

SAVE OUR HEROES[®]

ADVOCATING FOR MILITARY JUSTICE REFORM AND EQUAL JUSTICE FOR ALL

Sent Via Electronic Mail: whs.pentagon.em.mbx.dacipad@mail.mil

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**Defense Advisory Committee on
Investigations, Prosecution, and Defense of
Sexual Assault in the Armed Forces (DAC-IPAD)
875 N. Randolph Street, Suite 150
Arlington, Virginia 22203**

**Statement of Michael Konzachi, Director of Investigations, Save Our Heroes', provided to
the Defense Advisory Committee on Investigations, Prosecution, and Defense of Sexual
Assault in the Armed Forces (DAC-IPAD), to be considered at the 25 January 2019
Committee Meeting**

Pursuant to 41 CFR 102-3.140 and section 10(a)(3) of the Federal Advisory Committee Act of 1972, I, Michael Konzachi a member of the Board of Directors of the Texas Based non-profit organization, Save Our Heroes' (SOH) respectfully requests this public comment to be considered for the meeting scheduled for 25 January 2019.

I am privileged to offer the distinguished members of the Defense Advisory Committee on Investigations, Prosecution, and Defense of Sexual Assault in the Armed Forces (DAC-IPAD) with this statement, to further enlighten the committee members of the harmful long-term effects of service members who were either falsely accused or subsequently cleared or exonerated of sexual misconduct allegations.

I currently serve on the Board of Directors of the Texas based non-profit organization, Save Our Heroes' as the Director of Investigations. I am an Honorably Discharged Army Infantry veteran of the elite 82nd Airborne Division, an honorably retired three-decade Homicide Detective from Southern California, and a partner in a private investigation firm in Southern California that specializes in the investigation of cases of all forms of false allegations, prosecutorial misconduct and public corruption offenses. I have approximately four decades of investigative experience, investigating high profile and complex crimes.

I have volunteered with Save Our Heroes' since 2016, donating over 4,000 hours conducting over 300 investigations, primarily involving false allegations of sexual misconduct, military law enforcement agent and prosecutorial misconduct, and other forms of official misconduct. I have

conducted exhaustive investigations that have resulted in formal complaint packages that have been forwarded to a host of governmental oversight entities and investigative bodies to include the DoD Office of Inspector General, Military Service Secretaries ¹, DoD Standards of Conduct Office, DoD Hatch Act Unit, Office of the Judge Advocate General Professional Responsibility Branch and State Bar Associations ² in more than a dozen states, to name a few.

My extensive research, experience, and investigations of military sexual misconduct cases reveals that the current political narrative; that there exists a sexual assault epidemic in the military, is FALSE.

While sexual assaults occur in our military ranks, the actual and true problem of sexual harassment and assault is actually much lower as compared to the general public. In many cases, military law enforcement agents and prosecutors perform their duties and obligations in a fair, unbiased and professional manner, however, in too many cases, the quest to obtain convictions, by any means necessary results in egregious abuses of the military justice system.

In today's military environment, virtually any and all allegations of sexual misconduct are handled in such a manner that military law enforcement agents and prosecutors begin any inquiry with the presumption and the mandated requirement that the allegation is true ^{3 4 5 6}. As such, the investigative method and protocol by design involves the validation of the allegation, rather than an unbiased and impartial compilation and review of the facts and evidence.

The purpose of such an investigative and prosecutorial approach is to gather sufficient information and evidence for the purposes of referring a case to court martial with the ultimate

¹ 'Save Our Heroes' Writes Navy Secretary, Demands Court Martial of Navy JAG, Vice Admiral James Crawford,' <https://www.saveourheroesproject.org/save-our-heroes-writes-navy-secretary-demands-court-martial-of-navy-jag-vice-admiral-james-crawford/>

² Save Our Heroes' Files Complaint of Army JAG Special Victim Prosecutor Major Jenny Sue Schlack, <https://www.saveourheroesproject.org/save-heroes-files-complaint-army-jag-special-victim-prosecutor-major-jenny-sue-schlack/>

³ Stop Abusive & Violent Environments, 'Believe the Victim: The Transformation of Justice,' <http://www.saveservices.org/wp-content/uploads/SAVE-Believe-the-Victim.pdf>

⁴ Center for Prosecutor Integrity, 'Start by Believing Investigations,' <http://www.prosecutorintegrity.org/pr/investigations/>

