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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF KENTUCKY
PADUCAH DIVISION

UNITED STATES OF AMERICA,) Case No. 5:06-CR-19
)
Plaintiff,)
)
VS.)
)
STEVEN D. GREEN,)
) April 30, 2009
Defendant.) Paducah, Kentucky

TRANSCRIPT OF TESTIMONY OF JESSE SPIELMAN
FROM JURY TRIAL
BEFORE THOMAS B. RUSSELL
UNITED STATES DISTRICT CHIEF JUDGE

APPEARANCES:

For United States: Marisa J. Ford
James R. Lesousky, Jr.
U.S. Attorney's Office
510 West Broadway
Louisville, KY 40202

Brian D. Skaret
U.S. Department of Justice
Criminal Division
950 Pennsylvania Ave., N.W.
Washington, DC 20530

For Defendant: Patrick J. Bouldin
Scott Thomas Wendelsdorf
Western Kentucky Federal
Community Defender, Inc.
629 S. 4th Avenue, Suite 200
Louisville, KY 40202

[Defendant present.]

Terri L. Turner, RPR
Official Court Reporter
133 U.S. Courthouse
501 Broadway
Paducah, KY 42001

Proceedings recorded by mechanical stenography,
transcript produced by computer.

1 APPEARANCES (Continued):

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Darren C. Wolff
Attorney at Law
2615 Taylorsville Road
Louisville, KY 40205

1 (Begin proceedings in open court at 10:27 a.m.)

2 JESSE SPIELMAN, GOVERNMENT WITNESS, SWORN

3 DIRECT EXAMINATION

4 BY MS. FORD:

5 Q. Good morning.

6 A. Good morning.

7 Q. Would you tell the members of the jury your full
8 name and spell your last name for the court reporter?

9 A. Jesse Von-Hess Spielman. And the last name is
10 S-p-i-e-l-m-a-n.

11 Q. Mr. Spielman, I'm going to go a little bit
12 through your background to get started this morning.
13 You are a former member of the United States Army; is
14 that correct?

15 A. Yes, ma'am.

16 Q. And when did you join the Army?

17 A. March of 2005.

18 Q. All right. And how old were you when you joined
19 the Army?

20 A. Twenty.

21 Q. And where are you from originally?

22 A. Chambersburg, Pennsylvania.

23 Q. Chambersburg, Pennsylvania?

24 A. Yes, ma'am.

25 Q. All right. If you can -- you might want to pull

1 that microphone a little bit closer to you. I don't
2 know if you can lean forward a little bit. Just speak
3 up so the court reporter can hear you and the jury can
4 hear you.

5 A. Yes, ma'am.

6 Q. That's better. That's much better. When you
7 joined the Army, you specifically requested infantry;
8 isn't that correct?

9 A. Yes, ma'am.

10 Q. And why did you ask for infantry?

11 A. That's just something I wanted to do. 9/11 came
12 by, and, you know, I just got out of high school and
13 just wanted to fight for my country and stuff like that,
14 so.

15 Q. And you also specifically requested an assignment
16 with the 101st Airborne Division, didn't you?

17 A. Yes, ma'am.

18 Q. Why don't you tell the members of the jury why
19 you did that?

20 A. They were just one of the most popular Army forts
21 and everything. I knew it was one of the bigger bases,
22 and I know they were really renowned in World War II and
23 everything like that.

24 Q. Okay. Your voice is falling again a little bit.
25 Can you speak up again?

1 A. I'll try to keep it up.

2 Q. All right. Thank you. So you did your basic
3 training in 2005?

4 A. Yes, ma'am.

5 Q. All right. Where did you do your basic training?

6 A. Fort Benning, Georgia.

7 Q. All right. And then did you go to Fort Campbell?

8 A. Yes.

9 Q. All right. When was that?

10 A. August of 2005.

11 Q. All right. And from Fort Campbell in August of
12 2005, did you deploy to Iraq?

13 A. Yeah, end of September of 2005.

14 Q. End of September 2005?

15 A. Yes.

16 Q. Okay. What were you doing between the end of
17 August of '05 and the end of September?

18 A. I got drivers training for the Humvees and EFR
19 training for Eagle First Responder. It's a first aid
20 course.

21 Q. Okay. ERF training?

22 A. EFR, yes.

23 Q. EFR training. Okay. Eagle First Responder?

24 A. Yes.

25 Q. All right. And then you deployed to Iraq?

1 A. Yes.

2 Q. And having just joined the Army, that would have
3 been your first deployment; isn't that correct?

4 A. Yes, ma'am.

5 Q. All right. And where were you deployed to in
6 Iraq?

7 A. When we went to Iraq, we first went to BIAP, and
8 then we went directly to Yusufiyah, Iraq.

9 Q. Okay. BIAP is the Baghdad International Airport?

10 A. Yes, ma'am.

11 Q. All right. And from there, you went to
12 Yusufiyah?

13 A. Yes.

14 Q. All right. And were you assigned to Bravo
15 Company?

16 A. Yes.

17 Q. All right. And the jury has heard a lot about
18 platoons, squads, and teams over the course of the last
19 couple of days. You were assigned to Bravo Company.
20 Which platoon were you assigned to?

21 A. 1st Platoon.

22 Q. All right. And you know the defendant in this
23 case, Steven Green?

24 A. Yes, ma'am.

25 Q. Was he -- was the defendant in your platoon, in

1 1st Platoon?

2 A. Yes, ma'am.

3 Q. All right. And your platoon sergeant when you
4 arrived in September 2005 was Sergeant Miller?

5 A. Yes, ma'am.

6 Q. All right. And what squad were you on?

7 A. I was on 1st Squad.

8 Q. Okay. A platoon is divided into three squads,
9 isn't it?

10 A. Four squads.

11 Q. Four squads. I'm sorry. Okay. You were on 1st
12 Squad?

13 A. Yes.

14 Q. All right. And was Mr. Green on your squad, as
15 well?

16 A. Yes.

17 Q. All right. And a squad is comprised of about how
18 many men?

19 A. Usually between 9 and 11.

20 Q. All right. And Mr. Green was on your squad?

21 A. Yes.

22 Q. All right. And who was your squad leader when
23 you arrived in Iraq?

24 A. Staff Sergeant Nelson.

25 Q. All right. And squads are further divided down

1 into teams, aren't they?

2 A. Yes, ma'am.

3 Q. All right. An Alpha and a Bravo Team?

4 A. Yes, ma'am.

5 Q. All right. And teams are also sometimes referred
6 to as fire teams, aren't they?

7 A. Yes, ma'am.

8 Q. Okay. What team were you assigned to when you
9 first arrived?

10 A. I was on Alpha Team.

11 Q. Alpha Team?

12 A. Yes, ma'am.

13 Q. And who was your team leader?

14 A. Sergeant Casica.

15 Q. Sergeant Casica?

16 A. Yes.

17 Q. All right. And what about the defendant, Steven
18 Green? Was he on your fire team?

19 A. He was on Bravo Fire Team.

20 Q. Okay. And who was his team leader?

21 A. When we deployed, I can't -- I can't remember
22 what it was.

23 Q. Okay. But you were under Sergeant Casica?

24 A. Yes.

25 Q. All right. When you arrived in Iraq in September

1 of 2005, can you describe for the jury sort of where you
2 were and what your basic assignments were?

3 A. We were in Yusufiyah sector. And Bravo Company
4 was TCPs, FOB security, and we also had the JS Bridge.
5 We rotated throughout that. Each platoon would have
6 one. One would have FOB security, one would have TCPs,
7 and one would have the JS Bridge.

8 Q. Whoa, whoa, whoa. Back up. You and Mr. Lesousky
9 share a common trait, and that is you speak quickly.
10 You and I share a common trait in that you have a fairly
11 low voice, soft voice. So I need you to bring up the
12 volume and slow it down.

13 A. All right.

14 Q. Because the information that you have is very
15 important, so I want to make sure the jury hears it.
16 All right? So let's start again. What were your
17 assignments when you first got there to Iraq?

18 A. We would have -- Bravo Company general assignment
19 was we had the TCP operations, which is traffic control
20 points. One platoon would have FOB security, which
21 would be the main company base. And, also, we would
22 have one platoon that would go down to the JS Bridge --

23 Q. Okay.

24 A. -- and do security down there.

25 Q. All right. So the three platoons in Bravo

1 Company when you first arrived, one platoon goes out to
2 the JS Bridge, which the jury has already heard quite a
3 bit about.

4 A. Yes.

5 Q. Okay. So when you first arrived, was your first
6 assignment at the JS Bridge or someplace else?

7 A. Our actual platoon got split up. One squad
8 stayed at the FOB security, and one squad -- or the rest
9 of the platoon went down to the JS Bridge.

10 Q. Okay. And where were you first assigned?

11 A. The FOB.

12 Q. To the FOB?

13 A. FOB Yusufiyah.

14 Q. And FOB is forward operating base?

15 A. Yes, ma'am.

16 Q. All right. And from the forward operating base
17 there in Yusufiyah, you would do patrols out into the --
18 into the -- Yusufiyah is not really a large city, but
19 into the town. You would do patrols out into the town?

20 A. Yes.

21 Q. All right. And what would you do on these
22 patrols?

23 A. Mainly, it was just presence patrols to show the
24 Iraqi people that we were around and stuff like that.
25 We would randomly go into people's houses sometimes,

1 search their houses.

2 Q. And what would you be searching the homes for?

3 A. Weapons, any kind of weapons they're not supposed
4 to have. They were allowed one AK-47 and 30 rounds.
5 And we'd make sure they wouldn't have any machine guns
6 or explosives.

7 Q. I'm sorry. How many rounds were they allowed to
8 have?

9 A. Thirty rounds.

10 Q. All right. So each family, each home is allowed
11 to or authorized to have one AK-47?

12 A. Yes.

13 Q. All right. And they can have, I guess, one
14 magazine with 30 rounds?

15 A. Yes.

16 Q. All right. Do you know why families were allowed
17 to have an AK-47 in the home?

18 A. Not really, no.

19 Q. Okay. So you would go into the homes and look to
20 make sure that -- search and make sure they didn't have
21 more firearms than what they were authorized to have?

22 A. Yes, ma'am.

23 Q. All right. When you were doing your assignment
24 from the forward operating base in Yusufiyah, how long
25 would you stay there initially? I'm talking about at

1 the beginning of your deployment; September, October --
2 I'm sorry. When did you arrive in Iraq?

3 A. We arrived in Iraq mid-October.

4 Q. Mid-October?

5 A. Yeah.

6 Q. So let's go from October, November, say December,
7 the first three months of your deployment. When you are
8 doing the assignments -- let's say you go out to the JS
9 Bridge. Part of your -- was it part of your platoon
10 went out to -- part of your squad went out to the JS
11 Bridge?

12 A. The entire platoon would go out to the JS Bridge,
13 and from there one squad would go to TCP 4.

14 Q. Okay. And how long would they stay at the JS
15 Bridge?

16 A. Approximately three weeks.

17 Q. All right. About 21 days?

18 A. Yes.

19 Q. Okay. And that would be one platoon out of the
20 company?

21 A. Yes.

22 Q. All right. And there's a water treatment
23 facility plant down there at the JS Bridge?

24 A. Yes.

25 Q. Okay. And JS Bridge is the Jurf Sukr Bridge?

1 A. Yes.

2 Q. All right. And what were your responsibilities
3 on that assignment when you're down at the bridge?

4 A. Basically just to -- we had -- a squad would go
5 out to TCP 4, Traffic Control Point 4, and from there
6 about three individuals would go down to what we call
7 the Alamo. It was another small bridge that we used.
8 Those two would just take the traffic control point and
9 the Alamo, and then the rest of the platoon would have
10 presence patrols. We would do random walk-arounds, walk
11 around the towns, go into people's houses, and stuff
12 like that.

13 Q. So the same thing. You're doing presence
14 patrols --

15 A. Yes.

16 Q. -- in the vicinity of the bridge?

17 A. Yes.

18 Q. And you're doing the same kind of searches that
19 you already described?

20 A. Yes.

21 Q. All right. And what I heard you say is you would
22 have how many -- how many men would you have going down
23 to the bridge at one time?

24 A. You mean the entire platoon?

25 Q. Yes.

1 A. About 30.

2 Q. Okay. And then from there, you would divide up.
3 You'd send a squad of eight or nine people?

4 A. Yes.

5 Q. And where would they go?

6 A. To TCP 4 and the Alamo.

7 Q. All right. So you'd have eight or nine people
8 who would go out to TCP 4, and from there some of those
9 people, some of those men had responsibilities at what
10 you called the AVL bridge?

11 A. Yes.

12 Q. Okay. Which is sometimes referred to as the
13 Alamo?

14 A. AVL bridge and the Alamo are the same one, yeah.

15 Q. Are the same thing. All right. And you said
16 when you would do that part of your assignment, you
17 would -- your platoon would stay out there for about
18 21 days?

19 A. Yes.

20 Q. All right. So what's the -- there's a third
21 component to your responsibilities when you're there,
22 isn't there? We've talked about the JS Bridge, we've
23 talked about being at the forward operating base in
24 Yusufiyah, and then you also had responsibility for the
25 TCPs?

1 A. Yes.

2 Q. All right. So when you first arrived during the
3 first part of your deployment -- October, November,
4 December -- you got to the JS Bridge for 21 days. If
5 you finish at the JS Bridge, then what do you do?

6 A. We rotate back to the FOB Yusufiyah, and then we
7 would stay there for about three days. And then we
8 would switch out from the FOB Yusufiyah to the traffic
9 control points.

10 Q. Okay. So now you'd have -- if you finished your
11 21 days down at the JS Bridge, you'd come back to the
12 forward operating base, your entire platoon, wouldn't
13 they?

14 A. Yes.

15 Q. All right. And from there, you're just
16 flip-flopping back and forth between the TCPs and the
17 FOB; is that right?

18 A. Yes.

19 Q. Okay. So you'd go out to the TCPs for three to
20 five days, do the TCP duties --

21 A. Yes.

22 Q. -- and then finish that, come back to the FOB,
23 your entire platoon come back to the FOB, and you'd do
24 the presence patrols you were talking about?

25 A. Yes.

1 Q. Okay. And so the platoon -- you're just
2 flip-flopping with other platoons or rotating with other
3 platoons through these assignments?

4 A. Yes, ma'am.

5 Q. All right. When you're at the TCPs -- let me ask
6 you, when you first arrived at the beginning of your
7 deployment, did the traffic control points exist?

8 A. They existed, basically the areas. Some of them
9 existed, and some of them didn't.

10 Q. Okay. Did TCP 2 exist? If you remember.

11 A. I don't think that existed, no, when we first got
12 there.

13 Q. Was part of your -- part of the assignment of
14 Bravo Company when you first arrived in Iraq to develop
15 these traffic control points?

16 A. Yes.

17 Q. All right. And what did you understand the
18 overall mission of Bravo Company to be when you arrived
19 in Iraq?

20 A. Basically to stop weapons and anything that we
21 weren't -- you know, the Iraqis weren't allowed to
22 have -- bombs, IED-making materials -- prevent that from
23 getting to the Baghdad area and the Green Zone.

24 Q. Okay. Can you speak up again and slow down?

25 A. Yes.

1 Q. All right. Why don't you say that again?

2 A. Bravo Company's mission was to stop weapons and
3 IED-making materials from going from our area of
4 Yusufiyah to Baghdad area, which is also known as the
5 Green Zone.

6 Q. Okay. And what role did the traffic control
7 points on Route Sportster play in that mission?

8 A. We randomly stopped cars, made sure no one was
9 transporting IEDs, weapons, any kind of materials that
10 they weren't supposed to have, make sure they weren't
11 transporting that anywhere.

12 Q. All right. And so when you're doing duties at
13 the TCP, at any of the TCPs -- there were a number of
14 them, weren't there?

15 A. Yes.

16 Q. All right. Why don't you tell the members of the
17 jury what daily activity was like at the TCP? What were
18 your responsibilities when you were doing TCP duty?

19 A. At the TCPs, in the morning, first thing in the
20 morning at daybreak, we would go out for IED sweeps. We
21 would kick out about four people from the squad, walk up
22 and down the road and just look for bombs, any roadside
23 bombs that were planted in the middle of the night.
24 We'd just look for bombs on foot.

25 And then after we returned from that -- we also

1 had another element from the squad that didn't go on the
2 IED sweeps to pull guard. When we got back from that,
3 we would rotate guard all day, all night. And we would
4 also do mandatory presence patrols from the TCPs into
5 the surrounding areas.

6 Q. Okay. If I can take you forward to March the
7 12th of 2006, do you know where you were on March the
8 12th?

9 A. Yes.

10 Q. All right. And where were you on that date?

11 A. I was at Traffic Control Point No. 2.

12 Q. Okay. And were you with your squad? Were you
13 with 1st Squad?

14 A. No. I was supplemented down to 3rd Squad.

15 Q. Okay. And do you recall -- do you know when you
16 were supplemented?

17 A. Approximately three days before. Probably around
18 March 9th.

19 Q. All right. Where were you before you went to
20 TCP 2?

21 A. I was at TCP 1 with my squad, 1st Squad.

22 Q. Okay. So on March the 12th, 1st Squad -- all the
23 members of 1st Squad were at TCP 1?

24 A. Yes.

25 Q. All right. And a few days before that, you think

1 around March the 9th or thereabouts, you had been sent
2 down to TCP 2 where 3rd Squad --

3 A. Yes.

4 Q. Okay. And at that point, your platoon, 1st
5 Platoon, is doing -- you're doing the duties at the
6 traffic control points; is that correct?

7 A. Yes, yes.

8 Q. All right. Are you still on the three- to
9 five-day rotation that you described?

10 A. We were originally. Sergeant Fenlason, our
11 current platoon sergeant in March, he had the idea of
12 going out there for a longer period of time. And pretty
13 much, we didn't -- he didn't say how long, and we were
14 just expected to stay out there for up to the rest of
15 the deployment. We didn't know how long.

16 Q. Okay. So do you know when that started?

17 A. It started on March 1st.

18 Q. All right. And so on March the 12th, you were
19 about 12 days into that?

20 A. Yes.

21 Q. Okay. And you moved from TCP 1 down to TCP 2 on
22 or about March the 9th?

23 A. Yes.

24 Q. All right. And do you know why they sent you
25 down there to augment with 3rd Squad?

1 A. I believe the staff sergeant, the squad leader of
2 TCP 2 and 6, was on leave, and another --

3 Q. Who was that?

4 A. Staff Sergeant Lauzier.

5 Q. All right. So the squad leader for 3rd Squad was
6 not present. He's on leave?

7 A. Correct.

8 Q. Which meant he was in the United States?

9 A. Yes.

10 Q. Okay. And that's standard that you -- if you do
11 a one-year deployment, you're going to get some time
12 back in the United States, aren't you?

13 A. Yes, mid-tour.

14 Q. Okay. Mid-tour. And you yourself got some time
15 back in the U.S., didn't you, mid-tour?

16 A. Yes, ma'am.

17 Q. All right. So Sergeant Lauzier is in the United
18 States on leave. And I interrupted. Was there somebody
19 else from 3rd Squad that was also unavailable?

20 A. Yes. I believe it was PFC Hoyt I believe was on
21 leave, as well.

22 Q. Okay. So you've got another member of 3rd Squad
23 who is on leave in the United States?

24 A. Yes.

25 Q. All right. So you were sent down to supplement

1 or augment 3rd Squad. Who was at TCP -- at TCP 2 when
2 you arrived?

3 A. When I arrived, it was Specialist Cortez -- at
4 the time a specialist. Specialist Cortez, Specialist
5 Barker, myself, Private Scheller, and PFC Howard.

6 Q. Okay. And do you know -- you said that Cortez --
7 that's Paul Cortez?

8 A. Yes.

9 Q. You said he was a specialist?

10 A. Yes.

11 Q. Okay. Do you know if he was in a position at
12 that time to be promoted to sergeant?

13 A. He was.

14 Q. He was. Okay. Was he about to become a
15 sergeant?

16 A. Yes.

17 Q. All right. And you said Specialist Barker was
18 there?

19 A. Yes.

20 Q. Barker is James Barker?

21 A. Yes.

22 Q. Okay. PFC Howard was Bryan Howard?

23 A. Yes.

24 Q. All right. And PFC Scheller?

25 A. Yes.

1 Q. All right. When you arrived there, you knew
2 Barker and Cortez were both on their -- James Barker and
3 Paul Cortez are both on their second deployments, aren't
4 they?

5 A. Yes.

6 Q. You all right?

7 A. Yeah. I got a little close.

8 Q. They're on their second deployments?

9 A. Yes.

10 Q. All right. And at that point, you've been in
11 theater, what, about six months, I guess?

12 A. Approximately, yes.

13 Q. About. And was the defendant, Steven Green, was
14 he at TCP 2 when you were sent down there from 1?

15 A. No.

16 Q. Okay. Was there -- at some point, did he arrive
17 at TCP 2 before March the 12th?

18 A. Yes.

19 Q. Do you know when that was?

20 A. It was either the 10th or 11th. It was right
21 after.

22 Q. So a day or two after you arrived, Green was sent
23 down?

24 A. Yes.

25 Q. Was he sent down for the same reason you were?

1 A. Yes.

2 Q. Basically more manpower?

3 A. Yes, ma'am.

4 Q. To augment or supplement the guys who were
5 already there?

6 A. Yes.

7 Q. All right. Well, tell the members of the jury
8 something about on March the 12th, you've now got -- you
9 were at TCP 2 with PFC Howard, PFC Scheller, and
10 Specialist Cortez and Barker. Tell the members of the
11 jury how that day started.

12 A. On March 12th?

13 Q. Yes.

14 A. I had guard duty approximately 9:00 in the
15 morning. I probably got off guard around 10:00.

16 Q. So you pulled guard duty for about an hour?

17 A. I can't remember exactly when I got on guard. We
18 usually pulled about two hours was the average.

19 Q. Okay.

20 A. I know sometime in the morning I had guard.

21 Q. And what does that mean at TCP 2 when you have
22 guard duty?

23 A. At nighttime, we have two guard positions. We
24 have one on the truck on the road, Route Sportster.

25 Q. The truck is a Humvee?

1 A. Yes.

2 Q. All right. And it's placed out on the road, on
3 Route Sportster, in front of the TCP?

4 A. On Route Sportster, yes.

5 Q. All right. And you'd sit in the Humvee?

6 A. Yes. We'd basically just monitor the radio, make
7 sure -- for radio checks, make sure what was going on,
8 and everything like that. And, also, we would watch up
9 and down the road and make sure nobody was planting IEDs
10 in the middle of the night.

11 Q. Okay. And you have weapons in your Humvee?

12 A. Yes.

13 Q. All right. And so you're basically looking both
14 directions up and down the road --

15 A. Yes.

16 Q. -- to make sure that nobody comes out and plants
17 any IEDs?

18 A. Yes.

19 Q. So you've got responsibility for a stretch of
20 road in both directions?

21 A. Yes.

22 Q. All right. So the morning of March the 12th, you
23 said you pulled guard duty for an hour or two. Then
24 what did you do?

