JOHN N. MAHER
Attorney-at-Law
2033 West Roscoe Street
Chicago, Illinois 60618
johnmaher8724@hotmail.com
(312) 804-9912

MEMORANDUM THRU Staff Judge Advocate, 82d Airborne Division 15 August 2014

FOR Commanding General, Headquarters, 82nd Airborne Division

SUBJECT: Rule for Court-Martial 1105 Submission - *United States v. Clint A. Lorance,* First Lieutenant, 1st Platoon, C Troop, 4-73 Cavalry, 4th Brigade Combat Team, 82nd Airborne Division, US Army

1. INTRODUCTION. Sir, on behalf of First Lieutenant Clint A. Lorance, his family, his friends, the **92** people who wrote handwritten letters to you urging clemency, and the **25,398** people who posted public comments urging clemency, we respectfully request that you grant the relief requested in paragraph six.

a. Sent to fight in the ancestral home of the Taliban, 1st platoon sustained four casualties right before Clint became platoon leader. The former platoon leader, 1LT Latino, sustained peppering shrapnel wounds to his abdomen, limbs, eyes, and face when a hidden improvised explosive device detonated. Private First Class (PFC) Walley lost his right arm below the elbow, right leg below the knee, and incurred serious soft tissue damage to his left leg. PFC Kerner was hit in the thighs and buttocks, while Specialist (SPC) Hanes was shot in the throat. The gunshot fractured vertebrae in his spine, broke his rib, and collapsed his lung. He is now paralyzed from the waist down. Mindful of these casualties, Clint pledged that he wanted nobody else to be killed or wounded while he was platoon leader. Fulfilling that pledge, though, would be difficult in the wildly violent Taliban area where death and maiming were suddenly delivered by shadow men who struck from the cover of the population. This stealth tactic makes distinguishing the Taliban from civilians hard to do. It is made even harder when your duty is also to protect your paratroopers and accomplish the mission.

b. Clint explains to you in his personal letter, attached, that he made those decisions within three – five seconds after one of his combat-experienced riflemen assessed the threat. Clint writes that he wanted "to bring my men home safely," and that he would have given his life and freedom for their safety. As demonstrated more fully below, this record contains many instances of reasonable doubt as to the legality of Clint's actions. ***In particular, the materials on pages six and seven, which can also be found in the trial transcript at 585-586, lay bare reasonable doubt***. What is more, the record contains multiple legal errors. These include: (i) the guilty findings for attempted murder and murder are legally and factually insufficient; (ii) fatal variances between the allegations and the evidence at trial for the attempted murder, murder, and discharging a firearm offenses; (iii) the guilty findings for communicating threats and obstructing justice are legally and factually insufficient; (iv) Article 13 pre-trial punishment; (v) the military judge failed to provide the panel with all of the instructions, to include lesser-included offenses and the affirmative defense of justification; (vi) lead defense counsel was ineffective; and (vii) unlawful post-trial processing delay.

c. The larger message from this court-martial is double-edged. On the one hand, if I hesitate and let the situation develop further, I risk my paratroopers' lives. On the other hand, if I act decisively based on the information available, I risk a court-martial, prison sentence, and discharge with the enduring stigma of dishonor. The adjudged findings of guilty and the sentence, as they currently stand, are not the best result for the command, the Army, Clint, and the Nation. Careful review of these matters shows not only reasonable doubt on the findings, but also misgivings as to the appropriateness of the overall larger inconsistent message – both of which can be corrected at this point.

d. In plain language, this is not a case where a depraved soldier intended to kill indiscriminately. This is the case of a patriotic and loyal infantry officer who zealously sought to protect his paratroopers. We appeal to your good will, temperament for fairness, and conscience, and ask that you grant clemency. Doing so, in this particular case, serves the interests of the command, the Army, Clint, and his family. If the corrective power of clemency were ever to be applied, this is the case to do it. The following explains why.

2. <u>THE FIGHTING SEASON – SUMMER 2012 – KANDAHAR, AFGHANISTAN</u>.

a. First platoon occupied an outpost called Strong Point Payenzai overlooking the rural village of Sarenzai in the Zhari district. Enemy contact there was frequent and the fighting treacherous. The undeveloped dirt road nearby was called Route Chilliwack. To get to the village of Sarenzai from their Strong Point, paratroopers had to cross the road after climbing up and down grape row berms which often precluded seeing over the berm. The location is literally a minefield compelling patrols to walk in file formation behind a minesweeper. This severely limited the ability to maneuver. Over the preceding months, nearly every patrol was attacked. The platoon had just returned from several days of refit at Strong Point Ghariban. There, they received combat stress medical attention because of the casualties mentioned above. Their main mission was to deny enemy sanctuary.

