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**THE LAW FIRM OF PUCKETT AND FARAJ, PC**

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March 21, 2011

**VIA EMAIL**  
**VIA USPS FIRST CLASS MAIL**

Major General Vaughn Ary  
Staff Judge Advocate to Commandant of the Marine Corps  
Headquarters, U.S. Marine Corps  
3000 Marine Corps Pentagon  
Washington, DC 20350-3000

*Re: Misconduct and unlawful interference with a judicial Proceeding in the case of United States v. Capt Douglas Wacker.*

Dear Major General Ary,

I am a retired Marine Corps officer. I served twenty-two years on active duty, nine of which were as an enlisted Marine. My last three years of service were as a Judge Advocate in the billet of senior defense counsel at Legal Team Echo at Camp Pendleton. For nineteen of my twenty-two years I served in a variety of billets including infantry platoon sergeant, infantry platoon commander, company commander and operations officer. I retired in August of 2008.

I am writing to bring to your attention certain facts that I believe constitute serious misconduct by one of your Judge Advocates. The Officer's name is Col Stephanie Smith.

In December of 2008, I was retained by Capt Douglas Wacker to defend him against certain allegations of violations of the UCMJ. At the time, Capt Wacker was a student on the excess leave program at the University of San Diego Law School. The charges he faced alleged that he raped or sexually assaulted several different students from the USD law school. We began to prepare to defend against the charges but soon realized that preparing for defense of these charges would require more than going through the standard military justice process. It would require us to defend against relentless attacks by the SJA, Col Stephanie Smith, who undermined the proper function of the military justice system, unlawfully interfered with or sought to interfere with witnesses and members, and denied Capt Wacker a timely adjudication of the charges against him. Capt Wacker was acquitted of all the serious charges. He was found guilty of a charge that did not exist on his original charge sheet that we continue to deny he is guilty of, and that was a fanciful creation under the umbrella of "conduct unbecoming" by Col Smith and prosecutors who continued to function under her command.

The fact that Capt Wacker was acquitted of the most serious charges against him is a function of the composition of the jury panel in this case rather than the proper functioning of the

military justice system. The military judge's finding that UCI had been ameliorated by the Government's action does not remedy the harm the military justice system suffered in the eyes of the general public. You only need to review the Marine Corps Times articles on this case and other cases Col Stephanie Smith was involved in to understand the harm she caused. Her conviction at any price approach to military justice sought to use every advantage, fair or unfair, to place an accused in a disadvantageous position by fabricating baseless charges or allegations or by denying an accused certain due process rights such as telling civilian witnesses they don't have to go to an Article 32 hearing or by ordering her prosecutors to ensure that alleged sexual assault victims become unavailable during an Article 32 hearing. *See Enclosure A, Maj Bueno Affidavit.*

*Col Smith Convinces BGen Walker to disenroll Capt Wacker based on false allegations of disobeying an MPO*

On March 9, 2009, Capt Wacker was notified by the then SJA to CMC of his intent to disenroll Capt Wacker from the ELP program. *Enclosure B.* Such a decision is well within the prerogative of the SJA to CMC. The problem with this particular decision, however, was the timing. The incidents forming the basis for the charges against Capt Wacker occurred in New Orleans in April of 2007. The decision to disenroll came in March of 2009. The Marine Corps and the command were well aware of the allegations throughout the period. In fact, Capt Wacker found out about the allegations in New Orleans from his command. BGen Walker decided to disenroll Capt Wacker because he was informed that Capt Wacker disobeyed a direct lawful order by violating an MPO. The subject MPO listed twenty names. Of the twenty names listed on the MPO only a handful were in New Orleans on the date of the allegations. The majority of those listed on the MPO were friends of Capt Wacker who either had nothing to do with the alleged incident in New Orleans or knew nothing about the allegations. Moreover, the people listed had been in regular contact with Capt Wacker throughout the preceding two years before the MPO issued. Nonetheless, Capt Wacker obeyed the MPO. Shortly after the MPO was issued, Capt Wacker was charged with violating it. The charges were baseless. The facts underlying the alleged violation are an online chat between Capt Wacker and one of his closest friends –Capt Blosser- in which Capt Wacker tells Capt Blosser that there is an MPO and he can no longer speak to him.

