DEPARTMENT OF THE NAVY
OFFICE OF THE JUDGE ADVOCATE GENERAL
1322 PATTERSON AVENUE SE, SUITE 3000
WASHINGTON NAVY YARD, DC 20374-5066

GENERAL COURT-MARTIAL SUPPLEMENTAL)
) NMCCA 201700303
ORDER NUMBER 15-20)

OCT 0 5 2020

In the General Court-Martial case of the United States v. Lieutenant Commander Edward C. L. Lin, United States Navy, the findings and the sentence as acted on and promulgated in General Court-Martial Order No. 1-17 of 27 September 2017, have been affirmed under Article 66, Uniform Code of Military Justice (UCMJ). LCDR Lin was sentenced to be confined for a period of nine years, forfeiture of all pay and allowances, and to be dismissed from the United States Navy. The case is now final under Article 71(c), UCMJ. On 16 September 2020, the sentence to dismissal was approved and ordered executed by the Secretary of the Navy pursuant to Article 71(b), UCMJ, and LCDR Lin was dismissed from the United States Navy.

(b) (6)

Colonel, U.S. Marine Corps
Assistant Judge Advocate General
for Military Law

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UNITED STATES	)	NMCCA No. 201700303
	)	
v.	)	GENERAL COURT-MARTIAL
	)	
Edward C. L. Lin	)	
Lieutenant Commander	)	
United States Navy	)	ACTION UNDER ARTICLE 71(b)
	)	UNIFORM CODE OF MILITARY
	)	JUSTICE (2012 MCM)

Pursuant to Article 71, Uniform Code of Military Justice (2012 Manual for Courts-Martial), the sentence to dismissal in the above-titled case is hereby ordered executed.

(b) (6) SEP 16 2020

(b) (6)

G. J. SLAVONIC
Assistant Secretary of the Navy
(Manpower & Reserve Affairs)

THE ASSISTANT SECRETARY OF THE NAVY
(MANPOWER AND RESERVE AFFAIRS)
1000 NAVY PENTAGON
WASHINGTON, D.C. 20350-1000

SEP 16 2020

From: Assistant Secretary of the Navy (Manpower and Reserve Affairs)
To: Lieutenant Commander Edward C. L. Lin, United States Navy

Subj: DISMISSAL FROM THE UNITED STATES NAVAL SERVICE

Ref: (a) General Court-Martial Order No. 1-17 of 27 September 2017

1. On 2 June 2017, you were convicted by a General Court-Martial convened by Commander, U.S. Fleet Forces Command, the proceedings of which were promulgated in reference (a).

2. On 27 September 2017, the Convening Authority approved the adjudged dismissal in your case. On 15 April 2019, the Navy-Marine Corps Court of Criminal Appeals affirmed the findings and sentence. On 9 October 2019, the Court of Appeals for the Armed Forces denied your Motion for Grant of Review. The judgment is now final pursuant to Article 71(c)(1), Uniform Code of Military Justice (2012 MCM).

3. You are hereby dismissed from the United States Naval Service.

(b) (6)

G. J. SLAVONIC

United States Navy-Marine Corps Court of Criminal Appeals

UNITED STATES
Appellee

v.

Edward C. LIN
Lieutenant Commander (O-4), U.S. Navy
Appellant

No. 201700303

Appeal from the United States Navy-Marine Corps Trial Judiciary.

Decided: 15 April 2019.

Military Judges:
Captain Charles N. Purnell II, JAGC, USN (arraignment);
Commander Robert Monahan, JAGC, USN (trial).

Sentence Adjudged: 6 June 2017 by a general court-martial convened at Naval Station Norfolk, Virginia, consisting of a military judge sitting alone. Sentence approved by convening authority: forfeiture of all pay and allowances, confinement for nine years, and a dismissal.[1]

For Appellant:
Larry Younger, Esq.;
Captain Thomas R. Fricton, USMC.

For Appellee:
Major Kelli A. Oneil, USMC;
Captain Brian L. Farrell, USMC.

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[1] The Convening Authority suspended confinement in excess of six years pursuant to a pretrial agreement.

PUBLISHED OPINION OF THE COURT

Before WOODARD, HUTCHISON, and CRISFIELD,
Appellate Military Judges.

Chief Judge WOODARD delivered the opinion of the Court, in which Senior Judge HUTCHISON and Judge CRISFIELD joined.

WOODARD, Chief Judge:

The appellant was convicted, consistent with his pleas, of three specifications of violating a lawful general order, two specifications of making false official statements, and two specifications of willfully communicating information relative to the national defense of the United States to a person not entitled to receive it, in violation of Articles 92, 107, and 134, Uniform Code of Military Justice (UCMJ), 10 U.S.C. §§ 892, 907, and 934.[2]

On appeal, the appellant raises three assignments of error: (1) he was denied his right to a speedy trial as required by Article 10, UCMJ; (2) the military judge abused his discretion by admitting into evidence as aggravation damages caused by his misconduct that were hypothetical in nature; and (3) his sentence was inappropriately severe. Although not raised by the parties, we find that the Court-Martial Order (CMO) contains error and direct corrective action in our decretal paragraph. After careful consideration of the entire record, we find no merit in the assigned errors and affirm the findings and sentence.

I. BACKGROUND

On 11 September 2015, as the appellant was about to board a flight from Honolulu to the People's Republic of China, agents from the Naval Criminal Investigative Service (NCIS) and the Federal Bureau of Investigation (FBI) arrested the appellant. At the time of his arrest, the appellant had been the subject of a fifteen-month-long counterintelligence investigation. Prior to attempting to board his China-bound flight, law enforcement officers discovered that the appellant had concealed his true destination from his command by

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[2] The two Article 134, UCMJ, specifications of willfully communicating information relative to the national defense of the United States were charged as violations of 18 U.S.C. § 793(d).

completing a false leave request form indicating that he would be traveling to Alexandria, Virginia, his home of record.

The counterintelligence investigation also revealed that this was not the first time the appellant concealed foreign travel from his command. In October 2013, after requesting and receiving leave to travel to Alexandria, Virginia, the appellant instead traveled to Taiwan. Prior to traveling to Taiwan, the appellant had arranged to meet with a senior Taiwanese military officer and several other Taiwanese officers of lesser rank.

Upon being taken into custody, the appellant was questioned, amongst other things, about his planned activities in China. Over the course of two days of questioning, which was recorded by law enforcement, he explained that he planned to meet a local national female, whom he had met on an online dating site and whom he knew to be a Chinese government employee.

The appellant also admitted that, despite not disclosing them to his command security officer, he had close relationships with several foreign persons, including several registered foreign agents and some he believed to be foreign agents. He corresponded and conversed with these foreign agents about United States policy and positions. He was particularly open in his communications with two women with whom he conversed. With these women, he shared classified information concerning operational plans, policies, missions, and capabilities of the United States military.

Unbeknownst to the appellant, one of the women he believed to be a foreign agent and with whom he communicated and shared classified information was actually an undercover United States law enforcement counterintelligence agent. As part of the investigation, the undercover agent recorded approximately 10 hours of conversations with the appellant, a substantial portion in Mandarin Chinese.

The appellant's mishandling of classified information, however, was not limited to his discussions with these women. He also mishandled classified documents. While returning on a commercial flight from a deployment in February 2015, the appellant placed classified materials in his checked bags. A Department of Homeland Security officer found the classified documents while conducting an inspection of the appellant's checked luggage and confronted the appellant about the documents. The appellant admitted to failing to maintain proper security of the classified documents, asked the officer to dispose of the documents, and left the documents with the officer. The appellant admitted that he did not know whether the officer had the required clearance to view or possess the classified documents. The appellant failed to inform his command of this compromise of classified documents. Additionally, classified materials were also discovered at the appellant's home during a search.

The appellant was placed into pretrial confinement on 11 September 2015, the day he was apprehended attempting to board a flight to China. Following his apprehension, the appellant spent 249 days in pretrial confinement before his arraignment, and a total of 630 days before his sentence was announced. Additional facts necessary for the resolution of the issues raised will be discussed below.

II. DISCUSSION

A. Speedy Trial

At trial, the appellant filed a motion to dismiss with prejudice the charges against him due to the government's violation of his RULE FOR COURTS-MARTIAL (R.C.M.) 707, MANUAL FOR COURTS-MARTIAL, UNITED STATES (2016 ed.) and Article 10, UCMJ, right to a speedy trial. Finding that the government had complied with the requirements of both R.C.M. 707 and Article 10, UCMJ, the military judge denied the appellant's motion to dismiss. In denying the motion, the military judge issued a 19-page written ruling addressing his essential findings of fact and conclusions of law. On appeal, the appellant again asserts that the government violated his Article 10, UCMJ, right to a speedy trial by failing to exercise reasonable diligence to bring him to trial following his arrest.[3] However, unlike his complaint at trial where he argued the government's lack of diligence only extended to the date of his arraignment, on appeal he now asserts that the government's lack of diligence extended to the date his sentence was announced. We conclude that the government was diligent in bringing the appellant to trial and that the appellant's unconditional guilty plea waived any post-arraignment speedy trial violation claim.

The appellant's guilty plea was unconditional.[4] Generally, an unconditional guilty plea "waives any speedy trial issue as to that offense." R.C.M. 707(e); *see United States v. Tippit*, 65 M.J. 69, 75 (C.A.A.F. 2007). However, Article 10, UCMJ, "provides a narrow exception to the normal rule that a speedy trial motion is waived by an unconditional guilty plea." *Id.* (citing *United States v. Mizgala*, 61 M.J. 122, 126 (C.A.A.F. 2005)). A speedy trial

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[3] On appeal, the appellant does not raise any error related to the military judge's R.C.M 707 ruling.

[4] *See* Record at 704.

claim under Article 10, UCMJ, is not waived by a subsequent guilty plea when an appellant litigates that claim at trial. *Id.* at 127.

Article 10, UCMJ, provides:

> When any person subject to this chapter is placed in arrest or confinement prior to trial, immediate steps shall be taken to inform him of the specific wrong of which he is accused and to try him or to dismiss the charges and release him.

Whether the appellant's Article 10, UCMJ, right to a speedy trial has been violated is a question of law we review *de novo*, "giving substantial deference to a military judge's findings of fact that will be reversed only if they are clearly erroneous." *Mizgala*, 61 M.J. at 127 (citing *United States v. Cooper*, 58 M.J. 54, 57-59 (C.A.A.F. 2003); *United States v. Doty*, 51 M.J. 464, 465 (C.A.A.F. 1999)).

1. Waiver of post-arraignment claim

At trial, the appellant focused his unsuccessful speedy trial claim on the period of time from his arrest to arraignment—11 September 2015 to 17 May 2016—and did not later reassert his claim based on any post-arraignment delay before entering his unconditional guilty plea. Although it is well-settled law that the government's speedy trial obligations do not terminate at arraignment, *Cooper*, 58 M.J. at 61, as an initial matter, we first consider whether the appellant limited his claim at trial to just pre-arraignment delay. If he did, then we must determine if by doing so, he waived appellate review of any new Article 10, UCMJ, claims attacking the government's lack of diligence post-arraignment.

We find the appellant limited his Article 10, UCMJ, claim at trial to the period of time between his arrest and his arraignment. In accordance with the agreed upon Trial Management Order, the appellant filed his motion to dismiss on speedy trial grounds on 26 June 2016. The motion was litigated on 9 August 2016. During the proceedings on the motion, the military judge correctly noted that the "Article 10 concern runs to the date of trial, not merely to arraignment."[5] When questioned by the military judge whether the defense had any post-arraignment speedy trial concerns, the appellant's defense counsel stated that he did not have any speedy trial concerns post-

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[5] Record at 363-25. We note that due to the many classified proceedings in this case that the trial transcript page numbering system often involved a hyphenated page numbering format.

arraignment.[6] The defense counsel also acknowledged that the defense had not previously voiced any objection to any post-arraignment excludable delay granted.[7] And he acknowledged that the defense "could renew [the Article 10, UCMJ,] motion . . . if we have new evidence of . . . delay or lack of due diligence on the part of the government in proceeding to trial. I don't have that at this time."[8] On 12 August 2016, the military judge rendered his written ruling denying the speedy trial motion. In his ruling the military judge specifically found that the appellant had limited the motion to the time between apprehension and arraignment.[9] At no time following the issuance of the military judge's ruling did the appellant make any further speedy trial violation claims prior to the adjournment of his court-martial.

As stated by the court in *Mizgala,* an appellant's unconditional guilty plea does not waive "his right to contest the military judge's denial of *his Article 10 motion* on appeal." *Mizgala,* 61 M.J. at 127 (emphasis added). Further, as this court has previously opined, *Mizgala* stands for the proposition that only those Article 10, UCMJ, issues *litigated at trial* survive a waiver stemming from an unconditional guilty plea. *United States v. Dubouchet,* 63 M.J. 586, 588 (N-M. Ct. Crim. App. 2006). Here, by raising it and litigating it at trial, the appellant's Article 10, UCMJ, speedy trial claim preserved for appellate review was his *pre-arraignment* claim. By failing to raise or litigate his newly asserted *post-arraignment* speedy trial claims at trial, we conclude that appellant's unconditional guilty plea has, like it did in *Dubouchet,* waived appellate review of *that* issue. *See id.* Accordingly, we will focus our review on the Article 10, UCMJ, speedy trial violation claim made by the appellant and denied by the military judge at trial, and analyze the appellant's claim under the factors articulated in *Barker v. Wingo,* 407 U.S. 514 (1972).

2. Barker analysis of preserved pre-arraignment claim of error

When an accused is in pretrial confinement, Article 10, UCMJ, does not demand "constant motion," but does impose on the government the standard of "reasonable diligence in bringing the charges [lodged against him or her] to trial." *Mizgala,* 61 M.J. at 127 (citation omitted). In assessing whether the government has acted with "reasonable diligence in proceeding to trial," our

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[6] *Id.* at 363-25.

