

Neal A. Puckett, Esq.
Lic: VA

Haytham Faraj, Esq.
Lic: IL, MI, DC



Eric S. Montalvo, Esq.
Lic: PA, NJ, DC (Pending)

THE LAW FIRM OF PUCKETT AND FARAJ, PC

In reply refer to:
ESM/0001
March 8, 2010

From: Civilian Defense Counsel
To: Trial Counsel

Re: Discovery ICO United States v. CW4 Stephen C. Madrid

Comes the accused by and through his counsel and requests the government to provide the following to the defense for inspection, examination, and copying:

1. Pursuant to RCM 405(g), and the additional citations below, the defense requests copies of all documents, notes, reports, recordings, statements of witnesses, opinions of experts, laboratory reports, charts, chain of custody documents, physical evidence or other information in the possession of the government which has any bearing on the case at hand, however remotely or arguably favorable or unfavorable to the accused, whether consisting of evidence which would be legally admissible in a court-martial, or inadmissible, and whether concerning matters proper for the case-in-chief, or only in extenuation or mitigation. If you or any other government representative has such evidence or information, or has reason to know of the means by which it may be obtained, however difficult, expensive, or unlikely of success that it might be, you are requested to advise the defense of that evidence or information which may be discovered before, during or after trial of the case. Brady v. Maryland, 373 U.S. 83 (1963); Moore v. Illinois, 403 U.S. 953 (1971); U.S. v. Francia, 32 CMR 315 (CMA 1963); U.S. v. Maxfield, 43 CMR 336 (CMA 1971); U.S. v. Maugenel, 6 M.J. 589 (AFCMR 1978); RCM 701 & 703, Articles 36 & 46, UCMJ.

2. This request includes, but is not limited to, information concerning the following:

With respect to the accused:

a. The text of any statements or confessions made by the accused, oral or written, made by the accused that are, or may in any way become, relevant to the case. MRE 304(d)(1); MRE 304(d)(2)(A).

b. Any evidence of an exculpatory nature or which tends to negate the alleged guilt of the accused. RCM 701(a)(6)(A).

c. Any evidence which would tend to aggravate or mitigate the degree of the alleged offenses. RCM 701(a)(6)(B).

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d. Any records of prior civilian or Court-Martial conviction(s) of the accused. RCM 701(a)(4).

e. Disclosure of any evidence seized from the accused's person or property, or believed to be owned by him, that the government intends to offer into evidence against my client either at trial -. Also, any warrants, affidavits, consent forms, or other documents authorizing or related to the initiation of a search or seizure of evidence from the accused's person or property.

f. Whether the accused's conversations or premises have been subject to electronic or other surveillance. If so, the defense requests copies of any warrants issued, used or unused.

g. Disclosure of all evidence of prior identification of the accused at a lineup or other identification process regardless of result or intent to use at trial (should there be a trial).

h. Copies of any favorable or derogatory data regarding the accused, as well as all other information that may be used during a sentencing phase of a court-martial. The defense requests a copy of relevant information contained in any of the accused's personal information files.

i. Copies of all documents pertaining to any restrictions on the accused's liberty, even if subsequently lifted.

j. Copies of all documents related to any reassignment of the accused as a result of, or contemporaneous with, the investigation of this case.

k. Copies of all documents used to obtain any of the accused's financial records.

With respect to documentary reports:

l. A complete copy of any and all investigations or laboratory reports, including any internal agency documents and data made in connection with this investigation prepared by any law enforcement agency, including copies of all attachments. RCM 701(a)(1)(C). This request includes all internal forms/documents, including witness reliability forms, internal data sheets, and other relevant forms and documents. The defense further requests to be informed if any of the requested documents do not exist in the present case. In addition, we request to be informed specifically which documents fall into this category. RCM 701(a)(2)(a). This request also includes, but is not limited to, the following relevant documentation:

- (1) Complaint Initiation Form (including reverse and continuations sheets, if any);
- (2) Internal data pages;
- (3) Interview logs;

