



DEPARTMENT OF THE ARMY
A COMPANY, 501ST SPECIAL TROOPS BATTALION
101st AIRBORNE DIVISION (AIR ASSAULT)
COB SPEICHER, APO AE 09393

REPLY TO
ATTENTION OF

AFZB-KC-A

31 August 2006

MEMORANDUM FOR LTC Nathaniel Johnson, Jr., Appointing Authority

SUBJECT: Article 32(b) Investigation Findings and Recommendations – U.S. v. SSG Raymond L. Girouard, SPC William B. Hunsaker, SPC Juston R. Graber, and PFC Corey R. Clagett

1. Defense counsel present for the hearing: CPT Theodore Miller representing SSG Girouard, CPT Kevin Hynes and Mr. Michael Waddington representing SPC Hunsaker, CPT Sasha Rutizer and Mr. Paul Bergrin representing PFC Clagett, and CPT William Suddeth representing SPC Graber.

2. Substance of testimony – see attached transcripts.

3. As the Investigating Officer in the case US v. SSG Raymond L. Girouard, I find sufficient evidence to recommend the following charges against SSG Girouard be referred to a General Court Martial:

a. Charge I, Violation of the UCMJ, Art. 80. In that SSG Raymond L. Girouard, U.S. Army, did, at or near the Muthana Chemical Complex, Iraq, on or about 9 May 2006, attempt with premeditation, to murder a male detainee of apparent Middle-Eastern descent whose name is unknown by means of shooting him with a firearm.

b. Charge II, Violation of the UCMJ, Art. 81. In that SSG Raymond L. Girouard, U.S. Army, did, at or near the Muthana Chemical Complex, Iraq, on or about 9 May 2006, conspire with Specialist William B. Hunsaker and Private First Class Corey R. Clagett to commit an offense under the Uniform Code of Military Justice, to wit: premeditated murder of three detainees of apparent Middle-Eastern descent whose names are unknown, and in order to effect the object of the conspiracy, the said Specialist William B. Hunsaker and Private First Class Corey R. Clagett did shoot at the aforementioned three male detainees whose names are unknown.

c. Charge III, Violation of the UCMJ, Art. 118, Specification (1). In that SSG Raymond L. Girouard, U.S. Army, did, at or near the Muthana Chemical Complex, Iraq, on or about 9 May 2006, with premeditation, murder a male detainee of apparent Middle-Eastern descent whose name is unknown by means of shooting him with a firearm.

d. Charge III, Violation of the UCMJ, Art. 118, Specification (2). In that SSG Raymond L. Girouard, U.S. Army, did, at or near the Muthana Chemical Complex, Iraq, on or about 9 May

2006, with premeditation, murder a male detainee of apparent Middle-Eastern descent whose name is unknown by means of shooting him with a firearm.

e. Charge III, Violation of the UCMJ, Art. 118, Specification (3). In that SSG Raymond L. Girouard, U.S. Army, did, at or near the Muthana Chemical Complex, Iraq, on or about 9 May 2006, with premeditation, murder a male detainee of apparent Middle-Eastern descent whose name is unknown by means of shooting him with a firearm.

f. Charge IV, Violation of the UCMJ, Art. 134, Specification (1). In that SSG Raymond L. Girouard, U.S. Army, did, at or near the Muthana Chemical Complex, Iraq, on or about 10 May 2006, wrongfully communicate to Private First Class Bradley L. Mason a threat, to wit: "I will kill you if you tell anyone," or words to that effect.

g. Charge IV, Violation of the UCMJ, Art. 134, Specification (2). In that SSG Raymond L. Girouard, U.S. Army, did, at or near Forward Operating Base Brassfield-Mora, Iraq, between on or about 10 May 2006 and on or about 29 May 2006, wrongfully communicate to Private First Class Bradley L. Mason a threat, to wit: "You better not talk or I will kill you," or words to that effect.

h. Charge IV, Violation of the UCMJ, Art. 134, Specification (3). In that SSG Raymond L. Girouard, U.S. Army, did, at or near Forward Operating Base Brassfield-Mora, Iraq, and the U.S. Criminal Investigation Command (CID) office at Contingency Operating Base Speicher, Iraq, on or about 29 May 2006, wrongfully communicate to Private First Class Bradley L. Mason a threat, to wit: "You better not say anything or I swear I will kill you," or words to that effect.

