



UNITED STATES MARINE CORPS

REGIONAL DEFENSE COUNSEL, WESTERN REGION
PO BOX 555240
CAMP PENDLETON, CA 92055-5001

IN REPLY REFER TO:
5800
RDC
25 Jan 08

From: Detailed Defense Counsel
To: Convening Authority
Via: Trial Counsel

Subj: REQUEST FOR DEFENSE CRIME SCENE RECONSTRUCTION AND VISUAL
COMMUNICATIONS EXPERT IN THE CASE OF UNITED STATES v.
STAFF SERGEANT FRANK D. WUTERICH, U.S. MARINE CORPS

Ref: (a) Detailed Defense Counsel ltr 5800/RDC of 19 Jul 07
(First request for expert assistance from Mr. Gripp)

Encl: (1) Curriculum Vitae and Fee Schedule for Mr. James R.
Gripp

1. The defense again requests that Mr. James R. Gripp be provided as a confidential defense expert consultant. Per the reference, you previously denied our request for Mr. Gripp due to questions about the admissibility of a defense created animation and the cost for funding that animation. You also invited the defense to resubmit our request after the Article 32 investigation. The situation has now changed. We do not ask the government to fund Mr. Gripp in order to prepare an animated video. Given that the trial is to begin in a few weeks on 3 March, there is insufficient time to prepare such a video anyway. As a result, this request reflects a substantial decrease in the requested number of hours for Mr. Gripp's assistance. Instead, he will work in conjunction with counsel and the defense experts to provide expert consultation in the area of crime scene reconstruction and will aid the defense in strategic consultation and development of demonstrative exhibits. Mr. Gripp will conduct a review of the case and will assist counsel and defense experts in preparing technical or scientific graphics, charts, diagrams or illustrations. Mr. Gripp has already conducted a limited review of the evidence, at no cost to the government. Given the rapidly approaching trial date, Mr. Gripp is in the best position to provide the defense the requested assistance.

2. It is a basic principle of trial advocacy (and common sense) that juries will understand and retain information significantly better if there are visual or audio aids that accompany testimony. This is especially applicable in the case of complex or forensic evidence. In fact, one of the prosecution's expert consultants, Ross M. Gardner, in his book Bloodstain Pattern Analysis, emphasizes the need for demonstrative presentations:

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The ability of jurors to "see" the analyst's conclusion develop is very important in their subsequent acceptance of that conclusion. If the analyst simply takes the stand and talks for several hours, he or she might win over the jury, but more likely than not such presentation will simply put the jury to sleep. *Demonstrative presentations help the jury understand the interrelationships of the evidence and how that evidence led the examiner to a conclusion. They will also help keep the jury focused on relevant information.*

As is evident, it is vital that counsel have the ability to utilize effective demonstrative exhibits.

3. SSgt Wuterich is charged with voluntary manslaughter, reckless endangerment and other offenses originating from the deaths of Iraqi nationals on 19 November 2005 in Haditha. The defense expects this case will include testimony and other forms of evidence and the analysis of the "crime scene" from which facts and opinions will be extrapolated. In order to prepare an effective defense, the defense must analyze this evidence, evaluate possible theories and strategies of the case, and be prepared to provide its own evidence, to include demonstrative exhibits. Through his technical expertise, his experience working in the area of crime scene reconstruction, and his use of computer and other equipment assets, Mr. Gripp will be vital in assisting the defense in presenting an effective case through demonstrative exhibits.

4. No member of the Defense has sufficient academic, technical, or practical experience to evaluate this evidence and to adequately prepare adequate scene reconstructions or other complex visual or graphic aids. As you know, the amount of discovery in this case is enormous. Thousands of pages. Hundreds of photographs, diagrams, charts and other visual depictions. The volume of discovery makes the development of demonstrative aids very difficult when trying to reconstruct the scene of events in Haditha on 19 November 2005. Additionally, counsel are limited to the software that is included on their computers. While powerpoint can be useful, it is insufficient as the lone tool to develop effective exhibits. Defense counsel possess no case management software or similar computer programs that allow for manipulation or organization of the discovery. Since the government is sure to present its evidence with visual aids and through its experts, the defense is entitled to an equal opportunity to develop and present exhibits of their own.

