

**IN THE UNITED STATES COURT OF APPEALS
FOR THE ARMED FORCES**

UNITED STATES,

Appellee

v.

Keith E. Barry
Senior Chief Special Warfare
Operator (E-8)
United States Navy,

Appellant

**DECLARATION OF RADM
PATRICK J. LORGE, USN (RET.)**

Crim.App. Dkt. No. 201500064

USCA Dkt. No. 17-0162/NA

**TO THE HONORABLE JUDGES OF THE UNITED STATES COURT OF
APPEALS FOR THE ARMED FORCES:**

I, Patrick J. Lorge, USN (ret), do hereby swear and attest that the following is true and accurate to the best of my knowledge:

1. I am a retired Rear Admiral in the United States Navy.
2. In 2015, I was the General Court-Martial Convening Authority in the matter of *United States v. Barry*.
3. In that capacity I reviewed the trial in the post-trial clemency phase.
4. Upon review of the record, I had serious misgivings about the evidence supporting this conviction. Specifically, I did not believe the evidence supported the alleged victim's account of events. I was inclined to disapprove the findings.
5. My Staff Judge Advocate was CDR Dominic Jones and my Deputy Staff

Judge Advocate was LCDR Jon Dowling. They advised me on my legal options regarding this case, and tried to convince me to approve the findings in the case.

6. As I considered whether to disapprove the findings, I was also concerned about the impact to the Navy if I were to disapprove the findings. At the time, the political climate regarding sexual assault in the military was such that a decision to disapprove findings, regardless of merit, would bring hate and discontent on the Navy from the President, as well as senators including Senator Kirsten Gillibrand. I was also aware of cases from other services that became high profile and received extreme negative attention because the convening authorities upset guilty findings in sexual assault cases.

7. I perceived that if I were to disapprove the findings in the case, it would adversely affect the Navy. Everyone from the President down the chain and Congress would fail to look at its merits, and only view it through the prism of opinion. Even though I was convinced then, and am convinced now, that I should have disapproved the findings, my consideration of the Navy's interest in avoiding the perception that military leaders were sweeping sexual assaults under the rug outweighed that conviction at the time.

8. Prior to my action in this case, VADM Nanette DeRenzi, the then-Judge Advocate General of the Navy, expressed a similar concern to me about the reputation of the Navy in a conference in my office, although she did not address

this specific case. This was a personal conversation, not part of an instruction or informational course. She conveyed the importance that convening authorities held and how tenuous the ability of an operational commander to act as a convening authority had become, especially in findings or sentences in sexual assault cases due to the intense pressure on the military at the time. She mentioned that every three or four months military commanders were making court-martial decisions that got questioned by Congress and other political and military leaders including the President. This conversation reinforced my perception of the political pressures the Navy faced at the time.

9. In addition to the advice from my staff judge advocates, I also discussed the case with then- RADM Crawford, who is now the Judge Advocate General of the Navy.

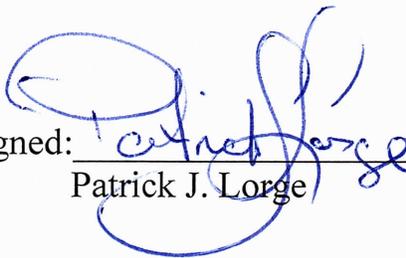
10. I have known VADM Crawford since 2001. LT McMahon's questions about my action in this case led me to recall—vaguely—conversations I had with VADM Crawford, in my office and on the telephone, about my action.

11. Upon my review of the record of trial from this case, I did not find that the Government proved the allegation against Senior Chief Barry beyond a reasonable doubt. Absent the pressures described above, I would have disapproved the findings in this case.

12. On a personal note, I would ask you to forgive my failure in leadership and right the wrong that I committed in this case against Senior Chief Barry; ensure justice prevails and when doubt exists, allow a man to remain innocent.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing information is true and correct.

Date: 5 MAY '17

Signed: 
Patrick J. Lorge