



September 17, 2013

Protect Our Defenders is a human rights organization dedicated to ending the plague of rape and sexual assault within the United States military. Our policy work focuses on the failings of the military justice system; we seek to reform the military training, reporting, investigation, and adjudication systems as they relate to the issue of sexual violence and harassment. Our work is motivated by the strength and bravery of survivors of military rape and sexual assault, who have stepped forward to tell their stories and push for change to a system that often re-victimizes survivors while failing to hold perpetrators accountable and effectively deter these crimes.

According to recent Pentagon reports, there were an estimated 26,000 incidents of unwanted sexual contact in the military in 2012. Of those estimated incidents, only 3,374 were reported, and only 238 of those resulted in a conviction. Based on the DoD SAPRO 2012 Survey, 60 percent of victims who did report their assault said they experienced some form of retaliation. We receive emails almost daily about cases of sexual assault that were never taken to trial, or from victims who were retaliated against, as well as from officers who have become discouraged by the process and seek help on behalf of victims. We have included some of these emails and letters in Attachment 1. Over the years, the estimated number of assaults has continued to grow, while the reporting rate has barely reached ten percent. This is an epidemic, and both the stories and statistics make it clear that the military is incapable of handling this problem on its own.

This panel, established under the FY2013 National Defense Authorization Act, was created to address this crisis and provide recommendations for reforming the military justice system so that real progress can be made on this three-decades old problem.. We urge the panel to take this opportunity to endorse meaningful reforms that address the structural changes at the core of the problem and create a professional, impartial, independent military justice system. There are two steps critical to achieving this goal: first, the authority to decide whether to prosecute a case must be removed from the chain of command and placed in the hands of trained prosecutors; second, the authority to adjudicate these crimes must be taken from the accused's chain of command.

While other changes will still be necessary to achieve a fair and functional judicial system—including reforming the jury selection process, modernizing the Article 32 process, and eliminating the Good Military Character defense (*see Attachment 2*)—taking commanders out of the legal decision process is the only way to ensure a fair and impartial system. This is a common sense step toward ensuring that members of our armed forces are given the same dignity, respect, and due process as the civilians they have volunteered to protect.

At the heart of the debate about the role of commanders, are a few fundamental questions that go to the core of our American values: Should justice be blind? Should the men and women who defend the Constitution be denied impartiality and objectivity in justice?

Should legal authority be vested in those trained and experienced in the law? How is good order and discipline really served by the current structure, when so many service members who have been victimized fear the process, do not trust the system, and do not consider their commanders to be impartial?

When considering these essential questions, we must start with the foundation, and address the inherently unfair structure that houses the Convening Authority (CA) within the chain of command. In addition to lacking any substantive legal training, commanders can be subject to bias and conflict of interest, and are in a position to retaliate against the victim while protecting the often higher-ranking perpetrator. As one victim told us: "I got raped.... When I tried to talk to my squad leader I got shut down and reminded that he (the rapist) was a Senior NCO.... I waited and spoke with my platoon SFC (sgt. first class) and Lt, [And, they told my perpetrator.].... Then, I got told if I say another word to ANYONE, I was going to be charged with Adultery...." (*see* Attachment 1). Furthermore, commanders are over-burdened, and serving as the convening authority detracts from their ability to focus on their primary mission. Removing CA from the chain of command will legitimize the system, provide impartial justice for both victims and the accused, unburden commanders, and increase transparency and accountability. Third party accountability is critical to fostering trust among victims, effectively deterring perpetrators, and fixing the culture of impunity that has afflicted the military for decades.

The recent case at Aviano Air Base in Italy and the ongoing injustice in the case currently pending at the Naval Academy exemplify many of the most troubling conflicts and flaws within the current military justice system. As the details of these cases have been revealed, they have exposed attitudes of military leaders and offered a window into conflicts of interest that undermine justice and re-victimize survivors. These cases highlight the fact that too often commanders are not objective, and when push comes to shove, they rally together to protect their own interests and those of more valued, higher-ranking service members. These attitudes are not relics of the past—they represent the status quo.

In the Aviano case, Lt Col James Wilkerson was convicted of aggravated sexual assault. Lt Gen Franklin, acting as the convening authority, overturned the conviction and freed his fellow pilot, going against the legal advice of his own Staff Judge Advocate (SJA).. Franklin's biased and poorly reasoned justification for his decision was based in part on his self described belief that Wilkerson was a good officer and a "doting father and husband." For a copy of Franklin's letter explaining his decision, as well as POD's point-by point comparison to the facts of the case, *see* Attachment 3.

Further details uncovered in the recent FOIA release of emails by Lt Gen Franklin and other Air Force leaders show that not only was Franklin biased, he was determined to help Wilkerson at any cost. In one particularly concerning email, Franklin ignored a plea from Brig Gen Scott Zobrist, the base commander, who pleaded with Franklin not to overturn the conviction. Zobrist warned that granting clemency, "would be absolutely devastating in so many ways...[and] would...have a huge negative impact on morale, send a very negative message about how seriously we take sexual assault in the AF, and potentially call into question the effectiveness of our UCMJ system in general."

Lt Gen Franklin ignored these warnings and instead, with support from his chain of command, moved ahead to dismiss the jury's findings and toss out the conviction. With the blessing of his command, including the Air Force Commander in Europe, General Mark Breedlove, who voiced his support for Franklin's decision in an email to General Mark Welsh, saying "[Franklin] and I have discussed in depth the meaning and the possible blow back. I stand behind his decision." With that, Franklin used his unfettered authority to set aside justice and began a full court press to get Wilkerson promoted and flying again (*see* Attachment 4 for POD's press release and the emails released under FOIA).

This case is an example of a commander who believed his own personal assessment of the perpetrator and biased reading of the evidence should override the verdict of a jury of senior officers, who—unlike him—had heard all of the testimony and reviewed the evidence in court. Lt Gen Franklin is a high-ranking commander who showed the nation what happens when individual loyalty is valued over impartiality and justice.

In the Naval Academy case, not only was there pressure on the victim by those in power as well as her fellow midshipman not to report, but also, once she did decide to come forward, the convening authority—a commander and Superintendent of the Academy—refused to take action. Only after pressure from the victims' civilian attorney was the case referred to an Article 32 hearing, where the investigating officer allowed the defense counsel to abuse and intimidate the witness. Without heavy pressure from outside sources, the case would have never seen a courtroom. The actions by the CA in this case are yet another example of the broken system and lack of regard for victims who report. They are seen as troublemakers and swept aside as collateral damage, "for the sake of the institution."

Another detrimental effect of the current role of commanders as convening authority is Unlawful Command Influence (UCI). By giving commanders the power to decide whether to prosecute a case, their subsequent actions can be construed to tip the scale for either side. No one wants an innocent defendant to be railroaded. On the other hand, one harsh statement from a commander about rooting out the problem of sexual assault can be used to derail sexual assault cases. In fact, a recent sequence of statements from top commanders regarding zero tolerance for sexual assault has led to many defense motions of UCI—some of which have led to court rulings that undermine justice (*see* Attachment 5 for details of recent cases impacted by UCI). The direct and simple solution is to remove the CA responsibility from the chain of Command, freeing commanders to focus on preventing sexual assault.

For decades, military leaders have decried any change to commander's authority in prosecuting and adjudicating rape and sexual assault. However, they have failed to provide any specific evidence to support the allegation that such change would undermine their ability to lead. In fact, the current biased and inefficient military justice system actually undermines good order and discipline and mission readiness.

How long must the victims – our service members – have to wait before we will recognize that it is time for a fundamental change? No more Tailhooks, no more Aberdeens, no more Lackland abuse scandals. Our troops deserve better.

Attachments:

1. Anecdotes from victims and letters from commanders re: convening authority
2. POD "Roadblocks to Justice" position paper
3. POD letter to Secretary Hagel, Lt. Gen. Franklin's letter, POD point-by-point rebuttal
4. Email excerpts from FOIA re Franklin
5. Examples of cases where UCI led to rulings for defendant

#### Victim 1

Young woman in the Marines raped in 2010 while on active duty in California. After she reported, she was retaliated against. The rapist and his friends in her unit initiated a financial audit of her pay. The rape did not go to Court Martial. The rapist was given as punishment restriction to the gym, work and home. That's it. She had to work with him every day.

After reporting she was brought up on charges that she was taking overpayment from the Marines. Without providing any evidence, they took 75% of her pay, which she needed to feed her family. Her Legal Aid Officer has provided proof that she was not overpaid but the Commander didn't want to admit the error. Instead they have chaptered her out with a mental disability. She now is not able to collect VA benefits.

#### Victim 2

Young man in the Air Force sexually assaulted by his superior in 2012 at the age of 19. Since the assault the victim has experienced sexual harassment by other service members, became suicidal, and was diagnosed with PTSD. The perpetrator's Command gave the assailant an Article 15, and he was never court-martialed. After being transferred to Travis Air Force Base in California, the victim's diagnosis was changed to a Personality Disorder, and his command is in the process of trying to force him out through the Med Board process.

#### Victim 3

Young woman in the Navy raped in 2010 by two first class military members in her home in San Diego. One of her attackers was her own LPO in her chain of command and the other was also a LPO. She reported the attack to San Diego Police, but the case was handed over to NCIS and the Navy to investigate. NCIS conducted a phone sting with the victim to collect evidence. During the investigation, she was forced to live and work on base with her assailants. Despite the evidence and the fact that one of the assailants was a repeat offender, her commander failed to refer her case to court-martial. The victim ended her career as a result of the trauma and lack of justice.

#### Victim 4

Young woman in the Navy sexually assaulted in the past year. Command dropped the charges, and then diagnosed the victims with an Adjustment Disorder and began chaptering her out of the service.

#### Victim 5

Young woman in the Army sexually assaulted in 2008 while stationed in Okinawa, Japan. After reporting she faced retaliation and harassment, and had to reach out to

Congress in order to obtain a transfer off the base. Her attacker was not prosecuted, but after reporting she was charged with two Article 15s. She is now being chaptered out of the military.

#### Victim 6

Young woman in the Army sexually assaulted while deployed to Iraq. She waited a year to report because her attacker was in her chain of command. After reporting, she was punished and demoted, and then diagnosed with a Personality Disorder. Her assailant was promoted.

#### Victim 7

Young woman in the Army sexually assaulted in 2012. While the case is still pending, she has been denied counseling, subjected to harassment and ridicule in her unit, and by her command. She was denied an expedited transfer. Her command has begun the process of trying to chapter her out.

**PROTECT OUR DEFENDERS**  
**SASC Hearing, June 4, 2013**

**A female soldier's story: January, 2013 Case 62009**

"I was medically discharged on Dec 27, 2012. I was on my second deployment doing missions in Iraq when I was initially harassed and finally raped...He was from reserve unit and I was Active Duty...I had noticed that a tire on my trailer needed changing and I pulled out the required tools when he appears...I crawled into the back of my cab to grab a bottle of water out of my cooler[in the back seat]...he asked me to wait a few because he wanted to talk to me...thought nothing of it. Right up until he combat locks the door and out comes a knife at me. My weapon was in front, otherwise he would be dead. He had his though but the knife is what he used...I got raped by this bastard, to this day I play it over in my head...wondering why I didn't do enough to protect myself...When I tried to talk to my squad leader I got shut down and reminded that he was a Senior NCO and I was NOT to be talking sh.t about him like that...I waited til we got back down to [location] and spoke with my platoon SFC and Lt., I thought for sure they had my back. I then got told if I say another word to ANYONE about it than I was going to be charged with Adultery and get an AR 15 for it...I shut down inside, I was lead Vic in Convoy and kept hoping to hit an IED after that.... (I told my roommate, she got moved away after speaking out) Again I get shut down with threats...started getting put on BS details...they won. I got injured when I was raped, I have a scar on my left breast to remind me of it daily. Can't miss it, size of a 50 cent piece. In May, 2012 I was sent back to the states over injuries sustained on a mission and tried to pursue it then, I told my squad leader at the time... and the next thing ya know I get told they are chaptering me on an adjustment disorder...I write all this to you so that you can attempt change. I am one of the 'Unreported statistics' but not without trying....He is free and able to do it again as long as he wears the Uniform, the Uniform represents a Protective Shield if you're a rapist with rank."

**Request from a commander, 2012**

Mrs Parrish.

I have a young female Soldier that will be filing a Congressional complaint on the investigation conducted regarding an incident. She lives in [town] and I live on the [name] Coast. I was wondering if there is any specific Congressional Representative that has been key in your efforts and would give more than lip service to her issue.

As her Commander I have supported and encouraged her reporting, but have been disappointed in the way it has been handled and the lack of support given to her by her command ( higher than me).

I would appreciate any direction you could advise. As I am still in the Command discretion would be appreciated.

Sincerely,

[name]

From: [Mother of survivor]  
Date: Wed, Jun 12, 2013 at 11:27 PM  
Subject: Referred by xxxxxxxxx  
To: "nancy@protectourdefenders.com" <nancy@protectourdefenders.com>

Hello, Nancy....

My name is [Mother of survivor]. I was referred to you by the wonderful, [name]. I spoke with [name of survivor] about my daughter who is currently active duty for the USAF [REDACTED] stationed in Texas. She has been there since January 15, 2012. This is a training base. The series of events that have taken place feel like those right out of a movie. Surely these things don't happen today... Not in this country. WOW.....Do they ever. My daughter is enduring a never ending nightmare... As is our entire family. She has been falsely charged and convicted of a crime after reporting a sexual assault that occurred as she was asleep in her dorm. The male stole the duty key and entered her room. The assault was reported in less than 24 hours. It was never investigated. They removed the male that assaulted her away from the scheduling office and to another place of duty. That's it. Later... This male names my daughter as the person who gave him Xanax pills.

She is very afraid of doing anything. She is scared to death of increased retaliation. She has already been to jail....

There is urgency in this situation. We have entered the clemency stage of this ridiculous military judicial system.

My daughter is afraid to get her hopes up about anything changing or helping her situation.

I look forward to discussing her options with you.

I have certainly met some amazing people while trying to figure out how I can help my daughter. I have found a cause I am passionate about and look forward to bringing awareness and ultimately positive changes to our military justice system.

Thank you, Nancy

Most sincerely,  
[Mother of survivor]  
Sent from my iPhone

Hi Nancy,

I just spoke with [survivor]. She had a meeting today with her 1st sergeant regarding her status. She was told that she should be discharged by the end of the week. She was told that she will not get to keep any of her GI bill or be entitled to any VA benefits.

She is beside herself.

I wish she would have made contact with you sooner than last night. She has been

afraid. She didn't believe [until recently] that they were obligated to investigate it until she read it in black and white. She didn't recognize the signs of MST and PTSD until she read them in black and white. She continued her loyalty and was conflicted by it. She has been hurt, and severely retaliated against...even gone to jail. They are about to send her home with a federal conviction and no help.

Please, Nancy, help.

Thank you,  
[Mother of survivor]

From: [Survivor]  
Date: Wed, Jul 10, 2013 at 7:56 AM  
Subject: Special advocate  
To: [nancy@protectourdefenders.com](mailto:nancy@protectourdefenders.com)  
Cc: [Mother of survivor]

Dear Ms. Parish,

I am requesting a special victims counsel if possible.  
I do not remember the name of the lady that I made the OSI report too. She was only with me for maybe 15 minutes. She was African American and had short hair.  
I went to my on base attorney first and he called over to OSI to let them know I was coming to make the report.  
My cell number is [REDACTED].  
Thank you for help.

Respectfully,  
[Survivor]

From: [Mother of survivor]  
Date: Sat, Jul 13, 2013 at 9:58 AM  
Subject: Re: a couple of timely questions  
To: Nancy Parrish <nancy@protectourdefenders.com>

Hello,

She new him from tech school, his rank was [REDACTED].  
[Survivor] never had anything to do with any Xanax in any way. No pills were ever seen through out this ordeal. [Assailant] was reported by someone to have been acting strangely. He was questioned and admitted to taking Xanax and drinking. During interrogation by OSI, [assailant] named [survivor] as the person who gave

him 2 Xanax. He was protecting [REDACTED] who was his girlfriend at the time. During [survivor]'s trial, [assailant] states that he lied about [survivor] giving him the Xanax and that he was "protecting someone else he cared more about at the time."

The now Airman [REDACTED] testified that she gave [assailant] the Xanax and that she had been receiving Xanax, ecstasy, and other drugs in peanut butter jars to her person on base.

Thanks...

[Mother of survivor]

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From: **[Mother of survivor]**

Date: Tue, May 14, 2013 at 4:08 PM

Subject: Please help my daughter NOW- currently in Army- was assaulted- being chaptered out

To: nancy@protectourdefenders.com, brian@protectourdefenders.com

I need your help – Please I am at my wits end – no one is listening  
My daughter is being emotional abused after being sexually abused in the ARMY-  
and a cover up is brewing right now, I am being ignored and my daughter can't get  
any help.

