IN THE UNITED STATES COURT OF APPEALS
FOR THE ARMED FORCES

UNITED STATES,	)	**SUPPLEMENT TO PETITION**
Appellee	)	**FOR GRANT OF REVIEW**
	)	
v.	)	
	)	**USCA Dkt. No. 17-0434/AF**
EDZEL D. MANGAHAS	)	
Lieutenant Colonel (O-5)	)	**Crim. App. No. 2016-10**
United States Air Force,	)	
Appellant	)	

TO THE HONORABLE, THE JUDGES OF THE UNITED STATES COURT OF APPEALS FOR THE ARMED FORCES

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ERROR ASSIGNED FOR REVIEW

THE LOWER COURT ERRED IN FINDING NO DUE PROCESS VIOLATION WHEN THE GOVERNMENT WAS INACTIVE FOR OVER 17 YEARS BEFORE INVESTIGATING A CLAIM OF RAPE, VIOLATING LT COL MANGAHAS' FIFTH AMENDMENT RIGHT TO A SPEEDY TRIAL.

STATUTORY JURISDICTION

The Air Force Court of Criminal Appeals (CCA) reviewed this case under Article 62, Uniform Code of Military Justice (UCMJ). This Court has jurisdiction under Article 67(a)(3), UCMJ.

STATEMENT OF THE CASE

A charge with one specification alleging rape under Article 120, UCMJ was preferred against Lt Col Mangahas on October 28, 2015. Charge Sheet. He is accused of raping DS when they were both cadets at the Coast Guard Academy in 1997. A preliminary hearing pursuant to Article 32, UCMJ, was conducted on April 19, 2016 and the Preliminary Hearing Officer issued his report on April 27, 2016. App. Ex. VIII, Att. 2. Despite the PHO's determination that there was no probable cause to believe that Lt Col Mangahas committed the charged offense and his recommendation to dismiss, the convening authority referred the charge and specification to trial by general court-martial on June 2, 2016. Lt Col Mangahas was arraigned, over Defense objection, on June 14, 2016. R. 11-12, 14.

On July 10, 2016, Lt Col Mangahas filed three Motions to Dismiss the Charge and Specification: one based on the statute of limitations (App. Ex. VI), another based on improper referral (App. Ex. VIII), and the last based on a violation of the constitutional right to a speedy trial (App. Ex. X). The military judge held an Article 39(a), UCMJ session on July 29, 2016 and heard argument on all three motions to dismiss. The Government stipulated to the facts in the Motions. R. 26-29. The military judge dismissed the charge and specification with prejudice on August 2, 2016, finding that the Government's inaction over 17 years prior to preferring charges violated the speedy trial guarantee embodied in the Fifth Amendment's due process clause. App. Ex. XV.[1]

The Government appealed the dismissal to the Air Force CCA under Article 62, UCMJ. On April 4, 2017, the Air Force CCA vacated the military judge's order, concluding that there was insufficient evidence of actual prejudice resulting from the lengthy pre-preferral delay and thus no due process violation. *United States v. Mangahas*, Misc. Dkt. No. 2016-10 (A.F. Ct. Crim. App. Apr. 4, 2017), at Appendix A. The CCA returned the case to the Judge Advocate General of the Air Force, who returned it to the convening authority. The convening authority, in turn, directed the military judge to proceed to trial. Appendix C.

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[1] The military judge's ruling is at Appendix B for the Court's convenience.

Lt Col Mangahas filed his Petition for Grant of Review with this Court on June 2, 2017. This Court granted leave to file the Supplement to the Petition separately, ultimately enlarging time up to and including July 7, 2017.

On May 25, 2017, the military judge issued a scheduling order docketing an Article 39(a), UCMJ hearing to litigate motions on August 10-11, 2017, and set a new trial date of September 11, 2017, deferring ruling on a Defense Motion to Continue. Lt Col Mangahas, therefore, has filed a Motion to Stay Court-Martial Proceedings with this Court contemporaneously with his Supplement to the Petition.

STATEMENT OF FACTS

On October 5, 2014 the complaining witness, DS, gave a videotaped statement to the Coast Guard Investigative Service alleging that Lt Col Mangahas raped her when they were both cadets at the Coast Guard Academy in 1997. App. Ex. I, Att. 1.[2] She also claimed that in 1997, she reported this rape verbally and in writing to Academy officials, including the Staff Judge Advocate (SJA), the Deputy SJA, PM – who was an Academy counselor, and other Academy officials via her witness testimony at an Executive Board hearing in an unrelated rape allegation involving one of her friends. She alleged that the Academy officials – specifically, the SJA, Deputy

[2] For the Court's convenience, Appendix D contains all of the statements DS purportedly authored (three unsigned, undated statements and one given to CGIS in 1998); it also includes the CGIS notes pertaining to their interview of DS. A transcript of the video was admitted at the preliminary hearing as PHO Ex. 33.

SJA, and counselor – discouraged her from participating in counseling beyond the initial session after reporting the rape and from going forward with a case. *Id.*; App. Ex. X, Att. 3. Finally, she made a written, sworn statement to the CGIS and local law enforcement on January 20, 1998, alleging that she was raped the year prior. App. Ex. X, Att.8. Neither CGIS nor the local police conducted any investigation whatsoever into the rape allegation between 1998 and DS's statement to CGIS in 2014. R. 73, 77-78.

In June 2015, CGIS found several boxes in a filing cabinet in the USCGA law library; the CGIS report states the following:

> On 06/03/2015, during the review of multiple boxes labeled "CDR Sulmasy", a document labeled "Statement by 1/c [DS], [xxx-xx-xxxx], concerning actions of Edzel Mangahas" was discovered. This document was maintained in the Fouled Anchor case file at CGIS Chesapeake Region.

App. Ex. X, Att. 7, pg. 2.

Despite the fact that the language above describes a single document, the Government provided to the Defense three different versions of a statement DS purportedly authored. R. 71-72; *see* App. Ex. X, Att. 4, 5, and 6. The Government, however, is unable to disclose which version was the one found in the library, and cannot identify the source of the other two versions.[3] R. 71-72.

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[3] The lower court's opinion erroneously states, "The box contained three type-written, unsigned, and undated statements describing the alleged sexual assault which

All three versions of the statement allege that DS reported the rape to her company commander, LCDR Riordan, in addition to the SJA, Deputy SJA, and PM. Further, two of the statements contain the following language: "I said [to PM] that I did not want to come forward with an investigation" (emphasis added). App. Ex. X, Att. 4, 6.

After CGIS interviewed DS in October 2014, it interviewed several individuals DS mentioned in her videotaped statement. None of these potential witnesses were able to corroborate DS's claims about being raped or reporting the rape to Academy officials in 1997. For example, DS alleged that the morning after the rape, she reported to her friend and fellow cadet, Shannon Pitts,[4] that Lt Col Mangahas raped her the night before. App. Ex. I, Att. 1; App. Ex. X, Att. 4, 5, and 6. The CGIS report, however, indicates the following results from the interview with now-Commander Pitts:

> In reference to any knowledge of a sexual assault involving [DS], Pitts said she did not have any knowledge of a sexual assault or sexual assault investigation involving [DS]. . . .(PK [person with knowledge]) Pitts said she was friends with [DS] as they had similar social habits, but explained that she was not close friends with her and did not remember any conversation with [DS] involving a·sexual assault or (S [suspect]) Mangahas. (PK) Pitts described her friendship with [DS]·as being "a friend of a friend." (PK) Pitts said she occasionally attended church

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on their face purport to be statements of DS." *Mangahas*, slip op. at 8 n.10.

[4] Pitts is the witness's married name.

> during the time period she was at the USCG Academy, but did not remember attending church with [DS]. (W [witness]) Pitts explained that she does not remember many details of social interactions from that time period due to the extensive amount of time which has since passed.

Attachment 1 (emphasis added).[5]

Significantly, CGIS interviewed PM – the Academy counselor – in December 2014 for approximately two hours in connection with a separate investigation called "Fouled Anchor." Despite the fact that they did discuss some specific cases of sexual assault at the USCGA, CGIS failed to ask her a single question about the relevant allegations, whether she had provided counseling to DS, or what transpired during counseling sessions with DS. Attachment 2.

Before the preliminary hearing, the Defense repeatedly requested discovery of witness contact information for everyone the Government interviewed. Eventually, the Government provided a partial list, which did not include PM. App. Ex. X. The Defense exercised independent efforts to locate and contact PM to prepare for the preliminary hearing, but discovered that, unfortunately, PM had passed away in March 2016, just weeks before the preliminary hearing. *Id.* She was, therefore, unavailable for anyone to ask her to confirm or deny that she discouraged DS from

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[5] A Motion to Supplement the Record is filed contemporaneously with this Supplement.

proceeding with an investigation of the alleged rape or from further counseling, or both, as DS asserted.

The SJA to whom DS said she made the report did testify by telephone at the preliminary hearing.[6] App. Ex. XIII. He denied that DS came to him or his deputy to report a rape. In fact, he testified that he heard DS claimed to be a rape victim only after she testified in connection with the unrelated rape allegation against another cadet, and he called DS to come to his office to question her about this claim that she had been raped. He further testified that, contrary to DS's videotaped statement, he never discouraged her from proceeding with the case because, in fact, he wanted to prosecute a cadet for sexual assault – but DS did not want to go forward with a prosecution at that time. The SJA made sure that DS had his contact information and told her to call him if she changed her mind. *Id.*

In addition to the testimony above, the SJA addressed whether PM would discourage a cadet from proceeding with a rape allegation. The SJA testified he knew PM well, and adamantly insisted that PM would never discourage a victim from proceeding with a rape claim because she was a strong supporter of cadets who were assault victims. *Id.*

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[6] The military judge listened to the audio of the preliminary hearing. R. 110-11; App. Ex. XV.

Finally, the SJA also testified that his memory had faded due to the passage of time. *Id.* Trial counsel argued at the motions hearing that the Government intended to impeach the SJA's testimony at trial. *See* R. 82 ("You know, given [the SJA's] credibility right now, I don't know that I can honestly say he didn't say that or she [PM] didn't say that.").

There was no investigation whatsoever in connection with DS's rape allegation against Lt Col Mangahas from 1997 until January 2014, when DS reported to the Department of Veterans Affairs that she was a rape victim after she failed to promote. App. Ex. XV.

No one notified Lt Col Mangahas that DS had accused him of rape until October 2014, after DS made her videotaped statement to CGIS. Lt Col Mangahas entered a plea of not guilty and denies that he ever had any sexual contact with DS. App. Ex. XIII. He therefore contests the accuracy of DS's claims regarding the alleged rape and other pertinent events she described in her 2014 videotaped statement to CGIS, but acknowledges for purposes of this appeal only that in 1997 she made an accusation that he raped her. App. Ex. X.

REASON TO GRANT REVIEW

THE LOWER COURT'S ERRONEOUS RESOLUTION OF A QUESTION OF LAW – FINDING NO PREJUDICE AND THUS NO DUE PROCESS VIOLATION FROM PRE-PREFERRAL DELAY OF ALMOST 20 YEARS – WAS A DECISION IN CONFLICT WITH APPLICABLE DECISIONS OF THIS COURT AND THE SUPREME COURT OF THE UNITED STATES.

ARGUMENT

A. Standard of Review.

The standard of review in a Government appeal reflects the foundational principle that such an appeal is to be "unusual, exceptional, [and] not favored." *Carroll v. United States*, 354 U.S. 394, 400 (1957). "In an Article 62, UCMJ, 10 U.S.C. § 862, petition, this Court . . . reviews the evidence in the light most favorable to the prevailing party at trial." *United States v. Wicks*, 73 M.J. 93, 98 (C.A.A.F. 2014) (citing *United States v. Baker*, 70 M.J. 283, 287-88 (C.A.A.F. 2011)), *reconsideration denied*, 73 M.J. 264 (C.A.A.F. 2014). Further, in ruling on Article 62 appeals, the appellate courts "may act only with respect to matters of law." *Baker*, 70 M.J. at 287-88 (quoting Article 62(b), UCMJ).

"When a court is limited to reviewing matters of law, the question is not whether a reviewing court might disagree with the trial court's findings, but whether those findings are 'fairly supported by the record.'" *Id.* at 288. This Court will review de novo the military judge's decision to dismiss based on a violation of the

Fifth Amendment due process of law right to a speedy trial since it concerns a "question of law," but the Court is bound by "the military judge's findings of historical facts unless they are clearly erroneous or unsupported in the record." *United States v. Hart*, 66 M.J. 273, 276 (C.A.A.F. 2008).

"The abuse of discretion standard calls for more than a mere difference of opinion. The challenged action must be 'arbitrary, fanciful, clearly unreasonable, or clearly erroneous.'" *United States v. Henning*, 75 M.J. 187, 191 (C.A.A.F. 2016) (quoting *United States v. White*, 69 M.J. 236, 239 (C.A.A.F. 2010), additional citations and internal quotations omitted), *reconsideration denied*, 75 M.J. 317 (C.A.A.F. Apr. 26, 2016) .

A military judge abuses his discretion only when his "findings of fact are clearly erroneous, the court's decision is influenced by an erroneous view of the law, or the military judge's decision on the issue at hand is outside the range of choices reasonably arising from the applicable facts and the law." *United States v. Stellato*, 74 M.J. 473, 480 (C.A.A.F. 2015) (quoting *United States v. Miller*, 66 M.J. 306, 307 (C.A.A.F. 2008)).

B. All of the Pertinent Military Judge's Findings of Fact are Supported by the Record; the Lower Court's Findings to the Contrary are Clearly Erroneous.

1. Advice PM gave to DS

The Air Force CCA found that:

> We note here that in his findings of fact the military judge found that "DS claimed in her 2014 interview with CGIS that [PM] told her *not to pursue the rape allegation* when she was still a cadet at the USCGA." (Emphasis added). Having carefully reviewed the record before us, we note that DS asserts PM's recommendation was to not continue *counseling*. DS made no assertion that PM told her not to pursue a rape allegation. We therefore conclude that the military judge's finding of fact that DS claimed that PM told her not to pursue the rape allegation is unsupported by record (sic) and therefore clearly erroneous.

Mangahas, slip op. at 9.

The Air Force CCA's finding is erroneous for several reasons. First, the military judge's findings of fact are supported by the transcript of the 2014 videotaped statement; it would be reasonable for the military judge to infer that if a counselor discourages counseling for a rape, the same counselor would also discourage pursuing the prosecution of the same allegation of rape. It makes no logical sense that a counselor would encourage a victim to proceed with an investigation and prosecution of a rape but simultaneously tell the victim not to seek psychological help to cope with the rape. To the extent that the military judge's conclusion is an inference from the record, it was a reasonable one for him to make

and inappropriate for the Air Force CCA to substitute its own judgment for that of the military judge. *See Baker*, 70 M.J. at 288 (observing "the question is not whether a reviewing court might disagree with the trial court's findings, but whether those findings are fairly supported by the record").

Second, while accurate that the 2014 videotaped statement mentions counseling rather than an investigation, the written statements before the military judge clearly stated that DS told PM she did not want to "come forward with an investigation." Inexplicably, the lower court's opinion sets out this language in the paragraph just preceding the opinion's quotation of the statement from 2014, but completely ignores it in its analysis. *Mangahas*, slip op. at 12. Consistent with the military judge's interpretation of what DS says transpired between DS and PM, the PHO noted in his report that DS "stated that she discussed the assault with the Academy's counselor, Mrs. [PM], but [PM] discouraged her from pursuing the case." App. Ex. VIII, Att. 2.

Because there is evidence in the record supporting the military judge's finding that DS's prior statements claimed that PM discouraged her from further counseling as well as proceeding with an investigation and prosecution of the reported rape, the military judge did not abuse his discretion. The lower court's substitution of its own judgment to the contrary is based on a clearly erroneous reading of the record.

2. The substance of PM's testimony

The Air Force CCA found that any conclusions about the substance of PM's testimony were speculative. *Mangahas*, slip op. at 10-11. This finding is likewise clearly erroneous.

As a preliminary matter, it is fundamentally unfair to find against Lt Col Mangahas on this point when it is the Government's gross negligence that caused the substance of PM's potential testimony to become unavailable. As previously discussed, had CGIS interviewed PM in 1997 or 1998, or asked her any relevant questions about this allegation in 2014 when it finally did speak with her, PM's viewpoint would have been preserved despite her death. This result is especially troubling, considering the Government's own conduct aggravated this situation when its failure to disclose her contact information as a potential witness, even after multiple requests, delayed the Defense learning of PM's significance until it was too late to ask her questions relevant to preparing Lt Col Mangahas's defense.

Even setting aside the Air Force CCA's failure to address the fundamental unfairness of its reasoning that the military judge's conclusion about PM's testimony was speculative, the lower court was simply incorrect. The SJA's testimony provides ample evidence to support the conclusion that PM – a counselor who was at the forefront of addressing sexual assault at the USCGA and who established a support

group for cadets who were victims of sexual assault – would not discourage DS from counseling or from proceeding with a legitimate case. The military judge arrived at his finding that PM's testimony was vital to the Defense not by guessing what she would say, but based on sworn testimony subject to trial counsel's cross-examination, as described above. AE XIII. This evidence supports the military judge's conclusion that PM would have seriously impeached DS. The military judge's findings and conclusions with regard to PM are correct. It is the Air Force CCA's reasoning that is unsupported.

C . The Air Force CCA Erred in Finding No Due Process Violation: Lt Col Mangahas Established an Egregious Delay and Actual Prejudice.

Long ago, both the Supreme Court and this Court recognized that the Fifth Amendment's Due Process Clause protects an accused against egregious or oppressive pre-charging delay. *United States v. Lovasco*, 431 U.S. 783, 789 (1977); *United States v. Vogan*, 35 M.J. 32, 34 (C.M.A. 1992).[7] Due process concerns apply when there is either an intentional or an egregious delay; the reason for the delay is relevant to the inquiry, as is whether an accused is prejudiced. *United States v. Reed*, 41 M.J. 449, 452 (C.A.A.F. 1995) (citing *Lovasco*, 431 U.S. at 790). "The defense may establish prejudice by showing: (1) the actual loss of a witness, as well as the

[7] The Supreme Court recently reaffirmed this principle. *Betterman v. Montana*, 136 S. Ct. 1609, 1613 (2016).

substance of their testimony and the efforts made to locate them, or (2) the loss of physical evidence." *Id*. (citations and internal quotes omitted). The record demonstrates that Lt Col Mangahas made both showings below, and the military judge correctly found a due process violation. Under the law and the facts, his dismissal of the charge and specification with prejudice should not have been disturbed by the Air Force CCA.

1. The delay was egregious

The military judge's finding that the delay in this case – over 19 years, 4 months and 13 days between the alleged offense and arraignment, which is 7,073 days – is egregious is supported by the record and correct in law. The Air Force CCA did not take issue with this finding.

