

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

UNITED STATES OF AMERICA	:	CRIMINAL NO. 12-231 (RC)
	:	
v.	:	
	:	
JAMES F. HITSELBERGER,	:	
	:	
Defendant.	:	

**GOVERNMENT’S RESPONSE TO DEFENDANT’S MOTION
TO SUPPRESS STATEMENTS**

The United States of America, through its undersigned attorneys, offers the following arguments and authorities and any other such arguments and authorities that may be offered at a hearing on this matter.

I. Background

In June 2011, the defendant, James Hitselberger accepted a position as a linguist with Global Linguist Solutions (GLS), a government contractor headquartered in Reston, Virginia. Hitselberger was assigned to be an Arabic linguist at the Naval Support Activity – Bahrain (hereinafter “Naval Base”).¹ Before leaving for Bahrain, Hitselberger went through two weeks of training at GLS’ Reston office, where he received instruction on the proper handling of classified and sensitive material. He received further guidance and training regarding the proper handling of classified materials in August and September 2011. Hitselberger initially received an interim Secret level clearance, which became permanent in January 2012.² However, he

¹ Naval Support Activity – Bahrain is located in the Kingdom of Bahrain, just east of Saudi Arabia, and is the home to over 4,000 United States military personnel. Several elements of the United States armed forces are based there, including the Navy’s Fifth Fleet and the Joint Special Operations Task Force – Gulf Cooperation Council (JSOTF-GCC).

² Pursuant to Executive Order No. 13526 (December 29, 2009), there are three levels of classified information: Confidential, Secret, and Top Secret. The designation “Confidential” is applied to information, the unauthorized disclosure of which could reasonably be expected to cause damage to national security; the designation “Secret” is applied to information, the unauthorized disclosure of which could reasonably be expected to cause serious damage

never became an authorized courier of classified information and thus could not handle classified materials outside of an approved secure facility.

In September 2011, Hitselberger arrived in Bahrain. He was assigned to work for the Joint Special Operations Task Force (JSOTF), Naval Special Warfare Unit Three (NSWU-3). NSWU-3 conducts such missions as unconventional warfare, training, direct action, combating terrorism, and special reconnaissance. NSWU-3 relied on Hitselberger's expertise in the Arabic language and sent raw data to him regularly for translation. Through this work, Hitselberger obtained intimate knowledge of sensitive source operations, including the true names and addresses of sources. While in Bahrain, he received additional training and regular reminders concerning the proper storage and handling of classified information.

A. The Events Leading To The Defendant's Interview on April 11, 2012

On the morning of April 11, 2012, Hitselberger was working with other linguists and two of his JSOTF supervisors in a Restricted Access Area (RAA). This was a structure within The JSOTF work space at the Naval Base (known as Bay 4) that was approved for the processing and handling of classified information up to the Secret level. There was a cipher lock on its reinforced door, and the classified hard drives used in the RAA were stored in a locked vault.

Around 11:15 a.m., everyone took a break. Hitselberger then asked his supervisor, Master Sergeant General (MSG) Dain Christensen, if he could check his email on Christensen's computer. Hitselberger tried to sign onto his Secret Internet Protocol Router Network (SIPRnet) account -- which was located on a secure, Secret level computer system, and asked Christensen to log off so that he could do so. After logging onto the Secret computer, two of his supervisors,

to the national security; and the designation "Top Secret" is applied to information, the unauthorized disclosure of which could reasonably be expected to cause exceptionally grave damage to the national security. Information is classified by an individual known as an original classification authority (OCA) who has been delegated the power to determine that the unauthorized disclosure of the information reasonably could be expected to result in damage to the national security.

MSG Dain Christensen and MSG Holden, observed Hitselberger viewing JSOTF Situation Reports (SITREPs), which were classified Secret. They also saw Hitselberger print multiple pages of Secret documents from a Secret printer. Christensen and Holden then observed Hitselberger take the classified documents from the printer, fold them, and place them into an Arabic-English Dictionary, which he then put into his backpack. Christensen could see the footer of a document that read “**SECRET NOFORN**” sticking out from the dictionary. Hitselberger proceeded to leave the RAA. As he was leaving, he did not indicate where he was going or make any reference to the documents that he had just printed and secreted in his backpack. As noted above, Hitselberger did not have the requisite authority to remove classified documents from the RAA, and Christensen and Holden knew that Hitselberger’s backpack was not an authorized courier bag which could properly be used to transport classified information.

After witnessing the event, Holden immediately notified his commanding officer, Captain Brendan Hering, who was also in the RAA at the time. Holden and Hering left the RAA to follow Hitselberger. As they were following him, Holden told Hering what he had just observed. Holden and Hering stopped Hitselberger near a picnic table outside of the building where the RAA was located. They told Hitselberger that they needed to see what was in his bag and to produce the documents that he had just printed. Hitselberger first took out only one classified document from inside the dictionary. When Holden asked Hitselberger for the other document, Hitselberger surrendered an additional document.

