1 2 3 4 5 6 7 8	LAURA E. DUFFY United States Attorn BETH A. CLUKEY Assistant U.S. Attorn California State Bar Office of the U.S. A 880 Front Street, Ro San Diego, Californ Telephone: (619) 55 Facsimile: (619) 55 Email: beth.clukey@ Attorneys for Defen	ney No. 228116 Attorney Dom 6293 ia 92101-8893 57-7184 7-5004 @usdoj.gov dants		
9			ATES DISTRICT COUP	
10 11	CAROLYN MAR'		N DISTRICT OF CAL	
12	Plai	ntiff,)	
13	v.)	
 14 15 16 17 18 19 20 21 22 	NAVAL CRIMIN SERVICE ("NCIS CLOOKIE, NCIS JACOBSON, NCI AGENT IN CHAF CORPS WEST FII SULLIVAN, STA ADVOCATE, MA RECRUIT DEPOT GERALD "JERRY SPECIAL AGENT SECRETARY OF DOES 1-7,	DIRECTOR; WADE S ACTING SPECIAL RGE, MARINE ELD OFFICE; SEAN FF JUDGE RINE CORPS T SAN DIEGO; (" MARTIN, NCIS	 TABLE OF EXHI DATE: November TIME: 11:00 a.m. CTRM: 4 THE HONORABL) 	1, 2010
23	Exhibit A	Declaration of LTCO	L Sean Sullivan	Pages: 01-06
24	Exhibit B	Letter fr. COL J.R. Sn dated July 22, 2010	ider to Plaintiff,	Pages: 07-09
25	Exhibit C	Report of Investigatio	n ("ROI")	Pages: 10-14
26	Exhibit D	Hearing Transcript		Pages: 15-26
27 28				

1	DATED:	October 18, 2010	Respectfully submitted,
2			LAURA E. DUFFY United States Attorney
3			
4			<u>s/ Beth A. Clukey</u> BETH A. CLUKEY Assistant United States Attorney Attorneys for Defendants Email: beth.clukey@usdoj.gov
5 6			Email: beth.clukey@usdoj.gov
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1	UNITED STAT	TES DISTRICT COURT
2		TRICT OF CALIFORNIA
3	CAROLYN MARTIN,	Case No. 10-cv-01879-WQH (AJB)
4) Plaintiff,	
5	v.)	CERTIFICATE OF SERVICE BY EMAIL
6	NAVAL CRIMINAL INVESTIGATIVE	
7	SERVICE ("NCIS"); MARK D. CLOOKIE,) NCIS DIRECTOR; WADE JACOBSON,)	
8 9	NCIS ACTING SPECIAL AGENT IN) CHARGE, MARINE CORPS WEST FIELD)	
9 10	OFFICE; SEAN SULLIVAN, STAFF) JUDGE ADVOCATE, MARINE CORPS) RECRUIT DEPOT SAN DIEGO; GERALD)	
10	"JERRY" MARTIN, NCIS SPECIAL) AGENT; RAY MABUS, SECRETARY OF)	
12	THE NAVY; JOHN DOES 1-7,	
12	Defendants.	
14		
15	IT IS HEREBY CERTIFIED THAT:	
16	I, the undersigned, am a citizen of the My business address is 880 Front Street, Roon party to the above-entitled action. I have caus	United States and am at least eighteen years of age. n 6293, San Diego, California 92101-8893. I am not a sed service of:
17	TABLE OF EXHIBITS (dated 10/18	8/10) plus Exhibits A through D attached thereto
18	to the following individuals, by email:	
19 20	John David Dlain Law	Seen Compan Diordon
20 21	John David Blair-Loy ACLU Foundation of San Diego and Imperial Counties	Sean Connor Riordan ACLU Foundation of San Diego & Imperial Counties
21 22	P.O. Box 87131 San Diego, CA 92138	P.O. Box 87131 San Diego, CA 92138
22 23	dblairloy@aclusandiego.org	sriordan@aclusandiego.org
23	I declare under penalty of perjury that the fore	egoing is true and correct.
25	Executed on October 18, 2010.	
26		s/ Beth A. Clukey
27		BETH A. CLUKEY
28		

