



further represents that they contacted various mitigation specialists without success, and have attached affidavits from a number of experts.

B. Defense counsel represents that less than six weeks from notice to jury selection is insufficient time to prepare to counter the government's death penalty case. The Government believes that this representation is made in good faith by counsel who reasonably believe they cannot gather such mitigation evidence as they believe exists, even if the Government ultimately argues and asserts that such evidence does not mitigate the crimes for which Regan, at the death penalty phase, will stand convicted.

C. Defense counsel advises the Court that it will take 45 to 60 days to complete an SCI background investigation of the mitigation specialist and that it will take at least four weeks to get the specialist even an interim codeword clearance. While there is much work which the Government believes a mitigation specialist can do without a security clearance, the Government agrees that it is appropriate for the mitigation specialist to have a security clearance at a level that permits the specialist to speak with Regan about the nature of his work history.

D. Defense counsel advises the Court that it intends to make significant challenges to the death penalty notice in this case, including a challenge as to the proportionality of the death penalty in an attempt espionage case and an attack on the non- statutory aggravating factors. The Government, of course, is confident that its death penalty notice, and the applicability of the death penalty to a case of this nature, is entirely consistent with the law. However, in light of defense counsel's representations that it plans on these various legal challenges to the applicability of the death penalty, the Government believes this is an appropriate consideration for the Court in determining whether to reconsider the trial date.

WHEREFORE, the Government supports defense counsel's request for reconsideration of the trial date.

Respectfully submitted,  
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