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PENDING LEGISLATION REGARDING SEXUAL ASSAULTS IN THE MILITARY

HEARING

BEFORE THE

COMMITTEE ON ARMED SERVICES
UNITED STATES SENATE

ONE HUNDRED THIRTEENTH CONGRESS

FIRST SESSION

JUNE 4, 2013

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PENDING LEGISLATION REGARDING SEXUAL ASSAULTS IN THE MILITARY

TUESDAY, JUNE 4, 2013

U.S. SENATE,
COMMITTEE ON ARMED SERVICES,
Washington, DC.

The committee met, pursuant to notice, at 9:35 a.m., in room SH–216, Hart Senate Office Building, Senator Carl Levin (chairman) presiding.

Committee members present: Senators Levin, Reed, Nelson, McCaskill, Udall, Hagan, Manchin, Shaheen, Gillibrand, Blumenthal, Donnelly, Hirono, Kaine, King, Inhofe, McCain, Sessions, Chambliss, Wicker, Ayotte, Fischer, Graham, Blunt, and Cruz.

Committee staff members present: Peter K. Levine, staff director; Travis E. Smith, chief clerk; and Leah C. Brewer, nominations and hearings clerk.

Majority staff members present: Jonathan D. Clark, counsel; Jonathan S. Epstein, counsel; Gabriella E. Fahrer, counsel; and Gerald J. Leeling, general counsel.

Minority staff members present: John A. Bonsell, minority staff director; Steven M. Barney, counsel; William S. Castle, general counsel; Samantha L. Clark, associate counsel; Allen M. Edwards, professional staff member; Anthony J. Lazarski, professional staff member; Daniel A. Lerner, professional staff member; and Natalie M. Nicolas, staff assistant.

Staff assistants present: Jennifer R. Knowles, Kathleen A. Kulenkampff, and John L. Principato.

Committee members' assistants present: Carolyn Chuhta, assistant to Senator Reed; Jeff Fatora, assistant to Senator Nelson; Jason Rauch, assistant to Senator McCaskill; Casey Howard, assistant to Senator Udall; Christopher Cannon, assistant to Senator Hagan; Mara Boggs, assistant to Senator Manchin; Chad Kreikemeier, assistant to Senator Shaheen; Moran Banai, Brook Gesser, Brooke Jamison, and Kathryn Parker, assistants to Senator Gillibrand; Ethan Saxon, assistant to Senator Blumenthal; Marta McLellan Ross, assistant to Senator Donnelly; Nick Ikeda, assistant to Senator Hirono; Karen Courington, assistant to Senator Kaine; Steve Smith, assistant to Senator King; Paul C. Hutton IV and Elizabeth Lopez, assistants to Senator McCain; Lenwood Landrum, assistant to Senator Sessions; Todd Harmer, assistant to Senator Chambliss; Joseph Lai, assistant to Senator Wicker; Brad Bowman, assistant to Senator Ayotte; Peter Schirtzinger, assistant to Senator Fischer; Craig Abele, assistant to Senator Graham;

Charles Prosch, assistant to Senator Blunt; and Jeremy Hayes, assistant to Senator Cruz.

OPENING STATEMENT OF SENATOR CARL LEVIN, CHAIRMAN

Chairman LEVIN. Good morning, everybody. The committee meets today to receive testimony on pending legislation regarding sexual assaults in the military.

Before we begin our hearing, we note with sadness the passing of our friend Frank Lautenberg, who was the last World War II veteran serving in the Senate.

Seven bills relating to sexual assault have been introduced in the Senate beginning in March and are now pending before the committee.

Senate bill 538, introduced by Senator McCaskill and others on March 12th.

Senate bill 548, introduced by Senator Klobuchar and others on March 13th.

Senate bill 871, introduced by Senator Murray and others on May 7th.

Senate bill 964, introduced by Senator McCaskill and others on May 15th.

Senate bill 967, introduced by Senator Gillibrand and others on May 16th.

Senate bill 992, introduced by Senator Shaheen and others on May 21st.

Senate bill 1041, introduced by Senator Blumenthal on May 23rd.

More than 40 Senators have sponsored or cosponsored one or more of these bills. There is good reason for this legislative activity. The problem of sexual assault is of such scope and magnitude that it has become a stain on our military.

Last year, for the fourth year in a row, there were more than 3,000 reported cases of sexual assault in the military, including 2,558 unrestricted reports and an additional 816 restricted reports. Restricted meaning that in accordance with the victim's request, they were handled in a confidential manner and not investigated.

A recent survey conducted by the Department of Defense (DOD) indicates that the actual number of sexual offenses could be considerably higher, as 6.1 percent of active duty women and 1.2 percent of active duty men surveyed reported having experienced an incident of unwanted sexual contact in the previous 12 months.

Even one case of sexual assault in the military is one too many. No one who volunteers to serve our country should be subjected to this kind of treatment by those with whom they serve. The problem is made much worse when the system fails to respond as it should, with an aggressive investigation that brings the perpetrators to justice.

The recent documentary "The Invisible War" has provided tragic and heartbreaking examples of some of these system failures. Every member of this committee wants to drive sexual assault out of the military. The question for us is how can we most effectively achieve this objective?

We have previously—in some cases as recently as last year's National Defense Authorization Act (NDAA)—taken a number of steps

to address the problem of sexual assault in the military to ensure the aggressive investigation and prosecution of sexual offenses and to provide victims of sexual assault the assistance and support that they need and should have.

For example, in the area of training, we have required sexual assault training for servicemembers at each level of military education, sexual assault training of new recruits within the first 2 weeks after entrance on active duty, and enhanced training for new and prospective commanders.

In the area of prevention, we have required regular assessments of command climate and regular surveys of gender relations, and we have prohibited the military from granting waivers to individuals with criminal convictions for sexual offenses to allow them to serve in the military.

In the area of victim protection, we have established requirements for legal assistance for victims of sexual assault, provided for expedited transfers for victims of sexual assault, and required general or flag officer review of any involuntary separation of a victim of sexual assault when requested by the victim to ensure that the victim is not victimized a second time.

In the area of reporting, we have authorized restricted reporting of sexual assaults that enables victims to maintain confidentiality when they choose to do so. We have required that each brigade or equivalent unit have its own full-time trained and qualified Sexual Assault Response Coordinator (SARC) and sexual assault victim advocate. We have established strong recordkeeping requirements for reports of sexual assault.

In the area of investigation, prosecution, and penalties, we have required DOD investigative agencies establish special capabilities for investigating and prosecuting sexual offenses, and we have required that any servicemember convicted of a sexual offense be processed for administrative separation when the court-martial punishment does not include a discharge.

Some of these steps being recent, their effectiveness is not yet determined. But we know more needs to be done. The bills now before the committee propose a wide variety of additional actions for us to consider.

These include the following: amending the Uniform Code of Military Justice (UCMJ) to limit the authority of a convening authority to modify the findings and sentence of a court-martial, requiring that special victims' counsel be provided to victims of sexual assault, as the Air Force has been doing on a test basis since January.

Bills before us would put into statute the existing regulatory requirement that commanders who receive reports of sexual misconduct offenses submit them to criminal investigators.

Bills before us would require commanders who receive reports of such sexual misconduct to submit them to the next higher officer in the chain of command, would direct the Secretary of Defense to establish a separate legal authority outside the chain of command to determine whether and how to proceed with a case. That would take the place of the commander, who now serves as the initial disposition authority under current law.

Bills before us would amend the UCMJ to establish a separate convening authority outside the chain of command to appoint courts-martial for serious offenses.

Bills before us would modify the manual for courts-martial to remove the character of the accused as one of the factors to be considered in deciding how to proceed with a case and would require that all substantiated sexual-related offenses be noted in the personnel records of the offender.

Now as important as some of these additional protections and procedural changes may be, we cannot successfully address this problem without a culture change throughout the military. Discipline is the heart of the military culture, and trust is its soul. The plague of sexual assault erodes both the heart and the soul.

We expect our men and women in uniform to be brothers and sisters in arms, to be prepared to take care of each other in the toughest of situations in the face of the enemy. That requires a level of trust that is rarely matched in civilian life, trust sufficient that our soldiers, sailors, airmen, marines, and Coast Guard personnel are ready to put their lives in their comrades' hands.

That trust is violated when one servicemember sexually assaults another and can only be restored when we have decisively restored discipline and addressed this plague.

The key to cultural change in the military is the chain of command. The Military Services are hierarchical organizations. The tone is set from the top of that chain. The message comes from the top, and accountability rests at the top.

But addressing a systemic problem like sexual assault requires action by all within that chain and especially by the commanders of the units. Only the chain of command can establish a zero tolerance policy for sexual offenses. Only the chain of the command has the authority needed to end problems with command climate that foster or tolerate sexual assaults.

Only the chain of command can protect victims of sexual assaults by ensuring that they are appropriately separated from the alleged perpetrators during the investigation and prosecution of a case. Only the chain of command can be held accountable if it fails to change an unacceptable military culture.

The chain of command has achieved cultural change before. For example, two generations ago when we faced problems with racial dissension in the military and, more recently, with the change to the "don't ask, don't tell" policy. The chain of command can do it again.

The men and women of our military deserve no less. Our sons and daughters contemplating a career in the military and their parents also deserve that commitment.

We have today three panels of witnesses to help us in our review of these issues. We have asked each of them for their views on the bills that are before us. We are very appreciative of their presence here today.

I will introduce our first panel after Senator Inhofe makes his opening statement.

Senator Inhofe.

STATEMENT OF SENATOR JAMES M. INHOFE

Senator INHOFE. Thank you, Mr. Chairman.

Today, we will address the legal and moral foundation of our Nation's military readiness, the UCMJ. Under the Constitution, Congress has the unique responsibility to make rules to govern and regulate our military. This responsibility is particularly important as we evaluate the effectiveness of the UCMJ in the context of combating sexual assault.

Last year, we created the Independent Panel to Review the UCMJ and Judicial Proceedings of Sexual Assault Cases, under section 576 of the NDAA for Fiscal Year 2013. This panel was tasked with assessing the response systems used to investigate, prosecute, and adjudicate crimes involving sexual assault and related offenses, and to develop recommendations on how to improve the effectiveness of those systems. The work of that commission, as I said yesterday on the Senate floor, has only just begun, and we have to allow it an opportunity to do what it was created to do.

Over the last decade, Congress has passed a number of laws to better equip the Services to combat sexual assault, including 10 provisions in last year's NDAA alone. I am not going to read those and I ask that they be included in the record as part of my statement.

Chairman LEVIN. They will be.

[The information referred to follows:]

SUBTITLE H—IMPROVED SEXUAL ASSAULT PREVENTION AND RESPONSE IN THE ARMED FORCES

Sec. 570. Armed Forces Workplace and Gender Relations Surveys.

Sec. 571. Authority to retain or recall to Active Duty Reserve component members who are victims of sexual assault while on active duty.

Sec. 572. Additional elements in comprehensive Department of Defense policy on sexual assault prevention and response.

Sec. 573. Establishment of special victim capabilities within the military departments to respond to allegations of certain special victim offenses.

Sec. 574. Enhancement to training and education for sexual assault prevention and response.

Sec. 575. Modification of annual Department of Defense reporting requirements regarding sexual assaults.

Sec. 576. Independent reviews and assessments of Uniform Code of Military Justice and judicial proceedings of sexual assault cases.

Sec. 577. Retention of certain forms in connection with Restricted Reports on sexual assault at request of the member of the Armed Forces making the report.

Sec. 578. General or flag officer review of and concurrence in separation of members of the Armed Forces making an Unrestricted Report of sexual assault.

Sec. 579. Department of Defense policy and plan for prevention and response to sexual harassment in the Armed Forces.

Senator INHOFE. Our commanders haven't had time right now to implement the most recent changes, and some think we need to change things again. I guess what I am saying here is we have made these suggestions. We have 10 changes that are out there that we are evaluating right now. They are doing it as we speak, Mr. Chairman, and they have time to get this done.

As we consider additional changes to the law in this year's NDAA, we should keep three things in mind. First, and fundamentally, we cannot abolish sexual assault by legislation alone. As you point out, eliminating sexual assault requires commanders to drive cultural change and achieve accountability.

Second, we must allow our commanders an opportunity to address those recent changes in the law and to monitor and assess their effectiveness.

Third, while I share Chairman Levin's concerns that we should not delay considering things that could make immediate, positive changes, I strongly believe that we must be deliberate in making fundamental changes to the UCMJ. I have had several confidential conversations with other members. That is a general agreement.

There is a risk of unintended consequences if we act in haste without thorough and thoughtful review. Rushing to change the law, yet again, could prove counterproductive to our ultimate objective of providing a sound, effective, efficient, and fair military justice system.

Over the past few weeks, several of my colleagues have introduced bills that propose significant changes to the UCMJ. I thank them for their commitment in combating sexual assault in the military and look forward to working collaboratively with them on these efforts. I am opposed to any provision that would remove commanders from their indispensable role in the military justice.

One of the things, as Senator Ayotte has been talking about, is to maintain this authority in the commanders and even advance that to a higher command. We must remember that the military is, by necessity, uniquely separate from the civilian society. Military Service requires those who serve to give up certain rights and privileges that civilians enjoy. Those of us who have been in the military understand that.

Those who volunteer to serve must, at times, subordinate their will to that of the commanders appointed over them, under the authority of the Constitution and the UCMJ. The UCMJ forms the foundation of command authority and military readiness.

Sexual assault is an enemy to morale and to readiness. But it is more than just that. It is an affront to the dignity of its victims. The men and women of our military must often tolerate arduous duty, separations from loved ones, and loneliness, but they must not tolerate sexual assault.

Some have criticized our commanders and the military justice system because of a recent case in which a court-martial was set aside. But if you take time and look at the statistics, you will see that commanders have only set aside findings of guilt in extraordinarily rare circumstances, in about 1 percent of the cases. Again, specific details are in my statement.

There is also a suggestion that commanders haven't done a good job of preserving good order and discipline, or effectively overseeing the conduct of their forces. But the record does not reflect this.

The Defense Legal Policy Board released a report on military justice in combat zones just last week. This is brand new. A lot of us haven't had a chance to look at this yet. I am encouraged that the main theme of the Defense Legal Policy Board report validates my longstanding position concerning the central role of the joint commander in the administration of justice in deployed theaters of operations.

It states, and I quote, "While good order and discipline is important and essential to any military environment, it is especially vital in the deployed environment. The military justice system is the de-

finitive commanders' tool to preserve good order and discipline, and nowhere is this more important than in a combat zone."

Further, still quoting, "A breakdown of good order and discipline while deployed can have a devastating effect on mission effectiveness. The joint commander is ultimately responsible for the conduct of his forces. As such, the subcommittee has determined that the joint commander must have the authority and apparatus necessary to preserve good order and discipline through the military justice system."

My request is for you to respond to this to see if there is general agreement to this statement, which I have just quoted that just came out last week.

Just how critical this military justice system is to our commanders is demonstrated by the frequency of its use. This report states that since 2001, the Army alone has conducted over 800 courts-martial in deployed environments. The Navy and Marine Corps conducted 8 courts-martial in Afghanistan and 34 in Iraq. The Air Force conducted three courts-martial in Iraq and three in Afghanistan.

We must never take this vital readiness tool from our commanders. It is vitally important that we make sexual assault culturally unacceptable, as the chairman said, in our military. But no change is possible without commanders as agents of that change.

Mr. Chairman, I look forward to this hearing.

[The prepared statement of Senator Inhofe follows:]

PREPARED STATEMENT BY SENATOR JAMES M. INHOFE

I thank Chairman Levin for convening this important hearing.

Today, we will address the legal and moral foundation of our Nation's military readiness, the Uniform Code of Military Justice (UCMJ). Under the Constitution, Congress has the unique responsibility to make rules to govern and regulate our military. This responsibility is particularly important as we evaluate the effectiveness of the UCMJ in the context of combating sexual assault.

Last year we created the Independent Panel to Review the UCMJ and Judicial Proceedings of Sexual Assault Cases, under section 576 of the National Defense Authorization Act (NDAA) for Fiscal Year 2013. This panel was tasked with assessing the response systems used to investigate, prosecute and adjudicate crimes involving sexual assault and related offenses and to develop recommendations on how to improve the effectiveness of those systems. The work of that commission has only just begun and we must allow it the opportunity to do what it was created to do.

Over the last decade, Congress has passed a number of laws to better equip the Services to combat sexual assault, including 10 provisions in last year's NDAA alone. Those changes from the NDAA for Fiscal Year 2013 include the following:

- Section 523 eliminates accession waivers for individuals convicted of felony sexual offenses, including "rape, sexual abuse and sexual assault."
- Section 571 allows continuation of a member of the Reserve component who is an alleged victim of sexual assault while on active duty for the purpose of making a line of duty determination.
- Section 572, requires the Secretary of Defense to modify the revised comprehensive policy for the sexual assault prevention and response program to establish additional requirements to retain records of dispositions of allegations of sexual assault; to require Services to establish policies to require administrative discharge processing for individuals who are convicted of rape, sexual assault and forcible sodomy whose final approved punishment does not include a punitive discharge; to conduct command climate assessments within 120 days of assuming command; and at least annually, for the purpose of preventing and responding to sexual assaults, to proactively provide information about resources available to report and respond to sexual assaults; and to establish a general education campaign to notify servicemembers of the authorities available for correction of military

records when a member experiences any retaliatory personnel action for making a report of sexual assault or sexual harassment.

• Section 573 requires the Secretary of Defense to prescribe regulations for the Service Secretaries to establish special victim support and defense capabilities for sexual offenses and other offenses.

• Section 574 establishes enhanced commanders' training for sexual assault prevention and response.

• Section 575 modifies annual Department of Defense (DOD) reporting requirements regarding sexual assaults, to include requiring case synopses if an individual is administratively separated or allowed to resign in lieu of court-martial; identify whether a member accused of committing a sexual assault was ever previously accused of a substantiated sexual assault or allowed to enter the service under a moral waiver with respect to prior sexual misconduct, and a statement of the nature of the punishment in cases where a sexual assault case results in nonjudicial punishment.

• Section 576 established a panel to conduct and in-depth review and assessment of judicial proceedings under the UCMJ, with focus on sexual assault and related offenses.

• Section 577 establishes retention requirements for restricted reports of sexual assault.

• Section 578, requiring general or flag officer review of proposed involuntary separation of any servicemember who made an unrestricted report of sexual assault, recommended for separation within 1 year of making the report, and where the member believes the involuntary separation was initiated in retaliation for making the report.

• Section 579 modifies DOD policy and plan for prevention and response to sexual harassment.

Our commanders haven't had enough time to implement the most recent changes and now some think we need to change things again. I think that would be a mistake to legislate initial demands on the Department and the Services until they have had an opportunity to assess the effectiveness of these recent legislative requirements.

As we consider additional changes to the law in this year's National Defense Authorization Act, we should keep three things in mind: First, and fundamentally, we cannot abolish sexual assault by legislation alone. Eliminating sexual assault requires commanders to drive cultural change and achieve accountability. Second, we must allow our commanders an opportunity to address those recent changes in the law and to monitor and assess their effectiveness. Third, while I share Chairman Levin's concerns that we should not delay considering things that could make immediate, positive changes, I strongly believe we must be deliberate in making fundamental changes to the UCMJ. There is a risk of unintended consequences if we act in haste without thorough and thoughtful review. Rushing to change the law yet again could prove counterproductive to our ultimate objective of providing a sound, effective, efficient and fair military justice system.

Over the past few weeks, several of my colleagues have introduced bills that propose significant changes to the UCMJ. I thank them for their commitment to combating sexual assault in the military and look forward to working collaboratively with them on these efforts. But I'm opposed to any provision that would remove commanders from their indispensable role in the military justice process.

As we take up our responsibility we must not forget that the military is, by necessity, uniquely separate from the civilian society. Military service requires those who serve to give up certain rights and privileges that civilians enjoy. Those who volunteer to serve must, at times, subordinate their will to that of the commanders appointed over them, under the authority in the Constitution and the UCMJ.

The UCMJ forms the foundation of command authority and military readiness. The Supreme Court observed that the Armed Forces depend on a command structure that at times must send forces into combat, not only at risk to their lives but ultimately involving the security of the Nation itself. Such a command structure cannot exist and cannot succeed without commanders. Our Nation entrusts our commanders to lead our forces to fight and win our Nation's wars. Those commanders voluntarily take an oath to defend the United States against all enemies, foreign and domestic. Sexual assault is such an enemy to morale and readiness. But it is more than that: it is an affront to the dignity of those who are its victims. The men and women of our military must often tolerate arduous duty, separations from loved ones, and loneliness. But they must not tolerate sexual assault.

Some have criticized our commanders and the military justice system because of a recent case in which a court-martial was set aside. But if you take time to look

at the statistics you will see commanders have only set aside findings of guilt in extraordinarily rare circumstances, about 1 percent of cases. Specifically:

- Marine commanders only set aside findings in 7 cases out of 1,768 or 0.4 percent from 2010 to 2012.
- Air Force commanders only set aside findings in 40 of 3,713 cases over 5 years. That is 1.1 percent.
- Army commanders set aside findings in only 68 of 4,603 cases since 2008, or about 1.4 percent
- Navy says its commanders only set aside findings in 4 of the 16,056 cases they have tried from 2002 to 2012. That would be 0.0001 percent.

There is a suggestion that commanders haven't done a good job of preserving good order and discipline or effectively overseeing the conduct of their forces. But the record does not reflect this. The Defense Legal Policy Board released a report on military justice in combat zones just last week. I am encouraged that the main theme of the Defense Legal Policy Boards' report validates my longstanding position concerning the central role of the joint commander in the administration of justice in deployed theaters of operations. The following excerpt from this report is important as we consider legislation concerning military justice matters:

While good order and discipline is important and essential in any military environment, it is especially vital in the deployed environment. The military justice system is the definitive commanders' tool to preserve good order and discipline, and nowhere is this more important than in a combat zone. A breakdown of good order and discipline while deployed can have a devastating effect on mission effectiveness. The Joint Commander is ultimately responsible for the conduct of his forces. As such the subcommittee has determined that the Joint Commander must have the authority and apparatus necessary to preserve good order and discipline through the military justice system.

Just how critical this military justice system is to our commanders is demonstrated by the frequency of its use. This report states since 2001, the Army alone has conducted over 800 courts-martial in deployed environments. The Navy and Marine Corps conducted 8 courts-martial in Afghanistan and 34 in Iraq, and the Air Force conducted 3 courts-martial in Iraq and 3 in Afghanistan.

We must never take this vital readiness tool from our commanders. It is vitally important that we make sexual assault culturally unacceptable in our military. But, no change is possible without commanders as agents of that change.

I look forward to our witnesses' testimony today.

Chairman LEVIN. Thank you very much, Senator Inhofe.

We now welcome our first panel. General Martin E. Dempsey, Chairman of the Joint Chiefs of Staff and the legal counsel to the Chairman, Brigadier General Richard C. Gross.

General Raymond T. Odierno, Army Chief of Staff, and Lieutenant General Dana K. Chipman, Judge Advocate General of the Army.

Admiral Jonathan W. Greenert, Chief of Naval Operations, and Vice Admiral Nanette M. DeRenzi, Judge Advocate General of the Navy.

General James F. Amos, Commandant of the Marine Corps, and Major General Vaughn A. Ary, Staff Judge Advocate to the Commandant of the Marine Corps.

General Mark A. Welsh, Chief of Staff of the Air Force; Lieutenant General Richard C. Harding, Judge Advocate General of the Air Force.

Admiral Robert J. Papp, Commandant of the Coast Guard, and Rear Admiral Frederick J. Kenney, Judge Advocate General of the Coast Guard.

I have asked the witnesses on this panel for one opening statement per Service by the Service Chief, and we have asked all of our witnesses to limit their opening statements to 5 minutes.

I have asked General Odierno to take a little extra time to describe, in some detail, the current process in the Army for addressing allegations of serious offenses, including to whom a victim can

report an offense, who is informed of the offense once it is reported, how they are informed, who conducts the investigation, who decides what offenses to charge, and who decides how to deal with the offenses, whether they are handled by court-martial or by some other means.

I invite our other witnesses in other Services to include any clarifying remarks about the process in their own Service so that we can all understand how allegations are handled now and what could change if some of the proposed legislation under consideration by this committee is adopted.

General Dempsey, again, we thank you and your colleagues for being here today, for your service to our Nation, and we will start with your opening statement.

STATEMENT OF GEN MARTIN E. DEMPSEY, USA, CHAIRMAN OF THE JOINT CHIEFS OF STAFF; ACCOMPANIED BY BG RICHARD C. GROSS, USA, LEGAL COUNSEL TO THE CHAIRMAN OF THE JOINT CHIEFS OF STAFF

General DEMPSEY. Thank you, Chairman Levin, Ranking Member Inhofe, members of the committee. Thank you for this opportunity to discuss our commitment to eliminating sexual assault from the Armed Forces of the United States.

The risks inherent to military service must never include the risk of sexual assault. It is a crime that demands accountability and consequences. It betrays the very trust on which our profession is founded.

We are acting swiftly and deliberately to change a climate that has become a bit complacent. We know that lasting change begins by changing the behaviors that can lead to sexual assault. Therefore, we are taking a comprehensive approach that focuses on prevention, victim advocacy, investigation, accountability, and assessment. All is part of our solemn obligation to safeguard the health of the force.

But we can and must do more to protect victims while preserving the rights of the accused, to prevent and respond to predatory and high-risk behaviors, and to ensure a dignified and respectful work environment. We remain open to every idea and option to accelerate meaningful institutional change.

Legal reform can and should continue to be part of our campaign to end sexual assault. Like my fellow chiefs, I have been attentive to every piece of legislation. There are many reasonable recommendations on the table. In fact, I recently conveyed in writing to the chairman and to the ranking member my sincere interest in further considering many of them.

For example, I see the merit in initiatives to prohibit those convicted of sexual assault from joining our ranks in the first place, to oblige administrative discharge for those convicted of sexual assault, to require commanders to report sexual offenses to the next higher commander in a prompt manner, and to increase transparency and accountability of commanders' actions and decisions.

It is my expectation that the panel established under section 576 of the NDAA for Fiscal Year 2013 will take up these and many other initiatives, and we need it to fully assess all the options and all the potential consequences, both intended and unintended.

As directed by Secretary Hagel, we need the panel to deliberate and to deliver on a more accelerated timeline. We won't be idle while giving time for this due diligence. We will be actively implementing my strategic direction on preventing sexual assault and DOD's new Sexual Assault Prevention and Response Plan.

In addition to completing a force-wide stand-down by the 1st of July, we are moving out on nearly 90 near-term actions to catalyze change. Over the next several months, we will assess units for command climate, conduct refresher training for response coordinators and victims' advocates, improve victim counsel and treatment, and much more. We welcome the opportunity to update you regularly on our progress.

As we consider further reforms, the role of the commander should remain central. Our goal should be to hold commanders more accountable, not render them less able to help us correct the crisis.

The commander's responsibility to preserve order and discipline is essential to effecting change. They punish criminals, and they protect victims when and where no other jurisdiction is capable of doing so or lawfully able to do so. Commanders are accountable for all that goes on in a unit, and ultimately, they are responsible for the success of the missions assigned to them.

Of course, commanders and leaders of every rank must earn that trust and, therefore, to engender trust in their units. Most do. Most do not allow unit cohesion to mask an undercurrent of betrayal. Most rise to the challenge of leadership every day, even under the most demanding physical and moral circumstances.

Our force has within it the moral courage to change course and reaffirm our professional ethos. Working together, we can and will restore trust within the force and with the American people.

Thank you.

[The prepared statement of General Dempsey follows:]

PREPARED STATEMENT BY GEN MARTIN E. DEMPSEY, USA

Chairman Levin, Ranking Member Inhofe, members of the committee, thank you for giving us this opportunity to discuss our commitment to eliminating sexual assault from the Armed Forces of the United States.

The risks inherent to military service should never include the risk of sexual assault. Sexual assault is a crime that demands accountability and consequences. It betrays the very trust on which our profession is founded.

The Joint Chiefs and our Senior Enlisted Leaders are committed to correcting this crisis. We are acting swiftly and deliberately to change a culture that has become too complacent. We know that lasting change begins by changing the behaviors that lead to sexual assault.

The Joint Chiefs have spent the last year leading a campaign focused on prevention, investigation, accountability, advocacy, and assessment—all as part of our enduring commitment to the health of the force. The additional actions recently directed by Secretary of Defense Hagel serve to strengthen our efforts.

We can and must do more. We must protect victims while preserving the rights of the accused. We must prevent and respond to predatory and high-risk behaviors. We must ensure a professional work environment predicated on dignity and respect.

We must be open to every idea and option to accelerate meaningful, institutional change.

Legal reform has been and should continue to be part of this campaign. Previously, we elevated initial disposition authority in certain cases to O–6 commanders with Special Court-Martial Convening Authority. More recently, I endorsed Secretary Hagel's proposed amendments to Article 60 of the Uniform Code of Military Justice.

Should further reform be needed, I urge that military commanders remain central to the legal process. The commander's ability to preserve good order and discipline remains essential to accomplishing any change within our profession. Reducing command responsibility could adversely affect the ability of the commander to enforce professional standards and ultimately, to accomplish the mission.

Of course, commanders and leaders of every rank must earn trust to engender trust in their units. Most do. Most do not allow unit cohesion to mask an undercurrent of betrayal. Most rise to the challenge of leadership even under the most demanding physical and moral circumstances.

Our men and women in uniform have within them the moral courage needed to change course and reaffirm our professional ethos. Working together, we can and will restore trust within our Force and with the American people. Thank you.

Chairman LEVIN. Thank you very much, General Dempsey.

Now let me call on General Odierno.

STATEMENT OF GEN RAYMOND T. ODIERNO, USA, CHIEF OF STAFF OF THE ARMY; ACCOMPANIED BY LTG DANA K. CHIPMAN, JAGC, USA, JUDGE ADVOCATE GENERAL OF THE U.S. ARMY

General ODIERNO. Thank you, Chairman Levin, Ranking Member Inhofe, and other distinguished members of the committee, for allowing us to testify today.

As we all know, today the Army has a serious problem. We are failing in our efforts to fully protect our people from sexual assault and sexual harassment.

As the Chief of Staff of the Army, as a former commander of forces at every level, and as a parent of two sons and a daughter, the crimes of sexual assault and sexual harassment cut to the core of what I care most about, the health and welfare of American sons and daughters. These crimes violate everything our Army stands for, and they simply cannot be tolerated.

Our military profession is built on the bedrock of trust, the trust that must inherently exist among soldiers and between soldiers and their leaders in order to accomplish the difficult mission in the chaos of war. Recent incidents of sexual assault and harassment demonstrate that we have violated that trust because we have failed to address these crimes in a compassionate, just, and comprehensive way.

Two weeks ago, I told my commanders that combating sexual assault and sexual harassment within our ranks is our number-one priority. I said that because, as chief, my mission is to train and prepare our soldiers for war.

These crimes cut to the heart of the Army's readiness for war. They destroy the very fabric of our force, soldier and unit morale. We will fix this problem.

Our actions now and in the future will be guided by five imperatives. First, we must prevent potential offenders from committing sexual crimes. But when a crime has been committed, we must provide compassionate care and protect the rights of survivors.

Second, every allegation of sexual assault and harassment must be professionally investigated and appropriate action taken.

Third, we must create a climate and an environment in which every person is able to thrive and achieve their full potential without concern of retaliation or stigma if they report a crime.

Fourth, it is imperative that all entities understand their responsibilities—individuals, units, and organizations—and specifically,

commanders and leaders. We expect them to create an environment and uphold standards consistent with our Army's and our Nation's values. If not, they will be held accountable.

Fifth, it is imperative that the chain of command is fully engaged and at the center of any solution to combat sexual assault and sexual harassment. Command authority is the most critical mechanism for ensuring discipline, accountability, and unit cohesion.

Our military justice system was deliberately designed to give commanders the tools to reinforce good order by prosecuting misconduct with a variety of judicial and nonjudicial punishments so that commanders can not only prosecute crimes, but also punish minor infractions that contribute to indiscipline.

The UCMJ allows us to punish misconduct on any scale quickly, visibly, and locally anywhere in the world, but it is clear we must implement a system of checks and balances to ensure our commanders and their legal advisers reinforce one another's mutual responsibilities to administer the UCMJ.

Military commanders have a far wider range of options available to them than civilian law enforcement, from four levels of court-martial, nonjudicial punishment, administrative discharge, and nonpunitive measures. These options allow commanders to address the entire spectrum of sexual misconduct from verbal harassment up to and including rape.

It allows commanders to prosecute multiple crimes at the same time, sexual or otherwise, which is essential to the commander's effort to build the right climate within a unit. It allows commanders to prosecute crimes with the full backing of the U.S. Army.

Take the recent example of a victim who was sexually assaulted by a soldier off post in Colorado. Civilian law enforcement conducted an initial investigation but determined they did not have enough sufficient resources to investigate or prosecute the case.

The local commander directed Army Criminal Investigation Division (CID) to further investigate this dormant case. They uncovered three additional victims that were sexually assaulted or battered by the accused in several locations across Colorado and Texas. The soldier's chain of command referred the case to court-martial, where the accused was convicted of numerous sexual assault offenses and sentenced to 35 years and a dishonorable discharge.

This case illustrates the flexibility of UCMJ to prosecute multiple crimes committed across multiple civilian jurisdictions. If the commander had been removed from this, his or her central role in administering justice for sexual assault case, it could have prevented justice in this particular case.

If I believed that removing commanders from their central role of responsibility in addressing sexual assault would solve these crimes within our ranks, I would be your strongest proponent. But removing commanders, making commanders less responsible and less accountable will not work.

It will undermine the readiness of the force. It will inhibit our commanders' ability to shape the climate and discipline of our units. Most importantly, it will hamper the timely delivery of justice to the very people we wish to help, the victims and survivors of these horrific crimes.

Let me just take a few moments to explain how the Army responds to a sexual assault. Our process consists of five basic elements.

First, the Army offers victims two options for reporting: a restricted report, which allows a victim to access counselors, medical support, and legal services; and an unrestricted report, which triggers an independent law enforcement investigation.

There are nine ways a victim can make an unrestricted report outside of the chain of command: to uniformed or civilian victim advocates, uniformed or civilian SARCs, military or civilian law enforcement to include 911 calls, military or civilian hospital staff, chaplains, the Office of the Inspector General, Judge Advocates, hotlines managed by DOD and local installations, and several Web sites for online reporting.

Following a report, victims are assigned a victim advocate and are offered legal services. Commanders are also required to protect the care of victims. They must transfer a victim to another unit, if requested; keep the victim informed monthly on the status of the investigation; and offer support services to ensure both victim and unit safety.

Second, every sexual assault allegation must be subject to a thorough investigation. Every allegation must be investigated by the CID, the Army's felony-level detectives. Our CID agents do not work for the commander, and commanders cannot shape or advise an investigation.

Third, Judge Advocates, including special victim prosecutors which were implemented in 2009, provide legal advice to the investigators and the commanders. They must track every allegation and are responsible for protecting the rights of victims.

When an investigation is complete, a Judge Advocate provides a legal opinion on whether an allegation should be founded or unfounded based upon the evidence presented. An unfounded allegation becomes part of the permanent record, while an allegation that is founded is brought to the commander to consider the options available.

Fourth, every allegation must be tracked on a daily crime blotter, through the installation's Monthly Sexual Assault Review Board, and is provided to Congress in an annual report on sexual assault in the military.

Fifth, the disposition of these cases is reserved for senior commanders with the advice of the Judge Advocate. The relationship between the commander and legal adviser is unique. The commander has the authority to decide the case disposition, while Article 34 UCMJ requires the Judge Advocate to provide written advice before charges may be referred to a court-martial.

If a Judge Advocate encounters a commander unwilling to follow his or her advice to take an allegation to trial, the Judge Advocate may elevate the case through Judge Advocate channels or to the next superior commander.

Although the Army's process for reporting disposition of victim care provides a sound base and although the UCMJ provides the commander a powerful tool to shape climate and impose discipline, it is obvious that it hasn't been working correctly to prevent and prosecute sexual crimes in the Army. I am aware of a number of

legislative proposals that contemplate changes to the role of the commander and to the UCMJ. I welcome candid and vigorous discussion about how we can improve our military justice system.

In my written testimony, I offer a number of suggestions on how we can improve the UCMJ and DOD policy. My experience leads me to believe that the majority of problems we are seeing are not the results of failures within our military justice system, but rather the failure of some commanders and leaders to administer that system correctly, to act in compliance with the UCMJ, or current DOD policies.

We must take a hard look at our system from start to finish to ensure that commanders and Judge Advocates are subject to appropriate checks and balances, all while protecting the interests of the victim and due process rights of accused soldiers. I propose a number of such checks and balances in my written statement.

If we find these checks and balances to be insufficient and determine that changes to the UCMJ are required, we must move in a very deliberate fashion to preserve what is good with the system while correcting inadequacies. I am in full support of a response systems panel to determine what changes should be made to law and policy.

I understand that the credibility of the Armed Forces and the credibility of the Army are at stake, but we cannot simply legislate our way out of this problem. Without equivocation, I believe maintaining the central role of commander in our military justice system is absolutely critical to any solution.

The Army and the military, working with Congress, have contributed to positive social changes throughout our Nation's history, from racial integration through repeal of "don't ask, don't tell." Although we have struggled in our efforts to get these issues right in the beginning, we always worked through them until we got it right, and commanders were essential to that success.

Sexual assault and sexual harassment are no different. We can and will do better. We must take deliberate steps to change the environment. We must restore our people's confidence by improving our system of accountability.

It is up to every one of us—civilian, soldier, general officer, to private—to solve this problem within our ranks. Over the last 12 years of war, our Army has demonstrated exceptional competence, courage, and resiliency in adapting the force to the demands of war. We will take on this problem and adapt as well and with the same resolve, we will fix it.

Thank you, Mr. Chairman and distinguished members of the committee, for the opportunity to speak with you today.

[The prepared statement of General Odierno follows:]

PREPARED STATEMENT BY GEN RAYMOND T. ODIERNO, USA

Thank you, Chairman Levin, Ranking Member Inhofe, and other distinguished members of the committee for allowing us to testify today.

It is clear to me that the Department of Defense and specifically the Army has a serious problem. We have failed in our efforts to date to fully protect our soldiers, civilians, and family members from sexual assault and sexual harassment within our ranks. Sexual assault and harassment are like a cancer within the force—a cancer that left untreated will destroy the fabric of our force. It's imperative that we take a comprehensive approach to prevent attacks, to protect our people, and where appropriate, to prosecute wrongdoing and hold people accountable. This is about in-

culcating a culture that is in line with our Army values, specifically treating all with dignity and respect.

In 1976, I entered into an Army that was rife with disciplinary problems across the force. Over the course of my 37-year career, I have commanded at every level, including division, corps, and theater command in combat. I know what it takes to prepare this Nation's sons and daughters for war and the discipline that must exist at every level of command to ensure an effective fighting force. As the Chief of Staff of the Army, as a commander of forces at every level, and as a parent of two sons and a daughter, sexual assault and harassment cut to the core of what I care most about—the health and welfare of America's sons and daughters.

Our profession is built on the bedrock of trust—the trust that must inherently exist among soldiers, and between soldiers and their leaders to accomplish their mission in the chaos of war. Recent incidents of sexual assault and sexual harassment demonstrate that we have violated that trust. In fact, these acts violate everything our Army stands for and they will not be tolerated.

On May 16, I sent a message to our 1.1 million soldiers and 266,000 Department of the Army civilians via email and several social media channels to address the issue of sexual assault and harassment within our ranks. Since its release, I have been taken aback by the emotional responses I have received—hundreds of messages from victims, from sexual assault response coordinators, and from leaders about their personal experiences dealing with sexual assault and harassment. It is clear that we have lost the confidence of some of our people because we have failed them—we have failed to address previous incidents in a just, compassionate, and comprehensive way.

In a video conference with Army commanders on May 17, I told my commanders that combating sexual assault and sexual harassment within our ranks is now the Army's #1 priority. The actions we will take to get after this problem will be guided by five imperatives.

First, we must prevent potential offenders from committing sexual crimes and when a crime has been committed, we must provide compassionate care and protect the rights of survivors, particularly their right to privacy.

Second, we must ensure that every allegation of sexual assault and harassment is thoroughly and professionally investigated and that appropriate action is taken.

Third, we must create a climate and an environment in which every person is able to thrive and achieve their full potential. Leaders must take action to establish and sustain standards at every level. Leaders must develop systems to "see" their units and themselves in order to understand the extent to which their leadership promotes a positive command climate. Every soldier must believe that when they report an incident of sexual assault or harassment the chain of command will respond quickly and will protect the victim. Part of building a positive command climate is reducing the stigma associated with reporting these crimes.

Fourth, it is imperative that we hold individuals, units and organizations, and commanders accountable for their behavior. Commanders are ultimately responsible for ensuring an environment of mutual respect, trust and safety. We must take a deliberate approach to implementing the necessary checks and balances that will ensure commanders and their legal advisors reinforce their mutual responsibilities to administer the Uniformed Code of Military Justice. At the same time every individual—leaders, peers, and subordinates alike—must be compelled to report sexual misconduct to eliminate the bystander mentality.

Fifth, it is imperative that we keep the chain of command fully engaged and at the center of any solution to combat sexual assault and sexual harassment. Command authority is the most critical mechanism for ensuring discipline and accountability, cohesion and the integrity of the force. Increased commander involvement and accountability is essential to instituting a change of culture in our Army, restoring the trust of our soldiers, and is necessary to comprehensively solve this problem.

THE MILITARY JUSTICE SYSTEM

It is my belief that soldier discipline is the foundation of any well-trained force capable of winning our Nation's wars. Discipline is built, shaped and reinforced over a soldier's career by commanders with authority. The commander is necessarily vested with ultimate authority because he or she is responsible for all that goes on in a unit—health, welfare, safety, morale, discipline, training, and readiness to execute a mission in wartime and in times of peace. The commander's ability to punish quickly, visibly, and locally is essential to maintaining discipline in all its forms within a unit. The Uniform Code of Military Justice (UCMJ) is the vehicle by which commanders can maintain good order and discipline in the force. Without equivo-

cation, I believe maintaining the central role of the commander in our military justice system is absolutely critical.

I also believe that the military justice system, based upon the UCMJ, is well equipped to meet the challenges of crime and indiscipline in the Army, to include the crimes of sexual assault and sexual harassment. Commanders have a wide range of disposition options available to them, from four levels of court martial, nonjudicial punishment, punitive administrative discharge, adverse administrative action, to imposing non-punitive measures. This toolbox of disposition options allows commanders to address the entire spectrum of sexual misconduct, from precursor behaviors of verbal harassment up to and including a rape. Civilian systems do not provide a corresponding range of disposition options. At the same time, I also believe that there are additional checks and balances that can be added to the UCMJ that will both assist commanders and ensure that they are following the appropriate procedures. This is where we must work together.

Sexual assault and harassment are unacceptable problems within our military and our society. We cannot, however, simply prosecute our way out of this problem. Sexual assault and harassment are issues of discipline that require a change in our culture. I need our commanders to instill that culture change as they continue to train our soldiers to prevent and to respond to issues of sexual assault and harassment. I am certain that removing a commander's role in military justice will, unfortunately, undermine a commander's ability to effect these culture changes. It will adversely affect discipline, and may result in an increase to the problems we seek to resolve.

THE ARMY'S SEXUAL ASSAULT REPORTING, RESPONSE, AND DISPOSITION PROCESS

The Army's system for receiving and processing reports of sexual assault consists of five basic elements: reporting options and victim care, independent investigation, legal review, tracking mechanisms, and the disposition decision. As detailed in our regulations, the Army's policies regarding sexual assault are intended to provide a series of checks and balances to ensure that once a report of sexual assault is made, there is accountability, visibility, and transparency in our system. We are taking a hard look at each of the steps detailed here so that we ensure we have the tools in place to ascertain full compliance with Army policies, and identify any gaps and areas for improvement.

First, victims must have a variety of options by which they can reach out for help and make a report. Understanding the intensely personal nature of these crimes, the Army provides victims with two types of reports for sexual assault victims in the Army. An unrestricted report, preferred by Army policy, can be made to any source and triggers immediate victim support and an independent law enforcement investigation. A restricted report can be made only to select individuals, and will allow a victim to obtain counseling, medical and advocacy services. Restricted reports may be made only to a Victim Advocate, Sexual Response Coordinator, and healthcare personnel, and this is commonly known to our soldiers. A restricted report does not trigger a law enforcement investigation; however, a victim who chooses to make a restricted report is able to convert to an unrestricted report at any time. The choice to make a restricted or unrestricted report is left to the discretion of the victim.

Soldiers may make unrestricted reports to multiple sources, including: uniformed or civilian victim advocates, uniformed or civilian Sexual Assault Response Coordinators, military or civilian law enforcement (including 911), military or civilian hospitals, chaplains, the inspector general's office, judge advocates, hotline numbers managed by the Department of Defense and local installations that accept phone calls and texts, websites for on-line reporting and any member of the victim's chain of command. These sources are considered 'first responders' and are specially trained to respond and support victims. A friend or family member of the victim may report to any of these sources which may also trigger a law enforcement investigation if the report is unrestricted. Every officer or noncommissioned officer within the chain-of-command who receives or learns of an allegation of sexual assault in their unit is obligated to report that crime to law enforcement. Failure to do so may be considered a dereliction of duty.

As soon as a report is made, victim care responsibilities are triggered. Throughout the reporting, investigative and prosecution process, victim care is an essential and ongoing element of the program. Victims are assigned a victim advocate, their primary point of contact, from the initial report. Victims are offered the services of legal assistance attorneys, who provide confidential advice within the privileged context of an attorney-client relationship, on victim's rights, options and the military justice system. Victim witness liaisons assist with educating victims about their

rights and the military justice process and provide compassionate, direct assistance that includes accompanying victims to interviews and proceedings.

In addition to victim service providers, commanders are required to protect and care for victims. Commanders must transfer a victim to another unit if requested; must keep the victim informed monthly about the status of the investigation; must ensure that victim afforded support services; and must take action to ensure victim and unit safety are maintained, to include issuing a no-contact order. The commander's role in protecting and caring for the victim is integral to promoting faith and trust in the military justice system and is another reason why commanders must be involved in the process. Victim support services continue until he or she elects to reduce or change support requirements.

Second, every sexual assault allegation must be subject to a thorough and professional investigation. Every source that receives an unrestricted report of sexual assault is required to notify law enforcement immediately. Every sexual assault allegation, from an unwanted touch over the clothing to rape, is required to be investigated by the specially-selected and trained agents of the Criminal Investigation Division (CID), the Army's felony level detectives. CID agents do not work for the commander, and the commander has no role in shaping or advising the investigation. CID agents receive some of the best and most extensive training in sexual assault investigations of any investigative agency, including their initial training, annual refresher training, and an in-depth 80-hour Special Victim Unit (SVU) Investigation Course. Further, CID has hired civilian sexual assault investigators (SAIs) to supervise their SVUs and sexual assault investigative teams. The sexual assault investigators bring, on average, 16 years of experience and expertise from civilian State and Federal law enforcement agencies.

Third, qualified judge advocates, including our specially trained and selected special victim prosecutors (SVPs), provide legal advice to the investigators and the commanders and protect the rights of victims. SVPs are hand-selected at the Department of the Army level for their skill and experience in the courtroom and their ability to work with victims. SVPs receive an intense 3-month training prior to assuming their duties that includes on-the-job experience with a civilian Special Victim Unit in a major metropolitan city and the National District Attorney's Association Career Prosecutor's course. The SVP works hand-in-hand with the CID agents to develop these investigations. SVPs are notified of and track every allegation of sexual assault. The SVP trackers are provided monthly to the Office of The Judge Advocate General Criminal Law Division and the Trial Counsel Assistance Program for oversight. SVPs are also trained to meet with the victim as soon as practicable after the report, to establish rapport and begin the relationship that will serve as the foundation of every case.

When the CID investigation is complete, a judge advocate must provide a legal opinion that the allegation should be "founded" or "unfounded" based on the requirement that there be evidence of every element of the offense. This process, an agreement between the investigator and the prosecutor, comports with civilian jurisdiction practice, in which the police and district attorney make collaborative decisions about the sufficiency of evidence. If the allegation is determined to be "unfounded," the commander is notified and the record becomes a permanent law enforcement record. If the allegation is determined to be "founded," the judge advocate will take the case to the commander for discussions and recommendations on disposition options.

Fourth, every allegation is tracked using several reporting methods to provide visibility and transparency. Every sexual assault allegation is entered on the daily crime blotter that is circulated to all leadership personnel with a need to know on that military installation, to include each level of command up to the Commanding General, usually within 24 hours of the initial report. Every investigation is evaluated by a judge advocate for the sufficiency of evidence. Every investigation, no matter the outcome, results in a permanent law enforcement record associated with the offender. The progress of the investigation and the disposition of every case is monitored by the installation and unit Sexual Assault Response Coordinators and discussed monthly at the Sexual Assault Review Board, chaired by the senior commander on the installation. Finally, the disposition and description of every allegation of sexual assault is provided to Congress in the Annual Report on Sexual Assault in the Military.

Fifth, the disposition of sexual assault allegations are Reserved for senior, seasoned and trained commanders relying on the advice of judge advocates. Due to the complexities of sexual assault crimes, the disposition of the most serious, penetrative offenses is withheld to the Special Court Martial Convening Authority, a brigade commander 0–6 (colonel) with a dedicated legal advisor. These officers have over 20 years of experience in the Army, command units of approximately 3,000–

5,000 soldiers and have been trained in their responsibilities under the military justice system repeatedly, to include a specialized, sex assault focused Senior Officer Leader Orientation at the Army Judge Advocate General's Legal Center and School. The non-penetrative sexual assault offenses are withheld for disposition to the Summary Court Martial Convening Authority, a battalion commander with an average of 20 years of experience who commands a unit of approximately 500 soldiers.

The disposition process is a continuation of the investigative process in that the same people are advising the command: the investigator and the legal advisor. The relationship between the judge advocate legal advisor and the commander is unique. The commander has the authority, but that commander relies on his or her judge advocate for advice and recommendation. Commanders do not make disposition decisions without judge advocate advice, and Article 34, UCMJ, requires that the judge advocate provide written advice before charges may be referred to a court-martial. In the event that a judge advocate encounters a commander unwilling to follow advice to take an allegation to trial, the judge advocate may take the same allegation to the superior commander, who can essentially pull the case up to the next level.

Although these policies for reporting, disposition and victim care provide a sound base, I believe the Army must take a hard look at our system, from start to finish to ensure that the central role of the commander is subject to appropriate checks and balances, all while protecting the interests of the victim and the due process rights of accused soldiers.

MILITARY JUSTICE SYSTEM IMPROVEMENTS

I am aware of a number of legislative proposals that contemplate changes to the role of the commander and to the UCMJ. I welcome candid and vigorous discussion about how we can improve our military justice system. Below are detailed some of the changes we should consider to improve our current system:

- Commander Response Certification. I believe we should implement a process of checks and balances to ensure commanders and their legal advisors are reinforcing their mutual responsibilities to administer the UCMJ properly. Although our commanders participate in our monthly Sexual Assault Review Boards held at the local level to review sexual assault cases and ensure effective victim support is provided, we believe the Army can do more to improve our response services and responsibilities. For example, we are considering whether to create a new system to formally track all commanders' actions after a report of sexual assault has been received. Army Regulation 600–20 lists the actions required by the commander, as well as the actions that must be taken by Sexual Assault Response Coordinators, CID, and staff judge advocates in the event of a reported sexual assault. These actions apply equally to reports made through the chain of command and those made outside the chain of command. However such actions are not formally tracked until an investigation is initiated by military law enforcement. In order to ensure the proper responsibility for and accountability of all command actions, we will consider the best ways in which to strengthen and codify these checks and balances.
- Article 60, UCMJ Limitations. I support the Secretary of Defense's position and the DOD's proposed amendment to Article 60 which would limit a commander's ability to disapprove a finding of guilt and would require a commander to justify any sentence reduction in writing. I also believe that the commander's role in the post-trial process should generally be preserved, particularly for the purpose of ensuring fairness to an accused when an appellate process may not be available.
- Trainee Sexual Abuse. I support proposals that would criminalize sexual activity between trainers and trainees as well as recruiters and recruits. I also believe that the definition of a "trainer" should be interpreted broadly to include training cadre and other supporting personnel.
- General Court Martial Referral for Rape. I support proposals which would require that all penetrative sexual offenses (for rape, sexual assault, forcible sodomy and attempts to commit those crimes) be referred to a General Court Martial only, rather than a Special Court Martial or a Summary Court Martial, due to the severity of these crimes. To implement this proposal, however, we will need to consider several technical amendments to ensure the UCMJ functions properly in practice.
- Bar to Service. I support a bar to service for any person who has been convicted of a sexual offense or who has been separated from military service due to any previous sexual misconduct.

• Mandatory Administrative Separation. I support the mandatory administrative separation of any person required to register as a sex offender. Registration requirements for sex offenders are already set forth in Federal law, State law, and Department of Defense policy, and the Army is in compliance.

• Expanded Legal Assistance Training. The Army has 300 well-trained legal assistance attorneys in the field right now. We are carefully watching the Air Force pilot program and adopting their best practices by incorporating specialized, victim-oriented training for our counsel. Along with this effort, we are fielding the National Defense Authorization Act (NDAA) for Fiscal Year 2013-mandated "Special Victim Capability" (SVC) which includes the following four specially trained personnel: Special Victim Prosecutor (SVP), Sexual Assault Investigator, Victim-Witness Liaison, and Paralegal.

The Army's SVP program, in place since 2009, has dramatically improved the overall handling and prosecution of sexual offenses. For the past 3 years, the feedback we have received from victims and their families attest to the dedicated, compassionate assistance provided by the specially-selected and trained Special Victim personnel. In addition, the number of courts-martial for sexual assault and domestic violence has steadily increased, reflecting a justice system that is increasingly focused on this problem. The robust training programs created to support that mission are now being multiplied to specially train the rest of the Special Victim Capability personnel. In addition, our legal assistance attorneys are receiving similar training so they are prepared to adequately represent victims' needs and privacy interests.

• Response System Panel. I am in full support of the NDAA for Fiscal Year 2013, section 576, creation of a Response Systems Panel (RSP) and the Judicial Proceedings Panel (JPP) to study the reporting, investigating, and prosecuting of sexual offenses under military and civilian jurisdictions and to determine what changes should be made to law and policy.

It is my view that any changes to the UCMJ—even if we agree that change is required—not be made in a piecemeal fashion. I agree that improvements can and should be made, but I recommend a measured approach. The UCMJ system created in 1950 was carefully crafted by Congress over the course of 2 years after numerous hearings, testimony from lawyers and non-lawyers, and carefully drafted legislation. Since that time, Congress has made major changes to the Code on only one occasion, when it enacted the Military Justice Act of 1968 after months of hearings and testimony. Any proposed statutory and policy changes should be made as part of RSP panel and not implemented until the panel is complete.

By taking a deliberate and thoughtful approach, we can ensure that the UCMJ remains a first class piece of legislation, but also ensure that unforeseen or unanticipated consequences do not adversely affect our military legal system. Any changes to our system must be done with a full appreciation for the second- and third-order effects on our pre-trial, post-trial, and appellate process.

ADDRESSING SEXUAL ASSAULT AND HARASSMENT

There are a number of existing and new initiatives underway at the institutional level and across our operational force, and within our military justice system to get after the problems of sexual assault and sexual harassment.

Institutional Initiatives

The Army's Sexual Harassment/Assault Response and Prevention (SHARP) program takes a comprehensive approach to preventing and responding to both sexual assault and harassment because research demonstrates that sexual assault is often preceded by sexual harassment. The Army's SHARP strategy is consistent with the Strategic Direction to the Joint Force on Sexual Assault Prevention and Response Memorandum dated 7 May 2012, DOD policy, and it is being updated to meet NDAA for Fiscal Year 2013 legislative requirements.

Due to the criticality and priority of this mission, I support exempting all SHARP program personnel from the civilian furlough and the hiring freeze so that we may continue to interview and hire additional Sexual Assault Response Coordinators (SARC), Victim Advocates, investigators, lab examiners and trainers through the end of fiscal year 2013.

On 10–11 June 2013, I will host a 2-day SHARP Summit with all of the Army's senior commanders and command sergeants major. The conference will bring together Army leaders, Congressional representatives, and civilian subject matter experts to discuss sexual assault and harassment related concerns. For example, con-

ference participants will discuss the status of compliance with Army policies and any challenges implementing the current Army SHARP Campaign Plan and new requirements as outlined by the Secretary of Defense in his 6 May 2013 Sexual Assault Prevention and Response and 17 May 2013 Stand-down directives. The conference will provide the opportunity for Army civilian and military leaders and survivors to share their lessons learned and develop best practices across the force.

- CSA SHARP Panel. I am in the process of establishing a SHARP panel of experts to provide Army senior leaders with a critical, independent review of the Army's current programs that will be used to inform any changes to the Army's policies and procedures. The panel will be composed of civilian government, legal, and academic experts, military commanders, and sexual assault survivors so that they can share their experiences and help to identify areas for improvement and increased responsiveness. In addition, the Sergeant Major of the Army will chair a junior enlisted SHARP panel to provide a more diverse view from across the force on sexual assault and harassment issues.
- Department of Defense Standards for SHARP Personnel. The Army oversees 32 SHARP training courses that span from initial entry up through command sergeants major and pre-commissioning to general officer. For example, the Army created and runs the SHARP 80-hour certification course which has been approved by the National Organization for Victim Assistance and is required for all personnel who respond to victims of sexual assault. To date, more than 20,000 Army personnel have completed the course.

In support of Army commanders, the Army will resource 902 military and civilian full-time positions, which includes 829 full-time Sexual Assault Response Coordinators (SARC) and Victim Advocates (VA) at brigade level as well as 73 full-time SHARP 80-hour Certification Course Trainers at Division level and higher Army organizations. Army Command and Headquarters Department of the Army level organizations. There are approximately 9,010 personnel with collateral duty positions at battalion and below units.

The Army also continues to increase its number of female drill sergeants. As of 22 May 2013, the Army is authorized 494 female drill sergeants, currently has 478 on hand and expects to add an additional 51 personnel (for a total of 529) within the next 3 months.

- Training and Education Programs. We are in the process of updating all Professional Military Education training programs on sexual assault and harassment from new recruit through general officer level and the Civilian Education System training. Program updates are based upon new legislation, revised DOD guidance, and changes to the Army's sexual harassment/assault prevention campaign efforts.

At their pre-command course, commanders receive mandatory SHARP training modules on current trends, cultural considerations, and the commander's role in establishing a climate and culture that does not tolerate sexual misconduct. In addition, an Army sexual assault Highly Qualified Expert (HQE) instructs commanders on their roles and responsibilities as Special/General Court Martial Convening Authorities.

Consistent with the NDAA for Fiscal Year 2013, the Army indoctrinates new recruits and first-term soldiers on SHARP training with in the first 14 days of basic combat training and offers support to soldiers who self-disclose a pre-service history of sexual assault. In training facilitated by sexual assault subject matter experts, recruits participate in a second course consisting of interactive skits dealing with dating, consent, and sexual assault to foster understanding about the nature and impact of interpersonal violence. Reserve Officer Training Corps (ROTC) cadets receive a 3 hour introductory course on SHARP early in their common core training program. A comprehensive curriculum at the U.S. Military Academy includes lessons on sexual harassment and sexual assault topics during the cadets' basic training as well as additional SHARP instruction throughout the 47-month cadet experience.

- Increasing Investigator, Lab Examiner, and Prosecutor Capacity. Since 2012, the Army has served as the Executive Agent for the Special Victims Unit Investigation 80-hour Course that trains all the Military Services' investigators and prosecutors at the U.S. Army Military Police School. Approximately 250 personnel were trained in fiscal year 2012. The U.S. Army Criminal Investigation Laboratory supports all Military Services and the laboratory's DNA processing meets all Congressionally mandated timelines of under 60 days. The Army maintains a Special Victims Unit capability

through 70 CID units worldwide, which includes 22 Sexual Assault Investigators at 19 Army installations; an additional 8 Sexual Assault Investigators will be hired in fiscal year 2014.

In addition to these programs, the Army has hired or assigned the following added personnel to increase capacity for investigations and prosecutions:

- Four Criminal Investigation Division (CID) highly-qualified experts
- Six (of seven) civilian lawyers who are highly-qualified experts in the field of sexual assault
- 20 (of 23) Special Victim Prosecutors (remaining filled by summer 2013)
- 32 Lab Examiners whose express purpose and focus is sexual assault

• Medical Command (MEDCOM). Every Army Military Treatment Facility has a Sexual Assault Care Coordinator, Sexual Assault Clinical Provider, and a Sexual Assault Response Coordinator (SARC) who train other healthcare providers and healthcare personnel on their requirements regarding the preservation of restricted reports, in addition to providing support to victims of sexual assault. There are a total of 304 designated health care providers and 398 SHARP trained personnel who support MEDCOM efforts.

Actions across the Operational Force

• Unit Training. The Army will continue to require training and improve our ability to conduct realistic, pertinent, interactive training with our operational units. We have mandatory annual training for all personnel, which includes small-group, interactive training and a self-study module on sexual assault and harassment prevention and response. This includes leader and soldier videos as well as scenario-based role playing to discuss how Soldiers, leaders, and commanders make choices in situations dealing with sexual harassment and sexual assault.

As part of the Army's SHARP Stand-down in June, commanders will conduct refresher training for all unit Sexual Assault Response Coordinators, Victim Advocates, recruiters, drill sergeants and AIT platoon sergeants. Commanders will also lead interactive, discussion-based unit training on: the duties and responsibilities for SARCs, VAs, recruiters, drill sergeants and AIT platoon sergeants; how professional ethics, the Warrior Ethos, and the Army Values relate to the subject of sexual harassment and sexual assault; and how sexual harassment and sexual assault affect Army readiness.

• Commander Review of All SHARP Personnel. Consistent with the Secretary of Defense Memorandum on Sexual Assault Prevention and Response Stand-down dated 17 May 2013, the Army is in the process of conducting a review of all Army Sexual Assault Response Coordinators, Victim Advocates, and recruiters and will initiate a similar review of all drill sergeants and advanced individual training (AIT) platoon sergeants. In addition to the review, the Army is considering methods of enhancing its selection criteria for these positions which may include enhanced background checks and face-to-face, behavioral health screening. The file review will be complete by 1 July 2013 in the Active component and 1 September 2013 in the Reserve component.

As part of our review, the Secretary and I have directed that every commander ensure that these positions are filled by the best qualified individuals of the highest moral character. We must ensure that every soldier or civilian in each of these positions is mature, well-trained and passes a rigorous background check, records review and selection process.

• Command Climate Surveys. The Army currently meets the NDAA for Fiscal Year 2013 requirement for conducting command climate surveys. Commanders conduct annual organizational climate assessments at 30 days, 6 months and annually thereafter, after assuming command. The Secretary of Defense has directed that the results of command climate surveys be provided up to the next level in the chain of command, which will be implemented by 31 July 2013. We are also considering whether to require that commanders develop an action plan to address any issues or concerns that are discovered during the course of the survey and its resulting analysis.

• Sensing sessions. In support of the Army's SHARP Stand-down, all Army Commands, Army Service Component Commands and Direct Reporting Units will develop a leader engagement plan to discuss sexual assault and harassment with all soldiers and civilians across the Army. These engage-

ments are intended to be commander-led, small-group discussions that facilitate greater understanding among leaders, peers, and subordinates about one another's experiences with sexual assault and harassment. At a minimum, commanders should discuss: the Army's SHARP program and the Army's I. A.M. (Intervene, Act, and Motivate) Strong Sexual Harassment/Assault Prevention Campaign; individual responsibility for maintaining a climate of dignity and respect; the Army values and how they relate to sexual assault and harassment; and how sexual assault and harassment affect the readiness of the Army.

In this effort, we still have much work to do. I understand that the credibility of the Armed Forces and the credibility of the Army are at stake. Our soldiers, their families, and the American people are counting on us to lead the way in solving this problem within our ranks. It is my responsibility; it is our responsibility to ensure that every service man, service woman, and civilian is able to serve the Nation in an environment of mutual respect, trust, and safety.

This problem will not be solved quickly because it requires us to take deliberate steps to change our culture. It requires that we restore our people's confidence by improving our system of accountability. It is up to every one of us, civilian and Soldier, general officer to private, to solve this problem within our ranks. To do so, our commanders must play a central role in changing our culture because it is they who are responsible and accountable for every soldier's health and welfare, unit discipline, and the readiness of our forces in times of war or peace.

Over the last 12 years of war, our Army has demonstrated great competence, courage, and resiliency in adapting to the demands of war. The Army and the military have contributed to positive social change throughout our history—through racial integration, the integration of women across all Services, and the elimination of discrimination on the basis of sexual orientation. The Army has faced difficult problems before and succeeded. We will put our minds to this task. I am absolutely confident that we can and we will ensure will eliminate the scourge of sexual assault and sexual harassment within our ranks.

I am grateful for our continued dialogue and partnership with Congress to ensure that together, we identify and implement the best ways possible to get after the crimes of sexual assault and sexual harassment in our Army, in our military, and in our society writ large. Thank you Mr. Chairman and other distinguished members of the committee for the opportunity to speak with you today. I look forward to your questions.

The strength of our Nation is our Army
The strength of our Army is our soldiers
The strength of our soldiers is our families.
This is what makes us Army Strong!

Chairman LEVIN. General Odierno, thank you so much.

Admiral Greenert?

STATEMENT OF ADM JONATHAN W. GREENERT, USN, CHIEF OF NAVAL OPERATIONS; ACCOMPANIED BY VADM NANETTE M. DERENZI, JAGC, USN, JUDGE ADVOCATE GENERAL OF THE U.S. NAVY

Admiral GREENERT. Thank you, Chairman Levin, Ranking Member Inhofe, and distinguished members of the committee. I want to thank you for the opportunity to testify today about addressing this deeply troubling issue.

I am grateful for your involvement and for your continued interest in providing our commanders and sailors the tools to help stamp out the crime of sexual assault from within our ranks. Sexual assault is a serious offense. It is contrary to everything that we stand for, and it is not who we are.

For me, this represents a significant safety issue and is an existential threat to our core values. It is a defining challenge for our time.

Our sailors deserve a safe environment in which to serve their Nation, and I am outraged and I find it inconceivable that a shipmate would assault another shipmate, someone with whom they

stand watch and trust their lives at sea and with whom they will go into combat.

However, my outrage alone is not enough. We need thoughtful, deliberate, relentless, and effective action. We need to dig into the root causes and establish and put in place sustained improvements that can be institutionalized and assessed over the long term. At a minimum, our current and future readiness are at stake.

Three years ago, we began a sustained effort to improve our prevention and response programs. One outcome was the development and integration of a pilot program that we instituted at our training command in Great Lakes, Illinois.

We chose an environment that we felt we could more readily control, a school environment. The results over 2 years have been sustained and substantial reduction in the prevalence of sexual assaults and conduct violations.

Based on these positive results, we have instituted similar programs at the aviation training command in Pensacola, the Naval Academy, and Naval Station San Diego. Further, we will be implementing these programs in Naples, Italy, and Yokosuka, Japan, within the next 6 months.

Initial feedback from sailors in San Diego thus far has generally been positive. Again, reduction in conduct violations and sexual assault reports and more confidence in their security environment. The foundation of these pilots has been focused and engaged leadership at every echelon of the command.

Now these are just a snapshot of initiatives to improve command climates, to weed out perpetrators, and to create an environment that dissuades these crimes from occurring. We have much more work to do in this area.

Our sailors must be confident in our reporting process. Sailors inform us that simple, multiple, reliable, and readily available means of discreetly reporting a sexual assault imbues confidence in the reporting process for sexual assault.

All our sailors need to know how to do this, and in April, we completed the training for every sailor in the Navy. We reinforced that there are multiple options available in every unit to report an assault.

For example, sailors can report a sexual assault to victim advocates, a SARC, the DOD safe line by Web or phone, medical personnel, the chain of command, Judge Advocates, 911 or base police, a Naval Criminal Investigative Service (NCIS) agent, or the chaplain. We hired additional professional credentialed response coordinators and victim advocates to augment the existing 3,500 trained active duty advocates that we have today.

In addition to numerous efforts in prevention and victim support, we recognize our military justice system and processes may need to evolve. Previous challenges, such as drug abuse in the 1970s and the early 1980s, demonstrated that the UCMJ must be able to adapt to better serve our sailors and to provide adequate support for our commanders.

Accordingly, as with DOD's Article 60 proposal, we have to ensure that our proposed modifications to the military justice system are deliberate, they consider second-order effects, and do not ulti-

mately adversely impact the best interests of justice, the victim's rights, and due process rights of the accused.

Further, the unit commander's authority and role as the singular individual accountable for the welfare of his or her sailors should be preserved such that the commander is able to carry out his or her mission. I believe that for complex and comprehensive changes, those that propose structural changes to the military justice system and the UCMJ, particularly the role of the commander, the response systems panel created by section 576 should be given the opportunity to complete an independent assessment.

It is clear that preventing and responding to sexual assault is not just a legal issue. It is assuredly a leadership issue and fundamentally embedded in what we call the "Charge of Command." The commanding officer is responsible and accountable for everything that happens in his or her ship, squadron, or unit, and we expect our commanders to create a safe environment founded on dignity and respect, one that reinforces our core values of honor, courage, and commitment.

To reinforce this concept, each sexual assault report is briefed by the unit commander to the first flag in the chain of command, focusing on root causes, location, environment, and the means for future avoidance. I review the collation of these results quarterly with my Navy four-star commanders, focusing on trends, progress, and a framework for further action.

Now we have found that successful, effective, and permanent changes in our military are best done through our commanders, the chain of command. I believe this is true for the military justice process as well. From initial disposition through convening authority to post trial review, the chain of command should be involved.

Recently, in the interest of improving the military justice process in cases of the commission of or the attempt to commit rape, sexual assault, or forcible sodomy, DOD elevated the disposition authority to the O–6 level to enhance seniority, experience, and the objectivity in this important element of the military justice process.

Navy commanders are often required to make independent decisions far from shore in uncertain or hazardous conditions. Given the unique nature of their responsibility and the authority and accountability we bestow on them for the welfare of their crew and mission accomplishment, I believe it is essential that our commanders be involved in each phase of the military justice process.

Mr. Chairman, we know there is more to do. We remain committed to preventing these crimes, to weeding out perpetrators and to providing compassionate, coordinated support for sexual assault victims, to holding commanders accountable, and to ensuring that sexual assault cases are processed through a fair, effective, and efficient military justice system.

Thank you for the opportunity to testify today.

[The joint prepared statement of Admiral Greenert and Vice Admiral Derenzi follows:]

JOINT PREPARED STATEMENT BY ADM JONATHAN W. GREENERT, USN, AND VADM NANETTE M. DERENZI, USN

Chairman Levin, Ranking Member Inhofe, distinguished members of the committee; thank you for the opportunity to testify today about our efforts to address

sexual assault and how we can work together to improve our ability to prevent and respond to sexual assaults, support victims, and hold offenders accountable.

Sexual assault is a crime. It is an attack on a shipmate, violates the Navy's Core Values and tarnishes everything we stand for. Sexual assault threatens the safety of our sailors, and degrades the readiness of our ships and squadrons. The Navy and our commanders are committed to eradicating this crime from our ranks; we owe this to our people and our Nation. I am deeply concerned by the extent to which this crime continues impact the Navy and undermine the trust our sailors and the American people place in our military. This isn't who we are. However, I cannot afford to simply be outraged. I have to, and I am committed to, working each and every day to solve this problem.

We began a sustained and focused effort to improve our prevention of and response to sexual assault 3 years ago with the Department of the Navy's Sexual Assault Prevention Summit. This effort has expanded and evolved as we have learned more, particularly in the past year. We started with what became a successful pilot program instituted at our training command in Great Lakes, Illinois. Over the last 2 years, this initiative substantially reduced the prevalence of sexual assaults through a tailored approach combining training, safety and security measures in housing areas, peer monitoring, direct engagement with local business and civil authorities, and regulated liberty. Armed with these insights, we recently implemented regionally-focused pilot programs in additional Fleet Concentration Areas—San Diego, Naples, Italy and Yokosuka, Japan. So far progress in these areas is positive: feedback from sailors; reduction in conduct violations (including sexual assault); and increased reporting of past sexual assaults in these Fleet Concentration Areas indicates awareness of, and confidence in, our reporting processes. The foundation of our efforts is focused and engaged leadership at every echelon of command, to include quarterly meeting I hold with my Navy four-star commanders.

We see some clear trends regarding sexual assault in the Navy which enable us to focus our efforts. Most sexual assaults are sailors assaulting other sailors; most victims and offenders are junior sailors; more than half of incidents occur on base or on ship; and alcohol is a factor in the majority of sexual assaults that occur outside of the workspace. Using these insights I see the greatest opportunity for future success in three main areas:

- Disrupting the factors that contribute to sexual assault—We continue to focus, in particular, on alcohol as a factor in sexual assault. This year we fielded alcohol detection devices in the fleet to help educate sailors on their alcohol use. We are also addressing command climate and how it contributes to sexual assault, particularly the impact of sexual harassment and how it contributes to a culture that may enable sexual violence. As described below, we implemented improvements to our leadership development programs and put in place processes to better evaluate and hold leaders accountable for their efforts to keep their sailors safe and for shaping proper command climate—the way their commands treat their people and the environment in which their sailors work. Since most incidents occur in areas we control, our commanders implemented more aggressive security measure in on-base housing areas including patrols by senior personnel, security cameras and improved lighting. Since most victims and offenders are junior sailors, our training is targeted to those sailors, and we support peer groups such as Coalition of Sailors Against Destructive Decisions who train, mentor, and sponsor awareness-raising events for fellow junior sailors.
- Fielding A Special Victim Capability—Specially trained investigators, victim advocates, prosecutors, and paralegals form the core of our special victim capability to respond to incidents of sexual assault. We established dedicated Naval Criminal Investigative Service (NCIS) agent-teams in Norfolk, San-Diego, Bangor, and Okinawa that exclusively handle adult sexual assault investigations. NCIS is expanding this model during fiscal year 2013 to Yokosuka, Japan, Hawaii and Mayport, Florida. To improve the overall quality of Navy court-martial litigation, the JAG Corps established the Military Justice Litigation Career Track. Military Justice Litigation Qualified judge advocates lead trial and defense departments at Region Legal Service Offices and Defense Service Offices, which provide Navy prosecutors and defense counsel, respectively. These officers provide proven experience in the courtroom, personally conducting, adjudicating, or overseeing litigation in sexual assault and other complex cases. The Military Justice Litigation Career Track program leverages trial counsel, defense counsel, and judicial experience to enhance the effectiveness of complex court-martial practice. We also increased the seniority of commanders authorized to decide the disposition of sexual assault cases and required that

commanders consult judge advocates in making disposition decisions. These and other improvements are discussed in further detail below.

• Support for victims—The Navy is in the process of hiring 66 full-time credentialed Sexual Assault Response Coordinators (SARCs) and 66 full-time, professional, credentialed victim advocates (VAs) to augment the approximately 3,000 existing trained active duty command VAs. We will have these SARCs and VAs at every one of our Fleet Concentration Areas and major overseas bases, with additional positions added proportionally to areas with larger populations. Complementing the support provided by SARCs and VAs, Navy prosecutors and legal assistance attorneys provide victims' with an understanding of their rights, the military justice process, and assistance with wide variety of issues related to being the victim of a crime.

PROPOSED CHANGES TO THE MILITARY JUSTICE SYSTEM

A critical aspect of our focused efforts is ensuring a fair, efficient, and effective military justice system. Consistent with previous challenges such as drug abuse in the 70s and early 80s, the UCMJ and Manual for Courts Martial (MCM) must be able to evolve. We recently endorsed a significant change to Article 60 of the Uniform Code of Military Justice (UCMJ) to prohibit a convening authority from setting aside the findings of a court-martial except for a narrow group of qualified offenses (those ordinarily addressed through non-judicial punishment or adverse administrative action) and require a convening authority to explain any sentence reduction in writing. The process the Secretary of Defense followed in proposing an amendment to Article 60 of the UCMJ ensured a careful and full evaluation of the proposal both in terms of accomplishing intended objectives and avoiding unintended second- and third-order effects.

As with the Department's Article 60 proposal, we must ensure that other proposed changes to the military justice system do not adversely impact the interests of justice, the rights of crime victims, and the rights afforded the accused. To maintain the proper balance of these interests and ensure the system remains constitutionally sound and responsive in peace and war we must continue to evaluate proposed changes to the UCMJ by carefully assessing their overall impact.

The Response Systems Panel created by section 576 of the National Defense Authorization Act for Fiscal Year 2013 should be given the opportunity to conduct an independent assessment of the systems used to investigate, prosecute, and adjudicate sexual assaults prior to the adoption of sweeping structural changes to those systems. I look forward to the opportunity to work with Congress now and in the future to ensure our commanders have the right tools to help them prevent and respond to sexual assault. In addition to the Secretary of Defense's proposed amendment to Article 60 of the UCMJ, we should carefully consider other proposals, including: enhanced protection for recruits and members of the armed forces in entry-level processing and training environments; prohibition against military service for any person with a conviction for sexual assault; enhanced authority for commanders to temporarily reassign or remove from a position of authority a member alleged to have committed a sexual assault offense; and elimination of the 5-year statute of limitations applicable to sexual assault offenses other than rape.

SEXUAL ASSAULT REPORTING

In the Navy, there are two reporting options for victims of sexual assault: restricted and unrestricted. There are multiple means available for sailors to make reports at all commands—afloat or ashore. Sexual assault reports can be made to personnel as described below inside or outside the victim's command and can be confidential, as desired by the victim.

Restricted reports are kept confidential; an investigation is not initiated, and the command is notified that an assault has occurred with no identifying information regarding the victim or suspect. Victims can make restricted reports to SARCs, VAs, medical personnel, or by contacting the DOD SafeHelpline by phone (877–995–5247) or online (https://www.safehelpline.org/), 24 hours per day, 7 days a week. SARCs, VAs, and SafeHelpline personnel ensure victims understand their reporting options and available resources. Victims who make restricted reports will still receive medical treatment, including a Sexual Assault Forensic Examination, counseling services, victim advocacy support, chaplain support, and legal assistance as they desire.

