Public Comment
LCDR Manuel Dominguez

06/07 DEC 22

From: Manuel Dominguez, Lieutenant Commander USN
To: Defense Advisory Committee – Investigation, Prosecution, & Defense of Sex Assault in the Armed Forces (DAC-IPAD)

Subj: LCDR MANUEL DOMINGUEZ LETTER TO DAC-IPAD, DECEMBER 2022 PUBLIC MEETING

Ref: (a) April 21, 2022, public comments to the DAC-IPAD from LCDR Manuel Dominguez
(b) April 21, 2022, DAC-IPAD public meeting transcript (pages 115-127)
(c) September 21, 2022, DAC-IPAD public meeting transcript

To the DAC-IPAD Staff,

1. Thank you for your time and forum for communication. I previously made comments and spoke to the committee on April 21st. As a follow-up, I invited the committee to send representatives to my rehearing held from 27 June – 01 July. At that rehearing, (which was observed by your staff) I was fully acquitted of all charges by a panel of officer members at a general court-martial. The allegations levied against me were patently false, and the jury clearly saw that. The military judicial process started for me in February of 2017 and unfortunately, the process is still on-going nearly 6 years later. Following my exoneration, I have not received my due back-pay and allowances, I have not received my due promotion, my records have not been corrected, and I am facing forced retirement due to no fault of my own.

***Note***: I also want to provide better context to an observation your staff made regarding my court-martial, the comment was that "both the prosecution and defense were incredibly well staffed (***reference c***)." The reasons for the observed parity resulted from: 1) my family investing in procuring civilian counsel and, 2) the uniqueness of the convening authority being located in Hawaii while the trial was held in Washington, thus, I had assigned representation to accommodate this dynamic. Observations of prosecution and defense compositions would illustrate disparity tilted toward prosecution teams, my rehearing was outside the scope in this regard (the former dynamic being illustrated during my first trial among other cases).

2. Simply put, there's an abhorrent lack of accountability on the part of the Navy. I have always maintained my innocence to the egregious allegations to which I was eventually cleared. The results from the rehearing would have been the same results for the first court-martial if it were not for three significant abuse of discretion errors with serious evidentiary ramifications committed by the judge. Moreover, the actions of the original trial counsel were unethical in withholding ***exculpatory*** evidence from panel members. Prosecutorial zeal and lack of a merit-based approach resulted in my wrongful investigation, prosecution, conviction, and incarceration. Yet, there's been no recourse or accountability for those involved in my case. Thankfully, the judge in my case has retired and can no longer make legal errors. A true merit-based assessment of my case should have resulted in charges never being brought forward, but no one had the courage to look at the facts for their face value. Decisions were made based on optics, emotions, pressure, and institutional risk management. ***I remind…this is the same Navy that has repeatedly failed victims of sexual assault, mishandled numerous cases like***

***mine, failed sailors' families in the fatal ship crashes of the USS McCain and USS Fitzgerald, woefully erred in the Bonhomme Richard ship fire case, and could not grasp the severity of the Red Hill fuel-water crisis in Pearl Harbor, Hawaii until it was too late.***

3. The committee's debrief of my case (***reference c***) is lacking this essential observation: I was locked up for 22 months, during which time I was stripped of my family, career, financial stability, mental health, and dignity. Furthermore, upon my original conviction being overturned in October of 2021, my release was not secured until I filed a writ of habeas corpus to a federal district court, upon which the court **forced** the Secretary of the Navy to show cause. I also reiterate that since my acquittal, I am still fighting for my due pay, rights, and corrections. I have exhausted all means of administrative relief and I have been forced to hire civilian counsel to remedy post-trial matters. ***The Navy's official stance has been to deny me continued legal and administrative representation due to "my case being closed, and that I am no longer considered a client after being acquitted."***

4. In the aftermath of my acquittal, I have fought for provisions contained in 10 USC 875: Art 75 Restoration. My back pay, promotion to O5/CDR, adverse record corrections, as well as career billeting/progression have all been put on hold due to this miscarriage of military justice. I also requested the bureau of Navy personnel to enact a statutory retirement ***time hold or freeze*** on my time in grade data until the Bureau of Corrections for Naval Records can review and favorably adjudicate my record (which was projected to take 10-18 months to correct). Due to these false allegations, I have two failures to select in my record which are not of my own fault or failure. Prior to this ordeal I was on an upward career track and progression to promote within the Surface Warfare Officer community (1110 designation); I wholeheartedly believe I could have been a commanding officer of a Naval warship.

5. Suffice it to say, I have in-depth and firsthand experience with how the military justice system oversees sex assault allegations, I make the following ***actionable*** comments for consideration on how to improve the military justice system:

A. First, I applaud the recognition and work which resulted in removing the convening authority from sex assault disposition decisions, this is a particularly important and monumental step. ***But as I pointed out in previous comments (reference b), the threshold of probable cause remains the essential problem in disposition decisions***. The premise of eradicating sex assault, coupled with an overwhelmingly victim-centric (and irreproachable) stance puts potentially innocent service members at risk for wrongful prosecution…regardless of whom is making the decisions. I recommend the committee continue to monitor the Article 32 / preliminary inquiry phase to give decision makers the best process for determining merits of an allegation. ***The article 32 juncture is the pivotal point where the beyond a reasonable doubt standard must be applied***, such is one check in preventing wrong cases from going forward. Had my case been truly evaluated on its merits and these fact-finding standards, it is unlikely my case would have gone to court-martial in the first place. I ask the committee to draft findings on this matter and publish them in their report.

B. ***Second, it was hypothesized that majority verdicts protect jury members from undue disclosure of their vote (reference c).*** On its face, this is a good reason for majority verdicts, but the reasoning undercuts progress the military has made in undue command influence and protecting service members from reprisal. In relying on majority verdicts for this reason alone, the military is signaling that it does not trust its service members to function as professionals. Furthermore, there are information measures that can be enacted to protect jury member composition & deliberations from being general knowledge. Have we forgotten the scope and magnitude of effects when charges are brought forth on a service member? Simply put, the stakes are too high, and the cost too much in criminal proceedings. ***While beyond a reasonable doubt does not mean all doubt…each impaneled jury must be convinced in unanimity to convict a service member of such serious crimes***. Continuing to rely on non-unanimous verdicts is a violation of basic constitutional rights, state and federal guidelines, and the Supreme Court ruling in Ramos v. Louisiana. I once again ask the committee to draft findings on this matter and publish them in their report.

C. ***Third, the military justice system does not have a standing conviction integrity unit, directorate, or office***. Currently, the process of conviction integrity is premised on the appellate process in of itself. The problem here is two-fold, for one, cases like mine, it takes too long for injustice to be corrected. There were 3 significant abuse of discretion errors with serious evidentiary ramifications as well as cumulative error which rendered my case as egregiously unfair, hence the setting aside of findings in my case. ***This occurred after I had already spent nearly 2 years wrongfully incarcerated***. The other issue is that military appointed appellate attorneys simply cannot match the experience, care, and continuity of individually procured civilian counsel, the service member finds themselves in a "pay-for-justice" arrangement that is resource dependent. Standing up a conviction integrity unit is a needed resource to aid in identifying the right cases for expedited review. I ask the committee to form a subcommittee on this matter and publish their findings.

