

I O Report

ANNEX 35

**Chronological Record of Events for
Article 23 Proceedings**

Chronological Record of Events for Article 32 Investigation

2003

- 17 July: Received appointment letter, CID investigation packet, and charge sheets from [REDACTED] attorney for the prosecution
- 18 July: Sent e-mail notification to trial counsel suggesting 28 July as hearing date
- Sent e-mail to [REDACTED] to draft an official notification letter for accused
- Sent e-mail to 530th MP Battalion notifying them of tentative hearing date and requesting coordination of facilities at Camp Bucca, IZ
- E-mail notification re-sent to [REDACTED]
- 19 July: E-mail notification re-sent to [REDACTED]
- 21 July: Received e-mail from [REDACTED] on behalf of other defense counsel, requesting delay until 5 September; reply asking for each counsel's calendar through 5 September
- Remaining counsels respond with trial calendars through 5 September
- 22 July: Forward defense counsels calendars to [REDACTED] asking for input for an alternate date
- [REDACTED] replies back suggesting 25 August as hearing date
- Investigating Officer selects 27 August for hearing, allowing 2 days travel and 2 days consultation for defense
- 23 July: Notification letters for accused prepared and handed to [REDACTED] Executive Officer, 530th MP Battalion, for delivery to accused
- E-mails sent to defense counsels with notification letters attached for their respective clients
- E-mail attachment received from [REDACTED] requesting hearing delay until 27 August
- 24 July: E-mail attachment received from [REDACTED] requesting hearing delay until 27 August
- Sent memorandum to Commander, 800th MP Brigade, advising on status of Article 32 investigation
- 27 July: E-mail attachment received from [REDACTED] requesting hearing delay until 27 August

- 28 July: E-mail received from [REDACTED] requesting hearing delay until 27 August
Sent request for hearing extension date to Commander, 800th MP Brigade
- 31 July: [REDACTED] legal advisor, receives Article 32 acknowledgement from [REDACTED]
- 4 August: Forwarded request to Commander, 800th MP Brigade, for assignment of Public Affairs Officer to the Article 32 Investigation
Receive notice from [REDACTED] that two of the defense counsels, [REDACTED] have requested change of venue from Camp Bucca to Camp Arifjan, due to their perceived inability to adjust to the area's climate in time for the trial.
- 5 August: Request report from [REDACTED] on progress with arrangements at Bucca; he responds that tents are available, but that air conditioning and power are critical issues that he is having problems with and that humidity is affecting all aspects of life there.
Send e-mail to [REDACTED] asking for input based on [REDACTED] report
- 6 August: Spoke with [REDACTED] of 724th MP Battalion regarding KBR force provider package for Bucca. Communicate with [REDACTED] to ask KBR for timeline. Package does not look as if it will support needs for hearing. 171st ASG unable to support requirements, either.
- 7 August: Spoke with 226th ASG representatives. They indicate that if hearing needs to move in part to Arifjan, they can support it with Warehouse #7. Also speak with KBR representatives on ability to provide temporary power generation and AC units for hearing at Bucca. They are checking to see if they can support the requirements.
Received e-mail from [REDACTED] regarding expression of concern from [REDACTED] about conditions at Bucca. Both have asked that hearing be bifurcated with any necessary interviews taking place at Camp Bucca and remainder of hearing in Kuwait.
- 8 August: Spoke with [REDACTED] on telephone regarding conditions at Bucca. She expresses her concern about holding hearing there, due to weather conditions. I explained that we were working to try and make conditions there more conducive to the hearing, but that if we couldn't accomplish it, we would look at holding the hearing at, or at least a portion of it, at Camp Arifjan, KU.
On or about 8 August, spoke with [REDACTED], S-3, 226th ASG, regarding availability of space for hearing and rooms at Arifjan. He said he believed he could accomplish it and be able to house both the hearing and sleep facilities in Warehouse #7, if necessary.
- 9 August: Sent out e-mail to all parties asking for resolution on issues concerning receipt acknowledgements of hearing from [REDACTED] late witness and evidence lists from defense counsels; PAO/recorder/interpreter support from 800th; KBR support at Camp Bucca.

[REDACTED] replies to query and has been in court 6-7 August. Said he plans on visiting Camp Bucca 12-14 August to check on site preparation and issues with PAO/interpreter/recorder support.

[REDACTED] sends e-mail informing me that a [REDACTED] ACO, can authorize tents at Camp Bucca.

10 August: Receive Article 32 Witness and Discovery Request from [REDACTED] on behalf of her client, [REDACTED]

In a series of e-mails with [REDACTED] he informs me that there is as of yet, no word or progress from KBR other than beginning the force provider package for the camp as a whole.

11 August: Receive Article 32 Witness and Discovery Request from [REDACTED] on behalf of her client, [REDACTED]

Make contact with [REDACTED] ACO, who expresses cooperation to help with site arrangements at Camp Bucca.