i. Additional Charge II, Violation of the UCMJ, Art. 92. In that SSG Raymond L. Girouard, U.S. Army, did, at or near Forward Operating Base Brassfield-Mora, Iraq, on or about 15 June 2006, violate a lawful general order, to wit: paragraph 5.a. General Order No. 1, 101st Airborne Division (Air Assault), Task Force Band of Brothers, dated 11 May 2006, by wrongfully possessing a privately owned firearm.

j. Additional Charge III, Violation of the UCMJ, Art. 134, Specification (1). In that SSG Raymond L. Girouard, U.S. Army, did, at or near the Muthana Chemical Complex, Iraq, on or about 10 May 2006, wrongfully endeavor to influence the testimony of Private First Class Bradley L. Mason as a witness in the case of the said SSG Raymond L. Girouard, Specialist William B. Hunsaker and Private First Class Corey R. Clagett regarding the investigation into the shooting of three male detainees of apparent Middle-Eastern descent whose names are unknown at or near the Muthana Chemical Complex on or about 9 May 2006 by communicating to the said Private First Class Bradley L. Mason a threat, to wit: "I will kill you if you tell anyone," or words to that effect.

k. Additional Charge III, Violation of the UCMJ, Art. 134, Specification (2). In that SSG Raymond L. Girouard, U.S. Army, did, at or near Forward Operating Base Brassfield-Mora,

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Iraq, between on or about 10 May 2006 and on or about 29 May 2006, wrongfully endeavor to influence the testimony of Private First Class Bradley L. Mason as a witness in the case of the said SSG Raymond L. Girouard, Specialist William B. Hunsaker and Private First Class Corey R. Clagett regarding the investigation into the shooting of three male detainees of apparent Middle-Eastern descent whose names are unknown at or near the Muthana Chemical Complex on or about 9 May 2006 by communicating to the said Private First Class Bradley L. Mason a threat, to wit: “You better not talk or I will kill you,” or words to that effect.

1. Additional Charge III, Violation of the UCMJ, Art. 134, Specification (3). In that SSG Raymond L. Girouard, U.S. Army, did, between Forward Operating Base Brassfield-Mora, Iraq, and the U.S. Army Criminal Investigation Command (CID) office at Contingency Operating Base Speicher, Iraq, on or about 29 May 2006, wrongfully endeavor to influence the testimony of Private First Class Bradley L. Mason as a witness in the case of the said SSG Raymond L. Girouard, Specialist William B. Hunsaker and Private First Class Corey R. Clagett regarding the investigation into the shooting of three male detainees of apparent Middle-Eastern descent whose names are unknown at or near the Muthana Chemical Complex on or about 9 May 2006 by communicating to the said Private First Class Bradley L. Mason a threat, to wit: “You better not say anything or I swear I will kill you,” or words to that effect.

4. As the Investigating Officer in the case US v. Specialist William B. Hunsaker, I find sufficient evidence to recommend the following charges against SPC Hunsaker be referred to a General Court Martial:

a. Charge I, Violation of the UCMJ, Art. 80. In that Specialist William B. Hunsaker, U.S. Army, did, at or near the Muthana Chemical Complex, Iraq, on or about 9 May 2006, attempt with premeditation, to murder a male detainee of apparent Middle-Eastern descent whose name is unknown by means of shooting him with a firearm.

b. Charge II, Violation of the UCMJ, Art. 81. In that Specialist William B. Hunsaker, U.S. Army, did, at or near the Muthana Chemical Complex, Iraq, on or about 9 May 2006, conspire with SSG Raymond L. Girouard and Private First Class Corey R. Clagett to commit an offense under the Uniform Code of Military Justice, to wit: premeditated murder of three detainees of apparent Middle-Eastern descent whose names are unknown, and in order to effect the object of the conspiracy, the said Specialist William B. Hunsaker and Private First Class Corey R. Clagett did shoot at the aforementioned three male detainees whose names are unknown.

c. Charge III, Violation of the UCMJ, Art. 118, Specification (1). In that Specialist William B. Hunsaker, U.S. Army, did, at or near the Muthana Chemical Complex, Iraq, on or about 9 May 2006, with premeditation, murder a male detainee of apparent Middle-Eastern descent whose name is unknown by means of shooting him with a firearm.