D. ***Fourth, in evaluating regulations, specifically 10 USC 875: Art. 75. Restoration,*** the law is woefully inadequate and does not address the psychological, emotional, career, and financial damages inflicted on falsely accused service members. On one hand, my accuser has financially benefitted from DoD instruction 1342.24 (abused dependent transition compensation) and is in fact, still being paid by the government…this is an anti-deficiency act violation. On the other hand, I am still fighting for my own rights to be restored even after having been cleared of all allegations. Furthermore, due to the Feres act, I am unable to seek financial restitution, or punitive damages from the government. Such is comparatively unfair when considering the recent ruling from the Court of Appeals for the Ninth Circuit – the ruling allows for military sexual assault survivors to sue for damages sustained during service (See Col. Kathryn Spletstoser (ret) vs. U.S.). For those service members wrongfully accused and exonerated, I advocate for punitive compensation, explicitly compensation outside backpay that is owed. This compensation should come from the same operations and maintenance funding allotted to DoD instruction 1342.24. Congress has already amended the law to permit service member claims for medical malpractice. Pursuant to the ninth circuit appeal (above) and in line for malpractice in principality, ***service members should be allowed to pursue recompense for legal malpractice from the government as well***. Servicemembers who

are falsely accused and exonerated deserve no less consideration; the current structure is an egregious double standard. I ask the committee to tackle this topic in a subcommittee and publish their findings.

E. ***Fifth, I advocate for and recommend follow-on codification of 10 USC 875: Article 75 Restoration.*** No service has an instruction, standard operating procedure, or commander's guidance on what to do for exonerated service members. A reading of Article 75 defines bounds, but no ways or means; the law is vague and woefully inadequate. Each service has a myriad of instructions that codifies nearly every aspect in the military, yet there is no guidance to oversee Article 75 Restoration. Considering the amount of legislation and policy dedicated to combating sexual assault, there must be a comparative 'closing of the loop' that manages what to do when the military justice system gets it wrong. There must be DoD wide codification for managing these types of cases because exonerations do actually happen, there must be guidance on the matter. ***I specifically recommend a DoD wide instruction that prescribes specific measures to enact UCMJ Article 75 across all the service branches.*** Research will show a lack of guidance across the services for Article 75, enacting such needed guidance would provide **actional** vice in name only restoration.

Along with the financial compensation I addressed in 5.D above, I recommend 2 key points to be codified in future instructions. **First**, exonerated service members that return to active duty should be afforded expedited transfer orders that facilitate the needs of the exonerated service member. The committee and DoD have already committed ways, means, and analysis in facilitating expedited transfer orders for victims of sexual assault. The same level of trauma that occurs for victims are also felt by wrongfully accused service members, facilitating expedited transfers for exonerated service members is one step in restoration. **Second**, there are serious mental health concerns incurred by victims (and their families) of wrongful prosecution in the military justice system. Unfortunately, there are numerous administrative obstacles in receiving requisite care. When cases involve child or minor victims and exonerated service members, there is extensive therapy required to even begin the healing process. Military insurance does not cover these circumstances. Receiving due and requisite mental health care is not as arduous for victims of sexual assault in the military. Service members who are falsely accused and exonerated deserve no less consideration; the current structure is an egregious double standard. I ask the committee to tackle these issues in a subcommittee and publish their findings.

F. ***Sixth, I recommend what I refer to as 'comparative composition' in military cases.*** There is a disparity of resources afforded the accused versus the resources afforded the alleged victim (especially early in the process). I advocate for the creation and appointment of a Special Defense Liaison (SDL) and Special Defense Investigator (SDI) that work in the interest of the accused. The positions would be akin to their prosecutorial counterpart's, Special Victim Liaisons (SVL) and Special Prosecution Investigators (SPI); these positions would provide early parity and balance in the current victim-centric resource composition. ***The two perspectives would be invaluable in disposition decisions.*** Service members who are accused of such serious offenses deserve no less consideration; the current structure is an egregious double standard that should be remedied. Additionally, the creation and appointment of a Special Defense Liaison (SDL) would serve as case managers for exonerated service members to navigate the administrative hurdles in non-codified ***10 USC 875: Art. 75. Restoration*** procedures. As discussed

earlier, the Navy's official stance in my case has been to deny me continued legal and administrative representation due to "my case being closed and no longer considered a client due to being acquitted." This should never happen to another exonerated service member and these issues need to be corrected. I ask the committee to investigate, prescribe policy on this matter and publish their findings.

5. The court-martial of U.S. v. Dominguez, LCDR USN is a sad and troubling tragedy. There were no winners in this case, just broken pieces that are left to be picked up. The damage inflicted by the military justice system on my family is incomprehensible to those not having lived the circumstances. I request the committee consider the points I've brought up; my case is not some one-off anomaly. ***There are wrongly accused service members out there right now***...there will continue to be more if actions are not taken to preserve due process and a presumption of innocence. Such consideration is not mutually exclusive to eradicating sexual assault in the military. Due process and fairness are requisite pillars to ensure integrity of the system, to protect victims of sexual assault, and to prevent the persecution of innocent service members. Thank you for your time and consideration, ***I sincerely hope the committee turns their intentions and words into substantive action.***

Copy To:

Tami Mitchell

Very Respectfully,

***Manuel Dominguez***
Lieutenant Commander
United States Navy
***"Have a powerful day..."***

# *Dominguez DAC-IPAD:* Survivor Impact Statement 06/07 December 2022

- ***My name is LCDR Manuel Dominguez, and I've served honorably in the United States Navy for 19 years.*** I spoke before this committee in April of this year. Your committee sent representatives and attended my retrial in June. My long fought for exoneration occurred on July 1st of this year and observations of my court-martial were briefed in September.

- My own experience with the military justice system, reviewing many cases (and not just my own), and interactions with inmates, tells me this. The process 'on the whole,' gets it right on most occasions. Sexual assault survivors are rightfully being taken more seriously than in the past and more offenders are being held accountable. However, the problem is, and remains a system that also gets it wrong...we need to face that reality and do something about it. ***The process remains overtly 'victim-centric' with few, time-late, and in many cases, plainly ineffective mechanisms for accountability when defendants' rights have been violated***. My key issues and pleas on actionable items to the staff is contained in my policy statement contained therein, so I will not rehash those points. Instead, I want to convey a personal perspective in this portion.

- ***First,*** for those of you who have children, I want you to imagine being alienated from them for 6 years. ***I have not seen or spoken to my children in 6 years... please let that sink in***. The military justice system is a direct contributor to that reality. In pursuit of 'getting a conviction,' prosecution teams set conditions to further confuse my daughter...she doesn't know what the truth is, she's only been fed perspectives from one side and one side only. Throughout the 6-year process she never spoke to me or my legal teams...she was forced to interact with them solely in a courtroom setting. No child should ever have to go through that, especially when the evidence and facts don't support the case. The adults in the military justice system, the stewards of the process have failed my daughter, my son, my family, and many other service members.

- ***Second***, imagine being handcuffed and having your feet shackled. Think of shuffling your feet in small steps in the cold, wearing the often-imagined orange jumpsuit while being transferred. I recall people and children staring at me at the airport, realizing I was handcuffed and being escorted by guards. Most people averted their eyes, I could see and hear children asking their parents, "what did he do?" I received death threats and sexual assault threats from inmates in my first week at Fort Leavenworth. I remember being stripped searched, naked, and having to spread my butt cheeks and shift my scrotum to confirm I had no items on me. In the three military confinement facilities I found myself in, I came across 2 poignant observations...most people assume you are guilty, and most people don't view you as an actual person. ***Me being innocent had absolutely no bearing on these circumstances***.

- ***Third***, imagine a personal or private nightmare that is instead displayed very publicly. Think about the people most important to you witnessing the injustice in real-time. My wife and in-laws witnessed me taken into custody...I was there one day and gone the next. My family visited

me until they couldn't, COVID prevented me from seeing loved ones for over a year, those were tough times. I often thought of committing suicide...knowing the truth, the love I received, peoples belief in me, and hoping the appellate process might correct the injustices are all that prevented me from taking my life. The circumstances were a far cry from standing as the tactical action officer onboard a navy warship...leading sailors and doing the bidding of what I once considered to be a great nation.

