

United States

v.

PFC Damien M. Corsetti

Company A

519th Military Intelligence Battalion

Fort Bragg, North Carolina 28310

MOTION FOR DELAY

March 21, 2006

MOTION FOR DELAY

COMES NOW the accused, by and through counsel, and hereby moves this Court for a delay in the scheduled Article 39(a) session and trial in this case and, as reasons in support thereof, states as follows:

Charges were preferred in this case on 29 September 2005. The undersigned defense counsel was retained on 10 January 2006. This is the first request for a delay in the court date.

This case involves the alleged abuse of two detainees at Bagram Air Base, and several other charges. The accused has plead not guilty to all charges. While both civilian and military defense counsel have been working diligently on this case, the defense is not prepared to go to trial on the currently scheduled date.

The defense has filed several motions to compel discovery, and several discovery requests. The defense is still not in possession of the entire case file, and not in possession of several requested documents and evidence. Much of this has been caused by the inability of the defense and government to resolve issues relating to providing the military defense counsel with a secured AKO account. In addition, the government has refused to provide the defense with "hard" copies of several secure documents, as referenced in the defense's motion to compel.

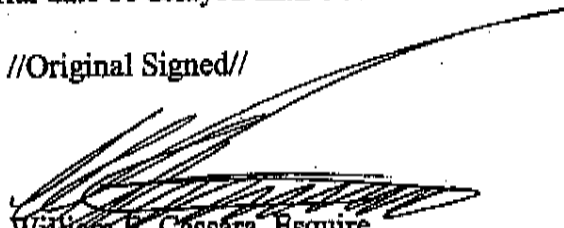
Many of the potential defense witnesses in this case are represented by counsel, and it will be necessary for the defense to request grants of immunity. In addition, the defense would anticipate the government may refuse to produce several defense witnesses, which would necessitate a separate Article 39 (a) session subsequent to the one already scheduled.

The defense has been diligent in contacting potential witnesses in this case. However, in a deployed environment, with representatives from several governmental agencies as potential witnesses, securing the names and contact information for these witnesses has been extremely time-consuming.

CPT Dowdy, the detailed defense counsel, has been out of the office since 13 March, and will not return until 24 March. The undersigned will be on active duty with the US Army Reserves from 8-26 May. In addition, the undersigned is currently scheduled to be in trial from 24-24 April at Fort Polk, LA and from 27-28 April at Fort Benning, Georgia.

Simply put, the defense needs more time to adequately represent their client, due to the slow nature of discovery, and the voluminous amount of material and witnesses. The defense requests that the currently scheduled Article 39 (a) session be delayed until the current trial date, 18 April, and that the trial date be delayed until 8 June.

//Original Signed//



William E. Cassara, Esquire
Civilian Defense Counsel

CERTIFICATE OF SERVICE

I certify that on 5 December 2005, I forwarded this request by e-mail to CPT Christopher Ellis, Trial Counsel.

//Original Signed//



William E. Cassara, Esquire
Civilian Defense Counsel

**IN A GENERAL COURT-MARTIAL OF THE UNITED STATES
US ARMY TRIAL JUDICIARY, THIRD JUDICIAL CIRCUIT, FORT BLISS, TEXAS**

UNITED STATES

v.

**CORSETTI, DAMIEN
PFC, U.S. Army,
A Company,
519TH MI Battalion,
Fort Bragg, NC**

**Government Response to Defense
Motion to Delay**

24 March 2006

COMES NOW the Government and opposes a delay in the trial of this case, stating as follows:

Charges were preferred in this case on 29 September 2005. From October to 0 December 2005, the Accused was represented by two military Defense counsel, CPT Joe Owens and CPT Ryan Dowdy. In January 2006, the Accused released CPT Owens and retained the services of civilian Defense counsel. CPT Dowdy has remained as military counsel for approximately six months. Contrary to the Defense's assertion, this is not the first request for a delay in a court date in this case.

The Defense was given the entire CID report concerning this case. That CID report contains approximately four thousand pages, a minute percentage of which actually applies to PFC Corsetti and the Military Intelligence interrogators at Bagram. The Defense states in its motion that it has not received the entire case file, but fails to articulate what it lacks. The Government asserts that it has provided the entire case file either on CD-Rom or in paper format. The classified material that the Defense states it cannot access has been available for months either on a SIPR computer or in paper format in a secure location.

The Defense states that many of the potential Defense witnesses in this case are represented by counsel, and it will be necessary for the Defense to request grants of immunity. However, in the last six months, the Defense has never provided the names of these witnesses so that the Government can begin the immunity process. In addition, the Defense argues that it would anticipate the government may refuse to produce several Defense witnesses, which would necessitate a separate Article 39 (a) session subsequent to the one already scheduled. Again, if the Defense had provided the names of its anticipated witnesses that issue might have been resolved before the Art 39a session on 28 March 2006. The failure to provide these names to the Government means that the Defense is solely responsible for creating the conditions that it seeks to use as a basis for delay.

The Defense states that it has been diligent in contacting potential witnesses in this case, but is having problems doing so. The Government has never been asked to obtain contact information for any of these witnesses. Not hindered by that fact, trial counsel has taken the proactive step of providing the defense counsel's name to potential witnesses who have never been contacted by the Defense. One witness, in particular, took it upon himself to contact defense counsel as a result of the good will efforts of the trial counsel.

Finally the defense argues that its hectic schedule in the month leading up to trial deprive it of the ability to properly prepare. Taken in the context of the approximately six months that CPT Dowdy has represented the Accused, a 10 day absence from the office is arguably not a powerful reason for delay. Furthermore, the hectic schedule of a civilian practice, while unquestionably difficult, is quite commonplace. It is, very respectfully, a factor that should be taken into account upon entry into representation, rather than at the point when a trial is imminent.

The Defense has had six months to prepare its case. It has not provided the names of any of its potential witnesses for immunity review. It has not asked for any assistance in locating witnesses, and it has had access to all information the Government has available. If a delay seems necessary to the Defense, that delay has not been occasioned by a lack of industry on the part of the Government. The Government would respectfully request that the case go forward as scheduled.

/signed/

DAVID R. TRAINOR
CPT, JA
Trial Counsel

This is to certify that I have served the foregoing on defense counsel and the military judge this 24th day of March 2006.

/signed/

DAVID R. TRAINOR
CPT, JA
Trial Counsel

IN A GENERAL COURT-MARTIAL OF THE UNITED STATES
U.S. ARMY TRIAL JUDICIARY, THIRD JUDICIAL CIRCUIT

UNITED STATES

) MOTION FOR JUDICIAL
) NOTICE

V.

