

INVESTIGATING OFFICER'S REPORT

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

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

(Check appropriate answer)

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

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

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

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

c. SIGNATURE OF ACCUSED

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

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

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

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

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

Item 12a, Witnesses

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

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

Item 13a, Witnesses

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

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

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

Item 21, Remarks

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

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

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

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

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

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

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

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

3. Delays in proceedings:

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

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

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

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

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

4. Defense and Government Objections:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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