DEPARTMENT OF THE NAVY
GENERAL COURT MARTIAL
NAVY AND MARINE CORPS TRIAL JUDICIARY
JUDICIAL CIRCUIT

UNITED STATES	)	
v.	)	**DECLARATION OF DR. PAUL SIMPSON, Ed.D.**
SSgt John Doe	)	**22 January 2023**

I, Paul Simpson, Ed.D., declare under penalty of perjury:

1. I am Dr. Paul Simpson, a psychologist specializing in forensic and clinical psychology. I received my doctorate from Northern Arizona University in 1990 and have been a licensed psychologist in the State of Arizona since 1991. I have testified and/or consulted as an expert in approximately 400+ state and federal trials and over 90 courts-martial for the U.S. Airforce, Army, Marines, and Navy. In 1997 I authored a book on memory and suggestibility. I am an instructor for the State Bar of Arizona for the past decade. I have provided trainings on numerous topics, including thirteen presentations on the topic of Eyewitness Memory and twice regarding Alcohol Blackouts and Sexual Assault. For seven years I was an instructor for the U.S. Air Force's JAG school at Maxwell AB. This training was part of their Advanced Sexual Assault Litigation Course (ASALC) and included alcohol blackouts and sexual assault. In addition, I have provided psychology professionals training regarding sexual compulsions / sexual offense in over 300 cities in all 50 states over a span of 11 years.

2. Through my education, training, and legal experience, I have become knowledgeable about the numerous impacts and manifestations that alcohol can have on the human body and related cognitive functioning. I have developed scientifically grounded, evidence-based expertise on the topics of alcohol effects on contextual memory, fragmentary and en bloc blackout history, and the differences between objective and subjective intoxication associated with alcohol consumption.

3. There has been significant research in the field of psychology regarding how memory works and the effects that alcohol has on memory. With my training and experience in the specialized area of alcohol and memory, I am able to assist the defense in exploring dynamics and various phenomena specific to this specialized field of study. This field is highly technical and complex.

4. While in an alcohol-induced blackout, a person maintains the functional capacity to engage in a wide array of complex and goal-directed activities, such as carrying on a conversation, driving, or having sexual intercourse. However, they are not encoding those memories. Thus, memory for parts or the totality of an event is jeopardized. Individuals in the midst of an alcohol-induced

blackout remain conscious (as opposed to being passed out or unconscious) while maintaining the functional and behavioral capacity to engage in a wide array of complex, goal-directed behaviors. Thus, their actions are engaged in while in a conscious state. Given that there is no way of knowing that an individual is in the midst of a blackout, their behaviors and actions appear fully volitional and intentional to an observer (and still can be 100% volitional and intentional).

5. The recollection of events (i.e., memory recall) is a reconstructive process. In other words, when an individual is asked to recall an event, it is not as if they go into their brain and pull an exact, carbon copy recording of what occurred. Rather, memories are recalled as a result of a reconstructive process. It is well-established in the psychological literature that when individuals are asked to describe or explain events or actions they may not readily recall, they may be prone and vulnerable to "filling in the blanks" when constructing their memories. This has been demonstrated in experimental, empirically-validated studies.

6. Alcohol can cause a person to perceive information inaccurately. It can also cause what is referred to as "*alcohol myopia*," which refers to the phenomena where a person will narrowly focus only on salient immediate stimuli at the expense of other contextual information. When this occurs, much of the contextual information is never encoded and subsequently will not be remembered.

7. *Source misattribution* is a psychological concept in which a person does not accurately link the original source of a memory to what is later recalled and retold to others. There are many potential causes of source misattribution. A basic example would be an eyewitness hearing from the police that a suspect was carrying a gun and later coming to believe that the suspect was carrying a gun without actually having seen a gun. The use of alcohol is likely to increase the risk and vulnerability of a source attribution error. A person in a fragmentary blackout state is particularly prone to making source attribution errors.

8. The concept of *transience of memory* is that memory generally deteriorates and gets worse over time. Research has shown that that a significant percentage of people experience major errors in their memory over the course of time, even for events that could be considered memorable. The memory issues associated with alcohol use can increase the potential for memories to be altered when recalled.

