



UNITED STATES MARINE CORPS
MARINE CORPS COMBAT DEVELOPMENT COMMAND
3300 RUSSELL ROAD
QUANTICO, VIRGINIA 22134-5001

IN REPLY REFER TO:
1920
C 06

AUG 09 2011

From: Staff Judge Advocate, Marine Corps Base Quantico, Virginia
To: Commanding General, Marine Corps Combat Development
Command

Subj: PRETRIAL ADVICE IN THE CASE OF UNITED STATES V. CAPTAIN
JAMES M. ROWE, USMC

Ref: (a) Article 32, UCMJ
(b) R.C.M. 405, MCM (2008 Edition)
(c) Article 34, UCMJ
(d) R.C.M. 406, MCM (2008 Edition)

Encl: (1) Charge Sheet preferred on 27 Apr 2011
(2) Art 32 IO's report dated 26 Jun 2011
(3) Additional Charge Sheet preferred on 4 Aug 2011

1. In accordance with references (a) and (b), the Commanding General, Marine Corps Combat Development Command, directed an investigation into the charges contained in enclosure (1). The Article 32 investigation commenced on 6 June 2011. I have reviewed the charges and the evidence contained in enclosures (1) and (3), and offer the following conclusions pursuant to references (c) and (d):

a. The charges and specifications thereunder allege an offense under the Uniform Code of Military Justice;

b. The offenses alleged are warranted by the evidence indicated in the report of investigation; and

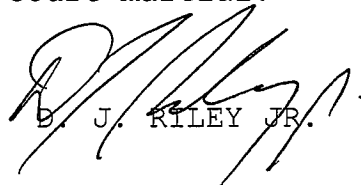
c. A general court-martial would have personal jurisdiction over the accused and subject-matter jurisdiction over the alleged offenses;

2. In enclosure (2), the Article 32 Investigating Officer recommends that the charges relating to the sexual assault of 1stLt Klay, specifically those contained in Articles 120, 125, 127, 128, and 134 (specification 4), not be taking forward for adjudication at any forum, mainly due to 1stLt Klay's lack of credibility. The Article 32 Investigating Officer recommends that the remaining charges be disposed of at a lower forum, specifically, a nonjudicial punishment proceeding. I non-concur with the recommendations of the Article 32 Investigating Officer.

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3. In addition to the charges included on enclosure (1), I am also recommending one additional charge be added to those contained on the original charge sheet. This charge and its specifications were not investigated at the Article 32 Investigation, however, the underlying conduct was fully investigated during the Article 32 Investigation and is clearly encompassed by the evidence in this case. The conduct was clearly covered during the testimony and presentation of documentatry evidence. Additionally, the Defense Counsel had a full opportunity to examine the evidence and cross examine the witnesses regaring the conduct in question.

4. Based on my review of the enclosures, I recommend all the original and additional charges be referred to a general court-martial. Issues pertaining to witness credibility, especially in light of the seriousness of the charges, are best left to the factfinder(s) for determination. Should you concur, your signature in block 14 of the charge sheet at enclosures (1) will refer the charges to a general court-martial.


D. J. RILEY JR.