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U.S. DEPARTMENT OF DEFENSE

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DEFENSE LEGAL POLICY BOARD

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SUBMISSION OF THE UNITED AMERICAN PATRIOTS

and

THE INNOCENT WARRIOR PROJECT

+ + + + +

FRIDAY

15 FEBRUARY 2013

+ + + + +

DANIEL ZENE CROWE: Madam Chair. On behalf of the Founder and President of the United American Patriots¹, Major Herbert W. Donahue, Jr., USMC (Ret.), our Board of Directors, the more than 208,450 Patriots who have contributed monetarily to our organization, and the millions more concerned Americans who have visited our website or who simply care deeply about the treatment our brave warriors are receiving at the hands of the Department of Defense and its justice

¹ a 501(c)(3) organization

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1 system, I want to thank you for the opportunity to
2 address the Defense Legal Policy Board.

3 We at the United American Patriots and the
4 Innocent Warrior Project were excited to learn of the
5 mandate Secretary Panetta has sent down to this board
6 to examine the way in which combat-related allegations
7 of misconduct are being handled. To echo the bottom
8 line of the Secretary when he established this Board,
9 "The Uniform Code of Military Justice is one of the
10 things that makes the U.S. military great. To ensure
11 our system of military justice remains fair, credible,
12 and dependable in today's world, I believe we must,
13 from time to time, assess whether certain reforms are
14 warranted."

15 Our specific focus today is on section six (6) of
16 your mandate: "Does the military justice system in
17 deployed areas fully preserve the rights of the
18 accused, while also respecting the rights and needs of
19 victims and witnesses?"

20 From our board's extensive combined military
21 service and our innumerable combat tours from aboard
22 ship during the Cuban Blockade through Vietnam to the
23 Global War on Terror, as well as the hundreds of

1 testimonials we have collected, we feel empowered to
2 answer part six of your mandate - "Does the military
3 justice system in deployed areas fully preserve the
4 rights of the accused?" - in the negative. The system
5 in place is a failure and an invitation to injustice.

6

7

SECTION I

8

Our Assessment of Current Management of

9

Allegations of Combat-Related Misconduct

10 The Department of Defense is failing to keep
11 true faith and allegiance with our brave service
12 members. These failures are profound and have many
13 causes: bureaucracy, complacency, and indifference on
14 the part of the stewards of the system, the Judge
15 Advocates General; obsession with service prerogatives
16 and turf battles which fights against joint justice
17 when it is necessary and required; explicit and
18 implicit political interference on the part of our
19 elected representatives; careerism, fecklessness, and
20 back scratching on the part of Commanders who are
21 disposing of cases unjustly; and dysfunctional
22 organizational structures within DoD have made a
23 mockery out of the selfless service that millions of

1 brave Americans have given our country during this
2 decade-plus of war in which we have found ourselves.
3 Those who have been failed include the 50,357 recorded
4 wounded and 6,518 recorded dead that DoD directly
5 attributes to combat. Those numbers, as we shall see,
6 woefully under-represents the total casualties and
7 ignores the connection to criminal misconduct that
8 links your remit with a much larger and more troubling
9 picture.

10 We owe a sacred debt to our brave warriors
11 who literally put their lives on the line to execute
12 the foreign policy of the United States at the sharp
13 end of the spear. Major Donahue started the United
14 American Patriots because he knows the sting of a
15 country which turned its back on those Marines who
16 were left behind - and those who returned - in a prior
17 war. He has dedicated his life to ensure not another
18 man is forgotten - no matter the allegation, no matter
19 the circumstance.

20 I started the Innocent Warrior Project out
21 of a firm belief that the process of military justice
22 in the Department of Defense - particularly concerning
23 the criminal defense function - is woefully

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1 inadequate. From my experience trying scores of
2 courts-martial and observing hundreds of others,
3 military justice has become increasingly
4 bureaucratized in a manner directly contrary to the
5 ancient traditions of the profession of arms and our
6 more-recent but far-more-important Constitutional
7 traditions. The tradition of managing each case on
8 its individual merits evolved to balance the rights of
9 organization and individual, alleged victim and
10 alleged perpetrator; but the defense function has
11 fallen further and further into complacency and
12 mediocrity as the prosecution function has been
13 increasingly integrated and disproportionately
14 attended. So-called "Special Victim Prosecutors,"
15 ostensibly deployed to fight a largely imaginary wave
16 of sexual crimes "plaguing" the military, instead have
17 been redeployed to prosecuting combat-related
18 misconduct, further upsetting the balance. Cases are
19 currently managed within a framework which does not
20 acknowledge the unique aspects of combat-related
21 misconduct. Punishments are meted out with further
22 disregard to a nuanced and complex picture. Service
23 Members convicted of combat-related misconduct are