b. On 01 July 2012, Clint conducted his first patrol as an Infantry officer. It was also his second day as the platoon leader. He had talked with his Troop Commander, Captain Swanson, about the historical violence in the area, the tactics the enemy used, and received intelligence about Taliban and insurgent fighter activity and tactics near the village. Captain Swanson stated that Clint "was highly recommended, seemed motivated and proactive and indicated that he understood my guidance." R. App. Ex. IV, 46.

c. Twenty-eight years old at the time, the native Oklahoman comes from a patriotic family in which service is respected. From an early age, Clint wanted to be a Soldier, enlisted after high school, graduated from Basic Training, and served previously in Iraq, South Korea, Georgia, North Carolina, and Texas. Based largely on his non-commissioned officer evaluation reports which praised his dedication, selflessness, devotion, and aptitude, the Army selected him for the prestigious officer education and commissioning program, "Green to Gold." By all accounts, he was an excellent ROTC cadet while completing undergraduate work in Texas. Upon graduation, Clint was commissioned an officer, completed Infantry Basic Officer Leader Course, and became air assault qualified and a paratrooper. His enlisted and officer records, spanning a decade, were exemplary. They contain dozens of certificates of achievement, personal awards, and decorations.

d. On his first patrol, Clint and his element received small arms fire from "historical enemy firing positions" while returning to their outpost, confirming intelligence reports, which stated that the enemy was active in the area and involved in intimidating the local population. At that time in the platoon's deployment rotation, the record states that they had inflicted approximately 50 enemy killed-in-action. The local population informed International Security Assistance Force personnel that they do not go up Route Chilliwack because it was a "known Taliban safe haven, bed-down location, and staging point for attacks against US personnel." The platoon had been "attacked by grenades and on multiple occasions ha[d] discovered Home Made Explosives (HME), and IED factories." R. Ex. 50.

e. On 02 July 2012, which was Clint's second patrol, there were two engagements. The first gave rise to this case and is discussed in detail below. The second engagement occurred moments after and a few hundred meters to the west of the first. There, the platoon engaged and killed two apparent Afghans who were using ICOM two-way radios to orchestrate enemy maneuvers around the platoon. The troop commander, Captain Swanson, later confirmed this by checking with the voice-interceptor technology which overhead the Taliban radio traffic. Shortly thereafter, another Afghan surrendered with a gunshot wound to the arm. While being medically treated, he tested positive for homemade explosive residue on his hands.

f. Clint's heart has always been with his family, his community, our country, and the Army. On that summer day, his heart was with the 82nd Airborne Division. His heart was with the paratroopers. His family will tell you that "he would have died out there to protect his soldiers."

3. LEGAL ERRORS.

a. THE GUILTY FINDINGS FOR CHARGES I AND III ARE LEGALLY AND FACTUALLY INSUFFICIENT BECAUSE 1st PLATOON HAD LEGAL JUSTIFICATION WHEN THEY ENGAGED THE THREE MILITARY AGED MALES ON THE SPEEDING MOTORCYCLE HEADING DIRECTLY TOWARD THE PLATOON'S EXPOSED POSITION WHILE CROSSING ROUTE CHILLIWAK

(1) The prosecution offered two theories to prove that Clint had the specific intent to kill without legal justification. The first theory was that he unilaterally changed the Rule of Engagement (ROE) so that motorcycles could be engaged on site. The second theory was that Clint gave two unlawful orders to "engage."

(2) The panel rejected the prosecution's first theory. They found Clint not-guilty of, as the prosecutor urged, "lying to his soldiers" in order to "manufacture combat." The platoon's two most senior NCOs testified that Clint did not state that the US ROE changed. Rather, they testified that the ANA ROE changed and that Clint continued to abide by the US ROE. Regarding a 30 June 2012 pre-mission brief which included US paratroopers and the ANA, Staff Sergeant Murray testified that the ANA, not Clint, changed the ANA ROE:

> And then after I was done briefing the ANA platoon sergeant and the interpreter had a back and forth; it seemed to last two or three minutes. And basically when they were done the interpreter interpreted to me and Lieutenant Lorance who said that the platoon sergeant said that a lot of their Soldiers -- ANA -- had been killed by guys on motorcycles recently. And that they were going to be firing at guys on motorcycles.

