



U.S. ARMY FREEDOM OF  
INFORMATION OFFICE

REPLY TO  
ATTENTION OF

**DEPARTMENT OF THE ARMY**  
**FREEDOM OF INFORMATION AND PRIVACY DIVISION**  
7701 TELEGRAPH ROAD, SUITE 150  
ALEXANDRIA, VA 22315-3905

January 31, 2017

William F. Marshall  
Judicial Watch, Inc.  
425 Third St., SW Suite 800  
Washington, DC 20024  
Sent via email: [bmarshall@judicialwatch.org](mailto:bmarshall@judicialwatch.org)

Dear Mr. Marshall:

This letter is in response to your Freedom of Information Act (FOIA) request dated December 15, 2016. Your request was referred to this office by the U.S. Army Installation Management Command (IMCOM), Garrison-West Point to process and respond directly to you. We have assigned your request FOIA control number FA-17-0077. You are seeking the following information:

1. Any and all records relating to budgetary expenditures associated with "Transgender Day of Remembrance," for the years 2013 through 2016, sponsored or involving USMA's Office of Diversity, Inclusion and Equal Opportunity, including but not limited to requests for funds, approvals for expenditures, purchase orders, invoices and other accounting documents.
2. Any and all teaching materials, handouts, PowerPoint presentations, fliers or other materials associated with the USMA's 2016 "Transgender Day of Remembrance."

We are releasing to you 10 pages with partial redactions. These pages were referred to this office by IMCOM-West Point. All redactions and withholdings have been made pursuant to Exemptions (b)(5) and (b)(6) of the FOIA, as described below.

***Exemption 5 of the FOIA 5 U.S.C. § 552(b)(5)***

Exemption 5 protects "inter-agency or intra-agency memorandums or letters which would not be available by law to a party other than an agency in litigation with the agency." 5 U.S.C. § 552(b)(5). Courts have interpreted Exemption 5 to encompass the privileges recognized by statute or case law in the civil discovery context. See *U.S. v. Weber Aircraft Corp.*, 465 U.S. 792, 800 (1984); *FTC v. Grolier Inc.*, 462 U.S. 19, 26 (1983) at 26; *NLRB v. Sears, Roebuck & Co.*, 421 U.S. 132, 149 (1975). In this case, the applicable privileges that serve as bases for citing Exemption 5 is the Attorney-Work Product Privilege.

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### ***Attorney Work-Product Privilege***

The attorney work-product privilege protects documents prepared by attorneys in contemplation of litigation. *See Hickman v. Taylor*, 329 U.S. 495, 509-10 (1947). The privilege protects the adversarial trial process by screening an attorney's preparatory work from scrutiny. *See Jordan v. DOJ*, 591 F.2d 753, 775 (D.C. Cir. 1978) (en banc). The privilege applies to any such work-product when it is prepared with "some articulable claim, likely to lead to litigation," in mind. *Coastal States Gas Corp. v. DOE*, 617 F.2d 854, 865 (D.C. Cir. 1980).

### ***Exemption 6 of the FOIA 5 U.S.C. § 552(b)(6)***

Exemption (b)(6) of the FOIA protects from mandatory disclosure "personnel and medical files the disclosure of which would constitute a clearly unwarranted invasion of privacy." 5 U.S.C. § 552(b)(6) (2011). To qualify for protection under Exemption (b)(6), records must meet two criteria: (1) they must be "personnel and medical files and similar files," (2) the disclosure of which "would constitute a clearly unwarranted invasion of personal privacy." *Id.*; *United States Dep't of State v. Washington Post Co.*, 456 U.S. 595, 599-603 (1982). The first prong is met if the information "appl[ies] to a particular individual" and is "personal" in nature. *New York Times Co. v. NASA*, 852 F.2d 602, 606 (D.C. Cir. 1988). The second prong requires courts to strike a "balance between the protection of an individual's right to privacy and the preservation of the public's right to government information." *United States Dep't of State v. Washington Post Co.*, 456 U.S. 595, 599 (1982). The "public interest" in the analysis is limited to the "core purpose" for which Congress enacted the FOIA: to "shed . . . light on an agency's performance of its statutory duties." *United States Dep't of Justice v. Reporters Comm. for Freedom of the Press*, 489 U.S. 749, 773 (1989).