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d. Charge III, Violation of the UCMJ, Art. 118, Specification (2). In that Specialist William B. Hunsaker, U.S. Army, did, at or near the Muthana Chemical Complex, Iraq, on or about 9 May 2006, with premeditation, murder a male detainee of apparent Middle-Eastern descent whose name is unknown by means of shooting him with a firearm.

e. Charge IV, Violation of the UCMJ, Art. 134, Specification (1). In that Specialist William B. Hunsaker, U.S. Army, did, at or near the Muthana Chemical Complex, Iraq, on or about 10 May 2006, wrongfully communicate to Private First Class Bradley L. Mason a threat, to wit: “I will kill you if you tell anyone,” or words to that effect.

f. Charge IV, Violation of the UCMJ, Art. 134, Specification (2). In that Specialist William B. Hunsaker, U.S. Army, did, at or near Forward Operating Base Brassfield-Mora, Iraq, between on or about 10 May 2006 and on or about 15 June 2006, wrongfully communicate to Private First Class Bradley L. Mason a threat, to wit: “Don’t tell anyone because if I go to jail I will kill you,” or words to that effect.

g. Additional Charge II, Violation of the UCMJ, Art. 134, Specification (1). In that Specialist William B. Hunsaker, U.S. Army, did, at or near the Muthana Chemical Complex, Iraq, on or about 10 May 2006, wrongfully endeavor to influence the testimony of Private First Class Bradley L. Mason as a witness in the case of the said SSG Raymond L. Girouard, Specialist William B. Hunsaker and Private First Class Corey R. Clagett regarding the investigation into the shooting of three male detainees of apparent Middle-Eastern descent whose names are unknown at or near the Muthana Chemical Complex on or about 9 May 2006 by communicating a threat to the said Private First Class Bradley L. Mason a threat, to wit: “I will kill you if you tell anyone,” or words to that effect.

h. Additional Charge II, Violation of the UCMJ, Art. 134, Specification (2). In that Specialist William B. Hunsaker, U.S. Army, did, at or near the Muthana Chemical Complex, Iraq, between on or about 10 May 2006 and on or about 15 June 2006, wrongfully endeavor to influence the testimony of Private First Class Bradley L. Mason as a witness in the case of the said SSG Raymond L. Girouard, Specialist William B. Hunsaker and Private First Class Corey R. Clagett regarding the investigation into the shooting of three male detainees of apparent Middle-Eastern descent whose names are unknown at or near the Muthana Chemical Complex on or about 9 May 2006 by communicating a threat to the said Private First Class Bradley L. Mason a threat, to wit: “Don’t tell anyone because if I go to jail I will kill you,” or words to that effect.

5. As the Investigating Officer in the case US v. Private First Class Corey R. Clagett, I find sufficient evidence to recommend the following charges against PFC Clagett be referred to a General Court Martial:

a. Charge I, Violation of the UCMJ, Art. 80. In that Private First Class Corey R. Clagett, U.S. Army, did, at or near the Muthana Chemical Complex, Iraq, on or about 9 May 2006,

attempt with premeditation, to murder a male detainee of apparent Middle-Eastern descent whose name is unknown by means of shooting him with a firearm.

b. Charge II, Violation of the UCMJ, Art. 81. In that Private First Class Corey R. Clagett, U.S. Army, did, at or near the Muthana Chemical Complex, Iraq, on or about 9 May 2006, conspire with SSG Raymond L. Girouard and Specialist William B. Hunsaker to commit an offense under the Uniform Code of Military Justice, to wit: premeditated murder of three detainees of apparent Middle-Eastern descent whose names are unknown, and in order to effect the object of the conspiracy, the said Specialist William B. Hunsaker and Private First Class Corey R. Clagett did shoot at the aforementioned three male detainees whose names are unknown.

c. Charge III, Violation of the UCMJ, Art. 118, Specification (1). In that Private First Class Corey R. Clagett, U.S. Army, did, at or near the Muthana Chemical Complex, Iraq, on or about 9 May 2006, with premeditation, murder a male detainee of apparent Middle-Eastern descent whose name is unknown by means of shooting him with a firearm.

d. Charge III, Violation of the UCMJ, Art. 118, Specification (2). In that Private First Class Corey R. Clagett, U.S. Army, did, at or near the Muthana Chemical Complex, Iraq, on or about 9 May 2006, with premeditation, murder a male detainee of apparent Middle-Eastern descent whose name is unknown by means of shooting him with a firearm.

