

Witness:
Yes ma'am.

Counsel:
You gave them a statement?

Witness:
Yes ma'am.

Counsel:
And then they moved you, the Command moved you down to Camp Arifjan, correct?

Witness:
Yes ma'am. I don't know the time frame, but it was pretty much a little while after that ma'am.

Counsel:
So you gave your statement and then you were moved down to Arifjan?

Witness:
Yes ma'am. We were still at Bucca for a little while and then they started moving us.

Counsel:
Can you remember about how long you up at Bucca in between?

Witness:
I would say a month, doing details and other things.

Counsel:
All right, and then after that they moved you down to Arifjan?

Witness:
To the best of my recollection, yes ma'am.

Counsel:
And your wife stayed up at Camp Bucca?

Witness:
Yes ma'am.

Counsel:
Now she called you from Camp Bucca, right?

Witness:
Yes ma'am. We talked on a cell phone which cost a lot.

012731

Counsel:

She called you cause she had gone to talk to CID, right?

Witness:

I had asked her actually, while I was at Arifjan, I had asked her to go and...I wanted to add to my statement. She went to see CID and she had called me up. Pretty much a few times, but one day in particular, yes ma'am.

Counsel:

Okay. Before you left Arifjan, you told your wife, I didn't see anything and I didn't do anything wrong, right?

Witness:

Before I left Arifjan, I told her that I didn't see anything and I didn't do anything wrong. That's right ma'am.

Counsel:

Okay. And after she talked to CID, she called you and said, hey they're telling me that you were involved.

Witness:

Yes ma'am.

Counsel:

She was pretty upset, wasn't she?

Witness:

Yes ma'am.

Counsel:

It's something that you guys discussed and argued about on the phone, right?

Witness:

Yes ma'am.

Counsel:

And she told you, what you need to do now is go back and think about all the details of what happened.

Witness:

She asked to go over in my mind the incident the day of, and there after, and anything I can come up with I should think about it.

Counsel: To see if there were any new details that you remember?

012732

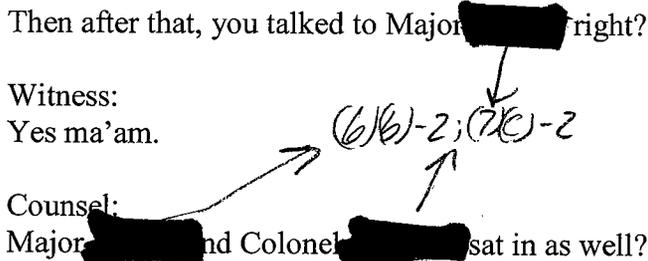
Witness:
Yes ma'am.

Counsel:
Then after that, you talked to Major [REDACTED] right?

Witness:
Yes ma'am.

Counsel:
Major [REDACTED] and Colonel [REDACTED] sat in as well?

(b)(6)-2; (7)(C)-2



Witness:
Yes ma'am.

Counsel:
And then that's when you did that second sworn statement, right?

Witness:
Yes ma'am.

Counsel:
Now it's your understanding that you have immunity from prosecution, right?

Witness:
Yes ma'am.

Counsel:
And it's your understanding that you can't be prosecuted for anything that you might have done on the bus, right?

Witness:
I didn't do anything on the bus, but yes ma'am.

Counsel:
Okay. Or if you told CID something that was incomplete or untruthful, you can't be prosecuted for that either, right?

Witness:
At both times when I made a statement, at that point when I made a statement, I was truthful to the whole point and extent, but yes ma'am.

Counsel:
Okay, except that you left out some of the details the first time?

012733

Witness:

Ma'am I was flustered and I was getting...I was completely truthful with what I can remember at the time. Yes ma'am.

Counsel:

Okay. That's my question. You went back, and later, there were new details.

Witness:

Yes ma'am.

Counsel:

Thank you Specialist [REDACTED] (b)(5)-4; (7)(C)-4

Questions by the defense counsel: CPT [REDACTED] (b)(6)-2; (7)(C)-2

Counsel: (b)(6)-4; (7)(C)-4

Specialist [REDACTED] want to talk to you a little bit about this conversation that you say you had with Master Sergeant [REDACTED] You said you were sitting in the truck when she approached you?

(b)(6)-5; (7)(C)-5

Witness:

Yes ma'am.

Counsel:

And you said that she advised you that you ought to get an attorney?

Witness:

As many others, yes ma'am.

Counsel:

Okay. You said many others had already told you ought to get an attorney?

Witness:

Yes ma'am.

Counsel:

That was other members of your Command?

Witness:

Yes ma'am.

Counsel:

And you took that as her taking care of you?

Witness: Yes ma'am.

012734

Counsel:

You didn't see that as any sort of coercion or anything, just that she was telling you that you ought to get an attorney?

Witness:

Yes ma'am.

Counsel:

And then, you said that you discussed whether or not you had seen anything, correct?

Witness:

Yes ma'am.

Counsel:

And you told her you had not seen anything, correct?

Witness:

That's right ma'am.

Counsel:

And that's what you had already told CID, correct?

Witness:

Yes ma'am.

Counsel:

And that's what you had already told your wife, correct?

Witness:

Yes ma'am.

Counsel:

And that was end of the conversation, correct?

Witness:

That's right ma'am.

Counsel:

And throughout that entire conversation, you just thought of this as just a normal, everyday conversation you would have with Master Sergeant [REDACTED]

(b)(6)-5; (7)(C)-5

Witness:

Yes ma'am.

Counsel: Didn't take it as any sort of event, didn't feel coerced in any manner, correct?

012735

Witness:
No ma'am.

Counsel:
Didn't say anything different as a result of this conversation?

Witness:
No ma'am.

Counsel:
Now you said she winked at you?

Witness:
Yes ma'am.

Counsel:
You said that you thought that was part of her personality, correct?

Witness:
Yes ma'am.

Counsel:
Normal thing you would see Master Sergeant [REDACTED] do? (b)(6)-5, (7)(C)-5

Witness:
Yes ma'am.

Counsel:
Didn't take it as any sort of coercion on her part?

Witness:
No ma'am.

Counsel:
Thank you Specialist [REDACTED] (b)(6)-4, (7)(C)-4

Questions by the defense counsel: M [REDACTED] (b)(6)-2, (7)(C)-2

Counsel: (b)(6)-4; (7)(C)-4
Specialist [REDACTED] when you went to the tent to ask...you thought you had some information people might like to know and you saw Specialist [REDACTED] correct?

Witness:
Yes ma'am.

(b)(6)-4; (7)(C)-4

Counsel:

And you told them you had some information about CID and what they were doing with the investigation?

Witness:

It was a rumor ma'am.

Counsel:

A rumor, okay. And you said to us that you like rumors and you passed them along to other people.

Witness:

Yes ma'am.

Counsel:

I have no further questions.

Questions by the defense counsel: CPT [REDACTED] (b)(6)-2; (7)(C)-2

Counsel: [REDACTED] (b)(6)-4; (7)(C)-4
Specialist [REDACTED] you testified about the Fedahyeen Major who...when he was on the bus and you were getting ready to unload him, he refused to get up?

Witness:

Yes ma'am, or yes sir, I mean. My apologies sir.

Counsel:

And then you said that you hoped there was at least one other EPW that you kind of had to push along, or you kind of had to forcefully had to move along through the aisle because he wouldn't move.

Witness:

Yes sir. There was a few that night that just didn't want to move, sir.

Counsel:

Okay. So there was a number, actually a number of EPWs, before they even got off the bus, they were kind of like dead weight?

Witness:

Yes sir.

Counsel:

Okay. Thank you Specialist.

012737

REDIRECT EXAMINATION

Questions by the trial counsel: MAJ [REDACTED] (b)(6)-2; (7)(C)-2

Counsel: (b)(6)-4; (7)(C)-4

Specialist [REDACTED], the first prisoner that, you say, didn't want to move, was he on crutches?

Witness:

Yes sir. He had crutches.

Counsel:

Okay. Did you know why he was on crutches?

Witness:

No sir. I don't know the extent of why he had the crutches.

Counsel:

At the end of the mission, you said you searched the bus?

Witness:

Yes sir.

Counsel:

Okay, and found some medical tape. Did you search the bus prior to letting the prisoners board?

Witness:

Yes sir. It was searched prior to, and the only thing we found was a lot of water bottles and leftover MREs.

Counsel:

Okay. A lot of trash on the ground?

Witness:

Yes sir.

Counsel:

Okay. Did you clean up all the trash?

Witness:

No sir. We didn't have trash bags available.

Counsel: Okay. So you just left all this trash?

012738

Witness:
Yes sir.

Counsel:
That's all I have sir.

I/O:
Anything else?

Defense counsel:
No, sir.

Questions by the Investigating Officer: LTC [REDACTED] (b)(6)-2; (7)(C)-2

I/O:
Specialist [REDACTED] when the bus pulled off to the side of the road, midway back to Camp Bucca, you said that Sergeant [REDACTED] and Specialist [REDACTED] came up to the bus, is that correct?
(b)(6)-4; (7)(C)-4

Witness:
Yes sir.

I/O:
And you said that they asked what was happening?

Witness:
Yes sir. They were the rear security vehicle at the time, sir.

I/O:
Okay. And then who responded back to them?

Witness:
I don't know, it was a male voice over the top of my head so I would assume it was either Sergeant [REDACTED] or Sergeant [REDACTED] sir.
(b)(6)-4; (7)(C)-4

I/O:
And then that voice said that everything is okay?

Witness:
It's just an air hose that broke.

I/O:
And then at that point, they left?

012739

Witness:

We were in the transition of doing a bunch of things at the time, so I didn't see them from that point on.

I/O:

Where were you exactly on the bus?

Witness:

I was in the front of the bus and I was then asked to pull side security. So they asked me to hop off with my M-16 and pull security on the side of the bus.

I/O:

You were in the front of the bus doing what?

Witness:

I was just, I was a passenger at the time when this air hose broke. Sergeant [REDACTED] and Sergeant [REDACTED] were security at the time, with their shotgun.

(b)(6)-4; 7(c)-4

I/O:

They were behind you, I guess?

Witness:

Yes sir.

I/O:

Okay. And then you went out and pulled security at that point?

Witness:

Yes sir.

I/O:

And where were you on the outside of the bus when you pulled security?

Witness:

I was between the front tire and the first cargo compartment.

I/O:

So if anybody had come on the bus after that point, you would have seen them or no?

Witness:

No sir. My vision was towards the desert in case anything would pop up, sir.

I/O:

So your not really sure if anybody came on the bus after that point or not?

012740

Witness:

No sir. I couldn't tell you if anybody came on between that point in time, no sir.

I/O:

How long was that?

Witness:

Ten minutes sir.

I/O:

Okay. Who called you back in?

Witness: (b)(6)-4;(7)(C)-4

Sergeant [REDACTED] had screamed out, he had voiced out through the door that everything was all right, time to board up to go.

I/O:

Anybody say anything to you when you came back on the bus?

Witness:

I'm not understanding sir.

I/O:

Did anybody, did any of the other MPs say anything to you when you came back on the bus?

Witness:

No sir. There was two comments made during the trip, but not when we got back on the bus sir.

I/O:

So you just got back on the bus and took off and continued the mission?

Witness:

Yes sir.

I/O:

Okay. Since the twelfth of May, have you had any conversations or discussions with anybody from the 223RD MP Company?

Witness:

No sir.

I/O:

Did you aware...were you aware that they were even on the ground that night?

012741

Witness:

Yes sir. Two of them were on the bus and then the lead vehicle was theirs.

I/O:

And you knew them to be members of the 223RD?

Witness:

There was an E-6, female E-4 gunner, an E-4 driver and then two Sergeants on the bus, as far as my recollection sir.

I/O:

When CPT [REDACTED] (b)(6)-2; (7)(C)-2 asked you about this conversation, or this brief conversation, I guess you had with Master Sergeant [REDACTED] (b)(6)-5; (7)(C)-5 was it typical for her to come up to you and advise you to get an attorney?

Witness:

No sir. There had not been any incidents requiring such a talk.

I/O:

Is it part of her personality to wink at you?

Witness:

Yes sir. She's the kind of...kind of her personality. She always winks at the end of some of her conversations towards me. It's just her personality. Her persona. It's part of her.

I/O:

Witness:

So she came up to you and advised you to get an attorney and then winked at you?

Witness:

Yes sir. Basically, essentially part of it, yes sir. The end of her conversation she just winked at us and that was the end of the conversation. I didn't take it as anything other than that.

I/O:

Anybody have any further questions?

Questions by the trial counsel: MAJ [REDACTED] (b)(6)-2; (7)(C)-2

Counsel:

That conversation with Master Sergeant [REDACTED] (b)(6)-5; (7)(C)-5 didn't she also say you didn't see anything, right?

Witness:

Yes sir. I said that prior to...

012742

Counsel:

I just wanted to clear that up. Thank you Specialist.

I/O:

Any further questions? Specialist ^{(b)(6)-4, (7)(c)-4} thank you for your testimony

[The witness was duly warned, dismissed and withdrew from the room.]

I/O:

Is that the end of the live witnesses we have?

Counsel:

The live ones, yes.

I/O:

Okay.

Counsel:

Then we have a CID agent who...I thought Ohio...are you sure it's eight hours?

I/O:

Special Agent ^{(b)(6)-1; (7)(c)-1} hello can you hear me?

Witness:

Yes, yes.

I/O:

Special Agent ^{(b)(6)-2; (7)(c)-2} this is Lieutenant Colonel ^{(b)(6)-2; (7)(c)-2}. I'm calling from Camp Doha Kuwait. We're in the middle of the Article 32 hearing that I believe you were contacted about previously. We have the Government and Defense counsel here. If you're prepared, we'd like to go ahead and interview you and conduct that part of the hearing?

Witness:

I'm ready sir.

I/O:

Okay.

Who we have here is Major ^{(b)(6)-2; (7)(c)-2} who's the counsel for the Government. Then we have Captain ^{(b)(6)-2; (7)(c)-2} Major ^{(b)(6)-2; (7)(c)-2} Captain ^{(b)(6)-2; (7)(c)-2} and Captain ^{(b)(6)-2; (7)(c)-2} here as the counsel for the accused. And I believe what we'll do is start with the Government counsel who will swear you in over the connection here, and then we'll begin the questioning here, okay?

Witness:

All right sir.

012743

DIRECT EXAMINATION

Special Agent [REDACTED] (b)(6)-1; (7)(C)-1, U.S. Army, was called as a witness for the Government, was sworn and testified as follows:

Questions by the trial counsel: MAJ [REDACTED] (b)(6)-2; (7)(C)-2

Counsel:
Agent [REDACTED], could you give your full name for the record, please?

Witness: [REDACTED] (b)(6)-1; (7)(C)-1

Counsel:
And your unit of assignment?

Witness:
44TH MP Detachment, CID.

Counsel:
And where is that unit currently stationed?

Witness:
I'm stationed with the forward element of that unit in Camp Bucca, which is located in Umm Qasr, Iraq.

Counsel:
Okay. Thank you Special Agent. I've no questions for you, if you please answer any questions that defense counsel pose.

CROSS-EXAMINATION

Questions by the defense counsel: CPT [REDACTED]

Counsel: (b)(6)-1; (7)(C)-1
Special Agent [REDACTED] this is Captain [REDACTED]

(b)(6)-2; (7)(C)-2

I/O:
Can you hear him?

Witness:
I heard this is Captain [REDACTED] I heard the introduction.

I/O:
Okay.

Counsel: (b)(6)-1; (7)(C)-1 (b)(6)-4; (7)(C)-4
Special Agent [REDACTED] you had previously interviewed Specialist [REDACTED] before you interviewed him in this case, is that correct?

Witness:
That is correct.

Counsel:
And that was involving another allegation by an EPW that he'd been abused, correct?

Witness:
That is correct.

Counsel:
And the EPW was a minor?

Witness:
That is correct.

Counsel:
And it turned out that that EPW had actually been injuring himself, correct?

Witness:
Yes that is correct.

Counsel: (b)(6)-4; (7)(C)-4
But what he actually claimed is that Specialist [REDACTED] had twisted his already injured arm, correct?

Witness:
That is correct.

Counsel:
And then you helped conduct the investigation in this case, correct?

Witness:
That is correct.

Counsel:
And you did an interview, again, with Specialist [REDACTED]? (b)(6)-4; (7)(C)-4

Witness:
That is correct.

012745

Counsel:

And since the time of that first investigation, there have been several EPWs who have alleged abuse by Specialist [REDACTED], correct?

(b)(6)-4; (7)(C)-4

Witness:

No, I cannot say with a high percent of certainty.

Counsel:

I'm sorry, can you repeat that answer?

Witness:

I was not aware of any other EPWs which alleged abuse against Specialist [REDACTED] (b)(6)-4; (7)(C)-4

Counsel:

Okay. So you don't remember...do you remember having a conversation with myself and Captain [REDACTED] few weeks back?

(b)(6)-2; (7)(C)-2

Witness:

Yes I do.