9. *Suggestion* and *suggestibility* refer to the psychological concept that memories can be affected and distorted by suggestion that is external to the individual. A person can suggest or insist that something occurred in a particular way or that an event should be conceptualized in a certain way and that can potentially lead an individual to recall their memories in a new light and cause distortion in their memory to conform with the suggestion. When external suggestion is applied to a situation that occurred when an individual was under the influence of alcohol or in a blackout state, the individual may be even more prone to suggestion because research has shown that individuals who are less certain of events are more prone to suggestion regarding those events.

10. *Hindsight bias* is the concept that a person will restructure their beliefs or understandings about an event in order to conform with information later obtained. There is significant research on the subject of hindsight bias that shows that a memory can be reconstructed to fit that person's

current beliefs or knowledge. The context provided by the new information can restructure that person's understanding and beliefs about what they remember occurring.

11. *Motivated memory* refers to several different concepts in which a person may consciously or unconsciously have a motivation to distort a memory. Embarrassment, shame, or self-justification are factors that can motivate a person to reconceptualize past events or create inaccurate memories in order to prevent negative feelings and conform with other beliefs that individuals may have about themselves. The memory issues associated with alcohol can make this more likely to occur since an individual's memory of an event may be incomplete and/or distorted.

12. *Imagination inflation* is a concept in which a person thought about or imagined something occurring which did not actually occur, however, the individual later remembers that thing having occurred. A basic example of this would be someone intending to say something during a conversation but forgetting to say it and later, believing falsely that they actually said that thing during the conversation. The use of alcohol or being in an alcohol-induced blackout state have the potential to increase the risk of this occurring due to other memory issues being experienced by someone in those states.

13. It is important to note that none of these aforementioned psychological concepts operate in a vacuum. Multiple concepts can interact to distort an individual's memory. For example, suggestion, hindsight bias, and motivated memory can all be applicable to a situation and lead a person to have a false and/or inaccurate memory about an event that occurred. Furthermore, alcohol - and the resulting memory issues that accompany its use - exacerbates the likelihood and vulnerability of memory distortions in these situations.

14. Although there is substantial individual variability in the effects of alcohol, knowledge about the person's drinking history and associated tolerance levels allows reasonable assumptions about their levels of cognitive and behavioral impairment at varying levels of intoxication. My research experience and training would allow me to provide scientifically-grounded insights into these areas, insights that would be beyond the typical knowledge of a person without medical and/or psychological training.

15. I have discussed the case of United States v. Sergeant John Doe with his defense counsel and they have informed me of the charges and allegations in the case.

16. With regards to the allegation, I have been given the following hypothetical scenario.

a. At a party, A1C Susan Jones drank a large number of alcoholic drinks over the course of 3-4 hours. She remembers the first part of the evening until approximately midnight. A1C Jones states that the next thing she remembers is waking up on a bed to someone performing oral sex on her. She then blacked/passed out again, to wake up later to Sgt Doe having coitus with her. She recalls resisting this and that she then went "back to sleep."

b. Upon awakening the next day, she had vomit in her hair and had urinated in the bed. She did not recall portions of the events of that night, though the following day she got "flashbacks" detailing the abovementioned memories.

c. Following these "flashbacks," she spoke with an individual in her dormitory who told her it was sexual assault. She then went and talked to a SARC counselor, who also described the events as sexual assault and encouraged her to make an unsworn statement.

d. Sgt Doe told investigators he also drank a large amount of alcohol and was unable to recover any memory from that night relating to any sexual encounters with A1C Jones.

17. Based upon the hypothetical in the above paragraph, there are undoubtedly various psychological and cognitive phenomena at play that may have the real potential to distort and inaccurately skew both an individual's memory of an event as well as their perception and characterization of an event. These opinions are based solely on the above hypothetical. Given that, my final opinion is subject to change based upon more complete information and the ability to review all relevant information in this case.

18. I would need 15 hours to review the evidence in this case and consult with defense counsel.

21. I am currently available for trial from 2 March to 29 May 2020. My calendar tends to fill out 2-3 months in advance, but I will work to accommodate any request from the trial court.

Executed this 22nd day of January 2023.

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Paul Simpson, Ed.D.