IN THE UNITED STATES ARMY COURT OF CRIMINAL APPEALS

U N I T E D S T A T E S,
Appellee

v.

First Lieutenant,
CLINT A. LORANCE,
United States Army,
Appellant

APPELLEE RESPONSE TO MOTION TO RETURN THIS INCOMPLETE RECORD OF TRIAL TO THE CONVENING AUTHORITY FOR CONSIDERATION OF AND ACTION ON EXCULPATORY AND MITIGATING EVIDENCE ACQUIRED AFTER INITIAL ACTION BUT BEFORE THE RECORD SHOULD HAVE BEEN FORWARDED

DOCKET No. ARMY 20130679

Tried at Fort Bragg, North Carolina, on 25 April, 22 July, 30 July, 31 July, and 1 August 2013, before a General court-martial convened by Commander, Headquarters, 82d Airborne Division, Colonel Kristen Brunson, Military Judge, presiding.

TO THE HONORABLE, THE JUDGES OF THE UNITED STATES ARMY COURT OF CRIMINAL APPEALS:

COME NOW the undersigned appellate government counsel, pursuant to Rules 2, 23.1 and 30.3 this Honorable Court's Rules of Practice and Procedure (hereinafter, "this Court's Rules"), hereby responds to appellant's "Motion to Return This Incomplete Record of Trial." In addition, Government relies upon this Court's Rule 22 in response to appellant's factual allegations and Def. App. Ex. G.

Civilian Counsel

Statement of the Case

A panel of officers convicted appellant, contrary to his pleas, of one specification of attempted murder of an Afghan military aged male, two specifications of unpremeditated murder of Afghan military aged males, and five specifications of conduct prejudicial to the good order and discipline of the service in violation of Articles 80, 118, and 134 Uniform Code of Military Justice, 10 U.S.C. §§ 880, 918, and 934 (2005)(hereinafter, UCMJ). Appellant was acquitted of making a false official statement, in violation of Article 107, 10 U.S.C. § 907, UCMJ.

On 1 August 2013, the panel sentenced appellant to total forfeitures of pay and allowances, confinement for twenty years, and a dismissal from service. On 31 December 2014, based upon the clemency recommendations of the Staff Judge Advocate, the convening authority approved only nineteen years confinement. The convening authority otherwise approved the sentence as adjudged, and except for that portion of the sentence pertaining to dismissal, ordered the sentence executed. (Def. App. Ex. A).[1]

[1] In appellant's brief, he alleges an ambiguity between the sentence as adjudged, the advice as to clemency, which specifies "six months", and the hand written decision on the Petition for Clemency, wherein the convening authority wrote, "twelve months." With a reduction from twenty years to nineteen years, there is no ambiguity between the convening authority's intent, and the action taken on 31 December 2014. R.C.M. 1107 does not require the convening authority to "show his work." There is no

Pursuant to Rule for Courts-Martial (hereinafter R.C.M.) 1107 and R.C.M. 1111, the office of the Staff Judge Advocate (SJA) caused the initial action and the record of trial to be forwarded to this honorable court on that same day. The record was sent electronically, and the original was forwarded via Federal Express on 3 January 2015. (Def. App. Ex. E).

Appellant was served the authenticated record of trial on 9 July 2014. On 10 July 2014, Appellant submitted a request for a twenty day extension to submit his 1105/1106 matters. This request was approved. (Gov. App. Ex. 1)[2]. On 31 July 2014, appellant submitted a second request for extension to file matters, through 15 August 2014. This was approved. (Gov. App. Ex. 1).

Over the course of several months, appellant made multiple submissions and supplements to his post-trial matters. All matters, including those alleging legal error, were considered by the convening authority prior to action, and were referenced

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reason in law or fact to presume that the SJA's advice was not a basis for the decision made by the convening authority in granting clemency. There is no arguable reason to add the six months recommendation, related to post-trial delay, to the twelve months granted by the convening authority.

[2] To avoid confusion and maintain continuity within these filings, all attached exhibits to this response will be marked as "Gov. App. Ex" with numbered identification." Appellant has motioned for attachment of exhibits, marked "Def. App. Ex." with alphabetic identification.

in the addendum to the SJA recommendation, dated 31 December 2014. (Def. App. Ex. B).

The Chief of Military Justice prepared an administrative document, memorializing the chronology of the extensive post-trial processing delay. This was dated 31 December 2014, and is the document appellant references as "new matters" under R.C.M. 1106. (App. Ex. C).

