

5 Mar 01

From: LCDR T. D. Stone, JAGC, USN, Counsel for LCDR Pfeifer
To: President, Court of Inquiry (Attn: Captain MacDonald,
Counsel for the Court)

Subj: REQUEST FOR THE PRODUCTION OF WITNESSES IN THE COURT OF
INQUIRY CONVENED TO EXAMINE THE CAUSES OF THE COLLISION
OF THE USS GREENEVILLE AND THE JAPANESE MV EHIME MARU ON
9 FEB 01.

Ref: (a) JAGINST 5830.1

1. Through counsel and per reference (a), LCDR Pfeifer requests, Commodore Byus and LCDR Barry Harrison, JAGC, USN be called as witnesses to the Court of Inquiry. I further request these individuals be called as witnesses as soon as practicably possible after RADM Griffiths testifies.
2. Commodore Byus and LCDR Harrison conducted more than 24 personnel interviews, including one with LCDR Pfeifer, within the first couple days of the preliminary inquiry. Because these results of interviews are to be admitted into evidence, the methods and circumstances surrounding the way they were obtained and transcribed is relevant and necessary for a fair and impartial hearing. Issues exist regarding the accuracy and the coercive nature of the interviews. The only way to find the facts associated with these interviews would be to call Commodore Byus and LCDR Harrison.
3. If the challenge of LCDR Harrison is denied, it is requested that LCDR Harrison not be present during court room proceedings until he testifies as to his personal knowledge. While I do not believe LCDR Harrison would be intentionally untruthful, court procedure and fundamental issues of fairness require witnesses to refrain from viewing other testimony or discussing testimony with other witnesses so as to prevent inaccuracies in testimony. LCDR Harrison's courtroom presence prior to testifying violates this principle because he would have access to testimony that could alter his perception of event or change context of various information.
4. Regardless of the ruling, I respectfully request this document be made a part of the official record.

Very Respectfully,

T. D. Stone

EXHIBIT # 4
PAGE 1 OF 1

11. I have read this Agreement carefully and my questions, if any, have been answered. I acknowledge that the briefing officer has made available to me the Executive Order and statutes referenced in this Agreement and its implementing regulation (32 CFR Section 2003.20) so that I may read them at this time, if I so choose.

SIGNATURE  CHARLES W. GITTINS	DATE 5 March 01	SOCIAL SECURITY NUMBER (See Notice below) [146]
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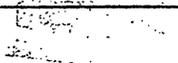
ORGANIZATION (IF CONTRACTOR, LICENSEE, GRANTEE OR AGENT, PROVIDE: NAME, ADDRESS, AND, IF APPLICABLE, FEDERAL SUPPLY CODE NUMBER)
(Type or print)

LAW OFFICES OF CHARLES W. GITTINS
P.O. BOX 144
MIDDLETOWN, VA 22645
PHONE: (540) 868-0949

WITNESS		ACCEPTANCE	
THE EXECUTION OF THIS AGREEMENT WAS WITNESSED BY THE UNDERSIGNED.		THE UNDERSIGNED ACCEPTED THIS AGREEMENT ON BEHALF OF THE UNITED STATES GOVERNMENT.	
SIGNATURE 	DATE 5 MAR 01	SIGNATURE	DATE
NAME AND ADDRESS (Type or print) J.S. HEPLER CDR, JAGC, USN COMMANDER IN CHIEF U.S. PACIFIC FLEET 250 MAKALAPA DRIVE PEARL HARBOR, HI 96860-3131		NAME AND ADDRESS (Type or print) ROCHELLE SALAVEA, CPF ASS'T SECURITY MANAGER COMMANDER IN CHIEF U.S. PACIFIC FLEET 250 MAKALAPA DRIVE PEARL HARBOR HI 96860-3131	

SECURITY DEBRIEFING ACKNOWLEDGEMENT

I reaffirm that the provisions of the espionage laws, other federal criminal laws and executive orders applicable to the safeguarding of classified information have been made available to me; that I have returned all classified information in my custody; that I will not communicate or transmit classified information to any unauthorized person or organization; that I will promptly report to the Federal Bureau of Investigation any attempt by an unauthorized person to solicit classified information, and that I (have) (have not) (strike out inappropriate word or words) received a security debriefing.

SIGNATURE OF EMPLOYEE	DATE 
NAME OF WITNESS (Type or print)	SIGNATURE OF WITNESS  EXHIBIT PAGE 1 OF 1

NOTICE: The Privacy Act, 5 U.S.C. 522a, requires that federal agencies inform individuals, at the time information is solicited from them, whether the disclosure is mandatory or voluntary, by what authority such information is solicited, and what uses will be made of the information. You are hereby advised that authority for soliciting your Social Security Account Number (SSN) is Executive Order 9397. Your SSN will be used to identify you precisely when it is necessary to 1) certify that you have access to the information indicated above or 2) determine that your access to the information indicated has terminated. Although disclosure of your SSN is not mandatory, your failure to do so may impede the processing of such certifications or determinations, or possibly result in the denial of your being granted access to classified information.

* NOT APPLICABLE TO NON-GOVERNMENT PERSONNEL SIGNING THIS AGREEMENT.

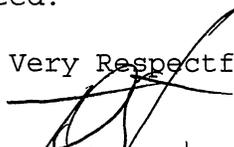
8 Mar 01

From: LCDR T. D. Stone, JAGC, USN, Counsel for LCDR Pfeifer
To: Commander in Chief U. S. Pacific Fleet (Attn: Fleet Judge Advocate Office)
Via: President, Court of Inquiry

Subj: REQUEST FOR THE ASSIGNMENT OF ADDITIONAL COUNSEL IN THE MATTER OF THE COURT OF INQUIRY CONVENED TO EXAMINE THE CAUSES OF THE COLLISION OF THE USS GREENEVILLE AND THE JAPANESE MV EHIME MARU ON 9 FEB 01.

