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THE LAW FIRM OF PUCKETT AND FARAJ, PC

March 11, 2010

Via email: sean.sullivan@usmc.mil

LtCol Sean Sullivan
Trial Counsel
Legal Team Echo, LSSS
Camp Pendleton, CA 92055

Re: Defense Supplemental Discovery Request in the Article 32 hearing of U.S. v. Capt Douglas Wacker, USMC

Ref: R.C.M. 405, MCM 2008 ed.

1. As provided in the references the defense requests the following fact and character witnesses be produced by the government because they are relevant and necessary. We also request current contact information before the Article 32 so that we may talk to these witnesses in advance of the Article 32 hearing (assistance with interview coordination is requested if the witnesses decline to provide their contact information):

Name: Nicole Cusack
Contact Info: In government's possession
Subject: Alleged rape victim. Named on the charge sheet.

Name: Jessica Brooder
Contact Info: In government's possession
Subject: Alleged rape victim. Named on the charge sheet.

Name: Elizabeth Easley Cook
Contact Info: In government's possession
Subject: Alleged rape victim. Named on the charge sheet.

Name: Amos "Alex" Lowder
Contact Info: In government's possession
Subject: Alleged witness tampering witness. Named on the charge sheet.

Name: Joseph Gorman
Contact Info: In government's possession
Subject: Alleged witness tampering witness. Named on the charge sheet.

Name: J. R. Burge

Contact Info: In government's possession.
Subject: NCIS case agent that investigated the case.

Name: Rebecca Barker
Contact Info: In government's possession. 1205 Colusa Street #19, San Diego, CA 92110.
Subject: New Orleans fact witness that can testify about state of Brooder and Easley after alleged rape incident.

Name: Forrest Merrithew
Contact Info: In government's possession.
Subject: New Orleans fact witness that can testify about state of Brooder and Easley before alleged rape incident. The women to him did not seem substantially incapacitated.

Name: Michael Story
Contact Info: 619-942-0203. San Diego, CA.
Subject: Character witness of Capt Wacker. This witness was present at the previous Article 32 hearing and heard NCIS Special Agent Burge testify to the fact that he told all of the potential civilian witnesses that an Article 32 hearing was an adversarial hearing and that witnesses did not have to come unless they wanted, and that he would not go if he did not have to. Attended school and social functions with the Accused during the course of some of the alleged misconduct and never saw any inappropriate conduct by Capt Wacker.

Name: Maj Christopher Shaw, USMC
Contact Info: In government's possession.
Subject: Character witness of Capt Wacker. Attended school and social functions with the Accused during the course of some of the alleged misconduct.

Name: Capt Christopher Blosser, USMC
Contact Info: In government's possession.
Subject: Character witness of Capt Wacker. Attended school and social functions with the Accused during the course of some of the alleged misconduct. This witness can testify to the tactics used by the government to force him to provide a sworn statement.

Name: Kristen Santerre
Contact Info: kristensanterre@gmail.com (858) 245-2266
Subject: This witness is relevant and necessary because he would offer good military character testimony in support of the Accused's reputation for peacefulness and honesty. She graduated from USD in 2008. She was the organizer of the New Orleans trip and the Accused and the witness became friends from there. Santerre was present at dinner and one of the club's (Razoo's) during the night of the alleged rape of Brooder and Easley. She saw how Easley and Brooder were behaving around Capt Wacker the night they were supposedly raped.

Name: Amber Davis
Contact Info: (206) 718-7827. 4234 E. Madison, Seattle.
Subject: This witness is relevant and necessary because she would offer good character testimony in support of the Accused's reputation for peacefulness and honesty. This witness was

a bartender at Finn MacCool's the night of the alleged rape of Cusack. She served the alcohol to Wacker and Cusack the night Cusack supposedly got drunk and was raped by Wacker.

Name: Talbot Theunissen

Contact Info: known by Nicole Cusack. Email: almosttalbot@gmail.com

Mobile Number: 619.302.2424. Lafayette, LA.

Subject: He was the roommate of Cusack between January 2007 and May 2007 at which time Wacker was dating Cusack and having sex with Cusack consensually. He can testify about how Wacker would come over eat dinner with Cusack and then sleep with Cusack in her room 3 or 4 times a week for five months. This witness is relevant and necessary because he would offer testimony as to the relationship between Nicole Cusack and the Accused; as well as the credibility of Cusack. This witness was the roommate of Cusack during their 1L and 2L years at USD.

Name: Jessie Baxter

Contact Info: known by Nicole Cusack. White and Case. New York, NY. jbaxter-09@san Diego.edu, jessie.i.baxter@gmail.com

Subject: She and Melissa Kopacz were best friends with Cusack during the period that Wacker and Cusack dated. These female friends would have conversations about Cusack's relationship with Wacker frequently. Jessie Baxter went up to Alaska during May and August 07 and Cusack and Wacker were still conversing via phone and email during that trip with each other. This witness is relevant and necessary because they would offer testimony as to the relationship between Nicole Cusack and the Accused; as well as the credibility of Cusack. This witness was also listed on the MPO/NCO.

Name: Melissa Kopacz

Contact Info: known by Nicole Cusack.

Subject: See Jessie Baxter proffer. This witness is relevant and necessary because they would offer testimony as to the relationship between Nicole Cusack and the Accused; as well as the credibility of Cusack.

Name: Marie Minnick, former assistant vice president for student affairs at USD

Contact Info: USD, San Diego, CA. 6192604527 (available through school of law dean's office).

