



UNITED STATES MARINE CORPS

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IN REPLY REFER TO:

5814

SJA

JUN 30 2011

MEMORANDUM

From: Staff Judge Advocate, 3d Marine Aircraft Wing
To: Commanding General, 3d Marine Aircraft Wing

Subj: STAFF JUDGE ADVOCATE'S RECOMMENDATION IN THE GENERAL
COURT-MARTIAL CASE OF UNITED STATES V. CAPTAIN DOUGLAS S.
WACKER, XXX XX 9313/0602, USMC

Ref: (a) Manual for Courts-Martial, United States (2008 ed.)
(b) 10 U.S.C. § 1565
(c) JAGINST 5800.7E (JAGMAN)
(d) Record of Trial ICO Capt D. S. Wacker, XXX XX 9313/0602,
USMC

Encl: (1) Capt Day's ltr 5800 MJ of 24 Jun 11
(Corrected Report of Results of Trial)
(2) Capt Day's ltr 5800 MJ of 23 Mar 11
(Report of Results of Trial)
(3) Marine Corps Total Force System (MCTFS) 3270: Basic
Individual Record (BIR), Basic Training Record (BTR),
Record of Service (ROS), Awards (AWDS), and Service Tour
Data
(4) Capt Hur's ltr 5800 DEF of 24 Mar 11
(Request for Clemency)

1. **Action Required:** This recommendation is to assist you in deciding what action to take in the General Court-Martial of Captain Douglas S. Wacker, USMC. While action on the guilty findings or sentence is a matter within your discretion, you must consider the Corrected Report of Results of Trial (enclosure (1)), this recommendation and any addendum thereto, and any post-trial matters submitted by the defense. You may also consider the record of trial and the personnel record of the accused as well as any other matters you deem appropriate. If, however, these matters are adverse to the accused and not included in the record of trial, the defense must be given the opportunity to comment. Reference (a).

2. **Report of Results of Trial:** I have reviewed the Corrected Report of Results of Trial, enclosure (1), and it accurately reflects the charges, findings, and sentence adjudged in this case, as well as any applicable confinement credit. Enclosure (2)

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is the Report of Results of Trial prior to the corrections being made.

3. **Pretrial Agreement:** There is no pretrial agreement in this case.
4. **Service Summary:** Enclosure (3) contains the Accused's MCTFS information to include: BIR, BTR, record of service, awards, and service tour data.
5. **Recommendation of the Sentencing Authority:** The sentencing authority (court-martial members) in conjunction with the announced sentence, recommend the following clemency: convening authority's non-judicial punishment; as part of any NJP sentence, the members also recommended "non-felony reprimand" and a formal written apology to the University of San Diego Critical Issues Board.
6. **Legal Error Raised by Defense:** The defense has not yet raised any allegations of legal error, but may do so in response to this recommendation.
7. **Post-Trial Matters Submitted by the Accused:** Post-trial matters submitted by the defense are contained in enclosure (4). You are required to consider these matters in determining whether to approve or disapprove any of the findings of guilty and the action you take on the sentence.
8. **DNA Collection:** Federal law and service regulations require authorities, upon conviction of certain qualifying offenses, to collect a sample of the offender's DNA. The order promulgating your action in those cases must contain certain notice requirements. Reference (b). This case requires DNA collection, thus the order promulgating your action must comply with applicable notice requirements.
9. **Post-Trial Processing:** Service regulations require that you take action within 120 days of the date the court-martial adjourns. There will likely be delay in the post-trial processing of this case. The primary reason for the delay is that the court reporters at Camp Pendleton took longer than usual to transcribe the lengthy record of trial. This was due to a backlog of cases that required processing. Also, once the record was transcribed, it was sent to Okinawa, Japan for authentication by the Military Judge and then returned to MCAS Miramar. This transit time added significant delay. In the event that your action occurs more than 120 days from the date the court-martial adjourns, you are required to report to CMC (JAM), in writing and under your

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personal signature, that delay has occurred in this case and the reasons for the delay. A copy of the letter must be included in the record of trial. Reference (c). Despite the delay, no corrective action is warranted.

10. **Companion Cases:** In order to make an informed decision in this case, service regulations require you to note in your action the separate trial of any companion cases. Reference (c). Companion cases are other cases referred to trial by you and involve servicemembers who, along with the accused, engaged in criminal conduct in a concerted effort to achieve a common goal. There are no companion cases.

11. **Additional Information:** None

12. **Recommendation:** Having reviewed the record of trial and the matters submitted by the defense, I recommend that you approve the sentence as adjudged and order the sentence executed in accordance with the UCMJ, MCM, and applicable regulations.


PHILIP J. BETZ, JR