.. [Survivor] – [REDACTED] JBLM (Lewis McChord) Tacoma WA

An immediate inquiry and investigation is needed. There is a cover up going on and  
a push to chapter my daughter out so the man code to protect careers over these  
victim soldiers is happening right now.

Colonel [REDACTED], Colonel [REDACTED] and Capt [REDACTED] have stood  
behind lies and omitted truths. to JAG who say the company did nothing  
wrong. [Survivor] was a STELLAR" soldier before sexually assaulted and in a 4  
month time has become anxiety ridden, self-loathing, borderline suicidal and drug  
dependent. She asked for help through ASAP and SHARP and was on the path to  
sanity when the captain shared her issues with the company subjecting her to mass  
ridicule, name calling and harassment which he personal was involved in. Denied  
her counseling, IG and JAG contact and placed her in all male escort care and all  
men's barracks- \*\*\* this may be protocol for the average person but not a sexually  
assaulted recovering victim of the ARMY... Please help me stop this injustice. Please  
call Colonel [REDACTED] through [REDACTED] . I reluctantly supported my  
daughter going into the army – fearing that she may be a casualty victim in combat  
overseas by some foreign enemy. I never imagined she would be a victim on US soil  
from the very Army she partnered with to protect the USA and our rights. She was  
sexual assaulted the end of 2012 which is a case still pending, She has lost her lust  
for life , became dependent on drugs to mask the pain and now being pushed out of

the army because the captain is derelict in his responsibilities and failed to respond to her plight. He has re-victimized her emotionally by exposing her to unsafe conditions; verbal abuse and total discard for her a soldier or a woman. I fear for her safety and wellbeing. They are trying to cover this up and to chapter her out quickly- I managed to get IG involved but I have lost my confidence they will protect her over their own agenda to hide this from the white house or the media. Help me please.

**I can be reached at [REDACTED] or [REDACTED] . I beg for your help**  
[REDACTED]

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From: **[victim]**

Date: Sun, Jan 13, 2013 at 9:26 AM

Subject: speaking out finally

To: [nancy@protectourdefenders.com](mailto:nancy@protectourdefenders.com)

Nancy,

My name is [name], I was recently medically retired from the Army on Dec 27, 2012. I was on my second deployment doing missions in Iraq when I was initially harassed and finally raped by an E-7 from our Battalion, different Company as he was from Arizona National Guard and I was Active Duty. I had met him in the Chaplains Christmas Choir in 2009, always talked about his faith and his family back home. I had assumed, like an idiot that this was a person of morals. I was the only female in my squad for a long time. I was an 88M Combat HET driver, M1070/M1000, we generally haul Tanks and heavy equipment. We travel as a squad in what we call a CLiP (Combat Logistics Patrol) anyways, this E-7 who had not gone outside the wire, had started going on missions with a clip that mirrored our clips route. He had access to the TOC where information on what clip was going where was listed. Since I was the only female on my clip I was used to being around guys all the time, if I didn't feel safe at a FOB than I slept in my truck, believe it or not I felt safer in a tent with my entire squad than a tent where I was alone. We had pulled into [REDACTED] right after the Christmas Blackout conditions were lifted. It was about 4AM, I had gathered my bag and weapon and headed into the FOB after our trucks were secured and did my routine, I showered, changed into my PT's and headed for the laundry room to was my dirty items when he comes in. Small FOB so no surprise, everyone pulling in does their laundry, he suggests we go eat chow while waiting for the washers to get done, I do that anyways and agreed. I Put my stuff into the dryer and went to [REDACTED] to grab a cup of coffee and go for a smoke in the smoke pit while I waited for my dryer to quit. Went to lay down in the females tent and secured my laundry but a few hours later a group of LOUD females came in and flipped on the lights, that ended my sleep so I decided to go clean out my truck, its daylight so I had not thought anything of it. I had noticed that a tire on my trailer neede changing and I pulled out the required tools to complete the task when he appears... asks if I need help and told him I was almost done and had it handled. After I put my old tire on the back of my trailer I crawled into my cab to grab a water

bottle out of my cooler, I only had my driver door unlocked and open since that was all I needed. My cooler was on my backseat so I had climbed in to get it, as soon as I sit on the back seat to grab my water bottle, he appears. I felt a bit uncomfortable so I suggested I needed to get out and go get some ice since mine was about gone... he asked me to wait a few because he wanted to talk to me about a problem he was having with his wife and wanted my perspective on it. I get this a lot from the guys in my squad so, again, thought nothing of it. Right up until he combat locks the door (dead bolts it to the frame of the cab) and out comes a knife at me. My weapon was in front, otherwise he would be dead. He had his thought, but the knife is what he used, I got raped by this bastard, to this day I play it over in my head like it was yesterday, wondering why I didnt do enough to protect myself. I should have shot him when he finished, but instead I sat there like a baby and cried... smoked a cigarette and go another set of PTs so I could go shower and threw the set I was wearing away. When I went to my truck later that night to head northbound into BIAP (Baghdad) I see the ass standing there joking with my squad leader. Apparently they had diner together... when I tried to talk to my squad leader I got shut down and reminded that he was a Senior NCO and I was NOT to be talking shit about him like that.. I waited til we got back down do Kuwait and spoke with my Plt SFC and Lt, I thought for sure they had my back. I then get told that if I say another word to ANYONE about it than I was going to be charged with Adultery and get an AR 15 for it. The next day I see the ass, he comes to my truck as I am getting it ready for another mission and lets me know that MY Plt SFC had told him what I said and he told him that I was simply trying to "hit on him" wanted me charged with harassment!! I shut down inside, I was lead Vic in our Convoy and kept hoping to hit an IED after that. I was only an E-4 at the time... he had sent some pics using his AKO of himself which I had shown my roommate so she knew I was telling them the truth. She got moved away from me after she spoke up. Again I got shut down with threats. Started getting put on BS details, mandated full battle rattle PT twice a day, and many times got put on Guard Duty that was generally reserved for someone on a profile that couldnt go on mission. Not me, as soon as I got off overnight duty, I had a full day ahead of me and did that repeatedly until I gave up trying to pursue it... they won. I got injured when I was raped, I have a scar on my left breast to remind me of it daily. cant miss it, size of a 50 cent piece. In May I was sent back to the states VIA MEDEVAC over injuries sustained on a mission and tried to pursue it then, I told my squad leader at the WTB here [REDACTED] at the time and next thing ya know I get told they were trying to chapter me on an adjustment disorder. I arrived at [REDACTED] July 7, 2010 and I just left there n Dec 2012. I was placed on TDRL (Temporary Disabled Retirement List) as they disagreed with the VA on a PTSD Diagnosis. I was finally able to tell my husband a few months ago, that is leading to a divorce as he cant see why I did not protect myself enough either. Everyone assumes that since we have a weapon its safe. Well, my weapon was NOT loaded with a magazine, no need for it on a FOB, my weapon had NO round chambered, again, not needed on a FOB. and it was up front. I couldnt read this guys mind, wish I could. I see a counselor at the VA and take medications that help somewhat, the human mind wont turn off no matter how hard you try...

I write all this to you so that you can attempt change. I am one of the 'Unreported

statistics" not without trying, I assure you of that. He is free and able to do it again as long as he wears the Uniform, the Uniform represents a Protective Shield if you're a rapist with rank. My life gets ruined and he gets promoted. I read your name in an article on Stars and Stripes and did a google search for you and found Protect our Defenders. Its too bad that the Military protects and defends rapists. I am not the first and unfortunately I will not be the last, but change has to start somewhere. I wrote my Congressman [REDACTED] and Senator [REDACTED], their response was a generic political ad leading me to their website... again, I got nowhere with them. Stand up and make it known loud and clear at these upcoming inquiries in Texas that they need to STOP protecting the rapists and start protecting US! I am tired of hearing about others like me who get punished for trying to come forward. If a sister in arms came to me today and told me she were raped I would have to advise her against coming forward, because nothing good comes from it and it makes things worse on her. I still have pride in the job I did, nothing will ever take that from me, I am just ashamed at leadership and my Uniform. I used to have pride wearing it, until I started seeing it as a Protective Shield for rapists. I am thankful to not ever have to wear it again, one less reminder of it...

Thank you for taking time out to read this and THANK YOU for standing up for us.

Regards,  
[REDACTED]

23 July 2013

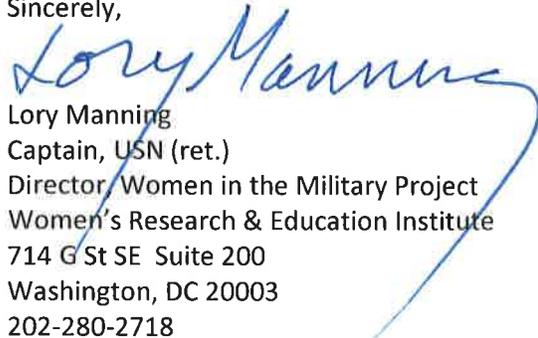
Dear Senator Gillibrand,

I am writing to support the needed changes you propose in the Military Justice Improvement Act. I spent over 25 years on active duty in the United States Navy and had the privilege of serving as Commanding Officer, Naval Telecommunications Station, Diego Garcia, British Indian Ocean Territory, a position in which I was the court-martial Convening Authority for the almost 400 people who were part of my command. For the past 13 years, I have served as Director of the Women in the Military Project at the Women's Research & Education Institute (WREI). In both these capacities, I have closely watched the struggle of the U.S. military to halt sexual assault in its ranks for over 35 years.

During this entire time, military Convening Authorities have had the power to investigate, refer to courts-martial and make final disposition of all charges of sexual assault within their commands, and yet they have not made a dent in the problem. As a former Commanding Officer and Convening Authority, I completely understand the services' insistence that commanders must retain their authority to dispose of charges of sexual assault. However, as an advocate for military women—and men—it is crystal clear to me that too many commanders have betrayed the trust placed in them by their subordinates, their services and their fellow citizens because they have not used this authority properly. I have, therefore, come to the reluctant conclusion that that authority must be removed from the chain of command and placed in the hands of trained military prosecutors who can serve as unbiased, professional experts on the disposition of sexual assaults and other felony cases. This is critical to ending sexual assault in the military.

Thank you, Senator Gillibrand, for your strong leadership in this matter of deepest importance to our future national security.

Sincerely,



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*\*licensed in Virginia and New York*

September 16, 2013

Ms. Taryn Meeks, Executive Director  
Protect Our Defenders

Dear Ms. Meeks:

Recent efforts to remove the decision making process from commanders where serious sexual assaults and major felonies are concerned are controversial but ultimately well advised. The issue is not the quality of the prosecutors or investigators; I was a civilian consultant in the U.S. Army JAG Corps for almost three years, and encountered largely dedicated and well-trained men and women who wanted justice for victims.

But I also found a continuing blind spot that makes sexual violence in particular impossible to adequately address under current military justice practice. In simplest terms, our military as a whole faces a "perfect storm" of a small but prolific percentage of predators in its midst colliding with an especially vulnerable population. Combined with the dynamics often associated with both, the approach to making the military safe within the ranks must evolve to recognize and meet this threat.

Contrary to what many assume, most sexual violence is perpetrated in serial fashion by predatory men known to their victims. Most do not appear as criminals and in fact are often successful and respected in their environments. They often seek "soft targets" who either won't report or won't be believed, and an environment that will provide them relative security. Predators are not created by environments; they are drawn to them.

Respected, values-based institutions are attractive to predators who pervert those ideals and use them to exploit trust and weaken victims. Sadly, military values like self-sacrifice, honor, duty and loyalty, characteristics taken seriously by the great majority, are manipulated by a dangerous few. Exacerbating the draw are combat training, access to weapons, and an instant recognition of power relationships due to rank. The great majority of service men and women are not predatory; quite the opposite is true. But even a small percentage in an institutional environment can create tremendous damage.

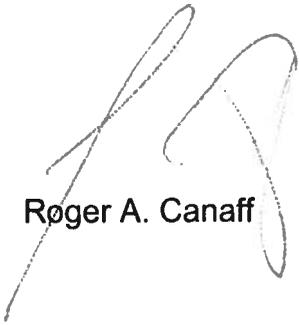
On the other side, a large percentage of enlistee females report sexual abuse prior to enlistment. Sadly, this prior victimization puts them statistically at a higher risk to be re-victimized. Their experiences may also lead to other behaviors that predators view as attractive; many are neither well-adjusted to military life nor highly valued by the command. Worse, reactions to sexual assault in any given case are often counter-intuitive and misunderstood.

Enter a commander considering sexual assault charges and perceiving an accused who is valuable and well-liked against a complainant who is a liability to unit cohesion and function. Combined with myths about sexual violence and deeply complex dynamics, valid cases are too often stopped in their tracks. In this way, predators continue to offend and victims continue to suffer without recourse, eventually weakening the entire military structure. Of course, victims can be and often are successful and well-adjusted to military life. But they similarly suffer blame for everything from "inviting" the attack to simply creating conflict within the unit.

Without a doubt, the civilian world is no different in terms of its struggle to understand and confront the issue of sexual violence. Improvement is needed everywhere, and victims suffer unfairly in all areas of life. But the military involves unique and inherent risks, conflicts, and disadvantages for sexual violence victims. Military commanders are the appropriate arbiters where most matters of discipline and good order are concerned, and will always have a crucial role in prevention as well as response. But because of the often misunderstood dynamics that arise in major felonies- particularly but not exclusively sexual violence- their prosecution under the UCMJ is better handled by prosecutors still in uniform but possessed of specialized knowledge. This knowledge involves legal details, cultural aspects, and offense dynamics. Military lawyers specially trained and unburdened by command concerns are in a better position to pursue justice and make our military healthier and more efficient.

Currently, commanders have complete and total responsibility for decisions regarding sexual violence and other serious crimes from the inception of the complaint through the final review of the sentence. Removing primary responsibility for the prosecution of these select crimes will not render commanders uninvolved and unable to remain a crucial part of the response to possible serious violations of the Code. Commanders will still have appropriately broad discretion to control the movements of accused persons as well as to protect them, the alleged victim, and any potential witnesses from harm or undue harassment during the process. Commanders will still set the tone for their units where mutual respect, discipline, and core military values are concerned. Further, they will be freer to concentrate on other serious matters already competing for their valuable time.

Respectfully,

A handwritten signature in black ink, consisting of a large, stylized 'R' followed by a large, stylized 'A'. The signature is positioned above the printed name.

Roger A. Canaff



Miranda Petersen &lt;mpetersen@protectourdefenders.com&gt;

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**BIPARTISAN MOMENTUM CONTINUES...ANOTHER RETIRED GENERAL COMES FORWARD IN SUPPORT OF GILLIBRAND PROPOSAL TO CREATE INDEPENDENT, NON-BIASED, OBJECTIVE MILITARY JUSTICE SYSTEM FOR VICTIMS OF SEXUAL ASSAULT IN THE MILITARY**

1 message

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**Brian Purchia** <brian@protectourdefenders.com>  
Bcc: mpetersen@protectourdefenders.com

Thu, Jul 18, 2013 at 11:40 AM

**KIRSTEN GILLIBRAND**  
UNITED STATES SENATOR FOR NEW YORK**FOR IMMEDIATE RELEASE****Thursday, July 18, 2013****Contact: Glen Caplin (917) 865-7556****BIPARTISAN MOMENTUM CONTINUES...ANOTHER RETIRED GENERAL COMES FORWARD IN SUPPORT OF GILLIBRAND PROPOSAL TO CREATE INDEPENDENT, NON-BIASED, OBJECTIVE MILITARY JUSTICE SYSTEM FOR VICTIMS OF SEXUAL ASSAULT IN THE MILITARY**

*Former Vermont National Guard Adjutant General and Retired Air Force Major General, Martha Rainville: “This Substantive and Visible Change Will Support a Safer Environment for All of Our Military Men and Women...Will Contribute to a Stronger and More Effective Force”*

*Rainville Was First Woman in the History of the National Guard to Serve as a State Adjutant General, Career Spanned 27 Years in Air Force, Air Force Reserve, Air National Guard – 14 of Those Years in Command Positions*

*Earlier This Week, Senators Rand Paul and Ted Cruz Joined Growing Bipartisan Momentum for*

***Measure Supported by Major Victims' Advocacy Groups and Former JAG Officers Creating Real Reform and Accountability in Military Justice System by Having Trained, Independent Military Prosecutors Make Decisions Over Whether Serious Crimes Go to Trial***

*Washington D.C.* - Just two days after announcing that Senators Rand Paul (R-KY) and Ted Cruz (R-TX) have joined a growing bipartisan coalition of 41 Senators publicly supportive of creating an independent military justice system outside the chain of command, including 34 cosponsors of the Military Justice Improvement Act, Senator Kirsten Gillibrand released a letter from the latest retired General to speak out in favor of this carefully crafted proposal.

