

DEPARTMENT OF THE ARMY REPORT OF RESULTS OF TRIAL

For use of this form, see AR 27-10; the proponent agency is TJAG

TO: Commander
B Battery, 4th Battalion, 1st Armored Division
Baghdad, Iraq APO AE 09324

1. Notification under R.C.M. 1101 and AR 27-10, paragraph 5-26 is hereby given in the case of the United States v. McKENZIE, John C.

SSG, B BTRY.. 4th BN, 1st FA, 3rd BDE, 1st AD

2. Trial by general court-martial on 8 Dec 03 ☒ at Baghdad, Iraq

convened by CMCO Number 5 HQ, 1st Armored Division, APO AE 09324.

3. Summary of offenses, pleas, and findings:

CH	ART UCMJ	SPEC	BRIEF DESCRIPTION OF OFFENSE(S)	PLEA	FINDING
THE	128	THE	Assault with a loaded firearm	Not Guilty	Not Guilty

4. SENTENCE: None.

5. Date sentence adjudged: None.

6. Contents of pretrial agreement concerning sentence, if any: None.

7. Number of days of presentence confinement, if any: None.

8. Number of days of judge-ordered administrative credit for illegal presentence confinement or restriction found tantamount to confinement, if any: None

9. Total present confinement credit towards post-trial confinement: None.

10. Name(s) and SSN(s) of companion accused or co-accused, if any: None.

CF: Commander
4th Battalion, 1st Field Artillery
Baghdad, Iraq APO AE 09324

SJA
1st Armored Division
Baghdad, Iraq APO AE 09324

TYPED NAME

SIGNATURE

RANK

BRANCH OF SERVICE

CPT

JA

DA FORM 4430-R, MAY 87 (EG)

EDITION OF OCT 85 IS OBSOLETE

002159

E1/8

CHARGE SHEET

I. PERSONAL DATA

1. NAME OF ACCUSED (Last, First, Middle Initial) McKenzie, John C.			2. SSN	3. GRADE OR RANK SSG	4. PAY GRADE E6
5. UNIT OR ORGANIZATION Bravo Battery, 4 th Battalion, 1 st Field Artillery Baghdad, Iraq APO AE 09324				6. CURRENT SERVICE	
				a. INITIAL DATE 20001208	b. TERM 6 years
7. PAY PER MONTH			8. NATURE OF RESTRAINT OF ACCUSED None.	9. DATE(S) IMPOSED None.	
a. BASIC \$2,400.90	b. SEA/FOREIGN DUTY None	c. TOTAL \$2,400.90			

II. CHARGES AND SPECIFICATIONS

10. CHARGE I: VIOLATION OF THE UCMJ, ARTICLE 93.

THE SPECIFICATION: In that Staff Sergeant (E6) John C. McKenzie, U.S. Army, at or near Baghdad, Iraq, on or about 21 June 2003, was cruel toward [REDACTED] a person subject to his orders, by ~~insulting~~ ^{offering an} ~~insult~~ ^{inoperable M16} ~~insult~~ ^{to} [REDACTED] while other armed soldiers ~~were~~ ^{after he was assaulted by Private First Class} ~~and saying to~~ ^{guarded} [REDACTED] "What happened, did you fall and break your nose?" or words to that effect.

CHARGE II: VIOLATION OF THE UCMJ, ARTICLE 128.

THE SPECIFICATION: In that Staff Sergeant (E6) John C. McKenzie, U.S. Army, did at or near Baghdad, Iraq, on or about 21 June 2003, commit an assault upon [REDACTED] by pointing at him with a dangerous weapon likely to produce death or grievous bodily harm, to wit: a loaded firearm.

III. PREFERRAL

11a. NAME OF ACCUSER (Last, First, Middle Initial) [REDACTED]	b. GRADE MAJ	c. ORGANIZATION OF ACCUSER HHC, 3 rd Brigade
d. SIGNATURE OF ACCUSER [REDACTED]		e. DATE (YYYYMMDD) 20030919

AFFIDAVIT: Before me, the undersigned, authorized by law to administer oaths in cases of this character, personally appeared the above named accuser this 19 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.

Typed Name of Officer

HHC, 3rd Bde, 1st AD

Organization of Officer

CPT

Grade

Trial Counsel

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

Signature

12.

On 20 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.)

[REDACTED]
Typed Name of Immediate Commander

CPT
Grade

[REDACTED]
Signature

B Btry, 4-1 FA

Organization of Immediate Commander

13.

IV. RECEIPT BY SUMMARY COURT-MARTIAL CONVENING AUTHORITY

The sworn charges were received at 1500 hours, 20 SEPT., 2003 at

HQ, 4-1 FA

Designation of Command or

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

FOR THE ¹

[REDACTED]
Typed Name of Officer

LTC
Grade

[REDACTED]
Signature

Commander

Official Capacity of Officer Signing

14a. DESIGNATION OF COMMAND OF CONVENING AUTHORITY

V. REFERRAL; SERVICE OF CHARGES

HEADQUARTERS, 1st ARMORED DIVISION

b. PLACE

BAGHDAD, IRAQ

c. DATE (YYYYMMDD)

20031114

Referred for trial to the general court-martial convened by Court-Martial Convening Order Number 5,
this headquarters,

dated 20 August 2003, subject to the following instructions:²

COMMAND of BRIGADIER GENERAL DEMPSEY
Command or Order

[REDACTED]
Typed Name of Officer

MAJ
Grade

[REDACTED]
Signature

Chief, Military Justice

Official Capacity of Officer Signing

15.

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

[REDACTED]
Typed Name of Trial Counsel

CPT

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.

DD FORM 458 (BACK), MAY 2000

002161

DEPARTMENT OF THE ARMY
HEADQUARTERS, 1ST ARMORED DIVISION
BAGHDAD INTERNATIONAL AIRPORT COMPLEX
UNIT 93054
APO AE 09324

COURT-MARTIAL CONVENING ORDER
NUMBER 9

1 December 2003

The following members are detailed to the Special Court-Martial empowered to adjudge a bad-conduct discharge convened by Court-Martial Convening Order Number 5, this headquarters, dated 20 August 2003, for the trial of United States v. SSG John C. McKenzie, Battery B, 4th Battalion, 1st Field Artillery, 1st Armored Division only:

CSM [REDACTED] HHT, 1-2 ACR (L)
CSM [REDACTED] HHC, 47th FSB, 1AD

Vice

CSM [REDACTED] 1 AR EN BDE
SGM [REDACTED] HHC, 2d BDE, 82d ABN

BY COMMAND OF BRIGADIER GENERAL MARTIN E. DEMPSEY:

DISTRIBUTION:
Each Indiv Conc (1)
Record of Trial (1)
Record Set (1)
Reference Set (1)

[REDACTED]
MAJ, JA
Chief, Military Justice

002162

CORRECTED COPY

DEPARTMENT OF THE ARMY
HEADQUARTERS, 1ST ARMORED DIVISION
BAGHDAD INTERNATIONAL AIRPORT COMPLEX
APO AE 09324-3054

COURT-MARTIAL CONVENING ORDER
NUMBER

5

20 August 2003

A general or special court-martial is convened with the following members and shall meet at a location to be determined:

COL. [REDACTED], HHC, 4th BDE, 1AD
COL. [REDACTED], HHT, 2ACR (L)
LTC [REDACTED], HHB, 2-3 FA
LTC [REDACTED], HHC, 2 BDE
LTC [REDACTED], HHC, 501st MI BN
MAJ [REDACTED], HHC, 1AD
MAJ [REDACTED], HHC, 1457th EN BN
CPT [REDACTED], HSC, 389th EN BN
CPT [REDACTED], HHC, 1st BCT, 1AD

In the event the accused submits a request pursuant to Article 25c, UCMJ, that the court be composed of at least one-third enlisted members, the officers not named below are excused and the court will be composed of the following officers and enlisted members:

COL. [REDACTED], HHT, 2ACR (L)
COL. [REDACTED], HHC, 4th BDE, 1AD
LTC [REDACTED], HHB, 2-3 FA
LTC [REDACTED], HHC, 501st MI BN
CPT [REDACTED], 389th EN BN
CSM [REDACTED], 1 AR EN BDE
SGM [REDACTED], HHC, 2ND BDE, 82ND ABN
MSG [REDACTED], RHHT, 2ACR
SFC [REDACTED], HHC 1-6 IN

All cases referred to the general or special court-martial convened by Court-Martial Convening Order Number 17 or 18, this headquarters, dated 8 December 2002 in which the court has not yet been assembled, will be brought to trial before the court-martial hereby convened.