One of the two documents was that day’s JSOTF SITREP (SITREP 104). It had **SECRET//NOFORN** in red, bold type (all capitals) in the header and footer of each page. On the first page of the document, and continuing on to the second page, is a multi-paragraph portion marked (S//NF). It contains an analyst’s assessment of the availability of certain

improvised explosive devices in Bahrain. Elsewhere in the document, in portions marked (S), are the schedule for the monthly travel of a high-ranking commander at Naval Support Activity-Bahrain and information about the locations of U.S. armed forces in the region and their activities.

The second document was a Navy Central Command (NAVCENT) Regional Analysis dated April 9, 2012. It bears the following header and footer on each page: **SECRET//REL TO USA, FVEY**.³ On the third page of the document are five bullet points, marked (S//REL), discussing gaps in UNITED STATES intelligence concerning the situation in Bahrain, which, at the time, was volatile. Original classification authorities from the Navy have reviewed both SITREP 104 and the April 9, 2012, NAVCENT Regional Analysis. These Navy officials have determined that both documents were properly classified and contained national defense information.

After retrieving the classified documents from Hitselberger, Holden and Hering returned to the Bay 4 building and Hitselberger walked away. Holden, Hering, and Christensen then reported the incident to their superior, Lieutenant Colonel Standridge. Standridge advised them to have Hitselberger return. They left to search for Hitselberger and Christensen began to call and text Hitselberger's cell phone. Hitselberger called back and was directed to return to the work spaces. Approximately five to ten minutes later, they located Hitselberger, who no longer had his backpack in his possession. Hitselberger was escorted to the JSOTF work space where he briefly met with Standridge. Standridge then had Hitselberger escorted to unclassified spaces inside the JSOTF work space and kept under watch. Officers from the Naval Security Forces (NSF) came to retrieve Hitselberger at approximately 3:20 p.m. and escort him back to NSF

³ REL is an abbreviation for "releasable to." FVEY is an abbreviation for a group of allied nations known as the "Five Eyes," which are the United States, the United Kingdom, Canada, Australia, and New Zealand.

office space, where they arrived at 3:23 p.m. There, Hitselberger waited in the NSF lounge area. While waiting at the NSF spaces, he was provided water, food, and escorted to the restroom three times. He remained there until approximately 8:07 p.m. when NSF officers escorted him to Building 336, which is Naval Criminal Investigative Service (NCIS) office space. There, Hitselberger met with Special Agent (SA) John Fowler and SA Raffi Kesici. Approximately eight hours passed between the time when Hitselberger first returned to the JSOTF work spaces, and when he met NCIS Agents for his interview.

The Agents met with Hitselberger inside of an office. The door to the office was closed during the interview, but not locked, and neither Agent was armed. At the start of the interview, Hitselberger was upset and crying, but he was soon able to compose himself.

Agent Kesici maintained an interview log during the interview. See Exhibit 1. According to the log, the interview began at 8:14 p.m. In a section called “Questions Prior to Warning” he noted “How are you,” “Bio data info,” and “How long in Bahrain.” The log notes indicate that Hitselberger was provided a Miranda warning at 8:49 p.m. and waived his Miranda rights at 8:52 p.m. Thus, the Agents spoke to Hitselberger for about 38 minutes before advising him of his Miranda rights.

According to the NCIS Investigative Action report of this interview, prior to warning Hitselberger of his rights, the Agents discussed with him a party to which he had not been invited; and his educational and work background, including the many foreign languages he had studied. See Exhibit 2. The Agents then advised him of his Miranda rights through use of a printed form. Hitselberger expressed that he would waive his rights and speak to the Agents and initialed and signed the form. See Exhibit 3. Questions related to the incident under investigation did not begin until after the defendant had executed the rights waiver form.

During the interview they took two breaks, which were noted on the interview log, at 9:36 p.m. and 11:07 p.m. Throughout the interview, the Agents used a conversational tone with the defendant. They did not threaten him, draw weapons, or take any steps to harm him or intimidate him.

Regarding the incident, Hitselberger admitted logging onto SIPRNET, printing documents, and placing them in his backpack with the intention of reading them in his room. He stated that he did not know that the documents were classified. After making these statements, the Agents asked Hitselberger to provide a written statement, to which he responded that he did not mind speaking to the Agents, but did not want to write a statement without the advice of a lawyer. He also expressed that it was late in the day and he wanted to go home. After Hitselberger stated that he wanted a lawyer to review any written statement, SA Kesici annotated his Miranda waiver form with the note "Request lawyer regarding statement." Hitselberger stated that he would consider providing a written statement and agreed to return the following day at 10 a.m. The interview concluded at about 11:25 p.m. and lasted about 3 hours.

B. The Events Leading Up To The Defendant's April 12, 2012, Interview

On April 12, 2012, at approximately 11:30 a.m., the defendant returned by his own accord and without escort to the NCIS building. He asked if he could return later that day and agreed to return at about 3 p.m. to provide a signed sworn statement. At about 4:15, after Hitselberger had not appeared at the appointed time, an NCIS Agent went to Hitselberger's room to check his status. When Hitselberger answered the Agent's call at his door, he appeared to have been asleep.

At approximately 4:40 p.m., SA Fowler and SA Adlin Velez of NCIS began a second interview of Hitselberger inside NCIS office space. This interview was video recorded and

lasted approximately 3 hours. Throughout the interview, the Agents used a conversational tone with Hitselberger. They never threatened him, displayed weapons, or took any coercive measures. They also offered him water, which he accepted.