25 A. I got off guard, and just the average thing to do

1 was pass time and stuff like that. We played a lot of
2 cards and stuff, and we started playing cards.

3 Q. Okay. So when you say "we started playing
4 cards," who was playing cards?

5 A. Pretty much everybody that was off duty.
6 Specialist Cortez, Specialist Barker, PFC Green, and
7 myself.

8 Q. Okay. So you had -- four of you were playing
9 cards?

10 A. Yes, ma'am.

11 Q. Okay. You, Barker, Cortez, and Green?

12 A. Yes, ma'am.

13 Q. All right. And somebody's pulling guard at this
14 time?

15 A. Yeah. Scheller was pulling guard after me.

16 Q. So Scheller's out in front of the building in the
17 Humvee?

18 A. Yeah.

19 Q. All right. And what was Bryan Howard doing?

20 A. He was coming on and off sometimes when we were
21 playing cards, going around sometimes, but he was -- I
22 think he was reading a book or listening to his iPod or
23 something.

24 Q. Okay. So just kind of wandering in and out of
25 the area?

1 A. Yeah.

2 Q. Where were you-all playing cards?

3 A. Right behind the TCP. It was still in the TCP
4 wire, but it was outside.

5 Q. All right.

6 A. When I say outside the TCP, outside the building,
7 but it was still at TCP 2.

8 Q. All right. And you said something that I lost.
9 I'm trying to figure out how to get you to slow down.
10 You said something about outside the TCP but inside the
11 wire, didn't you?

12 A. What I considered the TCP was the building. It
13 was just outside of the building, but it was still at
14 TCP 2.

15 Q. Okay. And did you say inside the wire?

16 A. Yes.

17 Q. Okay. And what do you mean by that?

18 A. The concertina wire that's surrounding us.

19 Q. Okay. So you've got concertina wire around the
20 perimeter of the building that you're in?

21 A. Yes, ma'am.

22 Q. Okay. And that is some form of force protection,
23 I guess, for you?

24 A. Yes, ma'am.

25 Q. All right. So you're outside the building but

1 still within that concertina wire?

2 A. Yes.

3 Q. Okay. Was that common for you-all to sit outside
4 and play cards?

5 A. Yes.

6 Q. All right. And why don't you continue on. The
7 four of you are playing cards. Were you drinking that
8 day?

9 A. Yes.

10 Q. All right. What were you drinking?

11 A. We had Iraqi whiskey, gin.

12 Q. Okay. Do you know where that came from?

13 A. Yes. Specialist Barker.

14 Q. Okay. And he'd purchased it somewhere?

15 A. Yes. He purchased it from the Iraqi Army.

16 Q. All right. Had you seen Iraqi whiskey or gin
17 before during your deployment?

18 A. Yes, ma'am.

19 Q. All right. Had you had any to drink before?

20 A. Yes, ma'am.

21 Q. All right. And you were playing cards that day.
22 You were drinking?

23 A. Yes.

24 Q. And you're mixing the whiskey and gin -- are you
25 drinking it straight, or are you mixing it with

1 something?

2 A. We're mixing it with energy drinks called Rip
3 Its.

4 Q. And how are you mixing it?

5 A. We had like a two-liter empty bottle, and we
6 would just pour one can in and then a couple cans of Rip
7 It.

8 Q. So you'd pour a can of either the whiskey or the
9 gin in?

10 A. Yes.

11 Q. And then a couple cans of the Rip It?

12 A. Yes, ma'am.

13 Q. You said it was like an energy drink?

14 A. Yes, ma'am.

15 Q. All right. And then you're just passing it
16 around?

17 A. Yes.

18 Q. All right. Was everybody drinking?

19 A. Yes.

20 Q. All right. Do you have any idea how much you
21 drank?

22 A. We drank a lot. Every time a can was empty, we'd
23 just go fill it up again. So we went through six cans
24 or so. They were 12-ounce cans.

25 Q. Okay. And you said this started sometime in the

1 morning?

2 A. Yes. Approximately 10:00, 10:30.

3 Q. All right. And how long did you-all play cards?

4 A. For at least an hour, hour and a half.

5 Q. Okay. And then what happened? Well, let me back
6 up for a minute. I mean, you're playing cards. Are
7 you-all -- are you betting or anything?

8 A. No. It's just regular and just passing time.

9 Q. Did you guys play poker?

10 A. No. I think we were playing like Uno or
11 something like that.

12 Q. All right. So you're basically just -- just
13 something to pass the time?

14 A. Yes.

15 Q. All right. And you're having something to drink.
16 Are you -- you're all young men. I assume you're
17 talking?

18 A. Yes.

19 Q. Okay. Anything in particular that you remember
20 talking about?

21 A. Not really anything specifically. I know we were
22 talking about girls back home, stuff like that. You
23 know, just regular stuff that we'd done back home.
24 Can't wait to get home, what our plans were when we got
25 home. Just stuff like that.

1 Q. Regular guy talk, I guess?

2 A. Yes.

3 Q. Things guys talk about. You had gotten married
4 right before you left for Iraq, didn't you?

5 A. Yes, ma'am.

6 Q. All right. So the -- you said you played cards
7 for about an hour or hour and a half. What happened
8 then?

9 A. We were done playing cards, and I was the owner
10 of them, so I went inside and took them to my bunk, put
11 them in my assault pack and everything. And then I just
12 laid down.

13 Q. All right. And were you feeling the effects of
14 what you had had to drink?

15 A. Yes. Yeah. I attempted to start reading a book
16 I was in the middle of, and I couldn't really read. I
17 was too drunk. So I just kind of laid there a little
18 bit.

19 Q. Okay. So tell the members of the jury, how drunk
20 would you say you were? I mean, you'd had alcohol
21 before. Are you slurring your -- speech slurred?

22 A. I might have been. I was definitely feeling the
23 effects of alcohol.

24 Q. But did you know where you were?

25 A. Yes, I knew where I was.

1 Q. You knew what you were doing?

2 A. Yes.

3 Q. All right. Didn't get sick --

4 A. No.

5 Q. -- from drinking? All right. So you
6 basically -- you have a buzz?

7 A. Yeah.

8 Q. Is that fair to say?

9 A. Yeah.

10 Q. All right. So you said you started trying to
11 read a book and couldn't, so what did you do then?

12 A. I got a snack. I went to one of the other rooms
13 that we had the food in, and I got a soda and a bag of
14 chips.

15 Q. Okay. What did you do then?

16 A. I came back and ate them in my -- in the same
17 room that I was at.

18 Q. All right. And describe for the jury the -- when
19 you're at TCP 2, you've got six men there. What are
20 your sleeping arrangements? I mean, you talked about
21 taking things back and putting them in your bunk area,
22 your assault pack.

23 A. We had one room we called it the NCO room.

24 Q. NCO stands for?

25 A. Non-commissioned officer.

1 Q. All right.

2 A. It's for sergeants and above enlisted. And
3 basically we had Cortez and Barker in that room, and
4 then I kind of went in that room, too. You know, it
5 wasn't strictly NCOs. But I went in that room, and I
6 slept there. And then --

7 Q. So the three of you -- Barker, Cortez, and you --
8 have your cots in the NCO room?

9 A. Yes.

10 Q. All right. Go on.

11 A. And then we had PFC Scheller and PFC Howard in
12 the other room.

13 Q. Okay. And what about Green? Where was he?

14 A. I think when he first got there, he was in the
15 room with Howard and Scheller. But by the time
16 March 12th comes around, he was in the room with us,
17 with Cortez, Barker, and myself.

18 Q. Okay. He'd moved his cot over into the room with
19 the three of you?

20 A. Yes, ma'am.

21 Q. All right. Continue on.

22 A. I was there for a little bit. I ate the chips
23 and soda, went back, took it out to the burn pit that
24 was out back. I went back to my bunk. Probably maybe
25 10 or 15 minutes went by -- I can't really say how

1 long -- and --

2 Q. Did you pass anyone as you were -- what are the
3 other guys doing? The card game's ended. What's
4 happened to Barker, Cortez, and Green?

5 A. When I went out there and got the chips the first
6 time, I seen Barker and Green outside talking pretty
7 much at the same area that we were playing cards at.
8 They were kind of close, having what looked like a
9 private conversation. And I'm not sure --

10 Q. Just the two of them, Barker and Green?

11 A. Yes.

12 Q. All right. Could you hear what they were saying?

13 A. No.

14 Q. All right. Couldn't hear any of it?

15 A. No.

16 Q. All right. Go ahead.

17 A. And I'm not sure where Cortez was. He was
18 probably around somewhere, too.

19 Q. All right. And you said you passed Steven Green
20 and James Barker when you were going to get something to
21 eat?

22 A. Yes, ma'am.

23 Q. All right. When you were going to get the chips
24 and the drink, you saw them talking?

25 A. Yes.

1 Q. All right. Can you tell us, do you remember
2 anything about their demeanor? Were they talking
3 loudly? You couldn't hear what they were saying.

4 A. It was -- it was close, like a foot away from
5 each other. It was a private conversation, you know.

6 Q. All right. And then what happened? You went
7 back in and ate your chips, had your drink?

8 A. Yes.

9 Q. You walked back out to the burn pit?

10 A. Yeah, like five or ten minutes later when I was
11 done. And they were in the same area.

12 Q. Barker and Green are in the same area?

13 A. Yes.

14 Q. All right. And Scheller is still on guard duty?

15 A. Yes.

16 Q. Do you have any idea where Howard and Cortez are
17 at this point?

18 A. I think Howard's in his room right next door to
19 mine. I'm not sure what he's doing. And I'm not sure
20 where Cortez is at.

21 Q. All right. And were Barker and -- James Barker
22 and Steven Green, were they still having the close
23 conversation that you described?

24 A. Yes.

25 Q. All right. Did you hear anything that they were

1 saying when you walked past them the second time?

2 A. No.

3 Q. Okay. And you've walked by them to throw your
4 chips and basically your garbage into the burn pit?

5 A. Yes.

6 Q. Okay. And the burn pit -- tell the members of
7 the jury, what did you-all use the burn pits for?

8 A. We used it for just trash, any kind of trash we
9 had, MRE trash, cans, bottles, stuff like that.

10 Q. MRE trash. The MREs are your meals ready to eat?

11 A. Yes.

12 Q. And you had two burn pits there outside TCP 2,
13 didn't you?

14 A. Yes.

15 Q. All right. One on either -- one at the front and
16 one at the back of the building?

17 A. Yes.

18 Q. All right. And basically that's how you-all
19 would dispose of your garbage?

20 A. Yes.

21 Q. It's also how you would dispose of your waste?

22 A. Yes.

23 Q. All right. So you go out and you throw your
24 material into the burn pit. Barker and Green are still
25 talking. What happened after that?

1 A. I go back in my room. And I don't know how much
2 time goes by, and then I remember Cortez coming in, and
3 he started changing his clothes.

4 Q. What was he wearing when he came in?

5 A. Wearing -- pretty much when we were off duty, we
6 were all wearing ACU bottoms -- they're always on -- our
7 tan boots, and our regular T-shirt.

8 Q. Okay. When you go out on patrols, you put on
9 helmets and flak vests and everything else?

10 A. Yes.

11 Q. All right.

12 MS. FORD: Judge, can I approach the
13 witness?

14 THE COURT: You may.

15 Q. Jesse, I'm going to show you what's been
16 marked -- this is United States Exhibit 22. This is
17 United States Exhibit 22 -- oh, it's 22A and B. Can you
18 take a look at those? They're just to orient the jury.

19 Are these the kind of pants you're talking about?

20 A. Yes, ma'am.

21 Q. All right. And this is the kind of T-shirt, the
22 standard issue Army T-shirt --

23 A. Yes, ma'am.

24 Q. -- that you-all have?

25 MS. FORD: Judge, I'd move to admit these.

1 MR. WENDELSDORF: No objection.

2 THE COURT: Motion's granted.

3 (Government Exhibits 22A and 22B admitted in
4 evidence.)

5 Q. So when you're at the TCP, when you're on patrol,
6 you wear a helmet, flak vest, what I think you-all refer
7 to as full battle rattle?

8 A. Yes, ma'am.

9 Q. All right. But when you-all are hanging out
10 playing cards at the TCP, you're in boots, your regular
11 Army pants, and just T-shirt?

12 A. Yes, ma'am.

13 Q. Okay. And you said that Cortez came in and
14 started changing clothes?

15 A. Yes, ma'am.

16 Q. And Barker, as well?

17 A. Yes, ma'am.

18 Q. All right. And what were they changing into?

19 A. They were changing into what we call a ninja
20 suit. It's silk weight underwear.

21 Q. All right. And is that also standard issue?

22 A. Yes, ma'am.

23 Q. All right. You're wearing a white long-sleeve
24 thermal shirt today. What are the -- these black silk
25 weights that you get, are they basically the same thing,

1 kind of a lightweight long underwear?

2 A. They're basically the same thing, yes.

3 Q. Okay. And you get those because I guess it
4 sometimes gets cold at night --

5 A. Yes, ma'am.

6 Q. -- in Iraq? All right. So it's basically kind
7 of a silky long underwear, isn't it?

8 A. Yes, ma'am.

9 Q. All right.

10 MS. FORD: Judge, may I approach again?

11 THE COURT: You may.

12 Q. I'm going to show you what's been marked United
13 States Exhibit 21A and B. I want you to open those up
14 and tell me if you recognize them. Do you recognize
15 those?

16 A. Yes, ma'am.

17 Q. What do you recognize those to be?

18 A. The silk weight underwear.

19 Q. All right. Just standard issue?

20 A. Yes, ma'am.

21 Q. When you went to Iraq, they were given to you,
22 weren't they?

23 A. Yes, ma'am.

24 Q. Okay. Every soldier gets them?

25 A. Yes, ma'am.

1 Q. All right. And Barker and Cortez start changing
2 into -- you described them as a ninja suit?

3 A. Yes, ma'am.

4 Q. Okay. And then what happened?

5 A. I don't know if it was myself or somebody asked,
6 you know, where we were going or what we were doing.
7 And Cortez says, "Oh, we're not going far. We're just
8 going behind the TCP."

9 And then so I start putting on my full battle
10 rattle; the IBA, my helmet, and my regular weapon. And
11 as I'm putting it on, he says, "No, you don't need that.
12 You know, just leave that here." So I just grab an
13 M-14.

14 Q. Cortez told you you didn't need your helmet or
15 your flak vest?

16 A. Yes, ma'am.

17 Q. All right. And you were wearing the T-shirt and
18 the ACU pants --

19 A. Yes, ma'am.

20 Q. -- and your boots?

21 A. Yes, ma'am.

22 Q. All right. You didn't change into a ninja suit?

23 A. No.

24 Q. All right. And what about the defendant? What's
25 Steven Green doing?

1 A. I don't really remember what he was doing at that
2 time. I just remember Cortez and Barker.

3 Q. Came in and started changing into the black
4 suits?

5 A. Yes, ma'am.

6 Q. Okay. Do you know what a balaclava is?

7 A. Yes, ma'am.

8 Q. Okay. What about -- did Barker and Cortez put on
9 a balaclava, as well?

10 A. Yes, ma'am.

11 Q. All right. I'm going to show you what's been
12 marked United States Exhibit 23. Do you recognize that?

13 A. Yes, ma'am.

14 Q. And what do you recognize that to be?

15 A. The balaclava, Army issued.

16 MS. FORD: Judge, move to admit.

17 THE COURT: Motion's granted.

18 (Government Exhibit 23 admitted in evidence.)

19 THE COURT: Will you introduce the other
20 one, the ninja, too?

21 MS. FORD: Yes.

22 THE COURT: Motion's granted for that.

23 MS. FORD: Thank you, Your Honor.

24 (Government Exhibits 21A and 21B admitted in
25 evidence.)

1 Q. So Specialist Cortez and Specialist Barker -- can
2 you tell the members of the jury what a balaclava is?

3 A. It's just cold weather gear just to put over your
4 head to stay warm and stuff like that.

5 Q. Okay. Kind of like a ski mask, isn't it?

6 A. Yes, basically.

7 Q. It's got an opening for your face?

8 A. Yes.

9 Q. And completely covers your head?

10 A. Yes.

11 Q. Okay. But you also can -- you could roll it down
12 like a turtleneck, or you can do it up like a hat, can't
13 you?

14 A. Yeah.

15 Q. You can do a couple things with it?

16 A. Yes.

17 Q. But how did Barker and Cortez put these on?

18 A. Just regular over their entire face and head.

19 Q. Okay. So they just -- they have the little
20 opening for their face?

21 A. Yeah.

22 Q. All right. But otherwise their heads are
23 completely covered?

24 A. Yes, ma'am.

25 Q. And they were wearing the black ninja suits?

1 A. Yes, ma'am.

2 Q. Okay. So you started to pick up -- put on your
3 battle rattle and pick up -- I mean, basically get ready
4 to go out on a patrol, I guess?

5 A. Yes, ma'am.

6 Q. All right. And Cortez told you you weren't going
7 to need your gear; is that right?

8 A. Right.

9 Q. Okay. What happened after that?

10 A. After they got finished changing and everything,
11 we were kind of just getting ready to go. I grabbed an
12 M-14 that was just right beside my cot. As we were
13 getting ready to leave, Cortez turns to PFC Howard and
14 hands him the ICOM radio, which is just kind of like a
15 walkie-talkie. And Cortez had one, and he gave one to
16 Howard.

17 Q. All right. Did you -- did they have any other
18 conversation?

19 A. I didn't hear what he was saying. He was talking
20 to him and --

21 Q. When you say "he was talking to him"?

22 A. Cortez was talking to Howard.

23 Q. Okay. Cortez is talking to Barker, but you
24 couldn't hear what they were saying?

25 A. Cortez was talking to Howard.

1 Q. I'm sorry. I misspoke. Cortez was talking to
2 Howard?

3 A. Yes.

4 Q. All right.

5 A. And I didn't really hear what the content of the
6 conversation was about.

7 Q. All right. But Cortez handed Howard the ICOM
8 radio?

9 A. Yes, ma'am.

10 Q. All right. And I think you just said the ICOM is
11 like a walkie-talkie?

12 A. Yes, ma'am.

13 Q. That's how you-all communicate with each other?

14 A. Yes.

15 Q. All right. Tell the jury a little bit -- you
16 said you grabbed an M-14. That was not a weapon that
17 was specifically assigned to you?

18 A. No.

19 Q. All right. Tell the jurors a little bit about an
20 M-14.

21 A. An M-14 is basically just a long-range sniper
22 rifle, uses 762 rounds. And the rounds are bigger than
23 an M-4, our standard issue weapon. And it's just a
24 long-range weapon.

25 Q. Okay. The M-4 that's the standard issue weapon

1 that you-all got is, I guess, an automatic weapon?

2 A. It has -- it has a selector switch for
3 semi-automatic and three-round burst.

4 Q. Okay. So there's semi-automatic or three-round
5 burst?

6 A. Yes.

7 Q. Okay. And that was standard, every soldier got
8 one of those?

9 A. Yes, ma'am.

10 Q. All right. And then squad -- would a squad get
11 an M-14?

12 A. Yes. Every squad would have sometimes one or two
13 M-14s.

14 Q. All right. What about shotguns?

15 A. And same with that.

16 Q. Okay. One or two shotguns for each squad?

17 A. Yes, ma'am.

18 Q. Okay. And you could use those when you needed
19 to?

20 A. Yes.

21 Q. All right. Why would you take an M-14?

22 A. I don't really know.

23 Q. You just picked up an M-14?

24 A. Yes, ma'am.

25 MS. FORD: Judge, may I approach?

1 THE COURT: You may.

2 Q. I'm going to show you what's been marked as
3 United States Exhibit 26. Do you recognize that?

4 A. Yes.

5 Q. What do you recognize that to be?

6 A. M-14.

7 Q. Okay. Move to -- is this similar to the weapon
8 that you picked up and took with you from the TCP 2 on
9 March the 12th?

10 A. Very similar.

11 Q. All right.

12 MS. FORD: Judge, I move to admit.

13 MR. WENDELSDORF: I have no objection but
14 would like to approach.

15 THE COURT: You may.

16 (Government Exhibit 26 admitted in evidence.)

17 (Bench conference on the record outside the hearing
18 of the jury.)

19 MR. WENDELSDORF: Judge, this clothing,
20 these weapons, the cutters you're getting ready to
21 introduce, they're all being introduced sort of like
22 photographs. They're illustrative only.

23 MS. FORD: Yes.

24 MR. WENDELSDORF: It's unclear, I think, to
25 the jury. Especially with the clothing, there may be

1 some confusion that this is the actual clothing that was
2 worn.

3 THE COURT: Why don't you point that out?

4 MS. FORD: I have no problem telling them
5 that. It's just to orient so they're familiar with it.

6 MR. WENDELSDORF: I understand. We just
7 thought --

8 MS. FORD: How do you want me to do it?

9 MR. WENDELSDORF: A stipulation that all
10 these exhibits are not -- there's no -- well, none of
11 these exhibits were actually used in the commission of
12 the crime. These are merely to show you what the
13 witness is talking about.

14 MS. FORD: Yeah.

15 MR. WENDELSDORF: So that there's no
16 confusion on the part of the jury.

17 MS. FORD: That's fine.

18 MR. WENDELSDORF: Because later there's
19 going to be testimony that all the clothing was burned,
20 you know.

21 MS. FORD: Yeah. I don't want them to be
22 confused about that.

23 THE COURT: Do you want me to tell them?

24 MR. WENDELSDORF: Well, I think she can do
25 that. That's fine. I just want to be clear.

1 MS. FORD: Do you want me to do it right
2 now?

3 MR. WENDELSDORF: As to the clothing, you
4 can wait and do that later.

5 MS. FORD: I think I did.

6 THE COURT: She did.

7 MR. WENDELSDORF: Okay. See, I wasn't
8 listening.

9 MS. FORD: And the judge helped me on that.

10 MR. WENDELSDORF: He did?

11 MS. FORD: Yes.

12 (End of bench conference.)

13 MS. FORD: The parties are stipulating,
14 you-all should understand, that these items of clothing
15 and the firearms are not intended to -- they are for
16 illustrative or demonstrative purposes only so that you
17 understand what the witness is talking about when he
18 describes ninja suits or the specific firearms.

19 You should not -- these are not intended nor
20 are they necessarily specific firearms or clothing items
21 that were used by any of the -- by the defendant in this
22 case or any of the individuals who will be testifying.

23 MR. WENDELSDORF: It's not just not
24 necessarily. They weren't.

25 MS. FORD: They weren't. They weren't.

1 They're just demonstrative.

2 MR. WENDELSDORF: Thank you, Judge.

3 BY MS. FORD:

4 Q. Okay. PFC Spielman, then you -- I don't want to
5 carry this firearm around. So you took -- the M-14 is
6 quite heavy, by the way, isn't it?

7 A. Yes, ma'am.

8 Q. All right. So you picked up what was basically a
9 sniper rifle. Barker and Cortez have changed into ninja
10 suits and covered their heads. What happened next?

