

**WESTERN JUDICIAL CIRCUIT
NAVY-MARINE CORPS TRIAL JUDICIARY**

UNITED STATES)	SPECIAL COURT-MARTIAL
)	
v.)	GOVERNMENT MOTION IN LIMINE
)	(Pre-Admit Evidence Collected From SSgt
VEGA, Nicolas)	Vega's NMCI Email)
Staff Sergeant)	
U.S. Marine Corps)	
XXX XX 4253)	(14 Oct 10)
)	

1. **Nature of Motion.** Pursuant to R.C.M. 906(b)(13), the Government submits the instant Motion in Limine (Pre-Admit Evidence Collected From SSgt Vega's NMCI Email).

2. **Summary of Facts.**

a. Col S. C. Smith, Commanding Officer of H&S Battalion, MCRD San Diego, appointed GySgt David Puente to investigate the misuse of a Government computer by SSgt Vega.

b. On 1 December 2009, GySgt Puente requested the retrieval of email and file contents of NMCI servers from Marine Corps Network Operations & Security Center (MCNOSC), Quantico, VA.

c. On approximately 3 December 2009, Mr. Angelo Patti took an electronic mirror image, or "snapshot," of the information contained in SSgt Vega's NMCI email account located on NMCI servers.

d. Mr. Angelo Patti electronically transferred the information he retrieved from SSgt Vega's NMCI email account to his supervisor, Mr. Tony Messer. This information was contained in a folder labeled "SDC3172154." SDC3172154 is the ticket number assigned to this investigation by Mr. Patti.

e. Mr. Messer transferred the information contained in SSgt Vega's NMCI email account to Ms. Josephine Warner of the Quantico MCNOSC, as well as, GySgt Puente, the Investigating Officer.

f. Ms. Warner mailed a disc containing a copy of the contents of SSgt Vega's NMCI email account to GySgt Puente.

g. GySgt Puente reviewed the information Mr. Patti seized from SSgt Vega's NMCI email account and discovered pornographic pictures of Ms. Nuvia Gomez and indecent communications with SSgt Melissa Reyes.


3. **Burden of Persuasion.** Pursuant to R.C.M. 905(c)(1) and (c)(2), the Government bears the burden of persuasion by preponderance of the evidence.

4. **Discussion.** The pictures recovered from SSgt Vega's email account, as well as, SSgt Vega's email traffic with SSgt Reyes are not hearsay and admissible as evidence once the proper foundation for them has been laid. Neither the pictures, nor the email traffic are statements being offered for the truth of the matter asserted. Additionally, any statements made by SSgt Vega are admissions of a party opponent pursuant to MRE 801(d)(2).

5. **Relief Requested.** The Government respectfully requests that it's Motion in Limine (Pre-Admit Evidence Collected From SSgt Vega's NMCI Email) be granted.

6. **Evidence.** Appointing Letter for GySgt Puente (Exhibit D); Request for File Retrieval dtd 1 Dec 09 (Exhibit E); Testimony of Mr. Angelo Patti; Chain of Custody Document (Exhibit F); Testimony of GySgt David Puente.

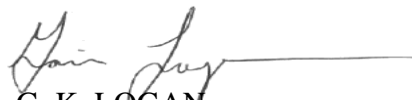
7. **Oral Argument.** The Government respectfully requests oral argument.



G. K. LOGAN
Capt, USMC
Trial Counsel

CERTIFICATE OF SERVICE

A true copy of this response was served upon the Defense on this date: 14 Oct 2010.

A handwritten signature in cursive script, appearing to read "G. K. Logan", followed by a horizontal line extending to the right.

G. K. LOGAN
Capt, USMC
Trial Counsel