1 treated as common criminals, although the
2 circumstances that led them to their current position
3 were anything but common. Concern about political
4 fallout and adverse perceptions from allies causes
5 these high-profile cases to be treated like show
6 trials whose results are largely foreordained.
7 Haditha and the aborted prosecution of SPC Wagnon are
8 two excellent cases in point.

9 Our government is accountable - first, last,
10 and always - to our own People; and our People are
11 gravely concerned about the manner in which we are
12 treating our service members. I expect our political
13 leaders at the highest levels to be infinitely more
14 finely attuned to the sensibilities of the People than
15 those of us who labor in the vineyards of justice. We
16 would submit that it is no coincidence that this board
17 has been commissioned by the Secretary of Defense and
18 given its mandate. We trust this board is not
19 convened as cover-up or window-dressing, not here to
20 bury these important issues behind another layer of
21 bureaucratic deniability. We believe that there is an
22 inchoate sense in the Secretary that the People are
23 becoming restless and disillusioned. The military

1 justice system is being exposed; the politicians are
2 wise to be worried. In fact, the more we in the
3 United American Patriots and the Innocent Warrior
4 Project share with the American People about what is
5 happening regarding combat-related allegations of
6 misconduct, the more furious the People become. The
7 military services naturally focus on those of us who
8 are raising the alarm. After a lifetime of uniformed
9 criminal defense, I am used to being accused of "not
10 being a team player." But those of us yelling "fire!"
11 are not the problem. The harder right is for this
12 board to acknowledge the plain fact that there is a
13 fire; the easier wrong is to blithely accept the
14 assurances of the Judge Advocates General that there
15 is no fire ... and if there is, it is under control ...
16 and if it isn't, then the services can put it out ...
17 and if the services can't, then there is no fire. We
18 are not cranks or alarmists; we are tribunes of the
19 People who are willing to engage in the hard work of
20 putting the conflagration out. As the first President
21 Roosevelt observed, "Patriotism means to stand by the
22 country. It does not mean to stand by the president
23 or any other public official, save exactly to the

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1 degree in which he himself stands by the country. It
2 is patriotic to support him insofar as he efficiently
3 serves the country. It is unpatriotic not to oppose
4 him to the exact extent that by inefficiency or
5 otherwise he fails in his duty to stand by the
6 country. In either event, it is unpatriotic not to
7 tell the truth, whether about the president or anyone
8 else."

9 And this latent fury of the people which the
10 politicians first sensed, and then us? The only
11 reason the People are not more furious is because the
12 bureaucratic inertia is so great, the edifice so
13 large, that few consciously realize the magnitude of
14 the failure or the depth of the complacency. Let us
15 accept that there always have been - and always will
16 be - fifth columnists in our own intelligentsia
17 actively conspiring to undermine our service members
18 and portray our brave warriors in a negative light
19 whenever possible. But let us not say that this is a
20 "liberal" or "conservative" issue. The United
21 American Patriots - born and bred in Major Donahue's
22 North Carolina kitchen - are an unapologetic and
23 unabashed "traditionalist" organization, whose mission

1 statement speaks of "support[ing] and promot[ing] the
2 Judeo-Christian belief structure of family values, the
3 Sanctity of Human life and the Peaceful Freedom of all
4 mankind, and, the protection of all other Religious
5 persuasions that support and avow the same and whose
6 members accept and swear allegiance the Constitution
7 of the United States of America."

8 The Innocent Warrior Project is, frankly, a
9 more progressive, Oregonian organization, focused on
10 strategic reform of military justice and preservation
11 of civil liberties. As a Soldier, I can still borrow
12 an analogy from Major Donahue's beloved Corps: Our
13 organizations represent West-Coast Marine
14 sensibilities versus East Coast Marine sensibilities.

15 The last election showed once again a split
16 in a country that seems to be drifting further and
17 further apart politically. But we all love football
18 and we all love our brave fighting men and women. We
19 are one America and our organizations fight shoulder
20 to shoulder, just as our military heroes fight
21 shoulders to shoulder—regardless of whether he's a
22 Corpsman from South Chicago or a Pararescueman from
23 Wyoming.