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5. The government investigators and prosecutors have had, at their disposal, a great deal of expert consulting, equipment, personnel, and other assets in order to investigate and prepare their case. The government will offer a variety of experts on firearms, ballistics, crime scene analysis, and pathology from the Naval Criminal Investigative Service (NCIS), the United States Army Criminal Investigation Laboratory (USACIL), and other similar agencies. In particular, NCIS has investigated and documented "Death Scene Examinations" which includes photographs, measurements, trajectory analysis, blood stain analysis and other related processes, as well as final opinions and conclusions about the incident of 19 November 2005. As a result of analysis of the evidence, the government prepared a number of charts, illustrations, and other visual representations as a result of the evidentiary analysis. A great deal of demonstrative evidence was entered as government exhibits at the Article 32 investigations of SSgt Wuterich and other defendants. The government experts and investigators have prepared physical and demonstrative evidence to include charts, diagrams, mannequins and other mock-ups. Additionally NCIS worked closely with the Illinois State Police Animation Division to develop an animated reconstruction of the events at roadside and houses # 1, 2, and 4. According to Special Agent Maloney, it took thousands of man hours and over 5 months to construct this video. It appears that these animations do not support the prosecutions theory of the case and apparently they do not intend to offer them at trial. However, this animation and all the personnel and equipment needed to produce it were at the disposal of the government and available at trial, if desired. For nearly two years, government investigators and prosecutors have had access to support personnel, experts, other law enforcement agencies, special computer programs and any necessary materials or equipment. All the defense is requesting is one witness to be used for the few weeks left before trial.

6. NCIS has utilized Special Agent Maloney and Special Agent Brady, both experienced forensic crime scene reconstruction experts for NCIS, for the purpose of reconstructing the events of 19 November 2005 at the white car, House #1, House #2, and House #4. From their analysis of photographs, firearms evidence, trajectory evidence, and medical reports, they have developed an expert opinion indicating the most likely sequence of events and actions during the incidents on 19 November. They have also developed numerous graphic depictions that were used in preparing the government's case and will likely be used at trial.

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Additionally, the government has also consulted with a number of well-renowned civilian experts, such as Vincent DiMaio, Edward Hueske and Ross M. Gardner. The prosecution has undoubtedly benefited a great deal from their experts in crime scene reconstruction and all the demonstrative exhibits developed for the investigation and in preparation for this case.

7. The requested defense expert, Mr. James Gripp, works for the San Diego firm Legal Arts Group. Legal Arts Group has been in operation for 28 years, providing trial support by way of consulting, graphics and technology. They have particular expertise in producing demonstrative evidence for criminal cases and consulting on the foundation for such evidence. Mr. Gripp and his firm have been involved in federal, state and military criminal cases, to include the somewhat recent case of US v. Cpl Matthew Joyce USMC. Mr. Gripp has extensive background in strategic consultations, creative conceptualization and development of demonstrative exhibits. He has a Bachelor of Arts degree in graphic communications. He has received extensive further training, to include a Certificate in Technical and Scientific Illustrations and continuing education in crime scene reconstruction and documentation from the International Association for Identification. He has been a licensed private investigator in California since 1981. After reviewing the evidence, Mr. Gripp can provide consultation on errors in the government's evidentiary analysis and help manage the existing visual evidence. He will provide the defense with its own demonstrative exhibits to present the defense theory. Such demonstrative evidence may be used by the defense experts in their testimony. Additionally, the defense intends to develop and use demonstrative exhibits to be used during the testimony of key percipient witnesses during the trial on the merits.

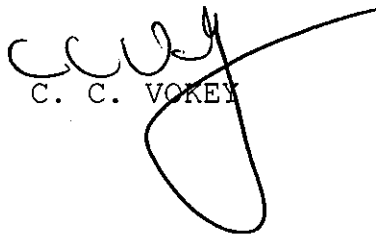
8. Although Mr. Gripp is a court-qualified foundational expert, the defense does not anticipate the need for Mr. Gripp to testify at trial. There is also no need for funding of any travel for Mr. Gripp as his firm is located in San Diego and all work will be completed locally. Additionally, Mr. Gripp is requested in lieu of another crime scene reconstruction expert. If granted, the defense will not be requesting any additional such expert.

