IN THE UNITED STATES ARMY COURT OF CRIMINAL APPEALS

UNITED STATES Appellee	**MOTION TO EXAMINE SEALED MATERIALS (2)**
v.	Docket No. ARMY 20220248
Staff Sergeant (E-6) **DANIEL D. HERMAN,** United States Army, Appellant	Tried at Fort Hood, Texas, on 10-14 May 2022, before a general court-martial appointed by the Commander, Headquarters, III Corps and Fort Hood, Lieutenant Colonel Scott Z. Hughes, Military Judge, presiding.

TO THE HONORABLE, THE JUDGES OF THE
UNITED STATES ARMY COURT OF CRIMINAL APPEALS

COMES NOW the undersigned appellate defense counsel, pursuant to Rules 6.9(a) and 23 of this court's Rules of Appellate Procedure, and moves to examine sealed materials contained in the record of *United States v. SSG Daniel Herman*. The undersigned counsel, Major Mitchell Herniak (Branch Chief, Defense Appellate Division), seeks to examine the following exhibits, all of which contain explicit images that formed the basis of the charges and specifications for which appellant was convicted and Military Rule of Evidence 404(b) material used during appellant's trial. Prosecution Exhibits: 35, 81, 84, and 89.

This court previously granted a motion to examine all sealed materials except Prosecution Exhibits 35, 81, 84, and 89. The previously filed motion erroneously omitted a request to examine Prosecution Exhibits 35, 81, 84, and 89.

PANEL NO. 2

This is not a request to review material protected under Mil. R. Evid. 513.

In the present case, review of the materials sealed pursuant to the military judge is consistent with appellate defense counsel's obligations under Army Reg. 27-26, Legal Services: Rules of Professional Conduct for Lawyers (28 June 2018), and is reasonably necessary to allow undersigned counsel to evaluate this material in order to adequately advise appellant.

WHEREFORE, appellate defense counsel respectfully requests this court grant the instant motion.

[redacted]

MITCHELL D. HERNIAK
Major, Judge Advocate
Branch Chief
Defense Appellate Division

PANEL NO. #2

MOTION TO EXAMINE SEALED MATERIAL

GRANTED: [redacted]

DENIED: _____

DATE: 5 April 2023

CERTIFICATE OF FILING AND SERVICE

I certify that a copy of the foregoing was electronically submitted to Army Court and Government Appellate Division on April 3, 2023.

[redacted]
MICHELLE L.W. SURRATT
Paralegal Specialist
Defense Appellate Division
[redacted]