[7] *Id.* at 363-23.

[8] *Id.* at 363-26.

[9] AE LIV at 15.

superior court has held that the four factors identified by the Supreme Court in *Barker* "are an apt structure for examining the facts and circumstances surrounding an alleged Article 10 violation." *Mizgala,* 61 M.J. at 127 (citations omitted). The four *Barker* factors are: "(1) the length of delay; (2) the reasons for the delay; (3) whether appellant made a demand for a speedy trial; and (4) prejudice to the appellant." *United States v. Schuber,* 70 M.J. 181, 188 (C.A.A.F. 2011) (citation omitted).

Upon review, we find the military judge's findings of fact in support of his decision denying the appellant's Article 10, UCMJ, speedy trial claim are supported by the record, not clearly erroneous, and we adopt them as our own.[10]

a. Length of delay

The initial question is whether the 249-day delay between the initiation of the appellant's pretrial confinement and his arraignment was unreasonable. In determining how *Barker's* first factor affects our inquiry, "we consider the particular circumstances of the [appellant's] case because 'the delay that can be tolerated for an ordinary street crime is considerably less'" than that which can be tolerated for more serious, complex cases. *United States v. Cooley,* 75 M.J. 247, 260 (C.A.A.F. 2016) (quoting *Barker,* 407 U.S. at 531). The length of the delay has been described by our superior court as a "triggering mechanism" for a speedy trial review and can be dispositive. *Cooley,* 75 M.J. at 260 (citing *United States v. Cossio,* 64 M.J. 254, 257 (C.A.A.F. 2007)). When determining whether the length of delay is reasonable, the analysis:

> "is not meant to be a *Barker* analysis within a *Barker* analysis," but should include the seriousness of the offense, the complexity of the case, the availability of proof, and "additional circumstances includ[ing] whether Appellant was informed of the accusations against him, whether the [g]overnment complied with procedures relating to pretrial confinement, and whether the [g]overnment was responsive to requests for reconsideration of pretrial confinement."

Cooley, 75 M.J. at 260 (quoting *Schuber,* 70 M.J. at 188) (citing *Barker,* 407 U.S. at 530-31, 531 n.31).

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[10] *See* AE LIV.

In conducting our *Barker* analysis, "we remain mindful that we are looking at the proceeding as a whole and not mere speed: 'The essential ingredient is orderly expedition and not mere speed.'" *Mizgala*, 61 M.J. at 129 (quoting *United States v. Mason*, 45 C.M.R. 163, 167 (C.M.A. 1972). "[U]nless there is a period of delay that appears, on its face, to be unreasonable under the circumstances, there is no necessity for inquiry into the other factors that go into the balance." *Schuber*, 70 M.J. at 188.

Here, we conclude 249 days between the initiation of the appellant's confinement and his arraignment is beyond what we would normally expect for a general court-martial and is sufficient to trigger analysis of the remaining *Barker* factors. However, under the circumstances of the appellant's case, we find that this period of delay was not unreasonable.

The appellant's case involved extremely serious crimes, with very sensitive and complex evidentiary concerns. The appellant was charged with two specifications of espionage—one of the most serious crimes under the UCMJ as made evident by its maximum punishment of death. Further, when the appellant was placed into pretrial confinement, he was informed of the accusations against him, and the government complied with all pretrial confinement procedures. Additionally, although the appellant waived his right to be present at his pretrial confinement hearing, when the appellant requested reconsideration of his pretrial confinement status, the government was responsive to his request.

b. Reasons for the delay

Under the second factor in the *Barker* analysis, "different weights should be assigned to different reasons" articulated for the delay. *Cooley*, 75 M.J. at 260 (citing *Barker*, 407 U.S. at 531). Deliberate attempts by the government to delay the proceedings in order to hamper the defense weigh heavily against the government. *Id.* In analyzing the reasons for delay, we also acknowledge that the government "has the right (if not the obligation) to thoroughly investigate a case before proceeding to trial." *Cossio*, 64 M.J. at 258 (citations omitted). In contrast, delay caused by the defense weighs against the appellant. *Cooley*, 75 M.J. at 260 (citing *Vermont v. Brillon*, 556 U.S. 81, 90 (2009)). In appellant's case, the reasons for delay are consistent with the timeline adopted by the military judge and not objected to by the parties at trial.[11]

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[11] *See* AE LIV at 7-9.

The investigation of the appellant's case did not end when he was placed into pretrial confinement. In this case, due to the circumstances and timing of the appellant's apprehension, the government had large amounts of information to gather and process in order to determine what charges the evidence supported. Gathering the evidence, in turn, involved multiple foreign contacts. It required the translation and transcription of several conversations conducted in Mandarin Chinese. It involved coordination with and between multiple federal law enforcement and intelligence agencies. And it was necessary to consult with numerous federal authorities to precisely determine what information disclosed by the appellant was classified, at what level it was classified, and whether any privilege would be exercised over the information. The interviews with the appellant on 11 and 12 September 2015 generated 13 hours of potentially classified content. The potentially classified content was sent to 12 separate Original Classification Authorities (OCAs) for review to determine whether the information was actually classified; if classified, its classification level; and, to provide the information's stakeholders an opportunity to exercise any privilege over the classified information. Coordinating with these 12 OCAs continued from October 2015 until 6 January 2016.

During this same timeframe, law enforcement was translating and identifying potential classified information contained within the 10 hours of recorded conversations between the appellant and the undercover agent—the most recent of which had occurred just days prior to the appellant's arrest. Potentially classified portions of the conversations were then sent to two OCAs for a classification review and an opportunity to exert a claim of privilege over any information determined to be classified. The prosecutors for the appellant's case did not receive the transcripts of the conversations or the results of the OCAs' classification reviews and privilege decisions until 5 November 2015. Charges were preferred one week later—12 November 2015.[12]

Meanwhile, on 3 November 2015 the appellant hired his first civilian defense counsel (CDC). The following day, the government provided the appel-

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[12] The CA approved as R.C.M. 707 excludable delay the period of 12 September 2015 through 4 November 2015 in order to "identify the appropriate agencies for classification reviews, to determine the security classification of evidence, and to allow stakeholders time to assert any privilege after completion of the classification reviews." AE LIV at 4. The military judge found that the CA did not abuse his discretion in approving the 12 September 2015 through 4 November 2015 R.C.M. 707 excludable delay. *Id.* at 15.

lant's CDC with the information necessary for her to request the interim security clearances required before she could review the classified evidence in the case. However, the CDC did not submit the documentation required to process her security clearance request until 24 November. On 1 December 2015, the government notified the defense of its intent to conduct an Article 32, UCMJ, preliminary hearing within the next few weeks. The following day, the appellant's CDC notified the government that the appellant would not waive her presence at the Article 32, UCMJ, proceeding and informed the government that the appellant was asserting his rights to a speedy trial under R.C.M. 707. One week later, the CDC's requested security clearance was denied.

The appellant then hired his second CDC on 11 December 2015. The government again promptly provided the second CDC the information necessary to apply for an interim clearance, which was granted on 5 January 2016.[13] In the meantime, the appellant and his detailed defense counsel were granted access to review, subject to a protective order, the classified evidence against him on 15 December 2015. The second CDC received his final clearances and was authorized access to the classified evidence on 2 March 2016.

On 7 March 2016, the appellant requested that the Article 32, UCMJ, proceedings which had been ordered by the CA to take place not later than 23 March 2016 be delayed until at least 30 March 2016. At the further request of the defense, the proceedings were ultimately delayed until 8 April 2016.[14] The Article 32, UCMJ, preliminary hearing officer issued his report on 26 April 2016 and the appellant's charges were referred to general court-martial on 10 May 2016. The appellant then requested and the military judge approved a delay of his arraignment from 13 May until 17 May 2016. The appellant was arraigned on 17 May 2016.

Upon consideration of the reasons for delay, we find no evidence in the record that the government acted in bad faith or with malice in the processing of the appellant's case. We find the reasons for the delay here are rea-

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[13] The CA approved as second period of R.C.M. 707 from 5 November 2015 through 5 January 2015 in order to allow the processing of and action on the CDC's request for interim security clearances. AE LIV at 6. At trial the appellant acknowledged and did not challenge that this period of delay was appropriately excluded under R.C.M. 707. *Id.* at 6-7.

[14] In conjunction with approving the request to delay the Article 32, UCMJ, proceedings until 8 April 2016, the CA also granted R.C.M. 707 excludable delay from 23 March 2016 through 8 April 2016. *Id.* at 9.

sonable, especially considering that the vast majority of the pre-arraignment delay in the appellant's case was either at his request, or to obtain the security clearances and authorization necessary to allow his CDC access to the classified evidence in order to defend him. This factor weighs against the appellant.

c. Appellant's assertion of speedy trial right

Under the third *Barker* factor, "[t]he defendant's assertion of his speedy trial right . . . is entitled to strong evidentiary weight in determining whether the defendant is deprived of the right." *United States v. Wilson*, 72 M.J. 347, 353 (C.A.A.F. 2013) (quoting *United States v. Johnson*, 17 M.J. 255, 259 (C.M.A. 1984)).

The appellant made a single speedy trial request. This request was made by his first CDC on 9 November 2015. Despite the request being couched in the terms of R.C.M. 707, we, like the military judge below, have considered this request to operate not only as an assertion of the appellant's right to a speedy trial under R.C.M. 707, but also Article 10, UCMJ.[15]

The weight of the appellant's speedy trial request, however, is undercut by his subsequent requests for delay. For example, following his CDC's authorization to review the classified evidence, the appellant requested a 30-day delay of the Article 32, UCMJ, proceeding, and a delay of the arraignment. Nevertheless, because the appellant did make a request for speedy trial, this factor weighs in favor of the appellant—albeit ever so slightly when considered in light of the appellant's own repeated requests for delay.[16]

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[15] *See* AE LIV at 17-18.

[16] Even though we have determined that the appellant waived any post-arraignment claim of an Article 10, UCMJ, violation, looking beyond the arraignment, the record establishes that the appellant was not actively seeking a speedy trial. In August 2016, the defense requested a continuance to pursue letters rogatory to the Republic of Taiwan. After conducting an inquiry with the appellant to ensure that he understood the implications of and agreed with the requested delay—at the time estimated to be at least four and a half months—the military judge granted the requested continuance. He did so despite the government's assertion that it was ready to go to trial. Some six months later in February 2017, the appellant requested another two-month continuance of trial. Despite the government again asserting that it was ready to go to trial, after conducting an inquiry with the appellant to ensure that he understood the implications of and agreed with the requested delay, the military judge granted the continuance.

d. Prejudice

The final *Barker* factor is prejudice to the appellant due to the delay. Pretrial confinement by itself does not constitute *per se* prejudice. *Cooley*, 75 M.J. at 262 (internal citations omitted). Instead, prejudice is assessed in light of the interests of the appellant which the speedy trial right was designed to protect. *Barker*, 407 U.S. at 532. Jurisprudence has recognized three such interests relevant to prejudice analysis: (1) prevention of oppressive pretrial incarceration; (2) minimization of anxiety and concern of the accused awaiting trial; and (3) limitation of the possibility that the defense will be impaired. *Mizgala* 61 M.J. at 129 (citing *Barker*, 407 U.S. at 532). "Of these, the most serious is the last, because the inability of a defendant adequately to prepare his case skews the fairness of the entire system." *Id.*

The appellant argues that he was prejudiced by being subjected to oppressive pretrial incarceration, not being able to fully or as actively participate in his defense, and by losing the ability to secure the testimony of several foreign national witnesses who could have exonerated him or provided mitigating evidence during his sentencing proceeding. We conclude otherwise.

On the whole of the record, we find for the following reasons that the appellant was not materially prejudiced by the delay.

First, even though we acknowledge that the military judge awarded an additional 16 days of confinement credit for Article 13, UCMJ, violations,[17] when considering the totality of the conditions of the appellant's pretrial confinement we find them to be neither harsh nor oppressive.

Second, we are unconvinced that the delay impacted the appellant's ability to secure the testimony of the foreign national witnesses. The appellant voluntarily pleaded guilty to the offenses of which he was convicted. Prior to conducting the guilty plea inquiry, the military judge explained to the appellant that by pleading guilty he was giving up his right to a trial of the facts by court-martial—that is, his right to have the court-martial decide whether or not he was guilty of the offenses based upon the evidence presented by the government and, if he chose to do so, any evidence he may present. The appellant agreed to give up this right. During the sentencing proceeding, the appellant affirmed to the military judge that his ability to provide the court with any information that he desired to present on the issue of determining an appropriate sentence in his case had not been limited. Additionally, the

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[17] *See* AE CXXXIII.

record establishes the delay associated with securing the testimony of the foreign national witnesses occurred after the appellant was arraigned and that the delay was incurred at the appellant's request. Our review of the record provides no indication that the appellant's preparation for trial, defense evidence, sentencing strategy, or ability to present sentencing witnesses were compromised by the delay.

Finally, as the vast majority of the pre-arraignment delay was attributable to providing his counsel of choice access to the classified evidence against him, and providing his counsel with the time they desired to adequately review the evidence and prepare his defense, the delay tended to benefit—rather than prejudice—the appellant. Balancing the factors identified in assessing prejudice, we find that if there was any prejudice to the appellant as a result of the pre-arraignment delay, it was minimal. This factor also weighs against the appellant.

Accordingly, we conclude that the appellant was not denied his right to a speedy trial. The government was reasonably diligent in bringing the appellant to trial in accordance with the requirements of Article 10, UCMJ.

