



DEPARTMENT OF THE AIR FORCE
WASHINGTON, D.C.

APR 01 1998

Office of the Assistant Secretary
AFBCMR 96-02101

MEMORANDUM FOR THE **CHIEF** OF STAFF

Having received and considered the recommendation of the *Air* Force Board for Correction of Military Records and under the authority of Section 1552, Title 10, United States Code (70A Stat 116), it is directed that:

The pertinent military records of the Department of the Air Force relating to [REDACTED], be corrected to show that: —

a. The Senior Officer Unfavorable Information File (SOUIF), to include the Letter of Reprimand, dated 5 October 1994, the Report of Investigation, dated 30 September 1994, and all other attachments pertaining thereto, which was considered by the Calendar Year 1996 and 1997 Brigadier General Promotion Boards, be, and hereby is, declared void and removed from his records.

b. The Promotion Recommendation Form considered by the Calendar Year 1996 Brigadier General Promotion Board, and reflecting an overall promotion recommendation of "Do Not Promote," be, and hereby is, declared void and removed from his records.

It is further directed that his corrected record be considered for promotion to the grade of Brigadier General by a Special Selection Board (SSB) for the Calendar Year 1996 Brigadier General Promotion Board and, if not selected, he be considered by SSB for the Calendar Year 1997 Brigadier General Promotion Board; and that the Promotion Recommendation Form considered by the Calendar Year 1995 Brigadier General Promotion Board and reflecting an overall promotion recommendation of "Do Not Promote" not be included in the records reviewed by the SSB for the Calendar Years 1996 and 1997 Brigadier General Promotion Boards.

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JOE G. LINEBERGER
Director
Air Force Review Boards Agency

RECORD OF PROCEEDINGS
AIR FORCE BOARD FOR CORRECTION OF MILITARY RECORDS

IN THE MATTER OF:

DOCKET NUMBER: 96-02101

COUNSEL: None

HEARING DESIRED: YES

APR 01 1998

APPLICANT REQUESTS THAT:

A Letter of Reprimand (LOR) and a Senior Officer Unfavorable Information File (SOUIF) be removed from his records; that his records be allowed to compete at a supplemental promotion board for brigadier general; and, once selected, that he be given a line number commensurate with his year group and back pay accrued.

APPLICANT CONTENDS THAT:

The investigation for the, alleged assault (which lead to the aforementioned actions being taken against him) was command influenced by improper comments to the investigators by Colonel J--- B---- (*hereinafter referred to as BGen (sel) J--- B---*), the [REDACTED]; that the investigator for the [REDACTED] Security Police then conducted a one-sided, flawed investigation which falsely portrayed his conduct at the unit party, incorrectly reported witness statements and omitted witness statements in his defense; that the result was a tainted investigative report which stated the faulty conclusions of the commander rather than the truth; and that this was then inadequately questioned by his counsel and his commander, Brigadier General (BGen) R--- C---, who subsequently gave him an LOR.

In support of his application, applicant states that on 5 October 1994, he received a LOR for allegedly grabbing a female airman on the buttocks. This LOR would subsequently generate a SOUIF and a "Do Not Promote" Promotion Recommendation Form (PRF). The final result was that his "sterling" record, up to the point of the LOR, was not allowed to be considered for promotion to brigadier general on the Calendar Year 1995 (CY95) Brigadier General Promotion Board. During the past year, he has aggressively reexamined the investigation report and has documented numerous inconsistencies and contradictions contained within. He has personally contacted individuals present during the alleged incident, some who were interviewed and some who were not. Their written statements, which they freely provided him, paint a completely different picture of the events of the evening than does the report. In fact, one witness confidently states that

the investigation was command influenced by the [REDACTED] BGen (sel) J--- B---. The one-sided, flawed investigation supports the false conclusion of the commander rather than presents the truth.

The result is that an exceptional USAF officer, commander and combat-proven leader was wrongfully punished and denied promotion to brigadier general.

Prior to this incident, he had established an extremely strong reputation and record as an exceptional officer, fighter pilot and leader, both in peacetime and at war. He had served as Commander, [REDACTED] Fighter Squadron, during Operation Desert Shield/Desert Storm, successfully leading this outstanding unit, which flew 1200 combat sorties in every major campaign and dropped eight million pounds of bombs without a **loss** of aircraft or aviator. A little more than a year later, he served as Commander, [REDACTED]th Operations Group, Saudi, Arabia, where he successfully planned and directed two days of air strikes by a joint force of 100 aircraft on targets in Iraq. Again, without loss of life or aircraft. From there, he went on to become the Commander, [REDACTED] Operations Group, [REDACTED], where he oversaw two F-15 squadron conversions and stood-up an F-15C squadron. He was assigned to Headquarters, [REDACTED] as Director of Plans and Programs; one of two promotable to brigadier general jobs. Subsequently, he was sent on temporary duty as [REDACTED] Component Commander at Operation Provide Comfort, Incirlik AB, Turkey. His mission, which he accomplished, was to "clean-up" the flying operation after the tragic Black Hawk Shoot Down. It was during this assignment that he was alleged to have committed the assault. During the last two years, as the Director of [REDACTED] Plans and Programs, his organization has set new "highs" in increased budget support and efficiently and effectively managed the stabilization of USAF forces in [REDACTED]. Clearly, these are the accomplishments of someone on track for promotion and positions of increased leadership and responsibility.

In conclusion, the applicant states that the attached supporting documentation was provided to SAF/IG in the form of a requested Congressional Investigation, 1 July 1996. The investigation is currently on-going. One major reason it has taken him this long to file the SAF/IG investigation request is that it took over nine months for SAF/IGQ to provide him with a readable but partial copy of the [REDACTED] Security Police Investigation Report from which to conduct his investigation. This unnecessary delay will result in his missing another opportunity for promotion on the CY96 Brigadier General Promotion Board. At this point, he has exhausted all other administrative remedies. As you will see in your review of his supporting documents, there are still questions which need to be answered by witnesses of this incident. This questioning is beyond his purview. He would expect the IG to conduct this questioning; hence, it will be available for your use. He respectfully requests your review and investigation into this matter. He is confident and so are other

witnesses, that he did not commit this alleged assault. He looks forward to meeting with each of you, answering your questions and correcting this injustice.

Applicant's complete statement, and documentary evidence submitted in support of his application, is included as Exhibit A, with Attachments 1 through 42.

STATEMENT OF FACTS:

Applicant completed the Reserve Officers Training Program as a Distinguished Graduate and entered on active duty 26 September 1971 as a second lieutenant. He was progressively promoted through the ranks to the Regular Air Force grade of colonel, effective and with date of rank of 1 December 1992.

In June 1994, the applicant received permanent change of station (PCS) orders to HQ [REDACTED] to serve as the Director of Plans and Programs. Prior to his reporting date, the applicant was diverted to Incirlik AFB, Turkey, to become the first [REDACTED] Component Commander (CC) for Operation Provide Comfort following the shoot-down of the two Black Hawk helicopters by USAF fighter jets.