Sent message to [REDACTED] at Camp Bucca on general layout of the hearing area and requirements for the housing of the participants.

12 August: [REDACTED] forwards Letter of Technical Direction to [REDACTED] authorizing erection of four tents and climate control VIA ECU's and power generation at Camp Bucca in support of Article 32 hearing.

14 August: Forwarded Article 32 Witness and Discovery Requests to [REDACTED]

15 August: Receive report from [REDACTED] on his trip to Camp Bucca 12-14 August.

Received message from [REDACTED] that he has not yet determined his witness list. Also advised that he would have [REDACTED] respond by e-mail, acknowledging Art 32 proceedings

Received message from [REDACTED] that she wishes representation at their Article 32 hearing from [REDACTED] forwarded to [REDACTED] responded to [REDACTED] and advised to forward witness/discovery list as soon as possible

[REDACTED] confirms reporter for hearing; advises that he is checking on PAO support

16 August: Send e-mail advising all counsel that Article 32 proceedings will be held at Camp Bucca, in total. Also advised that EPWs would be heard in one block. Spoke briefly to PAO and media coverage. Advised counsel that we would hold meeting on Tuesday, 26 Aug, at 0900, at Camp Bucca, to discuss issues before the hearing commences

- 17 August: [REDACTED] advises that her client [REDACTED] is aware of Art 32 proceedings and also that her witness list will be similar to CPT Ausprung.
- 18 August: Sent official notice to [REDACTED] that I am officially ordering witnesses and evidence previously requested by [REDACTED] to be present at hearing; requests had been forwarded to him on 14 August
- Send message to all counsel asking for input about having EPWs testify last in the proceedings, to allow mission essential personnel to go first and return to their units as quickly as possible
- Received replies from [REDACTED] that they had no objections to EPWs testifying last; [REDACTED] stated that she might need to re-call witnesses based on EPW testimony
- 19 August: Forwarded [REDACTED] witness and discovery request to [REDACTED] (request was sent late on 18 August).
- Asked [REDACTED] for review of requested evidence for classified material, in case brigade commander wishes to issue a protective order.
- 20 August: [REDACTED] replies that to-date he has not been able to determine whether evidence material contains classified information, but is waiting on [REDACTED] of 800th MP Bde to supply requested information.
- Received several communications regarding media presence at hearing and on Camp Bucca. Expressed my wish that media be limited to 2-3 representatives in the hearing tent due to its limited size. Also, that during presentation of testimony and evidence from EPWs, or when classified information is presented, that the tent will be cleared of all media.
- 23 August: Witness and discovery list received from [REDACTED]. Forwarded to [REDACTED] with order to produce witnesses and material.
- 25 August: Legal Advisor and I depart for Camp Bucca, IZ. Arrive approx. 1100 Hrs. Notify all counsel of meeting on Tuesday at 0900 Hrs to discuss trial procedure. Defense counsel and accused arrive with government counsels.
- 26 August: Meet with all trial counsels and discuss trial procedures and witness list. Government informs that all several US witnesses are on leave or have been rotated out of theater. Requests further time to identify, with [REDACTED] those EPW witnesses that will be available. Decide to meet again at 1500 to go over EPW witness list. Additionally,
- Defense requests verbatim transcript of proceedings and I approve, due to questionable presence of EPWs at a later time and potential of availability of US witnesses
 - Legal advise will be with all counsel present and re-stated for the record
 - Will request that appointing authority transmit copies of report to counsel
- At 1500 meeting, it has been determined that all EPW witnesses requested by the government and eight EPW witnesses requested by the defense are available, with potentially four more EPWs available, as well.

- 27 August: Hearing opened at 0800 Hrs, on schedule. All accused, defense counsels, and government counsels are present. Government presents six witnesses [REDACTED] Defense presents three witnesses [REDACTED] Hearing recessed at 1900 Hrs, at defense request, to review witnesses from 320th MP Battalion and 314th MP Company.
- 28 August: Hearing re-opened at 0800 Hrs. Government presents one witness [REDACTED] Defense presents three witnesses [REDACTED] Hearing stops at approximately 1030 Hrs, at defense request, in order for them to prepare for CID special agent and EPW testimony.
- Approx. 1900 Hrs, defense counsels request an additional delay until 1300 Hrs, 29 August, in order to further examine EPW testimony and also due to delay in seeing EPW witnesses that afternoon.
- 29 August: Hearing re-opens at 1300 Hrs. Defense presents [REDACTED] government presents EPWs [REDACTED] Government re-presents [REDACTED] presents CID Special [REDACTED] Defense presents CID Special Agent [REDACTED] Government presents [REDACTED] Hearing is recessed from Camp Bucca to Camp Doha, KU, for three witnesses returning from leave [REDACTED] and for government to pursue contact with witnesses rotated out of theater [REDACTED] MD.
- 30 August: All parties move to Kuwait, pending notification of arrival of three witnesses returning from leave. Recognition of [REDACTED] and [REDACTED] for arrangements at Camp Bucca.
- 1 September: At Camp Doha, heard testimony of [REDACTED] both just returning from leave. Also made contact with SA [REDACTED] by telephone and heard his testimony.
- 2 September: Heard testimony of SPC [REDACTED] at Camp Doha. Government requests additional charges of adultery and obstruction of justice against SGT [REDACTED] Decision made not to allow additional charges due to late request. Hearing closed. Government advises that verbatim transcript will take 3-4 weeks to produce.
- 7 September: Government requests re-consideration of earlier decision not to allow additional charges against SGT [REDACTED] CPT [REDACTED] counsel for SGT [REDACTED] unable to immediately respond due to trial in the US.