B. Admission of Evidence in Aggravation was Proper

During the pre-sentencing proceeding, the government called witnesses who testified about the harm to national defense posed by the appellant's unauthorized disclosures of classified information.[18] At trial, the appellant objected to the testimony as improper evidence in aggravation, arguing the evidence was speculative. Finding that the testimony was proper evidence in aggravation, the military judge admitted the testimony. The appellant avers that the military judge abused his discretion by admitting this testimony as aggravation of his crimes. We disagree.

We review a military judge's decision to admit sentencing evidence under the abuse of discretion standard. *United States v. Stephens*, 67 M.J. 233, 235 (C.A.A.F. 2009). At sentencing, "trial counsel may present evidence as to any aggravating circumstances directly relating to *or* resulting from the offenses of which the accused has been found guilty." R.C.M. 1001(b)(4) (emphasis added). R.C.M. 1001(b)(4), however, poses a higher burden than mere relevance. *United States v. Hardison*, 64 M.J. 279, 281 (C.A.A.F. 2007).

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[18] Due to the classified nature of the testimony, the specific facts testified to by the witnesses will not be discussed.

Even if the evidence is directly related to or resulting from the offenses of which the appellant is convicted, the evidence will only be admitted if it also meets the requirements of MILITARY RULE OF EVIDENCE (MIL. R. EVID.) 403, MANUAL FOR COURTS-MARTIAL, UNITED STATES (2016 ed.). *United States v. Manns*, 54 M.J. 164, 166 (C.A.A.F. 2000). "A military judge enjoys 'wide discretion' in applying MIL. R. EVID. 403." *Id.* (citing *United States v. Rust*, 41 M.J. 472, 478 (C.A.A.F. 1995)). If the military judge conducts a proper MIL. R. EVID. 403 balancing test, the "ruling will not be overturned unless there is a 'clear abuse of discretion.'" *Id.* (citing *United States v. Ruppel*, 49 M.J. 247, 250 (C.A.A.F. 1998)). When a military judge places his or her analysis on the record, we accord them the largest measure of deference. We afford judges less deference if they fail to articulate their analysis, and no deference if they fail to conduct a balancing at all. *Id.*

Because the military judge did not conduct an MIL. R. EVID. 403 balancing, we give his decision no deference and have examined the record ourselves. The aggravating "harm to the national defense" evidence presented and objected to by the appellant was the same harm admitted to by the appellant during his providence inquiry. In short, the harm described was not just directly related to or resulting from an offense for which the appellant was convicted; rather the evidence of the harm posed by the disclosures is what made the appellant's disclosures of the information criminally punishable. The objected-to evidence directly supported an element of the appellant's 18 U.S.C. § 793(d) offenses—that the appellant had reason to believe that the information could be used to the injury of the United States or the advantage of a foreign nation.[19] Further, the evidence showed why the appellant had reason to believe that the information he admitted to disclosing could be used to injure the United States.[20] Having reviewed the objected-to testimony, we find that the military judge appropriately determined that the testimony was proper evidence in aggravation in that it was directly related to his 18 U.S.C. § 793(d) convictions and provided the military judge with an informed explanation of how the disclosures injured the national defense interests of the United States.

The probative value of the objected-to testimony described above was not substantially outweighed by any prejudicial effect. Here, the potential prejudice to the appellant was that the military judge would sentence him based

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[19] *See* Record at 1147-47 and 1147-53.

[20] *See Id.* at 1147-44 and 1147-55 to 56.

on a harm that had not actually been proven to have occurred—that the disclosed information had actually been received by a potential adversary of the United States. We are confident that the military judge appropriately limited his consideration of this evidence. "Military judges are presumed to know the law and to follow it absent clear evidence to the contrary." *United States v. Rodriguez*, 60 M.J. 87, 90 (C.A.A.F. 2004) (citation omitted). There is no evidence in the record to indicate that the military judge rendered a sentence that was based upon any unproven harm to the national defense interests of the United States. To the contrary, when overruling the appellant's objection to the harm evidence, the military judge repeatedly announced that, absent evidence to the contrary, although the information disclosed could be used to the injury of the United States or the advantage of a foreign nation, he would not presume that the injury or advantage had actually occurred. Accordingly, we find the military judge did not abuse his discretion in admitting the testimony.[21]

C. Sentence Appropriateness

The appellant next avers that his adjudged sentence was inappropriately severe given his strong case in extenuation and mitigation, and when compared to other cases involving the mishandling of classified information. We disagree.

We review *de novo* the appropriateness of sentences. *United States v. Lane*, 64 M.J. 1, 2 (C.A.A.F. 2006). We will only affirm a sentence, or such part of a sentence, that we determine should be approved on the basis of the entire record. Art. 66, UCMJ. Our assessment of the appropriateness of a sentence requires an "individualized consideration of the particular accused on the basis of the nature and seriousness of the offense and the character of the offender." *United States v. Snelling*, 14 M.J. 267, 268 (C.M.A. 1982) (citation and internal quotation marks omitted). A sentence is appropriate when justice is done and "the accused gets the punishment he deserves." *United States v. Key*, 71 M.J. 566, 573 (N-M. Ct. Crim. App. 2012) (citing *United*

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[21] Even if we were to assume that the military judge erred in admitting the testimony, adhering to the principles set forth by our superior court in *United States v. Sales*, 22 M.J. 305 (C.A.A.F. 1986) and *United States v. Winckelmann*, 73 M.J. 11 (C.A.A.F. 2013), we are confident that we could reassess the appellant's sentence to obviate the impact of the error. *United States v. Moffeit*, 63 M.J. 40, 41 (C.A.A.F. 2006). Based upon our review of the record, absent the witness's testimony we would reassess the appellant's sentence to be that which he received at trial—confinement for 9 years, forfeiture of all pay and allowance, and a dismissal.

States v. Healy, 26 M.J. 394, 395 (C.M.A. 1988)). Despite our significant discretion in reviewing the appropriateness and severity of an adjudged sentence, we cannot engage in acts of clemency. *United States v. Nerad*, 69 M.J. 138, 146 (C.A.A.F. 2010).

1. Case in extenuation and mitigation

The appellant argues that the evidence he presented during the presentencing proceeding was not appropriately considered by the military judge. He asserts that the evidence he presented demonstrates that he did not intend to harm the United States when he provided national defense information to those he knew or believed to be foreign agents, nor did he do it for personal enrichment. He also highlights his strong professional record consisting of competitive assignments over an 18-year career, the actions he performed in the furtherance of protecting of our national defense interests, his openness with investigators, and his ultimate decision to plead guilty.

Like the military judge below, we too have considered the appellant's extensive case in extenuation and mitigation. However, weighing against the appellant's otherwise commendable service and conduct is the seriousness of his misconduct which included providing classified information to foreign agents and those he believed to be foreign agents, falsifying his leave requests, and mishandling classified documents.

The maximum sentence the appellant faced as a result of his convictions was confinement for 36 years, forfeiture of all pay and allowance, and dismissal from the Navy. Having given individualized consideration to the appellant, the nature and seriousness of his offenses, his character, record of service, and all other matters contained in the record of trial, we find that the adjudged and approved sentence in this case of nine years' confinement is appropriate. We are convinced that justice was done and the appellant received the punishment he deserved. *Healy*, 26 M.J. at 395.

2. Closely related and disparate?

The appellant also complains that when compared to similar cases, his sentence was inappropriately severe. We disagree. Each "court-martial is free to impose any [legal] sentence it considers fair and just." *United States v. Turner*, 34 C.M.R. 215, 217 (C.M.A. 1964). Therefore, "[t]he military system must be prepared to accept some disparity . . . provided each military accused is sentenced as an individual." *United States v. Durant*, 55 M.J. 258, 261 (C.A.A.F. 2001) (discussing disparity in sentencing of codefendants) (citations omitted). In execution of this highly discretionary function, Article 66, UCMJ, does not require us to consider sentences in other cases, except when those cases are "closely related." *United States v. Ballard*, 20 M.J. 282, 283 (C.M.A. 1985); *United States v. Noble*, 50 M.J. 293, 294 (C.A.A.F. 1999); *United States*

v. Wacha, 55 M.J. 266, 267 (C.A.A.F. 2001). As a general rule "sentence appropriateness should be determined without reference to or comparison with the sentences received by other offenders." *Ballard*, 20 M.J. at 283 (citations omitted). Notably, one narrow exception to this general principle of non-comparison exists. We are "required . . . 'to engage in sentence comparison with *specific cases* . . . in those rare instances in which sentence appropriateness can be fairly determined *only* by reference to disparate sentences adjudged in closely related cases.'" *Wacha*, 55 M.J. at 267 (citations omitted) (emphasis in original).

When requesting relief by way of this exception, an appellant's burden is twofold: the appellant must demonstrate "that any cited cases are 'closely related' to his or her case and that the sentences are 'highly disparate.'" *United States v. Lacy*, 50 M.J. 286, 288 (C.A.A.F. 1999). If the appellant succeeds on both prongs, then the burden shifts to the government to "show that there is a rational basis for the disparity." *Id.*

For cases to be considered closely related, "the cases must involve offenses that are similar in both nature and seriousness or which arise from a common scheme or design." *United States v. Kelly*, 40 M.J. 558, 570 (N.M.C.M.R. 1994). This threshold requirement can be satisfied by evidence of "co[-]actors involved in a common crime, servicemembers involved in a common or parallel scheme, or some other direct nexus between the servicemembers whose sentences are sought to be compared." *Lacy*, 50 M.J. at 288.

In this case, the appellant's request for sentence comparison and relief is based on his assertion that his sentence violates the principle of general sentence uniformity. In support of his argument, he cites to numerous cases of servicemembers who were convicted of mishandling or disclosing classified information and received lesser sentences. Having reviewed the cases cited by the appellant, we do not find them closely related. The cases did not involve co-actors of the appellant. Nor do the cases cited involve offenses that are similar in both nature and seriousness to the appellant's or involve a common or parallel scheme.

Having failed to meet his initial burden of showing that his case is closely related to any of the cases he cites, we decline his invitation to engage in sentence comparison.

D. CMO Error

Our review of the record has revealed that the results of the appellant's proceedings are not accurately reflected in the CMO. An appellant is entitled to an official record accurately reflecting the results of his proceedings. *United States v. Crumpley*, 49 M.J. 538, 539 (N-M. Ct. Crim. App. 1989). We test error in CMOs under a harmless-error standard. *Id.*

At a minimum, a CMO must contain the following information: (1) the type of court-martial and the convening command; (2) *a summary of all charges and specifications on which the appellant was arraigned*; (3) the *appellant's pleas*; (4) the findings or *disposition of all charges and specifications on which the appellant was arraigned*; (5) if adjudged, the sentence; and (6) a summary of the action taken by the CA in the case. R.C.M. 1114(c)(1) (emphasis added).

Although not raised by the parties, we note that the court-martial order incorrectly fails to reflect that the appellant was arraigned on Charge I, Specification 2, and Charge III, Specification 1 as listed on the charge sheet, and entered pleas of not guilty to these offenses.[22] Following his entry of pleas, Charge I, Specification 2 was later dismissed with prejudice by order of the court[23] and Charge III, Specification 1 was withdrawn and dismissed without prejudice by the convening authority.[24] The failure to reflect these offenses, the appellant's plea of not guilty to them, and their ultimate disposition in the CMO was error; however, the error was harmless as it did not materially prejudice the appellant's substantial rights. To ensure the appellant has an official record which accurately reflects his proceedings, in our decretal paragraph we will order that the supplemental CMO reflect the information omitted.

III. CONCLUSION

After careful consideration of the record and briefs of appellate counsel, we have determined that the approved findings and sentence are correct in law and fact and that no error materially prejudicial to appellant's substantial rights occurred. Art. 59 and 66, UCMJ. Accordingly, the findings and sen-

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[22] Following the disposition of these offenses, the military judge renumbered the remaining specifications under the respective charges. Although it is not error to do so, this practice often results in erroneous CMOs. Based upon our review of cases containing CMO errors, we note that it is often the renumbering of the remaining charges and specifications which ultimately leads to offenses, pleas entered to those offense, and the disposition of those offense being erroneously omitted from the CMO. To avoid these oft repeated CMO errors, we suggest that the practice which best ensures record clarity and accuracy is to refrain from renumbering the charges or specifications following the entry of pleas.

[23] *See* Record at 367; AE LVII.

[24] *See* Record at 423.

tence as approved by the convening authority are **AFFIRMED**. The supplemental CMO shall reflect all charges and specifications to which the appellant entered pleas and the final disposition of those offenses.

Senior Judge HUTCHISON and Judge CRISFIELD concur.