On the evening of 16 September 1994, applicant attended a Combined Task Force (CTF) party at an outdoor covered picnic pavilion at Arkadas Park across the street from the deployed living quarters. The party was attended by an estimated 150 to 300 individuals (officers and enlisted members). At around 2330 hours that night the applicant allegedly came up behind a female airman (*hereinafter referred to as SRA C---*), who at the time was assigned to the [REDACTED], Tinker AFB, OK, and grabbed her buttocks with both hands. SRA C--- immediately reported the incident to Lt Col P--- M---, the Deployed Detachment Commander, [REDACTED], and to Lt Col K--- U---, the Deployed Director of Operations, [REDACTED]. On 19 September 1994, Col (BGen(sel)) J--- B---, the [REDACTED], contacted the [REDACTED] Security Police and reported being informed of the incident by Lt Col M---. According to the report of the investigation (ROI) by the [REDACTED] Security Police, SRA C---'s allegations were substantiated (*See Exhibit T - Privileged Information*).

On 5 October 1994, the applicant received an LOR from BGen R--- C---, CTF Commanding General, Operation Provide Comfort, at Incirlik AB, Turkey, for acting in a drunk and disorderly manner before subordinates and assaulting SRA C---. The applicant acknowledged receipt of the LOR on that same date and elected not to comment on the allegations and also elected not to attach any statements or documents to be considered in determining whether the LOR would be placed in an Unfavorable Information File (*See Exhibit C*). On 8 October 1994, BGen R--- C--- reported the incident to SAF/IGQ as required by AFI 90-301. He recommended a

Senior Officer Unfavorable Information File (SOUIF) not be established (*See Exhibit D*). On 17 July 1995, General J--- J---, Commander, ██████ sent a letter to SAF/IGQ concurring with BGen C---'s recommendation that an SOUIF not be established (*See Exhibit E*).

On 22 August 1995, SAF/IGQ sent the applicant notice that the LOR and supporting documentation had to be maintained for possible inclusion in a SOUIF and afforded the applicant another opportunity to comment on the incident. On 5 September 1995, the applicant responded by saying that "...The only additional information I would like to provide is how sorry I am that I was involved in this incident. I further regret any wrong I may have caused to the airman involved." On 11 September 1995, SAF/IGQ sent another letter to the applicant informing him that he had yet another opportunity to submit comments to the Secretary of the Air Force to aid her in deciding-whether the derogatory data in his file would be submitted to an upcoming promotion board. The applicant again submitted his comments to the Secretary of the Air Force, this time stating that he did not recall the specific incident with SRA C---. (*See Exhibit A for these documents.*) Notwithstanding the applicant's comments, the Secretary of the Air Force decided to provide an Adverse Information Summary of the incident to the CY95 Brigadier General Promotion Board, which convened on 26 September 1995. He also received a "DO NOT PROMOTE THIS BOARD" PRF from LGen E--- P---, the Vice Commander, ██████ (*Copies of this PRF and the applicant's top OPR are included as Exhibits F & G.*) Applicant was not selected for promotion to brigadier general.

On 21 June 1996, the applicant forwarded a letter to the SAF/IG, which included the 21-page "Report" he provides in Exhibit A, requesting, in part, that the IG conduct its own investigation into the matter.

Applicant was considered for promotion again by the CY96 Brigadier General Board, which convened on 20 August 1996, but was not selected. The Secretary of the Air Force decided to provide an Adverse Information Summary of the incident to this board. The applicant also received a "DO NOT PROMOTE THIS BOARD" PRF from LGen E--- P---, Vice Commander, ██████ (*Copies of this PRF and the applicant's top OPR are included as Exhibits H & I.*)

Department of Defense (DoD) Instruction 1320.4 provides for disclosure of adverse information on general officer nominees to OSD, the White House, and the Senate. It also requires the Secretary of the Military Department concerned to provide to the Office of the Assistant Secretary of Defense (FMP) all adverse information since the officer's last Senate confirmation. Additionally, for promotion to O-7, the Secretary "...shall review all adverse information during the last 10 years of an officer's career to identify trends." SAF/GC (under authority delegated by the Secretary of the Air Force) determines whether

to send adverse information and SOUIF summaries to the brigadier general selection board (*See Exhibit I*).

Pursuant to a request by the AFBCMR Staff, SAF/IGQ provided additional information. However, since this information is privileged, it cannot be released to the applicant (*See Exhibit T - Privileged Information*).

The applicant was considered, but not selected, for promotion by the **CY97** Brigadier General Board, which convened on **19 August 1996**. An SOUIF on the incident was provided to this board also. The top OPR reviewed by the promotion board had been rated by the Vice Commander of [REDACTED]. The applicant received a "PROMOTE" PRF from the Vice Commander of Air Combat Command at Langley AFB, VA. (*Copies of this PRF and the applicant's top OPR are at Exhibit U.*)

AIR FORCE EVALUATION:

AFPC/JA states that applicant has not shown there was any legal error in the manner in which this case was processed. The documentation in the case file submitted by the applicant shows he was afforded due process at every step in the proceedings. Specifically, while the incident was being investigated, the applicant sought the advice of the Area Defense Counsel (ADC). According to the applicant, he initially spent over an hour with the ADC discussing this incident. He also periodically kept in touch with the ADC as the investigation progressed. When the investigation was complete, he reviewed the entire Report of Investigation (ROI) as well as the statements with his ADC. At the time he was issued the LOR, he was given the opportunity to respond to the allegations against him and submit any statements or documents he wished to be considered. He elected not to make any statements or to otherwise respond to the allegations contained in the LOR. He was also afforded two other opportunities by SAF/IGQ to provide his "side of the story." He took advantage of both of those opportunities. In the first instance, he apologized for his involvement in the incident. In the second instance, he merely stated that he had no memory of the assault on the female airman. Interestingly, in neither instance does he deny he acted in a drunk and disorderly manner before subordinates, nor does he deny assaulting the female airman. To his credit, the applicant did apologize for his conduct and the incident.

Applicant now claims he did not fully appreciate the significance an LOR and a SOUIF would have on his promotion eligibility. He claims his legal counsel was ineffective because he failed to fully and properly advise him prior to his receiving the LOR. He also claims his counsel only partially reviewed the ROI prior to advising him on what needed to be done in preparing a proper rebuttal to the LOR, and he claims his counsel never cross-

examined any of the witnesses against him or otherwise conducted his own investigation into the false allegations.

Initially, it is noted that "ineffective assistance of counsel" is a Sixth Amendment criminal law concept, not relevant in administrative or civil proceedings unless a respondent's liberty is at stake. Even where the argument is considered, there is a strong presumption in favor of effectiveness.

It is believed that once applicant had been afforded counsel, he was entitled to competent representation. Since the application contains only applicant's version of the facts, they discussed applicant's allegations with his former military counsel. Applicant's counsel related he was provided with an advance copy of the security police investigation report and the witness statements. He stated he thoroughly reviewed the entire report and all of the statements, and he spoke with the witnesses who were not represented by counsel, including the victim. He recalled that the Chief Circuit Defense Counsel (CCDC) for [REDACTED] was particularly interested in being kept abreast of all senior officer cases and, as such, he spoke with her several times each week regarding this case, and she provided him with a lot of advice. He stated the applicant told him he had had very little sleep and nothing to eat before the party. Applicant also told counsel he had been drinking alcohol that night but had no memory of the incident with the female airman. He advised the applicant not to apologize to the victim because of the appearance it would give of his guilt, but disputes that it was the applicant who had him call the CCDC to get a second opinion regarding this. Counsel stated he had already been in consultation with the CCDC when he advised the applicant not to apologize. Counsel also admitted he advised the applicant not to give a written statement to the Security Police Investigators, not because of their interrogation techniques, but rather because applicant had already told BGen C--- his side of the story and, in his opinion, the applicant had nothing more to gain by making a statement to the Security Police. Counsel specifically denied he failed to apprise the applicant of the consequences of the LOR and recounted how he had gone over to the legal office and reviewed the Air Force Regulation concerning the mandatory reporting requirements to SAF/IGQ for substantiated misconduct involving senior officers. Counsel specifically remembers counseling the applicant regarding this reporting requirement and of his rights to submit matters in his behalf. He also recalled discussing the fact that an LOR would have a negative impact on the applicant's career.