9. Estimated Cost. The fee schedule is attached in the enclosure. However, Mr. Gripp discounts his normal fees for public-funded criminal matters. As a result, Mr. Gripp would only charge \$200 per hour for review of the evidence,

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consultation, and project design and coordination. Any technology services needed in the development of other demonstrative evidence would be at a reduced rate per the fee schedule. It is estimated that 80 hours will be needed in this case due to the large volume of evidence provided through the NCIS investigation and the complex nature of the case. There may also be additional charges for some reprographics.

10. Denial of this request would result in a fundamentally unfair trial and would impede SSgt Wuterich's rights under the Fifth Amendment Due Process Clause, his Sixth Amendment right to confront the witnesses against him, and his Sixth Amendment right to effective assistance of counsel. We urgently ask that this request be granted and the contracting process be expedited.


C. C. VOREY

James R. Gripp, Curriculum Vitae



Education

San Diego State University, 1980
B.A. cum laude, Art (Graphic Communications),
Alumni Award, Student of the Year, Department of Art

Grossmont College, El Cajon, California, 1978
A.A. with honors
Certificate, Technical & Scientific Illustration, 1977

Continuing Education

International Association for Identification
Crime scene reconstruction and documentation

Harvard Business School, July 2006
AIGA Business Perspectives for Design Leaders

Professional

Legal Arts, Inc.
San Diego, CA
Principal, April 1979 to present
Strategic consultation with clients, creative conceptualization and development of demonstrative exhibits. Management of multiple projects, as well as of creative staff and resources. Direct involvement in 2,000+ cases in virtually every area of litigation. Court-qualified foundational expert in 40+ trials.

Legal Graphics, Inc.
Art Director, 1977-1979
Freelance demonstrative exhibit provider, 1975-1977.

License and Membership

Private Investigator, State of California, 1981 to present. License number PI-8608.

American Institute of Graphic Arts (AIGA).

International Association of Forensic and Security Metrology (IAFSM)

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Lecturer

Chicago Bar Association (Intellectual Property Section)

Demonstrative Evidence Specialists Association (Annual Conventions)

Estrin Paralegal Superconference (Jacksonville, FL)

International Association of Identification (Annual Convention)

Maui Bar Association

San Diego County Bar Association

Representative Criminal Matters: Homicide

Legal Arts has helped clients reconstruct crime scenes and prepare demonstrative exhibits and reconstructions for well over 100 criminal homicide cases. Representative matters for which Mr. Gripp was lead consultant (for the defense unless otherwise noted):

Military Matters:

- *USA v. Cpl. Matthew Joyce, USMC: false confession to suicide (military counsel, Capt. Gabriel Bass, USMC; civilian counsel, Milton J. Silverman, Esq., San Diego, CA; venue: Article 32 hearing, Miramar MCAS):*
 - Full size mockup of scene displaying back spatter pattern of blood from self-inflicted head wound.
 - Translucent photographic overlays of weapon over photo enlargements of victim's hand to demonstrate post-mortem positioning of weapon that explained why the pistol safety was found in on-position
 - Expert foundational testimony by supervised staff member
- *USA v. Pfc. John Jodka, USMC: purported conspiracy to commit murder and subsequent staged execution of bound prisoner in Hamdaniyah, Iraq (civilian counsel, Joseph Casas, Esq., San Diego, CA; venue: Article 32 hearing, Camp Pendleton):*
 - Crime scene reconstruction
 - Chronology exhibits
 - Statement consistency exhibits
 - Sequential reconstruction of events from multiple defendant statements
 - Verification of accuracy of government's investigative work product
- *USA v. Spc. William B. Hunsaker, US Army: accused of executing up to three combatant detainees in Samarra, Iraq (civilian counsel: Michael S. Waddington, Esq., Augusta, GA; venue: trial, Ft. Campbell, KY):*
 - Crime scene reconstruction based on satellite photos and witness statements

Non-Military Matters:

- *People v. David Alan Lucas: serial homicide of six victims in San Diego (for the prosecution):*
 - Multiple crime scene reconstructions
 - Medical illustrations and visual explanation of multiple victim pathologies
 - Chronologies
 - Verification of accuracy of original scene investigations
 - Eyewitness identification verification exhibits
 - Expert foundational testimony
- *People v. David Westerfield: child abduction from home in San Diego; homicide:*
 - Forensic entomology tutorial
 - Crime scene and evidence photography
 - Expert foundational testimony
- *People v. Browning: pawn shop homicide in Las Vegas, NV in support of motion for new trial:*
 - Crime scene reconstruction
 - Real-time eyewitness viewpoint and defendant identification impeachment animation
 - Expert foundational testimony
- *People v. Sagon Penn: traffic stop altercation, death of one San Diego police officer, wounding of another and a civilian ride-along passenger:*
 - Video/photo re-enactment of shooting corresponding to recorded 911 call
 - Crime scene reconstruction
 - Verification of accuracy of original scene investigation and opposing re-enactment photos
 - Eyewitness verification and impeachment exhibits
 - Expert foundational testimony
- *People v. David Genzler: fatal stabbing in San Diego, eyewitness impeachment exhibits*
 - Animated re-enactment of mechanism of blood spatter pattern on defendant's clothing used to impeach eyewitness testimony that was subsequently proved to be perjured (featured in *Forensic Files* episode no. 196, "Pinned by the Evidence")
- *People v. Billy Ray Waldon: multiple-homicide crime spree in San Diego (for the prosecution):*
 - Reconstruction of two separate crime scenes
 - Tabletop scale models of scenes, scale diagrams and chronology exhibits
 - Expert foundational testimony

- *People v. Howard Weiner: homicide in San Diego; videotaped human dismemberment tutorial:*
 - Videotaped chainsaw dismemberment re-enactment for bloodspatter analysis (with hog)
 - Reconstruction of alleged crime scene as scale diagram and model
 - Chronology and map exhibits refuting defendant's opportunity to commit the crime due to travel time inconsistencies
 - Expert foundational testimony
- *People v. Joselito Cinco: Fatal shooting of two San Diego police officers and wounding of a third; alleged coup de grâce execution of one victim:*
 - Crime scene reconstruction
 - Expended shell casing distribution analysis
 - Victim pathologies
 - Expert foundational testimony
- *People v. Carlos Fonseca: drug-related quadruple-homicide in San Diego; eyewitness identification impeachment:*
 - Crime scene reconstruction with placement of evidence and multiple victims
 - Eyewitness impeachment exhibit
 - Expert foundational testimony
- *Zaragoza v. City of San Diego, et al.: civil wrongful death matter concerning a San Diego Police/U.S. Border Patrol Border Task Force shootout with bandits at U.S./Mexican border; alleged coup de grâce execution of decedent:*
 - Crime scene reconstruction
 - Reconstruction of bullet path and victim pathology from exhumation evidence
 - Tutorial about close-contact gunshot wound pathology
- *People v. Elizabeth Broderick: double-homicide of a prominent lawyer and wife as they were sleeping by his ex-wife in San Diego:*
 - Crime scene reconstruction
 - Graphics documenting history of alleged spousal abuse
- *People v. Clifford Lee Stone: female rape of homosexual male defense for homicide of rapist in San Diego:*
 - Crime scene reconstruction
 - Evidence collection and photography of murder weapon found at the scene as described under hypnosis

- *People v. Bernard Lee Hamilton: kidnap, murder, and decapitation in San Diego:*
 - Crime scene reconstruction diagrams and setup for onsite jury site visit
 - Eyewitness visibility verification diagrams
 - Expert foundational testimony
- *People v. Stacy Butler, et al.: street gang confrontation resulting in death of San Diego police officer:*
 - Crime scene reconstruction
 - Eyewitness identification graphics
 - Comparison photography to illustrate alleged planted evidence
- *Jimenez v. City of San Diego, et al.: civil wrongful death case involving the simultaneous shooting of a combatant during attempted police custody after officers failed to subdue decedent by using several non-lethal techniques (i.e., pepper spray, nunchukas, shotgun bean bags, batons, and tasers):*
 - Shooting scene reconstruction and accurate placement of over one hundred pieces of evidence (decedent was shot more than fifty times)
 - Chronology of events

Fee Schedule

Effective June 1, 2006 – Subject to change without notice

Creative Services include consultation and case assessment; design and preparation of demonstrative exhibits; multimedia/interactive design and programming; 3D-modeling and animation; video and photographic production; and trial support including on or off-site war room services. Creative services are billed hourly based on individual talent.