FOR THE COURT:

(b) (6)

Clerk of Court

DEPARTMENT OF THE NAVY
UNITED STATES FLEET FORCES COMMAND
1562 MITSCHER AVENUE SUITE 250
NORFOLK VA 23551-2487

27 Sep 17

DNA processing required in accordance with 10 U.S.C. § 1565

General Court-Martial Order No. 1-17

Before a General Court-Martial convened at Region Legal Service Office Mid-Atlantic, on board Naval Station Norfolk, pursuant to Commander, U.S. Fleet Forces Command, General Court-Martial Convening Order 1A-15 of 24 August 2015, Lieutenant Commander Edward C. L. Lin, U.S. Navy, was arraigned and tried on the following offenses, and the following findings or other dispositions were reached:

CHARGE		PLEAS	FINDINGS
CHARGE I: VUCMJ Article 92		**GUILTY**	**GUILTY**
Specification 1 (Violation of a Lawful General Order): In that Lieutenant Commander Edward C.L. Lin, U.S. Navy, Commander Patrol and Reconnaissance Group, on active duty, did, at or near San Francisco International Airport, San Francisco, CA, on or about 12 February 2015, fail to obey a lawful general order, to wit: SECNAV M-5510.36, paragraph 9-3, dated June 2006, as incorporated into SECNAVINST 5510.36A, dated 6 October 2006, by wrongfully transporting material classified as SECRET.		GUILTY, excepting the words "paragraph 9-3, dated June 2006, as incorporated into SECNAVINST 5510.36A, dated 6 October 2006, by wrongfully transporting material classified as SECRET" substituting the words "paragraph 7-10, dated June 2006, as incorporated into SECNAVINST 5510.36A, dated 6 October 2006, by wrongfully failing to ensure material classified as SECRET was kept under constant surveillance by an authorized person	GUILTY, excepting the words "paragraph 9-3, dated June 2006, as incorporated into SECNAVINST 5510.36A, dated 6 October 2006, by wrongfully transporting material classified as SECRET" substituting the words "paragraph 7-10, dated June 2006, as incorporated into SECNAVINST 5510.36A, dated 6 October 2006, by wrongfully failing to ensure material classified as SECRET was kept under constant surveillance by an authorized person when removed from secure storage"

(b) (6)

		when removed from secure storage" to the excepted words NOT GUILTY, to the substituted words GUILTY, to the specification as excepted and substituted GUILTY	to the excepted words NOT GUILTY, to the substituted words GUILTY, to the specification as excepted and substituted GUILTY
Specification 2 (Violation of a Lawful General Order): In that Lieutenant Commander Edward C.L. Lin, U.S. Navy, Commander Patrol and Reconnaissance Group, on active duty, did, at or near Pearl Harbor, HI, on or about 11 September 2015, fail to obey a lawful general order, to wit: SECNAV M-5510.36, paragraph 10-3, dated June 2006, as incorporated into SECNAVINST 5510.36A, dated 6 October 2006, by wrongfully failing to properly store material classified as SECRET.		GUILTY	GUILTY
CHARGE II: VUCMJ ARTICLE 106a		**NOT GUILTY**	**WITHDRAWN AND DISMISSED**
Specification 1 (Espionage): In that Lieutenant Commander Edward C. L. Lin, U.S. Navy, Commander Patrol and Reconnaissance Group, on active duty, did, at or near Washington, D.C., on divers occasions, from about September 2012 to about December 2013, with intent or reason to believe it would be used to the advantage of a foreign nation, communicate SECRET information relating to the national defense to representatives of a foreign government.		NOT GUILTY	WITHDRAWN AND DISMISSED
Specification 2 (Espionage): In that Lieutenant Commander Edward C. L. Lin, U.S. Navy, Commander Patrol and Reconnaissance Group, on active duty, did, at or near Washington, D.C., on divers occasions, from about April 2012 to about May 2014, with intent or reason to believe it would be used to the advantage of a foreign nation, communicate SECRET information relating to the national defense to a representative of a foreign government.		NOT GUILTY	WITHDRAWN AND DISMISSED

(b) (6)

Specification 3 (Attempted Espionage): In that Lieutenant Commander Edward C. L. Lin, U.S. Navy, Commander Patrol and Reconnaissance Group, on active duty, did, at or near Pearl Harbor, HI, on or about 1 September 2015, with intent or reason to believe it would be used to the advantage of a foreign nation, attempt to communicate SECRET information relating to the national defense to a representative of a foreign government.		NOT GUILTY	WITHDRAWN AND DISMISSED
Specification 4 (Attempted Espionage): In that Lieutenant Commander Edward C. L. Lin, U.S. Navy, Commander Patrol and Reconnaissance Group, on active duty, did, at or near Pearl Harbor, HI, on or about 4 September 2015, with intent or reason to believe it would be used to the advantage of a foreign nation, attempt to communicate SECRET information relating to the national defense to a representative of a foreign government.		NOT GUILTY	WITHDRAWN AND DISMISSED
Specification 5 (Attempted Espionage): In that Lieutenant Commander Edward C. L. Lin, U.S. Navy, Commander Patrol and Reconnaissance Group, on active duty, did, at or near Pearl Harbor, HI, on or about 9 September 2015, with intent or reason to believe it would be used to the advantage of a foreign nation, attempt to communicate SECRET information relating to the national defense to a representative of a foreign government.		NOT GUILTY	WITHDRAWN AND DISMISSED
CHARGE III: VUCMJ ARTICLE 107		**GUILTY**	**GUILTY**
Specification 1 (False Official Statement): In that Lieutenant Commander Edward C. L. Lin, U.S. Navy, Commander Patrol and Reconnaissance Group, on active duty, did, at or near Washington, D.C., on or about 31 October 2013, with intent to deceive, electronically sign an official record, to wit: an e-Leave Request dated 31 October 2013, which record was false in that it listed the leave address as 166 Comay Terrace, (b) (6) rather than the actual foreign destination, and was then known by the said Lieutenant Commander Edward C. L. Lin to be so false.		GUILTY	GUILTY

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Specification 2 (False Official Statement): In that Lieutenant Commander Edward C. L. Lin, U.S. Navy, Commander Patrol and Reconnaissance Group, on active duty, did, at or near Pearl Harbor, HI, on or about 29 April 2015, with intent to deceive, sign an official record, to wit: an e-Leave Request dated 1 July 2015, which record was false in that it listed the leave address as (b) (6) (b) (6) rather than the actual foreign destination, and was then known by the said Lieutenant Commander Edward C. L. Lin to be so false.		GUILTY	GUILTY
CHARGE IV: VUCMJ ARTICLE 134		**GUILTY**	**GUILTY**
Specification 1 (Communicating Defense Information): In that Lieutenant Commander Edward C. L. Lin, U.S. Navy, Commander Patrol and Reconnaissance Group, on active duty, did, at or near Pearl Harbor, HI, on or about 21 August 2015, having lawful access to information relating to the national defense of the United States, which information the said Lieutenant Commander Edward C. L. Lin, U.S. Navy, had reason to believe could be used to the injury of the United States or to the advantage of a foreign nation, knowingly and willfully communicate information relative to the national defense to a person not entitled to receive said information in violation of Title 18, United States Code, Section 793(d), an offense not capital.		GUILTY, excepting the words "on or about 21 August 2015," substituting the words "from on or about August 2015 to on or about September 2015," to the excepted words NOT GUILTY, to the substituted words GUILTY, to the specification as excepted and substituted GUILTY.	GUILTY, excepting the words "on or about 21 August 2015," substituting the words "from on or about August 2015 to on or about September 2015," to the excepted words NOT GUILTY, to the substituted words GUILTY, to the specification as excepted and substituted GUILTY.
Specification 2 (Communicating Defense Information): In that Lieutenant Commander Edward C. L. Lin, U.S. Navy, Commander Patrol and Reconnaissance Group, on active duty, did, at or near Pearl Harbor, HI, on or about 25 August 2015, having lawful access to information relating to the national defense of the United States, which information the said Lieutenant Commander Edward C. L. Lin, U.S. Navy, had reason to believe could be used to the injury of the United States or to the advantage of a foreign nation, knowingly and willfully communicate information relative to the national defense to a person not entitled to receive said information in		GUILTY, excepting the words "Pearl Harbor, HI, on or about 1 September 2015," substituting the words "Washington, DC, from about April 2012 to May 2014" to the excepted words NOT GUILTY, to the substituted words GUILTY, to the	GUILTY, excepting the words "Pearl Harbor, HI, on or about 1 September 2015," substituting the words "Washington, DC, from about April 2012 to May 2014" to the excepted words NOT GUILTY, to the substituted words GUILTY, to the

violation of Title 18, United States Code, Section 793(d), an offense not capital.		specification as excepted and substituted GUILTY	specification as excepted and substituted GUILTY
Specification 3 (Communicating Defense Information): In that Lieutenant Commander Edward C. L. Lin, U.S. Navy, Commander Patrol and Reconnaissance Group, on active duty, did, at or near Pearl Harbor, HI, on or about 1 September 2015, having lawful access to information relating to the national defense of the United States, which information the said Lieutenant Commander Edward C. L. Lin, U.S. Navy, had reason to believe could be used to the injury of the United States or to the advantage of a foreign nation, knowingly and willfully communicate information relative to the national defense to a person not entitled to receive said information in violation of Title 18, United States Code, Section 793(d), an offense not capital.		NOT GUILTY	WITHDRAWN AND DISMISSED
Specification 4 (Communicating Defense Information): In that Lieutenant Commander Edward C. L. Lin, U.S. Navy, Commander Patrol and Reconnaissance Group, on active duty, did, at or near Pearl Harbor, HI, on or about 4 September 2015, having lawful access to information relating to the national defense of the United States, which information the said Lieutenant Commander Edward C. L. Lin, U.S. Navy, had reason to believe could be used to the injury of the United States or to the advantage of a foreign nation, knowingly and willfully communicate information relative to the national defense to a person not entitled to receive said information in violation of Title 18, United States Code, Section 793(d), an offense not capital.		NOT GUILTY	WITHDRAWN AND DISMISSED
Specification 5 (Communicating Defense Information): In that Lieutenant Commander Edward C. L. Lin, U.S. Navy, Commander Patrol and Reconnaissance Group, on active duty, did, at or near Pearl Harbor, HI, on or about 9 September 2015, having lawful access to information relating to the national defense of the United States, which information the said Lieutenant Commander Edward C. L. Lin, U.S. Navy, had reason to believe could be		NOT GUILTY	WITHDRAWN AND DISMISSED

(b) (6)

used to the injury of the United States or to the advantage of a foreign nation, knowingly and willfully communicate information relative to the national defense to a person not entitled to receive said information in violation of Title 18, United States Code, Section 793(d), an offense not capital.			
ADDITIONAL CHARGE: VUCMJ ARTICLE 92		**GUILTY**	**GUILTY**
Specification (Violation of a Lawful General Order): In that Lieutenant Commander Edward C.L. Lin, U.S. Navy, Commander Patrol and Reconnaissance Group, on active duty, did, at or near Pearl Harbor, HI, from about February 2014 to about September 2015, fail to obey a lawful general order, to wit: SECNAV M-5510.30, paragraph 3-8, dated June 2006, as incorporated into SECNAVINST 5510.30B, dated 6 October 2006, by wrongfully failing to report foreign connections to his security manager.		GUILTY	GUILTY

SENTENCE

On 2 June 2017, the accused was sentenced to a punitive separation from the Naval Service with a Dismissal, to be confined for nine (9) years, and to forfeit all pay and allowances.

APPROVAL

In accordance with the pre-trial agreement in the General Court-Martial of United States v. Lieutenant Commander Edward C. L. Lin, U.S. Navy, the sentence as adjudged is approved.

ACTION

Pursuant to the pre-trial agreement, execution of confinement in excess of six (6) years is suspended for the period of confinement adjudged plus 24 months thereafter, at which time, unless sooner vacated, the suspended portion will be remitted without further action.

EXECUTION

In accordance with the Uniform Code of Military Justice (UCMJ), the Manual for Courts-Martial (MCM), applicable regulations, and this action, the sentence is ordered executed, except, pursuant to Article 71, UCMJ, the punitive separation may not be executed until there is final judgment as to the legality of the proceedings.

(b) (6)

CONFINEMENT CREDIT

In accordance with the case of U.S. v. Allen, 17 M.J. 126 (CMA 1984), the accused is credited with 630 days of pre-trial confinement. Additionally, the accused is credited with 16 days of judicially ordered credit.

PLACE OF CONFINEMENT

The Naval Consolidated Brig Chesapeake, Chesapeake, Virginia, was designated as the initial place of confinement.

DEFERMENT

Other than the provisions of the pre-trial agreement, there have been no requests to defer any part of the sentence, either as adjudged or as mandated under the UCMJ.

POST-TRIAL DELAY

This action was taken within 120 days of the completion of trial.

MATTERS CONSIDERED

Prior to taking action in the case, I considered the Corrected Report of Results of Trial dated 15 August 2017, the Pre-Trial Agreement of 18 April 2017, the recommendation of my Fleet Judge Advocate of 5 September 2017, Defense counsels' letter and email of 21 September 2017, with all the enclosures submitted by Defense Counsel and the Accused in accordance with Rule for Courts-Martial 1105 and 1106, and the Addendum Fleet Judge Advocate Recommendation of 22 September 2017.

DISPOSITION

Pursuant to Article 65(a), Uniform Code of Military Justice, the record of trial is forwarded to the Navy-Marine Corps Appellate Review Activity (Code 40), Office of the Judge Advocate General, Washington Navy Yard, Washington, D.C. 20374, for appellate review.

The results of the foregoing case are hereby promulgated in accordance with Rule for Courts-Martial 1114, Manual for Courts-Martial.

Collection of a DNA sample from the accused is required per 10 U.S.C. § 1565.

