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## **The U.S. versus you. What to understand, do, and avoid if you are falsely accused in the military.**

**By Major Kit Martin**

**Due process and fundamental fairness in the military justice system have been eviscerated for political expediency.** There are hundreds of really good papers and articles covering this topic with great references, this is not one of them. I am not going to try and duplicate those efforts. I want to give you a quick and easy to read synopsis of what veterans are facing and what they need to do. Please spread the word to anyone you know in the military so they can be prepared. When you have time, you will need to read the papers referenced in this article for a deeper understanding of the history of this issue and how the system is now stacked against service members. Whenever any veteran is accused of any type of domestic violence, sexual harassment, or sexual assault; service members are strongly encouraged to keep in mind the following unwritten “rules.”

### **Rule 1. The Secret War, you are now in it.**

*“Power does not corrupt. Fear corrupts... perhaps the fear of a loss of power.”*  
— **John Steinbeck**

There is a secret war being waged in the military. You need to understand that what you are facing now is a direct result of a politically motivated over-reaction by the Department of Defense. This is the result of political initiatives to remove commanders from their convening authority. This is due primarily to the recent (but false) narrative of a rape culture<sup>i</sup>, of a sexual assault “epidemic” portrayed in documentaries such as “*The Invisible War*.”<sup>ii</sup> This is ironic since a review of Americas crime statistics shows nationwide rape and sexual assault are at a 24 year low.<sup>iii</sup> Yet the current political narrative is that there is a rape “epidemic” in our military and universities stating statistics such as 1 in 5 women are raped. The true numbers are more like 1 in 1,500.<sup>iv</sup> In fact, a 2014 report showed that of 11,000 campuses **91% of colleges reported no rapes!**<sup>v</sup>

*“Hysteria over a rape culture sheds no light and produces no solutions. Panic breeds chaos and mob justice. It claims innocent victims, undermines social trust, and distracts from genuine cases of abuse.”* - Christina Hoff Summers

As a result of political pressure, due process and service member rights have been sacrificed in order to streamline the conviction process and appease politicians. As such, concessions have been made which virtually eviscerate constitutional rights and due process protections.<sup>vi</sup> This includes changes to the UCMJ, the creation of special “victim” programs and prosecutors (SVPs), and a generous transitional compensation package for alleged victims.<sup>vii</sup>

This has created a **“perfect storm” for false allegations**. If you have been accused, the full weight of the U.S. government and all of its ample resources will be brought to bear in order to procure a guilty verdict, either through a plea bargain or at court-martial. **The ultimate goal is to get you to admit guilt**. This will make their statistics look better and stop the court system from being overloaded. Military prosecutors and defense attorneys will push plea deals, and if convicted, you must also admit guilt while in custody in order to qualify for parole.

## **2. Once accused, you are GUILTY until proven guilty!**

If accused of some type of sexual misconduct, guilt is presumed until such time as you are officially found guilty or plead guilty. Collateral charges are routinely added in order to pressure you to enter a plea bargain, or to ensure that you are found guilty of ‘something’.<sup>viii ix</sup> Article 32 Hearing’s (preliminary hearings) in sexual misconduct cases used to serve as a form of checks and balances, but have now been morphed into a mere stepping stone leading to a court-martial.<sup>x</sup>

## **3. CYA. Cover You’re A\$\$!**

Military commanders and convening authorities are under tremendous pressure to obtain convictions involving allegations of sexual misconduct. Any decision by a commander to reject or deny a case from proceeding to court-martial will automatically be reviewed by the Secretary of each branch as well as the JAG command. These decisions will reflect in their officer evaluations and it is likely that their promotions will be blocked by politicians.<sup>xi</sup> In fact the entire military rating system has recently been completely redesigned to focus on a service members support of equal opportunity and sexual “sensitivity” issues.<sup>xii xiii xiv</sup>

## **4. Military Sexual Harassment/Assault Response and Prevention (SHARP or SAPR) Training is misleading and does not reflect accurate data or statistics.**

