

UNITED STATES OF AMERICA

v.

PFC COREY CLAGETT, SSG RAYMOND  
GIROUARD, SPC WILLIAM HUNSAKER,  
AND SPC JUSTON GRABER  
CHARLIE COMPANY, 3D BATTALION  
3D BRIGADE COMBAT TEAM  
101ST AIRBORNE DIVISION (AIR  
ASSAULT)  
TASK FORCE BAND OF BROTHERS  
COB SPEICHER, IRAQ  
APO AE 09393

ARTICLE 32 INVESTIGATION

PROTECTIVE ORDER

24 JULY 2006

1. I have been notified by government counsel that they intend to seek the approval of the Secretary of the Army to invoke the privilege against the release of classified information contained in MRE 505 regarding the items specified in paragraphs 2.b.(5) through 2.b.(8).

2. Accordingly, while such request is pending, IAW MRE 505 and RCM 405(g)(6) it is hereby ORDERED:

a. The joint UCMJ art. 32 investigation for the above captioned cases shall remain UNCLASSIFIED. Neither government counsel nor defense counsel may introduce, nor may the investigating officer consider, any classified evidence.

b. As used herein, the term "classified information or document" refers to:

(1) Any classified document (or information contained therein);

(2) Information known by the defendant or defense counsel to be classifiable;

(3) Classified documents (or information contained therein) disclosed to the defendant or defense counsel as part of the proceedings in this case;

(4) Classified documents and information which have otherwise been made known to the accused or defense counsel and which have been marked or described as: "SECRET" or "TOP SECRET."

(5) The classified AR 15-6 investigation by BG Thomas Maffey, including advanced copies of testimonial transcripts provide to the defense which had not yet been marked as SECRET (most but not all of these files are labeled with the term "RAM" in the discovery provided to the defense).

(6) The 14 MAR 06 Operation Iron Triangle Commander's Back Brief (note – this product is erroneously dated in March, when it in fact was created in May).

(7) The 4 MAY 06 OORDER briefs to Operation Iron Triangle.

(8) The classified MNC-I, Task Force Band of Brothers, or 3rd Brigade Combat Team ROE annexes.

c. As used herein, the term “classified information or document” DOES NOT refer to:

(1) What an accused Soldier was subjectively told the ROE for Operation Iron Triangle was.

(2) What types of individuals an accused Soldier was subjectively told he could expect to find on the objective.

(3) Actions and activities that took place at or near the site of the alleged homicides on 9 May 2006 or 21 July 2006.

(4) Excerpts from the documents listed in paragraphs 2.b.(5) through 2.b.(8), provided said excerpts are specifically and properly marked as unclassified by the Original Classification Authority.

(5) Unclassified substitutes as provided in paragraph 2.n. below.

(6) Any relevant DA Form 2823 (Sworn Statement), DA Form 3881 (Rights Warnings Procedure/Waiver Certificate), or their equivalent, and other similar law enforcement documents, not marked as classified or known to be classified or classifiable.

d. All such classified documents and information related to this case shall remain classified unless they bear a clear indication that they have been officially declassified by the Government agency or department that originated the document or the information contained therein (hereinafter referred to as the “originating agency”).

e. The words “documents” or “associated materials” as used in this Order include, but are not limited to, all written or printed matter of any kind, formal or informal, including the originals and all non-identical copies, whether different from the original by reason of any notation made on such copies or otherwise, including, without limitation, papers, correspondence, memoranda, notes, letters, telegrams, reports, summaries, inter-office and intra-office communications, notations of any sort, bulletins, teletypes, telex, invoices, worksheets, and all drafts, alterations, modifications, changes and amendment of any kind to the foregoing, graphic or aural records or representations of any kind, including, without limitation, photographs, charts, graphs, microfiche, microfilm, video tapes, sound recordings of any kind, motion pictures, any electronic, mechanical or electric records or representations of any kind, including without limitation, tapes, cassettes, discs, recordings, films, typewriter ribbons and word processor discs or tapes.

f. The word “or” should be interpreted as including “and” and vice versa; “he” should be interpreted as including “she” and vice versa.

g. This order applies to all government and defense counsel, accused Soldiers, the investigating officer, court reporters, interpreters and other personnel assigned to these cases.

h. Persons subject to this order are advised that direct or indirect unauthorized disclosure, retention, or negligent handling of classified information could cause serious and, in some cases, exceptionally grave damage to the national security of the United States, or may be used to the advantage of a foreign nation or against the interests of the United States.

i. Persons subject to this order are admonished that they are obligated by law and regulation not to disclose any classified information in an unauthorized fashion.

j. Persons subject to this order are admonished that any breach of this order may result in the termination of their access to classified information. In addition, they are admonished that any unauthorized disclosure, possession or handling of classified information may constitute violations of United States criminal laws, including but not limited to, the provisions of Sections 641, 793, 794, 798 and 952, Title 18, United States Code, and Sections 421 and 783(b), Title 50, United States Code. In addition, for those persons who are attorneys, unauthorized disclosure of classified information may result in the filing of a report to their State Bar Association.

k. The defense shall not disclose the contents of any classified documents or information to any person except those persons identified to them by the Trial Counsel as having the appropriate clearances, and a need to know.

l. Nothing contained in this order shall be construed as waiver of any right of the accused.

m. The investigating officer, any defense counsel, or any government counsel may make a timely request for modification of this protective order.

n. IAW MRE 505(d), any defense or government counsel may request an unclassified substitute for relevant and necessary classified documents or information as provided in MRE 505(d)(2) and MRE 505(d)(3). Such a request will contain a proposed unclassified substitute. If the request is granted, the unclassified substitute may be submitted as evidence at the joint UCMJ art. 32 investigation for the above captioned cases. Such requests should be submitted to me no later than 28 July 2006.

o. IAW RCM 405(j)(4), not later than five days following the receipt of the investigating officer's report by the accused, defense counsel will submit to me a list specifically identifying any classified evidence they would have presented at the UCMJ art. 32 hearing but for this protective order.

  
NATHANIEL JOHNSON JR.  
LTC, IN  
Convening Authority