Given the foregoing, it is believed applicant was competently and ably represented under the circumstances. Applicant's allegations against his legal counsel are regrettable, but clearly indicative of an individual who refuses to accept responsibility for his actions or be accountable for his conduct and who insists on blaming everyone else, including "the system" and his lawyer for his lapse.

The bottom line---the applicant has failed to present credible evidence to support his contention there was legal error in this case, and they find that the law and Air Force procedures were followed in processing this case.

AFPC/JA further states that there was no injustice. Applicant has now decided to attempt to readjudicate the factual basis for his LOR. He has attached a number of statements (**some** sworn and some unsworn) which he claims casts doubt on the credibility of the female airman who made the allegations against him and provide theories and reasons behind the malevolent motivation of the female airman to fabricate the allegations against the applicant. Interestingly, none of the statements directly refutes anything the female airman has said happened to her the evening of the party. Many of the statements simply state that the person making the statement did-not observe the incident - not that the incident did not occur. Reference is made that one of the eyewitnesses to the incident has now recanted her earlier statement, but the recanted statement itself is nowhere to be found. Many of the statements give opinions on whether the applicant and/or the other witnesses to the incident were intoxicated that evening and then go on to expound upon whether that person was or was not impaired. Even if all the statements and affidavits are to be believed, it does not alter the fact that the female airman believed she had been assaulted by the applicant, and she immediately tried to report it to her commander. None of the statements alters that fact. Furthermore, this is not a situation where the misconduct is alleged to have taken place at a time or in a place where there were no witnesses. We are asked by the applicant to simply ignore the fact that his conduct was observed and commented upon by multiple eyewitnesses to the incident. It is true that some of the eyewitnesses have better memories than others, but the basic overarching fundamental facts of what happened that night have not been refuted by any of the evidence presented with this application. What seems to be the most telling piece of evidence in the application is the repeated mention by the applicant that he wanted to apologize to the airman. That kind of response is entirely inconsistent with innocence. It is safe to say that outrage would be a more typical response from a senior officer wrongfully accused of sexual harassment in today's Air Force.

The applicant also claims the investigation was flawed and unlawfully influenced by the Wing Commander at Incirlik, Turkey. In support of his claim, the applicant has attached two statements from Lt Col P--- M---. Lt Col M--- relates that he had been told by the █████ Security Police Commander that, on assigning the case to █████ SPS NCO Security Police Investigators, the Wing Commander [BGen (sel) J--- B---] had labeled the applicant a "flaming asshole" to his operations officer and that the implication was that the applicant was known for this type of conduct. Lt Col M--- offers his opinion that cases involving serious crimes and felonies such as alleged sexual assaults are

normally handled by the Office of Special Investigations (OSI) who have greater training but are outside the normal chain of command and thus free of command influence. The applicant believes that the Wing Commander [BGen (sel) B---) coveted the applicant's control over the flying mission and "was out to get him." Contrary to the assertions he makes in his application, the evidence he alludes to (if true) merely restates the Wing Commander's personal appraisal of the applicant's character and nothing more. There has been no proof that the Wing Commander told his investigators to "get" the applicant or to fabricate their investigation in any way. Furthermore, there is nothing in this record which would indicate that the Security Police Investigators were incompetent. It is an axiomatic principle of administrative law that federal officials charged with official duties are presumed to carry out those responsibilities according to law; i.e., a presumption of regularity, in the absence of proof to the contrary.

Applicant's evidence in support of his claim of an injustice consists almost entirely of his own self-serving unsworn statements and "memos for record." He repeatedly accuses the witnesses of being biased, but has supplied the Board no evidence, other than his personal opinion, that their sworn statements are inaccurate. The affidavits he does attach state the obvious - that the individual did not see the sexual assault occur, not that the incident did not happen. Absent legal error, personal bias or animosity alone does not void a personnel action. Applicant must do more than "merely allege that [an investigation] is inaccurate, incomplete, or subjective in some sense; in order to invoke a court [or BCMR] intervention, he must show violation of a specific objective requirement of a statute or regulation or misstatement of a significant hard fact." Even when reasonable minds could reach different conclusions from the evidence, [the BCMR] should not substitute its judgment for that of the decision-maker absent such a showing. Applicant has not made such a showing.

In conclusion, AFPC/JA states that what should be added to all that has been said up to this point is that sexual assault is a serious criminal offense. The applicant could have been prosecuted for his misconduct under the UCMJ. He could have been tried by General Court-Martial or punished under Article 15. His "stellar" career was obviously considered when the decision was made only to reprimand him. They find it disingenuous for the applicant to come before the AFBCMR to ask that it forgive his misconduct and erase the incident on the basis of his "stellar" Air Force career. Was the LOR and the SOUIF too harsh a punishment in this case? They think not. In this context, an "injustice," when not also legal error as contemplated under 10 U.S.C. Sec. 1552(a), has been described by the courts as "...treatment by the military authorities that shocks the sense of justice." There is nothing about the processing of this case by military authorities which shocks the sense of justice. To the contrary, the evidence would suggest that the applicant was

fortunate to have escaped the incident without more significant disciplinary action having been taken.

A complete copy of the evaluation is at Exhibit J.

APPLICANT'S REVIEW OF AIR FORCE EVALUATION:

Applicant states, in part, that he has chosen not to go into debt to hire an attorney, but has attempted to represent himself because he is innocent. He now sees that anyone without financial resources or legal training is at a serious disadvantage when arguing against a staff judge advocate's opinion, liberally sprinkled with legal precedents. He now sees that the role of the staff judge advocate's office is to hand the AFBCMR an outcome, worded as a judicial opinion. He believed that the AFBCMR was here to see that justice was served and that it was open to all, from airman up. No airman could fight the intimidation of a staff judge advocate's influence. He cannot word his request in legal jargon. He is not located at Randolph AFB, Texas, nor will he probably be known to you. He can only ask again that you investigate this case, fairly and impartially and to talk to people who were involved, and who have served with him. He knows that a sexual harassment charge is the current DOD "witch hunt" and that he could more easily argue his innocence of murder. Despite the odds against him, he maintains that, (1) he did not sexually harass SRA C---, (2) the investigation was influenced, (3) key evidence was not available for BGen C---'s LOR decision, (4) legal counsel was lacking, and (5) senior officials seriously mishandled his case. His record should be cleared, the LOR removed, his destroyed career restored and compensated, and those who are guilty of the improper handling should be punished.