Unrestricted reports provide victims the same support services as restricted reports. These reports are investigated by the NCIS and reviewed for prosecution by a commander with the rank of O–6 or above with disposition authority for sexual assault cases. Victims who desire to make an unrestricted report are encouraged to

report sexual assaults to a SARC or VA, medical personnel, command leadership, judge advocate, base police, master at arms, NCIS or civilian law enforcement as soon as possible after the incident. The decision to make a restricted or unrestricted report rests with the victim; a victim can make a restricted report and later change to an unrestricted report. Once a victim files an unrestricted report, investigation and reporting requirements are mandated. The Navy trained every sailor on reporting procedures during our Sexual Assault Prevention and Response for Leaders and Fleet training completed in April 2013. The Navy also implemented policies to ensure victim safety and support following an unrestricted report of a sexual assault. For example, victims may request an expedited transfer to another command or duty station. Additionally, commanders may issue military protective orders to order a military suspect to have no contact with the victim, temporarily transfer the accused pending resolution of the case, or place the accused in pretrial confinement.

Whether a victim chooses to make a restricted or unrestricted report of sexual assault, command SARCs and VAs are specially trained to respond quickly to victims; provide information; accompany victims to medical, investigative interviews, and legal proceedings as the victim desires; make referrals for military and community assistance; and help victims through this potentially life altering event. The Navy is in the process of hiring 66 full-time credentialed SARCs and 66 full-time, professional, credentialed VAs to augment the approximately 3,000 existing trained active duty command VAs. This will be complete by June 2013. We will have these SARCs and VAs at every one of our Fleet Concentration Areas and major overseas bases, with additional positions added proportionally to areas with larger populations. By hiring these credentialed professionals, we are improving not only our capacity for victim support, but also program continuity and quality.

The Navy's legal professionals support sexual assault victims. The Navy has trained more than 150 Navy and Marine Corps attorneys, paralegals, and enlisted personnel to provide legal assistance to crime victims in order to ensure victims' rights are understood and protected. Navy prosecutors contact victims to provide them with explanations of victims' rights; the court-martial process; and available Federal, State, or local victim services and compensation. Additionally, active-duty and dependent victims are eligible for military legal assistance services and may contact or be directed by VAs or prosecutors to legal assistance attorneys to receive help pertaining to victims' rights, understanding the court-martial process, and a wide variety of legal issues related to being the victim of a crime.

SEXUAL ASSAULT INVESTIGATION AND ADJUDICATION

Prompt, thorough investigation is critical to the effective prosecution of sexual assault cases. Every unrestricted report of sexual assault triggers an independent investigation by NCIS. This includes sexual contact offenses, such as groping someone over their clothes. From the outset of an investigation, NCIS works closely with Navy trial counsel (prosecutors) in order to ensure a thorough investigation sufficient to make an appropriate charging recommendation. To facilitate the prompt collection of evidence, the Navy will equip and certify all Medical Treatment Facilities and operational units to perform Sexual Assault Forensic Exams by the September 2013. To ensure appropriate care, each Navy unit with women sailors has at least one female corpsman or physician. In the past 2 years, NCIS established specially-trained teams around the country and overseas that investigate only sexual assault cases. These NCIS agent teams better enables NCIS to effectively investigate each case of sexual assault. In Norfolk, for example, these teams reduced the average time to investigate sexual assaults from 300 days to about 80 days.

Once an NCIS investigation is complete, the case is forwarded to the accused's commander. In accordance with Secretary of Defense policy, the initial disposition decision for reports of rape, sexual assault, forcible sodomy, and attempts to commit these offenses must be made by Sexual Assault Initial Disposition Authorities (SA–IDAs), who are Navy Captains (pay grade O–6) or above designated as Special Court-Martial Convening Authorities. If the accused's commander is not an SA–IDA, the commander must forward the case to the appropriate SA–IDA in the chain of command for the initial disposition decision. SA–IDAs must consult with a judge advocate prior to making disposition decisions, ensuring that appropriate legal considerations for these major offenses are fully evaluated and balanced with good order and discipline. Having received legal advice from a trained and experienced staff judge advocate and/or prosecutor, based on the nature of the offenses and an analysis of the evidence available, the SA–IDA may recommend that the suspect face charges at a general court-martial. The SA–IDA also has the option, when appropriate, to send charges to a special court-martial, summary court-martial, or non-judicial punishment and may also process the suspect for administrative separation.

If the SA–IDA does not recommend general court-martial, the SA–IDA can also return the case to the suspect's commanding officer for disposition deemed appropriate by that commanding officer, based on the nature of the offenses and an analysis of the evidence available, including special court-martial, summary court-martial, nonjudicial punishment, or administrative separation processing.

Once charges are preferred (sworn to), the suspect becomes "the accused" and is provided a military attorney. The charges can immediately be referred to a summary court-martial or special court-martial. However, before a case can be referred to a general court-martial, the accused has the right to have the charges considered at an Article 32 pre-trial investigation.

An Article 32 investigation is similar to a civilian preliminary hearing, and a victim may have to appear and testify at the hearing. The accused will be present at the Article 32 hearing along with the defense counsel who may cross-examine the victim. In the Navy, judge advocates serve as Article 32 investigating officers for sexual assault offenses. The Article 32 investigating officer will hear the evidence and write a report, which will include the investigating officer's determination as to whether there are reasonable grounds to believe that the accused committed the offenses charged and, if so, a recommendation on the forum for disposition of the charges. After considering the investigating officer's report and the recommendation of a staff judge advocate, the SA–IDA may decide to recommend to a general court-martial convening authority (generally an O–7 or above) that he or she convene a general court-martial, or the SA–IDA may send the accused to a special court-martial, summary court-martial, impose NJP or, if appropriate, dismiss the charges. The accused may also be processed for administrative separation. In the alternative, the SA–IDA may return the case to the suspect's commanding officer for appropriate disposition.

If the charges are referred to a general or special court-martial, the accused has the right to choose to be tried by a military judge alone or by a panel of servicemembers who serve as jurors (or "members" in a court-martial). To convict a servicemember, a two-thirds majority of the court-martial panel members, or the military judge if the case proceeds with the military judge alone, must be convinced of the accused's guilt beyond a reasonable doubt. If the accused is found guilty, the case will proceed to the sentencing phase and the military judge or members decide what punishment to apply. During a sentencing hearing, both sides may again call witnesses to help determine an appropriate sentence. The victim can testify about the impact of the sexual assault, which may include the emotional, physical, and financial suffering the victim experienced.

Post-trial appeal and review processes under Articles 64, 66, and 69 of the UCMJ occur after the court martial proceedings. Article 66 reviews apply to cases in which a punitive discharge or sentence of confinement for 1 year or more was approved; those convicted are assigned appellate defense counsel, and cases on appeal are decided by senior judge advocates serving as Navy and Marine Corps Court of Criminal Appeals appellate judges or by civilian judges of the U.S. Court of Appeals for the Armed Forces. Article 69 reviews apply to general courts-martial where a punitive discharge or confinement for 1 year or more was not approved; the records of trial are reviewed by the Office of the Judge Advocate General. Article 64 reviews are conducted for all other courts-martial cases and are submitted to a judge advocate who must respond to any allegation of error made by the accused.

Throughout the legal process, the victim has certain basic rights. For example, a victim has the right to communicate his or her position about the disposition of the case and plea negotiations. Although the convening authority is not bound to dispose of the case as the victim desires, the victim's views must be carefully considered. In addition to the general guidance Navy prosecutors provide, victims can contact counsel, and active-duty and dependent victims also have access to legal assistance attorneys to provide information on the military justice process, victim's rights, and help with a wide variety of legal issues related to being the victim of a crime.

Under the Victim and Witness Assistance Program (VWAP), the victim has certain basic rights throughout a court-martial, including:

- Being treated with fairness and respect for the victim's dignity and privacy;
- Being reasonably protected from the accused;
- Being notified of court proceedings;
- Being present at all public court proceedings related to the offense, unless the investigating officer or military judge determines that the victim's testimony would be materially affected if he or she heard other testimony at the pretrial investigation or at trial;
- Conferring with the trial counsel;
- Receiving available restitution, if appropriate; and

- Being provided information about the conviction, sentencing, imprisonment, and release of the offender.

THE ROLE OF THE COMMANDER

Preventing and responding to sexual assault is not just a legal issue—it is a leadership issue. The performance, safety and climate of a unit begin and end with the commander. As described in the "Charge of Command" that all Navy officers sign in the presence of their reporting senior upon taking command, the commanding officer is responsible and accountable for everything that happens in their ship, squadron or unit. By virtue of experience, skill and training, our commanders are the best assessors of their people and are the key to sustaining the readiness of their unit. If we want to implement effective, permanent change in our military, we must do so through our commanders.

From our analysis of sexual assault reports and cases, we know many of the factors surrounding the majority of sexual assaults. The commander is responsible to address these factors by fostering an appropriate command climate of dignity and respect for everyone and ensuring a safe workplace and living areas. Overall, the commanding officer is responsible for good order and discipline of the unit and the well being of his or her sailors.

The responsibility, authority, and accountability we repose in the commander requires that we provide him or her tools to maintain appropriate readiness and safety every day. Military justice is one of those tools. The fundamental structure of the military justice system and UCMJ, centered on the role of the commander as the convening authority, is sound. Navy commanders are often required to make independent decisions far from shore, in uncertain or hazardous conditions. In this environment, it is essential that our commanders be involved in each phase of the military justice process, from the report of an offense through adjudication under the UMCJ.

THE IMPORTANCE OF ACCOUNTABILITY

The Navy continues to evaluate the tools we provide commanders to ensure they can execute their charge of command. In particular, we are focused on improving the development of leadership and character in our leaders on their way to command. Today, all of our leaders complete high-quality, tailored training on sexual assault prevention and response. This training, provided by professional mobile training teams, is designed to help leaders identify factors and environment that surround or contribute to sexual harassment or sexual assault, and understand the response requirements when a sexual assault occurs.

While tailored to sexual assault prevention and response, this training is not enough to fully prepare commanders to create an appropriate command climate. The Navy recently instituted a concerted leader development program to guide young officers and enlisted personnel to be effective commanders and senior enlisted leaders. Over the next year, we will advance this program as a cornerstone of our training for future commanders and Senior Enlisted Advisors and leaders.

Because of the inherent responsibility of our commanders, our screening processes to select them are rigorous. They include:

- a formal command qualification program reviewed and approved by each community flag officer leader (normally, a Vice Admiral)
- professional qualification standards for each selected commander
- an oral qualification board for each candidate in front of former commanders
- a command screen board, led by flag officers
- full training on, and acknowledgement of, the "Charge of Command"

Despite the rigors of the selection and training process, we inevitably have failures and must hold commanders accountable for their command climate, their efforts to maintain a safe work environment of dignity and respect, and the good order and discipline of their commands. Today, we do this by requiring commanders to assess their organizational climate at regular intervals, while requiring those with multiple commands under their leadership to monitor the climates of subordinate commands. We also evaluate our commanders (and all officers) in their regular fitness reports (performance evaluations used for determination of advancement) in three areas: Command Climate/Equal Opportunity, Leadership and in written summary, where documentation of poor command climates would be listed. We hold our commanders responsible and accountable when they do not meet acceptable standards.

There are 1,254 command positions in the Navy. In 2012, Navy relieved 11 commanders for personal misconduct and 8 commanders were relieved for failure to pro-

vide effective leadership; 4 of these 8 were relieved for poor command climate. This year, we have relieved five commanders for failure to provide effective leadership, two of whom were relieved for poor command climate.

As part of the Navy's accountability process, commanders are required to brief their Immediate Superior in Command and the first flag officer in the chain of command on each sexual assault incident occurring in their command. Commanders evaluate the command climate of the suspect's command, as well as the factors surrounding the sexual assault, such as location and environment surrounding the incident, demographics, and the role of alcohol. Means to prevent further incidents are discussed.

Our Navy four-star flag officers reinforce accountability for command climate by reviewing these "first flag" reports. I meet with my four stars every quarter to review "first flag reports": trends, demographics, common features and environments and best practices to prevent sexual assaults. We apply the insights from the reports to ongoing initiatives, particularly our regionally-focused programs in Great Lakes, San Diego, Japan and Europe.

CONCLUSION

We remain steadfastly committed to eradicating sexual assault within our ranks and ensuring that sexual assault cases are processed through a fair, effective, and efficient military justice system.

Sexual assault is a crime that threatens the safety of our sailors, is utterly inconsistent with our Core Values, and impacts the ability of the Navy to execute our mission. We must more effectively prevent and respond to sexual assault, or our readiness and credibility as a fighting force will suffer.

The Navy is making progress in areas where we empowered commanders to undertake regionally-focused approaches that address the factors surrounding sexual assault. Our efforts must continue to focus on providing commanders the appropriate tools to remain effective, accountable leaders, and hold these commanders accountable for the safety and well being of all their sailors. I look forward to working with Congress on a deliberate, thoughtful review of the systems used to investigate, prosecute, and adjudicate sexual assaults.

Chairman LEVIN. Thank you very much, Admiral Greenert.

General Amos.

STATEMENT OF GEN. JAMES F. AMOS, USMC, COMMANDANT OF THE MARINE CORPS; ACCOMPANIED BY MAJ. GEN. VAUGHN A. ARY, USMC, STAFF JUDGE ADVOCATE TO THE COMMANDANT OF THE MARINE CORPS

General AMOS. Chairman Levin, Ranking Member Inhofe, members of the committee, thank you for calling today's hearing on this most critical issue.

Let me begin by saying that sexual assault is criminal behavior that has no place in your U.S. Marine Corps. It violates the bedrock of trust that marines must have in one another, the legendary trust that we have always had in one another. It is shameful, it is repulsive, and we are aggressively taking steps to eradicate it.

While there are cases of mixed and same-gender attacks, sexual assault within the Marine Corps is predominantly a male-on-female crime. That said, it is important to note that our data shows that the crime of sexual assault is being committed by roughly 2 percent of our Marine population. Clearly, and importantly, the remaining 98 percent of your marines are keeping their honor clean.

Since June of last year, we have tackled the sexual assault problem head on and have seen measurable improvements in three specific areas: prevention, reporting, and offender accountability. I am encouraged by these positive changes and believe we have momentum on our side.

I testify before you today to let you know that eradicating sexual assault from within our ranks is a top priority with the senior lead-

ership of the entire U.S. Marine Corps. But talking about this issue is not enough. Direct action and a uniform strategy is required.

Our history over the last century is replete with examples where we have changed the Marine Corps as an institution. Following World War II, we knocked down racial barriers, paving a clear road of racial equality in our Corps.

Following Vietnam, as a young lieutenant, I saw firsthand how we attacked a rampant drug problem. We solved this discipline and illegal behavior problem from the top down. We were successful through determined leadership and a combination of education and strict legal actions.

Over time, the Corps changed. Drug users and drug pushers became viewed as what they truly were, pariahs. We exiled them from our ranks. During that time, we pushed separation authority down to commanding officers to enforce discipline standards and to effect swift judgment against offenders. It was our commanders who drove the change.

Today, I have seen how the Marine Corps is tackling our alcohol problem through leadership and deglamorization of irresponsible behavior. While we are far from complete in these efforts, DUIs and other alcohol infractions are no longer acceptable behavior for a professional corps of marines.

I have watched us change over the past decades in this regard. What was deemed acceptable behavior for Lieutenant and Major Amos is simply not condoned today. It is the evolution of behavior, and it is good for us.

Accountability in the Marine Corps begins and ends with me. Sexual assault prevention within our ranks is front and center with me and at the top of my priorities. Our senior officers and staff noncommissioned officers are all in. They are focusing on making the necessary changes to prevailing conditions and attitudes to create the environment that the American people not only expect, but demand from their marines.

Over the last year, we have implemented an aggressive three-phase campaign plan that strikes at the heart of this issue. Its goal is complete elimination of sexual assault within our Marine Corps.

As we launched our plan last spring, the Sergeant Major of the Marine Corps and I traveled to every base and station throughout the world to look our marines in the eye, to remind them of their rich heritage, and to remind them who they are and who they are not. We spoke of the importance of maintaining the spiritual health of the Corps.

Just as I expect to be held accountable for everything the Marine Corps does and fails to do, I, in turn, hold my commanding officers accountable for everything their units do or fail to do. Our commanding officers are the centerpiece of the Marine Corps' effectiveness and professional and disciplined warfighting organization.

Commanding officers are charged with establishing and training to standards and uniformly enforcing those standards. A unit will rise or fall as a direct result of the leadership of its commanding officer. Commanding officers never delegate responsibility. They should never be forced to delegate their authority.

As such, as Congress responsibly considers changes to the commanders' authority under the UCMJ, I plead with you to do it sen-

sibly and responsibly. As strongly as I support the authority of the commanding officer, I reject the status quo in other areas to military justice and policy.

I have reviewed current legislative proposals related to sexual assault and military justice, and I believe there is merit to many of the proposals. I am committed to being an equal partner as we engage in serious debate about the best way to eliminate sexual assault from within our ranks.

Thank you again for holding this important hearing on such a critical issue. I am prepared to take your questions.

[The prepared statement of General Amos follows:]

PREPARED STATEMENT BY GEN. JAMES F. AMOS, USMC

INTRODUCTION

Sexual assault is criminal behavior that has no place in our Corps and my institution is aggressively taking steps to prevent it. Over the past 12 months, we have attacked sexual assault and have seen encouraging, and in some areas, measurable improvements in three specific areas—prevention, reporting, and offender accountability. There is more work to do, much more work, but we are seeing indicators that tell us we are on the right track.

Leadership is an essential element of our profession. We must be cautious, however, with changes that will undercut a commanding officer's ability to ensure obedience to orders. When commanding officers lose the ability to take action under the Uniform Code of Military Justice (UCMJ), we risk losing the enforcement mechanism needed to maintain the world's most effective fighting force.

My written testimony is composed of three main sections. First, I will discuss the importance of the military commanding officer generally. Any discussion of the role of the commanding officer in the military justice process must start with overall responsibilities and duties of a commanding officer to fight and win on the battlefield. Second, I will speak to the progress we have experienced in the last year under our Campaign Plan in the areas of prevention and response. Central to this discussion is the importance of top-down, commanding officer leadership that will bring about the culture change necessary to end sexual assaults, and the preconditions that lead to it in our Marine Corps. Finally, I will discuss our new Complex Trial Teams (CTT) that came online and began prosecuting complex cases in October 2012.

THE ROLE OF THE COMMANDING OFFICER

Sexual Assault Prevention within our ranks is ever front and center in my mind and at the top of my priorities. Our senior officers and staff noncommissioned officers have steadfastly focused on making the necessary changes to prevailing conditions and attitudes to create the environment that the American people not only expect but demand from their marines. Sexual assault is a crime against individual marines that reverberates within a unit like a cancer undermining the most basic principle we hold dear—taking care of marines. Our unit commanding officers are our first line of action in implementing aggressive policies and changing the mindset of the individual marine.

The commanding officer of every unit is the centerpiece of an effective and professional warfighting organization. Marine commanding officers are chosen through a rigorous selection process, based on merit and a career of outstanding performance. They are entrusted with our greatest asset, the individual marine. Commanding officers are charged with building and leading their team to withstand the rigors of combat by establishing the highest level of trust throughout their unit. Unit commanding officers set the command climate, one in which the spirit and intent of the orders and regulations that govern the conduct of our duties will be upheld. There are a number of leadership styles, but the result of any of them must be a group of marines and sailors that have absolute trust in their leaders, a level of professionalism derived from competence and confidence. Trust in the commanding officer and fellow marines is the essential element in everything we do. Developing this trust, dedication, and esprit de corps is the responsibility of the commanding officer. Commanding officers do this by setting standards, training to standards, and enforcing standards. This defines the good order and discipline required by every Marine unit. Marines expect this.

Whether it is rewarding success or correcting failure, the commanding officer remains the common denominator. Commanding officers may delegate certain tasks, but they can never delegate their accountability for their unit. This is the essence of good order and discipline. A unit with good order and discipline meets and exceeds standards, works together to continually improve, follows orders, trains new members, expects constant success, seeks challenges, and does not tolerate behavior that undermines unit cohesion.

As the Nation's Crisis Response Force, the Marine Corps must be ready to answer the Nation's call at a moment's notice. Accordingly, good order and discipline is required at all times . . . wherever a unit is and regardless of what that unit has been tasked to do. Commanding officers cannot delegate this responsibility.

I have repeatedly referred to these duties as maintaining the "spiritual health" of the Marine Corps from a holistic sense. This theme was the genesis of the 27 briefings the Sergeant Major of the Marine Corps and I delivered to marines all around the world last year. My intent was to re-emphasize the heritage of our Marine Corps . . . who we are, and who we are not. Our heritage is one that is guided by our principles of honor, courage, and commitment and described by our motto . . . Semper Fidelis—Always Faithful.

I expect marines to have a unified sense of moral and righteous purpose, to be guided by what I refer to as "true north" on their moral compass. I will aggressively pursue and fight anything that destroys the spiritual health of the Marine Corps and detracts from our ability to fight our Nation's wars. That includes sexual assault. A single sexual assault in a unit can undermine everything that a commanding officer and every marine in that unit has worked so hard to achieve.

After more than 43 years of service to our Nation, it is inconceivable to me that a commanding officer could not immediately and personally—within applicable regulations—hold marines accountable for their criminal behavior. That is the sacred responsibility of commanding officership. I expect to be held accountable for everything the Marine Corps does and fails to do. That is my task under U.S. law. I, in turn, will hold my commanding officers accountable for everything their units do and fail to do.

Commanding officers never delegate responsibility and accountability, and they should never be forced to delegate their authority. We cannot ask our marines to follow their commanding officer into combat if we create a system that tells marines to not trust their commanding officer on an issue as important as sexual assault. In May 2012, I wrote a personal letter addressed to "All Marines" regarding sexual assault; I told them "[o]ur greatest weapon in the battle against sexual assault has been and will continue to be decisive and engaged leadership." My opinion has not changed.

While our efforts in confronting sexual assault have been expansive, they have not eliminated this behavior from our ranks. I have been encouraged by our progress, but I acknowledge today, as I have told Members of Congress in previous testimony, that we have a long way to go. Changing the mindset of an institution as large as the Marine Corps always takes time, but we remain firmly committed to removing sexual assault from our Corps. We continue to work to ensure that our leaders gain and maintain the trust of their marines, as well as ensuring that marines can likewise trust their chain of command when they come forward. We are not there yet. Where the system is not working as it should, we are committed to fixing it, and to holding commanders accountable for what is happening in their units. I pledge that we will work with Congress, as well as experts in the field, as we eliminate sexual assault with our ranks.

I have reviewed the current legislative proposals related to sexual assault and military justice, and I believe there is much merit in many of the proposals. We should continue to engage in a serious debate about the best way to administer military justice. I want to specifically identify some encouraging trends in prevention, response and offender accountability. I believe these are based on substantial changes made in our Sexual Assault Prevention and Response (SAPR) Campaign Plan, and in the complete legal re-organization of our trial teams, both instituted mid-year 2012. These changes are showing measurable improvements and demonstrate that a commanding officer-led model of military justice can be successful. My Service will continue to work tirelessly in our fight to bring about the culture change that will combat sexual assault.

PREVENTION AND RESPONSE

Our Sexual Assault Prevention and Response Campaign Plan was launched a year ago with the stated purpose of reducing—with the goal of eliminating—incidents of sexual assault through engaged leadership and evidenced based best prac-

tices. Essential to this goal, as stated, is the commanding officer's responsibility to establish a positive command climate, reflecting our core values of honor, courage, and commitment. Commanding officers must instill trust and confidence that offenders will be held accountable and that victims receive the supportive services that preserve their dignity and safety. Sexual assault is an under-reported crime both inside the military and out, with an estimated 85 percent–90 percent of sexual assaults remaining unreported according to the Department of Defense. We must ensure, for those marines who do come forward, that we provide the support they need with compassion and determination. Last year we saw a 31 percent increase in reporting, which speaks directly to the confidence that marines have in their commanding officer and the Marine Corps. Reporting is the bridge to victim care and accountability remains the final litmus test for measuring our progress in our mission to eradicate this crime from our ranks. This sharp increase in reporting from last year is continuing into this year; I fully expect that we will exceed the rate of reporting of last year. I realize that on the surface an increase in reporting can be viewed as a negative outcome, however, I view it as an encouraging sign that our victims' confidence in our ability to care for them has increased markedly.

To supplement the ongoing work of the SAPR program and leadership in the field, we chartered a task force in April 2012, which produced our SAPR Campaign Plan and fed my subsequent Heritage Briefs. My intention was to reinvigorate our SAPR efforts program and implement large-scale prevention initiatives across the Marine Corps. With a culture change, a renewed emphasis on engaged leadership, and the message that it is every marine's inherent duty to step-up and step-in to prevent sexual assaults. The efforts of the Campaign Plan and my Heritage Briefs are aligned with the Secretary of Defense's five lines of effort: Prevention, Advocacy, Investigation, Accountability, and Assessment. Currently we have seen an increase in reporting of sexual assaults that went unreported in the previous year. Initial feedback from the field indicates that the surge efforts inspired victims to come forward because the message received was the Marine Corps takes sexual assault seriously and that it will not be tolerated.

Our Campaign Plan is comprised of three phases. The first phase consisted of 42 initiatives across the Marine Corps, resulting in an unprecedented call to action to address the prevalence of sexual assault within our ranks. Initiating a top-down approach, the SAPR General Officer Symposium (GOS) was held 10–11 July 2012 for 2 full days of training, where every General Officer in our Corps came to Marine Corps Base Quantico. We did the same thing in August during our 2012 Sergeants Major Symposium. Specifically convened to address the prevention of sexual assault, the 2-day training event for all Marine Corps General Officers included subject matter experts who spoke on topics relevant to prevention, including the effects of alcohol, inadvertent victim blaming, dispelling myths, and other related subjects. Ethical Decision scenarios were introduced. This video-based training initiative, involving sexual assault based scenarios, was designed to evoke emotion, stimulate discussion, and serve as another training tool that would resonate with marines of all ranks. This renewed focus on senior leadership was deemed a critical turning point for the Marine Corps. According to the 2012 Workplace and Gender Relations Survey of Active Duty Personnel (WGRA), 97 percent of marines received training within the past 12 months, which was an increase from 2010. These training efforts remain ongoing, as approximately 30,000 new marines are brought in annually. Sixty-two percent of the Marine Corps population is between the ages of 18 and 24—a high risk demographic for sexual assault.

To further cement leadership engagement, Command Team Training was given to all commanding officers and sergeants major, and was designed to bring forth a desired end state in which all leaders through are proactively engaged on the problem of sexual assault within the Corps. The program consisted of 1 day of training presented in the form of guided discussion, case studies, Ethical Decision scenarios and SAPR Engaged Leadership Training. SAPR Engaged Leadership Training, specifically, provided command teams in-depth practical knowledge of their responsibilities, the importance of establishing a positive command climate, the process of Victim Advocate (VA) selection, critical elements of bystander intervention and prevention. Bystander intervention, an evidence-based practice, is a central focus of all of our training programs. The 2012 WGRA Survey showed that 93 percent of female and 88 percent of male marines indicate that they would actively intervene in a situation leading to sexual assault. I am encouraged by that data. Command Team Training was completed by 31 August 2012.

In Phase I of the Campaign Plan, all SAPR training was revitalized and standardized Marine Corps-wide. Specific Phase I training initiatives included "Take A Stand" bystander intervention training for all noncommissioned officers and SAPR training for every single marine. To achieve long-term cultural change, this training

will be sustained through re-crafting the curricula in all of our professional schools, customizing the training based on the rank and experience of the individual marine.

The second phase of the Campaign Plan, Implementation, is presently underway. This phase is focused on victim care, with the major initiative being the creation of the Sexual Assault Response Team (SART). SARTs are multidisciplinary teams of first responders that are designed to respond proficiently to the many concerns of victims, ensuring efficient investigative practices, forensic evidence collection, victim advocacy and care. A SART will include, at a minimum, the following personnel: Naval Criminal Investigative Service (NCIS), Military Police, Sexual Assault Response Coordinator (SARC)/VA, Judge Advocate/Trial Counsel, mental health services representative and Sexual Assault Forensic Examiner. For those installations where an immediate SART response capability is not available, the SART can include; community representatives, local law enforcement, rape crisis centers, district attorneys, Federal task forces, existing civilian SARTs, or nongovernmental organizations specializing in sexual assault. Each SART is coordinated by the installation SARC.

The SART initiative coincides with the parallel efforts to increase the number of SAPR personnel in the field and intensify the training requirements. All SAPR personnel now receive 40 hours of focused sexual assault advocacy training and go through an accreditation process administered by the National Organization for Victim Assistance (NOVA). The addition of credentialed subject matter experts in the field enhances our victim care capabilities. Forty-seven new fulltime positions have been added in support of the nearly 100 highly trained, full-time civilian SARCs and VAs and nearly 1,000 collateral-duty SARCs and Unit Victim Advocates (UVAs). SAPR personnel are handpicked by commanding officers and serve as the victim's liaison for all supportive services to include counseling, medical, legal, chaplain and related support.

Phase II, Prevention, efforts also include further development of the SAPR training continuum, encompassing bystander intervention training for junior enlisted marines, the development of eight additional Ethical Decision Games and the implementation of customized SAPR training for all marines.

Phase III, the Sustainment Phase, will focus on providing commanding officers at all levels the requisite support and resources to effectively sustain SAPR efforts and progress. It includes the initiative to support Marine Corps Recruiting Command's implementation of a values-based orientation program, focused on the "whole of character" for young adults who are members of the Delayed Entry Program and have not yet attended recruit training. In addition to sexual assault, the program will specifically address all non-permissive behaviors such as sexual harassment, hazing, alcohol abuse, and other high-risk behaviors that tear at the fabric of the Corps.

The efforts of our Campaign Plan and Heritage Briefs have had many positive effects to include an increase in reporting. The Marine Corps portion of the fiscal year 2012 Annual Report shows a 31 percent increase in sexual assault reports involving marines and shows that this spike occurred largely in the second half of 2012 ... coinciding with implementation of our Campaign Plan and training and education efforts. As previously stated, I view increased reporting is a positive endorsement of our efforts to deepen the trust and confidence in our leadership and response system, as well as speaks to the courage of those marines most impacted by this crime. In time, and with continued focus, marines will increasingly understand and see that we have put in place a response system that provides the necessary care for victims while holding offenders accountable.

The 2012 WGRA indicated a greater number of female marines aware of the number of options available to them to include the DOD Safe Helpline, expedited transfers and restricted reporting. Seventy-seven percent of those females, who reported some form of unwanted sexual contact, also told us they had a positive experience with the advocacy support provided to them.

REPORTING

A victim of sexual assault can initiate SAPR services through various avenues and have two reporting options: unrestricted and restricted reporting. For both, our goal is to connect victims with Victim Advocates, who serve as the critical point of contact for information and support. Victim Advocates will provide support from the onset of the incident to the conclusion of needed care.

Unrestricted reporting triggers an investigation by NCIS as well as notification of the unit commanding officer. To make an unrestricted report, victims have several access points. Options include calling the Installation 24/7 or the DOD Safe Helplines, making a report to a civilian Victim Advocate (VA), Uniformed Victim

Advocate (UVA), Sexual Assault Response Coordinator (SARC), medical/healthcare provider, law enforcement, or the chain of command. A victim may also make a report to a legal assistance attorney or a chaplain. All access points are funneled to the Victim Advocate to track and support the victim. Victim Advocates ensure that a Sexual Assault Forensic Examination (SAFE) is offered to the victim, counseling and/or chaplain services are offered to the victim, and liaison services with legal assistance are initiated. Victims are counseled early on in the proceedings that legal assistance is available through a Victim Witness Liaison Officer who provides information and assistance through the legal phase of this continuum. In addition, victim advocates keep the victim informed throughout the continuum of services.

There are many instances where commanding officers are made aware of incidents of sexual assault by third parties. In those instances, commanding officers are obligated to contact NCIS to initiate an investigation, as they would for any report of a crime that is brought to their attention. These reports are classified as unrestricted reports and all SAPR services are offered to victims in those instances.

Sexual assault cases and the completed NCIS independent investigation are automatically elevated to the first O–6 in the chain of command who, in close consultation with their legal advisors, decides which legal avenue to pursue. This decision-making process also includes a discussion with the first General Officer in the chain of command to decide whether the case will be pulled up to his or her level.

Commanding officers are responsible for providing for the physical safety and emotional security of the victim. A determination will be made if the alleged offender is still nearby and if the victim desires or needs protection. They will ensure notification to the appropriate military criminal investigative organization (MCIO) as soon as the victim's immediate safety is addressed and medical treatment procedures are in motion. To the extent practicable, a commanding officer strictly limits knowledge of the facts or details regarding the incident to only those personnel who have a legitimate need-to-know. Commanding officers are in the best position to immediately determine if the victim desires or needs a "no contact" order or a military protective order issued against the alleged offender, particularly if the victim and the alleged offender are assigned to the same command, unit, duty location, or living quarters.

Victims are advised of the expedited transfer process and the possibility for a temporary or permanent reassignment to another unit, living quarters on the same installation, or other duty location. Commanding officers ensure the victim receives monthly reports regarding the status of the sexual assault investigation until its final disposition.

The Defense Sexual Assault Incident Database (DSAID) is a central data system managed by the Department of Defense (DOD) Sexual Assault Prevention and Response Office (SAPRO). DSAID is a DOD-wide service requirement that allows for the standardization of data collection and management, which is critical for improving case oversight, meeting reporting requirements, and informing SAPR Program analysis, planning, and future efforts to care for victims. In addition to providing consistency across the services in reporting, DSAID is electronically linked to the data system used by NCIS, facilitating timely and accurate coordination within the investigative process. Full migration to DSAID was completed in October 2012.

In October 2012, the Marine Corps implemented SAPR 8-Day Briefs, an additional tool designed to guarantee leadership engagement at the onset of each case. For all unrestricted reports of sexual assault, the victim's commanding officer must complete a SAPR 8-Day Brief to ensure that victim care resources are being provided. Eight-day briefs include the commanding officer's assessment and a timely way ahead, and are briefed within 8 days to the first general officer in the chain of command. The reports are briefed quarterly to the Assistant Commandant of the Marine Corps. The analysis of the data compiled utilizing SAPR 8-Day Briefs also provides us with a more immediate assessment and surveillance opportunity, helping us to identify trends to further inform our prevention and response efforts. A victim's commanding officer stays engaged in the process from beginning to end by attending monthly case management group meetings and coordinating with the SARC to ensure the appropriate level of victim care and support are being provided.

Restricted reporting is another reporting option for victims. This option is a critical resource for those in need of support. Restricted reporting does not trigger an official investigation but does allow for confidentiality and time to process the impact of the incident without the visibility that comes with immediate reporting to law enforcement officials and commanding officers. Victims are able to get a SAFE. Evidence recovered from a SAFE can be held for 5 years, should the victim opt to convert their report to an unrestricted status. Through a restricted report, victims can also receive general medical treatment, counseling services, and the full support of the Victim Advocate and Sexual Assault Response Coordinator.

There are many reasons why a victim of sexual assault would not report an incident, the perceived stigma about being revictimized remains a powerful deterrent to reporting for marines. Restricted reports can be taken by specified individuals (i.e., SARCs, VAs/UVAs, or healthcare personnel). Restricted reporting allows those victims to take care of themselves emotionally and physically. Victims who make restricted reports often comprise the population who might otherwise remain silent. Restricted reporting increased by over 100 percent in the fiscal year 2012 Annual Report and serves as an initial indicator that our messaging about the reporting options has been effective.

ASSESSMENT

The Marine Corps is developing ways to monitor victim care and services more closely through SARC engagement in an effort to improve and better utilize all resources available to victims and to help keep victims engaged in the process. A victim survey is being developed to accomplish that task and will assess all levels of services provided.

I have just recently approved and directed new command climate surveys. These surveys are mandatory within 30 days of a commanding officer taking command and also at the commanding officer's 12-month mark in command. Giving commanding officers this tool and holding them accountable for the overall health and well-being of their command will help us mitigate the high-risk behaviors that tear at the fabric of the Corps. The results of the command climate surveys will be forwarded to the next higher headquarters in the chain of command. It is important to keep in mind however that the command climate surveys are just one assessment tool.

THE INVESTIGATION

Before the commanding officer is confronted with a decision about what to do with an allegation, the commanding officer will receive significant advice and information from three different sources. By current Marine Corps practice, once NCIS is notified of a sexual assault, there is coordination between a prosecutor and the investigating agent(s). This practice enables unity between the investigative and prosecutorial functions of the military justice system. It also ensures that the commanding officer's evaluation of the alleged crime is fed by two distinct and independent professional entities—NCIS and the military prosecutor. Additionally, the commanding officer is advised by his Staff Judge Advocate (SJA) during this stage. The SJA is an experienced judge advocate, well versed in the military justice system, and able to advise the commanding officer on what actions to direct during the investigation, such as search authorizations.

As a critical component of our Campaign Plan, I directed that our legal community completely reorganize into a regional model, which gives us the flexibility to better utilize the skills of our more experienced litigators. Practically speaking, our new regional model, which became fully operational late last year, allows us to place the right prosecutor, with the appropriate training, expertise, supervision, and support staff, on the right case, regardless of location. These prosecutors not only represent the government at the court-martial, but they work with NCIS to develop the case and advise the commanding officer and his or her SJA about the status of the case.

I directed this reorganization because an internal self-assessment of our military justice docket uncovered an increase in complex and contested cases as a percentage of our total trial docket. We realized that our historical model of providing trial services needed to be revised to better handle these complex cases, many of which involved sexual assault. More specifically, within the alleged sexual assault cases, we noticed a significant number of alcohol associated sexual assaults, which are difficult cases to prosecute, thus I wanted our more seasoned trial attorneys available for use by our commanding officers.

The legal reorganization greatly increases the legal expertise (based on experience, education, and innate ability) available for prosecuting complex cases. The reorganization divided the legal community into four geographic regions—National Capital Region, East, West, and Pacific. These regions are designated Legal Service Support Areas (LSSA) and are aligned with the structure of our regional installation commands. Each LSSA contains a Legal Services Support Section (LSSS) that is supervised by a Colonel Judge Advocate Officer-in-Charge. Each LSSS contains a Regional Trial Counsel (RTC) office that is led by an experienced Lieutenant Colonel litigator whose extensive experience provides effective regional supervision over the prosecution of Courts-Martial cases. This new construct provides for improved allocation of resources throughout the legal community and ensures that complex cases, such as sexual assaults, are assigned to experienced counsel who are better suited

to handle them. After our reorganization, we have increased the experience level in our trial bar by over 20 percent from the previous year.

The Marine Corp's "Special Victim Capability" resides in the RTC offices through the use of CTT. The CTT is assembled for a specific case and may contain any or all of the following: a civilian Highly Qualified Expert (HQE), experienced military prosecutors, military criminal investigators, a legal administrative officer, and a paralegal. The civilian HQE is an experienced civilian sexual assault prosecutor who has an additional role training and mentoring all prosecutors in the region. The HQEs are assigned to the RTCs and work directly with prosecutors, where they will have the most impact. HQEs report directly to the RTC and provide expertise on criminal justice litigation with a focus on the prosecution of complex cases. In addition to their principal functions, the HQEs also consult on the prosecution of complex cases, develop and implement training, and create standard operating procedures for the investigation and prosecution of sexual assault and other complex cases. The criminal investigators and the legal administrative officer in the RTC office provide a key support role in complex prosecutions. Historically, a prosecutor was individually burdened with the coordination of witnesses and experts, the gathering of evidence, background investigations, and finding additional evidence for rebuttal, sentencing, or other aspects of the trial. These logistical elements of a trial are even more demanding in a complex trial; the presence of criminal investigators and the legal administrative officer allow Marine Corps prosecutors to focus on preparing their case.

Our Reserve Judge Advocates, who are experienced criminal prosecutors, are brought on active duty and made available to mentor our active duty Judge Advocates either during training or on specific cases. To ensure an adequate level of experience and supervision not only at the headquarters level, but also in each LSSS, we more than doubled the number of field grade prosecutors we are authorized to have on our rolls from 11 to 25. We also specifically classified certain key supervisory military justice billets to require a Master of Laws degree in Criminal Law.

THE DISPOSITION DECISION

When NCIS completes its investigation, the commanding officer must make a disposition decision. Essentially, the commanding officer must decide if the case should go to court-martial or some lesser forum. There are two important points to cover at this stage. First is the type of commanding officer who is making this decision. Second is the process the commanding officer uses to make his or her decision.

On April 20, 2012, the Secretary of Defense (SECDEF) issued a memorandum withholding Initial Disposition Authority (IDA) in certain sexual assault offenses to the Colonel, O–6, SPCMCA level. The SECDEF withheld the authority to make a disposition decision for penetration offenses, forcible sodomy, and attempts to commit those crimes. This withholding of IDA to a Sexual Assault Initial Disposition Authority (SA–IDA) also applies to all other alleged offenses arising from or relating to the same incident, whether committed by the alleged offender or the alleged victim (i.e., collateral misconduct). On June 20, 2012, I expanded this O–6 level withholding to include not just penetration and forcible sodomy offenses, but all contact sex offenses, child sex offenses, and any attempts to commit those offenses.

My expansion of the scope of the SECDEF's withhold of IDA is another example of the important role a commanding officer plays in military justice. I felt it was important for good order and discipline to make it clear to our marines that all types of nonconsensual sexual behavior were worthy of a more senior and experienced commanding officer's decision. I also made it clear that under no circumstance could the SA–IDA forward a case down to a subordinate authority for disposition.

Before discussing the procedures our SA–IDAs use to make the initial disposition decision, I want to point out a specific Marine Corps policy on collateral misconduct by an alleged victim (e.g., underage drinking). Marine SA–IDAs are encouraged to defer adjudication of any alleged victim collateral misconduct until the more serious non-consensual sex offenses are adjudicated. This policy is specifically aimed at encouraging victim reporting and making the fairest decision regarding collateral misconduct at the most appropriate time.

In accordance with Rule for Court-Martial (RCM) 306(c), the SA–IDA for sexual assaults may dispose of charged or suspected offenses through various means: "Within the limits of the commanding officer's authority, a commanding officer may take the actions set forth in this subsection to initially dispose of a charge or suspected offense," by taking: (1) no action, (2) administrative action, (3) imposing Non-Judicial Punishment, (4) disposing of charges through dismissal, (5) forwarding charges to a superior authority for disposition, or (6) referring charges to a Court-Martial.

Before making a decision regarding the initial disposition of charges, the Convening Authority must confer with his or her SJA. In the Marine Corps model for providing legal services, the provision of legal services support (i.e. trial and defense services, review, civil law, legal assistance) is completely divorced from the provision of command legal advice. Practically, this means the commanding officer's SJA is not affiliated with the prosecutors who evaluate the evidence in the case and recommend whether to take a case to trial. Effectively, this ensures the commanding officer and his SJA receive impartial advice (in addition to information from NCIS) in order to make an appropriate and well-informed disposition decision in accordance with RCM 306.

If a commanding officer decides to proceed with charges against an alleged offender, the commanding officer will file a request for legal services with the LSSS that services the command.

THE ARTICLE 32 INVESTIGATION

Before a case can go to a General Court-Martial, the commanding officer must first send the case to an Article 32 investigation. According to Article 32, UCMJ, "[n]o charge or specification may be referred to a General Court-Martial for trial until a thorough and impartial investigation of all the matters set forth therein have been made." A General Court-Martial may not proceed unless an Article 32 investigation has occurred (or the accused has waived it). Unlike a grand jury under Federal Rule of Criminal Procedure 6, the proceeding is not secret and the military accused has the right to cross-examine witnesses against him or her.

RCM 405 governs the conduct of the Article 32 investigation and states in its discussion that "the investigating officer should be an officer in the grade of major ... or higher or one with legal training ... and may seek legal advice concerning the investigating officer's responsibilities from an impartial source." As a matter of regulation in the Marine Corps, for a case alleging a sexual assault, the Article 32 investigating officer (IO) must be a Judge Advocate who meets specific rank and experience requirements, in accordance with Marine Corps Bulletin (MCBul) 5813, "Detailing of Trial Counsel, Defense Counsel, and Article 32, UCMJ, Investigating Officers." MCBul 5813 was published on 2 July 2012 and ensures that Judge Advocates who are detailed as trial counsel (TC), defense counsel (DC), and Article 32 IOs possess the appropriate expertise to perform their duties.

Once the Article 32 investigation is complete, the IO makes a report to the Convening Authority that addresses matters such as the sufficiency and availability of evidence, and more importantly, contains the IO's conclusions whether reasonable grounds exist to believe that the accused committed the offenses alleged and recommendations, including disposition. Although the rules of evidence generally do not apply at an Article 32 investigation, it is important to note that the evidentiary rape-shield law and all rules on privileges do apply.

Before deciding how to dispose of charges and allegations, the convening authority again receives advice from his or her SJA and then decides how to dispose of the charges and allegations. Prior to making a disposition decision, Convening Authorities also take the victim's preference into consideration. Victim advocates, SARCs, and the victim can express preferences to the trial counsel, who will communicate directly with the SJA and Convening Authority. If the commanding officer decides to move forward, he or she may refer the charges to a general court-martial or a lesser forum.

COURT-MARTIAL

Since the formation of our CTTs in October 2012, we have seen significant improvements in our ability to successfully prosecute Courts-Martial involving sexual assault offenses. After the first 6 months of our legal reorganization (October 2012–March 2013), we compared court-martial disposition data against the same 6-month period from the previous year (October 2011–March 2012). Here are our main findings:

- A 77 percent increase in the number of cases involving sex offenses that went to court-martial (from 31 to 55). We attribute that significant increase to three main things: first, an improved investigative effort as a result of improvements in NCIS' ability to investigate cases, along with the force multiplying effect of our embedded investigators; second, the dedication of increased prosecution resources to complex cases; and three, increased reporting based on our Campaign Plan efforts.
- A 94 percent increase in the number of general courts-martial in cases dealing with sexual assault offenses (from 19 to 37).

• For General Courts-Martial involving sexual assault offenses, an 89.5 percent overall conviction rate, with 62.5 percent of those convictions for sexual assault offenses. In the 30 cases where there was a conviction for a sexual assault offense, 90 percent of the sentences included a punitive discharge. We also almost doubled the amount of sexual assault convictions receiving confinement in excess of 5 years (from 28.5 percent to 44 percent).
• Between the two 6-month periods, there was an 18-percent increase in the conviction rate of charged sexual assault offenses.

Overall, the initial data from our legal reorganization shows that our CTTs are prosecuting more cases with better results. We expect this trend to continue and will closely monitor the statistics to identify any other relevant trends. This set of initial data also validates my belief that a commanding officer-based system of military justice can successfully prosecute complex cases if we are smart in how we dedicate the appropriate investigative and prosecutorial resources.

My focus to this point has been on the prosecution function within the Marine Corps. What must not be lost in our discussion of offender accountability, is the primary goal of justice in our courtrooms. I must ensure that each marine accused receives a constitutionally fair trial that will withstand the scrutiny of appeal. To that end, in 2011 we established the Marine Corps Defense Services Organization (DSO), which placed all trial defense counsel under the centralized supervision and operational control of the Chief Defense Counsel of the Marine Corps. This change was designed to enhance the independence of the Marine Corps DSO and the counsel assigned to it. The DSO also established a Defense Counsel Assistance Program to provide assistance and training to the DSO on sexual assault and other cases.

During the Court-Martial process, we take special care to ensure that the rights and interests of victims are protected. The Military Rules of Evidence (MRE) provides the same protections as our Federal and State courts against the humiliation, degradation and intimidation of victims. Under MRE 611, a military judge can control the questioning of a witness to protect a witness from harassment or undue embarrassment. More specifically for sexual assault cases, the military's "rape shield" in MRE 412 ensures that the sexual predisposition and/or behavior of a victim is not admissible absent a small set of well-defined exceptions that have survived extensive appellate scrutiny in Federal and military courts (the exceptions listed in MRE 412 are identical to the exceptions listed in Federal Rule of Evidence 412). In addition, victims also have the protection of two special rules on privileges. Under MRE 513, a patient (victim) has the privilege to refuse to disclose, and prevent another person from disclosing, a confidential communication between the patient and a psychotherapist. Under MRE 514, the military has created a "Victim advocate-victim privilege" that allows a victim to refuse to disclose, and prevent another person from disclosing, a confidential communication between the victim and a victim advocate in a case arising under the UCMJ. These two evidentiary privilege rules ensure that victims have a support network they are comfortable using and that they do not have to fear that their efforts to improve their mental well-being will be used against them at a court-martial.

Marine prosecutors, paralegals and NCIS investigators, along with full-time, professional, credentialed SARCs and Victim Advocates (VAs), provide individualized support to inform and enable victims to participate in the military justice process. The Marine Corps is in the process of hiring 25 full-time credentialed SARCs and 22 full-time credentialed VAs to augment the over 70 SARCs and 955 Uniformed and civilian VAs presently in the field. Hiring and credentialing are on track to be completed by October 2013.

POST-TRIAL—THE CONVENING AUTHORITY'S CLEMENCY POWER

On May 7, 2013, the Secretary of Defense submitted proposed legislation to Congress that would modify the Convening Authorities ability to take action on the findings and sentence of a court-martial during the post-trial phase. Specifically, the legislation would limit the commanding officer's ability to act on the findings of a court-martial to a certain class of "minor offenses," and also require a written explanation for any action taken on the findings or the sentence of a court-martial. I support exploring these proposed modifications for two reasons.

First, I believe the proposed modifications are reasonable adjustments to a specific phase of the court-martial process that has changed significantly since its inception. The commanding officer's broad authority under Article 60 was established during a time when the key participants of the trial—the prosecutors, defense counsel, and military judges—were not professional lawyers, and when there was not a comprehensive system of appellate review. The professionalization of our court-martial practice and the addition of multiple layers of appellate review justify reducing the

commanding officer's broad authority to take action on the findings in cases not involving "minor offenses." I believe the Secretary of Defense's proposal properly excludes the right class of cases that would be left to the appellate review process for the correction of legal error and/or clemency. Similarly, I believe that a commanding officer, based on his or her specific needs for good order and discipline, should retain the ability to take action on the findings of "minor offenses" identified in the proposal.

Second, the proposal would improve the transparency of the military justice system. When the commanding officer does believe it is necessary to take action under Article 60, that action should be as transparent and visible as every other aspect of the court-martial. The proposed requirement for a written explanation for any Article 60 action ensures accountability and fairness and will preserve the trust and confidence servicemembers and the public have in our military justice system.

CONCLUSION

I fully acknowledge that we have a problem and that we have much to do. We must protect our greatest asset—the individual marine . . . they are and will always be the strength of our Corps. That said, I am determined to establish a culture that is intolerant of sexual harassment and sexual assault, one that promotes mutual respect and professionalism, and maintains combat readiness. I am determined to fix this problem and will remain fully engaged in developing solutions towards prevention efforts and maintaining our high standards of good order and discipline.

Chairman LEVIN. Thank you very much, General Amos.

General Welsh.

STATEMENT OF GEN. MARK A. WELSH III, USAF, CHIEF OF STAFF OF THE AIR FORCE; ACCOMPANIED BY LT. GEN. RICHARD C. HARDING, JAGC, USAF, JUDGE ADVOCATE GENERAL OF THE U.S. AIR FORCE

General WELSH. Thank you, Chairman Levin, Ranking Member Inhofe, members of the committee, for allowing us to be here today together to address this very difficult, but critically important topic.

Lieutenant General Harding and Chief Master Sergeant Cody of the Air Force and I are privileged to join this group.

Mr. Chairman, may I offer, on behalf of this entire panel and all of our men and women in the U.S. military, our sympathies on the loss of Senator Lautenberg. I know many of you were very close to him, and we are so very sorry for your loss.

Chairman LEVIN. We thank you for that.

General WELSH. General Odierno described very well the reporting process and the action process for response to a sexual assault. The Air Force's process, Mr. Chairman, is almost identical. I will associate myself with the remarks of every Service Chief you have heard so far with the severity of the problem and avoid some of the details and defer to my written statement for that.

Mr. Chairman, I would like to say that sexual assault is a crime, as the Commandant just said, and is unacceptable in any of our Services. Moreover, I believe it undermines the mission effectiveness of our great force. Everyone on this panel is committed to doing whatever is necessary to ensure an environment free from sexual harassment, disrespectful treatment, and the crime of sexual assault.

Air Force leaders have worked hard to make sure our people understand that it is every airman's responsibility to ensure unit climates are free from harassment and disrespect, that every airman is either part of the solution or part of the problem, and that there is no middle ground.

That message starts with me, as does the accountability for the solution. It is my responsibility to ensure that the Air Force welcomes new airmen into a safe, respectful, and professional environment, that new airmen are taught standards of behavior, discipline, and respect for others, that unit commanders and supervisors enforce and live by those same standards, and if they do not, that they are held harshly accountable.

That if sexual assault does occur, that victims are treated with compassionate care, that they feel confident to report the incident without fear of retaliation or reprisal, and that alleged perpetrators are given a fair and impartial forum and then firmly held accountable if proven guilty.

Nothing saddens me more than knowing that this cancer exists in our ranks and that victimized airmen on what is unquestionably the worst day of their life sometimes feel they can't receive compassionate, capable support from our Air force, or they don't trust us enough to ensure that justice is done.

Clearly, it is time for thoughtful consideration of every reasonable option. Like my fellow Service Chiefs, I believe the 576 panel gives us the option to look at the unintended consequences, the second- and third-order effects of major changes, and decide which ones make sense and which might not.

In the meantime, none of us will be standing still. Commanders shouldn't just be part of the solution. They must be part of the solution, or there will be no solution. That is the way our systems operate.

I will tell you this. None of us are going to slow down in this effort because we all feel the same about one thing. We all love the people in our Service. All of us have families, and we immediately relate to them every time we see a report of this crime.

I have five sisters. I have a mother. They set my moral compass on this issue. I have a daughter who is looking at coming into the U.S. Air Force. I will not be tolerant of this crime. None of us will.

Secretary Hagel said it clearly. Sexual harassment and sexual assault are a profound betrayal of sacred oaths and sacred trusts, and they must be stamped out of America's military. I know that this hearing is about helping us do exactly that, and I am grateful for your continued commitment to this effort.

I look forward to the conversation.

[The prepared statement of General Welsh follows:]

PREPARED STATEMENT BY GEN. MARK A. WELSH III, USAF

Sexual assault and unprofessional relationships are unacceptable, they have no place in our Air Force, and their prevalence undermines the mission effectiveness of our great Service. The U.S. Air Force cannot and will not tolerate such behavior, and as I have done since becoming Air Force Chief of Staff, I will continue to pursue an organizational environment free from sexual harassment, disrespect, and the crime of sexual assault.

As an Air Force, we have worked hard to disseminate the message that it is every airman's responsibility to ensure unit climates are free from harassment and disrespect. You are either part of the solution or part of the problem; there is no neutral position. That message starts at the top, and it is my responsibility to ensure that the Air Force family welcomes new airmen into a safe, respectful, and professional environment; that new airmen are taught standards of behavior and discipline; that unit commanders enforce and live by those standards; and that if sexual misconduct occurs, victims are treated with compassionate care, they feel confident to report the incident without fear of retaliation or reprisal, and that alleged

perpetrators are given a fair and impartial forum and held accountable if proven guilty. Nothing saddens me more than knowing this cancer exists in our ranks, and that victimized airmen, on possibly the worst day of their lives, sometimes feel they cannot receive compassionate, capable support from our Air Force. This is an issue I work every day to remedy, primarily through those installation- and unit-level commanders who are so critical to good military order, discipline, and morale, and who must be personally involved in establishing the proper organizational climate and character.

Since very early in my tenure as Air Force Chief of Staff, I have emphasized this issue to multiple echelons of Air Force leadership, and to our airmen themselves. Every Air Force four-star general received my guidance during our CORONA Fall conference in early October 2012. Secretary Donley, then-Chief Master Sergeant of the Air Force Roy, and I issued a joint letter to airmen on November 15, 2012, expressing clear and unambiguous direction to the force, urging them to become personally involved in driving sexual misconduct from our ranks. We brought all 164 Air Force wing commanders—those most influential in shaping our Air Force environment and climate at the installation level—to Washington on November 28, 2012, to receive not only my personal perspective on this issue, but also to encourage meaningful dialogue and explore significant policy options for the future.

Following the wing commander conference, installation leadership conducted an Air Force-wide health and welfare inspection during the first 2 weeks of December 2012 designed to eliminate environments conducive to sexual harassment or unprofessional relationships, both possible leading indicators of sexual misconduct. Over 32,000 findings were reported by wing commanders at over 100 installations, with 85 percent of the findings comprised of "inappropriate" items like unsuitable calendars and magazines displayed in public areas. About two percent of the findings were pornographic in nature. All reported items were removed, but more importantly, airmen and their commanders received a clear message of non-tolerance for sexually-charged environments.

I issued a January 2, 2013, "CSAF Letter to Airmen" reinforcing the message that images, songs, stories, or so-called "traditions" that are obscene, vulgar, or that denigrate or fail to show proper respect to all airmen, are not part of our heritage and will not be accepted as part of our culture. They are not things we value, and they ultimately degrade mission effectiveness and hurt unit morale. Disrespectful, sexually-charged atmospheres foster a "permissive environment" for sexual predators, allowing them to pursue their criminal acts more easily. By reaffirming respect and professionalism within workplace environments, we took an important step toward eliminating environments conducive to sexual misconduct. We must continue to aggressively pursue that goal.

We have made progress in the Basic Military Training (BMT) environment as well. General Edward Rice, Commander of Air Education and Training Command (AETC), has continued to investigate thoroughly all allegations of misconduct, to hold perpetrators of misconduct accountable, to care for victims of misconduct, and to fix the problems that led to the misconduct. Providing a safe and professional training environment to our Nation's sons and daughters who choose to become airmen is a sacred responsibility. We have worked hard to restore the trust of the American public while also honoring the selfless service of the great majority of our military training instructors (MTIs) who exemplify the highest adherence to our core values of Integrity, Service, and Excellence.

The Air Force does not prejudge the accused—every airman under investigation is presumed innocent until and unless proven guilty. The Air Force has completed 19 courts-martial cases related to the BMT investigation, with all but one resulting in a conviction.[1] Three MTIs received non-judicial punishment under Article 15 of the Uniform Code of Military Justice (UCMJ) for violation of the AETC policy against unprofessional relationships. The unprofessional relationships were all consensual relationships with students in technical training status: one involved social media contact only, one involved a non-sexual relationship with a student, and the third involved a sexual relationship with a student who had graduated from technical training. There are eight more trials scheduled, and three other instructors are under investigation.

We have identified and cared for a total of 63 trainees and technical school students involved at Joint Base San Antonio-Lackland. Twelve are victims of sexual assault, 40 were allegedly involved in an unprofessional relationship with an instructor involving physical contact, and 11 were allegedly involved in an unprofessional

[1] The case of the sole exception is still open as the Air Force has appealed a judge's evidentiary ruling.

relationship with an instructor involving no physical contact.[2] The vast majority of the misconduct allegations—51 of 63 affected trainees and students—fall into the category of unlawful consensual "unprofessional relationships" as defined by AETC policy. All 63 airmen have been contacted and offered support from base agencies under the Air Force's Sexual Assault Prevention and Response (SAPR) program, as well as other support services such as legal assistance. Sixty-one have accepted some level of Air Force support, including 11 who have been assigned victim advocates at their request, and 24 who have requested and been assigned Special Victims' Counsel (SVC). The Air Force will continue to provide this support to all future victims identified as a result of the ongoing BMT investigations. The mending of the BMT environment at Lackland AFB has taken time, but due process and the deliberative nature of an effective investigation required it. I am grateful for the tremendous progress General Rice and his team have achieved, and I am confident that the Air Force is firmly on the path to restoring the high levels of professional conduct that we demand of ourselves, that the BMT environment requires, that our trainees deserve, and that the American people expect.

SEXUAL ASSAULT PREVENTION AND RESPONSE IN THE AIR FORCE

A 2010 Gallup survey revealed that since joining the Air Force, 19 percent of women and 2 percent of men experienced some degree of sexual assault. For 3.4 percent of women and 0.5 percent of men, those assaults had occurred in the 12 months preceding the survey. Of those, only about 17 percent of the women and 6 percent of the men reported the incident. We expect to conduct another Gallup study later this year to gauge shifts from this baseline data. The Air Force recorded 614 reports of sexual assault in fiscal year 2011; in fiscal year 2012, the figure rose about 29 percent to 790.[3] These sexual assaults, as reported in the fiscal year 2012 Department of Defense (DOD) Annual Report on Sexual Assault in the Military, range from inappropriate sexual touching to rape. Other figures suggest a strong tendency to under-report, and even more disturbing is that within the Air Force, fellow airmen commit the majority of these crimes—brothers- and sisters-in-arms who should be protecting and looking out for one another. Calling these numbers unacceptable does not do the victims justice—in truth, these numbers are appalling!

The 2010 and 2012 Workplace and Gender Relations surveys provide insight as to why victims of sexual assault often do not report the assault. Results from both years show that "they did not want anyone to know" (70 percent); "they felt uncomfortable making a report" (66 percent); and "they did not think their report would be kept confidential" (51 percent), are the top three barriers to reporting. Victims of sexual misconduct often attach undeserved feelings of shame to the incident that discourage them from sharing their experiences with fellow airmen, family, or their chain-of-command. Some victims fear reprisal or retaliation from the alleged perpetrator or their friends or their chain of command, while others do not wish to relive the experience through the multiple "retellings" of the event that an in-depth investigation requires. With minor offenses, airmen often feel that the incident was not sufficiently egregious to merit a formal report. Despite the existing tendency to under-report, I believe that increased attention to this issue, educational efforts to ensure every airman knows exactly what constitutes sexual assault in the military, and generating trust in the many elements of the victim support apparatus are part of the required solution going forward.

Once a victim does report, there are many avenues of support and legal guidance available. The Air Force process, from initial incident report through case disposition, is very similar to that of the other military Services. A sexual assault victim may initiate either a restricted or an unrestricted report of sexual assault. A victim may only initiate a restricted report if they voice their initial claim to a Sexual Assault Response Coordinator (SARC), a Victim Advocate (VA), or a medical professional. For restricted reports, the victim's identity and/or identifying information is not provided to anyone in the supervisory chain or to law enforcement.

Once the victim makes his/her initial report to a SARC, VA, or medical professional, the victim's reporting options are fully explained and a personal victim advocate (VA) is appointed, if desired. In the Air Force, SARCs are government civilians or officers, located at every Air Force installation, with a full-time responsibility to handle sexual assault response. Victim advocates are trained volunteers who work with victims on a part-time basis.

[2] Eight of the 11 unprofessional relationships not involving physical contact were via social media and/or telephone only.

[3] 449 unrestricted reports, 399 restricted reports, of which 58 converted to unrestricted.

If the victim's initial report is to a supervisor, commander, or law enforcement official, the report must be initiated as an unrestricted report, and must be investigated by law enforcement. If the victim tells a friend who tells a supervisor, commander, or law enforcement, this is considered an unrestricted report of sexual assault and must be investigated by law enforcement. If law enforcement responds to a scene involving allegations of sexual assault, the Air Force Office of Special Investigations (AFOSI) is notified immediately, and the base defense operations center will enter a sanitized entry into the law enforcement blotter, a controlled document with very limited distribution, that captures chronologically all security forces activities. The blotter entry does not include personally-identifying information for either the victim or the alleged offender, but it will identify who was notified of the incident, particularly AFOSI and the chains of command of all parties involved. AFOSI will notify the SARC, who will then engage the victim to offer support. There is no requirement for victims to report a sexual assault to their supervisor or commander personally.

DOD regulations require the SARC to provide the installation commander with information on unrestricted and restricted reports of sexual assault within 24 hours,[4] and all sexual assault reports, both restricted or unrestricted, route through the installation SARC and the vice wing commander to the installation command post within 48 hours of notification. If the report is unrestricted, only the victim's duty status (military or civilian) is included; if restricted, only the fact that a report has been filed is forwarded. Installation command posts forward operations reports up the chain of command, through their respective major command commanders, to Air Force headquarters. These reports are forwarded to me on a weekly basis. For unrestricted reports, the victim's commander is notified as soon as possible, either by the SARC, the unit first sergeant, or medical personnel. Upon initiating an investigation, AFOSI also provides memoranda to the unit commanders of all subjects involved, alerting them to the investigation.

From the moment an alleged assault becomes known, the SARC informs the victim of all available support services, including counseling, a safe place to stay, access to a special victims' counsel (SVC) and the confidentiality associated with sexual assault forensic examinations (SAFEs). AFOSI will offer a victim a SAFE if circumstances warrant, and, if conducted, accepts custody of the SAFE kit from the issuing military treatment facility or local community hospital. The SARC arranges a follow-up meeting with the victim the morning after any alleged sexual assault.

AFOSI works closely with the prosecutors from the Staff Judge Advocate's (SJA) office as they conduct and complete the investigation. Commanders are required to provide victims who file unrestricted reports monthly updates on the status of investigative, medical, legal, or command proceedings until final disposition.[5] The SARC, VA, and SVC—if requested—maintain contact with the victim throughout the investigation. AFOSI is not permitted to "unfound" an allegation of sexual assault after an investigation. AFOSI must, in all cases, provide their report to the alleged offender's commander for disposition after every sexual assault investigation. The AFOSI reports include a narrative of all of the investigation's steps, a description of all the available evidence, and a copy of all witness statements. SJAs use the same investigative report to provide commanders appropriate disposition recommendations. Since recent Secretary of Defense-directed legal reforms have withheld initial disposition authority for sexual assault cases from commanders who are not a special court-martial convening authority with the rank of at least O–6 (typically Air Force wing commanders), the squadron commander no longer has the authority to issue initial disposition decisions. The squadron commander, an O–4 or O–5 typically with 12 to 16 years of service, now sends the case materials to the special court-martial convening authority with his or her own disposition recommendation. If the special court-martial convening authority accepts the recommendation, he or she may elect to take action at their level, or they may return the case to the squadron commander for disposition. If the special court-martial convening authority disagrees with the recommendation, he or she may still take action at their level, or forward the case to the general court-martial convening authority for disposition. Throughout the process, the legal office—through the victim and witness assistance program—consults with the victim and obtains his or her input on whether to prefer charges, or to accept the accused's discharge or resignation in lieu of court-martial. In over 99 percent of all Air Force cases where an SJA recommended a court-martial, the convening authority's disposition decision followed

[4] DODI 6495.02, Enclosure 5, para. 3(g)(2).
[5] DODI 6495.02, Enclosure 5, para. 3(g)(2).

the SJA advice. Also, Air Force prosecution and conviction rates for sexual assault have been very similar to national averages.[6]

Despite the progress we have made in the Air Force, more must be done. The Air Force has partnered with the Office of the Secretary of Defense (OSD) to conduct a top-to-bottom review of current SAPR training requirements to determine their sufficiency and effectiveness. Secretary Hagel has further directed that all Services re-train and re-certify their respective SARCs and VAs, and the Air Force is in the process of doing so. Furthermore, in accordance with the National Defense Authorization Act for Fiscal Year 2012, all of our over 3,100 volunteer victim advocates have been informed of the certification required to serve victims after October 1, 2013, and we are on track to hire and place a full-time, fully certified victim advocate at every installation by October 1, 2013.

In coordination with OSD, the Air Force has implemented a special victims' capability comprised of investigators and attorneys equipped with specialized training in sexual assault cases. This special victims unit (SVU) possesses advanced training in sexual assault investigation and litigation, and is qualified to handle the most difficult sexual assault cases. Twenty-four AFOSI agents, whose sole purpose is to investigate sexual assault crimes, serve in this capacity, and nine of our most experienced senior trial counsel also contribute to the SVU. All told, 48 AFOSI agents and 24 trial counsel have jointly attended the Federal Law Enforcement Training Center's sex crimes investigation training program this fiscal year. This summer, additional AFOSI agents and trial counsel will attend an advanced sexual assault litigation course at the Air Force JAG school.

In January, the Air Force also stood up the SVC program—separate and distinct from SVU—as a pilot program for DOD. SVCs are providing comprehensive and compassionate legal representation to victims, and in a few short months the program has already made a profound difference for our victims and our Air Force. To date,

these attorneys are zealously representing over 300 clients in various stages of the investigatory and adjudicatory phases of their cases. Feedback from those who have received SVC services has been very positive and extremely encouraging. A report on the pilot program's performance, due to OSD on November 1, 2013, will likely affirm these initial impressions.

To sustain and capitalize upon this momentum, I directed a complete review of manpower and resource requirements pertaining to the Air Force SAPR program which identified a shortfall of 224 SARC, VA, and SVC positions across the enterprise. We will work to fill those billets immediately, prioritizing the installation-level first. We will also continue to expedite base transfer requests for all Air Force sexual assault victims. We approved all 46 expedited transfer requests over the past year, to include both permanent change-of-station and local installation reassignments.

Secretary Donley and I also recently approved realignment of the SAPR office within the Air Force headquarters hierarchy. The expanded office will be led by a General Officer reporting directly to the Vice Chief of Staff of the Air Force. We will also infuse the office with a significant increase in dedicated manpower and expertise, to include recruiting outside experts in this field to advise and assist our efforts as full-time teammates. The revised SAPR office will be better equipped to execute our comprehensive approach to combating sexual assault along five lines of effort: Personal Leadership, Climate and Environment, Community Leadership, Victim Response, and Holding Offenders Accountable.

UCMJ AND THE COMMANDER

Since becoming the Air Force Chief of Staff, I have worked hard to combat sexual assault within our ranks. I know our commanders and supervisors truly care for their airmen, and appreciate the tremendous sacrifices they and their families make every day in service to our Nation. I recognize that the American people send the U.S. military their very best to serve, and that we have been entrusted by the families of every airman with the care of their sons and daughters. I take this responsibility very seriously, and have shared my thoughts on this subject with airmen at every level of our Air Force.

Airmen should have no doubt about who will hold them accountable for mission performance and adherence to standards. Airmen expect their commander to define

[6] Rape, Abuse, and Incent National Network (RAINN) nationally-tracked prosecution and conviction rates are 26 percent and 56 percent respectively. Using the RAINN model to calculate the numbers, USAF prosecution rates were 24 percent and conviction rates were 57 percent for fiscal year 2012.

the mission, ensure readiness, and hold accountable other airmen who fail to meet their responsibilities or live up to our standards of conduct. The commander must have both the responsibility and the authority to address issues that affect the good order and discipline of their unit. Military units reflect the character, demeanor, and priorities of their commanders. Commanders having the authority to hold airmen criminally accountable for misconduct in-garrison is crucial to building combat-ready, disciplined units. In a deployed environment, where lives are in immediate and proximate danger, the importance of unit cohesion driven by a commander's ability to maintain order, discipline, morale, and to hold airmen accountable cannot be overstated.

There are many current legislative proposals that seek to alter the UCMJ, some in significant ways. The UCMJ traces its roots to the 1775 Articles of War, with 238 years of proven history and combat effectiveness behind it. During the intervening 238 years, this body of law—with commanders serving in a "gate-keeping" role over courts-martial—has ensured a well-disciplined military, one that has fought the Nation's wars and defended national interests extremely well. Bodies of law like the UCMJ can and should change over time, but any changes should be conducted prudently, deliberatively, and with thoughtful consideration of unintentional second- and third-order effects.

Over the last 5 years, only 1 of 327 Air Force sexual assault findings resulted in a complete reversal of court martial findings by the convening authority with no follow-on disciplinary action—the Wilkerson case—which has served as the catalyst for recent calls for change. The current Article 60[7] legislative proposal from the Secretary of Defense that places limits on commanders' authority to overturn any conviction represents a thoughtful and significant step in the right direction to limit commander authority appropriately.

I believe the decision to elevate court-martial initial disposition authority for sexual assault cases to the O–6 level will also produce significant results over time. The Air Force is already seeing significantly higher referral rates for sexual assault cases during fiscal year 2013 than in previous years. It will take time to assess fully the success of these changes. But to truly turn the corner on sexual assault, we must thoroughly consider every reasonable alternative in our effort to find the set of "game changers" that will lead to the elimination of this crime from our Air Force.

As we do so, it will be important for us to remember that commanders are also the key to permanent organizational and environmental change. From racial integration to the repeal of "don't ask, don't tell," unit commanders have been absolutely essential to the acceptance of new policy and standards of conduct. The commander's strong and effective role throughout unit climate shifts is crucial—including the reaffirmation of environments free of sexual misconduct. Changing views on respect and dignity does not happen overnight and it requires consistent leadership focus. We must avoid creating an environment where commanders are less accountable for what happens in their individual units, stifling the very environmental shift we seek. The U.S. military takes pride in its "can-do" attitude, and we have led the way on a range of societal imperatives. We can, and will, do the same on sexual assault. If we are serious about change, we must reinforce to commanders that success depends on their sound judgment in all matters involving good order and discipline, not separate them from the problem.

SUMMARY

Secretary Hagel said it clearly—sexual harassment and sexual assault in the military "are a profound betrayal of sacred oaths and sacred trusts; this scourge must be stamped out."[8] The Air Force has made steady progress in sexual assault response, but preventing the crime itself remains the goal. Regardless of their background, once a young man or woman becomes an airman, they are held to a higher standard, as service in the most capable military in the world demands. That unmatched capability requires adherence to a code of behavior that exceeds societal norms. The unit commander is the most visible champion and example of the norms we expect our people to meet, personifying expectations of discipline daily with his or her airmen. Commanders knit combat units into an effective fighting force, and airmen reflect the character and values of their commander—commanders are the key to promoting persistent, healthy environments of respect and dignity.

We swear an oath to uphold and defend our Constitution, and we willingly agree to lay down our lives in defense of the freedoms we all cherish. About 1 percent of

[7] Action by the convening authority.
[8] Commencement address to 2013 graduating class at West Point, May 25, 2013.

Americans volunteer to serve their Nation in uniform, and as U.S. service men and women, we sacrifice a portion of our personal freedoms to bond effectively as a cohesive member of America's military team. Because of this, we must instill a climate of respect in every Air Force unit, and into the mind of every airman. Every airman must desire to do the right thing, to respect and look out for fellow airmen, and to truly live by our core values of Integrity First, Service Before Self, and Excellence in All We Do. No one who truly lived those values would ever walk down a path that leads them to commit this terrible crime.

Americans hold their military to a high standard, and rightly so. Air Force leadership at every level has an obligation to protect and strengthen the force, and to be worthy of the confidence of our airmen and the Nation we serve. We have a duty to live by our core values and to meet or exceed the high standards the American people expect of us. As Secretary Donley has stated, "this is family business," and as an Air Force family, we must do a better job of caring for one another. I will never stop spreading this message, and we will never slow down our efforts to ensure that victims receive the best, most capable, and most thoughtful care and advice possible. Until we succeed, I will do everything in my power to eradicate sexual assault from the ranks of the U.S. Air Force. Nothing else is acceptable.

Chairman LEVIN. Thank you very much, General Welsh.

Admiral Papp.

STATEMENT OF ADM ROBERT J. PAPP JR., USCG, COMMANDANT OF THE COAST GUARD; ACCOMPANIED BY RADM FREDERICK J. KENNEY JR., USCG, JUDGE ADVOCATE GENERAL OF THE U.S. COAST GUARD

Admiral PAPP. Good morning, Chairman Levin, Ranking Member Inhofe, and the distinguished members of the committee. I appreciate the opportunity to testify before you this morning.

Sexual assault is a violent crime that devastates its victim. It also destroys unit discipline. It erodes cohesiveness, and it degrades our readiness. I am personally committed to eliminating it from our Coast Guard.

We are making progress. New policies, enhanced training, improved access to victim support services, and greater reporting opportunities, including those outside the chain of command, provide us with important tools to achieve our goal of eliminating sexual assault from the Coast Guard. However, we must and we will do more.

In a message last year to all my Coast Guard men and women, I told the Service, "We will intervene to prevent or halt these acts when they are occurring. We will investigate and discipline those who have violated law and service policy. We will insist that all our shipmates live by our core values. Most importantly, there are no bystanders in the Coast Guard."

Recently, I followed this with a commander's intent message that initiates our Service-wide campaign plan for eliminating sexual assault from the Coast Guard. Yesterday, I briefed Secretary Napolitano on our efforts. She directed me to ensure that every member of the Coast Guard is clear regarding their responsibility and to take whatever action is required to eradicate sexual assault from our Service and to ensure that victims receive immediate, compassionate, and complete support.

The Coast Guard system of reporting, investigation, and prosecution of sexual assault cases is largely similar to the Army's, as described by General Odierno. Details that are in any way different are contained in my written statement.

This is, first and foremost, a leadership responsibility. Every commander must create a culture that is intolerant of any unwelcome sexual contact or the behaviors that enable it.

We have enhanced our training so that all hands recognize indicators of this behavior and are prepared to intervene. We must also demand command climates that allow victims to come forward, knowing they will be protected and cared for without fear of reprisal or stigma.

Prevention is the first and best option. However, when a response is necessary, when this crime does occur, we will hold those predators accountable.

The military justice system is a critical tool for doing this. We give commanders great responsibility to act independently and demanding in dangerous situations, and we hold them accountable for the results.

I recognize the military justice system is not perfect, and I welcome considered, well-reasoned improvements where they are needed. However, I have serious concerns about legislation that would fundamentally alter the role of commanders without full consideration of the second- and third-order effects on command authority and the ability to maintain unit discipline.

Stopping sexual assault is also the duty of each and every individual. As I said before, there can be no bystanders. Every Coast Guardsman must take ownership of this problem and be intolerant of any action that minimizes the significance of this crime.

If they see it occurring, they must take action to intervene, prevent, or halt it, and then, most importantly, report it. Failure to help a shipmate in those circumstances demonstrates a lack of courage that is contrary to our core values. I expect every Coast Guardsman will display the same courage in those circumstances as they would while rescuing someone in peril on the sea.

I look forward to working with this committee to eradicate this crime from our midst, and I look forward to your questions.

[The prepared statement of Admiral Papp follows:]

PREPARED STATEMENT BY ADM ROBERT J. PAPP, USN

Good afternoon Chairman Levin, Ranking Member Inhofe, and distinguished members of the committee. Thank you for the opportunity to testify before this committee about the Coast Guard's commitment to eliminate sexual assault from our Service.

The violent crime of sexual assault plagues our society; it is unacceptable in any place. However in the military it is especially repugnant because it breaks the sacred bond of trust between servicemembers that is vital to readiness and our Nation's security. We will not tolerate the crime of sexual assault in the Coast Guard.