EXHIBIT A

1 2 3 4 5 6 7 8	LAURA E. DUFFY United States Attorney BETH A. CLUKEY Assistant U.S. Attorney California State Bar No. 228116 Office of the U.S. Attorney 880 Front Street, Room 6293 San Diego, California 92101-8893 Telephone: (619) 557-7184 Facsimile: (619) 557-5004 Email: beth.clukey@usdoj.gov Attorneys for Defendants	
9	UNITED STA	ATES DISTRICT COURT
10	FOR THE SOUTHE	RN DISTRICT OF CALIFORNIA
11	CAROLYN MARTIN,) Case No. 10-cv-01879-WQH (AJB)
12	Plaintiff,	
13	V.	
 14 15 16 17 18 19 20 21 	NAVAL CRIMINAL INVESTIGATIVE SERVICE ("NCIS"); MARK D. CLOOKIE, NCIS DIRECTOR; WADE JACOBSON, NCIS ACTING SPECIAL AGENT IN CHARGE, MARINE CORPS WEST FIELD OFFICE; SEAN SULLIVAN, STAFF JUDGE ADVOCATE, MARINE CORPS RECRUIT DEPOT SAN DIEGO; GERALD "JERRY" MARTIN, NCIS SPECIAL AGENT; RAY MABUS, SECRETARY OF THE NAVY; JOHN DOES 1-7, Defendants.	 DECLARATION OF LIEUTENANT COLONEL SEAN M. SULLIVAN, UNITED STATES MAINE CORPS RESERVE DATE: November 1, 2010 TIME: 11:00 a.m. CTRM: 4 THE HONORABLE WILLIAM Q. HAYES
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IN THE UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

CAROLYN MARTIN)
Plaintiff,	
v.) Civil Action No. 10-CV-1879) (Judge Hayes)
NAVAL CRIMINAL INVESTIGATIVE)
SERVICE ("NCIS"); MARK D. CLOOKIE	,)
NCIS DIRECTOR; WADE JACOBSON,)
NCIS ACTING SPECIAL AGENT IN)
CHARGE, MARINE CORPS WEST)
FIELD OFFICE; SEAN SULLIVAN,)
STAFF JUDGE ADVOCATE, MARINE)
CORPS RECRUIT DEPOT SAN DIEGO;)
GERALD "JERRY" MARTIN, NCIS)
SPECIAL AGENT; RAY MABUS,)
SECRETARY OF THE NAVY; JOHN)
DOES 1-7,)
)
Defendants)

DECLARATION OF LIEUTENANT COLONEL SEAN M. SULLIVAN, UNITED STATES MARINE CORPS RESERVE

DECLARANT, states as follows, to wit:

1. I am Lieutenant Colonel Sean M. Sullivan, USMCR, presently serving as the Assistant Chief of Staff ("AC/S"), Staff Judge Advocate ("SJA"), Marine Corps Recruit Depot ("MCRD") and Western Recruiting Region ("WRR"), located in San Diego, California.

2. As the SJA, I exercise staff cognizance over the following legal sections: Administrative Support; Civil Law; Military Justice; legal Assistance; and Defense. MCRD SD/Western Recruiting Region ("WRR") Organization and Function Manual, ¶ 8001.1 and MCRD SD/WRR Standard Operating Procedures for Legal Matters, ¶ 1005 (DepO P5800.13B).

3. MCRD San Diego is a military installation under the military command and management control of the Commandant of the Marine Corps. Marine Corps Manual w/ CH 1-3, \P 6(a).

4. In July 2010, I assumed my official duties as the SJA at MCRD and WRR.

5. As the AC/S, SJA at MCRD San Diego, I am responsible for the security of Building 12 ("Law Center") onboard MCRD SD. MCRD SD/WRR Crime Prevention Program Order (DepO 1600.1C).

