

22. (Services) Please provide a copy of the investigator reports, to include the verbatim or summary transcript for the following Article 32, UCMJ hearings (Note: please provide the FOIA exemption or statutory justification for any information redacted from the reports and/or transcripts):

22a. (Navy) The Article 32 hearing involving sexual assault allegations against the three football players (Tra’ves Bush, Eric Graham, and Joshua Tate) at the U.S. Naval Academy in Annapolis, Maryland. (August 2013)

USN	The documents related to this request cannot be provided at this time due to the on-going criminal case. The requested documents will be provided, as appropriate, after the conclusion of criminal proceedings related to this matter.
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22b. (Army) The Article 32 hearing involving sexual assault allegations against BG Sinclair at Fort Bragg, North Carolina. Please provide the investigator’s report and transcript from November 2012 by the suspense noted above, November 5, 2013. Please provide the report and transcript from the October 2013 Article 32 by December 19, 2013, or sooner if it is complete and becomes available.

USA	<p>The court-martial of BG Sinclair is an ongoing court-martial and has been the subject of intensive pretrial litigation by the defense, focusing largely on the issue of Unlawful Command Influence (UCI). The Criminal Law Division (CLD) of the Office of The Judge Advocate General of the Army is extremely concerned about any issues which might jeopardize this on-going judicial process, especially given that the remedy the defense has been seeking in its litigation is the dismissal with prejudice of the court-martial charges. Successful litigation by the defense of any UCI motion could result in the loss of the opportunity to have the allegations of sexual misconduct be litigated in a court of law.</p> <p>The U.S. Army is committed to ensuring a fair and equitable judicial process for all parties involved in this court-martial and believes that the concept of requesting that the Headquarters, Department of the Army become involved in any level in the judicial process of this pending trial, to include the request for the production of an unauthenticated transcript of the Article 32 investigation and the undisclosed Investigating Officer’s Report and Recommendations, could create an inaccurate and unwarranted potential appearance of senior level scrutiny and involvement. The U.S. Army will continue to attempt to safeguard this court-martial from any improper appearances or inferences and will not produce the requested transcript while this case is being litigated. In order to ensure transparency in the on-going judicial process of this court-martial, the Criminal Law Division is compelled to disclose to all parties of the court-martial the content of both this RFI from the RSP and the U.S. Army’s response.</p> <p>The U.S. Army understands the RSP’s interest in the Article 32 process in general in a case involving sexual assault and the potential application of Military Rule of Evidence 412 and the privileges which apply at an Article 32 investigation. However, scrutiny of on-going litigation by an outside entity during trial does not seem to be a</p>
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Narrative responses have been consolidated by the Response Systems Panel (RSP). Please forgive formatting errors in text and data. Source documents for narrative responses can be obtained by contacting the RSP.

	proper inquiry at this time.
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22c. (Air Force) An Article 32 hearing involving sexual assault allegations where a victim was represented by a Special Victim Counsel and interjected by exercising victims' rights issues during the proceeding. (Within the last 6 months)

USAF	Since no Article 32 hearings within the past six months have yet been resolved at trial, in accordance with Air Force Instruction 51 -201, para. 13.5, no records are provided in response to these questions. Any such records could interfere with law enforcement proceedings or deprive the accused of his right to a fair trial or impartial adjudication.
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22d. (Marines and Coast Guard) An Article 32 hearing involving sexual assault allegations which involved MRE 412 issues or other victim rights' concerns.

USMC	The Marine Corps is currently looking for an appropriate case involving MRE 412 issues that is responsive to this request.
USCG	A copy of the Article 32 Investigation is included as enclosure 3.

Narrative responses have been consolidated by the Response Systems Panel (RSP). Please forgive formatting errors in text and data. Source documents for narrative responses can be obtained by contacting the RSP.

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**BY ORDER OF THE
SECRETARY OF THE AIR FORCE**

AIR FORCE INSTRUCTION 51-201

6 JUNE 2013



Law

ADMINISTRATION OF MILITARY JUSTICE

COMPLIANCE WITH THIS PUBLICATION IS MANDATORY

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(Colonel Patricia McHugh)

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2007

This instruction implements the Uniform Code of Military Justice (UCMJ), the Manual for Courts-Martial (MCM), and Air Force Policy Directive (AFPD) 51-2, *Administration of Military Justice*. It provides guidance and procedures for administering military justice. Users of this instruction must familiarize themselves with the UCMJ, MCM, and applicable Department of Defense (DoD) Directives. It applies to individuals at all levels, including Air National Guard (ANG) members and Air Force Reserve Command (AFRC) members. Commands may supplement this instruction only with the prior, written approval of Air Force Legal Operations Agency, Military Justice Division (AFLOA/JAJM), 1500 West Perimeter Road, Suite 1130, Joint Base Andrews Naval Air Facility Washington, MD 20762; DSN 612-4820. This instruction requires the collection and maintenance of information protected by the Privacy Act of 1974. The authority to collect and maintain this information is in 10 U.S.C. §§ 854 and 865. Privacy Act System of Records Notice F051 AF JA I, *Military Justice and Magistrate Court Records*, applies. Refer recommended changes and questions about this publication to the Office of Primary Responsibility (OPR) using the AF Form 847, *Recommendation for Change of Publication*; route AF Form 847s from the field through Major Command (MAJCOM) functional managers. Ensure that all records created as a result of processes prescribed in this publication are maintained in accordance with Air Force Manual (AFMAN) 33-363, *Management of Records*, and disposed of in accordance with the Air Force Records Disposition Schedule (RDS) located in the Air Force Records Information Management System (AFRIMS).

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13.7.1. Release of Court-Martial Record of Trial. RCM 1103(b)(2) defines a court-martial record of trial. The court-martial record of trial is subject to release determination under the Privacy Act and Freedom of Information Act. Information marked as classified, controlled, or sealed by judicial order should not be released absent an authoritative determination of releasability. A transcript of oral proceedings is not a record until authentication. When releasing records of trial under this paragraph, redact all Victim and Witness Protection Act and Privacy Act protected data, to include the names of victims of sex offenses, the names of children (under the age of 18), and the identity of victims who could be harmed by disclosure of their identity.

13.7.2. Release of Other Military Justice Documents or Records. All other documents or records, including documents which will become part of a record of trial, and including those which are attached to the court-martial record of trial but not made a part of the record of trial under the provisions of RCM 1103 (for example, an Article 32 report and its attachments) are also subject to release determination under the Privacy Act and Freedom of Information Act. However, due regard will be given to the potentially heightened privacy interests of an accused where a case has not been fully adjudicated as well as to whether any exemption, such as those included to protect ongoing deliberative processes or investigative processes should be invoked. Information marked as classified, controlled, or sealed by judicial order should not be released absent an authoritative determination of releasability. When releasing military justice documents or records under this paragraph, redact all Victim and Witness Protection Act and Privacy Act protected data, to include the names of victims of sex offenses, the names of children, and the identity of victims who could be harmed by disclosure of their identity.

13.7.3. Cases Disposed of by Acquittal or Action Other Than Court-Martial. When the charges against an accused were disposed of by an action other than court-martial, or when a court-martial results in an acquittal, due consideration must be given to the likelihood that the accused may have increased privacy interests in the protection of information contained in military justice documents or records. Less serious misconduct, which is handled administratively rather than judicially, generally is not considered of sufficient public interest to outweigh the privacy interest of the individual.

Section 13E—Special Interest Reports (SIRs)

13.8. Reporting Special Interest Cases to HQ USAF. Certain offenses committed by Air Force members generate requests for information within HQ USAF, regardless of the member's grade or disposition by military or civilian authorities. Similarly, an accused's grade itself may generate requests for information, or necessitate HQ USAF knowledge of an alleged offense. SJAs must be sensitive to reporting requirements in this chapter, and make complete and timely reports. Reporting Special Interest cases is a base level responsibility. Reports should be prepared and forwarded within 24 hours of learning of the incident to AFLOA/JAJM by the base legal office prosecuting the case or, if the case is in a civilian court, the base legal office servicing the unit where the accused is assigned. None of the reporting requirements are intended to preclude a commander's complete evaluation of a case before deciding what action, if any, to take.

13.8.1. Officer, Cadet, CMSgt and SMSgt Cases. Regardless of offense, report all investigations into allegations involving officers, cadets, CMSgts, and SMSgts.

13.8.2. Serious Crimes. Regardless of grade, report cases involving the following crimes, including attempts, conspiracies, and solicitations to commit these crimes:

13.8.2.1. homicide;

13.8.2.2. sexual assault;

13.8.2.3. espionage, subversion, aiding the enemy, sabotage, spying, or violations of punitive regulations or statutes regarding the handling of classified information or the foreign relations of the United States;

13.8.2.4. environmental crimes, including civilian felony prosecution;

13.8.2.5. fraternization and unprofessional relationships; and

13.8.2.6. anthrax or smallpox refusals.

13.8.3. Cases with Command or Media Interest.

13.8.3.1. Report any case where the local chain-of-command for the accused or subject would likely provide information about the case to the MAJCOM commander and/or Headquarters Air Force (HAF). SJAs should also work with their respective command post to ensure they are made aware of criminal activity and other legal-related events or incidents reported to higher headquarters via OPREP3 as provided for in AFI 10-206, *Operational Reporting*.

13.8.3.2. Report any other case with potential community reaction, or potential or actual media coverage.

13.8.4. Report Format. Use the Special Interest Report in AMJAMS to generate reports. Ensure the initial report includes a detailed summary of the case by filling in all AMJAMS data fields. Include a thorough description of offenses, dates, UCMJ articles allegedly violated, the number of specifications under each offense, sufficient detail to provide senior leadership with a clear understanding of the facts and circumstances involved, whether media attention is anticipated, and any other unusual or significant features of the case. Identify incomplete facts in the report and follow-up as soon as possible.

13.8.4.1. Ensure sensitive investigative information is not included in the SIR without concurrence of the AFOSI Detachment Commander/Special Agent-in-Charge (SAC) or other investigating agency. See paragraph 13.31 for examples of sensitive investigative information.

13.8.4.2. For matters investigated by commander-directed investigation (CDI), IG or MEO, summarize the allegations, and when final, identify both substantiated and unsubstantiated findings.

13.8.4.3. For cases disposed of by NJP or administrative action (e.g. LOR or LOC), identify the wrongdoing or offenses alleged (e.g. "On (date), Subject served NJP/LOR for...").

13.8.4.4. For cases disposed of by civilian authorities, include information that identifies the court and jurisdiction and summarize the charges, pleas, findings and sentence.

- 13.8.4.5. If a matter was disposed of without action, explain why.
- 13.8.4.6. With sexual assault cases, make sure to put whether or not an STC was consulted under the "Pending Offense" subfolder, "Case Information" tab.
- 13.8.5. When to Report. Submit reports:
- 13.8.5.1. Within 24 hours after learning of an incident in any of the above-mentioned categories;
- 13.8.5.2. When a significant event in a reported case occurs after initial reporting. Significant events include disposition of investigation, when jurisdiction is obtained from civilian authorities, preferral of charges, trial, results of trial, Convening Authority action, date Article 15 offered, date Article 15 punishment imposed, and media interest;
- 13.8.5.3. Continue to submit reports until completion of administrative or disciplinary action, to include the decision whether to file the action in an OSR, or as directed by AF, MAJCOM or NAF legal offices. Exception: in officer cases involving involuntary separation, continue to report until completion of discharge processing.
- 13.8.6. When updating or reporting initial SIRs in accordance with triggering events listed in the previous paragraph, use the following format for the e-mail subject line as appropriate: (FOUO) NEW SIR: CASE ID # - RANK SURNAME – BASE; (FOUO) UPATED SIR: CASE ID # - RANK SURNAME – BASE.
- 13.8.6.1. All current event updates to a SIR should be completed no later than the 25th of each month.
- 13.8.7. AMJAMS Process. All special interest reporting should be accomplished via AMJAMS using the reports located on the AMJAMS reports page. Reporting special interest cases is a base responsibility. Updates should be made after every significant event until final disposition (e.g., Article 15, administrative action, preferral, Article 32, referral).
- 13.8.7.1. SAF and NAF/MAJCOM SIR buttons are located in the Special Interest Folder of AMJAMS. Click the "Special Interest reporting required" button for all cases listed in the paragraphs 13.8.1 to 13.8.4. The "NAF/MAJCOM SIR" button is selected when a NAF/MAJCOM requires additional reporting not required by this AFI and the information is for use by each individual NAF and MAJCOM.
- 13.8.7.2. Transmitting SIRs to AFLOA/JAJM. In addition to the requirement in paragraph 13.8.4, updates are made in AMJAMS by going to the AMJAMS Reports page on the web and selecting Special Interest Report. Next, put in the case ID and select case notes and run the report. Save a "pdf" copy of the SIR and send it to AFLOA/JAJM via e-mail to JAJM.SIR@pentagon.af.mil.

Section 13F—Reporting Referral of Additional Charges in Cases Pending Review

13.9. Reporting Referral of Additional Charges in Cases Pending Review. If a case is pending review under Articles 66, 67 or 69, UCMJ, the headquarters referring new charges must notify AFLOA/JAJM of the facts relating to the new charges.

Section 13G—Reporting Foreign National USAF Member Cases

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Commandant
United States Coast Guard

2703 Martin Luther King Jr Dr SE
Washington DC 20593
Staff Symbol: CG-0946
Phone: (202)372-3811

5800

From: *A. M. Lee*
A. M. Lee, LCDR
COMDT (CG-0946)
To: *R. L. Smith*
R. L. Smith, CAPT
SAPR MCO

NOV 08 2013

Subj: COPY OF ARTICLE 32 INVESTIGATION FOR RESPONSE SYSTEMS PANEL

1. In response to the Response Systems Panel Request for Information about Article 32 proceedings, enclosed is a copy of an Article 32 investigation conducted by the Coast Guard in 2010 that involved allegations of sexual assault under Article 120, UCMJ, and in which the defense counsel sought to introduce evidence which was covered by Mil. R. Evid. 412.
2. The redacted language and exhibits are exempt from release under 5 U.S.C. § 552(b)(6), (7)(c).

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INVESTIGATING OFFICER'S REPORT
(Of Charges Under Article 32, UCMJ and R.C.M. 405, Manual for Courts-Martial)

1a. FROM: <i>(Name of Investigating Officer - Last, First, MI)</i> ██████████	b. GRADE O5	c. ORGANIZATION CGD NINE (dl)	d. DATE OF REPORT 60 Oct 24/11
2a. TO: <i>(Name of Officer who directed the investigation - Last, First, MI)</i> ██████████	b. TITLE Commanding Officer	c. ORGANIZATION USCGC ALEX HALEY (WMEC 39)	
3a. NAME OF ACCUSED <i>(Last, First, MI)</i> ██████████	b. GRADE E3	c. SSN ██████████	d. ORGANIZATION USCGC ALEX HALEY
			e. DATE OF CHARGES 15 July 2011

<i>(Check appropriate answer)</i>		YES	NO
4. IN ACCORDANCE WITH ARTICLE 32, UCMJ, AND R.C.M. 405, MANUAL FOR COURTS-MARTIAL, I HAVE INVESTIGATED THE CHARGES APPENDED HERETO (Exhibit 1)		X	
5. THE ACCUSED WAS REPRESENTED BY COUNSEL (if not, see 9 below)		X	
6. COUNSEL WHO REPRESENTED THE ACCUSED WAS QUALIFIED UNDER R.C.M. 405(d) (2), 502(d)		X	
7a. NAME OF DEFENSE COUNSEL <i>(Last, First, MI)</i> ██████████	b. GRADE O3	8a. NAME OF ASSISTANT DEFENSE COUNSEL <i>(if any)</i> ██████████	b. GRADE O3
c. ORGANIZATION <i>(if appropriate)</i> NLSO NW		c. ORGANIZATION <i>(if appropriate)</i> NLSO NW	
d. ADDRESS <i>(if appropriate)</i> 365 S Barclay Code 1307 Bremerton, WA 98314		d. ADDRESS <i>(if appropriate)</i> 365 S Barclay Code 1307 Bremerton, WA 98314	
9. (To be signed by accused if accused waives counsel. If accused does not sign, investigating officer will explain in detail in item 21.)			
a. PLACE		b. DATE	

I HAVE BEEN INFORMED OF MY RIGHT TO BE REPRESENTED IN THIS INVESTIGATION BY COUNSEL, INCLUDING MY RIGHT TO CIVILIAN OR MILITARY COUNSEL OF MY CHOICE IF REASONABLY AVAILABLE. I WAIVE MY RIGHT TO COUNSEL IN THIS INVESTIGATION.

c. SIGNATURE OF ACCUSED		
10. AT THE BEGINNING OF THE INVESTIGATION I INFORMED THE ACCUSED OF: <i>(Check appropriate answer)</i>		
a. THE CHARGE(S) UNDER INVESTIGATION	X	
b. THE IDENTITY OF THE ACCUSER	X	
c. THE RIGHT AGAINST SELF-INCRIMINATION UNDER ARTICLE 31	X	
d. THE PURPOSE OF THE INVESTIGATION	X	
e. THE RIGHT TO BE PRESENT THROUGHOUT THE TAKING OF EVIDENCE	X	
f. THE WITNESSES AND OTHER EVIDENCE KNOWN TO ME WHICH I EXPECTED TO PRESENT	X	
g. THE RIGHT TO CROSS-EXAMINE WITNESSES	X	
h. THE RIGHT TO HAVE AVAILABLE WITNESSES AND EVIDENCE PRESENTED	X	
i. THE RIGHT TO PRESENT ANYTHING IN DEFENSE, EXTENUATION, OR MITIGATION	X	
j. THE RIGHT TO MAKE A SWORN OR UNSWORN STATEMENT, ORALLY OR IN WRITING	X	
11a. THE ACCUSED AND ACCUSED'S COUNSEL WERE PRESENT THROUGHOUT THE PRESENTATION OF EVIDENCE <i>(if the accused or counsel were absent during any part of the presentation of evidence, complete b below.)</i>	X	
b. STATE THE CIRCUMSTANCES AND DESCRIBE THE PROCEEDINGS CONDUCTED IN THE ABSENCE OF ACCUSED OR COUNSEL		

NOTE: If additional space is required for any item, enter the additional material in item 21 or on a separate sheet. Identify such material with the proper numerical and, if appropriate, lettered heading (Example: "7c.") Securely attach any additional sheets to the form and add a note in the appropriate item of the form: "See additional sheet."

500094



5812
06 October 2011

MEMORANDUM

From: M. G. [REDACTED]
Investigating Officer

Attn of: [REDACTED]

To: [REDACTED] CDR
USCGC ALEX HALEY (WMEC 39)

Subj: REPORT OF ARTICLE 32 INVESTIGATION: U.S. V. SN [REDACTED] USCG

Ref: (a) Article 32, Uniform Code of Military Justice
(b) Manual for Courts-Martial (2008 ed.)
(c) Military Judges Bench Book, DA PAM 27-9, 01 January 2010

1. As directed by Investigating Officer (IO) exhibit 3 (IO-3), I conducted an Article 32 investigation in the courtroom adjacent to the CGD THIRTEEN legal office on 22 and 23 September 2011 into the charges preferred against SN [REDACTED] USCG. This report is submitted in accordance with the requirements of R.C.M. 405(j) of reference (b).
2. LT [REDACTED] JAGC, USN represented the accused in her capacity as defense counsel and LT [REDACTED] JAGC, USN represented the accused in her capacity as assistant defense counsel. Both LT [REDACTED] and LT [REDACTED] were present during the investigation and both were qualified in accordance with RCM 405(d)(2) and RCM 502(d).
3. A summary of the sworn testimony of each witness is attached to this report as enclosure (1). Eleven witnesses were determined not reasonably available but did testify telephonically. Accordingly, I was not able to obtain their signatures on the summary of their testimony. Two witnesses testified in person; S/A [REDACTED] CGIS and SN [REDACTED] but due to time constraints, I was unable to obtain their signatures on their witness summaries before they departed to their duty stations. Defense counsel requested ten additional witnesses, but for reasons described below in paragraph 7 and IO-14, I did not call these witnesses to testify. As you requested in IO-3, the hearing was recorded and I have enclosed an audio copy of the hearing as enclosure (2). The essential witnesses in this case are expected to be available to testify if this case goes to trial.
4. A list of exhibits received during the investigation is attached as enclosure (3).
5. The following information is provided regarding the truth of the matters set forth in the charges and recommended form of the charges:
 - a. Charge I: Violation of Article 120, UCMJ – Aggravated Sexual Assault and Indecent Act

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There are five specifications under Charge I. The government has plead the first four specifications in the alternative as Aggravated Sexual Assault and the fifth specification is for an Indecent Act.

As charged, the elements of Specification 1 of Charge I are:

- (1) That on or about 16 October 2010, SN [REDACTED] USCGC ALEX HALEY, on active duty, did, at or near Kodiak, Alaska, engage in a sexual act by inserting his penis into the vagina of SN [REDACTED] USCG; and
- (2) That SN [REDACTED] did so when SN [REDACTED] USCG was substantially incapacitated.

The evidence produced at the hearing relevant to this specification was as follows:

SN [REDACTED] is currently on active duty and was assigned to the USCGC ALEX HALEY (WMEC 39) at the time the activities serving as the basis of these charges occurred. (IO-1, testimony of FN [REDACTED], SN [REDACTED], SN [REDACTED], and LTJG [REDACTED]). On 15 October 2010 SN [REDACTED] weighed 117 pounds. (testimony of SN [REDACTED]). Her last meal was lunch, after which she drank an energy drink and engaged in physical exercise consisting of both weights and cardiovascular activities. (testimony of SN [REDACTED]). At approximately 1900 that evening, she began preparing for the Halloween party at her Shipmate's house, consuming approximately three to four 16oz mimosa cocktails consisting of 1/2 champagne and 1/2 orange juice. (testimony of SN [REDACTED]). She arrived to the Halloween party at approximately 2230 and continued drinking. (testimony of SN [REDACTED], FN [REDACTED], SN [REDACTED], BM [REDACTED], and SNBM [REDACTED]). SN [REDACTED] recalls consuming another three to four 16oz solo cups filled about 1/2 way with champagne (about 8oz per drink), at least one jello shot, and drinking approximately eight ounces of champagne through a funnel. (testimony of SN [REDACTED]). Testimony from other party attendees varies as to what or how much SN [REDACTED] was drinking, but all concur that she was drinking. (testimony of SN [REDACTED], FN [REDACTED], SN [REDACTED], BM [REDACTED], and SNBM [REDACTED]).

Following the Halloween party, SN [REDACTED] proceeded to Bernie's Bar. (testimony of SN [REDACTED]). She recalls drinking a "jaeger bomber" (a shot of Jaeger Meister alcohol dropped into a glass of Red Bull energy drink), a rum and coke, and she was told by FN [REDACTED] that she also drank a shot of Petron. (testimony of SN [REDACTED]). SN [REDACTED] testified that from this point in the evening forward she was blacking out and she only has certain intermittent recollections. (testimony of SN [REDACTED], LTJG [REDACTED], and SN [REDACTED]).

Several Shipmates who were with or saw SN [REDACTED] from the time she left Bernie's Bar to the time she entered the Government Vehicle (GV) to go home described her as being somewhere between intoxicated and highly intoxicated. (testimony of FN [REDACTED]: "pretty drunk", LTJG [REDACTED]: "intoxicated," FS3 [REDACTED]: "kind of drunk" to "very drunk," and MK3 [REDACTED]: "disoriented"). LTJG [REDACTED] who has prior training as a nurse and who has dealt with intoxicated persons in community nursing and who has received Coast Guard Boarding Officer Training at the MLE Academy following the event, testified to SN [REDACTED]'s condition. (testimony of LTJG [REDACTED]). On that evening, [REDACTED] herself had been drinking at Bernie's Bar, but she was with her Supervisor and described her own condition as being "buzzed" but stated that her memory was clear (testimony of LTJG [REDACTED]). LTJG [REDACTED] testified that when she left Bernie's Bar, she encountered SN [REDACTED] who appeared intoxicated, her head rolling back and forth, but responsive to questions, albeit with slurred speech. (testimony of LTJG [REDACTED]).

LTJG [REDACTED] witnessed SN [REDACTED] interact with police and bouncers outside of the Mecca Bar where [REDACTED] was not admitted due to her level of intoxication. (testimony of LTJG [REDACTED] and FS3 [REDACTED]). SN [REDACTED] did enter the Mecca Bar, but was kicked out by bouncers when discovered. (testimony of LTJG [REDACTED]). LTJG [REDACTED] was instructed by a Kodiak Police officer to take SN [REDACTED] away due to [REDACTED]'s high level of intoxication. (testimony of LTJG [REDACTED]). At one point, LTJG [REDACTED] was assisting SN [REDACTED] to walk by supporting most of her body weight (testimony of LTJG [REDACTED]). LTJG [REDACTED] called the GV to retrieve [REDACTED] so that [REDACTED] would not get into trouble with the police. (testimony of LTJG [REDACTED]). LTJG [REDACTED] turned SN [REDACTED] over to "some other women" from the ALEX HALEY to await the arrival of the GV. (testimony of LTJG [REDACTED]).

One of those "other women" was FS3 [REDACTED] (testimony of FS3 [REDACTED]). FS3 [REDACTED] described SN [REDACTED] as being "kind of drunk" and stated that [REDACTED] could walk, but that she was holding onto [REDACTED] for support. (testimony of FS3 [REDACTED]). Following SN [REDACTED]'s rejection from the Mecca Bar, she and [REDACTED] went to get something to eat. (testimony of FS3 [REDACTED]). The GV arrived before the food so they cancelled the order and got into the GV. (testimony of FS3 [REDACTED]).

The GV driver was dispatched for the specific purpose of picking up SN [REDACTED] due to her intoxication and when he arrived in town SN [REDACTED] had a couple of people assisting her. (testimony of LTJG [REDACTED] and MK3 [REDACTED]). According to FS3 [REDACTED], SN [REDACTED] appeared "very drunk" during the van ride home. (testimony of FS3 [REDACTED]). According to the liberty van driver, SN [REDACTED] was complaining of being sick and dry-heaving on the ride home. (testimony of MK3 [REDACTED]). The van driver pulled over to provide SN [REDACTED] the opportunity to vomit, but she declined. (testimony of MK3 [REDACTED]). SN [REDACTED] was coherent enough to understand MK3 [REDACTED]'s question and to decline. (testimony of MK3 [REDACTED]). The van driver did discover vomit in the location where SN [REDACTED] had been seated when he arrived back to the ship; that vomit was not there when he departed for his van run. (testimony of MK3 [REDACTED]).