The Government's negligence (or even gross negligence) in failing to conduct any investigation at all after multiple Government agents, including law enforcement, became aware of the allegation, is inexcusable. The only justification for the delay the Government offered was the cooperation or non-cooperation of the complaining witness. Although certainly DS's input should have been considered at the time, it was not dispositive and was irrelevant to whether the Government should conduct a timely investigation to support an informed decision as to the proper disposition of the case. In other words, DS had a "vote," but not a "veto."

Although there is an absence of military cases addressing the issue, this Court has considered Government negligence in analyzing the character of the Government's action with respect to the reason for the delay. *United States v. Reap*, 41 M.J. 340, 342 (C.A.A.F. 1995) ("the delay period found here does not amount to an egregious or blatantly negligent trial delay or a tactical delay ... incurred in reckless disregard of circumstances, known to the prosecution, suggesting that there exists an appreciable risk that delay would impair the ability to mount an effective defense.") (citations and internal quotes omitted, emphasis added). Some civilian courts also have found that mere negligence can supply the "improper purpose" to which the cases underlying *Reed* refer. *See United States v. Moran*, 759 F.2d 777, 782 (9th Cir. 1985) ("The determination of whether a pre-indictment delay has violated due process is essentially decided under a balancing test, and we do not find that intent or reckless behavior by the government is an essential ingredient in the mix. If mere negligent conduct by the prosecutors is asserted, then obviously the delay and/or prejudice suffered by the defendant will have to be greater than that in cases where recklessness or intentional governmental conduct is alleged.") (citations omitted); *United States v. Mays*, 549 F.2d 670, 678 (9th Cir. 1977) ("although weighted less heavily than deliberate delays, negligent conduct can also be considered, since the ultimate responsibility for such circumstances must rest with the

government rather than the defendant.") (citing *United States v. Barket*, 530 F.2d 189, 195 (8th Cir. 1976)).

In fact, the concurring opinion in one of the Supreme Court's seminal cases on this issue discusses at some length the concept of government negligence:

> When is governmental delay reasonable? Clearly, a deliberate attempt by the government to use delay to harm the accused, or governmental delay that is 'purposeful or oppressive,' is unjustifiable. . . . The same may be true of any governmental delay that is unnecessary, whether intentional or negligent in origin. A negligent failure by the government to ensure speedy trial is virtually as damaging to the interests protected by the right as an intentional failure; when negligence is the cause, the only interest necessarily unaffected is our common concern to prevent deliberate misuse of the criminal process by public officials. Thus the crucial question in determining the legitimacy of governmental delay may be whether it might reasonably have been avoided—whether it was unnecessary. To determine the necessity for governmental delay, it would seem important to consider, on the one hand, the intrinsic importance of the reason for the delay, and, on the other, the length of the delay and its potential for prejudice to interests protected by the speedy-trial safeguard. For a trivial objective, almost any delay could be reasonably avoided. Similarly, lengthy delay, even in the interest of realizing an important objective, would be suspect.

United States v. Marion, 404 U.S. 307, 334 (1971) (Douglas, J., concurring) (quoting *Dickey v. Florida*, 398 U.S. 30, 51-52 (1970) (Brennan, J., concurring) (emphasis added).

When the Government failed to properly investigate DS's claim and did nothing, literally, from 1998 to 2014, such conduct constituted, at best, a "reckless disregard of circumstances, known to the prosecution, suggesting that there existed

an appreciable risk that delay would impair the ability to mount an effective defense." Despite a sworn, written statement alleging DS was a rape victim, there is no evidence that CGIS conducted any follow up interviews with DS or any other potential witnesses, examined the scene of the alleged crime (a dorm room at the Coast Guard Academy, to which the Government had access and control), or performed any investigation at all. The failure to document and catalogue evidence readily available at the time recklessly disregarded the difficulty the Government's conduct would present for an accused to defend himself after a more than 19-year delay between the allegation and the trial.

As mentioned, the Government offered as its sole justification for the delay that the complaining witness in this case did not want to cooperate with the prosecution in 1997-1998. R. at 83. There is conflicting evidence in the record on this point, because the totality of DS's written and oral statements indicate that she initially wanted to go forward but claimed in 2014 that she was dissuaded in 1997 by persons in authority – the SJA and an Academy counselor, specifically – who told her that it would be in her best interest not to proceed. The bottom line, however, is whether DS wanted a prosecution to proceed ignores the controlling issue, *i.e.*, the Government's independent duty to investigate a serious criminal allegation. While DS's input should have been considered with regard to any subsequent prosecution,

she was not the ultimate decision-maker—especially concerning whether even a preliminary investigation would take place to preserve key evidence in the event of a subsequent prosecution.

The relevant question is what action law enforcement officials and the convening authority took in response to DS's complaint of rape. It is uncontested that in 1998 CGIS was aware that this complainant alleged she was raped while a student at the Academy. AE X, Att. 8. There is no explanation as to why it failed to conduct even the most perfunctory investigation, nor is there any documentation of any declination by the complainant that could possibly justify such a lack of diligence. It is also undisputed that, according to DS, at some point in the same time frame, two officers in the SJA's office and several other Academy officials became aware of her allegation. AE XIII. Those officials included DS's company commander, the counselor, the members of the Executive Board in the unrelated rape allegation to which DS was a witness, and presumably the Superintendent of the Academy who should have reviewed the records from the Executive Board that resulted in the unrelated rape case. The convening authority, who was on notice of a serious allegation of crime, at a minimum via his legal advisor, had an obligation to conduct an investigation and make an independent decision based on that investigation whether to prosecute. He did not do so.

Law enforcement should have investigated. The convening authority should have asked the complaining witness her preference on how to handle the case once the relevant facts were documented. The convening authority then should have exercised his discretion to make a decision regarding disposition of the case. None of this happened, and it is the Government's fault. The Government's reliance on a witness's willingness or unwillingness to testify may have contributed to the delay, but, as the military judge correctly found, this was not a justifiable reason for the extraordinarily lengthy delay in this case. AE XV at 16. In any event, the issue of whether to refer a case to trial based on witness preference or availability, or any other issue, is separate and apart from the duty to make a timely investigation, preserving evidence, and documenting events for future use.

The lengthy, unwarranted delay was egregious.

2. Lt Col Mangahas suffered actual prejudice

a. Death of PM without preserving her testimony

The Air Force CCA held that because the SJA and the friend to whom DS allegedly reported the rape the next morning could impeach DS at trial, Lt Col Mangahas was not prejudiced due to PM's death. *Mangahas*, slip op. at 12. This holding is likewise erroneous.

First, the lower court ignored that the Government argued during pretrial motions that it intended to impeach the SJA's testimony at trial. R. 82. Second, it failed to acknowledge the clear "preference for live testimony" over alternatives to testimony. *United States v. Cokeley*, 22 M.J. 225, 229 (C.M.A. 1986). Seeing PM's demeanor when answering questions about her interaction with DS would have been extremely valuable when evaluating her credibility compared to DS's. Third, the lower court's opinion does not account for the concept that just because members might hear impeachment of a witness and yet believe that witness, one cannot assume that if presented with further impeachment, the members would continue to believe the witness. *United States v. Brickey*, 16 M.J. 258, 265-66 (C.M.A. 1983) ("The fact that court-martial members believe a witness despite circumstances A and B, which tend to impair his credibility, does not mean they will continue to believe him if impeaching circumstance C is added."). In other words, even if contradicted by two witnesses who admittedly suffer some degradation in their memory due to the passage of time, PM's live testimony denying that she told DS not to continue counseling or proceed with the case could be the "straw that breaks the camel's back" when the members are deciding whether to believe DS' testimony.

Finally, the Air Force CCA's theory that PM would have hurt the Defense rather than helped because it would be a "fresh complaint" admissible to rebut a

Defense theory that DS made the claim in order to obtain VA benefits is unpersuasive. The "VA benefits" theory is not the only theory that exists to explain why DS would fabricate being raped. And, PM's advice to DS will be an issue in the case regardless of the Defense theory, because DS's written and verbal statements all contain references to PM. Being able to fully present a defense by impeaching DS with PM as a live witness was crucial for Lt Col Mangahas' defense.

All parties agree that this is a hotly contested, "he-said she-said" case with no physical evidence, no forensic evidence, no eyewitness testimony (other than DS herself), and no admission or confession. Thus, DS's credibility is the paramount issue. PM likely would have been a critical fact and character witness, and Lt Col Mangahas is significantly prejudiced by her death before anyone interviewing her to determine whether DS accurately described the nature and content of their interaction.

Had the Government promptly investigated this allegation, certainly PM's reaction to DS's allegation that PM discouraged her from counseling or going forward with the case would have been preserved. Instead, almost two decades later, the Government repeatedly refused to disclose any information about PM, despite multiple Defense requests. The Government even neglected to inform the Defense that law enforcement interviewed her at all by omitting her name from the witness list provided shortly before the Article 32, UCMJ preliminary hearing. Had CGIS or

AFOSI interviewed PM even a few years after the alleged rape, and failed to ask her any questions at all about her interaction with the student sexual assault victim support group and DS, defense counsel (assuming we were notified of the interview) would have had time to review the thoroughness of that interview and evaluate whether to ask additional relevant questions. The Government destroyed this opportunity when it delayed over a decade-and-a-half to begin an investigation into this allegation, and this key witness died without being properly interviewed by either side.

The military judge's findings and conclusions with regard to PM are correct; her death under these circumstances constitutes actual prejudice.

b. Loss of other evidence

The Air Force CCA failed to acknowledge the loss of other evidence due to the passage of almost two decades, for example: (1) the ability to identify and interview witnesses who lived near DS at the relevant time and might have been able to rebut her claim that Lt Col Mangahas went to her room on a Saturday night in February 1997; (2) forensic evidence from the ejaculation she describes in the written statements; (3) identification of other fact witnesses (including, but not limited to those who may have supported an alibi defense) and character witnesses who are now unknown and unavailable; and (4) the fact that even the few known witnesses's

memories have now faded. Had Lt Col Mangahas been notified in a timely manner that he was accused of raping DS, he could have taken steps to identify and preserve evidence to defend himself.

3. Public perception of fairness

Another argument the Air Force CCA failed to acknowledge in its opinion is the prejudice suffered due to the impact on the public's perception of the fairness and integrity of the military justice system. *See United States v. Haney*, 64 M.J. 101, 108 (C.A.A.F. 2006); *United States v. Toohey*, 63 M.J. 353, 362 (C.A.A.F. 2006). Surprising an exceptionally successful Air Force Officer with an accusation as heinous as rape after an extensive and unjustified Government-caused delay certainly reflects poorly on the fairness and integrity of the system.

D. Conclusion.

Bringing this case to trial almost two decades after the claim was allegedly made but not investigated constituted an egregious delay. Lt Col Mangahas has suffered actual prejudice from the delay. The military judge's findings of fact are supported by the record and his conclusions of law are based on a thorough evaluation and correct interpretation of the law. The dismissal was not "arbitrary, fanciful, clearly unreasonable, or clearly erroneous." *United States v. Henning*, 75

M.J. at 191. The military judge did not abuse his discretion in granting the Defense's motion to dismiss based on violation of Lt Col Mangahas's right to a speedy trial.

PRAYER

The Air Force CCA's opinion conflicts with applicable decisions of this Court and the United States Supreme Court. Good cause exists for this Honorable Court to grant review. Lt Col Mangahas respectfully requests that this Court grant review, reverse the lower court, and affirm the military judge's ruling dismissing the Charge and Specification with prejudice.

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE WITH RULE 24(d)

1. This Supplement complies with the type-volume limitation of Rule 24(c) because this Supplement contains 5963 words.

2. This Supplement complies with the typeface and type style requirements of Rule 37.

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CERTIFICATE OF FILING AND SERVICE

I certify that a copy of the foregoing Supplement to the Petition for Grant of Review was electronically mailed to the Court and to the Director, Air Force Government Trial and Appellate Counsel Division, on July 7, 2017.

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IN THE UNITED STATES COURT OF APPEALS
FOR THE ARMED FORCES

UNITED STATES,	)	**SECOND CORRECTED APPENDIX**
Appellee	)	**TO SUPPLEMENT TO PETITION**
	)	**FOR GRANT OF REVIEW**
v.	)	
	)	**USCA Dkt. No. 17-0434/AF**
EDZEL D. MANGAHAS	)	
Lieutenant Colonel (O-5)	)	**Crim. App. No. 2016-10**
United States Air Force,	)	
Appellant	)	

TO THE HONORABLE, THE JUDGES OF THE UNITED STATES COURT OF APPEALS FOR THE ARMED FORCES

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INDEX TO APPENDIX

APPENDIX A

UNITED STATES AIR FORCE
COURT OF CRIMINAL APPEALS

Misc. Dkt. No. 2016-10

UNITED STATES
Appellant

v.

Edzel A. MANGAHAS
Lieutenant Colonel (O-5), U.S. Air Force, *Appellee*

Appeal by the United States Pursuant to Article 62, UCMJ

Decided 4 April 2017

Military Judges: Brendon K. Tukey (arraignment); Joseph S. Imburgia.

GCM convened at Hill Air Force Base, Utah.

For Appellant: Major G. Matt Osborn, USAF (argued); Colonel Katherine E. Oler, USAF; Gerald R. Bruce, Esquire.

For Appellee: Terri R. Zimmerman, Esquire (argued); Major Johnathan Legg, USAF; Jack B. Zimmerman, Esquire.

Before DUBRISKE, HARDING, and C. BROWN, *Appellate Military Judges.*

Judge HARDING delivered the opinion of the Court, in which Senior Judge DUBRISKE and Judge C. BROWN joined.[1]

This is an unpublished opinion and, as such, does not serve as precedent under AFCCA Rule of Practice and Procedure 18.4.

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[1] Senior Judge Dubriske participated in this decision prior to his reassignment.

HARDING, Judge:

A single charge and specification of rape in violation of Article 120, Uniform Code of Military Justice (UCMJ), 10 U.S.C. § 920, alleged to have occurred in February of 1997, was preferred against Appellee on 28 October 2015.[2] Finding the pre-preferral delay in this case violated the Due Process Clause of the Fifth Amendment,[3] the military judge granted Appellee's motion to dismiss the charge with prejudice. The Government filed an interlocutory appeal under Article 62, UCMJ, 10 U.S.C. § 862, challenging the military judge's ruling. The Government avers: (1) that certain aspects of the military judge's findings of fact were clearly erroneous; (2) that the military judge applied the incorrect legal standard for when a pre-preferral delay violates Fifth Amendment due process; and (3) that the military judge erroneously concluded the pre-preferral delay in excess of 18 years was egregious and that the death of a potential witness resulted in actual prejudice to Appellee. We conclude the military judge abused his discretion in finding actual prejudice and thus grant the Government's appeal.[4]

I. BACKGROUND

In February 1997, Appellee and DS, the alleged victim, were cadets attending the United States Coast Guard Academy (USCGA) in New London, Connecticut. Although DS made her allegation against Appellee known to legal and other USCGA officials prior to her graduation in May 1998, there is nothing in the record to directly establish or even imply that any USCGA official or agency initiated an investigation of DS's sexual assault claim. Coast Guard Captain (CAPT) TM, the USCGA staff judge advocate from 1994 to 1998, recalled that he became aware of DS's sexual assault claim after reviewing a written statement she provided for a separate sexual assault investigation. Specifically, DS provided a written witness statement for a joint investigation conducted in early 1998 by the Coast Guard Investigative Service (CGIS) and the Connecticut State Police into an alleged off-installation sexual assault of another female cadet by another male cadet. DS reported in her witness statement that she overheard what she believed to be sexual activity accompanied by someone crying in the bedroom next to the one she was in. She described

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[2] The specification reflects the version of the punitive article in effect prior to 1 October 2007 and reads: "in that [Appellee] did, at or near the United States Coast Guard Academy, Connecticut, between on or about 1 February 1997 and on or about 28 February 1997, rape [DB], then known as [DS]."

[3] U.S. CONST. amend V.

[4] We heard oral argument in this case on 24 January 2017.

that while overhearing this activity she was "in a state halfway between being fully awake and dreaming." She further wrote that she remembered her dream of the two cadets in the adjacent room "and then the dream turning into me and *the guy who raped me last year."* (Emphasis added) DS did not identify Appellee as her attacker in this statement.

According to CAPT TM, he met with DS prior to her graduation from the USCGA in May 1998 to discuss what she meant by "the guy who raped me last year" in her written statement. At the preliminary hearing for this case, CAPT TM explained that during that meeting DS told him about a sexual assault committed by Appellee against her in her dorm room in February 1997. According to CAPT TM, however, DS did not want to go forward with a sexual assault prosecution at that time and therefore his office did not pursue an investigation, consider preferral of a charge, or explore referral of the allegation to a civilian jurisdiction.[5] Over 16 years passed before DS again spoke with military investigative or prosecutorial authorities about the alleged 1997 sexual assault by Appellee.

In January 2014, DS reported to the Department of Veterans Affairs (VA) that Appellee had raped her in 1997. DS was subsequently interviewed by CGIS on 5 October 2014.[6] In addition to providing details about the sexual assault, she also recounted to whom she had reported it while still a cadet at USCGA. Among those persons is PM, a former USGCA cadet counselor. DS recalls that she met with PM within a month of the alleged sexual assault. According to DS, PM recommended she not continue counseling for the sexual

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[5] CAPT TM knew that as part of an alternate disposition for a separate and unrelated allegation of sexual misconduct Appellee had graduated from the USCGA in the summer of 1997 but without a commission from the Coast Guard. By the spring of 1998 when CAPT TM recalls speaking to DS, he states he was unaware Appellee had been commissioned in the United States Air Force and assumed Appellee was a civilian. CAPT TM thus believed at the time that personal jurisdiction over Appellee for a military prosecution was lacking and that sole jurisdiction would be with civilian authorities.

[6] The record does not establish precisely what the impetus was for the interview on 5 October 2014. There is evidence that DS made her claim of rape in January of 2014 in conjunction with a visit to the Department of Veterans Affairs (VA). This might support an inference that the VA forwarded this information to the Coast Guard Investigative Services for review or that DS independently made contact with investigators. There is also evidence in the record that the Coast Guard was reviewing the disposition of all sexual assault claims at the Coast Guard Academy made in a period to include 1997 to 1998. Such a review may have included DS's 1997 claim but the record is silent on that point.

assault because, to the extent she was seen as having a mental health issue, this could negatively impact her prospects for commissioning as an officer. CAPT TM, who knew PM in her capacity as a cadet counselor, expressed doubt at the preliminary hearing that PM would have ever attempted to dissuade a sexual assault victim from obtaining counseling services. PM passed away on 23 March 2016 without ever being questioned about a counseling session with DS regarding the alleged sexual assault and any recommendations she made.

Appellee claims, and the military judge concluded, that the unavailability of PM to testify causes actual prejudice to Appellee. As is further discussed below, we disagree and, given this record, do not find actual prejudice.