On 10 January 2015, appellant submitted an additional memo for consideration by the convening authority. This memo alleged *Brady*[3] issues, which appellant states he discovered post-trial, but within ten days of the action taken on 31 December 2014. (Def. App. Ex. G). On 14 January 2015, appellant alleged additional discoveries.[4] This memo, and the matters contained therein, are outside the ten day period in R.C.M. 1106(f)(5) and (7), and arguably irrelevant for this Motion to Return the Incomplete Record. (Def. App. Ex. H). The SJA forwarded these post-action submissions to the Clerk of Court, citing lost jurisdiction after forwarding of the record for the regular course of review. (Def. App. Ex. E).

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[3] *Brady v. Maryland*, 373 U.S. 83 (1963).

[4] Appellant alleges additional biometric evidence can be found in a government database, as well as a potential witness to a separate engagement on the same date as those subject to this court-martial.

Law and Argument

I. The SJA recommendation and its addendum are in proper form, and were lawfully considered prior to action by the convening authority.

Appellant alleges that the record was improperly forwarded to this honorable Court, citing his inability to respond to a post-trial memorandum for record. This argument fails. Appellant cites to the proper provisions for post-trial considerations, but fails to identify any "new matter" under the definitions of R.C.M. 1106(f)(7). Even assuming this administrative memo contained new matter, that alleged deficiency under R.C.M. 1106 is harmless. It is appellant's burden to show colorable prejudice before this Court. He alleges no relationship between the post-trial delay memo, and the claim of newly discovered evidence that was not considered due to the forwarding of this record. As such, the issues raised in this motion are not yet ripe, and should be tabled for consideration in the course of normal appellate review, per the statutory requirements of Article 66(a), UCMJ (10 U.S.C. § 866 (2012)).

a. Administrative matters, even when they reference documents outside the record, do not trigger the additional ten day waiting period under R.C.M. 1106(f)(7).

As noted above, the appellant was granted ample opportunity to submit matters in requests for clemency, pursuant to R.C.M. 1105, and to allege additional legal errors pursuant to R.C.M. 1106. Appellant submitted original matters and seven

supplemental matters for consideration under both R.C.M. 1105 and 1106. (Def. App. Ex. B). Appellant, over the course of several months alleged fourteen separate legal errors. Unlawful post-trial delay processing delay was included in these allegations. In the addendum to the SJA recommendation, which is now at issue, the SJA advised, "I agree that post-trial processing delay amounted to legal error in this case. In accordance with U.S. v. Moreno [sic], to compensate First Lieutenant Lorance for this violation I recommend reducing the period of confinement by six months." (Def. App. Ex. B, at para. 9).

At action, the convening authority granted clemency, reducing the period of approved confinement to nineteen years. (Action). The plain language of this advice is simple and responsive to the allegations of legal error. The SJA recommendation does not address any additional matters outside the scope of the allegations. Without opening the door to further matters or new issues in law, the addendum does not justify additional discussion or redundant litigation. The rules do not contemplate such back and forth advocacy in the post-trial arena, and appellant cites to no provision within the rules for courts-martial that indicate otherwise. Appellant generally references R.C.M. 1106(f)(7), but omits key words. This is a mandatory provision of due process, requiring service

and time to respond. However this provision is applicable only if new matter is included in the SJA addendum itself. (R.C.M. 1106(f)(7)).

"New matter" is not defined in the *Manual for Courts-Martial*, However, the Discussion to R.C.M. 1106(f)(7) provides:

> "[n]ew matter" includes discussion of the effect of new decisions on issues in the case, matter from outside the record of trial, and issues not previously discussed. "New matter" does not ordinarily include any discussion by the staff judge advocate or legal officer of the correctness of the initial defense comments on the recommendation. MCM, pt. II, R.C.M. 1106(f)(7), Discussion.

While CAAF has not provided a comprehensive definition of the term "new matters", they have addressed this question. See, generally, *United States v. Scott*, 66 M.J. 1, 3 (C.A.A.F. 2008); See *United States v. Buller*, 46 M.J. 467, 468 (C.A.A.F. 1997). CAAF has held that a matter that "was not new, and [was] thus not new matter." *Scott*, 66 M.J. at 3. Likewise, "a statement of the obvious" does not constitute a new matter. *Id., citing United States v. Key*, 57 M.J. 246, 248 (C.A.A.F. 2002).