BY COMMAND OF BRIGADIER GENERAL DEMPSEY:

DISTRIBUTION:
Each Indiv Conc (1)
Record of Trial (1)
Record Set (1)
Reference Set (1)

[REDACTED]
MAJ, JA
Chief, Military Justice

002163



DEPARTMENT OF THE ARMY
HEADQUARTERS, 3RD BRIGADE COMBAT TEAM, 1ST ARMORED DIVISION
BAGHDAD, IRAQ
UNIT 92940, APO AE 09324-2940

REPLY TO
ATTENTION OF:

AFZN-BB-CO

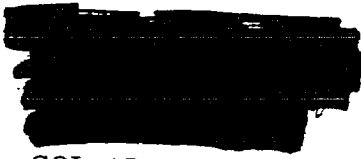
3 November 2003

MEMORANDUM THRU Staff Judge Advocate, 1st Armored Division, Baghdad, Iraq

FOR Commanding General, 1st Armored Division, Baghdad, Iraq

SUB JECT: Disposition of Court Martial Case (U.S. v. SSG John C. McKenzie)

1. This memorandum is to inform you of the results of a recently completed Article 32 investigation in the case of U.S. v SSG John C. McKenzie and to discuss with you my preference for the disposition of this case.
2. Staff Sergeant McKenzie was charged on 19 September 2003 with a violation of Article 93, UCMJ, for maltreatment of a detainee, and with a violation of Article 128, UCMJ, for assaulting the same detainee. The Article 32 investigation for this case was conducted on 22 October 2003. This investigation found reasonable grounds to believe that SSG McKenzie committed the Article 128 offense, as well as a variation on the charged Article 93 offense. It also found reasonable grounds to believe that SSG McKenzie violated Article 92, UCMJ, for being derelict in his duty to correct a subordinate soldier's maltreatment of the detainee. The recommendation of the investigating officer was that the case be referred to a Special Court-Martial empowered to adjudge a Bad-Conduct Discharge.
3. Despite this recommendation, it is my preference that I handle this case with a Field Grade Article 15. Although the charges in this case are serious, this appears to be the only indiscretion by the noncommissioned officer in question. In fact, even the witnesses against him stated that he is "by the book" and always sets the standard. I feel a Field Grade Article 15 is appropriate for this offense considering the circumstances surrounding it.
4. This case has not previously been referred to you for disposition. I will await word from you as to whether my intended resolution of this case is acceptable before executing any nonjudicial punishment, and will understand if you decide to pull the case up to your level for a court-martial.


COL, AR
Commanding

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

FROM: (Name of Investigating Officer - Last, First, MI) [REDACTED]		b. GRADE [REDACTED]	c. ORGANIZATION HQ, 3 rd Brigade Combat Team 1 st Armored Division Baghdad, Iraq APO AE 09324	d. DATE OF REPORT 28 Oct 2003
2a. TO: (Name of Officer who directed the Investigation - Last, First, MI) [REDACTED]		b. TITLE [REDACTED]		c. ORGANIZATION HQ, 3 rd Brigade Combat Team 1 st Armored Division Baghdad, Iraq APO AE 09324
1a. NAME OF ACCUSED (Last, First, MI) McKENZIE, John C.	b. GRADE E6	c. SSN [REDACTED]	d. ORGANIZATION B Battery, 4-1 FA Baghdad, Iraq	e. DATE OF CHARGES 19 Sep 03

(Check appropriate answer)

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	NO
THE ACCUSED WAS REPRESENTED BY COUNSEL (If not, see 9 below)				X	
UNSEL WHO REPRESENTED THE ACCUSED WAS QUALIFIED UNDER R.C.M. 405(d)(2), 502(d)				X	
a. NAME OF DEFENSE COUNSEL (Last, First, MI) RUSH, Brian	b. GRADE O3	8a. NAME OF ASSISTANT DEFENSE COUNSEL (If any)		b. GRADE	
c. ORGANIZATION (If appropriate) DS DS USALSA Field Office		d. ADDRESS (If appropriate) Camp Victory Baghdad, Iraq			
To be signed by accused if accused waives counsel. If accused does not sign, investigating officer will explain in detail in Item 21.)					
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.					
SIGNATURE OF ACCUSED					

J. AT THE BEGINNING OF THE INVESTIGATION I INFORMED THE ACCUSED OF: (Check appropriate answer)			YES	NO
THE CHARGE(S) UNDER INVESTIGATION			X	
IDENTITY OF THE ACCUSER			X	
THE RIGHT AGAINST SELF-INCRIMINATION UNDER ARTICLE 31			X	
THE PURPOSE OF THE INVESTIGATION			X	
THE RIGHT TO BE PRESENT THROUGHOUT THE TAKING OF EVIDENCE			X	
THE WITNESSES AND OTHER EVIDENCE KNOWN TO ME WHICH I EXPECT TO PRESENT			X	
THE RIGHT TO CROSS-EXAMINE WITNESSES			X	
THE RIGHT TO HAVE AVAILABLE WITNESSES AND EVIDENCE PRESENTED			X	
THE RIGHT TO PRESENT ANYTHING IN DEFENSE, EXTENUATION, OR MITIGATION			X	
THE RIGHT TO MAKE A SWORN OR UNSWORN STATEMENT, ORALLY OR IN WRITING			X	
a. 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	
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."

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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]	E5	B Batt, 4-1 st Field Artillery Baghdad, Iraq APO AE 09324	X	
[REDACTED]	E5	B Batt, 4-1 st Field Artillery Baghdad, Iraq APO AE 09324	X	
[REDACTED]	E4	B Batt, 4-1 st Field Artillery Baghdad, Iraq APO AE 09324	X	
[REDACTED]	E4	B Batt, 4-1 st Field Artillery Baghdad, Iraq APO AE 09324	X	
[REDACTED]	E4	B Batt, 4-1 st Field Artillery Baghdad, Iraq APO AE 09324	X	
(SEE CONTINUATION SHEET 1)				

13. THE SUBSTANCE OF THE TESTIMONY OF THESE WITNESSES HAS BEEN REDUCED TO WRITING AND IS ATTACHED.

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
Sworn Statements of SGT [REDACTED] dtd 21 Jun 03 and 27 Jun 03	Office of the Staff Judge Advocate, 1 st Armored Division	X	
Sworn Statements of SGT [REDACTED] dtd 21 Jun 03 and 27 Jun 03	Office of the Staff Judge Advocate, 1 st Armored Division	X	
Sworn Statements of SPC [REDACTED] dtd 21 Jun 03 and 27 Jun 03	Office of the Staff Judge Advocate, 1 st Armored Division	X	
Sworn Statements of SPC [REDACTED] dtd 21 Jun 03 and 27 Jun 03	Office of the Staff Judge Advocate, 1 st Armored Division	X	
Sworn Statements of SPC [REDACTED] dtd 21 Jun 03 and 27 Jun 03	Office of the Staff Judge Advocate, 1 st Armored Division	X	
(SEE CONTINUATION SHEET 1)			

4. 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).)

5. THE DEFENSE DID REQUEST OBJECTIONS TO BE NOTED IN THIS REPORT (If Yes, specify in Item 21 below.)

6. ALL ESSENTIAL WITNESSES WILL BE AVAILABLE IN THE EVENT OF TRIAL

7. THE CHARGES AND SPECIFICATIONS ARE IN PROPER FORM

8. REASONABLE GROUNDS EXIST TO BELIEVE THAT THE ACCUSED COMMITTED THE OFFENSE(S) ALLEGED

9. I AM NOT AWARE OF ANY GROUNDS WHICH WOULD DISQUALIFY ME FROM ACTING AS INVESTIGATING OFFICER. (See R.C.M. 405(d)(1).)

10. I RECOMMEND:

TRIAL BY ☐ SUMMARY☐ OTHER (Specify in Item 21 below)☒ SPECIAL☐ GENERAL COURT-MARTIAL

11. REMARKS (Include, as necessary, explanation for any delays in the investigation, and explanation for any "no" answers above.)

12. FORM OF THE CHARGES.

It is my certainty based upon the written and oral testimony provided by the witnesses that the two charges are in proper form and that there are reasonable grounds to believe that Staff Sergeant John C. McKenzie did in fact commit the offenses alleged; however, based upon evidence presented, I recommend several amendments to the form of the charges and their specifications. I recommend that Charge I, Violation of Article 93, UCMJ, cruelty and maltreatment, be amended to substitute the specification addressed in the following paragraph and also recommend that the specification of Charge I be dismissed for reasons addressed in the second paragraph of the

(SEE CONTINUATION SHEET 2)

a. TYPED NAME OF INVESTIGATING OFFICER

b. GRADE

c. ORGANIZATION

p4

HQ, 3rd BCT, 1st AD

Baghdad, Iraq APO AE 09324

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CONTINUATION SHEET 1, DD FORM 457, PERTAINING TO SSG MCKENZIE, John C.,
 B Battery, 4th Battalion, 1st Field Artillery Regiment, Baghdad, Iraq
 O AE 09324

Item 12a, continued:

NAME (Last, First, MI)	GRADE (If any)	ORGANIZATION/ADDRESS (Whichever is appropriate)	YES	NO
[REDACTED]	E3	B Batt, 4-1 st Field Artillery Baghdad, Iraq APO AE 09324	X	
[REDACTED]	E3	B Batt, 4-1 st Field Artillery Baghdad, Iraq APO AE 09324	X	
[REDACTED]	E3	B Batt, 4-1 st Field Artillery Baghdad, Iraq APO AE 09324	X	
[REDACTED]	E4	B Batt, 4-1 st Field Artillery Baghdad, Iraq APO AE 09324	X	
[REDACTED]	Civilian	Khalif Baghdad Harthia, House 44 Baghdad, Iraq	X	

Item 13a, continued:

DESCRIPTION OF ITEM	LOCATION OF ORIGINAL (If not attached)	YES	NO
Sworn Statements of PFC [REDACTED] dtd 21 Jun 03 and 27 Jun 03	Office of the Staff Judge Advocate, 1 st Armored Division Baghdad, Iraq	X	
Sworn Statements of PFC [REDACTED] dtd 21 Jun 03 and 28 Jun 03	Office of the Staff Judge Advocate, 1 st Armored Division Baghdad, Iraq	X	
Sworn Statements of PFC [REDACTED] dtd 21 Jun 03 and 28 Jun 03	Office of the Staff Judge Advocate, 1 st Armored Division Baghdad, Iraq	X	
Sworn Statements of SPC [REDACTED] dtd 21 Jun 03 and 27 Jun 03	Office of the Staff Judge Advocate, 1 st Armored Division Baghdad, Iraq	X	
Sworn Statements of PFC [REDACTED] dtd 21 Jun 03 and 27 Jun 03	Office of the Staff Judge Advocate, 1 st Armored Division Baghdad, Iraq	X	
Photographs (18)		X	

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em 21, continued.

