



DEPARTMENT OF THE NAVY  
COMMANDER NAVAL BASE  
937 NO. HARBOR DR.  
SAN DIEGO, CALIFORNIA 92132-5100

IN REPLY REFER TO:

FOCT 24 1994

**SUPPLEMENTARY GENERAL COURT-MARTIAL ORDER NUMBER 13-94**

In the foregoing general court-martial case of Hospital Corpsman Chief Ronald J. Spychala, U. S. Navy, (b) (6), as promulgated in General Court-Martial Order Number 06-92, Commander, Naval Base San Francisco, dated 7 August 1992, and in Supplementary General Court-Martial Order Number 06-94, Commander, Naval Base San Diego, dated 20 July 1994, which promulgated the decision of the U. S. Navy-Marine Corps Court of Military Review, NMCM 92 02025 decided on 6 June 1994, transmitted on 29 June 1994, and received at Commander, Naval Base San Diego, on 8 July 1994, a sentence of no punishment is approved only for the affirmed findings relating to Specifications 3 and 4 under Charge II. No further action is ordered or shall be taken with respect to those specifications. As to the remaining alleged offense, a rehearing is ordered.

(b) (6)

F. K. HOLIAN  
Rear Admiral, U. S. Navy  
Commander, Naval Base San Diego  
Commander

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Defense Counsel - LCDR Horrigan

Trial Counsel - LT McCartin/LT Bloomfield

Accused

Case File

SUPPCMO File

IN THE U.S. NAVY-MARINE CORPS COURT OF MILITARY REVIEW  
WASHINGTON NAVY YARD  
WASHINGTON D.C.

BEFORE

DAVID C. LARSON

EDWIN W. WELCH

P.J. McLAUGHLIN

UNITED STATES

v.

Ronald J. SPYCHALA, (b) (6)  
Hospital Corpsman Chief (E-7), U.S. Navy

NMCM 92 02025

PUBLISH  
Decided 6 June 1994

Sentence adjudged 28 April 1992. Military Judge: P.F. Roberts.  
Review pursuant to Article 66(c), UCMJ, of General Court-Martial  
convened by Commander, Naval Base San Francisco, San Francisco,  
CA.

LT L.M. HIGDON, JAGC, USNR, Appellate Defense Counsel  
Maj LAURA L. SCUDDER, USMC, Appellate Government Counsel

McLAUGHLIN, Judge:

On 28 April 1992, the appellant, contrary to his pleas, was  
convicted of sodomy and indecent assault on his then (b) (6) year-old  
step-grandson, (b) (6) at a general court-martial with members.<sup>1</sup> (b) (6)  
was (b) (6) years old when he testified. The appellant has submitted

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<sup>1</sup> Violations of Arts. 125 and 134, Uniform Code of Military  
Justice [UCMJ], 10 U.S.C. §§ 925 and 934. The appellant pled  
guilty to other violations of Art. 134 regarding firearms-  
shipment offenses under 18 U.S.C. § 922. He was sentenced to a  
bad-conduct discharge, confinement for 5 years, forfeiture of  
\$500.00 pay per month for 60 months, and reduction to E-1. The  
convening authority approved the sentence, but as a matter of  
clemency, suspended confinement in excess of 3 years for a period  
of 24 months from the date of trial.

15 assignments of error.<sup>2</sup> Because we find merit in Assignment

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<sup>2</sup> I. THE EVIDENCE FOR THE CHARGES OF FORCIBLE SODOMY AND INDECENT ACTS WAS LEGALLY AND FACTUALLY INSUFFICIENT FOR PROOF BEYOND A REASONABLE DOUBT.

II. THE M.R.E. 404(b) PRIOR ACTS OF MOLESTATION WERE INADMISSIBLE BECAUSE THEY DID NOT PROVE INTENT, MOTIVE OR PLAN AND BECAUSE THEIR PROBATIVE VALUE WAS OUTWEIGHED BY THEIR PREJUDICIAL EFFECT.

III. THE GOVERNMENT'S PSYCHOLOGIST EXPERT WITNESS TESTIFIED BEYOND THE SCOPE OF EXPERT TESTIMONY BY GIVING HER OPINION ON THE ULTIMATE ISSUE OF APPELLANT'S INNOCENCE OR GUILT.