To execute our missions, all Coast Guard personnel must be bound by trust and mutual respect for one another. The crime of sexual assault not only damages the victim, it undermines morale, degrades readiness and damages mission performance. It is a deliberate act that violates law, policy and our Core Values of Honor, Respect, and Devotion to Duty.

We have made progress in improving our ability to prevent and respond to sexual assaults in the Coast Guard. New policies, enhanced training, improved access to victim support services, and greater communications provide us with important tools to achieve our goal of eliminating sexual assault from the Coast Guard. Despite some progress, we must and will do more to combat sexual assault.

As I told Coast Guard men and women worldwide a little over a year ago: "We will intervene to prevent or halt these acts when they are occurring. We will investigate and discipline those who have violated law and service policy. We will insist that all of our Shipmates live by our Core Values. Let me be clear, there are no

bystanders in the Coast Guard. Respect for our Shipmates demands that each of us have the courage to take immediate action to prevent or stop these incidents."

Sexual assault prevention and response encompasses more than policy statements and more than check-the-box training—it must be an extension of each servicemember's ethos, inculcated into our everyday planning, training, and operations. An operating environment free from threat of sexual assault must be part of our culture.

SEXUAL ASSAULT PREVENTION AND RESPONSE POLICIES AND PROGRAMS

The Coast Guard has strengthened policies and tools to combat sexual assault over the past several years. We will continue to improve our programs and services. The Coast Guard has previously provided a summation to this committee on our Sexual Assault Prevention and Response (SAPR) Program initiatives. To recap the program:

As early as 2002, Coast Guard policy required commands to report any allegations of rape or sexual assault to the Coast Guard Investigative Service (CGIS) for investigation. In 2006, the Coast Guard Investigative Service formally established a distinct CGIS Sex Crimes Program and hired a Senior Special Agent to oversee the stand-up of the program.

In 2007, the Coast Guard SAPR instruction was significantly amended to include the addition of the restricted reporting option for victims, which aligned the Coast Guard's reporting options with the two options offered by the Department of Defense (DOD) (restricted and unrestricted). Restricted reporting is the process used to disclose to specific individuals on a confidential basis that he or she is the victim of a sexual assault. Unrestricted reporting is the process used to disclose a sexual assault to the chain of command and law enforcement authorities. The official policy and guidance was issued in December of that same year.

In 2008, a dedicated Sexual Assault Prevention Program Manager was hired to implement and oversee the day-to-day administration of the USCG SAPR Program.

In March 2011, CGIS established a cadre of specially trained and credentialed CGIS special agents—known as Family and Sexual Violence Investigators (FSVIs). In addition to their standard investigatory training, these agents attend advanced courses and seminars on sexual assault, domestic violence, and child abuse. CGIS has credentialed 22 FSVI special agents to date.

In April 2011, the Vice Commandant of the Coast Guard chartered a Sexual Assault Prevention and Response Task Force to examine holistically the Coast Guard's posture toward sexual assault in five discipline areas: Education/Training; Policy/Doctrine; Investigation/Prosecution; Communications; and Climate/Culture. Subject matter experts from each of these five disciplines met for over a year to provide input to the Vice Commandant on ways to improve our SAPR Program. The Vice Commandant approved the thirty nine recommendations from the Working Groups on January 31, 2013.

One of the most significant recommendations, the establishment of a Flag level Sexual Assault Prevention Council (SAP–C), has already been implemented, with the Deputy Commandant for Mission Support hosting the inaugural meeting on February 27, 2013. The SAP–C is a standing body chaired by a Vice Admiral and comprised of subject matter specialists designed to oversee the implementation of the Task Force recommendations; consider & discuss SAPR policy generally; direct empirical studies and trends (root cause analyses) based on accurate and reliable data; and order immediate and actionable course corrections to Coast Guard SAPR policy as needed. Since this initial meeting, the SAP–C has formed three working groups, assigning the implementation of the Task Force's recommendations to each on an aggressive schedule.

Other recommendations from the Task Force include providing Victim Advocates to improve access to our widely dispersed population, improving annual SAPR mandated training and leadership course training segments, implementing various bystander strategies, and continuing SAPR messaging year-round. Some of these recommendations are already in the implementation stage, such as the bystander intervention initiative titled the "Sexual Assault Prevention Workshop".

In April 2012, the Coast Guard issued a new and comprehensive SAPR policy that clearly defines roles and responsibility, mandates significant education and training, defines reporting processes and response procedures, and ensures greater victim safety. The policy also clarifies that commands must immediately notify not only CGIS, but also work-life and victim advocacy specialists, as well as the servicing legal office, upon receipt of an unrestricted report of sexual assault. This helps ensure that a comprehensive inter-disciplinary approach toward managing the victim's safety and support is in place, and that the investigation begins immediately.

Also noteworthy within the last year was the creation and roll-out of the Coast Guard's bystander intervention training program known as the "Sexual Assault Prevention Workshop". The workshop is presented live by CGIS special agents, Judge Advocates and Coast Guard Work-Life specialists, who, in addition to providing the necessary information about the SAPR program in plenary session, then engage in gender specific break-out sessions to have a frank dialogue about sexual assault and SAPR. Since its inception in 2012, the workshop has provided training to forty-eight units and approximately 7,500 personnel. This training initiative received the Department of Homeland Security Office of General Counsel Award for Excellence in Training on January 11, 2013, and many Coast Guardsmen have reported that this training is the most meaningful and effective training they have ever received.

In addition to Sexual Assault Prevention Workshops, SAPR training sessions are being incorporated into all command & leadership courses in the Coast Guard, and we have significantly expanded the number of trained Victim Advocates across the Coast Guard, resulting in approximately 800 new Victim Advocates in the last few years.

In April 2013, in observance of Sexual Assault Awareness Month (SAAM), I directed all Commanders, Commanding Officers, Officers-in-Charge, Deputy and assistant Commandants, and Chiefs of Headquarters staff elements to conduct a unit all-hands SAAM discussion. A standardized training toolkit was developed and featured videos from the Master Chief Petty Officer of the Coast Guard and me offering personal messages on the imperative to focus efforts on preventing sexual assault. Additionally, the toolkit provided a training film and a script to facilitate open, frank, and productive unit-level discussion about sexual assault prevention and response.

In May 2013, a SAPR Military Campaign Office was created under the Deputy Commandant for Mission Support to orchestrate execution of the SAPR Strategic Plan and to manage strategic communications. A Captain (O–6) has been assigned as the full-time lead and a support staff has also been assigned, including a Commander (O–5) as a Coast Guard Liaison to DOD's Sexual Assault Prevention and Response Office. This will optimize alignment between DOD and the Coast Guard with Strategic Plan implementation.

Most recently, I issued my Commander's Intent launching a service wide "Campaign to Eliminate Sexual Assault from Our Coast Guard" on May 26, 2013. In this mandate, I make clear to everyone in the Coast Guard, including Active, Reserve, civilian, and auxiliary, my expectation to create a culture intolerant of sexual assault. This includes stopping sexual assault by recognizing indicators of predicate behavior and ensuring all personnel know they are empowered to intervene. We will also improve the availability and quality of response resources; improve reporting, investigative, and military justice processes; and enhance victim aftercare.

In addition to specific SAPR programs and policy, the Coast Guard has worked to continually improve the administration of military justice and build our special victims' advocacy capability. In coordination with the Joint Service Committee on Military Justice, we are examining methods to incorporate the rights afforded to victims through the Crime Victims' Rights Act into military justice practice. We are also developing a Special Victim Counsel program to ensure that victims of sexual assault are provided the advice and assistance they need to understand their rights and feel empowered in the military justice system.

REPORTING OPTIONS AND PROCESSING OF SEXUAL ASSAULT CRIMES

Turning to the military justice system, I would like to discuss the process of how an allegation of sexual assault is reported, investigated, preferred (charged), and tried within the Coast Guard.

A victim of sexual assault in the Coast Guard can elect to make a restricted or unrestricted report. Once any urgent medical treatment for the victim is provided, the Sexual Assault Response Coordinator (SARC), Victim Advocate, Health Care Provider, or Family Advocacy Specialist will advise the victim of the two reporting options, explaining the benefits and limitations of each, and document the reporting option the victim selects.

Ultimately, the decision to make a restricted or unrestricted report is the victim's choice. The victim's decision on which report to make affects the processing of the case.

Under the restricted reporting option, the victim notifies only certain authorized individuals, including a Victim Advocate, Family Advocacy Specialist, or Health Care Provider, about the incident. The report is "restricted" because the allegation is not to be reported to the chain of command and the victim's identity and all information about the allegation is protected. The victim receives advocacy, medical

treatment, and counseling but a formal investigation is not triggered. The authorized individual who receives the restricted report will notify the appropriate Sexual Assault Response Coordinator.

SARCs are strategically located in each Coast Guard District and the Coast Guard Academy. The SARC will assign a victim advocate if requested by the victim, and will track the case. Any evidence collected by the victim or victim advocate is sent to CGIS, but it is not processed and no attempt is made by CGIS to identify the victim. If forensic evidence is collected as part of a restricted report, current policy requires that it be retained for at least 1 year. If the victim chooses at any time to make an unrestricted report, CGIS will then process the evidence and begin an investigation. The chain of command is not notified of the restricted report, and will not be notified unless the victim ultimately decides to make an unrestricted report.

Chaplains are also permitted to receive restricted reports. However, unlike other personnel authorized to receive a restricted report, a Chaplain is not obligated to notify the SARC or track the reports made. The chaplain may facilitate contact between the victim and any necessary advocacy services.

Under the unrestricted reporting option, the victim makes an unrestricted report when he or she notifies his or her command, CGIS, or any servicemember who is not authorized to receive restricted reports about the incident. The victim may notify his or her supervisor or commanding officer; however, the victim does not have to notify his or her chain of command directly. The victim may notify a SARC, Victim Advocate, CGIS, Chaplain, local law enforcement, or an attorney in the legal office. These entities will then notify the victim's unit commander, the alleged offender's unit commander, or another appropriate authority in the chains of command. The SARCs and the Victim Advocates receive training on what to do with an unrestricted report if the victim identifies the unit commander as the alleged perpetrator.

After the unit commander has received a report, he or she will notify CGIS and the SARC, if they have not already been informed. Upon notification of an alleged sexual assault, CGIS prepares a notice of case initiation (NOCI) report, detailing the allegations made, location of the incident, status and identification of the victim and perpetrator, units assigned, and known or potential witnesses. This NOCI report is transmitted to CGIS Headquarters, where a case dossier is created for investigative tracking, data collection, and for use in notifying senior Coast Guard leaders. It serves as notice within CGIS that an alleged sexual offense has been committed and that a formal criminal investigation has been initiated. Only personnel within CGIS have access to the information contained in the NOCI report. CGIS will notify the appropriate command cadre of both the victim and the perpetrator upon initiation of an investigation to ensure that no action is taken by the command without CGIS visibility and concurrence.

Only CGIS is authorized to conduct a formal criminal investigation. Command cadre and other parties are prohibited from conducting any investigative activity into allegations of sexual assault. There are no longer any command-level investigations into allegations of sexual offenses. CGIS will notify the servicing legal office that an investigation into a sexual offense has been initiated. CGIS and the legal office work closely to ensure the various elements of the offense under investigation are thoroughly addressed and that all victim and witness rights are preserved. CGIS investigative efforts include, to the extent possible within the application of the military justice system and the rules of evidence, an interview of the victim, alleged offender, and all necessary witnesses; collection of physical and documentary evidence; collection of testimonial evidence; and forensic analysis of the evidence collected. The command does not have an active role in the investigation, except to make witnesses available for interview by CGIS agents and to provide any additional support requested by CGIS.

Although the command does not play an active role in the investigation, it does play a critical role in providing care to the victim. The victim's unit commander is responsible for, among other things, ensuring the physical safety of the victim, advising the victim of his or her options for medical assistance, ensuring the victim understands the availability and benefits of victim advocacy, determining whether the victim needs to request a military protective order, and facilitating the need for temporary or permanent reassignment to another unit, duty location, or living quarters. A full list of the unit commander's obligations is located in the Sexual Assault Prevention and Response Program Instruction (COMDTINST M1754.10D).

The alleged offender's unit commander also has obligations during the investigation. He or she must ensure that CGIS has been notified, limit the dissemination of pertinent information to only those personnel with a need to know, ensure procedures are in place to inform the alleged offender about the investigative and legal

processes, provide for counseling for the alleged offender, and monitor the general well-being of the alleged offender, especially for any indications of suicide ideation.

Unit commanders also have an obligation to emphasize that the alleged offender is presumed innocent until proven guilty, advise those with knowledge to fully cooperate with the investigation, and determine whether additional counseling or training is required for the unit.

After CGIS has pursued all logical leads, the agents prepare a final report detailing the investigative effort and results. CGIS does not "substantiate" or "unsubstantiate" the allegations. Instead, CGIS mandate is to develop investigatory facts. A copy of the report is provided to the command responsible for determining any adjudicative action and to the servicing legal office. In accordance with my service-wide order issued in June 2012, only those officers who have special court-martial convening authority, have achieved the grade of at least O–6 (Captain), and have a dedicated staff judge advocate assigned may dispose of allegations of sexual misconduct, which includes any allegation of rape, sexual assault, aggravated sexual contact, abusive sexual contact, forcible sodomy, and attempts to commit such offenses. Because of the current organizational structure of the Coast Guard, in most cases the initial disposition decision is made by a flag officer. Only these commanders may make the decision to refer the case to court-martial, to impose nonjudicial punishment, to take adverse administrative action, or to take no further action in the case. The commander must consult with the assigned staff judge advocate before making any decision in the case, including the decision to take no action. If no action is taken, the commander must document that decision in writing after consultation with his or her staff judge advocate.

If charges are preferred, the case data is entered into the Coast Guard Law Manager system, where it can be tracked by the local legal servicing office and the Office of the Judge Advocate General. Trial Counsel (prosecutor) and Defense Counsel are then assigned. Only experienced trial attorneys are assigned as lead counsel in sexual assault cases.

Under this process, a victim of sexual assault has options. They can make a restricted or an unrestricted report. They can decide to whom they want to report. Most significantly, the victim has options other than reporting a sexual assault directly to the command. However, once reported, a commander has a critical role not only in the safety and in well-being of the victim, but also a central role in the administration of justice.

MILITARY JUSTICE PROCESS AND LEGISLATIVE IMPROVEMENTS

The administration of justice within the military has been subjected to increased scrutiny in the last few years, in particular the role of the commander. That criticism is not entirely unjustified, and the military has not ignored those critiques. As an institution, the Armed Forces have continuously strived to improve its system of justice. History has shown that the modern military justice system has evolved in efforts to make constructive changes. From the enactment of the Uniform Code of Military Justice in 1950, to the Military Justice Acts of 1968 and 1983, to the implementation of rules of procedure and evidence, the military justice system has not remained a static legal regime. Moreover, the Services themselves have helped shape changes to the UCMJ and Manual for Courts-Martial through the Joint Service Committee on Military Justice. The Coast Guard has embraced those changes.

The modern military justice system apparatus—with specific rules of procedure, evidentiary court rules, professionalized practitioners, and independent judicial bodies—has more in common with the Federal civilian courts than differences. The U.S. military justice system today is arguably one of the best, most fair, and just systems in the world. However, the argument for the status quo should not be because it is the status quo. While the system works well, it is not perfect. There should be, and there is, a never-ending quest to improve it. Our current system of military justice is worthy of robust examination and debate. It is important that serious thought go into what in the UCMJ should be changed and how that change should be accomplished. As Service Chief, I am committed to changing our organizational culture. I am concerned that dramatically changing our system of justice at the same time could impede those cultural changes.

With that said, a core tenet of the military justice system is the central role commanders play in the administration of military justice. Military justice, unlike the civilian criminal system, has a dual role of seeking justice and enforcing discipline. This reflects the notion that commanders are in charge of their units, not lawyers or other officials. Any changes to the military justice system should not needlessly undermine commanders' ability to maintain good order and discipline. While the Coast Guard shares the goal of improving the system of justice within the military,

it generally opposes legislation that would fundamentally alter the role of commanders in a piece-meal fashion without a full appreciation for the second- and third-order effects on the unit discipline and command authority.

With these two aims in mind, the National Defense Authorization Act of 2013 creates two independent panels—the Response System Panel and the Judicial Proceedings Panel—that will provide an empirical, data-driven study to assess criminal justice systems used to investigate, prosecute, and adjudicate crimes involving adult sexual assault and related offenses. Congress legislated a clear mandate that these panels assess "legislative initiatives to modify the current role of commanders in the administration of military justice and the investigation, prosecution, and adjudication of adult sexual assault crimes." This deliberate and thoughtful study is an appropriate method to consider possible changes to the UCMJ.

CLOSING

Since 1790, the Coast Guard has been standing the watch and protecting America's national interests against all manner of maritime threats. The success of our operations has always depended on both Prevention and Response. However, our first priority is always to prevent an incident from occurring. Whether it's a vessel casualty, a pollution incident, disruption of traffic into our ports, or the flow of illegal drugs and migrants, we have always believed it is better to prevent an incident from occurring than respond to it afterwards.

However, should an incident occur, no one is better at responding than Coast Guard men and women. We rescue those in distress, enforce the laws, and fight for our Nation and our people. It is what we do.

The same must be true of our efforts to eliminate sexual assault from our Service.

As the President has said, there is "no silver bullet" to solving the blight of sexual assault within our ranks. But we will continue our efforts until every victim feels confident in the ability to report sexual assault; every servicemember feels a duty to intervene and protect; every leader is focused on a command climate intolerant of sexual assault; and every crime is vigorously investigated and prosecuted, and justice is done. We will continue until sexual predators are driven from our Service.

Our goal is simple—to eliminate the crime of sexual assault from our Service and ensure that no Coast Guard man or woman ever needs to fear the crime of sexual assault from a shipmate.

Chairman LEVIN. Thank you very much, Admiral.

We are going to have a 6-minute round of questions.

Under the current law, both the initial disposition authority for a case—that is the official who decides whether to proceed to court-martial or to seek lesser punishment—and the convening authority—that is the official who appoints the military judge and other members for a trial by court-martial—both are part of a chain of command.

That means that the chain of command has ultimate responsibility for addressing misconduct in the ranks, including steps to address command climate that contributes to misconduct, steps to protect the victims of misconduct, and to ensure appropriate punishment for the perpetrators.

Let me start, General Dempsey, with you. If the UCMJ were amended to reduce the commander's discipline authority by taking away his or her power to refer a case for trial by court-martial or by taking away the power to impose nonjudicial punishment, what impact would that have on a commander's authority and control over those who are under his or her command?

General DEMPSEY. Well, in general terms, Mr. Chairman, as one of the chiefs said, we hold the commander responsible for everything the unit does or fails to do on or off duty, and whether in CONUS or deployed in an expeditionary contingency plan. That kind of responsibility is best served by authority that aligns with it.

So, if you have heard each of us suggest that the role of the commander is central in solving this problem, it is because we believe that the role of the commander is essential to any change, any positive change we will be able to make on this issue.

Chairman LEVIN. General Odierno, is there a relationship between the commander's authority to take action against a member of the Armed Forces and the commander's power to address problems of climate and culture, whether on the issue of sexual assault or with regard to other serious offenses, such as barracks larceny, for instance?

General ODIERNO. A commander sets the tone for all that goes on inside of a unit, and he must have the ability to quickly, visibly, and locally administer justice so soldiers understand that the commander will ensure that the climate that they operate in is important. It is also important that we have these capabilities as you are deployed, that we can export this capability.

As somebody mentioned, I think you mentioned, 800 courts-martial were conducted in Iraq and Afghanistan by the Army, and several other cases of nonjudicial punishment. In some cases, this impacted not only our forces discipline, but the Iraqis or Afghans that were involved in the incidents that they saw, that we were able to do it right there, bring them as witnesses and prosecute the soldiers, which helped them to understand that we were holding people accountable as well. That is an example of the kind of thing that our commanders are willing and have to do.

One other vignette I would just give you is there are cases in the Army, say, you have a soldier in a barracks who has—sometimes we have soldiers who decide they give up. So they refuse to report to formation. They conduct barracks larcenies. They start doing significant amount of drugs in the barracks. It is incumbent on the commanders and the chain of command to ensure they do not tolerate this.

If we had to give that to an independent authority in order to solve that problem, in my mind, that takes away the power of the commander to set a standard that would say I am responsible for the health and welfare of this unit. I am responsible for the discipline of this unit, and I will take charge of this discipline whether it is here, overseas, or anywhere to ensure that we can operate in a cohesive way. Unit cohesion is the key term.

Chairman LEVIN. It has been frequently said in many op-eds and editorials that the only option now available to a victim of sexual assault is to report to his or her chain of command. In other words, the only option is to report to the commander of his or her unit, to your boss. It is pointed out how absurd it would be to require somebody to report to his or her boss if, in fact, that person has no confidence in his or her boss, if that is the case.

Now, General Odierno, you have said, and I believe a number of you have said that there are many, many options that a victim of sexual assault has for reporting an offense, and you enumerated them. Reporting to a sexual assault coordinator, sexual assault victim advocate, healthcare professional, military police, local police, appropriate criminal investigative command, DOD Inspector General, DOD hotline, Judge Advocate General (JAG), or anyone in the

chain of command, including that person's own commander, should he or she make that decision.

I believe, Admiral, you indicated that every person in your Service has been informed of those opportunities, those options to report an assault, that they are not limited to report to their own commander. General, is that true in the Army, and more importantly, do the men and women in the Army, are they informed of all these various options to report an assault or other sexual offense or any other offense?

General ODIERNO. Several years ago, we began training this, starting in basic training. So within the first 2 weeks that you become a member of the Army in basic training, you are given the basic information about who you can report to for, specifically, sexual assault offenses. It begins from the time you come into the Army to the time you progress through the Army.

I would say one caveat to that, which I think is that they all—when they understand they can report, the next step for us is to ensure when they do report, even if it is outside the chain of command, that they are not retaliated against by the chain of command. So, that is the second step to this process.

There are many ways for them to report. They are trained to do it, and then it is up to us to make sure that within the chain of command there is no retaliation or consequences, no matter how you report. We are working on that very carefully as well.

Chairman LEVIN. I just want to ask all of the other Services here, are the men and women in your Service notified that they have the option to report a sexual offense against them in numerous ways? They are not just—they are not required at all to report to their commander?

Starting with you, General, let me ask all of you. Any of you disagree with that? Because we have to have that real clear. There has been a big misunderstanding about this question of having to report to your commander.

In any of your Services, must a victim report an offense to their commander, or are these other options available? So just give me yes or no. Yes, the other options are available in each of your Services, and men and women are so informed.

Admiral, you have already answered the question. General?

General WELSH. Mr. Chairman, the options are available, and they are informed.

Chairman LEVIN. They are informed. General, I assume that is the policy for all the Services. General, you have already answered, General Odierno. General Amos?

General AMOS. Mr. Chairman, it is exactly the same, and I would add one more thing that we all have is the thing called a uniformed victim advocate. Those are actual young men and women that are probably their same rank that are in these units whose pictures are up on the bulkheads. So it is a lot easier to go to a contemporary. They are trained 40 hours of training.

So the answer is yes.

Chairman LEVIN. Admiral?

Admiral PAPP. The same within the Coast Guard, sir.

Chairman LEVIN. Thanks very much.

Senator Inhofe.

Senator INHOFE. Thank you, Mr. Chairman.

I think it is very appropriate that the Defense Legal Policy Board report on military justice in combat zones came out just last week. I quoted in my opening statement a rather long part of that. The two-sentence synopsis would be, "The military justice system is a definitive commanders' tool to preserve good order and discipline, and nowhere is this more important than in a combat zone. A breakdown of good order and discipline while deployed can have devastating results on mission effectiveness."

Does anyone disagree with that statement? [No response.]

All right. If you agree with that statement, General Odierno, why don't you give us just an example of how stripping this authority from the commanders affects his or her ability for maintaining good order and discipline or mission effectiveness, and why?

General ODIERNO. Well, first off, again, as I said earlier, it is about quickly, visibly, and locally taking action that very quickly makes sure that the unit and other soldiers involved understand that this will not be tolerated. It also ensures them that action will be taken immediately.

If we can't do it forward in theater, then it would delay action. Potentially, we would have a problem with witnesses, and so it would cause us not to have something done quickly, very visibly, and locally. So, in my opinion, it is about, again, continuing to have unit cohesion in a forward operating capability that allows our soldiers to continue to perform their mission under very difficult conditions.

Senator INHOFE. That is very good. In reading the Defense Legal Policy Board's report, it quotes most of you on this panel. Secretary McHugh stated in this report, "The Services are consistent in their position that initial and final disposition authority should reside in the commanders, as is currently the case."

He is not here today, but General Harding, you are. You are quoted in here as saying, "Creating artificial distinctions between offenses should not supplant a commander's case-by-case evaluation of an alleged offense."

Is that an accurate statement today?

General HARDING. Yes, sir. It is.

Senator INHOFE. Tell me why.

General HARDING. I believe that after 34 years of practice of law in the military that what I have observed is that commanders are enhanced, their ability to exercise command and control, their ability to discipline their forces is enhanced by holding every member of their command appropriately accountable.

Senator INHOFE. Very good.

General Ary, in January 2012, you stated, "In a combat environment, noncompliance with rules and undisciplined operations cost lives and negatively impacts the mission."

Do you still believe that the commander must maintain the central and permanent role, as you did a year and a half ago?

General ARY. Yes, sir. I do. In fact, I would say whether it is an enemy on a battlefield or sexual assault in the barracks, good order and discipline is just as important.

Senator INHOFE. General Amos, do you agree with that?

General AMOS. Yes, Senator. Absolutely.

Senator INHOFE. He has said that an undisciplined operation costs lives. Could either one of you give us an example of how that could cost lives?

General AMOS. Senator, we have had a couple of occasions several years ago in Afghanistan where we had one or two marines that were not paying attention to business, falling asleep on duty, falling asleep on watch. As a result of this, the battalion commander and the company commander had to do something about it.

Marines' lives were at risk. There was a nonjudicial punishment in those cases and in one case court-martial that ended up as a result of this. So the behavior forward deployed in combat absolutely is critical and could cost lives.

Senator INHOFE. Thank you, General Amos.

Yesterday, I talked about the 10 provisions that were in the NDAA for Fiscal Year 2013 that were the programs on sexual assaults. Can anyone here give me a status as to what has been done on those 10 recommendations that were in the NDAA for Fiscal Year 2013? [Pause.]

General ARY. Well, sir, it is a long list. But I think one of the big game-changers here is going to be the hiring of those certified, credentialed victim advocates. I think we all recognize that our victims need an advocate that is effective, and we think that those will be a supporting effort for the uniformed victim advocates.

Also the SARCs. Getting them online is going to be big, and we are in the process of hiring them right now.

Senator INHOFE. Okay. What I am trying to get at here is those are 10 specific things, and I assume you are all aware of those and are working on it. I see nods to the affirmative.

Lastly, General Welsh, the Air Force currently has a pilot program for a special victims' counsel. What is the current status of that?

General WELSH. Sir, the program began in January. It was planned to run for 1 year, but we plan to give a report to the Secretary of Defense no later than November 1 of this year. We have so far had 318 victims apply for support through the special victims' counsel.

We currently have 60 special victims' counsel who are fully trained to do this work. They are today supporting 282 victims in various ways, including many all the way through court-martial and final adjudication of their cases.

Feedback from the victims has been very, very positive. We believe the program is working very well for us. We are excited about where it is going.

Senator INHOFE. General Welsh, this is an Air Force pilot program. Would you recommend this for the other Services?

General WELSH. Sir, the results we are seeing are very positive. I am going to recommend to my Secretary that we continue the program.

Senator INHOFE. Very good, sir.

General WELSH. There are resource issues associated with it, each Service will have to look at separately, but it has been a very, very good program.

Senator INHOFE. Thank you, Mr. Chairman.

Chairman LEVIN. Thank you very much, Senator Inhofe.

Senator Reed.

Senator REED. Thank you, Mr. Chairman.

This issue goes to the heart of our military forces, our national security. All the talent and the billions of dollars of technology won't make a difference if soldiers—and I will use the term generically—don't trust their fellow soldiers, and certainly if they don't trust their commanders. The essence of the military is that soldiers protect, not exploit, their comrades, and commanders particularly protect and not exploit their commanders.

Having said that, General Odierno, to your knowledge, has the Army relieved a commander who has tolerated an inappropriate environment with respect to sexual abuse?

General ODIERNO. Senator, in the last 4 years, we have relieved 57 commanders, 14 brigade and 43 battalion commanders, and about half of those for command climate. About half of those cases were specifically related to their ability to execute sexual assault and other issues associated with command climate and toxic leadership.

Senator REED. Is this an explicit criteria or criterion, rather, for promotion board consideration for particularly senior ranks?

General ODIERNO. I would say toxic climates as a whole, which include sexual harassment, are absolutely assessed and a requirement for any type of promotion or job of senior—for any senior members. If you ask me specifically is sexual harassment on there, on our efficiency reports, we don't specifically mention sexual harassment, but we talk about command climate, which sexual harassment is a subset of.

Senator REED. It may be well to consider making that much more explicit not only in terms of relief, but in terms of evaluation and in terms of promotion because if you want the chain of command to be—have the authority that it has today, then it has to be extraordinarily responsible to this specific issue and not to general climate issues. That is my opinion, for what it is worth.

Admiral Greenert, can you answer the same question?

Admiral GREENERT. Yes, sir. The command climate is an explicit part of an officer's fitness report. Command climate of a unit by a unit commander is evaluated by the immediate senior in command, and that is reported to our type commander.

So by virtue of those reports and the synopsis in the report of fitness at a promotion board, the command climate is evaluated by the promotion board. It is an explicit part of an officer's evaluation.

Senator REED. With respect to relief, have you relieved a commander because of the—specifically, not generically, because of bad climate? Specifically because of the failure to respond to sexual abuse in his command or her command?

Admiral GREENERT. Not explicitly due to sexual abuse within a command. However, those—a few who have been removed due to poor command climate, when, unfortunately, after the fact, what we are seeing now, we have found that it is an attribute.

Senator REED. General Welsh?

General WELSH. Senator, during my tenure, we have not removed a commander explicitly for climate of sexual assault or sex-

ual harassment. We have removed commanders for command climate, but I don't know of one specific to that in the past.

They are clearly held accountable as far as command performance reports based on their ability to lead and influence their people. This is a major part of that. Maybe equally as important I think are commanders in the field, and for us at the wing commander level especially, need to fully understand how the Air Force and I feel about this topic and about how it will affect their future opportunities.

I called all of them to DC last—at the end of last year, late November, early November, and made it real clear to them. I haven't talked to Colonel Jeannie M. Leavitt—a witness on panel II—about this, but in the second panel today is one of my wing commanders. I believe she can tell you what I expect from her in this regard, and I think that is important. We have all done that.

Senator REED. General Amos?

General AMOS. Senator, to the best of my knowledge, since I have been the Commandant for 2½ years, I don't believe we have relieved anybody from command for having a climate of sexual assault or sexual harassment.

That said, there is an expectation for each of our commanding officers to set the conditions, the climate, in his or her organization that not only does all the combat stuff—equipment, the training, and the personnel readiness—but also sets the environment such that young marines who are in that unit are comfortable. They are confident in their leadership.

Last month, I signed a policy letter out to every single commanding officer. We have already briefed it. It is instituted now. Every commanding officer will take—the whole unit will take a command climate survey. We just finished it, 34 questions. At least five of those deal with sexual assault, sexual harassment, confidence in the leadership to be able to protect and take care of the interests of the young marine.

That command climate survey will be done at the beginning of every single commander's term within the first 30 days and annually at that point. Those results will go to the next higher command.

So a commander is responsible for everything else, clearly responsible for command climate, Senator. My expectations are we will probably see more of this in the future.

Senator REED. Admiral Papp, my remaining time, please?

Admiral PAPP. Thank you, sir.

We average probably about a dozen reliefs for cause each year, primarily due to command climate issues. We fill the spectrum. We have officers in charge starting at the chief petty officer, or E–7 level, E–8 and E–9, all the way up through many junior officers commands as well. So primarily due to command climate issues as they are discovered.

We have had one relief of an O–4 2 years ago, was relieved of command for failure to report a sexual assault. The victim went outside the chain of command and made the report. It came back in the chain of command above this particular commander, and he was relieved for failure to report.

Senator REED. Thank you.

Chairman LEVIN. Thank you very much, Senator Reed.

Senator McCain.

Senator MCCAIN. Thank you, Mr. Chairman.

Obviously, we are here today to determine how DOD can most effectively reduce instances of sexual assault and ensure that offenders are held accountable. Our witnesses have characterized the problem as a crisis and a cancer that threatens the very fabric of our military, and I couldn't agree more.

At its core, this is an issue of defending basic human rights, but it is also a long-term threat to the strength of our military. We have to ask ourselves if left uncorrected, what impact will this problem have on recruitment and retention of qualified men and women?

Just last night, a woman came to me and said her daughter wanted to join the military, and could I give my unqualified support for her doing so? I could not.

I cannot overstate my disgust and disappointment over the continued reports of sexual misconduct in our military. We have been talking about the issue for years, and talk is insufficient.

I would remind my colleagues that after the Vietnam war, at the end of the Vietnam war and in the aftermath, there were breakdowns in discipline. There was race riots on aircraft carriers. There was instances of fragging. There was tremendous racial unrest and tensions within our military. We addressed the issue, and now I believe the military is our most effective equal opportunity employer.

We must do that in the case of this crisis that we are facing now. Today, we all agree that action has to be taken, and I hope that today's hearing will build on that consensus.

General Dempsey, as you stated in your prepared statement, you have endorsed Secretary Hagel's proposed amendments to Article 60. I am sure that members of the panel are familiar with it. They would prohibit a convening authority from setting aside the findings of a court-martial, except for a narrow group of qualified offenses, and require a convening authority to explain any sentence reduction in writing.

Is there anyone on the panel that disagrees with Secretary Hagel's recommendation? [No response.]

Thank you. General Dempsey, do the Services allow individuals with a history of sex-related crimes to enlist or receive a commission to serve?

General DEMPSEY. There are currently, in my judgment, Senator, inadequate protections for precluding that from happening. So a sex offender could, in fact, find their way into the Armed Forces of the United States. In fact, there are cases where a conviction wouldn't automatically result in a discharge.

Senator MCCAIN. Obviously, we have to fix that. You would agree?

General DEMPSEY. Absolutely.

Senator MCCAIN. General Odierno, in your prepared testimony, you expressed your support for this proposal but stated you need to "consider several technical amendments to ensure the UCMJ functions properly in practice." Would you submit for the record those technical changes that you would like to see?

[The information referred to follows:]

General ODIERNO and Lieutenant General CHIPMAN. As detailed in my written statement, I support a number of legislative proposals that contemplate changes to the role of the commander and to the Uniform Code of Military Justice, including a Commander Response Certification or system of checks and balances, Article 60 limitations, new enumerated offenses for trainer-trainee sexual abuse, general court martial referrals for the most serious sexual offenses, bars to service and mandatory separation for those convicted of these crimes, expanded legal assistance training for attorneys assisting victims throughout the process, and the Response System Panel and Judicial Proceedings Panel for a comprehensive review and comparison of our system to determine what changes should be made to law and policy. The Army will continue to provide technical assistance on proposed legislation as requested.

General AMOS and Major General ARY. In his written submission, General Odierno stated, "I support proposals which would require that all penetrative sexual offenses (for rape, sexual assault, forcible sodomy and attempts to commit those crimes) be referred to a General Court Martial only, rather than a Special Court Martial or a Summary Court Martial, due to the severity of these crimes. To implement this proposal, however, we will need to consider several technical amendments to ensure the Uniform Code of Military Justice (UCMJ) functions properly in practice."

I believe the convening authority's pretrial discretion in determining how to dispose of certain sexual assault offenses should not be limited. [do not support legislation that would limit the discretion of the convening authority to determine how to dispose of certain sexual assault offenses before trial. Rule for Courts-Martial 306(b) states that "[Allegations of offenses should be disposed of in a timely manner at the lowest appropriate level of disposition . . . " In deciding how an offense should be disposed of, there are several factors the convening authority considers, including the views of the victim as to disposition. While I agree that a general court-martial is normally the appropriate forum to adjudicate sexual assault offenses, there are circumstances, such as victim preference, when a convening authority may find it appropriate to handle a sexual assault offense at a special court-martial. For example, in a case where it might be very difficult to prove a penetrative sexual offense, there might also be a contact-type sex offense to which the accused is willing to plead guilty. The victim may prefer to avoid a lengthy contested general court-martial in order to guarantee a conviction and the accused's qualification as a sex offender. If the law mandates that all sexual assault cases be referred to General Court-Martial alone, the ability for a commander to remain flexible upon victim preference would be impossible.

I concur with General Odierno that changes to the UCMJ should not be made in a piecemeal fashion. Any proposed changes to the UCMJ should be referred to the Response Systems Panel for independent review and assessment. By taking a deliberate and thoughtful approach, we can ensure that unforeseen or unanticipated consequences do not adversely affect victims of sexual assault or compromise the Constitutional rights or those accused of crimes.

Senator MCCAIN. It is important for our committee to understand the extent to which commanders are following the advice of legal counsel in making disposition determinations. My understanding is that in an overwhelming number of cases in each Service, the commander is following the advice of legal counsel.

Could the Service Chiefs or Judge Advocates tell us how many cases did a commanding officer go against the advice of a Staff Judge Advocate (SJA) in executing their convening authority? Do you know, General?

General AMOS. Senator, I don't—I am going to let General Ary talk if he has the numbers. But in 43 years, I can't think of a single instance where my Judge Advocate, in all the times I have been in command and a convening authority, I can't think of a single instance where my Judge Advocate came to me and said we want you—we recommend that you prosecute these cases, and I didn't do it.

On the other hand, I can think of many where he said we don't have enough evidence, don't prosecute him, and I did anyway.

Senator MCCAIN. General?

General ODIERNO. Something related to this is that I think sometimes people are led to believe that all of a sudden commanders are doing these cases with no experience. From the time you come in the Army or any Service as a commissioned officer, as a platoon leader, company commander, battalion commander——

Senator MCCAIN. I would appreciate—I apologize.

General ODIERNO. Okay. So, yes. So, in every case, I agree totally with General Amos is that in every case in my own experience that when I was—said we have evidence to go, we did. Many times, when we didn't think we had enough, we went to a court-martial anyhow because of the importance of the case.

Senator MCCAIN. Admiral? I am sorry for the request for a short answer.

Admiral GREENERT. We scrubbed every case for the last year for sure, and there were no discontinuities. The advice was taken, legal advice was taken by the commander.

Senator MCCAIN. General?

General WELSH. Senator, we reviewed every case, every trial for the last 3 years. There were 2,511 cases, and 22 of those, the initial disposition authority did not agree with the recommendation from the JAG. The recommendation was forwarded in 10 of those cases to a higher convening authority who agreed with the JAG's recommendation, and that was the action that was taken.

In 12 of the 2,511 cases, the commander made a different decision than what his JAG recommended, so less than 1 percent of the time.

Senator MCCAIN. Admiral DeRenzi, you have had a long experience with these issues. Is the problem better, worse, or the same?

Admiral DERENZI. Sir, do you mean sexual assault issues in general?

Senator MCCAIN. Yes.

Admiral DERENZI. I think the problem is improving. I was a junior officer during Tailhook, and I can tell you that I do not recall the training efforts, the response, the prevention, the attention on our ability to prosecute offenders reaching down from leadership to the deckplate level at that time.

I would tell you that in the time since and now, I see a difference. I see a difference in the leadership. I see a difference in how the Judge Advocates are trained to respond and support, and I see a tremendous difference in the prevention and response efforts.

Senator MCCAIN. But you would agree that improvements need to be made?

Admiral DERENZI. Yes, sir.

Senator MCCAIN. We would be very interested in your support or lack of support of some of the recommendations that we are considering.

Admiral DERENZI. Yes, sir. I would be happy to provide those for the record.

[The information referred to follows:]

The Navy is committed to ensuring the military justice system works fairly, guarantees due process, maintains good order and discipline, provides justice to victims of crimes, and is accountable. Given this commitment, we remain open to improvements in the military justice system that further these goals without giving rise to unintended second- and third-order effects. To be considered for change, proposals

should be targeted to address specifically identified problems with the current military justice system.

However, I do not support taking away a Commander's authority to convene courts-martial. Such authority underpins good order and discipline, which is central to mission accomplishment. Commanders are singularly responsible and accountable for mission accomplishment, as well as for the welfare, safety, and effectiveness of those they lead. Commanders must retain authority commensurate with their responsibility. A key component of that authority is the ability of Commanders, at an appropriate level, to take disciplinary action.

Secretary of Defense policy already withholds initial disposition authority for rape, sexual assault, forcible sodomy and attempts to commit those offenses to Special Court-Martial Convening Authorities in the grade of O–6 and senior. This ensures that Convening Authorities addressing the most serious sexual assault cases are knowledgeable and experienced in the disposition of military justice cases. More fundamentally, these Convening Authorities are senior military officers who possess judgment cultivated throughout their careers by their experiences in leadership positions. Additionally, the Secretary of Defense policy ensures Convening Authorities have the support and obtain the advice of senior judge advocates.

Through the Response Systems Panel created by section 576 of the National Defense Authorization Act for Fiscal Year 2013, Congress has created a means of objectively evaluating proposed changes to the Uniform Code of Military Justice (UCMJ) relating to sexual assault in the military. The Response Systems Panel should be given the opportunity to complete its independent assessment of the systems used to investigate, prosecute, and adjudicate sexual assaults prior to enacting sweeping and fundamental changes to the UCMJ. The following is provided subject to that caveat.

I fully support the Secretary of Defense's proposal to amend Article 60 of the UCMJ to modify a Convening Authority's authority to change the findings and sentence of a court-martial. This proposal recognizes that our court-martial practice has changed since World War II through the participation of professional military prosecutors, defense counsel and judges in trials, as well as a robust review and appeals process.

I believe there is merit in the provisions calling for enhanced protection of new members of the Armed Forces in initial entry-level processing and training environments from military members in a supervisory role in these same environments. Although the Navy has existing policies which prohibit inappropriate relationships and sexual contact and provide appropriate punishment for offenders, a uniform policy would promote consistency across the Services.

I also concur with provisions requiring commanding officers to immediately notify the appropriate military criminal investigative organization after receiving a report of sexual assault. The Navy already requires such reporting but creating a statutory duty to report reinforces the existing policy guidance. Similarly, I support provisions requiring immediate notification of the chain of command of sexual assault allegations. Such measures reinforce existing practice and policy.

I concur with eliminating the statute of limitations for sexual assault, sexual assault of a child and forcible sodomy. Although prosecution of such offenses becomes more difficult with the passage of time, the seriousness of the offenses warrants giving commanders the opportunity to hold offenders accountable without regard to the current statute of limitations.

While the Navy's legal professionals already provide support to sexual assault victims, I can support extending the program to provide victims with the legal advice that judge advocates are uniquely qualified to provide, including legal consultation regarding victims' rights; the military justice process; potential criminal liability of the victim for collateral misconduct; potential civil litigation; and legal assistance in personal civil legal matters.

I concur that individuals with civilian convictions for rape, sexual assault, forcible sodomy and incest should be prohibited from serving in the military. Similarly, if legislation is enacted requiring administrative separation of individuals convicted by court-martial of penetration offenses, or attempts to commit penetration offenses, but not punitively discharged, then conforming amendments to the statutory provisions pertaining to boards of inquiry would be required (see 10 U.S.C. 1182).

Navy commanders currently have the authority and ability to temporarily reassign members who are alleged to have committed sexual assaults pending the resolution of their case. Accordingly, a statutory change is unnecessary but not objectionable. As victims currently have the right to request an expedited transfer, commanders are able to weigh the equities in each individual case and transfer either the suspect or victim, as appropriate. This is in addition to the ability to issue no-

contact military protective orders, place a suspect in pretrial confinement, or restrict liberties if the facts warrant such actions.

Senator MCCAIN. Thank you, Mr. Chairman.

Chairman LEVIN. Thank you, Senator McCain.

Senator McCaskill.

Senator MCCASKILL. Thank you, Mr. Chairman.

I appreciate all of you being here. I have spent hours and hours with your prosecutors over the last several months. I have had long conversations with several of you at the table, including those who are heading up our various branches.

I want to start with the fact that I think part of the problem here is you all have mushed together two issues in ways that are not helpful to successful prosecution. There are two problems. One is you have sexual predators who are committing crimes. Two, you have work to do on the issue of a respectful and healthy work environment.

These are not the same issues. With all due respect, General Odierno, we can prosecute our way out of the first issue. We can prosecute our way out of the problem of sexual predators who are not committing crimes of lust.

My years of experience in this area tell me they are committing crimes of domination and violence. This isn't about sex. This is about assaultive domination and violence. As long as those two get mushed together, you all are not going to be as successful as you need to be at getting after the most insidious part of this, which is the predators in your ranks that are sullying the great name of our American military.

I want to start with—I think the way you all are reporting has this backwards because you are mushing them together in the reporting. Unwanted sexual contact is everything from somebody looking at you sideways when they shouldn't to someone pushing you up against the wall and brutally raping you.

You have to, in your surveys, delineate the two problems because until you do, we will have no idea whether or not you are getting your hands around this. We need to know how many women and men are being raped and sexually assaulted on an annual basis, and we have no idea right now because all we know is we have had unwanted sexual contact, 26,000.

Well, that doesn't tell us whether it is an unhealthy work environment or whether or not you have criminals. You have to change that reporting.

Success is going to look like this. More reports of rape, sodomy, and assault, and less incidents of rape, sodomy, and assault. So everybody needs to be prepared here, if we do a good job, that number of 3,000 the chairman referenced, 3,000 and something, that is going to go up if we are doing well.

But overall, the incidents are going to be going down, but we have no way of being able to demonstrate that with the way you are reporting now. I hope that you all understand that.

Now reporting is the key. Senator Gillibrand and I are in complete agreement that this is about creating a culture where victims are comfortable coming forward, and that is incredibly important. I think a number of steps are being proposed in all the different

pieces of legislation, and a number of them you have agreed with, which is progress.

I think we have to look at restricted reporting with an emphasis on getting the perpetrator ID'd. Right now, no one is really pressing to get the perpetrator ID'd in an unrestricted report. Why is that important? Because the victim who won't come forward today will come forward a year from now if there are two other victims who have come forward.

But if we don't know who the perpetrator was, we can't even go back and talk to that victim. I think that is one thing that you all need to work on.

Let me ask a question of you, General Amos. I am concerned—I agree with the part of Senator Gillibrand's legislation, and others, I think, have included this, too, in our legislation, that we should not be taking into account how good a military person is in deciding whether or not to try them on a felony. The facts of a felony are the facts of a felony.

I don't care how good a pilot it is. I don't care how good of a special operator a person is. Their ability to perform as a soldier or an airman or a member of the Coast Guard is irrelevant to whether or not they committed a crime.

Do any of you disagree with the proposal that we should be not considering how good a military character they have in terms of how well they serve the military as part of the consideration as to whether or not a case should be tried where a felony accusation has been made? Anybody disagree with that? [No response.] Nobody disagrees with that? Okay. That is good.

General HARDING. Ma'am, I will just comment that assessing the character, to the extent that you can through previous deeds, is an appropriate factor to enter into the equation. It doesn't enjoy overriding weight, but I think that is what the code had in mind. I think district attorneys also assess an individual's character in the community to determine whether or not the allegation is supported or not supported by that.

But it is one of many characters in the totality of circumstances that you referred to that are taken into consideration in a decision whether or not to prosecute. But it is not, by any stretch of the imagination, an overriding factor or one that would result in a decision solely not to prosecute.

Senator MCCASKILL. Well, the character of the perpetrator would come in the trial if the defendant wanted to bring it into the trial, and then there would be an opportunity to impeach. There is no opportunity to impeach on character at a disposition phase. I completely disagree with you, General Harding.

There is not—it is not relevant as to whether or not somebody raped a woman how good a pilot he was.

General HARDING. I am not referring to their job performance, ma'am. I am referring to their character. As a district attorney, would you assess an individual's character before—in the totality of circumstances? Not at all.

Senator MCCASKILL. If the defendant brings it in in a trial, then it is relevant that I have that opportunity to impeach at the trial and show that his character is not that great.

General HARDING. I think you and I agree.

Senator MCCASKILL. Whereas, you don't have that at a disposition phase. You don't have that—I shouldn't say disposition phase because that is confusing to people out there. Because disposition technically in our world is the end of the trial. But for you, disposition is at the beginning.

At the beginning of the trial process, deciding whether or not there is sufficient evidence to support the charges, the character of the defendant should be irrelevant.

General HARDING. To include a bad character, a character for criminal actions in the past.

Senator MCCASKILL. The facts should speak to that. If he has been convicted and if there have been accusations that have been borne out, if he has had other actions against him, then that is a factual determination. That is not this illusive let us put together a big package and say what a great guy this is.

General HARDING. Well, that is not what the process is.

Senator MCCASKILL. Okay. Well, we may not disagree or we may disagree. But we will ferret that out.

I just, for the record, Mr. Chairman. I know my time is up. I need to know how many cases you all have taken that civilian prosecutors declined to prosecute. I also need to know how many cases you have taken after someone has been found not guilty in civilian courts.

I don't think many people realize that you do that, and you do. In talking to the prosecutors, there are cases that you have taken action after someone is found not guilty in the civilian courts. I think that is important for our consideration as we work on the markup of the defense authorization bill.

Thank you, Mr. Chairman.

Chairman LEVIN. Let us ask each of the Service Chiefs here to get the statistics which have been requested along that line by Senator McCaskill.

[The information referred to follows:]

General ODIERNO and Lieutenant General CHIPMAN. The Army does not track the total number of cases in which civilian authorities had concurrent jurisdiction, took the lead on investigation and declined to prosecute and Army commanders subsequently chose to proceed with judicial action. However, data collected from a sampling of our General Courts-Martial jurisdictions and Special Victim Prosecutor case trackers indicates that in every jurisdiction, Army commanders have preferred court-martial charges or pursued nonjudicial or adverse administrative actions after civilian authorities declined to prosecute Army offenders. The number of cases will vary by jurisdiction, depending on the resources or prosecutorial policies of the local authorities and upon the relationship between the local authorities and the Office of the Staff Judge Advocate. For example, for the Special Victim Prosecutor assigned to Fort Drum, NY, over a 30 month period, 9 of the 25 sexual assault cases (36 percent) handled within the geographic area of responsibility were cases in which the civilian authorities investigated and declined to prosecute and Army commanders chose to prefer charges.

The Army is also aware of 28 specific cases from various jurisdictions in which Army commanders pursued courts-martial after civilians declined to prosecute over the past 2 years. This is not an exhaustive list as the number of cases declined by civilian jurisdictions is not currently tracked by the Army.

Finally, there are cases, justified by unique circumstances, in which Army commanders have prosecuted soldiers who were acquitted in civilian courts. MSG Timothy Hennis was prosecuted at Fort Bragg, NC, in 2010 for rape and capital murder after three unsuccessful attempts by North Carolina to convict. SGT Brendan Burke was prosecuted at Fort Campbell, KY, in 2012 for the murder of his wife and mother-in-law after four civilian trials ended with hung juries.

Admiral GREENERT. Over the course of the last 2 fiscal years, Navy commanders prosecuted seven sexual assault cases declined by civilian prosecutors, resulting in two convictions for sexual assault and one for a non-sexual assault offense.

Over that same period, the Navy successfully prosecuted one general court-martial in which there was an acquittal in the civilian court and one additional general court-martial in which the civilian court found the member guilty, but only of one count (involuntary manslaughter) of several charged. The civilian court sentenced the accused to 12 months confinement. The Navy subsequently tried the accused and secured a court-martial conviction for voluntary manslaughter, aggravated assault, discharging a firearm, endangering human life and disorderly conduct. The accused received five years confinement and a bad conduct discharge.

The cases above do not include current cases currently undergoing an Article 32 pre-trial investigation or cases tried overseas under another country's criminal jurisdiction.

General WELSH. While the Air Force does not formally track this information, we routinely prosecute cases where the local authorities decline to prosecute, including sexual assault cases. The numbers below are the cases where this fact was noted in the case synopsis of the fiscal year 2011 and fiscal year 2012 Department of Defense Annual Report of Sexual Assault in the Military. This is not an exhaustive list because there may be cases where the local prosecutor waived or declined jurisdiction but that fact was not captured in reporting.

In fiscal year 2012, we preferred charges in at least seven sexual assault cases where civilian prosecutors declined to prosecute. Five of those cases went to trial and four of those resulted in convictions.

In fiscal year 2011, we preferred charges in at least eight sexual assault cases where civilian declined to prosecute. Five of those cases went to trial and five of those resulted in convictions.

General AMOS and Major General ARY. The Marine Corps has not historically tracked this specific statistic. In February 2010, the Marine Corps implemented its Case Management System (CMS) in order to accurately track and meet the legal requirements for timely post-trial processing and review. CMS was not initially designed to capture trial level data about certain types of cases, but since its inception, CMS has been modified and utilized to track valuable information about certain types of cases, such as sexual assaults and hazing. To this point, pretrial civilian involvement in a court-martial has not been tracked as part of CMS. The Marine Corps is modifying CMS to collect this data in the future.

Despite the immediate unavailability of the requested data, we are currently collecting responsive information from our offices in the field. We anticipate having our answer by June 10, 2013.

Admiral PAPP. [Deleted.]

Chairman LEVIN. Thank you, Senator McCaskill.

Senator Chambliss.

Senator CHAMBLISS. Thanks, Mr. Chairman.

First of all, let me say that I think each of you delivered a statement with emotion and passion, and you obviously recognize the seriousness of the issue. I take you at your word that we are going to get to the bottom of, number one, how we attack the issue and, second, as to the best way to resolve it moving forward, particularly in light of the fact that now if we are going to have women in combat, I think the potential for the issue to increase is going to become even greater.

Admiral Greenert, I want to go back to an incident that didn't occur on your watch. But as I recall, several years ago when we had the first females go out on an aircraft carrier that when they returned to port, a significant percentage of those females were pregnant. Now I don't remember exact percentage, but as I recall, it was pretty high percentage.

Was any investigation made by the Navy following that incident to determine whether or not all of those pregnancies occurred as a result of consensual acts, or was there any investigation made regarding sexual attacks that were made on that carrier?

Admiral GREENERT. Senator, I will have to take that one for the record and go dig up and get those facts behind that.

[The information referred to follows:]

An investigation would have been initiated if a sailor reported a sexual assault. In 1988, the Naval Criminal Investigative Service began maintaining records of sexual assault investigations (records are maintained for 50 years). In review of these archives, we found no reported sexual assaults during the first deployment of USS *Eisenhower* with women on board (October 1994–March 1995). Additionally, there were no delayed reports of sexual assaults upon the ship's return from deployment.

Senator CHAMBLISS. Well, my reason for asking that is that I hear and I understand all of you talk about the importance for chain of command and the importance that we follow that. If we are going to maintain good order and discipline in the military across the board, that has to be the case. But there also has to be some kind of fear put into these young people that come to every branch of our Service the very first day that they raise their hand and swear to defend the Constitution.

The fear has to be that that chain of command that we allude to really is serious about making sure that these types of sexual assaults do not occur and, by golly, if they do, starting with the drill sergeant all the way to the top, somebody is going to make sure that you pay the price if this does happen.

If you look at the private sector, if something like that had happened, there would have been an extensive investigation, and it wouldn't be taken for granted that everything was consensual. But I dare say that after that happened, it made the headlines in the paper.

I was on the Personnel Subcommittee at the time that happened, and frankly, I don't recall any investigation being made of it. Looking back on it, it is easy now to say it should have because of the number of instances that we have seen.

The easiest way to eliminate this problem is to make sure it never happens in the first place and that those men and women are trained early on as to the types of situations they ought to avoid and the consequences if something like this does happen.

So to each of you, let me just ask you, and I will start, General Welsh, with you and come right down the line, is there any background check done during the recruitment process to determine whether or not these young men and young women have had any incidences that might lead to this?

General WELSH. Sir, there are background checks done. But as was previously mentioned, I am sure there have been cases where people have entered the military and entered the Air Force who have had a problem with this in the past that is not in any formal database.

Senator CHAMBLISS. Admiral?

Admiral GREENERT. Background check in regard to criminal record, those are done. But as General Welsh said, to the degree and the success, we have to go back and check.

Senator CHAMBLISS. General?

General ODIERNO. The same. Background checks are done, but the ability to identify sexual offenders is certainly not 100 percent right now, and we have to do a better job of doing that. We need

help with having a better database, but also making sure we are scrutinizing those as we go forward.

General AMOS. Senator, we are plugged in deeply to the FBI database, and we absolutely willingly will not recruit a marine or candidate that has a sexual assault background at all. When we find out we have a marine that has committed and is convicted of it, they are discharged.

Admiral PAPP. Same here, Senator. We do a background on every person that is recruited. If we find someone who did slip through the cracks and we found there is a previous conviction, that is a fraudulent enlistment, and they are discharged.

Senator CHAMBLISS. Well, there may be some exceptions as, General Dempsey, you responded to Senator McCain on. There may be some exceptions to folks who slip through that crack, but you are going to have to go further than looking at convictions of individuals.

I don't know how you are going to do that, whether you get additional character references or what. There may be things known within the community about individuals that need to be given to the military to prepare, and it may be on other issues also. But we have to do a better job of screening folks before they come in.

The other thing we have to remember as we think about making changes to the UCMJ in this respect, the young folks that are coming into each of your Services are anywhere from 17 to 22 or 23. Gee whiz, that is the level or the hormone level created by nature sets in place the possibility for these types of things to occur.

So we have to be very careful how we address it on our side, but guys, we are not doing our job. You are not doing yours, and we are not doing ours with the rates that we are seeing on sexual assaults. As I said to start with, you recognize it. We recognize it. We have to figure this thing out because we simply can't tolerate it.

Thank you very much, Mr. Chairman.

Chairman LEVIN. Thank you, Senator Chambliss.

Senator Udall.

Senator UDALL. Thank you, Mr. Chairman.

Good morning to all of you for appearing today, and thank you for being here to discuss what is probably the most troubling issue that this committee has addressed since I was elected to the Senate.

For good reason, the American people trust our military more than any institution in our country, and that trust is well deserved. But now I am afraid that some of the dishonorable actions of our troops and some of our leaders are threatening that trust.

Every sexual assault committed by an American servicemember represents a fundamental failure of leadership, and we are not just talking about one or a few assaults. We are talking about thousands. If the troops can't trust their teammates or their leaders to keep them safe, then we are facing a fundamental breakdown of good order and discipline, and that puts our troops at greater risk than they already face.

We ask a hell of a lot of our troops, but I refuse to ask them to put up with rape. Make no mistake, sexual assault is a national disgrace. But the American people expect our military to set and

uphold the highest possible standard of conduct, and frankly, the military is failing to meet that expectation.

I have been working with my colleagues on both sides of the aisle on legislation that will help to end this plague, and I know that you are working toward the same goal. But to be blunt, you need to do more, and it needs to happen much faster.

As our senior leaders and as fathers, I know you agree that the status quo is unacceptable. So I expect to see bold and immediate action to end this crisis because I can assure you that that is what you will be seeing from me and my colleagues on this committee.

General, let me turn to my first question, and I would hope I could receive a yes or no answer. Do you feel that the DOD is lacking the authority or the tools it needs to reduce the incidence of sexual assault in the military? If not, then why do you believe that the number is not dropping? If DOD has the power it needs to solve this crisis, what isn't being done?

General Dempsey, I think it would be appropriate if I started with you.

General DEMPSEY. Well, as I said in my opening statement, Senator—by the way, thanks for your passion about this issue. I assure you we share it.

As I said in my opening statement, there are some things we have had an opportunity to reflect on together as chiefs with our SJAs, with DOD, and those things we have actually come forward and said we have had enough time to deliberate on those, and we are eager to move ahead. There are other things that this 576 panel I think will illuminate as we allow it to do its work.

So I think, in general, we have the tools that we need, but we haven't been getting it done. You said so. We agree. So, there are other measures to be taken, and we hope that that panel allows us to understand them.

Senator UDALL. General Dempsey, I think you speak for the panel here and for all the Service Chiefs.

General DEMPSEY. Well, be careful about that.

Senator UDALL. Okay.

General DEMPSEY. These guys are not bashful characters.

Senator UDALL. Maybe I will start then, start with Admiral Papp, and we can move across to General Amos and General Odierno and in turn? Admiral?

Admiral PAPP. Yes, sir. I think we have all the tools. It is all a matter of focus, and that is our job as leaders. We have been driving that focus now, and I expect to see results.

Senator UDALL. General Amos?

General AMOS. Senator, we absolutely have the tools. We have failed in this in the past. It has not been a top priority in the years past, in the decades past. If it was, we wouldn't be here today.

But it is now. It is now in my Service, and I speak for probably all of us, it is a priority in our Services now. We are after it, and we hear you loud and clear.

Senator UDALL. General Odierno?

General ODIERNO. I would just say I think we have adequate tools, but I think there is some refinement that we can work together with on this. I think that is around the edges, and I think

we just have to make sure we understand the second- and third-order effects of those refinements.

I think that, to me, is the critical piece to this as we move forward.

Senator UDALL. Admiral Greenert?

Admiral GREENERT. I think we have the tools, that the commander has the tools, we have the tools to provide a proper atmosphere of dignity, respect, and make sure the command climate is there. I think Congress and this committee have come forward with some ideas to further those tools, and I think that is great, and we should continue to pursue those, to move faster, to your point, Senator Udall.

We should evaluate these tools to make sure we understand them, the second- and third-order effects, so we don't—so we do make the progress that are intended.

Senator UDALL. General Welsh?

General WELSH. Senator, I believe that the tools are there. But I also agree that we can refine them. I think that is what this discussion of reasonable alternatives should include, everything from punishments to deterrent capabilities, to make sure people clearly understand what the result of this crime will be if you commit it.

I also think that one of the things we are lacking isn't the tool. It is just expertise in this arena. We don't have a lot of people who are brilliant in this area. We are trying to develop knowledge and expertise because we are so focused on this now. But it is going to take some time, and it is going to take partnering with people who really understand the problem.

Senator UDALL. Mr. Chairman, I will stop there. I know we are going to have a series of rounds, and I have many, many more questions, as do my colleagues. But this is truly something that needs immediate attention, and I know that we can solve this.

Thank you all.

Chairman LEVIN. Thank you, Senator Udall.

Senator Wicker.

Senator WICKER. Thank you very much, Mr. Chairman.

Thank you to each member of the panel.

Let me start with General Odierno because I was interested in your statement about the Colorado case, where the civilian authorities concluded that there was not enough evidence to proceed and then the military court came out with a different result.

General Odierno, as I understand it, we have a lot of legislative proposals. Among changes that are being advocated are three that I want to ask you about and how it would have impacted that particular case that you mentioned. One would be removing unit commanders from the military justice decisionmaking process when a crime is reported.

A second would be placing the convening authority for courts-martial for sex-related crimes outside the chain of command for either the accuser or the accused. Three, prohibiting convening authorities from setting aside convictions in courts-martial for sex-related crimes only.

So let me ask you, in the case that you mentioned, how would these changes have impacted the, in your view, successful result in

prosecuting a member of the military who turns out was a multiple offender?

General ODIERNO. I think the commander has information that is available to him and tools that are available to him that maybe might raise some doubt. So what the commander did in this case was then ask for further investigation by our CID.

I think if you had an independent authority, they wouldn't be privy to some of this information because the commander understands other things that go on within the climate of a command. So, I think it probably would not have happened if, in fact, the commander was not part of this process.

Now, again, it depends on exactly what the legislation means. I have to take a look at it. But my initial thought is it would have been very, very difficult in this case. I think the commander, understanding his command, understanding his soldiers, was able to direct the CID to continue to investigate, and when they came up with more and more information and talked to other people in the unit or other potential victims who came forward, they were then able to prosecute this case over a couple months' worth of investigation.

So, in my opinion, that shows the importance of the role of the commander and why we want him in the system. The only other one I would talk about, in terms of overturning convictions, I don't think that plays a role. That legislation did not play a role in this at all because that comes, obviously, after the court-martial would have been completed.

So then you look at overturning results of any sexual offenses, and so I don't think that would have had any difference in this case at all.

Do you want to add anything, Dana, on that?

General CHIPMAN. Yes.

Senator WICKER. Lieutenant General Chipman?

General CHIPMAN. Senator, I think what the chief talked about is, in fact, relevant. The idea that the CID can go back to prior duty stations and gather that pattern of misconduct that may have occurred there. As Senator McCaskill mentioned, one victim comes forward and then others, if you retain that evidence for a sufficient period of time and identify other victims, that can add and have a cumulative effect.

But it would not have altered the ability to set aside. I mean, I don't think that would have occurred in this case. We do think that we are inclined and over our special victim prosecutor history, we have pulled 28 cases that the civilians were not proceeding on and have been able to mount a court-martial prosecution since 2009.

Senator WICKER. Let me ask this question as a former Judge Advocate myself. In every instance that you mentioned, General Odierno—your JAG is sitting at your right hand today—the commander is in constant consultation with the JAG on all of these decisions?

General ODIERNO. Absolutely, Senator. Absolutely.

Senator WICKER. Okay. General Amos, I was intrigued by something you said, and there is a bit of a paradox here. You say you reject the status quo, and yet you say we have the tools.

Help clear up any confusion I might have over that. Which proposals have the most merit in moving from the status quo, and would you just clarify what you were trying to tell the panel?

General AMOS. Senator, we have the tools because we have the leadership, and I think we have the capability and wherewithal internal to the organization, the institution, the commands, to be able to actually make the changes, make the difference, and eradicate sexual assault. So that is what I meant by that.

But when I talked about I reject, what I was saying was—referring to was just the wholesale UCMJ, it is perfect, we are not going to look at it. Truth of the matter, it does need to be reviewed, and it does need to be looked at. That is what I was referring to by that, sir.

Senator WICKER. Okay.

General AMOS. I am more than willing to sit down and go through these things, the proposals.

[Additional information provided for the record follows:]

The Marine Corps generally supports the current Senate and House legislative proposals that make improvements in recruiting, retention, reporting, and transparency and maintain the commander as the central authority in military justice. The Marine Corps believes there is merit in many of the proposals, and that implementing them would improve the administration of military justice and the maintenance of good order and discipline.

The Uniform Code of Military Justice (UCMJ) is a carefully designed system with many deeply embedded checks and balances. The elements of the UCMJ that allow it to be portable, swift and efficient (commander's role in charging and selecting members, worldwide personal and subject-matter jurisdiction, and a two-thirds majority requirement for a guilty finding) also demand procedural safeguards that guarantee the accused's trial satisfies the Constitutional requirements of due process (enhanced rights against self-incrimination, a pre-trial Article 32 investigation, a robust and open system of discovery, and a prohibition against unlawful command influence). Major structural changes to the UCMJ should be carefully analyzed to determine any long-reaching effects on the efficacy of military justice and the accused's right to a fair trial.

The first group of proposals in which the Marine Corps is open to working with Congress to foster improvement involve changes to the UCMJ that will improve the military's ability to prosecute and defend complex cases such as sexual assaults while facilitating a commanders responsibility to balance swift prosecution with the accused's right to a fair trial. The following changes also help improve the transparency of the military justice system, thereby helping to create an environment conducive to victim trust, confidence, and reporting:

- The Secretary of Defense's legislative proposal to modify Article 60 (S. 964 Sec. 2; S. 1032 Sec. 2). It is a logical limitation on the power of the convening authority to act on the findings of a court-martial that is based on developments in the military justice system over the past decades.
- Legislation that requires a convening authority to provide a written justification, for inclusion in the record of trial, for any action that he or she takes under Article 60 (S. 538 Sec. 1; S. 967 Sec. 6(a); S. 1032 Sec. 2; Secretary of Defense's legislative proposal). This legislation ensures that a convening authority's decision and reasoning is transparent.
- The right of a victim to submit matters in the clemency process (S. 1032 Sec. 3). This change will ensure that victims of all crimes are able to communicate their preferences to the convening authority during the post-trial phase in a similar fashion to the accused, and is consistent with the victim's pre-trial right to communicate their preferences to the convening authority.
- Legislation that requires a commander who is informed of an alleged sexual assault to report the allegation to the next higher officer in the chain of command and to the relevant MCIO (S. 548 Sec. 5; S. 967 Sec. 7). This increases transparency and ensures prompt and proper criminal investigations of all allegations of sexual assault, regardless of the time, place, and circumstances.

• The Marine Corps supports the concept of an 0–6 SPCMCA level SA–IDA, (S. 548 Sec. 3(a)(I)(B)), as already implemented by the Secretary of Defense and the Commandant. Before making this a statutory requirement, the Marine Corps believes the concept should be studied by the RSP as part of the overall evaluation of the role of the commander. The Commandant of the Marine Corps expanded that Secretary's withhold to include not just penetration offenses, but all contact and child sex offenses. However, not enough empirical data has been collected to confirm that this is the proper SA–IDA level to justify making it a statutory requirement.

The Marine Corps believes any other changes to the fundamental structure of the UCMJ should be carefully and deliberately studied by the RSP. The Marine Corps recommends that the RSP, in addition to its already established tasks of reviewing the role of commander and advisory sentencing guidelines in sexual assault cases, look at sentencing reform in a broader sense. Specific issues the Marine Corps recommends studying include limiting sentencing authority to military judges and eliminating the good military character defense.

The second group of issues the Marine Corps is open to working with Congress for involve policy changes related to recruiting, retention, and reporting. Collectively, these proposals will have three positive influences: (1) they provide a rapid way to remove sexual predators from the military service, thereby improving the health and safety of the force; (2) they encourage reporting of sexual assault allegations and protect those who make those reports; and (3) they improve the Department of Defense's ability to report critical data related to all aspects of sexual prevention, response, and offender accountability. Together, these proposals also will have a very strong deterrent effect on criminal sexual behavior. This in turn adds to the authority commanders have to protect their marines, hold sexual criminals accountable, and maintain good order and discipline.

• Providing authority for Inspector General retaliatory investigations following sexual assault reporting (H.R. 1960 Sec. 537). This legislation ensures that the protections afforded to military whistleblowers are explicitly expanded to those servicemembers who report information regarding sexual assault.

• Recruiting policies that bar sex offenders from entering military service (S. 548 Sec. 2). The substance of this legislation will codify service regulations that already prevent sex offenders from entering military service.

• Retention policies that require mandatory separation for members convicted of qualifying sex offenses (S. 548 Sec. 2). While the Marine Corps currently processes all convicted sex offenders for administrative separation if they do not receive a punitive discharge at court-martial, this legislation will expedite that process.

• Related to this proposal, for inappropriate sexual misconduct that does not result in a criminal conviction, but which was substantiated by an investigation or a commander, the Marine Corps will require mandatory processing for separation. This new policy is part of the Commandant's Sexual Assault Campaign Plan and will soon be published in a revised Marine Corps Separations Manual.

• Requiring a victim's commander to brief the first general/flag officer in the chain of command within 8 days of an unrestricted report of sexual assault (S. 1032 Sec. 8). The "8-day report" ensures that commanders are providing timely and appropriate victim care. It also provides general or flag officer oversight and trend analysis of sexual assault cases within his or her purview; this in turn allows for authorities to direct appropriate training, remediation, or safety measures where appropriate. This proposal also mirrors existing Marine Corps practice.

• Comprehensively reviewing the training and qualifications of all DOD personnel responsible for sexual assault prevention and response within the Armed Forces for the discharge of such responsibility (S. 964 Sec. 1). This legislation ensures that the appropriate personnel are in these important jobs. The Commandant of the Marine Corps has already put this into practice by hand-selecting an O–6 operational commander, whom he recalled from a deployment, in order to put him in charge of the Marine Corps' Sexual Assault, Prevention, and Response office.

• Providing guidance on a commanders' ability to temporarily reassign or transfer those accused of sexual assault (H.R. 1960 Sec. 535). This legislation would ensure that commanders are aware of their authority to transfer a marine or sailor who is accused of sexual assault, when such a transfer or reassignment would be in the best interests of the victim and good order and discipline.

• Requiring a commander to screen a servicemember's personnel records for any history of sexual assault upon assignment or transfer to a new unit (S. 548, Sec. 6). This legislation is an added check on our system of screening for sex offenders at service entry and ensures that commanders are aware of any history of sex-related offenses of their incoming personnel.
• Increasing the requirements for retaining records for sexual assault cases (S. 548, Sec. 7). This legislation will improve tracking and is currently pending implementation by service regulation in the Marine Corps.
• Adding details to the DOD SAPR Annual Report (S. 871 Sec. 3). This requirement will allow the DOD and Services to more closely track those accused of sex offenses and gather data on a unit's history of dealing with these cases.
• Requiring the assignment of SANEs at the brigade level and higher unless it is an undue burden (H.R. 1986 Sec. 2). This requirement will ensure that each victim is provided the "gold standard" for sexual assault forensic examinations and will prevent revictimization and unnecessary trauma after a sexual assault.
• Establishing a uniform policy or legislation that appropriately proscribes relationships, and sexual contact between certain servicemembers (between trainers and trainees, and between recruiters and applicants), as well as mandatory administrative separation of members who violate this policy (H.R. 2206 Sec. 2(a)–(c)). This legislation recognizes the unique position of power present in the trainer-trainee environment and holds our trainers and recruiters to an appropriately higher standard and is reasonably designed to prohibit them from forging consensual relationships.
• Increasing the rights and protections for veterans with military sexual trauma (S. 294 Sec. 2; H.R. 975 Sec. 3). These protections will expedite veterans' benefits for servicemembers who have been the victim of a sexual assault.

I support all of the aforementioned proposals for the reasons articulated and because I believe that they will best ensure that our victims of sexual assault receive the care they need and the justice they deserve. I am also open to explore other innovative measures that could improve upon the current system, thereby better effectuating a commander's ability to maintain good order and discipline within a warfighting organization.

Senator WICKER. You mentioned, General Amos, aggressive steps that you have taken. Since you have taken those steps, is the situation better or worse now in the Marine Corps, in your judgment?

General AMOS. The numbers of reported sexual assaults have gone up 31 percent since I took those steps. You are going to look and say, "Oh, my gosh." When we began this campaign plan in June of last year, we said if we are going to be successful to set the conditions, the atmosphere, the command climate, such that our victims are comfortable coming forward, then we can expect the numbers of reported incidents to go up.

We don't know what the total number of incidents are. They are up there somewhere. But what we do want to do is try to capture as many of those as we can. So our numbers of reported incidents have gone up. I expected that to happen. I don't take solace in it, but it is the reality of a successful campaign.

Senator WICKER. You think they were occurring, but now more of them are being reported because of your aggression?

General AMOS. Oh, absolutely, sir. What we don't know is the top line. In a perfect world, the total numbers of real assaults, whatever that number is, if we are successful in our campaign plan, will come down. The numbers of actual reports will go up, and somewhere they will meet, and we will have absolute ground truth, which is what I think Senator——

Senator WICKER. Okay. Admiral Greenert, is that happening in the Navy in these particular locales where you have really been pressing it? At schools, at the Naval Academy, at Pensacola, are

things getting better or getting worse? Are we seeing more reports because reporting is okay now?

Admiral GREENERT. We are just getting started at the Naval Academy and in Pensacola. But in San Diego and in Great Lakes, where our training command is, we are getting more reports. Navy overall is a 50 percent increase in reports.

We are getting a significant amount, I have to give you the numbers, of incidents that occurred a couple of years before, where somebody has decided to come forward from the past. But overall, in those sites that I described, in Great Lakes and in San Diego, particularly in Great Lakes, the number of incidents has gone down by two-thirds.

It is still we have promising information in San Diego some, but it is not statistically significant, from 21 to, say, 13 over a 6-month period. That is just data right now, Senator. We have to look at it.

Senator WICKER. Thank you.

Chairman LEVIN. Thank you very much, Senator Wicker.

Senator Manchin.

Senator MANCHIN. Thank you, Mr. Chairman.

Thank all of you for being here today.

I had the privilege of meeting with Secretary Hagel a few weeks ago at the Pentagon, and I know that he is serious about cutting this cancer from the ranks of the military. It is a tough issue and one that has plagued our military for far too long, and I think you all would agree on that.

I believe you are understanding that Congress is serious about not going to sit back and let this continue. I know that all of you are completely committed to working with us, and we can't change what has happened, but we can work very hard to make sure it doesn't continue to happen.

To all of you, I would say this is not a new problem. I look at the Navy Tailhook scandal, 1991. The Army basic training scandals in the mid-1990s. The Coast Guard captain who was kicked out in 2010 for improper relationships with subordinates. You had the Air Force basic training scandal at Lackland. There are many, many more. Most disturbing are the recent abuses by those charged to prevent sexual assault.

After each of these instances, DOD leaders all said "never again" or used phrases like "zero tolerance." So I guess I would ask what is different this time? What is different this time? If we have a history of this repeating itself and nothing ever being done, what is different now?

General Dempsey?

General DEMPSEY. Well, I will respond, and then you can redirect to the chiefs. But I will have 39 years in the Service tomorrow. So I have been through periods of enormous change and also periods where we have had this issue.

You talk about the 1990s, I have actually spoken—we have actually spoken about that as well. I think what happened in the 1990s is we focused on victim protection. We immediately focused our energy on victim protection probably out of balance——

Senator MANCHIN. Versus prevention.

General DEMPSEY. Right, versus prevention. That is right.

Then, as we have reflected on it, we entered this period of 12 years of conflict. Frankly, I think we probably—I will speak for myself. I think I took my eye off the ball a bit in the commands that I had. The chief talks about doing command climate surveys. At the operations tempo (OPTEMPO) we were operating, some of that stuff, frankly, just got pushed to the side, and we didn't do the right amount of command climate surveys.

What you are hearing, I think, today is the recognition that we have to go back to take some of these tools that we have and make better use of them and focus our energy on it. We are also spending a lot more time now working on the prevention side of it.

I think we also have to acknowledge that coming out of this period of conflict, we have soldiers, sailors, airmen, marines and coastguardsmen who engage in some high-risk behavior as they come out of the conflict. So, when you tie it all together, I wouldn't say that we have been inactive, but we have been less active than we probably need to be.

What you are hearing reflected here today is a willingness to take the tools we have, but also consider other tools as well.