At the beginning of the interview, SA Velez informed Hitselberger that she was closing the door for privacy, but that it was not locked. The Agents then discussed that he had been advised of his Miranda rights the evening prior and had agreed to speak to the Agents but not to provide a statement at that time. Hitselberger stated that he was now comfortable providing a written statement. The Agents then showed him the Miranda waiver form that he had executed the evening before. The Agents inquired if he was now comfortable giving a written statement and Hitselberger then responded that he wanted a lawyer to review his written statement before he officially submitted and signed it.

During the interview, Hitselberger discussed his interactions at the taxi stand outside of the Navy base as well as his local contacts and outings with Bahrainis, stating that he practiced his Arabic at the taxi stand in the evenings. At the conclusion of the interview, SA Fowler told Hitselberger that he was not under arrest and not being charged at that point. Hitselberger responded that he did not realize that. SA Fowler also told him that if any legal action was taken against him it would be handled in the United States.

C. The Events Leading Up To The Defendant's October 25, 2012, Interview

On October 24, 2012, the defendant's flight landed in Kuwait at approximately 1:45 p.m. EST (9:45 p.m. Kuwaiti time), where he was apprehended by authorities. He was placed on a flight later that day that departed Kuwait at approximately 6:38 p.m. EST (or 1:38 a.m. Kuwait time). His flight landed at Dulles Airport, Virginia approximately thirteen hours later on October 25, 2012,, and by approximately 7:45 a.m. EST, he had cleared Customs. The defendant

was then brought to a government building in Sterling, Virginia, where he met with SA Grant Cauthen of the FBI and SA Marin Lawson of NCIS. The defendant appeared tired and presented as a person typically would after having traveled for many hours. But he was lucid and coherent and did not stumble over his words. He also ably and consistently followed the Agents' questions.

At the start of the interview, the Agents informed Hitselberger that the interview was being recorded and asked for his consent. He did not consent, at which point the recording device was turned off. The Agents offered him food and water and a restroom break. He accepted water but declined anything else. He was then advised of his Miranda rights via a printed "Advice of Rights" form. He agreed to waive his rights and initialed and signed the form at approximately 9:15 a.m. See Exhibit 4. Hitselberger was subsequently offered a break, food, and water at 11:15 a.m., and another break at 12:15 p.m. The interview concluded at approximately 12:30 p.m. Hitselberger accepted food at the conclusion of the interview. Throughout the interview, the Agents used a conversational tone with the defendant. They never raised their voices, drew their weapons, or threatened him.

II. ARGUMENT

A. The Defendant Was Lawfully Detained Prior To His Interview On April 11, 2012.

JSOTF Command and NSF were justified in detaining Hitselberger prior to his interview because they had probable cause to believe that he had committed a crime. Probable cause exists when, considering the totality of the circumstances, a reasonably prudent person applying "common sense conclusions about human behavior" would believe that a crime has been committed or is being committed. United States v. Lucas, 778 F.2d 885, 887 (D.C. Cir. 1985) (quoting Illinois v. Gates, 462 U.S. 213, 230 (1983)).

On the morning of April 11, 2012, MSG Holden and MSG Christensen witnessed Hitselberger review classified daily situation reports on SIPRnet; print multiple documents to a SECRET printer; retrieve the documents and place them inside his dictionary and his backpack; and then leave the RAA. Holden and Hering then saw Hitselberger walk out of the Bay 4 building while still carrying his backpack. They observed his actions from only a few feet away in a well-lit environment, and only lost sight of him momentarily before again locating him outside the work space carrying the same backpack. Courts have routinely sustained arrests and searches on findings of probable cause based on less compelling evidence than is present in this case. See U.S. v. Lawson, 410 F.3d 735, 740-741 (D.C. Cir. 2005) (officers had probable cause to seize vehicle that matched other witness' descriptions of getaway car and where latex gloves were viewed in front passenger area); Lucas, 778 F.2d at 887-888 (officer had probable cause to effect drug arrest based on receipt of anonymous tip, corroboration of certain details of the tip, and observation of a hand-to-hand exchange of an object for a green object that appeared to be currency); United States v. Young, 598 F.2d 296 (D.C. Cir. 1979) (where actions of defendants conformed to modus operandi used to cash stolen treasury checks and continued for one hour officers had probable cause for arrest); United States v. Caroline, 791 F.2d 197 (D.C. Cir. 1986) (probable cause for search was provided by officers' observations of occupants engaging in series of petty larcenies from a number of stores over a period of approximately one hour); cf. United States v. Bookhardt, 277 F.3d 558, 564 (D.C.Cir.2002) ("an arrest will be upheld if probable cause exists to support arrest for an offense that is not denominated as the reason for the arrest by the arresting officer"). Thus, the statements that Hitselberger gave to NCIS Agents on April 11 and 12, 2012, were not the unlawful fruit of an illegal detention and should not be suppressed.

B. The Defendant Executed A Knowing And Voluntary Miranda Waiver Before Speaking To NCIS Agents On April 11 And 12, 2012, And Did Not Invoke His Right To Counsel.