IV. THE MILITARY JUDGE ERRED BY NOT *SUA SPONTE* GIVING THE MEMBERS A LIMITING INSTRUCTION WHEN THE GOVERNMENT'S EXPERT WITNESS DISCUSSED THREE ADDITIONAL ACTS OF MISCONDUCT WHICH HAD BEEN RULED AS INADMISSIBLE.

V. THE (b) (6) YEAR-OLD CHILD'S STATEMENT, "PAPA PLAYS WITH MY PEE-PEE" WAS IMPROPERLY ADMITTED UNDER M.R.E. 803(2) EXCITED UTTERANCE.

VI. THE DISCOVERY RULES WERE VIOLATED WHEN THE COUNSELING RECORDS OF (b) (6) WERE NOT PROVIDED TO THE DEFENSE PER THEIR REQUEST.

VII. THE MOTION FOR DEFENSE CONSULTANTS WAS IMPROPERLY DENIED BY THE MILITARY JUDGE.

VIII. THE MOTION FOR SODIUM AMYTAL "TRUTH SERUM" ENHANCED INTERVIEW OF APPELLANT WAS IMPROPERLY DENIED.

IX. THIS CASE WAS IMPROPERLY REFERRED TO A GENERAL COURT-MARTIAL WHERE THE INVESTIGATING OFFICER WAS NOT IMPARTIAL SINCE HE AND THE PROSECUTOR WERE DIRECTLY SUPERVISED BY THE SAME OFFICER.

X. THE MILITARY JUDGE IMPROPERLY DENIED THE CHALLENGE FOR CAUSE AGAINST CDR (b) (6) WHO STATED BIAS BY BELIEVING A PSYCHIATRIST MORE THAN ANY OTHER WITNESS AND BELIEVING THE STATEMENT, "ONCE A CHILD MOLESTER, ALWAYS A CHILD MOLESTER."

XI. THE COURT-MARTIAL LACKED JURISDICTION BECAUSE THE MILITARY JUDGE WAS NOT APPOINTED TO A FIXED TERM OF OFFICE. (CITATION OMITTED.)

XII. THE COURT-MARTIAL LACKED JURISDICTION BECAUSE THE MILITARY JUDGE WAS DESIGNATED IN VIOLATION OF THE APPOINTMENTS CLAUSE OF THE CONSTITUTION. (CITATION OMITTED.)

of Error V, we need not address Assignments of Error I, II, III, IV, VI, VII, VIII, and X.

#### ADMISSIBILITY OF HEARSAY

The only evidence supporting the allegation under Charge I, sodomy, is a purported statement made by the victim to his Uncle (b) (6)

The appellant claims that the military judge erred when he ruled that that statement was admissible as an excited utterance because the stress, if ever there was any, had dissipated. We agree.

The statement in question, as related by (b) (6) was made by (b) (6) to his (b) (6) while they were together in (b) (6) car after a time of play and wrestling at a local park.<sup>3</sup> It was made over 30 days after the last opportunity for the appellant to have physical contact with (b) (6)

According to (b) (6) testimony, on 12 May 1991, (b) (6) (b) (6) was doing some paperwork in the driver's seat of his car while (b) (6) was eating a sandwich in his car seat in the front-passenger side. (b) (6) had an uneaten piece of sandwich that he had molded into a rectangle in his crotch area. (b) (6) had only his lap on which to eat the sandwich. According to (b) (6) "he (b) (6) was fiddling his fingers on . . . either side of this . . . piece of bread." Record at 62. (b) (6) testimony continued:

Q. What happened next?

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XIII. THIS COURT DOES NOT HAVE POWER TO REVIEW THIS CASE BECAUSE ITS JUDGES ARE NOT APPOINTED TO A FIXED TERM OF OFFICE. (CITATION OMITTED.)

XIV. THIS COURT HAS NO POWER TO REVIEW THIS CASE BECAUSE ITS JUDGES ARE DESIGNATED IN VIOLATION OF THE APPOINTMENTS CLAUSE OF THE CONSTITUTION. (CITATION OMITTED.)