R. 243.

Sergeant Murray also testified that US personnel could not automatically engage motorcycles. By contrast, he testified that Clint wanted his paratroopers to be alert and "look very carefully" when motorcycles were approaching US personnel:

> Q. You didn't hear Lieutenant Lorance say that American forces would automatically engage motorcycles did you?
>
> A. No, sir.
>
> Q. But from what you did hear from him you understood he wanted American forces to look very carefully at any motorcycles seen in their area of operation?
>
> A. I would agree. Yes.
>
> Q. You never heard him say that motorcycles are to be automatic engaged by American Soldiers?
>
> A. I did not hear that. No.

R. 250-251.

Sergeant First Class Ayres, the platoon sergeant and former acting platoon leader after the previous platoon leader was wounded by an IED, testified that the ANSF changed their ROE and that Clint

continued to adhere to US ROE:

> Q. And you know that at that brief when Lieutenant Lorance was briefing the patrol that would go the next morning, 2 July 2012, he informed everyone there that there had been a rule of engagement change by Afghan National Forces;
>
> A. Yes, sir.
>
> Q. ---- do you recall that?
>
> A. I recall that, sir; an ANSF directive.
>
> Q. Okay. "ANSF" is Afghan National Forces.
>
> A. Yes, sir.
>
> Q. He did not say that the United States forces, that the brigade had changed ROE; he said it was the ANSF that had changed the rules of engagement, correct?
>
> A. Yes, sir; that was my understanding.
>
> Q. And he briefed that to everyone
>
> A. Yes, sir.
>
> Q. Okay. And the nature of the ANSF directive changing rules of engagement was that motorcycles would be engaged on sight.
>
> A. Roger, would be engaged on sight by Afghan National Security Forces,
>
> Okay.
>
> A. ---- if that was their ROE, sir.
>
> Q. Okay. Now did you take that to mean that Lieutenant Lorance meant that American forces would engage motorcycles on sight?
>
> A. No, I did not.
>
> Q. Okay. So it should have been clear to everyone there that what Lieutenant Lorance said was that the ANSF, the Afghans, have a change of ROE and they will engage motorcycles on sight. He did not suggest that Americans had a similar change, correct?
>
> A. Correct, sir.
>
> Q. And, again, that would have been clear or should have been clear ----
>
> A. Should have been clear, sir.

> Q. ---- to everyone present.
>
> A. Yes, sir.
>
> Q. Okay. And for the members of the patrol, if any, who were not present, would their leaders, team leaders, squad leaders, would they have told them or should they have told them, "Hey, this is what the change is"?
>
> A. Yes, sir.
>
> Q. To make sure everyone gets the same word.
>
> A. Yes, sir.

R. 504 – 506.

(3) This testimony under oath by senior non-commissioned officers experienced in the Sayenzai area of operations created reasonable doubt in the minds of jury. Because the panel members had reasonable doubt, they did their sworn duty and found Clint not guilty. Stated differently, the members believed that Clint did not lie to his paratroopers to deceive them into thinking they could engage motorcycles on-site. Accordingly, when the “ANA in the lead” patrol started out from Strong Point Payenzai the morning of 02 July 2012, in the minds of the jury, US ROE had not been changed by anybody.

(4) Application of the US ROE under stressful conditions often requires an instant decision based on less than complete information in rapidly developing conditions. Captain Gilluly, the Troop Commander before Captain Swanson, explained the complexity involved in applying the US ROE during fast-moving, volatile, uncertain, and complex life and death situations where the enemy blends in with the local population in manner, language, appearance, and dress:

> A. The definition of hostile intent and hostile act is based on the ground. It becomes a decision about -- at that point on -- in time on the ground of what you understand of the threat.
>
> Q. My question’s not as complicated as you’re making it.
>
> A. Okay. It’s a complicated situation.

R. 198.

(5) As Clint explains to you in his personal handwritten letter, he too concluded he had only 3 – 5 seconds to decide whether to authorize his paratroopers to engage. Moments after leaving the ECP on the morning of 02 July 2012, PFC Skelton saw three Afghan military-aged-males on a motorcycle approaching the ANA/US dismounted patrol at what he perceived an excessive speed on a tiny dirt road. They ignored ANA warnings to stop. A part of the “file” formation to avoid landmines and IEDs, the platoon was exposed as it crossed Route Chilliwack. Of particular significance, PFC Skelton testified that he did <u>not</u> immediately engage. Instead, he assessed the situation:

A. Knowing the area that it was coming from, the first thought I had was it could be a drive-by shooting; it could be a drive-by grenade throw; it could be a vehicle borne IED.