Appellee filed multiple pretrial motions to dismiss the Charge and its Specification arguing, *inter alia*: (1) a violation of the statute of limitations, (2) a violation of his speedy trial rights under the Sixth Amendment[7] as well as Rule for Courts-Martial (R.C.M.) 707, and (3) a violation of his Fifth Amendment due process rights predicated on prejudicial and egregious pre-preferral delay that is the subject of this appeal. Appellee was arraigned on 14 June 2016. The general court-martial reconvened on 29 July 2016 at which time the military judge heard oral argument on the motions to dismiss.

The military judge issued written rulings on 2 August 2016 denying the motions to dismiss for alleged violations of the statute of limitations,[8] the R.C.M. 707(a) 120-day speedy trial clock, and the Sixth Amendment right to speedy trial. The military judge, however, found that the death and resultant unavailability of PM to impeach the credibility of DS caused actual prejudice to Appellee. Further, finding that the "[G]overnment produced no evidence of a justifiable reason for the delay" of "19 years, 4 months, and 13 days from the first date of the charged offense of rape" to the date of arraignment, he concluded that the Government's pre-preferral delay was "egregious." Finding a violation of the Fifth Amendment Due Process Clause, he granted Appellee's motion to dismiss the Charge and its Specification with prejudice.

Following timely notice of appeal, the Government requested review of the following issue:

> WHETHER THE MILITARY JUDGE ABUSED HIS DISCRETION IN DISMISSING THE CHARGE AND SPECIFICATION

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[7] U.S. CONST. amend. VI.

[8] Under the version of Article 120, UCMJ, in effect at the time of the alleged rape offense, death was an authorized punishment and therefore in accordance Article 43(a), UCMJ, 10 U.S.C. § 843(a), the charge and specification in this case "may be tried and punished at any time without limitation."

WITH PREJUDICE BASED ON A DUE PROCESS VIOLATION OF THE FIFTH AMENDMENT.

II. Jurisdiction and Standard of Review

This court has jurisdiction to hear this appeal under Article 62(a)(1)(A), UCMJ, which authorizes the Government to appeal "[a]n order or ruling which terminates the proceedings with respect to a charge or specification" in a court-martial where a punitive discharge may be adjudged.

Because this issue is before us pursuant to a Government appeal, we may act only with respect to matters of law. Article 62(b), UCMJ. We may not make findings of fact, as we are limited to determining whether the military judge's factual findings are clearly erroneous or unsupported by the record. *United States v. Lincoln*, 42 M.J. 315, 320 (C.A.A.F. 1995). "When a court is limited to reviewing matters of law, the question is not whether a reviewing court might disagree with the trial court's findings, but whether those findings are 'fairly supported by the record.'" *United States v. Gore*, 60 M.J. 178, 185 (C.A.A.F. 2004) (quoting *United States v. Burris*, 21 M.J. 140, 144 (C.M.A. 1985)). We review de novo any conclusions of law. *Chatfield*, 67 M.J. at 437. "A military judge abuses his discretion when (1) the findings of fact upon which he predicates his ruling are not supported by the evidence of record; (2) . . . incorrect legal principles were used; or (3) . . . his application of the correct legal principles to the facts is clearly unreasonable." *United States v. Ellis*, 68 M.J. 341, 344 (C.A.A.F. 2010) (citing *United States v. Mackie*, 66 M.J. 198, 199 (C.A.A.F. 2008)).

While we accord substantial deference to a military judge's factual findings, whether the pre-preferral delay violated an accused's Fifth Amendment due process rights is a legal question that we review de novo. *See, e.g., United States v. Kalbflesh*, 621 Fed. Appx. 157, 158 (4th Cir. 2015); *United States v. Vaughn*, 444 Fed. Appx. 875, 878 (6th Cir. 2011).

III. Discussion

An accused's primary protection against unreasonable delay by the government in bringing charges is the statute of limitations. *United States v. Marion*, 404 U.S. 307, 322 (1971). Still, the Due Process Clause of the Fifth Amendment may also provide protection against onerous pre-preferral delay. *Id.* But to prevail on a Fifth Amendment due process claim predicated on pre-preferral delay, an accused must show: (1) "egregious or intentional tactical delay" on the part of the government; and (2) that he suffered actual prejudice as a result of the delay. *United States v. Reed*, 41 M.J. 449, 452 (C.A.A.F. 1995).

A. Egregious or Intentional Delay

The first prong focuses on the reasons for the delay. The Government urges that to satisfy this first prong, Appellee must show *intentional* government delay to gain an unfair tactical advantage or for some other bad-faith motive. This position is consistent with precedent from several federal circuits. *See, e.g., United States v. Byrd*, 31 F.3d 1329, 1339 (5th Cir. 1994); *United States v. Hoo*, 825 F.2d 667, 671 (2d Cir. 1987); *United States v. Ismaili*, 828 F.2d 153, 167 (3d Cir. 1987). *But see, e.g., Jones v. Angelone*, 94 F.3d 900, 904 (4th Cir. 1996) (holding once a defendant proves actual prejudice resulting from pre-indictment delay, the court then balances the defendant's prejudice against the government's justification for the delay).

Adopting the "intentional delay" position would make short work of this case, as both parties concede that there was no intentional delay. But this position appears to us to be inconsistent with our superior court's holding that the delay must be "egregious *or* intentional." *Reed*, 41 M.J. at 452 (emphasis added). While military courts have had little opportunity to further define "egregious," our superior court's use of the disjunctive plainly connotes something in addition to "intentional"—that there is some level of government culpability for delay short of intentional, bad-faith actions that nonetheless meets this prong.

Such a reading is, we believe, consistent with precedent from the United States Supreme Court. In *United States v. Marion*, the Court endorsed a government concession that "the Due Process Clause of the Fifth Amendment would require dismissal of the indictment if it were shown at trial that the pre-indictment delay . . . caused substantial prejudice to appellees' rights to a fair trial and that the delay was an intentional device to gain tactical advantage over the accused." 404 U.S. 307, 324 (1971). But the Court declined to establish a precise test or legal standard for when other government delays resulting in actual prejudice violate due process. *Id.* ("[W]e need not, and could not now, determine when and in what circumstances actual prejudice resulting from pre-accusation delays requires the dismissal of the prosecution."). *See also*, *United States v. Lovasco*, 431 U.S. 783, 796–97 (1977) ("In *Marion* we conceded that we could not determine in the abstract the circumstances in which preaccusation delay would require dismissing prosecutions. 404 U.S. at 324. More than five years later, that statement remains true. Indeed, in the intervening years so few defendants have established that they were prejudiced by delay that neither this Court nor any lower court has had a sustained opportunity to consider the constitutional significance of various reasons for delay.").

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A more recent explanation of protections against delay is also illuminating:

> Criminal proceedings generally unfold in three discrete phases. First, the State investigates to determine whether to arrest and charge a suspect. Once charged, the suspect stands accused but is presumed innocent until conviction upon trial or guilty plea. After conviction, the court imposes sentence. There are checks against delay throughout this progression, each geared to its particular phase.
>
> In the first stage—before arrest or indictment, when the suspect remains at liberty—statutes of limitations provide the primary protection against delay, with the Due Process Clause as a safeguard *against fundamentally unfair prosecutorial conduct. United States v. Lovasco,* 431 U.S. 783, 789 [ ] (1977); see *id.*, at 795, n. 17 [ ] (*Due Process Clause* may be violated, for instance, by prosecutorial delay that is "tactical" or "*reckless*" (emphasis added, internal quotation marks omitted)).

Betterman v. Montana 136 S. Ct. 1609, 1613 (2016) (emphasis added, quotation marks omitted)).

We thus decline to grant the Government's appeal on the basis that Appellee failed to demonstrate that the pre-preferral delay was an intentional, bad-faith tactic and instead grant it by finding a lack of actual prejudice.

B. Actual Prejudice

In meeting the burden to prove actual prejudice, speculation is not sufficient. *Reed*, 41 M.J. at 452. The "possibility of prejudice inherent in any extended delay: that memories will dim, witnesses become inaccessible, and evidence lost" is not sufficient to demonstrate that an accused cannot receive a fair trial. *Marion,* 404 U.S. at 326. Furthermore, "conclusory allegations of prejudice, otherwise unsupported in the record, do not constitute valid grounds for dismissal." *Reed*, 41 M.J. at 452 (quoting *United States v. Comosona*, 614 F.2d 695, 697 (10th Cir. 1980)). Prejudice may be demonstrated by showing: "(1) the actual loss of a witness, as well as 'the substance of their testimony and the efforts made to locate them,' or (2) the loss of physical evidence." *Id.* (quoting *United States v. Tousant,* 619 F.2d 810 (9th Cir. 1980)) (internal citations omitted). Finally, the prejudice must be a substantial prejudice to an Appellee's rights to a fair trial to the point where it "would impair the ability to mount an effective defense." *Reed,* 41 M.J. at 452 (quoting *Lovasco*, 431 U.S. at 795 n.17.

In his written ruling, the military judge found, "In this credibility only case, the death of the cadet counselor, Ms. [PM], causes actual prejudice." In order

to assess whether that is the case, it is necessary to review the record and determine: (1) what the substance of PM's trial testimony would have been, and (2) whether Appellee is able to mount an effective defense without that trial testimony.

1. Substance of PM's Testimony

We note at the outset that PM never made a written statement about her counseling session with DS, that PM was never interviewed by any investigator or counsel for either side about the counseling session, and that there were no records or notes of the counseling session itself. The exclusive source as to the substance of the interactions between DS and PM is DS herself. Given these circumstances, it is inherently an exercise in speculation to determine whether PM would have recalled, credited, or rebutted the details of the counseling session as provided by DS. Notwithstanding this significant limitation, the following examines the record established below to the extent it describe this one-time counseling session between DS and PM.

During the interview conducted by CGIS on 5 October 2014, in addition to alleging that Appellee sexually assaulted her in her barracks room in February 1997, DS provided a chronology of whom she told about it. PM was one of the people to whom DS stated she reported the sexual assault.[9] In addition to the CGIS interview, there are three undated, unsigned, type-written statements offered during motion practice that describe the assault and actions taken by DS afterwards that are each on their face purportedly authored by DS prior to her 1998 graduation from USCGA.[10]

According to DS, she had decided not to report the alleged rape immediately for purposes of an investigation but desired to "at least get the fact that what happened to me wasn't okay." DS describes this as her impetus to meet with PM. Two of the three undated, unsigned, type-written statements purportedly

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[9] DS also claimed to have told fellow female cadet, now Commander SH, the morning after the alleged assault.

[10] As part of a Coast Guard review of the handling of sexual assault allegations at USCGA, a box marked "property of GS" was located at the USCGA law library. GS was a judge advocate assigned at the USCGA in the late 1990s to whom DS claims to have reported the sexual assault in the spring of 1997. She says that she provided him a written statement. The box contained three type-written, unsigned, and undated statements describing the alleged sexual assault which on their face purport to be statements of DS. The record before us does not establish whether DS affirmatively identified these statements as prepared by her while a cadet at the USCGA and provided to the USCGA legal office.

authored by DS contain the following paragraph describing her interaction with PM:

> I also talked to one of the cadet counselors, [PM], about the incident. I had used [Appellee's] name, at least his first name. I said that I did not want to come forward with an investigation due the treatment of [sic] the Corps and Administration to the females who do come forward with having been raped.

In her October 2014 interview with CGIS, DS provided additional details about what she recalled PM telling her and specifically that PM recommended she not continue counseling.

> . . . I went to Cadet Counseling and met with her once . . . I can't remember her last name; I think it was "M[ ]." And she was like, "Well, if you continue, this could look bad, because they could say that you have a mental health issue, and you may not be, you know, be able to be commissioned." So she recommended that I don't continue counseling. And so I didn't go any further with that.

We note here that in his findings of fact the military judge found that "DS claimed in her 2014 interview with CGIS that [PM] told her *not to pursue the rape allegation* when she was still a cadet at the USCGA." (Emphasis added). Having carefully reviewed the record before us, we note that DS asserts PM's recommendation was to not continue *counseling*. DS made no assertion that PM told her not to pursue a rape allegation. We therefore conclude that the military judge's finding of fact that DS claimed that PM told her not to pursue the rape allegation is unsupported by record and therefore clearly erroneous. He later marshals this erroneous finding of fact to buttress his legal conclusion of actual prejudice.

In support of the contention that the substance of PM's testimony would in fact rebut DS's claim that she recommended that DS discontinue counseling for the sexual assault, the military judge referenced the Article 32 testimony of CAPT TM.[11] The military judge provided the following analysis in his written ruling:

> DS claims that [PM] told her not to pursue the rape case. DS also said that CAPT [TM] told her not to pursue the rape case. CAPT [TM] said he never told DS not to pursue the allegation, and that [PM] would have never done so either, adding that [PM]

[11] As noted, the military judge erroneously framed this as a recommendation not to pursue a rape case. Notably, CAPT TM's testimony addressed the counseling issue.

> has established a support group for cadets who were victims of sexual assault and that [PM] has little tolerance for sexual misconduct. He added that [PM] was at the forefront of eliminating sexual assault on college campuses in the 90s, and that [if] DS told him and [PM] that she was raped, the two of them would never have let [Appellee] leave USCGA.

The military judge, however, stopped short of making an express finding of fact with regard to what the substance of PM's testimony would actually be. Instead, he characterized the impact of the unavailability of PM as a witness on Appellee's ability to mount an effective defense as follows.

> Whether DS has an MRE 608(c) motive to fabricate to obtain a better disability rating with the VA when she went there in 2014 to report this incident to them, and whether DS may have asserted to the VA that she was told by CAPT [TM] and [PM] not to go forward in an effort to explain, for the purposes of increased VA benefits, why her rape accusation was never adjudicated, is a valid defense theory the accused can no longer explore because there is no way to adequately rebut DS's accusations regarding PM.

As noted above, the record does not support a claim by DS that PM recommended that she not go forward with a rape prosecution. The accusation against PM that the military judge found critical for Appellee to rebut is not supported by the record in the first place. Regardless, as noted above, speculation is unavoidable in determining what the substance of testimony would be. One could, relying on the testimony of CAPT TM, find it more likely that PM recommended counseling rather than recommend against it.

2. Ability to Mount an Effective Defense without PM

The case for actual prejudice predicated on the military judge's unsupported finding of fact may be summed up as this: were PM to testify, she would flatly deny telling any sexual assault victim, to include DS, not to pursue an allegation of sexual assault. Furthermore, depending how the evidence was put on at trial, this testimony might serve to undermine explanations provided by DS in 2014 to the VA and CGIS as to why she did not press her case while she was still a cadet at USCGA. Arguably, DS felt compelled to provide explanations in 2014 as to why she did not immediately report the sexual assault to law enforcement or express a clear desire to go forward while still a cadet at USCGA. If PM had recommended that DS not pursue the rape case, as the military judge mistakenly found DS had claimed, that would provide an understandable explanation. Conversely, were PM to utterly deny she made such a recommendation and was found credible on that point, that testimony would

not only impeach DS by contradiction, but also suggest a motive by DS to fabricate. The motive to fabricate would be rooted in pursuing a better disability rating from the VA and could extend to DS engaging in revisionist history as to some of the details of what she said and did in 1997–1998 with regard to the alleged sexual assault and to the veracity of the alleged assault itself. But these arguments lose some of their weight as DS did not claim that PM told her not to pursue the rape allegation. Even so, it is Appellee's contention that PM would have directly rebutted DS's claim that PM recommended DS discontinue counseling and that such rebuttal would have the same detrimental impact on the credibility of DS. While it is possible that it might have some impact, this conclusion remains speculative.

Furthermore, PM's unavailability does not preclude exploring or presenting evidence of a defense theory that DS fabricated a rape claim in order to obtain a better disability rating with the VA. Appellee is certainly able to cross-examine DS as to her motivations for reporting the sexual assault to the VA and establish a motive to fabricate and attribute false statements to CAPT TM and PM. Appellee can call CAPT TM as a witness to directly rebut her claims about what he told her. As for PM, CAPT TM could also testify to some predicate facts about PM to support an inference that PM would not have recommended that DS not pursue counseling. The military judge himself, when discussing the loss of an opportunity for Appellee to interview PM and ask "whether [she] discouraged DS from proceeding forward with her case" as alleged by DS, found such discouragement by PM "unlikely." We note that the military judge made this finding without ever hearing from PM.

Returning to the two-prong analysis that we laid out for examining actual prejudice in this case, we determine as a matter of law that Appellee has not established actual prejudice.

First, the actual substance of what PM's trial testimony would be is speculative. Given that DS presented herself to PM with no intent to report the rape, rooted in concerns over how she would be treated, it is a reasonable expectation that PM would have addressed those concerns in some fashion. Whether she would have attempted to disabuse DS of those concerns or whether she validated them somewhat by acknowledging the challenges that the criminal process brings to any victim or the reality that certain mental health diagnoses could create issues of suitability or fitness for military service, either course of action is certainly plausible. While a counselor might not view such a discussion as a recommendation against counseling, someone in DS's shoes who already has those concerns may well have perceived it that way. Regardless, the point is that the precise contours and context of PM's unavailable testimony is highly speculative.

Further, even assuming that PM were to directly rebut DS, the absence of that testimony, as discussed above, does not deny Appellee the ability to mount an effective defense. In addition to the ability to raise the VA disability benefits as a motive to fabricate, Appellee has at least two witnesses that this court is aware of who can impeach DS's credibility. First is CAPT TM, especially as to her account of how she reported and when she did so. Second is Commander SH who, contrary to DS's assertion, denies that DS ever told her about being sexually assaulted. Finally, in assessing how the absence of PM's testimony potentially impacts Appellee's ability to mount a defense, we note that an obvious import of PM's unavailable testimony is that DS made a complaint to a USCGA official within weeks of the alleged sexual assault. "Fresh complaint" evidence or evidence of reporting a sexual assault close in time has often been viewed as corroborative of the complaint itself. PM's potential testimony, in addition to possibly addressing a recommendation regarding continued counseling, would also potentially establish that DS reported the sexual assault to a USCGA official within the same month. Further, if Appellee were to put on evidence of a motive to fabricate the sexual assault to the VA, then any details that DS provided PM about the sexual assault itself may be admissible for substantive purposes as a prior consistent statement under Mil. R. Evid. 801(d)(1)(B). Perhaps what this best illustrates is the difficulty in assessing actual prejudice before the case is even tried.

IV. CONCLUSION

The appeal of the United States under Article 62, UCMJ, is **GRANTED**. The military judge's ruling to grant the defense motion to dismiss is **VACATED**. The record is returned to the Judge Advocate General for remand to the military judge for action consistent with this opinion.