⁵ Stop Abusive & Violent Environments, 'Believe the Victim' Investigations Reveal a Callous Disregard for the Truth,' <http://www.saveservices.org/2018/01/believe-the-victim-investigations-reveal-a-callous-disregard-for-the-truth/>

⁶ Save Our Heroes,' 'Victims are to be Believed and their Cases Referred to Trial: Air Force Judge Advocate General; Lieutenant General Richard Harding,' <https://www.saveourheroesproject.org/victims-believed-cases-referred-trial-air-force-judge-advocate-general-lieutenant-general-richard-harding/>

objective of securing a conviction. In most cases, exculpatory evidence is either ignored, glossed over, or not provided to a defendant in violation of mandated lawful discovery requirements ⁷.

These abuses have reached pandemic levels and has negatively affected tens of thousands of service members and their families. When these investigative methods are employed and the abuses are allowed to flourish, the after effects can and do last a lifetime, even when a falsely accused service member has either been cleared at some point during the investigative process, acquitted at court martial or cleared through the appellate process. Even when cleared, service members face a mountain of administrative obstacles which makes a military service career a near impossible task. Some sadly, have resorted to suicide.

Recent research ⁸ reveals that false or manufactured reports of sexual misconduct outpace actual assaults. Further complicating the matter is the problem of prosecutorial misconduct and unlawful command influence ⁹, which has reached the highest levels of the military and the DoD ^{10 11 12}. Some, in the highest positions of decision making and authority, openly, defiantly, and blatantly call for the abolishment of due process and rule of law in cases involving sexual misconduct allegations ^{13 14 15}.

In our nation's history, there has never been a more dangerous and volatile time for our service members as any allegation of sexual misconduct, even those that have no merit, are lacking in sufficient probable cause or evidence, or are blatantly false, will ultimately negatively affect service members and their families, perhaps for the remainder of their lives, even if completely

⁷ U.S. Supreme Court, *Brady v. Maryland*, 373 U.S. 83 (1963), <https://supreme.justia.com/cases/federal/us/373/83/>

⁸ Washington Times, 'False reports outpace sex assaults in the military,' <https://www.washingtontimes.com/news/2013/may/12/false-reports-outpace-sex-assaults-in-the-military/>

⁹ Navy JAG Docket, <http://www.jag.navy.mil/courts/documents/archive/2016/BARRY-201500064.UNPUB.pdf>

¹⁰ Navy Times, 'The Navy's top lawyer unlawfully scuttled a SEAL's case, court rules,' <https://www.navytimes.com/news/your-navy/2018/09/06/the-navys-top-lawyer-unlawfully-scuttled-a-seals-case-court-rules/>

¹¹ The Hill, 'Gillibrand holds up Navy nominee,' <https://thehill.com/policy/defense/188917-sen-gillibrand-places-hold-on-navy-nominee-over-sex-assault-stance>

¹² Washington Examiner, 'Kirsten Gillibrand holding up Navy nominee who criticized her sex assault bill,' <https://www.washingtonexaminer.com/policy/defense-national-security/kirsten-gillibrand-holding-up-navy-nominee-who-criticized-her-sex-assault-bill>

¹³ Washington Times, 'Kirsten Gillibrand got due process, but denies Kavanaugh his,' <https://www.washingtontimes.com/news/2018/sep/25/kirsten-gillibrand-a-hypocrite-who-got-due-process/>

¹⁴ City Journal, 'Due Process for Judge Kavanaugh, Senators eager to destroy his nomination must be restrained by the rule of law,' <https://www.city-journal.org/due-process-for-brett-kavanaugh-16192.html>

¹⁵ Reason, 'From a 'Due Process' Perspective, the Brett Kavanaugh Hearing Will Be a Farce,' <https://reason.com/blog/2018/09/23/brett-kavanaugh-ford-due-process-hearing>

cleared or exonerated. Even if completely cleared, affected service members most likely will be forced from the ranks, albeit any extenuating circumstances, which may cost service members tens of thousands of dollars in legal fees, rendering them and their families penniless.

I offer this written statement to the committee to further enlighten the members of the immediate and long-term effects on servicemembers, post acquittal, post-conviction, or a reversal of a conviction at the appellate stage.

I will provide a case example of one of the most egregious cases of a false allegation of rape and sexual assault and the lasting and ongoing affects it has had on a serviceman. Although the serviceman was ultimately cleared and remains in the service, it came at a great cost to him and his family, professionally, emotionally, and financially.