The current political and media narrative is that there is a rape “epidemic” in our military and SHARP training is mandatory, biased, and often insulting.<sup>xv</sup> SHARP training has made all members of the military (and therefore courts-martial panels) biased in their perceptions of what sexual assault really is, by actually redefining the definitions. Women are told they can

reinterpret any sexual encounter they have ever had at any time with no statute of limitations. This has created a system that is rife with abuse and false allegations.<sup>xvi</sup>

### **5. Any relationship is a potential liability.**

Every person you have had a relationship with is a potential liability and future “victim.” Never put yourself in a position of vulnerability such as meeting/counseling a member of the opposite sex alone. Be careful in your relationships, especially with women that have children. If there is a breakup, it will be you versus them, not “he said-she said.” Military men and women have seen what is happening with regard to false allegations, as a result they are justifiably paranoid of being accused. An unintended outcome of this is that **our military is now the most segregated it has ever been.**<sup>xvii</sup>

### **6. As a man, and a veteran, you are more likely to be arrested.**

This applies even if you are the one to call the police. Current civilian and military law enforcement training encompasses ‘predominant aggressor’ considerations. This means that it is usually the male who will be viewed as the predominant aggressor, thus demanding an arrest. This argument is not statistically accurate, but it doesn’t matter.<sup>xviii xix</sup> Like an “epidemic” of sexual assault, it is the believed perception.

This applies even if they have to pry that frying pan out of your head that your spouse or girlfriend hit you with. Law enforcement domestic violence training programs suggest that veterans are a threat, and that any form of alleged intimate partner violence is a result of PTSD. The PTSD perception is also reinforced on TV, movies, and the media in general.

### **7. EPOs are easy, expect to be served!**

Protection orders are easy to obtain and virtually anyone can get one for any reason. If you have a spouse, girlfriend, or even a female co-worker, they can obtain an order of protection with a mere accusation.<sup>xx</sup> Virtually everything and anything is sufficient to obtain an order of protection. Judges, like commanders, want to protect their jobs (CYA!).

**Develop a contingency plan.** Protect your children if you have children and protect your assets. Keep sensitive documents such as financial records, titles, and other documents in a separate area or with a trusted relative or friend. If things in the relationship begin to deteriorate, or if you have concerns about a female co-worker (or even a woman you met at a bar) **consider having a recording device on you at all times.** Some states prohibit unauthorized two party recorded conversations, however if faced with false allegations of sexual assault, it is better to face charges of illegally recording rather than take the chance of a lifetime prison sentence.<sup>xxi</sup>

### **8. The Military Family Advocacy Program (FAP) IS NOT confidential.**

If accused of some type of domestic violence or sexual misconduct, you will be ordered to participate in FAP. You may even be forced to admit guilt in order to be accepted into the

program; **DON'T!** They will also have you answer a series of questions that will try to show a history of violence or abuse in your family, starting with your parents, so be aware of what they are doing.

Despite any claim that your discussions with FAP advocates or counselors being confidential; **THEY ARE NOT.** The UCMJ allows military law enforcement agents and prosecutors to obtain any and all records of conversations and counseling sessions with FAP members. If you are innocent, say so in a very cordial and calm manner. Consider covertly recording any and all conversations with anyone from FAP. **DO NOT TRUST** anything that anyone from FAP tells you about the confidentiality of your conversations, nor be lulled into believing that they 'are there for you,' **THEY ARE NOT.**

FAP needs to get you in their program and they will hold a secret meeting to determine if you should be admitted. Oh, by the way, you **can't** attend and speak for yourself and provide evidence and witnesses, neither can your attorney. "Your" counselor has the sole power to filter what information is presented, and therefore, they control the outcome.

**9. Hire a competent civilian defense lawyer specializing in military court-martials. This is the single most important thing you can do!**

Do not trust military defense council! Yes, they are free, and yes, you get what you pay for. JAG lawyers are all friends and coworkers that share information whether it is intentional or not. They can also switch sides at any time. New JAGs, junior captains, are usually the ones assigned as defense council. Their job is to push plea deals on unsuspecting clients. They also advise them to go judge alone instead of a panel ("jury"). **NEVER GO JUDGE ALONE!** This is an almost guaranteed conviction and longer sentence.