DAMIEN M. CORSETTI

PFC, U.S. Army

A CO, 519TH MI BN, FORT BRAGG, NC

) 20 MARCH 2006

I. RELIEF SOUGHT

COMES NOW the Government, and requests that this Honorable Court take judicial notice of Army Field Manual 34-52, Army Regulation 190-8, and White House Memorandum 7 February 2002.

II. BURDEN

The military judge shall take judicial notice if requested by a party and supplied with the necessary information. R.C.M. 201(d). Judicial notice may be taken at any stage of the proceeding. R.C.M. 201(f).

III. FACTS

FM 34-52, "Intelligence Interrogation," promulgated by Headquarters, Department of the Army on 28 September 1992, addresses Army interrogation tactics, techniques, and procedures. Army Regulation 190-8, "Enemy Prisoners of War, Retained Personnel, Civilian Internees, and Other Detainees," promulgated by Headquarters, Departments of the Army, Navy, Air Force, and Marine Corps on 1 October 1997, is a joint service regulation governing the treatment of personnel captured or detained during military operations. The White House Memorandum of 7 February 2002 was signed by the President and requires humane treatment of detainees.

IV. EVIDENCE

1. The above-referenced documents.

V. LAW

1. M.R.E. 201 and 201A
2. M.C.M. Article 92(3)
3. United States v. Townsend, 49 M.J. 175 (1998)

VI. ARGUMENT


FM 34-52 qualifies for judicial notice of adjudicative facts, because it is an Army Field Manual not subject to reasonable dispute—"it is generally known in the area pertinent to the event" (Military Intelligence interrogations) (M.R.E. 201(b)). Additionally, it is "capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned." (M.R.E. 201 (b)). While the government submits the entire document for the Court's review, the government requests specific judicial notice of at least the information contained on pages 1-6 through 1-15 (prohibiting the use of force and any form of torture), 3-13 through 3-20 (describing proper interrogation procedure), and Appendix D (which reiterates treaty and other legal requirements to humanely treat interrogation subjects).

AR 190-8 and the White House Memo qualify for judicial notice of law under M.R.E. 201A. These documents are "laws and regulations of the United States" within the meaning of United States v. Townsend, 49 M.J. 175 (1998). The government submits these documents in their entirety, while requesting specific judicial notice of at least the AR 190-8 directives contained at sections 1-5 (general protection policy); 3-7(e)(1) (forbidding improper punishment, cruelty, torture); and 6-11 (prohibiting inhumane or brutal punishment); and paragraph 3 of the White House Memo.

VII. CONCLUSION

FM 34-52, AR 190-8, and the White House Memorandum of 7 February 2002 satisfy M.R.E. 201 and 201A requirements for being granted judicial notice. The government respectfully requests that this Honorable Court grant the same.

I have served the foregoing on Mr. William Cassara and CPT Ryan Dowdy via electronic mail, this 20th day of March, 2006.

//SIGNED// 
CHRISTOPHER E. ELLIS
CPT, JA
Trial Counsel

JUN. 17. 2004 2:27PM

LEGAL

NO. 499

P. 1

UNCLASSIFIED

THE WHITE HOUSE

WASHINGTON

February 7, 2002

MEMORANDUM FOR THE VICE PRESIDENT
THE SECRETARY OF STATE
THE SECRETARY OF DEFENSE
THE ATTORNEY GENERAL
CHIEF OF STAFF TO THE PRESIDENT
DIRECTOR OF CENTRAL INTELLIGENCE
ASSISTANT TO THE PRESIDENT FOR NATIONAL
SECURITY AFFAIRS
CHAIRMAN OF THE JOINT CHIEFS OF STAFF

SUBJECT: Humane Treatment of al Qaeda and Taliban Detainees

1. Our recent extensive discussions regarding the status of al Qaeda and Taliban detainees confirm that the application of the Geneva Convention Relative to the Treatment of Prisoners of War of August 12, 1949 (Geneva) to the conflict with al Qaeda and the Taliban involves complex legal questions. By its terms, Geneva applies to conflicts involving "High Contracting Parties," which can only be states. Moreover, it assumes the existence of "regular" armed forces fighting on behalf of states. However, the war against terrorism ushers in a new paradigm, one in which groups with broad, international reach commit horrific acts against innocent civilians, sometimes with the direct support of states. Our Nation recognizes that this new paradigm -- ushered in not by us, but by terrorists -- requires new thinking in the law of war, but thinking that should nevertheless be consistent with the principles of Geneva.
2. Pursuant to my authority as Commander in Chief and Chief Executive of the United States, and relying on the opinion of the Department of Justice dated January 22, 2002, and on the legal opinion rendered by the Attorney General in his letter of February 1, 2002, I hereby determine as follows:
 - a. I accept the legal conclusion of the Department of Justice and determine that none of the provisions of Geneva apply to our conflict with al Qaeda in Afghanistan or elsewhere throughout the world because, among other reasons, al Qaeda is not a High Contracting Party to Geneva.
 - b. I accept the legal conclusion of the Attorney General and the Department of Justice that I have the authority under the Constitution to suspend Geneva as between the United States and Afghanistan, but I decline to

NSC DECLASSIFICATION REVIEW [E.O. 12958 as amended]

DECLASSIFIED IN FULL ON 6/17/2004

by R.Soubers

Reason: 1.5 (d)

Declassify on: 02/07/12

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P. 3

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2

exercise that authority at this time. Accordingly, I determine that the provisions of Geneva will apply to our present conflict with the Taliban. I reserve the right to exercise this authority in this or future conflicts.

- c. I also accept the legal conclusion of the Department of Justice and determine that common Article 3 of Geneva does not apply to either al Qaeda or Taliban detainees, because, among other reasons, the relevant conflicts are international in scope and common Article 3 applies only to "armed conflict not of an international character."
- d. Based on the facts supplied by the Department of Defense and the recommendation of the Department of Justice, I determine that the Taliban detainees are unlawful combatants and, therefore, do not qualify as prisoners of war under Article 4 of Geneva. I note that, because Geneva does not apply to our conflict with al Qaeda, al Qaeda detainees also do not qualify as prisoners of war.
3. Of course, our values as a Nation, values that we share with many nations in the world, call for us to treat detainees humanely, including those who are not legally entitled to such treatment. Our Nation has been and will continue to be a strong supporter of Geneva and its principles. As a matter of policy, the United States Armed Forces shall continue to treat detainees humanely and, to the extent appropriate and consistent with military necessity, in a manner consistent with the principles of Geneva.
4. The United States will hold states, organizations, and individuals who gain control of United States personnel responsible for treating such personnel humanely and consistent with applicable law.
5. I hereby reaffirm the order previously issued by the Secretary of Defense to the United States Armed Forces requiring that the detainees be treated humanely and, to the extent appropriate and consistent with military necessity, in a manner consistent with the principles of Geneva.
6. I hereby direct the Secretary of State to communicate my determinations in an appropriate manner to our allies, and other countries and international organizations cooperating in the war against terrorism of global reach.

