

AE614 Government Motion to Compel Notice of Intent to Introduce Expert Mental Health Evidence

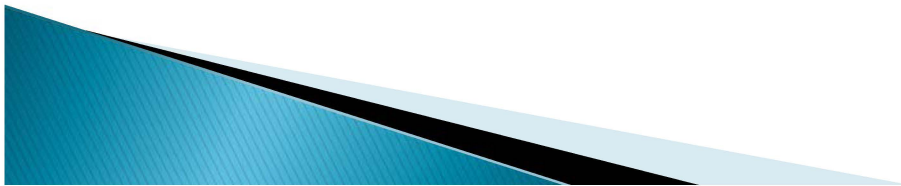
Counsel for Mr. al Baluchi

RMC 701(g)(2)

(2) *Notice of certain defenses.* The defense shall notify the trial counsel before the beginning of trial on the merits of its intent to offer the defense of alibi or lack of mental responsibility, or its intent to introduce expert testimony as to the accused's mental condition. Such notice by the defense shall disclose, in the case of an alibi defense, the place or places at which the defense claims the accused to have been at the time of the alleged offense.

Discussion

Such notice shall be in writing unless impracticable. *See* R.M.C. 916(k) concerning the defense of lack of mental responsibility. *See* R.M.C. 706 concerning inquiries into the mental responsibility of the accused. *See* Mil. Comm. R. Evid. 302 concerning statements by the accused during such inquiries. If the defense needs more detail as to the time, date, or place of the offense to comply with this rule, it should request a bill of particulars (*see* R.M.C. 906(b)(6)).



Fed. R. Crim. P 12.2(b)

(b) Notice of Expert Evidence of a Mental Condition.

If a defendant intends to introduce expert evidence relating to a mental disease or defect or any other mental condition of the defendant bearing on either

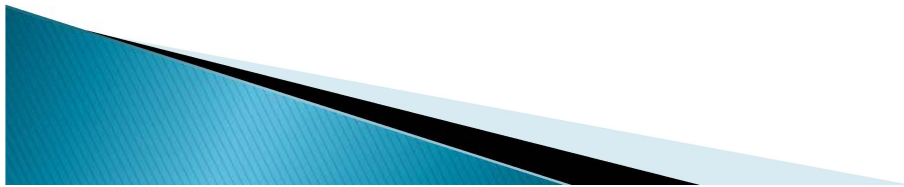
- (1) the issue of guilt or
- (2) the issue of punishment in a capital case, the defendant must—within the time provided for filing a pretrial motion or at any later time the court sets—notify an attorney for the government in writing of this intention and file a copy of the notice with the clerk. The court may, for good cause, allow the defendant to file the notice late, grant the parties additional trial-preparation time, or make other appropriate orders.

Backup Slides

RMC 706(a)

Rule 706. Inquiry into the mental capacity or mental responsibility of the accused

(a) *Initial action.* If it appears to any convening authority who considers the disposition of charges, or to any trial counsel, defense counsel, military judge, or member that there is reason to believe that the accused lacked mental responsibility for any offense charged or lacks capacity to stand trial, that fact and the basis of the belief or observation shall be transmitted through appropriate channels to the authority authorized to order an inquiry into the mental condition of the accused. The submission may be accompanied by an application for a mental examination under this rule.



RMC 916(k)

(k) *Lack of mental responsibility.*

(1) *Lack of mental responsibility.* It is an affirmative defense to any offense that, at the time of the commission of the acts constituting the offense, the accused, as a result of a severe mental disease or defect, was unable to appreciate the nature and quality or the wrongfulness of his or her acts. Mental disease or defect does not otherwise constitute a defense.

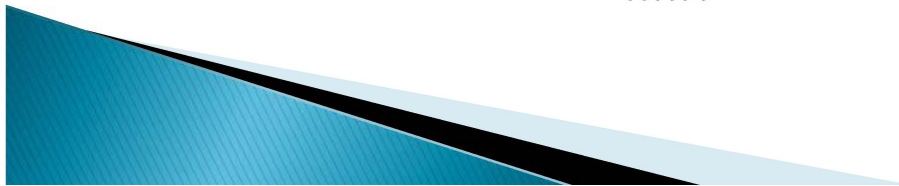
Discussion

See R.M.C. 706 concerning sanity inquiries; R.M.C. 909 concerning the capacity of the accused to stand trial; and R.M.C. 1102A concerning any post-trial hearing for an accused found not guilty by reason of lack of mental responsibility.

(2) *Partial mental responsibility.* A mental condition not amounting to a lack of mental responsibility under subsection (k)(1) of this rule is not an affirmative defense.

Discussion

Evidence of a mental condition not amounting to a lack of mental responsibility may be admissible as to whether the accused entertained a state of mind necessary to be proven as an element of the offense. The defense must notify the trial counsel before the beginning of trial on the merits if the defense intends to introduce expert testimony as to the accused's mental condition. *See* R.M.C. 701(b)(2)(B).



MCRE 302

Rule 302. Privilege concerning mental examination of an accused

(a) *General rule.* The accused has a privilege to prevent any statement made by the accused at a mental examination ordered under R.M.C. 706 from being received into evidence against the accused on the issue of guilt or innocence or during sentencing proceedings.

(b) *Exceptions.*

- (1) There is no privilege under this rule when the accused first introduces into evidence such statements.
- (2) An expert witness for the prosecution may testify as to the reasons for the expert's conclusions and the reasons therefore as to the mental state of the accused if expert testimony offered by the defense as to the mental condition of the accused has been received in evidence, but such testimony may not extend to statements of the accused except as provided in subsection (1).
- (c) *Release of evidence.* If the defense offers expert testimony concerning the mental condition of the accused, the military judge, upon motion, shall 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.M.C. 706. If the defense offers statements made by the accused at such examination, the military judge may upon motion order the disclosure of such statements made by the accused and contained in the report as may be necessary in the interests of justice.