

Congress of the United States
House of Representatives
Washington, D.C. 20515

January 29, 2004

The Honorable Joseph E. Schmitz
Inspector General
Department of Defense
The Pentagon
Washington, DC 20301

Dear Mr. Schmitz:

We are writing to ask you to investigate whether Jon Dolan, a member of the Missouri National Guard who is also a Republican state senator in Missouri, has received special treatment from the Department of Defense (DoD).

There are explicit rules prohibiting National Guard members who are called to active duty from participating as federal, state, and local officeholders. Despite these rules, Mr. Dolan sought permission to return to Missouri to vote in a closely contested effort to override the governor's veto of legislation authorizing citizens to carry concealed weapons. Mr. Dolan was expressly advised by the adjutant general for the Missouri National Guard, who is the senior National Guard official in the state, as well as by other military officials, that he would be in violation of military regulations if he voted in the legislature. Nonetheless, Mr. Dolan ignored their warnings and cast what proved to be the deciding vote to override the governor's veto.

The U.S. Southern Command (SOUTHCOM) conducted a three and a half-month investigation into Mr. Dolan's actions. This investigation found that Mr. Dolan had been advised that his actions were in violation of military regulations and recommended that Mr. Dolan "be relieved of his command and demobilized immediately." However, DoD ignored this recommendation and gave Mr. Dolan only a letter of admonition as punishment.

Some may debate the merits of the prohibition against active duty service members participating as officeholders. However, there should be no debate about the need to enforce military regulations evenhandedly once they are adopted, regardless of their merits. Many active duty members of the National Guard serving in Iraq and elsewhere are making enormous sacrifices, missing the births of their children or the funerals of their parents. Military regulations do not permit these guardsmen to return home until their period of service is completed. It is unfair to them — and it dishonors the sacrifices they make — if politicians like Mr. Dolan are allowed to flout the rules with virtual impunity.

For these reasons, we are requesting that you investigate whether Mr. Dolan has been the recipient of special treatment, either in the handling of his initial leave request or in the decision to ignore the recommendation of SOUTHCOM and sanction him only with a letter of reprimand.

Background

This incident involves 10 U.S.C. § 973(b), which states that “a reserve officer of an armed force serving on active duty under a call or order to active duty for a period in excess of 270 days . . . may not hold or exercise, by election or appointment, the functions of a civil office in the government of a State.” According to the legislative history, the provision “does not permit any officer holding a civil office while serving on active duty to exercise any activities associated with that office while on active duty.”¹ This provision is implemented in DoD Directive 1344.10, which states that “no member on [active duty] may hold or exercise the functions of civil office . . . [i]n the government of a State.”²

According to the SOUTHCOM report, Mr. Dolan was called to active duty in the Army National Guard on August 8, 2003, and was assigned to Guantanamo Bay (GTMO).³ The order activating Mr. Dolan’s unit was for a period of up to one year, and thus, 10 U.S.C. § 973(b) and DoD Directive 1344.10 applied to him. The day after Mr. Dolan arrived at GTMO, he asked his supervisor for leave to return to Missouri in order to participate in a veto session of the Missouri Senate. Despite the fact that GTMO required service members to be there for 60 days before being granted leave, Mr. Dolan’s request was approved by his immediate supervisor, Lt. Col. Pamela Hart, who was aware of the purpose of the leave.⁴

Mr. Dolan traveled to Missouri by commercial and private planes paid for in part by the Missouri Republican Party. Upon Mr. Dolan’s arrival in Missouri, Brig. Gen. Dennis Shull, the adjutant general for the Missouri National Guard and Mr. Dolan’s military superior, warned him that “he would be in violation of Army regulations if he voted in the senate session.”⁵ Specifically, Mr. Dolan was told that he would be in violation of DoD Directive 1344.10.