UNCLASSIFIED

United States

)
) Response to Request for Judicial
) Notice
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v.

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) PFC Damien M. Corsetti
) Company A
) 519th Military Intelligence Battalion
) Fort Bragg, North Carolina 28310
)

March 22, 2006

COMES NOW the accused, by and through the undersigned counsel and hereby objects, in part, the government request for judicial notice.

The defense opposes the request to have this Court take Judicial Notice of the White House Memorandum. Such a document is clearly outside of the realm of material for which a court can take judicial notice. It is the equivalent of a letter from the President to his advisors.

WHEREFORE, the government request should be denied in part.



William E. Cassara, Esquire
Civilian Defense Counsel

I hereby certify that a copy of this document was served on the Trial Counsel and on the Military Judge on March 22, 2006



William E. Cassara, Esquire
Civilian Defense Counsel

United States Army Trial Judiciary
Fourth Judicial Circuit, Fort Bliss, Texas

UNITED STATES

v.

PFC Damien M. Corsetti
Company A, 519th MI Battalion
Fort Bragg, NC 28310

Pretrial Order

February 7, 2006

1. Trial for the above case is scheduled to begin at 0830 hours on **17 April 2006**. An Article 39(a) session will be held at 0900 hours on **28 March** to hear all pretrial motions raised by the parties. Pursuant to R.C.M. 801, the following orders are issued to ensure a fair, orderly, and expeditious court-martial:

a. Defense counsel will provide the Trial Counsel and the Court with notice of motions not later than 1700 hours on **14 March** and notice of plea and forum not later than 1700 hours on **3 April**.

- i. The plea shall include the actual language of the plea, should the accused plead by exceptions, exceptions and substitutions, or to a lesser-included offense.
- ii. Counsel need to consider the issues required to be raised prior to entry of plea (R.C.M. 905(b)(1)-(6) and 906), the issues that must be raised prior to final adjournment of the court-martial (R.C.M. 906 and 907(b)(2)), and the grounds for motions that are not waived (R.C.M. 907(b)(1)). The following issues, if relevant, will be addressed in notice of motions / motions:
 - (1) Objections based on defects in the preferral, forwarding, investigation or referral of charges (R.C.M. 905(b)(1)).
 - (2) Objections based on defects in the charges and specifications (R.C.M. 905(b)(2) and R.C.M. 907(B)(1)).
 - (3) Any motions to suppress evidence (R.C.M. 905(b)(3)).
 - (4) Any motions for discovery, or production of evidence or witnesses (to include requests for expert witnesses or investigative assistants) (R.C.M. 701, 703, 905(b)(4), and 906(b)(7)).
 - (5) Any motions for severance of charge or accused (R.C.M. 905(b)(5); R.C.M. 906((b)(9)-(10)).

- (6) Any objections based on denial of individual counsel (R.C.M. 903(b)(6)).
- (7) Any request for continuance (R.C.M. 906(b)(1)).
- (8) Objections based on corrections or defects in the Article 32 Investigation or pretrial advice (R.C.M. 906(b)(3)).
- (9) A request for relief from pretrial confinement (R.C.M. 906(b)(8)).
- (10) A request for a bill of particulars (R.C.M. 906(b)(6)).
- (11) Any request for change of venue (R.C.M. 906(b)(11)).
- (12) Any motions on multiplicity (R.C.M. 906(b)(12)).
- (13) Any evidentiary issues capable of resolution before trial by motion *in limine* (for example, hearsay issues under Mil. R. Evid. 801, 802, 803, 804 and 807; R.C.M. 906 (b)(13)).
- (14) Whether a sanity board will be requested, or whether there is any good faith basis to question the mental capacity or responsibility of the accused (R.C.M. 906(b)(14)).
- (15) Any motion to dismiss:
 - a. On speedy trial grounds (R.C.M. 907(b)(2)(A)).
 - b. On statute of limitations grounds (R.C.M. 907(b)(2)(B)).
 - c. On the grounds of double jeopardy or that the prosecution is otherwise barred (R.C.M. 907(b)(2)(C)-(D)).

b. The Government must strictly comply with the Section III disclosure provisions of MRE 304(d), 311(d) and 321(c). Notice of intent to admit Section III evidence (statements of the accused, evidence seized from the person or property of the accused, or prior identification of the accused) shall be provided to counsel for the accused at the earliest possible time.

c. Defense Counsel will file any motions (supporting any notice of motions filed above), with the Trial Counsel and the Court not later than 1700 hours on **21 March**. Such motions will be in writing and comply with the requirements of the Uniform Rules of Court.

d. Trial Counsel provide the Defense Counsel and the Court with any notice of motions no later than 1700 hours on **14 March** and will file any motions (supporting any

notices of motion filed above) no later than 1700 hours on **21 March**. Such motions will be in writing and comply with the requirements of the Uniform Rules of Court.

e. Both counsel will file responses to any motions no later than three duty days after receipt of the motion from the opposition, or two duty days before the scheduled date for the hearing on the motion, whichever is earlier.

f. Trial Counsel and Defense Counsel will submit to each other, to the Court and to the Court Reporter, a complete list of witnesses (full names with correct spelling) each party intends on calling in all phases of the trial by 1700 hours on **13 April**.


g. Trial Counsel will provide to the Court, not later than 1700 hours on **13 April**, all Court-Martial Convening Orders, a seating chart, the flyer, electronic copies of the Findings and Sentence Worksheets, and copies of completed panel member questionnaires.

h. Both counsel will provide to the Court no later than 1700 hours on **13 April** a list of proposed voir dire questions. Neither counsel may ask voir dire questions unless previously approved by the Court.

i. Defense Counsel will notify the Trial Counsel of any local military witnesses whose production by the Government the Defense requests, no later than 1700 hours on **10 April**. The Defense Counsel will notify the Trial Counsel of any other witnesses whose production by the Government the Defense requests, no later than 1700 hours on **3 April**. This notification will comply with RCM 703(c)(2). (Counsel are reminded of R.C.M. 703(b) and (c) concerning what must be contained in the request (*United States v. Rockwood*, 52 M.J. 98 at 105 (1999)) and potential penalties for failure to submit the name of a witness in a timely manner. If any witnesses requested by counsel are represented by their own Defense Counsel, counsel shall contact their counsel and determine (1) is the witness a suspect or accused, and (2) will the witness invoke his or her Article 31, UCMJ rights.)

j. Defense Counsel will provide notice of any defenses described in R.C.M. 701(b)(2), in writing, to the Trial Counsel no later than 1700 hours on **3 April**.

