

Subj: COMMAND INVESTIGATION INTO THE FACTS AND CIRCUMSTANCES
SURROUNDING THE ALTERCATION BETWEEN MAJOR DAVID I.
EICKENHORST, USMC, AND STAFF SERGEANT CHRISTOPHER N.
WILSON, USMC, ON OR ABOUT 18 MARCH 2011

2. Major Eickenhorst demonstrated extremely poor leadership and a serious lack of judgment and forethought during this incident. Pulling a weapon (especially one which is condition 3), even "partially," is an escalation of force. When you combine this act with the statements attributed to Major Eickenhorst, one can reasonably construe these actions to be a threat to inflict bodily harm. [FF 20, 24, 26, 46, 64, 66]

3. SSgt Wilson felt threatened during the interaction and perceived that the Major was serious when he made the verbal comments. [FF 21, 27, 37, 52]

4. Capt Dimoh did not see the incident. The Captain knew there was a conversation going on to the right of him. In order to get his own work done, he donned head phones and proceeded to work on FITREPS. The Major is right handed. When the Major drew his weapon, the Major's body partially concealed the motion. The three witnesses were in close proximity to the Major and standing on the Major's right side. They had a clear view of the weapon. SSgt Wilson, who was standing almost directly to the right of Maj Eickenhorst looking at the Maj, could see the Captain and was confident the Captain did not see what transpired. [FF 31, 32, 33]

Recommendations

1. Maj Eickenhorst's case be referred to the Commanding General, 3d Aircraft Wing (3d MAW) for appropriate level disciplinary and/or administrative action. Major Eickenhorst has been redeployed to MCAS Miramar, CA. CG, 3d MAW, is the appropriate Commanding General to adjudicate this case.


M. K. VAN NEST



UNITED STATES MARINE CORPS
2D MARINE AIRCRAFT WING (FORWARD)
1: MARINE EXPEDITIONARY FORCE (FORWARD)
UNIT 78091
FPO AE 09510-8091

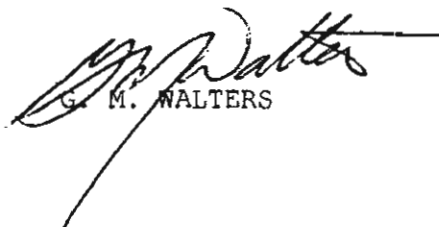
5800
CG/SJA
19 Mar 11

From: Commanding General, 2d Marine Aircraft Wing (Forward)
To: Lieutenant Colonel Michael K. Van Nest, XXX XX 3385/7532
USMC

Subj: COMMAND INVESTIGATION INTO THE FACTS AND CIRCUMSTANCES
SURROUNDING THE ALTERCATION BETWEEN MAJOR DAVID I.
EICKENHORST AND STAFF SERGEANT CHRISTOPHER N.
WILSON ON OR ABOUT 18 MARCH 2011

Ref: (a) JAGINST 5800.7E (JAGMAN)

1. This appoints you, per chapter II of the reference, to inquire into the facts and circumstances surrounding the allegation that Major David I. Eickenhorst, USMC, drew his weapon and made a threatening comment toward Staff Sergeant Christopher N. Wilson, USMC, at Forward Operating Base Dwyer, Afghanistan on or about 18 March 2011.
2. Investigate the cause of the incident, to include actions prior to 18 March 2011 that may have contributed to the event, the impact on good order and discipline within the unit, and any fault, neglect, or responsibility therefore, and recommend appropriate corrective, administrative, and/or disciplinary action. Report your findings of fact, opinions, and recommendations in letter form by 3 April 2011. If you cannot complete this investigation by this date, submit a written request for an extension before the due date. If you have not previously done so, read chapter II of the reference in its entirety before beginning your investigation.
3. The conduct of this investigation is your primary duty and will take precedence over your regular assigned duties until complete. During the course of your investigation, you may seek legal advice from Major C. W. Pehrson, USMC, Staff Judge Advocate, 2d Marine Aircraft Wing (Forward).