He has been punished for something he did not do. He did not "grab" SRA G---. The author of the advisory opinion used his apology as an admission of guilt. An apology expresses regret, concern, and compassion for another person. He has held several command positions and if you investigate his record and talk to those he has commanded, you will find that he takes very seriously the leadership role. He **looks** out for the people assigned to his units and he does not ignore or attempt to cover up allegations (paragraph 78). As an officer and a gentleman, his first inclination was to say he was sorry you feel you have suffered (paragraph 11). If you read the report, his initial response was to want to talk to SRA C--- (paragraph 8). He has found that talking can defuse a bad situation.

He would still like to meet with SRA C---. What has caused her to be so angry with the Air Force that she wanted to "get even" with the Air Force and "to take out an officer" (paragraphs 7, 10, 26, 44, 74, 76, 89, 90, 94, 96, 98, 89, 90, 94) by making such an allegation?

He should have measured every word in light of legal manipulation but he has never hesitated to take the high road even if it involved saying he was sorry you have made this accusation against him, but he did not "grab" you. God help us if every leader in the Air Force is following the implication of the staff judge advocate and measuring every word in order to protect his/her career and not become involved.

He certainly did not ask to be involved, but SRA C---'s accusation involved him. He will never have any memory of this incident because he did not do it. She may have been touched, but it was not by him. He knows exactly the path he took out of the pavilion and he knows it was crowded and he knows it was difficult to move. He remembers his movements from start to finish and he did not grab SRA C--- (paragraphs 30, 42, 55, 66, 85-88, 91-93, 95, 97).

His witnesses did not see him touch SRA C--- either. The author of the advisory opinion says that because his witnesses say, "I did not see [REDACTED] touch SRA C---," the door is left open for the possibility that he did touch her. This is another example of twisting of the words of ordinary DOD personnel who are untrained in the way to express the truth in a way that an attorney will not attack., He should have brought all his witnesses in, hired a lawyer and coached them on how to effectively state the truth.

Over this last year he talked to some of his witnesses and they told him and they wrote that they watched him leave. When they said they did not see him touch SRA C--- they meant they saw him touch no one on his way out. He asked them to **tell** the truth and they did. He encourages you to talk to his witnesses and not accept the manipulation of words by the staff judge advocate. That is not an investigation, but accepting the staff judge advocate's foregone conclusion.

How could the staff judge advocate, an officer of the court, ignore the evidence that a commander, BGen (sel) J--- B--- instructed his investigators to "really get" him? Lessons in leadership teach that the only instruction you give is investigate, nothing more. These security police expressed the opinion that they had a really hot case and that they were supposed to find him guilty. Has anyone looked into these allegations? The staff judge advocate cites a legal case to support the claim that investigators are "presumed to carry out ... responsibilities according to law." The key word is "presumed" and the staff judge advocate is making a leap of presumption in the favor of investigators when he has offered statements that indicate that there is doubt that these investigators carried out those responsibilities without influence (paragraphs 26-28, 54, 64, 65). BGen (sel) B--- was the commander who would be signing the investigators' OERs and OPRs. He was not their commander and could never reward them,

but BGen (sel) B--- held their careers in his hand and he had made it clear the conclusion he wanted.

Applicant continues by asking why would he bring up these allegations, serious as they are, if he did not already have a first-hand knowledge of BGen (sel) B---'s style of leadership. [BGen (sel) B---] is ambitious and did not like his being in his territory. [BGen (sel) B---] just replaced him as ██████████ at Ramstein and commented that he had to "once again follow me " BGen (sel) B--- was open in trying to overrule what he (the applicant) did as the ██████ CC in charge of the flying operation. [BGen (sel) B---] wanted his position and that was apparent to others. He knows BGen (sel) B--- and he knows how he felt about him (paragraph4). BGen (sel) B--- had followed him as Operations Group Commander in ██████ in ██████ and he was extremely unpopular and more interested in making [himself] look good than in looking out for his people. That is a -clear difference in their leadership styles. If [the author of the advisory opinion] were a fighter pilot, Wing Commander, he would understand what a bitter pill BGen (sel) B--- had to swallow by yet again having to watch him be the popular, effective leader, in charge of planes, while he was in charge of roads and grounds. Again, he encourages you to ask those who have had to follow, not lead, both of them (there are numerous examples available). You will find that BGen (sel) B--- does not generally endear himself and he would let his bitterness cause him to improperly influence an investigation. It is not an accusation he makes lightly and he hopes it is not passed over lightly. In fact, in the last several weeks he has been able to make contact with BGen (now retired) R--- C---. [BGen C---'s] own words to him when they went over the incident were "B--- saw you as a threat/competitor to his job as commander as well as a future promotion and didn't like it."

During a recent visit to St. Louis, he had the chance to further discuss this incident with BGen C--- and to provide him with additional documentation he requested. It is interesting to note that in July 1996, prior to his retirement, [[BGen C---] called him with suggestions on how to get this "thrown out." [BGen C---] recommended this process and the Article 138 which he has pursued. The SAF/IG is currently reviewing the Article 138 request. He provided BGen C--- with the statements from Lt Cols M--- and D---, Captain S--- and Ms. H---. [BGen C---] showed great interest in Lt Col M---'s statements. In fact, [BGen C---] he stated that this information could have changed his decision. As he (the applicant) previously stated in his earlier letter, Lt Col M--- had attempted to get this data to him prior to the AWACS departure to Tinker AFB. He (the applicant) had also questioned his receipt. He does not know how [BGen C---] missed it but it was obvious from his comments and expressions that it would have made a positive impact in his favor. [BGen C---] further stated, "That in 28 years of active duty, giving [the applicant] the LOR was the toughest thing he had done - and he still isn't sure he made the right decision". He asked BGen C---

to send a letter in his behalf for removal of the LOR or at least support further questioning. Whether or not he does is to be seen. Regardless, doesn't this behavior beg some more questioning?

He still contends that Captain D--- [applicant's ADC at the time] should have been more aggressive in the questioning of the witnesses. As stated before, he and his wife needed over 30 days to go through the report and pick it apart. While he recognizes that this is [Captain D---'s] job, he thinks the short time spent as well as [Captain D---'s] failure to recognize the "shocked" condition of his client and the requirement to lead him through the critical end game investigation/reinvestigation resulted in their failure to get at the truth.

He did seek a legal opinion in the spring of 1996 from an attorney who believed in him, Lt Col K--- K---; the CCDC that the author of [the advisory opinion] and Captain D--- refer to in the opinion. Lt Col K--- was professional enough to really listen to him, read his rough draft report, look over his evidence and meet with him and his wife. She listened to them, asked questions, made comments, and took the report home. Lt Col K--- offered her written and verbal suggestions as to how to strengthen his arguments. If Captain D--- was in such close contact with Lt Col K---, then why, when she met with him and his wife, did she express complete surprise upon finding out that BGen C---, his commander, was at the party for all but the last few moments that he was there? He wondered then and wonders now why Captain D--- and the investigators failed to question BGen C---. They were together, talking, eating, and drinking for all but the last few minutes when [BGen C---] left and the incident was alleged to have taken place. If he were acting in a drunk and disorderly fashion why did the commander not stop this immediately [paragraphs 8, 55, 60, 61]? How did Captain D---, who claims to have interviewed all the witnesses and talked to BGen C--- miss this key witness to his behavior? Lt Col K--- was clearly stunned that BGen C--- had not been questioned and that she did not know of his attendance or see his name as a member of the party anywhere in the investigation (paragraphs 31/32). She said he definitely should have been questioned and this angle should be further examined. Had Captain D--- really kept in the close contact with Lt Col K--- as he contends why did he fail to give her all the pertinent information necessary to the investigation?