Q. So "it could be" as in something to look out for?

A. These are potential dangers.

Q. Did you perceive any actual threat?

A. The vehicle was traveling fast down Route Chilliwack.

Q. Okay, roughly how fast was it going?

A. My estimates for the speed, between 30, 35, 40 miles an hour, ----

Q. Okay.

R. 537.

While he called out the motorcycle with the three Afghan military-aged-men riding at excessive speed on a dirt road toward friendly personnel and visually observing 1st Platoon, PFC Skelton explained that he applied the US ROE, alerted Clint, and fired his weapon at what he perceived as the threat:

Q. It was your obligation, as you saw it, to say to Soldiers that the motorcycle was possibly threatening because of the potential threat it represented, correct?

A. We have the right to protect ANA and coalition forces, yes.

Q. And at the time that you fired, you believed that's what you were doing; you were protecting friendly forces, both American and ANA.

A. Based on -- based on ROE and my quick threat analysis of what could happen, yes.

Q. Yes. So this I'll ask you, okay. Based on what you had available to you, you saw this as a threat and you felt an obligation as an American Soldier to protect friendly forces, American and ANA, correct?

A. Yes.

R. 585-586.

(6) This testimony demonstrates that PFC Skelton did not engage immediately. It shows that he assessed the rapidly-evolving situation and determined the riders represented a hostile threat which he was duty-bound to protect against. He called it out to Clint, who could not see the threat but relied on PFC Skelton's assessment, received the "engage," and fired his weapon. This testimony creates reasonable doubt for Charge I because as described, the shots were fired with the legal justification contained in the ROE. With legal justification, there can be no attempted murder.

(7) The same legal justification that existed for PFC Skelton's fire extends to PFC Shiloh. He was operating the M240B in the support-by-fire truck in a blocking position and heard Clint's order to engage on the radio. PFC Shiloh fired his weapon and killed two with one running away. PFC Shiloh fired at what had been determined hostile threats and acts while the events were still unfolding. Where the engagement had legal authority under the US ROE, there can be no attempted or unpremeditated murder.

(8) Sir, if upon reading this section you are at all skeptical of the prosecution's case, if you are in the least bit hesitant, that means reasonable doubt exists. If reasonable doubt exists, then Clint, in the words of the law, "must" be acquitted.

(9) The prosecution's second theory to prove Clint had the specific intent to kill without legal justification was that he gave two orders to "engage:" one to PFC Skelton and the other to PFC Shiloh. Clint does not dispute that he gave the orders. Military justice training explains that all orders are presumed lawful. Equally as important, US personnel are trained that if they suspect an order to be unlawful, they are duty-bound to seek clarification and are equally duty-bound to disobey orders which involve the commission of a crime. ***As Specialist Haggard stated, "anyone can tell you to shoot, ultimately it comes down to you to decide whether or not to shoot."*** Agent's Investigative Report, 13 July 2012, at 6. Here, both PFC Skelton and PFC Shiloh received military justice and ROE training. Neither sought clarification of Clint's orders to engage. Instead, both engaged, presuming the order was lawful. That presumption is confirmed as fact when they engaged by following the US ROE, which contains legal justification for the attempted killing and killings. As Clint earnestly explains in his personal letter to you, his orders resulted from his duty to protect his platoon in a wildly dangerous, volatile, uncertain, and rapidly changing area. As he also explains, his orders resulted from his assessment of PFC Skelton's US ROE assessment – all of which occurred in a few seconds.

(10) As a result, this evidence clearly shows the two paratroopers who actually fired did so while following US ROE. US ROE authorizes the use of deadly force in response to hostile intent/hostile act situations and for self-defense. In those circumstances, deadly force is legally authorized. Similarly in Clint's situation, he was also justified in ordering deadly force based on PFC Skelton's informed assessment of the hostile threat. As such, there can be no attempted murder under Charge I. Nor can there be unpremeditated murder under the two Specifications of Charge III. Put differently, when Clint ordered deadly force as authorized by the US ROE, he committed no criminal offense. At that instant, there was only self-defense, and at his court-martial, reasonable doubt. Where the record contains reasonable doubt, the accused "must" be acquitted. Therefore, the guilty findings for Charges I and III are rightly disapproved.

b. CHARGES I AND III SHOULD BE DISMISSED BECAUSE THERE IS A FATAL VARIANCE BETWEEN WHAT IS ALLEGED IN THE ACTUAL CHARGES AND THE EVIDENCE AT TRIAL WHERE THE PROSECUTION ALLEGED THAT CLINT SHOT AFGHANS BUT THE EVIDENCE IS UNDISPUTED THAT HE NEVER FIRED HIS WEAPON. CHARGE IV, SPECIFICATION 2 IS EQUALLY PROBLEMATIC BECAUSE CLINT NEVER DISCHARGED A M14 RIFLE AS ALLEGED

(1) In Charge I, the problematic language references an "attempt to murder a male of apparent Afghan descent by means of shooting him with firearms." Similarly, the problematic language in Charge III's two Specifications references "murder [of] a male of apparent Afghan descent by means of shooting him with firearms."