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- (4) Interview Records;
- (5) Source Dossier and any form(s) related to any Confidential Informant(s);
- (6) Informants' notes;
- (7) Informal Source Files;
- (8) Any form(s)/documents detailing any Disbursement from Confidential Funds;
- (9) Developmental Files;
- (10) Any Substantive Investigations Record Check Summary;
- (11) Any form(s) related to Consent for Search and Seizure;
- (12) Internal communications, Staff Summary Sheets, and E-Mail and/or electrical medium (message) documents used to brief, respond and/or request investigative activities in the investigation;
- (13) Results of any NCIC, DCII, LAC and Security Police 110 records checks;
- (14) All records reflecting the chain of custody on any evidence seized and/or tested; and
- (15) All Agent or Investigator notes.

m. Inspection and copies of all personal and business notes, memoranda and records, including all internal agency documents and data, kept by all agents, investigators, or witnesses, not formally made part of the reports referred to above. In addition to other uses, said papers are to be used prior to cross-examinations of said persons, as provided by the Jencks Act. We further request that all such notes and those made in the future be preserved and not destroyed and that the appropriate parties be directed to preserve the same. The defense further requests to be given access to all classified notes and records. RCM 914.

n. Copies of any reports or statements or conclusions of experts made in connection with this case, including, but not limited to, the results of corporeal, physical, scientific, forensic and mental health examinations or tests including polygraph or comparisons. This request includes, but is not limited to, mental or medical examinations. This request includes all relevant chain of custody documents. FRCP 16(a)(1)(d); Article 46, UCMJ; RCM 701(a)(2)(b); U.S. v. Mouganel, 6 M.J. 589 (AFCMR 1978).

o. The names and phone numbers of all investigators, either military or civilian, who have participated or are presently participating in the investigation of this case. In addition, the defense requests copies of the following regarding each investigator involved in this case:

- (1) Any "On-the-Job" Training Record;
- (2) Training test score results;
- (3) Evidence of credentials suspended or revoked
- (4) Evidence of being a subject or suspect in any internal affairs investigations, whether related to this matter or not; and
- (5) Evidence of any adverse administrative or disciplinary actions, whether related to this matter or law enforcement activity or not.

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p. A copy of any of and all medical records of the complaining witness. This is to include documentation related to any previous alleged sexual assaults,. This list is not intended to be exclusive. ALL medical records are requested for the complaining witness.

q. A copy of any and all records of counseling of the complaining witness specifically including any and all records of formal and/or informal counseling that may exist.

r. A copy of any and all documentation pertaining to any prior allegations(s) of sexual harassment and/or sexual assault made by the complaining witness.

s. A copy of any documentation generated as a result of the complaining witness' involvement in the Victim Witness and Assistance Program, or other similar programs established to aid alleged victims of crimes.

With respect to witnesses:

t. The names and duty phone or business addresses of all witnesses and potential witnesses used in developing the case against the accused, including any potential rebuttal witnesses (see U.S. v. Trimper, 28 M.J. 460 (CMA 1989)), together with their relevant statements, including those made during polygraph examination(s), and any such statements or reports which may later become discoverable under the Jencks Act. If any of the statements contain classified information, the accused requests full access to the statements or forms. If any of the statements contain "privileged" information the defense requests to be so notified and further requests to be informed of the specific privilege the government claims for the document or statement. RCM 914; Federal Rules of Criminal Procedure 26.2; 18 U.S.C. 3500.

u. A separate written list of witnesses that the government anticipates will testify at trial with a synopsis of the expected testimony of each witness and a reliable point of contact for said witness.

v. The military status of all witnesses. As to those presently in civilian status, we request the date of separation from the military, the discharge or other provisions used to effect such discharge, and a summary of circumstances explaining any discharges for other than completion of the obligated term of service.

w. Any known evidence tending to diminish the credibility of all potential witnesses. This request includes any information regarding prior civil or military convictions (See Mil. R. Evid. 609), and evidence of other character, conduct, or bias bearing on witness credibility including letters of counseling, letters of reprimand, memoranda or other information concerning the existence of oral counseling's or reprimands, evidence of prior Article 15 action, investigative reports, and adverse administrative actions in the government's possession or reasonably obtainable. MRE 405(a), MRE 608(b)(1) & (2); MRE 806; RCM

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701(a)(2)(a). The defense specifically requests all derogatory actions regardless of whether the government believes it is relevant to witness credibility or bias. Further, the defense requests any evidence that the testimony of any prospective witness is inconsistent with any statement of any other person or prospective witness. Finally, the defense requests any evidence that any prospective government witness is biased or prejudiced against the accused or has a motive to falsify or distort his/her testimony.

