

Declaration of Neal A. Puckett, Lead Civilian Counsel for  
SSgt Frank Wuterich, USMC

1. I am retired Marine Lieutenant Colonel and Judge Advocate who has been retained to represent SSgt Frank Wuterich in the case of U.S. v. Wuterich.
2. Charges were preferred in the case on 21 Dec 2006. Major Haytham Faraj, USMC, was detailed as military defense counsel in the case on 11 January 2007. LtCol Colby Vokey, USMC, was also detailed as military defense counsel in the case on 17 January 2007.
3. Both military counsel have worked on this case since the day they were detailed. Discovery in the case encompasses tens of thousands of pages from multiple investigations, including the most extensive criminal investigation in the history of the Naval Criminal Investigative Service (NCIS). There are hundreds of photographs, over a hundred witness, and many expert witnesses.
4. Upon being detailed, both military defense counsel were relieved of all responsibility for other cases except those already ongoing. LtCol Vokey retained his position as Regional Defense Counsel and Maj Faraj retained his position as Senior Defense Counsel. The reason both counsel were not detailed additional cases is because of the voluminous nature of the discovery and the complexity of the issues involved. Accordingly, from Jan 2007 through June 2008, both detailed counsel did nothing except work this case. The number of hours expended by each of them was between 30 and 40 hours per week for the entire period.
5. Their work included the interviews of all witnesses, some more than once, reviewing every page of the reports of investigation produced by NCIS. They also searched for, vetted and requested expert witnesses for the defense. They traveled to interview witnesses, met with co-counsel and consult with experts.
6. Both detailed counsel were sent to several continuing legal education seminars to prepare them for the unique issues in this case, including blood spatter, pathology, ballistics, psychology principles and on preparing sentencing cases for defendants accused of murder.

7. As a fluent speaker of the Arabic language, Maj Faraj was specifically tasked with reviewing the hundreds of pages of statements written in Arabic to ensure the accuracy of translations. He discovered numerous substantive errors between videotaped interviews in Arabic and their English transcripts. His language skills are irreplaceable from the ranks of judge advocates.

8. LtCol Vokey came to the case with a wealth of military courtroom experience. He had litigated several high profile complex cases including a Guantanamo detainee case and numerous homicide cases. He also had an extensive network of colleagues among military and civilian attorneys, as well as acquaintances with scientific experts throughout the country that he was able to leverage to assist the defense team in preparation of the case.

9. LtCol Vokey personally interviewed critical Iraqi witnesses in videotaped depositions in Iraq during a site visit in January 2008. He alone has established the rapport with those witnesses which will be crucial for cross examination during the trial. He walked over the ground and through the houses where the deaths at issue in the case occurred in Haditha, Iraq.

10. The case has evolved through many different prosecution and defense theories. Witnesses have given varying accounts of what they remember over time. The Article 32 Investigation was long and complex, requiring counsel to divide the witnesses and evidence among themselves. Both LtCol Vokey and Maj Faraj spent many hours perfecting their knowledge of the evidence and witnesses assigned to them. Further, over the course of the past 20 months, charges have been withdrawn and dismissed and modified. An understanding of the history of these iterations is extremely important for the members of the defense team.

11. Maj Faraj retired from the Marine Corps on 1 August 2008 and is no longer representing SSgt Wuterich. LtCol Vokey, now on terminal leave, retires from the Marine Corps on 1 October 2008, and will no longer represent SSgt Wuterich. In addition, LtCol Vokey has been officially told by Headquarters, U.S. Marine Corps, that he will not be permitted to extend his active duty service beyond that date.

12. On 1 October 2008, and not before, SSgt Wuterich may be detailed a single new detailed counsel only. It is the published policy of the Chief Defense Counsel of the Marine Corps that no accused may be detailed more than one counsel. The new detailed counsel, whomever that will be, will need to begin his or her education on this case, including establishment of an attorney/client relationship with SSgt Wuterich. Marine Corps defense counsel policy also prohibits that relationship from beginning prior to detailing.

13. On 1 October 2003, SSgt Wuterich will transition from two knowledgeable, experienced detailed counsel to one detailed counsel with no knowledge of the case and almost certainly less qualified. Although he is represented by myself as lead civilian counsel, and Mr. Zaid as associate civilian counsel, the loss of experience, preparation and talent possessed by LtCol Vokey and Maj Faraj will be devastating.

14. This case was scheduled to go to trial in March 2008. A government appeal of a military judge's pretrial ruling prevented that from happening and caused the delay that resulted in the loss to SSgt Wuterich of his two detailed defense counsel.

I declare under penalty of perjury pursuant to 28 U.S.C. § 1746 that the foregoing is true and correct.



Neal A. Puckett

Executed on: \_\_\_\_\_

8/28/2008