

INVESTIGATING OFFICER'S REPORT

(Of Charges Under Article 32, UCMJ and R.C.M. 405, Manual for Courts-Martial)

1a. FROM: (Name of Investigating Officer - Last, First, MI) MINER, BRETT C.	b. GRADE CAPT	c. ORGANIZATION WFTBN, MCRD	d. DATE OF REPORT 4 JUN 09
2a. TO: (Name of Officer who directed the investigation - Last, First, MI) SALINAS, ANGELA	b. TITLE COMMANDING GENERAL	c. ORGANIZATION MCRD/WRR	
3a. NAME OF ACCUSED (Last, First, MI) HAWK, JOSHUA	b. GRADE SSGT	c. SSN 561578658	d. ORGANIZATION SPTN, RTR, MCRD
			e. DATE OF CHARGES 6 MAY 09

(Check appropriate answer)

4. IN ACCORDANCE WITH ARTICLE 32, UCMJ, AND R.C.M. 405, MANUAL FOR COURTS-MARTIAL, I HAVE INVESTIGATED THE CHARGES APPENDED HERETO (Exhibit 1)	YES	NO	
5. THE ACCUSED WAS REPRESENTED BY COUNSEL (If not, see 9 below)	X		
6. COUNSEL WHO REPRESENTED THE ACCUSED WAS QUALIFIED UNDER R.C.M. 405(d) (2), 502(d)	X		
7a. NAME OF DEFENSE COUNSEL (Last, First, MI) GREEN, JIM	b. GRADE CIV	8a. NAME OF ASSISTANT DEFENSE COUNSEL (If any) AHN, DAVID	b. GRADE CAPT
c. ORGANIZATION (If appropriate) N/A		c. ORGANIZATION (If appropriate) USMC	
d. ADDRESS (If appropriate) 8880 Rio San Diego Dr. Suite 370 San Diego, CA 92108		d. ADDRESS (If appropriate) 3700 Chosin Ave. Bldg 12 San Diego CA 92140	
9. (To be signed by accused if accused waives counsel. If accused does not sign, investigating officer will explain in detail in Item 21.)			
a. PLACE N/A		b. DATE N/A	

I HAVE BEEN INFORMED OF MY RIGHT TO BE REPRESENTED IN THIS INVESTIGATION BY COUNSEL, INCLUDING MY RIGHT TO CIVILIAN OR MILITARY COUNSEL OF MY CHOICE IF REASONABLY AVAILABLE. I WAIVE MY RIGHT TO COUNSEL IN THIS INVESTIGATION.

c. SIGNATURE OF ACCUSED N/A		
10. AT THE BEGINNING OF THE INVESTIGATION I INFORMED THE ACCUSED OF: (Check appropriate answer)	YES	NO
a. THE CHARGE(S) UNDER INVESTIGATION	X	
b. THE IDENTITY OF THE ACCUSER	X	
c. THE RIGHT AGAINST SELF-INCRIMINATION UNDER ARTICLE 31	X	
d. THE PURPOSE OF THE INVESTIGATION	X	
e. THE RIGHT TO BE PRESENT THROUGHOUT THE TAKING OF EVIDENCE	X	
f. THE WITNESSES AND OTHER EVIDENCE KNOWN TO ME WHICH I EXPECTED TO PRESENT	X	
g. THE RIGHT TO CROSS-EXAMINE WITNESSES	X	
h. THE RIGHT TO HAVE AVAILABLE WITNESSES AND EVIDENCE PRESENTED	X	
i. THE RIGHT TO PRESENT ANYTHING IN DEFENSE, EXTENUATION, OR MITIGATION	X	
j. THE RIGHT TO MAKE A SWORN OR UNSWORN STATEMENT, ORALLY OR IN WRITING	X	
11a. THE ACCUSED AND ACCUSED'S COUNSEL WERE PRESENT THROUGHOUT THE PRESENTATION OF EVIDENCE (If the accused or counsel were absent during any part of the presentation of evidence, complete b below.)	X	
b. STATE THE CIRCUMSTANCES AND DESCRIBE THE PROCEEDINGS CONDUCTED IN THE ABSENCE OF ACCUSED OR COUNSEL		

NOTE: If additional space is required for any item, enter the additional material in Item 21 or on a separate sheet. Identify such material with the proper numerical and, if appropriate, lettered heading (Example: "7c.") Securely attach any additional sheets to the form and add a note in the appropriate item of the form: "See additional sheet."

12a. THE FOLLOWING WITNESSES TESTIFIED UNDER OATH: (Check appropriate answer)

NAME (Last, First, MI)	GRADE (If any)	ORGANIZATION/ADDRESS (Whichever is appropriate)	YES	NO
N/A				

b. THE SUBSTANCE OF THE TESTIMONY OF THESE WITNESSES HAS BEEN REDUCED TO WRITING AND IS ATTACHED.

13a. THE FOLLOWING STATEMENTS, DOCUMENTS, OR MATTERS WERE CONSIDERED; THE ACCUSED WAS PERMITTED TO EXAMINE EACH.

DESCRIPTION OF ITEM	LOCATION OF ORIGINAL (If not attached)		
IE-1: Charge Sheet	Trial Counsel	X	
IE-2: Appointing Order	Trial Counsel	X	
IE-3: Defense continuance request dtd 8 May 09	Defense Counsel	X	
IE-4: Government continuance denial dtd 12 May 09	N/A- e-mail	X	
IE-5: Defense witness request dtd 12 May 09	Defense Counsel	X	
IE-6: Defense supplemental witness request dtd 13 May 09	Defense Counsel	X	

b. EACH ITEM CONSIDERED, OR A COPY OR RECITAL OF THE SUBSTANCE OR NATURE THEREOF, IS ATTACHED

14. THERE ARE GROUNDS TO BELIEVE THAT THE ACCUSED WAS NOT MENTALLY RESPONSIBLE FOR THE OFFENSE(S) OR NOT COMPETENT TO PARTICIPATE IN THE DEFENSE. (See R.C.M. 909, 916(k).)

15. THE DEFENSE DID REQUEST OBJECTIONS TO BE NOTED IN THIS REPORT (If Yes, specify in Item 21 below.)

16. ALL ESSENTIAL WITNESSES WILL BE AVAILABLE IN THE EVENT OF TRIAL

17. THE CHARGES AND SPECIFICATIONS ARE IN PROPER FORM

18. REASONABLE GROUNDS EXIST TO BELIEVE THAT THE ACCUSED COMMITTED THE OFFENSE(S) ALLEGED

19. I AM NOT AWARE OF ANY GROUNDS WHICH WOULD DISQUALIFY ME FROM ACTING AS INVESTIGATING OFFICER. (See R.C.M. 405(d) (1).)

20. I RECOMMEND:

a. TRIAL BY SUMMARY SPECIAL GENERAL COURT-MARTIAL

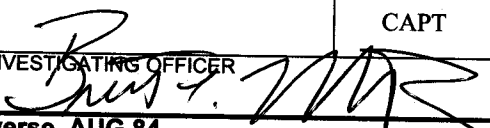
b. OTHER (Specify in Item 21 below)

21. REMARKS (Include, as necessary, explanation for any delays in the investigation, and explanation for any "no" answers above.)

Item 14. There was no evidence presented during this investigation that suggests the Accused was not mentally responsible for the offenses or not competent to participate in his own defense during this hearing or during future proceedings.