In a letter to Gillibrand (see full letter below), former Vermont National Guard Adjutant General and Retired Air Force Major General, Martha Rainville who served in the military for twenty-seven years, including fourteen years in command positions wrote:

*"As a former commander, endorsing a change that removes certain authority from military commanders has been a tough decision," said Rainville. "It was driven by my conviction that our men and women in uniform deserve to know, without doubt, that they are valued and will be treated fairly with all due process should they report an offense and seek help, or face being accused of an offense. When allegations of serious criminal misconduct have been made, the decision whether to prosecute should be made by a trained legal professional. Fairness and justice require sound judgment based on evidence and facts, independent of pre-existing command relationships."*

Rainville, the first woman in the history of the National Guard to serve as a state Adjutant General, joins other voices with military experience who publicly support Gillibrand's bipartisan proposal, including:

**Former JAG Corps officer in the U.S. Navy and Executive Director of Protect our Defenders, Taryn Meeks:**

"In my experience, mid-level commanders, department heads, and military leadership do not want this responsibility. They don't want the burden of convening a court-martial and the entire process is a distraction from the mission. These mid-level leaders are busy with operational demands, and handling complex sexual assault cases occupies their time and energy and is counter-productive to mission readiness."

**Retired U.S. Army Maj. Gen. Dennis Laich:**

"We have relied on the chain of command to deal with this issue, and the chain of command has failed for

decades. America gives us their sons and daughters, and we've failed to discharge the responsibility to take care of them."

**Former Army JAG officer with the U.S. 82nd Airborne Division while stationed in Iraq from 2003-2004 and former Congressman Patrick Murphy:**

"It's time for real, commonsense changes. District attorneys and attorneys general don't have to get permission from mayors or governors to prosecute cases because they're independent. At the felony level, military judge advocates should be independent too."

**Former Air Force officer and law professor Diane H. Mazur:**

"Everything about the proposal takes military needs into account, except for the fact that military leaders don't like change."

The carefully crafted *Military Justice Improvement Act* moves the decision whether to prosecute any crime punishable by one year or more in confinement to independent, trained, professional military prosecutors, with the exception of crimes that are uniquely military in nature, such as disobeying orders or going Absent Without Leave. The decision whether to prosecute 37 serious crimes uniquely military in nature plus all crimes punishable by less than one year of confinement would remain within the chain of command. The *Military Justice Improvement Act* will be offered as an amendment when the annual National Defense Authorization Act (NDAA) is debated on the full Senate floor.

The full letter from former Vermont National Guard Adjutant General and Retired Air Force Major General, Martha Rainville to Senator Gillibrand is here:

*Dear Senator Gillibrand,*

*17 July 2013*

*I am writing to support key changes you proposed in the Military Justice Improvement Act. After spending almost 27 years serving in the USAF, the Air Force Reserve, and the Air National Guard, with 14 of those years in command billets, I am convinced that the system of reporting, investigating and prosecuting serious offenses must change. After years of sexual harassment education, widely publicized scandals followed by corrective actions, and recent examples of system failures to address sexual harassment and assault, we should not expect lasting improvements in the military environment and culture without permanent, substantive changes in how the military services process allegations of sexual harassment and assault along with other violent crimes.*

*As a former commander, endorsing a change that removes certain authority from military commanders has been a tough decision. It was driven by my conviction that our men and women in uniform deserve to know, without doubt, that they are valued and will be treated fairly with all due process should they report an offense and seek help, or face being accused of an offense. When allegations of serious criminal misconduct have been made, the decision whether to prosecute should be made by a trained legal professional. Fairness and justice require sound judgment based on evidence and facts, independent of pre-existing command relationships.*

*As a retired general officer I attend military functions and am invited to speak at forums attended by veterans and those currently serving. I hear from a cross section of soldiers and airmen and more recently, from a group of dedicated Marine women aviators. Sadly, there are many more instances of harassment and assault than I had realized.*

*Sexual harassment and assault continue to poison the culture of our military, and I strongly support placing the decisions to prosecute sexual assault – and other serious crimes – with the military legal system rather than keeping it as a commander's responsibility. An improved and resourced system of well-trained investigative and legal professionals would provide assurance to all who serve that they will be dealt with in a fair, just, timely and consistent manner. This substantive and visible change will support a safer environment for all our military men and women and by doing so will contribute to a stronger and more effective force.*

*Sincerely,*

*Martha T. Rainville*

*Maj Gen, USAF (Ret)*

*Former Adjutant General, Vermont*

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The New York Times

June 20, 2013

# Bills on Military Sex Abuse

To the Editor:

Re “Complex Fight in Senate Over Curbing Sexual Assaults in Military” (news article, June 15):

News reports have not recognized that Senator Kirsten E. Gillibrand’s [bill](#) demonstrates deep understanding of the military justice system.

She made three thoughtful choices: not singling out sexual assault for special treatment but treating all felony offenses the same; leaving minor misconduct under command control but sending felony cases to military lawyers; and leaving full responsibility for “military” crimes (those without civilian counterpart) with commanders.

Everything about the proposal takes military needs into account, except for the fact that military leaders don’t like change.

Senator Carl Levin’s proposal will make the problem worse. It applies only to sexual assault crimes, and then only when prosecution is declined. Cue the screams from defense lawyers and service members that every prosecution is brought for political reasons.

DIANE H. MAZUR

Davis, Calif., June 15, 2013

*The writer, a law professor at the University of Florida and a former Air Force officer, is the author of “A More Perfect Military: How the Constitution Can Make Our Military Stronger.”*



MORE IN OPINION (1 OF 18 ARTICLES)

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## **NINE ROADBLOCKS TO JUSTICE**

### **The Need for an Independent, Impartial Military Justice System**

#### **1. COMMANDER BIAS AND CONFLICT OF INTEREST**

In the military, the accused's commander serves as the Convening Authority (CA) – the person who (1) decides whether the case should go to court-martial and (2) appoints the jury and convenes the trial. This is an inherently biased and inefficient system. The CA is not a lawyer, not a criminal law expert, and may have close ties to the accused. The commander's career may even suffer if assaults happen in his unit or on his watch, and he may have an interest in covering up the crime. The current system also lacks transparency. There is no way to track how well each CA performs their duty and therefore no way to hold them accountable. This system is inherently unfair – and it discourages many victims from reporting.

Victims are often discouraged or sometimes outright told not to report a sexual assault. Of the 26,000 incidents of sexual assaults and other sexual crimes that occurred in 2012, only 3,374 were officially reported. Many times, victims are advised by people in their chain of command that if they report, the victim could face criminal charges or non-judicial punishment for collateral misconduct. This is often enough to silence a victim who is already intimidated or distrustful of the system. Of the victims who chose not to report, 47% indicated fear of retaliation or reprisal as a reason for not reporting.

Convening authority must be removed from commanders and placed in the hands of an objective, independent body. Furthermore, military prosecutors must have a more significant role in this process. Prosecutors – not commanders – who are trained to properly evaluate the evidence and make a decision on whether the case should go to trial, should be the ones reviewing all sexual assault cases. Giving prosecutors a more active and influential role, and taking the decision making from commanders, will help legitimize the military justice system and protect victims.

#### **2. JURY SELECTION IS NOT RANDOM**

Today, military juries are hand selected by the convening authority. They are not randomly selected and could be or appear to be biased. Despite *voir dire*, a process of questioning designed to address bias, jury members who have been hand selected by the commander may have preconceived notions about the case, witnesses, or the outcome.

The military should follow the civilian structure and implement a random, fair, selection of jury members for each trial. This could be as simple as requiring each person who checks into a base, to submit their information for a jury pool database. This would remove the commander's hand from the jury box, and eliminate conflict and bias.

### **3. INEXPERIENCE, MISTAKES, AND PREJUDICE**

Inexperience, mistakes, and prejudice plague the military justice system. From investigators to military judges, the level of experience and training is shockingly low. In the military, attorneys change roles every 2-3 years and will hold a broad spectrum of job responsibilities. This fosters professional inconsistency and dilutes courtroom expertise. The constant change in assignments forces attorneys who may have been serving in non-litigation billets, to suddenly handle complex criminal cases or even to serve as military judges.

Congress should mandate a military justice career track for all services. The Navy has already implemented such a career track with its JAG Corps to increasing success. It allows JAG officers to specialize in criminal justice, hone their skills, and serve in that role continuously. Congress could also create special terms of office for military judges, which would grant more authority and independence. These changes would engender expertise in the criminal process and prevent otherwise inevitable mistakes.

### **4. TRAUMATIC ARTICLE 32 HEARINGS**

In the military criminal justice process there is a preliminary (Article 32) hearing to determine whether enough evidence exists to proceed to trial. In practice, it is a mini-trial that can last for days, during which the victim is forced to testify for hours, usually without benefit of his or her own counsel. Victims are re-traumatized by defense counsel through lengthy cross-examination; potentially designed to intimidate, confuse, exhaust, and demoralize him or her. After a traumatic Article 32 hearing, it is not unusual for victims to decline further participation in the case.

Article 32 hearings should more closely model the federal grand jury process, with adaptations for the military environment. Instead of an Investigating Officer serving in the role of judge there should be a panel of three persons, similar to an Administrative Board. The prosecution alone should attend and present evidence. The defense should not be present, but entitled to a transcript of the testimony. After the government presents its evidence, the panel should deliberate and make an immediate determination on probable cause. This would expedite the process, protect victims, create a written record, and legitimize the system.

### **5. VICTIMS MUST HAVE THE RIGHT TO LEGAL REPRESENTATION**

The military justice process is confusing and overwhelming for victims. Sexual assault coordinators provide an important role, but they cannot and do not take the place of legal representation. Victim representation by a full-service attorney is essential to prepare for Article 32 hearings, object during pre-trial hearings, file motions under MRE 412 and 513 to protect against unwarranted intrusion into mental health and sexual histories, meet with defense counsel, etc.

The Air Force implemented a program to provide victims with representation through its Special Victims Counsel (SVC) program. Recently, Secretary of Defense Hagel mandated that the other services create similar programs. But the roles of SVCs and legal representatives for victims are still being defined and tested. Although the military's highest court, the Court of Appeals for the

Armed Forces (CAAF) recently ruled that SVCs could represent victims in court, the parameters of that representation are still unclear. Congress and the Services must do all they can to ensure victims' rights are fully protected by making that representation expansive and meaningful.

## **6. GOOD MILITARY CHARACTER SHOULD NOT BE A DEFENSE**

In the military, there is a defense called the “good military character” (GMC) defense, also known as the “good soldier defense”. It allows an accused to call witnesses and present evidence about his character and military service. In essence, the defense can take an entire day or more to tell the jury what a great soldier, sailor, airmen or marine the accused is. At its worst, the GMC defense can enable an accused to be acquitted of rape simply because he is good at his job. It also allows defense two bites at the mitigation apple. The defense can present GMC evidence both on the merits (guilt or innocence phase) and again at sentencing. Therefore, juries hear twice how the accused has done good things for his service and his country.

The GMC defense should be eliminated from the merits phase of trial. Congress must enumerate in MRE 404, which addresses character evidence, that GMC is not a pertinent character trait on innocence or guilt for criminal offenses, except those offenses that are specific military crimes. This exception would not include Art 120 cases and other common law crimes.

## **7. MILITARY SENTENCING FAILS TO HOLD OFFENDERS ACCOUNTABLE**

In contested courts-martial, military juries have the sole authority for sentencing (unless the accused elects a bench trial) and there exist no minimum guidelines to suggest an appropriate sentence. In fact, military judges instruct juries that sentencing options include: “no punishment at all” or only a fine, reprimand, restriction, hard labor, forfeitures, confinement, or a punitive discharge. Unfortunately, even in serious crimes, juries often award only days of confinement and retain the defendant in the service – thereby sending him back to his unit.

Military judges should be assigned sole responsibility to sentence an offender and Congress should mandate the establishment of minimum sentencing guidelines, following the well-established civilian federal system. Sentencing by judges would also make the system more efficient, because it would encourage plea bargaining. With jury sentencing, defense counsel know that even if they lose their case on the merits, they are still likely to receive a very light punishment. However, if judges are given sole sentencing authority, defense will be more inclined to negotiate a plea in order to get some protection, knowing they do not have the safety net of jury sentencing. More offenders will be held accountable, more victims will see justice, and the system will be less burdened.

## **8. CLEMENCY & APPEALS ARE ANOTHER CHANCE FOR OFFENDERS TO AVOID PUNISHMENT**

After trial is over and before any appeals have even been initiated, the clemency process under Article 60, affords the accused another significant chance to go free or receive substantially reduced punishment. The clemency process occurs via communication directly between the defense counsel and the Convening Authority (CA). There are no rules of evidence and the

defense can submit anything they wish for consideration, including unreliable statements or documents that were inadmissible at trial. Unchecked clemency authority allows a CA to unilaterally overturn a verdict or sentence without justification. This is inherently unjust.

Clemency should only be entertained after all appeals have been exhausted and the responsibility should be left to higher authority, such as the Secretaries of the services, who are in a better position to make unbiased, fair decisions.

In the military system, defendants also get automatic appeals even if they plead guilty. This is a waste of resources and increases the chance an offender will be set free on a technicality. As in the Federal system, defendants should waive their right to appeal when they plead guilty. It would increase efficiency, unburden the system, and ensure that people who plead guilty for their crimes are held accountable.

## **9. A CULTURE OF MISOGYNY AND VICTIM BLAMING**

Within the military services, there still exists a widespread, underlying culture of misogyny and victim blaming. Sadly, we have too often seen this undercurrent rise to the surface with “traditions” in which women are subjugated and demeaned. Victims – both male and female – are blamed for their attacks, harassed, ostracized, and retaliated against.

The military’s leadership must be instructed from the top down, that this behavior in their units will lead to their being relieved from duty. Most important, leaders must be seen as upholding the standards they demand of their troops and must be held accountable for condoning or tolerating harassment. In addition, there must be a more convincing system wide education and indoctrination effort. The military’s young recruits must understand these practices are not tolerated and that violators will be charged with harassment.

This information can also be found on our website at: <http://www.protectourdefenders.com/roadblocks-to-justice/>



April 22, 2013

Mr. Chuck Hagel  
Office of the Secretary of Defense  
1000 Defense Pentagon  
Washington, D.C. 20301-1000

Dear Mr. Secretary,

I am writing to request that you exert leadership to have Lt. General Franklin dismissed from the Air Force, because of his highly inappropriate decision to overturn the conviction of Lt. Colonel Wilkerson for Aggravated Sexual Assault. His decision clearly conflicts with his responsibility to further good order and discipline within the service.

As the enclosed analysis of Lt. General Franklin's letter, in which he attempts to justify his decision makes clear, he used failed and biased reasoning, and unreliable information to overturn Lt. Colonel Wilkerson's conviction for Aggravated Sexual Assault. He fails to make even a plausible case for his action.

Furthermore, Lt. General Franklin's initial decision to even review Wilkerson's conviction, while within his authority, was completely optional. As you know, the military justice system has a separate appellate process with designated courts to address any issues that might have arisen as to appropriateness of the conduct of the trial.

Franklin cited eighteen reasons to justify his conclusion that there was reasonable doubt in Wilkerson's case, despite the fact that a jury, consisting of one Lt. Colonel and four Colonels, found Wilkerson guilty of committing aggravated sexual assault.

In addition to the eighteen reasons Franklin enumerated, in the preamble of his letter Franklin made the following assertions as to why he took the unusual step to set aside the conviction by the jury of senior officers he selected:

1) *“This was the most difficult court case I have ever faced as a convening authority...I struggled with referring this case to a court-martial after reviewing the results of the Article 32 investigation”*

Really? A senior JAG officer and former judge conducted the investigation. The process was extensive and very thorough. On the polygraph test, Lt. Col. Wilkerson’s answers to key questions were each deemed “deception indicated.”

As will become clear from the analysis in the itemized list enclosed, Lt. Col Wilkerson and his wife Beth Wilkerson gave highly inconsistent testimony. Independent witnesses gave statements consistent with the victim’s statement. Based on the information available before the trial, as confirmed by the proceedings of the trial itself, there is no reason to conclude that it should have been a close decision as to whether to convene the General Court-Martial.

2) *“This was the most extensive clemency request package that ...I had ever seen. ...most pleaded with me ...they had grave concerns...with fairness of the trial”*

What has the fact that Lt. Col. Wilkerson’s and, in some cases, Lt. Gen. Franklin’s friends writing a multitude of letters have to do with guilt or innocence? It is unconscionable that Lt. Gen. Franklin would question the professionalism of the prosecutors and Judge without stating any basis in fact. This does a disservice to this Judge and these prosecutors in particular, as well as those who serve throughout the entire military justice system. The defense counsel objected only 5 times in 6 days. This is hardly an indication that the prosecution and Judge ran roughshod over the defense and committed transgressions that resulted in a flawed verdict.

3) *“Letters from Lt. Col and Mrs. Wilkerson’s family, friends and fellow military members painted a consistent picture of a person who adored his wife and 9-year old son, as well as a picture of a long-serving professional Air Force officer. Some provided additional clarity to me on matters used effectively by prosecution in trial to question the character and truthfulness of both Lt. Col and Mrs. Wilkerson.”*

Franklin conveniently ignored Wilkerson’s previous bad behavior unrelated to this case. What else would he or anyone expect Wilkerson’s family and friends to write about him in clemency letters?