It is interesting that the only investigation that the author of the advisory did was to talk to his attorney and to defend his conduct. It would seem that all his other allegations do not require asking any questions of anyone. Questioning of a fellow attorney caused the author of the advisory to ask questions, but never to ask them of him. Lt Col K--- died this summer but Captain D--- will have to call both him and his wife liars in order to refute what she discussed with them and what she found to be wrong with the handling of his case.

Lt Col K--- cautioned him and his wife that even though the senior leadership had inappropriately handled some aspects of his case, he should proceed cautiously because as she said, "they will circle the wagons against you." He had to take that chance, because to leave out the part played by senior officers would be to cover-up the truth.

His report covers not only BGen (sel) B--- and BGen C---, but also Brigadier General S--- J--- (paragraphs 25, 26, 28, 29) and General H--- (paragraphs 2, 3, 16, 17). The impact of his cooperation with the GAO and going forward with information about the cover-up of the Black Hawk shoot-down are issues as well, but they will be adjudicated, if not by the Senate investigative committee, then by the investigative press and he can only state that it has been made clear that the Air Force is trying to block any investigation. His proof of Colonel D--- R---'s dereliction and the cover-up by the Air Force are probably beyond the scope of the AFBCMR, but definitely pertinent to understanding how much easier it is to cover-up dereliction of duty leading to murder (paragraphs 3, 20) than it is to prove innocence when the topic is sexual harassment.

"What is not beyond the scope of the Board is what Lt Col K--- pointed out to him was clearly contrary to Air Force policy was General [REDACTED] handling of the SOUIF [sic]." How can a commander wait one year, 'never counsel with the accused, and allow an additional punishment to be incurred (paragraphs 15, 16)? Then General [REDACTED] further ignored his responsibilities by telling him that he would call his wife and he would question and speak against the SOUIF. He has never called him and his wife, nor spoken in his behalf. Commanders at a lower level would be held accountable. Where is the leadership and the accountability (paragraph 22)?

[The author of the advisory opinion] is a stickler for accountability and he should have noticed that the only person who has taken any responsibility is him. Captain D--- and the author of the advisory maintain that Captain D--- has no responsibility if he poorly represents a client. He is not familiar with the oath [Captain D---] took as an Air Force legal counsel, but he does know the one he took. He took an oath at Virginia Military Institute, to neither lie, cheat, nor steal, nor tolerate it in others. It is one of the only honor code systems in the nation which has not been wracked with scandals. He adhered to it then and he made that code a part of his Air Force commitment. The Air Force had lost faith in him and he offered to his commanding officer to retire or resign (paragraph 15). How much more responsibility can an officer take (paragraph 19)? Cover up, lie, and get a good lawyer are the current Air Force tactics, but he refused to stoop to the new norm.

In conclusion, applicant states that he appeals to you, the members of the Board, to investigate this false accusation, tainted investigation, and improper handling by legal counsel and

senior officers. The minimal dollar cost for an investigator's short TDY to get the truth will be well worth the investment. He welcomes the opportunity to meet with you and urges you to investigate as a fair and impartial Board and not as attorneys looking for a way to support the Air Force position on a political correctness issue.

Applicant's complete response is at Exhibit N.

ADDITIONAL STATEMENT SUBMITTED ON BEHALF OF APPLICANT:

In a letter of 19 December 1996, BGen R--- C--- [who issued the LOR; now retired], describes the reasons for the applicant's assignment to Incirlik AFB in late August 1994 in a TDY status. He further states that, as you are well aware, applicant was accused by SRA C---, an airman assigned to the deployed AWACS unit, of sexual assault/harassment during a 16 September 1994 party following an OPC composite force mission ---a large scale mission similar to the Red Flag exercises conducted at Nellis AFB. While at the party, applicant allegedly approached her from behind and grabbed or pinched her buttocks. To the best of his memory since he does not have the [redacted] Security Police investigation report at his disposal, only A1C J--- W--- stated she saw applicant approach SRA C--- and perform this act. As outlined in his 8 October 1994 memorandum to SAF/IGQ, paragraph 1.d., the two officers standing in front of SRA C--- saw [the applicant] approach the victim from behind, saw his arms moving toward her, and then saw the victim jumping up and forward. Based on the evidence available to him he issued a Letter of Reprimand to [the applicant] and forwarded the entire file to his commander, General J--- J---, [redacted].

He learned of the alleged incident the morning of 17 September 1994 through a phone call from [BGen (sel) J--- B---], [redacted]. He told [BGen (sel) B---] to conduct a thorough investigation as quickly as possible. The 17th was a no-fly day. The very next day, he had applicant come to his office where he informed him there was an allegation against him of sexual assault and advised him to contact the Area Defense Counsel (ADC). To say [the applicant] was stunned is an understatement. [The applicant] told him he had absolutely no recollection of this incident. Further, [the applicant] stated the allegations were completely out of character. He believes then as he does now that [the applicant] did not recall this incident. [The applicant] offered to contact the airman and make a personal apology despite the fact he did not know whether or not he actually committed the act. He (BGen C---) believes his response was [the applicant] should first contact the ADC while waiting for the investigation to run its course.

The statements by SRA C---, A1C W--- and the two officers convinced him that an incident had occurred involving [the

applicant]. Later, he issued an LOR, first hearing [the applicant's] verbal explanation. There was no compelling evidence that he did not commit the alleged incident. Overindulgence in alcohol coupled with a long duty day and lack of sleep are not valid defenses.

In early December, [the applicant] visited his place of employment after retirement for an orientation tour in [the applicant's] new position as [REDACTED] DRP. [The applicant] gave him copies of Lt Col M---'s 2 December 1994 memo to [REDACTED] CC and the 26 May 1996 memo to applicant's legal counsel. This was the first time he had access to these documents. Paragraph two of the 26 May 1996 memo states: "One alleged witness, Airman First Class J--- W---, recanted her original eyewitness statement...." He has no knowledge as to the veracity of this statement by Lt Col M--- nor has he seen any statement from A1C W--- other than what was in the original [REDACTED] Security Police investigation report. If A1C W--- has subsequently changed her statement than this fact needs to be pursued since she is the individual who saw [the applicant] approach SRA C--- and grab her buttocks. The two officers standing in front of SRA C--- did not actually witness [the applicant] grab SRA C---'s buttocks. They could only state that he was in a position to perform this act.

A complete copy of this statement is Exhibit O.