The charge of violating the MPO was eventually dropped after the Investigating Officer at an Article 32 hearing in June of 2009 found no factual basis for it. During a 39a session on February 23, 2011, Col Stephanie Smith testified that she took it upon herself to notify BGen Walker of Capt Wacker's alleged violation of the MPO. It was clear from her testimony that she pushed to have Capt Wacker disenrolled from the Law Program. During that same 39a hearing, Capt Wacker's company commander while he was on the excess leave law program, a Maj Armando Budomo, testified that Col Smith as the SJA made it quite clear to him that in her eyes Capt Wacker was guilty and should never be an attorney; she also wanted Capt Wacker to be transferred so that he would fall under her supervision in the law center at MCRD.

At the time the MPO issued, Col Smith served as the SJA at MCRD, San Diego. She took the lead in preparing the MPO and having the commander issue the obviously overbroad and unconstitutional MPO. After preparing and facilitating the issuance of the MPO, she alleged

that Capt Wacker violated it when he clearly did not and followed-up by pushing to have Capt Wacker disenrolled from the excess leave law program so that he would fall under her control and eventually her command when she assumed command of Headquarters and Services battalion. Col Smith' efforts to disenroll Capt Wacker from the excess leave law program had no valid basis and were undertaken in bad faith to prevent him from obtaining his law degree.

*Col Smith wrongfully influenced court members and witnesses*

Once Capt Wacker was disenrolled from excess leave law program, he was reassigned to work in the G-3 section at MCRD San Diego. The AC/S G-3 was Col Christopher Conlin. In the G-3, Capt Wacker was initially assigned to work for Maj Christopher Blalock and later LtCol Thad Trapp. Based on testimony from Maj Blalock, LtCol Trapp, and Col Conlin, Capt Wacker did a fine job. He accomplished all duties assigned to him and was a key figure in a Base wide exercise that was carried off successfully in 2009. The entire G-3 section received accolades for their performances including Capt Wacker. The accolades and the assignment of duties and responsibilities that challenged and in turn availed Capt Wacker of potentially outstanding good military character witnesses and evidence appears to have infuriated Col Smith. She undertook to persuade Col Conlin, LtCol Trapp, and Maj Blalock to reassign Capt Wacker to a lesser position. *See Transcript of February 22-25, 39a testimony of Col Smith, Col Conlin, Col Trapp and Maj Blalock.*

Her efforts to have him moved were quite odd because she had no cognizance over Capt Wacker's duties at the G-3. Having no cognizance did not dissuade Col Smith however. In pursuing her goal of moving Capt Wacker to a lesser billet, she made several inappropriate and unprofessional comments to try and persuade those officers responsible for him to reassign him or move him. Maj Blalock and LtCol Trapp testified that she called Capt Wacker a narcissist, a rapist and psychopath. Col Conlin remembers her calling him to tell him that Capt Wacker was a narcissist. Col Smith denied all of it under oath.

The same language was used in an email that was sent out by her, then, executive officer LtCol Bond to the court martial members named in the convening order. *See Enclosure B, email of LtCol Bond and Enclosure C, MCRD-San Diego GCMCO #1-09* and also to several of Capt Wacker's character witnesses. After LtCol Bond sent out his email, Col Smith sent out an email to the same recipients admonishing LtCol Bond and stating that that was not her position. *See enclosure D.* A careful review of LtCol Bond's email reveals that his words represent the opinion of Col smith. While testifying under oath regarding statements made about Capt Wacker, Col Smith emphatically denied ever making such statements, in direct contradiction to the testimony of LtCol Trapp, Maj Blalock and the reasonable inferences about the issue within LtCol Bond's email.

LtCol Bond did not know Capt Wacker on a personal level. There is no reason for him to make such statements if he did not hear the statements from someone who held such an opinion of Capt Wacker. LtCol Bond testified that Col Smith did not share her opinion of Capt Wacker with him. That is a curious statement, however, because she freely shared her opinions of Capt Wacker with Col Conlin, LtCol Trapp, Maj Blalock, and Maj Budomo. In any event LtCol Bond was betrayed by his own testimony. He testified that once when he was playing basketball

with Col Smith she told him never to assign an accused to a billet that would help an accused develop good military character evidence before his court martial. Col Smith sought to do exactly that with Capt Wacker.

Col Smith admitted to speaking to Col Conlin about Capt Wacker. She testified that she did not agree with Col Conlin's decision to assign him the duties he was performing. When asked if she had ever communicated the words "psychopath" "rapist" or "narcissist," Col Smith categorically denied making such statements to anyone at all. Her demeanor on the stand as she struggled to find answers that appeared truthful spoke louder than the words she uttered. She fidgeted, kept her hands in front of her mouth, and slouched. She was clearly uncomfortable and called her own credibility into question. She was especially incredible when she was asked questions about her role in luring Capt Christopher Blosser to an NCIS interview under the guise of a mentoring meeting.