“[W]hen the government opposes a motion to suppress a confession, it need prove waiver only by a preponderance of the evidence.” United States v. Yunis, 859 F.2d 953, 961 (D.C. Cir. 1988). (internal quotation marks and citation omitted). “The administration of proper Miranda warnings, followed by a written waiver of the rights described in those warnings, will usually go far toward demonstrating that a decision to speak is not compelled.” Id. See North Carolina v. Butler, 441 U.S. 369, 373, 99 S.Ct. 1755, 1757 (1979). See United States v. Blocker, 354 F. Supp. 1195, 1198 n.11 (D.C. 1973) (“A signed waiver form is strong evidence that a suspect voluntarily waived his Miranda rights.”).

For a defendant’s statement to be deemed involuntary, there must be a showing of “government overreaching,” or a showing that the state has overborne the defendant’s will. See Colorado v. Connelly, 479 U.S. 157, 163-64 (1986); Columbe v. Connecticut, 367 U.S. 568, 602 (1961) (holding that if a defendant’s “capacity for self-determination has been critically impaired, the use of his confession offends due process”). Absent such a showing, the defendant’s statement is deemed voluntary and is admissible against him. See Schneckloth v. Bustamonte, 412 U.S. 218, 225-26 (1973) (holding that a voluntary statement is “the product of an essentially free and unconstrained choice by its maker . . . [and] . . . it may be used against him”).

Determining whether a statement was voluntary is a fact-specific inquiry, requiring the court to consider whether, under the “totality of the circumstances” surrounding the defendant’s statement, the defendant’s will was “overborne in such a way as to render his confession the product of coercion.” See Arizona v. Fulminante, 499 U.S. 279, 288 (1991); United States v.

Bradshaw, 935 F.2d 295, 299 (D.C. Cir. 1991) (holding that “[a] confession is a violation of due process if under the totality of the circumstances it was involuntarily obtained”); see also Schneckloth, 412 U.S. at 226 (noting that a court should consider “both the characteristics of the accused and the details of the interrogation” when making its determination). The government need only establish the voluntariness of a defendant’s statement by a preponderance of the evidence. Connelly, 479 U.S. at 168; see also United States v. Reed, 522 F.3d 354, 359 (D.C. Cir. 2008). If the government meets that burden, the defendant’s statement is admissible against him. See United States v. Clarke, 611 F. Supp. 2d 12, 34 (D.C.C. 2009) (denying the defendant’s motion to suppress statements because the government had “easily satisfie[d] its burden to show by a preponderance of the evidence that [the defendant’s] statement . . . was voluntary”).

When Agents first encountered the defendant on April 11, 2012, he was emotionally distraught and crying. The Agents did not immediately administer Miranda warnings. They waited until the defendant had collected himself and engaged in some background with the defendant regarding his educational and career background. Contrary to the defense’s assertion, the defendant never invoked his right to counsel. Before asking any questions about his crimes, the Agents administered oral and written Miranda warnings which the defendant – a healthy and highly educated man of 55 years of age – read, initialed, and signed. Only after obtaining the defendant’s Miranda waiver did the Agents begin to question him regarding the incident from that morning. See United States v. Bogle, 114 F.3d 1271, 1275 (D.C. Cir. 1997) (“only questions that are reasonably likely to elicit incriminating information in the specific circumstances of the case constitute interrogation within the protections of Miranda”). There is also no evidence that the defendant was suffering from any ailment, fatigue, or condition that

would prevent him from being able to speak coherently and voluntarily with the Agents. Furthermore, the Agents took no actions against him that could be considered coercive and treated him respectfully throughout the process. Berghuis v. Thompkins, 130 S.Ct. 2250, 2263 (2010) (no evidence that statement was coerced and involuntary where defendant did not claim he was threatened or harmed, fearful, incapacitated, or food or sleep-deprived, and interrogation occurred in standard-sized room); United States v. Mohammed, 693 F.3d 192, 198 (D.C. Cir. 2012). Because the Agents treated Hitselberger well; because they did not “interrogate” him prior to administering Miranda warnings; because he voluntarily executed a Miranda waiver; and because he never invoked his right to counsel; there is no basis for suppressing any of the statements that he made on April 11, 2012.

When Hitselberger returned to meet with NCIS Agents on April 12, 2012, he was no longer in custody. After providing a statement on April 11, 2012, he was escorted to temporary quarters for the evening. Thereafter, he was not guarded or kept under watch. Indeed, video surveillance from the night of April 11, 2012, showed Hitselberger walking through the halls of his temporary quarters alone and unescorted. Additionally, Hitselberger left the Naval Base during the middle of the night between April 11 and April 12, 2012 – again alone and unescorted – as confirmed by the guards posted at the gate from which he exited, and by electronic records showing that he swiped his Common Access Card (CAC) upon reentering the Naval Base at approximately 2:30 a.m. on April 12, 2012. Hitselberger chose of his own accord to return to meet with Agents on April 12, 2012, in order to provide a written statement of his version of the event. When he failed to appear at the appointed time, an NCIS Agent went to his room not to escort Hitselberger because he was under watch, but to check on his status. Furthermore, when Hitselberger appeared on April 12, 2012, to provide a written statement, his freedom of

movement was in no way constrained, and indeed, Agent Velez may be heard on the videotaped recording of the interview informing Hitselberger that the door to the interview room was closed but not locked. See Miranda v. Arizona, 384 U.S. 436, 444 (1966) (“By custodial interrogation, we mean questioning initiated by law enforcement officers after a person has been taken into custody or otherwise deprived of his freedom of action in any significant way.”); Howes v. Fields, 132 S.Ct 1181 (2012) (prisoner was not in custody for Miranda purposes where he was told he was free to leave and return to his cell, offered food and water, not restrained or threatened, and interviewed in a well-lit room average-sized room, and the door was sometimes left open).

