

**GENERAL COURT-MARTIAL
NAVY-MARINE CORPS TRIAL JUDICIARY
WESTERN JUDICIAL CIRCUIT**

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| UNITED STATES |) | |
| |) | GENERAL COURT-MARTIAL |
| |) | |
| v. |) | GOVERNMENT RESPONSE TO DEFENSE |
| |) | MOTION FOR APPROPRIATE RELIEF TO |
| Frank D. Wuterich |) | ABATE PROCEEDINGS UNTIL |
| XXX-XX-3312 |) | ATTORNEY CLIENT RELATIONSHIP |
| Staff Sergeant |) | WITH DETAILED COUNSEL (LTCOL |
| U.S. MARINE CORPS |) | VOKEY) IS RESTORED |
| |) | |

22 April 2011

I. FACTS.

1. In January of 2007, Lieutenant Colonel Colby Vokey, USMC, was detailed as defense counsel to the subject case. The Regional Defense Counsel, Pacific was granted detailing authority by the convening authority for the Haditha cases. The detailing authority for LtCol Vokey was the Regional Defense Counsel, West. (Encl 1).
2. On 1 February of 2007, LtCol Vokey requested voluntary retirement under 10 USC §6323, on 1 April 08 and 1 May 08 respectively. (AE XCIV).
3. The Article 32, UCMJ investigations for the Accused occurred on 30-31 August 2007 and 5-6 September 2007. (Record).
4. LtCol Vokey requested and was approved for three modifications to his original retirement, from: 1 April 08 to 1 May 08, 1 May 08 to 1 August 08, and 1 August 08 to 1 November 08. (AE XCIV).
5. LtCol Vokey took no action to cancel or modify his retirement pursuant to paragraphs 2004.8 and 2013 of MCO 1900.16F. He retired from active duty and went into private practice on 1 November 2008. (AE XCIV).

6. The email from Colonel Patrick Redmon to LtCol Vokey, dated 19 May 2008 is a confirmation of LtCol Vokey's second retirement modification to 1 August 2008 not a rejection of additional retirement modifications as characterized by the defense motion. (XCIV at 2). Subsequent to that email, LtCol Vokey requested and was approved for a third modification to 1 November 2008. (AE XCIV).
7. Mr. Vokey was courtesy copied in 2009 in email traffic after his retirement. (Encl 2).
8. On 13 September 2010, LtCol Vokey requested that he be excused from the case due to an irreconcilable conflict of interest. (Record pg. 812). The military judge held an *ex parte* hearing, and in the wake of that hearing, severed the attorney client relationship between the accused and Mr. Vokey, pursuant to R.C.M. 506(c). (Record pg. 812).

II. DISCUSSION.

1. **UNLIKE THE FACTS IN *HUTCHINS*, SSGT WUTERICH'S ATTORNEY CLIENT RELATIONSHIP (ACR) WITH MR. VOKEY REMAINED INTACT UNTIL BEING SEVERED BY THE MILITARY JUDGE ON 13 SEPTEMBER 2010.**

The defense motion incorrectly conflates the issue of Mr. Vokey's change in status from "detailed" to "civilian" defense counsel with an actual severance of the Attorney Client Relationship (hereinafter ACR). The accused's ACR with and Mr. Vokey remained intact from its formation until it was properly severed by the Military Judge on 13 September 2010 pursuant to RCM 506(c). (Record pg. 813). There simply was no severance of the ACR until 13 September 2010, when, on motion of the accused, Mr. Vokey was released from further participation in the case. (Record pg. 813). The

military judge stated: “the court specifically finds that there is not a way to ameliorate the issue, and the only way for this issue to be satisfied is to release Mr. Vokey from further participation in the case.” (Record pg. 813).

The defense argues that there was an improper severance of the ACR between Mr. Vokey and the accused on 11 March 2008. In support of their argument, the defense relies in part on the recent opinion of *United States v. Hutchins*, 69 M.J. 282 (C.A.A.F. 2011). However, the facts that led to the erroneous severance in the *Hutchins* trial are distinguishable from the facts here. In this case, the context of the facts and circumstances establish that no ACR severance event took place. The ACR between Mr. Vokey and the accused survived Mr. Vokey’s departure from active duty in November 2008.

Mr. Vokey represented the accused until 13 September 2010. Prior to that, Mr. Vokey made appearances on 22 March 2010, 23 March 2010, and 24 March 2010. On 26 March 2010, Mr. Vokey was not present. Pursuant to R.C.M. 813, the military judge noted Mr. Vokey’s absence, the reason for his absence, and obtained a waiver from the accused. (Record pg. 677). At the next Article 39a session, held on 26 August 2010, Mr. Vokey was absent. And again, pursuant to R.C.M. 813, the military judge inquired into Mr. Vokey’s whereabouts. (Record pg. 709). Mr. Puckett represented that Mr. Vokey was absent due to illness. (Record pg. 709). Mr. Puckett indicated that “Staff Sergeant Wuterich would be waiving his presence.” (Record pg. 709). The military judge then asked the accused, “So Staff Sergeant Wuterich, I guess, at this time, if I am correct, you have four attorneys: Mr. Vokey, Mr. Puckett, Mr. Faraj, all civilian counsel of course – and Major Marshall; is that correct?” (Record pg. 709). To which the accused

replied: "Yes, sir." (Record pg. 709). On 27 August 2010, Mr. Vokey appeared on behalf of the accused, and sat at counsel table. (Record pg. 759). On 13 September 2010, Mr. Vokey was again present and represented the accused, along with his several other attorneys. (Record pg. 793). At the Article 39a session of 13 September 2010, upon application, and for good cause, the Military Judge released Mr. Vokey from any further participation in the case. (Record pg. 813).

Throughout the course of the proceedings, Mr. Vokey was repeatedly referred to as counsel of record by the defense team. (Record pg. 709, 762, 763, 764). On 22 March 2010, when the military judge inquired as to whether Mr. Vokey had made a written notice of appearance in compliance with the Western Judicial Circuit Rules, Mr. Vokey replied, "no Sir, I just continue to represent Staff Sergeant Wuterich since active duty." (Record pg. 523). Finally, the accused was properly advised that Mr. Vokey was planning on transitioning to retirement. (AE XCIV pg. 5) The defense counsel assured the accused that Mr. Vokey, "would not abandon him, but that the relationship would not be as detailed counsel." (AE XCIV pg. 5). The assurances made to the accused prior to then LtCol Vokey's departure from active duty can only be interpreted as an intention to continue to maintain their ACR, which **has been** done as evidenced by Mr. Vokey's continued appearances the Article 39a sessions. A critically distinguishing fact between this case and *Hutchins* is that the detailed defense counsel in *Hutchins* **did not** continue to represent the accused as civilian defense counsel after his separation as did Mr. Vokey. Indeed, in *Hutchins*, Captain Bass was absent from trial entirely.

The issue is not status as "detailed" counsel but whether the ACR was severed. Here, the ACR has never been severed. The defense's reliance on *Hutchins*, *Iverson*, and

Baca to support their position that the Accused has a right to keep his chosen detailed counsel in “detailed” status, despite survival of the ACR, is misplaced. *See id.*; *United States v. Baca*, 27 M.J. 110 (C.M.A. 1988); *United States v. Iverson*, 5 M.J. 440 (C.M.A. 1978). All three cases pertain to the right of the accused to continue an **established attorney-client relationship**.

The defense contends that Mr. Vokey was erroneously denied “detailed” counsel status when he was, allegedly, “forced” to retire. The facts, *infra*, do not support the contention that anyone was forced off of active duty or from continued representation of the accused. Based on the evidence, it appears that every request to modify Mr. Vokey’s retirement dates was approved. Further, it appears that Mr. Vokey stopped submitting requests to modify his retirement dates in July of 2008, well before the appellate litigation related to the government’s subpoena of the “outtakes” of the accused’s interview with CBS was complete.