For the purposes of this example, the identity of this serviceman will remain confidential pursuant to the Privacy Act of 1974, since he has done absolutely nothing wrong.

In March of 2013, an enlisted female Marine accused a highly decorated and model serviceman of rape and sexual assault that allegedly occurred six and nine months previously. An exhaustive and intensive investigation was launched by the Naval Criminal Investigation Service (NCIS) and Navy JAG prosecutors.

After several thousand labor hours were expended among more than two dozen various professionals, it was determined that the allegations made by the female Marine were entirely false. It should be noted that there was no prior relationship, affair, or mistake of fact. This female Marine simply accused this serviceman at random, and uttered so many untruths that it became explicitly clear that the allegations were manufactured.

The case prompted comments that are contained in official court documents, and in part are listed below that came from both JAG prosecutors and defense counsel.

“.....As noted above, this incident hinges solely on the testimony and credibility of the complaining witness, [false accuser]. Again, the object evidence undermines her entire report and cast doubt that the event ever occurred. The NCIS investigation sought out any and all leads that could produce objective corroborating evidence but at each turn the leads proved the opposite. The additional defense evidence further undermines the allegations in this case. Every possible witness who had an opportunity to confirm aspects of [false accuser’s] report did just the opposite - they contradicted her claims.”

[false accuser] *“Calculating, aggressive and untruthful”*

....[false accuser] “is among the most calculating, aggressive, and untruthful complaining witness[es] that I have ever observed.”

“... you have overwhelming evidence that [false accuser] has a psychopathic personality, is manipulative and aggressive, is adept at exploiting loopholes and gaming the system, and is a brazen and pathological liar.”

During the course of the investigation, a frightening and shocking discovery was learned. Official documents and records obtained revealed unlawful influence on the part of a very vocal and prominent member of the legislature, that potentially could be multiple violations of federal criminal law statutes and were supported by the discovery of written and electronic forensic evidence.

Although cleared of all allegations, this serviceman was forced to appear before a retention board, at the direction and insistence of the same member of the legislature, which resulted in the filing of an official motion by defense counsel. The defense motion succinctly describes and offers proof that this member of the legislature engaged in criminal acts to include a federal criminal law violation of **Interference with a Tribunal** and **Obstruction of Justice** among multiple other federal criminal law violations.

Thankfully, this serviceman was ultimately allowed to remain in the service, despite the unlawful acts by a member of the legislature, and the fact that the plethora of evidence revealed that the serviceman was innocent of any and all criminal acts, after more than 4 ½ years.

As a result of being completely exonerated at all levels of the military justice and administrative process, the serviceman filed a civil suit against his false accuser. Ultimately, the serviceman had to abandon his civil action, after expending tens of thousands of dollars in legal fees, nearly rendering him and his family bankrupt.

During this civil action, another disturbing set of facts became known. When the serviceman filed his civil suit and during this process, he learned that his false accuser had been provided pro-bono legal services from a prominent Washington D.C. law firm that previously employed this same member of the legislature. Essentially, this law firm engaged in malicious delaying tactics in possible violation of the professional rules of conduct for attorneys, for the sole purpose of rendering this serviceman incapable of further financing his civil action.

As of today's, date, this serviceman has been denied promotion for nearly six years and may still be forced from the military, due to time in rank regulations. He has done nothing wrong, has

committed no crime or violation of regulations, yet his personal reputation still suffers as well as his family life and his interactions with co-workers, supervisors and subordinates.

Official records in this case reveal that the false accuser has a history of false allegations and initiated these allegations in order to fraudulently obtain lavish V.A. benefits for PTSD due to Military Sexual Trauma (MST).

A number of claims, facts and statements are contained within official records validating the false accuser's motives and desire to fraudulently procure and obtain V.A. benefits and one of those statements is listed below;

“Since January 2015, [false accuser] is collecting \$1,530.71 per month. Put another way, she gets \$18,368.52 per year from the U.S. Government. If that figure is not adjusted, then in 60 years (i.e. roughly over the course of a lifetime) this allegation will have been worth \$1,102,111.20 just in direct payments that she will receive from the U.S. Government.”

Another after effect of false allegations of sexual assault in the military, are the negative affects to another large group of individuals;..... the American taxpayer!

