BEFORE THE BOARD OF DISCIPLINARY APPEALS
APPOINTED BY
THE SUPREME COURT OF TEXAS

IN THE MATTER OF	§	
ERIK JAMES BURRIS	§	**CAUSE NO.** 59817
STATE BAR CARD NO. 24061360	§	

PETITION FOR COMPULSORY DISCIPLINE

TO THE BOARD OF DISCIPLINARY APPEALS:

Petitioner, the Commission for Lawyer Discipline (hereinafter called "Petitioner"), brings this action against Respondent, Erik James Burris, (hereinafter called "Respondent"), showing as follows:

1. This action is commenced by Petitioner pursuant to Part VIII of the Texas Rules of Disciplinary Procedure. Petitioner is also providing Respondent a copy of this Board's procedures for handling a compulsory discipline matter by attaching a copy of such procedures to this petition.

2. Respondent, Erik James Burris, may be served with a true and correct copy of this Petition for Compulsory Discipline, its attachments, as well as a notice of hearing, at Erik James Burris, NAVCONBRIG, Miramar, 46141 Miramar Way, Bldg. 7684, Suite 1, San Diego, California, 92145.

3. Attached hereto and made a part hereof for all intents and purposes as if the same were copied verbatim herein, is a true and correct copy of two sets of documents in the Burris criminal case. The first contains a Charge Sheet, a General Court-Martial Order, and a US Army Court of Criminal Appeals Memorandum Opinion (Exhibit 1). The second set contains a Charge

Sheet and a Department of Defense Report of Result of Trial (Exhibit 2). Petitioner expects to introduce a certified copy of both exhibits at the time of hearing of this cause.

4. On September 20, 2013, court-martial charges were preferred against Respondent, Erik James Burris. On February 7, 2014, the charges were referred for trial by general court-martial. As enumerated on DD Form 458, Charge Sheet, (Exhibit 1) Respondent was charged with the following: Charge I with Specifications 1 through 8: violation of the UCMJ, Article 128, Assault; Charge II with Specifications 1 through 4: violation of the UCMJ, Article 120, Rape, Sexual Assault, and Other Sexual Misconduct; Charge III with Specifications 1 and 2: violation of the UCMJ, Article 125, Sodomy; Charge IV with Specifications 1 and 2: violation of UCMJ Article 134, General Article; and Charge V with its Specification: violation of the UCMJ, Article 90, Willfully Disobeying Superior Commissioned Officer.

5. On January 27, 2014, additional court-martial charges were preferred against Respondent. The additional charges were referred for trial by general court-martial and ordered to be tried in conjunction with the original charges. The additional charges, as enumerated on DD Form 458, Charge Sheet, (Exhibit 2) include the following: Additional Charge I with its Specification: violation of the UCMJ, Article 134, General Article; and Additional Charge II with its Specification: violation of the UCMJ, Article 125, Sodomy. A trial was conducted on January 25, 2015 and the results were documented on DD Form 2707-1, Department of Defense Report of Result of Trial (Exhibit 2).

6. On December 16, 2015, General Court-Martial Order Number 10 (Exhibit 1) was entered by the Department of the Army, Headquarters, Fort Bragg, North Carolina, wherein Respondent was found guilty of Charge I, Specifications 1, 2, 4, and 5: violation of the UCMJ, Article 128, Assault; Charge II, Specifications 2 and 4: violation of the UCMJ, Article 120,

Rape, Sexual Assault, and Other Sexual Misconduct; Charge IV, Specification 2: violation of the UCMJ, Article 134, General Article; and Additional Charge II and its Specification: Violation of the UCMJ, Article 125, Sodomy. Respondent was sentenced to be dismissed from the service, to be confined for 20 years, and to forfeit all pay and allowances. By General Court-Martial Order Number 10, the general court-martial convening authority, Lieutenant General Townsend, waived the forfeiture of all pay and allowances for a period of six months and ordered those funds to be paid to Respondent's dependent children.

7. Respondent, Erik James Burris, whose bar card number is 24061360, is the same person as the Major Erik J. Burris, who is the subject of the DD Forms 458, Charge Sheet, and General Court-Martial Order Number 10, described above, true and correct copies of which are attached hereto as Exhibit 1.

8. Attached hereto as Exhibit 3 and made a part hereof for all intents and purposes as if the same were copied verbatim herein is a true and correct copy of an affidavit of Rita Alister, Attorney of Record for Petitioner herein, attesting to the fact that Respondent is the same person as the person who is the subject of the Charge Sheet and General Court-Martial Order entered in the Burris criminal case. Petitioner expects to introduce the original of said affidavit at the time of hearing of this cause.

9. The offenses for which Respondent was convicted are intentional crimes as defined by Rule 1.06(T), Texas Rules of Disciplinary Procedure. They are, as well, serious crimes as defined by Rule 1.06(AA), Texas Rules of Disciplinary Procedure.

10. Having been found guilty and having been convicted of intentional crimes and such conviction currently being appealed to the United States Court of Appeals for the Armed Forces, Respondent should be suspended as an attorney licensed to practice law in Texas during

the appeal of his conviction. Further, upon a showing by Petitioner that the conviction has become final after determination of the appeal, Respondent should be disbarred, as provided by Rule 8.05, Texas Rules of Disciplinary Procedure.

PRAYER

WHEREFORE, PREMISES CONSIDERED, Petitioner prays that Respondent be given notice of these proceedings as provided by law and, upon hearing of this matter, that the Board enter its order suspending Respondent during the appeal of his conviction, and for such other and further relief to which Petitioner may be entitled to receive including costs of court and attorney's fees.

Respectfully submitted,

Linda A. Acevedo
Chief Disciplinary Counsel

Rita Alister
Assistant Disciplinary Counsel
Office of the Chief Disciplinary Counsel
STATE BAR OF TEXAS
P.O. Box 12487, Capitol Station
Austin, Texas 78711-2487
Telephone: 512.427.1350
Facsimile: 512.427.4167
Email: ralister@texasbar.com

Rita Alister
State Bar Card No. 17614703
ATTORNEYS FOR PETITIONER

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing instrument has been sent for personal service on Erik James Burris, NAVCONBRIG, Miramar, 46141 Miramar Way, Bldg. 7684, Suite 1, San Diego, California, 92145, on this ___ day of December 2017.

Rita Alister

Rita Alister

NOTICE OF HEARING

NOTICE IS HEREBY GIVEN that a trial on the merits of the Petition for Compulsory Discipline heretofore sent to be filed with the Board of Disciplinary Appeals on this day, will be held in the courtroom of the Supreme Court of Texas, Tom C. Clark Building, 14th and Colorado Streets, Austin, Texas, at **9:00 a.m. on the 25th day of January 2018.**

Rita Alister

Rita Alister

INTERNAL PROCEDURAL RULES

Board of Disciplinary Appeals

Effective February 19, 2015 and amended September 20, 2016

Contents

SECTION 1: GENERAL PROVISIONS

Rule 1.01 Definitions

(a) "BODA" is the Board of Disciplinary Appeals.

(b) "Chair" is the member elected by BODA to serve as chair or, in the Chair's absence, the member elected by BODA to serve as vice-chair.

(c) "Classification" is the determination by the CDC under TRDP 2.10 or by BODA under TRDP 7.08(C) whether a grievance constitutes a "complaint" or an "inquiry."

(d) "BODA Clerk" is the executive director of BODA or other person appointed by BODA to assume all duties normally performed by the clerk of a court.

(e) "CDC" is the Chief Disciplinary Counsel for the State Bar of Texas and his or her assistants.

(f) "Commission" is the Commission for Lawyer Discipline, a permanent committee of the State Bar of Texas.

(g) "Executive Director" is the executive director of BODA.

(h) "Panel" is any three-member grouping of BODA under TRDP 7.05.

(i) "Party" is a Complainant, a Respondent, or the Commission.

(j) "TDRPC" is the Texas Disciplinary Rules of Professional Conduct.

(k) "TRAP" is the Texas Rules of Appellate Procedure.

(l) "TRCP" is the Texas Rules of Civil Procedure.

(m) "TRDP" is the Texas Rules of Disciplinary Procedure.

(n) "TRE" is the Texas Rules of Evidence.

Rule 1.02 General Powers

Under TRDP 7.08, BODA has and may exercise all the powers of either a trial court or an appellate court, as the case may be, in hearing and determining disciplinary proceedings. But TRDP 15.01 applies to the enforcement of a judgment of BODA.

Rule 1.03 Additional Rules in Disciplinary Matters

Except as varied by these rules and to the extent applicable, the TRCP, TRAP, and TRE apply to all disciplinary matters before BODA, except for appeals from classification decisions, which are governed by TRDP 2.10 and by Section 3 of these rules.

Rule 1.04 Appointment of Panels

(a) BODA may consider any matter or motion by panel, except as specified in (b). The Chair may delegate to the Executive Director the duty to appoint a panel for any BODA action. Decisions are made by a majority vote of the panel; however, any panel member may refer a matter for consideration by BODA sitting en banc. Nothing in these rules gives a party the right to be heard by BODA sitting en banc.

(b) Any disciplinary matter naming a BODA member as Respondent must be considered by BODA sitting en banc. A disciplinary matter naming a BODA staff member as Respondent need not be heard en banc.

Rule 1.05 Filing of Pleadings, Motions, and Other Papers

(a) **Electronic Filing.** All documents must be filed electronically. Unrepresented persons or those without the means to file electronically may electronically file documents, but it is not required.

(1) **Email Address.** The email address of an attorney or an unrepresented party who electronically files a document must be included on the document.

(2) **Timely Filing.** Documents are filed electronically by emailing the document to the BODA Clerk at the email address designated by BODA for that purpose. A document filed by email will be considered filed the day

that the email is sent. The date sent is the date shown for the message in the inbox of the email account designated for receiving filings. If a document is sent after 5:00 p.m. or on a weekend or holiday officially observed by the State of Texas, it is considered filed the next business day.

(3) It is the responsibility of the party filing a document by email to obtain the correct email address for BODA and to confirm that the document was received by BODA in legible form. Any document that is illegible or that cannot be opened as part of an email attachment will not be considered filed. If a document is untimely due to a technical failure or a system outage, the filing party may seek appropriate relief from BODA.

(4) **Exceptions.**

(i) An appeal to BODA of a decision by the CDC to classify a grievance as an inquiry is not required to be filed electronically.

(ii) The following documents must not be filed electronically:

a) documents that are filed under seal or subject to a pending motion to seal; and

b) documents to which access is otherwise restricted by court order.

(iii) For good cause, BODA may permit a party to file other documents in paper form in a particular case.

(5) **Format.** An electronically filed document must:

(i) be in text-searchable portable document format (PDF);

(ii) be directly converted to PDF rather than scanned, if possible; and

(iii) not be locked.

(b) A paper will not be deemed filed if it is sent to an individual BODA member or to another address other than the address designated by BODA under Rule 1.05(a)(2).

(c) **Signing.** Each brief, motion, or other paper filed must be signed by at least one attorney for the party or by the party pro se and must give the State Bar of Texas card number, mailing address, telephone number, email address, and fax number, if any, of each attorney whose name is signed or of the party (if applicable). A document is considered signed if the document includes:

(1) an "/s/" and name typed in the space where the signature would otherwise appear, unless the document is notarized or sworn; or

(2) an electronic image or scanned image of the signature.

(d) **Paper Copies.** Unless required by BODA, a party need not file a paper copy of an electronically filed document.

(e) **Service.** Copies of all documents filed by any party other than the record filed by the evidentiary panel clerk or the court reporter must, at or before the time of filing, be served on all other parties as required and authorized by the TRAP.

Rule 1.06 Service of Petition

In any disciplinary proceeding before BODA initiated by service of a petition on the Respondent, the petition must be served by personal service; by certified mail with return receipt requested; or, if permitted by BODA, in any other manner that is authorized by the TRCP and reasonably calculated under all the circumstances to apprise the Respondent of the proceeding and to give him or her reasonable time to appear and answer. To establish

service by certified mail, the return receipt must contain the Respondent's signature.

Rule 1.07 Hearing Setting and Notice

(a) **Original Petitions.** In any kind of case initiated by the CDC's filing a petition or motion with BODA, the CDC may contact the BODA Clerk for the next regularly available hearing date before filing the original petition. If a hearing is set before the petition is filed, the petition must state the date, time, and place of the hearing. Except in the case of a petition to revoke probation under TRDP 2.23, the hearing date must be at least 30 days from the date that the petition is served on the Respondent.

(b) **Expedited Settings.** If a party desires a hearing on a matter on a date earlier than the next regularly available BODA hearing date, the party may request an expedited setting in a written motion setting out the reasons for the request. Unless the parties agree otherwise, and except in the case of a petition to revoke probation under TRDP 2.23, the expedited hearing setting must be at least 30 days from the date of service of the petition, motion, or other pleading. BODA has the sole discretion to grant or deny a request for an expedited hearing date.

(c) **Setting Notices.** BODA must notify the parties of any hearing date that is not noticed in an original petition or motion.

(d) **Announcement Docket.** Attorneys and parties appearing before BODA must confirm their presence and present any questions regarding procedure to the BODA Clerk in the courtroom immediately prior to the time docket call is scheduled to begin. Each party with a matter on the docket must appear at the docket call to give an announcement of readiness, to give a time estimate for the hearing, and to present any preliminary motions or matters. Immediately following the docket call, the Chair will set and announce the order of cases to be heard.

Rule 1.08 Time to Answer

The Respondent may file an answer at any time, except where expressly provided otherwise by these rules or the TRDP, or when an answer date has been set by prior order of BODA. BODA may, but is not required to, consider an answer filed the day of the hearing.

Rule 1.09 Pretrial Procedure

(a) Motions.

(1) **Generally.** To request an order or other relief, a party must file a motion supported by sufficient cause with proof of service on all other parties. The motion must state with particularity the grounds on which it is based and set forth the relief sought. All supporting briefs, affidavits, or other documents must be served and filed with the motion. A party may file a response to a motion at any time before BODA rules on the motion or by any deadline set by BODA. Unless otherwise required by these rules or the TRDP, the form of a motion must comply with the TRCP or the TRAP.

(2) **For Extension of Time.** All motions for extension of time in any matter before BODA must be in writing, comply with (a)(1), and specify the following:

(i) if applicable, the date of notice of decision of the evidentiary panel, together with the number and style of the case;

(ii) if an appeal has been perfected, the date when the appeal was perfected;

(iii) the original deadline for filing the item in question;

(iv) the length of time requested for the extension;

(v) the number of extensions of time that have been granted

previously regarding the item in question; and

(vi) the facts relied on to reasonably explain the need for an extension.

(b) **Pretrial Scheduling Conference.** Any party may request a pretrial scheduling conference, or BODA on its own motion may require a pretrial scheduling conference.

(c) **Trial Briefs.** In any disciplinary proceeding before BODA, except with leave, all trial briefs and memoranda must be filed with the BODA Clerk no later than ten days before the day of the hearing.

(d) **Hearing Exhibits, Witness Lists, and Exhibits Tendered for Argument.** A party may file a witness list, exhibit, or any other document to be used at a hearing or oral argument before the hearing or argument. A party must bring to the hearing an original and 12 copies of any document that was not filed at least one business day before the hearing. The original and copies must be:

(1) marked;

(2) indexed with the title or description of the item offered as an exhibit; and

(3) if voluminous, bound to lie flat when open and tabbed in accordance with the index.

All documents must be marked and provided to the opposing party before the hearing or argument begins.

Rule 1.10 Decisions

(a) **Notice of Decisions.** The BODA Clerk must give notice of all decisions and opinions to the parties or their attorneys of record.

(b) **Publication of Decisions.** BODA must report judgments or orders of public discipline:

(1) as required by the TRDP; and

(2) on its website for a period of at least ten years following the date of the disciplinary judgment or order.

(c) **A**bstracts of Classification Appeals. BODA may, in its discretion, prepare an abstract of a classification appeal for a public reporting service.