*Col Smith committed perjury when she testified under oath that she did not invite Capt Blosser to lunch for the purpose of having him meet NCIS Agent John Burge.*

The defense in this case filed two UCI motions. One motion was filed on or about September of 2009, while the case was at MCRD, San Diego. Another was filed after the charges were withdrawn and re-referred at MCAS, Miramar. That motion was filed in October of 2010. It was followed up and supplemented by a motion seeking to have the charges dismissed because of an improper withdrawal and re-preferred motion under R.C.M. 604.

Among one of the many issues raised by the UCI motions is an allegation that Col Smith had abandoned her role as an SJA and became an investigator. The reason the defense alleged that Col Smith became an investigator is because the defense discovered -based on the testimony of NCIS Special Agent John Burge and the testimony of Capt Christopher Blosser at the first Article 32 hearing in June of 2009- that Col Smith collaborated with Agent Burge to lure Capt Christopher Blosser to MCRD for an interview under the pretext of a professional mentoring lunch.

Capt Blosser was also an ELP student at USD and a very close friend of Capt Wacker. Unlike Capt Wacker, however, he did not belong to Headquarters and Services Battalion MCRD, San Diego. Capt Blosser reported to a local I&I command in San Diego. During sworn testimony at the 39a that took place between 22 and 24 February 2011, Col Smith denied that the lunch with Capt Blosser was a ruse to get Capt Blosser to meet with NCIS. Capt Blosser testified that he was called and invited to a mentoring lunch by Maj Jackson, Col Smith's deputy at the time, at the behest of Col Smith. He testified that when the lunch concluded, he was escorted to an office where NCIS Agent Burge was waiting for him. He, then, came to realize the he had been duped because the entire lunch was a ruse.

Capt Blosser's feeling about the lunch was confirmed by NCIS Agent John Burge. Agent Burge testified that he contacted Col Smith during the investigation to try and locate Capt Blosser. He testified that Col Smith asked him when he would like to meet Capt Blosser. They then coordinated a time date and location for the meeting. On the agreed upon date, NCIS Agent Burge went to the place where Col Smith told him to be. He waited a few minutes until Col

Smith walked up with Capt Blosser after they had completed their “mentoring lunch,” and she turned Capt Blosser over to Agent Burge.

Col Smith denied that the entire lunch was for the purpose of bringing Capt Blosser to NCIS Agent Burge for interrogation. During questioning she became evasive and refused to testify to very specific questions about whether she had ever invited any individual law student to a similar lunch as she had done with Capt Blosser. She kept repeating that she invited many law students who were interested in Marine Cops Careers. She was asked to listen to the question and asked again if she could recall a single time when she ever invited a Marine Corps officer law student for a mentoring session, solicited or unsolicited. She kept testifying about functions she or her staff out together for non-Marine Corps law students who would seek advice on Marine Corps careers. The question was posed to her several different times. She refused to provide a clear answer and continued to evade.

Following the close of the presentation of evidence in the trial in this case, the Government produced Agent Burge for a post-trial 39a. Agent Burge testified that he went to Col Smith for help with locating Capt Blosser for an interview. She instructed him to be at MCRD at a certain time and location. He did as instructed. At that time Col Smith walked up with Capt Blosser after they had had lunch and turned Blosser over to the NCIS agent for interrogation.

*Col Smith Committed Perjury when she testified that Maj Armando Budomo sought her out to locate Capt Wacker*

During the same pretrial 39a held between 22 and 24 February, Col Smith testified that Maj Armando Budomo, Capt Wacker’s company commander in 2008 and 2009 before Capt Wacker was transferred to MCRD, San Diego, sought her out to assist him in locating Capt Wacker to take a PFT. This testimony is directly contradicted by Maj Budomo and by the evidence. Maj Budomo testified that Col Smith sought him out to find Capt Wacker. This testimony is supported by the facts at the time at issue. Maj Budomo was Capt Wacker’s company commander. Maj Budomo testified that as the company commander he would have no need to contact the SJA –Col Smith- to reach one of his Marines. He also testified that Capt Wacker contacted him regularly pursuant to reporting requirements established for Capt Wacker while he was on the excess leave law program. Col Smith was provided several opportunities while under oath to correct her testimony. She remained adamant that Maj Budomo contacted her. She, however, could not explain why a company commander would have a need to contact the SJA to find one of his Marines. The relevance of the contact with Maj Budomo relates to Col Smith’s statements to Maj Budomo regarding her opinion of Capt Wacker’s guilt. Col Smith denied making such statements and testified that Budomo called her to find his Marine. The facts, however, contradict her. It makes no sense for Budomo to contact the SJA to find one of his Marines.