Counsel:

Okay. Do you remember at that time saying that EPWs, they sort of got a hold of Specialist [REDACTED] name and sort of past it around, and everyone said they got abused by Specialist [REDACTED]

Witness:

I remember saying that they alleged abuse against a soldier by the name of [REDACTED]. Whether or not they were directed towards, against Specialist [REDACTED] forget his full name, I cannot say. I do not know if they were directed...if there were any allegations directed, specifically towards Specialist [REDACTED] or towards a soldier name [REDACTED]

Counsel:

Okay. But it is the case that EPWs were claiming that they were abused by a soldier named [REDACTED] correct?

Witness:

I've been told that have been alleging anything and everything against a soldier named [REDACTED]

Counsel:

Okay. Thank you Agent [REDACTED]. Agent [REDACTED] don't have anymore questions for you.

I/O:

Major [REDACTED] is going to ask now.

(b)(6)-2; (7)(C)-2

012746

Counsel: CPT [REDACTED] (b)(6)-2; (7)(C)-2 (b)(6)-1; (7)(C)-1
I'm sorry. I did forget to ask you one other question. Special Agent [REDACTED] All of those allegations against some soldier named [REDACTED] all those allegations were ultimately unfounded, correct?

(b)(6)-4; (7)(C)-4

Witness:

Yes. The allegations with the minor were unfounded, that is correct.

Counsel:

Okay. And then all of the subsequent allegations by all the EPWs claiming that some soldier named [REDACTED] abused them, all of those allegations were also unfounded, correct?

(b)(6)-4; (7)(C)-4

Witness:

To my knowledge, yes sir that's correct.

Counsel:

Okay. I don't have any more questions for you.

Questions by the defense counsel: MAJ [REDACTED]

Counsel:

Special Agent [REDACTED] this is Major [REDACTED] Can you hear me?

Witness:

Yes I can ma'am.

Counsel:

Okay. Sticking with the line of questioning of [REDACTED] you did interview a Specialist [REDACTED] in this particular case, correct?

(b)(6)-4; (7)(C)-4

Witness:

That is correct.

Counsel:

And you took a sworn statement from him on May sixteenth, according to your IARR?

Witness:

That is correct.

(b)(6)-4; (7)(C)-4

Counsel:

And you were the person who did the questioning of [REDACTED] Specialist [REDACTED] and did the Q and A on the question on his statement?

Witness: That is correct.

012747

(b)(6)-1; (7)(C)-2
Counsel:

At this time I would like to have this admitted into evidence. Just a moment Special Agent [REDACTED] I'm moving to admit [REDACTED]'s sworn statement into evidence.

(b)(6)-4; (7)(E)-4

[The sworn statement was marked as Exhibit 12 without objection.]

Counsel:

Without objection.

Counsel:

Okay, without objection. It's marked as exhibit twelve and I'm going to leave it with the IO. I have no further questions, but another defense may. Please hold on.

Questions by the defense counsel: CPT [REDACTED] (b)(6)-2; (7)(C)-2

Counsel:

(b)(6)-1; (7)(E)-1 (b)(6)-2; (7)(C)-2
Special Agent [REDACTED], this is Captain [REDACTED] one of the defense counsels in the case. Can you hear me okay?

Witness:

Yes I can.

Counsel:

(b)(6)-1; (7)(E)-1
Agent [REDACTED] on the sixteenth of May, did you do an interview with a Lieutenant Colonel [REDACTED]

(b)(6)-4; (7)(C)-4
Witness:

Yes. That is correct.

Counsel:

And he told you that he was present during the off-loading of the EPWs on the bus on the twelfth of May, correct?

Witness:

That is correct.

Counsel:

And he related to you that he did see any soldiers striking EPWs, correct?

Witness:

That is correct.

Counsel:

And he told you that the soldiers were complaining to him that the EPWs were being combative and resisting, correct?

012748

Witness:

If it is in my AAR, the details are in there.

Counsel:

Thank you Agent [REDACTED] (b)(6)-1 ; (7)(C)-1

I/O:

Captain [REDACTED] (b)(6)-2 ; (7)(C)-2

Defense counsel: CPT [REDACTED]

No, sir.

Major [REDACTED]

No, sir

I/O:

I don't have any questions. Agent [REDACTED] appreciate your time very much. I hope this wasn't too much of an inconvenience for you; I hope everything's okay back home. And please don't, if you have an opportunity, don't discuss your testimony with any other witnesses or potential witnesses. And if we need anything, we will try and get back a hold of you.

Witness:

Thank you sir. I can be reached at this number.

I/O:

All right. Thank you very much. Goodbye.

[The witness was duly warned, dismissed and ended his telephonic interview.]

[The Article 32 hearing recessed at 1705 hours 01 September 2003.]

012749

[The Article 32 hearing reconvened at 1300 hours 02 September 2003.]

SPC [REDACTED] (b)(6)-4 ; (7)(C)-4 U.S. Army National Guard, was called as a witness for the Government, was sworn and testified as follows:

DIRECT EXAMINATION

Questions by the trial counsel: MAJ [REDACTED] (b)(6)-2 ; (7)(C)-2

Counsel:
You are SPC [REDACTED] (b)(6)-4 ; (7)(C)-4

Witness: Yes.

Counsel:
Of the 223rd MP Company?

Witness:
Yes.

Counsel:
And the 223rd is currently stationed at Camp Bucca, Iraq. Is that correct?

Witness:
Yes.

Counsel: (b)(6)-4, (7)(C)-4
Okay, SPG [REDACTED] do you remember the events of the 12th of May of this year?

Witness:
Yes I do.

Counsel:
What was your unit's mission on that day?

Witness:
On that day our mission was to go up to Talil, with 320th, and help train them on escorting EPW's.

Counsel:
Who was with you from your unit?

Witness:
SSG [REDACTED], SGT [REDACTED], SGT [REDACTED] and SPG [REDACTED] (b)(6) 4-(7)(C)-4

Counsel: And do you remember how many vehicles that you took up on the mission?

Witness:

We took four vehicles.

Counsel:

What type of vehicles were they?

Witness:

There was one upper armored humvee, which was ours, a bus, and I believe both of their humvee's were soft tops.

Counsel:

Which vehicle were you in?

Witness:

I was in the lead vehicle.

Counsel:

And your position in the vehicle?

Witness:

Gunner.

Counsel:

So you weren't on the bus?

Witness:

No.

Counsel:

I'm going to go ahead and fast forward to the--your return to Camp Bucca. Could you describe for me the unloading process of the EPWs once you reached Camp Bucca?

Witness:

Once we get to Camp Bucca we have all the prisoners down-loaded and they're handed off to whoever's helping down-load them. And they're set-up in groups of five and they're taken escorted down to the search area.

Counsel:

What was your job during the unloading process?

Witness:

I helped unload and take them to the first area we set-up and I also escorted them to the search area.

012751

Counsel:
Were you on the bus at any point?

Witness:
No.

Counsel:
So just tell me what did you do exactly?

Witness:
I helped escort them from the bus to the search area.

Counsel:
Was anyone else from the 223rd helping escort the EPWs?

Witness:
Not to the search area.

Counsel:
Who was helping you escort these EPWs?

Witness:
I know there were members of the 320th and I believe some people from the in processing station as well.

Counsel:
Do you remember when the first EPW came off the bus?

Witness:
Yes.

Counsel:
Was there anything unusual about that EPW?

Witness:
He was on crutches, he was a heavy guy, I'm not sure what else you're asking for.

Counsel:
What happened when he came off the bus?

Witness:
When he came off the bus he sat at the bottom of the stairs and he was speaking in Arabic, and the interpreter was telling us that he needed help getting off the bus that he could not walk, and everybody kept yelling "get up! get up! let's go!" and nobody seemed to want to help him.

012752

Counsel:
Who was yelling at him?

Witness:
Everybody--people that were around the bus.

Counsel:
Do you remember who was in that group that was in that group that was helping to --as this POW was being taken off the bus?

Witness:
I can't recall who all was there, pretty much it was the first EPW off the bus pretty much everybody was there, but I can't recall exactly who was where.

Counsel:
Did you--so he finally got up?

Witness:
Yes.

Counsel:
Did he get up under his own power?

Witness:
How he got up I do not remember, but when he got up he...first there were two people beside him on each side of him, I don't know who it was, but then they kinda just let him walk on his own with the interpreter to the initial staging area before we walked the five of them.

Counsel:
And did at that point what role did you play in the escort?

Witness:
I was just kinda sitting back watching.

Counsel:
Did you see what happened next?

Witness:
After the five were lined up there was five prisoners lined up after that they began to walk them, I'm not sure exactly who walked with them, but as they started walking down to lane to the search area I saw the MSG come up from their right side and strike the first prisoner who was on the crutches and knock him down on the ground.

Counsel:
Okay, who was this MSG?

012753

Witness:

This woman right here (pointing to MSG [REDACTED])

Counsel:

When you say she, MS [REDACTED] struck this EPW, what do you mean by struck? (b)(6)-5; (7)(C)-5

Witness:

She ran up from behind him and he fell forward onto the ground.

Counsel:

How did she strike him?

Witness:

I don't know whether it was with fist or pushing I just know she came up and struck him and he fell down I don't know exactly how.

Counsel:

How did he land?

Witness:

He landed onto the ground just like head first on the ground.

Counsel:

What happened after he was down on the ground?

Witness:

After he was on the ground, she began punching and kicking him, and then her and another male--.

Counsel:

Hold on a second--she began, who is she?

Witness:

The MSG.

Counsel:

And then what?

Witness:

And then after that her as well as another male, I don't know who it was, grabbed him from beneath his armpits and drug him to the searching area.

Counsel:

Would you recognize the individual that grabbed him by the armpits and drug him off?

012754

Witness:
No.

Counsel:
Did you hear any noise coming from this EPW?

Witness:
There was screams coming from many EPWs.

Counsel:
How about that the first EPW in particular?

Witness:
When he was knocked down, yes.

Counsel:
What kind of scream was it?

Witness:
I mean they were just high-pitched wails from him.

Counsel:
You were in a position to see them walk away?

Witness:
Right

Counsel:
Did you--did he have his crutches at that point?

Witness:
No.

Counsel:
Did he appear to be resisting?

Witness:
Not at all.

Counsel:
Did he look like he was fighting them?

Witness:
No.

012755

Counsel:

Did it look to you as if he was under the control of the two escorts?

Witness:

Not at all, are you asking did he control them?

Counsel:

No, I'm the other thing too. Did it look like the two escorts were in control of the EPW?

Witness:

Oh, yes.

Counsel:

And later on after that was over, did you help move the EPW referred to as the rapist?

Witness:

Yes.

Counsel:

Who escorted him?

Witness:

SGT [REDACTED] and I.

(b)(6)-5; (7)(C)-5

Counsel:

Were his hands bound?

Witness:

Yes.

Counsel:

And what happened while you were escorting this EPW?

Witness:

When he came off the bus the MSG said, "I think the females need to take care of him for what he's done" and he was handed off to SGT [REDACTED] and I. She was on his left side and I was on his right side and we walked him to the initial place where we stage them before we take them to searching area, and MSG struck him from behind and he was knocked out of SGT [REDACTED] and I hands onto the ground face first.

(b)(6)-5; (7)(C)-5

Counsel:

Did you see how she struck him?

(b)(6)-5; (7)(C)-5

Witness:

I did not see she was behind us.

012756

Counsel:
So what happened as you were escorting that EPW?

Witness:
We just had to hold his arms and we walked with him, and he was knocked out of our hands. And that's when she began kicking him in the groin from behind.

Counsel:
How did he fall?

Witness:
He fell head first onto his knees.

Counsel:
And then what happened next?

Witness:
She began kicking him in the groin from behind.

Counsel:
How many times did she kick him?

Witness:
Probably about five to seven times.

Counsel:
How hard did she kick him?

Witness:
Pretty forcefully.

Counsel:
And then after she kicked him in the groin, what happened next?

Witness:
He kinda fell over onto his right side trying to block it with his kinda--separate-- put his legs together and that's when she started kicking him in his stomach and in his face.

Counsel:
Did the EPW make any noise?

Witness:
He yelled out. He kept yelling out and I heard him yelling "Nothing.. nothing" I don't know what he meant by that, but I heard him yelling that.

012757

Counsel: (b)(6)-5, (7)(C)-5
As you and SGT [REDACTED] were escorting that EPW was he resisting?

Witness:
Not at all.

Counsel:
When he was shoved out of your arms was he resisting?

Witness:
No.

Counsel:
Was he fighting you?

Witness:
No.

Counsel:
Was he complying with what you'd told him?

Witness:
Yes.

Counsel:
Then the next EPW that you were escorting, could you tell me about that?

Witness:
I can't recall which one was the next one that I escorted.

Counsel:
Did you see any other instances where an EPW was hit or struck?

Witness:
Yes.

Counsel:
Could you tell me about that please?

Witness:
There were various ones when we would be escorting them down the search area they were being kicked, thrown on the ground, and everything.

Counsel:
Now, you say various ones, could you pick one in particular out and describe what happened to him?

012758

Witness:

Not really in particular, I mean there were a lot of them that this occurred to.

Counsel:

Did you see one that was dressed unusually?

Witness:

Not really unusually.

Counsel:

How about one that their pants had fallen down?

Witness:

Yes I did.

Counsel:

Let's talk about him for a little bit. What did you see happen to him?

Witness:

He was, I believe, behind the guy--the supposed rapist guy, and he had been thrown down on the ground and the--

Counsel:

Okay, how did he make it down on the ground?

Witness:

I believe he was thrown down on the ground. The short specialist was sitting on top of him.

Counsel:

Did you actually see him throw him to the ground?

Witness:

No I did not.

Counsel:

But somebody was sitting on top of him?

Witness:

Yes.

Counsel:

Is that individual sitting here with us today?

012759

Witness:
Yes.

Counsel:
Could you point him out to us please?

Witness:
The specialist right here (pointing to SPC [REDACTED] (b)(6)-5, (b)(7)(C)-5

Counsel:
After the specialist was sitting on his back did you see anything else happen with this EPW?

Witness:
Not that particular one.

Counsel:
Did you see any other EPWs that were thrown to the ground?

Witness:
There were many EPWs that were thrown to the ground. There was one instance where we had a line of medical EPWs lined up. There was a man with one arm, there were, I believe, one of them had a sling on his arm, there was crutches, and then the last guy in the group he wasn't medical I believe he was a teacher that was a supposed interpreter. And when they came off the bus the MSG was asking, "whose a problem, are they a problem? Are they a problem?" and then they were like--no I take that back the MSG didn't say that, someone said that I don't remember who said that, but she said, "they're all here aren't they, well then they're a problem". And then that is when the tall SSG began picking them up off their feet and throwing them down on the ground.

Counsel:
Would you recognize that SSG?

Witness:
Yes.

Counsel:
Is he in the room here today?

Witness:
Yes he is.

Counsel:
Would you point him out for us please?

012760

Witness:
It's SSG McKenzie over there (pointing to him)

Counsel:
You say, he threw that EPW to the ground?

Witness:
Yes.

Counsel:
You saw that happen?

Witness:
Yes.

Counsel:
Did that EPW, at the time, appear to be resisting?

Witness:
Not at all.

Counsel:
How about fighting?

Witness:
No, the first one he did it to had only one arm.

Counsel:
What happened to him when he was, after he was thrown to the ground?

Witness:
He just laid there.

Counsel:
Did you see any other EPWs that were thrown to the ground?

Witness:
Yes, particularly all the EPWs in that line, the medical and the teacher, and it was five of them.

Counsel:
Did you recall an EPW that being down on the ground who was being held on the ground?

Witness:
Besides the one that was sat on top of?

012761

Counsel:
Yes.

Witness:
No I do not.

Counsel:
I'm going to go back to the EPW that was called the rapist. What exactly happened with him again?

Witness:
When he was taken off the bus he was handed to SGT [REDACTED] and I and we walked him to the initial area where we set him down. And when we got there he was struck from behind, by the MSG, and he was knocked down head first onto his knees. And the MSG began kicking him in his groin from behind and he fell over onto his side and she began kicking him in his stomach and in his face. And then after that SGT [REDACTED] and I put him into the prone position, except the only difference was his hands were bound beneath him, so we could not spread his hands apart like we were trained to do. And that's when the SPC and the SSG grabbed his ankles and the MSG had her foot on his head and they were all saying, "It's your shot...It's your shot...Go ahead"

(b)(6) -5;
(7)(C) -5

Counsel:
Let's back up for a second, he's down on the ground and where was the MSG?

Witness:
MSG was at his head.

Counsel:
What was she doing at his head?

Witness:
At that particular time she just had her foot on his head.

Counsel:
And then, who else was there?

Witness:
SPC [REDACTED] and SSG McKenzie.

(b)(6) -5 - 7(c) -5

Counsel:
And what were they doing?

Witness:
SPC [REDACTED] was sitting on top of the other EPW, the second one in the row, and SSG McKenzie he was just over there. I guess he had walked up when it was occurring.

Counsel:
And then,--were they holding on to his legs?

Witness:
They held on to his ankles.

Counsel:
And so each one had a hold of one ankle?

Witness:
Yes.

Counsel:
How were his legs arranged at that point?

Witness:
At that point they were spread apart.

Counsel:
And where was his face?

Witness:
His face was in the ground.