(2) Clint never fired a weapon. That is undisputed. Accordingly, the language used is misleading and clearly states an offense more depraved and evocative than what the evidence introduced at trial supported. It is undisputed that the M240B operator fired the fatal shots. Equally troublesome, the Military Judge used the unclear or misleading and inaccurate language ("shoot with firearms") when she

instructed the jury on the law.

(3) Adding to the vagueness of the language, the identity of the putative victims is unknown. For all we know, these unidentified persons were Taliban, insurgents, IED makers, suicide bombers, scouts, or IED emplacers. The prosecution referred to the deceased as "a male of apparent Afghan descent." This begs the question: who was killed? That the Specifications do not allege ascertainable, identifiable deceased persons can be attributed to Colonel Halstead's refusal to allow investigators to contact ostensible family members. Captain Patten, legal counsel during the investigation, advised the Criminal Investigation Division not to attend a *Shura* (meeting) with the villagers to conduct interviews. Had CID pursued, and the command not prohibited these evidentiary leads, it is altogether possible that identities, affiliations, biometrics, and other evidence could have been obtained in Clint's defense.

(4) In Charge IV, Specification 2, the prosecution alleged that Clint "discharged a firearm, to wit: a M14 rifle." Here too the Military Judge used the unclear or misleading and inaccurate language when she instructed the jury on the law.[1]

c. THE EVIDENCE IS LEGALLY AND FACTUALLY INSUFFICENT TO SUPPORT THE FINDINGS OF GUILTY AS TO SPECIFICATIONS 1 AND 5 OF CHARGE IV

The evidence is insufficient to sustain these convictions because the record contains no evidence of precisely what language was communicated to the local Afghans to whom the threats were directed. We do know that an interpreter was needed to verbally communicate. However, the local Afghans did not testify to the actual threat language and neither did the interpreter. For all we know, the interpreter could have said just about anything. This total lack of evidence is cause for reasonable doubt. Clint was not charged with threatening his own paratroopers – he was charged with threatening local Afghans. Therefore, because the record does not contain evidence of what was really stated to the local Afghans, these findings of guilty are legally and factually insufficient.

d. THE EVIDENCE IS LEGALLY AND FACTUALLY INSUFFICIENT TO SUPPORT THE FINDING OF GUILTY AS TO SPECIFICATION 4 OF CHARGE IV

(1) The military judge herself expressed concern during the trial that the necessary element of a criminal proceeding was missing – that an administrative investigation is not a criminal proceeding:

> MJ: Okay, well I have an issue. If you go to Page 6, the elements of the offense of obstructing justice; government, explain to me what evidence that you presented that the accused had reason to believe that there were or would be criminal proceedings pending at the time that he allegedly committed the acts in Specification 4 of Charge IV?
>
> TC: Your Honor, first of all, we put on evidence that he understood the ROE, meaning what was justified. And if it wasn't justified, it was a crime. Beyond that we showed that he took specific steps to -- do not report, I know they're going to ask questions in the TOC; that kind of thing. So understanding of what would happen -- asking questions. He knows 15-6s -- every time ----
>
> MJ: 15-6 is not a criminal proceeding, Captain Otto.

[1] Clint recognizes that the Military Judge did instruct the members on the theory of "Principals – Counseling, Commanding, or Procuring." However, as written, the language chosen for the Charges and Specifications noted above remains unclear or misleading and inaccurate.

> TC: I understand, Your Honor, but it is an investigation that can and often does lead to a criminal investigation.
>
> MJ: So you're saying there's an inference there? And what I'm asking you under R.C.M. 917, what evidence has the government presented on the issue on that element?
>
> TC: Your Honor, it is circumstantial, but that's allowed, and it is evidence that he went -- he knew that people would ask questions and find out. So he made sure reports -- radio reports were falsified to present -- prevent affirmation to obstruct or impede that information from getting to where people with authority over him -- criminal justice authority over him would have naturally investigated.
>
> MJ: Here's what I recall hearing; I recall hearing plenty of evidence that brigade would ask questions, people in the TOC would ask questions, higher would ask questions. I don't recall hearing any evidence that criminal proceedings would result or that he had reason to believe that criminal proceedings would result. So that's the evidence that I'm looking for.