- ***Lastly***, being exonerated is not a 'lifetime' or 'hallmark movie.' No one in the Navy has offered an apology or words of accountability; I don't imagine anyone from the Department of Defense ever will. Words and phrases like "predecessor, based on legal advice, administrative requirements and system or legal flaws" are tossed around casually by those not having experienced what I have lived. The road to restoration is paved in glass and gravel, I am still fighting for my rights and it's akin to pulling teeth. I look forward to ending my service with all that I am due...I remain very conflicted about the Navy and this country. In the collective execution of mandates and good intentions we lost sight of the responsibility and ramifications of our actions and policy. I request the committee consider the points I've brought up here and more so in my written statement; my case is not some one-off anomaly. ***There are wrongly accused service members out there right now...there will continue to be more if actions are not taken to preserve due process and a presumption of innocence***. Such consideration is not mutually exclusive to eradicating sexual assault in the military. Due process and fairness are requisite pillars to ensure integrity of the system, to protect victims of sexual assault, and to prevent the persecution of innocent service members. No one should ever have to go through what myself and family have gone through. Thank you for your time and consideration, ***I sincerely hope the committee turns their intentions and words into substantive action.***

Signed,

***Manuel J. Dominguez***
LCDR, USN
***"Have a powerful day..."***

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November 28, 2022

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Re: *United States v. LCDR Manuel J. Dominguez*

Dear DAC-IPAD Members,

I am writing to you regarding my representation of LCDR Manuel Dominguez, whose case has been the topic of several committee meetings. I was an Army Judge Advocate, retiring on September 30, 2016 after 20 years of service. I have been in private practice since retirement, defending Servicemembers at trial and on appeal. I was the first Army Judge Advocate to serve as a trial counsel, defense counsel, Government appellate counsel, Special Victims Counsel (SVC), and Law Instructor at the Army's Military Police School at Fort Leonard Wood, Missouri, where I was rated one of the best Law Instructors in 25 years. I was certified as an SVC in 2014 and as an Instructor in 2015. I also defend college students accused of "sexual misconduct" in Title IX proceedings. My biography can be reviewed on my office's website and on Avvo at www.avvo.com/attorneys/80911-co-tami-mitchell-1506390.html.

I represented LCDR Dominguez during his successful appeal of his wrongful court-martial conviction, and during his rehearing in 2022, which resulted in a full acquittal. This was a righteous and just acquittal of someone who was factually innocent, and who should never have been prosecuted. I write this letter in my personal capacity, to create a public record of LCDR Dominguez's innocence, respond to questions and comments about his case, and provide my observations and recommendations for improvement of the military justice system.

I was surprised no one asked the committee members who observed LCDR Dominguez's rehearing why he was acquitted. The facts as presented to the panel members, and which were *always* the underlying facts of this case, showed that LCDR Dominguez committed no acts of "molestation" of his daughter, OD. Instead, his ex-wife, JB, falsely and maliciously accused him of "causing" OD to touch his penis and digitally penetrating OD's vulva shortly before JB filed for a divorce in February 2017. JB and LCDR Dominguez had agreed in August 2016 that she would file for their divorce when she met the 6-month residency requirement for Texas. For two years after JB's initial report, the allegations mounted in severity and frequency (including an allegation of oral

penetration of OD's vulva), culminating in LCDR Dominguez's wrongful conviction and confinement for almost two years.

*Motives for False Allegations*

JB had several motives launching false accusations against LCDR Dominguez.

1. Emails between LCDR Dominguez and JB, hours before JB's report to law enforcement officials, showed that she believed LCDR Dominguez intended to report her for physically abusing OD. This was based on JB's admission she spanked OD so hard that OD needed an icepack (JB claimed this spanking prompted OD's initial "disclosure"). Under the circumstances, JB made false accusations of "molestation" to preempt LCDR Dominguez from making a truthful report of JB physically abusing OD.

2. LCDR Dominguez and JB argued over money, specifically that his support obligation would decrease from $6,000/month for the entire family to about $2,000/month for the children. JB resented him for living "the high life" while she had to singularly parent two small children while working and finding a place to live.

3. JB was frustrated with OD, who actively voiced her hatred of JB for separating her from her preferred parent—LCDR Dominguez. In fact, OD expressed her hatred of JB by telling JB she wanted her (JB) to die so that she (OD) could return to Hawaii to be with her father. Launching false allegations against LCDR Dominguez led to a no-contact order, which helped JB regain control of OD.

OD could not distinguish between telling the truth and telling a lie. In her own words during her first "forensic" interview, "lying is like telling the truth." OD also related during this interview that she had discussed the allegations with JB "a million times in [her] life." OD had her own motives to repeat the false accusations. She was miserable in Texas, and wanted to return to Hawaii. Having been spanked hard enough to require an ice pack, OD succumbed to JB's emotional, direct questioning, and gave an answer that JB "desperately wanted to hear." From that point forward, OD received positive attention from JB and other individuals. OD has been so brainwashed she cannot distinguish fantasy from reality. She has also been thoroughly alienated from LCDR Dominguez that specialized, reunification therapy is necessary to reestablish their relationship.

*The Evidence*

1. "Causing OD to Touch his Penis"

a. LCDR Dominguez did not "cause" OD to touch his penis. She poked it once while they showered together because she was curious about the differences between boys and girls. LCDR Dominguez stopped her, reported the incident to JB (who laughed about it), and stopped showering with OD, as any reasonable father would do. "Communal showering" was a normal activity for this family.

b. OD was not credible. Her statements from initial disclosure to JB, to her first "forensic" interview (about a week after initial disclosure), to a law-enforcement driven "medical examination" (a subject of the appeal and not admitted during the rehearing), to her second "forensic" interview (16 months after the first), to the first court-martial, to the rehearing, varied widely, and were contradicted in several key aspects by JB. For example, OD claimed that JB and a friend of JB's returned from a "girls' night out," caught OD touching LCDR Dominguez's penis, and LCDR Dominguez went to jail as a result. JB denied witnessing this. The only time LCDR Dominguez went to jail was because of a domestic dispute in Texas during the family's PCS move from Japan to Hawaii in 2015. OD's second "forensic" interview was wholly unreliable, the result of more than 16 months of coaching from JB and OD's therapist at the child advocacy center, and leading, suggestive questioning by the forensic interviewer.

c. Ultimately, OD's report of LCDR Dominguez putting a "white" or "clear" (or "green" according to her second interview) "sticky" or "slimy" substance on her mouth that tasted like throw-up, and misrepresented as "ejaculate," was nothing more than LCDR Dominguez putting hydrocortisone cream and Vaseline around OD's mouth to treat her hand-foot-mouth disease. This illness resulted in a rash around OD's mouth. OD even demonstrated this during her first forensic interview when she talked about the "red dots" around her mouth, but the forensic interviewer never explored this. OD's hand-foot-mouth illness was corroborated by text messages between LCDR Dominguez and JB, with a picture of OD, in November of 2016 when LCDR Dominguez came to Texas to spend Thanksgiving with his children. OD had a history of hand-foot-mouth disease, with the rash getting inside of her mouth, which caused her to throw up when she ate.

2. "Digital Penetration of OD's Vulva"

a. LCDR Dominguez never disputed digitally penetrating OD's vulva. Rather, he disputed he had a sexual intent in doing so. The evidence showed LCDR Dominguez digitally penetrated OD's vulva while performing his parenting duties to wipe OD after toileting and bathing, or to apply medication. OD had an extensive medical history of injuries and illnesses in her vulva area, including but not limited to labial adhesions, urinary tract infections, and yeast infections, which would worsen if *any* residual moisture remained. In her first forensic interview, OD described LCDR Dominguez separating her labia while he wiped her, and demonstrated the action. LCDR Dominguez testified he and JB did this because it was medically necessary to deal with her labial adhesions. This was corroborated by OD's medical records, which could have been obtained by LCDR Dominguez's previous civilian defense counsel, but he neglected to request them.

b. OD also described in her first forensic interview, and demonstrated, that she would bend over with her "butt in the air" for her parents to wipe after defecating ("the credit card game"). LCDR Dominguez testified both of the children would bend over for visual inspection and wiping by both parents, if needed, to ensure no fecal matter remained. Their son was just beginning his toilet training, and OD was not yet fully capable of wiping herself. Once again, OD twisted a normal parenting activity into a sinister "little piggy game" due to manipulations by her mother and her therapist at the child advocacy center.