11 A. After Cortez gave the ICOM to Howard, we started
12 to proceed out the back of the TCP.

13 Q. Okay. And was the defendant with you?

14 A. Yes, ma'am.

15 Q. All right. And what was he wearing?

16 A. The same ninja suit.

17 Q. Okay. And what about -- was he wearing -- was
18 his face covered?

19 A. I don't remember specifically what his face was
20 covered with, but it was covered with something.

21 Q. All right. So his face was covered, as well?

22 A. Yes.

23 Q. All right. Not necessarily with the balaclava,
24 but you just don't recall?

25 A. Correct.

1 Q. All right. And you -- so you left the TCP?

2 A. Yes.

3 Q. All right. And which direction did you go?

4 A. I don't know the cardinal direction, but we went
5 out the back of the TCP through the concertina wire.
6 There's a break in the fence.

7 Q. Okay. And what happened next?

8 A. We went back there. And in the back of the TCP
9 with the concertina wire, after that is basically just a
10 big field, and it's blocked in by walls and another
11 chain link fence. We went to that chain link fence in
12 the back, and then Barker, I believe, started cutting
13 through it.

14 Q. All right. And you proceeded out the back of the
15 TCP and to the chain link fence. Are you -- are you in
16 formation?

17 A. Yeah, just regular formation. I mean, staggered
18 formation.

19 Q. Just like a regular patrol?

20 A. Yes.

21 Q. All right. And where were you in the formation?

22 A. I was in the rear.

23 Q. All right.

24 A. The last man.

25 Q. And what about the other individuals with you?

1 You're carrying an M-14. Are the other individuals
2 carrying firearms?

3 A. I believe so, yes.

4 Q. Do you remember what they were carrying?

5 A. M-4s.

6 Q. M-4s. Okay. Do you remember if anyone was
7 carrying a shotgun?

8 A. Not specifically, no.

9 Q. You don't remember?

10 A. No.

11 Q. All right. You said you got to the fence, and
12 what happened then?

13 A. When we got to the fence, I was the last man. So
14 I turned around and pulled security for back where we
15 just came from basically, and somebody started cutting
16 through the fence, which I believe was Barker.

17 Q. So you already had gone through -- after leaving
18 the TCP, you had gone through one fence already?

19 A. Yes.

20 Q. But there was already a gap or a cut in the first
21 fence?

22 A. The first one we went through was concertina
23 wire.

24 Q. Okay.

25 A. And then the first fence we got to we had to cut

1 through.

2 Q. All right. And what did you use to cut through
3 the fence?

4 A. Barker used -- he has a Gerber multi-tool knife,
5 and it has wire cutters on it. And he used it to cut
6 through the fence.

7 Q. Okay.

8 MS. FORD: Your Honor, may I approach?

9 THE COURT: You may.

10 Q. I'm going to show you what's been marked United
11 States Exhibit 24 and have you take a look at that.
12 Does that look familiar?

13 A. Yes, ma'am.

14 Q. What is that? What is that?

15 A. It's a regular Gerber multi-tool knife.

16 Q. Okay. Are those also issued to soldiers when you
17 join the Army, or do you buy them?

18 A. Most of the time, we buy them, yeah.

19 Q. Did you have one?

20 A. Yes, ma'am.

21 Q. All right. And Specialist Barker had one?

22 A. Yes, ma'am.

23 Q. Okay. Does this look like the same type of
24 Gerber multi-tool that Barker would have used on March
25 the 12th to cut the fence?

1 A. Yes, ma'am.

2 Q. Okay.

3 MS. FORD: Move to admit, Your Honor.

4 MR. WENDELSDORF: Same stipulation, though
5 no objection.

6 MS. FORD: Same stipulation.

7 THE COURT: Motion's granted.

8 (Government Exhibit 24 admitted in evidence.)

9 Q. So you said you pulled up -- you were at the
10 rear, and when you say that you turned around to pull
11 security, what does that mean?

12 A. Just watch the area for enemy combatants, people,
13 you know, civilians, stuff like that walking around,
14 anything like that.

15 Q. All right. Which is what you would do on a
16 standard patrol, isn't it, if you're bringing up the
17 rear of the formation?

18 A. Yes, ma'am.

19 Q. All right. You're focused towards the back.
20 You're looking for enemy or things coming from the rear?

21 A. Yes, ma'am.

22 Q. All right. And at this point, do you recall
23 about what time of day it was?

24 A. I don't really know. Probably around noon maybe.

25 Q. Okay. Not all that long after your card game had

1 ended?

2 A. Correct.

3 Q. Okay. And so basically it's in the middle of the
4 day?

5 A. Right.

6 Q. All right. And what kind of patrol do you think
7 you're going on?

8 A. Well, I don't really think we're going on a
9 patrol.

10 Q. Because this isn't -- is this something that
11 you've ever -- I mean, have you ever gone out with other
12 soldiers who were wearing these ninja suits?

13 A. No.

14 Q. All right.

15 A. This was a first. We've been on patrols before
16 where we didn't necessarily have all of our full battle
17 rattle on, but for ninja suits and dressing up like
18 that, that was a first for me.

19 Q. Okay. So tell the jury what's in your mind at
20 this point. I mean, what do you think is -- what are
21 you doing?

22 A. When I first leave, I know we're going to do
23 something. I mean, it's happened before that we've gone
24 and roughed people up and stuff like that before. It's
25 not completely uncommon. We don't do it all the time,

1 but it has happened. And I think we're going to maybe a
2 residence or somebody's place to rough them up, steal,
3 burn something. Anything could happen.

4 Q. Okay. So you're thinking that whatever you're
5 going to do is not -- this is not an authorized patrol?

6 A. Correct.

7 Q. All right.

8 MR. WENDELSDORF: May we approach, Your
9 Honor?

10 THE COURT: Yes.

11 (Bench conference on the record outside the hearing
12 of the jury.)

13 MR. WENDELSDORF: Judge, unless they
14 stipulate that Private Green was not involved in any of
15 these prior occasions, then I move for a mistrial, and I
16 move that the panel be discharged. This is 404(b)
17 evidence of prior misconduct. We were never given
18 notice of it. It's clearly prejudicial unless there's a
19 stipulation that Private Green had nothing to do with
20 it.

21 MS. FORD: I don't have any problem -- I'm
22 only interested in what is going on in this witness's
23 head when they leave, so.

24 MR. WENDELSDORF: It's still evidence of
25 misconduct.

1 MS. FORD: The incident that he's referring
2 to, he would testify Green wasn't there.

3 MR. WENDELSDORF: Well ...

4 THE COURT: Can you just say the parties
5 stipulate that any prior incidents discussed, there is
6 no evidence that --

7 MR. WENDELSDORF: I'd rather be clearer than
8 that. I think we just stipulate that the prior incident
9 of roughing people up that he's referring to, Private
10 Green had no role in.

11 MS. FORD: I'm actually more comfortable
12 with that --

13 THE COURT: All right.

14 MS. FORD: -- because there's certainly --

15 MR. WENDELSDORF: Well, okay. The prior
16 incidents that he's talking about, multiple incidents,
17 that Private Green had no role in those. I think that
18 would cure the damage.

19 MS. FORD: I can clarify, I think, with this
20 witness that he's referring to an episode shortly before
21 March the 12th at a time -- and Green was not present at
22 that time.

23 MR. WENDELSDORF: Well ...

24 THE COURT: Why don't we just do this,
25 rather than run the risk of him saying something

1 different --

2 MR. WENDELSDORF: He said multiple. So
3 you're going to confirm he's talking about one, you're
4 going to confirm that it took place before this incident
5 and that Green was not involved.

6 I mean, obviously, he's not been schooled.
7 I'm just worried about asking him another open-ended
8 question and having him come out with something like,
9 "Oh, yeah, Green was there." And then I'm in deeper
10 than I am now. I mean, in a capital case, you've got to
11 kind of be careful about 404(b).

12 THE COURT: How about if I say the parties
13 have stipulated that the prior incidents that
14 Mr. Spielman just discussed that defendant Green had no
15 role in those incidents at all?

16 MS. FORD: Yeah.

17 THE COURT: Okay?

18 MR. WENDELSDORF: Incidents multiple, he
19 said.

20 MS. FORD: He said --

21 MR. WENDELSDORF: That's fine.

22 THE COURT: I'll do that.

23 MS. FORD: Okay. Are you going to do that
24 one?

25 THE COURT: I will.

1 MR. WENDELSDORF: Okay.

2 MS. FORD: Okay. Thank you, Judge.

3 (End of bench conference.)

4 THE COURT: Just a second. Ladies and
5 gentlemen, during the opening instructions to you, I
6 told you you may receive some instructions during the
7 course of the trial and also from time to time the
8 parties enter into stipulations, which are agreements
9 that the parties have made. They just told you one a
10 moment ago.

11 Let me tell you this other stipulation that
12 the parties have agreed to. The parties have stipulated
13 that the prior incidents of roughing up that the witness
14 just discussed, that defendant Green had no role nor was
15 he a participant in those incidents.

16 MS. FORD: Thank you, Judge.

17 BY MS. FORD:

18 Q. So Specialist Barker used a Gerber tool to cut
19 through a fence. I think we've gotten to that point.
20 Any idea how long that took?

21 A. It wasn't long. Maybe a minute.

22 Q. Okay. And it's the four of you; Specialist
23 Cortez, Barker, Green, and yourself?

24 A. Yes, ma'am.

25 Q. Okay. And do you recall -- you said you were at

1 the back of the formation. Do you recall where the
2 other individuals were?

3 A. No.

4 Q. All right. Once you get cut through the fence,
5 what do you do next?

6 A. We get through one side of the fence, and we all
7 climb through. On the other side of the property, I
8 know that side of the property is abandoned, and then
9 there's a --

10 Q. Slow down. I'm having trouble hearing you.

11 A. That side of the property is abandoned, and I
12 knew where we were at that point. And then there's a
13 sidewalk, and we followed a sidewalk the entire way back
14 to the rear of that property. And there was another
15 fence back there, same chain link fence, but that one
16 had already been cut. And we went through that fence,
17 too.

18 Q. All right. So I had them backwards. It was the
19 second fence that already had a gap in it?

20 A. Yes.

21 Q. All right. So you didn't have to cut the second
22 fence?

23 A. Correct.

24 Q. All right. And what happens after you go through
25 the gap in the second fence?

1 A. We all go through, and then we start, you know,
2 back in formation. And we come up to -- we keep walking
3 through this field until we basically get to a
4 residence.

5 Q. To a residence?

6 A. Yes.

7 Q. All right. Was it a residence that you had been
8 to before?

9 A. No.

10 Q. You had not been there on patrol?

11 A. No.

12 Q. All right. Not familiar with the residence at
13 all?

14 A. No.

15 Q. All right.

16 MS. FORD: Judge, may I approach the
17 witness?

18 THE COURT: You may.

19 Q. I'm going to back you up just a tiny bit here. I
20 want to show you some photographs, and I just want you
21 to flip through them and see if you recognize them.

22 A. Uh-huh.

23 Q. And don't say what they are right now, and then
24 we'll talk about them individually. And if there's one
25 that you don't recognize, you know, just point it out to

1 me.

2 A. Just flip through it?

3 Q. Uh-huh. Just flip through them until I tell you
4 to stop. There's a fair number of them.

5 Okay. That's good. Let's stop there. Okay.

6 Mr. Spielman, I just showed you a group of photographs
7 starting with United States Exhibits 5A, 5B, 5D, 5E, F
8 through -- F through Q, and Exhibits 6A, 6B, C, D, and
9 E.

10 The first group that you looked at, Exhibits 5A
11 through 5Q, what did you recognize those to be? I'll
12 bring them back up so you can look at them. Just
13 generally.

14 A. Most of them were the TCP and the route that we
15 took to the residence.

16 Q. Okay. The first set that I mentioned, the
17 Exhibit 5 group, are photographs of TCP 2; and the
18 second set, which are the Exhibits 6, were part of the
19 route that you took to -- the path you took from TCP 2
20 to the house?

21 A. Yes, ma'am.

22 Q. All right.

23 MS. FORD: Judge, I would move to admit 5A
24 and B and then D through -- I'm not putting that one in.

25 MR. WENDELSDORF: No objection.

1 THE COURT: Motion's granted.

2 MS. FORD: Thank you.

3 (Government Exhibits 5A, 5B, and 5D through 5Q
4 admitted in evidence.)

5 MS. FORD: Mary, let's pull up United States
6 Exhibit 5A.

7 Q. Mr. Spielman, can you tell the members of the
8 jury what that is?

9 A. That's the back burn pit at TCP 2.

10 Q. All right. And you had a similar burn -- this is
11 the back side of the building?

12 A. Yes, ma'am.

13 Q. You had a similar burn pit on the front of the
14 building?

15 A. Yes.

16 Q. All right. Let's take a look at 5B. Can you
17 tell the jury what that is?

18 A. That is sometime after March 12th on Route
19 Sportster at TCP 2 looking at TCP 1.

20 Q. How do you know it's after March the 12th?

21 A. This picture has filled HESCOs and jersey
22 barriers, and we didn't have any of that when we were
23 here.

24 Q. Okay. The jersey barriers are these structures?

25 A. Yes, the concrete structures right there.

1 Q. The concrete structures with kind of the warning?

2 A. Yes, to slow traffic.

3 Q. To slow traffic down. All right. And this
4 vehicle over here on the left side of the road, can you
5 tell us what that is?

6 A. That's a Humvee.

7 Q. All right. That would be the kind of Humvee
8 where you'd pull guard duty?

9 A. Yes, ma'am.

10 Q. All right. And is this an individual sitting in
11 the top of the truck?

12 A. Yes, ma'am, pulling guard.

13 Q. Pulling the guard duty?

14 A. Yes, ma'am.

15 Q. And can you -- you can do the same thing on your
16 own screen. Can you tell us where TCP 2 would be in
17 this photograph?

18 A. It would be to the left side of the screen.

19 Q. All right. And is this Route Sportster --

20 A. Yes, ma'am.

21 Q. -- right here going -- all right. Let's look at
22 5D.

23 A. This is another picture of the burn pit. It's
24 the back of the TCP 2.

25 Q. All right. And when you were talking about

1 concertina wire before, all of this circular wire that's
2 over on the right-hand side, is that the concertina
3 wire?

4 A. Yes, ma'am.

5 Q. All right. And what is this back here?

6 A. Empty HESCO baskets.

7 Q. Okay. Did you have HESCO baskets? Had they been
8 delivered by March the 12th when you were there?

9 A. Yes, they had been delivered.

10 Q. But they weren't filled?

11 A. Correct.

12 Q. All right.

13 MS. FORD: Let's go to the next one, Mary.

14 Q. All right. Can you tell the jury what that is?

15 A. That is at TCP 2 looking into what we call the
16 NCO room where I stayed.

17 Q. Okay. And what's that right there?

18 A. That's a cot right there, and that's
19 approximately where I was sleeping.

20 Q. Okay. That was where your cot was?

21 A. Yes, ma'am.

22 Q. Okay. And you said that Specialist Barker and
23 Cortez also had cots in there?

24 A. Yes, ma'am.

25 Q. And along with Specialist [sic] Green?

1 A. Yes.

2 Q. All right. Let's look at the next photo. And
3 tell us what that is.

4 A. That's a picture -- just another picture in the
5 same room that we were just looking at.

6 Q. Okay. So that's still -- that basically is the
7 living area?

8 A. Yes, ma'am.

9 Q. All right. This appears to have been taken
10 sometime after March the 12th. There are no cots in
11 there.

12 A. Correct.

13 Q. All right. But otherwise you guys would have
14 kept your cots in there and your assault packs?

15 A. Yes, ma'am.

16 Q. All right. Let's go to the next photo. What's
17 this?

18 A. That's down at TCP 2.

19 Q. Okay.

20 A. Oh, okay. That's just an inverted picture from
21 the last one. It was in the NCO room looking out.

22 Q. All right. So now this is inside the room.
23 Would this be your cot -- where your cot was located?

24 A. Yes, ma'am.

25 Q. All right. And so now we're inside the NCO

1 looking out, and is this the other room where Howard and
2 Scheller were staying?

3 A. No. They would have been directly to the left
4 looking at this picture. That's outside, and we didn't
5 have cots outside.

6 Q. Okay. So that's looking -- that's a door to the
7 outside?

8 A. Correct.

9 Q. Okay. And that cot that we see right there, that
10 would not have been there when you were there on March
11 the 12th?

12 A. Correct.

13 Q. All right. Let's go to the next one. All right.
14 What's that in this photograph?

15 A. That's the same picture. The door right there
16 would be to the NCO room, and the window there to the
17 right would be to the other room where the other
18 soldiers stayed.

19 Q. So that photograph that we just looked at, we
20 were looking out of this doorway?

21 A. Yes.

22 Q. All right. And we could just see the edge of
23 this cot?

24 A. Yes.

25 Q. All right. So, again, now this is -- this is

1 outside the building?

2 A. Yes.

3 Q. And whoever was there at the time this photograph
4 was taken, they did put cots outside with their packs
5 and their helmets?

6 A. Yes, ma'am.

7 Q. All right. Let's look at the next one.

8 MS. FORD: You're going to be so unhappy
9 when you get this binder back.

10 Q. What's this?

11 A. This is inside the other room where all the
12 soldiers stayed, and it's looking outside.

13 Q. So this is the second room. This is -- when you
14 say the other soldiers, you're talking about this is
15 where Howard and Scheller were sleeping?

16 A. Yes, ma'am.

17 Q. All right. Let's look at the next one. What's
18 this?

19 A. That's outside of the TCP, just the back,
20 backyard area.

21 Q. All right. Can you show the -- does this photo
22 help you show the jury after the card game when you
23 and -- when you came out to get chips or then put them
24 in the burn bit and you saw -- well, let me stop for a
25 minute.

1 When you were playing cards, can you show us on
2 here -- does this help you describe for the jury where
3 the card game was?

4 A. Yes. It would be on the other side of the HESCOs
5 right there in the grass area.

6 Q. Okay. So these are the HESCO baskets right here?

7 A. Yes, ma'am.

8 Q. All right. And you're saying you were playing on
9 the other side of those?

10 A. Yes, ma'am.

11 Q. All right. And when you came back out to throw
12 away your garbage in the burn pit, were Green and Barker
13 somewhere in the same vicinity?

14 A. Yes, ma'am.

15 Q. Okay. Can you kind of point for yourself on your
16 own screen where they would have been?

17 A. Right there about, approximately.

18 Q. Okay. Again, on the other side of the HESCO
19 baskets?

20 A. Yes, ma'am.

21 Q. All right. Let's look at the next photo. Tell
22 the jury what this is.

23 A. This is standing on Route Sportster looking at
24 the TCP 2 from the front.

25 Q. All right. This is the Humvee where you-all

1 would pull the guard duty?

2 A. Well, that's an Iraqi Humvee, but that was about
3 where our Humvees would be, too.

4 Q. That's where you would locate yours?

5 A. Yes.

6 Q. All right. That just happens to be an Iraqi
7 vehicle in this photograph?

8 A. Correct.

9 Q. All right. And what is this in the center of the
10 photograph?

11 A. That's the door to the TCP 2.

12 Q. All right. And when you say -- is that the
13 door -- is that actually the door into the building?

14 A. Not into the building, but into the wall.

15 Q. All right. So this structure kind of right here
16 is a wall that just runs parallel to Route Sportster?

17 A. Yes, ma'am.

18 Q. All right. And the building of TCP 2 is actually
19 located behind that wall?

20 A. Yes, ma'am.

21 Q. All right. And are these HESCOs that have been
22 delivered over there on the left side?

23 A. Yes, ma'am.

24 Q. All right. And they don't look like they've been
25 filled.

1 A. No.

2 Q. All right. Let's look at the next one. This is
3 basically the same thing but a close-up --

4 A. Yes, ma'am.

5 Q. -- closer shot? So the door into the wall?

6 A. Yes.

7 Q. And then the actual structure where you-all
8 stayed is behind that wall?

9 A. Yes, ma'am.

10 Q. All right. Let's look at the next one. This is
11 the door into the -- through the wall?

12 A. Yes.

13 Q. Okay. And you see that opening back there?

14 A. Yes.

15 Q. What's that?

16 A. That is going into the TCP 2.

17 Q. All right.

18 A. The building.

19 Q. That's actually the door into the TCP?

20 A. Yes.

21 Q. Okay. This building, was it an abandoned
22 structure?

23 A. Yes. It had been abandoned for some time.

24 Q. Did it appear to you -- what kind of building did
25 it appear to you to be?

1 A. It looked like a residential building.

2 Q. A residential building?

3 A. Yes, ma'am.

4 Q. A home?

5 A. Yes.

6 Q. All right. Let's look at the next one. And this
7 is, again, a closer shot of what we just looked at.
8 This is just walking into the front door of the
9 building, isn't it?

10 A. Yes.

11 Q. All right. Let's look at the next one. Tell us
12 what this is.

13 A. That's in the same courtyard as the last picture.
14 It's just off to the left side looking down the canal
15 road.

16 Q. All right. Can you show us where the canal road
17 is?

18 A. That right there.

19 Q. All right. And where would Route Sportster be in
20 this photograph?

21 A. Directly behind the person taking the picture.

22 Q. Okay. So back this way?

23 A. Yes.

24 Q. All right. And where -- which direction did you
25 go -- the house that you went to, the residence, what

1 direction is it in this photograph?

2 A. In this photograph, if you would follow that
3 canal road back there that I already marked a couple
4 hundred meters and then take a right, it would be down
5 one of those roads down there.

6 Q. Okay. So you would have gone all the way down
7 this road and then --

8 A. Yes.

9 Q. -- turned right?

10 A. Yes.

11 Q. All right. Let's look at the next one. And
12 where's this?

13 A. Just walking right inside the door of the TCP.

14 Q. All right. Do you know what this is?

15 A. No.

16 Q. No idea? Wasn't there when you were there on
17 March the 12th?

18 A. No, it wasn't.

19 Q. All right. Let's look at the next one. And
20 what's this?

21 A. That's directly across from the NCO room. It's
22 just a little place where we had a map and some
23 batteries for the radios and some equipment.

24 Q. Is this probably what would have been the living
25 room when it was actually a house?

1 A. That's fair to say, yeah.

2 Q. All right. And what's this structure?

3 A. The table?

4 Q. Uh-huh.

5 A. That's just a table that we had where we put our
6 equipment.

7 Q. All right. And these are MRE boxes?

8 A. Yes, ma'am.

9 Q. All right. Would you set up the same kind of
10 similar tables when you'd play cards?

11 A. Yes. We just didn't have the wood. We had about
12 four or six MRE boxes stacked on top of each other just
13 for a table area.