The document prepared by the Chief of Justice is purely administrative. There is no reference to this memorandum in the SJA recommendation, or the addendum, nor is it itemized as a matter that was considered by the convening authority prior to action. The memo itself alleges no additional information or legal basis that could be interpreted as adverse to appellant's

claim of error. In short, this is an appropriate administrative document, prepared in the regular course of business, by a diligent and detailed military justice supervisor. In the normal course of appellate review, we expect no less than this performance from a field supervisor, and almost always require similar documentation in preparation of appellate response when post-trial delay is an issue.

Should this Court find that this document *might* have been considered in the preparation of the SJAR addendum, or the convening authority's decision, it remains proper and appropriate, pursuant to R.C.M. 1107(b)(3)(B)(iii). This rule expressly states that the convening authority may consider all other matters as he deems appropriate. "However, if the convening authority considers matters *adverse* to the accused from outside the record, with knowledge of which the accused is not chargeable, the accused shall be notified and given an opportunity to rebut." (Emphasis added). This memorandum factually supports the recommendation for significant clemency related to the post-trial processing delay. Comparing this memo to the SJA's advice to give six months clemency for delayed processing, there is no indication that this memo is adverse to the appellant. On the contrary, the memo could have only buttressed appellant's petition for clemency at action. If a convening authority considers matters beyond the record of

trial, then they must be somehow adverse to the accused to trigger the additional period of review and response time. Appellant's statement that the record "could not be forwarded until the time period had run" ignores that condition precedent to the rule. (App. Brief at 7).

b. Appellant has not met his burden under any theory for relief. He has failed to demonstrate any level of prejudice attributable to the alleged deficiency under R.C.M. 1106(f)(7).

Even if an SJA fails to serve an SJAR Addendum containing "new matter" on the defense, an appellant bears the burden to "demonstrate prejudice by stating what, if anything, would have been submitted to 'deny, counter, or explain' the new matter." *Scott*, 66 M.J. at 3 (citing *United States v. Key*, 57 M.J. 246, 248 (C.A.A.F. 2002)). Moreover, the appellant must make a colorable showing of prejudice by proffering a "possible response to the unserved addendum *that could have produced a different result.*" *United States v. Gilbertson*, 57 M.J. 57, 61 (C.A.A.F. 2006)(emphasis in original)(citations and internal quotes omitted). "The failure to serve new matter upon the defense is not prejudicial if the new matter is 'neutral information' or 'so trivial as to be nonprejudicial.'" *United States v. Chatman*, 46 M.J. 321, 323 (C.A.A.F. 2007)(citation omitted). Factors considered in assessing possible prejudice include whether the statement in question was false, misleading,

or incomplete. *United States v. Cornwell*, 49 M.J. 491, 493 (C.A.A.F. 1998).

This rule is not intended to keep the window open for further defense investigation, which is clear from the strict time constraints under R.C.M. 1105(c)(1) and 1106(f)(5), which limits defense time to respond to ten days, with a possible twenty day extension only for good cause shown.[5]

Much like the facts in *United States v. Tessier*, ARMY 20100161, 2011 WL 2279613 (Army Ct. Crim. App. 7 June 2011)(mem. op.)[6], this memorandum for record contained facts that served only to address the correctness of appellant's assertion of legal error. Assuming this memo was used in the preparation of either the addendum or the action, appellant offers no rationale as to why it was improper. There is no reason the SJA could not

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[5] R.C.M. 1105(c)(4) states "good cause for an extension ordinarily does not include the need for securing matters which could reasonably have been presented at the court-martial."

[6] In *Tessier*, appellant's R.C.M. 1106 submissions stated that trial judges consult the Federal Sentencing Guidelines when sentencing child pornography cases, but that the convening authority is not bound by this and can hand down a lesser sentence. That SJA Addendum responded to the asserted matter, stating the appellant actually "served less than one-quarter of the sentence" of the minimum sentence prescribed in the Guidelines. *United States v. Tessier*, at *1. That addendum specifically referenced legislative authority to provide context to the convening authority. Here, the Chief of Justice's internal memo, if considered, provided context to the SJA alone, to assist his understanding of the lengthy post-trial processing delay.

put his allegation of legal error into context for the convening authority.

Instead, appellant attempts to bootstrap this rule for post-trial matters into deeper waters. The allegations of prejudice discuss "newly discovered evidence" entirely unrelated to the issues of post-trial delay. Appellant was properly notified of the action and forwarding of his record for appellate review on 31 December 2014. Rather than address the Court, he submitted a memorandum for consideration to the convening authority on 10 January 2015.[7] This memorandum is completely unrelated to the issue of post-trial delay, and focuses squarely on allegations of new evidence. Without a causal relationship, appellant has failed to show any prejudice attributable to an alleged due process violation under R.C.M. 1106(f)(7).

c. Appellant's effort to discuss post-trial *Brady* allegations are irrelevant to the captioned motion, and fail to allege violations pursuant to the continuing rules of discovery or controlling legal precedent.