Counsel:
And what happened when his legs were spread apart?

Witness:
When his legs were spread apart and they had a hold of his ankles they kept saying, "It's your shot--It's your shot. Go ahead"

Counsel:
Who was saying that?

Witness:
The MSG, SPC [REDACTED] and SSG McKenzie.

Counsel:
And they were saying, "It's your shot"?

Witness:
Yes, and they were looking at SGT [REDACTED] and I.

} (b)(6)-5 ; (7)(C)-5

Counsel:
And what happened then?

Witness: (b)(6)-5; (7)(C)-5
SGT [REDACTED] looked over at me and I just kinda stepped back, like I don't want to have any part in it. And she was looking around real nervous biting her lip like she knew that she didn't want to do it, and she just--they kept urging her on and she did it anyway.

Counsel:
She did what?

Witness:
She kicked him in his groin.

Counsel:
How many times did she kick him?

Witness:
That I saw, she probably only kicked him three to five times, I walked away.

Counsel:
How hard were the kicks?

Witness:
They were pretty forceful, probably not as hard as she could've, but she kicked him pretty good.

Counsel:
How did that EPW finally make it to the holding area?

Witness: (b)(6)-4; (7)(C)-4 (b)(6)-5; (7)(C)-5
After I had walked away and walked over to SPC [REDACTED] and SGT [REDACTED] came back and got me and we picked him up and walked him to the search area together.

Counsel:
While he was down on the ground did he make any noise?

Witness:
Yes he was screaming out.

Counsel:
And what would happen when he screamed?

Witness:
When he screamed she would kick him in his face each time, the MSG.

012764

I/O: Could you say that again, I'm sorry?

Witness:

When he screamed the MSG would kick him in his face each time.

I/O: After you picked him up?

Witness:

No, this was before we picked him up while he was still on the ground.

I/O: After she kicked him in the groin, according to you?

Witness:

Yes.

Counsel:

And did anything happen as you were moving him over to the search area?

Witness:

Yes, there was someone walking behind us, I'm not sure exactly who it was 'cause they were behind us, and they kept trying to trip the prisoner from behind and I just kept a firmer grip on his arm and tried to walk faster. SGT [REDACTED] started to kick him from the side, but he never fell. I just kept trying to walk faster with the prisoner.

Counsel:

Did you hear anything as you were walking away with him?

Witness:

I don't recall.

Counsel:

After you got to the searching area, I assume, you went back to the bus?

Witness:

Correct.

Counsel:

Did you hear anything as you were walking back to the bus?

Witness:

On the way back I heard SGT [REDACTED] and the MSG were right behind me, and SGT [REDACTED] said "I didn't get a good kick in the first time, but I got him good after that" and the MSG said, "I got a good cock shot in".

Counsel:

What did you see when you got back to the door of the bus?

012765

Witness:

When I got back to the bus that was when the next group happened, with the guy with one arm and the medical guys and the teacher that was the next time.

Counsel:

What happened to the next EPW off the bus, that you saw?

Witness:

That was the ones that were lined up and the SSG was throwing them down on the ground.

Counsel:

What do you mean throwing them on the ground?

Witness:

He was actually picking them up off their feet and throwing tem down--like a body slam.

Counsel:

How would they land?

Witness:

Generally like their whole body like face first into the ground.

Counsel:

And then what happened after they would land on the ground?

Witness:

They just lay there, sit there however they landed.

Counsel:

So, how many EPWs were in this group?

Witness:

Five.

Counsel:

And each one of them got thrown?

Witness:

Yes.

Counsel:

How far away were you from this group of EPWs?

012766

Witness:
Less than five feet.

Counsel:
Did they appear to be resisting?

Witness:
Not at all.

Counsel:
Were they fighting?

Witness:
No.

Counsel:
Did they appear to be doing what they were told?

Witness:
Yes.

Counsel:
With this group of EPWs did you see any training going on?

Witness:
I did notice that it was out of the ordinary of what we were taught on how he was throwing them down to the ground. For one they weren't resisting, so there was no reason to, and for another we weren't taught like that. So I made a comment to SGT (b)(6)S-(7)(C)-3 [REDACTED] I was like, "what is he a cop or something" I mean obviously I don't know how cops are trained either, but I was just asking, and she said, "No, he's an Ultimate Fighter". She tried to explain it to me I had-kinda had-no clue what she was talking about so I just let it go.

Counsel:
Do you know what an Ultimate Fighter is?

Witness:
No I don't.

Counsel:
Sir, I have no further questions.

After a recess the following occurred for the record:

(b)(6)-2, (7)(C)-2 CPT [REDACTED] Sir, is there anything that we should know about that you can't continue with the hearing or anything, sir?

012767

(b)(6) 2 - (7)(C) - 2

I/O: No, I'm just feeling a little queasy after lunch that's all.

CPT [REDACTED] Aside from the hearing, sir?

I/O: Yeah

b6-27 7(C) 2

CPT [REDACTED] That's all I just wanted to inquire about, sir. That there's no problem.

CROSS-EXAMINATION

Questions by the defense counsel: CPT [REDACTED] (b)(6) 2 - 7(c) - 2

Counsel: SPC [REDACTED] you've been with the 223rd since November 2001?

Witness:

(b)(6) - 4; 7(C) - 4

Yes.

Counsel:

And your civilian occupation?

Witness:

I work in a deli.

Counsel:

(b)(6) - 4; (7)(C) - 4

And SGT [REDACTED] is your team leader, right?

Witness:

Yes.

Counsel:

(b)(6) 4; (7)(C) - 4

And SSG [REDACTED] would be your squad leader?

Witness:

Yes.

Counsel:

Prior to this mission you guys had done about 20 escort missions?

Witness:

Yes.

Counsel:

(b)(6) 4 - 7(c) - 4 [REDACTED] was with you on most of those missions, right?

012768

Witness:
That's correct.

Counsel: (b)(6)(4)-(7)(C) -4
And SGT [REDACTED] as well?

Witness:
Yes.

Counsel:
And on this mission your job was to be the gunner for the lead vehicle?

Witness:
That's correct.

Counsel:
You were wearing DCUs?

Witness:
I was wearing my brown T-shirt, Flak vest, Kevlar, in the vehicle of course, my DCU pants, boots 9M, and I mount a SAW on top of the vehicle.

Counsel:
Were you wearing goggles?

Witness:
Goggles--I usually wear goggles, yes. I can't remember whether I was that day, but I'm pretty sure I was.

Counsel:
Up in the turret you didn't have goggles on?

Witness:
Up in the turret I usually wear goggles, but other than driving I don't know if I had them on.

Counsel:
That night you had your goggles on as well, correct?

Witness:
Yes.

Counsel:
Not those glasses, right?

012769

Witness:

No.

Counsel:

You had the big birth control glasses that you were wearing?

Witness:

Yes.

Counsel:

They're big and black?

Witness:

Yes.

Counsel:

With a strap around them?

Witness:

Yes.

Counsel:

Were you wearing a desert do-rag that night?

Witness:

I very well may have been I'm not sure.

Counsel:

Now your duties as the gunner, your main duty is to face forward and cover the sectors of fire that are in front of the convoy, right?

Witness:

Yes.

Counsel:

Can you remember the configuration of the convoy that night?

Witness:

Yes, there was my vehicle, and behind us was a soft top humvee, then there was the bus, and another humvee.

Counsel:

And that configuration was the same both going and coming, right?

Witness:

Yes.

012770

Counsel:

Now the communications that you had that night...everybody in the truck was wearing the internal head-sets, correct?

Witness:

Correct.

Counsel:

And that allowed you to hear the SINGARS communication that was going on on the radio, right?

Witness:

Yes.

Counsel:

And it also allowed you to talk to the three people that were in the truck with you, correct?

Witness:

Yes.

Counsel:

Now on the ride up you had no communications from the bus, correct?

Witness:

That's right.

Counsel:

You didn't hear them come on to the SINGARS and talk to you guys, right?

Witness:

No.

Counsel:

And on the way back you didn't hear anything from the bus either, correct?

Witness:

No.

Counsel:

On the way back the bus stopped, right?

Witness:

Correct.

012771

Counsel:

And at that point the people in your vehicle had no idea what was wrong with the bus, correct?

Witness:

That's right.

Counsel:

And your job, when the convoy stops, is to pull security towards the front, correct?

Witness:

That's correct.

Counsel:

And when the bus stopped SSG ^{(b)(6)4 - 7(c)4} [REDACTED] and SGT [REDACTED] got out right?

Witness:

Correct.

Counsel:

And per your SOP when people exit the vehicles their jobs are to pull security, right?

Witness:

Correct.

Counsel:

Now it was your understanding that SSG ^{(b)(6)4 - 7(c)4} [REDACTED] was going to go to the bus, correct?

Witness:

Correct.

Counsel:

^{(b)(6)4 - 7(c)4} And SGT [REDACTED] was going to pull security?

Witness:

Correct.

Counsel:

^{(b)(6)4 - 7(c)4} Did you see where SGT [REDACTED] pulled security?

Witness:

No.

Counsel:

Now when you arrived at Camp Bucca, there was no one from the in processing unit to meet you, right?

012772

Witness:
Correct.

Counsel:
So you guys waited for those in processing soldiers to arrive before you downloaded the bus, correct?

Witness:
That's correct.

Counsel:
That night when you were escorting prisoners you were armed only with 9M, right?

Witness:
Right.

Counsel:
No M16s out there?

Witness:
No M16s.

Counsel:
Why not?

Witness:
Because if you have your M16 with you the M16 is long and bulky and the prisoner could possible, you know, if they got out of line could reach for your M16 and you wouldn't be in very good a shape, obviously.

Counsel:
So there were no M16s out there on the escorts?

Witness:
No.

Counsel:
So the in processing people weren't there--the set-up was a little bit different too correct?

Witness:
Yes.

Counsel:
The distance to the search area was further, right?

012773

Witness:
Further, yes.

Counsel:
Now that first EPW off the bus was the major on crutches, correct?

Witness:
Yes.

Counsel:
And he sat down on that top step and he refused to move, right?

Witness:
He sat down on the bottom step yes.

Counsel:
Okay, I'm sorry, he sat down on the bottom step and he wouldn't get up?

Witness:
Right.

Counsel:
And you're not sure how he eventually did get up, correct?

Witness:
Correct.

Counsel:
But he walked by himself with his crutches to the staging area, right?

Witness:
By himself with his crutches along next to the Kuwaiti interpreter, I assume he's Kuwaiti
I don't know his nationality for sure, but he works for the Americans.

Counsel:
He walked by himself?

Witness:
Yes.

Counsel:
And that kinda stood out in your mind as being odd, right?

Witness:
Right.

012774

Counsel:
And that staging area is how far from the bus?

Witness:
Probably about approximately 15 feet away from the bus.

Counsel:
Fifteen feet away?

Witness:
Approximately.

Counsel:
And as he was moving the other escorts were standing in line, correct?

Witness:
Yes.

Counsel:
So you were standing in line next to SGT [REDACTED] ^{(b)(6)-4, (7)(C)-4} waiting for your turn to escort a prisoner, correct?

Witness:
Maybe not directly next to him, but around the same area, yes.

Counsel:
How far do you think you were from him?

Witness:
Within five feet.

Counsel:
After that the major sat down at the staging area four more EPWs followed, correct?

Witness:
Yes.

Counsel:
And it was after that that you say that MSC [REDACTED] ^{(b)(6)-5, (7)(C)-5} came up from behind the EPW on crutches, right?

Witness:
Yes.

Counsel:
At that point all five EPWs were moving down towards to search area, right?

012775

Witness:
Right.

Counsel:
What were the escorts doing? The two escorts that were escorting the five?

Witness:
I don't recall what they were doing.

Counsel:
At the time that you saw that happening, did you hear SGT (b)(6)-4; (7)(C)-4 say anything?

Witness:
No.

Counsel:
Did you hear SSG (b)(6)-4; (7)(C)-4 say anything?

Witness:
I wasn't listening or paying any attention to what people were saying.

Counsel:
Then that EPW was picked up underneath the arms, correct?

Witness:
Yes.

Counsel:
And it was his feet that you saw dragging, right?

Witness:
Right.

Counsel:
Now you talked about the major that you identified as the rapist, correct?

Witness:
Yes.

Counsel:
And what you saw happen to the rapist also happened 15 feet from the bus, is that right?

Witness:
Yes.

012776

Counsel: (b)(6)-5; (7)(C)-5
It was you and SGT [REDACTED] that were escorting the major, right?

Witness:
Yes.

Counsel:
And while he was on the ground you claim that the MSG kicked him in the groin?

Witness:
Yes.

Counsel:
Five times?

Witness:
Yes.

Counsel:
Five times before he rolled over on his side?

Witness:
Approximately five times before he rolled over onto his side.

Counsel:
And then there was kicks in the face as well?

Witness:
Yes.

Counsel:
And you said that she had her foot on her head?

Witness:
Yes.

Counsel: (b)(6)-5, (7)(C)-5
And it was at that point that you and SGT [REDACTED] kicked the EPWs legs apart to put him in the prone?

Witness:
Yes.

Counsel:
While he was in the prone, after you kicked his legs apart, you walked away, right?

012777

Witness: ^{b6-5, b(7)(C)-5}
After SGT [REDACTED] began to kick him is when I walked away.

Counsel:
You walked to back to where [REDACTED] and [REDACTED] were?

(b)(6)(4); 7(c)-4
Witness:
Yes.

Counsel:
Did [REDACTED] say anything then?

Witness:
I didn't speak to [REDACTED] I spoke to [REDACTED]

Counsel:
And you said, "I don't like what's going on"?

Witness:
Right.

Counsel: ^{(b)(6)-5; (7)(C)-5}
And then you went back with SGT [REDACTED] to escort that prisoner down to the search area?

Witness:
Right.

Counsel:
And at that point he walked down to the search area with the two of you?

Witness:
Yes.

Counsel:
When the EPW was on the ground, after you kicked his legs apart and put him in the prone, you said that two individuals were holding his ankles, correct?

Witness:
Correct.

Witness: ^{(b)(6)-5; (7)(C)-5}
And you said that SPC [REDACTED] was sitting on an EPW, right?

Witness:
Right.

012778

Counsel: You didn't see how that EPW got on the ground, correct?

Witness:
That's correct.

Counsel:
You described a third incident with the five EPWs that you say were thrown on the ground, correct?

Witness:
Correct.

Counsel:
That also happened out by the staging area, right?

Witness:
Yes.

Counsel:
That NCO was by himself out there at the staging area?

Witness:
Possibly not by himself, but he was the only one that was actually throwing them down.

Counsel:
Who else did you see out there with him?

Witness:
I didn't see anybody else out there.

Counsel:
And this happened after the EPWs were lined up out there?

Witness:
Yes.

Counsel:
So the five of them were sitting in a line?

Witness:
They were standing in the line.

Counsel:
Okay the five of them are standing in a line?

Witness:

Yes.

Counsel:

Fifteen feet from the bus?

Witness:

This one was ..they changed the area where we started putting them. They cut a piece of the engineer tape to where we could walk straight up and around, rather than go to the end of the bus, come back across, and around.

Counsel:

Okay so someone cut a hole in the barbed wire, correct?

Witness:

The engineer tape.

Counsel:

The engineer tape, I'm sorry, it's not barbed wire there quite yet?

Witness:

Not in that point right.

Counsel:

So someone cut a hole in the engineer tape?

Witness:

Yes.

Counsel:

And that actually made the distance between the bus and the search area shorter, right?

Witness:

No it didn't make it shorter it just the path was shorter, but the distance was about the same--from the bus to the searching area you've still got the same distance, but rather than going back here and around we just went straight out--so it just made the path shorter.

Counsel:

That area where the hole was in the fence was close to the bus than the other staging area was, correct?

Witness:

Yes.

012780

Counsel:

So these five guys are lined up and you're standing at the bus with [REDACTED] right? Near

[REDACTED] (b)(6)-4; (7)(C)-4

Witness:

Yes.

Counsel:

(b)(6)-4; (7)(C)-4

Did you hear [REDACTED] say anything at that point?

Witness:

No.

Counsel:

SSG [REDACTED] (b)(6)-4; (7)(C)-4

Witness:

I didn't hear anybody say anything.

Counsel:

Did you have to put anyone on the ground that night?

Witness:

No.

Counsel:

Any EPW?

Witness:

No.

Counsel:

Did you tell another soldier that you had put an EPW on the ground that night?

Witness:

I did not tell them I had to put another one on the ground, no.

Counsel:

There was lots of commotion out there, right?

Witness:

Yes.

Counsel:

People were running around everywhere, right?

012781

Witness:

Not necessarily running around, but yes.

Counsel:

At some point you started running with EPWs, correct?

Witness:

Yes.

Counsel:

So you're the MP that's running with the EPWs, right?

Witness:

Yes.

Counsel:

Some people--some EPWs were being taken off the bus one-to-one escort, right?

Witness:

Right.

Counsel:

Some EPWs had two escorts on them, right?

Witness:

Yes.

Counsel:

Now you kicked EPW's legs apart before, right?

Witness:

Yes.

Counsel:

On one of the first the 223rd did you guys had an EPW that you had to put in the prone, right?