Dismissed for reasons addressed in the second paragraph of the discussion. I also recommend that one additional charge, Violation of Article 92; UCMJ, Dereliction in the Performance of Duties be preferred against Staff Sergeant McKenzie. The witness testimony and evidence supporting the charges, recommended amendments, and/or dismissals are discussed below.

1. Charge I, Violation of Article 93, UCMJ (Cruelty and Maltreatment).

This paragraph addresses my recommendation to substitute the specification to Charge I. While I do believe that reasonable grounds exist to believe that Staff Sergeant McKenzie violated Article 93, UCMJ (Cruelty and Maltreatment), I do not believe that he is guilty of the offense as it is stated on the charge sheet. The specification as it is stated, charges that Staff Sergeant McKenzie was cruel toward [redacted] by "laughing at [him] after he was assaulted...and saying to [him] "What happened, did you fall and break your nose?" I do not believe that the evidence supports the charge that Staff Sergeant McKenzie was cruel in this manner. I do not believe that what basically amounted to "teasing" [redacted] raises to the level of cruelty. Laughing at someone is not a crime and [redacted] could not understand the words that were being stated regardless. I do not believe that these acts could not meet the second element of Article 93.

While I do not believe there are reasonable grounds to charge Staff Sergeant McKenzie for cruelty as that specification is stated, I do believe that there are reasonable grounds to believe that he did commit the offense. There is credible evidence that Staff Sergeant McKenzie attempted to persuade [redacted] accept an operable pistol while he was sitting on the ground and with weapons pointed at him. I believe that Staff Sergeant McKenzie did this because he knew that [redacted] acceptance of the pistol would justify having the other soldiers shoot him. [redacted] testified that he believed that he would be killed if he accepted the pistol, and two other witnesses, Specialist [redacted] and Private First Class [redacted] testified that they overheard Staff Sergeant McKenzie say "take it so we can shoot you," or words to that effect. In addition, a few other witnesses testified that they believed Staff Sergeant McKenzie would shoot, engage or otherwise harm [redacted] if he accepted the pistol. By placing [redacted] in a fear of imminent death or bodily harm, he engaged in a type of mental torture by Staff Sergeant McKenzie that I believe would meet the cruelty element of the offense that [redacted] was subject to the orders of the accused. The victim was a detainee and had to obey the orders of his detainer. Staff Sergeant McKenzie was the senior ranking individual at the scene, so [redacted] was subject to his orders.

Although I do not believe that the statement "what happened, did you fall and break your nose?" rises to the level of cruelty by itself, I do believe that the statement may be indicative of some other type of physical maltreatment of [redacted] by someone in the group. I believe that he may have made the statement to provide an explanation for physical signs of maltreatment on the victim. However, I do not believe that there is sufficient evidence to suggest that Staff Sergeant McKenzie himself inflicted this damage.

Charge II, Violation of Article 128, UCMJ (Assault with a Dangerous Weapon)

This paragraph addresses my reasonable belief to that Charge II, Violation of Article 128, UCMJ, Assault with a Dangerous Weapon, is in proper form, that all the elements required to substantiate the charge have been met, and that credible witness testimony and sworn statements support the charge.

(SEE CONTINUATION SHEET 3)

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tem 21, continued..

The sequence of events based upon the evidence gathered shows that the actions, which are the basis of Charge II, took place sometime after the detainment of [REDACTED] outside the building he was guarding, but prior to the incident where [REDACTED] struck him in the face.

Besides [REDACTED] it is believed that there were only five other soldiers at the scene; Staff Sergeant McKenzie, [REDACTED] and [REDACTED]. A written statement and oral testimony by [REDACTED] and a written statement by [REDACTED] both credible witnesses at the scene, claim they saw Staff Sergeant McKenzie and another soldier taunting [REDACTED] by instructing him to lower and raise his head. Both witnesses observed Staff Sergeant McKenzie pull back the charging handle of his M16A2 rifle presumably to chamber a round into the chamber of his rifle and then aim his rifle at a distance of 6-12 inches away from [REDACTED] head. Another credible witness, [REDACTED], stated that he did see Staff Sergeant McKenzie aim his M16A2 at [REDACTED], but did not see him charge the weapon. [REDACTED] also a credible witness, did not recall having seen Staff Sergeant McKenzie aim his weapon at [REDACTED] however, it is reasonable to believe that [REDACTED] who was standing twenty to thirty feet away from the detainee, may have been distracted momentarily as Staff Sergeant McKenzie aimed his rifle at [REDACTED].

Although I do not believe [REDACTED] to be a credible witness in this case, I would like to acknowledge his testimony that he and another soldier "badgered" [REDACTED] and told him to keep his head down. When questioned by the defense counsel, [REDACTED] stated that he trained his weapon on [REDACTED] accused when he did not obey "our" command to keep his head down. The evidence and testimony leads me to believe that the other soldier was Staff Sergeant McKenzie.

There are other credible witnesses who did not recall having seen Staff Sergeant McKenzie aim his weapon at [REDACTED]. I believe that this discrepancy in credible witness testimony can be explained by a lack of personal knowledge of the events. The above-mentioned witnesses lack of knowledge can be explained by the fact that they were still in the process of searching nearby buildings or en route to the site where the incident took place.

Recommended Charge, Violation of Article 92, UCMJ (Dereliction in the Performance of Duties).

Although it was not charged, the evidence uncovered during my investigation provided reasonable grounds to believe that Staff Sergeant McKenzie was derelict in his duty as a NCO supervisor when he failed to correct and to report that his soldier, [REDACTED], had wrongfully assaulted [REDACTED], in violation of UCMJ, Article 92. Six witnesses whose testimony I consider to be credible testified that after [REDACTED] had struck [REDACTED] in the face with his hand causing him to bleed profusely from his mouth and nose, Staff Sergeant McKenzie took no action whatsoever to correct or restrain [REDACTED] instead he joked about the incident. According to the accounts of several witnesses, [REDACTED] was at no time perceived a threat and he responded fully to the orders of the soldiers detaining him. After the incident occurred, Staff Sergeant McKenzie failed to report this incident to his superiors, as he should have. Instead, it was the soldiers who observed the incident who informed the battery first sergeant of what had happened. During the hearing, [REDACTED] stated that soldiers within the battery had received Rules of Engagement (ROE) training prior to deploying to Iraq.

(SEE CONTINUATION SHEET 4)

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em 21, continued.

Because of this, I recommend that Staff Sergeant McKenzie be additionally charged for the violation of Article 92, UCMJ (Dereliction of Duty).

II. FINDINGS FROM WITNESS TESTIMONY.

Of the 10 soldier witnesses who had previously submitted sworn statements about the events of 21 June 2003, I found only 8 to be credible. I found the testimony of [REDACTED], [REDACTED], [REDACTED], and [REDACTED] to be credible because their respective oral testimonies were generally consistent with their previously submitted sworn statements. The oral testimony did, however, tend to provide more illustrative detail of the events than did their sworn statements.

The testimony of the alleged victim in this case, [REDACTED], seemed to be credible and was consistent for the most part with the testimony of the other witnesses. I will say however, that it appeared as if he exaggerated the events at times.

I did not find the testimony of [REDACTED] and [REDACTED] to be credible or convincing.

[REDACTED] acknowledged that the details in his first sworn statement were false. In this statement, he claimed to have seen nothing, but as the written and oral testimony of others would show, he was at or near every event related to Staff Sergeant McKenzie's alleged misconduct. I also have little reason to believe [REDACTED] second sworn statement and oral testimony cause the recollection of events he described did not resemble in any consistent fashion those presented by the other eight witnesses.

With regard to the testimony provided by [REDACTED] I have a strong belief that he may have in fact violated Article 131 of the UCMJ by committing perjury during his examination in this Article 32 hearing. During his oral testimony, I questioned [REDACTED] about having seen Staff Sergeant McKenzie during the incident. He denied having seen Staff Sergeant McKenzie at all until after he left the scene where the assault took place. This testimony conflicts with [REDACTED] written statement acknowledging that Staff Sergeant McKenzie was located "somewhere behind him" at the time of the incident where he struck [REDACTED] in the face.

I would like to state that [REDACTED] was not a cooperative witness during the course of the investigation, it came to my attention that [REDACTED] had agreed to testify truthfully about this incident in exchange for disposition of his case with an Article 15. It is my belief that he did not live up to his part of the bargain. He did not provide truthful and accurate testimony against or in support of Staff Sergeant McKenzie as agreed to in the Memorandum of Agreement. In light of this, I believe that [REDACTED] voided the agreement and recommend that formal action should be taken against [REDACTED]

II. RECOMMENDATION AS TO DISPOSITION

Disposition. I recommend that this case be referred to a special court-martial empowered to adjudge a bad conduct discharge. These are serious crimes, which have the possibility of adversely affecting the image of the United States Army, and if [REDACTED] is found guilty of these crimes at the court-martial, they are crimes worthy of a punitive discharge. I believe that this level of disposition is appropriate to both punish Staff Sergeant McKenzie and to deter other soldiers from engaging in this type of misconduct. Aware the chain of command, including yourself, recommend a general court-martial in this case, I believe that a special court-martial

(SEE CONTINUATION SHEET 5)

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Item 21, continued.

empowered to adjudge a bad conduct discharge is a more appropriate level of disposition considering Staff Sergeant McKenzie's years in service and previous service record.

Summary. I recommend that you send the following charges to the 1st Armored Division Commanding General, with a recommendation for referral to a special court-martial empowered to adjudge a bad-conduct discharge:

1. Charge I, The Specification: Violation of the UCMJ, Article 93.

I recommend that this charge be modified to reflect the acts, which could be considered to be cruel.

2. Charge II, The Specification: Violation of the UCMJ, Article 128.

3. Additional Charge I, The Specification: Violation of the UCMJ, Article 92.

I recommend that this charge be added, because the evidence provided reasonable grounds to believe that Staff Sergeant McKenzie was derelict.

