DEPARTMENT OF THE AIR FORCE
HEADQUARTERS THIRD AIR FORCE (USAFE)

12 March 2013

Secretary Donley

I am keenly aware of the significant Congressional interest and media coverage of my 26 Feb 13 decision as a General Court-Martial Convening Authority (GCMCA) to disapprove the findings and dismiss the charges in the court-martial U.S. vs. Lt Col James H. Wilkerson III. I am troubled by the recent wave of continuing negative and biased dispersions being cast upon the Uniform Code of Military Justice (UCMJ), the constitutional court-martial process, and the weighty and impartial responsibility of a convening authority to fairly administer justice.

Accusations by some that my decision was the result of either an apparent lack of understanding of sexual assault on my part, or that because I do not take the crime of sexual assault seriously are complete and utter nonsense. I unequivocally view sexual assault as a highly egregious crime. I take every allegation of sexual assault very seriously. As a commander, I cannot think of a more destructive act to good order and discipline and to the maintenance of a cohesive and effective fighting force. Likewise allegations that I made this decision to protect a Lieutenant Colonel pilot or because I was a former Aviano/31 Fighter Wing Commander are equally preposterous. I have many responsibilities as the Commander of Third Air Force, one of those being a GCMCA. In this role, I review and decide all matters of military justice fairly and impartially. I review each court-martial thoroughly and independently.

The UCMJ directs that a convening authority may, in his or her sole discretion, set aside any finding of guilty in a court-martial. This broad and independent discretion is a direct function of military command. There are legitimate reasons, past and present, why the UCMJ does not require a convening authority to explain his/her actions, and in some ways, it even appears rightly to discourage convening authorities from explaining their decisions so as not to cause even a perception of Unlawful Command Influence.

I have no desire to set an unfortunate and potentially damaging precedent for present and future convening authorities. By law and in the interests of justice, they should not believe they are obliged to provide such explanations. No one has asked or directed me to provide this information to you or to anyone else. Yet due to the ongoing controversy that I have recently observed in the "court of public opinion," it is appropriate, in this case only, to provide you a sense of what I considered in arriving at my decision.

To begin, this was the most difficult court case that I have ever faced as a convening authority. The case was comprised of mostly consistent testimonies of a husband and wife in contrast to the testimony of an alleged victim. There was no confession or admission of guilt by the accused and no physical evidence. I even struggled with referring this case to a court-martial after reviewing the results of the Article 32 Investigation. As you know, the evidentiary standard of probable cause to refer charges to a court-martial is much less than the very high standard of proof beyond a reasonable doubt to convict in a court-martial. Consequently, after my review of the evidence within the Article 32 investigation report, and after my many discussions with my

Staff Judge Advocate (SJA), I concluded that sufficient probable cause existed to refer the case to trial.

After the court-martial, I was somewhat surprised by the findings of guilty based upon the evidence that I had previously reviewed and the high constitutional standard of proof beyond a reasonable doubt in a court-martial. However, I gave deference to the court-martial jury because they had personally observed the actual trial. I subsequently received the request for clemency by Lt Col Wilkerson and his defense counsel along with its many compelling clemency letters. To be honest, this was the most extensive clemency request package that either my SJA or I had ever seen. I read all of the clemency letters (91 of them) in detail and some I read several times. Most pleaded with me to review the entire court transcript and all the evidence in detail because of grave concerns that they had with the fairness of the trial.

Letters from Lt Col and Mrs Wilkersons' family, friends, and fellow military members painted a consistent picture of a person who adored his wife and 9-year old son, as well as a picture of a long-serving professional Air Force officer. Some of these letters provided additional clarity to me on matters used effectively by the prosecution in the trial to question the character and truthfulness of both Lt Col Wilkerson and Mrs Wilkerson. Some letters were from people who did not personally know the Wilkersons, but wanted to convey their concerns to me about the evidence and the outcome of the case.