1. On behalf of LCDR Gerald K. Pfeifer, USN, appointed counsel requests the appointment of LT Daniel P. Shanahan, JAGC, USN as an additional counsel in the ongoing court of inquiry.
2. LT Shanahan is a former line officer and Judge Advocate stationed at the Naval Legal Service Office, Yokosuka, Japan. If assigned, LT Shanahan would fill the role of Assistant Counsel and would be assigned legal duties of a technical and administrative nature in support of LCDR Pfeifer. As a former line officer, LT Shanahan is familiar with many of the relevant terms and concepts at the core of this inquiry.
3. LCDR Pfeifer's defense team is the only party without a second attorney assigned. While I am currently able to manage the daily preparation of in court procedures, the ability to thoroughly respond to new issues are becoming increasingly difficult to manage without a qualified second counsel.
4. The assignment of LT Shanahan, or another experienced line officer, is necessary because they possess knowledge of technical issues involved in the case. All local JAGC Officers are first tour Navy Lieutenants with very little legal experience and no Navy or line experience. An ongoing Navy Court of Inquiry is not the forum to teach a New JAGC Officer.
5. The failure of granting the approval of this request will not result in the ineffective assistance of counsel. However, the failure to appoint qualified additional counsel will require me to continue to work 16-18 hours a day and does not allow for the an overabundance of time during the workday to investigate or review information prior to its introduction in court.
6. No continuance is requested or contemplated with this request. But a prompt answer is requested.

Very Respectfully,


LCDR T. D. STONE

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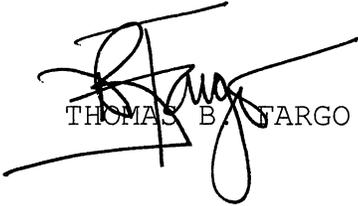
DEPARTMENT OF THE NAVY

COMMANDER IN CHIEF
UNITED STATES PACIFIC FLEET
250 MAKALAPA DRIVE
PEARL HARBOR, HAWAII 96860-3131

IN REPLY REFER TO:
5800
Ser N00/373
8 Mar 01

From: Commander in Chief, U.S. Pacific Fleet
To: CDR Scott D. Waddle, USN, [(b)(6)]
Subj: RENEWAL OF REQUEST FOR INDIVIDUAL MILITARY COUNSEL
Ref: (a) JAG MANUAL, para 0131

- 1 Per Navy policy and as directed by reference (a), your renewed request for LCDR C. L. Reismeyer, JAGC, USN is denied.
2. While you have the right to be represented by a military counsel of your choice if that counsel is "reasonably available," you do not have an attorney-client relationship with LCDR Reismeyer and, by Navy definition, LCDR Reismeyer is not reasonably available. Accordingly, reference (a) requires that I deny your request.
3. The Secretary of the Navy has defined when counsel are "reasonably available" in a way that balances the right to effective representation against the inevitable delay and expense that would result if an individual could choose any military attorney he or she might like, from any job or from any location in the world. Since you have not only a highly experienced civilian counsel, but also two of the three most experienced Naval Legal Service Office counsel in the Pacific, representing you, I am persuaded that you have sufficient attorneys, of requisite experience, to ensure effective representation of your interests.


THOMAS B. FARGO

Copy to:
Senator Kay Bailey Hutchinson, Texas
Senator Phil Gramm, Texas
CO, NLSO MIDLANT
CO, NLSO PAC
LCDR C. L. Reismeyer

ENCLOSURE K
PAGE 1 OF 1



DEPARTMENT OF THE NAVY

COMMANDER IN CHIEF
UNITED STATES PACIFIC FLEET
250 MAKALAPA DRIVE
PEARL HARBOR, HAWAII 96860-3131

IN REPLY REFER TO:

5830
Ser N00/0384
9 Mar 01

From: Commander in Chief, U.S. Pacific Fleet

To: Vice Admiral John B. Nathman, USN, C (b)(6) J

Subj: COURT OF INQUIRY INTO THE CIRCUMSTANCES SURROUNDING THE
COLLISION BETWEEN USS GREENEVILLE (SSN 772) AND JAPANESE
M/V EHIME MARU THAT OCCURRED OFF THE COAST OF OAHU,
HAWAII ON 9 FEBRUARY 2001

Ref: (a) JAGMAN
(b) JAGINST 5830.1

1. Pursuant to references (a) and (b), Lieutenant Daniel P. Shanahan, JAGC, USN, a lawyer qualified under Article 27(b) of the Uniform Code of Military Justice, is appointed as counsel for Lieutenant Commander Gerald K. Pfeifer, USN.

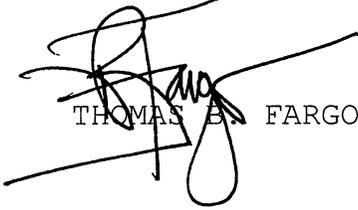

THOMAS B. FARGO

EXHIBIT
PAGE 1 OF 2

Subj: COURT OF INQUIRY INTO THE CIRCUMSTANCES SURROUNDING THE
COLLISION BETWEEN USS GREENEVILLE (SSN 772) AND JAPANESE
M/V EHIME MARU THAT OCCURRED OFF THE COAST OF OAHU,
HAWAII ON 9 FEBRUARY 2001

Copy to:

CNO

USCINCPAC

COMSUBPAC

Rear Admiral Sullivan, USN

Rear Admiral Ozawa, JMSDF

Rear Admiral Stone, USN

Captain Brandhuber, USN

Captain MacDonald, JAGC, USN

Commanding Officer, Trial Service Office Pacific

Commander Quinn, JAGC, USN

Commander Wright, USN

Commander Waddle, USN

Commander Patton, USN

Commander Woolston, USN

Lieutenant Commander Pfeifer, USN

Lieutenant (Junior Grade) Coen, USN

Commander Herold, JAGC, USN

Lieutenant Commander Young, JAGC, USN

Lieutenant Commander Stone, JAGC, USN

Lieutenant Commander Filbert, JAGC, USN

Lieutenant Commander Harrison, JAGC, USN

Lieutenant Commander Breitfelder, USN

Lieutenant Fulton, JAGC, USNR

Lieutenant Shanahan, JAGC, USN

Mr. Charles W. Gittins

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March 12, 2001

Admiral Thomas B. Fargo, USN
Commander in Chief
United States Pacific Fleet
250 Makalapa Drive
Pearl Harbor, HI 96860

Re: PROFFER OF EXPECTED TESTIMONY OF COMMANDER SCOTT D. WADDLE,
USN, IN THE MATTER OF THE COURT OF INQUIRY INTO THE
CIRCUMSTANCES OF THE COLLISION BETWEEN USS GREENEVILLE
(SSN 772) AND JAPANESE M/V EHIME MARU ON 9 FEBRUARY 2001

Dear Admiral Fargo,

On March 1, 2001 as counsel for Commander Scott D. Waddle, USN, I submitted, on Commander Waddle's behalf, a request for testimonial immunity. Your response of March 3, 2001 requested that I submit a proffer of Commander Waddle's expected testimony. Below, I have outlined a number of areas of testimony that have been the focus of the Court of Inquiry and how Commander Waddle may address those areas in his immunized testimony.

