

## PROSECUTION MEMORANDUM FOR POTENTIAL COURTS-MARTIAL

1. **Background:** When you want the Active Component (AC) to consider taking a case to court-martial, it is helpful to prepare a Prosecution Memorandum for the AC Chief of Military Justice. By preparing a Prosecution Memorandum, you show the AC that the case is important enough to you and your command. The Chief of MJ can take the Prosecution Memorandum to his/her Staff Judge Advocate. If you articulate the reasons why the case warrants a court-martial, and you present strong evidence in the memorandum, you are more likely to get the AC support.

### 2. Requirements in Prosecution Memo:

a. **Key Data:** Include the accused key data such as MOS, years of service, ETS, GT score, Education, pretrial confinement (if any), dependents, and any related cases.

b. **Theory/Theme:** Prepare a theory of the case, and a theme for the potential court-martial. The theory explains how and why the accused did what he/she did. The Theme is what the active component uses at court-martial as the central focus of the case, and everything will revolve around the Theme.

c. **Facts/Background:** Have a section explaining the facts and background of the case. It is good to start with an overall summary of the facts, and then the following paragraphs go into greater detail about the case.

d. **Proof Analysis:** Prepare a Proof Analysis for the case. In the proof analysis, you list all the potential UCMJ Articles violated, the elements of each article, the evidence to meet the elements in your particular case, possible basis of admission for each piece of evidence, and any other comments or concerns about each Article that you have at the time of preparing the prosecution memorandum.

e. **Witnesses:** Create the list of potential witnesses. Include their contact information to make it easy for the AC trial counsel to interview them. Also, it is helpful if you provide a one or two line explanation of why the witness is important to the case.

f. **Anticipated Motions:** List out and explain any anticipated motions for the government or the defense.

g. **Charges and Maximum Punishment:** Create a list of all the charges and the maximum punishments for each charge. You should include possible confinement, possible discharges, and potential forfeitures.

h. **Sentencing Factors:** Explain any matters of aggravation or mitigation that could be exploited during the trial.

i. Anticipated Defenses: A good trial counsel is always ready for defenses. In this section you should think like a Defense Counsel, and consider what possible defenses may result at trial.

j. Other Concerns/Issues: Include any other matters you feel are relevant for the AC to consider or be mindful of for this potential case.

k. Recommendation: Explain what you think should happen with the case, and what the proposed punishments should be for your specific case.



DEPARTMENT OF THE ARMY  
OFFICE OF THE STAFF JUDGE ADVOCATE

[REDACTED]

Chief, Criminal Law, OSJA, [REDACTED]

FOR Staff Judge Advocate, [REDACTED]

SUBJECT: Prosecution Memorandum - *United States v. SPC* [REDACTED]

1. ACCUSED KEY DATA:

Accused Key Data	
Military Occupational Specialty	11B Infantryman
Years in Service	XX
Term of Service Began:	[REDACTED]
ETS Date:	[REDACTED]
General Technical Score	120
Education	Three semesters of college
PTC/Restriction	None
Dependents	Wife
Companion Case/Accused	N/A

2. THEORY AND THEME OF THE CASE:

a. **Theory:** On [REDACTED], SPC [REDACTED] engaged in sexually explicit communications with someone he believed to be a 12-year-old female on an anonymous messaging application. Special Agent (SA) [REDACTED], who was working undercover as part of the Federal Bureau of Investigation's (FBI) [REDACTED] Operation, made contact with SPC [REDACTED] via an online messaging application. She told SPC [REDACTED] that she was a 12-year-old female.

SPC [REDACTED] quickly turned the conversation towards sex. SPC [REDACTED] first sent several explicit messages to the agent posing a 12-year-old dependent of a Service

SUBJECT: Prosecution Memorandum – U.S. v. SPC [REDACTED]

Member. SPC [REDACTED] then indicated his desire to engage in [REDACTED] with her. SPC [REDACTED] also sent a [REDACTED] photograph of himself with [REDACTED]

On [REDACTED], SPC [REDACTED] made a sworn statement and confessed to sending explicit text messages and a sexually explicit image to an undercover agent he believed to be a minor, stating in part, “[REDACTED]”

a. **Theme:**

SPC [REDACTED] is a sexual predator who tried to prey on a 12-year-old child of a Service Member. He asked a 12-year-old child to [REDACTED] while they chatted online. He attempted to tell a 12-year-old child that he would [REDACTED]. He tried to send a 12-year-old child a [REDACTED] of himself with [REDACTED].

