

CENTRAL JUDICIAL CIRCUIT
NAVY-MARINE CORPS TRIAL JUDICIARY

UNITED STATES)	
)	
v.)	SPECIAL COURT MARTIAL
)	
MICHAEL P. NATIVIDAD)	MOTION TO SUPPRESS
ADC)	
U.S. NAVY)	
XXX XX 0365)	19 APRIL 2010
)	

1. **Nature of Motion.** Pursuant to M.R.E. 304, the Defense hereby respectfully submits this motion to suppress all statements obtained by the Government from Chief Michael P. Natividad since the start of their investigation. The burden of proof, stated under M.R.E. 304(e), rests on the prosecution by a preponderance of the evidence standard.

2. **Summary of Facts.** On 14 October 2009, Investigator Jerry Stout from Recruit Training Command Security contacted Chief Natividad on his personal cell phone and requested that he come to his office for questioning. Within the hour, Chief Natividad arrived at Mr. Stout's office, and was placed in a secluded room for approximately 30 minutes. Afterwards Mr. Stout entered the room and began advising Chief Natividad of his rights. When Mr. Stout mentioned the right to counsel, Chief Natividad immediately requested an attorney, which Mr. Stout ignored. Mr. Stout instructed Chief Natividad to initial next to the right to counsel box, as well as all other spaces. Once the rights advisement was complete, Mr. Stout conducted his interrogation. Following this event, Chief Natividad was interrogated by Security on four additional occasions, with each of these resulting in statements by Chief Natividad and/or reports. In all five of these interrogations, Chief Natividad requested an attorney, but Security ignored this request until the final interrogation. At

the final interrogation, Mr. Johnson, also a member of RTC Security provided a form to Chief Natividad allowing him to request an attorney.

3. **Written Argument.** M.R.E. 305(f)(2) requires that if a member of the Armed Services is questioned for the goal of seeking evidence against that individual, questioning must cease if that person invokes their right to counsel. In Edwards v. Arizona, Justice White established that when an individual invokes his right to counsel, such individual “is not subject to further interrogation by the authorities until counsel has been made available to him...” Edwards v. Arizona, 451 U.S. 477, 485(1981). This principle was adopted by the Military Courts in United States v. Harris, 19 M.J. 331 (C.M.A. 1985).

In Harris, the suspect was brought into an interrogation room and questioned despite requesting counsel. Id. at 338. The request for counsel was ignored, and the interrogation continued. In our set of facts, Chief Natividad was brought into a room and advised of his rights. During the advisement, Chief Natividad requested counsel, but such request was ignored and Mr. Stout continued the process. Furthermore, on four additional occasions, Chief Natividad was questioned by interrogators, and was not provided counsel until the final event.

The Government may argue that Chief Natividad continued to make statements to Mr. Stout and other investigators after his request for counsel, indicating he waived this request. In Oregon v. Bradshaw, Justice Rehnquist held police may re-engage with a suspect only if the individual “initiates further communication, exchanges or conversations.” Oregon v. Bradshaw, 462 U.S. 1039, 1043 (1983). In Oregon, after the suspect invoked his right to counsel, the police ceased

interrogation. However, the suspect later inquired with the police what would happen to him. Id. at 1042. Justice Rehnquist reasoned that this inquiry by the suspect was sufficient enough to override the request for counsel and provide clearance for the police to continue its interrogation. Id. at 1043.

In the present set of facts, when Chief Natividad made his initial request for counsel to Mr. Stout, it was ignored. Mr. Stout instructed Chief Natividad to complete the rights advisement, and then continued the interrogation. At no point was there a break by Mr. Stout even to allow Chief Natividad to override his request for counsel because Mr. Stout never halted the process. As such, all statements obtained by Mr. Stout following this request for counsel are in violation of M.R.E. 305, and should be suppressed.

Pursuant to M.R.E. 305 and the above case law, all statements and evidence obtained by the Government following Chief Natividad's request for counsel should be suppressed.

4. **Relief Requested.** The Defense respectfully requests this Honorable Court to grant its motion to suppress all statements and evidence obtained by the Government from Chief Natividad.

5. **Oral Argument.** The Defense respectfully requests to make oral argument in support of this motion.

_____/S/
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April 19, 2010
Date

CERTIFICATE OF SERVICE

I certify that a copy of this paper was served upon counsel for the government on April 19, 2010.

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