(b) (6)

P. S. DAVIDSON
Admiral, U.S. Navy
Commander, U.S. Fleet Forces Command

(b) (6)

DISTRIBUTION:

ORIGINAL – Original Record of Trial
CERTIFIED COPIES – Service Record of Accused
– Original ROT
– Copies of ROT
– CNPC (PERS 834)
– GCMCA – COMUSFLTFORCOM
– PATRECONGRU
– USACIL (Attn: Codis Lab)
– Directorate of Debt and Claims Management
– NAVCONBRIG CHARLESTON SC
– NAVCONBRIG CHESAPEAKE VA
– PSD Norfolk, VA
– NCPB

PLAIN COPY – Military Judge (CAPT Monahan, JAGC, USN)
– TC (CAPT Luken, JAGC, USN)
– ATC (CDR Tang, JAGC, USN)
– DC (CDR Czaplak, JAGC, USN)
– ADC (LCDR Bridges, JAGC, USN)
– CDC (Mr. Larry Youngner, Esq.)
– Accused
– File

(b) (6)

DEPARTMENT OF DEFENSE REPORT OF RESULT OF TRIAL

1. DATE OF TRIAL *(YYYYMMDD)*: 20170602

TO: *(Convening Authority)*
COMMANDER, US FLEET FORCES COMMAND

1. NOTIFICATION UNDER R.C.M. 1101 IS HEREBY GIVEN IN THE CASE OF UNITED STATES VERSUS:

a. NAME *(Last, First, Middle Initial)*	b. BRANCH OF SERVICE	c. RANK/GRADE	d. DoD ID/SSN (Last 4)
LIN, Edward C. L.	USN	LCDR/0-4	(b) (6)

e. ORGANIZATION: *(Full address)*	2.a. TYPE OF COURT-MARTIAL *(X one)*					
COMMANDER PATROL AND RECONNAISSANCE GROUP 7927 INGERSOL ST. STE 250 NORFOLK, VA 23551-2392	X	GENERAL		SPECIAL		SUMMARY
	X	JUDGE ALONE		JUDGE ALONE		

b. CONVENED BY: COURT MARTIAL ORDER NUMBER(S)	c. ISSUING COMMAND	d. DATE *(YYYYMMDD)*
1A-15	COMMANDER, US FLEET FORCES COMMAND	20150824

3. SUMMARY OF OFFENSES, PLEAS AND FINDINGS

a. CHARGE/ SPECIFICATION NO(S)	b. UCMJ ARTICLE(S)	c. DBIRS CODE	d. BRIEF DESCRIPTION OF OFFENSE	e. PLEA	f. FINDING
CHARGE I	92	092-A0	VIOLATION OF A LAWFUL GENERAL ORDER	G	G
SPEC 1				*G	*G
SPEC 2				G	G
CHARGE II	106a	106-A-	ESPIONAGE AND ATTEMPTED ESPIONAGE	NG	W/D
SPEC 1				NG	W/D
SPEC 2				NG	W/D
SPEC 3				NG	W/D
SPEC 4				NG	W/D
SPEC 5				NG	W/D
CHARGE III	107	107-A-	FALSE OFFICIAL STATEMENT	G	G
SPEC 1				G	G
SPEC 2				G	G
CHARGE IV	134	134-2-	COMMUNICATING DEFENSE INFORMATION	G	G
SPEC 1				*G	*G
SPEC 2				*G	*G
SPEC 3				NG	W/D
SPEC 4				NG	W/D
SPEC 5				NG	W/D
ADDITIONAL CHARGE	92	092-A0	VIOLATION OF A LAWFUL GENERAL ORDER	G	G
SPEC				G	G
			* GUILTY BY EXCEPTIONS AND SUBSTITUTIONS AS NOTED IN THE RECORD OF TRIAL.		

4.a. DATE ADJUDGED	b. DATE OF ANY FORFEITURES OR REDUCTIONS
20170602	20170602

5. SENTENCE
DISMISSAL; 9 YEARS CONFINEMENT; FORFEITURE ALL PAY AND ALLOWANCES.

6.a. CONTENTS OF PRE-TRIAL AGREEMENT CONCERNING SENTENCE TO CONFINEMENT *(if any)*
May be approved as adjudged. However, all confinement in excess of 6 years will be suspended for the period of confinement adjudged plus 24 months thereafter, at which time, unless sooner vacated, the suspended portion will be remitted without further action.

b. DAYS OF PRE-TRIAL CREDIT	c. DAYS OF OTHER JUDGE ORDERED CREDIT	d. TOTAL PRESENTENCE CREDIT TOWARD POST-TRIAL CONFINEMENT
630	N/A	630

7. DNA PROCESSING: IAW DoDI 5505.14	X	IS		IS NOT REQUIRED.	
8. SEX OFFENDER REGISTRATION: IAW 42 U.S.C. § 16917		IS	X	IS NOT REQUIRED.	

9. COMPANION ACCUSED/CO-ACCUSED *(Name(s) and Social Security Number(s) (if any))*
N/A

10. DISTRIBUTION *(Copy provided to named Agencies/Unit(s))*
COMMANDER PATROL AND RECONNAISSANCE GROUP; PSO; DISBURSING OFFICE; RECORD OF TRIAL; TCAP/DCAP; NCIS

11. SIGNED BY *(X one)*	X	TRIAL COUNSEL		SUMMARY COURT-MARTIAL OFFICER
a. NAME *(Last, First, Middle Initial)* TANG, Angela J.	b. RANK/GRADE CDR/0-5		c. BRANCH OF SERVICE USN	
d. SIGNATURE (b) (6) [redacted]			e. DATE SIGNED (YYYYMMDD) 20170602	

CHARGE SHEET

I. PERSONAL DATA

1. NAME OF ACCUSED (Last, First, MI)	2. SSN	3. RANK/RATE	4. PAY GRADE
LIN, Edward C. L.	(b) (6)	LCDR	O-4

5. UNIT OR ORGANIZATION	6. CURRENT SERVICE	
	a. INITIAL DATE	b. TERM
Commander Patrol and Reconnaissance Group	22 Dec 1999	Indefinite

7. PAY PER MONTH			8. NATURE OF RESTRAINT OF ACCUSED	9. DATE(S) IMPOSED
a. BASIC	b. SEA/FOREIGN DUTY	c. TOTAL		
~~$7,449.30~~ 7605.60	~~$0.00~~ NTE	~~$7,449.30~~ 7605.60	Pre-Trial Confinement 2/16/17	September 11, 2015 - Present

II. CHARGES AND SPECIFICATIONS

10. CHARGE I VIOLATION OF THE UCMJ, ARTICLE 92

Specification 1 (Violation of a Lawful General Order): In that Lieutenant Commander Edward C. L. Lin, U.S. Navy, Commander Patrol and Reconnaissance Group, on active duty, did, at or near San Francisco International Airport SAN FRANCISCO, CA on or about 12 February 2015, fail to obey a lawful general order, to wit: SECNAV M-5510.36, paragraph 9-3, dated June 2006, as incorporated into SECNAVINST 5510.36A, dated 6 October 2006, by wrongfully transporting material classified as SECRET.

Specification 2 (Violation of a Lawful General Order): In that Lieutenant Commander Edward C. L. Lin, U.S. Navy, Commander Patrol and Reconnaissance Group, on active duty, did, at or near Pearl Harbor, HI, on or about 20 February 2015, fail to obey a lawful general order, to wit: SECNAV M-5510.36, paragraph 12-2, dated June 2006, as incorporated into SECNAVINST 5510.36A, dated 6 October 2006, by wrongfully failing to report the compromise of information classified as SECRET.

Specification 3 (Failure to Obey a Lawful Order): In that Lieutenant Commander Edward C. L. Lin, U.S. Navy, Commander Patrol and Reconnaissance Group, on active duty, having knowledge of a lawful order issued by the Special Security Officer, Special Projects Patrol Squadron TWO, to report all foreign contacts to the Special Security Officer, an order which it was his duty to obey, did at or near Pearl Harbor, HI, on divers occasions, between on or about 24 February 2013 and about September 2015, fail to obey the same by wrongfully failing to report foreign contacts.

DISMISSED WITHOUT PREJUDICE

SEE 2 ADDITIONAL PAGES

III. PREFERRAL

11a. NAME OF ACCUSER (Last, First, MI)	b. GRADE	c. ORGANIZATION OF ACCUSER
(b) (6)	LCDR/O-4	United States Fleet Forces Command
		e. DATE: 7 April 2016

AFFIDAVIT: Before me, the undersigned, authorized by law to administer oaths in cases of this character, personally appeared the above named accuser this 7th day of April, 20 16, and signed the foregoing charges and specifications under oath that he/she is a person subject to the Uniform Code of Military Justice and that he/she either has personal knowledge of or has investigated the matters set forth therein and that the same are true to the best of his/her knowledge and belief.

(b) (6)
Typed Name of Officer

United States Fleet Forces Command
Organization of Officer

CDR, JAGC, USN

Deputy Force Judge Advocate
Official Capacity to Administer Oaths
(See R.C.M. 307(b)–must be commissioned officer)

(b) (6)

12. On 7 April 16, the accused was informed of the charges against him/her and of the name(s) of the accuser(s) known to me. *(See R.C.M. 308(a)). (See R.C.M. 308 if notification cannot be made.)*

(b) (6)
Typed Name

Region Legal Service Office Mid-Atlantic
Organization

CDR, JAG, USN

(b) (6)

IV. RECEIPT BY SUMMARY COURT-MARTIAL CONVENING AUTHORITY

13. The sworn charges were received at 1600 hours, 7 April 20 16 at
Designation of Command or

United States Fleet Forces Command
Officer Exercising Summary Court-Martial Jurisdiction (See R.C.M. 403)

FOR THE Commander, United States Fleet Forces Command

(b) (6)
Typed Name of Officer

Fleet Judge Advocate
Official Capacity of Officer Signing

CAPT, JAGC, USN

(b) (6)

V. REFERRAL; SERVICE OF CHARGES

14a. DESIGNATION OF COMMAND OF CONVENING AUTHORITY	b. PLACE	c. DATE
Fleet Forces Command	NSA, Norfolk, VA	10 May 2016

Referred for trial to the General court-martial convened by General Court-Martial

Convening Order 1A-15

24 August , 20 15 ,subject to the following instructions:[2] None.

By Of
Command or Order

P.S. DAVIDSON
Typed Name of Officer

Commander
Official Capacity of Officer Signing

ADMIRAL, U.S. NAVY

(b) (6)

15. On 11 May ,20 16 , I (caused to be) served a copy hereof on (each of) the above named accused.

J.T. STEPHENS

Commander, U.S. Navy
Grade or Rank of Trial Counsel

(b) (6)

FOOTNOTES
1 – When an appropriate commander signs personally, inapplicable words are stricken.
2 – See R.C.M. 601(e) concerning instructions. If none, so state.

DD Form 458 Reverse

Continuation of DD FORM 458 - CO U.S. v. LCDR EDWARD LIN, USN (b) (6)

CHARGE I, VIOLATION OF THE UCMJ, ARTICLE 92 (CONTINUED)

Specification 2 (Violation of a Lawful General Order): In that Lieutenant Commander Edward C. L. Lin, U.S. Navy, Commander Patrol and Reconnaissance Group, on active duty, did, at or near Pearl Harbor, HI, on or about 11 September 2015, fail to obey a lawful general order, to wit: SECNAV M-5510.36, paragraph 10-3, dated June 2006, as incorporated into SECNAVINST 5510.36A, dated 6 October 2006, by wrongfully failing to properly store material classified as SECRET.

CHARGE II, VIOLATION OF THE UCMJ, ARTICLE 106a

Specification 1 (Espionage): In that Lieutenant Commander Edward C. L. Lin, U.S. Navy, Commander Patrol and Reconnaissance Group, on active duty, did, at or near Washington, D.C., on divers occasions, from about September 2012 to about December 2013, with intent or reason to believe it would be used to the advantage of a foreign nation, communicate SECRET information relating to the national defense to representatives of a foreign government.

Specification 2 (Espionage): In that Lieutenant Commander Edward C. L. Lin, U.S. Navy, Commander Patrol and Reconnaissance Group, on active duty, did, at or near Washington, D.C., on divers occasions, from about April 2012 to about May 2014, with intent or reason to believe it would be used to the advantage of a foreign nation, communicate SECRET information relating to the national defense to a representative of a foreign government.

Specification 3 (Attempted Espionage): In that Lieutenant Commander Edward C. L. Lin, U.S. Navy, Commander Patrol and Reconnaissance Group, on active duty, did, at or near Pearl Harbor, HI, on or about 1 September 2015, with intent or reason to believe it would be used to the advantage of a foreign nation, attempt to communicate SECRET information relating to the national defense to a representative of a foreign government.

Specification 4 (Attempted Espionage): In that Lieutenant Commander Edward C. L. Lin, U.S. Navy, Commander Patrol and Reconnaissance Group, on active duty, did, at or near Pearl Harbor, HI, on or about 4 September 2015, with intent or reason to believe it would be used to the advantage of a foreign nation, attempt to communicate SECRET information relating to the national defense to a representative of a foreign government.

Specification 5 (Attempted Espionage): In that Lieutenant Commander Edward C. L. Lin, U.S. Navy, Commander Patrol and Reconnaissance Group, on active duty, did, at or near Pearl Harbor, HI, on or about 9 September 2015, with intent or reason to believe it would be used to the advantage of a foreign nation, attempt to communicate SECRET information relating to the national defense to a representative of a foreign government.

CHARGE III, VIOLATION OF THE UCMJ, ARTICLE 107

Specification 1 (False Official Statement): In that Lieutenant Commander Edward C. L. Lin, U.S. Navy, Commander Patrol and Reconnaissance Group, on active duty, did, at or near ~~Pearl Harbor, HI~~, on or about 9 August 2012, with intent to deceive, electronically sign an official record, to wit: Standard Form 86, which record was false in that it failed to include foreign travel from 3 December 2011 to 10 December 2011, and was then known by the said Lieutenant ~~Commander Edward C. L. Lin~~ to be so false.

Specification 2 (False Official Statement): In that Lieutenant Commander Edward C. L. Lin, U.S. Navy, Commander Patrol and Reconnaissance Group, on active duty, did, at or near ~~Pearl Harbor, HI~~, on or about 31 October 2013, with intent to deceive, electronically sign an official record, to wit: an e-Leave Request dated 31 October 2013, which record was false in that it listed the leave address as (b) (6) (b) (6) rather than the actual foreign destination, and was then known by the said Lieutenant Commander Edward C. L. Lin to be so false.

Specification 3 (False Official Statement): In that Lieutenant Commander Edward C. L. Lin, U.S. Navy, Commander Patrol and Reconnaissance Group, on active duty, did, at or near Pearl Harbor, HI, on or about 29 April 2015, with intent to deceive, ~~electronically~~ sign an official record, to wit: an e-Leave Request dated 1 July 2015, which record was false in that it listed the leave address as (b) (6) (b) (6) rather than the actual foreign destination, and was then known by the said Lieutenant Commander Edward C. L. Lin to be so false.