That is what SPC [REDACTED] intended to do, and he did take these actions. He asked someone to [REDACTED], and told that person he wanted to [REDACTED] her, and sent her a [REDACTED] of himself with [REDACTED]. But what he did not know was that he wasn’t communicating with a 12-year-old child of a Service Member. Instead, he was communicating with an undercover investigator working with the FBI.

SPC [REDACTED] intended to prey on a 12-year-old child, and sending explicit communications and a nude photograph of himself was no mistake. SPC [REDACTED] began [REDACTED] to the conversation, repeatedly expressing sexual interest in someone he believed to be a 12-year-old child of a Service Member.

What kind of person—what kind of Soldier—would prey on a 12-year-old child?

SPC [REDACTED]’s words speak to his intent. There is more: take SPC [REDACTED]’s own words during an interview with an investigator. “I ended up messaging an underage female on Omegle, and it ended up going to Kik. From there, we were talking and the conversation was going very well. I [REDACTED]”

3. **FACTS:**

a. **Summary of Facts.** The accused is SPC [REDACTED]. He is a [REDACTED]-year-old Infantryman with [REDACTED]. He engaged in sexual conversations to include sending a nude image of himself to what he believed to be a 12-year-old girl through an anonymous chatting application. The 12-year-old girl was undercover FBI

SUBJECT: Prosecution Memorandum – U.S. v. SPC [REDACTED]

agent, SA [REDACTED]. On [REDACTED] CID [REDACTED] conducted an interview on SPC [REDACTED] where the accused confessed to sending a nude image of himself and engaging in sexually explicit communication with someone he believed to be a 12-year-old female.

b. **Background.** On [REDACTED], SPC [REDACTED] sent explicit text messages and a sexually explicit image to an undercover agent he believed to be a 12-year-old female dependent of a Service Member. SA [REDACTED], was working undercover as part of the FBI's [REDACTED] "Operation" when she made contact with SPC [REDACTED] through an anonymous messaging application, Omegle. SA [REDACTED] told SPC [REDACTED] that she was a 12-year-old female. At some point, the conversation shifted to the messaging app Kik. At the time, SPC [REDACTED]'s Kik profile picture was of himself in an Army uniform with his nametag and face clearly visible.

c. **SPC's lewd messages.** SPC [REDACTED] first sent several explicit messages to the agent posing a 12-year-old dependent of a Service Member. SPC [REDACTED] asked, "[REDACTED]?" When the agent replied asking if SPC [REDACTED] had a girlfriend, he said "[REDACTED]." SPC [REDACTED] then indicated that he "[REDACTED]," before discussing [REDACTED] in more detail, saying "[REDACTED], telling the individual that she should "[REDACTED]."

SPC [REDACTED] also indicated his desire to engage in sexual intercourse with the he believed to be a 12-year-old girl. SPC [REDACTED] messaged, "[REDACTED]" The agent messaged back, "[REDACTED]" SPC [REDACTED] responded, "[REDACTED]"

SPC [REDACTED] then offered to send a sexually explicit photograph. SPC [REDACTED] asked, "[REDACTED]?" The agent responded, "[REDACTED]." SPC [REDACTED] then sent a nude photograph of himself with both [REDACTED] and his face visible. After sending the photograph, he indicated that he was [REDACTED] to the conversation, messaging "[REDACTED]"

On [REDACTED], SA [REDACTED] informed the [REDACTED] CID Office of these facts. SA [REDACTED] provided several files documenting the encounter, including (1) a Kik profile picture of a [REDACTED] in Army ASUs with a digitally added username [REDACTED] though the name tape was unreadable; (2) DPS search results for SPC [REDACTED]

██████████  
SUBJECT: Prosecution Memorandum – U.S. v. SPC ██████████

indicating he was stationed at ██████████; and (3) a video file of the Kik session showing a recording of a cell phone screen, showing SA ██████████ scrolling through the content of the conversation with the account name ██████████, including sexually graphic language and a nude image. On ██████████, SA ██████████ compared a digital copy of SPC ██████████ Driver's License photograph, and found them to be a positive match with the images provided by SA ██████████.

d. **SPC ██████████ confession.** ██████████, SPC ██████████ confessed to sending explicit text messages and a sexually explicit image to an undercover agent he believed to be a 12-year-old female. He signed a sworn statement stating, ██████████  
██████████  
██████████

**4. PROOF ANALYSIS:**

THE CHARGE: ARTICLE 80 (Attempted Sexual Abuse of a Child)

SPECIFICATION 1: In that, Specialist ██████████, U.S. Army, did, at or near ██████████, on or about ██████████, attempt to commit a lewd act upon Special Agent ██████████, an individual who he believed had not attained the age of 16 years, by intentionally communicating indecent language, to wit: "██████████  
██████████," or words to that effect, to Special Agent ██████████, by any means, including via any communication technology, with an intent to arouse or gratify the sexual desire of any person.