ADDITIONAL AIR FORCE EVALUATION:

HQ AFPC/JA states, in part, that having carefully reviewed the former commanding general's letter, they have not altered the conclusions and recommendations reached in their earlier advisory. First, the statements from Lt Col M--- alluded to by BGen C--- are not new; they are already in the AFBCMR case file and were reviewed by that office prior to completing that advisory. Indeed, they noted at that time that nothing furnished by Lt Col M--- constituted evidence that would overturn or otherwise discredit the findings made by the [REDACTED] Security Police Squadron, upon which BGen C--- based his letter of reprimand. They also noted in their earlier advisory the fact that the file made reference to the claim by Lt Col M--- that one of the eyewitnesses to the incident (presumably, A1C J--- W---) had supposedly recanted her earlier statement; however, they noted that the recanted statement was not in the case file and had not been submitted by the applicant or anyone else. It is obvious from the tone of BGen C---'s letter that such a recantation was not furnished to him either. Their conclusion is that if any testimony was recanted, it was not reduced to writing or someone would most certainly have forwarded it to the Board by now. Thus, as was the case before BGen C---'s letter, the only evidence the Board has before it that a key witness in the case has supposedly recanted testimony is a statement by an officer who was stationed with applicant at the time (Lt Col M---) and

who has an obvious bias to discredit the victim and her story. No one, however, has provided any evidence of recanted testimony. They would note that it is not the responsibility of the AFBCMR to serve as an investigative body and chase down questionable claims such as this; rather, the Board is charged with the responsibility to determine the issues before it based on the evidence of record in the case file. If the Board were to determine nevertheless that further investigation of this allegation is appropriate, a position with which they strongly disagree, they would recommend that the Board pursue such a request through appropriate investigative channels. Suffice it to say once more, however, that if such truly exculpatory evidence existed, the Board would certainly have had it by now.

HQ AFPC/JA further states that, in their opinion, even if such evidence did exist, it would not change the result. As was thoroughly explained in their earlier advisory, the victim of this alleged assault has stated unequivocally that it took place; this airman has never wavered in her statement to that effect. Moreover, no witness who provided statements to the Security Police ever stated that the incident did not take place; the statements offered by the applicant in his attempt to mitigate the incident merely state that the particular witnesses in question did not see anything, not that the incident did not occur. Finally, as we pointed out in our earlier advisory, the applicant has never denied the allegation (suggesting he was too drunk to remember one way or the other). Consistent with this, what is probably the most telling piece of evidence in this case is the repeated mention by the applicant that he wanted to apologize to the airman and the fact that this applicant's behavior subsequent to the event---to include his actions as described by his defense counsel---was entirely consistent with someone who was guilty of the alleged conduct.

In sum, it is recommended that this application be denied. All of the evidence of record clearly supports the actions that were taken; nothing offered by the applicant or by BGen C--- has altered that fact. Although the Board could certainly pursue further investigation of the issue raised by BGen C---, they do not believe such action would either be appropriate or necessary. Even if the witness had recanted her statement, the evidence remaining is sufficient, in their opinion, to sustain the actions taken. As they noted in their earlier advisory, this applicant simply refuses to accept responsibility for his actions or be accountable for his conduct, and he insists on blaming everyone else, including "the system" and his lawyer, for his own lapse in behavior. The bottom line in this case is that the applicant has failed to present credible evidence to support his contention of legal error or injustice.

A complete copy of the additional evaluation is at Exhibit Q.

APPLICANT'S RESPONSE TO ADDITIONAL AIR FORCE EVALUATION:

The applicant states that he has not changed his position that he did not commit this act and that he is appealing for a full and untainted investigation. It appears to him that not only was his case improperly investigated and influenced by BGen (sel) J--- B--- and the █████ Security Police, but may have been tainted and influenced by the AFBCMR itself. To say that he does not think his case has been handled properly is an understatement. If it will ever be handled in an ethical manner is questionable. He requests that he be given a fully accounting of all the paperwork that will go before the Board and copies of it, so that he knows none of it has been altered or lost---both concerns he has a right to question.

He would like to know why it took the board until March .29[sic], 1997, to put a cover letter with [the additional advisory] of 24 January and mail it to him on March 20, 1997. He was told he "was hard to find," despite his having notified the AFBCMR in writing of his PCS move and address. Is he supposed to believe that the Board is capable of handling any record or should he believe that a form cover letter takes two months to print, staple, and attach to a response? Again, he asks for assurances that this Board is not in itself incapable of impartial or even competent decisions.

[AFPC/JA] again contends in the advisory that he is guilty because he apologized and again insists that he has taken no responsibility for his actions. He will not rehash what he has already addressed in his package and subsequent letters before you. [AFPC/JA] has offered no evidence as to why an apology constitutes guilt or why it constitutes a lack of responsibility. From the beginning to date, he is the only one who has not tried to dodge, cover-up, or lie. Committing the deadly crime of apologizing is the worst [AFPC/JA] can offer for guilt. What a shame that no one ever shown [the author of the AFPC/JA advisory] that courtesy, for that is all that a questionable apology is. Even the 19 Dec 1966 memorandum from BGen C--- stated that he (the applicant) wanted to apologize despite his doubts, but he (BGen C---) counseled that he should get an attorney. No wonder the Air Force suffers from such credibility gaps with the public and Congress as the Black Hawk, CT-43 crash, and Khobar Towers. The leadership in each case was hidden and continues to hide behind legal counsel such as [HQ AFPC/JA's] and he (the applicant) is not acting responsibly? He maintains that in stopping his career, the Air Force is downsizing one of their blindly loyal while keeping their blatantly derelict. [AFPC/JA] introduces several other contentions using BGen C---'s letter, which he will address.

[AFPC/JA] says that a recantation by A1C W--- is not in the case file and has not been submitted by him or anyone else. He does not know if she recanted or not, nor does he have any way of obtaining that information. A1C W█████ lied about his touching

her and he believes that lying in a sworn statement is perjury. She also recognized him but not her friends that were standing there and she was quite inebriated. He thinks A1C W--- makes a very questionable witness, but [AFPC/JA] has put great faith in her. She lied once, maybe she had a pang of conscience and recanted; he only has Lt Col M---'s statement to go on and he, after all, knew her. [AFPC/JA] perhaps knows her, he does not.

[AFPC/JA] also has absolute faith in the sacredness of the investigation file. His case file shows that he had to reapply for a "complete" file several times, and after telling him he had received a complete, but unreadable file, the IG suddenly found two more statements. On the one and only time he was allowed to see, but not have a copy of, a complete file, the morning of 5 October 1994, for about an hour, there was a sworn statement by Ms. L--- H--- and numerous statements by ██████████ personnel. As you will see in the file, the IG maintains these do not exist. He saw the file; the IG did not. The statements did exist but now do not. Could her statement have "disappeared" along with these others? Only those who know where the rest of the file went know the answer to that.

[AFPC/JA] may believe that evidence has not disappeared in this case, but he **knows** that sworn statements were in the original file and no one has provided them to date. Where did these files go? Can [HQ AFPC/JA] swear that a recantation never existed just because he did not **see** one in the investigative report? Strange how that file seems to have records appear and disappear at will. He has repeatedly tried to get a complete file, but does not think an untampered one exists.

Since the file has been tainted, where can one obtain the statements? [AFPC/JA] said that "it is not the responsibility of the AFBCMR to serve as an investigative body and chase down questionable claims such as this." Is [AFPC/JA] insinuating that he has the responsibility to "chase down questionable claims?" Imagine what would happen if he contacts A1C W--- and requests such a thing. Under Paragraph 2 of the Board Responsibilities which he was sent in May 1966, 2.1 states, "However, the Board may, in its discretion, hold a hearing or call for additional evidence. . ." It would seem that the Board can ask questions he cannot legally ask. Why would the Board hesitate to gather any and all statements and investigate thoroughly the handling of the case if the Board intends to see that justice is served? If the Board subscribes to [AFPC/JA's] sarcasm, then investigating is just "chasing down questionable claims." Please do not use [AFPC/JA's] obvious disdain for the evidence he has collected and be swayed by the derogatory dismissal of this as a questionable claim.

