MAJOR ERIK J. BURRIS DAC-IPAD ORAL PRESENTATION
MARCH 12-13, 2024

CONTENTS SUBMITTED TO DAC-IPAD VIA EMAIL ON MARCH 4, 2024

1. PUBLIC ORAL COMMENT-EXTENDED VERSION-Edited version to be given telephonically on March 13, 2024 during meeting.
2. ARTICLE 32 AND ASSOCIATED LETTERS AND EMAILS.
3. TIMELINE AND ROAD MAP TO A BAD CASE.

PERSONNAL COMMENT:

Our son, formerly Major Erik J. Burris-US Army, was not authorized the use of normally required instruments necessary to provide a video presentation. The format and printing of this packet were prepared by his parents. If not in the correct format, we apologize. The five-page public comment and associated materials are his.

Thank you,

[redacted]

[redacted]

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"Erik, no justice system can be perfect."

[redacted]

US Marine Reserve Judge Advocate

Members of the Committee, Witnesses, Air Force Personnel, and Cadets,

No justice can be perfect. That is what an appellate attorney said after he informed me CAAF would not hear my case again despite the fact that the Army Court of Criminal Appeals failed to conduct a new review despite a CAAF order to do so. No system can be perfect! As if that could console me, a former Chief of Military Justice, after the Army twisted and perverted the military justice system in order to convict me contrary to ***"all* evidence"** that was available. No justice system can be perfect! My career destroyed! My family destroyed! My future was shattered! After spending five years in prison, hoping justice would still be done; after tears and screaming, praying for God's intervention, these words of consolation from another judge advocate. My daughters though? All else pales in comparison to my separation from them. "Even now my blood boils" just thinking of those who knowingly did this evil that separated me from them.

My case is proof that the military justice system can easily be manipulated to achieve results. It is strong evidence that politics and hysteria have driven the military's justice system to break faith with Service Members. It is also compelling evidence that no amount of piece meal patches will ever fix a system if those who wield the power care more about appearances or promotions than what is morally and ethically right.

I wish I could convince you to abandon the UCMJ, as we know it, but I am not going that far today. Today, my concerns are matters recently considered by your committee, Articles 32 and 25 of the UCMJ, that were significant in my case. In the five minutes I've been permitted to speak I have insufficient time to highlight every point. I would direct your attention to my Article 32 report as well as the "Bad Case Roadmap" which have hopefully been included but are

also easily found online. I am going to give you an idea of how the UCMJ was manipulated to convict a man who faithfully served his country in Bosnia, Iraq and Afghanistan as an Artillery Officer and as a member of JAG Corp and how truth and justice was betrayed.

Article 32

The Article 32 that was conducted in my case essentially cleared me. Don't believe me? Read it yourself! A female Judge Advocate Lieutenant Colonel, who I had never met, conducted a hearing that lasted more than three twelve-hour days, and ultimately concluded that my accuser had substantially fabricated or wholly lied about every allegation seeking to gain an advantage in the custody fight in family court, known as the "nuclear option" to divorce lawyers. As a result, that investigating officer recommended that no charges proceed to court-martial. Furthermore, this same officer would later attend my court-martial offering to testify, saying my accuser was, and I quote, a "****ing liar".

My Article 32 IO was alone in this conclusion. The Army Regulation 15-6 investigating officer, who considered the first allegations, also concluded my accuser was lying and likewise offered his support to me later. In addition, both Texas and North Carolina CPS offices investigated accusations underlying future charges and "unfounded" all that they considered. Yet despite the findings and recommendations, despite my unimpeached character for truthfulness and integrity, the Convening Authority still sent all charges, and more, to trial, even those lacking the weak threshold of probable cause. Why?

All who are honest know factors were at play. The sexual assault hysteria in the military had exploded under President Obama in 2013. The fear of generals for their careers had they chosen not to send even a bad case to court-martial, removed their individual judgement and discretion. There was a desire that all accusations would lead to convictions. Fear of senior elected officials. Fear of negative press attention. In my case, at least, also a need for a win in the wake of the prosecutorial misconduct that derailed the BG

Sinclair prosecution which bled into my case as well. What was done to me and so many continued wrongs, yet after nine years you all are still, only, considering making the Article 32 recommendation binding and are still deliberately indifferent to the realities of command influence pervasive throughout the Armed Forces.

Article 25

Command influence is clearly involved in the panel selection process; and consequently, every decision made by the panels. Just as the Article 32 needs to be made binding, the Article 25 needs to be completely gutted and replaced with a randomized selection process; a selection process in which convening authorities are blind to panel composition. I am intimately knowledgeable about panel selection. Once again, consider my case. After all unbiased and impartial investigations had found my accuser to have lied and recommended "against" trial proceedings, the Convening Authority referred my case to court-martial. At court-martial I appeared before a panel hand-selected by the same Convening Authority. After the prosecution challenged the original ranking member, a female Colonel and nurse, who herself had conducted sexual assault examinations, for no other reason than her belief that some rape accusations were false, I was left with a Colonel both rated and senior rated by the Convening Authority. In what court room in the United States of America would such a juror with the kind of connections to the charging authority be permitted to remain? Outside of the military, none! Those arguments in support of the current system are themselves evidence of the conflict posed by rank. Just look at the recommendations offered to your committee by various JAG offices as well as their subordinate criminal law offices. The opinions of the chiefs are parroted by the subordinates. I challenge you to find an instance in which I am wrong. Are you going to suggest that there are no prosecutors who disagree with any of the processes or mechanisms of the UCMJ? Furthermore, the arguments against the inclusion of enlisted members on panels considering officers are themselves strong evidence as to the powerful influence of, and factor, that rank and authority has in the Armed Forces. Not a surprise! Even the panel is organized

by rank from lead to seating. By the very act of referring my case to court-martial, the Convening Authority made it clear to his subordinates the importance he attached to my prosecution, and once again one such immediate subordinate led my panel. No attempt to seat such jurors should ever be made! Any suggestion otherwise should be considered for what it is, a farcical mimicry of the justice system meant to arouse amusement.

Little Cause for Hope

Even were you to correct the Article 32, the entirety of the pre-trial investigative process, as well as the Article 25 and chose to randomize panels, removing commanders completely from their selection, you would only be putting more Band-Aids on a sucking chest wound. Year of failures to correct or to make substantive changes as well as the history of the UCMJ gives substantial pause for holding any hope. For those not in the know, as a refresher, allow me to give just a few examples:

- For the first twenty years of the UCMJ, the military courts did not have actual judges presiding, but line officers. There were a plethora of failures.
- For the first forty years, fifty in the case of the Marine Corp, defense and prosecuting attorneys worked for the same supervising attorney, out of the same offices. Forty years to realize that this was a bad idea.
- One Supreme Court decision (O'Callahan) made it clear that military cases needed an actual military nexus. Twenty years later a divided Supreme Court struck down that decision (Solario) opening the flood gates to the military jurisdiction over civilian cases; experienced and competent prosecutors and defenders.
- Since 2008 the military has become schizophrenic with regards to Article 120, revising it again and again to the point that a commander's decision not to refer a case to court-martial required review at the next star level.
- Institutional resistance to efforts to take the morally and ethically right action in cases as evidenced by your own 2017 Judicial Proceedings

Panel report, which confirms my education, observations and experience.

- The ability of the military subordinates, also evidenced in your reports, to voice their own thoughts and conclusions without parroting superiors further shows how the military rank structure impedes, often prevents, the use of individual analysis and discretion, a fatal flaw in justice.

Do What is Right!

I am not the first to be betrayed by my country. Nor am I the first to be denied justice because of observable characteristics such as gender and race or social hysteria and politics. I am Alfred Dreyfus. I am Leo Frank. I am one of the Scottsboro boys. I am not alone. Far from it! Despite my anger and pain over the comment, it is true that no justice system can be perfect! Certainly not a system shaped by self-serving hands. However, that comment, that defeated view, cannot be tolerated or else it will become justification for inaction, apathy, and further injustice. Furthermore, this view, coupled with the ages-old battlefield calculus allowing for an acceptable casualty count will forever prevent substantive corrective action. You cannot join with old professors, old judge advocates, who haven't served for years, and are clueless about current military tradition. Consider previous presenters, such as Schenk, Schlueter, and my own constitutional law professor, Rosen, who vacuously endorsed a system simply because "it is". I ask you to review my case, and the cases of other men who have maintained their innocence. I ask that you recommend substantive action be taken to include reopening cases from the last decade, perhaps longer. I ask that you analyze the entirety of the UCMJ against the backdrop of the history of Anglo-American military law brightly illuminated by many, such as Joseph Lieber in the posthumously published piece To Save A Country. Sadly, I sincerely doubt you will. I suspect you will simply recommend an approach that compromises justice, betrays Service Members and insures more innocent men are convicted. Corrective action usually requires true courage! If you are too craven to see justice done for me and those already grievously wronged, work to see it done for the troops currently serving and those yet to come. Our country, our troops, deserve better.

Enclosure 1

DEPARTMENT OF THE ARMY
HEADQUARTERS UNITED STATES ARMY FORCES COMMAND
4700 KNOX STREET
FORT BRAGG, NORTH CAROLINA 28310

REPLY TO
ATTENTION OF

AFCG-JA

10 January 2013

MEMORANDUM FOR [redacted] 16th MP Brigade, Fort Bragg, North Carolina 28310

SUBJECT: Investigating Officer's Report – US v. MAJ Erik J. Burris

1. As directed your appointment memo dated 24 September 2013, I conducted an Article 32 investigation at the XVIII Airborne Corps Office of the Staff Judge Advocate, Fort Bragg, North Carolina on 20-22 November 2013 into the charges preferred against MAJ Erik J. Burris on 20 September 2012. This report is submitted in accordance with the requirements of reference R.C.M. 405(a).

2. **Defense Counsel.** [redacted] represented the accused. [redacted] represented the government. As of 20 November, MAJ Burris had a pending request for Individual Military Counsel.

3. **Special Victim Counsel.** [redacted] Special Victim Counsel, represented [redacted] remained in the hearing during [redacted] testimony, consulted with [redacted] during breaks and assisted [redacted] with logistical arrangements. [redacted] also remained in the hearing during the testimony of several other witnesses.

4. **Transcript.** A verbatim transcript of the sworn testimony of each witness is attached to this report, as ordered by you on 14 November 2013. (Exhibit 342).

5. **Exhibits.** A list of the Exhibits received and considered during the investigation is attached. I considered as evidence Exhibits 1 through 320 and Exhibit 342.

6. **Correspondence.** Official correspondence in the case is attached at Exhibits 321 – 330.

7. **Delays.** I originally scheduled the hearing for 27 September. Defense submitted a delay in writing through 30 October. (Exhibit 323) Via email communication, the government then indicated it was prepared to proceed on 7 and 8 November. I wanted to allow for more than two days of testimony so due to the trial and/or TDY schedules of both government and defense counsel and the Veterans Day holiday, so I scheduled the hearing for 19 November. On 13 November the government requested via email a one day delay from 19 November until 20 November. Via email correspondence between you and I, you approved these delays.

8. **Document Requests and Subpoenas Duces Tecum.** Prior to the hearing, I requested several documents under the control of the government and I issued several subpoenas duces tecum pursuant to Article 47, UCMJ. The subpoenas duces tecum are attached. (Exhibit 331 – 341) The status of the document requests and subpoenas is as follows:

a. Document Requests and Subpoenas Fulfilled Prior to the Hearing.

1. **146th Judicial District, Bell County, TX: any/all reports or records relating to the Burris Family** (146th clerk represented that all records from the 146th Judicial District were previously turned over to the government via Exhibits 18 and 49).
2. **Mr.** [redacted] **any/all records of counseling of** [redacted] (Exhibit 17 had been previously provided and Exhibit 314 was provided pursuant to subpoena).
3. **Ms.** [redacted] **any/all records of counseling of** [redacted] (Exhibit 46 previously provided and Exhibit 322 was provided during the hearing).
4. **Scott and White Hospital: any/all reports, records evidence pertaining to** [redacted] **Ms.** [redacted] **and/or** [redacted] (Exhibit 292 provided pursuant to subpoena).
5. **Temple, Texas Police Department: records of 911 calls made by members of Burris Family in Temple, Texas** (Exhibit 44 previously provided and Exhibit 51 provided pursuant to subpoena).
6. **Cumberland County, North Carolina Department of Social Services: any/all reports, records and evidence pertaining to the Burris family** (Record does not exist, as represented by the government counsel).
7. **Moore County, North Carolina Department of Social Services: any/all reports, records and evidence pertaining to the Burris family** (Record does not exist, as represented by the government).
8. **DFAS – Fort Bragg**, MAJ Burris' LESs from 2010 through the present (Exhibit 291 provided pursuant to subpoena).
9. **Fort Hood: Command Referral to Mental Health for MAJ Burris.** (Record does not exist, as represented by government counsel. Therefore I did not issue a subpoena after I initially requested the government to prepare one).
10. **Fort Bragg Family Advocacy Program records for Burris family** (Fort Bragg FAP Record does not exist, as represented by government counsel. Therefore, I did not issue a subpoena after I initially requested the government to prepare one).

b. Pending Document Requests and Subpoenas:

1. **Tricare Humana-Military South: any/all medical records for Ms.** [redacted] (mailed 12 November 2013).
2. **Tricare Humana-Military South: medical records for** [redacted] (mailed 12 November 2013).
3. **361st Judicial District, Brazos County Texas: any/all records relating to the Burris family** (mailed 12 November).
4. **Texas Dept of Family and Protective Services: any/all reports, records and evidence pertaining to the Burris family** (mailed 12 November).
5. **UNK carrier: Telephone records for** [redacted] **2010 - present** (IO unable to issue subpoena due to CID not responding to RFI for telephone numbers/carrier information).
6. **UNK carrier: Telephone records for** [redacted] **2010 – present** (IO unable to issue due to CID not responding to RFI for telephone numbers/carrier information).

7. [redacted]: **personal journal of Ms.** [redacted] (subpoena not issued due to CID representing it would first seek consent for the journal from [redacted]

c. Document Request and Subpoena Fulfilled After the Hearing.

11. **Scott and White Hospital, Temple, Texas: any/all records relating to** [redacted] **treatment by** [redacted] (Exhibits 315 - 317).

d. Additional Requests for Evidence and Subpoenas Made by Defense during the hearing:

1. **Chevy Dealership Killeen, TX: any/all records from** [redacted] **Purchase of Chevy Malibu in Summer of 2011.**
2. **Dell Medical Center/Dell Children's Hospital: any/all records relating to** [redacted] **or** [redacted] (also previously requested in 18 October Defense Discovery Request).
3. **UNK Records Custodian referenced in Exhibit 8: any/all records relating to November 2012 "hotline" call made by** [redacted]
4. **CID RFA to Interview Mr.** [redacted]
5. **Telephone Records for** [redacted] **for Relevant Time Period** (requested by IO but not issued due to CID not responding in a timely fashion for telephone numbers/carrier information; also previously requested in Defense Discovery Request dated 18 October).
6. **Telephone Records for** [redacted] **Burris for Relevant Time Period** (requested by IO but not issued due to CID not responding in a timely fashion for telephone numbers/carrier information; also previously requested in Defense Discovery Request dated 18 October).

e. **Other evidence under the control of the government.** Based on [redacted] Article 32 testimony, the following evidence is under control of the government but was has not been turned over to government or defense counsel:

1. **CID – Forensic Examination of MAJ Burris' laptop computer (pending)**
2. **CID – Forensic Examination of MAJ Burris' cell phone (pending)**

Based on [redacted] article 32 testimony, the following evidence is under the control of the government but has not been turned over to government or defense counsel:

3. **Financial Calendars given to CID by** [redacted] **(P 386 Article 32 transcript)**

9. **Witness Availability.** As required by R.C.M.405(g)(2)(A) and (B), I made the following determinations regarding witness availability:

a. **Witnesses Reasonably Available.** The following witnesses were reasonably available and were sworn and testified under oath in person during the hearing:

1. [redacted] **Temple, Texas**
2. [redacted]

[redacted]

b. **Witnesses Not Reasonably Available.** After conducting the balancing test outlined in the discussion R.C.M. 405(g)(1)(B) and considering the guidance in R.C.M. 405(g)(2)(B), I found the following civilian witnesses unavailable to testify in person. I accepted an alternative form of testimony IAW R.C. M 405(g)(4)(B)(ii). The following witnesses were sworn and testified under oath telephonically:

1. **Ms. [redacted] College Station, Texas** (indicated under oath she was willing only to provide telephonic testimony and was not willing to come to Fort Bragg for the hearing)
2. **Ms. [redacted] Bryon, Texas** (indicated that up until the evening of 20 November, she believed her professional rules regarding doctor/patient confidentiality precluded her from testifying either in person or telephonically. On the evening of 20 November, after the hearing was underway, she learned testifying in person or by telephone would be permissible under her professional rules. The parties did not learn this until she was called telephonically on the evening of 21 November, providing her insufficient time to travel to Fort Bragg for the hearing)
3. [redacted] **Temple, Texas** (indicated that although he was willing to testify in person, his schedule precluded him from traveling to Fort Bragg on 20-22 November 2013)
4. [redacted] **Temple, Texas** (indicated that although she was willing to testify in person, her schedule precluded him from traveling to Fort Bragg on 20-22 November 2013)
5. **Mr. [redacted] Palestine, Texas** (indicated that up until the evening of 20 November, he believed professional rules regarding counselor/patient confidentiality precluded testifying either in person or telephonically. On or about 20 November, after the hearing was underway, he learned testifying in person or by telephone would be permissible under his professional rules, providing insufficient time to make travel arrangements to travel to Fort Bragg)
6. **Mr. [redacted] Breman, Kentucky** (was located by the government telephonically during the hearing, and arranging travel would not have not been feasible in time for the hearing).

c. **Witness Reasonably Available, But Alternative Form of Testimony Considered Due to Lack of Defense Objection.** I found the following witness available to testify in person, but IAW R.C. M 405(g)(4)(A)(ii) accepted telephonic testimony because the defense did not object to the alternative form of testimony. The following witness was sworn and testified under oath telephonically:

[redacted]

d. **Witnesses Not Reasonably Available.** After conducting the balancing test outlined in the discussion R.C.M. 405(g)(1)(B) and considering the guidance in R.C.M. 405(g)(2)(B), I found the following witness unavailable to testify during the hearing:

1. **Ms.** [redacted] (Ms. [redacted] was nine years at the date of the hearing and her mother [redacted] did not consent for Ms. [redacted] to testify in person or to give a statement under oath by telephone or other similar means)
2. [redacted] ([redacted] is three years old and her mother [redacted] did not consent for [redacted] to testify in person or to give a statement under oath by telephone or other similar means)
3. **Female co-worker/physician who** [redacted] **references during her 8 May 2013 CID interview)** (In her CID interview [redacted] referenced a female physician friend who worked with her at Smith and White hospital in Temple, Texas. During the interview, [redacted] claimed this co-worker was aware of abuse in the Burris marriage. After the government asked [redacted] who this female friend was [redacted] could not remember and therefore I found her unavailable).

e. **Witness Requests Withdrawn.** Requests for the following witnesses were withdrawn by all parties and therefore I did not make reasonable availability determinations:

[redacted]

f. IAW the discussion of R.C.M. 405(a) ("the primary purpose...to inquire into the truth of the matters set forth in the charges, the form of the charges, and to secure information on which to determine what disposition should be made...The investigation also serves as a means of discovery...," I permitted the defense to cross-examine witnesses for an equal or greater amount of time than I permitted the government to ask questions.

10. **Witness Availability for Trial.** Essential witnesses will likely be available should the case be referred.

