

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 8 February 2023

DOCKET NUMBER: AR20220008387

APPLICANT REQUESTS: through counsel, for removal of the General Officer Memorandum of Reprimand (GOMOR) and all allied documents from his military record. In the alternative, counsel request the GOMOR be transferred to the restricted section of the applicant's Army Military Human Resource Record (AMHRR).

APPLICANT'S SUPPORTING DOCUMENT(S) CONSIDERED BY THE BOARD:

- DD Form 149 (Application for Correction of Military Record)
- Counsel's Brief of Arguments
- Personal Statement
- Redacted U.S. Army Criminal Investigation Division (CID) reports
- Law Enforcement Report – Final
- DA Form 4833 (Commander's Report of Disciplinary or Administrative Action)
- GOMOR
- Affidavits (8)
- Photographs
- Podcast Transcripts
- News Articles

FACTS:

1. Counsel states, in effect:

a. The applicant, a retired major general (MG), respectfully requests that the Army Board for Correction of Military Records (ABCMR) remove the GOMOR, 20 May 2019, in accordance with Army Regulation (AR) 15-185 (ABCMR), in the interests of justice and to ensure fundamental fairness. In the alternative, the applicant requests the GOMOR be moved to the restricted portion of his AMHRR for the good of the Army and to correct the injustice in his military record. The applicant served honorably for over 38 years, only to have his record unfairly tarnished at age 83 by a single, unwitnessed accusation, for an event that allegedly occurred 24 years before it was reported.

(1) A review of the applicant's record shows an untarnished career. As attested to by multiple individuals whose statements are included with his petition, the applicant

was known as an officer of the highest caliber with impeccable character. None of the witnesses with whom he served, many of them for long hours in close proximity, ever observed or heard of any alleged improper conduct by the applicant.

(2) Both the applicant and the Army at large suffer continuing injustice which has only grown in magnitude and scope through the actions of RS (a retired MG) and his spouse, CS (hereafter referred to as the complainant) since the filing of the reprimand in this case.

(3) Due to a flawed and superficial CID investigation, as well as incorrect legal advice from the applicant's former attorney, significant, independent evidence was never identified and considered by Army leadership before filing the reprimand. Had CID conducted a fair and thorough investigation, this reprimand would have never been imposed and placed in the applicant's file.

(4) For his part, the applicant has seen a lifetime of service tarnished. Although he learned that the reprimand itself was filed on 21 May 2019, the applicant did not know that the personal, and what he thought was private, injustice would continue to grow in the time since he learned it was placed in his file. Since the reprimand was filed, the applicant has suffered ongoing injustice at the hands of RS and CS, who are now using the GOMOR to attack him publicly through newspaper interviews, such as their article in USA Today (June 2019), their lengthy podcast interview (originally aired July 2020, re-posted to YouTube, January 2021), and their continuing use of this reprimand to justify re-telling this story at camps, posts, and stations across the Army.

b. Counsel states that the evidence does not support the underlying allegation.

(1) Both the complainant and her sister, GV, provided materially incorrect descriptions of the event. Both described the gathering as including a crowded indoor area. As attested to by the applicant and his spouse and supported by numerous photographs of the 1994 event itself, the entire party, from welcome table to the food line was held outdoors, with guests sitting in their own lawn chairs or blankets on the ground. Guests were not congregating indoors as claimed by the complainant and her sister.

(2) Additionally, the photographs also demonstrate that GV's claim that attendees were present in a mix of uniforms and civilian attire is inconsistent with the nature of the event (an informal event held by the Ordnance Ladies Association (OLA)), the requested attire as published in the invitation (which is included in the photos), and the numerous photographs, in which not a single person is captured in uniform.

c. Counsel's response to the misleading description of the applicant and the allegation fearing reprisal.

(1) The complainant described the applicant to CID as a very tall and imposing person, when in fact he was (and is) of only medium height and build. As attested by the applicant's spouse and supported by photos of the applicant in this petition, he was a trim individual, measuring only 5'11" and weighing 160 lbs. While gregarious, he clearly was not a physically imposing man, particularly in 1994. The complainant's attempt to craft this misleading picture of the applicant is especially ironic, given her spouse stands well over six feet, as noted by the applicant's spouse and clearly captured in the 1993 photograph.