Witness:

Yes.

Counsel:

And the EPW was in the prone, correct?

Witness:

Correct.

012782

Counsel:
And you were standing over him, right?

Witness:
I was standing near him, yes.

Counsel:
Okay near him. And the EPW put his legs together?

Witness:
Right.

Counsel:
And so you kicked him to put them back apart?

Witness:
Yes.

Counsel:
And one of the in processing NCOs told you, hey you shouldn't...that's not how you should do that, correct?

Witness:
Yes.

Counsel:
When everything was said and done that night, you talked to SGT [REDACTED] right?

Witness:
Yes.

(b)(6)-4, (7)(C)-4

Counsel:
And it was in front of your company TOC, correct?

Witness:
Yes.

Counsel:
And SSG [REDACTED] showed up at some point as well?

Witness:
Yes.

(b)(6)-4, (7)(C)-4

Counsel:
And SGT [REDACTED] told you some things that you didn't see, correct?

Witness:
That's correct.

Counsel:
Like for example-- she told you that when the bus stopped he saw soldiers jump on the bus, correct?

Witness:
Yes.

Counsel:
And you didn't see that yourself?

Witness:
That's right.

Counsel:
'Cause you were pulling security to the front when the convoy had stopped, right?

Witness:
Yes, well originally when the convoy had stopped we had to turn around and come back, and then I was pulling security on the front, so I didn't see that.

Counsel:
And that's something he told you?

Witness:
Yes.

Counsel:
And you told him some of the things that you'd seen, right?

Witness:
Yes.

Counsel:
That he hadn't necessarily seen, correct?

Witness:
Yes.

Counsel:
And you also talked to SGT [REDACTED] later, right?

Witness:
Yes, at some point in time I did.

(b)(6)-4-(7)(C)(4)

Counsel:

But you can't remember if it was that night or maybe the next day?

Witness:

Yes.

Counsel:

And he told you that he didn't see anything, right?

Witness:

Right.

Counsel:

'Cause he was busy dealing with the property?

Witness:

Yes.

Counsel:

And you told him well this is what I saw, correct?

Witness:

Yes.

Counsel:

You guys didn't actually go back to your company area right after the escorts were over, correct?

Witness:

That's correct.

Counsel:

'Cause there was a problem with the property?

Witness:

Yes.

Counsel:

As far as you know someone had signed for something that either didn't show up or there was some mistake with the paperwork?

Witness:

Yes.

012785

Counsel:
So you all stayed there together, right?

Witness:
That's right.

Counsel:
And you didn't talk about what you saw then, right?

Witness:
Not that I can recall.

Counsel:
'Cause at that point the focus was on taking care of the property?

Witness:
The property issue.

Counsel: (b)(6)-4 ;(7)(c)-4
[REDACTED] I just want to go back one more time to this incident with the rapist?

Witness:
Yes.

Counsel:
You said that you were escorting this individual and the MSG ran up and pushed him to the ground?

Witness:
Yes.

Counsel:
And then he kicked...she kicked him in the groin?

Witness:
Yes.

Counsel:
Five times?

Witness:
Approximately five times.

Counsel:
And then he rolled onto his side?

012786

Witness:
Yes.

Counsel:
And she kicked him some more?

Witness:
Yes.

Counsel: (b)(6)-5; (7)(C)(5)
And it was at that point that you and SGT [REDACTED] kicked his legs apart into the prone position?

Witness:
Yes.

Counsel:
At that point that's when you did that?

Witness:
Yes.

Counsel: (b)(6)-5; (7)(C)(5)
And then SGT [REDACTED] you said kicked him and you walked away?

Witness:
Yes.

Counsel:
No further questions.

(b)(6)-2; (7)(C) 2
Questions by the defense counsel: MAJ [REDACTED]

Counsel:
After he got kicked in the groin and you kicked his legs apart to spread them apart?

Witness:
Right.

Counsel:
He didn't resist and flail his legs?

Witness:
Not at all.

Counsel: He compliantly opened his legs again after he had been kicked in the groin?

012787

Witness:
Yes.

Counsel:
And you said so there was-- he was first of the set of five, correct?

Witness:
Correct.

Counsel:
And you don't know who was escorting the other ones, correct?

Witness:
That is correct.

Counsel:
You said-- you identified in your statement there was a specialist sitting on top of this second EPW.

Witness:
The second one, yes.

Counsel:
And you didn't know his name?

Witness:
I didn't know his name, no.

Counsel:
You were told his name, later correct?

Witness:
That's correct.

Counsel:
And you said he was sitting on top of the EPW that you thought was a teacher?

Witness:
No.

Counsel:
No? Okay just sitting on top of the second EPW in line?

Witness:
Yes.

012788

Counsel:
He wasn't punching him, right?

Witness:
No.

Counsel:
And he wasn't kicking him?

Witness:
No.

Counsel:
And you don't know, you said people were yelling "take a shot--it's your shot" you don't know what he said do you, specifically what came out of his mouth?

Witness:
Not specifically, no.

Counsel:
I have no further questions.

I/O:
Was that it?

Defense counsel: CPT [REDACTED] (b)(6)-2 ; (7)(C)-2
I think its all been covered

I/O:
Okay.

Questions by the Investigating Officer: LTC [REDACTED] (b)(6) 2 -(7)(c)-2

I/O:
SPC, this EPW that you call the rapist do you have any other description of him?

Witness:
No he was just an Iraqi.

I/O:
What was his dress?

Witness:
He was wearing a green Iraqi uniform.

012789

I/O:
Green Iraqi--

Witness:
Just all green.

I/O:
I'm interested to know when you saw the second EPW being kicked, what was going through your mind at that time?

Witness:
I was just shocked. I mean, this isn't anything I've ever seen before and I knew it wasn't right. I just couldn't believe it was happening.

MAJ [REDACTED] b6-2, b7(c)2
Excuse me did you say the second EPW?

I/O:
The one that you were calling the rapist.

Witness:
Yes.

I/O:
The one that was being kicked. Am I correct when that's what you said that that was the one that was being kicked?

Witness:
Yes

I/O:
When you said you...kicked his legs apart?

Witness:
Yes.

I/O:
And put him in the prone position after that?

Witness:
That's right.

I/O:
How did you go about kicking his legs?

012790

Witness:

Just use your foot to kind of, you know, kick his feet apart, because you can't reach down and move his feet where you want with your hands. Because you're putting yourself in a position to be kicked in the face, so you use your feet to kick their feet apart.

I/O:

And this was after he'd been knocked out of your hands?

Witness:

Yes.

I/O:

So you didn't have any other control measure on him at the time that you were kicking his legs apart, is that correct?

Witness:

That's correct.

I/O:

You said that after they were holding his ankles and then you were being invited to kick the EPW, you said you didn't do that you just walked away?

Witness:

Yes.

I/O:

Is that correct?

Witness:

That's correct.

I/O:

Where did you walk to?

Witness:

(b)(6)-4 ; (7)(C)(4)

I walked--SPC [REDACTED] was standing by the bus and I walked over to him and he was just kinda standing around and I said, "I don't like they way they work. This is ridiculous I've never seen anything like it" and he was just like "I know" and just kinda shaking his head disappointingly. And that's when SGT [REDACTED] me back over and asked me to help her escort

(b)(6)-5 ; (7)(C)-5

I/O:

Who told you SPC [REDACTED] name?

Witness: I do not recall.

012791

I/O:
Was it that night?

Witness:
No it was not that night.

I/O:
Sometime later?

Witness:
Yes.

I/O:
Have you ever seen any EPWs treated in the manner that you say that you saw them treated that night?

Witness:
No I had not.

I/O:
Did you have any conversations with SGT [REDACTED] ^{b6, 7(c)} while all this was supposedly going on?

Witness:
I could've, I don't recall speaking to him, but I could've I don't remember.

I/O:
And then you said that you talked with SGT [REDACTED] ^{(b)(6) 4-7(c) 4} and SSG [REDACTED] ^{(b)(6) -4 - (7)(c) -4} that night?

Witness:
That's correct.

I/O:
Did you all come to any conclusions about what you'd say you saw say you'd seen that night?

Witness:
I don't know what you mean by conclusions.

I/O:
I mean, did you come to any course of action, like "we have to tell somebody about this" or "we're not gonna tell anybody about this"?

012792

Witness:

We did mention that something needed to be done about it, because that's not how we're trained to treat EPWs at all.

I/O:

And then after you had these conversations did you go back to your tent that night?

Witness:

Yes.

I/O:

I don't have any further questions. Does anybody else have any questions that they would like to ask?

Questions by the defense counsel: CPT [REDACTED] (b)(6)-2; 7(c)-2

Counsel: You didn't know SSG McKenzie's name when you gave your statement to the 15-6 officer?

Witness:

Correct.

Counsel:

Nor when you talked to CID, right?

Witness:

That's right.

Counsel:

That's another name that somebody told you, right?

Witness:

Yes.

Questions by the defense counsel: CPT [REDACTED] (b)(6)-2; 7(c)-2

Counsel:

Did you know MSG [REDACTED] (b)(6)-5; 7(c)-5 name at the time you gave your statement?

Witness:

No I did not.

Counsel:

So, somebody told you that name later also?

012793

Witness:

Yes.

I/O:

Any other questions, defense?

Defense counsel:

No, sir.

Questions by the Investigating Officer: LTC [REDACTED]

(b)(6) 2 - (7)(C) 2

I/O:

SPC am I to understand that you recognize these individuals that you've identified here today by sight, is that correct?

Witness:

Yes, that's correct.

I/O:

And not by what someone has told you, is that correct?

Witness:

That's correct. I don't have any further questions.

[The witness was duly warned, dismissed and withdrew from the room.]

I/O:

(b)(6) - 4; (7)(C) - 4

We have just finished with the testimony of SPC [REDACTED]. The government had made a request to broaden the scope of the investigation to include two additional charges. And Major [REDACTED] did you want to address that at this point after we've had our conversations, and I've talked with the legal advisor?

b62,
7(c) 2

MAJ [REDACTED]

(b)(6) - 2; (7)(C) 2

Yes, sir. The government in fact that only the investigation be expanded and that you make recommendations concerning a additional charge of Obstruction of Justice against SGT [REDACTED] in light of the testimony of SPC [REDACTED] when she said that SGT [REDACTED] had hidden her diary in SPC [REDACTED] belongings so that CID would not find it when they conducted the search that day.

(b)(6) - 5; 7(c) 5

(b)(6) 4 - (7)(C) - 4

CPT [REDACTED]

(b)(6) - 5; 7(c) 5

I would, on behalf of SGT [REDACTED] object to the Investigating Officer making a recommendation on that charge based solely on the testimony the uncorroborated testimony of SPC [REDACTED]. We would just maintain our objection for the record.

(b)(6) - 2; 7(c) - 2

(b)(6) - 4; 7(c) 4

012794

I/O:

I have heard both sides of the argument and the recommendation at this point in my mind is due to the late nature of the request from the government the Investigating Officer will not recommend the additional charge be included.

(b)(6) - 2; 7(c) - 2 (b)(6) - 1; (7)(C) - 1
We have a matter or some additional witnesses that the government was attempting to contact: CPT [REDACTED] LTC [REDACTED] Investigator [REDACTED] and Special [REDACTED] as well as [REDACTED] who was a translator present that evening. It's my understanding from the defense they are going to waive any further attempts to contact these individuals and do not desire further testimony to be presented, is that correct?

Defense counsels:

Yes that's correct.

I/O:

All four-defense counsel agree to that?

Defense Counsels:

Yes, sir (all)

I/O:

I will invite the government to make any closing recommendations.

MAJ [REDACTED]

66-2, 67(c)2
Sir, the government waives that opportunity at this point.

I/O:

Very well. I invite any of the defense counsel to make any closing recommendations to the Investigating Officer.

Defense Counsel:

No sir (all)

I/O:

All four-defense counsel waives that opportunity. One question I do have before we close, before we began these proceedings defense had requested and I had acknowledged that a verbatim transcript be made of the proceedings here. Can a summarized transcript be produced first and then I understand a verbatim transcript is going to take some time to be produced. Can that then be followed by the verbatim transcript?

CPT [REDACTED]

(b)(6) - 2; (7)(C) - 2
The summarize take a great deal of time also, sir so I think that would actually be harder on the court reporter. To make it summarized and then go back and make it verbatim.

I/O: I just noticed the court reporter eyes just widen a little bit back there.

012795

ALL (b)(6) 2-(7)(C)-2

CPT [REDACTED]

I just know from experience sir that sometimes a summarized transcript takes as long or longer as a verbatim for the court reporter, but the government may want to weigh in.

Major [REDACTED]

Verbatim portion, or just the--

I/O:

We just need to acknowledge that General Karpinski's direction was that a summarized transcript be produced within three days of the closing of the hearing. I don't even know if that's possible or not. I will have the XO of the 800th contact General Karpinski and tell her that we are proceeding with all due haste to produce a verbatim transcript it could be a matter, from what I understand, two or three weeks before that transcript is produced. And I'll communicate that to her. Then I believe her direction in the appointment letter was that three days following the production of the transcript that I was to have my report complete and forwarded. And I also acknowledge that a request was made by the defense counsel to have copies of the report forwarded to them and that will be done or at least that will be recommended to General Karpinski when the report is forwarded to her.

MA [REDACTED]

May I ask that as it's being typed, can it be sent to us in chunks. I don't know how you'd do it, if you like to read the entire thing first. But, like with records of trial I know they get sent to me as their being done to expedite the reading. It's just a suggestion. Maybe by email?

MAJ [REDACTED]

Yes, that's something we'll try to accommodate.

MAJ [REDACTED]

And also I'd like to go on record to ask that the tapes--that the tapes be preserved for the trial.

MAJ [REDACTED]

I have just one last question, a truck drove by, you said that you are not going to consider the additional charge of Obstruction of Justice or you are?

I/O:

That's correct.

MAJ [REDACTED]

You're not?

I/O:

I'm not.

MA: [REDACTED]

(b)(6)-2; (7)(C)-2

Okay. I couldn't hear because of a truck going by.

I/O: And my reasoning for that is the date or the late time of the request placed in the hearing. Any other matters that any counsel would like to present at this time for my consideration?

All Counsel: No sir

I/O: I'd like to thank all the counsel for your cooperation, I'd like to thank the government for their efforts to set all this up and as well as at Camp Bucca, and here at Camp Doha. If there are no further matters then I'll declare that the Article 32 proceedings are closed.

[The Article 32 Hearing was closed at 1601, 02 October 2003.]

012797



DEPARTMENT OF THE ARMY
800TH POLICE BATTALION
CAMP BUCCA, IRAQ
APO AE 09375

REPLY TO
ATTENTION OF:

AFRD-JA

16 July 2003

(b)(6)-2; (7)(C)-2

MEMORANDUM FOR LTC [REDACTED] Headquarters and Headquarters Company,
220th Military Police Brigade

SUBJECT: Appointment of Article 32 Investigating Officer

1. You are hereby appointed to investigate the enclosed preferred charges and specification concerning Staff Sergeant Scott A. McKenzie, [REDACTED] AHC, 320th Military Police Battalion, Camp Bucca, Iraq, APO AE 09375. (b)(6)-5; (7)(C)-5
2. You will conduct your investigation in accordance with Article 32a, UCMJ, and Rules for Courts-Martial 405. You will use DA Pam 27-17 as a procedural guide. Additionally, you shall investigate and make a recommendation as to any uncharged offenses, except minor offenses as defined by Part V, Manual for Courts-Martial, brought to your attention during the investigation unless counsel for both sides agree that they should not be investigated. This duty takes priority over all other duties.
3. A defense counsel will be detailed for the accused by Trial Defense Service. Each counsel plays an adversarial role in the proceedings. Avoid talking to the legal counsels, the commanders of the accused, and any prospective witnesses about the merits of the case outside of formal sessions where all parties are present. (b)(6)-2; (7)(b)-2
4. Your legal advisor for this investigation will be MAJ [REDACTED] CFLCC Staff Judge Advocate. You can contact him at 825-2352 for legal advice as soon as possible upon notification of this duty. Logistical support will be provided by the Criminal Law Division, CFLCC- OSJA. The hearing will be open.
5. The Article 32 should be set as soon as possible from the date you receive this memorandum. Any request to delay this investigation by the attorneys must be in the writing and must detail the basis for the request. You have the authority to grant reasonable requests by the attorney to delay the investigation. However, any request, which would delay this investigation any more than ten (10) calendar days, must be approved by myself.

012798

AFRD-JA

SUBJECT: Appointment of Article 32 Investigating Officer

6. After the hearing is completed, the legal specialist assigned to the investigation shall complete a summarized transcript within 3 duty days. Upon receipt of the transcript, you have 3 duty days to submit the report of your investigation, with five copies, on DD Form 457 (Investigating Officer's Report) to the Criminal Law Division, OSJA. Your report will contain a detailed date and time chronology of your actions in conducting this investigation, to include all delays.