Although Miranda warnings were not legally required at this point, the record indicates that Hitselberger was again refreshed of his Miranda rights before his second interview on April 12, 2012, and shown the Miranda waiver that he had executed the evening prior. He agreed to continue to speak to the Agents but wavered regarding whether he would make a written statement without first having a lawyer review the statement. Cf. United States v. Andaverde, 64 F.3d 1305, 1312 (9th Cir. 1995) (“The courts have generally rejected a per se rule as to when a suspect must be readvised of his rights after the passage of time or a change in questioners.”); United States v. Saksa, 2011 WL 4434556 *2 (D. Mont. 2011) (same, and noting that courts have upheld the admissibility of statements made up to fifteen hours after Miranda warnings were given); United States v. Anthony, 474 F.2d 770, 773 (5th Cir.1973) (“there is no requirement that an accused be continually reminded of his rights once he has intelligently waived them”). As during the April 11, 2012 interview, Hitselberger appeared coherent and healthy, and exhibited no signs that he was in pain, unhealthy, fearful, or otherwise unable to provide voluntary statements. Furthermore, the Agents treated him well and took no actions that

could be deemed coercive or threatening. Thus, there is no basis for suppression of the statements that he made on April 12, 2012.

C. The Defendant Executed A Knowing And Voluntary Miranda Waiver Before Speaking To Agents On October 25, 2012, And His Post-Miranda Statement Was Voluntary.

The record further demonstrates that the defendant's post-arrest statements were made pursuant to a valid Miranda waiver and not coerced in any respect. The defendant arrived at Dulles airport after having traveled for about 18 hours from Kuwait. Although he appeared fatigued, he was coherent and lucid. He spoke clearly and was able to understand the Agents' questions. The Agents conducting the interview offered the defendant food, water, and breaks during the course of their three-hour interview. There is no evidence that these Agents engaged in any coercive tactics to obtain the defendant's Miranda waiver, or in the course of the subsequent interview. Furthermore, Hitselberger did not present as someone ill, suffering, pain, fearful, or intimidated. All of the evidence demonstrates that he voluntarily chose to waive his Miranda rights and voluntarily provided a statement to the Agents. See Yunis, 859 F.2d at 961; Blocker, 354 F. Supp. at 1198 n.11 ("A signed waiver form is strong evidence that a suspect voluntarily waived his Miranda rights.").

D. Conclusion

For the foregoing reasons, the Court should deny the defendant's motions to suppress statements.

Respectfully submitted,

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United States Attorney

_____/s/_____

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CERTIFICATE OF SERVICE

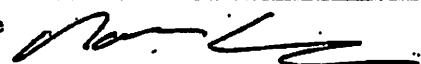
On this 5th day of April 2013, a copy of the foregoing was served on counsel of record for the defendant, Ms. Mary Petras, via the Court's Electronic Filing System.

_____/s/_____
Mona N. Sahaf
Assistant United States Attorney

Exhibit 1

388-70-5249/0702564 Detroit, MI

CCN: 11APR12-MEJT-0209-3XNA

INTERVIEW LOG (Timeline)			
Name of Interviewee: JAMES FRANCIS HITSSELBERGER		Interview Conducted By: SA'S FOWLER KOSICI	
Place: NCIS MEMPHIS Bldg 3-336	Date: 11 APR 12	Unescorted:	Under Guard:
Arrival at Interview Site:			Time: 2010
Entered Interview Room:			Time: 2014
Questions Prior to Warning (if any, specify): - How long in Bahrain - How are you - Bro date info			
Time Warning Begun: 2049	Time Waives Rights: 2052	Time Exercises Rights:	Method: Lawyer Silence
Suspect Executes Written Waiver: 2052			Time:
Guilt or Participation Verbally Admitted: 2157 Time →			Time: 2127 2127
Written Statement Commenced:			Time:
Written Statement Signed: Danned			Time: 2229
Disposition of Suspect: End interview			Time: 2325
Interview Breaks (include stop/start times and rewarding, if necessary)			
Food : _____			
Rest : stop 2136 start 2144 stop 2307 start 2319			
Consultation : * 2229 ask for lawyer/ JAG when asked to			
Other : Provid signed sworn statement			
REMARKS: - Clarified JAG request only for statement not for conducted to depart time interview			
Signature 		NCIS OFFICE MBJ	