We are withholding names of personnel, other than Senior Executive Service members and General Officers and contact information for all Army personnel (e.g., e-mail addresses, direct-line telephone numbers) under Exemption 6. 5 U.S.C. § 552(b)(6). *See Judicial Watch, Inc. v. United States*, No. 03-1160, 2004 WL 26736, at \*4 (4th Cir. Jan. 6, 2004). Under the Exemption (b)(6) balancing test, the Supreme Court held in a similar case that disclosure of employee addresses "would not appreciably further the citizens' right to be informed about what their Government is up to and, indeed, would reveal little or nothing about the employing agencies or their activities." *United States Dep't of Defense v. Fed. Labor Relations Auth.*, 510 U.S. 487 (1994). The same is true here. Disclosure of the names, contact and personal information of government employees would contribute little to the public's understanding of government activities. By contrast, such disclosure would constitute a "non-trivial" and "not insubstantial" invasion of government employees' privacy interests. *Id.* at 500, 501.

Furthermore, Department of Defense policy following September 11, 2001, authorizes the withholding of the names and room numbers of government employees "because of a heightened interest in the personal privacy of DoD personnel that is concurrent with the increased security awareness demanded in times of national emergency." Memorandum from D.O. Cooke, Director of Administration & Management, Office of the Secretary of Defense, Re: Withholding of Personally Identifying Information under the Freedom of Information Act (FOIA) (Nov. 9, 2001), available at [http://www.acq.osd.mil/dpap/pdi/pc/docs/Withholding\\_Info\\_that\\_IDs\\_DoD\\_Personnel\\_-\\_Sept\\_2005.pdf](http://www.acq.osd.mil/dpap/pdi/pc/docs/Withholding_Info_that_IDs_DoD_Personnel_-_Sept_2005.pdf). As such, the names of government employees and their e-mail addresses are withheld under Exemption (b)(6).

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For any further assistance and to discuss any aspect of your request, you have the right to contact the Army FOIA Public Liaison Officer, Alecia Bolling, by email at [us.army.hqda-oaa-ahs.mbx.rmda-foia-public-liaison@mail.mil](mailto:us.army.hqda-oaa-ahs.mbx.rmda-foia-public-liaison@mail.mil) or by phone at (703) 428-6238. Additionally, you may contact the Office of Government Information Services (OGIS) at the national Archives and Records Administration (NARA) to inquire about the FOIA mediation services they offer. The contact information for OGIS is as follows: NARA-OGIS, 8601 Adelphi Road-OGIS, College Park, MD 20740-6001, email at [ogis@nara.gov](mailto:ogis@nara.gov), telephone number (202) 741-5770 toll free at (877) 684-6448 or by facsimile at (202) 741-5769.

This partial denial has been made on behalf of the Administrative Assistant to the Secretary of the Army, who has designated that this office act as the Initial Denial Authority for records maintained by the Office of the Secretary of the Army and its serviced activities. You have the right to file an administrative appeal with the Office of the Army General Counsel within ninety (90) calendar days. See 32 C.F.R. § 518.17(c). Their mailing address is:

Department of the Army  
Office of the General Counsel  
104 Army Pentagon, Room 2E724  
Washington, D.C. 20310

If you have any questions regarding this letter or the information furnished, please contact this office at (703) 428-6238 or email at [usarmy.belvoir.hqda-oaa.rpa.mbx.foia@mail.mil](mailto:usarmy.belvoir.hqda-oaa.rpa.mbx.foia@mail.mil). In all correspondence please refer to FOIA number FA-17-0077.

Sincerely,

A handwritten signature in black ink, appearing to read 'Paul V. DeAgostino', with a long horizontal line extending to the right.