3. "Oral Penetration of OD's Vulva"

a. LCDR Dominguez did *not* orally penetrate OD's vulva. As detailed in the NMCCA's 2021 decision, 81 M.J. at 806, 815-20, OD experienced oral copulation from a neighbor girl during a "privacy game," which was not litigated at LCDR Dominguez's first court-martial. During the rehearing, this incident was the subject of a defense motion pursuant to MRE 412, which was not opposed by the Government or OD. Furthermore, during LCDR Dominguez's first court-martial, OD flatly denied *under oath* that he ever put his mouth on her vulva. This was during direct examination by the *trial counsel*.

b. OD's testimony changed dramatically and was absolutely incredible. She initially disclosed during her second forensic interview, in response to suggestive questioning, that LCDR Dominguez put his mouth on her vulva in her parents' bedroom on their bed while JB was in the adjoining bathroom.[1] But OD testified at the rehearing that he licked her vulva while she was sitting on the toilet in her parents' bathroom. During a pretrial interview by trial counsel and the Government's expert witness, OD claimed she was "pretty sure" this incident happened. By the time OD testified at the rehearing, she was "confident" this incident happened, obviously the result of continued influence.

*Rehearing Litigation*

Motions were litigated in May of 2022. Some of motions the defense filed were: (1) MRE 412 related to OD's sexual experience with another child (unopposed); (2) MRE 513 related to OD's behavioral health records in Hawaii and from a child advocacy center in Texas (granted with respect to the Texas records, based on JB's waiver of OD's privilege); (3) motion to dismiss for a defective referral and lack of jurisdiction due to an improperly convened panel (almost half of panel members were junior to LCDR Dominguez at the time of referral) (denied); (4) motion to compel production of OD's educational and medical records in Texas (granted on educational records, denied on medical records); (5) motion *in limine* regarding MRE 404(b) and 414 evidence (granted in part); (6) motion to suppress LCDR Dominguez's testimony from his first court-martial; and (7) motion to compel production of witnesses (granted in part).

Disturbingly, trial counsel received OD's counseling records from Texas and Hawaii during LCDR Dominguez's first court-martial; the records contained exculpatory information. Yet instead of disclosing them to defense counsel or submitting them to the military judge for an *in camera* review, as they were obligated to do, trial counsel removed them. Those records were subsequently "lost."

The Government affirmatively disavowed an intent to introduce OD's forensic interview statements under the residual hearsay exception. However, the Government wanted to introduce some of OD's statements as prior consistent statements, while the Defense sought to introduce some of her statements as prior inconsistent statements. In response to a comment that the presentation of OD's prior statements seemed "confusing," this is because of the different evidentiary standards for prior consistent statements (admissible as substantive evidence), prior inconsistent statements made under oath (also admissible as substantive evidence), and prior

[1] A picture of the master bedroom and adjoining bathroom contradicted OD's claims.

inconsistent statements generally (limited to evaluating credibility of the witness's in-court testimony). This required both parties to create clips to comply with the military judge's order to "surgically excise" OD's forensic interview statements with the "precision of a scalpel, not a meat cleaver." The panel members were able to view these clips in the courtroom during deliberations.

Responding to the comment that the panel members seemed "annoyed" at having to leave the courtroom while the parties were litigating issues, the Rules for Court-Martial require everything said in court to be "on the record," as Congress defines that term (Article 1(14), UCMJ). "Sidebars" are not allowed because there would no "record" of the discussion in the audio recording or written transcript. The panel members seemed to be very understanding of this dynamic.

*Observations and Recommendations*

LCDR Dominguez's case is one of the most egregious miscarriages of justice I have seen in my 26+ years of practicing military law. In my opinion, the victim-centric changes over the last two decades have not "improved" military justice. Instead, the responses to Congressional and Presidential demands for "more prosecutions and convictions" have created imbalance because the changes are designed to make it easier for the Government to prosecute and obtain convictions, and harder for defense counsel to defend. As long as changes to military justice favor the Government, at the expense of the accused, there will be more cases like LCDR Dominguez's.[2] I offer the following observations and recommendations:

1. Confirmation bias was rampant throughout the investigation, due to indoctrination to blindly believe putative victims and not challenge their credibility. A law enforcement agent even went so far as to suggest that OD was credible because "she looks credible" in her forensic interview. "Start by believing the victim" should not have a place in a criminal investigation because it injects bias into what should be an impartial process.

a. As a result of "believe the victim" dogma, there were no efforts to challenge JB's credibility, even though she was an interested party and gave wildly conflicting statements about what OD allegedly reported to her. In her first forensic interview, OD failed the "test" for evaluating her ability to distinguish between the truth and a lie, yet the forensic interview proceeded. The forensic interviewer failed to follow up with OD on inconsistencies within each of her interviews and inconsistencies between her first and second interviewers. The forensic interviewer also failed to pursue an alternative hypothesis that "abuse" never happened.

b. Law enforcement agents did not pursue leads that would have exposed JB and OD as being incredible, such as identifying JB's friend who purportedly witnessed OD touching LCDR Dominguez's penis. They also ignored the biggest indicator of innocence—LCDR Dominguez actively supported OD's behavioral health therapy, *and cooperated with JB in finding a therapist for OD when she moved from Hawaii to Texas.*

[2] This problem is not unique to the military. A wealth of information about the dangers of "victim-centered" investigations and prosecutions can be found at www.prosecutorintegrity.org.

**RECOMMENDATION**: Law enforcement agents need to be trained to remain objective, and to pursue the facts *wherever they lead*, even when those facts show innocence.

2. Disparity in resources. LCDR Dominguez had to pay for civilian defense counsel, and for the defense's expert consultants travel time for both courts-martial. At his previous court-martial, LCDR Dominguez had *one* military defense counsel, who was replaced by another military defense counsel late in the process. LCDR Dominguez was assigned two military defense counsel for his rehearing because he was returned to Hawaii, but the rehearing was held in Bremerton. Trial counsel got access to JB and OD for both trials; defense counsel did not. Military defense counsel do not receive the same level of paralegal and administrative support that trial counsel receive.

**RECOMMENDATION**: Military defense counsel should be resourced on par with trial counsel. Consider establishing rules and a fund for "court appointed" civilian defense counsel. Create a rule that defense counsel are entitled to interview *all* Government witnesses, including the complainant and other witnesses with a vested interest in the outcome. Perpetuating the idea that putative victims and those with a vested interest (such as OD and JB in this case) have a "right to refuse" pretrial interviews by the defense counsel harms military justice and creates the risk that defense counsel will be ineffective for its inability to investigate. It is difficult, if not impossible, for defense counsel to make informed decisions about strategy when Government witnesses refuse reasonable defense requests for interviews.

3. The standard for referring cases to trial, probable cause, is too low. The value of an Article 32, UCMJ, hearing has been eviscerated by changing its purpose. It used to provide a realistic assessment of the strengths and weaknesses of the Government's case, including remarks about the believability, or lack thereof, of witnesses, as well as a means of discovery for the defense.

**RECOMMENDATION**: Restore Article 32, UCMJ to its former purpose, to include being a source of discovery. Raise the bar for referral to whether there is sufficient *admissible* evidence to obtain a conviction beyond a reasonable doubt."[3] Consideration should also be given to permitting retired Judge Advocates to serve as Article 32 preliminary hearing officers. Many retired Judge Advocates have a wealth of military justice experience, and could provide valuable insight. Also consider making a recommendation of non-referral binding on the Government.