During Rear Admiral Griffiths' four days of testimony, he testified that he would have been better informed about the cause of, and reasons for, the collision of the USS GREENEVILLE and the Japanese M/V EHIME MARU had he been able to thoroughly debrief those individuals presently designated as parties before this Court of Inquiry, and specifically, Commander Waddle. Rear Admiral Griffith, Captain Kyle, Rear Admiral Konetzni, and Captain Brandhuber all concurred that a complete and thorough investigation may not be possible absent CDR Waddle's testimony because many of the decisions made on board USS GREENEVILLE were judgment calls reposed in the discretion and authority of the Commanding Officer. These three senior officer submariners all concurred that further inquiry by the Court necessarily required the testimony of the Commanding Officer to completely investigate this accident.

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Primarily, the Court of Inquiry you appointed is tasked with investigating the facts and circumstances connected with the collision of the USS GREENEVILLE and the M/V EHIME MARU, and any fault, neglect or responsibility for the incident. Commander Waddle's testimony is clearly necessary to the Court in determining all of the relevant facts and circumstances bearing on the collision. Without his testimony there will be a number of facts that the Court of Inquiry can reach only by surmise or speculation, double, triple and in some cases, quadruple hearsay, and by drawing conclusions based on this non-firsthand and largely unreliable information. All of the parties, the Court, the families of those lost in the accident, and now Rear Admiral Konetzni and Rear Admiral Griffiths, have concluded that the testimony of the Commanding Officer, who was directly and substantially involved in USS GREENEVILLE's operation in the hour before the collision, is a necessary incident of a complete and thorough investigation of this unfortunate accident.

For example, the Court now has heard entirely speculative testimony that some real or artificial time constraint may have informed Commander Waddle's actions. Commander Waddle is prepared to address this issue and provide his first-hand testimony concerning this unfounded speculation by prior witnesses. Only Commander Waddle is in a position to provide probative evidence on this issue of real or perceived time constraints because it was solely his decision whether and when USS GREENEVILLE would return to Pearl Harbor.

In addition, the Court and witnesses heard by the Court have clearly indicated that the high power, sector-focused periscope search conducted by Commander Waddle prior to the Emergency Deep and EMBT blow is one of the most important issues considered by the Court of Inquiry. Indeed, Admiral Konetzni clearly indicated that he believes the periscope search is the key to understanding this collision and how it could have been prevented. While it is clearly the case that had either LTJG Coen or Commander Waddle seen the M/V EHIME MARU, the collision would not have occurred, it is also true that the Court will only be able to surmise and speculate on the specific procedure followed by Commander Waddle; what he saw or did not see; and, why he used the specific methodology for a focused high power search, unless they actually hear Commander Waddle's testimony on this critical subject. Commander Waddle desires to address the Court directly on the quality of the periscope search he conducted; the manner in which it was performed; the depth at which it was performed and why; and, whether he directed his

search on the bearings of the reported contacts and at what optical powers his search was conducted.

With regard to contact management by Sonar and Fire Control, the Commanding Officer's testimony would address the contact picture he believed obtained prior to raising the GREENEVILLE to periscope depth, his actions at periscope depth, and could further explain the decision matrix that led him to dive GREENEVILLE in preparation for the EMBT blow. His testimony would cogently, accurately, and succinctly convey his understanding of the contact picture, and his actions in sonar and at the fire control station prior to directing the OOD to prepare the GREENEVILLE to come to periscope depth. Further, Commander Waddle's testimony concerning his understanding of the contact picture, and his situational awareness, and reasons therefore, are necessary to understanding the Commanding Officer's actions and why they were undertaken. No other witness is able to testify to these important facts relevant to this accident.

Further, Commander Waddle is solely able to address actions he directed to compensate for the loss of the ASVDU in the Control Room. He will be able to speak specifically to the placement of the Executive Officer in Sonar and other compensatory actions he took or directed to mitigate the effects of the ASVDU casualty on ship's operations.

Moreover, evidence was adduced on cross-examination of the Government reconstruction "expert", Captain Kyle, that a new contact of interest -- S-14 -- had just been acquired while the ship cleared baffles on course 340. Sonar logger data indicates that the Fire Control Technician of the Watch may have properly been focused on obtaining a system solution for this new contact, vice S-13- apparently the M/V EHIME MARU during the important minutes before the collision. Only the Commanding Officer can explain his understanding of the significance on his judgment, or lack thereof, of this tardily acquired contact which appears to have diverted the attention of the contact management team on board USS GREENEVILLE from S-13 (EHIME MARU) at a critical time in GREENEVILLE's operations.

You directed the Court of Inquiry to examine the operational policies and practices of Commander, Submarine Force, U.S. Pacific Fleet's, implementation of the Distinguished Visitor Embarkation Program. Specifically, the Court's investigation would benefit by having the Commanding Officer's thoughts and analysis regarding his real-time ability to receive

back-up from his wardroom and crew during this specific Distinguished Visitor embarkation and his crew's ability to provide the backup that was required to prevent this collision.

