

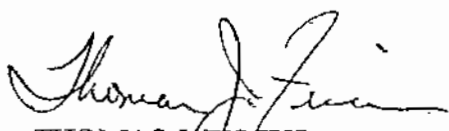
TO: SAF PERSONNEL COUNCIL  
SECRETARY OF THE AIR FORCE  
IN TURN

27 December 2004

FROM: MAJOR GENERAL THOMAS J. FISCUS

SUBJECT: Officer Grade Determination Board

I understand and accept the difficult task this board has before it. Weighing a person's mistakes against his merits is never easy. I want the board to know that I have always considered it an honor to have served the United States Air Force. During my 32+ years of service, I always did my utmost to give the Air Force and its people the best effort, innovation and ideas within me. Nothing was ever held back. Today, my son was competitively selected to enter the Army JAG Corps. During all the time this matter has been in process, I've never altered my faith that he should also serve as a JAG. I believe in it that much. I ask only that the board consider fully the good that I tried to do for the Air Force, its people and the nation during my tenure as TJAG.



THOMAS J. FISCUS  
Major General, USAF

TO: SAF PERSONNEL COUNCIL  
SECRETARY OF THE AIR FORCE  
IN TURN

FROM: DEFENSE COUNSEL (COL MCDADE)

SUBJECT: Defense Submission of Matters to Officer Grade Determination Board of  
Maj Gen Thomas J. Fiscus, USAF

## I. Introduction and Key Points

This Memorandum provides the Defense submission of matters for the consideration of the Officer Grade Determination (OGD) Board of Maj Gen Thomas J. Fiscus, USAF, The Judge Advocate General of the U.S. Air Force, IAW AFI 36-3203, 12 Sep 2003, para. 7.5.2.1.3.

The Board has a very large investigative file it will consider together with the Article 15 imposed on Maj Gen Fiscus. In so doing, the defense asks that the Board keep in mind the following points that are more fully set out in the body of this submission:

1. Maj Gen Fiscus has taken full responsibility for his actions and has sought to minimize the damage to the Air Force, the JAG Corps and the Air Force members involved. He has made no statements to the media. He chose not to drag out this process by demanding trial by court-martial, accepted non-judicial punishment and did not appeal that punishment. He has prepared a letter of apology to the Air Force and JAG Corps which he submitted to General Cook's staff for approval. It is attached and will be released upon completion of the OGD. Atch. 1.

2. Not one of the people who testified to the IG ever complained to the IG or MEO about their interactions with Maj Gen Fiscus prior to that interview and only one person said she was offended by his conduct. None of the four people who testified that General Fiscus exceeded their comfort level with his affectionate gestures ever told him of their discomfort to allow him to apologize. He intends to send each an individual letter apologizing for his actions.

3. The IG investigation and the subsequent Report of Investigation (ROI) are unduly influenced by an opinion from an Air Force psychologist. The investigators formulated their strategy and questions to prove the opinion to be true, rather than using a dispassionate and objective approach. Their goal is evident in the coached nature of the interviews of the witnesses, and in the investigation report itself.

4. Maj Gen Fiscus and his family have suffered great humiliation by the unauthorized release of portions of the IG investigation, notably the psychologist's opinion. The DoD "sources" that discussed the ROI violated the Air Force's commitment to all subjects of investigations, and to Maj Gen Fiscus specifically, not to disclose the nature of the allegations or report findings before completion of action on the

case. Those violations of the process have unnecessarily and permanently damaged Maj Gen Fiscus's reputation and future employment prospects and have caused immense suffering to him, his wife and family. Maj Gen Fiscus and his wife have entered individual counseling as well as marital counseling. They are committed to remaining married. Atch. 2.

5. Prior to becoming Judge Advocate General, Maj Gen Fiscus amassed an extraordinary 30 year record of accomplishment that culminated in his selection as Judge Advocate General, as shown in his official military records. Atch. 3. His tenure as TJAG was marked by principled stands on issues of critical national significance such as the treatment and interrogation of detainees and the rights of field commanders to receive unfettered legal advice from their Staff Judge Advocates. For these stands and others, he was subjected to immense and unrelenting pressure and disapproval. He was an unfailing stalwart in helping the Air Force Academy with its Honor Code and to overcome its problems regarding sexual assault, created the first training course at the AF JAG School on prosecuting sexual assault cases, served admirably on the Department of Defense Task Force on Domestic Violence and created the annual AF JAG School workshop on assisting victims of domestic violence in collaboration with several nationally recognized organizations and the Department of Justice. At the same time he was the champion of greater opportunities for minorities and women to enter the upper echelons of the JAG Corps leadership. He constantly worked 12-16 hour days and spent over 40% of his time carrying out a brutal travel schedule.

6. Maj Gen Fiscus has been punished by the Air Force through the Article 15 process and those results released to the media by HQ AETC. He has also been publicly humiliated through the intentional, unauthorized release of selective and misleading information to the media. Based on partial leaks of some of the allegations (many of which were disproved by the IG), many unnamed sources and anonymous JAGs felt the need to voice an opinion to the press as to the appropriate punishment, without knowing the facts in the case. Of particular concern are the opinions expressed to the media from DoD officials who have already decided that Maj Gen Fiscus should be retired as an O-6. General Fiscus and his family have faith that this Board will be more deliberate in its decision-making and appropriately consider Maj Gen Fiscus' 32 year record of extraordinary service to the nation.

The following submission is intended to assist the Board by providing another view of the specifics of General Fiscus's case. The defense acknowledges that General Fiscus made mistakes that were unbecoming for an officer in his position and for which he has been punished. That said, the extraordinary visibility of his punishment has had vastly more far reaching consequences than are warranted by his offenses. The defense respectfully requests that the Board place his misconduct in perspective relative to his exceptional contributions to the nation and permit General Fiscus to retire as a general officer.

As you review this case, you will see that Maj Gen Fiscus is a caring individual, who has been a well-respected leader and mentor throughout his spectacular career. His

supervisors identified him early for his outstanding duty performance as an officer and a JAG, and noted that he stood far above his peers. They challenged him with the toughest assignments whether in the field or at Air Force Headquarters offices of the Judge Advocate General. In those latter assignments, he worked with the Judge Advocate General to help shape the Corps into the superb legal force it is today. He was recognized as an exceptional leader when he was made the senior functional supervisor for all the JAGs in PACAF and ACC. He deployed to Riyadh, Saudi Arabia, in 1995, where he served as Staff Judge Advocate and Chief of Staff to the Commander of Joint Task Force-Southwest Asia, in charge of enforcing the no-fly zone. And most tellingly, he competed at two selection boards against a group of the best JAGs in the Air Force and was chosen over all others to be Deputy TJAG and then later The Judge Advocate General. In those jobs, he has served many general officers, providing them with exceptional legal support while building a strong JAG cadre for the Air Force and helping guide it through many monumental challenges.

