



THE LAW FIRM OF PUCKETT AND FARAJ, PC

October 5, 2010

Via email: Elisabeth.pennix@navy.mil

From: Haytham Faraj, Esq. (Defense Counsel)
To: Trial Counsel

Subj: REQUEST FOR DISCOVERY IC1 WOFFORD, NIKKIA, XXX-XX-0867,USN

Ref: (a) R.C.M. 701, MCM (2008 ed.)
(b) Article 46, UCMJ
(c) 18 U.S.C. § 3500
(d) Brady v. Maryland, 373 U.S. 83 (1963)
(e) United States v. Webster, 51 C.M.R. 76 (1975)
(f) R.C.M. 912(a)
(g) M.R.E. 404(b)

1. Pursuant to the references, the defense hereby requests discovery of all documents, notes, reports, recordings, statements of witnesses, opinions of experts, laboratory reports, charts, chain of custody documents, physical evidence or other information in the possession of the Government for inspection, examination, and copying which has any bearing on the case at hand, however remotely or arguably favorable or unfavorable to the Accused, whether consisting of evidence which would be legally admissible in a court-martial, or inadmissible, and whether concerning matters proper for the case-in-chief, or only in extenuation or mitigation. If you or any other government representative has such evidence or information, or has reason to know of the means by which it may be obtained, however difficult, expensive, or unlikely of success that it might be, you are requested to advise the defense of that evidence or information which may be discovered before, during or after trial of the case. This request includes, but is not limited to, the following items:

2. With respect to the Accused:

a. The text or electronic text of any oral or written statements, confessions, transcription of interviews and recordings thereof made by the Accused, that are, or may in any way become, relevant to the case, to any government agents. M.R.E. 304(d)(1); M.R.E. 304(d)(2)(A). If the government does not intend to reduce to writing oral statements made by the Accused, the Defense requests the names and contact information of witnesses who will testify about the Accused's admissions.

b. Any evidence of an exculpatory nature or which tends to reduce or negate the alleged guilt of the Accused, including information relevant to the credibility and impeachment of any government witness. R.C.M. 701(a)(6)(A).

c. Any evidence which would tend to aggravate or mitigate the degree of the alleged offenses. R.C.M. 701(a)(6)(B).

d. Any evidence which would lessen the punishment of the Accused.

e. Any records of prior civilian or Court-Martial conviction(s) of the Accused. R.C.M. 701(a)(4).

f. Disclosure of any evidence seized from the Accused's person or property, or believed to be owned by him, that the Government intends to offer into evidence against the Accused at trial.

g. Any warrants, affidavits, consent forms, or other documents authorizing or related to the initiation of a search or seizure of evidence from the Accused's person or property. Additionally, this disclosure is requested pursuant to Mil. R. Evid. 311(d)(1).

h. Whether the Accused's conversations or premises have been subject to electronic or other surveillance. If so, the defense requests copies of any warrants issued, used or unused.

i. Disclosure of all evidence of prior identification of the Accused at a lineup or other identification process regardless of result or intent to use at trial. Additionally, this disclosure is requested pursuant to Mil. R. Evid. 321(c)(1).

j. Copies of any favorable or derogatory data regarding the Accused, as well as all other information that may be used during a sentencing phase of a court-martial.

k. A copy of the Accused's personal information files.

l. Copies of all documents pertaining to any restrictions on the Accused's liberty, even if subsequently lifted.

m. Copies of all documents related to any reassignment of the Accused or revocation of a security clearance as a result of, or contemporaneous with, the investigation of this case.

n. Copies of all documents used to obtain any of the Accused's financial records.

o. The Accused's fitness reports (if applicable).

3. With respect to documentary reports:

a. A complete copy of any and all investigations or laboratory reports, including any internal agency documents and data made in connection with this investigation prepared by any law enforcement agency, including copies of all attachments and notes. R.C.M. 701(a)(1)(C).

b. A copy of all internal forms/documents, including witness reliability forms, internal data sheets, and other relevant forms and documents. The defense further requests to be informed if any of the requested documents do not exist in the present case. In addition, we request to be informed specifically which documents fall into this category. R.C.M. 701(a)(2)(a).

c. This request also includes, but is not limited to, the following relevant documentation:

- (1) Complaint Initiation Form (including reverse and continuations sheets, if any);
- (2) Internal data pages;
- (3) Interview logs;
- (4) Interview Records;
- (5) Source Dossier and any form(s) related to any Confidential Informant(s);
- (6) Informants' notes;
- (7) Informal Source Files;
- (8) Any form(s)/documents detailing any Disbursement from Confidential Funds;
- (9) Developmental Files;
- (10) Any Substantive Investigations Record Check Summary;
- (11) Any form(s) related to Consent for Search and Seizure;
- (12) Internal communications, Staff Summary Sheets, and E-Mail and/or electrical medium (message) documents used to brief, respond and/or request investigative activities in the investigation;
- (13) Results of any NCIC, DCII, LAC and Security Police 110 records checks;
- (14) All records reflecting the chain of custody on any evidence seized and/or tested; and
- (15) All Agent or Investigator notes;
- (16) All investigative reports;
- (17) Laboratory reports;
- (18) Internal agency reports;
- (19) Witness reliability forms,
- (20) Any draft statement, printed out by any NCIS agent and provided to a witness to review that preceded their final sworn statement;
- (21) All other relevant forms and documents.