Item 15. The defense initially objected to the convening of the Article 32 because the Accused was attempting to retain civilian counsel. Ultimately, the investigation was left open in order to allow the Accused to effectuate civilian representation, which nullified the issue.

Item 16. The Investigating Officer was informed by the government that an essential government witness (unnamed NCIS agent) would likely be unavailable during the next few months for trial as a result of operational commitments (deployment).

22a. TYPED NAME OF INVESTIGATING OFFICER BRETT C. MINER	b. GRADE CAPT	c. ORGANIZATION WFTBN, MCRD
d. SIGNATURE OF INVESTIGATING OFFICER 		e. DATE 4 JUN 09

Block 13 a cont.

IE-7: Government response to defense witness requests

IE-8: NCIS Investigation – CCN: 19SEP08-MWMM-0052-8DMA

IE-9: Civilian defense counsel Notice of Appearance

IE-10: NCIS Investigation – (Interim) dtd 19 May 09 (Sgt Mahoe statement)

IE-11: CDROM – Photographs of V/Danielle Ligon

IE-12: CDROM – Videotaped statement of the Accused

IE-13: Service Record Book of the Accused

IE-14: E-mail from Defense dtd 28 May 09

IE-15: Defense objections/comments on the evidence.

IE-16: Government objections/comments on the evidence

Procedure

The investigation was opened on 14 May 09. Persons present were the Accused, Trial Counsel, and Detailed Defense Counsel. The Investigating Officer was immediately informed that the Accused was attempting to retain civilian defense counsel for the subject investigation. On 15 May 09, the Investigating Officer was informed that the Accused had selected a civilian defense counsel, and was in the process of acquiring funds to effectuate legal representation. The Investigating Officer was notified that the Accused needed 48 hrs. to secure the funds to retain his civilian defense counsel. Accordingly, the Investigating Officer directed the Government to notify the Convening Authority of this delay and request an additional 48 hrs to continue the investigation. On 19 May 09, the investigation was reconvened and the Investigating Officer was notified that the Accused had in fact retained Mr. Jim Green as his Civilian Defense Counsel (IE-9). However, the Investigating Officer was informed that Mr. Green's first available date to conduct the hearing would be 29 May 09. Again, the Investigating Officer directed the Government to notify the Convening Authority of this delay and request an additional 10 days to accommodate the schedule of the Civilian Defense Counsel. Ultimately, the Article 32 was reconvened on 29 May 09 with all necessary parties present, to include the Trial Counsel, Civilian Defense Counsel, Detailed Defense Counsel and the Accused. That same day, the Investigating Officer closed the investigation concerning the presentation of evidence. In accordance with R.C.M. 405, the Government and the defense were given until close of business on Monday 1 Jun 09 to file all objections and any additional comments on the evidence presented. At 1700 on 1 Jun 09, the investigation was officially closed.

Witness Production

The defense requested a myriad of witnesses for this investigation. See IE-5,6. The Government's response to both defense witness requests is located at IE-7. From 14 May 09 – 29 May 09, the Investigating Officer facilitated the Government's efforts to address the production of the requested witnesses that were reasonably available. The Investigating Officer also reengaged the detailed defense counsel on the relevance of their requested witnesses. It was determined that the critical witness for the defense was the alleged victim, Ms. Danielle Ligon ("Danielle"). The defense's position was that her personal appearance and ability to assess her credibility was critical. The Investigating Officer agreed, as did the Trial Counsel. Per R.C.M. 405(g), Danielle was invited to attend the investigation, but declined to participate in person or testify telephonically. See IE-7. Ultimately, on 29 May 09, when the investigation was reconvened, in light of the fact that the alleged victim would not be testifying, the defense withdrew their request to produce all other witnesses. See IE-14. The Investigating Officer notes that the language contained in IE-14 is a bit ambiguous. "The defense at this time does not intend on calling any witnesses due to Danielle's unavailability for the Art 32 at this time." On the record at the hearing on 29 May 09, the Investigating Officer requested clarification from the defense on the issue. The Investigating Officer again explained to the Accused and the defense that the Accused had the absolute right to request the production of any witness, and that the government would produce any such requested witness that was determined to be reasonably available. The defense, given this opportunity, again relayed that in light of the fact that Danielle had declined invitation and for tactical reasons, they were withdrawing all other witness production requests.

Summary of Witness Testimony

There were no witnesses that testified either in person or telephonically during this investigation.

Summary of Investigative Exhibits Considered

- IE-1: Charge Sheet.** Not evidence.
- IE-2: Investigating Officer appointing letter.** Not evidence.
- IE-3: Defense continuance request dtd 8 May 09.** Not evidence.
- IE-4: Government response to continuance request dtd 12 May 09.** Not evidence.
- IE-5: Defense witness request dtd 12 May 09.** Not evidence.
- IE-6: Defense supplemental witness request dtd 13 May 09.** Not evidence.
- IE-7: Government response to defense witness requests dtd 13 May 09.** Not evidence.
- IE-8: NCIS Investigation.** Considered for all Charges and Specifications.
- IE-9: Civilian defense counsel notice of appearance.** Not evidence.
- IE-10: NCIS Investigation (Interim).** Considered for all Charges and Specifications.
- IE-11: CDROM – Photographs of V/Danielle Ligon’s injuries.** Considered for all Charges and Specifications.
- IE-12: CDROM – Videotaped statement of Accused.** Considered for all Charges and Specifications.
- IE-13: Service Record Book of the Accused.** Considered for all Charges and Specifications.
- IE-14: E-mail from defense to Investigating Officer dtd 28 May 08.** Not evidence.
- IE-15: Defense objections/comments on the evidence.** Not evidence, but considered for all Charges and Specifications.
- IE-16: Government objections/comments on the evidence.** Not evidence, but considered for all Charges and Specifications.

Form of Charges

Charge I, Spec: The subject charge comports with the model specification per Article 80, UCMJ (MCM 2008 Ed.), and does not require change. The government has charged attempted rape by using strength or power per Article 120, UCMJ. The Investigating Officer notes that there are several variations of the current Article 120 – Rape by using physical violence, strength, power or restraint to any person. In the instant case, the specification as drafted does describe the offense with sufficient detail to include expressly or by necessary implication every element of the attempted offense alleged.

Charge II, Spec: The subject charge comports with the model specification per Article 107, UCMJ (MCM 2008 Ed.), and does not require change.

Charge III, Spec: The subject charge comports with the model specification per Article 120, UCMJ (MCM 2008 Ed.), and does not require change.

Charge IV, Spec: The subject charge comports with the model specification per Article 134, UCMJ (MCM 2008 Ed.), and does not require change.

Jurisdiction over the Accused

The Accused was on active duty at the time of the offenses alleged. See IE-13. Jurisdiction over the accused is not an issue in this case.

Government Comments / Objections

The government has requested that the Investigating Officer consider additional violations of Article 107, UCMJ. See IE-16. Specifically, the government has asked the Investigating Officer to comment on the following statements made by the accused in his videotaped interview. See IE-12.

“Sgt Mahoe told me he had sex with Danielle a few weeks before this incident.” - Sgt Mahoe explains “I may have told SSgt Hawk and SSgt Mora that Danielle was an easy lay and that I could have had sex with her, but I never told them I did have sex with her.” See IE-10. The question of determining that the Accused made this specific, official statement to NCIS with the intent to deceive is a matter for the finder of fact. Per Article 32d, UCMJ and *United States v. Engle*, 1 M.J. 387 (C.M.A. 1976), the Investigating Officer believes that the government has met the evidentiary burden to refer this specification to trial by general court-martial.