Rule 1.11 Board of Disciplinary Appeals Opinions

(a) BODA may render judgment in any disciplinary matter with or without written opinion. In accordance with TRDP 6.06, all written opinions of BODA are open to the public and must be made available to the public reporting services, print or electronic, for publishing. A majority of the members who participate in considering the disciplinary matter must determine if an opinion will be written. The names of the participating members must be noted on all written opinions of BODA.

(b) Only a BODA member who participated in the decision of a disciplinary matter may file or join in a written opinion concurring in or dissenting from the judgment of BODA. For purposes of this rule, in hearings in which evidence is taken, no member may participate in the decision unless that member was present at the hearing. In all other proceedings, no member may participate unless that member has reviewed the record. Any member of BODA may file a written opinion in connection with the denial of a hearing or rehearing en banc.

(c) A BODA determination in an appeal from a grievance classification decision under TRDP 2.10 is not a judgment for purposes of this rule and may be issued without a written opinion.

Rule 1.12 BODA Work Product and Drafts

A document or record of any nature—regardless of its form, characteristics, or means of transmission—that is created or produced in connection with or related to BODA's adjudicative decision-making process is not subject to disclosure or discovery. This includes documents prepared by any BODA member, BODA staff, or any other person acting on behalf of or at the direction of BODA.

Rule 1.13 Record Retention

Records of appeals from classification decisions must be retained by the BODA Clerk for a period of at least three years from the date of disposition. Records of other disciplinary matters must be retained for a period of at least five years from the date of final judgment, or for at least one year after the date a suspension or disbarment ends, whichever is later. For purposes of this rule, a record is any document, paper, letter, map, book, tape, photograph, film, recording, or other material filed with BODA, regardless of its form, characteristics, or means of transmission.

Rule 1.14 Costs of Reproduction of Records

The BODA Clerk may charge a reasonable amount for the reproduction of nonconfidential records filed with BODA. The fee must be paid in advance to the BODA Clerk.

Rule 1.15 Publication of These Rules

These rules will be published as part of the TDRPC and TRDP.

SECTION 2: ETHICAL CONSIDERATIONS

Rule 2.01 Representing or Counseling Parties in Disciplinary Matters and Legal Malpractice Cases

(a) A current member of BODA must not represent a party or testify voluntarily in a disciplinary action or proceeding. Any BODA member who is subpoenaed or otherwise compelled to appear at a disciplinary action or proceeding, including at a deposition, must promptly notify the BODA Chair.

(b) A current BODA member must not serve as an expert witness on the TDRPC.

(c) A BODA member may represent a party in a legal malpractice case, provided that he or she is later recused in accordance with these rules from any proceeding before BODA arising out of the same facts.

Rule 2.02 Confidentiality

(a) BODA deliberations are confidential, must not be disclosed by BODA members or staff, and are not subject to disclosure or discovery.

(b) Classification appeals, appeals from evidentiary judgments of private reprimand, appeals from an evidentiary judgment dismissing a case, interlocutory appeals or any interim proceedings from an ongoing evidentiary case, and disability cases are confidential under the TRDP. BODA must maintain all records associated with these cases as confidential, subject to disclosure only as provided in the TRDP and these rules.

(c) If a member of BODA is subpoenaed or otherwise compelled by law to testify in any proceeding, the member must not disclose a matter that was discussed in conference in connection with a disciplinary case unless the member is required to do so by a court of competent jurisdiction.

Rule 2.03 Disqualification and Recusal of BODA Members

(a) BODA members are subject to disqualification and recusal as provided in TRCP 18b.

(b) BODA members may, in addition to recusals under (a), voluntarily recuse themselves from any discussion and voting for any reason. The reasons that a BODA member is recused from a case are not subject to discovery.

(c) These rules do not disqualify a lawyer who is a member of, or associated with, the law firm of a BODA member from serving on

a grievance committee or representing a party in a disciplinary proceeding or legal malpractice case. But a BODA member must recuse him- or herself from any matter in which a lawyer who is a member of, or associated with, the BODA member's firm is a party or represents a party.

SECTION 3: CLASSIFICATION APPEALS

Rule 3.01 Notice of Right to Appeal

(a) If a grievance filed by the Complainant under TRDP 2.10 is classified as an inquiry, the CDC must notify the Complainant of his or her right to appeal as set out in TRDP 2.10 or another applicable rule.

(b) To facilitate the potential filing of an appeal of a grievance classified as an inquiry, the CDC must send the Complainant an appeal notice form, approved by BODA, with the classification disposition. The form must include the docket number of the matter; the deadline for appealing; and information for mailing, faxing, or emailing the appeal notice form to BODA. The appeal notice form must be available in English and Spanish.

Rule 3.02 Record on Appeal

BODA must only consider documents that were filed with the CDC prior to the classification decision. When a notice of appeal from a classification decision has been filed, the CDC must forward to BODA a copy of the grievance and all supporting documentation. If the appeal challenges the classification of an amended grievance, the CDC must also send BODA a copy of the initial grievance, unless it has been destroyed.

SECTION 4: APPEALS FROM EVIDENTIARY PANEL HEARINGS

Rule 4.01 Perfecting Appeal

(a) **Appellate Timetable.** The date that the evidentiary judgment is signed starts the appellate timetable under this section. To make TRDP 2.21 consistent with this requirement, the date that the judgment is signed is the "date of notice" under Rule 2.21.

(b) **Notification of the Evidentiary Judgment.** The clerk of the evidentiary panel must notify the parties of the judgment as set out in TRDP 2.21.

(1) The evidentiary panel clerk must notify the Commission and the Respondent in writing of the judgment. The notice must contain a clear statement that any appeal of the judgment must be filed with BODA within 30 days of the date that the judgment was signed. The notice must include a copy of the judgment rendered.

(2) The evidentiary panel clerk must notify the Complainant that a judgment has been rendered and provide a copy of the judgment, unless the evidentiary panel dismissed the case or imposed a private reprimand. In the case of a dismissal or private reprimand, the evidentiary panel clerk must notify the Complainant of the decision and that the contents of the judgment are confidential. Under TRDP 2.16, no additional information regarding the contents of a judgment of dismissal or private reprimand may be disclosed to the Complainant.

(c) **Filing Notice of Appeal.** An appeal is perfected when a written notice of appeal is filed with BODA. If a notice of appeal and any other accompanying documents are mistakenly filed with the evidentiary panel clerk, the notice is deemed to have been filed the same day with BODA, and the evidentiary panel clerk must immediately send the BODA Clerk a copy of the notice and any accompanying documents.

(d) **Time to File.** In accordance with TRDP 2.24, the notice of appeal must be filed within 30 days after the date the judgment

is signed. In the event a motion for new trial or motion to modify the judgment is timely filed with the evidentiary panel, the notice of appeal must be filed with BODA within 90 days from the date the judgment is signed.

(e) **Extension of Time.** A motion for an extension of time to file the notice of appeal must be filed no later than 15 days after the last day allowed for filing the notice of appeal. The motion must comply with Rule 1.09.

Rule 4.02 Record on Appeal

(a) **Contents.** The record on appeal consists of the evidentiary panel clerk's record and, where necessary to the appeal, a reporter's record of the evidentiary panel hearing.

(b) **Stipulation as to Record.** The parties may designate parts of the clerk's record and the reporter's record to be included in the record on appeal by written stipulation filed with the clerk of the evidentiary panel.

(c) **Responsibility for Filing Record.**

(1) Clerk's Record.

(i) After receiving notice that an appeal has been filed, the clerk of the evidentiary panel is responsible for preparing, certifying, and timely filing the clerk's record.

(ii) Unless the parties stipulate otherwise, the clerk's record on appeal must contain the items listed in TRAP 34.5(a) and any other paper on file with the evidentiary panel, including the election letter, all pleadings on which the hearing was held, the docket sheet, the evidentiary panel's charge, any findings of fact and conclusions of law, all other pleadings, the judgment or other orders appealed from, the notice of decision sent to each party, any post submission pleadings and briefs, and the notice of appeal.

(iii) If the clerk of the evidentiary panel is unable for any reason to prepare and transmit the clerk's record by the due date, he or she must promptly notify BODA and the parties, explain why the clerk's record cannot be timely filed, and give the date by which he or she expects the clerk's record to be filed.

(2) Reporter's Record.

(i) The court reporter for the evidentiary panel is responsible for timely filing the reporter's record if:

a) a notice of appeal has been filed;

b) a party has requested that all or part of the reporter's record be prepared; and

c) the party requesting all or part of the reporter's record has paid the reporter's fee or has made satisfactory arrangements with the reporter.

(ii) If the court reporter is unable for any reason to prepare and transmit the reporter's record by the due date, he or she must promptly notify BODA and the parties, explain the reasons why the reporter's record cannot be timely filed, and give the date by which he or she expects the reporter's record to be filed.

(d) Preparation of Clerk's Record.

(1) To prepare the clerk's record, the evidentiary panel clerk must:

(i) gather the documents

designated by the parties' written stipulation or, if no stipulation was filed, the documents required under (c)(1)(ii);

(ii) start each document on a new page;

(iii) include the date of filing on each document;

(iv) arrange the documents in chronological order, either by the date of filing or the date of occurrence;

(v) number the pages of the clerk's record in the manner required by (d)(2);

(vi) prepare and include, after the front cover of the clerk's record, a detailed table of contents that complies with (d)(3); and

(vii) certify the clerk's record.

(2) The clerk must start the page numbering on the front cover of the first volume of the clerk's record and continue to number all pages consecutively—including the front and back covers, tables of contents, certification page, and separator pages, if any—until the final page of the clerk's record, without regard for the number of volumes in the clerk's record, and place each page number at the bottom of each page.

(3) The table of contents must:

(i) identify each document in the entire record (including sealed documents); the date each document was filed; and, except for sealed documents, the page on which each document begins;

(ii) be double-spaced;

(iii) conform to the order in which documents appear in the clerk's record, rather than in alphabetical order;

(iv) contain bookmarks linking each description in the table of contents (except for descriptions of sealed documents) to the page on which the document begins; and

(v) if the record consists of multiple volumes, indicate the page on which each volume begins.

(e) **Electronic Filing of the Clerk's Record.** The evidentiary panel clerk must file the record electronically. When filing a clerk's record in electronic form, the evidentiary panel clerk must:

(1) file each computer file in text-searchable Portable Document Format (PDF);

(2) create electronic bookmarks to mark the first page of each document in the clerk's record;

(3) limit the size of each computer file to 100 MB or less, if possible; and

(4) directly convert, rather than scan, the record to PDF, if possible.

(f) Preparation of the Reporter's Record.

(1) The appellant, at or before the time prescribed for perfecting the appeal, must make a written request for the reporter's record to the court reporter for the evidentiary panel. The request must designate the portion of the evidence and other proceedings to be included. A copy of the request must be filed with the evidentiary panel and BODA and must be served on the appellee. The reporter's record must be certified by the court reporter for the evidentiary panel.

(2) The court reporter or recorder must prepare and file the reporter's record in accordance with TRAP 34.6 and 35 and the Uniform Format Manual

for Texas Reporters' Records.

(3) The court reporter or recorder must file the reporter's record in an electronic format by emailing the document to the email address designated by BODA for that purpose.

(4) The court reporter or recorder must include either a scanned image of any required signature or "/s/" and name typed in the space where the signature would otherwise appear.

(5) A court reporter or recorder must not lock any document that is part of the record.

(6) In exhibit volumes, the court reporter or recorder must create bookmarks to mark the first page of each exhibit document.

(g) **Other Requests.** At any time before the clerk's record is prepared, or within ten days after service of a copy of appellant's request for the reporter's record, any party may file a written designation requesting that additional exhibits and portions of testimony be included in the record. The request must be filed with the evidentiary panel and BODA and must be served on the other party.

(h) **Inaccuracies or Defects.** If the clerk's record is found to be defective or inaccurate, the BODA Clerk must inform the clerk of the evidentiary panel of the defect or inaccuracy and instruct the clerk to make the correction. Any inaccuracies in the reporter's record may be corrected by agreement of the parties without the court reporter's recertification. Any dispute regarding the reporter's record that the parties are unable to resolve by agreement must be resolved by the evidentiary panel.

(i) **Appeal from Private Reprimand.** Under TRDP 2.16, in an appeal from a judgment of private reprimand, BODA must mark the record as confidential, remove the attorney's name from the case style, and take any other steps necessary to preserve the confidentiality of the private reprimand.

Rule 4.03 Time to File Record

(a) **Timetable.** The clerk's record and reporter's record must be filed within 60 days after the date the judgment is signed. If a motion for new trial or motion to modify the judgment is filed with the evidentiary panel, the clerk's record and the reporter's record must be filed within 120 days from the date the original judgment is signed, unless a modified judgment is signed, in which case the clerk's record and the reporter's record must be filed within 60 days of the signing of the modified judgment. Failure to file either the clerk's record or the reporter's record on time does not affect BODA's jurisdiction, but may result in BODA's exercising its discretion to dismiss the appeal, affirm the judgment appealed from, disregard materials filed late, or apply presumptions against the appellant.

(b) **If No Record Filed.**

(1) If the clerk's record or reporter's record has not been timely filed, the BODA Clerk must send notice to the party responsible for filing it, stating that the record is late and requesting that the record be filed within 30 days. The BODA Clerk must send a copy of this notice to all the parties and the clerk of the evidentiary panel.

(2) If no reporter's record is filed due to appellant's fault, and if the clerk's record has been filed, BODA may, after first giving the appellant notice and a reasonable opportunity to cure, consider and decide those issues or points that do not require a reporter's record for a decision. BODA may do this if no reporter's record has been filed because:

(i) the appellant failed to request a

reporter's record; or

(ii) the appellant failed to pay or make arrangements to pay the reporter's fee to prepare the reporter's record, and the appellant is not entitled to proceed without payment of costs.

(c) **Extension of Time to File the Reporter's Record.** When an extension of time is requested for filing the reporter's record, the facts relied on to reasonably explain the need for an extension must be supported by an affidavit of the court reporter. The affidavit must include the court reporter's estimate of the earliest date when the reporter's record will be available for filing.

(d) **Supplemental Record.** If anything material to either party is omitted from the clerk's record or reporter's record, BODA may, on written motion of a party or on its own motion, direct a supplemental record to be certified and transmitted by the clerk for the evidentiary panel or the court reporter for the evidentiary panel.

Rule 4.04 Copies of the Record

The record may not be withdrawn from the custody of the BODA Clerk. Any party may obtain a copy of the record or any designated part thereof by making a written request to the BODA Clerk and paying any charges for reproduction in advance.

Rule 4.05 Requisites of Briefs

(a) **Appellant's Filing Date.** Appellant's brief must be filed within 30 days after the clerk's record or the reporter's record is filed, whichever is later.

(b) **Appellee's Filing Date.** Appellee's brief must be filed within 30 days after the appellant's brief is filed.

(c) **Contents.** Briefs must contain:

(1) a complete list of the names and addresses of all parties to the final decision and their counsel;

(2) a table of contents indicating the subject matter of each issue or point, or group of issues or points, with page references where the discussion of each point relied on may be found;

(3) an index of authorities arranged alphabetically and indicating the pages where the authorities are cited;

(4) a statement of the case containing a brief general statement of the nature of the cause or offense and the result;

(5) a statement, without argument, of the basis of BODA's jurisdiction;

(6) a statement of the issues presented for review or points of error on which the appeal is predicated;

(7) a statement of facts that is without argument, is supported by record references, and details the facts relating to the issues or points relied on in the appeal;

(8) the argument and authorities;

(9) conclusion and prayer for relief;

(10) a certificate of service; and

(11) an appendix of record excerpts pertinent to the issues presented for review.

(d) **Length of Briefs; Contents Included and Excluded.** In calculating the length of a document, every word and every part of the document, including headings, footnotes, and quotations, must be counted except the following: caption, identity of the parties and counsel, statement regarding oral argument, table of contents, index of authorities, statement of the case, statement of issues presented, statement of the jurisdiction, signature, proof of service, certificate of compliance, and appendix. Briefs must not exceed 15,000 words if computer-generated, and 50 pages if not, except on leave of BODA. A reply brief must not exceed 7,500 words if computer-generated, and 25 pages if not, except on

leave of BODA. A computer-generated document must include a certificate by counsel or the unrepresented party stating the number of words in the document. The person who signs the certification may rely on the word count of the computer program used to prepare the document.