JANIS L. KARPINSKI

BG, USA

Commanding

*

012799

INVESTIGATING OFFICER'S REPORT

(Of Charges Under Article 32, UCMJ and R.C.M. 405, Manual for Courts-Martial)

1a. FROM: (Name of Investigating Officer - Last, First, MI) ██████████ (b)(6)-2; (7)(e) 2	b. GRADE O-5/LTC	c. ORGANIZATION 220TH MILITARY POLICE BRIGADE APO AE 09366	d. DATE OF REPORT
2a. TO: (Name of Officer who directed the investigation - Last, First, MI) KARPINSKI, JANIS L.	b. TITLE BRIGADE COMMANDER	c. ORGANIZATION 800TH MILITARY POLICE BRIGADE APO AE 09366	
3a. NAME OF ACCUSED (Last, First, MI) MCKENZIE, SCOTT A.	b. GRADE E-6	c. SSN (b)(6)-5, 7(b) 3 ██████████	d. ORGANIZATION 320TH MILITARY POLICE BN e. DATE OF CHARGES

(Check appropriate answer)

4. IN ACCORDANCE WITH ARTICLE 32, UCMJ, AND R.C.M. 405, MANUAL FOR COURTS-MARTIAL, I HAVE INVESTIGATED THE CHARGES APPENDED HERETO (Exhibit 1)	YES	N
5. THE ACCUSED WAS REPRESENTED BY COUNSEL (If not, see 9 below)	X	
6. COUNSEL WHO REPRESENTED THE ACCUSED WAS QUALIFIED UNDER R.C.M. 405(d)(2), 502(d)	X	

7a. NAME OF DEFENSE COUNSEL (Last, First, MI) ██████████ (b)(6)-2-7(b) 2	b. GRADE O-3/CPT	8a. NAME OF ASSISTANT DEFENSE COUNSEL (If any) NA	b. GRADE
c. ORGANIZATION (If appropriate) US ARMY TRIAL DEFENSE SERVICE REGION VIII, VICENZA FIELD OFFICE		c. ORGANIZATION (If appropriate) NA	
d. ADDRESS (If appropriate) APO AE 09630		d. ADDRESS (If appropriate) NA	

9. (To be signed by accused if accused waives counsel. If accused does not sign, investigating officer will explain in detail in Item 21.)

a. PLACE	b. DATE
----------	---------

I HAVE BEEN INFORMED OF MY RIGHT TO BE REPRESENTED IN THIS INVESTIGATION BY COUNSEL, INCLUDING MY RIGHT TO CIVILIAN OR MILITARY COUNSEL OF MY CHOICE IF REASONABLY AVAILABLE. I WAIVE MY RIGHT TO COUNSEL IN THIS INVESTIGATION.

c. SIGNATURE OF ACCUSED

10. AT THE BEGINNING OF THE INVESTIGATION I INFORMED THE ACCUSED OF: (Check appropriate answer)		YES	N
a.	THE CHARGE(S) UNDER INVESTIGATION	X	
b.	THE IDENTITY OF THE ACCUSER	X	
c.	THE RIGHT AGAINST SELF-INCRIMINATION UNDER ARTICLE 31	X	
d.	THE PURPOSE OF THE INVESTIGATION	X	
e.	THE RIGHT TO BE PRESENT THROUGHOUT THE TAKING OF EVIDENCE	X	
f.	THE WITNESSES AND OTHER EVIDENCE KNOWN TO ME WHICH I EXPECTED TO PRESENT	X	
g.	THE RIGHT TO CROSS-EXAMINE WITNESSES	X	
h.	THE RIGHT TO HAVE AVAILABLE WITNESSES AND EVIDENCE PRESENTED	X	
i.	THE RIGHT TO PRESENT ANYTHING IN DEFENSE, EXTENUATION, OR MITIGATION	X	
j.	THE RIGHT TO MAKE A SWORN OR UNSWORN STATEMENT, ORALLY OR IN WRITING	X	
11a.	THE ACCUSED AND ACCUSED'S COUNSEL WERE PRESENT THROUGHOUT THE PRESENTATION OF EVIDENCE (If the accused or counsel were absent during any part of the presentation of evidence, complete b below.)	X	

b. STATE THE CIRCUMSTANCES AND DESCRIBE THE PROCEEDINGS CONDUCTED IN THE ABSENCE OF ACCUSED OR COUNSEL

NOTE: If additional space is required for any item, enter the additional material in Item 21 or on a separate sheet. Identify such material with the proper numerical and, if appropriate, lettered heading (Example: "7c.") Securely attach any additional sheets to the form and add a note in the appropriate item of the form: "See additional sheet."

12a. THE FOLLOWING WITNESSES TESTIFIED UNDER OATH: (Check appropriate answer)				
NAME (Last, First, MI)	GRADE (If any)	ORGANIZATION/ADDRESS (Whichever is appropriate)	YES	NO
[REDACTED]	E-6/SSG	223rd MP COMPANY	X	
[REDACTED]	E-5/SGT	223rd MP COMPANY	X	
[REDACTED] (b)(6)-4;	E-4/SPC	223rd MP COMPANY	X	
[REDACTED] 7(c)4	E-5/SGT	223rd MP COMPANY	X	
[REDACTED]	E-4/SPC	320th MP BATTALION	X	
[REDACTED]	E-4/SPC	320th MP BATTALION	X	
b. THE SUBSTANCE OF THE TESTIMONY OF THESE WITNESSES HAS BEEN REDUCED TO WRITING AND IS ATTACHED.			X	
13a. THE FOLLOWING STATEMENTS, DOCUMENTS, OR MATTERS WERE CONSIDERED; THE ACCUSED WAS PERMITTED TO EXAMINE EACH.				
DESCRIPTION OF ITEM	LOCATION OF ORIGINAL (If not attached)		YES	NO
#1: SWORN STATEMENT, SGT [REDACTED] DTD 14 MAY 03	OSJA, CFLCC, Camp Doha, KU		X	
#2: AIR, SA MANORA IEM, 14 MAY 03	OSJA, CFLCC, Camp Doha, KU		X	
#3: SWORN STATEMENT, SPC [REDACTED] DTD 14 MAY 03	OSJA, CFLCC, Camp Doha, KU (b)(6)-4-7(c)4		X	
#4: SWORN STATEMENT, [REDACTED] DTD 14 MAY 03	OSJA, CFLCC, Camp Doha, KU		X	
#5: SWORN STATEMENT, SPC [REDACTED]	OSJA, CFLCC, Camp Doha, KU		X	
#6: EPW MANIFEST, 744th MP BN, DTD 12 MAY 03	OSJA, CFLCC, Camp Doha, KU		X	
b. EACH ITEM CONSIDERED, OR A COPY OR RECITAL OF THE SUBSTANCE OR NATURE THEREOF, IS ATTACHED			X	
14. THERE ARE GROUNDS TO BELIEVE THAT THE ACCUSED WAS NOT MENTALLY RESPONSIBLE FOR THE OFFENSE(S) OR NOT COMPETENT TO PARTICIPATE IN THE DEFENSE. (See R.C.M. 909, 916(k).)				X
15. THE DEFENSE DID REQUEST OBJECTIONS TO BE NOTED IN THIS REPORT (If Yes, specify in Item 21 below.)			X	
16. ALL ESSENTIAL WITNESSES WILL BE AVAILABLE IN THE EVENT OF TRIAL			X	
17. THE CHARGES AND SPECIFICATIONS ARE IN PROPER FORM			X	
18. REASONABLE GROUNDS EXIST TO BELIEVE THAT THE ACCUSED COMMITTED THE OFFENSE(S) ALLEGED			X	
19. I AM NOT AWARE OF ANY GROUNDS WHICH WOULD DISQUALIFY ME FROM ACTING AS INVESTIGATING OFFICER. (See R.C.M. 405(d)(1).)			X	
20. I RECOMMEND:				
a. TRIAL BY <input type="checkbox"/> SUMMARY <input type="checkbox"/> SPECIAL <input checked="" type="checkbox"/> GENERAL COURT-MARTIAL				
b. <input type="checkbox"/> OTHER (Specify in Item 21 below)				
21. REMARKS (Include, as necessary, explanation for any delays in the investigation, and explanation for any "no" answers above.)				
SEE ATTACHED CONTINUATION SHEET				
(b)(6)-1; (7)(C)1				
22a. TYPED NAME OF INVESTIGATING OFFICER		b. GRADE	c. ORGANIZATION	
[REDACTED]		0-5/LTC	220th MILITARY POLICE BRIGADE APO AE 09366	
d. SIGNATURE OF INVESTIGATING OFFICER			e. DATE	
[REDACTED]				

CONTINUATION SHEET, DD FORM 457, INVESTIGATING OFFICER'S REPORT

Item 12a, Witnesses

(b)(6) 4 (7)(b) 4	[REDACTED]	E-4/SPC	744 th MP BATTALION	YES
	[REDACTED]	E-7/SFC	744 th MP BATTALION	YES
	[REDACTED]	E-5/SGT	744 th MO BATTALION	YES
	[REDACTED]	E-6/SSG	314 th MP COMPANY	YES
	[REDACTED]	E-4/SPC	314 th MP COMPANY	YES
	[REDACTED]	E-4/SPC	314 th MP COMPANY	YES
	[REDACTED]	E-4/SPC	314 th MP COMPANY	YES
	[REDACTED]	EPW	CAMP BUCCA, IZ	YES
	[REDACTED]	EPW	CAMP BUCCA, IZ	YES
	(b)(6) -4 (7)(b) -4	[REDACTED]	EPW	CAMP BUCCA, IZ
[REDACTED]		EPW	CAMP BUCCA, IZ	YES
[REDACTED]		EPW	CAMP BUCCA, IZ	YES
[REDACTED]		EPW	CAMP BUCCA, IZ	YES
[REDACTED]		EPW	CAMP BUCCA, IZ	YES
[REDACTED]		EPW	CAMP BUCCA, IZ	YES
[REDACTED]		EPW	CAMP BUCCA, IZ	YES
(b)(6) -1 (7)(b) -1	[REDACTED]	EPW	CAMP BUCCA, IZ	YES
	[REDACTED]	SA	CID, CAMP BUCCA, IZ	YES
	[REDACTED]	SA	CID, CAMP BUCCA, IZ	YES
	[REDACTED]	SA	CID, CAMP BUCCA, IZ	YES
	[REDACTED]	SA	CID, CAMP BUCCA, IZ	YES
	[REDACTED]	O-4/MAJ	800 th MP BRIGADE	YES
	[REDACTED]	E-4/SPC	320 th MP BATTALION	YES
	[REDACTED]	E-4/SPC	320 th MP BATTALION	YES
	[REDACTED]	E-4/SPC	223 rd MP COMPANY	YES
	[REDACTED]	SA		YES

By Telephonic Interview:

CONTINUATION SHEET, DD FORM 457, INVESTIGATING OFFICER'S REPORT

Item 13a, Witnesses

(b)(6)-4 (7)(c)-4	#7: SWORN STATEMENT, SSG [REDACTED] DTD 15 MAY 03	OSJA, CFLCC, CAMP DOHA, KU	YES
(b)(6)-5, (7)(e)-5	#8: SWORN STATEMENT, MSG [REDACTED] DTD 16 MAY 03	OSJA, CFLCC, CAMP DOHA, KU	YES
(b)(6)-1 (7)(c)-1	#9: AIR, SA [REDACTED] DTD 14 MAY 03	OSJA, CFLCC, CAMP DOHA, KU	YES
(b)(6)-5, (7)(e)-5	#10: SWORN STATEMENT, SP [REDACTED] DTD 15 MAY 03	OSJA, CFLCC, CAMP DOHA, KU	YES
	#11: SWORN STATEMENT, SSG K. McKENZIE DTD 16 MAY 03	OSJA, CFLCC, CAMP DOHA, KU	YES
(b)(6)-5 (7)(e)-5	#12: SECOND SWORN STATEMENT, SPC [REDACTED] DTD 15 MAY 03	OSJA, CFLCC, CAMP DOHA, KU	YES

012803

CONTINUATION SHEET, DD FORM 457, INVESTIGATING OFFICER'S REPORT

SSG Scott A. McKenzie, [REDACTED] (b)(6) 5-7e) 5

Item 21, Remarks

1. Twelve pieces of evidence were submitted during the hearing. The evidence presented and examined consisted of sworn statements or Agent's Investigation Reports taken or written by CID Special Agents. A manifest from the 744th Military Police Battalion, dated 12 May 03, was also submitted during the hearing. In some cases, witnesses referred to their statements or reports to re-fresh their recollection of events under question. Thirty-one separate witnesses were heard. The witnesses were credible, although defense counsels attempted to refute the testimony of certain witnesses and highlight that previous testimony or statements were contradictory to the recorded testimony during this hearing. Based on the testimony of the witnesses and the evidence presented, I am able to make a recommendation with regard to further action involving the accused soldier.

2. With regard to SSG McKenzie, I make the following recommendations to the charges and specifications alleged against him:

a. Charge 1: Violation of Article 92, Dereliction of Duty: I find that a preponderance of the evidence exists to validate the specification alleged against him. By virtue of his position, experience and rank, SSG McKenzie had a certain duty to safeguard EPWs and was aware of those duties. The testimony of SSG [REDACTED] (b)(6) 4; SGT [REDACTED] SGT [REDACTED] and SPC [REDACTED] indicate that he was willfully (7e) 4 derelict in the performance of those duties.

b. Charge II: Violation of Article 93, Cruelty and Maltreatment: I find that a preponderance of the evidence exists to validate Specifications 2, 3 and 5 alleged against him. Evidence was not presented to sufficiently validate Specifications 1 and 4 alleged against him. SGT [REDACTED] testimony confirms EPW [REDACTED] account of being dragged across the ground by his armpits (Specification 2). SGT [REDACTED] and SPC [REDACTED] both testified to his mistreatment of EPW [REDACTED] (Specification 3). The testimony of SSG [REDACTED] and SGT [REDACTED] indicate his mistreatment of EPW [REDACTED]. Other than the testimony of the EPWs themselves, I did not find corroborating testimony to substantiate the mistreatment of EPWs [REDACTED] and [REDACTED].

(b)(6)-4;
(7e)-4

c. Charge III: Violation of Article 107, False Official Statements: I find that a preponderance of the evidence exists to validate the specification alleged against him. The testimony of the previous witnesses indicates that SSG McKenzie's sworn statement of 16 May was false in that he denied the mistreatment of any EPWs and that he evidently knew such denial to be false at the time, and that his intent was to deceive investigators as to the true events of 12 May.

(b)(6)-4
(7)(c)-4

d. Charge IV: Violation of Article 128, Assault: I find that a preponderance of the evidence exists to validate Specifications 1, 2, and 5 alleged against him. Evidence was not presented to sufficiently validate Specifications 3 and 4 alleged against him. The testimony of SGT [REDACTED] confirms EPW [REDACTED] account of being dragged by his armpits across the ground. SGT [REDACTED] and SPC [REDACTED] testified as to EPW [REDACTED] abuse. SSG [REDACTED] and SGT [REDACTED] testified as to his abuse of EPW [REDACTED]. Other than the testimony of the EPWs themselves, I did not find corroborating testimony to substantiate the assault of EPWs [REDACTED] and [REDACTED].

(b)(6)-4
(7)(c)-4

e. During the course of the hearing, testimony from SPC [REDACTED] prompted counsel for the government to request that the investigation be broadened to include violations of Article 81, Conspiracy, and Article 134, Obstruction of Justice, against all four of the accused. I granted that request over the objection of all defense counsels. Aside from the testimony of SPC [REDACTED] I do not feel that further, sufficient evidence was presented to validate these charges. I, therefore, cannot report that a preponderance of the evidence suggests that these charges are true.

f. I recommend that you proceed with a general court martial, charging the accused with Violation of Article 92, as specified, Violation of Article 93, Specifications 2, 3, and 5, Violation of Article 107, and its specification, and Violation of Article 128, Specifications 1, 2, and 5.

3. Delays in proceedings:

- a. IO proposed original date of 28 July 03 for hearing. Defense counsels requested delay to 5 September 03 due to schedule conflicts. IO set date of 27 August 03 after consulting all counsels. Defense counsels acknowledged that the time would not count against the speedy trial requirement of the government.
- b. 28 August 03: Defense counsels requested additional time to prepare for EPW witnesses and CID Special Agent testimony. IO granted recess until 290800

012805

August 03. At approx. 2000 Hrs, defense counsels requested further delay due to problems accessing EPW witnesses. IO granted further delay until 291300 August 03.

- c. 29 August 03: Hearing recessed until arrival of additional witnesses on leave. Re-convene at Camp Doha, KU.
- d. 1 September 03: Hearing recessed until 021300 September 03 for additional witness. Further delayed until 021430 Sep 03 at request of defense counsels for additional time to interview witness.

4. Defense and Government Objections:

(b)(6)-4
(7)(C)-4

a. Defense: Defense counsels objected to introduction of sworn statement of SSG [REDACTED] in addition to his sworn testimony at the hearing. SSG [REDACTED] did not refer to his report during his testimony. IO sustained objection IAW RCM 405(4)(g)(B), allowing introduction of sworn statements over defense objection when the witness is not available.

b. Government: Government counsel objected to defense line of questioning, asking whether certain witnesses had been advised of their rights under Article 31, or were being investigated, or had been charged with violation of Article 32, UCMJ, Dereliction of Duty. IO allowed defense counsels to ask this question due to its relevance based on the testimony of the witnesses.