Plea deals also help streamline the now overloaded system with "admissions" of guilt, which makes the statistics look good. This is also unfair and immoral as what private or young sergeant is going to assert themselves over, or dismiss, a superior officer? They have been trained and indoctrinated to follow their orders. Having a seasoned civilian attorney that answers to you, knows how the military system works, **and** knows how the key JAG "players" at your base operate is a deciding factor. This will be pivotal in whether you are convicted or exonerated as well as what your potential sentence will be in the event of a conviction.<sup>xxii</sup>

**10. You need to act like your own lawyer too. Document everything and keep a timeline.**

This is the second best thing you can do. **No one knows your case better than you.** Be proactive and organized. Keep a daily log of events and documents to back them up. If your case is complicated, you will need a lawyer with a support staff. ***This can be crucial!***  
**- Always secretly tape any conversation regarding your case** (commander, JAG, FAP, etc. to back up your timeline. If you are interviewed by investigative services, hide it in your underwear to document their threats, but only ask for your lawyer, do not talk).

- Gather any evidence that may be relevant.
- Make a list of anyone that can serve as a witness for you with their contact information.
- Prepare to be isolated. Nothing will isolate you more than being labeled a rapist or child molester, so that is what the JAG prosecutors will probably do.<sup>xxiii</sup>

## 11. “Victim” centered investigations by biased law enforcement are the new standard.

***“Law enforcement are the facilitators of corporate fraud.” – Steven Magee***

Like SHARP, “Victim” centered investigations (the victim must be believed) is so indoctrinated that many investigators don’t think twice about their biased perspective.<sup>xxiv</sup> **Do not talk or make statements to them! EVER!! Sign no statements either! Wait them out.**

CID/OSI/NCIS get “results” through intimidation, coercion, and offering rewards to “victims.” Do not submit to any testing without your attorney’s approval and coordination. This means polygraphs too.<sup>xxv</sup> These same tactics are also employed with potential defense witnesses, so you and your civilian attorney will have to educate your potential defense witnesses. Your civilian attorney must be notified immediately if threatening or coercive tactics are used against potential defense witnesses.

**REMEMBER: NCIS/CID/OSI are NOT there for the purposes of determining the truth.** Once accused the primary purpose is to CONVICT someone (you), at any and all costs.<sup>xxvi</sup>

## 12. The military is making “Victims” and Witnesses through bribery or coercion.

Military investigators will usually look for only negative information and collect only evidence that helps the prosecution. This is who they work for. They are looking for witnesses that will help their case, not yours. They will start by telling your friends and associates that you are a rapist or child molester and they need to help put you away to protect others (again, guilty until proven guilty). The second thing they will say is that there is a “victim” compensation program that pays thousands of dollars a month.

Then they will ask ***“Did he ever sexually assault you? Are you a victim too? (\$\$\$!!!)*** If you have an “ex” or potential ex, how do you think they will respond?

## 13. The UCMJ process is held as being fair and impartial, but it’s not, especially with recent changes.<sup>xxvii</sup>

It is a misnomer that the military investigative and judicial system is fair and impartial, but IT’S NOT. In any case involving allegations of sexual misconduct, the primary and sole objective is to obtain a conviction, preferably through an admission of guilt. They will also stack the same charge over and over again to increase the potential sentence and intimidate you into

taking a plea deal (which means admitting guilt, their objective). “You’re looking at 200 years, or you can plead and get 8...”

In cases involving allegations of domestic violence or sexual misconduct, investigators do not seek evidence of innocence and if they accidentally come across it, they will either ignore it or minimize its significance.

#### **14. Military Prosecutors hold all the cards.**

The military judicial process is a battle between lawyers and judges over rules and procedures, not a battle of determining the truth. The same is true for your courts-martial. Witnesses, evidence, and any information of your innocence will be fought, blocked, and argued to prevent it from becoming part of the proceedings. The panel (jury) will not know about this.<sup>xxviii</sup>

Expect devious tactics, lies, and other acts of investigative and prosecutorial misconduct to be part of the process. **Everything is filtered through the prosecutors. They control everything!** They can and will deny you the resources and witnesses you need to prove your innocence. The requests also telegraph your defense strategy. They will also try to block information that shows their accusers lies and past history. It’s usually not admissible anyway.

