

**GENERAL COURT-MARTIAL  
WESTERN JUDICIAL CIRCUIT  
NAVY-MARINE CORPS TRIAL JUDICIARY**

**UNITED STATES**

v.

**DOUGLAS S. WACKER**

**CAPTAIN**

**U.S. Marine Corps**

(  
( **AFFIDAVIT OF**  
( **COLONEL M. B. RICHARDSON USMC**  
( **FORMERLY - SJA, MCRD**

( **DATE: 22 September 2010**

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I, Colonel Michael B. Richardson, USMC, hereby state under oath the following facts relating to my involvement in the present case:

I assumed duties and responsibilities as the Staff Judge Advocate, Marine Corps Recruit Depot, San Diego California in approximately August of 2009. Shortly after arriving, I was briefed by the acting Staff Judge Advocate, Major Sam Jackson, of the high-profile and/or otherwise important military justice cases that were ongoing at the Depot. Among those cases briefed was that of Captain Wacker. At the time, if I recall correctly, Captain Wacker's case had been referred and a trial schedule set. Major Jackson explained that he had done the Staff Judge Advocate review of the case prior to referral as Colonel Smith had already moved to her present billet of Commanding Officer, Headquarters and Support Battalion. I don't believe motions had yet been filed in the case.

I was briefed on the fact pattern of the case by LtCol Sean Sullivan, a reserve Marine Judge Advocate who had been helping our prosecution shop at the Depot. LtCol Sullivan struck me as a very seasoned litigator, and I do not recall discussing trial strategy with him. He appeared to have the prosecution moving efficiently forward in a timely manner, and I left it to him. I also discussed the case with members of the defense shop, if I recall correctly, as I believe that Captain Hur, the incoming Senior Defense Counsel, had asked for permission to either co-detail himself or detail himself early in this case due to its importance. I don't recall specifically how it occurred, but I do recall that I allowed him to detail himself to the case (whether as co-counsel or simply early I do not recall).

Within a short time after having been detailed, Captain Hur brought to my attention an email that he had been provided by someone in the Depot's G-3 shop from the Executive Officer of the Battalion, LtCol Greg Bond. I believe Captain Hur brought it to my attention as the SJA because it struck him as potential UCI and something of which I, as the SJA, needed to be aware. Captain Hur and I had an amicable relationship, and I believe he felt comfortable bringing this to me because he knew I would want to know of it, and would want to take whatever corrective action I could in order to ensure his client received a fair trial. From the onset of my assumption of duties at the Depot, I had repeatedly stressed to all counsel, both TCs and DCs,

## *Affidavit of Colonel Richardson*

that I viewed my role as SJA as a neutral advisor to the CG, and that one of my roles was to ensure fairness throughout all legal proceedings. I believe it was in that spirit that Captain Hur brought this email to my attention.

The email from LtCol Bond was, in my mind, problematic and required immediate corrective action. I had three primary concerns. First, the email on its face was wildly improper in my opinion, as it not only pre-judged guilt of the accused, but further appeared to imply that the XO was speaking on behalf of the command. Second, several of the addressees on the email were actually members of the "standing GCM panel" to which the charges in this case had been referred, and while I did not think it likely that they would have remained on the final panel due to their direct supervision and daily contact with the accused in this case, I was nonetheless concerned that such an email to panel members was, on its face, seriously wrong. Third, I was concerned that such an email might discourage or chill the accused's current chain of command from testifying on his behalf.