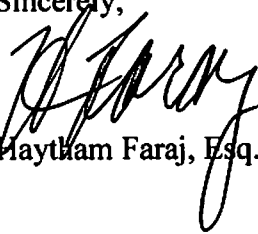
Summary

Col Smith’s conduct in this case casts serious doubt on the fairness of the military justice system and its independence from improper influence. Capt Wacker’s case is but one of many I

am personally familiar with. She has placed people in pretrial confinement based on fabrications and lies or when the facts or charges do not merit pretrial confinement in direct violation of the spirit of R.C.M. 305. This is an officer who is ethically challenged, has a poor understanding of the military justice system, the pernicious effect even subtle interference can have on the process, and fails to grasp the role of the SJA and the commander in the military justice process. Perhaps most disturbing is that she is a commander who lacks any understanding of the commander's role as the *convening authority* in the military justice process.

I have never made this type of complaint before but after contemplating the matter for a long time, I decided that it must be brought to your attention for action. I am available by email at [haytham@puckettfaraj.com](mailto:haytham@puckettfaraj.com) or at the number below.

Sincerely,



Haytham Faraj, Esq.

Copy to:  
Chief Defense Counsel of the Marine Corps  
JAR Branch Head  
RDC-West Coast  
Detailed Defense Counsel  
Client  
File

AFFIDAVIT

AFFIANT says of his own personal knowledge:

Col Smith called a meeting between me, as the prosecutor, and two NCIS special agents to discuss the Hawk case. One SA present was SA Rendon, however, I cannot recall the name of the other SA. I would be able to recognize the other agent if I saw him. This meeting took place one afternoon in the conference room at the law center in which SA Rendon was briefing us (Col Smith and I) on the latest update with the case. Col Smith was intimately involved with all military justice cases and the Hawk case was no different. She made it a point to contact the agents on a regular basis to receive updates and to provide guidance to them as to how to better conduct their investigations (who to interview, etc...).

During this meeting, after receiving the agent's update, Col Smith turned to me and asked if I had interviewed the victim, Danielle Ligon. I told her I had and Col Smith asked me to elaborate. I informed Col Smith, in the presence of the two agents, that Danielle told me that her intent was to go out with her friend, Amy, and to hang out with her at a club. She only wanted to hang out with Amy and no one else. Danielle's intent was not to "Hook up" with anyone to include the accused. Col Smith then looked at me in disbelief and said, "Rob, you don't believe her do you?" I told her that that is what she said and I had no reason to disbelieve her. Col Smith then said, "Well, no one is going to buy off on her story." "You can't make her come off as the Virgin Mary because no one is going to believe her Rob." "Have her say that she went to the Locker Room with every intention of meeting with Hawk and things got out of hand." "And because he is much larger than her, she suddenly found herself in a situation where she couldn't get out of."

I understood that Col Smith was directing me to have Danielle change her testimony in order to make her, Danielle, more credible. I could not believe she was asking this of me and I immediately looked at SA Rendon to see if he was listening to these instructions as they were given to me. I was hoping he would have had a reaction or supported me by saying that Danielle told him the same thing. SA Rendon and the other agent remained quiet. I also believe that she was instructing me in the presence of the SAs in order for them to get on "the same sheet of music."

It was Col Smith's policy that was widely known to me as the military justice officer, the deputy SJA, and all of my prosecutors that she developed a litmus test for selecting investigating officers for Article 32 hearings. There were two reservist Marine Officers who made a recommendation to General Salinas that their respective case be sent to a lower forum other than a general court martial. As a result, Col Smith told the military justice section that she no longer wanted us to select reservists to be appointed as investigating officers.

Subsequently, she removed the option of selecting from a pool of investigating officers from Miramar after Major Mori, the military justice officer at Miramar, gave a recommendation for one of our cases to be tried at a lesser forum than a general court martial. Col Smith wanted me to only exclude Major Mori as an Article 32 officer because she described him as a "Defense counsel holding a military justice officer's billet." She just wanted him alone to be excluded, but when I mentioned to her that I normally send the request to Major Mori who selects the Article 32 officer based upon the officer's availability, he would be able to volunteer to conduct the hearing himself. She then

Initial: 

made it a blanket policy to exclude all of Miramar's attorneys from participating as investigating officers.

After Col Smith filtered all of these potential officers, the only person I could ask for at that time was Capt Miner, who is a judge advocate and was serving as a company commander at Camp Pendleton for Weapons Field Training Battalion.