“Danielle took my right hand and put it on her crotch over her clothes.” - Danielle states emphatically that this event never took place. The question of determining the falsity of this specific statement is a matter for the finder of fact. Per Article 32d, UCMJ and *United States v. Engle*, 1 M.J. 387 (C.M.A. 1976), the Investigating Officer believes that the government has met the evidentiary burden to refer this specification to trial by general court-martial. However, it should be noted that an independent witness, Ms. Sybil Mitchell, the bartender at The Locker Room, corroborates the statement of the Accused. See IE-6.

“I exited the SUV and went to my room while Danielle stayed in the SUV.” - Sgt Mahoe states that the Accused told him “Danielle freaked out and stopped kissing him. She got out of the vehicle and walked off.” See IE-10. The question of determining that the Accused made this specific, official statement to NCIS with the intent to deceive is a matter for the finder of fact. Per Article 32d, UCMJ and *United States v. Engle*, 1 M.J. 387 (C.M.A. 1976), the Investigating Officer believes that the government has met the evidentiary burden to refer this specification to trial by general court-martial.

“Amy and SSgt Mora knocked on my door while I was watching TV.” – SSgt Mora states “I knocked on the door and there was no answer. I opened the door and the lights were off. SSgt Hawk was lying asleep on his bed by himself.” See IE-8, Exhibit 28. The question of determining that the Accused made this specific, official statement to NCIS with the intent to deceive is a matter for the finder of fact. Per Article 32d, UCMJ and *United States v. Engle*, 1 M.J. 387 (C.M.A. 1976), the Investigating Officer believes that the government has met the evidentiary burden to refer this specification to trial by general court-martial.

Defense Comments / Objections

Procedural objections: The defense objected to the opening of the Article 32 Investigation on 14 May 09. Specifically, the Investigating Officer was informed that the Accused was attempting to retain civilian counsel for the hearing. The defense had previously requested a continuance of the hearing in order to prepare; the continuance was denied by the convening authority on 12 May 09. See IE-3,4. Accordingly, the Article 32 Investigation was opened on 14 May 09. However, in order to allow the Accused the opportunity to retain civilian counsel, the Investigation was held open until 19 May 09 with an understanding that the Accused would have made the decision on whether or not he was retaining civilian counsel. On 19 May 09, the Accused informed the Investigating Officer that he had retained civilian counsel, but that the earliest the defense would be able to proceed would be 29 May 09. The Investigating Officer directed the Government to get an answer from the Convening Authority on the issue of continuing the case until 29 May 09, at which time all parties would be ready to proceed. On 19 May 09, the Convening Authority granted a continuance until 29 May 09. The Investigation was therefore held open until that date.

Evidentiary objections: The defense had no objection to any evidence submitted during this investigation.

Other comments: The defense submits that there is “no evidence showing that any of SSgt Hawk’s clothing was ever removed or sexual intercourse was ever attempted.” The Investigating Officer notes that the specific intent necessary to prove attempted sexual intercourse can be shown in many ways. Ultimately, the finder of fact will determine whether the Accused had the requisite *mens rea* to commit an attempted rape. Under a theory that Danielle escaped before an actual rape occurred, the Investigating Officer believes that the government has met its burden with respect to this specific charge.

Summary of the Case

This case can be best described as the classic “he said, she said” sexual assault case. There were no eye witnesses to the alleged sexual assault. There is no physical evidence that conclusively shows a lack of consent on the part of the victim. The events that occurred prior to the incident and immediately following the incident help to explain the actions of both the Accused and Danielle, but ultimately the case hinges on the issue of credibility.

On 11 Sep 08 the Accused, SSgt Carlos Mora, USMC (“SSgt Mora”) and Ms. Emiliana Argeunta (“Amy”) were drinking and eating at an enlisted club on board MCRD San Diego called “The Locker Room.” The aforementioned witnesses arrived at The Locker Room around 1700-1800 on the evening of 11 Sep 08. At some point, Amy decides that she would call her girlfriend Danielle and invite her out for the evening. See IE-8, Exhibit 26. Danielle states that she received a text message from Amy “indicating there was a present for me.” Danielle also stated, “this is girl talk for a cute guy being around.” See IE-8, Exhibit 2. After making contact with Danielle, Amy departs The Locker Room and proceeds to pick up Danielle at their residence. Danielle and Amy are good friends and roommates. Approximately 45 minutes to one hour later, Danielle and Amy arrive back at The Locker Room on board MCRD. Essentially, the plan was for the four of them to hang out and party for the evening.

From 1800/1900 to approximately 2200, Amy, Danielle, SSgt Mora and the Accused ate food and drank alcoholic beverages at The Locker Room. During this time, with the exception of Amy, the designated driver, all other persons admit to consuming substantial amounts of alcohol. All parties agree that Danielle, SSgt Mora and the Accused were intoxicated. See IE-8, Exhibits 2, 26, 28. The Accused admits to consuming several beers, margaritas, “Jager bombs,” (shots of Jagermeister and Red Bull), and shots of Patron tequila. The Accused freely admits that he was intoxicated. See IE-12. Danielle admits to consuming at least two Long Island Iced Teas and a “Jager Bomb.” See IE-8, Exhibit 2.

During the course of the evening several witnesses describe flirting or playful banter between Danielle and the Accused. SSgt Mora states, “SSgt Hawk and Danielle were flirting at the bar with each other.” He also states, “At one point, Danielle leaned over to me and was complaining about her boyfriend cutting her off from having sex. She said she just wanted to meet someone who was going to toss her around.” SSgt Mora believes that Amy heard this comment, but he wasn’t sure if the Accused heard it. See IE-8, Exhibit 28. Amy states, “While we were at the bar, Danielle and Josh interacted in a playful banter like brother and sister.” She also states, “Danielle was all over the place talking about crazy stuff. There may have been a time where either Josh or Danielle had their arm on or around the other.” See IE-8, Exhibit 26. The Accused also states that both he and Danielle were flirting with each other. He also remembers “joking around” with Danielle about the subject of rough sex. See IE-12. This fact appears to be corroborated by Amy and SSgt Mora. Neither SSgt Mora nor Amy witnessed any kissing or other actual sexual contact. Danielle also does not admit to any kissing or sexual contact at The Locker Room at any time. However, the Accused states that he did in fact kiss Danielle and it was completely mutual. The bartender at The Locker Room, Ms. Sybil Mitchell, observed Danielle and the Accused kissing each other. She stated that she observed them kiss one and another’s neck once each, but they were not making out. She also stated that she observed Danielle push the Accused’s hand down to her crotch area once during the evening, to which she replied “no fornicating at my bar.” See IE-8, Exhibit 6.