Due to my previous concerns with Lt Col Wilkerson's case prior to referral and the concerns identified in defense clemency matters, my deliberation became extensive. Accordingly, I began to personally review and consider the entire record of the trial and its accompanying papers. I reviewed the Article 32 investigation report again. I reviewed the entire court transcript and all the other evidence the jury reviewed (captured on compact discs or in hard copy photos). I looked at some evidence a second and third time and I re-read particular portions of the court transcripts. I reviewed affidavits provided after trial by the prosecuting attorneys and I also read a personal letter to me from the alleged victim. I carefully looked at everything, evidence supporting the findings of the court-martial and evidence against. The more evidence that I considered, the more concerned I became about the court martial findings in this case.

After my extensive and full review of the entire body of evidence and my comprehensive deliberation spanning a three-week period, I only then finally concluded there was insufficient evidence to support a finding of guilt beyond a reasonable doubt. Based upon my detailed review, I could not conclude anything else. Accordingly, I could not in good conscience let stand the finding of guilty.

Please note, at the beginning of my thorough review, my SJA recommended approving the court-martial findings and approving the sentence of one year confinement. In consideration of Lt Col Wilkerson's family and his lengthy military service, my SJA also recommended commuting the sentence of dismissal to an additional two years of confinement. However, after we engaged in numerous subsequent conversations during my extensive deliberation of the evidence, he told me that he had come to fully respect my concerns with the evidence in the case and my conclusion that the evidence did not prove Lt Col Wilkerson guilty beyond a reasonable doubt. At the end, he advised me that I could only approve court-martial findings and a sentence that I found correct in law and in fact. Based upon his personal knowledge of how extensively and

thoroughly I had reviewed and deliberated on this case, my SJA said he fully respected my decision to disapprove findings in this court case.

Below is a portion of the considerable evidence which caused me, in part, to form my reasonable doubt as to Lt Col Wilkerson's guilt. I reviewed all the evidence below, and other evidence, holistically and comprehensively in reaching my conclusion:

a) The evidence indicated that the alleged victim turned down at least three distinct offers of a ride from the Wilkerson home back to her room on base. Whenever she was offered a ride, she seemingly had a different reason to stay at the Wilkerson home;

b) When shown clear photos of all bedrooms of the house, the alleged victim could not identify the bed in which she slept and/or where she claimed the alleged assault occurred;

c) At different times, the alleged victim's description of the hours leading up to the alleged assault varied, as did her description of the state of her clothing during and immediately after the assault;

d) In her initial statement, the alleged victim said that she "passed out" (went to sleep) between 0045 hours and 0100 hours in the morning, and in her court testimony she said that her next memory was that she was in a dream state and was subsequently awoken at about 0300 hours by Mrs Wilkerson turning on the light. Yet the alleged victim's phone records and her testimony in court showed that she was texting on her phone to a friend at 0143 hours;

e) The alleged victim did not remember whether or not the man who she says assaulted her had facial hair. In addition, she said his face was only 6 inches away from hers. Lt Col Wilkerson had a full mustache and the alleged victim had already seen him throughout the recent evening;

f) The alleged victim's version of events describes a path out of the house from the downstairs bedroom (the only room that she could have logically stayed in). This path was not feasible based upon the actual layout of the house;

g) The alleged victim claimed that she woke to a bright light being turned on in the room in which she was sleeping, and Mrs Wilkerson yelling at her to "get out of my house." The room that she stayed in had an energy-saving ceiling light that is dim for the first few minutes of operation. Although the military judge did not allow the members of the jury to visit the house, the defense counsel made a video to document what would have been the alleged victim's actions based upon her testimony. I watched the entire video twice. It shows the very dim light and the only path to get out of the house from the only room that she could have logically stayed in. It was not consistent with her description of the path that she said she took out of the house;

h) Mrs Wilkerson's version of the events at her house the night of the alleged incident was substantially consistent from her initial OSI interview statement, to her Article 32 investigation statement, and through her court testimony. And my detailed review of all phone records (of all the key witnesses) validated Lt Col and Mrs Wilkerson's combined

version of what occurred on the night in question and the next morning. Please note, I spent close to 4 hours looking at phone record evidence alone. In particular, I determined that the alleged victim's cell phone records (times and durations of incoming/outgoing calls and text messages) when aligned with the testimony and phone records of the friend of the alleged victim, all merged to a common picture that was more consistent with Lt Col and Mrs Wilkerson's combined version of events;