Prosecutors will elevate an Article 15 to a court-martial in order to eliminate evidence of innocence like contradictory statements, polygraph examinations, and even prior criminal acts or lying on the part of accusers. Prosecutors will also instigate new charges from false accusers and provide them protection and benefits.

#### **15. UCI, (Unlawful Command Influence) is alive and well.**

Every commander has their own style of leadership and interests. If a commander’s pet peeve or project is domestic violence, sexual assault, or drug use, they will institute draconian measures or policy letters to ‘eliminate’ or ‘eradicate’ a perceived problem. This is especially true now with the perceived sexual assault “epidemic.” As such, a potential panel member may feel compelled to convict an innocent service member based on a perception or belief, that is what the commander expects.

#### **16. Congressional Requests are double edged swords.**

If you are being treated unfairly, you may request a Congressional Inquiry through your congressional representative. Although a service member is fully entitled to exercise their rights with their own elected representatives, doing so will most likely result in some type of backlash or additional or more serious charges. Commanders, especially generals who are selected by congress, are not fond of the attention of any Senate or Congressional inquiry.

#### **17. A Courts Martial is a narrative and your story cannot be told.**

A court-martial is the prosecution telling your accusers story, often a story the prosecutors have tailored or manufactured in order to obtain a conviction. It IS NOT a process for the determination of the truth. **You do not get to tell your story!** Military Rules of Evidence (MRE) substantially prevent an accused's ability to present an effective defense. Prosecutors control virtually all evidence and witnesses that will be offered in any potential court-martial. Your lawyers can only try to "poke" holes in the accuser's story. In other words, prove you didn't do something. How do you prove a negative?  
*"You groped her 10 years ago, prove you didn't do it..."*

### **18. Courts-Martial Panels are not like a civilian jury.**

This is not a civilian jury of 12 of your peers that must make a unanimous decision of guilt. This is a military panel of your superiors, sometimes **as few as five**. Only **two thirds majority is required for a felony conviction!** Court members (panel members) will be selected based on their perceived loyalty to the convening authority (commander). Panels that find for the defense will be labeled "pro-defense" and will be rotated (removed). **Panels that continually find "pro-government" will be retained for up to one year**, one of many idiosyncrasies that most in the general populace (and military) are completely unaware.

### **19. The worst part. There is no retribution against false accusers.**

**That's right; there is NO PUNISHMENT for false accusers, but there are rewards!**

Reasons for lying can be varied. They may want to avoid the consequences of adultery or punish their spouse for suspected adultery. Maybe there is a child custody dispute, or maybe it's just the \$\$\$. A senior female attorney specializing in campus sexual assault allegations stated at a recent conference that - **"90% of the time false rape and sexual assault allegations are done to either gain the sympathy of an ex, or punish the one that got away."**<sup>xxix</sup>

### **20. The final rule- You can never really win!**

Remember it's the U.S. government versus you.

The bottom line, and the reality, is that once you are accused; your career, and quite possibly your freedom, is over. Not all cases are like this of course, but this is the general rule of thumb. There are still some military leaders and commanders out there that utilize common sense, but they are being weeded out quickly.<sup>xxx</sup>

Ultimately nothing is going to change until the American people are made aware of what is happening and force their politicians to correct it. This can be done by –

1. Documenting and humanizing cases of wrongly accused veterans.
2. Documenting the unethical conduct of commanders, prosecutors, and investigators.
3. Showing the impact it has on military families and military readiness.
4. Begin to make reasonable and common sense changes to the UCMJ.

## Conclusion

American Veterans and Service Members should have the same rights as the citizens they defend, a fair and impartial legal process. The military justice system has been corrupted for political expediency in order to appease a falsely perceived “epidemic” of sexual assaults. This has led to changes in the UCMJ that have eviscerated due process by a government that is unfairly using its power against veterans for political correctness. Senior leaders in the government and military are now sacrificing veterans in an attempt to maintain their own autonomy and power.

This has created an environment of “guilty until proven guilty” investigations, unlawful command influence, and excessive punishments. The net effect of this is that service members are realizing (and hopefully the general public will too), that the current system is illegitimate, hypocritical, and elitist.