His style of leadership and mentorship is to relate to other members as individuals, building a bond between them and the Air Force that inspires and pushes them to excel. Throughout his career, his personal attention has positively affected his fellow JAG members, resulting in successful colonels, senior NCOs and even civilian Air Force employees. He successfully fought for JAG Continuation Pay to help new accessions pay off their huge student loans in return for staying on active duty and serving the Air Force. He instituted JAG FLAG, a course to train JAGs and paralegals to provide legal services to commanders and members in deployed environments. He championed the cause of victims' rights in the wake of the Air Force Academy sexual assault situation, bringing positive recognition to Air Force processes among national victim advocate groups. He built an incredibly high morale in the JAG Corps, at the same time that we have more than 70 JAGs and paralegals deployed all over the world. He is universally hailed as a role model, an inspiration to his fellow JAGs, and a gentleman and a genuinely nice man.

This grade determination must weigh that 32 years of accomplishment and sacrifice against the behavior chronicled in the Report of Investigation (ROI) by the Inspector General (IG). The defense will show that Maj Gen Fiscus's record clearly outweighs the impact of any misconduct during the periods all of his grades through brigadier general. Obviously, his record as a major general now contains significant demerits. Nonetheless, taken as a whole, that record reflects extraordinary accomplishment on behalf of the Air Force and the nation and should not be easily cast aside for his conduct in his last grade -- conduct for which he has taken responsibility, been punished and had his future severely damaged.

## II. OFFICER GRADE DETERMINATION PROCESS

The Officer Grade Determination (OGD) Board is convened under the authority of AFI 36-2023, 14 Oct 1994, para. 2.2.3., to identify "the highest grade of satisfactory service." There is no further definition or explanation of how to determine what is "satisfactory." AFI 36-3203, Chap. 7, *Determining Retired Grade and Pay*, is similarly

unhelpful. In administrative matters such as these, the normal standard used is the "preponderance of the evidence standard." Sometimes that is explained as the "50% or more test." The defense proposes that Maj Gen Fiscus should be found to have served satisfactorily in each grade, unless you are convinced that 51% or more of the evidence supports a finding of unsatisfactory service. Stating it another way, the defense suggests to you that Maj Gen Fiscus should be found to have served satisfactorily in each grade, unless the unsatisfactory behavior is considered to outweigh all the satisfactory behavior during that time period.

### III. ADVERSE INFORMATION

This situation started with an anonymous complaint faxed to the Chief of Staff of the Air Force and former TJAG Maj Gen (Ret.) William Moorman. ROI, p. 1. The complaint accused Maj Gen Fiscus of carrying on romances with at least ten women. In order to make the allegations, the complainant may have broken into General Fiscus' unclassified government email account. The IG investigation concluded that most of the allegations in the anonymous complaint are false.

The IG investigated but found there was absolutely no evidence that Maj Gen Fiscus ever improperly used government funds and never committed any fraud, waste or abuse, such as use of official travel to further any relationship. The IG found there was never any preference or inappropriate official action taken by Maj Gen Fiscus regarding any JAG Corps member, regarding assignments, promotions or any other decision.

The IG investigation revealed that none of the women involved in the allegations investigated believed that Maj Gen Fiscus's conduct was serious enough to cause them to file a complaint. Additionally, many of the women involved in the allegations investigated told the IG that they didn't believe that Maj Gen Fiscus did anything wrong. Nearly all of the women took his hugging and pecks on the cheek to be friendly gestures and some of them reciprocated the same behavior. Absolutely everyone told the IG that Maj Gen Fiscus was a very friendly man, who was "a hugger," who would customarily give out hugs and occasionally kisses on the cheek as greetings or goodbyes, to people with whom he felt comfortable doing so. This was neither unusual nor sexist. Some witnesses testified his affectionate hugs were sometimes extended to men with whom he was comfortable enough to do so, and Maj Gen Fiscus has himself been hugged by other men, including General Cook, and women such as Col [REDACTED].

### IV. ARTICLE 15

General Cook, AETC/CC, received the ROI and was delegated authority to decide the appropriate disposition of the case. He imposed Article 15 non-judicial punishment on Maj Gen Fiscus on 21 Dec 2004. The Article 15 specifications include 8 specifications of violations of Article 133, *Conduct Unbecoming an Officer and Gentleman*, 1 violation of Article 134, *General Article*, for deleting emails and one for fraternization with TSgt Snider, and 1 violation of Article 92 for using government email for unofficial use. This is only a quick summary of the Article 15.



## V. DISCUSSION

Since the grade determination must evaluate whether Maj Gen Fiscus served satisfactorily in each grade, it will be useful to compare Maj Gen Fiscus's record against the conduct revealed in the ROI during his service in each grade.

### 1. 2<sup>nd</sup> Lieutenant to Lieutenant Colonel (June 1972 – March 1992)

Cadet Thomas Fiscus graduated on 7 June 1972 from the Air Force Academy with a Bachelors degree in computer science and his commission as a second lieutenant. He served in successive grades of 1<sup>st</sup> Lieutenant (1974); Captain (1975); Major (1982); Lieutenant Colonel (1987). He became a Colonel on 1 Apr 1992.

During that period of time, General Fiscus accumulated an incredibly impressive series of successes, accomplishments, service to his country and dedication to improving the Air Force and The Judge Advocate General's Department of the Air Force. He graduated with a Law Degree, with Honors, from Ohio State University in 1975. He joined the JAG Department and was assigned to Offutt AFB as an Assistant SJA from 1975-1976. He was given additional responsibility as Deputy SJA at Zaragoza AB in Spain, from 1976-1978. He was moved to Headquarters, USAFE, and served as Chief, Appellate Review Division, from 1978-1980. From there, he moved to DC for the first time. He started as a litigation attorney in the General Litigation Division from 1980-1983. Then-Major (s) Fiscus won the 1982 Albert M. Kuhfeld Award, as the Air Force Outstanding Young Judge Advocate of the Year. He was spotted as special, and hand-picked to be the Assistant Executive to the Judge Advocate General from 1983-1985. He next was given the closest job a JAG can have to being a commander, as a Staff Judge Advocate at Mather AFB, from 1985-1988. After a successful run as boss, he was brought back to DC to serve as Chief, Preventive Law and Legal Aid Group, 1988-1991. He was again hand-picked to come back to the TJAG's Office, this time to serve as Executive to the TJAG, from 1991-1993.