Mr. Dolan indicated his belief that the DoD directive did not apply to him because he had not yet served on active duty for 270 days. He noted that his “legal counsel” had advised him that he could participate in the vote but then admitted that he only had consulted with “a senate

¹ Sen. Rep. No. 50, 106th Cong., 1st Sess., 302 (May 17, 1999).

² Department of Defense Directive, No. 1344.10 (June 15, 1990). The prohibition is further implemented in Army Regulation 600-20 (May 13, 2002).

³ Report of Proceedings by Investigating Officer/Board of Officers (copy is enclosed).

⁴ Lt. Col. Hart said “she granted the exception given the importance of what Dolan wanted to do in Jefferson City.” Even Lt. Col. Hart recognized the unusual nature of the request: “It’s not something that happens often, and I have never seen it happen.” *Military Made Rare Exception to Grant Leave for Foe of Veto*, St. Louis Post-Dispatch (Sept. 12, 2003).

⁵ Report of Proceedings by Investigating Officer/Board of Officers, *supra* note 3.

attorney and an Army friend.”⁶ Lt. Col. John Keller, the staff judge advocate for the Missouri National Guard, also warned Mr. Dolan that it would be “improper for him to vote.”⁷ In addition, Lt. Col Michael Boehman, the GTMO staff judge advocate, tried unsuccessfully to inform Mr. Dolan that voting in the state senate would violate Army regulations.

Mr. Dolan proceeded to vote in the Missouri Senate on September 11, 2003, including casting the deciding votes on a bill to allow Missouri residents to carry concealed weapons and a bill protecting gun makers from lawsuits. After Mr. Dolan returned to GTMO on September 16, 2003, he was again informed that “his actions were in direct conflict with DoD Directive 1344.10 and applicable Army Regulations.”⁸

After a three and a half-month investigation, the SOUTHCOM report found: “Major Dolan chose to disregard the advice of the State AG [adjutant general] and executed his duties as a Missouri state senator. As commander of the 70th MPAD [Mobile Public Affairs Detachment], Major Dolan must realize that his actions have a direct impact on the unit and soldiers assigned to that unit.”⁹ The SOUTHCOM report noted that “it is clear that the AG made him aware of the directive once he arrived in Missouri” and thus “Major Dolan could have chosen not to participate in the senate session.”¹⁰ The SOUTHCOM investigating officer concluded: “In view of Major Dolan’s actions before, during, and after the vote, I recommend that he be relieved of his command and demobilized immediately.”¹¹

The SOUTHCOM report was forwarded to Brig. Gen. Michael R. Lehnert, SOUTHCOM chief of staff, who wrote that he did not have the authority to relieve Mr. Dolan of his command but that the report would be forwarded to Mr. Dolan’s commander at GTMO for “whatever action, if any, he deems appropriate.”¹² However, the recommended punishment was not implemented. Instead, Mr. Dolan was given only a slap on the wrist — a letter of admonition. Mr. Dolan will thus be able to remain in the National Guard and presumably can be called up for active duty in the future.

⁶ *Id.*

⁷ *Id.*

⁸ *Id.*

⁹ *Id.*

¹⁰ *Id.* The SOUTHCOM findings that Mr. Dolan was aware that he was violating the law directly contradict statements from a SOUTHCOM spokesman that “[t]here was no deliberate misconduct. There was probably a misinterpretation of the regulations. It was a mistake.” *Sen. Dolan Gets Light Penalty for Leaving Guard Duty to Vote*, St. Louis Post-Dispatch (Jan. 6, 2004).

¹¹ Report of Proceedings by Investigating Officer/Board of Officers, *supra* note 3.

¹² *Id.*

Request for Investigation

We are troubled that the recommendations of a three and a half-month investigation have been ignored. At a time when over 130,000 American troops are bravely serving in Iraq, it is important to ensure that all servicemen and servicewomen receive equal treatment. We are aware of countless heartbreaking stories of military personnel missing funerals or childbirths or being unable to return home to care for dying parents. These people are certainly no less deserving of special treatment than a state senator who seeks leave for political purposes in clear violation of the law.