e. Charge IV, Violation of the UCMJ, Art. 134. In that Private First Class Corey R. Clagett, U.S. Army, did, while traveling in a vehicle between Forward Operating Base Brassfield-Mora, Iraq, and the U.S. Army Criminal Investigation Command (CID) office at Contingency Base Speicher on or about 29 May 2006, wrongfully communicate to Private First Class Bradley L. Mason a threat, to wit: “SSG Girouard will not have to kill you because I will kill you if you say anything,” or words to that effect.

f. Additional Charge II, Violation of the UCMJ, Art. 134. In that Private First Class Corey R. Clagett, U.S. Army, did, while traveling in a vehicle between Forward Operating Base Brassfield-Mora and, Iraq, and the United States Criminal Investigation Command (CID) office at Contingency Operating Base Speicher, Iraq, on or about 29 May 2006, wrongfully endeavor to influence the testimony of Private First Class Bradley L. Mason as a witness in the case of the said Private First Class Corey R. Clagett, SSG Raymond L. Girouard, and Specialist William B. Hunsaker regarding the investigation into the shooting of three male detainees of apparent Middle-Eastern descent whose names are unknown at or near the Muthana Chemical Complex on or about 9 May 2006 by communicating a threat to the said Private First Class Bradley L. Mason a threat, to wit: “SSG Girouard will not have to kill you, because I will kill you if you say anything,” or words to that effect.

g. Additional Charge III, Violation of the UCMJ, Art. 91, Specification (1). In that Private First Class Corey R. Clagett, U.S. Army, at or near the Camp Arifjan, Kuwait Theater

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Field Detention Facility, on or about 21 July 2006, was disrespectful in language and deportment toward Damage Controlman First Class Marcko L. King, a petty officer, then known to the accused to be a superior petty officer, who was then in the execution of his office, by saying to him “My lawyer will fuck you up,” or words to that effect, by saying to him “I don’t give a fuck about rank,” or words to that effect, and by refusing to go to the position of parade rest while addressing the said Damage Controlman First Class Marcko L. King.

6. As the Investigating Officer in the case US v. Specialist Juston R. Graber, I find sufficient evidence to recommend the following charges against SPC Graber be referred to a General Court Martial:

a. Charge I, Violation of the UCMJ, Art. 80. In that Specialist Juston R. Graber, U.S. Army, did, at or near the Muthana Chemical Complex, Iraq, on or about 9 May 2006, attempt with premeditation, to murder a male detainee of apparent Middle-Eastern descent whose name is unknown by means of shooting him with a firearm.

b. Charge III, Violation of the UCMJ, Art. 107. In that Specialist Juston R. Graber, U.S. Army, did, at or near Contingency Operating Base Speicher, Iraq, on or about 29 May 2006, with intent to deceive, make to Special Agent Ramon A. De La Mora an official statement, to wit: “Upon arriving to the front of the house I witnessed the 3 dead detainees,” or words to that effect, which statement was false in that not all three detainees were dead when he arrived at the front of the house after shots were fired, and was then known by the said Specialist Juston R. Graber to be so false.

c. Charge IV, Violation of the UCMJ, Art. 118. In that Specialist Juston R. Graber, U.S. Army, did, at or near the Muthana Chemical Complex, Iraq, on or about 9 May 2006, with premeditation, murder a male detainee of apparent Middle-Eastern descent whose name is unknown by means of shooting him with a firearm.

7. I am not recommending the original charges of:

a. In the case US v. Private First Class Corey R. Clagett, Additional Charge III, Violation of the UCMJ, Art. 91, Specification (2). In that Private First Class Corey R. Clagett, U.S. Army, at or near the Camp Arifjan, Kuwait Theater Field Detention Facility, on or about 22 July 2006, was disrespectful in language and deportment toward Master at Arms Second Class Michelle M. Belle, a petty officer, then known to the accused to be a superior petty officer, who was then in the execution of her office, by saying to her “I can do anything in this facility and can’t be charged with it,” or words to that effect. I am not recommending this charge be referred to a General Court Martial for the following reasons:

(1) In her testimony of 9 August 2006, MA2 Michelle M. Behl stated that PFC Clagett’s statements to her were not disrespectful, and that PFC Clagett had never been disrespectful to her.