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TAB B

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SUMMARIZED RECORD OF ARTICLE 32b INVESTIGATION

PERSONS PRESENT

MAJ [REDACTED] Investigating Officer
CPT [REDACTED] Government Representative
CPT [REDACTED], Defense Counsel
Mr. [REDACTED], Translator
SSG [REDACTED] C. McKenzie, Accused
SPC [REDACTED] Reporter

PERSONS ABSENT

None.

The Article 32b Investigation convened at 0900 hours, 22 October 2003.

The Investigating Officer informed the accused that this was a formal investigation of the charges against him ordered pursuant to Article 32b of the UCMJ by COL [REDACTED], special court-martial convening authority.

The Investigating Officer stated that he had previously informed the accused of his rights regarding counsel and that the accused indicated to him that he did wish to be represented by CPT [REDACTED] detailed defense counsel, who was present with the accused.

The Investigating Officer stated that Major [REDACTED] was assigned as his primary legal advisor on 30 September 2003, but on 21 October 2003 that Captain [REDACTED] was appointed as his legal advisor replacing Major [REDACTED].

The Investigating Officer advised the accused that the sole purpose of the Article 32b Investigation was to determine thoroughly and impartially all the relevant facts of the case. To weigh and evaluate those facts and determine the truth of the matter set on the charges and make a recommendation concerning disposition of the charges preferred against him.

The Defense Counsel waived the reading of the charges.

The Investigating Officer advised the accused of his right to remain silent concerning the offenses, of the right to make a sworn or unsworn statement, and that such a statement could be used against him in a trial by court-martial. The Investigating Officer further informed the accused of his right to present matters in defense, extenuation and mitigation, and that anything presented by the accused would be considered and weighed as evidence just as the testimony of any witness.

The Investigating Officer stated that the accused had been previously given a copy of the investigative file, which has been compiled in the case. The Investigating Officer listed the items contained in the investigative file.

The Defense attorney requested that the Investigating Officer allow counsel to review the charge sheet furnished to him. There being no objection by the Government Representative, the Investigating Officer allowed the Defense Counsel to review his copy of the charge sheet.

The Investigating Officer stated that he intended to call as a witnesses [REDACTED]
Bravo Battery, 4th Battalion, 1st Field Artillery Regiment; [REDACTED] Bravo Battery, 4th
Battalion, 1st Field Artillery Regiment; [REDACTED] Bravo Battery, 4th Battalion, 1st Field

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Artillery Regiment; [REDACTED] Bravo Battery, 4th Battalion, 1st Field Artillery Regiment;
[REDACTED] Bravo Battery, 4th Battalion, 1st Field Artillery Regiment; [REDACTED]
[REDACTED] Bravo Battery, 4th Battalion, 1st Field Artillery Regiment; [REDACTED]
[REDACTED] Bravo Battery, 4th Battalion, 1st Field Artillery Regiment; and [REDACTED]
Iraqi citizen.

The Investigating Officer informed the accused that he had the right to cross-examine all witnesses, which testify at this hearing. The Investigating Officer further informed the accused of his right to call witnesses on his behalf.

The Investigating Officer asked the accused if he had any questions concerning his rights in the investigation.

The accused stated that he understood his rights in the Article 32b Investigation.

The Investigating Officer stated that [REDACTED] would be deemed as reasonably unavailable due to the witness being returned to the United States on environmental leave. There being no objection from the Defense Counsel or the Government Representative, the Investigating Officer stated that he would consider the sworn statement of [REDACTED] in his review of the investigation.

The Investigating Officer stated that the Government Representative would swear in the witnesses and the translator in this investigation. There was no objection from Defense Counsel.

The Defense Counsel performed voir dire on the Investigating officer.

The Government Representative asked both the Defense Counsel and the Investigating Officer if they were comfortable with the completeness of the investigative packet that they were given in this case. Both the Defense Counsel and the Investigative Officer stated that they felt comfortable with the completeness of the packet that they received in this case.

The Government Representative made an opening statement.

The Defense Counsel made an opening statement.

The Investigating Officer also stated that [REDACTED] currently would not be called as a witness due to the fact that the soldier has legal counsel and his counsel has advised him not to testify at this investigation at the present time. The Government Representative informed all parties that [REDACTED] would only testify if an agreement was reached between the witness, his counsel, the Government Representative, and the Special court-martial convening authority. There was no objection from Defense Counsel.

[REDACTED] was called as a translator for [REDACTED] he was sworn and translated the testimony of the witness.

[REDACTED] Baghdad Harthia, House 44, was called as a witness for the government, was sworn, and testified through an interpreter in substance as follows:

QUESTIONS BY THE GOVERNMENT REPRESENTATIVE

My name is [REDACTED] I prefer to be called [REDACTED] I was guarding a building that housed military artifacts on 21 June 2003. They were trying to make that place educational for the youth of Iraq or as a health center for the Iraqi people. Me and one other man normally guard the building. I forgot the date that American forces came to the building and did a search of its interior. I do remember

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that the date the American forces came to the building that I guard was in June. On the day the American forces came, I was the only guard at the building.

QUESTIONS BY THE INVESTIGATING OFFICER

I was the only guard at the museum that day, but normally there are two of us.

QUESTIONS BY THE GOVERNMENT REPRESENTATIVE

I was lying on the couch because it was a very hot day. I heard a lot of noises outside, so I got up and went outside to look and see where the noise was coming from. I saw a lot of American forces and tanks when I went outside. The soldiers started screaming at me to get out of the building, but I did not realize that they were talking to me at first. At this time, there were two soldiers with their rifles pointed at me. The two soldiers came in the building and told me to get outside, so I came out of the building. They had me lay down on the ground so that they could search me. After they had searched me and found nothing, they told me to get up and sit on a chair while some of the forces moved inside the building. I was not wearing a uniform that day when the American forces came to the museum because this all happened before we were issued uniforms. The soldiers had me sit down against some type of aluminum post as the other soldiers conducted some type of operation. Five of the soldiers stayed outside and guarded me, while the others went inside the building. I was thinking that the five soldiers guarding me were going to shoot me at any minute. The soldiers were talking to one another with their weapons pointed at me, but I could not understand what they were saying. The soldiers did bring some of the weapons from the museum outside. The building I was guarding was a military museum. It had a lot of old weapon systems inside. One of the soldiers brought a revolver pistol out of the building and asked me what it was. I told the soldier that it was an old revolver pistol. Later on, one of the soldiers had brought someone that could speak Arabic over and I told him that the revolver was an old pistol. I was told that there had been some resistance towards American forces the area around the museum, and that some of the coalition forces had been attacked from this area. The soldiers asked me if I knew anything about it. I told them that sometimes thieves and robbers come into the museum to still because they know that weapons are in there. Sometimes, I try to stop the thieves from stealing the weapons. There was about a foot and a half distance between my head and the weapons the soldiers had pointed at me. The soldiers did make me put my head down and close my eyes. I do remember a soldier putting his weapon to my head, but that did not occur until after one of the soldiers hit me. After the soldiers had searched the building and brought the weapons out of it, I was then struck by one of them. After I was surrounded, one of the soldiers showed me his bayonet by pulling his knife out as if to say that he was going to stab me. Two soldiers were standing beside me, when a third soldier came and hit me from behind in my mouth. I fell to the ground when the soldier hit me. When I was trying to get up, that is when two soldiers put their weapons to my head.

Let the record show that the witness identified an M16A2 rifle as being similar to the weapon that had been placed against his head.

My nose and mouth started bleeding when the soldier struck me in the face. After the soldiers saw that I was bleeding from the nose and mouth, they put their weapons on safe and started backing up. The man with the American forces who spoke Arabic then gave me a cloth to wash my face and mouth. I do not remember any of the soldiers laughing. The leader of the soldiers was in the building when I got struck. When he came out and saw that I was bleeding, he asked the soldiers which one of them had hit me. After the leader of the soldiers found out who had hit me, he pulled the soldier to the side and told him to go back to his area until he had a chance to speak with him later on the incident. The leader of the soldiers is not present in this room. I was not scared when I was struck in the mouth. I was more concerned with my friends finding out about me being hit by an American soldier because it would cause insult to me in their eyes. I was never hit by my father, mother, or brother. Up until now, most of my friends do not know that I was hit in the face by an American soldier. I was scared when the soldiers put their weapons to my head, because I was expecting one of them to pull the trigger. I have heard of a lot of innocent people getting killed by mistake and I thought that I was going to be one of them. I can not remember if any of the soldiers in the room here, were one of those present when I was assaulted. The only American soldier that I can recognize is the one who spoke Arabic that befriended me. Most of the time during the incident, my

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head was down or my eyes were closed. I cried on the inside because I did not understand why the soldier had hit me. The only thing that I suffer from right now, because of the incident is ridicule from my friends. Sometimes when I play with my friends where we hit one another, they tell me that before I hit an Iraqi back, I should go and hit the American soldier back that struck me in the face. I lost 50,000 Dinar and 9MM Blanc pistol due to the incident. I used my pistol the American soldiers took from me only to protect myself whenever I went out.

QUESTIONS BY THE INVESTIGATING OFFICER

One of the soldiers tried to offer me a gun that he had brought out of the museum. The pistol that the soldier offered me was burnt up.