At some point during the evening, the foursome (Amy, Danielle, SSgt Mora and the Accused) decided that they were going to go out to another club or bar to continue the party. All agree that the foursome left The Locker Room at approximately 1000/1030. See IE-8, Exhibits 2, 26, 28, IE-12. After leaving The Locker Room, the foursome traveled to the RTR barracks. SSgt Mora and the Accused had planned on changing clothes before they went out on the town. They used Amy's Mitsubishi Montero SUV. Amy was driving, SSgt Mora was the front seat passenger and Danielle and the Accused were in the back seat. During the ride from The Locker Room to the RTR barracks, both Amy and SSgt Mora stated that Danielle and the Accused were playing around in the back seat. SSgt Mora states, "While in the back seat SSgt Hawk and Danielle were play fighting with their arms going back and forth in a flirting manner." See IE-8, Exhibit 28. Amy states, "On the drive to the boys' room, Josh and Danielle were rough housing in the back seat. They were laughing, yelling etc..." Upon arrival at the RTR barracks, Amy states that "Danielle and Josh were still playing, playfully, still in the back seat." See IE-8, Exhibit 26. SSgt Mora had already exited the vehicle, and Amy told the Accused and Danielle to "cut it out" and for the Accused to go change his clothes. Danielle then told Amy "no, you get out of the car" in a playful/joking tone. See IE-8, Exhibit 26. SSgt Mora states Danielle told him and Amy, "You guys need to go." He also believes Danielle kicked the back of Amy's seat as she said this. SSgt Mora also heard Amy ask Danielle "if she was sure" [that she wanted them to go], to which Danielle responded, "Yes, ya'll need to leave." See IE-8, Exhibit 28. The Accused has a similar recollection of these events. The Accused states that he and Danielle were kissing and messing around in the back seat while in route to the RTR barracks to change over. He also states that Danielle said, "ya'll need to get the fuck out of the car." See IE-12.

Danielle has no memory of these events whatsoever. See IE-8, Exhibit 2.

After exiting the vehicle, SSgt Mora and Amy walked around the Depot for about an hour. See IE-8, Exhibits 26, 28. (SSgt Mora estimates 1 hour, Amy estimates 30-45 minutes).

The Accused describes the incident in the back of the Montero as a consensual sexual encounter, to include foreplay, touching and sucking of Danielle's left breast, and digital penetration of her vagina. He states that during the encounter she reciprocated affection, to include lifting up her hips to allow him to remove her pants and panties. He states that this encounter lasted for approximately 15 minutes. At some point during the encounter, the Accused states Danielle said "I shouldn't be doing this, I have a boyfriend that is coming home tomorrow," or words to that effect. He states that she asked him to stop, and he did. The Accused then states that he exited the vehicle and went to his room to go to bed. See IE-12.

Danielle's version of the incident is dramatically different. Danielle remembers getting up to leave The Locker Room at approximately 1000, but her next memory is waking up in the back of Amy's Montero SUV "struggling to get Carlos' friend [the Accused] to stop touching me." Danielle does not remember the Accused pulling down her jeans, which she describes as "pretty tight," nor does she remember any of the flirtatious horse play while in route from The Locker Room to the RTR barracks. See IE-8, Exhibit 2. Danielle states that the Accused was pulling down her blouse to expose one of her breasts, sucking her nipple area, gagging her with his fingers, putting his hand down her pants and penetrating her vagina with his finger, and pulling her hair back to the point that it hurt. She further states that she was saying "stop, I'm not that kind of girl," and "no." See IE-8, Exhibit 2. She further states that the Accused said, "It's Okay, it's alright," or words to that effect.

Danielle then states that she was able to open up the door on her side of the SUV and escape. She quickly got out of the vehicle and pulled up her pants. She immediately retrieved her purse and ran away from the SUV. At this point, Danielle, not knowing exactly where she was at, begins to wander around MCRD. Eventually, Danielle comes upon the perimeter fence of MCRD. She follows the fence line to a place where she believes she can successfully negotiate the obstacle. She climbs the fence and begins to travel down "a dark paved street." See IE-8, Exhibit 2. Ultimately, Danielle winds up at an AM/PM gas station adjacent to MCRD. While at the AM/PM Danielle was able to secure a ride home from a customer. See IE-8, Exhibit 5.

Meanwhile, SSgt Mora and Amy arrive back at Amy's SUV. Upon their arrival, they notice that one of the back doors of the SUV was open, and that nobody was in the vehicle. SSgt Mora had assumed that the Accused and Danielle had transitioned up to the Accused's barracks room. See IE-8, Exhibit 28. Amy, on the other hand, had no idea where Danielle was. See IE-8, Exhibit 26. Both Amy and SSgt Mora then went to the Accused's barracks room. They initially knocked with negative results. SSgt Mora opened the door and entered the room. They found the Accused lying in bed asleep and the lights were off. Immediately, SSgt Mora woke the Accused up by turning on the lights and he asked the Accused, "Where is Danielle?" SSgt Mora states that the Accused told them "She's in the car," or that "he left her in the car." See IE-8, Exhibit 28. Amy states that the Accused told them "she was in the room and she left somewhere," and "she was doing back flips off his bed." See IE-8, Exhibit 26. Both Amy and SSgt Mora describe the accused as being very intoxicated. See IE-8, Exhibit 26, 28. After confronting the Accused, SSgt Mora and Amy proceeded to search for Danielle on board MCRD. SSgt Mora was able to make contact with a recruit standing fire watch by the Recruit PX. This recruit told him that he had seen a girl that met Danielle's description "walking toward the airport and taking a right between the MCMAP pits and the warehouses." See IE-8, Exhibit 28. Amy and SSgt Mora then got into Amy's Montero SUV and began to drive around MCRD looking for Danielle. During their search, Amy received a text message from Danielle's boyfriend, ET2 Garwood, stating "thanks to you Danielle almost got raped." See IE-8, Exhibit 26. Amy texted ET2 Garwood back asking where Danielle was located. ET2 Garwood stated that she was at home at her apartment crying. See IE-8, Exhibit 26. Both Amy and SSgt Mora went to Danielle and Amy's apartment. Upon arrival SSgt Mora stayed in the living room and Amy went to Danielle's bedroom to ask her what had happened. Danielle told Amy that "Josh had got forceful with her and was a little too rough." Danielle also told Amy that "they were kissing a little and Josh's hands were all over the place, and that she got to a point where she was uncomfortable with his advances and he put his hands down her pants." Danielle also told her that "she told him to stop and back off," but he didn't. Finally, Danielle relayed that the only way she could repel his advances was to get out of the vehicle with "her pants around her ankles." Amy also described Danielle as disheveled with messy hair and visibly upset when she relayed the story. See IE-8, Exhibit 26. SSgt Mora stayed the night with Amy at the girls' apartment.

Opinion on Credibility of the Key Witnesses

There were no witnesses that testified during the hearing, which would have allowed the Investigating Officer to opine on their credibility via personal observation.

Accused: The Investigating Officer reviewed the videotaped statement of the accused on three separate occasions. It appeared that the Accused was cooperative, lucid and able to answer specific, detailed questions asked by the NCIS agent during the interrogation. The Accused did not appear to be evasive in his answers and he did not display the classic signs of deception. Based on the

evidence submitted to the Investigating Officer, many of the details of the Accused's statement can be verified/corroborated by other means (i.e. ATM withdrawals, conduct of Danielle prior to the incident, and his overall timeline). The Investigating Officer notes that there is one major inconsistency concerning statements made by the Accused. In his statement to NCIS, the Accused states that Danielle became upset while they were making out in the vehicle. He then states that, as a result of her requests, he stopped his sexual advances, exited the vehicle and proceeded to his BEQ room where he went to sleep. See IE-12. Conversely, Sgt Mahoe, in his statement to NCIS, states that the Accused told him "Danielle freaked out and stopped kissing him. She got out of the vehicle and walked off." See IE-10. This is particularly problematic for the defense. There are only two possibilities; either he lied to NCIS or he lied to his good friend. The Investigating Officer has no evidence of prior military disciplinary action of the Accused. See IE-13. The Investigating Officer notes that the Accused was not subject to cross examination during this investigation.