INTERVIEW LOG (PERSONAL DATA SHEET)			DATE: 11 APR 17	
NAME (Last, First, Middle) HITSELBERGER, JAMES FRANCIS				
DUSTA/Date Reported				
Rate/Rank CONT	Branch USA	Sex M	Race CAUCASIAN	
Citizenship U.S.A.	Clearance SECRET	SSN 5649	DOB 07 DEC 56	
Height 5'9"	Weight 180lb	Hair BRN	POB DETROIT MI	
Eyes BLUE	Complexion	Build	Rotation Date/EAOS	Date of Current Enlistment 06 SEP 3, 2011
Scars, Marks or Tattoos N/A				
Current Address 1416 4600 AVENUE "B" AUSTIN, TEXAS				
Phone 434-218-0256 (google)				
Vehicle Data				
Home Address of Record P.O. BOX ONTONOGON, MICHIGAN (LAKE SUPERIOR)				
Education GEORGETOWN UNIV 1980 / GRADUATE UNIV TEXAS 1990 AFABEG, HISTORY / POLITICAL GOVERNMENT PHD.				
Address BROOKFIELD 80-83, LANDCANSSETS, BICYCLES, 107 COMPUTER ENTERPRISES				
Next of Kin (Relationship, Name, Address, and Telephone)				
Civilian Occupation ERRAND 3yrs CARPENTRY, REFRIGERATION 2008			Date First Employed, Enlisted or Commissioned GLOBAL LEADERSHIP SERVICES	
Remarks: Personnel/Travel Delays 1978 at Georgetown Univ Middleburg, Virginia Year 1978, but in March 1979 - July 1979. Stanford University, Herbert Hoover - collector of Yakov's information from the Revolution. Chest, Ct Russia: high school				
NCIS Representative: John JOHN FOWLER				
NCIS Office: NCIS MIDDLE EAST FERRIS OFFICE NAVAL SUPPORT ACTIVITY, BALTIMORE				

5272 BOAZ RD
Chantilly, VA 22931
NCIS 5580/14 (1/2001)
COUGER

(Formerly NCISFORM 004/1)

SHITSELBERGER, JAMES FRANCIS/CIV
 CCN: 11APR12-MEBJ-0209-3XNAV
 SA FOWLER

Exhibit 2

U.S. NAVAL CRIMINAL INVESTIGATIVE SERVICE

INVESTIGATIVE ACTION

11APR12

CONTROL: 11APR12-MEBJ-0209-3XNA

RESULTS OF INTERVIEW WITH S/HITSELBERGER

1. (U) On 11APR12, Reporting Agent (RA) and Participating Agent (PA) KESICI, conducted a non-custodial interview of S/HITSELBERGER, a DoD civilian contract linguist working for Command. The interview was conducted at NCIS building 336 aboard Naval Support Activity (NSA), Bahrain from 2010L to 2325L. S/HITSELBERGER appeared emotionally distraught when asked how he has been doing lately. S/HITSELBERGER began weeping and sobbing when discussing an incident that occurred this past weekend. Apparently, S/HITSELBERGER was not invited to a going away party for one of his previous supervisors over the last six months, CPT Ryan THIEL, USA, JSOTF GCC, NSA Bahrain which was devastating for him. S/HITSELBERGER stated that he loves his work and that's his life, so it's important for him to have good working relationships. He cannot understand why he was not invited, especially since the other three Arabic interpreters were. S/HITSELBERGER commented that he believes in "one team, one fight" philosophy. S/HITSELBERGER repeated several times that he could not understand why they excluded him from the going away gathering. S/HITSELBERGER's office consists of one army officer, a captain (O-3), one army senior enlisted soldier, a (E-8), and four civilian contract linguists.

2. (U) S/HITSELBERGER reviewed his educational credentials during the interview. S/HITSELBERGER studied Russian in high school which was a prestigious boarding school in Connecticut. However, prior to attending this school, his first attempt at learning a foreign language was not a positive experience. S/HITSELBERGER asked the interviewing agents "do you know why I studied languages"? After the agents replied "no, why?", S/HITSELBERGER responded "because they told me that I was not capable of learning a foreign language". Apparently, S/HITSELBERGER's first attempt and subsequent exam scores reflected that he was not doing well enough in his foreign language class, according to his teachers. S/HITSELBERGER mentioned that other students that attended this school in CT, had an advantage over him while taking the same foreign language classes. Other students had been studying for a longer period of time than him and had possibly utilized tutors, resulting in added proficiency in their attempt of learning the language. For these reasons, S/HITSELBERGER felt that

most others in his foreign language class had an advantage over him. S/HITSELBERGER explained that this gave him more incentive and drive to study and excel in his foreign language classes. S/HITSELBERGER explained that he is not a natural in regards to being able to pick up or learn a foreign language, that he was forced to work harder and become more dedicated towards mastering the foreign language.

3. (U) S/HITSELBERGER advised that he studied Arabic abroad in Libya in the late 1970s and travelled to Iran in 1978 and again in 1979 (pre-Revolution) to study Farsi. S/HITSELBERGER explained that while in Iran, he collected miscellaneous flyers and pamphlets that he determined may be of historical value. S/HITSELBERGER mentioned that he studied Arabic and history at Georgetown University in Washington DC around 1980. He attended graduate school at the University of Texas at Austin, TX around 1990. At the University of Texas, he studied politics and government while working on an open ended PHD which was never completed. He worked at the Brookings Institute in Washington DC from 1980 to 1983. S/HITSELBERGER noted that he donates academic materials to the Hoover Institute at Stanford University in California. He claims that the Hoover Institute accredited him with donating the largest collection of pre-Islamic Revolution of Iran items to include pamphlets and miscellaneous documents of historical interest.

