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THE LAW FIRM OF PUCKETT AND FARAJ, PC

March 23, 2011

Via Email

Commander
I Marine Expeditionary Force
Box 555325
Camp Pendleton CA 92055

Via: (1) Trial counsel
(2) SJA, I MEF

Re: U.S. v. Major Edward Card Article 32 discovery and witness request

Ref: (a) R.C.M. 405, M.C.M., 2008
(b) Article 32, UCMJ

1. As provided in the references, the defense requests:

a. The names, units, addresses, and telephone numbers of all witnesses the Government intends to call during the Article 32 hearing.

b. Any sworn or signed statements of which the Government is aware relating to an offense charged.

c. A description 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 and its present location. In the case of documentary evidence, legible copies are requested.

d. Disclosure 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.

e. All reports or results of scientific tests or experiments conducted by the Government or agents acting on its behalf which are material to the preparation of the defense or are intended for use by the Government.

f. All words, remarks, or statements spoken or made by the accused, oral or recorded in any fashion, relative to this case and known to the Government. Also, all statements by the accused which the Government intends to introduce at the Article 32 hearing.

g. Any records of prior civilian convictions of the accused that the Government may offer.

h. The names of all Government investigators who have participated in or are presently involved in the investigation of this case.

i. A detailed summary of any legal advice which Naval Criminal Investigative Service (Naval Criminal Investigative Service) Agents received from judge advocates which affect the course or scope of the investigation. According to a Naval Criminal Investigative Service Policy Document dated 24 August 1989, such documentation shall include the date the legal opinion was obtained, the name and position or title of the attorney providing the advice, the name of the special agent who obtained the advice, a summary of the information given by the special agent to the attorney, and a summary of the legal advice given by the attorney.

j. All reports, statements, memoranda of statements, and case notes, (including "rough notes") oral or recorded in any fashion, relative to this case and investigation thereof, in the possession of any Government law enforcement or investigative agency or agent, including any maps of the scene drawn by participants at the request of investigators or during the course of the investigation.

k. Any known evidence tending to diminish credibility of witnesses including, but not limited to, prior convictions and evidence of other character, conduct, bias bearing on witness credibility, or investigations into misconduct by any government investigators or witnesses that would tend to impeach their testimony including previous unredacted statements, writings, emails, journals or testimony related to the facts underlying the charges in this case.

l. If any Government witness has prior military service, the date of separation from the service, the discharge provisions used to effect such discharge, and a summary of circumstances explaining any discharges for other than completion of obligated term of service.

m. Evidence of any criminal misconduct or misconduct investigations in which any potential Government witness was identified as a subject or co-subject, whether or not it was related to the subject case.

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

o. Any evidence tending to exculpate the accused or to reduce the seriousness of the offense.

p. Any material evidence favorable to the accused.

q. A complete copy of the accuser's Officer Qualification Record - both sides.

r. A complete copy of the Official Military Personnel File of Special Agent Master Sergeant Jason R. Periard, any performance evaluations during his work for NCIS, and any

known evidence tending to diminish his credibility including, but not limited to, prior convictions and evidence of other character, conduct, bias bearing on witness credibility, or investigations into misconduct by any government investigators or witnesses that would tend to impeach him including previous unredacted statements, writings, emails, journals or testimony related to the facts underlying the charges in this case.

- s. A copy of the same for any NCIS investigators who worked on the investigation.
- t. Sgt Jackie Phillips' complete medical and mental health records.
- u. A roster of all members of the Jump CP in August of 2004 whether they were present at the alleged incident or not.
- v. A complete and playable copy of all video and/or audio footage of any interviews conducted by NCIS during the course of this investigation.
- w. The location and official point of contact for said location of every witness interview that was done outside of Marine Corps Base Camp Pendleton.
- x. A full accounting of any and all alternatives to evidence the government intends to produce at the investigation instead of physical or testimonial evidence.
- y. A full and complete copy of all invitational orders the Government offers to any witness requested by the defense or the government, as well as any correspondence or denial made by such requested witness. The defense requests that any details regarding oral invitations or oral responses be adequately summarized, placed in writing, and provided to the defense.

2. Pursuant to the reference, the following witnesses are requested in the subject pretrial investigation:

- a. Ali G Abdelgawad
 - Summary: Ali Abdelgawad will testify that On July 7th of 2004, he was in the second vehicle behind the LAV that got hit by an IED. He saw 2 or 3 guys were coming out of the slope below the road while Sgt Duran & Capt Card were on their way to rescue the Marines in the front vehicle. He fired at them while Capt Card and Sgt Duran were running. He shot his rifle while he was helping the wounded Marine, then some shots were coming from behind him. Some guy from the other unit said that one of the guys was shot in the face. Abdelgawad didn't see who shot, all he saw was the 2 or 3 guys that he fired at in the beginning. He was told by the Investigator that one wounded Iraqi was shot by the Capt and if he had seen anything like that. Capt Card was in the Vehicle Abdelgawad was in. This was the first time he heard about this killing because he did not see it. He believes Capt Card and Sgt Duran had rifles on them.