14 Q. All right. Let's go to the next one.

15 MS. KENNEDY: 6?

16 MS. FORD: 6A.

17 Q. Can you tell us what that is?

18 A. That structure right here on the left side of the
19 picture --

20 Q. Why don't you draw it?

21 A. Right there. That was one of the outside
22 structures at the residence of the family.

23 Q. All right. This is close to the house?

24 A. Correct.

25 Q. All right. It's like an outbuilding or shed?

1 A. Yeah, kind of like a little shack outside.

2 Q. All right. And can you tell us in this
3 photograph from which -- which direction would TCP 2 be
4 in?

5 A. It would probably be over somewhere in that area.

6 Q. All right. About how far away from the house was
7 TCP 2?

8 A. Maybe three to four hundred meters.

9 Q. Okay. How long did it take you-all to get there?

10 A. Just a few minutes.

11 Q. Were you walking or jogging?

12 A. It wasn't like a jog, but it was like what we
13 call an airborne shuffle. Just like a --

14 Q. A what shuffle?

15 A. In between a walk and a jog.

16 Q. Okay.

17 A. You know, it's just a faster patrol.

18 Q. And you called it a something shuffle.

19 A. Yeah. Back at the 101st, we call it the airborne
20 shuffle.

21 Q. Airborne shuffle?

22 A. Yeah.

23 Q. The airborne shuffle. All right. And can you
24 tell -- I mean, how did you get from the TCP to this
25 point?

1 A. You mean what did we do?

2 Q. I mean, did you -- did you come up this path?

3 A. Oh, yeah. After we got through the second fence
4 that was already cut, we came up through this path right
5 here and in towards the house.

6 Q. All right. So you'd be going in this direction?

7 A. Yes, ma'am.

8 Q. All right. Let's look at the next one. All
9 right. Can you tell us where this is?

10 A. That appears to be the same path right after
11 cutting the fence.

12 Q. Okay. Can you draw on the path for us?

13 A. (Witness complying.)

14 Q. All right. And where's TCP 2 in this photograph?

15 A. I can't really -- I can't really say where it's
16 at. I can't see it.

17 Q. Well, which direction would it be in? Just the
18 general location.

19 A. I believe over in that area.

20 Q. Okay. And that would make the house up here
21 somewhere?

22 A. Yes, ma'am.

23 Q. All right. Let's look at the next one. Is this
24 6C? All right. And same path?

25 A. Yes.

1 Q. All right. After you came through the cut in the
2 second fence, did you proceed through a field like this
3 in this photograph, or was -- how did you get -- were
4 you on a path or a road?

5 A. I just remember a path leading to the house. I
6 don't remember a field.

7 Q. Okay. So you remember walking on a path all the
8 way?

9 A. Yes, ma'am.

10 Q. All right. And let's look at 6D. Okay. And
11 what's this?

12 A. That's the second fence where it was already cut.

13 Q. All right. So this is the second fence you came
14 to. We basically have worked backwards from the house
15 back. But you went through the cut in this fence and
16 then proceeded along the path that we just looked at
17 until you got to the house?

18 A. Yes, ma'am.

19 Q. All right.

20 MS. FORD: Mary, you can take that down.
21 Thanks.

22 Q. When you arrive at the house, you're still
23 bringing up the rear?

24 A. Yes, ma'am.

25 Q. All right. And what do you do when you arrive at

1 the house?

2 THE COURT: Let's approach the bench a
3 second.

4 (Bench conference on the record outside the hearing
5 of the jury.)

6 THE COURT: I just want to see where we are.
7 How much longer?

8 MS. FORD: Oh, this would be a good place to
9 stop.

10 THE COURT: I figure he's probably going to
11 be a --

12 MS. FORD: Yes, a good place to stop.

13 THE COURT: I figure it might be a good
14 place to stop rather than stopping in the middle of --

15 MS. FORD: I agree. Thank you.

16 (End of bench conference.)

17 THE COURT: All right. Ladies and
18 gentlemen, we're going to take our -- this would be a
19 good place for us to stop at this time. We'll take our
20 break at this time. I've got 11:45, and we'll return at
21 12:45. Thank you.

22 (Jury left the courtroom at 11:45 a.m.)

23 THE COURT: Court will be in recess until
24 12:45.

25 (Recess at 11:45 a.m. until 12:51 p.m. Jury

1 present.)

2 THE COURT: Welcome back, ladies and
3 gentlemen. You may continue --

4 MS. FORD: Thank you, Your Honor.

5 THE COURT: -- Ms. Ford.

6 MS. FORD: Mary, would you pull up 6A for
7 me?

8 BY MS. FORD:

9 Q. Okay. Mr. Spielman, we were talking about March
10 the 12th of 2006, and we had gotten to the point, before
11 we broke for lunch, you had left TCP 2 on that day. Can
12 you tell the jury again who you left -- who you were
13 with, who you left TCP 2 with?

14 A. We left TCP 2 with Specialist Cortez, Specialist
15 Barker, PFC Green, and myself.

16 Q. All right. And we had gotten about up to this
17 point in United States 6A. This was the path
18 approaching the house; is that correct?

19 A. Yes, ma'am.

20 Q. All right. Why don't you tell the ladies and
21 gentlemen of the jury what happened when you reached
22 this point?

23 A. When we reached this point, we just kept going
24 into the house. I was rear security. I was, you know,
25 paying attention to the back and the sides and

1 everything, and I didn't see anybody outside. And then
2 we approached the house and went inside.

3 Q. Okay. And you said you were still in the rear of
4 the group?

5 A. Yes, ma'am.

6 Q. Okay. Do you have any idea who was in the front?

7 A. No, ma'am.

8 Q. All right. But the three men -- the three men
9 you were with were all in front of you?

10 A. Yes, ma'am.

11 Q. All right. You said you approached the house and
12 you entered the front door?

13 A. Yes, ma'am.

14 Q. All right. I'm going to show you some pictures
15 that have already been admitted into evidence.

16 MS. FORD: Mary, let's take a look at 9D.

17 Q. Mr. Spielman, do you recognize that?

18 A. Yes, ma'am.

19 Q. What is that?

20 A. That's the side of the house. That's the
21 direction that we approached the house.

22 Q. All right. That's the direction you came towards
23 the house from?

24 A. Yes, ma'am.

25 Q. All right. And can you draw for me or show me

1 where is the outbuilding or the shed?

2 A. What's that?

3 Q. Where was the little outbuilding?

4 A. You can just see the very edge of it right there.

5 Q. That's it right there. All right. So you
6 approached the house in this direction?

7 A. Yes, ma'am.

8 Q. And was there a vehicle parked in front of the
9 house when you approached?

10 A. Yes, ma'am. Right in this area.

11 Q. All right. There was a car parked there?

12 A. Yes, ma'am.

13 Q. All right. Do you remember what it looked like?

14 A. I just remember it being a little four-door car,
15 blue.

16 Q. All right. And you said you didn't see anybody
17 outside the house?

18 A. No, ma'am.

19 Q. All right. Let's take a look at 9E. Do you
20 recognize that?

21 A. Yes, ma'am.

22 Q. What is that?

23 A. That's the front door of the residence.

24 Q. All right. And you can -- you can see into the
25 residence there, can't you?

1 A. Yes, ma'am.

2 Q. What room are you looking into?

3 A. The living room.

4 Q. You said that you were the fourth individual to
5 enter the house that day. What did you do when you went
6 into the front door?

7 A. Just regular operating procedure, last man in
8 usually covers the front door, the entrance that you go
9 into. So I stayed in the front area.

10 Q. All right. And you were treating this like a
11 normal patrol?

12 A. Yes, ma'am.

13 Q. All right. And so the last man in typically
14 stays near the front door?

15 A. Yes, ma'am.

16 Q. All right. And what would be the purpose of
17 that?

18 A. Just to pull security. Anybody leaving or more
19 specifically coming into the house, somebody in the
20 squad would know so they just don't, you know, come out
21 of nowhere and get shot or something like that.

22 Q. All right. So at this point, are you looking
23 into the house or out of the house?

24 A. Looking into the house right there.

25 Q. All right. And can you tell us -- show us about

1 where you were standing?

2 A. This is the front foyer area. Just in this
3 general area.

4 Q. All right. So you're just standing there?

5 A. Yes.

6 Q. All right. Are you still carrying the M-14?

7 A. Yes, ma'am.

8 Q. All right. And what about the other three
9 individuals? Where is -- where are Barker and Cortez?

10 A. They proceeded into the house, and we did a quick
11 walk-through. Basically, you just get everybody in the
12 same room, go through the house, make sure you located
13 everybody so there's no surprises, and put them all in
14 one room. So they were doing that at that time.

15 Q. So they're -- I didn't hear the last part of what
16 you said.

17 A. Going through the house and just locating
18 everybody.

19 Q. Okay. And so that is also something that would
20 typically be done on a patrol?

21 A. Yes, ma'am.

22 Q. All right. And what about PFC Green? Do you
23 know where he is?

24 A. He's just doing the same thing. I don't know
25 where specifically.

1 Q. All right. So the other three in front of you
2 are basically clearing the house?

3 A. Yes, ma'am.

4 Q. All right. Let's take a look at 9F. Do you
5 recognize this to be -- what room is this in the house?

6 A. That's the living room in the corner.

7 Q. All right.

8 MS. FORD: Okay. Mary, could you take that
9 down?

10 Q. After you got into the front door and the other
11 individuals were clearing the house, what did you do
12 next?

13 A. When we first -- I stopped in the foyer area,
14 then I kind of walked around to the hallway, and I was
15 just, you know, watching what was going on, keeping an
16 eye on the front door and everything like that. And I
17 seen them putting the three individuals in the bedroom.

18 Q. Okay. And when you say "the three individuals,"
19 you said you hadn't seen anybody outside the home. Once
20 you got into the house, did you see some individuals,
21 other people?

22 A. Yes, ma'am.

23 Q. All right. Describe them for us.

24 A. I seen an older male, older female, and a younger
25 female.

1 Q. Okay. And by "younger female," about how old?

2 A. At the time, I would have guessed about 20.

3 Q. Okay. So you saw those three people, and what
4 were they doing?

5 A. They were just getting put into the bedroom.

6 Q. All right. And who was putting them into the
7 bedroom?

8 A. Cortez, Barker, and Green.

9 Q. All right. And what happened then?

10 A. I seen one of the -- the younger female get
11 pushed, separated from the older male and older female
12 and get separated from the little group and get pushed
13 into the living room.

14 Q. All right. And how was she separated from them,
15 from the other two?

16 A. Just taken, just -- you know, just corralled,
17 basically.

18 Q. Who took her?

19 A. I don't know specifically.

20 Q. All right. And were you still standing in the
21 front foyer?

22 A. Yeah. The area, yeah.

23 Q. All right. And what happened then?

24 A. The bedroom door shut. I believe it was Green
25 shut the door. And then I went back to the front foyer

1 area looking out again, just pulling security, stuff
2 like that. And then I heard several gunshots coming
3 from the bedroom.

4 Q. All right. And did you -- what did you do then?

5 A. It kind of took me by surprise, so I ran over to
6 the door. I started beating on the door, and the door
7 was locked. And just a few seconds went by, and then
8 Green kind of opened up the door, just cracked it open a
9 little bit. He said to me that -- you know, I asked
10 him, I was like, "Is everything all right? Is
11 everything fine?"

12 And he was like, "Yeah, everything's fine." And
13 he kind of opened the door the rest of the way, and I
14 seen the older female on the ground and the older male
15 in the corner on the ground, as well.

16 Q. All right. And what were you able to see?

17 A. It appeared like they were both dead. I seen
18 some shells on the ground. I seen a shotgun shell on
19 the ground. It didn't look like it was expended, it was
20 not fired, and I pointed that out. He picked it up.
21 And he had a shotgun I remember seeing at that time. He
22 put the shell back in the shotgun and kind of kept
23 looking around on the ground looking for something.

24 And at that point, I kind of backed up and seen
25 what the other individuals were doing. I looked in the

1 living room and --

2 Q. Let me stop you for just a minute. When you say
3 "he" was looking for a shotgun shell, who are you
4 referring to?

5 A. Green.

6 Q. All right. And when Green opened the door to the
7 bedroom, you said you saw the older woman and the older
8 man lying on the floor of the bedroom?

9 A. Yes, ma'am.

10 Q. All right. And you said they appeared -- both
11 appeared to be dead?

12 A. Yes, ma'am.

13 Q. Okay. And looking from the outside into the
14 bedroom, could you see evidence of gunshots to both of
15 them or to either of them?

16 A. To the older female, no. But to the male, yes, I
17 could tell.

18 Q. All right. And what did you see?

19 A. Blood splatter on the wall and missing part of
20 his cranium.

21 Q. All right. Did you see a smaller -- a female
22 child, five or six years old?

23 A. At that time, I don't remember specifically
24 seeing her. I know later on -- when we went back to the
25 house later on, I remember seeing her then.

1 Q. We'll talk about that in a little bit. But at
2 that time on March the 12th when you first go to the
3 house, when Green opens the door, you didn't see the
4 little girl? You hadn't seen her at all?

5 A. I don't remember seeing her, no.

6 Q. Don't remember seeing her. Okay. What happened
7 then?

8 A. I kind of -- that's when I kind of backed up from
9 the door a little bit. I looked into the living room
10 and seen what the other individuals were doing, Cortez
11 and Barker, and they appeared to be raping the younger
12 female.

13 Q. Okay. And what room were they in?

14 A. The living room.

15 MS. FORD: All right. Judge, I'd like to
16 use the model with this witness if I can.

17 THE COURT: You may.

18 Q. Mr. Spielman, would you come down here?

19 THE COURT: Mr. Spielman, you have a low
20 voice. Speak up a lot louder so the court reporter can
21 hear you down there, please, sir.

22 THE WITNESS: Yes, sir.

23 Q. Okay. Do you -- you and I have looked at this
24 once before. Do you recognize it?

25 A. Yes, ma'am.

1 Q. All right. And does this look to you -- appear
2 to you to be an accurate representation of the home that
3 you went to on March the 12th in Iraq?

4 A. Yes, ma'am.

5 Q. All right. And you previously testified, was
6 there -- this is about where the car was parked out
7 front?

8 A. Correct.

9 Q. All right. Let me take the top off and take a
10 look at the inside. Does that appear to accurately
11 reflect the layout of the home?

12 A. Yes, ma'am.

13 Q. All right. So we're going to back you up just a
14 little bit. So orient us a little bit. Where is TCP 2
15 in relation to how this house is set up?

16 A. It would be way in that direction.

17 Q. I'm going to remind you again, because you got
18 quiet again over lunch.

19 A. Okay.

20 Q. All right. You've got a really low voice, so
21 speak up, because it's important information, and slow
22 down.

23 A. Yes, ma'am.

24 Q. You're probably even less comfortable standing
25 up.

1 A. Yes.

2 Q. All right. That's good. So what direction is
3 TCP 2 from the house?

4 A. It would be in this direction.

5 Q. All right. You're pointing down over here?

6 A. Yeah.

7 Q. All right. So you approached the house coming
8 from this direction?

9 A. Yes, ma'am.

10 Q. All right. And you said you went into the -- you
11 may want to use this if you want. You don't want to get
12 too much in front of the house because the jurors want
13 to be able to see. You entered the front door?

14 A. Yes, ma'am.

15 Q. All right. Why don't you show us where that is?

16 A. The front door is located right there.

17 Q. All right. And where were you standing
18 initially?

19 A. Just in this area, this general area right here.

20 Q. All right. And which room is the bedroom?

21 A. The bedroom would be right here.

22 Q. Okay. And the living room?

23 A. Right here.

24 Q. Okay. So initially you had described three
25 individuals, a young woman and an older female and an

1 older man?

2 A. Yes, ma'am.

3 Q. Okay. And you said that they were taken into
4 which room?

5 A. The bedroom right here.

6 Q. Okay. And they were in there with the defendant
7 in this case, Steven Green?

8 A. Yes, ma'am.

9 Q. Okay. And you said the door was closed?

10 A. Yes, ma'am.

11 Q. All right. And you said the -- let me back up
12 because I just misspoke. No, I didn't. Initially,
13 those three individuals were in the bedroom, and then
14 you said the young woman was separated from the mother
15 and father?

16 A. Yes, ma'am.

17 Q. All right. And where was she taken?

18 A. She was escorted through this room, through the
19 doorway right there into this room, the living room.

20 Q. Okay. Into the living room?

21 A. Yes.

22 Q. All right. And she was taken by Barker and
23 Cortez?

24 A. Yes.

25 Q. All right. And from that point, where -- are you

1 still standing in the foyer?

2 A. I'm about in this area right here.

3 Q. All right. And now you're pointing towards --
4 really, you're kind of right in the -- there's a middle
5 foyer area in the house?

6 A. Yes.

7 Q. All right. From there, can you still -- can you
8 see out the front door?

9 A. No. I can see the front foyer area. But after
10 initially coming into the house -- this is the foyer
11 area. I was looking out the door and out the little
12 window out there. Then a few seconds went by, and I was
13 seeing what everybody else was doing. So I came up
14 right in this area, and that's when I seen the
15 individuals of the house getting put into the bedroom.

16 Q. Okay. All right. And then what happened?

17 A. That's when the younger one was -- the younger
18 female was separated and put into the living room by
19 Cortez and Barker.

20 Q. All right. And then Green shut the door to the
21 bedroom?

22 A. I think -- I don't know who did, but I think he
23 did.

24 Q. You don't know who closed the door, but the
25 bedroom door was closed?

1 A. Correct.

2 Q. All right. And where did you go then?

3 A. I went back up to the foyer area, like right in
4 this area, so I could see out. The gate to the
5 residence would have been over in this area right here,
6 so I was kind of keeping -- looking out at an angle to
7 the gate area.

8 Q. Okay. And was it at that point that you heard
9 gunshots?

10 A. Yes, ma'am.

11 Q. All right. And you heard them from the bedroom?

12 A. Yes.

13 Q. All right. And do you recall how many gunshots
14 you heard?

15 A. No.

16 Q. Could you tell what kind of firearm it was?

17 A. No.

18 Q. All right. And tell us again what you did after
19 you heard the gunshots.

20 A. I ran through this door right here to the door as
21 fast as I could and started beating on the door to see
22 what was going on.

23 Q. And were you concerned at that point?

24 A. Yeah, because I wasn't expecting it, so.

25 Q. Okay. Go on.

1 A. And I started knocking on the door, and the door
2 was locked.

3 Q. You need to speak up again.

4 A. The door was locked.

5 Q. All right. So then what did you do?

6 A. That's when I started pounding on the door,
7 knocking on it seeing what was going on and --

8 Q. Were you concerned that something might have
9 happened to the defendant, to Green?

10 A. Yes.

11 Q. All right.

12 A. And he opened the door a little bit and --

13 Q. Were you saying anything when you were pounding
14 on the door?

15 A. I might have been. I don't -- I don't recall
16 specifically --

17 Q. All right.

18 A. -- if I was saying anything. He opened the door
19 a little bit, and I looked at him. And he said that --
20 I said, "Is everything all right? What's going on?"

21 And he said, "Everything's fine." And then he
22 opened the door the rest of the way.

23 Q. Okay. And that was when you were able to see two
24 bodies inside the room?

25 A. Yes.

1 Q. Okay. Can you show the members of the jury about
2 where you were able to see the bodies?

3 A. The older female was right behind the door,
4 pretty much right here in this area.

5 Q. All right. Very close to the opening of the
6 door?

7 A. Yes.

8 Q. All right. What about the man?

9 A. The male was right here in this corner --

10 Q. All right.

11 A. -- laying this way.

12 Q. And where was his head located?

13 A. Up in this area.

14 Q. In the corner of the room?

15 A. Yes, ma'am.

16 Q. And you mentioned -- you testified a few minutes
17 ago that you saw blood splatter in the room on the
18 walls?

19 A. Yes, ma'am.

20 Q. Where did you see that?

21 A. It was up in this corner right here.

22 Q. All right. Above the head of the man?

23 A. Yes.

24 Q. Okay. And you were able to see -- did you enter
25 the bedroom at that point?

1 A. I was just standing in the doorway about right
2 here in this area.

3 Q. All right. So you were just able to see in
4 through the open door?

5 A. Yes.

6 Q. All right. And what was the -- what was Green's
7 demeanor like at that point? How was he acting?

8 A. Well, like I said, he was looking for something,
9 looking for something on the ground. I pointed out a
10 shotgun shell. The bed's not here, but the bed was in
11 this area right here. And the shotgun shell was
12 probably right in the middle of the living [sic] room.
13 I pointed that out to him. He picked it up, put it in
14 his shotgun, and then kept looking around on the ground
15 for something else. And then that's when I backed up.

16 Q. Okay. How could you tell he was looking for
17 something?

18 A. He was just looking around on the ground, just
19 like searching.

20 Q. Okay. Was there carpeting or rugs on the floor?

21 A. I think there was rugs, yes.

22 Q. Okay. But you saw a shotgun round on the floor?

23 A. Yes.

24 Q. And pointed it out to him?

25 A. Yes.

1 Q. All right. Was it a spent round?

2 A. It was not spent, no.

3 Q. It was not a spent round. And he put it back in
4 a shotgun?

5 A. Yeah, the top of the shotgun. I don't know if
6 you guys have one, but it holds rounds on the exterior
7 of it, on top of it, and he put it back in there.

8 Q. All right. Let me show you one, see if we can
9 see what you're talking about. Mr. Spielman, let me
10 show you -- do you recognize that?

11 A. Yes, ma'am.

12 Q. This would be United States --

13 MS. FORD: Judge, these have all been
14 rendered safe. It's just -- since I clearly don't know
15 what I'm doing.

16 MR. WENDELSDORF: Since it's pointed at me.

17 MS. FORD: Since it's pointed at defense
18 counsel. They have been rendered safe.

19 Q. This is United States Exhibit 27. Do you
20 recognize that?

21 A. Yes, ma'am.

22 Q. All right. Again, this is just a representative
23 sample, but is this the standard issue shotgun that
24 was -- let me get out of the way; I can't get out of the
25 way -- that was used by American soldiers?

1 A. Yes, ma'am.

2 Q. All right. Is this the kind of shotgun you're
3 referring to?

4 A. Yes, ma'am.

5 MS. FORD: Judge, I'm going to move to admit
6 this. It's just a demonstrative exhibit, though.

7 THE COURT: Motion's granted.

8 MR. WENDELSDORF: Same stipulation, no
9 objection, Judge.

10 MS. FORD: Yes. Thank you.

11 (Government Exhibit 27 admitted in evidence.)

12 Q. And you were just saying that there was a place,
13 a location on the top of this weapon where a round could
14 be replaced?

15 A. Yes, ma'am.

16 Q. Okay. Can you point that out for us?

17 A. It's just these right here hold extra rounds.

18 Q. Okay. So the round that the defendant -- that
19 you pointed out and that he picked up off the floor was
20 one that had not been used, and he replaced it back
21 here?

22 A. Yes, ma'am.

23 Q. All right. And you said the defendant appeared
24 to still -- to be looking for something else on the
25 floor?

1 A. Yes, ma'am.

2 Q. Okay. And what did you do then?

3 A. That's when I kind of backed up from the doorway
4 a little bit, and I peered into the living room, and
5 that's when I seen Cortez and Barker raping the female.

6 Q. All right. There's a doorway from the foyer into
7 the -- actually, there are two that go into the living
8 room, aren't there?

