

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF KENTUCKY
AT PADUCAH
(Filed Electronically)**

**CRIMINAL ACTION NO. 5:06CR-19-R
UNITED STATES OF AMERICA,**

PLAINTIFF,

vs.

STEVEN DALE GREEN,

DEFENDANT.

**RESPONSE TO MOTION OF THE UNITED STATES
TO CONDUCT MENTAL EXAMINATION OF DEFENDANT**

Comes the defendant, by counsel, and for his response to the motion of the United States to conduct mental examinations of the defendant, says as follows.

The government's motion is rendered moot by the withdrawal of defendant's notice pursuant to FRCrP 12.2(a) that he intends to rely on the defense of insanity herein.

Defendant has amended his notice pursuant to FRCrP 12.2(b) to limit expert testimony regarding mental disease or defect in any penalty phase herein to

1) an MRI study performed on defendant by the University of Louisville on March 27, 2008, and the interpretation thereof;

2) interpretation and explanation of medical, psychiatric, and combat stress records provided in discovery by the United States including, but not limited to, the December 21, 2005, report of Dr. Karen Marrs regarding defendant; and

3) whether the psychiatric care rendered to defendant on or about December 21, 2005, while in the Iraq theater of combat, deviated from acceptable standards of medical care and, if so, the consequences of such deviation from acceptable practices.

While defendant does intend to introduce expert testimony regarding the MRI study performed on defendant and the interpretation of same, defendant does *not* intend to introduce expert testimony previously provided to the United States in discovery regarding any other psychological testing and/or psychiatric evaluations of defendant conducted by Dr. Antonio E. Puente, Ph.D.; Dr. Ruben C. Gur, Ph.D.; or Dr. Pablo Stewart, M.D. Accordingly, the United States is barred from conducting any testing or introducing any expert testimony or materials regarding defendant's mental disease or defect which is outside the scope of these three areas. United States v. Taylor, 320 F.Supp.2d 790 (N.D. Ind. 2004). In short, the United States *may* conduct its own MRI evaluation of defendant and/or hire its own Neuro-Psychiatrist to interpret the MRI data provided by defendant. It *may* call an expert to interpret the medical, psychiatric, and combat stress records of defendant's treatment while in the Army. It *may* call its own expert to opine on the appropriateness of Dr. Marrs' treatment and evaluation of defendant. It may *not* conduct its own psychological testing of defendant or perform any psychiatric evaluations of him, since defendant is not relying on same.

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Counsel for Defendant.

CERTIFICATE

I hereby certify that on January 14, 2009, I electronically filed the foregoing with the clerk of the court by using the CM/ECF system, which will send a notice of electronic filing to the following: Marisa J. Ford, Esq., Assistant United States Attorney; James R. Lesousky, Esq., Assistant United States Attorney; and Brian D. Skaret, Esq., Attorney at Law.

/s/ Scott T. Wendelsdorf