Appellant's 10 January 2015 memorandum (Def. App. Ex. G) alleges post-trial *Brady*[8] violations, but fails to apply the holdings of *Brady*, and its progeny, to the post-trial context. Appellant apparently recognizes that deficiency in his position,

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[7] This document was received one day late, if we take appellant's arguable right to ten days to respond.

[8] *Brady v. Maryland*, 373 U.S. 83 (1963).

and instead attempts to argue an over-arching duty to seek out information. Appellant alleges evidence that could have been discovered in ancillary investigations and unnamed or classified databases. He applies the term "reasonable" when arguing that those outside references are required prosecutorial searches in the regular course of pretrial investigation. However, appellant provides this Court with no law or authority to support that position. Instead, Appellant relies generally on R.C.M. 701(a)(6), alleging far reaching and overly broad obligations to investigate that is not supported by the plain language of the rule.

Appellant does not allege that the government ignored or otherwise violated a pretrial discovery request. (Gov. App. Ex. 2).[9] Nor does he allege that there was any obvious avenue that might have led the government to this "newly discovered evidence."[10] Article 46, UCMJ (10 U.S.C. §846 (2012)), allows

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[9] In order to provide this Court with context regarding the unspecified allegations of discovery errors, the index to the authenticated Record of Trial is attached. There is no indication that discovery failures were litigated at the pretrial or trial sessions. Appellant alleges that the CID report indicated further interviews that might have been beneficial to his trial strategy. As the government could not be charged with understanding what evidence *might* be favorable to strategy, a specific discovery request would have been necessary to require expansion of the trial counsel's due diligence obligations under R.C.M. 701(a)(6). R.C.M. 703(f)(3). That was not done here.

[10] Appellant attached three separate appendices to the 10 January 2015 memorandum. The first seems to be a series of power-point

equal opportunity to obtain witnesses and other evidence. Appellant would have this court presume that R.C.M. 701 is without bounds, requiring unfettered prosecution efforts to secure information. This interpretation of the rule would mean that the government must search, even without plausible indicia that relevant or favorable evidence might be available in outside sources.

Our superior court has addressed this issue. CAAF held that the broad discovery process in military justice is not without its boundaries. "The core files that must be reviewed include the prosecution's files in the case at bar." *United States v. Williams*, 50 M.J. 436, 440 (C.A.A.F. 1999)(citing *United States v. Simmons*, 38 M.J. 376 (C.M.A. 1993)). Beyond this, the prosecution's burden, while defined by the facts of the case, is generally limited to favorable evidence known to the others acting on the government's behalf *in the case*." *Id.* (citing *Kyles v. Whitley*, 514, U.S. 419, 434 (1995))(emphasis in the original). "The prosecution is not required to search for

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slides, without authentication or source explanation. There is some indication that these are based upon agent's notes gleaned from the CID report, and therefore would have been discoverable pretrial. Appellant does not allege any indicator that would put the government on notice of the relationship to the defense case at bar. The second appears to be a self-created "family tree" of sorts, in an attempt to identify relationships of terror between various local nationals. The third is a series of news articles, discussing the use of motorcycles in the area of operations at issue.

the proverbial 'needle in a haystack', but need only review prosecution 'files and those police files readily available' to the prosecution." *Id.* (citing *Simmons*, 38 M.J. at 382, n. 4).[11]

II. Appellant cites to no authority for its requested remedy of remand. Additionally, appellant buries a Petition for New Trial within a Motion for Incomplete Record. Should this Court entertain the additional arguments relevant only to a Petition for New Trial, appellant fails to meet the high burden for such extraordinary relief.

Appellant's Motion is styled as administrative error under this Court's Rule 30.3. However, the allegations buried in this motion are better considered under the formal requirements of this Court's Rule 22, R.C.M. 1210, and the statutory limitations of Article 73, UCMJ, 10 U.S.C. §873. Should this Court agree, then appellant has failed in his burden to raise any justification for a new trial. He provides no proffer of authenticity, no witnesses, no affidavits, and no evidence as required by R.C.M. 1210(c).

