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November 28, 1988

Mr. Thomas W. Spindle
277-70-4281
Drawer "A"
Ft. Leavenworth, Kansas 66027-7140

Re: United States v. Specialist Four Thomas W. Spindle
CM 443294, Docket No. 51,123/AR

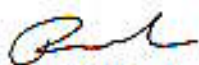
Dear Tom:

Our informal attempts to have the FBI take the fingerprints which were found at the scene of Derek Kusumoto's murder and compare them to those in their automated fingerprint bank has been turned down. Accordingly, we prepared an application for an extraordinary writ to be issued by the Court of Military Appeals, so that they might compel the examination of the fingerprints against those that are maintained in the FBI's fingerprint bank. Although I understand that the practice is for the judges to act on these requests at their weekly conference, as of yet they have not acted, and I understand that it will be at least the middle of December before they do so. If they recess at that time without taking action on the request, then it will be another month, as they take traditionally take a long Christmas recess.

Hope that you are continuing to get along alright, as I know that the upcoming holiday season must be an especially tough time on you. Your stepfather calls me regularly, and I hope that the updates that you receive from him through your regular Saturday night phone calls will keep you apprised, although I will certainly try to keep you updated through regular correspondence. If you have any additional thoughts or questions, please don't hesitate to write.

With best regards,

Sincerely,



Richard E. Fay

REF/ert

cc: Mr. Charles Tipton



DEPARTMENT OF THE ARMY
UNITED STATES ARMY LEGAL SERVICES AGENCY
DEFENSE APPELLATE DIVISION
901 NORTH STUART STREET, SUITE 340
ARLINGTON, VIRGINIA 22203-1837

January 6, 2005

Thomas W. Spindle
04439-000/B Unit R
FCI Fairton, P.O. Box 420
Fairton, NJ 08320

Dear Mr. Spindle:

I received your letters dated December 7 and 15, 2004, in which you request our assistance in obtaining the testing of certain evidence related to your court-martial from 1982. Unfortunately, as discussed below, your request for assistance arguably falls outside the scope of our representation, but even if it did not, there is no way to advocate for the testing of evidence unless the evidence is still in the possession of the government, which, apparently, it is not.

Once your case was finalized by the court, the rules for courts-martial and the UCMJ allow a request for new trial based on new evidence for two years. After the two years there is no mechanism in which to request a new trial. Since that time has expired, the military courts have no jurisdiction and the case is final, at least directly within the courts-martial system. It may very well be that the Army Clemency and Parole Board or Secretary of the Army could be convinced to take action if a compelling case was made on a particular issue. I am sure that you have probably been involved in the processes of the Clemency and Parole board. Therefore, although I understand the arguments that you make in your letters regarding the reliability of the evidence and testimony presented at your trial, there are no grounds upon which we at the Army Defense Appellate Division can help you.

I am familiar with the recent statute you cited in your letter (The Innocence Protection Act of 2004) and I understand that it does authorize funding for DNA testing to help exonerate persons in predicaments such as yours. These programs will be set up in various states and may also have some applicability to federal districts. There are no provisions directly applicable to military courts, nor does it in anyway extend the jurisdiction of the military courts. The provisions of the act may, however, lend you some support in your quest in that it clearly demonstrates congressional intent to ensure that modern forensic technology is applied to cases where it was previously unavailable. As a result, I have thoroughly reviewed these statutes and I believe that a good argument could be made that the overall principles should be applicable to the military system, in the right case with the right evidence.

You discuss the possibility of DNA evidence gathered during the investigation of your case. This evidence, physical evidence gathered from the crime scene, would have been in the custody of the criminal investigators- in this case CID. I have conducted inquiries regarding the status of the investigative case files as well as any physical evidence that may have been

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Deputy Chief, Defense Appellate Div.

gathered during the course of the investigation. I was informed by CID that there are no longer any case files nor is there any evidence maintained from the investigation. If you have any information that there is still evidence in the possession of military or civilian law enforcement that could be subject to DNA testing, let me know.

One of the requirements of 18 U.S.C. § 228A (Post Conviction DNA Testing- part of the Innocence Protection Act) is that "the specific evidence to be tested is in the possession of the government" and that it has been properly maintained. Clearly, if there is no evidence, there is nothing to test. Without the existence of DNA evidence which could be tested, there is no way for us to make the arguments that these statutes are applicable to the military.

You also mention fingerprint evidence. Since there is no evidence, fingerprint or otherwise, in the possession of the government, I am unsure what evidence to which you are referring. If you have any such fingerprint evidence in your possession, you would have a difficult time establishing a chain of custody or proving the source of any such prints. You were also unclear as to how, if at all, any fingerprints would be relevant to your case. Again, as I said above, the time has passed for presentation of new evidence in the forum of an appeal or a request for a new trial.

I am sorry I cannot be of more assistance and I wish you luck on your quest. If you have any questions or need more information, I can be contacted at the address on the letterhead.

Sincerely,



Mark Tellitocci
Lieutenant Colonel, Judge Advocate
Deputy Chief, Defense Appellate Division

U.S. ARMY LEGAL SERVICES AGENCY
DEFENSE APPELLATE DIVISION
ATTN: BRANCH 1 LTK T
901 N. STUART STREET
ARLINGTON, VA 22203

PAGE TWO : LETTER FROM THE ABOVE
DATED 6 JAN 2005



DEPARTMENT OF THE ARMY
UNITED STATES ARMY LEGAL SERVICES AGENCY
DEFENSE APPELLATE DIVISION
901 NORTH STUART STREET, SUITE 340
ARLINGTON, VIRGINIA 22203-1837

January 14, 2005

Thomas W. Spindle
04439-000/B Unit R
FCI Fairton, P.O. Box 420
Fairton, NJ 08320

Dear Mr. Spindle:

You asked a few questions in your most recent letter and implied a few more. Let's see if I can answer them.

First, you are right about the possible destruction of the evidence in your case. It would certainly not be unusual for CID or USACIL to dispose of evidence after a criminal case is finalized. This would be consistent with their evidence regulations and would be normal procedure. I believe it is most likely that they did, in fact dispose of the evidence. I told you that I could find no indications that anything was left, but my investigation was informal and was based upon your name and the CID case number you provided to me in your first letter. It is possible, however, that evidence was not disposed of or that it may have been filed under the number or name of your co-accused- Clifford B. Hubbard. I am referring to both physical evidence as well as documents or fingerprints.

I think the best way for you to be sure would be to request the information from CID pursuant to the Freedom of Information Act ("FOIA") and the Privacy Act. Request what you want to know and what records you want to see, as specifically as you can, directly from:

HQ, U.S. Army Criminal Investigation Command
Attention: Freedom of Information Officer
6010 6th Street, Building 1465
Fort Belvoir, VA 22060

Be as specific in your request as you can and make sure you refer to FOIA and Privacy Act in your request. They may refer you action to another office, but that will start the ball rolling.

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Deputy Chief, Defense Appellate Div.

To obtain a copy of your record of trial you should also request it pursuant to the FOIA directly from the Clerk of the Army Court. Since it is relative large, you should also ask the clerk to waive copy fees. They will certainly make and send you a copy, but they may not waive fees- ask anyway. Send your request to :

Office of the Clerk of Court
901 North Stuart Street, Ballston Suite 1200
Arlington, VA 22203-1837

Good luck and, once again, I'll tell you again that I am sorry I cannot be of more assistance.. If you have any questions or need more information, I can be contacted at the address on the letterhead.

Sincerely,



Mark J. Ellitocci
Lieutenant Colonel, Judge Advocate
Deputy Chief, Defense Appellate Division

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DATED 14 JAN 2005