i) Regarding the next morning after the alleged incident, Mrs Wilkerson claimed she slept in until 0900 hours. In closing arguments, the prosecution argued she was "lying" because she had outgoing calls, incoming calls, and texts before 0900 hours. The defense counsel countered that it was possible that Lt Col Wilkerson was using her phone (I am aware that occasionally wives will use husbands' phones, husbands will use wives' phones, kids will use adults' phones, etc.). The prosecution argued that the defense explanation was impossible since phone records showed Lt Col Wilkerson was on his own phone/texting at apparently the same time. When I closely checked the phone records to verify this prosecution argument, I determined the times of Lt Col Wilkerson's phone-use were different from his wife's cell phone-use -- thereby making it entirely possible that Lt Col Wilkerson was using Mrs Wilkerson's phone before 0900 hours. Likewise, the letter of clemency from the mother of the two guest-children (who were staying overnight at the Wilkerson house), specifically indicated that she called Mrs Wilkerson's phone that morning at approximately 0700 hours and that Lt Col Wilkerson answered it, saying his wife was still asleep. She also said that she spoke with her children during this same phone call. In addition, when she subsequently stopped by the house prior to 0800 hours to check on her children, she said Lt Col Wilkerson was awake/up and that her children said that Mrs Wilkerson was still sleeping;

j) The Office of Special Investigations (OSI) interviewed these two guest-children, ages 13 and 9 who were guests in the Wilkerson house the night of the alleged incident. Neither awoke or heard any yelling during the time of the alleged incident. Yet, the alleged victim at one point said that Mrs Wilkerson yelled at her to "get out of my house";

k) In addition, the mother of these two children observed her kids and the Wilkersons the very next day following the alleged incident. She did not notice any change in the Wilkerson's behavior or her children's behavior, or that her children sensed any tension between the Wilkersons. Further, these two children apparently stayed at the Wilkerson house the following night. If an incident occurred as claimed by the alleged victim, it would be highly peculiar for the Wilkersons to volunteer to take care of these two children again the following evening;

l) Additionally, witness testimony about the Wilkerson marriage before the night in question and in the immediate days and weeks after that night, showed no perceptible tension or change in their relationship. Had the alleged sexual assault taken place as the alleged victim claimed, it would be reasonable to believe that their relationship would change and that close friends would perceive this change;

m) Witness testimony from a female friend of the alleged victim (who also works at the 31st Medical Group, and who took the alleged victim to the hospital the next day) and her

subsequent letter of clemency (in support of Lt Col Wilkerson), caused me notable additional doubt about the alleged victim's stated version of events. The friend's comments in this clemency letter also indicated a potential reasonable motivation for the alleged victim to have been less than candid in her stated version of the events;

n) One particular witness was not allowed to testify in court. The primary rationale was that the applicable events of which she had knowledge in regard to the character and truthfulness of the alleged victim occurred 10 years earlier (when the alleged victim was approximately 39 years of age). I reviewed this excluded testimony, as well as the clemency letter of this witness which detailed court proceedings that involved the alleged victim 10 years earlier. The excluded witness had a strong opinion that the alleged victim (now 49 years old) might lie in a court proceeding when it would be in her personal interest to do so;

o) Significantly, I closely watched the video of the entire OSI interview of Lt Col Wilkerson (3 hours and 25 minutes). I watched it not once, but twice (and several portions I watched additional times). The prosecution effectively used small segments of the video in closing arguments in attempts to portray Lt Col Wilkerson as a liar, or as someone who was trying to cover up misconduct. However, when I twice viewed the video in whole, and I considered his answers in the context of the questions and paths that the OSI attempted to take him down, I believed the entire OSI interview portrayed him as truthful;