(2) To excuse her decades late allegation, the complainant claimed that she could not have accused the applicant in 1994, due to fear of reprisal against her then husband, Brigadier General (BG) BH, deceased. As noted by the applicant and validated by another general officer, however, this statement simply does not match the facts. At the time, BG BH, due to his long past decision to specialize in munitions, had reached the pinnacle of his career, working for the Assistant Secretary of the Army (Research, Development, Acquisitions) (ASA(RD&A)) and he was already in the position from which he would naturally retire. From his professional perspective, Lieutenant General (LTG) TS ably explained not only this fact, but that BG BH was also well aware of it. Simply put, BG BH was not at risk of any curtailment to his career, something of which he assuredly was well aware.

d. Counsel identifies the following relationships.

(1) The complainant claimed to CID that she told her deceased husband, BG BH, right after the assault occurred. Later, during her public interview with MC, the complainant further embellished her tale, stating that the assault "ate up my husband mentally," that it "ate him alive" and that "he had incredible rage for the next twenty years." In reality witnesses observed the applicant and BG BH were close, with no indication of concern expressed from any party whatsoever. They remained friends until BG BH's passing in 2016.

(2) Unlike the close, personal relationship the applicant maintained with BG BH until his death in 2016, he has not been on good terms with the complainant's new husband, RS for many years, ever since RS was blamed for the Aberdeen Proving Grounds (APG) scandal in 1996. As noted by the applicant and supported by witness affidavits, RS has lain the blame for the embarrassing end to his own career, at least in part, at the feet of the applicant due to the applicant's refusal to provide a statement to support him in 1996.

e. Counsel's offers the following motives for a complaint to be filed. As noted by the applicant, the applicant's spouse, LTG TS, and others, both the complainant and her husband had significant motives to make this allegation. These motives are not just historical, such as the complainant's spouse's personal animus toward the applicant,

they are also captured at length in the interview RS gave to MC. The complainant has benefited from this allegation and transformed herself into a cause-celebrity and advocate for change. Sadly, CID made no attempt to ascertain motive in this case.

f. Counsel argues that CID conducted a superficial investigation. In no small part due to the long-passed statute of limitations, CID's investigative effort was, at best, superficial. At the outset, CID demonstrated little interest in following their own procedures and processes, nor any interest in identifying and following even the most obvious investigative leads. In simple terms, the agent did little more than allow the complainant and her sister to read prepared statements to a video camera, conduct brief interviews of two individuals identified by the complainant, and attempt to engage the applicant in one interview through subterfuge by misleading him as to the nature of the meeting. The investigation documents no attempt to find other witnesses or obtain any documentary evidence to confirm or deny verifiable facts germane to the allegations made by the complainant.

(1) Token Interviews. Although the CID report characterized the interactions with the complainant and her sister as interviews, a review of the file documents show that what actually happened is that the CID agent went to a civilian legal office where the complainant and her sister were permitted to read from pre-drafted, unsigned statements. Further, outside of routine follow-up questions, neither party appear to have been asked even rudimentary questions about their allegations to confirm details, identify potential inconsistencies, etcetera. If such questions were asked, basic investigation practices would have required they be included in the report.

(2) Contradictory Witnesses. When the agent interviewed the two "witnesses" identified by the complainant, neither of them had any knowledge of the allegation other than having been very recently informed of it by the complainant herself. Notably, those witnesses informed CID that they had never had any sort of interaction like that with the applicant. In his report, the CID agent even noted that one of these witnesses volunteered that she had confronted the complainant, questioning why she would cold-call her to inform her of the allegation since they "weren't friends" and relayed to the CID agent that the complainant had no excuse other than she thought the witness should be told about it.

(3) The "Joke" investigation. Ironically, the complainant herself admitted in her public interview with MC that not only did she believe the CID investigation was superficial but claimed that Army officials told her the same. According to the complainant:

They were totally unwilling, it appeared, to do anything to take the applicant to task, and that their explanation for, "The investigation," was a joke. Senator X talked to them, and suddenly the Army was going to have to explain to Senator X, why they

had done nothing. And suddenly on that date, we actually see because we tracked it back, that the decision was made that the applicant would in fact, be reprimanded.

