

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

1a. FROM: (Name of Investigating Officer - Last, First, MI) SCHWEITZER, JOHN H.	b. GRADE 0-4	c. ORGANIZATION LSSS-IMA, CAMP PENDLETON, MCB WEST	d. DATE OF REPORT 20100824
2a. TO: (Name of Officer who directed the investigation - Last, First, MI) SMITH, S. C.	b. TITLE COMMANDING OFFICER	c. ORGANIZATION HEADQUARTERS & SERVICE BATTALION, MCRD-SD	
3a. NAME OF ACCUSED (Last, First, MI) VEGA, JR., NICOLAS	b. GRADE E-6	c. SSN 4253/0659	d. ORGANIZATION H&SBN, MCRD-SD
			e. DATE OF CHARGES 20100629

(Check appropriate answer)

4. IN ACCORDANCE WITH ARTICLE 32, UCMJ, AND R.C.M. 405, MANUAL FOR COURTS-MARTIAL, I HAVE INVESTIGATED THE CHARGES APPENDED HERETO (Exhibit 1)	YES	NO
5. THE ACCUSED WAS REPRESENTED BY COUNSEL (If not, see 9 below)	X	
6. COUNSEL WHO REPRESENTED THE ACCUSED WAS QUALIFIED UNDER R.C.M. 405(d) (2), 502(d)	X	

7a. NAME OF DEFENSE COUNSEL (Last, First, MI) FARAJ, HAYTHAM	b. GRADE CIV	8a. NAME OF ASSISTANT DEFENSE COUNSEL (If any) BOYER, JOHN	b. GRADE 0-3
c. ORGANIZATION (If appropriate) PUCKET & FARAJ, PC		c. ORGANIZATION (If appropriate) DEFENSE COUNSEL, JOINT LAW CENTER, MCRD-SD	
d. ADDRESS (If appropriate) 6200 SCHAFFER ROAD, STE 202 DEARBORN, MICHIGAN 48126; PHONE 313.457.1390		d. ADDRESS (If appropriate) MARINE CORPS RECRUIT DEPOT, SAN DIEGO, CALIFORNIA	

9. (To be signed by accused if accused waives counsel. If accused does not sign, investigating officer will explain in detail in Item 21.)

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

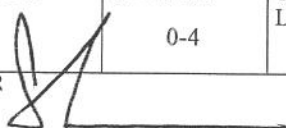
c. SIGNATURE OF ACCUSED

10. AT THE BEGINNING OF THE INVESTIGATION I INFORMED THE ACCUSED OF: (Check appropriate answer)	YES	NO
a. THE CHARGE(S) UNDER INVESTIGATION	X	
b. THE IDENTITY OF THE ACCUSER	X	
c. THE RIGHT AGAINST SELF-INCRIMINATION UNDER ARTICLE 31	X	
d. THE PURPOSE OF THE INVESTIGATION	X	
e. THE RIGHT TO BE PRESENT THROUGHOUT THE TAKING OF EVIDENCE	X	
f. THE WITNESSES AND OTHER EVIDENCE KNOWN TO ME WHICH I EXPECTED TO PRESENT	X	
g. THE RIGHT TO CROSS-EXAMINE WITNESSES	X	
h. THE RIGHT TO HAVE AVAILABLE WITNESSES AND EVIDENCE PRESENTED	X	
i. THE RIGHT TO PRESENT ANYTHING IN DEFENSE, EXTENUATION, OR MITIGATION	X	
j. THE RIGHT TO MAKE A SWORN OR UNSWORN STATEMENT, ORALLY OR IN WRITING	X	