2. Questions regarding this order should be directed to the undersigned at 915-568-7225 or sposatom@bliss.army.mil.


MARK P. SPOSATO
LTC, JA
Military Judge

WILLIAM E. CASSARA
ATTORNEY AT LAW
918 HUNTING HORN WAY
EVANS, GEORGIA 30809
706-860-5769
706-868-5022 (fax)

PRACTICE LIMITED TO MILITARY LAW

United States

*

v.

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Notice of Appearance

CORSETTI, Damien
PFC, U.S. Army

*

* * * * *

The undersigned hereby enters his appearance in the above-captioned case.

Respectfully Submitted,

William E. Cassara, Esquire
Civilian Defense Counsel
918 Hunting Horn Way
Evans, GA 30809
706-860-5769
706-868-5022 (fax)
bill@williamcassara.com

United States

v.

Motion for Continuance

CORSETTI, Damian
SPC, U.S. Army

* * * * *

Comes now the accused, by and through the undersigned counsel, and hereby requests a continuance in this case from 10 January until the date of the first Article 39a session in this case, and as reasons in support thereof states as follows:

Civilian counsel has only recently been retained in this case.

This case requires access to classified material, much of which is not readily available to either defense counsel.

Immediately upon being contacted, civilian counsel began to work on this case, including meeting with the client, and reviewing the case file.

All parties are scheduled to travel to Guantanamo Bay, Cuba the week of 6 March to interview one of the alleged victims.

A delay is necessary in this case in order to allow civilian counsel to interview all witnesses, to travel to Guantanamo Bay, and to review the remainder of the case file.

The government has indicated that they do not object to this request.

WHEREFORE, the accused respectfully requests that this Motion be granted.

Respectfully Submitted,

151

William E. Cassara, Esquire
Attorney at Law

Received 6 Feb 08

Sposato, Mark, P. LTC

From: William Cassara [wcassara1@comcast.net]
Sent: Monday, February 06, 2006 11:36 AM
To: 'Sposato, Mark, P. LTC'; 'Parker, Branson J. CPT - SJA'; 'Ellis, Christopher CPT - SJA'; 'Dowdy, Ryan CPT'; 'Bill Cassara'; 'Carrier, Christopher D. MAJ'
Subject: RE: Corsetti Arraignment
Attachments: Continuance.doc

Judge: As requested.

From: Sposato, Mark, P. LTC [mailto:Mark.Sposato@emh10.bliss.army.mil]
Sent: Monday, February 06, 2006 13:24
To: 'William Cassara'; Parker, Branson J. CPT - SJA; Ellis, Christopher CPT - SJA; 'Dowdy, Ryan CPT'; 'Bill Cassara'; Carrier, Christopher D. MAJ
Subject: RE: Corsetti Arraignment
Importance: High

Mr. Cassara: Please get with trial counsel and come up with dates for trial. I also require a date for an Article 39 (a) session at least two weeks prior to trial to take up any motions. You also owe me a request for delay to cover the period from 10 January until the first Article 39(a) session. If the parties can't agree on these dates by 9 February, I'll set the dates.

LTC Sposato

From: William Cassara [mailto:wcassara1@comcast.net]
Sent: Monday, February 06, 2006 11:19 AM
To: 'Sposato, Mark, P. LTC'; 'Parker, Branson J. CPT - SJA'; 'Ellis, Christopher CPT - SJA'; 'Dowdy, Ryan CPT'; 'Bill Cassara'; 'Carrier, Christopher D. MAJ'
Subject: RE: Corsetti Arraignment

Judge: Given the logistics, the defense is not prepared to go to an arraignment on Thursday. We would therefore ask for a delay in the arraignment until the date of trial, and will be responsible for delay from when the government is ready to proceed until the date of trial. Is that suitable? If you would like to do a telephonic 802, I am available. Thanks.

From: Sposato, Mark, P. LTC [mailto:Mark.Sposato@blisapdoimsmt1.bliss.army.mil]
Sent: Monday, February 06, 2006 12:45
To: Parker, Branson J. CPT - SJA; Ellis, Christopher CPT - SJA; Dowdy, Ryan CPT; Bill Cassara (bill@williamcassara.com); Carrier, Christopher D. MAJ
Subject: Corsetti Arraignment
Importance: High

All: I intend to arraign PFC Corsetti at 1300 hours on Thursday, 9 February here at Fort Bliss.

LTC Sposato

Mark P. Sposato
Military Judge
4th Judicial Circuit
915-569-5507 / 568-7225
915-568-6874 (fax)

2/6/2006

DSN prefix = 978

United States

Motion for Bill of Particulars

v.

PFC Damien M. Corsetti

March 21, 2006

Company A

519th Military Intelligence Battalion

Fort Bragg, North Carolina 28310

1. Nature of Motion-This is a defense motion for a bill of particulars.

2. Facts-PFC Corsetti is charged with various allegations of abuse against detainees while stationed at Bagram Air Base.

Specification 2 of Charge I alleges that the accused was derelict in his duties in that he failed to properly conduct interrogations. It does not describe how he was derelict in the performance of those duties.

Specification 1 of Charge II alleges that the accused maltreated detainees by sitting on top of them. It does not a victim, nor state how many times this occurred.

Specification 1 of Charge IV alleges that the accused assaulted a detainee referred to as BT 414. It does not name the detainee.

Specification 2 of Charge V alleges that the accused wrongfully exposed his genitalia. It does not state when this occurred.


3. Discussion-PFC Corsetti can not prepare to meet such vague specifications. Specifications should, of course, state with specificity what the accused has allegedly done. R.C.M. 307 (c) (3). PFC Corsetti is not on notice as to the essential facts of these offenses.

Additionally, several of the above specifications would seem to mirror other charged offenses. Further, as currently plead, the accused could be subjected to later prosecution for the same offenses.

4. Relief Requested-That the Court order the government to state the exact acts, times, dates and places of the alleged offenses, the name of the alleged victim, the exact action or omission which gives rise to Specification 2 of Charge I; the exact acts alleged in Specification 1 of Charge II, the name of the detainee in Specification I of charge IV, and the exact location, time and victim of Specification 2 of Charge V..

