

Air Force Times

December 27, 2007

Rape Case JAG Accused of Withholding Evidence

By Erik Holmes, Staff Writer

The former staff judge advocate at Pope Air Force Base, N.C., is being investigated on allegations that he behaved unethically by attempting to withhold evidence earlier this year in a sexual assault case involving four airmen at Pope, sources close to the case said.

The sources, who spoke on condition of anonymity, said an ethics complaint against Lt. Col. Philip Wold is being investigated by the legal office at Air Mobility Command, which has jurisdiction over Pope. The investigation results and recommendations will be forwarded to Maj. Gen. Jack L. Rives, the judge advocate general of the Air Force, for a final decision and any corrective or punitive action.

Wold, who became deputy legal counsel to the Office of the Chairman of the Joint Chiefs on July 10, did not respond to a request for comment submitted through the Joint Staff.

The sources said the complaint accuses Wold of telling a witness potentially favorable to the defense not to come forward to the lawyers defending Airman 1st Class Cassandra Hernandez, 20. She was charged with indecent acts and underage drinking related to a May 2006 sexual encounter in a base dorm room.

Hernandez claimed she was gang-raped by three men after a party at Pope, but she was charged with committing indecent acts after declining to testify against one of her alleged assailants. Rape charges against one of the men were dropped. He and the two other men took punishment under Article 15 for indecent acts.

She told *Air Force Times* in August that she decided not to testify because she was under stress and felt intimidated by the alleged rapist's lawyer, because her victim's advocate was improperly barred from the proceeding, and, ultimately, she wanted to put the incident behind her. A court-martial was scheduled for late September, but the Air Force dropped all charges against her about two weeks before it was to begin.

The military's rules for courts-martial require prosecutors to disclose to the defense the existence of evidence — including witnesses — that might negate or reduce the defendant's degree of guilt. The Air Force Rules of Professional Conduct, which govern the conduct of Air Force lawyers, require fairness to opposing counsel.

The ethics complaint against Wold is based on information in a March 27 sworn statement by Capt. Michel Edwards, Pope's sexual assault response coordinator when the alleged rape occurred, sources said.

In her statement, obtained by Air Force Times, Edwards said she met Hernandez at the emergency room of Fort Bragg's Womack Army Medical Center at 5:30 a.m. on May 13, 2006, just hours after the alleged assault.

"She was clearly disturbed and shaken," Edwards said in the statement, and "as she spoke to me she wiped tears from her eyes with a shaking hand."

Edwards was present when agents from the Air Force Office of Special Investigations questioned Hernandez, according to the statement, and she remained involved during the next several months.

On March 23, Edwards participated in a conference phone call with Claudia Bayliff, director of the Air Force Sexual Assault Prevention and Response Program, and the sexual assault response coordinator for Air Mobility Command, according to the statement.

"Bayliff asked me if I believed Cassandra had been assaulted, and I told her I did," Edwards said.

Edwards, Bayliff and the AMC sexual assault response coordinator agreed that Edwards would contact Hernandez's squadron commander and Wold, the base's top lawyer, to offer her observations of Hernandez in the emergency room after the alleged assault, according to the statement.

That same evening, Edwards said in the statement, she received an e-mail from the AMC sexual assault response coordinator saying that Bayliff wanted her to contact Hernandez's lawyers "as soon as possible."

Edwards was not comfortable going to Hernandez's lawyers without first talking to Wold, she said in the statement.

On the following Monday, Edwards said she spoke to Wold about her observations in the emergency room and Bayliff's e-mail instructing her to contact Hernandez's lawyers.

"I was told not to contact" Hernandez's lawyer, she said in the statement. "However, if he were to contact me, that I should fully cooperate with him."

Later that day, according to the statement, Wold called Edwards to check on her schedule for April — she was scheduled to deploy soon — and told her "he was going to have someone contact [Hernandez's lawyer] to notify him" when she would be taking leave and deploying.

Hernandez, in her own statement, said: “No phone call, e-mail or fax was ever sent or made to either of my military defense counsels or their offices.”

One of Hernandez’s lawyers happened to call Edwards the next day.

“As a result of our conversation, he requested that I document my observations,” Edwards said in her statement.

Hernandez made public the allegations against Wold in a memo about her case widely distributed to the media, members of Congress and Rick Perry, the governor of her home state of Texas. But she is not involved in the ethics complaint, and she declined to comment on her case or the complaint.

Ethics complaints against Air Force lawyers are investigated through the staff judge advocate of the major command to which the attorney in question is assigned. The SJA evaluates a complaint and, if he decides it might have merit, appoints an investigating officer to look into the matter.

The investigating officer gathers evidence, writes a report and submits a recommendation of finding to the SJA, who evaluates the report and makes his own recommendation before submitting the case to the JAG Corps’ Professional Responsibility division. That division then sends the case to the JAG Advisory Committee — a group of three senior JAGs — which evaluates it and makes a recommendation before sending the case to the judge advocate general of the Air Force — Rives. Only he can decide whether an ethics complaint is substantiated or not.

The Air Force Rules of Professional Conduct say substantiated ethics violations “may be addressed administratively, or through actions to withdraw certification” as a judge advocate.

Wold began his active-duty service Jan. 31, 1991, according to the Air Force.

His past assignments include chief of military justice at the Air Force Academy in Colorado Springs, Colo.; chief of the operational law branch for 9th Air Force at Shaw Air Force Base, S.C.; legal adviser to the Air Force Doctrine Center at Maxwell Air Force Base, Ala.; and staff judge advocate for the 43rd Airlift Wing at Pope.

Copyright © 2007 Army Times Publishing Company.