QUESTIONS BY THE DEFENSE COUNSEL

The soldiers had their guns pointed at me when I was kneeling in front of the museum. When I tried to get up from the ground, after I had been struck by the soldier; that is when they put their weapons to my head. I was on my knees while the soldiers had their weapons pointed at me. There were five soldiers with their weapons pointed at me. The soldier that offered me the gun had a piece of paper in his hand. The soldier that offered me the weapon knew how to read Arabic. He was asking me who had me guarding the museum. The soldier was asking me why I was in the museum and what was I doing there. The soldier that told me to take the weapon he had in his hand for me was not speaking to me in Arabic. I thought that the soldier was trying to hand me the weapon because the soldier was putting the weapon out towards me. I refused taking the weapon from the soldier, because I thought that they would have tried to harm me. The soldier that offered me the pistol was not speaking in Arabic. After the search, there were normally two soldiers guarding me. At times though, there was only one soldier guarding me with his weapon at my head.

The interpreter demonstrated the distances between the witness and the soldiers guarding him. The distance was about 8 feet.

QUESTION BY THE INVESTIGATING OFFICER

From the moment the soldiers walked into the museum, I was expecting them to kill me. I thought that if I took the pistol from the soldier that offered it to me, the others would have killed me.

The Government Representative requested that the Investigating Officer permanently excuse the witness, because he had come a long way to deliver his testimony. There being no objection by the Defense Counsel, the Investigating Officer stated that he would permanently excuse the witness.

There being no further questions, the witness was permanently excused and warned not to discuss his testimony with anyone other than the Government Representative, Defense Counsel, Investigating Officer, and the Reporter.

The Government Representative requested a brief recess to link the witness up with his coalition forces escort so that he could get back to his residence. There being not argument from Defense Counsel, the Investigating Officer gave all parties a brief recess.

The Article 32b Investigation recessed at 0956 hours, 22 October 2003.

The Article 32b Investigation resumed at 1001 hours, 22 October 2003, with all parties present

[REDACTED], Bravo Battery, 4th Battalion, 1st Field Artillery Regiment, was called as a witness for the government, was sworn, and testified in substance as follows:

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QUESTIONS BY THE GOVERNMENT REPRESENTATIVE

On 21 June 2003, I was assigned to Bravo Battery, 4th Battalion, 1st Field Artillery Regiment. On 21 June 2003, we were called out on a QRF mission. When we arrived on the scene that we had been called to respond to as the QRF, I was tasked to guard a detainee. We were told that there was an Iraqi civilian in a building with an AK47. When I arrived the detainee was already outside and being watched by the [REDACTED]. The [REDACTED] told me to watch the detainee and make sure that he did not try to get away. The accused along with the rest of the guys from my unit were already inside the building when I arrived. Once the building was cleared, and they had brought out all the weapons that they needed to bring out, all the soldiers were congregating outside the building waiting to go back to our Forward Observation Base. The soldiers brought some mortar tubes, AK47s, a hand gun, and some ammunition out of the building.

The Government Representative handed the witness photo 1251.

This is a picture of a mortar tube, some AK47s, and a Rocket Propelled Grenade (RPG). These are the same weapons that I saw the soldiers bring out on 21 June 2003.

The Government Representative handed the witness photo 1265.

This photo shows two old, rusty weapons that look like they have been burned. I saw weapons that looked like these when the soldiers had brought them out of the building to turn them in. These looked like one of the weapons that the accused had brought out of the building. From my position, it looked like the accused was gesturing at the detainee in a way that looked like he was trying to hand the Iraqi detainee a weapon. I could not understand what the accused and the detainee were saying. I did see [REDACTED] that day. [REDACTED] struck the detainee in the face with an open hand. While I was guarding the detainee, [REDACTED] was talking to another soldier and kept walking around the detainee. Then [REDACTED] walked over and struck the detainee. The accused just sat there when he saw [REDACTED] strike the detainee. There was a lot of talking going on after [REDACTED] struck the detainee, but I could not make out what was being said. The accused was joking around with some other soldiers by saying that the detainee had tripped and fell on his face. I did not ever see the accused correct [REDACTED] for striking the detainee. The accused reported what had happened that day after we got back to our Forward Observation Base. The accused is the section chief of [REDACTED]. In my opinion, the only thing that disturbed me was the actions of [REDACTED].

QUESTIONS BY THE INVESTIGATING OFFICER

The [REDACTED] remained on the scene, but he was not in the immediate area when [REDACTED] struck the accused. I was about thirty feet from the accused and the detainee when the incident took place.

QUESTIONS BY THE DEFENSE COUNSEL

I was about twenty to thirty feet away from the detainee. My mission, once I got to the scene, was to guard the detainee. I did not have anything blocking my view from the detainee. I did have my weapon pointed at the detainee while I was guarding him. The accused did not have his weapon pointed at the detainee at any time. There was no one blocking the line of sight between myself and the detainee. I could not see what it was that the accused gesturing towards the detainee with. I could see that the accused had something in his hand, but I could not see precisely what that object was. The item in the hand of the accused looked like a burnt up weapon.

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QUESTIONS BY THE GOVERNMENT REPRESENTATIVE

There were about five or six other soldiers around the detainee when I was guarding him. There were a lot of soldiers standing around waiting to go back and some walking around talking. I was the only soldier watching the detainee.

██████████ Bravo Battery, 4th Battalion, 1st Field Artillery Regiment, was called as a witness for the government, was affirmed, and testified in substance as follows:

QUESTIONS BY THE GOVERNMENT REPRESENTATIVE

On 21 June 2003, my unit was inside the Iraq palace, which serves as our unit's compound. The Sworn statements that I have previously made were correct and truthful. On 21 June 2003, we were called out as the Quick Reaction Force because people had been sighted on roofs with AK47s. Once, we got the call for our Quick Reaction Force, the ██████████ divided us up into groups. My task from the ██████████ was the rear security. I was later sent by the ██████████ with my squad on the roof to look for any suspicious activity or AK47 shell casings. In the beginning, I did not see any of the weapons taken from the building.

QUESTIONS BY INVESTIGATING OFFICER

We did not find any shell casings.

QUESTIONS BY THE GOVERNMENT REPRESENTATIVE

I was about ten feet from the ██████████. The accused was also present that day. the accused was about five feet on my left hand side.

The Government Representative handed the witness photo 1265.

This is a picture of a rusted, burnt out revolver. I have seen this item before because it looks like the revolver that the accused was trying to hand the detainee. The accused was talking to the detainee, but I could not hear him. From his actions, it looked like the accused was taunting the detainee. Then ██████████ approached the detainee. While the detainee was sitting on the ground Indian style, ██████████ hit him in the face causing the detainees head to go back and hit the aluminum siding. The accused was standing about five feet to the right hand side of ██████████ when the detainee was struck. I do believe the accused saw ██████████ strike the detainee. ██████████ interceded to prevent ██████████ from striking the accused again. I did not hear the accused correct nor yell at ██████████ for what he did. The accused asked the detainee if he had fallen down and broke his nose. None of the noncommissioned officers said anything to ██████████ about striking the detainee.

QUESTION BY THE INVESTING OFFICER

I did not say anything to ██████████ because I left it to the accused, who was the section chief of ██████████ to correct him.

QUESTIONS BY THE GOVERNMENT REPRESENTATIVE

We did receive Rules of Engagement classes prior to deploying to Iraq. We did not receive any classes on the treatment of detainees. The detainee was not offering any type of resistance when ██████████ struck him. I do not believe that ██████████ actions were in accordance with the army's current operations in Iraq. We are not here to abuse these people. We were sent to liberate them.

QUESTIONS BY THE DEFENSE COUNSEL

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I saw the revolver when the accused was taunting the detainee. I believe he was taunting the detainee solely because of the motions he was making at him with his hand. The accused did not make any other comments about the detainee besides asking the detainee had fell down and broke his nose. The accused was about five feet, and two the right of the detainee. I was about ten feet in front with [REDACTED] was right in front of the detainee.

QUESTIONS BY THE INVESTIGATING OFFICER

The Investigating Officer asked the witness to demonstrate how the accused was waiving the weapon towards the detainee. There being no objection from the Government Representative or the Defense Counsel, the witness demonstrated how the accused was holding the weapon out at the accused.

To me, it looked like the accused was trying to give the detainee the weapon.

QUESTIONS BY THE DEFENSE COUNSEL

It is possible that the accused could have been asking the detainee if the pistol was black when it looked like he was trying to give the detainee the weapon.

QUESTIONS BY THE INVESTIGATING OFFICER

When the accused said that the detainee had fell and broke his nose, he was making the statement to the detainee

QUESTIONS BY THE GOVERNMENT REPRESENTATIVE

The accused did make a statement to the Battery Commander and the [REDACTED]. The accused informed the Battery Commander and [REDACTED] that he did not know what had happened as far as [REDACTED] striking the witness is concerned.

There being no further questions, the witness was temporarily excused and warned not to discuss his testimony with anyone other than the Government Representative, Defense Counsel, Investigating Officer, and the Reporter.

[REDACTED], Headquarters and Headquarters Company, 2nd Battalion, 70th Armor Regiment, was called as a witness for the government, was sworn, and testified in substance as follows:

QUESTIONS BY THE GOVERNMENT REPRESENTATIVE

On 21 June 2003, I was on a QRF mission to the museum. There had supposedly been shots fired towards one of our towers and we went out to access the situation. I road to the museum in a 5 ton. We were clearing the people out of the building. In the building that I cleared, there were a couple of AK7s, some passports, and about four people. We took the detainees from the building that we had searched over to where [REDACTED] was being detained. We had the detainees from the building my team searched separate from [REDACTED]. My job was to guard the detainees that we got out of the electrical compound. We had the three detainees from the electrical compound separate from the other detainee.

The Government Representative showed the witness photo 0009.

I do not recognize the individual in the photo. I saw [REDACTED] guarding the detainee that was there when I arrived.

The Government Representative showed the witness photo 1265.