Senator MANCHIN. I would just say that I think that the Senate or Congress is more balanced with our Senators of different gender, if you will, who bring a balance to us and bring this, and you can see all the different aspects of what we are all concerned about, and we support all of their efforts.

But with that being said, do you believe by leaving it in the chain of command, if anybody—and General Amos, I would say that there is a lot of power in the military. With the ranks, and I think that is the concerns we may have, is it truly going to be able to correct itself without intervention of the really tough legislation we are talking about?

General AMOS. Senator, I would say the legislation, the one we are talking about removing the convening authority out of the chain of command is absolutely the wrong direction to go. I think it is going to take—it will take the eyes off the commander on a problem that is enormously important right at a very critical time when we are committed to making the changes.

The changes in command climate, the changes in confidence can only start at the beginning. I mean only can start at the top. So I think we are going in the wrong direction.

Senator MANCHIN. General, these types of sexual assault and abuse have gone on for far too long, and for over 20 years, we have identified some serious, some serious problems that have happened, serious crimes, and have not gone answered. I think that is why you have seen it get to the level it is today with 26,000 that have been known and only 3,000 reported.

It is almost intolerable that we can continue on this current path by allowing the commanders to be in charge at the level they are.

General AMOS. Senator, I will make a statement here. I am so committed, my Service is, and we all are, but I will just speak for myself on this thing, to making the changes and turning this completely around that if I honestly believe that pulling the commanding officer, the convening authority, the disposition authority out of the chain of command would fix it, then, sir, I would raise my hand and I would vote for it today.

I would vote for it today. It is not clear to me that that is the case because it is not that way in anything else that we deal with in the military.

Senator MANCHIN. Is there anybody here that disagrees with General Amos basically on removing this from the chain of command? Anybody disagree with that statement?

General DEMPSEY. No.

Senator MANCHIN. You all are in agreement that it must stay in the chain of command?

General DEMPSEY. I am. Yes.

Senator MANCHIN. Anybody else want to speak to that?

Admiral GREENERT. Senator, I don't know how to take it out of the chain of command and then in the continuum of responsibility and authority that we tell our people that they are responsible for the welfare, and this goes to training, all the way through combat, all of that, how you take that part out of it and then you put the victim back in, if they come back. Or the report is reviewed, the investigation is reviewed, and it is returned, they say, well, here you go. It is back again.

I just don't understand how to do that yet. So, from that perspective, I do agree with General Amos because I haven't been able to internalize or understand it. But as I study the proposals, I don't know how that works.

But this I do know. We do hold them accountable for that. That has been forever. Especially those of us in the Navy who go out to sea within the units and that, it can confuse the crew, and that concerns me.

I want to—I have to understand. I think it needs to be reviewed much more closely before we jump on it.

Senator MANCHIN. I will save my other questions for the second round, but thank you very much for your answers.

Chairman LEVIN. Thank you very much, Senator Manchin.

We are not planning, by the way, on a second round on this panel.

Senator MANCHIN. We are?

Chairman LEVIN. We are not. Just so——

Senator MANCHIN. I will wait for another day.

Chairman LEVIN. Thank you. Or you could ask questions for the record.

Any of us, by the way, are free to answer or ask, excuse me, questions for the record, but we are not planning on a second round on this or other panels, given the number of witnesses that we have to cover today.

Thank you, Senator Manchin.

Senator Fischer.

Senator FISCHER. Thank you, Mr. Chairman.

Thank you all for being here today.

It seems like the talk in the media has focused on the seven women members of this panel, but I would like to point out that all of my colleagues take this issue very, very seriously, and they have been leaders in the past on this—Senator Levin, Senator Inhofe. We need to resolve it, and it needs to happen soon.

We are looking at a crisis here that is being viewed through the lens of gender, but I think all of us need to acknowledge that this

isn't a gender issue. This is a violence issue, as my colleague Senator McCaskill so eloquently reminded all of us. This is a crisis that I believe the military needs to step up and confront.

In response to a question that we had from Senator Reed previously, many of you indicated that no commanders have ever been removed for setting an inappropriate environment with regard to sexual assault. In fact, Admiral Greenert, in your prepared statement, you wrote that we are also addressing command climate and how it contributes to sexual assault, particularly the impact of sexual harassment and how it contributes to a culture that may enable sexual violence.

I guess I would first ask you, Admiral, do you believe that this climate we have, this culture that we are kind of just putting aside sexual harassment and not taking action on that, contributes then to sexual assault?

Admiral GREENERT. I believe that a command climate that tolerates innuendos, jokes, posters, and allusions therein involving gender sets the stage for an environment where a predator could, if not flourish, exist. I believe that that, first of all, you have to get to that, and we are focused to get to that, and that I am hopeful then because I don't know that it would expose such a person.

Senator FISCHER. I would ask each of you, have you evaluated any ways to enhance the current command climate reports to make commanders more accountable for the environment that they are setting within your ranks. If we could start with you, Admiral?

Admiral PAPP. We have no formal process, ma'am. But that is something that we stress verbally as we go through command and operations school, when we send people out there with all the senior field commanders that I select to take over our major commands, that they are to focus on command climate issues and make sure that any report of any sort of command climate violation is thoroughly investigated.

Most often, we send our senior enlisted member from the district or the area to do a climate survey. We have a couple of units right now that we have heard reports on, and we are doing climate surveys on them.

Senator FISCHER. Do you think it would be beneficial if you had a formal process in place?

Admiral PAPP. That is certainly one of the things that we are looking at through our sexual assault task force.

Senator FISCHER. Thank you.

General?

General AMOS. Senator, I think command climate is the single, my perspective, is the single greatest indicator not only for the combat readiness, the equipment readiness, the personnel readiness of the unit, all of those things, but also the health, what we call the spiritual health of that institution. I am not talking religion here. I am talking about the ability to be able or the absolute sacredness of taking care of one another, not being a predator, not preying on one another.

So we started the command climate officially. It begins the end of this month. I approved it last month, as I said a bit ago. Those reports for the climate of that organization, it will be everybody will take it, will go to the next higher in the chain of command.

So that the commander's commander will now be able to look into that organization and say, okay, how are they with regards to sexual assault, sexual harassment, and the like.

Senator FISCHER. Thank you.

General?

General ODIERNO. Senator, several things. One is I directed about a year ago the incorporation of command climate surveys done within 3 months when you take command, 6 months, and then 12 months thereafter to get out specifically this year.

Second, we are doing a pilot on 360 assessments of battalion and brigade commanders, which will incorporate questions about the entire command climate to include sexual harassment, sexual assault. We are in the process of determining what we will do with those assessments, and that is part of the pilot.

Once we get those, I expect that I am looking at directing 360s for every battalion and brigade commander beginning this fall. I am just waiting for the results of this pilot about how we do it.

So with those kind of issues, it is about commanders understanding how important that climate is, and those will be reported to those who they work for as we go through this process.

Senator FISCHER. I know that all of you value trust and its importance within your ranks. So, General, with this pilot program, how do you develop that trust, and how are you going to evaluate it? By the number of reporting that comes out that General Amos talked about earlier?

General ODIERNO. I think, yes, absolutely. I think one of the things we are struggling with, there is lots of different opinions on this. But the one thing I know for certain is that we need to make sure commanders understand that we won't tolerate toxic environments, and toxic environments can be created in several different ways. Sexual harassment, sexual assault is part of a toxic environment, and that is what we are looking to correct in this, as we look at this.

Admiral GREENERT. Our Navy Inspector General visits, and inspections include the command climate with regard to in my case that I described to you of sexual harassment. Also General Odierno and General Amos mentioned command climate surveys. They are done at the relief of a commanding officer and then periodically after.

Those results go to the immediate superior in command to review on the unit, and then those comments then have to be adjudicated—reconciled between the two overall so that you look at the entire ship types. All the surface ships and air, those are reviewed by what we call the type commander. So they move up.

Senator FISCHER. How often are those surveys done, and who receives them and responds to them?

Admiral GREENERT. Immediately upon or within I think it is 6 months of relief of a commanding officer—I will get you the details of this. But shortly after relief by the commanding officer. Then I will get you specifically the period. I think it is about annually afterward that you get a command climate survey.

Senator FISCHER. Do you take that into consideration on the next assignment for the officer then?

Admiral GREENERT. Yes, Senator. Because that survey is then reviewed by the immediate superior. Among the things you evaluate your unit commander on would be reports such as this.

Senator FISCHER. Thank you.

Chairman LEVIN. Thank you. Thank you, Senator Fischer.

Senator FISCHER. Thank you, Mr. Chairman.

Chairman LEVIN. Senator Shaheen.

Senator SHAHEEN. Thank you, Mr. Chairman.

Gentlemen and Admiral DeRenzi, we very much appreciate your being here today, and I know that everyone on this committee shares the appreciation for your service and for the service of all of the men and women in our military today. I know that we are all very concerned about addressing what is a horrible scandal on the good service of most of the men and women who are serving. So thank you for your efforts to do that.

Chairman Levin, when he gave his opening remarks, talked about some of the scandals that have surfaced in the last couple of years from the allegations at the Naval Academy about rape of one of the female midshipmen to the rugby team being suspended at West Point, to the recent videotaping at West Point, to Fort Hood, to the Aviano Air Base, to Lackland. All of these scandals that have surfaced make me wonder if the measures that have been taken are going to be able to fundamentally address this issue and whether it is not going to take a more significant look at how we operate in the military to really address this scandal at all levels.

So, Admiral Greenert, you talked about the chain of command and how it might be implemented to address some of these crimes outside of the chain of command. I wonder if anybody here has looked at some of our allies, at Britain and Canada and Israel, which have removed the chain of command from serious cases, and how that is working and how they have done that?

General Dempsey or Admiral Greenert, I don't know which one of you might like to respond?

Admiral GREENERT. I have not, Senator. But I will. I know the Israel navy chief very well, and I will have that conversation. I thank you for that tip.

Senator SHAHEEN. General Dempsey, do you want to add anything?

General DEMPSEY. We have just begun that, actually, in preparation for this hearing and for the consideration of some of the legislative recommendations we have. So I have a briefing from my Australian counterpart and my Israeli counterpart, and I have a couple of other requests outstanding.

Senator SHAHEEN. I hope you will let us know what you find out.

Almost everyone today has talked about the importance of good order and discipline, but I am wondering if you can respond to how sexual assault in a unit that goes unpunished and unreported might undermine unit morale and cohesion, especially as we look at more and more women joining the ranks of our military. What has been your experience on that?

General Odierno, have you got——

General ODIERNO. I think, as I said earlier, it gets to the very fabric of who we are. I mean, we have to rely on each other totally.

As a ground force, close combat, no matter what your position is, you have to be able to rely on those to your right and left. If you can't rely on them to protect you, whether you are a male or a female, it goes against everything we are.

So, in my mind, it gets to cohesion. It gets to our ability to accomplish our mission. It fundamentally goes at the discipline of our unit, and that is what makes it so disturbing to all of us. We just don't expect that in our units, but we are seeing it. So, it is why it is so important that we have to deal with this issue.

As you said, we are increasing the role of women. We are increasing the number of women. We are increasing. They are in the Army significantly as we move forward, and so we have to deal with this because we rely on them and are going to depend on them more and more because we need their talents. It is important for us to go forward with this.

Senator SHAHEEN. Senator Fischer and I have introduced legislation that would make the sexual assault prevention response positions more high profile, and I was pleased, General Odierno, that in your testimony you addressed this. I am wondering if there is a response from the other chiefs who we haven't heard from about the possibility of enhancing and upgrading those sexual assault prevention and response positions so that commanders have a hand in that selection process.

Do you think this is something that would be helpful, General Amos?

General AMOS. Senator, I think absolutely yes. But if I could just caveat that with how we have done it. A year ago, when we were putting this campaign plan together and said, okay, enough is enough, let us change it. Let us fix it. I personally selected the head of our program and brought—he was out overseas in command of 2,500 marines, a Marine expeditionary unit. I brought him home early from the Western Pacific to come in and head that up because he had the passion, the intellect, and the capacity to be able to do that.

So, in that regard, Senator, I think those individuals in charge of representing these programs to us absolutely should be handpicked, and in my Service, I am the guy that does that.

Senator SHAHEEN. General Welsh, do you want to respond to that?

General WELSH. Yes, ma'am, I would. Thank you for the question because it gives me the opportunity to comment on the SARCs we already have, who are doing absolutely phenomenal work. They feel like they are battling upstream on this issue, and they are more frustrated than anyone is. Anything we can do to enhance their training and their qualifications and the support we give them and the visibility we give them is a good thing.

We are currently in the process of expanding the numbers. Moreover, on the air staff, we are moving the entire office to have it report directly to our Vice Chief of Staff. We have a two-star general, General Maggie Woodward, who will take over that office now. We will hire a Senior Executive Service deputy. We will expand the number of people in the organization and hire highly qualified experts to come in and help give us the expertise that we need to help move forward in this area.

You asked the question a minute ago about what can happen if a climate is allowed to continue. I believe the Lackland issue that we saw the last couple of years is exactly that. It was allowed to continue. It got very ugly very quickly, and that is the danger.

One of the comments I made earlier had to do with not knowing if we have relieved commanders for this. While I don't think it was directly termed for a climate of sexual assault, we did have two commanders at Lackland that were relieved by General Ed Rice, and it was clearly related to the climate that they had allowed to develop.

So, I would like to correct that on the record. Somebody reminded me of that a moment ago.

Senator SHAHEEN. Thank you. My time is up.

Chairman LEVIN. Thank you very much, Senator Shaheen.

Senator Graham.

Senator GRAHAM. Thank you, Mr. Chairman.

I think Senator McCaskill made a point that I thought was very intriguing. When people come forward and talk about being assaulted or bad working environment are completely two different things. Is there a system in place to capture those two different things?

Of all the numbers we are talking about, can you tell us from your Services' point of view of the numbers, the thousands, whatever allegations there are being made out there, how many of them fall into the category of inappropriate conduct versus a crime? Can you tell me that in the Coast Guard?

Admiral PAPP. No, sir. I don't have stats or figures that I can give you, and we can certainly do that for the record.

[The information referred to follows:]

General ODIERNO and Lieutenant General CHIPMAN. The Army's annual report on sexual assault currently includes the following categories: rape, sexual assault, aggravated sexual contact, abusive sexual contact, forcible sodomy, and any attempts to commit these offenses. Several methods of distinguishing between the ranges of infractions could easily be developed from our current reporting and data collection. For example, the Army could easily separate the reporting into three or more subsections such as: penetrating offense, non penetrating and abusive sexual contact (unwanted touching).

Furthermore, the existing Defense Manpower Data Center Human and Gender Relations Surveys examine a very broad spectrum of misconduct defined generically as "unwanted sexual contact." This broad categorization complicates our efforts to accurately measure the gap between estimated incidents of sexual assault and reported sexual assault. However, the Army Research Institute conducts a separate survey every 2 years that examines a much more specific set of behaviors and can accurately distinguish between inappropriate conduct and criminal acts.

General WELSH. We will work with Chairman of the Joint Chiefs of Staff leadership to propose and put into place a system of tracking the sexual assault misconduct in different categories, especially rape, sexual assault, and nonpenetration sexual contact.

One point of clarification from the hearing, a distinction is already made in the Workplace and Gender Relations Survey of Active Duty Members between unwanted sexual contact (i.e., sexual assault) and unwanted gender-related behaviors (i.e., sexual harassment and sexist behaviors).

Although the term "unwanted sexual contact" does not appear in the Uniform Code of Military Justice (UCMJ), it is used as an umbrella term intended to include certain acts prohibited by the UCMJ. For the purposes of the 2012 WGRA survey, the term "unwanted sexual contact" means intentional sexual contact that was against a person's will or which occurred when the person did not or could not consent, and includes completed or attempted sexual intercourse, sodomy (oral or anal sex), penetration by an object, and the unwanted touching of genitalia and other sexually-related areas of the body. This misconduct is covered under Article 120,

125, and 80 of the UCMJ, and these are the offenses included in our current tracking.

To determine the extent of unwanted gender-related behaviors, members were provided a list of 12 sexual harassment behaviors and 4 sexist behaviors and were asked to indicate how often they had experienced the behaviors in the past 12 months. The 12 sexual harassment behaviors comprise 3 components of sexual harassment-crude/offensive behavior (e.g., repeatedly told sexual stories or jokes that are offensive); unwanted sexual attention (e.g., unwanted attempts to establish a romantic sexual relationship despite efforts to discourage it); and sexual coercion (e.g., treated badly for refusing to have sex). Sexist behavior is defined as verbal and/or nonverbal behaviors that convey insulting, offensive, or condescending attitudes based on the gender of the respondent

General AMOS and Major General ARY. The different types of sexual offenses are separately tracked and reported under existing surveys and systems.

The term "unwanted sexual contact" (USC) is used in the Workplace and Gender Relations Survey of Active Duty Members (WGRA) and is defined as "intentional sexual contact that was against a person's will or which occurred when the person did not or could not consent, and includes completed or attempted sexual intercourse, sodomy (oral or anal sex), penetration by an object, and the unwanted touching of genitalia and other sexually-related areas of the body." The WGRA further divides USC into three categories: penetration of any orifice; attempted penetration; and unwanted sexual touching (without penetration). The full WGRA report includes a break-down of responses in each of these three categories.

The Department of Defense, in DOD Directive 6495.02 (Sexual Assault Prevention and Response (SAPR) Program Procedures), defines "sexual assault" as "Intentional sexual contact characterized by the use of force, threats, intimidation, or abuse of authority or when the victim does not or cannot consent. As used in this Instruction, the term includes a broad category of sexual offenses consisting of the following specific UCMJ offenses: rape, sexual assault, aggravated sexual contact, abusive sexual contact, forcible sodomy (forced oral or anal sex), or attempts to commit these offenses." The purpose of having a broad definition of sexual assault is to permit a larger population of victims access to SAPR services.

Existing systems used to track "sexual assault" offenses (e.g., the Defense Sexual Assault Incident Reporting Database (DSAID), which is a centralized, case-level data system for documenting sexual assault reports; and the Marine Corps Case Management System (CMS), which tracks court-martial cases in a single database) identify the specific alleged UCMJ offense(s).

Allegations of sexual harassment are separately tracked using the Discrimination and Sexual Harassment (DASH) system. The purpose of the DASH system is to track all formal complaints of discrimination or sexual harassment and the parties involved in the investigation until final action is taken.

The following chart breaks down the types of offenses, according to the 2012 WGRA.

USC Characterization	Unwanted sexual touching (percent)	Attempted sexual intercourse, anal or oral sex (percent)	Completed sexual intercourse, anal or oral sex (percent)	Did not specify	Maximum margin of error
DOD Total	42	15	20	23	+/-9
USMC Total	29	22	20	30	+/-9
USMC Males	31	15	10	44	+/-5
USMC Females	26	32	34	8	+/-14

Derived from DMDC's 2012 Workplace and Gender Relations Survey of Active Duty Members Tabulations of Responses, pgs. 348 and 349.

Admiral PAPP. [Deleted.]

Admiral PAPP. But just intuitively and anecdotally, whenever we have somebody who is removed for command climate issues, inevitably it goes much deeper, and we find other——

Senator GRAHAM. I guess I would just say command climate doesn't do justice to what we are talking about. Command climate is a hostile workplace to me. A crime is a crime.

So, to me, how do we capture the difference between the sexual perpetrator who somehow got through the gates of training in the military, who has been able to survive and sometimes flourish in the military performing their duties, but yet have this as a disposi-

tion that will destroy the military if not addressed? How do we separate those two? Does anybody have any ideas to make sure we understand the difference?

Admiral PAPP. Well, sir, I agree with Senator McCaskill completely that there are two separate things we measure.

Senator GRAHAM. Yes, but are they being reported in a way? What about the Army?

General ODIERNO. Yes, right now, they are required to be reported together.

Senator GRAHAM. Well, I think——

General ODIERNO. We have to separate them. We can separate them.

Senator GRAHAM. I think that is a really good place to start.

General ODIERNO. We understand that.

Senator GRAHAM. Because I don't want everybody in the country to think that every allegation is of rape. Now every allegation of "I was inappropriately talked to" is very important and needs to be dealt with that I was not treated right. But I think there is a big difference between the two systems that she is describing, and I don't believe there is any tolerance for anyone to allow someone who is a sexual predator to get anything other than just as hard a hit as we can give them.

I would like to follow up on her question and you all report back to us how you would create two tracking systems.

Now about lay people making prosecutorial decisions, that is a bit odd to the average person. I mean, in the civilian community, decisions to prosecute individuals are made by trained lawyers, sometimes elected, sometimes appointed. How would you justify this in the military, to have such a different system?

General ODIERNO. I would just say that I think what we do in the military is very unique. We are asked to do things that are very different than any other profession, and that is why the UCMJ was originally created, for us to have this unique relationship because of the good order and discipline that we often talk about and the unit cohesion that is necessary to do the things that we are asked to do.

Senator GRAHAM. Would you agree that a military commander has authority that is hard to find a counter to in the civilian community?

General ODIERNO. That is correct.

Senator GRAHAM. Very few of us have the authority to order somebody into battle.

General ODIERNO. That is correct.

Senator GRAHAM. Very few of us have the responsibility of commanding people where they don't really get to discuss among themselves if this is a good idea.

From the Navy point of view, I remember writing a law school paper about the absolute authority of a naval commander at sea. There was a case where a guy had been up for like 20 hours. He went to sleep for 2 hours, and the ship ran aground, and they court-martialed the commander. Why would you do that?

Admiral GREENERT. Well, we entrust in the commanding officer of the ship all of the people aboard and the ship itself, part of the Nation. That authority and that delegated authority to the com-

manding officer is absolute, and they are absolutely responsible for anything that goes on.

Senator GRAHAM. All I would tell my colleagues, the military is truly a different world.

General Gross, who picks the jury?

General GROSS. Senator, that is the convening authority.

Senator GRAHAM. Is there any such thing as a jury of one's peers in the military?

General GROSS. It is different. I mean, everybody on the panel—

Senator GRAHAM. You are not going to get a jury of your peers?

General GROSS. That is correct. They outrank. They outrank the individual who is on trial. In the case of an officer, it is an all-officer panel, but every officer outranks the individual.

In the case of an enlisted, they can elect to have an enlisted panel, and part of the panel will be enlisted.

Senator GRAHAM. But they will be all senior enlisted people?

General GROSS. That is correct.

Senator GRAHAM. The point is that court-martial panels are not jury of one's peers. They are juries made up of people who have expertise and knowledge and experience for the unit who are assigned to do justice in individual cases, but have that command perspective because the whole point of military justice is to render justice in individual cases, but to make sure the system is moving the unit forward as a whole.

I understand this is a bit difficult to absorb for a lot of folks who are not in the military. But I would say that from my point of view, that commanders do listen very closely to their JAGs. It seems like the only cases that go forward are the bad cases. I don't know why you would want to send a case to court-martial where your JAG said we didn't think it was a good case.

Can you tell us why you would do that, General Amos?

General AMOS. I would be happy to, Senator, because there are times when I have sent a case forward when my JAG has said, sir, we don't have enough compelling evidence. It is a "he said, she said," which, quite honestly, makes up an awful lot of our sexual assault cases.

There is alcohol involved. It is complicated, and I, in those cases, often have forwarded it to a court-martial, forwarded it to an Article 32, then a court-martial because I am going to let the jury, the judge sort it out. But I want to send a signal to the command that it is not tolerated here because it may be "he said, she said" to me, but it may come clearer in the matter of a court.

Senator GRAHAM. Gotcha. One last question, I am over my time. Article 60 power, the ability to set aside a finding or a specification and reduce a sentence, do you all agree that that should be taken away from commanders in most cases? To me, that is internally inconsistent with your message to us in terms of power of the commander. How do you reconcile that?

General CHIPMAN. Senator, if I can answer that? I think that when the code was promulgated in 1950, it was before substantial reforms had occurred in 1968, where we brought in trained judges, qualified lawyers, to perform those roles. So, I think that the conditions that warranted that authority back in 1950, coming out of our experience in World War II, no longer pertained.

Chairman LEVIN. Thank you, Senator Graham.

Now Senator McCaskill has raised this question of keeping statistics much more separately in terms of assaults, sexual misconduct involving assaults versus other types of sexual misconduct. That might not be the perfect dividing line. I am not sure. But the point that she raised I think is extremely important. Senator Graham has just emphasized that as well.

We would ask you, I think under your leadership, General Dempsey, to propose and to put into place a system of tracking the misconduct in different categories so that we can, number one, understand it better but, number two, have a baseline that we can follow. That would be very helpful to us.

So will you, General Dempsey, take the leadership, see if that is possible with the stats that are currently available. If it is, fine, we will have an earlier baseline.

Senator MCCASKILL. It is not.

Chairman LEVIN. Apparently, it is not. Senator McCaskill said I think it is not, and one of the Services, I think, indicated it is not. So either way, but assuming it is not available, start now. If it is, you can reconstruct something, fine.

Senator MCCASKILL. Mr. Chairman, the numbers that we have been relying on that have been so widely reported is the 26,000 number, and that is from the biannual survey. The question is, have you had unwanted sexual contact? That is the problem is that that includes sexual harassment, unhealthy work environment, and rapists.

Chairman LEVIN. Right.

Senator MCCASKILL. That doesn't help us track whether or not we are getting at this or not.

Chairman LEVIN. I think it is an important point, and we are asking you, starting now, if you can't reconstruct it earlier, to give us a much more useful system, okay?

General DEMPSEY. We will go to work on it. If I could add, though, just so you know how we got here, because I recalled it might be now 10 or 12, 15 years ago, a conversation about whether we should separate these categories. Because in separating them, you could encourage some to ignore the unwanted sexual touching or the sexual harassment and focus in only on the sexual assault, and it was our view 15 years ago that this was a problem that was a continuum, not individual acts.

I know, but I am suggesting to you we didn't get to this point by being stupid. We actually got to this point because we were trying to do the right thing. Looking back at it, it is probably time to adjust it.

Chairman LEVIN. Right. Well, we thank you for taking on that task. We think it is now important that we do that.

Senator Gillibrand, thank you for your leadership on your subcommittee, too. You have had hearings on this subject, and you have been a leader on this subject. We very much appreciate both of those things.

Senator Gillibrand.

Senator GILLIBRAND. Thank you, Mr. Chairman.

Thank you for holding this hearing, and I think what Senator Levin said when he opened up this hearing, he said discipline is

the heart of the military culture, and trust is its soul. I am sure there is not one of you who disagrees with that statement, and this goes to the very reason why we are having this hearing.

I have spent a lot of time over the past several months trying to understand this problem because I appreciate the service and dedication every single one of you gives every single day to this country. I am extremely grateful with the renewed passion and determination so many of you have shown in this hearing about how you will get to the bottom of this problem and how you end the scourge of sexual violence and assault in the military.

I believe you when you say that is what you want to accomplish. But what I want to talk about today is how we are going to accomplish that and what the actual problems seem to be.

After speaking to victims, they have told us that the reason they do not report these crimes is because they fear retaliation. More than half say they think nothing is going to be done, and close to half say they fear they will have negative consequences. They will be retaliated against. Of the victims who actually did report, 62 percent said they actually did receive some retaliation.

Unfortunately, the reports that we do have, the incidence of reporting has actually dropped in comparison to the number of cases. It has dropped from 13 percent to under 10 percent of the vague estimate of 26,000 incidents. We don't know how many are rapes and sexual assaults and how many are unwanted sexual attempts.

Now Secretary Hagel has said the most important thing we can do is prosecute the offenders, deal with those that have broken the law and committed the crime. If we can do that, we can begin to deal with this issue. Each one of you have talked about today military trust.

General Odierno, you said the military is built on a bedrock of trust. Crimes cut to the heart of military readiness. You have to be able to rely on our troops. It goes to unit cohesion and discipline. You have said it perfectly.

General Amos, you have said the exact same thing, that we need to have trust.

General Welsh, you said the bottom line is, though, they don't trust us enough to report.

General Amos, you said the exact same thing in April, you say why wouldn't female marines come forward? Because they don't trust us. They don't trust the command. They don't trust the leadership.

General Dempsey, you said the same thing. You said that you might argue that we have become too forgiving because if a perpetrator shows up at a court-martial with a rack of ribbons and has four deployments and a Purple Heart, there is certainly the risk that we might be a little too forgiving of that particular crime.

Lieutenant General Harding, you just answered Senator McCaskill's question, saying you think character should be considered whether or not we go to trial. No legal standard in the country agrees with you. That is why we want prosecutors to make that decision.

So my concern is this. You have lost the trust of the men and women who rely on you that you will actually bring justice in these cases. They are afraid to report. They think their careers will be

over. They fear retaliation. They fear being blamed. That is our biggest challenge right there. Right there.

So what I want to ask you, now you have all said you could never support taking this out of the chain of command. Now the key question Senator McCaskill made is very important. I agree with you. The chain of command is essential for setting the climate. Absolutely. You do set the climate.

That is why when we looked at this problem we have chosen to keep all Article 15 issues in the chain of command. We have also chosen to keep all crimes of mission—going AWOL, not showing up on time, not charging up the hill when you command your servicemember to do so. So we have understood that you do set the tone for all of this.

But there is a difference between setting the tone, dealing with misdemeanor-level behavior and dealing with some criminal behavior. But when we are talking about serious crimes, serious crimes like rape and murder, crimes that have penalties of more than a year or more, what several of us are asserting and arguing today is we think you should do what other countries around the world do, who we fight with every day, that are our allies. They are side-by-side with us in combat—Israel, the United Kingdom, Australia, Germany.

They have taken the serious crimes out of the chain of command for precisely this reason because the commander, while you are all so dedicated and determined, not all commanders are objective. Not every single commander necessarily wants women in the force. Not every single commander believes what a sexual assault is. Not every single commander can distinguish between a slap on the ass and a rape because they merge all of these crimes together.

So my point to you is this has been done before by our allies to great effect, and in fact, in Israel, in the last 5 years because they have prosecuted high-level cases, you know what has increased by 80 percent? Reporting.

I would like you to tell me specifically if you elevated only the decision point of whether to prosecute the serious crimes to a JAG military trained prosecutor to make that one decision, along with the decision that Secretary Hagel has already recommended, the decision of whether or not to overturn the jury verdict, it is just two decision points for only serious crimes, for no other command climate.

I do agree with you, U.S. commanders are essential to this. I don't think you can get this done if you are not 100 percent dedicated to eliminating the scourge of sexual assault. So I would like you to say, and starting with General Dempsey, how do you feel about those two decision points? Why can't you maintain good order and discipline without those two decision points?

Because you have those two decision points today, and you do not have good order and discipline. You have, arguably, 26,000 attempts, either unwanted sexual attempts, assaults, or rapes. That does not define, by any of your definition, as stated today, good order and discipline. It goes to the heart of not having military readiness.

General Dempsey, please give me your thoughts about those two decision points, and why is overturning okay with you, but whether to go to trial is not okay with you?

General DEMPSEY. Well, we have had the time with the chiefs or our SJAs to give full consideration of the Article 60 adaptation, and we will give consideration as part of the 576 process to the other part of the question.

But as I have said earlier, I haven't had the time to talk to my counterparts. I am not sure they would completely align themselves with you on the success or failure of taking it out of their military chain of command. Some cases they were forced to do it, and they are expressing their support for that.

But I do want to be clear. Though I am aligned very closely with my peers here on the idea that we should try to fix this through the commander, not around him. I also think we should take a look at surrounding him or her with a constellation of checks and balances so that we empower and hold accountable commanders. So that is my initial thoughts.

Senator GILLIBRAND. General Amos, could you give me your thoughts?

General AMOS. Senator, I just pile on what General Dempsey said about enabling the commander better. So that is something we have not talked about, and actually, that is very encouraging.

But just a little bit, last year we had a total of all our general court-martial cases last year, 97 percent of those under your proposed bill would go to this independent decision authority, independent disposition authority, 97 percent. That would be things like failure to obey orders and regulations. Clearly, that is——

Senator GILLIBRAND. No, that is excluded under our bill. Any crime of mission is excluded.

General AMOS. Okay. I am just going by what is listed down here. Assault, Article 134 offenses, adultery, child endangerment, all those things would be would—go to this independent disposition authority. Those are things that are line with a commander's ability to be able to mete out justice and maintain good order and discipline.

So, as I said earlier, if I thought—and I am not convinced of this. If I thought that moving in an Initial Disposition Authority (IDA) on sexual assault matters would reduce sexual assaults, increase reporting, then I would support it. I am just not there yet because I don't have any proof of this thing, and I am not convinced of it yet.

Senator GILLIBRAND. Since my time has expired, I would like each of you to submit for the record two things. How do you intend to regain trust of the men and women that serve under you that they can get justice within the current system? Because that is clearly what they have told us. They don't have the trust, and many of you have actually said that.

[The information referred to follows:]

General DEMPSEY I agree. We are losing the trust of our men and women on this issue. To regain that trust, we will ensure victims are confident they can report without fear of blame or retaliation and have confidence in a transparent military justice system.

We are taking swift and deliberate action to reinforce a professional work environment, prevent and respond to predatory and precursor behaviors, and better protect

victims. Already, we have moved initial disposition authority to O–6 commanders or higher. We are aggressively implementing the nearly 100 actions in the 2013 Department of Defense (DOD) Sexual Assault Prevention and Response (SAPR) Strategic Plan. We are engaging in a Department-wide stand-down to put a laser focus across the force on these crimes.

We must do all this and more to increase victims' willingness to report, hold commanders accountable for a unit climate of respect and trust, and cement an enduring culture of dignity and professionalism. We will identify and promote promising programs, such as the Air Force Special Victims Counsel pilot program. This program has already benefited hundreds of victims, many of whom have changed their report to unrestricted, an immediate indicator of greater trust in the process.

We will explore every option, and we are open to every idea, that will help eliminate this crime from our ranks. I will not be satisfied until trust is restored.

Senator GILLIBRAND. The second thing, how do you intend to hold commanders accountable if they don't get reporting up and they don't begin to solve this problem? Because none of you has ever reprimanded or held any of these commanders accountable in the past. But if everything starts and falls, stops and starts with the commanders, how do you intend to hold them accountable if they do not solve this problem?

Chairman LEVIN. That will be asked for the record, but I do think, in fairness, that a number of them have testified that they have held commanders accountable in the past, including for sexual climate.

Senator GILLIBRAND. But never dismissed.

General AMOS. Mr. Chairman, can I just——

Chairman LEVIN. We will let their testimony speak for itself on that.

General AMOS. Sir, I would just like to correct the record. My guys behind me reminded me that we have relieved two colonels——

Senator GILLIBRAND. Oh, you have?

General AMOS.—in the last 12 months. Two for sexual harassment and assault, two of them.

Senator GILLIBRAND. Thank you. Just please submit for the record what your hope is, what your measure will be and how you will create a measure of accountability.

Chairman LEVIN. Will you all do that then for the record? We will require that.

Thank you very much, Senator Gillibrand.

[The information referred to follows:]

General DEMPSEY Commander accountability is the cornerstone of our success. It is absolutely essential to solving this problem and we are moving out on a comprehensive approach to hold commanders accountable for preventing and responding to sexual assault at all levels. To snap this issue back into the focus it deserves, we have taken immediate steps to expand proven methods and are moving out on new initiatives. We have already refined our assessments of command climate by updating the surveys that specifically enable servicemembers to evaluate how effectively their commanders promote work environments that are intolerant of sexual harassment and violence and respond to reported sexual assaults. Additionally, we have moved initial disposition authority for incidents of sexual assault to O–6 commanders or higher. I have also endorsed Secretary Hagel's proposed amendments to Article 60 that remove a convening authority's ability to modify Court Martial findings or sentences for qualified offenses. To ensure compliance at all levels we are also instituting Sexual Assault Prevention and Response (SAPR) program compliance inspections and a range of nearly 100 accountability measures in the 2013 SAPR Strategic Plan. These measures will ensure a multifaceted approach to accountability and, where commanders fail in their responsibilities, the Service Chiefs are resolute in their commitment to remove commanders for cause.

General ODIERNO and Lieutenant General CHIPMAN. The Army has relieved 57 commanders over the past 4 years for failures to establish a healthy command climate or leadership failures. The Army will continue to identify commanders who fail to establish climates that encourage reporting and eradicate retaliation and hold these commanders accountable. The Army intends to enhance our comprehensive set of checks and balances through the implementation of a Commanders Response Certification program. This program will ensure that all the actors in the system—commanders, judge advocates, investigators and other first responders—are complying with all requirements and mutually reinforcing duties and obligations. This program will provide objective and measurable evaluations that can be certified by senior commanders. Transparency and visibility, both for offender accountability and commander accountability, will be essential to restoring the trust that we have lost.

Admiral GREENERT. We recognize the foundation of our operational effectiveness is the trust and resiliency of our force. Two elements contribute to sustaining this trust-effective means to report incidents of sexual assault and holding leaders accountable for creating an environment that is safe and does not tolerate, condone or ignore sexist behaviors, sexual harassment and sexual assault.

Commanding Officers are at the front line of creating command climates of dignity and respect that prevent sexual assaults, responding to sexual assaults when prevention fails, supporting victims and ensuring aggressive prosecution and accountability of offenders. We have mandatory reporting requirements for sexual assault through our Operational Report and Situation Report reporting procedures, where each command advises senior leadership of an event soon after it occurs. We also require all sexual assault allegations made through unrestricted reporting channels be referred to NCIS and investigated. I am unaware of any incident where a commander failed to report an incident up the chain of command and initiate an investigation based on an unrestricted report.

Should a sailor not be comfortable making a report to their chain of command, restricted or unrestricted sexual assault reports can be made to personnel outside the victim's command and can be confidential, as desired by the victim. Restricted reports are kept confidential; an investigation is not initiated, and the command is notified only that an assault has occurred with no identifying information regarding the victim or suspect. Victims can make restricted reports to SARCs, VAs, medical personnel, or by contacting the DOD SafeHelpline by phone (877–995–5247) or online (https://www.safehelpline.org/), 24 hours per day, 7 days a week. Victims who make restricted reports will still receive medical treatment, including a Sexual Assault Forensic Examination, counseling services, victim advocacy support, chaplain support, and legal assistance as they desire. Victims may also go outside their command to local law enforcement, NCIS, an installation SARC or VA, medical personnel, a military attorney, or a chaplain to make an unrestricted report that will result in an investigation by NCIS. Unrestricted reports provide victims the same support services as restricted reports.

As part of the Navy's accountability process, commanders are required to brief their Immediate Superior in Command and the first flag officer in their chain of command on each sexual assault incident occurring in their command. As part of that brief, commanders evaluate the command climate of the suspect's command, as well as the factors surrounding the sexual assault, such as location and environment surrounding the incident, demographics, and the role of alcohol. Means to prevent further incidents are discussed. Our Navy four-star flag officers reinforce accountability for command climate by reviewing these "first flag" reports each quarter. We are implementing the policies and actions from our successful sexual assault prevention program at Great Lakes Training Center across the Fleet. Early results suggest that these commander-led initiatives reduced the prevalence of sexual assault in each location through a tailored approach that combines elements such as safety and security measures, direct engagement with local business and civil authorities, and regulated liberty. Empowering our commanders while holding them accountable for identifying and implementing change, makes initiatives like these possible.

Additionally, we have also directed that each commander's immediate superior will have full access to all command climate survey information for the commands under their purview. This will enable a full evaluation of commanders based on sailor assessments of their command climate.

We relieve officers in command when they are deemed to create or sustain a poor command climate or commit misconduct, which can be reflective of or contribute to poor command climate. We publicly announce these reliefs and the reasons; since 2010 we have relieved 7 commanding officers for poor command climate and another 39 for personal misconduct.

Preventing and responding to sexual assault is not just a legal issue—it is a leadership issue. The performance, safety and climate of a unit begin and end with the commander. By virtue of experience, skill and training, our commanders are the best assessors of their people and are the key to implementing effective, permanent change in our military.

General WELSH. We know why some of our airmen have not reported sexual assault in the past—our surveys tell us that lack of trust in the system is a serious factor that we have to address, but there are also many other factors that add into this issue.

We are looking for fundamental ways to improve the prevention and response to combat sexual assault and improve the trust of our airmen in the current system. For example, we have just established a Sexual Assault Prevention and Response Office headed by a two-star general who reports directly to the Vice Chief of Staff of the Air Force. This Office will provide a multi-disciplinary approach to combat sexual assault and include highly-qualified civilian experts with significant experience in this area. Additionally, we have very promising initial results from our Special Victims' Counsel Program and believe it will play a significant role in improving trust and confidence in the ability for victims to get justice within our system and in return encourage additional reporting by victims of sexual assault.

The statistical data provides a number of reasons that cause victims not to report, and we are pursuing lines of effort to address those concerns. From the 2012 Workplace & Gender Relations Survey of Active Duty Members, of the 67 percent of women who did not report, the reasons in 2012 were:

Reason	DOD (percent)	Air Force (percent)
Did not want anyone to know	70	79
Felt uncomfortable making a report	66	73
Did not think their report would be kept confidential	51	NR
Did not think anything would be done	50	NR
Thought they would be labeled a troublemaker	47	40
Were afraid of retaliation/reprisals from the person(s) who did it or from their friends	47	NR
Heard about negative experiences other victims went through who reported their situation	43	NR

NR = Not reportable due to low reliability as the number of responses were too low to provide a statistically relevant amount.

Additionally, the Air Force contracted Gallup in 2010 to study the barriers to reporting and broke the data out by gender and type of criminal act to better target our efforts. The Air Force will conduct a follow-on survey in the fall of this year to evaluate against the 2010 baseline. Table 12 from the Findings from the 2010 Prevalence/Incidence Survey of Sexual Assault in the Air Force are included below:

Table 12. Barriers to Reporting by Gender and Type of Act

	Women			Men		
	Sexual Contact	Oral or Anal Sex	Sex Act	Sexual Contact	Oral or Anal Sex	Sex Act
Did not want superiors to know	45.6%	50.1%	58.9%	31.5%	43.0%	36.1%
Did not want fellow Airmen to know	49.9%	50.4%	63.4%	34.8%	43.0%	39.6%
Did not want to cause trouble in your unit	46.4%	32.5%	48.3%	32.1%	17.1%	27.2%
Did not want family to know	37.2%	50.1%	54.0%	29.7%	40.0%	39.8%
Lack of proof that incident happened	49.5%	47.2%	53.9%	34.5%	23.9%	41.2%
Fear of being treated badly	42.7%	39.2%	49.7%	27.4%	33.8%	30.3%
Not clear it was a crime	40.1%	38.7%	37.0%	39.1%	22.5%	45.1%
Did not know how to report	12.5%	11.6%	13.2%	8.6%	13.1%	8.4%
Afraid it would happen again	25.0%	23.0%	29.2%	14.7%	14.9%	8.4%
Did not think it was serious enough to report	58.1%	50.6%	43.2%	63.3%	57.2%	63.2%
Did not trust reporting process	23.4%	27.7%	29.0%	19.9%	20.1%	12.1%
Concern over protecting identity	31.2%	37.2%	43.7%	23.6%	35.3%	24.4%

We expect our commanders to create a respectful and professional environment where every airman can maximize their potential to meet our mission requirements. When this does not occur, we hold commanders appropriately accountable, as we have done in the past and will continue to do so in the future. We do so utilizing a wide range of available administrative and disciplinary options.

General AMOS and Major General ARY. The Marine Corps fully supports the direction outlined in the Secretary of Defense memorandum dated 6 May 2013. One specified task requires the acceleration of the assessment of the systems used to investigate, prosecute, and adjudicate sexual assaults, mandated under National Defense Authorization Act for Fiscal Year 2013. The Secretary of Defense memo also requires that: (1) a method be developed to incorporate the victim rights specified in the Crime Victims' Rights Act into military justice practice, and (2) that victims' counsel be improved, ensuring that victims are provided the advice and assistance they need to understand their rights and to feel confident in the military justice system.

Marine Corps legal assistance attorneys received training on their role of providing legal assistance to victims of crime, with a focus on victims of sexual assault. Legal assistance services provided include consultation addressing: the Victim and Witness Assistance Program, including the rights and benefits afforded the victim; the differences between restricted and unrestricted reporting; the roles and responsibilities of trial counsel, defense counsel, and investigators in the military justice system; services available from appropriate agencies or offices for emotional and mental health counseling and other medical services; the availability of and protections offered by civilian and military protective orders; eligibility for and benefits potentially available as part of the transitional compensation program; and traditional forms of legal assistance.

Marine prosecutors, paralegals and Naval Criminal Investigative Service investigators, along with full-time, professional, credentialed Sexual Assault Response Coordinators (SARC) and VAs, provide individualized support to inform and enable victims to participate in the military justice process. The Marine Corps is in the process of hiring 25 full-time credentialed SARCs and 22 full-time credentialed VAs to augment the over 70 SARCs and 955 uniformed and civilian VAs presently in the field.

The fiscal year 2012 DOD Annual Report shows a 31 percent increase in sexual assault reports involving marines and indicates that this spike occurred largely in

the second half of the year (April–September 2012). This increase coincides with the Commandant's Heritage Brief Tour from April to August and the launch of the SAPR Campaign Plan in June. With sexual assault being a highly under-reported crime, this increase in reporting is a positive endorsement of our efforts to heighten awareness and to deepen the trust and confidence in the Marine Corps response system.

New Command climate survey initiatives will supplement existing ones, to get after instilling an environment that is not non-permissive to misconduct and criminal behavior, therefore contributing to increased trust and confidence. Supplementing the survey provided within the first 90 days of a commander taking command, the Commandant has initiated a new requirement. Mandatory 30 days after assuming command and at the commanding officer's 12-month mark, this new survey will go up to the first General in the chain of command to hold commanders accountable for the climate they set. We believe that this tool will help commanders measure the health and well-being of their command and mitigate the high risk behaviors that tear at the fabric of the Corps.

I do not think we should lose sight of the true goal of fostering a culture intolerant of sexual assault. While the increased reporting in 2012 may indicate an increase in trust in the commander, the hope is that future reporting will decline as a result of a corresponding decline is sexual assaults. Therefore, it might not be appropriate to punish a commander merely for reporting numbers that hold steady, decline, or increase.

To ensure that commanders are appropriately executing their solemn duties, in May 2013 the Commandant directed new Marine Corps-wide Command Climate surveys. Command climate is the single greatest indicator not only of combat readiness, but also of the spiritual health of that institution. Marines have a sacred obligation to take care of each other and it starts with the commander. Command climate is not simply a measure of how happy marines and sailors are in their workplace; it is an indicator of the good order and discipline and drives mission accomplishment.

These new surveys are mandatory within 30 days of a commanding officer taking command and also at the commanding officer's 12-month mark in command. Giving commanding officers this tool and holding them accountable for the overall health and well-being of their command will help us mitigate the high-risk behaviors that tear at the fabric of the Corps. The results of the Command Climate surveys will be forwarded to the next higher headquarters in the chain of command. Senior commanders may relieve their subordinates of command if they lose trust and confidence in their subordinate's ability to lead the marines and sailors under their charge. In just the last 6 months, the Marine Corps has relieved three commanders based upon command climate concerns.

Admiral PAPP. [Deleted.]

Chairman LEVIN. Senator Blunt.

Senator BLUNT. Thank you, Mr. Chairman.

Thanks to all of you for your service and for being here.

You don't get to this table that you all are at today without considerable skill in lots of areas—leadership, communication, lots of things. I am always impressed when you come and represent your Service and represent those who serve us and defend us.

I did think, General Dempsey and Admiral Greenert, that your response to the question that Senator Shaheen asked was stunningly bad. The question was, have you talked to people, to Services that have been dealing with this for longer than we have?

Admiral Greenert, you said thanks for the tip about Australia and Israel, which Israel would—and General Dempsey, you said you had just begun that process preparing for this hearing, which I thought was not—it is a good thing we had the hearing. But then in response to what Senator Gillibrand said, General Dempsey, you said you hadn't had time.

So maybe I have heard this wrong. Has anybody who works for you been asking these people? This is not a tough management thing.

Where do you go to find out how people have dealt with this before, and how could that possibly, Admiral Greenert, be a "tip" from somebody on this committee to the principal manager of the U.S. Navy? I will let you answer that first and then General Dempsey.

General GROSS. Yes, Senator, thank you.

As the legal counsel to General Dempsey, that is one of the areas I have looked into. I have done some research on the United Kingdom——

Senator BLUNT. I was going to ask Admiral Greenert, and then I will come to your——

General GROSS. Oh, oh.

Senator BLUNT. That will be good. If somebody is looking into this, I will feel better than I did a minute ago. I am hoping.

Admiral GREENERT. Well, Admiral DeRenzi tells me she, too, has had those conversations with our Navy, but I take that aboard as something that I should have done, Senator, and I didn't, although we have talked about it with my JAG.

Senator BLUNT. Well, now apparently you hadn't talked about it enough to know that she had talked to them about it, or you would have said that to Senator Shaheen. I am trying to be fair here. I know you have a difficult job. I admire what you do.

But this has been going on now for years. Senator McCaskill has been, since the day she got here, trying to draw attention to this effort. You haven't been in this job all that time, but talking to people who have managed this problem longer than we have seems to me the very easiest place to start. The guy at the top should know that. The man or woman at the top should know that.

Admiral GREENERT. To be clear, Senator, I have talked about sexual assault in our navies with several of my counterparts. What I have not discussed is litigating and taking litigation or the process, if you will, of litigation outside of the chain of command. I have had numerous conversations with my counterparts.

Senator BLUNT. That is a helpful addition. General Dempsey? Do you want your attorney to answer?

General GROSS. Yes, Senators. As part of my duties, I have been looking into these matters. I mean, I even started thinking about it when I was in International Security Assistance Force and U.S. Forces Afghanistan back in 2009 and got a chance to learn about some of our allies' systems, to include Germany. Frankly, I heard some dissatisfaction with a criminal justice system that was completely bifurcated from the military chain of command.

An individual who had made a decision that a commander with battlefield experience might not have seen as a violation of the rules of engagement and so forth, but it was handed over to civilian prosecutors with no military experience, no combat experience, to make decisions about whether or not it was appropriate for that individual in that particular case to call in fire on a position. So there was some dissatisfaction there.

I have recently spoken with a British Judge Advocate. He sent me an article on the British system that I have been in the process of looking at, and some of my folks are as well.

I know that the Service Judge Advocate, each Service Judge Advocate also has criminal law shops. Just from speaking to some of

them, I know that they have considered Australia, the United Kingdom, Israel, and others that have looked at this as not necessarily as a solution to sexual assault, but as just a system for pulling all crimes out of the chain of command and into an independent, in some cases civilian prosecutor, in some cases court.

Senator BLUNT. I would think from a greater management point of view, in addition, and I think you are doing this—I hope you are doing this. But all of the thoughts we can get from other people dealing with this, or how do you stop it from happening? How do you minimize the chances you are going to have to deal with this at a litigated level by whatever you do in the culture of the command? What do you do to stop this from happening?

If we find out they are doing no better than we are, that is something that we should know. But I think they, in many cases, dealt with this in the situations particularly we are going into now longer than we have—in combat and other situations.

The question I am going to submit for the record, and I don't have time for everybody to answer it now, but among others, it will be is to each of the Service Chiefs, is the soldier, sailor, airman, marine, or coast guard person less fearful of being retaliated against for reporting instances of sexual harassment or assault than they were in the past?

I may put a couple of qualifiers on how—than they were, say, 18 months ago, and how do you feel that the guidance that commanders are issuing is restoring the trust among members of the Service that we need to have?

Thank you, Mr. Chairman.

Chairman LEVIN. Thank you very much, Senator Blunt.

That question for the record will be answered. Then would that be addressed to all of them, all the Chiefs?

Senator BLUNT. It will be to the Service Chiefs.

Chairman LEVIN. All right, and to the chairman, I assume, as well, and all questions for the record that we have identified so far, kindly answer those promptly.

Any other questions that are not referred to specifically today should be in to me so that we can pass them along no later than, let us say, by Thursday, so we can put some kind of a finite end to questions for the record.

[The information referred to follows:]

General ODIERNO and Lieutenant General CHIPMAN. Data in the Army's 2012 Human Relations Operational Troops Survey (OTS) showed some improvement over the 2009 OTS with regard to "fear of retaliation" after reporting a sexual assault. However, there is still much work to do to eliminate the fear of retaliation. The 2012 OTS showed we are making some progress in building a positive command climate in ensuring personnel are protected from retaliation.

In 2012, approximately 16 percent of female enlisted soldiers and 15 percent of male enlisted soldiers said it was likely/very likely that the reporting person's career would suffer; compared to 23 and 19 percent in 2009. In 2012, approximately 16 percent of female enlisted soldiers and 14 percent of male enlisted soldiers said it was likely/very likely that the reporting person would be labeled a troublemaker; compared to 26 percent and 2 percent in 2009.

Admiral GREENERT. We believe that our sailors have increased trust in the Navy and their leadership with regard to sexual assault. This is based on an increase we have seen in the number of sexual assault reports since fiscal year 2009. In fiscal year 2012, there were a total of 726 reports (527 unrestricted, 199 restricted) of sexual assault in the Navy. This is an increase over the average of 564 total reports per year from fiscal year 2009–fiscal year 2011. Additionally, through 2013 we con-

tinue to receive reports of previous incidents—assaults that happened months to years prior to the date of report. Together, we view the increase in reporting and the fact that victims are reporting prior events an indicator of decreased barriers to reporting. Further, we believe these trends indicate sailors increasingly trust the reporting process and the ability of the command to support them as victims.

We address the issue of retaliation and other barriers to reporting in our training and messaging to the force. Every sailor's understanding of the sexual assault reporting process, as well as the consequences for retaliation, has been raised through continuous awareness and outreach, including key initiatives such Sexual Assault Awareness Month, the interactive Sexual Assault Prevention and Response-Leaders (SAPR–L) and Sexual Assault Prevention and Response-Fleet (SAPR–F) training, and the recent DOD-wide Sexual Assault Stand-down.

We will continue to closely monitor the impact of barriers to reporting, and specifically retaliation, through future DOD and Navy surveys.

General WELSH. The Air Force continues to strive for Sexual Assault Prevention and Response (SAPR) and Equal Opportunity (EO) programs that remove barriers to reporting incidents of assault or harassment, especially fear of reprisal or retaliation. The Air Force will conduct a follow-on survey in fiscal year 2014 to evaluate our progress against the 2010 Prevalence/Incidence Survey of Sexual Assault in the Air Force baseline. We believe the findings from this survey will provide us the data we need to measure our progress in the areas covered by the 2010 survey. Both programs have significantly improved educational efforts so all Airmen understand they should immediately notify EO, Sexual Assault Response Coordinators, or Victim Advocates if they feel they are being retaliated against for making a report. Additionally, every new member of the Air Force receives accession training upon initial entry on SAPR and EO reporting options, procedures and victim rights. Training on both programs is further re-emphasized at all levels of leadership and professional development. Our airmen can also utilize the Inspector General office, which is an alternate reporting option free from any chain of command involvement. Finally, reprisal or any other form of retaliation is not tolerated in any Air Force organization and victim privacy is the foundation of all existing programs.

General AMOS and Major General ARY. Sexual assault is a field that is replete with deeply held myths that our training programs are designed to dispel. Myths are often centered around victim blaming and used as motives for reprisals. All of our efforts are focused on changing our culture, educating marines about sexual assault, and eliminating victim-blaming myths. which are contributing factors to this problem.

We purposefully survey our marines to use their input to move forward. Survey results help shape future initiatives, as we move forward. As our SAPR Campaign Plan continues to unfold and its many training initiatives are implemented, we anticipate that the survey will show continued improvements. Since the Campaign Plan's launch, our training efforts have included: the SAPR General Officers Symposium, SAPR training at the Sergeants Major Symposium, Command Team Training, "Take A Stand" bystander intervention training for noncommissioned officers, and all hands training for all marines. To continue our emphasis on leadership engagement, we updated our SAPR training course for prospective commanders and senior enlisted leaders to meet all core competencies and set learning objectives as defined by the Office of the Secretary of Defense. We have also implemented SAPR training programs customized for the Delayed Entry Programs, Recruit Depots, Entry-Level Training, Professional Military Education (PME), Officer PME, and Pre-Deployment Environments.

Also designed to protect victims from reprisal are Expedited Transfer Requests, implemented in February 2012, an option made available to victims to help empower and inform their decisions. Victims who file unrestricted reports can request a transfer and will receive a decision within 72 hours. Additionally, victims who remain reluctant to come forward have the option to file a restricted report. This option allows victims to confidentially disclose the assault to specified individuals (i.e., SARCs, VAs/UVAs, or health care personnel) and receive medical treatment and counseling, without the involvement of law enforcement or command.

The Marine Corps does not take reprisal lightly and our training programs are designed to reduce stigma and increase confidence in reporting. The 31 percent increase in reporting from fiscal year 2011 to fiscal year 2012 is a positive endorsement of these and other SAPR initiatives designed to reduce stigma and to encourage victims to come forward.

Admiral PAPP. [Deleted.]

Chairman LEVIN. Senator Blumenthal?

Senator BLUMENTHAL. Thank you, Mr. Chairman.

I want to join in expressing appreciation to you for being here today. I know this moment is a challenging and difficult and even a painful one because you share our view that the crime of sexual assault sullies the good name and honor of the greatest military in the history of the world. Each of you has given your lives, your professional and your personal life, to serving that military, and many under your command have literally given their lives under your command to serve that military and to keep faith and to maintain the trust that we all agree is at the core of the great service that you perform.

I have no question, having spoken to you before today and many under your command, that they share your determination to root out this cancer and to do what the civilian world has, in many instances, failed to do, which is improve our justice system there. I think that the military has a great opportunity to teach some lessons to the civilian world, just as you did on the issue of race relations and desegregation, which General Amos has alluded to.

I know something about prosecuting because I did it for a number of years, and I know that it is very, very difficult to make the kind of judgments about whether to charge someone with a crime. It is the most difficult part of being a prosecutor because you know in charging someone, with many crimes, you are going to ruin that person's life forever, whether there is a conviction or not. The kind of factors and issues to be considered are what kept me awake at night.

I have supported making those decisions by someone who is trained and experienced and has the responsibility exclusively not only for making the decisions, but then trying the case. I welcome General Dempsey's suggestion that we need to have checks and balances, a constellation of checks and balances. I welcome General Odierno's suggestion in his testimony that we need to take a hard look at the present system.

What I would suggest to you, very respectfully, is that decisions about prosecuting are as difficult and demanding and challenging as some of the decisions that you make about the expertise that is within your training, and the military would be well served by having those decisions made by someone who is perhaps not completely outside the chain of command, but at least within it, and not maybe a Judge Advocate, who is, again, not necessarily trained in this function, but someone who does have that role exclusively so that he or she can bring to bear that expertise and experience.

Reporting is the key factor here, and I am encouraged by some of the numbers that we have heard, the 31 percent in the Marine Corps, which I think is a basis for hope or optimism. But reporting will not occur in greater numbers unless we do refine, to take the word of the day, refine the present system.

I have suggested in legislation I proposed that victims be given restitution out of a compensation fund as an incentive to come forward, but also a means of making them whole. Let me ask all of you, considering that someone can get restitution as a victim for having a car robbed, isn't it appropriate for restitution to go to a victim or survivor of sexual assault?

General Dempsey?

General DEMPSEY. Well, as I said in my opening statement, Senator, I have been attentive to all of the legislative proposals. I am hopeful that as part of the 576 panel that that issue of restitution would come up. But I am not prepared to give you an answer on it today because I don't understand—by the way, Australia has done that in some ways successfully, in some ways unsuccessfully, and I am still trying to learn the lessons of our allies in that regard.

I don't have a view on it today, but I understand it.

Senator BLUMENTHAL. I assume you would agree, from what you have said, that mandating a punitive discharge for a convicted sexual offender would be something you would support, another measure that I have proposed?

General DEMPSEY. Yes, I have actually said that automatic discharge for convicted felony offenses, particularly in the case that we are discussing, sexual assault, is an idea that I would align myself with.

Senator BLUMENTHAL. What about the idea of some bill of rights that is incorporated in the UCMJ, a bill of rights for victims or survivors? Is that something that would seem to serve the purpose of eliciting more reporting?

General DEMPSEY. Yes. I believe it is. The only one we have actually put forward our military advice on collectively at this point is the Article 60 change. These others we would hope to put forward as part of the outcome of the 576 panel.

Senator BLUMENTHAL. Including, for example, a right against repeated interrogation without some kind of counsel being present, a right against inordinate delay, a right to be present in a proceeding, the right to speak at the proceeding if credibility or past sexual history is raised, to set the record straight. Those kinds of rights are basic to fairness and to trust, it seems to me.

Finally, some kind of ombudsman or authority within DOD that would be a source of action in the event there were a miscarriage of the justice system. Would you support that kind of change as well?

General DEMPSEY. Well, again, Senator, I am not trying to avoid your question, but I am suggesting to you that I have said that we will consider any of the options presented by 26 pieces of legislation, by the way, through the 576 process.

Senator BLUMENTHAL. Let me just close, and I appreciate being given this opportunity to question. One of the most impressive and startling facts at this hearing was the suggestion by—the testimony from General Amos and General Odierno that they actually went ahead to prosecute despite the recommendations to the contrary in many cases from their Judge Advocate, which I think indicates the passion and zeal that needs to be brought to this problem by the commanding officers.

I am confident that if that kind of zeal and passion are brought to decision to charge, it will change this, the command climate, and eliminate this cancer from the military system.

Thank you, Mr. Chairman.

Chairman LEVIN. Thank you, Senator Blumenthal.

Before I call on Senator Ayotte, we are going to—after this panel is completed, we are going to move directly to the next panel, and

we are not going to be stopping for lunch today at all. We are going to work right through the lunch hour. That is good news I wanted to deliver as early as possible.

Senator Ayotte.

Senator AYOTTE. Thank you, Mr. Chairman.

I want to thank all of our witnesses who are here today for their service and leadership to our country.

There are a few questions that I feel, number one, have not been answered. Senator Graham asked, touched upon it. General Dempsey, Senator Gillibrand touched upon it. But I think it is a very important question, and if you can't answer it today, then I think it needs to be taken for the record.

That is why is it that you support the changes to Article 60, and yet when it comes to the disposition authority for crimes of sexual assault that you believe that it would undermine the chain of command to make those changes or some changes to the disposition authority? I have not heard a clear answer on that today.

I am asking as someone who believes this is something we need answered. As a panel, we have our markup next week. We have all these pieces of legislation, and I think this is an important threshold issue that we have to address.

If you would like to take that for the record, I would like a clear answer so we can understand what the differences are between what I think has already been described and can be viewed very much as an inconsistent position on one end with the chain of command versus the disposition authority. I would appreciate your response to that.

I am not asking for it today. I just think it would be important for us in this markup to have a full understanding of what you think about that.

Then I wanted to ask——

Chairman LEVIN. Is that addressed to each of the chiefs?

Senator AYOTTE. I think it would be appropriate, Mr. Chairman.

Chairman LEVIN. It is. I think that it has been asked today, and whether it has been answered fully or clearly, we will leave up to each member here to decide.

However, it is an important question, and it goes to the heart of the matter. We are asking each of the Chiefs, and the chairman, to give us your response to that question no later than this Friday—given the fact that markup is next week.

[The information referred to follows:]

General DEMPSEY. While I support the proposed reforms of Article 60, I do not support removing commanders from their role as initial disposition authorities in the military justice process. Commanders' decisions regarding the initial disposition of offenses are central to their role and responsibility to maintain the good order and discipline of their units and the individuals they command.

Article 60 of the Uniform Code of Military Justice (UCMJ) currently grants broad authority and discretion to convening authorities to dismiss findings of guilt after trial. That authority, which dates back well over 200 years, was necessary when the military justice system lacked many of the procedural safeguards inherent in the system today. In the past, the military justice system lacked attorneys serving as trial and defense counsel, independent trial judges, and an appellate process. Article 60 was necessary then so that commanders, with the advice of their staff judge advocates, could ensure the proceedings, in particular the findings, were fair and just. Many changes to the military justice system, which began with the Military Justice Improvement Act of 1968, now provide the necessary due process and safeguards. Licensed military attorneys now serve as prosecutors and defense counsel, inde-

pendent military judges preside over courts-martial, and convicted servicemembers are entitled to a robust appellate process. Due to these changes, there is little or no need for a convening authority to dismiss the findings after a panel (jury) has found the accused guilty, except in those cases where the panel has found the accused not guilty of the major offenses and guilty only of minor offenses which, in and of themselves, would not justify court-martial in the first place. As I testified, prudent and deliberate refinements to the UCMJ, after careful study, are necessary to keep the military justice system vibrant and relevant, and the system needs certain checks and balances to protect the rights of the accused, the rights of victims, and the interests of justice. This proposed change to Article 60 is one of those sensible refinements.

The same cannot be said for eliminating the commander from making initial disposition decisions. While I support raising the initial disposition authority to higher level commanders in sexual assault cases, as the Secretary of Defense did in April 2012, I do not support removing commanders from that decision entirely. The authority and responsibility for a commander to hold his subordinates accountable for criminal activity, violations of orders, and dereliction of duty goes to the heart of good order and discipline.

General ODIERNO and Lieutenant General CHIPMAN. The Army supports the Secretary of Defense's revisions to Art. 60, which preserve the current practical uses of post-trial convening authority to set aside minor offenses and reduce sentences. The convening authority's ability to reduce a sentence based on the interests of justice is unchanged by the DOD proposal. The Army supports these amendments because of changes in our practice. Article 60 was part of the original code passed in 1950 and was not amended during the first major revision in 1968. At that time, the Services had not established the independent trial judiciary and independent defense bar. Line officers, not Judge Advocates, were assigned as judges, trial counsel and defense counsel. The intent of Article 60 was to allow the convening authority to grant clemency if the accused Soldier had not received a fair trial or if the court-martial adjudged an overly harsh sentence. These justifications do not support the current authority as it pertains to findings under Art. 60 given the current state of our practice.

The Army does not support removal of the commander from the disposition decision because the justification for this authority has not changed. The commander's ability to punish offenses quickly, visibly and locally is central to the authority of the commander and the responsibility of commanders for all that goes on in the unit.

In addition, there are several practical concerns with removing the commander from the initial phases of courts-martial. Commanders are integrated into every aspect of their soldiers' lives and would remain responsible for vitally important ancillary aspects of both victim care and victim protection (where the victim is a soldier) as well as control over the accused. Even if the commander were removed from pretrial disposition decisions, the commander would remain responsible for determining whether an accused should be placed in pretrial confinement or whether other conditions on liberty are appropriate, such as a military protective order. The commander would also discipline the soldier in the event he violates the military protective order. Because we are deployed globally, the military commander is frequently the only authority who can order such actions. Additionally, more senior commanders in the accused or victim's chain of command are vested with authority to process a transfer request for the victim, to appoint sanity boards and to authorize the assistance of expert witnesses. The commander's responsibility to care for the victim while managing the accused is inextricably linked with his responsibilities as a disposition authority, and removing this important aspect of command authority will have significant ramifications.

Admiral GREENERT. I support amending Article 60 regarding the commander's post trial authorities while retaining disposition authority with the commander as presently constituted. These positions are not inconsistent, because they pertain to two entirely different functions in the military justice process. A commander's disposition authority pertains to pretrial responsibilities and the ability to direct appropriate disciplinary action to support good order and discipline; Article 60 pertains to post-trial actions, where a disposition determination supporting good order and discipline is complete and post-trial review and appeal processes are adequate to ensure the effective administration of justice.

The responsibility, authority, and accountability we repose in commanders for mission accomplishment—including successfully leading U.S. servicemembers in combat—require that they play a central role in the military justice system, with the authority to hold perpetrators of all offenses appropriately accountable. The experience and perspective a military commander brings to bear, augmented by the

advice of experienced military lawyers, allow for the proper balancing of mission accomplishment, the rights of the victim, the rights of the accused, and the interests of justice to reach an appropriate disposition decision.

We have taken significant steps to ensure that allegations of rape, sexual assault, forcible sodomy and attempts to commit those offenses are forwarded to experienced senior commanders for disposition determinations; these commanders are required to consult with their experienced staff judge advocates and/or prosecutors in every case before making a disposition decision. Commanders who serve as Sexual Assault Initial Disposition Authorities are 0–6 or senior ranking officers who have special court-martial convening authority.

Post-trial actions are different from the initial disposition of a case. The Navy fully supports DOD's legislative proposal to amend Article 60 removing the authority of commanders to set aside the findings of a court-martial except for certain qualified offenses as defined in the DOD proposal and requiring convening authorities to explain, in writing, any action to modify a court martial sentence or qualified offense findings. The DOD proposal recognizes that court-martial practice has changed since World War II through the participation of professional military prosecutors, defense counsel, and judges, and the inclusion of a comprehensive review and appeal process. Post-trial appeal and review processes under Articles 64, 66, and 69 of the UCMJ occur after court-martial proceedings. Article 66 reviews apply to cases in which a punitive discharge or sentence of confinement for 1 year or more was approved; those convicted are assigned appellate defense counsel, and cases on appeal are decided by senior judge advocates serving as Navy and Marine Corps Court of Criminal Appeals appellate judges or by civilian judges of the U.S. Court of Appeals for the Armed Forces. Article 69 reviews apply to general courts-martial where a punitive discharge or confinement for 1 year or more was not approved; the records of trial are reviewed by the Office of the Judge Advocate General. Article 64 reviews are conducted for all other courts-martial cases and are submitted to a judge advocate who must respond to any allegation of error made by the accused.

Because court-martial convictions are now subject to these processes (obviating the need for a substantive review by the convening authority), the Navy supports the DOD proposal to amend Article 60 of the UCMJ.

General WELSH. Airmen must very clearly understand who will hold them accountable, both for mission execution and for meeting personal and professional standards. They expect that to be their commander. Our entire military system is based on commanders having that authority and responsibility. In general, it has served us remarkably well in both peacetime and conflict for a very long time. I believe we should be very deliberate as we consider significant changes to that authority. The "576 Panel" gives us the opportunity to do that.

Article 60 addresses the convening authority's responsibilities at the completion of a court martial; the disposition decision has already been made and findings have been issued by the court. Article 60's post-trial authority developed at a time when the armed forces did not have a robust appellate court system. Each Military Service now has its own Court of Criminal Appeals. Every case tried at a military court-martial is eligible for review by the Court of Criminal Appeals under either Article 66 or Article 69 of the Uniform Code of Military Justice. Cases with a sentence that includes a punitive discharge or a year or more of confinement receive a compulsory appellate review. I believe that Article 60 authorities can, and probably should, be updated to reflect today's more modern military judicial system.

The Article 60 modification proposed by the Secretary of Defense would prohibit a convening authority from setting aside the findings of a court-martial except for a narrow group of qualified offenses. Convening authorities would still retain their authority to execute pretrial agreements and safeguard the interests of the command by taking action on the sentence alone. Again, improvements in the military judicial system and our robust appellate process provide the rationale for my support of this Article 60 modification-not any loss of confidence in our convening authorities. Secretary Donley and I are committed to preserving the authority and responsibility of commanders to promote good order and discipline within their units, while simultaneously advancing victim support and protecting the due process rights of the accused.

General AMOS. A commander's pre-trial and post-trial court-martial roles involve separate and distinct authorities that should not be linked together. A commander's pre-trial disposition authority is an enforcement mechanism that reinforces the commander's authority as the individual who sets and maintains standards of conduct in a unit. A commander's post-trial role, in addition to continuing to serve as a mechanism to enforce a court-martial sentence, also includes a clemency function that when exercised, provides some sort of relief to an accused. The two roles can therefore serve completely opposite functions. While at one time there was a need

for both functions, the military justice system has evolved substantially since its inception, to the point where the broad clemency power under Article 60 is no longer necessary, even though the enforcement portion of the Article 60 is still needed.

The commander's broad authority under Article 60 was established during a time when the key participants of the trial—the prosecutors, defense counsel, and military judges—were not professional lawyers, and when there was not a comprehensive system of appellate review. The complete discretion of the commander under that system prevented miscarriages of justice, provided for the expedient correction of legal errors, and permitted the granting of clemency in certain cases. The professionalization of court-martial practice and the addition of multiple layers of appellate review justify reducing the commander's once unlimited authority to take action on the findings in cases not involving "minor offenses." The Secretary of Defense's proposal retains the proper amount of clemency authority necessary to maintain good order and discipline and properly excludes the right class of cases that should be left to the appellate review process for the correction of legal error and/or clemency. Additionally, the requirement for a written explanation for any Article 60 action (on the findings of a "minor offense" and/or the sentence of a court-martial) ensures transparency and will preserve the trust and confidence servicemembers and the public have in our military justice system. Lastly, it preserves the ability of a commander to take action on a sentence under Article 60, which serves as the authority for that commander to reduce an adjudged sentence in accordance with a pre-trial agreement.

Unlike the historical changes involving the conduct of a court-martial and the post-trial processing of that court-martial, the general role of the commander has not changed since the inception of the UCMJ. The military still needs a system of deployable military justice that provides swift and appropriate justice for the entire spectrum of misconduct. This will never change. As long as there is a military, there will be a chain of command. As long as there is a chain of command, there will be a commander responsible for everything that the unit does and fails to do. This responsibility cannot be overstated. Command is a central pillar of military culture. When a unit enters combat, success will be directly related to a commander's ability to enforce his or her orders and standards. Commanders are charged with building and leading their team to withstand the rigors of combat by establishing the highest levels of trust throughout their unit. Virtually every facet of Marine life underscores the authority and centrality of the commander, to ensure that when those critical moments come there is no hesitation among the marines he or she leads. This is a cornerstone of combat effectiveness, which is the core mission and central organizing principle of every Military Service. In a very real sense, the Nation's security depends on the strength and trust in the relationship between the commander and those he or she leads.

This trust can only be built and maintained when marines know that commanders have the authority to hold accountable marines who violate that trust. Marines must know that their commander sent a marine to court-martial, not an unknown third-party prosecutor, who plays no daily role in developing and maintaining the bond of trust essential to combat effectiveness.

The modification of Article 60 is about the reduced need for a commander to make certain clemency decisions in the post-trial process. Because the commander's need to make enforcement decisions has not changed, the commander's authority to make those enforcement decisions under the Uniform Code of Military Justice should also not change.

Admiral PAPP. The Coast Guard does not support removing the commander from the role of initial disposition authority because he or she is responsible for mission accomplishment and instilling good order and discipline in the unit. For that reason, the commander's role in deciding whether and how to dispose of charges is vital to the effectiveness of the military justice system and the military as a whole. Judge advocates are critical to the effective and fair application of the modem military justice system, but the discipline of military personnel is primarily the responsibility of commanders. A commander's exercise of initial disposition authority is apparent to subordinate military members, reinforces their appreciation of the authority of the commander, and thereby reinforces discipline. Moreover, to make a commander who is held absolutely responsible for mission execution, crew safety, and unit discipline, and not provide the commander the authority over military justice matters may place the commander at a disadvantage by maintaining his accountability but denying him the authority to ensure discipline.

Significantly, the vast majority of officers who have the authority under Article 22 to make an initial disposition on allegations of sexual offenses in the Coast Guard are flag officers. In June 2012, the Commandant of the Coast Guard withheld initial disposition authority for allegations of sexual offenses to those special courts-

martial convening authorities who have achieved the rank of 0–6 (Captain) and have an assigned staff judge advocate. While many special courts-martial convening authorities are of the 0–6 pay grade, only 13 have an assigned staff judge advocate. Even when the 0–6 has the authority to dispose of an allegation of a sexual offense, the Flag Officer above the 0–6 still has the authority to withhold disposition to his or her level. As a result, most sex crime cases are disposed of at the Flag level.

Initial disposition authority under Article 30 and the exercise of convening authority under Article 22 are different than the authority a commander exercises under Article 60. A commander's exercise of discretion in granting clemency under Article 60 arguably has a negligible effect on good order and discipline. Moreover, the historical justification for post-trial clemency authorities has abated with the introduction of professional judges, a highly competent defense bar, and an appellate process of review.

Senator AYOTTE. Thank you, Mr. Chairman. I appreciate it.

I know, General Welsh, that you were asked earlier about the Air Force Special Victims' Counsel Pilot Program. Senator Murray and I, we have a bill Combating Military Sexual Assault Act of 2013. It has 33 co-sponsors. As I understand it, you said that the response has been very, very positive in the Air Force to this program?

General WELSH. Yes, Senator. Overwhelmingly positive.

Senator AYOTTE. Overwhelmingly positive.

General WELSH. Yes, ma'am.

Senator AYOTTE. In other words, victims feel that they have the support of the system, which has been—when I look at your survey, that is one of the issues that comes loud and clear when you have people who are reporting saying 43 percent heard about negative experiences of other victims that went through that reported their situation.

General Dempsey, I would like to ask you what your position is on our legislation in terms of giving this special victims' counsel not only to those in the Air Force victims, but in every branch of our military?

General DEMPSEY. Yes, Senator, thanks.

We have discussed that as chiefs, and there is a distinction between special victims capabilities and special victims advocacy that we are trying to work through and understand the resource implications. But we are very much in agreement that we need to do more for the victims.

Senator AYOTTE. Okay, General. I also would appreciate if you are able to give us—I know that you are talking about it at a command level with the Secretary, but as we go into the markup next week, it would be very helpful to know.

Because this piece of legislation does have 33 cosponsors in the Senate, I want to make sure that every victim of sexual assault gets the support that they need in the system to make sure that people—we turn this around in terms of people who are not coming forward because they fear how they are going to be treated in this system.

I think knowing that there is a representative that represents them and will represent their rights and respect their rights within the system, I think, is very important. I would appreciate any follow-up you have on that with your meetings within.

[The information referred to follows:]

General DEMPSEY. The Air Force Special Victims Counsel (SVC) pilot program, while very new, has shown positive results and provides a robust support program

for victims of sexual assault. Hundreds of victims have availed themselves of SVC services in the Air Force in just the past several months since it was implemented. Many of those victims who initially filed restricted reports of sexual assault decided to change their report to unrestricted, allowing full investigation of the offenses committed by their assailant. As the early reports have been so promising, I expressed in my May 20, 2013, letters to Senators Levin and Inhofe that the proposed SVC legislation had merit. I support providing victims of sexual assault this important resource.

General ODIERNO and Lieutenant General CHIPMAN. The Army is monitoring the Air Force's special victim counsel pilot program and recognizes the value of all efforts that enhance victim care and satisfactions. The Army is engaged in hiring several hundred victim advocates as directed by law. We are also training our legal assistance attorneys and victim-witness liaisons to better advocate on behalf of victims. The Army has 300 legal assistance attorneys currently assisting and advocating for victims within a confidential attorney-client relationship.