Pursuant to Article 73, UCMJ, within two years of convening authority action, an "accused may petition . . . for a new trial on the grounds of newly discovered evidence or fraud upon the

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[11] In *Williams*, CAAF held that "the scope of the due-diligence requirement with respect to government files beyond the prosecutor's own files generally is limited to: (1) the files of law enforcement authorities that have participated in the investigation of the subject matter of the charged offenses; (2) investigative files in a related case maintained by an entity 'closely aligned with the' prosecution, and (3) other files, as designated in a defense discovery request, that involved a specified type of information within a specified entity. *Williams*, 50 M.J. at 441 (citations omitted).

court." *United States v. Brooks*, 49 M.J. 64, 68 (C.A.A.F. 1998) (quoting *United States v. Williams*, 37 M.J. 352, 356 (C.M.A. 1993)). The burden is on appellant. (Gov. App. Ex. 2).[12] In order to receive a new trial based on newly discovered evidence, appellant must show:

> (A) The evidence was discovered after the trial;
>
> (B) The evidence is not such that it would have been discovered by the appellant at the time of trial in the exercise of due diligence; and
>
> (C) The newly discovered evidence, if considered by a court-martial in the light of all other pertinent evidence, would probably produce a substantially more favorable result for the accused.

United States v. Brooks, 49 M.J. 64, 68 (C.A.A.F. 1998) (quoting *United States v. Williams*, 37 M.J. 352, 356 (C.M.A. 1993)). An appellate service court's decision on whether to grant a new trial will be disturbed only if there is a "clear abuse of discretion." *Id.* "[R]equests for a new trial, and thus rehearings and reopenings of trial proceedings, are generally disfavored, and are granted only if a manifest injustice would result absent a new trial, rehearing, or reopening based on proffered newly discovered evidence." *United States v. Hull*, 70

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[12] At no point was there litigation related to the statements of piecemeal discovery or withholding of potentially exculpatory evidence. Nor do the allied documents contain any specific discovery requests or other documents that might indicate a duty beyond that established in *United States v. Williams*.

M.J. 145, 152 (C.A.A.F. 2011)(quoting *Williams*, 37 M.J. at 356)(internal quotations omitted).

The arguments contained in appellant's brief circle back to those in his 10 January 2015 memo. Buried therein is a request to reopen the case with a post-trial session, with the intent to request a new trial. The statutory parameters of Article 73, UCMJ, set a high bar, and squarely place the burden of proof on the appellant. Minimizing his request within a motion for administrative remedy makes these arguments arguably improper before this Court. At a minimum, it makes these allegations and unsupported statements of fact irrelevant for the captioned motion, which relates solely to R.C.M. 1106(f)(7).

Conclusion

WHEREFORE, this Court should deny appellant's motion for relief. To the extent this motion contains a petition for new trial, that should be properly raised before this Court internal Rule 22, and the statutory parameters of Article 73, UCMJ, 10 U.S.C. § 873.

This Court should otherwise deny this motion for return to the convening authority. Appellant has failed to articulate a lawful or factual basis for relief under the rules of post-trial processing, specifically R.C.M. 1106, 1107, and 1112. This, and all other arguments contained in appellant's motion, are not yet ripe for consideration with this tribunal. They are at best

potential grounds to appeal under the regular course of review pursuant to Article 66(a), UCMJ 10 U.S.C. § 866.

CARRIE L. WARD
CPT, JA
Appellate Attorney

JANAE M. LEPIR
CPT, JA
Branch Chief,
Government Appellate Division

A.G. COURIE III
MAJ, JA
Deputy Chief, Government
Appellate Division

JOHN P. CARRELL
COL, JA
Chief, Government
Appellate Division

CERTIFICATE OF SERVICE AND FILING

I certify that I served or caused to be served a copy of the foregoing on this Honorable court and appellate and civilian defense counsel by hand on this the 20TH day of February 2015.

Tiffani Cox
Paralegal
Government Appellate Division

GOV App. Ex. 1

DEPARTMENT OF THE ARMY
HEADQUARTERS, 82D AIRBORNE DIVISION
FORT BRAGG, NORTH CAROLINA 28310

REPLY TO
ATTENTION OF

AFVC-JA

15 JUL 2014

MEMORANDUM FOR

CPT T. Campbell Warner, U.S. Army Trial Defense Service, Fort Jackson Field Office, Fort Jackson, SC 29207
MAJ Gregory N. Malson, U.S. Army Trial Defense Service, Southeast Region, Fort Bragg Field Office, Fort Bragg, NC 28310
Mr. John N. Maher, 2033 West Roscoe Street, Chicago, IL 60618

SUBJECT: Request for Extension of Time to Submit Post-Trial Matters Pursuant to Rules for Courts-Martial (R.C.M.) 1105 and 1106, United States v. First Lieutenant Clint A. Lorance

1. In accordance with R.C.M. 1105(c)(1) and 1106(f)(5), the defense request dated 10 July 2014 for an additional 20 days to submit matters is hereby approved. You have until 08 August 2014 to submit 1105 matters.