In addition, his veiled criticism of the prosecution team is without merit. The defense and Wilkerson's friends attacking this prosecutorial team and Judge is an affront to their professionalism and dedication. It is correct that the prosecution very "effectively", in fact very accurately, challenged the character and truthfulness of Lt. Col. and Mrs. Wilkerson. Their inconsistent and inaccurate statements called for nothing less.

4) *"I reviewed the entire record of trial...my deliberations became extensive."*

Franklin considered assertions not in evidence and clearly did not either understand or accept the facts as presented in the record. He is not a lawyer, was not present to hear the testimony, and thereby was hardly in a position to better judge the veracity of the witnesses than were the five members of the panel he selected. Moreover, in overturning Wilkerson's conviction, he acted against his own legal counsel's recommendation.

Attached is a verbatim list of the eighteen statements Franklin made in his letter to the Secretary of the Air Force, Michael Donley, in an attempt to justify his action overturning Lt. Col. Wilkerson's conviction. Following each of Franklin's explanatory statements, are excerpts from the record of the trial containing evidence and testimony relevant to the topic raised by Franklin at that point.

In every case, the facts in evidence and the weight of the credible trial testimony directly contradict the statement Franklin makes to support the conclusion he reached, purportedly based on his "review of the entire record" and "extensive" deliberations.

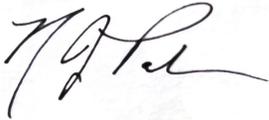
In this attempt to justify his actions, Lt. Gen. Franklin repeatedly substituted his judgment for the judgment of the court members and the military judge. He offers nothing new. The only evidence Franklin viewed that the members did not was found baseless by the military judge. Rather than look with suspicion on inconsistent or novel assertions made after the trial in clemency letters from defense witnesses, who previously testified at court, Franklin accepts their claims as gospel. He weighed the opinions of others as if it were fact, some of which had been disallowed in court. It is telling that these particular defense witnesses did not make these claims when under oath and subject to cross-examination. The bottom line is: what powers could Lt. General Franklin possess that would make him a better judge of the credibility of witnesses than the actual court members, who observed the testimony?

His pathetic excuses and sophomoric logic leave no doubt that he did nothing more than protect a fellow pilot.

His naive belief that senior officers cannot commit crimes is Exhibit A regarding what is wrong with commanders being in charge of prosecuting sexual offenders. He has destroyed the facade that commanders can be trusted to do what is right.

Lt. General Franklin must be fired. Furthermore, commanders, who are not trained in legal process and are immersed in conflicting self-interests and biases, should not have authority over investigation, prosecution, judicial, or appellate proceedings

Sincerely,

A handwritten signature in black ink, appearing to read 'N. Parrish', written in a cursive style.

Nancy Parrish,  
President

Enclosure: Analysis of Lt. Gen. Franklin's eighteen reasons to overturn Lt. Col, Wilkerson's conviction.

cc: Barack Obama, President of the United States  
Carl Levin, U.S. Senator and Chairman, Senate Armed Services Committee  
Buck McKeon, U.S. Congressman and Chairman, House Armed Services Committee  
Members of the Senate Armed Services Committee  
Members of the House Armed Services Committee  
Michael B. Donley, Secretary of the Air Force  
General Mark Welsh, Chief of Staff, U.S. Air Force  
Robert Taylor, Acting General Counsel, DOD



**DEPARTMENT OF THE AIR FORCE  
HEADQUARTERS THIRD AIR FORCE (USAFE)**

12 March 2013

Secretary Donley

I am keenly aware of the significant Congressional interest and media coverage of my 26 Feb 13 decision as a General Court-Martial Convening Authority (GCMCA) to disapprove the findings and dismiss the charges in the court-martial U.S. vs. Lt Col James H. Wilkerson III. I am troubled by the recent wave of continuing negative and biased dispersions being cast upon the Uniform Code of Military Justice (UCMJ), the constitutional court-martial process, and the weighty and impartial responsibility of a convening authority to fairly administer justice.

Accusations by some that my decision was the result of either an apparent lack of understanding of sexual assault on my part, or that because I do not take the crime of sexual assault seriously are complete and utter nonsense. I unequivocally view sexual assault as a highly egregious crime. I take every allegation of sexual assault very seriously. As a commander, I cannot think of a more destructive act to good order and discipline and to the maintenance of a cohesive and effective fighting force. Likewise allegations that I made this decision to protect a Lieutenant Colonel pilot or because I was a former Aviano/31 Fighter Wing Commander are equally preposterous. I have many responsibilities as the Commander of Third Air Force, one of those being a GCMCA. In this role, I review and decide all matters of military justice fairly and impartially. I review each court-martial thoroughly and independently.

The UCMJ directs that a convening authority may, in his or her sole discretion, set aside any finding of guilty in a court-martial. This broad and independent discretion is a direct function of military command. There are legitimate reasons, past and present, why the UCMJ does not require a convening authority to explain his/her actions, and in some ways, it even appears rightly to discourage convening authorities from explaining their decisions so as not to cause even a perception of Unlawful Command Influence.

I have no desire to set an unfortunate and potentially damaging precedent for present and future convening authorities. By law and in the interests of justice, they should not believe they are obliged to provide such explanations. No one has asked or directed me to provide this information to you or to anyone else. Yet due to the ongoing controversy that I have recently observed in the "court of public opinion," it is appropriate, in this case only, to provide you a sense of what I considered in arriving at my decision.

To begin, this was the most difficult court case that I have ever faced as a convening authority. The case was comprised of mostly consistent testimonies of a husband and wife in contrast to the testimony of an alleged victim. There was no confession or admission of guilt by the accused and no physical evidence. I even struggled with referring this case to a court-martial after reviewing the results of the Article 32 Investigation. As you know, the evidentiary standard of probable cause to refer charges to a court-martial is much less than the very high standard of proof beyond a reasonable doubt to convict in a court-martial. Consequently, after my review of the evidence within the Article 32 investigation report, and after my many discussions with my

Staff Judge Advocate (SJA), I concluded that sufficient probable cause existed to refer the case to trial.

After the court-martial, I was somewhat surprised by the findings of guilty based upon the evidence that I had previously reviewed and the high constitutional standard of proof beyond a reasonable doubt in a court-martial. However, I gave deference to the court-martial jury because they had personally observed the actual trial. I subsequently received the request for clemency by Lt Col Wilkerson and his defense counsel along with its many compelling clemency letters. To be honest, this was the most extensive clemency request package that either my SJA or I had ever seen. I read all of the clemency letters (91 of them) in detail and some I read several times. Most pleaded with me to review the entire court transcript and all the evidence in detail because of grave concerns that they had with the fairness of the trial.

Letters from Lt Col and Mrs Wilkersons' family, friends, and fellow military members painted a consistent picture of a person who adored his wife and 9-year old son, as well as a picture of a long-serving professional Air Force officer. Some of these letters provided additional clarity to me on matters used effectively by the prosecution in the trial to question the character and truthfulness of both Lt Col Wilkerson and Mrs Wilkerson. Some letters were from people who did not personally know the Wilkersons, but wanted to convey their concerns to me about the evidence and the outcome of the case.

Due to my previous concerns with Lt Col Wilkerson's case prior to referral and the concerns identified in defense clemency matters, my deliberation became extensive. Accordingly, I began to personally review and consider the entire record of the trial and its accompanying papers. I reviewed the Article 32 investigation report again. I reviewed the entire court transcript and all the other evidence the jury reviewed (captured on compact discs or in hard copy photos). I looked at some evidence a second and third time and I re-read particular portions of the court transcripts. I reviewed affidavits provided after trial by the prosecuting attorneys and I also read a personal letter to me from the alleged victim. I carefully looked at everything, evidence supporting the findings of the court-martial and evidence against. The more evidence that I considered, the more concerned I became about the court martial findings in this case.

After my extensive and full review of the entire body of evidence and my comprehensive deliberation spanning a three-week period, I only then finally concluded there was insufficient evidence to support a finding of guilt beyond a reasonable doubt. Based upon my detailed review, I could not conclude anything else. Accordingly, I could not in good conscience let stand the finding of guilty.

Please note, at the beginning of my thorough review, my SJA recommended approving the court-martial findings and approving the sentence of one year confinement. In consideration of Lt Col Wilkerson's family and his lengthy military service, my SJA also recommended commuting the sentence of dismissal to an additional two years of confinement. However, after we engaged in numerous subsequent conversations during my extensive deliberation of the evidence, he told me that he had come to fully respect my concerns with the evidence in the case and my conclusion that the evidence did not prove Lt Col Wilkerson guilty beyond a reasonable doubt. At the end, he advised me that I could only approve court-martial findings and a sentence that I found correct in law and in fact. Based upon his personal knowledge of how extensively and

thoroughly I had reviewed and deliberated on this case, my SJA said he fully respected my decision to disapprove findings in this court case.

Below is a portion of the considerable evidence which caused me, in part, to form my reasonable doubt as to Lt Col Wilkerson's guilt. I reviewed all the evidence below, and other evidence, holistically and comprehensively in reaching my conclusion:

- a) The evidence indicated that the alleged victim turned down at least three distinct offers of a ride from the Wilkerson home back to her room on base. Whenever she was offered a ride, she seemingly had a different reason to stay at the Wilkerson home;
- b) When shown clear photos of all bedrooms of the house, the alleged victim could not identify the bed in which she slept and/or where she claimed the alleged assault occurred;
- c) At different times, the alleged victim's description of the hours leading up to the alleged assault varied, as did her description of the state of her clothing during and immediately after the assault;
- d) In her initial statement, the alleged victim said that she "passed out" (went to sleep) between 0045 hours and 0100 hours in the morning, and in her court testimony she said that her next memory was that she was in a dream state and was subsequently awoken at about 0300 hours by Mrs Wilkerson turning on the light. Yet the alleged victim's phone records and her testimony in court showed that she was texting on her phone to a friend at 0143 hours;
- e) The alleged victim did not remember whether or not the man who she says assaulted her had facial hair. In addition, she said his face was only 6 inches away from hers. Lt Col Wilkerson had a full mustache and the alleged victim had already seen him throughout the recent evening;
- f) The alleged victim's version of events describes a path out of the house from the downstairs bedroom (the only room that she could have logically stayed in). This path was not feasible based upon the actual layout of the house;
- g) The alleged victim claimed that she woke to a bright light being turned on in the room in which she was sleeping, and Mrs Wilkerson yelling at her to "get out of my house." The room that she stayed in had an energy-saving ceiling light that is dim for the first few minutes of operation. Although the military judge did not allow the members of the jury to visit the house, the defense counsel made a video to document what would have been the alleged victim's actions based upon her testimony. I watched the entire video twice. It shows the very dim light and the only path to get out of the house from the only room that she could have logically stayed in. It was not consistent with her description of the path that she said she took out of the house;
- h) Mrs Wilkerson's version of the events at her house the night of the alleged incident was substantially consistent from her initial OSI interview statement, to her Article 32 investigation statement, and through her court testimony. And my detailed review of all phone records (of all the key witnesses) validated Lt Col and Mrs Wilkerson's combined

version of what occurred on the night in question and the next morning. Please note, I spent close to 4 hours looking at phone record evidence alone. In particular, I determined that the alleged victim's cell phone records (times and durations of incoming/outgoing calls and text messages) when aligned with the testimony and phone records of the friend of the alleged victim, all merged to a common picture that was more consistent with Lt Col and Mrs Wilkerson's combined version of events;

- i) Regarding the next morning after the alleged incident, Mrs Wilkerson claimed she slept in until 0900 hours. In closing arguments, the prosecution argued she was "lying" because she had outgoing calls, incoming calls, and texts before 0900 hours. The defense counsel countered that it was possible that Lt Col Wilkerson was using her phone (I am aware that occasionally wives will use husbands' phones, husbands will use wives' phones, kids will use adults' phones, etc.). The prosecution argued that the defense explanation was impossible since phone records showed Lt Col Wilkerson was on his own phone/texting at apparently the same time. When I closely checked the phone records to verify this prosecution argument, I determined the times of Lt Col Wilkerson's phone-use were different from his wife's cell phone-use -- thereby making it entirely possible that Lt Col Wilkerson was using Mrs Wilkerson's phone before 0900 hours. Likewise, the letter of clemency from the mother of the two guest-children (who were staying overnight at the Wilkerson house), specifically indicated that she called Mrs Wilkerson's phone that morning at approximately 0700 hours and that Lt Col Wilkerson answered it, saying his wife was still asleep. She also said that she spoke with her children during this same phone call. In addition, when she subsequently stopped by the house prior to 0800 hours to check on her children, she said Lt Col Wilkerson was awake/up and that her children said that Mrs Wilkerson was still sleeping;
- j) The Office of Special Investigations (OSI) interviewed these two guest-children, ages 13 and 9 who were guests in the Wilkerson house the night of the alleged incident. Neither awoke or heard any yelling during the time of the alleged incident. Yet, the alleged victim at one point said that Mrs Wilkerson yelled at her to "get out of my house";
- k) In addition, the mother of these two children observed her kids and the Wilkersons the very next day following the alleged incident. She did not notice any change in the Wilkerson's behavior or her children's behavior, or that her children sensed any tension between the Wilkersons. Further, these two children apparently stayed at the Wilkerson house the following night. If an incident occurred as claimed by the alleged victim, it would be highly peculiar for the Wilkersons to volunteer to take care of these two children again the following evening;
- l) Additionally, witness testimony about the Wilkerson marriage before the night in question and in the immediate days and weeks after that night, showed no perceptible tension or change in their relationship. Had the alleged sexual assault taken place as the alleged victim claimed, it would be reasonable to believe that their relationship would change and that close friends would perceive this change;
- m) Witness testimony from a female friend of the alleged victim (who also works at the 31st Medical Group, and who took the alleged victim to the hospital the next day) and her

subsequent letter of clemency (in support of Lt Col Wilkerson), caused me notable additional doubt about the alleged victim's stated version of events. The friend's comments in this clemency letter also indicated a potential reasonable motivation for the alleged victim to have been less than candid in her stated version of the events;

- n) One particular witness was not allowed to testify in court. The primary rationale was that the applicable events of which she had knowledge in regard to the character and truthfulness of the alleged victim occurred 10 years earlier (when the alleged victim was approximately 39 years of age). I reviewed this excluded testimony, as well as the clemency letter of this witness which detailed court proceedings that involved the alleged victim 10 years earlier. The excluded witness had a strong opinion that the alleged victim (now 49 years old) might lie in a court proceeding when it would be in her personal interest to do so;
- o) Significantly, I closely watched the video of the entire OSI interview of Lt Col Wilkerson (3 hours and 25 minutes). I watched it not once, but twice (and several portions I watched additional times). The prosecution effectively used small segments of the video in closing arguments in attempts to portray Lt Col Wilkerson as a liar, or as someone who was trying to cover up misconduct. However, when I twice viewed the video in whole, and I considered his answers in the context of the questions and paths that the OSI attempted to take him down, I believed the entire OSI interview portrayed him as truthful;
- p) In addition, Lt Col Wilkerson waived his rights to remain silent, did not request a lawyer, and appeared cooperative throughout. The Special Agents who conducted the interview utilized a full gamut of investigative interviewing techniques in attempts to garner incriminating statements from Lt Col Wilkerson. He maintained his innocence throughout the interview, provided a written statement, never stopped the interview, nor did he ever ask for a lawyer at anytime. As I viewed the entire interview in whole (twice), it was my consistent impression that Lt Col Wilkerson answered all the questions in a manner like an innocent person would respond if faced with untrue allegations against him;
- q) Lt Col Wilkerson voluntarily agreed to take an OSI polygraph examination. I am fully aware of and considered the polygraph results. As you are aware in a criminal investigation, a polygraph is only an investigative tool to assist in the potential focus of the investigation and/or to attempt to elicit admissions of guilt. It is not a "lie-detector test," nor is it "pass" or "fail." Because of the inherent unreliability of polygraphs, they are entirely inadmissible in a court-martial. Ultimately, Lt Col Wilkerson has consistently maintained his complete innocence -- throughout two lengthy OSI interviews, through the entire court-martial, and throughout his nearly four months in prison (following the court-martial and during the post-trial process);
- r) Finally, I do not assert in any way that the event as argued by the prosecution was out of the realm of the possible. However when I considered all the evidence together in total, the evidence was not sufficient to prove this alleged version by the prosecution beyond a reasonable doubt. In addition, and as simply one more point of reference, I was perplexed in relation to this conundrum -- Lt Col Wilkerson was a selectee for promotion

to full colonel, a wing inspector general, a career officer, and described as a doting father and husband. However, according to the version of events presented by the prosecution, Lt Col Wilkerson, in the middle of the night, decided to leave his wife sleeping in bed, walk downstairs past the room of his only son, and also near another room with two other sleeping guest-children, and then he decided to commit the egregious crime of sexually assaulting a sleeping woman who he and his wife had only met earlier that night. Based on all the letters submitted in clemency, in strong support of him, by people who know him, such behavior appeared highly incongruent. Accordingly, this also contributed, in some small degree, to my reasonable doubt.