XV. THE JUDGE ADVOCATE GENERAL OF THE NAVY'S PREPARATION OF NAVY-MARINE CORPS COURT OF MILITARY REVIEW JUDGES' FITNESS REPORTS VIOLATES PETITIONER'S [sic] RIGHT TO AN IMPARTIAL JUDICIAL FORUM.

<sup>3</sup> (b) (6) was the appellant's stepson. (b) (6) was the son of one of the appellant's stepdaughters. (b) (6) lived with his grandmother and the appellant, but spent considerable time with his (b) (6) who intended to adopt him. (b) (6) called his (b) (6) "Daddy," his step-grandfather "Papa," and his grandmother "Super grandma" or "Honey."

A. Then he . . . said, "Stop it. Stop it, papa." I asked him what he meant and he said, "When someone plays with your pee-pee, you tell them to stop it and stop it now." At that point, I asked if . . . with the playing, what did he mean by the playing, if he'd meant the way we had played outside before we had gotten in the . . . car, and he said, "No. Papa uses his mouth."

Q. What was (b) (6) -- can you describe how he was acting? What was his demeanor when he was talking to you?

A. He . . . was almost matter of fact; although, he . . . was emphatically said [sic], "Stop it." But he was pretty much matter of fact.

Q. Was he laughing? Crying?

A. No. He . . . was reserved but he was . . . focussing more on . . . the phrase, "Stop it. Stop it, papa."

Record at 63. (b) (6) never repeated this statement at court-martial, or corroborated that it had been said initially. At no point in the in-court testimony, or the Article 32, UCMJ, investigation testimony, does (b) (6) say the appellant touched his penis with his mouth. At trial, (b) (6) was asked by the trial counsel:

Q. (b) (6) now, this is real important. Do you remember how papa played with your pee-pee?

TC: The witness was shaking his head no.

(TC)Q. (b) (6), do you remember if your papa used his mouth to play with your pee-pee?

A. No, he didn't.

Q. He did not? Did he use his hands?

A. Uh, no.

Q. What did he use?

A. I don't know.

Record at 319. Based on (b) (6) lack of memory concerning his testimony at the Article 32, UCMJ, investigation, the defense counsel entered (b) (6) Article 32, UCMJ, testimony without Government objection.<sup>4</sup> Def. Ex. B. As to the sodomy charge,

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<sup>4</sup> The basis of the offer was Mil. R. Evid. 804(3), which allows into evidence former testimony of a witness who, because of lack of memory, is unavailable to testify at the court-

this prior testimony casts no greater light on what the Government alleges the appellant did to (b) (6) than the in-court testimony. (b) (6) was asked by the Government counsel:

Q. Did your papa touch your pee pee?  
A. Yes.

. . .

Q. What did he touch you with?  
A. I don't know.

Def. Ex. B at 6. The military judge ruled that (b) (6) statement to his (b) (6) at the park, i.e., "Stop it. Stop it, papa." and (b) (6) responses to (b) (6) questioning about how papa played with his penis were admissible as excited utterances under Military Rule of Evidence (Mil. R. Evid.) 803(2).<sup>5</sup> Our review of the trial court's decision is to determine whether he abused his discretion in admitting this testimony. *United States v. Pearson*, 33 M.J. 913, 915 (A.F.C.M.R. 1991) (citing *United States v. LeMere*, 22 M.J. 61 (C.M.A. 1986)). For the reasons stated below, we conclude that the military judge abused his discretion. Abuse of discretion does not imply improper motive, willful purpose, or intentional wrong. *United States v. Travers*, 25 M.J. 61, 62 (C.M.A. 1987). "An abuse of discretion arises in cases in which the judge was controlled by some error of law or where the order, based upon factual, as distinguished from legal, conclusions, is without evidentiary support." *Id.* at 63 (citations omitted).