FOR THE COURT

LAQUITTA J. SMITH
Appellate Paralegal Specialist

APPENDIX B

DEPARTMENT OF THE AIR FORCE
UNITED STATES AIR FORCE TRIAL JUDICIARY

UNITED STATES	)	**RULING ON DEFENSE MOTION TO DISMISS FOR DENIAL OF RIGHT TO SPEEDY TRIAL**
v.	)	
LT COL EDZEL D. MANGAHAS **388th Operations Group (ACC)** **Hill AFB, Utah**	)	**2 August 2016**

RELIEF SOUGHT

On 10 July 2016, the accused, by and through his defense counsel, moved this Court to dismiss the Charge and Specification against the accused for a violation of his speedy trial rights (Appellate Exhibit X). On 17 July 2016, the government filed a written response in opposition (Appellate Exhibit XI). On 22 July 2016, the defense filed an objection (Appellate Exhibit XII) to portions of the timeline contained in Attachment 1 to the government's written response in opposition to the defense's speedy trial motion; however, the defense agreed, for the limited purposes of this motion, to the timeline in the facts section of the government's motion itself. The parties also asked me to consider the audio from the Article 32 preliminary hearing in its entirety, which was provided to the Court on 30 July 2016. The named victim in this case is represented by a special victim's counsel (SVC). Both the SVC and her client were made aware of the Article 39(a) session on 29 July 2016; however, neither the named victim nor her SVC decided to attend (or participate via VTC or otherwise) that hearing. The Court considered the written motions, the defense's objections to the timeline, the Article 32 audio (Appellate Exhibit XIII), the relevant law, and the arguments of counsel during the Article 39(a) session on 29 July 2016. The Court finds, concludes, and rules as follows:

ESSENTIAL FINDINGS OF FACT

1. D.S., the named victim in this case, alleges that the accused raped her in February 1997 when they were both cadets at the U.S. Coast Guard Academy (USCGA).

2. D.S. is represented by Capt Jennifer M. Lake, her SVC. The government informed the SVC and her client about the 29 July 2016 Article 39(a) (Appellate Exhibit XVI), but neither D.S. nor her SVC decided to attend (either in person, VTC or otherwise) the hearing.

3. D.S. reported the February 1997 rape allegation verbally and in writing to the Staff Judge Advocate serving at the USCGA before she graduated on 20 May 1998.

4. D.S. also reported the rape to a counselor at the USCGA, Ms. Pam Moulton, at some point before she graduated from the USCGA in May 1998.

5. Following another USCGA sexual assault incident, which D.S. witnessed on 20 January1998, D.S. told the Coast Guard Investigative Service (CGIS) and local Connecticut law enforcement that she was raped in 1997. Connecticut law enforcement were involved because portions of the Coast Guard Academy's barracks are under concurrent jurisdiction.

6. In 1998, before she graduated from the USCGA, D.S. testified in front of a USCGA Executive Hearing that she had been raped in 1997.

7. D.S. reiterated that she reported the alleged rape to USCGA authorities in 1997 during an October 2014 interview with investigators from CGIS.

8. Three versions of a written statement D.S. wrote accusing Lt Col Mangahas of raping her at the USCGA were found during a search of old files at the USCGA on 30 June 2015. These statements are undated, but reflect that D.S. was still a Cadet at the USCGA when she wrote them. They were therefore written prior to May 1998.

9. USCG Captain (Ret.) Thomas J. Mackell was the Staff Legal Officer/Staff Judge Advocate (SJA) who was serving at the USCGA at the time of the alleged incident. Capt Mackell is now a GS-14 with the Coast Guard and has given over 40 years of his life to the Coast Guard, starting when he was a cadet at the USCGA. Capt Mackell confirmed that D.S. reported the alleged 1997 rape incident to him when she was a USCGA cadet in early 1998. Because the case happened so long ago, Capt Mackell cannot remember everything about this case.

10. D.S. was a witness to an alleged rape between two other USCGA cadets that apparently occurred on 20 January1998. CGIS and the State of Connecticut (where the USCGA is located) conducted a joint investigation into that other offense and D.S. was interviewed as a witness. During her interview, D.S. mentioned that she had been raped the previous year (i.e., in 1997). D.S. testified as a witness during a USCGA Executive Hearing into this other rape allegation later in 1998, and testified consistently with her statement to law enforcement that she had been raped the previous year. Because of these statements to CGIS and USCGA leadership, D.S. ended up in Capt Mackell's office at some point during the Spring (March-May timeframe) of 1998 to talk to him in his role as the USCGA's SJA about the alleged incident between her and the accused in 1997. Capt Mackell was clear that the reasons D.S. talked to him was because of her accusation, which she reported to law enforcement while being interviewed as a witness to the unrelated 20 January1998 incident. Capt Mackell said this conversation took place in the spring of 1998. He knew that was the time period because he remembered that D.S. already knew her post-Academy assignment, and opined that this conversation therefore occurred in the March-May timeframe of 1998 based on the fact that assignments were normally released sometime the first two weeks of March, and D.S. had not yet graduated

in May 1998.

11. Capt Mackell said D.S. "was not chompin' at the bit" to proceed with the rape case when she was a cadet. D.S. disputes this fact. I find that D.S. wanted to go forward with her case back in 1998. I also find that she may not have been as adamant as she otherwise would have been about going forward because of Captain Mackell's representations to her that pursuing the charge would be too hard, and may delay D.S. reporting to her first ship. Capt Mackell told D.S. she could pursue the case once she became an Ensign as well.

12. Captain Mackell believed there were evidentiary issues and jurisdictional challenges with proceeding with the investigation and subsequent prosecution of the accused back in 1998. Capt Mackell's jurisdictional concern with the accused's case was over his confusion about where in the barracks the alleged rape occurred, whether that area was concurrent or federal jurisdiction, and how hard it would have been to get jurisdiction over a civilian former Coast Guard cadet for a crime that came to light after the accused left active Coast Guard duty. In 1998, the accused had already left the Coast Guard Academy due to other misconduct (to include fraternization with a fourth-class cadet). Capt Mackell stated that he may have shared those concerns with D.S.

13. Capt Mackell would have done more with the case had D.S. given him the impression she wanted him to do so. Capt Mackell told D.S. that he would keep the file for five years and told D.S. where he would be stationed next (he was about to execute permanent change of station orders) and told her to contact him if she changed her mind. She never did contact him.

14. Capt Mackell said that D.S. never used the word "rape" with him, and he thought she was alleging an indecent assault. He was not actually aware that D.S. was alleging that the accused raped her. Despite Capt Mackell's statement, however, the statement D.S. gave to law enforcement that led her to Capt Mackell's office clearly said she was raped. Specifically, the statement D.S. gave to law enforcement about the other sexual assault incident she witnessed in January 1998 was as follows:

> At this time I heard a rhythmic sound of the bed coming from the other room and a sound of a female breath escaping, from my experience it sounded like sexual intercourse. With all of this, I also heard a crying, a crying of someone in pain, [V] saying "alcohol is evil," and Sean's muffled words. I kept thinking that I needed to get up and go into that room and turn the light on. Yet I could not. I was in a state halfway between being fully awake and dreaming. I remember my dream being of Sean and [V] and then the dream turning into me and ***the guy who raped me last year***. I just lay frozen in the fetal position.

Emphasis added. Moreover, the statements D.S. made to USCGA authorities before she graduated the USCGA stated the accused's penis penetrated her vagina about an inch.

15. Capt Mackell did not discuss the case further with CGIS because he thought it would have been pointless because of the jurisdictional concerns he thought existed, and because D.S. "was not chompin' at the bit to pursue" the case." Capt Mackell believed that if you did not have a willing victim to pursue the allegation, you could not do much back then. The provision in DoD Instruction 6495.02, Enclosure 4, paragraph 1.c(1), dated 28 March 2013 that states: "The victim's decision to decline to participate in an investigation or prosecution should be honored by all personnel charged with the investigation and prosecution of sexual assault cases, including, but not limited to, commanders," did not exist in 1997 or 1998.

16. In January 2014, D.S. reported to the Veterans Administration (VA) that the accused raped her in 1997. The report was made after D.S. had been passed over for promotion on at least two occasions.

17. In October 2014, D.S. reported to CGIS again that the accused raped her in 1997. There is no evidence of a CGIS or other law enforcement investigation regarding D.S.'s rape accusation against the accused from D.S.'s May 1998 graduation from the USCGA until D.S's additional reports to the VA and CGIS in 2014—an over 16-year investigatory delay.

18. No new evidence came to life that warranted dusting off this cold case other than D.S.'s decision to meet with the VA and CGIS again in 2014. The subsequent investigation has uncovered no additional evidence to support D.S.'s initial allegations she made in 1997.

19. The parties agreed during the Article 39(a) hearing that this case comes down to the credibility of D.S. and, as such, evidence that would tend to strengthen or diminish D.S.'s credibility is relevant. The parties agreed that the case in 1997/1998 would have been a credibility case, and that the government's primary evidence against the accused remains D.S.'s allegation of rape against the accused.

20. No physical, scientific, or medical evidence existed in 1998 to support D.S.'s allegations, and that remains true today.

21. Ms. Pam Moulton was the USCGA counselor D.S. told about the alleged rape while D.S. was still a cadet at the USCGA. Ms. Moulton passed away on 23 March 2016.

22. In December 2014 (two months after D.S. met with CGIS in October 2014), CGIS interviewed Ms. Pamela Moulton. That interview was recorded, and a copy of that recording was provided to the defense in June 2016.

23. During their December 2014 interview of Ms. Moulton, CGIS did not ask Ms. Moulton a single question about D.S. Instead, CGIS interviewed Ms. Moulton in connection with a parallel investigation about the USCGA's procedures for handling sexual assault claims.

24. The defense was unable to interview Ms. Moulton before she died. D.S. claimed in her 2014 interview with CGIS that Ms. Moulton told her not to pursue the rape allegation when she was still a cadet at the USCGA.

25. The defense made efforts to obtain Ms. Moulton's identity and her contact information. Through discovery requests beginning in February 2016, the defense asked for the AFOSI and CGIS case files into this case, to specifically include contact information for all witnesses who had been interviewed by law enforcement.

26. On 17 March 2016—one week before Ms. Moulton's death—the government provided what purported to be a list of all witnesses interviewed by CGIS. Ms. Moulton's name, however, was not included in the list. D.S., however, had identified Ms. Moulton as a potential witness in this case to CGIS in 2014.

27. Captain Mackell knew Ms. Moulton, and stated that Ms. Moulton had established a support group for cadets who were victims of sexual assault. Capt Mackell described Ms. Moulton as having little tolerance for sexual misconduct, and as someone at the forefront of eliminating sexual assault on college campuses in the 90s. Capt Mackell also said that he and Ms. Moulton would have never allowed the accused to have left the US Coast Guard Academy without trial and Academy recoupment if D.S. had ever told either of them that the accused allegedly committed a rape. The accused was allowed to leave the USCGA without recoupment.

28. On 28 October 2015, one Charge and one Specification was preferred against the accused alleging rape under the version of Article 120, Uniform Code of Military Justice (UCMJ), applicable to sexual offenses committed prior to 1 October 2007.

29. On 19 April 2016, a preliminary hearing pursuant to Article 32, UCMJ, was conducted in this case. On 27 April 2016, the Preliminary Hearing Officer (PHO) issued his report finding no probable cause to proceed.

30. On 2 June 2016, the convening authority referred the Charge and Specification to trial by General Court-Martial.

31. On 14 June 2016, the accused was arraigned. At that time, Judge (Lt Col) Brendon Tukey was the detailed military judge.

32. Lt Col Mangahas asserted his right to a speedy trial in discovery requests dated 3 February 2016 and 22 April 2016; and again at the 14 June 2016 arraignment.

33. The defense proposed December 2016 as the date to begin the trial on the merits. In an email sent to trial counsel on 2 June 2016, defense told the government at that time that "a prudent motions hearing date would be 19 September [2016], and a trial date for early December [2016]."

34. Although the government suggested a change in venue during the 14 June 2016 arraignment, the government has not filed a motion on this matter to date, so there is nothing to rule on with respect to this issue.

35. There has been no pretrial confinement in this case. Because he has not been subject to pretrial confinement or restraint, the defense specifically does not allege a violation of Article 10 or Article 33, UCMJ.

36. The defense does not allege any intentional tactical delay on behalf of the government.

37. In addition to the facts above, and for the purposes of making the dates easier to identify, the Court makes the following findings of fact with respect to the government's Accountability for the processing of this case to trial:

Date	Event(s)	Julian Date/CY16 Julian Date	Elapsed Days/ Elapsed Days from Preferral	Gov't RCM 707 Days
01 Feb 97	First charged date of alleged rape	32/-6907	0/0	0
31 May 97	Latest date D.S. claims she reported rape to USCGA SJA (written and verbal)	151/-6803	119/0	0
20 Jan 98	D.S. became involved in another investigation during which she tells CGIS that she was raped in 1997	20/-6555	353/0	0
31 May 98	Last day D.S. would have possibly met with Ms. Moulhun, former USCGA counselor, about rape	151/-6424	484/0	0
1 Jan 14	Earliest approximate date D.S. reports rape to VA	1/-364	6178/0	0
5 Oct 14	CGIS interview of D.S. about 1997 rape	278/-87	6455/0	0
28 Oct 15	Charge and specification preferred against Acc	301/-64	6843/0 [18yrs, 8 mos, 27 days]	0
28 Oct 15	Mil Judge requested for Art 32 PHO	301/-64	6843/0	0
3 Nov 15	Defense requested delay in providing available dates for Article 32 due to likely hiring of civilian defense counsel	307/-58	6849/6	6
19 Nov 15	JA notified that Accused entered into attorney client relationship with civilian defense counsel (Ms. Zimmerman)	323/-42	6865/22	22
4 Dec 15	TC states Govt is prepared for Article 32 on	338/-27	6880/37	37

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	29 December 2015. Defense counsel indicates their earliest availability for Article 32 is 19 April 2016			
16 Dec 15	SpCMCA signs PHO appointment letter and exclusion of time memorandum	350/-15	6892/49	49
29 Dec 15	SpCMCA excludes time from 29 Dec 15 to 18 Apr 16 from RCM 707 computation.	363/-2	6905/62	62
19 Apr 16	Article 32 preliminary hearing. Victim elects not to testify.	110	7017/174 [19yrs, 2mos, 18 days]	62
28 Apr 16	JA receives completed PHO report	119	7026/183	71
2 May 16	ADC and Accused receipt for PHO report	123	7030/187	75
4 May 16	AFSC/JA (GCMCA legal office) provided PHO report	125	7032/189	77
11 May 16	TC interviews Victim for first time. Discuss possible MH issues and risks of litigation.	132	7039/196	84
16 May 16	SVC confirms that Victim is willing to proceed with litigation.	137	7044/201	89
17 May 16	GCMCA legal office requests and receives audio of Article 32 hearing	138	7045/202	90
18 May 16	JA obtains list of potential court members equal to or senior in rank to Accused	139	7046/203	91
20 May 16	GCMCA prepares referral package	141	7048/205	93
25 May 16	SpCMCA & JA discuss forwarding memo	146	7053/210	98
26 May 16	SpCMCA signs forwarding memo. Pretrial advice drafted and sent to GCMCA JA	147	7054/211	99
26 May 16	TC alerts DC and SVC that SpCMCA has recommended referral and asks for availability for arraignment.	147	7054/211	99
1 Jun16	Civilian defense counsel informs TC that she is not available until 18 Jun 16	153	7060/217	105
2 Jun 16	Charge referred by GCMCA. Accused signs for receipt of referred charge.	154	7061/218	106
3 Jun 16	TC sends notice of referral to CCMJ with request for immediate docketing and scheduling of arraignment on 8 Jun 16	155	7062/219	107

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6 Jun 16	Docketing conference with CCMJ. Arraignment scheduled for 14 Jun 16. Defense counsel indicates unavailability until 29 Aug 16 for motions. Defense requests bifurcated trial for motions/merits. Trial scheduled for 5-10 December 2016.	158	7065/222	110
8 Jun 16	CCMJ, Col Natalie Richardson, excluded 8-13 Jun 16 from RCM 707 computation	159	7067/224	111
14 Jun 16	Arraignment (and Judge Tukey excludes time period from arraignment to second scheduled motions date – 29 Aug 16 – from RCM 707 computation.	166	7073/230 [19yrs, 4 mos, 13 days]	112

38. 19 years, 4 months and 13 days elapsed from the first date the charged offense of rape is alleged to have occurred in this case until the accused was arraigned for the charged offense. 230 days had elapsed from the date of preferral to arraignment. For purposes of RCM 707, however, only 112 days elapsed.

39. 5,982 days (or 16 years, 4 months, and 15 days) elapsed from the time D.S. graduated the USCGA until the time CGIS to her again on 5 October 2014.

40. Trial on the merits in this case is currently scheduled for 5 December 2016. Another Article 39(a) session to handle additional motions has been docketed for 29 August 2016.

BURDEN

41. "In the case of a motion to dismiss for … denial of the right to speedy trial under R.C.M. 707, the burden of persuasion shall be upon the prosecution." RCM 905(c)(2)(B). "The burden of proof on any factual issue the resolution of which is necessary to decide a motion shall be by a preponderance of the evidence." RCM 905(c)(1).

42. While denial of the right to speedy trial under R.C.M. 707 is typically decided by determining whether the accused was brought to trial within 120 days of preferral of charges or imposition of restraint, RCM 707(d) does discuss the deprivation of an accused's constitutional right to speedy trial. Accordingly, the burden discussed above remains on the government when discussing Constitutional violations of the right to speedy trial outside the 120-day rule spelled out in RCM 707(a). None-the-less, for purposes of violations of the accused's Fifth Amendment Due Process right to a speedy trial, the defense "has the burden of proof to show an egregious or intentional tactical delay and actual prejudice." *See United States v. Reed*, 41 M.J. 449, 452 (CAAF 1995).

CONCLUSIONS OF LAW

43. There are a number of sources of the right to a speedy trial in the military, to include the following sources of law *and applicable case law*: (a) statute of limitations; (b) Articles 10 and 33 of UCMJ (10 USC §§ 810 and 833, respectively); (c) RCM 707; (d) Sixth Amendment speedy-trial guarantee; and (e) the Due Process Clause of the Fifth Amendment.

a. **Statute of limitations.** Absent restraint, the "primary guarantee" or "primary protection" against pre-accusation delay is the statute of limitations. *See United States v. Marion*, 404 U.S. 307. 322 (1971). As the Supreme Court noted in *Toussie v. United States*, 397 U.S. 112, 114-15 (1970):

> The purpose of a statute of limitations is to limit exposure to criminal prosecution to a certain fixed period of time following the occurrence of those acts the legislature had decided to punish by criminal sanctions. Such a limitation is designed to protect individuals from having to defend themselves against charges when the basic facts may have become obscured by the passage of time and to minimize the danger of official punishment because of acts in the far-distant past. Such a time limit may also have the salutary effect of encouraging law enforcement officials promptly to investigate suspected criminal activity….