Subject: Supervised the fact finding USD hearing into the allegations against Capt Wacker that found no credible evidence to support misconduct by Capt Wacker. Can verify recording of the USD hearing.

Name: Donald Godwin, Assistant Vice-President for Student Affairs at USD

Contact Info: USD, San Diego, CA. 6192604527 (available through school of law dean's office).

Subject: Can verify interaction between the government and the university and was involved in the decision to suspend Capt Wacker during his final semester of law school. Can verify recording of the USD hearing.

Name: Chief Larry Barnett, Assistant Vice-President for Public Safety at USD

Contact Info: USD, San Diego, CA. 6192604527 (available through school of law dean's office).

Subject: Can verify interaction between the government and the university and was involved in the decision to suspend Capt Wacker during his final semester of law school. Can testify that USD has initiated a Critical Issues Board concerning new information presented by the government, which will not convene until all government proceedings have concluded.

Name: Kevin Cole, Dean of USD School of Law

Contact Info: USD, San Diego, CA. 6192604527.

Subject: Can testify about the influence of the U.S. Marine Corps on the hearing at USD into the allegations against Capt Wacker. Can also testify about Capt Wacker's character as he was a law student at USD.

Name: Carrie Wilson, Associate Dean for Student Affairs, School of Law

Contact Info: University of San Diego, carrie@sandiego.edu, (619) 260-6851

Subject: This witness is relevant and necessary because she would offer good character testimony in support of the Accused's reputation for peacefulness and honesty. She knew about the Accused's situation from the very beginning. She has been the spokesperson from the law school. She can speak to the Accused's actions and conduct throughout law school. The Accused has worked with her on several student organization projects. She stated that the speaker panel the Accused organized last semester, "Guantanamo Bay After Boumediene and Hamdan: What Happens Now?" was the best event that she has seen at the law school in the past 20 years. It required organizing 6 different student groups and raising over \$3,000. 150 people attended from the law school and local community.

Name: Donald Cook

Contact Info: In government's possession. 2034 San Diego Avenue, San Diego, CA 92110.

SUBJ: Husband of Elizabeth Easley. Received a call from Easley the night of the alleged rape incident and was told a version of events by the victim.

Name: Justin Micklish

Contact Info: In government's possession.

SUBJ: Former boyfriend of Jessica Brooder. Received a call from Brooder the night of the alleged rape incident and was told a version of events by the victim.

Name: Tara Marie Aguilar

Contact Info: 2400 5th Avenue, #335, San Diego, CA 92101

SUBJ: Friends of Easley and Brooder; heard their version of events.

Name: Elizabeth Jo "Jodi" McShan

Contact Info: jodimeshan@gmail.com. jodi@mcshan.com. 2147978883

SUBJ: law school friend and character reference for Capt Wacker. Also knows Cusack, Easley and Brooder. Thought the charges against Wacker were outrageous.

2. As provided in the reference, the defense requests the following evidence be produced by the government at the Article 32:

a. Copies of all documents that the Government intends to submit as investigative exhibits.

b. The name, telephone number and address of any witness the Government intends to call or could be helpful to the defense case.

c. Copies of any sworn or signed statements of which the Government is aware relating to an offense charged.

d. A description and production of any documentary, real, or other evidence pertinent in this case which is material to the preparation of the defense or which the Government intends to introduce into evidence, and its present location. In the case of documentary evidence, legible copies are requested.

e. A copy of the entire Naval Criminal Investigative Service/Criminal Investigative Division file to include the agents notes on the investigation concerning the accused.

f. Disclosure and production of all evidence seized from the person or property of the accused, or believed to be owned or possessed by the accused, and its present location.

g. Any known evidence tending to diminish credibility of witnesses including, but not limited to, prior convictions and evidence of other character, conduct, or bias bearing on witness credibility.

h. Disclosure of any promise or offer of immunity, leniency, or special treatment or consideration offered or afforded any prosecution witness.

i. Any and all videos tapes, digital media, recordings, and etc. related to the charges that are under the control of the government, a type-written transcript should accompany any and all media.

j. Disclosure of the criminal history (charges and convictions) of all potential government witnesses in this case. The defense requests that the government ask each and everyone of its potential witnesses for this information.

k. Regarding any potential or alleged victims in this case, disclosure of other times that those person(s) have been an alleged victim of a crime before or plaintiff or defendant in a civil lawsuit or claim. The defense requests that the government ask each and everyone of its potential witnesses for this information.

l. Facebook and Myspace account entries and emails from Nicole Cusack, Elizabeth Easley Cook, Jessica Brooder, Alex Lowder, Joseph Gorman, Donald Cook and Justin McLish that concern Capt Douglas Wacker or the alleged charges in any way. This specifically includes

a request that these witnesses not delete their Facebook, Myspace or email account entries and that the trial counsel seek and preserve this evidence with their subpoena power as soon as they possible can.

m. USD audio recording and type-written transcript of all testimony concerning the hearing regarding the allegations against Capt Douglas Wacker. Please produce this for the investigating officer to review along with the transcript of a certain audio recording that exists where Jessica Brooder calls to warn Capt Wacker that he may get a call from her boyfriend Justin Micklish following the alleged rape.

Respectfully submitted,

/s/
Haytham Faraj
Attorney for Capt Wacker

Copy to: LtCol Michael Sayegh
Capt Christopher Hur
Client