



UNITED STATES MARINE CORPS
OFFICE OF THE STAFF JUDGE ADVOCATE
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MARINE CORPS BASE
QUANTICO, VIRGINIA 22134-5001

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5 July 11

From: First Lieutenant Maryann N. McGuire, Trial Counsel, Marine Corps Base
Quantico, Virginia
To: Detailed Military Defense Counsel

Subj: R.C.M. 704(e) REQUEST FOR IMMUNITY FOR DEFENSE WITNESS ICO UNITED
STATES V. STAFF SERGEANT MARINA D. LOPEZ

Ref: (a) R.C.M. 704(e)

1. Pursuant to the reference the government denies the defense request to immunize Gunnery Sergeant Jennifer N. Kelton.
2. Defense proffers that Gunnery Sergeant Kelton will be expected to testify that:
 - a. Staff Sergeant Lopez was not the staff member who took photos on her cell phone of a candidate,
 - b. that Staff Sergeant Lopez did not make the platoon do footlocker drills,
 - c. that numerous other staff members- from the company and the battalion- were present and witnessed certain events on the charges sheet,
 - d. that Gunnery Sergeant Kelton may be able to testify to other acts or omissions, and
 - e. she Gunnery Sergeant Kelton can testify to verbal orders the platoon staff received from the platoon commander.

3. Based upon the testimony that was elicited since the charges against the accused have been preferred, from individual questioning of numerous witnesses as well as testimony elicited at Gunnery Sergeant Kelton's Article 32 hearing, the government's intent is to withdraw and dismiss Charge I in its entirety, and specifications 5 and 8 of Charge II. It is the government's intent to move to withdraw and dismiss this charge and these specifications on the record during the next session of court. It is the government's position that Gunnery Sergeant's Kelton's testimony is not material or relevant to the remaining charges.

a. Gunnery Sergeant Kelton's testimony in reference to Staff Sergeant Lopez not being the individual who took a cell phone picture of a candidate, Staff Sergeant Lopez not being the individual who forced the candidates to do foot lockers drills, and verbal orders of the platoon staff will be moot and irrelevant as the government intends to withdraw the charges to which that testimony would be relevant.

b. Gunnery Sergeant Kelton's testimony that numerous other staff members- from the company and the battalion- were present and witnessed certain events on the charges sheet is irrelevant. That others may have witnessed Staff

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Sergeant Lopez commit the crimes she is charged with is immaterial and irrelevant.

c. Gunnery Sergeant Kelton's testimony regarding "other acts or omissions" that may have been committed by Gunnery Sergeant Kelton as opposed to Staff Sergeant Lopez is vague and provides no basis from which to determine the relevancy any such testimony would have. There is no indication, based on the defense proffer, that this testimony would be exculpatory or otherwise essential to the defense case.

4. Gunnery Sergeant Kelton's proffered testimony is not clearly exculpatory and essential, as such; the government denies the defense request for testimonial immunity.



M. N. MCGUIRE