6. The first deck of the Law Center houses the following sections: Administrative Support; Civil Law; Military Justice; legal Assistance; and Defense. The second deck of the Law Center houses a courtroom which has been under construction for the past year and should be completed on or before 1 November 2010.

7. Every section maintains either confidential Naval Criminal Investigative Service ("NCIS") Reports of Investigation ("ROI"), prosecution case files, confidential administrative investigation files, confidential and privileged defense investigatory files involving ongoing criminal cases (General and Special Courts-Martial), and other privileged and personal information protected by the Privacy Act (5 U.S.C. § 552A) and other federal statutes applicable to ensuring the safeguarding of official documentation and personal information obtained and maintained within an official system of records.

8. As the SJA, I have to ensure that my subordinate attorneys and office personnel working within the Law Center take appropriate action to safeguard official and confidential files and ensure that only authorized personnel have access to the Law Center.

9. In July 2010, after assuming my duties as the SJA, I was informed by NCIS personnel and an Assistant U.S. Attorney from the San Diego U.S. Attorney's Office, that Ms. Carolyn Martin was the subject of an ongoing federal criminal investigation related to allegations that she had fraudulently misrepresented her credentialing authority in order to gain access to the NCIS field office at Marine Corps Air Station ("MCAS") Miramar, California. Furthermore, I was informed that she was also under investigation for alleged witness tampering and attempted obstruction of justice involving improper communications she made to civilian witnesses who were scheduled to testify at a court-martial that was held at MCRD San Diego, in May 2010.

10. In mid August 2010, the Chief of Staff, MCRD San Diego, who was at the time, acting as the Commanding General, MCRD San Diego¹ (herein referred to "Acting Commanding General") was briefed by NCIS personnel concerning Ms. Martin's ongoing federal criminal investigation as discussed above.

11. Based upon the information received from the federal criminal investigative authorities relating to Ms. Martin's alleged witness tampering and attempted obstruction of justice, and given the confidential investigatory files maintained at the Law Center, the Acting Commanding General decided to limit Ms. Martin's access to the Law Center until the conclusion of the criminal investigations.

12. Specifically, the Acting Commanding General determined that Ms. Martin shall be debarred from the Law Center unless I approve otherwise. Ms. Martin is not debarred from

¹ Pursuant to Navy Regulations, in the absence of the commander, the chief of staff for the commander succeeds to command. See Navy Regulations, art. 1073 (1990).

entire MCRD installation, but only the building 12 Law Center with the exceptions noted in Paragraph 13.

13. I have never, nor do I intend on taking any action to prevent Ms. Martin from accessing any courtroom located on the 2nd deck of the Law Center should she be called to testify as a witness by a party in any judicial proceeding. Also, Ms. Martin will not be prevented from accessing any courtroom at the Law Center for any judicial proceeding, should defense counsel request her presence and the military judge approves said request.

I declare under penalty of perjury that the foregoing is true and correct.

Executed in San Diego, California, this 18th day of October, 2010.

S. M. Sullivan, LtCol, USMCR

State of California	
County of Sch Diego	> ss.
On 15 oct 10 before m personally appeared <u>Scan Sullive</u>	ie, Angele Hadren, Legul Assisting,
personally appeared Scan Sulliva	(NOTARY) STORY,
	SIGNER(S)
personally known to me - OR -	proved to me on the basis of satisfactory
,	evidence to be the person(s) whose name(s)
	is/are subscribed to the within instrument and
7 .	acknowledged to me that he/she/they executed
	the same in his/her/their authorized
	capacity(ies), and that by his/her/their
	signatures(s) on the instrument the person(s),
AUTHORIZED TO ACT AS A NOTARY	or the entity upon behalf of which the
PUBLIC UNDER THE PROVISIONS OF	person(s) acted, executed the instrument.
SECTION 1044(A) OF TITLE 10 OF THE	· · · · · · · · · · · · · · · · · · ·
UNITED STATES CODE AND SECTION	
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VALLEY-SIERRA, 800-362-3369