R. 814-815.

(2) On 02 July 2012, about four – five hours ***after*** the engagement, the Squadron Commander asked Clint to "walk me through your decision-making process." There is no evidence that at that time, the Squadron Commander suspected Clint of criminal wrongdoing. (Had he, there would presumably have been the administration of Article 31 rights before asking Clint about the engagement). It is also worth noting that Clint is alleged to have made the wrongful statements hours ***before*** the Squadron Commander spoke personally with Clint. Also that day, all members of 1st Platoon, except Clint, were ordered into one tent, *en masse*, and asked questions by the Troop Executive Officer, 1LT Tinsley. None were advised of their rights. This is evidence that there was no criminal proceeding contemplated or underway. Charges were not preferred for another six months. Here, there is reasonable doubt on this question of pending criminal proceedings.

e. PRETRIAL PUNISHMENT IN VIOLATION OF ARTICLE 13 OCCURRED FROM 02 JULY THROUGH 23 SEPTEMBER 2012

(1) On 02 July 2012, the command stripped Clint of his weapon in one of the most dangerous places in Afghanistan. Green-on-blue attacks were frequently occurring at the time, and there was always the risk of a direct enemy assault. Yet, his command left him without the means to defend himself. Many soldiers and officers saw him without his weapon. He was stigmatized prior to court-martial. What is even more unsettling, Clint never fired a shot during the 02 July 2012 engagement which is why his personal weapon was taken away from him. He was not allowed in the DFAC because he did not have a personal weapon – all personnel had to have a weapon to enter the DFAC in order to defend themselves given the risk of insider attack. Instead, Clint was compelled to purchase his meals at the PX.

(2) Equally troublesome, the Squadron Commander, LTC Howard berated Clint before a formation at the Kandahar airfield when Clint arrived to board the plane home. LTC Howard stated, before a large formation, "what the fuck are you doing here?" Clint replied that he was manifested on that flight, to which LTC Howard replied, "you are not riding with me, find your own fucking way home!" Clint stated, "I have never been so humiliated as I was that day in Afghanistan." These facts are illegal

pretrial punishment for ostracizing Clint, unnecessarily endangering his ability to personally defend himself, and stigmatizing him prior to trial, when he was presumed innocent.[2]

f. THE MILITARY JUDGE DID NOT GIVE THE PANEL ALL OF THE INSTRUCTIONS RAISED BY THE EVIDENCE TO ENSURE THAT THE MEMBERS HAD ALL OF THE OPTIONS AVAILABLE TO THEM

(1) There is no dispute that defense counsel at trial asked that the Military Judge not provide the following relevant and important instructions: i) witnesses who have received immunity and/or an order to testify; ii) lesser included offenses of those charged – required by RCM 920; and iii) the affirmative defense of justification. Had the members received these instructions, it is reasonably likely that the findings and sentence would have been vastly different.

(2) This mistake suggests that Clint did not receive effective assistance of counsel at trial on this issue. Even so, the Military Judge did not correct this error when she failed to provide the panel with these instructions. While she should have acted as the final gatekeeper to the proceedings and as the final legal authority, she did not. At this point, it is only proper to approve findings which are correct in law and fact. And these multiple errors by lead defense counsel and the Military Judge cast the fairness, legality, and impartiality of this tribunal into serious doubt.

g. LEAD DEFENSE COUNSEL WAS INEFFECTIVE AT TRIAL

(1) It is important to know that lead counsel for the defense in this case arrived from out-of-state the evening before trial. He did not interview witnesses the government disclosed nor did he interview defense witnesses. He exercised no peremptory challenge when Clint wanted to remove COL Hynes. Clint believed that COL Hynes had already made up his mind before any evidence was introduced in court, due to his manner, tone, deportment, and stern and disapproving looks to Clint.[3] He developed no challenges for cause, even where several panel members were in the same rating chain. At the close of the prosecution's case, he did not make a motion for a finding of not guilty on those charges and specifications which lacked evidence. He did not cross-examine those witnesses who had received immunity and had been ordered to testify on those potential grounds for bias or impeachment. He did not urge the Military Judge to give the jury the instruction of immunity for testifying witnesses. Lead defense counsel did not urge that the Military Judge give the lesser-included offense instruction to the jury. He did not articulate the facts showing a violation of Article 13 for pretrial punishment, and he often raised his voice in mock anger to junior enlisted soldiers testifying for the prosecution. Prior to trial, he neither wrote, signed, nor argued defense motions.