G. M. WALTERS

Copy to:
CO, MWSS-373
CG, 3d MAW
SJA, 3d MAW
SJA, 2d MAW (FWD)

ENCLOSURE (1)

0029

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

SUSPECT'S RIGHTS AND ACKNOWLEDGEMENT/STATEMENT

FULL NAME (ACCUSED/SUSPECT)	SSN	RATE/RANK	SERVICE (BRANCH)
DAVID I EICKENHORST	339603370	MAS	USMC
ACTIVITY/UNIT	DATE OF BIRTH		
MWSS 373 2DMAW FWD	19 DEC 66		
NAME (INTERVIEWER)	RATE/RANK	SERVICE (BRANCH)	
VAN NEST MICHAEL K	LTCOL	USMC	
ORGANIZATION	BILLET		
HQ 2DMAW FWP	RED CELL OIC		
LOCATION OF INTERVIEW	TIME	DATE	
MWSS 373 Compound Camp Leathurick	1750	19 MAR 11	

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):

ARTICLES 80, 128, 133, 134

- (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; -----

(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; -----

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

(6) If I decide to answer questions now without a lawyer present, I will have the right to stop this interview at any time. -----

WAIVER OF RIGHTS

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 a lawyer present with me during this interview. -----

(5) This acknowledgement and waiver of rights 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.

(6) I further understand that, even though I initially waive my rights to counsel and to remain silent, I may, during the interview, assert my right to counsel or to remain silent. -----

NOTE: IF THE SUSPECT INDICATES HE IS WILLING TO MAKE A STATEMENT, HE SHOULD FIRST BE ASKED WHETHER HE HAS MADE A STATEMENT IN RESPONSE TO QUESTIONS ABOUT THE SUSPECTED OFFENSE TO ANYONE HE BELIEVED WAS ACTING IN A LAW ENFORCEMENT CAPACITY PRIOR TO THE PRESENT INTERVIEW. IF THE SUSPECT INDICATES HE HAS PREVIOUSLY MADE SUCH A STATEMENT, ADVISE THE SUSPECT AS FOLLOWS:

PREVIOUS STATEMENTS

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) My previous statement may not be admissible at courts-martial and may not be usable against me. (It may not be possible to determine whether a previous statement made by the suspect will be admissible at some future court-martial; this suggests it may be wise to treat it as inadmissible and provide the cleansing warning).

(2) Regardless of the fact that I have talked about this offense before, I still have the right to remain silent now.

A-1-m

ENCLOSURE (2) 2/3

0031

PRIVACY ACT STATEMENT

Name: DAVID I EICKENHORST Rank/Rate: MAS 104
 Activity: _____ Unit: MUSS 373
 Telephone number: DSN 3258

Today, 19 Mar, 2011, I acknowledge that I have received the following advisement under the guidelines of the Privacy Act.

This statement is provided in compliance with the provisions of the Privacy Act of 1974 (Public Law 93-579) which requires that Federal agencies must inform individuals who are requested to furnish personal information about themselves as to certain facts regarding the information requested below.

1. AUTHORITY: 5 U.S.C. 301; 10 U.S.C. 972, 1201-1221, 2733, 2734-2734b., 2737, 5013, 5031-5036, 5131-5150, 5947, 6148, 7205, 7622-7623; 28 U.S.C. 1346, 2671-2680; 31 U.S.C. 240-243, 3521-3531, 3701-3702, 3717-3718; 37 U.S.C. 802; 38 U.S.C. 105; 42 U.S.C. 2651-2653; 44 U.S.C. 3101; 49 U.S.C. 1901.

2. PRINCIPAL PURPOSES. The information which will be solicited is intended principally and may be used for the following purposes:

- a. Determinations on the status of personnel regarding entitlements to pay during disability, disability benefits, severance pay, retirement pay, increases of pay for longevity, survivor's benefits, involuntary extensions of enlistments, date of expiration of active obligated service, and accrual of annual leave.
- b. Determinations on disciplinary or punitive action.
- c. Determinations on liability of personnel for losses of, or damage to, public funds or property.
- d. Evaluation of petitions, grievances, and complaints.
- e. Adjudication, pursuit, or defense of claims for or against the Government or among private parties.
- f. Other determinations, as required, in the course of naval administration.
- g. Public information releases.
- h. 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.