EXHIBIT B



UNITED STATES MARINE CORPS

MARINE CORPS AIR STATION BEAUFORT, SOUTH CAROLINA 29904-5001

IN REPLY REFER TO 5510 SJA/SAUSA

Ms. Carolyn Martin 447 Tamarack Avenue Carlsbad, CA 92008

Dear Ms. Martin:

I have determined you attempted to interfere, or left the distinct impression of an attempt to interfere, with a witness's participation in the pending court-martial of <u>United States v.</u> <u>Corporal J. W. Sims</u>. Given your conduct, and the effect that your presence can have on this and other witnesses, I consider your presence aboard this Air Station to be detrimental to the good order and discipline required aboard this installation.

As a result thereof, upon receipt of this letter, you are hereby ORDERED not to return to or reenter Marine Corps Air Station, Beaufort, South Carolina, to include the Laurel Bay Housing Area, unless this order is withdrawn by me or my successors in writing.

You are hereby given **NOTICE** that any reentry or attempt to reenter the Marine Corps Air Station, Beaufort, South Carolina, or the Laurel Bay Housing Area, will constitute a violation of the Title 18, United States Code, Section 1382, which is quoted in its entirety for your information.

TITLE 18 U.S. Code Section 1382 - Entering Military, Naval, or Coast Guard property:

Whoever, within the jurisdiction of the United States, goes upon any military, Naval, or Coast Guard reservation, post, fort, arsenal, yard, station, or installation, for any purpose prohibited by law or lawful regulation: or

Whoever, reenters or is found within any such reservation, post, fort, arsenal, yard, station or installation, after having been removed therefrom or ordered not to reenter by any officer or person in command or charge thereof shall be fined under this title or imprisoned not more than six months, or both. (As amended Sept. 13, 1994, Pub.L. 103-322, Title XXXIII, Section 330016(1)(G), 108 Stat. 2147.) \

You are further informed that should you reenter or be found within the limits of Marine Corps Air Station, Beaufort, South Carolina, or the Laurel Bay Housing Area, in violation of this order, you will be subject to apprehension and detention by the military for prompt delivery to Federal Marshals or other appropriate civil authorities.





This **ORDER** remains in effect permanently unless you receive written notification from me or my successors to the contrary. You may request reconsideration of this action in writing within ten days from your receipt of this **ORDER** and **NOTICE**. Please direct your correspondence to the attention of the Staff Judge Advocate, Joint Law Center, P.O. Box 55001, Marine Corps Air Station, Beaufort, SC 29904.

SNIDER Colonel, USMC U.S. Marine Corps

Copy to: MCAS PMO MCAS SJA IPAC

CERTIFICATION OF RECEIPT

I hereby acknowledge that I have read the foregoing ORDER and NOTICE and I understand that contents thereof and I am subject to prosecution in the U.S. District Court if I violate Title 18, U.S. Code, Section 1382. I understand that if I desire to appeal this action, such appeal must be submitted in writing within ten days.

MARTI Date Witne USAc (mt)



EXHIBIT C



UNITED STATES MARINE CORPS MARINE CORPS AIR STATION

MARINE CORPS AIR STATION BEAUFORT, SOUTH CAROLINA 29904-5001

IN REPLY REFER TO 5510 SJA/SAUSA

2 9 AUG 2010

Ms. Carolyn Martin 447 Tamarack Avenue Carlsbad, CA 92008

Re: Your letter dtd 29 July 2010

Dear Ms. Martin:

I am in receipt of your correspondence requesting an appeal of your debarment from this installation. The documents you requested are enclosed. In consideration of your request for appeal, please provide your written response to the documents to the following address.

COMMANDING OFFICER ATTN JOINT LAW CENTER PO BOX 55001 MCAS BEAUFORT SC 29904

If you would like to schedule a personal appearance in conjunction with your document submission, please call Ms. T. Johnson at the Joint Law Center at 843-228-7382 within 10 days of this letter.