The statute of limitations issue is the subject of another defense motion to dismiss and Court ruling (Appellate Exhibit XIV), and will therefore not be addressed again in this ruling. For purposes of this motion, the statute of limitations for the 1997 crime of rape is unlimited per the version of Article 43, UCMJ, in existence during the period of the charged offense, which stated: "A person charged … with any offense punishable by death, may be tried and punished at any time without limitation." 10 USC § 843 (1997). In 1997, the maximum punishment listed for rape was death. Article 120, UCMJ; 10 U.S.C. §920 (1996).

b. **Articles 10 and 33 of UCMJ.** Because the accused was not subjected to pretrial confinement or restraint, the defense specifically does not allege a violation of Article 10 or Article 33, UCMJ.

c. **RCM 707.** RCM 707(a) requires that the accused be brought to trial within 120 days of preferral of charges or imposition of restraint under R.C.M. 304(a)(2)-(4). Again, there has been no RCM 304 restraint alleged, so the only issue here is the date of preferral of charges to the date the accused was brought to trial. In accordance with RCM 707(b)(1), the accused "is brought to trial" for purposes of RCM 707 "at the time of arraignment under R.C.M. 904." Preferral of charges occurred 28 October 2015. Arraignment occurred on 14 June 2016—231 days later. Some of that 231 delay, however, had been excluded. Which party caused the delay is largely irrelevant. The issue is not whether the delay was attributable to the government or defense, but whether the delay is approved by the convening authority or a military judge under R.C.M. 707(c), and whether the delay was reasonable. 118 days were excluded in this case. Specifically, the SpCMCA excluded 112 days (between 29 December 2015 and 18 April

2016) to allow civilian defense counsel to prepare for the Article 32. The Chief Circuit Military Judge (CCMJ), Col Natalie D. Richardson, later excluded another 6 days (8-13 June 2016) due to time from docketing to the 14 June 2016 arraignment. The exclusion of those 118 days was reasonable. That leaves only 112 elapsed days (less than 120) from preferral to arraignment for purposes of RCM 707. Accordingly, there is not an RCM speedy trial violation in this case.

i. Defense's objection to the 14 June 2016 arraignment as a sham arraignment because D.S. was unable to testify that day due to pregnancy complications is without merit. For purposes of RCM 707, the accused "is brought to trial" for purposes of RCM 707 "at the time of arraignment under R.C.M. 904." RCM 904 states:

> Arraignment shall be conducted in a court-martial session and shall consist of reading the charges and specifications to the accused and calling on the accused to plead. The accused may waive the reading.

The discussion to RCM 904 states: "Arraignment is complete when the accused is called upon to plead; the entry of pleas is not part of the arraignment." On 14 June 2016, the arraignment was complete and complied with RCM 904. The accused waived the reading of the charge, was called upon to plead, and deferred pleading. That session was conducted in an Article 39(a) court-martial session in front of the then detailed military judge, Judge Tukey. That the government may not have been ready to proceed to trial immediately thereafter does not make the arraignment a sham. As CAAF held in *United States v. Doty*, 51 M.J. 464 (C.A.A.F 1999), "there is no reason to question appellant's arraignment based on the fact that the Government was unprepared to present its case on the merits immediately following the arraignment" so long as the government proceeded diligently to trial. *Doty* at 465. Based on the evidence currently before me, the government proceeded diligently to trial.

ii. Judge Tukey also denied the defense's motion challenging the validity of the 14 June 2016 arraignment at arraignment. RCM 801(e)(1)(A) discusses the finality of a military judge's ruling, and states: "Any ruling by the military judge upon a question of law, including a motion for a finding of not guilty, or upon any interlocutory question is final." I see no need to upset the finality of Judge Tukey's ruling given the evidence currently before me (and, as an aside, also concur with that decision).

iii. Furthermore, the defense's statement that "the only purpose for the [14 June 2016] arraignment was to protect the Government's interest in stopping the speedy trial clock" is also without merit. As the discussion to RCM 904 points out: "Once the accused has been arraigned, no additional charges against that accused may be referred to that court-martial for trial with the previously referred charges." Moreover, MRE 304(d) precludes the trial counsel's use at trial of any statement, oral or written, made by the accused that are relevant to the case, known to the trial counsel, and within the control of the Armed Forces, and all evidence derived from such statements, that the prosecution intends to offer against the accused if the contents of such statements are not

disclosed to the defense before arraignment. Additionally, the Court in *Doty* found that "arraignment serves to protect an accused's rights. After arraignment, the power of the military judge to process the case increases, and the power of the convening authority to affect the case decreases." *Doty* at 466. Accordingly, there are a number of benefits afforded to the accused at an arraignment, and other "purposes of such a proceeding" than just stopping the speedy trial clock.

d. **Sixth Amendment.** In the military, Sixth Amendment speedy trial protections are triggered upon preferral of charges or the imposition of pretrial restraint. *United States v. Danylo*, 73 M.J. 183 (C.A.A.F. 2014). The Sixth Amendment speedy-trial protection does not apply to pre-accusation delays when there has been no restraint. *United States v. Marion*, 404 U.S. 307 (1971); *United States v. Reed*, 41 M.J. 449 (CAAF 1995); *United States v. Vogan*, 35 M.J. 32 (CMA 1992). Accordingly, the only time to consider here is the time from preferral of the charge on 28 October 2015 to present. To determine whether this right was violated, the military judge must analyze the factors the Supreme Court established in *Barker v. Wingo*, 407 U.S. 514, 530 (1972). *Danylo*, 73 M.J. at 186 (citations omitted). Those factors are: (1) the length of the delay; (2) the reasons for the delay; (3) whether the accused made a demand for a speedy trial; and (4) prejudice to the accused. *Id*. (citations omitted). Here, the *Barker* factors overall weigh in favor of the government. Although: (1) the length of 230 days from preferral to arraignment seems long; (2) the reasons for the delay are largely attributable to the defense. There was a 112-day delay from preferral to arraignment due to the fact that the accused hired civilian defense counsel prior to the Article 32. That delay is entirely reasonable, but can hardly be held against the government. Additionally, there was a 6-day delay from the date of docketing to the arraignment. That was also reasonable. Although the accused has made several demands for a speedy trial, there appears to be little prejudice to the accused in the amount of time it has taken this case to get from preferral to arraignment and beyond, to include a 5 December 2016 trial date. This is especially true given the representations defense made in a 2 June 2016 email sent to trial counsel before this case was docketed for trial in December in which defense told the government on that date that "a prudent motions hearing date would be 19 September [2016], and a trial date for early December [2016]." Given defense was requesting a December trial date, there seems to be little prejudice to the accused in accomplishing arraignment 14 June 2016, and this initial, unscheduled motions hearing 29 July 2016—with another motions hearing scheduled for 29 August 2016 and an actual trial in December per defense's request. The accused can hardly complain about a delay in trial to December when his counsel originally proposed that month for this court-martial.

e. **Fifth Amendment Due Process**. "While the military statute of limitations, Article 43, UCMJ, provides protection against pre-accusation delay, it may not be sufficient by itself—thus [an accused can rely] upon the Due Process Clause of the Fifth Amendment." *United States v. Reed*, 41 M.J. 449, 451 (CAAF 1995). As the moving party on a motion to dismiss for a violation of the accused's Fifth Amendment due process rights to a speedy and fair trial, the defense "has the burden of proof to show an egregious or intentional tactical delay and actual prejudice." *Id.* at 452. Speculation of both egregious and intentional tactical delay by the government and actual prejudice by

the accused is not sufficient. *Id.* "Conclusory allegations of prejudice, otherwise unsupported in the record, do not constitute valid grounds for dismissal," *see, e.g., United States v. Comosona*, 614 F.2d 695, 697 (10th Cir. 1980). Here, however, the defense has provided more than speculation and mere conclusory allegations.

i. Again, the *Reed* test for a Fifth Amendment speedy trial violation is "an egregious or intentional tactical delay and actual prejudice." *Reed, 41 M.J.* at 451. This is in accord with the Court of Military Appeals case of *United States v. Vogan*, which stated: "the Fifth Amendment Due Process Clause may be applicable to protect an accused against egregious trial delays." *United States v. Vogan*, 35 M.J. 32, 34 (CMA 1992)(citing *United States v. Lovasco*, 431 U.S. 783 (1977)). The issue over whether length of delay, by itself, can be sufficiently egregious without intentional tactical delay seems to be an area of confusion. That question in this case is an important one, because the defense has conceded that there was no pre-preferral intentional tactical delay on the part of the government. The answer appears to be that a particularly egregious pretrial delay, even without intentional delay on behalf of the government, can amount to a Fifth Amendment Due Process violation of an accused's right to a speedy trial, and that the disjunctive word "or" in the *Reed* test (an egregious delay "or" an intentional tactical delay, plus actual prejudice) was chosen for a reason. This is because egregiously lengthy delays have the potential to insidiously erode the very foundations of fundamental fairness, due process, and true justice. In a Sixth Amendment context, Courts have stated that the speedy trial right is designed to limit the possibility that the defense will be impaired. The inability of a defendant adequately to prepare his case skews the fairness of the entire system. *See Barker*, *supra* at 532; *United States v. Grom*, 21 M.J. 53, 57 (CMA 1985). The same can be true about a particularly egregious pretrial delay, as the Government has an obligation to proceed to trial with all deliberate speed to ensure fading memories and valuable evidence are not lost. This is decidedly true in a credibility case such as this one, where there is no physical evidence, and where memories and credibility evidence are determinative. Appellate courts that have looked at the issue seem to apply the "or" as drafted in *Reed*. *See United States v. W.*, 56 M.J. 626 (USCGCCA 2001)(despite 3-year delay, appellant failed to show "an intentional tactical delay by the Government and, while it was lengthy, the circumstances satisfy us that it was not an egregious delay;" no prejudice either); *United States v. Salcido*, 2014 CCA LEXIS 89 (NMCCA 2014)(twenty-four-month delay in preferral not egregious delay, but assuming it was egregious, not prejudicial).

ii. Moreover, reading the "or" as an "and" in the *Reed* test (as the government would have me do in this case) would seem to go against the U.S. Supreme Court's holding in *United States v. Marion*, 404 U.S. 307 (1971) and *United States v. Lovasco*, 431 U.S. 783 1977. In *Marion*, the Supreme Court noted that the Due Process Clause of the Fifth Amendment would require dismissal if it were shown at trial that the "pre-indictment delay" in that case caused substantial prejudice to an accused's rights to a fair trial and that the delay was an intentional device to gain tactical advantage over the accused. *Marion*, 431 U.S. at 324. However, the Court did not state that such circumstances were the only way to violate the Due Process Clause of the Fifth Amendment with respect to pre-indictment / pre-preferral delays, and suggested that

actual prejudice to the defense of a criminal case may result in circumstances other than those caused by intentional tactical delay. *Id.* The Court went on to state: "we need not, and could not now, determine when and in what circumstances actual prejudice resulting from pre-accusation delays requires the dismissal of the prosecution." *Id.* The *Marion* Court added:

> To accommodate the sound administration of justice to the rights of the defendant to a fair trial will necessarily involve a delicate judgment based on the circumstances of each case. It would be unwise at this juncture to attempt to forecast our decision in such cases.

Id. at 325. In *Marion*, the Court also added that the statute of limitations plays a factor when determining the constitutionality of pre-trial delays. *Id.* at 325 (holding that 38-month pre-trial delay that occurred while case was still within the five-year statute of limitations not a violation of due process).

iii. Five years later, the Supreme Court in *Lovasco*, provided further guidance that there can be many ways to violate an accused's Fifth Amendment Due Process rights to a speedy trial. In *Lovasco*, the Supreme Court of the United States stated:

> In *Marion*, we conceded that we could not determine in the abstract the circumstances in which preaccusation delay would require dismissing prosecutions. 404 U.S., at 324. More than five years later, that statement remains true. Indeed, in the intervening years so few defendants have established that they were prejudiced by delay that neither this Court nor any lower court has had a sustained opportunity to consider the constitutional significance of various reasons for delay. **We therefore leave to the lower courts, in the first instance, the task of applying the settled principles of due process that we have discussed to the particular circumstances of individual cases.**

Lovasco, 431 U.S. at 786-87 (holding 18-month pre-indictment delay while government was still investigating case with hopes to find new witnesses did not violate due process).

iv. In discussing the importance of the statute of limitations to this analysis, the Supreme Court in *Lovasco* also held:

> [The] statutes of limitations, which provide predictable, legislatively enacted limits on prosecutorial delay, provide 'the primary guarantee against bringing overly stale criminal charges.' [Marion] at *322*, quoting *United States v. Ewell, 383 U.S. 116, 122 (1966)*. But we did acknowledge that the 'statute of limitations does not fully define [an accused's] rights with respect to the events occurring prior to indictment,' [Marion] at 324, and that the Due Process Clause has a limited role to play in protecting against oppressive delay.

Lovasco, 431 U.S. at 789. Thus, the very language in *Lovasco* and *Marion* support the notion that an egregious delay, by itself, and in the right

circumstances, can be a violation of an accused's Fifth Amendment Due Process right to a speedy trial, so long as there is proof of prejudice and the due process inquiry considered the reasons for the delay as well as the prejudice to the accused. *See Id*. at 790.

v. As stated in *Ewell*, *Lovasco* and *Marion, supra*, the applicable statute of limitations "is the primary guarantee against bringing overly stale criminal charges." But as suggested in *Lovasco*, "primary guarantee" does not mean "only guarantee." Again, *Lovasco* stated that the "statute of limitations does not fully define [an accused's] rights with respect to the events occurring prior to indictment,' [Marion] at 324, and that the Due Process Clause has a limited role to play in protecting against oppressive delay." *Lovasco*, 431 U.S. at 789. Accordingly, trial counsel's argument during the 29 July 2016 Article 39(a) hearing on this motion that the government can bring a rape case at any time without violating the accused's Fifth Amendment Due Process right to a speedy trial—because there is no statute of limitations for rape—is without merit. Fundamental fairness and due process still protect the accused against staleness in a case that has no statute of limitations. In such cases, egregious delays are of that much more import, and the military judge still has the affirmative duty to ensure the accused receives a fair trial. *See United States v. Ramos*, 42 M.J. 392, 396 (1995); *United States v. Justice*, 3 M.J. 451, 453 (C.M.A. 1977). *United States v. Greaves*, 46 M.J. 133, 139 (1997)(quoting *United States v. Rake*, 11 C.M.A. 159, 160, 28 C.M.R. 383, 384 (1960)); *United States v. Grady*, 15 M.J. 275, 277 (C.M.A. 1983); *United States v. Milburn*, 8 M.J. 110, 114 (C.M.A. 1979); *United States v. Rosser*, 6 M.J. 267, 271 (C.M.A. 1979); *United States v. Jackson*, 6 M.J. 116, 117 (C.M.A. 1979). Given the egregious delay that has occurred in this case, that cannot occur.

vi. What exactly constitutes an egregious delay is unsettled, but again, the answer to that question seemingly "falls to the lower court" to determine. *See Lovasco, supra*, at 786-87. In the context of a post-trial delay, lengthy delays can impact an accused's due process rights to a speedy and fair trial. *See United States v. Haney*, 64 M.J. 101, 107-08 (CAAF 2006); *United States v. Moreno*, 63 M.J. 129, 135-41 (C.A.A.F. 2006). In *Haney*, CAAF found that a 2,639 day-delay in the post-trial processing of the appellant's case was egregious. *Haney*, 64 M.J.at 107-08 (holding that "the egregiousness of the unexplained delay in this case was such that the perception of fairness of the military justice system is potentially jeopardized" and therefore finding "a due process violation"). Again, the egregious delay in *Haney* was 2,639 days. Here, the delay from offense to arraignment was 7,073 days – over 2 ½ times the length of the delay CAAF found egregious in *Haney* (albeit, in a post-trial context), and equally as egregious from a pretrial due process violation standpoint. The delay from D.S.'s USCGA to the time she spoke to CGIS again about her accusation was 5,982 days—over twice as long as the post-trial delay the *Haney* Court found to be egregious. Such delays in this case are egregious—especially in comparison to *Haney*.

vii. In an analogous, but also only persuasive case, the State of Ohio found an 18-year pre-trial delay did not violate Fifth Amendment Due Process because there was no actual prejudice to the accused. *State v. Jackson*, 2015-Ohio-4274 (8th App.

Oh., October 15, 2015 decided)(18 year delay from 1996 rape to trial not violation of preindicitment delay because accused made statement that it was consensual, so loss of victim's medical records, loss of clothing taken from the victim at the time or rape, loss of evidence in the car in which the rape was alleged to have occurred, and inability to locate sex crimes detective who investigated case not prejudicial because accused made no showing of why these were relevant and would have assisted in his defense, which was that it was consensual).

viii. **Egregious delay**. Based on the foregoing, I conclude that a 19 year, 4 month and 13 day delay from the first date the charged offense of rape is alleged to have occurred in this case until the accused was arraigned for the charged offense is egregious. Whether this delay was intentional or not, the government has produced no evidence of a justifiable reason for the delay in the prosecuting of this case by nearly 20 years. If 2,639 days is egregious in *Haney* post-trial, then a 7,073 day-delay in this case is egregious pre-trial.

(1) While rape can be prosecuted without limitation, fundamental due process mandates that it be prosecuted diligently. The government had D.S.'s rape allegation prior to D.S.'s graduation from the USCGA in May 1998 and failed to move forward with her case with all deliberate speed because, to paraphrase Capt Mackell, it was too hard to do—it was too hard to figure out the jurisdictional question, both of where the offense occurred, and how to call the accused back to active duty after he left the USCGA. "Too hard to do" on the part of the government does not a nearly two-decade delay justify.

(2) For Capt Mackell, the O6 SJA at the USCGA, to say he would have done more with this case had D.S. given him the impression she wanted him to do so, and that talking to CGIS back in 1998 after he spoke with D.S. would have been pointless, makes the delay that much more egregious. The relevant provisions of DoDI 6495.02 cited above that now exist and state that commanders should honor the victim's decision to decline to participate in an investigation or prosecution of sexual assault did not exist in 1997 or 1998. In 1998, D.S. could have simply been ordered to testify, and having CGIS investigate the matter in 1998 can hardly be said to be pointless.

(3) That D.S. reported her rape allegation to USCGA authorities on four occasions— (1) to the USCGA SJA (Capt Mackell); (2) to a USCGA counselor (Ms. Moulton); (3) to the CGIS after being witness to another rape in January 1998; and (4) to a USCGA Executive Board—and that all four of these authorities, Capt Mackell in particular, decided not to press forward with this case, and that close to two decades passed before the government started to move this case forward, is egregious.

(4) While it is unfortunate that the government may not have taken D.S.'s allegations as seriously as they should have back in the 90s, the simple fact is that the government had D.S.'s allegations in 1998 and did nothing with them until 2014. As frustrating and as miserable as such a delay is for D.S., it is even more so for the accused with respect to his Fifth Amendment Due Process right to a speedy trial. The egregious pretrial delay insidiously eroded the very foundations of fundamental fairness,

due process, and true justice in this case, and the accused will be significantly impaired from receiving an adequate defense and a fundamentally fair trial.