11. **Objections.** The following objections were made during the hearing:

a. **Defense objection to presence of Special Victim Counsel in the hearing, beyond the periods of testimony of** [redacted] Objection was noted. Based on R.C.M. 405(h)(3) ("Article 32 investigations are public hearings and should remain open to the public whenever possible"), I permitted CPT Runyan to remain in the hearing.

b. **Government objection to consideration of Exhibit 309** (167 Pages of Text Screen Shots between Erik and [redacted] Burris from July 2012 through November 2012). **The basis for the** government objection was a lack of foundation – though [redacted] testified that the telephone number in the records (512-632-2420) was in fact hers. The objection was noted and Exhibit 309 was considered. R.C.M. 405(h)(1)(C) states "the defense shall have the full opportunity to present

any matters in defense, extenuation, or mitigation." Additionally, the exclusionary rules of R.C.M. 405(g)(5) appear to only apply to evidence the government is attempting to introduce. The defense requested the telephone records in its 18 October Discovery Request and had the request been fulfilled, foundational issues with Exhibit 309 would be known.

c. **Government objection pursuant to M.R.E. 412(a)(1) to defense questioning of Mr. [redacted] regarding the general nature and scope of previous sexual activity between [redacted] and [redacted] during their marriage.** [redacted] testified at the Article 32 that her ex-husband's penis did not penetrate her vagina during their previous marriage. (See [redacted] Article 32 testimony for specific discussion). [redacted] testified in contradiction, stating that he and [redacted] had sexual intercourse during their marriage, citing their honeymoon. ([redacted] Article 32 testimony). At that point, I stopped the questioning and defense requested to question [redacted] further regarding the general nature and scope of the sexual relationship between he with [redacted] for the limited purpose of impeaching [redacted] credibility pursuant to M.R.E 412(b)(1)(c) ("evidence the exclusion of which would violate the constitutional rights of the accused.") I stopped the defense from further questioning on this matter to hear both sides' position. At that time the government objected to further inquiry based on M.R.E. 412. Ultimately, I did not permit further inquiry by either side in to the matter.

d. **Defense objection to closing the investigation without waiting for fulfillment of pending subpoena duces tecum and issuance and fulfillment of the subpoena duces tecum requested by defense during the hearing** (Article 32 transcript). The additional evidence subject to any outstanding subpoenas and/or subpoenas requested during the hearing is not reasonably available at this time as it is outside of the control of the government. R.C.M. 405(g)(1)(B) requires only evidence "under the control of the Government" to be produced.

e. **Special Victim Prosecutor Comment.** During the second day of the hearing, [redacted] raised an issue of [redacted] laughing during [redacted] testimony, and either the accused and/or counsel snacking during testimony. I did not observe [redacted] doing laughing during testimony and did not follow up on the issue of snacking, but instructed all counsel to remain professional.

12. **Form of the Charges.** I found no substantive errors in the form of the charges. I did note that [redacted] name was spelled two different ways on the charge sheet.

13. **Rule for Courts-Martial 706: Inquiry into the mental capacity or mental responsibility of the accused.** R.C.M. 706 requires an investigating officer if "it appears...that there is reason to believe that the accused lacked mental responsibility for any offense charged or lacks capacity to stand trial," to transmit through appropriate channels, the fact and the basis of belief or observation, to the officer authorized to order an inquiry into the mental condition of the accused. While there were two points in the hearing where emotions were running very high for both [redacted] and MAJ Burris (P 459 and P 539), I observed nothing in MAJ Burris' behavior during these two instances, or during any other part of the hearing, that gave me reason to believe the he lacks the mental responsibility for any offense charged or that he lacks capacity to stand trial. One on occasion during [redacted] testimony, MAJ Burris spoke out and stated "don't talk to me that way." On the other occasion after [redacted] was crying and pointing at MAJ Burris, [redacted] got up from the witness chair and left the room, while immediately thereafter MAJ Burris got up and walked in the other direction to the room that was designated for the defense team to confer privately. Neither instance caused me to believe MAJ Burris lacks mental responsibility for the offenses charged or lacks the mental capacity to stand trial.

14. **Case Preparation.** Over the course of six weeks prior to the hearing, I reviewed in detail approximately 290 exhibits in the government case file. This included review of 800 pages of documents, including: the entire CID investigation including Agent's notes; 28 November 2012 Bell County, Texas family court testimony of MAJ Erik Burris, [redacted] and others; 8 May 2013 Bell County, Texas family court testimony of MAJ Erik Burris, [redacted] and others; and other records from Bell County and Brazos County, Texas. I also reviewed over sixty-four hours of candid Skype audio tapes between MAJ Burris and Ms. [redacted] the [redacted] family. Prior to the hearing, I also reviewed, multiple times, the following CID videotaped interviews: [redacted] Exhibit 287), [redacted] (Exhibit 286) and MAJ Erik Burris (Exhibit 288). During and after the hearing, I reviewed the exhibits introduced by the government at the hearing (Exhibits 291 through 303, 308, 310, 311, 312, 313) and the 5 exhibits introduced by the defense (Exhibits 304 and 309). At the hearing I listened to and considered the in-person and/or telephonic testimony of 16 witnesses. After the hearing I reviewed over 1000 pages of medical records belonging to [redacted] Ms. [redacted] and [redacted] (Exhibits 315-317). With the exception of some of the Skypes, I reviewed the entire file after the hearing, including the videotaped interviews and prior in-court testimony, to ensure accuracy in synthesizing the Article 32 testimony with the case file.

15. **Basic Timeline for Reference.** This timeline is not all inclusive as there are so many disputed and inconsistent facts in this case, I *attempted* to create a basic timeline and have noted where the facts are disputed.

MAJ Burris entered active duty in 1998 as a Field Artillery Officer and was assigned to Fort Hood, Texas. Sometime in late 2002 or 2003, while still stationed at Fort Hood, he married [redacted] prior to deploying to Iraq in the spring of 2003. MAJ Burris and [redacted] had one daughter, [redacted] who was born on 3 December 2003. (Exhibit 316) Their marriage was dissolved on 21 May 2004 (Exhibit 30) not long after MAJ Burris' redeployment to Fort Hood. In the summer of 2004 MAJ Burris ETSd from the Army and remained living in Texas where he attended Texas Tech Law School. He graduated from law school in 2007. (Exhibits 318, ORB and 319, OMPF)

In 2008, MAJ Burris returned to active duty as a Judge Advocate. After attending the Judge Advocate Officer's Basic course, he was assigned to Fort Hood. (Exhibits 318, ORB and 319, OMPF)

In January 2009, MAJ Burris and Ms. [redacted] met on Match.com and had their first date. They spoke on the phone on a regular basis and had their second date on Valentine's Day, 2009. In the summer of 2009, they rented an apartment and moved in together. According to [redacted] Burris' Article 32 testimony, they began having a sexual relationship in May of 2009. She described the sexual relationship as one where MAJ Burris would bring flowers and chocolates, run bubble baths, light candles and 'go very slowly and include a lot of kissing.' According to [redacted] the sex included missionary style sex once or twice a week, with the emphasis on weekends. [redacted] testified that prior to her sexual relationship with MAJ Burris, her vagina had never been penetrated, a topic of controversy and impeachment testimony during the hearing [redacted] - Article 32 Testimony).

In January 2010, [redacted] learned she was pregnant with [redacted] while on the birth control pill, according to her Article 32 testimony. [redacted] was born on 19 August 2010.

Sometime o/a early March, 2012 a pre-wedding dispute centered around [redacted] stay with the couple prior to the wedding, as [redacted] disapproved of pre-marital sleepovers in [redacted] presence. The dispute resulted in the MAJ Burris and Ms. [redacted] having two weddings so [redacted] could stay overnight with them during the weekend of the Fort Hood Chapel wedding. Prior to this dispute, Ms. [redacted] stayed with her parents during [redacted] visitations for this same reason. ([redacted] Testimony, [redacted] testimony, MAJ Ruckno testimony).

In March 2010, the couple married at the Justice of the Peace in the greater Fort Hood area and then a week later at a Chapel on Fort Hood. At the time they married, [redacted] was 35 years old (Exhibit 315) and MAJ Burris was 34 years old (Exhibit 318).

Although [redacted] did not raise an allegation of rape until a 28 November 2012, and that time did not allege all of the allegations now charged (Exhibit 19), she now alleges that the Article 120 offenses continued on a periodic basis from the time the first alleged rape occurred in March of 2010 until November of 2012, when she left MAJ Burris.

As discussed herein, [redacted] later alleged that MAJ Burris raped her throughout the marriage. She testified at the Article 32 hearing that consensual sex occurred throughout the marriage as well, until some point consensual intercourse allegedly stopped. She also testified that MAJ Burris complained to her that she was 'cold during sex.'

In April 2010, MAJ Burris deployed to Afghanistan. [redacted] remained in Temple, Texas near her family.

In the fall of 2010, MAJ Burris and [redacted] purchased a home in Temple, Texas, financed by MAJ Burris via VA loan.

In December 2010, MAJ Burris took mid-tour leave from Afghanistan. Several incidents involving allegations in the case allegedly occurred during this mid-tour leave period.

In January 2011, Mr. [redacted] Sr ([redacted] father) and [redacted] ([redacted] mother) moved into the home next door to the Burris' family in Temple. Their son, [redacted] 40, also moved into the home.

In March of 2011, MAJ Burris redeployed to Fort Hood for a few months, then PCSed during the summer to the Judge Advocate Officer Graduate Course in Charlottesville, Virginia for the 2011-2012 academic year. [redacted] did not PCS to Virginia with him, instead she remained in the Temple, Texas home next to her family. MAJ Burris would return to Temple, Texas periodically to visit his family, including [redacted] MAJ Burris and [redacted] second daughter, [redacted] was conceived during one of these visits in May 2012. Her conception is subject of one of the rape allegations in this case, as is intercourse during other visits back to Texas MAJ Burris made during the Graduate Course.

When MAJ Burris completed the Graduate Course at the end of May 2012, he returned to Texas on leave. After his leave was completed, MAJ Burris PCSd to Fort Bragg. [redacted] followed in September 2012.

Throughout [redacted] lifetime, MAJ Burris was active in calling and visiting with his daughter [redacted] After he met [redacted] in 2009, [redacted] was involved with picking up/dropping off of [redacted] and had engaged in several conversations with [redacted] to include

ensuring [redacted] and [redacted] spent time together while he was in Afghanistan. Although, [redacted] denied at the Article 32 that she had contact with or access to [redacted] during 2010 and 2011, [redacted] testimony and the Skype conversations between MAJ Burris and [redacted] while he is in Afghanistan directly contradict [redacted] testimony.

MAJ Burris paid child support and fully exercised his parental visitation rights of [redacted] via visitations, phone and skype. (Exhibits 52-166 -- Skype conversations between MAJ Burris and [redacted] Article 32 Testimony, and elsewhere in the record). MAJ Burris and [redacted] had a contentious relationship since the marriage was dissolved. ([redacted] testimony, and other places in the record). In communications with [redacted] and her family (Mr. [redacted] testimony), MAJ Burris criticized [redacted] in a manner that might be commonly characterized as 'bashing' often seen in divorce and child custody disputes. There is evidence that he was often joking about [redacted] to the [redacted] family. (Exhibit 13, Mr. [redacted] Testimony, [redacted] Testimony and other places in the record).

Throughout the 2010-2012, MAJ Burris engaged in an activity with [redacted] that he referred to as "tickle torture." He also engaged in physical play with [redacted] in the form of an activity called "tushie squeeze" as well as "tickle torture."

In April 2012, a "tickle torture" incident occurred with [redacted] This incident is one of the alleged assaults in Specification 5 of Charge I.

On 1 October 2012 [redacted] contacted [redacted] a licensed psychologist, to enroll [redacted] in counseling (Exhibit 308).

On 6 November 2012, Ms. [redacted] began counseling with [redacted]

On or about 13 November 2012, [redacted] left MAJ Burris, with the assistance of her mother, and moved back to Texas.

On 15 November [redacted] filed for Divorce and filed a Protective Order via an Affidavit In Support of Ex Parte Relief (Exhibits 20-25) in the 146th Judicial District, Bell County, Texas. She alleged, generally, domestic assault and non-support against MAJ Burris.

On 16 November 2012, [redacted] went to Scott and White OB ER to complain of pelvic pain for the 'last week as a result of domestic abuse.' (Exhibit 291)

On 19 November 2012, [redacted] presented [redacted] to her pediatrician for strep throat, and also alleging MAJ Burris physically and sexually abused [redacted] (Exhibit 291)

On 28 November, the 146th Judicial District heard the Motion for Protective Order. During this hearing, [redacted] first alleged that MAJ Burris raped her. The court ordered MAJ Burris' visitation with [redacted] be supervised. The court ordered [redacted], Centex Family Solutions and & Counseling, to supervise the visits. [redacted] also testified at this hearing regarding an alleged assault against [redacted] (Specification 5 of Charge I).

On 26 November, after the court hearing, MAJ Burris had a brief visitation with [redacted] at the [redacted] home in Temple, Texas. (Exhibit 304). During the visitation a verbal altercation occurred between [redacted] and MAJ Burris, centered on the allegations of rape that [redacted] made during the court hearing. As reported by [redacted] and [redacted] Ms. [redacted] alleged

that MAJ Burris attempted to kidnap [redacted] during this visitation. ([redacted] testimony). However, the attempted kidnapping amounted to MAJ Burris taking [redacted] next door to his house next to the [redacted] during the visitation. (Mr. Burris' testimony).

On or about 29 November, MAJ Burris returned to Fort Bragg and informed his chain of command of the allegations raised by [redacted] in the 28 November hearing. (Exhibit 288, MAJ Burris' CID Interview, Exhibit 49 CPT Little statement)

On or about 22 December 2012, MAJ Burris visited his daughter [redacted] in Temple, Texas. IAW the 28 November order (Exhibit 18) for supervised visitation, the visitation was supervised by [redacted]. As reported by [redacted] in the 8 May family court hearing, the visitation was positive and without incident. (See Exhibit 49 for full discussion).

On 26 December 2012, [redacted] presented [redacted] in the Scott & White Clinic for evaluation of a "rash w/ pimples in pelvic area/genitals," [redacted] reporting she just rec'd [redacted] back from visitation from her father. Rash to genitals w/ white pimples, crying when urinating and saying "owie" while pointing to her privates."

On 26 December 2012, a report was filed with Texas Department of Family and Protective Services (DFPS) that MAJ Burris sexually and physically abused [redacted] The source of the report remains unknown at this time. The scope of the DFPS investigation is also unknown, and a subpoena with DFPS is pending. On or about 1 February 2013, Texas Department of Family and Protective Services found the allegation in the report of physical and sexual abuse against [redacted] to be "not true." (Exhibit 296).

[redacted] was born on or about 21 January 2013.

In February 2013, LTC Jonathan Kaiser was appointed as a 15-6 officer to look into allegations of spousal abuse made by [redacted] (Exhibits 2-8). She made two unsigned statements to [redacted] (Exhibits 5 and 7) and at least one telephonic statement (Exhibit 6). The allegations included an alleged pattern of child sex abuse of [redacted] and [redacted] multiple assaults on [redacted] and [redacted] assaults and rape of [redacted] non-support, threats, abuse of prescription pain medication and disrespect to his superior officers. Many of the allegations had not been previously raised in the 15 November affidavit or 28 November court hearing. None of the allegations had been raised with civilian police as of the 22 November 13 Article 32 hearing.

Sometime between 28 November 2012 and 6 March 2012, [redacted] made a Motion for a Temporary Order in the 361st Judicial District, Brazos County, Texas. The court ordered a Modified Possession Order based on an arrangement MAJ Burris and [redacted] had agreed to involving MAJ Burris' visitation being temporarily suspended until [redacted] deemed appropriate for him to resume contact and visitation with [redacted]

On 1 February 2013, in an unsigned statement to [redacted], [redacted] alleged financial non-support, verbal and physical abuse to herself, [redacted] and [redacted] communicating a threat, abuse of prescription pain medications, possession of pornographic photos of [redacted] and [redacted] rape, adultery during his first marriage and other things.

On 11 February 2013, in an unsigned statement to [redacted], [redacted] expanded on the allegations in the 1 February statement, alleging "grabbing, pinching, swinging our daughter [redacted]

around by one arm, holding her down and kissing all over her body, squeezing or pinching her inner thighs, squeezing or pinching her bottom calling it "tooshe squeeze," holding, restraining or confinement." Among other things, she stated "Major Burris would insist that [redacted] not wear any underwear..", insisting the girls go to the bathroom with him and give them baths, sleep in bed with [redacted] and engage in "excessive bed play" with her, among other things.

Sometime in late February or early March, 2013 [redacted] Article 32 testimony) after receiving the 1 February and 11 February statements, the 15-6 investigation was suspended and the case was turned over to CID at Fort Jackson, South Carolina for investigation. MAJ Burris was moved from the Chief of Criminal Law to an Operational Law attorney position. He was not prohibited from accessing the 82d OSJA.

In March, 2013 CID contacted [redacted] Initially, she did not agree to cooperate with CID citing her concerns with MAJ Burris' ability to influence the law enforcement process, but ultimately gave a videotaped interview on 10 May 2013. (Exhibit 287) Her brother [redacted] (Exhibit 286) also gave an interview. CID took a very limited statement from [redacted] (Exhibit 9) and accepted statements typewritten at home from [redacted] (Exhibits 10 and 11). CID did not conduct any other interviews prior to preferral of charges, except for MAJ Burris' interview (Exhibit 288) and an interview of [redacted]' (Exhibit 294), which was provided to counsel during the hearing (along with approximately 16 other previously requested exhibits not previously provided to the investigating officer or defense counsel, some of which were CID exhibits that were not provided to trial counsel). CID never interviewed [redacted] (to whom [redacted] testified on 28 November 12 that she reported a May 2012 rape to the day after it happened), [redacted] ([redacted] mother), Mr. [redacted] [redacted] ex-husband or any representatives from the Texas DFPS, who had investigated at least one incident of alleged abuse of [redacted]

On 8 May 2013, both [redacted] and MAJ Burris testified before the 146th Judicial Court, Bell County, Texas regarding visitation matters regarding [redacted] and [redacted]

In July 2013, CID interviewed MAJ Burris. (Exhibit 288)

On or about 6 August 2013, MAJ Burris had lunch with [redacted] and made the statements giving rise to the allegation of wrongfully endeavoring to impede an investigation in Specification 2 of Charge IV (Exhibit 289).

On or 9 August 2013, after asking the senior trial counsel, [redacted], when a good time would be go back into his old office to access the computer, MAJ Burris went into the legal office and copies files – the content of which is unknown at this time (forensic examination by CID is pending).

On 12 August 2013, [redacted] counseled MAJ Burris in writing (Exhibit 298) stating "you will return all DVDs or CDs or electronic media you recently produced or copied from the 82d Airborne OSJA." [redacted] also issued a no-contact order to cease all communications with any member of the 82d OSJA and to remain away from Gavin Hall. [redacted] flagged MAJ Burris pursuant to AR 600-8-2 for law enforcement purposes. [redacted] command referred MAJ Burris to Mental Health (Exhibit 300), which met with negative findings and referred MAJ Burris to ASAP (Exhibit 301) which did not result in enrollment.

Later that day, [redacted] (MAJ Burris' defense counsel) contacted [redacted] and asked [redacted] to give MAJ Burris an extension to return the electronic media he had copied

from the computer in the legal office. Apparently, some discussion between government and defense counsel occurred regarding the lawfulness of the 12 August 2013 order, including the discussion in the emails at Exhibit 303. No DVDs, CDs or electronic media were returned to LTC Thomas.

[redacted] preferred charges in this case on 20 September 2013.

[redacted] were interviewed by CID on 30 October regarding their knowledge of Specification 2 of Charge IV.

During the Article 32 hearing, [redacted] testified that on multiple occasions MAJ Burris raped her vaginally, that on multiple occasions he digitally penetrated her vagina and anus with unlawful force and without her consent, and that he raped her anally on at least one occasion. She referred to MAJ Burris as the "beast" during these alleged incidents, and told CID and later testified at the Article 32 hearing that she manifested lack of consent by telling him no, by telling him it hurt and on at least one occasion confronting him the next morning. She testified that on multiple occasions, she woke up in the night to being raped or to unlawful sexual contact and that on other occasions he 'took the sex.' (CID Statement, Article 32 testimony).