9 A. Yes, ma'am.

10 Q. All right. So you're now standing close to the
11 bedroom door but looking through the door into the
12 living room?

13 A. Yes, ma'am.

14 Q. Okay. And can you show us where Barker and
15 Cortez are?

16 A. They were in this corner right here of the living
17 room.

18 Q. All right. And they have the young woman?

19 A. Yes, ma'am.

20 Q. All right. And at that point when you look
21 into -- when you first look into the room and see them,
22 where is the young woman?

23 A. She's --

24 Q. Is she standing or -- is she standing up?

25 A. No. She's laying on the ground head facing this

1 wall, body oriented right here.

2 Q. Is she on her back?

3 A. Yes, ma'am.

4 Q. All right. But you didn't -- you don't -- you
5 don't know how she got to the ground? You didn't see
6 her --

7 A. No.

8 Q. -- go from a standing position to on the ground?

9 A. Correct.

10 Q. All right. When you first see her, she's lying
11 on her back?

12 A. Correct.

13 Q. All right. And her head is in the corner of this
14 room?

15 A. Yeah, facing the wall right here.

16 Q. Okay. And Barker -- Specialist Barker and
17 Specialist Cortez are in the room with her?

18 A. Yes, ma'am.

19 Q. All right. And what are they doing?

20 A. They appear to be raping her.

21 Q. And how can you tell?

22 A. One of them was positioned in between her legs in
23 this area. And then on top over her head, her arms were
24 pulled back on top of her head, behind her head pretty
25 much, and another one kneeling down holding her arms.

1 Q. Okay. So she has her arms up above her head like
2 this?

3 A. Yes.

4 Q. Okay. And when you first see her, can you tell
5 who it is -- which of those individuals is between her
6 legs?

7 A. No, not really.

8 Q. Okay. Can you tell that her clothing is pushed
9 up?

10 A. I don't -- I don't really remember.

11 Q. You couldn't really see at that point?

12 A. No.

13 Q. All right. You can -- the person who is -- who
14 appears to be assaulting her, is his back to you?

15 A. Yes.

16 Q. All right. And can you tell which one it is?

17 A. I'm not really -- they were both wearing black
18 and they had balaclavas over their head, so I'm not
19 really sure which one it is.

20 Q. So they still have the balaclavas on their --
21 over their head?

22 A. I believe so, yes.

23 Q. As best you can recall?

24 A. Yes.

25 Q. All right. And what was the young woman doing?

1 Was she crying or ...

2 A. At that point, I don't really remember her crying
3 or anything. I don't think anything.

4 Q. Okay. But one of -- either Barker or Cortez
5 appears to be assaulting her. Could you tell -- whoever
6 it was, did he have the bottoms of his ninja suit down?
7 Had he pulled his pants down?

8 A. Yeah, a little bit. I couldn't really tell, but
9 it looked like it was pulled down, yeah, a little bit.

10 Q. All right. And from where you were standing, he
11 appeared to be engaging in an act of intercourse --

12 A. Yes.

13 Q. -- as best you could tell?

14 A. Yes.

15 Q. All right. And the other individual, you said,
16 appeared to be holding her down?

17 A. Yes.

18 Q. All right. Can you describe for the jury what
19 you saw? You said she had her arms above her head?

20 A. Yeah. She had her hands above her head, and the
21 individual was -- kind of had his knees on top of -- on
22 top of her hands.

23 Q. Okay. So holding her hands down with his knees?

24 A. Yes.

25 Q. All right. And which way is that person facing?

1 A. Facing the -- Barker and Cortez are both facing
2 each other, if that describes it.

3 Q. All right. So the person who is holding -- her
4 head is up here in the corner. The person who's holding
5 her down, his head is facing back towards the door?

6 A. Yeah. Yeah, facing each other right there.

7 Q. All right. What did you -- what did you do at
8 that point? What were you thinking at that point?

9 A. You know, I didn't really know what to do at that
10 point.

11 Q. Did you know that this -- the rape was going to
12 be committed when you went to the house?

13 A. No.

14 Q. All right. So tell me what you were thinking at
15 that point.

16 A. Well, I know what we came here for, you know, I
17 guess.

18 Q. I want to make sure I'm clear about this. You
19 just said -- you said you went to the house not knowing
20 there was going to be a rape?

21 A. Correct.

22 Q. All right. And so repeat what you just said.

23 A. At that point, I knew what we were -- you know,
24 what we were there for, what we went on the patrol for,
25 you know. Like when we were going there, it's like we

1 knew where we were going, you know. I was following
2 because I didn't know where we were going. So I was
3 following, and it's like we knew where we were going.
4 And then when we got in the house, you know, separated
5 the female and stuff like that, then I put it together
6 that we came here to rape the female.

7 Q. But when you say "we," you're not referring to
8 yourself?

9 A. Well, I realized what we were there for.

10 Q. All right. You mean what the others were there
11 for?

12 A. Yes.

13 Q. All right. So what happened then?

14 A. At that point, you know, after the gunshots rang
15 out, I went back to the front of the foyer just to check
16 and see if anybody had heard or was coming in through
17 the gate. I was looking out of the foyer right here in
18 this area and checking the gate over in this area and
19 just making sure to see if anybody was alarmed by it or
20 was coming to investigate or anything like that.

21 Q. Uh-huh. When you saw Barker and Cortez with the
22 young woman, did you think about trying to stop them?

23 A. I mean, a couple things ran through my mind. You
24 know, I didn't -- I didn't really know what to do at
25 that point. I wanted to leave. At the same time, you

1 know, I can't leave people, you know, that I'm on patrol
2 with. I didn't know whether to stop them or not. I
3 really didn't know what to do.

4 Q. You didn't know what to do?

5 A. Yeah.

6 Q. Standard patrol is four people?

7 A. Correct.

8 Q. All right. For you to leave at that point, you
9 would have had to go back by yourself?

10 A. Correct.

11 Q. All right.

12 THE COURT: Attorneys just approach the
13 bench a second.

14 (Bench conference on the record outside the hearing
15 of the jury.)

16 THE COURT: We'll just take a break. Okay?

17 MS. FORD: Thank you.

18 (End of bench conference.)

19 THE COURT: Ladies and gentlemen, I think we
20 need to take a little break right now. Someone
21 indicated they need to. So we'll take about a
22 ten-minute break at this time.

23 (Jury left the courtroom at 1:18 p.m.)

24 THE COURT: We'll be in recess no longer
25 than ten minutes.

1 (Recess at 1:18 p.m. until 1:26 p.m. Jury
2 present.)

3 THE COURT: You may continue, Ms. Ford.

4 MS. FORD: Thank you.

5 BY MS. FORD:

6 Q. Mr. Spielman, could you come back down here?

7 We'll finish up down here.

8 Okay. You were at the point where you had
9 described you saw Specialist Barker and Specialist
10 Cortez in the living room with the young woman. What
11 did you do then?

12 A. Like I said, after the gunshots, I returned to
13 the front foyer area, and I was looking out -- just
14 pulling security, seeing if anybody heard or was
15 investigating, you know, the --

16 Q. You need to speak up a little bit.

17 A. See if anybody heard the gunshots and was coming
18 to see what they were or anything like that. So I was
19 just standing there in the front area.

20 Q. Looking out the front door?

21 A. Yes, ma'am.

22 Q. All right. Are you still in the house?

23 A. Yes, ma'am.

24 Q. All right. And then what did you do?

25 A. At that point in time, I walked into the room

1 right here, into the living room, and I was standing up
2 in this area right here.

3 Q. So now you've entered the living room through
4 another door?

5 A. Yes, ma'am.

6 Q. Immediately off the foyer?

7 A. Yes, ma'am, right there.

8 Q. All right. And are Barker and Cortez still in
9 the room?

10 A. Yes, ma'am.

11 Q. All right. And where are you standing?

12 A. Right here at the front of the living room right
13 after I walk in the door.

14 Q. Very close to the door?

15 A. Yes.

16 Q. All right. And where is PFC Green?

17 A. When I first got in there, he's not in there.

18 Q. And what's going on in the living room when you
19 return?

20 A. Cortez and Barker, I guess, are finishing up
21 assaulting the female and --

22 Q. Can you -- I mean, is she still being raped when
23 you come back into the room?

24 A. When I first go in the room, it appears that way.
25 A few seconds go by, and I guess they're done.

1 Q. And does it appear to be the same person that you
2 saw the first time?

3 A. I can't really tell.

4 Q. Okay. And then what happens?

5 A. I was in this area, and then --

6 Q. But they're still holding her down?

7 A. Yes.

8 Q. All right.

9 A. And then Green comes out of the bedroom in
10 through this door right here and --

11 Q. And he enters the living room?

12 A. Enters the living room, yes. The four of us are
13 in the living room, and he kind of announces just to
14 everybody in the living room, "I killed them, and
15 they're all dead." And then the other two, Barker and
16 Cortez, get up and they're finished, and they leave the
17 female laying on the ground.

18 Q. Okay. And she's lying on her back on the ground?

19 A. Yes, ma'am.

20 Q. And you're still standing in the corner of the
21 living room by the door?

22 A. Yes, ma'am.

23 Q. All right. And can you see at that point, are
24 her -- is her clothing or undergarments removed or
25 clothing pushed up?

1 A. It looks like her dress or whatever she was
2 wearing was kind of hiked up. It was lifted, yeah.

3 Q. Okay. And in what position are her legs?

4 A. Kind of spread open a little bit.

5 Q. All right. Are her arms still above her head?

6 A. I don't think so, no.

7 Q. All right. And what happened then?

8 A. At that point, Green was holding an AK-47, and he
9 puts it down right there against that wall. He leans it
10 up against the wall and then goes over and then starts
11 assaulting the girl.

12 Q. All right. You said when he came -- he came from
13 the bedroom into the living room?

14 A. Yes.

15 Q. And what did he say when he came into the living
16 room?

17 A. He announced to everybody in the living room just
18 in general that "I killed them, and they're all dead."

19 Q. All right. And when you say then he put his
20 firearm, put an AK-47 -- had you-all gone to the house
21 with an AK-47?

22 A. No, ma'am.

23 Q. All right. So where would the AK-47 have come
24 from?

25 A. I can't really tell. I don't know where it came

1 from.

2 Q. But it was not a firearm you had carried to the
3 house with you?

4 A. I don't remember, no.

5 Q. All right. But it was common to find AK-47s
6 within Iraqi homes?

7 A. Yes, ma'am.

8 Q. All right. And were AK-47s firearms that were
9 commonly assigned to or used by U.S. soldiers?

10 A. No, ma'am.

11 Q. All right. That's not a standard issue weapon
12 for American soldiers?

13 A. No, ma'am.

14 Q. All right. And you said Green began assaulting
15 her. He crossed the room. Did he take off any of his
16 clothing?

17 A. Yeah. Looks like he unbuttoned his pants and
18 then got down in between her legs and appeared that he
19 was raping her.

20 Q. All right. And he was making motions like it
21 appeared that he was having intercourse?

22 A. Yes, ma'am.

23 Q. All right. And he had unbuttoned his pants?

24 A. Yes, ma'am.

25 Q. From where you were standing, could you see if he

1 had taken his penis out, if he touched himself?

2 A. I couldn't tell from where I was.

3 Q. All right. Because you were back behind him?

4 A. Yes, ma'am.

5 Q. All right. And what about the young woman? Did
6 you -- was she crying or making any kind of sounds at
7 all?

8 A. Yeah. At that point, she was crying. It just
9 sounded like she was sobbing a little bit and crying.

10 Q. All right. And what happened next?

11 A. After he was done, he gets up and kind of pulls
12 his pants back up --

13 Q. Let me stop you for a second. Do you recall
14 today where Specialist Barker and Specialist Cortez were
15 at this point?

16 A. I believe they were in the -- they were still in
17 the same room, the living room here. I think they were
18 in this area right over here.

19 Q. All right. Against the wall?

20 A. Yes.

21 Q. All right. And while the defendant -- while
22 Steven Green was raping the young woman, did you -- was
23 anyone holding her down?

24 A. No, ma'am.

25 Q. All right. But you did hear her crying?

1 A. Yes.

2 Q. All right. And what happened then?

3 A. After he was done, he pulled his pants back up,
4 went over to where he placed the AK-47 against the wall,
5 walked back over to the young lady there, and I remember
6 him putting a pillow over her face and then --

7 Q. I'm sorry. Who put the pillow over her face?

8 A. Green.

9 Q. All right. He picked up a pillow in the living
10 room?

11 A. Yes, ma'am.

12 Q. All right. And put it over her face?

13 A. Yes, ma'am.

14 Q. And then what did he do?

15 A. He put the AK-47 up to the pillow and then fired
16 probably five or six times.

17 Q. Okay. And he would have hit her in the head?

18 A. Yes, ma'am.

19 Q. All right. Killing her?

20 A. Yes, ma'am.

21 Q. All right. Did you see blood splatter at that
22 point?

23 A. I don't recall, no.

24 Q. All right. What happened then?

25 A. At that point in time, it was just kind of like

1 crazy, like nobody really knew what to do. I
2 remember -- I remember Barker leaving through this door,
3 the door right here to the living room.

4 Q. Okay. Back out into that middle central part of
5 the house?

6 A. Yes, ma'am.

7 Q. All right.

8 A. I don't know what Cortez did, and I don't know
9 what Green did. I kind of went -- I looked out this
10 window right here to the -- you know, out in the front
11 yard and everything.

12 Q. So you're looking out the front window of the
13 living room into the front yard?

14 A. Yes, ma'am.

15 Q. All right. And why were you doing that?

16 A. Just still pulling security kind of, just looking
17 to see if anybody was entering the premises.

18 Q. All right. You need to slow down a little bit
19 and speak up.

20 A. Yes, ma'am.

21 Q. All right. You want to say that again?

22 A. I was just making sure nobody was entering the
23 premises for -- you know, just looking to see what was
24 going on.

25 Q. All right. Because gunshots had been fired?

1 A. Yes, ma'am.

2 Q. All right. What happened then?

3 A. I walked over here to the body of the young
4 female. My back was towards everybody in the living
5 room, so I don't know who was in there. And I knelt
6 down beside her and lifted up her shirt.

7 Q. And then what did you do?

8 A. I touched her breast.

9 Q. And why did you do that?

10 A. I really can't tell you why.

11 Q. Did you rape her?

12 A. No, ma'am.

13 Q. All right. You did not do anything other than
14 touch her breast?

15 A. Correct.

16 Q. Okay. But you can't tell us why you did it?

17 A. No. I really don't know the reason why I did it.

18 Q. But she was dead at the time?

19 A. Yes, ma'am.

20 Q. All right. What happened then?

21 A. I got up, I went back over to the foyer area, and
22 I was looking out the door. Somebody came -- obviously,
23 that -- I remember seeing Barker coming out of the
24 kitchen, the kitchen door right here, and then he went
25 through this area. So I seen him crossing the hallway

1 back into the living room. I was watching out the door.

2 Q. And I'm sorry. Again, you're standing in the
3 front foyer now?

4 A. Yes.

5 Q. All right. And you see Barker cross that central
6 foyer and go into the kitchen?

7 A. Yes, ma'am.

8 Q. All right. And then from where you were
9 standing, you could see him come back out?

10 A. Yeah. From where I was standing right here, I
11 was looking this way, and he came out from the kitchen
12 area back into the living room door.

13 Q. All right. Go on.

14 A. And then as I was standing there, I was getting
15 ready to leave, and somebody came up -- I don't recall
16 who it was -- asked me for my lighter. Because I still
17 had my ACUs on and everything and I smoked, so I had a
18 lighter on me. Somebody asked me for it, and then I
19 gave it to them. And I was still kind of watching out,
20 out the door.

21 Q. Was Specialist Barker carrying anything that you
22 could see when he came out of the kitchen?

23 A. Yes. He had something in his hand. It was like
24 a, I think, clear glass, and it had a clear liquid in
25 it.

1 Q. All right. Did you -- did that have any meaning
2 to you? Did you recognize it?

3 A. No, ma'am.

4 Q. All right. So it was -- he had a clear -- like a
5 glass bowl or --

6 A. Yes.

7 Q. With a clear liquid in it?

8 A. Yes, ma'am.

9 Q. All right. And then what happened?

10 A. As I was watching out here, I turned around, and
11 then I remember seeing Barker pouring the liquid on the
12 female, on the corpse. And I don't know when, but very
13 soon after that, the body was lit on fire.

14 Q. Did you -- did you light the body on fire?

15 A. No, ma'am.

16 Q. Do you know who did?

17 A. No, ma'am.

18 Q. Okay. Somebody came and asked you for your
19 lighter?

20 A. Yes, ma'am.

21 Q. All right. And then when you turned around, the
22 body was on fire?

23 A. Yes, ma'am.

24 Q. Okay. What happened then?

25 A. After that, I went over -- the TV stand was over

1 in this corner right here of the living room.

2 Q. You're pointing to the corner opposite of where
3 the young woman was lying?

4 A. Yes, ma'am.

5 Q. Okay. On the same wall?

6 A. And there's a TV over there, and there was like
7 bags of clothes, blankets, and stuff like that piled
8 inside a bag. I grabbed one of the bags and then put it
9 on top of the body to fuel the flames pretty much.

10 Q. And can you tell the ladies and gentlemen of the
11 jury why you did that?

12 A. Destroy evidence.

13 Q. And were you thinking that at the time, to
14 destroy evidence?

15 A. Yes, ma'am.

16 Q. Okay. Go on.

17 A. At that point in time, I walked back to the front
18 door. Cortez was over there, and he said, "Let's go."
19 And then the four of us exited the residence and started
20 on the same path that we came back. And as we were
21 leaving, I remember Green saying something about he
22 opened up a can of propane, it's going to blow. And
23 then we kind of ran back to the TCP at that point.

24 Q. All right. Why don't you go ahead and sit down
25 again?

1 A. Yes, ma'am.

2 Q. After the four of you left the house, you said
3 you returned to the TCP?

4 A. Yes, ma'am.

5 Q. And what happened when you got back to the
6 traffic control point?

7 A. After we got back to the TCP 2, I remember Barker
8 and Cortez kind of standing outside in that -- if you
9 remember the pictures, inside the HESCOs, but it was
10 kind of outside. And they kind of -- they had stripped
11 off all their clothes, the silk weight underwear. They
12 got some water bottles and started washing themselves.

13 At that point, I remember Cortez telling
14 Howard -- Howard got back at that point. Well, he was
15 there at that point at TCP 2. And he told Howard to put
16 the clothes in a box and burn them, and that's what they
17 did. They stripped off their clothes, and Howard took
18 the clothes.

19 Q. Let me stop you for a second.

20 MS. FORD: Mary, can you put up Exhibit 5J?

21 Q. Is this the photograph you were referring to?

22 A. Yes, ma'am.

23 Q. All right. So when you returned to the TCP, can
24 you tell the jury how you -- did you walk back? Did you
25 run back?

1 A. We pretty much jogged back the whole way.

2 Q. All right. Was anybody talking?

3 A. I don't recall anybody talking, no.

4 Q. All right. You jogged back, and you carried with
5 you all of the firearms that you had taken to the house?

6 A. Yes, ma'am.

7 Q. All right. And when you got back to the TCP, you
8 said that Barker and Cortez started stripping off their
9 black ninja suits?

10 A. Yes, ma'am.

11 Q. Okay. And you said it was somewhere in -- we
12 could see that somewhere in this photograph?

13 A. Yes, ma'am. Right in this area.

14 Q. So now they're inside those HESCO barriers on
15 what looks kind of like a concrete patio?

16 A. Yes.

17 Q. All right. And you said they took off the
18 black -- the silk weights?

19 A. Yes, ma'am.

20 Q. And the balaclavas?

21 A. Yes, ma'am.

22 Q. All right. And you said they washed themselves
23 off?

24 A. Yes, ma'am.

25 Q. How did they do that?

1 A. They had bottled water. They just kind of poured
2 it on theirselves and just kind of rinsed theirselves
3 off.

4 Q. Okay. Bottled water?

5 A. Yes, ma'am.

6 Q. Okay. Any particular parts of their bodies they
7 were washing?

8 A. Mainly their genital areas.

9 Q. Okay. Using soap?

10 A. No.

11 Q. All right. So just kind of putting some --
12 pouring bottled water on their genital areas. Any other
13 parts of their body?

14 A. Just mainly their chest, stomach, and genital
15 areas.

16 Q. Okay. What about their lower arms or hands?

17 A. I don't remember.

18 Q. Okay. Mostly the chest, stomach, and genital you
19 definitely remember?

20 A. Yes, ma'am.

21 Q. All right. And was Green there at the time?

22 A. I don't remember seeing him with them. I was
23 just kind of standing -- because, you know, Cortez was
24 the acting squad leader at the time. I was just, you
25 know, kind of seeing if -- what else to do.

1 Q. Okay. And they put -- Barker and Cortez put
2 their black silk weights into a box, and what happened?

3 A. Yes. They gave them to Howard. I think they
4 threw them on the ground, and he told Howard -- Cortez
5 told Howard to get the balaclavas -- the silk
6 underweights and everything like that and the
7 balaclavas, put them in a box, and put them in a burn
8 pit to burn them.

9 Q. All right. And then what happened?

10 A. I went inside the room that I was staying in and
11 put down the M-14 and just kind of sat there on the
12 bunk.

13 Q. Okay. Did you put your clothing in the box?

14 A. No, ma'am.

15 Q. All right. You didn't burn any of your clothing?

16 A. No, ma'am.

17 Q. You were still wearing your T-shirt and your
18 ACUs?

19 A. Yes, ma'am.

20 Q. Okay. And your regular Army boots?

21 A. Yes, ma'am.

22 Q. All right. And returned with the M-14 you were
23 carrying?

24 A. Yes, ma'am.

25 Q. Okay. You went in and sat down on your bunk.

1 Did you see Bryan Howard throw the box of clothing into
2 the burn pit?

3 A. No, ma'am.

4 Q. All right. But you did hear Cortez tell him to
5 go burn the clothing?

6 A. Yes, ma'am.

7 Q. All right. What happened then?

8 A. A few minutes went by, and Cortez came in after
9 he had already changed back into his ACUs, and he
10 approached me with the AK-47. The magazine was out of
11 it, and the AK-47 was already cleared, meaning there was
12 a round that was taken out of the chamber. He gave me
13 the two items and --

14 Q. Let me stop you one second. Do you know -- this
15 was the AK-47 that the defendant Green had had in the
16 house?

17 A. Yes, ma'am.

18 Q. Okay. And how had it gotten from the house back
19 to TCP 2?

20 A. Green carried it.

21 Q. All right. You saw him carry it?

22 A. Yes, ma'am.

23 Q. Okay. And did you see him give it to Specialist
24 Cortez?

25 A. No, ma'am.

1 Q. Okay. But you did see the defendant Green carry
2 the --

3 THE COURT: Let's just take a second.
4 Ma'am, why don't you step out, if you wish, for just a
5 second. We'll just take a break here.