11a. THE ACCUSED AND ACCUSED'S COUNSEL WERE PRESENT THROUGHOUT THE PRESENTATION OF EVIDENCE (If the accused or counsel were absent during any part of the presentation of evidence, complete b below.)	YES	NO
	X	

b. STATE THE CIRCUMSTANCES AND DESCRIBE THE PROCEEDINGS CONDUCTED IN THE ABSENCE OF ACCUSED OR COUNSEL
NOT APPLICABLE

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

12a. THE FOLLOWING WITNESSES TESTIFIED UNDER OATH: (Check appropriate answer)				
NAME (Last, First, MI)	GRADE (If any)	ORGANIZATION/ADDRESS (Whichever is appropriate)	YES	NO
FITZSIMMONS, REBECCA	SP.AGENT	NCIS, NCISRA MIRAMAR, 7208 GONSALVES AVENUE, MCAS MIRAMAR, SAN DIEGO CALIFORNIA	X	
ORCUTT, KAYLA I.	CIVILIAN	663 SOUTH SAN MARCOS PLACE, RIVERSIDE COUNTY	X	
GOMEZ-VILLA, NUVIA	CIVILIAN	2836B HAWKEYE COURT, LEMOORE	X	
ORCUTT, DANA(V)/ORCUTT, KATIE (Mother)	CIVILIAN	663 SOUTH SAN MARCOS PLACE, RIVERSIDE COUNTY	X	
LOEBNITZ, MIRANDA	CIVILIAN	663 SOUTH SAN MARCOS PLACE, RIVERSIDE COUNTY	X	
MUNOZ, GLORIA	CORPORAL	JOINT LAW CENTER, MILITARY JUSTICE, MCAS MIRAMAR	X	
b. THE SUBSTANCE OF THE TESTIMONY OF THESE WITNESSES HAS BEEN REDUCED TO WRITING AND IS ATTACHED.			X	
13a. THE FOLLOWING STATEMENTS, DOCUMENTS, OR MATTERS WERE CONSIDERED; THE ACCUSED WAS PERMITTED TO EXAMINE EACH.				
DESCRIPTION OF ITEM	LOCATION OF ORIGINAL (If not attached)			
IO1 through IO17 as submitted to the IO; a detailed copy of which is provided with this Report of Investigation	Trial Counsel/Government		X	
IO18 - Enrollment Form for accidental death insurance with Monumental Life	Defense Counsel/Trial Counsel/Government		X	
Set of 3 CD's containing interview of the accused and the total evidence of NCIS investigation	Trial Counsel/Government		X	
b. EACH ITEM CONSIDERED, OR A COPY OR RECITAL OF THE SUBSTANCE OR NATURE THEREOF, IS ATTACHED			X	
14. THERE ARE GROUNDS TO BELIEVE THAT THE ACCUSED WAS NOT MENTALLY RESPONSIBLE FOR THE OFFENSE(S) OR NOT COMPETENT TO PARTICIPATE IN THE DEFENSE. (See R.C.M. 909, 916(k).)				X
15. THE DEFENSE DID REQUEST OBJECTIONS TO BE NOTED IN THIS REPORT (If Yes, specify in Item 21 below.)			X	
16. ALL ESSENTIAL WITNESSES WILL BE AVAILABLE IN THE EVENT OF TRIAL			X	
17. THE CHARGES AND SPECIFICATIONS ARE IN PROPER FORM				X
18. REASONABLE GROUNDS EXIST TO BELIEVE THAT THE ACCUSED COMMITTED THE OFFENSE(S) ALLEGED				X
19. I AM NOT AWARE OF ANY GROUNDS WHICH WOULD DISQUALIFY ME FROM ACTING AS INVESTIGATING OFFICER. (See R.C.M. 405(d) (1).)			X	
20. I RECOMMEND:				
a. TRIAL BY <input type="checkbox"/> SUMMARY <input type="checkbox"/> SPECIAL <input type="checkbox"/> GENERAL COURT-MARTIAL				
b. <input checked="" type="checkbox"/> OTHER (Specify in Item 21 below)				
21. REMARKS (Include, as necessary, explanation for any delays in the investigation, and explanation for any "no" answers above.)				
<p>Delay in the actual hearing date of 24 August 2010 was attributable to the defense. Subsequently, this resulted in delay of submission of the IO recommendation with a due date of 29 August 2010. Two requests from the IO for extension of time were denied by the Convening Authority.</p> <p>Question 14 is answered in the negative because the accused is competent and/or no evidence of incompetence was submitted.</p> <p>Question 17 is answered in the negative because of Charge I, Specification 1 erroneously citing section 2-301b of DoD 5500.7-R. The correct section to cite is 2-301(a)(2)(d) of DoD 5500.7-R.</p> <p>Question 18 is answered in the negative for most charges because there is no reasonable belief the accused committed the offenses as alleged. This is outlined in further detail in the recommendation, attached hereto and incorporated herein by reference.</p> <p>Question 20(b) is marked and the recommendation is attached hereto and incorporated herein by reference.</p>				
22a. TYPED NAME OF INVESTIGATING OFFICER		b. GRADE	c. ORGANIZATION	
JOHN H. SCHWEITZER		0-4	LSSS-IMA, CAMP PENDLETON	
d. SIGNATURE OF INVESTIGATING OFFICER			e. DATE	
			14 SEPTEMBER 2010	