Inform the defense if any of the requested documents do not exist. In addition to our request for investigators' notes, we ask that all of those notes and those made in the future be preserved.

d. Any handwritten, typed, or recorded statements by any potential witness in connection with the investigation of this case, to include summaries of conversations with representatives of the Government.

e. Copies of any investigative reports in which the expected witnesses were subjects or co-subjects.

f. Inspection and copies of all personal and business notes, memoranda and records, including all internal agency documents and data, kept by all agents, investigators, or witnesses, not formally made part of the reports referred to above. In addition to other uses, said papers are to be used prior to cross-examinations of said persons, as provided by the Jencks Act. We further request that all such notes and those made in the future be preserved and not destroyed and that the appropriate parties be directed to preserve the same. R.C.M. 914.

g. Access to all classified notes and records.

4. Experts:

a. The name, address and phone numbers of all experts employed by the Government, their connection with this case, their specialties and their qualifications.

b. A copy of the curriculum vitae of any expert witness the Government intends to call during trial.

c. Results of physical, scientific, forensic and mental health examinations or tests including polygraph or comparisons. This request includes, but is not limited to, mental or medical examinations. This request includes all relevant chain of custody documents. FRCP 16(a)(1)(d); Article 46, UCMJ; R.C.M. 701(a)(2)(b); U.S. v. Mougene, 6 M.J. 589 (AFCMR 1978).

d. All reports or statements or conclusions of experts made in connection with this case.

e. A copy of, or citation to, all documents and treatises used by any government experts to help them prepare for trial. M.R.E. 803(18).

5. Investigators:

a. The names and phone numbers of any investigators, either military or civilian, who have participated or are presently participating in the investigation of this case.

b. Copies of the following regarding each investigator involved in this case:

- (1) Any "On-the-Job" Training Record;
- (2) Training test score results;
- (3) Evidence of credentials suspended or revoked

- (4) Evidence of being a subject or suspect in any internal affairs investigations, whether related to this matter or not; and
- (5) Evidence of any adverse administrative or disciplinary actions, whether related to this matter or law enforcement activity or not.

c. A complete copy or opportunity to view any adverse information in the personnel file or a Henthorn affidavit from NCIS headquarters stating that no adverse information exists for each NCIS agent the Government intends to call as a witness.

6. With respect to witnesses:

a. The names and duty phone or business addresses of all witnesses and potential witnesses used in developing the case against the Accused, including any potential rebuttal witnesses (see U.S. v. Trimper, 28 M.J. 460 (CMA 1989)), together with their relevant statements, including those made during polygraph examination(s), and any such statements or reports which may later become discoverable under the Jencks Act. If any of the statements contain classified information, the Accused requests full access to the statements or forms. If any of the statements contain “privileged” information the defense requests to be so notified and further requests to be informed of the specific privilege the Government claims for the document or statement. R.C.M. 914; Federal Rules of Criminal Procedure 26.2; 18 U.S.C. 3500.

b. A written list of names of witnesses (to include duty and/or business address and phone number), along with a synopsis of their expected testimony, and a list of documents and other items of real evidence (and their locations) intended to be used on the findings and sentence portions of the Government’s case.

c. The names, addresses, and phone numbers of all confidential witnesses, including undercover informants or agents.

d. The military status of all witnesses. As to those presently in civilian status, we request the date of separation from the military, the discharge or other provisions used to effect such discharge, and a summary of circumstances explaining any discharges for other than completion of the obligated term of service.

e. Any writing or document used by a witness to prepare for trial. M.R.E. 612.

f. Any known evidence tending to diminish credibility of witnesses including, but not limiting to, prior civil or military convictions (See Mil. R. Evid. 609); and evidence of other character, conduct, or bias bearing on witness credibility including but, not limited to letters of counseling, letters of reprimand, memoranda or other information concerning the existence of oral counseling or reprimands, evidence of prior Article 15 action and adverse administrative actions in the Government’s possession or reasonably obtainable. See Mil. R. Evid. 608; Brady v. Maryland, 373 U.S. 83 (1963); Giglio v. United States , 405 U.S. 150 (1972); United States v. Agurs, 427 U.S. 97 (1996); United States v. Brickly, 16 M.J. 258 (C.M.A. 1983).