Because the appellant's case comes to us for review under Article 66(c), UCMJ, 10 U.S.C. 866(c), we are not bound by the military judge's essential findings. *United States v. Cole*, 31 M.J. 270 (C.M.A. 1990); *United States v. Jones*, 34 M.J. 899, 905 (N.M.C.M.R. 1992); *United States v. Ruhling*, 28 M.J. 586, 592 n.8

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martial. The foundation is rather curious. The defense established that (b) (6) had no memory of his Art. 32, UCMJ, investigation testimony. Record at 407. The Art. 32, UCMJ, investigation testimony shows (b) (6) had no memory of any type of events such as those charged. The rule would appear to require that (b) (6) have no memory of the actual events surrounding the allegations, and that his Art. 32, UCMJ, testimony would provide percipient insights to aid the fact-finder regarding the events, not a repeat of "I don't remember."

<sup>5</sup> The excited utterance exception to hearsay states:

(2) *Excited utterance.* A statement relating to a startling event or condition made while the declarant was under the stress of excitement caused by the event or condition.

(N.M.C.M.R. 1988), *petition denied*, 29 M.J. 289 (C.M.A. 1989). "Nonetheless, we are generally inclined to give them deference." *Jones*, 34 M.J. at 905 (citations omitted). The essential facts needed for a determination of the admissibility of (b) (6) statement at the park are provided by (b) (6) testimony, and they are uncontroverted. We conclude that the finding that the statements by (b) (6) in the park were excited utterances under Mil. R. Evid. 803(2) is not supported by the evidence.

Although passage of time alone does not require a certain outcome on this issue, we note that a passage of time of greater than 30 days is well beyond the outer limits of statements previously found admissible as excited utterances. *United States v. Arnold*, 25 M.J. 129 (C.M.A. 1987), *cert. denied*, 484 U.S. 1060 (1988); *accord United States v. Grant*, 38 M.J. 684 n.6 (A.F.C.M.R. 1993) (noting Annotation, *Time Element As Affecting Admissibility Of Statement Or Complaint Made By Victim Of Sex Crime As Res Gestae, Spontaneous Exclamation, Or Excited Utterance*, 89 A.L.R. 3d 102 (1979)); *United States v. Pearson*, 33 M.J. 913 (A.F.C.M.R. 1991). When determining whether an out-of-court statement is admissible as an exception to the hearsay rule under the excited utterance exception, spontaneity is the key factor rather than the degree of excitement. *United States v. Fink*, 32 M.J. 987, 990 (A.C.M.R. 1991), but the statement must be made contemporaneously with the excitement or stress caused by the event or condition. *Arnold*, 25 M.J. at 132. (b) (6) responses to (b) (6) questions were not contemporaneous or spontaneous in that sense. We conclude that the statements made by (b) (6) at the park, in a reserved, matter-of-fact manner were, at most, made as a result of recall not as a result of the event. Our assessment of the circumstances surrounding (b) (6) statement at the park, and his responses to (b) (6) questioning, convinces us that they were reflective and not made under the stress or excitement of events from the past. *United States v. LeMere*, 22 M.J. 61, 68 (C.M.A. 1986) ("we believe that Mil. R. Evid. 803(2) cannot readily be applied to a situation where a child calmly answers questions asked by her mother, instead of emotionally volunteering information.")

#### RESIDUAL HEARSAY

Because of (b) (6) status as a prior victim of the appellant, himself,<sup>6</sup> and his frame of mind regarding the appellant, we find no equivalent circumstantial guarantees of trustworthiness that would allow these purported statements of (b) (6) at the park to be admissible under Mil. R. Evid. 803(24) or 804(b) (5), the so-called Residual Hearsay Rule. The military judge did not address this avenue of possible admissibility in

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<sup>6</sup> (b) (6) testified that he was repeatedly sexually abused, including fellatio, by appellant when he was a youngster.

his ruling, although the counsel at trial did brief and orally argue the theory.