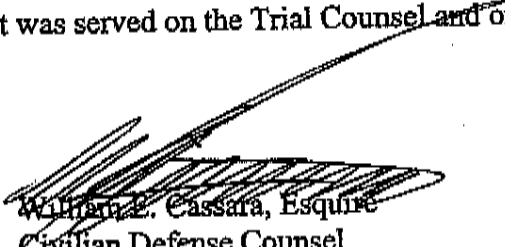
5. Evidence-This is a legal, not a factual issue. As such the burden of proof should be on the government.

6. Oral Argument-Only in rebuttal.



William E. Cassara, Esquire
Civilian Defense Counsel

I hereby certify that a copy of this document was served on the Trial Counsel and on the Military Judge on March 21, 2006



William E. Cassara, Esquire
Civilian Defense Counsel

UNITED STATES**v.****CORSETTI, Damien M.****PFC, U.S. Army
519th Military Intelligence Battalion
Fort Bragg, North Carolina 28310****FORT BLISS, TEXAS****RESPONSE TO MOTION FOR
BILL OF PARTICULARS****24 March 2006****I. RELIEF SOUGHT**

COMES NOW the Government, and requests that a Defense Motion for a Bill of Particulars be denied.

II. BURDEN

The moving party, in this case the Defense, must prove any factual issues by a preponderance of the evidence. See, R.C.M. 905(c)(1).

III. FACTS

The accused, PFC Damien M. Corsetti, is charged with two specifications of dereliction of duty, in violation of Article 92, UCMJ; one specification of failure to obey a general order, in violation of Article 92, UCMJ; three specifications of maltreatment of a subordinate, in violation of Article 93, UCMJ; one specification of wrongful use of hashish, in violation of Article 112(a); three specifications of assault consummated by battery, in violation of Article 128, UCMJ; and three specifications involving indecent acts or language, in violation of Article 134, UCMJ.

IV. EVIDENCE

1. The above-referenced charge sheet, referred for trial on 9 January 2006.
2. Investigating Officer's Report, dated 7 December 2005.

V. LAW

1. R.C.M. 906(b)(6), with Discussion
2. R.C.M. 307 (c) (3), with Discussion
3. M.C.M. Article 92(3)
4. M.C.M. Article 93
5. M.C.M. Article 112(a)
6. M.C.M. Article 128
7. M.C.M. Article 134

VI. ARGUMENT

The Defense motion should be denied because the charge sheet in the instant case “inform(s) the accused of the conduct charged, to enable the accused to prepare a defense, and to protect the accused against double jeopardy.” (Discussion, R.C.M. 307 c (3). This rule further requires: “Only those facts that make the accused’s conduct criminal ordinarily should be alleged. Specific evidence supporting the allegation ordinarily should not be included in the specifications.” (Section (G)(iii) of Discussion, emphasis added). The Government responds to the specific elements of the Defense motion, as follows:

1. Specification 2 of Charge I alleges that the accused was derelict in his duties in that he failed to properly conduct interrogations. It does not describe how he was derelict in the performance of those duties.

R.C.M. 307(c)(3) states: “A specification is sufficient if it alleges every element of the charged offense expressly or by necessary implication.” Article 92 (3) lists the elements of dereliction as: (a) That the accused had certain duties; (b) That the accused knew or reasonably should have known of the duties; and (c) That the accused was (willfully) derelict in the performance of those duties.

This Article 92 specification alleges that the accused “on divers occasions between on or about 1 August 2002 to on or about 1 February 2003... willfully failed to conduct interrogations of detainees according to approved tactics, techniques and procedures as it was his duty to do.” This specification tracks the format of the model. The allegation is specific. It alleges willful failure, during a specified date range, to fulfill duties related to the conduct of interrogations, according to approved tactics, techniques, and procedures. The specification alleges every necessary element of the charged offense. Elements (a) and (c) are alleged expressly—that the accused had a duty specific to a timeframe and applicable to a class of persons, and that the accused was willfully derelict in the performance of said duties. Element (b) is alleged by necessary implication—that the accused knew or reasonably should have known of this duty. The accused was properly put on notice regarding the nature of the charges. This notice clarifies the scope of the accused’s protection from double jeopardy.

A thorough reading of Article 92 reveals:

Article 92 (3) (a): A duty may be imposed by treaty, statute, regulation, lawful order, or custom of the service.

(b): Actual knowledge of duties may be proved by circumstantial evidence. Actual knowledge need not be shown if the individual reasonably should have known of his duties. This may be demonstrated by regulations, training or operating manuals, customs of the service, academic literature or testimony, testimony of persons who have held similar or superior positions, or similar evidence.

2. Specification 1 of Charge II alleges that the accused maltreated detainees by sitting on top of them. It does not a victim, nor state how many times this occurred.

The subject specification alleges that the prohibited conduct – sitting on top of detainees during interrogations – occurred “on divers occasions.” This specification is supported by the statements and Art. 32 testimony of SGT Jennifer Higginbotham, who observed the charge behavior on more than one occasion. She was able to identify one such victim (Ahmed al Darbi, as charged in Specification 2 of Charge II), but not the remaining victims. The subject specification is sufficiently specific.

3. Specification 1 of Charge IV alleges that the accused assaulted a detainee referred to as BT 414. It does not name the detainee.

The documents in the Government’s possession which provide BT-414’s name remain classified. They are, and have been, available for defense inspection. In the alternative, the Government remains prepared to transmit the information via secure internet, immediately upon receipt of the appropriate account information.

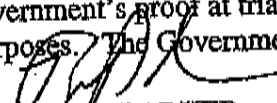
4. Specification 2 of Charge V alleges that the accused wrongfully exposed his genitalia. It does not state when this occurred.

The subject specification alleges that the prohibited conduct occurred “between on or about 1 August 2002 and on or about 1 February 2003.” The subject specification is sufficiently specific.

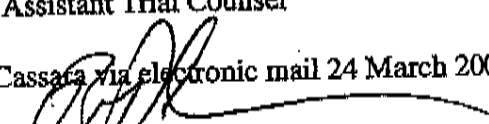
VII. CONCLUSION

Extensive discovery has been provided to Defense in this case. Additionally, the evidence adduced at the Article 32 hearing in this case, as reflected in the Investigating Officer’s report, provided a detailed recitation of the specific acts of the accused, and the evidence supporting the associated charges. The volume of information supplied, coupled with the required specificity demonstrated by this charge sheet gives the Defense notice of the nature of the charges, ample opportunity to prepare a defense, and no concerns over double jeopardy.

The Discussion following R.C.M. (b)(6) cautions: “A bill of particulars should not be used to conduct discovery of the Government’s theory of a case, to force detailed disclosure of acts underlying a charge, or to restrict the Government’s proof at trial.” The Defense seeks a bill of particulars here for these impermissible purposes. The Government requests that the Defense motion be denied.