(e) **Amendment or Supplementation.** BODA has discretion to grant leave to amend or supplement briefs.

(f) **Failure of the Appellant to File a Brief.** If the appellant fails to timely file a brief, BODA may:

(1) dismiss the appeal for want of prosecution, unless the appellant reasonably explains the failure, and the appellee is not significantly injured by the appellant's failure to timely file a brief;

(2) decline to dismiss the appeal and make further orders within its discretion as it considers proper; or

(3) if an appellee's brief is filed, regard that brief as correctly presenting the case and affirm the evidentiary panel's judgment on that brief without examining the record.

Rule 4.06 Oral Argument

(a) **Request.** A party desiring oral argument must note the request on the front cover of the party's brief. A party's failure to timely request oral argument waives the party's right to argue. A party who has requested argument may later withdraw the request. But even if a party has waived oral argument, BODA may direct the party to appear and argue. If oral argument is granted, the clerk will notify the parties of the time and place for submission.

(b) **Right to Oral Argument.** A party who has filed a brief and who has timely requested oral argument may argue the case to BODA unless BODA, after examining the briefs, decides that oral argument is unnecessary for any of the following reasons:

(1) the appeal is frivolous;

(2) the dispositive issue or issues have been authoritatively decided;

(3) the facts and legal arguments are adequately presented in the briefs and record; or

(4) the decisional process would not be significantly aided by oral argument.

(c) **Time Allowed.** Each party will have 20 minutes to argue. BODA may, on the request of a party or on its own, extend or shorten the time allowed for oral argument. The appellant may reserve a portion of his or her allotted time for rebuttal.

Rule 4.07 Decision and Judgment

(a) **Decision.** BODA may do any of the following:

(1) affirm in whole or in part the decision of the evidentiary panel;

(2) modify the panel's findings and affirm the findings as modified;

(3) reverse in whole or in part the panel's findings and render the decision that the panel should have rendered; or

(4) reverse the panel's findings and remand the cause for further proceedings to be conducted by:

(i) the panel that entered the findings; or

(ii) a statewide grievance committee panel appointed by BODA and composed of members selected from the state bar districts other than the district from which the appeal was taken.

(b) **Mandate.** In every appeal, the BODA Clerk must issue a mandate in accordance with BODA's judgment and send it to the evidentiary panel and to all the parties.

Rule 4.08 Appointment of Statewide Grievance Committee

If BODA remands a cause for further proceedings before a statewide grievance committee, the BODA Chair will appoint the statewide grievance committee in accordance with TRDP 2.27. The committee must consist of six members: four attorney members and two public members randomly selected from the current pool of grievance committee members. Two alternates, consisting of one attorney and one public member, must also be selected. BODA will appoint the initial chair who will serve until the members of the statewide grievance committee elect a chair of the committee at the first meeting. The BODA Clerk will notify the Respondent and the CDC that a committee has been appointed.

Rule 4.09 Involuntary Dismissal

Under the following circumstances and on any party's motion or on its own initiative after giving at least ten days' notice to all parties, BODA may dismiss the appeal or affirm the appealed judgment or order. Dismissal or affirmance may occur if the appeal is subject to dismissal:

(a) for want of jurisdiction;

(b) for want of prosecution; or

(c) because the appellant has failed to comply with a requirement of these rules, a court order, or a notice from the clerk requiring a response or other action within a specified time.

SECTION 5: PETITIONS TO REVOKE PROBATION

Rule 5.01 Initiation and Service

(a) Before filing a motion to revoke the probation of an attorney who has been sanctioned, the CDC must contact the BODA Clerk to confirm whether the next regularly available hearing date will comply with the 30-day requirement of TRDP. The Chair may designate a three-member panel to hear the motion, if necessary, to meet the 30-day requirement of TRDP 2.23.

(b) Upon filing the motion, the CDC must serve the Respondent with the motion and any supporting documents in accordance with TRDP 2.23, the TRCP, and these rules. The CDC must notify BODA of the date that service is obtained on the Respondent.

Rule 5.02 Hearing

Within 30 days of service of the motion on the Respondent, BODA must docket and set the matter for a hearing and notify the parties of the time and place of the hearing. On a showing of good cause by a party or on its own motion, BODA may continue the case to a future hearing date as circumstances require.

SECTION 6: COMPULSORY DISCIPLINE

Rule 6.01 Initiation of Proceeding

Under TRDP 8.03, the CDC must file a petition for compulsory discipline with BODA and serve the Respondent in accordance with the TRDP and Rule 1.06 of these rules.

Rule 6.02 Interlocutory Suspension

(a) **Interlocutory Suspension.** In any compulsory proceeding under TRDP Part VIII in which BODA determines that the Respondent has been convicted of an Intentional Crime and that the criminal conviction is on direct appeal, BODA must suspend the Respondent's license to practice law by interlocutory order. In any compulsory case in which BODA has imposed an interlocutory order of suspension, BODA retains jurisdiction to render final judgment after the direct appeal of the criminal conviction is final. For purposes of rendering final judgment in a compulsory discipline case, the direct appeal of the criminal conviction is final when the appellate court issues its mandate.

(b) **Criminal Conviction Affirmed.** If the criminal conviction made the basis of a compulsory interlocutory suspension is affirmed and becomes final, the CDC must

file a motion for final judgment that complies with TRDP 8.05.

(1) If the criminal sentence is fully probated or is an order of deferred adjudication, the motion for final judgment must contain notice of a hearing date. The motion will be set on BODA's next available hearing date.

(2) If the criminal sentence is not fully probated:

  (i) BODA may proceed to decide the motion without a hearing if the attorney does not file a verified denial within ten days of service of the motion; or

  (ii) BODA may set the motion for a hearing on the next available hearing date if the attorney timely files a verified denial.

(c) Criminal Conviction Reversed. If an appellate court issues a mandate reversing the criminal conviction while a Respondent is subject to an interlocutory suspension, the Respondent may file a motion to terminate the interlocutory suspension. The motion to terminate the interlocutory suspension must have certified copies of the decision and mandate of the reversing court attached. If the CDC does not file an opposition to the termination within ten days of being served with the motion, BODA may proceed to decide the motion without a hearing or set the matter for a hearing on its own motion. If the CDC timely opposes the motion, BODA must set the motion for a hearing on its next available hearing date. An order terminating an interlocutory order of suspension does not automatically reinstate a Respondent's license.

SECTION 7: RECIPROCAL DISCIPLINE

Rule 7.01 Initiation of Proceeding

To initiate an action for reciprocal discipline under TRDP Part IX, the CDC must file a petition with BODA and request an Order to Show Cause. The petition must request that the Respondent be disciplined in Texas and have attached to it any information concerning the disciplinary matter from the other jurisdiction, including a certified copy of the order or judgment rendered against the Respondent.

Rule 7.02 Order to Show Cause

When a petition is filed, the Chair immediately issues a show cause order and a hearing notice and forwards them to the CDC, who must serve the order and notice on the Respondent. The CDC must notify BODA of the date that service is obtained.

Rule 7.03 Attorney's Response

If the Respondent does not file an answer within 30 days of being served with the order and notice but thereafter appears at the hearing, BODA may, at the discretion of the Chair, receive testimony from the Respondent relating to the merits of the petition.

SECTION 8: DISTRICT DISABILITY COMMITTEE HEARINGS

Rule 8.01 Appointment of District Disability Committee

(a) If the evidentiary panel of the grievance committee finds under TRDP 2.17(P)(2), or the CDC reasonably believes under TRDP 2.14(C), that a Respondent is suffering from a disability, the rules in this section will apply to the de novo proceeding before the District Disability Committee held under TRDP Part XII.

(b) Upon receiving an evidentiary panel's finding or the CDC's referral that an attorney is believed to be suffering from a disability, the BODA Chair must appoint a District Disability Committee in compliance with TRDP 12.02 and designate a chair. BODA will reimburse District Disability Committee members for

reasonable expenses directly related to service on the District Disability Committee. The BODA Clerk must notify the CDC and the Respondent that a committee has been appointed and notify the Respondent where to locate the procedural rules governing disability proceedings.

(c) A Respondent who has been notified that a disability referral will be or has been made to BODA may, at any time, waive in writing the appointment of the District Disability Committee or the hearing before the District Disability Committee and enter into an agreed judgment of indefinite disability suspension, provided that the Respondent is competent to waive the hearing. If the Respondent is not represented, the waiver must include a statement affirming that the Respondent has been advised of the right to appointed counsel and waives that right as well.

(d) All pleadings, motions, briefs, or other matters to be filed with the District Disability Committee must be filed with the BODA Clerk.

(e) Should any member of the District Disability Committee become unable to serve, the BODA Chair must appoint a substitute member.

Rule 8.02 Petition and Answer

(a) **Petition.** Upon being notified that the District Disability Committee has been appointed by BODA, the CDC must, within 20 days, file with the BODA Clerk and serve on the Respondent a copy of a petition for indefinite disability suspension. Service must comply with Rule 1.06

(b) **Answer.** The Respondent must, within 30 days after service of the petition for indefinite disability suspension, file an answer with the BODA Clerk and serve a copy of the answer on the CDC.

(c) **Hearing Setting.** The BODA Clerk must set the final hearing as instructed by the chair of the District Disability Committee and send notice of the hearing to the parties.

Rule 8.03 Discovery

(a) **Limited Discovery.** The District Disability Committee may permit limited discovery. The party seeking discovery must file with the BODA Clerk a written request that makes a clear showing of good cause and substantial need and a proposed order. If the District Disability Committee authorizes discovery in a case, it must issue a written order. The order may impose limitations or deadlines on the discovery.

(b) **Physical or Mental Examinations.** On written motion by the Commission or on its own motion, the District Disability Committee may order the Respondent to submit to a physical or mental examination by a qualified healthcare or mental healthcare professional. Nothing in this rule limits the Respondent's right to an examination by a professional of his or her choice in addition to any exam ordered by the District Disability Committee.

(1) **Motion.** The Respondent must be given reasonable notice of the examination by written order specifying the name, address, and telephone number of the person conducting the examination.

(2) **Report.** The examining professional must file with the BODA Clerk a detailed, written report that includes the results of all tests performed and the professional's findings, diagnoses, and conclusions. The professional must send a copy of the report to the CDC and the Respondent.

(c) **Objections.** A party must make any objection to a request for discovery within 15 days of receiving the motion by filing a written objection with the BODA Clerk. BODA may decide any objection or contest to a discovery motion.

Rule 8.04 Ability to Compel Attendance

The Respondent and the CDC may confront and cross-examine witnesses at the hearing. Compulsory process to compel the attendance of witnesses by subpoena, enforceable by an order of a district court of proper jurisdiction, is available to the Respondent and the CDC as provided in TRCP 176.

Rule 8.05 Respondent's Right to Counsel

(a) The notice to the Respondent that a District Disability Committee has been appointed and the petition for indefinite disability suspension must state that the Respondent may request appointment of counsel by BODA to represent him or her at the disability hearing. BODA will reimburse appointed counsel for reasonable expenses directly related to representation of the Respondent.

(b) To receive appointed counsel under TRDP 12.02, the Respondent must file a written request with the BODA Clerk within 30 days of the date that Respondent is served with the petition for indefinite disability suspension. A late request must demonstrate good cause for the Respondent's failure to file a timely request.

Rule 8.06 Hearing

The party seeking to establish the disability must prove by a preponderance of the evidence that the Respondent is suffering from a disability as defined in the TRDP. The chair of the District Disability Committee must admit all relevant evidence that is necessary for a fair and complete hearing. The TRE are advisory but not binding on the chair.

Rule 8.07 Notice of Decision

The District Disability Committee must certify its finding regarding disability to BODA, which will issue the final judgment in the matter.

Rule 8.08 Confidentiality

All proceedings before the District Disability Committee and BODA, if necessary, are closed to the public. All matters before the District Disability Committee are confidential and are not subject to disclosure or discovery, except as allowed by the TRDP or as may be required in the event of an appeal to the Supreme Court of Texas.

SECTION 9: DISABILITY REINSTATEMENTS

Rule 9.01 Petition for Reinstatement

(a) An attorney under an indefinite disability suspension may, at any time after he or she has been suspended, file a verified petition with BODA to have the suspension terminated and to be reinstated to the practice of law. The petitioner must serve a copy of the petition on the CDC in the manner required by TRDP 12.06. The TRCP apply to a reinstatement proceeding unless they conflict with these rules.

(b) The petition must include the information required by TRDP 12.06. If the judgment of disability suspension contained terms or conditions relating to misconduct by the petitioner prior to the suspension, the petition must affirmatively demonstrate that those terms have been complied with or explain why they have not been satisfied. The petitioner has a duty to amend and keep current all information in the petition until the final hearing on the merits. Failure to do so may result in dismissal without notice.

(c) Disability reinstatement proceedings before BODA are not confidential; however, BODA may make all or any part of the record of the proceeding confidential.

Rule 9.02 Discovery

The discovery period is 60 days from the date that the petition for reinstatement is filed. The BODA Clerk will set the petition for a hearing on the first date available after the close of the discovery period and must notify the parties of the time and place of the hearing. BODA may continue the hearing for good cause shown.

Rule 9.03 Physical or Mental Examinations

(a) On written motion by the Commission or on its own, BODA may order the petitioner seeking reinstatement to submit to a physical or mental examination by a qualified healthcare or mental healthcare professional. The petitioner must be served with a copy of the motion and given at least seven days to respond. BODA may hold a hearing before ruling on the motion but is not required to do so.

(b) The petitioner must be given reasonable notice of the examination by written order specifying the name, address, and telephone number of the person conducting the examination.

(c) The examining professional must file a detailed, written report that includes the results of all tests performed and the professional's findings, diagnoses, and conclusions. The professional must send a copy of the report to the parties.

(d) If the petitioner fails to submit to an examination as ordered, BODA may dismiss the petition without notice.

(e) Nothing in this rule limits the petitioner's right to an examination by a professional of his or her choice in addition to any exam ordered by BODA.

Rule 9.04 Judgment

If, after hearing all the evidence, BODA determines that the petitioner is not eligible for reinstatement, BODA may, in its discretion, either enter an order denying the petition or direct that the petition be held in abeyance for a reasonable period of time until the petitioner provides additional proof as directed by BODA. The judgment may include other orders necessary to protect the public and the petitioner's potential clients.

SECTION 10: APPEALS FROM BODA TO THE SUPREME COURT OF TEXAS

Rule 10.01 Appeals to the Supreme Court

(a) A final decision by BODA, except a determination that a statement constitutes an inquiry or a complaint under TRDP 2.10, may be appealed to the Supreme Court of Texas. The clerk of the Supreme Court of Texas must docket an appeal from a decision by BODA in the same manner as a petition for review without fee.

(b) The appealing party must file the notice of appeal directly with the clerk of the Supreme Court of Texas within 14 days of receiving notice of a final determination by BODA. The record must be filed within 60 days after BODA's determination. The appealing party's brief is due 30 days after the record is filed, and the responding party's brief is due 30 days thereafter. The BODA Clerk must send the parties a notice of BODA's final decision that includes the information in this paragraph.

(c) An appeal to the Supreme Court is governed by TRDP 7.11 and the TRAP.

DEPARTMENT OF THE ARMY
UNITED STATES ARMY COURT OF CRIMINAL APPEALS
9275 Gunston Road
Fort Belvoir, Virginia 22060

CERTIFICATION OF TRUE COPIES

I HEREBY CERTIFY that the attached are true and complete copies of the Charge Sheet (20 September 2013); General Court-Martial Order Number 10 (16 December 2015); and US Army Court of Criminal Appeals Memorandum Opinion (8 May 2017); in the general court-martial case of United States v. Major Erik J. Burris, U.S. Army (ARMY 20150047), sentence adjudged 25 January 2015, which record is in my custody as Government Information Specialist, United States Army Court of Criminal Appeals, 9275 Gunston Road, Fort Belvoir, Virginia 22060.