[AFPC/JA] further shows contempt for his case by impugning Lt Col M---. Lt Col M--- was advised, by an attorney, not to provide him with any information. Lt Col M--- decided to do the honorable thing and provide him with information Lt Col M--- used in his

own case and to answer questions for him (the applicant). Had BGen C--- done what he told him had [sic] done in September 1994, BGen C--- would not be relying on memory and a letter he (the applicant) provided him, but would have talked to Lt Col M---. [BGen C---] told him he had done it in 1994 and he believed [BGen C---] to be truthful. He now found out that had he not asked Lt Col M--- himself, he would never have known of this information from either of two men who called themselves his friend, BGen C--- and MGen (sel) S--- J---. Lt Col M--- had nothing to gain by helping him and has risked a great deal. Maybe you should ask the two generals why they did such a poor job of following up on leads at the time of the investigation.

Yes Lt Col M--- received punishment, but he would expect that at some point [Lt Col M---] would appeal his treatment as well. As Lt Col K--- told his (the applicant's) wife and him at their meeting in the summer of 1996, Lt Col M--- has a strong legal case because of his treatment by BGen (sel) J--- B--- and MGen (sel) S--- J---. She was an attorney who found him to be a credible witness who had received unjustified punishment by two men who should have acted responsibly.

[AFPC/JA] places tremendous credibility in the statements of several witnesses who are not so credible. Their statements should be further examined., [AFPC/JA] states that "the victim of this alleged assault has stated unequivocally that it took place; this airman has never wavered in her statement to that effect." Perhaps [AFPC/JA] talks to SRA C--- on a regular basis, since "never" spans right up to the moment. He has not talked with her since the morning before the alleged incident, when she thought his asking her questions about her job constituted his being "judge and jury over" the AWACS. As others have stated Ms. [redacted] was definitely a disgruntled AWACS troop---read MGen A---s' report of the low morale---who thought she should not have had to deploy. She had tried the sexual harassment allegation on several others and she had threatened to "get even" with the Air Force by "taking out" an officer. He thinks greed and hatred of Air Force officers caused her to set her sights on revenge. That is a strong motivation to maintain one's story.

She was also interested in pursuing a sexual relationship with Captain K--- [redacted] AACS, a witness in the investigation], into whose arms she fell. She appealed for assistance, after the fact and in the privacy of his room, to Captain F--- [redacted] AACS, a witness in the investigation], who was interested in pursuing a sexual relationship with her. Attention-getting is also a great motivation and her recounting and embellishing each time she retold the story is quite dramatic. There should be enough there to question her veracity, but there is more. She brought a lawsuit in Federal court charging not only sexual assault by him, but that she was subsequently forced out of the Air Force as a result of collusion by him, Lt Col M---, and MGen (sel) S--- J---. Not only is the assault part a fabrication, but also the subsequent ruin of her career. He never had any contact with

her. As you can see there was no friendly conversation between MGen (sel) J--- and him and he only saw Lt Col M--- the day he left when he tried to give him (the applicant).information.

SRA C--- had expressed her plan to exit the Air Force prior to the alleged incident and he has since been told she had turned down a chance at further training for career progression prior to the alleged incident. He was not in her chain-of-command and to his knowledge no one forced her out. She quit because she wanted to.

Apparently the Justice Department did not buy her arguments because they argued the case, instead of "paying her off," which he is told is done when the Pentagon thinks it cannot win the case. It was subsequently turned down by that court and she is now appealing in the Federal District Court. You bet, she has not wavered in her assertion. If she wavers she risks a strong counter-suit by those she has falsely accused. She has to maintain her story because she hopes to get money and is out on a "slander" limb.

[AFPC/JA] should have noticed that only the alleged victim and her roommate swore that there was another woman present that they saw. Should you read the [redacted] Security Police report you will find that they tried to find this person and could not. This is buried at the end of the report, but they had to admit they tried and she was never found. She was given a very attractive persona by these two roommates, but a party of 200+, many of them male, and single, do not remember ever seeing such a person. That should have been a red flag to the [redacted] Security Police, but they conveniently let those sworn statements go unchallenged. Again, an attorney would have a field day with false sworn testimony--call it perjury.

SRA C--- thought nothing of creating a person to strengthen her case and also to bring her roommate into the lie. Several other statements attest to the fact that the roommate would say anything she was told to say by her friend. He wonders if her allegiance is still as strong. Again, he thinks you can see why he cannot obtain statements from either the alleged victim or her roommate. These were sworn statements and he thinks lying under oath is perjury, but [AFPC/JA] sees the alleged victim as a woman of truth because her story never wavered. It will not waiver, until she is held accountable in some public forum or asked tough questions by unbiased investigators, if such exist in the Air Force. Otherwise she risks losing money and being counter-sued.

In sum he maintains the following: (1) he did not sexually harass Ms. [redacted], (2) the investigation was influenced by BGen (sel) J--- B---, (3) his legal counsel was derelict, (4) senior officials seriously mishandled his case, and (5) justice at the hands of the AFBCMR is questionable, unless he is willing to pay for it (see enclosed).

He understands that this will take months. By the way, why did it take two months between the time [AFPC/JA] faxed their comments and [the AFBCMR staff] put a standard form cover letter on it and mailed it? Two months and no new information or investigation was added, just a form letter? He understands that reading a hefty file will take time, but two months for a cover letter is incredibly slow. He apologizes (note that he is not admitting to anything, but only being polite) for the additional requests of assurances of proper handling of his case which he requested and realizes that something more than a cover letter will really slow the process.

Applicant's complete response, with an attached 22 January 1997 statement he provided to the OSI, is at Exhibit S.

THE BOARD CONCLUDES THAT:

1. The applicant has exhausted all remedies provided by existing law or regulations.
2. The application was timely filed.
3. Sufficient relevant evidence has been presented to demonstrate the existence of probable error or injustice to warrant granting partial relief. In reaching this conclusion, we considered the following:

a. The primary question before this Board was: Precisely what happened at the Arkadas Park party? To make a determination we had to thoroughly examine the evidence of record and attempt to ascertain the credibility of the individuals involved. To that end, we greatly appreciate the willingness of the applicant, his counsel, and his witnesses to testify before this Board. We also acknowledge the applicant's difficult burden. As his counsel so aptly asked: "How do you prove you're innocent? How do you prove a negative--*that you did not do something?" However, since the applicant was disciplined for misconduct, and this and any other Board Panel operates under the presumption of regularity, proving otherwise rested squarely on the shoulders of the applicant. During the course of our deliberations, we came to realize that, at this point in time, the evidence unfortunately does not clearly reveal exactly what occurred on 16 September 1994, nor does it unequivocally establish whether the incident was an accidental or deliberate act.

b. This difficulty stems, in part, from the ROI prepared by the Security Police. While we are not convinced that it is fatally flawed by command influence as the applicant alleges, we do believe it is inconsistent and contradictory. For example, the highly divergent observations from the witnesses and the incongruities between some of their statements and the Security Police summaries thereof give one the uneasy feeling that this was not the most competently or thoroughly conducted

investigation. Further, we note that neither the ROI nor the individuals' statements attached thereto make any reference to the water balloon fight mentioned in the applicant's appeal and in his witness's affidavit. As was discussed during the Formal Hearing, this balloon fight may have provoked an unintentional contact between the applicant and the complainant. Had the investigation been more thoroughly conducted, perhaps we would not now be facing so many unanswerable questions. Another issue which gave us pause was the fact that the enlisted eyewitness had to have her memory "refreshed" in 1996.