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It looks like the weapon that I saw [REDACTED] take over and put up to the head of the detainee and yell bang. I saw the accused in the general area. The accused took the hand gun from [REDACTED] and walked over to the detainee. It looked like the accused could see everything that was going on. When the accused took the weapon from [REDACTED] it looked like the accused was holding the weapon by the barrel and was waving it towards the detainee. The accused was telling the detainee to go ahead and take the weapon.

The Government Representative handed the witness a 9MM to show how the accused was holding the weapon on the day of the incident. There being no argument from Defense Counsel, the Investigating Officer allowed the witness to demonstrate how the accused was holding the weapon.

Yes, emotions were running high that day. You could say that some of the soldiers were angry at [REDACTED]. After the incidents of this day, there was some incident involving the detainee on another occasion. I did not actually see [REDACTED] hit the detainee, but I did hear the detainee's head hit the aluminum siding. I did not hear the accused say anything to correct [REDACTED]. The accused was the senior noncommissioned officer in the immediate area. I saw that the detainee was bleeding. Once the detainee was hit, the soldiers that had been giving him a hard time dispersed. One of the soldiers came up and gave the detainee a rag to clean his face. The accused had his M16A2 that day. I saw the accused near the detainee with his weapon pointed at him. The weapon of the accused was slung over his shoulder at first. Then the accused took his weapon off of his shoulder and leveled it at the detainee. Then the accused charged his weapon and pointed it at the detainee again. I was on the wrong side of the accused to see if he moved his selector switch from safe to semi. It looked like the detainee was trying to comply with the demands of the soldiers standing around him. The detainee was aware of the accused pointing his weapon at him. It did not look like the accused was trying to guard the detainee. It looked like the accused was trying to threaten the detainee to me because there was no need for the accused to guard the detainee with [REDACTED]. [REDACTED] was guarding the detainee the entire time that I was there. I thought the accused was angry at the detainee because of a rumor I had heard involving a previous incident where it was said that the detainee had been shooting at our compound. I do not know whether or not this rumor was ever verified.

QUESTIONS BY THE INVESTIGATING OFFICER

I did see the accused charge his weapon. The weapon status is red whenever you leave our compound. Normally, we would stay amber until we were either told to put our weapons in red status, or if we felt we were in danger. We normally wait until we are told to put our weapon in red status before we actually do it because of safety reasons. There have been a lot of accidental discharges in our Battalion.

QUESTIONS BY THE DEFENSE COUNSEL

I am in second platoon and the accused is in first platoon. I am not in the same platoon as the accused. I was referring to my platoon when I said that we normally leave the Forward Observation Base in amber status. My mission on 21 June 2003 was to guard four other detainees. I would say that the accused and [REDACTED] taunted the detainee for about three to five minutes. I did not see the entire incident, because I was not always watching the detainee that [REDACTED] was guarding. I saw the accused pointing his weapon at the detainee before [REDACTED] struck him. I did not hear the accused say anything else to the detainee besides, "Here. Take it". It is possible that the accused was saying other things to the detainee that I could not hear. I was standing about fifteen to twenty meters away from the detainee which [REDACTED] was guarding. I remember [REDACTED] was present when the accused pointed his weapon at the detainee. I am pretty sure that other soldiers were around, but I can not remember their names. [REDACTED] and [REDACTED] were around when the accused pointed his weapon at the detainee. I was in front of the electrical building when the accused was offering the weapon to the detainee. The accused had his back towards me when he was waving the weapon at the detainee. There were some people that were saying that it was messed up that [REDACTED] had hit the detainee while others were laughing. I do not remember seeing the accused after the detainee had gotten hit. I did not hear the accused say anything about the incident where [REDACTED] hit the detainee.

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QUESTIONS BY THE INVESTIGATING OFFICER

I cannot remember when [REDACTED] threw his Kevlar down. I remember someone telling him to go to the vehicle that had brought him to the site so that he could cool off.

QUESTIONS BY THE GOVERNMENT REPRESENTATIVE

I saw the accused charge his weapon well after the area had been secured. There would have been no reason for him to move his weapon to red status at the point where I heard him charge his weapon.

There being no further questions, the witness was temporarily excused and warned not to discuss his testimony with anyone other than the Government Representative, Defense Counsel, Investigating Officer, and the Reporter.

The Article 32b Investigation recessed at 1100 hours, 22 October 2003.

The Article 32b Investigation resumed at 1110 hours, 22 October 2003, with all parties present.

[REDACTED] Bravo Battery, 4th Battalion, 1st Field Artillery Regiment, was called as a witness for the government, was sworn, and testified in substance as follows:

QUESTIONS BY THE GOVERNMENT REPRESENTATIVE

On 21 June 2003, I was on a recon for a possible raid the first part of the day. Around mid afternoon when we were returning to our compound, [REDACTED] told us that someone was firing at the tower from a roof. Myself, [REDACTED], his driver, and several other soldiers went out as the Quick Reaction Force. We sat back about a block from the building until the rest of the group showed up. Once the others arrived, we all moved into position. The [REDACTED] yelled at the individual we saw standing in the building. [REDACTED] told the individual to come out of the building with his hands up twice, before the Iraqi complied. At this point, groups started to go in and clear the building.

The Government Representative showed the witness photo 0009.

This is the photo of the Iraqi that was standing in the doorway when we arrived on the scene. We found an AK47 in one of the first rooms that we cleared. We also found some old melted handguns in the building as we cleared the building. After the building was cleared, I proceeded down the street to go get some water from Bravo 7.

The Government Representative showed the witness photo 1205.

This is a photo of two of the pistols we retrieved from the building. We were told to take these revolvers out of the building and place them out to the gate. At first, I did not see anyone pick up the pistols. I later heard someone tell the detainee, "Here Take it" referring to one of the handguns that we had taken out of the building. When I turned around to see who it was, it was the accused. I could not remember exactly how the accused was trying to give the weapon to the detainee. The accused tried about two or three times to give the weapon to the detainee. Giving weapons to a detainee is not a part of our unit Standard Operating Procedure (SOP). [REDACTED] walked up to the detainee and asked him had he been shooting at our guard tower. That is when [REDACTED] hit the detainee in the face. The detainee that I am referring to is the one in the photo marked 0009. When [REDACTED] hit the detainee in the face, it caused the back of his head to hit the aluminum building he was sitting against. When [REDACTED] went back to try and hit the detainee again, I got in front of him, pushed him back, and told him that he needed to go cool down. The accused was present to witness this. The accused did not correct [REDACTED] None of the noncommissioned officers tried to correct [REDACTED] I heard someone laughing and saying in a joking manner that the detainee had fell and broke his nose when I was walking away. The accused was the soldier that made the

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comment. I walked back up to the building and told the [REDACTED] that I was ashamed of wearing the American patch if soldiers were going to treat the Iraqis the way that the accused and [REDACTED] did. [REDACTED] then went and asked the detainee what had happened. The detainee told the [REDACTED] that [REDACTED] had hit him and busted his nose. The accused did not report the incident to the [REDACTED]. I am not aware of the accused making a statement about the incident.

QUESTION BY THE INVESTIGATING OFFICER

The accused made the statement that the detainee had fell and broke his nose while [REDACTED] was laughing. I was about five or ten feet from the accused and the detainee when the comment was made. I was about five to ten feet from the accused.

QUESTIONS BY THE DEFENSE COUNSEL

When I heard the words, "Here. Take it", other things could have been being said at the same time. It is easy to understand the dialect of the accused once you have been around him for a while. The accused has a thick accent. When the accused said, "what did he do, fall down" it sounded more sarcastic than funny to me. [REDACTED] was laughing when the accused made the comment. [REDACTED] said something, but I could not hear what it was he said. There were other people around, but I can not remember what and if they were saying things as well. The first time I heard the accused say, "Here take it" I was not facing him. The second time the accused said it I was facing him.

QUESTIONS BY THE INVESTIGATING OFFICER

The accused was the highest ranking person in the immediate area.

QUESTIONS BY THE DEFENSE COUNSEL

I saw [REDACTED] strike the detainee. The accused was beside the guard shack where the detainee was sitting on a cement ledge. I was not watching the actions of the accused when [REDACTED] struck the accused. It is possible that the accused did not see the incident. I did not see whether or not the accused saw [REDACTED] strike the detainee. During the time period when I thought that the accused was offering the detainee a weapon, I could not remember who else was around, but there were other soldiers around.

QUESTIONS BY INVESTIGATING OFFICER

I did not see the accused point a weapon at the detainee. We were at red status during this incident. I did not hear nor see anyone charge a weapon.

QUESTIONS BY GOVERNMENT REPRESENTATIVE

The first thing I saw when I came out of the building was the accused trying to hand the detainee a pistol.

There being no further questions, the witness was temporarily excused and warned not to discuss his testimony with anyone other than the Government Representative, Defense Counsel, Investigating Officer, and the Reporter.

[REDACTED] Bravo Battery, 4th Battalion, 1st Field Artillery Regiment, was called as a witness for the government, he was sworn, and testified in substance as follows:

QUESTIONS BY THE GOVERNMENT REPRESENTATIVE

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I am assigned to Bravo Battery, 4th Battalion, 1st Field Artillery Regiment. This is the same unit I was assigned to on 21 June 2003. On 21 June 2003, I was part of the Quick Reaction Force which responded to the museum. We arrived at the building located across the street from our Forward Observation Base. There was an Iraqi citizen coming out of the building with his hands up when we arrived to the building. Some of the other soldiers involved in the QRF mission detained the civilian.

The Government Representative showed the witness photo 0009.

That is the individual that we had detained and put over near the guard shack. Once we brought the individual out, a few of us went inside the building to clear it. [REDACTED], and I found a suitcase full of burnt up pistols inside the museum. The weapons looked like burnt up revolvers to me.

The Government Representative showed the witness 1265.