A review of these assignments shows that Maj Gen Fiscus was identified as a standout among his peers. Only the best are selected to serve as execs in the TJAG's Office. Likewise, only the best are given the highly-sought after jobs as staff judge advocate. In 1990-1991, he served as national President of the Judge Advocates' Association. As set out in his Legion of Merit Award (1988-1993), during this time period, he originated the "readiness law" concept, which revamped the mind-set by which legal offices prepare for deployment, and as author of several legislative initiatives, he secured significant tax relief, reemployment rights for reservists and other personal benefits under the Soldiers and Sailors Civil Relief Act for personnel deployed to or serving in DESERT SHIELD/STORM. As exec for TJAG, he was point man for a comprehensive study delineating roles and responsibilities between the JAG Department and the AF General Counsel's Office, resolving a divisive dispute between the two. He also fashioned a reorganization of the legal personnel on the Air Staff and Air Force Legal Services Agency, a reorganization which has endured to the present day.

As evidenced by the letter of Maj Gen (Ret.) Morehouse, then Lt Col and Colonel Fiscus stood head and shoulders above his peers. For this demonstrated performance and talent he was challenged with bigger jobs and ever greater responsibility and the increasingly more difficult tasks and decision-making they demand. He excelled and succeeded in all his taskings, opening up a time of even greater responsibility and service. Atch. 4.

Col [REDACTED] met then-Lt Col Fiscus while he was assigned to the Legal Assistance Division and she was in International Law. She was a major at the time. She stated that she spent time alone and with her fiancé with Lt Col Fiscus. She has known him well since that time and he never acted inappropriately. She never dated him. And she has never seen nor heard of General Fiscus acting inappropriately. ROI, Ex. 17.

There is no adverse information in the IG's ROI that occurred during this time period. This record of exemplary service is unequivocally "satisfactory."

## 2. Colonel (April 1992 – April 1999).

Colonel Fiscus's service was so meritorious that he was selected below the zone to the grade of colonel – something almost unheard of in the JAG Corps. He was selected to attend National War College from 1993-1994. He was then assigned to be the Staff Judge Advocate at 15<sup>th</sup> Air Force, from 1994-1996. During this time period, he deployed from January to April, 1995, as Staff Judge Advocate to the Commander, Operation Southern Watch, Joint Task Force-Southwest Asia, Riyadh, Saudi Arabia. During that deployment, he was selected to also serve as Chief of Staff to the Commander. He followed up with a tour as Staff Judge Advocate, HQ PACAF, from 1996-1999.

During this period, Colonel Fiscus developed a revolutionary Numbered Air Force case management program that became the Air Mobility Command standard, enhancing the effects of military justice on combat readiness. His Legion of Merit Award (First Oak Leaf Cluster), 1994-1999, also states that he designed and implemented the first-ever wing legal office readiness assessment process, which provided a systematic method to identify and fix resource and training shortfalls. Leading the first joint Pacific Command sponsored legal exchange team with New Zealand since 1985, Colonel Fiscus significantly increased judge advocate participation in combined/joint exercises.

As a colonel serving as SJA in successively bigger jobs, Colonel Fiscus was an inspirational leader and mentor to many judge advocates. He also cultivated friendships with many people inside and outside the Air Force. Ms [REDACTED] is a retired Air Force O-5 who was identified in the anonymous complaint as a paramour of General Fiscus. Major General [REDACTED] is her former husband. ROI, Ex. 8, p. 1. She and Maj Gen [REDACTED] and the Fiscuses are friends to this day. Ms [REDACTED] said she often spent time with both "Tom and Carolyn" together and sometimes "Tom alone." She stated that at no time, in any grade, has General Fiscus ever made any romantic or

sexual advance toward her. ROI, Ex. 8, p. 9. She confirmed that he hugged her, kissed her on the cheek and on the lips in greeting and goodbye, and that it was "not a big deal." ROI, Ex. 8, p. 10. Even though the Investigating Officer asked a series of questions challenging Ms [REDACTED] opinion, she held firm that Colonel and later General Fiscus always acted like a gentleman, even though he was outwardly affectionate toward her. ROI, Ex. 8, p. 10-11. Ms [REDACTED] stated that as a woman in the military, when she wanted to avoid hugs from a male general, she stuck her arm out straight and shook his hand. ROI, Ex. 8, p. 12. Ms [REDACTED] stated the woman has to be clear as to what is acceptable in the relationship, for example, shaking hands versus hugging. ROI, Ex. 8, p. 12. But clearly, she had never had a problem with General Fiscus's behavior.

Col [REDACTED], the current exec to TJAG, testified that "General Fiscus kind of establishes friendships. I mean, it's not a . . . cold relationship where he keeps everybody at arm's length. Okay? He kind of, he is, the word you used was gregarious and all of that." ROI, Ex. 11, p. 7. Another JAG officer, Lt Col [REDACTED] told the IG that Colonel Fiscus established those friendships with a hug or a pat on the back, always in a gentlemanly manner. ROI, Ex. 9, pgs. 2, 4, 5.

Lt Col [REDACTED] worked at HQ 15<sup>th</sup> AF while Colonel Fiscus was there. She never saw him act in an inappropriate manner. Atch 5 and ROI, Ex. 16. She said he was an extremely open and warm person, who greeted individuals with a quick hug and sometimes a peck on the cheek. She didn't see nor did anyone ever mention Colonel Fiscus acting inappropriately.

After his first marriage ended in 1989, Colonel Fiscus was single until 28 May 1994. Lt Col [REDACTED] told the IG she and Colonel Fiscus spent what she called a "romantic" weekend together in August 1993. They had previously met in 1991 during an official TJAG visit to Turkey. It was a one-time thing. They were both single. They did not date each other after that, but maintained an infrequent email correspondence. As a student at National War College at that time, Colonel Fiscus had no impact on assignments, promotions and no supervisory responsibilities over Capt [REDACTED]. She testified he has never pulled strings for her.

Upon his marriage to his present wife, Carolyn, General Fiscus moved with his new family, including then teenagers [REDACTED] and [REDACTED] to HQ 15AF, in June 1994. He later adopted his step-children.

The IG concluded that during this time period General Fiscus made a sexual advance toward then-MSgt [REDACTED]. The conclusion is based solely on SMSgt [REDACTED] testimony, which is very unclear as to dates and specifics. ROI, Ex. 12. She was certain she was stationed at Osan AB from October 1998 to 1999. ROI, Ex. 12, p. 13. During that time, she said she was speaking to Colonel Fiscus at a social event, a dinner. She remembers him talking about his family and she talked to him about troubles with her step-son. Ex. 12, p. 9. She says they were alone later, but not where. She says there was no kissing, no touching, no sex, maybe a hug. She told the IG that the SJA, Colonel [REDACTED] came in, and that was the end of it. Pages 9, 10, 11.



The IG interviewed Colonel (Ret.) [REDACTED], who did not remember ever seeing SMSgt [REDACTED] alone with Colonel Fiscus. ROI, Ex. 76, p. 2. She did not recall seeing her in Colonel Fiscus's DV quarters. She also said she never saw inappropriate activity between the two and never saw Colonel Fiscus in any compromising situation nor heard of any. SMSgt [REDACTED] was clear in her interview that there was no physical contact between Colonel Fiscus and her (she says so repeatedly over the course of pages 9 to 11). Also, Colonel [REDACTED] who supposedly could corroborate the story, does not recall it ever happened. This incident, if it truly happened, can only be considered to be a non-incident, as there was no touching except maybe a hug, no kissing, no groping, etc.