#### EFFECT ON OTHER CHARGES

In this intense and emotional trial, the key ingredient to successful prosecution of the sodomy charge was the admissibility and believability of (b) (6) testimony regarding the statement he says (b) (6) made at the park on 12 May 1991, because that was the evidence of sexual abuse in the form of sodomy. All other indecent acts would necessarily have to flow from the inference and ultimate conclusion that, because the appellant sodomized (b) (6) and had sexually abused other young children in his household, the touchings of (b) (6) penis were criminal. In the absence of that feeble straw, we cannot be certain that this evidence was harmless beyond a reasonable doubt vis-a-vis the indecent acts convictions. *United States v. Remai*, 19 M.J. 229 (C.M.A. 1985). Because of the circumstances surrounding these allegations, the military judge was not required to give instructions limiting the use of this evidence of sodomy. Thus, a "spillover effect" was inevitable.

In *United States v. Palacios*, 37 M.J. 366 (C.M.A. 1993), a case of child sodomy and indecent acts, a videotape was erroneously admitted at trial, and the Court of Military Review dismissed the sodomy charge and ordered a rehearing on sentence as to the indecent acts. The Court of Military Review found that the admission of the videotape, which contained evidence of other indecent acts, was harmless error vis-a-vis the indecent acts. The U.S. Court of Military Appeals disagreed and stated that the proper analysis should not be whether there is legally sufficient evidence, excluding the evidence complained of, but rather "whether there is a reasonable possibility that the evidence complained of might have contributed to the conviction." *Palacios*, 37 M.J. at 368 (quoting *Fahy v. Connecticut*, 375 U.S. 85 (1963)) (emphasis in original). The Court stated further that:

If the tape was considered by the members as evidence of indecent acts, "[t]his would violate one of the most basic precepts of American jurisprudence: that an accused must be convicted based on evidence of the crime before the court, not on evidence of a general criminal disposition." *United States v. Hogan*, 20 M.J. 71, 73 (CMA 1985) citing *United States v. Lotsch*, 102 F.2d 35, 36 (2d Cir.), cert. denied, 307 U.S. 622, 59 S.Ct. 793, 83 L.Ed. 1500 (1939).

*Palacios*, 37 M.J. at 368.



As in *Palacios*, "we cannot be assured that the erroneously-admitted testimony did not affect the conviction of indecent acts." 37 M.J. at 369. This inadmissible evidence was extremely damaging to the appellant. Without it, the specter that the appellant would be convicted of sexual assault for any touchings, because he did it before, looms large.

Assignments of Error IX and XI-XV are without merit. *United States v. Mitchell*, 39 M.J. 131 (C.M.A. 1994); *Weiss v. United States*, 114 S. Ct. 752 (1994).

The findings of guilty of the specification under Charge I and Specification 1 of Charge II are set aside. Charge I, and its sole supporting specification, is dismissed. The remaining findings of guilty are affirmed. The sentence is set aside. The record is returned to the Judge Advocate General for remand to the same or a different convening authority who may order a rehearing.

(b) (6)

P. J. McLAUGHLIN

Chief Judge LARSON and Senior Judge WELCH concur.

(b) (6)

DAVID C. LARSON

(b) (6)

EDWIN W. WELCH

I certify that, pursuant to Rule 18, CMR Rules of Practice and Procedure, a copy of this decision was served on appellate defense counsel on the decision date appearing thereon.

(b) (6)

Clerk of Court



DEPARTMENT OF THE NAVY  
COMMANDER  
NAVAL BASE, SAN FRANCISCO  
SAN FRANCISCO, CALIFORNIA 94130-5018

IN REPLY REFER TO:

07 AUG 1992

GENERAL COURT-MARTIAL )  
:  
ORDER NO. . . . 06-92 )

Before a general court-martial which convened at Naval Legal Service Office, Naval Station Treasure Island, San Francisco, California, pursuant to Commander Naval Base San Francisco, California, General Court-Martial Convening Order Number 01-92 of 2 January 1992, as amended by Amending Order 01A-92 of 19 March 1992, and as further amended by Amending Order 01B-92 of 1 April 1992, was arraigned and tried:

Hospital Corpsman Chief Ronald J. Spsychala, U.S. Navy, (b) (6), Headquarters Company, Marine Corps Security Force Battalion, Pacific.

The accused was arraigned on the following offenses and the following findings or other dispositions were reached:

CHARGE I: ARTICLE 125. Plea: NG. Finding: G.

Specification: On or before 13 May 1991, commit sodomy with (b) (6), a child under the age of 16 years, by force and without consent. Plea: NG. Finding: G.