This is a photo of the weapons that we brought out of the building. When we brought the weapons out, we put them on the ground beside us. The accused then grabbed one of the weapons and walked over to the detainee. The accused asked the detainee had he seen the weapons before. After that, the accused then tried to give the weapon to the detainee. The accused had told [REDACTED] that if the detainee tried to grab the weapon, they were to shoot him. The accused offered the detainee the weapon two or three times. The detainee kept shaking his head no when the accused was offering him the weapon. The accused gave [REDACTED] the weapon. [REDACTED] then walked over to the detainee and tried to get him to take it. [REDACTED] then put the weapon down and walked up to the detainee and slapped him in the face. When [REDACTED] struck the detainee, his head went through the thin aluminum of the guard shack, which caused his nose to bleed. That is when the [REDACTED] came out and asked who struck the detainee. The accused was three or four feet from the detainee and [REDACTED] I was behind the accused. The accused did not try to stop [REDACTED] from slapping the detainee. I did not see the accused try to correct [REDACTED]. The accused saw [REDACTED] strike the detainee. There were a lot of us that went and report the incident to the [REDACTED]. I could not see the accused and the detainee from inside the building.

QUESTIONS BY THE INVESTIGATING OFFICER

I did hear laughing after the victim was slapped. The accused and [REDACTED] were laughing and saying that the detainee had fell and broke his nose. I heard [REDACTED] say that the reason the detainee's nose was bleeding was because he had fallen. I did hear the accused make the same statement.

QUESTIONS BY THE DEFENSE COUNSEL

[REDACTED] was the first person that I heard say that the detainee had fell and broke his nose. The accused repeated the statement that [REDACTED] had made. It sounded like the accused made the comment in a jokingly manner to me. I am in the section of the accused. The accused is by the book and above when it comes to following the standards. The accused enforces the standards of our organization. The weapon status is red outside of the Forward Observation Base. I thought the accused was trying to give the detainee a weapon by his actions and his words. He had told us that if the detainee took the weapon, then we were to shoot him. The first thing I remember the accused telling the detainee was whether or not he had seen the weapons before.

QUESTIONS BY THE INVESTIGATING OFFICER

I did not see nor hear anyone charge their weapon. The weapons should have already been charged prior to leaving the Forward Observation Base. I did see the accused point his weapon at the detainee, but it was the standard way we use when we are guarding detainees. I did not see the accused point his weapon at the detainee any differently than we normally do.

QUESTIONS BY THE DEFENSE COUNSEL

002183

When I saw the accused trying to hand the weapon to the detainee, the accused was on the right hand side of the detainee. The M16A2 of the accused was slung on his shoulder and lowered in the direction of the detainee, but not directly at him.

There being no further questions, the witness was temporarily excused and warned not to discuss his testimony with anyone other than the Government Representative, Defense Counsel, Investigating Officer, and the Reporter.

The Government Representative informed all parties that after the testimony of [REDACTED] he intended to call [REDACTED] to deliver testimony. The Government Representative further stated that a deal had been reached between [REDACTED] his counsel, the government, and the special court-martial convening authority.

[REDACTED], Hawk Troop, 1st Cavalry Regiment, was called as a witness for the defense, he was sworn, and testified in substance as follows:

QUESTIONS BY THE GOVERNMENT REPRESENTATIVE

I did make a statement to [REDACTED] and to CID. Both of these statements were truthful.

The Government Representative stated that since the witness is offering cumulative evidence he would submit his sworn statement into the record in the place of testimony. The Defense Counsel objected to substituting the witness's sworn statements into the record instead of his verbal testimony since the witness was available for live testimony. Investigating Officer ruled that the witness' sworn statements would not substitute in the record for his live testimony.

Defense Counsel objected to the Investigating Officer taking a recess so that he could read the sworn statement of the witness since he was present to deliver live testimony. The Government Representative argued that the witness does not have any further information to add in the facts of this investigation. The Investigating Officer stated that he would not take a recess to review the witness' sworn statements of the witness and accept his live testimony over the sworn statements.

21 June 2003, my mission was as part of the Quick Reaction Force. One of our tours had reported someone in one of the neighboring buildings carrying an AK47. When we had completed searching the building, we stood around for a while.

The Government Representative showed the witness 0009.

This is a picture of the detainee in the area across the street from the museum. I was looking down the street from the museum because I was pulling security. I remember [REDACTED] and near the individual being detained. I happened to turn around for a minute when I saw [REDACTED] the detainee. [REDACTED] was saying that [REDACTED] was messed up. One of the NCOs started rendering aid to the Iraq for his nose bleed. We all talked about the incident later on with our chief, but that was after the incident. [REDACTED] striking the detainee is all that I can remember about that day. We were in the area for about two hours. I never saw the detainee again after that.

QUESTIONS BY THE DEFENSE COUNSEL

I was involved with clearing the electrical building. I do not remember any detainees being taken out of the electrical building. I saw [REDACTED] strike the detainee when I turned around. I do not know what the accused was doing when [REDACTED] struck the detainee. I saw the accused in the corner of my eyes well enough to know that he knew what was going on.

QUESTION BY THE INVESTIGATING OFFICER

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I did not see the accused react to the incident in any way. I can not recall any laughing or joking.

QUESTIONS BY THE GOVERNMENT REPRESENTATIVE

There were a lot of people in the building that I cleared that day. I believe [REDACTED] was one of the soldiers in the building that I was helping to clear. I did not hear anyone making comments on why the detainee was bleeding.

There being no further questions, the witness was temporarily excused and warned not to discuss his testimony with anyone other than the Government Representative, Defense Counsel, Investigating Officer, and the Reporter.

[REDACTED] Bravo Battery, 4th Battalion, 1st Field Artillery Regiment, was called as a witness for the government, he was sworn, and testified in substance as follows:

Government Representative stated that there is an agreement between the witness, his counsel, the Government, and the Special court-martial convening authority.

The Government Representative furnished a copy of the agreement to the Investigating officer.

QUESTIONS BY THE GOVERNMENT REPRESENTATIVE

I recognize this document as the agreement between my counsel, the government, and the special court-martial convening authority. I have talked with my legal counsel about testifying at this investigation. I understand the context and language of this agreement. I understand that I must testify truthfully about the circumstances of 21 June 2003. I am not going to answer any questions about me, but I am willing to answer any questions that do not pertain to me. On 21 June 2003, my mission was to participate as a member of the Quick Reaction Force. We went out as the Quick Reaction Force because there was an Iraqi on one of the roofs with an AK47 that had fired at one of our towers. We did not know where we were going. We went across the street and detained the individual that was in the building. I went in the building with Specialist Vaughan and Private First Class Perkins to clear it. I found an Ak47 with a magazine which I handed to my First Sergeant. We found some rusty weapons in the building as well.

The Government Representative showed the witness photo 1265.

One of the weapons in this photograph is the weapon that I found in the building. The top pistol looks like the one that I had found in the building. I know that it was the top one that I found in the building because I had been the one to carry it outside.

The Government Representative showed the witness photo 0009.

This is a picture of an Iraqi citizen. It is a picture of the individual that we detained. I do not recall where the accused was when we went inside the building. The accused is my section chief at our unit. The accused means a lot to me because he has taught me a lot since I have been in the army. The accused cares about his family and his soldiers. Any problems that I have had with my family since arriving to Fort Riley; the accused has helped me resolve them. The accused tells me when I am doing wrong as well.

The Government Representative asked the witness was he invoking his right to remain silent on questions about his possible misconduct. The witness stated that he was invoking his right to remain silent on any issues involving him. The witness stated that his attorney advised him not to discuss anything about his possible misconduct.

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I do not remember seeing the accused take any action against the detainee. I did not see the accused with the detainee at all. The accused did not talk to me about anything that he may have said or done to the detainee.

QUESTIONS BY THE INVESTIGATING OFFICER

I went in the building with [REDACTED] and [REDACTED]. I can not remember if we all came out of the building together because we were all taking out the burnt up weapons. I do remember seeing [REDACTED] when I came outside. [REDACTED] was walking from the other side of the building when I saw him. [REDACTED] was the only one out there guarding the detainee.

QUESTIONS BY THE DEFENSE COUNSEL

The accused makes sure that everything is straight with us and our families. Whenever we are going out for patrols or missions, he always checks our gear. The standard is red when we leave the compound. Red status is weapon on safe with magazine inside and round in the chamber. The government has dismissed the charges against me for my testimony in any proceedings against the accused. I have no recollection of any contact between the accused and the detainee.

QUESTIONS BY THE INVESTIGATING OFFICER

When we rolled in to the area on the Quick Reaction Force mission, I did not see the accused until we left.

There being no further questions, the witness was permanently excused and warned not to discuss his testimony with anyone other than the Government Representative, Defense Counsel, Investigating Officer, and the Reporter.

[REDACTED] 78th MP Detachment CID, was called as a witness for the government, he was sworn, and testified in substance as follows:

QUESTIONS BY THE GOVERNMENT REPRESENTATIVE

I am currently assigned to Bravo Battery, 4th Battalion, 1st Field Artillery Regiment. I was part of the Quick Reaction Force on 21 October 2003. My first statement was false in that I told the commander that I had not seen anything. My second sworn statement was truthful. When we arrived, the Iraqi National was already detained. I can not remember who I arrived on the scene with.

The Government Representative showed the witness photo 0009.

This is a photo of an Iraqi National. I really do not recognize him. I searched the power plant with [REDACTED], and I can not remember the rest of the people involved. I do not remember where the accused was at that time. When we came out and walked over by the detainee, we were badgering him and telling him to keep his head down. I asked [REDACTED] could I kick the detainee because he had been shooting at our compound. We were mad because the intelligence we were given said that our tower was getting shot at from the building that the detainee was taken from.

QUESTIONS BY THE INVESTIGATING OFFICER

Our intelligence said that our compound was being shot at from the building that the detainee was found in.