Although she had not reported the allegation in her previous testimony or statements, [redacted] testified that during the Article 32 hearing that in February of 2012 MAJ Burris raped and forcibly sodomized her in a hotel room in Raleigh, NC.

During the Article 32 hearing, the government requested that the following allegations of uncharged misconduct be investigated at the Article 32 hearing: rape and forcible sodomy that allegedly occurred in Raleigh, North Carolina in February 2012 and the allegation of Communicating at Threat in the proposed Additional Charge I (Exhibit 329).

16. **Credibility Analysis.**

In both domestic and sexual assault cases, the alleged victim's credibility plays an especially important role in determining the truth of the matters asserted in the charges. In cases such as this one, where there was no physical evidence of the alleged Article 120, 125 and 128 offenses and no eyewitness testimony to the alleged Articles 120, 125 or 128 offenses, both the "reasonable grounds" determination at the Article 32 hearing and any "beyond a reasonable doubt" determination made by a trier of fact at trial, rests primarily on alleged victim's ability to articulate what happened and to convince the investigating officer or trier of fact that the allegations are true.

To that end, when reviewing the evidence and testimony, I assessed [redacted] credibility. This analysis encompassed assessment of various things, including whether the evidence showed that [redacted] was genuine and trustworthy, for example, whether the evidence demonstrated that she embellished any facts that were otherwise established, whether she fabricated facts that were otherwise established as non-existent, whether she omitted facts to mislead and whether her perception of known facts was reasonable. The evaluation was influenced by her demeanor, her memory, and most importantly the consistency and timing of her statements (or lack thereof) to family members, law enforcement personnel, medical providers, other care or social service providers or religious figures, in family court and whether her statements were corroborated or contradicted by other facts presented. Focus was also placed on assessing on whether her behavior corroborated or contradicted things she said, or demonstrated that the alleged events

occurred or did not occur exactly as she conveyed. Lastly, the examination included whether the evidence demonstrated that [redacted] had motive to fabricate.

Additionally, [redacted] parents, [redacted] and [redacted] testified at the Article 32 hearing. Besides [redacted] they presented the only eyewitness testimony to the alleged Article 128 assaults on Ms. [redacted] and [redacted] along with [redacted] brother, [redacted] (who gave a videotaped statement to CID indicating he observed 128 offenses against Ms. [redacted] and [redacted] He did not testify at the Article 32). [redacted] parents also testified as the only eyewitnesses to any physical evidence of the alleged Article 128 offenses against [redacted] (indicating they observed bruising on [redacted] on at least two occasions and that they saw MAJ Burris squeeze the back of [redacted] neck). [redacted] MAJ Burris' ex-wife, also testified to observing bruising on [redacted] on one occasion following the alleged April 2012 assault of [redacted] MAJ Burris also testified twice in family court and gave a sworn interview to CID. I also assessed the credibility of [redacted] and MAJ Burris in making findings and recommendations.

In assessing the credibility of [redacted] I gave her a significant amount of deference to forget or confuse dates or details, as one might expect any person to do when queried about events occurring over a three year period or when relaying information about a traumatic event or when disclosing extremely personal details to strangers such as law enforcement, family court judges or an investigating officer. I also gave [redacted] significant deference in having delayed reporting and possibly making untruthful statements to medical providers or others prior to reporting, as it is common for victims of sexual assault to engage in such behavior. I relied heavily on her May 2013 sworn videotaped statement to CID, her testimony under oath on 28 November 12 and 8 May 2013 and her Article 32 hearing testimony where I gave her ample time and opportunity to explain her rationale for her pre-reporting and post-reporting behavior, and her prior statements, including an opportunity to explain or clarify the inconsistencies in the record.

My overall assessment is that [redacted] allegations', her behavior since making them, her testimony in the 146th Judicial District family court, her statements to [redacted] and CID and at the Article 32 hearing were driven by a combination of motives. The evidence in the case file and the Article 32 testimony suggests she embellished or made untruthful and/or inconsistent statements in her 28 November 2012 court testimony (Exhibit 19), her statements to [redacted] (Exhibits 5 and 7), to CID (in her 8 May 2013 videotaped statement (Exhibit 287), 12 July follow up telephonic CID interview (Exhibit 3)), during her Article 32 testimony and omitted relevant facts. Many assertions in her statements, testimony and in the evidence she provided to [redacted] and to CID appeared to be skewed and self-serving. By itself and without considering any corroborating or contradicting facts, [redacted] testimony appears moving and somewhat convincing. It contained, however, frequent nuanced exaggerations, embellishments, omissions and fabrications that traversed an expansive variety of topics. Moreover, her displays of emotion when testifying did not appear genuine, but rather appeared to include a noticeable ability to start and stop crying at will. I am left with no other alternative that to assess that [redacted] is exaggerating or fabricating allegations. The evidence suggested that a variety of motives were likely at play – most significantly the desire to alienate MAJ Burris from their daughters, so she would not have to deal with his aggressive enforcement of his parental rights and be part of a long term contentious custody arrangement, like he had with [redacted] The evidence also suggested that [redacted] has an skewed view of the world which causes her to draw conclusions that most reasonable adults would not See final minutes of CID Interview at Exhibit 287 as an example,

where she compares her assessment of MAJ Burris 'sick' behavior against what [redacted] characterizes as 'quirky' behavior.

Specifically with respect to a motive to fabricate, I found several instances where the facts available to me provided circumstantial evidence of several motives underpinning [redacted] allegations.

First, I assess she was concerned MAJ Burris would enforce his parental rights to the maximum extent of the law. [redacted] observed MAJ Burris enforce his parental rights to the maximum extent of the law with [redacted] with respect to [redacted] (Exhibits 52-166). She knew MAJ Burris would not engage in behavior that would risk him losing his parental rights (For example, both [redacted] and [redacted] testified that, prior to their wedding in March 2010, MAJ Burris asked [redacted] to leave their apartment on weekends for overnight stays prior to the marriage, to ensure [redacted] did not take him back to court for having pre-marital domestic overnight stays with a significant other). My assessment is that [redacted] knew if she and MAJ Burris divorced he was likely to invest the same about of time, money and energy to remain active in their daughters' lives.

She also emphasized in the Article 32 how many times Erik told her "no one would take his kids away" (Article 32 testimony) which was corroborated by [redacted] in his CID interview who stated "he would always throw the law at us" which [redacted] explained was his indicating he would enforce his parental rights. MAJ Burris' intelligence, his status as an attorney and judge advocate intimidated her and her family (Article 32 testimony [redacted] CID statement, and other places in the record).

Next, [redacted] likely feared the name calling associated with contentious divorces and custody battles. [redacted] had a contentious relationship with him, and also observed MAJ Burris criticize [redacted] (Exhibit 13 MAJ Burris referencing [redacted] as "the evil one" and "seriously how much cheaper would the "Chicago way" be...." [referring to an ongoing joke to have someone in Chicago kill [redacted]

Third, she was upset that her expectations of marriage were not fulfilled. She testified about how she had expectations of what marriage would be like and that she expected MAJ Burris to send flowers and give her bubble baths and give her equal decision making authority in financial decisions, though they never established roles and expectations, prior to the marriage. ([redacted] Article 32 testimony).

Fourth, there was some suggestion that [redacted] and/or her family members resented MAJ Burris for the attention he gave [redacted] alludes, in his CID interview, to feeling like MAJ Burris' gave [redacted] more attention than to [redacted] or [redacted] (Exhibit 286).

Fifth, I assess [redacted] did not want to be apart from her mother and father who live in Temple, Texas. She lived near her parents her entire adult life, living with them for 3 or 4 years, and then next to them as of early January 2011 ([redacted] Ms. [redacted] Article 32 testimony). When [redacted] finally moved to Fort Bragg with MAJ Burris, she didn't quit her job (Exhibit 19, P 60 showing she took a leave of absence) and she testified she never intended on living in North Carolina.

Sixth, [redacted] was unsatisfied with the financial support MAJ Burris gave her, and felt she should have an equal say in finances. She made relevant omissions and made false, or at least inconsistent, statements about finances. Some examples include: She provided CID Exhibit

48 (Regions Bank Records of [redacted] and [redacted] reflecting only a few deposits by MAJ Burris), but omitted any mention to [redacted] or CID that 1) MAJ Burris paid over half of all of their expenses prior to the birth of [redacted] when [redacted] was working and had student loans available to her, 2) that MAJ Burris bought her a home in Temple, Texas at her request in December 2010 and paid the mortgage on it through their PCS to Fort Bragg in the Fall of 2012, 3) that at least as of January 2012 MAJ Burris had established a joint checking account (Exhibit 299 Bank of America Records – Joint Checking Account) and that 4) at least as early as August 2011 she had access to funds in the Bank of Amica account. During the Article 32 hearing she specifically denied every having access to this account and specifically denied ever having access to checks or writing checks from this account. (See Exhibit 299 which shows transactions made by [redacted] and checks written by [redacted]

17. **Evidence Impacting Credibility Analyses.**

Below I provide some context and examples of evidence considered most important assessing the credibility of the allegations; however, the list is not all inclusive. Including all of the inconsistencies, nuanced embellishments or fabrications in [redacted] statements would have precluded me from synthesizing this case into a digestible report.

a. **Photographs (Exhibits 268 - 285) and Text Messages (Exhibit 309).**

[redacted] left the Burris home in Pinehurst, NC on 13 November 2012, without notice to MAJ Burris. Her mother, [redacted] helped [redacted] move back to Texas, where the [redacted] lived and where she and MAJ Burris used to live. [redacted] testified that, in the days prior to leaving, she called a Fort Bragg domestic abuse hotline prior to leaving the home (Article 32 testimony...) but was referred to a Fort Hood hotline instead. While the Fort Hood 'hotline' records were not available for review at the hearing, [redacted] testified that she was instructed to photograph weapons, liquor, ammunition and anything dangerous prior to her departure (Exhibits 204-213 – photos from Pinehurst home) and leave, not when MAJ Burris was out of town over the 8-9 November weekend in Houston, but when he returned and was at work at Fort Bragg. However, there were no photos of weapons, she did not photograph the mini-gun safe/lockbox and later testified she had no idea what the contents of the safe or lockbox were, and she supplied CID with no photos of weapons. Instead, she took photos of the liquor cabinet, MAJ Burris' gun cleaning bag, empty rifle magazines and a box of 9mm ammunition (Exhibits 267 – 285). [redacted] testified that the photos of MAJ Burris sent in the text messages in the days leading up to her departure were sent to "taunt" her, (See Exhibit 309 for context) which does not appear to be a reasonable conclusion of his intent based on the communications.

a. **15 November 2012 Affidavit and 28 November 2012 Court Testimony**

On 15 November 2012, [redacted] filed for Divorce and filed a Protective Order via an Affidavit In Support of Ex Parte Relief (Exhibits 20-25) in 146th Judicial District, Bell County, TX. (Exhibit 20) The assertions in the Affidavit regarding communications and interactions between [redacted] and MAJ Burris during the weekend preceding her departure are entirely inconsistent with the tone and content of Exhibit 309, text message screenshots exchanged between [redacted] and Erik Burris preceding her departure from North Carolina from 6 and 12 November 2012 (Pages 57 through 61, Pages 63 – 65, Pages 67-75, Exhibit 309). The affidavit alleges the days leading up to her departure included a series of fights, and while ostensibly they are not complete set of communications between the couple, the texts in Exhibit 309 show normal loving discourse between husband and wife.

The Affidavit also alleges that prior to her departure, MAJ Burris was, among other things, throwing dishes, of which there was no evidence (testimony or evidence) presented to corroborate notwithstanding that [redacted] took photographs of other evidence in an effort to demonstrate MAJ Burris' dangerousness. Of greatest relevance and weight in the affidavit is: 1) the absence of any allegation of rape or forcible sodomy, 2) [redacted] assertion under oath that she did not want to PCS with her husband to Fort Bragg and her suggestion that his attempt to PCS his family to Fort Bragg rose to the level of an abusive or quasi-criminal threat, 3) the omission of allegations she later complains of (such as rape see page 3 of the affidavit), and 4) her untruthful statement that in June of 2012 "he immediately stopped payment and cut me off from access to any funds." (Exhibit 299 - Bank of America Combined Bank Statements showing frequent electronic activity and checks written by [redacted] Burris from June 2012 – September 2012 including transactions made in Texas after his PCS to Fort Bragg).

The Affidavit contains allegations of MAJ Burris' unsafe gun storage and handling, which remains a theme for [redacted] in all of her remaining statements, and to a certain extent her family members. For example, she stated that "Erik has four various types of firearms that he would leave out where I could see them Erik also has multiple swords, axes, machetes, and knives of all sizes and other weapons." And later from her testimony in Bell County; Texas Q: "Where are the guns? A: They're just random everywhere...." Q: "Where is the ammunition? A: They're random. They're everywhere..." (P 58, Exhibit 19). Later, [redacted] alleged MAJ Burris was stockpiling ammunition, for which there was no evidence ever presented. (Exhibit 296, Progress notes from 18 December 2012, [redacted] states she has heard from [redacted] is in Texas today. He has requested daily visiting with their child [redacted] states that [redacted] told her tha[redacted] was "stockpiling ammo" and asking [redacted] to claim that she was the one who was stockpiling the ammo."

The evidence in the case showed that MAJ Burris owns one 9mm pistol, a .22 mm pistol and he purchased [redacted] a .9 mm pistol. (Page 17, Exhibit 18, Exhibit 286 and [redacted] testimony). He also has one buck knife, an ax that he took on road marches and a machete. (Exhibits 267-280, Exhibit 288, Testimony of Mr. [redacted]). Besides the events in alleged in Specification 1 of Charge IV, the evidence related to possible unsafe gun storage or handling centers on 1) Mr. [redacted] testifying that he saw one of the pistols on the kitchen counter on one occasion he purchased MAJ Burris a mini-gun safe for Christmas, which MAJ Burris used; and 2) according to [redacted] Burris MAJ Burris stored the 9mm next to the bed or in the closet, until she asked him to move them in to the mini-safe/lock box and he complied, and that he cleaned a gun in front of [redacted] (Exhibit 286, Testimony of [redacted] and [redacted] and other places in the record).

[redacted] who allegedly witnessed the assaults on Ms. [redacted] and [redacted] also told CID that MAJ Burris had an "arsenal" of weapons, yet admitted to CID that MAJ Burris had two 9mm pistols and a .22 caliber pistol. [redacted]s demeanor during the interview coupled with his characterization of MAJ Burris' three weapons as an "arsenal," was an exaggeration that suggested motive to fabricate or exaggerate, given that [redacted] (with whom [redacted] lived) owns so many guns he was not able to count them, ([redacted] Article 32 testimony-) and that [redacted] and [redacted] possess concealed carry permits (Exhibit 17).

With the exception of the allegation made in Charge IV, Specification 1 (Article 134-Communicating Threat – while waving weapon on the back porch in December 2010 while on mid-

tour leave from Afghanistan) , there was no evidence presented that MAJ Burris improperly stored or handled weapons in the home in violation of law. While reasonable minds can differ on what constitutes proper ownership, storage or handling of weapons, I assess that [redacted] overemphasized what appears to be common and acceptable storage and weapons practices, potentially in an attempt to bolster the allegation in Charge IV, Specification 1 and other allegations, and to establish it was reasonable for her to remain in the relationship and/or fail to report the allegations in a timely manner.

[redacted] also alleged in the Affidavit (Exhibit 20) that the military has previously disciplined MAJ Burris for anger problems: "Erik had issues with the military due to his anger. I have found a document from a doctor that stated he would not prescribe pain medication to Erik until he got counseling. I am aware of an incident in which the military made Erik undergo a psychological evaluation because he was irate with his commanding officers, yelling and knocking over further due to being passed over for a promotion."

There was no evidence MAJ Burris had "issues" with the military, although there was evidence MAJ Burris has a temper. [redacted], Article 32 testimony, Exhibit 16). The evidence also established that he was not ordered to undergo a psychological evaluation after learning he was passed over as alleged by [redacted] (Government Representation that its request for Fort Hood Mental Health Records had negative findings). The evidence presented during the hearing contradicted [redacted] allegation that MAJ Burris became irate with commanding officers and knocked over furniture in the legal office. While he was upset for being passed over, his behavior did not create cause for concern (Article 32 Testimony of former supervisor [redacted] and Article 32 Testimony of former subordinate [redacted]). [redacted], one of his other supervisors, testified he had issues with MAJ Burris' work performance in other ways but did not formally counsel him and testified that "I did not have any concerns about his temperament." (P 1247, Article 32 Testimony).

Additionally, when comparing [redacted] Affidavit to Exhibits 10 and Exhibit 11 (typewritten statements of Mr. [redacted] completed at home and turned into CID) they look very similar in form, style and content the Affidavit. After listening to [redacted] testify at the Article 32 hearing and identifying grammatical and spelling errors in his brief handwritten statement to CID (Exhibit 9), my assessment is that based on his vocabulary and verbal skills, these statements were not prepared by Mr. [redacted] but for Mr. [redacted] most likely by [redacted] It is not clear why CID didn't take a statement from Mr. [redacted] individually in a law enforcement setting instead of permitting him to bring in a statement prepared in advance at home (Exhibits 10 and 11). (Article 32 testimony during cross-examination: Q. Yes, sir. Sir, did they -- or did they type one for you based upon your conversation? A. I don't recall, no. There was so much, like I said, there was so much going on that day -- so many questions and stuff ----") Because an examination of the statements suggest they were prepared on behalf of Mr. [redacted] the evidentiary value of the statements is deteriorated and his credibility impacted. Based on Mr. [redacted] tone and demeanor I assessed him to be a loving and supportive father and a hard working American veteran, though it is doubtful he wrote the statement he submitted to CID.

[redacted] also alleged on page 3 of the Affidavit "In June of this year, Erik was threatening to take [redacted] out of the State of Texas. I told him that I did not want to move to North Carolina." This statement in the affidavit serves as an example, in my opinion, of how [redacted] would nuance her statements to convey a particular message she wanted to send. When we revisited this time frame during the Article 32 hearing, the evidence demonstrated that the threat to 'take [redacted] out of the State of Texas' meant that MAJ Burris wanted his family to PCS with him to Fort

Bragg and that [redacted] "begged" him to let her and [redacted] stay in Texas, near her family. She characterized his desire to move the family to Fort Bragg as controlling, but could not articulate how it could be feasible for him to financially support two households indefinitely. ([redacted] Article 32 testimony).

On 28 November 2012, the Motion for the Protective Order was heard in Bell County, Texas (Exhibit 18). There, [redacted] claimed that on November 13, 2012, two nights before she completed the Affidavit, MAJ Burris gave her a bloody nose and bruised her neck and again, yet the testimony and Exhibit 309 do not indicate any contentious conversations between husband and wife. Although she had taken pictures in the house in Pinehurst that weekend to demonstrate MAJ Burris' dangerousness at the advice of the hotline, she did not take pictures of the bloody nose or bruises on her neck he allegedly caused (P 57, Exhibit 19). During the 28 November 2012 hearing she also alleged that MAJ Burris raped her in June of 2012 (P 56 and 65, Exhibit 19) and that the "beast" gave her three bloody noses in 2012. The court hearing is the first time she references that the "beast" raped her and this becomes the first in a series of allegations, not included in her 15 November affidavit, where [redacted] adds new allegations. During the 28 November hearing, she testified that (P 81, Exhibit 19) that the conception of [redacted] was a result of a sexual assault that took place in the Burris' Temple, Texas home and that she told her mother the following day. Her mother later testified at the Article 32 hearing that she first learned of the rape allegation at the 28 November 2012 court hearing and [redacted] later testified that she didn't tell her mother until the 28 November 2012 hearing (P 407, Article 32 transcript. There was no evidence presented of any other reporting since that time. She also testified on 28 November 12 that she had a photo from 'Christmas' which showed a bruise on her neck (Exhibit 18, Page 75). She has not produced this photograph.