(b)(6)-4
(7)(C)-4

c. Defense: Government counsel requested to broaden the scope of the investigation to include violations of Article 81, UCMJ, 80, Conspiracy to Obstruct Justice, and Article 134, UCMJ, Obstruction of Justice, against all four of the accused, based on testimony of SPC [REDACTED]. Based on her testimony, IO allowed government to broaden the scope of the investigation to include these two charges.

d. Defense: Defense counsels perceived an allegation of impropriety in line of questioning by government counsel and asked that hearing area be cleared to further discuss the matter. IO cleared the courtroom of all spectators, including the media. I was advised by the PAO representation of a potential violation of the Freedom of Information Act in doing so, since the hearing was declared open. My legal advisor also suggested that other spectators carried the same weight as the media. Both were allowed back in, although the government counsel assured all parties that no such implied accusation was intended against any defense counsel and withdrew any further line of questioning along these lines.

(b)(6)1 - (7)(C)1

(b)(6)5 - 7(c)5

e. Defense: defense counsels objected to line of questioning by the government of SA [redacted] regarding a previous investigation by [redacted] of MSG [redacted] as irrelevant to the proceedings at hand. Government did not argue probative v. prejudiced value of the questioning. I sustained the objection and disallowed the questioning.

(b)(6)4 - (7)(C)4

f. Defense: after the testimony of the final witness, SPC [redacted] government counsel asked that the scope of the investigation be broadened to include violation of Article 134, Adultery and Obstruction of Justice. Government withdrew its request for the adultery charge. I did not allow the inclusion of this charge due to inadequate notice to the defense to prepare for the additional charges.

5. While EPW witnesses have agreed to be available for further testimony, their release might make it difficult to reach them once they have returned home.

6. During the course of this hearing, testimony from SSG [redacted] SGT [redacted] [redacted] SGT [redacted] SPC [redacted] and SPC [redacted] indicated that while the alleged incidents were occurring, they did not actively attempt to intervene as it was their responsibility to do as soldiers, and in the case of [redacted] and [redacted] as non-commissioned officers and leaders. Beyond SSG [redacted] verbal attempts to stop the abuse of these EPWs, nothing else seems to have been done. SGT [redacted] testimony that he turned away because he could not bear to watch this treatment is especially disturbing. I recommend that you consider appropriate action with regard to these soldiers and their evident failure to act to protect the enemy prisoners of war in their charge or stop the mistreatment to which they have testified, under oath.

(b)(6)-4;

(7)(C)-4

CHARGE SHEET

I. PERSONAL DATA

1. NAME OF ACCUSED (Last, First, MI) McKenzie, Scott A.		2. SSN [REDACTED]	3. GRADE OR RANK SSG	4. PAY GRADE E6
5. UNIT OR ORGANIZATION HHC, 320th Military Police Battalion Camp Bucca, Iraq 09375		6. CURRENT SERVICE a. INITIAL DATE 19930131		b. TERM 11 years
7. PAY PER MONTH		8. NATURE OF RESTRAINT OF ACCUSED		9. DATE(S) IMPOSED
a. BASIC	b. SEA/FOREIGN DUTY	c. TOTAL		
2,709.60	250.00	2,959.60	N/A	

II. CHARGES AND SPECIFICATIONS

10. CHARGE: VIOLATION OF THE UCMJ, ARTICLE

SPECIFICATION:

CHARGE I: VIOLATION OF ARTICLE 92
 Specification 1: In that Staff Sergeant Scott Alan McKenzie, U.S. Army, HHC, 320th Military Police Battalion, Camp Bucca, Iraq, on active duty, who knew of his duties at or near Camp Bucca, Iraq, on or about 12 May 2003, was derelict in the performance of those duties in that he willfully failed to safeguard from assault or abuse captured Iraqi prisoners of war that he was escorting from Talil Air Base, Iraq, to Camp Bucca, Iraq, as it was his duty to do.

CHARGE II: VIOLATION OF ARTICLE 93
 Specification 1: In that Staff Sergeant Scott Alan McKenzie, U.S. Army, HHC, 320th Military Police Battalion, Camp Bucca, Iraq, on active duty, at or near Camp Bucca, Iraq, on or about 12 May 2003, did maltreat [REDACTED] and [REDACTED] a person subject to his orders, by throwing him to the ground striking him on the head and legs as he walked to the inprocessing tent.

Specification 2: In that Staff Sergeant Scott Alan McKenzie, U.S. Army, HHC, 320th Military Police Battalion, Camp Bucca, Iraq, on active duty, at or near Camp Bucca, Iraq, on or about 12 May 2003, did maltreat [REDACTED] a person subject to his orders, by dragging him by his armpits across the ground.

Specification 3: In that Staff Sergeant Scott Alan McKenzie, U.S. Army, HHC, 320th Military Police Battalion, Camp Bucca, Iraq, on active duty, at or near Camp Bucca, Iraq, on or about 12 May 2003, did aid and abet in the maltreatment of [REDACTED] person subject to his orders, by holding his legs apart, and by encouraging other soldiers to kick him, while other U.S. soldiers kicked him in the groin, face and abdomen.

Specification 4: In that Staff Sergeant Scott Alan McKenzie, U.S. Army, HHC, 320th Military Police Battalion, Camp Bucca, Iraq, on active duty, at or near Camp Bucca, Iraq, on or about 12 May 2003, did maltreat [REDACTED] a person subject to his orders by throwing him to the ground on his face and stepping on his previously injured Arm.

(SEE CONTINUATION SHEET)

(b)(6)-4; (7)(C) 4

III. PREFERRAL

11a. NAME OF ACCUSER (Last, First, MI) [REDACTED]	b. GRADE O2	c. ORGANIZATION OF ACCUSER 320th MP Battalion
d. SIGNATURE OF ACCUSER [REDACTED]	e. DATE 13 JUL 03	

AFFIDAVIT: Before me, the undersigned, authorized by law to administer oaths in cases of this character, personally appeared the above named accuser this 13th day of July, 2003, 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.

 Typed Name of Officer

 Grade

OSJA, CFLCC

Organization of Officer

Article 136, UCMJ

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

CONTINUATION SHEET 2

Specification 5: In that Staff Sergeant Scott Alan McKenzie, U.S. Army, HHC, 320th Military Police Battalion, Camp Bucca, Iraq, on active duty, at or near Camp Bucca, Iraq, on or about 12 May 2003, did maltreat [REDACTED] a person (b)(6) 4- (7)(C) 4 subject to his orders, by twisting his previously injured arm, causing him to scream in pain.

CHARGE III: VIOLATION OF ARTICLE 107

Specification: In that Staff Sergeant Scott Alan McKenzie, U.S. Army, HHC, 320th Military Police Battalion, Camp Bucca, Iraq, on active duty, did, at or near Camp Bucca, Iraq, on or about 16 May 2003, with the intent to deceive, make to Special Agent [REDACTED] (b)(6)-1; (7)(C)-1 United States Army Criminal Investigation Division Command, an official statement on a DA Form 2823 Sworn Statement, to wit: that he did not see MSG [REDACTED] (b)(6)-5 (7)(C)-5 kick an EPW in the groin, that he did not see SGT [REDACTED] kick an EPW in the groin, that he did not hold and EPW's ankles while female soldiers kicked the EPW, that he did not drag an EPW to the searching area, that he did not throw EPWs to the ground, and that he did not kick, punch, or do anything unnecessary to any of the EPWs, or see any of the other MPs do anything unnecessary to the EPWs, which was then known by the said SSG McKenzie to be so false.

CHARGE IV: VIOLATION OF ARTICLE 128

Specification 1: In that Staff Sergeant Scott Alan McKenzie, U.S. Army, HHC, 320th Military Police Battalion, Camp Bucca, Iraq, on active duty, did, at or near Camp Bucca, Iraq, on or about 12 May 2003, unlawfully drag [REDACTED] (b)(6)-4; (7)(C)-4 an Iraqi prisoner of war, across the ground by his armpits.

Specification 2: In that Staff Sergeant Scott Alan McKenzie, U.S. Army, HHC, 320th Military Police Battalion, Camp Bucca, Iraq, on active duty, did, at or near, Camp Bucca, Iraq, aid and abet Master Sergeant [REDACTED] and Sergeant [REDACTED] (b)(6) 5-(7)(C) 5 in unlawfully kicking [REDACTED] an Iraqi prisoner of war, in the groin, face and abdomen, by holding [REDACTED] b(6) 5-7(c) 5's leg and encouraging SGT [REDACTED] to kick him. (b)(6) 4-(7)(C) 4

Specification 3: In that Scott Alan McKenzie, U.S. Army, HHC, 320th Military Police Battalion, Camp Bucca, Iraq, on active duty, did, at or near Camp Bucca, Iraq, on or about 12 May 2003, unlawfully throw [REDACTED] an Iraqi prisoner of war, to the ground on his face, and stepped on his previously injured arm. (b)(6)-5 (7)(C)-5

Specification 4: In that Scott Alan McKenzie, U.S. Army, HHC, 320th Military Police Battalion, Camp Bucca, Iraq, on active duty, did, at or near Camp Bucca, Iraq, on or about 12 May 2003, unlawfully throw [REDACTED] and [REDACTED] an Iraqi prisoner of war, to the ground and strike him on the legs as he walked to the inprocessing tent.

RECORD OF PROCEEDINGS OF
COURT-MARTIAL

012810

CERTIFICATE IN LIEU OF RECEIPT

Camp Arifjan, Kuwait APO AE 09306
(Place)

23 March 2005
(Date)

I certify that on this date a copy of the record of trial in the case of United States v. McKenzie

was transmitted (delivered) to the accused, SSG Scott A. McKenzie
(Rank and Name of accused)

at (b)(6)5-(C)(7)5, by certified mail number: 7002 0860 0000 4385 3800
(Place of delivery, or address sent to) (Means of effecting delivery, i.e., mail, messenger, etc.)

and that the receipt of the accused had not been received on the date this record was forwarded to the convening authority. The receipt of the accused will be forwarded as soon as it is received.

(b)(6)2-(7)(c)2, JA, Assistant Chief Criminal Law
(Signature of trial counsel)

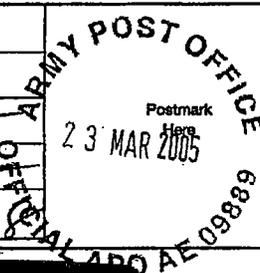
U.S. Postal Service
CERTIFIED MAIL RECEIPT
(Domestic Mail Only; No Insurance Coverage Provided)

OFFICIAL USE

Postage	\$ 3.13
Certified Fee	2.30
Return Receipt Fee (Endorsement Required)	1.75
Restricted Delivery Fee (Endorsement Required)	
Total Postage & Fees	\$ 7.18

Sent To: (b)(6)5-(C)(7)5
Street, Apt. No. or PO Box No.: (b)(6)5-(C)(7)5
City, State, ZIP: (b)(6)5-(C)(7)5

PS Form 3800, April 2002 See Reverse for Instructions



Case of United States v. _____
(Date)

_____ *(Rank and Name)*
(Means of effecting delivery, i.e., mail, messenger, etc.)

al on the accused because he/she was transferred to _____
(the accused requested such at trial) (the accused so _____).
(Other reason)

(b)(6)5-(7)(c)-5 *(Signature of trial counsel)*

OR

The accused was not served personally because (he/she is absent without leave) (_____ *(Other reason)*).

Accused has no defense counsel to receive the record because (defense counsel has been excused under RCM 505(d)(2)(B)) (_____ *(Other reason)*).

(Date) _____ *(Signature of trial counsel)*

RECORD OF TRIAL

of

(616)5-17EJ5

MCKENZIE, Scott A.

(Name: Last, First, Middle Initial)

[REDACTED]

(Social Security Number)

Staff Sergeant/E6

(Rank)

Headquarters and Headquarters
Company, 320th MP Battalion

(Unit/Command Name)

U.S. Army

(Branch of Service)

Camp Bucca, Iraq
APO AE 09375

(Station or Ship)

By

GENERAL COURT-MARTIAL

Convened by COMMANDER

(Title of Convening Authority)

Coalition Land Forces Component Command, Third U.S. Army, U.S. Army Central Command

(Unit/Command of Convening Authority)

Tried at

Camp Doha, Kuwait APO AE 09304 on 15 November 2003

(Place or Places of Trial) (Date or Dates of Trial)

INDEX	RECORD
Article 39(a) Sessions:	
On <u>15 November 2003</u>	R- <u>1</u>
On	R- <u>2</u>
On	R- <u>—</u>
On	R- <u>—</u>
Introduction of Counsel	R- <u>2</u>
Challenges	R- <u>—</u>
Arraignment	R- <u>8</u>
Motions	R- <u>—</u>
Pleas	R- <u>11</u>
Prosecution evidence	R- <u>—</u>
Defense Evidence	R- <u>—</u>
Instructions on Findings	R- <u>—</u>
Findings	R- <u>—</u>
Prosecution evidence	R- <u>—</u>
Defense evidence	R- <u>—</u>
Sentence	R- <u>—</u>
Appellate rights advisement	R- <u>—</u>
Proceedings in revision	R- <u>—</u>

TESTIMONY

Name of Witness (Last, First, Middle Initial)	Direct and Redirect	Cross and Recross	Court
Prosecution			
NA			
Defense			
NA			
Court			
NA			

EXHIBITS ADMITTED IN EVIDENCE

Number or Letter	Description	Page Where-	
		Offered	Admitted
AE I	Advice on Disposition of Court-Martial Charges	--	--

COPIES OF RECORD₁

_____ 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 RECORD₂

I hereby acknowledge receipt of a copy of the record of trial in the case of United States v. _____

Delivered to me at _____ this _____ day of _____, 20____

(Signature of accused)

I hereby acknowledge receipt of a copy of the record of trial in the case of United States v. _____

Delivered to me at _____ this _____ day of _____, 20____

(Signature of accused)

¹ For instructions as to preparation of copies of record, see back cover or appendices 13 and 14, MCM, 1995

² If copy of record prepared for accused contains matters requiring security protection, see RCM 1104(b)(1)(D), MCM, 1995.

CERTIFICATE IN LIEU OF RECEIPT

(Place)

(Date)

I certify that on this date a copy of the record of trial in the case of United States v. _____

was transmitted (delivered) to the accused, _____,
(Rank and Name of accused)

at _____, by _____
(Place of delivery, or address sent to) (Means of effecting delivery, i.e., mail, messenger, etc)

and that the receipt of the accused had not been received on the date this record was forwarded to the convening authority.

The receipt of the accused will be forwarded as soon as it is received.

(Signature of trial counsel)

OR

(Place)

(Date)

I certify that on this date a copy of the record of trial in the case of United States v. _____

was transmitted (delivered) to the accused, _____,
(Rank and Name of accused)

at _____, by _____
(Place of delivery, or address sent to) (Means of effecting delivery, i.e., mail, messenger, etc)

because (it was impracticable to serve the record of trial on the accused because he/she was transferred to

_____ (the accused requested such at trial) (the accused so
(Place)

requested in writing, which is attached)(the accused is absent without leave)(_____).
(Other Reason)

(Signature of trial counsel)

OR

The accused was not served personally because (he/she is absent without leave)(_____)

Accused has no defense counsel to receive the record because (defense counsel has been excused under
RCM 505(D)(2)(B)) (_____)

(Date)

(Signature of trial counsel)



REPLY TO
ATTENTION OF:

CORRECTED COF

DEPARTMENT OF THE ARMY
COALITION FORCES LAND COMPONENT COMMAND
HEADQUARTERS THIRD UNITED STATES ARMY
UNITED STATES ARMY FORCES CENTRAL COMMAND
APO AE 09304

COURT-MARTIAL CONVENING ORDER
NUMBER

6

3 July 2003

A general court-martial is hereby convened with the following members and shall meet at
ARCENT/Kuwait, unless otherwise directed:

MEMBERS

- COL [REDACTED] SC, HHC, Third U.S. Army, CFLCC-C6
- COL [REDACTED] AG, HHC, 143d Transportation Group, DCS, G4
- LTC [REDACTED] IO, HHC, Third U.S. Army, CFLCC-C3
- LTC [REDACTED] IN, HHC, Third U.S. Army, CFLCC, C3
- MAJ [REDACTED] d, ADA, HHC, Third U.S. Army, CFLCC, C3
- *MAJ [REDACTED] A V, HHC, Third U.S. Army, CFLCC, C4
- *MAJ [REDACTED] IN, HHC, ARCENT-KU
- *CPT [REDACTED] AG, HHC, 335th Theater Signal Command
- *CPT [REDACTED] OM, HHC, Third U.S. Army, CFLCC, C4
- *CW3 [REDACTED] SC, HHC, Third U.S. Army, CFLCC-C6

(b)(6) 2 - (7)(c) - 2

*These members are excused when the accused requests to be tried by a panel consisting of
enlisted and officer members.