2. The 30 day period following service on the accused and defense attorney will be attributed to defense for submission of matters pursuant to R.C.M. 1105 and 1106.

DEAN L. WHITFORD
LTC, JA
Staff Judge Advocate

DEPARTMENT OF THE ARMY
HEADQUARTERS, 82D AIRBORNE DIVISION
FORT BRAGG, NORTH CAROLINA 28310

REPLY TO
ATTENTION OF

AFVC-JA

6 AUG 2014

MEMORANDUM FOR

CPT T. Campbell Warner, U.S. Army Trial Defense Service, Fort Jackson Field Office, Fort Jackson, SC 29207
MAJ Gregory N. Malson, U.S. Army Trial Defense Service, Southeast Region, Fort Bragg Field Office, Fort Bragg, NC 28310
Mr. John N. Maher, 2033 West Roscoe Street, Chicago, IL 60618

SUBJECT: Second Request for Extension of Time to Submit Post-Trial Matters Pursuant to Rules for Courts-Martial (R.C.M.) 1105 and 1106, United States v. First Lieutenant Clint A. Lorance

1. In accordance with R.C.M. 1105(c)(1) and 1106(f)(5), the defense request dated 31 July 2014 for an additional 7 days to submit matters is hereby approved. I previously granted the defense a 20 day extension for submission of matters pursuant to R.C.M. 1105 and 1106 in this case. You now have until 15 August 2014 to submit 1105 matters.

2. The 37 day period following service on the accused and defense attorney will be attributed to defense for submission of matters pursuant to R.C.M. 1105 and 1106.

DEAN L. WHITFORD
LTC, JA
Staff Judge Advocate

JOHN N. MAHER
Attorney-at-Law
2033 West Roscoe Street
Chicago, Illinois 60618
Johnmaher3724@yahoo.com
(312) 804-9912

10 July 2014

MEMORANDUM FOR Staff Judge Advocate, 82d Airborne Division, Fort Bragg, North Carolina 28310-5000

SUBJECT: Request for Extension of Time to File R.C.M. 1105/1106 Matters, *United States v. 1LT Clint Lorance*

1. Pursuant to Rules for Courts-Martial (R.C.M.) 1105(c)(1) and 1106(f)(5), the Defense (the undersigned civilian counsel and detailed TDS counsel) respectfully requests an additional twenty days within which to submit clemency matters and respond to the Staff Judge Advocate's recommendation (SJAR). The authenticated record of trial and the SJAR were received on 9 July 2014. The current suspense is 19 July 2014. An additional twenty-day extension would change the suspense date to 8 August 2014.

2. Our client is presently assigned to the U.S. Disciplinary Barracks at Fort Leavenworth, Kansas. The undersigned and detailed TDS counsel are both new to the case and are located in Chicago, Illinois, and Fort Jackson, South Carolina. Additional time is needed to consult with our client and his family members/friends, to collect and compile documents for purposes of clemency from various sources, and to properly assist with the preparation and presentation of 1LT Clint Lorance's clemency submission.

3. Given the length of the record of trial, that counsel is new to the case, that counsel must read and review the record of trial, meet with the client and family and others, and provide legal counsel as to clemency materials, additional time may be required in the interest of justice beyond this instant request. We will, however, make every effort to meet the 8 August 2014 suspense, if granted. Should, however, the defense require additional time, we will continue to keep you informed of a submission date.

4. Your favorable consideration is appreciated. I may be reached at (312) 804-9912 or at johnmaher3724@hotmail.com. Captain Warner can be reached at (803) 751-6813 or timothy.c.warner6.mil@mail.mil.