CHARGE II: ARTICLE 134. Plea: G. Finding: G.

Specification 1: On or before 13 May 1991, commit indecent acts upon the body of (b) (6), a male under 16 years of age. Plea: NG. Finding: G.

Specification 2: At Naval Station Treasure Island, San Francisco, California, on or about 9 January 1990, wrongfully possess, keep and offer for sale an Uzi 9mm/45 caliber pistol, in violation of California Penal Code Section 12280, as assimilated into Federal Law by the provisions of the Federal Assimilative Crimes Act, Title 18, U.S. Code, Section 13. Plea: NG. Finding: DISMISSED.

Specification 3: On or about 9 January 1990, at or near San Francisco, California, while not a licensed importer, manufacturer, dealer or collector, wrongfully and willfully receive into California an Uzi 9mm/45 caliber pistol, which firearm had been purchased or otherwise obtained by the accused outside the state of California, in violation of Title 18, U.S. Code, Section 922. Plea: G. Finding: G.

Specification 4: On or about 2 January 1990, at or near Clearwater, Florida, wrongfully and knowingly cause to be delivered to a common or contract carrier for transportation or

GENERAL COURT-MARTIAL )  
:  
ORDER NO. . . . 06-92 )

shipment in interstate commerce, to a person other than a licensed importer, manufacturer, dealer or collector, a package or other container containing an Uzi 9mm/45 caliber pistol, without providing written notice to the carrier that said firearm was being transported or shipped, in violation of Title 18, U.S. Code, Section 922. Plea: G. Finding: G.

**SENTENCE**

Sentence adjudged on 28 April 1992: To be reduced to pay grade E-1; to be confined for a period of 5 years; to forfeit \$500.00 pay per month for a period of 60 months; and to be discharged from the naval service with a Bad Conduct Discharge.

**ACTION**

COMMANDER  
NAVAL BASE, SAN FRANCISCO  
SAN FRANCISCO, CALIFORNIA 94130-5018

07 AUG 1992

**ACTION**

In the case of Hospital Corpsman Chief Ronald J. Spsychala, U.S. Navy, (b) (6), the sentence is approved and, except for that part of the sentence extending to a bad conduct discharge, will be executed, but the execution of that part of the sentence adjudging confinement in excess of three (3) years is suspended for a period of twenty-four (24) months from the date of trial, at which time, unless the suspension is sooner vacated, the suspended part of the sentence will be remitted without further action. Consolidated Brig, Naval Air Station Miramar, San Diego, California, is designated as the place of confinement.

The record of trial; Staff Judge Advocate's Recommendation dated 9 June 1992; Defense Counsel's Response to Staff Judge Advocate's Recommendation and Request for Clemency dated 30 June 1992; the Addendum to the Staff Judge Advocate's Recommendation dated 4 July 1992; Defense Counsel's Response to Addendum Staff Judge Advocate Recommendation and Request for Clemency dated 17 July 1992; and the Second Addendum to the Staff Judge Advocate's Recommendation dated 5 August 1992, have been considered in taking this action.

In accordance with U.S. v. Allen, 17 M.J. 126 (C.M.A. 1984), the accused is to be given 18 days credit towards the confinement adjudged for the days of pretrial confinement served.

GENERAL COURT-MARTIAL )  
:  
ORDER NO. . . . 06-92 )

Pursuant to section 0152, Manual of the Judge Advocate General, the following is a brief synopsis of the accused's conduct during the current enlistment:

Previous convictions: None.

Nonjudicial punishments: None.

Awards and decorations: National Defense Service Medal (Two awards); Sea Service Deployment Ribbon (w/Bronze Star); Navy Unit Commendation; Good Conduct Medal (Three awards); Overseas Service Ribbon (Three awards); Philippine Republic Presidential Unit Citation.

Range of performance marks: 4.0 average of evaluation traits.

The record of trial is forwarded to the Navy and Marine Corps Appellate Review Activity, Office of the Judge Advocate General, Washington Navy Yard, Building 111, Washington D.C. 20384-1111.