J. R. SNIDER Colonel, USMC U.S. Marine Corps **U.S. NAVAL CRIMINAL INVESTIGATIVE SERVICE**

INVESTIGATIVE ACTION

25JUN10

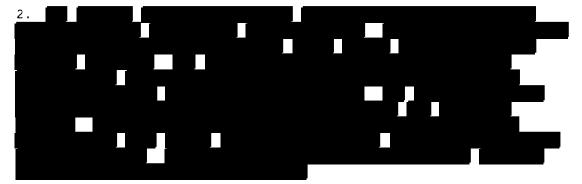
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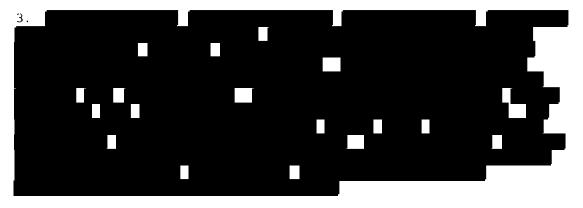
S/SIMS, JOSHUA WILLIAM/CPL USMC M/W/MEE4/T/497-96-2964/21JUL87/MARCLINE, MO DUSTA: PMO, MCAS BEAUFORT SC

RESULTS OF INTERVIEW OF MS. SIMMONS

1. On 25Junl0, Ms. Lindsey N. SIMMONS, was interviewed after she was identified as S/SIMS ex-wife. The focus of the interview was to ascertain if Ms. SIMMONS could provide any historical information that may assist this investigation.









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EXHIBIT (28 Def'sOpp 12

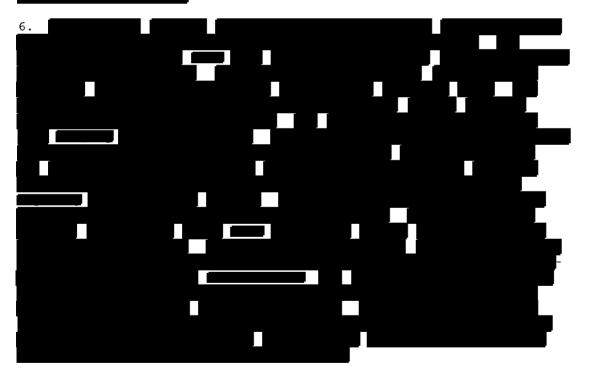
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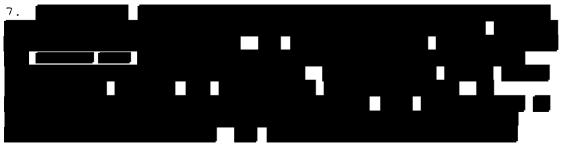
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SUBJ: S/SIMS, JOSHUA WILLIAM/CPL USMC U.S. NAVAL CRIMINAL INVESTIGATIVE SERVICE







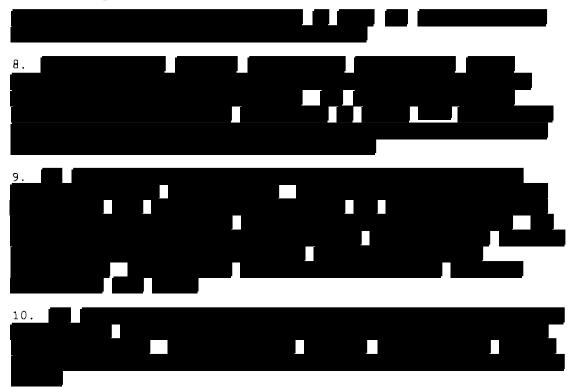


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WARNING

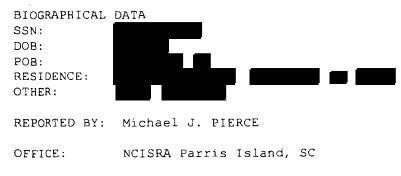
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SUBJ: S/SIMS, JOSHUA WILLIAM/CPL USMC U.S. NAVAL CRIMINAL INVESTIGATIVE SERVICE