Prior to holding the Article 32 hearing, Danielle told me that she did not want to participate in the case and wanted the case to go away because she was fearful for her life. I discovered her concern only after her victim advocate (I believe her name is Sandy) brought it to my attention by handing me an e-mail she had received electronically from Danielle. In the e-mail, to the best of my recollection, it had read that someone threw a brick or rock through the glass part of her car door. Her car was parked at her residence and this indicated to her that Hawk knew where she lived and what car she drove. This frightened her and it scared her so far as to not wanting to cooperate with the government. She believed it was a warning from Hawk and it convinced her to basically cease and desist.

Upon receiving this e-mail from the victim advocate, Sandy, I showed it to Col Smith. Col Smith told me, "This is not good Rob. We can't afford to lose her; do whatever it takes to get her back on track." I told Col Smith that I had already placed several unanswered calls and e-mails to her and was not getting a positive indication that Danielle wanted to participate. Col Smith said, "Do whatever you have to to get her back on board." At some point during her instructions, she also stated that she didn't care what I had to do.

I was persistent with my attempts to contact Danielle until she changed her mind and wanted to cooperate again. I must have gone overboard because she was so inflamed that she wanted to testify at the article 32 hearing after I spoke with her. I didn't want Col Smith to yell at me for violating another one of her policies - avoid at all costs victims testifying at Article 32 hearings. She only wanted the government to put NCIS agents on the stand and no one else.

Based upon Col Smith's policy, I mentioned to Danielle that she did not have to testify and she had a right to decline. Danielle was concerned that her not testifying at the article 32 hearing would adversely affect the case as it would show that she did not want to testify and thought it would reflect negatively on her credibility and show a lack of confidence. She wanted to testify. I went over the rules again and told her it was not necessary. Danielle then signed the invitational sheet I brought to her inviting her to the Article 32 hearing and declining to testify.

I took the same sheets to the other civilians involved in the case. I explained the procedures and they declined to participate at the hearing. Again, my motivation was to comply with Col Smith's policy to avoid a negative confrontation with her. Early during her tenure as SJA, she yelled and ridiculed one of my senior Captain prosecutors at a military justice meeting in front of other prosecutors and enlisted Marines for allowing his victim to testify at an Article 32 hearing.

Regarding all of the other charges not related to Danielle Ligon, Col Smith was looking into Hawk's background herself, looking at his security clearance issues and drunk and disorderly conduct as the SJA on his case. She brought all of that stuff up and handed it to me to prosecute. She told me that she had discovered additional charges and rebuttable evidence for me.

Initial: 



Col Smith also claimed that the CID chief (I believe his last name is Cullen) was covering for Hawk. She stated that Hawk was an MP by MOS and the CID chief did not report something that Hawk did to affect Hawk's security clearance. Col Smith took it upon herself to look for "dirt" on the CID chief and gathered evidence to get him relieved from CID. The chief was a GySgt who had just been promoted to MSgt. The CID chief was relieved from his post. Col Smith was upset with the Provost Marshall, Major Rourke, for not supporting her assertions against his CID chief. She then attempted to have him relieved from his billet too. Col Helfrich, the H&HS Battalion CO at the time, rejected the SJA's accusations which only infuriated her more.

Col Smith dug up the petty cab and drunk and disorderly incidents against Hawk as the SJA. I am aware that in other cases Col Smith would frequently talk to witnesses and victims. She would brag about how she would flip defense witnesses and how she would chew their butts out for testifying for the defense. She would tell me, "Rob, why am I doing your job?" "Defense witnesses should not want to testify after you speak with them." "You need to point out the error of their ways and who they need to answer to when they get back to their unit because they will have some explaining to do."

I remember once that the XO from 8<sup>th</sup> Marine Corps District (I believe his name started with LtCol Kaz) testified for the defense in either a sentencing case or admin board and Col Smith stated that she could not believe a LtCol would do that (testify for the defense). She also said that she was going to talk to General Salinas about that. I cannot recall the other Marine's name, but Hawk was on a double date with another Marine when he met Danielle. Col Smith told me that if that Marine would not testify favorable for the government, that we should threaten him by charging him with adultery since he was married and fooling around with Amy. She wanted to keep him "in check."

I swear that the above official statement is true and correct to the best of my knowledge.