For these reasons, we ask that you open an investigation into how the DoD has handled Mr. Dolan's case. Specifically, we request that you investigate:

- Whether Mr. Dolan's commanding officers at GTMO exceeded their authority or discretion in approving his leave request;
- Whether any political pressure was applied to DoD, SOUTHCOM, or GTMO to grant leave to Mr. Dolan in order to participate in the Missouri Senate;
- Whether any political pressure was applied to DoD, SOUTHCOM, or GTMO to impose a punishment on Mr. Dolan different than what was recommended in the SOUTHCOM investigative report;
- Whether Mr. Dolan violated any military regulations or directives by rejecting the legal advice of his military superior, the Missouri adjutant general;
- Whether a serviceman who knowingly defies a military regulation in order to return home for the birth of his child would receive the same punishment that Mr. Dolan received; and
- Whether a serviceman who knowingly defies a military regulation in order to return home to care for a dying parent would receive the same punishment that Mr. Dolan received.

We are also concerned that another aspect of the SOUTHCOM report has been ignored. In addition to recommending that Mr. Dolan be relieved of his command, the report recommended that the National Guard Bureau brief all serving legislators on DoD Directive 1344.10. Brig. Gen. Lehnert approved this recommendation and directed SOUTHCOM to coordinate with the National Guard on implementing this directive. However, recent press accounts suggest that state legislators on active duty continue to believe that they can perform

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the functions of their civil offices, including running for reelection and introducing legislation.¹³ We request that you investigate whether the SOUTHCOM directive has been implemented and if so, whether it is being followed.

We ask that you notify us by February 5, 2004, as to whether you will investigate this matter. If you have any questions about this request, you can contact Chris Lu on Rep. Waxman's staff (225-5420), Michele Bogdanovich on Rep. Clay's staff (225-2406), or Sean Kennedy on Rep. Gephardt's staff (225-2671).

Sincerely,



Henry A. Waxman
Ranking Minority Member
Committee on Government
Reform



Wm. Lacy Clay
Ranking Minority Member
Subcommittee on Technology,
Information Policy,
Intergovernmental Relations
and the Census
Committee on Government
Reform



Richard A. Gephardt
Member of Congress

Enclosure

¹³ *Rules for Public Officials in Military Cause Confusion*, Associated Press (Jan. 16, 2004).

REPORT OF PROCEEDINGS BY INVESTIGATING OFFICER/BOARD OF OFFICERS

For use of this form, see AR 15-6; the proponent agency is OTJAG.

IF MORE SPACE IS REQUIRED IN FILLING OUT ANY PORTION OF THIS FORM, ATTACH ADDITIONAL SHEETS

SECTION I - APPOINTMENT

Appointed by U.S. Southern Command Chief of Staff, Michael R. Lehnert, BGen, USMC (Appointing authority)

on 2003/09/16 (Date) (Attach inclosure 1: Letter of appointment or summary of oral appointment data.) (See para 3-15, AR 15-6.)

SECTION II - SESSIONS

The (investigation) (board) commenced at Guantanamo Bay (JTF-GTMO), Cuba at 1436 (Place) (Time)

on 2003/09/23 (Date) (If a formal board met for more than one session, check here [] . Indicate in an inclosure the time each session began and ended, the place, persons present and absent, and explanation of absences, if any.) The following persons (members, respondents, counsel) were present: (After each name, indicate capacity, e.g., President, Recorder, Member, Legal Advisor.)

The following persons (members, respondents, counsel) were absent: (Include brief explanation of each absence.) (See paras 5-2 and 5-8a, AR 15-6.)