Additionally, the Court of Inquiry has questioned the conduct of briefings by USS GREENEVILLE to the D/Vs on the morning of 9 Feb 01. The Commanding Officer can speak directly to who provided safety briefs, how many were provided, the content thereof and when during the underway such briefings were conducted for the visitors and by whom. Commander Waddle will also be able to provide testimony to the placement of the embarkees and the potential for their passive interference in the execution of watchstanding duties by members of the control room watch team during critical moments prior to the collision. No other non-party witness has been, or appears able to, illuminate this issue for the court.

Finally, Commander Waddle's statement enclosed in the preliminary investigation should not be relied upon by the Court of Inquiry as a source to determine what the Commanding Officer saw or thought. Regardless of how hard the initial interviewers tried to ensure the accuracy of statements taken by them, a number of obvious and clear inaccuracies have been identified during the course of the Court of Inquiry. CDR Waddle did not have the opportunity to review the summary of his statement before it was submitted as an enclosure to the preliminary investigation, did not sign it nor otherwise adopt it as accurate. While it is largely accurate, there are a number of critical areas that were not addressed by the interviewers relevant to this investigation.

Throughout Rear Admiral Griffiths' testimony, he testified that a myriad of judgment issues were involved in the operations of GREENEVILLE in the hour prior to the unfortunate accident between the EHIME MARU and GREENEVILLE. Rear Admiral Griffiths candidly admitted that in many cases only the Commanding Officer's testimony would provide the requisite information for resolving the causes of this accident. Captain Kyle, who performed the accident reconstruction, Rear Admiral Konetzni, the COMSUBPAC Commander, and Captain Brandhuber, the COMSUBPAC, Chief of Staff, have confirmed the necessity of Commander Waddle's testimony in order to obtain a thorough and complete investigation of this unfortunate collision.

Most importantly, Commander Waddle's immunized testimony will provide insight into his judgment and discretion and provide the Japanese families with the opportunity to hear from

CDR Waddle. In his private meetings with the members of the Japanese families who lost loved ones in the accident, the family members have firmly indicated their desire - and demand - that Commander Waddle provide his testimony so that the families will understand this accident. CDR Waddle's testimony will afford everyone involved in this terrible tragedy the ability to assess his actions based on his knowledge and judgment under the circumstances he faced on 9 February 2001. Everyone will know by the end of that testimony that Commander Waddle accepts responsibility for the operation of USS GREENEVILLE on 9 February 2001 and the reasons for the specific actions he took prior to the collision.

Although Commander Waddle is ready and willing to accept responsibility for his actions and that of his crew as the Commanding Officer, he does not believe -- nor does Rear Admiral Griffiths nor Rear Admiral Konetzni -- that there is evidence to support criminal prosecution for his conduct on 9 February 2001. Given the lack of criminal intent, the clear evidence of honest effort and judgement exerted by the Commanding Officer and the fact that Commander Waddle's initial statement and all evidence derived there from will be inadmissible at any trial by court-martial, a grant of testimonial immunity is unlikely to further prejudice any prosecution of Commander Waddle, should such precipitate action be undertaken.

On a more personal note, Commander Waddle strongly believes that taking the witness stand and testifying will provide the Court of Inquiry with pertinent facts necessary to conduct a complete and transparent inquiry. I am confident that Commander Waddle's testimony would aid in the understanding of the reasons for this accident and serve as a preventative example for similar accidents in the future. I am constrained in my advice to my client, however, by the potential that my client may yet face a court-martial for his actions. Such a drastic remedy is one that potentially could strip my client of his retirement benefits, require my client to serve a term of confinement, and substantially destroy the future of my client's family. While such remedies remain to address the conduct of my client testimonial if immunity is granted, I cannot permit him to testify in this Court of Inquiry absent such a grant because of the potential substantial prejudice to his future.

If the true goal of this investigation is to establish the factual predicates for the accident and prevent similar accidents in the future, then it will not undermine the investigation to provide my client an assurance that his

testimony in the Court of Inquiry will not later be used against him in a court-martial. Accordingly, I respectfully request that you grant my client testimonial immunity so that he may provide his testimony to the Court of Inquiry and bring closure to the families of those lost on board the M/U EHIME MARU.

Respectfully,

A handwritten signature in black ink, appearing to read "Charles W. Gittins", with a horizontal line extending to the right.

Charles W. Gittins

EXHIBIT
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DEPARTMENT OF THE NAVY

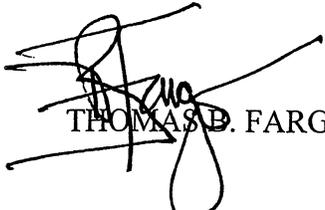
COMMANDER IN CHIEF
UNITED STATES PACIFIC FLEET
250 MAKALAPA DRIVE
PEARL HARBOR, HAWAII 96860-3131

IN REPLY REFER TO:
5800
Ser N00 453
16 Mar 01

THE COURT OF INQUIRY INTO)
THE CIRCUMSTANCES)
SURROUNDING THE)
COLLISION OF THE USS) GRANT OF IMMUNITY
GREENEVILLE (SSN 772) AND)
M/V EHIME MARU ON)
FEBRUARY 9, 2001)
_____)

From: Commander in Chief, U.S. Pacific Fleet
To: FT1(SS) Patrick Thomas Seacrest, USN, [(b) (6)]

1. It appears that you will be a material witness for the Court of Inquiry into the circumstances surrounding the collision of the *USS GREENEVILLE (SSN 772)* and *M/V Ehime Maru* on February 9, 2001.
2. In consideration of your testimony as a witness in the matter described in paragraph (1), you are hereby granted immunity from the use of your testimony or other information given by you (including any evidence directly or indirectly derived from your testimony or from the other information you provide) against you in any criminal case, except a prosecution for perjury, giving a false statement, or otherwise failing to comply with an order to testify in this matter.
3. It is understood that this grant of immunity from the use of your testimony or other information given by you (including any evidence directly or indirectly derived from your testimony or from the other information you provide) against you in any criminal case is effective only upon the condition that you participate in reasonable preparatory interviews with counsel and testify under oath as a witness in the matter described in paragraph (1).
4. This grant of immunity is made under the authority granted me under Rule for Courts-Martial 704, Manual for Courts-Martial, 2000, as a General Court Martial Convening Authority.