Witness my hand and seal this 16th day of May 2017.

JERONIMO G. GUZMAN
Government Information Specialist

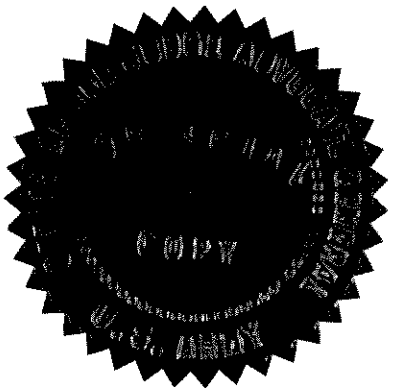

Exhibit
I

CHARGE SHEET

I. PERSONAL DATA

1. NAME OF ACCUSED (Last, First, Middle Initial)	2. SSN	3. GRADE OR RANK	4. PAY GRADE
BURRIS, Erik, J.	(b)(6)	MAJ	O-4

5. UNIT OR ORGANIZATION	6. CURRENT SERVICE	
Headquarters and Headquarters Company, Headquarters and Headquarters Battalion, 82d Airborne Division, Fort Bragg, North Carolina 28310	a. INITIAL DATE: 10 FEB 2008	b. TERM: Indef

7. PAY PER MONTH			8. NATURE OF RESTRAINT OF ACCUSED	9. DATE(S) IMPOSED
a. BASIC: ~~$7,149.60~~ ~~$7,078.80~~ $7,221.00	b. SEA/FOREIGN DUTY: $0.00	c. TOTAL: ~~$7,149.60~~ ~~$7,078.80~~ $7,221.00	NONE	N/A

II. CHARGES AND SPECIFICATIONS

10. CHARGE I: VIOLATION OF THE UCMJ, ARTICLE 128

SPECIFICATION 1: In that MAJ Erik J. Burris, U.S. Army, did, at or near Temple, Texas, on divers occasions, between on or about 1 March 2010 and on or about 31 May 2012, unlawfully strike (b)(6) (b)(6) on the chest, arms, and face, with his hands.

SPECIFICATION 2: In that MAJ Erik J. Burris, U.S. Army, did, at or near Temple, Texas, on divers occasions, between on or about 1 March 2010 and on or about 31 May 2012, unlawfully grab [redacted] (b)(6) on the arm with his hands.

SPECIFICATION 3: In that MAJ Erik J. Burris, U.S. Army, did, at or near Pinehurst, North Carolina, on divers occasions, between on or about 26 August 2012 and on or about 13 November 2012, unlawfully strike [redacted] on the chest, arms, and face, with his hands.

SPECIFICATION 4: In that MAJ Erik J. Burris, U.S. Army, did, at or near Pinehurst, North Carolina, on divers occasions, between on or about 26 August 2012 and on or about 13 November 2012, unlawfully grab (b)(6) on the arm with his hands.

(SEE CONTINUATION SHEET)

III. PREFERRAL

11a. NAME OF ACCUSER (Last, First, Middle Initial)	b. GRADE	c. ORGANIZATION OF ACCUSER
BARTON, GABRIEL, W.	O-5	HHBn, XVIII Airborne Corps

d. SIGNATURE OF ACCUSER

e. DATE (YYYYMMDD): 20130920

AFFIDAVIT: Before me, the undersigned, authorized by law to administer oath in cases of this character, personally appeared the above named accuser this 20th day of September, 2013, and signed the foregoing charges and specifications under oath that he/she is a person subject to the Uniform Code of Military Justice and that he/she either has personal knowledge of or has investigated the matters set forth therein and that the same are true to the best of his/her knowledge and belief.

LARSON, Nicholas J.	OSJA, HQ, XVIII ABN CORPS AND FORT BRAGG
Typed Name of Officer	*Organization of Officer*
0-3	Trial Counsel, Article 136, UCMJ
Grade	*Official Capacity to Administer Oath (See R.C.M. 307(b) - must be commissioned officer)*

Signature

12.

On 20 September, 2013, the accused was informed of the charges against him/her and of the name(s) of the accuser(s) known to me *(See R.C.M. 308(a)). (See R.C.M. 308 if notification cannot be made.)*

JARRETT A. THOMAS II	HHBn, 82D Airborne Division
Typed Name of Immediate Commander	*Organization of Immediate Commander*

O-5
Grade

Signature

IV. RECEIPT BY SUMMARY COURT-MARTIAL CONVENING AUTHORITY

13.

The sworn charges were received at 1239 hours, 20 Sep 2013, at Headquarters
Designation of Command or

HHBn, XVIII Airborne Corps
Officer Exercising Summary Court-Martial Jurisdiction (See R.C.M. 403)

~~FOR THE~~ [1]

GABRIEL W. BARTON	Commanding
Typed Name of Officer	*Official Capacity of Officer Signing*

O-5
Grade

Signature

V. REFERRAL; SERVICE OF CHARGES

14a. DESIGNATION OF COMMAND OF CONVENING AUTHORITY	b. PLACE	c. DATE *(YYYYMMDD)*
HQ, FORT BRAGG	FORT BRAGG, NC	20140207

Referred for trial to the GENERAL court-martial convened by Court-Martial Convening Order Number 6, headquarters, XVIII Airborne Corps and Fort Bragg.

17 May, 2013, subject to the following instructions: [2]

To be tried in conjunction with the additional charges.

By Command of Major General Chinn
Command or Order

C. CHRISTOPHER FORD	Senior Trial Counsel
Typed Name of Officer	*Official Capacity of Officer Signing*

O-3
Grade

Signature

15.

On 07 FEB, 2014, I ~~(caused to be)~~ served a copy hereof on (each of) the above named accused.

Nicholas J. Larson	O-3/CPT
Typed Name of Trial Counsel	*Grade or Rank of Trial Counsel*

Signature

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

CONTINUATION SHEET, DD Form 458 – MAJ BURRIS, Erik, J., [redacted] U.S. Army, Headquarters and Headquarters Company, Headquarters and Headquarters Battalion, 82d Airborne Division, Fort Bragg, NC 28310

Item 10 Continued:

SPECIFICATION 5: In that MAJ Erik J. Burris, U.S. Army, did, at or near Temple, Texas, on divers occasions, between on or about 1 March 2010 and on or about 31 May 2012, unlawfully hold Ms. [redacted], a child under the age of 16 years, on the floor with his hands and arms and poke and squeeze the said Ms. [redacted] on the abdomen and torso with his fingers and hands.

SPECIFICATION 6: In that MAJ Erik J. Burris, U.S. Army, did, at or near Temple, Texas, on divers occasions, between on or about 01 December 2010 and on or about 31 May 2012, unlawfully squeeze and pinch with his hands Ms. [redacted] a child under the age of 16 years, on the inner thigh and buttock(s).

SPECIFICATION 7: In that MAJ Erik J. Burris, U.S. Army, did, at or near Pinehurst, North Carolina, on divers occasions, between on or about 26 August 2012 and on or about 13 November 2012, unlawfully hold Ms. [redacted] a child under the age of 16 years, on the floor with his hands and arms and poke and squeeze the said Ms. [redacted] on the abdomen and torso with his fingers and hands.

SPECIFICATION 8: In that MAJ Erik J. Burris, U.S. Army, did, at or near Pinehurst, North Carolina, on divers occasions, between on or about 26 August 2012 and on or about 13 November 2012, unlawfully squeeze and pinch with his hands Ms. [redacted] a child under the age of 16 years, on the inner thigh and buttock(s).

CHARGE II: VIOLATION OF THE UCMJ, ARTICLE 120.

SPECIFICATION 1: In that MAJ Erik J. Burris, U.S. Army, did, at or near Temple, Texas, on divers occasions, between on or about 1 March 2010 and on or about 31 May 2012, cause [redacted] to engage in a sexual act, to wit: penetration of her anus with his finger, by using strength and power sufficient that she could not avoid or escape the sexual conduct.

SPECIFICATION 2: In that MAJ Erik J. Burris, U.S. Army, did, at or near Temple, Texas, on divers occasions, between on or about 1 March 2010 and on or about 31 May 2012, cause [redacted] to engage in a sexual act, to wit: penetration of her vulva with his penis, by using strength and power sufficient that she could not avoid or escape the sexual conduct.

SPECIFICATION 3: In that MAJ Erik J. Burris, U.S. Army, did, at or near Pinehurst, North Carolina, on divers occasions, between on or about 26 August 2012 and on or about 13 November 2012, commit a sexual act upon [redacted], to wit: penetration of her anus with his finger, by unlawful force, to wit: holding her down with his hands or body, or striking her with his hands.

CONTINUATION SHEET, DD Form 458 – MAJ BURRIS, Erik, J., [redacted] U.S. Army, Headquarters and Headquarters Company, Headquarters and Headquarters Battalion, 82d Airborne Division, Fort Bragg, NC 28310

SPECIFICATION 4: In that MAJ Erik J. Burris, U.S. Army, did, at or near Pinehurst, North Carolina, on divers occasions, between on or about 26 August 2012 and on or about 13 November 2012, commit a sexual act upon [redacted], to wit: penetration of her vulva with his penis, by unlawful force, to wit: holding her down with his hands or body, or striking her with his hands.

CHARGE III: VIOLATION OF THE UCMJ, ARTICLE 125.

SPECIFICATION 1: In that MAJ Erik J. Burris, U.S. Army, did, at or near Temple, Texas, on divers occasions, between on or about 1 March 2010 and on or about 31 May 2012, commit sodomy with [redacted] by force and without the consent of the said [redacted].

SPECIFICATION 2: In that MAJ Erik J. Burris, U.S. Army, did, at or near Pinehurst, North Carolina, on divers occasions, between on or about 26 August 2012 and on or about 13 November 2012, commit sodomy with [redacted] by force and without the consent of the said [redacted].

CHARGE IV: VIOLATION OF THE UCMJ, ARTICLE 134.

SPECIFICATION 1: In that MAJ Erik J. Burris, U.S. Army, did, at or near Temple, Texas on or about 24 December 2010, wrongfully communicate to [redacted] a threat, to wit: "if you ever leave me I would kill myself, you, and the kids" or words to that effect, and that said conduct was to the prejudice of good order and discipline in the armed forces and of a nature to bring discredit upon the armed forces.

~~SPECIFICATION 2: In that Major Erik J. Burris, U.S. Army, did, at or near Fort Bragg, North Carolina, on or about 9 August 2013, wrongfully endeavor to impede an investigation in the case of himself by copying data from a government computer onto eight (8) Digital Versatile Discs (DVDs) and removing them from the Office of the Staff Judge Advocate, and that said conduct was to the prejudice of good order and discipline in the armed forces.~~ EFG 15 Jan 15

CHARGE V: VIOLATION OF THE UCMJ, ARTICLE 90.

THE SPECIFICATION: In that MAJ Erik J. Burris, U.S. Army, at or near Fort Bragg, North Carolina, having received a lawful command from LTC Jarrett A. Thomas II, his superior commissioned officer, then known by the said MAJ Burris to be his superior commissioned officer, to return all DVDs or CDs or electronic media the said MAJ Burris produced or copied from the 82d Airborne Office of the Staff Judge Advocate to said LTC Thomas, or words to that effect, did, on or about 15 August ~~2012~~ 2013, willfully disobey the same.

EFG 15 Jan 15 (END OF CHARGES)

DNA processing required. 10 U.S.C. § 1565

DEPARTMENT OF THE ARMY
Headquarters, Fort Bragg
2175 Reilly Road, Stop A
Fort Bragg, North Carolina 28310

GENERAL COURT-MARTIAL ORDER NUMBER 10 — 16 December 2015

Major Erik J. Burris, [redacted] U.S. Army, Headquarters and Headquarters Battalion, 82nd Airborne Division, was arraigned at Fort Bragg, North Carolina, on the following offenses at a general court-martial convened by Commander, Headquarters, Fort Bragg.

Charge I. Article 128. Plea: Not Guilty. Finding: Guilty.

Specification 1: On divers occasions, between on or about 1 March 2010 and on or about 31 May 2012, did, at or near Temple, Texas, unlawfully strike [redacted] on the chest, arms, and face, with his hands. Plea: Not Guilty. Finding: Guilty, except for the words and figures, "on divers occasions between on or about 1 March 2010 and on or about 31 May 2012"; substituting therefor the words and figures, "on or about 24 December 2010." Of the excepted words and figures: Not Guilty; of the substituted words and figures: Guilty.

Specification 2: On divers occasions, between on or about 1 March 2010 and on or about 31 May 2012, did, at or near Temple, Texas, unlawfully grab [redacted] on arm with his hands. Plea: Not Guilty. Finding: Guilty.

Specification 3: On divers occasions, between on or about 26 August 2012 and on or about 13 November 2012, did, at or near Pinehurst, North Carolina, unlawfully strike [redacted] on the chest, arms, and face, with his hands. Plea: Not Guilty. Finding: Not Guilty.

Specification 4: On divers occasions, between on or about 26 August 2012 and on or about 13 November 2012, did, at or near Pinehurst, North Carolina, unlawfully grab [redacted] on the arm with his hands. Plea: Not Guilty. Finding: Guilty, except the words and figures, "on divers occasions between on or about 26 August 2012 and or about 13 November 2012"; substituting therefor the words and figures, "on or about 8 November 2012"; of the excepted words and figures: Not Guilty; of the substituted words and figures: Guilty.

GCMO No. 10, DA, HQ, Fort Bragg, Fort Bragg, North Carolina, dated 16 December 2015 (continued)

Specification 5: On divers occasions, between on or about 1 March 2010 and on or about 31 May 2012, did, at or near Temple, Texas, unlawfully hold Ms. D.B., a child under the age of 16 years, on the floor with his hands and arms and poke and squeeze the said Ms. [redacted] on the abdomen and torso with his fingers and hands. (After arraignment, but prior to entry of plea, the name listed as "[redacted] on this Specification of Charge I was amended on the original charge sheet to reflect the victim's legal name [redacted] Plea: Not Guilty. Finding: Guilty, except for the words and figures, "on divers occasions between on or about 1 March 2010 and or about 31 May 2012"; Substituting therefor the words and figures, "on or about 15 April 2012"; of the excepted words and figures: Not Guilty; of the substituted words and figures: Guilty.

Specification 6: On divers occasions, between on or about 01 December 2010 and on or about 31 May 2012, did, at or near Temple, Texas, unlawfully squeeze and pinch with his hands Ms. [redacted] a child under the age of 16 years, on the inner thigh and buttock(s). Plea: Not Guilty. Finding: Not Guilty.

Specification 7: On divers occasions, between on or about 26 August 2012 and on or about 13 November 2012, did, at or near Pinehurst, North Carolina, unlawfully hold Ms. [redacted] a child under the age of 16 years, on the floor with his hands and arms and poke and squeeze the said Ms. [redacted] on the abdomen and torso with his fingers and hands. Plea: Not Guilty. Finding: Not Guilty.

Specification 8: On divers occasions, between on or about 26 August 2012 and on or about 13 November 2012, did, at or near Pinehurst, North Carolina, unlawfully squeeze and pinch with his hands Ms. [redacted] a child under the age of 16 years, on the inner thigh and buttock(s). Plea: Not Guilty. Finding: Not Guilty.

Charge II. Article 120. Plea: Not Guilty. Finding: Guilty.

Specification 1: On divers occasions, between on or about 1 March 2010 and on or about 31 May 2012, did, at or near Temple, Texas, cause [redacted] to engage in a sexual act, to wit: penetration of her anus with his finger, by using strength and power sufficient that she could not avoid or escape the sexual conduct. (After arraignment and entry of plea, the military judge granted the Government motion to amend Specification 1 of Charge II, amending the word "act" to the word "contact" as a minor change.) Plea: Not Guilty. Finding: Not Guilty.