SSgt Mora: The Investigating Officer read the written statement of SSgt Mora multiple times. Based on the specificity of his statement and the totality of the evidence submitted during this investigation, his version of the events on the night of 11 Sep 08 seems logical and plausible. There are minor inconsistencies with Amy's statement, but for the most part they both describe key events and an overall time line in a consistent manner. The Investigating Officer has no evidence to suggest SSgt Mora has any credibility issues, to include a motive to fabricate, past *crimen falsi* offenses, or other impeachment evidence. The Investigating Officer notes that SSgt Mora, as a friend of the Accused, likely exhibits a bias toward the accused. It should also be noted that he was not subject to cross examination during this investigation.

Amy: The Investigating Officer read the written statement of Emiliana Argeunta many times. Based on the specificity of her statements and the totality of the evidence submitted during this investigation, her version of the events on the night of 11 Sep 08 seems logical and plausible. Despite being a good friend and roommate of Danielle, much of her testimony will contradict the testimony of Danielle in this case. The Investigating Officer has no evidence to suggest Amy has any credibility issues, to include a motive to fabricate, past *crimen falsi* offenses, or other impeachment evidence. The Investigating Officer notes that Amy, as a friend of the Accused and the girlfriend of SSgt Mora, a friend of the accused, likely exhibits a bias toward the Accused. In fact, Danielle states that she was approached by Amy after the incident concerning the potential pressing of charges. She said, "she wasn't trying to convince her not to file charges or anything, but that I [Danielle] needed to see the big picture. She said this will not only involve me and him [Danielle and the Accused], but that would also include her and Carlos [SSgt Mora]. It appears from this conversation that Amy was trying to convince Danielle to not go forward with the charges. See IE-8, Exhibit 26. It should also be noted that she was not subject to cross examination during this investigation.

Danielle: The government provided the Investigating Officer two separate statements of Ms. Danielle Ligon during this investigation (IE-8, Exhibit 2 and Exhibit 1). The Investigating Officer has reviewed both Danielle's sworn statement and her e-mail to SgtMaj Jackson several times.

BLUF: Danielle Ligon will NOT be a credible witness at trial.

Danielle's own friends, SSgt Mora and Amy both state that she was flirting with the Accused at The Locker Room prior to the incident; a fact that Danielle denies. The bartender, a presumably independent witness, states that Danielle forced the Accused's hand into her crotch and she replied

“hey, no fornicating at my bar;” another fact that Danielle denies. The bartender also observed mutual kissing; another fact that Danielle denies. Her roommate and good friend Amy states that on the night of the incident, Danielle told her that they were kissing and “it just got a little too rough.” Yet, in her sworn statement to NCIS, she claims to have no memory of any events from the time they left The Locker Room until she is awakened by the Accused’s hand down her pants and his mouth on her nipple. SSgt Mora also stated that Danielle told him “she just wanted someone that would toss her around.” The actions and statements of Danielle on the night of 11 Sep 08 are inconsistent with a person seeking a platonic relationship. It should also be noted that she was not subject to cross examination during this investigation.

Defenses

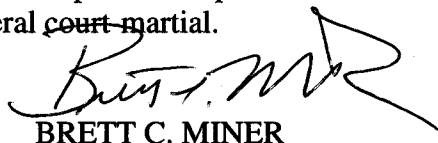
In this case the defense will present a very strong *consent/mistake of fact defense* to the allegations of sexual assault at trial. Most of the evidence presented to the Investigating Officer suggests that there was actual consent in this case. Alternatively, the issue involving the defense of mistake of fact as to the victim’s lack of consent could also be raised. SSgt Mora, Amy and the Accused all state that the issue of “rough sex” was a topic of conversation that evening. Both SSgt Mora and Amy state that the Accused and Danielle were playing around in a flirtatious manner, and lastly Danielle admits that “it just got a little too rough.” [Suggesting that there was initially consent, but that she just got a little scared] Aside from the impeachment of Danielle’s overall credibility, these facts alone will be used by the defense to explain some of the physical injuries to Danielle.

Physical Injuries

The Investigating Officer has reviewed IE-11 numerous times in order to assess whether or not the photographs depict injuries consistent with a sexual assault. It is very possible that the photographs depict injuries that resulted from restraint, non-consensual sexual contact, or retaliation for rejection. It is also possible that they depict photographs consistent with a person engaged in rough foreplay. Some of the photographs that depict injuries to the Danielle’s arms, legs and feet may also be consistent with injuries resulting from her scaling the MCRD perimeter fence.

Conclusion / Recommendations

Per Rule for Court-Martial 405(j)(2)(H), the government has met its burden to refer the charges and specifications to trial by general court-martial. Irrespective of potential defenses at trial, the alleged victim’s statement alone carries this burden. It is well established that the government need only submit evidence that would convince a reasonable, prudent person there is *probable cause* to believe a crime was committed and the Accused committed it. *United States v. Engle*, 1 M.J. 387 (C.M.A. 1976). However, based on the evidence submitted to the Investigating Officer, the likelihood of proving guilt beyond a reasonable doubt is *extremely* low. Absent evidence that the alleged victim in this case does not desire to participate in the prosecution, I recommend all Charges and Specifications be referred to trial by general court-martial.


BRETT C. MINER
Capt, USMC

CHARGE SHEET

I. PERSONAL DATA

1. NAME OF ACCUSED (Last, First, MI) HAWK, JOSHUA E.		2. SSN 561 57 8658	3. GRADE OR RANK SSGT	4. PAY GRADE E-6
5. UNIT OR ORGANIZATION SPTN, RTR, MCRD, SAN DIEGO, CA			6. CURRENT SERVICE	
			a. INITIAL DATE 23 Feb 98	b. TERM 4 YRS
7. PAY PER MONTH			8. NATURE OF RESTRAINT OF ACCUSED NONE	
a. BASIC	b. SEA/FOREIGN DUTY	c. TOTAL		
\$3,044.70	NONE	\$3,044.70		
9. DATE(S) IMPOSED NONE				

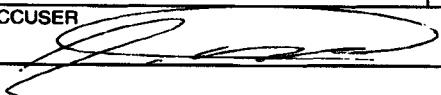
II. CHARGES AND SPECIFICATIONS

CHARGE I: VIOLATION OF THE UCMJ, ARTICLE 80

Specification: In that Staff Sergeant Joshua E. Hawk, United States Marine Corps, on active duty, did, at or near San Diego, California, on or about 11 September 2008, attempt to cause Danielle Ligon to engage in a sexual act, to wit: sexual intercourse by using strength and power sufficient that she could not avoid or escape the sexual conduct.

(CONTINUED ON SUPPLEMENTAL CHARGE SHEET)

III. PREFERRAL

11a. NAME OF ACCUSER (Last, First, MI) OSPINA, JHONY	b. GRADE SGT	c. ORGANIZATION OF ACCUSER HQSVCBN, MCRD SAN DIEGO, CA
d. SIGNATURE OF ACCUSER 		e. DATE 6 May 2009

AFFIDAVIT: Before me, the undersigned, authorized by law to administer oaths in cases of this character, personally appeared the above named accuser this 16th day of MAY, 20 09, 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.