Paul V. DeAgostino  
Senior Counsel

Enclosure: 10 pages





DEPARTMENT OF THE ARMY  
UNITED STATES MILITARY ACADEMY  
West Point, New York 10996

REPLY TO  
ATTENTION OF

MACC-0-2F

13 November 2014

MEMORANDUM FOR Chief Diversity Officer (b) (6) United States  
Military Academy, West Point, NY 10996

SUBJECT: Request Approval for Office of Diversity, Inclusion and Equal Opportunity (ODIEO) Funding to Host Diane Schroer at West Point's Transgender Day of Remembrance Ceremony

1. Event. Request approval of ODIEO expenditures in order to support the West Point's Transgender Day of Remembrance (TDoR) Ceremony's guest appearance of Diane Schroer, from 18-19 November 2014 at West Point.

2. Purpose. Develop/enhance diverse climate throughout Corps of Cadets and West Point Community. TDoR is an annual observance on November 20 that honors the memory of those whose lives were lost in acts of anti-transgender violence. The vigil commemorated all the transgender people lost to violence that year and began an important memorial that has become the annual Transgender Day of Remembrance.

Diane is a decorated, Airborne Ranger qualified Special Forces officer who completed over 450 parachute jumps and received numerous decorations including the Defense Superior Service Medal while in active service. Her experience as a Leader within the U.S. Army and as a transgendered woman will provide cadets with a perspective enhancing opportunity while paying respects during a solemn event.

3. Justification and Cost-Benefit Analysis

a. Anticipated Benefits. Support at the 2014 TDoR demonstrates West Point and the Army's commitment to supporting professional development opportunities that enhance West Point's diversity and inclusion efforts. Cadet's who attend the TDoR ceremony and/or attend Diane's Dean's Hour lecture will have the opportunity to learn from, and interact with, a distinguished Army veteran. The end result is to develop and maintain a relationship between the Spectrum Club, West Point and Diane over time.

b. Attendee. Diane Schroer

c. Estimated Costs. Costs are template with two separate transportation options for Diane Schroer.

Expense	Estimated Cost	Remark
Lodging w/ Taxes	\$198.00	17-18NOV (2x Night)
Meals & Inc	\$51.00	17-19NOV (3x Days)
POV Car Travel	\$93.50	~20 mpg, 550 Mi, \$3.40 Gal
West Point Tour	\$198.00	Private Tour scheduled to ensure CDTs attend respective classes
<b>TOTAL</b>	<b>\$840.50</b>	

4. The POC for this memorandum is the undersigned at (b) (6)  
or (b) (6)

(b) (6)

Tactical Officer, Company F2



MADN-CHEM

15 November 2016

MEMORANDUM THRU

Chief Diversity Officer, (b) (6) United States Military Academy,  
West Point, NY 10996

Chief of Staff, (b) (6) United States Military Academy,  
West Point, NY 10996

FOR LTG Robert L. Caslen, Jr., United States Military Academy, West Point, NY 10996

SUBJECT: Request Approval to Spend Less Than \$10,000 (Army Funding) on Army Attendance at the Transgender Day of Remembrance, November 30 2016

1. Event. Request approval for Army expenditures of less than \$10,000 for Army attendance at the Transgender Day of Remembrance, 30 November 2016, in the Cullum Hall Ballroom at West Point, NY.
2. Purpose. Since the DOD recently published a policy that supports transgender people serving in the Armed Forces, supporting this event is critical to West Point's efforts to support USMA diversity initiatives. The Transgender Day of Remembrance raises awareness of hate crimes against transgender people. For the past three years, this event has been sponsored by the USMA Spectrum LGBTQ Club.
3. Justification and Cost-Benefit Analysis
  - a. Anticipated Benefits. Supporting this event demonstrates West Point and the Army's commitment to diversity and inclusion of transgender service members in our Armed Forces. This event fosters awareness in the USMA and West point community about this significant change to DoD policy and plight of transgender people killed worldwide because of their transgender identity.
  - b. Conference Fees and Contracts. There are no registration fees or contracts. Costs associated with this event include \$400 for ceremony refreshments and \$699.92 for travel expenses for the guest speaker. Attendance is free for all members of the West Point community. Costs were minimized by arranging for the guest speaker to stay with the (b) (6) family in lieu of a hotel.
  - c. Alternatives. By hosting this event, members from across the West Point community can participate. Members of the FDNY LGBTQ Organization will also be in

MAJA-AL

8 December 2014

(b) (5), (b) (6)







# UNITED STATES MILITARY ACADEMY WEST POINT.

## Office Diversity, Inclusion and Equal Opportunity (ODIEO)

On 18 NOV, COL (RET) Diane Schroer provided a Dean's Hour lecture to USMA Cadets and Faculty hosted by the Spectrum Club of the Diversity Branch of DCA Clubs.