(5) The inability of the accused to adequately prepare his case skews the fairness of his entire court-martial. The reasons for the delay are even more egregious—"too hard to do back in 1998." To paraphrase CAAF in *Haney*, the egregiousness of the delay in this case is such that the perception of fairness of the military justice system is significantly jeopardized. Even assuming the case did not move forward because D.S. did not want to proceed in 1998, there is a limit, protected by due process, to how long a case can lay dormant until due process precludes its re-initiation without new evidence—even in a case that has no statute of limitations. Whatever that due process limit is, a 19 year, 4 month and 13 day delay until an arraignment in a case that began in 1997 has to exceed it. To hold otherwise would allow victims the opportunity to pick and choose when to initiate and re-initiate a case. For example, and by no means does the Court mean to insinuate that D.S. has or would do this, there is nothing, absent due process, to present D.S. from deciding to again withdraw from this case and change her mind 20 years down the road. This, the Due Process Clause should not allow. The government caused this delay through inaction, it is egregious, and it violated the accused's Fifth Amendment Due Process right to a speedy trial because, as discussed below, actual prejudice occurred.

ix. **Actual Prejudice**. The *possibility* of prejudice inherent in any extended delay—that memories will dim, witnesses become inaccessible, and evidence lost—is not in and of itself enough to demonstrate that an accused cannot receive a fair trial and therefore to justify the dismissal of the offense. *United States v. Marion*, 404 U.S. 307, 326 (1971). Absent actual prejudice demonstrated at the trial, such due process claims are speculative and premature. *Id.* For the reasons that follow, actual prejudice has occurred.

(1) In this credibility only case, the death of Ms. Pam Moulton causes actual prejudice. D.S. claims that Ms. Moulton told her not to pursue the rape case. D.S. also said that Capt Mackell told her not to pursue the rape case. Capt Mackell said he never told D.S. not to pursue the allegation, and that Ms. Moulton would have never done so either, adding that Ms. Moulton had established a support group for cadets who were victims of sexual assault and that Ms. Moulton had little tolerance for sexual misconduct. He added that Ms. Moulton was at the forefront of eliminating sexual assault on college campuses in the 90s, and that had D.S. told him and Ms. Moulton that she was raped, the two of them would never have let the accused leave the USCGA. Whether D.S. has an MRE 608(c) motive to fabricate to obtain a better disability rating with the VA when she went there in 2014 to report this incident to them, and whether D.S. may have asserted to the VA that she was told by Capt Mackell and Ms. Moulton not to go forward in an effort to explain, for the purposes of increased VA benefits, why her rape accusation was never adjudicated, is a valid defense theory the accused can no longer adequately explore because there is no way to adequately rebut D.S.'s accusations regarding Ms. Moulton. This is an important point in this case, because no new evidence came to life that warranted dusting off this cold case other than D.S.'s decision to meet

with the VA in 2014.

(2) That D.S. may have minimized the offense with Ms. Moulton, or exaggerated the offense to the VA, is speculative; but what is not speculative is that the defense made several attempts to obtain Ms. Moulton's contact information through discovery requests to the government before Ms. Moulton passed away, and the government failed to provide it. Furthermore, despite D.S. telling CGIS about her conversations with Ms. Moulton in her 2014 interview with CGIS, CGIS failed to ask Ms. Moulton about her interactions with D.S. when they interviewed her a few months later. Lost was the opportunity for CGIS and the defense to ask Ms. Moulton whether D.S. sought counseling from her at the USCGA due to the alleged rape; whether D.S. claimed she was raped or simply assaulted (as Capt Mackell believed); whether Ms. Moulton discouraged D.S. from proceeding forward with her case (as D.S. now alleges, but which this Court finds unlikely); and how impacted D.S. was by the alleged incident (information potentially useful to the defense in sentencing). That the defense was denied this information, especially after asking for the contact information for Ms. Moulton multiple times before her death caused actual prejudice in this case.

(3) In a credibility case, opportunities for the defense to impeach D.S. have been diminished by the nearly 20-year delay in this case and the death of a key witness. Ms. Moulton had information about a fact of consequence in this case and was a material witness. The parties agreed during the Article 39(a) hearing that this case comes down to the credibility of D.S. and, as such, evidence that would tend to strengthen or diminish D.S.'s credibility is extremely relevant. That Ms. Moulton passed due to an egregious delay on behalf of the government now deprives the accused of a fundamentally fair trial.

(4) Moreover, there is more than a mere possibility that memories have dimmed in this case due to the lapse of time. Nearly 20 years will have passed if this case goes to trial in December 2016, and Capt Mackell's memory about the specific facts of this case has, by his own admission, diminished. Given that he and Ms. Moulton were the two primary individuals with whom D.S. spoke about the allegation back in the 90s, the fact that Capt Mackell's memories have faded only exacerbates the actual prejudice to the accused given the death of Ms. Moulton.

(5) As discussed in *United States v. Tousant*, the defense may establish prejudice by showing: (1) the actual loss of a witness, as well as "the substance of their testimony and the efforts made to locate them." *See United States v. Tousant*, 619 F.2d 810, 814 P19 (9th Cir. 1980). As discussed, Ms. Moulton passed away, and the defense made several attempts to obtain her information before she died. The substance of her testimony, as one of the two main witnesses with whom D.S. talked back in 1998, is critical to determine the action. Actual prejudice has occurred in this case.

x. While the *Lovasco* Court stated that the Due Process Clause does not require prosecutors to be penalized for deferring and delaying action on a case until the prosecutor will be able to promptly establish guilt beyond a reasonable doubt, and

that the orderly processing of a case should not be subordinated to "mere speed," *Lovasco*, 431 U.S. at 796, the government in this case waited until 2015 to charge the accused for an offense that allegedly occurred in February 1997, and the case is the same as it was back then—the statement against D.S. remains the only evidence against the accused. The Due Process Clause requires more than just sitting on a case from 1997/1998 to 2014 doing nothing. The parties agreed that no physical, scientific, or medical evidence existed in 1998 to support D.S.'s allegations, and that remains true today. So waiting nearly 20 years to prosecute this case has gained the government nothing, and cost the accused much in terms of a lost witness (Ms. Moulton) and loss of memories (Capt Mackell and everyone else in this case). As the Supreme Court stated in *Lassiter v. Dep't of Social Services*:

> For all its consequence, 'due process' has never been, and perhaps can never be, precisely defined. '[Unlike] some legal rules,' this Court has said, due process 'is not a technical conception with a fixed content unrelated to time, place and circumstances.' Cafeteria Workers v. McElroy, 367 U.S. 886, 895. Rather, the phrase expresses the requirement of 'fundamental fairness,' a requirement whose meaning can be as opaque as its importance is lofty. Applying the Due Process Clause is therefore an uncertain enterprise which must discover what 'fundamental fairness' consists of in a particular situation by first considering any relevant precedents and then by assessing the several interests that are at stake.'

Lassiter v. Dep't of Social Services, 452 U.S. 18, 24-25 (1981).

xi. Here, due process and fundamental fairness are not served by allowing this case to proceed following an egregious pretrial delay that has caused actual prejudice to the accused. Simply put, a 19-year, 4-month and 13-day delay from the date of the alleged offense to arraignment, and a 16-year, 4-month, and 15-day delay from the time D.S. graduated the USCGA until the time CGIS interviewed her again on 5 October 2014, during which time the government (unlike the government in *Lovasco*) did nothing in this case, violates the accused's Fifth Amendment Due Process right to a speedy trial because actual prejudice occurred in this credibility only case. According to R.C.M. 707(d)(1), the charge "must be dismissed with prejudice where the accused has been deprived of his or her constitutional right to a speedy trial." To accommodate the sound administration of justice and protect the rights of the accused to a fundamentally fair trial, the charge must be dismissed with prejudice.

RULING

For the foregoing reasons, the defense's motion to dismiss the Charge and Specification against the accused for a violation of his right to a speedy trial is DENIED in part and GRANTED in part. The Court rules that the accused's Fifth Amendment Due Process right to a speedy trial has been violated. The accused's constitutional right to a speedy trial having been violated, R.C.M. 707(d)(1) mandates dismissal with prejudice.

The Court therefore orders that the Charge and its Specification be dismissed with prejudice.

A ruling on defense's motion to dismiss for an improper referral (Appellate Exhibit VIII) is now unnecessary.

SO ORDERED on this 2nd day of August 2016.

JOSEPH S. IMBURGIA, Colonel, USAF
Military Judge

Appellate Exhibit XV
Marked page ___

APPENDIX C

26 April 2017

MEMORANDUM FOR AFSC/JA

FROM: AFLOA/JAJM

SUBJECT: U.S. v. Lieutenant Colonel Edzel A. Mangahas (Misc Dkt 2016-10)

On 5 April 2017, the Air Force Court of Criminal Appeals (AFCCA) granted the petition for Article 62 Appeal filed on behalf of the Governement, as set forth in the attached order. The case is returned to the convening authority for further processing.

FOR THE JUDGE ADVOCATE GENERAL

JULIE A. STEELE
Assistant Chief, Appellate Records Paralegal
Air Force Legal Operations Agency

Attachment:
AFCCA Decision

cc: 75 ABW/JA

Appx C

DEPARTMENT OF THE AIR FORCE
HEADQUARTERS AIR FORCE SUSTAINMENT CENTER (AFMC)
TINKER AIR FORCE BASE OKLAHOMA

MAY 1 3 2017

MEMORANDUM FOR MILITARY JUDGE

FROM: AFSC/CC
3001 Staff Drive
Tinker AFB OK 72145

SUBJECT: Order to Proceed

On 4 April 2017, the Air Force Court of Criminal Appeals (AFCCA) granted the appeal of the United States under Article 62, Uniform Code of Military Justice (UCMJ). The military judge's ruling to grant the defense motion to dismiss was vacated. IAW R.C.M. 908(c)(3), as the Convening Authority, I direct that *United States v. Lieutenant Colonel Edzel A. Mangahas* proceed to trial by general court-martial at Hill Air Force Base.

LEE K. LEVY II
Lieutenant General, USAF
Commander

cc:
75 ABW/JA
AFLOA/STC (Maj Havern)
Lead Civilian Defense Counsel (Terri R. Zimmerman)

APPENDIX D

STATEMENT BY 1/c [redacted], CONCERNING ACTIONS OF EDZEL MANGAHAS

I met Ed Mangahas when he was a 3/c and I was a 4/c during the fall of 1994 at the U.S. Coast Guard Academy. He was a member of Hotel Company and I was a member of Alfa Company. I remember him making the comment about the occupants of the room due to our name plate "Popp" and "[redacted]" He had a friend in the area of our room so he came by regularly. During the second semester, he would come by and talk. This is not normal action since 3/c and 4/c are supposed to have a separation, however at the time I felt it was harmless due to the fact that he was senior and knew the rules and that he often talked about him girlfriend/fiancee from the Seattle area, Missy.

During my 3/c summer, summer of 1995, I came down with mononucleosis and was sent off of EAGLE back to the Academy to recover so that I could go to my summer cutter, the MELLON. While at the Academy, I did work hours in admin and again was befriended by Ed Mangahas who was now a 2/c. We did hang out quite a bit and played Hearts and Spades along with numerous others in his class. He knew that I planned on going into Electrical Engineering, his major, so he would give me advice about his major. He also talked about Missy and going to West Point as an exchange cadet during the fall of 1995.

I did not see Ed that much during the fall of 1995 since he was an exchange cadet. I did however see him once when I went to visit my boyfriend at the time, Jason Brandt, who was a cadet at the United States Military Academy. When I visited Jason, I saw Ed, who also had his fiancee visiting. This was around Labor Day of 1995. Also while he was at West Point, Ed called and emailed me several times to see how things were going. It was through this communication that Ed informed me that he and Missy had ended their relationship. Also, when Ed was put up for frat at West Point and the rumor spread to here by Thanksgiving, Ed called me to tell me "his story" of the situation.

When Ed returned to the Academy for the spring semester of 1996, Ed was put up for frat here because of the incident at West Point. Around that same time he announced his engagement to [redacted] the prior 4/c from West Point who he had been up for frat with. I went to the CSCB hearing on the matter and he ended up not receiving any punishment, or maybe restriction, I do not recall anymore. In April, his fiancee, [redacted] came up for his 2/c Ring Dance.

Sometime during the summer or fall of 1996, [redacted] and Ed ended their relationship and Ed was heartbroken.

Sometime in February of 1997, Ed came to my room after drinking. I do not know what time of night it was, only that it was after I had already gone to bed. The reason I knew he had been drinking is that he smelled strongly of beer. This was not the first time

he had come to my room after drinking, usually however, I was awake when he came in and we only talked. This night was very different from that. He came into my room and closed the door, he did not turn on the light. I recall vaguely asking who was there, having just waken up. Ed told me who he was. I am not sure how the events came next, but I do remember that he got into bed with me. I asked him to leave. He said he only wanted to talk. I rolled over so that my back was to him. He laid closer to me and I told him I was tired and for him to come back later. He then rolled me over and tried to kiss me. I tried to roll back over and rolled up in the fetal position to protect myself from the uneasy feeling I had about the situation. Ed kept bothering me and I soon realized that he was not dressed. He kept trying to get me out of the fetal position and I began to try and reason with him since he had not responded to my actions or asking him to leave. I told him that this was against the regulations, then I said that I did not want to do this, then I started to cry about getting pregnant. It was then that Ed stopped and asked me if I was on birth control. I said that I was not. At that he stopped. Already though I could feel that he had penetrated my vagina about an inch with the head of his penis. He withdrew. I crawled up into the fetal position again and he ended up masturbating on my bed with a little semen hitting my shoulder. He then got up and left. I continued to lie there hoping it was just a bad dream. I ended up falling asleep. In the morning I got up, threw out my linen, washed my clothing, and took a long shower. I remember thinking that I could not scrub my body enough, especially my shoulder.

I believe the evening was a Saturday or early Sunday morning, but I do not remember for sure. The reason I believe this is that the first person I told was my friend, Shannon Heye, who was a 1/c cadet and friend of Ed's. She had been friends with him since their 4/c year and was in the same major as him. I told Shannon since I needed to tell someone and also because since we often went out as a group with Ed, I asked her if she could keep him away from me in your future outings. I told Shannon before church. We often went to St. Mary's in New London together, we had gotten there a little early, so we drove in her van out to the river and she let me talk for awhile about the incident. At that time I told her that I did not want to take any action because of the treatment other females had received after having come forward about being raped. In addition, at that time I did not even admit to myself that the penetration itself was rape, I kept trying to say that it was anything else. I had to deny that I allowed myself to become a victim of rape.

Later during the year, it was Shannon who told me that Ed was put up for another rape of 4/c [redacted], who was in his company.

For the remainder of the year, I avoided Ed. Our mutual friends never tried to get us together. I assumed that Shannon must have told a couple others in our group, [redacted] and [redacted], the situation. I especially felt this after [redacted] mentioned to me

while we were both in Kodiak, Alaska because of our ships that she was surprised that I was never called in to testify since my name had come up during the investigation. It was not until I spoke to LCDR M. Riordan, my company officer, in the beginning of the year about the incident and also with Ms. Pamela Moulton, one of the counselors at the Academy, that my name had never come up for possible questioning and that Ed had been allowed to resign versus go through a courts martial.

Before Ed graduated however, he did come see me again. It was the week before graduation and he was going through the investigation of [redacted]. He came by my room and told me that he knew I had probably heard that he was under investigation and had not done anything to [redacted] He also added that during the investigation he realized that what he had done to me and asked for my forgiveness. I told him that I forgave and had not forgotten. Then I asked him to leave my room. That was the last time I saw him.

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he had come to my room after drinking, usually however, I was awake when he came in and we only talked. This night was very different from that. He came into my room and closed the door, he did not turn on the light. I recall vaguely asking who was there, having just waken up. Ed told me who he was. I am not sure how the events came next, but I do remember that he got into bed with me. I asked him to leave. He said he only wanted to talk. I rolled over so that my back was to him. He laid closer to me and I told him I was tired and for him to come back later. He then rolled me over and tried to kiss me. I tried to roll back over and rolled up in the fetal position to protect myself from the uneasy feeling I had about the situation. Ed kept bothering me and I soon realized that he was not dressed. He kept trying to get me out of the fetal position and kept putting his hands under my shirt (I was wearing shorts, shirt, and underwear). With his hands he kept trying to fondle my breasts and telling me to relax. While lying on top of me, he then began to remove my shorts and underwear even though I tried to keep putting them back on and pushing my shirt down to cover more of me. I began to try and reason with him since he had not responded to my actions or asking him to leave. I told him that this was "against the regulations," then I said that I did not want to do this and to stop (I thought about screaming but for some reason I felt at the time that with 4/c being on either side of my room, I did not want them to hear what was going on so that they would not think this type of stuff happened at the Academy), then I started to cry about getting pregnant and being kicked out of the Academy for being pregnant. It was then that Ed stopped his motions and asked me if I was on birth control. I said that I was not. Already though I could feel that he had penetrated my vagina about an inch with the head of his penis. He withdrew. I quickly tried to get my clothes back on, crawled up into the fetal position again, and tried to hide at the edge of bed. He ended up masturbating on my bed with a little semen hitting my right shoulder/upper arm. He then got up and left. I continued to lie there, crying (I still remember how my tears felt as though they were burning scars into my face), hoping it was just a bad dream, yet my vagina was throbbing and sore. I ended up falling asleep. In the morning I got up, threw out my linen, washed my clothing, and took a long shower. I remember thinking that I could not scrub my body enough, especially my right shoulder and arm.

I believe the evening was a Saturday or early Sunday morning, but I do not remember for sure. The reason I believe this is that the first person I told was my friend, Shannon Heye, who was a 1/c cadet and friend of Ed's. She had been friends with him since their 4/c year and was in the same major as him. I told Shannon since I needed to tell someone and also because since we often went out as a group with Ed, I asked her if she could keep him away from me in your future outings. I told Shannon before church. We often went to St. Mary's in New London together, we had gotten there a little early, so we drove in her van out to the river and she let me talk for awhile about the incident. At that time I told her that I did not want to take any action because of

the treatment other females had received after having come forward about being raped. In addition, at that time I did not even admit to myself that the penetration itself was rape, I kept trying to say that it was anything else because he had withdrawn before ejaculation. I also had to deny that I allowed myself to become a victim of rape for my own sanity.

I also talked to one of the cadet counselors, Pamela Moulton, about the incident. I had used Ed's name, at least his first name. I said that I did not want to come forward with an investigation due to the treatment of the Corps and the Administration to the females who do come forward with having been raped.

Later during the year, it was Shannon who told me that Ed was put up for another rape of 4/c [redacted], who was in his company.