There were some matters of evidence that I could not reconcile. For example, I did have questions about differences in some witnesses' respective versions of events that conflicted with the combined testimony of Lt Col and Mrs Wilkerson. Accordingly, I scrutinized the allegations and arguments that the Wilkersons were untruthful in these instances. The majority of these inconsistencies had plausible alternate explanations. Those that did not were not independently conclusive, nor did all of them put together satisfy me beyond a reasonable doubt of Lt Col Wilkerson's guilt.

Moreover, minor inconsistencies between Lt Col Wilkerson and Mrs Wilkerson's versions of events indicated to me that they had not colluded to manufacture a "unified story." In fact, if their two separate versions were too consistent, I would have reasonably been skeptical of them. After I reviewed all the evidence, it appeared to me that, at the time of their OSI interviews, the two Wilkersons were simply trying, in good faith, to recall an evening that had occurred almost 3 and ½ weeks prior. After consideration of all the matters I have mentioned, as well as other matters within the record of trial, I impartially and in good faith concluded that there was insufficient evidence to prove beyond a reasonable doubt that Lt Col Wilkerson was guilty.

Obviously it would have been exceedingly less volatile for the Air Force and for me professionally, to have simply approved the finding of guilty. This would have been an act of cowardice on my part and a breach of my integrity. As I have previously stated, after considering all matters in the entire record of trial, I hold a genuine and reasonable doubt that Lt Col Wilkerson committed the crime of sexual assault. As a result, I would have been entirely remiss in my sworn military duty and responsibility as a GCMCA if I did not release someone from prison whose guilt I did not find proven beyond a reasonable doubt. Accordingly, I knew that my court-martial action to disapprove findings and to dismiss the charges was the right, the just, and the only thing to do.

In summary, I exercised the obligation of a GCMCA exactly as required by the UCMJ, when after my lengthy review and deliberation of the evidence, I had reasonable doubt as to Lt Col Wilkerson's guilt. Sir, I provide this letter for you to use or to share with others as you deem appropriate in relation to this case or in relation to the lawful and necessary discretion of a court-martial convening authority.

Very Respectfully,



CRAIG A. FRANKLIN, Lieutenant General, USAF  
Commander, Third Air Force



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**Lt. General Franklin's list of 18 reasons whereby he concluded that he was justified in overturning the conviction of Lt. Colonel Wilkerson's for aggravated sexual assault, followed by relevant quotations from the court record, witness statements, related evidence and analytical commentary on the validity of Franklin's attempted justification:**

**Franklin explanation a)** *"The evidence indicated that the alleged victim turned down at least three distinct offers of a ride from the Wilkerson home back to her room on base. Whenever she was offered a ride, she seemingly had a different reason to stay."*

This first explanation, supposedly as a basis for finding reasonable doubt, offered by Franklin is factually wrong and was addressed directly through a question asked by the court members (the equivalent of civilian jury members), during the trial, after both sides rested.

In particular, the members asked the victim the following:

Q. Why didn't you leave the Wilkerson house when you were offered rides from various people including, [name redacted], Beth Wilkerson, and Suzanne Berrong?

A. Okay. [name redacted] never offered me a ride home. Beth Wilkerson -- she did offer me a ride, but she was going to drop me off outside the gate. I didn't know where my shoes were. I didn't want to walk, in March, down the road through the gate, and also I had been drinking. Suzanne -- I felt really bad. You know I was upset: I called her, I woke her up. She was in bed. Beth was saying you know "You can stay here. You can stay here." After talking to Suzanne for a while, I just thought: "I'm not going to make her get out of the bed and drive all the way over to the house." I didn't know how far it was, but Suzanne lives in Pordenone -- and come pick me up, take me to the TLF, and then go back home in the middle of the night. So, it just seemed the easiest thing to do at that point.  
(Record at 910 lines 1-20)

[name redacted] confirmed he did not offer Kim a ride home:

Q. And when you left that night, you did not offer Kim a ride home, correct?

A. No.

(R. at 593 lines 18-20)

Suzanne Berrong's testimony verifies she was sleeping when Kim called her at 12:23 AM on 24 March 2012 (P.26 OSI):

Q. So where were you at midnight?

A. I'd already gone home, so I was home in Pordenone.

Q. Were you up or were you in bed or. . .

A. I was already in bed asleep.

(R. at 616 lines 3-6)

Moreover Ms. Berrong testified Kim Hanks was unhappy to have been left at the Wilkerson residence.

When asked what the tone of the conversation was, Ms. Berrong testified:

A. "She, ah, she's a bit irritated because she had been left at the house -- at a house -- that the people she came with had left her there, and she was irritated at this -- a little upset about it."

(R. at 616 lines 18-20)

Shockingly, Lt Gen Franklin claims to have read the record of trial in its entirety and spent three weeks agonizing over the case. Yet, his very first excuse for finding reasonable doubt was addressed head on by the court-martial members, the very members he selected. The members asked Kim Hanks why she stayed, and their verdict is proof they were satisfied with her answer. It is beyond belief Franklin would view himself as in better position, to judge the answer to a question the court asked, than the court members were. Moreover, Kim Hanks was not offered three distinct rides to her room on Aviano Air Base. She was offered one ride part way home and decided to withdraw her request that her friend come to get her and take her home. She was upset she was left at the Wilkerson residence, but understandably, after being offered a place to stay, did not want to make her friend get out of bed to pick her up.

**Franklin's explanation clearly does not match the facts. It appears he may have simply regurgitated the clemency narrative offered by Wilkerson's supporters.**

**Franklin Explanation b)** *"When shown clear photos of all bedrooms of the house, the alleged victim could not identify the bed in which she slept and/or where she claimed the alleged assault occurred."*

Kim Hanks was shown pictures from a house she briefly visited for a matter of a few hours, 9 months earlier. The defense's own forensic psychologist testified about memory and had to concede it would not be surprising someone would not remember details of a house in Kim Hanks situation. (R. at 655 lines 2-21 and 656 lines 1-8).

Again, at the close of evidence, the jury asked additional questions of Ms. Hanks concerning the beds. She was certain she did not sleep in the bed that Wilkerson claimed she did. Once more the members asked about this very issue and obviously were satisfied with Kim Hanks' response.

**It is uncontroverted that Kim Hanks slept at the Wilkerson residence and it is hardly surprising she may not recognize a bed when shown a photograph 9 months after the sexual assault. In this case, while Franklin’s statement may be correct, it has no reasonable implication regarding Kim Hanks’ veracity and no basis for a finding of reasonable doubt regarding Wilkerson’s guilt.**

**Franklin Explanation c)** *“At different times, the alleged victim's description of the hours leading up to the alleged assault varied, as did her description of the state of her clothing during and immediately after the assault.”*

Franklin's summary conclusion is without merit. How did her description change? He gives absolutely no examples of how it changed. Rather, he just boldly asserted that it did without any proof. Ms. Hanks reported the sexual assault to her friend whom she called as soon as she left the Wilkerson home and within 15 minutes of the crime. (P13 OSI) She told her treating nurse about the assault the next morning. She also told the SARC and a psychologist. She made two statements to the office of the special investigations and testified at an Article 32 hearing. Her testimony at trial consisted of about 80 pages of testimony. She was subjected to over an hour of cross-examination. General Franklin did not list significant variations. Kim Hanks' description of the "state of her clothing" never wavered. She always stated she went to bed with her clothes on. She always stated she was unsure if Lt Col Wilkerson was touching her breasts over or under her clothes. She always stated Wilkerson's hand was inside the front of her pants, and she always stated his finger was inside her vagina and it hurt. [Name redacted] did state she believed Kim said her pants were unbuttoned. Kim was asked about that in cross-examination:

Q. Did you tell [name redacted] your belt was undone or that your pants were undone?

A. No. She must have misunderstood me.

(Record 271 20-22)

**Clearly, the court (jury) members understood that [Name redacted] could have misunderstood Kim Hanks or [name redacted] simply remembered incorrectly. Once again the issue was before the finders of fact and they found Kim Hanks credible. Again there was clearly no basis for reasonable doubt in this regard.**

**Franklin Explanation d)** *“In her initial statement, the alleged victim said she "passed out" (went to sleep) between 0045 hours and 0100 hours in the morning, and in her court testimony she said that her next memory was that she was in a dream state and subsequently awoken at about 0300 hours by Mrs. Wilkerson turning on the light. Yet the alleged victim's phone records and her testimony in court showed she was texting on her phone to a friend at 0143 hours.”*

Yet again, this phantom reasonable doubt was also directly addressed at trial:

Q. Now Ms. Hanks, just to clarify, you did not have a watch on the night of 23 March 2012, correct?

A. That's correct.

Q. Were you in anyway trying to keep track of the exact times when they were occurring prior to being here?

A. No.

Q. Did you have any reason to believe that you might have to remember the exact times of everything to testify in a court-martial before you went to bed?

A. No.

(R. at 295 lines 9-17)

Q. And in that note [intake sheet], defense counsel, in this statement defense counsel made a lot to do about the fact that you said you went to bed at about between 0045 and 1 o'clock in the morning, right?

A. Yeah, I was ball parking.

(R. at 301 lines 13-16)

**The court members evaluated Ms. Hanks' explanation and found her credible. Apparently, Lt Gen Franklin believes women must keep a chronology of their daily activities in case they are sexually assaulted. Furthermore, when Beth Wilkerson made an equivalent incorrect time estimate, Franklin saw no issue with the discrepancy. Again, there is no basis for reasonable doubt here.**

**Franklin Explanation e)** *"The alleged victim did not remember whether or not the man who she says assaulted her had facial hair. In addition, she said his face was only six inches away from hers. Lt Col Wilkerson had a full mustache and the alleged victim had already seen him throughout the evening."*

That Kim Hanks saw Lt Col Wilkerson, off and on, over several hours is not in dispute. She identified the man who assaulted her as Lt Col Wilkerson. She was asked about this issue at trial during cross-examination:

Q. Now you say that the man you saw when your eyes opened up, that was six inches away, you say that was Colonel Wilkerson's face, correct?

A. Yes.

Q. Is it as it appears to you today -- was it as it appears to you today?

A. Ah, I suppose.

Q. Okay, well, you've previously been asked whether he had facial hair, and you said you don't recall that he had any facial hair, correct?

A. I just saw his -- what I saw was his face because his eyes -- he had his eyes shut and his hair -- the color.

Q. You were asked at the Article 32 hearing where you testified -- you remember that?

A. Yes.

Q. Whether you recalled any facial hair, and you said you did not recall any facial hair, correct?

A. I couldn't remember if had facial hair or not. All the guys were wearing moustaches for March -- March something, but I couldn't specifically say if he had a moustache or not.

Q. Right, you've since learned that they had moustaches because it was Moustache March?

A. No, I haven't since learned. They had them. They were joking about them at the bar.  
Q. In any event, when you were asked at the Article 32 hearing whether he had any facial hair, you said you did not -- when you were asked if the man that you saw, whose face was six inches away, whether he had any facial hair, you said you did not recall seeing any facial hair.

A. I didn't recall if I saw any or not, right. I didn't want to superimpose, but I knew that they were talking about it the night before -- but I couldn't definitely identify facial hair.  
(R. at 270 lines 1-22 –R. 271lines 1-2)

Q. The individual whose hands were in your pants when you woke up that morning, is he here in the courtroom today?

A. Yes. He's right there.

Q. Where is he sitting?

A. He's right there. [Pointing to the accused.]

Q. Is there any doubt in your mind that he is, in fact, the individual who you woke up to?

A. No doubt at all. (R. at 249 lines 9-13 and lines 16-17)

**The court members also had no doubt. Once again this issue was squarely before the fact finders, and they believed Kim Hanks' explanation and found her credible. To this day, Lt Gen Franklin has yet to explain what special powers he possesses that he was a better judge of the credibility of the witnesses than the senior court members he selected. Kim Hanks made it clear that Lt Col Wilkerson is the one who sexually assaulted her.**

**There is again no basis for Franklin to decide to overturn the conviction based on reasonable doubt.**

**Franklin Explanation f)** *“The alleged victim's version of events describes a path out of the house from the downstairs bedroom (the only room she could have stayed in). This path was not feasible based upon the actual layout of the house.”*

Lt Gen Franklin's conclusion demonstrates his blind loyalty to Lt Col Wilkerson. It is uncontroverted that Kim Hanks was at the Wilkerson residence, and it is uncontroverted that she left the house at some time. Franklin can point to absolutely no reason why she would have to lie about how she left the house. Beth Wilkerson was the only person who testified that Kim Hanks slept in the basement bedroom, the room farthest from where Wilkerson claimed to be. Kim consistently stated she was not in the room Beth Wilkerson claimed she was. This issue was squarely before the members and was a central theme of Mr. Spinner's argument.

**By its verdict, it is clear the court believed Kim was telling the truth. Once again, Franklin is substituting his judgment for the judgment of the jury he picked. No basis here for reasonable doubt.**

**Franklin Explanation g)** *“The alleged victim claimed that she woke to a bright light being turned on in the room in which she was sleeping, and Mrs. Wilkerson yelling at her to “get out of my house.” The room she stayed in had an energy-saving ceiling light that is dim for the first few minutes of operation. Although the military judge did not allow the members of the jury to visit the house, the defense counsel made a video to document what would have been the alleged victim's actions based on her testimony. I watched the entire video twice. It shows the very dim light and the only path out of the house from the only room that she could have stayed in. It was not consistent with her description of the path that she said she took out of the house.”*

**This statement demonstrates beyond any doubt Franklin either did not read the record of trial or he intentionally ignored the testimony and arguments of counsel. Kim Hanks was explicit in her testimony that Beth Wilkerson did not yell at her:**

Q. Now with respect to -- well one moment please. As between Beth and her husband, Jay Wilkerson, did they shout or yell at you at the point that you said that they made these statements to you when you awoke from the dream?

A. He spoke very loudly. I wouldn't say it was he yelled, but he said very loudly, "What the hell's going on?" And she did not yell. She said, "Get the hell out of my house," but she didn't yell.

(R. at 280 lines 5-10).

The room Beth Wilkerson claims Kim Hanks stayed in had an energy saving light bulb nine months after Lt Col Wilkerson sexually assaulted her. The video was not taken the morning of 24 March 2012 and is not proof of how the room appeared at that time. Moreover, Kim Hanks denied she slept in that room. The video is inconsistent with Kim Hanks' testimony because it starts with the false premise that that is the room where Lt Col Wilkerson sexually assaulted her. Twice in open court the members watched the same video. In fact, Mr. Spinner closed his two-hour argument by playing the video (R at 1012 line 10). The members watched the same video as Franklin and rejected Spinners' and subsequently Franklin's argument. Moreover, when the members asked to view the home, the defense objected to the members visiting the house (R. at 1032 -33 line 16-18). It is interesting that Mr. Spinner no longer wanted the members to view the house after the prosecution had successfully argued that the room next to the hall had a bed with a lamp next to it. That same bed had Kim Hanks' shoes under it . (R. at 1013 lines 12-21 -1014 lines 9-12). Faced with the truth, Mr. Spinner didn't want the court members anywhere near the Wilkerson residence.

**The evidence at trial does not support any of Franklin’s points. She never said Beth Wilkerson yelled, did not sleep in the room Franklin presumed, and the path out of the house that Franklin studied was not the path from the room where she testified she stayed and where her shoes were under the bed. No basis for reasonable doubt.**

**Franklin Explanation h)** *“Mrs. Wilkerson's version of the events at her house the night of the alleged incident was substantially consistent from her initial OSI interview statement, to her Article 32 investigation statement, and through her court testimony. And my*

*detailed review of all the phone records (of all the key witnesses) validated Lt Col and Mrs. Wilkerson's combined version on the night in question and the next morning. Please note, I spent close to 4 hours looking at the phone record evidence alone. In particular, I determined that the alleged victim's cell phone records (times and durations of incoming/outgoing calls and text messages) when aligned with the testimony and phone records of the friend of the alleged victim, all merged to a common picture more consistent with Lt Col and Mrs. Wilkerson's combined version of events."*

Look back to Franklin's excuse for manufacturing reasonable doubt listed in Explanation 4. He claimed Kim's initial estimate that she went to bed around 1245 to 0100 despite a record of a text being sent at 0143 proved she was unworthy of belief. He did so despite Kim explaining that it was merely an estimate, "ball parking" the time she went to sleep. This for Franklin was a smoking gun of reasonable doubt, which it is clearly not.

Beth Wilkerson made a statement to the OSI on 19 April 2012 stating, "On 23 March my husband along with Col Ostovich, [name redacted], [name redacted] and 3 women I did not know came to our house around 9:00 pm." (I.O. Exhibit 29 P.1 of 4) In her Article 32 testimony, Beth Wilkerson testified they arrived at her house at 2200 hours (10PM). She explained the difference in time was due to her reviewing her phone records. She realized she had made a text at 2138 hours (9:38PM) that she knew had occurred before they arrived at her house.