ROBERT M. BUENO
Typed Name of Officer

HQSVCBN, MCRD SAN DIEGO, CA
Organization of Officer

MAJOR
Grade

JUDGE ADVOCATE
*Official Capacity to Administer Oath
(See R.C.M. 307(b) - must be a commissioned officer)*


Signature

SUPPLEMENTAL CHARGE SHEET**I. PERSONAL DATA**

1. NAME OF ACCUSED (Last, First, MI)	2. SSN	3. GRADE OR RANK	4. PAY GRADE
HAWK, JOSHUA E.	561 57 8658	SSGT	E-6

CHARGE II: VIOLATION OF THE UCMJ, ARTICLE 107

Specification: In that Staff Sergeant Joshua E. Hawk, United States Marine Corps, on active duty, did, at or near San Diego, California, on or about 15 October 2008, with intent to deceive, make to Special Agent Rick Rendon of the Naval Criminal Investigative Service, an official statement, to wit: That on 11 September 2008 at MCRD, Ms. Emiliana L. Argueta (AKA: Amy) told SSgt Hawk, "She might like you." referring to Ms. Danielle Ligon; Ms. Danielle Ligon was dancing with the guys behind them at the table; Ms. Danielle Ligon took SSgt Hawk's right hand and put it on her crotch over her clothes; SSgt Hawk immediately pulled her hand away when she did this; while at the bar, SSgt Hawk and Ms. Danielle Ligon kissed a couple of times on the mouth in the view of others; Ms. Emiliana L. Argueta and SSgt Mora knocked on his door while he was watching TV around 2230 and asked him where Ms. Danielle Ligon was and he said that she was not there; nothing sexual occurred after Ms. Danielle Ligon told him to stop; SSgt Hawk opened the passenger door on his side while in the SUV with Ms. Danielle Ligon; and that Ms. Danielle Ligon lifted her hips to get her pants down beyond her butt, which statements were totally false and was then known by the said Staff Sergeant Joshua E. Hawk, to be so false.

CHARGE III: VIOLATION OF THE UCMJ, ARTICLE 120

Specification: In that Staff Sergeant Joshua E. Hawk, United States Marine Corps, on active duty, did, at or near San Diego, California, on or about 11 September 2008, cause Danielle Ligon to engage in a sexual act, to wit: exposing her breast, having her nipple sucked, having her breast grabbed, and having her vagina penetrated with the insertion of his fingers, by causing bodily harm upon her, to wit: pulling the back right side of her hair causing pain and redness to her scalp and head, gagging her by inserting his fingers into her mouth causing redness and soreness to the inside of her mouth, and by also causing her to obtain scrapes, bruises and abrasions throughout her body she obtained during her struggle and escape from the said Staff Sergeant Joshua E. Hawk, U.S. Marine Corps.

CHARGE IV: VIOLATION OF THE UCMJ, ARTICLE 134

Specification: In that Staff Sergeant Joshua E. Hawk, United States Marine Corps, on active duty, was, at or near San Diego, California, on or about 11 September 2008, drunk and disorderly, which conduct was of a nature to bring discredit upon the armed forces.

12. On 7 May, 2009, 20 09 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.)

A. SUTTON

Typed Name of Immediate Commander

CAPTAIN, U.S. MARINE CORPS

Grade

Signature

MARINE CORPS RECRUIT DEPOT/ WESTERN RECRUITING REGION, SAN DIEGO, CA

Organization of Immediate Commander

IV. RECEIPT BY SUMMARY COURT-MARTIAL CONVENING AUTHORITY

13. The sworn charges were received at 1706 hours, 6 May 20 09 at MCRD/WRR, SAN DIEGO, CA
Designation of Command or

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

FOR THE ¹ COMMANDING GENERAL

A. SUTTON

Typed Name of Officer

CAPTAIN, U. S. MARINE CORPS

Grade

Signature

DEPUTY G-1 OFFICER

Official Capacity of Officer Signing

V. REFERRAL; SERVICE OF CHARGES

14a. DESIGNATION OF COMMAND OF CONVENING AUTHORITY	b. PLACE	c. DATE
----------------------------------------------------	----------	---------

Referred for trial to the _____ court-martial convened by _____

_____ 20 _____, subject to the following instructions:² _____

By //////////////////// Of _____
Command or Order

Typed Name of Officer

Official Capacity of Officer Signing

Grade

Signature

15. On _____, 20 _____, I (caused to be) served a copy hereof on (each of) the above named accused.

Typed Name of Trial Counsel

Grade or Rank of Trial Counsel

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.



UNITED STATES MARINE CORPS
MARINE CORPS RECRUIT DEPOT/WESTERN RECRUITING REGION
1600 HENDERSON AVENUE, SUITE 238
SAN DIEGO, CALIFORNIA 92140-5001

IN REPLY REFER TO:
5810

6

67 MAY 2009

From: Convening Authority
To: Captain Brett Miner, USMC

Subj: FORMAL PRETRIAL INVESTIGATION IN THE CASE OF STAFF SERGEANT JOSHUA E.
HAWK 8658/5811 USMC

Ref: (a) Article 32, Uniform Code of Military Justice
(b) Rule for Courts-Martial 405, MCM (2008 Ed.)

Encl: (1) Charge Sheet

1. You are hereby appointed as the investigating officer to conduct a formal pretrial investigation, in accordance with the above references, into the matter set forth in the enclosure. This investigative hearing is to occur on or before 14 May 2009 and the investigation report should be completed within five working days upon the completion of the hearing. You do not have the authority to grant delays. You shall brief me if such a need arises.

2. Major Robert Bueno, USMC is the Trial Counsel. The defense counsel is Captain David Ahn, USMC.

3. The Office of the Staff Judge Advocate, MCRD, San Diego, California, will provide the necessary logistical assistance and facilities.

4. You are directed to expedite the investigation in accordance with the references. It shall assume priority over your other assigned duties. As investigating officer, you will complete your investigation and timely submit your recommendations by return endorsement, in accordance with the references.

5. Upon completion of the investigation, you will make a recommendation regarding the appropriate disposition of the charges and specifications contained in the enclosure.

6. Thank you in advance for your hard work in this matter.


A. SALINAS

Copy To:
Defense Counsel

IE-2



UNITED STATES MARINE CORPS
Marine Corps Recruit Depot
3700 Chosin Avenue
San Diego, California 92140-5197

IN REPLY REFER TO:
5800
DEF/da
8 May 09

From: Captain David Ahn, Detailed Defense Counsel
To: Convening Authority
Via: Trial Counsel

Subj: REQUEST FOR CONTINUANCE IN THE ARTICLE 32, UCMJ, PRETRIAL INVESTIGATION OF STAFF SERGEANT JOSHUA E. HAWK

1. The defense respectfully requests a continuance in the Article 32, UCMJ, Pretrial Investigation of Staff Sergeant hawk from 14 May 2009 to 1 June 2009. Delay from 15 May to 1 June 09 will be attributable to the defense.

2. The case file was served on the defense on Friday afternoon, 1 May 2009. The same day the Military Justice Officer approached the defense to discuss the dates for the 32 hearing. Both parties had originally agreed to a date of 12 May 09 knowing that a continuance request for 2 June 09 would be asked for by the defense and agreed to by the government. However, the government on the same day changed its representation to the defense and no dates were agreed to.