11. Near the end of the interview, Ms. SIMMONS provided that she was previously contacted and questioned by a female private investigator regarding this investigation. RA inquired if the investigator was Carolyn MARTIN and Ms. SIMMONS confirmed that it was. Ms. SIMMONS stated she was not comfortable speaking with Ms. MARTIN because she was an independent investigator, not from an official investigating agency. According to Ms. SIMMONS, Ms. MARTIN cautioned her about speaking to any "government agencies" regarding this investigation. Ms. SIMMONS stated Ms. MARTIN told her the government agency would try to "coerce or bully her around" and that she should not trust them. Ms. SIMMONS added that Ms. MARTIN said, "I can't tell you not to talk to them, but it would be in your best interest not to".

12. Ms. SIMMONS could provide no additional information. She was provided with RA's contact information and encouraged to contact RA if she recalled or came upon any information she believed would assist the investigation.



 FOR OFFICIAL USE ONLY

 Page 3
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WARNING

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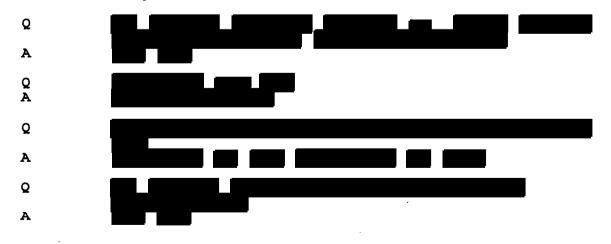
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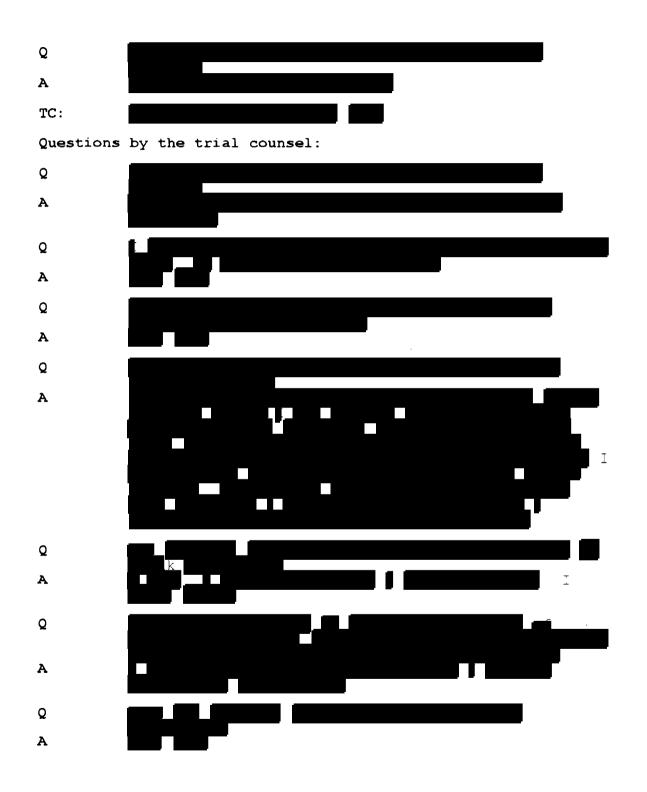
Ms. Lindsay Simmons, a civilian, was called as a witness by the prosecution, was sworn, and testified as follows:

DIRECT EXAMINATION

Questions by the trial counsel:

- Q Are you on a cellular phone, Ms. Simmons? A Yes, sir.
- Q Are you in a place where you have uninterrupted service and you are not going to be driving or in danger or anything?
 A Yes, sir.
- Q Yes, sir, you are in a quiet place where you're not going to be in danger?
 A Yes.
- Q Is there anybody else in the room with you?
 A No, sir.
- Q Are you going to be referring to any notes?A No, sir.
- Ms. Simmons, I know that -- you are on a phone +- on speakerphone in the courtroom, so I can just ask you to speak up because the court reporter has to take down your words and then I will just ask you a few questions. All right?
 A Okay.