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1 The United American Patriots has joined with
2 the Innocent Warrior Project to advance the goal of
3 working with the DoD and the military services to
4 reform and modernize the way in which allegations of
5 combat-related misconduct are managed from the initial
6 investigation through the acquittal of the innocent or
7 the release and reintegration of the convicted. We
8 are not naïve, and we acknowledge the need to have a
9 mechanism to investigate and vigorously prosecute
10 allegations of combat-related misconduct. We simply
11 cannot and do not accept that justice is served by
12 placing a thumb on Justice's scales.

13 The exigencies of combat blind casual
14 observers to the complexities of how allegations of
15 combat-related misconduct are born, investigated, and
16 then prosecuted. The media is looking for a simple
17 narrative they can sell as a 30-second sound bite on
18 the six o'clock news; and these cases are anything but
19 simple.

20 The United American Patriots is specifically
21 focused on combat-related allegations of misconduct,
22 while the Innocent Warrior Project, of which I am the
23 founder and head, is focused on more long-term reform

1 of the defense function within the Department of
2 Defense. We have joined forces to encourage reform,
3 but we cannot agree to meet DoD halfway. Reducing
4 injustice by 50% doesn't get us to an acceptable level
5 of injustice. We must extirpate injustice against our
6 brave service members wherever it is found and replace
7 broken systems with ones that acknowledge the singular
8 requirements of defending those who defend us.

9 We are working hard to engage and persuade,
10 because our warriors deserve nothing less than the
11 absolute best.

12

13 SECTION II

14 **Who are the United American Patriots (UAP)?**

15 The United American Patriots was formed in
16 2005 in response to the grave miscarriage of justice
17 and kangaroo-court-like proceedings that accompanied
18 the allegations against our Marines in Haditha.

19 The core values of United American Patriots
20 are Individual Liberty, Protecting and Preserving the
21 Constitution of the United States and our National
22 Sovereignty, the promotion of Free Enterprise,
23 National Defense, traditional American Values and the

1 proper education of our youth, all of which are
2 founded on the same Judeo-Christian principles upon
3 which our Nation, and representative form of
4 Democratic Government, was established. We believe
5 that elected officials should be required to live by
6 and under the same laws and statutes they pass for
7 American Citizens, and, that each American Citizen -
8 whether civilian or military - has inalienable
9 Constitutional Rights that must be assured and
10 protected at all times.

11 Among, but certainly not all inclusive, of
12 our missions is our focus on supporting and defending
13 the Constitutional Rights of members of our Armed
14 Forces and their Families in any process of the
15 Military Justice System; preserving and advancing
16 Veterans' rights and Benefits; supporting education
17 for Veterans' children; and providing encouragement
18 and direction to all and tiered assistance to some
19 based on members' individual circumstance and the
20 capability of United American Patriots.

21 We are focused on pursuing high standards of
22 Ethics and Morality in the Political Governance of our
23 great nation and its Military Leadership; advancing

1 the Ethical and unbiased Rule of Law to protect and
2 preserve our American way of Life, Liberty and the
3 Pursuit of Happiness; exposing and eliminating
4 corruption and wrong doing from our Body Politic in
5 government and the Military at every level; and making
6 known to the American people the same.

7 It is in furtherance of our Mission
8 Statement and our Purpose that we provide this
9 testimony today.

10

11

SECTION III

12

What is the Innocent Warrior Project (IWP)?

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As for the Innocent Warrior Project, we are
a private charitable organization whose mission is

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I. To provide reduced- or no-cost Defense
Services for innocent American Soldiers,
Sailors, Airmen, Marines, and Coast
Guardsman caught up in military justice
proceedings;

20

21

22

II. To advocate for better representation
for Service Members accused of Military
Justice violations;

1 III. To encourage and assist the Military
2 Services in following the law and their own
3 rules; and

4 IV. To advance the interests of all Service
5 Members in obtaining fair justice.

6
7 In construction, the IWP agrees with the
8 Secretary that the UCMJ is a brilliant system of
9 military justice. The UCMJ, in design, carefully
10 balances the interests of the individual Service
11 Member, victims and witnesses, and the Services to
12 ensure fairness in practice as well as good order and
13 discipline in the ranks. But much of the
14 implementation of the Code has been left to the
15 Services, which have a vested interest in advancing
16 Service interests—sometimes at the expense of Service
17 Member rights.

