

**WESTERN JUDICIAL CIRCUIT
NAVY-MARINE CORPS TRIAL JUDICIARY**

| | | |
|-------------------|---|---------------------|
| UNITED STATES |) | |
| |) | |
| v. |) | |
| |) | STIPULATION OF FACT |
| VEGA, Nicolas |) | |
| Staff Sergeant |) | |
| U.S. Marine Corps |) | |
| XXX XX 4253 |) | |
| |) | |

It is hereby agreed by and between trial counsel and civilian defense counsel, with the express consent of the accused, that the facts contained within this document are true. The accused understands that this document may be used in three ways. First, the Convening Authority may use it to determine whether the accused is guilty. Second, the Convening Authority may use it in selecting an appropriate sentence. Third, any reviewing authority may use it when reviewing the case for factual sufficiency, legal error, and appropriateness of the sentence. Now, and at all times relevant to the Stipulation of Fact, SSgt Vega is a United States Marine on active duty.

CHARGE I: VIOLATION OF THE UCMJ, ARTICLE 92

Specification 1:

1. Defense counsel reviewed with SSgt Vega section 2-301b, Department of Defense 5500.7-R (JER), Second Amendment, dated 25 March 1996.
2. Section 2-301b, Department of Defense 5500.7-R, Second Amendment, dated 25 March 1996, as implemented by DOD Directive 5500.07, dated 29 November 2007, was issued by the Secretary of Defense.
3. The Secretary of Defense was authorized to issue the JER, as implemented by DOD Directive 5500.07, dated 29 November 2007.
4. The JER was properly published.

5. SSgt Vega believes and admits that the JER is a lawful general order. SSgt Vega believes that it was a lawful general order in effect between on or about January 2009 and on or about December 2009.
6. SSgt Vega believes that that the JER is reasonably necessary to safeguard and protect the morale, discipline, and usefulness of the command.
7. SSgt Vega believes and admits that the JER applied to him between on or about January 2009 and on or about December 2009.
8. SSgt Vega believes and admits that he had a duty to obey the JER.
9. SSgt Vega believes and admits that he had a duty to obey the JER because he was an active duty Marine subject to the regulation and using a Government communication system.
10. SSgt Vega believes and admits that he violated the JER between on or about January 2009 and on or about December 2009 at or near San Diego, California.
11. SSgt Vega believes and admits that he violated the JER between on or about January 2009 and on or about December 2009 at or near San Diego, California by using his NMCI email account to solicit, receive and forward eleven (11) pornographic pictures from Ms. Nuvia Gomez.
12. SSgt Vega believes that his soliciting the pornographic pictures from his government email was a violation of the JER, regardless of his deleting the pornographic pictures after they were received.
13. SSgt Vega believes and admits that his failure to obey the JER was wrongful.
14. SSgt Vega could have followed the JER if he wanted to.
15. Nobody forced or coerced SSgt Vega into violating the JER.

CHARGE III: VIOLATION OF THE UCMJ, ARTICLE 134

Specification 1:

16. Between on or about January 2008 and on or about May 2009, on divers occasions, SSgt Vega did wrongfully have sexual intercourse with Ms. Dana Orcutt.
17. SSgt Vega and Ms. Dana Orcutt had a consensual, sexual relationship.
18. When SSgt Vega and Ms. Dana Orcutt had sexual intercourse, SSgt Vega's penis penetrated the vagina of Ms. Dana Orcutt.
19. At the time, SSgt Vega was married to a woman, not Ms. Dana Orcutt.
20. SSgt Vega married Ruth Vega in September 2004. Ruth Vega moved out of the home she shared with SSgt Vega in May 2007 and they have not lived together as husband and wife since this time. Ruth Vega filed for divorce in June 2008. The divorce was finalized in May 2009. SSgt Vega believes and admits that he was married to Ruth Vega between September 2004 and May 2009.
21. SSgt Vega's conduct was to the prejudice of good order and discipline in the armed forces and of a nature to bring discredit upon the armed forces. It was known to Ms. Dana Orcutt and other members of the public and Marine Corps acquainted with Ms. Dana Orcutt and SSgt Vega that SSgt Vega was a married Marine in a sexual relationship with a woman, not his wife. SSgt Vega is a Staff Non-Commissioned Officer (SNCO) in the Marine Corps. As a SNCO, he is in charge of junior Marines and responsible for their development, both personally and professionally. His adulterous conduct with Ms. Dana Orcutt directly impugns his ability to set the example for the junior Marines around him and is, therefore, prejudicial to good order and discipline and service discrediting.

22. SSgt Vega could have avoided having sexual intercourse with Ms. Dana Orcutt if he wanted to.
23. Nobody forced or coerced SSgt Vega into having sexual intercourse with Ms. Dana Orcutt.
24. Having sexual intercourse with Ms. Dana Orcutt was a freely made decision on the part of SSgt Vega.

Specification 2:

25. Between on or about November 2007 and on or about May 2009, SSgt Vega did wrongfully have sexual intercourse with Ms. Nuvia Gomez.
26. SSgt Vega and Ms. Nuvia Gomez had a consensual, sexual relationship.
27. When SSgt Vega and Ms. Nuvia Gomez had sexual intercourse, SSgt Vega's penis penetrated the vagina of Ms. Nuvia Gomez.
28. At the time, SSgt Vega was married to a woman, not Ms. Nuvia Gomez.
29. SSgt Vega married Ruth Vega in September 2004. Ruth Vega moved out of the home she shared with SSgt Vega in May 2007 and they have not lived together as husband and wife since this time. Ruth Vega filed for divorce in June 2008. The divorce was finalized in May 2009. SSgt Vega believes and admits that he was married to Ruth Vega between September 2004 and May 2009.
30. SSgt Vega's conduct was to the prejudice of good order and discipline in the armed forces and of a nature to bring discredit upon the armed forces. It was known to Ms. Nuvia Gomez and other members of the public and Marine Corps acquainted with Ms. Nuvia Gomez and SSgt Vega that SSgt Vega was a married Marine in a sexual relationship with a woman, not his wife. SSgt Vega is a SNCO in the Marine Corps. As

a SNCO, he is in charge of junior Marines and responsible for their development, both personally and professionally. His adulterous conduct with Ms. Nuvia Gomez directly impugns his ability to set the example for the junior Marines around him and is, therefore, prejudicial to good order and discipline and service discrediting.

31. SSgt Vega could have avoided having sexual intercourse with Ms. Nuvia Gomez if he wanted to.
32. Nobody forced or coerced SSgt Vega into having sexual intercourse with Ms. Nuvia Gomez.
33. SSgt Vega could have avoided having sexual intercourse with Ms. Nuvia Gomez.
34. Having sexual intercourse with Ms. Nuvia Gomez was a freely made decision on the part of SSgt Vega.

Stipulation of Fact Signature Page ICO SSgt Vega



N. VEGA
SSgt, USMC
Accused

20101110

Date



J. F. BOYER
Capt, USMC
Defense Counsel

10 Nov 10

Date



G. K. LOGAN
Capt, USMC
Trial Counsel

9 Nov 10

Date