2. EVEN ASSUMING THAT THE DEFENSE COUNSEL’S TRANSITION FROM DETAILED COUNSEL STATUS TO CIVILIAN COUNSEL STATUS WAS ERRONEOUS, DENIAL OF DETAILED STATUS IS HARMLESS ERROR WHERE THE UNDERLYING ACR REMAINS INTACT.

In *United States v. Wiechmann*, 67 M.J. 456 (C.A.A.F. 2009), the convening authority erroneously denied recognition of one of the accused’s two detailed counsel. Before the military judge restored the unrecognized counsel’s “detailed” status on the eve of trial, that counsel was denied detailed counsel status during several critical pretrial stages. However, the ACR was never severed and the unrecognized counsel continued to provide his services to the defense team on pretrial matters. On appeal, the defense argued that LtCol Wiechmann’s Sixth Amendment right to counsel had been violated by the refusal of the convening authority to recognize his counsel’s detailed status, under the

facts of that case. *Wiechmann* held that even an erroneous denial of detailed status is harmless error under the circumstances of an uninterrupted ACR. *United States v. Wiechmann*, 67 M.J. 456, 464-5 (C.A.A.F. 2009). Judge Ryan, filing a separate opinion concurring in the judgment explains, “[t]he core of this [Sixth Amendment right to counsel] has historically been, and remains today, ‘the opportunity for a defendant to consult with an attorney and to have him investigate the case and prepare for trial,’” therefore, the Sixth Amendment does not rest upon the counsel’s particular status. *Id.* at 465 citing *Kansas v. Ventris*, --- U.S. ---, 129 S.Ct. 1841, 1844-45 (2009). A defendant’s Sixth Amendment right to counsel is *also* not violated every time these opportunities are restricted. *Id.* citing *Morris v. Slappy*, 461 U.S. 1, 11, 13-14 (1983). Therefore, even the negative implications of an attorney’s erroneous denial of status, such as lack of access to the defendant or files, is not a per se violation of the Sixth Amendment.

Similarly situated to *Wiechmann*, the accused enjoyed a continuing relationship with Mr. Vokey after his retirement. The accused has benefited continuously from the services of Mr. Vokey since he was detailed in 2007 and continued to receive his services until being relieved by the military judge pursuant to R.C.M. 506(c) on 13 September 2010. Under *Wiechmann*, even an erroneous denial of a counsel’s **detailed status** is harmless error while the ACR survives. Here, there has been no error: LtCol Vokey requested retirement and set his retirement date for 1 April 2008. After seeking and receiving several modifications to his retirement date he voluntarily retired on 1 November 2008; commencing terminal leave on 6 August 2008. The ACR continued in 2009, until 13 September 2010, when he was properly relieved by the military judge.

(Encl 2). (Record pg. 813). By Mr. Vokey's own representations to the Court, he continued to represent the accused. (Record pg. 523).

Further, there is no evidence that Mr. Vokey sought redress of any adverse modification request with the convening authority or the court. In fact, Mr. Vokey specifically admitted that he did not seek any relief from the convening authority, the military judge, the trial counsel, or the officer in charge of the legal services support section. If LtCol Vokey was having difficulty extending his retirement date, there were myriad opportunities for any member of the defense team to seek assistance in extending his retirement date. It is incomprehensible that the defense would not seek the assistance from the military judge if there was truly a desire to remain on active duty.

3. THE DEFENSE'S CONTENTION OF DISPARATE TREATMENT IS WITHOUT MERIT AS THE ATTORNEYS ARE NOT SIMILARLY SITUATED, THERE IS NO EVIDENCE OF DISPARATE TREATMENT, AND THERE IS A PRESUMPTION OF REGULARITY IN GOVERNMENTAL ACTIONS ABSENT CLEAR EVIDENCE TO THE CONTRARY.

The defense's comparison of the circumstances of the active duty defense counsel with those of the retired counsel is without merit as the attorneys are not similarly situated. Mr. Vokey submitted a voluntary request to retire from active duty, a process with entirely different statutes and administrative procedures from LtCol Sullivan's application for sanctuary as a reservist. A request to retire is a request to leave active duty. A request for consideration of sanctuary is a request to remain on active duty, as opposed to leave active duty. Furthermore, once it became apparent that this case would be stayed pending appeal in February of 2008, it appears that the defense counsel only minimally availed themselves of the administrative and judicial options for modifying or

canceling their retirements while LtCol Sullivan properly applied for an orders extension via the appropriate chain of command.

In the situation of voluntary retirement, a service member may apply for modifications of their retirement date for "any duration." However, as a general rule the requested modification should not exceed 14 months. *See* Paragraph 2004.8(c) of MCO P1900.16F. While both Mr. Vokey requested and was approved for several modifications to his original retirement dates, he did so in an atypical fashion, choosing to modify the dates by smaller rather than larger, more realistic, intervals. Further, Mr. Vokey did so through informal telephone calls, as opposed to submission of an administrative action form, coupled with command and convening authority endorsements. Mr. Vokey was granted four modifications to his original retirement by way of these short term, informal oral requests: from: 1 April 08 to 1 May 08, 1 May 08 to 1 June 08, 1 June to 1 August 08 and, 1 August 08 to 1 November 08. All four modification requests stated the accused's trial as the determining factor in Mr. Vokey's need to modify his retirement and, pursuant to such reasons, all four were fastidiously granted.

The defense has argued that the email from Col Patrick Redmon to LtCol Vokey, dated 19 May 2008 was an admonishment, and denial of a modification request. However, a plain reading of that email suggests that it was a confirmation of LtCol Vokey's third retirement modification to 1 August 2008; not a rejection of additional retirement modifications as characterized by the defense motion. (AE XCIV pg. 2). Subsequent to that email, it appears that LtCol Vokey requested and was approved for a fourth modification to 1 November 2008. The "admonition" referenced in the defense

motion addresses an approval of LtCol Vokey's request for an extension through 1 August 2008 which also happened to discourage his continued month to month extension request methods. It appears that Col Redmon was concerned that the attorneys would "nickel and dime" the USMC for "30 days at a time" instead of asking for a realistic retirement date.

There is no evidence to suggest that Mr. Vokey or would have been denied the option to modify their retirement dates up to the "normally" permitted 14 months had they requested such modifications from MMSR at the time of their original, or later, requests. Paragraph 2004.8(c) of MCO P1900.16F. However, it is impossible to know for sure, as LtCol Vokey failed to make a long-term, formal 14 month modification request. There is also no reason why the circumstances would not have warranted modifications beyond the "normally" permitted time frame had the defense counsel requested such relief through their chain of command, the convening authority, or an appropriate motion to this Court. Instead, it appears that LtCol Vokey completely halted his efforts to remain on active duty and accepted a job private practice in August 2008. It also appears that Mr. Vokey never availed himself of the option to cancel his retirement pursuant to paragraph 2004.8(c) of MCO P1900.16F.

Requests for modification or cancellation of voluntary retirement are granted under the following criteria: bona fide humanitarian or hardship circumstances, a critical need existing for the officer's grade and MOS, the needs of the service, and selection for promotion. *Id.* at 2004.8(a). As evidenced by the multiple requests granted by MMSR to modify Mr. Vokey's retirement, the circumstances of their established attorney client relationships with the accused fall under the regulation's criteria for granting

modifications and cancellations. There is no evidence to suggest that defense counsel could not have obtained further relief under this regulation had they actually requested additional modification or cancellation, particularly with the assistance of their command, the convening authority, the trial counsel or this Honorable Court.