THOMAS B. FARGO

Copy to:
Appointed Party Counsel
Mr. Gittins
VADM Nathman

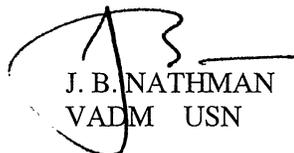
EXHIBIT N
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16 March 2001

From: President, Court of Inquiry
To: Commander in Chief, U. S. Pacific Fleet

Subj: IMMUNITY REQUEST ICO FT1 SEACREST

1. I most strongly recommend granting testimonial immunity to FT1 Patrick Seacrest, USN.
2. After two weeks of testimony, it is apparent that Petty Officer Seacrest has critical information that the Court should consider to establish the full facts and circumstances surrounding the collision on 9 February 2001. Without this testimony, the Court may have insufficient information to formulate its opinions and recommendations. Additionally, the court needs this testimony in order to make an informed recommendation regarding CDR Waddle's pending request for immunity.


J. B. NATHMAN
VADM USN

U.S. PACIFIC FLEET
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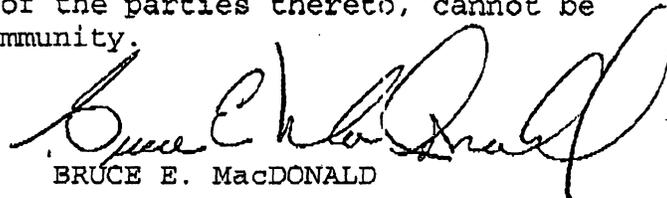
16 Mar 01

From: Captain Bruce E. MacDonald, JAGC, U.S. Navy
To: Commander in Chief, U.S. Pacific Fleet

Subj: GRANT OF TESTIMONIAL IMMUNITY FOR FIRE CONTROL TECHNICIAN
FIRST CLASS PETTY OFFICER PATRICK T. SEACREST, U.S. NAVY

Ref: (a) CINCPACFLT ltr 5830 Ser N00/269 of 17 Feb 01
(b) JAGMAN 0138

1. Reference (a) designated me as Counsel for the Court of Inquiry assigned to review the facts and circumstances surrounding the collision between the USS GREENEVILLE (SSN 772) and M/V EHIME MARU. Pursuant to the authority and procedures contained in reference (b), I recommend that FT1 Patrick Seacrest, USN, be granted testimonial immunity in this matter.
2. Over two weeks of testimony, the Court has heard evidence regarding the fact that the USS GREENEVILLE fire control system was tracking the M/V EHIME MARU (designated sonar contact "S-13") for a period of up to one hour before the collision. The testimony and data files from the USS GREENEVILLE reveal that FT1 Seacrest, the Fire Control Technician of the Watch, had obtained a proposed solution for S-13 as less than 5,000 yards shortly before the collision. By all accounts, FT1 Seacrest did not report this information to the Officer of the Deck or the Commanding Officer.
3. On 10 March 2001, as part of my preparations for the Court, I advised FT1 Seacrest of his rights under Article 31(b) of the Uniform Code of Military Justice. At that time, FT1 Seacrest requested and was provided the opportunity to consult with counsel. Through counsel, the Court has been informed that FT1 Seacrest will not make a statement to the Court.
4. Only FT1 Seacrest can testify regarding the operation of the fire control system in the time period leading to the collision, and why no close contact report was made. His testimony is so essential and material that the interests of this Court of Inquiry, and the interests of the parties thereto, cannot be served without a grant of immunity.


BRUCE E. MacDONALD

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MAR 16 2001
PACIFIC FLEET
PAGE 3 OF 5

SUSPECT'S RIGHTS ACKNOWLEDGEMENT/STATEMENT (See JAGMAN 0170)

FULL NAME (ACCUSED/SUSPECT) Seacrest, <i>PATRICK THOMAS</i>		SSN	RATE/RANK FT1	SERVICE (BRANCH) USN
ACTIVITY/UNIT USS GREENEVILLE (SSN 772)			DATE OF BIRTH	
NAME (INTERVIEWER) MacDONALD, Bruce		SSN	RATE/RANK CAPT/06	SERVICE (BRANCH) USN
ORGANIZATION Court of Inquiry in the Matter of the USS GREENEVILLE (SSN 772)			BILLET Counsel to the Court of Inquiry	
LOCATION OF INTERVIEW TRISVCOFFPAC		TIME <i>1010</i>	DATE <i>10 MAR 01</i>	

RIGHTS

I certify and acknowledge by my signature and initials set forth below that, before the interviewer requested a statement from me, he warned me that:

(1) I am suspected of having committed the following offense(s):

VIOLATIONS OF THE UCMJ: **Article 92** (Dereliction of Duty)

I am further advised, pursuant to 10 USC §2005(g)(2), that that if I, voluntarily or because of misconduct, fail to complete any period of active duty service specified in any agreement with the United States for advanced education assistance, or fail to fulfill any term or condition prescribed pursuant to 10 USC §2005(a)(4), I will be required to reimburse the United States in an amount that bears the same ratio to the total cost of advanced education provided to me as the unserved portion of active duty bears to the total period of active duty I agreed to serve. -----

PTB

(2) I have the right to remain silent; -----

PTB

(3) Any statement I do make may be used as evidence against me in trial by court-martial, and that any prior illegal admissions or other improperly obtained evidence which incriminated me cannot be used against me in a trial by court martial; -----

PTB

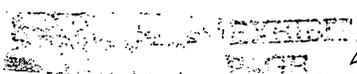
(4) I have the right to consult with lawyer counsel prior to any questioning. This lawyer counsel may be a civilian lawyer retained by me at my own expense, a military lawyer appointed to act as my counsel without cost to me, or both; and -----

PTB

(5) I have the right to have such retained civilian lawyer and/or appointed military lawyer present during this interview. -----

PTB

WAIVER OF RIGHTS


 N
 PAGE 4 OF 5

I further certify and acknowledge that I have read the above statement of my rights and fully understand them, and that, -----

- (1) I expressly desire to waive my right to remain silent; -----
- (2) I expressly desire to make a statement; -----
- (3) I expressly do not desire to consult with either a civilian lawyer retained by me or a military lawyer appointed as my counsel without cost to me prior to any questioning; -----
- (4) I expressly do not desire to have such lawyer present with me during this interview; and ----
- (5) This acknowledgment and waiver of rights is made freely and voluntarily by, and without any promises or threats having been made to me or pressure or coercion of any kind having been used against me.-----

SIGNATURE (ACCUSED/SUSPECT) <i>Patrick Thomas</i>	TIME 1015	DATE 10 MAR 01
SIGNATURE (INTERVIEWER) <i>Bruce E McDonald</i>	TIME 1015	DATE 10 MAR 01
SIGNATURE (WITNESS) <i>Douglas E Wright</i>	TIME 1015	DATE 10 MAR 01

The statement which appears on this page (and the following ___ page(s), all of which are signed by me), is made freely and voluntarily by me, and without any promises or threats having been made to me or pressure or coercion of any kind having been used against me.

