

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

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

012750

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, MSG [REDACTED] struck this EPW, what do you mean by struck?

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 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

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

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.

012762

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

012763

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)5-(7)(c)5 [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-kind of 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:
Yes.

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

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 SINCGARS 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 SS (b)(6)4 - 7(c)4 and SGT (b)(6)4 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 was going to go to the bus, correct?

Witness:

Correct.

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

And SGT (b)(6)4 was going to pull security?

Witness:

Correct.

Counsel:

Did you see where SGT (b)(6)4 - 7(c)4 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 SG (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 MSG (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: (b)(6)-4; (7)(C)-4
At the time that you saw that happening, did you hear SGT [REDACTED] say anything?

Witness:
No.

Counsel: (b)(6)-4; (7)(C)-4
Did you hear SSG [REDACTED] 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

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

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.

(b)(6)-5, (7)(C)-5
Counsel:

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:

After SGT [REDACTED] began to kick him is when I walked away.

Counsel:

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

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:

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:

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?

012779

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

Witness:

Yes.

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

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

Witness:

No.

Counsel:

Ssgt [REDACTED] (b)(6)-4; (b)(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: [REDACTED]

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.

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?

012783

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)

012784

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 ; (1)(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: A.
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] came back over and asked me to help her escort

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 ; 7E)-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 ; (7E)-2

Counsel:

(b)(6)-5 ; (7E)-5
Did you know MSG [REDACTED] 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?

662, 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

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

MA [REDACTED]

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.

012796

MA: [REDACTED] (b)(6)-Z; (7)(C)-Z
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 that 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