

Lawyers for sailor convicted of sex assault accuse brass of illegally trying to remove them

Say Navy illegally tried to remove legal team



Vice Adm. James W. Crawford III is the 43rd Judge Advocate General of the Navy. (Navy photo) more >

By Rowan Scarborough - *The Washington Times* - Monday, August 14, 2017

Attorneys for a SEAL war hero are seeking a dismissal of his 2014 sex assault conviction because the Navy is trying to remove the naval lawyers assigned to the sailor's defense team.

Attorneys for Senior Chief Petty Officer Keith E. Barry say the Navy is engaging in unlawful command influence because the service wants to show Congress it is playing hardball with a convicted sex offender.

“Perhaps certain members of Congress do not like the optics of the Navy presenting a robust defense to a sailor accused of rape,” David Sheldon, Barry’s civilian attorney, told The Washington Times. “There is a reason why the command influence occurred in this case. It’s because the Navy has buckled under to congressional pressure in sexual assault cases at the expense of sailors’ constitutional rights.”

Earlier this year Barry’s legal team formally accused Vice Adm. James W. Crawford III, the Navy’s judge advocate general and highest-ranking lawyer, of exercising illegal command influence in the SEAL’s 2014 trial.

On Aug. 8 Barry’s attorneys filed legal motions before a specially appointed Air Force judge asking that his conviction be dismissed.

The defense motion states that the Barry legal team’s July 31 questioning of Adm. Crawford at the Pentagon spurred the Navy to counterattack by seeking to disqualify Barry’s naval attorneys. They noted that the move came just one day after Adm. Crawford was interviewed, not during the previous 41 days the case had been open.

The admiral’s lawyers had asked a judge to disqualify Barry’s three judge advocates (JAGs), alleging that they improperly “self-detailed” themselves to the high-profile case.

Asked by The Times to respond to the allegations, Patty Babb, a spokeswoman for Adm. Crawford, said: “The Barry case has been forwarded to a new convening authority, senior to the original convening authority, and the fact-finding process is underway. The Navy remains, as always, dedicated to pursuing justice in a fair and impartial system. To preserve the integrity of that process, the Navy will not comment further on the case.”

The government’s countermotion, a copy of which was obtained by The Times, states: “No unlawful command influence exists in the demand that appellate defense counsel follow Navy Rules and not self-detail to trial level proceedings. This is a recurring issue.”

The underlying court battle began in May, when Barry accused Adm. Crawford in a court filing of unlawful command influence in 2014, when he contacted the officer who was overseeing the SEAL's trial in San Diego.

That officer, retired Rear Adm. Patrick J. Lorge, said in a sworn affidavit on May 5 that Adm. Crawford, then the Navy's No. 2 lawyer, urged him not to overturn the judge's guilty verdict. He also said that Vice Adm. Nanette DeRenzi, then the judge advocate general of the Navy, also pressed him to convict.

Mr. Lorge complied, and Barry went to prison. But three years later, his conscience nagging at him, Mr. Lorge provided a statement to the defense expressing regret that a man he believed to be innocent went to prison.

The female accuser testified that after a series of "crazy sex" encounters, Barry forced intercourse on her. He was convicted in a nonjury court-martial, and two appeals courts upheld the conviction.

He served his three-year sentence and is on "appellant leave" without pay.

Mr. Lorge's affidavit reopened the case.

The Court of Appeals for the Armed Forces, the military's highest, ruled in June that Mr. Lorge provided sufficient evidence to order a fact-finding hearing.

And, in a slap at the Navy, the appeals court ordered that the presiding judge could not be a Navy or Marine Corps officer. The appointment went to Air Force Col. Vance H. Spath.

The court said the judge's report must be filed by Nov. 1 directly to the court, bypassing the Navy's normal chain of command.

After Adm. Crawford was interviewed by Barry's defenders, government lawyers began questioning how the JAGs were detailed to the case.

“It is frankly unprecedented. And the fact that the Navy is now challenging [this] very experienced detailed defense counsel the day after we interviewed the judge advocate general is not coincidental,” Mr. Sheldon told The Times. “It is the proverbial ‘13th stroke of the clock.’”

The defense motion revealed that Adm. Crawford acknowledged that he spoke with the chief of naval operations, then-Adm. Jonathan Greenert, about the Barry case.

The defense motions also said that legal advisers to Mr. Lorge at the time he was the convening authority on the Barry court-martial are refusing to turn over their files for the fact-finding hearing.

These same advisers alerted the Navy top brass at the Pentagon after then-Adm. Lorge began saying he might overturn the conviction.