c. On the other hand, we believe it would be irresponsible to totally disregard the testimony of the complainant and the two captains who state they saw the applicant deliberately approach her from behind. While they did not actually see him grab her, it was seconds after he came up behind her that she strongly reacted. Although the applicant may set great store by the Deployed Detachment Commander's statements, we find this individual's credibility somewhat suspect. He clearly changed his stories regarding his response (or lack thereof) to the complainant's allegations. We also cannot ignore the fact that the former [redacted] Commanding General, who knew the applicant and was in a position to consider all the evidence, including the applicant's verbal explanation, still issued the LOR. As he indicated in his supporting statement, he served the LOR because "there was no compelling evidence that [the applicant] did not commit the alleged incident." This remains true today. The [redacted] commander also stated he had been told that the enlisted eyewitness had recanted her testimony. Since he could not confirm the veracity of this allegation, he asked that it be pursued. This was done and while we note, albeit uncomfortably, that the eyewitness had to have her memory "refreshed," the fact remains that she still did not recant her original testimony. Consequently, we are unable to resolve all doubt completely in the applicant's favor.

d. The second determination we had to make was: If the applicant did commit the alleged misconduct, was the punishment he received appropriate or do mitigating circumstances warrant relief? If we could state categorically that the applicant deliberately grabbed the airman as alleged, we believe the punishment and its repercussions were probably appropriate. However, as indicated in our discussion above, we cannot determine with certainty precisely what happened on 16 September 1994. It is conceivable that the incident occurred as presented in the ROI. Since that possibility has not been eliminated, we cannot entirely exonerate the applicant. Therefore, we believe it would be inappropriate to void the LOR and the SOUIF in their entirety from the point of their inception. However, we also believe certain mitigating issues justify our recommending some relief. We note that both the [redacted] Commanding General and the HQ [redacted] Commander recommended against establishing a SOUIF because they believed the alleged incident was an aberration. It is apparent they did not intend for the LOR to mar forever an

otherwise outstanding career. This, together with the questions raised, rather than answered, by the substandard ROI inclines us to believe that the LOR and the SOUIF should not continue to severely impact the applicant's second and third promotion considerations.

4. In conclusion, after weighing all aspects of this appeal, we believe the LOR and the SOUIF considered by the Calendar Year 1995 promotion board should stand; however, they should be deleted for the applicant's remaining two promotion considerations. Although the applicant did not address the PRF reviewed by the Calendar Year 1996 promotion board, we shall do **so** now. That document's "Do Not Promote" recommendation was undoubtedly driven by the LOR and the SOUIF. Since we have concluded that the LOR and the SOUIF reviewed by the 1996 board should be voided, we believe the PRF for that board should also be deleted for the sake of consistency. These corrections warrant consideration by SSB for the 1996 board and, if the applicant is not selected, SSB consideration for the 1997 board. In view of the many known and unknown components of this difficult case, we believe our decision provides a fair and responsible resolution which serves the interests of the individuals involved as well as the Air Force. Thus we recommend the applicant's records be corrected as indicated below.

THE BOARD RECOMMENDS THAT:

The pertinent military records of the Department of the Air Force relating to APPLICANT, be corrected to show that:

a. The Senior Officer Unfavorable Information File (SOUIF), to include the Letter of Reprimand dated 5 October 1994, the Report of Investigation dated 30 September 1994, and all other attachments pertaining thereto, which was considered by the Calendar Year 1996 and 1997 Brigadier General Promotion Boards, be declared void and removed from his records.

b. The Promotion Recommendation Form considered by the Calendar Year 1996 Brigadier General Promotion Board, and reflecting an overall promotion recommendation of "Do Not Promote," be declared void and removed from his records.

It is further recommended that his corrected records be considered for promotion to the grade of Brigadier General by a Special Selection Board (SSB) for the Calendar Year 1996 Brigadier General Promotion Board and, if not selected, he be considered by SSB for the Calendar Year 1997 Brigadier General Promotion Board; and that the Promotion Recommendation Form considered by the Calendar Year 1995 Brigadier General Promotion Board and reflecting an overall promotion recommendation of "Do

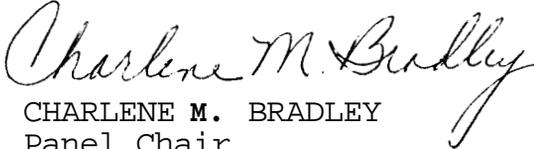
Not Promote" not be included in the records reviewed by the SSB for the Calendar Years 1996 and 1997 Brigadier General Promotion Boards.

The following members of the Board considered this application in a Formal Hearing on 17 December 1997, and deliberated in Executive Session on 18 December 1997, under the provisions of AFI 36-2603:

Ms. Charlene M. Bradley, Panel Chair
Mr. Charles E. Bennett, Member
Mrs. Barbara A. Westgate, Member
Mr. Kenneth L. Reinertson, Member
Mr. Henry Romo Jr., Member

All members voted to correct the records, as recommended. The following documentary evidence was considered:

- Exhibit A. DD Form 149, dated 16 Jul 96, w/atchs.
- Exhibit B. Applicant's Master Personnel Records.
- Exhibit C. LOR, dated 5 Oct 94.
- Exhibit D. Letter, [REDACTED]/CG, dated 8 Oct 94.
- Exhibit E. Letter, HQ [REDACTED]/CC, dated 17 Jul 95.
- Exhibit F. PRF for 1995 Promotion Board.
- Exhibit G. Top OPR for 1995 Promotion Board.
- Exhibit H. PRF for 1996 Promotion Board.
- Exhibit I. Talking Paper and Top OPR for 1996 Board.
- Exhibit J. Letter, HQ AFPC/JA, dated 26 Sep 96.
- Exhibit K. Letter, AFBCMR, dated 21 Oct 96.
- Exhibit L. Letter, Applicant, dated 23 Oct 96.
- Exhibit M. Letter, AFBCMR, dated 29 Oct 96.
- Exhibit N. Letter, Applicant, dated 17 Dec 96.
- Exhibit O. Letter, Brig Gen R--- C---, dated 19 Dec 96.
- Exhibit P. Letter, AFBCMR, dated 21 Jan 97.
- Exhibit Q. Letter, HQ AFPC/JA, dated 24 Jan 97.
- Exhibit R. Letter, AFBCMR, dated 20 Mar 97.
- Exhibit S. Letter, Applicant, dated 13 Apr 97.
- Exhibit T. Privileged Information - Withdrawn.
- Exhibit U. PRF and Top OPR for 1997 Board.
- Exhibit V. Hand-drawn Map presented at Formal Hearing.
- Exhibit W. Air Force Times Article presented at Formal Hearing, dated 22 Dec 97.
- Exhibit X. Redacted Copy of Memo for Record, dated 2 Dec 96, presented at Formal Hearing.
- Exhibit Y. Transcript of Formal Hearing.


CHARLENE M. BRADLEY
Panel Chair