4. A panel member questioned the military judge as to whether the public would know how the members voted. However, this does not justify continuing non-unanimous verdicts. Concerns about undue influence for disclosing a panel member's vote would only be valid if Congress required unanimous acquittals. After *Ramos v. Louisiana*, 140 S. Ct. 1390 (2020), our military justice system is now the *only* American criminal justice system that does not require unanimous verdicts. Consider the following:

[3] This Committee addressed this issue in its October 2020 report at pp. 55-57, Finding #96. "The difference between the minimal evidentiary threshold of probable cause and the beyond a reasonable doubt standard needed to obtain a conviction at trial is significant." *Id*. at 56.

a. Courts-martial panels are now comprised of eight members (except in capital cases);

b. The risk of convicting an innocent person rises as the size of the jury diminishes. *Ballew v. Georgia*, 435 U.S. 223, 234 (1978);

c. Non-unanimous verdicts have racist origins. *Ramos*, 140 S. Ct. at 1417-18 (Kavanaugh, J., concurring); *see also United States v. Causey*, 82 M.J. 574, 591 (N-M. Ct. Crim. App. 2022) (Gaston, S.J., concurring), *rev. denied*, 2022 CAAF LEXIS 618 (C.A.A.F. Aug. 26, 2022);

d. "The active-duty component officer population is less diverse that the eligible civilian population," and "the officer corps is significantly less racially and ethnically diverse than the enlisted population, for both active and Reserve Components." Department of Defense Board on Diversity and Inclusion Report: Recommendations to Improve Racial and Ethnic Diversity and Inclusion in the U.S. Military, Executive Summary at viii, available at https://media.defense.gov/2020/Dec/18/2002554852/-1/-1/0/DOD-DIVERSITY-AND-INCLUSION-FINAL-BOARD-REPORT.PDF (last accessed Aug. 11, 2022).

As a minority, LCDR Dominguez's reality was that he, an officer sworn to uphold and defend the Constitution, was denied the protection of a unanimous verdict in a system with less racial diversity, because he is a Servicemember. While he was fortunate to finally be exonerated by a panel of officers, I have many other minority clients who are not. It is antithetical to "justice for all" that the Constitution now provides protection of a unanimous verdict for *everyone except* those who are sworn to uphold and defend it.

**RECOMMENDATION**: Congress should require unanimous verdicts of guilty to convict Servicemembers, with authorization for one more trial if there is a "hung" panel. If there is not a unanimous verdict after a second trial, the Servicemember must be found not guilty. Consider the use of retirees to serve as panel members to address issues of "undue influence."

5. The ability of a CCA to reverse a wrongful conviction for factual insufficiency remains vital to the legitimacy of the military justice system, especially in light of the fact that non-unanimous guilty verdicts are still permitted. In my experience, the CCAs do not abuse this authority, and use it as an option of "last resort."[4] When the CCAs do set aside convictions for factual insufficiency, they explain their rationale for doing so. *See United States v. Armendariz*, 82 M.J. 712 (N-M. Ct. Crim. App. 2022); *United States v. Gilpin*, 2019 CCA Lexis 515 (N-M. Ct. Crim. App. 30 Dec. 2019) (unpub. op.); *United States v. Dawkins*, 2019 CCA Lexis 386 (N-M. Ct. Crim. App. 4 Oct. 2019) (unpub. op.); *United States v. Wilson*, 2019 CCA Lexis 276 (N-M. Ct. Crim. App. 1 Jul. 2019) (unpub. op.); *United States v. Whisenhunt*, 2019 CCA Lexis 244 (A. Ct. Crim. App. 3 Jun. 2019) (unpub. op.); *United States v. Soto*, 2014 CCA Lexis 681 (A.F. Ct. Crim. App. 16 Sep. 2014)

[4] We asserted on appeal that the evidence was factually and legally insufficient to support LCDR Dominguez's convictions. 81 M.J. at 805. However, because the NMCCA found three other legal errors, and cumulative error, the Court set aside his convictions for those reasons and authorized a rehearing. Considering the results of the rehearing, I believe the NMCCA would have been justified in setting aside LCDR Dominguez's convictions for factual and legal insufficiency.

(unpub. op.). Sometimes, panels, and even military judges, erroneously convict, and therefore, it remains vital for the CCAs to have the ability to correct that erroneous conviction. *See i.e. United States v. Thompson*, 2021 CCA Lexis 641 (A.F. Ct. Crim. App. 29 Nov. 2021) (unpub. op.), *reversed and remanded*, 2022 CAAF Lexis 832 (C.A.A.F. 21 Nov. 2022) (holding the AFCCA erred in its factual sufficiency review in affirming sexual assault conviction).

**RECOMMENDATION**: The CCAs should continue having authority to set aside convictions for factual insufficiency. Congress has already amended Article 66, UCMJ to require an appellant to specifically identify the deficiencies in the evidence, and to raise the standard to "clear and convincing," but it will take time to see how the CCAs implement it.

6. Despite his exoneration, LCDR Dominguez is still treated as a pariah by his command. Additionally, members from his first court-martial are still stationed at his command in Hawaii. LCDR Dominguez's pay and benefits have yet to be restored pursuant to Article 75, UCMJ. He has been left to fend for himself to correct his records to regain the promotion he lost. His reasonable request for a humanitarian transfer to Texas to be with his family has been denied, and he continues to be held in Hawaii, with no meaningful duties commensurate with his rank and experience. This forces LCDR Dominguez to use leave and incur travel expenses to spend time with his family over the holidays. He is a *bona fide* victim of false accusations and a wrongful conviction and incarceration, without a legal remedy to make him whole. LCDR Dominguez is not the only Servicemember who has been wronged by the military justice system. The military has a duty to care for *all* Servicemembers and their dependents.

**RECOMMENDATIONS**:

a. Issue guidance implementing Article 75, UCMJ to restore exonerated Servicemembers in a timely fashion. This guidance should come from the DOD to establish uniformity across the services. This guidance should include directives to the services' respective boards of correction of military records to automatically and expeditiously correct exonerated Servicemembers' records to enable them to receive lost promotions, awards, etc.

b. Authorize expedited transfers for exonerated Servicemembers, in the same manner as sexual assault victims are authorized expedited transfers when they make unrestricted reports of sexual assault.

c. Establish a compensation fund for Servicemembers who succeed in getting their convictions and/or sentence overturned on appeal. Those facing a rehearing have to wait for the results of the rehearing before their backpay can be calculated and paid. Those who obtained civilian employment while on appellate leave have their backpay reduced, and sometimes completely withheld, to prevent "double-dipping." In the meantime, the lives of these Servicemembers are on hold, but they still must find a way to pay their bills. Compensation funds could be used to bridge the gap. Compensation should be paid to those who served confinement, in addition to "backpay."

This compensation fund could be similar to dependent transitional compensation.[5]

d. Establish mental health services for exonerated Servicemembers, and a PTSD-related condition that qualifies for VA services and disability compensation. Regarding the need for specialized, reunification therapy to reestablish LCDR Dominguez's relationship with his children, this should be covered by Tricare and/or the VA.

7. Finally, LCDR Dominguez's case could serve as the impetus for establishing a DOD conviction integrity unit. The military should seek to eradicate false accusations, prevent wrongful convictions, and hold false accusers accountable as vigorously as it seeks to eradicate and prevent sexual assault, and to hold offenders accountable.

**RECOMMENDATION**: Obtain a copy of the audio recording of LCDR Dominguez's rehearing (there is no transcript due to the full acquittal). I would be happy to provide additional information about this case, as well as other cases I have worked on.

*Conclusion*

I consider it a privilege to have represented LCDR Dominguez during his appeal and his rehearing, and to continue advocating on his behalf, and on behalf of other clients, for meaningful improvements to the military justice system to obtain justice for all. I can be reached at (719) 426-8967 or tamimitchelljustice@gmail.com for any questions or concerns. Thank you.