I am confident that the Army's approach of a Special Victim Capability with specially selected and trained prosecutors, investigators and victim witness personnel working as a coordinated team, not in an adversarial relationship with a separate attorney, is the best opportunity for effective, sustainable victim care without undercutting accountability. The relationship between the prosecutor and the victim is the bedrock of every case and I am hesitant to place a wedge between them.

Admiral GREENERT. The Navy's legal professionals provide support to sexual assault victims. Navy prosecutors explain to victims their rights; the court-martial process; and available Federal, State, or local victim services and compensation. In addition, the Navy has trained more than 150 attorneys, paralegals, and enlisted personnel to provide legal assistance to crime victims in order to ensure victims' rights are understood and protected. Active-duty and dependent victims are eligible for military legal assistance services and are directed by Sexual Assault Response Coordinators and Victim Advocates or prosecutors to legal assistance attorneys to receive help pertaining to victims' rights, understanding the court-martial process, and a wide variety of legal issues related to being the victim of a crime.

I believe it is premature to commit to the full scope of the Air Force Special Victim's Counsel pilot program at this time, particularly given that in-court representation of victims has triggered judicial challenges. The first such challenge is currently pending before the United States Court of Appeals for the Armed Forces. The outcome of the judicial challenges, and assessment of the issue by the Response Systems Panel created by section 576 of the National Defense Authorization Act for Fiscal Year 2013, will help determine the feasibility of in-court representation of victims.

While such assessment is pending, I support a program that provides victims with the legal support judge advocates are uniquely qualified to provide, including: legal consultation regarding victims' rights; the military justice process; potential criminal liability of the victim; potential civil litigation; and legal assistance in personal civil legal matters.

General AMOS. The Marine Corps agrees with prohibiting sexual contact between trainers and trainees, and would also support extending that prohibition to recruiters and those honorable Americans seeking to enter the Marine Corps. Sexual activity between these classes of individuals is shameful and violates the trust and esprit de corps that makes the Marine Corps what it is.

Marine commanders currently possess sufficient charging options to punish this unacceptable behavior. Marine Corps regulations at our Recruit Depots, where we train approximately 38,000 new marines each year, provide strict guidance prohibiting any form of social or personal relationship between drill instructors and recruits. Sexual activity between a drill instructor and a recruit would clearly violate this order under Article 92 of the UCMJ. Additionally, a drill instructor would violate Article 120 when he or she used their position of authority to coerce or threaten a recruit with some sort of wrongful action in order to get the recruit to engage in sexual activity. This type of abuse of authority justifies elevating criminal liability from an orders violation to a non-consensual sex crime and registration as a sex offender.

The Marine Corps believes this proposal should be first studied by the Section 576 Response Systems Panel (RSP) to ensure the strict liability nature of the crime would not create unintended second- and third-order effects.

Admiral PAPP. The Coast Guard supports providing comprehensive legal services to victims of sexual assault, and we recognize the value of designated Special Victims Counsel. As such, we are currently developing an SVC program to ensure that victims of sexual assault are provided the advice and assistance they need to understand their rights and to feel empowered in the military justice system. In this ef-

fort, the Coast Guard continues to closely monitor the changes and enhancements to the Air Force's SVC program to assess and potentially adopt best practices.

The Coast Guard would have no objection to legislation as long as it vests in the Secretary concerned a degree of latitude in implementation. The Coast Guard ensures currently that a cadre of specially trained and designated personnel provides services to sexual assault victims: Criminal Investigators, Victim Advocates, Sexual Assault Response Coordinators or Employee Assistance Program Coordinators, Health Care Providers, Family Advocacy Specialists, Trial Counsel, Physical Disability Attorneys, and Legal Assistance Attorneys. These specially trained personnel provide a host of complementary and integrated services, including consultation between restricted and unrestricted reporting, education about victim-witness assistance programs, explanation of the military justice system, advisement of the availability of health and mental health services, offers to assist with any personal civil legal matters, and information about post-service benefit programs. Affording survivors of sexual assault access to special victim counsel would potentially supplement these services.

The Coast Guard notes that, as a general matter, statutory requirements may not always take into account the disparity in the size, organizational structure, and geographic location of units within and among the services. Given geographic dispersion, structure, and missions of the Coast Guard, absent additional funding, existing Coast Guard legal resources may not be sufficient to allow special victim counsel to carry out all of the duties identified in the current draft language, which include accompanying and representing victims during interviews with investigative services, at Article 32 hearings, and at any court-martial proceedings. At the same time, some functions contemplated for special victim counsel may potentially duplicate some of the already available services performed by Victim Advocates.

The Coast Guard therefore recommends legislation provide the Secretary concerned with a degree of flexibility in implementation and/or execution, by foregoing prescriptive requirements and duties, and by allowing the flexibility to allocate functions appropriate to their training and expertise among special victim counsel and other members of the cadre of specially trained and designated personnel who provide services to sexual assault victims. This approach would preserve and help to realize the apparent intent to prescribe a vibrant special victim counsel program that would provide valuable assistance to survivors of sexual assaults.

The Coast Guard understands that the Defense Department recommends deferring legislation mandating special victim counsel pending completion of the Air Force pilot program and assessment by the section 576 panel. The Coast Guard concurs with that recommendation.

Senator AYOTTE. I also wanted to ask in our legislation, one of the incidents that we have been—when we talk about incidents that we are all troubled by, one of them has happened at Lackland, where you have 43 female trainees alleged to have been victimized by their military training instructors. Seventeen instructors were accused of offenses ranging from improper relationship all the way to rape.

One of the components of the legislation that Senator Murray and I have introduced actually prohibits sexual contact between instructors and trainees while the training is going on and within 30 days of the completion of basic training. I think all of you, as leaders of the military, appreciate that there certainly is a vulnerability to those who are in a training setting with those who are the commanders there and the people that they are reporting to that are training them.

General Dempsey, when I saw your written response to that piece of the legislation, I was troubled by the fact that there wasn't an endorsement of that. I need to understand where do you stand on the notion of prohibiting sexual contact between instructors and trainees during basic training?

General DEMPSEY. We have spoken about special protections for, for example, cadets in basic training. But we find ourselves at a little bit on the horns of a dilemma. We have the 576 process that

the Secretary of Defense has been chartered to go through, and we haven't had a chance, frankly, to speak with him about any of these in particular, which is why I have said on a couple of occasions now that, personally, I think some of these issues have real merit and potential, but I have to also be true to the legislation and the panel that will try to see this thing holistically.

I am not trying to avoid the question, Senator. But I am trying to make sure that I have the opportunity with the Secretary to bring it into context.

Senator AYOTTE. My time is up, and I just think it would be hard to justify not supporting what seems to be basic common sense when you have incidents like Lackland. Just the relationship between a trainee in a basic training setting and the individuals who have command over them, who are training them, that there should not be sexual contact there because that, obviously, can lead to issues of coercion.

I hope that that would be something that would just pass the basic common sense test. I look forward to hearing more about that from you as you have these meetings.

Thank you.

[Additional information follows:]

Admiral PAPP. The Coast Guard concurs with the intent of the draft legislation criminalizing a trainer engaging in consensual sexual relationships with a trainee. However, the statute is duplicative with existing charging options under the Uniform Code of Military Justice (UCMJ) and may invite appellate challenges.

This conduct is already criminalized under the UCMJ. Coast Guard personnel policy explicitly states that consensual sexual activity between a trainee and trainer is prohibited and punishable under Article 92 for failure to obey an order or regulation. The Coast Guard has long used Article 92 to hold company commanders accountable for consensual relations with students at training commands. In addition, Coast Guard Training Center Cape May has promulgated a lawful order prohibiting personal relationship between company commanders and graduates of recruit training for 1 year following graduation.

Sexual conduct that is not consensual is prohibited and punishable under Article 120. That would include cases when a trainer uses his authority to place a trainee in a position where he or she cannot consent freely. Sexual harassment is also punishable under Article 92 (orders violation) or Article 93 (maltreatment).

Placing this proposed offense under Article 120 as a sexual assault raises legal concerns. The proposal removes consent as a possible defense, thus making sexual conduct between two consenting adults a strict liability sex offense.

Doing so would likely draw Constitutional challenges in light of recent decisions by the Supreme Court and Court of Appeals for the Armed Forces. Categorizing this offense as a "sex act" and placing it under Article 120 raises an issue with regard to sex offender notification. Under the Federal Sex Offender Registration Act, "an offense involving consensual sexual conduct is not a sex offense for the purposes of this title if the victim was an adult, unless the adult was under the custodial authority of the offender at the time of the offense." 42 U.S.C. § 16901(5)(c). The result is that conduct criminalized under Article 120 may not result in registration while other conduct will.

Because the proposal invites unnecessary legal risk with some of the language used in the draft text and placement of this offense under Article 120, the Coast Guard recommends that this proposal be further studied by the congressionally-mandated panels under the National Defense Authorization Act of 2013.

Chairman LEVIN. Thank you, Senator Ayotte.

Senator Donnelly.

Senator DONNELLY. Thank you, Mr. Chairman.

I want to thank all of you for your service, and I know how hard you are working to try to get this right.

We have heard about the risk of unintended consequences, but here is the risk that concerns me; I know you all feel the same. We

have brothers and sisters, sons and daughters, husbands and wives, and when this happens, it is the risk of personal violation of somebody. It is the risk of destroying that person's internal soul, their emotional state, their physical state.

In some cases, by a person who they look to as their leader, their commander, and that they look to with a sacred trust. General Amos, you put it best. You said this is a sacred trust that we have in front of us and that we have an obligation to get this right.

We are in this with you. When you said the buck stops here, the buck stops with us, too. We have an obligation to get this right.

I was at the Indy 500 a week before the race, and we inducted a couple hundred young men and women into the Service. I want to be able to know when I look them in the eyes that I can keep my obligation to tell them you can serve our country, serve with dignity, have your dignity respected. That is what we are trying to do.

General Odierno, you said we have a commander problem, and so my question is we ask a lot of our commanders, in many cases, they are in the middle of fighting a war at the same time. They have a lot on their plate.

It doesn't, in my eyes, make them less capable that they don't handle this. They have other things to handle. Why would a soldier think less of their commander simply because their commander doesn't handle this area?

General ODIERNO. Well, having been a commander in combat on three occasions——

Senator DONNELLY. Right.

General ODIERNO.—I would tell you that is essential because they depend on you for everything that goes on in that unit. One of the things we talked about, by the way, is this threat about retaliation. That is not going to change if you take it outside the chain of command. You still have the threat of retaliation.

I want the commander fully involved in the decisions that have an impact on the morale and cohesion of the unit, to include punishment, to include UCMJ. That is their responsibility. It is not too much responsibility.

In my mind, it sets the tone for the unit in order for them to execute under the most strenuous conditions, and I need commanders who can do that. I think, ultimately, if they can't do it, then we hold them accountable. That is their responsibility.

So I feel very strongly about it. Because what we ask them to do—I agree with you. What we ask them to do is very unique and very complex, and it requires a commander who sets the tone for every issue. As we increase the role of women, it becomes even more important in my mind that the commanders take this on themselves and that they are part of the process to solve these problems.

The other thing I would just say is they are not making these decisions independently. You have a very experienced Judge Advocate by your side the whole time, walking you through and helping you through this process.

Senator DONNELLY. What is the training that they have, the commanders, as well in terms of classes that they take or book learning that they take that they can look at this and go, "It is this

or it is that," where they have the same kind of prosecutorial ability.

General ODIERNO. Yes. We require commanders to go through legal orientation courses before they take command. That is part of the requirement for a battalion command, brigade command, and when general officers take command, they are required to go through a course that we teach at the Judge Advocate General School in Charlottesville.

They go through that course to specifically outline for them what their responsibilities are. One of the key pieces of that is if you don't understand the responsibility, you go to your JAG for them to explain to you the details and technical responsibilities that you have. It is not only do they get trained, they are taught to rely on their JAGs.

Senator DONNELLY. This would be for any of the people. Are you aware of how often, and I am sure you are, that people who have suffered the sexual assault, that not long after there is often suicidal thoughts or suicidal problems? I mean, this seems to compound another issue that we deal with.

General ODIERNO. You are right.

Senator DONNELLY. Well——

General ODIERNO. You are right, Senator. It does, and that is why it gets to the overall issue of climate, environment, et cetera.

Senator DONNELLY. I would like to ask our Coast Guard admirals who are here with us, there is a documentary, "The Invisible War." There is a young lady in there who is a member of the Coast Guard, stationed not far—stationed on Lake Michigan, not far from where I live. She went through an extraordinary and horrible series of events.

I was just wondering after having seen that—she has been working with the Department of Veterans Affairs (VA) and working with others—has the Coast Guard reached out to her? Have you contacted her or sat with her or talked with her to say, "Hey, how can we help put this back together for you?"

Admiral PAPP. Senator, we have made attempts to—some of the allegations she makes were not revealed when she was a member of the Service. Every time we have made the offer to further investigate or take up those allegations, we have received no response.

I watched that, and it broke my heart. I brought it home and had my wife watch it with me. I know many of our spouses go on the road with us, and they are dealing with the families. They are dealing with the crews. We have made that mandatory viewing for our senior leaders, and we have also engaged in seminars, every single senior leader within the Service.

In fact, we are going to finish up with our headquarters component next week. It is our intent that nothing like that happen again.

Senator DONNELLY. Okay. I guess the point I also want to make with this, and this is to all of you, and I know you are all committed to this as well, is that we continue to follow-up. We continue to try to get it right for some of these folks who have felt, look, I have put forward my best claims. I have been put aside.

Or as this process goes through, that once a decision is made that we don't just leave them to the side. That they are continuing

to deal with a whole host of issues that we, like I said, when I looked at those kids at the Indy 500, the buck stops here, too. I have an obligation to make sure they get it right and have an awesome and wonderful career, just like all of you have had.

Thank you, Mr. Chairman.

Chairman LEVIN. Thank you very much, Senator Donnelly.

Senator Kaine.

Senator KAINE. Thank you, Mr. Chairman.

Admiral Greenert, in your testimony you departed a little bit from your written testimony in one way that I thought was interesting. You said this issue of sexual assault in the military represents an existential threat to our core values, and I think that is a great way to put it.

There has been a lot of testimony today and questions eliciting testimony about the inside effect, the effect upon those who are serving, the debilitating effect that sexual assault of any kind would have. But I just want to say a word about my concern about the external effects, not just those currently serving.

First, the recruiting concern is a major one. I was recently at the Mary Baldwin College in Virginia. There is a Virginia Women's Institute for Leadership. It is an 800-person women's college in Staunton, VA. One hundred of the women are in an institute that is focused on training people to take commissions in the military. They have a commissioning rate that is higher than most of the senior military colleges in the United States, about 60 percent.

As the students and I were in dialogue about what they thought about for their future, they had two major concerns that they wanted to raise with me. First is on our soldiers. Is Congress, with sequester and all these other things, really committed to the mission? Would we want to sign up for a career if a political leadership wasn't committed to us?

Second they were asking about the sexual assault issue. When somebody says I will put my life on the line and I will risk death to go in harm's way, but I don't know whether I want to risk a culture that has allowed this to grow so much, that is a very serious concern.

You all, and we all, want to make sure that the best leaders in the future feel like this is a career that they can pursue because we want to be sitting here 25 years from now with leaders who are entering today because they know they can do it.

The second external effect that this has in a very dramatic way is one on society. Every society needs heroes, and you all are as good as we have right now. But when people start to question their heroes or think that there is a cancer or something within the heroic class, it not only affects their view about the military, it affects their view about our entire society.

I think they feel the same if they look at Congress. If they look at Congress and they feel like we don't treat each other civilly or we are too gridlocked, it doesn't just affect their view about Congress. It affects their view about our country.

So, when people look at the military and they see these stories about sexual assault, it is not just affecting their view about the military. It weakens their confidence in our Nation. That is why the stakes in getting this right are so high.

I tend to agree with the line of questioning that Senator Gillibrand and others were pursuing that one of the main issues here is this fear of reporting. The DOD report that came out in April has some staggering numbers.

For those who do report unwanted sexual contact, 62 percent say that they have experienced something that they would believe is retaliation as a result. For those who do not report—and we know, I guess, maybe 7 of 8 don't report, based upon the recent survey—47 percent don't report because of fear of retaliation, and 43 percent don't report for another reason that is very close, which is the experience of others who have had the same reason, which would either be retaliation or, well, nothing was done. Why bother?

So 90 percent of people who don't report are reporting for something, either retaliation or a sense of I have seen others who have gone through it, and it just doesn't make any difference. We have to get at that issue of the reporting and the retaliation.

General Welsh, one of the things that I think is interesting, you talked briefly in your comments and also to Senator Ayotte about this Air Force special victims' counsel, the response that you have gotten. I would be interested in knowing about the positive response.

I am sure it is positively received that along the way there is someone who can help understand the process, but I wonder whether the special victims' counsel, whether you are getting reports about it, "It makes me fear retaliation less knowing that I have someone who is going to be with me through every step of the process."

If we can't get the fear of retaliation down, then we are not going to solve this problem. So, I think that the special victims' counsel pilot project that you all are working on, that may have an impact on the fear of retaliation. But if we can't whittle that fear down, we are not going to solve this problem.

So I would be curious as to whether you are seeing that in any of the initial reports about the project?

General WELSH. Senator, we haven't seen any comments back from the victims who do the survey debriefs with us that specifically relate to "I feel better about the risk of retaliation because I had a special victims' counsel."

The positive return rate is about 95 percent on these surveys, overwhelmingly positive about the benefits of having someone who understood the legal process, who was by their side supporting them primarily the entire time, who shielded them from unnecessary questioning, and who helped them understand the intricacies and the confusion and the law of the legal system that they are now in.

The positive results we are seeing are, number one, that feeling from victims. Even in some cases where the alleged perpetrator was acquitted, the victim still had usually positive things to say about the special victims' counsel.

A couple of other areas that are really positive for us are that we are finding fewer victims of the ones represented by special victims' counsel deciding not to proceed forward with prosecution, and I agree with the comments that have been made earlier today about prosecution being a very, very, very critical piece of this. So,

the more cases we can get to a court with good victim support to get the facts in the case right, I think the better we will be in the future.

The other thing we are seeing is that there is a higher propensity for victims who start as a restricted report. Once they are assigned to special victims' counsel and have someone who is helping guide them through this what must be an incredibly confusing maze they face, more are deciding to come forward and change from restricted to unrestricted, about 50 percent more than have in the past.

Those two statistics are really positive for us. The special victims' counsel, in my mind, is one of a set of game-changing things that can help us in this area across the spectrum of issues related to sexual assault. Right now, it is the only one we have found that is really gaining traction. We have to keep looking for all the others.

Senator KAINE. Mr. Chairman, earlier you indicated, all of you, that you thought you had the tools you needed right now. But General Welsh, you did say that on the special victims' pilot that resources are a component of how broadly you can implement that, either in the Air Force or system wide. Correct?

General WELSH. Yes, sir. It would be different by Service, based on numbers of legal, of SJAs that are available and size of your Service. But this is an issue. We just can't define it clearly enough yet because we don't know what the top end of our support capacity is.

Hopefully, we will find that out by the time we finish the 1-year pilot and be able to report on that in our paper.

Senator KAINE. Thank you.

Thank you, Mr. Chairman.

Chairman LEVIN. Thank you very much, Senator Kaine.

Senator King.

Senator KING. You all have a great deal of experience with leadership. In my experience, the personality and qualities and character of the leader infect the whole organization, whether it is for good or ill, whether it is a company or a small unit or a governmental entity.

We have talked a lot today about culture, and it just seems to me that one of the most important things is for you all to mean it. To mean it. To make it absolutely clear, no jokes, no winks, no nods, and don't tolerate people that make jokes, winks, and nods. That is going to be a powerful way to communicate it.

I am not suggesting that you don't, but I am just saying that. Down the line that has to be part of this that we can change the rules and do all those kinds of things, but it is the culture that has to change, that this is unacceptable conduct.

Along those lines, is retaliation an offense? If it isn't, it should be. General Dempsey, is retaliation an offense in one of these situations?

General GROSS. Senator, there may be ways to charge that. There is interference with the justice system and certain things that there may be threats that could be charged. There may be—there are different ways under the UCMJ that you could get at that behavior.

Senator KING. Well, I would suggest maybe you want to look at something more specific than tampering with the system. But we are talking about more subtle offenses, and perhaps think about defining an offense of retaliation for reporting one of these crimes because nonreporting is the big problem here. That is the big issue.

General GROSS. I mean, I truly do think there is adequate provisions within the UCMJ now that you could charge almost all the behavior that fell within that span.

Senator KING. Does it ever happen?

General GROSS. I know that I have recently seen charges where there was obstruction of justice. I don't know that it was retaliation, per se. But it was the idea that somebody was encouraging someone not to testify or threatening them not to tell the truth.

I have seen that a number of times over my career. I don't know of a recent example of someone being charged with retaliation, per se, but some of the Service TJAGs might have an idea about that.

Senator KING. Anybody else want to address that issue?

General CHIPMAN. Senator, I will address part of it. We talk about retaliation, and in fact, the top three reasons that people don't report relate to loss of privacy, a desire not to undergo the process, the idea that too many people will know, so a lack of confidentiality. Those are the reasons that actually outnumber retaliation.

Much of the retaliation that our survivors report actually relates to ostracism from fellow unit members. So, it is not a command-driven retaliation, but it is this idea that through social media and other contexts, victims feel that they are now isolated from the base of support within the unit that they may have once shared because of this report of misconduct within the unit, that same unit whose values and cohesion and ethos they share.

Senator KING. I would just suggest that this issue of retaliation is significant. Whether it is in the command chain or whether it is in the unit, again, it is creating a culture of zero tolerance. I think that is important.

Let me change the subject for a minute. A lot of this discussion is about Senator Gillibrand's bill to take these decisions out of the chain of command. That is the issue that all of you addressed in your opening comments, and I think it is an important one.

Are there any figures, and there may be—I apologize if I didn't pick them up—on how many decisions not to prosecute after a complaint is made? How big a problem is this of a decision of the O–6 or higher who decides not to prosecute? Is it 1 percent, 2 percent, 10 percent, 20 percent? Do we have any figures on that?

General CHIPMAN. Senator, I think much of our experience would be anecdotal. We have that check and balance with the Judge Advocate and the commander discussing each and every case. In the Army, for example, we have 50 major jurisdictions that last year tried 2,400 cases. I would have 50 general court convening authorities making the individual decision on the merits of each case, accompanied by a discussion with his or her Judge Advocate following a pretrial investigation.

Senator KING. But you see, the point of my question is Senator Gillibrand has suggested that we ought to take this out of the chain of command because that is a problem in the prosecution. I

am trying to get at is it a problem in terms of the numbers? Does it happen once every 1,000 cases or once every 10 cases?

If you can comb the studies and the records and perhaps answer that for the record, I would appreciate it.

[The information referred to follows:]

General ODIERNO and Lieutenant General CHIPMAN. Statistically and anecdotally, the Army prosecutes the most serious offenses (rape, sexual assault, and forcible sodomy) at a rate comparable or favorable to most civilian jurisdictions. Data available in the fiscal year 2012 Annual Report to Congress indicates that in founded cases in which there was a final disposition and jurisdiction over the offender, the Army prosecutes rape offenses at the rate of 56 percent and sexual assault (sleeping or intoxicated victims) at a rate of 59 percent. Studies by advocacy groups and academics estimate that civilian jurisdictions, that do not have comparable comprehensive reporting requirements, prosecute those same offenses at a rate between 12–20 percent. In a penetrative offense allegation, if insufficient evidence exists to support the allegation, commanders can, and do, take lesser actions for related offenses such as adultery, fraternization, or violations of barrack's policies.

Due to the variety of disposition options for commanders under the Uniform Code of Military Justice (UCMJ), the Army also prosecutes "minor" offenses, those involving an unwanted touch, with non-judicial or administrative punishments. Civilian jurisdictions rarely prosecute these types of offenses.

Finally, the UCMJ criminalizes conduct, such as indecent language and or the sexual harassment of subordinates (maltreatment) that is not criminalized in civilian jurisdictions. This allows commanders to address the pre-cursor behaviors that can contribute to sexual assaults and affect morale and discipline in a unit.

General WELSH. In general, the Air Force does not specifically track decisions not to prosecute after a complaint is made. However, some data is available specifically for sexual assault. The fiscal year 2012 Sexual Assault Prevention and Response Office (SAPRO) report details 177 cases that were presented to Air Force commanders for action in fiscal year 2012. Commanders took action for a sexual assault offense in 56 of those cases: 42 resulted in preferral of court-martial charges, 14 in non-judicial punishment. Command action was precluded or declined for a sexual assault offense in 121 of those 177 cases presented to commanders for action in fiscal year 2012: 54 because probable cause existed only for a non-sexual assault offense, 32 because there was insufficient evidence of any offense, 24 in which the victim declined to participate, 11 because allegation was deemed unfounded by command.

"Unfounded by command" includes cases involving determinations made by a commander with supporting legal advice that the cases were: (1) False cases—Evidence obtained through an investigation shows that an offense was not committed or attempted by the subject of the investigation; or (2) Baseless cases—Evidence obtained through an investigation shows that alleged offense did not meet at least one of the required elements of a UCMJ offense constituting the SAPR definition of sexual assault or was improperly reported as a sexual assault.

With regard to the number of cases where a Judge Advocate recommends going forward and a commander does not, the Air Force recently reviewed this through a data call. We found that commanders disagreed on disposition in only 22 of 2,511 cases tried from 1 Jan 2010 to 23 Apr 2013 (less than 1 percent). Of those 22, there were 10 in which a superior commander preferred charges and only 12 where no commander preferred charges. Only one of those 12 cases involved a sexual offense charge (wrongful sexual contact).

General AMOS and Major General ARY. In fiscal year 2012, investigations were completed on 288 suspected individuals. Of those, 32.3 percent were outside of DOD's legal authority (i.e., the offender was unknown, the subject was a civilian or foreign national, civilian authorities assumed initial jurisdiction, or the subject died or deserted). Accordingly, in fiscal year 2012 there were 195 suspected individuals whose cases were presented to commanders for disposition decision. After consultation with a Staff Judge Advocate, the commander determined in these cases that there was insufficient evidence to substantiate any misconduct in 54 percent of those cases. Of the remaining cases, the commander determined that probable cause supported sexual assault charges in 33 percent of the cases. In 97 percent of those cases, the commander referred the case to court-martial.

On April 20, 2012 the Secretary of Defense issued a memorandum withholding initial disposition authority (IDA) in certain sexual assault offenses to the, 0–6, SPCMCA level. The Secretary of Defense withheld the authority to make a disposition decision for penetration offenses, forcible sodomy, and attempts to commit those crimes. This withholding of IDA to a Sexual Assault Initial Disposition Authority

(SA–IDA) also applies to all other alleged offenses arising from or relating to the same incident, whether committed by the alleged offender or the alleged victim (i.e., collateral misconduct).

On June 20, 2012, the Commandant expanded this withholding to include not just penetration and forcible sodomy offenses, but all contact sex offenses, child sex offenses, and any attempts to commit those offenses. The Marine Corps also made it clear that in no circumstance could the SA–IDA forward a case down to a subordinate authority for disposition. For example, if a marine was initially accused of a non-consensual sex offense, along with orders violations and adultery, but the NCIS investigation did not substantiate the nonconsensual sex offense, the SA–IDA would still be required to make the disposition decision on the remaining non-sexual assault offenses, even if those types of offenses were of the type normally handled at lower levels of command. The result is that the USMC now has a smaller group of more senior and experienced officers making disposition decisions for all sexual offense allegations and any related misconduct.

In fiscal year 2012, Marine Corps Legal Services Support Sections received 2,575 Requests for Legal Services (RLS) on military justice cases from commands within the Department of the Navy. Of those 2,575 RLS, 17 percent resulted in adjudicated general or special courts-martial. The other 83 percent were adjudicated using alternate forums or disposition methods. The Marine Corps found that convening authorities took action consistent with their SJA's recommendation for all cases that were disposed of during fiscal year 2012.

General CHIPMAN. Senator, we will do that. There is very little daylight between the cases that a Judge Advocate think is worth prosecuting and the decision of the commander to refer that case. So on the order of 1 percent would be more realistic.

Senator KING. That is a perfect intro to my final question, and that is instead of taking—I am looking for an alternative to taking it out of the chain of command but to still have a check and balance. What about a situation where a decision not to prosecute would have to have the written concurrence of the JAG officer associated with that decision? In other words, it is a two-person decision, as opposed to one.

That is an attempt to find a middle ground between not tampering with the chain of command in any way, shape, or form and the bill that would take these decisions out of the chain of command. Any reflections on that?

General ODIERNO. Senator, as I said in my opening comments, that is required. The JAG is required today to give his opinion in writing. If it disagrees with the commander's decision, it could be pushed up to the next higher level.

Senator KING. It could be or would be? That is my question.

General ODIERNO. Yes, I think—I will let you answer that.

General CHIPMAN. Senator, I think could be. I don't think there is an automatic. It really depends upon the nature of the disagreement between the commander and the Judge Advocate. But certainly, there have been convening authorities and Judge Advocates who have called me in my current duties to say can I talk through this case with you and get your own assessment as to the merits of this particular decision.

Senator KING. My suggestion would be that it would go up one level if the JAG disagrees with the decision not to prosecute. Again, I am searching for an option here that maintains the chain of command but still provides another check and balance in these cases, which we all agree are unacceptable.

Thank you very much, gentlemen.

Thank you, Mr. Chairman.

Chairman LEVIN. Thank you very much, Senator King.

Senator Nelson.

Senator NELSON. I would like to ask the commanders in determining whether or not to prosecute, do you feel that the accused's military service record should be a determination aid/determining factor in whether or not to prosecute? General Dempsey, I will start with you.

General DEMPSEY. We had this conversation a little bit earlier, actually, and the question was at what point does character enter into a decision to prosecute? I think we were pretty clear, I thought, that the decision to prosecute was made in the context of the overall character of service, but always in light of the crime and the evidence that supported the criminal prosecution.

In my own experience now, character generally comes into sentencing and punishment far more than it does into the decision to prosecute.

Senator NELSON. Yes. Character in the sense of a person's exemplary military record, that is what I am talking about. Is there anybody that disagrees that a decision to prosecute could be mitigated by an exemplary record of the servicemember accused?

General AMOS. Senator, I don't believe a valorous record or a substantive record should have anything to do with the decision as to whether or not an individual should be prosecuted, number one.

Number two, in 43 years, and having done this now many times, I can't think of a single instance where my SJA sat down with me and said, sir, we ought to reconsider this because this marine XYZ has a tremendous record. Not a single time.

Senator NELSON. Does anybody disagree with General Amos? [No response.] Okay. Now I understand that you all have already discussed this, that you all agree that a commanding officer can, at whatever level, cannot reverse a conviction by a military court? Is there anybody that disagrees with that, in other words, you would agree that a commanding, convening authority could not reverse a conviction by a military court?

General GROSS. Senator, I think—I can't speak for everybody on the panel. But I think what was said earlier is that we support Secretary Hagel's proposal to modify Article 60 that a commander, a convening authority couldn't reverse a conviction in all except certain minor qualified offenses, if those were the only ones remaining. He or she would still retain the authority to reduce sentences for different purposes.

I think that was the earlier testimony.

Senator NELSON. Could any of you speak—I guess, General Welsh, could you speak to the circumstances where this has happened that Senator McCaskill has been so involved in with regard to the Air Force general?

General WELSH. Senator, I am not sure exactly what you are looking for. The case was the Aviano case, but are you talking about the convening authority's actual overturning of the verdict?

Senator NELSON. Yes. In the case of General Helms.

General WELSH. Yes, sir. General Helms is actually a case in Vandenberg Air Force Base in California, and General Helms' case was a case where an individual was charged with two counts, two sexual assault charges, and then some additional lesser charges.

In the court, one of the sexual assaults, the principal sexual assault charge was found to be not guilty. The perpetrator was found guilty of the second charge and the subordinate charges. General Helms, in her Article 60 review, as the convening authority felt that the court had not met the burden of proof for the allegation of guilt or for the finding of guilty.

So, she set aside that finding in the court, and she punished that finding under a lesser charge and the subordinate findings of the court under nonjudicial punishment. That is what happened.

Senator NELSON. Do you believe that a commander should have that authority to overturn the decision of a military court?

General WELSH. No, Senator. I completely agree with Secretary Hagel's recommended changes to Article 60.

Senator NELSON. Thank you.

Chairman LEVIN. Thank you, Senator Nelson.

Senator Hirono.

Senator HIRONO. Thank you, Mr. Chairman.

We have heard a number of you testify that the victims in these circumstances can make an initial report in a number of ways to a number of people. Now when the report is not to the person that is in the chain of command and it is to some nonmilitary entity, what happens to that report? Are these entities required in any way to submit a report to that person's, the complainant's chain of command?

General WELSH. Senator, each of the Services may be a little bit different on how this starts, but I think we are fundamentally all the same. If the report goes to someone who then reports to the chain of command, the chain of command or anyone in the chain of command, the chain of command must now consider it an unrestricted report and it is reported through the command chain through standard reporting procedures.

If the initial call goes to one of our Special Assault Response Coordinators, to a victim advocate, or to a medical person as part of that initial string of notifications, if they get it first and contact the victim, then the victim will have the opportunity to file an unrestricted report—or excuse me, a restricted report. It starts with focus on victim care.

The commander is then only notified through the command chain that an incident has occurred. There is no identifying information.

Senator HIRONO. I can understand when it is all in the military environment, and so there is that. But we all know that one of the major issues with regard to these kinds of crime is the tremendous underreporting that is going on.

My interest is to make sure that whatever reporting is done is being captured in some way by the military, and the testifiers said that sometimes civilian authorities or anonymously these crimes are reported. How do those get tracked, if at all?

General WELSH. In some cases, they don't. In many cases, our SARCs actually have done an awful lot of work to connect to and cooperate and communicate with victim care agencies in the regions around the bases. In those cases, those organizations, unless there is a privacy restriction imposed upon them, will share information or encourage victims to talk to the SARC, and we will get the reporting back into the military chain.

Senator HIRONO. You all do your best, all of you Chiefs and all of our Services, you do your best to capture this kind of information, I hope? Good.

There was also a discussion about command climate surveys and how important they are to determine what kind of environment our men and women are serving in. It seems as though these are not institutionalized. It is not formalized.

I would suggest, and following up on some of my other colleagues' line of questioning, that I would like to know who does the survey? Who gets asked to participate in the survey? What questions are asked in the survey? What happens in those surveys?

I think that these surveys should be institutionalized because of the importance.

General ODIERNO. Yes. In fact, I believe they are institutionalized. First, the entire unit answers the question. So, in other words, if it is a company or a battalion, the entire unit will be part of the command climate survey, or at least a proper representation of the unit of every rank.

Involved in the questions are anything to do with the readiness of the unit to discipline within the unit, to sexual assault, sexual harassment, to suicide information, to how they feel the command reacts to what they do, what they don't do. So it gives you overall assessment of a capability of a unit from readiness to climate issues, and we have questions that are specifically built for them to answer that have been studied and continue to be adjusted over time throughout the Army.

Then those answers are taken. There are assessments done, and then feedback is given to the chain of command.

Senator HIRONO. So these surveys are institutionalized in the Army. What about the other Services? Also there is a question of confidentiality. Are these surveys done confidentially?

General ODIERNO. They are.

Senator HIRONO. What about the other Services?

General AMOS. Senator, we have institutionalized it. It is mandatory for each command. As soon as a commander takes over, within 30 days, he or she has to have this 34-question command climate survey taken on 100 percent of the individuals in their unit. Then it will be done on the anniversary of that taking, so every year.

That information is confidential, and it goes to the next higher command, and in that, out of that, the next higher commander. So if the command is a battalion that is having the survey, a regimental commander is going to know the climate of that organization. Are the marines happy? Is the equipment up, and are they—what is the climate for sexual harassment and sexual assault?

Senator HIRONO. Thank you. I am running out of time, and I have a couple of important questions.

We know that there are a number of bills that have been introduced, and several of them is to remove the chain of command from certain decisions. We know that we have allies—Israel, United Kingdom, Australia, Germany—who have done the kinds of things, removal of chain of command on certain decisions.

The response to the question of whether or not any of you have talked with our allies with regard to their experience I thought was unusual in that you had—apparently you haven't had those discus-

sions. I like to make decisions based on information and experience. I would really like to hear from you as to when you intend to or if you intend to talk with our allies as to what their experience is in moving in the direction that some of these bills move in.

Is there any timeframe when you are going to be doing that, any of our chiefs?

General WELSH. Senator, I think we have all done a little bit of this work. General Harding, for example, has spoken with the Australians, with the Canadians, and with the British TJAG or member of the JAG staff to get their views on this.

I have spoken with the former Canadian and British air chiefs, also the Israeli air chief on a visit to Washington. On my visit to Israel in about a month, it is one of the topics we have on the agenda to discuss with his legal team. I think this actually is happening. There are people interested.

The problem is getting to the details, and to get the details of how they operate, we have to go to them to talk to them and their staff. That is what was not available when we spoke originally with the air chief.

Senator HIRONO. Mr. Chairman, I would very much appreciate a response from all of our Services as to when they intend to talk with our allies, if they intend to, and with specifically regarding the removal of the chain of command on some of these decisions.

Chairman LEVIN. Do you want that for the record?

Senator HIRONO. I would like to have that in the record.

Chairman LEVIN. Please tell us whether you and your JAGs have had such conversations and, if not or even if you have, what your plans are to have additional conversations with our allies. A number of people have raised that question. So we will ask each of you, for the record, to give us that information.

[The information referred to follows:]

General ODIERNO and Lieutenant General CHIPMAN. The General officer leadership of The Office of The Judge Advocate General (TJAG) for the U.S. Army has met with the Canadian TJAG, Canadian DJAG on Military Justice, British T JAG, and Australian TJAG within the past 2 years to discuss the role of the commander in military justice. It is important to note that changes in those systems, that altered the authority of the commander in military justice, were based on perceptions or findings that the rights of the accused soldiers were not being adequately protected. We will continue to examine our allies systems of justice.

Admiral GREENERT. The Judge Advocate General of the Navy, the Deputy Judge Advocate General of the Navy and I have had meetings with our counterparts from the United Kingdom, Canada, and Australia to discuss the management of military justice cases, including sexual assault. The role of the military commander in these nations differs from the role of the commander in the U.S. military justice system.

In the United Kingdom, a civilian Director of Service Prosecutions makes the decision to prosecute at court-martial and determines the charges. Military commanders may try minor offenses at a Summary Hearing (similar to non-judicial punishment (NJP) under Article 15 of the Uniform Code of Military Justice (UCMJ)); however, serious offenses are referred to General Court-Martial and, in contrast to the U.S. military justice system, commanders may not grant clemency following a conviction at court-martial.

In Canada, commanders may try minor offenses at a Summary Trial (similar to NJP). For more serious offenses, a commander, a commander's delegate, or a military police officer may charge the offenses, which are then referred to the Canadian Military Prosecution Service (CMPS). The CMPS was created to separate the court-martial system from military commanders; the Director is appointed by the Defense Minister and it is staffed with active-duty attorneys. CMPS decides which cases should proceed to trial, designates the trial forum, drafts appropriate charges, and provides prosecutors for court. CMPS may also decide to not proceed with charges.

Military commanders have no authority to grant post-trial clemency following conviction at court-martial. Offenses committed by servicemembers in Canada may also be prosecuted in civilian courts.

In Australia, a military commander may try minor offenses before a Summary Authority (similar to NJP). More serious offenses are investigated by the Provost Marshal, who has the discretion to submit the investigation to the commander or to the independent Director of Military Prosecutions (DMP). The DMP, appointed by the Defense Minister, consults with the Superior Authority (typically a two-star commander) to ensure chain-of-command input is considered in the disposition decision. For offenses with concurrent military/civilian jurisdiction, the DMP is required to consult with civilian authorities to determine whether the offense is sufficiently connected to service discipline to allow trial by court-martial. If the DMP determines that court-martial is warranted, the DMP determines the charges and provides the prosecuting attorney. Through the Registrar of Military Justice, a panel of jurors is chosen at random from all available officers of the defense force. This system was instituted in Australia eight years ago. Although generally thought to have provided more transparency and fairness in the eyes of the Australian populace, the changes have not markedly changed the rate of criminal offenses, serious crimes, or conviction rates. The Australian force has expressed an interest in the U.S. system's restricted reporting options to encourage sexual assault victims to come forward.

Many of the changes made to the military justice systems in the United Kingdom, Canada, and Australia resulted from perceived system unfairness, lack of transparency, or court rulings pertaining to the rights of accused servicemembers. However, each system retains the authority of the commander to adjudicate minor offenses and maintains differing roles for the military commander in the disposition of more serious offenses.

General WELSH. We have spoken with a number of our allies about removal of the chain of command on some decisions, and we have begun evaluating the merits of their approaches. Specifically, Lieutenant General Rich Harding, the Air Force Judge Advocate General, had meetings with his Australian and Canadian counterparts on the topic in the last 6 months and intends to engage with his British counterparts later this year. In addition, I will be meeting with his Israeli counterpart in August and this issue is already on their agenda. He will add this topic to the agenda for future meetings with his counterparts from our other nations who have a system that separates commanders from the initial disposition decision. Our additional conversations with allies on this topic will build on the knowledge we already accumulated.

One key distinction that makes adopting any of the allied models of criminal justice especially problematic for the United States is the relative size and geographic distribution of our Armed Forces compared to those of our allies. The United States has approximately 1.4 million active duty servicemembers stationed worldwide compared with approximately 221,000 in Germany, 212,000 in the United Kingdom, 172,000 in Israel, 59,000 in Canada, and 51,000 in Australia. As of 31 December 2012, U.S. Armed Forces were stationed in more than 150 countries, with large contingents of 52,692 in Japan, 45,596 in Germany, 39,157 in Afghanistan, Iraq, Kuwait, South Korea and classified locations, 10,916 in Italy, and 9,310 in the United Kingdom. Implementing a centralized prosecutorial system likes our allies presents unique challenges given a need to administer a consistent uniform justice system for a very mobile workforce across nearly every time zone in multiple foreign countries subject to host nation arrangements.

General AMOS and Major General ARY. The Staff Judge Advocate of the Marine Corps (SJA to CMC) has personally met with the senior Canadian judge advocate and discussed changes in their military justice system. The SJA to CMC's staff has also been researching and evaluating the changes some of our allies have made to their military justice systems to see what lessons may be learned.

The Marine Corps' initial research into the changes made by our allies indicates that in many cases, those changes were undertaken because of court decisions that found the military justice system did not adequately protect the rights of the accused. This is a fundamentally different situation than the one currently being evaluated by Congress. Federal courts, including the Supreme Court, have consistently upheld the constitutionality of our military justice system.

The Marine Corps will continue to research lessons learned from our allies, both individually and collectively as part of the Joint Service Committee on Military Justice, the Code Committee, the Response Systems Panel, and the Judicial Proceedings Panel. We are constantly reflecting upon our system and trying to improve it. We will continue to do so in the future.

Admiral PAPP. [Deleted.]

Chairman LEVIN. Thank you, Senator Hirono.

Senator Hagan.

Senator HAGAN. Thank you, Mr. Chairman.

Mr. Chairman, I really do appreciate you holding this hearing today, and I appreciate all of you being here and your testimony.

I also appreciate the fact that we have All-Volunteer Service today. I think our men and women who are serving us, they have a mission, and they have a job to do. They should not have to worry whether today is going to be the day that they are sexually assaulted.

I want to tell General Amos and Admiral Papp, I believe in your opening sentence, both of you said that this is a crime, sexual assault is a crime, and we have to address it as such. That is what this hearing is for, to discuss this.

One of the concerns that I have heard and that has been raised with me is an environment in which commanders—and this is a little bit of background—are hesitant to report issues like sexual assault up to the chain of command because of the fear that making these incidents known might possibly reflect poorly on them as commanders. Commanders may fear that if they are not "handling it at their level," they might be passed over for promotions and future command.

While I realize that the official message from our senior leaders is different, I am concerned that at the lower levels, especially at the lower levels, there may be an environment in which commanders believe that they have to sweep sexual assault reports under the rug in order to avoid a perception that they are not properly leading their units.

General Odierno and General Amos, if you could tell me, are there any concerns that our commanders, especially at these more junior levels, feel they need to handle the situation rather than properly reporting sexual assaults? In particular if it would impact on their careers?

General ODIERNO. I think, first off—thank you, Senator, for the question. I think, first off, what we have to discuss is that this is everybody's problem. It is not their problem. It is every commander's problem. It is every soldier's problem. It is everybody's problem. We have to work this together.

In fact, what we are trying to establish is that the worst thing we can do is not report this and not deal with it. That is our responsibility. What I am trying to emphasize is the fact that if you don't do the things we are asking, reporting, setting the right climate, it is about what actions you are taking. Inaction is what we don't like.

I think the constant discussion that you have to have from command level to command level to command level is what you have to do to ensure this does not happen, what you described, and that is what we are really focusing on. Because in order for us to solve this problem, everybody has to be all in on this problem.

General AMOS. Senator, I think it could happen, and I suspect, as I look back over years, decades, it probably has. But I will just say that we talked a lot about command climate here. We have talked about, to me, that, in and of itself, is a commander's report card of sorts.

I mean, there is a lot of other things that a senior evaluates a junior on, but in there, you will know right away whether you have a climate that supports and protects victims of sexual assault and sexual harassment.

Today is different than it was even a year ago. Our commanders now, just as the chief was saying, understand that the problem is a Service-wide problem. We are all in it together. I am not going to take a commander that has a sexual assault in a unit and say, "Shame on you." I will say "shame on you" if you don't protect the victim and you don't handle it well, and you back away from it.

But my sense is we are leaving that environment. We probably had that environment in the past.

Senator HAGAN. I just want to be sure that there is not negative professional consequences to the commanders who are doing the job to report these incidents and to prosecute them.

Admiral Greenert?

Admiral GREENERT. Senator, if I may? For about 6 months now, we have had a process in place where the unit commander briefs a sexual assault to the first flag in the chain of command. There is—they sit down and say this is what happened. This is the environment behind it. These are the specifics of it.

All sexual assaults are reported in our Operations Report, our operation reporting system. So there is no hiding it, per se. Now we want to get to the details, bring that together, and find out——

Senator HAGAN. Well, you have to report it in order to get to that point.

Admiral GREENERT. Yes, ma'am. But once they are—once it is reported, I mean, it is out there. So, again, to General Amos and General Odierno's point, it is a conversation that we all have to have. Then quarterly, I sit down with my four-star commanders and say what are we learning about all of this? What are our commanders telling us?

So there is a broader conversation, and there can be more focused action. We do this for big things like collisions, airplane crashes, and things of that nature. It is embedded in important operational issues for us.

Senator HAGAN. Thank you.

I want to now look at sex offenders in the military and then how it relates to the civilian component. Back in 2008, there were guidelines where sex offender registration required military correctional and supervision personnel to actually notify State authorities concerning the release of sex offenders to their States. There are instructions that they must inform the convicted person of his or her duty to register and must inform the appropriate officials in the offender's State and jurisdiction of residence.

The Secretaries concerned "shall establish a system to verify that these required notifications have been made." I agree that military personnel convicted of sexual offenses should be punished and then separated from the Service, out of the Service. But I also believe our obligation doesn't end at that point when a sex offender walks out the gates.

So my question is, and perhaps General Chipman and Ary, how are the Services verifying that these required notifications to State

authorities have been made for sex offenders as they separate from the military or after they have been convicted?

General CHIPMAN. Senator, part of the issue depends on the point of departure. For example, from an installation, that responsible installation would be the notification entity. If it is from a confinement facility, there are provisions within the confinement, also the administrative entity that supports the confinement facility that would make those notifications.

Where we have a challenge is when that ex-soldier or ex-prisoner then moves to another State, and how do we follow up to ensure that that individual has then notified? Is that our follow-on obligation to ensure that that gaining State is also aware of this sex offender?

Senator HAGAN. What State do they report it, and are you positive that that reporting takes place?

General CHIPMAN. In other words, when they move, they have an obligation——

Senator HAGAN. Right. Well, no, when they actually—when they get out the first time.

General CHIPMAN. Well, from the point of the State in which they separate or in which they are discharged.

Senator HAGAN. General Ary?

General ARY. We have a similar process. Both the brig system will do the notification, and then NCIS will do a notification for qualifying offenses.

Senator HAGAN. You are positive this takes place?

General ARY. It is required. I think making sure it happens in each and every case to the follow-on States and the moving challenges, that is going to be an issue. But it is in the system.

Senator HAGAN. The individuals here, do you see reports like that that this has, in fact, been done?

Admiral DERENZI. Yes, ma'am. Those reports come up through the brig system. Our brigs are responsible. They notify the individual that he or she has to register as a sex offender, and they notify the State that the offender is going to so that the State is on alert that we are going to be releasing someone who has to register as a sex offender when they move.

As the general said, when the individual doesn't receive confinement, the NCIS does that for us.

[Additional information follows:]

Secretary of the Navy Instruction 5800.14A provides instructions for notification of sex offender status prior to release from military confinement, or notification by the Naval Criminal Investigative Service (NCIS) if the sex offender was not confined.

- Prior to the permanent release from confinement, the correctional facility (brig) will advise the prisoner of the registration requirements for the State the prisoner intends to reside within upon release.
- Prior to the release of the prisoner, the confinement facility will provide written notice of the prisoner's impending release to:
  - the chief law enforcement officer of the State in which the prisoner intends to reside upon release;
  - the chief law enforcement officer of the local jurisdiction in which the prisoner intends to reside; and
  - the State or local agency responsible for the receipt or maintenance of sex offender registration in that jurisdiction.

• If the offender was not sentenced to confinement, or the offender is not confined in a military confinement facility, no later than one working day after completion of the judicial proceeding. the Convening Authority will provide the Results of Trial indicating sex offender registration or notification requirements to NCIS.
• NCIS will then notify the State and local law enforcement officials and the agency responsible for sex offender registration/notification in the jurisdiction of which the convicted servicemember intends to reside, work, or attend school.

Senator HAGAN. Thank you, Mr. Chairman.

Chairman LEVIN. Thank you very much, Senator Hagan.

We thank you, this panel very, very much. We thank those with whom you serve. Thank you for your service, and also your families for your service.

This panel is excused, and we will now call our second panel.

We are going to take a 5-minute break for the sake of our reporter here. [Recess.]

We now welcome our second panel, a panel of commanders. Colonel Donna W. Martin, U.S. Army, Commander of the 202nd Military Police Group.

Captain Stephen J. Coughlin—did I pronounce your name correctly?

Captain COUGHLIN. It is Coughlin, sir.

Chairman LEVIN. Coughlin. Thank you, Captain. U.S. Navy, Commodore, Destroyer Squadron Two.

Colonel Tracy W. King, U.S. Marine Corps, Commander, Combat Logistics Regiment 15.

Colonel Jeannie M. Leavitt—did I pronounce your name correctly? U.S. Air Force, Commander of the 4th Fighter Wing.

We welcome you all. We thank you for your service and those with whom you work, and we will call you in the order that I just stated.

So, Colonel Martin, welcome, and please limit your testimony to 5 minutes. Colonel?

STATEMENT OF COL DONNA W. MARTIN, USA, COMMANDER, 202ND MILITARY POLICE GROUP

Colonel MARTIN. Chairman Levin, Ranking Member Inhofe, and distinguished members of the committee, thank you for the opportunity to testify before you today.

My name is Colonel Donna Martin, and for the past 2 years, I have commanded the 202nd Military Police Group CID, which provides world-class investigative and protective services to the U.S. European Command, U.S. Africa Command, and U.S. Central Command. Our mission is to protect and safeguard DOD personnel and resources.

I lead personnel assigned to 13 military installations throughout Germany, Italy, Belgium, and Kosovo. I have commanded military police units at the company, battalion, and brigade levels. My experience with and authority under the UCMJ has grown at each stage of command.

As a company commander, I attended a Company Commander-First Sergeant Pre-Command Course, which included instruction on military justice. The Company Commander-First Sergeant Course emphasizes the role and relationship between the Judge Advocate and the commander. This relationship is critical. It is a

relationship that is built on mutual trust and respect. From my time as a company commander through brigade command, I have received instruction on military justice, and I have relied upon my Judge Advocate as I have considered military justice actions.

Military justice becomes more complex as you become more senior. Prior to assuming my duties as battalion commander, I attended the Senior Officer Legal Orientation Course at the Army's Judge Advocate General School.

This course acquaints senior Army officers with the legal responsibilities and issues commonly faced by battalion, brigade, and installation commanders and by those commanders assuming special court-martial convening authority. As a battalion commander, I relied heavily on my past instruction, along with the advice of my Judge Advocate in making military justice decisions.

I currently serve as the commander of the Army's premier felony investigative unit in Europe. Being a CID commander not only gives me the inherent authorities of command, but it also exposes me to the crime trends throughout the units in Europe. Part of my mission is to educate and inform leaders at all levels of possible causes for crime trends and assist in the development of strategies to prevent further crimes.

We have conducted over 100 crime trend analysis briefings in Europe, specifically oriented to a requesting unit. In my capacity as a CID commander, I have had the unique opportunity to build a Special Victims Unit consisting of both skilled sexual assault investigators and a special victims prosecutor, all of whom receive additional specialized training.

This collaborative team develops the facts, builds a rapport with the victim, and advises the commander so that he or she can make an informed decision regarding adjudication. The Special Victims Unit is notified of and tracks every allegation of sexual assault. They confer early and often with investigators to ensure a thorough and professional investigation.

We are in constant contact with the commanders that we support as investigators. My criminal investigators offer commanders additional resources to combat sexual assault, included targeted prime analysis briefings, newcomers briefings, and a sharing of best practices aimed at solidifying our commitment to providing the best possible investigative support so that commanders can execute their UCMJ authorities.

In summary, I would just reiterate that I have been educated in military justice at each stage of command, and I have worked closely with Judge Advocates at every step. It is of paramount importance that commanders are allowed to continue to be the center of every formation, setting and enforcing standards and disciplining those who do not.

The commander is responsible for all that happens or fails to happen in his or her unit. They set the standard, and we enforce them. The UCMJ provides me with all the tools I need to deal with misconduct in my unit from low-level offenses to the most serious, including murder and rape. I cannot and should not relegate my responsibility to maintain discipline to a staff officer or someone else outside of the chain of command.

Thank you for the opportunity to speak with you today. I look forward to answering your questions.

Chairman LEVIN. Thank you very much, Colonel.

Captain Coughlin?

STATEMENT OF CAPT STEPHEN J. COUGHLIN, USN, COMMODORE, DESTROYER SQUADRON TWO

Captain COUGHLIN. Good afternoon, Mr. Chairman and members of the committee. Thank you for allowing me this opportunity to speak with you today and to provide any information that may be useful on how we in the Navy are responding to the crime of sexual assault from the perspective of a unit-level naval commander.

I am serving in my third command assignment at sea, and I am currently the commander of Destroyer Squadron Two, home ported in Norfolk, VA. My squadron is comprised of 8 *Arleigh Burke*-class destroyers, consisting of just under 2,500 personnel. These units deploy across the globe independently as ballistic missile defense ships or components of a carrier strike group.

I am a career service warfare officer and a graduate of the U.S. Naval Academy. Beginning in Annapolis, I have been a leader in a mixed-gender environment throughout my career. From the beginning, we were all taught to recognize the value of each individual sailor and annually trained in sexual assault prevention and response, fraternization, equal opportunity, and other aspects of military law and accountability.

More specifically, prior to every leadership position I have held, I have received mandatory refresher training on these subjects, particularly in sexual assault. In addition, I have had legal counsel and technical guidance by a local or embedded SJA at every command that I have been assigned to, and like any prudent commander, I have never hesitated to seek advice for any case that I have handled.

In all those cases, the use of the UCMJ authorities enable me to set a tone, shape a culture, establish good order and discipline in my organization by quickly and visibly taking action to hold those under my command accountable for misconduct and to protect those I am responsible to with the preventive measures enabled by the UCMJ.

As the commodore of a destroyer squadron, I ensure all of my commanding officers are trained on the UCMJ and that they use it as a tool for maintaining a squadron-wide environment where all personnel are treated with respect and dignity and where rules and regulations are not violated.

This is a vital component of the commander's ability to establish the conditions where the result is unit efficiency, team cohesion, and trust up and down the chain of command. Since the commander of a military unit is responsible and accountable in every respect for the welfare of all assigned personnel, there must be authorities in place for that commander to take appropriate actions for every infraction and disturbance that negatively affects his or her people.

Any change to this will erode the commander's ability to command by reducing his or her effectiveness in the eyes of the crew. Taking authority away from unit commanders could have direct ad-

verse effects, such as warfighting inefficiencies, noncompliance with battle orders and rules of engagement, and the lack of damage control and fire fighting effectiveness in moments of crisis.

In short, the authority of a naval commander at sea is essential for fighting the ship. The failure of a commander to exercise his authority, in turn, should and does result in the immediate removal of that commander, a practice the Navy persistently maintains.

Based on my unit-level perspective, the process for victim reporting, with the option for a restricted or unrestricted report and the many avenues available for reporting sexual assault, has encouraged more victims to come forward and receive the care and support that they need.

I have also noticed the effects of the new fleet-wide training initiatives that have been targeted at smaller groups and have us openly and candidly talking to each other about violent crimes, the importance of bystander intervention, the role of alcohol, and related topics.

Our current training efforts are not the typical "death by PowerPoint" or block-checking exercises, but personal and meaningful facilitated engagement that is building trust and changing our culture.

Thank you for this opportunity to be here today and discuss this very important issue in our military, and I look forward to your questions.

Chairman LEVIN. Thank you very much, Captain.

Colonel King.

STATEMENT OF COL. TRACY W. KING, USMC, COMMANDER, COMBAT LOGISTICS REGIMENT 15

Colonel KING. Chairman Levin, Ranking Member Inhofe, and members of the committee, I am honored and humbled at this opportunity to address you today on this critical issue.

Preventing sexual assault or any other form of misconduct in my regiment is my personal responsibility. It is a responsibility I don't take lightly.

My name is Colonel Tracy King, and I have the honor of leading approximately 3,000 men and women of Combat Logistics Regiment 15. I have commanded marines and sailors of platoon, company, battalion, and most recently in my current assignment as a regimental commander. I have served in all three Marine expeditionary forces and with all elements of the Marine Air-Ground Task Force. My operational experiences include numerous deployments in the Middle and Far East.

Like all commanders at my level, I have received legal training on numerous occasions to include the Senior Officer Legal Course at Newport, RI, the Naval War College, and most recently at the Commanders Course just last year. Accountability in my regiment begins and ends with me. This includes the prevention and adjudication of any form of misconduct, especially all instances of sexual assault.

Please allow me to be blunt. My job is to ensure that my regiment is ready to fight today's fight today. This kind of readiness demands a level of unit cohesion that can only stem from strong bonds between marines and complete trust between marines and

their commander. I cannot afford and my Commandant will not allow an environment absent that trust.

Thank you again for holding this important hearing. I look forward to the opportunity to answer your questions.

Chairman LEVIN. Thank you very much, Colonel.

Colonel Leavitt.

STATEMENT OF COL. JEANNIE M. LEAVITT, USAF, COMMANDER, 4TH FIGHTER WING

Colonel LEAVITT. Good afternoon. Chairman Levin, Ranking Member Inhofe, and distinguished members of the committee, thank you for the invitation to join you today.

My name is Colonel Jeannie Leavitt, and for the past year, it has been my privilege to command the 5,000 men and women of the 4th Fighter Wing, located at Seymour Johnson Air Force Base, NC.

Our mission is to deliver dominant Strike Eagle air power any time and any place when called upon to do so in defense of our great Nation. Within a matter of hours, we can deploy to provide precision combat air power and hold targets at risk anywhere in the world.

I have been in the U.S. Air Force for more than 21 years. I am an F–15E instructor pilot with more than 2,600 hours, including more than 300 combat hours over Iraq and Afghanistan. I have served at various State-side locations as well as in South Korea, and I have deployed to locations in Saudi Arabia, Kuwait, Turkey, Bahrain, Qatar, and Afghanistan. I have commanded at the squadron and wing levels.

My experience with the military justice system began well before I became a commander. From pre-commissioning academics to continuing coursework, training, education, and leadership briefings, these experiences instilled in me a deep sense of the vital role military justice plays in maintaining a disciplined force. As a result, I take my duties and responsibilities as a commander very seriously today.

As the commander of the 4th Fighter Wing, I am responsible to ensure that our airmen are properly trained and equipped to go into harm's way at a moment's notice, should the need arise. Our Nation has entrusted the lives of America's sons and daughters to our military, and ultimately, it is the commander who shoulders that responsibility.

An absolutely indispensible attribute of a combat-ready force is discipline. Commanders must have the ability to hold airmen accountable for their behavior. This is what enables a highly disciplined force, which increases the lethality of our weapons systems and improves the safety of our airmen.

Discipline is not punishment. It is a state of readiness that allows flawless execution of a mission. A disciplined airman follows orders. The UCMJ gives commanders the ability to enforce the high standards they set.

I often address 4th Fighter Wing airmen and reiterate my expectations of them. I expect them to abide by the Air Force core values of integrity first, service before self, and excellence in all we do. I also expect them to be professional and disciplined and to always

have respect for others. When I talk about respect, I emphasize that there is absolutely no tolerance for sexual assault.

If a sexual assault happens, we will ensure the victim is taken care of and ensure any guilty people are held accountable. Sexual assault is a vile crime against the victim and against society. It erodes trust, damages the unit, and weakens our military.

The UCMJ gives commanders the ability to prosecute the guilty and hold them accountable for their actions. As we continue our efforts to eradicate sexual assault, we must strive to set a climate where prevention is the norm, a climate where airmen feel the duty and desire to protect one another.

We must aggressively combat sexual assault to ensure we remain the world's greatest military. I won't set a goal of anything below 100 percent bombs on target for my fighter wing, and I won't set a goal of anything below 100 percent eradication of this wretched problem.

Thank you again for the chance to testify before this committee today. I look forward to answering your questions.

Chairman LEVIN. Thank you very much, Colonel.

We will have a 6-minute round for questions.

When a commander offers an Article 15 or a nonjudicial punishment (NJP), the accused has a right to decline the punishment and to insist upon a trial by a court-martial instead. If the accused does that, however, he or she risks more serious punishment that could be assessed by a court-martial. Is that correct?

Colonel KING. That is correct, sir.

Chairman LEVIN. Okay. Now let me ask each of you, is the availability of NJP, under Article 15 of the UCMJ, to quickly and efficiently punish servicemembers for some serious offenses, let us say barracks larceny, for instance, is that an important tool for the commander?

Let me start first with you, Colonel Martin. Is the availability of NJP under Article 15, is that an important tool for the commander?

Colonel MARTIN. Thank you, Senator.

Yes, it is an absolute important tool for the commander to have. Number one, to be able to effect discipline in my unit, I must have the tools to do that. The UCMJ allows me to do that.

But it also sends a message in my unit of what the standard is. So, if I, as a commander, don't have a tolerance for, say, barracks larceny in this case, then I have the tool to punish that offender under the article, Article 15.

Thank you.

Chairman LEVIN. Okay. Thank you.

Captain?

Captain COUGHLIN. Yes, sir. Absolutely, without question. That is probably the number-one tool for the commander to quickly and visibly establish discipline in his unit based on some infraction of a regulation.

Chairman LEVIN. Okay. Colonel King?

Colonel KING. Sir, without question. It is quick. It is effective. So, yes, sir. It is an effective tool.

Chairman LEVIN. Okay. Colonel Leavitt?

Colonel LEAVITT. Yes, sir. The Article 15 is absolutely a critical tool in the commander's toolbox.

Chairman LEVIN. Now the question is whether we take away the—one of the questions that has been raised in one of the bills before us is whether we should remove from the commander the authority to refer cases for trial by court-martial.

Now, first of all, what impact would that have on the commander's authority and control over those who are under his or her command? Why don't we start at the other end? Colonel Leavitt?

Colonel LEAVITT. Yes, sir. I think it is absolutely critical that the commander has the ability to prosecute offenses. You know they say that actions speak louder than words. I need to be able to back up my words. When I say there is absolutely no tolerance for sexual assault, I need to have the ability to back that up.

I need to be able to take action against any perpetrators and hold people accountable. That is part of my responsibility as a commander.

Chairman LEVIN. Now when you say to hold someone accountable, do you mean by, for instance, referring a case for trial by court-martial?

Colonel LEAVITT. Yes, sir.

Chairman LEVIN. Okay. Colonel King?

Colonel KING. Sir, I will give you a straightforward answer. If you remove my authority to convene a court-martial, my suspicion is that the overwhelming majority of marines will refuse NJP.

Chairman LEVIN. Will do what?

Colonel KING. They will refuse NJP. They will not accept it. They are not going to do it. They are going to take their chances with the person they have never met, a convening authority that is not there with them every single day. I think they will refuse it.

Especially for the high-order cases where I can refer charges, the preponderance of evidence supports that the event has occurred, but I am not quite sure whether or not I can get beyond a reasonable doubt, they are going to never accept Article 15, if I am not the convening authority.

Chairman LEVIN. A nonjudicial punishment?

Colonel KING. Yes, sir. They are not——

Chairman LEVIN. So your ability to successfully use the tool of NJP, in your judgment, is dependent upon, at least in some cases, having the power to refer a matter to a general court-martial?

Colonel KING. That is correct, sir.

Chairman LEVIN. Okay. Captain Coughlin?

Captain COUGHLIN. Sir, in my mind, it comes down to a very simple matter of trust, and I know we mentioned that earlier today. But I want to refer back to what the Chief of Naval Operations mentioned in his testimony about this charge of command that we use in the Navy, and there is a passage in that that refers to trust.

I would just like to read before you. "As the commanding officer, you must build trust with those officers and sailors under your command. You build trust through your character and in your actions, which demonstrate professional competence, judgment, good sense, and respect for those you lead."

Now every person who takes command of a naval vessel reads this, acknowledges it, and signs it, and that is credibility and trust. I have to be viewed as being trusted by my chain of command in the eyes of my crew. That gives me credibility and, therefore, leads to good order and discipline.

Chairman LEVIN. Thank you. Colonel Martin?

Colonel MARTIN. Senator, I would agree with my colleagues on the panel that having that ability to refer a case to court-martial is crucial. Not only to the commander's credibility, but we also speak of trust in this matter as well. It is a crucial element.

I do believe exactly what Colonel King said that soldiers knowing or understanding that you don't have the authority as a commander to refer a case to court-martial, they will never take—they will never accept an Article 15.

Chairman LEVIN. All right. The commander has a broader goal when considering whether to refer a case to a court-martial, such as protecting his or her troops and sending a message that, for instance, the conduct at issue—sexual misconduct, barracks stuff, whatever—will not be tolerated.

Would you be concerned that professional prosecutors, without the responsibilities of a commander, might actually be less likely to pursue court-martials in those—in close cases?

Colonel Martin?

Colonel MARTIN. Yes, Senator. I think that because the commander is so in tune to discipline and setting standards inside of their units that they would fiercely pursue NJP, and I don't think that someone outside of the chain of command or a staff officer would have that same passion for discipline inside of their unit.

Chairman LEVIN. Okay. Now we are also saying, my question, though, is might a commander be more likely to pursue a court-martial than even an outside independent officer because of the desire of a commander to send a message to his unit?

Colonel MARTIN. Yes, Senator. I do believe the commander would.

Chairman LEVIN. Captain Coughlin?

Captain COUGHLIN. Sir, I think it goes to the severity of the crime. I mean, there are some crimes that clearly need to go to a higher level, and I think most commanders have that sense and judgment when to elevate it. When questioned, that is where they seek the advice of the SJA.

Chairman LEVIN. Okay. Colonel King?

Colonel KING. Sir, my comment on that would be that commanders at our level don't even consider judicial economy. I think that if we had a separate and distinct panel of civilian prosecutors that judicial economy is something that is always factored in, whether or not it is worthwhile to try the case. I don't even consider that.

What I consider is, number one, protecting the victim; number two, achieving justice for whatever crime was committed; and also the message that I send to the thousands of marines that are aptly watching what is going on. Even if I fail to achieve a conviction at whatever level, I can still send a powerful message to them that this kind of conduct, even alleged, even not proven, is completely unacceptable.

Chairman LEVIN. Colonel Leavitt?

Colonel LEAVITT. Yes, Senator. I could absolutely see the scenario where a prosecutor may not choose to prosecute a case or recommend prosecuting a case because the likelihood of a conviction. However, as a commander, I absolutely want to prosecute the case because of the message it sends so that my airmen understand that they will be held accountable.

Then we will let the jury decide what happened in the case and whether or not it will be convicted. But that message is so important, whereas an independent prosecutor may not see the need to take it to trial if the burden—if the proof is not necessarily going to lead to a conviction.

Chairman LEVIN. Thank you.

Senator Inhofe.

Senator INHOFE. Mr. Chairman, I don't think I have ever heard four opening statements so precise and specific. I am real impressed.

Of course, with all of your commands that you have had, Colonel Martin, including CID, and you, Captain, and of course, Colonel Leavitt, as a fellow flight instructor, I know how you all feel about discipline.

Colonel King, I was listening to you. I can tell that you are a very well-educated man. Where did you get that education?

Colonel KING. Boomer Sooner, sir.

Senator INHOFE. Oh, Oklahoma. There you go. [Laughter.]

I wouldn't expect that you folks have had time, since it just came out, to have read and digested the Defense Legal Policy Board report. I know you will be doing it, and it is certainly appropriate to what our discussion is today.

I would like just to quote one thing out of it and ask for your opinions. The quote is, "The notion that commanders have the ability to deal swiftly, fairly, completely, and visibly with all misconduct, both in and out of the field environment, is necessary to achieve effective deterrence and discipline. Executing fair, prompt military justice reinforces command responsibility, authority, and accountability."

I would like to ask you, in your view, would creating a centralized initial disposition authority with oversight by an O–6 Judge Advocate, combined with the centralized authority to detail judges and members of courts-martial, impact the qualities of portability and agility of the military justice system? Then getting back to the four qualities, how would a system like this impede your ability to deal with misconduct swiftly, fairly, competently, and visibly?

Can you give me any thoughts on that? Start with you Colonel Martin.

Colonel MARTIN. Thank you, Senator.

One of the things that as I think about this, I think about a case in question that I had, maybe anecdotally, about one of the times when I had to relieve a senior noncommissioned officer in my command. What happened was the senior noncommissioned officer was having an inappropriate relationship with a junior member of the command.

So, while it wasn't a sexual relationship, it was inappropriate because of the rank differential, and my ability to deal with that was

certainly swift. It gave me the ability to send a message, number one, to the victim, the very junior enlisted member of that offense, that I took her complaint, because she did complain about it, I took her complaint very seriously. Just because he was a very senior member, she knew that I would act on that, on the issue.

That spread across my unit. It was very, very transparent, and it affected very positively the morale in the unit. So just having that ability to affect those is very, very positive.

Senator INHOFE. Well said. Captain Coughlin?

Captain COUGHLIN. Sir, my first thought on that is just possibly the logistics behind providing that kind of support in dispersed naval forces, and the ability to act quickly by the commander is what is going to set the tone and establish those conditions.

Some of this information, depending on it may have a half-life, but to deal with it quickly is essential.

Senator INHOFE. That is good. Colonel King?

Colonel KING. Senator, resident in the four folks you see sitting right here today is a nexus that I think is important. That is, we tell our marines—it comes from our mouths—this is the standard we want to hold you to.

We tell them why we have that standard. These are the things that we are going to achieve, and then we hold them to that standard. That is actually the same person.

Right now, we have the tools to do what I just described. It is not always precise, but it works, and they know. The deterrent value, the prevention of misconduct is actually where I know I spend most of my time. I don't want it to occur. So I attempt to set the conditions where it can't flourish.

That is what is most important, and that is what I think we need to be very cautious about changing.

Senator INHOFE. Well said. Colonel Leavitt?

Colonel LEAVITT. Yes, Senator. I believe that the commander's ability to issue swift and fair justice is critical to enforcing the high standards we set. When we are able to enforce those standards, that is when we are able to build discipline and trust, and that is when we build combat capability, and that is when we have combat effectiveness. That is how we become victorious, and that is how we maintain our state as the best military in the world.

I think this portion of it is critical that you allow a commander to command by being able to enforce the standards they set.

Senator INHOFE. Yes. Well, thank you.

Mr. Chairman, I think this has been a really good panel to get people on the ground, doing it on a day-to-day basis, as opposed to looking at all the theories and all that. So, I appreciate your responses very much.

Thank you, Mr. Chairman.

Chairman LEVIN. Thank you, Senator Inhofe.

Senator Reed.

Senator REED. Well, thank you, Mr. Chairman.

Thank you, ladies and gentlemen, for your service to the Nation and to your individual Services.

Let me put my two questions, and they are not rhetorical. I am searching, with your guidance, for answers.

I commanded a paratrooper company a long time ago. It was not mixed gender so this issue of sexual assault was not as central as it is today. But I have given Article 15s, and I have referred people to general court-martials, and I have seen some of my soldiers actually sent to Fort Leavenworth. It was not a good day for either one of us.

There are, I think, two or three issues that I would like to explore. First of all, and I say this not rhetorically, but how do you separate a chain of command from a legal process in the fact that—and I think there is a presumption if we had this independent process outside the chain of command, it will encourage reporting. It will be much more effective.

But the reality in a company, particularly is if something bad happens, most people know about it. If the company commander knows about it last, that is probably the worst thing for the company and for the company commander.

But just in sort of practical detail, if a serious offense, even if it is reported through an independent channel, very quickly CID agents will show up in the company. Company mates will be—I use the term generically, but it applies to squadrons and also ships. You will have individual soldiers who have to be interviewed.

Then you will have to take some action as a company commander. It might not be the formal referral of charges. Do you separate the individuals? Do you transfer an individual out of the company, et cetera? Will that be perceived as prejudicial or discriminatory or retribution?

Again, this is the reflection of someone who 30-plus years ago, being kind, had to do this, but not in the same context today. So your comments, Colonel Martin and then down the row, about this issue.

Colonel MARTIN. Thank you, Senator.

I think the anecdote that I gave may suit this question very well with my sergeant major and a very junior victim in my command. We moved the victim in this case, but I suspended the sergeant major of his duties. She moved by her request to go to another installation, and I suspended him of his duties.

I think that responsibility has to lie with the commander, and the commander has to make difficult choices because we always have to do what is best for our organization. So, that is in the forefront of our minds at all time.

That discipline that we have all talked about and setting the tone, those are actions that the commander has to take. So separating or bifurcating that process of the command from the legal authority, I think, would set us back in discipline.

Senator REED. Captain?

Captain COUGHLIN. Sir, accountability is such a broad term, and I think when you try to separate one element of accountability from my responsibility as a commanding officer, that would be confusing. I don't think people under my command really could list a definite list of what elements of accountability did I own. I think you add confusion to the chain of command, and a crew of a ship or ships in a squadron will eventually wonder who is really doing all of the commanding.

The question about investigation, an outside entity comes in, conducts an investigation. I do that. I conduct command investigations that are thorough by using the Judge Advocate General Manual (JAGMAN), and we are trained on doing that. It is not uncommon.

Senator REED. Colonel King, briefly?

Colonel KING. Senator, I don't think you can separate it. In fact, it is my opinion that if we do separate these two things that you are talking about, you are actually going to have a significant decrease in reporting. That is my opinion. I can't prove a negative, but that is my opinion.

I would be very hesitant to do this. I know I have read some studies in the past year since this has become our number one priority that show that reporting in the civilian community is even worse. Well, they don't have a chain of command out there. So I can't—I am attempting to rationalize that in my mind right now.

I actually think that our commanders' involvement and how we have really taken this at issue is going to get after the reporting issue because reporting is the bridge to everything. It is the bridge to victim services. It is the bridge to justice. So it is about reporting.

You pull those two apart, reporting is going to go down.

Senator REED. Let me follow up quickly. Colonel Leavitt, your comments on this question, and then I have another question which I want to address.

Colonel LEAVITT. Yes, sir. I agree that the command and the legal aspect have to be hand-in-hand. For me to be able to enforce the standards I have set, I have to be able to take action when people don't follow the guidance I give. I have to be able to hold people accountable.

The command team works in conjunction with legal. So I have advice on any legal matters from my Judge Advocate.

Senator REED. Colonel King, let me go back to your comment because there is another—this is part of the complex nature of this issue. There are compelling statistics that there are numerous cases of improper sexual contact between members of the military. Then there are also and I think very compelling statistics that a lot of them go unreported.

When you ask the young marine, the young sailor, the young soldier or airman why, it is "I don't trust the commander. I don't trust the whole system." I think there is enough there not to dismiss that as sort of, well, it is worse in the civilian life. The intention of many of the proposals is to provide that kind of trust, et cetera.

So how do you respond to this issue most specifically, and if anyone else has a quick comment also, how do you respond to this issue of—because it is all about trust. Colonel?

Colonel KING. Sir, I can only speak from my own experience. My experience with actually working through sexual assaults is actually pretty limited. But in my experience, this is such a personal crime. It is so embarrassing.

That is what in my experience causes the lack of reporting. That is the number-one reason. It is embarrassing, sir. You have an 18-year-old kid who just wants to do well, who is embarrassed by it. That is what causes it.

Also, sir, in my experience, sir, I have never met a commander that wouldn't jump—wouldn't stop time when they hear that something like this is occurring. I have never seen that. I have never smelled it. I have never heard of it.

Now I read the newspapers, too, sir, and I see what is going on out there. But I don't see it where I work.

Senator REED. Anyone else? Captain?

Captain COUGHLIN. Yes, sir. Just to add to that, also personal experience. My experience is that people under my charge trust the leadership. I know that from reading command climate surveys, speaking to sailors face-to-face on my ships.

I think they are uncomfortable, they are not confident with the process. They are not as familiar with it as we are. They know that these things take a long time, and just the thought of going through that process, even if it is swiftly acted upon at the command, is, I think, a huge concern.

Senator REED. Anyone else have a comment on this? I have one final question. I apologize to my colleagues.

You know it is ultimately about leadership, and that is accountability and responsibility. I have no doubt, Colonel, if you will let, or even without your knowledge, an intoxicated pilot get in one of your aircraft, you would be relieved. Colonel, if an intoxicated supply sergeant drove a truck into a wall, you would be relieved, even if you had nothing to do with that.