13 September: [REDACTED] responds to government request.

17 September: [REDACTED] advises IO on government request and defense position.

18 September: Responded to request affirming earlier decision not to allow charges.

22 September: Receive two copies verbatim transcript from CFLCC OSJA.

23 September: Article 32 investigation report forwarded to BG Karpinski.

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. 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) EDMONDSON, SHAWNA L.	b. GRADE E-5	c. SSN [REDACTED]	d. ORGANIZATION 320TH MILITARY POLICE BN
<i>(Check appropriate answer)</i>			e. DATE OF CHARGES
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 <input checked="" type="checkbox"/> N <input type="checkbox"/>
5. THE ACCUSED WAS REPRESENTED BY COUNSEL (If not, see 9 below)			YES <input checked="" type="checkbox"/> N <input type="checkbox"/>
6. COUNSEL WHO REPRESENTED THE ACCUSED WAS QUALIFIED UNDER R.C.M. 405(d)(2), 502(d)			YES <input checked="" type="checkbox"/> N <input type="checkbox"/>
7a NAME OF DEFENSE COUNSEL (Last, First, MI) [REDACTED]	b. GRADE O-3/CPT	8a. NAME OF ASSISTANT DEFENSE COUNSEL (If any) NA	b. GRADE
c. ORGANIZATION (If appropriate) US ARMY TRIAL DEFENSE SERVICE REGION VIII, SCWEINFURT BRANCH OFFICE		c. ORGANIZATION (If appropriate) NA	
d. ADDRESS (If appropriate) APO AE 09226		d. ADDRESS (If appropriate) NA	
9. (To be signed by accused if accused waives counsel. If accused does not sign, investigating officer will explain in detail in Item 21.)			
a. PLACE		b. DATE	
I HAVE BEEN INFORMED OF MY RIGHT TO BE REPRESENTED IN THIS INVESTIGATION BY COUNSEL, INCLUDING MY RIGHT TO CIVILIAN OR MILITARY COUNSEL OF MY CHOICE IF REASONABLY AVAILABLE. I WAIVE MY RIGHT TO COUNSEL IN THIS INVESTIGATION			
c. SIGNATURE OF ACCUSED			
10. AT THE BEGINNING OF THE INVESTIGATION I INFORMED THE ACCUSED OF: <i>(Check appropriate answer)</i>			YES <input type="checkbox"/> N <input type="checkbox"/>
a. THE CHARGE(S) UNDER INVESTIGATION			<input checked="" type="checkbox"/>
b. THE IDENTITY OF THE ACCUSER			<input checked="" type="checkbox"/>
c. THE RIGHT AGAINST SELF-INCRIMINATION UNDER ARTICLE 31			<input checked="" type="checkbox"/>
d. THE PURPOSE OF THE INVESTIGATION			<input checked="" type="checkbox"/>
e. THE RIGHT TO BE PRESENT THROUGHOUT THE TAKING OF EVIDENCE			<input checked="" type="checkbox"/>
f. THE WITNESSES AND OTHER EVIDENCE KNOWN TO ME WHICH I EXPECTED TO PRESENT			<input checked="" type="checkbox"/>
g. THE RIGHT TO CROSS-EXAMINE WITNESSES			<input checked="" type="checkbox"/>
h. THE RIGHT TO HAVE AVAILABLE WITNESSES AND EVIDENCE PRESENTED			<input checked="" type="checkbox"/>
i. THE RIGHT TO PRESENT ANYTHING IN DEFENSE, EXTENUATION, OR MITIGATION			<input checked="" type="checkbox"/>
j. THE RIGHT TO MAKE A SWORN OR UNSWORN STATEMENT, ORALLY OR IN WRITING			<input checked="" type="checkbox"/>
11a THE ACCUSED AND ACCUSED'S COUNSEL WERE PRESENT THROUGHOUT THE PRESENTATION OF EVIDENCE <i>(If the accused or counsel were absent during any part of the presentation of evidence, complete b below.)</i>			<input checked="" type="checkbox"/>
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 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]	E-4/SPC	223rd MP COMPANY	X	
[REDACTED]	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, [REDACTED] DTD 14 MAY 03		OSJA, CFLCC, Camp Doha, KU		
#2: AIR. SA [REDACTED] IEM, 14 MAY 03		OSJA, CFLCC, Camp Doha, KU		
#3: SWORN STATEMENT, SPC [REDACTED] DTD 14 MAY 03		OSJA, CFLCC, Camp Doha, KU		
#4: SWORN STATEMENT, SGT [REDACTED] DTD 14 MAY 03		OSJA, CFLCC, Camp Doha, KU		
#5: SWORN STATEMENT, SPC [REDACTED]		OSJA, CFLCC, Camp Doha, KU		
#6: EPW MANIFEST, 744th MP BATTALION DTD 12 MAY 03		OSJA, CFLCC, Camp Doha, KU		
14. EACH ITEM CONSIDERED, OR A COPY OR RECITAL OF THE SUBSTANCE OR NATURE THEREOF, IS ATTACHED			X	
15. 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
16. THE DEFENSE DID REQUEST OBJECTIONS TO BE NOTED IN THIS REPORT (If Yes, specify in Item 21 below.)			X	
17. ALL ESSENTIAL WITNESSES WILL BE AVAILABLE IN THE EVENT OF TRIAL			X	
18. THE CHARGES AND SPECIFICATIONS ARE IN PROPER FORM			X	
19. REASONABLE GROUNDS EXIST TO BELIEVE THAT THE ACCUSED COMMITTED THE OFFENSE(S) ALLEGED			X	
20. 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				
22a. TYPED NAME OF INVESTIGATING OFFICER		b. GRADE	c. ORGANIZATION	
[REDACTED]		O-5/LTC	220th MILITARY POLICE BRIGADE APO AE 09366	
d. SIGNATURE OF INVESTIGATING OFFICER			e. DATE	
[REDACTED]				