Tami L. Mitchell

cf: LCDR Manuel Dominguez
Sarah Gonzales

[5] JB and the children began receiving transitional compensation (TC) for abused dependents after LCDR Dominguez was convicted in February 2020, approximately $2,000/month for three years. LCDR Dominguez believes they are still receiving TC even though he was acquitted. The committee should investigate whether the family is still receiving TC because if they are, then there is an Anti-Deficiency Act violation. 31 U.S.C. § 1331(a)(1) prohibits federal employees from making expenditures in excess of what Congress appropriated. Pursuant to DEP'T OF DEFENSE INSTRUCTION (DODI) 1342.24, eligibility for TC requires a conviction, which there is not. Furthermore, payments must stop when the conviction is set aside, which occurred on October 22, 2021. DODI 1342.24, para. 3.2.d.(1)(a). Payment should have stopped effective December 1, 2021. *Id*. at para. 3.2.d.(2).

06/07 DEC 22

From: **Sarah Elizabeth Gonzales**

To: Defense Advisory Committee – Investigation, Prosecution, & Defense of Sex Assault in the Armed Forces (DAC-IPAD)

Subj: **SARAH ELIZABETH GONZALES VICTIM IMPACT STATEMENT TO THE DAC-IPAD**

Dear DAC-IPAD Committee and Staff Members,

My name is Sarah Gonzales. I am the wife of LCDR Manuel Dominguez (Manny). I am writing this letter to you regarding my victimization, at the behest of the US Navy and military justice system, because those in charge chose to believe lies. You are already familiar with the NMCCA's decision for Manny's appeal (81 M.J. 800), as well as the results of his rehearing (FULL ACQUITTAL), so I will not repeat those particular details. My purpose in submitting this letter is so that you, and members of the public, understand that there are a variety of victims that deserve to be treated with dignity and respect. I am one of those "other" victims, as in those victims who are generally ignored in the interests of political correctness and expediency. As my husband, my husband's civilian counsel (Tami Mitchell), and I were not able to get on the committee's agenda for December, I respectfully request that you take the time to read my letter, reflect on my experience, and use this to bring meaningful change. This is my lived experience, my truth, the truth.

I met Manny while we both attended the University of Texas at Austin in the early 2000s. After more than a decade of separation, we reconnected in the fall of 2016, after Manny and his then wife (JB) legally separated and prepared to divorce. In February 2017, JB maliciously filed false accusations of "child sex abuse" against Manny related to their daughter, OD. Knowing that these accusations were ridiculous, false, and retaliatory in nature, Manny and I married in November of 2017. The entirety of our marriage has been lived under the shadow of these fictitious allegations.

Those who are in the Government (specifically US Navy officials) and aware of our situation tend to use the word "unusual" to describe it. I mark this word in quotations because I have come to realize these people use this word as a way to tacitly acknowledge the utter injustice of what happened to me and Manny, while at the same time, avoid responsibility for their complicity in believing the false accusations, without any fact-checking. If something is "unusual," it's not unjust and therefore no one is at "fault". If no one is at fault, no one needs to remedy the wrongdoing that occurred.

The evidence showed that JB was able to fabricate enough information through her manipulation of Manny 's own daughter (OD), that the Navy decided to file charges. My mother is an attorney, so I am well aware of the biases that lie within the criminal justice system, so Manny and I quickly pursued outside representation. Living in Hawaii, our choices were few, yet we were able to hire a civilian attorney (who was previously a JAG) for Manny's first court-martial, naturally at our own expense. While Manny had to buy out JB's interest in his TSP account, we were able to use the remainder to pay for legal fees. This marked the first and a long line of financial traumas we incurred as a result of these false accusations. Manny maintained a positive attitude that

since he was factually innocent, that people would see the truth and find him not guilty. I myself, having a better understanding of the legal system, knew that we were in a battle for our lives.

Manny's first court-martial was, by dictionary standards, a farce.[1] Some might call it a "kangaroo court." Regardless of what terms people want to use, Manny's first court-martial was not a legitimate trial. First, the military judge (CAPT Ann Minami) for Manny's first court-martial was not assigned to be a military judge based on her experience. Her lack of experience showed in the rulings she made. Second, the panel member (i.e. jury in the civilian sector) *voir dire* process was ridiculous. The singular person of color was removed due to a personal experience, where a brother of his had gone through a divorce and had been falsely accused of sexual assault by their ex-partner. Several members of the panel had been assigned as SAPR representatives for the Navy, so they were predisposed to believe an alleged victim without question. The panel member who had experienced false accusations before was dismissed, while the SAPR representatives were allowed to remain on the panel and were considered to not have bias. My heart sank in my chest over realizing no justice was going to be done in this trial.

Moving forward to trial testimony**, OD actually recanted her allegations on the stand!** She looked directly at Manny when she testified about this. I know this because I was there, I saw it with my own eyes as I sat behind Manny in the courtroom. I held out hope that the panel members would see the allegations for what they were—false accusations drummed up by a vindictive ex who pressured her daughter to repeat the lies, but who realized she could not lie under oath. But after this, CAPT Minami admitted OD's "forensic interviews" as substantive evidence, without even viewing them. That she admitted the videos as evidence without even viewing them was a complete joke—truth-seeking was not part of this process. This proceeding reminded me of the Salem Witch trials—everyone was ready to burn the witch, convict the man.

I also note that the two Navy JAGs who were detailed as trial counsel were both heavily pregnant and emphasized their pregnancies throughout the trial by leaning back whenever they stood up, doing their best to villainize Manny. They sent a subliminal message to the panel members that if they acquitted him, they would send a message that they were anti-child as well as anti-Government. During the closing argument, trial counsel argued that OD's second interview showed she was an abused child. If that was true, who do you think was the perpetrator of said abuse? It would've been JB, since OD was in her continuous and exclusive custody since the initial allegations in February 2017. Despite all of this, I continued to hold out hope that the truth would set Manny free—I could not imagine the panel coming to a guilty verdict when the alleged victim had recanted on the stand in front of them, under oath. I was wrong.

In early February 2020, about 3 years after JB's initial report, the panel found Manny guilty of 3 offenses, and then sentenced him to 16 years in prison. I could not breathe. A strange noise rang in my ears, and the room seemed to get smaller and brighter. I vaguely recall testifying on Manny's behalf during sentencing. But it didn't matter, because the truth didn't count in this farcical nightmare. I also remember thinking, when the sentence was announced, that Manny and I had made it through a decade apart, so we could do it again. I remember going to the Navy exchange with a list in my hand of what Manny would need in prison. Socks, underwear, toiletry items that did not contain alcohol, lest he would drink it, which was ridiculous. I remember trying not to cry in the store. The night he was sentenced, he was taken away to confinement, that was one of the worst nights of my life. Several family members came to stay with me over the next few weeks although I barely remember any of it. I am sure the committee members are familiar with the effects of trauma on the brain and memory.

After a few days, I received my first phone call from Manny and began the process of getting cleared to visit him in prison on Ford Island, Hawaii. I don't suppose any of you have ever visited a loved one in prison before. I certainly had not. This would be the first of three prisons Manny would be sent to throughout his wrongful incarceration. Manny was transferred from Hawaii to Miramar, California in March of 2020, during the height of the global COVID-19 pandemic. As a result, I was pretty much on my own.

The one instance where I felt supported during this time frame, and one of few bright spots in this entire story, was Captain Patton. He really supported me in getting myself, our belongings, and our three dogs relocated to Texas. I was forced to quit my job as a second-grade teacher in Hawaii in order to relocate to Texas. I had never relocated as a military spouse before and had no idea how to process anything. And going back to the effects of trauma on the brain, I really wasn't able to think either. I know that Captain Patton did most of the work and for that I am truly thankful.