(4) In her rush to attack the Army in any way she could, the complainant undermined her own case by acknowledging the poor and incomplete nature of the investigation that had resulted in the reprimand she now holds up as proof of her victimhood. Finally, her admissions to the interviewer, if true, demonstrate that the Army staff was aware of the investigative deficiencies and had refrained from taking action because the investigation was too deficient to support even adverse administrative measures.

g. Counsel's argument regarding new witnesses. Although no attempt was made by the CID to interview even a single Servicemember who had served with the applicant, they have remedied this injustice by providing statements from individuals, both military and civilian, who worked closely with the applicant over many years while he was a senior Army leader. These witnesses were around the applicant in every professional and social setting imaginable and, in many cases, traveled extensively with him. Without exception, none of these witnesses ever observed any conduct (in word or deed) by the applicant that was improper and certainly nothing like the unwitnessed allegations of the complainant and her sister. Without exception, every witness interviewed attested to the applicant's strong moral character and professionalism and expressed that his reputation and character are completely inconsistent with the allegations made by the complainant.

h. Since enlisting in the Army in 1958, the applicant has devoted his life's work to the Army and to its Soldiers. By all respects from anyone who knows him, he was a conscientious officer committed to equality and fair treatment of all those around him. The officers with whom he served, regardless of gender, uniformly support him and have attested on his behalf to his good character and proper treatment of others.

i. To distill this matter to its clearest form, counsel is compelled to submit the following for the Board's consideration. To believe the complainant and her sister requires the Board to accept that, after more than 35 years of unblemished service, the applicant, an officer of unquestioned moral character by anyone who knew him-groped the wife of a fellow general officer and friend in the presence of numerous witnesses, and then approached a woman whom he had never met before to crudely comment upon her breasts. Such an allegation, particularly against an individual with the applicant's reputation and record of service deserved a thorough investigation, not just for the applicant's sake, but also for the good of the Army. Tragically, that did not happen here. The perfunctory nature of the CID investigation, and the incorrect legal advice originally received by the applicant, when combined with the political pressure brought to bear upon the Army by the complainant, resulted in a clear injustice that continues to harm the applicant and the Army.

j. Counsel humbly submits to the Board that the evidence submitted by the applicant and by others on his behalf is fundamentally different than what was available to the General Court Martial Convening Authority (GCMCA)/GOMOR Issuing Authority (IA) in 2019 when the reprimand was directed to be permanently filed in the applicant's record. Counsel contends the GOMOR Issuing Authority -

- did not have the statements from numerous personnel who had the opportunity to observe the applicant's conduct toward others over the course of many years as a general officer
- did not have the photographs of the invitation and the event itself; photographs which directly contradict material facts asserted by the complainant and her sister
- could not have known that complainant's spouse, RS, was likely not even present for the 1994 OLA event
- could not have known about the close and personal relationship observed between the applicant and BG BH, as observed by witnesses, in the years after retirement when the complainant falsely claimed her spouse at the time, BG BH, was being eaten alive and filled with rage

k. Upon review of all the evidence, it is counsel's hope that the Board will share the conclusion he has reached since he was detailed to assist the applicant... when considered in total, the great weight of the evidence simply does not support the allegation made against the applicant. No independent evidence or witness corroborates her allegation; multiple independent witnesses and documentary evidence directly contradict it.

l. The applicant enjoyed a sterling reputation throughout the retired and active military community until this allegation was publicized by the complainant and her current spouse. Now, when the applicant and his spouse should be enjoying their twilight years, they instead must endure an unjustly tarnished reputation. The applicant and his family deserve to be able to enjoy his twilight years and celebrate his service. The system failed both the applicant and our Army. Hopefully, this Board will see fit to remedy that failure so that the injustice he continues to suffer to this day can be put to rest.

2. The applicant states, in effect:

a. He seeks relief from this Board for the injustice he has suffered because of the false allegation made against him by the complainant. The complainant, with the support of her sister, GV, fabricated an allegation against him for the personal gain of the complainant's new husband, RS, a man who has harbored ill will against him for more than 25 years. To his great regret, he did not previously provide a statement or other evidence in his own defense due to following what he now realizes was incorrect

legal advice. Having obtained new counsel, he now understands that he should have made a statement and submitted evidence from the beginning of this investigation to present his side of the story and refute this false allegation. In support of his claim, he offers not only his own testimony, but that of multiple others who can attest to relevant facts, as well as documentary evidence which undermines the allegations made against him in this matter.

(1) In early-November 2018, he received a call from Army CID Special Agent DH (SA DH), who told him that he was investigating a matter involving a fellow retired general officer and friend, BG BH, and that he needed to interview him in connection with that allegation. He could not believe there was an allegation involving his friend, who had passed away a couple years prior. He immediately offered to help in any way he could, to include inviting SA DH to his home to speak with him whenever he was available. However, SA DH asked instead to meet at a local police station near his home in Gulfport, Florida. He readily agreed and met him at the station.