Conversely, LtCol Sullivan properly initiated his sanctuary request via the chain of command. Reserve Marines must submit an administrative action (AA) form, requesting a high active duty time waiver to MMFA, through the chain of command. MCO 1800.11 at 2-1. LtCol Sullivan submitted the appropriate AA form via his chain of command, to MMFA, before procuring sanctuary. Importantly, he did so well after Mr. Vokey and Mr. Faraj had already left active duty as a result of their voluntary retirement requests. LtCol Sullivan initiated his sanctuary request in March 2009.

Finally, the implication by the defense that there has been misconduct on behalf of the Government in their treatment of the defense and trial counsel teams is completely without merit. The two parties are distinguishable in three respects: status, conduct and time. Their status differs in that Mr. Vokey requested to leave active duty, approximately one month after being detailed as defense counsel. LtCol Sullivan requested to remain on active duty. Their conduct was different in that it appears that Mr. Vokey made several successful modification requests, and then they ceased efforts to postpone his retirement. LtCol Sullivan on the other hand, simply followed the established procedure for making a sanctuary request. Finally, the two differ in time as well. Mr. Vokey made his retirement request in February 2007, less than one month after being detailed to the case. The several modification requests made by Mr. Vokey were made in the summer of 2008. LtCol Sullivan made his sanctuary request on 4 March 2009. Nearly one year later.

Thus, the notion that the sanctuary request and the retirement date modifications were being considered at the same time is not supported. Therefore, it is impossible that there was some conspiracy, or other insidious motive on the part of the convening authority, or the government, as alleged by the defense.

In the absence of clear evidence showing the contrary, the court must follow the long standing presumption that there is regularity in the conduct of governmental affairs. *U.S. v. Hilton*, 29 M.J. 1036, 1040 (1991). The defense has produced no evidence of misconduct or a scheme by the Government to treat the defense counsel differently than the trial counsel and as such the court should properly apply the presumption of regularity to this case. If anything, the defense counsel actively sought to separate himself from active duty, instead of seeking any of the numerous administrative and judicial remedies available to keep them himself in uniform in an active duty as detailed counsel. Here, the Government's "hands" are clean.

4. EVEN ASSUMING THAT THE DEFENSE COUNSEL'S TRANSITION FROM DETAILED COUNSEL STATUS TO CIVILIAN COUNSEL STATUS TEMPORARILY SEVERED THE ACR, THE RECORD DEMONSTRATED GOOD CAUSE AND A BASIS FOR THE EXCUSAL OF LTCOL VOKEY.

An attorney client relationship may only be severed under a limited set of circumstances. *United States v. Weichmann*, 67 M.J. 456, 458 (C.A.A.F. 2009). R.C.M. 505(d)(2)(B). R.C.M. 505(c). Whenever there is a replacement of counsel, the military judge shall ensure that the record reflects the change, and the reason for the change. R.C.M. 813. Even where good cause exists, the military judge shall capture the good cause on the record. *See generally United States v. Acton*, 38 M.J. 330, 335-337 C.M.A., 1993). On 11 March 2009, the parties held an article 39a session. The purpose of the Article 39a session of 11 March 2009 was to litigate the existence of a "newsgathering"

privilege at courts-martial. The litigants were CBS Broadcasting Inc. and the United States. The accused and two members of his defense team were present at the hearing, but the defense did not participate in the litigation of the newsgathering privilege, and consistently insisted that they "had no position" on the issue. (Record, pg. 307, 411). The defense team did not file any briefs with the trial court on the issue of the newsgathering privilege. (Record, pg. 409). During the Article 39a session, the military judge, pursuant to R.C.M. 813, discussed the status of the defense team with the detailed defense counsel, LtCol Tafoya, and the lead civilian counsel, Mr. Puckett. The military judge covered the absence of the Individual Military Counsel, Captain Nute Bonner. His presence was waived by the accused. The military judge covered the absence of assistant civilian defense counsel, Mr. Zaid. His was waived by the accused. The military judge covered the status of Mr. Faraj. His presence was waived by the accused. And, the military judge covered the status of Mr. Vokey. The following colloquy is informative:

MJ: Present today representing the defense is a new counsel, Lieutenant Colonel Tafoya. LtCol Tafoya, would you please state your legal qualifications, status as to oath, and by whom you were detailed.

DC (LtCol Tafoya): Yes Sir. I have detailed myself to this case in my capacity as the Regional Defense Counsel for the Western Region. I'm qualified and certified under Article 27(b) and sworn under Article 42(a) of the UCMJ. I have not acted in any disqualifying manner in this case.

MJ: Very well. Now, previously present in the court appearing to represent Staff Sergeant Wuterich was Captain Bonner as the individual military counsel. What is the status of Captain Bonner?

DC (LtCol Tafoya): Sir, Captain Bonner to my knowledge is still the individual military counsel for Staff Sergeant Wuterich.

MJ: Okay. He is not present in the courtroom today.

DC (LtCol Tafoya): He is not present in the courtroom today.

MJ: Also representing previously as a, I believe detailed defense counsel was Lieutenant Colonel Vokey. My understanding is that Lieutenant Colonel Vokey has since retired from the Marine Corps; is that correct?

DC (LtCol Tafoya): That's correct, Your Honor.

MJ: There has been some discussion that he may be retained in this case in the capacity as a civilian, that that has not occurred; is that correct?

DC (LtCol Tafoya): That's correct, Your Honor.

(Record 405-406).

Here, the military judge's colloquy with the accused was informed by several previous events. And in order to properly understand the events of 11 March 2009, it is critical that one understand the exact status of the case at that time, as well as several significant events that predated the 11 March 2009 Article 39a session. Taken in concert, the factual and legal landscape surrounding the 11 March 2009 Article 39a session explain the military judge's actions in court.

On 20 June 2008, the NMCCA issued its opinion on the government's Article 62, UCMJ appeal. Ten days later, on 30 June 2008, the defense filed a petition for a grant of review to the Court of Appeals for the Armed Forces (C.A.A.F.). On 1 July 2008, the C.A.A.F. ordered the defense to file a supplement to their 30 June 2008 petition, due no later than 21 July 2008. In effect, the C.A.A.F. had granted the defense motion seeking review of the 20 June 2008 NMCCA opinion. Further, the NMCCA opinion of 20 June 2008 lifted the stay of the case. Consequently, on 21 July 2008, the government sought an R.C.M. 802 conference with LtCol Meeks, the military judge. (Encl 3). After some coordination, an R.C.M. 802 conference was set for 1 August 2008. Several items were on the agenda at the R.C.M. 802 conference. The government advised the military judge that the case was again under his control. The government also sought to establish a trial

schedule, discuss the status of LtCol Vokey and Maj Faraj, the status of all outstanding motions, the 20 June 2008 NMCCA opinion, and the road ahead. (Encl 3). The R.C.M. 802 conference was held on 1 August 2008. When the issue of status of counsel came up, the defense made no objection to LtCol Vokey's then impending retirement. On 1 August 2008, the defense did advise the Court and the Government that they intended to request a continuance. (AE LI, LII). After all, the Government was pushing for a trial schedule, and the stay of the proceedings was lifted. (Encl 3). In their continuance request, the defense represented that a continuance was required in order to allow newly detailed counsel time to become familiar with the case. (AE LII). It is important to note that at this point in the litigation, the defense had asked for the C.A.A.F. to review the NMCCA opinion of 20 June 2008, and the C.A.A.F. had ordered a briefing schedule. It was thus apparent to the parties that the C.A.A.F. was going to review the NMCCA ruling. There was a possibility they would reverse, or substantially modify the NMCCA's 20 June 2008 ruling. The defense, the court and CBS Broadcasting Inc. were all desirous of waiting until the appellate litigation was completed, and there was a final decision from the C.A.A.F. The defense represented that the accused's interests would not be harmed if the appellate process was to run its course. (AE LII). At no point did the defense object to the retirement of LtCol Vokey. (AE LI, LII). In fact, the defense moved the trial court for a continuance in order to allow time for newly detailed counsel to become familiar with the facts of the case. It is clear that as of 1 August 2008, before LtCol Vokey went on terminal leave, the defense team had decided to release LtCol Vokey from his detailed status because the attorney client relationship would continue in a civilian capacity. LtCol Vokey even assured the accused, before he left active duty,

