



Military Appeals Court to Review Evidence in Conviction of SSgt. David Gutierrez Based on Office of Scientific and Medical Justice Findings

For Immediate Release

WASHINGTON, D.C./EWorldWire/Sep. 27, 2013 --- Citing questions about whether the evidence used to convict USAF Sgt. David Gutierrez was insufficient, the U.S. Court of Appeals for the Armed Forces has ordered a review of the case, after experts from the Office of Medical and Scientific Justice (OMSJ) exposed serious flaws in the prosecution's case.

In 2011, Staff Sgt. Gutierrez, 44, a 20-year military veteran, was convicted of aggravated assault and adultery for exposing multiple partners to HIV at swinger parties. He was sentenced to eight years at Ft. Leavenworth Federal Penitentiary, after which he will be dishonorably discharged from the military.

A nonprofit investigative agency that provides medical, scientific and legal support to victims of unapproved and unreliable medical and scientific practices, OMSJ joined appellate counsel Kevin B. McDermott in 2011.

After reviewing Gutierrez' medical records, OMSJ expert Rodney Richards, Ph.D., a chemist and HIV test expert, found that "the testing facilities had deviated from FDA and military directives" and that "the results could not prove infection with any degree of medical or scientific certainty," Richards claims in an affidavit.

OMSJ expert Nancy Banks, M.D., a board certified gynecologist and sexually transmitted disease specialist, further challenged the medical evidence used to convict Gutierrez. "Even if standard FDA-proved tests had been used," she states, "the tests are subject to false positives for a variety of reasons, and particularly for vaccinations. A member of the 22nd Maintenance Squadron, at McConnell Air Force Base, Tech Sergeant Gutierrez consistently received top performance evaluations for managing the service and repairs for the 22nd Refueling Wing."

Although he was healthy and never assigned to hostile combat zones, Gutierrez cooperated with the military's experimental vaccination program and received more than 40 vaccinations - for such diseases as anthrax, hepatitis, tuberculosis, and pneumonia, 17 of which he received in 2007 at roughly the same time he submitted to the initial HIV tests.

During the next three years, the clinicians who tracked Gutierrez health indicated that he was nothing more than asymptomatic - no visible sign or evidence of disease. Gutierrez continues to deny that he is HIV positive and that he committed adultery.

Allegations that Gutierrez committed adultery were called into question when OMSJ's investigation found that the military veteran's wife willingly participated in and encouraged the couple's group activities.

Gutierrez' appeal also cites ineffective assistance of trial counsel as a contributing factor in his conviction.

Founded by investigator and retired LAPD officer Clark Baker, of the more than 50 cases OMSJ (<http://www.omsj.org>) has completed since 2009, all but 3 have resulted in favorable plea agreements, acquittal or the withdrawal of all HIV-related charges.

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