USAPPV

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

Item 12a. Witnesses

[REDACTED]	E-4/SPC	744 th MP BATTALION	YES
[REDACTED]	E-7/SFC	744 th MP BATTALION	YES
[REDACTED]	E-5/SGT	744 th MO BATTALION	YES
[REDACTED]	E-6/SSG	314 th MP COMPANY	YES
[REDACTED]	E-4/SPC	314 th MP COMPANY	YES
[REDACTED]	E-4/SPC	314 th MP COMPANY	YES
[REDACTED]	E-4/SPC	314 th MP COMPANY	YES
[REDACTED]	EPW	CAMP BUCCA, IZ	YES
[REDACTED]	EPW	CAMP BUCCA, IZ	YES
[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
[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]	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]	0-4/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

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

Item 13a, Witnesses

#7: SWORN STATEMENT, [REDACTED] DTD 15 MAY 03	OSJA, CFLCC, CAMP DOHA, KU	YES
#8: SWORN STATEMENT, [REDACTED] DTD 16 MAY 03	OSJA, CFLCC, CAMP DOHA, KU	YES
#9: AIR, [REDACTED] DTD 14 MAY 03	OSJA, CFLCC, CAMP DOHA, KU	YES
#10: SWORN STATEMENT, [REDACTED] DTD 15 MAY 03	OSJA, CFLCC, CAMP DOHA, KU	YES
#11: SWORN STATEMENT, [REDACTED] DTD 16 MAY 03	OSJA, CFLCC, CAMP DOHA, KU	YES
#12: SECOND SWORN STATEMENT, [REDACTED] DTD 15 MAY 03	OSJA, CFLCC, CAMP DOHA, KU	YES

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

SGT [REDACTED]

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 SGT [REDACTED] 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 her. Clearly, SGT Edmondson had certain duties that night to safeguard EPWs, she knew of these duties by virtue of her position, grade, and previous experience, and that, according to the testimony of [REDACTED] [REDACTED] she was willfully derelict in the performance of those duties.
 - b. Charge II: Violation of Article 93, Cruelty and Maltreatment: I find that a preponderance of the evidence exists to validate the specification alleged against her. The testimony of [REDACTED] indicate that her actions were cruel and maltreated EPW [REDACTED]
 - c. Charge III: Violation of Article 128, Assault: I find that a preponderance of the evidence exists to validate the specification alleged against her. The testimony of the witnesses identified previously all indicate that SGT [REDACTED] inflicted bodily harm on EPW [REDACTED] and that her use of force was unlawful.
 - d. 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.

e. I recommend that [REDACTED]
[REDACTED]
[REDACTED]

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 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:

- 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.

