

NEAL M. SHER
Attorney at Law

Chrysler Building
132 East 43rd Street
Suite 304
New York, NY 10017

Tel: 646-201-8841
Fax: 646-706-7029
nealsher@gmail.com

August 15, 2013
FAX COVER SHEET

TO: The Honorable Tara Osborn
FAX #: 254-287-8929
PAGES(including this sheet): 4
Re: United States v. Major Nidal Hasan

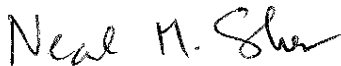
Dear Judge Osborn,

Per advice recieved from III Corps, I am transmitting the attached Motion on behalf witnesses who have testified at the Hasan Court Martial. As stated in the Motion, I am doing so because I have no other recourse.

Copies have been served on Col. Mulligan and the defendant via the fax number also provided by III Corps. Colonel Mulligan and members of his staff have received a copy via email.

I am in Killeen and available to provide additional information or to appear before you on this matter.

Respectfully,



NEAL M. SHER
Counsel for Alonzo Lunsford and Shawn Manning

`UNITED STATES ARMY COURT MARTIAL

United States of America,

v.

Major Nidal Hasan

Motion Regarding Post Testimony Instructions to Witnesses and
RCM 806(d)

To The Honorable Court:

Comes now Neal M. Sher, Esquire, who respectfully states as follows:

1.I am counsel to many victims of November 5, 2009 attack at Ft. Hood in a lawsuit relating to that attack filed in the United States District Court for the District of Columbia.I submit this Motion on behlaf of two such clients, Alonzo Lunsford and Shawn Manning, both of whom have given testimony before you in the instant trial.

2.Upon completion of their testimony both Lunsford and Manning were instructed by the Court not to discuss their their knowledge of the case with anyone other than counsel.

3.I have advised my clients - who have no interest in speaking outside the Court about their testimony, but rather events after November 5, 2009 - to comply with those instructions. The prosecutors have told them that the prohibition extends to the matters about which they wished to speak. However, they have riased with me questions as to need and basis for such an order.

4.Accordingly,as their attorney, I looked into the matter and became aware of 2012 Manual for Courts Martial, RCM 806(d), which deals with extrajudicial statements by witnesses. By its unambiguous terms, that Rule requires that any order prohibiting extrajudicial statements be in

writing and is to be issued only if such statements would result in "a substantial likelihood of material prejudice to a fair trial by impartial members." The *Discussion* portion of Rule 806(d) further states: "The military judge must state on the record the reasons for issuing the protective order."

5. On several occasions, beginning on August 8, 2013, I asked Thomas Rheinlander, Director of Public Affairs at Fort Hood as well as the prosecutors whether the requirements of Rule 806(d) had been followed. Surely, my clients, whose First Amendment rights have been curtailed, have a legitimate right to know whether the mandates of Rule 806(d) have been adhered to.

6. Regrettably, to date I have received no response from either Mr. Rheinlander or the prosecutors regarding my inquiries. Hence, my clients have been left with no recourse other than to raise this matter with the Court.

7. Moreover, assuming an 806(d) written order has in fact been rendered, I would respectfully question the need for the prohibition placed on the witnesses.

8. I respectfully submit that the only scenario in which extrajudicial statements could even remotely cause "material prejudice to a fair trial by impartial members" would be for such statements to reach the eyes or ears of members of the jury. However, that could only occur if a jury member were to disobey the standard instructions from the Bench not to read, watch or listen to media reports. Moreover, it is my understanding that the jurors have been sequestered.

9. Under the circumstances, it is simply unimaginable that any of the high ranking career members of the jury would violate instructions from the Court. The premise of any prohibition of extrajudicial witness statements is the expectation that a jury member would ignore Your Honor's order. That premise, I respectfully suggest, is wholly unreasonable. And, it surely should not serve as a basis to restrict my clients First Amendment rights.

10. Accordingly, since my repeated requests have gone unanswered, I respectfully request this Court to clarify whether or not a Rule 806(d) order has been issued, and if so, to disclose to my clients the contents of such a written order.

11. If such an order has been entered, I would ask the Court to reconsider and vacate the order as there appears to be no basis upon which to conclude that extrajudicial statements by witnesses would materially prejudice a fair trial by impartial members.

12. I am in Killen and available to provide additional information or appear before Your Honor on this matter.

Respectfully submitted,



Neal M. Sher

Counsel for Alonzo Lunsford and Shawn Manning

CERTIFICATE OF SERVICE

This is to certify that on August 15, 2013 copies of the foregoing *Motion Regarding Post Testimony Instructions to Witnesses and RCM 806(d)* were served upon Colonel Michael Mulligan and Major Nidal Hasan via fax numbers provided to me from the offices of III Corps. Colonel Mulligan and members of his staff were also served via email.

Neal M. Sher