[redacted] also alleged for the first time that MAJ Burris assaulted his daughter [redacted] in April 2012, and on other occasions, during the 28 November hearing. [redacted] alleged that MAJ Burris bruised her while playing "tickle torture." This fact is very important in analysis all of the Article 128 allegations against the children because "tickle torture" is a type of physical play MAJ Burris engaged in with his daughters openly. Based on his demeanor when discussing "tickle torture" in several Skype conversations, he believed this was an appropriate form of physical play and affection he engaged in with his daughters (Exhibits 69, 70, 73, 74, 75, 79, 82, 85, 87, 89 Skypes between MAJ Burris and [redacted] with [redacted] in the room listening and recording bi-weekly communications from 2010 through 2012).

[redacted] the [redacted] family, or [redacted] did not report the alleged "tickle torture" assaults against [redacted] to anyone in a position of authority prior to the 28 November hearing. In fact, [redacted] did not report any alleged assaults on [redacted] to [redacted] (including the alleged April 2012 incident where [redacted] told [redacted] to 'tell her mother' instead of immediately contacting [redacted] mother directly) ([redacted] Article 32 testimony) until the summer of 2012. Sometime thereafter, [redacted] and [redacted] had some communications since, [redacted] appeared and testified at the 28 November 2012 hearing ([redacted] testimony, defense request for phone records is pending).

When [redacted] went home from the April 2012 visit and told [redacted] responded by instructing [redacted] to tell her father she didn't want to be tickled anymore. (Article 32 testimony). [redacted] testified, "I didn't think the tickle torture was necessarily abusive. It was probably, you know an excessive, you know – at what time when do you stop." (P 932, Article 32 testimony). Pages 1259 through 1261 of the Article 32 testimony provide context). While [redacted] testified at the 28 November hearing that there was bruising on [redacted] in April 2012, [redacted] didn't

photograph the bruising although at the advice of her family law attorney she had recorded skypes and telephone calls and saved email correspondence with MAJ Burris ([redacted] Article 32 testimony, [redacted] Article 32 testimony) since the around the time of their divorce in 2004. My assessment is that if at that the time of incident (or at any previous time) if [redacted] mother found the play to be excessive, abusive or unlawful [redacted] would have immediately reported it to someone or raised it in family court. Instead, she advised [redacted] tell her father she didn't want to be tickled anymore and addressed it with him at the next in-person meeting they had, and he stopped. There was other evidence that MAJ Burris thought [redacted] liked it until this point, and stopped thereafter. [redacted] Article 32 testimony).

My assessment of this is that at the time, [redacted] knew that "tickle torture" was an expression of physical affection that MAJ Burris engaged in with his daughter, that she was not alarmed by the behavior, and did not believe it warranted further reporting. [redacted] did not raise this issue of tickle torture with the court, until having been notified of [redacted] allegations. ([redacted] testimony). If she had believed that the tickle torture incident rose to the level of child abuse, the evidence regarding her behavior suggests, she would have reported it. While the evidence shows that incident occurred, based on the post-incident behavior of [redacted] and [redacted] and the lacking formal or informal reporting on the part of the [redacted] family, I do not find that there are reasonable grounds to believe that incident, or any other "tickle torture" or play incident, occurred with unlawful force.

In court, [redacted] also testified that [redacted] had bruises that were documented in medical records. (Page 82-83) "Q: have you ever taken any picture of any of the injuries that you claim he caused to your daughter A: Her pediatrician recorded the bruises." There was no evidence of bruises in her medical records. She also testified that the Army ordered a psychological evaluation of MAJ Burris (P 72), which was not true (MAJ Ruckno testimony, Government Counsel Representation).

[redacted] made another important statement in the 28 November hearing "Q: And did you ever intend to live in North Carolina? A: No." This statement suggests possible motive, in that [redacted] lived near her parents for the majority of her adult life and "begged" MAJ Burris to allow her to stay in Texas after he PCSd. ([redacted] Article 32 testimony). [redacted] had never lived far from her parents, and had never PCSed with MAJ Burris.

b. **Statements Made in Connection with 15-6 Investigation.**

In February 2013, [redacted] made two unsigned statements and at least one telephonic statment to LTC Kaiser as part of an AR 15-6 inquiry (Exhibits 5 - 7). The allegations included an alleged pattern of child sex abuse of [redacted] and [redacted] multiple assaults on [redacted] and [redacted] assaults and rape of [redacted] non-support, threats, abuse of prescription pain medication and disrespect to his superior officers. Again, many of these allegations had not been previously raised in the 15 November affidavit, 28 November court hearing or at any other time.

While analyzing every line in those statements is not feasible to keep this report manageable, there are several examples in these statements of the way [redacted] manipulates facts. For example, she wrote in Exhibit 7 that "MAJ Burris would insist that [redacted] not wear any underwear," suggesting that MAJ Burris' had an inappropriate motive to insist [redacted] not wear underwear (she also makes the claim about him insisting [redacted] not wear underwear in her CID statement). In the Article 32 hearing, [redacted] and [redacted] testified that [redacted] has always refused to wear underwear because it aggravates her skin in her genital area and this has been on

ongoing issue for [redacted] throughout [redacted] lifetime. (See also Exhibit 46 - [redacted] Counseling Report).

Another example of skewing facts is her statement in Exhibit 7 that "From the time Major Burris and I got married, Major Burris had always insisted on giving [redacted] [sic] baths..." suggesting it was inappropriate for a father to bathe his daughter. In fact, MAJ Burris was the non-custodial parent bound by law to ensure the health, safety, hygiene, nutrition, etc of the child, not [redacted]

A third example in Exhibit 5 is her statement that "Major Burris started verbally attacking screaming and yelling at me regarding money that was spent without his permission" yet later she testified that he never gave her access to his funds (Article 32 testimony).

c. **8 May Family Court Hearing (Exhibit 50).**

On 8 May 2013, [redacted] testified in family court that [redacted] was complaining of "hurting in her private area" after the 23 December 2013 supervised visitation visit and that she was concerned with [redacted] behavior after the visit, suggesting something inappropriate may have happened during the visit. Although, she didn't take [redacted] to the emergency room for approximately three days after being advised to immediately take her to the ER (Exhibit 318). Both counselors who conducted the supervised visitation testified at the 8 May hearing that the interactions between father and child were appropriate and that "she seemed to enjoy it as evidence by hugging him, holding him, giving him a kiss, giggling, being attentive to what he had to say when he instructed her not to do something and being safe..." This allegation of inappropriate touching by someone during the visitation supervised by two court appointed representatives is so bizarre, it is difficult to glean what motivation, other than attempting to alienate MAJ Burris from his children, would have motivated [redacted] to complain to medical personnel that the alleged symptoms or injury occurred during this visit.

d. **10 May CID Statement.**

On 10 May 2013, [redacted] gave a sworn statement to Army CID [redacted] at Fort Hood, Texas. The following statements are examples of statements made by [redacted] made in her sworn interview to CID that were directly impeached somewhere in the record or through other testimony, as indicated below. While not an all inclusive list, impeachment of these statements weighed heavily in my assessment of her credibility.

1. **Assertion to [redacted] that evidence of sexual assault was documented in a timely fashion.**

[redacted] "I'd be willing to give you the medical record for [redacted] pregnancy ... because its coded abuse, sexual assault...because when I went to the ER after he had attacked me it showed I had some tearing."

Evidence: No evidence of "coding" in medical record and no evidence of an allegation of sexual assault made to medical providers until after she left MAJ Burris in November, 2012. Her earliest ER visit was 16 November 2012, after her departure from North Carolina. Exhibit 291 – Reason for Visit: "PT c/o of dull lower back ache x "several days" and foul smelling white vaginal discharge. Pt also c/o of public pain "every few days". Pt states her "sharp public pain" started last week during a domestic violence incident with her husband in North Carolina..... "MD states normal vaginal discharge with a closed cervix. MD states pt may be discharged to home."

2. **Omission of Mention of Ex-Husband.**

[redacted] told [redacted] that she only dated 3 people in her life.
Evidence: She omitted mention of her ex-husband.

3. **Assertion that MAJ Burris was Keeping [redacted] Away from [redacted] During Dating in 2009**

[redacted] "In dating I never went over to his apartment, he never wanted me to come when he had [redacted] on the weekends, I'd only see [redacted] when for social occasions."
Evidence: She omitted mention that [redacted] insisted on no overnight stays prior to the wedding ([redacted] testimony) and this was the reason MAJ Burris did not permit overnight stays with [redacted] prior to her marriage to MAJ Burris.

4. **Interactions with the Legal Office.**

[redacted] "Erik loved to throw these huge barbeques for everybody in his office, that was one thing... he would rope people in to do what he wanted by – he would buy them things, he'd find out what they liked...and they'd think he was greatest guy in the world....they liked free food and he'd send them home with huge massive amounts of food and he'd send them home these steaks and everything... CPT Burris is throwing it...free food...and alcohol, alcohol was free flowing."
Evidence: Both [redacted] testified at the Article 32 hearing that MAJ Burris and [redacted] hosted two office BBQs, where members of the legal office would attend, and that the BBQs were nothing out of the ordinary, and that he would not by people food to "rope them in."

5. **Allegations of Maltreament and Assault of [redacted] and assertions about other interactions with members of the legal office regarding MAJ Burris' behavior.**

[redacted] "She'd [redacted] would be up late late late he'd be up all hours of the night and if he'd decide to meet some friends to take her and I found out about that because one of his buddies....who was a JAG who worked here would call me and even his...paralegal... [redacted] he called me actually told me a lot about Erik, and his anger and what he did to him at work and struck [redacted] many of times and the abuse, verbal and he said he was trying to get a good write up and move on that was why he was putting up with it..."
Evidence: [redacted] testified that MAJ Burris never struck him or maltreated him. [redacted] (MAJ Burris' supervisor at Fort Hood) testified that MAJ Burris never struck [redacted], never called [redacted] to discuss 'MAJ Burris' anger' and never said 'he was putting up with it for his report." [redacted], another one of MAJ Burris' supervisors, also testified that he did not have issues with MAJ Burris' temperament.

[redacted] "I saw [redacted] many of times and he actually helped Erik out many of Times, he actually helped Erik and I move..... he talked to me a lot about how Erik has this uncontrollable rage, you never know what is going to set him Everyone walks on egg shells....we warned me be careful...He's got this terrible anger we've seen him through coffee pots, we've seen him throw we've seen him throw cups of hot coffee at people, I guess his favorite was throwing chairs, and [redacted] said if he made a mistake or didn't do something... or cover for Erik, how he went off on him....he [redacted] was a very nice guy.....he was trying to worn me...."

Evidence: [redacted] testified that he never told [redacted] that MAJ Burris has an uncontrollable rage, that he never told [redacted] that members of the legal office saw him throw coffee pots or chairs, and that [redacted] never said he was covering for MAJ Burris and that MAJ Burris never struck [redacted]. [redacted] testified that she was not (nor was anyone else in the legal office) aware of MAJ Burris throwing coffee pots or chairs or assaulting or maltreating [redacted]. There is was no negative counseling record for MAJ Burris found. (Government counsel representation). Again, [redacted] testified there were no issues with MAJ Burris' temperament.

[redacted] "He [redacted] told me how Erik was doing things that he didn't want to support with cases, wheeling and dealing...and just Erik was doing things he didn't like ..he didn't tell me specifics... support with cases wheeling and dealing just said Erik was "forcing him to do things" but forcing him to do things...'Ma'am could you please talk to him and ask him to lighten up...everyone is constantly coming to me in his office. They would call me when he was going off on a tangent..."Can you call him can you please calm him down?"'

Evidence: Assertions that members of the legal office would call [redacted] for help in 'calming MAJ Burris down' were all directly refuted by [redacted]. See also X-exam of [redacted] pages 608 – 612).

[redacted] "He was horrible to [redacted], who was his....chief at the time... he was horrible he used to verbally abuse her just she couldn't stand up to him he used to talk about how he was doing her job and.... but many times she told me she tried to control him in the office. [redacted], I know [redacted] his wife – and I'd see he was constantly talking about Erik in the courtroom, trying to keep Erik from was the word he used badgering the witnesses. Everyone was constantly telling me about Erik in about this anger and uncontrollable rage. Once minute he'd be really, really nice and you'd say a phrase or word and he'd flip like a switch....."

Evidence: Allegations regarding [redacted] efforts to "try to control him" refuted by [redacted], who also had no knowledge of the military judge 'constantly talking about Erik' or calls made by the military judge's wife to [redacted] in that regard.

6. Allegations of Abuse of Prescription Pain Medication and Disrespect to [redacted].

[redacted] "I knew he was drunk of his butt and high on his pills....and he was going after [redacted]...he was the SJA, [redacted] ....was the one who was here. My understanding is Erik went straight to corps and stormed and barged and banged down his office door... into [redacted] office. I understand [redacted] tried stopping him and he was throwing over chairs in the office."

Evidence: All allegations of actions in the legal office refuted by [redacted], who testified MAJ Burris was upset and did go to see [redacted] about being passed over, but there was no altercation. Again, [redacted] testified at the Article 32 that he did not 'have any issues with his temperament." There was no evidence was presented of abuse of prescription pain medication. During the Article 32 hearing, when reviewing the photos [redacted] submitted to CID, she pointed to a full prescription baggie full of anti-malaria medication issued to MAJ Burris in Afghanistan (a medication which does not cause a "high"), and referenced it as one of the pain medications he was allegedly abusing and high on. (Compare Exhibits 209-210 with [redacted] Article 32 testimony and Exhibit 312, and explanation of the side effects of the medication in the Exhibits).

[redacted] also made several statements regarding the amount of alcohol she says he consumed, referencing the photos of beer in the garage and the liquor cabinet at home (Exhibits

274, 283 and 284). While there is no definitive evidence to show how much alcohol MAJ Burris' consumed on any sort of regular basis, [redacted] tone and demeanor during the Article 32 hearing suggested to me she was exaggerating his alcohol consumption. Comments made from her brother during his CID interview suggest that MAJ Burris' drinking was not excessive, as well as Exhibit 15 ([redacted] email statement to [redacted] during the 15-6 demonstrating he refused alcohol at a social even when [redacted] was present), [redacted] and [redacted] descriptions of alcohol consumed at the BBQs the Burris' hosted, (Exhibit 301) ASAP intake form and review of the photos she submitted of the liquor cabinet cause me to believe she is exaggerating.

7. Allegations of Non-Support.

[redacted] "So, and he left for AF the following week and therefore started all the verbal abuse from there and he cut off everything. I tried to do my best with continuing to work at the hospital and I was pregnant getting ready for my first child, so the whole time he never claimed [redacted] when he was over there in AF and always told me you can work I came over to AF for one purpose and one purpose only to pay off debt and I am not about to deviate from that. I continued to pay the rent on the apt and everything just as I wasn't married. ' It got to where I couldn't work. It got to where my parents, brother stepped in financially, *he never did* [emphasis added] because I don't know I make him feel guilty is what he said he sent 200 dollars then he sent another 300 he was coming in for December for Christmas for his mid leave."

Evidence: While the allocation of payment of debts was not entirely settled at the Article 32 hearing, non-support was a large point of contention for [redacted] and she alleged it in every statement she made in the case. However, the evidence demonstrated that MAJ Burris did not cut [redacted] off financially and the evidence strongly suggests the allegations of non-support were exaggerated and at times fabricated, throughout all of her statements. Although the couple did ask for financial assistance from her parents at one point and MAJ Burris threatened to 'cut her off financially at another point' (Exhibit 14), the evidence suggested that MAJ Burris paid nearly half of the expenses, including rent and the electric bill, during the first half of his tour in AF ([redacted] Article 32 testimony), that he purchased a home for the family toward the end of his tour ([redacted] Article 32 testimony), that he sent money home from Afghanistan on several occasions, that while he was in Afghanistan she had a power of attorney, that he purchased their home and paid the mortgage on it; that she had access to his banking account at least in 2012 and made withdrawals and electronic purchases from the account, and that on at least one occasion he asked [redacted] mother to meet with them to help them create a budget. (P 780 Ms. [redacted] Article 32 testimony).

8. Omission of Context Regarding December 2010 Dispute at the airport.

[redacted] "...anyway he came home Christmas and [redacted] was there and he was mad from the time I picked him up from the airport when I saw him I didn't want to stop the car to pick him up he looked worse that when he left that was the first thing I noticed. He didn't talk to me the whole ride down from Dallas...he started in because I was late...because I was late...calling me incompetent and stupid... and how did I survive this far in life and I am trying to calm him the children are at home can you please just stop and not do it in front of them...it was the first time he was going to see our daughter [redacted] and he wasn't even excited about that."

Evidence: (Article 32 Cross Examination) elicited from [redacted] that the reason that MAJ Burris was so upset at the airport was because [redacted] didn't arrive at the airport until all of the other service members family members had gathered at the airport to give the those coming home from AF for Christmas an official welcome at the airport, and [redacted] didn't arrive until after the

welcome was over and all of the family members had left or were leaving the airport. This portion of her CID interview is a good example of [redacted] omission of relevant details when describing events.

9. Statement to CID that she purchased a home for their family.

[redacted] "I had even bought a first new home, I had gotten a home, and I built it for us I thought I'd try to make... somewhat of a family and thought he'd step up to... because [redacted] was so sick...I couldn't have the oxygen and what she need in the apartment...it was the first time it was going to see [redacted] and he wasn't even excited about that...."

Evidence: Elicited in follow up questioning of [redacted] that MAJ Burris bought the home on his VA loan and paid the mortgage on it ([redacted] Article 32 testimony), contradicting both her claim of non-support and her previous sworn statement to CID that she purchased the home.

10. Other exaggerations of MAJ Burris' Alleged Abuse of Pain Pills, and Alcohol Consumption.

[redacted] "...and from the times... he comes in the house non-stop heavy, heavy drinking he was drunk the whole time and the pills, oh my God, one of those pictures I showed you that with them on the floor he would just scatter the stuff all out in the living room.... and cleaning weapons right in front of [redacted] in the living room and.... taunting her....she was scared to death.....and he started in on the children... [redacted] just an infant he started kissing her all over and squeezing between her legs, poor [redacted] she felt the rath when he came home the tickle torture was bad for [redacted] and I spent the whole time trying to sidetrack... keep him off of her wanting to bath with her in the bathtub...he was obsessed with... constantly touching her oh my God I have to figure out how to get his attention of her and to me to keep him off of her, he was going and sleeping in the bed with her, I had taken the children..." and later on in the CID statement, "He was hyped up on the pills scattered all over the coffee table."

[redacted] "...it was just before Christmas he was so drunk...I had left and I had taken the children and gone to shopping and got back that evening and he was passed out stark naked...and took [redacted] upstairs and the whole evening we stayed upstairs and we left him down there hoping he'd just stay passed out about three in the morning I was up for a treatment for [redacted].... I had gone down stairs to get her medicine and formula..as soon as I got down stairs he was standing there waiting for me...he grabbed me and threw me into the living room...he started in on me about money I had spent without his approval, I could see him in my face...screaming at me... calling every cuss word in the book... and I proceeded to go into the kitchen I will ignore him he is drunk he is hyped up on pills he had the pills scattered all over the coffee table..."

Evidence: Review of the photos [redacted] gave to CID (Exhibits 207 – 209), testimony from [redacted], the lack of counseling file, ASAP referral (Exhibit 301), MAJ Burris' medical records (Exhibit 34) coupled with [redacted] demeanor and descriptions of what appears to be common over the counter or prescribed pain medication that does not cause "a high," (Exhibit 312 – a summary of side effects of drugs prescribed to MAJ Burris) suggests she is exaggerating, or fabricating, his consumption of pain medication and alcohol.

11. Inconsistencies about Allegations of Charge IV, Specification 1.

[redacted] "he was out on our back patio waving a gun around, just waving and screaming and holding it up to his head....I remember...waving it..he was standing there with that pistol pointed at me...."

Evidence: She contradicted her statement to CID during the Article 32 by stating that the pistol was pointed at the ground (referring to the December 2010 incident of alleged in Charge IV, Specification 1).