CHARGE IV, VIOLATION OF TH[illegible]CMJ, ARTICLE 134

Specification 1 (Communicating Defense Information): In that Lieutenant Commander Edward C. L. Lin, U.S. Navy, Commander Patrol and Reconnaissance Group, on active duty, did, at or near Pearl Harbor, HI, on or about 21 August 2015, having lawful access to information relating to the national defense of the United States, which information the said Lieutenant Commander Edward C. L. Lin, U.S. Navy, had reason to believe could be used to the injury of the United States or to the advantage of a foreign nation, knowingly and willfully communicate information relative to the national defense to a person not entitled to receive said information in violation of Title 18, United States Code, Section 793(d), an offense not capital.

Specification 2 (Communicating Defense Information): In that Lieutenant Commander Edward C. L. Lin, U.S. Navy, Commander Patrol and Reconnaissance Group, on active duty, did, at or near Pearl Harbor, HI, on or about 25 August 2015, having lawful access to information relating to the national defense of the United States, which information the said Lieutenant Commander Edward C. L. Lin, U.S. Navy, had reason to believe could be used to the injury of the United States or to the advantage of a foreign nation, knowingly and willfully communicate information relative to the national defense to a person not entitled to receive said information in violation of Title 18, United States Code, Section 793(d), an offense not capital.

Specification 3 (Communicating Defense Information): In that Lieutenant Commander Edward C. L. Lin, U.S. Navy, Commander Patrol and Reconnaissance Group, on active duty, did, at or near Pearl Harbor, HI, on or about 1 September 2015, having lawful access to information relating to the national defense of the United States, which information the said Lieutenant Commander Edward C. L. Lin, U.S. Navy, had reason to believe could be used to the injury of the United States or to the advantage of a foreign nation, knowingly and willfully communicate information relative to the national defense to a person not entitled to receive said information in violation of Title 18, United States Code, Section 793(d), an offense not capital.

Specification 4 (Communicating Defense Information): In that Lieutenant Commander Edward C. L. Lin, U.S. Navy, Commander Patrol and Reconnaissance Group, on active duty, did, at or near Pearl Harbor, HI, on or about 4 September 2015, having lawful access to information relating to the national defense of the United States, which information the said Lieutenant Commander Edward C. L. Lin, U.S. Navy, had reason to believe could be used to the injury of the United States or to the advantage of a foreign nation, knowingly and willfully communicate information relative to the national defense to a person not entitled to receive said information in violation of Title 18, United States Code, Section 793(d), an offense not capital.

Specification 5 (Communicating Defense Information): In that Lieutenant Commander Edward C. L. Lin, U.S. Navy, Commander Patrol and Reconnaissance Group, on active duty, did, at or near Pearl Harbor, HI, on or about 9 September 2015, having lawful access to information relating to the national defense of the United States, which information the said Lieutenant Commander Edward C. L. Lin, U.S. Navy, had reason to believe could be used to the injury of the United States or to the advantage of a foreign nation, knowingly and willfully communicate information relative to the national defense to a person not entitled to receive said information in violation of Title 18, United States Code, Section 793(d), an offense not capital.

Specification 6 (Prostitution - Patronizing): In that Lieutenant Commander Edward C. L. Lin, U.S. Navy, Commander Patrol and Reconnaissance Group, on active duty, did, at or near Pearl Harbor, HI, on divers occasions from about October 2014 to about March 2015, wrongfully procure (b) (6) to engage in an acts of sexual intercourse for hire and reward with the accused, such conduct being to the prejudice of good order and discipline in the armed forces and of a nature to bring discredit upon the armed forces.

DISMISSED WITHOUT PREJUDICE 12 Feb 18 CAPT, JAGC, USN

Specification 7 (Adultery): In that Lieutenant Commander Edward C. L. Lin, U.S. Navy, Commander Patrol and Reconnaissance Group, on active duty, a married man, did, at or near Norfolk, Virginia and Flushing, New York, on divers occasions between about January 2011 and about July 2015, wrongfully have sexual intercourse with Ms. Zhen Guan, a woman not his wife, such conduct being to the prejudice of good order and discipline in the armed forces and of a nature to bring discredit upon the armed forces.

AND NO OTHERS

CHARGE SHEET

I. PERSONAL DATA

1. NAME OF ACCUSED (Last, First, MI)	2. SSN	3. RANK/RATE	4. PAY GRADE
LIN, Edward C. L.	(b) (6)	LCDR	O-4

5. UNIT OR ORGANIZATION	6. CURRENT SERVICE	
	a. INITIAL DATE	b. TERM
Commander Patrol and Reconnaissance Group	22 Dec 1999	Indefinite

7. PAY PER MONTH			8. NATURE OF RESTRAINT OF ACCUSED	9. DATE(S) IMPOSED
a. BASIC	b. SEA/FOREIGN DUTY	c. TOTAL		
$7,449.30	$0.00	$7,449.30	Pre-Trial Confinement	September 11, 2015 - Present

II. CHARGES AND SPECIFICATIONS

10. ADDITIONAL CHARGE — VIOLATION OF THE UCMJ, ARTICLE 92

Specification (Violation of a Lawful General Order): In that Lieutenant Commander Edward C. L. Lin, U.S. Navy, Commander Patrol and Reconnaissance Group, on active duty, did, at or near Pearl Harbor, HI, from about February 2014 to about September 2015, fail to obey a lawful general order, to wit: SECNAV M-5510.30, paragraph 3-8, dated June 2006, as incorporated into SECNAVINST 5510.30B, dated 6 October 2006, by wrongfully failing to report foreign connections to his security manager.

AND NO OTHERS

III. PREFERRAL

11a. NAME OF ACCUSER (Last, First, MI)	b. GRADE	c. ORGANIZATION OF ACCUSER
(b) (6)	LCDR/O-4	United States Fleet Forces Command
		e. DATE: 9 May 2016

AFFIDAVIT: Before me, the undersigned, authorized by law to administer oaths in cases of this character, personally appeared the above named accuser this 9TH day of MAY, 20 16, and signed the foregoing charges and specifications under oath that he/she is a person subject to the Uniform Code of Military Justice and that he/she either has personal knowledge of or has investigated the matters set forth therein and that the same are true to the best of his/her knowledge and belief.

(b) (6)
Typed Name of Officer

United States Fleet Forces Command
Organization of Officer

CDR, JAGC, USN

Deputy Fleet Judge Advocate
Official Capacity to Administer Oaths
(See R.C.M. 307(b)--must be commissioned officer)

(b) (6)

DD FORM 458

S/N 0102-LF-000-4580

12. On 11 May 16, the accused was informed of the charges against him/her and of the name(s) of the accuser(s) known to me. *(See R.C.M. 308(a)). (See R.C.M. 308 if notification cannot be made.)*

(b) (6)
Typed Name

Region Legal Service Office Mid-Atlantic
Organization

CDR, JAG, USN

(b) (6)

IV. RECEIPT BY SUMMARY COURT-MARTIAL CONVENING AUTHORITY

13. The sworn charges were received at 1103 hours, 9 May 20 16 at
Designation of Command or

United States Fleet Forces Command
Officer Exercising Summary Court-Martial Jurisdiction (See R.C.M. 403)

FOR THE Commander, United States Fleet Forces Command

(b) (6)
Typed Name of Officer

Fleet Judge Advocate
Official Capacity of Officer Signing

CAPT, JAGC, USN

(b) (6)

V. REFERRAL; SERVICE OF CHARGES

14a. DESIGNATION OF COMMAND OF CONVENING AUTHORITY	b. PLACE	c. DATE
United States Fleet Forces Command	NSA Norfolk, VA	10 May 2016

Referred for trial to the General court-martial convened by General Court-Martial

Convening Order 1A-15

24 August 20 15 ,subject to the following instructions:[2] To be tried in conjunction with the charges preferred on 7 April 2016, ICO Edward C.L. Lin

By Of
Command or Order

P.S. Davidson
Typed Name of Officer

Commander
Official Capacity of Officer Signing

Admiral, U.S. Navy

(b) (6)

15. On 11 MAY ,20 16 , I (caused to be) served a copy hereof on (each of) the above named accused.

J. T. STEPHENS

Commander, U.S. Navy
Grade or Rank of Trial Counsel

(b) (6)

FOOTNOTES

1 -- When an appropriate commander signs personally, inapplicable words are stricken.
2 -- See R.C.M. 601(e) concerning instructions. If none, so state.

DD Form 458 Reverse

DEPARTMENT OF THE NAVY
GENERAL COURT-MARTIAL
NAVY AND MARINE CORPS TRIAL JUDICIARY
CENTRAL JUDICIAL CIRCUIT

UNITED STATES **v.** **EDWARD C. L. LIN** **LCDR USN**	**ADDENDUM TO PRETRIAL AGREEMENT PART I** **26 April 2017**

1. I understand that in return to agreement to this pretrial agreement, my plea to Charge IV, Specification 2 involves major changes to the Specification. I have discussed this plea with my Defense Counsel and changing the nature of the Specification is in my interest. In consideration for the benefits of this agreement, I waive objection to the major change of the time and site of the Specification. Further, I affirmatively waive any procedural objection related to this Specification as excepted and substituted, including a right to preferral, notice, an Article 32, UCMJ, preliminary hearing, Article 34, UCMJ advice, referral, service, the five-day waiting period, and arraignment. Pursuant to the terms of this agreement, I agree this Specification as excepted and substituted is rightfully before this Court for acceptance of my plea.

SIGNATURE PAGE

By my signature below I acknowledge that I have read this agreement completely, I have discussed it with my counsel, I understand it in all respects, and I am prepared to abide by its terms.

Accused: (b) (6) Date: 27 APR 2017

Edward C. L. Lin
LCDR
USN

Defense Counsel: (b) (6) Date: 27 APR 2017

Mr. Larry Youngner, Esquire

Defense Counsel: (b) (6) Date: 27 Apr 17

Chris Czaplak
CDR, JAGC, USN

Defense Counse (b) (6) Date: 3 May 17

Daniel M. "Clay" Bridges
LT, JAGC, USN

The foregoing pretrial agreement is approved, including the sentence limitation portion of this agreement.

Convening Authority: (b) (6) USN Date: 27 APR 17

Force Judge Advocate
For P. S. Davidson
ADM, USN
Commanding

GENERAL COURT-MARTIAL
NAVY-MARINE CORPS TRIAL JUDICIARY
CENTRAL JUDICIAL CIRCUIT

UNITED STATES v. Edward C. L. Lin LCDR U.S. Navy	)	**MEMORANDUM OF PRETRIAL AGREEMENT (Part I)**

I, LCDR Edward C. L. Lin, USN, the accused in the court-martial now pending, in exchange for good consideration and after thorough consultation with my defense counsel, do fully understand and agree to the following terms and conditions:

1. I agree to enter pleas of GUILTY as indicated below. I assert that I am, in fact, guilty of the offenses to which I am pleading guilty and I am entering into this agreement freely and voluntarily and no one has threatened or coerced me into entering this agreement.

2. This agreement (Parts I and II) constitutes all the conditions and understandings of both the government and me regarding the plea in this case. There are no other agreements, written, oral or otherwise implied.

3. I understand that the convening authority in this case may approve any sentence adjudged by the court-martial, or any automatic sentence or portion thereof, but shall order executed only that sentence which does not exceed the lesser of the sentence contained in Part II of this agreement or the sentence adjudged by this court-martial. I also understand that the sentence limitation portion of this agreement addresses, each of the following distinct parts of the sentence that may be adjudged in this case: (1) punitive discharge, (2) confinement and restraint, (3) forfeiture and fine, (4) reduction in pay grade, and (5) any other lawful punishment that may be adjudged.

4. I am satisfied with my defense counsel, CDR Chris Czaplak, JAGC, USN and LT Clay Bridges, JAGC, USN, and civilian defense counsel, Mr. Larry Youngner, Esquire in all respects and consider them qualified to represent me at this court-martial.

5. I understand that I may ask permission to withdraw my pleas of guilty at any time before they are actually accepted by the military judge. I also understand that I may ask to withdraw my pleas of guilty after they have been accepted but before sentence is announced, and the military judge may permit me to do so at his/her discretion.

6. I understand that this pretrial agreement may become null and void, and that the convening authority can withdraw from this agreement, if any of the following occur:

a. I fail to plead guilty as set forth in this agreement;

b. The court refuses to accept my plea/any of my pleas of guilty;

c. The court sets aside my plea/any of my pleas of guilty for any reason (including upon my request) before a sentence is announced;

d. I fail to satisfy any material term of this agreement; or

e. I fail to plead guilty as required by this agreement at a rehearing, should one occur.

7. I understand that if this agreement becomes null and void, then my offer to plead guilty and to enter into this agreement cannot be used against me in any way to prove whether I am guilty or not guilty of the charges alleged against me at this court-martial. In this regard, the offer to plead guilty includes any statement or proffer made in the course of plea discussions with the convening authority or any counsel for the Government, whether in oral or in a written form.