Robert M. Bono  
Print Name

[Signature]  
Signature

10/20/10  
Date



**DEPARTMENT OF THE NAVY**  
HEADQUARTERS UNITED STATES MARINE CORPS  
3800 MARINE CORPS PENTAGON  
WASHINGTON, DC 20380-3800

IN REPLY REFER TO:  
5000  
JAS/hetw  
9 Mar 09

**From:** Staff Judge Advocate to the Commandant of the Marine Corps  
**To:** Captain Douglas S. Wacker 9313/4401 USMC  
**Subj:** NOTICE OF CONSIDERATION FOR DISENROLLMENT FROM THE EXCESS LEAVE PROGRAM (LAW)/ELP(L)  
**Ref:** (a) SECNAVINST 1520.7F  
(b) LEGADMINMAN, Chapter 19  
**Encl:** (1) CO HQSVBN MCRD ltr 5800 S-1 of 2 Mar 09  
(2) Capt Wacker Education Program Agreement for ELP (Law) of 18 Jan 06

1. Enclosure (1) indicates that while you were under investigation by NCIS for allegedly violating articles 120 and 134 of the UCMJ, you violated a direct order from your Commanding Officer to not contact any of the alleged victims or witnesses related to the investigation. This behavior is inconsistent with the high standards of conduct for a Marine officer and the ethical standards of the legal profession. As a result, pursuant to reference (a) and (b), and as stated in enclosure (2), you are being considered for disenrollment from the Excess Leave Program (Law) for deficiency in conduct.
2. You are afforded the opportunity to make a written reply within thirty (30) days from your receipt of this letter. Your reply, if any, will be given full consideration in making a final determination on whether you are to be disenrolled from the Excess Leave Program (Law).
3. A final decision and the supporting grounds for that decision will be set forth in writing and a copy provided to you.

  
J. C. WALKER

Enclosure (B)



**UNITED STATES MARINE CORPS**  
**MARINE CORPS RECRUIT DEPT./WESTERN RECRUITING REGION**  
1600 HENDERSON AVENUE, SUITE 238  
SAN DIEGO, CALIFORNIA 92140-5801

ST. PERRY REFER NO.  
5800  
5  
S B W ...

**FIRST ENDORSEMENT on CO HQSVCBn ltr 5800/S-1 of 2 Mar 09**

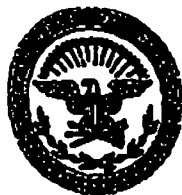
**From:** Commander, MCRD/WRR San Diego  
**To:** Commandant of the Marine Corps (JAM)  
**Via:** (1) Commanding General, Training and Education Command  
(2) Commanding General, Marine Corps Combat Development Command

**Subj:** RECOMMENDATION FOR TERMINATION OF EXCESS LEAVE PROGRAM (LAW) ICO CAPT DOUGLAS S. WACKER 9313/0602 USMC

1. Forwarded, recommending approval.
2. I concur with the recommendation of the Commanding Officer, Headquarters and Service Battalion. Capt Wacker should be disenrolled from Excess Leave Program (Law) and placed in a regular duty status to prepare for his pending Article 32 Investigation.

  
C. F. HUENEFELD

**ENCLOSURE (1)**



**UNITED STATES MARINE CORPS**  
**HEADQUARTERS AND SERVICE BATTALION**  
**MARINE CORPS RECRUIT DEPOT/WESTERN RECRUITING REGION**  
**3800 BELLEAU AVENUE**  
**SAN DIEGO, CALIFORNIA 92140-3199**

**IN RELY ASST TO:**  
**5800**  
**S-1**  
**2 Mar 09**

**From: Commanding Officer**  
**To: Commandant of the Marine Corps (JAS)**  
**Via: (1) Commanding General, Marine Corps Recruit Depot San Diego/Western Recruiting Region**  
**(2) Commanding General, Training and Education Command**  
**(3) Commanding General, Marine Corps Combat Development Command**

**Subj: RECOMMENDATION FOR TERMINATION OF EXCESS LEAVE PROGRAM (LAW) ICO CAPTAIN DOUGLAS S. WACKER 9313/0602 USMC**


**Ref: (a) MCO P5800.16A (LEGADMINMAN)**

1. Pursuant to paragraph 19008 of the reference, I recommend that Captain Douglas S. Wacker be terminated from the Excess Leave Program (Law) (ELP(L)) for deficiency in conduct.
2. Per the reference, deficiency in conduct includes... "behavior recognized by the Marine Corps as inconsistent with ... the high standards of conduct and performance of the officer corps..."
3. Captain Wacker is pending charges for two allegations of rape, one allegation of indecent assault, one allegation of obstruction of justice, and an allegation of orders violation (violation of Military Protective Order/No Contact Order).
4. Captain Wacker's law school has not decided to expel him from school, but has banned Captain Wacker from the law school campus, based upon public safety concerns. To ensure that he is not irreparably impacted by the ban, the law school has employed professional note takers for the time being to ensure that he does not fall behind in any of his classes.
5. After allegations of obstruction of justice were raised, this battalion was compelled to issue a Military Protective Order and a No Contact Order to Captain Wacker to safeguard the military justice process. Despite receiving written orders and a detailed oral explanation, reports to NCIS indicate that Captain Wacker violated those orders within one week of receiving them. Refusal by a Marine Corps officer to follow explicit orders relating to such a serious matter is