The (investigating officer) (board) finished gathering/hearing evidence at 0700 (Time) on 2003/09/24 (Date)

and completed findings and recommendations at 1530 (Time) on 2003/10/15 (Date)

SECTION III - CHECKLIST FOR PROCEEDINGS

A. COMPLETE IN ALL CASES

Table with 3 columns: YES, NO, NA. Rows include: Inclosures (para 3-15, AR 15-6), Are the following inclosed and numbered consecutively with Roman numerals: (Attached in order listed), a. The letter of appointment or a summary of oral appointment data?, b. Copy of notice to respondent, if any? (See item 9, below), c. Other correspondence with respondent or counsel, if any?, d. All other written communications to or from the appointing authority?, e. Privacy Act Statements (Certificate, if statement provided orally)?, f. Explanation by the investigating officer or board of any unusual delays, difficulties, irregularities, or other problems encountered (e.g., absence of material witnesses)?, g. Information as to sessions of a formal board not included on page 1 of this report?, h. Any other significant papers (other than evidence) relating to administrative aspects of the investigation or board?

FOOTNOTES: 1) Explain all negative answers on an attached sheet. 2) Use of the N/A column constitutes a positive representation that the circumstances described in the question did not occur in this investigation or board.

	YES	NO	NA ²
a. Are all items offered (whether or not received) or considered as evidence individually numbered or lettered as exhibits and attached to this report?	X		
b. Is an index of all exhibits offered to or considered by investigating officer or board attached before the first exhibit?			X
c. Has the testimony/statement of each witness been recorded verbatim or been reduced to written form and attached as an exhibit?	X		
d. Are copies, descriptions, or depictions (if substituted for real or documentary evidence) properly authenticated and is the location of the original evidence indicated?	X		
e. Are descriptions or diagrams included of locations visited by the investigating officer or board (para 3-6b, AR 15-6)?			X
f. Is each written stipulation attached as an exhibit and is each oral stipulation either reduced to writing and made an exhibit or recorded in a verbatim record?			X
g. If official notice of any matter was taken over the objection of a respondent or counsel, is a statement of the matter of which official notice was taken attached as an exhibit (para 3-16d, AR 15-6)?			X
3 Was a quorum present when the board voted on findings and recommendations (paras 4-1 and 5-2b, AR 15-6)?			X
B. COMPLETE ONLY FOR FORMAL BOARD PROCEEDINGS (Chapter 5, AR 15-6)			
4 At the initial session, did the recorder read, or determine that all participants had read, the letter of appointment (para 5-3b, AR 15-6)?			
5 Was a quorum present at every session of the board (para 5-2b, AR 15-6)?			
6 Was each absence of any member properly excused (para 5-2a, AR 15-6)?			
7 Were members, witnesses, reporter, and interpreter sworn, if required (para 3-1, AR 15-6)?			
8 If any members who voted on findings or recommendations were not present when the board received some evidence, does the inclosure describe how they familiarized themselves with that evidence (para 5-2d, AR 15-6)?			
C. COMPLETE ONLY IF RESPONDENT WAS DESIGNATED (Section II, Chapter 5, AR 15-6)			
9 Notice to respondents (para 5-5, AR 15-6):			
a. Is the method and date of delivery to the respondent indicated on each letter of notification?			
b. Was the date of delivery at least five working days prior to the first session of the board?			
c. Does each letter of notification indicate --			
(1) the date, hour, and place of the first session of the board concerning that respondent?			
(2) the matter to be investigated, including specific allegations against the respondent, if any?			
(3) the respondent's rights with regard to counsel?			
(4) the name and address of each witness expected to be called by the recorder?			
(5) the respondent's rights to be present, present evidence, and call witnesses?			
d. Was the respondent provided a copy of all unclassified documents in the case file?			
e. If there were relevant classified materials, were the respondent and his counsel given access and an opportunity to examine them?			
10 If any respondent was designated after the proceedings began (or otherwise was absent during part of the proceedings):			
a. Was he properly notified (para 5-5, AR 15-6)?			
b. Was record of proceedings and evidence received in his absence made available for examination by him and his counsel (para 5-4c, AR 15-6)?			
11 Counsel (para 5-6, AR 15-6):			
a. Was each respondent represented by counsel?			
Name and business address of counsel:			
(If counsel is a lawyer, check here <input type="checkbox"/>)			
b. Was respondent's counsel present at all open sessions of the board relating to that respondent?			
c. If military counsel was requested but not made available, is a copy (or, if oral, a summary) of the request and the action taken on it included in the report (para 5-6b, AR 15-6)?			
12 If the respondent challenged the legal advisor or any voting member for lack of impartiality (para 5-7, AR 15-6):			
a. Was the challenge properly denied and by the appropriate officer?			
b. Did each member successfully challenged cease to participate in the proceedings?			
13 Was the respondent given an opportunity to (para 5-8a, AR 15-6):			
a. Be present with his counsel at all open sessions of the board which deal with any matter which concerns that respondent?			
b. Examine and object to the introduction of real and documentary evidence, including written statements?			
c. Object to the testimony of witnesses and cross-examine witnesses other than his own?			
d. Call witnesses and otherwise introduce evidence?			
e. Testify as a witness?			
f. Make or have his counsel make a final statement or argument (para 5-9, AR 15-6)?			
14 If requested, did the recorder assist the respondent in obtaining evidence in possession of the Government and in arranging for the presence of witnesses (para 5-8b, AR 15-6)?			
15 Are all of the respondent's requests and objections which were denied indicated in the report of proceedings or in an inclosure or exhibit to it (para 5-11, AR 15-6)?			