12. Embellishments Regarding Treatment of [redacted]

[redacted] "When [redacted] was older he started touching her more, kissing her all over, tickle torture, holding her down, so much that she vomited, same with [redacted] was *always bruised, her ribs.* [emphasis added – no evidence presented of this by [redacted] I tried as much as possible to keep him off of them…I went out of my way as much as possible to never let him be alone with the children, he would just grab [redacted] while I'd be giving her a bath and he'd lock the bathroom and he'd lock the door, I'd be trying to beat down the door, unlock this door damnit, I'd hear her crying……and I finally found [the key] and hid one myself and I got in and did whatever I had to get him away from them…and I took the punishment as long he would stop touching the children….he's always relentless with taking those pictures, constantly, constantly, [redacted] hated it…..I finally started talking to [redacted] you've got to tell your mother this was last spring, last April and she finally stood up and told her mom …it was "the worst beating he ever did to [redacted] her ribs were so bruised, and [redacted] it was for weeks she couldn't touch her."

Evidence: Compare with testimony of [redacted] who only identified bruising after the April 2012 incident despite receiving [redacted] back from regular visitations with MAJ Burris throughout her life. ([redacted] testimony)

13. Uncharged Allegations of Sexual Abuse of [redacted]

[redacted] "…he started where in the middle of the night..he would think I was asleep, he would sneak into [redacted] room, I'd be waken by [redacted] crying out…I'd walk in and he'd be under the covers with, groping her, kissing on her, he had the nerve to say they were playing doctor. I found him in our bed with [redacted] no panties on, her nightgown on, with her favorite stuffed animal acting like he was delivering a baby from her…; and later "The baths with [redacted] with [redacted] things were always more…taken up to the next level. Baths, bathing was with him in the bathtub, as reference in one of the pictures he'd love taking baths with her and she was still young 5 years old….[Q] she was very very afraid of him and she was starting to say 'she hurt down there she hurt in her private area and her privates hurt and daddy was tickling me and I would barge in…

Evidence: No evidence presented to support this allegation. Exhibit 46 and Exhibit 296 again show that [redacted] did not wear underwear due to rash or irritation.

14. [redacted] Assertion that She was Unable to Contact [redacted] Between 2010 - 2012

[redacted] "The whole time of our marriage I never knew anything abou[redacted]…I didn't know any of her contact..anything…she was trying to reach out to me but he always intercepted…" ' And then later in the Article 32 hearing, when I asked her about whether she knew how to get in touch with [redacted] [to report the alleged assaults on [redacted] [redacted] testified she initially didn't know who [redacted] was, did not know her last name, and claimed she didn't meet [redacted] until the summer of 2010, then lost her phone number and was unable to contact her. There are other references in the file to dispute her statement to CID (See Exhibit M email from [redacted] Burris to Erik Burris indicating that a "certified letter came in the mail from [redacted]

Evidence: [redacted] testimony (P 1252 – 1259 Article 32) describes how [redacted] was involved in the visitation exchanges of [redacted] how [redacted] had [redacted] email since 2009, how

they exchanged texts in 2010, how MAJ Burris insisted [redacted] and [redacted] meet while he was in Afghanistan so [redacted] and [redacted] could get to know one another, among other things. [redacted] "This is one thing I do want to make sure that...he insisted [with emphasis] that [redacted] not wear any underwear, no underwear whatsoever, and he liked and only would buy dresses for her, skirts, no underwear though wearing these skirts and dresses, not with me, that is where we would always battle.."

Evidence: Again, Exhibit 46 and Exhibit 296 and [redacted] testimony show that the reason [redacted] did not wear underwear was due to a rash/irritation.

15. Statement That Female Physician Saw Bruises on [redacted] and Saw "things internally."

[redacted] "...I think my doctor, she tried she suspected it, she's one of my close friends, she tried talking to me about it, but you know I had to tell her...but you know...I noted what I saw...you know I knew she saw bruises, she saw things internally...[did you tell any friends or family members or anything like that] I told my mom that he was, and she'd seen bruises on me, generalized not details we'd gotten in an argument and he'd been drinking, they knew the physical abuse was there they had definitely seen the verbal, I kind of told my mom I mean this last year about what happened in Raleigh and in May when I got pregnant because she's like why did you get pregnant again, and I actually did tell her that he had forced himself...and that was the first....no I mean I didn't I had close friends they knew there was abuse they knew there was physical they knew I was struggling financially they knew he was mean to them he was always trying to keep me away from friends or co workers or family, he hated me family lived next door..."

Evidence: When I requested the government located the physician referenced in [redacted] statement to testify at the Article 32, government counsel queried [redacted] as to the identity of the physician referenced above. According to government counsel, [redacted] did not know, or remember, who the woman was.

18. **Findings.** A findings and recommendations quick reference chart is also included for your review at the end of this report for your reference.

a. **Charged Offenses.**

1. **<u>Charge I, Specifications 1 through 4.</u> Reasonable grounds exist on Specification 1 of Charge I (from 1 December 2010 through 31 May 2012); Specification 2 of Charge I (from 1 December 2010 through 31 May 2012; Specification 3 of Charge I and Specification 4 of Charge I;**

While [redacted] testified that MAJ Burris assaulted her on a number of occasions and Ms. [redacted] testified she saw bruises on [redacted] and that MAJ Burris made admissions to Ms. [redacted] regarding physical altercations occurred between the couple, I base this finding primarily on MAJ Burris' own admission in Bell County family court corroborating the fact that the couple was involved in at least one physical altercation. MAJ Burris' admitted in family court: "A [MAJ Burris]: I think there was an incident in which she came at me. This was approximately one month – no, approximately two months after my return from Afghanistan in the month of May 2011. She – we had gotten in probably the worst fight we had ever been in, and she came at me, and while we were arguing she repeatedly said to me, Are you going to hit me? Are you going to hit me? Are you going to hit me? And I remember it scared me so much because she got in my face. [discussion between counsel and judge] Q: How many times have you left bruises on her in this

marriage? A [MAJ Burris]: I related the indicated I was just talking about, once. A small bruise on her upper arm, I think when I tried to get her away from me." (Exhibit 19, Page 13).

It should be noted for your consideration that [redacted] admits to the being the aggressor during several physical altercations. Even Ms. [redacted] testified she told [redacted] and Erik, " "If you don't work it out and you guys don't -- there's problems, separate. Get away. Get away. You know, don't hurt each other. You know, don't..." Whether [redacted] Burris assaulted MAJ Burris or whether her actions were taken in defense of the children hinges on her credibility. In any case, there is evidence that some of the incidents, if they occurred, were mutual affrays: [redacted] to CID: "I tried as much as possible to keep him off of them...I went out of my way as much as possible to never let him be alone with the children, he would just grab [redacted] while I'd be giving her a bath and he'd lock the bathroom and he'd lock the door, I'd be trying to beat down the door, unlock this door damnit, I'd hear her crying.....and I finally found [the key] and hid one myself *and I got in and did whatever I had to get him away from them* [emphasis added]... And later in the interview, she stated "tickle torture, with [redacted] it was always on a bed he would hold their arms down and just forcibly poke..all over their ribs...touching..grabbing..and inching between their legs...like an animal...he called it like he was played...laughing, laughing the whole time he was doing it...growling...like a wolf his favorite animal and just constant all over their body...poking, poking, grabbing, pinching. [redacted] it was different usually in her bed or our bed, or the living room... *it would include me, all of my forcible weight, and ramming him to push him off of her...and me trying to intercept and get him off of her* [emphasis added]... And again, "So the bath...I had barged in, managed to get in on a couple of the times and he'd have his hand between [redacted] legs ... See also, [redacted] CID statement: "... ... If she [redacted] was sitting on the couch, he would just go right over and grab her and throw her down and be right on top of her on the couch... I finally figured out how to get him off that...*I pulled him off the side of the couch and rolled him on the floor*"...[emphasis added.]

2. **Charge I, Specifications 5 . Reasonable grounds do not exist to on Specifications 5 of Charge I.**

Several Skype conversations between MAJ Burris and [redacted] demonstrate two key points regarding "tickle torture": 1) [redacted] was aware of the "tickle torture" play as she was present in the room with [redacted] or in the adjacent room during the Skypes (she also recorded all of them as demonstrated by her providing Exhibits 52-166 in this investigation); and 2) MAJ Burris's tone of voice and demeanor during the Skype discussions suggest he believes he is engaging in normal father/child play. (Exhibit 69, 14 Nov 10 Skype – MAJ Burris: "do this or I'll tickle you for 5 hours straight..."; Exhibit 70, 17 Nov 10 Skype – father trying to bring around non-responsive daughter, threatens to tickle; Exhibit 73, 6 December 10 Skype - father talking about tickle torture, no negative response from child; Exhibit 74, 8 Dec 10 Skype - [redacted] "[redacted] going to protect me from all of that tickle torture...and you are going to get a time out from [redacted] in your bedroom....." and later Erik: "you are bringing more tickle torture to yourself....."; Exhibit 75 - 2 Jan 11 Skype: "I don't think I tickled you enough...when I get home the tickling can continue"; Exhibit 79 – 16 January 2011 Skype – MAJ Burris references something being worth "5 seconds of tickle torture;" Exhibit 82 - 26 Jan 2011 Skype – discussion of tickle torture, little to no response by child; Exhibit 85 - 6 Feb 2011 Skype - discussion on tickle torture and tickle torture log; Exhibit 87 - 13 Feb 2011 Skype tickle torture discussion, child giggling; Exhibit 89 - 20 Feb 11 Skype MAJ Burris joking "where is my tickle torture log?" child ignores and moves on, father and daughter talking amicably about something else; Exhibit 93, 9 March 2011 Skype brief mention of tickle torture by MAJ Burris, child doesn't even acknowledge or care and continues discussion about what something means in French.

Notwithstanding that [redacted] knowledge of this play, as discussed previously, she did not complain of it in family court in Brazos County, Texas or to anyone in a position of authority (Exhibit 19, paged 95-96) until [redacted] initiated the family law case in Bell County, Texas and [redacted] appeared in court to testify on 28 November 2012 of the April 2012 incident. (Exhibit 19, pages 95-96).

[redacted] notes show that [redacted] opinion of her father was influenced, at least by [redacted] (Exhibit 296, Progress note from [redacted] and Ms. [redacted] session on 8 January 2013): "FA [Father] back in Pinehurst, North Carolina. He called the police on Christmas night. He called 911 to say that someone was trying to break into his house, he was armed, and he would protect himself. Police searched the home and found pills and alcohol and said Erik was "keyed up". Police thought he was paranoid. "Soon to be ex-wife" told [redacted] that the police informed her about Erik's behavior. Erik told them that "soon to be ex-wife's FA [father] is in Chicago mafia and sending a hitman to kill him. Police have Erik on the "danger list" and consider him highly dangerous. Police said Erik's house is completely trashed out" with a mattress, TV, and recliner in the living room." MAJ Burris was not on a danger list or considered highly dangerous (Exhibit 15 – Pinehurst Police Record and Exhibit 43 Email from [redacted], Pinehurst Police Dept.)

In a conversation with MAJ Burris and [redacted] MAJ Burris told [redacted] that he thought [redacted] liked the physical play, and when informed in May 2012 by her that she didn't like it, he stopped. In [redacted] visits with [redacted] stated she "liked it at first but not later." Additionally, [redacted] did not report anything to [redacted] sufficient to cause [redacted] to make a report to CPS, which she is obligated by law to do (Article 32 hearing).

Additionally both [redacted] and [redacted] testified about how meticulous [redacted] was in maintaining records of communications with MAJ Burris, and [redacted] testified about how her family law attorney advised her to maintain records of communications. I drew from this that [redacted] who is a chemical engineer who struck me as an incredibly intelligent woman, was on notice to record anything MAJ Burris did or said that would potentially assist her in custody and/or visitation proceedings. That conclusion is also supported by that fact that [redacted] in 2009 and 2010 insisted to MAJ Burris that [redacted] (then Ms. [redacted] not engaged in overnight stays during [redacted] visits or she would take him back to family court to insert a "no overnight stay with pre-marital domestic partners" clause, that according to Texas law should have been inserted into their divorce decree ([redacted] Testimony).

I weighed heavily the fact that [redacted] did not take photos or complain of the April 2012 incident to CPS or another authoritative body in an effort to establish a record against MAJ Burris. This suggests to me – when considered with all of the facts and circumstances – including MAJ Burris' demeanor during all of the Skype conversations, and specifically during the Sykpe conversations about "tickle torture" – and including the fact that [redacted] Mr. [redacted] Sr. nor [redacted] did not complain to anyone in any position of authority about these alleged incidents, that these incidents did not occur using unlawful force.

The Skype conversations at Exhibits 52-166 also demonstrate that MAJ Burris loves and adores his Daughter and is interested in being an active participating in the growth and development of [redacted] and that he consistently exercises and enforces his parental the full extent of the law. His dispositionon the Skypes is genuine, as he was not aware that [redacted] was recording. (Exhibit 320).

In making this finding I reviewed Appendix D DA Pam 27-9 Military Judge's Benchbook Instruction 3-54-7 requiring an "unlawful and intentional (or culpably negligent) application of force or violence..." and defining culpable negligence as a "degree of carelessness greater than simple negligence." I also reviewed Appendix E Instruction on Parental Discipline which instructs the trier of fact to consider all relevant facts and circumstances (amount of force, number of times and manner, age and size of child, or any other factors). It also instructs the trier of fact to examine the intent of the parent, but discusses that the force used may not be unreasonable or excessive. Unreasonable or excessive force is that designed to cause or known to create a substantial risk of causing death, serious bodily injury, disfigurement, extreme pain, extreme mental distress, or gross degradation. I find the evidence regarding the "tickle torture" shows that MAJ Burris engaged in this activity as a form of physical play, he believed his child enjoyed it, he stopped when he learned she did not and his actions did not rise to the level of unlawful force.

3. **Charge I, Specifications 6-8: Reasonable grounds do not exist on Specifications 6 through 8 of Charge I.**

The members of the [redacted] family alleged they witnessed the assaults against [redacted] but none reported the behavior formally or informally to anyone (medical providers, counselors, clergy, etc). Synthesizing [redacted] (who I found credible) perception of "tickle torture" as 'not necessarily excessive' with [redacted] lack of credibility, the circumstantial evidence in the case of motive to alienate MAJ Burris from his kids, against hints of motive and exaggeration on the part of [redacted] and [redacted] and lack of formal or informal reporting, I do not find that events described in Specifications 6 through 8 of Charge 1 rose to the level of MAJ Burris' reasonable grounds to believe MAJ Burris used unlawful force or violence.

Regarding [redacted] credibility relating to these specific allegations, [redacted] testified in the 28 November 2012 (Exhibit 19) hearing that [redacted] had bruises as a result of these assaults and that the injuries were documented in [redacted] medical records, but the medical records over entire [redacted] lifetime show there was never any complaint to a medical provider regarding the alleged assaults (Exhibit 317). It was not until [redacted] took [redacted] into her pediatrician on 19 November 2012 for strep/flu symptoms (approx. 5 days after leaving MAJ Burris) did she report that "both she and [redacted] had been repeatedly physically abused." (Exhibit 291) (This visit followed a 16 November OB visit, where she reviewed pain that "started last week during a domestic violence incident with her husband in North Carolina. (Exhibit 291). Then on 28 November at the family court hearing, she testified that: "Q: Have you ever taken any pictures of any of the injuries that you claim he caused to your daughter? A [redacted] Her pediatrician recorded the bruises. Did you bring those medical records with you here today? A: No, I don't have – they're at – Scott & White has them." [redacted] response during the 28 November hearing is very important, as it relates to both Specifications 6 through 8 and to all other charges and specifications. The impression given by her 28 November court testimony is that a timely complaint to medical provider was made, and that the medical provider observed bruises and actually documented them. But what occurred in fact was that [redacted] did not report the alleged assaults to a medical provider in a timely fashion, did not present the child to a medical provider with injuries, but instead told the pediatrician the assaults occurred only after she left MAJ Burris, and then testified in court "Her pediatrician recorded the bruises." This is a subtle, but illustrative example, of how the evidence shows that [redacted] was trying to build a record after the fact, and is one of many factors supporting the conclusion that her actions are driven by a motive to alienate MAJ Burris from his children.

Over a month later, a complaint was made to the Texas Department of Family and Protective Services (DFPS) on 26 December 2012 alleging that MAJ Burris committed both physical and sexual abuse of [redacted] On 22 February 2013, CPS made a finding of "Ruled Out" both the allegation physical and the allegation sexual abuse, meaning "based on the available information, it was reasonable to conduct the alleged abuse or neglect did not occur." The DFPS closed the case.

During the Article 32, [redacted] Licensed Professional Counselor, [redacted], testified. The gist of his testimony was that [redacted] has displayed pattern of having a negative reaction when presented with anything related to her father. The defense explored whether [redacted] and/or [redacted] influenced the child in having these feelings towards her father, and my impression based on [redacted] testimony is that he had adequate control measures in place to guard against that type of inappropriate influence, but that at the same time he was supplied only [redacted] side of the story. Although [redacted] suggested that [redacted] displayed negative feelings towards her father, I did not find the testimony probative in determining the truth of the matters asserted in Specifications 6 through 8, because neither the evidence nor [redacted] testimony linked the root cause or causes of [redacted] feelings in any way to the allegations in Specifications 6 through 8. With the contentious nature of this entire case and related family court cases, the cause of [redacted] feelings against her father could be limitless.

What was relevant from [redacted] testimony at the Article 32 hearing and from his testimony at the 8 May family court hearing (Exhibit 49, Page 75) is that [redacted] never manifested a 'complaint' that her father abused her in any way "Q: So, has the child at any point made an outcry to you [redacted]? A: [redacted]: In the form of what exactly? Q: In the form of any type of abuse; sexual, physical, emotional, otherwise? A: [redacted]: No sir, She has not made those kinds of outcries or allegations. Q: And if the child had made any type of those outcries or allegations, you would be obligated under the ethical rules of your profession to make a CPS report; is that correct? A: [redacted] That's correct."

4. **Charge II: Specifications 1 through 4. Reasonable grounds exist on Specifications 1 through 4 of Charge II.**

[redacted] testified that MAJ Burris committed the sexual misconduct alleged during the times and at the places alleged. She testified that on multiple occasions MAJ Burris raped her vaginally, that on multiple occasions he digitally penetrated her vagina and anus with unlawful force and without her consent, and that he raped her anally on at least one occasion.

Again, she referred to MAJ Burris as the "beast" during these alleged incidents, and told CID and later testified at the Article 32 hearing that she manifested lack of consent by telling him no, by telling him it hurt and on at least one occasion confronting him the next morning. She testified that on multiple occasions, she woke up in the night to being raped or to unlawful sexual contact and that on other occasions he 'took the sex.' (CID Statement, Article 32 testimony). She gave examples such as waking up on her stomach and her pajama bottoms being down at her knees, with MAJ Burris raping her from behind (Article 32 testimony). She also testified to MAJ Burris holding her wrists down while she was laying on her back and raping her while he looked forward at the headboard and grunted (Article 32 testimony). She also gave an example of MAJ Burris picking her up and raping her while he was standing, holding her legs around his waist (Article 32 testimony). She testified that she manifested lack of consent on each occasion.

5. **Charge III, Specifications 1 and 2. Reasonable grounds do not exist on Specifications 1 and 2 of Charge III.** The government presented no evidence of forcible sodomy in the charged time and/or at the locations described in the specifications.