p) In addition, Lt Col Wilkerson waived his rights to remain silent, did not request a lawyer, and appeared cooperative throughout. The Special Agents who conducted the interview utilized a full gamut of investigative interviewing techniques in attempts to garner incriminating statements from Lt Col Wilkerson. He maintained his innocence throughout the interview, provided a written statement, never stopped the interview, nor did he ever ask for a lawyer at anytime. As I viewed the entire interview in whole (twice), it was my consistent impression that Lt Col Wilkerson answered all the questions in a manner like an innocent person would respond if faced with untrue allegations against him;

q) Lt Col Wilkerson voluntarily agreed to take an OSI polygraph examination. I am fully aware of and considered the polygraph results. As you are aware in a criminal investigation, a polygraph is only an investigative tool to assist in the potential focus of the investigation and/or to attempt to elicit admissions of guilt. It is not a "lie-detector test," nor is it "pass" or "fail." Because of the inherent unreliability of polygraphs, they are entirely inadmissible in a court-martial. Ultimately, Lt Col Wilkerson has consistently maintained his complete innocence -- throughout two lengthy OSI interviews, through the entire court-martial, and throughout his nearly four months in prison (following the court-martial and during the post-trial process);

r) Finally, I do not assert in any way that the event as argued by the prosecution was out of the realm of the possible. However when I considered all the evidence together in total, the evidence was not sufficient to prove this alleged version by the prosecution beyond a reasonable doubt. In addition, and as simply one more point of reference, I was perplexed in relation to this conundrum – Lt Col Wilkerson was a selectee for promotion

to full colonel, a wing inspector general, a career officer, and described as a doting father and husband. However, according to the version of events presented by the prosecution, Lt Col Wilkerson, in the middle of the night, decided to leave his wife sleeping in bed, walk downstairs past the room of his only son, and also near another room with two other sleeping guest-children, and then he decided to commit the egregious crime of sexually assaulting a sleeping woman who he and his wife had only met earlier that night. Based on all the letters submitted in clemency, in strong support of him, by people who know him, such behavior appeared highly incongruent. Accordingly, this also contributed, in some small degree, to my reasonable doubt.

There were some matters of evidence that I could not reconcile. For example, I did have questions about differences in some witnesses' respective versions of events that conflicted with the combined testimony of Lt Col and Mrs Wilkerson. Accordingly, I scrutinized the allegations and arguments that the Wilkersons were untruthful in these instances. The majority of these inconsistencies had plausible alternate explanations. Those that did not were not independently conclusive, nor did all of them put together satisfy me beyond a reasonable doubt of Lt Col Wilkerson's guilt.

Moreover, minor inconsistencies between Lt Col Wilkerson and Mrs Wilkerson's versions of events indicated to me that they had not colluded to manufacture a "unified story." In fact, if their two separate versions were too consistent, I would have reasonably been skeptical of them. After I reviewed all the evidence, it appeared to me that, at the time of their OSI interviews, the two Wilkersons were simply trying, in good faith, to recall an evening that had occurred almost 3 and ½ weeks prior. After consideration of all the matters I have mentioned, as well as other matters within the record of trial, I impartially and in good faith concluded that there was insufficient evidence to prove beyond a reasonable doubt that Lt Col Wilkerson was guilty.

Obviously it would have been exceedingly less volatile for the Air Force and for me professionally, to have simply approved the finding of guilty. This would have been an act of cowardice on my part and a breach of my integrity. As I have previously stated, after considering all matters in the entire record of trial, I hold a genuine and reasonable doubt that Lt Col Wilkerson committed the crime of sexual assault. As a result, I would have been entirely remiss in my sworn military duty and responsibility as a GCMCA if I did not release someone from prison whose guilt I did not find proven beyond a reasonable doubt. Accordingly, I knew that my court-martial action to disapprove findings and to dismiss the charges was the right, the just, and the only thing to do.

In summary, I exercised the obligation of a GCMCA exactly as required by the UCMJ, when after my lengthy review and deliberation of the evidence, I had reasonable doubt as to Lt Col Wilkerson's guilt. Sir, I provide this letter for you to use or to share with others as you deem appropriate in relation to this case or in relation to the lawful and necessary discretion of a court-martial convening authority.

Very Respectfully,

CRAIG A. FRANKLIN, Lieutenant General, USAF
Commander, Third Air Force