JOHN B. PARKER
CPT, JA
Assistant Trial Counsel

This response was served upon Mr. William Cassata via electronic mail 24 March 2006.


JOHN B. PARKER
CPT, JA
Assistant Trial Counsel

United States

v.

PFC Damien M. Corsetti

Company A

519th Military Intelligence Battalion

Fort Bragg, North Carolina 28310

Motion to Compel Discovery

March 14, 2006

COMES now the accused, by and through counsel, and hereby moves to compel the government to comply with the requirements of Article 46, U.C.M.J., and R.C.M. 701. As reasons in support thereof, the undersigned states as follows:

The defense has served the government with two requests for discovery. On 27 February 2006, the government announced its refusal to turn over certain materials requested by the defense. A copy of this refusal is attached. The defense now moves this Court to compel the government to produce the following:

1. Copies of all inspections or evaluations done of Bagram Air Base since the beginning of Operation Iraqi Freedom (See, number 7, defense supplemental request for discovery.)

These documents are necessary and relevant to the defense case, in order for the defense to ascertain whether senior commanders were aware of the interrogation techniques employed at Bagram, and consented to the methods used. It is also necessary to determine whether any of the detainees involved in the present case complained of their treatment.

2. Copies of any logs or journals kept on OGA/ODA personnel's presence at Bagram Air Base.

While the government denies knowledge of any such items, they clearly exist. There were significant numbers of OGA/ODA personnel at Bagram Air Base, and the defense seeks to know who they were, and whether they documented their observations of detainee treatment.

3. Medical records, records, and copies of all investigations into the activities of Ahmed al Darbi and Omar al Farooq.

This material is necessary for the defense to cross examine the alleged victims, and to inquire into the need for their security levels at Bagram. The defense is entitled to know what activities led to their capture in order to question other witnesses regarding the need for harsh interrogation techniques, and in order to raise potential issues of self defense. In addition, the defense is entitled to this information, which the government

already has, in order to ascertain what training, if any, the detainees had in responding to being captured by U.S. authorities.

The defense is entitled to all medical records of the alleged detainees, in order to see if they document the allegations of abuse against the accused.

4. The name, detainee number and other information regarding other detainees (defense request number 16.)

The defense is entitled to this information in order to determine if there are potential witnesses to the allegations, and in order to question other detainees regarding the treatment they received from the accused.

5. Statements/e-mails relating to detainee operations at Bagram (defense request number 18.)

This material is relevant and necessary for the same reasons as outlined in numbers 1 and 4, *supra*.

6. Defense request number 20.

While the government claims they are unaware of such items, their existence has been acknowledged by the administration, and widely reported in the press. These documents are relevant and necessary.

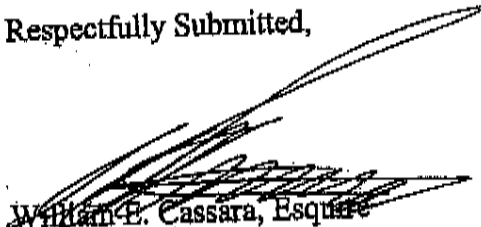
The defense further moves this Court to compel the government to provide the defense with copies of all classified documents stored by the government at Fort McPherson, Georgia. The defense has secured a classified location at Fort Gordon, Georgia to store all classified documents. However, the government has refused to provide the defense with a copy, citing security concerns.

The undersigned has reviewed these documents, and they are relevant and necessary to the defense case. To require the defense to travel to Fort McPherson (2 ½ hours from defense counsel's office) every time the defense needs to check something in one of these documents is unduly onerous, and denies the defense the same access to these documents as the government counsel.

Finally, the defense moves for all prior statements of the alleged victim, Ahmed al Darbi. The defense has made this request on numerous occasions, and has been told these documents do not exist. However, in the first statement taken of Ahmed al Darbi, the interviewer asks Ahmed al Darbi why he did not disclose any of the allegations of abuse in his February 2004 statement, which has never been provided to the defense.

WHEREFORE, for the above reasons, the defense requests that this motion be granted.

Respectfully Submitted,



William E. Cassara, Esquire
Civilian Defense Counsel

WEC/pc

United States)

v.)

PFC Damien M. Corsetti)

Company A)

519th Military Intelligence Battalion)

Fort Bragg, North Carolina 28310)

Discovery Request

18 November 2006

Supplemental Discovery Request

The accused, through counsel, and under Article 46, UCMJ, R.C.M. 701, M.R.E., Rule 3.8 of the Army Rules of Professional Conduct for Lawyers, and the Fifth Amendment to the U.S. Constitution, requests that the United States produce and permit the defense to inspect, copy, or photograph each of the following things which are known, or should through the exercise of due diligence be known, to the United States or its agents. ***Request the Prosecution notify the Defense in writing which specific items of requested information or evidence will not be provided and the reason for denial of discovery.*** Hereinafter, the term *Government* includes Federal, state and local governments, to the extent that such agencies are participating or have participated in the investigation of this case. This request is ongoing in nature.

This request is submitted as an addendum to the previous discovery request filed in this case, which is hereby adopted by the defense.

1. The previous statement made by Waheed A. Ayazi, referenced in his statement of 21 November 2003.

2. The record of trial and results of trial for the Summary Court-Martial of Sgt. Selena Salcedo. The results of trial/record of trial or record of non-judicial or administrative punishments for any other witnesses the government intends on calling in its case in chief or on pre-sentencing.

3. All other material referenced by SGT Jennifer Higginbotham in page 21 of her statement of August 1, 2004. SGT Higginbotham references physical conduct with detainees that "has been previously documented." Please provide specific references to the materials and copies of same.

4. J2 JIIC Guidance to Bagram Air Base for handling of detainees.

5. CJTF 180 Guidance regarding handling of detainees, and all legal reviews and guidance of same as discussed by Major Bovarnick.

Final 1

6. Request all Standard Operating Procedures, guides, manuals, documents, audio/video tapes, or training material used by the 519th MI Battalion and all Military Police units serving in deployed environments, to include but not limited to Iraq and Afghanistan.

7. Request all documentation pertaining to any inspections or evaluations on Bagram Air Base since the beginning of Operation Iraqi Freedom. Request notice of any meetings that occurred by officials to discuss the operation of the facility whether documented or conducted verbally. Request the names of all parties who attended these meetings or conferences. This shall include, but is not limited to a complete copy of any AR 15-6 investigations, with annexes and supplements not previously provided to the defense. This shall also include any recommendations made by judge advocates or any official of the United States or any country. This shall also include any legal advice given by an administrative law attorney or any judge advocate appointed to advise any of the persons charged with conducting said reports.