FOOTNOTES: 1) Explain all negative answers on an attached sheet.
2) Use of the N/A column constitutes a positive representation that the circumstances described in the question did not occur in this investigation or board.

SECTION IV - FINDINGS (para 3-10, AR 15-6)

The (investigating officer) (board), having carefully considered the evidence, finds:

In accordance with U.S. Southern Command Chief of Staff letter dated 16 September 2003, I conducted an Army Regulation (AR) 15-6 investigation into the conduct of Major Jon Dolan, Deputy PAO and Commander of the 70th Mobile Public Affairs Detachment (MPAD), JTF GTMO. The investigation included but was not limited to: What did the leadership of the Missouri National Guard (MOARNG) and JTF GTMO know about the situation regarding Major Dolan? Who granted Major Dolan leave to depart JTF GTMO and why was that decision made? Did Major Dolan receive legal, supervisory, or command advice regarding his ability to act in his capacity as a state senator while on active duty and if so, who provided that advice?

During the investigation I interviewed the following people:

Col Tim Lynch	Chief of Staff	JTF GTMO
LTC Michael Boehman	SJA	JTF GTMO
LTC Pamela Hart	PAO	JTF GTMO
LCDR Paul LeBlanc	DSJA	JTF GTMO
Major Jon Dolan	DPAO/ Commander	JTF GTMO 70th MPAD
BG Dennis Shall	TAG	MOARNG
COL Frank Theising	IG	MOARNG
LTC John Keller	SJA	MOARNG

This investigation was originally due by 30 September 2003. I requested a delay of two weeks to complete the investigation. That request was granted on 25 September 2003. (Exhibit R).

During the investigation, I attempted to interview Mr. Jeff Davis, the Chief of Staff to the President Pro Tem of the Missouri State Senate. I called Mr. Davis twice and left messages. Mr. Davis did not return my call and I was unable to complete the interview.

My investigation revealed:

Major Dolan served as the Commander of the 70th Mobile Public Affairs Detachment in the Missouri National Guard. He is also an elected state senator from Missouri. Major Dolan was activated on 8 August 2003 (Exhibit M). The orders activated the 70th MPAD for a period of up to 365 days. These orders put Major Dolan in Title 10 status. The unit was deployed to JTF GTMO on or about 28 August 2003 (Exhibit L). Major Dolan was never briefed, either at his mobilization station or at GTMO, on his responsibilities as a state senator while serving on active duty.