g. All derogatory actions of any potential witnesses, regardless of whether the Government believes it is relevant to witness credibility of bias.

h. Any evidence that the testimony of any prospective witness is inconsistent with any statement of any other person or prospective witness.

i. Any evidence that any prospective government witness is biased or prejudiced against the Accused or has a motive to falsify or distort his/her testimony.

j. Notice of any government agent or representative of any government agency offered to assist or “help out” any witness in return for their cooperation.

k. Disclosure of any immunity or leniency granted to a witness or to potential witnesses. This includes specifically any and all documents related to agreements for testimony of any and all potential witnesses. Disclosure is requested pursuant to Mil. R. Evid. 301 (c)(2), U.S. v. Giglio, 405 U.S. 150 (1972), United States v. Webster, 1 M.J. 216 (C.M.A. 1975), U.S. v. Boyd, 27 M.J. 82 (CMA 1988).

l. Access to all relevant personnel, medical and mental health records of all potential witnesses who may testify against the Accused at any stage of the case, whether they are presently in the military or have been discharged at an earlier date. Please do not make a blanket denial of relevance without reviewing the records of potential witnesses. Relevant records would include anything that might diminish witness credibility or suggest bias, any records reflecting statements by alleged victims related to the charges, and any records of physical or mental health treatment related to the charges.

m. Any evidence that any prospective witness has consumed alcohol or drugs prior to witnessing the events that gave rise to his/her testimony. In addition, the defense requests any evidence, including any medical or psychiatric report or evaluation, tending to show that any prospective witness’s ability to perceive, remember, communicate, or tell the truth is impaired and any evidence that a witness has ever used narcotics or other controlled substance, or has ever been an alcoholic.

n. If any relevant witness in this case has been subject to a polygraph or other “truth detecting” examination, I request to be provided with the results of this testing, together with all relevant charts, graphs, questions and other documents. See U.S. v. Mouganel, 6 M.J. 589 (AFCMR 1978).

o. Pursuant to the obligation of the Government to produce to the defense any and all exculpatory evidence, defined as "evidence favorable to an accused...material either to guilt or punishment" as set forth in the case of Brady v. Maryland, 373 U.S. 83, 87 (1963).

7. With respect to physical evidence:

a. Access to any physical evidence in the custody or control of the Government that was seized, recorded, or otherwise considered, during the investigation of this case. This is to include an inspection and the production of any evidence collected from the scene of the alleged crime.

b. The opportunity to listen to all audio recordings made in connection with this case, including but not limited to, 911 calls.

c. Disclosure of the existence of, and the opportunity to listen to, any and all tapes made by and/or between any and all parties involved in this case, including those which may later become discoverable under the Jenck's Act, 18 U.S.C. § 3500.

d. Any diagrams, regardless of the artist, that any witness has identified.

e. Any notes by any attorney or paralegal that any witness has reviewed and indicated were correct. See U.S. v Vanderwier, 25 MJ 263, 268 (CMA 1987) (“When a writing that relates to the subject matter of the testimony of a government witness has been ‘signed or otherwise adopted or approved by’ the Government witness, it is producible under the Jencks Act even though the writing was prepared by the Government lawyer who interviewed the witness.”) The defense understands that such notes may contain attorney work product and requests that any attorney work product simply be redacted.

f. Notice of whether the Government intends to conduct scientific tests, experiments or comparisons which may consume or destroy the subject matter of the test, or intends to dispose of relevant physical objects.

g. Notice of whether the Government intends to offer, as part of the proof that the Accused committed the offenses charged, evidence of other offenses. R.C.M. 701(a)(2)(a) and 701(a)(2)(b).

h. Digital colored copies of any photographs taken of the alleged crime scene, if there is one, or any other photographs taken pursuant to this investigation.

i. Notice of the specific location and written permission to inspect any books, papers, documents, photographs, tangible objects, buildings, and places which are in the possession, custody or control of military authorities, and which are material to the preparation of the defense or are intended for use by the trial counsel as evidence in the prosecution of the Accused. R.C.M. 701(a)(2)(A). If any potential evidence in this case is in any way classified, the defense requests full and complete access to said evidence.

8. Court Members:

a. Background information of the prospective court members when this becomes available, including the specific questions listed in R.C.M. 912(a)(1) for each potential court member.

b. Complete and updated Eastern Judicial Circuit members' written questionnaires.

c. All written matters (including electronic mail) and information used by the Convening Authority and the various advisory personnel (including the staff judge advocate) in nominating prospective court members and in selecting final members detailed to the court-martial for all court-martial orders in this case. This request specifically includes any listing of names (including alpha rosters) sent to the convening Authority from which the names of court members were selected and materials relating to individuals considered and were not selected for detailing as members.

d. All written matters (including electronic mail) and information used by the Convening Authority and the various advisory personnel (including the staff judge advocate) for the purpose amending any convening order, specifying in particular the reason for removing any previously detailed court member.

