



UNITED STATES MARINE CORPS

3D MARINE AIRCRAFT WING  
MARINE CORPS AIR STATION MIRAMAR  
PO BOX 452038  
SAN DIEGO CA 92145-2038

IN REPLY REFER TO:

5812

SJA

AUG 11 2011

From: Commanding General, 3d Marine Aircraft Wing  
To: Commandant of the Marine Corps (JAM)  
Via: Commanding General, I Marine Expeditionary Force  
Subj: REPORT OF COURT-MARTIAL CONVICTION IN THE CASE OF UNITED STATES  
V. CAPTAIN DOUGLAS S. WACKER, XXX XX 9313/0602, USMC

Ref: (a) MCO P5800.16A (LEGADMINMAN)  
(b) SECNAVINST 1920.6C

Encl: (1) Corrected Report of Results of Trial dtd 24 Jun 11  
(2) Acknowledgement of Advance Education Assistance Reimbursement Requirement  
(3) Acknowledgement of Receipt of Report of Court-Martial Conviction  
(4) Matters Submitted by Captain Wacker (if any)

1. This report is submitted per paragraph 4004 of reference (a).
2. On 3-4 November 2010; 22-25 and 28 February 2011; 1-4 and 8-11 March 2011, Captain Wacker was arraigned and tried at a General Court-Martial convened by the Commanding General, 3d Marine Aircraft Wing. A summary of the offenses and their disposition is provided in enclosure (1).
3. I recommend that Captain Wacker be required to show cause for retention in the Marine Corps at a Board of Inquiry pursuant to reference (b).
4. Captain Wacker has been advised of the reimbursement requirement for advanced education assistance, and his acknowledgment of this requirement is provided as enclosure (2). I do not recommend that the reimbursement requirement be waived in this case.
5. Captain Wacker has acknowledged that adverse information pertaining to this case will be forwarded for inclusion in his OMPF. See enclosure (3). By copy hereof, Captain Wacker will be afforded the opportunity to read this Report and to provide a statement in response. Any such response must be delivered to the Staff Judge Advocate within five working days of receipt and, if provided, will be added as enclosure (4).

  
T. CONANT

Copy to:  
SJA, 3d MAW  
CO, MWHS-3  
IPAC  
Capt Wacker



UNITED STATES MARINE CORPS

JOINT LAW CENTER  
MARINE CORPS AIR STATION MIRAMAR  
P.O. BOX 452022  
SAN DIEGO, CALIFORNIA 92145-2022

IN REPLY REFER TO:  
5800  
MJ  
24 Jun 11

REPORT OF RESULTS OF TRIAL

From: Trial Counsel  
To: Commanding General, 3d Marine Aircraft Wing

Subj: CORRECTED REPORT OF RESULTS OF TRIAL

1. Pursuant to R.C.M. 1101(a) and 1304(b)(2)(E)(v), MCM, 2008 ed., notification is hereby given in the case of U.S. v. CAPTAIN DOUGLAS S. WACKER, XXX XX 9313/0602, USMC, a trial by General Court-Martial at Camp Pendleton, California, convened by the Commanding General, 3d Marine Aircraft Wing.

2. Offenses, pleas, and findings:

a. Charges & Specifications / Pleas & Findings

Offense(s):

Plea(s):

Finding(s):

Charge I: Viol of the UCMJ, Art. 120\*

Not Entered\*\* NG

Spec: On active duty, did, at or near New Orleans, Louisiana, on or about 3 April 2007, rape Jessica Brooder.

Not Entered\*\* NG

Charge II: Viol of the UCMJ, Art 133\*\*\*

Not Entered\*\* G

Spec 1: on active duty, did, at or near New Orleans, Louisiana, on or about 3 April 2007, act in a manner unbecoming of an officer and gentlemen, to wit: committing an indecent assault upon Ms. Elizabeth Easley, a woman not his wife, by straddling the said Ms. Easley by placing his legs on either side of her body, while he knew or should have known that the said Ms. Easley was so significantly intoxicated and mentally and physically impaired as a result of said intoxication that a reasonable officer in the Naval service would have recognized that there was a substantial likelihood that she was incapable of knowingly and voluntarily consenting to any sexual contact.

Not Entered\*\* NG

Spec 2: On active duty, did, at or near New Orleans, Louisiana, on or about 3 April 2007, act in a manner unbecoming of an officer and gentlemen, to wit: by wrongfully engaging in sexual intercourse with Ms. Jessica Brooder while he knew, or should have known that Ms. Brooder was so significantly intoxicated and mentally and physically impaired as a result of said intoxication that a reasonable officer in the Naval service would have recognized that there was a substantial likelihood that she was incapable of knowingly and voluntarily consenting to sexual intercourse.

