

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

_____)	
UNITED STATES OF AMERICA)	
)	
v.)	No. 1:08-cr-360-RMU
)	
PAUL ALVIN SLOUGH,)	
NICHOLAS ABRAM SLATTEN,)	
EVAN SHAWN LIBERTY,)	
DUSTIN LAURENT HEARD, and)	
DONALD WAYNE BALL,)	
)	
Defendants.)	
_____)	

JOINT STATUS REPORT

The parties respectfully submit this Joint Status Report in response to the Court’s July 8, 2009, request. In this Joint Status Report, the parties relay those issues where they have reached an agreement on a proposed schedule and those issues where there remains a disagreement. The parties have attempted to resolve these disputes through meeting and conferring.

In addition, pursuant to the Court’s request, the parties attempt to identify herein the issues that need to be resolved based on the parties’ present understanding; any motions the parties presently intend to raise with the Court (with the understanding that other motions may be necessary once discovery is completed); whether a hearing for those motions is requested, and if so requested: (i) what the subject of the hearing would be; (ii) the approximate length of the hearing; and (iii) the number of witnesses the parties expect would be called.

Defendants respectfully request an interim status hearing in early August to discuss the issues raised herein. The Government is not opposed to a status hearing in early August or any

time in September to resolve any remaining scheduling issues that cannot be worked out between the parties.

A. The Parties' Agreed-Upon Schedule

The parties have agreed to the following proposed schedule regarding briefing on the merits (*i.e.*, not *Garrity/Kastigar* pleadings):

Bill of Particulars

Government filed its Opposition to Defendants' Motion for a Bill of Particulars on July 9, 2009 (Docket # 96); and

Pursuant to a prior agreed-to schedule, Replies are to be filed on or before July 23, 2009.

Discovery Motions

Discovery Motions on or before July 27, 2009;

Oppositions on or before August 14, 2009; and

Replies on or before August 21, 2009.

Pre-Trial Motions/Notices

Pretrial Motions/Notices on or before October 23, 2009;

Oppositions on or before November 13, 2009; and

Replies on or before November 25, 2009.

Dates Set Pursuant to the Court's Standing Order and January 6, 2009 Order

A Joint Pre-Trial Statement on January 2, 2009¹;

A pretrial conference on January 14, 2010, at 10:00 a.m.;

Jury Selection on January 29, 2010, at 10:00 a.m.; and

Trial on February 1, 2010, at 10:00 a.m.

¹ The parties will submit motions in limine pursuant to the Court's Standing Order for Criminal Cases.

B. The Scheduling Issues that the Parties Dispute

There are a number of issues that the parties dispute.²

1. The Defendants' Proposed Schedule on Disputed Issues

Discovery Cutoff

The Government shall complete all discovery, including *Kastigar* related discovery, on or before July 31, 2009.

Defendants respectfully request a date-certain as a cutoff for document productions and discovery. The Government represented to the Court at the arraignment that it could be ready to try this case in early September 2009. The Court set February 2010 as a trial date and admonished both sides to avoid any delay. While some discovery has been produced, the Government has represented that there is still more to be produced. The Government has been investigating this case for over two years through a Grand Jury. It has access to all of its evidence and there is no reason why it cannot be fully disclosed now. Moreover, this trial presents unique issues for the defense. The factual events and witnesses are located in Iraq, a place that remains very dangerous to travel to. Defendants require sufficient time to evaluate the Government's discovery and investigate it in Iraq. While under ordinary circumstances, a discovery cutoff six months before trial may be early, in this case it is justified and is reasonably necessary in order to hold the trial as scheduled.

² Defendants' understanding of the Court's July 8, 2009, request was for the parties to submit a Joint Status Report that proposed areas of agreement and disagreement with respect to a schedule without explanation or advocacy. Defendants initially drafted a Joint Status Report that was devoid of any advocacy or explanation. The Government's position was that Defendants' requests for certain deadlines, such as a discovery cutoff or a deadline for Rule 404(b) Notices, required some explanation since Defendants were proposing dates that would likely pass before the parties had an opportunity to present their positions to the Court. Since the Government would not agree to present just dates to the Court (as requested), Defendants have included brief explanations of their positions.