9. Miscellaneous:

a. The Request for Legal Services package submitted by the Convening Authority.

b. The convening order for this case, along with any amending orders.

c. Any recommendations as to disposition by officers and staff noncommissioned officers subordinate to the Convening Authority, including but not limited to, a command Report Sheet with routing and recommendation actions.

d. Any papers which accompanied the charges when referred. R.C.M. 701(a)(1).

e. Any sworn or signed statement relating to an offense charges which is in the possession of the trial counsel. R.C.M. 701(a)(1).

f. Any papers relating to a previous withdrawal or referral of charges.

g. If there is an Article 32 hearing, copies of the Investigating Officer's notes for the Article 32 investigation for this case.

h. If there is an Article 32 hearing, copies of all drafts, revised statements, and finalized statements of the witnesses who testified at the Article 32 investigation for this case.

i. Any matter the prosecution seeks to have judicially noticed. See Mil. R. Evid. 201.

j. Access to pertinent background information of the prospective court members when it becomes available. See, United States v. Credit, 2 M.J. 631, 642 (AFCMR 1976).

k. Any subpoena duces tecum issued by the prosecution to any entity.

l. A detailed summary of any legal advice which Naval Criminal Investigative Service (NCIS) 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.

m. A descriptive list of all non-testimonial evidence and demonstrative aids the Government intends to offer at any stage of this case. If photographs of this evidence are available, the defense requests color copies of the photographs.

n. A list of all exhibits the prosecution intends to offer at trial, along with the current location and custodian for each exhibit.

o. All pretrial publicity that is in any way relevant to this case. This includes any references in the base and local media. This discovery is necessary so that the defense may properly conduct voir dire and may examine the necessity of raising motions.

p. Any hearsay evidence the government intends to introduce as an exception to M.R.E. 802. The defense further requests to be notified of the specific provision under which the government will seek admission of the hearsay evidence.

q. Any findings or sentencing instructions the prosecution intends to request.

r. Any evidence the Government intends to introduce concerning any specification which was not charged due to lack of evidence concerning these specifications, or lack of seriousness to charge at a Court-Martial. The term "any evidence" includes, but is not limited to, statements, whether oral or written, real or documentary evidence.

s. Any evidence the government intends to introduce concerning allegations of substandard duty performance, including but not limited to, dereliction of duty and weight control failure, which have not been officially charged.

t. A copy of any "pre-preferral" investigations conducted by any government entity or agency.

10. Additionally, the defense specifically requests the following:
- a. Notice of the general nature of any evidence the government intends to use in any manner relying on M.R.E. 404(b) as the theory or admissibility.
 - b. All relevant evidence other than that enumerated above.
 - c. A roster of the names and contact information of all recruits within Division 194 of year 2010.
 - d. The names and contact information of all NEX employees whom a larceny occurred when IC1 Wofford sought to return certain items to the NEX.
 - e. A list of the items returned to the NEX by IC1 Wofford on the day the alleged larceny occurred.

11. The duty to disclose is a continuing duty. R.C.M. 701(d). The duty extends to matters in the possession or control of the Government and any others who have participated in the investigation or evaluation of the case. This request includes any information which you may discover before, during or after trial of this case, or which is not requested in a specific manner. R.C.M. 701(d); United States v. Brickey, 16 M.J. 258 (C.M.A. 1983); United States v. Eshalomi, 23 M.J.12 (C.M.A. 1986). This information should be disclosed as early as possible. Please provide all presently available information as soon as possible. This request is made on the grounds that the Accused cannot properly prepare for trial without production and inspection of the documents and items requested in advance.

12. The defense requests a formal written response to the above for purposes of trial preparation within 10 days of receipt of this request. If the government can not reply in that time frame, notify the detailed defense counsel immediately. If any of the requested information will not be provided, please notify the defense, in writing, which information will not be forthcoming and the reasons why the defense will not be provided the requested information. If any requested item is not currently available, please provide an estimate of when it will become available. This request should not be construed as a waiver of any right to matters which the Government has an independent duty to disclose without specific request.

13. Please note, that as authorized by R.C.M. 701(b)(3) and (4) the defense will not provide certain reciprocal discovery until the Government fully complies with its discovery obligation.

Respectfully,

/s/

Haytham Faraj
Attorney for the Accused

I hereby certify that a copy of the above request was served upon trial counsel on 5 October 2010.

/s/

Haytham Faraj
Attorney for the Accused

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