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

Item 13a, Witnesses

#7: SWORN STATEMENT, SSG [REDACTED] DTD 15 MAY 03	OSJA, CFLCC, CAMP DOHA, KU	YES
#8: SWORN STATEMENT, MSG [REDACTED] DTD 16 MAY 03	OSJA, CFLCC, CAMP DOHA, KU	YES
#9: AIR, SA [REDACTED] DTD 14 MAY 03	OSJA, CFLCC, CAMP DOHA, KU	YES
#10: SWORN STATEMENT, SPC [REDACTED] DTD 15 MAY 03	OSJA, CFLCC, CAMP DOHA, KU	YES
#11: SWORN STATEMENT, SSG [REDACTED] DTD 16 MAY 03	OSJA, CFLCC, CAMP DOHA, KU	YES
#12: SECOND SWORN STATEMENT, SPC [REDACTED] DTD 15 MAY 03	OSJA, CFLCC, CAMP DOHA, KU	YES

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

SSG Scott A. McKenzie, [REDACTED]

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 [REDACTED] had a certain duty to safeguard EPWs and was aware of those duties. The testimony of SSG [REDACTED], SGT [REDACTED], SGT [REDACTED] and SPC [REDACTED] indicate that he was willfully derelict in the performance of those duties.
 - b. Charge II: Violation of Article 93, Cruelty and Maltreatment: I find that a preponderance of the evidence exists to validate Specifications 2, 3 and 5 alleged against him. Evidence was not presented to sufficiently validate Specifications 1 and 4 alleged against him. SGT Nilsson's 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].

- 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] and [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 [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

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

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:

- 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.
- 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.

- 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.
 - f. Defense: after the testimony of the final witness, SPC [REDACTED] government counsel asked that the scope of the investigation be broadened to include violation of Article 134, Adultery and Obstruction of Justice. Government withdrew its request for the adultery charge. I did not allow the inclusion of this charge due to inadequate notice to the defense to prepare for the additional charges.
5. While EPW witnesses have agreed to be available for further testimony, their release might make it difficult to reach them once they have returned home.
 6. During the course of this hearing, testimony from SSG [REDACTED], SGT [REDACTED], [REDACTED] SGT [REDACTED], SPC [REDACTED], and SPC [REDACTED] indicated that while the alleged incidents were occurring, they did not actively attempt to intervene as it was their responsibility to do as soldiers, and in the case of [REDACTED] and [REDACTED] as non-commissioned officers and leaders. Beyond SSG [REDACTED] verbal attempts to stop the abuse of these EPWs, nothing else seems to have been done. SGT [REDACTED] testimony that he turned away because he could not bear to watch this treatment is especially disturbing. I recommend that you consider appropriate action with regard to these soldiers and their evident failure to act to protect the enemy prisoners of war in their charge or stop the mistreatment to which they have testified, under oath.

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. 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 [REDACTED]	d. ORGANIZATION 320TH MILITARY POLICE BN

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

B. (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: <i>(Check appropriate answer)</i>	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 <i>(If the accused or counsel were absent during any part of the presentation of evidence, complete b below.)</i>	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. Markify 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]	E-4/SPC	223rd MP COMPANY	X	
[REDACTED]	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		
#2: AIR, SA [REDACTED] IEM, 14 MAY 03		OSJA, CFLCC, Camp Doha, KU		
#3: SWORN STATEMENT, SPC [REDACTED] DTD 14 MAY 03		OSJA, CFLCC, Camp Doha, KU		
#4: SWORN STATEMENT, SGT [REDACTED] DTD 14 MAY 03		OSJA, CFLCC, Camp Doha, KU		
#5: SWORN STATEMENT, SPC [REDACTED]		OSJA, CFLCC, Camp Doha, KU		
#6: EPW MANIFEST, 744th MP BN, DTD 12 MAY 03		OSJA, CFLCC, Camp Doha, KU		
WHICH ITEM CONSIDERED, OR A COPY OR RECITAL OF THE SUBSTANCE OR NATURE THEREOF, IS ATTACHED			X	
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				
22. 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

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

By Telephonic Interview:

[REDACTED]	SA		YES
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- 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.
- 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.
- 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.
- g. On 7 September, MAJ [REDACTED] representing the government, asked again, by e-mail attachment, that I re-consider my decision not to include the charges of adultery and obstruction of justice against SGT [REDACTED] outlined in para. 4.f.above. CPT [REDACTED] representing SGT [REDACTED] replied on 13 September after returning from another case in the United States. On 17 September, I consulted with MAJ [REDACTED] my legal advisor. Summarizing his counsel, I responded to the government's request by e-mail on 18 September, affirming my earlier decision not to consider the additional charges due to the late notice given

by the government and, in the case of the adultery charge, that it was outside the scope of the hearing.

5. While EPW witnesses have agreed to be available for further testimony, their release might make it difficult to reach them once they have returned home.
6. During the course of this hearing, testimony from SSG [REDACTED] SGT [REDACTED] 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] 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.

