

Tuesday, 26 November 2013 (1000)

United States v. Easterly

Before Panel 3 of the Court: Chief Judge Modzelewski
Senior Judge Mitchell
Judge Fischer

For Appellant: Capt David A. Peters, USMC

For Appellee: LCDR Brian C. Burgtorf, JAGC, USNR

In a mixed plea general court-martial, a military judge convicted appellant, pursuant to his plea, of adultery, in violation of Article 134, UCMJ, 10 U.S.C. § 934. Contrary to his please, a panel of members with enlisted representation convicted the appellant of one specification of assault consummated by a battery, and one specification of adultery in violation of Articles 107, 128, and 134, UCMJ, 10 U.S.C. § 907, 928, and 934. The members acquitted the appellant of rape and aggravated sexual assault, in violation of Article 120, UCMJ, 10 U.S.C. § 920. The members sentenced the appellant to reduction to pay-grade E-1, forfeiture of all pay and allowances, to be confined for a period of two years, and to a bad-conduct discharge. The convening authority approved the adjudged sentence and, except for the bad-conduct discharge, ordered it executed.

The sole issue to be argued before this Court is as follows:

- I. MILITARY LEADERS ARE PROHIBITED FROM CREATING AN OBJECTIVE APPEARANCE THAT A COURT-MARTIAL PROCEEDING IS UNFAIR. HERE, THE COMMANDANT OF THE MARINE CORPS GAVE A "HERITAGE BRIEF" TO MANY MARINES INCLUDING MEMBERS OF APPELLANT'S LATER COURT-MARTIAL. HE DECLARED THAT 80% OF CASES LIKE APPELLANT'S ARE "LEGITIMATE SEXUAL ASSAULTS" AND THAT THEY SHOULD "GET RID" OF MARINES SUSPECTED OF MISCONDUCT. DID THE MILITARY JUDGE ERR IN FINDING NO UNLAWFUL COMMAND INFLUENCE AND IN DENYING THAT DEFENSE MOTION?