SIGNATURE (ACCUSED/SUSPECT)

FTI SEACREST INVOKED/EXERCISED HIS RIGHT TO REMAIN SILENT AND REQUESTED TO TALK WITH AN ATTORNEY.

SUSPECT'S RIGHTS ACKNOWLEDGEMENT/STATEMENT (See JAGMAN 0170)

FULL NAME (ACCUSED/SUSPECT) PFEIFER, Gerald Kent	SSN [(b)(6)]	RATE/RANK LCDR/04	SERVICE (BRANCH) USN
ACTIVITY/UNIT USS GREENEVILLE (SSN 772)	DATE OF BIRTH		
NAME (INTERVIEWER) MacDONALD, Bruce	SSN [(b)(6)]	RATE/RANK CAPT/06	SERVICE (BRANCH) USN
ORGANIZATION Court of Inquiry in the Matter of the USS GREENEVILLE (SSN 772)	BILLET Counsel to the Court of Inquiry		
LOCATION OF INTERVIEW TRISVCOFFPAC	TIME 1145	DATE 3/19/01	

RIGHTS

I certify and acknowledge by my signature and initials set forth below that, before the interviewer requested a statement from me, he warned me that:

(1) I am suspected of having committed the following offense(s):

VIOLATIONS OF THE UCMJ: **Article 92** (Dereliction of Duty), **Article 110** (Improper hazarding of a vessel);

JG 12/3/19

(2) I have the right to remain silent; - - - - -

JG
JG

(3) Any statement I do make may be used as evidence against me in trial by court-martial, but any prior illegal admissions or other improperly obtained evidence which incriminated me cannot be used against me in a trial by court-martial;-----

JG

(4) I have the right to consult with lawyer counsel prior to any questioning. This lawyer counsel may be a civilian lawyer retained by me at my own expense, a military lawyer appointed to act as my counsel without cost to me, or both; and - - - - -

JG

(5) I have the right to have such retained civilian lawyer and/or appointed military lawyer present during this interview. - - - - -

JG

WAIVER OF RIGHTS

I further certify and acknowledge that I have read the above statement of my rights and fully understand them, and that; - - - - -

JG

(1) I expressly desire to waive my right to remain silent; - - - - -

JG

(2) I expressly desire to make a statement; - - - - -

JG

(3) I expressly do not desire to consult with either a civilian lawyer retained by me or a

EXHIBIT 0
PAGE 1 OF 2

²
~~military lawyer~~ appointed as my counsel without cost to me prior to any questioning; -----

[Signature]

(4) I expressly do not desire to have such lawyer present with me during this interview; and ----

(5) This acknowledgment and waiver of rights is made freely and voluntarily by, and without any promises or threats having been made to me or pressure or coercion of any kind having been used against me.-----

[Signature]

SIGNATURE (ACCUSED/SUSPECT)	TIME	DATE
<i>[Signature]</i> GORDON K PFEIFER	1150	3/19/01
<i>[Signature]</i> (BOUCE MACDONALD)	1149	3/19/01
<i>[Signature]</i> B.L. HARRIS, JUDGE	1150	3/19/01

The statement which appears on this page (and the following ___ page(s), all of which are signed by me), is made freely and voluntarily by me, and without any promises or threats having been made to me or pressure or coercion of any kind having been used against me.

SIGNATURE (ACCUSED/SUSPECT)

LCDR Pfeifer intends to submit an unsworn statement and notes taken
after the incident to the court of inquiry. *[Signature]*

PRIVACY ACT STATEMENT - FOR PARTIES TO THE COURT OF INQUIRY

1. **AUTHORITY:** 5 U.S.C. § 301; 10 U.S.C. §§ 935, 7622-7623; 44 U.S.C. § 3101; 46 U.S.C. §§ 740-752, 781-790; 49 U.S.C. § 1901.

2. **PRINCIPAL PURPOSE(S):** The information which will be solicited is intended principally for the following purpose(s):

a. Determinations on possible disciplinary or adverse administrative action.

b. Adjudication, pursuit, or defense of claims for or against the Government or among private parties.

c. Evaluation of procedures, operations, material, and designs by the Navy and contractors, with a view to improving the efficiency and safety of the Department of the Navy.

d. Public information releases.

e. Other determinations, as required, in the course of naval administration.

3. **ROUTINE USES:** In addition to being used within the Department of the Navy and Defense for the purpose(s) indicated above, records of investigations are routinely furnished, as appropriate, to the Department of Veterans Affairs for use in determinations concerning entitlement to veterans' and survivors' benefits; to Servicemen's Group Life Insurance administrators for determination concerning payment of life insurance proceeds; to the U.S. General Accounting Office for purposes of determination concerning relief of accountable personnel from liability for losses of public funds and related fiscal matters; and to the Department of Justice for use in litigation involving the Government. Additionally, such investigations are sometimes furnished to agencies of the Department of Justice and to State or local law enforcement and court authorities for use in connection with civilian criminal and civil court proceedings. The records of investigations are provided to agents and authorized representatives of persons involved in the incident, for use in legal or administrative matters. The records are provided to contractors for use in connection with settlement, adjudication, or defense of claims by or against the Government, and for use in design and evaluation of products, services, and systems. The records are also furnished to agencies of the Federal, State, or local law enforcement authorities, court authorities, administrative

authorities, and regulatory authorities, for use in connection with civilian and military criminal, civil, administrative, and regulatory proceedings and actions.