- b. 1st Sgt David M. Beall
- Summary: He will testify that he saw an insurgent pop out of the bushes to his front right next to the HMMWV. He then saw that Capt Card had exited the HMMWV and was engaging this insurgent. Beall looked up and saw some of the Marines pointing, and he saw a white sedan heading down an adjacent road to the right at a high rate of speed. He then saw several Marines shot at the vehicle, that's when Gutierrez shot at it and disabled it with the machine gun. Capt Card, Sgt Tucker, Sgt Phillips, and Sgt Duran, were outside their vehicle and walking around. He will testify that during the investigation Special Agent Periard pressured him into writing and signing his statement after hours of demeaning custodial interrogation.
- c. Justin Tyrel Britt
- Summary: He was in the third LAVC2. Heard an explosion and saw the first vehicle in the convoy had been hit. Britt began to hear small arms fire and the gunner on his vehicle Sgt Gutierrez fired to the right hand side vehicle. During the IED attack he never saw Card fire his weapon his M-9 or Rifle. Britt saw two dead people he doesn't know if they were Iraqis or not. They were not Marines. He did not believe Card would have shot an unarmed Iraqi. Within the convoy Card, Beall, Duran, Slaughter carried M-9 service pistols.
- d. NCIS, Nick A. Carlo
- Summary: Carlo was contacted with GySgt JC Hawks. GySgt Hawks routinely interacts with LtCol Abd Khalaf Dowaij, Officer in Charge, Iraqi Police Criminal Investigation Division (IP CID) as part of his duties. According to GySgt Hawks, LtCol Dowaij reported that on 20Jul09 and 21Jul09, detectives from the IP CID traveled to the Ramadi Hospital and searched through over 400 records from the 2004 timeframe; however, they did not locate any records relevant to a deceased Iraqi male with a gunshot wound to the head.
- e. David B. Depass
- Summary: Depass stated he could be quoted that "He has no knowledge of any wrongdoing or conduct unbecoming a Marine officer by Capt Card. Depass agreed that he was refusing to cooperate with the investigator based on his distrust of law enforcement.
- f. Carlos A Duran
- Summary: Duran stated that Capt Card insisted on them going in the late afternoon and that is when most attacks happened. They headed a route and they were hit with an IED. As soon as the LAV25 in front of them got hit, there was a quick pause and then Capt Card got out and started shooting at guys that were to the right of the convoy that looked like they were coming towards them. LCpl Johnson jumped out and mentioned that he saw people in the house to the left and asked to go in and clear it. At that time, they saw a vehicle from the right, they felt threatened, and they engaged the vehicle to

disable it. Duran recalls hearing moaning coming from the bushes, but he can't remember if Gutierrez and Tipton were there. Capt Card went off into the bushes area, Duran remembered that the moaning stopped and remembered seeing the Capt coming back with his 9M in his hand, but he did not recall hearing a gunshot or seeing him actually shooting someone with his weapon.

Duran recalled either Tipton or Gutierrez mentioning dude or something like that, can't recall the actual exact word like the Capt just shot someone. Duran did not remember seeing Capt Card shooting an unarmed trial. He did not see Capt Card violate any rules of engagement. Capt Card looked like he was just carrying the pistol when he was walking from the bushes.

g. Jon M. Embry

- Summary: Embry saw a white four-sedan (like a taxi) approaching down an adjacent road and was ignoring warning shots from a Marine with an M-16 at the intersection, so the vehicle was disabled after they all shot at it.

h. Richard Guillenavila

- Summary: Has no knowledge of anyone breaking or talking about breaking any rules of engagement.

i. Carlos Ruben Gutierrez

- Summary: Gutierrez was the vehicle Commander for the LAVC2, which was the third vehicle in the four vehicle convoy. After the blast, a sedan came from the right side at about a hundred miles an hour. Gutierrez asked for permission to engage from GySgt Beall and it was granted. After this, to the right of the vehicle, he saw insurgents pop up out of the bushes. He shot one of them.

Gutierrez got out of his vehicle to clear the area with Sgt Duran. He yelled to GySgt Beall and Card that he saw a wounded Iraqi to the right of his vehicle down in a field. Beall stayed in the vehicle. Card and Tipton and a few others went down to where the wounded Iraqi was. Gutierrez then saw Card take out his pistol and shoot the Iraqi. After shooting him, Card told Cpl Phillips to go to the back of the convoy. Gutierrez saw Tipton and (possibly Sergeant Duran) drag the body. He didn't tell Mattis about Card shooting the wounded Iraqi. He talked to some of the other Sergeants (Hyman, Tucker, Duran and others) about Card.

j. James M. Heredia

- Summary: Heredia denied ever responding to an IED attack on the Division Jump CP and did not hear any rumors of a violation of the Rules of Engagement (ROE). Heredia confirmed Ferguson and Stefanovich (NFI) were members of his squad in 2004. He refused to provide any further personal information and declined to provide a written statement in the future.