Specification 2: On divers occasions, between on or about 1 March 2010 and on or about 31 May 2012, did, at or near Temple, Texas, cause [redacted] to engage in a sexual act, to wit: penetration of her vulva with his penis, by using strength and power sufficient that she could not avoid or escape the sexual conduct. Plea: Not Guilty. Finding: Guilty.

GCMO No. 10, DA, HQ, Fort Bragg, Fort Bragg, North Carolina, dated 16 December 2015 (continued)

Specification 3: On divers occasions, between on or about 26 August 2012 and on or about13 November 2012, did, at or near Pinehurst, North Carolina, commit a sexual act upon [redacted] to wit: penetration of her anus with his finger, by unlawful force, to wit: holding her down with his hands or body, or striking her with his hands.
Plea: Not Guilty. Finding: Not Guilty.

Specification 4: On divers occasions, between on or about 26 August 2012 and on or about 13 November 2012, did, at or near Pinehurst, North Carolina, commit a sexual act upon [redacted] to wit: penetration of her vulva with his penis, by unlawful force, to wit: holding her down with his hands or body, or striking her with his hands.
Plea: Not Guilty. Finding: Guilty, except for the words and figures, "on divers occasions between on or about 26 August 2012 and on or about 13 November 2012"; Substituting therefor the words and figures, "on or about 8 November 2012"; of the excepted words and figures: Not Guilty; of the substituted words and figures: Guilty.

Charge III. Article 125. Plea: Not Guilty. Finding: Not Guilty.

Specification 1: On divers occasions, between on or about 1 March 2010 and on or about 31 May 2012, did, at or near Temple, Texas, commit sodomy with [redacted] by force and without the consent of the said [redacted] Plea: Not Guilty. Finding: Not Guilty.

Specification 2: On divers occasions, between on or about 26 August 2012 and on or about 13 November 2012, did, at or near Pinehurst, North Carolina, commit sodomy with [redacted] by force and without the consent of the said [redacted] Plea: Not Guilty. Finding: Not Guilty.

Charge IV. Article 134. Plea: Not Guilty. Finding: Not Guilty.

Specification 1: On or about 24 December 2010, did, at or near Temple, Texas wrongfully communicate to [redacted] a threat, to wit: "if you ever leave me I would kill myself, you, and the kids" or words to that effect, and that said conduct was to the prejudice of good order and discipline in the armed forces and of a nature to bring discredit upon the armed forces. (After arraignment but prior to entry of plea, the military judge renamed Specification 1 as The Specification after Specification 2 of Charge IV was dismissed.) Plea: Not Guilty. Finding: Not Guilty.

GCMO No. 10, DA, HQ, Fort Bragg, Fort Bragg, North Carolina, dated 16 December 2015 (continued)

Specification 2: On or about 9 August 2013, did, at or near Fort Bragg, North Carolina, wrongfully endeavor to impede an investigation in the case of himself by copying data from a government computer onto eight (8) Digital Versatile Discs (DVDs) and removing them from the Office of the Staff Judge Advocate, and that said conduct was to the prejudice of good order and discipline in the armed forces. (After arraignment but prior to entry of plea, the military judge granted Government's motion to dismiss Specification 2 of Charge IV.) Plea: Dismissed on Motion of Trial Counsel.
Finding: Dismissed on Motion of Trial Counsel.

Charge V. Article 90. Plea: Not Guilty. Finding: Guilty.

Specification: On or about 15 August 2012, at or near Fort Bragg, North Carolina, having received a lawful command from LTC J.T., his superior commissioned officer, then known by the said MAJ Burris to be his superior commissioned officer, to return all DVDs or CDs or electronic media the said MAJ Burris produced or copied from the 82d Airborne Office of the Staff Judge Advocate to said LTC T., or words to that effect, did, willfully disobey the same. (After arraignment but prior to entry of plea, the military judge granted Government's motion to amend The Specification of Charge V, to wit: to change the date "2012" to "2013.") Plea: Not Guilty. Finding: Guilty.

Additional Charge I. Article 134. Plea: Not Guilty. Finding: Not Guilty.

Specification: Between on or about 01 August 2011 and on or about 31 August 2011, did, at or near Temple, Texas, wrongfully communicate to [redacted] Sr. a threat, to wit: "that bitch, I would like to do away with [redacted], do you know anyone up in Chicago that would do the hit on [redacted] or words to that effect, and that said conduct was to the prejudice of good order and discipline in the armed forces and of a nature to bring discredit upon the armed forces.
Plea: Not Guilty. Finding: Not Guilty.

Additional Charge II. Article 125. Plea: Not Guilty. Finding: Guilty.

Specification: Between on or about 01 February 2012 and on or about 28 February 2012, did, at or near Raleigh, North Carolina, commit sodomy with [redacted] to wit: places his penis into the anus of said [redacted] by force and without the consent of the said [redacted]
Plea: Not Guilty. Finding: Guilty.

SENTENCE

The sentence was adjudged on 25 January 2015. To be dismissed from the service, to be confined for 20 years, and to forfeit all pay and allowances.

ACTION

Only so much of the sentence as provides for dismissal from service and confinement for 20 years is approved and, except for the part of the sentence extending to dismissal from the service, will be executed. The automatic forfeiture of all pay and allowances required by Article 58b, UCMJ is waived effective this date for a period of six months with direction that these funds be paid to the dependent children of the accused [redacted], [redacted] and [redacted].

BY COMMAND OF LIEUTENANT GENERAL TOWNSEND:

SALLY M. JUAREZ
MAJ, JA
Chief, Military Justice

DISTRIBUTION:
1-Accused
1-MJ
1-TC, DC

GCMO No. 10, DA, HQ, Fort Bragg, Fort Bragg, North Carolina, dated 16 December 2015 (continued)

1-Cdr, HHC, HHB, 82nd ABN DIV
1-Cdr, HHB, 82nd ABN DIV
1-Cdr, HQ, 82nd ABN DIV
1-Provost Marshal's Office, 16th MP Bde, Fort Bragg, NC 28310-5000
1-Cdr, USACIDC, 2nd Region, Fort Bragg, NC 28310-5000
1-Cdr, Defense Military Pay Office, 2175 Reilly Road, Stop A, Fort Bragg, NC 28310-5000
1-Cdr, Defense Military Pay Office, 4700 Mow Way Rd, Ste 190, Inmate Pay, Fort Sill, OK 73503 (Comply with AR 37-104-4)
1-Cdr, Special Processing Company, USA Personnel Control Facility (W6CSPR), Ft Sill, OK 73503-5100 (Comply with AR 600-8-104)
1-Cdr, Naval Consolidated Base Brig, 46141 Miramar Way, Ste 1, P.O. Box 452135, San Diego, CA 92145-2135
1-Cdr, Professor of Law, US Military Academy, West Point, NY 10996
1-Cdr, USA HRC, ATTN: Army Soldier Records Branch (PDR-R) Dept 420, 1600 Spearhead Division Ave., Fort Knox, KY 40121(To comply with AR 600-8-104)
1-Cdr, USACIDC, ATTN: CIOP-ZC, Russell-Knox Building, 27130 Telegraph Road Quantico, VA 22134
1-Director, US Army Crime Records Center, 27130 Telegraph Road, Quantico, VA 22134
1-Cdr, U.S. Army Criminal Investigation Lab, Fort Gillem, ATTN: CODIS Lab, 4930 North 31st Street, Forest Park, GA 30297
10-Clerk of Court (JALS-CCR), US Army Legal Service Agency, 9275 Gunston Road, Fort Belvoir, VA 22060
2-OSJA Case File
1-Record Set (Original)

UNITED STATES ARMY COURT OF CRIMINAL APPEALS

Before
TOZZI, CELTNIEKS, and BURTON
Appellate Military Judges

UNITED STATES, Appellee
v.
Major ERIK J. BURRIS
United States Army, Appellant

ARMY 20150047

Headquarters, Fort Bragg
Tara A. Osborn, Military Judge (arraignment)
John T. Rothwell, Military Judge (trial)
Lieutenant Colonel Jerrett W. Dunlap, Jr., Staff Judge Advocate

For Appellant: Mr. Zachary D. Spilman, Esquire (argued); Major Christopher D. Coleman, JA; Mr. Zachary D. Spilman, Esquire (on brief and reply brief).

For Appellee: Captain Linda Chavez, JA (argued); Lieutenant Colonel A.G. Courie III, JA; Major Cormac M. Smith, JA; Captain Linda Chavez, JA (on brief).

8 May 2017

MEMORANDUM OPINION

This opinion is issued as an unpublished opinion and, as such, does not serve as precedent.

BURTON, Judge:

In this appeal, we find appellant waived his right to claim impermissible character evidence and improper argument because he failed to object at trial. In addition, we find appellant failed to meet his burden to prove his defense counsel were ineffective.

An officer panel sitting as a general court-martial convicted appellant, contrary to his pleas, of one specification of willfully disobeying a superior commissioned officer, two specifications of rape, one specification of sodomy, and four specifications of assault consummated by a battery, in violation of Articles 90, 120, 125, and 128, Uniform Code of Military Justice, 10 U.S.C. §§ 890, 920, 925, 928 (2006 & Supp. III 2010; 2006 & Supp. IV 2011; 2006 & Supp. V 2012; 2012)

[hereinafter UCMJ].[1] The panel sentenced appellant to a dismissal, confinement for twenty years, and forfeiture of all pay and allowances. The convening authority approved the sentence as adjudged, but waived automatic forfeitures for six months.

This case is before us for review pursuant to Article 66, UCMJ. Appellant raises ten assignments of error, three of which merit discussion, but no relief. Appellant personally raised several matters pursuant to *United States v. Grostefon*, 12 M.J. 431 (C.M.A. 1982), including ineffective assistance of counsel during sentencing. These matters also warrant no relief, but the claim of ineffective assistance of counsel will be discussed in conjunction with the assigned error addressing this issue.

BACKGROUND

Appellant, a judge advocate,[2] met his second wife, [redacted] in January 2009 while he was stationed at Fort Hood, Texas. They married in March 2010. From the inception of their marriage through November 2012, appellant assaulted, forcibly engaged in sex with, and sodomized [redacted] Initially, [redacted] did not report these instances of abuse because she was embarrassed and feared no one would believe her. When [redacted] reported appellant's actions, he was serving as the Chief of Justice (CoJ) for the 82d Airborne Division at Fort Bragg, North Carolina.

Appellant had a daughter from his first marriage, [redacted] When his daughter would visit, he engaged in what he called "tickle torture." Witnesses testified that initially his daughter laughed when he tickled her. As [redacted] grew older, she started to dislike "tickle torture" and believed he engaged in "tickle torture" as punishment. She expressed her dislike to appellant by telling him she did not like it and would try to get away from him when he engaged in "tickle torture."

In his duties as CoJ, appellant had access to the shared computer drive where documents pertaining to ongoing investigations were stored. When documents pertaining to appellant's investigation were discovered on his government-issued computer, he was counselled in writing to "return all DVDs or CDs or electronic media you recently produced or copied from the 82d Airborne OSJA." Appellant

---

[1] Although appellant was charged with assaulting and raping his wife "on divers occasions" for two of the assault specifications and one of the rape specifications, the panel found him guilty of a single instance in each of the charged offenses.

[2] According to his Officer Record Brief, appellant received a juris doctorate degree from Texas Tech University in 2007, and attended the Judge Advocate Officer's Basic Course in 2008. As a judge advocate, appellant served as trial counsel and administrative law attorney at Fort Hood, prior to serving as the CoJ at Fort Bragg.

responded in writing, "I will get back with LTC Thomson about the CDs mentioned once I look for/find them and have discussed the same with defense counsel, but will give an update to him before COB today." Appellant never returned any DVDs or CDs to the 82d Airborne Division's Office of the Staff Judge Advocate.

A. Improper Character Evidence and Argument

In a videotaped Criminal Investigation Command (CID) interview, appellant told a special agent about his nickname, "The Beast." At trial, the government used appellant's nickname throughout its case to highlight the domestic violence incidents and to counter appellant's "good soldier" defense. For example, during [redacted]s testimony, she referenced "The Beast" when describing different instances of assault, rape, and sodomy. According to [redacted] after the first time appellant raped her, she asked him, "'Why did you do that? You hurt me.' . . . 'Why didn't you stop?' . . . 'It hurt me.'" After appellant stopped laughing he responded, "'Oh, you must have been talking about The Beast. You met The Beast last night.' . . . 'Oh, that's a name I nicknamed -- the girls in college that happened to and they nicknamed -- calls it The Beast.'" The CID interview, which included appellant's description about the origins of his nickname, was also admitted into evidence and played in its entirety to the panel. In closing argument, trial counsel used the term "The Beast" or "a beast" nine times.

On appeal, appellant alleges the numerous references to him as "The Beast" were impermissible character evidence and improper argument. Appellant also argues the government improperly commented on his constitutional right to remain silent during closing argument. As a threshold matter, we must determine in each instance whether appellant preserved his right to claim error, or waived his claim by failing to object at trial.

In general, "'[d]eviation from a legal rule is error unless the rule has been waived.'" *United States v. Ahern*, __ M.J. ___, 2017 CAAF LEXIS 292, at *7 (C.A.A.F. Apr. 20, 2017) (quoting *United States v. Girouard*, 70 M.J. 5, 10 (C.A.A.F. 2011)). As our superior court has explained, "[while an appellate court] reviews forfeited issues for plain error, *United States v. Gladue*, 67 M.J. 311, 313 (C.A.A.F. 2009), [appellate courts] do not review waived issues because a valid waiver leaves no error to correct on appeal." *Id.* (citing *United States v. Campos*, 67 M.J. 330, 332 (C.A.A.F. 2009)). Whether an appellant has waived an issue is a question of law we review de novo. *Id.* at *8 (citing *United States v. Rosenthal*, 62 M.J. 261, 262 (C.A.A.F. 2005)).

Regarding evidentiary errors, "[a] party may claim error in a ruling to admit or exclude evidence only if the error materially prejudices a substantial right of the party and: *if . . . a party, on the record: timely objects* or moves to strike . . . ." Military Rule of Evidence [hereinafter Mil. R. Evid.] 103(a) (emphasis added).

However, "[a] military judge *may* take notice of a plain error that materially prejudices a substantial right, even if the claim of error was not properly preserved." Mil. R. Evid. 103(f) (emphasis added). Regarding argument by counsel, "*[f]ailure to object to improper argument* before the military judge begins to instruct the members on findings *shall constitute waiver* of the objection." Rule for Courts-Martial [hereinafter R.C.M.] 919(c) (emphasis added).

1. "The Beast"

Appellant failed to object to a single reference of "The Beast" during the admission of evidence or during argument. Accordingly, this issue is waived and there is no legal error to correct on appeal. Moreover, there is no cause for us to exercise our discretionary authority to address this issue notwithstanding appellant's waiver. Although "[e]vidence of a person's character or character trait is not admissible to prove that on a particular occasion the person acted in accordance with the character or trait[,]" the term "The Beast" is not a character trait. Mil. R. Evid. 404(a)(1). It is appellant's self-imposed nickname, and it is not "'necessarily suggestive of a criminal disposition.'" *United States v. Farmer*, 583 F.3d 131, 145 (2d Cir. 2009) (quoting *United States v. Dean*, 59 F.3d 1479, 1492 (5th Cir. 1995)).[3] Because the use of appellant's nickname is not character evidence, there is no reason for this court to look beyond appellant's clear waiver.

2. Right to Remain Silent

During closing argument, trial counsel stated the following:

> Who is so many people's source of information in this case, who didn't walk into this courtroom and talk to you -- 95 percent of the time, what was the answer when asked? "[Appellant] told me." "[Appellant] told me that the initial report was just domestic violence." If you're Brandon Hobgood, "[Appellant] called me and told me that [redacted] said these things." If you're [appellant's] family, Kristin Beilman or her husband, "Well, we met

[3] In *Farmer*, the trial judge overruled the defendant's objection to the use of his nickname, "Murder," even though he was charged with murder and attempted murder. 583 F.3d at 135. The appellate court found "the main problem was not the admission of the nickname into evidence. Rather, it was the prosecutors' frequently repeated, gratuitous invocation of [the] nickname" that "amounted to a 'flagrant abuse.'" *Id.* at 146-147 (quoting *United States v. Coriaty*, 300 F.3d 244, 255 (2d Cir. 2002)). In *Farmer*, the nickname "Murder" was used nearly thirty times in the rebuttal argument. *Id.* at 144. In the case at hand, appellant's nickname is not repeated frequently nor is it a gratuitous invocation rising to flagrant abuse.