Colonel, same thing, one of your military police drove 80 miles an hour because they were under the influence. Do you feel that the same responsibility would be extracted if there were an incident of a serious sexual assault in your unit, i.e., you would be relieved almost without question? Colonel?

Colonel LEAVITT. Senator, I believe it is absolutely the commander's responsibility to set the climate where people know there is zero tolerance for sexual assault and that if anything happens, it is absolutely everyone's responsibility to report that, to take care of the victim.

Senator REED. It is actually everyone's responsibility to prevent someone getting in the aircraft who is intoxicated. But if it happens, you would be gone. I have no doubt about that, or at least I have a sense of that.

My point is if the chain of command is going to be the chain of command, then commanders have to understand pretty quickly that there are some things that if it happens, even if they had no ability to deter it, they would be responsible for it and they would accept it, salute, and say, "Yes, sir. I understand."

Colonel KING. Sir, a proven sexual assault occurs in my command and I don't report it, I am gone. There is no question in my mind.

Captain COUGHLIN. Yes, sir. Same here, and also if it has become known through an investigation that I have tolerated a climate that accepts any kind of behavior like that, then I should be accountable for that.

Senator REED. I presume you concur, Colonel?

Colonel MARTIN. Absolutely, Senator.

Senator REED. Thank you.

Thank you, Mr. Chairman.

Chairman LEVIN. Thank you, Senator Reed.

Senator Ayotte.

Senator AYOTTE. Thank you, Mr. Chairman.

I want to thank the witnesses for being here and for your service to our country.

I wanted to ask Colonel Leavitt whether you have had any experience with the special victims' counsel in the Air Force, the pilot program?

Colonel LEAVITT. Yes, Senator. I have spoken with—one of my prosecutors is a special victims' counsel and we've spoken in broad terms.

He said that it has been very well received, and truly, it gives victims a voice. It gives them an understanding of how the process works. It makes them feel like someone is on their side to help them through the process for them to understand what options they have available.

Senator AYOTTE. Because one issue we are struggling with is if you look at the recent Sexual Assault Prevention and Response (SAPR) report, one of the real fundamental issues is that some people aren't coming forward because they have expressed that they have heard other victims talk about a negative experience in the situation that they went through.

I wanted to get the impression from the other branches if you have any understanding what the Air Force program is and what your thought is of their program of having a special victims' counsel represent victims within the system?

Colonel MARTIN. Thank you, Senator. I will go next.

In the Army, we have a Special Victims Unit. That Special Victims Unit is made up of a sexual assault investigator. It is also made up of a special victims prosecutor, and it is also in coordination with a victim witness liaison. All of these resources are available to the victim to help them through the process, establish a rapport, which is actually the foundation of our investigation, and then it works very, very well.

The interview techniques that we have developed in the Army, called the Forensic Experimental Trauma Interviews technique, where we use a lot of different questioning techniques, I think that word has spread. Because I guess I watched "The Invisible War," too. So, the CID agent in "The Invisible War" talks about how we had a mantra where we tried to prove, when we were talking to the victim, you disprove it that something didn't happen.

Now we don't do that. We don't take that approach. We spend so much time with the victim establishing a rapport, I think that spreads, and so, we have more reporting.

We also see an uptick in victims who initially did a restricted report now come forward and want to do an unrestricted report.

Senator AYOTTE. Colonel, the one thing I will say is what the Air Force has is that the individuals that would be the advocate in the Army, are they trained lawyers? I mean, meaning, that their pilot has trained lawyers helping victims. Do you have the same thing happening in the Army and other branches?

Colonel MARTIN. Yes, Senator. We have a special victims prosecutor who is a trained attorney.

Senator AYOTTE. They represent the person with the same authority as the special victims' counsel?

Colonel MARTIN. Yes, Senator.

Senator AYOTTE. I would like to understand, if you can get me some more information about that because I understood—Senator Murray and I have a bill that extends what the Air Force is doing to every single branch, has 33 cosponsors in the U.S. Senate, and it was our understanding that the Air Force had this pilot. So if there are similar programs in other branches, I would like to get more information on that because our understanding is that the Air Force pilot program really had somewhat of a unique standing in the Services.

Colonel MARTIN. I will certainly provide that to you, Senator.

[The information referred to follows:]

I would like to clarify that the Army does not have a program modeled on the U.S. Air Force Special Victims Counsel. I was referring to the Army Special Victim Prosecutor (SVP) program.

The Army has 23 SVPs with regional responsibilities. These judge advocates are individually selected and assigned based on demonstrated court-martial trial experience, ability to work with victims and ability to train junior counsel. They complete a specially designed foundation and annual training program to elevate their level of expertise in the investigation and disposition of allegations of sexual assault and family violence. This training includes the career prosecutor courses offered by the National District Attorneys Association and on-the-job training with a civilian special victim unit in a large metropolitan city. The SVP's primary mission is to investigate and prosecute special victim cases within one's geographic area of responsibility. Their secondary mission is to develop a sexual assault and family violence training program for investigators and trial counsel in their area of responsibility. SVPs are involved in every sexual assault and special victim case in their assigned region. The SVPs work hand-in-glove with the SAI investigators throughout the process.

As a brigade commander, I look forward to the results of the Air Force's special victim counsel pilot program and recognize the value of all efforts that enhance victim care and satisfaction. Within my Service, the Army is engaged in hiring several hundred victim advocates as directed by law. We are also actively training our legal assistance attorneys and victim-witness liaisons to better advocate on behalf of victims. The Army has 300 legal assistance attorneys currently assisting and advocating for victims within a confidential attorney-client relationship.

As a Military Police Commander, I have seen firsthand the professional, comprehensive services available to victims of sexual offenses. I am confident that the Army's Special Victim Capability consisting of specially selected and trained prosecutors, investigators, paralegals and victim witness personnel working as a coordinated team is the best opportunity for effective, sustainable victim care.

Senator AYOTTE. Thank you.

Colonel LEAVITT. Senator, just one thing to add in terms of our process. The special victims' counsel is separate from the prosecution chain. They are not part of the prosecution for that sexual assault. They are there purely for support for the victim.

Senator AYOTTE. That is a huge difference. Of course, absolutely. In fact, if you are in the prosecution chain, then you have a different purpose than if you are there just to solely advocate for the victim and who may have a different opinion on the plea result in a case, who may want their counsel to express that opinion to the prosecutor who has a different opinion.

Victims having their own voice is really important. It is something that has happened in certainly the civilian sector. I appreciate your clarifying that distinction for me because my vision of it, as I didn't understand it, for how it works in the Army is much more what happens in the Air Force.

Because I think victims can have very different feelings about a disposition and also if they feel they are part of the—if they are just treated within the prosecution, that is different than someone representing just their interests.

I wanted to ask about the situation at Lackland Air Force Base; can you help me, Colonel, to understand what that tells us about some of the issues we have with basic training, the culture during basic training, and the fact that there were certainly basically victims there that were either through inappropriate sexual contact or, in some instances, criminal rape type situations in Lackland. What is your view on this issue with regard to basic training, and how much of a problem do you think this is?

Do you all think we should be prohibiting sexual contact between military instructors and trainees during basic training? Because I see this as a situation where, as you are in basic training, you are very new, most of them are young, and they want to succeed.

If there is contact between the person that they are reporting to that is training them, then there is a real coercion issue there. Could you give me some insight on that, what you think?

Colonel LEAVITT. Senator, I haven't been to Lackland anytime recently. I am familiar from reading the papers. But my view is that any kind of climate or situation that allows sexual assault or rape to happen is completely unacceptable, and people should be held accountable. That kind of climate, there should be zero tolerance.

Senator AYOTTE. What about sexual conduct in general—doesn't that create a potential for coercion while someone is in basic training between someone who is a trainee and the person that they are reporting to? I mean, what kind of culture would that create within that unit within the trainees as well?

Colonel KING. Senator, any form of contact that wasn't professional, that wasn't part of the curriculum, is contrary to good order and discipline. I will tell you upfront I have no problem with what you are proposing. I think it will help.

But I also say that we do that now. We just, obviously, messed up in that one case. I can only speak from my personal experience. My personal experience, traveling through the Marine Corps, is that the level of institutional control, boot camp, when it is higher, the marines are actually safer.

That is what I have seen with my own eyes, and that is a little bit contrary to the point you are making, but that is what I have seen.

Captain COUGHLIN. Ma'am, certainly at a basic training environment, there should be a huge level of control and regimentation, and there is also a chain of command, just like any place else. In fact, if you go to the Navy's basic training site, it mirrors ships and divisions and departments on ships.

There is a clear chain of command. All those same rules should apply, and anything inappropriate is obviously a violation.

Colonel MARTIN. Senator, I would agree. I would concur. I have no issue with what you are proposing either. I don't believe there should be a sexual relationship. It is not the place. That is not why they are there. It does erode discipline in that environment.

Senator AYOTTE. Thank you all. Appreciate it.

Chairman LEVIN. Thank you, Senator Ayotte.

Senator McCaskill.

Senator MCCASKILL. Thank you.

Thank you all for being here.

I am a little taken aback. It sounds like you all are very bullish on the status quo, just listening to your testimony from a distance. I just want to tell you that with this Senator and I think other Senators, the status quo is not acceptable.

I will start with that, and let me first ask all four of you, have any of you referred a sexual assault case for a court-martial? Start with Colonel Martin.

Colonel MARTIN. Yes, Senator. I have.

Senator MCCASKILL. Captain Coughlin?

Captain COUGHLIN. No, ma'am. I have not.

Senator MCCASKILL. Colonel King?

Colonel KING. Yes, ma'am.

Senator MCCASKILL. Colonel Leavitt?

Colonel LEAVITT. Yes, Senator. I have.

Senator MCCASKILL. Okay. Have any of you referred a sexual assault case for court-martial when your JAG officer did not recommend it?

Colonel MARTIN. Yes, Senator. I have.

Senator MCCASKILL. You have? Colonel King? No? Colonel Leavitt?

Colonel LEAVITT. No, ma'am.

Senator MCCASKILL. Has there been an instance where your JAG has recommended a court-martial, and you have instead taken an Article 15 and done a NJP. Colonel Martin?

Colonel MARTIN. No, Senator.

Captain COUGHLIN. No, ma'am.

Senator MCCASKILL. Colonel King?

Colonel KING. For a sexual assault, ma'am?

Senator MCCASKILL. Yes.

Colonel KING. No, ma'am.

Senator MCCASKILL. Colonel Leavitt?

Colonel LEAVITT. No, Senator.

Senator MCCASKILL. Okay. The reason I asked this is because there is a difference between discipline and punishment, and I see that Article 15 and NJP, I certainly appreciated the points that Senator Reed was making with you on this regard. But one of the issues here is removing the problem versus punishing the felon.

Do you think, any of you think that there may be a tendency for commanders to say, okay, I have enough on him over here to go to a court-martial. But maybe the court-martial is not a slam dunk, and I want to remove the problem. So let us just revert to an Article 15, get him out of here. Then I remove the problem, and then we don't have the problem in existence anymore.

Colonel LEAVITT. No, Senator. Absolutely not.

If I have a case of sexual assault, I absolutely want to prosecute it. I want it to be visible. I want the unit to understand that there is absolutely zero tolerance. So, if I just make the problem go away, I have eroded the trust and confidence that that unit has in its leadership.

So I do not see a case that that would happen.

Senator MCCASKILL. Colonel King?

Colonel KING. Senator, I am not a lawyer, but I have had somewhat legal training, and I have done a couple of court-martials. What I have learned with regards to sexual assault is these are hard to prove because they normally revolve around whether or not consent was given.

Senator MCCASKILL. It is about believability, isn't it?

Colonel KING. It is, and that is——

Senator MCCASKILL. It is about the finders of the facts being able to hear the testimony in a courtroom and decide who is telling the truth.

Colonel KING. Yes, ma'am.

Senator MCCASKILL. Because you don't have an opportunity to talk to that victim, do you?

Colonel KING. Yes, ma'am. I don't like that, but it is absolutely true. In many cases, I can get to where—I can get above the 51 percent where I can prefer charges, but I can never get above 90 percent. I just can't. There is not enough evidence.

Senator MCCASKILL. Well, what is the 51 percent and the 90 percent? What are you referring to?

Colonel KING. Normally, ma'am, I would decide that I can prefer charges when one of three things happen. The findings of a formal investigation. So an investigation comes back from NCIS that says this occurred.

The conviction of a criminal court out in town or the findings of a civil case out in town. Again, that is preponderance of the evidence.

Or when just all the evidence as I took it in got me to believe that, you know what, it is more likely this occurred than it didn't occur. When I reach that level, I am comfortable with sending charges forward.

Senator MCCASKILL. Okay, but you are saying that you have never disagreed with your professional lawyers who have made recommendations on these cases?

Colonel KING. No, Senator.

Senator MCCASKILL. Okay. When you decide to do an Article 15, for whatever reason, a NJP as opposed to a court-martial, have any of you ever had an opportunity to talk to the victim about that before you did it?

Captain COUGHLIN. Ma'am, depending on the crime, we have a process on the——

Senator MCCASKILL. We are just talking about sexual assault today.

Captain COUGHLIN. Okay. No, ma'am. I have not.

Senator MCCASKILL. Anybody ever talk to a victim before doing an Article 15 in lieu of a court-martial? No. Don't you think you should? Don't you think that victim at that point—I mean, this is a huge decision you are making.

One of the things we are struggling with here is how many cases are going to trial versus how many are reported. We don't know many incidents there are because all we know is how many have been reported because the only thing that you guys collect is sexual contact, unwanted sexual contact. Well, that can be a far cry from a rape.

If we know there have only been 3,300 or so many reported and if we only know there has been several hundred of that that have gone to trial, the huge difference there, a lot of that is NJP. A lot of that is Article 15. But I don't sense that the victim is being consulted about this momentous decision to avoid a criminal conviction that will mean prison versus a demotion or 60 days without pay or even an administrative separation from the military.

Colonel LEAVITT. Senator, I can only speak for the 4th Fighter Wing specifically. Since January 2012, we have had six unrestricted cases. Five of those either have gone or are going to courts-martial. The only one that did not was when the victim recanted.

So, under oath, the individual swore that it was consensual in all instances. So NJP was never even considered.

Senator MCCASKILL. Anybody who had an Article 15 where it might have been appropriate to talk to the victim before you did it? No?

Well, you see the point I am making? I like it, I mean, believe me, when I was a prosecutor, there were cases that fell apart for reasons that were not within the control of the victim, and I would have liked to have a backup of something I could do to get on this guy's record because very rarely does anybody do this once or twice.

I want to ask you this, do you all feel like you have had enough training about the difference between sexual harassment and sexual assault?

Colonel MARTIN. Yes, Senator. I do.

Captain COUGHLIN. Yes, Senator.

Senator MCCASKILL. You do?

Colonel KING. Yes, ma'am.

Senator MCCASKILL. I would tell you—and I know I am out of time, I just want to say this on the record. General Franklin, in the Aviano case, when he felt compelled to justify what he had done, he wrote—have you all read his letter that he wrote?

I recommend you read it because it was astoundingly ignorant. He opened it by stating that she didn't get a ride home when she had a chance. Are you fricking kidding me? That that is somehow relevant to whether or not he crawled in bed with her and tried to have sex with her?

I mean, that was his first thing he started recounting, and what a great husband he was and how their marriage was picture perfect. All of this completely irrelevant to whether or not he committed the crime.

So, if you are making these decisions, which you are, and if you have the ability to look at these cases, I recommend his letter to you as a poster case of a lack of training and understanding the nature of sexual assault. You can have a perfect marriage and be a predator, and believe me, there aren't very many wives that step forward and admit that their husbands, and there aren't very many husbands that would step forward and admit that their wives were what is being accused of them being.

It is not unusual for those people to come forward and try to justify that they were innocent, I just want to make sure. You all are here, and you are on the front lines. I want to make sure you read that letter, and if you need it—I am sure you can get it through

your command. But if you need it, my office would be happy to provide it to you.

Thank you all for being here.

Thank you, Mr. Chairman.

Chairman LEVIN. Thank you, Senator McCaskill.

Just for the record, a number of times the NJP acronym has been used. I think we all know what it means. You all know what it means. But just for the record, that is nonjudicial punishment.

Okay. Senator Gillibrand?

Senator GILLIBRAND. Thank you all for being here today. Thank you for your service.

I have been disturbed by some of the testimony in this panel. There seems to be a lack of awareness of incidents where a victim does not feel he or she has received justice and does not feel that they can go to their command because they feel they will either be marginalized, retaliated against, or blamed.

There are so many instances of this, it is astounding to me that you don't know them personally or haven't seen them. I don't know have you seen "The Invisible War." I don't know what due diligence you have done, but there is a real problem. You have 26,000 cases of unwanted sexual contact, sexual assault, or rape. As Senator McCaskill pointed out, we don't know how many of each.

We have 3,300 reported cases, and of the 3,300 reported cases just from last year alone, only 1 in 10 go to trial. Once it goes to trial, we have a pretty good conviction rate. But why is 1 in 10 going to trial, and why is only 1 in 100 cases actually resulting in conviction? We have a serious issue with a victim's willingness to report.

Colonel Leavitt, I recently learned of a disturbing case of Airman First Class Jessica Hinves. She reported that she was raped by a coworker who broke into her room at 3 a.m.

She said, "Two days before the court hearing, his commander called me at a conference at the JAG office, and he said he didn't believe that the offender acted like a gentleman, but there wasn't reason to prosecute. I was speechless. Legal had been telling me this was going through court. We had the court date set for several months, and 2 days before, his commander stopped it.

"I later found out the commander had no legal education or background, and he had only been in command for 4 days."

Her rapist was given the award for airman of the quarter, and she was transferred to another base. Please explain to me how this incident would provide any victim of sexual assault in the military comfort that if they are willing to come forward, to have the courage to tell their story, report that rape, that they have any chance of receiving impartial justice when the decision to prosecute is left within the chain of command?

Now your own personal record sounds very strong, Colonel, but I don't know if that is true for everyone in your position.

Colonel LEAVITT. Yes, Senator. I am familiar with the case, happened a few years ago, and I have a little bit of summary information. I was not there. I don't know why the commander chose what he did.

However, I feel it is very important that we set a climate so people feel comfortable to come forward because I was very clear. In

terms of "The Invisible War," when our new chief took command, he quickly made this a huge emphasis item, and it was very, very clear. Early November, I called in all of my commanders, all of my first sergeants, and together in a theater, we all watched "The Invisible War."

We talked in detail about what we can do, how we can set an environment where people feel it is okay to come forward because I was crystal clear with them. I am not judging you by whether or not you have sexual assaults. I am judging you by what you do if there is one.

You need to set the climate to make sure that everyone knows it is unacceptable. If it happens, we will take care of the victim, and we will bring justice to the perpetrator.

Senator GILLIBRAND. If 62 percent of the victims who have actually come forward to report a sexual assault or rape believe they have been retaliated against, how do you think you are going to instill that trust?

Colonel LEAVITT. I think you have to build that trust, ma'am. That is what I have been working on since I took command a year ago, is trying to build that trust.

Senator GILLIBRAND. How long do you think that will take? How many more victims have to suffer through a rape and a sexual assault until you rebuild that trust?

Why wouldn't you let someone who is experienced to make that decision, who is a prosecutor, so that you have an objective reviewer, someone who can't be biased in any way? Why wouldn't you allow that to happen, to instill better discipline and order? Because if you don't have trust, you have nothing.

Colonel LEAVITT. Yes, Senator. I truly believe that I need to be able to back up my words. So when I tell my commanders that there is zero tolerance, that I will not tolerate any sexual assault, if I can't back it up, if I have to now turn to a separate entity to say now I really want to prosecute, please do that.

Because there could be cases where my legal advice given to me is we shouldn't prosecute because we don't have enough evidence, but I need to send that message that it is unacceptable because people in the unit know. They know what happened.

Even though we may not get a conviction, it is very important to send that message that there is no tolerance. As a commander, I need to be able to do that, even if legal is not advising to do so.

Senator GILLIBRAND. Colonel King, you said that you have never seen this instance of a commander not moving forward. In 2006, not a mile and a half from where we sit today, Marine Lieutenant Elle Helmer was attacked and raped by a superior officer. According to Marine Lieutenant Helmer, she immediately appealed to her rapist's supervisor, who refused to press charges or significantly punish the assailant.

She has reported that he said, "You are from Colorado. You are tough. You need to pick yourself up and dust yourself off. I can't babysit you all the time."

In this instance of extreme sexual violence, not only was Lieutenant Helmer's attacker not prosecuted, she was investigated for public intoxication and conduct unbecoming. She was ultimately forced

to leave the Marine Corps. Her accused rapist remains a marine in good standing.

Given these kind of stories, this one from Lieutenant Helmer, the statements from your commander, Marine Corps General Amos, saying that sexual assault victims do not report because, "They don't trust us. They don't trust the command. They don't trust the leadership." Even the Commandant of the Marine Corps say the trust of the chain of command does not exist now.

Do you not agree that this must have a chilling effect on reporting?

Colonel KING. Senator, I wasn't at 8th and I Street. I can't speak to those circumstances. What I do know about it is, is that there were—there was collateral misconduct on the part of some of the members, and that was what was adjudicated. I can't speak to the charge of sexual assault.

What I can tell you is what we are doing in my unit. We are doing ethical decision games. We do have a positive command climate. Senator, and my unit is kind of unique in the Marine Corps. I have a little less than 3,000 marines. I have 16 percent women. That is a lot, especially in the Marine Corps. The Marine Corps has about 7 percent women.

I have a significant amount of women in my unit. I have two cases right now, two. I know, just from reading the literature that is out there, that I have a reporting issue. I am not saying I don't have a reporting issue. I am going after that. But those are the numbers that I work with right now.

Senator GILLIBRAND. Thank you.

Colonel KING. Thank you.

Chairman LEVIN. Thank you, Senator Gillibrand.

Senator Blumenthal.

Senator BLUMENTHAL. Colonel King, in one of your answers, you describe the way you make a decision about whether to pursue charges. I know you are not a lawyer, and by the way, lawyers are sometimes confused about these standards as well. But you said that you looked at whether it was more likely that it happened or not, or whether there was a preponderance of evidence, or whether you were 90 percent sure.

The 90 percent sure, I guess, is guilt beyond a reasonable doubt. Those are three separate, different standards. I guess one of the reasons why a lot of folks feel that it makes sense to have a trained prosecutor making these decisions rather than the commanding officer is that the standards are easily confused. They are difficult to discern.

I have heard the charge given to the jury about reasonable doubt, and I must tell you, I wonder sometimes whether the jury understands it, not to mention sometimes the judges in the way that they describe it.

I wonder whether you can tell us, and this is a question really for all the members of the panel, to pursue Senator Gillibrand's line of questioning, whether maybe somebody who does this for a living, so to speak, who day-in and day-out thinks about what those standards mean, sees a lot of different cases, makes these decisions every day, and maybe consults with you. But at the end of the day says this is how we can win this case. We can win it. We can pur-

sue it. Even if we are not sure we can win it, after consulting with the commanding officer of the unit, this will serve the good order and discipline of the unit?

Colonel KING. Senator, thank you for that question. I will start off, if you don't mind.

What I meant to say was when I am considering an alleged act of misconduct of any kind, it has to get above a preponderance of the evidence in order for me to refer charges to a court-martial. That is a barrier that I am not making up. That is in the manual for courts-martial, and it is generally seen as 51 percent.

There are three ways I can get there, and those are the ways that I laid out. But that is a long ways between a preponderance of the evidence and beyond a reasonable doubt, which is a very, very high bar. A lot of cases of misconduct and, unfortunately, a lot of cases of alleged sexual assault fall into that gray area. That is the problem that we have with our cases.

But to get specifically to your question, sir, with respect, I don't agree with you. I don't agree. I think that having that authority resident inside of the commander who is responsible for the discipline of that unit is what is required.

Thank you.

Senator BLUMENTHAL. Let me ask you this. Suppose there were a fund, a restitution fund to compensate victims and maybe encourage them to come forward. Right now, as I said earlier today, somebody is entitled to restitution if their car is hit by a truck in some cases.

Wouldn't it make sense to have a victim or survivor be entitled to some kind of compensation? Anybody, I will open it to anyone.

Captain COUGHLIN. Sir, I think you are asking about incentivizing the reporting through monetary gain, and my intuition tells me that because of the severity of this crime—and I have asked the SARCs in Norfolk at the Fleet and Family Support Center just how severe is this crime? It is orders of magnitude greater than any other kind of crime you commit to somebody.

So I personally don't think any kind of compensation would encourage people much more to come forward. But——

Senator BLUMENTHAL. Don't you think maybe they are entitled to it because of the harm they have suffered?

Captain COUGHLIN. They may be entitled to something, but they would have to come forward, and we would have to investigate and go through that process in order to give them that entitlement, I would think.

Senator BLUMENTHAL. Well, no, I am not talking about rewarding them for reporting. I am talking about if there is, for example, a court-martial and conviction or even if there is some discipline. In other words, a result, an adjudicated result, not just an allegation.

Captain COUGHLIN. I think that would get back to my role in that process, and again, I am not an expert on this either. But as long as I am viewed as the commander, as being central to that process and the one that is accountable for solving the problem, I think that is what it comes back to, any kind of deviation from what we have right now.

Senator BLUMENTHAL. Let me ask you this. How about some kind of bill of rights for victims or survivors so that if there is a delay, if their credibility is challenged, if their sexual history is raised, they have some ability to be represented and to have a right to redress?

Captain COUGHLIN. Yes, sir. I think they deserve all the rights that we can afford them. They have rights now, and there is a process now that through victim advocacy and the SARC system. I think no matter what you call it, they have to believe it, ultimately, in order to come forward.

Senator BLUMENTHAL. They have to believe that their rights will be vindicated?

Captain COUGHLIN. Yes, sir.

Senator BLUMENTHAL. Wouldn't you agree that right now there is that lack of credibility and trust?

Captain COUGHLIN. I think it depends on the unit. Again, I can only speak to my command, and I don't think I have a—I can't prove it. I can't prove there is something going on right now that is not being reported.

Senator GILLIBRAND. It is being reported.

Senator BLUMENTHAL. We know from the numbers, though, and you do, that there is a lack of reporting. Doesn't that reflect also a lack of trust and credibility?

Captain COUGHLIN. Yes, sir.

Senator BLUMENTHAL. Anybody disagree?

Colonel KING. I don't disagree, but I will make the point it doesn't only reflect just that. It could also reflect the nature of the crime.

Senator BLUMENTHAL. Which raises the issue of embarrassment——

Colonel KING. This crime is so personal——

Senator BLUMENTHAL. Embarrassment, shame, which you mentioned earlier.

Colonel KING. Right. I have done a cursory look at universities, for example. They have even worse numbers of reporting. Other institutions, cities, they have the same. So what is that a lack of trust in?

Senator BLUMENTHAL. So you may be absolutely right and Senator Gillibrand has just pointed my attention to these graphs on victim reporting, which reflect perhaps a lower rate of reporting than other institutions. But the fact of the matter is the rate is low, and the Commandant of the Marine Corps pointed to the fact that it has increased 31 percent, which he cited as progress. I agree.

He said, and I also agree, that eventually the numbers of reporting and the numbers of crime will meet each other. Hopefully, the numbers of criminal incidents will come down, and the numbers of reporting will rise, which will eventually produce better reporting and more deterrence. Because you can't have reporting—you can't have prosecution without reporting. You can't have deterrence without prosecution.

I think you would agree, would you not, that deterrence is a very powerful means, the fear of punishment?

Colonel KING. Without question, Senator.

Senator BLUMENTHAL. My time has expired. I thank the chairman.

Thank you all for your service and for your dedication to dealing with this problem.

Thank you.

Chairman LEVIN. Thank you, Senator Blumenthal.

Senator Donnelly.

Senator DONNELLY. Thank you, Mr. Chairman.

Thank you all for your service.

Just to follow up, do you think it is easier for a member of your command to tell someone else about a sexual assault rather than their commander, who they live with every day and who they see every day, that they might be more embarrassed to tell you than to tell a victims assistance person?

Captain COUGHLIN. Sir, there are a lot of ways of reporting this, not just through the chain of command. You can make a 911 call. There is a help line.

Senator DONNELLY. Right.

Captain COUGHLIN. I think we are getting that training out there and those resources available, and I don't think there is—it depends on the level of trust again, whether a member is going to go right to their chain of command. That is certainly the easiest way to do it, but there are many other ways to report.

Senator DONNELLY. Do you feel that it would make—it reflects that a commander is less of a commander because you don't have full responsibility for this process?

Captain COUGHLIN. Yes, sir. I think I need full responsibility and accountability for any form of welfare for somebody in my command.

Senator DONNELLY. Well, then let me follow up with, and this isn't to give you a hard time, but the legal training that you then have. What legal training do you have?

Captain COUGHLIN. At all the command schools I have gone to in my career, essentially in the Navy, every time you go to a ship in a different level of leadership, you go through a pipeline, depending on the ship you are going to. It all includes legal training.

You actually do case studies, and you do JAGMAN cases, and you have a handbook and you have resources available to you.

Senator DONNELLY. How does it make you less of a commander to not have full responsibility for this?

Captain COUGHLIN. Because my job is to be accountable for everything in this command, all forms of welfare for my crew. So whether it is safe navigation or it is proper healthcare or pay problems or violent crimes, it all falls within the commanding officer's responsibility and accountability to solve.

Senator DONNELLY. What type of training do you give your sailors in regards to sexual assault and how serious this is taken? This would be for all of you. How do you get the message across when we have seen so many awful cases? How do you get the message across that this is serious?

Captain COUGHLIN. Well, sir, we have instituted a new method of rolling out training to the fleet. We have had the SAPR–L leadership training at that level, then the SAPR fleet wide, and these are targeted at small groups.

It is video driven. There are vignettes. There are case studies. There is participation. It is very interactive. It is facilitated by fleet concentration area SARC, professionally trained people.

I feel it is very effective. I feel like junior sailors understand methods of reporting, the severity of this crime, and how they can get help if they need it.

Senator DONNELLY. Colonel Martin?

Colonel MARTIN. Yes, Senator. I think one of the most effective training methods that we used was the viewing of "The Invisible War." As an investigative unit watching that, and then it was amazing to me how many of my special agents still questioned the victim's response.

I think what was very important as we watched that movie was to talk about the lack of trust that the victims had for the chain of command, to talk about how they felt revictimized, especially in our area, in the investigation of the crime. What was very important to us and what we spent a great deal of time on is the interview technique and how we treat victims and how we believe every victim should be treated with respect during the investigative process. Very powerful.

Senator DONNELLY. Let me ask you this. Okay, so they have watched the movie. Are there any documents that they sign off, "Hey, I have read this? I understand the serious nature of this." Or you mentioned that even after watching the movie, some of the folks questioned the validity of some of the claims.

I don't want to put words in your mouth, but how more than just watching that movie is the point driven home?

Colonel MARTIN. Senator, it is not just watching the movie. It is the discussion that goes on while the movie and then after the movie is being played. That discussion about how we treat victims and even in our case how we investigate, how we interview victims was very, very powerful.

We have changed significantly in the criminal investigation role in how we interview victims. We have gone from a system where we put the blame on the victim or try to make the victim tell us specifically what happened all the time. Instead, what we do now is we try to build that rapport with the victim, and so it establishes a trust in the system that we can actually get to what happened, make her or him feel comfortable.

Senator DONNELLY. Is there a class or classes given, for instance, a group gets to one of the forts, do they have a class on this? This is critical and serious. This is a sacred obligation to have one another's back, and we will not stand for that being violated.

Is there any formal process that you use?

Colonel MARTIN. Yes, Senator. That message comes from me, the commander of that unit.

Senator DONNELLY. Is there any formal process that you use. Hey, here is what I told them. Here is the way the Army does it. Here is step one, two, three, four.

I mean, you know you tell them this is serious. Then they watch the movie, and then they are done. Is there anything more formal than that?

Colonel KING. Senator, I can tell you from a Marine Corps perspective, we have what we call "Take a Stand" training, and that

is every noncommissioned officer (NCO) in the Marine Corps, and the Army has something that is very similar to it. It is about 60,000 guys go to 40 hours of training a week.

That is a significant training commitment. I can name a handful of other things that are that significant. We also have command team training. So command team is commander, sergeant major, and whoever else he directs, chaplain. I always bring my chaplain with me. That is where we get about another week's worth of training that is specified for the command teams.

Following the "Take a Stand" and the command team training, we have all-hands training, and that is just what it sounds like. Get in a theater, let us talk about this for an hour.

You heard the Commandant mention his campaign plan. During Phase 1, he even upped that ante. All 85 general officers were brought to Quantico. I have never heard of that before. I have never heard of it since. They had one subject. It was sexual assault.

So he started by reading them his white letter, talking to all of his general officers, sending them back out, and then making 60,000 NCOs take "Take a Stand," which is a formal training continuum, do the command team training, and do the all-hands training.

Senator DONNELLY. You feel confident every marine from here to there has been fully immersed in that culture to tell them no more?

Colonel KING. Above 95 percent, yes, Senator.

Senator DONNELLY. Okay. Thank you very much.

Thank you, Mr. Chairman.

Chairman LEVIN. Thank you very much.

Senator Kaine.

Senator KAINE. Thank you, Mr. Chairman.

I think this has been a helpful panel, but I feel a little bit of it has gotten into kind of a tug of war over your reactions to proposals that we might make on this side of the aisle, and that is as it ought to be. I want to set aside any proposals from this side of the dais and ask you just to be problem solvers with us here and not to talk about what is being done, but just to engage your problem-solving skills because you are dealing with folks on the front line all the time.

Colonel King said reporting is key. The key to this thing is reporting. I think a number of the other Senators have said the same thing throughout the course of the panel. But the stats that were given from the DOD survey show that this is—if reporting is the key, that we clearly have a lot of problems.

Seven out of eight people do not report. Seven out of eight who have an experience of unwanted sexual contact do not report, and 90 percent of them report that it is either because of fear of retaliation or the negative experience of other victims that they have seen. That they are not treated right or they are not treated significantly.

Of the one of eight who do report, 62 percent say they experience some form of retaliation, 38 percent do not. So if reporting is key, and I think we all believe that to be the case, and if we are not likely to solve this problem, absent a culture that allows reporting to occur more significantly, based on your own experience in deal-

ing with your people in each of your Service branches, what is the reason for the lack of reporting?

What do you think can be done that will make a culture or create a culture where reporting is easier for folks to do?

Captain COUGHLIN. Sir, a couple of thoughts come to mind about the retaliation, which is preventing the reporting, and I don't think we have had enough time yet to see the effect of the expedited transfer option by the victim. I think once that starts being leveraged and victims know that is what is going to happen, I think that is going to reduce some retaliation. It should reduce all of it if you transfer them swiftly.

Another option is military protective orders. Really use them. Really enforce them and keep the people retaliating away from a victim.

Senator KAINE. Other thoughts?

Colonel MARTIN. Just to key on that, too, is you must set the condition in your command where others know that retaliation will never be tolerated and set a zero tolerance for retaliation as well.

Senator KAINE. Colonel King or Colonel Leavitt?

Colonel LEAVITT. Yes, Senator. I agree that there has to be a climate, a climate where victims feel that they can come forward, and command needs to understand at all levels that they will be held accountable if they do not identify sexual assaults when they happen.

Now there are a lot of other avenues, like, in our case, our SARC. She is very visible throughout our wing. She briefs at every ride start, at every first-term airman center. I mean, she briefs at unit level. She is out and about and visible.

On every marquee on my base, it cycles through, and one of the things that cycles through is "Do you need to talk to the SARC?" with her number. It is going to take some time. We are trying to get the word out. We are trying to change that climate to make sure people understand, victims understand they can come forward. We will take care of them, and we will hold people accountable.

Senator KAINE. Colonel Leavitt, real quick before Colonel King answers. The special victims' counsel pilot project within the Air Force, maybe one of the fears of reporting is the fear that you are going to be isolated and alone. You could be ostracized. The retaliation may not be from command, but it may be from folks within your unit if you report.

Is the structure of the special victims' counsel set up to—so that a victim knows, well, I have an ally. I have an advocate. I am not going to be completely isolated if I have somebody going through this with me?

Colonel LEAVITT. Yes, Senator. The special victims' counsel does exactly that. I mentioned it gives the victim a voice. It also empowers them. It helps them understand the rapid transfer, that that option is available.

It helps them understand that maybe I should go unrestricted because they are offered the special victims' counsel whether it is a restricted or unrestricted report. What we have seen is the number of restricted cases that shift into unrestricted has increased when they are able to talk to a special victims' counsel and under-

stand what options they have available and how the whole process works.

So we have——

Senator KAINE. Just to make sure I—because this is new terminology to me. This is my first instance of dealing with the UCMJ-type setup. Somebody comes in and makes a restricted complaint, meaning I want to tell you about it, but I don't really want it known other than in our conversation.

But then as the victim who describes what has happened gets more comfortable with what the process will be, you have seen in the special victims' counsel scenario that they become more willing to go ahead and make it an unrestricted complaint that would be known within the chain of command?

Colonel LEAVITT. Yes, Senator. Because whether they make a restricted or unrestricted case, they are offered special victims' counsel. Even with the restricted report, they can still have that ally, that expert who can help them through the process. Once they understand it, then they have been more willing to make it unrestricted, and then we are able to prosecute.

Senator KAINE. Colonel King, how about your thoughts about how to fix this, setting aside anything we have proposed to fix it?

Colonel KING. You told us to do problem-solving, right, Senator? You should have seen me when I was 18. I knew everything, and I really couldn't be told anything. Senator, I have a regiment full of those guys right now.

Around 60 or 70 percent of my ranks are young men and women who are right out of high school who are bullet proof. When I hear terms, Senator, like the chain of command is retaliating, what I think that that mostly means is peer pressure. I remember what peer pressure felt like. I have two teenage kids right now, and that is front and foremost in their world.

So they don't want to be different. These are—they have volunteered to wear the Nation's cloth. They don't want to be different. Anything that makes them different feels like retaliation.

Again, I can only speak from my own experience. I have never seen the chain of command retaliate, and I haven't done anything else my entire adult life.

Senator KAINE. Just to be fair, Mr. Chairman, the stats reported in the DOD report do not suggest fear of retaliation from the chain of command. It is just fear of retaliation generally. So that could encompass what you are saying.

Thank you, Mr. Chairman.

Chairman LEVIN. Thank you, Senator Kaine.

Senator King.

Senator KING. Colonel King, you used the words that were the first words of my note for my first question, which is peer pressure. I am not asking for policy or prescriptions, but just for your analysis of what is going on in the field right now. Is the peer pressure against sexual assault, or is it against reporting sexual assault?

Try to tell me what you are hearing and seeing.

Colonel KING. Senator, I would say that—I would honestly tell you that there is peer pressure against reporting right now, but the tide is changing. I believe that. I can't give you a number. I can't tell you when.

But there is a lot of peer pressure out there. I mean, these are young, strong, driven men and women who we ask to do some pretty amazing stuff. The primary group bonding that they go through in order to do that stuff that their Nation asks for them, I mean, the sense of belonging is very, very powerful.

That character, that, for lack of a better term, personality, it can have some negative connotations. So, yes, I would honestly tell you that sometimes it is peer pressure that causes them not to report. Sometimes they will just tell a friend.

In my experience, I have learned about misconduct in a very circuitous fashion. When it does get to my level, which is truly the chain of command, I know myself and the ladies and gentlemen that are sitting up here, we immediately act, immediately.

Senator KING. The real question before us all is how do we reverse that impulse at the grassroots level in terms of this is unacceptable conduct, that is the sexual assault, and reporting is okay? I mean, it seems to me that is really the nub of this problem.

Because we can talk about generals and officers and admirals, but it has really got to happen in and amongst the troops. Colonel?

Colonel LEAVITT. Yes, Senator. That is absolutely critical, going to the grassroots. We have to create a climate and an environment where the peer pressure is that you don't commit sexual assault and you don't tolerate it. You step in, and you stop it. That is something we are trying to get to.

Our chief has had increased emphasis on sexual assault from day one, how we prevent it, what we do about it, how we respond. In late November, he had a global wing commander call, unprecedented. Never had all wing commanders around the world been brought to one location, and they were brought to one location with one goal in mind—how to address the problem of sexual assault.

We all watched "The Invisible War" together and talked in great depth because he said you are the ones who are going to have to make this change, the wing commanders. You set that climate. You set that environment, and you need to make that change.

Following that, I had a series of commanders calls, and we looked at a clip from "The Invisible War," and we talked about it. We talked about that climate and that culture. We had a health and welfare inspection where we went through, and we hit the reset button. What is acceptable? What kind of environment is respectful, has professionalism, discipline written all over it?

Every class that comes in of new airmen, first-term airmen, I go brief them in detail. I make sure it is crystal clear in their minds what the standard is, what is acceptable and what is not. Because I truly believe it is going to have to be grassroots. We are going to have to create that peer pressure and that culture where we hold ourselves to a higher standard, and that is not acceptable in our Air Force or our military.

Senator KING. Well, I lived through the period where we went from drinking and driving being a kind of semi-humorous, "How did you get home last night? I don't remember. Ha-ha-ha." To "That is not acceptable." It came not only from the legal system, but from your colleagues.

It came from your peers, and that was what really changed that culture, which there has been a remarkable change in the last 35 or 40 years.

Here is my question. Should retaliation be an offense? If someone retaliates against someone for reporting, should that, in itself, be some kind of punishable offense?

Captain COUGHLIN. Sir, that is like any kind of a crime against a shipmate. That is unacceptable. Yes, that should be a punishable offense.

Senator KING. Do we need language to that effect, or does the code already have sufficient language?

Captain COUGHLIN. I have all the tools I need to take care of that in my command right now through nonjudicial punishment.

Senator KING. Do you recall any evidence or any occasion where someone has been disciplined for retaliation in a case like this?

Captain COUGHLIN. I can't prove it was retaliation for a report of a sexual misconduct, but there have been many cases of nonjudicial punishment where two sailors get into a fight. That is punishable. That is not good order. That is not discipline. That is not teamwork.

We prosecute those things within the lifelines all the time.

Senator KING. I would suggest that this might be an area to, again, get the word out that if the word gets back that somebody is being retaliated against in some way—shunned, ostracized, whatever—that that in itself ought to be, in some way, punishable, not necessarily with a court-martial, but nonjudicial discipline.

Captain COUGHLIN. Sir, another method gets back to the grassroots theory is bystander intervention that is being very, very focused upon in the fleet-wide training, and then reward that, reward that kind of bystander intervention, and you are kind of attacking the problem from the other end. So that then, hopefully, as we get more run time on this, people will come forward more.

Senator KING. One final question. A great deal of discussion here this morning has been about taking these decisions out of the chain of command. What about an alternative whereby if you decide not to prosecute, that that has to be signed off on affirmatively by your JAG officer. If the JAG officer disagrees, it gets bumped up a level.

I am trying to find something that doesn't violate the chain of command, but at the same time provides a check and balance to give people the confidence that this is real, they are going to get a fair hearing.

Colonel MARTIN. Senator, there is already a process where if a JAG advises a commander to go forward on a case and they decide not to, the commander does, then the JAG can take it to the next higher commander.

Senator KING. My question is the key word you used was "can." Should that be "shall"? In other words, should it be an automatic proposition if the JAG officer disagrees that it goes up, not a further discretionary decision?

Colonel MARTIN. I think if there is an agreement, and the JAG feels very strongly about it, then he shall go forward.

Senator KING. Any other thoughts you have? Colonel King?

Colonel KING. Senator, I wouldn't have a problem with that at all. We are so close with our JAGs. I mean, since I have been a

battalion and a regimental commander, I don't have these conversations without them. I honestly thought that we did what you are describing anyways.

Now I never went against their recommendation, but I thought we did that. I know he would go to the general.

Senator KING. Okay.

Colonel KING. So I would be fighting this fight anyway.

Senator KING. Thank you very much, and thank you all for your service.

Chairman LEVIN. Thank you very much, Senator King.

Senator Sessions.

Senator SESSIONS. Thank you very much, and I am sorry I missed much of the morning. I am ranking on the Budget Committee, and we had a hearing I had to attend.

This is an important subject, and we are proud that you are here to testify about it. I had time in the Army Reserve. I even held a JAG slot, but I never was Charlottesville trained. So, I am a pretty weak JAG officer, not like Senator Lindsay Graham, who actually served in those areas.

But my experience with JAG officers are that they are not—they don't see themselves like the average corporate counsel for some CEO. They see themselves as an advocate for the values of the United States military and proper enforcement of the law.

First, let me ask you, would it generally be so that the JAG officers work hard and are prepared to be aggressive in prosecuting cases that involve sexual misconduct, or do you think there is a lack of aggressiveness in that regard?

Captain COUGHLIN. Senator, all my experience with SJAs is that they are very aggressive. They are very plugged in, and they view themselves as to support me in making a good decision.

Senator SESSIONS. What I remember in advanced officer school, we had an African American that had not cleared the course, and we complained to the JAG officer. He happened to be from Alabama, and he grilled—we had a hearing. He grilled that colonel shockingly, really, and he ended up reversing the position.

I would say that my observation with JAG officers are they are courageous and independent and not afraid to take on difficult cases.

I am not fully familiar with your roles at this point in your career. But are our captains, colonels, majors, are they talking with their officers and leadership team, NCOs, about this problem today, and is it being emphasized in a regular way in your command? If there is a problem, do you call your leadership team together, is it being discussed with them?

Captain COUGHLIN. Yes, sir. It is a huge focus. There is fleet-wide training that is ongoing.

Senator SESSIONS. Now does that happen—been emphasized more in recent months as a result of some of the reports we have seen?

Captain COUGHLIN. I have seen since 2011, we have been aggressively tracking this problem and attacking it. The Navy is going to have a stand-down from the 10th of June to the 1st of July Navy-wide. We have rolled out fleet-wide training, at the fleet level and leadership level.

I can't think of many more things that are more focused than this right now in the Navy.

Senator SESSIONS. There is no doubt that a person would from the lowest rank on up know that this is an increasingly important emphasis from the command? You have already done that? That has already been done?

Captain COUGHLIN. Yes, sir.

Senator SESSIONS. Mr. Chairman, I just had a letter and a document here that were given to me. Morality in Media. Pat Trueman used to be in the Department of Justice. I knew him when he was there. Points out that a picture here of a newsstand in an Air Force base exchange with sexually explicit magazines being sold.

We live in a culture that is awash in sexual activity. If it is not sold on base, it is right off base. There are videos and so forth that can be obtained, and it creates some problems, I think.

Let me just say this. Let us say that you had a female soldier who had felt she was assaulted by an NCO, higher rank. What would happen? When that comes to your attention—Colonel Martin, I see you nodding—what would you do? Do you think what you would do is typical of what other officers would do?

Colonel MARTIN. Senator, I nod because this is exactly a situation that I had in my command where I had a young female who was sexually harassed by a senior noncommissioned officer. That noncommissioned officer was relieved of his duties, and then at her request, she was transferred to another unit.

Senator SESSIONS. If it were criminal assault, is a JAG officer notified first or the Defense Investigative Services, or who would investigate the facts of the case?

Colonel MARTIN. That would have been investigated by CID.

Senator SESSIONS. You did that?

Colonel MARTIN. That is correct.

Senator SESSIONS. Okay.

Colonel KING. Senator, just to be clear, we are not allowed to investigate allegations of sexual assault.

Senator SESSIONS. How does it work?

Colonel KING. Our commands are not. That has to be investigated by NCIS, in our case.

Senator SESSIONS. All right. Then who do they make a report to?

Colonel KING. The report comes back to the convening authority, sir, which in this case would be one of us.

Senator SESSIONS. Then you would take—you would convene a court-martial or not convene a court-martial proceeding? But there is a procedure for that to be done.

I am just trying to—for the people who are wondering how this happens in the real world—I am trying to flesh that out, what happens in the real world is that a complaint is not ignored, first. Is that correct? Would you all agree with that?

Then there are mechanisms to investigate and, if necessary, prosecute those cases, and the person can be removed from the military, placed in jail, or given other kinds of discipline as a result of misbehavior.

Colonel KING. Sir, in a recent change, any substantiated allegation of sexual assault results in automatic processing for discharge. So now we normally——

Senator SESSIONS. Automatic processing?

Colonel KING. Automatic processing. Now we hold that in abeyance if there is legal proceedings still going on. We don't want to discharge someone who we are going to have a general court-martial for.

But if that court-martial proceeds forward and comes back with a verdict of not guilty, then we can process them. That is a recent change.

Senator SESSIONS. I don't know how many million people are in all our branches of Service. What? Three million, Mr. Chairman? Most of them from 18 to 30, let us say. If you had a city of 3 million with a lot of young men and some women, we know there will be certain problems. We know that just mathematically.

I do believe the military has a serious commitment. I have read and heard General Dempsey's comments today, and I really believe he is focused on reversing these bad reports that we are seeing that are unacceptable, and whether legislation is needed or not, we will see. It is very important that each of you, to the lowest level, are aggressive in ensuring that we have a safe workplace.

I thank you for what you have done and your service to your country.

Chairman LEVIN. Thank you, Senator Sessions.

Senator Hagan.

Senator HAGAN. Thank you, Mr. Chairman.

First, I want to say to Colonel Leavitt, congratulations for being the first female wing commander in the history of the Air Force, we are pleased that you are here today.

I know a lot of the conversation this afternoon has been centered around making the command environment where victims are comfortable reporting crimes of sexual assault, and these victims in this process need to feel that they are going to be listened to, that they are going to be protected. They are going to be cared for, their case will be taken at the appropriate level of investigation. Hopefully, they are not going to be retaliated against, and the stigma, hopefully, will not stick with the victim.

Colonel Leavitt, I know General Welsh was talking about the pilot program for the special victims' counsel. Have you been directly involved with one of these pilot programs?

Colonel LEAVITT. Senator, I do have familiarity with the special victims' counsel. One of the prosecutors that works in my chain of command, he is a special victims' counsel. Now he can't give me any specifics, but what I did is ask him about the program and how it was working. He said it has been very positive feedback.

It really gives a victim a voice. It empowers them. It helps them under the process and understand what options they have. In cases, it has been able to allow people who initially file the restricted report, once they understand the whole process and they feel they have an ally, they are willing to go to an unrestricted report, in which case we are able to prosecute.

Senator HAGAN. So how many current victims get access to a special victims' counselor?

Colonel LEAVITT. Ma'am, any victim, anyone who makes a case for sexual assault, if they file either a restricted or unrestricted report, they are offered special victims' counsel.

Senator HAGAN. Is that true in the other branches?

Colonel KING. Ma'am, we don't have a Special Victims Unit. We do have complex trial teams. It is more training our litigators, our prosecutors to properly try these cases. One of the things that we noticed——

Senator HAGAN. But that is not available to the victim from day one?

Colonel KING. No, ma'am. The reason for that is, in my opinion, we do the take care of the victim side of it pretty well today. I know the Commandant has said we are going to look at the special victim unit. I think it is a great idea.

Senator HAGAN. Why don't you give me a run-through as to what happens for the victim?

Colonel KING. For the support mechanisms they have? They have—in every unit, we have a response coordinator who really handles the process once the report has been done. We also have a uniformed victim advocate. So that person is specifically trained to not only be there in those initial phases of the very—reporting that very traumatic experience, but to open up all of the things that are available to help a victim, which are mostly on the installation side.

That uniformed victim advocate will walk through with that victim every step of whatever counseling or whatever medical help they need. Does that answer your question, Senator?

Senator HAGAN. It does. Over the last 20 years, States have gotten involved in special victims' counsel. They have been involved with advocates for sexual assault victims, domestic shelters, domestic violence, all sorts of these issues. I want to be sure that these resources that are available at the State levels, that the military either makes use of them or actually is following what is going on.

I guess, Colonel Martin, in your case—and tell me if I am correct—that you oversee the investigators who are investigating many of these crimes?

Colonel MARTIN. Yes, Senator. I do.

Senator HAGAN. One question I have is you were talking about "The Invisible War" and that some of your investigators find it hard to believe the victim.

Colonel MARTIN. No, Senator, what I was saying was the discussion was centered around where we have come from when we started investigations to the additional training that we have given our agents, to where they are now and how we treat victims. They all believe that all victims should be treated with dignity and respect.

Senator HAGAN. Okay. I have seen "The Invisible War," and I am pleased that some of you have actually witnessed it and are using it. But it wasn't put together as a training mechanism, and I want to be sure that the training that goes into the people that help the victim when they present at a hospital stand by their side.

This is a traumatic situation. So much has been done on the civilian side over the last 20 years that I want to be sure that the military is using that as good examples of best practices. I think the special victims' counsel is certainly an area that all the branches need to be moving into, and I am certainly hoping that this doesn't just be a pilot program, that it continues to be a program that is acted upon.

Do you feel it is appropriate, Colonel Leavitt, to dispose of sexual assault or other serious offenses at the O–6 level of command?

Colonel LEAVITT. Senator, I believe that the commander needs to have the ability to back up what they say. They need to be able to enforce the standards they set. So, if I say there is no acceptable level of sexual assault, I need to be able to back that up, not look to an independent counsel and ask them to then take it to courts-martial.

Senator HAGAN. I am concerned about how the victims are continually being treated, and why are they not reporting at a larger number than they are right now? I have heard the testimony, and I have heard we have a zero tolerance. We are going to do this. We are going to do better.

What specific steps are going to change that reporting behavior? If you could just quickly, Colonel Martin?

Colonel MARTIN. Senator, I think command climate would change that reporting. Positive command climate and belief that the chain of command is going to——

Senator HAGAN. Have we not been doing that for the last couple of years?

Colonel MARTIN. Yes, ma'am. But I think we just have to continue. We have to reiterate our concern for our victims.

Senator HAGAN. Captain Coughlin?

Captain COUGHLIN. That is the hardest question of all, ma'am. We have good command climates, and I am comfortable that my commanding officers are addressing this problem and talking to me about it, and we are adjudicating it the best we can.

But the stigma associated with this is the tough thing to get through, and I just think we have to break down those barriers little by little by little, and hopefully, those who would have a tendency to not report would then come forward.

Colonel KING. Senator, I think it is going to take continuous pressure and time. I don't think this is an intractable problem, but it is definitely a hard one. It is a complex one. It is going to take some time.

Colonel LEAVITT. Yes, Senator. I think it is going to be a continuous process in order to improve the environment and ensure that victims do feel comfortable, and we have done a number of things, but we have to continue it.

There is a big, increased emphasis I have seen with our new chief and his focus for our airmen.

Senator HAGAN. Well, hopefully, the victims will start coming forward in higher numbers. It should also, I hope, discourage the perpetrators of sexual violence to also take note and realize that this is a crime, and it is unacceptable in the military and in the civilian world.

Thank you, Mr. Chairman.

Chairman LEVIN. Thank you very much, Senator Hagan.

We very much appreciate this panel. We appreciate the service that you and the men and women with whom you serve, and your families. We thank you for coming forward today and giving us your own testimony from your own perspectives. It is extremely important that we hear from you, helpful to this committee and, I hope, helpful to the final outcome of our deliberations.

You are now all excused with our thanks. We will move immediately to the third panel. [Pause.]

Our final panel, a panel of outside witnesses, and we are welcoming first Ms. Nancy Parrish, president of Protect Our Defenders.

Ms. Anu Bhagwati, Executive Director and Co-Founder of the Service Women's Action Network. Major General, Retired, John Altenburg, chairman of the American Bar Association's Standing Committee on Armed Forces Law.

Colonel Lawrence Morris, Retired, General Counsel of Catholic University.

We are grateful for your presence, and for your patience here today. We will call on you in the order in which I introduced you. First, Ms. Parrish?

STATEMENT OF MS. NANCY PARRISH, PRESIDENT, PROTECT OUR DEFENDERS

Ms. PARRISH. Thank you, Mr. Chairman.

Protect Our Defenders regularly receives pleas from current sexual assault victims whose attempts to report are thwarted, mishandled, or made to disappear. We try to intervene, hire lawyers, block retaliation, reverse errant medical diagnoses.

Servicemembers with outstanding records after they report are often isolated in psych wards, investigated, and forced out. One soldier explained, "I got raped. When I told my squad leader, I got shut down. I waited, spoke with my platoon leaders. I got told if I say another word, I would be charged with adultery.

"I told my new squad leader. In December 2012, they chaptered me on an adjustment disorder. He is free, wears the uniform. It represents a protective shield if you are a rapist with rank."

A mom reported, "In April 2012, servicemembers gave our daughter cigarettes laced with embalming fluid and raped her. She was locked up, denied requests for expedited transfer. Weeks later, an Article 15 and an attempt to discharge with errant medical diagnoses."

Last year, an active duty officer of 18 years said, "I was deployed overseas. The first advice you get, always carry a knife, not for battle, to cut the person who tries to rape you. I was drugged and raped. Check the base inspector general (IG) records. See how many complaints were pushed under the rug."

Lieutenant Adam Cohen was violently sexually assaulted and endured botched investigations. Today, he faces command retaliation, harassment, threats to his life, and finds himself the investigation target.

Several months ago, a commander wrote, "I have a young female soldier. I encouraged her reporting. I have been disappointed in the lack of support given by her command higher than me. I would appreciate any direction you could advise."

Congress must assume its responsibility and not approach reform based only on what military leaders would like to accept. Common sense tweaks to a dysfunctional biased system will not fix this.

Place the duty to determine whether to go forward to trial with trained senior prosecutors. Third-party accountability will help fix the culture and legitimize the system.

Why should a legal decision be left to a non-lawyer often connected with those involved and with vested interest? How could this consistently produce justice? In deployed areas, justice would still occur with the JAG system.

Remove Good Military Character (GMC) defense from trial. Instruction on GMC tells members that it, on its own, can raise reasonable doubt. Only if the accused has committed another crime can you impeach at trial.

Remove commanders' authority to reduce sentences. Provide victims with absolute legal representation to protect their rights, not just advice. Judges, not juries, should pronounce sentences.

Military juries are notorious for light sentencing. Mandate minimum sentencing guidelines. Juries should be selected randomly, not by someone who may have an agenda.

Many insist that absolute command discretion is required to maintain good order and discipline. Yet when victims are punished and perpetrators go free, troops know it, and trust is undermined.

Whether you agree with how our allies have set up their outside system, the bottom line is it hasn't reduced a commander's ability to train and lead warfighters. Many have stressed the critical involvement of commanders in addressing this crisis. We agree. Commanders must create a command climate that minimizes these incidences.

Commanders must be held accountable. Status quo supporters have failed to explain how placing the disposition authority in the hands of capable prosecutors would undermine effectiveness. The opposite is true. Today, more reports may mean a commander is fair and effective, and a commander with no reports may be intimidating victims and burying offenses.

Third-party accountability will help legitimize the system and fix the culture. Victims will report, retaliations shrink, and prosecutions increase. Today, there is absolutely no tracking of how a convening authority performs this part-time duty.

Forceful leadership and accountability is also required. Recently, General Franklin, exhibiting faulty analysis and bias, set aside the sexual assault conviction of Colonel Wilkerson. Leadership's only response? Franklin acted within his authority.

Of course, he did. That is the problem. What about his duty to promote good order and discipline and see justice served? He failed on both counts. Will he be held accountable?

Furthermore, Franklin's commander, General Breedlove, speaking before 500 majors, rising commanders, publicly defended Franklin's analysis and erroneously attacked the prosecution. This circling the wagons above the interests of the service is common.

The panel today said they rarely relieved anyone for having a climate of sexual assault. What does it take?

Survivors have found their voice. Americans are watching. Fundamental change is required. It will come. How long will it take?

[The prepared statement of Ms. Parrish follows:]

PREPARED STATEMENT BY MS. NANCY PARRISH

Chairman Levin and members of the Senate Armed Service Committee, thank you for holding this hearing and for your visible determination to address the critical issue of military sexual assault. Thank you for the opportunity to address your committee today.

Protect Our Defenders is a human rights organization that works with victims of military sexual assault, providing support services and advocating for military justice reform. Our experience working directly with sexual assault survivors, active duty and veteran, as well as our work educating the public and policymakers on this issue have left us critically aware of the shortfalls within the current system and the need to implement fundamental reforms.

The argument currently circulating that sexual assault reform is an old problem, predominantly solved through recent changes in the law, is simply not correct.

It is well understood that the numbers are going up not down.

We regularly receive desperate pleas from current victims of sexual assault, who are having their attempts to report thwarted, mishandled, or swept under the rug.

Increasingly we intervene, hiring lawyers, to block retaliation and reverse errant medical diagnoses. We frequently hear from highly rated servicemembers, who soon after they report, suffer persecution, are isolated in psych wards with wrongful diagnoses, or become targets of investigations. Soon after, they are frequently being forced out of the Service.

One soldier explained, quote: "I got raped by this bastard. ... When I tried to talk to my squad leader I got shut down and reminded that he (the rapist) was a Senior NCO. ... I waited and spoke with my platoon SFC (sergeant first class) and lieutenant, [And, they told my perpetrator.] . ... Then, I got told if I say another word to ANYONE, I was going to be charged with Adultery. ... I was sent back to the States . ... I told my squad leader ... and the next thing ... I get told they are chaptering me on an adjustment disorder. ... I am one of the 'unreported statistics' but not without trying. ... He is free and able to do it again as long as he wears the Uniform. ... The Uniform represents a Protective Shield if you're a rapist with rank."

A mother reported to us, quote: "Our daughter's career and life nearly ended on base 4/7/12, days before her tech training was to begin. That day other servicemember(s) gave her cigarettes laced with embalming fluid and raped her ... she was locked up, prescribed medications, denied repeated requests for expedited transfer. ... Only weeks later, Command initiated an Article 15 letter of reprimand and proceeded to discharge her with an errant medical diagnosis. (This was later overturned with outside legal assistance.) She endured months of anguish, hospitalizations, humiliation, punishment ... having to clean and work in the area where she was assaulted a second time—raped, sodomized, threatened reporting further, and forced to live in close proximity to her perpetrators. ... (A letter is attached the to committee from the mother.)

Last year, an officer of 18 years, still on active duty, said: I was deployed overseas. The first advice you get when you get there ... ALWAYS carry a knife. Even in the daylight, almost every woman carried a knife. Not for battle against the Taliban, but to cut the person who tries to rape her. I was drugged and raped ... if you report people are going to ostracize you. ... If you report rape you are done. ... Check their crime records here, and [see] how many IG complaints were pushed under the rug ... why? Because, the IG office is also a deployment position. They don't want to deal with big issues, because it takes too long to investigate."

USAF Lieutenant Adam Cohen is on active duty. He deployed three times for Operation Enduring Freedom, flying over 40 combat missions in Afghanistan.

Lieutenant Cohen is an example of a failed system, a system that permits the weakest within it to suffer manipulation and castigation for having the temerity to come forth with an allegation of sexual assault. According to Lieutenant Cohen, for years he suffered blackmail, at the hands of his assailant and his assailant's friends, designed to keep him from coming forward with his allegation. When he finally came forward, he was initially ignored by Air Force law enforcement. Pressing his claim further, he was punished by investigators and manipulated into providing evidence that was meant not to hold his assailant accountable, but rather to prosecute him. Through the actions of the Air Force, Lieutenant Cohen's alleged assailant (still on active duty) is statutorily barred from prosecution, while Lieutenant Cohen remains the subject of a constitutionally suspect prosecution. He has been retaliated against, attacked, and denied an expedited transfer. Upon learning the expedited transfer was denied, SVC Major Bellflower asked the commander to provide a safety plan. If we are to make any headway in curbing sexual assault in the military, we must act to protect those that come forward, by ensuring that the system does not punish them for doing so. (SVC Counsel, Major John Bellflower's redacted report is attached with his permission. Also attached with permission is Lieutenant Cohen's background and statement.) There should be a Department of Defense (DOD) investigation of the entire matter.

Several months ago, a commander wrote: "I have a young female soldier. ... As her commander ... I have supported and encouraged her reporting, but have been disappointed in the way it has been handled and the lack of support given to her

by her command (higher than me). I would appreciate . . . any direction you could advise. . . . As I am still in the Command, discretion would be appreciated."

Civilian oversight of our military is a founding principle of our democracy. Yet, for decades we have seen Congress approach reform efforts with great deference, to what military leaders would like to accept This has remained the case, even after it became painfully evident the reforms to date were not sufficient and that the failure is quite damaging. This failure has come at great cost to our servicemembers, our military, and our national security.

The rising numbers of unreported cases of rapes and sexual assault, coupled with unacceptably low prosecution rates have left victims discouraged, intimidated, disdained, retaliated against, and all too often, broken. They are dismissed by a legal system, tightly controlled within the chain of command. Many victims are coerced to keep their complaints unrecorded and officially unheard. In sum, the criminals are not prosecuted and victims are persecuted.

There are three fundamental issues regarding this crisis plaguing the military:

- The broken justice system, which is biased toward retaliating against the victim, while protecting the often higher-ranking perpetrator;
- A culture of objectifying and denigrating women and refusal to recognize male victims; and,
- A failure of military leadership to exhibit resolve and forcefully and effectively address this issue.

On May 22, 2013, former General Counsel to the Pentagon, Mr. Jeh Johnson said, "I have recently come to the conclusion . . . the problem, I believe has become so pervasive. The bad behavior so pervasive, we need to look at fundamental change in the military justice system itself." These are powerful words from the Nation's former top military legal official.

Congress must assume its responsibility and no longer approach reform based on what military leaders would like to accept. We cannot afford to simply continue to make marginal changes.

The military leadership has long insisted that absolute command discretion is required in order to maintain good order and discipline, and to ensure mission readiness and unit cohesion. Yet, when victims are punished and perpetrators go free and everyone knows it to be the case, trust, the essential ingredient to an effective, functioning military is undermined. It would also undermine unit cohesion and trust, if as defense counsels frequently argue, commanders, in response to political pressure, simply pursue witch-hunts against anyone accused. Why have the commander in a position where so many people may question their objectivity, both those that believe the victim and those that support the accused? We need to remove from the process all those with a personal interest or even an appearance of potential conflict of interest and bias.

Our military leaders have consistently failed to specifically explain how or why removing the convening authority from commanders and placing it in the hands of capable and trained prosecutors would cause this alleged break down in the system. They said the same about repealing Don't Ask Don't Tell. Commanders would still have a multitude of tools at their disposal to maintain good order and discipline. We need only look to our closest ally, the United Kingdom in this regard.

For commanders, administering justice and referring cases to court-martial is only a small part of their job. The Convening Authority has many other high priority, non-judicial responsibilities that consume the majority of their time and attention. Why should a legal decision be left to a non-lawyer, particularly someone often directly connected with those involved and with an inherent interest in the outcome? How could one expect this to consistently produce unbiased justice?

Taking administration of the legal process out of the chain will increase accountability. Many members of the military have stressed that it is critical that commanders remain accountable for the climate within their command. We agree. After taking legal decisions out of the chain, commanding officers will still be required and able to create and maintain a command climate that will minimize the occurrences of these incidences. With the responsibility to administer the legal process out of their hands, the reality and perception of victims will be that the system is more legitimate and fair. More victims will report, more prosecutions will occur and commanders will be held more accurately accountable for the climate they maintain.

The current system produces a perverse consequence. There is no good way to know which commander is doing a better job. Which is better, a commander who has 20 victims come forward in his unit or a commander who has zero reports. Today the truth is not knowable. Victims have little or no faith in the system and the system lacks transparency. The commander with 20 reports may be doing a good job, encouraging and fairly dealing with reports. The commander with no reports

may not tolerate repor,ting and his unit may actually have a much greater incidence of sexual assault

Taking responsibility and authority for administering the legal process out of the chain will increase accountability. Victims will understand that they will more likely get a fair shake. More victims will report. As more report, it will become clearer which commanders are creating a good climate, strong unit cohesion, and good order and discipline and which are not.

Congress must face reality. For justice to prevail, you must end commanders' unfettered authority over the legal aspects of military justice. Nothing less will end the damaging cycle of scandal and continued incidence.

The civil justice system provides an apt model for how the military justice system could work well. To make the military justice system more effective, we would recommend the following changes:

1. As in civilian justice, place the duty to determine whether to go forward to trial (the disposition authority), into the hands of professionally trained senior prosecutors.

   Although you will not likely hear it in this room, many commanders would prefer such a change.
2. Require that court-martial panels be randomly selected from a pool of eligible candidates, in a manor similar to the civilian justice process. As in the civilian process, there should be exceptions for those with conflicts precluding assignment.
3. The chief judge of each Service should continue to assign judges as required.
4. DOD should establish minimum sentencing guidelines, which follow the well-established civilian Federal system.
5. Assign military judges the exclusive responsibility to administer sentences. Military panel members are not trained as to what is appropriate and are notorious for inappropriately light sentences.
6. Rely totally on the appeals courts for post trial assessment of legal issues.
7. Elevate authority to overturn or reduce sentences to the Service Secretaries or Chief of Staffs. As in the civilian systems, overturning conviction or reduction of sentencing should be a last resort, only available after completion of any appeals process, with decisions taken by a fully independent, unbiased, previously uninvolved authority.
8. Remove Good Military Character defense from the trial, as well as pre-trial proceedings. The ability to raise reasonable doubt based solely on the accused military record is biased and should be not be relevant to findings of guilt in criminal matters. There is no civilian equivalent. Imagine a rapist being set free merely because he has a good reputation as an auto mechanic, a popular teacher, or business executive. It is offensive to the notion of justice.
9. Provide that all Services should have Special Victims Counsels empowered to provide actual legal representation to help victims protect their rights. Do not eviscerate the Air Force Special Victims Counsel program. If access to counsel were provided, retaliation would be greatly reduced.
10. Create an independent, victim centered, protective reporting process.
11. Mandate that each Service create a military justice track for JAGs. The current system does not sufficiently nurture military justice expertise. The Navy has recently implemented such a track It enables talented JAGs, who enjoy litigation, to specialize in justice and continuously serve in that capacity.

Reforming the military justice system is necessary but, alone, will not be sufficient to end this epidemic. Only with forceful leadership from the top and accountability throughout the command structure, will we see the necessary positive shift in the military culture and less negative attitudes toward victims of sexual assault. Good laws alone do not create good government.

This issue was brought to light most recently in the sexual assault case at Aviano Air Base. Lieutenant General Craig Franklin set aside the conviction of fellow pilot, Lieutenant Colonel Wilkerson, overturning the guilty verdict rendered by a court-martial panel of five colonels he personally selected, and against the recommendation of his legal advisor.

Lieutenant General Franklin's letter explaining his decision to overturn the conviction clearly exhibits faulty analysis, misjudgment, and personal bias. Protect Our Defender's analysis of the General's explanation, with extensive excerpts from trial record, has been previously provided to the committee. No one, after a careful, unbiased analysis of the trial record, could reasonably conclude that General Franklin's action was well-reasoned and balanced, solely based on the facts of the case. It appears that he simply could not believe or accept that this fellow fighter pilot would commit such an act. Lieutenant General Franklin's twisted reasoning and reliance

on the accused's alleged strong character and veracity is an awkward attempt to justify and reconcile his own belief in a fellow pilot, rather than rely on the evidence at trial. This bias coupled with his gratuitous exercise of unilateral and unchecked authority is an archetypical example of what plagues the military justice system.

There was bipartisan condemnation of Lieutenant General Franklin's action and subsequent explanation. Yet, the only response from the Pentagon has thus far been that Lieutenant General Franklin acted within his authority. Of course he did. That is the problem. What about his duty to promote good order and discipline? What about his duty to see that justice is served? Having failed on both counts, will he be held accountable? Thus far, we see no sign that his career will even be affected.

To further compound the egregious and reverberating effects of this decision, on March 15, Lieutenant General Franklin's commander, General Breedlove, speaking before 500 Majors and rising commanders at the Air Command and Staff College, publicly defended Franklin's decision on the merits and falsely attacked the prosecution team. There is no way, had he carefully reviewed the record, that General Breedlove could have rationally reached his conclusion. It appears as though he may have simply read and accepted Lieutenant General Franklin's account. This sort of "circling the wagons" mentality, where the bad actions of one or a few individuals are defended, over the best interests of the Service and the troops, is all too common.

The Aviano case was and is a stark opportunity for DOD and the Air Force top leadership to exercise their responsibility and stated commitment to hold accountable those who countenance sexual offenses. The facts are on the record, very clear, and easy to analyze. Instead, General Breedlove doubled down and supported Franklin on the merits in a very public and gratuitous manor. The Pentagon, thus far, has correctly and repeatedly stated that Franklin acted within his authority. There is thundering silence from the Pentagon regarding whether any one even doubts that he made the right decision. Such silence emboldens predators and those who would be inclined to protect predators or sweep this issue under the rug. It sends a chilling signal to victims who must decide whether to report and can only be deeply demoralizing to investigators, prosecutors, and panel members, who face similar cases every day.

Ultimately, our military leaders must understand that they will be held personally accountable for their decisions on this issue. Those, as the President recently said, who are doing the right thing should be incentivized. However, it is even more important that those leaders who countenance sexual assault and protect predators must themselves suffer severe consequences. They must be relieved of command. Right now, all too often, the opposite occurs. Commanders fail to effectively address the issue, predators survive and advance in rank, and victims suffer retaliation and are pushed out of the Service.

The bottom line is the culture will not change until top leaders take strong action and leaders who fail to do their duty are clearly and swiftly held accountable.

Legislation currently pending before the Senate Armed Services Committee includes many crucial measures, particularly those in the Military Justice Improvement Act, which, if passed, would improve the situation regarding rape and sexual assault in the military, and could, if effectively implemented, go a long way to prevent future crimes. The reform must be sweeping to make appreciable change.

The failure of the military to effectively deal with this cancer has been very damaging to the thousands of victims, the quality of our military, and the prestige and honor of our troops. Americans are finally, starkly aware of this crisis, and on August 2, 2012, according to Stars and Stripes, General Welsh stated, "[Sexual assault] just has the potential to rip the fabric of your force apart. I think it is doing that to a certain extent now." We agree.

Survivors have found their voice. The American people are paying attention. There is no longer any doubt that change will come. The question is how long will it take and, meanwhile, at what cost to our service men and women, our military as a whole, and our prestige around the world.

We are extremely grateful for the work and attention the Senate Armed Services Committee is devoting to this issue. We are encouraged by many of the proposed reforms. We believe that, along with our additional proposals, they, if enacted and effectively implemented, will result in significant improvement over the status quo.

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Lt Cohen is an example of a failed system, a system that permits the weakest within it to suffer manipulation and castigation for having the temerity to come forth with an allegation of sexual assault. According to Lt. Cohen, for years he suffered blackmail, at the hands of his assailant and his assailant's friends, designed to keep him from coming forward with his allegation. When he finally came forward, he was initially ignored by Air Force law enforcement. Pressing his claim further, he was punished by investigators and manipulated into providing evidence that was meant not to hold his assailant accountable, but rather to prosecute him. Through the actions of the Air Force, Lt Cohen's alleged assailant (still on active duty) is statutorily barred from prosecution, while Lt Cohen remains the subject of a constitutionally suspect prosecution. He has been retaliated against, attacked and denied an expedited transfer. Upon learning the expedited transfer was denied, SVC Major Bellflower has asked the commander to provide a safety plan. If we are to make any headway in curbing sexual assault in the military, we must act to protect those that come forward by ensuring that the system does not punish them for doing so. (SVC Counsel, Major John Bellflower's redacted report is attached with his permission. Also attached with permission is Lt. Cohen's background and statement.) There should be a DOD investigation of the entire matter.

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May 17, 2013

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Nancy Parrish
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Dear Ms. Parrish,

Thank you for your inquiry into the plight of my client, Lt Adam Cohen, as a victim of sexual assault. I have read through the material my client provided you in seeking your assistance and the material from various individuals within the Air Force that relates to my client. At my client's request, I provide the following facts, circumstances, and observations for your consideration.

I must say that, although disheartened, I am not surprised by the responses from Air Force channels. Much of what appears to be "stone-walling" on behalf of the Air Force is the result of my client's dual-status as a victim of sexual assault and as an accused in a criminal case. Quite simply, the fact that Lt Cohen is facing criminal charges results in an absolute refusal of Air Force authorities at his current base of assignment to view him as anything other than a criminal. Indeed, all attempts to get authorities to investigate his sexual assault and the threats that flow from that sexual assault have been met with resistance and requests to supply evidence that could only be used in his criminal proceeding. The myopia encountered thus far is, in the least, a systematic failure to recognize his status as a victim and, at worst, an attempt to exploit that status to further a criminal case. Either way, the system is failing Lt Cohen.

The various replies by the Air Force contain many inaccuracies and omissions. I confine my responses to assertions regarding my client's sexual assault and related harassment and threatening behavior toward him. My concerns are addressed individually below:

(1) *Initial Report and Investigation*: In a letter dated 4 March 2013 to Representative [redacted] the Air Force asserts that an investigation into Lt Cohen's allegation of harassment by two Air Force members eventually turned into an investigation of Lt Cohen for

harassing these same members. As it is with many assertions by McConnell authorities, this is only partially correct and fails to tell the whole story.

Lt Cohen first made a report to the Air Force Office of Special Investigations (OSI) at McConnell AFB, KS in October 2011. During his interview he asserted that he had been repeatedly harassed and threatened by Major [redacted] and Captain [redacted] both of the US Army, and Capt [redacted] US Air Force, and asked if OSI could simply "make them stop" rather than file charges. The interview was conducted by Special Agent [redacted], OSI, and Investigator [redacted], Security Forces Office of Investigations (SFOI). Although Lt Cohen was extremely uncomfortable discussing the sexual assault by [redacted], he did bring it up to give them the context in which the threats and harassment arose. This was overlooked by the investigators, who simply gave him a business card and told him to call if he wanted to file an official report.

Although I certainly understand the investigators' reluctance to open an investigation into harassment and threatening language given that my client was then disinclined to file an official report, I am astonished that they did not attempt to follow up with any questions regarding the sexual assault. As you may know, victims of sexual assault are often hesitant in coming forward and making an initial public disclosure is an enormous step psychologically – yet Lt Cohen's disclosure was ignored. After nearly two months, Lt Cohen once again complained of harassment and threats to an investigator at MacDill AFB, FL in December 2011. While this did result in an official investigation, the case was transferred back to the McConnell OSI Detachment – to the very agents that ignored him the first time. To say Lt Cohen's confidence in the McConnell OSI Detachment was undermined is an understatement.