INVESTIGATING OFFICER RECOMMENDATION ICO SSGT NICOLAS VEGA, JR.,
UNITED STATES MARINE CORPS

The Investigation: The investigation opened at 0830 on 24 August 2010 and adjourned at 0230 25 August 2010.

Jurisdiction: The military justice system has subject matter jurisdiction over the offenses charged and has personal jurisdiction over the accused because he was on active duty at the time of the alleged offenses and has since remained so serving.

Summary and Analysis of Testimony: Six witnesses testified at the investigation. A very brief summary of their testimony follows:

FITZSIMMONS, REBECCA: The NCIS Special Agent was the first witness. Her testimony consisted of her investigation of the case along with findings and evidence received and discovered. At this point in time it was already admitted by her that no photographs were ever recovered with respect to the charges and specifications relating to the "baby-in-the-photo" picture, pictures of the victim, Dana Orcutt, or child pornography on the personal computer of the accused. This was after the most prestigious computer crime labs in United States had done a thorough search of the personal computer belonging to the accused. Basically, from the testimony it seemed that for the most serious allegations, including the allegation of holding a loaded weapon to the victim's head, had no evidence to back them up. As for the accused being in pretrial confinement, the agent stated it was her belief the IRO based his decision on the death threat coupled with the insurance policy taken out on the victim's life.¹ To be sure, the rape charge from 31 December 2007 was suspect since the couple dated for 2.5 years after the incident and it did not get reported until the couple had their "big" break-up (then got back together), and then broke-up again.² The agent stated the oldest brother of the victim refused to cooperate as a witness.³

¹ When asked by me, the agent stated the policy listed the victim's mother as the beneficiary. Furthermore, writing exemplars and fingerprints had been taken from the accused, the victim, and other witnesses associated with the case and that all had been sent with the original policy to the sheriff's crime lab for processing. It was later discovered only the fingerprints and writing exemplars of the accused were sent.

² The IO has the unfortunate experience to have been an Article 32 Officer on many sexual assault cases. In 18 years as an attorney, 11 of which served as an active duty and reserve judge advocate, the presentation of a relationship after "rape" is a case of first impression. The IO

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ORCUTT, KAYLA I.: The sister of the victim testified how she first met the accused. She testified as to his personality and also discussed the purported "bubblegum" incident.⁴ She stated she did not like the accused and that he treated her sister poorly. She also discussed the "towel" incident⁵ where she said the accused flashed his genitals at her. As noted for this recommendation, most all of her testimony was hearsay or double-hearsay. She was not a percipient witness to most all of the allegations against the accused. As to the relationship between the accused and her sister, she stated her sister was in love with him sort-of but downplayed the closeness of the relationship.⁶ As to the incidents, the witness stated during her testimony she kept a diary of the relationship, among other things in her life. She said she was sure she wrote them in her diary. She further stated she had probably 2.5 years worth of writings which happened to coincide with the timing of the relationship. Upon questioning, she said she would gladly provide the diary and even disclosed where it was hidden in her room. Trial Counsel objected and stated, correctly, the military did not have the jurisdiction to seize the journal. Therefore, the witness was asked to produce it and arrangements would be made for delivery with chain-of-custody requirements. The very next day I received a phone call from the witness (I gave her my personal cell number for POC). She left a message stating that she was not able to obtain her diary. She looked for it "all day" and she could not find it anywhere. She stated she was not even aware if she had it in her possession anymore.⁷

is merely stating facts and history of prior legal proceedings to come to a conclusion. He is not stating that it is impossible, only that this is a first occurrence in many years of practice.