When the GV arrived in front of SN [REDACTED]'s barracks room, [REDACTED] could not get out of the van by herself. (testimony of MK3 [REDACTED]). MK3 [REDACTED] described her exit from the van as "falling out." (testimony of MK3 [REDACTED]). SN [REDACTED] was assisted out of the GV by SN [REDACTED] and FS3 [REDACTED] (testimony of MK3 [REDACTED]). SN [REDACTED] was coordinated enough to stand on her own, but not coordinated enough to walk on her own. (testimony of MK3 [REDACTED]). On a scale of 1 to 10, with 1 being sober and 10 being passed out, the liberty van driver described SN [REDACTED] as a nine at the time he picked her up in downtown Kodiak and as an 8 at the time he dropped her off at her barracks. (testimony of MK3 [REDACTED]). SN Thoms and FS3 [REDACTED] guided SN [REDACTED] to her barracks room because she could not make it into her barracks room alone. (testimony of FS3 [REDACTED] and MK3 [REDACTED]). FS3 [REDACTED] waited outside of SN [REDACTED]'s barracks room for approximately 15 minutes but SN [REDACTED] did not exit the room before she left. (testimony of FS3 [REDACTED] and S/A [REDACTED]).

The accused, SN [REDACTED], during an interview with CGIS, stated that SN [REDACTED] dry-heaved and vomited when she entered her barracks room. (testimony of S/A [REDACTED]). The accused further stated that SN [REDACTED] then brushed her teeth, took off her clothes, and invited him into her bed. (S/A [REDACTED]). SN [REDACTED] was shocked at the invitation, but did not decline, and he stated that he and [REDACTED] engaged in consensual sexual intercourse, meaning that SN [REDACTED] inserted his penis into her vagina (testimony of FN [REDACTED] and S/A [REDACTED]). In his statement to

CGIS, SN [REDACTED] stated that SN [REDACTED] requested aggressive sexual intercourse. (testimony FN [REDACTED] SN [REDACTED] and S/A [REDACTED]).

The following day, SN [REDACTED] awoke but could not remember events from the prior evening as a result of "blacking out." (testimony of LTJG [REDACTED], SN [REDACTED] and S/A [REDACTED]). SN [REDACTED] displayed some injuries that may be consistent with having "rough sex" as described by SN [REDACTED] (SN [REDACTED], SN [REDACTED] and S/A [REDACTED]). Evidence was received that SN [REDACTED] recalled certain events during the evening but did not have full recollection of the events. (SN [REDACTED], SNBM [REDACTED], LTJG [REDACTED], and S/A [REDACTED]). SNBM [REDACTED] testified that SN [REDACTED] told him that she had no recollection of [REDACTED] entering her barracks room, but that she was "in and out" [of recollection] during the sexual intercourse. (SNBM [REDACTED]). This statement is inconsistent with testimony provided by SN [REDACTED] who stated that she only had one recollection following the beginning of her "black-out" at Bernie's Bar, which was a flashback of her retrieving something from her boot. (testimony of SN [REDACTED]).

The government introduced a video purporting to be taken by SN [REDACTED] of SN [REDACTED] following the sexual acts. (testimony of S/A [REDACTED], S/A [REDACTED] and IO-17). In the approximately 51 seconds of video, the woman being videoed shows no apparent movement. (testimony of S/A [REDACTED]). S/A [REDACTED] testified that the video was removed from SN [REDACTED] phone following the seizure of that phone pursuant to a valid search warrant issued by a military judge. (testimony of S/A [REDACTED]). Further, he testified that the woman in the video appeared to be SN [REDACTED]. (testimony of S/A [REDACTED]). The failure of the woman to show movement is inconsistent with SN [REDACTED]'s prior statement to both CGIS agents and FN [REDACTED] when he told them that SN [REDACTED] requested that he return to bed following intercourse and that she was mad that he did not. (testimony of FN [REDACTED] and S/A [REDACTED]).

The evidence establishes each elements of this offense. SN [REDACTED] engaged in a sexual act, meaning that SN [REDACTED] penetrated the vagina of SN [REDACTED] with his penis on or about 16 October 2010, in her barracks room in Kodiak, Alaska, and that SN [REDACTED] was substantially incapacitated. Here, the evidence indicates that SN [REDACTED] needed the assistance of her Shipmates to be placed into, and removed from the GV. Of the witness testimony received, the IO relied heavily upon the testimony of MK3 [REDACTED] who was NOT under the influence of alcohol when he dropped SN [REDACTED], FS3 [REDACTED] and SN [REDACTED] off at her barracks. MK3 [REDACTED] was the last sober person who could objectively observe SN [REDACTED]'s condition upon her return to her barracks on the morning of the 16th. MK3 [REDACTED] indicated that SN [REDACTED] was clearly intoxicated, falling out of the GV when attempting to depart, able to stand but not walk on her own, and either on the verge of or actually vomiting in the GV. She was then assisted into her barracks room by SN [REDACTED] and FS3 [REDACTED] because she was unable to proceed on her own. Thus, the testimony provided leads me to believe that SN [REDACTED] was incapacitated due to her alcohol intoxication and unable to provide valid consent to sexual intercourse with SN [REDACTED].

The above said, whether or not SN [REDACTED] consented will be an issue if Charge I, Specification 1 is referred to court-martial. Under Article 120, consent and mistake of fact as to consent are an affirmative defense to a charge of Aggravated Sexual Assault.¹

¹ See, reference (b), Part IV, Punitive Articles, Article 120). See also, United States v. Medina, 68 M.J. 587 (NMCCA 2009). There is some question whether the affirmative defense of consent can exist in the current scenario. The term "consent" means words or overt acts indicating freely given agreement to the sexual conduct by a

During the investigation, evidence was provided to indicate that SN [REDACTED] may also have been intoxicated on the evening of the 15th and morning of 16th of October 2010. (testimony of FN [REDACTED] SN [REDACTED] BM3 [REDACTED] S/A [REDACTED] OS2 [REDACTED] FS3 [REDACTED] and MK3 [REDACTED]). Evidence was also produced to indicate that SN [REDACTED] and SN [REDACTED] may have had a previous sexual relationship just one week before the Halloween party (testimony of FN [REDACTED] S/A [REDACTED] SN [REDACTED] and SNBM [REDACTED]) and that SN [REDACTED] was wearing a skin tight bodysuit with an open back as part of her cheetah costume. (testimony of SN [REDACTED] LTJG [REDACTED] and OS2 [REDACTED]). Additionally, evidence was presented to indicate that SN [REDACTED] and SN [REDACTED] were "dirty dancing" together earlier in the evening in an overtly sexual manner (FN [REDACTED] and SN [REDACTED]) and that SN [REDACTED] and SN [REDACTED] kissed during that evening both on the dance floor and in the liberty van and that [REDACTED] may have either rubbed SN [REDACTED] penis or given him oral sex while on the way home in the GV. (testimony of FN [REDACTED] and SN [REDACTED] (retelling a story told to them by the accused), FS3 [REDACTED] (maybe kissing in GV) and MK3 [REDACTED] [REDACTED]s head in [REDACTED] lap during GV ride home accompanied by heavy breathing). Finally, evidence was produced that indicated SN [REDACTED] may have had some recollection of engaging in sex with SN [REDACTED] on the morning of 16 October 2010 and that SN [REDACTED] believed that she consented and even aggressively sought sexual intercourse. (testimony of FN [REDACTED] BM3 [REDACTED] OS2 [REDACTED] and S/A [REDACTED]).

The term "consent" means words or overt acts indicating a freely given agreement to the sexual conduct at issue.² A current or previous dating relationship by itself or the manner of dress of the person involved with the accused in the sexual conduct at issue shall not constitute consent.³ Further, a person cannot consent to sexual activity if they are substantially incapable of appraising the nature of the sexual conduct at issue due to mental impairment or unconsciousness resulting from consumption of alcohol (See, below, discussion of Charge I, Specification 2). Likewise, a person cannot consent to sexual activity if they are substantially incapable of declining participation in the sexual conduct at issue (See, below, discussion of Charge I, Specification 3) or substantially incapable of physically communicating unwillingness to engage in the sexual conduct at issue (See, below, discussion of Charge I, Specification 4).⁴

Further, Part IV of the Punitive Articles states:

"Mistake of fact as to consent means that the accused held, as a result of ignorance or mistake, an incorrect belief that the other person engaging in the sexual conduct consented. The ignorance or mistake must have existed in the mind of the accused and must have been reasonable under all the circumstances. To be reasonable, the ignorance or mistake must have been based on information, or lack of it, that would indicate to a reasonable person that the other person consented. Additionally, the ignorance or mistake cannot be based on the negligent failure to discover true facts. Negligence is the absence of due care. Due care is what a reasonably careful person would do under the same or similar

competent person. A person who is substantially incapacitated or substantially incapable of appraising the nature of, incapable of declining participation in, or incapable of communicating unwillingness to engage in the sexual acts is not competent. The alternative affirmative defense of mistake of fact as to consent does exist "if the accused reasonably and honestly held, 'as a result of ignorance or mistake, and incorrect belief that the [putative victim] consented.'" 68 M.J. 587 at 589.

² Id.

³ Id.

⁴ Id.

circumstances. The accused's intoxication, if any, at the time of the offense is not relevant to mistake of fact. A mistaken belief that the other person consented must be that which a reasonably careful, ordinary, prudent, sober adult would have had under the circumstances at the time of the offense. (emphasis added)."

Here, it is my opinion that reasonable grounds exist to believe that the accused committed the crime of aggravated sexual assault as alleged. The MCM is clear that a prior sexual relationship, if one existed, may be considered but does not, by itself, constitute consent. Similarly, the manner of dress worn by a victim does not constitute consent. The MCM is also clear that the possible level of intoxication of the accused does not weigh in favor of a mistake of fact defense. Accordingly, I recommend that this specification be referred for trial by general court-martial. In my opinion, even if doubt exists as to whether SN [REDACTED] did consent, or was capable of consenting, the determination of whether such a defense should or could succeed should be made by a trier of fact through the court-martial process. In my analysis, I found the testimony of LTJG [REDACTED] and MK3 [REDACTED] to weigh strongly in favor of the Government's argument. Additionally, I have reviewed IO Exhibit 17 four times and find this evidence compelling. I believe that the nude woman in the video is SN [REDACTED] and she appears completely passed out with her arms and foot in an awkward position with no movement for 51 seconds. There is nothing in this video that leads me to believe that she in any way participated in the creation of the video or that it is likely she consented to aggressive sexual intercourse just prior to the video being captured. The form of the Charge I, Specification 1 is correct.

As charged, the elements of Specification 2 of Charge I are:

- (1) That on or about 16 October 2010, SN [REDACTED] USCGC ALEX HALEY, on active duty, did, at or near Kodiak, Alaska, engage in a sexual act by inserting his penis into the vagina of SN [REDACTED] USCG; and
- (2) That SN [REDACTED] did so when SN [REDACTED] USCG was substantially incapable of appraising the nature of the sexual act.

The evidence produced at the hearing relevant to this specification is the same as described above for Specification 1 of Charge I.

The evidence establishes each element of this offense. SN [REDACTED] inserted his penis into the vagina of SN [REDACTED] and that SN [REDACTED] was substantially incapable of appraising the nature of the sexual act. SN [REDACTED] was heavily intoxicated at the time she was dropped off at her barracks room by MK3 [REDACTED] as described above. Under Article 120 (c), *Aggravated Sexual Assault* (described above), a person cannot consent to sexual activity if they are substantially incapable of appraising the nature of the sexual conduct at issue due to mental impairment or unconsciousness resulting from the consumption of alcohol.

Here, evidence was provided that SN [REDACTED] who weighed 117 pounds on the date of the incident and ate no food after her lunch (except, (possibly) some McDonalds food during the GV trip home), consumed a large amount of alcohol between approximately 1900 and 0300. While the actual amount of alcohol consumed is unclear, the effects of that alcohol as described by LTJG [REDACTED] FS3 [REDACTED] and MK3 [REDACTED] indicate that she was intoxicated and unable to make it into her barracks room unaided. If this case is referred to court-martial, I would expect that either trial or defense counsel would call an expert toxicologist to identify the level of

intoxication that would accompany an individual's physical capabilities as described by the various witnesses. The MCM makes clear that the level of impairment of one under the influence of alcohol does not have to reach the level of unconsciousness before an individual is incapable of appraising the nature of the sexual conduct at issue.⁵

Further, IO-17, which was seized from SN [REDACTED] phone, shows a woman matching the description of SN [REDACTED] lying in bed without any movement for 51 seconds. (testimony of S/A [REDACTED]). It would not be unreasonable for a panel of members reviewing this video to infer from the lack of movement that SN [REDACTED] (if they believe the woman in the video to be she) was unable to appraise the nature of the sexual act as a result of being unconscious from the consumption of alcohol. In his prior statement to CGIS, SN [REDACTED] indicated that [REDACTED] asked him to return to bed following their sexual encounter. (testimony of FN [REDACTED] and S/A [REDACTED]). This video would call into question SN [REDACTED] version of the event, but only if Government Counsel were able to convince a trier of fact that the woman in the video is SN [REDACTED] on the morning of 16 October 2010. Based upon the testimony of S/A [REDACTED] I believe that the Government could prove that the woman in the video is SN [REDACTED]

It is my opinion that reasonable grounds exist to believe that the accused committed the crime of aggravated sexual assault as alleged in this specification. Accordingly, I recommend that this specification be referred for trial by general court-martial with Government Counsel pleading this specification in the alternative to Specification 1 of Charge I. The form of the Charge I, Specification 2 is correct.

As charged, the elements of Specification 3 of Charge I are:

- (1) That on or about 16 October 2010, SN [REDACTED] USCGC ALEX HALEY, on active duty, did, at or near Kodiak, Alaska, engage in a sexual act by inserting his penis into the vagina of SN [REDACTED] USCG; and
- (2) That SN [REDACTED] did so when SN [REDACTED] USCG was substantially incapable of declining participation in the sexual act.

The evidence produced at the hearing relevant to this specification is described above under Specifications 1 and 2 of Charge I. The evidence establishes both elements of this specification. In this specification, the Government is again pleading the same charge under an alternative specification. I note that the MCM, under the definition of consent, adds the term "physically" before the language "declining participation in the sexual conduct at issue."⁶

As described above, the evidence presented at the hearing included that of MK3 [REDACTED] and FS3 [REDACTED] both of whom stated that SN [REDACTED] required physical assistance to proceed and enter into her barracks room. Further, the woman in the video (IO Exhibit 17), if determined by the trier of fact to be SN [REDACTED] appears incapable of physically declining participation in a sexual act.

It is my opinion that reasonable grounds exist to believe that the accused committed the crime of aggravated sexual assault as alleged in this specification. Accordingly, I recommend that this

⁵ See, reference (b), Part IV, Article 120, (t) (14): definition of "consent."

⁶ Id.

specification be referred for trial by general court-martial with Government Counsel pleading this specification in the alternative to Specifications 1 and 2 of Charge I. The form of the Charge I, Specification 3 is correct.

As charged, the elements of Specification 4 of Charge I are:

- (1) That on or about 16 October 2010, SN [REDACTED] USCGC ALEX HALEY, on active duty, did, at or near Kodiak, Alaska, engage in a sexual act by inserting his penis into the vagina of SN [REDACTED] USCG; and
- (2) That SN [REDACTED] did so when SN [REDACTED] USCG was substantially incapable of communicating unwillingness to engage in the sexual act.

The evidence produced at the hearing relevant to this specification is described above under Specifications 1, 2, and 3 of Charge I. The evidence establishes both elements of this specification. In this specification, the Government is again pleading the same charge under an alternative specification. I note that the MCM, under the definition of consent, adds the term "physically" before the language "communicating unwillingness to engage in the sexual conduct at issue." As described above, if the woman in the video (IO-17), is determined by the trier of fact to be SN [REDACTED] the trier of fact could reasonably conclude that she was incapable of physically communicating unwillingness to engage in the sexual conduct at issue.

The above said, of the four specifications alleged under *Article 120 (c) Aggravated Sexual Assault*, I believe Specification 4 to be the weakest because it relies most heavily upon the trier of fact's impression of IO-17. Additionally, while the evidence presented by MK3 [REDACTED] and FS3 [REDACTED] indicates that SN [REDACTED] required physical assistance to enter into her barracks room, there was also an indication that she was coherent enough to stand by herself (testimony of MK3 [REDACTED] and to verbally decline an invitation to stop the GV to allow her to vomit (testimony of MK3 [REDACTED]).

It is my opinion that reasonable grounds exist to believe that the accused committed the crime of aggravated sexual assault as alleged in this specification. However, I do NOT recommend that this specification be referred. Evidence was presented that SN [REDACTED] blacked out and can not remember whether she gave verbal consent or not (testimony of SNBM [REDACTED]). I therefore recommend that this specification be dismissed. If you decide to move forward with this Specification, the form of the Charge I, Specification 4 is correct.

As charged, the elements of Specification 5 of Charge I are:

- (1) That on or about 16 October 2010, SN [REDACTED] USCGC ALEX HALEY, on active duty, did, at or near Kodiak, Alaska, wrongfully commit indecent conduct by photographing and recording video of the genitalia and buttocks of SN [REDACTED] USCG, without her consent and contrary to her reasonable expectation of privacy.
- (2) That the conduct was indecent conduct.

The evidence produced at the hearing relevant to this specification was as follows: Photographs and a 51 second video depicting a nude woman matching SN [REDACTED]'s description where

⁷ Id.

found on SN [REDACTED] cellular phone (testimony of S/A [REDACTED] and S/A [REDACTED]). The phone was seized and searched pursuant to a valid search warrant issued by a military judge. (testimony of S/A [REDACTED]). SN [REDACTED] is certain that the pictures found on SN [REDACTED] phone are of her. (testimony of SN [REDACTED]). SN [REDACTED] sent a picture of the nude women to BM3 [REDACTED] onboard the HALEY accompanied by a text message. (testimony of BM3 [REDACTED]). SN [REDACTED] told [REDACTED] that the woman in the picture was SN [REDACTED] and [REDACTED] agreed that the woman did appear to be SN [REDACTED] (testimony of BM3 [REDACTED]). BM3 [REDACTED] could see the woman's nude buttocks but not her genitalia in the picture. (testimony of BM3 [REDACTED]). SN [REDACTED] showed SN [REDACTED] a copy of the picture stored on SN [REDACTED] cellphone and told SN [REDACTED] that it was a picture of [REDACTED]. (testimony of SN [REDACTED]). SN [REDACTED] could see the woman's nude buttocks but not her genitalia in the picture. (testimony of SN [REDACTED]). SN [REDACTED] stated that he would not have known that the picture was of SN [REDACTED] had SN [REDACTED] not told him so. (testimony of SN [REDACTED]). In both the pictures and the video, the nude buttocks of the female are clearly visible. (testimony of S/A [REDACTED] S/A [REDACTED] IO-16 and IO-17). The date and timing of the pictures corroborates with the time and date information in the allegations against SN [REDACTED] and the date and time during which SN [REDACTED] stated that he had consensual sex with SN [REDACTED] (testimony S/A [REDACTED] and S/A [REDACTED]). SN [REDACTED] had no knowledge that she was photographed or videotaped. (testimony of S/A [REDACTED]).

The evidence establishes each element of this specification. Pursuant to Article 120 (k) of reference (b), any person subject to Article 120 of the UCMJ "who engages in indecent conduct is guilty of an indecent act." Article 120 (t) (12) of reference (b) states that indecent conduct means:

"that form of immorality relating to sexual impurity that is grossly vulgar, obscene, and repugnant to common propriety, and tends to excite sexual desire or deprave morals with respect to sexual relations. Indecent conduct includes making a videotape, photograph, motion picture, print, negative, slide, or other mechanically, electronically, or chemically reproduced visual material, without another person's consent, and contrary to that other person's reasonable expectation of privacy, of-

(A) that other person's genitalia, anus, or buttocks,"

Here, the evidence provided indicates that SN [REDACTED] took both pictures and video of SN [REDACTED] buttocks without her knowledge or consent and against her reasonable expectation of privacy. Further, the conduct involved in taking the photo (IO-16) and the video (IO-17) fits within definition of indecent conduct defined in reference (b).

It is my opinion that reasonable grounds exist to believe that the accused committed the crime of Indecent Act as alleged in this specification. However, at the hearing, the witnesses testified as to seeing the buttocks of the woman but did not clearly see her genitalia in both the picture and the video. Accordingly, I recommend that the specification be amended by striking the terms "genitalia and" from the specification. I recommend that this specification be referred for trial by general court-martial. The form of the Charge I, Specification 5 is correct.

b. Charge II: Violations of Article 134, UCMJ

There are five specifications under Charge II. Here, the specifications are NOT plead in the alternative, and each specification alleges a separate wrongful act.

As charged, the elements of Specification 1 of Charge II are:

- (1) That on or about 16 October 2010, SN [REDACTED] USCGC ALEX HALEY, on active duty, did, at or near Kodiak, Alaska, communicate to [REDACTED] in writing certain indecent language, to wit: "if you look closely you can see the cum on her butt" or words to that effect;
- (2) That the language was indecent; and
- (3) That, under the circumstances, the conduct of the accused was to the prejudice of good order and discipline in the armed forces or was of a nature to bring discredit upon the armed forces.

The following description of the evidence presented will be used to describe the applicable evidence for Specifications 1 through 5 of Charge II.

The evidence produced at the hearing relevant to these specifications was as follows: SN [REDACTED] is currently on active duty and was assigned to the USCGC ALEX HALEY (WMEC 39) at the time the activities serving as the basis of these charges occurred. (IO-1, testimony of FN [REDACTED] SN [REDACTED] SN [REDACTED] LTJG [REDACTED] Following the report of the alleged sexual assault, CGIS agents seized SN [REDACTED] phone pursuant to a valid search warrant issued by a military judge. (testimony of S/A [REDACTED] Forensic analysis of the phone was conducted by S/A [REDACTED] of CGIS with the assistance of the Kodiak, Alaska Police Department. (testimony of S/A [REDACTED] Forensic analysis of the phone revealed several text messages and pictures, including the picture entered as IO Exhibit 16. (testimony of S/A [REDACTED] Through his forensic analysis, S/A [REDACTED] was able to link certain text messages together, including the date and time those messages were sent, with the filename associated with the picture entered as IO-16. (testimony of S/A [REDACTED] On 16 October 2010, SN [REDACTED] transmitted a text message to a civilian named [REDACTED] (testimony of S/A [REDACTED] That text message also contained the picture entered as IO-16. (testimony of S/A [REDACTED] The text message that accompanied the picture entered as IO-16 contained the language "if u zoom in there is cum all over her butt . . ." (testimony of S/A [REDACTED] and IO-18).

Also on 16 October, SN [REDACTED] sent a text message containing the picture entered as IO-16 to a civilian named [REDACTED] (testimony of S/A [REDACTED] and IO-18). S/A [REDACTED] could verify that the picture and an accompanying text were received by [REDACTED] SN [REDACTED] also sent a text message and a nude picture of a nude woman's back and buttocks to BM3 [REDACTED] the night following the Halloween party on 16 October 2010. (testimony of BM3 [REDACTED] The woman in the nude picture had dark brown hair and he could see the woman's buttocks, but not her genitalia. (testimony of BM3 [REDACTED] SN [REDACTED] told BM3 [REDACTED] that the woman in the picture was SN [REDACTED] (testimony of BM3 [REDACTED] The woman in the picture fit the build and description of SN [REDACTED] and BM3 [REDACTED] believed that it was her. (testimony of BM3 [REDACTED] SN [REDACTED] also showed SN [REDACTED] a nude picture of a woman that was contained on SN [REDACTED] cell phone. (testimony of SN [REDACTED] In the picture, SN [REDACTED] could see the nude back and buttocks of a woman. (testimony of SN [REDACTED] SN [REDACTED] informed SN [REDACTED] that the woman in the picture on his cell phone was SN [REDACTED] (testimony of SN [REDACTED]

Pursuant to reference (b), Part IV, Paragraph 89., Article 134 (Indecent language) (c), "Indecent" language is that:

" which is grossly offensive to modesty, decency, or propriety, or shocks the moral sense, because of its vulgar, filthy, or disgusting nature, or its tendency to incite lustful thought. Language is indecent if it tends reasonably to corrupt morals or incite libidinous thoughts. The language must violate community standards."

Pursuant to reference (c), paragraph 3-89-1. Indecent Language Communicated to Another (Article 134), the term "communicated to" means that the language was actually made known to the person to whom it was directed. A text message can be a communication.⁸ Reference (c) also provides an explanation for the terms "[c]onduct prejudicial to good order and discipline" which is "conduct which causes a reasonably direct and obvious injury to good order and discipline. "Service discrediting conduct" is also defined by reference (c) as "conduct which tends to harm the reputation of the service or lower it in public esteem."

Reference (c) states:

"not every use of language that is indecent constitutes an offense under the UCMJ. The government must prove beyond a reasonable doubt, either by direct evidence or inference, that the accused's conduct was prejudicial to good order and discipline in the armed forces or was of a nature to bring discredit upon the armed forces."

The evidence establishes all elements of this specification. Here a reasonable trier of fact could find that the language is vulgar, filthy, and of the nature to incite libidinous thoughts. Additionally, a reasonable trier of fact could determine that the language, in reference to a fellow Coast Guard member, is prejudicial to good order and discipline (in the effect it had between SN [REDACTED] and SN [REDACTED] relating to their duties onboard the HALEY) as well as of a nature to bring discredit upon the armed forces because the text was sent from a Coast Guard member to a civilian member of the public, an embarrassment to the Coast Guard.

It is my opinion that reasonable grounds exist to believe that the accused committed the crime of Indecent Language as alleged in Specification 1 of Charge II. Accordingly, I recommend that this specification be referred for trial by general court-martial. I note that the language in the specification does not match that contained in IO-18 exactly, but the specification is sufficient in that it alleges "or words to that effect." The form of Charge II, Specification 1 is correct.

As charged, the elements of Specification 2 of Charge II are:

- (1) That on or about 16 October 2010, SN [REDACTED] USCGC ALEX HALEY, on active duty, did, at or near Kodiak, Alaska, send a nude picture of SN [REDACTED] USCG to [REDACTED] without SN [REDACTED] permission, and
- (2) That, under the circumstances, the conduct of the accused was to the prejudice of good order and discipline in the armed forces and was of a nature to bring discredit upon the armed forces.

⁸ See, United States v. Johnson, 2009 WL 2599398 (Unpublished Opinion of N.M.C.C.A. 2009) (citing to United States v. White, 62 M.J. 639, 642 (N.M.C.C.A. 2006 and reference (b), Part IV, Paragraph 89b(1)).

The evidence produced at the hearing relevant to this specification is described above. In short, S/A [REDACTED] testified that the SN [REDACTED] cell phone contained an outgoing text describing the language in Specification 1 of Charge II and the picture entered as IO Exhibit 16. S/A [REDACTED] testified that he could determine through forensic analysis that the text and picture were received by civilian [REDACTED]. The picture in IO-16 was identified as SN [REDACTED] (testimony of S/A [REDACTED] and SN [REDACTED]). The picture was taken without SN [REDACTED] knowledge (or consent). (S/A [REDACTED])

Here, a reasonable trier of fact could determine that the electronic distribution of a nude picture of a fellow Coast Guard crewmember, is prejudicial to good order and discipline (in the effect it had between SN [REDACTED] and SN [REDACTED] relating to their duties onboard the HALEY) as well as of a nature to bring discredit upon the armed forces because the picture was sent via a text message from a Coast Guard member to a civilian member of the public, an embarrassment to the U.S. Coast Guard.

The evidence establishes both elements of this specification. This specification is charged under the general Article 134 and not a specific listed offense under that Article. I have reviewed military justice case law to ascertain whether Specification 2 of Charge II is unreasonably multiplicitous with Specification 1 of Charge II because the second specification arose out of the same course of conduct; i.e., the sending of a text message to [REDACTED]. It is my opinion that no multiplicity problem exists between these two Specifications. While the underlying conduct of sending a text message is the same, the act of attaching a picture to that text message is a separate act worthy of its' own specification. Further, although both Specification 1 and Specification 2 of Charge II are pled under Article 134, the elements of the Indecent Language specification are different than the elements of this specification because the former requires the additional element of the indecent language. In sum, it is my opinion that it is appropriate to allege both specifications.⁹

It is my opinion that reasonable ground exist to believe that the accused committed the crime of committing conduct that was to the prejudice of good order and discipline or was of a nature to bring discredit upon the armed forces. Accordingly, I recommend that this specification be referred for trial by general court-martial. The form of Charge II, Specification 2 is correct.

As charged, the elements of Specification 3 of Charge II are:

- (1) That on or about 16 October 2010, SN [REDACTED], USCGC ALEX HALEY, on active duty, did, at or near Kodiak, Alaska send a nude picture of SN [REDACTED] USCG to [REDACTED] without SN [REDACTED] permission, and
- (2) That, under the circumstances, the conduct of the accused was to the prejudice of good order and discipline in the armed forces and was of a nature to bring discredit upon the armed forces.

The evidence produced at the hearing relevant to this specification is described above under Specification 1 of Charge II. In sum, on 16 October 2010, SN [REDACTED] sent a text message containing the picture entered as IO-16 to a civilian named [REDACTED] (testimony of S/A [REDACTED])

⁹ See ex. United States v. Paxton, 64 M.J. 484 (C.A.A.F. 2007); United States v. Britcher, 41 M.J. 806 (C.G.C.C.A. 1995).

[REDACTED] and IO-18). S/A [REDACTED] could verify that the picture in and an accompanying text was received by [REDACTED]. The picture in IO-16 is that of SN [REDACTED] (testimony of SN [REDACTED] and S/A [REDACTED]). That picture was taken without SN [REDACTED] consent. (testimony of S/A [REDACTED]). Here, a reasonable trier of fact could determine that the electronic distribution of a nude picture of a fellow Coast Guard crewmember, is prejudicial to good order and discipline (in the effect it had between SN [REDACTED] and SN [REDACTED] relating to their duties onboard the HALEY) as well as of a nature to bring discredit upon the armed forces because the picture was sent via a text message from a Coast Guard member to a civilian member of the public, an embarrassment to the Coast Guard.

It is my opinion that reasonable ground exist to believe that the accused committed the crime of committing conduct that was to the prejudice of good order and discipline and was of a nature to bring discredit upon the armed forces. Accordingly, I recommend that this specification be referred for trial by general court-martial. The form of Charge II, Specification 3 is correct.

As charged, the elements of Specification 4 of Charge II are:

(1) That on or about 16 October 2010, SN [REDACTED] USCGC ALEX HALEY, on active duty, did, at or near Kodiak, Alaska send a nude picture of SN [REDACTED] USCG to BM3 [REDACTED] USCG without SN [REDACTED] permission, and

(2) That, under the circumstances, the conduct of the accused was to the prejudice of good order and discipline in the armed forces and was of a nature to bring discredit upon the armed forces.

The evidence produced at the hearing relevant to this specification is described above under Specification 1 of Charge II. In sum, the applicable portion is that SN [REDACTED] sent a text message and a nude picture of a woman's back and buttocks to BM3 [REDACTED] the night following the Halloween Party on 16 October 2010. (testimony of BM3 [REDACTED]). The woman in the nude picture had dark brown hair and he could see the woman's buttocks, but not her genitalia. (testimony of BM3 [REDACTED]). SN [REDACTED] told BM3 [REDACTED] that the woman in the picture was SN [REDACTED] (testimony of BM3 [REDACTED]). The woman in the picture fit the build and description of SN [REDACTED] and BM3 [REDACTED] believed that it was her. (testimony of BM3 [REDACTED]). SN [REDACTED] did consent to having her nude picture taken by SN [REDACTED] (S/A [REDACTED]).

The evidence establishes each element of this offense, except that the evidence does not show how the conduct brought discredit upon the armed services. Such activities between crewmembers onboard the same Coast Guard Cutter is, on its face, prejudicial to the good order and discipline of the armed services. To the contrary, evidence was not received to show how SN [REDACTED] actions as they relate to BM3 [REDACTED] were of a nature to bring discredit upon the armed forces.

"Discredit" within the context of being "of a nature to bring discredit upon the armed forces," means to injure the reputation of. This clause of Article 134 makes punishable conduct which has a tendency to bring the service into disrepute or which tends to lower it in public esteem.¹⁰ In this specification, the activity occurred solely between active duty members of the Coast Guard. To the extent that the Kodiak police department assisted in the retrieval of photographs from SN [REDACTED] phone, the evidence provided did not make clear that it was one of those

¹⁰ Reference (c), Part IV Punitive Articles, Article 134(c)(3).

pictures that was sent to BM3 [REDACTED] phone or that his phone was available for forensic analysis.

It is my opinion that reasonable ground exist to believe that the accused committed the crime of committing conduct that was to the prejudice of good order and discipline, but not that he committed conduct that was of a nature to bring discredit upon the armed forces as described in this specification. Accordingly, I recommend that the language in the specification relating to bringing discredit upon the armed forces be struck and that the modified specification be referred for trial by general court-martial. The form of Charge II, Specification 4 is correct.

As charged, the elements of Specification 5 of Charge II are:

- (1) That on or about 16 October 2010, SN [REDACTED] USCGC ALEX HALEY, on active duty, did, at or near Kodiak, Alaska show a nude picture of SN [REDACTED] USCG to SN [REDACTED] USCG without SN [REDACTED] permission, and
- (2) That, under the circumstances, the conduct of the accused was to the prejudice of good order and discipline in the armed forces and was of a nature to bring discredit upon the armed forces.

The evidence produced at the hearing relevant to this specification is described above. Specifically, SN [REDACTED] showed SN [REDACTED] a nude picture of a woman that was contained on SN [REDACTED] cell phone. (testimony of SN [REDACTED] In the picture, SN [REDACTED] could see the nude back and buttocks of a woman. (testimony of SN [REDACTED] SN [REDACTED] informed SN [REDACTED] that the woman in the picture on his cell phone was SN [REDACTED] (testimony of SN [REDACTED] SN [REDACTED] had no knowledge of (and did not consent to) the taking of her nude picture (S/A [REDACTED])

The evidence establishes each element of this offense, except that the evidence does not show how the conduct brought discredit upon the armed services. Such activities between crewmembers onboard the same Coast Guard Cutter is, on its face, prejudicial to the good order and discipline of the armed services. To the contrary, evidence was not received to show how SN [REDACTED] actions as they relate to SN [REDACTED] were of a nature to bring discredit upon the armed forces. The activity described in this specification, like the one above, was strictly between Coast Guard members. Also, there was no evidence provided that the actions of SN [REDACTED] lowered SN [REDACTED] esteem for the Coast Guard.

It is my opinion that reasonable ground exist to believe that the accused committed the crime of committing conduct that was to the prejudice of good order and discipline, but not that he committed conduct that was of a nature to bring discredit upon the armed forces. Accordingly, I recommend that the language in the specification relating to bringing discredit upon the armed forces be struck and that the modified specification be referred for trial by general court-martial. The form of Charge II, Specification 5 is correct.

c. Uncharged Misconduct: During Government Counsel's closing statement, Government Counsel requested that I examine whether the accused committed uncharged conduct of a second allegation of indecent language based upon the evidence presented during the hearing. During the hearing, S/A [REDACTED] testified that the accused sent SN [REDACTED] one or more text message on 23 October 2011 at approximately 0230 containing the language "let's fuck" (testimony of S/A [REDACTED] These text messages were discovered during the consensual examination of SN [REDACTED] cell phone by CGIS agents and the text messages matched SN [REDACTED] cell phone

number. (testimony of S/A [REDACTED] This would be a second Indecent Language specification based upon a separate text message from the one identified in Specification 1 of Charge II.

The elements for an offense of Indecent Language under Article 134 are:

- (1) That (state the time and place alleged), the accused (orally) (in writing) communicated to (state the name of the alleged victim), certain language, to wit: (state the language alleged);
- (2) That the language was indecent; and
- (3) That, under the circumstances, the conduct of the accused was to the prejudice of good order and discipline in the armed forces or was of a nature to bring discredit upon the armed forces.

Upon review of the testimony of S/A [REDACTED] as it relates to the examination of SN [REDACTED] cell phone, it is my opinion that reasonable grounds do exist to believe that the accused committed the uncharged misconduct. I believe that a reasonable trier of fact could determine that a text message stating "let's fuck" from a male Coast Guard member to a female Coast Guard member is both indecent language and to the prejudice of good order and discipline. I recommend that a specification under Charge II reflecting this uncharged misconduct be referred to a General Court-Martial in the form described above. Also, while evidence was received to indicate that SN [REDACTED] and SN [REDACTED] may have had a previous consensual sexual relationship, the fact that the prior relationship may have existed does not make an indecent text appropriate.

It is important to note that Government Counsel's request came during his closing statement. The testimony relating to the uncharged misconduct was previously received from S/A [REDACTED] but was not recognized as such during that time. I advised Government Counsel that I would take his request under advisement and review the testimony. Defense Counsel did not object to the Government's request, either at that time or in written closing comments and objections (Enclosure 4). Additionally, Defense Counsel had full opportunity to cross-examine S/A [REDACTED] regarding his testimony. Based upon the above, I feel that the accused had both fair notice that this conduct might be charged and the opportunity to hear and cross-examine the Government's key witnesses on the evidence forming the basis for the charge. Accordingly, I believe that referring this charge is appropriate. I would limit the specification as being conduct prejudicial to good order and discipline in the armed services.

6. Defense Counsel's Objections: Detailed defense counsel's closing comments and objections in connection with this Article 32 Investigation are attached as enclosure (4). In enclosure (4), Defense Counsel makes a number of requests, based upon the evidence that was admitted during the Article 32, as well as notes a number of objections.

Defense counsel, in enclosure (4), made the following objections:

a. That the Convening Authority, Trial Counsel, and Investigating Officer did not properly follow R.C.M. 405 as it applies to the production of witnesses. Defense counsel objects to the fact that the following witnesses were not called to testify at the Article 32 (Enclosure (4), paragraph 5.a. i. through a.iii).

1. SN [REDACTED] USCG
2. Mrs. [REDACTED]

3. FN [REDACTED] USCG
4. BM3 [REDACTED] USCG
5. FN [REDACTED] USCG
6. SN [REDACTED] USCG
7. ETC [REDACTED] USCG
8. MK3 [REDACTED] USCG
9. SN [REDACTED] USCG
10. S/A [REDACTED] CGIS

b. That the Government failed to produce the following evidence upon request (Enclosure (4), paragraph 5.b.i. through b.iv.):

1. SN [REDACTED] Service Record (Personnel Data Record)
2. Access to the clothes worn by SN [REDACTED] on the night of 15 October 2010
3. SN [REDACTED] Medical Record
4. Facebook messages of SN [REDACTED]

c. To rulings during the hearing made by the Investigating Officer (Enclosure (4), paragraph 5.c. and d.i. through d.iv.):

1. on the admissibility of certain MRE 412(b)(1)(C) evidence regarding SN [REDACTED] sexual behavior with another member of the HALEY crew the week following the alleged sexual assault by SN [REDACTED] – ruled inadmissible at the Article 32
2. Rulings by Investigating Officer limiting cross examination on SN [REDACTED] actions in the days that followed the alleged sexual assault.
3. Rulings made by the Investigating Officer limiting cross examination relating to how the incident came to be reported.
4. Ruling preventing Defense Counsel from questioning SN [REDACTED] on whether she had reported any prior sexual assault.

7. Investigating Officer's Response to Defense Counsel's Objections. Defense Counsel asserts in their closing argument that the "only evidence offered to prove the sex offense charges are the verbal allegations made by SN [REDACTED] after the fact." To the contrary, evidence was also heard describing the accused's own statement to CGIS agents describing his version of the events leading up to the preferred charges. Additionally, the government proffered witnesses to establish each element of the Article 120 offenses. Each of those witnesses was also requested by Defense Counsel who was provided the opportunity to cross-examine those witnesses. Defense Counsel was offered wide-latitude in questioning witnesses, especially the government's key witnesses including the alleged victim, MK3 [REDACTED] LTJG [REDACTED] and the CGIS Special Agents. Thus, Defense Counsel's assertion that the entire weight of this case rests upon the testimony of SN [REDACTED] is inaccurate.

The Investigating Officer's rulings were designed to keep the investigation limited to the issues raised by the charges and necessary to the proper disposition of the case as required my R.C.M. 405. Central to Defense Counsel's objections is the assertion that the Investigating Officer limited the accused's ability to use the Article 32 as a means of discovery contrary to R.C.M. 405 and supporting case law.

I agree with Defense Counsel that the pretrial investigation under Article 32, UCMJ serves a twofold purpose. It operates as a discovery proceeding for the accused and stands as a protection

against baseless charges.¹¹ This said, while the right of discovery at an Article 32 is an important right, it is not the sole purpose of the investigation nor is that right to discovery unrestricted.¹² The discussion section following RCM 405 states explicitly that "the investigation should be limited to the issues raised by the charges and necessary to the proper disposition of the case."¹³ Accordingly, my rulings were designed to elicit relevant non cumulative testimony relating to the offenses charged in this case.

In any Article 32 proceeding, only witnesses that are relevant to the investigation and not cumulative need to be produced.¹⁴ Here, the accused had the opportunity to cross examine every key government witness, including the victim, the Special Agent in charge of the investigation, and the Special Agent who assisted with the forensic analysis of both the accused and the victim's cell phone. Contrary to Defense Counsel's position, the accused was permitted wide latitude in performing their cross examination and provided with the opportunity for re-cross examination following the Investigating Officer's questioning of the witness. If Defense Counsel was limited in their cross examination, the limitations that were placed were focused on ensuring that the investigation stayed focused on relevant, non-cumulative matters or to protect an important right of the accused under M.R.E. 412.

Regarding Defense Counsel's assertions that the Investigating Officer wrongly determined certain witnesses to be either cumulative or irrelevant and, therefore, not necessary witnesses at the hearing, I reviewed those decisions several times and firmly believe that I called every witness that was key to this investigation. In this investigation, before making any decisions with regards to witnesses, I reviewed the CGIS report of Investigation in order to familiarize myself with the case generally and to ascertain who might be an appropriate witness at the Article 32. Using the CGIS report in this manner is fully supported by the law.¹⁵ I then reviewed Defense Counsel's request for production of witnesses (IO-11), Government Counsel's witness list (IO-13), Government Counsel's response to Defense Counsel's request (IO-12), and the prior Investigating Officer's decision memorandum relating to witnesses (IO-14). After reviewing these materials, I determined that I agreed substantially with the prior IO's determinations except that I ordered BM3 [REDACTED] USCG to testify telephonically following my determination that he was unavailable. BM3 [REDACTED] is assigned to USCGC Willow, stationed Newport, RI, and, on the dates of the hearing, the Cutter was engaged in TISTA. (IO-14) Thus, in this case, two independent determinations were made by two separate IO's regarding which witnesses should

¹¹ United States v. Matthews, 15 M.J. 622,625 (NMCM 1982); United States v. Bramel, 29 M.J. 958, 964 (A.C.M.R. 1990); United States v. Ledbetter, 2 M.J. 37, 43 (C.M.A. 1976); United States v. Samuels, 10 USCMA 206, 212 (CMA 1959).

¹² See, United States v. Roberts, 10 M.J. 308, 311 (C.M.A. 1981) (some negative treatment of this case relating to issue of compelling civilian witnesses to testify, but not relating to discovery at an Article 32).

¹³ Reference (b) R.C.M. 405(a) Discussion.

¹⁴ Reference (b) R.C.M. 405(g)(1)(A).

¹⁵ United States v. Stephens, 66 M.J. 520,522 (A.C.M. 2008) (An Investigating Officer is permitted to review the CGIS report of investigation before conducting the Article 32 hearing to become familiar with the nature of the case and to focus his questioning).

be heard at the hearing.¹⁶ That my determination was deliberative and independent is demonstrated by the fact that I did not agree wholly with LT [REDACTED] determinations, but instead determined that the testimony of BM3 [REDACTED] was also required. During the investigation, Defense Counsel again requested that all of these witnesses be made available. I stood by my original decision as I believed firmly, especially after hearing the evidence provided, that it was correct.

Regarding the Government's failure to produce relevant evidence, specifically: SN [REDACTED] Service Record (Personnel Data Record), access to the clothes worn by SN [REDACTED] on the night of 15 October 2010, SN [REDACTED] medical record and potential Facebook messages of SN [REDACTED] I have reviewed my emails relating to this case as well as the documentation I have received and have not found anything relating to these requests. During the Article 32, Defense Counsel did ask SN [REDACTED] questions relating to her facebook messages and medical history, which questioning I entertained until it became too irrelevant to be within the scope of this investigation. For purposes of this investigation, I do not feel that any of the items requested are necessary to ascertain whether there are reasonable grounds to believe that the accused committed the crimes alleged in these charges and specifications. The IO heard from at least three witnesses who described SN [REDACTED] clothing on the night of the incident, I felt no need to review her PDR, and I did not feel the need to delve into SN [REDACTED] Facebook messages in light of the testimony of thirteen other witnesses. With regards to her medical examination, SN [REDACTED] testified that it was approximately two weeks following the incident. Even if there was material relevant in her medical record in a remote sense, I did not believe and still do not believe that anything in her medical jacket would assist me in ascertaining whether reasonable grounds existed for the crimes alleged in this case. For this reason, I did not request a copy.

While I do not believe the listed items were relevant to this investigation, it should be noted that if this case goes to trial, R.C.M 701 and, more specifically, R.C.M. 701(a)(6) requires the Government to disclose known evidence that 'reasonably tends to' negate or reduce the accused's degree of guilt or reduce the punishment that accused may receive if convicted.¹⁷ Moreover, Trial Counsel must exercise due diligence in discovering [favorable evidence] not only in his possession but also in the possession of others acting on the Government's behalf.¹⁸ Trial counsel's failure to disclose favorable evidence to the appellant violates Constitutional due process "where evidence is material either to guilt or to punishment."¹⁹ As stated above, I do not believe the items requested are relevant to this investigation. If the Convening Authority refers

¹⁶ CDR [REDACTED] USCGR was appointed the IO following the relief of LT [REDACTED] USCG due to a family emergency.

¹⁷ United States v. Jackson, 59 M.J. 330, 334 (C.A.A.F. 2004).

¹⁸ United States v. Simmons, 38 M.J. 376, 381 (C.M.A. 1993); United States v. Noss, 2005 WL 995673 (N.M.C.C.A. 2005) (unpublished opinion).

¹⁹ Brady v. Maryland, 373 U.S. 83 (1963).

this case to court-martial, the determination of whether Government Counsel has complied with R.C.M. 701 is a question of law for the military judge.

Defense Counsel's asserts that the IO made improper rulings on: (1) the admissibility of certain MRE 412(b)(1)(C) evidence regarding sexual behavior of SN [REDACTED] with another member of the HALEY crew the week following the alleged sexual assault by SN [REDACTED] (2) by limiting cross examination on SN [REDACTED] actions in the days that followed the alleged sexual assault, (3) by limiting cross examination relating to how the incident came to be reported and (4) by preventing Defense Counsel from questioning SN [REDACTED] on whether she had reported any prior sexual assaults. Below, I address items (1), (2), and (4) first because they relate to M.R.E. 412, followed by a discussion of item (3).

Prior to the beginning of the hearing, but on the record, I invited Counsel to discuss the admissibility of evidence relating to the victim's sexual behavior or predisposition under Military Rule of Evidence 412 pursuant to Defense Counsel's notice in IO-15. Under this rule of evidence, evidence of the victim's sexual behavior is generally inadmissible except for certain reasons.²⁰ Of the three exceptions to the general rule of inadmissibility, two exceptions appeared to me as poignant in this case. First, evidence of specific instances of sexual behavior by the alleged victim with respect to the person accused of the sexual misconduct offered by the accused to prove consent or by the prosecution; and second, evidence the exclusion of which would violate the Constitutional rights of the accused.

Following oral discussion I agreed to hear evidence relating to the accused prior relationship with the victim because it was relevant to proving whether or not the victim may have consented in this case and to whether the accused may have an affirmative defense. To the contrary, however, I determined that I did not need to hear evidence relating to the victims sexual experiences with other crewmembers following the incident nor did I need to hear whether the victim had previously reported another sexual assault. The basis for my determination was that I believed evidence of other sexual exploits by the victim and whether or not the victim had reported other sexual assaults were not relevant to ascertaining whether the alleged crime occurred on 15-16 October. Further, as an Investigating Officer, I did not feel that I had either the professional training or experience to ascertain the value of that testimony as it bore on this case, thereby giving such evidence very little probative value within the context of this Article 32 investigation. The evaluation of evidence relating to the victims post-incident sexual activities would be better left to an expert versed in the psychology of sexual assault victims at trial. Thus, for the purposes of ascertaining whether reasonable grounds existed in this case, I determined this information to be (1) not relevant, (2) generally prohibited by M.R.E 412, and (3) of no value to a laymen IO is ascertaining the credibility of the victim.

²⁰ Reference (b) M.R.E. 412 (MCM 2008).

Relating to the evidence offered with regards to how the event came to be reported. Evidence of this was heard from SN [REDACTED] LTJG [REDACTED] BM3 [REDACTED] and S/A [REDACTED] Defense Counsel was authorized wide latitude when questioning the victim and these other witnesses because their testimony was key to the Government's case, and therefore, the accused's defense. While the information regarding the reporting of the crime was informative, the evidence that was presented was not helpful to me as the IO in ascertaining whether the reasonable grounds existed to believe that the crimes alleged in this case had been committed. I allowed Defense Counsel to proceed, however, to permit them an opportunity for discovery. I did limit Defense Counsel's questioning as the evidence became cumulative.

8. Recommended Disposition: General Court-Martial.

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Enclosures:

- (1) Summaries of Witness Testimony
- (2) Audio copy of the hearing on Compact Disk.
- (3) List of exhibits
- (4) LT [REDACTED] and LT [REDACTED] Memo dtd 27 Sep 11, Subj: ClosingComments and Objections ICO US V. SN. [REDACTED] USCG, XXX-XX [REDACTED]

Copy:

w/o encl:

- LT [REDACTED] Government Counsel
- LT [REDACTED] Assistant Government Counsel
- LT [REDACTED] JAGC, USN, Detailed Defense Counsel
- LT [REDACTED] JAGC, USN, Assistant Detailed Defense Counsel

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Enclosure (1)
Summaries of Witness Testimony
Article 32 Investigation: United States v. [REDACTED] USCG

Summaries are presented in the same order that testimony was received.

(1) FN [REDACTED] USCG, TRACEN YORKTOWN: FN [REDACTED] was onboard the ALEX HALEY with both SN [REDACTED] and SN [REDACTED]. [REDACTED] reported that he and [REDACTED] were good friends and "hung out" on and off duty most every day. [REDACTED] stated that [REDACTED] and [REDACTED] were friends when they first reported onboard, but had a falling out after [REDACTED] was kicked out of the barracks for having alcohol in his room that, reportedly, belonged to [REDACTED]. [REDACTED] blamed [REDACTED] for getting kicked out of the barracks and they were not close friends after this event.

[REDACTED] explained that one pastime engaged in by both he and [REDACTED] is drinking and going to the bars in Kodiak; much like the rest of the crew onboard the HALEY. He stated that in his experience, [REDACTED] does get drunk, might drink approximately ten drinks per night, and that [REDACTED] can tell when [REDACTED] has been drinking because [REDACTED] will stumble around. Also, SN [REDACTED] always dances when they go out, but he dances more when drinking.

[REDACTED] also sees [REDACTED] at the bars regularly ("every weekend") but doesn't know what or how much she drinks. [REDACTED] reported that he does know that she gets drunk. [REDACTED] has never seen [REDACTED] throw up from alcohol and keep going, but he has seen her stumble from alcohol.

On the evening of 15 October 2010, [REDACTED] recalls getting ready for the Halloween party with SN [REDACTED]. Earlier in the day, they had purchased wine at the exchange and both FN [REDACTED] and SN [REDACTED] drank one bottle of wine each before attending the party. [REDACTED] reported that SN [REDACTED] costume for the party was a pair of black socks, underwear (briefs) a white button down shirt and sun-glasses representing Tom Cruises' character in the movie "Risky Business." [REDACTED] and [REDACTED] were driven to the Halloween Party by the duty driver and they arrived at approximately 2230.

At the party, [REDACTED] saw [REDACTED] and [REDACTED] continued to consume alcohol. He thinks that [REDACTED] consumed two beers and two jello shots. He believes that [REDACTED] consumed Coors Light at the party and reported that she appeared fine. [REDACTED] did not see [REDACTED] and [REDACTED] talk at the party.

Following the Halloween party [REDACTED] and much of the crew from the HALEY who attended the party went to Bernie's Bar in Kodiak where they were dancing, drinking, and hanging out. [REDACTED] reported that [REDACTED] consumed three to four Jaegerbombers (a shot of Jaeger Meister dropped into a cup of Red Bull energy drink). He also saw [REDACTED] at Bernie's and did see her drinking but did not know what. [REDACTED] did not

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see [redacted] and [redacted] interacting at Bernie's Bar. He does recall seeing [redacted] dancing at Bernie's but does not recall seeing [redacted] dance at that location.

Following the closing of Bernie's Bar at 0200, many crew members shifted over to another bar called [redacted] including [redacted] [redacted] recalls seeing [redacted] inside Mecca wearing a skin tight leopard outfit and saw that she was drinking and talking. He also saw [redacted] at [redacted] dancing and drinking. [redacted] according to [redacted] appeared "pretty drunk, but not unusually so," and [redacted] appeared "pretty drunk." [redacted] testified that [redacted] and [redacted] were dancing at Mecca in an overtly sexual style that is common to younger crew members. By overtly sexual, [redacted] described the dancing as including the rubbing of genitalia together and prolonged making out. [redacted] testified that he asked [redacted] what he was doing (dancing like that) in front of their fellow crew members because he did not think that it was a good idea. [redacted] testified that he was not surprised, however, because [redacted] had told [redacted] that he and [redacted] had engaged in sexual activity within the previous week.