(2) Upon his arrival, SA DH surprised him and told him that he was the target of an allegation of indecent assault. At no point during the prior call did SA DH read him his rights or tell him he was under investigation. He now understands that SA DH misled him during the initial phone call in order to trick him into meeting him in the intimidating and coercive environment of the police station. SA DH stated that the complainant had accused him of inappropriately touching her, and that Army CID was investigating him more than 20 years after retirement. He was stunned.

(3) SA DH accused him of placing his hands on the complainant's breasts during a reception at his quarters on Fort Belvoir, Virginian in October 1994 and making an inappropriate comment to her sister, CV, at that same reception at his home. SA DH read him his rights and informed him he wanted to interview him about these allegations. At that moment in the police station, he was at a complete loss. Because of the way SA DH elected to surprise him with the allegation, combined with the passage of 25 years since the reception, he was greatly impaired in his ability to defend himself. He knew that he never placed his hands on the complainant's breasts. He also knew that he never made a comment to the complainant's sister about her breasts. But beyond that he did not know what to do, how to respond, or even for certain which reception the agent wanted to talk about.

(4) At first, SA DH pressed him to answer his questions, telling him it would be to his benefit to get this cleared up right away. SA DH even told the applicant that he might be subject to being called back onto active duty to respond to the investigation. He asked SA Hayden what he could do to prove he did not do what he was being accused of doing and SA DH said it would take an airplane ticket or something showing he was not there.

(5) Given the shock and confusion of it all, as well as the health issues caused by his Parkinson's Disease, he asked for counsel. At that point, SA DH then pulled out a phone, called a number and handed him the phone. On the other end was a young man who identified himself as a Trial Defense Service (TDS) attorney at Fort Bragg, North Carolina. The TDS attorney informed him that he would have to inquire into whether his office was allowed to represent him, to make no comment to CID, and that he would call him back later. At that point, because he did not have an attorney, SA DH terminated the interview.

(6) Eventually, he received a telephone call from the TDS attorney informing him that he would be allowed to assist him. The applicant asked him for his advice and what he could do to defend himself. The TDS attorney responded that based on the allegation and lack of evidence that he did not recommend the applicant make any statement. He agreed to follow his advice and did not re-contact CID for an interview.

(7) He heard nothing about this matter for six months. Then, in May of 2019, he received a copy of a GOMOR, 29 April 2019, reprimanding him for inappropriately touching of the complainant. When he received the memorandum, he again wanted to defend himself. However, based on the advice of his TDS attorney and given what the CID agent had told him, he would essentially have to prove that he was not there. He did not think anything he could say would matter.

(8) That time was also a very busy point for Army leadership, with the new leadership preparing to assume the duties of Chief of Staff. Rather than drag the matter out, which he believed would be a distraction to Army leadership and detrimental to the Army, he elected to submit no matters. He expected that with the completion of this administrative process, the matter would be closed. What he did not know, and could not have known at the time, was that the complainant and her husband would later make this into a public spectacle, seeking publicity through USA Today, social media interviews, and public engagements in order to use this allegation to tarnish not only his reputation, but that of the Army.

b. The applicant further states that he now realizes that for so long as this reprimand continues to reside in his record, the complainant and her husband will continue to use it to legitimize their fabricated allegation in order to not only continue to harm him and his family, but also unjustly tarnish the Army because of his service as one of its senior officers. In support of his petition to correct the injustice caused by their false allegation, he provides the following additional evidence on his own behalf.

(1) He honorably served the Army for nearly 38 years. He began service as a young, enlisted Soldier in 1958, served in Vietnam as an operations officer, and retired at the rank of General in 1996. During his military career, he was vetted at every level and intensely scrutinized with each promotion as a general officer. There was never



even a hint of any inappropriate behavior or misconduct. He rose to the position of top logistician of the Army through hard work and devotion to duty, with a sterling reputation as an officer and a gentleman. He believes in the golden rule and has always treated others with dignity and respect in all aspects of his life - professional, social, and personal.

(2) More than 20 years after he retired from the Army, the complainant falsely accused him of touching her inappropriately during a midday reception in October 1994. Her allegation is completely untrue and preposterous. He has never, nor would he ever, grope the complainant or any other person. Her sister's wild attempt to bolster the complainant's claim, by stating that he would simply walk up to her, someone who was a complete stranger to him, and comment on the size of her breasts is equally false. Under no circumstances would he ever make a comment like that to anyone. This fact is born out in witness statements attached to his position, covering more than a decade of his service as a senior officer in the Army. These personnel were with him in countless engagements across formal and informal settings and attest that he never even uttered an inappropriate comment, let alone inappropriately touched another person.