4. **VOLUNTARY DISCLOSURE, CONSEQUENCES OF REFUSING TO DISCLOSE:**
Disclosure is voluntary. You are advised that you are initially presumed to be entitled to have disciplinary and adverse administrative determinations in paragraph 2, above, resolved in your favor, but the final determination will be based on all the evidence in the investigative record. If you do not provide the requested information, you will be entitled to a favorable determination if the record does not contain sufficient evidence to overcome the presumption in your favor. If the completed record does contain sufficient evidence to overcome the presumption in your favor, however, your election not to provide the requested information possibly could prevent the investigation from obtaining evidence which may be needed to support a favorable determination.

 Donald K. Perf
Signature

 3/19/01
Date

 P
 2 of 2

SUSPECT'S RIGHTS ACKNOWLEDGEMENT/STATEMENT (See JAGMAN 0170)

FULL NAME (ACCUSED/SUSPECT) COEN, Michael John	SSN [(b) (6)]	RATE/RANK LTJG/02	SERVICE (BRANCH) USN
ACTIVITY/UNIT USS GREENEVILLE (SSN 772)			DATE OF BIRTH
NAME (INTERVIEWER) MacDONALD, Bruce	SSN [(b) (6)]	RATE/RANK CAPT/06	SERVICE (BRANCH) USN
ORGANIZATION Court of Inquiry in the Matter of the USS GREENEVILLE (SSN 772)		BILLET Counsel to the Court of Inquiry	
LOCATION OF INTERVIEW TRISVCOFFPAC		TIME	DATE

RIGHTS

I certify and acknowledge by my signature and initials set forth below that, before the interviewer requested a statement from me, he warned me that:

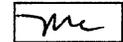
(1) I am suspected of having committed the following offense(s):

VIOLATIONS OF THE UCMJ: **Article 92** (Dereliction of Duty), **Article 110** (Improper hazarding of a vessel);

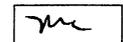
I am further advised, pursuant to 10 USC §2005(g)(2), that that if I, voluntarily or because of misconduct, fail to complete any period of active duty service specified in any agreement with the United States for advanced education assistance, or fail to fulfill any term or condition prescribed pursuant to 10 USC §2005(a)(4), I will be required to reimburse the United States in an amount that bears the same ratio to the total cost of advanced education provided to me as the unserved portion of active duty bears to the total period of active duty I agreed to serve. -----



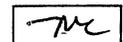
(2) I have the right to remain silent; -----



(3) Any statement I do make may be used as evidence against me in trial by court-martial, and that any prior illegal admissions or other improperly obtained evidence which incriminated me cannot be used against me in a trial by court martial; -----



(4) I have the right to consult with lawyer counsel prior to any questioning. This lawyer counsel may be a civilian lawyer retained by me at my own expense, a military lawyer appointed to act as my counsel without cost to me, or both; and -----



(5) I have the right to have such retained civilian lawyer and/or appointed military lawyer present during this interview. -----



WAIVER OF RIGHTS

I further certify and acknowledge that I have read the above statement of my rights and fully


 MICHAEL JOHN COEN 2

understand them, and that, -----

me

(1) I expressly desire to waive my right to remain silent; -----

me

(2) I expressly desire to make a statement; -----

me

(3) I expressly do not desire to consult with either a civilian lawyer retained by me or a military lawyer appointed as my counsel without cost to me prior to any questioning; -----

me

(4) I expressly do not desire to have such lawyer present with me during this interview; and ----

(5) This acknowledgment and waiver of rights is made freely and voluntarily by, and without any promises or threats having been made to me or pressure or coercion of any kind having been used against me.-----

me

SIGNATURE (ACCUSED/SUSPECT)	TIME	DATE
<i>[Signature]</i>	1240	3/19/01
SIGNATURE (INTERVIEWER)	TIME	DATE
<i>[Signature]</i> B.L. HARRISON, JAGC, USA	1240	3/19/01
SIGNATURE (WITNESS)	TIME	DATE
<i>[Signature]</i> BRUCE E. MCDONALD	1240	3/19/01

The statement which appears on this page (and the following ___ page(s), all of which are signed by me), is made freely and voluntarily by me, and without any promises or threats having been made to me or pressure or coercion of any kind having been used against me.

SIGNATURE (ACCUSED/SUSPECT)

LTJG Coen will give an oral
 Unsworn Statement in open court at
 The Court of Inquiry.

PRIVACY ACT STATEMENT - FOR PARTIES TO THE COURT OF INQUIRY

1. **AUTHORITY:** 5 U.S.C. § 301; 10 U.S.C. §§ 935, 7622-7623; 44 U.S.C. § 3101; 46 U.S.C. §§ 740-752, 781-790; 49 U.S.C. § 1901.

2. **PRINCIPAL PURPOSE(S):** The information which will be solicited is intended principally for the following purpose(s):

a. Determinations on possible disciplinary or adverse administrative action.

b. Adjudication, pursuit, or defense of claims for or against the Government or among private parties.

c. Evaluation of procedures, operations, material, and designs by the Navy and contractors, with a view to improving the efficiency and safety of the Department of the Navy.

d. Public information releases.

e. Other determinations, as required, in the course of naval administration.

3. **ROUTINE USES:** In addition to being used within the Department of the Navy and Defense for the purpose(s) indicated above, records of investigations are routinely furnished, as appropriate, to the Department of Veterans Affairs for use in determinations concerning entitlement to veterans' and survivors' benefits; to Servicemen's Group Life Insurance administrators for determination concerning payment of life insurance proceeds; to the U.S. General Accounting Office for purposes of determination concerning relief of accountable personnel from liability for losses of public funds and related fiscal matters; and to the Department of Justice for use in litigation involving the Government. Additionally, such investigations are sometimes furnished to agencies of the Department of Justice and to State or local law enforcement and court authorities for use in connection with civilian criminal and civil court proceedings. The records of investigations are provided to agents and authorized representatives of persons involved in the incident, for use in legal or administrative matters. The records are provided to contractors for use in connection with settlement, adjudication, or defense of claims by or against the Government, and for use in design and evaluation of products, services, and systems. The records are also furnished to agencies of the Federal, State, or local law enforcement authorities, court authorities, administrative

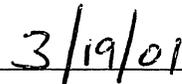
authorities, and regulatory authorities, for use in connection with civilian and military criminal, civil, administrative, and regulatory proceedings and actions.