Not Entered\*\* NG

Spec 3: On active duty, did, at or near San Diego, California, on or about 21 June 2007, while the said Captain Wacker was a student at the University of San Diego School of Law in the Marine Corps Excess Leave Program (Law), with intent to deceive, make a false statement before a Critical Issues Board at the University of San Diego in the case of the said Captain Wacker, to wit: that he did not have sexual intercourse with Jessica Brooder on or about 3 April 2007, or words to that effect, which statement was totally false, and was then known by the said Captain Wacker to be so false, and which conduct was unbecoming of an officer and a gentlemen.

Not Entered\*\* G

\* Originally numbered Specification 1 of Charge II; renumbered as the sole specification of Charge I at trial.

\*\* The accused provided pretrial notice of intent to enter pleas of not guilty to all charges and specifications, but failed to enter pleas at trial. A contested trial on the merits was conducted. Further, after trial the defense notice of intended pleas and forum was attached to the record of trial as Appellate Exhibit CGIX, indicating that the accused intended to plead not guilty to all charges and specifications.

\*\*\* Specifications 1, 2, and 3 of Charge II were originally numbered Specifications 3, 4, and 5 of Charge III respectively, but were re-numbered at trial. This change was reflected on the cleansed charge sheet provided to the members and referenced by all parties at trial, and findings were announced that also reflected this change. Due to an administrative oversight, however, the change to the charge number is not reflected on the original charge sheet.

b. Any preferred charge withdrawn before or at trial: YES.

(1) The following charges and specifications (as originally numbered) were withdrawn and dismissed without prejudice prior to referral:

- Specification 2 of Charge II: Violation of the UCMJ, Article 120 (rape of Nicole Cusack);

- Specification 1 of Charge III: Violation of the UCMJ, Article 133 (conduct unbecoming an officer by attempting to engage in sexual intercourse with Nicole Cusack while she was incapacitated);
- Specification 6 of Charge III: Violation of the UCMJ, Article 133 (obstructing justice by asking Amos Lowder to tell Nicole Cusack not to discuss the accused's case); and,
- Specification 7 of Charge III: Violation of the UCMJ, Article 133 (obstructing justice by asking Joseph Gorman to withhold information from Special Agent J.R. Burge, Naval Criminal Investigative Service).

(2) The following charges and specifications (as originally numbered) were withdrawn and dismissed without prejudice at trial on 24 February 2011:

- Sole Specification of Charge I: Violation of the UCMJ, Article 80 (attempted rape of Elizabeth Easley); and,
- Specification 2 of Charge III: Violation of the UCMJ, Article 133 (conduct unbecoming an officer by attempting to engage in sexual intercourse with Elizabeth Easley while she was incapacitated).

c. Partial acquittal based on mental incompetence: NO.

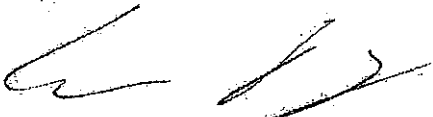
3. Forum: Officer members..

4. Sentence adjudged (if specific sentence provision does not apply indicate "NA"):

Discharge (Dismissal, DD, BCD)	None
Confinement	None
Hard Labor w/out confinement	None
Reduction	None
Forfeiture	None
Reprimand	None
Other	No punishment. Members recommended clemency in the form of non-judicial punishment in lieu of approving the findings, a non-felony reprimand, and a letter of apology to the members of the

Critical Issues Board at the University of San Diego.
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5. Date sentence adjudged: 11 Mar 11.
6. Automatic forfeitures apply: No.
7. Credits to be applied to confinement, if any: None.
8. Terms of pretrial agreement concerning sentence, if any: N/A.
9. Upon Convening Authority's action in this case, sex offender notifications may be required per 42 U.S.C. § 14071: No.
10. Collection of a DNA sample from the accused is required per 10 U.S.C. § 1565: Yes. If collection is required, collection may be effected before the Convening Authority acts pursuant to Under Secretary of Defense for Personnel and Readiness memo of 18 April 2005.

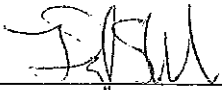


E. S. DAY

Distribution:  
Convening Authority  
Commanding Officer of accused  
CO/OIC of brig (if confinement adjudged)  
PDS/Unit Diary Clerk  
Disbursing Office  
Record of trial  
Officer exercising general courts-martial jurisdiction

**ACKNOWLEDGEMENT OF ADVANCE EDUCATION ASSISTANCE  
REIMBURSEMENT REQUIREMENT**

I understand that, if I am voluntarily or involuntarily separated before I complete an active duty service requirement incurred because I received advanced education assistance (USNA, ROTC, FLEP, etc.), I may be required to reimburse the U.S. on a pro rata basis for the unserved portion of the active service requirement.

  
\_\_\_\_\_  
D. S. WACKER

15 Aug 11  
\_\_\_\_\_  
Date