3. Up until 1448 Friday, 8 May 09 the government had not re-approached defense counsel to talk about the dates for a 32 hearing or notified the defense that the 32 hearing was set for 14 May 09.

4. The defense has been up in Camp Pendleton from 4-7 May 09 for NITA training as ordered to by both the Deputy SJA and Regional Defense Counsel. These were full days of training consuming full work days.

5. Currently the defense is scheduled to be in court on the 12 May 09 for a guilty dive and a fully contested trial on 27-29 May 09 which is likely to be continued due to civilian defense counsel. Further, another article 32 hearing in the case of U.S. v. Capt Wacker is likely to be scheduled on 2, or 3, or 4 June 09 based on trial counsel's schedule.

6. Defense currently has seven active case files two of which are pending 32 hearings. Additionally, the active case files are not simple UA or drug abuse cases involving Lance Corporals or below. The active case files that the defense is carrying have no one below the rank of Sergeant. Of the seven case files six will likely be fully contested courts-martial.

IE-3

Subj: REQUEST FOR CONTINUANCE IN THE ARTICLE 32, UCMJ, PRETRIAL
INVESTIGATION OF STAFF SERGEANT JOSHUA E. HAWK

7. SSgt Hawk is faced with serious charges. He is being accused of attempted rape and sexual assault. In the interest of justice and to afford SSgt Hawk proper due process rights the defense is respectfully asking for a continuance.

8. The purpose of an Article 32 hearing is to provide an investigation that is thorough and impartial. If the defense is forced into an Article 32 hearing on 14 May 09 the defense would only have had two working days to prepare for the hearing. This would not afford the defense an adequate opportunity to represent SSgt Hawk at the hearing which would run contrary to the purpose behind an Article 32 hearing. The defense is not making an unreasonable request.

D. AHN

Miner Capt Brett C

From: Smith Col Stephanie C
Sent: Tuesday, May 12, 2009 5:03 PM
To: Ahn Capt David; Bueno Maj Robert M; Jackson Maj Samuel E; Miner Capt Brett C
Subject: FW: Hawk def req
Signed By: stephanie.smith@usmc.mil

All:

The defense request for a continuance in the SSgt Hawk Article 32 was denied by the CG. I will have the written denial for the record when the CG returns. Please proceed as scheduled.

V/R

SCS

Col Stephanie C. Smith USMC
Staff Judge Advocate
Marine Corps Recruit Depot/Western Recruiting Region
3700 Chosin Ave
San Diego, CA 92140
(619) 524-4104
DSN 524-4104
(619) 524-6784 (fax)

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DO NOT RELEASE, FORWARD, OR COPY WITHOUT PRIOR AUTHORIZATION FROM THE SENDER.

-----Original Message-----

From: Salinas BGen Angela
Sent: Tuesday, May 12, 2009 17:00
To: Smith Col Stephanie C
Subject: Hawk def req

Col Smith

I reviewed the request and hereby deny the request.

S

[1 Attachment]



UNITED STATES MARINE CORPS
OFFICE OF THE STAFF JUDGE ADVOCATE
DEFENSE SECTION
MARINE CORPS RECRUIT DEPOT
3700 CHOSIN AVENUE
SAN DIEGO, CALIFORNIA 92140-5197

IN REPLY REFER TO:
5800
12 May 09

From: Detailed Defense Counsel
To: Trial Counsel

Subj: REQUEST FOR DISCOVERY AND WITNESSES IN THE ARTICLE 32, UCMJ,
PRETRIAL INVESTIGATION OF U.S. V. STAFF SERGEANT JOSHUA E.
HAWK.

Ref: (a) R.C.M. 405, M.C.M., 2008
(b) R.C.M. 701, M.C.M., 2008
(c) R.C.M. 703, M.C.M., 2008
(d) Article 46, UCMJ, M.C.M., 2008
(e) Article 32, UCMJ, M.C.M., 2008

1. As provided in the references, the defense requests:

a. Copies of all documents that the Government intends to submit as investigative exhibits.

b. The name, telephone number and address of any witness the Government intends to call.

c. Copies of any sworn or signed statements of which the Government is aware relating to an offense charged.

d. A description of any documentary, real, or other evidence pertinent in this case which is material to the preparation of the defense or which the Government intends to introduce into evidence, and its present location. In the case of documentary evidence, legible copies are requested.

e. A copy of the entire Naval Criminal Investigative Service/Criminal Investigative Division file to include the agents notes on the investigation concerning U.S. v. Staff Sergeant Joshua E. Hawk.

f. Disclosure of all evidence seized from the person or property of the accused, or believed to be owned or possessed by the accused, and its present location.

IE-5

Subj: REQUEST FOR DISCOVERY AND WITNESSES IN THE ARTICLE 32, UCMJ,
PRETRIAL INVESTIGATION OF U.S. V. STAFF SERGEANT JOSHUA E.
HAWK.

g. Any known evidence tending to diminish credibility of witnesses including, but not limited to, prior convictions and evidence of other character, conduct, or bias bearing on witness credibility.

h. Disclosure of any promise or offer of immunity, leniency, or special treatment or consideration offered or afforded any prosecution witness.

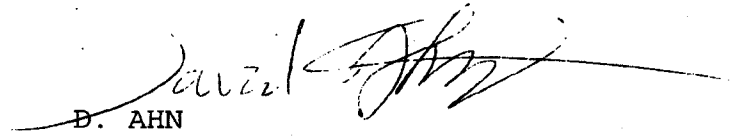
i. Any and all videos tapes, digital media, recordings, and etc. related to the charges that are under the control of the government.

2. Pursuant to the reference, the following witnesses are requested in the subject pretrial investigation:

- a. Danielle Ligon, alleged victim in the case.
- b. Ms. Emilian L. Argueta, friend of alleged victim, present at the Locker Room and drive to RTR.
- c. ET2 Jordan Garwood, boyfriend of Ms. Argueta.
- d. SSgt Carlos Mora, present at the Locker Room and the drive from the Locker Room to RTR.
- e. Sybil Mitchell, bartender at Locker Room.
- f. Mr. Joe Everall, the AM/PM clerk.
- g. Mr. Baldyga, individual that drove alleged victim home.
- h. 1stSgt Spencer Beacham, Alpha Company, at Locker Room.
- i. 1stSgt Robert McDermott, Charlie Company, at Locker Room.
- j. Sgt Shannon Mahoe, had a prior sexual relationship with victim.

3. The relevance of the requested witnesses is evident as reflected in their respective statements or interview summaries contained in the NCIS investigation. Please inform the defense counsel immediately if any of the above witnesses will be denied and provide the basis for denial.

Subj: REQUEST FOR DISCOVERY AND WITNESSES IN THE ARTICLE 32, UCMJ,
PRETRIAL INVESTIGATION OF U.S. V. STAFF SERGEANT JOSHUA E.
HAWK.

A handwritten signature in black ink, appearing to read "David Ahn", written over a horizontal line.