Subj: RECOMMENDATION FOR TERMINATION OF EXCESS LEAVE PROGRAM  
(LAW) ICO CAPT DOUGLAS S. WACKER 9313/0602 USMC

inconsistent with the high standards of conduct expected of a Marine Corps officer, leaving me no choice but to submit this recommendation.

6. Accordingly, I recommend that Captain Wacker be terminated from the Excess Leave Program (Law) (ELP(L)) for deficiency in conduct and be returned to a regular duty status to afford him the opportunity to prepare his defense for a pending Article 32 investigation.



K. S. HELFRICH

## Blalock Major Christopher G

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**From:** Bond LtCol GregoryF ✓  
**Sent:** Thursday, September 24, 2009 5:36 PM  
**To:** Conlin Col Christopher C ✓  
**Cc:** Trapp LtCol Thad R; Huenefeld Col Carl F; Myers CIV Clifford O III; Blalock Major Christopher G  
**Subject:** RE: CAPT WACKER

Sir:  
Col Smith can't say it because she is the "impartial" CO. I the XO I can. Wacker is a psychopath who, if / when he is court martial , goes to prison and returns will be the type of individual who would be a Lone Shooter and get back at everyone who he thinks "wronged" him. Just like when he raped the 3 law students who refused to go out on a date with him. You did not read the NCIS investigation...I did You did not interview or speak with the NCIS Investigators who sent lab results to Quantico (FBI) because of the nature of the drugs he used to "drug" his victims before he raped them. If Wacker is acquitted, it will be because of a slick lawyer or NCIS procedural problems.  
He is a rapist. I am sure the Colonel would not want him to watch your kids. If we had a "suspected" DI Child Molester, and we gave him to MCCS to go work while his trial was going on, would it be right to put him in charge of the day care center. I think not.  
Just wanted to clarify why I think he is a criminal and we should not be giving him access to ATF Plans.  
I will come to the G-3 and work on the AAR in the time being if that is what it takes to remove Wacker from this position.  
The next time we send a "body" to the G-3, we will stipulate and make recommendations/agreements before he is billeted.

Sir  
Lt Col Bond

-----Original Message-----  
**From:** Bond LtCol GregoryF  
**Sent:** Thursday, September 24, 2009 17:17  
**To:** Conlin Col Christopher C  
**Cc:** Trapp LtCol Thad R; Huenefeld Col Carl F; Smith Col Stephanie C; Myers CIV Clifford O III  
**Subject:** RE: CAPT WACKER

Yes, Sir. We can give you Major Bennett until his deployment.  
BO

-----Original Message-----  
**From:** Conlin Col Christopher C  
**Sent:** Thursday, September 24, 2009 17:10  
**To:** Bond LtCol GregoryF  
**Cc:** Trapp LtCol Thad R; Huenefeld Col Carl F; Smith Col Stephanie C; Myers CIV Clifford O III  
**Subject:** RE: CAPT WACKER

Does that mean I'll be getting his relief on deck here tomorrow for the required turn over? Or are we intending to gap a billet on the heels of executing a major AT/FP exercise that shows the necessity of a well manned Mission Assurance Section?

CCC

**Enclosure (c.)**



UNITED STATES MARINE CORPS  
MARINE CORPS RECRUIT DEPOT/WESTERN RECRUITING REGION  
1600 HENDERSON AVENUE  
SAN DIEGO, CALIFORNIA 92140

IN REPLY REFER TO:  
5817  
9D  
GCMCO #1-09


01 MAR 2009

GENERAL COURT-MARTIAL CONVENING ORDER, SERIAL 1-09

Pursuant to the authority contained in R.C.M 504(b)(1) and JAGMAN section 0120a(1), A General Court-Martial is hereby convened to hear all those cases properly referred to it, with the following members:

MEMBERS

Colonel C. C. Conlin, U.S. Marine Corps;  
Colonel P. G. Looney, U.S. Marine Corps;  
Colonel M. A. Biszak, U.S. Marine Corps;  
Lieutenant Colonel G. F. Bond, U.S. Marine Corps;  
Lieutenant Colonel M. A. Begin, U.S. Marine Corps;  
Lieutenant Colonel N. C. Maker, U.S. Marine Corps;  
Major L. M. Webb, U.S. Marine Corps;  
Major C. G. Blalock, U.S. Marine Corps;  
Captain E. M. Lopez, U.S. Marine Corps;  
Captain B. W. Richardson, U.S. Marine Corps;  
Captain S. E. McCann, U.S. Marine Corps; and  
First Lieutenant Z. B. Walter, U.S. Marine Corps.