Elements	Evidence/Witnesses	Basis of Admission	Comments
That at or ██████████, on or about ██████████, the accused attempted to commit a lewd act upon SA ██████████, by intentionally	- SA ██████████ testimony discussing move from Omegle to Kik, she identified herself as 12yo on Omegle - SA ██████████: CID Investigator and was	- MRE 401 (relevance) - Statements by accused and sworn statement: MRE 801(d)(2)(A) (statement by a	- Kik time logs are in UTC, but DFE at CID said they match the 17 May timeline - We don't have Omegle chats- those have been lost or destroyed,



██████████  
 SUBJECT: Prosecution Memorandum – U.S. v. SPC ██████████

		(not hearsay if not offered for truth of matter asserted)	
That the accused did so with an intent to arouse or gratify the sexual desire of any person.	<ul style="list-style-type: none"> <li>- SA ██████████ testimony regarding the nature of the conversation</li> <li>- Kik screen shots</li> <li>- Kik video</li> <li>- Accused's sworn statement says he sent messages for his own sexual gratification</li> <li>- Accused's CID interview</li> </ul>	<ul style="list-style-type: none"> <li>- MRE 401 (relevance)</li> <li>- Statements by accused and sworn statement: MRE 801(d)(2)(A) (statement by a party opponent)</li> <li>- Statements by SA ██████████ in conversation: MRE 801(c)(2) (not hearsay if not offered for truth of matter asserted)</li> </ul>	

SPECIFICATION 2: In that, Specialist ██████████, U.S. Army, did, at or near ██████████ on or about ██████████, attempt to commit a lewd act upon Special Agent ██████████, an individual who he believed had not attained the age of 16 years, by intentionally ██████████ to Special Agent ██████████ by any means, including via any communication technology, with an intent to arouse or gratify the sexual desire of any person.

Elements	Evidence/Witnesses	Basis of Admission	Comments
That SPC ██████████ at or near ██████████, on or about ██████████ committed a lewd act upon SA ██████████	- SA ██████████ testimony discussing move from Omegle to Kik, she identified herself as 12yo on Omegle	- Statements by accused and sworn statement: MRE 801(d)(2)(A) (statement by a	-Need color copy of image of Accused, because the image we have is BW; image I saw at CID was color (best evidence)



SUBJECT: Prosecution Memorandum – U.S. v. SPC [REDACTED]

<p>[REDACTED], by intentionally exposing his [REDACTED] to Special Agent [REDACTED] by any means, including via any communication technology;</p>	<ul style="list-style-type: none"> <li>- [REDACTED]: CID Investigator and was the interviewer for the accused's confession</li> <li>- Screenshots of Kik conversation</li> <li>- Video of Kik session</li> <li>- Kik time logs</li> <li>- Accused's sworn statement admits username, account, 12yo, images, etc.</li> <li>- Image of accused exposing his genitalia</li> </ul>	<p>party opponent)</p> <ul style="list-style-type: none"> <li>- Statements by SA [REDACTED] in conversation: MRE 801(c)(2) (not hearsay if not offered for truth of matter asserted)</li> </ul>	
<p>That at the time, SPC [REDACTED] believed SA [REDACTED] had not attained the age of 16 years; and</p>	<ul style="list-style-type: none"> <li>- SA [REDACTED] testimony</li> <li>- Screenshots of Kik conversation</li> <li>- Video of Kik conversation</li> <li>- Accused CID interview video</li> <li>- Accused sworn statement</li> </ul>	<ul style="list-style-type: none"> <li>- Statements by accused and sworn statement: MRE 801(d)(2)(A) (statement by a party opponent)</li> <li>- Statements by SA [REDACTED] in conversation: MRE 801(c)(2) (not hearsay if not offered for truth of matter asserted)</li> </ul>	<ul style="list-style-type: none"> <li>- In his sworn and interview at CID he says he would end conversations with anyone under age. Still, he admits knowing she was 12yo and SA [REDACTED] can offer testimony to that effect</li> </ul>
<p>That the accused did so with an intent to arouse or gratify the sexual desire of any person.</p>	<ul style="list-style-type: none"> <li>- SA [REDACTED] testimony regarding the nature of the conversation</li> <li>- Kik screen shots</li> <li>- Kik video</li> <li>- Accused's sworn statement says he sent messages for his own sexual gratification</li> </ul>	<ul style="list-style-type: none"> <li>- Statements by accused and sworn statement: MRE 801(d)(2)(A) (statement by a party opponent)</li> </ul>	