DEPARTMENT OF THE ARMY
U.S. Army Trial Defense Service
Vicenza Field Office
APO AE 09630

AESE-JAD

25 July 2003

MEMORANDUM FOR LTC [REDACTED] Article 32 (b) Investigating Officer

SUBJECT: Defense Request for Delay Article 32 Investigation

1. The defense requests a delay in the Article 32(b) Investigation scheduled for 28 July 2003 until 27 August 2003. The bases for the defense delay request are as follows:

a. The defense received notice of the Article 32(b) Investigation on 18 July while TDY for a contested court-martial. As of that date, defense counsel had yet to received the charge sheet or the CID report pertaining to this case. The date set for the Article 32 hearing was 28 July 2003. Defense counsel was in a contested court-martial until the evening of 24 July 2003 and is scheduled to take leave in conjunction with TDY to begin on 28 July 2003. Given the timing of the notice, approved leave and logistical problems with getting back to Italy, drawing equipment and scheduling a flight, defense counsel requests a delay in the Article 32(b) Investigation.

b. More importantly, defense counsel will not be prepared to go forward on 28 July 2003. I have yet to receive and review the packet. This is an extremely serious case, which will take extensive preparation prior to the Article 32(b) Investigation. Defense cannot provide SSG McKenzie with effective assistance without some time to prepare for the hearing.

2. I am the POC for this memorandum and can be reached via phone at DSN 314-634-7043 or via e-mail at amy.fitzgibbons@setaf.army.mil. I will be back in Vicenza on 6 August 2003.

[REDACTED]
CPT, JA
Senior Defense Counsel

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. 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	
3a. NAME OF ACCUSED (Last, First, MI) CANJAR, TIMOTHY F.	b. GRADE O-4/SPC	c. SSN [REDACTED]	d. ORGANIZATION 320th MP BATTALION
			e. DATE OF CHARGES 14 JULY 03

(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 8 below)	X	
6. COUNSEL WHO REPRESENTED THE ACCUSED WAS DUALIFIED UNDER R.C.M. 405(d)(2), 502(a)	X	

7a. NAME OF DEFENSE COUNSEL (Last, First, MI) [REDACTED]	b. GRADE O-4/MAJ	8a. NAME OF ASSISTANT DEFENSE COUNSEL (If any) NA	b. GRADE
c. ORGANIZATION (If appropriate) US ARMY TRIAL DEFENSE SERVICE BAMBERG FIELD OFFICE, REGION VIII		c. ORGANIZATION (If appropriate) NA	
d. ADDRESS (If appropriate) APO AE 09139		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]	SPC/E-4	223rd MP COMPANY	X	
[REDACTED]	SGT/E-5	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		
#2: AIR. SA [REDACTED] IEM, 14 MAY 03		OSJA, CFLCC, Camp Doha, KU		
#3: SWORN STATEMENT, SPC [REDACTED] DTD 14 MAY 03		OSJA, CFLCC, Camp Doha, KU		
#4: SWORN STATEMENT, SGT [REDACTED] DTD 14 MAY 03		OSJA, CFLCC, Camp Doha, KU		
#5: SWORN STATEMENT, SPC [REDACTED]		OSJA, CFLCC, Camp Doha, KU		
#6: EPW MANIFEST, 744th MP BN, DTD 12 MAY 03		OSJA, CFLCC, Camp Doha, KU		
14. 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				
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]			23 September 2003	

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

Item 13a, Witnesses

#7: SWORN STATEMENT, SSG [REDACTED] DTD 15 MAY 03	OSJA, CFLCC, CAMP DOHA, KU	YES
#8: SWORN STATEMENT, MSG [REDACTED] DTD 16 MAY 03	OSJA, CFLCC, CAMP DOHA, KU	YES
#9: AIR, SA [REDACTED] DTD 14 MAY 03	OSJA, CFLCC, CAMP DOHA, KU	YES
#10: SWORN STATEMENT, SPC [REDACTED] DTD 15 MAY 03	OSJA, CFLCC, CAMP DOHA, KU	YES
#11: SWORN STATEMENT, SSG [REDACTED] DTD 16 MAY 03	OSJA, CFLCC, CAMP DOHA, KU	YES
#12: SECOND SWORN STATEMENT, SPC [REDACTED] DTD 15 MAY 03	OSJA, CFLCC, CAMP DOHA, KU	YES

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

SPC Timothy F. Canjar, [REDACTED]

