

Enclosure 17



THE LAW FIRM OF JAMES M. BRANUM



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To: Deputy Commanding Officer (DCO) of Operations (Ops),
1st Special Forces Command (1SFC), Fort Liberty, NC
From: SFC Michael Forbes through James M. Branum, Attorney at Law
Date: November 24, 2023
Subject: Request for redress IAW with UCMJ Article 138

Through legal counsel,¹ SFC Forbes submits this brief (with attachments) to constitute a request for redress under the provisions of AR 27-10 para. 19-6 and UCMJ Article 138.²

1. Identification of Parties

The complainant is SFC Michael J. Forbes, an NCO with nearly 17 years of unblemished service to the US Army, prior to the recent wrongful investigations.

The alleged wrong committed against SFC Michael J. Forbes was by Brigadier General (BG) Lawrence G. Ferguson, who at the time of the alleged wrong was serving as the Deputy Commanding Officer (DCO) of Operations (Ops) for 1st Special Forces Command (1SFC). He has since been promoted, which means the successor commander, is designated as the respondent IAW AR 27-10, para. 19-6 (e).

¹ IAW AR 27-10 para. 19-5 (b).

² Please note that the complainant is forced to file a formal complaint under Article 138, that he will be seeking a determination by the GCMCA that other available "channels or procedures" for resolving this issue are not in fact adequate or available, and that the "GCMCA should conduct a full examination as provided in paragraph 19-12, and otherwise treat the complaint as appropriate subject matter for resolution pursuant to Article 138," IAW AR 27-10 para 19-11 (e).

2. Identification of Wrong

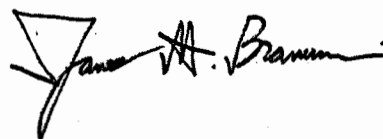
The complainant was improperly given a permanently filed GOMOR (the notification of which occurred on August 25, 2023³) after previously being subjected to improper investigations⁴ and retaliation as a whistleblower.⁵

Conclusion and Request for Redress

The complainant urges you to take action now to prevent further damage to SFC Forbes' career and further harm to the Army. The investigation by COL Brunson was materially flawed and the other investigation is in breach of 10 U.S.C. § 1034.

It is for these reasons that the complainant requests that:

1. The permanently filed GOMOR be removed from the permanent file and rescinded,
2. The Relief for Cause NCOER be rescinded and corrected.



James M. Branum
Attorney at Law

Enclosures:

A: Certification by SFC Michael J. Forbes

B: Summary of Allegations Regarding Improper Investigations, Illegal Retaliation

³ This date is provided IAW AR 27-10 para. 19-6 (c).

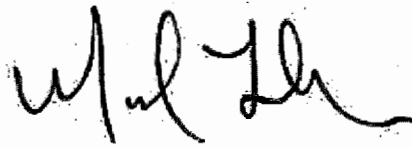
⁴ See enclosure B for a summarized discussion of these improper investigations and the underlying context behind the improper GOMOR filing.

⁵ Please note that an open and ongoing Inspector General (IG) Whistleblower Case, encompassing other aspects of this situation other than only the Whistleblower issue exclusively, per DAIG, has been open for months (case number: ZS-23-0084).

Enclosure A: Certification by SFC Michael J. Forbes

I have read the attached request for redress with enclosures. I certify that it is accurate to the best of my knowledge and that I have authorized my civilian attorney, James M. Branum, to submit it on my behalf.

Dated: November 24, 2023

A handwritten signature in black ink, appearing to read 'M. J. Forbes', is centered on the page.