404(b) Notices

The Government shall provide any Rule 404(b) Notices with respect to the Defendants on or before July 31, 2009.

For the reasons explained above, any prior bad acts evidence that the Government may intend to use will most likely involve a Defendant's service in the military or with Blackwater. In either event, there is a strong likelihood that any investigation of the evidence would require travel abroad and/or locating transient witnesses who most likely remain in the military or working for a government contractor. The Government is fully aware of this evidence and should provide notice of it now so that Defendants may fairly rebut it in time for trial. Moreover, Defendants' proposed schedule would permit Defendants to file any motions *in limine* to exclude the proposed 404(b) evidence by the agreed-upon motions deadline of October 23, 2009, which would give the Court more time to consider this important issue.

Kastigar

Motion to Dismiss on or before July 30, 2009;

Oppositions on or before August 20, 2009; and

Replies on or before September 3, 2009.

As explained in more detail in Defendants' Opposition to the Government's Preemptive Motion to Foreclose Application of *Kastigar* (Docket # 98), which was filed under seal, the Government's attempt to preempt the above-schedule on a motion to dismiss for *Kastigar* violations, a schedule which was long discussed with the Government, is contrary to law and orderly procedure. The Government's motion should be stricken or summarily denied, and the Court should consider this issue in due course based on a motion to dismiss filed by the Defendants.

2. The Government's Proposed Schedule on Disputed Issues

Defense Discovery Motions

The Government's position is that the defendants are free to file their discovery motions at any time, and the Government is not opposed to the defendants' request that they file their motions on or before July 27, 2009. The defendants have been advised by the Government that discovery will not be completed until September 18, 2009, especially as to several discovery requests made recently by the defendants. The Government therefore urged the defendants to delay filing their discovery motions until after that discovery is provided.

Discovery Cutoff

The Government is opposed to the entry of an order imposing a discovery deadline on the Government. Such an order is premature on this record, where the defendants have not yet even filed a motion to compel, and the Government has demonstrated its good faith in meeting its discovery obligations by producing over 9,300 pages of documents, 3,945 photographs and diagrams, and 16 digital videos to the defendants in response to their discovery requests. See Government's Opposition to Defendants' Motion for Bill of Particulars [**Document 96**], at 3 and 8.

The defendants previously indicated by letter that they agreed with a Government offer to produce any remaining expert reports by September 18, 2009, but the defendants now seek to move that date up to July 31, 2009 – a full six months before trial – even though the defendants had been advised that the Government cannot meet that deadline. The Government's position is that the Court should not impose any discovery deadlines on the Government until the Court has had an opportunity to review the record of discovery produced to date, and consider the merits of

any defense discovery requests that remain outstanding. The Government respectfully requests an opportunity to be heard on these issues at the next status hearing before the Court imposes any discovery cutoff.

404(b) Notices

Similarly the defendants previously indicated by letter that they agreed with a Government offer to file its Rule 404(b) notices on or before by September 18, 2009. As late as last week, the defendants were expressing a willingness to agree to a briefing schedule that would allow the parties to file motions and notices on October 23, 2009. However, the defendants now seek to move that date up to July 31, 2009 as well.

The Government is prepared to file any Rule 404(b) Notices four months before trial, that is, on or before October 1, 2009.

Kastigar

The Government filed a “Motion for *Garrity* Hearing In Lieu Of A Pretrial *Kastigar* Hearing” on July 7, 2009.