For the remainder of the year, I avoided Ed. Our mutual friends never tried to get us together. I assumed that Shannon must have told a couple others in our group, [redacted] and [redacted] (I later found out after talking to [redacted] that she had known anything about my situation), about the incident. I especially felt this after [redacted] mentioned to me while we were both in Kodiak, Alaska because of our ships that she was surprised that I was never called in to testify since my name had come up during the investigation. It was not until I spoke to LCDR M. Riordan, my company officer, in the beginning of the year about the incident and also with Ms. Pamela Moulton, one of the counselors at the Academy, that my name had never come up for possible questioning and that Ed had been allowed to resign versus go through a courts martial.

Before Ed graduated however, he did come see me again. It was the week before graduation and he was going through the investigation of 4/c [redacted]. He came by my room and told me that he knew I had probably heard that he was under investigation and had not done anything to "her." He also added that during the investigation he realized that what he had done to me and asked for my forgiveness. I told him that I forgave and had not forgotten. Then I asked him to leave my room. That was the last time I saw him.

STATEMENT BY 1/c [redacted], CONCERNING ACTIONS OF EDZEL MANGAHAS

I met Ed Mangahas when he was a 3/c and I was a 4/c during the fall of 1994 at the U.S. Coast Guard Academy. He was a member of Hotel Company and I was a member of Alfa Company. I remember him making the comment about the occupants of the room due to our name plate "Popp" and "[redacted] He had a friend in the area of our room so he came by regularly. During the second semester, he would come by and talk. This is not normal action since 3/c and 4/c are supposed to have a separation, however at the time I felt it was harmless due to the fact that he was senior and knew the rules and that he often talked about him girlfriend/fiancee from the Seattle area, Missy.

During my 3/c summer, summer of 1995, I came down with mononucleosis and was sent off of EAGLE back to the Academy to recover so that I could go to my summer cutter, the MELLON. While at the Academy, I did work hours in admin and again was befriended by Ed Mangahas who was now a 2/c. We did hang out quite a bit and played Hearts and Spades along with numerous others in his class. He knew that I planned on going into Electrical Engineering, his major, so he would give me advice about his major. He also talked about Missy and going to West Point as an exchange cadet during the fall of 1995.

I did not see Ed that much during the fall of 1995 since he was an exchange cadet. I did however see him once when I went to visit my boyfriend at the time, Jason Brandt, who was a cadet at the United States Military Academy. When I visited Jason, I saw Ed, who also had his fiancee visiting. This was around Labor Day of 1995. Also while he was at West Point, Ed called and emailed me several times to see how things were going. It was through this communication that Ed informed me that he and Missy had ended their relationship. Also, when Ed was put up for frat at West Point and the rumor spread to here by Thanksgiving, Ed called me to tell me "his story" of the situation.

When Ed returned to the Academy for the spring semester of 1996, Ed was put up for frat here because of the incident at West Point. Around that same time he announced his engagement to [redacted], the prior 4/c from West Point who he had been up for frat with. I went to the CSCB hearing on the matter and he ended up not receiving any punishment, or maybe restriction, I do not recall anymore. In April, his fiancee, [redacted] came up for his 2/c Ring Dance.

Sometime during the summer or fall of 1996, [redacted] and Ed ended their relationship and Ed was heartbroken.

Sometime in February of 1997, Ed came to my room after drinking. I do not know what time of night it was, only that it was after I had already gone to bed. The reason I knew he had been drinking is that he smelled strongly of beer. This was not the first time

he had come to my room after drinking, usually however, I was awake when he came in and we only talked. This night was very different from that. He came into my room and closed the door, he did not turn on the light. I recall vaguely asking who was there, having just waken up. Ed told me who he was. I am not sure how the events came next, but I do remember that he got into bed with me. I asked him to leave. He said he only wanted to talk. I rolled over so that my back was to him. He laid closer to me and I told him I was tired and for him to come back later. He then rolled me over and tried to kiss me. I tried to roll back over and rolled up in the fetal position to protect myself from the uneasy feeling I had about the situation. Ed kept bothering me and I soon realized that he was not dressed. He kept trying to get me out of the fetal position and kept putting his hands under my shirt (I was wearing shorts, shirt, and underwear). With his hands he kept trying to fondle my breasts and telling me to relax. While lying on top of me, he then began to remove my shorts and underwear even though I tried to keep putting them back on and pushing my shirt down to cover more of me. I began to try and reason with him since he had not responded to my actions or asking him to leave. I told him that this was "against the regulations," then I said that I did not want to do this and to stop (I thought about screaming but for some reason I felt at the time that with 4/c being on either side of my room, I did not want them to hear what was going on so that they would not think this type of stuff happened at the Academy), then I started to cry about getting pregnant and being kicked out of the Academy for being pregnant. It was then that Ed stopped his motions and asked me if I was on birth control. I said that I was not. Already though I could feel that he had penetrated my vagina about an inch with the head of his penis. He withdrew. I quickly tried to get my clothes back on, crawled up into the fetal position again, and tried to hide at the edge of bed. He ended up masturbating on my bed with a little semen hitting my right shoulder/upper arm. He then got up and left. I continued to lie there, crying (I still remember how my tears felt as though they were burning scars into my face), hoping it was just a bad dream, yet my vagina was throbbing and sore. I ended up falling asleep. In the morning I got up, threw out my linen, washed my clothing, and took a long shower. I remember thinking that I could not scrub my body enough, especially my right shoulder and arm.

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the treatment other females had received after having come forward about being raped. In addition, at that time I did not even admit to myself that the penetration itself was rape, I kept trying to say that it was anything else because he had withdrawn before ejaculation. I also had to deny that I allowed myself to become a victim of rape for my own sanity.

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Later during the year, it was Shannon who told me that Ed was put up for another rape of 4/c [redacted], who was in his company.

For the remainder of the year, I avoided Ed. Our mutual friends never tried to get us together. I assumed that Shannon must have told a couple others in our group, [redacted] and [redacted] (I later found out after talking to [redacted] that she had known anything about my situation), about the incident. I especially felt this after [redacted] mentioned to me while we were both in Kodiak, Alaska because of our ships that she was surprised that I was never called in to testify since my name had come up during the investigation. It was not until I spoke to LCDR M. Riordan, my company officer, in the beginning of the year about the incident and also with Ms. Pamela Moulton, one of the counselors at the Academy, that my name had never come up for possible questioning and that Ed had been allowed to resign versus go through a courts martial.

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DEPARTMENT OF TRANSPORTATION U.S.COAST GUARD CG-4608 (Rev. 1-76)	REPORT OF INVESTIGATION	CLASSIFICATION STAMP FOR OFFICIAL USE ONLY

NOCI	ROI	R/R	I/R	RLD CCN	DLD	STATUS (Pend, Closed, etc.)	PREVIOUS ROI's
	X			0454-98GNE	03 20 98	CLOSED	P F Z

SUBJECT
MURPHY, SEAN DANIEL/M/[redacted]/NEW HAVEN CT/CADET/[redacted]/USCGA

CHARACTER	CCN
CRIMINAL-SEX-RAPE	0051-98 GNE 0454 8F[GN]
PREDICATION: VERBAL PREDICATION FROM USCGA SUPERINTENDENT, DTD 20 JAN 1998	CONTROL AGENT: SCHENKELBERG, W.J., RAC WJS
PARTICIPATIING AGENTS: S/A M. DIXON, S/A J. MILLER, DET. J. TWOHILL, DET. N. CABELUS	REVIEW SUPERVISOR: MINITER, J.E., SS/A

REMARKS

CO-SUBJECT

None

CROSS REFERENCE

(V) [redacted] A/F/[redacted]/LOCUST FORK AL/CADET/[redacted]/USCGA
(W) [redacted] L/F/[redacted]/STANFORD CA/CADET/[redacted]/USCGA

SYNOPSIS:

This investigation was predicated through a verbal request from the U.S. Coast Guard Academy (USCGA), Superintendent to CGIS for a criminal investigation. On 20 January 1998, the USCGA received an allegation of rape, committed by the SUBJECT against 1/c [redacted]. The alleged incident occurred at a private residence located in Durham CT, on 18 January 1998. This case was a joint investigation with the Connecticut State Police (CSP). All persons involved with this matter were interviewed by both CGIS agents and CSP detectives. The facts revealed in this investigation did not satisfy the elements of the State of Connecticut criminal statute for sexual assault. CSP closed their investigation. This report will be forwarded to the USCGA Superintendent's Office for review. This investigation is closed.

SPECIAL HANDLING REQUIRED

DISTRIBUTION		SIGNATURE AND TITLE(Approving Authority)	DATE
COMDT(G-O-CGIS)	ORIG	R.P. DEROCHE, SPECIAL AGENT IN CHARGE U. S. COAST GUARD INVESTIGATIVE SERVICE	FEB 3 1998
CGIS NE REGION	COPY #1		DISTRICT
RAO NEW LONDON	COPY #2		NORTHEAST
USCGA (C)	COPY #3		

D	DCS	O	OTHER	NONE

3. INTERVIEW OF: 1/c [redacted], USCGA
DATE: 20 January 1998
PLACE: CGIS, Hamilton Hall
INTERVIEWER: S/A's M. Dixon and W. Schenkelberg

a. 1/c [redacted] was interviewed as a potential witness to the alleged rape by the SUBJECT. [redacted] explained Jason BARRETT, [redacted] and herself were together during the day hours of 17 January 1998. They visited the Salem Witch Museum, Salem MA. They then travel to Durham CT and the SUBJECT's house. [redacted] stated he had planned a party at his parent's house that evening. All three arrived at the SUBJECT's house between the hours of 1800 and 2000. [redacted] said his house looked like he had planned on having a party.

b. They all started to watch various movies on the television. The four of them started to drink some beer and subsequently screwdrivers. [redacted] explained [redacted] took her aside and cautioned her to "watch her," as she was going to drink that evening. [redacted] explained this meant to watch her so she did not get too drunk and flirt with either of the two male cadets. [redacted] said a female telephoned the SUBJECT and said they would not be attending the party. This left only the four of them for the rest of the evening. As they continued to watch the movies, they began playing drinking games. [redacted] said she did not drink much during the entire evening because of her low blood sugar problem.

c. After a few drinking games, [redacted] announced she was not going to drink any more. [redacted] explained [redacted] appeared to be "drunk" at that time. [redacted] noticed [redacted] then began "flirting" with BARRETT. The SUBJECT followed with "hitting" on her. [redacted] told the SUJBECT, "you have a girlfriend." This stopped his advances. [redacted] sat on one of the couches behind where [redacted] was sitting. When [redacted] looked backward a short while later, the SUBJECT was kissing [redacted] [redacted] said [redacted] looked like she was "almost passed out." The SUBJECT was sitting over her. [redacted] interceded and told [redacted] she should go to bed. She then helped [redacted] up the stairs to a bedroom. [redacted] explained she had to help [redacted] up these stairs because of her intoxicated state. They walked into the SUBJECT's bedroom. [redacted] helped [redacted] get undressed as she ([redacted] was "barely doing it herself." [redacted] wanted to brush her teeth, so she walked down the hallway to the bathroom. The SUBJECT met [redacted] in the hallway and kissed her. She pushed him away. [redacted] made the SUBJECT promise he would not do "anything" (to [redacted] [redacted] then emphasized to investigators the SUJBECT was a good friend of [redacted]

d. [redacted] got [redacted] in bed. S/A W. Schenkelberg asked [redacted] to draw a diagram of the upstairs area of the SUBJECT's house. (Exhibit "B") Agent's note: The diagram is labeled "his room" as this was where [redacted] and the SUBJECT were later engaged in sexual intercourse. The SUBJECT entered the bedroom and sat on the floor. [redacted] left the bedroom where both [redacted] and the SUBJECT were and walked to the bedroom directly across the hall. Agent's note: This is the bedroom on [redacted] diagram labeled as "bros RM." [redacted]

then got ready for bed. [redacted] explained she could see directly into the bedroom where [redacted] and the SUBJECT were sleeping, from the angle of her bed. [redacted] began falling asleep. She believed the time was about 0230, as she had looked at the digital clock in her bedroom.

e. [redacted] was awakened by a noise in the bedroom where [redacted] and the SUBJECT were sleeping. She noticed the clock in her room was showing 0314. Initially she heard voices coming from this room., but stated there was "more going on than talking." [redacted] described she heard a "rhythmic" sound coming from their bedroom in conjunction with [redacted]s "rhythmic" breathing. When asked, [redacted] said it sounded like two people having intercourse. [redacted] then heard crying from [redacted] She described the crying as a soft, "wounded cry." [redacted] was softly saying, "alcohol is evil." The SUBJECT was also talking but she could not make out the dialogue. S/A Schenkelberg asked in what tone the conversation was between the SUBJECT and [redacted] She replied the tones were soft and muffled. [redacted] continued speaking in a soft, crying voice, talking to the SUBJECT. [redacted] said her bedroom door was open during this time. She could not see into the other bedroom due to the darkness.

f. [redacted] explained she had been raped at the USCGA about a year ago. Listening to what was transpiring in the other bedroom, traumatized her to the point that she started to re-live her experience. This caused her to become, in [redacted] words, "paralyzed." [redacted] wanted to intercede with helping [redacted] but could not move. She laid still in her bed, in a fetal position. [redacted] believed she was experiencing Post Traumatic Stress Syndrome. [redacted] admitted what she was experiencing at that moment was a "dream state." [redacted] then fell back asleep.

g. [redacted] stated she awoke at about 0600 on the same morning and went downstairs. [redacted] observed [redacted] in her bed, but the SUBJECT was not in bed with her. [redacted] woke up BARRETT and told him what she had heard during the night between [redacted] and the SUBJECT. [redacted] explained it had snowed during the night. She and BARRETT believed [redacted] would still too drunk to drive them home, especially in the snow. They decided to let her sleep a bit more. [redacted] went upstairs and woke [redacted] at about 0730. [redacted] then observed the SUBJECT lying on the floor in the bedroom where [redacted] was sleeping. Both her and [redacted] went to the bathroom. [redacted] told [redacted] she heard what had happened the night before and asked if she was OK. [redacted] continued asking, "Did you have sex last night?" [redacted] replied, "yes." [redacted] explained she through the whole incident was a nightmare. They both walked back to the bedroom to gather [redacted] belongings.

h. Once downstairs, [redacted] told [redacted] she was still light-headed. She had some crackers to help her with her condition. [redacted] wanted to know if BARRETT knew what had happened between her and the SUBJECT. [redacted] said she told him. All three decided to leave the SUBJECT's house. As they were leaving, the SUBJECT came downstairs and asked them where they were going. The SUJBECT expressed a concern about driving in the snow. The SUBJECT urged them to stay.

i. As [redacted] BARRETT and [redacted] were driving back to the USCGA, they discussed what had happened the previous night. [redacted] believed [redacted] was in denial, regarding the facts of what had occurred. When confronted with this, [redacted] replied, "don't blame Sean." "I didn't agree or disagree (to having intercourse with the SUBJECT)." [redacted] asked [redacted] if the SUBJECT was wearing any protection. [redacted] said no.

j. [redacted] continued the conversation inquiring if what had happened was a rape. [redacted] said, "it wasn't a rape." [redacted] was worried about what [redacted] boyfriend Pat (1/c P. THOMPSON) would think. [redacted] explained [redacted] and THOMPSON had discussed marriage. [redacted] was worried he would leave because of this incident.

k. [redacted] stated she spoke with the SUBJECT on Monday (19 January 1998) about the incident. [redacted] told the SUBJECT she was mad at him because she had become "involved" in the [redacted] She also was mad at the fact he broke his promise to her. [redacted] told the SUBJECT she heard everything between he and [redacted] She said she could not forgive him for what he did (to [redacted] The SUBJECT replied he could not forgive himself for doing what he did.

l. S/A Schenkelberg directed [redacted] to complete a statement to the above facts. Agent's note: On 21 January 1998, 1/c [redacted] provided S/A Schenkelberg with a written affidavit to the events of 18 January 1998 which she had witnessed. (Exhibit 'C') The affidavit was sworn to by [redacted] and contained the same basic facts of the previous day's interview.

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]FICIAL USE ONLY
PUBLIC AVAILABILITY TO BE DETERMINED
UNDER 5 U. S. C. 552 and 552(a)

DEPARTMENT OF TRANSPORTATION
U. S. COAST GUARD
CG-5593F (12-94)

Affidavit

With full understanding of my rights and the knowledge that this affidavit is being taken in conjunction with an official investigation, I do voluntarily furnish the following written affidavit (statement). No threats have been made and no promises have been extended to me as an inducement to make a written statement.

0837/21JAN98/HAMILTON HALL-GLSI
Time / Date / Location

[redacted]
Printed/Typed Name of Person Giving Affidavit

[redacted]
Signature of Person Giving Affidavit

William J. Schenkelberg
Printed/Typed Name of Witness

Signature of Witness

[redacted]

21JAN98

FOR OFFICIAL USE ONLY
Public Availability Determined
Under 5 USC 552 and 552(a)

EXHIBIT " C "

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I have been asked to recall to my best ability of the events from Saturday morning until Monday evening.

To preface this, this weekend was a "long weekend." Cadets are able to leave after their last military obligation on Friday afternoon and are able to stay away until their liberty would expire if it were a Sunday that Monday. Because of this long time frame, cadets often make plans ahead of time, as we did for that weekend. [redacted] and myself planned on going to the mall and out to eat for Friday night. On Saturday morning I was taking my car in for an oil change. Saturday after Jason Barrett got off duty we were going to go to Salem, Massachusetts to see the witch museum. Saturday night we were going to go to Sean Murphy's house in Durham, Connecticut. Sean was going to have a party at his house. He had invited a lot of his friends, I recall him saying something about there being a lot of girls and the only guys would be himself and Jason. Sunday Jason, [redacted] and myself would come back to the Academy. Jason, [redacted] and Darlene Wilson (who would be getting off duty) planned to go to New York and then to Jason's house while I would spend the remainder of the weekend at Chaplain Graham's home.

I got back to the Academy from getting my oil changed around 1030. I went by [redacted] room. She was not there, so I left her a note that I was back. I then went to wake up Jason. From there I went to talk to Darlene. I talked to her for awhile hoping that she had seen [redacted] she had not. I then went to my room and found a note from [redacted] saying that we were leaving at 1200. A few minutes later [redacted] came by and said to get ready to go since the museum closed at 5, so we planned to leave by 1100. She left to go make sure that Jason had gotten up and would be ready. We met in [redacted] room and drove to Salem. We got to Salem around 3. We went to the witch museum, the program there lasted around a half hour then we headed to Sean's house. On the way, we stopped off at a package store and bought vodka and kahula so that there would be more to drink then just beer (Sean's drink of choice). Before we got to Sean's house, we stopped off at a gas station to fill up [redacted] truck and then to a Roy Rogers/Sberro's for dinner. After dinner [redacted] and I both went to the restroom. Before we left the restroom, Veronica asked me to promise her one thing. She wanted to get drunk and she knew that with there only being the two guys that they likely wanted to "hook up" that night, she made me promise that she would not be one of them. I told her that I would be there for her.