Very truly yours,

By: _____
John N. Maher
Illinois Bar: 6237599
Admitted November 7, 1996
Qualified & Certified, Uniform Code of Military Justice (UCMJ) – 1997
Admitted - US Army Court of Criminal Appeals – 2000
Admitted - US Court of Appeals for the Armed Forces – 2000
Admitted - US Supreme Court – 2001

By: _____
T. Campbell Warner
Captain, U.S. Army

JOHN N. MAHER
Attorney-at-Law
2033 West Roscoe Street
Chicago, Illinois 60618
Johnmaher8724@hotmail.com
(312) 804-9912

31 July 2014

MEMORANDUM FOR Staff Judge Advocate, 82d Airborne Division, Fort Bragg, North Carolina 28310-5000

SUBJECT: Second Request for Extension of Time to File R.C.M. 1105/1106 Matters, *United States v. 1LT Clint Lorance*

1. Pursuant to Rules for Court-Martial 1105and 1106, the Defense (the undersigned civilian and detailed TDS counsel) respectfully requests an additional seven days to submit clemency matters and respond to the Staff Judge Advocate's recommendation (SJAR). The authenticated record of trial and the SJAR were received on 9 July 2014. The first suspense was 19 July 2014. The first request for an additional twenty-day extension adjusted the suspense date to 8 August 2014. If granted, this request would adjust the suspense to 15 August 2014.

2. This is a complex case involving two convictions for murder, one conviction for attempted murder, and related offenses. There are eleven volumes in the Record of Trial and dozens of witness statements a part of the Allied Papers and Exhibits. There are also dozens of witnesses who have/will be making statements as part of our client's clemency matters, and, coordination with civilian and military trial defense counsel, who represented our client at court-martial, remains to be made due to scheduling. Detailed TDS counsel is currently on previously scheduled international travel and will not return to the United States until the week of 4 August. First Lieutenant Lorance is currently confined on Fort Leavenworth, Kansas. First undersigned counsel is scheduled to travel to Fort Leavenworth on 4 August, confer with our client on 5 and 6 August, meet with our client's family, who is traveling from Texas, 7 August, and return to home of record the evening of 7 August. Given the length of the record of trial, the severity of the convictions and sentence, that clemency counsel is new to the case, that counsel must continue review of the record of trial with our client as well as civilian and military trial defense counsel, meet with the family and others, and provide legal counsel as to clemency matters, modest additional time is reasonably required in the interest of justice.

3. Your favorable consideration is appreciated. I may be reached at (312) 804-9912 or at johnmaher8724@hotmail.com. Captain Warner can be reached at (803) 751-6813 or timothy.c.warner8.mil@mail.mil.

Very truly yours,

By: _____

John N. Maher
Illinois Bar: 6237599
Admitted November 7, 1996
Qualified & Certified, Uniform Code of Military Justice (UCMJ) – 1997
Admitted - US Army Court of Criminal Appeals – 2000
Admitted - US Court of Appeals for the Armed Forces – 2000
Admitted - US Supreme Court – 2001

GOV App. Ex. 2

RECORD OF TRIAL

LORANCE, CLINT A.	446-84-0426	First Lieutenant
Headquarters and Headquarters Company, 4th Brigade Combat Team, 82d Airborne Division	U.S. Army	Fort Bragg, NC

By

GENERAL COURT-MARTIAL

Convened by Commanding General
Headquarters, 82d Airborne Division

Tried at

Fort Bragg, North Carolina on 25 April 2013, 22 July 2013, 30 July 2013, 31 July 2013 and 1 August 2013

TESTIMONY

Name of Witness (Last, First, Middle Initial)	Direct and Redirect	Cross and Recross	Court
PROSECUTION			
CIV MITCHELL, Kevin W.	28	31	36
SPC TWIST, James	155,173	163,174	177
SPC BYNES, Brian	178,187	183	188
CPT GILLULY, Christopher	191,205	195	
1LT LEUTE, Jarrid	207,217	214	
1LT JONES, Charles	218,234	230,234	
1LT YODER, Brian	237		
SSG MURRAY, Christopher	241,251	247,253	252
SPC RUSH, Matthew	255,277	267	
SGT WILLIAMS, Daniel	286,351	335,353,357	356
PVT THOMAS, Zachary	359,379, 381,387	374	382
COL HALSTEAD, Scott	389,418,440	405,434	422
SPC FITZGERALD, Todd	447,463	457,464	465
CPT HANNA, Michael	467	469,483	477,479
SFC AYRES, Keith	486,511	500,514	517
PFC SKELTON, James	523,595, 604,614,622	566,602, 605,619	615
SPC FRACE, Brett	626	632	
SPC WINGO, Erik	639	653	
SPC LEON, Reyler	656,665	660	
SGT RUHL, Jarred	667,676	671	
CPT McNAIR, Catherine	678,691	680,689	
CPT SWANSON, Patrick	693,726	714	
PV2 SHILO, David	727,746	741,748	747
SPC FITZGERALD, Todd	921	924	
SPC WINGO, Erik	926		
MAJ FERRIS, Eugene	930	931	