I was told that I could apply for relief at Manny's command to receive a few additional months of his salary while I relocated to Texas to establish a new residence and find a new job. I wrote my letter to the command, explaining the situation and asking for relief. I thought that since I had nothing to do with any of this, why would they punish me? Again, I was wrong. I was denied this relief and told to move home on my own, with no income and, as explained to me, no health insurance, in the middle of a global pandemic. I was diagnosed with adjustment disorder, generalized anxiety and depression, as a result of the years long investigation that occurred leading up to the first court martial. Suddenly my insurance had been ripped from me, and I was no longer able to see my therapist, attend group therapy sessions, or receive necessary medication. Of all the ways I have been victimized by the US Navy, this is one that makes me the angriest. Another person in my shoes might have suicided. But I was too angry for that, and I had a husband to think about. I had to survive so that I could continue advocating on Manny's, and my, behalf. I also had an appeal to win and another court martial to endure, although I didn't know it at the time.

I returned to Texas in May 2020 and began a 2-week quarantine at my parents' house near Waco, TX. Please note: this was before vaccines were available. I was fortunate to find a job as an educator in July 2020, in Austin, TX. I began searching for an attorney to oversee Manny's appeal, even though I didn't know how to pay for those services, as there was no income from Manny's employment (or lack thereof), and his credit was ruined. We had to rely on my parents to support our endeavors. After talking to several different attorneys, I found Tami. For the first time, I felt someone was actually listening to me, even though Tami was cautious in her initial response, since she hadn't received the record of the trial. When she did review it, after reading about 2000 pages of transcript, Tami sounded just as angry and appalled as I felt. She confirmed what we believed all along as an injustice—a military judge who abused her power, trial counsel who crossed the line of ethical boundaries, a host of Navy authorities willing to believe a series of lies, and a vindictive ex willing to lie and manipulate a child. That is what supposedly counted for truth in this post-Me Too world.

We hired Tami to lead the way with the appeal. Our experience with the military did not instill any level of trust, so relying solely on military-appointed appellate defense counsel was not an option. Those familiar with the appeal process know that it takes around 18 months, which equals 78 weeks, 546 days, and 13,104 minutes. It's multiple birthdays, holidays, weekends, etc. where my only contact with Manny would be through a monitored phone call with a maximum of 30 minutes duration. Even though it took a long time, Tami assured us it was because of the numerous issues that needed to be raised due to the complexity or "uniqueness" of Manny's case. If you were to read the briefs that were submitted, you would agree. It also took a long time due to COVID-19, when attorneys had to rotate being in the office, and as I understand, telework from home was less than optimal for military appellate counsel and judges.

While Manny and I endured the appellate process, I was limited to supporting my husband via phone; I couldn't visit him in person due to the pandemic. Can you understand how hard it is to listen to your spouse trying to stay positive while he's in prison for something that he didn't do? Can you understand how hard it is to listen to your spouse describe how guards verbally abuse him and other inmates, and abused their authority by "searching" him in what would normally be considered a "sexual assault" in the military? Can you imagine your spouse describing the food and the activities which he does to pass time while he waits for confirmation of his innocence? And on top of this, dealing with a COVID-19 pandemic, which didn't permit visitors, and greatly limited phone calls. Additionally, I don't think people comprehend the cost of maintaining communication with Manny. I was able to set up a phone account that allowed him to call me. But every time I added money to his account I was charged $4.95 out of whatever amount up to $50 that I put in. Each phone call had a connection fee and then a fee per minute that was paid after that. Each month I spent on average $250 talking on the phone to Manny. The farce continued.

We held out hope when the NMCCA granted our request for oral argument at the NMCCA at the Washington Navy Yard, D.C. Manny would obviously not be allowed to attend. My father and I purchased plane tickets, and a hotel reservation, with our own funds in order to watch oral arguments take place. While my father was able to attend, I was not, because a thunderstorm left me stranded in Dallas. On the other hand, JB and OD were flown to watch the oral arguments on the government's budget, as well as OD's victim legal counsel. One would think that, if a child was actually victimized, the mother would not permit her child to attend oral argument for an appeal, because attending oral argument would expose the child to further trauma. So why did JB attend the oral argument with OD? I believe she sought information about the case to "adjust" testimony, and because JB wanted to blame Manny for OD's suffering. But again, this was all at Government expense because Government officials considered them victims, while I was not.

During the appeals process, Manny was transferred to Fort Leavenworth, Kansas. In a way, this was a blessing, as the staff and facilities at Fort Leavenworth were far superior and professional to those at Miramar. A vaccine for COVID was authorized and I was able to make plans to visit Manny in person for the first time in over a year. In total, I traveled to Kansas from Texas four times, all at my own cost. The last time I visited Manny at Leavenworth was November of 2021, after the NMCCA released its opinion concluding that Manny's convictions and sentence had to be set aside. Yet, Manny remained in prison.

I can't accurately express in words my mindset during the months of November and December 2021 as we tried to get Manny released from prison. I was exhausted yet energized and confused. Nobody could give me a concrete answer as to when Manny would be released or where he would go upon his release. Tami and military appellate defense counsel inquired several times, but officials at the NMCCA weren't providing answers. No JAGs in Hawaii or at Leavenworth were providing answers either. The command in Hawaii was using the Pearl Harbor fuel-water crisis as an excuse to avoid dealing with Manny. Oddly enough, another inmate at Leavenworth suggested that Manny sue in federal district court for habeas corpus. That is exactly what he did. A falsely accused and convicted man sues the US Navy for his own release; sounds like a farce to me.

Manny sued the US Navy in the Federal District Court, and the court ordered the Navy to show cause why he shouldn't be released. This was about 7-10 days before Christmas in 2021, more than 22 months after Manny's initial conviction and incarceration. Several questions remained. Where would he be sent? We thought surely he would come home to Texas—that made sense on a financial and emotional level, as well as considering that Hawaii was still much more restrictive than the rest of the country in admitting people during

the global pandemic that was still raging. At this point in my victimization, I somehow remained optimistic that the Navy would take an action that made common sense. But again, my optimism was misplaced. We later discovered that Navy officials bowed to JB's demand to keep Manny incarcerated, and then when they explained they could not justify his continued confinement, JB demanded that he be returned to Hawaii.

I want you, the committee members and general public, to envision what happened at this point. Finally, Manny was to be released from wrongful imprisonment. Even though he was being returned to Hawaii, as opposed to Texas, he was being released from imprisonment. But how do you think the process of his release played out in real time?

Picture prison officials driving Manny to the Kansas City airport, only to claim they didn't have the correct documentation and had to return to Leavenworth. The commander of the prison issued Manny a debarment letter, claiming he couldn't return to Leavenworth based on his "conviction," which technically didn't exist. Prison officials claimed no hotel facilities were available for Manny to stay in overnight while he waited for his early-morning flight to Honolulu. Really, in ALL OF KANSAS CITY there were no hotels available for one single night? Instead, prison officials told Manny he had a "choice"—return to Leavenworth for the evening or sleep on the Kansas City airport floor. Not really a choice if you ask me. Manny told them to leave him at the airport overnight.

Imagine Manny carrying the entirety of his belongings in a cardboard produce box, given to him from the prison kitchen. Imagine him wearing a shirt too small for his frame and pants two sizes too big, his hair unkempt because it had not been cut in several months. No official identification, no cell phone, and only $30 in his pocket. Picture Manny relying on the kindness of two strangers, one at each airport during his travel, to use a cell phone to call me with status updates on his release. We don't have to imagine it, because we lived it.

I flew to Honolulu, HI, again with my own funds that we couldn't really afford, to meet him upon his arrival. Although Manny and I were both vaccinated, he needed to be able to fill out an online entry form to enter the island state of Hawaii, as they were much more restrictive than the rest of the United States. If I had not met him in person in Hawaii, he would've been without a cell phone and without an identification card, and therefore would not have been allowed to even leave the airport. We were finally met by a representative of the command at baggage claim as I was waiting to pick up my suitcases, one of which contained clothes and shoes for Manny. I remember being excited when I was able to give him his wedding ring back.