A review of official court documents in this case reveals that more than two dozen various professionals were involved in some form in this investigation. They include military law enforcement investigators, JAG prosecutors and defense attorneys, judges, paralegals, secretary's, clerks, administrative personal and forensic and evidence technicians and scientific personnel. The entire case file encompasses several thousand pages.

Considering the number of labor hours expended by professionals and related personnel, it is estimated that the financial cost of investigating just this one case, could exceed two million dollars. That's a two-million-dollar waste of financial resources to the American taxpayer, and two million dollars redirected from other priorities, such as funds to provide artificial limbs to service members injured in combat, or funds that could go to the prevention of the abysmal rate of suicide among service members and veterans.

Despite the fact that this fraud is **a violation of the False Claims Act, Title 31 U.S. Code § 3729**, there has never been any attempt to recoup these lost taxpayer funds from this false accuser. To my knowledge there has never been a scenario where a false accuser has ever been sanctioned in any military sexual misconduct case.

What is unknown to the general public is that there exists approximately two dozen various websites and Facebook pages that offer instruction to persons who desire to procure fraudulent V.A. claims for PTSD due to Military Sexual Trauma. Specific instructions and key words describing symptoms are provided to potential petitioners, and virtually all are approved without question, scrutiny, or documentation to support such claims.

Based on the number of false or manufactured cases of sexual misconduct that Save Our Heroes' has received and investigated in a period of just three years, our Board Members and volunteers opine that the waste and loss to the taxpayer is several hundred million dollars a year. This is just an estimate as there are no quantitative studies that support this estimate.

Save Our Heroes,' as part of our mission objective of accountability, have attempted to bring this egregious travesty of justice to the attention of the appropriate governmental investigative and oversight bodies. In August of 2017, after conducting a more than six-month exhaustive investigation, Save Our Heroes' submitted a formal complaint, consisting of several hundred pages of official documents and supporting evidence, requesting a criminal investigation and prosecution of the false accuser to the Federal Bureau of Investigation, and the V.A. Office of Inspector General.

There was no response by either agency and SOH filed a second request in February of 2018. There was still no response and SOH filed a formal complaint with the FBI Office of Professional Responsibility in June of 2018 due to the FBI's failure to launch an investigation, and its failure to interview the more than two dozen witnesses in this case. There has been no response from the Office of Professional Responsibility.

Having received no cooperation or contact from either the FBI or the VA OIG, SOH assisted this serviceman in his contact and with supplying official documents to this serviceman's elected representative. It is believed that an inquiry is underway.

This case is by no means unusual; in fact, it is the norm¹⁶. This case illustrates that it is not just the service member who is negatively affected by false allegations of sexual misconduct, or prosecutorial, official, or legislative misconduct, but the service member's personal and professional reputation, family, children, colleagues, co-workers, supervisors, subordinates, the numerous military professionals and administrative personnel involved in this case, and the American taxpayer that are also negatively affected. These collateral issues have yet to be considered or addressed by any investigative committee, but they do in fact have a negative affect on large swaths of individuals.

¹⁶ Military Corruption, 'Former JAG Officer Speaks Out on Injustice involving Maj. Burris,' <http://militarycorruption.com/burris-3/>

It is hoped that the DAC-IPAD Committee will consider the information contained in this correspondence in the hopes that substantive legislative change and reform will be implemented to restore the presumption of innocence, due process and constitutional protections. Serious consideration should be given to the immediate **formation of an unbiased and impartial Conviction & Accountability Unit.**

So many of our honorable service members have sacrificed for and many have given their lives to enjoy the rights that all citizens enjoy. They should not be denied these rights because of a false political narrative, and those who promulgate these injustices; false accusers, officials, and political office holders who abuse their authority and oaths must be held accountable.

The current state of affairs in the military with respect to false or manufactured sexual misconduct allegations, and the accompanying official misconduct is dire and should be considered a **Threat to National Security.**

While the intent to reduce sexual misconduct in the ranks of the military is correct and noble, the current method and the systemic abuses are destroying the lives of thousands of service members and their families, and the waste to the taxpayer are in the hundreds of millions of dollars a year.

For additional information and copies of letters that have been sent, the committee members are welcome to visit our website where copies can be downloaded with the links provided.

Additional information is available upon request, keeping in mind the provisions of the Privacy Act of 1974 as to the identity of the serviceman involved in this case.

Sincerely & Respectfully.



Michael Conzachi
Director Investigations
Save Our Heroes', San Antonio, Texas

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cc: SOH Board of Directors, Advisors & Volunteers