> [redacted] twice; but [appellant] told us these things about her."
>
> [redacted] is isolated, and she is not controlling the dialogue. [Appellant] is controlling the dialogue. And you saw that, too. Watch that CID video. Watch that push of information. Watch that display with [Special Agent AT] about what he knows and how he knows it. It's exactly what [redacted] feared. And it is reasonable to think, "If I leave and the person -- if I call someone and the very person they are going to turn to, to find out what's going on is linked with my husband, who am I really turning to at all?" That isn't an option. She doesn't have an option.

Defense counsel did not object to this portion of trial counsel's argument. After trial counsel finished her closing argument and before defense started his argument, the military judge sua sponte excused the members and stated the following:

> [MJ:] Counsel, during closing -- and it may have been inadvertent and I may be paraphrasing here but I believe the statement was made, "Who is the person giving them all the information, who didn't walk in here and talk to you? [Appellant]." I mean, I don't know -- I may have misinterpreted that.
>
> ATC: No, sir. That was not what I -- yeah.
>
> MJ: But I didn't raise it then. I didn't hear an objection. Obviously, my concern is, you know, it could be interpreted as a comment on the accused's failure to testify.
>
> Defense, do you want me to give any kind of curative instruction based on that?
>
> . . . .
>
> CDC: Judge, I heard it the way you heard it. I heard it as an impermissible instruction on the accused's failure to testify. We didn't want the instruction.
>
> MJ: No. I understand. That's why ----

> CDC: Now we are put into a bit of a box because we have to make a decision on something that the government put in. I'd like to be able to speak to my [co-counsel] and see what we can proffer up to be a reasonable -- see if there is any solution. We didn't poison the well, Judge, obviously.
>
> MJ: I understand, and I don't think it was an intentional if it was ----
>
> CDC: I'm not saying it was but ----
>
> MJ: I understand.
>
> CDC: But I heard it in the same vain you did.
>
> . . . .
>
> MJ: May I listen to the tape?
>
> [The court reporter conferred with the military judge.]
>
> MJ: Court's in recess.

The military judge recessed the court-martial and held a R.C.M. 802 conference during which the parties and the military judge listened to the audio recording of trial counsel's closing argument. Following the recess, the military judge held an Article 39(a), UCMJ, session during which the following ensued:

> [MJ:] During the recess, both I and counsel listened to the audio. I believe it can be interpreted a couple of different ways. One as was described, another with respect to a voice inflection and intonation and pause in the argument.
>
> Also during the [R.C.M. 802 conference], I believe defense counsel indicated something that might alleviate the problem during the next session.
>
> Is there anything that either party wishes to add to this on this issue?
>
> TC: No, Your Honor.
>
> CDC: No, Your Honor.

> ATC: Actually -- I apologize, sir. Just to make -- that the defense's plan was to do that prior to any of this popping up on the record either. You know what I mean, it wasn't like ----
>
> MJ: Right.
>
> ATC: ---- this concern changed the tides or anything like that.
>
> MJ: Okay. Thank you, Government.

Defense counsel offered no additions or corrections to the military judge's summary of the R.C.M. 802 conference. When the court-martial was called to order and the panel returned, defense counsel gave his closing argument in which he stated: "[Appellant] didn't testify in this case because that says it best. That video[4] was pure and raw and honest. There was no need."

Based on the facts in this case, we conclude appellant waived his right to raise this issue on appeal. "Waiver is different from forfeiture. Whereas forfeiture is the failure to make the timely assertion of a right, waiver is the 'intentional relinquishment or abandonment of a known right.'" *Gladue*, 67 M.J. at 313 (quoting *Johnson v. Zerbst*, 304 U.S. 458, 464 (1938)). When the military judge directed defense counsel's attention to trial counsel's potentially improper argument, the right to object became a "known right." After listening to the audio recording of trial counsel's argument and conferring with co-counsel during a recess, appellant, through counsel, intentionally abandoned his right to object and obtain a judicial remedy. Instead of a judicial remedy, defense counsel chose to address the potentially improper argument with counter-argument.[5]

Even assuming appellant preserved this issue for appellate review by simply agreeing with the military judge, we find neither error in nor prejudice from trial counsel's argument. As the military judge correctly observed, trial counsel's comments could be interpreted multiple ways. In its full context, trial counsel's

---

[4] The video of appellant's interview with CID was admitted into evidence and played in its entirety during the government's case.

[5] Defense counsel claimed during the Article 39(a), UCMJ, session that he recognized trial counsel's potentially improper argument before the military judge intervened sua sponte. Defense counsel also indicated during the R.C.M. 802 conference that he originally intended to address the potentially improper argument with counter-argument. Essentially, the military judge's intervention did not change defense counsel's initial preference to forego a judicial remedy.

reference to appellant as the common source of information for defense witnesses, "did not manipulate or misstate the evidence, nor did it implicate other specific rights of the accused such as the right to counsel or the right to remain silent." *Darden v. Wainwright*, 477 U.S. 168, 182 (1986). Even if this argument indirectly or by innuendo commented on appellant's exercise of a fundamental right, the comments were a reasonable inference drawn from the testimony of Mr. Hobgood, Mrs. Beilman, and Mr. Aaron Beilman.

Further assuming constitutional error, we are convinced beyond a reasonable doubt appellant suffered no prejudice. After the defense team consulted with each other during a recess, they made a tactical decision to decline a curative instruction from the military judge. Instead, defense counsel chose to address the issue with counter-argument, which was their original strategy. In short, the military judge not only elicited defense counsel's preferred remedy on the record, he also acquiesced to their post-consultation preference.

Under the circumstances of this case, we find appellant failed to preserve a claim of error by merely agreeing with the military judge's sua sponte identification of potential error. Even assuming, *arguendo*, appellant did not waive the issue, we find no error and no prejudice. Accordingly, appellant is not entitled to relief.

B. Ineffective Assistance of Counsel

Whether counsel provided ineffective assistance is a question of law reviewed de novo. *United States v. Datavs*, 71 M.J. 420, 424 (C.A.A.F. 2012) (quoting *United States v. Gutierrez*, 66 M.J. 329, 330-31 (C.A.A.F. 2008)). "Even under de novo review, the standard for judging counsel's representation is a most deferential one." *Harrington v. Richter*, 562 U.S. 86, 105 (2011) (emphasis omitted).

The Sixth Amendment guarantees an accused the right to the effective assistance of counsel. *United States v. Gooch*, 69 M.J. 353, 361 (C.A.A.F. 2011) (citing *United States v. Gilley*, 56 M.J. 113, 124 (C.A.A.F. 2001)). To establish that his counsel was ineffective, appellant must satisfy the two-part test, "both (1) that his counsel's performance was deficient, and (2) that this deficiency resulted in prejudice." *United States v. Green*, 68 M.J. 360, 361-62 (C.A.A.F. 2010) (citing *Strickland v. Washington*, 466 U.S. 668, 687 (1984)).

> Judicial scrutiny of counsel's performance must be highly deferential. It is all too tempting for a defendant to second-guess counsel's assistance after conviction or adverse sentence, and it is all too easy for a court, examining counsel's defense after it has proved unsuccessful, to conclude that a particular act or omission of counsel was unreasonable. A fair assessment of attorney performance requires that every effort be made to

> eliminate the distorting effects of hindsight, to reconstruct the circumstances of counsel's challenged conduct, and to evaluate the conduct from counsel's perspective at the time. Because of the difficulties inherent in making the evaluation, a court must indulge a strong presumption that counsel's conduct falls within the wide range of reasonable professional assistance; that is, the defendant must overcome the presumption that, under the circumstances, the challenged action might be considered sound trial strategy. There are countless ways to provide effective assistance in any given case. Even the best criminal defense attorneys would not defend a particular client in the same way.

Strickland, 466 U.S. at 689 (internal quotation marks and citations omitted).

The *Strickland* framework was adopted by the military justice system and further developed into a three-pronged test to determine whether an appellant has overcome the presumption of competence and shown prejudice:

> (1) Are appellant's allegations true; if so, "is there a reasonable explanation for counsel's actions?";
>
> (2) If the allegations are true, did defense counsel's level of advocacy fall "measurably below the performance . . . [ordinarily expected] of fallible lawyers?"; and
>
> (3) If defense counsel was ineffective, is there a "reasonable probability that, absent the errors," there would have been a different result?

United States v. Grigoruk, 56 M.J. 304, 307 (C.A.A.F. 2002) (quoting *United States v. Polk*, 32 M.J. 150, 153 (C.M.A. 1991)). In adopting the *Strickland* framework, our superior court has maintained the strong deference to counsel's tactical decisions and rejected the advantages of hindsight. *See United States v. Akbar*, 74 M.J. 364, 379 (C.A.A.F. 2015) ("Thus, our scrutiny of a trial defense counsel's performance is 'highly deferential,' and we make 'every effort . . . to eliminate the distorting effects of hindsight, to reconstruct the circumstances of counsel's challenged conduct, and to evaluate conduct from counsel's perspective at the time.'").

Moreover, our review of ineffectiveness is not based on a single act of counsel, but by considering counsel's overall performance. *See United States v. Murphy*, 50 M.J. 4, 8 (C.A.A.F. 1998) ("When we look for effective assistance, we do not scrutinize each and every movement or statement of counsel. Rather, we satisfy ourselves that an accused has had counsel who, by his or her representation,

made the adversarial proceedings work."). Similarly, where an appellant was represented by multiple counsel, their performance is judged as a team, not by considering only one or more individual counsel. *United States v. McConnell*, 55 M.J. 479, 481 (C.A.A.F. 2001).

Regarding counsel's performance after findings, "defense counsel may be ineffective at the sentencing phase when counsel either 'fails to investigate adequately the possibility of evidence that would be of value to the accused in presenting a case in extenuation and mitigation or, having discovered such evidence, neglects to introduce that evidence before the court-martial.'" *United States v. Alves*, 53 M.J. 286, 289 (C.A.A.F. 2000) (quoting *United States v. Boone*, 49 M.J. 187, 196 (C.A.A.F. 1998)). When assessing the second prong, appellant "'must show that there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different. A reasonable probability is a probability sufficient to undermine confidence in the outcome.'" *Green*, 68 M.J. at 362 (quoting *Strickland*, 466 U.S. at 698).

In this case, appellant was represented by a military defense counsel (DC), an individual military counsel (IMC), and a civilian defense counsel (CDC). During the trial, the CDC became ill and was taken to a hospital. Although the CDC later returned to trial, he was not present when the panel announced its findings. In addition, the CDC was not present during presentencing because he was excused by appellant since the DC and IMC "were comfortable" going forward without him.

On appeal, appellant, both personally and through appellate defense counsel, alleges his trial defense counsel were ineffective during presentencing because they did not prepare for the possibility of his conviction. Specifically, appellant claims his defense counsel failed to investigate possible matters in extenuation and mitigation, identify a sufficient number of potential witnesses, prepare and control the few witnesses who did testify, present a "good soldier book," and advise him to apologize in his unsworn statement.

1. Investigating Matters in Extenuation and Mitigation, and Presentencing Witness Identification and Preparation

In his affidavit, appellant states:

> Everyone on my defense team was blown away by the findings. They only considered the possibility of an assault of my wife as a possible conviction. They did minimal pre-trial sentencing preparation based only on that possibility. When the findings were announced, there was total disbelief from my counsel. They were totally unprepared to handle a sentencing case that involved sex offense convictions.

. . . .

> At no point in the preparation of the case did my defense counsel ask about witnesses who would testify to accomplishments of my military career. We discussed character witnesses for the merits portion of the case, but we never discussed calling witnesses who could describe the things I did during my military career. We did not even put together the sentencing materials until we were waiting for findings to be announced. They had a paralegal print out photographs for me to submit.

First, we reject appellant's factual assertion that sentencing was not considered until after findings. Appellant acknowledges as much in his affidavit:

> The first time *I had a substantive conversation about pre-sentencing proceedings with my counsel* was when I brought up sentencing *about a week or a week and a half before my court-martial.* I asked them what we were going to do if I was convicted of any of the charges. I asked them specifically about a Good Soldier Book. They said we should probably get something together, including letters of support and awards. However *I was the person who reached out to people through email and Facebook asking for letters of support.*

(emphasis added). In the post-trial affidavits ordered by this court, the IMC and DC admitted they, too, were "shocked" and "surprised" by the verdict. However, despite their disappointment, it is clear from the record and defense counsel's sworn affidavits that their strategic decision to raise the "good soldier defense" on the merits involved the investigation and presentation of evidence typically reserved for presentencing. As our superior court has held, even defense counsel's post-findings surprise and regret, without more, do not establish deficient performance by counsel. *See United States v. Smith*, 48 M.J. 136, 137-38 (C.A.A.F. 1998) ("We hold that the assertions of appellant's trial defense counsel, which reflect counsel's remorse and disappointment with the ultimate resolution of the case, do not establish ineffective assistance of counsel under [*Strickland.*] . . . A post-trial attack, even when self-initiated by trial defense counsel, requires more than counsel's regret as support.").

Second, appellant has failed to show a reasonable probability his sentence would have been different even if his claims were true—that his counsel were "unprepared to handle a sentencing case that involved sex offense convictions" as opposed to one that involved "an assault of [redacted] The "good soldier defense" his counsel put forth was equally applicable during presentencing to sex offense

convictions as domestic violence convictions. Specifically, defense counsel called ten witnesses who testified about appellant's good military character. Defense counsel also used a government witness to discuss appellant's good duty performance. Although testifying on the merits, these witnesses covered appellant's entire military career, including his time as a field artillery officer and a judge advocate. They testified about his good duty performance at various duty locations including his deployment to Iraq and his attendance at The Judge Advocate General's Officer Graduate Course.

Defense counsel referenced the testimony of these witnesses in their presentencing argument. The military judge instructed the panel prior to sentencing they could consider all the witnesses who testified on the merits as to appellant's character. Accordingly, it was a reasonable tactical decision for defense counsel not to recall all of these witnesses during presentencing. In similar circumstances, our superior court has found counsel's decision to reference, rather than repeat, the earlier testimony of a merits witness was not ineffective for sentencing. *See United States v. Perez*, 64 M.J. 239, 244 (C.A.A.F. 2006) ("[W]e note that defense counsel's sentencing argument expressly referenced the 'good soldier' testimony that the witness had provided during the findings portion of trial. Moreover, by referring to earlier testimony rather than recalling the witness, the defense was able to avoid the risk of cross-examination.").

In addition to documentary evidence and appellant's unsworn statement, defense counsel did recall three witnesses during presentencing—Dr. Mark Whitehill, a licensed psychologist and certified sex offender treatment provider; Mr. Galen Burris, appellant's father; and Mrs. Beilman, appellant's sister. Dr. Whitehill explained his clinical assessment that appellant has a personality disorder, but is a low-level risk to reoffend and commit sexual violence. Even ignoring whether his testimony offers further proof counsel were prepared for a sentencing case involving sex offenses, appellant has failed to show what else Dr. Whitehill could have testified to if he had been more fully prepared by counsel.[6]

---

[6] While appellant asserts that Dr. Whitehill only spoke with him between the announcement of findings and the presentencing proceedings, it is clear from the record that Dr. Whitehill prepared for testifying as an expert witness. Dr. Whitehill reviewed the complete report from appellant's mental examination by the R.C.M. 706 board. Although the government elicited information pertaining to appellant's personality disorder, this is not evidence of a lack of preparation. The DC admits in her affidavit that she considered this matter prior to calling Dr. Whitehill and made a tactical decision to call him because she believed the benefits from his opinion about appellant's low risk of recidivism outweighed information about a personality disorder.