It is the Government's position that a *Kastigar* hearing is not required for the reasons set forth in the Government's Motion For a *Garrity* Hearing in Lieu of a Pretrial *Kastigar* Hearing. The Government's motion presents discrete legal issues that need to be decided in advance of any evidentiary hearing. A briefing schedule should be established for this motion and the Court should hear oral argument on it. Although the Government will continue to produce discovery on the *Kastigar* issue, the Court's ruling on this motion will affect the scope of the Government's discovery obligations.

C. Issues that Need to be Resolved Before Trial

1. Motions Defendants Intend to File As of Now

Defendants have met and conferred with the Government on all of these motions identified below. The Government does not consent to these motions with the exception of the first one identified below. Defendants reserve their rights to file motions up to the deadlines imposed by the Court's forthcoming scheduling order. These motions represent Defendants' intention based on the factual information presently available to them.

- a. Consent Motion to Supplement the Record Concerning Defendants' Motions to Dismiss for Lack of Jurisdiction and Venue. (This motion will be filed when discovery is complete as additional information in support of Defendants' motions continues to be produced).
- b. Defendants' Motion for Disclosure of the Prosecution's Instruction and Argument to the Grand Jury Regarding the Military Extraterritorial Jurisdiction Act.
- c. Defendants' Motion to Dismiss the Indictment for Improperly Instructing the Grand Jury Regarding the Military Extraterritorial Jurisdiction Act. (Defendants intend to file this motion if the motion identified above is granted and produces information that supports such a motion).
- d. Motion to Compel Rule 16 Discovery
- e. Motion to Compel Brady Disclosures
- f. Motion to Dismiss the Indictment for *Kastigar* Violations and Request for a *Kastigar* Hearing
- g. Motion for Early Disclosure of Brady and Jencks Material³
- h. Motion to Dismiss the Indictment for Insufficiency
- i. Motion to Dismiss the Indictment Because MEJA is Unconstitutionally Vague

³ The parties have met and conferred on this issue and exchanged proposals; however, the parties have been unable to reach an agreement.

2. Motions the Government Intends to File as of Now

The Government anticipates filing a Rule 404(b) Notice with respect to one or more of the defendants describing certain prior bad acts. The Government also reserves the right to file a Motion to Compel Reciprocal Discovery from the defendants.

D. Requests for Pretrial Hearings

1. Defendants' Request for Hearing

Defendants respectfully request the following hearings:

- a. An interim status conference in early August concerning the scheduling issues discussed herein.
- b. A hearing in early September on any discovery motions and the motion for a bill of particulars.
- c. A *Kastigar* evidentiary hearing in mid-September. It is somewhat difficult to assess at this time the number of witnesses who would be called because: (a) *Kastigar* discovery has not been completed; and (b) it remains unclear whether the Government will continue to contest certain issues; for instance, whether the statements the Defendants provided to the Government were compelled. Defendants anticipate that a *Kastigar* hearing could take 3-5 days.
- d. A pretrial motions hearing in early December concerning all pretrial motions and notices filed.

2. Government's Position regarding Pretrial Hearings

The Government does not see the need to schedule four separate hearings, as requested by defense counsel, in early-August, early and mid-September and early-December. The Government also does not see the need for the Court to hold any *evidentiary* hearings involving witnesses on any of the defense discovery motions or the Government's motions outlined above. The Government recommends that any hearing on the non-*Kastigar* discovery matters be combined and scheduled on a single day after September 18, 2009, which is the date by which

the Government has promised to produce any supplemental expert reports and any other remaining discovery materials that the defendants have recently requested from the Government.

As noted previously, it is the Government's position that a *Kastigar* hearing is not required for the reasons set forth in the Government's Motion For a *Garrity* Hearing in Lieu of a Pretrial *Kastigar* Hearing. If a *Kastigar* evidentiary hearing were to be held before trial, the Government anticipates that it would take far longer than the three to five days estimated by defense counsel.

Dated: July 13, 2009

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on this 13th day of July 2009, I caused the foregoing Joint Status Report to be filed with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to all counsel of record.

/s/
Michael J. Baratz