SFC Michael J. Forbes

Enclosure B: Summary of Allegations Regarding Improper Investigations, Illegal Retaliation

1. COL Tavi Brunson violated or used undue Command Influence that caused others to support his violation of multiple Public Laws⁶, Army Regulations and Directives⁷, Unit Policies,⁸ and Constitutional provisions⁹ after he acted on flawed professional advice from Subject Matter Experts (SMEs) in duty-bound positions that required them to provide him with lawful guidance.
2. MAJ Racaza did the following:
 - a. She severely strayed from the standards set by her state professional licensing agency, the Arizona Board of Psychologist Examiners (BOPE), including several areas of the code of conduct¹⁰ and multiple specific principles and provisions¹¹ of the code.
 - b. She advised, coordinated, facilitated and/or was aware that these Behavioral Health Assessments (BHAs) failed to provide appropriate protections to affected Soldiers potentially or actively under her Professional care per the Womack Army Medical Center (WAMC) Patient Bill of Rights (PBoR).¹²
3. During a 5-day period, beginning 28NOV2022, COL Brunson illegally mandated not one (BDE sponsored), but two (Army Sponsored), Behavioral Health Assessments (BHA)s to unlawfully gather and store¹³ unauthorized personally identifiable,¹⁴ Psychological data¹⁵, without proper

⁶ 10 U.S.C. § 1034 (MWPA), 18 U.S.C. § 208 (Conflict of Interest), 45 C.F.R § 160.103 defines Protected Health Information (PHI), while 45 C.F.R. § 46 (Basic HHS Policy) and 32 C.F.R. § 219 (Common Rule DoD), defines the Protection of Human Subjects.

⁷ AR 15-6 (Due Process), AR 25-22 (Privacy/ Civil Rights), AR 380-5 (INFOSEC), & AR 380-67 (PERSEC)

⁸ DoDD 6490.04 (eCDBHE) and 1SFC/USASOC 25-2 (PEDs)

⁹ 4th and 5th Amendments to our Constitution

¹⁰ Arizona BOPE has adopted the APA (American Psychological Associations) code of Principles. See APA 2.0 (Competence); APA 3.0 (Human Relations); APA 4.0 (Privacy & Confidentiality); APA 5.0 (Advertising & Other Public Statements); APA 8.0 (Research & Publication); and APA 9.0 (Assessment).

¹¹ Arizona BOPE has adopted the APA (American Psychological Associations) code of Principles. See APA CoC Principles 1.02, 1.03; 2.01, 2.03 & 2.04; APA 3.04, 3.05, 3.06, 3.08, 3.10 & 3.11; 4.01, 4.02, 4.05 & 4.07; 5.01, 5.03 & 5.06; 8.01, 8.02, 8.04 & 8.08; 9.01, 9.03, and 9.04.

¹² All data and evidence supporting this document and the associated legal brief were provided to the command in the myriad documents provided as part of the complainant's GOMOR and RFC rebuttal packet provided on 16JUN2023.

¹³ In violation of 45 C.F.R. § 46, 32 C.F.R. § 219, and AR 25-22

¹⁴ 45 C.F.R § 160.103, and AR 25-22

¹⁵ In violation of 45 C.F.R. § 46 and 32 C.F.R. § 219

prior informed consent.¹⁶ This data would be stored (*Smartabase*) indefinitely and used by the COL's or the Army's licensed Medical Providers via undisclosed metrics for the subjective private assessments, determinations, recommendations and/or potential follow-on treatment plans. After the complainant sought to gather the needed informed consent information (the scope and statutory support of the BDE sponsored assessment), he was falsely accused of being "angry" by the BDE Psychologist.

4. The complainant also attempted to identify the same scope and statutory support for the second (Army sponsored) assessment and was 'internally-outed-for-asking' at multiple echelons even though this was a lawful request.
5. Subsequently, the complainant was assaulted by one of COL Brunson's BN CSMs while he was attempting to prevent the prohibited use of PEDs in our classified facilities¹⁷ in support of the same, second (Army sponsored) assessment.
6. After reporting the assault to his Congressman, 1SFC IG, and the Fort Bragg Military Police Office (MPO), the complainant was:
 - a. removed from his BDE S2 NCOIC position,
 - b. clandestinely investigated (without due process)¹⁸,
 - c. ordered to a corrupt emergency Command Directed Behavioral Health Evaluation (eCDBHE),¹⁹
 - d. erroneously²⁰ found guilty of Disrespecting the Psychologist²¹ and counterproductive leadership,
 - e. provided with an unsubstantiated Relief for Cause (RFC; to be appealed), and
 - f. provided with a (GOMOR; by the 1SFC OPs DCO), which, illegally, culminated in the complainant being clandestinely added to his own Military Whistleblower Protection Act (MWPA) complaints' investigation, (which is another violation of law that resides solely at the 1SFC echelon).²²
7. MAJ Rhea Racaza, never provided to the complainant the requested informed consent advisement (for the first BHA) which was both mandated by law²³ and required by her binding professional