  
A. SALINAS  
Brigadier General  
U.S. Marine Corps  
Commanding General

*Certified True Copy*  
*Zenr Koska, Capt, USMC*

Enclosure (D)

## Keske Capt Zenon W

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**From:** Richardson Col Michael B  
**Sent:** Friday, October 02, 2009 10:40 AM  
**To:** Keske Capt Zenon W  
**Subject:** Important message  
**Signed By:** michael.b.richardson@usmc.mil

-----Original Message-----

**From:** Smith Col Stephanie C  
**Sent:** Thursday, October 01, 2009 14:45  
**To:** Trapp LtCol Thad R; Blalock Major Christopher G; Conlin Col Christopher C; Myers CIV Clifford O III  
**Cc:** Richardson Col Michael B  
**Subject:** Important message

Gentlemen:

It just came to my attention that my XO spoke in an e-mail to all of you harshly regarding Captain Wacker and his pending legal action. To be clear, I was unaware of this e-mail until now and do not in any manner condone or ascribe to his comments. I am committed to ensuring that Captain Wacker gets a fair trial. Captain Wacker is innocent until proven guilty by a competent court of law. As some of you may know I made the decision to move Captain Wacker from the G3 and reassign him to duties within the battalion. I did this because I was concerned that the decision to task him as the "lead" G3 representative for the multi-agency exercise Aztec Fury that had considerable media coverage exposed the Depot to unnecessary risk. If Captain Wacker as the lead representative for the Depot were to speak to the media and the media made the connection that he is pending trial for alleged sexual misconduct, this had the potential to reap bad press for the Depot. I also was concerned that based solely on the seriousness of the charges to which he is accused, that Captain Wacker should not be privy to the specifics of the force protection plan for the Depot and/or the local authorities response plan in the event of an emergency aboard the Depot. This decision was mine and was made to ensure good order and discipline within my command and had nothing to do with Captain Wacker personally. I do not want my decision to move Captain Wacker to impact your decision to participate in any manner you deem appropriate regarding Captain Wacker's upcoming trial. In fact, I expect you to participate without any fear of repercussion or reprisal in any manner you deem appropriate. Once again, I do not agree with the XO's comments and want to make it completely clear that those comments were improper. That e-mail should not in any way prevent you from fulfilling your right and obligation to participate in any manner you deem appropriate for Captain Wacker's court proceedings. Lastly, please do not forward LtCol Bond's unprofessional e-mail to anyone else. Doing so will further jeopardize the potential jury pool for Captain Wacker and jeopardize his right and entitlement to a fair trial.

V/R  
Col Smith





DEPARTMENT OF THE NAVY  
HEADQUARTERS UNITED STATES MARINE CORPS  
3000 MARINE CORPS PENTAGON  
WASHINGTON, DC 20350-3000

IN REPLY REFER TO:  
5800  
JAR1

21 JUL 2011

Haytham Faraj, Esquire  
The Law Firm of Puckett and Faraj, P.C.  
1800 Diagonal, Suite 210  
Alexandria, Virginia 22314

Dear Mr. Faraj,

This letter is in response to your letter of March 21, 2011, making a formal complaint of professional misconduct against Colonel Stephanie C. Smith, U.S. Marine Corps. As Rules Counsel for the U.S. Marine Corps, I am responsible for reviewing allegations of professional misconduct against Marine judge advocates and determining appropriate action.

After careful review of your complaint and Colonel Smith's response, I requested that the Commanding General, Marine Corps Recruit Depot/Western Recruiting Region, San Diego, appoint an officer to conduct a preliminary inquiry into the allegations according to the procedures in JAG Instruction 5803.1C. I have reviewed the results of the preliminary inquiry, and I have taken appropriate action.

Thank you for bringing this matter to my attention. The point of contact in my office for this matter is Lieutenant Colonel Porter Harlow, Research and Civil Law Branch Head, at 703-693-8164.

Sincerely,

A handwritten signature in black ink, appearing to read "V. A. Arty".

V. A. ARTY  
Major General, U.S. Marine Corps  
Staff Judge Advocate to the  
Commandant of the Marine Corps  
Rules Counsel