that LtCol Vokey “would never abandon [the accused] but the relationship would not be as detailed counsel.” (AE XCIV at 5). The R.C.M. 802 conference was held five days before LtCol Vokey went on terminal leave and after LtCol Vokey’s phone conversation with Col Redmon. On 7 August 2008, true to their representations during the R.C.M. 802 of 1 August 2008, the defense filed a motion for a continuance. (AE LI). The defense argued that a continuance was necessary as it was:

axiomatic that all accused are entitled to effective assistance of detailed military defense counsel. R.C.M. 506. When, as here, the passage of time results in the loss of detailed counsel by attrition due to retirement from military service, the accused should become entitled to replacement counsel who have sufficient time to become knowledgeable about the facts, witnesses, and evidence in the case before any additional pretrial proceedings and eventual trial can resume.

(AE LI at 3). The government did not object to the continuance request. (AE LII). The government’s response to the defense motion to continue stated:

[b]ased on the R.C.M. 802 conference of 1 August 2008, it is understood that SSgt Wuterich’s interests will not be harmed by allowing the appellate process to run its course; and further, that SSgt Wuterich does not wish to litigate other matters while the parties wait for C.A.A.F. to render their decision.

(AE LII at 2). The defense never objected to LtCol Vokey’s retirement. (AE LI). They made no motion of any retirement modification denials with the trial court, the trial counsel, the SJA or the OIC of the LSSS, and specifically represented that they did not wish to litigate any other matters during the pendency of the appellate process. (AE LII).

As indicated above, attorney client relationship may only be severed under a limited set of circumstances. *United States v. Weichmann*, 67 M.J. 456, 458 (C.A.A.F. 2009). R.C.M. 505(d)(2)(B). R.C.M. 505(c). “Absent government misconduct, the routine separation of a judge advocate from active duty normally terminates any attorney-client relationship.” *United States v. Spriggs*, 52 M.J. 235, 246 (C.A.A.F. 2000).

Whenever there is a replacement of counsel, the military judge shall ensure that the record reflects the change, and the reason for the change. R.C.M. 813. Even where good cause exists, the military judge shall capture the good cause on the record. *See generally United States v. Acton*, 38 M.J. 330, 335-337 C.M.A, 1993). On 11 March 2009, during the Article 39a session, the military judge in essence found good cause to excuse LtCol Vokey's absence from the 11 March 2009 Article 39a session because his absence was explained and waived. Pursuant to R.C.M. 813, the military judge noted LtCol Vokey's absence on the record. (Record pg. 405). Also, pursuant to R.C.M. 813, the military judge noted that there was a replacement of counsel, and he ensured that the record reflected the reason for the change. The military judge noted a replacement of counsel by stating: "present today representing the defense is a new counsel, Lieutenant Colonel Tafoya." (Record pg. 405). And the military judge ensured that the record reflected the reason for the change:

MJ: Also representing previously as a, I believe detailed defense counsel was Lieutenant Colonel Vokey. My understanding is that Lieutenant Colonel Vokey has since retired from the Marine Corps; is that correct?

...

MJ: Normally, you have the right to have all of your attorneys to be present prior to proceeding in this trial here today. Now, I will note that we had some discussions previously before going on the record were **I was informed that the counsel who are not present are going to be excused because you are giving them the permission to be excused.** However, I haven't talked to you about that. So I'm going to go over your rights with your right now on that.

MJ: You have the right to have all of your counsel be present with you during the presentation of your case. If your counsel isn't here, normally I would stop the proceeding until they could be here. Of course, we would also have the alternate problem of the court directing a date for the counsel to be here and the counsel not being here, we would have to deal with that separately.

MJ: Have you discussed with your counsel their presence and your desires as to their presence?

ACC: I have.

...

MJ: Now, previously, you had been detailed Lieutenant Colonel Vokey while he was on active duty in the United States Marine Corps. **He has been relieved is my understanding because he's no longer on active duty in the United States Marine Corps.** Now, there's no way the government can compel him to be present. Do you understand that?

ACC: Yes, Sir I do.

MJ: Now, you have the right, of course, to retain him, but that's something completely between you and Lieutenant Colonel Vokey. Do you understand that?

ACC: Yes Sir, I do.

...

MJ: Mr. Puckett, just to make sure I'm clear, do you have any objection to us proceeding with the counsel being absent today?

CC (Mr. Puckett): No. None whatsoever, sir, and I would like to thanks the court for allowing us to proceed in this fashion.

(Record pg. 405-408).

Since separation from active duty normally constitutes good cause, it is reasonable, even if erroneous, that the military judge excused LtCol Vokey's absence from the 11 March 2008 Article 39a session because his retirement appeared to constitute good cause. All of the circumstances apparent to the military judge pointed to a knowing, intelligent waiver on the part of the defense counsel on this issue. LtCol Vokey never attempted to rescind his retirement. There was no objection by the defense and LtCol Vokey had been replaced by LtCol Tafoya, the Regional Defense Counsel, West. And, a defense continuance request had been previously granted in order to give the newly detailed counsel time to become familiar with the case.

5. EVEN ASSUMING THAT THE DEFENSE COUNSELS' TRANSITION FROM DETAILED COUNSEL STATUS TO CIVILIAN COUNSEL STATUS TEMPORARILY SEVERED THE ACR, AND THE MILITARY JUDGE ERRED IN FAILING TO ENSURE THAT THE RECORD ACCURATELY REFLECTED THE REASONS FOR ABSENCE OF COUNSEL, ANY PREJUDICE WAS HARMLESS.

Even assuming that the military judge erred as a matter of law by failing to ensure, pursuant to his duty under R.C.M. 813, that the record of the 11 March 2009 Article 39a session accurately reflected the reasons for LtCol Vokey's absence, the accused suffered no prejudice. The C.A.A.F. has taken a variety of approaches to the question of prejudice flowing from errors in the severance of the attorney-client relationship. See *United States v. Hutchins*, 69 M.J. 282, 291, accord *United States v. Hutchins*, 68 M.J. at 630 (citing *United States v. Iverson*, 5 M.J. 440 (C.M.A. 1978) (prejudice presumed), *United States v. Baca*, 27 M.J. 110 (C.M.A. 1988) (prejudice presumed), *United States v. Acton*, 38 M.J. 330 (C.M.A. 1993) (prejudice evaluated in light of facts and circumstances); *United States v. Kelly*, 16 M.J. 244 (C.M.A. 1983) (prejudice evaluated in light of facts and circumstances)). In *Hutchins*, 69 M.J. 282, the C.A.A.F. recently offered further elucidation on the issue of assessing prejudice. The *Hutchins* court held that in assessing prejudice, "we consider the context of the error in the present case." *United States v. Hutchins*, 69 M.J. at 291. Here, any assessment of prejudice inevitably leads to the conclusion that Staff Sergeant Wuterich suffered no harm as a result of LtCol Vokey's absence from the 11 March 2009 session.

First, as indicated above, the 11 March 2009 Article 39a, UCMJ session was limited to the litigation of whether a "newsgathering privilege" existed at courts-martial. (Record pg. 405). The defense consistently represented that that they take no position on the issue, nor did they file trial briefs on the issue. (Record pg. 409, 411). The defense

participation in the March 2009 litigation was *de minimis*. (Record pg. 405-458).