The day after he arrived at JTF GTMO, Major Dolan asked his immediate supervisor, LTC Pamela Hart for leave to return to Missouri. JTF GTMO had a policy, which required service members to be on Guantanamo 60 days before being granted leave. (Policy #4, Exhibit Y). Although this was the policy exceptions could be granted. Major Dolan drafted a memorandum for LTC Hart's signature supporting Major Dolan's request for leave. (Exhibit I). LTC Hart signed the memorandum without comment.

Major Dolan is an elected state senator in Missouri. He was elected in November 2002 and inaugurated on 8 January 2003. He represents the second district of Missouri.

SECTION V - RECOMMENDATIONS (para 3-11, AR 15-6)

In view of the above findings, the (investigating officer) (board) recommends:

In view of Major Dolan's actions before, during, and after the vote, I recommend that he be relieved of his command and demobilized immediately.

Additionally, I recommend that CDR, USSOUTHCOM urge the National Guard Bureau to institute a policy that would ensure all serving legislators and members affected by DoD Directive 1344.10 be provided with a thorough and in-depth briefing on their responsibilities upon being called onto active duty for a period of time longer than 270 days. Further, that this information be provided to the reservist's gaining command either through the mobilization station or Army Major Command.

REPORT OF PROCEEDINGS BY INVESTIGATING OFFICER/BOARD OF OFFICERS
CONT PAGE DA FORM 1574/SECTION IV - FINDINGS

Major Dolan was a member of the MOARNG and serves as the commander of the 70th MPAD. He was activated on 8 August 2003 and was deployed to JTF GTMO on 26 August 2003. His orders are for a period of up to 365 days. Major Dolan was in Tide 10 status beginning on 8 August 2003.

DoD Directive 1344.10 prohibits members on active duty for more than 270 days from holding civil office or participating in partisan politics.

Prior to being granted leave, Major Dolan was not briefed about his responsibilities under DoD Directive 1344.10 concerning his activities as a state senator.

Both LTC Hart and COL Lynch knew that Major Dolan was requesting leave to participate in the Missouri State Senate. They both knew that the leave request would require an exception to GTMO policy #4. Neither LTC Hart nor COL Lynch was aware of DoD Directive 1344.10 prior to granting Major Dolan leave.

LTC Hart signed the memorandum supporting Major Dolan's leave without fully understanding its implications and did nothing to clarify the requirements.

There is no evidence of any outside pressure or influence on the leadership at JTF GTMO to grant Major Dolan leave. However, given the memorandum signed by LTC Hart, Major Dolan's position and his desire to take leave immediately upon arrival, the leadership should have asked more questions prior to granting Major Dolan leave.

Several days later, Major Dolan requested to see the JTF GTMO Chief of Staff, COL Tim Lynch. Major Dolan explained the purpose of the requested leave and, once again, requested an exception to the policy. COL Lynch granted the leave from 10-16 September 2003. Neither Major Dolan nor COL Lynch discussed Major Dolan's status with regards to DoD Directive 1344.10.

Major Dolan traveled to and from Missouri via commercial and private means. The cost of the travel was paid, at least in part, by the Missouri Republican Party. (Exhibit W). Since the cost of the travel was not provided to Major Dolan in his official capacity as a U.S. Army officer, it is permissible for him to accept this reimbursement. (Exhibit Q).

Prior to Major Dolan's arrival in Missouri, the Governor asked the State Adjutant General (AG) if Major Dolan could legally vote in the senate assembly since he was an activated officer. The AG then asked his SJA to provide him the applicable Army regulations. LTC Keller, the SJA called COL Strong at the OSD. LTC Keller then told the AG about DoD Directive 1344.10.