The Dean's Hour lecture and discussion covered the range of strategic to tactical implications of ISIL: Differentiation of COIN and Counterterrorism theory, ISIL's terrorism franchise strategy, operational responses to terror organizations and implications for tactical level leaders in a COIN environment. Diane also attended two classes with the Behavioral Science and Leadership department.

In the evening, the spectrum club hosted it's annual Transgender Day of Remembrance (TDoR) ceremony. Over 40 Cadets, Staff and Faculty were in attendance paying respect and memorializing those who were killed due to bias and hatred based on gender identity and expression.

Guest Bio: COL (RET) Diane Schroer Diane served 25 years of active service. For 16 of those years she served in Special Forces, to include tours as a detachment commander, company commander, and battalion commander, accumulating 450 parachute jumps. She participated in combat operations in Panama and Haiti as well as missions in the Middle East, Central America, Africa, and Europe. Additionally, she initiated humanitarian demining operations in Namibia, Rwanda, Mozambique, Botswana, Zambia, and Zimbabwe. Following the attacks on 9/11, she was selected to organize and direct a classified 120-person interagency organization responsible for all Department of Defense operations against the country's most significant terrorist threats and all long-term planning for the Global War on Terrorism. Diane retired in January 2004. Since her retirement, Diane has been intimately involved in Homeland Security, Critical Infrastructure Protection, and Maritime High-Risk counterterrorism Operations.



Above Left image: COL (RET) Diane Schroer presented a Dean's hour lecture on ISIL and Leadership in COIN Operations at the tactical level.



Above Right image: (from left to Right) (b) (6) OIC/TAC (b) (6) COL(RET) Diane Schroer (b) (6) BS&L and Dr Outing (Diversity Director)



Above Image: Attendees of the evening Transgender Day of Remembrance Ceremony



MADN-CHEM

SUBJECT: Request Approval to Spend Less Than \$10,000 (Army Funding) on Army Attendance at the Transgender Day of Remembrance, 30 November 2016

f. *Coordination and networking:* None.

g. *Previous attendance:* None.

h. *Allocation rule:* None.

6. Total Costs.

Expense	Estimated Cost	Remarks/Calculations
<i>Attendee Costs</i>		
Lodging costs for attendees	\$0.00	Guest speaker will stay with the (b) (6) family.
M&IE costs for attendees	\$147.50	For guest speaker only
Travel costs for attendees	\$552.42	For guest speaker only Flight=\$463.20 Rental Car= \$89.22
Registration fee	\$0	None
Total attendee costs	\$699.92	Total of the above costs to include: per diem, travel expenses and registration fees
<i>Other Costs</i>		
Exhibit fee (if applicable)	\$0	None
Other costs	\$400	Ceremony Refreshments
Total other costs	\$400	Total of the costs above, including exhibit or other costs
TOTAL COSTS	\$1099.92	Total Expenses

7. Reporting Requirement. Within 5 business days of approval, a copy of the approval memorandum and this request must be forwarded to OAA's Army Conference Management Directorate at (b) (6)@mail.mil. Within 25 days of the conclusion of the conference, provide an after action report to the approval authority and OAA. Required formats for after action and closeout reports are available on the Army Conference home page.

