

To The Honorable Members of the Committee:

### **INTRO**

Thank you very much to the staff and committee for granting me the opportunity to speak on such an important matter for both the Military, Veterans, and the public. I also advocate for a service free of sexual assault, as well as fair and impartial processes of justice. As stated, my name is Darin Lopez, and I am a former Navy Intelligence Specialist who honorably served by country for 12 years. I was convicted of a sexual assault in 2014 against my plea of not guilty and was sentenced to three years confinement and a bad conduct discharge where consent was the argued point. Today I am here in the interest of Justice and respectfully request the pursuit of a conviction integrity unit, such could be named the Armed Forces Falsely Accused Individual Review (FAIR) subcommittee. The committee should be granted fact-finding authority and make necessary recommendations to the appellate services and/or board of corrections for adjudication. Although my initial my plight is based upon relief for those believed to be affected by Unlawful Command Influence, I believe there is a need beyond that single scope and that such review committee should be permanently commissioned in the interest of all service members and military justice.

### **KEY POINTS**

I stress **two integral parameters to be reviewed by the proposed conviction integrity unit.**

#### **UCI**

First, in short the armed forces has experienced **the largest account of Unlawful Command Influence (UCI) in US history.** UCI has many variants and has been exerted by the President, SECDEF, Congressional officials. Service leaders, the JAG Corps, jury pools, and

service members of every armed force who through mandatory briefings, and policy memos (*see US v Kish*). Explicit and implicit guidance has been a real problem manifested in undue command influence. Moreover, UCI has reached extremes where those who are supposed to embody the spirit of justice; the Judge Advocate Generals of the Navy and Air Force were found to individually intercede in cases (*see US v SOC Keith Barry*). The alarm has been sounded repeatedly, and despite slow incremental changes, little substantive change has occurred. Specifically, the UCI agenda pervaded because of a perception that the Armed Forces couldn't manage sexual assault cases. In my case that statement is correct, but not as the agenda presented. The military system failed even after presenting civilian authorities the opportunity to pursue but dropped for a lack of evidence. A problem that took months of misinformation to create, has reached a decade of damage, and I am here today to say that there is still time to do the right thing for the future and **ensure progress toward a path where none are left behind.**

#### **Rights Violations**

The military justice system has violated individual rights for the accused as defined by the Constitution and I ask the committee to look at cases such as mine. What occurred cannot be purely explained as a series of unfortunate events such as ineffective council, prior inconsistent statements, testimony changing, storytelling, phone muting during testimony, but **a series of events disregarding my rights to fit an agenda enabled by UCI.**

The burden at trial is **beyond a reasonable doubt** and in less a trial lasting only several hours prefaced by 2 years of investigation and fact finding my fate was determined by a Navy Judge alone. The judge determined that the burden was met based on a single statement by the accuser; "don't worry, I used a condom." Despite all of the inconstancies in provided evidence and testimony, he describes the accuser as credible and explains "critically significant" in his

rationale proves that the word “used” is past tense and implies that I was aware of her inability to consent. At most if that statement were true that was the most overwhelming evidence that a crime had occurred. Still, that does not reach the burden of an inability to consent beyond a reasonable doubt. The standard for the burden would have been substantial incapacitation proven beyond a reasonable doubt, and the record shows the accuser drank three drinks between 3-4 hours and **has many memories however intermittent on record before, during, and after our consensual sexual activity**. What makes the Judges finding even more severely separated from the truth is that **this particular statement evolved from the initial interviews** with Army CID in Dec 2012 of her having an account of me saying “**I have a condom on” during sexual activity, which would be a direct answer from a question to a conscious person**. But the account of that statement changed somewhere after being assigned a personal attorney or Special Victim Advocate (SVA). That statement and the oddly tactical responses of an accuser to say “I don’t know” in response to particular lines of questioning offer more than mere suspicion, because without them there would have been no way to narrate a case at all **due to a lack of any factual evidence**. This would be a tactic aligned with UCI guidance to achieve a conviction to get past the burden shift of court-martial and into appeals where that shift further makes justice increasingly difficult. These tactics were necessary because there was not and is not anything that implies our activity was not consensual but fit the agenda of that time. The accuser stated on the record that “I don’t remember saying no or stop” (Article 32) because she didn’t.

After what has been revealed from the scope of the UCI, the handlings, and the result of my case given the lack of evidence, it is more than apparent that **the true tragedy was the chain of command creating a crime and ensuring a conviction**. The violation of my rights ruined my career, sent me to prison, put me through a decade of emotional and mental distress, and

makes every day a challenge due to accommodating circumstances and yet, there is no avenue for relief.

**Solution**

As stated, I am here today advocating for my own individual path for relief and for every Veteran who has been subject to the damages of injustice with no clear path to redemption. I have been in recent contact with military prosecutors, and they are in agreeance that a case like mine by todays standard would not be pursued, yet I remain suffering and penalized by injustice. As stated, I believe in something such as the proposed (FAIR) committee composed of non-reservist nor active-duty military to ensure integrity where self-preservation of career cannot be a factor in the process of justice. I imagine this is much like what Member Jim Markey has mentioned as a conviction integrity project that would seek that everybody's victims are supported, and everybody's rights are also respected and is the correct course of action for the future. Thank you for your time.

Very Respectfully,

Darin G. Lopez