³ After Agent Fitzsimmons' testimony, it was at this point the investigating officer was opining for what purpose SSGt Vega was in pretrial confinement and suggested, in a closed hearing with counsel, contact with the original IRO to reevaluate may be in order.

⁴ Kayla's testimony regarding the incident seemed forced and at times as if guessing or trying to remember what her sister/victim may have told her (as if coached). She presented as a very incredible witness with a concrete memory when it mattered most and a not-so-good memory if it were something not in favor of her sister.

⁵ See footnote 4, above.

⁶ This was in marked contrast to the niece of the victim who essentially testified how much in love the victim was with the accused and how he could "do no wrong."

⁷ It must be noted the purpose of the IO asking for the journal was for the exact reason as to the outcome claimed by the witness in her voicemail message to the IO the very next day - from the credibility standpoint of the witness as observed on the stand, the IO was certain no journal ever existed. It was a last-minute claim of the witness to bolster her testimony. It was very obvious from a human-nature standpoint of self-preservation and protection. Furthermore, the

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GOMEZ-VILLA, NUZIA: The ex-girlfriend of the accused testified in favor of the accused. In her sworn statement she wrote how much she respected the accused and how he helped her "straighten out" her life. She denied him ever being physical with her throughout their relationship. She stated the baby in the alleged photo was Sergio, her son with her now-husband, Tristen, who is in the United States Navy. There was a photograph taken during a sexual encounter with the accused and another female individual wherein Sergio could be seen in the background in a car seat. All that was noticeable was his footie pajamas. The witness testified at the time she was a single-parent as the reason for the baby being with her. She denied any involvement of the child in the sexual encounter.⁸

ORCUTT, DANA: She testified as to various happenings and events while dating and living with the accused. She testified that on their first date of 31 December 2007, she was raped by the accused.⁹ Her testimony directly contradicted her sworn statement.¹⁰ She then discussed the photos that were allegedly taken (10 to 12 in all) without her consent and that she did not remember ever giving consent or permission for the accused to take any photos except for one.¹¹ The timeframe testified to

memory displayed by the witness regarding certain events would lead one to believe she was well organized and could locate the journal expeditiously. As she explained to me where her journal was located in excruciating detail, she even acted out the scene as if pulling it down from the exact location in her bedroom. I was happy that we may be able to have a glimpse into the veracity of all witnesses to this unfortunate incident but alas, my belief was correct - no journal.

⁸ During the hearing, prior to this witness taking the stand, it was discussed between counsel and the investigator that nobody was alleging the baby was actually involved in the sex play. It should be noted these pictures do not exist for evidentiary purposes.

⁹ It must be noted the incident as described by the victim while on the stand did not even closely resemble her sworn statement of March 2010. At this point, the victim began to unravel and lost all credibility to the point wherein it seemed she began to make things up just to show the accused how much power she indeed had over him and this entire process.

¹⁰ In her sworn statement, she woke up naked with the accused being on top of her having sex. In her testimony, she gave a very detailed account and stated that she told the accused to "put it in her butt" because she wanted to remain a virgin. The victim then testified that he "put it in my vagina" for three thrusts - it was then she got up and went into the other room and told her friend that the accused "put it in my vagina instead of my butt" to which her friend replied, "I think you just got raped."

¹¹ The testimony was again completely different than her sworn statement. The victim's own written statement reported the accused had taken over 1,000 to 1,800 pictures of her, many of which were nude. She wrote that "only about 100 of the naked photos were ones I consented to." (Page 3, last paragraph, 5th sentence.