QUESTIONS BY THE GOVERNMENT REPRESENTATIVE

I recognized the detainee from a previous QRF mission that we had been called out on previously. My reaction to the accused slapping the Iraqi was laughter. Someone did give the detainee a rag to wipe his nose. I do not recall the accused saying anything to [REDACTED] after the incident. I said

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that I did not see anything and that the Iraqi must have fell. After that, I walked away from the incident. After [REDACTED] had slapped the detainee, he walked away.

QUESTIONS BY INVESTIGATING OFFICER

The detainee had a nonchalant or arrogant look. When we told him to put his head down, he would lift his head and start looking at us. I know that the detainee could not speak English, but we demonstrated how we wanted him to put his head down. The accused and I are in the same platoon, but he is not my supervisor. Some people like him and some don't because he speaks the truth. When he speaks the truth, other people sometimes have a problem with that.

QUESTIONS BY THE DEFENSE COUNSEL

I had my weapon trained on the detainee when he was not obeying our command to keep his head down. I do not remember who else had their weapons trained on the detainee. Both myself and [REDACTED] had our weapons trained on the detainee. I do not remember who approached the accused and told him that his soldier, [REDACTED] was out of line. Someone then said that the Iraqi must have fell down in a surprised tone of voice. I did not see the accused near the detainee. When [REDACTED] hit the detainee, the accused was not around. I was on the detainee's left. The accused was at least ten feet away when [REDACTED] hit the detainee.

QUESTIONS BY THE INVESTIGATING OFFICER

I do not know who was in charge during the incident. If there had been a problem, the accused would have been the person that I would have went to for guidance.

There being no further questions, the witness was temporarily excused and warned not to discuss his testimony with anyone other than the Government Representative, Defense Counsel, Investigating Officer, and the Reporter.

[REDACTED] Bravo Battery, 4th Battalion, 1st Field Artillery Regiment, was called as a witness for the government, he was sworn, and testified in substance as follows:

QUESTIONS BY THE DEFENSE COUNSEL

On 21 June 2003, that was when I was one of the guys called out on Quick Reaction Force. We were moved across the street from the palace, because one of our towers had gotten shot at. We cleared the power plant and moved all of the workers out of the building so that we could search it. I believe that there were three or four AK47s taken out of the building. Myself and another soldier were sent out to pull perimeter detail. I did not have any personal interaction with the accused. I did not see the accused interact with the detainee. When I saw the accused, he was about ten feet from the detainee. I do remember that [REDACTED] had his weapon pointed at the detainee. I can not remember to well who was there, but I remember a lot of soldiers were present. I do not remember the accused having anything in his hands. The accused had his M16A2 slung over his soldier. I did not see the detainee get assaulted. I gave the detainee the brown rag which I had in my Kevlar to wipe the blood from his nose.

QUESTIONS BY INVESTIGATING OFFICER

I can not recall if the laughter was before or after I gave the Detainee my rag. When I walked by the detainee, he was looking pretty normal as he was sitting on the curve with his hands behind his head. No one else had offered assistance to the detainee.

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There being no further questions, the witness was temporarily excused and warned not to discuss his testimony with anyone other than the Government Representative, Defense Counsel, Investigating Officer, and the Reporter.

The Government Representative made a closing argument.

The Defense Counsel made a closing argument.

The Investigating Officer stated that he would be considering the Sworn Statements of [REDACTED] made on 21 June 2003 and 27 June 2003; the Sworn Statements of [REDACTED] made on 21 June 2003 and 27 June 2003; the Sworn Statements of [REDACTED] made on 21 June 2003 and 27 June 2003; the Sworn Statements of [REDACTED] made on 21 June 2003 and 27 June 2003; the Sworn Statements of [REDACTED] made on 21 June 2003 and 27 June 2003; the Sworn Statements of [REDACTED] made on 21 June 2003 and 27 June 2003; the Sworn Statements of [REDACTED] made on 21 June 2003 and 27 June 2003; the Sworn Statements of [REDACTED] made on 21 June 2003 and 27 June 2003; the Sworn Statements of [REDACTED] made on 21 June 2003 and 27 June 2003; the Sworn Statements of [REDACTED] made on 21 June 2003 and 27 June 2003; the Sworn Statements of [REDACTED] made on 21 June 2003 and 27 June 2003; the Sworn Statements of [REDACTED] made on 21 June 2003 and 27 June 2003; and photographs marked as numbers 000-001, 000-002, 000-003, 000-004, 000-006, 000-008, 000-009, 000-010, 000-012, DSN1251, DSN1255, DSN1256, DSN1260, DSN1265, DSN1268, DSN1269, DSN299, DSN1301.

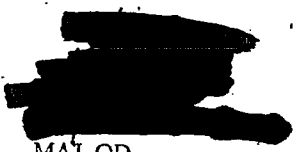
The Defense Counsel restated his objection to consider the Sworn Statements of soldiers that have testified at the investigation. The Investigating Officer noted Defense Counsel's objection for the record.

The Article 32b Investigation adjourned at 1525 hours, 22 October 2003.

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CERTIFICATION

I hereby certify that the enclosed 16 page Article 32b Investigation transcript in the case of US v. SSG McKENZIE, John C., Bravo Battery, 4th Battalion, 1st Field Artillery Regiment, is a true and summarized copy of proceedings at the Article 32b Investigation held on 22 October 2003 at the 3rd Brigade Combat Team Forward Observation Base, Baghdad, Iraq. I certify the accuracy of this transcript as the Investigating Officer of the hearing.


MAJ, OD
Investigating Officer

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UNITED STATES

vs.

SSG John C. McKenzie

SERVICE OF DOCUMENTS

O N ACCUSED

B Btry., 4-1 FA

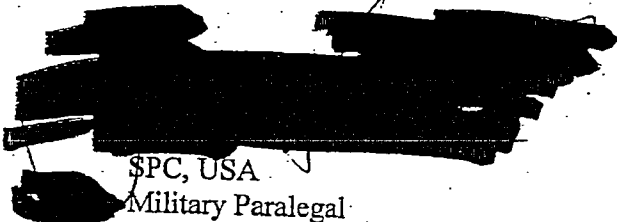
Baghdad, Iraq APO AE 09324

1. The following document was served on the accused located in Baghdad, Iraq:


Referred Charge Sheet

2. Service was accomplished at 18 November, 2003.

3. Unit commander is to insure that the soldier signs this document and return this page back to the Military Justice Cell located at the 3rd Brigade Combat Team TOC.


SPC, USA
Military Paralegal

Receipt acknowledged.


Signature

002190

COURT-MARTIAL CHARGES TRANSMITTAL FORM

PART I

TO:

FROM:

DATE:

20 SEP 03

Court-Martial charges against the following named individual are forwarded as Enclosure 1. Witness statements, any evidence of previous misconduct (to include properly certified DA Forms 2627 and the accused's DA Form 2A and 2-1) are attached as Enclosure 2. Soldier is not pending chapter action UP AR 635-200.

NAME:

John C. McKenzie

RANK:

SSG

SSN:

UNIT:

Bravo Battery, 4th Battalion, 1st Field Artillery Regiment

Recommend:

☐ Summary Court-Martial

☐ Special Court-Martial

☐ BCD Special Court-Martial

☒ General Court-Martial

☐ Other

NAME OF COMMANDER

SIGNATURE OF COMMANDER

PART II

TO:

FROM:

DATE:

20 SEP 03

I have reviewed the attached charges, documents, and Article 32 (if applicable) and (recommend)(direct):

☐ Summary Court-Martial

☐ Special Court-Martial

☐ BCD Special Court-Martial

☒ General Court-Martial

☐ Other

NAME OF COMMANDER

SIGNATURE OF COMMANDER

PART III

TO:

FROM:

DATE:

BG Martin E. Dempsey

I have reviewed the attached charges, documents, and Article 32 (if applicable) and (recommend)(direct):

☐ Summary Court-Martial

☐ Special Court-Martial

☐ BCD Special Court-Martial

☐ General Court-Martial

☐ Other

NAME OF COMMANDER

SIGNATURE OF COMMANDER

002191

COURT-MARTIAL CHARGES TRANSMITTAL FORM

PART I

TO: [REDACTED] FROM: [REDACTED] DATE: 20 SEP 03

Court-Martial charges against the following named individual are forwarded as Enclosure 1. Witness statements, any evidence of previous misconduct (to include properly certified DA Forms 2627 and the accused's DA Form 2A and 2-1) are attached as Enclosure 2. Soldier is not pending chapter action UP AR 635-200.

NAME: John C. McKenzie RANK: SSG SSN: [REDACTED]

UNIT: Bravo Battery, 4th Battalion, 1st Field Artillery Regiment

Recommend:

- () Summary Court-Martial () Special Court-Martial
 () BCD Special Court-Martial ☒ General Court-Martial
 () Other

NAME OF COMMANDER

SIGNATURE OF COMMANDER

[REDACTED]

[REDACTED]

PART II

TO: [REDACTED] FROM: [REDACTED] DATE: 20 SEP 03

I have reviewed the attached charges, documents, and Article 32 (if applicable) and (recommend)(direct):

- () Summary Court-Martial () Special Court-Martial
 () BCD Special Court-Martial ☒ General Court-Martial
 () Other

NAME OF COMMANDER

SIGNATURE OF COMMANDER

[REDACTED]

[REDACTED]

PART III

TO: BG Martin E. Dempsey FROM: [REDACTED] DATE:

I have reviewed the attached charges, documents, and Article 32 (if applicable) and (recommend)(direct):

- () Summary Court-Martial () Special Court-Martial
 () BCD Special Court-Martial ☒ General Court-Martial
 () Other

NAME OF COMMANDER

SIGNATURE OF COMMANDER

[REDACTED]

[REDACTED]

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