6. **Charge IV: Violation of Art. 134**

a. **Specification 1 (Communicating a Threat). Reasonable grounds exist on Specification 1 of Charge IV.**

While [redacted] testified that MAJ Burris made the statement charged in this specification, she testified inconsistently about the his handling of the weapon, and that because the statement was conditional, it may not rise to the level of "expressing a present determination or intent to wrongfully injure...." Therefore, the specification may be more properly charged as a general article 134 offense (See Article 32, page 616-618).

b. **Specification 2 (Wrongfully Endeavoring to Impede an Investigation). Reasonable grounds exist on Specification 2 of Charge IV.**

[redacted] statement (Exhibit 49), [redacted] s statement (Exhibit 49) and [redacted] Article 32 testimony all demonstrate that MAJ Burris arranged with [redacted] who temporarily replaced MAJ Burris as Chief of Justice, 82d OSJA to come into his old office to copy files. On or about 9 August MAJ Burris openly came into the OSJA and copied some information from the government computer in his old office. The content of the files are unknown and it is unknown at this time whether he copies files off of the shared drive and/or his desktop. While MAJ Burris was not prohibited from doing so, he did happen to make these copies three days after his conversation with [redacted] (Exhibit 49) when he said according to [redacted] "then Major Burris went into details about how if he released documents regarding some of the things that he had tried and prosecuted, extreme embarrassment would come to the command, because of the shadiness of the activities or something to that effect."

That said, while the government has met the reasonable grounds burden, it may have some proof problems with this specification. Namely, 1) [redacted] also said: "I really didn't pay too much attention to anything Major Burris comments [sic] that day as it was just it sounded like a normal venting session to me;" 2) [redacted] has been since flagged IAW AR 600-8-2 for allegations unrelated to the Burris case (according to Government Counsel); and 3) the government computer in question is at the CID lab pending forensic examination, so if relevant, the contents of the DVDs/CDs is unknown at this time.

7. **Charge V: Violation of Article 90, The Specification. Reasonable grounds exist on the Specification of Charge V.**

In his 12 August 2012 written counseling, [redacted] directed MAJ Burris return the CDs/DVDs that he removed from the 82d OSJA prior to the weekend o/a 9 August. MAJ Burris acknowledged the counseling, specifically acknowledging the CDs/DVDs. MAJ Burris did not return the CDs/DVDs. I expect defense to raise whether [redacted] sufficiently communicated the order in Exhibit 298, and whether it was in fact a lawful order – as discussed by counsel in Exhibit 303 and during the Article 32 hearing. That said, those issues do not impact a "reasonable grounds" determination at the Article 32 level.

b. **Uncharged Misconduct.**

AFCG-JA
SUBJECT: ARTICLE 32(B) INVESTIGATION (BURRIS, ERIK, J. MAJ)

1. **Proposed Additional Charge I, Violation of Article 134, Specification 1 (Communicating a Threat). Reasonable grounds exist on the Specification of proposed Additional Charge I.**

[redacted] testified that MAJ Burris made the statements alleged in Specification 1 of Charge IV, and that he believed that MAJ Burris was serious when making the statements. According to Mr. [redacted] MAJ Burris made the comments in Mr. [redacted] garage, where he and MAJ Burris would occasionally spend time and drink beer (Mr. [redacted] Article 32 testimony). However, it should be noted there was also evidence presented to demonstrate that "off-ing" his ex-wife [redacted] was an ongoing joke between MAJ Burris and [redacted] (Mr. [redacted] testimony), that [redacted] had heard him in the past make these jokes and the defense is likely to raise this pattern of joking to attempt to establish that the comment was made "in jest" and therefore not a violation of Article 134. This charge could be re-preferred a general 134 offense.

2. **Article 120 and 125 Allegations Raised During Article 32 Hearing. Reasonable grounds exist regarding this uncharged misconduct.**

[redacted] testified that on or about 14 February 2012, at or near Raleigh, North Carolina, MAJ Burris caused [redacted] to engage in a sexual act, to wit: penetration of her anus with his finger, by using strength and power sufficient that she could not avoid or escape the sexual conduct., and that he raped [redacted] vaginally and anally.

3. **All Other Uncharged Misconduct Raised by** [redacted] Reasonable grounds do not exist to believe the accused committed the following allegations of uncharged misconduct made by [redacted]

a. That MAJ Burris sexually assaulted his oldest daughter [redacted]
b. That MAJ Burris sexually assaulted his middle daughter [redacted]
c. That MAJ Burris photographed [redacted] and maintained photos for inappropriate purposes;
d. That MAJ Burris photographed [redacted] and maintained photos for inappropriate purposes;
e. That MAJ Burris abused prescription medication;
f. That MAJ Burris was disrespectful to [redacted];
g. That MAJ Burris was disrespectful to [redacted];
h. That MAJ Burris physically assaulted [redacted];
i. That MAJ Burris maltreated [redacted];
j. That MAJ Burris failed to meet his AR 608-99 support obligation;
k. That MAJ Burris possessed photos from Afghanistan that may rise to the level of the CENTCOM General Order 1B in effect during the time of his deployment;
l. That MAJ Burris' stole or wrongfully appropriated criminal law case files; or
m. That MAJ Burris attempted to kidnap his daughter [redacted] o/a 28November 2012 (alleged and relayed by Mr. [redacted] to [redacted] and [redacted]

19. **Recommendations:** I recommend the following disposition:

a. Specifications 1 through 4 of Charge I: Article 15 and/or GOMOR; Initiate Show Cause Board;

b. Specifications 5 through 8 of Charge I: Dismiss;

c. Charge II and its Specifications: Dismiss;

d. Charge III and its Specifications: Dismiss;

e. Specification 1 of Charge IV: Redraft as Art 134 general offense (for which I find reasonable grounds do exist), Article 15 and/or GOMOR; Initiate Show Cause Board;

f. Specification 2 of Charge IV: Article 15 and/or GOMOR; Initiate Show Cause Board;

g. Charge V and its Specification: Article 15 and/or GOMOR; Initiate Show Cause Board;

h. (Proposed) Additional Charge I, Specification 1: Redraft as Art 134 general offense, Article 15 and/or GOMOR; Initiate Show Cause Board

i. All other uncharged misconduct, including the rape and forcible sodomy allegations made during the Article 32 hearing; no action.

c. **Basis for Recommendation of Alternative Disposition:**

Based on the totality of evidence and testimony presented and the abundant number of substantive inconsistencies within her statements and testimony, the number of times her statements under oath were called into question by other testimony or evidence, I did not find [redacted] testimony credible as it related to not only periphery issues, but also as it related to the ultimate issues of whether the events alleged occurred as she alleges. Throughout the review of testimony and evidence, I remained mindful of common behaviors sexual assault victims often display, for example delayed reporting or making false statements prior to reporting. In drawing this conclusion, I considered the totality of her statements and testimony under oath as well as all of the other evidence in the file. While I found that the government met the very minimum "reasonable grounds" threshold ("more than mere suspicion") on offenses that relied exclusively on her testimony, I do not recommend that the government proceed on the Article 120 or 125 offenses. Only because the evidentiary burden at the Article 32 hearing level is so low did I find that reasonable grounds exist on Charge II and on the uncharged sexual misconduct that allegedly occurred in February 2012 in a hotel room in Raleigh, North Carolina.

It was not the case that [redacted] was untruthful on just one instance, that she just delayed reporting to family and never reported to civilian law enforcement, DFPS, North Carolina CPS or the Army, or that new allegations seemed to be revealed every time previous allegations raised didn't produce the desired result. Rather, it was the cumulative effect of her testimony as conveyed to me under oath and face to face during the Article 32 hearing, in her previous under oath testimony, in her previous statements, both sworn and unsworn, compared and contrasted with her actions, the evidence of motive and all other evidence in the file that led me to conclude she exaggerated, skewed and/or fabricated facts. In drawing this conclusion, I relied heavily on her testimony under oath on 28 November 12, 8 May 2013, her 10 May 2013 CID interview and during the Article 32 hearing where she was given time and opportunity to explain her rationale for her pre-reporting as well as her post-reporting behavior, her prior statements, including the opportunity to explain or clarify the inconsistencies in the record.

While her testimony is sufficient to meet the very low "reasonable grounds" threshold, in this case the sum total of evidence that directly contradicts and challenges the credibility of the allegations is so overwhelming, my assessment is that the government has met its obligation to conduct due diligence in this case and that referral of the charges to trial by court-martial is not necessary to further flush out the facts of the case or the truth of the matters asserted in the allegations.

Based on my assessment of [redacted] credibility, I believe that it is highly unlikely that any reasonable trier of fact, if given to the opportunity and requisite time to review all of the evidence that was available to me, including the actual impeachment evidence such as hearing transcripts, bank statements, agent's notes, medical records, prior written statements, hours of video or audio and other evidence, would find the allegations credible or find that the evidence meets the 'beyond a reasonable doubt' burden of proof. The risk in this case is that it is unlikely, due to the sheer volume of evidence and the evidentiary rules regarding impeachment evidence, that a trier of fact would have the opportunity to review all of the evidence that was available to me.

The recommendation for alternate disposition in this case is predicated upon the rationale that when left with the evidence actually presented and considered on the Specifications 1-4 of Charge I; Specification 1 of Charge IV if redrafted as a general 134 offense; Specification 2 of Charge IV; the Specification of Charge V; and the (proposed) Specification of Additional Charge I are more properly suited for non-judicial punishment and adverse administrative action.

d. **Caveat.** Should the examination of MAJ Burris' government computer or laptop reveal evidence of a crime, further investigation would be warranted.

20. **Findings and Recommendations Quick Reference.**

CHARGE I:	**Reasonable Grounds?**	**Recommendation as to Disposition**
Specification 1	Yes	Art 15/GOMOR; Initiate Show Cause Bd
Specification 2	Yes	Art 15/GOMOR; Initiate Show Cause Bd
Specification 3	Yes	Art 15/GOMOR; Initiate Show Cause Bd
Specification 4	Yes	Art 15/GOMOR; Initiate Show Cause Bd
Specification 5	No	Dismiss
Specification 6	No	Dismiss
Specification 7	No	Dismiss
Specification 8	No	Dismiss
CHARGE II:		
Specification 1	Yes	Dismiss
Specification 2	Yes	Dismiss
Specification 3	Yes	Dismiss
Specification 4	Yes	Dismiss
CHARGE III:		
Specification 1	No	Dismiss (No evidence presented on this spec)
Specification 2	No	Dismiss (No evidence presented on this spec)
CHARGE IV:		
Specification 1	Yes	Redraft Spec to General 134 offense; Reas grounds exist for Gen 134 offense. Art 15/GOMOR; Initiate Show Cause Bd

Specification 2	Yes	Art 15/GOMOR; Initiate Show Cause Bd
CHARGE V:		
The Specification	Yes	Art 15/GOMOR; Initiate Show Cause Bd
ADDITIONAL CHARGE I (proposed):		
Specification 1	Yes	Art 15/GOMOR; Initiate Show Cause Bd

21. POC is the undersigned at [redacted]

[redacted]

Encl: (1) DD-457
(2) List of Investigating Officer Exhibits, Official Correspondence and Article 32 Transcript
(3) List of Investigating Officer Exhibits, Official Correspondence and Article 32 Transcript

Goes with EO Report

Wish I cold tell you more. but it was a short conversation.

Let me know if I can be of further service.

[redacted]

On Fri, May 9, 2014 at 1:52 PM, Bill Cassara <bill@courtmartial.com> wrote:

[redacted] I am one of the attorneys representing Erik in his court-martial. He has told me about the conversation between you and [redacted] regarding his conversation with the JAGs who came to see him. As we believe this may be a matter of importance at his trial, I would like to know exactly what was said, as best as you can recall. I would appreciate an e-mail back that lays out that conversation, to the best of your recollection. Thanks.

William E. Cassara
Attorney at Law
706-860-5769
706-868-5022 (fax)
www.courtmartial.com

Goes with I.O. Report

[redacted]
Erik Burris - Do Not Forward

May 9, 2014 at 3:26 PM
PrintRaw message

Erik Burris <[redacted]>
To: [redacted]>

Do NOT Forward
What I was talking about.

Sent from my iPhone
Begin forwarded message:

From: "Bill Cassara" <bill@courtmartial.com>
Date: May 9, 2014 at 17:12:00 EDT
To: [redacted]
Subject: RE: Erik Burris

Thanks[redacted]. This is helpful.

From: [redacted]
Sent: Friday, May 09, 2014 4:01 PM
To: Bill Cassara
Cc: Erik Burris; [redacted]
Subject: Re: Erik Burris

Dear Bill,

The conversation was short. I was in Family Magistrate Court (our local Family Magistrate, [redacted] is appointed by the elected judges; she handles many routine matters, divorce prove ups, temporary orders hearings, etc.) and [redacted] was talking to [redacted] coordinator. [redacted] is typically proactive in inquiring about dormant cases, asking if they need a hearing, etc. and she had asked [redacted] about our case.

I joined the conversation. [redacted] told us that some JAG officers met with him and his client, [redacted] (I think that the only reason that that they had [redacted] there was because [redacted] is represented by counsel). [redacted] told us that they said that they were going to go forward with the Court Martial. I have no reason to believe that [redacted] had any ex parte communications with the court.

I had previously sent him the IO's report. At the tail end of the conversation, he told me that the JAG officers were going forward notwithstanding the IO's report and that the JAG officers told him that the IO was going to be disciplined or reprimanded for the report and that she was only supposed to do a short report, two pages or so.

A copy of my letter to [redacted] that included the IO report is attached. A copy of [redacted] letter to the court is also attached.

You might try calling [redacted]. He may talk to you. Perhaps you could take the approach that y'all are surprised that the JAG is discounting the report, y'all believed that [redacted] claims were unfounded, etc.

Enc 3

[redacted]

From: BURRIS ERIK (00127062BE)

Sent Date: Thursday, January 26, 2023 2:27 PM

To: [redacted]

Subject: RE: packet

Yes. She would have been the panel President. A senior O-6, colonel. A nurse who personally had extensive experience in sex assault and in conducting SANEs (Sexual Assault Nurse Examinations). You would have thought that the prosecution wanted her. They did, UNTIL she said that she believed some assaults were fabricated, that sometimes women lied. Result: prosecution used a peremptory challenge on her to kick her off. Once gone an O6 both rated and senior rated by the general who sent my case to court martial became the President. And ...,

[redacted] on 1/26/2023 9:25 AM wrote:

>

Erik, during panel interviews, I recall a military professional, in sexual abuse, being considered but but turned away. Do you recall who she was and who axed her?

UNITED STATES v. BURRIS

THIS CASE HAS NO BONES

January 28, 2023

This case proves that some people are definitely above the law. When a second tier system of justice can be so controlled and manipulated by predator con artists, both in and out of the military, it ceases to be valid. From civilians using military policy to get their way, to commanders that were more than willing to support them, this case cries conspiracy. Though there are cases similar to this, the case against Major Erik J. Burris-US Army is the ultimate example of how far the JAG Corp can be fraudulently manipulated by its own commanders. Why did they commit this when many people call it a kangaroo action against one of their own?

[redacted], [redacted] Burris civilian divorce attorney and [redacted], a retired [redacted] IG and always a hostile father-in-law, knew very well 'how to take the case to the JAG Corp. [redacted] clearly had old cronies in uniform that could affect, effect and infect this case.

I'm not going to revisit how entirely fraudulently this case was handled by these people, other than give you a short list of those involved. Please have C.I.D. or the Department of Justice question the following people for their unusual activities in this case. The ranks and positions were circa 2014/2015.

1. All the members of ACCA and CAAF concerned with this case.
2. The convening command general and his placement of a colonel as the CM panel president.
3. The judges at the trial: I witnessed a male judge; not a female.
4. The transcript suggests that [redacted] was at the trial as assistant defense counsel. Not true. [redacted] was the lead attorney at the Article 32 hearing only. He retired before the court martial trial.
5. The presiding panel member and his coercive effect with other panel members.
6. The other seven panel members.
7. The female colonel, RN, involved in the panel interviews who treated victims of sexual assault. The prosecution dismissed her from the panel.
8. [redacted], lead prosecutor, at both Article 32 and court martial trial. She was very active for [redacted] at the courthouse in Texas. She met with both [redacted] and [redacted] families, [redacted] and the civilian divorce judge. She interfered with the civil court

judgement concerning visitation. [redacted] coordinated the Army's plan of attack with these families and their attorneys.

9. [redacted] -The most competent and possibly the only non-politically motivated investigator in the JAG Corp.
10. The [redacted] family, "a nest of grifters" as described by [redacted] first husband.

I know that the accusations against Major Burris are horrendous, but they were so easily filed and accepted by the Army who wanted to show that they care. This case would never have gone to a civilian court, especially after the grand jury had seen the lies. The lies were from one person and never by her willing, hostile witness, [redacted] Their statements are so easily rebuked. They clearly demonstrate their collusion as directed by attorneys.

Please allow my son to have his first day in court, with justice as its ultimate goal.

[redacted]

Exh 4 - Supporting Letters (2)

UNITED STATES v. BURRIS

THIS CASE HAS NO BONES

January 28, 2023

There was never any intention by the Army to give my son, Major Erik J. Burris-US Army, a fair trial. He made a few enemies, both civilian and military, that had the power to corrupt any opportunity for justice. Both the gang of civilians in Texas and the criminals controlling the actions of the JAG Corp, together, would destroy a patriot and hero. From the scheming accusations of a sociopath, her family, and the [redacted] family in coordination with the Army blatant discriminatory policy in sexual abuse cases my son would fall. [redacted] Temple, TX attorney, [redacted] who was well versed in military law involved the [redacted] family to destroy Erik in the Texas family law courts. That wouldn't work in a system that required evidence. [redacted] called for assistance to Ft. Bragg and wherever his cronies were. His relationships with military leaders were clear. His daughter, [redacted] call to arms to her father to see who they knew at Ft. Bragg was clearly an indication of where this case would go. She texted her father, "Who do we know at Bragg?" Fortunately, the text went to Erik's phone by accident. My son responded, "Me."

While [redacted] Burris was making her list of accusations with the help of [redacted] she was applying to receive an estate that required her to be married and have two children, so the divorce action was delayed until after the conviction and [redacted] the second daughter, was born. When [redacted] found out she was expecting [redacted] and estate requirements would be met, she sought [redacted] help to clarify her marching order on how to get rid 'of Erik. Her call to [redacted] Erik's first wife, to suggest that [redacted] was the way to get Erik". In other words, [redacted] my son's first daughter, was the best way to destroy Erik. Sexual assault, child abuse, the "Beast", the attack was on.

The Army's willingness in this travesty was more than eager after my son's testimony in another sexual assault case about the Army's policy of taking such cases straight to trial in spite o no evidence. They only wanted superficial Article 32 hearings or getting rid of them altogether. In Erik's case, they

wanted the IO report to be a couple of pages. The integrity of the 32 IO, [redacted] obviously shined a bright light on this case. But they kept it far from the court room, and somehow its mention would not be admitted at trial. [redacted] feared that the Army would do this. She sat in the defense room, and its mention would not be admitted at trial. [redacted] feared that the Army would do this. She sat in the defense waiting room ready, but was not called to testify. Later, an email between attorneys stated that [redacted] would be disciplined for being so thorough.

I can go on for days talking about [redacted] and Erik's first wife, [redacted] including their lack of integrity in this case and their acidic and ridiculous conspiracy to destroy my son. A close examination of them, their accusations, their lives, their histories before Erik would clearly show that their testimonies are not credible. [redacted] first husband, apparently not dead, said the [redacted] family is "a nest of grifters". I was willing under oath at the trial to expand on all of this, to show who the [redacted] and [redacted] families really. were. But after two simple questions were answered, my required testimony was finished.

Please read [redacted] Article 32 IO investigation report. It's just 36 pages long. It's the only. part of this case where justice was the true goal. The trial transcript, all 2,146 pages, was a poorly directed, produced, choreographed scenario that flew in the face of justice. But the times are what they are, so my son will sit in a cell for twenty years with very little hope for any true trial, appellate process or parole consideration. The Army and his false accusers fear his release. The military should be held responsible for their actions, for this could not have happened without them. No civilian court would have ever accepted this case.