18 The surest example of this conflict of
19 interest is in the court-martial process. In Courts-
20 Martial, the Services generally select the judge, the
21 prosecutor, and the defense counsel. The Services
22 also control the appeals process. Each Service has an
23 "in-house" Trial Defense organization which provides

1 criminal defense representation to the members of that
2 particular Service.

3 Judge Advocates are assigned back and forth
4 between Administrative, Prosecutorial, and Defense
5 functions during their careers, always doing less and
6 less defense work as they are promoted into "position
7 of greater responsibility."

8 In other words, Judge Advocates who are
9 temporarily assigned as defense attorneys are expected
10 to fight zealously for their clients against the
11 Services that select, train, employ, evaluate, and
12 promote (or don't promote) these same Judge Advocates.
13 Tremendous pressure is placed on Judge Advocates in
14 Defense Counsel slots to "play team ball," which means
15 "fight hard, but not too hard."

16 Additionally, the respective Trial Defense
17 Services (or "TDS") of each Service require their
18 Defense Attorneys to provide a full range of
19 administrative defense services, thereby further
20 inhibiting their ability to concentrate on Court-
21 Martial defense.

1 For example, in Fiscal Year 2011, the Army
2 TDS employed more than 500 active and RC attorneys,
3 including 100 Army National Guard.

4 The caseloads for those Army Defense Lawyers
5 were as follows:

6 **General and Special Courts-Martial: 1,074**

7 **Administrative Boards: 1,823**

8 **Nonjudicial Punishment: 41,300**

9 **Military Justice Consultations: 20,836**

10 In other words, the average Judge Advocate
11 Defense Attorney in the Army handled over 58
12 administrative matters for every Court-Martial they
13 were able to try. They are overworked, under-
14 resourced, and beleaguered. The Services have an
15 inbuilt conflict of interest which inclines them to
16 provide *adequate* - minimally adequate -
17 representation, when excellence should be the
18 standard.

19 Dissidents within the TDS systems of each
20 Service have labored for decades to get their
21 respective Services to take criminal defense more
22 seriously, to innovate new approaches to defense, and
23 to alleviate the inherent conflicts of interest within

1 the system. The Military Services have generally
2 waited out, marginalized, or eliminated Judge
3 Advocates whose first priority was defending Service
4 Members.

5 Traditionally, the bureaucratic imperatives
6 of each Service's JAG Corps demand loyalty to their
7 particular Corps, to the Law, to their particular
8 Service, and then to our Country. Young counsel
9 quickly learn the bureaucratic imperatives of each
10 Service and either get out of the military or learn to
11 become "team players," thereby robbing the Services of
12 the capacity to reform internally. Those who leave
13 are marginalized as "inexperienced to the nuances and
14 requirements of service legal matters"; those of stay
15 do so only upon the sufferance of accepting the party
16 line. The system self-selects those who don't rock
17 the boat.

18 The creation of the Innocent Warrior Project
19 represented a decisive break with the inadequate
20 approaches of the past, a rejection of accommodation
21 with the Service bureaucracies which leave Service
22 Members under-represented, and a determination to
23 bring a better system into being.

1 Every Soldier, Sailor, Airman, Marine, and
2 Coast Guardsman who has been represented by a
3 uniformed lawyer has felt the conflict. Many do not
4 bother returning after an initial appointment in which
5 it becomes clear that their lawyer's interests are not
6 aligned with their own. Others only realize their
7 plight after receiving sub-standard Defenses, often
8 seeing fellow Service Members receiving better results
9 because they were wealthy enough to obtain private,
10 civilian representation at their own expense.

11 The unfortunate truth of our system is that
12 the Services have very little institutional interest
13 in providing service members the best defense
14 possible. In spite of Congressional intent, the
15 Services continue to look at criminal defense as a
16 jobs training program for inexperienced counsel, a
17 necessary evil, and a foil to prosecutors.

18 For example,

- 19 • The head of the Trial Defense Service in
20 each Service is hand-selected by the Judge
21 Advocate General of that Service. The Judge
22 Advocate General of each Service is
23 responsible for advocating for the

1 institutional interests of his or her
2 particular Service and supervises the
3 Prosecution function, as well.