During this time period, the IG also stated that Colonel Fiscus hugged and kissed Capt [REDACTED] and told her she had pretty hands, which "upset" her. ROI, IV. Chronology, p. 6. The defense takes issue with that characterization of Capt [REDACTED] as upset. In her interview, Maj [REDACTED] does say Colonel Fiscus kissed her and remarked that Maj [REDACTED] had pretty hands. However, at the time, she said she "honestly didn't think too much about it." ROI, Ex. 28, p. 1. She stated that years later, when he visited a base at which she then worked, she did not feel a need to avoid being alone with him. Ex. 18, p. 8. In fact, reading her interview as a whole, it seems Maj [REDACTED] was never bothered by Colonel/General Fiscus's conduct until other people told her she should be, Ex. 18, p. 17, some of whom could possibly be the investigating officers. Bottom line is, she told the IG she was not upset at the time this "incident" occurred in 1999.

The IG's review of Maj Gen Fiscus's email files found a few emails from Ms. [REDACTED] during this time period, in which she mentioned that she had feelings for him. He invited her to his promotion party, and she briefly mentioned in her emails about being jealous and said she cared about him. The IG pointed out these specific parts. However, in order to understand the relationship between Maj Gen Fiscus and Ms. [REDACTED], one must read all her emails in the ROI. They reveal that the two have been acquainted since they were on active duty together at Mather AFB in the mid 1980s. In their emails, they talk about their spouses, children, jobs, home repairs - everything friends talk about. As Ms. [REDACTED] is a civilian, there is nothing inappropriate about Colonel or General Fiscus having a friend who is also a female. In other email included in the ROI, she invites General Fiscus and his wife Carolyn to her annual Christmas party. The specific emails that occurred during this time period concern him inviting her to his promotion party, getting directions, asking for a recommendation for a good hotel, etc. She planned to bring her family and make a trip of it. This interpretation of the two as friends is supported by the IG's interview with Ms. [REDACTED]. In that interview she stated in no uncertain terms that there was never a romantic or sexual relationship between the two of them. She stated the two had a friendship based on their intellectual exchange of ideas and debates. Seen from the perspective that these two were and are old friends, the emails do not seem intimate or romantic at all. They were friendly emails, with Ms. [REDACTED] perhaps wistfully expressing her affection for Brigadier General (Sel.) Fiscus, but never referring to an improper or sexual relationship.

Considering all of then-Colonel Fiscus's accomplishments, one can see he had a distinguished career during this time period. He began as one of the top percent of the JAG Department, a below the zone colonel. He finished as truly one of the elite, being selected for brigadier general. His accomplishments along the way documented in his record were extraordinary. Compare that with the adverse information during this time period, described above. The only thing of any note is that he had a romantic weekend with a single, female JAG that he did not supervise, while they both were single. Otherwise, he talked to MSgt [REDACTED] about their families, received a few mushy emails from his friend Ms [REDACTED] and hugged and kissed Maj [REDACTED] on the cheek (who was not bothered by it at all until in September of this year she was induced by the IG investigators into believing that these minor contacts were part of some plan). Weighing this against his record for this time period, one can only conclude that then-Colonel Fiscus served satisfactorily in the grade of colonel.

### 3. Brigadier General (May 1999 – February 2000).

From February 1999 to 2000, Brig Gen Fiscus served as SJA of HQ Air Combat Command. He then moved up to become the Deputy TJAG from February 2000 – 2002. In February 2002, he assumed his present position as TJAG for the Air Force. His last Distinguished Service Medal covers the period February 1999 to 2002. During this period of complex legal challenges and momentous events, his unflinching leadership, sound judgment, personal and professional integrity, and unwavering dedication to duty were instrumental in meeting the demands of Air Force missions worldwide. At ACC, he oversaw the smooth functioning of over 30 subordinate legal offices. As Deputy TJAG, he oversaw the development of Air Force JAG doctrine, and publication of the Department's first comprehensive vision statement and enumeration of its core competencies. He led teams for the SecAF to examine the AF homosexual policy training program, the USAFA Honor Code and discharge process. He was also the Air Force's point man on the Defense Task Force on Domestic Violence, which led to new recommendations to the Secretary of Defense regarding policy and legislative initiatives to address domestic violence.

During this time period, now-Brigadier General [REDACTED] was Deputy SJA at HQ ACC/JA. During her time there, she never witnessed Col or Brig Gen Fiscus engage in any inappropriate behavior toward women, nor did he ever behave inappropriately toward her. She did not hear about any improper behavior or unprofessional relationships, nor did anyone ever approach her to report any such behavior. Atch 6. Brig Gen [REDACTED] is currently the SJA at U.S. TRANSCOM and Air Mobility Command.

Colonel [REDACTED] also worked for Brig Gen Fiscus during this time. She told the IG that she really admires and respects Gen Fiscus. ROI, Ex 5, p. 3. She says she will often give him a hug and a kiss when she sees him and his wife, and that he will give her a hug. She told the IG she's been behind closed doors with him many times and he never behaved inappropriately. She said he's a gentleman. She is currently the SJA at Travis AFB.

Lt Col [REDACTED] was assigned to civil law at HQ ACC/JA, when Brig Gen Fiscus was SJA. She also filled in as exec. During this time, she frequently saw Brig Gen Fiscus. She said he was a model professional at all times. She never observed him say or do anything suggestive or inappropriate to anyone. She said Brig Gen Fiscus is a "people person" who would engage people in conversation out of a genuine concern about everyone. During conversation, she says, Brig Gen Fiscus would often lean close to the other party, place his hand on the middle of an individual's back, or touch a forearm in making a point. She described this as "fatherly" and said the "touching was never of an intimate or sexual nature." He acted the same as other gregarious co-workers of hers. Atch 7.

TSgt [REDACTED] testified that though she intended to separate from the Air Force, Colonel Fiscus convinced her to remain on active duty. He began a mentoring relationship with her that lasts to this day. The IG closely examined this relationship, looking for sex, but found the relationship was completely un-romantic and non-sexual. Specification 2 of Article 134 of the Article 15 alleges the email exchanges between the two to be inappropriately personal. The specification also states that General Fiscus permitted her to use unduly familiar names. A close examination of the emails shows that TSgt [REDACTED] always addressed Gen Fiscus as "Sir" in her emails, but sometimes closed with "vr [REDACTED]" "x" or "xx." ROI, Ex. 60. When asked to explain by the IG, she said she maybe was "not as military..." as she should be. ROI, Ex. 38, p. 4-5, and she firmly stated there was no romantic or sexual relationship with General Fiscus.