6 MS. FORD: A break?

7 THE COURT: Yeah. Rather than run upstairs,
8 let's just give her a minute and see if she's going to
9 be all right.

10 (Recess at 1:42 p.m. until 1:49 p.m. Jury
11 present.)

12 THE COURT: You may continue.

13 MS. FORD: Thank you, Your Honor.

14 BY MS. FORD:

15 Q. You said that -- you testified that the
16 defendant, Steven Green, returned from the Al-Janabi
17 home to -- you didn't know it was the Al-Janabi home,
18 did you?

19 A. No, ma'am.

20 Q. All right. But he returned -- Green returned
21 from the house with the AK-47?

22 A. Yes, ma'am.

23 Q. Was that the same AK-47 that he had used to shoot
24 the young woman in the head?

25 A. I believe so.

1 Q. All right. And you said that you had returned to
2 the TCP and you were sitting on your cot in the room
3 that you shared with Specialist Barker, Specialist
4 Cortez, and PFC Green?

5 A. Yes, ma'am.

6 Q. All right. And then you said that Cortez came to
7 you with the AK-47?

8 A. Yes, ma'am.

9 Q. All right. What happened then?

10 A. Like I said, he brought it to me in two pieces,
11 it was already cleared, and he told me to go across
12 the -- go across to the canal and get rid of it.

13 Q. All right. And what did you do then?

14 A. I went outside the TCP, went on Route Sportster
15 where a canal runs through, and threw it in the canal.

16 Q. Okay.

17 MS. FORD: Mary, can you put up 9I?

18 Q. Do you recognize that?

19 A. Yes, ma'am.

20 Q. All right. What do you recognize that to be?

21 A. That's the canal right at TCP 2.

22 Q. Okay. And can you show us which -- which
23 direction is TCP 2 from this photograph?

24 A. With an arrow?

25 Q. Yes.

1 A. In that area.

2 Q. And where is Route Sportster?

3 A. They're probably standing on it, whoever is
4 taking the picture. It runs --

5 Q. All right. Route Sportster is probably right --
6 runs right along this way?

7 A. Yes, ma'am.

8 Q. All right. So the canal was perpendicular to it?

9 A. Yes, ma'am.

10 Q. And is this about the location that you were
11 standing when you threw the AK-47 into the canal?

12 A. Yes, ma'am.

13 Q. All right. And how far did you throw it?

14 A. As far as I could.

15 Q. Okay. How far would you say that was?

16 A. Probably about 20 or 30 feet, right in that area.

17 Q. All right. What did you do after that?

18 A. I returned to the TCP.

19 Q. Okay. And then what did you do?

20 A. After that, I went back into the room, and I went
21 to sleep.

22 Q. Did you ever see any of the clothes burned in the
23 burn pit?

24 A. When I was going outside to dispose of the AK-47
25 in the canal, I passed Howard, and he was tending the

1 fire on the front burn pit.

2 Q. Okay.

3 MS. FORD: Mary, can you put up -- I think
4 it's the first photo of TCP 2 -- 5A?

5 Q. This is the back burn pit, isn't it?

6 A. Yes, ma'am.

7 Q. Okay. Can you show the jury where the front burn
8 pit would be located?

9 A. That direction.

10 Q. Okay. But on the other side of this building,
11 right?

12 A. Yes, ma'am.

13 Q. Okay. Basically the same side but just on the
14 front part of the building?

15 A. Correct.

16 Q. Okay. And so Sportster would be out here?

17 A. It would run right along there, yes.

18 Q. Exactly. All right. And so when you were going
19 out onto Sportster to the canal, you saw Bryan Howard at
20 the burn pit?

21 A. Yes, ma'am.

22 Q. Okay. And you said he was tending the fire.
23 Could you see what was in the fire?

24 A. It was just a fire at that point.

25 Q. Okay. You couldn't see any evidence of the silk

1 weights at that point?

2 A. No, ma'am.

3 Q. All right. And where is the defendant? Where is
4 Green while all of this is going on, the clothing is
5 being burned and you're throwing the AK-47 into the
6 canal?

7 A. He's on guard duty.

8 Q. Okay. So as soon as you got back from the house,
9 Green went on guard duty?

10 A. A few minutes passed. All three of them changed,
11 a few minutes went by, and then when Cortez approached
12 me with the AK-47 to throw it away, Green had already
13 relieved I believe it was Scheller on guard.

14 Q. Okay. So if we can go back to when Cortez and
15 Barker were changing out on the patio and washing
16 themselves off, was Green there, as well?

17 A. I don't remember him being with those two, but I
18 don't remember where he was at.

19 Q. Okay. But you know he changed clothes?

20 A. Yes, ma'am.

21 Q. All right. And then went out onto guard duty?

22 A. Yes, ma'am.

23 Q. Okay. Did you have any conversations with him?

24 A. No.

25 Q. Okay. You returned to your room?

1 A. Well, last question, what part do you mean?

2 Q. I guess at some point, didn't you pass the
3 defendant as he was going --

4 MR. WENDELSDORF: Objection, Your Honor.

5 THE COURT: I'll sustain.

6 MS. FORD: I'll rephrase. I'll rephrase.

7 Q. Let's just pick up at the point at which you are
8 coming back from -- you've thrown the AK-47 into the
9 canal.

10 A. Yes, ma'am.

11 Q. Just tell the ladies and gentlemen of the jury
12 what happened at that point.

13 A. When I was coming back, I seen Green on guard.
14 He was on the truck, the Humvee, and it was kind of like
15 he motioned me over to talk to him. I went over to see
16 what he wanted, and then it seemed to me like he wanted
17 to talk about the incident that just happened. And as
18 soon as I realized that, I kind of shut him out and just
19 said, "Don't ever talk to me about it again." And then
20 I went back inside the TCP.

21 Q. All right. How long would you say this entire
22 incident took from the time that you left TCP 2, went to
23 the Al-Janabi home, and then returned to TCP 2?

24 A. Just returned to the TCP?

25 Q. Uh-huh.

1 A. Total time was probably maybe 15 minutes.

2 Q. All right. What happened after that?

3 A. I went back into the TCP, and I went to sleep.

4 Q. All right. And were you still at TCP 2 when
5 Sergeant Yribe was sent down?

6 A. Yes, ma'am.

7 Q. All right. Tell the members of the jury about
8 that.

9 A. I probably slept for a few hours. It was getting
10 towards evening time, probably around 5:00. And over
11 the FM radio, the radio that we use, we were listening
12 over at TCP 1, and they had a report of a murder and a
13 rape behind the TCP. And it was reported to the Iraqi
14 Army, and they reported it to us. And the TCP 1 kicked
15 out a patrol to come down to TCP 2 to investigate it.

16 Q. And who came down from TCP 1?

17 A. It was a bunch of Iraqi Army followed by Sergeant
18 Yribe, Private Tucker, and I believe it was Specialist
19 Doss.

20 Q. All right. And what happened then?

21 A. Sergeant Yribe was in charge. He was the highest
22 ranking. So he grabbed me and Sergeant Cortez and PFC
23 Tucker, and we went back to investigate the incident.

24 Q. Okay. And so you went back to the house?

25 A. Yes, ma'am.

1 Q. Okay. Did you go back the same way that you had
2 gone the first time?

3 A. No, ma'am.

4 Q. All right. Can you tell the jury how you went
5 with Sergeant Yribe?

6 A. We followed the canal road. We followed the
7 Iraqi Army. They knew where it was, and we pretty much
8 followed them down the canal road and went into the
9 village through the front gate.

10 Q. All right. And then what happened?

11 A. Upon arriving at the house, the Iraqi Army was
12 already going through the house and everything, looking
13 through stuff. As soon as we got there, U.S. takes
14 priority over every incident, so we took control. We
15 just went through the house just like a regular patrol,
16 looked through everywhere, made sure there wasn't --

17 Q. When you say "we," who are you referring to?

18 A. Sergeant Yribe, myself, Private Tucker, and
19 Specialist Cortez.

20 Q. Okay. And what's your purpose when you return to
21 the house?

22 A. To investigate what was going on, take pictures,
23 and record it.

24 Q. All right. And Sergeant Yribe was in charge of
25 that?

1 A. Yes, ma'am.

2 Q. All right. So you returned to the house and
3 treat it as you would on any other patrol?

4 A. Correct.

5 Q. All right. And what happens then?

6 A. We go through the house, search it, make sure
7 nobody's around. Private Tucker was kind of new to the
8 unit, so Sergeant Yribe told him to wait outside, kind
9 of like the -- just make sure nobody came in, went out,
10 stuff like that. And me, Cortez, and Sergeant Yribe
11 went through the house just to make sure there wasn't
12 anybody in there. And we brought a digital camera from
13 TCP 1.

14 Q. Sergeant Yribe did?

15 A. Yes, ma'am.

16 Q. All right.

17 A. And he went through to take pictures of the crime
18 scene.

19 Q. Okay. Was the -- was there any fire in the home
20 when you returned?

21 A. No, ma'am.

22 Q. Okay. Could you smell smoke in the house?

23 A. Yes, ma'am.

24 Q. All right. Did you smell propane in the house?

25 A. Yes, ma'am.

1 Q. Okay. Did you enter through the front door
2 again?

3 A. Yes, ma'am.

4 Q. All right. And could you see the body of the
5 young woman in the living room?

6 A. Yes, ma'am.

7 Q. All right. Can you describe it for the ladies
8 and gentlemen of the jury?

9 A. It smelled really bad, so I didn't -- I didn't
10 get close to it. I just kind of walked through the
11 living room from the one door to the other. I didn't
12 get close to the body, but I could see it was just -- it
13 was just all charred, mainly just all black.

14 MS. FORD: Mary, can you put up United
15 States Exhibit 7P?

16 Q. Mr. Spielman, do you recognize that?

17 A. Yes, ma'am.

18 Q. Okay. And what do you recognize that to be?

19 A. It's the body of the young female.

20 Q. All right. Is that the way she appeared when you
21 returned to the house?

22 A. Yes, ma'am.

23 Q. All right. And how long would you say -- what
24 day is it when you returned to the house with Sergeant
25 Yribe, Tucker, and Cortez?

1 A. It's the same day on March 12th.

2 Q. Same day?

3 A. Yes, ma'am.

4 Q. How much time would you say had passed since you
5 had been there?

6 A. Approximately five hours.

7 Q. All right. And can you tell me what these are?

8 A. Those are her hands.

9 Q. Okay. So her face or head would be up here
10 somewhere?

11 A. Yes, ma'am.

12 Q. All right. What did you do --

13 MS. FORD: Mary, you can take that down.
14 Thank you. Why don't you show me 7Q?

15 Q. Mr. Spielman, do you recognize this photograph?

16 A. Oh, yes.

17 Q. All right. Can you tell the jury what that is?

18 A. It's the same individual, different shot.

19 Q. All right. And can you tell us what these are?

20 A. Those are her legs.

21 Q. And this is?

22 A. That's her hand.

23 Q. Hand. All right. When you went into the house,
24 were these -- were these blankets and things on her --

25 A. No.

1 Q. -- on her body?

2 A. No, ma'am.

3 Q. All right. So was she wearing undergarments
4 or ...

5 A. No, ma'am.

6 Q. All right.

7 MS. FORD: Mary, you can take that down.
8 Thank you.

9 Q. After you -- so you've entered the house. You're
10 in the living room. What did you do then?

11 A. We went into the bedroom to take the pictures,
12 kind of help Sergeant Yribe take the pictures.

13 Q. Okay. Were you taking the pictures yourself?

14 A. No, ma'am. He was.

15 Q. Okay. You were there to assist him?

16 A. Yes.

17 Q. Okay. And you entered the bedroom?

18 A. Yes, ma'am.

19 Q. Okay. Tell the jury what you saw when you went
20 into the bedroom.

21 MR. WENDELSDORF: May we approach, Your
22 Honor?

23 THE COURT: You may.

24 (Bench conference on the record outside the hearing
25 of the jury.)

1 MR. WENDELSDORF: Your Honor, this evidence
2 is getting repetitive.

3 MS. FORD: I'm not going to show all the
4 photos again. I'm just showing one of each victim.

5 MR. WENDELSDORF: Well, it's still
6 repetitive.

7 THE COURT: Are you going to go through that
8 with each -- of course, he was the only one that went
9 back, he and Cortez.

10 MS. FORD: Yeah. I just want to do it with
11 one witness since he went back.

12 MR. WENDELSDORF: You're not going to do it
13 with Cortez and Barker?

14 THE COURT: Well, we'll get to those when we
15 get to those.

16 MS. FORD: Not with Barker. He didn't go
17 back.

18 MR. WENDELSDORF: I mean, it's one thing to
19 say, "I show you Government's Exhibit 4. Does this
20 accurately depict," without displaying it to the jury
21 over and over and over again. That's my objection --

22 THE COURT: I understand.

23 MR. WENDELSDORF: -- is it's repetitive.

24 THE COURT: I'll let them go through this
25 one, and then we'll see where we are.

1 MR. WENDELSDORF: Yes, sir.

2 MS. FORD: Thank you, Judge.

3 MR. WENDELSDORF: Thank you, Judge.

4 (End of bench conference.)

5 BY MS. FORD:

6 Q. All right. Mr. Spielman, you went into the
7 bedroom, and you're assisting Sergeant Yribe. What did
8 you see when you went into the bedroom?

9 A. When I first went in, the female was right behind
10 the door, and he was taking pictures of her.

11 Q. And you're referring to the adult female?

12 A. Yes, ma'am.

13 Q. All right.

14 MS. FORD: Mary, if you could put up
15 Government's Exhibit 7B.

16 Q. Mr. Spielman, do you recognize that?

17 A. Yes, ma'am.

18 Q. All right. Is that the adult female?

19 A. Yes, ma'am.

20 Q. All right. And did you -- you were assisting
21 Sergeant Yribe?

22 A. Yes, ma'am.

23 Q. Was she lying on her back when you went into the
24 bedroom, if you remember?

25 A. I believe so, yes.

1 Q. All right. Was this the same woman that you had
2 seen earlier in the day when PFC Green opened the
3 bedroom door?

4 A. Yes, ma'am.

5 Q. All right.

6 MS. FORD: Mary, you can take that down.

7 Q. You testified previously that you also saw the
8 adult male when PFC Green opened the door and that he
9 also appeared to be dead. Did you -- when you returned
10 to the house with Sergeant Yribe, did you -- you saw --
11 tell us what else you saw in the bedroom.

12 A. The next person, we went to the adult male. And
13 he told me to search him, and I searched the pockets of
14 the male. I turned up a cell phone, I think some keys,
15 and an ID card.

16 Q. All right.

17 MS. FORD: Mary, if you can put up 7D.

18 Q. Mr. Spielman, do you recognize this?

19 A. Yes, ma'am.

20 Q. All right. What do you recognize it to be?

21 A. The adult male.

22 Q. All right. And this is the individual that
23 Sergeant Yribe asked you to check his pockets for
24 identification and --

25 A. Yes, ma'am.

1 Q. -- other documents? All right. And was this the
2 same man that you had seen earlier in the day when PFC
3 Green opened the bedroom door?

4 A. Yes, ma'am.

5 Q. Okay. The man who appeared to you to be dead?

6 A. Yes, ma'am.

7 Q. All right.

8 MS. FORD: Mary, you can take that down.

9 Q. And did you see anyone else in the bedroom?

10 A. Yes, ma'am.

11 Q. All right. Tell the members of the jury what you
12 saw.

13 A. In the opposite corner from where the adult male
14 was, there was another younger female. She was a child.
15 And we went over to take pictures of her, as well.

16 Q. All right.

17 MS. FORD: Mary, can you put up 7I?

18 Q. Mr. Spielman, do you recognize this?

19 A. Yes, ma'am.

20 Q. Okay. Tell the jury what this is.

21 A. It's a picture of the adult female and the
22 younger female, the youngest.

23 Q. What is this right here?

24 A. That's the body of the youngest female.

25 Q. Okay. Was that the first -- had you seen her

1 earlier in the day when you were there at the house?

2 A. I don't recall seeing her the first time.

3 Q. All right. When you -- how old did she appear to
4 you to be?

5 A. Younger than ten. I mean --

6 Q. All right.

7 A. -- single digits. I don't know.

8 Q. And when you went into the bedroom with Sergeant
9 Yribe, was this the position of her body?

10 A. Yes, ma'am.

11 Q. All right. And did you then assist Sergeant
12 Yribe in taking a photograph of her face?

13 A. Yes, ma'am.

14 Q. All right. And what did you do after that?

15 A. He just had me turn her over, the body, so he
16 could get another picture of her face and then --

17 MS. FORD: Mary, you can take that down.
18 Thank you.

19 A. And then he just kind of like was taking more
20 pictures. He was taking pictures of the AK-47 rounds,
21 the spent shells, the non-spent shells, looking around
22 the room some more. And then he kind of looked under
23 the bed, stopped, lifted up the bed with one arm, just
24 kind of like threw it up against the wall, and there was
25 a shotgun shell laying there on the floor, and he just

1 kind of looked at it.

2 Q. Was that a round that had been expended, or was
3 it a live round, if you remember?

4 A. I believe it was an expended round. It was used.

5 Q. All right. And what happened then?

6 A. He just kind of looked at it, and then at that
7 time, I left the room. And he called Cortez in. Well,
8 as Cortez was coming in the room, I left right after
9 that.

10 Q. All right.

11 A. And I had left the room, and then they were
12 talking about it and --

13 Q. Could you hear them talking about it?

14 A. No. They were just starting to talk as I was
15 leaving.

16 Q. All right. So what -- all right. You didn't
17 pick up the shotgun round?

18 A. No, ma'am.

19 Q. All right. At that point, the point at which
20 Sergeant Yribe had seen it, you left the room?

21 A. Yes, ma'am.

22 Q. Left the bedroom?

23 A. Yes, ma'am.

24 Q. All right. And where did you go from there?

25 A. I went out, and I kind of skirted through the

1 living room. The smell was pretty bad, so it kind of
2 made me gag a little bit. I went outside to get some
3 fresh air, and then I just waited outside with Private
4 Tucker until the Iraqi ambulance showed up.

5 Q. All right. And the bodies were removed from the
6 home?

7 A. Yes, ma'am.

8 Q. Okay. And what happened then?

9 A. The AIs came in, like I said, removed the bodies
10 from the room in body bags, put them in the ambulance,
11 and then we followed them back to the TCP 2, and they
12 left from there. And then we continued, you know,
13 regular operating, regular TCP.

14 Q. How long were you at the house with Sergeant
15 Yribe?

16 A. It was evening time when we left, right before
17 the sun set. When we got back, it was dark. So it was
18 probably at least an hour or so.

19 Q. All right. So it was dark when you returned --

20 A. Yes, ma'am.

21 Q. -- to the TCP? All right. And what happened
22 then?

23 A. Upon return to the TCP, Green was there, and
24 Sergeant Yribe was coming back. And Green immediately
25 went over and started talking to Sergeant Yribe.

1 Q. Could you hear what the defendant was saying?

2 A. No, ma'am.

3 Q. All right. But you could -- you observed him
4 talking to Sergeant Yribe?

5 A. Yes, ma'am.

6 Q. You have no idea what the defendant -- you didn't
7 hear what the defendant said?

8 A. No, ma'am.

9 Q. All right. What happened then?

10 A. I went directly to my cot in the room that I was
11 staying in, took off my IBA and my helmet, dropped my
12 weapon, and I waited until Sergeant Yribe and the other
13 guys from the TCP 1 left.

14 Q. All right. What happened after that?

15 A. After they left, there was -- I don't know if it
16 was the same fire that was still going or somebody made
17 another fire, but we all went around the fire at the
18 front of the TCP. We kind of got together. It was
19 Specialist Cortez, Specialist Barker, myself, Green, and
20 Private Howard. And Private Scheller again was on
21 guard.

22 We were around the fire. And at that point,
23 Cortez told us to just keep all this quiet, keep it to
24 ourselves, and don't tell anybody about it.

25 Q. All right. What else?

1 A. Green then told us to -- if any of this ever got
2 out or anything like this, that he did it and just blame
3 everything on him.

4 Q. All right. Did you ever -- did you consider
5 reporting what had happened to any of your superiors?

6 A. I thought about it that night, and I decided
7 not to.

8 Q. You thought about it that night?

9 A. Yes.

10 Q. All right. Why did you decide not to report it?

11 A. A couple different reasons. I mean, you go over
12 there in the wartime environment and stuff like that
13 and, you know, we're looking out for each other and
14 stuff like that, and I just didn't feel like telling on
15 people that I served with. And at the same time, you
16 know, I might end up like them, too. You know, if I did
17 go and tell the command, you know, somebody might
18 silence me or something like that.

19 Q. All right. Something might happen to you?

20 A. Correct.

21 Q. All right. So you had some concern for your --
22 concerned about your own safety?

23 A. It was mainly the first one, but I also thought
24 about that, too.

25 Q. All right. How much longer did you stay at TCP 2

1 after March the 12th?

2 A. I don't remember specifically. Maybe a few more
3 days.

4 Q. All right.

5 A. I don't remember.

6 Q. Okay. I guess there came a time when you went
7 back to -- you'd been sent down there to augment 3rd
8 Squad --

9 A. Yes, ma'am.

10 Q. -- shortly before March the 12th. Sometime, I
11 guess, you go back with your 1st Squad?

12 A. Yes, ma'am.

13 Q. Okay. And the defendant does, as well?

14 A. Yes, ma'am.

15 Q. Okay. And at some point, the defendant is
16 discharged from the Army, isn't he?

17 A. Yes, ma'am.

18 Q. He left your squad?

19 A. Yes, ma'am.

20 Q. All right. And was discharged?

21 A. Yes, ma'am.

22 Q. All right. In April or May of 2006?

23 A. Yes, ma'am.

24 Q. Okay. And that was the last time that you saw
25 the defendant?

1 A. I went on mid-tour in the very beginning of May,
2 and I think I left to go up to FOB Mahmoudiyah, the
3 battalion FOB, and I seen him up there. He was pulling
4 guard. I think I played PlayStation with him one time
5 in my MWO tent, because he was about the only person I
6 knew up at that FOB. And it just took about 24 hours
7 for me until I left there to go back to the United
8 States.

9 Q. Okay. And was the defendant processing through
10 his discharge, as well? Was he waiting to go back to
11 the U.S.?

12 A. Yes, ma'am.

13 Q. Okay. At that time when you saw him in May, did
14 you-all have any conversations about what had happened
15 on March the 12th?

16 A. No, ma'am.

17 Q. All right. You returned -- you had your leave in
18 the U.S., you said, in May of '06?

19 A. Yes, ma'am.

20 Q. Okay. And then you -- when was it that you
21 returned to Iraq?

22 A. I got back in the states on about May 3rd, and I
23 left probably around May 20th, May 21st to come back.

24 Q. Okay. If I can take you now forward to June of
25 2006. Eventually -- let me back up for a minute. Until

1 June of 2006, you followed what -- you didn't talk about
2 what had happened on March the 12th?

3 A. Correct.

4 Q. All right. In June of 2006, you are aware that
5 Lieutenant Colonel Kunk started a commander's inquiry,
6 aren't you?