Although appellant attempts to show prejudice by reference to other witnesses, we find those efforts similarly inadequate and mere speculation. Appellant admits he did not provide counsel with a list of "numerous individuals who" he claims "would have testified on [his] behalf in sentencing." While appellant now states his desire to call additional witnesses, with the exception of his sister, there are no affidavits confirming the desired witnesses were willing to testify favorably on his behalf. Essentially, appellant asks this court to presume he was prejudiced when counsel failed to discover unspecified witnesses or recall merits witnesses to provide unspecified testimony. We cannot presume what appellant has the burden to show. *See Alves*, 53 M.J. at 289-90.

2. Control of Witness Testimony

Appellant now claims counsel did "almost no preparation with my sister [Mrs. Beilman.]" He believes his sister should have been asked about aspects of his life including: his childhood, times he defended women against violence, rescued animals, coached a girls soccer team, and his numerous volunteer activities. He also alleges his counsel did not discuss with Mrs. Beilman the relevance of attacking [redacted] and the trial counsel, or the wisdom of commenting "about evil women or what it would be like to be married to an evil woman."

Mrs. Beilman submitted an affidavit in which she stated, "I recall [the IMC] approaching me and asking me if I was going to be able to testify for [appellant's] sentencing as I was noticeably distraught and crying, but he did not prepare me." She further states:

> I know that [appellant] was wrongfully convicted. I have regrets about some of the statements I made during my sentencing testimony and I believe that my words, while spoken in grief, are not in my true character and also contributed to the length of [appellant's] sentence. I really had no understanding how all the words I said on the stand could affect that decision. Prior to [the IMC's] affidavit I had never heard the term "impeaching the verdict." When I testified in the sentencing proceeding I simply reacted to the pain that I and my family were experiencing. I was not guided through the range of emotions I was experiencing or helped to convey the message I really wanted to.
>
> If I could do it again, my testimony would be different.

While Mrs. Beilman's post-trial reflection on her testimony with the benefit of hindsight is understandable, we cannot rely on the same benefit in our appellate review. Furthermore, her belief, no matter how deeply felt, that the panel increased

appellant's punishment because she "impeached the verdict" and criticized the trial counsel is speculation. In contrast to her post-trial assessments, her claim that she was inadequately prepared by counsel *before* testifying during presentencing requires closer examination of the record.

During presentencing, Mrs. Beilman was very responsive to the IMC's questions despite the fact she was emotional and crying. After she answered the IMC's final question, neither the government nor the panel members had any questions for her. As she was about to be permanently excused, Mrs. Beilman asked the military judge, "May I say something?" The military judge responded, "Counsel? You can answer questions from counsel." She responded, "I will." It is clear from the context that Mrs. Beilman's request to make a final comment was not planned. At this juncture, the IMC had little time to make a critical decision in front of the panel. The IMC could have concluded his examination without giving her the opportunity to express her final thought. However, this may have left the panel confused and possibly prompted a panel member to ask a question to allow her to continue to speak. If counsel had chosen this tactic, we could be faced with a similar question whether counsel were ineffective because they prevented a witness from providing additional mitigation evidence. In the alternative, the IMC could have requested a recess to determine what Mrs. Beilman wanted to say, but even if granted it could undermine her testimony as overtly crafted and prescreened. Under these circumstances, the IMC made a tactical decision to permit her final comment and asked, "Ma'am, do you have anything else you want to say?" The following colloquy occurred:

> A: Yes. When his oldest daughter was a few years old, [appellant] was in law school; and he was studying hard and he was exhausted. . . .
>
> . . . .
>
> And for [redacted] [redacted] was proof that he could have children. That's what [redacted] was to [redacted] And her time was running out. I am a woman, and I know women. And I'm ashamed to be one of them sometimes because they have no moral class anymore.
>
> And for [redacted] once she got her kids, I always knew that for her if it worked out, it worked out. And, if not, she had Daddy welfare; and that is who [redacted] is. And she managed to sit up here and cry those tears. They are not real -- they're not real.
>
> *And that prosecutor -- that blonde prosecutor with the bun, can smirk during my testimony and comment that -- I*

> *see something in someone's eyes -- so disrespectful. And I want you to think about this and that when you sleep -- and when my niece's grow up, maybe they'll marry your son. Then you'll know what it feels like to know an evil woman ----*
>
> MJ: Counsel?
>
> WIT: I'm done. [Crying.]
>
> IMC: Thank you, ma'am.
>
> WIT: My brother is worthy of wonderful things in his life. [Crying.]
>
> I love you, and I am proud of you. And you keep fighting because you're my hero.
>
> [Pause.]
>
> MJ: Let's take a brief recess. Court's in recess.
>
> [The witness withdrew.]

(emphasis added). Appellant's criticism of the IMC's decision to permit Mrs. Beilman's to make a final comment is based entirely on hindsight. Even in hindsight, the IMC believes he made the correct decision in not abruptly terminating Mrs. Beilman's final statement. The IMC states in his affidavit:

> I did not intervene because in my personal and professional opinion, the panel got it wrong; I felt that any uneasiness by panel members in their findings may potentially have resulted in a more lenient sentence. Moreover, I figured that allowing a third party witness to impeach the verdict versus doing it myself – or through [appellant] – would be an effective way to plant the seed while not overtly making that argument, potentially offending the members. In other words, as litigation strategy, I attempted to walk the fine line.

We do not rely on the hindsight of appellant, the witness, or counsel to resolve this question. It is clear from the record of trial that Mrs. Beilman was sufficiently prepared to understand counsel's questions and, apart from *her* impromptu concluding remarks, to provide favorable testimony. Without more, an affiant's post-trial regret and speculation, like lack of memory, are far too equivocal

and ambiguous a complaint to overcome the strong presumption of counsel's competence. *See United States v. Key*, 57 M.J. 246, 249 (C.A.A.F. 2002) (finding broad, generalized accusations from an affiant are insufficient to prove counsel were ineffective). Moreover, there is no evidence to suggest the panel rejected the military judge's instructions on the proper basis for a sentence and instead punished appellant for the errant comments from his sister.

3. Good Soldier Book

There is no blueprint for the contents of a "good soldier book." Although not in book format, defense counsel submitted twelve letters of support and appellant's military awards and certificates, which included two Bronze Stars, a Meritorious Service Medal, a Joint Service Commendation Medal, and two Army Achievement Medals. Defense counsel also submitted appellant's academic awards and certifications from the Texas Tech University School of Law. In addition, the panel received pictures of appellant with his family and appellant's officer record brief. These documents, combined with the "good soldier" testimony on the merits, paint a picture of appellant's military career and served the same purpose as a "good soldier book." Although appellant notes he had to request letters of support, this is not an uncommon or unreasonable practice as appellant would know people who would be willing to support him. Significantly, appellant does not proffer any additional evidence he wanted to submit on his behalf. Accordingly, appellant has failed to show deficient conduct or prejudice.

4. Unsworn Statement

While not wholly unfettered, an accused has a broad right to make an unsworn statement during presentencing, and may not be cross-examined by the trial counsel or the court-martial. *United States v. Grill*, 48 M.J. 131, 133 (C.A.A.F. 1998); R.C.M. 1001(c)(2). While R.C.M. 1001(c)(2)(A) purports to limit an accused's unsworn statement to matters "in extenuation, in mitigation or to rebut matters presented by the prosecution," this limit has never been strictly enforced in light of its traditional place as "an important right at military law." *Grill*, 48 M.J. at 133. Accordingly, the unsworn statement remains "an opportunity for an accused to bring information to the attention of the members or a military judge . . . without ordinary evidentiary constraints." *United States v. Johnson*, 62 M.J. 31, 37 (C.A.A.F. 2005).

Appellant is clear that he briefly discussed with his counsel what he would say if he made an unsworn statement, which included an emphatic resolve that he "was not going to apologize for anything." Instead, appellant exercised his broad right to make an unsworn statement as follows:

> Members of the Panel, thank you. Thank you for listening to this case. Thank you for deliberating on the evidence that you heard. Thank you for reaching a decision.

I want to believe, I have to believe, and I trust that each of you are great officers, great Americans and you believe you did the right thing. I trust that.

To the extent that you found me guilty of rape and spousal abuse, *I must apologize to you, because I cannot offer you an apology*. I do not challenge your decision. I do not challenge any of you. But I have never, nor shall I ever, *admit* to having raped my wife or beaten her. Whatever vestiges of honor I have left, whatever shreds of honor I may have left, I'm going to fight to cling onto. And one of those is the truth.

What I did hear, *what hurts me unbelievably is that -- that excessive horseplay, being too rough with my eldest daughter has caused her any pain, has caused her any grief* and, as the letter you've just heard, has caused her to ultimately hate me.

There is nothing more precious in this world to me than those that I love, and there is nothing more precious to me than my three girls. I love them dearly.

As a result of this court-martial, it's safe to say I will not be seeing them again. To that end, I would ask one woman in this courtroom that I see, please take care of those girls. I will love them beyond my lifetime.

Again, I want to thank you for what you've done, and I trust you did what you felt was right.

In addition to that, though I have just a few friends in the -- in the gallery right now. I want to say that I have experienced an unbelievable, overflowing show of support, trust, faith, confidence, from -- from friends that I could never have imagined.

At this moment, I should probably feel some kind of -- at this moment, honestly, I think more than -- I feel more joy than anything else for the friends and my family that have supported and have believed me through this entire process. To that end, thank you.

To my counsels who have been with me so long now, I can actually call them friend. I am overwhelmed.

> I'm not going to take up more of your time. *I'm not going to ask you to give me some ridiculously short sentence.* You've convicted me of some serious things and you need to think about that and an appropriate sentence.
>
> But I've served my country, my community, and my family, my entire life. I ask that you give me a chance to return to doing those same things in some capacity at some point. Thank you.

(emphasis added). Appellant chose not to apologize, as is his right. There is no requirement for an appellant to apologize during an unsworn statement or forfeit the right to make one. Confronted with appellant's emphatic refusal to apologize, it was reasonable for defense counsel to encourage him to express remorse in his own words as opposed to pressuring him to make an insincere apology.[7] Ultimately, defense counsel had no authority to prevent appellant from making an unsworn statement, or advising him that he *must* apologize or forego his right altogether. Absent extraordinary circumstances, these decisions made by counsel are exactly the type of tactical decisions relevant case law instructs us not to second guess. As such, we will not do so here.

Under the circumstances of this case, we see no need to order a fact-finding hearing pursuant to *United States v. DuBay*, 17 U.S.C.M.A. 147, 37 C.M.R. 411 (1967). The facts in appellant's allegations—even if true—would not result in relief. *United States v. Ginn*, 47 M.J. 236, 248 (C.A.A.F. 1997). Furthermore, "the appellate filings and the record as a whole 'compellingly demonstrate' the improbability of [appellant's allegations]." *Id.* Applying the first, second, and fourth *Ginn* principles to appellant's submission, we reject appellant's ineffective assistance claim. In short, defense counsel made objectively reasonable choices in strategy from available alternatives. Appellant's assertions that his defense counsel provided ineffective assistance lack merit.

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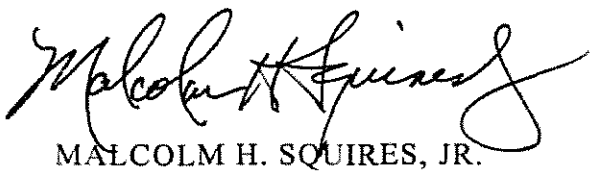
[7] Whether to give an accused the generally prudent advice to apologize to the victims during an unsworn statement is a tactical decision that requires case-specific analysis by defense counsel. While the benefits of a genuine expression of remorse are obvious, a "shallow, artificial, or contrived" expression of remorse can have potentially negative effects during the government's rebuttal. *United States v. Edwards*, 35 M.J. 351, 355 (C.M.A. 1992).

CONCLUSION

On consideration of the entire record, the findings of guilty and the sentence are AFFIRMED.

Senior Judge TOZZI and Judge CELTNIEKS concur.

FOR THE COURT:



MALCOLM H. SQUIRES, JR.
Clerk of Court

DEPARTMENT OF THE ARMY
UNITED STATES ARMY COURT OF CRIMINAL APPEALS
9275 Gunston Road
Fort Belvoir, Virginia 22060

CERTIFICATION OF TRUE COPIES

I HEREBY CERTIFY that the attached are true and complete copies of the Charge Sheet (27 January 2014); and Department of Defense Report of Result of Trial (26 January 2015); in the general court-martial case of United States v. Major Erik J. Burris, U.S. Army (ARMY 20150047), sentence adjudged 25 January 2015, which record is in my custody as Government Information Specialist, United States Army Court of Criminal Appeals, 9275 Gunston Road, Fort Belvoir, Virginia 22060.

Witness my hand and seal this 30th day of November 2017.

JERONIMO G. GUZMAN
Government Information Specialist

Exhibit
2

CHARGE SHEET

I. PERSONAL DATA

1. NAME OF ACCUSED (Last, First, Middle Initial)	2. SSN	3. GRADE OR RANK	4. PAY GRADE
BURRIS, Erik, J.	[redacted]	MAJ	O-4

5. UNIT OR ORGANIZATION	6. CURRENT SERVICE	
Headquarters and Headquarters Company, Headquarters and Headquarters Battalion, 82d Airborne Division, Fort Bragg, North Carolina 28310	a. INITIAL DATE: 10 FEB 2008	b. TERM: Indef

7. PAY PER MONTH			8. NATURE OF RESTRAINT OF ACCUSED	9. DATE(S) IMPOSED
a. BASIC	b. SEA/FOREIGN DUTY	c. TOTAL		
~~$7,149.60~~ $7,221.00	$0.00	~~$7,149.60~~ $7,221.00	NONE	N/A

II. CHARGES AND SPECIFICATIONS

10. ADDITIONAL CHARGE I VIOLATION OF THE UCMJ, ARTICLE 134

THE SPECIFICATION: In that MAJ Erik J. Burris, U.S. Army, did, at or near Temple, Texas between on or about 01 August 2011 and on or about 31 August 2011, wrongfully communicate to [redacted] a threat, to wit: "that bitch, I would like to do away with [redacted] do you know anyone up in Chicago that would do the hit on [redacted] or words to that effect, and that said conduct was to the prejudice of good order and discipline in the armed forces and of a nature to bring discredit upon the armed forces.

ADDITIONAL CHARGE II: VIOLATION OF THE UCMJ, ARTICLE 125

THE SPECIFICATION: In that MAJ Erik J. Burris, U.S. Army, did, at or near Raleigh, North Carolina between on or about 01 February 2012 and on or about 28 February 2012, commit sodomy with [redacted] to wit: places his penis into the anus of said [redacted] by force and without the consent of the said [redacted]

(END OF CHARGES)

III. PREFERRAL

11a. NAME OF ACCUSER (Last, First, Middle Initial)	b. GRADE	c. ORGANIZATION OF ACCUSER
KOBER, ERIK K.	O-5	HHBn, XVIII Airborne Corps

d. SIGNATURE OF ACCUSER [signature] e. DATE (YYYYMMDD) 20140127

AFFIDAVIT: Before me, the undersigned, authorized by law to administer oath in cases of this character, personally appeared the above named accuser this 27TH day of January, 2014, and signed the foregoing charges and specifications under oath that he/she is a person subject to the Uniform Code of Military Justice and that he/she either has personal knowledge of or has investigated the matters set forth therein and that the same are true to the best of his/her knowledge and belief.