Lt Col (Ret.) [REDACTED] has known Maj Gen Fiscus since they worked together at Mather AFB in 1985-1986. She was his deputy. Ms [REDACTED] told the IG she "always viewed him as a good friend and that's it." ROI, Ex. 13, p. 2. The IG's evidence shows that during this time period, there was email communication between the two. In July 1999, then-Brig Gen Fiscus emailed her and offered to meet her in her office with an "olive branch." The next email was sent in December 1999 from Ms [REDACTED] to Brig Gen Fiscus, telling him she was moving to Arlington. That's all. Nothing else in this brigadier general time period concerns Ms [REDACTED].

The IG discussed whether during this time period, in December 1999, Brig Gen Fiscus was alone with MSgt [REDACTED] in a VOQ room at Nellis AFB. The IG discussed whether they kissed and he steered her toward the bedroom. There is no evidence that this happened except for SMSgt [REDACTED] testimony, which is not corroborated by any other evidence. Further, her testimony is uncertain and unspecific. SMSgt [REDACTED] told the IG she took a Santa suit over to Brig Gen Fiscus's room so he could change into it and play the role of Santa at the JAG Christmas party. ROI, Ex. 12. It is only natural that he would go to the bedroom to change into the Santa suit, thereby explaining the bedroom memory. As far her memory of some sort of kissing, all the witnesses interviewed acknowledged he hugs and may kiss someone he knows. A hug from him has no illicit meaning to anyone. SMSgt [REDACTED] said she was flattered, not offended. All in all, it's just as possible that she misunderstood Brig Gen Fiscus's "touchy feely" style for a romantic overture, rather than just being friendly. That is consistent with his later

email stating that "I apologize if you were made to feel that I had any expectations of you," ROI, Ex. 43, p. 8., which he sent because he had no expectations of her at all. Her memories are consistent with a misinterpreted hug and kiss. The lack of corroboration means that we have no way of judging why SMSgt ██████ testimony is so uncertain. There is no way to determine if she is biased for some reason, or simply remembers inaccurately, or whether the event was just too long ago and not significant enough to make a lasting impression. SMSgt ██████ told the IG she felt she took care of the situation on her own by not letting anything happen. She did not report it at the time, and now we are in the situation of her not being able to recall with certainty what did or did not happen.

The ROI's Chronology, ROI, IV, shows entries during this time frame concerning MSgt ██████ and an entry indicating he invited Capt ██████ to have a drink with him and Col ██████ in his DV quarters. Her interview makes it plain that she was his escort officer during an Article 6 visit (official SAV), and dropped him and Col ██████ off at the DV suites. As a courtesy, she was invited to join them, she drank half a drink and left. That was it. The other entries during this time period include emails with Ms ██████, Ms ██████, to Maj ██████ and Ms ██████. The emails discuss topics such as having lunch, his promotion ceremony, and other innocuous topics. For example, he told Ms ██████ he was sorry he did not get to spend more time with her at his promotion ceremony. He offered to meet Ms ██████ at her office to talk, to offer an "olive branch." These emails contain nothing out of the ordinary.

A fair reading of the IG's ROI for this period shows that the only suggestion of inappropriateness concerned MSgt ██████ at Christmas 1999. The only support that this occurred at all is SMSgt ██████ uncertain testimony. The hint of inappropriateness with inviting Capt ██████ for a drink with Col ██████ present and in the emails is not supported or justified. Those facts can just as easily be interpreted to reach a conclusion they were totally innocent. There is no basis to conclude anything untoward happened.

Weighing this slight information against his record of accomplishment during this time period, one must conclude that the outstanding accomplishments evident in then-Brig Gen Fiscus's record describe service as a brigadier general that can only be considered vastly better than "satisfactory."

#### 4. Major General (March 2000 to present)

Maj Gen Fiscus was promoted to two-star general on 1 Mar 2000. During this time frame, Maj Gen Fiscus was involved in some incredibly high-profile legal issues. Lt Gen John W. Rosa, Superintendent, US Air Force Academy, submitted a statement describing some of that work. Atch 8. He stated that Maj Gen Fiscus unstintingly supplied legal personnel to assist the General Counsel and the IG to ensure the most possibly comprehensive reports on the USAFA sexual assault investigation. He wrote that "Tom also oversaw the retooling of the initial UCMJ indoctrination program for new cadets to one that gives the incoming cadets a better comprehension of their rights and obligations. The SECAF has repeatedly commented on the value of this initiative." Lt



Gen Rosa remarked that Maj Gen Fiscus has supported the studies and programs subsequent to the investigation with manpower, and that he personally served on the USAFA's Executive Steering Group. He has also personally visited the USAFA in order to teach cadet classes, mentor the DFL faculty and USAFA/JA personnel.

It was also during his service as TJAG that Maj Gen Fiscus voiced his opinion regarding the treatment and interrogation techniques used on the detainees in Guantanamo Bay. He was also instrumental in pushing for commanders to be able to receive unfettered legal advice from their JAGs. He successfully fought for JAG Continuation Pay, he instituted JAG FLAG to prepare JAGs and paralegals for deployment and championed victims' rights. Morale in the JAG Corps has never been higher, and the Corps is giving unprecedented support to deployed and home-station commanders around the world.

Ms [REDACTED] worked with him on the Defense Task Force on Domestic Violence beginning 2000. She met with Maj Gen Fiscus often as they worked to increase accountability for offenders and the complex issues surrounding victim confidentiality. She "never doubted his concern for victims of [domestic] violence." He told her that "the Air Force was the best client a lawyer could have." Atch. 9.

Chief Master Sergeant [REDACTED] submitted a statement in which she stated that she worked closely with Maj Gen Fiscus and he never touched or spoke to her in a way that made her feel uncomfortable. Atch 10.

The relationship with Maj [REDACTED] was charged in Specification 1 of the Article 15 as an unprofessional relationship, exchange of intimate emails, and the pursuit of a romantic or sexual relationship outside of marriage. Maj [REDACTED] testified to the IG under orders after being granted testimonial immunity. She testified that her relationship with Maj Gen Fiscus began as a mentorship, after she invited him out for a drink and a mentoring session. The relationship was never consummated by sexual intercourse. In the face of tough questioning by the IG investigators, she testified under oath that she and Maj Gen Fiscus were together alone in her home on two occasions, and that they were physical - she sat in his lap, kissed him, they cuddled. She was adamant that they did not have sexual intercourse or oral sex and that the two of them were never naked together. She told the IG there was no sex. There is no evidence at all to contradict her testimony. ROI, Ex. 31.

However, the evidence does show an unprofessionally familiar relationship between the two. She said over the course of time she fell in love with him for a while, then during her tour in Germany for two years, the ardor cooled. It is clear that she felt romantic thoughts towards him, they are spelled out in her emails to him. She called him by pet names or call signs in her emails, and he allowed her to do so. She closed her emails with "hugs and kisses," "XOXOXO," and he allowed her to do so. She called him sweetie, and he allowed her to do so. She thought of him as a friend, just hanging out together, and he allowed her to do so. ROI, Ex. 31.