The following members are detailed to the court-martial when the accused requests enlisted
members under Article 25(C), UCMJ:

MEMBERS

- SGM [REDACTED] SA, HHC, Third U.S. Army, CFLCC, C7
- SGM [REDACTED] USA, HHC, 377th Theater Support Command
- SGM [REDACTED] USA, HHC, Third U.S. Army, CFLCC, C6
- SGM [REDACTED] USA, HHC, 377th Theater Support Command
- MSG [REDACTED] USA, HHC, 377th Theater Support Command

(b)(6) 2 - (7)(c) - 2

BY COMMAND OF LTG McKIERNAN:

[REDACTED]
SSG, USA
Criminal Law NCOIC

DISTRIBUTION:
Each Member Selected

012817

1 MJ: This Article 39(a) session is called to order.

2 TC: This court-martial is convened by Court-Martial Convening
3 Order Number 6, Headquarters, Third United States Army, Coalition
4 Forces Land Component Command, dated 3 July 2003, copies of which
5 have been furnished to the military judge, counsel and the accused
6 and which will be inserted at this point in the record.

7 The charges have been properly referred to this court for
8 trial and were served on the accused on 9 November 2003.

9 The prosecution is ready to proceed with the arraignment in
10 the case of The United States versus Staff Sergeant Scott A.
11 McKenzie.

12 The trial counsel and the following persons detailed to
13 this court are present:

- 14 LIEUTENANT COLONEL [REDACTED] MILITARY JUDGE;
- 15 CAPTAIN [REDACTED] TRIAL COUNSEL; and
- 16 CAPTAIN [REDACTED] ASSISTANT TRIAL COUNSEL;
- 17 CAPTAIN [REDACTED] DEFENSE COUNSEL.

} all
(b)(6)-2; (7)(c) 2

18 The members are absent.

19 ~~Master Sergeant [REDACTED] has been detailed reporter for~~
20 this court and has been previously sworn.

21 TC: All members of the prosecution have been detailed to this
22 court by Colonel [REDACTED]. All members of the prosecution are
23 qualified and certified under Article 27(b) and sworn under Article

1 42(a) of the Uniform Code of Military Justice. No member of the
2 prosecution has acted in any manner which might tend to disqualify us
3 in this court-martial.

(b)(6)-2; (7)(C)-2

4 MJ: Thank you. All right, Staff Sergeant McKenzie, you have
5 the right to be represented by Captain [REDACTED] She is your
6 military defense counsel, she's detailed to your case and provided to
7 you free of charge. You also have the right to request a different
8 military lawyer to represent you and if that person were reasonably
9 available then he or she would be made available to represent you
10 free of charge. If your request for another military lawyer were
11 granted, however, you would not have the opportunity to keep the
12 services of Captain [REDACTED] normally because you're only entitled
13 to one military lawyer. You could ask her superiors to let you keep
14 your detailed counsel, but your request would not have to be granted.

(b)(6)-2; (7)(C)-2

16 In addition, you have the right to be represented by a
17 civilian lawyer. If you are represented by a civilian lawyer, that
18 civilian lawyer would have to be provided by you at no expense to the
19 government. ~~If you are represented by a civilian lawyer, you can keep~~
20 Captain [REDACTED] on your case to assist your civilian lawyer, or
21 you could excuse her and be represented solely by a civilian lawyer.

22 Do you understand everything I've talked to you about?

23 ACC: Yes, Your Honor.

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

2 ACC: No Your Honor.

3 MJ: By whom do you wish to be represented?

4 ACC: Captain [REDACTED] Your Honor.

5 MJ: By Captain [REDACTED] alone then?

6 ACC: Yes, Your Honor.

7 MJ: Captain [REDACTED] please state your detail and
8 qualifications.

9 DC: I was detailed to represent Sergeant McKenzie by Lieutenant
10 Colonel [REDACTED] Regional Defense Counsel Region VIII U.S.
11 Army Trial Defense Services. I am qualified and certified under
12 Article 27 Bravo and sworn under Article 42 Alpha Uniform Code of
13 Military Justice. I have not acted in any manner which might tend to
14 disqualify me at this court-martial.

15 MJ: Thank you. I too have been properly certified, detailed,
16 and sworn. Counsel for both sides appear to have the requisite
17 qualifications and all personnel required to be sworn have been
18 sworn. Trial counsel, please announce the general nature of the
19 ~~charges in this case.~~

20 TC: The general nature of the charges in this case is violation
21 of Article 92 UCMJ, failure to obey a lawful order; violation of
22 Article 93 UCMJ, dereliction of duty, five Specifications; violation

ALL
(b)(6) 2 - (7)(e) 2

all (b)(6)-2; (7)(c)-2

1 of Article 107 UCMJ, a false official statement; violation of Article
2 128 UCMJ, assault consummated by a battery, five Specifications.

3 These charges were preferred by First Lieutenant [REDACTED]
4 [REDACTED] and forwarded with recommendations as to disposition by
5 Lieutenant Colonel [REDACTED] and investigated by Lieutenant
6 Colonel [REDACTED]. The general nature of the additional
7 charges, is violation of Article 134 UCMJ, obstruction of justice and
8 violation of Article 81 UCMJ, conspiracy to obstruct justice. These
9 charges were preferred by Major [REDACTED] and forwarded with
10 recommendations as to disposition by Lieutenant Colonel [REDACTED]
11 [REDACTED]

12 Your Honor, are you aware of any matter which might be a
13 ground for challenge against you?

14 MJ: I am not. Does either side desire to either question me or
15 challenge me?

16 DC: No, Your Honor.

17 TC: No, Your Honor.

18 MJ: Okay. Captain [REDACTED] you indicated that there were five
19 ~~assault specs. My referred charge sheet indicates four, is that~~
20 correct at charge four?

21 DC: I have a continuation sheet three that has a fifth
22 Specification on it, Your Honor.

1 MJ: Okay, I don't have a copy of that, would you make sure I
2 get a copy of that please?

3 TC: If I can, Your Honor, I'll approach with this.

4 [Trial counsel hands document to reporter.]

5 MJ: Okay, great. That just didn't come through in the fax
6 transmission to Germany apparently. All right.

7 MJ: All right. Sergeant McKenzie, at this general court-
8 martial, you have the right to be tried by a court consisting of at
9 least five officer members. They would be commissioned and or
10 warrant officers. Also, if you request it you would be tried by a
11 court consisting of at least one-third enlisted members, but none of
12 those enlisted members would come from your company and none of them
13 would be junior in rank to you.

14 Do you understand what I've said?

15 ACC: Yes, Your Honor.

16 MJ: If you are tried by a court with members, the members will
17 vote by secret written ballot and two-thirds of the members must
18 agree before you could be found guilty of any offense. If you were
19 ~~found guilty then two-thirds must also agree in voting on a sentence~~
20 and if that sentence included confinement for more than 10 years,
21 then three-fourths would have to agree. You also have the right to
22 request a trial by military judge alone, and if approved there will
23 be no court members and the judge alone will decide whether you are

1 guilty or not guilty and if you are found guilty then the judge alone
2 will determine your sentence.

3 Do you understand the differences between trial before
4 members and trial before a military judge alone?

5 ACC: Yes, Your Honor.

6 MJ: Do you understand the choices you have then?

7 ACC: Yes, Your Honor.

8 MJ: Captain [REDACTED] are you prepared to enter a choice of
9 forum today? (b)(6) -2 (c) -2

10 DC: Yes, Your Honor.

11 MJ: You are?

12 DC: Yes. Sergeant McKenzie wishes to be tried by an enlisted
13 panel.

14 MJ: All right. Sergeant McKenzie is that right, you want to be
15 tried by a court consisting of both enlisted soldiers and officer
16 members?

17 ACC: Yes, Your Honor.

18 MJ: Very well. Government, I expect then that on the dates

~~19 that we set for trial that you'll arrange for an enlisted panel, all~~
20 right?

21 TC: We will, Your Honor.

22 MJ: The accused will now be arraigned.

1 TC: All parties to the trial have been furnished with a copy of
2 the charges. Does the accused want them read?

3 DC: The accused waives reading of the charges.

4 MJ: The reading may be omitted.

5 [END OF PAGE]

CHARGE SHEET

I. PERSONAL DATA

1. NAME OF ACCUSED <i>(Last, First, MI)</i> McKenzie, Scott A.		2. SSN [REDACTED]	3. GRADE OR RANK SSG	4. PAY GRADE E6
5. UNIT OR ORGANIZATION HHC, 320th Military Police Battalion Camp Bucca, Iraq 09375		(b)(6)5 - (7)(C)5		6. CURRENT SERVICE
7. PAY PER MONTH		8. NATURE OF RESTRAINT OF ACCUSED		9. DATE(S) IMPOSED
a. BASIC	b. SEA/FOREIGN DUTY	c. TOTAL	N/A	a. INITIAL DATE 19930131
2,709.60	250.00	2,959.60		b. TERM 11 years

II. CHARGES AND SPECIFICATIONS

10. CHARGE: VIOLATION OF THE UCMJ, ARTICLE

SPECIFICATION:

CHARGE I: VIOLATION OF ARTICLE 92

Specification 1: In that Staff Sergeant Scott Alan McKenzie, U.S. Army, HHC, 320th Military Police Battalion, Camp Bucca, Iraq, on active duty, who knew of his duties at or near Camp Bucca, Iraq, on or about 12 May 2003, was derelict in the performance of those duties in that he willfully failed to safeguard from assault or abuse captured Iraqi prisoners of war that he was escorting from Talil Air Base, Iraq, to Camp Bucca, Iraq, as it was his duty to do.

all (b)(6) - 4, (7)(C) - 4

CHARGE II: VIOLATION OF ARTICLE 93

Specification 1: In that Staff Sergeant Scott Alan McKenzie, U.S. Army, HHC, 320th Military Police Battalion, Camp Bucca, Iraq, on active duty, at or near Camp Bucca, Iraq, on or about 12 May 2003, did maltreat [REDACTED] and [REDACTED] a person subject to his orders, by throwing him to the ground striking him on the head and legs as he walked to the inprocessing tent.

Specification 2: In that Staff Sergeant Scott Alan McKenzie, U.S. Army, HHC, 320th Military Police Battalion, Camp Bucca, Iraq, on active duty, at or near Camp Bucca, Iraq, on or about 12 May 2003, did maltreat [REDACTED] a person subject to his orders, by dragging him by his armpits across the ground.

Specification 3: In that Staff Sergeant Scott Alan McKenzie, U.S. Army, HHC, 320th Military Police Battalion, Camp Bucca, Iraq, on active duty, at or near Camp Bucca, Iraq, on or about 12 May 2003, did aid and abet in the maltreatment of [REDACTED], a person subject to his orders, by holding his legs apart, and by encouraging other soldiers to kick him, while other U.S. soldiers kicked him in the groin, face and abdomen.

Specification 4: In that Staff Sergeant Scott Alan McKenzie, U.S. Army, HHC, 320th Military Police Battalion, Camp Bucca, Iraq, on active duty, at or near Camp Bucca, Iraq, on or about 12 May 2003, did maltreat [REDACTED] a person subject to his orders by throwing him to the ground on his face and stepping on his previously injured Arm.

(SEE CONTINUATION SHEET)

III. PREFERRAL

11a. NAME OF ACCUSER <i>(Last, First, MI)</i> [REDACTED]	b. GRADE O2	c. ORGANIZATION OF ACCUSER 320th MP Battalion
d. SIGNATURE OF ACCUSER [REDACTED]	(b)(6)2 - (7)(C)2	
		e. DATE 13 JUL 03

AFFIDAVIT: Before me, the undersigned, authorized by law to administer oaths in cases of this character, personally appeared the above named accuser this 13th day of July, 2003, 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.

[REDACTED]
Typed Name of Officer

OSJA, CFLCC

Organization of Officer

MAJ / 04

Article 136, UCMJ

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

012825

CONTINUATION SHEET 2

Specification 5: In that Staff Sergeant Scott Alan McKenzie, U.S. Army, HHC, 320th Military Police Battalion, Camp Bucca, Iraq, on active duty, at or near Camp Bucca, Iraq, on or about 12 May 2003, did [REDACTED], a person subject to his orders, by twisting his previously injured arm, causing him to scream in pain.

(b)(6)-4;
7(c)-4

CHARGE III: VIOLATION OF ARTICLE 107

Specification: In that Staff Sergeant Scott Alan McKenzie, U.S. Army, HHC, 320th Military Police Battalion, Camp Bucca, Iraq, on active duty, did, at or near Camp Bucca, Iraq, on or about 16 May 2003, with the intent to deceive, make to Special Agent [REDACTED] United States Army Criminal Investigation Division Command, an official statement on a DA Form 2823 Sworn Statement, to wit: that he did not see MSG [REDACTED] kick an EPW in the groin, that he did not see SGT [REDACTED] kick an EPW in the groin, that he did not hold and EPW's ankles while female soldiers kicked the EPW, that he did not drag an EPW to the searching area, that he did not throw EPWs to the ground, and that he did not kick, punch, or do anything unnecessary to any of the EPWs, or see any of the other MPs do anything unnecessary to the EPWs, which was then known by the said SSG McKenzie to be so false.

(b)(6) 1-
(7)(c) 1
(b)(6) 5
- 7(c) 5

CHARGE IV: VIOLATION OF ARTICLE 128

Specification 1: In that Staff Sergeant Scott Alan McKenzie, U.S. Army, HHC, 320th Military Police Battalion, Camp Bucca, Iraq, on active duty, did, at or near Camp Bucca, Iraq, on or about 12 May 2003, unlawfully drag [REDACTED] an Iraqi prisoner of war, across the ground by his armpits.

(b)(6)-4,
(7)(c) 4

Specification 2: In that Staff Sergeant Scott Alan McKenzie, U.S. Army, HHC, 320th Military Police Battalion, Camp Bucca, Iraq, on active duty, did, at or near, Camp Bucca, Iraq, aid and abet Master Sergeant [REDACTED] and Sergeant [REDACTED] unlawfully kicking [REDACTED] Iraqi prisoner of war, in the groin, face and abdomen, by holding [REDACTED] leg and encouraging SGT [REDACTED] to kick him.

(b)(6) 5
- (7)(c) 5

(b)(6) 4, (7)(c) 4

(b)(6)-5, (7)(c) 5

Specification 3: In that Scott Alan McKenzie, U.S. Army, HHC, 320th Military Police Battalion, Camp Bucca, Iraq, on active duty, did, at or near Camp Bucca, Iraq, on or about 12 May 2003, unlawfully throw [REDACTED] an Iraqi prisoner of war, to the ground on his face, and stepped on his previously injured arm.

(b)(6) 4
(7)(c) -4

Specification 4: In that Scott Alan McKenzie, U.S. Army, HHC, 320th Military Police Battalion, Camp Bucca, Iraq, on active duty, did, at or near Camp Bucca, Iraq, on or about 12 May 2003, unlawfully throw [REDACTED] and [REDACTED] an Iraqi prisoner of war, to the ground and strike him on the legs as he walked to the inprocessing tent.

(b)(6) -4
(7)(c) -4

CONTINUATION SHEET 3

Specification 5: In that Scott Alan McKenzie, U.S. Army, HHC, 320th Military Police Battalion, Camp Bucca, Iraq, on active duty, did, at or near Camp Bucca, Iraq, on or about 12 May 2003, unlawfully twist the previously injured arm of [REDACTED] [REDACTED] using him to scream in pain.

(b)(6)-4

(7)(C)-4

12.

On 13 July, 19 2003, the accused was informed of the charges against him/her and of the name(s) of the accuser(s) known to the (See R.C.M. 308 (a)). (See R.C.M. 308 if notification cannot be made.)

[Redacted]
Typed Name of Immediate Commander

1LT/02

HHC, 320th MP Battalion
Organization of Immediate Commander

all (b)(6) 2 ; (7)(C) - 2

[Redacted]
Signature

IV. RECEIPT BY SUMMARY COURT-MARTIAL CONVENING AUTHORITY

13.

The sworn charges were received at 1500 hours, 13 July 19 2003 at Camp Arifjan, KU
Designation of Command or

[Redacted]
Commander

FORXME¹ Commander

[Redacted]
Typed Name of Officer

Official Capacity of Officer Signing

LTC, MP

Grade

Commander, 320th MP Battalion

[Redacted]
Signature

V. REFERRAL; SERVICE OF CHARGES

14a. DESIGNATION OF COMMAND OF CONVENING AUTHORITY <u>Third U.S. Army/CFLCC</u>	b. PLACE <u>Camp Doha, Kuwait</u>	c. DATE <u>8 NOVEMBER 2003</u>
--	--------------------------------------	-----------------------------------

Referred for trial to the General court-martial convened by Court-Martial Convening Order
Number 6, this headquarters

dated July 3, 19 2003, subject to the following instructions:² None.

By Command of Lieutenant General David D. McKiernan
Command or Order

[Redacted]
Typed Name of Officer

Chief Paralegal, CFLCC FWD
Official Capacity of Officer Signing

Sergeant Major

Grade

15.

On 9 November, 19 2003, I (caused to be) served a copy hereof on (each of) the above named accused.

[Redacted]
Typed Name of Trial Counsel

Captain
Grade or Rank of Trial Counsel

[Redacted]
Signature

FOOTNOTES: 1 - When an appropriate commander signs personally, inapplicable words are stricken.
2 - See R.C.M. 601(e) concerning instructions. If none, so state.