DEFENSE			
CIV BOYETTE, Randy	754		
LTC LANIER, Andrew H.	760	765	
1LT LUCAS, Katrina	770,785,788	779	787
CPT PIERCE, Zachary	932	938	
CIV POWELL, Mark	938		
SSG POGORZELSKI, Matthew	945		
CIV HENDERSON, Shelby	950		
1LT LORANCE, Clint A. Accused's (UNSWORN)	956		

EXHIBITS

NUMBER Or LETTER	DESCRIPTION	PAGE WHERE -	
		OFFERED	ADMITTED
PROSECUTION EXHIBITS			
1	E-mail to CPT Swanson	698	698
2	Picture dead bodies and bike	645	645
3	Pictures of engagement area	560	560
4	Demonstration diagram	306	306
5	2823 - Lorance	--	--
6	Log	--	--
7	Picture of possessions	649	649
8	Chairman Joint Chiefs Staff Instruction	790	791
9	Opening Slides	--	--
10	Closing Slides	--	--
11	ORB	692	693
12	4137 - Hard Drive Toshiba	--	--
13	4137 - Hard Drive Western Digital	--	--
14	Hard Drive Toshiba	--	--
15	Hard Drives x 3	--	--
16	DFE	--	--
17	Picture from tower	261	261

DEFENSE EXHIBITS			
A	2823 - PFC Skelton @1630	--	--
B	2823 - PFC Skelton @1849	--	--
C	2823 - PFC Skelton @1659	--	--
D	Sworn Statement-PFC Skelton 6 July	--	--
E	2823 - PFC Skelton 25 July	--	--
F	Article 32 PFC Skelton Testimony	--	--
G	2823 - Leon	--	--
H	2823 - McNair	--	--
I	2823 - Lucas	--	--
J	Good Soldier Book	955	955

APPELLATE EXHIBITS	
I	CDC Notice of Appearance
II	Def Request for Extension/Government Response/MJ Granting 9 Jul/9 Jul/10 Jul
III	Def Motion in Limine 404b 13 Jul 13
IV	Gov Response to Motion in Limine 404b 17 Jul 13
V	Def Motion to Suppress 13 Jul 13
VI	Gov Response to Defense Motion to Suppress 17 Jul 13
VII	Gov Regulation for Judicial Notice
VIII	Excusals
IX	Gov Proposed Voir Dire
X	Def Proposed Voir Dire
11	FLYER
12	Testimonial Immunities
13	LTC Jenison's Question of SPC Twist
14	COL Gabel's Question of SPC Bynes
14	LTC Jenison's Question of SSG Murray
16	LTC Jones' Question of SGT Williams
17	LTC Jones' Question of PVT Thomas
18	COL Bredenkamp's Question of PVT Thomas
19	LTC Jenison's Question of COL Halstead

APPELLATE EXHIBITS CONTINUED…	
20	LTC Valeriano's Question of COL Halstead
21	COL Gabel's Question of COL Halstead
22	LTC Jones' Question of SPC Fitzgerald
23	COL Bredenkamp's Question of CPT Hanna
24	COL Bredenkamp's Question of CPT Hanna
25	LTC Hockenberry's Question of SFC Ayers
26	COL Gabel's Question of SFC Ayers
27	LTC Tabb's Question of SFC Ayers
28	LTC Jenison's Question of SFC Ayers
29	LTC Jenison's Question of PFC Skelton
30	COL Gabel's Question of PFC Skelton
31	LTC Jones' Question of PV2 Shilo
32	LTC Jenison's Question of 1LT Lucas
33	COL Gabel's Question of 1LT Lucas
34	Gov Proposed Instruction
35	Def Proposed Instruction
36	Findings Worksheet
37	Findings Instructions
38	Sentence Worksheet
39	Sentence Instructions
40	Post-Trial & Appellate Rights

COPIES OF RECORD

____copy of record furnished the accused or defense counsel as per attached certificate or receipt.

____copy(ies) of record forwarded herewith.

RECEIPT FOR COPY OF RECORD

I hereby acknowledge receipt of a copy of the record of trial in the case of US v. Lorance, delivered to me at _____ this ____ day of _____, _____.

_____
(Signature of accused)

I hereby acknowledge receipt of a copy of the record of trial in the case of US v. Lorance, delivered to me at _____ this ____ day of _____, _____.

_____
(Signature of defense counsel)