The IG investigated to see if there were any inappropriate official consequences caused by this relationship, and found none. Maj [REDACTED] assignments were handled in the normal course of business. Maj [REDACTED], who was interviewed by the IG as a witness against Maj Gen Fiscus (in Specification 2 discussed below), handled the O-4 assignments. She said Maj Gen Fiscus did not influence Maj [REDACTED] assignment in summer 2004 to JAA. All the witnesses agreed she is properly qualified for that job. She is still working there, even after she has accused the civilian SES head of JAA of seeking a romantic relationship with her. ROI, Ex. 31.

In Specification 2, Maj Gen Fiscus is charged with kissing Maj [REDACTED] on the lips. In her witness statement, Maj [REDACTED] told the IG that she was alone with Maj Gen Fiscus a lot. She stated he hugged her in the hallway, but she did not consider it to be a sexual advance. ROI, Ex. 18, p. 20. She stated he did kiss on the lips, for a fraction of a second. Ex. 18, p. 21-22. But she said, she never felt he was coming on to her. Ex. 18, R. 21. That single kiss was charged in the Article 15. Finally, their communications were always professional, using "Sir" or "Gen Fiscus." Ex. 18, p. 23.

In Specification 3, Ms [REDACTED] testified to the IG that she was having personal problems caused by an abusive former boyfriend when she worked as DJAG's secretary. She sometimes would show up at work with bruises from her boyfriend. ROI, Ex. 19, p. 17. It was affecting her work performance. Maj Gen Fiscus took the time to mentor and counsel her through her emotional difficulties. There were never any romantic gestures. ROI, Ex. 19, p. 3. Occasionally, they would have lunch together in the Pentagon to chat and see how she was doing. She considered it a good working relationship. He was not her supervisor. She was transferred to another job later on. Subsequently, she said she dropped off a package at his office, and he hugged her and kissed her on the lips. He often had hugged her in greeting, and once had hugged her and pecked her on the cheek. This time it was a hug and peck on the lips. She said she pulled away, made an expression on her face, and left. He never did it again, and she didn't feel it was sexual in nature. Ex. 19, p.20-22.

Maj Gen Fiscus was charged in Specification 4 of the Article 15 with massaging the neck of, and placing his hand on the knee of, Maj [REDACTED]. Maj [REDACTED] testified to the IG that Maj Gen Fiscus hugged her a few times over the course of years. Maj [REDACTED] testified that some years ago, she was diagnosed with Lupus and was thinking about separating. Maj Gen Fiscus took time to advise her and convince her to remain in the Air Force. He and her husband are friendly, and Maj Gen Fiscus even tried to help work an assignment for her husband [REDACTED] to the Test and Evaluation Wing at Eglin AFB and the corresponding joint spouse assignment for her. During this emotional conversation, he hugged her. She didn't think a thing about it. ROI, Ex. 28, p. 4-5.

Maj [REDACTED] was assigned last summer to the Pentagon. During this tour, she saw Maj Gen Fiscus in the hallway of the Pentagon. The two were talking about the White House and Washington Monument and "he put his hand on my neck and started massaging my neck a little bit." She went on, "And I didn't think about it really too much," and "it was very quick." On another occasion, he gave her a ride, during the day,

from Bolling AFB back to the Pentagon after a meeting. During the drive in his Corvette, she said he put his hand on her left knee long enough to make her feel uncomfortable. ROI, Ex. 28, p. 9. She remembered to the IG that the car was an automatic shift and that he did not squeeze or rub her knee.

It is important to consider these portions of Maj [REDACTED] statement in the context of her entire statement. It appears from the interview that Maj [REDACTED] did not see Maj Gen Fiscus's behavior as alarming, inappropriate or sexual. ROI, Ex. 28, p. 10-12. The neck and knee touchings did make her feel uncomfortable, p. 13. But she never told him so, p. 15. She said it was "preposterous" that Maj Gen Fiscus could think she would want any relationship other than a professional, mentoring relationship, p. 12. She never thought he was doing anything wrong until other people told her she had been wronged, p. 17. The IG investigators' questions hinted that each incident with Maj Gen Fiscus fitted into some scheme or plan, "IO: You started putting it all together?" on page 17. She couldn't remember exactly where he put his hand, so the Article 15 charged this as "at, on or near her knee." The defense proposes that the incident was not so traumatic as the IG sets it out to be if she can't even remember clearly where he put his hand. The investigators spoke to Maj [REDACTED] before the taped interview, as shown on page 17, "IO2: When we talked once before you said..." Apparently after that off-the-record discussion, Maj [REDACTED] struggled mightily with the idea that though she never thought Maj Gen Fiscus did anything wrong and was being friendly and helpful, the investigators told her that Maj Gen Fiscus was grooming her for romance, p. 10, 11, 12, 14, 15. One can conclude from the uncertainty evident in her entire interview that she is still not completely convinced that Maj Gen Fiscus was not acting in a friendly, helpful and mentoring way with her. The touching of the neck and knee did make her feel uncomfortable, but there is no evidence, and Maj [REDACTED] is not even sure, that there was anything sinister about it.

Maj Gen Fiscus was charged with an unprofessional relationship of inappropriate familiarity with Maj [REDACTED] in Specification 5 of the Article 15. Maj [REDACTED] occasionally ran with Maj Gen Fiscus on the weekends. As his former exec, she was trying to help him get into and stay in shape. In their email correspondence, they used email call signs, "Stinky" and "Cootie." However, Maj [REDACTED] testified she always addressed him by "General" or "Sir" when she spoke with him. When they ran, sometimes Carolyn Fiscus would join them. Maj Gen Fiscus shouldn't have allowed the use of the email call signs but not one individual interviewed had ever even heard of those terms. There was no unprofessional appearance created by the use of the terms because they only existed in cyberspace and were never used in public. There could not have been much of an appearance problem created by running with Major [REDACTED] too often, since his wife was fully aware of everytime they ran together and sometimes accompanied them on the runs. The IG did not find evidence of preferential treatment. The IG did find an email in which General Fiscus intended to give her the results of the Air Force Intern selection board as soon as he knew it, but there is nothing to indicate that he would have received the information any earlier than the official release.

Specifications 6, 7 and 8 of the Article 15 involve inappropriate intimate emails, during the time Maj Gen Fiscus was a major general, with three civilian women. Specifically, the women named are Ms [REDACTED], Ms [REDACTED] and Ms [REDACTED]. All three are friends of long standing. They did not tell the IG that Maj Gen Fiscus's emails or attention were unwanted or made them feel uncomfortable. None of them work in the JAG Corps, so he had no impact on their professional lives and his relationship with them had no impact on the Air Force or the JAG Corps. None of them voiced any complaint about General Fiscus at any time and all were emphatic that there was no sexual relationship.