Please follow the lead prosecutor, [redacted] actions in this case. Her interference in civil court hearings in Texas and her relationship with the two families in Texas. Why did [redacted] tell the civil court judge about the military's upcoming case and have him postpone visitation judgement until the military trial was completed. [redacted] should be dismissed with penalties. However, she was probably just a tool for the Army, coerced to do all of these things. And why did one of the prosecuting attorneys take. [redacted] outside the courthouse during the trial and yell at him because he wasn't practicing his statement correctly. At the 32 hearing the assistant prosecutor wouldn't go forward to trial

because he saw what [redacted] was doing. He was PCSed.

[redacted]

Enclosure 2

Relevant Timeline

Relevant Prior Military Service

June through July 1995 – I attend ROTC Basic Camp.
June through August 1996 – I attend ROTC Advanced Camp, and then follow that with Airborne School.
December 20, 1997 I commission as a Field Artillery Officer, and then spend three months recruiting.
August, 1998 I graduate from Field Artillery Officer Basic Course; Report to my first unit
July 2000 - I attend the Scout Platoon Leader Course (one of the first Artillerymen to ever attend).
June through December 2001 – I volunteer for and spend six months working for NATO in Sarajevo.
March 3, 2003 – I marry my first wife, a graduate student. We will ultimately never live together.
April 2003 – I deploy to Iraq, as an Artilleryman and also work on Iraqi Governance
December 3, 2003 – While home on mid-tour leave, my daughter [redacted] is born.
March 2004 I redeploy from Iraq.
May 2004 I am divorced from my first wife.[1]
June 2004 - I begin my terminal leave after receiving an Honorable Discharge.

Graduate School and the Reserves

August 2004 through May 2007 – I attend Law School
August 2005 through December 2006 – I attend Graduate School
May 2007 – I receive a Master of Public Administration (MPA), with high honors, and a Juris Doctorate
August 2006 through February 2008 – I serve as a Civil Affairs Det. Alpha Team Leader, (USAR)

Judge Advocate Service

2008

February – I return to active duty
May – I graduate from the Judge Advocate Officer Basic Course
June – I am assigned as a trial counsel, bypassing the normal career development, which begins with legal assistance, administrative law, and then military justice.[2]
December I am asked to remain behind, for six months, as 1st Cavalry Division deploys to Iraq (I am not pleased.) Over the course of the following year I will maintain the heaviest case load at Fort Hood Texas of any Trial Counsel (usually more than double the caseload of the next busiest counsel). At any given time, at an installation with upwards of 50,000 assigned personnel, more than half of all military prisoners in pretrial confinement from the installation I had hand in incarcerating, including advising for the infamous [redacted]. I handled cases ranging from conspiracy to commit murder to drugs, to, yes, many sex-assault cases which I was known for vigorously investigating and prosecuting. I am also proud of the work that I and my immediate subordinates had in ensuring that reason and moral discretion were applied to case handling, processing, and disposition.

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[1] No accusations of violence, assault or any kind of misconduct are made. An IG complaint is made by my ex that I was not paying separation or child support, investigated by the chain of command, and found to be meritless. Furthermore, the separation was somewhat amicable, fully resolved through mediation.

[2] I was slated to return to my previous Fort Hood unit, 4th Infantry Division, however the Staff Judge Advocate of 1st Cavalry Division knew of my hard work and efforts in Iraq and, as he had priority at the time, requested me.

Timeline of Events Impacting my Incarceration

2009

January 30 – I complete a civilian prosecutor's course hosted at the Department of Justice's School on the campus of the University of South Carolina. That same evening, upon my return to Texas, I have my first date with my future wife.

2010

March 19 – I marry [redacted][3]

April 7 I depart for Fort Benning Georgia, en route to a one-year deployment to Regional Command East (first serving under the 82nd Airborne Division, then with the 101st Airborne (Air Assault) Division). My wife is approximately 4 months pregnant. The night before my departure my ex-wife had me served with a demand for more child support. (This would be part of ongoing child custody disputes.)[4]

August 19 – My second daughter, and first with [redacted] is born. I attend the birth via Skype.[5]

2011

April ~5 – I return from my deployment to Afghanistan

May – My wife and I fly to Virginia to spend some time together in DC as well as to house hunt in the Charlottesville, Virginia area where I would PCS next. The plan is for the three of us, (my wife, my daughter, [redacted] and I) to move back there together.

June – My wife and I discuss her desire to remain in Texas to attend college courses she was taking as well as take advantage of her mother's ability to provide Child Care. I am not fully for it, but relent given the belief that what is "best for her" will be "best for us."

August ~18 – I depart, alone, for Charlottesville, Virginia, to attend the Judge Advocate Officer Graduate Course and earn an LLM. I will return to Texas to visit with my family four times during the course of the 2011-2012 academic year. My wife will not visit me until my graduation.

2012

June 1 – I leave Charlottesville, Virginia for Fort Bragg, North Carolina.

June (mid-month) – Unbeknownst to me, my wife speaks to a divorce attorney. (I won't discover this happened until December)June 20 – I return to Texas on leave to see my wife and daughters, [redacted] and [redacted] My wife and I buy some furniture and discuss a moving timeline.

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[3] But for the existence of two beautiful girls, [redacted] and [redacted] (whose name was supposed to be [redacted] whom I love dearly now and forever, I would venture to say that this date is the worst of my life.

[4] My first wife felt that mothers were more important than fathers, and that I should be forever grateful and indebted to her for time I had with [redacted] She is . . . less than she should be. That said, as she didn't make up rape accusations against me as well, only lied about tickling, and her mother died while I have been in prison after her father suffered a debilitating stroke, I am leaving her out of this to the extent possible. But for OIF1 and our time apart immediately following our marriage I think I would probably have remained married to her to this very day.

[5] No, my daughter was not the cause of our marriage. I was in the middle of planning the engagement when we found out that my soon to be fiancé was pregnant.

August 23 – My in-laws move my wife and then youngest daughter, [redacted] from Texas to North Carolina, following her completion of some schooling in Texas, and the very next day leave, commenting on their happiness at seeing the three of us finally together as a family. (I had just returned from Justice training at the JAG School in Charlottesville, Virginia.)

October ~31 – I receive the second half of my retention bonus, and within the following day or two pay off all of my outstanding credit cards, as well as credit debt of my wife. I was thoroughly excited to have killed off all remaining credit debt from law school and to no long owe on anything other than student loans. I was looking forward to restarting retirement and college savings plans, as well as starting some new investments as my disposable income jumped dramatically.

November 13 – I come home after work, about 6:30 PM, to find my daughter, [redacted] wife, and mother-in-law, gone. I attempt to try to call them, my then father-in-law, the police, and my parents. I check my joint bank account I hold with my wife, and credit card accounts. I discover a $10,000.00 charge to my personal Visa (one of the accounts that had just been paid off – a card, long held by me, that my wife had authorization to use) to a name that I then google and discover is a law firm. That particular credit card had an $11,000.00 limit. I call my boss, the then 82nd Airborne Division Staff Judge Advocate, [redacted], and ask for emergency leave given the circumstances. He grants it.

November 14 – My father flies from California to North Carolina to be with me, fearful I might harm myself. (Less than 24 hours after my world was shattered and my father dropped everything to fly across the country to see me. This is a great example of the kind of amazing parents that I have.

November 15 – I will learn later that my wife filed for a restraining order, and in the supporting material she will make the first accusations, against me, to anyone, ever.

November 19 – Through a family law attorney in Texas I hired to look into the matter, I discover that my wife has filed for divorce and an ex parte restraining order. The copy of the affidavit that my wife, now accuser has filed accuses me of physical violence against her, my eldest daughter, [redacted] No sexual accusations are made of any kind. Not rape. Not sodomy. Not forcible digital penetration. Nothing. I inform the Staff Judge Advocate of the same, as is my moral and ethical duties, and forward him a copy of the affidavit.

November 22 (Thanksgiving) – My last direct contact with my eldest daughter (telephonic).

December 5 - My father and I travelled to Central Texas to attend a preliminary divorce and child custody hearing, during which, for the first time, my accuser suggested that I had raped her. After the hearing I spoke with [redacted] and informed him that I had just been accused of rape, as was my professional and ethical duty. My friend, and Counselor [redacted] overheard the conversation, as she attended the hearing with my father and I. After the hearing I was granted a short visit with [redacted] During the visit my accuser's father and I argued, and I yelled at him that his daughter had just accused me of rape. Subsequent to the visit, my ex-wife and accuser would suggest that I had attempted to kidnap my daughter, along with the help of my father, and [redacted].[6]

December 22, 23 I have court ordered, supervised, visitation with my daughter [redacted] Subsequent to the visits, my accuser will accuse me of sexually harming my daughter during the visit.[7]

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[5] See the 15-6 investigation affidavit submitted by my first wife, attached.

[7] The ensuing CPS investigation into the incident will unfound her accusations, as well as all of her suggested incidents of child abuse related to [redacted] and collaterally, to [redacted] as well. I fully cooperated with the

2013

January ~15 – In response to a call made to the Fort Hood Domestic Abuse hotline (after my accuser left me) a 15-6 Investigation is Initiated. According to the Staff Judge Advocate, numerous times during discussions, the IO did not believe most of what was submitted to him in affidavits and questioned the honesty of my accuser. He would later tell me, personally, while we were both involved in classified planning, that he felt the accusations were "full of ****" and offered to testify in my support if possible.

January ~17 I am contacted by the North Carolina department of Child Protective Services. The ensuing investigation into the incident alleged in December will unfound her accusations, as well as all of her suggested incidents of child abuse related to [redacted] and collaterally, to [redacted] as well. I fully cooperated with the investigation conducted by Texas and North Carolina., Like the rest of her accusations, even the suggestion was morally ludicrous.

January ~28 – After beginning a search into the account of the cause for the marriage failure given to me by my accuser I begin searching for her ex-husband. My sister finds contact information for him, and after an attempt to reach him through his wife I get through to a Mr. [redacted]. She had alleged physical violence against him as well as a pornography addiction. He laughed when I informed him as much, and denied both. Furthermore, I discover that she left him, out of the blue, after only 6 months of marriage, EXACTLY THE SAME WAY. Her mother helped her leave, secretly, both times.

February 23 – I am suspended from my duties as the Chief of Military Justice. The then 82nd Airborne Division Staff Judge Advocate, [redacted] informs me that he was pressured by Office of the Judge Advocate General officers to remove me from my duties at the initial accusations, but upon the sexual assault accusations he felt he no longer had a choice. I was reassigned as an Operational Law Attorney and liaison to the 82nd plans staff. (Amusingly, I rarely had a need to use a secret security clearance as a criminal attorney, but was finally able to use my TS-SCI while under criminal investigation. After being charged I actually argued with the Installation Security Manager as to why my clearance should be suspended, pending a proper conclusion to the investigation and lifting of any associated flags.

May ~7 – An additional family law hearing is held back in Texas after my accuser VIOLATES the original court-order giving me visitation with my youngest daughters. I filed for the hearing. A different judge hears the proceeding and opts not to sanction my wife for her contempt of court, furthermore rewarding her for her conduct by ordering a discontinuation of visitation.[8]

July ~17 – I make a voluntary statement to CID concerning the allegations as I know them at the time, contrary to the advice of counsel, foolishly believing that my participation will help the investigation to an honest conclusion.

August ~23– I am removed from the Office of the Staff Judge Advocate following matters discussed with a former NCO divulged to the SJA. (I told that NCO over a lunch that I knew well of unethical conduct engaged in by the Army in political cases, including a Law of War violation case I initially oversaw, as

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investigation conducted by Texas and North Carolina. Like the rest of her accusations, even the suggestion was morally ludicrous.

[8] As many men know that have been so unfortunate to experience the process, there is not gender equality in family law courts. Women are giving preferential treatment and are easily forgiven wrongs that would lead to sanctions for men. This Board has no control or influence over this, however it is known by most family law attorneys dealing with military service members that civilian spouses will often exercise the "nuclear option" to gain the upper hand in custody proceedings.

well as manipulation of sex assault cases and that I might discuss the same with the media.) Contrary to idiotic fears by the prosecution, never realized of course, I would not have divulged privileged attorney-client or other sensitive matters because such action would have led to my disbarment.

September 19 – I am charged with numerous offenses, including domestic violence and rape against my accuser.[9]

November 20 through November 22 – An Article 32 Investigation is conducted by [redacted] (Find attached the Investigating Officer's Report, that she prepared, and pay special attention to the final three pages, including the MANY accusations that my accuser made against me and how she felt about them, as well as my accuser.)

December 13 – A final session is held to conclude the article 32 hearing. During the session, which I attended telephonically, [redacted] concluded that my accuser had fully impeached herself during her testimony and asked the lead prosecutor, then [redacted], if she disagreed. (An awkward silence persisted for nearly one minute.)

2014

February through July – I am formally arraigned on the initial charges as well as charges added after the Article 32 Investigation that the IO recommended not taking forward, lacking any reasonable evidence. (Once again, see the Article 32 Report.) In addition, the 18th Airborne Chain of Command directs a psychological examination, claiming that such examination was requested by the Defense. At first called a "scrivener's error" by the assistant prosecutor, the prosecution then lied by resubmitting a revised memo which still states it was pursuant to a defense request.[10]

December ~15 – I have another child custody hearing attempting to resume contact with my two youngest daughters. The judge defers a new decision until completion of the court-martial. I attend telephonically, yet tellingly the lead prosecutor, [redacted], assigned to the 18th Airborne Corps at Fort Bragg, North Carolina is there physically, in Texas. (This was the same judge that did not sanction my accuser for her violation of the previous judge's order.)

2015

January 26 – I find myself, contrary to the truth and my pleas, convicted and confined.

2023

As of this date – Eight years later. I remain confined for crimes I did not commit.

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[9] From the time I was charged with "assault by tickling" I found it comical, and an indicator of how truly weak and desperate the prosecution was in my case. Read the charge! "Unlawfully poked and pinched on the ribs and abdomen with [my] thumbs and forefingers. . ." Isn't that how it went? I found it amusing until I was convicted of one count against my daughter [redacted] Yes, members of the Board, I tickled my eight-year-old daughter. Guilty. Guilty of loving her, sacrificing all that I could for her, caring for her until the end of time, and, yes, tickling her. You all should stop and ask yourselves how such a thing is ******* possible! THAT is the case against me.

[10] The government was engaging in deliberate dilatory tactics given that it was simultaneously preparing for trial against [redacted], also accused of sexual assault, and whose case was stopped by the judge when the same office handling my case was found to have lied in assertions about evidence to both the defense and court. Furthermore, the Office of the Judge Advocate General was also found to have engaged in undue command influence. My defense failed to similarly pursue such evidence.

Military Investigation

"If you begin an investigation with theories, you will only look for evidence to support those theories. If you begin an investigation by collecting facts, theories will naturally develop."
- Sir Arthur Conan Doyle

An investigation was not triggered by my notifications to my superiors of the then known accusations against me. It came to light, subsequent to the initial family court proceedings, that my accuser called an abuse hot-line at a different military installation and it took approximately 45 days for the notification of the same to reach Fort Bragg. That notification triggered an automatic commander's inquiry. The Headquarters and Headquarters Battalion Commander appointed a Lieutenant Colonel to investigate accusations of domestic violence. Over the course of the next 6 weeks, during which time the Commander's Formal Inquiry (AR 15-6) Investigating Officer would have problems getting in contact with my accuser and ex-wife, additional outlandish accusations were made, notably among them was that I took inappropriate photos of my children, and, unbelievably, attempted kidnapping. My father and a good friend were suggested to be conspirators to the attempted kidnapping of my daughter [redacted] during a visit following a family court hearing.

While the investigation was ongoing I would speak with my superior officer, the Staff Judge Advocate (SJA) of the 82nd Airborne Division, about progress, though without significant details. In late February of 2013 the SJA informed me that because of accusations which amounted to production of child pornography that the AR15-6 investigation would be halted and the matter turned over to Army CID for investigation. The SJA also shared with me the fact that the AR15-6 IO doubted the claims being made against me, information which I would personally confirm when I worked intermittently alongside that same IO. The IO informed me that he

would be willing to testify or otherwise assist if possible.

At first Army CID appeared to be investigating for the truth. Sadly I came to see that I was mistaken.

The CID investigation was a prime example of something other than a neutral, detached, and disinterested party conducting a search for objective truth. CID pushed forward an investigation that chose to disregard known and suspected lies, as well as glaring omissions. Any and all accusations against me by my accuser were seemingly taken as the gospel truth by CID. Even when confronted with verifiable lies CID did not reengage with my accuser and tell her the same. (The many, numerous lies would be investigated at my Article 32 hearing alongside the preferred charges.) Nor did CID conduct a full investigation of my accuser; they were oblivious to easily discoverable information such as my accuser's bankruptcies, her previous marriage, the end of which was initiated by my accuser in the same way she left me, her separate bank accounts that were held as she accused me of being financially controlling as well as many more fabrications of her stories.

CID investigators were quite simply uninterested in investigating for the truth. They began my investigation with the theory that I was an abusive husband and no information uncovered contrary to this criminally ignorant idea would be entertained. So many lies. So many!

One lie told by my accuser, which was investigated by my Article 32 but I was not charged with, was that I sexually abused my eldest daughter [redacted] CID investigated, putting my precious eldest daughter through God knows what, only to find out that no such thing ever happened – verified by [redacted]

Another lie uncovered by CID was that I physically assaulted and abused a subordinate, a

former senior paralegal of mine. When my accuser told CID that I had struck this NCO they contacted the CID at the installation he was stationed at to get his statement. By their very own investigative notes they were excited. Excited! When that NCO informed the CID agent who contacted him no such thing ever happened and asked when he should come in to make the statement he was informed that it wouldn't be necessary. Not necessary or unwanted? Verified lie, without any subsequent questioning of my accuser. At trial this NCO testified to the same.

Another verified lie that she told was that I disrespected my superior officer while stationed at a different installation, and verbally abused her, a then pregnant woman. When this former superior was questioned about it she verified that such accusations could not be further from the truth. Again, no confrontation of my accuser. No doubt of her central accusations.

She accused me of being an alcoholic and an abuser of prescription pain medication, which forced the command, by regulation, to send me to alcohol and substance abuse screening. (I was determined not to be an abuser of the same.) Yet no investigation of my alcohol or drug use was ever conducted, the investigators took her at her word, her fantastically evil word. So too were psychological accusations made that former superiors had compelled me to seek military counseling and other psychiatric treatment. Never happened. Verified.

Again, and again, and again, lies investigated, lies uncovered, no questioning of the accuser nor, significantly, any apparent change in the belief by those same investigators in the veracity of my accuser's central claims, those of physical and sexual assault. (Okay, she lies about everything else but not THAT, right? At trial the prosecution would bring in a counter-intuitive victim behaviorist to testify to that end. Yes, that person asks you to abandon your common sense and everyday logic.)

None of this should be shocking to anyone familiar with military justice however. According to the Report on Sexual Assault Investigations in the Military, dated February 17, 2017, prepared by the Subcommittee of the Judicial Proceedings Panel (JPP Investigations Report) many investigators feel that they are no longer eliciting all facts necessary to "discover what occurred." Consistent with the investigation of my case, investigators are not questioning accuser's lies and inconsistencies. Investigators are required to investigate on the assumption that a "victim" truly is a victim and the claims of sexual assault are true. Reviewing the JPP Investigations Report it is obvious that my case is not unique and that many investigations are similarly fatally flawed. As noted by some investigators in the JPP Investigations Report such an approach leads to overlooking evidence and the obscuring of reality. In my case reality was not obscured, it was wholly disregarded!

Pretrial Investigation and Referral

> "...in this case the sum total of evidence that directly contradicts and challenges the credibility of the allegations is so overwhelming..."
>
> – [redacted], Article 32 Report

Despite the lies uncovered during the investigation, given that accusations were made, given that on the basis of those accusations made a titling decision was made by CID, and given the pressure on CID to pursue only one course, it was a foregone decision that the Army would charge me. They had to (I had similar marching orders a Chief of Military Justice for the 82nd Airborne Division, which I will discuss further in the next section). The sex assault hysteria that has consumed military justice since 2012 guaranteed that as a Judge Advocate and Major, I was to be just another sacrificial victim from the beginning. If the military had chosen not to charge me, I have little doubt that it would have haunted the commanders that chose to use their

discretion to kill a bad case.

