

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

UNITED STATES OF AMERICA,	:	
	:	
vs.	:	CRIMINAL ACTION NO.
	:	
BRIAN RICHARDSON,	:	1:08-CR-0139-CC
	:	
Defendant.	:	

ORDER ESTABLISHING PROCEDURES GOVERNING
MENTAL HEALTH EVIDENCE

Pursuant to Federal Rule of Criminal Procedure 12.2 and consistent with this Court's Order of July 12, 2010, the Court hereby establishes the following procedures that shall govern the mental health evidence in this case:

1. One expert retained by the Government shall have the opportunity to examine the Defendant. If the Government desires additional examination(s) by additional expert(s), the Government will file a motion for such, and the parties will litigate it at that time.
2. The mental health examination(s) of the Defendant by the expert(s) retained by the Government shall be conducted at USP-Atlanta, where the Defendant is currently housed.
3. The Government shall file a notice with this Court advising the Defendant of the time and date of said mental health examination(s), the profession of its expert(s), and any tests to be administered at least one week in advance of the examination. The Government's expert(s) cannot administer more than one test to measure the same mental function.
4. If the Defendant objects to a particular expert or test, the parties must diligently attempt to resolve the objection. If no resolution is reached, Defendant must file his objection with the Court before the end of three business days after receiving notice of the expert or test from the Government.

The Court will set a hearing, and no rebuttal examination or testing can be conducted until the Court has held the hearing and made a final decision on the disputed issue(s). Nothing in this paragraph shall create a preference in favor of the Government or a burden on the Defendant at a hearing conducted pursuant to this paragraph.

5. There shall be no video or audio recording of the examination(s) by the expert(s) retained by the Government. If the expert(s) specifically requests such a recording, the Government will alert counsel for the Defendant in advance of the examination. If the parties cannot reach an agreement regarding the recording, the Government will file a motion for such, and the parties will litigate it at that time.
6. The parties shall agree as to a reasonable amount of time for any mental health examination(s) in conjunction with the expert(s) retained by the Government and the Bureau of Prisons. If the parties cannot reach an agreement regarding the number of hours that the expert(s) is permitted to examine the Defendant, the Government will file a motion requesting the amount of time that it desires, and the parties will litigate it at that time.
7. A member of the defense team shall be permitted to sit outside of the room at USP-Atlanta where the examination(s) of the Defendant is being conducted.
8. The rebuttal expert(s) must prepare a report that addresses his/her qualifications, education, and experience in criminal cases; the components of his/her evaluation; and the results of his/her evaluation, including diagnostic impressions and professional opinions.
9. The rebuttal expert(s) must file his/her results, incorporated into a report, with the Court, under seal, within 15 days after completion of the rebuttal examination.
10. Upon the filing of the rebuttal expert's report, the Court will promptly review the report for any information that would be exculpatory or beneficial to

Defendant under Brady v. Maryland, 373 U.S. 83 (1963). If the Court finds such beneficial or exculpatory information, that portion of the report will be unsealed for the Defendant and provided to the Defendant.

11. Except as set forth in Paragraph 10 above, the rebuttal expert's report will only be released to, or discussed with, either party if the jury reaches a verdict of guilty on a capital charge in the guilt-innocence phase of trial and if the Defendant confirms his intent to offer expert mental health evidence in the penalty phase.
12. Except as set forth in Paragraph 13 below, the mental health professional(s) conducting the examination for the Government shall not discuss the examination or any information derived from the examination with anyone unless and until the expert's report has been unsealed and released to both the defense and the Government. "Information derived from the examination" includes statements the Defendant makes in the course of the examination.
13. If the mental health professional(s) determines in his/her professional opinion after examining the Defendant that additional examination(s) is needed by an additional expert(s), the mental health professional may communicate this determination to the attorneys for the Government but may not explain the basis for this determination or otherwise discuss the substance of the examination of the Defendant.
14. Prior to an unsealing and disclosure of the rebuttal expert's report to the Government, all communications between members of the prosecution team and the Government's expert(s) must be audio taped. The tapes must be filed under seal with the Court.
15. Before conducting any examination, the Government's mental health professional(s) must sign a written confirmation, demonstrating that he/she understands his/her obligation not to discuss the examination, or any information derived from the examination, except as set forth in Paragraph

13 above, with anyone unless and until the results of the examination are released to the Government. The mental health professional(s) must confirm in writing an understanding that any violation of this Order may be punishable by contempt of this Court.

16. If the jury reaches a verdict of guilty on a capital charge in the guilt-innocence phase of trial, the Defendant shall have 24 hours to file a pleading with the Court either confirming or disavowing his intent to offer expert mental health evidence in the penalty phase. If the Defendant disavows his intent to offer expert mental health evidence in the penalty phase, the rebuttal expert report will remain sealed and will not be released to either the Government or the Defendant. Further, the Defendant shall not be required to release the reports of the defense's mental health experts. If the Defendant confirms his intent to offer expert mental health evidence in the penalty phase, the rebuttal expert report immediately will be unsealed for the Defendant and released to the Defendant only. The Defendant shall then have 24 hours from his receipt of the rebuttal expert report to withdraw his notice of intent to introduce mental health evidence. If the Defendant does not withdraw his notice within that time frame, the rebuttal expert report will be unsealed and released to the Government immediately, and Defendant shall immediately release to the Government the reports from any and all examinations on mental condition conducted by the Defendant's experts about which the Defendant intends to introduce expert mental health evidence during the penalty phase. If, during the 24-hour period, the Defendant does withdraw his intent to introduce expert mental health evidence, the results and reports of the rebuttal expert will remain sealed from the Government. Further, the Defendant shall not be required to release the reports of the defense's mental health experts to the Government.
17. Even if the Defendant confirms his intent to offer expert mental health

evidence in the penalty phase and thereafter declines to withdraw that notice after having received the results and reports of the expert(s) retained by the Government, the Defendant may still withdraw the notice of intent to offer such evidence at any time before actually introducing evidence related to his mental health, and, in that event, neither the fact of notice, nor the results or reports of any mental examinations, nor any facts disclosed therein, shall be admissible against the Defendant.

18. Failure of the Defendant to participate in a Court-ordered examination or to confirm his notice of intent to offer expert mental health evidence may result in forfeiture of the right to present expert mental health evidence during the penalty phase of trial. Additionally, any failure of the Defendant to disclose any report pursuant to Federal Rule of Criminal Procedure 12.2(c)(3) may result in exclusion of the expert evidence.

SO ORDERED this 23rd day of July, 2010.

s/ CLARENCE COOPER

CLARENCE COOPER
SENIOR UNITED STATES DISTRICT JUDGE