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(2) In MACM(AW) Donaldson's testimony of 9 August 2006, he stated he never read PFC Clagett his rights before conducting the interview of PFC Clagett. MACM(AW) Donaldson was required by AR 190-47, Section 12-10, to read PFC Clagett his rights before conducting an interview regarding the charge. PFC Clagett's statement admitted as evidence on 9 August 2006 is an unsworn statement.

b. In the case US v. Specialist Juston R. Graber, Charge II, Violation of the UCMJ, Art. 81. In that Specialist Juston R. Graber, U.S. Army, did, at or near the Muthana Chemical Complex, Iraq, on or about 9 May 2006 conspire with Staff Sergeant Raymond L. Girouard to commit an offense under the Uniform Code of Military Justice, to wit: premeditated murder of a male detainee of apparent Middle-Eastern descent whose name is unknown, in order to effect the object of the conspiracy, the said Specialist Juston R. Graber did aim at the aforementioned male detainee whose name is unknown through the sight picture of his firearm. I am not recommending this charge be referred to a General Court Martial for the following reasons:

(1) The first element of conspiracy requires the accused to enter in an agreement with one or more persons to commit the offense. Therefore, the nature of conspiracy requires agreement between two persons. I believe that SPC Graber, in following SSG Girouard's order to "Put him out of his misery," did not enter an agreement, but followed an order whether he agreed or not. There is a difference between obedience and agreement. Therefore, I recommend the government not put forward the Charge of Violation of the UCMJ, Art. 81, on SPC Graber.

(2) SPC Graber had already demonstrated that he had withdrawn from the agreement to kill the detainees when he left the meeting led by SSG Girouard at which SSG Girouard, SPC Hunsaker and PFC Clagett conspired to kill the three detainees.

c. In the case US v. SSG Raymond L. Girouard, Specialist William B. Hunsaker and Private First Class Corey R. Clagett, Additional Charge I, Violation of the UCMJ, Art. 81. In that SSG Raymond L. Girouard, Specialist William B. Hunsaker, and Private First Class Corey R. Clagett, U.S. Army, did, at or near the Muthana Chemical Complex, Iraq, on or about 9 May 2006, conspire with each other to commit an offense under the Uniform Code of Military Justice, to wit: obstruction of justice in the case of the said SSG Raymond L. Girouard, Specialist William B. Hunsaker and Private First Class Corey R. Clagett regarding the investigation into the shooting of three male detainees of apparent Middle-Eastern descent whose names are unknown at or near the Muthana Chemical Complex on or about 9 May 2006, and in order to effect the object of the conspiracy, the said SSG Raymond L. Girouard, Specialist William B. Hunsaker and Private First Class Corey R. Clagett staged the murder scene so as to appear that the aforementioned three male detainees of apparent Middle-Eastern descent whose names are unknown attacked Specialist William B. Hunsaker and Private First Class Corey R. Clagett during an escape attempt. I am not recommending this charge be referred to a General Court Martial for the following reason:

(1) The act of staging the murder scene is a subset of the first Art. 81 Conspiracy charge, and therefore is already covered.

8. In accordance with the authority of the Investigating Officer as stated in the MCM, paragraph 832, I recommend the following additional charges be referred to a General Court Martial:

a. In the case US v. SSG Raymond L. Girouard, Violation of the UCMJ Art. 121 (Larceny). In that SSG Raymond L. Girouard, U.S. Army, did, at or near the Muthana Chemical Complex, Iraq, on or about 9 May 2006, wrongfully take a 9mm pistol and holster from the owner, a female of apparent Middle-Eastern descent whose name is unknown, with intent to appropriate it to his own use and permanently deprive its owner of use of the pistol. The accused was present at the investigation, was informed of the nature of the uncharged offense, and was afforded the opportunity for representation, cross examination, and presentation.

b. In the case US v. SSG Raymond L. Girouard, Violation of the UCMJ Art. 93 (Maltreatment). In that SSG Raymond L. Girouard, U.S. Army, did, while traveling between Contingency Operating Base Speicher, Iraq, and Forward Operating Base Brassfield-Mora, Iraq, on or about 5 June 2006, sexually harass Private First Class Chanel Diaz by deliberately using repeated offensive comments of a sexual nature, to wit: "Could I eat your ass," and "You had a lot of dick," or words to that effect. The accused was present at the investigation, was informed of the nature of the uncharged offense, and was afforded the opportunity for representation, cross examination, and presentation.