- 4 • No one in the Military is allowed to
5 specialize as a Criminal Defense Attorney.
6 Instead Judge Advocates shuttle rapidly
7 between assignments in and out of Trial
8 Defense as "seasoning" for positions of
9 "greater responsibility." Defense Counsel
10 and their supervisors know that they will be
11 returning shortly to the "mainstream."
- 12 • Military Judges, the ultimate faces of the
13 Military Justice system, are hand-selected
14 by the Service's Judge Advocate General and
15 then stabilized and protected by the
16 Military Services, often serving years or
17 decades within their own Military
18 Occupational Specialty and enjoying explicit
19 protections built into Regulation. Defense
20 Counsel enjoy no such privileges.
- 21 • In order to further tilt the playing field
22 against Service Members, the Services have
23 created a cottage industry of "Special

1 Victim Prosecutors" and "Victim Advocates"
2 without adding commensurate resourcing onto
3 the side of Accused Service Members, a clear
4 violation of the UCMJ.

- 5 • Lawyers in the military get ahead by being
6 "team players." Prosecution is the surest
7 route to promotion, and "outside the box"
8 thinking is frowned upon ... and often subtly
9 punished.
- 10 • Provision of military criminal defense by
11 civilian lawyers is a multi-million dollar
12 private industry, even though Service
13 Members are entitled by law to free
14 representation by Military Counsel. Most
15 Service Members who can afford civilian
16 representation take it, even in the face of
17 the fact that TDS representation is free of
18 charge.

19 Let me be clear: Individual Judge Advocates
20 are - almost without exception - honorable,
21 professional, and decent people. But the Services
22 have an irreconcilable interest in turning a blind eye
23 toward the inherent conflicts within their systems.

1 The Military Services' responsibility, as they see it,
2 is to provide each Accused Service Member an adequate
3 defense, not an excellent one.

4 The Innocent Warrior Project respectfully
5 disagrees with the idea that our Service Members
6 deserve less than the best.

7 The Innocent Warrior Project believes that
8 Service Members should receive the full benefit of the
9 law without being forced to either pay crippling legal
10 fees out of their own pockets or rely on often-
11 incompetent Uniformed Defense Counsel randomly
12 assigned to them.

13 Therefore, the Innocent Warrior Project

- 14
- 15 • educates Accused Services Members about
 - 16 their options concerning criminal defense,
 - 17 • certifies Civilian Criminal Defense Lawyers
 - 18 and subsidizes their fees so that Accused
 - 19 Service Members are given real choices and
 - 20 fair defenses,
 - 21 • pressures Military Services to reform their
 - 22 approach to Military Justice, and

1 Sgt Larry Hutchins III
2 SGT Leonard Trevino
3 Cpl Marshall Macincalda
4 SFC Trey Corrales
5 SGT Evan Vela
6 Sgt Jermaine Nelson
7 Sgt Jose Nazario, tried under MEJA as
8 civilian for acts performed as combat Marine
9 1LT Michael Behenna
10 SSG Jess Cunningham
11 SGT Michael Leahy, Jr.
12 SGT Ryan Sullivan
13 PFC Andrew Holmes
14 SPC Adam Winfield
15 SPC Michael Wagnon
16 1st Lt Shawn Blair
17 SGT Darren Jones
18 PFC David Lawrence
19 SSG Calvin Gibbs
20 SGT Derrick Miller
21 SFC Walter Taylor
22 Sgt Johnny Joe Serna
23 Senior Chief Harvey Fisher

1 We will leave no man behind. Therefore,
2 over and above litigation support, we bear faith with
3 our incarcerated brothers-in-arms by continuing to
4 provide them monetary and emotional support long after
5 their last appeal has been considered. As a
6 particularly happy example, we learned last week that
7 SGT Evan Vela has been granted parole. We are proud
8 to have been able to provide monetary support to Evan
9 and Alyssa and their two little ones to help them
10 relocate to their new home and for Evan to begin his
11 new job.

12 It is our contention that allegations of
13 combat-related misconduct are dissimilar from -
14 indeed, quite the opposite of - "garden-variety"
15 rapes, AWOLs, and drug use for which the military
16 services' military justice apparatuses are designed
17 and structured. Combat-related misconduct must be
18 handled differently; it is different. A specific
19 example of this general concept was recently shared
20 with me by Dan Conway, a civilian court-martial
21 defense attorney. Dan pointed out from his experience
22 defending combat-related murder trials that the
23 "peacetime-standard" mandatory minimum for

1 premeditated murder unfairly binds panels from using
2 their proper discretion for combat-related
3 premeditated murder cases.