Second, the accused has had the assistance of multiple counsel throughout the proceedings, to include detailed counsel (LtCol Tafoya), civilian counsel (Mr. Puckett, Mr. Zaid and Mr. Faraj), as well as Captain Bonner, the Individual Military Counsel. All of whom, save Mr. Puckett and LtCol Tafoya, were absent on 11 March 2009. Their presence was knowingly waived by the accused. (Record pg. 406-407). The military judge granted a defense continuance request to facilitate preparation by the new member of the defense team. (AE LI). (Record pg. 409). The defense never objected to LtCol Vokey's transition to civilian counsel, nor did LtCol Vokey advise the military judge, the trial counsel, or the convening authority of any difficulties he may have encountered in modifying his retirement date. And, the personnel action that led to LtCol Vokey's transition from detailed defense counsel to civilian counsel was initiated by LtCol Vokey, not by the prosecution or the command. Finally, LtCol Vokey's status was discussed at the next Article 39a, UCMJ session of 22 March 2010, where the military judge referred to LtCol Vokey as "civilian counsel of record." (Record, pg. 460). Taken together, the record establishes that the accused suffered no violation of his Sixth Amendment right to counsel. *See United States v. Hutchins*, 69 M.J. 282, 292, citing *Morris v. Slappy*, 461 U.S. 1, 14 n.6 (1983) (holding that the Sixth Amendment does not create a right to a "meaningful relationship" with counsel--privately retained or provided by the public--and specifically rejecting the notion that an appointed counsel with whom an accused enjoys no "meaningful relationship" is the equivalent of deprivation of counsel). Mr. Vokey's absence on the 11-12 March 2009 Article 39a sessions in no way deprived the accused of

his Sixth Amendment right to counsel, and he suffered no prejudice as a result of LtCol Vokey's absence, even if the military judge erred in his duties under R.C.M. 813.

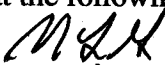
III. CONCLUSION.

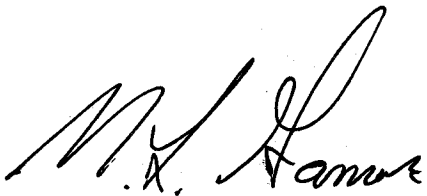
The Government respectfully requests that this Honorable Court deny the defense motion in its entirety. The ACR between Mr. Vokey and the Accused remained intact until it was properly severed by the military judge on 13 September 2010. And, even if there was an erroneous denial of the defense counsels' detailed status, under *Wiechmann*, the error is harmless. Finally, the notion that there was disparate treatment of defense and trial counsel is not supported and without merit.

ATTACHMENTS

The government specifically incorporates all attachments to Appellate Exhibit XCVII.

1. Detailing Memoranda
2. Email traffic 2009
3. Email traffic 2008

I certify that the following motion was served on the Court and opposing counsel on 22 April 2011. 



N.L. Gannon,
Major, U.S. Marine Corps
Trial Counsel



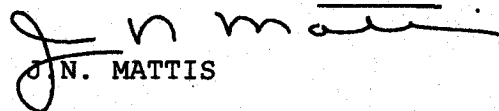
UNITED STATES MARINE CORPS
U.S. MARINE CORPS FORCES CENTRAL COMMAND
7115 SOUTH BOUNDARY BOULEVARD
MACDILL AIR FORCE BASE, FLORIDA 33621-5101

IN REPLY REFER TO:
5800
SJA
1 2 DEC 2008

From: Commander, U.S. Marine Corps Forces, Central Command
To: Lieutenant Colonel Phillip Simmons, USMC
Subj: DELEGATION OF DETAILING AUTHORITY TO LIEUTENANT COLONEL
PHILLIP SIMMONS USMC

Ref: (a) R.C.M. 503, MCM (2005 ed.)
(b) JAGINST 5800.7c, para. 0130 (JAGMAN)

1. Pursuant to the reference, you are hereby delegated detailing authority for those cases arising from alleged misconduct in Haditha, Iraq during November 2005.
2. Reference (a) requires that a detailed defense counsel represent service members at Special and General Courts-Martial. Reference (b) provides that Navy and Marine Corps Judge Advocates may be detailed as Defense Counsel by their Commanders or their designee.
3. As Commander, U.S. Marine Corps Forces, Central Command and as Commanding General, I Marine Expeditionary Force, I authorize you to detail defense counsel under my cognizance or qualified counsel from other commands, if made available for detailing by the appropriate command authority.
4. This detailing authority authorizes you to detail one detailed defense counsel per accused. Requests for individual military counsel (IMC) shall be forwarded via trial counsel to my Staff Judge Advocate, Lieutenant Colonel G.W. Riggs (or his successor), who will forward those requests to the appropriate commander for a determination of reasonable availability.


J.N. MATTIS

ENCLOSURE (1)



UNITED STATES MARINE CORPS
REGIONAL DEFENSE COUNSEL, PACIFIC REGION
CAMP SMEDLEY D. BUTLER, OKINAWA JAPAN
MARINE CORPS BASE
UNIT 35002
FPO AP 96379-5002

IN REPLY REFER TO:

5800
RDC
17 Jan 07

From: Regional Defense Counsel
To: OIC, Legal Team Charlie

Subj: DETAILING MEMO FOR HADITHA CASES OF 17 JANUARY 2007

Ref: (a) LtCol Simmons ltr 5800 RDC of 11 Jan 07
(b) LtCol Riggs email of 12 Jan 07

1. Reference (a) details a single military counsel to each of the accused in the subject cases. Reference (b) indicates the convening authority as granted authority to detail a second military counsel to each of these cases. This letter will detail the additional counsel.

2. The counsel below, listed in bold, are detailed as co-counsel. Counsel detailed in reference (a) are included for reference and to show all detailed counsel in a single document.

| Accused | Detailed |
|----------------|---|
| LtCol Chessani | LtCol Shelburne, Capt King |
| Capt McConnell | Maj Saran, Capt Grimm |
| Capt Stone | LCDR Perdue (USN), Capt Bonner |
| Lt Grayson | Maj Woodard, Capt Folchetti |
| SSgt Wuterich | Maj Faraj, LtCol Vokey |
| Sgt Delacruz | Capt Slabbekorn, LtCol Starita |
| LCpl Sharratt | CAPT Lazarro (USN), Maj Cosgrove |
| LCpl Tatum | Maj Munoz, LtCol Cord |

3. Notes

a. The detailing authority for LtCol Vokey, LtCol Starita, LtCol Cord and Maj Cosgrove is Regional Defense Counsel, West. RDC West has made each available for detailing to these cases.

b. Capt Folchetti's detailing authority is the Officer in Charge, Legal Services Support Section located in Camp Lejeune, North Carolina. The OIC has made Capt Folchetti available for detailing to these cases.

c. Captains Grimm and Bonner are currently deployed to Iraq, serving in defense billets. They are scheduled to redeploy in the next month.

Subj: DETAILING MEMO FOR HADITHA CASES OF 17 JANUARY 2007

3. Please contact me at 011.81.90.6861.0648 or at philip.simmons@usmc.mil with any questions.

Very Respectfully,



PHILIP E. SIMMONS
Lieutenant Colonel
U.S. Marine Corps

Copy to:
SJA MARCENT
CDC, USMC
RDC WEST
RDC EAST
OIC, LSSS, CPCA
OIC, LSSS, CLNC
Legal Chief, Legal Team Charlie Defense
Civilian Defense Counsel

Jamison Col Mark K

From: Jamison LtCol Mark K
Sent: Tuesday, August 08, 2006 3:51 PM
To: Baker LtCol John
Subject: FW: Detailing memo for 3/5 cases

John,

Here you go. As discussed. S/F, Mark

>
>-----
>From: Riggs LtCol Bill
>Sent: Saturday, August 05, 2006 10:46
>To: Simmons LtCol Gregory L; Jamison LtCol Mark K
>Cc: Joyce Col Carol K; Vokey LtCol Colby C
>Subject: RE: Detailing memo for 3/5 cases

>
>Colby,
>
>You keep referencing that COMUSMARCENT has authorized you to detail; to my knowledge he has not. Aside from our preliminary discussions on this, it never went beyond that.