(2) When retained in 2012, there were but a few email exchanges between lead defense counsel and Clint, and, three or four phone calls which were not more than an hour each. The same is true in 2013. The first time lead defense counsel met with Clint was the morning of the Article 32 pretrial hearing in April. Like the actual court-martial, lead defense counsel flew in from out-of-state the night before, conducted no pre-hearing investigation, examined no witnesses prior to the hearing, and only briefly spoke with Clint. After the Article 32 and prior to the commencement of the court-martial on 30 July 2013, there was scant communication from counsel. When counsel arrived for the court-martial, it appeared to Clint that he "did a brain drain," because he acted like he did not remember me, and asked only basic questions that he "should have known."

---

[2] Clint informed his lead defense counsel of these facts, which lead defense counsel declined to argue to the court. This gaff demonstrates that Clint did not receive effective assistance of counsel at trial on this issue.

[3] It may be relevant that COL Hynes has been relieved of command due to "lack of confidence" in his leadership.

(3) It is also important to know that Clint's mother and father sat through every aspect of the trial. During a break, lead defense counsel stated to them, "there is no way that Clint is going to jail – this is a combat case, this is not a murder case," which is a violation of the ethical rules which prohibit counsel from making claims of specific outcomes in a legal proceeding.

(4) Clint and his family recall that lead defense counsel had a very busy trial and travel schedule at the time, and that communication was infrequent and often lacking in substance. Their overall conclusion: counsel "shot from the hip" relying on his experience rather than the intense and detailed preparation required of all lawyers serving as defense counsel in complex court-martial proceedings where the client is facing murder charges and potentially a sentence to confinement for life without parole.

(5) When the President of the panel announced the sentence adjudged, to include 20 years confinement, lead defense counsel shockingly and cavalierly told Clint, "don't worry….it's not that bad in there."

h. POST-TRIAL PROCESSING DELAY

(1) There is impermissible post-trial delay on constitutional grounds.

(a) Post-trial delay is presumed to be unreasonable when more than 120 days of government-attributable time elapse between announcement of sentence and action. If the 120-day deadline is exceeded, three additional factors – the reasons for the delay, invocation of the right to speedy post-trial processing, and prejudice - must be examined. *See United States v. Moreno*, 63 M.J. 129, 135 (C.A.A.F. 2006).

(b) In the present case, there is unconstitutional post-trial delay. The sentence was announced on 01 August 2013. Even accounting for defense-attributable time with respect to submitting these matters, over 300 days have elapsed since announcement of sentence. This time period is more than double the 120-day limit. The government has provided no explanation for the delay.[4] Clint has invoked his right to speedy post-trial processing. With respect to prejudice, Clint remains confined while action and automatic appeal are pending. As discussed above, Clint has substantive grounds for appeal, and the delay in this case has prohibited him from receiving appellate review of these matters.

(2) This is also impermissible post-trial delay on sentence appropriateness grounds. Given the length of the delay in this case and the lack of any explanation from the government, Clint's sentence is inappropriate on its face, and Clint is entitled to sentence relief under Article 66(c), UCMJ, as a result of the delay. *See United States v. Tardif*, 57 M.J. 219, 225 (C.A.A.F. 2002).

4. MATTERS SHOWING THAT CLINT IS WORTHY OF CLEMENCY.

a. REHABILITATIVE POTENTIAL

Since 01 August 2013, when the court adjudged the sentence, Clint has been a model inmate. His record has been exemplary in all regards. He is pursuing a Master's degree available via correspondence, given that he already possesses a Bachelor's degree. He has been on a self-designed reading program to

[4] Additionally, even if the Government attempts to provide such an explanation at this late date, it cannot reasonably rely on personnel and administrative issues such as a heavy caseload, shortage of court reporters, or deployments, to excuse the delay. *See United States v. Arriaga*, 70 M.J. 51 (C.A.A.F. 2011).

keep his mind sharp, reads *The Economist* regularly, PTs daily, eats a heart-healthy diet, and remains very spiritual. He has developed a following at Fort Leavenworth where he has encouraged others to be reflective, to work on self-awareness, and to gain self-improvement. Clint plans to continue formal education and eventually earn a PhD.

b. PRIOR MILITARY SERVICE

Please consider the entirety of Clint's military service, not just the events that led to the adjudged findings. Clint has devoted his adult life to the Army, enlisting after high school as a military policeman and rising to the rank of staff sergeant by the age of 23. He served honorably and well in Iraq, Korea, Alaska, Georgia, North Carolina, Texas, and was on his second combat tour. While on active duty, he attended the University of Phoenix online and Turo University. He was selected for the Green-to-Gold program and worked to graduate in two years. He earned his commission and became an infantry officer. His NCOERs and OERs reflect a high level of devoted service to the United States, as do the multiple awards he has received, including multiple Army Commendation and Army Achievement Medals.