Def'sOpp_17



- All right. Ms. Simmons, I am going to turn your attention now to more recent events. Have you talked to a Ms. Carolyr. Martin recently?
 A Yes, in June.
- Q And could you please relay that conversation to the court please?A She called me and I didn't know why she was calling
 - She called me and I didn't know why she was calling because I didn't know about any of this. And -- so I was kind of afraid at first because I thought I had done something wrong because all she said was that she was a private investigator and she needed to ask me some questions. And then after a couple of minutes she told me -- I mean, I think she realized that I was confused and didn't know what was going on, so she told me about Josh's situation

and she just asked me a lot of questions about Josh and a lot of questions about how I felt for him and things like that. And then towards the end she asked if anyone else had talked to me about it and, again, I said, No, I didn't know anything about it but no one had called me. And she told me that she couldn't tell me not to talk to NCIS and there is some other agency that I can't, for the life of me, remember what it was she said.

Q Was it CID? A I don't rem

I don't remember. It was an acronym of some sort, but I don't remember what it was. And she told me she couldn't tell me not to talk to them, but in her experience the people that she had talked to before, those people felt -- and this isn't verbatim -- but something about how they felt pressured into answering questions and, kind of, led into questions and that I didn't have to talk to them if I didn't want to and just on and on about how other people that she talked to had a really negative experience with NCIS and fill in the blank.

- **Q** What kind of impression did you get from what she said?
- A Honestly, it just made me think that it reflected poorly on her because I felt -- I mean, after she said that, it gave me a really negative impression of NCIS and I thought that was kind of odd because I met people before who work there and they were always really nice. So I thought it was kind of odd and I thought it was kind of poor on her part to, kind of, I don't know, demean anyone really at all really. And then I forget his name, but a gentleman from NCIS called me and he was so nice to me that I told him that because I thought it was really shocking that it had gone so well and she kind of told me that it wouldn't.
- Q Was that gentleman Michael Pierce?
 A I believe so. I didn't write down his name.
- And you've talked to me before, Captain Evans, about this case?
 Yes, sir.

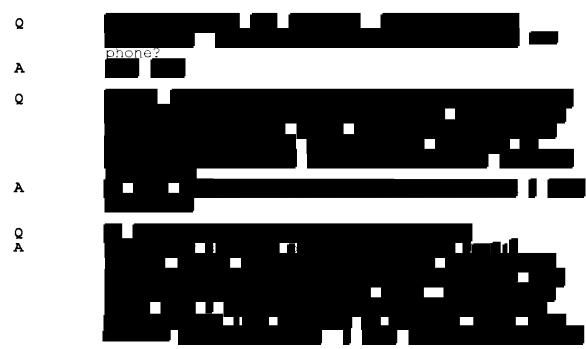
- Q Has either Special Agent Michael Pierce or myself, Captain Evans, treated you unfairly or done any of the things that Carolyn Martin said that we would do?
 A No, sir.
 TC: I have no further questions at this time, sir.
 Thank you very much, Ms. Simmons. I believe -- I thank Captain Schonfeld is going to have some questions for you. He is the defense attorney;
- WIT: Okay.
- TC: Thank you, ma'am.