So, General Franklin clearly concluded that if a victim of a sexual assault estimates what time she went to sleep and later realizes she was off by 45 minutes to an hour after reviewing her phone records, she must be a liar? But, on the other hand he concluded that if the accused's wife is off by an hour, as to when the accused arrived back home and realizes she is wrong after reviewing her phone records, she is consistent and believable. Is it any wonder victims do not trust commanders to do the right thing?

It is clear that Franklin placed great faith in the credibility of Beth Wilkerson. Such faith was misplaced. Beth Wilkerson admitted on the stand that she lied about events on the morning of the sexual assault. Additionally, other witnesses directly contradicted Beth Wilkerson's testimony. Moreover, even defense counsel Spinner contradicted Beth Wilkerson.

The Wilkersons cancelled a previously planned BBQ scheduled for the afternoon of 24 March. Beth Wilkerson testified the BBQ was cancelled because she was tired and fewer people were coming:

Q. All right, so I just want to be clear, okay, so you had a barbeque scheduled for that day, and because you had gone to bed about four...

A. Yes, Sir.

Q. ...and awakened around nine...

A. Yes, Sir.

Q. ...you were tired, right?

A. Yes, Sir.

Q. And because the Newbills canceled, you didn't want to go through with this?

A. Yes.

(R. at 745 lines 12-20 )

The prosecutor then clarified that Beth Wilkerson was not sick on the 24th:

Q. And, other than being tired, you felt fine?

A. Yes, I did.

(R. at 748 lines 8-9)

Yet, that is not what she told her friend the morning of the 24th:

Q. Do you remember sending a text to Anna Reed on the morning of 24 March?

A. Yes, I did.

Q. And in that text, you told Anna Reed, "Hey, I'm sorry, but we have to cancel today," correct?

A. I did.

Q. And you said, "I am very sick this morning," didn't you? Is that true?

A. Uh-huh.

Q. "And not getting any better." Isn't that what the text says?

A. Yes, it does.

Q. "Not sure what is wrong, but I was up to 5 AM." That's what the text says, correct?

A. Yes, that's correct.

Q. "And I can't keep anything down," is what the next text says, correct?

A. Uh-huh.

Q. "Sorry, we'll have to try again soon." Is that what it says?

A. Yes, Sir.

Q. Was that a lie?

A. It was a story just to cancel...

Q. Was that a lie?

A. ...the barbeque.

Q. Was that a lie?

A. Yes, Sir.

Q. So you lied to your friend, and you told her details about being very sick, correct?

A. I did.

Q. You lied to your friend and said you couldn't keep food down, correct?

A. Yes, Sir.

Q. You lied to your friend and said you were up until five in the morning, correct?

A. Correct.

(R. at 748 lines 10-22 – 749 lines 1-14)

Beth Wilkerson admitted she lied and the jury believed she was caught in a series of lies. Lies to her friend about how she was feeling hours after her husband sexually assaulted an innocent victim. Lies to her friend about why she cancelled a previously planned BBQ on the very day her husband sexually assaulted an innocent victim.

The following serve as just a few examples of how Beth Wilkerson was discredited by other witnesses including her friends:

Beth Wilkerson testimony:

Q. Now your testimony is, and I want to make sure you're one hundred percent clear on this, your testimony is the OSI came to your house, correct?

A. Yes, they did.

Q. You offered the shoes to the OSI, correct?

A. I did.

Q. And they refused to take them into evidence, correct?

A. Yes, they did -- or they did not take them.

(R. at 759 lines 1-7)

The OSI testified:

Q. Do you ever remember her offering you a pair of shoes that would have been owned by Ms. Kimberly Hanks?

A. No, Sir.

Q. Did she ever offer you a pair of shoes?

A. No, Sir.

Q. Do you have any doubt in your mind?

A. No.

Q. Did you, in fact, ask her if she had those shoes?

A. Yes we did.

Q. Did you, in fact, ask her if she knew where those shoes were?

A. Yes, Sir, we did.

Q. And, did she express any knowledge of those shoes?

A. No, Sir she didn't.

Q. Do you typically decline evidence at any point in your career as an OSI agent?

A. Never, Sir. (R. at 818 lines 12-22, R. 819 at lines 1-4)

Beth Wilkerson:

Q. On the way, taking [name redacted], back to the base, do you recall talking to her about the evening or if there were any issues about the evening?

A. She mentioned to me that I didn't know who I had in my house, and I assumed she was talking about Colonel Ostovich being the Vice Wing Commander. And she did seem like when she said she wanted to go home, she said she wanted to go home "now." So I was wondering if something was said or done that upset her because of the way she wanted to leave at that point, right then and there.

Q. Did you tell [name redacted] or ask [name redacted] if your husband had done something to upset or to her that night or words to that effect?

A. No, Sir.

Q. Do you recall saying something to that effect, at all?

A. I, ah, I asked her if Osto -- if it had been Osto, because she was not in the house at all either. She spent most of her evening -- I saw her one time on the stairwell, talking to Kim Hanks, and then she was outside with [name redacted] and Col Ostovich.

Q. And would you agree that "Osto" sounds like "Bosco" sounds like "Roscoe"?

A. Yes, Sir.

(R. at 705 lines 1-7 – 706 lines 1-11)

[Name redacted] Testimony:

Q. I want to turn your attention to when you were in the car with Mrs. Beth Wilkerson. Do you remember that time?

A. Yes.

Q. Did you say anything to her such as "You don't know who you have in your house?"

A. No, Sir.

Q. Or any words to that effect?

A. No, Sir.

Q. When you testified previously that she asked you if her husband -- if ". . .my husband did anything?" is that correct?

A. Correct.

Q. Did she say "Did Osto do anything?"

A. No, Sir.

Q. Did she say "Did Roscoe do anything?"

A. No, Sir.

Q. Are you a hundred percent certain that she said ". . .my husband. . .?"

A. Yes, Sir.

(R. at 814 lines 10-22 – 815 lines 1-3)

Beth Wilkerson:

Q. And your testimony is that [name redacted] said that he would take Kim Hanks home, correct?

A. He -- I . . .

Q. That's a simple yes or no.

A. Yes.

(R. at 759 lines 1-2)

Testimony [name redacted]:

A. And that was who was going to take her home. And I said I didn't want to take her home. We were going a different way. [name redacted] and I were going to go back home. So I was under the impression that she [Beth Wilkerson] was going to take her home.

(R. at 586 lines 3-5 )

Q. Thank you. And when you left that night, you did not offer Kim a ride home, correct?

A. No.

(R. at 593 lines 18-20)

When the OSI interviewed Beth Wilkerson on 19 April, she did her best to paint a picture that all three women who visited the house were drunk. "The three women were very drunk." "One last thing is that she [Kim Hanks] was very drunk and did not know who I was and where any of her belongings were. She kept introducing herself to me and asking where her purse and shoes were." At trial, Beth Wilkerson tried to back away from her statement, and now testified, "she rallied after we had a moment talking on the steps. She seemed fine to me . . . she was not intoxicated or falling down drunk."

(R. at 772 lines 5-7)

It's clear to see what's happened here. The Wilkersons wanted to paint Kim Hanks as an out of control drunk who wouldn't go to sleep. It provided them an excuse to throw a shoeless woman out of the house at three a.m. and a reason for others to doubt Kim Hanks' credibility. By trial the defense tactic had shifted to Kim Hanks was not drunk nor was she ever drunk. The witnesses' testimony simply did not support Beth Wilkerson.

Mr. Spinner [defense counsel] repeatedly emphasized this fact in his opening: "Now there is nobody at this point that's drunk, the evidence will show." (R. at 201 lines 21-22 ) "...nobody is out of control, nobody is stumbling, nobody is having trouble getting around." (R. at 202 line 1) "...I think we're talking about 11 o'clock . . . But not very much drinking occurs at this point. People may have one glass of prosecco or a glass of wine, and that's it." (R. at 203 lines 6-9) ". . .the evidence will show that Kim Hanks was not drunk, was not intoxicated, had had some alcohol that night, but she otherwise was walking, was talking and was interacting with people who were in the Wilkerson residence up until the point where she went to sleep." (R. at 206 lines 8-11)

To prove this point, the defense called a forensic toxicologist to testify. On cross-examination the doctor testified:

Q. So just to clarify, you observed all of Ms. Hanks' testimony, correct, Sir?

A. I did.

Q. And your findings were consistent with how she described herself that evening, correct?

A. Yes they were.

Q. So if someone was to say that she was "quite inebriated," that would be inconsistent with your findings?

A. Yes, and all the testimony I heard. She was not drunk, she was not intoxicated -- that's the testimony I heard. (R. at 637 lines 13-21)

Lt Col Wilkerson made it clear in his written statement to the OSI that Beth was claiming Kim was still drunk at 3 AM: ". . . she became concerned that Kim would be able to walk very far -- both in her condition and without shoes." By "her condition" he was clearly implying that she was drunk. (Prosecution Exhibit 1)

**Beth Wilkerson's claim that Kim was "very drunk" was repudiated by every witness including the defense's own expert. This testimony is clearly not consistent with General Franklin's finding that Beth Wilkerson's testimony was consistent and credible. Having the defense counsel's opening and closing argument directly contradict her original statement to the OSI clearly does not "merge to a common picture" of consistency. No basis for reasonable doubt.**

**Franklin Explanation i)** *Regarding the next morning after the alleged incident, Mrs. Wilkerson claimed she slept in until 0900 hours. In closing arguments, the prosecution argued she was "lying" because she had outgoing calls, incoming calls and texts before 0900 hours. The defense counsel countered that it was possible that Lt Col Wilkerson was using her phone (I am aware that occasionally wives will use husbands' phones, husbands*

*will use wives' phones, kids will use adults' phones, etc.) The prosecution argued the defense explanation was impossible since the phone records showed Lt Col Wilkerson was on his own phone/texting at apparently the same time. When I closely checked the phone records to verify this prosecution argument, I determined the times of Lt Col Wilkerson's phone use were different from his wife's cell phone-use -- thereby making it entirely possible that Lt Col Wilkerson was using Mrs. Wilkerson's phone before 0900 hours. Likewise the letter of clemency from the mother of the two guest-children (who were staying overnight at the Wilkerson house), specifically indicated that she called Mrs. Wilkerson's phone that morning at approximately 0700 hours and that Lt Col Wilkerson answered it, saying his wife was still asleep. She also said that she spoke with her children during this same phone call. In addition she subsequently stopped by the house prior to 0800 hours to check on her children, she said Lt Col Wilkerson was awake/up and that her children said that Mrs. Wilkerson was still sleeping.*

The mother testified at both the Article 32 hearing and at trial. Prior to making her claim in her clemency letter she made no mention of calling Beth Wilkerson's phone and talking to Lt Col Wilkerson. In fact, contrary to her seemingly perfect recall in her clemency letter about a phone call made almost a year earlier, the mother testified at trial:

I believe I saw them (her sons) Saturday morning, briefly, on my way to my class, again at the base. I had class that -- the next morning. I can't remember all the details, to be honest with you, because I was in a hurry.  
(R. at 574 lines 3-5 )

In her Article 32 testimony, the mother testified:

"I saw Beth Wilkerson that Saturday. She was normal. I saw both Wilkersons on Sunday."  
(I.O. Exhibit 31 P. 1 of 1)

She makes no mention of talking or seeing Lt Col Wilkerson on Saturday at all, let alone Saturday morning.

But, in her clemency letter, she claims:

"It is true Beth's phone was utilized. I personally called her cell phone and Jay answered it because he said Beth was asleep, just as she testified in court."

The problem is this: The call at 7 the morning of 24 March was not from the mother to Beth Wilkerson's phone. The call was from Beth Wilkerson's phone to the mother. At 0659 a call was made using Beth Wilkerson's phone to the mother. The call lasted about 7 minutes. Approximately one minute later, the mother calls back to Beth Wilkerson's phone and talks for 59 seconds. Three minutes later, Beth Wilkerson's phone was then used to text the mother at 0711. At 0731, the mother makes a 31 second phone call back to Beth Wilkerson's phone. (Prosecution Exhibit 5, pages 16 and 27).

Additionally, Lt Col Wilkerson was using his phone frequently before nine that morning. He received a series of texts starting at 0740 that morning and he sent a series of texts starting at 0817. (Prosecution Exhibit 5 at pages 37, 38 and 44)

So the phone records that Franklin claims to have spent 4 hours reviewing show just the opposite of what the mother is claiming for the first time in her clemency letter. The first phone call was not from her to Beth Wilkerson. The first phone call was from Beth Wilkerson to the mother. This was followed by two more phone calls and a text over the next half hour.

So, the mother when subject to cross examination and under oath makes no mention of talking to Lt Col Wilkerson on Saturday morning or seeing him on Saturday morning. In fact she testified she could not remember all the details of that morning. Clearly not, considering the phone records are the opposite of what her clemency letter claims.

Even more problematic is Franklin's failure to disclose his relationship with the mother. The mother's husband had been a squadron commander who worked directly for Franklin when he was the Wing Commander at Aviano. He was close to her husband who had been killed a year earlier. He knew the mother and her children. Her closing line in her clemency letter played on that close relationship:

"We didn't have a choice when the Lord took [my husband] home. I am asking that [the Wilkerson son] be able to have his Dad back home."

How could Kim Hanks ever hope for justice when the deck was stacked against her like this? Personal friends of Franklin are making allegations of an unfair trial, and he is the one passing judgment. Franklin should have recused himself from acting as the convening authority. Many of the letters refer to their personal relationship with Franklin, even Lt Col Wilkerson's did. Some of the most caustic letters attacking the prosecutors, the judge, the court members, the reporter covering the case, and the victim come from mutual friends. These are the letters that "provided additional clarity to [Franklin] on matters used effectively by the prosecution in the trial to question the character and truthfulness of both Lt Col Wilkerson and Mrs. Wilkerson."

**General Franklin clearly did not correctly analyze the phone record evidence and chose to give weight to clemency letters from his personal friends that were inconsistent with the facts in evidence. No factual basis for reasonable doubt.**

**Franklin Explanation j)** *The Office of Special Investigations (OSI) interviewed these two guest-children, ages 13 and 9 who were guests in the Wilkerson house the night of the alleged incident. Neither awoke or heard any yelling during the time of the incident. Yet, the alleged victim at one point said that Mrs. Wilkerson yelled at her to "get out of the house."*

As we have already discussed, Kim Hanks testified that Mrs. Wilkerson did not yell. Again, Franklin does not want to let the facts get in the way of his excuses.

However, since Franklin wants to delve into what the children told the OSI, let's explore that a little more closely. Beth testified that her husband went to bed around midnight and never came back down stairs until morning. She made it clear when she was drinking tea with Kim Hanks at 0100 that her husband was not with her. (R. at 716 lines 8-11) What

Franklin did not tell Secretary Donley is that the oldest child confirmed Kim Hanks' testimony and directly rebutted both Wilkersons. Kim testified that after talking to Suzanne Berrong she stayed up with both Wilkersons talking and drinking juice or tea. (R. at 237 line 22 – 238 lines 9-14 ) The child told the OSI that he woke up for a snack at approximately 0100. He saw Beth Wilkerson and she told him it was 0100 and he needed to go back to bed. He saw Lt Col Wilkerson and a woman he didn't know talking. (Report of Investigation 2-19)

**If he actually read the transcript, how can Franklin possibly explain the contradiction and his failure to honestly explain the record to Secretary Donley? Furthermore, this explanation is inconsistent with the facts in evidence, so it provides no valid basis for reasonable doubt.**

**Franklin explanation k)** *“In addition, the mother of the two children observed her kids and the Wilkersons the very next day following the alleged incident. She did not notice any change in the Wilkersons' behavior or her children's behavior, or that her children sensed any tension between the Wilkersons. Further, these two children apparently stayed at the Wilkerson house the following night. If an incident occurred as claimed by the alleged victim, it would be highly peculiar for the Wilkersons to volunteer to take care of these two children again the following evening.”*

**This issue was placed squarely before the court members and clearly they were convinced beyond a reasonable doubt that Wilkerson was guilty. Franklin is doing nothing but substituting his judgment for the judgment of the court. Franklin wants to credit the Wilkersons for not being stupid and acting guilty in public.**

**Franklin explanation L)** *Additionally, witness testimony about the Wilkerson marriage before the night in question and in the immediate days and weeks after that night showed no perceptible tension or change in their relationship. Had the alleged sexual assault taken place as the alleged victim claimed, it would be reasonable to believe that their relationship would change and that close friends would perceive this change.*

What we know is that the Wilkersons did cancel a BBQ planned for that afternoon. A BBQ that Beth Wilkerson told detailed lies about her health in order to cancel -- a BBQ for which Lt Col Wilkerson had already prepared the food. We also know that Beth Wilkerson did not attend her only son's end of season basketball luncheon that same day. Moreover, on the two occasions the Wilkersons were separated, the Wilkersons sent dozens and dozens of texts back and forth. Many of those texts were long. (Prosecution Exhibit 5, pages 17 - 21 and 28 - 32) This texting occurred while Lt Col Wilkerson was supposedly playing baseball and consoling a friend. Multitasking indeed.