(3) The only reception that he and his wife hosted during October 1994 was the OLA Oktoberfest, one day prior to Association of the U.S. Army (AUSA) Conference, on 16 October 1994. This was a casual event held on their lawn. The attire was very casual, and attendees were advised to bring their own lawn chairs because this was an outside event. Attached to his petition is a copy of the original invitation verifying these facts, as well as photos taken during the 1994 reception (and from the same receptions in 1993 and 1995), showing attendees in casual attire eating and socializing on the lawn of their quarters. The attendees did not gather inside their quarters during this event. It was strictly outside on their lawn.

(4) The complainant, her then husband BG BH, and her twin sister GV, are not in any of these photos. Neither he nor his wife, have any recollection of them being present at this event. While it is impossible for him, 25 years after the fact, to affirmatively disprove that they were in attendance that day, he can state with absolute certainty that he has no recollection of meeting and speaking with the complainant's sister that day. Similarly, he cannot believe that anyone would walk up to a complete stranger, as she alleged, and offer a comment about her breasts. Further, the assertion that he would grope the spouse of a friend and fellow general officer in his own home at a reception surrounded by numerous other people and make such a sexual comment to a complete stranger defies all logic and belief.

(5) In her statement to the CID, he also noted that the complainant claimed that she observed a number of attendees in both military and civilian attire at the reception. That statement is also untrue. As shown in the event invitation, dress was "very casual" civilian or traditional German attire. The photos of not only the 1994 reception, but the

receptions in 1993 and 1995 also bear out- that there is not a single uniform in sight. Those photos show attendees in civilian attire, sitting in lawn chairs eating picnic-style.

(6) The complainant and her sister both claimed to the CID that she told her husband that same day in 1994 and that he was "very angry" and the complainant later claimed in her public interview, that it "literally ate [her husband] alive" and that "he had incredible rage" for the rest of his life. He served in the Army with the complainant's previous husband and they remained good friends after retirement. In the 20 years after their retirement until his death in 2016, he never sensed any animosity from the complainant's husband at any time.

(7) Both the complainant and her spouse continued to attend social events and receptions in their home at Fort Belvoir, Virginia after the alleged 1994 incident. They even celebrated New Year's Eve together around 1998 at the country club near their home in Gulfport, Florida. If her allegation was true, it is unbelievable that they would continue to socialize with him and his wife after their respective retirements.

(8) This image of a rage-filled man who was eaten alive for the rest of his life was also not the person that he had countless dinners, lunches, and breakfasts with, attended board meetings with, and frequently talked on the phone with for 20 years after retirement until his death in 2016.

(9) After retiring from the Army, he became a Senior Vice President of Logistics and Procurement with large distributor of household items for three years and left when the company was sold in 1999. He then undertook a consulting position with another company. In that capacity, his supervisor asked him to help him create an Advisory Board of retired officers to help advise the company on logistical support contracts. He recommended the complainant's previous husband for a position on the Advisory Board, which he accepted.

(10) Throughout the time they worked together regularly on the Advisory Board, corresponded with each other, and they remained on the best of terms. Not once did he ever demonstrate any animosity or feelings of ill will; a point noted by his supervisor and others in their attached affidavits. He has been married for 62 years to his spouse and he cannot believe that any caring husband, which the complainant's spouse most certainly was, would have, or could have, kept up such a facade of good will toward someone he believed had assaulted his spouse.

(11) The complainant claimed that she could not have made this complaint in 1994 over concern for her husband's career. But this statement, which was not investigated by the CID, is not supported by the facts. As noted in his witness' attached affidavit, the complainant's spouse specialized in munitions logistics and had already been promoted to BG and was serving as the Director of Ammunition, in charge of all

munition's logistics for the force. As further explained by the witness, this was a highly specialized career track that limited logistics officers (at least back in the 1990s) to advancement no higher than BG. The witness also noted that the complainant's spouse was well-aware of this fact and knew full-well that he would ultimately retire at current rank after serving as the Director of Ammunition. This is, of course, exactly what happened. The applicant contends that in 1996, at BG HG request, he co-hosted his retirement ceremony. The only person "bitter" about the complainant's husband retiring as a BG, as attested by the witness, was the complainant herself.

