

THE UNITED STATES ARMY
COURT OF CRIMINAL APPEALS

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

APPELLANT'S DECLARATION

v.

Docket No. ARMY 20130679

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

Tried at Fort Bragg, North
Carolina, on 25 April, 22 July,
30 July, 31 July, and 1 August
2013 before a general court-
martial appointed by the
Commanding General,
Headquarters, 82nd Airborne
Division, Fort Bragg, North
Carolina, Colonel Kristen
Brunsen, military judge,
presiding.

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

DECLARATION OF FIRST LIEUTENANT CLINT A. LORANCE

1. My name is Clint A. Lorance and I am the appellant in this court-martial. I currently reside in the United States Disciplinary Barracks on Fort Leavenworth, Kansas.

2. I write and respectfully offer this declaration in support of the assignments of error generally and the claim of ineffective assistance of counsel specifically filed before this court on 9 December 2015.

3. When I first learned that the Army sought to investigate the events of 1 and 2 July 2012 which occurred near

Strong-Point Payenzai in the Zahray District of Kandahar Province, Afghanistan, I retained Attorney Guy Womack, a retired Marine Corps Judge Advocate and civilian military justice practitioner with an office located in Houston, Texas.

4. In summer 2012, there were approximately three or four phone calls while I remained in Afghanistan on Kandahar Air Field, having been removed from First Platoon, given a no-contact order, given no duties, and stripped of my personal weapon. We emailed maybe 10 times during that time frame.

5. Upon redeployment to Fort Bragg in September 2012, I did not meet with Attorney Womack. Between redeployment and the U.C.M.J. Article 32 investigation in my case, we did not meet. We did not discuss witnesses, tactics, the law, the government's theory of criminal liability, defenses, evidence to support defenses, how to execute a defense, if I should testify, who we should call as witnesses, what documents we would use, what demonstrative evidence we should use, if we should negotiate with the government's representatives, if we needed an expert, or if we needed more time to prepare.

6. It was clear to me that Attorney Womack did not prepare for the Article 32 hearing. I saw him reading sworn statement forms at counsel table while witnesses were testifying. He did not seem to know what they were going to say, nor did he seem to know how to obtain information from them

favorable to the defense case. He did not read the CID file. He did not interview me about First Platoon, or what really happened out there. He did not ask me for information about the witnesses or what happened during my service with First Platoon.

7. Attorney Womack flew in from out-of-town the night before the Article 32 hearing, and did not prepare with me the morning of the Article 32 hearing.

8. The CID Agent's Investigative Summary in the CID file have pages of information concerning evidentiary leads. I thought Attorney Womack should be talking with me about them, especially the names and identities of the males of apparent-Afghan-descent. Some of their phone numbers were listed. I thought it was a good idea for Attorney Womack to call them. I do not know why he did not.

9. Between the Article 32 investigation and trial, Mr. Womack did not meet with me at all. We phoned two or three times. We did not email during this timeframe. He neither drafted, nor filed and argued any pretrial motions. At no point during the pretrial representation did Mr. Womack explain the court-martial process, the pros and cons of an offer to plea, panel member tactics, the strengths and weaknesses of the government's evidence, investigation failures on the part of the government, the defense or defenses, tactics, overall strategy,

opening statements, cross-examinations, the defense case-in-chief, or pre-sentencing.

10. We never discussed whether or not I would testify, until one point in the hallway during a recess, Mr. Womack stated, "I have never put a client on the stand and I will not start now." Although I gave him a list of witnesses, Mr. Womack did not interview any of them. I felt really lost the whole time.

11. Attorney Womack struck me and my family as extremely busy with other cases, and that he really did not have time for me or my family. We felt uncomfortable because he did ask for a lot of money, but we did not see him working for it.

12. He did tell me that this was a "combat-case" not a murder case. He told me and my family that there was no way I was going to jail, that I would be "exonerated," and that I would be able to get on with my career.