That said, it was only after I had been charged that I saw my first and only unbiased consideration, due process and evidentiary review. I had a female, Lieutenant Colonel, Judge Advocate sit as my Article 32 investigating Officer. She was dutiful, considered all available facts and evidence, conducted investigations of her own into matters, and delivered a report substantially beyond that which the commanders would have preferred. (I would like to note that I do not embrace all of her report, merely that I recognize her fair and exhaustive pursuit of the truth in a fully objective, unbiased manner.)

Rather than discuss the Article 32 IO's report I suggest that you read it for yourself. In short it consists of 11 pages of background data, 22 pages of findings – which includes example after example after example of the overwhelming dishonesty and complete lack of credibility of my accuser, and 2 pages drawing conclusions and making recommendations. The conclusions and recommendations were that there was never any rape committed, that if there was domestic violence that it was initiated by my accuser, and to NOT FORWARD ANY CHARGES to courts-martial.

Let me hammer this point home: a female, senior officer, Judge Advocate who carefully and impartially reviewed all available evidence recommended against a court-martial proceeding. Yet I still had my charges referred to trial. Yet I was convicted of rape and domestic violence, in addition to the tickling of my daughter, tickling. Yet I was sentenced to twenty years! You cannot possibly reconcile these facts without understanding the hysteria gripping the Armed Forces.

The Article 32 report would matter little. The charges would be referred. Why?

Congressional attention to sexual assault case processing and the cowardice of senior military leaders. Oh, and a fair amount of unlawful command influence.

As if to illuminate the gross betrayal of an accused's substantive and due process rights, another report was published by the Subcommittee of the Judicial Proceedings Panel. On May 12, 2017 the Subcommittee submitted its Report on Barriers to the Fair Administration of Military Justice in Sexual Assault Cases (JPP Justice Report). This report comments on a number of issues well known across the military legal community, such as the pressure exerted on flag officers to refer all cases. Notably exhibited, but not limited to, Lieutenant Generals Craig Franklin and Susan Helms, Senator Claire McCaskill of Missouri attacked both for exercising their inherent commander's discretion involving cases charged before FY15. Lieutenant General Franklin was threatened with firing by the Chief of Staff and Secretary of the Air Force as well. In a case currently before you, that of a Navy SEAL, two Navy Judge Advocate Generals told the SEAL's Convening Authority that it would be damaging to his career if he gave relief in the case - clear unlawful command influence (UCI). (The Vice-Admiral wrote in the action he took that the case was the "worst example of injustice that he had seen in his more than 30 years in the Navy" yet he passed the charges along all the same.)

The President himself doubled down on the insanity and hysteria when, in May 2013, while attempting to avoid the "red flag" crossed by the Syrian government only a few days before, he gathered his service chiefs and the Secretary of Defense. He told these senior military leaders that anyone accused of sexual assault should be court-martialed, fired, dishonorably discharged. That his comments were taken as UCI is clear, given that the Secretary of Defense soon thereafter circulated a memo clarifying the comments made by the President.

While the JPP Justice Report comments on the above, what it does not comment on is what the service chiefs of the Armed Forces did in the following days. I was personally present in the 82nd Airborne Division Operations Center with the Commander of the Division when, not even 48 hours later, the then Chief of Staff of the Army, [redacted], conducted an Army wide video-teleconference (VTC). The purpose of the VTC with major subordinate commanders was to deliver instructions and expectations on the handling of sexual assault cases. [redacted] directed his Army commanders to attack sexual assault accusations with fervor. During comments lasting approximately eleven minutes, he spoke about supporting victims, victim's rights, and prosecuting such cases forcefully; at times his demeanor bordered on anger. His bias, and his expectations were clear, especially given that once, ONLY ONCE, during all of his comments did he make any mention anything about protecting the legal rights of the accused, and that about eight or nine minutes into the remarks. Once! One comment, consisting of one or two sentences. An afterthought.

Perhaps the VTC did not unduly and inappropriately influence the Army's leadership. Perhaps it did not set expectations in conflict with justice. Perhaps also the "Invisible War" documentary viewing party which the 82nd Airborne Division Commander held with all of his Brigade and Battalion commanders in late 2012 had no impact on the processing of accusations and did not mistakenly skew the beliefs of those responsible for making recommendations about case handling and disposition. Perhaps.

At Fort Bragg, that fall, concurrent to my Article 32, and handled by the same convening authority and command, was a sexual assault case case against Army [redacted]. As in the [redacted] cases, the Army was embarrassed when it came out in the trial, during a

break in the accuser's testimony no less, that the Army had engaged in case manipulation and UCI. Superiors in Washington had directed the convening authority at Fort Bragg to not accept a plea offer submitted by [redacted] because, among other things, he was not going to plead guilty to sexual assault. Confronted with the evidence of UCI, in the form of e-mails primarily, the presiding military judge reluctantly put a halt to the court-martial proceedings and directed the convening authority to reconsider the plea. The convening authority accepted the plea offer on the second look. (As a side note, and also unknown to many, the original prosecutor in the [redacted] case refused to go forward with the sexual assault charges at trial because he severely doubted that [redacted] was guilty of such conduct and he felt that he could not ethically take those accusations to trial. He had his career destroyed and his reputation smeared, by one of the most senior judge advocates of the Army, for his stance. Attorneys on both sides of the case confirmed these facts to me as my case was proceeding.)

The JPP Justice Report captured this inherent systemic UCI and predisposition in sexual assault cases well on page 14 of the report.

> Judge Advocates overwhelmingly reported a perception of pressure on convening authorities to refer sexual assault cases to court-martial, regardless of merit. According to many of the judge advocates interviewed on site visits, this pressure extends to weak cases that civilian jurisdictions would not prosecute and, in some cases, have already declined to prosecute. The vast majority of prosecutors and defense counsel who spoke with the Subcommittee have the impression that this pressure causes convening authorities to favor referral to court-martial rather than deal with the potential adverse ramifications of not referring a sexual assault case, such as career setbacks, media scrutiny, the possibility of their non-referral decisions being subjected to elevated review, or questions about why the case was not referred. These lawyers suspect that commanders may feel that the act of sending a case to trial, regardless of merit, is perceived as "safe" and harmless with respect to the parties and the justice system as a whole.

It should be apparent by this point that there was little doubt that the charges would be referred, clearly contrary to the Article 32 findings and recommendations. I could bring up the fact that charges were referred that even lacked probable cause. I could discuss how the IO's recommendations were wholly disregarded, including the addition of even more charges that she investigated at the court-martial and also recommended against. I could discuss all of that but by now I think it is likely clear that justice was never an aim of the Army from the start of the investigation, through the charging, the Article 32, and the referral decision. Justice was to be a sobbing bystander.

Publicity and Testimony

I admittedly did not endear myself to the Army while waiting for trial, nor did I care to. Truth being my standard, I took my case to the media and assisted another accused in his sexual assault case.

In the Spring of 2014 I aired my case, and the results of the Article 32 hearing, during a brief news piece on me by a Fox news affiliate in my hometown of Sacramento, California (sadly the network did not pick up the story, though I was in touch with producers working for Sean Hannity, about my case and others).

I also testified in another case related to a UCI motion raised by defense in June of 2014. The important sum of my testimony was that I had been directed to take any and all sex assault accusations forward to at least an Article 32 hearing unless the accuser recanted, or there was otherwise a "smoking gun" (similar to comments in the JPP Justice Report). The Staff Judge Advocate, my superior, in the 82nd Airborne Division, had given me this direction. His reasoning was that if we charged the case but it died during subsequent investigation then we

could argue we had done our "due diligence." I have little doubt he was ordered to do the same.

Trial

My trial was replete with error, and obvious taint. If it wasn't obvious upon inspection of the record, this would be the only way to reconcile the vastly different outcomes between my Article 32 hearing and a court-martial that sentenced me to hell. There were panel member issues, repeated name calling, an expert of questionable expertise, denial of my full and fair right to confront my accuser, and a defense team wholly unprepared for the worst case scenario. These were just some among many issues and problems in a case that would never have gone to trial but for all of the insanity I saw personally and others have seen across the Armed Forces. The JPP Justice Report doesn't lie.

The original senior panel member was excused by the government with their peremptory challenge. This was troubling for numerous reasons, notably among them: the member challenged was a nurse familiar with sexual assault nurse examinations (SANE) and procedures, was one of only a couple women originally seated, and was the ranking member of the panel. Her departure left the senior ranking member a person with a questionable ability to be neutral and detached.

That the senior ranking member was one of only three women on the panel before any members were excused, and that there was only one woman left after challenges were completed, is its own unique issue. However, given that she was a woman AND a nurse with limited SANE knowledge and was excused by the prosecution is shocking, but not when you consider the government's goal: conviction not justice. My defense team challenged the prosecution's use of a peremptory challenge on her and asked for a gender basis. The cause for excusal proffered by

the prosecution that the Colonel had extensive experience in sexual assault examination (it lasted two weeks) and that other panel members would potentially give her opinions more weight. Why would the prosecution fear her opinion carrying extra weight unless it would be weight against the their case? The truth is that the prosecution knew who the senior ranking panel member would be with her departure, and likely felt their chances were better with fewer women. For the record and for the sake of posterity, my defense team and I were hopeful to have more women on the panel AND a female military judge.

With the nurse's departure the ranking panel member was a colonel who answered to the convening authority, the garrison commander for the installation. This officer therefore was both rated and senior rated by the command of the same convening authority that took jurisdiction over my case and pushed my case to trial. This, of course, is not a per se conflict nor a violation of the rules for courts-martial. That said, given that member's position, time in the military, relationship with the convening authority, and many years of exposure to sexual assault prevention and response (SAPR) training and command climate similar to that discussed earlier he was undoubtedly predisposed to believe my accuser. According to the JPP Justice Report this leads to a belief that the voir dire process cannot "completely expose the bias of potential panel members" and it has been seen that members have mistaken understandings of legal concepts such as consent because of SAPR training.

I was referred to as "the beast" over and over again, and such a theme from the government was meant to distract from the lack of truth in the allegations. Waiver? Forfeiture? It was not my intent to get into that kind of minutiae in these matters, nor will I here. That said, the need for the government to repeatedly refer to a joke in such a dark way, just as the prosecution did

with respect to "tickle torture" and also "tooshie-squeeze," (harmless affectionate play, both) was nothing more than an indicator of the weakness of the accuser and the accusations themselves, though, as discussed in the panel member issue previously, it ultimately may have mattered little.

Another incredible error was the fact that the government was able to use an "expert" testifying about a matter that has been deemed by the profession as "junk science" to improperly bolster my accuser's testimony. While this Court has previously accepted the concept of counter-intuitive victim behavior, and the testimony of [redacted], such testimony is to be limited to behavior, and not character for truthfulness. The counter-intuitive victim behaviorist basically testified that no matter what a woman does, including lying about many things, a woman will not lie about being sexually assaulted. She therefore affirmed my accuser's truthfulness and accusations. The trial judge not only allowed such testimony but denied my team's request to rebut such an empty affirmation by calling the Article 32 IO to testify about my accuser's complete lack of truthfulness. As my Article 32 IO commented to one of my attorneys at trial while waiting to possibly testify, "the case hasn't changed … [the accuser] is a f***ing liar." Now, of course, she would likely not have said that on the stand, nor would she have been able to testify about her findings from the Article 32. However she absolutely should have been allowed to testify as a person who had a full and ample opportunity to evaluate the accuser's character for truthfulness, or lack thereof, and weigh in on her credibility. This decision by the judge was further damaging given that the trial judge also prevented my team from recalling the accuser to the stand.

Perhaps the gravest legal error that occurred during the court-martial, my defense was not permitted to recall my accuser to the stand during the trial. I was denied my full 6th

Amendment rights to confront my accuser by the judge's decision. After cross-examining my accuser on the stand my defense team sought to introduce her Article 32 testimony to further rebut her allegations and to show a wealth of inconsistencies that were otherwise not covered during the main cross-examination. (The trial judge found some of the differences to be "variances" which, again, showed his bias and inclinations.) My defense team felt that cross-examining my accuser on the stand for the additional six to eight hours, at least, that it would take to flesh out all of the other lies would lead to exhaustion on the part of the panel. The plan was to hit some of the larger lies and inconsistencies and overwhelm the panel with the portion of my Article 32 record pertaining to her verbatim testimony. Her testimony changed significantly from the Article 32 hearing to the actual trial (thus the hearing that cleared me also ultimately hurt me). This is not a strong man argument; her testimony changed significantly. My mobilized counsel, [redacted], an attorney for the Department of Justice, felt that it would be simple to introduce that portion of the record from the Article 32. As the military judge's decision indicated, he was wrong. There is no woman more dishonest than my accuser that I can conceive of. Had she retaken the stand, and been pinned to more lies, especially over matters dealing specifically with her and I, I likely would have taken the stand over the assertions by my defense counsel that my videotaped interrogation with CID was sufficient (the introduction of which we did not oppose). When the military judge did not allow my defense team to recall that witness, MY ACCUSER, he too showed that he was predisposed to a particular outcome, or to at least tilt the case in that direction.

If IAC is not found in my case then a new standard has been set for at least the United States Army - which is no standard. In preparation for trial my attorneys and I prepared for a trial on

the merits, not sentencing. We never discussed witnesses nor testimony, nor a God Soldier book or ANTYHING. As far as a paper case, none of my records were copied, rewards and commendations noted, until bad news became anticipated during a break in jury deliberations. As for sentencing testimony none was discussed until the hour immediately before sentencing was to begin. Let me tell you how effective that was as I was screaming, crying, and beating my head against the wall in the defense team preparation room. I do not hate my counsel for this; one attorney was told me that he no longer wanted to be in the JAG Corps, another that he was tired of practicing trial law if that result could really be, and another cried over how she had failed me. Not one of us believed that I could be convicted of heinous offenses which NEVER occurred. My only preparation was asking for character letters in support of myself in case I was convicted of anything. God knows that I did not pack up my household for this eventuality, let alone pack a bag for prison. That said, if you are to share the belief of ACCA that my counsel did not fail in their responsibilities to prepare adequately for sentencing in my case, and they gave affidavits affirming that they had, then it is reasonable to say that there is no standard expected by defense attorneys in sentencing. Perhaps the only violation of baseline standards of advocacy would be found if there was no defense case presented whatsoever.

Post-Trial and Convening Authority Action

The errors made in my case and the failures of those responsible for carrying out their duties did not end with the trial. Notably the Staff Judge Advocate's Recommendation (SJAR) was cowardly deficient, and there was unacceptable, and unexplained, excessive post-trial delay. Sadly, such mistakes were to be expected when the aim of my case for the government never included a desire to do justice.

The SJAR was deficient in three primary areas. First, documents were admitted by the SJA and presented to the convening authority improperly. Special Victim's Counsel submitted written statements to the Convening Authority for consideration. These statements were wrongly included and should not have been considered. Rule for Courts-martial 1105A provides that a victim has a right to submit a written statement to the Convening Authority. That statement however must be signed by the victim.

The SJAR also did not address new matters raised by my accuser, including additional allegations that were proven to be lies. Matters from outside the record were presented to the Convening Authority. The accuser made additional accusations that could lead to further disciplinary or punitive action. Those accusations were that I did not pay child support after she left (and in accordance with civil court direction, which I did comply with) and that I had not paid the property taxes on the home we owned for years. No comment was made in the SJAR about these accusations, nor that they were disproven in my post-trial submissions. Rule for Courts-Martial 1107(b)(3)(B) directs that "if the convening authority considers matters adverse to the accused from outside the record" the accused will be given an opportunity to rebut. The SJAR included neither comment about the additional post-trial accusations made by the accuser or the proof that those accusations were lies. This does not constitute a simple, harmless error in a case that hinges entirely on the credibility of an accuser who has been shown to lie again and again and again.

Additionally, the SJAR did not address the excessive length of delay in post-trial processing. The Convening Authority did not take action for more than four months after having all RCM 1105 and 1106 matters at hand, and that did not occur until nearly eleven months after my trial

was completed. The SJAR did not address this.

The excessive post-trial delay was a failure in the SJAR as well as a violation of well established case law of this court which requires action within 120 days. Typically courts will consider granting relief in cases that take more than 200 days to process. Even excluding attributable defense delay to prepare and coordinate documents, the government still took more than 289 days to take action. This is clear error. The government brief didn't bother challenging this.

Ultimately the Convening Authority rewarded my accuser and her continued dishonesty, even when confronted with PROOF that she was lying, when he chose to backdate a six-month deferment in pay and entitlements at her request. I never asked for that because I had no desire to further enrich an evil, dishonest person for her lies. (In addition to winning full custody of our children I can conservatively estimate that my accuser will make more than $150,000.00 in tax free money through her accusations. It pays to lie.)

What more needs be shown for the one sided approach to justice by the Army?

Army Court of Criminal Appeals Review

The Army Court of Criminal Appeals (ACCA) review and opinion continued to underscore the injustice done in my case and the deliberate indifference of the United States Army. Not only were most issues disregarded as if they had not been raised, but substantive issues were left unacknowledged entirely.

I will not waste time arguing the merits of the errors cited here but instead want to compare the issues raised by my counsel or myself as compared to those addressed by the government in response or ACCA itself. (Issues are mentioned in brief.)

ISSUE	DEFENSE	GOVERNMENT	ACCA
I. Whether prosecution used improper character evidence	X	X	X
II. Whether military judge erred in not instructing on mistake of fact defense	X	X	
III. Factual and legal sufficiency of the case	X	X	
IV. Whether the government's "expert" improperly bolstered the accuser's testimony.	X	X	
V. Prosecution commentary about my failure to take the stand	X	X	
VI. Removal of a panel member based on gender	X	X	
VII. Military Judge denial of my right to confront my accuser	X	X	
VIII. Ineffective Assistance of Counsel during sentencing	X	X	X
IX. Severity of Sentence			
X. Cumulative effect of errors	X	X	
Additional I. Defective SJAR	X		
Additional II. Excessive post-trial processing delay	X		

Every issue raised by counsel or the accused is not guaranteed discussion or ultimately relief. That said, every issue is required to be fully and faithfully considered. The unmistakable conclusion when comparing ACCA's choice of issues (two, to the total raised of twelve) and the disregard of the rest, when case law and the facts of my case support relief, is that ACCA was to be yet another rubber stamp in this process. I would like to give those three judges the benefit of the doubt, but I know better.

My Anguished Plea

I will never be made whole for the injustices committed against me. I will never have the time lost with my precious daughters returned to me, including that with my youngest whom I have yet to meet but swear to the Lord I one day will. My accuser, [redacted] will likely never see punishment for her lies on this side of the grave. Her very existence will continue to be an affront to real victims as well as real justice. This Court is powerless to address that. This

Court is also powerless to investigate, and appropriately address, the deliberate disregard for evidence and truth exhibited by so many commanders in the chain of my case, like many apparently scattered across the services, commented on in the JPP Justice Report, who have betrayed the noblest traditions of American jurisprudence.

That said, how do I end this? How do I sufficiently and effectively conclude these matters that I have presented and discussed? How can I possibly hope that you will choose to do what is morally and ethically right when justice has been denied me at every point in the military "justice" system, save one point when a dutiful Lieutenant Colonel had the fortitude and moral compass to fairly review ALL of the evidence at my Article 32 hearing and submit a report consistent with her evaluations and determinations? (I bear, thankfully, she is now a Colonel. I pray she attains greater rank, and thus, opportunities to change the system that now exists.)

I'll end this with a dare. I dare you! I challenge you to set aside the monumental injustice that has been done to me. I challenge you to seek a higher power or purpose in your detailed and thorough review of my case and all collateral matters impacting it. Yes, all matters.

You were charged with upholding justice consistent with the Constitution of the United States of America. For the love of this Country, the Constitution, and JUSTICE fulfill that charge!

veritas,

ERIK J. BURRIS
MAJ, JA
United States Army