(12) Another element not considered during this process was the fact that the complainant levied her false allegation against him less than three months after marrying RS, a man who bears him deep personal enmity. His hatred is driven by his decades-long anger for his refusal to support him when he faced relief and reprimand for his command climate failures at APG. When he faced investigation, RS asked him (as the former commander) to provide a statement to the effect that his travel obligations for the other Ordnance School locations prevented him from being able to fully execute his responsibilities at APG. He did not believe that was accurate and told him that he could not provide such a statement. He still remembers to this day that RS hung up the phone and never spoke more than a few words to him in the more than 25 years since that day.

(13) Finally, this process also ignored the fact that RS has built his entire post-Army career around speaking on the SHARP circuit, driven in no small part by his desire to expurgate the taint to his reputation by the APG drill sergeant sex scandal. By collaborating with his embittered spouse to fabricate this unwitnessed allegation against him, RS has gained yet another opportunity to expand his speaking engagements and advertise his published book and to re-litigate history to absolve himself of any responsibility for his failures at APG and attacking the Army as an institution.

(14) More significantly, however, the complainant has used her allegation for her own benefit and to paint herself as the heroine who is forcing the Army to be held accountable for what she describes is a campaign cover up of allegations against senior officers. One need only listen to, or read, her interview with MC to see how she has sought to use her status to her own benefit. As she boasted during her interview, she is the self-described "gray haired lady" who is taking on the Army as a corrupt organization, she is also re-inventing history by painting RS as the only senior Army leader in 25 years willing to investigate sexual assault in the Army, and (of course) taking every opportunity to continue to slander him and his life-long reputation and a good and honorable man.

(15) In support of his petition, he requests this Board consider the affidavits provided by multiple former officers of impeccable character who served with him for more than ten years as an Army senior leader. These officers, who were around him

almost constantly, day-after-day and year-after-year, attest to his commitment to diversity and honorable treatment of others, and that they never once saw him speak or act improperly toward anyone. He asks the Board to consider the evidence of his universally good conduct and character in balance to the much-delayed, isolated, and unwitnessed allegation by the complainant. Finally, he asks that the Board consider the photographs saved all these years by his spouse, and the statements of those individuals who served with him, and the fact that he served with the complainant's spouse on the same Advisory Board as evidence that refutes multiple points falsely made by the complainant and the story fabricated by her sister, in support of the allegation made against him which formed the basis for the reprimand he eventually received.

3. The applicant served as a commissioned officer from 24 June 1959 until he was retired on 30 April 1996. He held the rank and pay grade of GEN/O-10. He completed 36 years, 10 months, and 7 days of net service.

4. The available record shows no acts of indiscipline or derogatory information during his service. However, on 29 April 2019, the applicant received a GOMOR as the result of a CID investigation which established probable cause to believe that in 1994, he inappropriately touched the complainant while hosting an official function in his quarters in his capacity as the Commander, Army Material Command. The applicant was informed that the reprimand was an administrative action and not punishment under the Uniform Code of Military Justice (UCMJ). He was given 30 calendar days to submit matter for consideration in extenuation, mitigation or rebuttal.

a. The applicant acknowledge receipt on 9 May 2019 and elected not to submit matters on his own behalf.

b. On 20 May 2019, after considering the nature of the evidence, the issuing authority directed that the GOMOR be filed in the applicant's AMHRR.

5. The GOMOR is filed in the applicant Military Personnel Record Jacket.

6. The applicant provides the following documents:

a. A CID Form 94, 15 October 2018, which shows the complainant's spouse, RS contacted the CID to tell them his spouse wanted to report that she was sexually assaulted in 1994 by the applicant. The complainant was later interviewed, and the CID report indicates that she read from a five-page written statement. The report lists several exhibits that were part of the investigation, some of which were not provided by the applicant. These exhibits included agent investigative reports, statements from the complainant and her sister, compact discs with interviews given by the applicant and the complainant.

b. The Final Law Enforcement Report, 19 December 2018, which found there was probable cause to believe the applicant committed the offense of indecent assault as enumerated in the 1994 version of the UCMJ. The Statute of Limitation in place at that time had expired and no criminal prosecution could occur. No additional investigative efforts were required. There was sufficient evidence to provide to the command for consideration of action.

c. A Statement from his spouse wherein she attests to the applicant's character as a husband, father, grandfather, and Officer. She stated, in effect, that she did not remember hosting the complainant at any indoor or outdoor function at their home. She remembers meeting the complainant and her twin sister at another officer's quarters. The only event that occurred at her home during the time in question was the OLA function. The complainant never joined or attended any OLA function. However, the complainant's current spouse, RS had attended the OLA Octoberfest in 1993 and 1995. He did not attend in 1994 as the complainant reported in her CID statement. The photographs from her personal records of the 1994 Octoberfest clearly show the event was informal, outdoors, and with no crowds of people socializing indoors. The complainant's sister was not at the event in question. She provides the invitation of the event and photographs which shows individuals casually dressed in an outdoor location.