It is interesting that General Franklin is so concerned about how the Wilkersons were acting in the following weeks, but he gives no thought to the powerful testimony of the effects Lt Col Wilkerson's attack had on Kim Hanks.

Testimony of [name redacted] describing Kim Hanks immediately after the sexual assault:

Q. When you first got there and met her, what was her demeanor like?

A. She seemed upset, disoriented. She was kind of -- I don't know. She -- I could tell she'd been drinking just a little, but she was coherent. You know she was making complete sentences. I didn't think you know that she was drunk or anything.

Q. Was she crying?

A. Yeah, a little bit. Yes. Yes. She started crying more when we were in the car, on the drive back.

(R. at 309 lines 8-14)

and:

A. And she was upset. She was crying. You know she said nothing like this had ever happened before, and you know she didn't know what to do basically.

(R. at 311 lines 10-11)

Testimony of [name redacted], the nurse treating Kim Hanks 6 hours after Lt Col Wilkerson assaulted her:

Q. What was her demeanor when you first saw her?

A. She was really shaken up. Her eyes were puffy, like she had been crying. She wasn't her normal bubbly self. Kim is usually very energetic, very engaging woman. And that morning she appeared that she had something traumatic happen to her the evening prior, and she looked she had had a tough time.

(R. at 372 line 22 and 373 lines 1-4 )

**Contrary to Franklin's assertion, Beth Wilkerson cancelled their BBQ, after the food was prepared, did not attend her son's basketball game. Since Franklin was so concerned about the observations of how people were acting after the sexual assault, how could the victim's condition not figure into his review? Why did Franklin not, in his six-page letter, make a single reference about what happened to Kim Hanks and the obvious impact it had on her?**

**Franklin Explanation m)** *Witness testimony from a female friend of the alleged victim (who also works at the 31st Medical Group, and who took the alleged victim to the hospital the next day) and her subsequent letter of clemency (in support of Lt Col Wilkerson) caused me notable additional doubt about the alleged victim's stated version of events. The friend's comments in this clemency letter also indicated a potential reasonable motivation for the alleged victim to have been less than candid in her stated version of events.*

This "friend of the alleged victim" was called as a witness by the defense at trial. The defense had every opportunity to bring up the allegations raised for the first time in the post trial clemency letter. They did not. After trial, Franklin gave great weight (notable additional doubt) to statements that were not part of her testimony at trial. The "friend"

was never cross-examined on her post-trial assertions. Again she was a defense witness. The defense chose not to go into her allegations.

**One can only conclude the “friend’s” allegations were without merit. Once again, Franklin glossed over his or his friends relationships with those submitting clemency letters. A more accurate description of this person he described as a “friend of the victim” would be a "girl friend" of Colonel Dean Ostovich.**

**Franklin explanation n)** *One particular witness was not allowed to testify in court. The primary rationale was that the applicable events of which she had knowledge in regard to the character and truthfulness of the alleged victim occurred 10 years earlier (when the alleged victim was approximately 39 years of age). I reviewed the excluded testimony, as well as the clemency letter of this witness, which detailed court proceedings that involved the alleged victim 10 years earlier. The excluded witness had a strong opinion that the alleged victim (now 49 years old) might lie in a court proceeding when it would be in her personal interest to do so.*

**Up until this point, Lt Gen Franklin has limited himself to believing he is smarter than the jury he picked. Now he has determined he knows better than the military judge as well.** If not for the seriousness of his hubris, this stated reason would be laughable. First, he completely avoids mentioning that this witness is the current wife of Kim Hanks' ex-husband. Second, he fails to mention that the court proceedings involved a bitter child custody dispute. Third, he fails to mention that the allegations were reported to Kim Hanks through third parties (child abuse by both the witness and her husband), and fourth he blatantly mischaracterizes the military judge's ruling by stating the primary rationale was that the alleged events occurred 10 years ago. The judge actually ruled as follows:

“In light of that, I've concluded that this witness does not have sufficient foundation to provide the opinion as requested by the defense, to the extent she does have a foundation, the court will and does apply MRE 403, and to the extent there is some probative value, it is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or by consideration of undue delay and a waste of time. And in making that determination under MRE 403, I consider the more than ten years ago that this was based on as well as the information was based on court filings in dispute in the context of a child custody dispute. As such, I sustain the government's objection.”

(R. at 568 lines 12 - 19)

**General Franklin states that, at least in part, he set a convicted sex offender free because the wife of the victim’s ex-husband does not like the victim? He did so despite the judge finding the evidence inadmissible? No wonder why people are angry over Franklin’s decision.**

**Franklin’s explanation provides clear documentation that commanders, who are not trained in the legal process and are immersed in conflicting self-interest and biases,**

**should not have authority over investigation, prosecution, judicial, or appellate proceedings.**

**Franklin explanation o)** *Significantly, I closely watched the video of the entire interview of Lt Col Wilkerson (3 hours and 25 minutes). I watched it not once, but twice (and several portions I watched additional times). The prosecution effectively used small segments of the video in closing arguments in attempts to portray Lt Col Wilkerson as a liar, or as someone trying to cover up misconduct. However, when I twice viewed the video in whole and I considered his answers in the context of the questions and paths the OSI attempted to take him down, I believed the entire OSI interview portrayed him as truthful.*

The prosecution's argument focused on several themes that Lt Col Wilkerson conveyed to the OSI; 1) that he didn't feel normal the next day implying he had been drugged, 2) that the women wanted to be with him and forced their way into his home, 3) he didn't want the women to be at his home and he tried to make that clear to them and 4) he wanted to portray Kim as drunk. Apparently, General Franklin is claiming the OSI tricked Wilkerson into making these claims with their questions ("paths the OSI attempted to take him down"). Even the most superficial review of the interview proves Wilkerson brought up on his own each one of his narratives.

After reading Wilkerson his rights, the OSI said to him:

Tell us what happened, who you were with, all of the details, and I just want to make this clear: we're in no hurry, we're not in any rush. We want to make sure we get all the information correct. So we'll be here as long as it takes to make sure that the information comes out.

(R at 393 line 20 -21 394 1-2)

Wilkerson started explaining the events of the evening of 23 March. The agent responded to his initial remarks with an "Okay" and an "Uh-huh." Wilkerson then said, "They [the women] wanted to go wherever we were going." (R. at 394 line 20) The OSI agent responded with "Okay," and Wilkerson continued with "I knew for a fact my wife didn't want them at home, and I knew I was going home, so I asked for a ride home." The agent responded with, "Uh-huh." (R. 395 lines 1-3) Wilkerson then said, "And my wife makes it clear she wants everyone gone, so I ask [name redacted] and [name redacted] to help me get them out of there repeatedly and they did." (R. 395 line 10-13) The agent responds, "Okay." Wilkerson's next statement was, "I know they were quite inebriated." (R. at 395 line 18).

The agent responds to some discussion of Wilkerson's drinking habits with, "so, right." Wilkerson then said, "my wife tells me -- this before I go to to bed -- that one of the ladies is too drunk and she's walking around the house and going to stay." (R. at 396 lines 13-14) Wilkerson then talked more about Kim Hanks, to which the agent responded twice with an uh-huh. Wilkerson then said, "and I felt like crap -- I can guarantee that. I don't know why, but I felt horrible from, I guess, drinking. I didn't feel good at all. (R.397 lines 8-10)" The

agent responds with an "uh-huh." (R. at 398) After a series of "rights," "okays," and uh-huhs," the agent asked if Wilkerson knew the names of the women who came to the house. After providing two names, Wilkerson said, "Let me make this very, very clear.(R.399 line 16)" The agent said, "yes? (line 17)" Wilkerson continued, "I know I did not want these women to come to my house. I know that I did not want these women to come to my house. I know my wife did not. And I know I tried to get them away." (R at 399 lines 18-20)

In response to "All right" (R. 403 line 19) from the agent, Wilkerson stated, "For the life of me, I don't know why they were hell-bent on wanting to come to my house." (R at 404 lines 1-2) Later the agent asked, "Can you describe what their demeanors were like at the Club -- the females?" Wilkerson: "Very much into us." OSI: "What do you mean by that -- 'into us'?" Wilkerson: "Wanted to -- made it very clear that where were we going, what were we doing." (R at 420 lines 1-5)

Wilkerson continued with his theme that the women were into him and his friends: The agent asked, ". . .still at the bar at the Club. Do the girls -- I mean were they giggly, did they seem very intoxicated? What were they doing? Wilkerson: "not anything that would have made me say "I want to take that girl home and take advantage of her." Agent: "Right." Wilkerson: "Ah, they were very giggly, very much into -- they ended up getting Colonel Ostovich in trouble, but very much into him." Agent: "Okay." Wilkerson: "And they wanted that, but they did keep asking me what my rank . . ." (R.421 lines 2-10)

Agent: "The age old question." Wilkerson: "They did and what I do and who I was, and what my rank was. They did. I recall that now, and I'm sorry I'm not trying to play into the hand of being targeted. But what I am saying is they did -- I recall that specifically a few times there, while we were standing, which was right next to where they serve the food, right on the enlisted side, next to the popcorn machine, right there. I'm positive, and I bet you Bear -- [name redacted] -- would recall that." (R. at 421 lines 11-16)

Wilkerson continued in response to the agent asking what the women were drinking: "I'll tell you this right now, I did say to you, I felt horrible the next day. I felt -- the way I felt the next day, was not, like I would normally feel for what I had had to drink, so . . ." The agent responded, "Uh-huh." Wilkerson: "I did say to my wife that I'm not sure that I -- that there wasn't something in my -- I don't think I was drugged, but I did not feel right the next day. I will say that for sure." (R. at 422 lines 14-18) The agent asked whether Wilkerson had "ever been drunk to the point where you don't recall details before?" Continuing with his theme, Wilkerson responded: "yeah, but not recently. I will say, as I said, I felt like crap the next day, and would not have. I don't know why I felt, based on what I'd had to drink, I would have been -- I ride bikes -- pedal bikes. I would have been able to go for a hundred miles normally, but that day, if I even looked at my bike, I would have either thrown up or fallen over." (R. at 430 lines 1-8)

**It is very clear that General Franklin was not correct when he claimed that the OSI lead Wilkerson down a path. All those "uh-huhs," "okays," and "rights" do not constitute "leading down a path." The reality is Wilkerson brought up every one of the topics on his own. Unfortunately for him, all the witnesses refuted**

**his version of the events. General Franklin was right about one thing: the prosecution was effective in showing Wilkerson lied to the OSI.**

**Franklin Explanation p)** *In addition, Lt Col Wilkerson waived his rights to remain silent, did not request a lawyer, and appeared cooperative throughout. The Special Agents who conducted the interview utilized a full gamut of investigative interviewing techniques in attempts to garner incriminating statements from Lt Col Wilkerson. He maintained his innocence throughout the interview, provided a written statement, never stopped the interview, nor did he ever ask for a lawyer at anytime. As I viewed the entire interview in whole (twice), it was my consistent impression that Lt Col Wilkerson answered all questions in a manner like an innocent person would respond if faced with untrue allegations against him.*

Franklin has created a new standard for reasonable doubt; just never admit you committed the crime. The court members also reviewed the OSI interview along with all the other evidence and by their verdict found Wilkerson had lied. A quick review of just a few conflicts between what Lt Col Wilkerson said, and what his wife said are illustrative.

As we have just seen, Wilkerson had gone to great lengths to infer he had been drugged and that he was very sick. But there is more:

"What I will tell you is I felt unbelievably F'd up the next day." "I don't, but I know I mentioned to my wife that, 'I feel horrible, horrible.'" (R. at 431 lines 16-19) "I remember - I'll tell you what I remember that first set me off was that morning, the pancake mix was under the lower cabinet, and I almost fell over -- forward as I went to get it out of the cabinet. I was having trouble focusing." (R. at 449 lines 1-3) "I know I told him I felt like crap, because I did. I sat in the outfield a while." "I'm telling you, I know I sat in the outfield. You know we were playing baseball. I felt so freaking vertigoish I had to sit down." (R. at 472 lines 4-10)

How did Beth Wilkerson describe Lt Col Wilkerson on the 24th?

Q. How was your husband feeling that day [24 March]?

A. He was -- he said he was hung over. (R. 745 lines 21-22)

Q. Okay, hung over. Did he describe anything else?

A. No, he was hung over and but for being hung over, he did an awful lot that day.

Q. Yeah, what did he do that day?

A. He got up early with the children, when they first woke up, and he went down and he made a big breakfast for them. And when I came down at 9 o'clock, he was preparing for the barbeque. We had not decided at that point we were going to cancel it. I had not talked to Angela. And he went a head and prepared the ribs to go into the smoker, and the brisket, and then he went to -- he took the kids to Burger King to have lunch. (R.746 lines 1-8)

Q. All right, so go on. Sounds like Colonel Wilkerson is a busy little bee, but go on. What else is going on?

A. After they had lunch and the end-of-season basketball party, he met up with Major [name redacted] and his children, and they went and played baseball. (R. at 747-lines 1-4)

Their two sets of testimony on this subject are not even close, but there is more.

"My wife asked me to go to bed, and I go to bed." (R. at 396 line 2) "My wife said, "You need to go to bed." And I said, "You got it." (R. at 426 line 18-19) "Kim is not there when my wife says, 'Time for you to go to bed.' I think I walk in and let the other girl outside, whatever -- the Captain, she is -- I don't know her name. I go back in and she (wife) said, 'You need to go to bed.'" (R. at 427 lines 7-9) "My wife tells me, 'Hey you've had enough to drink. It's time to go to bed.'" (R. at 429 lines 19-20) "She said, 'You go to bed.' And I said, 'I'm going to bed.'" (R. at 468 lines 15)

But what does Beth Wilkerson say?

Q. Do you often send your husband to bed? I mean are you the one that tells him when it's time for him to go to bed?

A. Ah, no.

(R. at 760 lines 1-3)

Here is another example:

"We were worried about the connotation of a woman being thrown out of the IG's house, leaving her shoes behind." (R. at 417 lines 6-7) "And she said she found her by the [name redacted] boys' room, and she told her to depart in rapid terms." (R. at 427 line 16 ) "And I believe she did get snippy with her and said, 'You need . . .' or she told me -- I was not privy to this; I'm going on what she told me, 'You need to depart.'" (R. at 437 lines 1-2) "She had to feel strongly about something to bring a story . . . I mean, she got kicked out of our house." (R. at 447 lines 15-16) "To get back at me for kicking her out. I didn't kick her out." (R. at 448 line 5)

More inconsistencies between the Wilkersons

"And then I told him that the other girl had been booted out a little aggressively by my wife, actually, and had left her shoes." (R. at 469 lines 14-15)

But according to Beth: "I was not kicking her out of the house." (R. 725 line 17) "And it wasn't like I was kicking her out . . ." (R. at 725 line 21 )

Col Wilkerson's testimony was clearly not consistent or credible. How could General Franklin reasonably deem Wilkerson to have "*...answered all questions in a manner like an innocent person would respond....*"

**Franklin Explanation q)** *Lt Col Wilkerson voluntarily agreed to take an OSI polygraph examination. I am fully aware of and considered the polygraph results. As you are aware in a criminal investigation, a polygraph is only an investigative tool to assist in the potential focus of the investigation and/or attempt to elicit admissions of guilt. It is not a "lie-detector test," nor is it "pass" or "fail." Because of inherent unreliability of polygraphs, they are entirely inadmissible in a court-martial. Ultimately, Lt Col Wilkerson has consistently maintained his complete innocence -- throughout two lengthy OSI, interviews, through the entire court-martial, and throughout his nearly four months in prison (following the court-martial and during the post-trial process).*

**Only Franklin's mental gymnastics could turn a finding of "deception indicated" on the very questions of which Wilkerson was convicted into reasonable doubt. He essentially claims that a failed polygraph means nothing. The testimony of an ex-husband's wife about her opinion based on a ten-year old child custody case (also inadmissible) is gold in his mind. Furthermore, it is easy to maintain your innocence during a court-martial, if you never say a word. Silence is hardly proof of innocence. No basis for reasonable doubt.**

**Franklin Explanation r)** *Finally, I do not assert in any way that the event as argued by the prosecution was out of realm of possible. However when I considered all the evidence together in total, the evidence was not sufficient to prove this alleged version by the prosecution beyond a reasonable doubt. An addition, and as simply one more point of reference, I was perplexed in relation to this conundrum -- Lt Col Wilkerson was a selectee for promotion to full colonel, a wing inspector general, a career officer, and described as a doting father and husband. However, according to the version of events presented by the prosecution, Lt Col Wilkerson, in the middle of the night, decided to leave his wife sleeping in bed, walk downstairs past the room of his only son, and also near another room with two other sleeping guest-children, and then decided to commit the egregious crime of sexually assaulting a sleeping woman who he and his wife had only met earlier that night. Based on all the letters submitted in clemency, in strong support of him, by people who know him, such behavior appeared highly incongruent. Accordingly, this also contributed, in small degree, to my reasonable doubt.*

The defense went to great lengths to portray Wilkerson as a model officer and family man. Franklin fails to mention the other misconduct that rebutted this assertion. This "model officer" was caught peeking over a stall at a subordinate's wife while she urinated, egregiously violated safety standards and was abusive to the security forces sergeant who responded to a fire set by Wilkerson and fellow pilots (conduct he later bragged about in an email to his pilot friends). During the trial, a retired colonel testified about Wilkerson's poor military character and a captain submitted an affidavit about Wilkerson's poor character. Franklin ignores that evidence.