x. Any evidence that any prospective witness has consumed alcohol or drugs prior to witnessing the events that gave rise to his/her testimony. In addition, the defense requests any evidence, including any medical or psychiatric report or evaluation, tending to show that any prospective witness's ability to perceive, remember, communicate, or tell the truth is impaired and any evidence that a witness has ever used narcotics or other controlled substance, or has ever been an alcoholic.

y. The text or other evidence of any promises of immunity or leniency made to the accused or to any government witness. The defense further requests notification if any government agent or representative of any government agency offered to assist or "help out" any witness in return for their cooperation. This request would extend, for example, to a government agent telling a witness that they would speak to the witness's commanding officer about retaining them in the military or reducing their punishment if the witness cooperates with the government. MRE 301(c); U.S. v. Giglio, 405 U.S. 150 (1972); U.S. v. Webster, 1 M.J. 216 (CMA 1975), U.S. v. Boyd, 27 M.J. 82 (CMA 1988).

z. Pursuant to Mil. R. Evid. 612, any writing or document used by a witness to prepare his/her testimony.

aa. The name, address and phone numbers of all experts employed by the government, their connection with this case, their specialties and their qualifications. The defense further requests to be provided with a copy of, or citations to, all documents and treatises used by any government expert to help them prepare for trial. MRE 803(18).

bb. Access to all relevant personnel, medical and mental health records of all potential witnesses who may testify against the accused, whether they are presently in the military or have been discharged at an earlier date. Please do not make a blanket denial of relevance without reviewing the records of potential witnesses. Relevant records would include anything that might diminish witness credibility or suggest bias, any records reflecting statements by alleged victims related to the charges, and any records of physical or mental health treatment related to the charges.

cc. The names, addresses and phone numbers of all confidential witnesses, including, but not limited to, undercover informants and/or agents. Rovario v. U.S., 353 U.S. 53 (1957).

dd. If any relevant witness in this case has been subject to a polygraph or other “truth detecting” examination, I request to be provided with the results of this testing, together with all relevant charts, graphs, questions and other documents. See U.S. v. Mouganel, 6 M.J. 589 (AFCMR 1978).

ee. The defense requests that the government identify whether or not the complaining witness, has undergone any physical or mental health examination which in any manner is related to the allegations which are the subject matter of this action. As to each said physical or mental examination, it is requested that the government disclose the full name and address of the health care provider and the date of each said examination. If in fact the complaining witness has received any form of psychiatric and/or psychological care or counseling of any nature which is in any manner related to the allegations which are the subject matter of this action, it is the position of the defense that said care and/or counseling falls within the confines of information and material to be provided to the defense and the defense accordingly requests production of the identity of said health care providers or counselors, as well as any and all records of any nature related to said care and/or counseling. The defense requests the same with regard to any previous rape allegations made by the complaining witness;

ff. Pursuant to the obligation of the government to produce to the defense any and all exculpatory evidence, defined as "evidence favorable to an accused... material either to guilt or punishment" as set forth in the case of Brady v. Maryland, 373 U.S. 83, 87 (1963), the defense requests the government to produce any and all information related to a) prior accusation by the complaining witness or parents/ relatives/ guardian against the accused or others which were deemed unfounded, or were otherwise submitted to any law enforcement authorities, to include Child Protective Services in any state; b) psychiatric/psychological information and records pertaining to the complaining witness or family/guardian which has any bearing on competency, delusional thinking, etc, of the complaining witness; c) identities of other persons present at the scene of any alleged assault who did not see or hear any of the said alleged sexual assault; d) any and all oral reports of scientific tests which are in any manner favorable to the accused, or are otherwise in any manner related to the subject matter of this case; e) any information or evidence of any nature which in any manner suggests that the complaining witness is not a truthful person or has a reputation as being an untruthful person;

With respect to physical evidence:

gg. Access to any physical evidence in the custody or control of the government that was seized, recorded, or otherwise considered, during the investigation of this case.

hh. Disclosure of the existence of, and the opportunity to listen to, any and all tapes made by and/or between any and all parties involved in this case, including those which may later become discoverable under the Jenck's Act, 18 U.S.C. 3500. Furthermore, the defense requests any diagrams, regardless of the artist, that any witness has identified. The defense also requests any notes by any attorney or paralegal that the witness reviewed and indicated