[redacted] did not see [redacted] and [redacted] leave. [redacted] did see [redacted] the next day, at which time [redacted] described for [redacted] his sexual exploits with [redacted] on the previous evening. [redacted] as relayed by [redacted] received a "hand job" from [redacted] in the Government Vehicle (GV) while riding home from the bars. In return, [redacted] stated that he "fingered" [redacted] during the ride. [redacted] did not know who initiated the sexual activity that occurred in the GV. [redacted] also testified that [redacted] told him that when he and [redacted] returned to her barracks room, [redacted] vomited. After vomiting, [redacted] came out of the head, undressed, and asked [redacted] to join her. [redacted] relayed that [redacted] was shocked, but did not decline. [redacted] testified that [redacted] described the sex as "rough." After the sex, [redacted] said that he sat on the couch and watched a movie, that [redacted] requested that he return to bed, but that [redacted] declined the request because he had to leave for duty. [redacted] showed [redacted] a text message that he received from [redacted] requesting to know what was going on in their relationship. [redacted] testified that [redacted] told him that [redacted] was upset because [redacted] had to leave for his duty.

[redacted] reported [redacted] usually provided him with details about [redacted] sex life and that [redacted] reported sexual contact with [redacted] before the night of the Halloween party. [redacted] also stated that [redacted] did not appear to act any differently following the event.

(2) SN [redacted], USCG, TRACEN YORKTOWN: SN [redacted] testified that he was friend with SN [redacted] from onboard the HALEY and that he knows SN [redacted] but that the two are not friends, only acquaintances from onboard the HALEY and from out in town (at the bars). [redacted] testified that he only drank with [redacted] occasionally but that he recalls that [redacted] usually drinks "Jaeger Bombs." He also recalls seeing [redacted] drink mixed drinks in the past.

██████ testified that he thought ██████ and ██████ were friends and he was unaware of any previous falling out and he never detected anything unusual between ██████ and ██████ while onboard the HALEY.

On the evening of the Halloween party, ██████ recalls seeing both ██████ and ██████ at the party. He has a faulty memory with regard to what and how much either ██████ or ██████ were drinking, but thinks that ██████ was drinking beer, that ██████ was drinking alcohol of some kind, and that both ██████ and ██████ had some jello shots.

Following the Halloween party, ██████ saw both ██████ and ██████ at Bernie's Bar. ██████ saw ██████ and ██████ dancing at Bernie's Bar and described the dancing as "up close dirty college dancing" of a sexual nature. He thought that dancing in that manner was a bad idea because of the perception that it might exude. ██████ testified that in his experience, that kind of dancing is "frowned upon" by the Command and he viewed the style of dancing as an indication that ██████ and ██████ liked one another. ██████ was not surprised that they were dancing together as he heard that they had previously "hooked up" (had sex). ██████ reported that other members of the crew saw ██████ and ██████ dancing at Bernie's Bar as well.

██████ left Bernie's Bar without saying good bye and went home. He stated that while he had been drinking, he believes his memory of the events is clear.

██████ testified that the following day, ██████ told him that he and ██████ were talking and kissing in the GV on the ride home and that ██████ asked ██████ back to her room. At a later date, while discussing ██████ allegations against ██████ ██████ recalls ██████ telling him that on the night of the Halloween party, ██████ asked him to return to her barracks room and that they engaged in rough sex. Additionally, ██████ testified that he had duty on the day following the Halloween party. ██████ recalled seeing ██████ onboard. ██████ appeared hung over and tired but "not horribly so." ██████ did, however, still smell of alcohol. ██████ testified that ██████ showed him a picture of a naked woman on ██████ cell phone and told ██████ that the woman was ██████. In the picture, ██████ could see the woman's buttocks, but could not see her vagina. ██████ stated that he would not have known that the picture was ██████ unless ██████ told him so, but that the picture did appear to have been taken in a barracks room.

(3) BM3 ██████ USCG, USCGC WILLOW: BM3 ██████ testified that he served with both SN ██████ and SN ██████ onboard the HALEY and that he had known ██████ since ██████ first arrived onboard. ██████ and ██████ would go out together as friends and their activities included four-wheeling, sports, and drinking at the bars. ██████ stated that ██████ would drink both beer and liquor; in particular, ██████ drank Jaeger Bombers or vodka and diet cokes.

██████ also went out with ██████ and described her as "flirty when drinking." By flirty, ██████ meant that ██████ was "giggly and laid back." ██████ recalled

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carrying [REDACTED] on one occasion due to her consumption of alcohol, but he doesn't recall her throwing up.

[REDACTED] described the relationship between [REDACTED] and [REDACTED] as friendly resulting from being crew members onboard the same ship, but he did not recall speaking to [REDACTED] about previous sexual encounters between [REDACTED] and [REDACTED] before the Halloween party on 15 October 2010.

[REDACTED] saw [REDACTED] at the Halloween party and recalls seeing [REDACTED] play a couple of games of "beer pong." [REDACTED] described that at beer pong, an individual would consume approximately five beers per person. He doesn't recall what else [REDACTED] was drinking. [REDACTED] also recalled that [REDACTED] was at the party. She was dressed as a cat in a body fitting suit with an open back. She, like everyone else at the party, was drinking out of a "solo" style party cup so he did not know what or how much she was drinking.

Following the party, [REDACTED] went to Bernie's. [REDACTED] stated that he was intoxicated while he was at Bernie's, but not to the point where he was stumbling. He recalls seeing [REDACTED] at Bernie's and that "everybody" (who was there from the HALEY's crew) was dancing in the back of the bar. At the Article 32, [REDACTED] testified that had no memory of going to Mecca. [REDACTED] did recall giving a previous statement to S/A [REDACTED] of the CGIS, but he did not recall telling [REDACTED] that he saw [REDACTED] and [REDACTED] kiss at Mecca.

Following the Halloween Party (3-4 days later), [REDACTED] had a conversation with [REDACTED] during which [REDACTED] told [REDACTED] that he [REDACTED] and [REDACTED] had "hooked up." During this conversation, [REDACTED] told [REDACTED] that [REDACTED] had been sexually aggressive in the liberty van and that the [REDACTED] and [REDACTED] had slept together, meaning that they had sexual intercourse. [REDACTED] was asked by Defense Counsel whether he was surprised to hear that [REDACTED] and [REDACTED] had sex. [REDACTED] responded no, in that [REDACTED] was "flirty, young and single."

[REDACTED] testified that the night following the Halloween party, [REDACTED] sent him a text message on his cell phone accompanied by a picture of a naked woman, lying on her stomach. The woman had dark brown hair and he could see the woman's buttocks, but not her vagina. [REDACTED] testified that he was unsure what kind of bed the woman was lying on, but that [REDACTED] informed him that the woman in the picture was [REDACTED] the woman fit the build and description of [REDACTED] and that he believed it was [REDACTED]

(4) LTJG [REDACTED], USCG, CGD ONE (dxo): LTJG [REDACTED] was previously assigned to the HALEY and knew both [REDACTED] and [REDACTED]. On the evening of 15 October 2010, [REDACTED] was at Bernie's Bar and she was there when [REDACTED] and [REDACTED] first arrived, along with others from the HALEY. [REDACTED] recalled that [REDACTED] was dressed as a cat and was wearing zipper boots with an approximately three-inch heel. [REDACTED] recalled that she had seen [REDACTED] and [REDACTED] dancing together in the past at Bernie's but she did not recall seeing them dancing together on the evening of the 15th.

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She stated that the crew often dances together, no one dancing with anyone in particular, and she stated that the men often goof off and break dance while the women dance like "strippers." Further, [REDACTED] doesn't recall seeing [REDACTED] at Bernie's on that evening. When Bernie's closed, [REDACTED] and other crew members intended on going to Mecca. At this point, [REDACTED] described her level of intoxication as "buzzed" but not intoxicated as she had been drinking with her supervisor while at Bernie's.

[REDACTED] testified that when she left Bernie's she observed [REDACTED] outside of the bar leaning against a wall. [REDACTED] stated that [REDACTED] appeared intoxicated, that [REDACTED] head was rolling back and forth, that she was responsive to questions but that it was difficult to understand [REDACTED] answers because her speech was slurred, and, that at one point, [REDACTED] was helping [REDACTED] walk by supporting her with one arm around [REDACTED] hip and another around her shoulder. [REDACTED] reported supporting most of [REDACTED] body weight.

[REDACTED] stated that [REDACTED] desired to go into the Mecca Bar. [REDACTED] testified that [REDACTED] was not ready to go home and that she wanted to stay out. She attempted to enter the Mecca Bar several times but was rejected due to her level of intoxication by both bar personnel and officers of the Kodiak Police Department. [REDACTED] observed [REDACTED] arguing with the bar personnel. [REDACTED] testified that she lost sight of [REDACTED] in the crowd two to three times and that [REDACTED] did succeed in getting into the Mecca at least twice in a short interval, but that she was kicked out both times. The Kodiak Police officer instructed [REDACTED] to take [REDACTED] away due to her level of intoxication, which [REDACTED] did to protect [REDACTED] from any adverse legal action.

[REDACTED] called the GV because she felt [REDACTED] was in an unsafe situation due to her level of intoxication and did not want to leave her alone. [REDACTED] called both the Quarter Deck and the OOD (LTJG [REDACTED]) in order to request the GV. While awaiting the arrival of the GV, [REDACTED] turned [REDACTED] over to some other women from the HALEY for a safe return. [REDACTED] did not see [REDACTED] for the remainder of the evening.

[REDACTED] testified that she was not in [REDACTED] chain of command and did not spend time with [REDACTED]. [REDACTED] would occasionally see [REDACTED] out around town or at the bars but they were not friends. [REDACTED] testified that [REDACTED] personality while out drinking was like that of any other young female out drinking. [REDACTED] also described [REDACTED] personality as like any other typical young male out drinking.

[REDACTED] also testified that she holds both a degree in nursing which she obtained before entering the Coast Guard and that she has attended the MLE Academy to train as a Boarding Officer following the events of 15 October 2010. [REDACTED] was engaged in "community nursing" and did have experience with intoxicated people. [REDACTED] testified that based upon her training and experience, on a scale of 1-10, with one being completely sober and ten being passed out, [REDACTED] registered between a 6 or 7 when she last saw her on the evening of 15 October 2010. [REDACTED] indicated that her own level of intoxication was that of buzzed and that while she did have some alcohol, her memory of that evening is clear.

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On the morning of 16 October 2010, [REDACTED] received a cell phone call from SN [REDACTED] phone – it was [REDACTED] and she sounded upset. [REDACTED] would not tell [REDACTED] what was wrong, but she stated that she “blacked out” and could not remember what she had done the previous evening. [REDACTED] testified that [REDACTED] had no recollection of her interactions with [REDACTED] the night before. Eventually, [REDACTED] told [REDACTED] why she was upset. [REDACTED] testified that [REDACTED] told her that she believed that she had sex but had no recollection of it. [REDACTED] stated that she woke up naked on her bed and that her vagina felt raw as if she had unlubricated sexual intercourse and that her nipples had bite marks on them and body was sore. [REDACTED] blamed herself for drinking too much and not remembering anything. At this time, [REDACTED] did not tell [REDACTED] who she believed that she had sex with. Following her conversation with [REDACTED] [REDACTED] spoke with SN [REDACTED] (it was [REDACTED] cell-phone). [REDACTED] tried to convince [REDACTED] not to go forward with anything stating that “it was no big deal.”

On another day, BM3 [REDACTED] asked to speak with [REDACTED] [REDACTED] informed [REDACTED] that [REDACTED] had confided in him and stated that she had been raped, or words to that effect, by SN [REDACTED].

[REDACTED] was unsure what to do so she consulted with one of the Chiefs on the boat. This Chief apparently consulted with the Command Chief, who in turn informed the XO. The XO contacted [REDACTED] and ordered her to bring [REDACTED] to the XO's office. At this meeting, [REDACTED] testified that [REDACTED] again stated that she woke up naked and described her injuries as having a raw vagina, bleeding/bitten nipples, bruises on her body, and other soreness. [REDACTED] also stated that she found vomit in the toilet. [REDACTED] stated that she believed that she had “sex” with [REDACTED].

On some date, [REDACTED] was interviewed by S/A [REDACTED] of the CGIS. [REDACTED] informed [REDACTED] that she had a “hunch” that [REDACTED] had been assaulted. [REDACTED] testified that as a woman she is aware of the difference in getting drunk and having sex with someone you did not want too and [REDACTED] situation. [REDACTED] testified that [REDACTED] sounded scared and that her instincts told her that [REDACTED] had been assaulted. On further questioning from Defense Counsel about whether [REDACTED] might have simply been upset because she had sex, [REDACTED] testified that it was a possibility.

(5) SN [REDACTED] USCG, STATION SAND KEY: SN [REDACTED] testified regarding her previous relationship with SN [REDACTED]. In sum, the two were friends when she first arrived to the HALEY and they planned nights out and explored Kodiak Island together. They would, exchange emails and texts occasionally. At no point during their friendship was she told that she was being too flirtatious with [REDACTED] nor was she asked by anyone in her Chain of Command about the relationship.

The two had a falling out when SN [REDACTED] blamed her for getting kicked out of the barracks, and that, prior to the Halloween party on 15 October 2010, [REDACTED] had been verbally mean to her during an eco-challenge event that they both attended, along with other crew members. In the week just prior to the Halloween party, she and [REDACTED] were

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on speaking terms but not close friends and she allowed [REDACTED] to sleep over in her barracks room after an evening of drinking at Kodiak bars. She did this so that [REDACTED] would not have to go back and sleep onboard the HALEY. She informed [REDACTED] that he could stay over in her room if he was willing to "let go" being kicked out of his barracks room. On this occasion, [REDACTED] slept in bed with [REDACTED] [REDACTED] did not protest and she allowed him to sleep in the bed with her stating that "she did not mind." He attempted to put his hand on her hip but she brushed it away. [REDACTED] testified that they slept in the same bed together, without cuddling, spooning or anything more, until the following morning. [REDACTED] testified that she had no romantic interest in [REDACTED]. Shortly after this occasion, [REDACTED] texted [REDACTED] requesting to sleep over again. Monokian declined.

On the evening of 15 October 2010, [REDACTED] prepared to attend a Halloween costume party. She dressed as a cheetah wearing a spotted body suit, complete with ears and tail. She also wore black, calf high boots with a 3.5 inch heel. She stated that the boots were comfortable and that she had no difficulty walking in the boots. She did not carry a purse or wallet, but kept her personal items inside her boot by zippering them in against her leg.

[REDACTED] who weighed 117 pounds on the date of the Halloween party, had consumed fish onboard the HALEY during the noon meal. Following the noon meal, she consumed "Jack 3D," an energy product, before a work out that involved both weight lifting and cardiovascular activity. According to [REDACTED] testimony, she consumed nothing further, except alcohol, for the rest of the evening.

While getting into her Cheetah outfit and preparing for the party, [REDACTED] reported consuming 3-4 solo cups (approximately 16 ounces) containing ½ Andre Champagne and ½ orange juice starting at about 1900. At one point, she thought [REDACTED] was going to give her a ride to the party but, as circumstances had it, SN [REDACTED] [REDACTED] provided her transportation.

After arriving to the Halloween party at approximately 2230 (and not eating for the previous 10.5 hours), [REDACTED] testified that she consumed an additional 3-4 drinks, including 16oz Solo cups which were filled ½ of the way with champagne. She recalls also consuming at least one jello shot and drinking about ½ of a cup of champagne through a funnel. [REDACTED] recalls seeing [REDACTED] at the party. [REDACTED] was dressed as the Tom Cruise character from "Risky Business," wearing black sox, briefs, white button down shirt, and sunglasses. [REDACTED] testified that her level of intoxication at the party was an eight on a scale of 1-10 but did not further elaborate.

[REDACTED] recalled proceeding to Bernie's Bar following the Halloween party. At Bernie's bar, she recalls drinking a Jaeger Bomber, a rum and coke, and she was told by FN [REDACTED] that she drank a shot of Petron, but that she does not recall doing so. [REDACTED] recalls seeing [REDACTED] at Bernie's, but doesn't recall more as she reports that she started "blacking out" at this point in the evening. Her last recollection at Bernie's was talking with OS2 [REDACTED] and another crewmember. She testified as to having one flashback to the entire evening which was her attempting to remove something from her

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boot, she thinks this was outside of Mecca. She testified that she had no other recollections from that evening.

██████████ testified that the morning of 16 October 2010, following the Halloween party, she awoke nude in her barracks room with a burning sensation in her vagina that she attributed feeling that "something happened." She also felt pain in her nipples, which had raspberries and scabs, and her head hurt above her temple. She testified that she next found vomit in her toilet, which she assumed was hers, and found a mark on her back that looked like either a bite or hand mark. ██████████ testified that she attempted to find her phone but was unable to locate it. She knocked on some friend's doors until she encountered one who was at home, SN ██████████ and she asked to borrow his phone so that she could dial and locate her own. She did, and discovered her phone in her barracks room. Her phone had text messages on it from both ██████████ and ██████████. She further testified that while she was in the process of finding her phone she was not focused on her pain and doesn't recall experiencing any because her adrenaline was pumping.

She next called the CGC HALEY to speak w/ SN ██████████ because she found a black sock and a pair of briefs in her barracks room and believed that they were from his Halloween Costume. Eventually, she reached ██████████ and she testified that they had a conversation to the effect of:

██████████ Oh my God ██████████ tell me nothing happened.
██████████ Yeah man, we fucked, but we did not kiss.
██████████ You would do that.
██████████ I wouldn't pass up an opportunity.

██████████ also testified that ██████████ said, that she had said, that she was going to vomit before leaving town on the GV. ██████████ asked ██████████ whether he ejaculated inside of her. ██████████ replied that he had ejaculated, but not inside. ██████████ testified that she was drunk and could not say no and that she was very disappointed in herself for getting intoxicated to the point where she was physically incapable of saying no.

Government counsel asked SN ██████████ to authenticate a photograph (IO-16) as being one of her. ██████████ reviewed the photograph and stated that she was certain it was her ("100% sure") stating that "it's my body, it's my barracks, it's me."

When questioned by Defense Counsel, ██████████ testified that she grew up in St. Croix, U.S. Virgin Islands where the drinking age was eighteen. She had started sampling alcohol at age 14 and drank alcohol by age eighteen, although she was not a heavy drinker. ██████████ first got drunk somewhere between the age of 15 or 16. She testified that in the past, prior to joining the HALEY, she had "blacked out" on 4-5 occasions as a result of alcohol consumption. ██████████ did not recall ever throwing up in front of her shipmates before, except on one occasion when she threw up in front of SN ██████████ while in barracks six in order to make herself feel better. Following getting sick, they both returned to the HALEY.

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██████████ attended various colleges and worked as a waitress before joining the Coast Guard at age 21 and she has had no prior interaction with law enforcement as a result of consuming alcohol prior to the Coast Guard. She has never been "kicked out" of a bar.

██████████ testified that following the event, she contacted a number of friends, some civilians from home while others were Shipmates from the HALEY. ██████████ testified to what she told various individuals (her friends ██████████ and ██████████ SN's ██████████ ██████████ and ██████████ BM3 ██████████ FS3 ██████████ FN ██████████ LTJG ██████████ the XO, and CGIS etc.), describing her injuries to some but not to others. ██████████ testified that she did not intend to report the incident at first because she thought that she could get over it. She stated that one of her friends ██████████ - civilian) described what had occurred as "date rape" and that ██████████ hated the word and felt that she ██████████ was partly responsible because she was not able to say no and get out of a bad situation.

Additionally, ██████████ testified that she sent SN ██████████ a text message a day or two later telling him how she felt and telling him that he took advantage of a bad situation, but SN ██████████ did not respond.

SN ██████████ testified that she was called to the XO's office where she told the XO what had happened and about her relationship with SN ██████████ Upon return to port, SN ██████████ was referred to CGIS, where she spoke with S/A ██████████ and S/A ██████████ At some point, she provided CGIS with a statement.

(6) S/A ██████████ CGIS PORT ANGELES: S/A ██████████ testified to his background, training and experience with CGIS, in particular his level of expertise as a certified forensic computer examiner, and what that qualification requires.

S/A ██████████ described the analysis that was performed on the memory cards of the phones belonging to ██████████ and ██████████ and the assistance he received from the Kodiak police in order to examine the phones. He stated that using the equipment provided by the Kodiak police avoids up to a three month delay because the CGIS does not own equipment capable of performing examinations and providing downloads of cell phone memory cards. S/A ██████████ testified that CGIS seized SN ██████████ phone pursuant to a valid search warrant issued by a military judge.

S/A ██████████ provided testimony describing what was found on ██████████ phone, including pictures and a video of a naked female matching ██████████'s description, how it was found, and where the information was located. He explained the concepts of "drive free space" and explained how pictures and messages can get duplicated on a phone and how he is able to match pictures and videos to specific text messages by file number.

In sum, S/A ██████████ described how the picture entered as IO-16 was transmitted via text message to two individuals; ██████████ and ██████████ and how he was able to match the picture to the specific sent and received text messages by file name. S/A ██████████ testified that the woman in nude picture that was sent to these individuals appeared to be SN ██████████ and that the date on the text sent to ██████████ is clearly 16 October 2010.

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Regarding the date on the [REDACTED] text, S/A [REDACTED] testified that he believes this photo was sent on 16 October 2010 as well based upon how the text presents when printed. The language from the CGIS report containing these text messages was entered as IO-18.

S/A [REDACTED] further testified that he discovered video on [REDACTED] phone. The video, like the pictures, was located in the drive free space but was not sent to anyone. The video was played for the participants of the Article 32. The video lasted 51 seconds, showed the back side and buttocks of a woman who appeared to be [REDACTED] in weight, hair color, and body type. During the 51 seconds of video, there was no apparent movement of the woman. This video was entered as IO-17.

S/A [REDACTED] also testified regarding his training and experience in sexual assault cases, including some of the common "problems" or difficulties associated with sexual assault cases.

(7) S/A [REDACTED] CGIS PORT ARTHUR: S/A [REDACTED] testified to his background, training, and experience as a CGIS agent and, in particular, his expertise on sexual assault. He also testified regarding the various procedural steps common to a sexual assault investigation. He was referred to this case by the XO of the HALEY. During the interview by both the Government and Defense Counsel, S/A [REDACTED] used the CGIS report of investigation to refresh his recollection of events forming the substance of his testimony.

S/A [REDACTED] testified that he interviewed SN [REDACTED] the accused, about the events of 15 October 2010. He described [REDACTED] as eager to tell his side of the story and said that the interview was consensual and that [REDACTED] was free to go at any time. S/A [REDACTED] testified that SN [REDACTED] stated the following during that interview:

BEGIN TESTIMONY FROM S/A [REDACTED] ON PRIOR STATEMENT OF SN [REDACTED]

That about a week prior to the evening of 15-16 October, [REDACTED] stayed at [REDACTED] barracks room after she offered up her room so that [REDACTED] wouldn't have to sleep onboard the HALEY. On the prior evening, [REDACTED] and [REDACTED] kissed, she rubbed his penis and he digitally penetrated her vagina.

On the evening of the 15th of October 2010 SN [REDACTED] went to a Halloween party at a friend's house. [REDACTED] consumed some shots of alcohol while at the party. Following the party, he and his friends went to Bernie's Bar where he consumed more alcohol, his bar tab was approximately \$100.00. [REDACTED] stated that he had been drinking quite a bit during the evening. Following Bernie's, [REDACTED] walked to Mecca but consumed no further drinks that he recalls. While at [REDACTED] he danced with SN [REDACTED] and kissed her as well.

[REDACTED] stepped outside of Mecca to make a phone call when he saw [REDACTED] leaving Mecca. [REDACTED] got into the GV in order to go home. Enroute the base, the GV stopped at McDonalds. [REDACTED] stated to CGIS agents that while the GV was driving back to base,

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██████████ was laying with her head on his lap. During the ride home, SN ██████████ dry heaved a little. ██████████ stated that ██████████ started rubbing his penis and that he in turn rubbed her breasts and back. At barracks eight, the GV stopped to let out ██████████ and ██████████. He stated that his fellow crewmembers in the GV thought that it would be a good idea for him to walk ██████████ into the barracks because she was intoxicated.

Once inside the barracks, ██████████ dry heaved and threw up in the bathroom, after which she brushed her teeth. ██████████ came out of the bathroom and undressed in front of him and then invited ██████████ into the bed. ██████████ and ██████████ commenced intercourse. ██████████ guided his penis into her vagina. At first, the sex was rough and ██████████ was into it. Sex took a long time and ██████████ started to lose his erection. Eventually, ██████████ started getting tired and stopped moving. ██████████ said that he stopped having sex and watched a movie. He stated that he did not ejaculate. ██████████ asked him to return to bed, but he refused because he had to report for duty.

S/A ██████████ testified that ██████████ stated that he believed that ██████████ while highly intoxicated and vomiting, was coherent enough to consent to sexual intercourse.

END TESTIMONY FROM S/A ██████████ ON PRIOR STATEMENT OF SN ██████████

S/A ██████████ interviewed SGT ██████████ of the Kodiak police department who stated that she recalled denying entry into Meca of a young woman wearing a one piece leotard cat suit due to her extreme intoxication.

S/A ██████████ described the consensual examination of the data extracted from SN ██████████ cell phone. The cell phone contained a number of unanswered text messages from the evening and early morning hours of 15 and 16 October, respectively. Additionally, ██████████ cell phone contained 22 text messages between ██████████ and ██████████ between 09 and 23 October 2010. Included in these texts are three from 16 October 2011 occurring between 0247 and 0259 and include the statements "you ?ets fuck" and "I thought you wanted to fuck." S/A ██████████ also reported that on 23 October 2011 between 0214 and 0257, ██████████ texted ██████████ three times and again stated "let's fuck." S/A ██████████ testified that there were more texts on ██████████ phone than were provided in the CGIS report. S/A ██████████ stated that there were approximately 2100 text messages on the phone and that he only pulled those appearing to have evidentiary value for the CGIS report of investigation because providing all of the texts would have made the report voluminous and uninformative.

S/A ██████████ also testified regarding his interviews with ██████████. He reported that ██████████ had no recollection of events of 15-16 October past her experiences at Bernie's Bar. ██████████ stated that she was blacked out for most of the time and only recalls having a couple of drinks at Bernie's. S/A ██████████ testified that ██████████ had experienced a black out on another occasion while drinking.

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S/A [redacted] testified to the need to sometimes allow a victim to reflect on an experience as a reason for not taking a statement from [redacted] right away. He described how victims often can't remember all of the details and that the process of writing a statement down and then working on it for a few days might help victims jog their memory regarding events.

Regarding the photos and video of the woman alleged to be [redacted] on [redacted] phone, S/A [redacted] testified that [redacted] had no knowledge that the pictures or video had been taken.

(8) OS2 [redacted] USCGC ALEX HALEY (WMEC 39): [redacted] testified that he knew both [redacted] and [redacted]. He knew both from onboard the HALEY and from seeing them at the bars out in town. He described [redacted] as a typical young male who would go out, drink, get drunk, dance with himself and others. He described [redacted] as a typical female who would go out, drink, and who was outgoing and approachable when drunk.

[redacted] recalled the evening of 15-16 October 2010. [redacted] was at Bernie's bar where he saw [redacted] wearing her spotted leopard costume. [redacted] recalled talking with [redacted] at approximately 1230 and could tell that she was intoxicated but she was responsive and able to engage in standard witty bar banter. [redacted] was dancing as well, with a group of her shipmates, but did not appear to be dancing with anyone in particular. Otherwise, she was just socializing with other members of their group transiting fore and aft within Bernie's talking to different groups of people.