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while on the stand was May/June 2009 for the incident.¹² The victim testified as to events that were not in her sworn statement or that were directly conflicting with her sworn statement of March 2010. She testified as to the threat to kill her by the accused holding the loaded weapon to her head.¹³ She also testified as to the insurance policy and that she did not authorize its submission nor had anything to do with it as well.¹⁴ When asked about her relationship with the accused, she stated she never loved him and he really was not her type.¹⁵ She said she was with him because she was trying to get more information out of him to make a case against him. She admitted to him being her "guinea pig."

LOEBNITZ, MIRANDA: This witness is the niece of the victim and was attending school with the sister of the victim at one time. She testified as to the "bubblegum" incident and the "towel" incident. It should be noted the testimony did not mirror the other alleged percipient witnesses. Furthermore, much of the witness' testimony was hearsay and she was not a percipient witness to many of the allegations against the accused.

ORCUTT, KATIE: The mother of the victim testified that she never liked the accused. She stated she knew about the rape after it had happened. She denied allowing the accused to stay at the house on the weekends.¹⁶ She did not report the rape nor did she want to "rock the boat" with her daughter.¹⁷ She talked about the insurance policy and told her daughter to call the company.¹⁸

¹² The weapon was reported stolen on 25 June 2008 (see, US-NCIS Results of S/Vega's Background Queries).

¹³ This story took on a life of its own while the victim was on the stand. The victim added to her sworn statement that a police officer/highway patrol was chasing them and finally the accused, after her pleadings, pulled over on the freeway. No report is in evidence, no name, no badge number, or what verbal exchange occurred, if any. She did report the officer looked at the ID of the accused and saw he was in the military so he, "let us go." Her sworn statement was to the effect of "...I would be a lesbian if he wanted me to" to "we talked for about 30 minutes on the side of the road until he [accused] was calmed down."

¹⁴ Victim reported that she knew the accused would do such a thing. She testified the company told her the accused was listed as the primary beneficiary. There are no records or writings from the insurance company supporting this claim. The victim's mother was listed as the beneficiary.

¹⁵ Throughout the hearing the relationship was downplayed by the accused and her family, except for the niece of the accused. This contradicts the statement of witness Leibnitz which paints a picture of the victim finally finding someone to "take her out of San Jacinto" for a better life.

¹⁶ She did admit to allowing the accused back into her home after the rape - but it was at least two weeks later.

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MUNOZ, GLORIA: The Corporal, who works for military justice, was called to the witness stand because of an allegation made by the victim during the hearing. The victim stated she made derogatory remarks directly to her and overheard the Corporal speaking with a Marine who allegedly had an affair with the accused, stating that she "would be okay because they couldn't prove a fucking thing" or words to that affect. The Corporal was examined by counsel and by me. She denied ever saying anything to either the victim or speaking about the case with a witness.¹⁹

Charge I: Article 92 (Failure to obey order)

Specification 1: Reasonable belief exists the accused committed this offense. Although the regulation only states "...uses involving pornography;" it is clear through email that the accused intended for the witness to send him personal photos of herself in sexually explicit poses. It was noted on the record the accused never forwarded the photos and in fact, the photos were recovered not from the computer of the accused, but from the backup system of NMCI of the public folders (read: snapshot of inbox and not saved on his government computer's c:\ drive for later use and distribution).²⁰

Charge II: Article 107 (False Official Statement)

Specification 1: This charge and accompanying specification was withdrawn by request of trial counsel and the military justice officer.

¹⁷ Yet, through her action/non-action, the mother condoned her daughter's relationship with the accused for 2.5 years after the incident and her daughter living with the accused on two separate occasions. This is another credibility obstacle with this entire case.

¹⁸ The witness spoke of this incident with surprise and disdain for the accused as expected. She neither testified as being aware about "the company" nor divulged any knowledge as to its business practice as an insurance provider. She told her daughter to call and find out what it was all about. Upon further investigation by the IO post-hearing into information provided by NCIS, the mother had business dealings with the same insurance company in the past. She has held life insurance/accidental death insurance on two occasions with respect to her children.