4. (U) Subsequent to waving his rights advisement, S/HITSELBERGER provided the following. S/HITSELBERGER advised that he is Arabic, Farsi and a Russian translator. S/HITSELBERGER is currently assigned to Command as a translator performing Arabic to English translation duties. S/HITSELBERGER had several deployments as a DoD civilian contract linguist working for Titan corporation as a translator in Iraq during 1994. He again served in Fallujah, Iraq in 2005 and Ramadi, Iraq from early 2006 to early 2007, in the same capacity.

5. (U) S/HITSELBERGER explained that he feels some of his co workers do not like him; he specially named MSG Michael HOLDEN, USA, and MSG Dain CHRISTENSEN of JSOTF GCC NSA Bahrain. S/HITSELBERGER has been told in the past by his supervisor that he cannot participate in specific missions due to the fact he is "socially awkward". S/HITSELBERGER feels that most of his coworkers had similar views of him and added that he does not drink alcohol or smoke. S/HITSELBERGER advised that he has friends with local Bahraini nationals and he enjoyed studying the local dialect. S/HITSELBERGER opined that he has a better understand and grasp of the local dialect than the other two Arabic linguists that also work for Command. He gave an example when one day he mentioned a word to Gandool, another linguist in his

office, who thought that S/HITSELBERGER was calling him foolish in Arabic. S/HITSELBERGER had to explain to him that in the local Bahraini dialect, the used Arabic word actually means something completely different. RA asked S/HITSELBERGER to provide names of his Bahraini friends. S/HITSELBERGER commented that he did not feel comfortable discussing their names. RA mentioned to S/HITSELBERGER that due to his security clearance, S/HITSELBERGER has a responsibility to provide the name of his foreign contacts to his security manager. S/HITSELBERGER noted again that he did not want to talk about them but then explained that he would provide one name. The name S/HITSELBERGER provided was Abu Saed Ali, a Bahraini Shia taxi driver that S/HITSELBERGER met at the Bahraini taxi stand located at the front gate of NSA Bahrain. S/HITSELBERGER advised that he frequently goes out to the Bahraini taxi stand, specifically in the evenings to practice his Bahraini dialect of Arabic.

6. (U) S/HITSELBERGER continued to explain that outside the scope of his duties, and to provide additional value to his work, he arranges press summaries based on his knowledge of five local Bahraini newspapers. S/HITSELBERGER commented that the U.S. Library of Congress only carries one of the papers and S/HITSELBERGER believes the Library should carry all five in order for the American people to have a fuller understanding of the environment in Bahrain.

7. (U) S/HITSELBERGER was asked what had occurred today regarding an incident at his job. S/HITSELBERGER stated that he asked to log onto a classified system (SIPRNET) to access his email. S/HITSELBERGER mentioned that he rarely has an opportunity to log into a classified system and that he has only done so a handful of times, four or five, in the last several months. When he logged on the SIPRNET today, he had close to 500 emails in his inbox demonstrating that he infrequently has an opportunity to computer access. S/HITSELBERGER confessed that he printed documents from his email attachments today and that he placed them in his backpack. RA displayed evidence (MEBJ Log Number 018-02 Item N) to S/HITSELBERGER who concurred that he printed the documents out with the intention of reading them in his on base room. S/HITSELBERGER was specifically interested in a page containing "how to build an IED". S/HITSELBERGER however stated that he did not realize the displayed document was classified and that not all documents on the SIPR system are classified. S/HITSELBERGER was specifically shown the red colored header and footer page classification markings and the paragraph classification markings. S/HITSELBERGER admitted that he should have been more careful and observant when reviewing and printing out the pages and that he was negligent for not doing so. S/HITSELBERGER was asked what the various

classification markings located on the documents listed under MEFO evidence meant. S/HITSELBERGER claimed not to know the meaning of NOFORN or REL TO USA, FVEY after the SECRET caveat.

8. (U) S/HITSELBERGER explained that he should have known that MSG HOLDEN was "looking and peering over his shoulder" today when he was on the computer and subsequently observe him printing out the classified email attachment. S/HITSELBERGER felt that MSG HOLDEN should have advised S/HITSELBERGER not to take classified documents out of the building if he witnessed and realized that S/HITSELBERGER was placing classified documents into his personal bag. S/HITSELBERGER explained that MSG HOLDEN and CPT Brendan HERING, USA followed him out of the building going outside. MSG HOLDEN ordered S/HITSELBERGER to stop and asked S/HITSELBERGER to review the contents of S/HITSELBERGER's backpack. S/HITSELBERGER complied and provided a document, MEFO evidence (MEBJ Log Number 018-02 Item N) to MSG HOLDEN. When asked if there was any more, S/HITSELBERGER provided MSG HOLDEN with MEFO evidence (MEBJ Log Number 018-02 Item N). S/HITSELBERGER explained to MSG HOLDEN that he thought the documents were unclassified and that it was an honest mistake. S/HITSELBERGER also confirmed that he did make some references to not being invited to the party to MSG HOLDEN but blamed it on his shock and confusion of the matter of being confronted by MSG HOLDEN. S/HITSELBERGER did not appreciate the hand gestures of stop or the raised tone in MSG HOLDEN's voice when speaking with him regarding this matter.