**This is a national security issue!** Our military defense will be greatly diminished as fewer and fewer men will be willing to expose themselves to an organization that rewards false accusers and fast tracks men into prison. The military has shown it is not capable of being trusted. Specific changes need to be made:

- 1. Remove the military from all felony cases and prosecutions except those involving military and war specific crimes such as spying and desertion (The JAG Corps and UCMJs original purpose).***

This includes commanders convening authority power over felony cases that they are not qualified to oversee. The “good order and discipline” argument is best served by non-judicial punishment, not felony cases. You do not have city mayors or company CEOs involved in determining felony criminal prosecutions, so why should unit commanders? If most of these commanders (like I was) were able to answer honestly, they would tell you they don’t want to be involved in this process anyway. It’s a distraction from their mission and they aren’t qualified. As a result, they take the advice of prosecutors out of fear of making a mistake. Worse yet, some commanders trying to make a name for themselves and secure advancement will override legal advice and justice for personal gain.

- 2. Give Service Members the same rights as citizens- innocent until proven guilty, jury trial by 12 peers, a unanimous verdict required. This is a no brainer!*** Sexual Assault investigations and trials should occur in the civilian county of where they allegedly occurred. These cases should be handled by civilian authorities that have legal accountability, know what they are doing, and are less influenced by politics.

3. *There should be a time limit on any allegation and the military should not be able to have a “double jeopardy” ability to re-prosecute an allegation previously cleared by civilian authorities.*
4. *Stop rewarding accusers and giving them “special victim status” based only on an accusation. \$\$\$ for accusations promotes corruption and wrongful convictions. Give all proven false accusers the max punishment their victims would have received.*
5. *The MRE (military rules of evidence) should be that if any evidence may prove an accused’s innocence then it should be allowed, period! Give panels (juries) all the information and stop hiding the truth.*
6. *Give the accused the same resources the prosecution has without requests being approved by the prosecution and convening authority. This is grossly unfair and telegraphs the defenses strategy and blocks their access to investigators and specialists.*
7. *Conduct a Department of Justice (DoJ) run 100% review in the cases of all veterans charged or convicted of sex crimes. This should focus on cases that have occurred since the recent UCMJ changes and political UCI came into effect, approximately 2011.*
8. *Completely reform or disband the JAG Corps and military investigation agencies (and MRE), they have no oversight and have proven they cannot be trusted. Prosecute all commanders, JAG officers, and investigators that committed unethical and illegal actions. This will help restore trust in the UCMJ.*
9. *Change EPO Laws to require a hearing of both parties first. Track all EPOs in a public national database to stop abusers and con-artists. Sanctuaries and other protections exist for emergency situations. EPO laws are unfair, biased, and empower false accusers.*
10. *Dissolve all military SHARP and FAP programs. Use unbiased private civilian agencies and real professionals. It will take time to undo the bias and false perceptions these programs have created, especially on court-martial panels.*

“To oppose corruption in government is the highest obligation of patriotism.”

– G. Edward Griffin

**Remember, this is a national security issue!**

A great deal of damage has been done by railroading our veterans into prison and labeling them as felons and sex offenders for life. This injustice continues to destroy morale and trust. In order for our military to do what it was designed for, protecting our freedom through

force, it needs to stop being used to promote political and social agendas. Service members need to know they are not second class citizens just because they volunteer to serve. They should have the same rights as those they defend. Changes need to be made quickly to restore due process and stop the gender segregation in our military. If not, it will be destroyed from within because corruption executed under the disguise of law and protected by the power of government is the worst injustice of all.

(This article is reflection of the authors personal experience of Major Kit Martin after 30 years in the military. It does not reflect the official position of the U.S. government or the U.S Military)

UCMJ Process Video by Attorney James Phillips

<https://www.youtube.com/watch?v=Gylfnmz8zaE>

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<sup>i</sup> Wendy McElroy [https://www.youtube.com/watch?v=v3\\_ty5jKkX0](https://www.youtube.com/watch?v=v3_ty5jKkX0)

<sup>ii</sup> The Invisible War (seven stories of sexual assault)

[https://www.youtube.com/watch?v=v3\\_ty5jKkX0](https://www.youtube.com/watch?v=v3_ty5jKkX0)