[redacted] was drinking as well and, at one point, he bought [redacted] a shot of alcohol. [redacted] did not recall whether [redacted] was dancing. [redacted] did not recall seeing either [redacted] or [redacted] depart Bernie's. Following Bernie's, [redacted] went to Mecca, but by this time, he himself was intoxicated and doesn't recall seeing [redacted] or [redacted] further.

The week following the costume party, [redacted] had a conversation with [redacted] at a bar. [redacted] stated to [redacted] "You wouldn't believe who I was with" or something to that effect, and then proceeded to tell [redacted] that [redacted] had been "with" SN [redacted] but provided no further details. On another occasion, [redacted] told [redacted] that he had sexual relations with [redacted] and that she was upset with him because [redacted] wouldn't return her calls or pay further attention to her. It appeared to [redacted] that [redacted] was upset with [redacted] because [redacted] wouldn't talk with [redacted] or take her calls. [redacted] had no advice for [redacted] and did not provide any.

(9) FS3 [redacted] USCGC ALEX HALEY (WMEC 39): FS3 [redacted] testified that she knew SN [redacted] from onboard the HALEY but they were not close friends and they had never hung out together on their own or been out drinking together. [redacted] would see [redacted] out at the bars as well but she was not close friends with him. FS3 [redacted] recalled the evening of 15-16 October 2010 as the night of the Halloween party. On that evening, she recalls seeing [redacted] out at the bars between 22-2400 hours and saw that she was "a little drunk." [redacted] recalled seeing [redacted] inside Bernie's bar. [redacted] thinks, but is not sure, that she walked to the Mecca Bar with

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██████████ and the ██████████ She does recall ██████████ trying to get into the Mecca Bar.

██████████ removed her ID card from her boot and showed it to the bouncer. ██████████ testified that the bouncer would not let ██████████ into Mecca because the bouncer thought ██████████ was "kind of drunk." ██████████ recalled ██████████ being rejected for entry at least two times. Following ██████████ rejection at the Mecca, she and ██████████ went to get something to eat. ██████████ could walk, but she was holding onto ██████████ for support. ██████████ and ██████████ cancelled their food order because the GV appeared to take them home.

██████████ testified that in the GV ride home, ██████████ appeared "very drunk" and she believes that ██████████ was a "little drunk" as well. ██████████ and ██████████ were talking in the GV and ██████████ thinks that she saw them kissing but she isn't sure. ██████████ doesn't think that ██████████ threw up in the GV. When they arrived to the base, ██████████ was guiding ██████████ so that she wouldn't fall because SN ██████████ could not walk into her barracks room on her own. ██████████ further testified that she believed ██████████ was holding ██████████ ID card because she did not think that ██████████ could swipe the ID card on her own.

██████████ waited outside for ██████████ in order to make sure everything was O.K. ██████████ texted ██████████ but did not hear back from her. She did not knock on ██████████ door, but waited outside for about fifteen minutes before departing.

When she next spoke to ██████████ told her that everything was "all right." ██████████ never told FS3 about what happened on that evening and ██████████ appeared normal at work. FS3 ██████████ learned more about the evening of 15-16 October when she was interviewed by CGIS and Military Police as part of this investigation.

On a scale of 1-10, ██████████ described ██████████ as about a 7 during a previous interview with CGIS but she did not recall why she gave that answer. ██████████ described her own level of intoxication as being a 5 or a 6.

(10) SNBM ██████████ USCGC ALEX HALEY (WMEC 39): SNBM ██████████ testified to his previous relationship with both ██████████ and ██████████ ██████████ was friends with both and a close friend with ██████████ ██████████ described ██████████ and ██████████ as "O.K." with each other, until the Eco-Challenge, after which they were no longer friends and were only cordial with one another.

One week before the Halloween party on 15 October 2010, several SNs from the HALEY went out together to Bernie's and Mecca. He recalled that both ██████████ and ██████████ were there but he did not recall that they were talking. Following their night out, ██████████ and ██████████ went back together in the GV. When they arrived to the barracks, ██████████ announced that he did not want to sleep onboard the HALEY. ██████████ offered to allow ██████████ to sleep on her couch. He recalls seeing ██████████ and ██████████ go into ██████████ barracks room.

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On the evening of 15 October 2010, [REDACTED] was at the Halloween party. He thinks that [REDACTED] drank a bottle of jaegermeister and a jello shot. [REDACTED] also recalled seeing [REDACTED] drinking at the party and believes that she was drinking mint schnapps out of a cup and thinks that she may have had a jello shot as well.

Following the party, [REDACTED] went to Bernie's Bar where he saw both [REDACTED] and [REDACTED]. He recalled having a drink with [REDACTED] and believes that [REDACTED] may have had between one and three Jaegerbombers. [REDACTED] was also at Bernie's where she was talking and drinking with her friends. [REDACTED] appeared a little drunk but not to the point where she was falling down.

[REDACTED] did not make it to Mecca that evening.

The following morning [REDACTED] received a call from [REDACTED] while he was onboard the HALEY. In fact, [REDACTED] was calling for [REDACTED] not [REDACTED] but the Quarterdeck watchstander piped the wrong individual. [REDACTED] could recognize immediately that [REDACTED] was upset and she appeared to be crying. [REDACTED] did not tell [REDACTED] anything and simply hung up, called back, and asked for [REDACTED].

The following Sunday, [REDACTED] was talking with [REDACTED] in her room. [REDACTED] showed [REDACTED] of the injuries she had experienced following her night of drinking on the 15-16th of October 2010. The injuries included bruising and a bite mark as [REDACTED] recalled.

[REDACTED] stated that [REDACTED] recalled bits and pieces of the evening but that she did not describe for him exactly what she remembered. [REDACTED] stated that [REDACTED] told him that she had "blacked out" and that she did not know whether [REDACTED] had forced himself on her or not. [REDACTED] did not indicate whether she was in or out of consciousness but [REDACTED] did know that [REDACTED] did not recall anything regarding [REDACTED] entering her room. [REDACTED] did testify that [REDACTED] told him that she was "in and out" during the sexual intercourse on the morning of the 16th but that she had no recollection of whether or not she consented.

(11) BM3 [REDACTED] USCGC ALEX HALEY (WMEC 39): BM3 [REDACTED] was not at the Halloween party on the evening of 15 October 2010 and testified to his interactions with SN [REDACTED] following the events of that evening. Following the events of 15-16 October 2010, BM3 [REDACTED] was underway onboard the HALEY when he spoke with [REDACTED] on the aft mess deck one evening. [REDACTED] mentioned to BM3 [REDACTED] that she felt sick because she could not work with [REDACTED] anymore. [REDACTED] then relayed to [REDACTED] her story about her interactions with SN [REDACTED] that she went to the Halloween party, got drunk, went to Bernie's, got rejected from Mecca, etc. but that she could not recall anything further. She then relayed to [REDACTED] what she had been told by FS3 [REDACTED] about that evening and she then described that she awoke on the morning of the 16th, naked with soreness.

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██████████ testified that ██████████ did not intend to report the incident. BM3 ██████████ instructed ██████████ to go to bed and stated that he would discuss the matter with LTJG ██████████ which he did.

(12) MK3 ██████████ USCGC ALEX HALEY (WMEC 39): MK3 ██████████ was the duty driver for the HALEY on the evening of 15-16 October 2010. ██████████ was instructed to go to town to pick up ██████████ because she was intoxicated. ██████████ arrived to Kodiak and picked up ██████████ as instructed, along with a number of other crewmembers including ██████████ ██████████ stated that ██████████ had a couple of people assisting her at the time when he arrived. ██████████ stated that in his opinion, only a few members of the crew appeared "disoriented," but those that he recalls as being disoriented were ██████████ ██████████ and ██████████ all of whom appeared intoxicated.

██████████ testified that ██████████ was talking with people in the van; her words were slurred and she appeared intoxicated. At one point, ██████████ pulled the van over to allow her to vomit because he heard ██████████ dry heaving and she stated that she was feeling sick. At that time, ██████████ declined to vomit but he did discover vomit where ██████████ was seated at the time he returned the van after the van run. ██████████ was certain that the vomit was not there when he departed because he was meticulous about checking the van out before and after each run.

██████████ recalled that ██████████ and ██████████ were talking in the van, as was everyone else. He stated that ██████████ was "leaning all over" ██████████ and was acting in a "flirtatious" manner. As the van neared the base, the conversation quieted down. ██████████ believed that he could hear heavy breathing of a sexual nature emanating from ██████████ who was seated directly behind him with ██████████ lying with her head in his lap and back to ██████████ ██████████ speculated that ██████████ was receiving oral sex from ██████████

As the van neared the gate of the base, everyone in the van was up, seatbelts on, and ID out, including ██████████ ██████████ stated that when they arrived to the barracks, ██████████ could not get out of the van herself and described her exit as "falling out." She was assisted out of the van by ██████████ and ██████████ ██████████ stated that ██████████ was not coordinated enough to get out of the van on her own. She was coordinated enough to stand up on her own, but she could not walk on her own. As a result, she was assisted by ██████████ and ██████████ with these two personnel supporting her body weight. On a scale of 1-10, with one being sober and 10 being passed out, ██████████ described ██████████ as an 8 at the time he dropped her off with ██████████ and ██████████ at her barracks. He described her as a 9 at the time he picked ██████████ up in downtown Kodiak.

(13) SN ██████████ USCGC MUNRO (WHEC 724): SN ██████████ testified that he had known SN ██████████ since boot camp and stated that they had been out drinking together on one occasion. ██████████ was not at the Halloween party on the evening of 15 October but did speak with ██████████ the following day when she knocked on his barracks room door to borrow his cell phone.

██████████ was in his barracks room with another crewmember named ██████████ when ██████████ knocked on his door. ██████████ did not want to enter his room or tell ██████████ anything with ██████████ there, so ██████████ departed. ██████████ then told ██████████ that she thought that she had been raped, she described her injuries to ██████████ but did not tell ██████████ who she thought had raped her. At this time, ██████████ stated that ██████████ did not want to inform her Command. ██████████ could not recall what ██████████ could remember at the time she spoke with him. About all ██████████ remembered at the time he provided his testimony is that ██████████ was crying and upset and did not want to inform her Command about what had happened. ██████████ did recall that ██████████ stated that she had no intentions of having sex that night, that ██████████ stated that she had been receiving texts from some guy for a period of time (she did not say who), and that she did not want to report it because she was embarrassed.

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Enclosure (3)

United States v. SN [REDACTED] USCG
Article 32 Hearing Exhibit Log

Investigating Officer: CDR [REDACTED] USCGR

Government Counsel: LT [REDACTED] USCG

Assistant Gov. Counsel: LT [REDACTED]

Defense Counsel: LT [REDACTED] JAGC, USN

Assistant Def. Counsel: LT [REDACTED] JAGC, USN

Exhibit No.	Description	# Pages	Objections
IO-1	Charge Sheet	3	None
IO-2	IO Appointing Letter for LT [REDACTED]	2	None
IO-3	IO Appointing Letter for CDR [REDACTED]	2	None
IO-4	Detailing Letter for Government Counsel	1	None
IO-5	Detailing Letter for Assistant Government Counsel	1	None
IO-6	Detailing Letter for Defense Counsel	2	None
IO-7	Detailing Letter for Assistant Defense Counsel	2	None
IO-8	Defense Counsel Request for Excludable Delay	1	None
IO-9	Convening Authority Grant of Excludable Delay	1	None
IO-10	IO Rights Advisement to the Accused	2	None
IO-11	Defense Witness Request	8	None
IO-12	Government Response to Defense Witness List	3	None
IO-13	Government Witness List	2	None
IO-14	IO Witness Determination and Change One Thereto	4	None
IO-15	Defense M.R.E. 412 Notice	3	None
IO-16	Government Photograph	1	None
IO-17	Government Video on Compact Disk	N/A	None
IO-18	Pages 38-40 of CGIS Report of Investigation in this case	3	None

The accused was permitted to examine each of these exhibits.

[REDACTED]
CDR, USCGR
Investigating Officer

27 Sep 11

From: LT [REDACTED], JAGC, USN
LT [REDACTED], JAGC, USN
To: CDR [REDACTED], USCG, Investigating Officer
Subj: CLOSING COMMENTS AND OBJECTIONS ICO US V. SN [REDACTED]
[REDACTED], USCG, XXX-XX-[REDACTED]

1. It is paramount to note that in this case, the issue of consent is hotly contested and credibility is essential. SN [REDACTED] claims she did not consent to sex with SN [REDACTED] and in fact would never consent to any sexual activity with SN [REDACTED]. She states that she was blacked out due to alcohol intoxication and that SN [REDACTED] should have known she was not willingly consenting to sex. There is no physical evidence of non-consensual sex, even SN [REDACTED] does not know for sure if what occurred was non-consensual; therefore, the only evidence offered by the government to prove the sex offense charges are the verbal allegations made by SN [REDACTED] after the fact.

2. A fundamental issue that arises in any sex offense investigation when consent is at issue is ascertaining the credibility of the alleged victim. The credibility of the alleged victim is even more critical in a case where the only evidence offered by the government in support of the alleged sex offense is a verbal complaint made by the alleged victim. In this case, the credibility of SN [REDACTED] the complaining witness, is suspect. Defense counsel invites the Investigating Officer to address and comment on the credibility of SN [REDACTED] in his recommendations to the convening authority.

3. The Government will assert that they have met their burden and will undoubtedly request a recommendation to refer the Article 120 rape charge to a General Court Martial. The reality of the situation is that there is no evidence of significance that pertains to the Article 120 offenses other than the testimony of the alleged victim. There is simply no physical evidence. The only evidence the government can provide are the statements of the complaining witness, SN [REDACTED] who has given numerous and varying accounts to a variety of witnesses, a statement to CGIS after much time and thought to think of the allegations, and testimony at the Article 32 Hearing. A great deal of evidence was introduced that although SN [REDACTED] herself cannot recall events on the night of the

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ENCLOSURE 4
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alleged incident, she was capable of conversation, dancing, drinking, and appraising her situation. The government has seemingly discounted this testimony.

4. SN [REDACTED] through counsel, respectfully requests the following courses of action:

a. Re-open the Article 32 Hearing. Defense counsel has numerous objections noted below which all have great bearing on the fairness of the hearing and ability of defense counsel to adequately assist SN [REDACTED] at the Article 32 Hearing and prepare for trial. Additionally, the outstanding evidence and testimony that defense counsel was unable to obtain during the Article 32 hearing means that the Investigating Officer does not have a full account of all relevant information with which to make the most accurate and reasonable recommendation to the Convening Authority. The equitable notions of fair play and due process dictate that SN [REDACTED] receive the full benefit of a properly convened Article 32 Hearing. Because of the numerous objections noted below, SN [REDACTED] has been denied this statutorily provided right. The Article 32 Hearing should be re-opened.

b. Recommend that the Article 120 rape charges be disposed of because the lack of credible evidence supporting such a charge. SN [REDACTED] states that she cannot recall having sex with SN [REDACTED] (and much of the night prior to the sex). As CGIS SA [REDACTED] testified to, SN [REDACTED] stated that SN [REDACTED] was a willing and active participant during sex. Many witnesses at the Article 32 hearing supported SN [REDACTED] accounting of events surrounding the alleged assault, including consensual sexual activity in the Government Van just minutes prior the alleged assault. SN [REDACTED] the alleged victim, claims that she must have been unable to consent because she would never consent to any sexual activity between herself and SN [REDACTED] calling her credibility directly into question. However, the testimony of numerous witnesses during the Article 32 shows that SN [REDACTED] danced provocatively with SN [REDACTED] kissed SN [REDACTED] and engaged in sexual activity with SN [REDACTED] while on the ride back to barracks. The testimony of several witnesses also indicated that although SN [REDACTED] was drunk that night, she was able to engage in conversation with people, dance, drink, understand questions and form coherent responses, and at no time passed out. Testimony also revealed that SN

CLOSING COMMENTS AND OBJECTIONS ICO US V. SN D [REDACTED]
[REDACTED] USCG, XXX-XX-[REDACTED]

[REDACTED] was also highly intoxicated that evening. There are significant issues in the case that create more than reasonable doubt at trial.

5. SN [REDACTED] through counsel, notes the following objections for the record:

a. The Convening Authority, Investigating Officer, and the Trial Counsel did not properly follow R.C.M. 405 as it applies to the production of witnesses. Defense counsel objects to the availability of the following witnesses:

i. SN [REDACTED] USCG, was requested by defense counsel in a 7 Sep 2011 Witness Production Request. Trial counsel responded on 13 Sep 2011 that SN [REDACTED] would not be produced on the basis that he was irrelevant (cumulative with other witnesses) and unavailable because he was outside the 100 mile radius. The Investigating Officer also deemed SN [REDACTED] cumulative and unavailable. Even if it was initially determined that he would not be produced, multiple witnesses testified at the Article 32 hearing that SN [REDACTED] spoke with SN [REDACTED] on the morning after the alleged assault. This conversation with SN [REDACTED] in essence SN [REDACTED]'s first statement, directly involved the events surrounding the alleged assault. While some witness testimony with commonalities may at first glance appear to be cumulative, each witness offers a different piece of the story to complete the full story of the alleged assault. This is particularly important in this case, as SN [REDACTED] simply cannot remember many events of the night in question. Only SN [REDACTED] can testify as to exactly what was SN [REDACTED] first statement after the alleged assault. A complete picture is key to understanding whether the charges have validity to go forward. As such, the failure of this witness to testify was improper.

ii. Defense counsel also requested that Mrs. [REDACTED] [REDACTED] appear as a witness. Again, trial counsel responded that her testimony was cumulative with MK3 [REDACTED]. However, it was clear from MK3 [REDACTED] testimony that Mrs. [REDACTED] and her husband were only other witnesses present in the government liberty van. Her statement to CGIS included comments about normal characteristics of SN [REDACTED] when she was drunk, and that the car ride with her was no different or out of the

ordinary of SN [REDACTED] character. The level of SN [REDACTED] intoxicated and her mental capacity will be greatly debated in this case. Thus, all accounts from witnesses who observed her behavior just minutes before an alleged assault are highly relevant and necessary. Again, these witnesses have somewhat different recollections. Mrs. [REDACTED] witnessed something different yet equally important and should have been invited to testify, at the very least telephonically.

iii. Defense counsel requested the following witnesses in a 7 Sept 2011 Witness Production Request: FN [REDACTED], USCG; BM3 [REDACTED], USCG; FN [REDACTED], USCG; SN [REDACTED], USCG; ETC [REDACTED], USCG; MK3 [REDACTED], USCG; SN [REDACTED], USCG; and SA [REDACTED], CGIS. [After testimony at the Article 32, the Investigating Officer reconsidered defense counsel's request to produce FN [REDACTED] as a witness, but ultimately she did not appear as a witness.]

Defense requested these witnesses on the basis that each witness had a different recollection of the night in question; in other words these witnesses together could paint the whole picture of what occurred on the night of 15 October 2010, since SN [REDACTED] could not recall that night. The entire picture of that evening is important in order for the Investigating Officer to make an adequate and effective recommendation as to whether the charges should go forward to a court-martial.

Trial counsel responded on 13 Sept 2011 that these witnesses would not be produced based on the government's belief that their testimony was either irrelevant, cumulative, or because they were located outside the 100 mile radius making them unavailable. The Investigating Officer also deemed these witnesses cumulative and unavailable. Again, while some witness testimony at a superficial glance could appear to be irrelevant or cumulative because of a similar general recollection of the night in question, each witness has a slightly different piece of evidence to offer. Piecing each of their witnesses' memories together to complete the story of the evening is truly key in understanding whether the very serious charges against SN [REDACTED] truly have validity to go forward. As such, the failure of these witnesses to testify was improper and should be produced to testify a re-opening of the Article 32 investigation.

b. Defense counsel also objects to the government failing to produce and respond to defense counsel's request for the following evidence. By denying defense counsel access to the below evidence, the government has impeded the ability of defense counsel to effectively assist SN [REDACTED] who has been accused of multiple serious crimes. This evidence should be turned over to the defense and the Article 32 Hearing should be re-opened so this evidence may be considered:

i. Denial of Service Record (SR) of SN [REDACTED] the alleged victim. Trial counsel did not respond to defense counsel's request, so it is unclear why this information has not been produced. A review of the SR of SN [REDACTED] is critical to defense counsel as it will assist in determining her credibility and past. This record was in the government's control and readily obtainable. Trial counsel had no justification to deny defense access to information that would affect the credibility of SN [REDACTED] whose verbal allegation was the only evidence the government could produce to prove the alleged sex offenses.

ii. Access and ability to view the clothes and shoes worn by SN [REDACTED] on the night of 15 October 2010. This evidence was requested by defense counsel and no response was given by the government. Access to this physical evidence is important to developing defense theories. The outfit worn by SN [REDACTED] that night is critical to establishing how certain events occurred. The government will likely attempt to show that SN [REDACTED] was incapacitated because she had difficulty walking, thus the shoes and outfit worn are important pieces of physical evidence. They will be important in order for the defense to show that there could be other reasons why SN [REDACTED] would have difficulty walking that evening.

iii. Medical Record of SN [REDACTED] Again, the government did not respond to this request. At the Article 32 Hearing, SN [REDACTED] stated she had been receiving some sort of medical attention or care regarding this incident, but the defense was not permitted to ask about this, nor did it have a copy of her records prior to the Article 32 hearing. A review of this medical record will assist in determining SN [REDACTED] credibility and what, if any, changes in behavior or emotional state occurred after the alleged assault.

iv. Facebook messages of SN [REDACTED] Again, the government did not respond to this request. SN [REDACTED] testified that she contacted several civilian and military friends after this incident occurred. Some of the witnesses testified that they were contact via Facebook. Any statements SN [REDACTED] made regarding this incident are discoverable and necessary for impeachment and determining SN [REDACTED] credibility. The defense should have had an opportunity to examine this prior to the Article 32 in order to question SN [REDACTED] about any such statement, while she was under oath.

c. Defense counsel objects to the ruling made by the Investigating Officer prohibiting the defense from questioning SN [REDACTED] (and any other witness) regarding behavior of SN [REDACTED] immediately following the alleged assault, including, but not limited to, the conduct sexual in nature just six days after SN [REDACTED] claims she was raped by SN [REDACTED]. The Investigating Officer ruled that this information was prohibited under MRE 412 and not relevant information to determine whether the alleged offenses occurred at an Article 32 hearing. Defense counsel objects to this ruling. Testimony of this issue falls under the MRE 412(a)(b)(1)(C) exception of "evidence the exclusion of which would violate the constitutional rights of the accused" because it is relevant and necessary for the defense to impeach SN [REDACTED]. SN [REDACTED] claims that she was very upset in the days following the assault. However, witnesses saw her out at the same bars within 7 days, drinking, dancing, and flirting with SN [REDACTED]. Again, after drinking, there is some evidence, which would have been gained at the Article 32 hearing, that she engaged in conduct of a sexual nature with SN [REDACTED]. This information is necessary and relevant to in order to weigh SN [REDACTED] credibility and testimony, including whether or not an assault actually occurred just days prior.

d. Defense counsel also objects to the refusal of the Investigating Officer to allow defense counsel to question numerous witness about the actions taken by SN [REDACTED] the complaining witness, in the days that followed the alleged rape. Defense counsel was severely limited in the scope of conducting witness examinations and cross examinations for every witness that testified at the Article 32 hearing. Again, some questions were denied on the basis of MRE 412, but the following areas were denied

CLOSING COMMENTS AND OBJECTIONS ICO US V. SN [REDACTED]

[REDACTED] USCG, XXX-XX-[REDACTED]

on the basis of relevancy: questions related to how the incident was reported to the chain of command, questions regarding the alleged victim's actions in the days following the incident including how she reported the incident and to whom she disclosed the incident to, and questions regarding SN [REDACTED] injuries and demeanor in the days following the alleged incident.

i. The Investigating Officer stated these questions were not relevant at the hearing on the basis of RCM 405 and the IO Appointment Letter. However, preventing such questioning prohibited the defense from utilizing the Article 32 Hearing to fulfill one of its two well established purposes- discovery for the defense. This two-fold purpose had been well established with controlling military courts, and is not contested by the government. Frustrating this well established purpose of an Article 32 has impeded the ability of defense counsel to effectively assist SN [REDACTED] who has been accused of multiple serious crimes that carry a potential sentence of over 20 years confinement. Defense should not have been denied the opportunity to question witnesses regarding this highly relevant and discoverable information.

ii. Curtailing such questions prevented the defense from establishing a basis to request further discovery, provide adequate proffers of expected testimony to secure witness determinations, and establish the need for expert testimony. Trial counsel will undoubtedly object to future requests for discovery, witnesses, and experts if there is not a sufficient record detailing why such requests are made. In fact, trial counsel stated on numerous occasions that the government would "entertain" such requests at a proper discovery stage while stating that the questions were part of a "fishing expedition." The line of questioning by defense counsel that was not permitted was intended to build a record to support such requests, and preventing its creation will continue to hamper defense counsel's ability to effectively assist SN [REDACTED]

iii. Additionally, defense counsel was not permitted to ask SN [REDACTED] the alleged victim, if she had ever reported a sexual assault or been the victim of a sexual assault in the past. Without even knowing the answers to these questions, the Investigating Officer preemptively stated that they were not relevant to this

particular alleged assault. This information would be highly relevant. The manner in which SN [REDACTED] perceives what occurred between her and SN [REDACTED] is undoubtedly shaped by her past experiences. Further, if she has ever reported a sexual assault in the past the manner in which that was disposed of could be highly relevant and very much a factor in evaluating the similarities of reporting in this alleged assault. Defense concedes that this information may not be relevant at trial, but without knowing the answers to such important questions, defense counsel was prohibited from ascertaining the relevancy in the future. Thus, this information is relevant at an Article 32 Hearing and defense counsel should have been permitted to ask such questions.

iv. Defense counsel should be given the opportunity to obtain sworn testimony regarding this information and the Article 32 Hearing should be re-opened so this evidence may be considered.

/s/

[REDACTED]

/s/

[REDACTED]

CHARGE SHEET

I. PERSONAL DATA

1. NAME OF ACCUSED (Last, First, MI) [REDACTED]		2. SSN [REDACTED]	3. GRADE OR RANK SN	4. PAY GRADE E-9
5. UNIT OR ORGANIZATION USCGC ALEX HALEY (WMEC-39)			6. CURRENT SERVICE	
			7. INITIAL DATE 02 Mar 10	8. TERM 4 years
7. PAY PER MONTH		8. NATURE OF RESTRAINT OF ACCUSED		9. DATE(S) IMPOSED
a. BASIC \$1729.80	b. SEA/FOREIGN DUTY N/A	c. TOTAL \$1729.80	None	
N/A				

II. CHARGES AND SPECIFICATIONS

10.

Charge I: Violation of UCMJ, Article 120

Specification 1: In that Seaman [REDACTED], USCGC ALEX HALEY (WMEC-39), on active duty, did, at or near Kodiak, Alaska, on or about 16 October 2010, engage in a sexual act, to wit: inserting his penis into the vagina of Seaman [REDACTED], U.S. Coast Guard, who was substantially incapacitated.