8. Request all training schedules and sign in rosters for all Military Police and Military Intelligence soldiers/officers serving at Bagram Air Base Confinement Facility, whether before or after deployment, pertaining to the control of PUC's.

9. Request all training schedules and sign-in rosters showing any training the accused received on Rules of Engagement and the Geneva Convention and any training specifically for the tour of duty in Iraq.

10. Request any logs or journals kept on OGA/ODA personnel's presence at Bagram Air Base.

11. Request any Standing Operating Procedures, guides, training manuals, audio/video tapes or documentation pertaining to interrogation techniques used by the United States Government on detainees, prisoners, prisoners of war, or other designation.

12. Request any memorandums, documentation, or audio/video tapes by any US official which allows additional interrogation techniques not typically authorized by OGA, Military Intelligence, or Military/civilian personnel if granted authority. Request names of the US officials who can grant such authority and any guidance regarding what the additional tactics/techniques are authorized.

13. Request contact information, records, and medical records on Ahmed Al Darbi and Omar Al Faruq.

14. Request any and all investigations done into the alleged activities of Ahmed Al Darbi and Omar Al Faruq which led to them being detained by U.S. authorities.

15. Request any and all OPORDs that pertain to the Bagram Air Base Confinement Facility mission to include the ROE/RUF card then in effect.

16. The name, detainee sequence number, capture number, capture date and crime charged with or suspected of for the all detainees at Bagram Confinement Facility..

17. Request copies of any SIGACTS, FRAGOs, OPORDERs, or other similar documents related to the ICRC visits to Bagram Air Base from 1 August to 1 December 2003.

18. Request copies of all statements, electronic mails (e-mails), memorandums, and other documentation sent or received by anyone in the chain of command, up to and including the Commander-In-Chief (President George W. Bush), regarding Bagram prisoner/detainee abuse.

19. Request copies of all memorandums, point papers, electronic mail (email), statements, documentation, and audio/videotapes regarding the applicability of the Geneva Convention to detainees in all of Iraq, Afghanistan and Guantanamo Bay Prisons.

20. Request copies of all portions of the classified and unclassified Justice Department Memorandum from government attorneys to the White House from on or about August 2002 through May 2004 regarding the torturing of captured Al-Qaeda members abroad and why that torture may be justified in the war on terrorism.

21. Copies of any administrative or other non-criminal investigations related, directly or indirectly, to this case; for example, AR 15-6 investigations, reports of survey, line of duty investigations, commander's inquiries, collateral, Article 139, EO, or IG investigations, and any other like or similar investigation(s) which have not been previously provided

William E. Cassara, Esquire
Civilian Defense Counsel

UNITED STATES)

FORT BLISS, TEXAS

v.)

RESPONSE TO
MOTION TO COMPEL DISCOVERY

CORSETTI, Damien M.)

PFC, U.S. Army)
519th Military Intelligence Battalion)
Fort Bragg, North Carolina 28310)

24 March 2006

COMES NOW THE GOVERNMENT, by and through its appointed representative, and files this, its Response to the accused's Motion to Compel Discovery, showing the Court as follows:

1.

The accused, PFC Damien M. Corsetti, is charged with two specifications of dereliction of duty, in violation of Article 92, UCMJ; one specification of failure to obey a general order, in violation of Article 92, UCMJ; three specifications of maltreatment of a subordinate, in violation of Article 93, UCMJ; one specification of wrongful use of hashish, in violation of Article 112a; three specifications of assault consummated by battery, in violation of Article 128, UCMJ; and three specifications involving indecent acts or language, in violation of Article 134, UCMJ.

2.

Immediately following the preferral of charges against PFC Corsetti, the Government shipped to Defense Counsel complete copies of "CID REPORT OF INVESTIGATION - FINAL(C) - 0134-02-CID369-23533" and "CID REPORT OF INVESTIGATION - FINAL(C) - 0137-02-CID369-23534," both dated 8 October 2004, with all associated, unclassified exhibits and attachments. Electronic mail correspondence between PFC Corsetti's detailed military counsel, CPT Joseph Owens, and the Investigating Officer, COL Jay Hogan, reflects the defense's receipt of those files on 14 October 2006. The unclassified files produced total more than 4,000 pages.

3.

A substantially smaller portion of the investigative documents material to this case are classified, none higher than SECRET. Copies of all relevant, classified materials are maintained by the prosecution at Fort Bliss, Texas and at Fort McPherson, Georgia; some are available in electronic format. The Government's position regarding access to these documents has remained unchanged since preferral of charges (indeed, since preferral of charges in the first Bagram-related prosecution): defense counsel will be provided access to all documents, at either location, at any time. Defense counsel have, in fact, reviewed the classified documents in this case, at both Fort Bliss and Fort McPherson; at no time has any request for access been refused.

1.

APPELLATE EXHIBIT: VII

or even questioned. The Government has declined to provide civilian defense counsel with a "take-home" copy of the materials, his Reserve status notwithstanding. Likewise, the Government has declined to forward a copy of the classified materials to Fort Gordon: no unit or element assigned to Fort Gordon has any responsibility for, or role in, this case, and sound document accountability practices simply do not yield in favor of defense counsel's convenience argument. As for those documents and materials maintained in electronic formats, the Government has repeatedly – to the point of distraction – requested that detailed assistant defense counsel acquire an account on the "AKO-S" classified portal, so that all such materials might be provided in a secure manner. The Government has repeatedly explained that production of those materials can, and will, be accomplished instantaneously upon receipt of secure account information.

4.

The Government responds to the enumerated paragraphs of the Defense Motion to Compel, as follows:

1. Copies of all inspections or evaluations done of Bagram Air Base since the beginning of Operation Iraqi Freedom.

No documents or materials produced during the referenced time frame are relevant to the case at bar.

2. Copies of any logs or journals kept on OGA/ODA personnel's presence at Bagram Air Base.

The Government is unaware of the existence of any documents or materials responsive to the defense's request. Moreover, even assuming, *arguendo*, that such materials could be identified, the presence or absence of personnel not in PFC Corsetti's chain of command would not be relevant to the issues in this case.

3. Medical records, records, and copies of all investigations into the activities of Ahmed al Darbi and Omar al Faruq.

All materials in the Government's possession which are potentially responsive to the defense's request have previously been made available to the defense, as noted above. The Government maintains communications with offices in theater, and has requested that additional record reviews be conducted, to ensure that no potentially-responsive document is omitted; any results, positive or negative, will be provided to the defense immediately upon receipt.

4. The name, detainee number and other information regarding other detainees.

All materials in the Government's possession which are potentially responsive to the defense's request have previously been made available to the defense, as noted above.