Specification 1 of Article 134, UCMJ, charges that Maj Gen Fiscus deleted some emails after being informed that someone filed a complaint against him. It is not clearly set out in the ROI or the Article 15 which emails were allegedly deleted or when they were deleted, or if and how they were relevant to the investigation. All these unknowns make a defense against this allegation to be impossible. Maj Gen Fiscus did not contest this or quibble with it during the Article 15, and does not do so now. We do know that the IG easily got copies of the emails from the server and that they constituted the bulk of the material of this investigation. The technique of getting copies of emails from email servers is well known to all law enforcement -- police, computer technicians, the IG and JAGs. There was never a chance that those emails would be unrecoverable.

Specification 2 of Article 134, UCMJ, charged fraternization with TSgt [REDACTED] by exchanging inappropriately intimate emails and using unduly familiar names. As discussed above, Maj Gen Fiscus's mentoring gave TSgt [REDACTED] motivation to stay on active duty with the Air Force. The IG looked hard to find a sexual relationship between them, but couldn't find any. Major General Fiscus allowed her to sign her email "x" and "xx," which he shouldn't have, but she never addressed him in the email in a disrespectful way. He also emailed without the professional separation between ranks one would expect, but this was never the case in public. There was witness testimony he visited her to say goodbye when she PCSed. She testified that was all that happened, he came by and said "goodbye" and may have hugged her, she didn't remember. She also testified that her son was with her. ROI, Ex. 38, p. 9. An objective view of the IG's evidence reveals there was nothing more than that to the relationship.

Finally, the single Specification of Article 92 charges that Maj Gen Fiscus should not have used government email to make some of the communications that form the basis of the other Article 15 specifications. This is simply charging the same conduct a second time.

Out of all the aspects of the massive IG ROI, the defense most soundly objects to the effects created by the "psychological profile" given by Dr Linda Estes to the IG. Dr Estes serves as one of two staff psychologists to the Office of Special Investigations (OSI). She provides various psychological services to OSI. Her only published works cited in her Curriculum Vitae concern the psychology of eating disorders. ROI, Ex. 78. Dr Estes provided criminal psychological profile assistance to the IG, at their request. For the reasons set forth below, the Defense urges that not only should Dr Estes' opinion

be considered with care, it should be recognized as having unduly influenced the investigation.

The psychologist's theory prejudiced the investigators to view all actions on the part of Maj Gen Fiscus as validating the psychologist's theory. Dr Estes was obviously trying to be helpful to the IG. The import of this evaluation was huge and the leak to the Washington Post of a portion of the evaluation demonstrated that it became a key part of the tone of the ROI. We are not calling Dr Estes unprofessional or unqualified. We simply believe that her opinion was hampered by too little information. It may have been the intention of the investigators to utilize her assistance to help them in developing questions, but Dr Estes' opinion clearly created a kind of zeal in the investigators. That zeal resulted in people like Major [REDACTED] becoming "convinced" by the investigators that General Fiscus's otherwise friendly behavior had a greater and vastly more sinister meaning than it actually had. Not only should her opinion not be included in the ROI, it should be considered to have unduly colored the nature of the investigation as well as the conclusions of the investigators and reviewing officials.

First, the defense questions whether the IG gave Dr Estes an adequate basis to even give an opinion about Maj Gen Fiscus. It is not clear what evidence the IG investigators gave her to review, because it is not listed anywhere. There is no way to know whether she saw all the witness statements, including those of Colonels [REDACTED] and [REDACTED] and Lt Cols [REDACTED] and others, who were alone with him frequently, yet said there was absolutely never anything inappropriate in his behavior. We do not know if the IG told Dr Estes that many male co-workers such as Col [REDACTED] consider Maj Gen Fiscus a wonderful mentor and leader, who treats people as people and cares about them on an individual basis. He said Maj Gen Fiscus gets personally involved in the lives of his subordinates in order to help them with problems. Ex. 11. That behavior is consistent with forming close relationships, but inconsistent with doing so to seek sex. Cols [REDACTED] and [REDACTED] also testified to his personal, involved style of leadership. Again, this is consistent with Maj Gen Fiscus's behavior as cited by Dr Estes but inconsistent with her theory. There is no allegation of, no hint of, no evidence of any force or coercion. It is not clear from Dr Estes' opinion, or common sense, whether a predator analysis is even the correct analysis to use in this situation. Dr Estes mentions reviewing some emails. The value of Dr Estes's opinion is lessened due to the lack of a fully documented workup, so that the opinion could be properly judged and considered.

Second, one must consider that Dr Estes did not interview Maj Gen Fiscus. Indeed, more than once, Dr Estes carefully points out to the IG that she has not spoken to Maj Gen Fiscus. Those portions of her interview are not included in the ROI. "I'm basing that on limited information so I, I hate to go too far...out on a limb on that but just from my reading of the correspondence-yeah, I, I think it fits his pattern." ROI, Ex. 39, p. 4. "You know, I, not knowing more about him than what I see in the emails I, I hesitate to say too much about him." ROI, Ex. 39, p. 9. She also says "...I've never met Gen Fiscus, I really don't know much about him..." ROI, Ex. 39, p. 12.



Contrast that perspective with that of Ms [REDACTED]. Atch 12. Ms [REDACTED] is a licensed clinical social worker who has had a clinical relationship with Maj Gen Fiscus for years. The defense summarized Dr Estes's opinion for Ms [REDACTED]. She said in her statement "I was startled to learn that an Air Force psychologist has diagnosed Maj Gen Fiscus as a sexual predator, without meeting him personally and completing a clinical examination and evaluation."

Ms Black stated "The diagnosis is not consistent with my own observations these past years. He had reported in therapy that he often sought approval from women, and discussed his difficulties saying "no" to them." She added "my therapeutic work with Maj Gen Fiscus has never given me reason to believe that he preyed on unsuspecting women. Coercion would be inconsistent with his character." She concluded with her opinion that, based on what she knows, "he is not a sexual predator."

There is little benefit in getting into a "battle of the experts" when neither of them were given all the information they need to provide a proper opinion. The defense respectfully points out these conflicting opinions in order to show that this situation is much too complicated to decide on the basis of opinions formed on less than complete information.

