

NAVY-MARINE CORPS TRIAL JUDICIARY
NORTHERN JUDICIAL CIRCUIT
GENERAL COURT-MARTIAL

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|----------------------------|---|-----------------------|
| UNITED STATES |) | GENERAL COURT-MARTIAL |
| |) | |
| v. |) | GOVERNMENT RESPONSE |
| |) | TO DEFENSE DISCOVERY |
| JAMES M. ROWE |) | REQUEST |
| CAPTAIN |) | |
| UNITES STATES MARINE CORPS |) | 22 November 2011 |
| |) | |

1. This responds to your emailed Defense Discovery Requests dated 18 November 2011 (hereinafter "Request").

2. In response to your request for all materials relied upon by Dr. Thomas Grieger "in prepping for his/her testimony" along with "all communication from trial counsel, witnesses, or any other government agent to [the] expert related to this case." Your request is granted in part and denied in part.

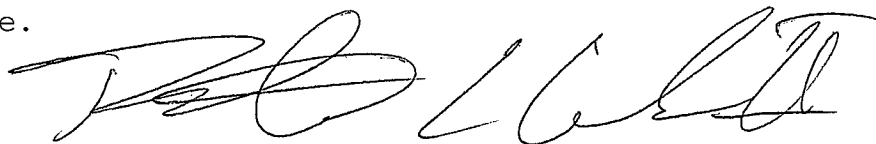
a. In response to your request for those materials which the expert has relied upon in preparing his testimony. All case specific materials which Dr. Grieger has or will rely upon have already been provided to the defense as part of the government's discovery process; therefore, the defense is in possession of all such materials in possession of the government.

b. In response to your request for all communications between the government and the expert, this request is denied. The only email communications between trial counsel and Dr. Grieger are not discoverable as they do not pertain to case specific facts, or matters other than administrative or logistical concerns.

3. In response to your request for a "proper" notice of an expert witness, this request is denied. Your request indicates that a proper notice contains "a complete statement of the reasons why employment of the expert is necessary and the estimated cost of employment." However, this is incorrect. This is what is required for a request for an expert witness

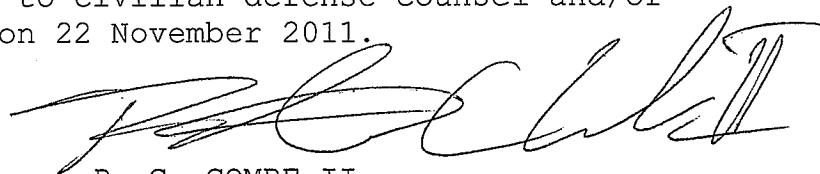
tendered to the convening authority. R.C.M. 703(d) gives no specific form or content for notice to an opposing party of the hiring and intended use of an expert witness.

4. In response to your request for the Article 32 report and all attendant exhibits, enclosures, and audio of the investigation regarding the rape allegations made by Mrs. Klay against a fellow midshipman, this request is denied. In accordance with the implementing Manual for SECNAV Instruction 5210.8D, The Department of the Navy Records Management Program, Records Management Manual (SECNAV M-5210.1, November 2007 (Rev.)), Part III, Chapter 5, in the paragraph dealing with SSIC Code 5811 matters, all reports of Article 32 investigations not resulting in General Court-Martial are destroyed when two (2) years old. Because those allegations took place in 2004, any search for such records would be fruitless given the nearly seven year passage of time.



P. C. COMBE II
Captain, U.S. Marine Corps
Trial Counsel

I hereby certify that a copy of this document was served, electronically via email, to civilian defense counsel and/or detailed defense counsel on 22 November 2011.



P. C. COMBE II
Captain, U.S. Marine Corps
Trial Counsel