4. VOLUNTARY DISCLOSURE, CONSEQUENCES OF REFUSING TO DISCLOSE:

Disclosure is voluntary. You are advised that you are initially presumed to be entitled to have disciplinary and adverse administrative determinations in paragraph 2, above, resolved in your favor, but the final determination will be based on all the evidence in the investigative record. If you do not provide the requested information, you will be entitled to a favorable determination if the record does not contain sufficient evidence to overcome the presumption in your favor. If the completed record does contain sufficient evidence to overcome the presumption in your favor, however, your election not to provide the requested information possibly could prevent the investigation from obtaining evidence which may be needed to support a favorable determination.



Signature



Date

EXHIBIT R
PAGE 2 OF 2



DEPARTMENT OF THE NAVY

COMMANDER IN CHIEF
UNITED STATES PACIFIC FLEET
250 MAKALAPA DRIVE
PEARL HARBOR, HAWAII 96860-3131

IN REPLY REFER TO:
5830
Ser 00/463
19 Mar 01

From: Commander in Chief, U. S. Pacific Fleet
To: Mr. Charles W. Gittins

Subj: TESTIMONIAL IMMUNITY FOR CDR SCOTT D. WADDLE, USN,
[(b)(6)]

Ref: (a) Mr. Charles W. Gittins ltr of 1 Mar 01
(b) Mr. Charles W. Gittins ltr of 12 Mar 01
(c) JAG Manual, section 0138
(d) VADM J. B. Nathman, USN ltr of 19 Mar 01

1. In response to references (a) and (b), I forwarded your request for testimonial immunity to the counsel for the Court of Inquiry for a recommendation according to Section 0138 of reference (c). I concur with the Court's recommendation contained in reference (d). Accordingly, the request is denied.


THOMAS B. FARGO

Copy to:
VADM Nathman

3

19 Mar 01

From: Vice Admiral John B. Nathman, U.S. Navy
To: Commander in Chief, U.S. Pacific Fleet

Subj: TESTIMONIAL IMMUNITY FOR CDR SCOTT D. WADDLE, USN

Ref: (a) Mr. Charles W. Gittens ltr of 1 Mar 01
(b) Mr. Charles W. Gittens ltr of 12 Mar 01
(c) JAGMAN
(d) CINCPACFLT ltr 5830 Ser N00/269 of 17 Feb 01
(e) Navy Regulations, Chapter 8

1. By reference (a), CDR Waddle requests a grant of testimonial immunity in order to testify before the Court of Inquiry convened to investigate the facts and circumstances of the collision involving USS GREENEVILLE (SSN 772) and the Japanese M/V EHIME MARU. Reference (b) is a proffer of CDR Waddle's expected testimony. The Court of Inquiry respectfully recommends against any grant of immunity for CDR Waddle.

2. To support a grant of immunity, the testimony of a witness must be deemed "so essential or material that the interest of justice cannot be served without the grant of immunity." Reference (c), section 0138.b. The Court has carefully considered CDR Waddle's proffer of expected testimony. While his testimony may provide additional insights into the events that occurred in the USS GREENEVILLE Control Room the afternoon of 9 February 2001, it is not essential or material to the conclusion of the Court's investigation.

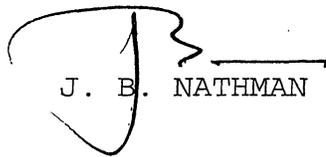
3. The Court has received significant evidence regarding the actions of relevant watchstanders, including those actions of the Commanding Officer, and precise reconstruction data from the USS GREENEVILLE's logs and ARCI system. The Court has sufficient information to meet the requirements of the appointing order (reference (d)): to accurately determine all the facts and circumstances connected with this collision; to assess any fault, neglect, or responsibility for the incident; and to render appropriate opinions and recommendations, to include any administrative or disciplinary action.

4. In making this recommendation against a grant of immunity for CDR Waddle, the Court has also carefully considered the unique privilege afforded those men and women placed in command

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2001 MAR 20 3

Subj: TESTIMONIAL IMMUNITY FOR CDR SCOTT D. WADDLE, USN

of United States warships. The Commanding Officer is entrusted with, and responsible for, the safe navigation of his or her ship. Reference (e), Article 0857. Commander Waddle has the absolute right to make a statement before the Court, either sworn or unsworn, orally or in writing. If he declines to exercise this right, the Court will conclude its investigation and address the issue of CDR Waddle's accountability for this collision without the benefit of his testimony. The Court does not support the setting of either a precedent or a perception that Commanding Officers will only provide a full and accurate accounting for mishaps at sea under grants of immunity.



J. B. NATHMAN

Copy to:
Mr. Gittins

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SERIALIZED _____
INDEXED _____
FILED _____
MAR 19 1968
FBI - WASH DC

PRIVACY ACT STATEMENT - FOR PARTIES TO THE COURT OF INQUIRY

1. **AUTHORITY:** 5 U.S.C. § 301; 10 U.S.C. §§ 935, 7622-7623; 44 U.S.C. § 3101; 46 U.S.C. §§ 740-752, 781-790; 49 U.S.C. § 1901.

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b. Adjudication, pursuit, or defense of claims for or against the Government or among private parties.

c. Evaluation of procedures, operations, material, and designs by the Navy and contractors, with a view to improving the efficiency and safety of the Department of the Navy.

d. Public information releases.

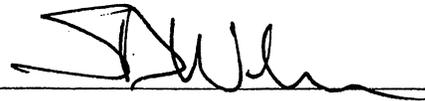
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Signature

20 MAR 2001

Date

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SERIALIZED FILED
MAR 20 2001
FBI - MEMPHIS