



UNITED STATES MARINE CORPS
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5811
LSST-E
JUL 13 2010

From: Major Nick Gannon, Trial Counsel
To: Defense Counsel, U.S. v. Wuterich

Subj: RECIPROCAL DISCOVERY REQUEST IN THE CASE OF UNITED STATES V.
STAFF SERGEANT FRANK D. WUTERICH, XXX-XX-3221, USMC

Ref: (a) R.C.M. 701, Manual for Courts-Martial (2008 Ed.)
(b) R.C.M. 914, Manual for Courts-Martial (2008 Ed.)

1. Pursuant to paragraph (b) of reference (a), consider this a request for the discovery of names of defense witnesses and all sworn or signed statements known by the defense to have been made by such witnesses in connection with the case; disclosure of certain defenses; production of documents and tangible objects the defense intends to introduce in the defense case-in-chief at trial; and, production of reports of examinations or tests. This includes the names, addresses and contact information (i.e., phone number, e-mail) of all witnesses, other than the accused, whom the defense intends to call during the case-in-chief or at presentencing proceedings, as well as the right to inspect any written material that will be presented by the defense at any presentencing proceeding.

2. Besides the matters listed above in paragraph 1, consider this a request for the notice or disclosure of evidence required under the Military Rules of Evidence and the production of statements pursuant to reference (b).

3. Pursuant to the Uniform Code of Military Justice, the Rules for Courts-Martial and the Military Rules of Evidence and applicable case law, the government requests that the defense produce or disclose the following discovery materials:

a. Any written or recorded material that will be presented by the defense at any presentencing proceeding.

b. Any intention of the defense to offer the defense of:

(1) Alibi (include the place or places the defense claims the accused to have been at the time of the offense); or

(2) Lack of mental responsibility or attempts to introduce expert testimony regarding the accused's mental condition.

c. The government further requests that the names and addresses of any witnesses upon whom the accused intends to rely to establish any such defense.

d. Any intention of the defense to offer the affirmative defense of justification, obedience to orders, accident, entrapment, coercion or duress, inability, or ignorance or mistake of fact, duress, or defense of others.

e. Copies of (or the opportunity to inspect) any books, papers, documents, photographs, tangible objects, or copies or portions thereof, that the defense intends to introduce as evidence in the defense case-in-chief or sentencing. This paragraph specifically includes any and all materials generated by Mr. James Gripp.

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f. Copies of (or the opportunity to inspect) any results or reports of physical or mental examinations and of scientific experiments made in connection with this case which the defense intends to introduce in the case-in-chief at trial or which are prepared by a witness whom the defense intends to call at trial when the results or reports relate to that witness's testimony.

g. Any statement of a defense witness that relates to the subject matter about which the witness will testify or has testified in the past.

h. Notification of any intent by the defense to use evidence of a conviction more than ten years old.

i. Pursuant to M.R.E. 612, the government requests any writing that will be used by a witness to refresh his or her memory for the purpose of testifying.

j. Pursuant to M.R.E. 613, the government requests any prior statement, written or otherwise, made by a witness being examined concerning that prior statement.

k. Notification of any intent by the defense to use a hearsay statement not covered by the specified exceptions (include the particulars of the statement, to include the name and address of the declarant).

4. The government specifically requests the production of any case notes, case files, reports of examinations or testing conducted by any witness related to the accused's mental condition. This request includes any psychiatric or psychological examination or neuropsychological testing that the defense intends to introduce as evidence at any stage of the trial that was prepared by or will be relied upon any witness the defense intends to call.

5. The government specifically requests the production of any case notes, case files, reports of examinations, testing or analysis conducted by any witness related to crime-scene reconstruction, forensic pathology, blood stain pattern analysis, firearms trajectory analysis or any other materials generated by any expert related to any reconstruction of the events of 19 November 2005 in Haditha, Iraq that the defense intends to introduce as evidence at trial, or will be relied upon by any witness the defense intends to call at trial, or otherwise relates to that witness' testimony.

6. The government requests that the defense counsel identify which of the following experts the defense intends to call to testify at any stage of the trial:


- a. Dr. Michael Baden;
- b. Dr. John Thornton;
- c. Lucian Haag;
- d. James Gripp.

The government further requests that defense counsel make the notification in writing, complete with current contact information, no later than 20 July

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2010, and that the defense counsel authorize the trial counsel to contact and interview any of the above individuals named as witnesses.

7. The foregoing request is of a continuing nature and remains in effect until such time as final action is taken in this case.

 13 JULY 2010
N. L. GANNON
Major, USMC

CERTIFICATE OF SERVICE

I hereby certify that I caused to be served a copy of this document electronically upon Defense Counsel on 13 JULY 2010.

 13 JULY 2010
N. L. GANNON
Major, USMC

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