c. In the case US v. SSG Raymond L. Girouard, Violation of the UCMJ Art. 128 (Assault). In that SSG Raymond L. Girouard, U.S. Army, did, at or near the Muthana Chemical Complex, Iraq, on or about 9 May 2006, assault by cutting with a knife Specialist William B. Hunsaker on the face and arm. The accused was present at the investigation, was informed of the nature of the uncharged offense, and was afforded the opportunity for representation, cross examination, and presentation.

d. In the case US v. SSG Raymond L. Girouard, Violation of the UCMJ, Art. 134, Obstructing Justice. In that SSG Raymond L. Girouard, U.S. Army, did, at or near the Muthana Chemical Complex, Iraq, on or about 9 May 2006, wrongly endeavor to impede the investigation into the shooting of three male detainees of apparent Middle-Eastern descent whose names are unknown at or near the Muthana Chemical Complex on or about 9 May 2006, by staging the murder scene so as to appear that the aforementioned three male detainees of apparent Middle-Eastern descent whose names are unknown attacked Specialist William B. Hunsaker and Private First Class Corey R. Clagett during an escape attempt. The accused was present at the investigation, was informed of the nature of the uncharged offense, and was afforded the opportunity for representation, cross examination, and presentation.

e. In the case US v. Specialist William B. Hunsaker, Violation of the UCMJ, Art. 134, Obstructing Justice. In that Specialist William B. Hunsaker, U.S. Army, did, at or near the Muthana Chemical Complex, Iraq, on or about 9 May 2006, wrongly endeavor to impede the investigation into the shooting of three male detainees of apparent Middle-Eastern descent whose names are unknown at or near the Muthana Chemical Complex on or about 9 May 2006, by

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staging the murder scene so as to appear that the aforementioned three male detainees of apparent Middle-Eastern descent whose names are unknown attacked Specialist William B. Hunsaker and Private First Class Corey R. Clagett during an escape attempt. The accused was present at the investigation, was informed of the nature of the uncharged offense, and was afforded the opportunity for representation, cross examination, and presentation.

f. In the case US v. Private First Class Corey R. Clagett , Violation of the UCMJ, Art. 134, Obstructing Justice. In that Private First Class Corey R. Clagett, U.S. Army, did, at or near the Muthana Chemical Complex, Iraq, on or about 9 May 2006, wrongly endeavor to impede the investigation into the shooting of three male detainees of apparent Middle-Eastern descent whose names are unknown at or near the Muthana Chemical Complex on or about 9 May 2006, by staging the murder scene so as to appear that the aforementioned three male detainees of apparent Middle-Eastern descent whose names are unknown attacked Specialist William B. Hunsaker and Private First Class Corey R. Clagett during an escape attempt. The accused was present at the investigation, was informed of the nature of the uncharged offense, and was afforded the opportunity for representation, cross examination, and presentation.

9. In accordance with the 11 July 2006 amendment to my appointment orders, I find the following aggravating factor listed in R.C.M. 1004(c)(6) exists and warrants a sentence of death: that the offenses were committed in time of war and in territory in which the United States or an ally of the United States was then an occupying power or in which the armed forces of the United States were then engaged in active hostilities. This factor exists in:

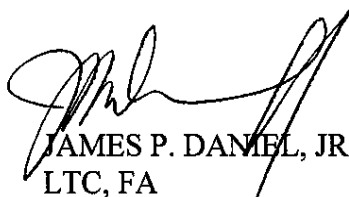
a. US v. SSG Raymond L. Girouard, Violation of the UCMJ, Art. 118, Specifications (1),(2), and (3).

b. US v. Specialist William B. Hunsaker, Violation of the UCMJ, Art. 118, Specifications (1) and (2).

c. US v. Private First Class Corey R. Clagett, Violation of the UCMJ, Art. 118, Specifications (1) and (2).

d. US v. Specialist Juston R. Graber, Violation of the UCMJ, Art. 118.

10. The POC for this memorandum is the undersigned at VOIP 672-1005.


JAMES P. DANBL, JR
LTC, FA
Investigating Officer

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Enclosures:

- 1- IO Chronology
- 2- Exhibits
- 3- Transcripts of the hearing