A few days passed, and we were informed of the command's intention to retry him on the three specifications Manny was initially convicted of. While this was the command's legal right, I was still angry. Did they think we had just given up on proving his innocence? Did the Navy hope we were emotionally and financially drained to the point where we would just give in this time? For once, they were wrong.

I had to return to Texas, and Manny made plans to take leave to spend time with me in Austin over the holidays. You would think the command would empathize and support that endeavor. Instead, what happened was a barrage of texts, phone calls, and emails, between Manny, me, Tami, the command's sponsor and the command's SJA over Manny's plans for leave and his intended route, which necessarily included a layover in Dallas. JB and the children lived in Arlington, TX. Despite the fact that Manny was issued a no-contact order with JB and both children, and his stated intention to follow the no-contact order, there was a

flurry of questions about his intentions during his layover, the scheduling of Manny's travel, and whether a layover in Dallas was necessary. All because of his angry, vindictive ex-wife JB. Again, really? This was pure harassment.

Since Manny's release from confinement, almost a year now, Manny and I have been forced to live over **3000 miles** apart, separated by people who don't care what we have gone through to get to this point. In June we faced the second court-martial. At least this time our optimism had some support. We retained Tami to spearhead Manny's defense; she obtained OD's medical records, which Manny's prior civilian counsel could have done, but didn't. She was also able to secure an expert in forensic psychology who was capable of identifying the multiple deficiencies in OD's video interviews. Manny was assigned two military defense counsel, LT Sarah DiMarzo (Hawaii) and LCDR Benjamin Adams (Bremerton, WA). I would note that this was unusual because Manny's court-martial was to be held in Bremerton, WA, instead of Hawaii. Manny's case was so complex it demanded the attention of at least 3 attorneys.

I noticed there was more care in detailing the Judge. While Manny was forced to appear before CAPT Minami for his arraignment, she had to recuse herself from presiding over the rehearing, and another, experienced judge, CAPT Angela Tang, was detailed. Although she issued some rulings we disagreed with, her rulings were fair, and based on an actual review of the evidence as well as legal precedent.

There were several issues with panel member selection, including the fact that half of the members originally detailed were junior in rank (a violation of his rights per the UCMJ). But at least the members involved in the rehearing weren't SAPR representatives, there was minority representation, and several medical personnel, which was important given that OD had many medical problems that were relevant to the charges. Manny's request for reassignment to Austin, or alternatively Bremerton, was denied. Reasonable requests for discovery, including OD's records from a "child advocacy" center in Texas, were being denied by the Government, resulting in litigation at Bremerton in May. Keep in mind that OD disclosed during her second videoed interview that she learned from her therapist at the child advocacy center that what Manny did to her was "abusing," even though most parents would call wiping your 4-year-old child after going to the bathroom normal parenting duties. Trial counsel had previously received these records, but culled them from the materials disclosed to the defense, and subsequently "lost" them. The Navy gave JB her own VLC, even though she didn't qualify because she wasn't a named victim. Why did the Navy spend its resources supporting JB and her (and OD's) lies, while denying me my basic needs and support?

I spent over 2 weeks of leave from my work as an educator attending hearings and meetings related to Manny's rehearing. My parents, Manny's mother, brother and uncle, and our close friends all attended the second trial. So did a few representatives from this committee. Because I was needed as a witness for the merits this time, due to new fabricated information from JB and OD, I was unable to watch the trial as I had done the first time. It was so nerve wracking to not know what was going on. And I had to testify, in front of strangers, about Manny's sexual preferences to rebut JB's false claims. Do you understand how embarrassing that is? I suspect you do, but only in the context of an alleged victim, *i.e.* the complainant (OD), and her mother (JB). And keep in mind that JB didn't have any problems vilifying Manny and his sexual "preferences" if she thought it would benefit the case. Anyone reviewing JB's statements, contained in the NCIS investigative file, would see that.

Luckily this panel saw through the lies, this judge allowed in the proper evidence and the correct verdict was rendered. Not Guilty. When the verdict was announced it felt like the air was gone from the courthouse. I cried out. My dad cried tears of relief. He never cries. Finally, after 5 years and 5 months (65 months, 260 weeks, or 1,950 days) since the original allegations, Manny and I were going to be free of all this…right?

I'm sure you've seen the pattern by now. But no, we are still not free. To this day Manny and I continue to live separately. It's been 5 months since his full acquittal of all charges. The Navy continues to victimize me each day we live apart. Manny requested a humanitarian transfer to return to Texas. It was denied without explanation, though I believe I know who is behind this decision. No orders have been issued that would allow me to move back to Hawaii at Government expense. Even if the Navy did issue orders for me to move to Hawaii, it would be impossible for me to do so. I can't just quit my job and relocate myself, our belongings, and our dogs to Hawaii, for what would be a short period of time.

Manny and I continue to fly back-and-forth across the globe using our own money in order to see each other. The average flight from Austin to Honolulu is around $2000 roundtrip. We continue to celebrate holidays and birthdays and special occasions separately. I continue to go to bed each night and wake up each morning separated from my husband, Manny. We continue to receive no answer from the Navy, as far as when Manny's back-pay and allowances will be paid. The Navy has wrongly denied us the family separation allowance we are entitled to receive. So, while we run separate households, financially, we are not supported in any way to do so, despite both of us being fully employed. The interest rates on the credit cards that I have been using to pay for attorneys and for travel have gotten so bad due to inflation that I have had to send them to a debt collection agency. Manny's credit score was ruined as a result of these false accusations, and now my credit score suffers as well. As a result, neither of us is eligible for loans or financial aid from a bank.

We requested financial aid from several places. One of those places was the Navy Marine Corps Relief Society. When Manny was incarcerated, he was unable to pay child support because he was not receiving an income. However, the state of Texas does not care if you're unemployed and in prison for something that you did not do. Upon release from prison Manny owed over $10,000 in child support. We requested a grant to pay the child support and were denied. Adding insult to injury, the Navy paid JB monthly "transitional compensation" based on Manny's wrongful conviction, which approximated his monthly support obligation. To the best of our knowledge and belief, the Navy is STILL paying this amount, despite the fact that they no longer qualify because his convictions were set aside on appeal and he has no conviction. The irony that the Navy has no problem financially supporting known liars, but won't financially support the known victim in this case—Manny. But that's just what the Navy is doing. It wasn't until the command wrote a letter on our behalf that Manny and I were issued a no-interest loan to cover the child support that was continuously accruing interest.

While our net monthly income is close to $12,000 we continue to live paycheck to paycheck. In total we have debts over $180,000. Almost all of this debt is due to attorney fees over almost 6 years as well as travel to see each other or attend legal matters during Manny's incarceration, or now while the Navy wrongly forces us to live apart.

There is no happy ending to this story, our story. I leave you with some questions that need answers. What resources does this committee have for victims like me? What support can you offer me or my family? Do you think we even deserve support, or are you of the opinion that's so commonly heard in JAG offices around the country: That if someone is charged with something, they probably did it. Do you think that only 2-5% of sexual assault accusations are false, or do you think those statistics are higher? Even if you believe only 2-5% accusations are false, why would you tolerate *any* percentage of false accusations? I recognize the military

has some adjusting to do in terms of how it oversees sexual assault and sex crimes. I know many victims have gone unheard and underserved for far too long. However, if your system of justice creates *more* victims, how is that just? Unfortunately, I know I won't be the last spouse or family member of a wrongfully accused and imprisoned military member. I do hope that knowing my story will start not just a conversation of how to address the injustice to those wrongly accused and convicted, but also lead to meaningful change to prevent future Servicemembers and their family members from suffering the same way Manny and I have suffered.

Respectfully Submitted,

Sarah Gonzales

Sarah E. Gonzales

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[1] "A light dramatic work, in which highly improbable plot situations, [and] exaggerated characters . . . are used; **a ludicrous, empty show, a mockery**. www.thefreedictionary.com/farce. **"An empty or patently ridiculous act, proceeding, or situation."** www.merriam-webster.com/dictionary/farce.