

**WESTERN JUDICIAL CIRCUIT
NAVY-MARINE CORPS TRIAL JUDICIARY**

UNITED STATES)	
)	GENERAL COURT MARTIAL
v.)	
)	DEFENSE RESPONSE TO
FRANK D. WUTERICH)	GOVERNMENT MOTION IN LIMINE
XXX XX 3312)	TO PREADMIT EVIDENCE (CBS
Staff Sergeant)	VIDEOS)
U.S. Marine Corps)	
)	15 June 2010

1. **Nature of Motion.** This is a defense response to the Government’s motion of 26 April 2010 seeking preadmission of outtakes from the accused’s interview with Columbia Broadcasting Stations [hereinafter “CBS”] “60 Minutes” television show. Specifically, the Government seeks admission of outtakes of the interview conducted by Mr. Scott Pelley of the accused. The outtakes the Government seeks to have admitted are contained on three DVDs labeled as Appellate Exhibit LVIII. The defense objects to the Government’s motion based on Mil. R. Evid. 106, *Remainder of Related Writings of Recorded Statements* and Mil. R. Evid. 304(h)(2) (Completeness).
2. **Summary of Facts.** The defense incorporates by reference, for the purpose of this motion, the facts offered by the Government.
3. **Discussion.** Under Mil. R. Evid. 106 “When a writing or recorded statement or part thereof is introduced by an party, an adverse party may require that party at that time to introduce any other part or any other writing or recorded statement which ought in fairness to be considered contemporaneously with it.” *Id.* The Government has moved to have statements voluntarily made by the accused on DVDs 3,4 and 8 to be admitted. To the extent that statements made by the accused are corroborated by independent evidence, the defense does not object to their admission so long as the entire interview, where

relevant, is also introduced. Moreover under Mil. R. Evid. 304(h)(2) *Completeness*, the defense may introduce by cross examination or otherwise the remainder of statements made by the accused when introduced by the government against the accused. *Id.* In *U.S. v. gillbride*, the Court of Appeals for the Armed Forces notes that M.R.E. 304(h)(2) is a long standing rule of completeness pertaining to confessions introduced against an accused. 56 M.J. 428, 430 (C.A.A.F 2002). (Internal citations omitted).

In deciding the applicability of the rule to a particular statement, the court determined that the rule 1) applies to written or oral statements; 2) governs the timing under which applicable evidence may be introduced; 3) permits the defense to introduce the remainder of a statement to the extent that the remaining matter is part of the confession or admission or otherwise is explanatory of or in any way relevant to the confession or admission, even if such remaining portions would otherwise constitute inadmissible hearsay; and (4) requires a case-by-case determination as to whether a series of statements should be treated as part of the original confession or admission or as a separate transaction or course of action for purposes of the rule. *Id.*

SSgt Wuterich's statements were oral and part of the same interview that the Government seeks to have admitted. Accordingly, under M.R.E. 304(h)(2) the defense is permitted to introduce the remainder of the interview. Practically speaking, the defense would present the remainder of the interview during its case-in-chief rather than have the relevant portions of the interview played in its entirety at the time the Government offers the relevant portions. Presenting the evidence in such a piecemeal fashion will waste time, may confuse the members, and will disrupt the natural flow of the interview. A consideration of the Court's analysis of the rule reveals that the rule is a tool of fairness.

Hence, allowing the Government to pick incriminating portions of an interview to present would be manifestly unfair to an accused. *U.S. v. Rodriguez*, 56 M.J. 336, 341 (C.A.A.F. 2002). Accordingly, relevant parts of the entire interview should be played to the members at the same time. Playing the entire interview at the same time is also counseled by M.R.E. 106 which allows the adverse party to require that entire statement of the accused be produced. *Id.*

4. **Evidence.**

Defense will offer “Haditha Killings” DVDs 1-8.

5. **Relief Requested.**

WHEREFORE, the defense moves this honorable court to admit all relevant portions of the accused’s interview pursuant to Mil. R. Evid. 106 and 304(h)(2).

6. **Argument.** Respectfully requested.

By: /S/
Haytham Faraj
Attorney for Plaintiff
1800 Diagonal Road
Suite 210
Alexandria, VA 2314
Tel 888-970-0005
Fax 202-280-1039
Email: Haytham@puckettfaraj.com

15 June 2010
Date

CERTIFICATE OF SERVICE

I certify that a copy of this document was served upon government counsel by email on

June 15, 2010.

By: /S/

Haytham Faraj
Attorney for Plaintiff
1800 Diagonal Road
Suite 210
Alexandria, VA 2314
Tel 888-970-0005
Fax 202-280-1039
Email: Haytham@puckettfaraj.com

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