13. However, he never explained to me the actual process of each stage of the trial, that we could obtain an expert in biometrics or IED investigations, or that records were within the CID's control in the Kuwait Evidence Room, to include Mohammad Rahim's bloody clothing, and that we should try and get the evidence.

14. I emailed Attorney Womack a list of witnesses, but I know he did not interview them. Nor did he interview the government witnesses.

15. I was shocked that he would not remove COL Hynes from the panel. COL Hynes was scowling at me the whole time and I did not feel comfortable.

16. Attorney Womack knew all about the unit's having ostracized me and punished me after the incident and before trial. I emailed all of that information to him, real time. When he told the Military Judge that there was no pretrial punishment, I felt weak in the knees. Each day in prison is a day I will never get back.

17. Attorney Womack did not show me legal cases, briefs, draft motions, a draft opening statement, cross-examinations, direct examinations, other documents or statements he sought to use, or the instructions on the applicable law and defenses.

18. Attorney Womack decided that he would not seek the instruction on the lesser-included offenses. However, I did not think it made sense not to ask for the other special defenses of justification, mistake of fact, duress, and/or obedience to orders. I thought it better for us that the jury have more ways to acquit than less ways to acquit.

19. The night before the actual trial, Attorney Womack had a rape case conclude in San Antonio, Texas which recessed at

approximately 1600 local time. He then flew to Fayetteville and called me from the car on his way from the airport to his hotel. He did not meet with me that evening. I was worried and very anxious.

20. The morning of trial, Attorney Womack met with me one hour prior to the opening session. During that session, he asked me four questions: i) where did you grow up? ii) where did you go to high school; iii) did you play sports in high school? and iv) where did you enter the Army? He did not offer a defense, explain its components, or identify how he planned to execute the defense through witness cross-examinations, direct examinations, demonstrative evidence, exhibits, documents, or otherwise. There was no collaborative attorney-client agreement on how to defend against the very serious Charges and Specifications facing me. I was really worried.

21. When Attorney Womack arrived for the court-martial, it appeared that he "did a brain drain," because he acted like he did not remember me, and asked only basic questions that he "should have known." In preparation for this trial where I faced the potential of confinement for life without parole, he did not interview witnesses the government disclosed nor did he interview defense witnesses.

22. I didn't think Attorney Womack's closing statement about the Marine Barracks in Beirut made any sense. It seemed to

me like the jury did not think it made any sense, either. I wish would could have practiced an opening and closing statement that talked about the current situation instead of one from thirty years ago.

23. Attorney Womack did not cross-examine those witnesses who had received immunity and had been ordered to testify on those potential grounds for bias or impeachment. He often raised his voice in mock anger to junior enlisted soldiers testifying for the prosecution.

24. I was disappointed that Attorney Womack let the government portray the enemy contact that day as two separate and isolated events. His insufficient investigation ill-equipped him to prove that the enemy contact on 2 July 2012 had every appearance of coordinated and evolving enemy reconnaissance and/or an attack. He unreasonably failed to present the defense's view of what happened out there to show that I am not a murderer.

25. Attorney Womack made no use of the incomplete tactical site exploitation and/or subsequent CID investigation. He did not elicit evidence that the Army sought to pay the villagers a large "Solatia" payment, returned a "Taskera" without identifying the person (one of the purported victims), and that the Army interviewed Mohammad RAHIM at the KAF hospital, took

his bloody clothing, but did not disclose that evidence to the defense for its use.

26. The CID report alerted counsel that Mohammad RAHIM, shot in the arm by First Platoon, and Haji KARIMULLAH, the third rider who escaped, were pivotal if not critical witnesses. The CID investigative summary states that "Haji KARIMULLAH is an important interview - his relatives were killed." *Id.*; ("Haji Karimullah's phone number [listed in the CID investigative summary] is 070-584-9616").