McConnell AFB initiated its investigation on or about 18 Jan 12, after MacDill AFB transferred the case to investigators there. In a subsequent interview, my client once again disclosed the sexual assault and, this time, proffered evidence of the assault's violent nature (i.e. a guitar with blood spatter). The investigator declined to accept the blood-stained guitar into evidence and never followed up on the sexual assault portion of the investigation. Shortly after this interview, my client deployed to support combat operations overseas. While deployed, he continued cooperating with McConnell law enforcement personnel in what he thought was an investigation into his complaints of sexual assault, harassment, and threats. He was mistaken as to the focus of the investigation.

In mid-February, Investigator [redacted] and SA [redacted] conducted a "group interview" of two of the "suspects," [redacted] and [redacted], along with one of their friends. It certainly does not require extensive knowledge of law enforcement investigative techniques to understand the severe negative impact this has on an investigation. The potential for collusion and the opportunity for "suspects" to get their story straight during a group interview are

obvious. In dealing with several law enforcement officials, including OSI, I have yet to find a single agent that supports such an interview technique. Moreover, the agent conducting the interview even permitted a friend of the two "suspects" to sit in during questioning. Perhaps the rationale for this lay in who was considered a suspect at the time. On questioning during the initial Article 32 Hearing, Investigator [redacted] first indicated that Lt Cohen was a suspect from the beginning of the investigation. She later changed her position to say that he became a suspect after the group interview. Indeed, Investigator [redacted] testified to a conscious decision not to read Lt Cohen his rights after he became a suspect – instead determining that simply not asking incriminating questions while continuing to accept information from a suspect that believed he was being treated as a victim was sufficient to protect Constitutional rights and the integrity of the investigation. It is incredulous to claim that this investigation was anything other than patently unfair to a victim merely seeking to have law enforcement assist in stopping harassing and threatening behavior related to a previous sexual assault. Investigators deliberately used Lt Cohen's belief that he was being helped as a victim to collect evidence against him. It would not be a stretch to conclude that Lt Cohen is being punished for coming forward.

About the time my client became a suspect in the eyes of investigators, McConnell law enforcement was provided a copy of an email he received from [redacted] stating "We will keep filing charges against you until you stop all investigations. There are four of us and one of you…who do you think their [sic] going to believe???" Ignoring evidence of collusion by those harassing Lt Cohen, McConnell law enforcement acquiesced by taking Lt Cohen into custody immediately upon his return from deployment. After a fourteen hour crew day, including a final eight-hour flight from RAF Mildenhall, UK to McConnell AFB, KS, Lt Cohen was escorted from the plane directly to OSI. As Investigator [redacted] testified, "It did not matter that he was tired," – investigators had their target and they engaged. He was patted down, had his belongings confiscated, was denied a restroom break, and was read his rights (for the very first time). It was not apparent during his months of cooperation with investigators, as they purported to investigate the crimes against him, but it was certainly obvious to Lt Cohen now that he was a suspect. Realizing that he could not receive a fair investigation into his sexual assault or the collateral harassment and threats, he made a restricted report to the Sexual Assault Response Coordinator so he could at least obtain some form of assistance. It was not until he was assigned a Special Victims' Counsel that he felt comfortable to once again give law enforcement a chance to fairly evaluate his claims.

The astonishing laziness with which this investigation was conducted (whether resulting from incompetence or malfeasance is unknown) shocks the conscience. A second Investigating Officer at a second Article 32 Hearing, noted the "several major missteps during the investigation of this case, including the failure to read rights to various parties during the investigation and SFOI's decision to conduct a 'group' subject interview of CPT [redacted] and Maj

[redacted] SA [redacted] SSgt [redacted] and SSgt [redacted] testified that the information flowing in throughout the investigation was confusing, inconsistent, and overwhelming." However, rather than seek assistance from more seasoned investigators or increase their efforts in discerning the truth, investigators took the easy way out and charged the victim – likely because, as [redacted] threatened Lt Cohen, there were four of them and only one of Lt Cohen. Investigators sacrificed the truth in a numbers game. What message does it send to future victims when they read of Lt Cohen coming forward with a report of sexual assault, harassment, and death threats only to be turned into a suspect and prosecuted based on a faulty investigation? How will future victims come forward when they've learned that investigators will manipulate them into providing evidence for a secret case against them? Why would any victim come forward after learning that the system seeks to punish them?

(2) *The Ramifications of an Inadequate Investigation*: It bears noting here that, once again, Lt Cohen is attempting to have his sexual assault, and related harassment/threats, investigated. However, given the obvious bias of the law enforcement authorities at McConnell AFB, KS, who are after all prosecuting him, he is attempting, through counsel, to have non-McConnell investigators conduct the investigation. The mishandling of this case by McConnell AFB has caused irreparable damage to the case against Lt Cohen's assailant. It is for this reason that McConnell authorities accused Lt Cohen of not cooperating. This is a classic "catch-22" situation: Lt Cohen knows that any evidence or statement he makes will be used not to investigate his tormentors, but rather, will be used against him. Yet, he is accused of non-cooperation when he requests different investigators or acts through counsel.

Lt Cohen was sexually assaulted by Major (then Captain) [redacted] while residing in Atlanta, Georgia on or about 2 June 2007. A photo of this assault was taken by Maj [redacted] and purportedly shared with some of his friends. Lt Cohen was not on active duty at the time, but was seeking a commission. Lt Cohen's plan to commission during a period when "Don't Ask, Don't Tell" (DADT) was still in effect is the basis for using the sexual assault photo to harass and threaten Lt Cohen as homosexual conduct (a claim of consent would presumably be made) was then a bar to military service.

Since Maj [redacted] was on active duty at the time, his conduct is punishable under the Uniform Code of Military Justice provided he is arraigned on charges within five years of the offense date. This so-called statute of limitations expired on 1 June 2012. Lt Cohen first came forward with an allegation of sexual assault on October of 2011, just after DADT ended, and did so again in December of 2011. Additionally, he provided details of the sexual assault, including his assailant's name, to investigators in January and February of 2012 and to a representative of the base legal office in February and March of 2012. In other words, the Air Force was put on notice regarding the sexual assault in sufficient time to assist the Army in prosecuting a case against Maj [redacted] However, the complete failure to follow through on an investigation into Lt

Cohen's claims dictates that the statute of limitations has run and Maj[redacted] is now immune from prosecution by the military.

In an 11 April 2013 letter to Representative[redacted] the Air Force attempts to foist blame on my client's defense counsel by asserting that a failure to make Lt Cohen available for interviews was the cause of the case being closed. However, the Air Force alleges this occurred in August of 2012, after the statute of limitations had already run, approximately ten months after first learning of the sexual assault and eight months after learning the assailant's name. Lt Cohen told at least three investigators and one military attorney about his sexual assault and who assaulted him; he offered forensic evidence (blood-spattered guitar) which could at least corroborate the physical attack portion of the sexual assault; he provided an email from[redacted] indicating collusion against my client; he provided evidence of threats and harassment made against him; and, finally, the Air Force had nearly eight months to coordinate an investigation. Indeed, Special Agent[redacted] indicated that Lt Cohen was extremely cooperative. Yet he ended up being prosecuted while his assailant gained immunity. What message does this send to future victims?

(3) *Failure to Investigate Threats*: Over the course of many years, beginning shortly after the sexual assault, Lt Cohen has received threatening email, voicemail, instant messages, and Facebook posts. All of this material has been provided to investigators and legal personnel at McConnell AFB, KS. A review of these threats reveals a systematic approach to harassing and threatening my client, all orchestrated by[redacted]. Evidence of this lead role is found by comparing the email[redacted] sent to Lt Cohen and his admission, under oath, to making all of the harassing/threatening language contained in two videos posted to YouTube by Lt Cohen in an attempt to document and expose the vile behavior he was subjected to while the Air Force looked on. Those videos can be found at http://www.youtube.com/watch?v=2J0SldD17D0 and http://www.youtube.com/watch?v=pswl-JD7g_Q.

It should be noted that[redacted] also admitted, again under oath, to fabricating texts and emails that appeared to be sent from third parties to various individuals, but were actually being sent from[redacted] to Lt Cohen and other people. Thus, in turning over documents to investigators, Lt Cohen was actually giving, unbeknownst to him, documents that had already been falsified. Investigators declined to uncover the truth in a case they admit was "very confusing" with a lot of "inconsistencies" in the evidence (perhaps attributable to the falsifications perpetrated by[redacted]?). Instead, Investigator[redacted] indicates that neither she nor any other investigator followed up on information indicating that[redacted] sent emails impersonating Lt Cohen. Nor did she or any other law enforcement officers investigate[redacted] the second of the two main perpetrators of the harassment and threats against my client. In a massive understatement, Investigator[redacted] concludes "that it looks bad to not follow up on evidence against[redacted]" Instead, the investigation reflects a comedy of errors in

misleading Lt Cohen as to his actual status in the investigation while continuing to collect questionable (in light of [redacted]'s admissions) evidence against him.

This treatment of a victim of sexual assault by Air Force authorities is reprehensible. Rather than conduct a proper investigation, Air Force authorities chose to skirt proper procedures and blame the victim. Investigator [redacted]'s own words, under oath, summarize the government's position: "I admit that some of our actions might look odd because some of the things we did are opposite from what we normally do. I cannot say for sure what actions we took to confirm Lt Cohen's allegations." If the lead investigator in a case such as this cannot articulate the actions taken to investigate claims of sexual assault, harassment, and threats then it is unquestionable that the Air Force has failed that victim. This failure is compounded by the fact that every effort to ensure the victim's safety is thwarted by McConnell authorities intent on prosecuting the victim for alleged crimes that their own investigators admit are confusing and by an investigation that is admittedly improper.

(4) *Safety Issues*: On 5 October 2012, Lt Cohen pleaded with his command for a transfer under the Threatened Person Assignments Program. At the time, he knew he was the target of a concerted effort by [redacted] and others to have him falsely convicted of harassment. He had also received a death threat via voice mail. Based upon his previous interaction with [redacted], Lt Cohen believed the voice to be that of [redacted] and relayed this information to law enforcement. Interestingly, this voice mail was left shortly after [redacted] was interviewed by OSI. Despite this evidence, Lt Cohen's commander denied the request citing Lt Cohen's failure to provide any information to either him or law enforcement that would warrant a transfer. No indication was given that the commander thought a safety plan was needed; just a terse, three-sentence letter insinuating that the language communicated to Lt Cohen was not significant enough for action.

On or about 13 January 2013, Lt Cohen was physically attacked while at his unit. While turning a corner coming from the squadron gym locker room, an assailant approached Lt Cohen from around a corner and struck his head hard enough to knock him unconscious for a period of time. Although Lt Cohen did not report the incident through his chain of command at the time (due to his distrust of McConnell authorities resulting from the investigation discussed above), he did report to the base medical facility for treatment. In February of 2013, Lt Cohen obtained a Facebook discussion wherein [redacted] tacitly encourages others to commit physical violence upon Lt Cohen by providing them with Lt Cohen's base of assignment. Additionally, Lt Cohen also received an instant message from account name "stanandkyle2010" via Yahoo Instant Messenger stating that a soldier was coming to McConnell "to shoot you in the back. You wont [sic] make it to court alive." Despite having information in their possession from a previous subpoena to Yahoo Inc. linking this account name to a phone number believed to belong to one

of the individuals harassing and threatening Lt Cohen, McConnell authorities have refused make any inquiries regarding this threat.

On 11 April 2013, on behalf of Lt Cohen, I submitted a request for transfer under the Expedited Transfer Program. This Department of Defense Program establishes a presumption in favor of transferring a service member following a credible report of sexual assault. In an effort to demonstrate the potential danger to Lt Cohen, I provided the commander with a letter outlining the threats made against Lt Cohen, to include those mentioned in this letter, and that such threats were related to an incident of sexual assault. My understanding is that this was the first time the commander was made aware of the physical attack against my client. I also spoke at length with the base legal office to explain the connection between the sexual assault and the threats.

Our request for expedited transfer was denied on 13 April 2013. Before getting to the rationale behind the denial, it is important to note that the initial decision authority regarding expedited transfer is the commander, the very person that preferred additional charges against my client. Irrespective of whether these charges have merit, there is the fundamental issue regarding conflict of interest. Having preferred additional charges against Lt Cohen, the commander has lost his objectivity and, without doubt, views Lt Cohen as an accused. His inability to see my client as the victim of a sexual assault predisposes him to deny the request. Indeed, this predisposition can be seen in two of the three rationales given for denial.

The commander denied our request on three grounds: (1) that the program fit within the Humanitarian Transfer Program thereby making my client ineligible due to his pending court-martial, (2) his assailant was not assigned to McConnell AFB, and (3) he had not made a credible report of sexual assault. It is revealing that the commander chose to build upon his initial, procedural rational for denial. Pointing to what he believes to be a governing regulation was simply not enough – he felt the need to attack Lt Cohen's victim status. The commander contends that Lt Cohen has not provided "a shred of credible evidence" to support a claim of sexual assault and that law enforcement has closed their investigations. As explained above, we contend (and the Article 32 Investigating Officer agrees) that no credible investigation was ever conducted – rather, a sham investigation was conducted to gather evidence to use against my client. Also outlined above is the evidence provided, but ignored by the commander.

The first rationale for denying an expedited transfer request by a sexual assault victim is even more problematic given its potential systemic application within the Air Force. Upon receipt of the denial letter, I immediately contacted the Air Force Personnel Command legal office to ascertain whether it was Air Force policy that the Department of Defense Expedited Transfer Program be subsumed within the Humanitarian Reassignment Program thereby subjecting it to the same rules governing humanitarian transfers. This was confirmed. As a

result, I had no true avenue of appeal as the appellate authority would also be bound by this Air Force policy.

Applying the rules governing humanitarian reassignments to expedited transfer requests by victims of sexual assaults eviscerates the Expedited Transfer Request Program. Victims of sexual assault may now be denied transfer to a safer location for nearly 12 different reasons, including a pending court-martial or ongoing investigation, receipt of a referral performance report, or even failing a physical fitness test. The message being sent is that all but the most stellar airmen can be denied an expedited transfer by the very commander that is considering disciplinary or administrative action. In other words, the victim's status as a victim is either being ignored or punished.

I do apologize for the length of this letter. It is, however, very necessary to more fully explain the travesty that is being perpetrated against a victim of sexual assault. I do agree with investigators on one specific point – this is an extremely complex and convoluted case. It is made more so by the defective investigation conducted at McConnell AFB. While I have assisted Lt Cohen in getting the investigation of sexual assault reopened, McConnell authorities have taken away any chance at prosecuting the offender. Their insular approach to this entire case has compromised any faith Lt Cohen has in McConnell AFB authorities to conduct a fair and impartial investigation into his sexual assault. Indeed, by any objective standard, the actions of McConnell authorities have irreparably damaged the integrity of any investigation and have shaken the very core of Air Force assistance to victims of sexual assault.

Should you require additional information, or need me to clarify any statements made in this letter, please do not hesitate to contact me at your earliest convenience. You have my gratitude for your concern regarding my client's safety and welfare.

JOHN W. BELLFLOWER, Maj, USAF
Special Victims' Counsel

Background:

I completed graduate school at Georgia Tech from Fall 2006 through Spring 2008. I completed a dual master's program in City & Regional Planning and International Affairs. Our City Planning program would meet at a local bar, Manuel's Tavern at "First Fridays." I first met CPT [redacted] at the bar that night (I believe September 1, 2006) (although he was in my International Affairs program, not City & Regional Planning). [redacted] was a helicopter pilot (58-Ds) with cross-training as an intelligence officer from Ft Huachuca working on a master's program in the Army's Advanced Civilian Schooling (ACS) where the army would send senior CGOs to civilian school for graduate studies. Shortly after first meeting, he and I became friends, traveled together and took classes together. At one point, he gave me a guitar and was teaching me how to play. When [redacted] and a pilot friend of his from Ft Rucker flight school (CPT [redacted]) found out about my personal life they began harassing me, which consisted of text messages and voice mail. I kept a log of this harassment. I began to get messages like "[redacted] needs a blow job call him." [redacted] refers to CPT [redacted]'s friend [redacted].

June 1, 2007: There was this bar near his apartment that we would frequently hang out at. It changed names a few times, but I believe the last name was "Top Floor." On June 1 2007, [redacted] contacted me. He was going to show me some stuff on the guitar and wanted to go out. I drove over to his apartment at Savannah Midtown, parked in the garage, brought the guitar up to his apartment and we walked down the street to Top Floor where we started the evening. The bar and all of the tables were full. We met these two random girls out front, sat down at their table and began to drink and order appetizers. The girls had friends (a gay couple) with a lavish condo around 9th and Peachtree. They wanted to hang out at their friends place so we all went over there, continued drinking. At the end of the evening, the group disbanded; [redacted] and I went back to his apartment.

I remember [redacted]'s apartment very distinctively. It was a fifth floor corner unit at Savannah Midtown. When you walked into the apartment there was long hallway leading to the family room a coat closet on the left, a laundry closet on the right. In the family room there was a tan/beige leather lazyboy sofa against a wall of windows with a matching chair against the master bedroom wall. Beside the sofa was an end table with a lamp. There was not a coffee table rather, but two folding wicker/iron side tables placed side-by-side in place of where a coffee table would go. A top of that were two small ceramic vases, one orange and one yellow. Directly opposite of the sofa was the guest bathroom. Along that wall was a dark wood television console table with a small Westinghouse flat screen television. On one side of the family was the master suite and on the other side was dining room (with a bank of bay windows), kitchen and guest bedroom/study. In the dining room there was a round glass table

with three wicker and iron chairs. The fourth chair was visible and in the study in front of a small desk. The kitchen was an L-shaped galley style kitchen with a high bar counter that faced the family room. The refrigerator and stove shared a wall with the guest bedroom and the sink faced the family room.

When we got back to his apartment, he got hungry and started making eggs in the kitchen. I sat down in the living room in the leather lazyboy chair and began to play on the guitar. To the right of the chair was a small tri-pod style guitar stand. [redacted] finished cooking in the kitchen, came into the living room, I placed the guitar next to the chair and stood up. He handed me the keys to his Kia Sorrento SUV and told me to drive. He had gotten a divorce and was returning to court with his ex-wife over a monetary dispute. He thought that his ex-wife was out of town, and wanted me to drive him to his ex-wife's house in Marietta. I did not know it at the time, but he planned entering her residence using the programmed homelink remote in his SUV, go inside her house and get financial records or documents. At the time he wanted to "show" me his ex's house but I later found that this was not his intent. Because we had been drinking earlier in the evening, I simply refused to drive him.

When I refused, he got really angry and picked up one of the small ceramic vases off one of the two tables in front of the sofa. He hit me over the forehead with it and began to wrestle me to the ground. When he got me to the ground, he put his knees over my arms so I could not move. There was a bedroom pillow on his sofa; he reached for it, and covered my face and began to suffocate me. While he had the pillow over my face, he began to undo his belt and unbutton his jeans, pulling out his genitals. He then removed the pillow tossing it aside; I began coughing gasping for air. As I did that, he leaned forward began ramming his penis down my throat. He didn't ejaculate and stopped when I started to throw up stomach acid. Then he started to slap his genitals in my face, pulled out his cell phone and started to take pictures of his genitals in my face, laughing, claiming to be emailing the photos to himself from his cell phone. He started to insert his genitals in again, but I got an arm free and reached behind me for anything I could grab. I grabbed a small iron candle lantern that was sitting on the floor next to the chair and the guitar stand and hit him over the forehead. I recall a fair amount of blood splattering all over the guitar which was behind me. He started cursing covered his forehead and went to clean it up. At that point, I fled with the guitar in hand.

June 2, 2007: The next day, I contacted the DeKalb Rape Crisis Center and was met at a local clinic for medical care. I don't recall where it was at or her name, but I remember it was a slightly stocky woman (I believe of Indian or Latin decent). I know that night he came over to my place wanting to talk and I would not answer him. Within about two weeks, at some point, I don't know if it was from calling around, but he did find out that I had sought medical care

following the attack. He got really nervous about me pressing charges or filing a police report. He began texting and calling me with threats against my life - things like 'prepare to die' - or 'I'm going to kill you.' At one point, he even sent a death threat to my government cell phone, in which Federal Protective Services were notified and investigated.

We ran into each other periodically in the company of other students in our graduate program. At one point, late summer when school was starting up again, [redacted] had found out from other students that I was applying for Officer Training School, and indicated to me that he was going to show the pictures he had taken to the Air Force. He claimed he was going to tell them about my private life and say it was consensual; and that because the pictures did not have anything identifying of [redacted] (other than his genitals), he claimed he could do it anonymously and keep me from commissioning under the guise of Don't Ask Don't Tell.

So sayeth Adam P. Cohen this 15th day of April 2013.

ADAM P. COHEN, Lt, USAF

Chairman LEVIN. Thank you very much, Ms. Parrish.

Now Ms. Bhagwati?

STATEMENT OF MS. ANU BHAGWATI, EXECUTIVE DIRECTOR AND CO-FOUNDER, SERVICE WOMEN'S ACTION NETWORK

Ms. BHAGWATI. Good afternoon, Chairman Levin, Ranking Member Inhofe, and members of the Armed Services Committee.

Thank you for convening this hearing and for the privilege of testifying before you today.

My name is Anu Bhagwati. I am the executive director of Service Women's Action Network (SWAN) and a former Marine Corps captain.

SWAN has been at the forefront of working to end military sexual violence since 2007. We are nonpartisan. We are veterans led, and we are a nonprofit organization. It is our mission to transform military culture by securing equal opportunity and freedom to serve without discrimination, harassment, and assault, and to reform veterans services to ensure high-quality healthcare and benefits for women veterans and their families.

I would like to begin by saying that I have a deep abiding love for the military that comes from spending 5 years serving as an officer of marines. I want to see our servicemembers succeed and our Armed Forces thrive.

The issue of sexual violence in the military has been a priority for our organization since its inception. Daily interactions with servicemembers and veterans on our legal and social services help line have shown us that the impact of sexual violence, the impact that it has had on our military in terms of recruitment, readiness,

and retention is profound, and the pain and damage to individual survivors is, in many cases, irreparable.

Even more distressing, the continued failure of the military to address this situation has caused troops to completely lose faith in their leadership and in the military's criminal justice system. This is evident in abysmally low reporting rates for sexual assault.

Servicemembers tell us that they do not report for two reasons primarily. They fear retaliation, and they are convinced that nothing will happen to their perpetrator.

With approximately 26,000 members of the military having experienced some form of sexual assault over the past year alone, this issue calls for immediate attention. Sexual violence presents a challenge to the force that requires the same level of planning, leadership, and execution that goes into the most critical military operations. Resolving this crisis will require a comprehensive approach as well as a joint effort by DOD, Congress, the White House, and outside experts and advocates.

Issues that must be addressed include victim services, protection from retaliation, military justice reform that reevaluates the role of the commander and removes bias against both victim and the accused, and wholesale changes to military culture.

These issue areas require solutions that transcend traditions or rhetoric. Everything must be put on the table, and a climate of cooperation and change must prevail if we are to restore the military's standing in the eyes of its own members, the Nation, and the world.

SWAN believes that part of this change requires a dramatic increase of accession rates of women in the Service branches and all commissioning sources. The answer to the sexual violence crisis in part lies with the need to drastically increase women's presence in the Armed Forces. Until women are afforded the same access to all jobs and assignments as men, until sex discrimination ends, we will also have a military that condones sexual harassment and assault.

We simply cannot expect to recruit or retain enough women in the force when they are treated so poorly, and we cannot expect military culture to improve with so few women at the highest echelons of enlisted and officer leadership.

As you may know, I come to this hearing having personally experienced and witnessed widespread discrimination and sexual harassment during my own military career, having witnessed my own senior officers sweep numerous cases of rape and sexual assault under the rug, and having experienced personal and professional retaliation for reporting abuse in my unit.

I know intimately what intimidation by the chain of command feels like. I know deeply what long-term personal trauma from reporting these incidents feels like. I know deeply how it feels to lose a career I loved because of my own commanding officers doing nothing to support my troops or me when we did the right thing.

For any servicemembers, veterans, or civilians who are here in this room or who are watching this hearing today who have experienced rape, military sexual assault, or harassment, please know that you are not alone. I believe you, and millions of Americans across this Nation believe you.

We know that the military justice system has not worked effectively for you. We know that the trauma, fear, intimidation, and retaliation you experienced is a travesty of justice. It is a violation of everything that your fellow servicemembers swore to uphold. It is a betrayal of the oaths that your officers swore to uphold.

You didn't deserve this when you volunteered to serve your Nation. I am so proud of you for making it through each and every day while your fellow brothers and sisters in arms may have blamed you for what was never your fault, while your chain of command and even your own families may not have believed or supported you, while the VA made it nearly impossible for you to get the benefits you deserved, making you feel again and again that like what happened to you was your fault and not the fault of those who violated your trust.

Mr. Chairman, we are facing a crisis in the ranks. Our military today is a hostile environment in which women and men must put up with all kinds of degrading behavior, not random acts, but rather routine rites of passage that are still condoned by senior enlisted and officer leaders—going to strip clubs, brothels, red light districts both within the United States and overseas, exposure to violent, bestial pornography, rape jokes, and constant verbal harassment.

We should not be surprised that in the age of Steubenville, it is also not safe to be a woman at the Service Academies, where a culture of silence and the glorification of student athletes has allowed a culture of sexual violence and mistreatment of women cadets and midshipmen to flourish.

In a culture that is so deeply rooted in sexist tradition in which sexual assault of men occurs even more often than sexual assault of women; in which sexualized hazing and abuse rituals to allegedly toughen up our male servicemembers are routine; in which service women practically become numb to sexual harassment because it is so common; when even service women often do not support fellow service women who are abused or harassed because few of them want to be considered troublemakers or rabble rousers; in this kind of proud warrior society, where stepping in line is the norm and the very idea of being a victim is considered antithetical to everything we were taught is strong, heroic, and valued, we need to think well outside the box to find transformative solutions.

In the interest of time, I have submitted several Senate bills in my testimony, which SWAN supports for the record. I will just highlight three bills at this time.

The first is Senate bill 871, the Combating Military Sexual Assault Act. The second is Senate bill 1032, the BE SAFE Act. The third is Senate bill 967, the Military Justice Improvement Act, a critical bill that professionalizes the military justice system by ensuring that trained, professional, impartial prosecutors control the keys to the courthouse for felony-level crimes while still allowing commanders to maintain judicial authority over lesser crimes and crimes that are unique to the military.

Unless and until we professionalize the military justice system and afford servicemembers at least the same access to civil redress that civilian victims have, including critical access to civil suit, we will not change this culture. Military perpetrators will continue to be serial predators, taking advantage of a broken system, and tens

of thousands of victims of sexual assaults, sexual harassment, and rape will continue to suck up their pain year after year and decade after decade with no hope for justice.

I now urge the committee please put yourselves in the shoes of the average victim, junior enlisted, powerless, and shamed into silence and vulnerability. Please think of them and move this critical legislation forward. To wait any longer is to welcome the next generation of American victims.

Thank you.

[The prepared statement of Ms. Bhagwati follows:]

PREPARED STATEMENT BY MS. ANU BHAGWATI

Good Afternoon, Chairman Levin, Ranking Member Inhofe, and members of the Armed Services Committee. Thank you for convening this hearing, and for the privilege of testifying before you today.

My name is Anu Bhagwati. I am the Executive Director of Service Women's Action Network (SWAN) and a former Marine Corps captain. SWAN has been at the forefront of working to end military sexual violence since 2007. We are a non-partisan, veterans-led non-profit organization. It is our mission to transform military culture by securing equal opportunity and freedom to serve without discrimination, harassment or assault; and to reform veterans' services to ensure high quality health care and benefits for women veterans and their families.

I would like to begin by saying that I have a deep, abiding love for the military that comes from spending 5 years serving as an officer of marines. I want to see our servicemembers succeed and our Armed Forces thrive. The issue of sexual violence in the military has been a priority for our organization since its inception. Daily interactions on our legal and social services helpline with servicemembers and veterans have shown us that the impact that sexual violence has had on our military in terms of recruitment, readiness and retention is profound, and the pain and damage to individual survivors is in many cases irreparable. Even more distressing, the continued failure of the military to address this situation has caused troops to lose faith in their leadership and in the military's criminal justice system. This is evident in the abysmally low reporting rates for sexual assaults. Servicemembers tell us they don't report primarily for two reasons: they fear retaliation and they are convinced that nothing will happen to their perpetrator.

With approximately 26,000 members of the military having experienced some form of sexual assault over the past year alone, this issue calls for immediate action. Sexual violence presents a challenge to the force that requires the same level of planning, leadership and execution that goes into the most critical military operations. Resolving this crisis will require a comprehensive approach, as well as a joint effort by the DOD, Congress, the White House and outside experts and advocates. Issues that must be addressed include victim services, protection from retaliation, military justice reform that reevaluates the role of the commander and removes bias against both the victim and the accused, and wholesale changes to military culture. These issue areas require solutions that transcend traditions or rhetoric—everything must be put on the table and a climate of cooperation and change must prevail if we are to restore our military's standing in the eyes of its own members, the Nation and the world.

SWAN believes that part of this change requires a dramatic increase to accession rates of women into all the service branches and all commissioning sources. The answer to the sexual violence crisis lies in part with the need to drastically increase women's presence in the Armed Forces. And until women are afforded the same access to all jobs and assignments as men, until sex discrimination ends, we will also have a military that condones sexual harassment and assault. We simply cannot expect to recruit or retain enough women in the force when they are treated so poorly. And we cannot expect military culture to improve with so few women at the highest echelons of enlisted and officer leadership.

As you may know, I come to this hearing with professional experience with these issues, having personally experienced and witnessed widespread discrimination and sexual harassment during my own military career, having witnessed my own senior officers sweep numerous cases of rape and sexual assault under the rug, and having experienced personal and professional retaliation for reporting abuse in my units. I know intimately what intimidation by my chain of command feels like. I know deeply what long-term personal trauma from reporting these incidents feels like.

And I know deeply how it feels to lose a career I loved because my own commanding officers did not support my troops or me in doing the right thing.

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Mr. Chairman, we are facing a crisis in the ranks. Our military today is a sexually hostile environment in which women and men must put up with all kinds of degrading behavior, that are not random acts but rather routine rites of passage that are still condoned by senior enlisted and officer leaders—going to strip clubs, brothels and red light districts both within the United States and overseas, exposure to violent bestial pornography, rape jokes and constant verbal harassment. We should not be surprised that in the age of Steubenville, it is also not safe to be a woman at the Service Academies, where a culture of silence and the glorification of student athletes has allowed a culture of sexual violence and mistreatment of women cadets and midshipmen to flourish.

In a culture that is so deeply rooted in sexist traditions, in which sexual assault of men occurs even more often than sexual assault of women, in which sexualized hazing and abuse rituals to allegedly toughen up our male servicemembers are routine, in which service women practically become numb to sexual harassment because it is so common, when even service women often do not support fellow service women who are abused or harassed because few of them want to be considered trouble-makers or rabble-rousers, in this kind of proud warrior society, where stepping in line is the norm and the very idea of being a victim is considered antithetical to everything we are taught is strong, heroic, and valued, we need to think well outside the box to find transformative solutions.

Mr. Chairman, several bills related to military sexual violence have been introduced in recent weeks by members of this committee and other congressional champions for reform. Some bills address the need to improve victim services, some address the critical need for UCMJ reform, and others are focused on the impact that sexual assault and sexual harassment have on veterans. The majority of these are bipartisan and bicameral, which speaks to the collective approach required to see real change happen. I would like to highlight these bills and urge the committee to give them serious consideration as it moves forward with this year's National Defense Authorization Act:

S. 538 which modifies the authority of commanders under Article 60.

S. 548 the Military Sexual Assault Prevention Act which requires retention of all sexual assault reports, restricted and unrestricted for 50 years, and requires substantiated complaints of sexual-related offenses be placed in the perpetrator's personnel record.

S. 871 the Combating Military Sexual Assault Act which would require the Air Force's special victims counsel program be implemented DOD-wide, prohibit sexual acts and contact between instructors and trainees, provide enhanced oversight responsibilities to the Sexual Assault Prevention and Response Offices and make Sexual Assault Response Coordinators available to all National Guard troops.

S. 967 the Military Justice Improvement Act, a critical bill that professionalizes the military justice system by ensuring that trained, professional, impartial prosecutors control the keys to the courthouse for felony-level crimes while still allowing commanders to maintain judicial authority over crimes that are unique to the military and requiring more expeditious and localized justice to ensure good order and discipline.

S. 992 which would require Sexual Assault Prevention and Response personnel billets to be nominative positions.

S. 1032 the BE SAFE Act that would mandate dismissal or dishonorable discharge of those convicted for specific sex crimes, remove the 5 year stat-

ute of limitations on sexual assault cases and allow for consideration for accused transfer from the unit.

S. 1041 the Military Crimes Victim Act that extends crime victims' rights to offenses under the UCMJ.

S. 1050 the Coast Guard STRONG Act that requires the Coast Guard to implement sexual assault prevention and response reforms.

S. 1081, the Military Whistle Blowers Enhancement Act which would help protect victims from retaliation and reprisal by expanding protections under the existing Whistleblower Protection Enhancement Act for Federal workers, require timely Inspector General investigations, ensure discipline for those who retaliate and improve corrective relief for victims.

Unless and until we professionalize the military justice system, and afford servicemembers at least the same access to legal redress that civilian victims have, including critical access to civil suits, we will not change this culture. Military perpetrators will continue to be serial predators, taking advantage of a broken system to prey on victims, and tens of thousands of victims of rape, assault, and harassment will continue to suck up their pain, trauma, shame and humiliation, year after year, and decade after decade, with no hope for justice.

Beyond just punishing bad behavior, a professional, fair and impartial legal system aids in prevention training. It creates a bright shining line that is the hallmark of effective military training. If you do the crime, you do the time. It creates a deterrent and a respect for laws and regulations. That is what maintains good order and discipline within the ranks. That is also what will restore the full faith and confidence of troops in military commanders and the military justice system.

As entrenched as military sexual violence is right now, SWAN is convinced that the military can transform its culture, because it has done so in the past. In the 1980s, the military took decisive action to counter soaring rates of drinking and driving. It didn't treat driving under the influence (DUI) as a lapse in professionalism or bad judgment, as it so often does sexual assault. It didn't just hold safety stand-downs and attempt to train its way out of the problem. Instead the military instituted firm, fair policies that made getting a DUI what the military calls a "showstopper." If you got caught drinking and driving, you faced discipline, prosecution if appropriate and an end to your career. In less than 10 years, alcohol related incidents in the military were brought below civilian statistics. To this day, servicemembers know what will happen to them if they get caught drunk behind the wheel. The military treated DUI as a crime, just like it needs to treat sexual assault as a crime.

I now urge the committee: please put yourselves in the shoes of the average victim—junior enlisted, powerless, and shamed into silence and invisibility. Please think of them, and move this critical legislation forward. To wait any longer is to welcome the next generation of American victims.

Thank you.

Chairman LEVIN. Thank you very much, Ms. Bhagwati.

Mr. Altenburg?

STATEMENT OF MG JOHN D. ALTENBURG JR., USA, RETIRED, CHAIRMAN, AMERICAN BAR ASSOCIATION STANDING COMMITTEE ON ARMED FORCES LAW

General ALTENBURG. Thank you, Chairman Levin, Ranking Member Inhofe, and members of the committee, for allowing me to testify here today.

These views are my personal views. They do not reflect the views of DOD, the American Bar Association, or any other entity.

We all agree, I think, that the problem of sexual assault in the military is appalling. How to solve this issue is critical to our Nation's ability to field an effective military force. I approach this issue from a perspective shaped by three experiences.

First, my service as an enlisted soldier. Including reserve time, I was an enlisted soldier for more than 5 years, including a year in combat.

Second, my service as an Army Judge Advocate for more than 28 years, including almost 8 years personally prosecuting serious

crimes in the United States and Germany and, later, another 6 years as a SJA in the two busiest general court-martial jurisdictions in the Army, and I deployed with both of those organizations. I have prosecuted and I have overseen the prosecution of numerous rape and sexual assault cases.

The third is the fact that I am the father of five children. They are all adults now. Two served in the Army, including my oldest daughter, who served 6 years Active, most of it deployed, and another 6 years in the Reserve. All of this after attending and graduating from the military academy at West Point. My youngest daughter also is considering military service next year.

Sexual assault in the military is one of the most serious problems I have seen in more than 45 years observing military issues. We know from accounts of victims that there has been inadequate command accountability for addressing this insidious problem.

Clearly, some leaders have failed to take care of victims, and many victims have been horribly retraumatized by the process, frequently because of insensitive leaders.

I agree that change is needed, but many of the changes already urged and passed by Congress are leading to change that is needed to cope with this problem. Many of the changes demanded by victims advocates have only been in place less than 3 years. If we argue for major change, we should check to see how effective recent changes have been before more major changes.

There are more than 130 convening authorities across DOD, who review and approve or disapprove of findings in more than 2,000 cases annually. We must be careful of judgments based on 1 or 2 of those decisions in the last 5 years, compared to the 10,000 decisions by all the other convening authorities.

It is not enough to point out that statistics are misstated by critics, that survey responses are extrapolated by mathematicians to reflect 26,000 unwanted sexual contacts but then translated by critics and journalists to be 26,000 actual rapes or sexual assaults. This problem is serious. There is no need to exaggerate statistics.

The military prosecutes sexual assault more aggressively than most civilian jurisdictions. The military prosecutes many cases after civilian jurisdictions decline them. Those who claim otherwise simply don't know the facts.

No commander ever refers a case to a general court-martial without first reviewing the pretrial advice of his or her SJA. Those who say that non-lawyers run the prosecution of cases do not understand how fully commanders understand their quasi-judicial responsibilities and the direct link those duties have with the combat readiness of the force.

Nor do critics understand that lawyers are fully engaged in the exercise of prosecutorial discretion. Rarely does a commander not follow the recommendation of the SJA. Taking authority from commanders and giving it to lawyers solves nothing, in my opinion. It is a 50-year-old solution looking for a problem to solve. Lawyers are already fully engaged.

Prosecution is critical to prevention, but only leader accountability will solve this problem in all of its complexity the same way leader accountability in the 1970s began to solve race issues and

in the 1980s to counter the misuse of alcohol and drugs and drunk driving.

There have been crises in child abuse and spouse abuse in the military. In each instance, military leaders created the change that was required. Withholding disposition authority to a higher level was instrumental in each of those matters.

Leaders must understand that while sexual assaults occur with similar frequency in the civilian sector, the military setting creates two unique circumstances that commanders must address. One, a unique opportunity for predators unlike anything outside the military.

The professor or teacher with a student in no way compares to a military supervisor and a young trainee. Consent as a practical matter, in my opinion, is impossible for a trainee. There should be strict liability for supervisors in the military training environment.

Second, a unique vulnerability of victims, who frequently don't realize the many ways they can report an assault, that they could even prefer the charges themselves or go to six or seven different possible places to report, even personally prefer charges, as I said. That is because of the intimidating unit environment for young soldiers, as alluded to earlier.

If we are to modify the military justice system, then it must be done with care to understand fully the complexity and the balance of a system and to think through the potential unintended consequences. Holding leaders accountable can be approved immediately. The leaders who testified earlier will see to that.

I look forward to your questions.

Chairman LEVIN. Thank you very much, Mr. Altenburg.

Mr. Morris?

STATEMENT OF COL LAWRENCE J. MORRIS, USA, RETIRED, GENERAL COUNSEL, CATHOLIC UNIVERSITY

Colonel MORRIS. Good afternoon, Chairman Levin, Ranking Member Inhofe, and distinguished members of the committee.

Thanks for the opportunity to contribute to this important discussion.

I am here as a citizen, 2 years removed from having served as the Army's Chief of Advocacy, which is a civilian position charged with implementing the improved training of Army prosecutors and defense counsel regarding sexual misconduct.

Before that, I had the great privilege of serving in uniform for 30 years, 27 of them as a Judge Advocate around the world, trying about 100 courts-martial both as a prosecutor, including capital cases, and a defense counsel and then supervising the trial of many others; serving as the SJA, the chief legal adviser to general court-martial convening authorities in the States and while deployed and as the SJA or general counsel at West Point.

Before I served as the chief prosecutor for the Guantanamo Bay war crimes trials, I sought the opportunity to serve as the Army's Chief Public Defender, supervising the 300 or so Judge Advocates charged with the ethical and independent defense of their fellow soldiers. I have five brief observations.

First, the military justice system essentially works as a productive collaboration between commanders and lawyers. Now though

the system is command run, commanders rarely make a move and certainly not a significant move involving cases of the complexity and gravity of sexual misconduct without consulting their counsel.

These aren't episodic or formal occasions. They are constant and deeply embedded in the law, procedure, and military culture.

Second, the military justice system is essential for good order and discipline. Command is a sacred trust, and it must include the ability to effect discipline in a military whose sole purpose is to fight and win our Nation's wars.

We do take a risk in giving that awesome power to commanders, which is why it is notable and damaging when they breach it. But it is an essential element of the authority and trust of a servant leader.

Third, the military tries hard cases. I know lots of civilians who do, too. But I also know that because of the military's culture and the abundance of resources, that the military is generally more willing to try the close case undeterred by possible acquittal.

I did it many times, and I know my experience was not unique. Cases should never be tried for show or out of solidarity, but victim trust can be sustained and enhanced when the victim devotes legal resources and energy to trying a close case.

Fourth, we must be mindful of soldier rights and command influence. Dating as far back as Harry Truman's critical letters from the front, through my generation's service as Judge Advocates, the greatest concern about military justice has been its most persistent scourge—unlawful command influence.

In our rightful zeal to eradicate sexual misconduct, we must make sure that all participants in the process, all participants exercise independent and dispassionate judgment in that in the process, accused soldiers do not face a compromise of their rights under the Constitution or the UCMJ to fully defend themselves, including the ability to prepare cases and call witnesses on their behalf.

Fifth and last, we are right to demand a lot from our military and our military justice system, but only what each is reasonably able to accomplish. Any justice system is a reactive instrument. We do and we should have high expectations of our military and its justice system, but we also must candidly face the attitudes toward sexuality that our patriotic volunteers bring with them into the force and recognize the commitment in education and leadership that is required to modify them.

Congress should be satisfied that the military is doing all it can to remove factors that might make sexual misconduct easier, including the availability of alcohol, unsupervised living arrangements, and the consumption of pornography.

Our military justice system never has been static, and there are changes I would recommend to better balance efficiency and soldier protections. The committee would be well served to demand carefully prepared data on current practices and to understand how the commitment to justice is operationalized in a serious and appropriate manner.

Thanks, and I look forward to your questions.

[The prepared statement of Colonel Morris follows:]

PREPARED STATEMENT BY COL LAWRENCE J. MORRIS, USA, (RET.)

The commander is indispensable to the military justice system because the only reason for a military justice system is the maintenance of good order and discipline. Removing this tool—or entrusting it to lawyers with no leadership responsibility—would diminish the authority of command and the quality of the force. We so often talk about command as a sacred trust that we can forget both the noun and the adjective: it really is trust, the rightful burden of leadership placed on commanders by our history, laws, and tradition; and it really is sacred because the leaders are the servants of those they lead—a responsibility that translates to caring for the led with an intensity and comprehensiveness that has no civilian equivalent.

We have the most robust military justice system in the world, not only because we are the world's most powerful military, but because we are the world's best led, most disciplined, and most ethical force. Leaders do not lead primarily out of fear or fear of consequences—but they need to have available to them an array of consequences to justly and swiftly address misconduct. Commanders' responsibility under the Uniform Code of Military Justice (UCMJ) is not one more additional duty but is woven into the mantle of command, part of who they are, an indispensable element of their authority and their commitment to mission and people.

I speak from the perspective of a judge advocate privileged to have served 27 years on active duty, most of them in or near the courtroom. I followed my time in uniform with 2 years' service as the civilian chief of advocacy for the Army, responsible for implementing the special victim prosecutor program and the training and development of prosecutors and defense counsel. My greatest concern is that the committee understands how the system really works—how closely commanders and lawyers are tied together so that it does not impose a remedy that does not fix the problem.

In every unit at all levels of our military, commanders consult their judge advocates on the full array of disciplinary options—a uniquely rich continuum that runs from "admonishment" (getting in the face of a subordinate quickly to correct an error) through a range of administrative and nonjudicial measures, all the way to the felony-level general court-martial. I know that there are captains and lieutenants across the Services who have developed practices similar to what I did as a young prosecutor, keeping a copy of the punitive articles of the UCMJ and the discussion to R.C.M. 401 (which explains all of the factors, many peculiar to the military, that leaders should consider in deciding whether to punish and how to calibrate that punishment) under the glass on my desk to be able to talk through not just the possible offenses but the rationale behind selecting a disciplinary choice. The leaders benefit from a judge advocate's best advice—what the law requires, what the evidence will support, the likely outcome—and we lawyers benefit from the leader's perspective on the impact of the infraction in their unit, factors that might not be as obvious or intuitive to us at our remove. As one of many examples, after a few years as a prosecutor I was evaluating a case involving a soldier who drowned after horseplay among buddies on a boat on a cold German lake. It was a true tragedy—friends whose conduct got out of control—but the brigade commander whom I advised, nearing his 30th year in the Army, explained to me why, in the Transportation Corps, his soldiers had to be "on" regarding safety at all times, and that the tragedy was more profound because it reflected such a departure from that mindset. Such commander-lawyer collaborations happen all day every day across our military, a seamless and collaborative dialogue meant to bring the appropriate discipline in each individual case. Of course these conversations occur with particular care and urgency regarding sexual misconduct, especially when the victim is a military member and even more so when in the same unit.

Besides the constant advice, the law requires a commander to obtain the written advice of his senior legal advisor, the staff judge advocate, on several matters, including jurisdiction and the availability of evidence, before he can send a case to a general court-martial; in this pivotal circumstance the lawyer holds the keys to the courtroom, and a commander is disabled from convening a general court-martial without that independent advice. Therefore, the suggestion that increased lawyer involvement would mean better preparation and trial of sexual misconduct might not appreciate the extent to which lawyers already are involved in the preparation and development of a case, not to mention their actual authority, as in their pretrial advice for a general court-martial.

These are among the unique features of the military justice system, many of them stemming from the demands placed on servicemembers and leaders for which there is no civilian equivalent—disciplinary measures that can be administered with justice and efficiency around the world during wartime and peace. Because it is an instrument of command, however, the system also carries the potential to be distorted

by command influence or control, a risk well known to most observers of and participants in the system. In addition to all my years in the courtroom I also served as the chief of criminal law for the Army's largest group of prosecutors, and the deputy staff judge advocate and staff judge advocate in different combat divisions. In my years as the chief of the criminal law department at the Army's law school I not only taught judge advocates but rising battalion, brigade and division commanders as they prepared for their judicial roles. On many occasions I took difficult cases of sexual misconduct, as well as child sexual abuse, to commanders. In many instances there was no guarantee of conviction but there was a strong reason to try the case and we were able to develop the victim's confidence. In all instances the commanders underwrote risk and took the cases to trial; I have no doubt that many of these cases would not have been tried by civilian courts either because of lack of resources or concern about acquittal. I know from my direct experience that in many of these instances the local civilian jurisdiction that could have tried the case, in places as disparate as Oklahoma, Panama, Korea, New York, and Germany, was pleased to have the military take the chance on the case. It was also essential that the command brought those cases, signifying the leadership's interest in servicemembers' conduct whether on or off duty, on the installation or off. This should be taken into account in considering how confusing it would be to set apart a category of offenses, such as sexual misconduct or common law crimes, from the rest of the offenses under the UCMJ. A commander's unitary authority to attack all criminal misconduct is essential to his effectiveness and to the military's and society's expectations of the commander. The Supreme Court recognized the wisdom of the military's ability to attack all such misconduct in *Solorio* v. *United States*, 483 U.S. 435 (1987) when it removed the service connection requirement from military prosecutions; Congress should honor that analysis in refusing to fragment accountability and responsibility for addressing servicemember misconduct.

It was not long ago that the military justice system was criticized by courts and commentators for insufficiently protecting the rights of accused soldiers; though it has rightly regained a reputation for balanced justice, it must maintain and earn that with each wave of our All-Volunteer Force. My first assignment as a judge advocate was as a defense counsel and the last job I sought in the Army was as its chief public defender, responsible for our 300 uniformed defense counsel around the world. There are several protections under the UCMJ that civilians would covet—including a broader privilege against self-incrimination, more liberal right to counsel, and much more liberal rules in its "grand jury" proceeding. Those protections also include Article 60, the authority of a commander who convened a court to disapprove the findings or sentence. While I agree that it is reasonable to require a commander to state his reasons for granting such relief—most any judicial officer anywhere carries a similar obligation of accountability—modifying or removing this authority still represents a reduction in servicemember protections without a compensating change elsewhere. The committee should be careful when making any change, however slight, in the carefully calibrated and long-developed balance between command interests and protection of servicemembers—in a system in which any servicemember can swear out charges and where you can be sentenced to life in prison based on the votes of four members of a 5-person jury. Still, the greatest worry of a servicemember suspected or accused of a crime is that the command can run the system in a way that keeps his ample rights and protections from taking flesh in the reality of the disciplinary process. These concerns would persist under a lawyer-run system, as the lawyers would work for and with commanders, and we must be most vigilant to keep unlawful influence from sprouting in informal ways, such as speech and conduct that can telegraph to leaders that they should dispose of cases in a certain manner or that would undermine an accused's sixth amendment right to a fair trial by intimidating potential witnesses or chilling the cooperation or candor of leaders or fellow servicemembers. Soldiers trust our system, a hard-earned but evanescent confidence that is the product of generations of careful practice, backed by draconian sanctions for unlawful influence; if servicemembers do not consider the system to be essentially fair it will forfeit its legitimacy and undermine the effectiveness of leaders and the lawyers who advise them. All of which only reminds us of the inherent limitations of any justice system.

The military justice system certainly is an appropriate instrument for attacking sexual misconduct; moreover, the availability of nonjudicial and administrative measures means that it can attack "precursor" conduct short of sexual assault because it has tools unavailable to the civilian world. But military justice, like any justice system, is primarily reactive and blunt. It addresses conduct after it occurs. While general deterrence is an appropriate purpose for a justice system, and we should have confidence that a potential criminal calculates the consequences when contemplating criminal behavior, this focus on the consequence stage illustrates the

inherent limitations of justice—and its dependency on culture more than anything to set society's standards. Our young volunteers come to us from a society that sends at best conflicting messages about human sexuality, with the edifying aspects and elements of responsibility and respect often buried under its dulling ubiquity and focuses on "consequence management." Our servicemembers are the products of the values and examples set by moms and dads, schools and churches, movies and music. The military has an admirable history of being at the lead on social change—racial equality—and on behavioral change—alcohol and drugs; it recently proved its flexibility and fidelity to civilian leadership in implementing the gay rights policy. But all of those changes required education and leadership—and justice was but a component of it. It is equally true with sexual misconduct. We must candidly deal with the experiences and attitudes of those whom society entrusts to us and immerse them in a culture of team work, honor and respect, one reason that the emphasis on stinging consequences for sexual misconduct by leaders involved in basic training and the first duty station is especially important. Unlike some initiatives, there are multiple components to the effort against sexual misconduct because sexuality is unique in the human dynamic and especially tough to try because cases are heavily testimonial. When the military was concerned with chubby recruits it gave them extra PT and adjusted the recipe card for SOS. When it was concerned about drunken driving it cut off alcohol sales during the duty day and hit all ranks with mandatory reprimands for DUI. Mandatory drug testing caused drug use to plummet and sustained and credible testing kept it low. None of these measures eradicated the conduct but all of them brought it under control. Sexual misconduct involves a more profound reorientation of attitudes, and merits tough and just consequences—but also involves reducing the opportunities for misconduct by paying attention to the availability of alcohol, combined with virtually unsupervised living arrangements for large numbers of young, single people. Attention also should be paid to the pornography epidemic in society and strong evidence of its heavy consumption in the ranks.

To say that attacking this problem requires a bit of judicial humility does not mean reticence or a lack of ambition. The problem can be attacked with the same unity of effort that has characterized prior successes, and the consequence portion of that continuum should always be scrutinized to ensure it is both just and fair. Society holds the military higher in esteem than almost any institution—and its ability to lead and manage social change is as much a part of that reputation as fighting with ethical ferocity. The military justice system is as old as our country but the UCMJ is only a little over 60 years old. As with many of my colleagues, I could suggest to you several changes I would make if I had the authority to do so—but they all must come about after careful study and anticipation of collateral consequences. Congress must answer the fundamental questions implicit in some of the legislation you are considering, including whether it is the system or the people employing it who are the greater concern and how you would measure change—do we think reports are not currently made that would be made? That cases would be tried that are not tried? More convictions? Harsher sentences?

The system should not remain static, but Congress should require hard data on sexual misconduct, candor and clarity regarding living arrangements and supervision, study of cultural influences that our members bring with them as well as the culture they enter—and how the justice system enforces good order and discipline in a manner that is fair, swift, and just.

Chairman LEVIN. Thank you all.

First is the question of retaliation, what we know long before today's hearing, but it has been emphasized at today's hearing is that most of the women who do not report, or most of the troops that don't report—men or women—do not do so because they are afraid of retaliation.

A huge percentage are very much afraid of humiliation or embarrassment. But it is the retaliation issue which we want to put some focus on, or at least I want and I think all of us want to put some focus on.

The question is whether or not, and I think, Ms. Bhagwati, you made reference to one of the bills here, Senator Gillibrand's bill, which would require that serious offenses be sent to a new disposition authority outside of the chain of command for a determination

of whether the allegation should be prosecuted at a general or special court-martial.

My question is how would doing that stop retaliation? That is the question I guess I will ask of you, Ms. Bhagwati.

Ms. BHAGWATI. Well, the first thing it will do is restore faith and trust in the system. Right now, victims don't have any of that. They have lost all hope in the military justice system, unfortunately.

Retaliation happens in many respects. We see on a day-to-day basis that our callers, both servicemembers and veterans who have recently been discharged, have been punished with anything from personal retaliation from roommates and family members to professional retaliation by their chain of command from the lowest levels to the highest levels, platoon sergeants all the way up the chain.

They are also retaliated in more kind of insidious ways. They are given false diagnoses, mental health diagnoses, like personality disorders, which bar them from service, which force them to be discharged, which ban them from getting VA services, VA benefits. So it is comprehensive retaliation.

Chairman LEVIN. Mr. Altenburg, let me ask you a question about the investigation process. Colonel King said that the investigation in the Marines, and I think this is generally true, is handled by professional investigators. Is that your understanding?

General ALTENBURG. That is my understanding, and that is a recent change, I mean, in the last 3 years, I think.

Chairman LEVIN. Now have you read the bill, Senator Gillibrand's bill?

General ALTENBURG. I have.

Chairman LEVIN. If there were a new disposition authority created, independent of the chain of command that would make a determination of whether allegations should be prosecuted at a court-martial or not, would that affect the investigation process?

General ALTENBURG. I don't think it would necessarily. If they left the investigation with the CID in the Army, the NCIS in the other Service, and the Air Force Office of Special Investigations, then they would do their investigation, and then it would get passed, I guess, to this court-martial command is what it was called 50 years ago when people tried to do that.

Chairman LEVIN. All right. Now in terms of who would make the decision, as you read the bill, who would make the decision, the determination as to whether an offense meets the threshold of a serious offense that would have to be referred to the new disposition authority? Who would make that determination?

General ALTENBURG. Excuse me, sir. I assume a lawyer would. Just as now, lawyers make no command decisions——

Chairman LEVIN. Lawyer, which lawyer, where?

General ALTENBURG. Prosecution, a prosecutor.

Chairman LEVIN. In that same independent office? I mean, that is the threshold question as to whether or not there is evidence of a serious offense or not so that that new independent approach would be triggered. Who would make that, as you read the bill?

General ALTENBURG. As I read the bill, a lawyer and the SJA would make that call, as I read the bill.

Senator Levin, if you please——

Chairman LEVIN. Does anyone else have a—yes, go on. Go on.

General ALTENBURG. I beg your indulgence in making a couple of comments, one related to retaliation, the other regarding investigations. Investigations have now become mandatorily done by the professional investigative services. That is a change that was a response to this problem.

Second, with regard to retaliation, I think it is even more complex and subtle than Ms. Bhagwati talks about. I agree with everything that she said, that she has experienced. But it is so subtle that it can just be soldiers attending an investigative hearing and glowering at the victim to make her feel uncomfortable.

Chairman LEVIN. Do you have any suggestions as to how we can get to the peer pressure type of retaliation?

General ALTENBURG. I think the only way to get to that is through the command, is through leadership. They have to seize this issue. They have to understand the cultural dimensions of it, realize how unique the military is in terms of the vulnerabilities of the victim, and the opportunity for this predator mentality that it is like a wolf around a pack of sheep that seeks out different types of people and tests them and probes them and then finally decides to strike when they are one-on-one.

I mean, whether they do it subliminally or whether they do it with malice aforethought, they are predators to the Nth degree, and many of them, we are finding from studies, are repeat offenders and they are serial offenders. Some of the things that have been suggested to keep people from coming in the military who have that kind of background will be—will help solve this.

But that mentality and that culture is what the leaders have to attack. The same way they attacked racism in the 1970s and the 1980s. There were racist lieutenant colonels and colonels, and they got discovered. They got out.

You couldn't cope. You couldn't deal without modifying your behavior or getting out, and we have done that with several other social issues. It takes leadership. That doesn't mean that all the leaders are going to be the good people and the ones that get it, but that is how we will effect change in this culture.

Chairman LEVIN. Senator Inhofe?

Senator INHOFE. Thank you, Mr. Chairman.

First of all, Ms. Bhagwati, I appreciate your comments about the Naval Academy. I am concerned enough about it that I called Admiral Mike Miller, who visited this morning, the superintendent up there. This is a deplorable situation that we need to pursue.

Not being a lawyer, I am going to ask a question a little bit differently than the chairman did of the two. Perhaps you, Colonel Morris, or you, General Altenburg. On the second panel, I asked a question that came out of a recommendation from this Defense Legal Policy Board report. Now, that is just a week old, and so I doubt seriously that everybody has spent some time reading it.

They feel very strongly about the notion that commanders have the ability to deal swiftly, fairly, competently, and visibly. I asked the question of that panel, and of course, you guys are JAGs so you would come from a different perspective, perhaps, that creating the centralized initial disposition authority with an oversight by an O–6 Judge Advocate.

How would a system like this, or would it, impede with the ability to deal with misconduct using those four characteristics—swiftly, fairly, competently, and visibly? Any thoughts about that, either one of you?

Colonel MORRIS. Senator, I think that there is no doubt that lawyers can and always have accurately been able to assess the evidence, assist in the energizing of investigators, and give their best legal analysis and advice to commanders. So in terms of analyzing a case, there would be no degradation in a kind of a JAG unique bubble there, working those cases.

The concern is what you would give up, and what you would give up is the unitary aspect of a commander being responsible for everything that happens in his unit. The military justice system is a component of that. It is not the only one, obviously. If you lead just out of fear or lead just out of consequence, you are not a full-spectrum leader.

But to be able fully to lead, you need to be able to have the ability directly to effect discipline, which means a full range of punishments. I mean, we are talking at the court-martial end of the spectrum. But what the military justice system provides is punishments that civilians would love to have, from admonition, reprimand, nonjudicial punishment.

A lot of the conduct that is kind of the low level and sometimes precursor conduct to serious sexual misconduct can be addressed directly, severely, and swiftly with that range of sanctions available to commanders.

Senator INHOFE. I appreciate that answer because that also answered my second question, which was to have you go into this range that they would have that is not found in the civilian approach to this. You have done that very well.

Let me ask you something. As I read as a non-lawyer, one of the proposals would, and I use the word "require," would require the defense to request interviews with the complaining witness in a sexual assault case, but would prohibit the defense from interviewing the complaining witness unless it was in the presence of the trial counsel, counsel for the witness, or the outside counsel.

Now General Altenburg and Colonel Morris, do you think that that restriction on the defense would be workable in a military justice case?

General ALTENBURG. I would say, first of all, that no one can force a victim to talk to a defense counsel. I mean, it may, as a practical matter, impede the trial of the case. But certainly before an investigative hearing——

Senator INHOFE. It says prohibit. So go ahead.

General ALTENBURG. The proposal would prohibit the defense lawyer from talking to the victim?

Senator INHOFE. From interviewing, yes.

General ALTENBURG. I think it—I understand why victims don't want to talk to the defense lawyer. I get that. But in our system of justice in this country, they have to talk to the defense lawyer eventually. They have to be confronted.

I think that is something that would tilt the delicate balance of military justice too much against the accused. It would impede the preparation of trial.

Senator INHOFE. Would it impede it enough to question the constitutionality of such an arrangement?

General ALTENBURG. I am not qualified, I don't feel qualified at all to comment on the Constitution. But I have no doubt that there would be a motion in every case where that was exercised. The defense would have a motion at trial that they were prohibited from preparing for trial, and they couldn't adequately defend their client because they couldn't——

Senator INHOFE. I see. Any thoughts on that, Colonel?

Colonel MORRIS. Similar, Senator. The concern would be, ultimately, it is your Sixth Amendment right to confront a witness, which only has to happen in the courtroom. The question would be then whether that Sixth Amendment right is effectively exercised, depending on your ability to prepare.

I don't think it would be automatically unconstitutional to limit access to the victim ahead of time. But as always, it ends up with what details otherwise attach to that.

One other piece of that is the Article 32 investigation, a unique process to the military. It is often and inaccurately analogized as the military's grand jury. But it is a required step before a case can go to a general court-martial.

In that process, the Government most always would present its witnesses, which is an opportunity, a controlled opportunity for the defense to cross-examine a complaining victim, a complaining witness there.

Senator INHOFE. I see. I see.

Thank you, Mr. Chairman.

Chairman LEVIN. Thank you very much, Senator Inhofe.

Senator Reed.

Senator REED. Thank you very much, Mr. Chairman.

Thank you, witnesses, for your testimony. It is extraordinarily helpful dealing with an issue of great not only significance, but that goes to the essence of our military force.

Colonel Morris, just as a point of reference, when did you leave Active Service?

Colonel MORRIS. 2009, Senator.

Senator REED. 2009, and one of the issues that everyone has spoken about is accountability, and I think Ms. Bhagwati and her experiences suggest that there really isn't very good accountability when you go—when your squad leader ignores you, when your platoon leader ignores you, et cetera.

From your most recent perspective, how common was it for a company commander to be relieved for or have a bad report done because he or she was indifferent to complaints by subordinates about mistreatment and sexual misconduct?

Colonel MORRIS. I would think I would remember if I knew of any.

Senator REED. Yes.

Colonel MORRIS. My experience, of course, was quite the opposite, that they were highly energized and that you had an intensive and immediate collaboration. It is really three parties—the leader, the lawyer, and the law enforcement person—and all of them working closely together.

Senator REED. If the chain of command wants to retain these powers under UCMJ, it has to be a chain of command that is accountable. We all agree on that. What I think we are looking for, and I am going to ask Ms. Bhagwati to comment, too, is that it is hard to put a finger on specific cases where squad leaders, platoon leaders, et cetera, who are indifferent.

It goes back to Major General Altenburg's point. If you were insensitive and made insensitive racial comments, if you were—had other behaviors back in the 1970s, you would not last very long, in the 1980s, in the 1990s, et cetera. The question is, do you think we are getting close to that, or we are just beginning that process now with respect to sexual assault?

If we can't get there through the existing rules, then we are going to have to make some changes. So, General Altenburg?

General ALTENBURG. I think, candidly, that we are just getting at it in the last year or 2. I think that for a variety of reasons, including fighting two wars, I guess, it wasn't the priority that it should have been and certainly that it is now.

I think that commanders must get it first, and then they have to work their way through the rest of the people that work for them, that the commanders are starting to understand the dimensions of this. They are starting to learn that false allegations are a very low rate, even though the conventional wisdom among men is that they are high.

Things like that. As they become more knowledgeable about this issue, then they will do a better job of getting a handle on it. It is subtle. It is complex, and so is the change.

I mean, it is somebody caring enough to get up from the computer and go out and make sure he is talking to the troops and make sure he is looking them in the eye when he is talking to them about whether it is in the motor pool or whether it is at formation or on physical training in the morning and watching how they operate and what they say.

Good leaders have always done that, and the kind of mediocre leaders that Ms. Bhagwati is talking about have never done that. Those kind of people have always been a problem for us.

Senator REED. Let me ask you another question, and I want Ms. Bhagwati to have an opportunity to respond. There is a certain sort of a macro issue here. We have a warrior culture, which has been dominated for centuries by males.

We have an expectation that these now men and women will be able to destroy our enemies, literally, and at the same time give their own lives for their comrades and for their country. In that culture, is it likely that we will find people who function very highly as warriors, but are in fact, as you describe, the sexual predators and that it is hard for the system to sort those out. It is hard for individual commanders to say, okay, I am going to really make an example of this, my best soldier.

General ALTENBURG. I don't think now it is hard for a commander to do that. As they learn how invidious this conduct, this behavior is, I think that more and more of them are going to be willing to go after this.

Senator REED. Thank you.

General ALTENBURG. What is remarkable is that it is a manhood "boys will be boys" problem that enlightened commanders will get a handle on. I visited Ms. Bhagwati's web site last night, and I was—or yesterday, and I was looking at some of the documents that she had submitted somewhere. There were bad songs, ribald songs, people talking about going in the bars and hitting on women and their teammates and all the rest of it.

I thought to myself as I read it, this is 10 years old, Ms. Bhagwati, why do you have this stuff out here? I mean, I know that was our culture 10 years ago, and it was a 2012 document from a unit. That is appalling.

Senator REED. Thank you.

Ms. Bhagwati, please, can you comment on—you have a lot to comment on.

Ms. BHAGWATI. Senator Reed, I think, if you are suggesting that the military somehow kind of creates a culture of rape or there is something——

Senator REED. No, I am not.

Ms. BHAGWATI. No. Because I would disagree with that. I don't think the military creates rapists. I think, however, we still condone sexual violence in the day-to-day, which is different. That when we still mistreat women, and I have not met a woman in the military yet who has not experienced some form of discrimination or harassment.

When that is sort of the average experience of a woman in the military, a culture of harassment is created, and sexual predators will thrive in that culture. These serial predators that are entering the ranks, they are hitting a target-rich environment. They really are.

I think until we create systems and policies, until we tighten the military justice system, until we potentially open up additional forms of redress like civil suits to servicemembers—I think we really have to think outside the box here—we are not going to change that culture. The presence of women at the highest echelons of leadership is really important.

We talked today about a presence of women in the Senate making a difference. Well, the presence of women in the military also will make a difference, but only if there is a critical mass of women. Right now, there aren't enough women at the top.

Ms. PARRISH. Senator Reed?

Senator REED. Surely.

Ms. PARRISH. If I could say that this problem predated our most recent wars. It predated the increase in women in the military. Over half the victims are male. For 25 years, we have had scandal, self-investigation, reports pointing to failed leadership, reforms failing to address the core issue.

Until you remove the bias and conflict of interest out of the chain of command, you will not solve this problem. The retaliation is not about peer pressure. The retaliation is about the lower-ranking victim being disbelieved by the higher-ranking perpetrators and their friends.

It is about accountability. As I said in my statement, when General Franklin overturned the conviction of Colonel Wilkerson and then his commander, General Breedlove, supported his action and

those even who sat on the panel this morning also applauding General Franklin, that accountability, that failure to hold him accountable, that is—will continue to cause a command climate that is promoting sexual assault.

Senator REED. I agree with you. I think it is about accountability. It is about command climate. But that is about commanders stepping up and commanding. Part of that might be better UCMJ procedures, but we could improve the UCMJ, but if we don't have commanders who are ready to stand up for their troops, then we are not going to solve this problem. We are not going to fight effectively.

Ms. PARRISH. But sir, if I could just say, until you change the culture, and civil rights, when it came to integrating blacks in the military, first, there was a Civil Rights Act. Fundamental reform was passed.

Then military commanders decided that it was time to create rules and enforce them. You need fundamental reform.

Chairman LEVIN. Thank you, Senator Reed.

Senator Cruz.

Senator CRUZ. Thank you, Mr. Chairman.

I would like to thank each of the witnesses for being here today, for providing testimony on this tremendously important topic.

I would also like to thank the committee for focusing attention on this issue. There is no more solemn obligation we have than to stand up for and protect the men and women who have stepped forward to join our military and to defend our Nation.

When young men and women volunteer to be part of the armed services, they are willingly putting themselves in harm's way and subjecting themselves to risk of violence or death at the hands of our enemies. But they are not putting themselves willingly at risk to assault or violence from their superiors, from their colleagues, from other Americans. So, I applaud the efforts of those witnesses here today and the efforts of this committee to get to the bottom of this issue because it goes fundamentally to the trust and the duty of protection we owe the men and women who are defending us.

I would note my wife and I have two little girls now. They are 5 and 2. So they are not of age where military service is at least an immediate prospect. But the reports we have heard about the prevalence of sexual assault and harassment should disturb every parent, every mother, every father, every brother, every sister, everyone who would want our children and loved ones to be able to serve in a capacity where they can trust their colleagues to be shoulder-to-shoulder defending our Nation.

I would like to begin with several questions addressed to all of the panel, the first of which is DOD has estimated, as I understand it, that in 2011 there were roughly 19,000 sexual assaults in the military. I want to ask the members of the panel, in your judgment, how accurate is that assessment, and how widespread, how prevalent is sexual assault today in the military?

I would address that to any members of the panel that would care to answer.

General ALTENBURG. I will start. There was a 2010 survey that was probably from the previous year that showed 19,000. There

was a 2012 survey that showed 26,000 unwanted sexual contacts. Hard to tell how many of that is sexual assault. Too many, that is for sure, and it indicates a big problem.

But journalists especially have taken those numbers, 19,000 in 2010 and 26,000 in 2012, and called them sexual assaults. It could have been if I put my hand on Ms. Bhagwati's shoulder and she didn't like it and thought it was unwanted sexual contact, she would have reported that in the survey.

I don't know what number of those reported unwanted sexual contacts are like that and what number are sexual assaults. I suspect that if we drilled down, the number of actual sexual assaults is pretty darned disgusting anyway. So, the number is way too high. But it is also, it is an extrapolation based on how many answered the survey, multiply it by the end strength, and you come up with a mathematician's figure of this is what it is.

At any rate, it is obvious, based on the testimony of many, many people, that it is far too prevalent in the military, that we have unique circumstances that allow it to flourish, and that it is going to be a—it is a great challenge to the leadership to get at this.

Senator CRUZ. Are there others who would care to amplify on the topic?

Ms. PARRISH. Yes, sir. The problem is getting worse. It is not improving. Until more victims report, there will not be more prosecutions. You will not have more victims report until you remove the bias out of the process.

Professional prosecutors must be able to look at this professionally. Convening authorities have this job as a part time. They are not trained, and they are biased and conflicted. They believe the higher-ranking perpetrator.

Until you remove that from the system, you are not going to fix it. Until more victims report, you won't have more prosecutions.

Transparency is vital. Third-party accountability, that is what prosecutors outside the normal chain will bring to this. There will be no solution. The problem is getting worse. There are more and more victims coming forward.

Over the weekend, I received a call from one of the victims' moms in Fort Hood. When it is unconscionable that we give any more time—the patience and deference we have shown our military leaders to address this problem has come at great costs to our service men and women. It is time to do what our allies have done.

You won't ever get rid of rapes or assaults, but you can punish the perpetrators, and you can stop the retaliation.

Senator CRUZ. Thank you for that.

Let me follow up on Ms. Parrish's comment with a final question to the panel, which is, in your judgment, what are the major impediments to reporting and prosecuting sexual assault today in the military? Are they cultural or structural or legal? What are the most important changes that, in your judgment, could be implemented to change that?

Ms. BHAGWATI. I would start certainly with professionalizing the criminal justice system, which Senator Gillibrand's bill certainly will do, while still allowing commanders to deal with lesser crimes and military-specific crimes. Also there is really no deterrent right now to sexual assault in the military, and I think access to civil

remedies is a very important part of this conversation, and I hope and encourage that Members of Congress will work on that in this coming year.

When you can't—we talk about retaliation, there are several bills on the table which will do a great many things for victims services and to improve the military criminal justice system. But civil remedies is what will deal with the issue of retaliation, and that is what is available to civilian victims in the civilian workforce, where harassment and discrimination and assault is also prevalent. But if the criminal justice system fails us, in the civilian world we have access to civil suits. That is the fallback.

So I would strongly suggest that.

Colonel MORRIS. Senator Cruz, I would suggest two things. One is continued, sustained addressing of the conduct at all levels. The least of the concerns is the ability effectively to prosecute rape cases. The greater concern, not because of consequence, obviously, because of the gravity of those, you don't need to wake somebody up to pay attention to a rape.

There is an awful lot of conduct short of rape that is repellant, degrading, and harms mission. A clearer intolerance for that will do a lot to not just weed out people before their conduct becomes more serious, but attack to a degree the conduct and the atmosphere that has been suggested as constituting retaliation. I am not sure "retaliation" is exactly the right word, but we sure know that there is no crime that is harder to report that a person feels more uncomfortable about reporting.

Fixing some of those things by using the whole array of the justice system can do something to redress that, and then sometimes action so swift that it makes people's heads turn.

Look, this afternoon's action at West Point. Just stop the functioning of the rugby team for a while, while everybody wakes up and pays attention.

Senator CRUZ. Thank you very much.

Chairman LEVIN. Thank you, Senator Cruz.

Senator McCaskill.

Senator MCCASKILL. Thank you, Mr. Chairman.

Let me shift gears a little bit and talk to particularly Ms. Parrish and Ms. Bhagwati about victims' experience as they begin down this road. I am curious about the unique situation that a victim finds herself in, in that where do you go? Do you go to a civilian hospital? Do you go to the medical facility on base? Do you go to a local police department? Do you go to a military police department? Do you go to the SARC?

In your experience in working with these victims, what is impacting their decision about where they go? Because that initial contact, in my experience, is more determinative of what comes after than almost anything else. I am wanting to know what your sense is of that because maybe that is another area where we need to focus on getting more information out about the best place to go.

Because as you guys know, the civilian prosecutors can file charges. So can the military. One can choose not to, the other one can. They can both file charges. They can both file different charges. They can wait until one to get finished, the other one can begin.

No one has been able to really explain to me in a way that I can put down on paper how this is working in all these instances.

Ms. PARRISH. Victim reporting for a victim is very confusing, and depending on the individual circumstance, whether they go to the hospital, whether they go to a SARC, and then depending on where you go, whether it is automatically an unrestricted—if you go to an investigator or your command—or if you go to a hospital, then you have a choice, those are very confusing to a victim. They are not sure what to do or where to turn in that regard.

We know that victims' privacy rights through that process are often violated early on.

Senator MCCASKILL. Have you all made suggestions that we could maybe consider in the defense authorization bill of a requirement that people entering the military get some kind of form in writing that what their choices are and what the pros and cons are of those so that you know?

I mean, my experience is the civilian system, and the vast majority of our victim reports came through the emergency rooms and/or 911 and/or someone showing up at the police department. Those were the three primary ways that victims entered the system.

There is probably about another two dozen ways that they can enter the system with a sexual assault in the military. Have you given much thought as to how we could empower the victim earlier so that they are making the right choices, so that they get the help at the initial stage?

Ms. BHAGWATI. We have referred clients to the Air Force's special victims' counsel program. It has been, I think, a remarkably positive development. Certainly Senator Ayotte's and Senator Murray's bill would bring that program to the rest of the Service branches. I don't think there has been anything quite as effective as that on the table.

Senator MCCASKILL. Okay. That is great. Tell me about the healthcare piece of this. Are all of these victims being offered emergency contraception when they are going to medical facilities, either on base or off base if they are reporting a rape?

Ms. PARRISH. Not in our experience, Senator. When they go to these different health facilities, depending on the situation, it is often a time when the form of prejudice against the victim, that retaliation begins to take place in subtle ways.

Quickly a victim who reports finds themselves being evaluated, be given a psych evaluation, and before you know it, the attention is turned on his or her stability, mental ability, mental health situation. All of a sudden, it becomes this, are they—a personality disorder, is it bipolar disorder?

We have hired lawyers and sent them in to bases to fight these errant medical diagnoses. The process of victim reporting is all part of the—and then into the investigation.

Senator MCCASKILL. So you are saying, Ms. Parrish, that in the medical facilities on bases they do not have a rape protocol?

Ms. PARRISH. If they do, the victims that we have talked with don't know it.

Senator MCCASKILL. Would you agree with that, Ms. Bhagwati, that there is not a rape protocol in the medical facilities on military bases in this country and abroad?

Ms. BHAGWATI. There is a rape protocol, but in terms of the access to emergency contraception or now it is federally funded abortions, there is some disparity there. We are not sure that this is happening in every facility.

Senator MCCASKILL. Well, obviously, if we are talking about a medical facility at the time of report, in most instances, we are just talking about the morning after pill.

Ms. BHAGWATI. Right.

Senator MCCASKILL. We are talking about emergency contraception because you have been raped.

Ms. BHAGWATI. I couldn't say.

Senator MCCASKILL. Okay. I think that is something we need to look into further and find out about that.

The last question I have is for the lawyers. Just briefly, because I am out of time, in your experience—because I have talked to a lot of prosecutors about this—who is making the call? Is it a deferral to the civilian prosecutors first, and if they refuse to file, then a consideration of court-martial in the military? Or is there a give-and-take?

I mean, is it "I will take this one, and you take the next one?" I mean, in your experience, how did that work in terms of that dual jurisdiction, which is unique in this sense. People don't realize the Federal Government doesn't have jurisdiction over rape in 99.9 percent of the cases. This is really the only place I am aware of that you have this dual jurisdiction that exists from the get-go.

General ALTENBURG. We had it in Germany also. But in my experience in the United States, it is a question of equities and comity, the same way it is between a U.S. attorney in Raleigh, an assistant U.S. attorney, and a State attorney in a bank robbery. If it is above a certain amount, maybe the Feds say they will take it.

When a crime is committed off post near a military base, usually the Staff Judge Advocate has a working relationship with the assistant district attorney or the district attorney. If they feel the equities are on their side because the victims were mostly civilian residents, then they take it.

But there is a discussion, and there is a give-and-take and, in my experience, handled very professionally. Usually, there is kind of a consensus, well, this one, this soldier, you are a soldier, but he killed four of your citizens in an Italian restaurant, 3 miles from post. I deferred to the prosecutor.

I say I was ready to take it. We wanted to take it. We wanted to prosecute it. But I certainly understood why he wanted to prosecute it, and I deferred to him.