c. FAMILY AND SUPPORT STRUCTURE

As the 92 letters in support of clemency included here show, Clint comes from a loving and supportive family. He is also supported by his community and other veterans and patriots, as reflected in the **25,398** people who made online postings of support. At the time of Clint's court-martial, the panel members did not have this information before them. Thus, they were not aware of all the information relevant to determining a truly appropriate sentence. If his sentence is reduced through your clemency, this love and support will assist Clint with returning home and starting his life anew.

d. REDEMPTION

As a general rule, members are instructed not to concern themselves with collateral consequences of a court-martial sentence. Here, the court members might have adjudged a different sentence if they had known of the adverse collateral consequences. Consider the ramifications of the punishment that has been adjudged:

(1) Clint is losing the best years of his life. If he serves his full twenty-year sentence, he will lose all of his thirties and nearly all of his forties to confinement. While most people his age will be getting married, starting families, attending family functions, and even seeing children graduate high school, Clint will be in prison.

(2) Clint has, as discussed above, devoted his adult life to the Army. The military career and commission he worked so hard to achieve have thus far ended in dishonor, and he must live with that for the rest of his life. He will be forty-eight years old when his twenty-year sentence concludes. While he will undoubtedly have the support of his family and friends at that point, it will still be a struggle for him to re-enter society at such an age. Please also consider that he will have to do so with multiple murder convictions on his record. His parents are in poor and declining health. Should Clint serve the entire adjudged sentence to confinement, they may not survive those twenty years. Clint respectfully asks that you grant clemency, especially for the Charges of attempted murder and murder.

5. FAMILY'S REQUEST. We believe this case to be so meritorious and appropriate for clemency, Clint's family would like to meet with you in person before you take action on this court-martial. They are willing to travel from Texas to North Carolina at their own expense. Clint would like to talk with you via Skype or VTC. Clint's family also asks that you review the nine (9) electronic pages of personal family photos contained at the following link, which depict Clint as a child, in school, graduating from Basic Training, on duty in Korea, while a cadet in ROTC in the Green to Gold program, and other social and

familial pictures. They would like you to know the Clint they know and love.
https://m.flickr.com/#/photos/clintlorance/

6. COMMANDING GENERAL'S ACTION.

(1) On 9/11, Clint was still a boy, but, because his parents had separated for a while, he was already the man of the family. That infamous morning, he sat with his mother, consoling her as they watched the Twin Towers fall and the Pentagon burn. It was at that moment when he told his mother that he was going to become a Soldier when he grew up so that he could protect America.

(2) Sir, you have shared publicly that on 9/11, while you were assigned to the D ring at the Pentagon, your desk was 100 feet from the nose of the airplane that crashed into the building. You explained that everyone from your desk down was killed, and, had your personal household move not been scheduled for 9/11, that you would have been at your desk and killed. As you were driving that morning to the 7-Eleven to get coffee, Clint was watching the Pentagon burn as he consoled his mother. On that morning, your lives coincided in such a way that Clint's life is now in your capable hands. If at all possible, we ask that you turn to the same force for good that spared your life that day, and extend that same mercy and benevolence to Clint and his family.

(3) And, in the larger sense, beyond Clint, corrective action at this stage serves the betterment of the unit, the Army, and the Nation. These findings and sentence, as they stand, send conflicting messages to tactical leaders on the ground. The message endorses hesitation at the unnecessary endangerment of paratroopers' lives and limbs. In an even larger sense, if not corrected, these findings and sentence may have a chilling effect on families and young people who would otherwise be inclined to voluntarily serve our country in harm's way.

(4) When one considers all of the effort and treasure expended in Afghanistan, it seems a crime to now waste the life of an honorable young officer who fought there. History will record that the United States Army placed its young people into a war where it was incredibly hard to distinguish the good people from the enemy sworn to murder Americans. Please, Sir, let history also record that when one of those Americans, Clint Lorance, led a platoon in combat and lost his world trying to protect his paratroopers, that the United States Army did not turn against him. Nothing could be more important to the future of the Army than this.

(5) We ask that the Staff Judge Advocate recommend corrective action on the findings of guilt and the sentence. Sir, we respectfully request that you disapprove all findings of guilty, disapprove the adjudged sentence to confinement and the dismissal, and allow Clint to resign from the US Army. Alternatively, we request that you grant meaningful clemency which would allow Clint to continue education and veterans' benefits upon beginning his life anew.

"I have always found that mercy bears richer fruits than strict justice."
― Abraham Lincoln

Sincerely,