Specification 2: In that Seaman [REDACTED], USCGC ALEX HALEY (WMEC-39), on active duty, did, at or near Kodiak, Alaska, on or about 16 October 2010, engage in a sexual act, to wit: inserting his penis into the vagina of Seaman [REDACTED], U.S. Coast Guard, who was substantially incapable of appraising the nature of the sexual act.

Specification 3: In that Seaman [REDACTED], USCGC ALEX HALEY (WMEC-39), on active duty, did, at or near Kodiak, Alaska, on or about 16 October 2010, engage in a sexual act, to wit: inserting his penis into the vagina of Seaman [REDACTED], U.S. Coast Guard, who was substantially incapable of declining participation in the sexual act.

Specification 4: In that Seaman [REDACTED], USCGC ALEX HALEY (WMEC-39), on active duty, did, at or near Kodiak, Alaska, on or about 16 October 2010, engage in a sexual act, to wit: inserting his penis into the vagina of Seaman [REDACTED], U.S. Coast Guard, who was substantially incapable of communicating unwillingness to engage in the sexual act.

Specification 5: In that Seaman [REDACTED], USCGC ALEX HALEY (WMEC-39), on active duty, did, at or near Kodiak, Alaska, on or about 16 October 2010, wrongfully commit indecent conduct, to wit: photographing and recording video of the genitalia and buttocks of Seaman [REDACTED], U.S. Coast Guard without the said Seaman [REDACTED]'s consent and contrary to her reasonable expectation of privacy.

(See continuation page)

III. PREFERRAL

11a. NAME OF ACCUSER (Last, First, Middle Initial) [REDACTED]	b. GRADE CWO2	c. ORGANIZATION OF ACCUSER Legal Service Command
d. SIGNATURE OF ACCUSER 	e. DATE (YYYYMMDD) 2011-15-07	

AFFIDAVIT: Before me, the undersigned, authorized by law to administer oaths in cases of this character, personally appeared the above named accuser this 15th day of JULY, 2011, and signed the foregoing charges and specifications under oath that he/she is a person subject to the Uniform Code of Military Justice and that he/she either has personal knowledge of or has investigated the matters set forth therein and that the same are true to the best of his/her knowledge and belief.

Typed Name of Officer

LT/03
Grade

CG Pacific Area
Organization of Officer

Commissioned Officer
Official Capacity to Administer Oaths
(See R.C.M. 307(b)—must be commissioned officer)

NET [REDACTED] JSCG
CERTIFIED TO BE A TRUE COPY

12. On 15 July, 2011, the accused was informed of the charges against him/her and of the name(s) of the accuser(s) known to me (See R.C.M. 308(a)). (See R.C.M. 308 if notification cannot be made.)

Typed Name of Immediate Commander

DRJ/
Grade

Signature

USCGC ALEX HALEY (WMEC-39)
Organization of Immediate Commander

IV. RECEIPT BY SUMMARY COURT-MARTIAL CONVENING AUTHORITY

13. The charges were received at 1118 hours, 15 July, 2011, at CGC ALEX HALEY
Designation of Command or Officer exercising
Summary Court-Martial Jurisdiction (See R.C.M. 403).

Typed Name of Officer

CDR/O-5
Grade
A.M. [Signature]
Signature

FOR THE ¹ XXXXXXXXXXXXXXXXXXXX

Commanding Officer
Official Capacity of Officer Signing

V. REFERRAL; SERVICE OF CHARGES

14a. DESIGNATION OF COMMAND OF CONVENING AUTHORITY b. PLACE DATE (YYYYMMDD)

Referred for trial to the _____ court-martial convened by _____

Dated _____, subject to the following instructions: ²

By _____ of _____
Command or Order

Typed Name of Officer

Grade

Signature

Commander
Official Capacity of Officer Signing

15. On _____, 2011, I (caused to be) served a copy hereof on (each of) the above named accused.

Typed Name of Trial Counsel

Signature

Grade or Rank of Trial Counsel

FOOTNOTES: 1 - When an appropriate commander signs personally, inapplicable words are stricken.
2 - See R.C.M. 601(e) concerning instructions. If none, so state.

Charge II: Violation of UCMJ, Article 134

Specification 1: In that Seaman [REDACTED] [REDACTED] USCGC ALEX HALEY (WMEC-39), on active duty, did, at or near Kodiak, Alaska, on or about 16 October 2010, in writing communicate to [REDACTED] certain indecent language, to wit: "If you look closely you can see the cum on her butt" or words to that effect.

Specification 2: In that Seaman [REDACTED] [REDACTED] USCGC ALEX HALEY (WMEC-39), on active duty, did, at or near Kodiak, Alaska, on or about 16 October 2010, send a nude picture of Seaman [REDACTED] [REDACTED] U.S. Coast Guard, to [REDACTED] without Seaman [REDACTED] permission, which conduct was to the prejudice of good order and discipline in the armed forces and was of a nature to bring discredit upon the armed forces.

Specification 3: In that Seaman [REDACTED] [REDACTED] USCGC ALEX HALEY (WMEC-39), on active duty, did, at or near Kodiak, Alaska, on or about 16 October 2010, send a nude picture of Seaman [REDACTED] [REDACTED] AN, U.S. Coast Guard, to [REDACTED] without Seaman [REDACTED]'s permission, which conduct was to the prejudice of good order and discipline in the armed forces and was of a nature to bring discredit upon the armed forces.

Specification 4: In that Seaman [REDACTED] [REDACTED] USCGC ALEX HALEY (WMEC-39), on active duty, did, at or near Kodiak, Alaska, on or about 16 October 2010, send a nude picture of Seaman [REDACTED] [REDACTED] U.S. Coast Guard, to Boatswain's Mate Third Class Petty Officer [REDACTED] U.S. Coast Guard, without Seaman [REDACTED] permission, which conduct was to the prejudice of good order and discipline in the armed forces and was of a nature to bring discredit upon the armed forces.

Specification 5: In that Seaman [REDACTED] [REDACTED] USCGC ALEX HALEY (WMEC-39), on active duty, did, at or near Kodiak, Alaska, on or about 16 October 2010, show a nude picture of Seaman [REDACTED] [REDACTED] U.S. Coast Guard, to Seaman [REDACTED] U.S. Coast Guard, without Seaman [REDACTED] permission, which conduct was to the prejudice of good order and discipline in the armed forces and was of a nature to bring discredit upon the armed forces.

500143

U.S. Department of
Homeland Security

United States
Coast Guard



Commanding Officer
USCGC ALEX HALEY (WMEC 39)

P.O. BOX 190657
Kodiak, AK 99619
Phone: (907) 487-5616
FAX: (907) 487-5618

5811
25 AUG 2011

MEMORANDUM

From: [REDACTED]
USCGC ALEX HALEY

To: [REDACTED] LT
Legal Service Command

Subj: APPOINTMENT AS UCMJ ARTICLE 32 PRETRIAL INVESTIGATING OFFICER
ICO U.S. v. [REDACTED] USCG

Ref: (a) Article 32, Uniform Code of Military Justice
(b) Rule for Courts-Martial 405, Manual for Courts-Martial (2008 ed.)
(c) Rule for Courts-Martial 707, Manual for Courts-Martial (2008 ed.)
(d) Military Justice Manual, COMDTINST M5810.1D, para 3-F

1. Pursuant to references (a) through (d), you are detailed as Investigating Officer to inquire into allegations against SN [REDACTED] USCG. The allegations are contained in the enclosed charge sheet. You shall inquire into the form and truth of the charges and into such other matters as may be necessary to make a recommendation as to the disposition of the charges. You shall be guided by the provisions of reference (b) and current case law relating to the conduct of pretrial investigations.

2. Your investigation shall commence at 0900 on 22 September 2011 at District Thirteen, Seattle, WA. The Convening Authority will grant or deny any continuance requests, including excludable delay pursuant to references (b) and (c). All requests for continuance shall be submitted to the Convening Authority via Government Counsel. All proceedings shall be conducted in accordance with references (b) and (d). Your report shall include, at a minimum, the information specified in reference (b).

3. Unless otherwise permitted by the Convening Authority, all defense requests for production of witnesses located within 100 miles of the site of the investigation shall be submitted per R.C.M. 405(g) no later than four (4) working days prior to the date of the Article 32 Investigation. Requests for the production of witnesses located beyond 100 miles of the sites of the investigation shall be submitted no later than five (5) working days prior to the date of the investigation.

4. In accordance with R.C.M. 405(g)(1)(A), all witness requests shall state how the requested witness' testimony would be relevant to the investigation and why it would not be cumulative with other testimony presented. All witness requests shall be submitted to the Investigating Officer via the Government Counsel.

500144

"IO Exhibit 2

Page 1 of 2

5. You shall advise SN [REDACTED] of his right to counsel and of his procedural rights under reference (b). Any testimony from a witness must be taken under oath and a summary of that testimony must be appended to your report, along with any other evidence you consider in coming to your conclusions. The proceedings shall not be recorded, and no verbatim record shall be made of this hearing.

6. LT [REDACTED] USCG has been detailed as Government Counsel. He may be reached at [REDACTED] or via email at [REDACTED]. LT [REDACTED] USCG, has been detailed as Assistant Government Counsel. He may be reached at [REDACTED] or via email at [REDACTED]. LT [REDACTED] JAGC, USN, has been detailed as SN [REDACTED] Defense Counsel. She may be reached at [REDACTED] or via email at [REDACTED]. LT [REDACTED] JAGC, USN, has been detailed as SN [REDACTED] Assistant Defense Counsel. She may be reached at [REDACTED] or via email at [REDACTED]. You shall avoid talking to the government representative or the defense counsel about the merits of the case, outside of formal sessions where all parties have the opportunity to be present.

7. Captain [REDACTED] Pacific Area Staff Judge Advocate, is designated to assist you in your role as Investigating Officer, should you need legal advice. He may be reached at [REDACTED]. However, the conclusions to be drawn from the evidence in the case and the recommendations concerning the disposition of the case are matters solely within your judgment and responsibility; the law requires that these matters be determined by you without reliance upon the opinions or recommendations of any other person. Your report should be completed not later than 14 days after you complete your investigation.

#

Enclosures: (1) SN [REDACTED] DD Form 458 (copy)
(2) CGIS Report of Investigation of 9 Feb 2011
(3) CGIS Report of Investigation of 12 Apr 2011

Copy: w/o encl
LT [REDACTED] Government Counsel
LT [REDACTED] Assistant Government Counsel
LT [REDACTED] JAGC, USN, Detailed Defense Counsel
LT [REDACTED] JAGC, USN, Assistant Detailed Defense Counsel

500145

PAGE 2 OF 2



MEMORANDUM

From: CGC ALEX HALEY (WMEC 39)

To: CDR
Coast Guard Ninth District (dl)

Subj: APPOINTMENT AS LICMIA ARTICLE 32 PRETRIAL INVESTIGATING OFFICER,
ICO U.S. v. SN USCG

Ref: (a) Article 32, Uniform Code of Military Justice
(b) Rule for Courts-Martial 405, Manual for Courts-Martial (2008 ed.)
(c) Rule for Courts-Martial 707, Manual for Courts-Martial (2008 ed.)
(d) Military Justice Manual, COMDTINST M5810.1D, para 3-F

1. Due to extenuating circumstances, LT is hereby relieved of further duties as Investigating Officer in this matter.

2. Pursuant to references (a) through (d), CDR is detailed as Investigating Officer to inquire into allegations against SN USCG. The allegations are contained in the enclosed charge sheet. You shall inquire into the form and truth of the charges and into such other matters as may be necessary to make a recommendation as to the disposition of the charges. You shall be guided by the provisions of reference (b) and current case law relating to the conduct of pretrial investigations.

3. Your investigation shall commence at 0900 on 22 September 2011 at District Thirteen, Seattle, WA. The Convening Authority will grant or deny any continuance requests, including excludable delay pursuant to references (b) and (c). All requests for continuance shall be submitted to the Convening Authority via Government Counsel. All proceedings shall be conducted in accordance with references (b) and (d). Your report shall include, at a minimum, the information specified in reference (b).

4. Unless otherwise permitted by the Convening Authority, all defense requests for production of witnesses located within 100 miles of the site of the investigation shall be submitted per R.C.M. 405(g) no later than four (4) working days prior to the date of the Article 32 investigation. Requests for the production of witnesses located beyond 100 miles of the sites of the investigation shall be submitted no later than five (5) working days prior to the date of the investigation.

5. In accordance with R.C.M. 405(g)(1)(A), all witness requests shall state how the requested witness' testimony would be relevant to the investigation and why it would not be cumulative

, USCG

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500146

IO EXHIBIT 3
PAGE 1 OF 2

with other testimony presented. All witness requests shall be submitted to the Investigating Officer via the Government Counsel.

6. You shall ensure SN [REDACTED] has been advised of his right to counsel and of his procedural rights under reference (b). Any testimony from a witness must be taken under oath and a summary of that testimony must be appended to your report, along with any other evidence you consider in coming to your conclusions. The proceedings shall be recorded, but no verbatim record shall be made of this hearing.

7. LT [REDACTED] USCG has been detailed as Government Counsel. He may be reached at [REDACTED] or via email at [REDACTED]. LT [REDACTED] USCG, has been detailed as Assistant Government Counsel. He may be reached at [REDACTED] or via email at [REDACTED]. LT [REDACTED] JAGC, USN, has been detailed as SN [REDACTED] Defense Counsel. She may be reached at [REDACTED] or via email at [REDACTED]. LT [REDACTED] JAGC, USN, has been detailed as SN [REDACTED] Assistant Defense Counsel. She may be reached at [REDACTED] or via email at [REDACTED]. You shall avoid talking to the government representative or the defense counsel about the merits of the case, outside of formal sessions where all parties have the opportunity to be present.

8. Captain [REDACTED] Pacific Area Staff Judge Advocate, is designated to assist you in your role as Investigating Officer, should you need legal advice. He may be reached at [REDACTED]. However, the conclusions to be drawn from the evidence in the case and the recommendations concerning the disposition of the case are matters solely within your judgment and responsibility; the law requires that these matters be determined by you without reliance upon the opinions or recommendations of any other person. Your report should be completed not later than 14 days after you complete your investigation.

#

Enclosures: (1) SN [REDACTED] DD Form 458 (copy)
(2) CGIS Report of Investigation of 9 Feb 2011
(3) CGIS Report of Investigation of 12 Apr 2011

Copy: w/o encl.
LT [REDACTED] CG D17(d1)
LT [REDACTED] Government Counsel
LT [REDACTED] Assistant Government Counsel
LT [REDACTED] JAGC, USN, Detailed Defense Counsel
LT [REDACTED] JAGC, USN, Assistant Detailed Defense Counsel

2

500147

U.S. Department of
Homeland Security

United States
Coast Guard



Commander
United States Coast Guard
Pacific Area

Coast Guard Island, Bldg 54A
Alameda, CA 94501-5100
Staff Symbol: PAC-094
Phone: (510) 437-3330
Fax: (510) 437-3341

5811

SEP 07 2011

MEMORANDUM

From: [REDACTED] JSGG
Acting Staff Judge Advocate

To: [REDACTED] LT, USCG

Subj: DETAIL AS GOVERNMENT COUNSEL ICO UNITED STATES V. SN [REDACTED]
S, USCG

Ref: (a) Manual for Courts-Martial United States (2008 Edition), R.C.M. 405.3(a)
(b) Military Justice Manual, COMDINST M5810.1E, Art. 3.H.4.a

1. In accordance with references (a) and (b), you are detailed as government counsel in the case of United States v. SN [REDACTED] USCG.

#

500148

'10 Exhibit 4

Page 1 of 1

U.S. Department of
Homeland Security

United States
Coast Guard



Commander
United States Coast Guard
Pacific Area

Coast Guard Island, Bldg 54A
Alameda, CA 94601-5100
Staff Symbol: PAC-094
Phone: (510) 437-3330
Fax: (510) 437-3341

5811

SEP 07 2011

MEMORANDUM

From: [REDACTED] USCG
Acting Staff Judge Advocate

To: [REDACTED] LT, USCG

Subj: DETAIL AS ASSISTANT GOVERNMENT COUNSEL ICO UNITED STATES V.
SN [REDACTED] USCG

Ref: (a) Manual for Courts-Martial United States (2008 Edition), R.C.M. 405.3(a)
(b) Military Justice Manual, COMDINST M5810.1E, Art. 3.H.4.a

1. In accordance with references (a) and (b), you are detailed as assistant government counsel in the case of United States v. SN [REDACTED] USCG.

#

500449

"10 Exhibit 5

Page 1 of 1"



5810
28 July 2011

MEMORANDUM

From: *M. Brumell*
[REDACTED]
Chief, Legal and Defense Services

Reply to
Attn of: [REDACTED]

To: [REDACTED] LT, JAGC, USN

Subj: DETAILING AS DEFENSE COUNSEL FOR ACCUSED ICO UNITED STATES v. SN [REDACTED] USCG

Ref: (a) Manual for Courts-Martial, R.C.M. 503(c)
(b) Military Justice Manual, COMDTINST M5810.1D, Chapter 3-H-2
(c) Navy & Coast Guard MOU on Mutual Support in Military Justice Matters
(d) Email w/assignment letter from NLSO Northwest Ms. [REDACTED] of
27 Jul 11 2:41 pm

1. In accordance with references (a), (b), (c), and (d), you are detailed as defense counsel for the accused in the case referenced above. Your representation is to include any pre-trial hearings (Article 32 Investigation) as well as any subsequent military justice proceedings. Detailed assistant defense counsel in this case is LT [REDACTED] JAGC, USN.
2. SN [REDACTED] is currently assigned TAD to Coast Guard Base Support Unit Kodiak, Kodiak, AK. He can be reached at [REDACTED] cell).
3. The Trial Counsel for this case is LT [REDACTED] Coast Guard Pacific Area (PAC-094), Alameda, CA. He can be reached at [REDACTED]. Assistant Trial Counsel for this case is LT [REDACTED] Coast Guard Pacific Area (PAC-094), Alameda, CA. He can be reached at [REDACTED]. For any additional documentation concerning this case, please contact either counsel directly.
4. Please note that the Coast Guard cannot issue orders or honor travel claims unless counsel is detailed by CG-094M. This letter details you to this case and will enable you to obtain a TONO and accounting data for travel to the site of the court-martial. Please complete the attached travel request form and contact:

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED] mil

M. J. Meyer
M. J. MEYER LT, USCG
CERTIFIED TO BE A TRUE COPY

500150
"10 Exhibit 6
Page 1 of 2"

Subj: **DETAILING AS DEFENSE COUNSEL FOR ACCUSED ICO UNITED STATES v. SN**
[REDACTED] USCG

5. You should contact [REDACTED] and return the enclosed travel request at least 5 working days in advance of the expected travel to avoid unnecessary delays in processing your travel orders.
6. Should you require additional travel, legal support, etc. you must submit a requesting email to: [REDACTED] and [REDACTED] and obtain prior approval.

#

Copy: CG-0948
Trial Counsel & ADC
File

U.S. Department of
Homeland Security

United States
Coast Guard



Commandant
United States Coast Guard

4200 Wilson Blvd Suite 1000
Mail Stop 7100
Arlington, VA 20598 - 7100
Staff Symbol: CG-094M
Phone: (202) 493-1022
Fax: (202) 493-1749
Email: [REDACTED]

5810
28 July 2011

MEMORANDUM

From: *W Russell*
[REDACTED]
Chief, Legal and Defense Services

Reply to
Attn of: [REDACTED]

To: [REDACTED] LT, JAGC, USN

Subj: DETAILING AS ASSISTANT DEFENSE COUNSEL FOR ACCUSED ICO UNITED STATES v. SN [REDACTED] USCG

Ref: (a) Manual for Courts-Martial, R.C.M. 503(c)
(b) Military Justice Manual, COMDTINST M5810.1D, Chapter 3-H-2
(c) Navy & Coast Guard MOU on Mutual Support in Military Justice Matters
(d) Email w/assignment letter from NLSO Northwest Ms. [REDACTED] of
27 Jul 11 2:41 pm

1. In accordance with references (a), (b), (c), and (d), you are detailed as assistant defense counsel for the accused in the case referenced above. Your representation is to include any pre-trial hearings (Article 32 Investigation) as well as any subsequent military justice proceedings. Detailed defense counsel in this case is LT [REDACTED] JAGC, USN.
2. SN [REDACTED] is currently assigned TAD to Coast Guard Base Support Unit Kodiak, Kodiak, AK. He can be reached at [REDACTED] (cell).
3. The Trial Counsel for this case is LT [REDACTED] Coast Guard Pacific Area (PAC-094), Alameda, CA. He can be reached at [REDACTED]. Assistant Trial Counsel for this case is LT [REDACTED] Coast Guard Pacific Area (PAC-094), Alameda, CA. He can be reached at [REDACTED]. For any additional documentation concerning this case, please contact either counsel directly.
4. Please note that the Coast Guard cannot issue orders or honor travel claims unless counsel is detailed by CG-094M. This letter details you to this case and will enable you to obtain a TONO and accounting data for travel to the site of the court-martial. Please complete the attached travel request form and contact:
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

M J Meyer
M J MEYER LT, USCG
CERTIFIED TO BE A TRUE COPY

5001527
"IO Exhibit 7

Page 1 of 2

Subj: **DETAILING AS ASSISTANT DEFENSE COUNSEL FOR ACCUSED ICO UNITED STATES v. SN [REDACTED] USCG**

5. You should contact [REDACTED] and return the enclosed travel request at least 5 working days in advance of the expected travel to avoid unnecessary delays in processing your travel orders.

6. Should you require additional travel, legal support, etc. you must submit a requesting email to: [REDACTED] and [REDACTED] and obtain prior approval.

#

Copy: CG-0948
Trial Counsel
File

5810
29 Jul 11

From: LT [REDACTED], JAGC, USN, Detailed Defense Counsel
LT [REDACTED], JAGC, USN, Detailed Defense Counsel
To: CDR [REDACTED], Commanding Officer, USCGC ALEX HALEY
Via: LT [REDACTED] USCG, Trial Counsel
LT [REDACTED], USCG, Trial Counsel

Subj: REQUEST FOR EXCLUDABLE DELAY ICO SN [REDACTED] [REDACTED] USCG,
XXX-XX-[REDACTED]

Ref: (a) Rule for Court-Martial 707
(b) Uniform Code of Military Justice Article 32

1. Per references (a) and (b), defense counsel respectfully requests the Article 32 investigation for SN [REDACTED] be postponed until 22 September 2011.

2. Delaying the Art 32 until 22 September will ensure that both detailed defense counsel have adequate time to investigate the scene of the alleged incident, interview and contact potential witnesses, and properly prepare for an Article 32 involving serious felony offenses. Additionally, both detailed defense counsel have conflicting schedules until 22 September 2011.

3. SN [REDACTED] has been accused of crimes for which he could potentially receive over 30 years of confinement and a dishonorable discharge. It is critical that the defense have adequate time to ensure that the Article 32 hearing serves its intended purpose. Pursuant to reference (b), at an Article 32 investigation, a "full opportunity shall be given to the accused ... to present anything he might desire in his own behalf, either in defense or mitigation, and the investigation officer shall examine available witnesses requested by the accused."

3. I respectfully request the period from 8 August 2011 to 22 September 2011 be considered excludable delay under reference (a).

/s/

[REDACTED]

/s/

[REDACTED]


M. J. MEYER LT, USCG
CERTIFIED TO BE A TRUE COPY

500154
"10 Exhibit 8"

Page 1 of 1

U.S. Department of
Homeland Security

United States
Coast Guard

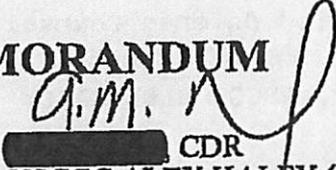


Commanding Officer
USCGC ALEX HALEY (WMEC 39)

P.O. BOX 190657
Kodiak, AK 99619
Phone: (907) 487-5616
FAX: (907) 487-5618

5811
2 Aug 11

MEMORANDUM

From:  CDR
USCGC ALEX HALEY (WMEC 39)

To: LT  JAGC, USN
LT  JAGC, USN
Detailed Defense Counsel

Subj: GRANT OF EXCLUDABLE DELAY ICO U.S. v. SN  USCG

Ref: (a) Article 32, Uniform Code of Military Justice
(b) Rule for Courts-Martial 405, Manual for Courts-Martial (2008 ed.)
(c) Rule for Courts-Martial 707, Manual for Courts-Martial (2008 ed.)

1. I understand that LT  has been detailed to this case as Government Counsel and LT  has been detailed as Assistant Government Counsel. These counsel have previously informed me that they are prepared to represent the government at a hearing conducted pursuant to references (a) and (b) in the subject case on 8 August 2011.
2. I am in receipt of your memo 5810 of 29 July 2011 requesting that this hearing be held 22 September 2011 instead of 8 August 2011 and further requesting that I deem this delay to be excludable under reference (c).
3. Your requests are hereby granted. I will direct that the Article 32 hearing in this matter be held 22 September 2011 SEPCOR. The period of pretrial delay that I have approved from 8 August 2011 to 22 September 2011 shall be excludable for purposes of reference (c).

#


M J MEYER LT, USCG
CERTIFIED TO BE A TRUE COPY

500155
"10 Exhibit 9
Page 1 of 1"

U.S. Department of
Homeland Security

United States
Coast Guard



Commander
Seventeenth Coast Guard District

P.O. Box 25517
Juneau, Alaska 99802
Staff Symbol: dl
Phone: (907) 463-2053
Fax: (907) 463-2054
Email:

5830
13 Sep 2011

MEMORANDUM

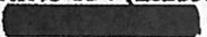
From:  S. P. Fields, LT, USCG
Investigating Officer

Reply to
Attn of:

To:  SN, USCG
Thru:  LT, JAGC, USN
Detailed Defense Counsel

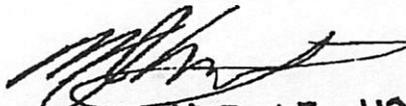
Subj: ARTICLE 32 RIGHTS ADVISEMENT

Ref: (a) Article 32, Uniform Code of Military Justice
(b) R.C.M. 405, Manual for Courts-Martial (2008 ed.)
(c) Military Justice Manual, COMDTINST M5810.1E

1. By order of Commander  USCG, Commanding Officer, Coast Guard Cutter ALEX HALEY, I have been appointed investigating officer under Article 32(b) of the Uniform Code of Military Justice to investigate certain charges against you. The charges allege, in general, the offenses of violation of the UCMJ, Article 120 (Aggravated Sexual Assault), Article 120 (Indecent Act), Article 134 (Indecent Language) and Article 134 (General Article). The name of the accuser is  CWO2, USCG.

2. In this investigation, you have the right to be present throughout the taking of evidence so long as your conduct is not disruptive. In addition, you have the right, at the proper time, to cross-examine all available witnesses against you; the right to present anything you might desire in your own behalf, either in defense, extenuation, or mitigation; the right to have a lawyer represent you at the investigation; the right to have me examine available witnesses requested by you; the right to make a statement in any form at the proper time, to remain silent, or refuse to make any statement regarding any offense that you are accused or suspected of, or concerning that which is being investigated. Further, you are advised that any statement made by you might be used as evidence against you in a trial by court-martial. It is imperative that you understand these rights.