- k. GySgt Sean W. Hyman
- Summary: Hyman remember seeing Capt Card walking in the field on the right side of the Convoy, and coming back toward the damaged LAV. He was carrying his M-4 and had a 9mm holster on his side. Later, Hyman remembered seeing a dead Iraqi, lying on the side of the road, in the weeds behind the damaged LAV. Hyman did not see Capt Card shoot any Iraqi prisoners, or anyone.
- l. SSgt Aaron K. Johnson
- Summary: Johnson accepted the request to join the Jump and he left the next day for Camp Blue Diamond. He took two members with him; Zack Zerbe (Gunner) and Tom Thrasher (Driver). Johnson was assigned as a Vehicle Commander and PFC Goodwin, LCpl Jimenez, and PFC or LCpl Johnson were added to his team as scouts. Regarding the day Bohlman was killed, to the best of his knowledge he never heard of any violations of the Rules of Engagement. Johnson remembered Major Card who was the General's Aid, going home on emergency leave soon after he arrived at Blue Diamond and GySgt Beall took over.
- m. Sgt Travis W. Johnson
- Summary: Before he came to the C2, he saw a man lying on the sidewalk wearing local clothing with no weapons near him and had a head wound from what looked like a 7.62mm round. His brain and back skull looking toward the street. During the next few months, he did not remember ever talking about or hearing about Capt Card committing any crimes.
- n. Timothy Kenneth Kadrie
- Summary: They were on a route they had never traveled before. Kadrie was the Gunner in the rear vehicle, LAV-25. Their lead LAV-25 was hit by an IED. A day or two after the incident, Gen Mattis told them that it was going to be dangerous. Mattis said you could leave or you could stay. That's when Cpl Phillips decided to leave. As a group of Lance Corporals, the rumor was, based on a group consensus, that Capt Card had killed a wounded Iraqi. After that night, Kadrie didn't see Capt Card anymore. And based on the fact that Capt Card disappeared after that night, which seemed odd or suspicious to him, he believes that this happened and that Capt Card killed a wounded Iraqi. He does not remember seeing Capt Card shoot anyone.
- o. Kevin D. Kroll
- Summary: Kroll kept in contact with Sgt. Phillips, HM3 Slaughter, and Lance Corporal Lollar once they returned to Camp Pendleton. Nobody talked about the IED attack or Captain Card.
- p. Robert Ryan Logan

- Summary: After the IED, Capt Card came to check on Logan and saw he was carrying his M-4 rifle which had a magazine marked “tracer” loaded into it and he had his finger straight and off the trigger. Logan saw a lot of the former Division Jump Marines but no one ever told him about Capt Card shooting an Iraqi. Lisdahl told Logan to call Phillips because he wanted to talk with him. Phillips told Logan that Capt Card had killed two civilians and that he had reported it and signed some rights when he reported it.
- q. Jeremy Don Lollar
- Summary: After the explosion, Lollar could hear LCpl Logan screaming as if he was injured. Due to injuries, LCpl Logan, SGT Tucker, and Lollar were removed from the scene by the Quick Reaction Force and taken back to the forwarded operating base. In approximately 2008, Lollar received a call from Sgt Phillips and asked if he knew what happened the night he was injured. Lollar said no. Sgt Phillips told Lollar that he received a medal for his bravery, and told him that Capt Card had shot an unarmed, injured Iraqi during the following the IED attack.
- r. Dominique William Perez
- Summary: Perez never spoke to any individual from his unit after he returned from Iraq. Perez was not aware of the incident currently being investigated. Perez indicated he had little to no interaction with Capt Card; however, Capt Card appeared to be level headed.
- s. Jacob Brian Poling
- Summary: Poling found it hard to believe. Poling said that Major Card was a good leader and a good Marine and he just can’t see him doing this. Card was always by the book and he never heard anyone say anything different.
- t. Thomas L. Thrasher
- Summary: Thrasher denied hearing any rumors concerning Capt Card shooting an unarmed Iraqi on the day Bohlman was killed, but related LCpl Jimenez told him they had gone down the wrong road that day.
- u. Alec Andrew Woodard
- Summary: Woodard doesn’t know any information about the shooting of an unarmed Iraqi male on 07Jun04. Woodard knew about the IED attack on the CG’s Jump Team, he wasn’t there and he wasn’t part of the CG’s Jump Team at that time.
- v. Zachary Thomas Zerbe
- Summary: Zerbe assigned at Camp Ramadi, Iraq, with Division Jump Team. This was General Mattis’s team. Zerbe was not a part of the convoy on 07Jun09. It is his first time he has heard of the allegation against Cpt Card. Zerbe did not witness or have any knowledge of the IED attack on 07Jun09. He had very few interactions with Capt Card.

3. All of the above requested witnesses and their phone numbers are known to the government. The relevance of the requested witnesses is evident as reflected in their respective statements or interview summaries contained in enclosure (2). Please inform the defense counsel immediately if any of the above witnesses will be denied and provide the basis for denial.

Sincerely,



Waynam Faraj, Esq.