**(b) (6)**

M. W. RUCK  
Rear Admiral, U.S. Navy  
Commander  
Naval Base San Francisco  
San Francisco, California

**AUTHENTICATION**

The foregoing is authenticated in accordance with R.C.M. 1114(e), Manual for Courts-Martial, 1984.

**(b) (6)**

**(b) (6)**

LT, JAGC, USN  
Staff Judge Advocate  
Naval Base San Francisco  
San Francisco, California

GENERAL COURT-MARTIAL )  
:  
ORDER NO. . . . 06-92 )

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Trial Counsel (LT FAWAL)

Defense Counsel (CAPT DEAN, USMC)

Accused

File

# CHARGE SHEET

## I. PERSONAL DATA

1. NAME OF ACCUSED (Last, First, MI) <b>SPYCHALA, Ronald J.</b>		2. SSN <b>(b) (6)</b>	3. GRADE OR RANK <b>HMC</b>	4. PAY GRADE <b>E-7</b>
5. UNIT OR ORGANIZATION <b>Headquarters Company, Marine Corps Security Force Battalion, Pacific, Mare Island Naval Shipyard, Vallejo, CA 94592-5022</b>			6. CURRENT SERVICE	
7. PAY PER MONTH		8. NATURE OF RESTRAINT OF ACCUSED		9. DATE(S) IMPOSED
a. BASIC <b>\$2,167.20</b>	b. SEA/FOREIGN DUTY <b>N/A</b>	c. TOTAL <b>\$2,167.20</b>	<b>Artrial Confinement</b>	
<b>\$1,924.20</b>		<b>\$1,924.20</b>	<b>None</b>	
				<b>10A1K 92</b>
				<b>N/A</b>

## II. CHARGES AND SPECIFICATIONS

10. CHARGE: **I** VIOLATION OF THE UCMJ, ARTICLE **125**

SPECIFICATION: In that Hospital Corpsman Chief Petty Officer Ronald J. Spychala, U.S. Navy, Marine Corps Security Force Battalion, Pacific, Mare Island Naval Shipyard, Vallejo, California, on active duty, did, on or before 13 May 1991, commit sodomy with **(b) (6)**, a child under the age of 16 years, by force and without the consent of the said **(b) (6)**.

Charge II: Violation of the UCMJ, Article 134

Specification 1: In that Hospital Corpsman Chief Petty Officer Ronald J. Spychala, U.S. Navy, Marine Corps Security Force Battalion, Pacific, Mare Island Naval Shipyard, Vallejo, California, on active duty, did, on or before 13 May 1991, commit indecent acts upon the body of **(b) (6)** a male under 16 years of age, not the spouse of said Hospital Corpsman Chief Petty Officer Ronald J. Spychala, by using his hands to fondle and touch the penis of the said **(b) (6)**, with the intent to arouse and gratify the sexual desires of the said Hospital Corpsman Chief Petty Officer Ronald J. Spychala.

(Continued on Page 2)

## III. PREFERRAL

11a. NAME OF ACCUSER (Last, First, MI) <b>(b) (6)</b>	b. GRADE <b>Cpl</b>	c. ORGANIZATION OF ACCUSER <b>MCSFBn, Pac, MINSY</b>
d. SIGNATURE OF ACCUSER <b>(b) (6)</b>	e. DATE <b>9/12/09</b>	

AFFIDAVIT: Before me, the undersigned, authorized by law to administer oaths in cases of this character, personally appeared the above named accuser this 9 day of DEC, 19 91, and signed the foregoing charges and specifications under oath that he/she is a person subject to the Uniform Code of Military Justice and that he/she either has personal knowledge of or has investigated the matters set forth therein and that the same are true to the best of his/her knowledge and belief.

**(b) (6)**

Typed Name of Officer

**MCSFBn, Pac, MINSY**

Organization of Officer

Captain, U.S. Marine Corps

Legal Officer

**(b) (6)**

Signature

Official Capacity to Administer Oath  
(See R.C.M. 307(b)—must be commissioned officer)

12.

On 9 DEC, 19 91, the accused was informed of the charges against him/her and of the name(s) of the accuser(s) known to me (See R.C.M. 308 (a)). (See R.C.M. 308 if notification cannot be made.)