3. As Investigating Officer, it is my duty to thoroughly and impartially investigate the charges against you. This investigation shall include inquiries into the truth of the matter set forth in the charges, form of the charges, and the disposition which should be made of the case in the interests of justice and discipline. It is my duty to impartially evaluate and weigh all the evidence. I will examine the available witnesses against you as well as any available witnesses requested by you. You and your counsel will be given full opportunity to cross-examine witnesses against you (if they are available) and to present anything either of you may desire in your behalf, either in defense or extenuation or mitigation. I can recommend that the charges against you be referred to a general court-martial or to a different type of court-martial, or that the charges be dismissed or disposed of other than by trial by court-martial. It is not my purpose during this investigation to act as a prosecutor, but only as an impartial fact finder. It is vital that you understand this.


M J MEYER LT, USCG
CERTIFIED TO BE A TRUE COPY

500156

"10 Exhibit 10

Page 1 of 2"

4. Before I begin the formal investigation and examination of any witnesses in this case, I must inform you that you have the right to be represented at all times during this investigation by legally qualified counsel. This means that you have the right to be represented by a civilian lawyer of your choice, but at no expense to the United States; by military counsel of your own selection if that counsel is reasonably available; or by counsel detailed from the detailing authority. There is no cost to you for military counsel. You also have the right to waive representation by counsel. I strongly recommend that you choose to be represented. I understand that you are already represented by [REDACTED] LT, JAGC, USN, and [REDACTED] LT, JAGC, USN, of the Naval Legal Service Office Northwest in Bremerton, Washington. If you intend to have different or additional representation, notify me as soon as possible.

5. The hearing is scheduled to begin in Room 3462 of the District Thirteen Building (i.e., Jackson Federal Building), Seattle, Washington, on 22 September 2011, at 0900. The uniform is tropical blue long.

#

Copy: LT [REDACTED] USCG, Government Counsel
LT [REDACTED] USCG, Government Counsel
LT [REDACTED] JAGC, USN, Assistant Detailed Defense Counsel
CDR [REDACTED] Convening Authority, CGC ALEX HALEY

7 Sep 11

From: LT [REDACTED], JAGC, USN, Defense Counsel
LT [REDACTED], JAGC, USN, Defense Counsel
To: LT [REDACTED], USCG, Investigating Officer
Via: LT [REDACTED], USCG, Trial Counsel
LT [REDACTED], USCG, Investigating Officer

Subj: REQUEST FOR PRODUCTION OF WITNESSES IN THE ARTICLE 32
INVESTIGATION OF [REDACTED] [REDACTED] USCG, XXX-XX-[REDACTED]

Ref: (a) R.C.M. 405 (f)(9), MCM, 2008 ed.
(b) *United States v. Davis*, 41 C.M.R. 217, 223 (1970)

1. In accordance with references (a) and (b), the defense requests production of the following witnesses for the subject Article 32 investigation:

a. SN [REDACTED], USCG. The defense does not have contact information for this witness, but believes the government is in possession of this information. SN [REDACTED] provided several statements to CGIS concerning this case that she believed she was the victim of an assault that occurred on the evening of 16 Oct 10 with the accused. She is relevant and necessary because she is the alleged victim and the reason for this case's Article 32 investigation.

b. SN [REDACTED], USCG. SN [REDACTED] was stationed onboard the USCGC ALEX HALEY; the defense does not have further contact information for this witness, but believes the government is in possession of this information. SN [REDACTED] is a neighbor of SN [REDACTED] on the night the alleged assault took place. The morning following the alleged assault, SN [REDACTED] stated she asked SN [REDACTED] to borrow a phone so that she may locate her own phone and that he allowed her to use his phone. SN [REDACTED] is relevant and necessary because SN [REDACTED] and SN [REDACTED] are close friends and SN [REDACTED] contacted him the morning after the alleged assault as one of the first people she spoke to about the alleged assault. SN [REDACTED] reportedly told SN [REDACTED] that she "felt taken advantage of." His testimony is relevant and necessary and could lead to disclosure of further discovery and possible impeachment testimony of SN [REDACTED]

c. SN [REDACTED] [REDACTED] USCG. SN [REDACTED] was stationed onboard the USCGC ALEX HALEY; the defense does not have further contact information for this witness, but believes the government is in possession of this information. SN [REDACTED] saw SN [REDACTED] out that night at both the costume party and Bernie's Bar and witnessed her appearance and demeanor. SN [REDACTED] also spoke to SN [REDACTED] the morning after the alleged assault. Her statements to him have varied in parts with statements she has

[REDACTED]
METER LT, USCG
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"IO Exhibit //

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Subj: REQUEST FOR PRODUCTION OF WITNESSES IN THE ARTICLE 32
INVESTIGATION OF SN [REDACTED] [REDACTED] USCG, XXX-XX-[REDACTED]

made to other people, which is important for impeachment purposes. As such, he is relevant and necessary for this proceeding.

d. FS3 [REDACTED] [REDACTED] USCG. FS3 [REDACTED] is stationed onboard the USCGC ALEX HALEY. FS3 [REDACTED] was with SN [REDACTED] for critical parts on the night of the alleged assault. FS3 [REDACTED] was with SN [REDACTED] at the last bar she attended and rode in the duty van back to the base with both SN [REDACTED] and SN [REDACTED]. She also was with SN [REDACTED] outside of her barracks room just minutes before the alleged assault occurred. She is a critical witness because she witnessed the interactions between SN [REDACTED] and SN [REDACTED] that night and spoke to SN [REDACTED] the morning after. She made a written statement to CGIS regarding these facts. She is relevant and necessary for this proceeding.

e. ENS [REDACTED] [REDACTED] USCG. ENS [REDACTED] was stationed onboard the USCGC ALEX HALEY; the defense does not have contact information for this witness, but believes the government is in possession of this information. SN [REDACTED] called ENS [REDACTED] the day after the alleged assault in an effort to gather information from the previous evening. SN [REDACTED] alleges that ENS [REDACTED] stated that she called a liberty van for SN [REDACTED] because she was heavily intoxicated and arguing with police officers outside one of the bars the night before. After further questioning by ENS [REDACTED] SN [REDACTED] revealed to ENS [REDACTED] that she felt she was taken advantage of sexually the previous evening but did not tell ENS [REDACTED] who she believed was responsible for the assault. For all these reasons, she is relevant and necessary for this proceeding.

f. BM3 [REDACTED] [REDACTED] USCG. BM3 [REDACTED] is stationed onboard the USCGC ALEX HALEY. SN [REDACTED] disclosed the alleged assault with BM3 [REDACTED] and was the person who brought the matter to the attention of ENS [REDACTED] who notified the ship's command. When interviewed by CGIS, BM3 [REDACTED] stated that SN [REDACTED] told him that she did not remember anything after the point where the government vehicle was called. This varies with what SN [REDACTED] told CGIS investigators and other requested witnesses. SN [REDACTED] also told BM3 [REDACTED] that she felt she had been taken advantage of, not that she was raped. Importantly, BM3 [REDACTED] was the person who brought this matter to the chain of command, not SN [REDACTED]. BM3 [REDACTED] testimony regarding exactly what SN [REDACTED] stated to him, and how this alleged assault was reported, is relevant and necessary for the proceeding and could lead to further relevant discovery.

Subj: REQUEST FOR PRODUCTION OF WITNESSES IN THE ARTICLE 32 INVESTIGATION OF SN [REDACTED] [REDACTED] USCG, XXX-XX-[REDACTED]

g. Mrs. [REDACTED] [REDACTED] dependant spouse civilian. Ms. [REDACTED] is the dependent spouse of FN [REDACTED] and was in the duty van with SN [REDACTED] and SN [REDACTED] on the way back to the base on the night of the alleged assault. Not only is Mrs. [REDACTED] relevant in discussing the surrounding circumstances of the van ride back to base with SN [REDACTED] she also stated SN [REDACTED] called her the morning of 16 Oct 10 and asked questions about the prior night. Her testimony is necessary and relevant to this hearing to explore for impeachment evidence.

h. SN [REDACTED] [REDACTED] USCG. SN [REDACTED] was stationed onboard the USCGC ALEX HALEY; the defense does not have further contact information for this witness, but believes the government is in possession of this information. SN [REDACTED] recalled that a shipmate told him that SN [REDACTED] had kissed SN [REDACTED] on the dance floor at Bernie's Bar on the night of the alleged sexual assault. Several days later, SN [REDACTED] recalled SN [REDACTED] telling him that he had sex with SN [REDACTED] on the night of the alleged assault. SN [REDACTED] also told him about SN [REDACTED] aggressive actions in the liberty van before they had consensual sex. He states that SN [REDACTED] told him about events well before SN [REDACTED] made any allegations of sexual assault. This information is relevant and necessary for this proceeding.

i. SN [REDACTED] [REDACTED] USCG. SN [REDACTED] is stationed onboard the USCGC ALEX HALEY. SN [REDACTED] was present at the costume party and bars on the night of the alleged assault and saw SN [REDACTED] that night. When CGIS interviewed him, he stated that SN [REDACTED] called him the next day (while he was on duty) and told him that she had sex with SN [REDACTED] but didn't remember it. She did not claim she was raped at this time. The day following the alleged assault, she also told SN [REDACTED] that she remembered bits and pieces of sex, but not everything. SN [REDACTED] is relevant and necessary as SN [REDACTED] disclosed a different set of facts to him, which will be important impeachment testimony. Additionally, his testimony could lead to disclosure of further discovery.

j. FN [REDACTED] [REDACTED] USCG. FN [REDACTED] is stationed onboard the USCGC MUNRO. FN [REDACTED] was at Bernie's Bar with SN [REDACTED] on the night of the alleged assault and remembers drinking and dancing with her there. FN [REDACTED] later spoke to SN [REDACTED] regarding the events of that night. SN [REDACTED] claimed she could remember the duty driver being called and could also recall getting denied entrances into another bar, Mecca. This is contradictory to what she told other people. SN [REDACTED] told other people that she couldn't remember anything

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INVESTIGATION OF SN [REDACTED] [REDACTED] USCG, XXX-XX-[REDACTED]

after the house costume party that night. This information is relevant and necessary for this proceeding.

k. BM3 [REDACTED] USCG. BM3 [REDACTED] was stationed onboard the USCGC ALEX HALEY; the defense does not have further contact information for this witness, but believes the government is in possession of this information. BM3 [REDACTED] stated SN [REDACTED] entered BM3 [REDACTED] room on the morning of 16 Oct 10 and complained that guys were jerks and swore that she would not drink again. Later on that afternoon, his roommate, SN [REDACTED] told him that a couple of guys had been in her room and took advantage of her while she was passed out drunk. He stated that SN [REDACTED] tried to convince her to go to the hospital but SN [REDACTED] refused. His testimony is relevant and necessary to this proceeding.

l. MK3 [REDACTED], USCG. MK3 [REDACTED] was stationed onboard the USCGC ALEX HALEY; the defense does not have further contact information for this witness, but believes the government is in possession of this information. MK3 [REDACTED] was the duty driver on the night of the alleged assault. MK3 [REDACTED] can testify as to the appearance and demeanor of SN [REDACTED] during the ride back to the base. He also believes that SN [REDACTED] may have given oral sex to SN [REDACTED] during the drive back to the barracks. His testimony is relevant and necessary for this proceeding.

m. FN [REDACTED], USCG. FN [REDACTED] was stationed onboard the USCGC ALEX HALEY; the defense does not have further contact information for this witness, but believes the government is in possession of this information. FN [REDACTED] was in the duty van with SN [REDACTED] and SN [REDACTED] on the way back to the base on the night of the alleged assault. It is unclear why he was the only witness in the duty van not interviewed by CGIS agents. However, because he was in the duty van just moments before the alleged assault, he can testify to the interactions he observed between SN [REDACTED] and SN [REDACTED] that evening and the surrounding circumstances. His testimony is relevant and necessary, and could lead to further relevant discovery.

n. SN [REDACTED], USCG. SN [REDACTED] is stationed onboard the USCGC ALEX HALEY. SN [REDACTED] was present the night of the alleged assault. When interviewed by CGIS, SN [REDACTED] stated that earlier in the night she told SN [REDACTED] to contact SN [REDACTED] for a ride to the costume party. She also knows about the friendship and relationship history between SN [REDACTED] and SN [REDACTED] prior to the night of the alleged assault. SN [REDACTED] also lived with SN [REDACTED] onboard the ALEX HALEY. SN [REDACTED]

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INVESTIGATION OF SN [REDACTED] [REDACTED] USCG, XXX-XX-[REDACTED]

claims that her bruises were very visible, yet SN [REDACTED] told CGIS that she never saw any bruising on SN [REDACTED] SN [REDACTED] also has information related to how the alleged assault was reported up the chain of command. Her testimony is relevant and necessary and could lead to further discovery of relevant evidence.

o. ETC [REDACTED] [REDACTED] USCG. ETC [REDACTED] was stationed onboard the USCGC ALEX HALEY; the defense does not have further contact information for this witness, but believes the government is in possession of this information. SN [REDACTED] told CGIS agents during his interrogation that he was drinking with ETC [REDACTED] at Bernie's Bar prior to the alleged assault, and that SN [REDACTED] had drank quite a few drinks with him. Assessing SN [REDACTED] level of intoxication will be important and relevant in this case. ETC [REDACTED] spent a great deal of time with SN [REDACTED] prior the alleged assault. His testimony and observations regarding SN [REDACTED] are relevant and necessary for this proceeding. Further, because he has not been previously interviewed by CGIS, this could lead to further discovery.

p. SN [REDACTED] [REDACTED] USCG. SN [REDACTED] was stationed onboard the USCGC ALEX HALEY; the defense does not have further contact information for this witness, but believes the government is in possession of this information. SN [REDACTED] was interviewed by CGIS during the course of their investigation. SN [REDACTED] was with SN [REDACTED] the night of the alleged assault. He witnessed SN [REDACTED] consuming alcohol that night and becoming intoxicated, and was a regular witness to SN [REDACTED] alcohol consumption. He can testify as to the appearance and demeanor of SN [REDACTED]. Further, SN [REDACTED] states that he saw SN [REDACTED] and SN [REDACTED] dance together and make out while dancing the night of the alleged assault. SN [REDACTED] also told CGIS that he assumed the two would have sex that night because they had sex the previous weekend. SN [REDACTED] spoke to SN [REDACTED] the next day and told him details of the sex he had with SN [REDACTED] SN [REDACTED] also knows information about the interactions between SN [REDACTED] and SN [REDACTED] after the night of the alleged assault. His testimony is relevant and necessary for this proceeding and could lead to further relevant discovery.

q. SN [REDACTED] [REDACTED] USCG. SN [REDACTED] was stationed onboard the USCGC ALEX HALEY; the defense does not have further contact information for this witness, but believes the government is in possession of this information. CGIS agents interviewed SN [REDACTED] regarding an alleged photograph taken by SN [REDACTED] SN [REDACTED] told CGIS that he spoke to SN [REDACTED] two or three days after the costume party. SN [REDACTED] told him he had

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INVESTIGATION OF SN [REDACTED] [REDACTED] USCG, XXX-XX-[REDACTED]

sex with SN [REDACTED] SN [REDACTED] also stated that SN [REDACTED] showed him a picture that forms the basis for what the Government believes supports a charge for misconduct under the UCMJ against the accused. He could not see the face of the person in the photo, but believed it to be SN [REDACTED] His testimony is relevant and necessary for this hearing as it pertains to the Article 134 charge against the Accused.

r. OS2 [REDACTED], USCG. OS2 [REDACTED] is stationed onboard the USCGC ALEX HALEY. OS2 [REDACTED] was present the night of the alleged assault. He was also present the following weekend and observed SN [REDACTED] at Bernie's Bar again. OS2 [REDACTED] spoke to SN [REDACTED] at Bernie's Bar the night of the alleged assault. He can testify as to her demeanor and ability to have a conversation with him. SN [REDACTED] also told OS2 [REDACTED] that he had sex with SN [REDACTED] before she made any allegations against him. OS2 [REDACTED] was not surprised when SN [REDACTED] told him he had sex with SN [REDACTED] - OS2 [REDACTED] indicated that the two had sexual tension before this evening and had danced together while drunk before. SN [REDACTED] later spoke to OS2 [REDACTED] again, telling him that he thought SN [REDACTED] was angry at him because the sex was rough and he didn't want to talk to her or have a relationship after. OS2 [REDACTED] testimony regarding this information is necessary and relevant in this proceeding and could lead to further discovery.

s. MK3 [REDACTED], USCG. MK3 [REDACTED] was stationed onboard the USCGC ALEX HALEY; the defense does not have further contact information for this witness, but believes the government is in possession of this information. MK3 [REDACTED] was interviewed by CGIS, but for some reason, the agents did not obtain a sworn statement. MK3 [REDACTED] told CGIS that he observed both SN [REDACTED] and [REDACTED] drinking on the night of the alleged assault, but they did not appear heavily intoxicated. He stated that SN [REDACTED] did get drunker as the night progressed, and that SN [REDACTED] was leaning against a wall later in the night. Additionally, he was surprised when he learned about the allegations made against SN [REDACTED] because he observed SN [REDACTED] to be her usual jovial self the days following the alleged assault. MK3 [REDACTED] testimony is relevant and necessary to the proceedings.

t. SN [REDACTED], USCG. SN [REDACTED] is stationed onboard the USCGC ALEX HALEY. SN [REDACTED] claims that she was severely distraught and depressed in the days and week following the alleged assault. However, on 22 Oct 2010, only one week after the alleged assault, SN [REDACTED] went out again to Bernie's Bar. SN [REDACTED] was at Bernie's Bar with SN [REDACTED] SN [REDACTED] has

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INVESTIGATION OF SN [REDACTED] [REDACTED] USCG, XXX-XX-[REDACTED]

pictures of SN [REDACTED] sitting in his lap the night of 22 Oct 10, wearing a revealing tank top. SN [REDACTED] testimony regarding what occurred this outing that occurred just after the alleged assault, and his observations of SN [REDACTED] behavior, statements, mood, etc. are relevant and necessary to this proceeding and could lead to further relevant discovery.

u. SA [REDACTED], CGIS. Special Agent [REDACTED] is the lead CGIS Agent assigned to this case. Special Agent [REDACTED] has been highly involved in many aspects of this case and has made several reports that appear in the case file against the accused. He also conducted the interrogation of the accused. Special Agent [REDACTED] interviewed SN [REDACTED] as well as many of the witnesses in this case including SN [REDACTED] FN [REDACTED] Ms. [REDACTED] FS3 [REDACTED] SN [REDACTED] SN [REDACTED] and BM3 [REDACTED]. Special Agent [REDACTED] also completed a search of the SN [REDACTED] room, and was the photographer of evidence. Because of his large role in this case as the lead agent, Special Agent [REDACTED] is therefore relevant and necessary for this proceeding.

v. SA [REDACTED] CGIS. Special Agent [REDACTED] is a CGIS Agent assigned to this case. Special Agent [REDACTED] has also been highly involved in many aspects of this case and was present at the interviews of SN [REDACTED] SN [REDACTED] FN [REDACTED] Ms. [REDACTED] and MK3 [REDACTED]. Special Agent [REDACTED] also completed a search of SN [REDACTED] room. He is therefore relevant and necessary for this proceeding in understanding his role in this investigation so as to verify versions of events with Special Agent [REDACTED] recollection.

w. SA [REDACTED] CGIS. Special Agent [REDACTED] is a CGIS Agent assigned to this case. Special Agent [REDACTED] has been highly involved in many aspects of this case and interviewed SN [REDACTED] as well as MK3 [REDACTED] SN [REDACTED] and SN [REDACTED]. She also conducted the interrogation of the accused. Special Agent [REDACTED] is therefore relevant and necessary for this proceeding.

2. The defense believes the government (including CGIS) is in possession of the contact information for all of the above witnesses, as most were previously interviewed by government agencies. However, this PII was not provided in the reports.

3. The defense requests that the IO make an initial determination of availability as to each of these witnesses at least 5 days prior to the investigation to allow the defense to adequately prepare for the hearing.

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Subj: REQUEST FOR PRODUCTION OF WITNESSES IN THE ARTICLE 32
INVESTIGATION OF SN [REDACTED] [REDACTED] USCG, XXX-XX-[REDACTED]

//s//

[REDACTED]

//s//

[REDACTED]

500165

**GENERAL COURT-MARTIAL
UNITED STATES COAST GUARD**

UNITED STATES)

v.)

Seaman, U.S. Coast Guard)

) GOVERNMENT COUNSEL'S
) RESPONSE TO DEFENSE COUNSEL'S
) ARTICLE 32 WITNESS REQUEST
)
)
)

13 September 2011

1. In accordance with R.C.M. 405(g)(1)(A), the Government responds to defense counsel's request for witnesses as follows:
 - a. SN [REDACTED] SN [REDACTED] will be present and testify at the Article 32 hearing.
 - b. SN [REDACTED] The government objects to this witness on the basis that the proffered testimony is irrelevant and cumulative with that of S/A [REDACTED] and this witness is located more than 100 miles from the hearing location.
 - c. SN [REDACTED] The government objects to this witness on the basis that the proffered testimony regarding "appearance and demeanor" is irrelevant to an assault that occurred hours later and is otherwise cumulative with that of S/A [REDACTED] and this witness is located more than 100 miles from the hearing location.
 - d. FS3 [REDACTED] FS3 [REDACTED] is currently at sea and more than 100 miles from the hearing room. She will testify via satellite telephone.
 - e. ENS [REDACTED] LTJG [REDACTED] is stationed in Boston and more than 100 miles from the hearing room. She will testify via telephone.
 - f. BM3 [REDACTED] BM3 [REDACTED] is currently at sea and more than 100 miles from the hearing room. He will testify via satellite telephone.
 - g. Mrs. [REDACTED] The government objects to this witness on the basis that the proffered testimony is cumulative with that of MK3 [REDACTED] who will testify via satellite telephone.
 - h. SN [REDACTED] The government objects to this witness on the basis the proffered testimony is both irrelevant and comprised of multiple levels of hearsay which do not militate in favor of producing this witness, who is now stationed in Newport, RI, more than 100 miles from the hearing location.

500166

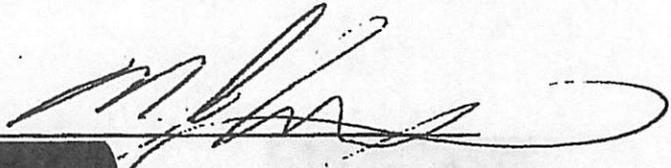
"10 Exhibit 12

Page 1 of 3"

- i. SN [REDACTED] The government objects to this witness on the basis that the proffered testimony is irrelevant and cumulative of that of other witnesses. Additionally, the defense request indicates that "his testimony could lead to the disclosure of further discovery," which constitutes a speculative and impermissible fishing-expedition not appropriate to the forum of an Article 32 hearing.
- j. SN [REDACTED] The government objects to this witness on the basis that the entirety of the proffered testimony is irrelevant and cumulative of that of other available witnesses and therefore does not militate in favor of producing this witness, who is now stationed in Newport, RI, more than 100 miles from the hearing location.
- k. BM3 [REDACTED] The government objects to this witness on the basis that the proffered testimony is irrelevant and cumulative of that of other available witnesses.
- l. MK3 [REDACTED] MK3 [REDACTED] a is currently at sea and more than 100 miles from the hearing room. He will testify via satellite telephone.
- m. FN [REDACTED] The government objects to this witness on the basis that the proffered testimony regarding events in the duty van on the evening of the sexual assault are cumulative of other witnesses that were in that van and will be testifying, such as MK3 [REDACTED] a.
- n. SN [REDACTED] The government objects to this witness on the basis that the proffered testimony is cumulative with that of other available witnesses, and therefore, does not militate in favor of producing this at-sea witness who is located more than 100 miles from the hearing location.
- o. ETC [REDACTED] The government objects to this witness on the basis that the proffered testimony is irrelevant. Moreover, this witness is currently serving at sea from a vessel homeported in Boston, MA, more than 100 miles from the situs of the hearing.
- p. FN [REDACTED] FN [REDACTED] is stationed in Yorktown, VA, more than 100 miles from the location of this hearing, and he will testify via telephone.
- q. SN [REDACTED] SN [REDACTED] p is stationed in Yorktown, VA, more than 100 miles from the location of this hearing, and he will testify via telephone.
- r. OS2 [REDACTED] Irrelevant and cumulative.
- s. MK3 [REDACTED] Irrelevant and cumulative.
- t. SN [REDACTED] This witness's proffered testimony is irrelevant.

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- u. S/A [REDACTED] S/A [REDACTED] will be present and will testify at this hearing.
- v. S/A [REDACTED] S/A [REDACTED] will be present and will testify at this hearing.
- w. S/A [REDACTED] a. The proffered testimony of this witness is cumulative with that of the other two agents who will be testifying.


[REDACTED]
U.S. Coast Guard
Government Counsel

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was served on the defense counsel this 13th day of September 2011.


[REDACTED]
Lieutenant, U.S. Coast Guard
Government Counsel

500168

GENERAL COURT-MARTIAL
UNITED STATES COAST GUARD

UNITED STATES)

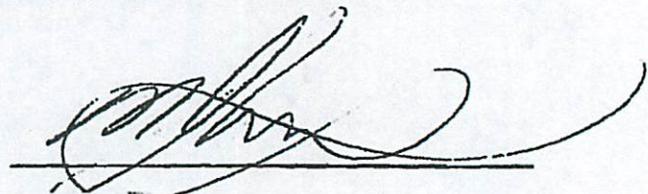
v.)

Seaman, U.S. Coast Guard)

) GOVERNMENT WITNESS LIST FOR
) ARTICLE 32 HEARING
)
)
)

13 September 2011

1. The government intends to call the following witnesses at the Article 32 hearing in the above-captioned matter:
 - a. SN [REDACTED] SN [REDACTED] will be present and testify at this hearing.
 - b. FS3 [REDACTED] FS3 [REDACTED] will testify via satellite telephone.
 - c. ENS [REDACTED] LTJG [REDACTED] will testify via telephone.
 - d. BM3 [REDACTED] BM3 [REDACTED] will testify via satellite telephone.
 - e. MK3 [REDACTED] MK3 [REDACTED] will testify via satellite telephone.
 - f. FN [REDACTED] SN [REDACTED] will testify via telephone.
 - g. SN [REDACTED] SN [REDACTED] will testify via telephone.
 - h. S/A [REDACTED] S/A [REDACTED] will be present and will testify at this hearing.
 - i. S/A [REDACTED] S/A [REDACTED] will be present and will testify at this hearing.



Lieutenant, U.S. Coast Guard
Government Counsel

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"10 Exhibit 13

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was served on the defense counsel this 13th day of September 2011.