LARSON, Nicholas J.
Typed Name of Officer

OSJA, HQ, XVIII ABN CORPS AND FORT BRAGG
Organization of Officer

0-3
Grade

Trial Counsel, Article 136, UCMJ
Official Capacity to Administer Oath
(See R.C.M. 307(b)_ must be commissioned officer)

[signature]
Signature

12.
On 28 JANUARY , 2014 , the accused was informed of the charges against him/her and of the name(s) of the accuser(s) known to me *(See R.C.M. 308(a)). (See R.C.M. 308 if notification cannot be made.)*

JARRETT A. THOMAS II
Typed Name of Immediate Commander

HHBn, 82D Airborne Division
Organization of Immediate Commander

O-5
Grade

Signature

IV. RECEIPT BY SUMMARY COURT-MARTIAL CONVENING AUTHORITY

13.
The sworn charges were received at 1330 hours, 31 JANUARY , 2014 at Headquarters
Designation of Command or

HHBn, XVIII Airborne Corps
Officer Exercising Summary Court-Martial Jurisdiction (See R.C.M. 403)

~~FOR THE~~ [1]

KOBER, ERIK K.
Typed Name of Officer

Commanding
Official Capacity of Officer Signing

0-5
Grade

Signature

V. REFERRAL; SERVICE OF CHARGES

14a. DESIGNATION OF COMMAND OF CONVENING AUTHORITY	b. PLACE	c. DATE *(YYYYMMDD)*
HQ, FORT BRAGG	FORT BRAGG, NC	20140207

Referred for trial to the GENERAL court-martial convened by Court-Martial Convening Order Number 6, headquarters, XVIII Airborne Corps and Fort Bragg , 17 May , 2013 , subject to the following instructions: [2]

To be tried in conjunction with the original charges.

By Command of Major General Chinn
Command or Order

C. CHRISTOPHER FORD
Typed Name of Officer

Senior Trial Counsel
Official Capacity of Officer Signing

O-3
Grade

Signature

15.
On 07 FEB , 2014 , I ~~(accused to be)~~ served a copy hereof on (each of) the above named accused.

Nicholas J. Larson
Typed Name of Trial Counsel

O-3/CPT
Grade or Rank of Trial Counsel

Signature

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

DEPARTMENT OF DEFENSE REPORT OF RESULT OF TRIAL

1. DATE OF TRIAL *(YYYYMMDD)*: 20150125

TO: *(Convening Authority)*
Commander, Headquarters, Fort Bragg, North Carolina 28310

1. NOTIFICATION UNDER R.C.M. 1101 IS HEREBY GIVEN IN THE CASE OF THE UNITED STATES VERSUS:

a. NAME *(Last, First, Middle Initial)*	b. BRANCH OF SERVICE	c. RANK/GRADE	d. DoD ID/SSN *(Last 4)*
BURRIS, Erik J.	Army	O-4	[redacted]

e. ORGANIZATION *(Full address)*	2.a. TYPE OF COURT-MARTIAL *(X one)*
HHC, HHBn, 82d Airborne Division Fort Bragg, North Carolina 28310	[X] GENERAL [ ] JUDGE ALONE; [ ] SPECIAL [ ] JUDGE ALONE; [ ] SUMMARY

b. CONVENED BY: COURT MARTIAL ORDER NUMBER(S)	c. ISSUING COMMAND	d. DATE *(YYYYMMDD)*
6	Headquarters, XVIII Airborne Corps and Fort Bragg	20130517

3. SUMMARY OF OFFENSES, PLEAS AND FINDINGS

a. CHARGE/ SPECIFICATION NO(S).	b. UCMJ ARTICLE(S)	c. DIBRS CODE	d. BRIEF DESCRIPTION OF OFFENSE	e. PLEA	f. FINDING
CHARGE I/ SPECIFICATION 1	128	128-B	On divers occasions, between on or about 1 March 2010 and on or about 31 May 2012, at or near Temple, Texas, unlawfully strike W.A.B. on the chest, arms, and face, with his hands.	NG	G*
SPECIFICATION 2	128	128-B	On divers occasions, between on or about 1 March 2010 and on or about 31 May 2012, at or near Temple, Texas, unlawfully grab W.A.B. on arm with his hands. (See continuation sheet)	NG	G

4.a. DATE ADJUDGED *(YYYYMMDD)*	b. DATE OF ANY FORFEITURES OR REDUCTIONS *(YYYYMMDD)*
20150125	20150208

5. SENTENCE
Forfeiture of all pay and allowances; to be confined for 20 years; and to be dismissed from the service.

6.a. CONTENTS OF PRE-TRIAL AGREEMENT CONCERNING SENTENCE TO CONFINEMENT *(If any)*
None.

b. DAYS OF PRE-TRIAL CREDIT	c. DAYS OF OTHER JUDGE ORDERED CREDIT	d. TOTAL PRESENTENCE CREDIT TOWARD POST-TRIAL CONFINEMENT
N/A	N/A	N/A

7. DNA PROCESSING: IAW 10 U.S.C. §1565	[X]	IS	[ ]	IS NOT REQUIRED.
8. SEX OFFENDER REGISTRATION: IAW 42 U.S.C. § 14071	[X]	IS	[ ]	IS NOT REQUIRED.

9. COMPANION ACCUSED/CO-ACCUSED *(Name(s) and Social Security Number(s) (If any))*
N/A

10. DISTRIBUTION *(Copy provided to named Agencies/Unit(s))*
Accused, SJA, Battalion Commander, Company Commander, FAO, PSB, TDS, Confinement Facility.

11. SIGNED BY *(X one)*: [X] TRIAL COUNSEL [ ] SUMMARY COURT-MARTIAL OFFICER

a. NAME *(Last, First, Middle Initial)*	b. RANK/GRADE	c. BRANCH OF SERVICE
BERGMANN, Brandon R.	CPT/O-3	U.S. Army

d. SIGNATURE	e. DATE SIGNED *(YYYYMMDD)*
[signature]	20150126

CONTINUATION SHEET, DD Form 2707-1 – MAJ BURRIS, Erik J., [redacted] U.S. Army, HHC, HHBn, 82d Airborne Division, Fort Bragg, North Carolina 28310

Item 1 Continued:

20140218, 20140602, 20140731, 20140929, 20150115, 20150120, 20150121, 20150122, 20150123, and 20150124

Item 1b Continued:

Superceded by Court-Martial Convening Order Number 1, amended by Court-Martial Convening Order Number 1

Item 1d Continued:

20140417, and 20150109

Item 3, Continued:

a. CHARGE/ SPECIFICATION NO(S).	b. UCMJ ARTICLES	c. DIBRS CODE	d. BRIEF DESCRIPTION OF OFFENSE	e. PLEA	f. FINDIN G
CHARGE I / SPECIFICATION 3	Article 128	128-B-	On divers occasions, between on or about 26 August 2012 and on or about 13 November 2012, at or near Pinehurst, North Carolina, unlawfully strike W.A.B. on the chest, arms, and face, with his hands.	NG	NG
SPECIFICATION 4	Article 128	128-B-	On divers occasions, between on or about 26 August 2012 and on or about 13 November 2012, at or near Pinehurst, North Carolina, unlawfully grab W.A.B. on the arm with his hands.	NG	G**
SPECIFICATION 5	Article 128	128-G-	On divers occasions, between on or about 1 March 2010 and on or about 31 May 2012, at or near Temple, Texas, unlawfully hold Ms. D.E-B., a child under the age of 16 years, on the floor with his hands and arms and poke and squeeze the said Ms. D.E-B. on the abdomen and torso with his fingers and hands.	NG***	G****

CONTINUATION SHEET, DD Form 2707-1 – MAJ BURRIS, Erik J., [redacted] U.S. Army, HHC, HHBn, 82d Airborne Division, Fort Bragg, North Carolina 28310

Item 3, Continued:

a. CHARGE/ SPECIFICATION NO(S).	b. UCMJ ARTICLES	c. DIBRS CODE	d. BRIEF DESCRIPTION OF OFFENSE	e. PLEA	f. FINDING
CHARGE I / SPECIFICATION 6	Article 128	128-G-	On divers occasions, between on or about 01 December 2010 and on or about 31 May 2012, at or near Temple, Texas, unlawfully squeeze and pinch with his hands Ms. M.B., a child under the age of 16 years, on the inner thigh and buttock(s)	NG	NG
SPECIFICATION 7	Article 128	128-G-	On divers occasions, between on or about 26 August 2012 and on or about 13 November 2012, at or near Pinehurst, North Carolina, unlawfully hold Ms. M.B., a child under the age of 16 years, on the floor with his hands and arms and poke and squeeze the said Ms. M.B. on the abdomen and torso with his fingers and hands.	NG	NG
SPECIFICATION 8	Article 128	128-G-	On divers occasions, between on or about 26 August 2012 and on or about 13 November 2012, at or near Pinehurst, North Carolina, unlawfully squeeze and pinch with his hands Ms. M.B., a child under the age of 16 years, on the inner thigh and buttock(s).	NG	NG
CHARGE II / SPECIFICATION 1	Article 120	120-E1	On divers occasions, between on or about 1 March 2010 and on or about 31 May 2012, at or near Temple, Texas, cause W.A.B. to engage in a sexual contact, to wit: penetration of her anus with his finger, by using strength and power sufficient that she could not avoid or escape the sexual conduct.	NG	NG*****
SPECIFICATION 2	Article 120	120-A1	On divers occasions, between on or about 1 March 2010 and on or about 31 May 2012, at or near Temple, Texas, cause W.A.B. to engage in a sexual act, to wit: penetration of her vulva with his penis, by using strength and power sufficient that she could not avoid or escape the sexual conduct.	NG	G

CONTINUATION SHEET, DD Form 2707-1 – MAJ BURRIS, Erik J., [redacted] U.S. Army, HHC, HHBn, 82d Airborne Division, Fort Bragg, North Carolina 28310

Item 3, Continued:

CHARGE II / SPECIFICATION 3	Article 120	120-A1	On divers occasions, between on or about 26 August 2012 and on or about 13 November 2012, at or near Pinehurst, North Carolina, commit a sexual act upon W.A.B., to wit: penetration of her anus with his finger, by unlawful force, to wit: holding her down with his hands or body, or striking her with his hands.	NG	NG
SPECIFICATION 4	Article 120	120-A1	On divers occasions, between on or about 26 August 2012 and on or about 13 November 2012, at or near Pinehurst, North Carolina, commit a sexual act upon W.A.B., to wit: penetration of her vulva with his penis, by unlawful force, to wit: holding her down with his hands or body, or striking her with his hands.	NG	G******
CHARGE III / SPECIFICATION 1	Article 125	125A	On divers occasions, between on or about 1 March 2010 and on or about 31 May 2012, at or near Temple, Texas, commit sodomy with W.A.B. by force and without the consent of the said W.A.B.	NG	NG
SPECIFICATION 2	Article 125	125A	On divers occasions, between on or about 26 August 2012 and on or about 13 November 2012, at or near Pinehurst, North Carolina, commit sodomy with W.A.B. by force and without the consent of the said W.A.B.	NG	NG
CHARGE IV / SPECIFICATION I	Article 134	134-X2	On or about 24 December 2010, at or near Temple, Texas, wrongfully communicate to W.A.B. a threat, to wit: "if you ever leave me I would kill myself, you, and the kids" or words to that effect, and that said conduct was to the prejudice of good order and discipline in the armed forces and of a nature to bring discredit upon the armed forces.	NG	NG

CONTINUATION SHEET, DD Form 2707-1 – MAJ BURRIS, Erik J., [redacted] U.S. Army, HHC, HHBn, 82d Airborne Division, Fort Bragg, North Carolina 28310

Item 3, Continued:

CHARGE IV / SPECIFICATION II	Article 134	134-U2	On or about 9 August 2013, at or near Fort Bragg, North Carolina, wrongfully endeavor to impede an investigation in the case of himself by copying data from a government computer onto eight (8) Digital Versatile Discs (DVDs) and removing them from the Office of the Staff Judge Advocate, and that said conduct was to the prejudice of good order and discipline in the armed forces.	D*** ****	D*******
CHARGE V / THE SPECIFICATION	Article 90	090-B1	At or near Fort Bragg, North Carolina, having received a lawful command from LTC J.A.T. II, his superior commissioned officer, then known by the said MAJ Burris to be his superior commissioned officer, to return all DVDs or CDs or electronic media the said MAJ Burris produced or copied from the 82d Airborne Office of the Staff Judge Advocate to said LTC J.A.T., or words to that effect, did, on or about 15 August 2013, willfully disobey the same.	NG	G******* *
ADD CHARGE I / THE SPECIFICATION	Article 134	134-X2	At or near Temple, Texas, between on or about 01 August 2011 and on or about 31 August 2011, wrongfully communicate to C.L.J. Sr., a threat, to wit: "that bitch, I would like to do away with [redacted] do you know anyone up in Chicago that would do the hit on [redacted] or words to that effect, and the said conduct was to the prejudice of good order and discipline in the armed forces and of a nature to bring discredit upon the armed forces.	NG	NG
ADD CHARGE II / THE SPECIFICATION	Article 125	125A	At or near Raleigh, North Carolina between on or about 01 February 2012 and on or about 28 February 2012, commit sodomy with [redacted] by force and without the consent of the said [redacted]	NG	G

* To Specification 1 of Charge I: Guilty, except the words "on divers occasions, between on or about 1 March 2010 and on or about 31 May 2012", substituting therefor the words, "on or about 24 December 2010"; to the excepted words, Not Guilty; to the substituted words, Guilty.

** To Specification 4 of Charge I: Guilty, except the words "on divers occasions, between on or about 26 August 2012 and on or about 13 November 2012", substituting therefor the words, "on or about 8 November 2012"; to the excepted words, Not Guilty; to the substituted words, Guilty.

*** After arraignment but prior to entry of plea, the military judge granted the Government's motion to amend the name listed in Specification 5 of Charge I from "Davina Burris" to "Davina Elms-Burris".

****To Specification 5 of Charge I: Guilty, except the words "on divers occasions, between on or about 1 March 2010 and on or about 31 May 2012", substituting therefor the words, "on or about 15 April 2012"; to the excepted words, Not Guilty; to the substituted words, Guilty.

***** After arraignment and entry of plea, the military judge granted Government's motion to amend the word "act" of Specification 1 of Charge II to the word "contact".

****** To Specification 4 of Charge II: Guilty, except the words "on divers occasions, between on or about 26 August 2012 and on or about 13 November 2012", substituting therefor the words, "on or about 8 November 2012"; to the excepted words, Not Guilty; to the substituted words, Guilty.

******* After arraignment but prior to entry of plea, the military judge granted Government's motion to dismiss Specification 2 of Charge IV.

******** After arraignment but prior to entry of plea, the military judge granted Government's motion to amend the figures of The Specification of Charge 5 from "2012" to the figures "2013".

AFFIDAVIT

THE STATE OF TEXAS §
§
COUNTY OF TRAVIS §

BEFORE ME, the undersigned authority, on this day personally appeared Rita Alister, Petitioner's attorney of record, who, being by me duly sworn, deposed as follows:

"My name is Rita Alister. I am over the age of 18 years, of sound mind, capable of making this affidavit, and state the following:

Based upon information and belief, Erik James Burris, whose Texas Bar Card Number is 24061360, is licensed as an attorney and counselor at law in the State of Texas. Based upon information and belief, Erik James Burris, named as Respondent in the Petition for Compulsory Discipline filed with the Board of Disciplinary Appeals, is one and the same person as the Major Erik J. Burris who is the subject of General Court-Martial Order Number 10 entered by the Department of the Army, Headquarters, Fort Bragg, North Carolina, wherein Respondent was found guilty of Charge I, Specifications 1, 2, 4 and 5: violation of the UCMJ, Article 128, Assault; Charge II, Specifications 2 and 4: violation of the UCMJ, Article 120, Rape, Sexual Assault, and Other Sexual Misconduct; Charge IV, Specification 2: violation of UCMJ Article 134, General Article; and Additional Charge II and its Specification: violation of the UCMJ, Article 125, Sodomy, and who was dismissed from the service and ordered to be confined for 20 years and to forfeit all pay and allowances, excepting pay and allowances for a period of six months, such funds to be paid to Respondent's dependent children."

FURTHER Affiant saith not.

Rita Alister

Rita Alister

SWORN AND SUBSCRIBED before me on the 6 day of December 2017.

SHELLY M HOGUE
NOTARY PUBLIC
ID# 2676492
State of Texas
Comm. Exp. 10-05-2018
NOTARY WITHOUT BOND

Shelly M. Hogue

NOTARY PUBLIC IN AND FOR
THE STATE OF TEXAS

Exhibit
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