Naval Justice School
 Publication

9-3

ENCLOSURE (3) 1/3

0033

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 determinations concerning payment of life insurance proceeds; to the U.S. General Accounting Office for purposes of determinations 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 settlements, 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, and regulatory authorities, for use in connection with civilian and military criminal, civil, administrative, and regulatory proceedings and actions.

4. MANDATORY/VOLUNTARY DISCLOSURE, CONSEQUENCES OF REFUSING TO DISCLOSE:

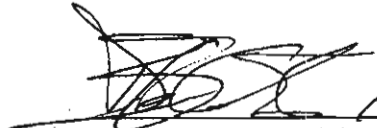
a. Where an individual is a subject of an investigation for purpose 2a or 2b, above: Disclosure is voluntary. You are advised that you are initially presumed to be entitled to have the [personnel determination] [disciplinary determinations] in paragraph 2, above, resolved in your favor, but the final 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 possible could prevent the investigation from obtaining evidence which may be needed to support a favorable determination.

b. Where an individual is a subject of an investigation for purpose 2c, above: Disclosure is voluntary, and if you do not provide the requested information, any determination as to whether you should be held pecuniarily liable for repayment of the Government's loss would be based on the other evidence in the investigative record, which possibly might not support a favorable determination.

c. Where the individual is a claimant or potential claimant in an investigation for purpose 2e, above: Disclosure is voluntary, but refusal to disclose the requested information could prevent the investigation from obtaining sufficient information to substantiate any claim which you have made or may make against the Government as a result of the incident under investigation.

d. Where the individual was treated at Government expense for injuries caused by third parties in connection with a matter being investigated for purpose 2e, above: Disclosure is voluntary, but refusal to disclose the requested information could result in a requirement for you to assign to the Government your medical care claims against third parties in connection with the incident, or authorize withholding of the records of your treatment in naval medical facilities.

e. In any other case: Disclosure is voluntary, and if you do not provide the requested information, and determinations or evaluations made as a result of the investigation will be made on the basis of the evidence that is contained in the investigative record.

 19 MAR 11
(Signature and date)

PRIVACY ACT STATEMENT

Name: Christopher N. Wilson Rank/Rate: SSgt
Activity: _____ Unit: MWSS-373
Telephone number: 359-2822/2821

Today, 20 March, 2011, I acknowledge that I have received the following advisement under the guidelines of the Privacy Act.

This statement is provided in compliance with the provisions of the Privacy Act of 1974 (Public Law 93-579) which requires that Federal agencies must inform individuals who are requested to furnish personal information about themselves as to certain facts regarding the information requested below.

1. AUTHORITY: 5 U.S.C. 301; 10 U.S.C. 972, 1201-1221, 2733, 2734-2734b., 2737, 5013, 5031-5036, 5131-5150, 5947, 6148, 7205, 7622-7623; 28 U.S.C. 1346, 2671-2680; 31 U.S.C. 240-243, 3521-3531, 3701-3702, 3717-3718; 37 U.S.C. 802; 38 U.S.C. 105; 42 U.S.C. 2651-2653; 44 U.S.C. 3101; 49 U.S.C. 1901.

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- b. Determinations on disciplinary or punitive action.
- c. Determinations on liability of personnel for losses of, or damage to, public funds or property.
- d. Evaluation of petitions, grievances, and complaints.
- e. Adjudication, pursuit, or defense of claims for or against the Government or among private parties.
- f. Other determinations, as required, in the course of naval administration.
- g. Public information releases.
- h. 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.

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 determinations concerning payment of life insurance proceeds; to the U.S. General Accounting Office for purposes of determinations 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 settlements, 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, and regulatory authorities, for use in connection with civilian and military criminal, civil, administrative, and regulatory proceedings and actions.

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b. Where an individual is a subject of an investigation for purpose 2c, above: Disclosure is voluntary, and if you do not provide the requested information, any determination as to whether you should be held pecuniarily liable for repayment of the Government's loss would be based on the other evidence in the investigative record, which possibly might not support a favorable determination.

c. Where the individual is a claimant or potential claimant in an investigation for purpose 2e, above: Disclosure is voluntary, but refusal to disclose the requested information could prevent the investigation from obtaining sufficient information to substantiate any claim which you have made or may make against the Government as a result of the incident under investigation.