Lieutenant, U.S. Coast Guard
Government Counsel

500170

U.S. Department of
Homeland Security

United States
Coast Guard



Commander (dl)
Seventeenth Coast Guard District

P. O. Box 25517
Juneau, Alaska 99802-5517
Staff Symbol: (dl)
Phone: 907-463-2053
Fax: 907-463-2054

5830
14 Sep 2011

MEMORANDUM

From: [REDACTED], USCG
Investigating Officer

Reply to
Attn of:

To: [REDACTED], LT, USCG
Government Counsel

[REDACTED], LT, JAGC, USN
Detailed Defense Counsel

Subj: WITNESSES FOR ARTICLE 32 INVESTIGATION ICC [REDACTED], SN, USCG

Ref: (a) Article 32, Uniform Code of Military Justice
(b) R.C.M. 405, Manual for Courts-Martial (2008 ed.)
(c) CGIS ROI 0090-10 GNW 0048 8D(GE)

1. Per references (a) and (b), I have determined that the following witnesses are relevant to my investigation and are not cumulative. This determination is based upon defense submission in enclosure (1), and the government's submissions in enclosures (2) through (5). I also considered the Coast Guard Investigative Service (CGIS) Report of Investigation (ROI) contained in reference (c) solely for the purpose of determining which evidence is necessary to complete a thorough and impartial investigation.

- a. SN [REDACTED], USCG, STA Sand Key. Will testify in person.
- b. FS3 [REDACTED], USCG, CGC ALEX HALEY. Will testify via satellite telephone. FS3 [REDACTED] is not reasonably available due to the fact that she is over 100 miles from Seattle and the expense, burden, and effect on military operations is excessive.
- c. LTJG [REDACTED], USCG, DISTRICT ONE. Will testify via telephone. LTJG [REDACTED] is not reasonably available due to the fact that she is over 100 miles from Seattle and the expense, burden, and effect on military operations is excessive.
- d. BM3 [REDACTED], USCG, CGC ALEX HALEY. Will testify via satellite telephone. BM3 [REDACTED] is not reasonably available due to the fact that he is over 100 miles from Seattle and the expense, burden, and effect on military operations is excessive.
- e. MK3 [REDACTED], USCG, CGC ALEX HALEY. Will testify via satellite telephone. MK3 [REDACTED] is not reasonably available due to the fact that he is over 100 miles from Seattle and the expense, burden, and effect on military operations is excessive.

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M J MEYER LT, USCG
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"10 Exhibit 14

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- f. FN [REDACTED] USCG, TRACEN YORKTOWN. Will testify via telephone. FN [REDACTED] is not reasonably available due to the fact that he is over 100 miles from Seattle and the expense, burden, and effect on military operations is excessive.
- g. SN [REDACTED] USCG, TRACEN YORKTOWN. Will testify via telephone. SN [REDACTED] is not reasonably available due to the fact that he is over 100 miles from Seattle and the expense, burden, and effect on military operations is excessive.
- h. CGIS Special Agent [REDACTED] Will testify by phone. S/A [REDACTED] wife is undergoing medical difficulties related to the recent premature birth of their twins, and this will preclude S/A [REDACTED] availability for all work-related duties for an extended period. He has nevertheless agreed to make himself available for telephonic testimony.
- i. CGIS Special Agent A. [REDACTED] Will testify in person.
- j. SN [REDACTED] USCG, CGC MUNRO. Will testify via telephone. SN [REDACTED] is not reasonably available due to the fact that he is over 100 miles from Seattle and the expense, burden, and effect on military operations is excessive.
- k. SN [REDACTED] USCG, CGC ALEX HALEY. Will testify via satellite telephone. SN [REDACTED] is not reasonably available due to the fact that he is over 100 miles from Seattle and the expense, burden, and effect on military operations is excessive.
- l. OS2 [REDACTED] USCG, CGC ALEX HALEY. Will testify via satellite telephone. OS2 [REDACTED] is not reasonably available due to the fact that he is over 100 miles from Seattle and the expense, burden, and effect on military operations is excessive.

2. I have considered government and defense counsel requests and responses contained in enclosures (1) through (5) and do not intend on calling the following witnesses for my investigation based on the following reasons;

- a. SN [REDACTED] USCG. Cumulative. Multiple witnesses will already testify as to their interactions with and observations of SN [REDACTED] and SN [REDACTED] during and after the night in question, testimony from this witness would be cumulative.
- b. Mrs. [REDACTED] Civilian. Cumulative. Multiple witnesses will already testify as to their interactions with and observations of SN [REDACTED] and SN [REDACTED] during and after the night in question, testimony from this witness would be cumulative.
- c. SN [REDACTED] USCG. Cumulative. Multiple witnesses will already testify as to their interactions with and observations of SN [REDACTED] and SN [REDACTED] during and after the night in question, testimony from this witness would be cumulative.
- d. FN [REDACTED] USCG. Cumulative. Multiple witnesses will already testify as to their interactions with and observations of SN [REDACTED] and SN [REDACTED] during and after the night in question, testimony from this witness would be cumulative.
- e. BM3 [REDACTED] USCG. Cumulative. Multiple witnesses will already testify as to their interactions with and observations of SN [REDACTED] and SN [REDACTED] during and after the night in question, testimony from this witness would be cumulative.

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- f. FN [REDACTED] USCG. Cumulative. Multiple witnesses will already testify as to their interactions with and observations of SN [REDACTED] and SN [REDACTED] during and after the night in question, testimony from this witness would be cumulative.
- g. SN [REDACTED] USCG. Cumulative. Multiple witnesses will already testify as to their interactions with and observations of SN [REDACTED] and SN [REDACTED] during and after the night in question, testimony from this witness would be cumulative.
- h. ETC [REDACTED] USCG. Cumulative and Irrelevant. Multiple witnesses will already testify as to their interactions with and observations of SN [REDACTED] and SN [REDACTED] during and after the night in question, testimony from this witness would be cumulative. Furthermore, ETC [REDACTED] interactions with SN [REDACTED] hours before the alleged assault took place is not relevant to determining whether there is sufficient evidence to recommend trial by court martial for the charges preferred.
- i. MK3 [REDACTED] USCG. Cumulative. Multiple witnesses will already testify as to their interactions with and observations of SN [REDACTED] and SN [REDACTED] during and after the night in question, testimony from this witness would be cumulative.
- j. SN [REDACTED] USCG. Cumulative. Multiple witnesses will already testify as to their interactions with and observations of SN [REDACTED] and SN [REDACTED] during and after the night in question, testimony from this witness would be cumulative.
- k. CGIS Special Agent [REDACTED]. Cumulative. Special Agent [REDACTED] the Control Agent for the investigation, and Special Agent [REDACTED] will already testify regarding the investigation, testimony from this witness would be cumulative.

3. The investigation proceeding will begin at 0900 on 22 September 2011 and likely will be concluded in one day. The location is Room 3462 of the District Thirteen Building (i.e., Jackson Federal Building), Seattle, Washington. The uniform is tropical blue long or the service equivalent. I intend to preview the facility prior to the hearing on the morning of 21 September 2011.

#

Enclosures: (1) LT [REDACTED] and LT [REDACTED] Request dtd 7 Sep 2011 (8 pages)
(2) LT [REDACTED] Witness List dtd 13 Sep 2011 (2 pages)
(3) LT [REDACTED] Response dtd 13 Sep 2011 (3 pages)
(4) LT [REDACTED] email dtd 14 Sep 2011 at 0757 (2 pages)
(5) LT [REDACTED] email dtd 14 Sep 2011 at 1424 (3 pages)

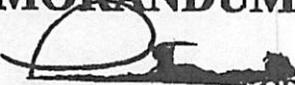
Copy: LT L. R. [REDACTED] Assistant Government Counsel
LT J. [REDACTED] JAGC, USN, Assistant Detailed Defense Counsel

500173



5830
21 September 2011

MEMORANDUM

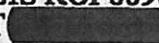
From:  DR
Investigating Officer

Reply to: (dl)
Attn of: (216) 902-6010

To:  LT, USCG
Government Counsel

 LT, JAGC, USN
Detailed Defense Counsel

Subj: WITNESSES FOR ARTICLE 32 INVESTIGATION ICO  SN, USCG
CHG 1.

Ref: (a) Article 32, Uniform Code of Military Justice
(b) R.C.M. 405, Manual for Courts-Martial (2008 ed.)
(c) CGIS ROI 0090-10GNW 0048 8D(GE)
(d) LT  MEMO 5830 dtd 14 Sep 11 w/encl.

1. I have reviewed references (a) through (d) and concur with LT  determinations listed in reference (d) with the following exception:

BM3  USCGC WILLOW, will testify via telephone. BM3  is not reasonably available due to the fact that he is over 100 miles from Seattle and the expense, burden, and effect on military operations is excessive.

#

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IO EXHIBIT 14

PAGE 4 OF 4

9 Sep 11

From: LT [REDACTED], JAGC, USN, Defense Counsel
LT [REDACTED], JAGC, USN, Defense Counsel
To: LT [REDACTED], USCG, Investigating Officer
Via: LT [REDACTED], USCG, Trial Counsel
LT [REDACTED], USCG, Trial Counsel

Subj: WRITTEN NOTICE OF INTENT TO OFFER EVIDENCE PURSUANT TO
MILITARY RULE OF EVIDENCE 412 IN THE ARTICLE 32
INVESTIGATION OF SN [REDACTED] USCG

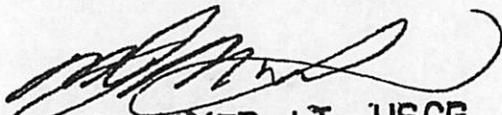
Ref: (a) R.C.M. 412, MCM, 2008 ed.

Encl: (1) Sworn Statement of SN [REDACTED], dtd 4 Nov 10
(2) Sworn Statement of FN [REDACTED], dtd 4 Nov 10
(3) CGIS Report of Investigation, dtd 8 Feb 11

1. In accordance with references (a) the defense is providing notice of intent to question SN [REDACTED] and several other witnesses previously interviewed by CGIS regarding the nature of SN [REDACTED] and SN [REDACTED] relationship, before, during, and after the alleged sexual assault by SN [REDACTED] on 16 October 2010. The defense also intends to question SN [REDACTED] and other witnesses regarding another possible sexual encounter that occurred between SN [REDACTED] and SN [REDACTED] the weekend of October 22, 2010, after the alleged assault by SN [REDACTED]

2. In her statement to CGIS, SN [REDACTED] admitted that SN [REDACTED] had spent the evening in her barracks room the weekend before the alleged sexual assault, on October 8, 2010. She claims there was no consensual sexual contact. [Enclosure 1]. However, SN [REDACTED] stated to CGIS that he and SN [REDACTED] had "invited him to stay the night in her barracks room where they kisses and engaged in intimate physical contact. In describing the contact, SN [REDACTED] said SN [REDACTED] rubbed his penis and he digitally penetrated her vagina." [Enclosure 3]. FN [REDACTED] also stated that prior to the night of October 15th, SN [REDACTED] disclosed to him that he and SN [REDACTED] had engaged in sexual conduct on October 8. [Enclosure 2].

3. SN [REDACTED] also told CGIS S/A [REDACTED] that he did not think SN [REDACTED] would object to casual sex, as he was told she had engaged in casual sex with EM3 [REDACTED] SN [REDACTED] and SN [REDACTED] SNBM [REDACTED] also stated that SN [REDACTED] did not have "the best reputation on the ship...that rumors suggested SN [REDACTED] 500175


M J MEYER LT, USCG
CERTIFIED TO BE A TRUE COPY

"10 Exhibit 15
Page 1 of 3"

Subj: WRITTEN NOTICE OF INTENT TO OFFER EVIDENCE PURSUANT TO MILITARY
RULE OF EVIDENCE 412 IN THE ARTICLE 32 INVESTIGATION OF SN
[REDACTED] USCG

[REDACTED] had sexual relations with SNBM [REDACTED] and KN3
[REDACTED] BM3 [REDACTED] stated that the alleged victim
"complained that guys were jerks and swore she would not drink
again." [Enclosure 3].

4. SN [REDACTED] turned over two items she discovered in her
barracks room to CGIS as items of evidentiary value: a pair of
men's underwear, and one men's sock. She claimed these items
belonged to SN [REDACTED]. Additionally, the CGIS report indicates
"that a sock matching the one found in her room was observed on
the from lawn of barracks 8" on 30 October 2010 [Enclosure 3].

5. SN [REDACTED] was seen out drinking, flirting, and sitting on
the lap on SN [REDACTED] on 22 October 2010, the weekend
immediately after the alleged sexual assault, and prior to SN
[REDACTED] reporting the alleged assault.

6. Reference (a) provides that in sex offense cases, evidence
of an alleged victim's sexual behavior or predisposition is
generally inadmissible. There are three exceptions, however, as
described in reference (a).

7. The defense is planning on questioning numerous witnesses,
including SN [REDACTED] about the relationship between her and SN
[REDACTED]. This questioning will delve into the past sexual history
between SN [REDACTED] and SN [REDACTED]. Testimony on this issue falls
under the MRE 412(a)(b)(1)(B) exception of "evidence of specific
instances of sexual behavior by the alleged victim with respect
to the person accused of the sexual misconduct offered by the
accused to prove consent or by the prosecution." [Reference
(a)].

8. Furthermore, the testimony is also admissible under the MRE
412(a)(b)(1)(C) exception of "evidence the exclusion of which
would violate the constitutional rights of the accused" because
it is relevant and necessary to impeach SN [REDACTED] at court-
martial in that she may have withheld information from CGIS
agents while making an official statement.

9. The defense also plans to question numerous witnesses
regarding the encounter that occurred between SN [REDACTED] and SN
[REDACTED] on 22 October 2010. The questioning will delve into the
behavior of SN [REDACTED] immediately following the alleged

Subj: WRITTEN NOTICE OF INTENT TO OFFER EVIDENCE PURSUANT TO MILITARY
RULE OF EVIDENCE 412 IN THE ARTICLE 32 INVESTIGATION OF SN
[REDACTED] USCG

assault, including conduct sexual in nature. Testimony of this issue falls under the MRE 412(a)(b)(1)(C) exception of "evidence the exclusion of which would violate the constitutional rights of the accused" because it is relevant and necessary to impeach SN [REDACTED] SN [REDACTED] claims that she was very upset in the days following the assault. However, witnesses saw her out at the same bars within 7 days, drinking, dancing, and flirting with SN [REDACTED]. Again, after drinking, she allegedly engaged in conduct of a sexual nature with SN [REDACTED]. This information is necessary and relevant to the members in order to weigh her credibility and testimony.

10. The defense respectfully requests permission to question witnesses at the Article 32 investigative hearing regarding the above discussed MRE412 evidence.

/s/

[REDACTED]

/s/

[REDACTED]

CERTIFICATE OF SERVICE

I certify that a copy of this request was served on LT [REDACTED]
[REDACTED] and LT [REDACTED] [REDACTED] via electronic mail on 9 Sep 2011.

[REDACTED]

500177

SUBJ: [REDACTED]

CCN: 0090-10GNW-0048-8D (CE)

Details:

the text being located in the files DriveFreeSpace002, DriveFreeSpace003, and mms_oom_hprof_data, the text was also located in the file slack of two files. This text was previously documented in this report under the analysis of SN [REDACTED] cellular phone.

(6) The bookmark "Text - blow your" contains three files that were identified during a query for the text "blow your load". This text was selected because it appears to be part of MMS message related to the graphic file 2010-10-16_05.50.10.jpg. The text appears to be part of a MMS message string to [REDACTED] that originated with the text "Thinking of u!" and the graphic file 2010-10-16_05.50.10.jpg.

[REDACTED] Relax don't blow your load too early

Sent: Oct 16

Sent: Oct 16

Relax don't blow your load too earl

D}LxolS!

732406258

[REDACTED] Relax don't blow your load too early

Sent: Oct 1

D~BpD~BH

/2482

8D}QHD}

Me: Dude I'm on fire as of late

Sent: Oct 16

Sent: Oct 16

Dude I'm on fire as of lat

732406258

8D}QHD}

Me: Dude I'm on fire as of late

Sent: Oct 1

/2479

[REDACTED] I heard your year long cold streak is over

Sent: Oct 16

Sent: Oct 16

I heard your year long cold streak is ove

732406258

[REDACTED] I heard your year long cold streak is over

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PAGE 38 OF 43 PAGES

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IO EXHIBIT 18

SE 1 OF 3

PHOTOGRAPH -

REDACTED

500179

SUBJ: [REDACTED]

CCN: 0090-10GNW-0048-BD (GE)

Details:

Sent: Oct 1
 content://mms/3
 Imag
 2010-10-16_05.50.10.jp
 image/jpeg
 text_0.tx

(7) The bookmark "Text - cum all over" contains three files that were identified during a query for the text "cum all over." The text appears to be part of a MMS message string with [REDACTED] mobile device number (201) 362-7171, (NFI). The text string appears to have originated with the text "Thinking of u!" and the graphic file 2010-10-16_05.50.10.jpg.

[REDACTED] Hahah

Sent: 8:07PM
 Sent: 8:07PM
 Haha
 201362717

[REDACTED] Hahah

Sent: 8:07P
 /2559

Me: Ya dawg... that's 530 in the am... if u zoom in there is cum all over her butt... I had work at 6

Sent: 8:04PM
 Sent: 8:04PM

Ya dawg... that's 530 in the am... if u zoom in there is cum all over her butt... I had work at 201362717

Me: Ya dawg... that's 530 in the am... if u zoom in there is cum all over her butt... I had work at 6

Sent: 8:04P
 /2558

[REDACTED] Awesome...you hit that?

Sent: 8:03PM
 Sent: 8:03PM
 Awesome...you hit that
 201362717

[REDACTED] Awesome...you hit that?

Sent: 8:03P

SUBJ: ██████████

CCN: 0090-10GRT-0048-8D (GR)

Details:

```

content://mms/4
content://mms/part/87
text_0.txt!D
<text_0!D
text/plain!D
Thinking of u!D
ent://mms/part/86
2010-10-16_05.50.10.jpg!D
<2010-10-16_05.50.10!D
image/jpeg!D
content://mms/part/85
smil.xml!D
<smil!D
application/smil#D
<smil><head><layout><root-layout width="480px" height="320px"/><region id="Image" left="0"
top="0" width="480px" height="240px" fit="meet"/><region id="Text" left="0" top="240"
width="480px" height="80px" fit="meet"/></layout></head><body><par dur="5000ms"><text src="text_0.txt"
region="Text"/></par></body></smil>
smil.xml
2010-10-16_05.50.10.jpg
text_0.txt
<text_0
<2010-10-16_05.50.10>
<smil>
Imag
2010-10-16_05.50.10.jp
image/jpeg
text_0.tx

```

(8) The bookmark "Text - video-2010-10-16" contains one file that was identified from a query for the text "video-2010-10-16-05-45-30.3gp." This text appears eight times in the file local-album-cachechunk_0. The file local-album-cachechunk_0 appears to be a cache file used by the Android OS. The file name "video-2010-10-16-05-45-30.3gp." is similar in file type and naming convention to the previously mentioned multimedia file "video-2010-10-16-05-48-11.3gp." A byte by byte search for file headers of additional multimedia files similar to the previously identified multimedia file was not successful.

(9) The bookmark "Text - video-2010-10-16" contains two files that were identified from a query for the text "video-2010-10-16-05-48-11.3gp." This text appears seven times in the file local-album-cachechunk_0. The

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PAGE 40 OF 49 PAGES

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PAGE 3 OF 3



5811

OCT 14 2011

MEMORANDUM

From: [REDACTED] CAPT,
CG PACAREA (PAC-094)

To: [REDACTED] VADM
CG PACAREA (PAC-00)

Subj: STAFF JUDGE ADVOCATE'S PRETRIAL ADVICE UNDER ARTICLE 34, UCMJ
ICO UNITED STATES V. SN [REDACTED] USCG

Ref: (a) R.C.M. 405, Manual for Courts-Martial (2008 ed.)
(b) R.C.M. 406, Manual for Courts-Martial (2008 ed.)
(c) USCGC ALEX HALEY (WMEC 39) Memo 5810 of 13 October 2011

1. In accordance with reference (a), an investigation under Article 32, Uniform Code of Military Justice (UCMJ), was conducted 22-23 September 2011 at the Jackson Federal Building, Seattle, Washington.
2. I have reviewed the charges and allied papers in this case and render this advice in accordance with the provisions of Article 34, UCMJ and reference (b) and in response to reference (c).
3. The enclosed charges against the subject named accused consist of:

Charge I: Violation of Article 120, UCMJ

- Specification 1: In that Seaman [REDACTED] USCGC ALEX HALEY (WMEC-39), on active duty, did, at or near Kodiak, Alaska, on or about 16 October 2010, engage in a sexual act, to wit: inserting his penis into the vagina of Seaman [REDACTED] U.S. Coast Guard, who was substantially incapacitated.
- Specification 2: In that Seaman [REDACTED] USCGC ALEX HALEY (WMEC-39), on active duty, did, at or near Kodiak, Alaska, on or about 16 October 2010, engage in a sexual act, to wit: inserting his penis into the vagina of Seaman [REDACTED] U.S. Coast Guard, who was substantially incapable of appraising the nature of the sexual act.
- Specification 3: In that Seaman [REDACTED] USCGC ALEX HALEY (WMEC-39), on active duty, did, at or near Kodiak, Alaska, on or about 16 October 2010, engage in a sexual act, to wit: inserting his penis into the vagina of

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Seaman [REDACTED] U.S. Coast Guard, who was substantially incapable of declining participation in the sexual act.

- Specification 4: In that Seaman [REDACTED] USCGC ALEX HALEY (WMEC-39), on active duty, did, at or near Kodiak, Alaska, on or about 16 October 2010, engage in a sexual act, to wit: inserting his penis into the vagina of Seaman [REDACTED] U.S. Coast Guard, who was substantially incapable of communicating unwillingness to engage in the sexual act.
- Specification 5: In that Seaman [REDACTED] USCGC ALEX HALEY (WMEC-39), on active duty, did, at or near Kodiak, Alaska, on or about 16 October 2010, wrongfully commit indecent conduct, to wit: photographing and recording video of the genitalia and buttocks of Seaman [REDACTED] [REDACTED] U.S. Coast Guard without the said Seaman [REDACTED]'s consent and contrary to her reasonable expectation of privacy.

Charge II: Violation of Article 134, UCMJ

- Specification 1: In that Seaman [REDACTED] USCGC ALEX HALEY (WMEC-39), on active duty, did, at or near Kodiak, Alaska, on or about 16 October 2010, in writing communicate to [REDACTED] certain indecent language, to wit: "If you look closely you can see the cum on her butt" or words to that effect.
- Specification 2: In that Seaman [REDACTED] USCGC ALEX HALEY (WMEC-39), on active duty, did, at or near Kodiak, Alaska, on or about 16 October 2010, send a nude picture of Seaman [REDACTED] U.S. Coast Guard, to [REDACTED] without Seaman [REDACTED] permission, which conduct was to the prejudice of good order and discipline in the armed forces and was of a nature to bring discredit upon the armed forces.
- Specification 3: In that Seaman [REDACTED] USCGC ALEX HALEY (WMEC-39), on active duty, did, at or near Kodiak, Alaska, on or about 16 October 2010, send a nude picture of [REDACTED] U.S. Coast Guard, to [REDACTED] without Seaman [REDACTED]'s permission, which conduct was to the prejudice of good order and discipline in the armed forces and was of a nature to bring discredit upon the armed forces.
- Specification 4: In that Seaman [REDACTED] USCGC ALEX HALEY (WMEC-39), on active duty, did, at or near Kodiak, Alaska, on or about 16 October 2010, send a nude picture of Seaman [REDACTED] U.S. Coast Guard, to Boatswain's Mate Third Class Petty Officer [REDACTED] U.S. Coast Guard, without Seaman [REDACTED] permission, which conduct was to the prejudice of good order and discipline in the armed forces and was of a nature to bring discredit upon the armed forces.

- Specification 5: In that Seaman [REDACTED] USCGC ALEX HALEY (WMEC-39), on active duty, did, at or near Kodiak, Alaska, on or about 16 October 2010, show a nude picture of Seaman [REDACTED] U.S. Coast Guard, to Seaman [REDACTED] U.S. Coast Guard, without Seaman [REDACTED]'s permission, which conduct was to the prejudice of good order and discipline in the armed forces and was of a nature to bring discredit upon the armed forces.

4. Investigating Officer's Recommendations:

- a. The Investigating Officer recommended that the following charge and specification be dismissed: Charge I, Specification 4.
- b. The Investigating Officer recommended that Charge II, Specifications 4 and 5 be amended to remove the language regarding bringing discredit upon the armed forces.
- c. The Investigating Officer recommended that the following additional charge be preferred: Article 134, UCMJ, indecent language.
- d. The Investigating Officer recommended that all remaining Charges and Specifications be disposed of at General Court-Martial.

5. Legal Conclusions: After reviewing the attached charges, the Article 32 Investigating Officers report and allied papers, I have reached the following conclusions:

- a. The charges and specifications thereunder properly allege offenses under the UCMJ.
- b. A court-martial can properly exercise jurisdiction over the accused and the offenses.
- c. The offenses alleged in the charges and specifications as amended are warranted by the evidence in the report of investigation.

6. Staff Judge Advocate's Recommendation:

- a. I recommend that the following Charges and Specifications be dismissed: Charge I, Specification 2; Charge I, Specification 3; Charge I, Specification 4.
- b. I recommend that an additional charge of Article 134, UCMJ, indecent language be preferred. The additional charge would read: "In that Seaman [REDACTED] USCGC ALEX HALEY (WMEC-39), on active duty, did, at or near Kodiak, Alaska, on or about 23 October 2010, in writing communicate to SN [REDACTED] U.S. Coast Guard, certain indecent language, to wit: "let's fuck" or words to that effect, and that such language was to the prejudice of good order and discipline in the armed forces."
- c. I recommend that the charges be referred to trial by General Court-Martial.

Subj: STAFF JUDGE ADVOCATE'S PRETRIAL ADVICE UNDER 5811
ARTICLE 34, UCMJ IC0 UNITED STATES V. [REDACTED] USCG

7. Although my opinion and recommendation are submitted pursuant to reference (b), you are advised that the disposition of the charges in this case is solely within your discretion. Your consideration and disposition of the charges should be based upon your independent exercise of discretion. You may lawfully order any or all of the charges dismissed for any reason. You may choose to order the charges tried by an inferior type of court-martial or initiate administrative action, with or without nonjudicial punishment.
8. Once you have considered this advice with its enclosures, please indicate your decisions with respect to the Investigating Officer's recommendations and the case disposition on the form provided as a draft endorsement (enclosure (1)). If you desire to do anything other than address the recommended actions, please inform me and I will direct preparation of the appropriate documents to effectuate your decisions.

#

Enclosures: (1) First Endorsement on PACAREA Memo 5811
(2) Charge Sheet
(3) Article 32 Investigating Officer's Report

Copy: LT [REDACTED] JAGC, U.S. Navy

LEE.AMANDA.
MILDRED.1234093793

Digitally signed by LEE.AMANDA.
MILDRED.1234093793
DN: cn=L. E. Government, ou=Govt,
ou=PRC, ou=USCG, email=LEE.AMANDA.
MILDRED.1234093793
Date: 2013.11.08 13:29:48 -0500

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