(b) (6)

Typed Name of Immediate Commander

MCSFBn, Pac, MINSY, Vallejo, CA  
Organization of Immediate Commander

Captain, U.S. Marine Corps

(b) (6)

Signature

IV. RECEIPT BY SUMMARY COURT-MARTIAL CONVENING AUTHORITY

13.

The sworn charges were received at 1430 hours, 9 DEC 19 91 at MCSFBn, Pac, Mare Island  
Designation of Command or

Naval Shipyard, Vallejo, CA 94592

Officer Exercising Summary Court-Martial Jurisdiction (See R.C.M. 403)

FOR THE <sup>1</sup> Commanding Officer

(b) (6)

Typed Name of Officer

Adjutant

Official Capacity of Officer Signing

Captain, U.S. Marine Corps

Grade

(b) (6)

Signature

V. REFERRAL; SERVICE OF CHARGES

14a. DESIGNATION OF COMMAND OF CONVENING AUTHORITY  
Commander, Naval Base San Francisco

b. PLACE  
San Francisco, CA

c. DATE 7 JAN 1992

Referred for trial to the general court-martial convened by my General Court-Martial Convening  
Order 01-92 dated

2 Jan 19 92, subject to the following instructions:<sup>2</sup> none.

By Commander, Naval Base San Francisco of Command or Order

M. W. RUCK

Typed Name of Officer

Commander, Naval Base San Francisco

Official Capacity of Officer Signing

Rear Admiral, U.S. Navy

Grade

(b) (6)

Signature

15.

On 09 January, 19 92, I (caused to be) served a copy hereof on ~~XXXXXX~~ the above named accused.

A. D. FAWAL

Typed Name of Trial Counsel

LT, JAGC, USNR

Grade or Rank of Trial Counsel

(b) (6)

Signature

FOOTNOTES: 1 - When an appropriate commander signs personally, inapplicable words are stricken.  
2 - See R.C.M. 601(e) concerning instructions. If none, so state

Specification 2: In that Hospital Corpsman Chief Petty Officer Ronald J. Spsychala, U.S. Navy, Marine Corps Security Force Battalion, Pacific, Mare Island Naval Shipyard, Vallejo, California, on active duty, did, at Naval Station Treasure Island, San Francisco, California, a place under the exclusive jurisdiction of the United States, on or about 9 January 1990, wrongfully possess, keep and offer for sale an assault weapon, to wit: an Uzi 9mm/45 caliber pistol, serial number 45UP53834, while within the state of California, in violation of California Penal Code Section 12280 as assimilated into Federal law by the provisions of the Federal Assimilative Crimes Act, Title 18 United States Code, Section 13.

Specification 3: In that Hospital Corpsman Chief Petty Officer Ronald J. Spsychala, U.S. Navy, Marine Corps Security Force Battalion, Pacific, Mare Island Naval Shipyard, Vallejo, California, on active duty, did, on or about 9 January 1990, at or near San Francisco, California, while not a licensed importer, manufacturer, dealer or collector, wrongfully and willfully receive into California, the state where he resides, a firearm, to wit: an Uzi 9mm/45 caliber pistol, serial number 45UP53834, which firearm had been purchased or otherwise obtained by the said Hospital Corpsman Chief Petty Officer Ronald J. Spsychala outside the state of California, in violation of Title 18, United States Code, Section 922.

Specification 4: In that Hospital Corpsman Chief Petty Officer Ronald J. Spsychala, U.S. Navy, Marine Corps Security Force Battalion, Pacific, Mare Island Naval Shipyard, Vallejo, California, on active duty, did, on or about 2 January 1990, at or near Clearwater, Florida, wrongfully and knowingly cause to be delivered to a common or contract carrier for transportation or shipment in interstate commerce, to a person other than a licensed importer, manufacturer, dealer or collector, a package or other container containing a firearm, to wit: an Uzi 9mm/45 caliber pistol, serial number 45UP53834, without providing written notice to the carrier that said firearm was being transported or shipped, in violation of Title 18, United States Code, Section 922.