

**IN A GENERAL COURT-MARTIAL
IN THE SECOND JUDICIAL CIRCUIT, U.S. ARMY TRIAL JUDICIARY
FORT BRAGG, NORTH CAROLINA**

UNITED STATES)	
)	
v.)	GOVERNMENT MOTION TO COMPEL
)	REPORTS PREPARED PURSUANT TO
BERGDAHL, ROBERT BOWDRIE)	RULE FOR COURT-MARTIAL (RCM) 706
(BOWE))	
SGT, U.S. Army)	
HHC, Special Troops Battalion)	22 August 2017
U.S. Army Forces Command)	
Fort Bragg, North Carolina 28310)	

I. RELIEF SOUGHT

The Government requests the Court order the Defense to release the full contents, other than any statements by the accused, of any report prepared pursuant to RCM 706. The Government does not request oral argument.

II. BURDEN OF PERSUASION AND BURDEN OF PROOF

The Government, as the moving party, has the burden of persuasion in accordance with RCM 905(c)(2), and the burden of proof is preponderance of the evidence in accordance with RCM 905(c)(1).

III. FACTS

On 27 July 2015, Dr. Christopher Lange concluded a sanity board evaluation ordered by LTC Peter Burke, the Special Court-Martial Convening Authority. In accordance with RCM 706(c)(3)(A), only a statement consisting of the board's ultimate conclusions was provided to the Government. On 21 August 2017, the Defense gave notice to the Government in D APP 91 (Defense Notice of Expert Testimony) that it intends to offer expert testimony concerning the mental condition of the accused.

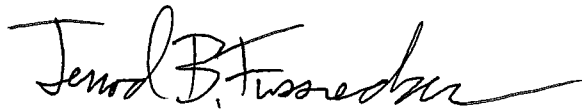
IV. LAW AND ARGUMENT

MRE 302(c) states: "If the defense offers expert testimony concerning the mental condition of the accused, the military judge, upon motion, must order the release to the prosecution of the full contents, other than any statements made by the accused, of any report prepared pursuant to R.C.M. 706."

In this instance, an inquiry into the mental capacity and responsibility of the accused was concluded on 27 July 2015 and the Defense gave notice to the Government on 21 August 2017 that it intends to offer expert testimony concerning the mental condition of the accused. Therefore, the Defense is now required to disclose to the Government any reports related to the inquiry into the mental capacity and mental responsibility of the accused that were conducted according to RCM 706.

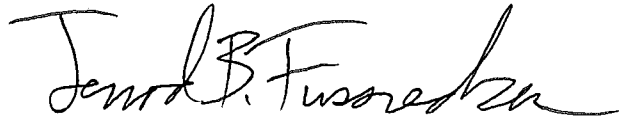
V. CONCLUSION

Based upon MRE 302(c) and RCM 706, the Government requests the Court to order the Defense to release the contents of the full report of the RCM 706 inquiry to the Government.



JERROD B. FUSSNECKER
MAJ, JA
Trial Counsel

I certify that I have served or caused to be served a true copy of the above on the Defense Counsel on 22 August 2017.



JERROD B. FUSSNECKER
MAJ, JA
Trial Counsel