

AFFIDAVIT

AFFIANT says of his own personal knowledge:

Col Smith called a meeting between me, as the prosecutor, and two NCIS special agents to discuss the Hawk case. One SA present was SA Rendon, however, I cannot recall the name of the other SA. I would be able to recognize the other agent if I saw him. This meeting took place one afternoon in the conference room at the law center in which SA Rendon was briefing us (Col Smith and I) on the latest update with the case. Col Smith was intimately involved with all military justice cases and the Hawk case was no different. She made it a point to contact the agents on a regular basis to receive updates and to provide guidance to them as to how to better conduct their investigations (who to interview, etc...).

During this meeting, after receiving the agent's update, Col Smith turned to me and asked if I had interviewed the victim, Danielle Ligon. I told her I had and Col Smith asked me to elaborate. I informed Col Smith, in the presence of the two agents, that Danielle told me that her intent was to go out with her friend, Amy, and to hang out with her at a club. She only wanted to hang out with Amy and no one else. Danielle's intent was not to "Hook up" with anyone to include the accused. Col Smith then looked at me in disbelief and said, "Rob, you don't believe her do you?" I told her that that is what she said and I had no reason to disbelieve her. Col Smith then said, "Well, no one is going to buy off on her story." "You can't make her come off as the Virgin Mary because no one is going to believe her Rob." "Have her say that she went to the Locker Room with every intention of meeting with Hawk and things got out of hand." "And because he is much larger than her, she suddenly found herself in a situation where she couldn't get out of."

I understood that Col Smith was directing me to have Danielle change her testimony in order to make her, Danielle, more credible. I could not believe she was asking this of me and I immediately looked at SA Rendon to see if he was listening to these instructions as they were given to me. I was hoping he would have had a reaction or supported me by saying that Danielle told him the same thing. SA Rendon and the other agent remained quiet. I also believe that she was instructing me in the presence of the SAs in order for them to get on "the same sheet of music."

It was Col Smith's policy that was widely known to me as the military justice officer, the deputy SJA, and all of my prosecutors that she developed a litmus test for selecting investigating officers for Article 32 hearings. There were two reservist Marine Officers who made a recommendation to General Salinas that their respective case be sent to a lower forum other than a general court martial. As a result, Col Smith told the military justice section that she no longer wanted us to select reservists to be appointed as investigating officers.

Subsequently, she removed the option of selecting from a pool of investigating officers from Miramar after Major Mori, the military justice officer at Miramar, gave a recommendation for one of our cases to be tried at a lesser forum than a general court martial. Col Smith wanted me to only exclude Major Mori as an Article 32 officer because she described him as a "Defense counsel holding a military justice officer's billet." She just wanted him alone to be excluded, but when I mentioned to her that I normally send the request to Major Mori who selects the Article 32 officer based upon the officer's availability, he would be able to volunteer to conduct the hearing himself. She then

Initial: 

made it a blanket policy to exclude all of Miramar's attorneys from participating as investigating officers.

After Col Smith filtered all of these potential officers, the only person I could ask for at that time was Capt Miner, who is a judge advocate and was serving as a company commander at Camp Pendleton for Weapons Field Training Battalion.

Prior to holding the Article 32 hearing, Danielle told me that she did not want to participate in the case and wanted the case to go away because she was fearful for her life. I discovered her concern only after her victim advocate (I believe her name is Sandy) brought it to my attention by handing me an e-mail she had received electronically from Danielle. In the e-mail, to the best of my recollection, it had read that someone threw a brick or rock through the glass part of her car door. Her car was parked at her residence and this indicated to her that Hawk knew where she lived and what car she drove. This frightened her and it scared her so far as to not wanting to cooperate with the government. She believed it was a warning from Hawk and it convinced her to basically cease and desist.

Upon receiving this e-mail from the victim advocate, Sandy, I showed it to Col Smith. Col Smith told me, "This is not good Rob. We can't afford to lose her; do whatever it takes to get her back on track." I told Col Smith that I had already placed several unanswered calls and e-mails to her and was not getting a positive indication that Danielle wanted to participate. Col Smith said, "Do whatever you have to to get her back on board." At some point during her instructions, she also stated that she didn't care what I had to do.

I was persistent with my attempts to contact Danielle until she changed her mind and wanted to cooperate again. I must have gone overboard because she was so inflamed that she wanted to testify at the article 32 hearing after I spoke with her. I didn't want Col Smith to yell at me for violating another one of her policies - avoid at all costs victims testifying at Article 32 hearings. She only wanted the government to put NCIS agents on the stand and no one else.

Based upon Col Smith's policy, I mentioned to Danielle that she did not have to testify and she had a right to decline. Danielle was concerned that her not testifying at the article 32 hearing would adversely affect the case as it would show that she did not want to testify and thought it would reflect negatively on her credibility and show a lack of confidence. She wanted to testify. I went over the rules again and told her it was not necessary. Danielle then signed the invitational sheet I brought to her inviting her to the Article 32 hearing and declining to testify.

I took the same sheets to the other civilians involved in the case. I explained the procedures and they declined to participate at the hearing. Again, my motivation was to comply with Col Smith's policy to avoid a negative confrontation with her. Early during her tenure as SJA, she yelled and ridiculed one of my senior Captain prosecutors at a military justice meeting in front of other prosecutors and enlisted Marines for allowing his victim to testify at an Article 32 hearing.

Regarding all of the other charges not related to Danielle Ligon, Col Smith was looking into Hawk's background herself, looking at his security clearance issues and drunk and disorderly conduct as the SJA on his case. She brought all of that stuff up and handed it to me to prosecute. She told me that she had discovered additional charges and rebuttable evidence for me.

Initial: 

Col Smith also claimed that the CID chief (I believe his last name is Cullen) was covering for Hawk. She stated that Hawk was an MP by MOS and the CID chief did not report something that Hawk did to affect Hawk's security clearance. Col Smith took it upon herself to look for "dirt" on the CID chief and gathered evidence to get him relieved from CID. The chief was a GySgt who had just been promoted to MSgt. The CID chief was relieved from his post. Col Smith was upset with the Provost Marshall, Major Rourke, for not supporting her assertions against his CID chief. She then attempted to have him relieved from his billet too. Col Helfrich, the H&HS Battalion CO at the time, rejected the SJA's accusations which only infuriated her more.

Col Smith dug up the petty cab and drunk and disorderly incidents against Hawk as the SJA. I am aware that in other cases Col Smith would frequently talk to witnesses and victims. She would brag about how she would flip defense witnesses and how she would chew their butts out for testifying for the defense. She would tell me, "Rob, why am I doing your job?" "Defense witnesses should not want to testify after you speak with them." "You need to point out the error of their ways and who they need to answer to when they get back to their unit because they will have some explaining to do."

I remember once that the XO from 8<sup>th</sup> Marine Corps District (I believe his name started with LtCol Kaz) testified for the defense in either a sentencing case or admin board and Col Smith stated that she could not believe a LtCol would do that (testify for the defense). She also said that she was going to talk to General Salinas about that. I cannot recall the other Marine's name, but Hawk was on a double date with another Marine when he met Danielle. Col Smith told me that if that Marine would not testify favorable for the government, that we should threaten him by charging him with adultery since he was married and fooling around with Amy. She wanted to keep him "in check."

I swear that the above official statement is true and correct to the best of my knowledge.

Robert M. BENO  
Print Name

[Handwritten Signature]  
Signature

10/20/10  
Date