012828

CHARGE SHEET

I. PERSONAL DATA

1. NAME OF ACCUSED <i>(Last, First, Middle Initial)</i> McKenzie, Scott A.			2. SSN [REDACTED]	3. GRADE OR RANK SSG	4. PAY GRADE E-6
5. UNIT OR ORGANIZATION 320th Military Police Battalion, 800th MP Brigade				6. CURRENT SERVICE	
				a. INITIAL DATE 19930131	b. TERM 11 years
7. PAY PER MONTH			8. NATURE OF RESTRAINT OF ACCUSED		9. DATE(S) IMPOSED
a. BASIC \$2,709.60	b. SEA/FOREIGN DUTY \$250.00	c. TOTAL \$2,959.60	N/A		

II. CHARGES AND SPECIFICATIONS

10. CHARGE: VIOLATION OF THE UCMJ, ARTICLE

SPECIFICATION:

ADDITIONAL CHARGE I: VIOLATION OF ARTICLE 134
 Specification: In that Staff Sergeant Scott A. McKenzie, US Army, HHD, 320th Military Police Battalion, Camp Arifjan, Kuwait, on active duty did at or near Camp Bucca, Iraq, on or about 16 May 2003, wrongfully endeavor to impede an investigation by meeting with MSG [REDACTED] SGT [REDACTED], SPC [REDACTED] and others for the purpose of deciding who would take responsibility for the actions of SSG McKenzie's unit and to misrepresent what occurred on or near Camp Bucca, Iraq on or about 12 May 2003 and by deciding that MSG [REDACTED] SSG Scott McKenzie, and SPC [REDACTED] would take responsibility for the actions of SSG McKenzie's unit on or near Camp Bucca, Iraq on or about 12 May 2003.

ADDITIONAL CHARGE II: VIOLATION OF ARTICLE 81
 Specification: In that Staff Sergeant Scott A. McKenzie, US Army, HHD, 320th Military Police Battalion, Camp Arifjan, Kuwait, on active duty did at or near Camp Bucca, Iraq, on or about 16 May 2003, conspire with MSG [REDACTED] SGT [REDACTED] and SPC [REDACTED] to commit an offense under the Uniform Code of Military Justice, to wit: Obstruction of Justice, by meeting to decide who would take responsibility for the actions of SSG MCKenzie's unit, and in order to effect the object of the conspiracy the said MSG [REDACTED] SSG McKenzie, SGT [REDACTED] on, and SPC [REDACTED] decided who would take responsibility for the actions of SSG McKenzie's unit and to misrepresent what occurred on or near Camp Bucca, Iraq on or about 12 May 2003, and that misrepresentations were made.

all (b)(6) - 5 ; (7)(C) - 5

III. PREFERRAL

11a. NAME OF ACCUSER <i>(Last, First, Middle Initial)</i> [REDACTED]	b. GRADE MAJ	c. ORGANIZATION OF ACCUSER CFLCC
d. [REDACTED]		e. DATE (YYYYMMDD) 20030927

AFFIDAVIT: Before me, the undersigned, authorized by law to administer oath in cases of this character, personally appeared the above named accuser this 27th day of September, 2003, 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)-2 ; (7)(C) 2* _____
 Typed Name of Officer Organization of Officer
 _____ MAJ _____
 _____ CFLCC _____
 _____ Article 136, UCMJ _____
 _____ Official Capacity to Administer Oath _____
 _____ (See R.C.M. 307(b) must be commissioned officer) _____

012829

12. On 27 September, 2003, 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.)

 Typed Name of Immediate Commander

 HHD, 320th Military Police Battalion
 Organization of Immediate Commander

 2LT/O-1
 Grade

 Signature

all (b)(6)-2 - (b)(7)(c)-2

IV. RECEIPT BY SUMMARY COURT-MARTIAL CONVENING AUTHORITY

13. The sworn charges were received at 1845 hours, 29 SEPT, 2003 at _____
 Designation of Command or

 Commander, 320th Military Police Battalion
 Officer Exercising Summary Court-Martial Jurisdiction (See R.C.M. 403)

 Typed Name of Officer

 LTC/O-5
 Grade

 Signature

FOR THE _____
 1

 Commander
 Official Capacity of Officer Signing

V. REFERRAL; SERVICE OF CHARGES

14a. DESIGNATION OF COMMAND OF CONVENING AUTHORITY <u>Third U.S. Army/CFLCC</u>	b. PLACE <u>Camp Doha, Kuwait</u>	c. DATE (YYYYMMDD) <u>8 November 2003</u>
--	--------------------------------------	--

Referred for trial to the General court-martial convened by Court-Martial Convening Order
Number 6, This Headquarters,
dated July 3, 2003, subject to the following instructions: ² None.

By Command of Lieutenant General David D. McKiernan
 Command or Order

 Typed Name of Officer

 Sergeant Major
 Grade

 Signature

 Chief Paralegal, CFLCC FWD
 Official Capacity of Officer Signing

15. On 9 November, 2003, I (~~caused to be~~) served a copy hereof on (~~each of~~) the above named accused.

 Typed Name of Trial Counsel

 Captain
 Grade or Rank of Trial Counsel

012830

FOOTNOTES: 1 - When an appropriate commander signs personally, inapplicable words are stricken.
 2 - See R.C.M. 601(e) concerning instructions. If none, so state.

(b)(6)-2; (7)(C)-2

1 TC: The charges are signed by First Lieutenant [REDACTED]
2 [REDACTED] a person subject to the Code as accuser; are properly sworn to
3 before a commissioned officer of the Armed Forces authorized to
4 administer oaths; and are properly referred to this court for trial
5 by Lieutenant General David D. McKiernan, the Convening Authority.

6 The additional charges are signed by Major [REDACTED] (b)(6)-2; (7)(C)-2
7 [REDACTED], a person subject to the Code as accuser, are properly sworn
8 to before a commissioned officer of the Armed Forces authorized to
9 administer oaths; and are properly referred to this court-martial--
10 to this trial-- to this court for trial by Lieutenant General David
11 D. McKiernan, the Convening Authority.

12 MJ: Thank you. Before we get to plea in this case, I will note
13 for the record that Appellate Exhibit I, you'll have to get Appellate
14 Exhibit I, I need the referral sheet for Staff Sergeant McKenzie
15 please.

16 TC: Your Honor I'm handing the Appellate Exhibit I for Staff
17 Sergeant McKenzie to the court reporter at this time.

18 [Trial counsel hands AE I to reporter.]

19 ~~[Reporter hands AE I to military judge.]~~

20 MJ: Thanks. All right, Appellate Exhibit I is entitled
21 Direction of the Convening Authority and is dated 8 November 2003.
22 It specifically states that he has considered the recommendations of
23 the Staff Judge Advocate and that Lieutenant General David D.

1 McKiernan, the Commander of Third Army is directing that the Charges
2 and Specifications against Staff Sergeant McKenzie be referred to
3 trial by general court-martial, convening order number 6, this
4 headquarters, dated 3 July 2003. I don't normally ask the government
5 for this document but in this case I want to be satisfied that the
6 Convening Authority's desire was indeed to try both the original
7 charges and the additional charges at the same court-martial. On 8
8 November when he took that action, I note for the record that the
9 charges then pending against Staff Sergeant McKenzie included the
10 original charges preferred against him on the 13th of July 2003 and
11 the additional charges preferred against him on the 27th of September
12 2003 and therefore I am satisfied that it was the intent of General
13 McKiernan to try both the additional charges and the original charges
14 in the same court-martial. Although normal practice would be to
15 include that language in the referral portion of the charge sheet and
16 that language has not been specifically included.

17 Defense you're on notice that if that becomes an issue,
18 look into it and make sure that you're satisfied as am I that his
19 ~~intent was to try them all together and if there is a defective~~
20 referral I expect a motion for lack of jurisdiction. All right?

21 DC: Yes, Your Honor.

22 MJ: All right. Staff Sergeant McKenzie, Captain [REDACTED]
23 please rise.

(b)(6)-2-(7)(C)-2

1 [Accused and counsel did as directed.]

2 MJ: Staff Sergeant Scott A. McKenzie, how do you plead? Before
3 receiving your plea, I advise you that any motions to dismiss or
4 grant any other appropriate relief should be made at this time. Your
5 defense counsel will speak for you.

6 DC: Your Honor, Sergeant McKenzie requests to defer entry of
7 plea.

8 MJ: Very well, please be seated.

9 [The accused and counsel did as directed.]

10 TC: Your Honor, is there also a deferment on motions that may
11 be made at this time?

12 MJ: Yes, you're deferring motions as well, right?

13 [Defense counsel nods affirmatively.]

14 MJ: That was a nod from Captain [REDACTED]

15 MJ: All right. Prior to trial in an 802 session held in
16 chambers, present were Captain [REDACTED] Captain [REDACTED] Captain
17 [REDACTED] and also present were Captain [REDACTED] who represents a co-
18 accused and Major [REDACTED] who represents another co-accused. The
19 primary purpose of the 802 session was to develop trial dates for

20 both motions and the trials themselves. I asked defense counsel what
21 motions they anticipated and have discerned that there are a couple
22 of issues that may need immediate litigation so that we can prepare
23 for trial. Those two issues are that the defense anticipates raising

1 a motion for a new Article 32 investigation and defective referral in
2 that the convening authority ignored the recommendation of the 32
3 investigating officer to dismiss four specifications against Staff
4 Sergeant McKenzie. He apparently also recommended against
5 dismissing-- excuse me, he also recommended dismissing specifications
6 against the co-accused, Master Sergeant [REDACTED] and Specialist [REDACTED]
7 and those recommendations were similarly ignored. So that's the
8 first issue. (b)(6)-5; (7)(C)-5

9 The second issue is that the defense intends to serve the
10 government today with a request for investigative assistance that is,
11 someone to be detailed to the defense case to investigate and cloaked
12 with attorney-client privilege under United States v. Toledo to
13 investigate both here in Kuwait and also back in Pennsylvania for
14 the----

15 DC: Kentucky, ma'am----

16 MJ: ----Kentucky for the purpose of developing potential
17 character evidence. If the government grants that request then
18 there'll be no issue. If they don't grant that request, then the
19 ~~defense will need to litigate that as quickly as possible as well.~~

20 So as to those two issues, I specifically told the defense that I
21 expect to see a motion from them not later than the 24th of November
22 and a government response not later than the 1st of December and we
23 will plan to litigate those on the 3rd and 4th of December here in Camp

1 Doha, Kuwait. It is my understanding also that the defense intends
2 to serve an additional discovery request on the government today and
3 to the extent that any of those issues are ripe for litigation on the
4 3rd and 4th, then we'll do those as well. Again, that's kind of
5 premature at this point. I was also notified that the defense
6 anticipates raising an issue regarding multiplication of charges-- an
7 unreasonable multiplication of charges under Quiroz and or
8 multiplicity under Teeters and Blockburger. That they will also
9 raise an Article 13 motion regarding Staff Sergeant McKenzie not
10 performing his MP duties and possible derogatory comments and any
11 other issues that arise. And that the defense is looking into,
12 though they're not convinced yet whether or not there is an issue
13 with unlawful command influence. And that's all my notes show, there
14 may be other motions, at any rate. For all other motions, your
15 deadline, defense counsel, is the 10th of December; government your
16 deadline for response is the 17th of December.

17 Government informed me that they prefer to try United
18 States versus ^{b6-5, b7(D)5} [REDACTED] then United States versus McKenzie second, and
19 lastly United States versus [REDACTED] third. Government also
20 anticipates seventeen witnesses from the United States and the need
21 for a bifurcated trial given that the victims and possibly some of
22 the witnesses are Iraqi citizens. Is that right?

23 TC: That's correct, Your Honor.

1 MJ: All right; and that we will have to hear their testimony in
2 Iraq. I have set aside 12 January for an additional motions hearing
3 if we need it. I expect counsel to let me know whether or not that's
4 necessary. Primary I'm thinking that may be necessary for purposes
5 of deciding whether or not certain overseas witnesses need to be
6 brought if the defense requests and the government is inclined to
7 decline. We will for sure have a motions hearing on the 20th of
8 January, where I anticipate litigating the multiplicity motion, the
9 Article 13 motion and unlawful command influence if that pans out to
10 be true and I will of course ask you whether or not that panned out
11 to be true. We will then try United States versus McKenzie beginning
12 at 1300 on Sunday, the 25th of January. I expect and hope to at least
13 seat a panel that day and then start with witnesses Monday the 26th,
14 whether that be here in Kuwait or up north in Iraq. And government
15 you have the responsibility, obviously, of getting all the parties
16 wherever they need to be, so. All right, that's all my notes state
17 in regard to the 802, do counsel have anything to add?

18 DC: No, Your Honor.

19 ~~TC: Not from the government, Your Honor.~~

20 MJ: All right, Staff Sergeant McKenzie what we've done here is
21 an arraignment. It's the legal term for the first pretrial hearing
22 in any court-martial. As the accused in a court-martial you have an
23 absolute right to be present in all sessions of your court. The one

1 caveat to that is if you were to absent yourself without leave, go
2 AWOL between now and the dates that we've set either the 3rd and 4th of
3 December, possibly the 12th of January, certainly the 20th of January
4 and then from the 25th through the 29th which I anticipate will be the
5 actual trial dates, then the government could go ahead and elect to
6 try the case even if you weren't here. It would be a really bad
7 situation for Captain [REDACTED] (b)(6)-2-(7)(c)-2 he'd be defending an empty chair,
8 all right? I would enter a plea of not guilty for you and we would
9 have a panel case and we would go forth. Obviously I don't expect
10 that you're going to go AWOL and again, I tell you that like I tell
11 every soldier who I am arraigning because I want you to understand
12 that you've got a lot of work to do between now and those dates that
13 I've set with Captain [REDACTED] so that you can assist her in
14 defending your case. (b)(6)-2, (7)(c)-2

15 All right?

16 ACC: Yes, Your Honor.

17 MJ: Is there anything further we can take up at this
18 arraignment?

19 ~~TC: Your Honor, I would just ask that I know that there may be~~
20 some issues of requesting leave by the accused between now and the
21 time of trial and I just want to know if the court had any issues or
22 concerns about the leave and going back to the states.

1 MJ: I don't. That's completely a command decision. I've seen
2 commanders grant leave up to the day before trial. Captain
3 [REDACTED] understands Article 138 if she needs it; okay?

4 TC: Thanks ma'am.

5 MJ: That's not my issue.

6 TC: Nothing more from the government.

7 MJ: Anything else? Captain [REDACTED]

8 DC: No, Your Honor.

9 MJ: Very well, court is in recess.

10 [The court-martial recessed at 1051, 15 November 2003.]

11 [END OF PAGE]

all
(b)(6) - 2 - (7)(c) - 2

ABATEMENT

1

2

3

4

5

6

The proceedings were terminated on 7 January 2004 when all charges and additional charges and their specifications were dismissed with prejudice by the convening authority.

/////////////////////////////////NOTHING FOLLOWS/////////////////////////////////

AUTHENTICATION OF RECORD OF TRIAL

In the case of

(b)(6)-5; (7)(C) 5

McKENZIE, Scott A. [REDACTED] Staff Sergeant

U.S. Army, HHC, 320th Military Police Battalion,

Camp Bucca, Iraq 09375

[REDACTED] (b)(6) 2 - (7)(C) - 2
[REDACTED]
LTC, JA

(Military Judge)

20 July, 2004

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

[REDACTED] (b)(6) 2 - (7)(C) - 2
CPT, JA
(Defense Counsel)

_____, 2004

ACTION

THE DEPARTMENT OF THE ARMY
Third United States Army
United States Army Forces Central Command
Coalition Forces Land Component Command
Camp Doha, Kuwait
APO AE 09304

7 JAN 2004

(b)(6)5-(7)(c)-5

In the case of the US v. SSG Scott A. McKenzie, [REDACTED] HC, 320th MP Battalion, 800th MP Brigade, APO AE, 09304, the charges and additional charges and their specifications are hereby dismissed with prejudice.



DAVID D. McKIERNAN
Lieutenant General, USA
Commanding

012841

APPELLATE EXHIBITS

012842

AFRD-CG

SUBJECT: Advice on Disposition of Court-Martial Charges

8 NOV 2003

DIRECTION OF THE CONVENING AUTHORITY

1. I have considered the recommendations of the Staff Judge Advocate. I hereby direct the following action on the charges and specifications against SSG Scott A. McKenzie, 320th Military Police Battalion, Camp Bucca, Iraq:

Refer them for trial by General Court-Martial, Court-Martial Convening Order Number 6, this Headquarters, dated 3 July 2003.

Refer them for trial by Special Court-Martial empowered to adjudge a Bad Conduct Discharge, Court-Martial Convening Order Number 6, this Headquarters, dated 3 July 2003.

Other, _____.

2. POC for this directive is the Staff Judge Advocate, COL [REDACTED]



DAVID D. McKIERNAN
Lieutenant General, USA
Commanding

(b)(6) 2-(7)(C) 2

APPELLATE EXHIBIT

I