██████████  
 SUBJECT: Prosecution Memorandum – U.S. v. SPC ██████████

	- Accused's CID interview	- Statements by SA ██████████ in conversation: MRE 801(c)(2) (not hearsay if not offered for truth of matter asserted)	
--	---------------------------	--	--

**5. WITNESSES:**

- SA ██████████
- SA ██████████
- SA ██████████
- ██████████ : Kik representative.
- ██████████ : Kik representative.
- SA ██████████, minimal involvement.

**6. ANTICIPATED MOTIONS:**

Anticipated Motions	
MRE 801	Exclude portion of conversation sent by ██████████

**7. CHARGES AND MAXIMUM PUNISHMENT:**

Article	Discharge	Confinement	Forfeitures
120(b)	DD	15 years	TF
120(b)	DD	15 years	TF
Maximum Sentence	DD; 30 years; total forfeitures; reduction to E-1		

██████████  
SUBJECT: Prosecution Memorandum – U.S. v. SPC ██████████

## 8. SENTENCING FACTORS:

a. Aggravation: Defense will attempt to minimize this crime because SA ██████████ is not a child, but the Government focus should be on the fact that the Accused thought this was a child. He intentionally sent lewd messages and an image to someone he thought was a child. This child gave him plenty of context cues, too (i.e. ██████████). This brings discredit to the United States Army and it is likely that he has or will do this, again, if he is not appropriately punished.

b. Mitigation: He is well-regarded in the unit. For a period of time there was no ██████████  
██████████

## 9. ANTICIPATED DEFENSES

a. **Voluntary intoxication.** In his CID interview, SPC ██████████ says ██████████  
██████████. According to RCM 916(I)(2), voluntary intoxication from alcohol may negate the elements of specific intent, knowledge, or willfulness. ██████████  
██████████. SPC ██████████ sent the lewd messages in question during the same conversation in which he was informed of her age. He was also reminded that her father was an enlisted Soldier. Moreover, SPC ██████████ messages do not indicate such a high level of intoxication. There are mostly comprised of complete sentences or sensible fragments without typos.

b. **Did not remember age.** In his CID interview, ██████████ says he did not remember the individual he was chatting with was ██████████. He seems to link this memory lapse with his intoxicated state. SPC ██████████ the lewd messages in question during the same conversation in which he was informed of her age. He was also reminded that her father was an enlisted Soldier.

c. **Entrapment.** Entrapment is an affirmative defense when “the criminal design or suggestion to commit the offense originated with the Government and the accused had no predisposition to commit the offense.” R.C.M. 916(g). The defense bears the burden to show that a Government agent originated the suggestion to commit the crime, after which the burden shifts to the Government to prove beyond a reasonable doubt that the criminal design did not originate with the Government or that the accused had a predisposition to commit the offense prior to first being approached by Government agents. See *United States v. Wheeler*, 76 M.J. 564, 574 (A.F. Ct. Crim. App.), review granted, 76 M.J. 457 (C.A.A.F. 2017), and *aff'd*, 77 M.J. 289 (C.A.A.F. 2018)

Entrapment is not a viable defense in this case. The agent did not originate the suggestion to send lewd messages or an explicit photograph. SPC ██████████ is the one

[REDACTED]  
SUBJECT: Prosecution Memorandum – U.S. v. SPC [REDACTED]

who turned the conversation towards sex. SPC [REDACTED] is the one who sent the first explicit messages, brining up the prospect of [REDACTED]. SPC [REDACTED] also asked the agent to [REDACTED]. [REDACTED] also offered to send a nude photograph without any solicitation from the agent, before going on to send a fully nude photograph of himself.

**10. OTHER CONCERNS / ISSUES:**

**Omegle conversation.** The Omegle conversation is not going to be available in this case. We will have to prove the 12 year old status of SA [REDACTED] through her testimony and the Accused's sworn statement.

**11. TRIAL COUNSEL RECOMMENDATION:**

- a. Case Disposition: Refer to General Court Martial.
- b. Proposed Quantum: 12 years confinement, Dishonorable Discharge.

12. Point of Contact for this memorandum is the undersigned by phone at [REDACTED] or by email at [REDACTED]

[REDACTED]  
CPT, JA  
Trial Counsel