>
>Your detailing authority comes for the delegation letter that Greg Simmons signed as OIC of LSSS.

>
>S/F,

>
>Bill

>
>LtCol G.W. Riggs
>Staff Judge Advocate
>U.S. Marine Corps Forces Central Command
>(760) 725-9289 (office)
>(813) 454-4642 (cell)

>
>-----
>From: Cerveney Sgt Heather N
>Sent: Friday, August 04, 2006 16:38
>To: White Col Bruce A ; Ashbacher Maj Rhesa J; Simmons LtCol Gregory L; Riggs LtCol Bill; Atterbury Maj Paul H; Sullivan LtCol Sean M; Blair Capt Cindiemarie; Mitchell Capt Edward C; Seeds CAPT John R; Slabbekorn Capt Ray
>Cc: Joyce Col Carol K; Vokey LtCol Colby C; Faraj Maj Haytham; Smith LTCOL Joseph S Jr.
>Subject: Detailing memo for 3/5 cases

>
>This email is being sent at the direction of LtCol Vokey. Please reply to this email at colby.vokey@usmc.mil.

>
>Ladies and Gentlemen,

>
>The Commanding General, MARCENT, has authorized me to detail all cases involving 3/1 and 3/5. Pursuant to that authority, and at the direction of the Chief Defense Counsel of the Marine Corps, the following detailing assignments for 3/5 were made on 4 August 2006:

>
>Lance Corporal Lopez-Romo - Captain R. Slabbekorn, USMC, 1st MLG

- >
- >Lance Corporal Lever - Captain E. Mitchell, USMC, MCRD San Diego
- >
- >Private First Class Lewis - Captain J. Seeds, USMC, MCAGCC 29 Palms
- >
- >R/S
- >
- >LtCol Vokey
- >



Nick Gannon <nicholasleegannon@gmail.com>

FW: Wuterich trial schedule

4 messages

Gannon Capt Nicholas L <nicholas.gannon@usmc.mil>
To: nicholasleegannon@gmail.com

Mon, Dec 29, 2008 at 1:45 PM

Neil,

I am going on leave from 1 January - 15 January. Point of Contact for all things SSgt Wuterich will be Maj Plowman and Capt Gannon. If we can hash out dates prior to the 1st that would be great. If not, then please contact Maj P and Capt G for proposed dates. If you wish to wait until I return on the 15th please advise as well.

v/r
Daren

Daren J. Erickson
LtCol USMC
OIC, LSST-E
Legal Services Support Section
1st Marine Logistics Group
Box 555607, Camp Pendleton, CA 92055-5607
Comm: (760) 725-4820
DSN: 365-4820 Fax: (760) 725-4500

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 smime.p7s
5K

Gannon Capt Nicholas L <nicholas.gannon@usmc.mil>
To: nicholasleegannon@gmail.com

Mon, Dec 29, 2008 at 1:54 PM

From: Neal Puckett[SMTP:NEAL@PUCKETTFARAJ.COM]
Sent: Monday, December 29, 2008 1:53:02 PM
To: Erickson LtCol Daren J
Cc: Plowman Maj Donald J; Gannon Capt Nicholas L; Faraj Haytham;
Colby Vokey; Zaid Mark; Bonner Capt Nute A
Subject: Re: Wuterich trial schedule
Auto forwarded by a Rule

Daren,

ENCLOSURE (2)

Still trying to figure out who's on first. Let's talk when you get back. Nothing will change before that. You can quote this email in reply to any frivolous speedy trial motions.
Happy New Year to you and your family!
Neal

N. A. Puckett
LtCol, USMC (Ret)
Puckett & Faraj, PC

[Quoted text hidden]

Gannon Capt Nicholas L <nicholas.gannon@usmc.mil>
To: nicholasleegannon@gmail.com

Fri, Jan 23, 2009 at 9:02 AM

Mr. Puckett,

Welcome to the New Year, hopefully it will be a blessed one for you and yours. I think everyone is back in the saddle at this point and the materials have been delivered to the MJ. Would like to figure out a trial schedule at this point based on you and your team's availability.

Please advise as to when you can discuss.

v/r
LtCol Erickson

-----Original Message-----

From: Neal Puckett [mailto:neal@puckettfaraj.com]
Sent: Monday, December 29, 2008 13:53
To: Erickson LtCol Daren J
Cc: Plowman Maj Donald J; Gannon Capt Nicholas L; Faraj Haytham; Colby Vokey; Zaid Mark; Bonner Capt Nute A
Subject: Re: Wuterich trial schedule

[Quoted text hidden]

 **smime.p7s**
5K

Gannon Capt Nicholas L <nicholas.gannon@usmc.mil>
To: nicholasleegannon@gmail.com

Sun, Jan 25, 2009 at 2:08 PM

From: Neal Puckett[SMTP:NEAL@PUCKETTFARAJ.COM]
Sent: Sunday, January 25, 2009 2:08:31 PM
To: Erickson LtCol Daren J
Cc: Plowman Maj Donald J; Gannon Capt Nicholas L; Faraj Haytham;
Colby Vokey; Zaid Mark; Bonner Capt Nute A
Subject: Re: Wuterich trial schedule
Auto forwarded by a Rule

Daren,
Let's talk Monday afternoon (my time). I'll give you a call on my way driving down to Camp Lejeune.

S/f,
Neal

Neal A. Puckett, Esq
LtCol, USMC (Ret)
Puckett & Faraj, PC
Washington DC | San Diego
888.970.0005

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[Quoted text hidden]



Nick Gannon <nicholasleegannon@gmail.com>

FW: U.S. v. SSgt Wuterich

13 messages

Gannon Capt Nicholas L <nicholas.gannon@usmc.mil>
To: nicholasleegannon@gmail.com

Mon, Jul 21, 2008 at 10:20 AM

Your Honor,

I was recently advised that the record of trial ICO U.S. v. Wuterich has been returned to the court reporters here at Camp Pendleton. As the case is now back in the hands of the Military Judge, the government respectfully requests that we conduct a telephonic 802 conference to discuss the way ahead.

The government respectfully requests that we conduct an 802 on 28 July at 1500 PST. We can use our teleconference line, which is (760) 725-9963. As you may recall Sir, the parties just need to call in to that line at the prearranged time and they will automatically be "conferenced in" to the call.

During the call, the government respectfully proposes the following agenda:

1. The establishment of a new trial schedule.
2. The status of the defense counsel, more specifically, LtCol Vokey's and Maj Faraj's respective status.
3. The status of all of the outstanding motions,
4. The NMCCA opinion ICO U.S. v. Wuterich and the road ahead.

With respect to topic number 4 above, the government anticipates that CBS will want to participate in the conference call. The government is available to conduct this requested proposed telephonic 802 at the Court's convenience, and at the convenience of the other parties.