7 A. Yes, ma'am.

8 Q. Did Lieutenant Colonel Kunk interview you?

9 A. No, ma'am.

10 Q. All right. But when CID, Army Criminal
11 Investigation Division, started their investigation,
12 they did interview you -- they did interview you, didn't
13 they?

14 A. Yes, ma'am.

15 Q. All right. They interviewed you several times?

16 A. Yes, ma'am.

17 Q. Okay. The first time that CID interviewed you,
18 do you recall about when that was?

19 A. It was probably the very end of June.

20 Q. All right. And you were interviewed by some CID
21 agents?

22 A. Yes, ma'am.

23 Q. All right. And did you tell them the truth?

24 A. Parts of it, yes.

25 Q. All right. What parts did you leave out?

1 A. I just may have left some stuff out. I lessened
2 my involvement.

3 Q. Okay. Do you know, did you leave out the rape?

4 A. I don't know. I'd have to read it again.

5 Q. Okay. If you read that statement that you gave,
6 would that help refresh your recollection?

7 A. Yes, ma'am.

8 MS. FORD: Your Honor, may I approach?

9 THE COURT: You may.

10 MS. FORD: I'm just going to mark this for
11 identification as U.S. 33.

12 Q. Just take as long as you need to read through
13 that.

14 A. (Witness reviewing document.)

15 Q. Ready?

16 A. Yes, ma'am.

17 Q. Is that going to help refresh your recollection?

18 A. Yes, ma'am.

19 Q. Can you tell -- let me take that back from you.
20 Can you tell the members of the jury now, when CID first
21 interviewed you, what was it that you left out of your
22 statement?

23 A. Pretty much everything that happened at the
24 house. I left out the part Green killing the three --
25 the three individuals. I left out the part of the rape.

1 I left out the fire and my involvement, touching the
2 corpse, and that whole area.

3 Q. All right. And why did you not tell the truth to
4 CID?

5 A. I really didn't want to get involved in anything.

6 Q. Were you concerned about your own involvement?

7 A. Yes, ma'am.

8 Q. All right. Were you interviewed again by CID
9 after this first interview?

10 A. Yes, ma'am.

11 Q. Okay. They interviewed you a couple more times,
12 didn't they?

13 A. Yes, ma'am.

14 Q. All right. And did you tell them the truth in
15 those subsequent interviews?

16 A. Yes, ma'am.

17 Q. Okay. And you didn't minimize your involvement
18 in the subsequent interviews?

19 A. Correct.

20 Q. You told them you threw the AK-47 in the canal?

21 A. Yes, ma'am.

22 Q. You told them about pushing up the young woman's
23 shirt and touching her breast?

24 A. Yes, ma'am.

25 Q. All right. Told them that you had seen Green in

1 the bedroom?

2 A. Yes, ma'am.

3 Q. Heard the shots coming from the bedroom?

4 A. Yes, ma'am.

5 Q. And about Green shooting the young woman in the
6 head?

7 A. Yes, ma'am.

8 Q. After raping her?

9 A. Yes, ma'am.

10 Q. All right. Mr. Spielman, you were eventually
11 charged by the Army in connection with these crimes,
12 weren't you?

13 A. Yes, ma'am.

14 Q. All right. And you have been convicted of your
15 role in these offenses, haven't you?

16 A. Yes, ma'am.

17 Q. All right. And you are currently serving a
18 sentence?

19 A. Yes, ma'am.

20 Q. And what is the sentence that you're serving?

21 A. Currently, I'm serving 90 years.

22 Q. At Leavenworth?

23 A. Yes, ma'am.

24 MS. FORD: All right. Judge, if I could
25 have just a moment.

1 THE COURT: You may.

2 MS. FORD: Judge, that's all I have.
3 Mr. Spielman, I'm sure that Mr. Wendelsdorf will have
4 some questions for you.

5 THE WITNESS: Yes, ma'am.

6 MR. WENDELSDORF: Do you want to start now,
7 Judge?

8 THE COURT: I think -- everybody all right?
9 Everybody okay? We'll go just a little while.

10 MS. FORD: Except me.

11 CROSS-EXAMINATION

12 BY MR. WENDELSDORF:

13 Q. You've been convicted of murder in this case?

14 A. Yes, sir.

15 Q. You've been convicted of rape in this case?

16 A. No, sir. Conspiracy to commit rape.

17 Q. Conspiracy to commit rape?

18 A. Yes, ma'am -- or sir. Sorry.

19 Q. That's all right. You get into a roll with
20 Marisa. I know how it is.

21 And housebreaking?

22 A. Yes, sir.

23 Q. You were sentenced to 90 years, you told the
24 jury?

25 A. Yes, sir.

1 Q. And you are eligible for parole in ten, correct?

2 A. Yes, sir.

3 Q. And every year thereafter, correct?

4 A. Yes, sir.

5 Q. You hope to make parole in ten years, don't you?

6 A. Yes, sir.

7 Q. And have you been made any promises about what
8 the government will do if they're satisfied or happy
9 with your testimony in this case?

10 A. No, sir.

11 Q. You're hoping, however, that they will convey to
12 the parole board that you have cooperated and that --
13 you're hoping for a recommendation, aren't you?

14 A. Yes, sir.

15 Q. That parole board, that is something that's
16 unique to the military justice system, isn't it?

17 A. Yes, sir.

18 Q. We don't have one of those in civilian court, do
19 we?

20 MS. FORD: Objection, Your Honor.

21 THE COURT: Sustained.

22 Q. Now, you told the jury that you accompanied
23 Sergeant Yribe to the scene immediately after -- well,
24 not immediately after, but very close in time to the
25 event. You went around with him. You took pictures.

1 You knew your involvement at that time. You said
2 nothing to Sergeant Yribe, correct?

3 A. Correct.

4 Q. You indicated to the jury that you were not
5 directly interrogated by Colonel Kunk, but had you done
6 so, is there any doubt in your mind that you would have
7 lied to Colonel Kunk, as well?

8 A. I would have probably lied, yes, sir.

9 Q. You certainly lied to CID the first time they
10 came to you, correct?

11 A. Yes, sir.

12 Q. And the only reason that you changed your story
13 and told them what you did is that they made it clear to
14 you that they knew what had happened; isn't that true?

15 A. Correct.

16 Q. And you felt that the game was up at that point
17 and that you better start cooperating to get the best
18 deal you could for yourself?

19 A. I didn't know about those at that point, but I
20 started cooperating, yes, sir.

21 Q. When they came to you and they told you events
22 that had occurred, things they had found out, it became
23 clear to you that they had found out about the murders
24 and the rape and they were starting to pull things
25 together?

1 A. Yes, sir.

2 Q. Okay.

3 MR. WENDELSDORF: What's our next exhibit?

4 MS. MICOU: 18.

5 MR. WENDELSDORF: 18.

6 Q. I'd like to do some housekeeping here before we
7 get into everything. I guess it would help if I labeled
8 these before I got up here, wouldn't it?

9 I show you Defendant's 18 for identification.
10 That's a picture of you, is it not, Mr. Spielman?

11 A. Yes, sir.

12 Q. When was that taken?

13 A. Right after graduation of boot camp and AIT.

14 Q. Okay. And this is a picture of you after you
15 were charged, Defendant's 19?

16 A. Yes, sir.

17 MR. WENDELSDORF: I offer them into
18 evidence, Your Honor.

19 MS. FORD: No objection.

20 THE COURT: Motion's granted.

21 (Defendant Exhibits 18 and 19 admitted in
22 evidence.)

23 Q. How did you feel about your mission at this point
24 in time following your graduation from boot camp knowing
25 that you were going to Iraq, knowing that you were part

1 of the 101st with the tradition and the history that you
2 told the jury about and that you were now a part of it?
3 How did you feel about the mission that you were about
4 to embark on?

5 A. Well, I didn't know what to expect over there,
6 but I felt good about going over there and trying to do
7 something for our country, trying to stop the
8 terrorists, and stuff like that.

9 Q. Okay. Tell the jury what happened upon your
10 arriving in Iraq for the first time.

11 A. What specifically?

12 Q. Well, when you got there, was it everything you
13 thought it would be, or did you find some surprises
14 there?

15 A. It was -- it was kind of what I expected it to
16 be, some points. I've seen pictures of houses and stuff
17 like that over there, so I knew what it looked like.
18 But the town and stuff like that, I thought it would be
19 more desert and thought there would be more sand and
20 stuff like that.

21 Q. You were assigned to where when you first got
22 there?

23 A. FOB Yusufiyah.

24 Q. And we've all heard about the FOB. And you were
25 there for how long?

1 A. The whole year. I mean, I rotated in and out.

2 Q. You rotated in and out. We've heard about how
3 the three platoons would rotate in and out. They'd go
4 to the FOB at Yusufiyah, they would go to the JSB, and
5 they would also pull duty at the TCPs. You were in that
6 rotation?

7 A. Yes, sir.

8 Q. And I believe for the first -- for the first few
9 months, things were pretty much what you expected?

10 A. Yes, sir.

11 Q. People were killed, people were injured, but
12 things seemed to be under control, things seemed to be
13 winnable to you at that point?

14 A. For the most part, yes.

15 Q. You still had enthusiasm for the mission?

16 A. Yes, sir.

17 Q. Who were Casica and Nelson?

18 A. Sergeant Casica and Sergeant Nelson was my direct
19 team leader and squad leader for 1st Squad.

20 Q. Those were your immediate leaders, correct?

21 A. Yes, sir.

22 Q. Did you respect them?

23 A. Yes, sir.

24 Q. Did you like them?

25 A. Absolutely.

1 Q. I believe that it was Casica and Nelson were both
2 very strong on reaching out to the Iraqi people. Would
3 you agree with that?

4 A. Yes, sir.

5 Q. In fact, on many occasions, they would hand out
6 candy to the children and school supplies to the
7 children?

8 A. Correct, sir.

9 Q. And you agreed with them?

10 A. Yeah. I took part in doing the same thing, yes.

11 Q. You thought that was the way to approach this
12 war?

13 A. Yes.

14 Q. Did something happen to change your view?

15 A. Yes, sir.

16 Q. What was that?

17 A. On December 10th of the same year, 2005, they
18 were both killed in front of me at the TCP 2.

19 Q. You were there when they were murdered, were you
20 not?

21 A. Yes, sir.

22 Q. Tell the jury -- I'd like for you -- you're the
23 only surviving member of the team that's here to testify
24 about what happened there that day on December 10th, but
25 I believe the story really starts the night before,

1 doesn't it, when an informant came to the TCP?

2 A. Yes, sir.

3 Q. Tell the jury about that.

4 A. Sergeant Casica had an informant who was pretty
5 reliable, so we trusted him for a while. He would come
6 to us with tidbits of information with where IEDs were
7 and explosives, and he brought it to the TCP and brought
8 it to our attention several times. So we kind of
9 trusted him.

10 We were talking to him the night before on
11 December 9th, and he was telling us about there was
12 going to be an attack on the TCP 2 the next day right
13 around noon, gave us specifics about there was like four
14 people in a car, certain color car, with certain weapons
15 in a certain direction. And so the next day, we got
16 prepared. You know, we got up and everything, got ready
17 for it. I went on guard duty probably around 10:00 that
18 afternoon.

19 Q. Now, you were stationed, I believe, actually in
20 the vehicle, the Humvee, at that time?

21 A. Yes, sir.

22 Q. And you were facing north, the direction from
23 which you expected this attack to come, correct?

24 A. I was facing down the road, and Sergeant Nelson
25 was facing towards the direction of the attack. It was

1 one of the side canals.

2 Q. All right. So they were facing one way; you were
3 facing the other?

4 A. Yes, sir.

5 Q. Okay. Let me show you Defendant's 23 for
6 identification. Now, this is not you, correct?

7 A. Correct.

8 Q. Doesn't look like you. But is this an accurate
9 representation of the Humvee and the gun that is mounted
10 there and what your position would have been in the
11 Humvee on that day, December 10th?

12 A. Yes, sir.

13 Q. And just like the shotgun and the AK and the
14 M-14, this isn't the actual thing, but it gives the jury
15 an idea of what things looked like and where you were
16 seated and what you were doing at the time, correct?

17 A. Yes, sir.

18 MR. WENDELSDORF: Your Honor, I offer this
19 as Defendant's 23.

20 MS. FORD: No objection.

21 THE COURT: Motion's granted.

22 (Defendant Exhibit 23 admitted in evidence.)

23 Q. Now, how busy was that checkpoint on an ordinary
24 day?

25 A. It was fairly busy. We got hundreds of cars

1 coming through.

2 Q. But on this particular day and around the time of
3 the attack -- of course, you didn't know it was the time
4 of the attack, but around the time of the attack in
5 retrospect, isn't it true that the amount of traffic
6 through that checkpoint fell off dramatically?

7 A. Yes, sir.

8 Q. There was no foot traffic when ordinarily there
9 would be foot traffic from the locals, correct?

10 A. Yes, sir.

11 Q. There was no vehicular traffic when normally
12 there would be vehicular traffic from the locals,
13 correct?

14 A. Yes, sir.

15 Q. What did happen that day, however?

16 A. About an hour before the attack was supposed to
17 occur, Specialist Babineau was on the ground. He would
18 check the cars that did come through. And I was in the
19 truck. Sergeant Casica and Sergeant Nelson were both
20 off duty. Well, they were always on duty, but they were
21 not on guard. Sergeant Nelson was watching down one of
22 the canal roads, and Sergeant Casica was just sitting
23 there I think shaving, brushing his teeth, and stuff
24 like that, personal hygiene.

25 A little bit of time went by, and we had an

1 individual come from the opposite direction, approach
2 the TCP --

3 Q. When you say "the opposite direction," this is a
4 direction opposite from where the informant told you to
5 expect the attack by car?

6 A. Yes, sir.

7 Q. All right. He comes from the opposite direction.
8 And I'm sorry to interrupt you, but continue telling the
9 jury what you saw.

10 A. Correct. He approached on foot, and Sergeant
11 Casica knew him. He had spoke to him a couple times.
12 Sergeant Casica does speak a little bit of Arabic. He
13 did. And he was pretty much just asking him questions,
14 just regular questions, if he was waiting on a car or on
15 a friend or what it was. And the guy was just kind of
16 acting a little shady.

17 So I started to bring my attention towards the
18 individual because there wasn't any cars coming through.
19 And right when I put my attention towards the
20 individual, he pulled out a -- what appeared to be like
21 a small caliber handgun, shot Sergeant Casica in the
22 neck, and then turned and shot Sergeant Nelson in the
23 back of the head, killed both of them, and then started
24 firing at me and Babineau.

25 Q. All right. And keep going. Tell the jury what

1 happened after that.

2 A. After that, Babineau took cover behind the
3 Humvee, and then he started shooting at me.

4 The turret, it's kind of hard to turn, so I
5 started turning it towards him. When I got in his
6 direction, he started firing at me, so I took cover. I
7 went underneath until the shots stopped firing, and then
8 as I pop up, I got the 240, which is a mini machine gun,
9 and started firing at the individual. He turned around,
10 and as soon as he turned around, I hit him in the head
11 and killed him.

12 Q. You shot him with this -- with a weapon much like
13 this one here?

14 A. Yes. That's a 240, yes.

15 Q. I show you what's previously been admitted as
16 Defendant's 13 and Defendant's 12 and Defendant's 14.
17 Is that the individual that you shot and killed that day
18 after he murdered Casica and Nelson?

19 A. That day is real blurry to me, but it appears
20 like it was. I'm not positive.

21 Q. Thank you. Tell us what happened after all the
22 gunfire stopped.

23 A. After all the gunfire stopped, I was on the
24 truck, and I was in control of the radio and everything.
25 And I called up medevac from Bulldog X-ray, which is the

1 company's call sign, and I --

2 Q. You say you called a medevac. Is that a
3 helicopter?

4 A. Well, I just wanted to get them medical
5 attention, not -- I call it medevac. Evacuation with
6 medical care.

7 Q. Okay. Did you call for air support?

8 A. I didn't -- I wasn't authorized to call for air
9 support, but I was telling our company that we needed
10 immediate evac.

11 Q. Okay. And what did -- what would that have
12 entailed had they granted your request? Would it have
13 been a vehicle? An aircraft? What would it have been?

14 A. Hopefully with something like that, it would have
15 been an aircraft. We would have had set up an LZ real
16 quick for them to dust off and take the soldiers out. I
17 know we didn't get the air support that day, and we had
18 to take them back to the FOB by truck.

19 Q. Now, was there a reason why they didn't give you
20 air support that day? You've just had two -- a staff
21 sergeant and a sergeant shot down by an Iraqi. Did they
22 give you a reason why they weren't going to send air
23 support?

24 A. They didn't give us a reason, no. If there was,
25 I don't know.

1 Q. So you made the decision to take Casica and
2 Nelson to the FOB yourselves?

3 A. The company did, yes.

4 Q. Okay. Tell us what occurred and what, if any,
5 role Private Green played in that.

6 A. Well, at the time, we had -- we had a FOB
7 resupply. So we gave probably about three people from
8 our TCP to go resupply. We get a couple people from
9 each TCP and a truck from each one to go back to the FOB
10 and get water and get food, maybe take a shower,
11 whatever it would be. And Green was on the resupply
12 with I believe it was Till and Diaz, and they had a
13 truck gone.

14 And whenever this happened, I believe they were
15 up at TCP 1. They sent a truck down real quick. And I
16 remember Sergeant Yribe, Green, and I don't remember who
17 the other person was came down -- oh, Watt was one of
18 them, too. They came down with a medic, Specialist
19 Sharpness. They came down, loaded up the individuals in
20 the truck. We stayed there to secure the site and
21 everything.

22 And I remember they brought like four people
23 down, so we put one person in the back. We put Sergeant
24 Nelson in the back, and he was spread out through the
25 back seats. And from right there, the truck was pretty

1 much filled with the other guys in there, so we didn't
2 have enough room. I remember us putting Sergeant Casica
3 on the front of the Humvee, and Green got on top of
4 Sergeant Casica and held him down while Specialist
5 Sharpness was trying to give him medical attention.

6 Q. Then the truck took off down Sportster toward the
7 FOB in Yusufiyah, correct?

8 A. Yes, sir.

9 Q. Was that a safe thing to do, to take a single
10 truck to Yusufiyah on that road without sweeping it
11 first?

12 A. Absolutely not.

13 Q. Because of the danger of assault from gunfire and
14 IEDs, correct?

15 A. Yes, sir.

16 Q. All those men acted without any regard to their
17 own safety, didn't they?

18 A. Correct, sir.

19 Q. To get their wounded comrades to the FOB?

20 A. Yes, sir.

21 Q. Now, after this occurred, did you feel, based on
22 what you had seen, what you had experienced, what you
23 had been told the night before, that the TCP had been
24 set up by this informant?

25 A. I mean, everything he had told us was pretty much

1 black and white from what actually happened. So, I
2 mean, I didn't trust him. I think he was setting us up.

3 Q. And how did you feel about the fact that the
4 locals who usually traveled through that checkpoint in
5 hundreds, as you said before, were nowhere to be seen
6 that morning? Did that lead you to believe something
7 about the local population around there?

8 A. Yes. I think that they knew the attack was
9 imminent, that it was going to happen, and they just
10 kind of stayed away from the area.

11 Q. Did this play any role in changing your attitude
12 toward Iraqis? Not just the insurgents and al-Qaeda,
13 but Iraqis in general who may be supporting al-Qaeda,
14 supporting the insurgency, or at least being contrary to
15 the American forces?

16 A. Yes, sir, it did. It did affect a lot.

17 Q. Tell the jury about that. Tell the jury about
18 how that changed your feelings.

19 A. That incident right there was really specific. I
20 mean, you know, Sergeant Casica and Sergeant Nelson were
21 both over there before. Sergeant Nelson was in Vietnam
22 -- not Vietnam, but Desert Storm. They'd both been to
23 Iraq before, and they were really good guys. They
24 didn't hold a grudge from the first time even though one
25 of them was wounded.

1 And, you know, they tried to learn the language.
2 They engaged the people. They talked to them and stuff
3 like that.

4 And to have somebody that they knew, someone that
5 young -- I mean, the guy that shot him was only -- you
6 know, at the time, he couldn't have been older than me.
7 You know, he was still in his teens probably. And for
8 something like that to happen, it just -- it just
9 completely changed the entire war scene, you know. And
10 that was the first time I ever seen people killed, like
11 American soldiers, up front and personal, and it was
12 just devastating for me.

13 At that point, you know, I just couldn't trust
14 anybody. And from that point on, I just heard stories
15 about, you know, kids being insurgents, women
16 transporting stuff, and I just -- it just kept getting
17 worse for me. I just couldn't trust anybody really.
18 You didn't know who was going to be a combatant or a
19 civilian.

20 Q. You talk about women and children. Was it the
21 experience of our troops in Iraq that the insurgency and
22 those who would do harm to American soldiers weren't
23 restricted to military age men?

24 A. Correct.

25 Q. They could be women?

1 A. Yes, sir.

2 Q. They could be children?

3 A. Yes, sir.

4 Q. In fact, you know of situations where children
5 were actually used by the terrorists to distract
6 soldiers so that they could be attacked more efficiently
7 by the insurgents, correct?

8 A. Yes, sir.

9 Q. Okay. Same thing with women. Women could carry
10 bombs, women could be involved in distracting soldiers,
11 or actually attacking the soldiers?

12 A. Correct, sir.

13 Q. You knew Private Green before this time, of
14 course?

15 A. Yes, sir.

16 Q. Did this death of Casica and Nelson, to your
17 knowledge, have any impact on him? Did it increase his
18 hatred of Iraqis or his distrust of Iraqis, if you know?

19 A. I think it did everybody in the platoon. I mean,
20 I think it did everybody.

21 Q. And before December 10th, you told the jury that
22 when you graduated from boot camp, you were very
23 enthusiastic about the mission; that Casica and Nelson
24 had reached out to the Iraqi people; it was their goal
25 to extend a hand to them, as Colonel Kunk would say,

1 Judge. Even the Marshals tensed up there a little bit.

2 Q. Let's try to -- let's try to slow down a little
3 bit, and we'll give her a break. So we're talking
4 December 22nd. And I'm sorry I interrupted you, but go
5 on.

6 A. We were on a mission. Us as infantry, we were
7 escorting EOD, explosive ordinance disposal teams, and
8 their job was to find the IEDs, the bombs, and blow them
9 up.

10 So as we were escorting them -- it was an
11 improvised rocket. I don't know what it was
12 specifically, but it shot out and it did its job. It
13 hit one of the trucks and destroyed it, the wheel and
14 that area of it. So at that point, we had to call it
15 pretty much mission quit. We had to stop. And we were
16 told by our company commander, Captain Goodwin, to
17 retrieve it.

18 I remember our first sergeant being with us, and
19 we went out with our first sergeant. Lieutenant Britt
20 led the way, as he usually did. It was him, Lopez,
21 Sergeant Yribe was there, Sergeant Diaz was there, the
22 First Sergeant Till. Me myself, I was in one of the EOD
23 trucks. So I wasn't specifically there at the time that
24 they dismounted, but I was in the convoy.