We got to Sean's. So far we were the only people there. He told us that the beer was on the back porch (?), I'm not really sure what he called it since I knew I would not be drinking any beer. [redacted] got a beer while Jason and Sean moved some Christmas decorations to the basement. [redacted] finished the beer before the guys were done. While we waited for everyone else to get there, we decided to start watching Fast Times at Ridgemont High and had screwdrivers made by Sean. Sean also mentioned that Lynda Yamamoto (a former cadet), Bob Green and Jamie Scholzen

EXHIBIT C

were expected to come later. Plus his brother would be coming by. During the movie Lynda called and said that she could not come (with her would have come Bob and Jamie who were staying at her house). Sean was a little upset that his party ended up just being the four of us. We then began to watch Billy Madison and I made Jason and I white Russians. [redacted] and Sean had another screwdriver and then began to drink beer. After the movie, Sean wanted to play some drinking games.

While we were playing the drinking games, Jason and [redacted] began to horse around a little, but no more than most friends would. At that point Sean also began to get closer to me. I remember telling him at one point to remember "Nikki," the girl he has been dating. He told me that they were not in a relationship and to not worry, but I still tried to keep some distance with him. I tried to not let him get closer than putting his arm around me. At one point when I was laying down he had jumped on me and kissed me to which I was very surprised, no one probably would not even have noticed that he had kissed me since it looked like a just falling into me. Around this time [redacted] began to feel bad and acting drunk. She was losing her ability to reason. Also she began to get very emotional. She left for the kitchen and Sean followed her. They seemed to be in there a long time so I went in there too. The mood didn't feel quite right so I got them to join the rest of us back in the living room. Before coming back [redacted] went to the restroom. [redacted] then came into thee living room and laid down on the sofa behind the sofa that we had been sitting on before. Jason and I were on the original sofa and [redacted] was on the back one. When I looked back a few minutes later, Sean was between [redacted] and the sofa back and sort of on top of her too. Also I noticed that he was kissing her. He noticed that I saw them. He let go of her and she tumbled to the ground. I got up and said that it was time to go to bed.

[redacted] could not even walk, so I helped her get up and get her upstairs. Sean said something about there being three rooms that we could sleep in, his, his brothers, and his sisters. He made a joke about who wanted to sleep with him. I took it as a joke since Jason was sleeping downstairs. Sean helped me get [redacted] to his room. It seemed logical at the moment since it was the closest one to the stairs. I got her in the room and closed the door so that I could help her change since she could not do that herself. Throughout the night she kept saying asking for my help since I was "the only one that" she "could trust." After getting her changed, she began looking for her toothbrush and toothpaste. She could not find them, so I found them for her. She then left for the bathroom.

While [redacted] was in the bathroom, Sean began hitting on me again. He asked me if I was jealous of [redacted]. I answered that I was not. He then went on to say something that I did not have

EXHIBIT " C "

to worry since he had liked me even when he was sober (referring to the fact that we had gone out once in October). During that brief conversation I told him to promise me to not touch [redacted] because of what she had told me earlier that evening. He promised and said that he would only stay in there to make sure that she got to sleep alright. Up to this point, I had no reason to doubt him since I had known him within the "big brother"/protective role. So I got [redacted] into bed. Sean was still there when I left. I left her door open and told her that I would be in the room across from the one she was in and that my door would be open if she needed anything.

When I went to bed I looked at the clock by the bed, it was not the correct time, but it was flashing something around 2:30. When I woke later, I looked at the clock, it said 3:14. At this time I heard a rhythmic sound of the bed coming from the other room and a sound of a female breath escaping, from my experience it sounded like sexual intercourse. With all of this, I also heard a crying, a crying of someone in pain, [redacted] saying "alcohol is evil," and Sean's muffled words. I kept thinking that I needed to get up and go in to that room and turn the light on. Yet I could not. I was in a state halfway between being fully awake and dreaming. I remember my dream being of Sean and [redacted] and then the dream turning into me and the guy who raped me last year. I just lay frozen in the fetal position. I awoke again about an hour later. I got up and closed the door to try and physically shut out what was happening. I then woke up again at 6 and laid there regretting that I had not taken action the night before and hoping that it had been a nightmare. I finally got up at 6:30 and went downstairs to tell Jason about what had happened and to tell him of my plan to get [redacted] out of the house. I decided that I would wake up [redacted] at 7:30 and then leave...not worry about eating or taking a shower or anything.

At 7:30 I went upstairs and tapped [redacted] on the foot to wake her up. It was then that I noticed Sean on the floor asleep. When I woke her up, he looked up at me and then put his head down again. I took [redacted] to the bathroom and followed her in there to confirm what I thought, that her and Sean did have sex. She mentioned something about thinking it was all a nightmare until I woke her up and then she realized that it was real. I got her stuff out of that room and put it in my room and took her downstairs. She began to feel lightheaded to she wanted to lay down. Jason and I made her drink water and eat some goldfish crackers to help her blood sugar levels. We told her of our plan to leave. Jason and I got dressed and [redacted] put on her shoes and we proceeded to leave. As we were leaving, Sean got up and came to the door asking us where we were going. Jason told him that we needed to leave. Sean said something about the roads because of the snow. [redacted] and I kept walking to the truck. We got in and left. On the way back, [redacted] said something

EXHIBIT " C "

about us not blaming Sean since he asked before he did anything. She did not mention that she ever consented. She also then began to worry about Pat's reaction (Pat Thompson, her boyfriend). We got back to the Academy. I gave her the phone number of where I was going to be staying and told her to call me if she needed to. I then asked her questions in hopes to make her realize that she had not wanted the sex. Also these questions were to serve as things to bring up to her later when she would have these concerns. I asked her if he had used a condom, no, he hadn't. I then asked her if she was on the pill since I knew she and been last year, no she wasn't. She also said to me since I know that she thought I was thinking it...she told me that it was not rape. At this point I think she was in denial since the hardest thing to admit is that you have been raped, especially after hearing her cries and her saying that it was a "nightmare."

I then left for Chaplain Graham's home and told her what had happened. I did not classify it as rape since [redacted] had not yet at this point. I just told her about how angry I was at Sean and how uncomfortable I was about the situation. While there I realized that I would have to continue to work with Sean since he is in my company therefore I had to find reasons that I could forgive to be mad at him. The reasons I decided were that he had gotten me involved by being able to hear it and that he broke his promise to not touch [redacted]

On Monday evening, I wrote Sean a broadcast message to speak to me as soon as possible. He came by shortly after. I first told him what I had heard and knew. I then told him my conclusions: that I could forgive him, but to give me time. He responded with that though I had forgiven him, he could not forgive himself for what happened.

21JAN98

[redacted]

EXHIBIT " C "

Page 5 of 6 Pages

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21JAN98

Affidavit (Final Page)

21 JAN 98 [redacted]

END OF AFFIDAVIT

I hereby acknowledge that I have read my affidavit, consisting of 6 pages. My signature below indicates that this affidavit is the truth and is correct, to the best of my knowledge and belief.

0844 21JAN98
Time and Date

[redacted]
Signature of Affiant

[redacted]
Print/Type Name of Affiant

Signature of Witness

William J. Schenkelberg
Print/Type Name of Witness

Sworn and subscribed to/before me this 21 (Day) day of JANUARY (Month) 1998 (Year)

Signature

21 JAN 98 0844
Date and Time Signed

William J. Schenkelberg
Print/Type Name And Title Special Agent

Printed/Typed Name PLUS Signature of WITNESS

Address

FOR OFFICIAL USE ONLY
Public Availability Determined
Under 5 USC 552 and 552(a)

EXHIBIT " C "

Page 6 of 6 Pages

Coast Guard Investigative Service

Action Report

Action Report #	Action Type	Action Date	Approval Status
ACT-2014-10-004061	INVESTIGATIVE ACTION REPORT	10/05/2014	APPROVED

Action Report Details

Location: ANCHORAGE , AK , 99501

Reported Date: 10/05/2014 14:25 **Hate Crime:** ☐ **Domestic Violence:** ☐

Reporting Agent: ANDERSEN, DENISE **Approving Offical:** THOMPSON, RANDAL

Related CG Unit: **Op Name:**

Related CG Type: **Related FIR:**

Related CG District: **Action Recorded:**

Related CG Area: **CGIS Office:**

Related MISLE #: **CGIS Region:**

CGIS Self Initiated: **Insider Threat Incident:**

OIG Referral #: **OIG Misc #:**

Remarks:
(V) [redacted] INTERVIEW

Offense Codes

Offense Information

Offense Code: <120-A-> RAPE BEFORE 10-1-07

Primary Offense: ☑ **Severity:** UCMJ

Attempt: COMPLETED **Arson:**

Bias:

Remarks:
CRIME OCCURRED SOMETIME IN FEBRAURY 1997

Date Information

Reported On: 09/30/2014 15:03 **Date of Entry:** 10/06/2014

Occured From: 02/28/1997 15:04 **Occured To:**

Time of Entry:

Associated Names

Action Report/Name Information

Involvement: PERSON WITH KNOWLEDGE

Linked Name: SULMASY, GLENN M **Juvenile At Time:** ☐

Comments

COPY

Action Report #	Action Type	Action Date	Approval Status
ACT-2014-10-004061	INVESTIGATIVE ACTION REPORT	10/05/2014	APPROVED

LT AT THE ACADEMY WHEN RAPE WAS REPORTED.

Action Report/Name Information

Involvement: PERSON WITH KNOWLEDGE

Linked Name: PITTS, SHANNON M **Juvenile At Time:** ☐

Action Report/Name Information

Involvement: PERSON WITH KNOWLEDGE

Linked Name: PARKER, KATHLEEN **Juvenile At Time:** ☐

Action Report/Name Information

Involvement: PERSON WITH KNOWLEDGE

Linked Name: LUSK, LEANNE M **Juvenile At Time:** ☐

Action Report/Name Information

Involvement: PERSON WITH KNOWLEDGE

Linked Name: MACKELL, THOMAS J **Juvenile At Time:** ☐

Comments

CAPTAIN AT THE ACADEMY WHEN RAPE WAS REPORTED

Action Report/Name Information

Involvement: PERSON WITH KNOWLEDGE

Linked Name: MURPHY, SEAN **Juvenile At Time:** ☐

Narratives For Action

Entered On: 10/05/2014 18:28 **Title:** (V) [redacted] INTERVIEW

Reporting Agent: ANDERSEN, DENISE **Participating Agent:**

Narrative:

On 10/05/2014 I interviewed (V) [redacted] at the Resident Agent Office, Anchorage, AK. The interview was captured utilizing Case Cracker Audio/Video which was later transferred to a DVD-R and placed into evidence at RAO Anchorage.

-(V) [redacted] told me she left Active Duty service with the Coast Guard in 2004 then joined USCG Reserves where she served in Louisiana until she moved to Alaska in 2007.

- (V) [redacted] said her name was [redacted] when she attended the USCG Academy in 1997.

- (V) [redacted] told me she was raped in February 1997 on a Saturday evening when (S) Edzel D. MANGAHAS came into her room, lay on top of her, held her down with one hand on her chest as he used his other hand to pull her legs apart, shorts to the side and penetrated her. (V) [redacted] remembered it was a Saturday evening because she went to church the following morning.

- (V) [redacted] said she did not have a roommate that semester and explained that there were only five females in her company so there was always one female that had their own room. Everyone knew who lived in what room and who your roommates are. The USCGA policy was that the students could not lock there room doors because the OOD would come through to complete bed checks, make sure nobody was having sex in their rooms and that room doors were open if someone of the opposite sex was inside.

- (V [redacted] said when she awoke that evening she did not realize what was happening at first or who was on top of her. She could smell alcohol but remained confused as to what was happening until she realized it was(S) MANGAHAS lying on top of her.

- (V) [redacted] asked (S) MANGAHAS what he was doing, started crying and kept asking him to stop, but he continued. (S) MANGAHAS had

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one hand on her chest and his other hand was in between her legs trying to open her legs. (V) [redacted] said she tried to push (S) MANGAHAS off of her, she tried to keep her legs shut and even tried to pull her legs up towards her chest in a fetal position to prevent (S) MANGAHAS from raping her. (V) [redacted] showed me her hand and made a twisting motion to show how (S) MANGAHAS opened her legs. She said (S) MANGAHAS was able to get himself in between her legs.

- (V) [redacted] was not sure why she said this, but she told (S) MANGAHAS that she didn't want to have an abortion. (S) MANGAHAS stopped, looked at her and said "but you're on birth control" (V) [redacted] responded, No, I'm not, I'm not on birth control, I've never taken it. (S) MANGAHAS then got up and left.

- The following morning she told her friend (PK) Shannon HEYE, now Shannon PITTS what had happened while they attended church.

-(V) [redacted] told me she did not feel safe reporting her rape because at that time if a women reported rape, blame would be turned around on the women, that the women may have done something or asked for it or was somehow just as guilty as the subject. She watched girls report, then later be processed for discharge as the men continued on in the service. (V) [redacted] wanted to be an officer and wanted to graduate.

- (V) [redacted] attended cadet counseling once. She believed the counselors' name was MULTEN. The counselor recommended that (V) [redacted] not continue counseling because she could be discharged or not commissioned for of a mental health issue.

- (V) [redacted] told me that in April/May 1997, (PK) Shannon PITTS told her that a freshman came forward with similar allegations against (S) MANGAHAS.

- (V) [redacted] came forward the following day after learning of the other allegations sometime in April/May 1997 and provided a written statement to (PK) LT Glenn SULMASY (now Captain SULMASY) for (S) MANGAHAS courts martial or cadet disciplinary review. (V) [redacted] said she was never called upon to testify.

- (V) [redacted] recalled that (S) MANGAHAS came to her room sometime in April/May 1997 and backed her against the wall in between her desk and chest of drawers. While (V) [redacted] was against the wall (S) MANGAHAS told her that what he was going through made him realize that he was wrong with what he had done to her and asked her to forgive him.

- (V) [redacted] did not believe (S) MANGAHAS was being sincere and just thought he was trying to determine if she was involved in the case against him. She asked him to leave and he said; I really just need you to forgive me, she said, Fine I forgive you. She just wanted him out of her room.

- (V) [redacted] sketched a picture of her room and where (S) MANGAHAS backed her against the wall (Attachment-Room Sketch)

- (V) [redacted] received a telephone call from (S) MANGAHAS sometime around November December 1997. (S) MANGAHAS told (V) [redacted] that he read an article in the Air Force Times about her recent Marine run and how she qualified for the Boston Marathon. During the telephone call, (S) MANGAHAS told (V) [redacted] that he was attending the Air Force OCS

- One of the females that alleged rape by (S) MANGAHAS quit the Academy the following year. (V) [redacted] believed two other cadets had come forward with similar allegations.

- After (V) [redacted] received the phone call she reached out to (PK) SULMASY and (PK) Captain Thomas MACKELL to inquire about (S) MANGAHAS status because she was told his commission was declined and that (S) MANGAHAS would not be able to join any military branch. (PK) SULMASY and (PK) MACKELL advised (V) [redacted] that the written statement she provided for (S) MANGAHAS was lost and that they would look into the matter of (S) MANGAHAS joining the Air Force.

- (V) [redacted] felt as though both SULMASY and MACKELL discouraged her from reporting her rape. They both told her if she reported it would delay her graduation, reporting and qualifying on her ship, and ultimately her career. They advised she only had three years to go forward and pointed out that she would still be on the ship in three years.

- (V) [redacted] felt as though (PK) SULMASY and (PK) MACKELL did not want her to move forward with reporting her rape.

- (V) [redacted] said this rape has affected her during her whole career. She spent a lot of time on the ship crying and at one point her Executive Officer thought she was suicidal. (V) [redacted] denied ever feeling suicidal.

- (V) [redacted] went to the VA Hospital in January 2014 for counseling where she was able to recall what she was wearing during her rape and why she had pain between her legs during penetration.

- (V) [redacted] said that her rape has affected her whole career negatively. She had received negative Officer Evaluations because she cried frequently at her first unit and that OER has followed her.

- (V) [redacted] told me she confided in a few people during her career. Specifically she told (PK) Kathleen PARKER, (PK) Leanne LUSK, and (PK) Catherine MELLETTE.

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(V) [redacted] recalled one incident when she was called to testify at a court martial or a disciplinary board for another cadet; Sean MURPHY. During the course of her testimony MURPHY asked her questions about her experience at the Academy.

Involved Agents

Agent: ANDERSEN, DENISE **Involvement:** REPORTING AGENT

Investigative Hours:	5.00	Travel Hours:	1.00	Intel Support Hours:	0.00	Total Hours:	6.00
						Grand Total Hours:	6.00

Action Related Evidence / Custody Items

BarCode #	Property Type	Category	Status	Receipt #
EVI-2014-10-000802		ELECTRONIC MEDIA/STORAGE		1

Action Related Cases

Case Management ID	Case Type	Date/Time Logged	Investigation Status	Primary	Comments
CSE-2014-10-000537	CRIMINAL INVESTIGATION	10/01/2014 18:51	CASE ACTIVE	☐	(V) INTERVIEW

Attachments

File Name	Attachment Type	Description	Linked By	Linked On
CADET ROOM.PDF	OTHER	SKETCH BT (V) [redacted]	ANDERSEN, DENISE	10/06/2014

Action Report #	Action Type	Action Date	Approval Status
ACT-2014-10-004061	INVESTIGATIVE ACTION REPORT	10/05/2014	APPROVED

Action Report/Name Information

Involvement: PERSON WITH KNOWLEDGE

Linked Name: PITTS, SHANNON M **Juvenile At Time:** ☐

Action Report/Name Information

Involvement: PERSON WITH KNOWLEDGE

Linked Name: PARKER, KATHLEEN **Juvenile At Time:** ☐

Action Report/Name Information

Involvement: PERSON WITH KNOWLEDGE

Linked Name: LUSK, LEANNE M **Juvenile At Time:** ☐

Action Report/Name Information

Involvement: PERSON WITH KNOWLEDGE

Linked Name: MACKELL, THOMAS J **Juvenile At Time:** ☐

Comments

CAPTAIN AT THE ACADEMY WHEN RAPE WAS REPORTED

Action Report/Name Information

Involvement: PERSON WITH KNOWLEDGE

Linked Name: MURPHY, SEAN D **Juvenile At Time:** ☐

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Involved Agents

Agent: ANDERSEN, DENISE **Involvement:** REPORTING AGENT

Investigative Hours:	5.00	Travel Hours:	1.00	Intel Support Hours:	0.00	Total Hours:	6.00
						Grand Total Hours:	6.00

Action Related Evidence / Custody Items

BarCode #	Property Type	Category	Status	Receipt #
EVI-2014-10-000802		ELECTRONIC MEDIA/STORAGE		1

Action Related Cases

Case Management ID	Case Type	Date/Time Logged	Investigation Status	Primary	Comments
CSE-2014-10-000537	CRIMINAL INVESTIGATION	10/01/2014 18:51	CASE ACTIVE	☑	(V) [redacted] INTERVIEW