¹⁹ The victim's testimony in this regard was detailed and outlandish as to the event. It took on a circus-like distortion which brought to light the very good probability of the victim having serious emotional issues.

²⁰ This is an NJP-type offense.

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Charge III: Article 120 (Sexual Assault/Rape)

Specification 1: Reasonable belief does not exist the accused committed this offense as charged. The specification is based upon the victim's inability to give consent because of substantial impairment to the point she was unable to decline participation. This specification was based upon the victim's sworn statement of March 2010. However, she directly contradicted her statement with her oral testimony. Her testimony revealed she had a very detailed command of memory as to exactly what happened during the night in question. She stated she told the accused she wanted to remain a virgin so to "put it in her butt" instead of her vagina. This actually corroborates the sworn statement of the accused that the victim wanted to have anal sex. The victim testified that the accused "put it in the wrong hole" and then she told him to stop after about three thrusts. She then got up and went into the other room.²¹

Specification 2: Reasonable belief does not exist the accused committed this offense. From all testimony, and without any evidence, it is apparent the photograph with the baby in it was inadvertent. It was discussed among counsel and the IO that the baby was not involved sexually in the incident. Furthermore, there are no percipient witnesses except witness Gomez and the accused. There is no other evidence. The statements of the percipient witnesses corroborate the testimony of witness Gomez. The only testimony that contradicts this position is the victim's testimony, which is divergent from her sworn statement.²²

Specification 3: Reasonable belief does not exist the accused committed the offense. There is no corroboration of this specification as charged. There is no evidence in existence of this occurrence. The victim testified there were approximately 10 or more pictures of her that were on the internet on MySpace.

²¹ She forgot facts with respect to other occasions when her memory was not under the influence of alcohol and came off as guarded. But when it came to the night wherein she was purportedly, as testified by her, very drunk and throwing up, she recalled minute details back to 31 December 2007.

²² Her sworn statement mentioned an infant in the pictures. In her testimony she stated the positions of the people in the threesome and acted out some of the parts on the floor for the courtroom. Some positions seemed physically impossible and made up on the spot. This gave the IO pause to consider the emotional state of the victim.

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In her sworn statement, the victim stated there were over 1000 photographs but she only consented to about 100 of them. Furthermore, the victim testified she did not consent to any pictures and when pressed, she said maybe a few. She did not state anything about her statement made in March 2010 which is completely different than her testimony at the hearing.

Charge IV: Article 128 (Assault)

Specification 1: Reasonable belief does not exist the accused committed the offense. There is no corroboration or specificity of any specific assault as stated by the victim or accused. Moreover, the testimony of the victim herself was incredible. There was no proof of assault nor was any evidence offered with respect to obtaining a civilian restraining order over the 2.5 year period of dating.²³ There were no percipient witnesses to any of the assaults alleged and only hearsay offered as to other witnesses with respect to what they were told by the victim.

Specification 2: Reasonable belief does not exist the accused committed the offense. Plain fact: the victim reports in her sworn statement and in her testimony at the hearing the accused held the gun to her head (she described it as the same gun that was stolen from his apartment) in the spring of 2009. The gun was reported stolen in 2008 and there is a police report of such as found by NCIS during their search of ATF and FBI reports. There is no corroboration of this event ever occurring and only hearsay as to what the victim told other witnesses (who also got the story timeline wrong).

Charge V: Article 134 (Adultery)

Specification 1: Reasonable belief does not exist the accused committed the offense. There was insufficient evidence and no corroboration of this offense. Although the accused can be charged with this offense it should be noted the accused was

²³ It should be noted the IO is a family law attorney and donates his legal time and is a presenter at speaking engagements on behalf of the San Diego Volunteer Lawyer Program which specializes in domestic violence against women. The IO takes domestic violence allegations against women very seriously.