4 Let me share with this board my perspective
5 on top of Dan's. The only thing in which I have had
6 unwavering faith throughout my career as a court-
7 martial attorney - both in uniform and out of it - is
8 the good judgment and common sense of military panels.
9 In every case I have observed, when given the full
10 benefit of quality advocacy and our traditional rules
11 of practice panels have come to what I believe was a
12 legitimate result. That is not to say every result
13 has been favorable to my client as a defense counsel
14 or to the Government when I served a prosecutor or
15 chief of justice. But panels have invariably shown
16 good sense, compassion for both the accused and the
17 alleged victim, balance, and proportion.

18 In this regard, I also have to give credit
19 to our military judges. My experience has been that
20 military judges are much more careful and judicious
21 when they know a panel is watching them. But when the
22 Judges are not subjected to that important quality
23 control, I am concerned that justice begins to become

1 bureaucratized and judges slip into the eternally
2 dangerous self-regard to which all persons in power
3 are subject. On top of the risk of excessive self-
4 regard, military judges practice in front of
5 inexperienced, beleaguered young Captains who don't
6 know enough to check excess on the part of the
7 military judge. Structureally, this is an inevitable
8 side-effect of seeing court-martial advocacy as a
9 training ground for young Judge Advocates to prepare
10 them for positions of "greater responsibility." I
11 have always suggested - and both the United American
12 Patriots and the Innocent Warrior Project adhere to as
13 matters of dogma - that there is no more important
14 calling for a Judge Advocate than ensuring that
15 personal, individual representation is provided to
16 every military accused, regardless of the allegation.
17 This should not be a stepping stone to something "more
18 important," but that is exactly how the Services treat
19 it.

20 This deficit is particularly worrisome when
21 examining allegations of combat-related misconduct.
22 In this sense, it is important to be clear that
23 neither the United American Patriots nor the Innocent

1 Warrior Project would restrict the understanding of
2 combat-related misconduct narrowly. I was recently
3 informed that 18% of the Army is on psychotropic
4 medicine right now, with combat veterans out of
5 service representing an even higher percentage of
6 psychically-wounded warrior heroes. Substance abuse,
7 domestic violence, sexual misconduct, as well as
8 superficially-unrelated criminal allegations can very
9 often be traced back to psychic wounds. This doesn't
10 mean combat veterans deserve a "get-out-of-jail-free"
11 card; but the adoption of Veterans' Courts throughout
12 our land is a subtle indication of the dawning
13 awareness of the societal responsibility we accept
14 when we send brave young men and women into harm's
15 way. We would suggest this "social contract," once
16 honored by the warrior who goes to war for us, binds
17 our country for the rest of that warrior's life and
18 the lives of those who have supported him. Is this a
19 huge hidden cost that society must bear? Absolutely,
20 which is why the Framers tried to make it so hard to
21 go to war ... notwithstanding the anti-Constitutional
22 abrogation of our Congress in the recent decades of
23 that sacred responsibility. Nevertheless, by our

1 words and our deeds, the United American Patriots and
2 the Innocent Warrior Project have taken up a small
3 measure of that slack and tried to show our most-
4 abandoned warriors that our country still values their
5 service and their sacrifices. And let us not be
6 naïve: The way in which we treat their brothers- and
7 sisters-in-arms is closely observed by their fellow
8 warriors. Each case has repercussions throughout the
9 force that we are foolish to minimize.

10 We maintain that there is a need to handle
11 allegations of combat-related misconduct in a manner
12 befitting the unique circumstances service members in
13 combat face. We acknowledge that the credibility of
14 the United States as an international actor in on the
15 line based on what our brave service members do when
16 representing our country; but we also believe the
17 credibility of the United States government and our
18 military services amongst our own People is also
19 implicated by the way in which military justice
20 actions are handled. We would submit that the latter
21 is far more important.

22 Concerning combat-related allegations of
23 misconduct, we believe there is a profound failure on

1 the part of our Department of Defense and our elected
2 representatives to acknowledge the singular task we
3 are asking these heroes to perform and the singular
4 and unique environment in which they are asked to
5 perform it.