<sup>iii</sup> Disaster Center <http://www.disastercenter.com/crime/uscrime.htm>

<sup>iv</sup> NCFM Carolinas Campus Sexual Assault Forum <http://ncfm.org/2016/07/news/event/event-males/ncfm-carolinas-invites-you-to-their-forum-on-campus-sexual-assault-due-process-and-consent/>

<sup>v</sup> <http://www.aauw.org/article/clery-act-data-analysis/>

<sup>vi</sup> <http://www.ucmj-defender.com/military-define-sexual-assault/>

<sup>vii</sup> <http://www.military-divorce-guide.com/domestic-violence/domestic-violence-victim-benefits.htm>

<sup>viii</sup> <http://ncfm.org/2016/08/news/mens-health/ncfm-adviser-michael-conzachi-another-in-a-long-line-of-false-military-sexual-assault-cases/>

<sup>ix</sup> <http://www.ucmj-defender.com/military-define-sexual-assault/>

<sup>x</sup> JAG Lawyer MAJ Mason Weiss “*Defending the Indefensible*”

[http://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=2740061](http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2740061)

<sup>xi</sup> <http://thehill.com/policy/defense/304283-mccaskill-blocks-generals-nomination-over-sex-assault-case>

<sup>xii</sup> <https://www.hrc.army.mil/content/FAQs%20-%20Draft%20OER%20Support%20Form>

<sup>xiii</sup> <http://www.stripes.com/news/navy-responds-to-criticism-of-changes-to-enlisted-ratings-system-1.434470>

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xiv <https://www.armytimes.com/story/military/careers/army/2015/03/15/nco-evaluation-reporting-system/70154354/>

xv <http://rebrn.com/re/navy-tip-if-you-pull-over-to-help-someone-remember-not-to-rape-t-2535554/>

xvi <http://www.washingtontimes.com/news/2015/jan/26/kirsten-gillibrand-blasted-decision-invite-columbi/>

xvii <http://ncfm.org/2015/07/news/false-allegations/rape-allegations-news/ncfm-update-in-the-case-of-u-s-army-major-kit-martin-an-abused-man/>

Jul 1, 2015 ... Among others things, Prosecutor CPT **Jenny Sue Schlack** says in the post that men she works with refuse to have closed-door discussions with her for fear of ...

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[https://mg.mail.yahoo.com/neo/b/message?sMid=0&fid=Inbox&fidx=1&sort=date&order=down&startMid=0&filterBy=&ac=XhVMQJ.vegFNr8MLk6xdLxy\\_jW4-&.rand=2105805541&midIndex=0&mid=ANW\\_imIAAbsRV7d27wwxGBm5FjI&fromId=](https://mg.mail.yahoo.com/neo/b/message?sMid=0&fid=Inbox&fidx=1&sort=date&order=down&startMid=0&filterBy=&ac=XhVMQJ.vegFNr8MLk6xdLxy_jW4-&.rand=2105805541&midIndex=0&mid=ANW_imIAAbsRV7d27wwxGBm5FjI&fromId=)

xix <http://time.com/2921491/hope-solo-women-violence/>

xx <http://www.legalmatch.com/law-library/article/emergency-protective-orders.html>

xxi <http://www.csmonitor.com/USA/Justice/2015/0923/Army-Ranger-uses-GoPro-in-domestic-violence-case-A-new-line-of-defense>

xxii <http://www.saveourheroesproject.com/>  
<https://www.facebook.com/SaveOurHeroesProject/>

xxiii <http://www.telegraph.co.uk/news/uknews/crime/10160029/Cab-driver-falsely-accused-of-rape-saved-by-his-phone-app.html>

xxiv <http://www.helixongroup.com/always-believe-victim-meets-false-allegations-accused-suffers/>

xxv <http://www.ucmj-defender.com/confession-may-good-soul-bad-career/>

xxvi <http://saveourheroesproject.org/legal-myths-sagapolice-are-objective-in-their-investigations/>

xxvii <http://www.prosecutorintegrity.org/sa/mjp/>

xxviii <http://www.ucmj-defender.com/military-justice-living-state-denial/>

xxix NCFM College False Accusation Conference, 1 AUG, 2016 Charlotte, NC

xxx <https://www.google.com/#q=200+military+leaders+fired>