The AG and Major Dolan spoke before the vote. The AG told Major Dolan about DoD Directive 1344.10 and the Joint Ethics Regulation. The AG advised Major Dolan that he would be in violation of Army regulations if he voted in the senate session. Major Dolan replied that he had consulted legal counsel about his actions and he believed that he could participate in the vote. Major Dolan refused to provide the source of his legal advice, only stating that he did not receive a written opinion, he only consulted a senate attorney and an Army friend. Major Dolan then spoke with LTC Keller who also informed Major Dolan it would be improper for him to vote. (Exhibit X)

After LTC Keller contacted COL Strong, Col Strong called LTC Boehman, the JTF GTMO SJA. COL Strong advised LTC Boehman to advise Major Dolan that he would be in violation of Army regulations if he participated in the vote. LTC Boehman did not have the opportunity to deliver the message to Major Dolan (Exhibit B).

Major Dolan returned to JTF GTMO on 16 September. On 17 September COL Lynch gave Major Dolan a written directive (Exhibit O). This directive informed Major Dolan of DoD Directive 1344.10 and told Major Dolan that he was to obey it. It also ordered Major Dolan to check with the Missouri senate to determine his status in the senate while he was on active duty. The President Pro Tem of the Missouri state senate provided a response which listed Major Dolan as "absent with leave" in the Missouri state senate. (Exhibit P). This means that Major Dolan is still an active member of the state senate but is not present. Even though there is a Missouri Statute covering state employees and elected representatives allowing leaves of absences, there is no requirement that employees actually take a leave of absence. (Exhibit N).

Major Dolan was informed that his actions were in direct conflict with DoD Directive 1344.10 and applicable Army Regulations. AR 600-20 Army Command Policy embodies the words and intent of DoD Directive 1344.10. Major Dolan chose to disregard the advice of the State AG and executed his duties as a Missouri state senator. As commander of the 70th MPAD, Major Dolan must realize that his actions have a direct impact on the unit and soldiers assigned to that unit.

Although Major Dolan and his active duty chain of command did not know of the DoD Directive, it is clear that the AG made him aware of the directive once he arrived in Missouri. Major Dolan could have chosen not to participate in the senate session.

SECTION VI - AUTHENTICATION (para 3-17, AR 15-6)

THIS REPORT OF PROCEEDINGS IS COMPLETE AND ACCURATE. (If any voting member or the recorder fails to sign here or in Section VII below, indicate the reason in the space where his signature should appear.)

(Recorder)

(Member)

(Member)

Benjamin F. Healy Jr.
(Investigating Officer) (President)

(Member)

(Member)

SECTION VII - MINORITY REPORT (para 3-13, AR 15-6)

To the extent indicated in Inclosure _____, the undersigned do(es) not concur in the findings and recommendations of the board. (In the inclosure, identify by number each finding and/or recommendation in which the dissenting member(s) do(es) not concur. State the reasons for disagreement. Additional/substitute findings and/or recommendations may be included in the inclosure.)

(Member) (Member)

SECTION VIII - ACTION BY APPOINTING AUTHORITY (para 2-3, AR 15-6)

The findings and recommendations of the (investigating officer) (board) are (approved) (disapproved) (approved with following exceptions/substitutions). (If the appointing authority returns the proceedings to the investigating officer or board for further proceedings or corrective action, attach that correspondence (or a summary, if oral) as a numbered inclosure.)

I do not have the authority to implement the first recommendation. I do not have the authority to remove MAJ Dolan from his National Guard command nor do I have the authority to demobilize him. I am forwarding this investigation to MAJ Dolan's commander at JTF-GTMO, MG Miller, for his consideration and whatever action, if any, he deems appropriate. Some of the options available to MG Miller for his independent decision are to take no action; to reassign MAJ Dolan to other duties; to process an Involuntary Removal From Active Duty (REFRAD) to the Department of the Army Active Duty Board (DAADB) in accordance with AR 600-8-24, paragraph 2-31; or some other administrative or disciplinary action as appropriate.

The second recommendation is approved, and we have coordinated with the National Guard for their actions.

[Signature]
MICHAEL R. LEHNERT, BGEN, USMC
CHIEF OF STAFF