¹⁶ In violation of 45 C.F.R. § 46, 32 C.F.R. § 219, AR 25-22 and APA Principles 3.10, 8.02, 8.05

¹⁷ 1SFC/USASOC 25-2

¹⁸ AR 15-6

¹⁹ In violation of 18 U.S.C. § 208, AR 25-22, DoDD 6490.04, and APA Principles 3.05, 3.06 & 3.08

²⁰ AR 15-6

²¹ UCMJ Article 89.

²² 10 U.S.C. § 1034

²³ In violation of 45 C.F.R. § 46, and 32 C.F.R. § 219

standards.²⁴ Doing this divested her of the protections afforded in Article 89 of the UCMJ as she “departed substantially from the required standards appropriate [her] rank or position.” Subsequently, she personally “recommend[ed]” the complainant to an unnecessary, after-hours, and corrupted²⁵ eCDBHE.

8. COL Brunson used Administrative actions and preliminary inquiries because he lacks substantive, material evidence to pursue non-judicial punishment as the complainant would have immediately demanded a trial by court-martial in front of an impartial panel of members to defend himself with the substantial material prima facie evidence of his and his subordinates wrongdoing, which would have been provided in the discovery process of any UCMJ judicial proceeding.
9. The above actions have resulted in the complainant being considered for the Qualitative Management Program (QMP), which could result in his being involuntarily separated from service (similar to a discharge) all without a fair opportunity or due process to defend his career.²⁶
10. The complainant is 55 years old and does not have the work years available for him to earn another pension, which is why he would welcome the scrutiny of his professionalism over the course of his career in any fair venue, as he would not jeopardize his pension over anything that was immaterial; but rather will defend it using every civil tool available to him. The complainant did this job well and should not be receiving a Relief for Cause (RFC) Non-Commissioned Officer Evaluation Report, nor the General Officer Memorandum of Reprimand (GOMOR) that was permanently filed in his records. This all happened because the complainant sought to exercise his rights to make an informed decision under the law regarding his health information, and for actually performing the appointed duties that were previously ordered by COL Brunson.
11. To defend his career from these administrative actions, after having no fair venue during two clandestine investigations to defend himself and expose the violations of my BDE CDR and his staff, the complainant has complained to the following in chronological order:
 - a. the ISFC IG;
 - b. Hon. Congressman Richard Hudson’s Office;
 - c. the Military Police Office (MPO);
 - d. the USASOC IG;
 - e. the Army Human Research Protection Office;
 - f. Defense Health Agency (DHA);
 - g. WAMC Director, Ombudsman and Patient Advocacy Offices;
 - h. the DAIG;
 - i. Federal Bureau of Investigation (FBI);
 - j. Multiple members of the Senate Armed Services Committee.

²⁴ APA Principles 3.10, 8.02, 8.05

²⁵ In violation of 18 U.S.C. § 208, AR 25-22 and APA Principles 3.05, 3.06 & 3.08

²⁶ AR 15-6

- k. Notably, the complainant's wife reached out to the Secretary of the Army, Ms. Wormuth, as well.
12. The complainant intended to contact, in an order of deadline precedence (not inferred herein), the following:
- a. the AZ BOPE for adjudication of MAJ Racaza's actions;
 - b. NCOER Appeal for its removal;
 - c. HRC for cover letter to Senior NCO Board packet;
 - d. the QMP Board;
 - e. Army Board for Correction of Military Records (ABCMR);
 - f. any necessary judicial venues;
 - g. Office of the Judge Advocates General (OTJAG); and,
 - h. any Government oversight committee or legitimate news, or research organizations to expose military administrative issues in this case.