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were correct. See U.S. v Vanderwier, 25 MJ 263, 268 (CMA 1987) (“When a writing that relates to the subject matter of the testimony of a government witness has been ‘signed or otherwise adopted or approved by’ the government witness, it is producible under the Jencks Act even though the writing was prepared by the government lawyer who interviewed the witness.”) The defense understands that such notes may contain attorney work product and requests that any attorney work product simply be redacted.

ii. Whether the government intends to conduct scientific tests, experiments or comparisons which may consume or destroy the subject matter of the test, or intends to dispose of relevant physical objects. Further, the defense requests to know whether the government intends to offer, as part of the proof that the accused committed the offenses charged, evidence of other offenses. RCM 701(a)(2)(a) and 701(a)(2)(b).

jj. Digital colored copies of any photographs taken of the alleged crime scene, if there is one, or any other photographs taken pursuant to this investigation.

kk. The specific location and written permission to inspect any books, papers, documents, photographs, tangible objects, buildings, and places which are in the possession, custody or control of military authorities, and which are material to the preparation of the defense or are intended for use by the trial counsel as evidence in the prosecution of the accused. RCM 701(a)(2)(A). If any potential evidence in this case is in any way classified, the defense requests full and complete access to said evidence.

Miscellaneous:

ll. A copy of the appointing letter for the Investigating Officer.

mm. A descriptive list of all non-testimonial evidence and demonstrative aids the government intends to offer at trial, particularly any evidence owned or seized from the accused, together with any search warrants obtained, supporting affidavits and returns. RCM 710(a)(2)(A); RCM 701(a)(5)(A); MRE 311(d)(2)(B). If photographs of this evidence are available, the defense requests copies of said photographs.

nn. A list of all exhibits the prosecution intends to offer during the trial, along with the current location and custodian for each exhibit.

oo. Any subpoena duces tecum issued by the government.

pp. Any information concerning any possible charges that the government plans on requesting the Investigating Officer to investigate that are not already preferred on the original charge sheet.

qq. The following additional list of items:


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- E-mails concerning civilian counsel travel to and from Afghanistan both over NIPR and SIPR accounts.
- All documentation concerning CW4 Madrid's leave request, to include being told to meet with COL Tim McAteer.
- Any and all e-mail messages between CW4 Madrid and COL Murry
- Any and all previous complaints of sexual harassment by the alleged victim in this case whether they were informal or formal.
- All documentation and information relating to how the CJTF-82 General Order 1 was published.
- All documentation and information relating to how the CJTF-101 General Order 1 was published.
- All documents, information, and statistics relating to how many sexual assaults were reported on Bagram Air Field in 2008, 2009, and 2010.
- All documents, information, and statistics relating to how many sexual assaults were reported in the CJTF-82 Area of Operations in 2008, 2009, and 2010.
- A list of the names of all the Soldiers who were part of the CIED Team #14 that were stationed at FOB Altimur from between on or about 10 July 2009 to on or about 20 September 2009
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- A copy of the accused's entire OMPF.
- All e-mail communication between the complaining witness and the government.

3. The duty to disclose is a continuing duty. RCM 701(d). The duty extends to matters in the possession or control of the government and any others who have participated in the investigation or evaluation of the case. This information should be disclosed in writing as early as possible. Please provide all presently available information as soon as possible and well in advance of the trial, in order that the defense may study the information and have sufficient time to prepare for cross-examination and the trial. Without the requested information, the accused will be denied his right to effective assistance of counsel at the trial. See U.S. v. Worden, 17 U.S.C.M.A. 486 (1968) (finding that "[a]n unprepared counsel is tantamount to no counsel.").

4. If any of the requested information will not be provided, please notify the defense, in writing, which information will not be forthcoming and the reasons why the defense will not be provided the requested information. If any requested item is not currently available, please provide an estimate of when it will become available. This request should not be construed as a waiver of any right to matters which the government has an independent duty to disclose without specific request.

5. The Defense respectfully requests a written response to this request.


Eric S. Montalvo
Attorney and Counselor at Law

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I hereby certify that a true copy of this request was served on trial counsel electronically on person on 8 March 2010.



Eric S. Montalvo
Attorney and Counselor at Law

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