**Once again, Franklin has substituted his beliefs for the beliefs of the court members he selected to serve as the fact finders in this case. He also failed to mention, anywhere in the entirety of his post hoc justification, anything about the evidence supporting the conviction. No one would ever know from reading this letter that Kim Hanks testified she was sexually assaulted and that she was believed beyond a reasonable doubt. Franklin's disbelief that a "model officer and family man" could commit sexual assault is not a valid basis for reasonable doubt.**



April 22, 2013

Mr. Chuck Hagel  
Office of the Secretary of Defense  
1000 Defense Pentagon  
Washington, D.C. 20301-1000

Dear Mr. Secretary,

I am writing to request that you exert leadership to have Lt. General Franklin dismissed from the Air Force, because of his highly inappropriate decision to overturn the conviction of Lt. Colonel Wilkerson for Aggravated Sexual Assault. His decision clearly conflicts with his responsibility to further good order and discipline within the service.

As the enclosed analysis of Lt. General Franklin's letter, in which he attempts to justify his decision makes clear, he used failed and biased reasoning, and unreliable information to overturn Lt. Colonel Wilkerson's conviction for Aggravated Sexual Assault. He fails to make even a plausible case for his action.

Furthermore, Lt. General Franklin's initial decision to even review Wilkerson's conviction, while within his authority, was completely optional. As you know, the military justice system has a separate appellate process with designated courts to address any issues that might have arisen as to appropriateness of the conduct of the trial.

Franklin cited eighteen reasons to justify his conclusion that there was reasonable doubt in Wilkerson's case, despite the fact that a jury, consisting of one Lt. Colonel and four Colonels, found Wilkerson guilty of committing aggravated sexual assault.

In addition to the eighteen reasons Franklin enumerated, in the preamble of his letter Franklin made the following assertions as to why he took the unusual step to set aside the conviction by the jury of senior officers he selected:

1) *“This was the most difficult court case I have ever faced as a convening authority...I struggled with referring this case to a court-martial after reviewing the results of the Article 32 investigation”*

Really? A senior JAG officer and former judge conducted the investigation. The process was extensive and very thorough. On the polygraph test, Lt. Col. Wilkerson’s answers to key questions were each deemed “deception indicated.”

As will become clear from the analysis in the itemized list enclosed, Lt. Col Wilkerson and his wife Beth Wilkerson gave highly inconsistent testimony. Independent witnesses gave statements consistent with the victim’s statement. Based on the information available before the trial, as confirmed by the proceedings of the trial itself, there is no reason to conclude that it should have been a close decision as to whether to convene the General Court-Martial.

2) *“This was the most extensive clemency request package that ...I had ever seen. ...most pleaded with me ...they had grave concerns...with fairness of the trial”*

What has the fact that Lt. Col. Wilkerson’s and, in some cases, Lt. Gen. Franklin’s friends writing a multitude of letters have to do with guilt or innocence? It is unconscionable that Lt. Gen. Franklin would question the professionalism of the prosecutors and Judge without stating any basis in fact. This does a disservice to this Judge and these prosecutors in particular, as well as those who serve throughout the entire military justice system. The defense counsel objected only 5 times in 6 days. This is hardly an indication that the prosecution and Judge ran roughshod over the defense and committed transgressions that resulted in a flawed verdict.

3) *“Letters from Lt. Col and Mrs. Wilkerson’s family, friends and fellow military members painted a consistent picture of a person who adored his wife and 9-year old son, as well as a picture of a long-serving professional Air Force officer. Some provided additional clarity to me on matters used effectively by prosecution in trial to question the character and truthfulness of both Lt. Col and Mrs. Wilkerson.”*

Franklin conveniently ignored Wilkerson’s previous bad behavior unrelated to this case. What else would he or anyone expect Wilkerson’s family and friends to write about him in clemency letters?

In addition, his veiled criticism of the prosecution team is without merit. The defense and Wilkerson's friends attacking this prosecutorial team and Judge is an affront to their professionalism and dedication. It is correct that the prosecution very "effectively", in fact very accurately, challenged the character and truthfulness of Lt. Col. and Mrs. Wilkerson. Their inconsistent and inaccurate statements called for nothing less.

4) *"I reviewed the entire record of trial...my deliberations became extensive."*

Franklin considered assertions not in evidence and clearly did not either understand or accept the facts as presented in the record. He is not a lawyer, was not present to hear the testimony, and thereby was hardly in a position to better judge the veracity of the witnesses than were the five members of the panel he selected. Moreover, in overturning Wilkerson's conviction, he acted against his own legal counsel's recommendation.

Attached is a verbatim list of the eighteen statements Franklin made in his letter to the Secretary of the Air Force, Michael Donley, in an attempt to justify his action overturning Lt. Col. Wilkerson's conviction. Following each of Franklin's explanatory statements, are excerpts from the record of the trial containing evidence and testimony relevant to the topic raised by Franklin at that point.

In every case, the facts in evidence and the weight of the credible trial testimony directly contradict the statement Franklin makes to support the conclusion he reached, purportedly based on his "review of the entire record" and "extensive" deliberations.

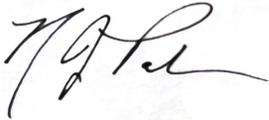
In this attempt to justify his actions, Lt. Gen. Franklin repeatedly substituted his judgment for the judgment of the court members and the military judge. He offers nothing new. The only evidence Franklin viewed that the members did not was found baseless by the military judge. Rather than look with suspicion on inconsistent or novel assertions made after the trial in clemency letters from defense witnesses, who previously testified at court, Franklin accepts their claims as gospel. He weighed the opinions of others as if it were fact, some of which had been disallowed in court. It is telling that these particular defense witnesses did not make these claims when under oath and subject to cross-examination. The bottom line is: what powers could Lt. General Franklin possess that would make him a better judge of the credibility of witnesses than the actual court members, who observed the testimony?

His pathetic excuses and sophomoric logic leave no doubt that he did nothing more than protect a fellow pilot.

His naive belief that senior officers cannot commit crimes is Exhibit A regarding what is wrong with commanders being in charge of prosecuting sexual offenders. He has destroyed the facade that commanders can be trusted to do what is right.

Lt. General Franklin must be fired. Furthermore, commanders, who are not trained in legal process and are immersed in conflicting self-interests and biases, should not have authority over investigation, prosecution, judicial, or appellate proceedings

Sincerely,

A handwritten signature in black ink, appearing to read 'N. Parrish', written in a cursive style.

Nancy Parrish,  
President

Enclosure: Analysis of Lt. Gen. Franklin's eighteen reasons to overturn Lt. Col, Wilkerson's conviction.

cc: Barack Obama, President of the United States  
Carl Levin, U.S. Senator and Chairman, Senate Armed Services Committee  
Buck McKeon, U.S. Congressman and Chairman, House Armed Services Committee  
Members of the Senate Armed Services Committee  
Members of the House Armed Services Committee  
Michael B. Donley, Secretary of the Air Force  
General Mark Welsh, Chief of Staff, U.S. Air Force  
Robert Taylor, Acting General Counsel, DOD



**FOR IMMEDIATE RELEASE**

September 3, 2013 Contact: Brian Purchia, 202-253-4330,  
[brian@protectourdefenders.com](mailto:brian@protectourdefenders.com)

**\*\*\* PRESS RELEASE \*\*\***

**Quotes of Interest from the FOIA released materials relating to Lt Col Wilkerson's sexual assault conviction**

*"I have considered all matters in the record of trial, including all matters presented in the presentencing portion of trial. The sentencing adjudged is appropriate for the offenses for which the accused was convicted. I recommend you approve the sentence as adjudged."*

Col Joseph Bialke, Staff Judge Advocate for Lt Gen Franklin advising him to approve the sentence against Lt Col Wilkerson, before clemency process

<http://www.foia.af.mil/shared/media/document/AFD-130404-223.pdf>

On page 11.

DOAF Letter: Memorandum for 3 AF/CC dtd 12 Dec 2012, Subj: Staff Judge Advocate's Recommendation

*"I recommend you amend the judged sentence of confinement for 1 year, and I further recommend you commute the adjudged sentence of a dismissal to confinement for two years; accordingly, approving of sentence of confinement for 3 years."*

Col Joseph Bialke, Staff Judge Advocate for Lt Gen Franklin advising him to approve the sentence against Lt Col Wilkerson, after clemency process

<http://www.foia.af.mil/shared/media/document/AFD-130404-223.pdf>

On page 20.

DOAF Letter: Memorandum for 3 AF/CC did 4 Feb 2013 Subj: Addendum to Staff Judge Advocate's Recommendation

*"This topic has been eating at me and I feel compelled to give you my thoughts. I know you have many advisors on the Wilkerson matter but this directly affects Aviano in many ways so I want to share one of my concerns as the commander here. I suspect that your lawyers are giving you many options to consider with respect to clemency and one of those options might include reversing the dismissal so that Wilkerson can retain his retirement in support of his family. My understanding is that if that happened, he would come back on active duty to Aviano. That would be absolutely devastating in so many ways that I begin to consider it. Having Wilkerson back on active duty at Aviano, even for one day, would complicate all the personnel and clearance actions taken, have a huge negative impact on morale and send a very negative message about how seriously we take sexual assault in the AF and potentially call into question the effectiveness of our UCMJ system in general... Finally, the victim still works on base... She*

*deserves consideration, too. Any change to his penalty will be a message to her as well.*”

Brig Gen Scott Zobrist, Commander, 31<sup>st</sup> Fighter Wing, Special Court-Martial  
Convening Authority for the Lt Col Wilkerson case

<http://www.foia.af.mil/shared/media/document/AFD-130821-024.pdf>

On Page 6

Fr: Zobrist To Franklin Feb 19, 2013, 6:40am

*“I called last night AFPC and they are lining up all POCs to work on*

*a) virtual out processing from Aviano*

*b) next assignment options (away from Aviano) . . . I intend to get him back to a flying assignment ASAP... Colonels’ group will work this*

*c) restoral of all Security Clearances*

*d) restoral of his promotion to 0-6*

*... if he wants to talk with me about staying in or getting out we’ve provided all my contact info as well. I would reassure him he has a great future and his record is very competitive for OG/CC.”*

Lt Gen Franklin email to Gen Breedlove about Lt Col Wilkerson’s future in the Air Force

<http://www.foia.af.mil/shared/media/document/AFD-130821-026.pdf>

On page 17.

Fr: Franklin To: Breedlove, Feb 27, 2013 8:05am

*“Let me look into the security clearance issue and see what I can do to fix it.”*

Lt Gen Franklin in response to Lt Col having lost his security clearance because of the trial

<http://www.foia.af.mil/shared/media/document/AFD-130821-025.pdf>

On page 43

Fr: Franklin To: Jay [redacted], Mar 5, 2013 10:46pm

*“I intend to get him back to a flying assignment ASAP (away from Aviano.) Please make sure Col Wilkerson knows he can contact me or his OG... about the way ahead for his next assignment.”*

Lt Gen Franklin discussing Lt Col Wilkerson’s next assignment

<http://www.foia.af.mil/shared/media/document/AFD-130821-024.pdf>

Page 38

Fr: Franklin To: Franklin and [redacted], Feb. 26, 2015 9:54 PM

*“He (Wilkerson) also wanted me to convey to you his promise that there is no adverse information to his knowledge outside the changes brought against him in the court.”*

Email from Commander, 31 Operations Group, Aviano AFB [name redacted], to Gen. Franklin, with copies to Gen Zobrist and Wilkerson, regarding Franklin’s effort to help Wilkerson regain his security clearance.

<http://www.foia.af.mil/shared/media/document/AFD-130821-016.pdf>

Page 23

Fr: [Redacted] Commander 31<sup>st</sup> Operations group, To: Franklin, Mar 5, 2013 3:29 PM

*“He [Franklin] and I have discussed in depth the meaning and the possible blow back. I stand behind his decision.”* – Air Force Commander in Europe, Gen Mark Breedlove emailed Gen Welsh that he is in agreement with Franklin’s decision to overturn the verdict

<http://www.foia.af.mil/shared/media/document/AFD-130821-024.pdf>

On page 30.

Fr: Air Force Commander in Europe, Gen Mark Breedlove To: Gen Welsh Feb 26, 2013 5:12 pm

*“Finally, and quite significantly, it is now clear that Col Ostovich knew of the sexual assault allegations but failed to take any action on them. The victim’s contractor friend who took the victim to the hospital, who is in a relationship with Col Ostovich, admitted that she told Col Ostovich “everything I knew” within two days of the incident (assault allegation involving Lt Col Wilkerson, drug test for date rape drug, other details of the assault, etc.) Col Ostovich clearly failed to act as the senior SAPR/SARC rep on the base and I believe he did this to protect his friend, the alleged assailant. There is also the possibility of criminal activity by Col Ostovich in that he potentially obstructed justice by communicating this info to Lt Col Wilkerson although this will be hard to prove.”*

SCOTT J. ZOBRIST, Brig Gen, USAF, Commander, 31st Fighter Wing, Aviano Air Base, Italy

<http://www.foia.af.mil/shared/media/document/AFD-130821-023.pdf>

On page 63&64.

Fr: Zobrist To: Franklin May 25, 2012 11:04 PM

## Attachment 5 – Unlawful Command Influence

Unlawful Command Influence (UCI), often called the “mortal enemy of military justice,” refers to actions made by senior military personnel that appear to pressure members of the military justice system towards certain decisions or outcomes. For instance, due to a commander’s words or actions, a convening authority may feel pressured to convene a court martial, or jurors may feel pressured to come to a certain verdict or sentence. Even the appearance of UCI merits a response from a military judge. Given the recent focus on sexual assault in the military, both claims and findings of UCI have skyrocketed in sexual assault case to the detriment of victims and the military justice system.

The most high-profile finding of UCI were in *U.S. v. Fuentes* and *U.S. v. Johnson* (June 2013), in which Navy Judge Cmdr. Marcus Fulton ruled that statements against sexual assault by President Obama constitute apparent UCI and that, as a result, the defendants could not receive a punitive discharge if found guilty. Such a discharge is a typical sentence for sex crimes in the Navy. After this ruling, Defense Secretary Chuck Hagel issued a memo reemphasizing the independence of the military judicial system, but the potential for findings of UCI remains. Although the federal government appealed this finding, the Navy-Marine Corps Court of Criminal Appeals found only that Judge Fulton could reconsider his decision in lieu of the memo. Such reconsideration has not yet occurred, and if found guilty, these defendants will be able to continue their careers in the Navy knowing the military justice system cannot hold them fully accountable.

Judge Fulton’s decision was not unique. In *U.S. v. Averell*, Judge Cmdr. John Maksym found that comments by President Obama and Chairman of the Joint Chiefs of Staff Gen. Dempsey constituted apparent UCI and granted the defense extra peremptory jury challenges. Protect Our Defenders knows of at least one case where such a ruling led a victim to question the entire court martial process, describing how the defense was able to choose a biased jury more sympathetic to the defendant than to justice. According to the Marine Corps Times, as of August 2013, at least 80 motions have been filed in sexual assault cases alleging UCI after a set of speeches by Marine Commandant James Amos, in which he took a firm stance against sexual assault. At least four of these resulted in findings of apparent UCI. Furthermore, according to the New York Times, one sexual assault case at Shaw Air Force Base in South Carolina has been dismissed, with the judge noting the UCI issue.

Findings of UCI also have the potential to overload the military justice system with appeals, particularly after another high-profile but unrelated UCI case involving Gen. Amos. As one defense attorney with experience in military justice cases stated to the Marine Corps Times, “Suddenly, if people have a case or had a case that was ongoing when [Gen. Amos] made those statements, the issue of UCI is not necessarily waived. You can pursue the issue on appeal.” Such appeals provide another opportunity for assailants to escape conviction, precisely because of the command structure that can influence a Convening Authority’s decision to prosecute.

As long as convening authority rests with the chain of command, rather than independent military prosecutors, the potential for UCI exists. Military officials at all levels have taken firm public stances against sexual assault, amounting to pressure that may lead military commanders

to prosecute weak case—or for judges to find for this possibility. Furthermore, victims may find it difficult to find justice when defendants cannot be discharged or when the defense has an overwhelming say in jury selection. Only by removing court martial-related decisions from the chain of command can Congress ensure an independent, unbiased, and effective military justice system.