As the SJA, I immediately confronted LtCol Bond in his office about his actions. Based upon this conversation, I believe he simply had no idea of the potential harm he had caused, but I nonetheless counseled him for actions which I believed any field grade officer should have understood were problematic. I then went to the G-3 office and spoke with, as I recall, 2 of the 3 recipients of the email (I believe it was Major Blalock and LtCol Trapp, but I am not certain). I seem to recall that at least one of the recipients, I believe it was Col. Conlin, was TAD and I contacted him via telephone to discuss the issue with him shortly thereafter, and to tell him that I'd spoken with members of his shop. All three men were told that as the SJA, it was my responsibility to ensure that they understood that this email was inappropriate and should be discounted by them. I explained to them words to the effect of LtCol. Bond being out of line, and that LtCol Bond could not speak for either Colonel Smith or, more importantly, BGen Bailey (the Convening Authority). I reiterated to them (words to the effect of) BGen Bailey would expect that they act according to their consciences and testify freely if they believed it appropriate, and that the General would expect that they discount this email as inappropriately pre-judging someone's guilt. The three individuals in question were all experienced, seasoned officers, and none appeared to have any problems with my explanation. In fact, they indicated that they (one of them, anyway) had realized the email was inappropriate and brought it to the defense counsel's attention. They indicated further that they knew what their duties were and would have no problem discounting this email. Based on their demeanor, and my interaction with these officers, I left feeling confident that this email would not chill them in any way, and that they would do what they believed was right.

On or about 22 September 2009, MCRD San Diego conducted some sort of a safety stand-down which included at least one brief on sexual assault prevention. The event occurred at the Depot's theater, and was attended by members of the Depot and 12<sup>th</sup> Marine Corps District. I do not recall if there was more than one period of instruction on sexual assault prevention training, but it is possible. Sexual assault prevention training was important to the Western Recruiting Region, and the USMC Recruiting Command in general, as the recruiting field

## *Affidavit of Colonel Richardson*

historically had seen a significant amount of sexual misconduct which led to courts-martial and state court prosecutions, often of a high-profile nature. How to prevent (or lessen) such incidences of sexual misconduct was (and is) a continuing problem in the recruiting community where young Marines are sent out far from the supervised military community, with little daily supervision, to interact with young, impressionable members of the opposite sex. It's a dangerous mix, and statistically leads to more misconduct than we see around other Marine commands. As such, its prevention was an important topic for the command, and the issue was addressed in a variety of settings, including these types of safety stand-down training events.

I do recall that I spoke at some point during this training. I recall specifically that before getting into the substance of my discussion, that I gave what I refer to as the "standard SJA caveat" speech that advises the audience that what we are about to discuss has no bearing on any particular case; that every case must always be decided upon the particular facts of the case; that all members must keep an open mind throughout the proceedings, listen to evidence, and apply the instructions given to them by the judge; and that all witnesses should answer questions honestly, without fear of retribution, and testify wherever they have relevant testimony (or words to that effect). I then went on to discuss that in my experience, buttressed by what I had seen as a trend to date at the Depot's law center, a significant amount of this misconduct revolved around what I referred to as "drunk sex," and that if we could impart to our Marines the simple notion that drunk sex was dangerous and led to increased incidences of police involvement, we could take a major step toward lessening our trend. I specifically noted that I was not stating whether or not any of these incidences actually qualified as "sexual assault" under the law, but rather that drunk sex tended to lead to police involvement, and that no matter what had occurred (or not occurred), lives were nonetheless altered by the event and the best course of action was not to put oneself in such a position to begin with. I closed the conversation with a recap of the "standard SJA caveat," again reiterating that no one should interpret this as any sort of an indication on my part as to how they, or the command, should view any particular incident, but rather that the talk was designed to serve only as a general form of advice that staying away from such situations in the first place would lessen the likelihood of finding oneself answering questions about what occurred.

I had no involvement in the decision to move the accused out of his billet as the force protection officer for a disaster response exercise at the depot. I was informed of the decision by Colonel Smith after the fact, and concurred with her that there were valid concerns with potential media problems in that the Depot expected media coverage of the exercise and the accused was known to local reporters due to the pretrial publicity surrounding his Article 32, but this was all after the decision had been made.

I did advise the Convening Authority with regard to his options on how to handle the allegations of UCI in this case, including the possibility of transferring the accused to Miramar in order to allow a new Convening Authority to essentially take an entirely new, fresh look at the allegations and take whatever action he deemed appropriate.

***Affidavit of Colonel Richardson***

I believe my conversations with the Convening Authority are protected by attorney-client privilege and I can not discuss them further.

I swear the above statement is true to the best of my knowledge and belief:

A handwritten signature in black ink, appearing to read "M. B. Richardson", with a long horizontal line extending to the right.

M. B. RICHARDSON  
Col, U.S. Marine Corps