6 Moreover, post-conviction treatment of these
7 cases must be revisited and reformed to reflect the
8 unique nature of the occurrence of combat-related
9 misconduct. We give medals for valor—for service in
10 combat environments. We relieve the tax burden of
11 service members—for service in combat environments.
12 We award appurtenances and special insignia—for
13 service in combat environments. It seems only logical
14 that we manage allegations of criminal misconduct
15 differently for service in combat environments. It is
16 neither wise nor appropriate nor fair to force a
17 Soldier who killed wrongly in the heat of battle next
18 to a child-molesting Officer dentist. It is wise nor
19 appropriate nor fair to incarcerate SSG Calvin Gibbs
20 for several more decades when he is not the slightest
21 danger to anyone outside of a combat environment ...
22 assuming he was ever a danger to anyone in it. It is
23 neither wise nor appropriate nor fair to subject

1 clearly mentally ill men like SGT John Russell or SSG
2 Robert Bales to the death penalty when they are
3 clearly mentally ill from the combat experience they
4 suffered on our behalf and simply to mollify our
5 Afghan "allies" who are not partners in word or in
6 deed, nor is it right to hold any service member in
7 solitary confinement for five years pending trial.
8 Furthermore, we must reform post-conviction treatment
9 of those service members to honor their service and to
10 acknowledge our continuing obligation to them. And to
11 those who would say that the crimes of the few have
12 besmirched and dishonored the service of the many, we
13 would respond that we are not a vengeful or short-
14 sighted People and that the fact of service, no matter
15 how poorly the result ultimately obtained, binds us to
16 treat these men - and someday women - differently.

17 Members of the Board, in addition to my role
18 as a board member of the United American Patriots and
19 as founder and leader of the Innocent Warrior Project,
20 as a Reserve Judge Advocate and professional criminal
21 defense attorney I have a personal perspective on many
22 the cases you are now reviewing. For example, I
23 represented then 1LT Ramon Ligsay in the so-called 2/2

1 Stryker "Thrill Kill" prosecutions involving SSG
2 Calvin Gibbs and SPC Michael Wagnon. My client was
3 exonerated in the process, but I had to sit by and
4 watch SSG Calvin Gibbs be wrongfully convicted of
5 murder. We must assume a colossal level of credulity
6 on the part of the prosecutors in that case under the
7 direction of LTC Kevin Kercher to believe that they
8 believed the absurd, contradictory, and uncorroborated
9 story of the Judas, Morlock, upon which they based the
10 successful prosecution of SSG Gibbs and the subsequent
11 stillborn prosecution of SPC Wagnon. By the time SPC
12 Wagnon's trial was approaching, Morlock's litany of
13 deceit had finally caused the case to fall apart; but
14 that is no solace whatsoever for SSG Gibbs, who sits
15 in Leavenworth an innocent man wrongfully convicted
16 for acts that would not have gotten him an Article 15
17 in Vietnam or World War II, and would have seen him
18 awarded a Silver Star in the Philippine Insurrection.

19 We in the United American Patriots and the
20 Innocent Warrior Project noted with great appreciation
21 the testimony the board received from Mrs. Behenna in
22 your last meeting. United American Patriots are proud
23 to be funding 1LT Michael Behenna's appeal to the

1 Supreme Court to overturn the unconscionable finding
2 by the Court of Appeals of the Armed Forces that
3 service members in combat should have a different -
4 and lower - ability to defend themselves than
5 policemen discharging their duties on the streets of
6 America.

7 Lastly, I spoke easier about reforming post-
8 conviction management of those who are convicted.
9 Specifically, what we contend is that combat-related
10 misconduct is almost invariably linked to combat-
11 related psychic trauma. Those service members who
12 have done wrong still face a post-release life wherein
13 they have been taught that the military and society
14 have rejected them. It is foolish, destructive, and
15 counterproductive to stigmatize these men. We
16 believe, based on anecdotal evidence, that the overly
17 harsh and politicized treatment of combat-related
18 misconduct and the epidemic of suicides amongst
19 military personnel are linked. We have certainly seen
20 numerous instances in units where service members were
21 aggressively prosecuted that attrition among other
22 members of those units has skyrocketed.