8. I certify that the requested costs are in accordance with applicable travel policies, regulations and statutes.

9. Point of Contact. The POC for this action is (b) (6) at (b) (6) or (b) (6)

MADN-CHEM

SUBJECT: Request Approval to Spend Less Than \$10,000 (Army Funding) on Army Attendance at the Transgender Day of Remembrance, 30 November 2016

Encl



Academy Professor, D/C&LS  
OIC, Spectrum Club

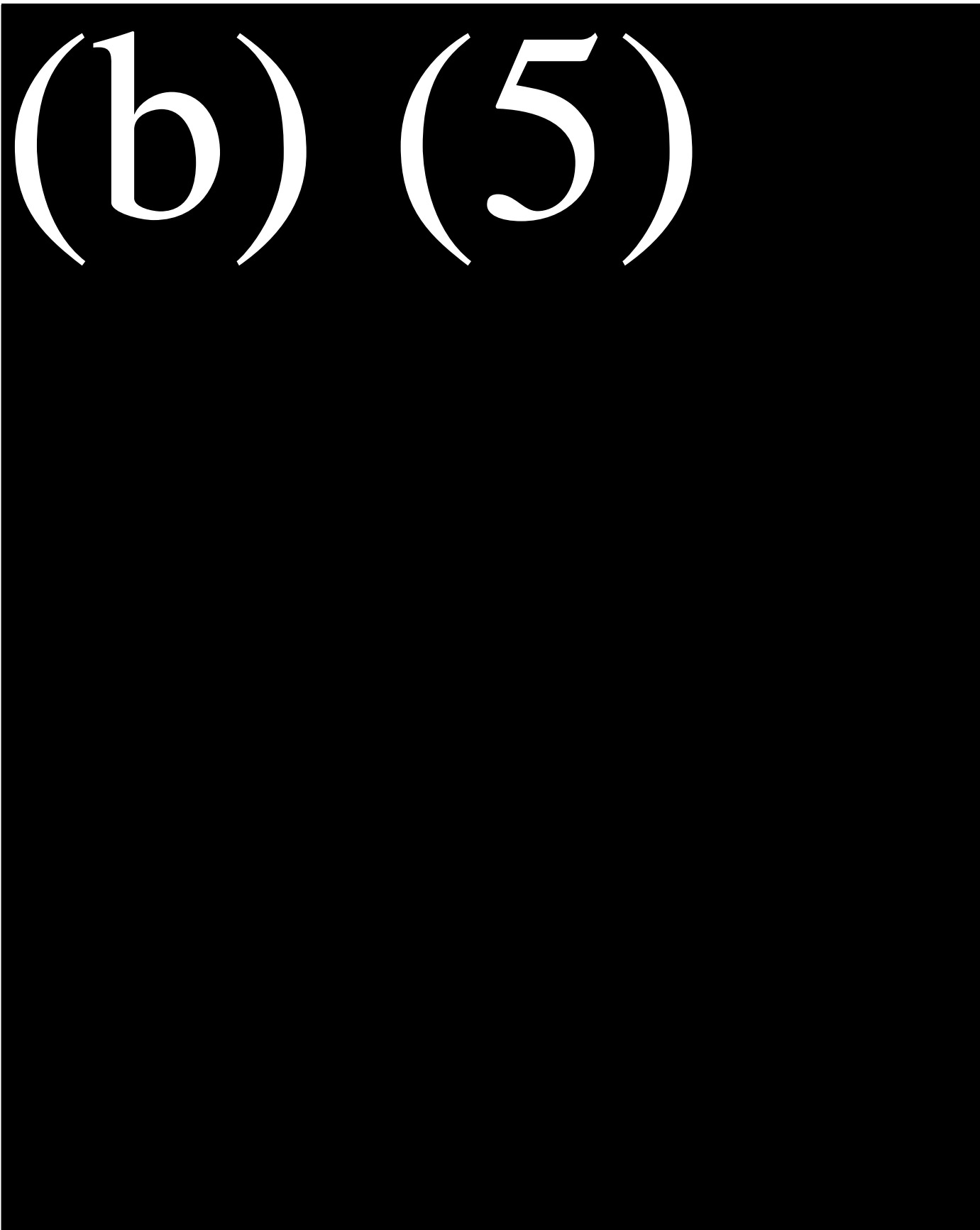
NOTE: The following items must accompany this request:

1. Conference agenda
2. Legal review

MAJA-AL

4 November 2016

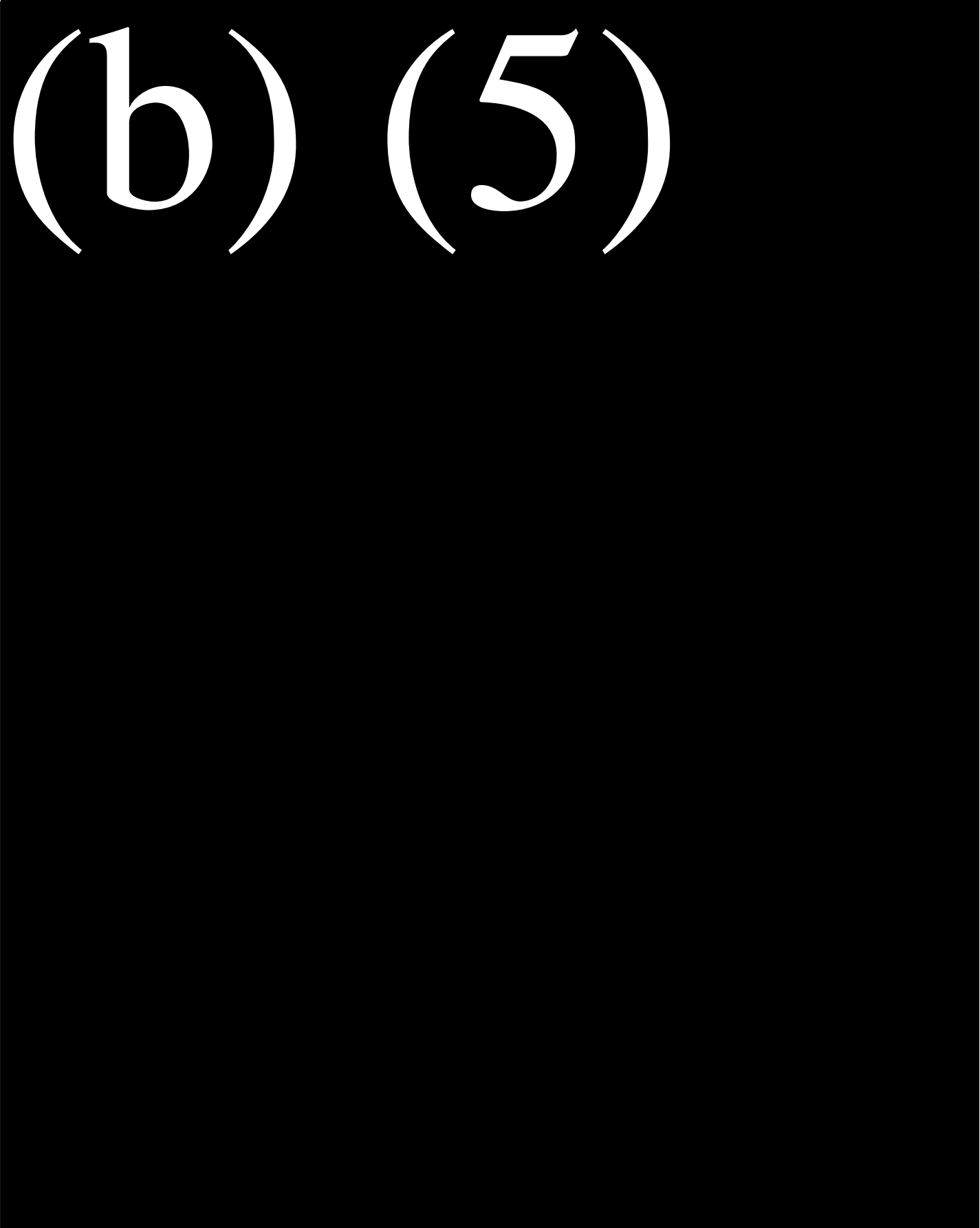
(b) (5)





MAJA-AL

(b) (5)



MAJA-AL

2

(b) (5), (b) (6)