8. Specially Negotiated Provisions. As consideration for this agreement and after having fully discussed the issue with my defense counsel:

a. I agree to request and to elect trial and sentencing by military judge alone, and I waive my right to a trial by members;

b. I agree not to request, at Government expense, the presence of any witness located more than 50 miles from the court-martial location. This provision does not interfere with my ability to present an effective case in extenuation and

mitigation. If I have further material to present, I intend to use alternative means to present this material.

c. The Government and I agree to not object to the Court receiving telephonic testimony in lieu of live testimony offered during the sentencing proceeding. This provision does not preclude objections to the content of the testimony offered.

d. The Government and I agree not to object to relevant service record documents, relevant command investigation materials, relevant Naval Criminal Investigative Service evidentiary material, relevant statements offered by the defense in extenuation and mitigation, or relevant statements offered by the Government in aggravation to include written, audio, or videotaped statements or telephonic testimony of any victim or relevant witness, or relevant unsworn testimony offered by a victim in accordance with the R.C.M.s being offered by either party in the presentencing phase of the trial on the basis of foundation, hearsay, lack of confrontation, or authenticity. Each party will provide the other party final witness and exhibit lists covered by this paragraph at least five (5) calendar days prior to the scheduled presentencing proceeding. This provision does not interfere with my ability to present an effective and complete case in extenuation and mitigation. Furthermore, the Government and I agree that the following items of evidence are admissible for consideration during the providency inquiry and in pre-sentencing. The Government and I agree not to object to the admissibility of the following documents:

(1) Stipulation of Fact pertaining to PACOM OCA review of evidence in this case;

(2) Stipulation of Fact pertaining to OPNAV OCA review of evidence in this case;

(3) Stipulation of Fact pertaining to JSOC OCA review of evidence in this case;

(4) Stipulation of Fact pertaining to AFRICOM OCA review of evidence in this case;

(5) Complete English translation transcript of the recording of LCDR Lin's meetings with the undercover agent known as (b) (6) on 21 and 25 August ~~2016~~ 2015 and 1, 4, and 9 September ~~2016~~ 2015;

TAR By Direction 27 APR 17

27 Apr 17

TAR By Direction 27 APR 17

27 APR 17

(6) Copies of the classified materials that form the basis of Charge I.

(7) Emails between LCDR Lin and (b) (6)

(8) Emails between LCDR Lin and (b) (6)

(9) Emails between LCDR Lin and (b) (6)

(10) Prosecution Exhibit 1 for Identification, Classified Excerpts of LCDR Lin's statements.

e. I agree, and am fully prepared, to go to trial and offer to go to trial no later than 4 May 2017. I understand that this agreement will not be deemed to have been breached if the Government is unprepared or the judiciary cannot schedule the trial by that date.

f. I agree to unconditionally waive any Board of Inquiry that is based on any act or omission reflected in the charges and specifications that are the subject of this agreement. I understand that any administrative discharge will be characterized in accordance with service regulations and may be under other-than-honorable conditions. I fully understand the nature and purpose of a Board of Inquiry and the rights that I would have at such a Board.

g. I specifically agree to waive all motions except those that are otherwise non-waivable pursuant to R.C.M. 705(c)(1)(B).

h. I understand and agree that, in return for my pleas of guilty, and following the military judge's acceptance of my pleas as set forth below, the convening authority will withdraw the language, charges and specifications to which I have pled not guilty. After announcement of the sentence by the military judge, the withdrawn language, charges and specifications will be dismissed by the convening authority without prejudice, to ripen into prejudice upon completion of appellate review in which the findings and sentence have been upheld.

i. I agree to enter into a stipulation of fact for use during the providence inquiry and during the pre-sentencing proceeding, which describes the facts and circumstances surrounding the offenses to which I am pleading guilty. If I have any objections to the admissibility of any matters contained in the stipulation of fact, I will notify trial counsel prior to signing it. I understand that the failure of

the parties to reach a mutually agreed upon stipulation of fact may result in either side withdrawing from this Agreement.

j. Polygraph.

(1) I agree to submit to and cooperate in all debriefings, to include interviews and polygraph examinations, requested by the investigators specified by the Convening Authority, which interviews and polygraph examinations shall concern the loss or disclosure of any classified information for which I have knowledge or in any matter which my cooperation may be relevant. I understand that my cooperation shall extend to disclosing my knowledge of the actual or potential compromise of classified material or information by my or by any person or entity whatsoever - to include questions about my interactions with officials from the Taipei Economic and Cultural Representative's Office. I also understand that these debriefings may also include questions typically asked in a polygraph examination for ascertaining if a person may continue to hold a Top Secret security clearance.

(2) I agree to answer all questions fully and completely, both orally and, where requested, in writing, to the best of my knowledge and belief. I will submit to as many debriefings, to include interviews and polygraph examinations, at such times and places as may be specified by the Convening Authority, as are necessary in the view of the Convening Authority, to ensure that I have made a full and truthful disclosure as to the above matters. I understand that my cooperation will extend for a period of 5 years from the date sentence is imposed on me.

(3) I understand and agree that I may request the presence of my counsel only during the pre-polygraph interview and initial rights advisement prior to the polygraph test, but during the polygraph examination, neither my counsel nor any persons other than the polygrapher and me will be permitted to be in the room. I agree to fully cooperate with investigators to resolve any issues arising from polygraph examination results indicating that I have provided deceptive or no opinion responses to any questions. I understand that such cooperation may extend to additional debriefings, to include interviews and polygraph examinations. I also understand that if I continue to provide deceptive or no opinion responses to any questions, based on the opinion of the polygraph examiner, that opinion and the responses shall be conveyed to the Convening Authority.

(4) I understand that if information is given to the Convening Authority indicating that I have violated the provisions of subparagraphs (1) - (3) of paragraph "j" of this agreement after trial but prior to his having taken action on the record of trial, the Convening Authority may, after first complying with notice and hearing requirements consistent with Article 72, UCMJ and R.C.M. 1109, withdraw from the sentence limitation provisions of this agreement. I further understand that should the Convening Authority withdraw from the sentence limitation provisions of this agreement that any provisions in the pretrial agreement relating to suspension of any aspect of my sentence would become null and void in all respects, and that the entire sentence adjudged at my court-martial may be approved and imposed upon me.

(5) I understand that if information is given to the Convening Authority that I have violated the provisions of subparagraphs (1) - (3) of paragraph "j" after the date of the Convening Authority's action, but before I have completed serving the entire sentence including any period of suspension or probation as finally approved and executed, the Convening Authority may, after complying with the procedures set forth in R.C.M. 1109, vacate any periods of suspension agreed to in this pretrial agreement or as otherwise approved by the Convening Authority. I understand that should the convening authority take such action, the previously suspended portion of my sentence could be imposed upon me.

(6) I understand that I will be entitled to present evidence based on a polygraph examination from an independent source if, during a hearing conducted pursuant to subparagraphs (4) or (5) of paragraph "j" the Convening Authority wants to consider the results of polygraph examinations, including a polygraph examiner's opinion that I provided deceptive or no opinion responses and the basis for those opinions. I understand that if I elect to have such an examination, the Convening Authority has agreed to provide an alternative polygraph examination from a different polygrapher from a different Department of Defense approved organization as specified in DoD Directive 5210.48 (April 24, 2015). I also understand that the alternative source polygrapher must hold, or be able to gain, the necessary security clearance in accordance with current regulations. I agree that the results and charts of any independent polygraph examination paid for by the Convening Authority will be forwarded to the Convening Authority for the Convening Authority's review.

(7) I understand that the Convening Authority shall provide me with a grant of testimonial immunity for any information I provide to government agents during debriefings, including interviews and polygraph examinations, conducted pursuant to this agreement.

(8) I agree to complete the polygraph rights waiver form pursuant to DoD Instruction 5210.91 (Incorporating Change 1, Effective October 15, 2013) prior to taking a polygraph examination referred to above. Although my only obligation under this provision is to complete the polygraph rights waiver form, I understand that should I not give my consent to the polygraph on the rights waiver form, I still may be found in violation of a different portion of this agreement because of my failure to cooperate. I also understand that because of the grant of immunity I will be given by the convening authority, I am not able to invoke the privilege against self-incrimination provided for on the polygraph rights waiver form. I understand that though I may have the right to consult with counsel as provided for on the polygraph rights waiver form, I also understand that I remain obligated under this agreement to cooperate fully and completely in answering all questions put to me during any polygraph that I am administered as part of this agreement.

9. Notification Provisions. I have been advised of the following potential consequences of my pleas of guilty and resultant convictions: My defense counsel has advised me that my pleas of guilty may adversely affect my ability to receive retirement pay and any and all other benefits accrued as a result of my military service under the Hiss Act, 5 U.S.C. § 8312.

PLEAS OF THE ACCUSED

CHARGE	PLEAS
Charge I: Violation of Article 92	GUILTY
Specification 1	GUILTY, excepting the words "paragraph 9-3, dated June 2006, as incorporated into SECNAVINST 5510.36A, dated 6 October 2006, by wrongfully transporting material classified as SECRET" substituting the words "paragraph 7-10, dated June 2006, as incorporated into SECNAVINST 5510.36A, dated 6 October 2006, by wrongfully failing to ensure material classified as SECRET was kept under constant surveillance by an authorized person" to the excepted words NOT GUILTY, to the substituted words GUILTY, to the specification as excepted and substituted GUILTY
Specification 2 (formerly Specification 4)	GUILTY
Charge II: Violation of Article 106a	NOT GUILTY
Specification 1	NOT GUILTY
Specification 2	NOT GUILTY
Specification 3	NOT GUILTY
Specification 4	NOT GUILTY
Specification 5	NOT GUILTY

(b) (6)

Charge III: Violation of Article 107	GUILTY
Specification 1 (formerly Specification 2)	GUILTY
Specification 2 (formerly Specification 3)	GUILTY
Charge IV: Violation of Article 134	GUILTY
Specification 1	GUILTY, excepting the words "on or about 21 August 2015," substituting the words "from on or about August 2015 to on or about September 2015," to the excepted words NOT GUILTY, to the substituted words GUILTY, to the specification as excepted and substituted GUILTY
Specification 2	GUILTY, excepting the words "Pearl Harbor, HI, on or about 1 September 2015," substituting the words "Washington, DC, from about April 2012 to May 2014" to the excepted words NOT GUILTY, to the substituted words GUILTY, to the specification as excepted and substituted GUILTY
Specification 3	NOT GUILTY
Specification 4	NOT GUILTY
Specification 5	NOT GUILTY
Additional Charge: Violation of Article 92	GUILTY
Specification	GUILTY

SIGNATURE PAGE

By my signature below I acknowledge that I have read this agreement completely, I have discussed it with my counsel, I understand it in all respects, and I am prepared to abide by its terms.

Accused: (b) (6) Date: 13 APR 2017

Edward C. L. Lin
LCDR
USN

Defense Counse (b) (6) Date: 3 MAY 2017

Mr. Larry Youngner, Esquire

Defense Counsel: (b) (6) Date: 13 Apr 17

Chris Czaplak
CDR, JAGC, USN

Defense Counsel (b) (6) Date: 3 May 17

Daniel M. Clay Bridges
LT, JAGC, USN

The foregoing pretrial agreement is approved, including the sentence limitation portion of this agreement.

Convening Authority (b) (6) Date: 18 Apr 2017

P. S. Davidson
ADM, USN
Commanding

GENERAL COURT-MARTIAL
NAVY-MARINE CORPS TRIAL JUDICIARY
CENTRAL JUDICIAL CIRCUIT

UNITED STATES v. Edward C. L. Lin LCDR U.S. Navy	)	**MEMORANDUM OF PRETRIAL AGREEMENT (Part II)**

The convening authority in this case may approve and order executed any lawfully adjudged sentence awarded by this court-martial, or any automatic sentence or portion thereof, except as specifically limited below:

1. **Punitive Discharge:** May be approved as adjudged.

2. **Confinement:** May be approved as adjudged. However, all confinement in excess of **6 years** will be suspended for the period of confinement adjudged plus 24 months thereafter, at which time, unless sooner vacated, the suspended portion will be remitted without further action. I agree that due to my operational knowledge and previous access to classified operations, an extended confinement suspension length for the period "confinement adjudged plus 24 months thereafter" is reasonable under these circumstances. This Agreement constitutes my request for, and the Convening Authority's approval of, deferment of all confinement suspended pursuant to the terms of this Agreement. The period of deferment will run from the date of sentence of the court-martial until the date the convening authority acts on the sentence.

3. **Forfeiture or Fine:** May be approved as adjudged.

4. **Other lawful punishments:** May be approved as adjudged.

SIGNATURE PAGE

I fully understand, and have discussed with my counsel, how this agreement will affect any sentence that I may be awarded by the court-martial.

Accused: (b) (6) Date: 13 APR 2017
Edward C. L. Lin
LCDR
USN

Defense Counsel: (b) (6) Date: 3 MAY 2017
Mr. Larry Youngner, Esquire

Defense Counsel: (b) (6) Date: 13 Apr 17
Chris Czaplak
CDR, JAGC, USN

Defense Counsel: (b) (6) Date: 3 May 17
Daniel M. Clay Bridges
LT, JAGC, USN

The foregoing pretrial agreement is approved, including the sentence limitation portion of this agreement.

Convening Authority (b) (6) Date: 18 Apr 2017
P. S. Davidson
ADM, USN
Commander, USFF

DEPARTMENT OF THE NAVY
GENERAL COURT-MARTIAL
NAVY AND MARINE CORPS TRIAL JUDICIARY
CENTRAL JUDICIAL CIRCUIT

UNITED STATES **v.** **EDWARD C. L. LIN** **LCDR USN**	**STIPULATION OF FACT** **26 April 2017**

1. In accordance and satisfaction with the pre-trial agreement in the above captioned case, it is hereby agreed by and between Trial Counsel and Defense Counsel, with the express consent of the accused, that the following facts, including the facts contained in an addendum to this stipulation that is classified SECRET (hereinafter "addendum") are true, accurate, susceptible of proof, and are admissible into evidence without regard to any evidentiary rule, applicable case law, or Rule for Courts-Martial. The accused specifically admits the following facts accurately reflect his actions, the government could prove these facts beyond a reasonable doubt, and hereby waives any objection he may have to the admission of these facts and evidence. Although the accused may not have observed or have first-hand knowledge of all the following facts, the accused does not dispute them and hereby agrees they are true. The military judge may consider these facts in determining the providence of the accused's pleas and in determining an appropriate sentence. The Charges and Specifications as listed in this document refer to the original numbering of the Charges and Specifications on the referred charge sheet.