5. Statements/e-mails relating to detainee operations at Bagram.

The Government reiterates its objection to the defense's original request, as seeking materials beyond the scope of permissible discovery. The request, as drafted, is entirely too broad to allow for reasonable response: essentially, all documents of any nature, generated or received by anyone (up to and including the President of the United States), which touch, however tangentially, on the topic of detainee operations at Bagram, without limitation to any particular issue or timeframe.

Subject to the foregoing objection, and without waiving same, the Government shows that all documents or materials which would be potentially responsive to a narrowly-tailored request for documents relevant to this case, have been previously provided to the defense, as noted above.


6. Defense request number 20.

The Government remains unaware of any documents or materials responsive to this request. The defense suggests that the existence of the document "has been acknowledged by the administration, and widely reported in the press"; if so, the defense would seem to have access to any such document at a level equal to the prosecution. In any event, even if such a legal opinion exists, it would have no relevance whatsoever to the facts at issue here.

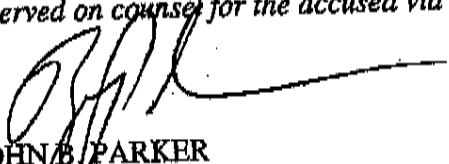
5.

The defense requests that the Court compel production of "all prior statements of the alleged victim, Ahmed al Darbi." The Government shows that all documents and materials in its possession, related in any way to the subject victim, have either been provided or, if classified, are available for review by defense counsel. As noted above, the prosecution has requested that additional record reviews be conducted, to ensure that no potentially-responsive document is omitted; any results, positive or negative, will be provided to the defense immediately upon receipt.

WHEREFORE, the Government, having provided appropriate responses to each and every proper request for discovery made by the defense, prays that the Defense Motion to Compel Discovery be denied.


JOHN B. PARKER
CPT, JA
Assistant Trial Counsel

I hereby certify that the above document was served on counsel for the accused via email on 24 March 2006.


JOHN B. PARKER
CPT, JA
Assistant Trial Counsel

UNITED STATES

v.

CORSETTI, DAMIEN.
PFC, U.S. Army,
A Co., 519th MI Battalion
Fort Bragg, NC 28310

MOTION FOR APPROPRIATE

RELIEF (Abatement)

28 March 2006

I. Motion

AND NOW comes PFC Damien Corsetti, by and through his defense counsels, William E. Cassara, Esquire and CPT Ryan Dowdy, and submits the following Motion to Abate based on unequal access to a witness of central importance under R.C.M. 703 and Article 46 of the U.C.M.J.

II. Legal Standard and Burden of Proof

1. The burden of proof for this motion rests on the moving party, the Defense. The standard of proof is preponderance of the evidence.

III. Statement of Facts

For purposes of this motion, the defense submits the following:

2. PFC Corsetti is charged with a violation of Article 93 of the U.C.M.J. by throwing Omar al-Farouq (BT 179) removing Omar Al Farouq's pants, grabbing him above the head and shoulders, and by bending him over a table and waving a water bottle in close proximity to his buttocks.

3. PFC Corsetti was assigned to the 519th MI Battalion at Bagram Airfield, Afghanistan, at the time of the charged conduct in this case.

4. Omar al-Farouq was a Person Under Control (PUC) at Bagram Airfield, Afghanistan, at the time of the charged conduct in this case. Al-Farouq was in U.S. Custody from on or about August 2002 through on or about July 2005

6. During the course of the Article 32 hearing, the Government disclosed that al-Farouq had somehow escaped from the high-security Bagram Airfield Detention Facility in the summer of 2005, and that his whereabouts were unknown. Omar al-Farouq was in US custody until approximately July 2005. The Defense did not have access to al-Farouq prior to his escape.

7. The *Newsweek* magazine dated 14 November 2005 contained an article entitled "Al Qaeda Prison Break" (pages 34-35) (see Addendum) describing the escape of Omar al-Farouq. The article contained a statement from a confidential informant in the Afghani government, who

revealed that Omar al-Farouq did not escape, but was exchanged for captured U.S. Special Operations soldiers.

IV. Law

9. The Defense relies on the following authority in support of its motion:

R.C.M. 703
Article 46, U.C.M.J.
Article 93
Article 128, U.C.M.J.

V Argument – Government Failed To Meet Burden

10. RCM 703(b)(3) provides:

"if the testimony of a witness who is unavailable is of such central importance to an issue that it is essential to a fair trial, and if there is no adequate substitute for such testimony, the military judge shall grant a continuance or other relief in order to attempt to secure the witness' presence or shall abate the proceedings, unless the unavailability of the witness is the fault of or could have been prevented by the requesting party."

11. Omar al-Farouq is unquestionably a witness of "central importance". Article 93 requires a showing that the accused's actions resulted in "pain or suffering". DA PAM 27-9, para 3-17-1(d). Without Farouq's testimony, the Government can only present the testimony of a soldier who witnessed the alleged incident from a distance, but claims to know whether Farouq suffered. This is not an adequate substitute to Farouq's testimony. Farouq received no medical attention, and made no statements regarding the alleged incident. His statements would provide critical and vital information concerning this alleged incident.

12. Article 46 requires that both the Government and the Defense have "equal opportunity" to obtain evidence. Omar al-Farouq was in the Government's custody for approximately 2 ½ years after the alleged incident of the instant case. The Defense was never given an opportunity to question Farouq. The Defense does not claim that the Trial Counsel had anything to do with al-Farouq's unavailability. However, the *Newsweek* article along with the astonishing circumstances of Farouq's escape from a highly-fortified facility support the inference that the US Government may have caused Farouq's unavailability.

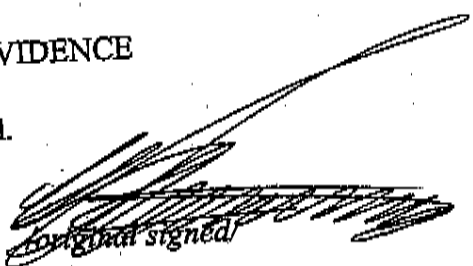
VIII. PROPOSED RELIEF

13. In light of the extremely unequal access to a witness of central importance, the Defense requests a continuance until Omar al-Farouq is produced. Alternatively, the

Defense requests the Military Judge to abate the charges associated with Omar al-Farouq.

IX. EVIDENCE

14. Oral argument is requested only in rebuttal.



original signed

WILLIAM E. CASSARA
Civilian Defense Counsel

CERTIFICATE OF SERVICE

I certify that on 28 March 2006, I forwarded this request by e-mail to CPT Christopher Ellis,
Trial Counsel.



original signed

WILLIAM E. CASSARA
Civilian Defense Counsel