25 At that point, they got out, went across -- we

1 told the company commander that the section wasn't
2 cleared, that we didn't --

3 Q. Was not clear?

4 A. Correct.

5 Q. You told Goodwin that the section was not clear,
6 which means that it was not proven safe for the troops,
7 correct?

8 A. Correct.

9 Q. Now, let's back up a little bit. We've heard
10 testimony that the convoy was attacked by an RPG. Do
11 you know what an RPG is?

12 A. Yes, sir.

13 Q. Is that a rocket-propelled grenade?

14 A. Yes, sir.

15 Q. I show you Defendant's 23 for identification and
16 ask you if that is a fair and accurate picture of an
17 RPG.

18 A. Yes, that is an RPG, sir.

19 Q. And it is a -- like the name implies, it is a
20 grenade at the end attached to a rocket which is
21 launched from a rifle-type -- sort of a combination
22 rifle-bazooka-type instrument, correct?

23 A. Yes, sir.

24 Q. Do you know what the range is?

25 A. No, I do not.

1 Q. Okay. So the convoy is approaching the bridge,
2 they're attacked by --

3 MR. WENDELSDORF: Oh, I offer this as
4 Defendant's 23, Judge. I got two 23s. Okay. We'll
5 make this 23B.

6 THE COURT: Motion's granted.

7 MR. WENDELSDORF: Losing track. Good job.
8 Keep it up.

9 (Defendant Exhibit 23B admitted in evidence.)

10 Q. You're attacked by an RPG, and Goodwin gives the
11 order to essentially get the RPG?

12 A. Yes, sir.

13 Q. You advised Goodwin that the bridge over which
14 the troops will have to cross has not been cleared,
15 correct?

16 A. Yes. The members of the squad did. Not
17 personally me, but somebody did, yes.

18 Q. Of course, you're a private at this time. You're
19 not going to tell Goodwin anything.

20 A. Yes, sir.

21 Q. But the junior people in control, the people who
22 can advise Captain Goodwin, are saying that's not a good
23 idea, that bridge hasn't been cleared?

24 A. Correct.

25 Q. And what was Goodwin's response?

1 A. His response was -- don't quote me, but it was
2 something like, "I don't care if you have to swim across
3 the canal to retrieve it. I want that."

4 Q. Okay. So he told them to go get it anyway?

5 A. Yes.

6 Q. And who went out to get it?

7 A. Like I said earlier, it was Lieutenant -- or
8 Lieutenant Britt was in the lead. He usually leads the
9 patrols. For him being a lieutenant, it's odd for him,
10 but he usually goes out first. Lopez, Specialist Lopez,
11 and then there was -- I believe it was Sergeant Diaz,
12 Sergeant Yribe, and from there I don't -- it was just a
13 couple other people.

14 Q. All right. So they headed out toward the device
15 across the foot bridge over the canal, correct?

16 A. Correct.

17 Q. Tell the jury what occurred then.

18 A. As they were walking across the foot bridge,
19 there was an IED. It must have been planted because you
20 couldn't tell it was there. It was a command detonated
21 IED, which is a copper wire leading up to the bomb, and
22 then like a hundred feet out into the bushes and the
23 shrubs and stuff like that, somebody could detonate it
24 through like a car battery or whatever this case may
25 have been.

1 And it blew -- it blew Lopez in half, and it
2 killed Sergeant -- Lieutenant Britt, too.

3 Q. Now, when you say it blew him in half, do you
4 mean that literally?

5 A. Yes.

6 Q. And pieces of his body went flying?

7 A. Yes, sir.

8 Q. And who did you say went into the canal?

9 A. I didn't say, but Lieutenant Britt did get blown
10 into the canal.

11 Q. All right. What occurred then?

12 A. I wasn't -- I wasn't present for that, but I was
13 in the convoy, like I said. Once I heard we had people
14 down, I got out of the truck that I was in, and I raced
15 up to where we were to see what was going on, and I got
16 informed exactly what just happened.

17 I went over there, and we had to get a sensitive
18 items check, which is a thing we must do for the Army,
19 make sure we accounted for all the night vision goggles,
20 all the weapons, any other particular items that they
21 might have had, maps and stuff. So we had to go around
22 and pretty much just pick up anything American. So that
23 included body parts, weapons, anything that was
24 American.

25 Q. And you actually came across -- well, you knew

1 Lieutenant Britt?

2 A. Yes, sir.

3 Q. You respected Lieutenant Britt?

4 A. Yes, sir.

5 Q. You thought he was a good leader?

6 A. Absolutely.

7 Q. And how did you feel when you looked down and saw
8 his jawbone at your feet?

9 A. It -- it was devastating for me. To this day, I
10 still get real emotional talking about it. It's just
11 something -- just something you can't describe, you
12 know. They were living like minutes earlier, and then
13 all of a sudden, you just find pieces of their bodies.
14 And it was horrible.

15 Q. What did that do to the morale of the platoon?

16 A. It was already down from Casica and Nelson, and,
17 I mean, this just -- this was just devastating for the
18 entire platoon. I mean, these were guys that had been
19 in the platoon for a long time, key leaders. We just
20 loved them. They were good guys.

21 Q. If you could have quit at that moment, would you
22 have?

23 A. No.

24 Q. Sergeant Miller did, though, didn't he?

25 MS. FORD: Objection.

1 Q. Did you lose another sergeant? Sergeant Miller
2 leave shortly thereafter?

3 A. Yeah. A little bit after that, Sergeant Miller
4 got pulled.

5 Q. So we've lost -- Sergeant Miller leaves. You've
6 lost Sergeant Casica, Sergeant Nelson, Lieutenant
7 Britt -- and what was -- Mr. Lopez was a specialist.
8 You've lost four of your leaders to attacks by Iraqis.
9 You've lost Sergeant Miller who leaves, is dismissed or
10 whatever.

11 And by this time, you're feeling a little
12 different about the mission, aren't you?

13 A. Yes, sir.

14 Q. Shortly thereafter, about a month thereafter, the
15 FOB burned down, did it not?

16 A. Yes. On February 5th, the FOB burned down.

17 Q. And a few days before that, your platoon had to
18 suffer a few more casualties. Specialist Owens was
19 killed, was he not?

20 A. Yes, on February 1st.

21 Q. And Specialist Strabino was not killed, but he
22 was severely wounded?

23 A. Yes, sir.

24 Q. So these hits, these deaths of respected leaders,
25 of respected comrades in arms, fellow soldiers, they

1 were just coming and coming and coming right grouped
2 together, correct?

3 A. Yes, sir.

4 Q. And just a few days after Owens was killed and
5 Strabino was wounded in a firefight, what happened to
6 the FOB?

7 A. It completely burned down to the ground.

8 Q. I show you what we've marked as Defendant's 20
9 for identification and ask you if this is a true and
10 accurate picture of the FOB obviously before it burned
11 down.

12 A. Yes, sir. It's the living quarters, yes.

13 Q. And what was the FOB?

14 A. It was the forward operating base. We had
15 different parts of it. It was really big. This was
16 specifically our living quarters where we had our
17 mechanics work on the Humvees and basically where the
18 entire company slept. We kept all of our possessions
19 there when we were out on patrols, and that was -- that
20 was our home.

21 Q. Okay. Your personal possessions were kept there,
22 correct?

23 A. Everything, yes.

24 Q. The pictures of your families?

25 A. Yes, sir.

1 Q. The letters from home?

2 A. Yes, sir.

3 Q. Your personal -- your DVD players, your iPods,
4 your computers. I believe you even kept the memorial --
5 the programs from Casica and Nelson's memorial there.

6 A. Yes, sir.

7 Q. Those were very important to you-all, weren't
8 they?

9 A. Yes, sir.

10 Q. I show you Defendant's 21 for identification and
11 ask you if that is a fair and accurate representation of
12 your home away from home after it burned.

13 A. Yes, sir.

14 Q. And, again, Defendant's 22 for identification.
15 Is that what the FOB looked like after it burned?

16 A. Yes, sir.

17 MR. WENDELSDORF: Your Honor, I offer these
18 as Defendant's 20, 21, and 22.

19 THE COURT: Motion's granted.

20 (Defendant Exhibits 20, 21, and 22 admitted in
21 evidence.)

22 Q. Now, Colonel Kunk has told us that every effort
23 was made to replace the belongings that individuals in
24 your platoon lost when the FOB burned down.

25 MR. LESOUSKY: Objection.

1 MR. WENDELSDORF: I'm sorry. Was that an
2 objection?

3 MR. LESOUSKY: An objection on relevance,
4 yes.

5 MS. FORD: Yes.

6 MR. WENDELSDORF: I just want to see if
7 that's true.

8 MR. LESOUSKY: Well, whether it's true or
9 not I don't believe is relevant. That's why I objected.

10 THE COURT: Let's approach the bench.

11 (Bench conference on the record outside the hearing
12 of the jury.)

13 MR. LESOUSKY: It's over the line.

14 MR. WENDELSDORF: No. Colonel Kunk, in
15 response to the prosecution's question, made a big deal
16 about the fact that all these things were replaced, that
17 people contributed clothing and DVDs, things came from
18 America. The bottom line is that's simply not true, and
19 this witness will say so.

20 MS. FORD: First of all, it was on redirect
21 after the defense had cross-examined him about the FOB
22 burning. Second, I already let the questions about
23 Captain Goodwin ordering them across the canal pass
24 because I was asleep at the switch. But I agree with
25 Mr. Lesousky. This crosses the line of the relevance

1 issue that we talked about before we started.

2 MR. WENDELSDORF: Once again, we run the
3 risk of Kunk getting away with a perjurious lie.

4 THE COURT: Even though it was on redirect,
5 you still brought it up.

6 MR. LESOUSKY: Let me talk to my counsel for
7 a second. I know you only want one of us talking.

8 THE COURT: Okay. Marisa?

9 MS. FORD: I think you probably could
10 hear what -- no. They're impeaching on a matter which
11 is completely collateral to this trial. It's not
12 relevant.

13 MR. WENDELSDORF: When you impeach on a
14 collateral issue, all that means is that I cannot bring
15 in extrinsic evidence to refute it. So if he doesn't
16 back me up, I can't bring somebody in to say, "Well,
17 that's not what you said two weeks ago."

18 THE COURT: That's exactly right. But I'm
19 going to allow him to do this, I think, on the FOB.

20 MR. WENDELSDORF: Right.

21 THE COURT: You understand --

22 MR. WENDELSDORF: I'm not going to go
23 anywhere on this leadership business.

24 THE COURT: I'm going to allow him to ask
25 that question.

1 MR. WENDELSDORF: Thank you, Judge.

2 (End of bench conference.)

3 BY MR. WENDELSDORF:

4 Q. Were your lost items replaced?

5 A. We had to account for everything, and basically
6 all the items with value, they gave us like 75 or
7 80 percent of what it was worth, depreciation value.
8 But, you know, stuff can get replaced that didn't mean
9 anything to me really, but the memorials and stuff like
10 that, they didn't get replaced. Our clothing and stuff
11 like that --

12 Q. Well, let's talk about your clothing. Isn't it
13 true that the clothing that they gave you to replace the
14 clothing you lost when the FOB burned down was the wrong
15 size?

16 A. Yeah. It was just -- they just gave us random
17 stuff.

18 Q. Random stuff. They gave you one change of
19 clothes; isn't that true?

20 A. They gave us a box of stuff. I mean, what we
21 got, it was just random, random stuff. You know, I had
22 shirts that was like 5XL.

23 Q. 5XL?

24 A. Yeah. Socks that couldn't fit on my feet.

25 Q. They were too small?

1 A. Yeah. There was just random personal hygiene
2 item stuff. It was like stuff that you find at a hotel,
3 like single-use-type stuff. And that was about it.

4 Q. And while all this was going on, though, you were
5 still responsible for your TCP duty?

6 A. Yes, sir.

7 Q. Tell us about that TCP duty and how it was to do
8 that after all these hits that platoon had taken. What
9 did you have to do in the average rotation through
10 TCP 2?

11 A. TCP 2, we just -- average rotation, you know, we
12 get up in the morning at -- well, someone would be on
13 guard 24 hours a day. Two guards at night usually and
14 two on the road at daytime.

15 And as soon as dawn hits, we do IED sweeps. You
16 walk up and down the roads just looking for bombs.
17 Sometimes we walk off the side of the road just to look
18 for the copper wires for command detonating IEDs, look
19 in potholes to see if there's any bombs in the potholes,
20 just investigate anything that's out of the ordinary.
21 Do that every morning, a certain stretch of the road.
22 And every TCP had a certain stretch of the road so the
23 entire thing gets covered.

24 After we return from that, you know, there's
25 mandatory presence patrols throughout the day, and you

1 just walk around, go in houses, just look for stuff out
2 of the ordinary. At nighttime, there might be a
3 nighttime operation where we'd go and just check
4 stretches of road, see if anybody's planting IEDs. And
5 throughout the daytime, of course, we're searching cars
6 and stopping everyone that comes through and searching
7 vehicles and stuff.

8 Q. And this was extremely stressful on the men of
9 1st Platoon, was it not?

10 A. Yes, sir.

11 Q. Including Private Green?

12 A. Everyone, yes.

13 Q. Including yourself?

14 A. Yes.

15 Q. And it finally got to the point, did it not,
16 where you and Green and the others came to the
17 realization that you most likely were not going to
18 survive out there?

19 A. Correct.

20 Q. That you were going to die at TCP 2 or something
21 like it?

22 A. Or wherever, yeah.

23 Q. And in the midst of this, was a change made to
24 the length of rotation through the TCPs? Up to a point
25 now, it's been five to seven days. Did that change?

1 A. It was about three to five days on average.

2 Q. Three to five days?

3 A. Yes. And I know the time that the FOB burned
4 down, we had to stay out there a little bit longer,
5 which I understood why. You know, everything was
6 getting switched around. Everything was chaos during
7 that period of time. It was like a week or so.

8 But Sergeant Fenlason came over and took over the
9 platoon. He was the new platoon sergeant, and he just
10 had an idea, you know, he just wanted to go out there
11 and -- I found later on, you know, he just -- he was
12 going out there -- I was told 28 days. Other people
13 might say 21. But it was for a long period of time,
14 almost a month.

15 And he wanted to get associated with the people,
16 started shaking every Iraqi's hand that he came across.
17 I kind of understood what he was talking about, but I
18 remember Sergeant Casica shaking people's hands and
19 stuff like that, and then all of a sudden he's dead, you
20 know. Somebody pulls out a gun and shoots him. So I
21 wasn't about to shake people's hands and stuff like
22 that, try to win over their hearts and minds.

23 We were trying to get them, the Iraqis, water,
24 running water, sewage, electricity, trying to get them,
25 you know, everything that they needed. And, you know,

1 we were neglecting our own men, neglecting ourselves.
2 He didn't really seem to care about us. He cared more
3 about the Iraqis than he did us.

4 Q. I understand that. And the saving grace, I
5 guess, was that as bad as it got at TCPs, like TCP 2,
6 until this change was made, you knew you were there for
7 three to five days and then you would be rotated perhaps
8 back to the FOB or perhaps back to TCP 1 or something of
9 that nature, correct?

10 A. Yes.

11 Q. But then it changed and it was 21 or 28 days, but
12 it was drastically extended, correct?

13 A. Correct.

14 Q. Now, when it was extended, were you told that it
15 was going to be 21 or 28 days, or were you just told
16 that you were going to stay there?

17 A. At first -- like after the first couple days, it
18 was just we didn't think anything. After about five
19 days, we kind of asked up, like just called up, you
20 know, not officially, just over the ICOMs, the
21 walkie-talkie-type deal, and just asked them, "Hey, when
22 are we leaving," something like that. He was like, "I
23 haven't heard anything."

24 After a week, we started calling up and being
25 like, "Are we leaving," because we need -- you know,

1 we're trying to get back to the FOB and stuff like that
2 and wanting to be out of here because it sucks out
3 there. And they told us they didn't know how long we
4 were going to be out there.

5 Q. Okay. So on March 12th -- March 11th, March
6 12th, around the time of these offenses, you had
7 suffered all these casualties. This animosity, this
8 hatred of Iraqis had grown tremendously among all
9 members of the platoon. You were out there well beyond
10 your three- to five-day limit. You keep asking when are
11 we going to be relieved. You're not told at this time
12 that there's a new policy of 21 or 28 days. You're just
13 told you're not relieved, you're not relieved, you're
14 not relieved, correct?

15 A. Correct.

16 Q. As far as you know, you are going to stay at
17 TCP 2 until you end up like Britt and Lopez and Casica
18 and Nelson?

19 MS. FORD: Objection.

20 THE COURT: I'll sustain the objection.

21 Q. Did you think you were going to die out there at
22 TCP 2?

23 MS. FORD: Objection.

24 MR. WENDELSDORF: I think it goes to his
25 state of mind, Judge.

1 THE COURT: It may go to his, but I'm going
2 to sustain the objection.

3 MR. WENDELSDORF: Very good. That's all.
4 Thank you.

5 MS. FORD: Just a couple questions, Your
6 Honor.

7 MR. WENDELSDORF: I have to clean up now.
8 No, I'm done. Come on.

9 REDIRECT EXAMINATION

10 BY MS. FORD:

11 Q. Mr. Spielman, I have just a few more questions
12 for you.

13 A. Yes, ma'am.

14 Q. I think it was the fall of 2007 that your
15 sentence was imposed at the conclusion of your
16 court-martial?

17 A. Yes, ma'am.

18 Q. And what was the sentence that was imposed at
19 that time?

20 A. From the panel, I got a life with parole.

21 Q. Okay. And that sentence was later reduced a bit
22 by your command at Fort Campbell, wasn't it?

23 A. Yes, ma'am.

24 Q. And it was reduced to what?

25 A. Ninety years.

1 Q. And that's the 90-year sentence that you told
2 the -- previously told the jury that you are currently
3 serving?

4 A. Yes, ma'am.

5 Q. All right. And that is a final sentence?

6 A. Yes, ma'am.

7 Q. And, Mr. Spielman, did you rape Abeer Al-Janabi?

8 A. No, ma'am.

9 Q. Did you kill her mother?

10 A. No, ma'am.

11 Q. Did you kill her father?

12 A. No, ma'am.

13 Q. Did you kill her little sister?

14 A. No, ma'am.

15 Q. Do you know who did?

16 A. Yes, ma'am.

17 Q. Did the defendant, Steven Green, rape Abeer
18 Al-Janabi?

19 A. Yes, ma'am.

20 Q. Did he kill her mother?

21 A. Yes, ma'am.

22 Q. And her father?

23 A. Yes, ma'am.

24 Q. And her little sister?

25 A. Yes, ma'am.

1 Q. Do you have any guarantee from the United States,
2 from me, or from anybody else that you will ever make
3 parole?

4 A. No guarantee, no, ma'am.

5 Q. Mr. Wendelsdorf asked you a lot of questions
6 about what happened to Sergeant Nelson and Sergeant
7 Casica, to Lieutenant Britt, and to Specialist Lopez.
8 Do you blame what happened to Sergeant Nelson and
9 Sergeant Casica for what you did on March 12th of 2006?

10 A. No, ma'am.

11 Q. Do you blame what happened to Lieutenant Britt
12 and Specialist Lopez on what -- for what you happened --
13 for what you did on March the 12th, 2006?

14 A. No, ma'am.

15 MS. FORD: Mary, could you put up -- I think
16 it's Exhibit 7L.

17 Q. On March the 12th of 2006, did you have any
18 reason to believe that this six-year-old girl was a
19 threat to you?

20 A. No, ma'am.

21 Q. And was she a threat to the defendant, Steven
22 Green, on March the 12th of 2006?

23 A. No, ma'am.

24 MS. FORD: Mary, you can take that down.

25 Q. On March the 12th of 2006, how long had you been

1 at TCP 2?

2 A. Probably about three days.

3 Q. And how long had the defendant, Steven Green,
4 been there?

5 A. About two days.

6 Q. And where were you before that?

7 A. I was at TCP 1.

8 Q. And do you know where Green was?

9 A. TCP 1 with me.

10 MS. FORD: That's all I have, Your Honor.
11 Thank you.

12 RE-CROSS-EXAMINATION

13 BY MR. WENDELSDORF:

14 Q. You were convicted of the murder of these four
15 individuals, were you not?

16 A. Yes, sir.

17 Q. You were originally given life with parole,
18 correct?

19 A. Yes, sir.

20 Q. And that was reduced later to a term of 90 years?

21 A. Yes, sir.

22 Q. And you will be eligible for parole in ten years
23 after your conviction, correct?

24 A. Yes, sir.

25 Q. Which was approximately three years ago?

1 A. 2007. About two years ago.

2 Q. Two and some change?

3 A. Yes, sir.

4 Q. So a little bit over seven years, you plan on
5 meeting the board?

6 A. Yes, sir.

7 Q. Okay. And if you don't make parole your first
8 time before the board, you know that you will come back
9 before that board every year thereafter, correct?

10 A. Yes, sir.

11 Q. Okay. Was Green a leader in your view, like
12 Cortez, like Barker?

13 A. It's hard to say. I don't know.

14 Q. In your view, had Green said to you, "Grab your
15 gear --"

16 MR. WENDELSDORF: I'm sorry? Oh, I thought
17 I heard something.

18 THE COURT: No.

19 MR. WENDELSDORF: Now I'm hearing voices. I
20 think I'm -- I think I've become a HESCO basket case
21 perhaps.

22 Q. Had Green said to you, "Spielman, let's go rape
23 and murder an Iraqi family" --

24 A. No, sir.

25 Q. -- you would have told him to shut up and get

1 back to work, wouldn't you have?

2 A. Yes.

3 Q. But when Barker and Cortez said let's go do
4 something, you went?

5 A. Yes.

6 Q. Could you ever conceive of yourself being
7 involved in something like this? That day when you
8 graduated from boot camp, could you ever in your wildest
9 imagination conceive that you ever would have been
10 driven to the degree that you were to commit these
11 crimes?

12 A. Absolutely not.

13 Q. Something happened to you in Iraq to change you,
14 didn't it?

15 A. Yes, sir.

16 Q. And it wasn't just you that it changed, was it?

17 A. No, sir.

18 MR. WENDELSDORF: That's all.

19 MS. FORD: Nothing further, Your Honor.

20 Thank you.

21 THE COURT: Thank you.

22 (Proceedings concluded at 3:09 p.m.)

23

24 C E R T I F I C A T E

25 I CERTIFY THAT THE FOREGOING IS A CORRECT TRANSCRIPT

1 FROM THE RECORD OF PROCEEDINGS IN THE ABOVE-ENTITLED
2 MATTER.

3

4 s/Terri L. Turner
5 Registered Professional Reporter
6 Official Court Reporter

June 10, 2009
Date

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I N D E X

WITNESSES:

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Government Exhibit 21B - Black silk weight pants -
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Government Exhibit 22B - Army issue T-shirt - page 37
Government Exhibit 23 - Balaclava - page 40
Government Exhibit 24 - Gerber multi-tool - page 52
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