• Principal	\$295 per hour Consultation, project management, art direction, design, technology, planning, and supervision
• Consultant • Creative Director • Producer	\$250 per hour Consultation, project management, art direction, design, project coordination
• Art Director • Senior Designer • Animator • Medical Illustrator • Programmer	\$225 per hour Art direction, computer animation, interactive programming, 3D illustration, medical illustration, specialty skills
• Designer • Photographer • Videographer	\$195 per hour Graphic design, illustration, production, photography, videography

Technology Services include consultation and case assessment, trial technology planning, training and in-court/war room staffing and operations.

• Trial Technologist	\$175 to \$195 per hour
• Technology Support	Trial presentation technology, technical support

Travel Time

One-half billable rate for the individual's applicable category of service.

Public-Funded Criminal Matters

25% discount off standard fees with \$5,000 minimum. Does not apply to reduced travel rate.



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Reprographics

Effective March 1, 2006 – Subject to change without notice

BCO = Bond Coated Special Bond Paper @ \$15 sq. ft.

SGP = Semi-Gloss Photo Paper @ \$22 sq. ft.

Add \$5/sq. ft. for foamcore and \$8/sq. ft. for gatorfoam

Size/Code	Sq. Ft.	Print	w/Foam	w/Gator
12x18-BCO	2	30.00	37.50	42.00
12x18-SGP	2	44.00	51.50	56.00
18x24-BCO	3	45.00	60.00	69.00
18x24-SGP	3	66.00	81.00	90.00
24x36-BCO	6	90.00	120.00	138.00
24x36-SGP	6	132.00	162.00	180.00
30x40-BCO	8	120.00	160.00	184.00
30x40-SGP	8	176.00	240.00	240.00
32x44-BCO	10	150.00	200.00	230.00
32x44-SGP	10	220.00	270.00	300.00
36x48-BCO	12	180.00	240.00	276.00
36x48-SGP	12	264.00	324.00	360.00
36x60-BCO	15	225.00		345.00
36x60-SGP	15	330.00		450.00
36x66-BCO	17	255.00		391.00
36x66-SGP	17	374.00		510.00
42x60-BCO	18	270.00		414.00
42x60-SGP	18	396.00		540.00
42x66-BCO	19	285.00		437.00
42x66-SGP	19	418.00		570.00
48x60-BCO	20	300.00		460.00
48x60-SGP	20	440.00		600.00
48x72-BCO	24	360.00		552.00
48x72-SGP	24	528.00		720.00
48x84-BCO	28	420.00		644.00
48x84-SGP	28	616.00		840.00
48x96-BCO	32	480.00		736.00
48x96-SGP	32	704.00		960.00

Odd sizes determined by using square footage formulas.

Under 24 hour turnaround may incur rush charges without prior notice.



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Reprographics and Miscellaneous

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B&W scan with foamcore/gatorfoam mount 36"x48":

\$75.00 / \$90.00 each

B&W scan with highlight and foamcore/gatorfoam mount 36"x48":

\$100.00 / \$125.00 each

Flip chart construction:

\$75 + unmounted prints + mounted print (backboard) + production time.

Magnetic media:

\$50 per mounted sheet of paperboard,

\$.10 per square inch of magnetic vinyl.

Clear mylar:

\$8 per square foot.

Dry erase media:

\$0.50 per square foot.

See attached schedule for Reprographics and display board rates.

Color Output

Letter size black/white \$2/each

Letter size color \$3/each

Tabloid size black/white \$3/each

Tabloid size color \$5/each

Miscellaneous

Duplicate Videotape \$15 per tape

CD Mastering \$10 each (*Legal Arts work product*)

CD Duplication \$10 each (*Legal Arts work product*)



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