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 SPC Canjar, 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. Testimony from SGT [REDACTED] and SPC [REDACTED] and EPW witnesses, clearly indicate that SPC [REDACTED] had certain duties on the night in question, that he knew or reasonably should have known of those duties, and that he was derelict of those duties.
 - b. Charge II: Violation of Article 93, Cruelty and Maltreatment: I find that a preponderance of the evidence exists to validate Specifications 2 and 3 alleged against him. Evidence was not presented to sufficiently validate Specifications 1 and 4 alleged against him. The testimony of SGT [REDACTED] and SPC [REDACTED] indicate SPC [REDACTED] participation in the cruelty and maltreatment of EPW [REDACTED]. The testimony of SGT [REDACTED] and SSG [REDACTED] indicate his participation in the cruelty and maltreatment of EPW [REDACTED]. I felt that insufficient evidence existed to confirm his participation in the alleged cruelty and maltreatment of EPW [REDACTED]. Specification 4 was not specific with regard to the identify of the EPW. There was insufficient evidence to suggest he participated in the cruelty or mistreatment of any such unidentified EPW. Clearly EPWs [REDACTED] and [REDACTED]

any such unidentified EPW. Clearly EPWs [REDACTED] and [REDACTED] were subject to SPC [REDACTED] orders and his actions were cruel and represented maltreatment of both individuals.

- 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 based on the testimony of witnesses already identified. SPC [REDACTED] signed two sworn statements indicating justifiable use of force against EPWs that evening. The testimony of witnesses, specifically SSG [REDACTED], SGT [REDACTED], SGT [REDACTED], and SPC [REDACTED] indicate that his statements were false, that he knew them to be false at the time of making them, and that his statements were intended to deceive the investigators.
- d. Charge IV: Violation of Article 128, Assault: I find that a preponderance of the evidence exists to validate Specifications 1 and 4 alleged against him. Evidence was not presented to sufficiently validate Specifications 2 and 3 alleged against him. Again, based on the testimony of SSG [REDACTED], SGT [REDACTED], SGT [REDACTED] and SPC [REDACTED] SPC [REDACTED] did bodily harm to these EPWs and the bodily harm was done with unlawful force.
- 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.
- f. I recommend that [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

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

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:

- 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 LAW 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.
- 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.

- 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.
 - 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 Article 128, Obstruction of Justice. Government withdrew its request for the adultery charge. I did not allow the inclusion of this charge due to inadequate notice to the defense to prepare for the additional charges.
5. While EPW witnesses have agreed to be available for further testimony, their release might make it difficult to reach them once they have returned home.
 6. During the course of this hearing, testimony from SSG [REDACTED] SGT [REDACTED] [REDACTED], SGT [REDACTED] SPC [REDACTED] and SPC [REDACTED] indicated that while the alleged incidents were occurring, they did not actively attempt to intervene as it was their responsibility to do as soldiers, and in the case of [REDACTED] 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.

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. 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) GIRMAN, LISA M.	b. GRADE E-8	c. SSN [REDACTED]	d. ORGANIZATION 320TH MILITARY POLICE BN e. DATE OF CHARGES 13 JUL 03

(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. GRADE O-3/CPT	8a. NAME OF ASSISTANT DEFENSE COUNSEL (If any) NA	b. GRADE NA
c. ORGANIZATION (If appropriate) US ARMY TRIAL DEFENSE SERVICE WURZBURG FIELD OFFICE, REGION VIII		c. ORGANIZATION (If appropriate) NA	
d. ADDRESS (If appropriate) APO AE 09036		d. ADDRESS (If appropriate) NA	

8. (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: <i>(Check appropriate answer)</i>	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		

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	
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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]	E-4/SPC	223rd MP COMPANY	X	
[REDACTED]	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 [REDACTED] IEM, 14 MAY 03		OSJA, CFLCC, Camp Doha, KU	X	
#3: SWORN STATEMENT, SPC [REDACTED] DTD 14 MAY 03		OSJA, CFLCC, Camp Doha, KU	X	
#4: SWORN STATEMENT, SGT [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	
14. EACH ITEM CONSIDERED, OR A COPY OR RECITAL OF THE SUBSTANCE OR NATURE THEREOF, IS ATTACHED			X	
15. 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, 916Q.)				X
16. THE DEFENSE DID REQUEST OBJECTIONS TO BE NOTED IN THIS REPORT (If Yes, specify in Item 21 below.)			X	
17. ALL ESSENTIAL WITNESSES WILL BE AVAILABLE IN THE EVENT OF TRIAL			X	
18. THE CHARGES AND SPECIFICATIONS ARE IN PROPER FORM			X	
19. 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				
22. TYPED NAME OF INVESTIGATING OFFICER		b. GRADE	c. ORGANIZATION	
[REDACTED]		O-5/LTC	220th MILITARY POLICE BRIGADE APO AE 09366	
d. SIGNATURE OF INVESTIGATING OFFICER			e. DATE	
[REDACTED]				

USA PPC V

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

Item 12a, Witnesses

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

By Telephonic Interview:

[REDACTED]	SA		YES
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CONTINUATION SHEET, DD FORM 457, INVESTIGATING OFFICER'S REPORT

Item 13a, Witnesses

#7: SWORN STATEMENT, SSG [REDACTED] DTD 15 MAY 03	OSJA, CFLCC, CAMP DOHA, KU	YES
#8: SWORN STATEMENT, MSG [REDACTED] DTD 16 MAY 03	OSJA, CFLCC, CAMP DOHA, KU	YES
#9: AIR, SA [REDACTED] DTD 14 MAY 03	OSJA, CFLCC, CAMP DOHA, KU	YES
#10: SWORN STATEMENT, SPO [REDACTED] DTD 15 MAY 03	OSJA, CFLCC, CAMP DOHA, KU	YES
#11: SWORN STATEMENT, SSC [REDACTED] DTD 16 MAY 03	OSJA, CFLCC, CAMP DOHA, KU	YES
#12: SECOND SWORN STATEMENT, SPO [REDACTED] DTD 15 MAY 03	OSJA, CFLCC, CAMP DOHA, KU	YES

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

MSG Lisa M. Girman, [REDACTED]

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 MSG Lisa M. Girman, I make the following recommendations to the charges and specifications alleged against her:
 - a. Charge I: Violation of Article 92, Dereliction of Duty: I find that a preponderance of the evidence exists to validate both specifications alleged against her. MSG Girman's position, her previous experience, and her senior non-commissioned officer rank are clearly indicative that she had certain duties that night and that she knew of those duties. The testimony of SSG [REDACTED] SGT [REDACTED] SGT [REDACTED] and SPC [REDACTED] all indicate that she was willfully derelict in the performance of those duties, to include her responsibilities to safeguard EPWs herself and to ensure that her soldiers also safeguarded EPWs.
 - b. Charge II: Violation of Article 93, Cruelty and Maltreatment: I find that a preponderance of the evidence exists to validate specifications 1 and 2 alleged against her, but that evidence was not presented to sufficiently validate specification 3 alleged against her. The testimony of SGT [REDACTED] and SPC [REDACTED] indicate MSG [REDACTED] participation in the cruel mistreatment of EPW [REDACTED]. The testimony of SSG [REDACTED], SGT [REDACTED] and SPC [REDACTED] indicate her cruel mistreatment of EPW [REDACTED]. I did not find that sufficient evidence existed to confirm the specification alleged against her regarding EPW [REDACTED].

- 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 her. Based on the testimony of the witnesses previously indicated, MSG Girman's sworn statement of 16 May appears to be false in that she denies the mistreatment and assault of any of the EPWs, that she evidently knew the statement to be false, and that her statement was intended to deceive investigators as to her true actions.
 - d. Charge IV: Violation of Article 128, Assault: I find that a preponderance of the evidence exists to validate specifications 1 and 2, but that evidence was not presented to sufficiently validate specification 3 alleged against her. The testimony of SSG [REDACTED] SGT [REDACTED] SGT [REDACTED] and SPC [REDACTED] all indicate that MSG Girman did bodily harm to EPWs [REDACTED] and [REDACTED] [REDACTED] and that the harm was done with unlawful force. Again, I did not find that sufficient evidence existed to confirm the specification alleged against her regarding EPW [REDACTED].
 - e. Charge V: Violation of Article 134: I find that the evidence presented was insufficient to validate the specification against her. The testimony of SPC [REDACTED] [REDACTED] indicates that while MSG Girman's inquiry of him, both about his need for an attorney and his actual knowledge of the events of 12 May, was suspicious, it does not meet the criteria to validate this charge.
 - f. 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.
 - g. I recommend that you proceed with a general court martial, charging the accused with Violation of Article 92, both specifications, Violation of Article 93, Specifications 1 and 2, Violation of Article 107 and its specification, and Violation of Article 128, Specifications 1 and 2.
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 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:

- 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.
- 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.

- e. Defense: defense counsels objected to line of questioning by the government of SA [REDACTED] regarding a previous investigation by [REDACTED] of MSG Girman 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.
 - f. Defense: after the testimony of the final witness, SPC [REDACTED] government counsel asked that the scope of the investigation be broadened to include violation of Article 134, Adultery and Obstruction of Justice. Government withdrew its request for the adultery charge. I did not allow the inclusion of this charge due to inadequate notice to the defense to prepare for the additional charges.
5. While EPW witnesses have agreed to be available for further testimony, their release might make it difficult to reach them once they have returned home.
 6. During the course of this hearing, testimony from SSG Stephen [REDACTED] SGT [REDACTED] [REDACTED] SGT [REDACTED] SPC [REDACTED] and SPC [REDACTED] indicated that while the alleged incidents were occurring, they did not actively attempt to intervene as it was their responsibility to do as soldiers, and in the case of [REDACTED] 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.