d. A 28-page transcript of an interview that the complainant and her spouse had with MC, titled "Healing from Emotional Abuse: Military Sexual Trauma Movement." This document was prepared by the TDS, Joint Base Lewis-McChord, Washington, 18 May 2022. During the interview, the complainant reported, in effect, being invited to a huge cocktail party at the applicant's quarters on Fort Belvoir, Virginia. She remembers this event because it was the only time her twin sister was ever on the base. She stated "What was terrifying as it began to unfold was that he was in individual who was on his own home ground and seemed to be very comfortable. Clearly, as I look back, had a very practiced behavior. Was confident that he could get away with it. And this is the four star for the Army Material Command, [applicant's name]. So, what he did was—he walked in—and uhm—as was my nature at the time—uh—[applicant's name] is a big guy, and—uh—I didn't hug many people but he was huggable. And—uh—I didn't see him that often, so I went up and gave—went in to give him a hug, and as I did in the middle of a very crowded room in the center of the house with everybody milling around us, I suddenly realized that his hands were on my breasts.....What made it even more upsetting to me is that—in addition to feeling he was totally comfortable to do that at this setting on the base—he goes and finds my identical twin sister, introduces himself to my twin sister, and proceeds to tell her—uh—"Oh, you're just like your twin sister only your boobs are bigger." The transcript contains details surrounding the event and the difficulties she and her spouse faced to bring the applicant to justice.

e. Affidavits from several officers, general officers (one of which is a female) and a past supervisor, although none were present at the event they attest to the applicant's

good character, good reputation, support of equal opportunity and advancement of the advancement of female officers, and minorities. One individual served on the Board of Advisors with the applicant and the complainant's former spouse, BG BH, and noted that the applicant had a good relationship with BG BH. These individuals never witnessed the applicant say or do anything improper to another individual. Some implied that the complainant's current spouse, RS felt the applicant was at fault for him being held responsible for the APG military sexual assault scandal and this was the motivation behind the current accusation.

f. A news article which reported that a retired four-star general had been reprimanded by the Army for groping the wife of a subordinated officer 25 years ago, and how this action showed the service's willingness to police the behavior of its most senior officers long after retirement.

7. The ABCMR begins its consideration of each case with the presumption of administrative regularity. The applicant has the burden of proving an error or injustice by a preponderance of the evidence. The ABCMR is not an investigative body.

8. Regulatory guidance states that once an official document has been properly filed in the AMHRR, it is presumed to be administratively correct and to have been filed pursuant to an objective decision by competent authority. Thereafter, the burden of proof rests with the individual concerned to provide evidence of a clear and convincing nature that the document is untrue or unjust, in whole or in part, thereby warranting its alteration or removal from the AMHRR.

#### BOARD DISCUSSION:

1. After reviewing the application, all supporting documents, and the evidence found within the military record, the Board found that relief was warranted. The Board carefully considered through counsel the applicant's record of service, documents submitted in support of the petition and executed a comprehensive and standard review based on law, policy and regulation. Upon review through counsel of the applicants petition and available military records, the Board agreed the character letters of support attest to the applicant's integrity, character and demonstrates the applicant was properly vetted during his numerous promotions and continued to perform exceptionally well in his duties as a general officer. Removal of a general officer memorandum of reprimand (GOMOR) is generally not warranted unless it is factually incorrect. The Board determined the counsel did demonstrate by a preponderance of evidence that procedural error occurred that was prejudicial to the applicant and by a preponderance of evidence that the contents of the GOMOR are substantially incorrect and support removal. Furthermore, the Board determined there was insufficient probable cause that supported the allegations. The Board agreed the applicant and his counsel provided

sufficient evidence of a clear and convincing nature that the document is untrue or unjust, in whole or in part, thereby warranting its alteration or removal from the AMHRR.

2. The purpose of maintaining the Army Military Human Resource Record (AMHRR) is to protect the interests of both the U.S. Army and the Soldier. In this regard, the AMHRR serves to maintain an unbroken, historical record of a Soldier's service, conduct, duty performance, and evaluations, and any corrections to other parts of the AMHRR. Once placed in the AMHRR, the document becomes a permanent part of that file and will not be removed from or moved to another part of the AMHRR unless directed by an appropriate authority. There does appear to be any evidence the contested GOMOR was unjust or untrue or inappropriately filed in the applicant's AMHRR. Therefore, relief is granted.