Very respectfully submitted,

Daren J. Erickson
Major USMC
OIC, LSST-E
Legal Services Support Section
1st Marine Logistics Group
Box 555067, Camp Pendleton, CA 92055-5607
Comm: (760) 725-4820
DSN: 365-4820 Fax: (760) 725-4500

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ENCLOSURE (3)

 smime.p7s
5K

Gannon Capt Nicholas L <nicholas.gannon@usmc.mil>

Mon, Jul 21, 2008 at 10:57 AM

To: nicholasleegannon@gmail.com

From: Seth Berlin[SMTP:SBERLIN@LSKSLAW.COM]
Sent: Monday, July 21, 2008 10:56:02 AM
To: Gannon Capt Nicholas L
Cc: Plowman Maj Donald J; Erickson Maj Daren J
Subject: RE: U.S. v. SSgt Wuterich
Auto forwarded by a Rule

Capt. Gannon,

Can I ask you to please resend your email, but cc'ing the judge and the defense counsel, so that any response which is the subject of a "reply all" email includes me. Thank you.

Seth D. Berlin
Levine Sullivan Koch & Schulz, L.L.P.
tel 202/508-1122
fax 202/861-9888
sberlin@lskslaw.com
www.lskslaw.com

-----Original Message-----

From: Gannon Capt Nicholas L [mailto:nicholas.gannon@usmc.mil]
Sent: Monday, July 21, 2008 1:28 PM
To: Seth Berlin
Cc: Plowman Maj Donald J; Erickson Maj Daren J
Subject: FW: U.S. v. SSgt Wuterich

Mr. Berlin,

The email below was just sent to the Military Judge ICO U.S. v. Wuterich. I noticed that you were inadvertently left off of the "cc" line, so I thought I would forward it on...

Very respectfully,

Capt Gannon

-----Original Message-----

From: Erickson Maj Daren J
Sent: Monday, July 21, 2008 10:21
To: Meeks LtCol Jeffrey G
Cc: (mark@markzaid.com); 'napuckett@comcast.net'; Vokey LtCol Colby C; neal@puckettfaraj.com; Plowman Maj Donald J; Gannon Capt Nicholas L
Subject: U.S. v. SSgt Wuterich

[Quoted text hidden]

Gannon Capt Nicholas L <nicholas.gannon@usmc.mil>
To: nicholasleegannon@gmail.com

Mon, Jul 28, 2008 at 9:47 AM

Your Honor,

With regards to the requested RCM 802 conference, we have received no response. Respectfully request confirmation on whether the RCM 802 conference was approved for this afternoon. Government and defense counsel are available for 1500 today. The conference line to call into for all parties has changed to: (760)725-8101. If an 802 conference is not possible today, the Government respectfully requests an Article 39a for Monday 4 August 2008.

Your Honor may have learned that CAAF recently directed the Government to file a consolidated brief by 22 August 2008. That directive did not stay this case. Therefore, we believe we are still moving forward to trial and wish to establish trial dates and milestones as your Honor directs.

Very respectfully,
Major Erickson

[Quoted text hidden]

 **smime.p7s**
5K

Gannon Capt Nicholas L <nicholas.gannon@usmc.mil>
To: nicholasleegannon@gmail.com

Mon, Jul 28, 2008 at 9:50 AM

Mr. Berlin,

Forgot to include you in the addressees below.

v/r
Major Erickson

-----Original Message-----

From: Erickson Maj Daren J
Sent: Monday, July 28, 2008 9:48
To: Erickson Maj Daren J; Meeks LtCol Jeffrey G
Cc: (mark@markzaid.com); 'napuckett@comcast.net'; Vokey LtCol Colby C;
neal@puckettfaraj.com; Plowman Maj Donald J; Gannon Capt Nicholas L
Subject: RE: U.S. v. SSgt Wuterich

[Quoted text hidden]

 **smime.p7s**
5K

Gannon Capt Nicholas L <nicholas.gannon@usmc.mil>
To: nicholasleegannon@gmail.com

Mon, Jul 28, 2008 at 9:52 AM

From: Meeks LtCol Jeffrey G
Sent: Monday, July 28, 2008 9:52:42 AM
To: Erickson Maj Daren J

Cc: 'mark@markzaid.com'; 'napuckett@comcast.net'; Vokey LtCol Colby C;
'neal@puckettfaraj.com'; Plowman Maj Donald J; Gannon Capt Nicholas L
Subject: Re: U.S. v. SSgt Wuterich
Auto forwarded by a Rule

I am on leave until Friday, per my out of office reply.

I am available on Friday.

V/r

LtCol Meeks

----- Original Message -----

From: Erickson Maj Daren J
To: Erickson Maj Daren J; Meeks LtCol Jeffrey G

[Quoted text hidden]

Gannon Capt Nicholas L <nicholas.gannon@usmc.mil>
To: nicholasleegannon@gmail.com

Mon, Jul 28, 2008 at 10:06 AM

Gentlemen,

Based on the below response from the MJ, please advise as to availability on Friday, 1 August. Propose doing the 802 at 1200 PST.

Also need to arrange for a conference call prior to Friday, 1 August, to discuss the agenda and specifically new trial dates and milestones. Please advise to your availability.

v/r
Major Erickson

-----Original Message-----

From: Meeks LtCol Jeffrey G
Sent: Monday, July 28, 2008 9:53
To: Erickson Maj Daren J
Cc: 'mark@markzaid.com'; 'napuckett@comcast.net'; Vokey LtCol Colby C;
'neal@puckettfaraj.com'; Plowman Maj Donald J; Gannon Capt Nicholas L
Subject: Re: U.S. v. SSgt Wuterich

[Quoted text hidden]

 smime.p7s
5K

Gannon Capt Nicholas L <nicholas.gannon@usmc.mil>
To: nicholasleegannon@gmail.com

Mon, Jul 28, 2008 at 1:56 PM

From: Neal Puckett[SMTP:NAPUCKETT@COMCAST.NET]
Sent: Monday, July 28, 2008 1:55:59 PM

To: Erickson Maj Daren J
Cc: mark@markzaid.com; Vokey LtCol Colby C; sberlin@lskslaw.com;
Plowman Maj Donald J; Gannon Capt Nicholas L
Subject: Re: U.S. v. SSgt Wuterich
Auto forwarded by a Rule

Wuterich defense team will be available for telephonic 802 conference at 1200 PST on Friday, 1 August.

Neal A. Puckett, Esq
LtCol, USMC (Ret)
Puckett & Faraj, PC
Washington DC | San Diego | Chicago
[888.970.0005](tel:888.970.0005)

[Quoted text hidden]

Gannon Capt Nicholas L <nicholas.gannon@usmc.mil>
To: nicholasleegannon@gmail.com

Mon, Jul 28, 2008 at 2:15 PM

From: Seth Berlin[SMTP:SBERLIN@LSKSLAW.COM]
Sent: Monday, July 28, 2008 2:12:57 PM
To: Neal Puckett; Erickson Maj Daren J
Cc: mark@markzaid.com; Vokey LtCol Colby C; Plowman Maj Donald J;
Gannon Capt Nicholas L; Seth Berlin; Lee Levine
Subject: RE: U.S. v. SSgt Wuterich
Auto forwarded by a Rule

Major Erickson,

I will be available telephonically on behalf of CBS Broadcasting Inc. on Friday at noon PDT. Please let me know the call-in number. Thank you.

Respectfully,

Seth D. Berlin
Levine Sullivan Koch & Schulz, L.L.P.
tel [202/508-1122](tel:202/508-1122)
fax [202/861-9888](tel:202/861-9888)
<<mailto:sberlin@lskslaw.com>> sberlin@lskslaw.com
<<http://www.lskslaw.com/>> www.lskslaw.com

From: Neal Puckett [<mailto:napuckett@comcast.net>]
Sent: Monday, July 28, 2008 4:56 PM
To: Erickson Maj Daren J
Cc: mark@markzaid.com; Vokey LtCol Colby C; Seth Berlin; Plowman Maj Donald J; Gannon Capt Nicholas L
Subject: Re: U.S. v. SSgt Wuterich

[Quoted text hidden]

Gannon Capt Nicholas L <nicholas.gannon@usmc.mil>
To: nicholasleegannon@gmail.com

Mon, Jul 28, 2008 at 2:47 PM

From: Seth Berlin[SMTP:SBERLIN@LSKSLAW.COM]
Sent: Monday, July 28, 2008 2:45:17 PM
To: Gannon Capt Nicholas L
Cc: Lee Levine; Plowman Maj Donald J; Erickson Maj Daren J
Subject: RE: U.S. v. SSgt Wuterich
Auto forwarded by a Rule

Thank you.