2. I, LCDR Edward Lin, USN, the accused in this case, was commissioned in the United States Navy on 10 May 2002 and have been on continuous active duty through the date of this court-martial, without discharge or release.

3. I have not at any time suffered from any mental defect or disease that caused me to commit the offenses to which I am pleading guilty. I was the subject of an examination in accordance with R.C.M. 706 and was found to be mentally responsible at the time of the offenses. I was not forced or coerced to commit the offenses, nor did I commit the offenses to save myself or anyone else from death or grievous bodily harm. If I wanted to, I could have avoided committing these acts. I had no legal authority to commit these acts. I was not an agent of the Government that was authorized to perform these acts as part of an investigation.

4. Charge I, Specifications 1 and 2 and Additional Charge and its Sole Specification, which allege violations of Article 92, UCMJ:

a. SECNAV M-5510.36 paragraphs 7-10, and 10-3, dated June 2006, as incorporated into SECNAVINST 5510.36A, dated 6 October 2006 were lawful general orders in effect from 2012

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(b) (6)

to 2015. SECNAVINST M-5510.30 paragraph 3-8, dated Jun 2006, as incorporated into SECNAVINST 5510.30B, dated 6 October 2006, was also a lawful general order in effect in from 2012 to 2015. I had a duty to obey SECNAVINST 5510.30B and SECNAVINST 5510.36A because all service members on active duty in the United States Navy had a duty to obey them. I was on active duty in the United States Navy during that time period.

b. I failed to obey the three listed provisions of SECNAVINST 5510.30B and SECNAVINST 5510.36A, lawful general orders. Specifically, I violated the three provisions of these general orders by wrongfully disclosing classified information to a Homeland Security agent at the San Francisco Airport, by wrongfully storing notebooks with classified material in my home in Honolulu, Hawaii, and by willfully failing to report contacts with foreign nationals. Those foreign contacts included agents of a foreign government.

c. On 12 February 2015, I landed at the San Francisco International Airport on return from foreign travel. An agent of Homeland Security conducted a border search of my person and luggage. I had two pieces of paper in my bag. They were aircrew kneeboard cards containing "special instructions" or "SPINs." They were clearly marked "SECRET when filled in." They were filled in. I removed these two pages from secure storage after a deployment mission in 2014. I was not carrying a courier card. The material was not wrapped or safeguarded according to regulations governing transport of classified material. When the agent confronted me about the classified nature of the papers in my possession, I allowed him to confiscate them. I did not consult my chain of command or my special security officer to ask the proper course of action. I do not know whether the agent had the appropriate clearance to view the materials. The agent did not have a "need to know" about the information on the papers. I did not ensure the materials were destroyed.

d. Upon a search of my home in Honolulu, Hawaii on 11 September 2015, that I consented to, Federal agents found several notebooks. I made notes in the notebooks. I never kept these notebooks in secure storage. The notes are in my handwriting. Some of the notes contained national defense information classified at the SECRET level. The notebooks were not marked SECRET. I was not authorized to store SECRET information in my house.

e. I had contacts with CDR (b) (6) CDR (b) (6) (b) (6) and Ms. (b) (6) (b) (6) CDR (b) (6) CDR (b) (6) and Ms. (b) (6) were all registered foreign agents of Taiwan. CDR (b) (6) and CDR (b) (6) were officers in Taiwan's Navy and were assigned as Assistant Naval Attaches to the Taipei Economic and Cultural Representative's Office (TECRO) in Washington, DC. Ms. (b) (6) worked as a research fellow at the Formosa Association for Public Affairs (FAPA) and as a staff member in the Washington, D.C. office of Taiwan Democratic Progressive Party (DPP).

f. I was introduced to CDR (b) (6) through a classmate of mine at the U.S. Naval War College. Through CDR (b) (6) I met CDR (b) (6) I had frequent contact with them over phone, e-mail, and face to face from 2012 to 2013. At the time I was assigned to the Deputy Assistant Secretary of the Navy's office handling Appropriations Matters (FMBE) and my duties did not require or include for me to officially liaise or maintain contact with CDR (b) (6) CDR (b) (6) or any other foreign official. I attended several lunches and dinners, meaning more than two, with CDR (b) (6)

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and CDR (b) (6) I also socialized with CDR (b) (6) He visited my house and I visited his. Our families knew each other in a social capacity. CDR (b) (6) would often, and CDR (b) (6) would sometimes, contact me with questions about the U.S. Navy. I would answer their questions on topics that included the impact of Congress' sequestration and the Navy's response to it. I also forwarded CDR (b) (6) a PowerPoint brief on mine warfare. Enclosure (1) contains e-mails I sent to CDR (b) (6) and CDR (b) (6) I did not report my contacts with CDR (b) (6) or CDR (b) (6) I had a duty to report them to my Security Officer as my contacts with CDR (b) (6) and CDR (b) (6) were close, recurring, and with foreign Naval Officers assigned to the equivalent of a foreign embassy, specifically TECRO. My contacts with CDR (b) (6) and CDR (b) (6) were so extensive that I cannot recall everything I spoke to them about and explained as much to NCIS during my 11-12 September 2015 interrogation.

g. I similarly interacted with Ms. (b) (6) Ms. (b) (6) is an American citizen whom I met while she was in graduate school at Tufts University around 2008. Though Ms. (b) (6) was an American citizen, she was a registered foreign agent of Taiwan while she worked for FAPA. FAPA was an organization that represented the interests of a Taiwanese political party with the U.S. Congress. Ms. (b) (6) also notified me that she was leaving FAPA for a staff position in the Washington D.C. office of the Taiwan Democratic Progressive Party (DPP). I met with Ms. (b) (6) while I was assigned to FMBE. My duties did not require or include for me to officially liaise or maintain contact with Ms. (b) (6) I did have recurring social contact with Ms. (b) (6) based on our friendship. I would interact with Ms. (b) (6) over phone, e-mail and face to face. I did not report my contacts with Ms. (b) (6) to my Security Officer. I had a duty to report them because she was representing the political interests of Taiwan in her role at FAPA. My contacts with Ms. (b) (6) were so extensive that I cannot recall everything I spoke to her about and explained as much to NCIS during my 11-12 September 2015 interrogations.

h. I also had contacts with two women, both Chinese nationals, named (b) (6) and (b) (6) I developed a close personal relationship with both women. I met (b) (6) in Honolulu, Hawaii. I had close and recurring contacts with her while I was stationed in Hawaii and I visited her in California. My close contacts with (b) (6) included providing some financial support. I met (b) (6) online. I had close and recurring contacts with (b) (6) to include speaking with her and correspondence over social media. We also communicated about meeting in person during my planned September 2015 trip to China. I did not report these contacts. I had a duty, however, to report these contacts to my Security Officer and I did not do that.

5. Charge III, Specifications 1 and 2:

a. On or about 31 October 2013 I electronically signed a leave request that stated my leave address was (b) (6) which was my home. That electronic leave request was an official document because it was submitted through a Navy website to authorize me to use leave I had accrued. An approved request would also authorize me to be away from my normal duties at FMBE. The electronic leave request was totally false because I travelled to Taiwan during that leave period instead of my home in (b) (6) During the leave period, I met with the Taiwanese equivalent Chief of Naval Operations, Vice Admiral (b) (6) I did not notify any U.S. official or agency that I was meeting

VADM (b) (6) Prior to taking the trip, I contacted CDR (b) (6) to help arrange an office call for me with VADM (b) (6) I intentionally put a false leave address on my request.

b. On or about 29 April 2015 I electronically signed a leave request that stated my leave address was (b) (6) (b) (6) which was my home. That electronic leave request was an official document because it was submitted through a Navy website to authorize me to use leave I had accrued. The request would also authorize me to be away from my normal duties at VPU-2. The electronic leave request was totally false because I planned to travel to China during that leave period instead of to my home in (b) (6) I intentionally put a false leave address on my leave request. On 11 September 2015, I proceeded to the Honolulu International Airport with a ticket to Shanghai, China in hand and my passport with full intent to travel to China.

6. Charge IV, Specifications 1-2:

a. 18 U.S.C. 793(d) is a Federal statute that applied to me in April 2012 to May 2014, and August to September of 2015. During that time, I lawfully had access to information relating to the national defense, which I had reason to believe could cause injury to the United States if disclosed and/or could aid a foreign power if disclosed. By information relating to the national defense, I mean information relating to the capabilities of Special Projects Patrol Squadron TWO (VPU-2) and details of U.S. Pacific Fleet activities that were closely held. The information was closely held because only people assigned to VPU-2, the U.S. Pacific Fleet, or who otherwise had a need to know, were given access to this information.

b. Much of this national defense information was also contained in the Special Projects Patrol Squadron Program Manual, which delineated what information was classified. I also received training when I checked in to VPU-2 not to discuss the details of my work with members of the public or even members of the military who were not granted access to this information. I had reason to believe disclosing this information could injure the United States because of my training, specifically that disclosing this information would degrade the ability of the VPU community to conduct its mission.

c. During my assignment to United States Pacific Fleet (PACFLT), I had access to closely held information that related to U.S. Pacific Fleet activities in the PACOM AOR. Some of that information was classified SECRET by the PACOM Original Classification Authority. While assigned to PACFLT and JTF 519, I had lawful access to the plan and participated in an exercise of the Plan as part of JTF 519. I understood, because of my training and experience in the Navy and the nature of the circumstances of the exercise, that all details of the Plan, including any assumptions, were closely held by the U.S. Navy. I knew this while assigned to JTF 519 and nothing occurred to change this in 2012 – 2014.

d. I communicated national defense information to a person not entitled to receive it, specifically a woman I believed was an immigrant from Taiwan known to me as '(b) (6) (b) (6) After meeting with Ms. (b) (6) a couple of times, I believed she was hired as a contractor by Taiwan's Ministry of Foreign Affairs. I later learned that Ms. (b) (6) was an undercover FBI agent and her name (b) (6) was an alias to protect her true identity as an FBI agent. I met

with Ms. (b) (6) on five occasions in August and September of 2015. I met with her in Starbucks and other restaurants in Honolulu, HI. During the conversations I had with her from August 2015 to September 2015, I disclosed information contained in the addendum to this stipulation. Ms. (b) (6) never asked me to reveal national defense information during our conversation. She did provide opportunities for me to discuss my knowledge as a Navy officer. I knowingly tried to impress her with my knowledge of the US Navy, my deployment experience and our US Navy capabilities. Based on my education, training, and military operational assignments and knowledge, I knew that certain information I communicated to Ms. (b) (6) was closely held national defense information and I should not have disclosed that information to Ms. (b) (6) a person not entitled to receive it. Even if the undercover FBI agent I knew as Ms. (b) (6) had a SECRET clearance, she did not have a need to know. The addendum contains the particular information that was closely held by the U.S. government and communicating it to someone who was not entitled to receive it could degrade the ability of the Navy to conduct its mission. I reasonably should have known that this communication could be used to injure the US or aid a foreign power because my status as a Naval Officer could confirm the details of the closely held information. I knew at the time that my communication was unlawful because I had been given access to information that was closely held and I was trained not to disclose such information and the Navy had not declassified nor authorized disclosure of this particular national defense information. I made a conscious choice to communicate the covered information. Because of my training and the regulations that applied to me and to my command, I knew at the time I communicated the information contained in enclosure (1) to (b) (6) (b) (6) that communicating this information to her was unlawful.

e. I communicated national defense information to a person not entitled to receive it, specifically Ms. (b) (6) (b) (6) I met with Ms. (b) (6) on more than one occasion and e-mailed with her while I was assigned to FMBE between 2012 and 2014. I knew Ms. (b) (6) was representing the political interests of Taiwan in her role at FAPA and DPP. Ms. (b) (6) would forward me open-source articles and ask my opinion on them. During the conversations I had with her from April 2012 to May 2014, I disclosed information contained in the addendum to this stipulation. Based on my education, training, and military operational assignments and knowledge, I knew that certain information I discussed with Ms. (b) (6) was closely held national defense information. I knew this while assigned to JTF 519 and nothing occurred to change this in 2012 – 2014. I knew this when I communicated the covered information to (b) (6) (b) (6) and made a conscious choice to do so. I knew at the time that my communication was unlawful because I had been given access to information that was based on assumptions necessary for the plan, was told not to disclose them and the Navy had not declassified the plan. The addendum contains the particular information that was closely held by the U.S. government and communicating it to someone who was not entitled to receive it would degrade the ability of the U.S. Pacific Fleet to conduct its mission. (b) (6) (b) (6) was not entitled to receive the information because she was not read in to the Plan and did not have a need to know. I reasonably should have known that this communication could be used to injure the US or aid a foreign power because my status as a Naval Officer who had been assigned to JTF 519 could confirm the details of the closely held information. I made a conscious choice to communicate the covered information. Because of my training and the regulations that applied to me when I stationed at PACFLT, I knew at the time I communicated the information in enclosure (1) to (b) (6) (b) (6) that communicating this information to her was unlawful.

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(b) (6)

Date: 27 APR 2017

Edward C. L. Lin
LCDR, USN
Accused

(b) (6)

Date: 27APR2017

Mr. Larry Youngner, Esquire
Defense Counsel

(b) (6)

Date: 27Apr 17

Chris Czaplak
CDR, JAGC, USN
Defense Counsel

(b) (6)

Date: 3 May 17

Daniel M. "Clay" Bridges
LT, JAGC, USN
Defense Counsel

(b) (6)

Date: 3 May 17

Michael J. Luken
CAPT, JAGC, USN
Trial Counsel

(b) (6)

Date: 27April 17

Angela Tang
CDR, JAGC, USN
Trial Counsel

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