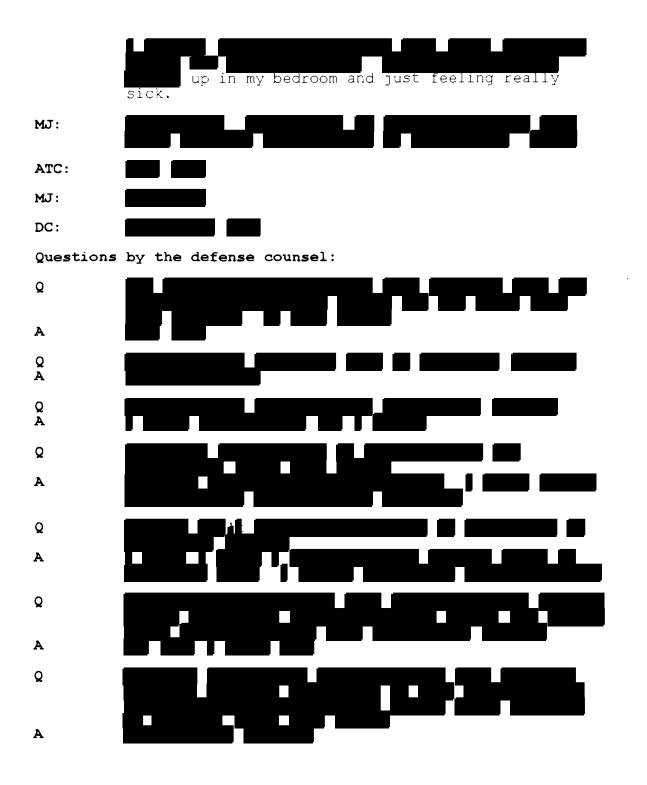
okay?

- MJ: Cross-examination?
- DC: Yes, sir. Thank you, sir.

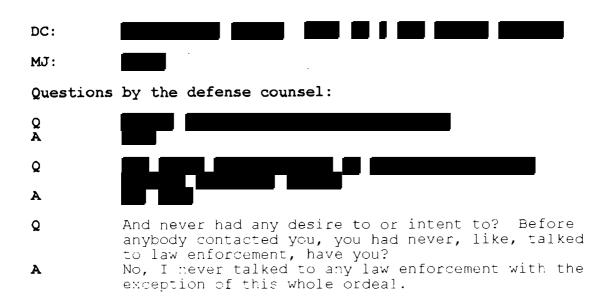
CROSS-EXAMINATION

Questions by the defense counsel:





i.



- MJ: With the exception of who?
- WIT: I'm sorry?
- MJ: With the exception of who?
- WIT: Of this whole thing that -- I mean, with the exception of Carolyn Martin and you all in the room, I haven't talked with hardly anyone.
- MJ: Thank you. Go ahead.

DC: Thank you, sir. Thank you, ma'am.

Questions by the defense counsel:

- **Q** And myself nor Captain Brooks, neither one of us, have attempted to sway you or try to effect your opinion about any of the other parties involved in this case, have we?
- A I am not sure that I really understand your question, but I haven't felt like any of you have tried to shift my opinion, no.
- Q And in our conversation, did I ever try to indicate that you should or should not talk to anyone?
 A No, sir.
- DC: Thank you. Sir, I have no further questions.

MJ: Ma'am, can you hear me?

Q A

Q A

Q

А

Q A

Q

A

Q A

Q

A

Q

A

Q A

Q

А

Questions by the military judge:

Yes, sir. WIT:

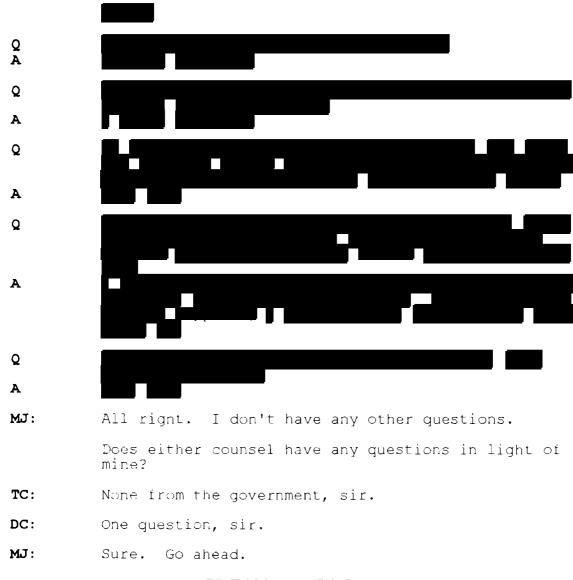
EXAMINATION BY THE COURT



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RECROSS-EXAMINATION

Questions by the defense counsel:



