



UNITED STATES MARINE CORPS

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IN REPLY REFER TO:
5811
MJO/esd
14 Jan 11

From: Trial Counsel
To: Defense Counsel

Subj: 10 JAN 11 DEFENSE REQUEST FOR DISCOVERY AND WITNESS
PRODUCTION ICO US V. CAPT DOUGLAS WACKER, USMC

Ref: (a) R.C.M. 701
(b) R.C.M. 703
(c) R.C.M. 707
(d) Defense ltr 5801 dtd 10 Jan 11

1. The government responds as follows to the requests for production of documents in paragraph 2 of ref (d):

a. The defense has been provided with transcripts of the Article 32 testimony of Jessica Brooder, Elizabeth Easley Cook, Nicole Cusack, and Rebecca Barker Abdullah. The defense request for transcripts of any additional Article 32 witness testimony is denied.

b. The government's response to the request for the items requested in Paragraph 2(b) of Ref (d) is unchanged from the government's initial response on 1 Jul 10.

c. The defense request in paragraph 2(c) of Ref (d) is denied for the reasons set forth in the government's previous responses. The request is also denied on the grounds that it is overbroad, vague, and irrelevant.

2. The defense requests for production of Maj Shibata and Mr. Phillipowski are denied. The request contains no proffer whatsoever of the expected testimony of these witnesses, and therefore does not demonstrate their relevance and necessity in accordance with Ref (b).

3. The government responds as follows to the defense requests for production of witnesses at trial. Except as set forth below, this response does not change the government's responses to the previous defense requests for production of witnesses:

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a. The following witnesses have been notified of the trial dates and will be produced at trial: Capt Jiemar Patacsil, LtCol Robert McCarthy, Henry DeVere White, Kelly Lowry, and Cory Christianson.

b. Elizabeth McShan: The government has been unable to contact this witness despite numerous attempts. Therefore, the government has been unable to determine her availability for trial. The government will offer Ms. McShan invitational travel orders via her last known contact address, but does not commit to her production at trial.

c. Maj Gen James Kessler is denied. This witness has no memory of the accused and therefore cannot testify as proffered.

d. It is the government's understanding that the defense has withdrawn its request for LtCol William Pigott due to the fact that he would likely offer an adverse opinion of the accused's character if asked to testify.

4. The defense request for production of Dr. Norah Rudin as an expert consultant and testifying witness has been forwarded to the convening authority for appropriate action.

5. Request for reciprocal discovery: The government requests that the defense provide the government with the following, as soon as possible:

a. The names and addresses of all witnesses the defense intends to call in the defense case-in-chief or in pre-sentencing proceedings, and all sworn or signed statements known by the defense to have been made by such witnesses in connection with the case;

b. Copies of any written material that will be presented by the defense on the merits or at pre-sentencing;

c. Copies of any books, papers, documents, photographs, tangible objects, or copies or portions thereof, which are within the possession, custody, or control of the defense and which the defense intends to introduce as evidence in the defense case-in-chief at trial;

d. **Any results or reports of physical or mental examinations and of scientific tests or experiments made in connection with the subject case, or copies thereof, that are**

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within the possession, custody, or control of the defense. As the defense has requested the production of Dr. Norah Rudin as a testifying witness, the government specifically requests that the results or reports of any testing conducted by Dr. Rudin be turned over to the government as soon as they are received by the defense.

A handwritten signature in black ink, appearing to read 'E. S. Day', with a stylized, cursive script.

E. S. DAY