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divorced at the time of the alleged occurrence and the only evidence presented were emails and an uncorroborated sworn statement of the accused (which stated he "messed around" with her).

Specification 2: Reasonable belief exists the accused committed the offense of January 2008 but not May of 2009. The accused had a sexual relationship with the victim for a lengthy period of time even though purported to be "on again, off again." It was apparent there was a sexual relationship notwithstanding the fact the accused may have been separated from his wife at the time.

Specification 3: Reasonable belief exists the accused committed the offense prior to May 2009. The witness herself testified she had intercourse with the accused. However, as to the May 2009 charge, she testified she did not have intercourse with him and that she has not had sexual relations with him since her marriage to another military member. No corroborating evidence was presented as to the 2009 allegation.

Specification 4: Reasonable belief exists the accused committed the offense on one occasion, date unknown. The accused, in his sworn statement, admitted to making a threat to the victim because he was very upset at her. As to the degree of such remark, there was no evidence proffered by the government except the sworn statement and the testimony of the victim.

The form of all charges is proper.

Conclusion

The problem with this case is the victim and her family. They are obviously very street smart but not credible witnesses. At a latter point in the evening, the IO started to wonder if this family actually believed it could build a case against the Marine Corps for a windfall lawsuit. The family painted a picture of a tight-knit unit full of love and affection. They were all-knowing of each other and described a fairytale childhood upbringing. However, when questioned, not one sibling or parent would remotely discuss the eldest brother as if scared of him or being blissfully ignorant of his "career." It is relevant because he was the only witness who would not cooperate

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with NCIS. Reasonably, would this not be the time when the eldest brother would come to the defense of his defenseless, younger sister? He was a no show and all I could get from questioning the family about him was that he was a stay-at-home dad who has been unemployed for the past 4 or more years (along with his wife); he owns his home; he spent time in jail according to one sister for 6 months; another sister said 3 days or so; and the mother stated never. They were hiding something that only NCIS could find out if given the go ahead. It was alleged that he was a member of a notorious "Mexican mafia-type" gang. The witnesses did not have any concept of togetherness on their testimony and it seemed for the most part, stunted. They did not corroborate their own testimony and were instead conflicting in their descriptions of events, times, dates and places. The victim wanted to be believed that even though she was raped, she stayed with the accused in a relationship and then lived with him on two separate occasions to "study him." She stated she was studying in college and majoring in "Homicide" and that she was a straight "A" student and very bright. From my observation post these statements could not be further from the truth. What was most troubling for this IO was the degree of blatancy as to the siblings, niece and mother coaching each other but just not having the requisite memory to recall their sworn statements or the stories they concocted over the time since the March 2010 reporting. The victim was well groomed and dressed appropriately for her appearance in court. However, while testifying she was nonchalant and cavalier at most times. At other times she giggled, laughed, smiled and winked at the accused. This culminated into the following action after her coup de gras moment of testimony; she was caught on record smirking directly at the accused. She was smarmy to a degree the IO has never witnessed in court proceedings.

From the standpoint of credibility from most to least, the order is: Agent Fitzsimmons and Corporal Munoz (95%+), Ms. Gomez (85%+), Ms. Loebnitz(50%-), Kayla Orcutt (35%-), Katie Orcutt (25%-), and lastly, Dana Orcutt (10%-).

The accused should be immediately released from the brig based upon the lack of evidence with respect to any of the severe charges and specifications. In accordance with my review of the investigation and the individuals who worked with the accused

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(who were senior), it cannot go without being stated the lack of immediate supervision and leadership played a part in the accused being in this situation. Like him or not, court martial is not the appropriate forum for the accused with these witnesses and case.

Based on the evidence submitted and the testimony of the witnesses, along with the amount of time spent in the brig thus far (3 months +/-), I recommend dismissal of all charges in exchange for time served only if NJP is accepted by and entered into the SRB of the accused to settle this unfortunate case. If not accepted, then trial by special court martial is in order or discharge (general or honorable based upon performance) in lieu of court martial.