9. (U) S/HITSELBERGER admitted that he felt that if this weekend had been different and that he would have been invited to the going away party, that today's incident probably would not have happened. S/HITSELBERGER stated that the stress and pressure over the weekend had made him less focused and suffered from an attention to details. S/HITSELBERGER was adamant that he was not going to provide documents that he had printed out to anyone else. The documents were taken for the purpose of reading them at home.

10. (U) RA requested S/HITSELBERGER to write a statement. S/HITSELBERGER advised that he did not mind talking to the agents but did not feel comfortable writing a statement without the advice of a lawyer. Then, S/HITSELBERGER explained that he would consider providing a written statement but he was tired and it was late in the day. RA noted that he was welcome to come back tomorrow morning after he got some sleep. S/HITSELBERGER agreed to return at 1000L on 12Apr12.

11. (U) LCDR David PECK, Staff Judge Advocate (SJA) NSA, Bahrain arranged a room for S/HITSELBERGER in base lodging since S/HITSELBERGER's room was searched pursuant to a Command Authorized Search. S/HITSELBERGER went directly from NCIS building 336 to the on base lodging at approximately 2340L.

12. (U) The next day, 12Apr12 at approximately 1130L S/HITSELBERGER arrived at NCIS building 336. S/HITSELBERGER spoke with PA KESICI and explained that he woke up late and that he was not aware of the current time. S/HITSELBERGER asked to come back later in the day. S/HITSELBERGER agreed to come back around 1500L for the purposes of providing a signed sworn statement. At 1615L, SSA Thomas CUNNINGHAM went by S/HITSELBERGER's temporary room aboard NSA Bahrain to check on him. S/HITSELBERGER opened the door and appeared that he had been asleep.

PARTICIPANT

Raffi KESICI, Special Agent, MEFO, Bahrain

Thomas CUNNINGHAM, Supervisory Special Agent, MEFO, Bahrain

Reported by: JOHN FOWLER, SPECIAL AGENT

Office: NCISFO BAHRAIN

Exhibit 3

CIVILIAN SUSPECT'S ACKNOWLEDGEMENT AND WAIVER OF RIGHTS.

Place: NCIS Mefto Bahain R-556

Date: 11 APR 12

I, James Francis Hitselberger, have been advised by Special Agent Ralfi Kesici that I am suspected of violation of 18 USC 793 Gathering, transmitting or losing defense information

I have also been advised that:

- JH* (1) I have the right to remain silent and make no statement at all;
- JH* (2) Any statement I do make can be used against me in a court of law or other judicial or administrative proceeding;
- JH* (3) I have the right to consult with a lawyer prior to any questioning. This lawyer may be a civilian lawyer retained by me at no cost to the United States, or, if I cannot afford a lawyer, one will be appointed to represent me at no cost to me;
- JH* (4) I have the right to have my retained or appointed lawyer present during this interview; and
- JH* (5) I may terminate this interview at any time, for any reason.

I understand my rights as related to me and as set forth above. With that understanding, I have decided that I do not desire to remain silent, consult with a retained or appointed lawyer, or have a lawyer present at this time. I make this decision freely and voluntarily. No threats or promises have been made to me.

Signature : *James Hitselberger*

Date & Time: 11 April 2012

Witnessed: *[Signature]*

At this time, I, James Francis Hitselberger, desire to make the following voluntary statement. This statement is made with an understanding of my rights as set forth above. It is made with no threats or promises having been extended to me.

Request lawyer regarding statement

EXHIBIT 4

ADVICE OF RIGHTS

Place Dallas (Sterling VA)
Date 10/25/12
Time 9:15

YOUR RIGHTS

JH You have been charged by a criminal complaint issued by a U.S. Magistrate Judge in the District of Columbia with unlawfully retaining classified information. Rule 5 of the Federal Rules of Criminal Procedure entitles you to have your initial appearance without unnecessary delay in the District of Columbia, which is an adjacent district. I knowingly and voluntarily waive any rights afforded me under Rule 5. Specifically, I agree to waive my right to have a prompt initial appearance and agree to answer questions at this time. ~~But I wish to see a judge today~~ BSC

JH Before we ask you any questions, you must understand your rights.

JH You have the right to remain silent.

JH Anything you say can be used against you in court.

JH You have the right to talk to a lawyer for advice before we ask you any questions.

JH You have the right to have a lawyer with you during questioning.

JH If you cannot afford a lawyer, one will be appointed for you before any questioning if you wish.

JH If you decide to answer questions now without a lawyer present, you have the right to stop answering at any time.

I have read this statement of my rights and I understand what my rights are. At this time, I am willing to answer questions without a lawyer present.

Signed *[Signature]*

Witness: *[Signature]*

Witness: *[Signature]*

Time: 9:15