Third, the defense submits that Dr Estes's opinion is internally inconsistent with the IG's own evidence. The most damning part of her opinion (that was leaked to the media), was that Maj Gen Fiscus is a predator and identified weak women and groomed them for sex. ROI, Ex. 39, p. 1. None of the evidence gathered by the IG supports this theory. For starters, Maj [REDACTED] has worked with Majors [REDACTED] and [REDACTED]. He stated that they are all exceptionally strong, independent women. ROI, Ex. 29. Similarly, Col [REDACTED] and Col [REDACTED] worked in the JA Front Office and stated that these majors were capable, smart women. Her opinion is inconsistent with the testimony of Col [REDACTED] and Lt Col [REDACTED] both whom served as his execs and traveled often with him, and never saw him behave inappropriately while away on TDYs. Additionally, the relationships with the civilians Ms [REDACTED], Ms [REDACTED] and Ms [REDACTED] have lasted over 20 years in some cases. He could hardly have been grooming them all this time. Her opinion is inconsistent with the statements of Brig Gen [REDACTED], Col [REDACTED], Col [REDACTED], Lt Col [REDACTED] and Lt Col [REDACTED]. They testified he NEVER behaved inappropriately with them. All but Brig Gen [REDACTED] testified he hugged them. If Dr Estes' opinion is correct, he should have "progressed" to the next stage, kissing them and making dates. It did not happen.

Finally, if Maj Gen Fiscus is supposed to have been preying on women for sex, the IG found little of it with the nineteen women interviewed. The investigation overwhelmingly discovered that Maj Gen Fiscus is an unrelentingly friendly man, a people-person who maintains friendly relationships with a lot of people. If Maj Gen Fiscus is anything, he could be called a "serial hugger," as Maj Gen [REDACTED] said. ROI, Ex. 30.



For these reasons, the defense submits the psychological opinion of Dr Estes is not only unhelpful to the factfinder, it skewed the investigation from a search for truth into an attempt to prove Dr Estes' opinion. The IG's Narrative reveals the investigators' bias to interpret every piece of evidence into something that fits into Dr Estes' model. Even a 20+ year friendship with Ms [REDACTED] is interpreted as some illicit relationship in the ROI. The IG's narrative does not discuss that Ms [REDACTED] invited the general to bring Mrs Fiscus to Ms [REDACTED] Christmas party. It does not discuss that the vast majority of the verbiage in the emails addressed her job, her father, brother, children and her problems with her house. This relationship between two friends is twisted into some sort of sinister plan and information to the contrary is not mentioned in the IG's discussion. Another example is the email in July 1999 from Brig Gen Fiscus to Ms [REDACTED] offering to meet her in her office with an "olive branch," a symbol of peace, not love. This innocent exchange is twisted into some sort of planned step when viewed in the light of Dr Estes's theory, and then it became characterized as "misconduct." While many of the interviews are professionally neutral and without a doubt this investigation involved a lot of time and the thorough pursuit of witnesses, this psychological opinion and its effect skewed the findings and conclusions.

In considering Maj Gen Fiscus' service and behavior during this time frame, you will be confronted with two starkly contrasting views. You will see the legal professional, advisor to the Chief of Staff of the Air Force, USAFA, SecAF and SECDEF. You will also find another side to Maj Gen Fiscus, a side that put in motion the events that make this grade determination process necessary. It will be necessary to evaluate a lot of conflicting evidence to determine whether his service was satisfactory during this period. A lot of the adverse information used by the IG came from Maj Gen Fiscus's email account, and emails alone do not provide a full picture. Likewise, friendly email banter between old friends can easily be distorted to mean almost anything. There is no defense against such interpretations, because protestations to the contrary are automatically dismissed as attempts at obfuscation, i.e., "spin."

One thing is certain, Maj Gen Fiscus's on-duty performance was not called into question by a single piece of evidence, email, documentary or testimonial. While the anonymous complainant alleged he went home early and abused official travel, even these investigators revealed those allegations were untrue. The ROI also showed he never used his position to positively or negatively affect anyone's promotion, assignment or any other official or unofficial personnel action. He maintained a grueling travel schedule, as is normal for flag officers. His bosses considered his duty performance to be exemplary.

That on-duty performance must be weighed against the non-duty conduct punished by Article 15. Keeping in mind that the Defense does not know who filed the anonymous complaint, it appears that none of the women involved in this investigation believed that Maj Gen Fiscus's conduct warranted filing an official complaint. Out of the women named in the Article 15, Maj [REDACTED], Maj [REDACTED], Ms [REDACTED], Ms [REDACTED], Ms [REDACTED] and TSgt [REDACTED], don't think he did anything wrong to them. Most believed Maj Gen Fiscus was being a good mentor, being friendly, and being his normal touchy-

feely self. He took the time to help Ms [REDACTED] and Maj [REDACTED] with personal problems out of concern for them as people, not as romantic objects

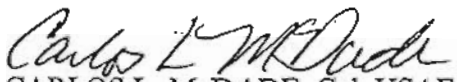
The military always has the right and obligation to correct improper behavior, even if a third party thinks nothing was wrong. Gen Cook's actions were based on the evidence he was presented, and we take no issue with the imposition of Article 15 punishment. We simply urge this proceeding to look beyond the bare specifications and consider the entire context behind his behavior with these women, as explained by them in their statements. Compare that to his performance. Then consider the effect a reduction in retired grade will have on Maj Gen Fiscus himself, and on his family. This is a career military man with 32 years service. He removed himself from his duties as TJAG and he's put in his retirement papers. There will be no retirement ceremony. Reduction in a lower grade will have a definite financial impact on Maj Gen Fiscus and his family.

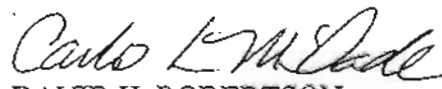
.... In evaluating Maj Gen Fiscus's behavior, please take note that he absolutely did not affect any person's promotion or assignments because of interaction with him or because she was not involved with him. He did not abuse official travel or otherwise harm the public fisc to involve himself in these relationships. He did not alter or reduce his tremendously taxing work and travel schedule. And he did not give any less than his best effort in his service to the U.S. Air Force and the United States. What he did was to perform at extremely high level, as evidenced in his performance reports. What he did was to serve Air Force senior leaders by providing them with the best legal advice possible. What he did was to see that home-station and deployed commanders received the best advice from the best-trained JAGs in the U.S. military. During his service as a major general, Maj Gen Fiscus did all of that.

## VI. CONCLUSION

The defense respectfully submits, on behalf of Maj Gen Fiscus, that there should be no question that his service was satisfactory in every grade through brigadier general. Questions are raised by the evidence regarding his personal, non-duty conduct in the years 2003 and 2004. That conduct has been punished by Article 15. General Fiscus has taken full responsibility for his personal misconduct, is prepared to apologize for it and has sought to minimize any damage to the Air Force, the JAG Corps and individuals named in the ROI. He and his family have had to suffer an incredibly painful and humiliating public airing of matters that were supposed to be kept confidential until action was completed. Leaks to the media have hurt the Air Force and its reputation, as well as Maj Gen Fiscus and his reputation. We respectfully ask that the Board and any reviewing authorities strike the proper balance and determine that General Fiscus has been punished enough.

We respectfully ask that you consider the merits of his exceptional service to the nation in all grades through brigadier general to be without question satisfactory, and hope you will take that into account while evaluating his performance as a major general.

  
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