27. I now know that Mr. Womack made no effort in any form to interview these witnesses/victim, Skype with them, talk on the telephone with them, secure their testimony, depose them, or ask the government or the court to give access and make them available to the defense. The government has flown Afghans to the United States for courts-martial before (*United States v. SSG Robert Bales*).

28. Attorney Womack's closing statement did not incorporate that First Platoon testified against me because they were originally told they were murder suspects, that I was the "new LT" who nobody knew, that the platoon had been in bloody combat together for months, and that they received immunity and were ordered to testify against me.

29. On 2 July 2012, the command stripped me of my weapon in one of the most dangerous places in Afghanistan. Green-on-

blue attacks were frequently occurring at the time, and there was always the risk of a direct enemy assault. Yet, I was unable to defend himself.

30. Many soldiers and officers saw me without his weapon. They smirked, laughed, pointed, gawked, laughed, and stigmatized me as a pariah prior to court-martial. I was not even allowed in the DFAC because I did not have a personal weapon - all personnel had to have a weapon to enter the DFAC in order to defend themselves given the risk of insider attack. Instead, I had to buy cold food or microwave food at the PX, another pretrial stigma in a combat zone.

31. Also on 2 July 2012, the command removed me from my position as platoon leader, gave me a no contact order that I could not to speak or communicate with members of my platoon, sent to Kandahar, and given no duties to perform at all.

32. Equally troublesome, the Troop Commander, LTC Howard, berated and chastised me horrifically before a formation at the Kandahar airfield when I arrived to board the plane home. LTC Howard stated, before a large formation of paratroopers, "what the fuck are you doing here?" I replied that I was manifested on that flight, to which LTC Howard replied, "you are not riding with me, find your own fucking way home!"

33. I have never been as humiliated as I was that day in Afghanistan."

34. It is also important to know my mother and father sat through every aspect of the trial. During a break, Attorney Womack said to them, "there is no way that Clint is going to jail - this is a combat case, this is not a murder case."

35. My family and I recall that Attorney Womack had a very busy trial and travel schedule at the time, and that communication was infrequent and often lacking in substance. My conclusion: Attorney Womack shot from the hip relying on his experience rather than investigating and preparing and talking with me.

36. Before the President of the panel announced the sentence, Attorney Womack said to me, "you are a great looking guy so people will trust you."

37. When the President of the panel announced the sentence adjudged, to include 20 years confinement, Attorney Womack told me, "don't worry...it's not that bad in there [the penitentiary] . . . I hear they actually have cottages out there for the officers."

38. My appellate lawyers shared the contents of Attorney Womack's file with me. It is hard for me to explain how abused, neglected, and manipulated I feel - almost foolish, to have trusted Attorney Womack.

39. It seems to me that there is a breakdown in the criminal justice system when a self-proclaimed professional and

retired Lieutenant Colonel failed to prepare, communicate, explain, and/or present my case; to give me and my family a fighting chance.

40. Mr. Womack's told me that his trial schedule prevented him from attending an important motions hearing after the U.C.M.J. Article 32 but before the actual trial began.

41. From my experience working in the TOC, just about any soldier assigned there will explain that the Brigade Commander, Deputy Commander, S-3, and S-2 regularly accessed and used biometric enrollment data to plan targets and execute missions.

42. The lead trial counsel, CPT Otto, is a former Infantry officer and Ranger with combat deployment experience before he became an Army Judge Advocate through the Funded Legal Education Program.

43. The Brigade Staff Judge Advocate's office was located within Building C-1140 on Fort Bragg. That building is U-shaped, and the reception area is the horizontal bridge of the U. The command hallway is to the left vertical extension and the staff shops are all on the right. [The trial counsel's] office is located directly across a six-foot wide hallway from the Brigade S2 shop. [The trial counsel] could have walked twenty steps from his desk to the desk of the intelligence analysts and asked for an intel dig into these people's identity.