BOARD VOTE:

Mbr 1      Mbr 2      Mbr 3

■	■	■	GRANT FULL RELIEF
:	:	:	GRANT PARTIAL RELIEF
:	:	:	GRANT FORMAL HEARING
:	:	:	DENY APPLICATION

BOARD DETERMINATION/RECOMMENDATION:

The Board determined the evidence presented is sufficient to warrant a recommendation for relief. As a result, the Board recommends that all Department of the Army records of the individual concerned be corrected by removing from his Army Military Human Resource Record (AMHRR) the

- General Officer Memorandum of Reprimand (GOMOR), dated 29 April 2019
- all allied documents from his military record.

[REDACTED]

[REDACTED]

[REDACTED]

I certify that herein is recorded the true and complete record of the proceedings of the Army Board for Correction of Military Records in this case.

REFERENCES:

1. Army Regulation 600-20 (Army Command Policy), in effect at the time, it stated:

a. The Equal Opportunity policy of the U.S. Army which was to provide equal opportunity and treatment for Soldiers and their families without regard to race, color, religion, gender, or national origin and to provide an environment free of sexual harassment. This policy applied to both on and off post, extended to Soldiers and their families, and applied to Soldiers' working, living, and recreational environments (including both on and off post housing).

b. Sexual harassment was a type of sex discrimination. It was not limited to the work environment and could occur at almost any place.

- c. Sexual harassment is defined as any Soldier or civilian employee who –
- through behavior of a sexual nature attempts to control, influence, or affect the career, pay, or job of a Soldier or civilian employee
  - makes deliberate or repeated verbal comments or gestures of a sexual nature that are offensive to the person to whom addressed
  - makes abusive physical contact of a sexual nature



2. AR 600-37 (Unfavorable Information), 2 October 2020, sets forth policies and procedures to ensure the best interests of both the Army and Soldiers are served by authorizing unfavorable information to be placed in, transferred within, or removed from an individual's AMHRR.

a. Paragraph 3-5b (Filing in Army Military Human Resource Records) provides that a memorandum, regardless of the issuing authority, may be filed in the AMHRR. The general officer directing filing must; exercise general court-martial convening authority over the recipient, or be the general court-martial convening authority's designee or delegate; be the Commander of U.S. Army Human Resources Command, or any Headquarters of the Department of the Army staff principle. Memoranda filed in the AMHRR will be filed in the performance folder.

b. Paragraph 7-2 (Policies and Standards) provides that once an official document has been properly filed in the AMHRR, it is presumed to be administratively correct and to have been filed pursuant to an objective decision by competent authority. Thereafter, the burden of proof rests with the individual concerned to provide evidence of a clear and convincing nature that the document is untrue or unjust, in whole or in part, thereby warranting its alteration or removal from the AMHRR.

c. Paragraph 7-2 also provides that only letters of reprimand, admonition, or censure may be the subject of an appeal for transfer to the restricted folder of the AMHRR. Such documents may be appealed on the basis of proof that their intended purpose has been served and that their transfer would be in the best interest of the Army. The burden of proof rests with the recipient to provide substantial evidence that these conditions have been met.

3. AR 600-8-104 (Military Personnel Information Management Records), in effect at the time, states to file an administrative reprimand only when the letter, indorsements or addendum directs filing in the Military Personnel Jacket (MPRJ) or Official Military Personnel File (OMPF). Remove and destroy the letter when:

- the ABCMR directs that letter be removed or transferred from the OMPF Performance fiche
- reprimand is successfully appealed

4. AR 600-8-104 (Army Military Human Resource Records Management) prescribes Army policy for the creation, utilization, administration, maintenance, and disposition of the AMHRR. Table B-1 states a memorandum of reprimand is filed in the performance folder of the AMHRR unless directed otherwise by an appropriate authority (Department of the Army Suitability Evaluation Board or the ABCMR).

5. AR 15-185 (Army Board for Correction of Military Records) prescribes the policies and procedures for correction of military records by the Secretary of the Army acting through the ABCMR. The ABCMR considers individual applications that are properly brought before it. The ABCMR will decide cases on the evidence of record; it is not an investigative body. The ABCMR begins its consideration of each case with the presumption of administrative regularity. The applicant has the burden of proving an error or injustice by a preponderance of the evidence.

//NOTHING FOLLOWS//