D. AHN
Captain, USMC



UNITED STATES MARINE CORPS
OFFICE OF THE STAFF JUDGE ADVOCATE
DEFENSE SECTION
MARINE CORPS RECRUIT DEPOT
3700 CHOSIN AVENUE
SAN DIEGO, CALIFORNIA 92140-5197

IN REPLY REFER TO:
5800
13 May 09

From: Detailed Defense Counsel
To: Trial Counsel

Subj: SUPPLEMENTAL WITNESS REQUEST IN THE ARTICLE 32, UCMJ,
PRETRIAL INVESTIGATION OF U.S. V. STAFF SERGEANT JOSHUA E.
HAWK.

Ref: (a) R.C.M. 405, M.C.M., 2008
(b) R.C.M. 701, M.C.M., 2008
(c) R.C.M. 703, M.C.M., 2008
(d) Article 46, UCMJ, M.C.M., 2008
(e) Article 32, UCMJ, M.C.M., 2008

1. Pursuant to the reference, the following additional witnesses are requested in the subject pretrial investigation:

a. PFC Daniel Reasco, was member of Platoon 1056 and was on fire watch on the night of the incident.

b. PFC Dennis Zamora, was member of Platoon 1056 and was on fire watch on the night of the incident.

c. PFC Ryan Sullivan, was member of Platoon 1056 and was on fire watch on the night of the incident.

d. PFC Angony Wour, was member of Platoon 1056 and was on fire watch on the night of the incident..

e. PFC Eloy Rendon Jr., was member of Platoon 1056 and was on fire watch on the night of the incident..

2. The relevance of the requested witnesses is evident as reflected in their respective statements or interview summaries contained in the NCIS investigation. Please inform the defense counsel immediately if any of the above witnesses will be denied and provide the basis for denial.

IE-6

Subj: SUPPLEMENTAL WITNESS REQUEST IN THE ARTICLE 32, UCMJ,
PRETRIAL INVESTIGATION OF U.S. V. STAFF SERGEANT JOSHUA E.
HAWK.

/s/
D. AHN
Captain, USMC

Miner Capt Brett C

From: Bueno Maj Robert M
Sent: Wednesday, May 13, 2009 10:58 AM
To: Miner Capt Brett C; Ahn Capt David
Subject: RE: Hawk def req
Signed By: robert.m.bueno@usmc.mil

All,

I received the defense witness request yesterday afternoon and have been calling and visiting witnesses since then given that I was given ten. This is what I have thus far:

- 2a. Danielle - civilian invited and declined.
- B. Amy - civilian whom I called last night and has not returned my call.
- C. ET2 Garwood - over 100 miles away and CO determined to be unavailable
- D. SSgt Mora - have not spoken to him.
- E. Sybil - civilian invited and declined.
- F. Joe Everall - civilian unavailable as he is in prison.
- G. Ted Baldyga - civilian invited and declined.
- H. 1stSgt Beacham - not relevant - he said he doesn't know accused/victim and was not at the locker room during night in question.
- I. 1stSgt McDermont - not relevant - same reasons as above.
- J. Sgt Mahoe - will be produced - I would object to questions that violate MRE 412.

I will submit whatever paperwork you need on the invitations in time for your report. As of now, I can only give you my word as both an officer of the court and a Major of Marines.

Semper Fi,
Maj Bueno

-----Original Message-----

From: Miner Capt Brett C
Sent: Wednesday, May 13, 2009 9:05
To: Ahn Capt David
Cc: Bueno Maj Robert M
Subject: RE: Hawk def req

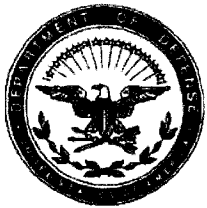
Dave,
Did you not get this e-mail?

ERR
Capt M

Brett C. Miner
Capt, USMC
CO, Rng Co, WFTBn
760-725-2411
949-300-4884 (cell)
760-725-2252 (fax)

Classification: UNCLASSIFIED//LIMDIS

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UNITED STATES MARINE CORPS
Marine Corps Recruit Depot
3700 Chosin Avenue
San Diego, California 92140-5197

IN REPLY REFER TO:
5800
MJO
19 May 09

From: Maj Rob Bueno
To: Danielle Ligon

Subj: WITNESS INVITATION ICO U.S. V. Hawk

1. You are invited to appear as a witness in proceedings under Article 32, Uniform Code of Military Justice, in the case of U.S. v. Hawk. You are requested to appear at the office of Military Justice Section _____ located at Bldg 12, MCRD.

2. You are entitled to witness fees and transportation allowances to cover your attendance. You may collect these fee and allowances after completing your testimony. The Article 32 is scheduled for 14, 19, and 29 May 2009.


3. Please mark below your desired involvement in the Article 32. If you have any questions my phone number is 619-524-4091.

a. I will come in and testify in person.

b. I am willing to testify in person but not available on the scheduled date. I will be available on _____.

c. I will not testify in person. However, I can testify via telephone. My phone number is _____.

d. DL I will not participate in the Article 32 either in person or via telephone.


Robert M. Bueno
Maj, USMC
Trial Counsel


Danielle Ligon



UNITED STATES MARINE CORPS
Marine Corps Recruit Depot
3700 Chosin Avenue
San Diego, California 92140-5197

IN REPLY REFER TO:
5800
MJO
19 May 09

From: Maj Rob Bueno
To: Sybil Mitchell

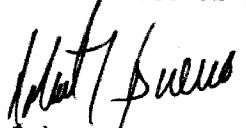
Subj: WITNESS INVITATION ICO U.S. V. Hawk

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2. You are entitled to witness fees and transportation allowances to cover your attendance. You may collect these fee and allowances after completing your testimony. The Article 32 is scheduled for 14 and 19 May 2009.

3. Please mark below your desired involvement in the Article 32. If you have any questions my phone number is 619-524-4091.

- a. I will come in and testify in person.
- b. I am willing to testify in person but not available on the scheduled date. I will be available on _____.
- c. I will not testify in person. However, I can testify via telephone. My phone number is _____.
- d. I will not participate in the Article 32 either in person or via telephone.


Robert M. Bueno
Maj, USMC
Trial Counsel


Sybil Mitchell



UNITED STATES MARINE CORPS
Marine Corps Recruit Depot
3700 Chosin Avenue
San Diego, California 92140-5197

IN REPLY REFER TO:
5800
MJO
19 May 09

From: Maj Rob Bueno
To: Sybil Mitchell

Subj: WITNESS INVITATION ICO U.S. V. Hawk

1. You are invited to appear as a witness in proceedings under Article 32, Uniform Code of Military Justice, in the case of U.S. v. Hawk. You are requested to appear at the office of Military Justice Section located at Bldg 12, MCRD.

2. You are entitled to witness fees and transportation allowances to cover your attendance. You may collect these fee and allowances after completing your testimony. The Article 32 is scheduled for 29 May 2009.

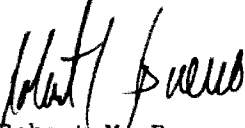
3. Please mark below your desired involvement in the Article 32. If you have any questions my phone number is 619-524-4091.

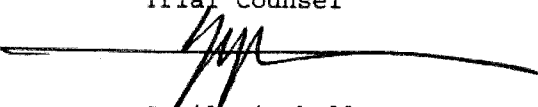
a. I will come in and testify in person.

b. I am willing to testify in person but not available on the scheduled date. I will be available on _____.

c. I will not testify in person. However, I can testify via telephone. My phone number is 619-867-2669.

d. I will not participate in the Article 32 either in person or via telephone.


Robert M. Bueno
Maj, USMC
Trial Counsel


Sybil Mitchell