-----Original Message-----
From: Gannon Capt Nicholas L [mailto:nicholas.gannon@usmc.mil]
Sent: Monday, July 28, 2008 5:45 PM
To: Seth Berlin
Cc: Lee Levine; Plowman Maj Donald J; Erickson Maj Daren J
Subject: RE: U.S. v. SSgt Wuterich

Sir,

The call in number is 760.725.8101.

Very respectfully,
Capt Gannon

-----Original Message-----
From: Seth Berlin [mailto:SBerlin@lskslaw.com]
Sent: Monday, July 28, 2008 14:13
To: Neal Puckett; Erickson Maj Daren J
Cc: mark@markzaid.com; Vokey LtCol Colby C; Plowman Maj Donald J; Gannon
Capt Nicholas L; Seth Berlin; Lee Levine
Subject: RE: U.S. v. SSgt Wuterich

Major Erickson,

I will be available telephonically on behalf of CBS Broadcasting Inc. on Friday at noon PDT. Please let me know the call-in number. Thank you.

Respectfully,

Seth D. Berlin
Levine Sullivan Koch & Schulz, L.L.P.
tel 202/508-1122
fax 202/861-9888
sberlin@lskslaw.com <<mailto:sberlin@lskslaw.com>>
www.lskslaw.com <<http://www.lskslaw.com>>

[Quoted text hidden]

Gannon Capt Nicholas L <nicholas.gannon@usmc.mil>
To: nicholasleegannon@gmail.com

Mon, Jul 28, 2008 at 3:55 PM

Mr. Berlin,

The call in number is: (760)725-8101.

Thank you,

[Quoted text hidden]

 **smime.p7s**
5K

Gannon Capt Nicholas L <nicholas.gannon@usmc.mil>
To: nicholasleegannon@gmail.com

Mon, Jul 28, 2008 at 3:59 PM

Sir,

Based on your availability, the Government and Defense have agreed to an 802 at 1200 on Friday, 1 August 2008. The call in number is (760)725-8101. Mr. Seth Berlin has also indicated he will participate.

Very respectfully,

Major Erickson

-----Original Message-----

From: Erickson Maj Daren J

Sent: Monday, July 28, 2008 9:48

To: Erickson Maj Daren J; Meeks LtCol Jeffrey G

Cc: (mark@markzaid.com); 'napuckett@comcast.net'; Vokey LtCol Colby C; 'neal@puckettfaraj.com'; Plowman Maj Donald J; Gannon Capt Nicholas L

[Quoted text hidden]

 **smime.p7s**
5K

Gannon Capt Nicholas L <nicholas.gannon@usmc.mil>
To: nicholasleegannon@gmail.com

Tue, Jul 29, 2008 at 6:10 PM

Sir,

0900 PST sound good to you? We can dial into 760-725-8101 at 0900.

v/r
Maj E.

-----Original Message-----

From: Neal Puckett [mailto:napuckett@comcast.net]

Sent: Tuesday, July 29, 2008 8:14

To: Erickson Maj Daren J

Subject: Re: U.S. v. SSgt Wuterich

Wed is fine.

Neal A. Puckett, Esq
LtCol, USMC (Ret)
Puckett & Faraj, PC
Washington DC | San Diego | Chicago
888.970.0005

On Jul 28, 2008, at 7:00 PM, Erickson Maj Daren J wrote:

Sorry Sir, for not getting back sooner. I have been in meetings all afternoon. Can we possibly talk Wednesday morning? I am in a BOI all day tomorrow (not my own).

s/f
Maj E.

-----Original Message-----

From: Neal Puckett [mailto:napuckett@comcast.net]
Sent: Monday, July 28, 2008 13:13
To: Erickson Maj Daren J
Subject: Re: U.S. v. SSgt Wuterich

Want to talk today?

Neal A. Puckett, Esq
LtCol, USMC (Ret)
Puckett & Faraj, PC
Washington DC | San Diego | Chicago
[888.970.0005](tel:888.970.0005)

On Jul 28, 2008, at 1:06 PM, Erickson Maj Daren J wrote:

Gentlemen,

Based on the below response from the MJ, please advise as to availability on Friday, 1 August. Propose doing the 802 at 1200 PST.

Also need to arrange for a conference call prior to Friday, 1 August, to discuss the agenda and specifically new trial dates and milestones. Please advise to your availability.

v/r
Major Erickson

-----Original Message-----

From: Meeks LtCol Jeffrey G
Sent: Monday, July 28, 2008 9:53
To: Erickson Maj Daren J
Cc: 'mark@markzaid.com'; 'napuckett@comcast.net'; Vokey LtCol Colby C;
'neal@puckettfaraj.com'; Plowman Maj Donald J; Gannon Capt Nicholas L
Subject: Re: U.S. v. SSgt Wuterich

I am on leave until Friday, per my out of office reply.

I am available on Friday.

V/r

LtCol Meeks

----- Original Message -----

From: Erickson Maj Daren J

To: Erickson Maj Daren J; Meeks LtCol Jeffrey G

Cc: (mark@markzaid.com) <mark@markzaid.com>;
'napuckett@comcast.net'

<napuckett@comcast.net>; Vokey LtCol Colby C; neal@puckettfaraj.com
<neal@puckettfaraj.com>; Plowman Maj Donald J; Gannon Capt Nicholas

L

Sent: Mon Jul 28 09:47:54 2008

[Quoted text hidden]

 **smime.p7s**
5K

Gannon Capt Nicholas L <nicholas.gannon@usmc.mil>

To: nicholasleegannon@gmail.com

Wed, Jul 30, 2008 at 8:11 AM

From: Meeks LtCol Jeffrey G

Sent: Wednesday, July 30, 2008 8:11:45 AM

To: Erickson Maj Daren J

Cc: 'mark@markzaid.com'; 'napuckett@comcast.net'; Vokey LtCol Colby C;
'neal@puckettfaraj.com'; Plowman Maj Donald J; Gannon Capt Nicholas L;
'SBerlin@lskslaw.com'

Subject: Re: U.S. v. SSgt Wuterich

Auto forwarded by a Rule

This will work. Thanks.

----- Original Message -----

From: Erickson Maj Daren J

To: Meeks LtCol Jeffrey G

Cc: (mark@markzaid.com) <mark@markzaid.com>; 'napuckett@comcast.net' <napuckett@comcast.net>;
Vokey LtCol Colby C; neal@puckettfaraj.com <neal@puckettfaraj.com>; Plowman Maj Donald J; Gannon
Capt Nicholas L; Seth Berlin <SBerlin@lskslaw.com>

Sent: Mon Jul 28 15:59:02 2008

Subject: RE: U.S. v. SSgt Wuterich

Based on your availability, the Government and Defense have agreed to an 802
at 1200 on Friday, 1 August 2008. The call in number is (760)725-8101. Mr.
Seth Berlin has also indicated he will participate.

Very respectfully,

Major Erickson

-----Original Message-----

From: Erickson Maj Daren J

Sent: Monday, July 28, 2008 9:48

To: Erickson Maj Daren J; Meeks LtCol Jeffrey G

Cc: (mark@markzaid.com); 'napuckett@comcast.net'; Vokey LtCol Colby C;
'neal@puckettfaraj.com'; Plowman Maj Donald J; Gannon Capt Nicholas L

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