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CONCLUSION

At the end of the day, we agree that a functioning system of military justice is absolutely necessary to preserve good order and discipline and to ensure the confidence of the people in their Armed Forces remains at its historically robust levels. However, we have noted in our years of existence and in our direct involvement with prosecutions across the services that the military justice system has been twisted to accommodate political concerns which should not "wag the dog" within a functional system of military justice. It is the contention of United American Patriots and the Innocent Warrior Project that combat-related misconduct is currently being mismanaged by the Department of Defense and we would very much like to engage with this board and with the military services to have a constructive dialog about reform of the system. Complacency and the "50,000 ft., General-eye" perspective we noted from the testimony of the Service Judge Advocate Generals will tell you nothing of the struggles of individual service members making life-and-death decisions in the span of heartbeats and then facing the ignominy and

1 intolerable dishonor of being judged in the safety and
2 comfort of a courtroom for those extraordinary
3 choices. We were completely unsurprised that the
4 Judge Advocates General of the military services
5 testified to you that everything within their
6 organizations is perfectly peachy and any problems
7 could be solved by simply giving those same Judge
8 Advocate Generals more authority and resources and by
9 not interfering with their wise and benevolent
10 stewardships. These are not evil or stupid men, but
11 they are certainly products of the environments that
12 selected, trained, groomed, and promoted them. I have
13 yet to meet a senior Judge Advocate who is not puzzled
14 by my unwillingness to pursue "career-enhancing"
15 positions in the JAG Corps. But I am not meant to be
16 a judge or a staff judge advocate or an instructor at
17 the JAG School—although those are all valuable and
18 important positions for those good souls who still
19 believe they can reform the organization from within.
20 We are meant to speak to this board and to serve as a
21 rallying point for those many, many dissidents both
22 within the service JAG Corps and the larger DoD who
23 are able to see that the administration of justice in

1 our military services has become dangerously
2 complacent.

3 As a West Point Plebe in 1987, I was
4 required to memorize a definition from 1879 that is
5 applicable still today:

6 The discipline which makes the soldiers of a
7 free country reliable in battle is not to be
8 gained by harsh or tyrannical treatment. On
9 the contrary, such treatment is far more
10 likely to destroy than to make an army. It
11 is possible to impart instructions and to
12 give commands in such a manner and in such a
13 tone of voice as to inspire in the soldier
14 no feeling but an intense desire to obey,
15 while the opposite manner and tone of voice
16 cannot fail to excite strong resentment and
17 a desire to disobey. The one mode or other
18 of dealing with subordinates springs from a
19 corresponding spirit in the breast of the
20 commander. He who feels the respect which is
21 due others cannot fail to inspire in them
22 regard for himself; while he who feels, and
23 hence manifests, disrespect toward other,

1 especially his inferiors, cannot fail to
2 inspire hatred against himself.

3 But it is not commonly known that General
4 Schofield, in giving his Definition of Discipline,
5 included it in a longer address to the Corps of
6 Cadets, an address to which I must give due credit to
7 Mr. J. Phoenix, Esq. for publicizing.

8
9 The very foundation of civil society is
10 mutual respect for individual rights. And
11 nowhere is such mutual respect more strictly
12 enjoined and rigidly enforced than in
13 military organizations. Without it, tyranny
14 on the one hand and disaffection and mutiny
15 on the other must destroy the efficiency of
16 an army.

17
18 The most odious of all forms of tyranny is
19 the tyranny of a mob; that is, of an
20 unlawful combination of many persons to
21 overawe an individual and compel him to
22 submit to wrong, or deter him from the

1 exercise of his rights or the denunciation
2 of those who have wronged him.

3
4 It is no coincidence that our military is
5 the strongest the world has yet known, just as it is
6 no secret that good people within an organization will
7 tend to blindly justify its actions as necessary no
8 matter how unfair or ill-considered those actions are.
9 The strength of our forces comes not from strength of
10 arms, but from strength of will. That will is derived
11 from free men and women fighting for something they
12 believe in so strongly that they are prepared to offer
13 the last full measure of devotion to its preservation.
14 It is for love - the purest love, love of one's
15 brother - that brave men lay down their lives. The
16 initiative and bearing of our junior officers and non-
17 commissioned officers, and those who emulate and
18 follow them, comes from this love and an inherent
19 confidence that we whom they protect will bear true
20 faith and allegiance with them when that faith is most
21 tested. We can do no less.

22 We thank you very much for your attention
23 and your work on this singularly important issue

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1 impacting with singular force on the credibility of
2 our Department of Defense in the eyes of our service
3 members and our People.

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