

Good Evening,

My name is Jerry Clifft. Formerly Gunners Mate 3rd Class in the United States Coast Guard. My Career was ended at a General Court Martial in 2016 where I was convicted of numerous counts of Domestic Violence. Those counts stem from allegations that were brought to light after asking my wife of 5 years for a divorce and refusing her requests for reconciliation.

One of those convictions was a Sexual Assault by Bodily Harm under the Article 120 statute in effect in 2014, and it will be the main focus of my statement.

The evidence at trial largely consisted of her "version of events" as she described on the stand and in the numerous statements she made to individuals prior to trial including several law enforcement professionals, family and friends, and other individuals acting in a professional capacity that were not bound to confidentiality.

Her pretrial story was a moving target but the version she settled on at trial is as follows:

After a 3-4 day period in which she claims upwards of 6 consensual sexual acts took place, on the night in question, she uttered the words "just take me" in response to my "badgering" for sex. She goes on to testify that she "took initiative", "Played along", "wanted me to think she was into it", "never said no or stop", "said she loved me 2x during the act, and once immediately after" and most astonishing of all, when asked by my defense if she considered herself an active participant in the act she answered "yes".

I do not give credence to this version, but it was the testimony the members had to consider in contrast to my plea of not guilty.

I was convicted and served 3 years of a 4 year sentence.

At trial it was heavily argued that her apparent consent was invalid due to a sense of fear she had. The fear alleged was not in relation to any particular threat or event, just the general atmosphere of our marriage as described by her.

The CCA affirmed on the same grounds alleging that she was in fear at the time and could not consent.

The CAAF as is within their power and authority to do so, denied review without explanation.

Bear in mind that the Charging document made no mention of a theory of fear, only that of bodily harm making these conclusions a direct contradiction to the Congressional intent behind the reconstruction of the statute and explicitly creating separate theories of liability in that statute. Case law such as Pease, Riggins, and Valentin all help to clearly outline those degrees of separation laid out in the new Statute.

While this all could make for interesting conversation or legal debate, it is for me, absolutely meaningless. Despite what legal merit they may hold, that ship has sailed and I can no longer seek and receive relief based on those assignments of error at trial and on appeal.

My appeals were finalized in 2018. I filed a timely 4 circuit Habeas petition in 2019 that was also denied. After that I shifted my focus to rebuilding my life, but I did not entirely give up hope.

My very last and best hope at any sort of justice would now lie in the very narrow legal confines of a Writ of Coram Nobis.

In February of 2023, those hopes were greatly lifted, and the idea that I could still one day receive justice was validated when I was contacted by a high ranking member of my jury panel. They told me of an alarming event that occurred outside of the record of trial.

The event is as follows:

Immediately after my ex-wife's direct testimony, a brief recess was called. She was placed in a room that shared a thin false wall with the Jury. She proceeded to wail and cry and carry on for approximately 15 minutes according to the juror. All while her victim advocate told her things like how great she did, that she did her part, and that it would be over soon.

The Juror said it was as if she was in the same room with them. The entire panel looked uncomfortable. The juror said the situation seemed unfairly prejudicial, told the bailiff as much and asked the bailiff if they could be moved to a room further away as a result and once moved the juror asked the bailiff to inform the judge of the move and the reason. The juror said many panel members expressed relief to be out of that room.

The record reflects that trial counsel knew of the move in a very brief exchange with the judge, where the judge asked what was taking the members so long, but there was no mention as to why they moved. It was simply noted that they had moved to the larger conference room.

The implications in this scenario are many. All of them are the antithesis of due process.

A common topic brought before this committee is the advocacy for some sort of Conviction Integrity Unit. If one existed it would have surely been well equipped to discover such constitutional violations within the finality threshold of Article 76 and potentially the misapplication of law in respect to the article 120.

That said, a petition for a writ of coram nobis is on its way and a thorough Dubai hearing will surely follow.

In what the CGCCA called and I quote "a concededly close case", I cannot possibly fathom a version of events in which the investigating court or the appellate court could rationally find that the incident did not constitute a gross violation of my constitutional right to an impartial jury and a fair trial and require immediate correction.

The Constitutional rights of a defendant matter and Article 76 is not meant to be a hurdle to a newly discovered violation of them simply because they have been discharged.

Coram nobis is an extreme remedy, but so are the circumstances in which this violation of my rights occurred and so is the manner in which they were discovered.

This is exactly the kind of claim and scenario that a writ of Coram Nobis is meant to correct.

If the authority on the receiving end of this petition has any integrity, they will do what is right and recommend corrective action in my favor.

GOV council thought it appropriate to mention the CG core values during closing, and I will briefly do the same and direct it to whatever authority ends up deciding the fate of the upcoming petition.

HONOR- Honor your oath and commitment to the Constitution, and by necessary extension, those it is designed to protect and their rights at trial.

RESPECT- Have due regard and respect for my rights under that very constitution and acknowledge that those rights have indeed been violated.

DEVOTION TO DUTY- It is your duty to ensure that convictions are upheld in a manner that is correct in law and fact and in keeping with protections provided to the accused by the constitution and the UCMJ.

I'm eager to answer any of your questions and I thank this committee for its time.