Senator MCCASKILL. So it is a case-by-case basis?

General ALTENBURG. Yes, ma'am.

Senator MCCASKILL. Colonel Morris?

Colonel MORRIS. Senator McCaskill, not so different in my experience, except that in—oh, sorry. Similar experience. Almost all of my experience was civilians being willing to have us take the case. Some of it was a resource decision, but in general when they had a confidence in our ability to bring a case to an effective conclusion.

In Germany, in Oklahoma, and then later in my career, when I was the SJA in northern New York, we visited all the local district

attorneys, and there were a couple who had thought they were dissatisfied with outcomes in the military justice system. We were able to assure them of our approach and in all cases obtained kind of clearance to prosecute. Really, technically, a clearance is not required. It is in some ways a race to the courthouse.

But a willingness to have us do so, and it wasn't—it was motivated mainly out of good order and discipline, but also out of a sense of commitment to those neighboring communities and part of our fidelity to them and our accountability to them, even though the primary concern is the soldier's accountability in our system.

Senator MCCASKILL. Thank you.

Thank you, Mr. Chairman.

Chairman LEVIN. Thank you, Senator McCaskill.

Senator Shaheen.

Senator SHAHEEN. Thank you, Mr. Chairman.

Thank you all very much for being here this afternoon. I do think it is very important for us to hear from experts who have worked both within the military and outside about what has worked to address sexual assault and rape.

I wonder, Ms. Bhagwati, one of the things, one of the pieces of legislation that Senator Fischer and I have introduced is legislation that would make the highest-level sexual assault prevention and response positions nominative ones. The change would, I think, help facilitate getting people with more experience and more committed to upholding the values of the position. It would also, I think, better hold the commanding officers responsible for those appointments.

I wonder if you could speak to whether you think that would be helpful?

Ms. BHAGWATI. I do think it would be helpful.

Senator SHAHEEN. Is there anything in particular that you would advise us as we are thinking about that or that you would advise the military to do?

Ms. BHAGWATI. We have talked a lot today or I have heard a lot today about the qualifications of an officer with moral leadership. I think with over a decade of deployments right now, we need to think outside the box a little bit on who is the right person for a sexual assault, sexual harassment leadership position.

Someone with kind of—someone who has proven himself or herself on the battlefield may not be the best person. Maybe he or she would be, but there need to be sort of tests for that kind of moral courage in terms of sticking up for someone who maybe the rest of the unit wouldn't have stuck up for.

We see that routinely. I am not sure how to measure that. I just know that we don't see it very often.

Senator SHAHEEN. Thank you.

Ms. Parrish, I think you may have mentioned a case that we have heard about in our office of an Air Force lieutenant who has contacted us who alleged that he was sexually assaulted and that his case has been ignored by base investigators. I won't get into the details of the case, but one of the issues is that he says that he has been denied an expedited transfer out of the base.

I wonder if you would comment on whether that should be one of the usual responses or appropriate responses to somebody who

is in this situation, that they be removed from the situation and where they were victimized?

Ms. PARRISH. Well, and I would just say, yes, Senator Shaheen. The special victims' counsel, John Bellflower, in fact, and I commend—I have attached it to my testimony—had an extensive report on the case that you are speaking of. In this case, he was denied expedited transfer.

We find while it is a good thing at times, expedited transfer requests, some victims say, yes, I was offered an expedited transfer, but to a job less than what I have now. Why am I being punished for being protected and trying to be sent off base? I am now being asked to make sandwiches for the pilots when once I was on another track in a successful career. Why do I have to leave? Why can't he leave?

I think that is an issue. But also a lot of times victims are told, you don't qualify for expedited transfer. There is this informal conversation going on that those who count the numbers are unaware of, where victims are often just even denied that opportunity.

It is very, very difficult. That is why it is more than—you can fix pieces of this, but until you remove the bias and conflict of interest out of the legal process, you are not going to solve this problem.

You can tweak it around the edges. Requiring that special victims can represent a victim to protect their privacy rights rather than just give them advice, that they can file motions on behalf of the victim. If there is not a remedy, there is not a right.

Those are huge problems, and they need to be addressed, but you have to remove the bias out of the system.

Senator SHAHEEN. Let me ask another question for anybody who would like to respond to it. Admiral Papp this morning talked about the responsibility that he thought each member of the Coast Guard should have when it came to anything that they saw relative to sexual assault or harassment and reporting that. In the State of New Hampshire when I was Governor, we had a personnel policy that applied to all State employees that said anyone who knew or heard of a report of sexual harassment or sexual assault was required to report that to the personnel officer.

I wonder if you think that that kind of a policy within the military, recognizing you would have to designate who the appropriate person to report to, and given the chain of command issues, that clearly would need to be looked at. Would it be helpful asking everybody to assume responsibility for this issue to say that if you hear about a case, you have a requirement to report?

Ms. BHAGWATI. I think you would have to consider that very carefully. I think that victim's agency needs to be considered carefully and that in many cases a victim would probably prefer not to have that happen, for reasons of confidentiality, safety, retaliation.

I mean, these are very real fears. They are well-justified fears. I would look into that a little more, see what the community thinks about that.

Senator SHAHEEN. Okay. Anybody else want to comment on that? [No response.]

All right. Thank you all very much.

Chairman LEVIN. Thank you, Senator Shaheen.

Senator Gillibrand.

Senator GILLIBRAND. Thank you, Mr. Chairman.

Thank you, each of you, for your testimony.

Ms. Bhagwati, we have heard a lot of testimony today. The previous panel, for example, talked a lot about good order and discipline, and they believed that maintaining the decisionmaking, the disposition authority over these cases had to stay within the chain of command for them to be able to instill good order and discipline.

They didn't seem to take into account different proposals that would have elevated the decisionmaking for the disposition authority well beyond their level and their tier of seniority. Please explain to me your opinion on what removing Article 30 and Article 22 would have on good order and discipline, and how do you believe good order and discipline would be maintained without those two decisionmaking authorities?

Ms. BHAGWATI. I believe giving trained prosecutors the authority to convene court-martials to determine judges and juries and also backend authority would remove—would remove bias from the system, would also free up commander time to do other extremely important duties, namely operational ones.

I mean, your legislation specifically authorizes commanders to still have authority over a great deal of judicial matters, not just nonjudicial, but also lesser crimes. I mean, it is a very sensible approach. It is something that I think the military could easily implement.

Certainly victims, again, would be much more, much more trusting of the system, much more willing to step forward.

Senator GILLIBRAND. You were a commander yourself. Can you explain to me specifically, everyone who testified in the last panel and everyone who testified on the first panel said it is impossible. If I don't get to decide whether to go to trial or not, it is impossible for people to respect me that I am going to take sexual assault seriously.

What could those commanders do to be taken seriously on sexual assaults and rape in the military if they don't make that one decision?

Ms. BHAGWATI. I really think this is a multipronged approach. This is not really only about military justice reform. We need more women in the military. In order to create a culture that is welcoming of all people, women have to be a part of that culture. Men will also benefit when women are part of this culture and are truly accepted.

So, my first instinct is to say commanders don't have all the tools, yes, that is true. But you will never have a perfect criminal justice system either. You need additional things within that system. You need access to civil remedies to open the possibility, to acknowledge that there is widespread retaliation.

Senator GILLIBRAND. Ms. Parrish, can you talk a little bit about—you also are of the view that you have to take the decisionmaking on whether to proceed to a trial outside the chain of command. Why do you believe that, and why do you think it will result in better good order and discipline?

Ms. PARRISH. Well, it is required to change the culture. You won't change the culture until you have accountability, and you

won't have accountability until you have transparency. So, good order and discipline will not—is lacking now within our unit, within these units.

I would like to just take a moment and read a comment from a victim who had tried to report four separate times, was in the middle of a combat zone, said, "He, the rapist, comes to my truck as I am getting it ready for another mission. I shut down inside. I was lead driver in our convey, and I kept hoping to hit an improvised explosive device (IED) after that."

Unit cohesion, good order and discipline? This young soldier tried four times to report, and what was her thinking at that moment when she was getting ready to get in her truck to lead the convoy? How can I—"I hope I hit an IED."

What will that do for mission readiness and unit cohesion? It is undermined every day by disbelieving the victim. You must remove the bias and conflict of interest. We have seen it for 20 years. It is not going to change until you fundamentally reform the system, until you have professional prosecutors looking at these cases.

Senator GILLIBRAND. For other cases that you have heard from victims, can you please describe to us what they tell you, why there is so little reporting? If there are only 3,000 cases reported a year and then only 1 in 10 go to trial, there is just a huge falloff in the amount that are reported. What are they telling you about the chain of command that is creating an impediment?

Ms. PARRISH. They don't report because they are disbelieved. They don't report because the often higher-ranking perpetrator is buddies with those that they must report to. They don't report because they are told when they are given their options to report that, oh, by the way, you were drinking. You are under age. You will be charged with collateral misconduct.

You don't report because the thought that you have heard from your friend who tried to report that—and you see what happens to them, and they are being drummed out and diagnosed with a personality disorder. These things are not going to change at any tweaks to the system, even common sense tweaks that are good. It is still not going to fundamentally address this issue.

Senator GILLIBRAND. Thank you.

Thank you, Mr. Chairman.

Chairman LEVIN. Thank you so much.

Next is Senator Blumenthal.

Senator BLUMENTHAL. Thank you, Mr. Chairman. Again, thank you for holding this hearing.

Thank you to the entire panel for being here today.

Just as a parenthetical, beginning with Ms. Parrish, you say that the soldier tried to report four times. Could you clarify what you mean by "tried to report"?

Ms. PARRISH. Sure. What I mean by that is they first went to their leader, their immediate supervisor, their superior, and were told that not to speak ill of that higher-ranking individual. Then they tried again to report to a platoon leader and was told that they would be charged with adultery if they wanted to move forward with an official report.

Senator BLUMENTHAL. She would be charged with adultery?

Ms. PARRISH. Adultery. That is right.

Senator BLUMENTHAL. How often, I think this point is critical, are victims or survivors, in effect, threatened with prosecution themselves?

Ms. PARRISH. Well, we don't know the numbers, but I can tell you we hear it all the time.

Senator BLUMENTHAL. Would you say it is a predominant reason that discourages victims from reporting, or is it just incidental and occasional?

Ms. PARRISH. I would say it is significant.

Senator BLUMENTHAL. If you had to rank it, from your experience, compared with other reasons, what would be the top three or top five would you say?

Ms. PARRISH. Well, I think retaliation at all levels would be number one.

Senator BLUMENTHAL. That would be a form of retaliation.

Ms. PARRISH. Well, yes, you are right.

Senator BLUMENTHAL. You will be charged with drinking. You will be charged with adultery. You will be charged with conduct unbecoming.

Ms. PARRISH. Right. Well, being disbelieved and knowing that the odds are, based on what you see, that you won't be—that you will not be believed. Then also just the way in which—for women, the way in which they are harassed and treated generally and that there is no, all the way up the chain, the jokes, the walking into a mess hall and finding yourself what is described as a catwalk, where your gender and your looks are debased. Superiors at all levels who are in that mess hall treat—that is accepted.

There are—until you—until you affect that type of harassment and retaliation, it is just not going to get fixed.

Senator BLUMENTHAL. But let me just, for the purposes of our conversation here, repeat to you what a number of witnesses have said earlier. Specifically, for example, General Odierno made the point that separating the prosecution authority from the chain of command, from the commanding authority, won't necessarily prevent that kind of shame, embarrassment, disapproval alone. It has to be part of broader changes.

As I understand your argument, it is one, the change potentially in the prosecuting authority is one step in the right direction, but it won't deal with that phenomenon, will it?

Ms. PARRISH. Well, you have to—you have to hold leaders accountable——

Senator BLUMENTHAL. Right.

Ms. PARRISH.—for their actions, as in the case of General Franklin, who has not been held accountable for his actions. Until you hold, until victims see higher-ups being held accountable, that is part of changing the culture. You must change the culture, and you have to make commanders more accountable for having command climates that ignore sexual harassment and assault.

Senator BLUMENTHAL. Let me ask, Ms. Bhagwati, in terms of victims' bill of rights, is this something that should be in the UCMJ? A number of witnesses this morning said we don't really see the need for it because it is already there in the rules.

Ms. BHAGWATI. Are you referring to the issue of collateral misconduct or——

Senator BLUMENTHAL. I am sorry. I mean, for example, rights of victims to be heard in the course of a courts-martial, if they wish to be. In punishment or protection against interrogation, victims' rights in terms of what needs to be protected in the process.

Ms. BHAGWATI. I would have to think about that a little bit. I mean, the criminal justice system, as I understand it, is really designed to provide a fair and impartial trial to the accused. So, a victim is more likely to find his or her day in court in a civil system, a civil court system.

Senator BLUMENTHAL. How often does that happen?

Ms. BHAGWATI. Well, it doesn't happen at all because servicemembers don't have access to civil suits.

Senator BLUMENTHAL. What about restitution or compensation for the victim?

Ms. BHAGWATI. I think it is a very good idea.

Senator BLUMENTHAL. Do you have any thoughts about what process should result in restitution? In other words, whether it ought to be a separate proceeding or part of the criminal proceeding?

Ms. BHAGWATI. I would have to look into it, but it is a good start.

Senator BLUMENTHAL. Thank you.

My time has expired. I want to thank all of the experts who are here today for your great work and for being here.

Thank you, Mr. Chairman.

Chairman LEVIN. Thank you, Senator Blumenthal.

Senator Kaine.

Senator KAINE. Thank you, Mr. Chairman.

To the witnesses, thanks for your patience through a long day.

I also appreciated the opportunity to hear Ms. Bhagwati testify earlier at the hearing that Senator Gillibrand called in the Personnel Subcommittee and also another witness from your organization, Ms. Parrish. Thank you for helping us work this through.

I spent a lot of time in courts as an attorney, but never in military court. So I am still trying to come up to speed on the different procedures, and a comment through earlier panels that I wanted to just follow up on a little bit was restricted versus unrestricted complaints or reports.

Is there sort of a common standard and is it commonly known among the military that in instances of sexual assault, you can file a restricted report?

Ms. BHAGWATI. I believe in this last annual report from the DOD, well over 90 percent of servicemembers said that they were told, that they had been educated about the difference between restricted and unrestricted reporting. I don't think that is a challenge anymore.

Senator KAINE. Do other witnesses feel the same, that whether you are serving on a base in Germany or you are going through boot camp at Pendleton, folks are aware that in an instance like this you can file a restricted report and have some confidentiality that would connect with the report? Is that now standard, and is it known?

Ms. PARRISH. I think it is known, Senator Kaine. But I think the problem, as we see so few reports, whether restricted or unre-

stricted. The problem is even if they report restricted that the word gets out.

So the reason for creating restricted reporting was so that privacy could be maintained. But that is rarely the instance. Very quickly word is out that you have reported, and then the retaliation begins, often.

Senator KAINE. Were you going to say something, Colonel Morris?

Colonel MORRIS. Just, Senator, I think a restricted report is a vote of partial confidence in the system by a victim who is hedging her bets because she doesn't have enough trust in the system. So I think, as you analyze those statistics, you want to figure out what the context means. It means you have problems there, but it also means that is a population whose trust we have not gained.

It is a frustrating statistic to a prosecutor because that is conduct that you would love to be able to address and bring full accountability for that you cannot, because that victim is signifying her lack of trust.

Senator KAINE. It could be a lack of trust or lack of information. I am not sure what the procedure is like. Before I decide how far I want to go, I would like to get more information. Would you agree that might be——

Colonel MORRIS. It sure serves its purpose by inviting that person who has that reticence, for whatever reason, at least to begin to come into the process.

Senator KAINE. How recent is the phenomenon of allowing and having it broadly understood that you can file on a restricted basis?

Colonel MORRIS. It is recent, but I can't pick the year. So several years.

Senator KAINE. Do you know, last 10 years or last 20 years, Ms. Bhagwati?

General ALTENBURG. Last 3 years. I think the last 3 years, Senator, I would say.

Senator KAINE. Last 3 years. Is restricted reporting limited to reporting with respect to crimes of sexual assault or unwanted sexual conduct, or is restricted reporting allowed for other kinds of violations of military discipline?

General ALTENBURG. Senator Kaine, it is my understanding—I have been out of the Army for 10 years. But it is my understanding that victim advocates recommended strongly that we allow restricted reporting because when there was not restricted reporting and a victim wanted to report, it had to go to the CID. The chain of command was going to find out. You were all in.

There were some victims who at least wanted treatment, somebody to talk to about it, sometimes medical treatment, and whatever else she may or he may need. It was recommended, and the DOD picked up and said, all right, we are going to allow restricted reporting. The victim makes the call.

Senator KAINE. Ms. Bhagwati, you testified a little bit earlier and there has been a lot of testimony today about the special victims' counsel pilot within the Air Force. I think, if I remember the testimony earlier correctly, that one of the things they are seeing is the number of people who come in with restricted reports, but then as they work with their advocate and come to understand the

system that they then change their restricted report into an unrestricted report. Are you hearing the same thing in your work?

Ms. BHAGWATI. That is right, and I believe General Harding instituted this program in part because victims who had filed unrestricted reports were feeling intimidated through the trial process and were backing out of those cases. This was in part a reaction to that and to encourage victims to stay in the process.

Once you have that buffer, there is very little that can, I think, give especially a junior enlisted servicemember that kind of authority and buffer like an attorney, his or her own designated counsel. Because a victim in a criminal case is merely a witness. It is not her or his trial, right?

Senator KAINE. Right.

Ms. BHAGWATI. Having that counsel is a huge asset.

Senator KAINE. In the first panel there was a question, do you have the tools that you need to deal with this problem? They all said we think we have the tools we need.

General Welsh from the Air Force, I think, said with respect to the special victims' counsel that it is a pilot program and that it is narrow and additional resources, both dollars, and having the number of trained people to handle this, to think about doing it either Air Force-wide or DOD-wide, that that definitely would require some additional, and thoughtful granting of resources to the DOD.

Ms. PARRISH. Well, that is why I think, Senator, you should require a military justice expertise track, and the Navy has one. I think it is very important in that regard.

Right now, we don't properly value military justice expertise, and it is a huge problem. In terms of the special victims' counsel program, we must provide victims with absolute legal representation rights, not just advice. I worry about some of the legislation that is currently proposed. It is that you will study representation and that providing advice is what will be required. That concerns us greatly.

We filed an amicus brief in a case right before the highest U.S. Court of Appeals for the Armed Forces right now on the special victims' counsel program, whether or not that victim was entitled to legal representation to protect her privacy rights, from disclosing her prior sexual history or medical health records. That is regularly violated throughout this process, and unless you have a special victims' counsel that is required to represent the victim, to file motions on behalf of the victim, not just to provide advice. Providing advice won't protect a victim in a court procedure.

You have to have the requirement that they have representation. Advice is meaningless when the defense counsel is filing motions left and right, and you have no one there to do it on your behalf.

Senator KAINE. Colonel Morris?

Colonel MORRIS. Senator Kaine, I think it will be useful for all the Services to analyze the results that come from the Air Force, but there is more than one model for it, and the model—a model that the Army has developed over time includes victim witness liaisons at least 20 years running, special victim prosecutors, which was a significant cultural change and probably only seemed so in sort of the inside baseball of the Army.

But the military counsel have almost always, for as long as anybody can remember, been organic to the unit, to the installation. For 4 years running now, the Army has had these special victim prosecutors, now 22, 23, or so, who are regionally around the world and come in to infuse their expertise on cases.

That has required some adjustment away from the model of the local prosecutor owns the case, addressing in part Ms. Parrish's concern about a sort of a career track of Judge Advocates. The best special victim counsel is the prosecutor.

The prosecutor should have such a comprehensive investment in the case that that includes a developed from the first minute relationship of trust with that victim. Because if he does not have that, that victim is unwilling to bear the risks from civilian life only intensified in the military, the risk and hassle of even in the best case working their way through the complicated process for a trial like that.

But it is reinforcing the authority and obligation on a trial counsel, the prosecutor, parallel to that of a commander that doesn't give any wiggle room, doesn't give any chance to dilute the level of accountability for bringing that case to a conclusion.

Chairman LEVIN. Thank you very much, Senator Kaine.

Senator King?

Senator KING. First, thanks to the panel. I hope it goes without saying that this committee is deeply interested in the solution to this problem. In my short experience here, I have never seen a committee spend as much time focused on a single issue as this committee has on this issue.

There is going to be consensus, I believe, in the committee on a number of the options and alternatives that have been put forward in various bills. The one that I think where there is still some differences and discussions is Senator Gillibrand's bill that would essentially take the prosecutorial decision out of the chain of command.

That is where I want to focus my question because I am struggling to decide myself about where to come down on that. The first question I have is what is the data on commanders failing to prosecute?

In other words, is there data that indicates that in a significant number of cases, a commander at whatever level, and it is at the O–6 level in these cases, has decided not to prosecute? Do we have any information on that, do you know, Ms. Parrish?

Ms. PARRISH. I don't. We only know the statistics that the DOD has put out, and few cases move to prosecution.

Senator KING. I am sorry?

Ms. PARRISH. According to the numbers, DOD has recently put out, few—there are few cases that move to prosecution and then conviction. Preferring charges, prosecutors tell us that, contrary to what we have heard in Senator Gillibrand's subcommittee, that often cases are not preferred.

There is just no—there is no way of right now being able to determine a convening authority's, how effective they are in their process, I think. I don't know how you ever dig down deep enough to come up with that data. I think you just have to look at the re-

sults, and the result is victims don't report. There are few prosecutions. There are fewer convictions.

Senator KING. I understand that, but one of the issues is reporting, which you just mentioned. What evidence is there that the failure to report is a result of the victim's perception that the commander isn't going to prosecute the case?

Do you see what I mean? Obviously, there are a lot of complicated reasons to not report. Is that one of them, and how do you know?

Ms. PARRISH. It certainly is one of them. Well, because they see. Their own experience is what is before them, and they see that often times the perpetrator is not brought up on charges, that victims report and are disbelieved. That higher-ranking perpetrators are more believed.

That is part of the chain of command. That is part of the higher ranking you are, the more on your lapel, the more you are believed, the more credibility you have. Until you create some objectivity in the process where there is no bias and influence and prejudice against the victim, the lower-ranking individual in the situation, you are not going to solve this problem.

Senator KING. One of the things you have talked about, all of you have talked about is accountability. By removing this decision from the chain of command, aren't you relieving that commander of the accountability?

Ms. PARRISH. Absolutely not. Because he will still have the responsibility for his command, for the climate and culture in his command. He will be required to create a climate that has no tolerance for sexual harassment. It goes hand-in-hand. It is not either/or.

Senator KING. Final question along these lines, two other questions. Retaliation has kept coming up and has come up a number of times in this hearing.

What would you think of the idea of making retaliation itself a punishable offense? Retaliation for reporting of a sexual assault is punishable by 10 days in the brig, or whatever. Do you have any thoughts on that?

Ms. PARRISH. Well, retaliation happens in several forms, and it is not always so obvious. But I am for it, personally.

But just to make my point, we see reports where there are subtle changes into the way in which the process moves forward. During the investigatory process, for example, Article 32 hearings are often a black hole upon which a victim's—their testimony is twisted to the point upon which they decide not to move forward in a case.

There are so many ways in which retaliation is hard to prove other than the fact that the victim is on her way out once reporting, even restricted or unrestricted.

Senator KING. Other thoughts on this idea of retaliation being an offense? Colonel?

Colonel MORRIS. There are enough specifications in the UCMJ to address it now. There is a particular punitive article that is unique to the UCMJ, essentially for corrupting the judicial process. That is one, if not cruelty and maltreatment, if not harassment, if not hazing.

It is more a matter of a commander paying attention to and squashing that conduct with the tools that are available to him, as opposed to needing a particular new offense. I think it is well covered now.

May I answer a couple other concerns?

Senator KING. Yes.

Colonel MORRIS. Just the issue of the statistics, failure to prosecute and all that, I mean, it would be important to seek a serious audit. Maybe take several installations from different Services to look at reports and look at what they have yielded.

The only numbers I know of any significance are the Army's of the last year or so. We had about 1,268 formal reports that worked its way through several other disposition options, and about 200 some of them were general courts-martial. So about a third of the general courts-martial for that year were rapes or serious sexual assaults, remembering again with 700 or so courts-martial, you have 40,000 incidents of nonjudicial punishment.

The last point was on relieving the commanders of accountability. That is the crux of what the committee is struggling with, I understand. To then say but the commander is still responsible for the climate, that now less powerful, less effective commander from whom the system can less effectively insist on accountability because now the ability to enforce all that climate that he is trying to set would have been taken away from him.

Senator KING. Thank you.

Mr. Chairman, may I follow with one question? Thank you.

Ms. Bhagwati, one of the things we were discussing earlier in the other panels was a kind of middle ground, where the command decision remained in the chain of command, but it had to be concurred in by the JAG officer, and if it wasn't, it would automatically be bumped up a level. Do you have any thoughts about that as a kind of compromise between taking it out of the chain of command and leaving it as is?

Ms. BHAGWATI. Bumped up to the O–7 level?

Senator KING. Yes.

Ms. BHAGWATI. The problem there is you have fewer O–7s than O–6s, but also I don't think there is that much difference in the mind of a victim or even the accused, for that matter, between an O–6 and an O–7. You still have the same chain of command. You still have the same bias in the system.

Frankly, I think in terms of running a program like that, again, there are only so many generals within the military. That is certainly a proposal we considered about 3 or 4 years ago, and it didn't fly.

Senator KING. I take it that your opinion is similar to Ms. Parrish that the structural solution is to take this decision out of the chain of command, and you feel that will make a substantive difference in the amount of reporting and, presumably, the amount of prosecuting?

Ms. BHAGWATI. Yes, but I would still, I think, remind the committee that Senator Gillibrand's bill doesn't completely remove judicial authority from commanders. It removes the authority in some cases to include sex crimes that would require more than 1 year of confinement.

Senator KING. Felony-level cases?

Ms. BHAGWATI. Right. Commanders would still have the authority over many other crimes, as well as nonjudicial punishment.

Senator KING. Thank you.

I want to thank you, Mr. Chairman, for holding these hearings. This has been important and been a very illuminating day. I appreciate it.

Chairman LEVIN. Thank you. Thank you all.

Let me first thank this panel before I close. Ms. Parrish, Ms. Bhagwati, General Altenburg, Colonel Morris, you have made a major contribution to this committee. Those of you who represent organizations, we thank your organizations that you represent.

This committee has no greater responsibility than to protect the men and women who wear the uniform of this country. We are going to carry out that responsibility in the next few weeks. I can't tell you precisely how we will end up doing that as a committee, but I can only tell you that we will act as a committee in our bill.

I have no doubt that we will take significant actions. I can't tell you precisely which. That will be decided by the committee after a markup in the subcommittee and then a markup in the full committee. I have no doubt that, in fact, we will take actions in this area.

We have received three statements with a request that they be made part of the record, and they will be made part of the record.

[The information referred to follows:]

PREPARED STATEMENT BY COMMANDER JOHN B. WELLS, USN, RETIRED

OVERSIGHT: PENDING LEGISLATION REGARDING SEXUAL ASSAULTS IN THE MILITARY

By way of introduction I am a retired Navy Commander who served 22 years of active duty as a surface warfare officer. My career included 10 years at sea, the last 2 as the Executive Officer (second in command) of a mixed gender ship. That crew consisted of approximately 900 men and 300 women and we deployed to the North Atlantic, the Indian Ocean, and the Persian Gulf. As I also spent 6 years in command ashore, I was a Special Court-Martial convening authority and administrative separation board convening authority. I also served on courts-martial.

I completed law school via a night program while still on active duty. I began to practice military law upon my retirement in 1994. I have defended personnel of all Services before courts-martial, administrative separation boards and in Federal court proceedings. I also seek veterans benefits for former military members.

Military-Veterans Advocacy, Inc. is a Louisiana non-profit corporation formed late last year to defend military personnel and advocate both legislatively and judicially for veterans. As its unpaid Executive Director I have advocated for veterans legislation in both the House and Senate. A 501(c)(3) designation has been requested and is pending. Prior to assuming this position reserved as the unpaid Director of Legal and Legislative Affairs for the Blue Water Navy Vietnam Veterans Association.

I have reviewed the pending sexual assault legislation, especially Senator Gillibrand's bill, S. 697, with some trepidation. The legislation seems to me to be a well meaning attempt to solve a terrible problem with the wrong solution. The central core of all pending legislation is to remove or limit the convening authority's power under Article 60 to set aside a conviction or grant clemency. I believe that this approach is misguided and will result in severe and unintended consequences.

S. 697 strips the convening authority of his referral and clemency powers for Articles 80–82, 92, 118–132, and 134 of the Uniform Code of Military Justice. It requires an 0–6 JAG with "significant" court-martial experience to act as a special prosecutor with authority to review and refer charges. "Significant" is not defined. There are frankly not enough JAG 0–6s to perform this mission, which is somewhat duplicative of the role of the Article 32 Investigating Officer.

Article 92 criminalizes the failure to obey an order and/or dereliction of duty. This is a purely military offense and referral/clemency powers should not be taken away from the convening authority. While this might be intended to encompass orders

concerning fraternization/sexual harassment, it also includes thousands of other orders violations. Accordingly, a person charged for failure to perform a quarterly stamp inventory would come under the enhanced review by the O–6 Special Prosecutor. Dereliction of duty violations such as failure to properly annotate a log would also come within the purview of this enhanced review. Not exempting this Article form S–697 would make its enforcement simply impossible.

The same holds true for Article 134. This article includes indecent assault, but also covers 52 enumerated offenses from "abusing public animal" to "wearing unauthorized insignia decoration, badge, ribbon, device or lapel button." The charge also allows for the creation of novel specifications. An example of a recent specification brought under Article 134 was lying to one's landlord. Any Federal or State crime brought under the Assimilated Crimes Act is also charged under Article 134. Obviously enforcement of the enhanced review/referral requirement concerning Article 134 would be unmanageable.

Under S. 697, the convening authority will be denied authority to grant clemency in cases of minor crimes. For example, should a female officer be in the situation of discovering her husband's infidelity and in a bout of depression and recrimination engage in a one night stand, the convening authority would be denied, irrespective of her fine service and upstanding character, the ability to set aside a conviction. Additionally, a person who engaged in homosexual conduct, finding himself convicted of At. 125, could not seek clemency if S. 697 is enacted. There are many other examples. I have only had one case where the conviction was set aside. The case involved a reservist recalled to active duty subsequent to September 11, who was convicted of travel fraud. Based on evidence not admissible at trial, the convening authority determined that the accused's action was based on misunderstanding of very confusing regulations. He properly set aside the conviction.

The commander plays an important role in ensuring the integrity of the military justice system. Senator Gillibrand recently asked why the Article 60 authority promotes good order and discipline. The short answer is that it acts as a safety valve. Though seldom used, it enhances faith and confidence in a system often criticized as arbitrary and unfair. After a conviction, the commander must review and consider the record of trial and the advice of his lawyer, known as the staff judge advocate. He may consider evidence not admitted at trial and clemency requests. He must be convinced beyond a reasonable doubt that the accused is guilty. Setting aside a conviction is very rare and is never done frivolously. But it is an important review designed to balance inequities between the military and civilian justice system.

There is a significant difference between a military and civilian trial. Most people do not realize that Court-Martial panel members are not randomly selected but are appointed by the commander. Instead of 12 members, there can be as few as 3 for a Special and 5 for a General Court-Martial. Attorneys are only allowed one peremptory challenge and it takes only a two-thirds vote of the panel to convict. Of course, these panel members are often susceptible to command influence. The commander's Art. 60 powers are used to off set some of these government friendly regulations.

Unfortunately, the statements of the President, the Secretary of Defense, and various lawmakers are having a chilling effect. Commanders are now less likely to set aside convictions, even when warranted, for fear of criticism or negative effects on their own careers. Senator McCaskill recently put a hold on the nomination of a female commander who had also set aside a sexual assault conviction, to be Vice Commander of the U.S. Space Command. I will guarantee that the actions and the legislation will give rise to command influence motions that if granted could paralyze the military justice system.

Curtailing Art. 60 powers will not solve the sexual assault problem but may lead to more false reports. The commander's authority is not the problem. If it is abused the commander can and should be disciplined. The problem is that sexual assault cases often lack physical evidence or witnesses. These "he said-she said" cases should be completely investigated at an Article 32 investigation, the military equivalent of a grand jury.

Strengthening the Article 32 investigation process is the key to encouraging the reporting of legitimate sexual assault cases. Only experienced judge advocates, who have served as both a prosecutor and defense counsel should be assigned as Investigating Officers. Fact finding will be conducted in a more informal and relaxed setting. Most of the rules of evidence do not apply. A victim can testify by video teleconferencing or telephone. Faced with a strong case against him, aguilty person will be more likely to plead, thus sparing the victim an arduous trial and cross-examination.

The Article 32 also protects the rights of the accused. Unlike a grand jury, the accused or his counsel cross-examines witnesses and presents evidence. However, an Article 32, until recently, had no subpoena powers and its decision is not binding. The Army even assigns non lawyers to conduct the proceeding. If probable cause is not found that finding should be binding.

Congress should not force victims of sexual assault into a court-martial. At a trial, the accused has confrontation and cross-examination rights that will only retraumatize a victim. Being forced to provide testimony while facing her assaulter could result in the victim reliving the experience.

At the Article 32, however, the victim can testify telephonically, via video conferencing or behind a shield. The Military Rules of Evidence do not generally apply and it is a more informal and less threatening proceeding. Working uniforms rather than formal dress uniforms are normally worn. The trappings of a court room are generally absent. No imposing judge is present.

The Article 32 investigation, if properly conducted, will flush out the facts surrounding the case. As a defense counsel, I can assure you that if the evidence points to guilt, I will be seeking a plea agreement. As a result of this type of agreement, the victim testifies only if he or she wished to do so. It will spare the victim the rigors of a trial.

The present Article 32 structure is not sufficient, however. I recommend the following changes to the statute to provide the investigating officer the tools he or she needs to ferret out the facts.

- The investigating officer must be 0–4 Judge Advocate qualified under Art 27(b) who has served as both a trial counsel and a defense counsel.
- A verbatim transcript will be made on all investigations in which referral to a court martial is recommended.
- The action of the investigating officer is binding on the convening authority except when a defect such as jurisdiction or the failure to state an offense is identified pursuant to Art. 34.
- Testimony can be provided live or by video conferencing, however victims of sexual abuse and child sexual abuse may also testify behind a screen or other device to shield them from the accused.
- The provisions of Art. 37 (command influence) and Art. 46 (equal access to witnesses and evidence) shall apply to Article 32 iInvestigations. The Investigating Officer may exercise contempt powers under Article 48.
- All offenses punishable by confinement for more than 1 year shall be referred to an Art. 32 for investigation.
- The Military Rules of Evidence other than Mil. R. Evid. 301, 302, 303, 305, 412, and Section V—shall not apply in pretrial investigations under this section.

While it is easy to become enraged by the estimated number of sexual assaults in the military, it must be remembered that the methodology is based upon surveys with no corroboration. Not all of these claimed sexual assaults really happened. As a defense counsel, I have tried a number of sexual assault cases. In most cases, the accused was proven to be innocent.

In one case, an E–6 recruiter was convicted of raping a recruit. After 7 years and 1 month of confinement, he was released as a result of an appeal. At the rehearing we provided testimony that the complaining witness and bragged about using the rape claim to get out of the Navy, laughed about putting an innocent man in jail and tried to sue the military under the Federal Tort Claims Act. After this E–6 was acquitted of rape and indecent assault the U.S. Attorney refused to prosecute the complaining witness.

On another occasion a female officer filed rape charges against her boyfriend after he asked to cool the relationship. The accused passed four polygraphs by three different polygraphers. We produced evidence that the complaining witness was being egged on by her new boy friend, an enlisted man. After she refused to take a polygraph the convening authority dismissed the charge.

Another woman met her ex-boyfriend and invited him to her barracks for sex. After an argument she filed rape charges stating that she was too drunk to consent. When her cell phone records were seized there were numerous telephone calls and texts from her to him inviting him to her room for sex. The convening authority dismissed the charges. Prior to the receipt of the phone records, the woman used the incident to secure an early discharge.

Another enlisted woman claimed that she was gang raped by three officers, one of whom I represented. The Article 32 Investigating Officer found her testimony incredible and recommended dismissal. The convening authority referred the charges. DNA evidence showed that my client's epithelial cells were found on a condom and

he was convicted of consensual sexual misconduct. Several years later the U.S. Army Criminal Information Lab disclosed that the serologist had fabricated test results in order to show increased productivity. A re-test exonerated my client. The U.S. Court of Federal Claims referred the matter to the Service Judge Advocate General who set aside the conviction.

There are other numerous cases of prosecutorial misconduct and command influence. Many are documented in the December 16, 2002 issue of U.S. News & World Report. http://www.usnews.com/usnews/news/articles/021216/l6justice.htm. The problems with the serologists at the U.S. Army Criminal Information Lab are documented in a newspaper series. http://www.mcclatchydc.com/201l/12/29/134411/were-army-crime-lab-problems-withheld.html#.UaaRvpso71U. An analysis of recent rape cases was performed by McClatchy and is shown at http://www.mcclatchydc.com/2011/11/28/131523/militarys-newly-aggressive-rape.html#.UaaSVZso7IU.

What is also noteworthy is that in raw numbers the number of males assaulted exceeds the number of females. With the growing acceptance of homosexuals being forced on the military, male on male sexual assaults are expected to increase. The refusal of males to report sexual abuse is even more widespread than a fear of reporting by females. A concern of reprisal is less of an issue with males than shame or fear of a loss of manhood. This problem will only get worse.

S. 697 and the other bills introduced into the Senate have not called for any kind of examination of how the repeal of "Don't Ask Don't Tell" has affected male sexual assault. The bill seems to be aimed only at protecting females. While a sexual assault against a female is wrong and has terrible consequences for the victim, the same holds true for a homosexual assault on a male. In protecting the women, we must ensure that we protect the men as well. We must also protect the rights of the accused. Strengthening the Article 32 investigation will help achieve that goal. Stripping convening authorities of their Art. 60 powers will not.

If Congress decides to take this right away from the accused, in an attempt to civilianize the process, fairness demands that they examine other provisions of the laws governing courts-martial. Accordingly, I would recommend the following changes to Chapter 47 of Title 10:

PROPOSED CHANGE TO 10 U.S.C. § 816

- General Courts-Martial shall be composed of 12 members.
- Special Courts-Martial shall be composed of six members.
- In a General Courts-Martial the Trial Counsel and Defense Counsel shall have 12 peremptory challenges.
- In a Special Courts-Martial, the Trial Counsel and Defense Counsel shall have six peremptory challenges.

PROPOSED CHANGES TO 10 U.S.C. § 825

- All courts-martial members are selected random by paygrade and shall be allocated so that no member is junior to the accused.

PROPOSED CHANGE TO 10 U.S.C. § 852

- Require a unanimous verdict to convict.

Additionally, Congress should countermand MRE 707 which precludes polygraph evidence from being admitted to a court-martial. Polygraph science has come a long way and if a proper foundation can be laid under *Daubert* v. *Merrill Dow Pharmaceuticals,* it should be available to the members. Polygraphs were admissible at courts-martial until the enactment of MRE 707. While the Supreme Court upheld MRE 707 in *United States* v. *Scheffer,* 523 U.S. 303 (1998), they did not rule polygraphs per se inadmissible. The majority and prevailing rule in the civilian community is to allow for the admission of polygraphs in Federal courts—at least in some cases. See, *United States* v. *Posado*, 517 F.3d 428, 434 (5th Cir. 1995) and its progeny.

A failure to discipline those who assault women is unacceptable. In ensuring the guilty are disciplined, however, we cannot send innocent men to prison. Sexual abuse allegations must be taken seriously but they cannot become the subject of a witch hunt. The focus should be on finding the truth and not on promoting a social or political agenda.

Thank you for considering this testimony.

PREPARED STATEMENT BY MS. TINA CLEMANS

Memorial Day, a day of "observance", a day of reflection on all that our U.S. Armed Forces have done to make this country strong. A day in honor of U.S. countrymen and women who sacrifice their life in defense and service of the United States of America.

Today is a fitting day for a mother to ask for observance, for change in our Armed Forces and legislation to save lives. Observance of an uncivil war within our own—an epidemic in corruption of power and unnecessary loss of life and service to an alarming number of men and women.

Our daughter enlisted in the Air Force in December 2011. Like her father, uncle, grandfathers, and great grandfather before her, she did so to serve her country. Like fellow service men and women, she worked hard to earn this right: she completed extensive documentation; mental, physical, and placement exams; investigations; basic military training, top secret clearance, and assignment for technical training April 11, 2012.

Records show on April 6, 2012, our daughter went to the base medical clinic and was treated for insomnia due to stress about problems with her roommate. Records note she was worried someone was "out to get her" but not suicidal, no claims of suicidal thoughts—Records state she is "Low Risk".

Our daughter's career and life nearly ended on base April 7, 2012, days before her tech training was to begin. The day another servicemember(s) gave her cigarettes laced with embalming fluid. She had no idea the cigarettes contained a date-rape drug that causes complete black outs, severe hallucinations, memory loss, and consciousness—and ultimately her basic rights and career.

Terrified and alone, she called family who advised her to go directly to Command to report the assault and drugging. She did so. Instead of being admitted in a hospital where she could have received a rape kit, an official investigation/report, counseling, and appropriate care, she was taken to a mental health facility. She was not aware, or in any condition, to voluntarily admit herself to a facility where she was locked up in a suicide ward, prescribed medications for a personality disorder she does not have. She was denied repeated requests for expedited transfer per DOD directive. At the same time, she was given an Article 15 and Letter of Reprimand. She endured months of anguish, hospitalizations, humiliation, punishment and torture—having to clean and work in the area where she was assaulted a second time—raped, sodomized, threatened with death for reporting further and forced to live in close proximity to her perpetrators. Days later she is punished for missing PT formations while heavily medicated and ill suffering PTSD, after her mother's request for the base IG to investigate her situation. A general had this data, too.

Documentation, records, and exhibits we have prove these statements and more. Worse, due to Chain of Command having ultimate authority in MST investigations, the system and programs currently in place failed to protect our daughter. She was denied expedited and humanitarian transfers to safety and left for dead on base, brutally assaulted, beaten unconscious, and raped that second time in July, days after her release from hospitalization. Skin grey, lips blue, naked, broken and bleeding, she was taken by ambulance July 29, 2012 to Shannon Medical Center.

When she came to in the ambulance and hospital, she complained of severe head pain, bleeding and blurred vision to several people, including medical staff. We have no records of an x-ray

Due to lack of action and failure of programs in place. I had to move from Washington state to Texas to keep my daughter alive; to fight for her rights when she was unable to do so, when and where DOD directive and programs for victims were ignored and denied by Chain of Command.

Three generals and their administration knew about our daughter's situation and facts. Nearly a half dozen congressional leaders inquired and wrote letters on her behalf, to no avail. Only after an outside advocate, and I enlisted the help of Senator Tsongas, co-author of the Defense Strong Act, did our daughter receive a humanitarian transfer agonizing months late. Long after those in command denied her basic rights, lied about reports/info being filed to her and her family, ridiculed her before her unit and peers. If not for legal representation having been donated by the advocacy of Protect Our Defenders and support of family, she would have been left to live with a dishonorable discharge and no benefits to help with healing, recovery and the shame of it all.

Our daughter and countless silent others, deserve better, they deserve action, here, now.

Decades of casualties, of broken promises to reform programs and legislation have taken a staggering toll. Allowing Chain of Command to oversee proceedings, cases and victims costs lives, careers and billions in denied care/benefits to service men

and women. Action and Reform are long overdue; accountability, care, legislation and programs for victims are only as good as those who enforce them.

We had to fight hard to save our daughter and win her appeal. Her honorable discharge with a disability rating was recently granted. Over a year after the first assault—we are waiting for VA diagnosis for extent of damage to her brain from severe trauma to her head (still untreated), mind, body, and soul. She will never be the same. PTSD, terrifying nightmares and flashbacks may abate, but her life and career could have been drastically different had Chain of Command not been in control of her MST investigations, obtaining appropriate care and counseling outside the proximity of abusers, or had the power to deny/ignore DOD directive and legislation.

Please, act now to help those who serve to protect—remove Chain of Command from MST investigations to prevent abuse of power that has spanned decades unchecked. Protect our defenders; If not for their sacrifice and service, we would not be the United States of America.

Our daughter is Airman Myah Bilton-Smith, a young woman who worked hard and was so very excited to serve her country. Please take action, demand action not broken promises to reform.

Thank you for your time and observance of this grave matter.

PREPARED STATEMENT BY AMOS N. GUIORA

I write with respect to the hearing scheduled for Tuesday, June 4, 2013 before the Senate Armed Services Committee addressing pending legislation regarding sexual assaults in the military.

By way of background: I served for 19 years (1986–2005) in the Judge Advocate General's Corps of the Israel Defense Forces, retiring as a Lieutenant Colonel. In the course of my career I served as the Judge Advocate to IDF Navy and Home Front Command, as a Judge of the Gaza Strip Military Court, as the Legal Advisor to the Gaza Strip, and as Commander of the IDF School of Military Law.

The significance is that I have served as both a Judge Advocate and Legal Advisor. It is in this context that I hope my comments below will be of help to the committee.

The Israeli system is profoundly different from the current American system. The primary difference relates to the "balance of power" between the commander and the Judge Advocate. In short, while serving as Judge Advocate to the Navy and Home Front Command I was solely entrusted with the decision to order the filing of an indictment against a soldier or officer. The commander was granted no authority in the matter. While I notified the commander of my charging decision and was open to his input, the decision was exclusively mine (in consultation with my own commander, The Judge Advocate General).

The decision to create a system whereby indictment decisions are in the exclusive bailiwick of the Judge Advocate reflects a profound belief that the separation between Judge Advocates and commanders is necessary in order to prevent undue command influence. It is, needless to say, a bone of contention, particularly when commanders are of the opinion that an indictment decision may impact Israeli national security.

While commanders understandably express reservations as to their lack of a role in the decision making, the system properly (and effectively) minimizes command influence in the criminal process to maintain fuller accountability and impartiality in meeting out justice.

That process, it is important to add, is distinct from the disciplinary process that is within the commanders' jurisdiction. However, a word of caution is in order: when the Judge Advocate receives the case file from the Military Police Investigation Unit there are four possible courses of action: filing an indictment; transferring the file to the commander for a disciplinary hearing; closing the file; and ordering further investigation.

A related note, it is also important to add that the Israeli Supreme Court (sitting as the High Court of Justice) has the power to issue an ex parte order nisi against IDF commanders in response to petitions filed either by aggrieved individuals or human rights organizations acting on behalf of the aggrieved, even though minimal standing requirements have not been met. I call this to your attention as it shows that commanders are subject to rigorous and robust judicial review (by the Israel Supreme Court) in other respects.

There is little doubt that recent high profile prosecutions have significantly enhanced the trust Israel Defense Forces soldiers feel in reporting instances of sexual assaults and harassment. A recent report reflecting an 80 percent increase in com-

plaints filed with respect to sexual assault and harassment suggests an increase in soldiers' confidence that their complaints will be forcefully dealt with. The cause for this is, arguably, two-fold: the requirement imposed on commanders to immediately report all instances of sexual assault and harassment and the forceful prosecution policy implemented by JAG officers who are not in the "chain of command."

It would be my pleasure to answer any questions you and the committee may have; needless to say, should the committee so decide, it would be my honor to testify. I take the liberty to add that I have twice testified before Congress, once before the Senate Judiciary Committee regarding U.S. detention policies (I was asked to compare to Israeli practices and models) and once before the House Homeland Security Committee.

Chairman LEVIN. Questions for the record have been asked of a number of our witnesses on other panels. If questions are asked of any of you, I hope that you would respond to those questions for the record as promptly as possible. I expect there will be additional questions for the record, that we would very much appreciate your responding to, as we appreciate the testimony that you have given us today.

With that, we will stand adjourned.

[Questions for the record with answers supplied follow:]

QUESTIONS SUBMITTED BY SENATOR CARL LEVIN

UNRESOLVED ISSUES WITH LEGISLATIVE PROPOSAL FOR NEW DISPOSITION AUTHORITY

1. Senator LEVIN. General Chipman, Admiral DeRenzi, General Harding, General Ary, and Admiral Kenney, if legislation is enacted that requires that serious offenses be sent to a new disposition authority outside of the chain of command for a determination of whether the allegations should be prosecuted at a general or special court-martial, who would make the determination of whether an offense meets the threshold of a serious offense that must be referred to the new disposition authority for consideration?

General CHIPMAN. The legislative proposal (S. 967) does not set forth who would make the determination of whether an offense meets the threshold of a serious offense that must be referred to the new disposition authority for consideration. Current statutes, regulations, and policies set forth a comprehensive and interconnected set of procedures and responsibilities for multiple first responders, commanders, investigators, and prosecutors that govern the reporting, investigation, victim response and accountability for sexual assault. Implementation of S. 967 would represent the most significant amendment to the Uniform Code of Military Justice (UCMJ) since 1968, without consideration of the second- and third-order effects on the system. This change would generate legal challenges, confusion and inefficiency. The proposal should be studied by the Joint Services Committee and the section 576 Response System Panel before such a dramatic change to the UCMJ is directed.

Legislative proposal S. 1197 and previously, S. 967, define serious offenses by designating specified Articles under the UCMJ as prohibited from initial disposition by a member of the accused servicemember's chain of command. Under S. 967, those offenses included Articles 92, 118–132, and 134, UCMJ. S. 1197 amended S. 967 to remove Articles 92 and 134, UCMJ, from the offenses prohibited from initial disposition by the accused's chain of command. All UCMJ offenses not authorized for chain of command disposition must be disposed of by a new disposition authority outside the chain of command. This officer, according to S. 1197, must decide first, whether the offense should go to a court-martial and second, whether it should go to a General or Special court-martial.

Admiral DERENZI. On April 20, 2012, the Secretary of Defense withheld initial disposition authority from all commanders within the Department of Defense (DOD) who do not possess at least special court-martial convening authority and who are not in the grade of O–6 or higher with respect to the following alleged offenses: rape, in violation of Article 120 of the UCMJ; sexual assault, in violation of Article 120 of the UCMJ; forcible sodomy, in violation of Article 125 of the UCMJ; and all attempts to commit such offenses, in violation of Article 80 of the UCMJ. This withholding applies to all other alleged offenses arising from or relating to the same incidents(s), whether committed by the alleged perpetrator or the alleged victim of the rape, sexual assault, forcible sodomy, or the attempts thereof. The sexual assault initial disposition authority (SA–IDA) must review the investigation into the allegations and consult with a judge advocate before making any disposition decision.

The Secretary of Defense policy provides appropriate senior officer oversight of the disposition of sexual assault allegations. The Secretary of Defense retains the authority to amend the policy based upon experience over time, if necessary. A detailed assessment of any specific proposal to send other serious offenses outside of the chain of command would be necessary to determine the appropriate disposition authority.

General HARDING. There are a number of potential options. Using the May 16, 2013 draft of the Military Justice Improvement Act, it would appear all non-uniquely military offenses which have a maximum confinement of greater than 1-year would be forwarded to this new disposition authority as a matter of law. Commanders would then retain disposition authority over uniquely military offenses as defined in section 2(A)2 of the proposed act and any other offense with 1-year or less maximum confinement. Judge Advocates, investigators and local commanders would review each case at the local level to determine whether a case meets the requirements for forwarding to the new disposition authority or would be retained by the commander for disposition.

General ARY. Under S. 967, the "determination whether to try [serious offenses] by court-martial" must be made by an O–6 judge advocate with significant trial experience. A "serious offense" is defined as a charged offense under which the maximum punishment authorized includes confinement for more than 1 year, and that is not on the list of "excluded offenses." Because confinement for 1-year is generally the benchmark for defining a felony offense in civilian jurisdictions, this new disposition authority can be referred to as the Felony Initial Disposition Authority (Felony IDA), even though the proposal does not identify a title for the disposition authority.

The proposal is silent on the procedures by which "serious offenses" would be referred to the Felony IDA for a disposition decision. The lack of clarity on this matter would have a tremendous effect on the processing of a vast majority of Marine Corps' criminal allegations, not just "serious offenses." Under Rule for Court-Martial (RCM) 601, all known offenses are ordinarily referred to a single court-martial. While the preference for joinder in the discussion to RCM 601 is not binding on a convening authority, as a matter of practice the vast majority of offenses are referred to a single court-martial for the sake of judicial economy and swift administration of justice. If a Felony IDA only had jurisdiction over serious offenses, however, there would be no single jurisdictional authority to ensure all offenses went to the same court-martial. This would result in parallel prosecutions in separate courts; one IDA-determined court for the "serious" offenses and one commander-determined court for the "not serious" offenses. This would create an enormous strain on resources (prosecutors, defense counsel, judges, court reporters, et cetera) and potentially slow down all prosecutions. As an example, in a case involving an alleged rape ("serious offense"), drug distribution (not "serious"), disrespect toward a superior officer (not "serious"), and false official statement (not "serious"), only the alleged rape would be sent to the Felony IDA. The remaining offenses would require a separate court-martial.

Regardless of what offenses are forwarded to the Felony IDA for a disposition decision, the Marine Corps believes that the commander of the accused, through consultation with his or her staff judge advocate (SJA) and servicing prosecution office (the unit that would actually draft the charges), would be responsible for forwarding cases involving "serious offenses" to the Felony IDA. In the Marine Corps, the SA–IDA, who is an O–6 special court-martial convening authority or higher, would be responsible for forwarding an allegation of sexual assault to the Felony IDA. A "sexual assault" for SA–IDA purposes in the Marine Corps includes any non-consensual sexual act or contact between adults, forcible sodomy, child sex crime, or attempts to commit those offens

Admiral KENNEY. Coast Guard policy requires all actual, alleged, or suspected felony violations of the UCMJ to be reported to Coast Guard Investigative Service (CGIS). This requires commands to report to CGIS a wide range of offenses, including rape, sexual assault, or abusive sexual contact. Presumably, legislation would define a serious offense. Otherwise, the Coast Guard would specify in policy what constitutes a "serious offense" requiring referral to an independent disposition authority. Our current reporting policy and practice suggests that all potential Article 120 offenses would reach the disposition authority.

Whether by statute or policy, unit commanders would be required to report potential "serious offense" allegations to CGIS for investigation. The ultimate decision on a specific case would likely rest with the new disposition authority on what constitutes a "serious offense." Moreover, a military judge would likely grant a motion to dismiss for improper referral of a "serious offense" if the charge was referred to court-martial by a military commander and not by the new disposition authority.

2. Senator LEVIN. General Chipman, Admiral DeRenzi, General Harding, General Ary, and Admiral Kenney, if a sexual assault occurs on a ship or battlefield, what are the responsibilities of the on-site commander?

General CHIPMAN. Under current Army regulations, battlefield commanders have initial and continuing responsibilities for the morale, safety, and welfare of their soldiers, including victims. Commanders are responsible for referring all allegations of sexual assault to Criminal Investigative Division (CID), contacting the Staff Judge Advocate, contacting higher headquarters, contacting the Sexual Assault Response Coordinator (SARC), providing updates to the victim and ensuring appropriate victim response. Removal of the commander from the disposition process could affect all of the commander's current responsibilities and shift those responsibilities to an authority outside the chain of command who might not be present in the combat zone. Removing disposition authority from the on-site commander will undermine the commander's ability to fulfill his or her responsibilities for the morale, safety, and welfare of the soldiers.

The legislative proposal, S. 967, does not address effects on the current responsibilities of an on-site battlefield commander after a sexual assault occurs. Current statutes, regulations and policies set forth a comprehensive and interconnected set of procedures and responsibilities for multiple first responders, commanders, investigators, and prosecutors that govern the reporting, investigation, victim response and accountability for sexual assault. Implementation of S. 967 would represent the most significant amendment to the UCMJ since 1968, without consideration of the second- and third-order effects on the system. This change would generate legal challenges, confusion and inefficiency. The proposal should be studied by the Joint Services Committee and the section 576 Response System Panel before such a dramatic change to the UCMJ is directed.

Admiral DERENZI. Commanders, both on ships and on battlefields, are required to take certain immediate actions upon receipt of an allegation of sexual assault. Commanders are tasked to support the victim, report the allegation, and refer all Unrestricted Reports of sexual assault to the appropriate Military Criminal Investigative Organization for investigation. This change reflects the requirement outlined in our policy, DODI 6495.02.

Commanders are responsible for ensuring victims are provided information on and access to appropriate services. This includes, but is not limited to: providing for the immediate safety and security of the victim, medical services, access to a victim advocate and SARC, the right to request an expedited transfer, all rights delineated under the Victim and Witness Assistance Program, and legal assistance. Commanders may also issue Military Protective Orders, transfer the alleged offender, or order the alleged offender into pre-trial confinement when warranted.

Upon receiving an allegation of sexual assault, a commander must submit a Special Incident Report under Chief of Naval Operations Instruction F3100.6J. This incident report is sent to the commander's immediate superior in command, the Chief of Naval Operations, the Director of the Naval Criminal Investigative Service (NCIS), and the Judge Advocate General. The policy requires commanders to make an initial voice report followed by a written report that provides details known at the time. In addition to the written report, commanders are required to make a face-to-face report to the first flag officer in the chain of command within 30 days of the allegation.

On April 20, 2012, the Secretary of Defense withheld initial disposition authority from all commanders within DOD who do not possess at least special court-martial convening authority and who are not in the grade of O–6 or higher with respect to the following alleged offenses: rape, in violation of Article 120 of the UCMJ; sexual assault, in violation of Article 120 of the UCMJ; forcible sodomy, in violation of Article 125 of the UCMJ; and all attempts to commit such offenses, in violation of Article 80 of the UCMJ. This withholding applies to all other alleged offenses arising from or relating to the same incidents(s), whether committed by the alleged perpetrator or the alleged victim of the rape, sexual assault, forcible sodomy, or the attempts thereof. Thus if the commander does not qualify as a SA–IDA under the Secretary of Defense policy, the commander must forward the investigation into the alleged offenses to a commander who does qualify as a SA–IDA. The SA–IDA must review the investigation into the allegations and consult with a judge advocate before making any disposition decision.

General HARDING. The responsibilities are the same for a commander regardless of location. First and foremost, a commander ensures the safety of the members of his unit and nearly simultaneously should ensure an appropriate investigation is initiated. If appropriate, a commander may issue a military protective order, remove an accused from his duty section, recommend placing an accused in pretrial confinement or grant a victim an expedited transfer, if requested.

General ARY. In the absence of implementing policies or regulations regarding the implementation of S. 967, the Marine Corps believes that the responsibilities of the commander would remain the same until charges are drafted. The proposal states that the Felony IDA will act "[w]ith respect to charges under chapter 47 of title 10, United States Code (the Uniform Code of Military Justice)." However, the proposal is otherwise silent on the procedures prior to charges being preferred and after the initial disposition decision. Therefore, the commander would likely proceed as he or she currently does upon receipt of a sexual assault allegation. This includes reporting the allegation to NCIS; providing victim advocate and SARCs to the victim; making legal assistance attorneys available to consult with the victim; processing expedited transfer requests; filing a Serious Incident Report to the Commandant of the Marine Corps; filing an 8-day brief to the first general officer in the victim's chain of command; making a pre-trial confinement decision; possibly removing the accused from the command; facilitating the expedited transfer of the victim, if requested; and issuing military protective orders as needed. These actions would be required on a ship, on the battlefield, and in garrison, and would all be taken after consultation with the commander's staff judge advocate.

Even though S. 967 should not affect the above listed requirements, there are two significant procedural requirements not addressed by S. 967, the Article 32 investigation and Article 34 pretrial advice requirement. These two issues could create fatal jurisdictional problems with the effective prosecution of offenses under S. 967.

The first issue is that S. 967 does not address the Article 32 investigation, which is required prior to referring charges to general court-martial. The Article 32 investigation is an important check on the government and ensures that the accused is not brought to trial on a case that lacks merit. The proposal says the Felony IDA's "determination to try such charges," and at which forum, "shall be binding on any applicable convening authority." There is no explanation of what specific action is being taken with the Felony IDA's "determination:" is it an initial disposition decision under RCM 306; is it preferral of charges under RCM 307; or is it referral of charges under RCM 601? These are all separate and distinct steps which are apparently merged into one action by the Felony IDA. Because an Article 32 is a jurisdictional requirement before a general court-martial can be convened, its absence may be viewed as reversible error by an appellate court.

The second issue with S. 967 is that it ignores the requirement for a staff judge advocate to provide pretrial advice after the Article 32 investigation in accordance with Article 34. The IDA is not a commander and cannot receive the Article 34 advice, and there is also no commander with a disposition decision to make who can be advised under Article 34. Because Article 34 is a jurisdictional requirement, its absence may also create reversible error.

Admiral KENNEY. The first response and continuous obligation by unit commanders will always be ensuring the safety and security of a victim. Commanders will determine if the victim desires or needs any emergency medical care. Victims will be advised of the restricted and unrestricted reporting options, and advised of their right to, and the benefits of, a medical forensic examination regardless of their reporting option. If underway and a feasible port destination is not readily available, arrangements will be made to medevac the victim for emergency medical care and/or a medical forensic examination. Commanders will also determine if the victim desires or needs protection. In port, commanders will determine the nature of pretrial restraint to impose on the accused that may include pretrial confinement. The commander will also consider temporary or permanent reassignment of the accused or the victim and imposition of a military protective order against the offender to ensure the safety of the victim. If the incident occurs underway, commanders have the inherent authority to restrict or confine the offender.

In the event of an unrestricted report of sexual assault, unit commanders must immediately report the incident to CGIS and the SARC. Under Coast Guard policy, only CGIS may conduct a formal criminal investigation involving sexual assault offenses with unrestricted reports. Agency policy prohibits command field-level investigation into allegations of sexual assault.

While some cutters in the Coast Guard are less than a day's trip from the nearest port call, many cutters may be underway from port. Because CGIS agents are not assigned to Coast Guard cutters, there may be situations where providing a CGIS agent will pose logistical challenges. The SARC, CGIS and the servicing legal office will work closely with the cutter's command to provide an agent to the cutter as expeditiously as possible.

In addition to addressing safety concerns and complying with Coast Guard reporting requirements and the victims' election of either a restricted or unrestricted reporting option, a commander is responsible for ensuring the victim understands the availability and benefits of having a victim advocate.

3. Senator LEVIN. General Chipman, Admiral DeRenzi, General Harding, General Ary, and Admiral Kenney, does the onsite commander have to send the alleged perpetrator, victim, and witnesses back to a secure location so they are available to the disposition authority?

General CHIPMAN. The legislative proposal (S. 967) does not address whether the independent disposition authority will review a written record of the law enforcement investigation, or whether the alleged perpetrator, victim, and witnesses have to be available, in person, to the disposition authority. Under current procedures in place, a sexual assault allegation made in a deployed setting can be investigated and prosecuted onsite without significant interruption of operations. One of the essential features of the UCMJ and the central role of the commander is portability. With over 60,000 troops deployed currently and as many as 100,000 at the height of operations over the past 10 years, commanders must be able to administer discipline wherever they are and in full transparent view of troops to ensure faith and trust in our system. If S. 967 was implemented, the portability and visibility of the system would be impacted. Removing disposition authority from the on-site commander will undermine the commander's ability to fulfill his or her responsibilities for the morale, safety and welfare of the soldiers. This could also create perceptions in the unit that victims have made an allegation merely to remove themselves from the combat zone. Current statutes, regulations and policies set forth a comprehensive and interconnected set of procedures and responsibilities for multiple first responders, commanders, investigators, and prosecutors that govern the reporting, investigation, victim response and accountability for sexual assault. Implementation of S. 967 would represent the most significant amendment to the UCMJ since 1968, without consideration of the second- and third-order effects on the system. This change would generate legal challenges, confusion and inefficiency. The proposal should be studied by the Joint Services Committee and the section 576 Response System Panel before such a dramatic change to the UCMJ is directed.

Admiral DERENZI. In most cases, the initial disposition authority can review evidence, consult with his or her judge advocate, and render an initial disposition decision without the physical presence of the alleged perpetrator, victim, and witnesses. The NCIS's report of investigation generally provides the initial disposition authority sufficient information concerning the alleged offense(s). Should additional information be required, NCIS will gather the information and submit a supplementary report of investigation to the disposition authority. Of course, should the disposition authority convene a court-martial to try an accused servicemember, then the physical presence of the accused, the victim, and witnesses would be required. However, courts-martial have been successfully conducted in deployed environments.

General HARDING. The flexibility and reach of the UCMJ is one of its essential elements which has allowed for courts-martial in combat zones since the inception of the UCMJ. However, depending on the circumstances, a commander may also choose to send individuals back for a variety of reasons, to include their own safety or health.

General ARY. Currently, commanders can make all disposition decisions at the location of the alleged crime, whether it is in a forward deployed location or in garrison. Because the commander has administrative control of those parties, he or she is able to ensure that they are available to participate in the investigation and military justice process. If the commander was no longer the disposition authority, it is unclear if the commander would need to send the accused, victim, and witnesses to the location of the new disposition authority.

Admiral KENNEY. Current practice does not require transfer of witnesses, victims, or alleged offenders to the location of the disposition authority. Under Coast Guard's Sexual Assault Prevention and Response (SAPR) Program, a victim of sexual assault will be reassigned if requested by the victim or if in the victim's best interest and a transfer does not compromise or hamper ongoing investigative activity. Likewise, reassignment of the alleged offender is made when it is in the best interest of the victim and the unit. Reassignment decisions are made in conjunction with the commander, staff judge advocate, CGIS agent, victim advocate, and the victim.

In the event of an unrestricted report, victims and witnesses are advised to fully cooperate with the investigation, are made available to both government and defense counsel, and may be compelled to travel to an Article 32 hearing, a court-martial proceeding, or other required venue.

Initial disposition of cases usually occurs after CGIS agents have completed their investigation and the staff judge advocate has formally provided independent legal advice to the convening authority.

4. Senator LEVIN. General Chipman, Admiral DeRenzi, General Harding, General Ary, and Admiral Kenney, what effect would this legislation have on the com-

mander's authority to place an accused in pre-trial confinement pending investigation and disposition of the offense?

General CHIPMAN. The legislative proposal, S. 967, does not address the commander's ability to place an accused in pre-trial confinement pending investigation and disposition of the offense.

RCM 304 governs pre-trial restraint and provides commanders with the primary responsibility for determination of appropriate actions under the rule. Under the proposed statutory scheme, commanders may still place an accused in pre-trial confinement but they no longer have the ability to control the timing of the preferral and referral of court-martial charges to ensure that the accused's constitutional rights to a speedy trial are not infringed upon, especially in cases that involve non excludable offenses. For non excludable offenses, the initial disposition authority is an independent O–6 Judge Advocate and the convening authority resides in a centralized body of officers geographically located elsewhere. The proposed legislation fails to consider the delays that will result in waiting for the O–6 Judge Advocate to prefer charges, in appointing and conducting a pretrial Article 32 investigation, and then obtaining referral of the case by a convening authority who is often at a different location. The potential adverse impact on the speedy trial rights of the accused under this proposal, may result in a chilling effect on a commander's use of pretrial confinement which in turn could adversely impact the maintenance of good order and discipline and the health, safety, and welfare of soldiers in some cases. Current statutes, regulations and policies set forth a comprehensive and interconnected set of procedures and responsibilities for multiple first responders, commanders, investigators, and prosecutors that govern the reporting, investigation, victim response and accountability for sexual assault. Implementation of S. 967 would represent the most significant amendment to the UCMJ since 1968, without consideration of the second- and third-order effects on the system. This change would generate legal challenges, confusion and inefficiency. The proposal should be studied by the Joint Services Committee and the section 576 Response System Panel before such a dramatic change to the UCMJ is directed.

Admiral DERENZI. Commanders ordering an accused servicemember into pretrial confinement are required to make an initial probable cause determination, provide written justification of that determination, and ensure timely periodic reviews of continued confinement. Commanders who order servicemembers into pretrial confinement must coordinate with initial disposition authorities to ensure compliance with the applicable rules; however, there will be little negative impact to the commander's authority.

Pursuant to Rule for Courts-Martial (RCM) 305, prior to ordering a servicemember into pretrial confinement, the commander ordering confinement must ensure that probable cause exists that the accused committed an offense under the UCMJ and that lesser forms of restraint are insufficient. Within 48 hours of the initiation of confinement, the commander must ensure a neutral and detached officer reviews the initial confinement decision. Within 72 hours, the commander must document the grounds for his or her determination in a written memorandum, along with the reasons for continued pretrial confinement. Finally, a review of "the probable cause determination and necessity for continued pretrial confinement" by a "neutral and detached officer appointed in accordance with regulations prescribed by the Secretary concerned" must be made within seven days of the initial confinement decision.

General HARDING. As it is currently drafted, it does not appear the Military Justice Improvement Act would impact a commander's ability to place an individual in pretrial confinement as provided in Articles 9–13 of the UCMJ.

General ARY. The authority of a commander to place an accused in pre-trial confinement pending investigation and disposition of the offense derives from Article 9, UCMJ, which allows "commissioned officers" to order persons into arrest or confinement for probable cause. Because the authority to order a person into pretrial confinement is not tied to a convening authority, commanders would retain the authority to place the accused in pretrial confinement.

Even though commanders would retain this authority, the creation of a new disposition authority severely limits the commander's authority. If the new disposition authority decided not to go forward with the misconduct that was the basis for the commander's pretrial confinement decision, the commander would have to immediately remove the accused from pre-trial confinement.

There is one other pre-trial confinement complication that is related to a new disposition authority. Placing an accused into pre-trial confinement starts the "speedy trial" clock. Sometimes the decision to place an accused in pre-trial confinement is made before all of the investigation is complete and the command is aware of the full nature of the misconduct, and how it will most likely be charged. Before a com-

mander can charge a case, it must be fully investigated and reviewed. This alone can create speedy trial concerns in complicated cases. If the new disposition authority would need additional time, after the time already used by the commander while the accused was confined, to review all of the evidence in order to make an independent and informed disposition decision, there is an increased risk that the government will have difficulty bringing the accused to trial in a timely manner.

Admiral KENNEY. Unit commanders are not restricted by existing policy or this proposed legislation from taking all necessary discretionary actions related to the alleged offender. This would include placing a suspected offender in pretrial restraint, which includes the possibility of pretrial confinement, as well as issuing a military protective order against the offender.

5. Senator LEVIN. General Chipman, Admiral DeRenzi, General Harding, General Ary, and Admiral Kenney, if the new disposition authority does not refer an allegation to a general or special court-martial, can the commander offer the accused an Article 15 for the offense considered by the disposition authority, and if the accused refuses the Article 15 and demands trial by court-martial, what does the commander do?

General CHIPMAN. The legislative proposal, S. 967, does not address what a commander's option will be if the disposition authority does not refer an allegation to a court-martial and the commander offers the accused an Article 15 for the same offense. It is possible that a defense counsel would advise an accused soldier to turn down the Article 15 (or summary court-martial) knowing that the commander does not have the ability to then proceed with a special or general court-martial.

Implementation of S. 967 could remove non-judicial disciplinary options for a commander in the event the new disposition authority declines to refer charges to a court-martial. This will leave misconduct unpunished that is currently punishable under the UCMJ.

Current statutes, regulations and policies set forth a comprehensive and interconnected set of procedures and responsibilities for multiple first responders, commanders, investigators, and prosecutors that govern the reporting, investigation, victim response and accountability for sexual assault. Implementation of S. 967 would represent the most significant amendment to the UCMJ since 1968, without consideration of the second- and third-order effects on the system. This change would generate legal challenges, confusion and inefficiency. The proposal should be studied by the Joint Services Committee and the section 576 Response System Panel before such a dramatic change to the UCMJ is directed.

Admiral DERENZI. On April 20, 2012, the Secretary of Defense withheld initial disposition authority from all commanders within DOD who do not possess at least special court-martial convening authority and who are not in the grade of O–6 or higher with respect to the following alleged offenses: rape, in violation of Article 120 of the UCMJ; sexual assault, in violation of Article 120 of the UCMJ; forcible sodomy, in violation of Article 125 of the UCMJ; and all attempts to commit such offenses, in violation of Article 80 of the UCMJ. This withholding applies to all other alleged offenses arising from or relating to the same incidents(s), whether committed by the alleged perpetrator or the alleged victim of the rape, sexual assault, forcible sodomy, or the attempts thereof. Therefore, if the commander does not qualify as a SA–IDA under the Secretary of Defense policy, the commander must forward the investigation into the alleged offenses to a commander who does qualify as a SA–IDA. The SA–IDA must review the investigation into the allegations and consult with a judge advocate before making any disposition decision.

Under RCM 306, a superior commander may withhold the authority to dispose of offenses in individual cases, types of cases, or generally. Therefore, an SA–IDA may limit the authority of a subordinate commander to impose Article 15 non-judicial punishment (NJP) after an initial disposition decision has been made.

However, if the subordinate commander's authority has not been limited under RCM 306, he or she retains the discretion to impose Article 15 NJP for an offense that was previously considered by the SA–IDA. If the accused refuses Article 15 and demands trial by court-martial, the subordinate commander may convene and refer the charges to a court-martial.

General HARDING. Assuming this is a case that must be sent to the new disposition authority under section 2(A) of the Military Justice Improvement Act and was returned from the new disposition authority for a commander to take appropriate action, a commander could offer an Article 15. If the member refused the Article 15 and demanded trial by court-martial, the commander would either dismiss the Article 15 and possibly offer administrative punishment (e.g., letter of reprimand) or refer it back to the new disposition authority with a renewed recommendation that the new disposition authority refer the case to a court-martial.

General ARY. Non-judicial punishment (NJP) is a leadership tool providing military commanders a prompt and essential means of maintaining good order and discipline. In order to impose NJP, a servicemember is notified by the commander of the nature of the misconduct of which he is accused, the evidence supporting the accusation, and the commander's intent to impose NJP. Article 15, UCMJ, affords the servicemember a right to turn down NJP and demand trial by court-martial except for those accused attached to or embarked on a vessel. Under the proposed legislation, the ability of the commander will be compromised.

For offenses requiring disposition by the proposed legislation's Felony IDA, jurisdiction lies with the Felony IDA, not the commander. Therefore, the commander would not be able to NJP the marine initially. The Felony IDA would not have NJP authority under Article 15 because it only inures to commanders. Additionally, if the Felony IDA decides not to take the case to special court-martial (SPCM) or general court-martial (GCM), that decision is binding on the commander. When this "do not prosecute" decision is made a commander can only offer disposition of the case at a lesser forum such as NJP, and the marine could simply refuse. Once NJP is refused, there is no remaining option to punish the marine. Under the current system, however, a Marine who refuses NJP can be taken to a SPCM or GCM. As an example of this, 10 U.S.C. section 923 (Article 123) is the military's punitive forgery statute, and has a maximum punishment of 5 years. Forgery can be anything from falsifying an order, an inherently military offense but a serious one, to trying to alter a liberty card, a disciplinary infraction that must be punished, but is not likely to be viewed as a felony-level offense. Both of these examples are most appropriately handled within the command. Under the proposed legislation, however, forgery is considered a serious offense and jurisdiction only belongs to the IDA. This means that a commanding officer may not have any authority to instill discipline related to forgery-related misconduct.

Admiral KENNEY. A commander could dispose of a case by NJP after an independent disposition authority chooses not to refer charges to a general or special court-martial. Administration of NJP would, however, be complicated by severing the convening authority function from commanders because some coordination between the independent disposition authority and commander would have to occur so the commander would be informed of the matter and the decision of the disposition authority not to proceed, and coordination would have to occur again where an accused declines NJP and a convening authority must decide whether and to what level of court-martial the case should be referred.

Except in rare situations where a servicemember is attached to or embarked on a vessel, a military member may reject NJP and demand trial by court-martial. In most cases, servicemembers accept NJP when offered. Currently, a commander can refer a case to court-martial if a member refuses NJP. If a commander lacks the ability to refer cases to court-martial, we expect that a member would be more likely to refuse NJP knowing that an independent disposition authority has already declined to refer the charges to a courts-martial. This result would have negative consequences on the exercise of command authority. Commanders must ensure mission accomplishment and do so by maintaining unit readiness and enforcing discipline. Dividing the authority to impose NJP from the ability to refer cases to court-martial would weaken command authority, which would be exacerbated where accused have a structural incentive to refuse NJP.

6. Senator LEVIN. General Chipman, Admiral DeRenzi, General Harding, General Ary, and Admiral Kenney, would the commander still have the authority to issue no-contact orders and to assign the alleged perpetrator and victim to duties so that they would not have to work with each other?

General CHIPMAN. The legislative proposal, S. 967, does not address the authority of commanders to issue no-contact orders and to transfer/reassign offenders and victims.

It is assumed that these authorities would remain with the commander. However, many administrative actions taken pre-trial require that the actions be made with a view toward court-martial. It is unclear whether commanders will still be able to make these decisions if disposition authority is taken away from the command. Current statutes, regulations and policies set forth a comprehensive and interconnected set of procedures and responsibilities for multiple first responders, commanders, investigators, and prosecutors that govern the reporting, investigation, victim response and accountability for sexual assault. Implementation of S. 967 would represent the most significant amendment to the UCMJ since 1968, without consideration of the second- and third-order effects on the system. This change would generate legal challenges, confusion and inefficiency. The proposal should be studied by

the Joint Services Committee and the section 576 Response System Panel before such a dramatic change to the UCMJ is directed.

Admiral DERENZI. Commanders currently have the authority to issue Military Protective Orders (MPOs), transfer the alleged perpetrator or order the alleged perpetrator into pretrial confinement when warranted, and conduct an "expedited transfer" of a victim, if the victim so requests. This authority is based upon the commander's responsibility for safety and good order and discipline and is independent of court-martial convening authority and initial disposition authority. Therefore, a commander's authority to issue MPOs or transfer the alleged perpetrator or victim would be unaffected by changes in court-martial process.

General HARDING. Commanders would still retain their inherent authority to command their units. This would include issuing no-contact orders and moving personnel within their unit.

General ARY. In the absence of implementing policies or regulations regarding the implementation of S. 967, the Marine Corps believes that the responsibilities of the commander would remain the same until charges are drafted. The proposal states that the Felony IDA will act "[w]ith respect to charges under chapter 47 of title 10, U.S.C. (the Uniform Code of Military Justice)." However, the proposal is otherwise silent on the procedures prior to "charges" being preferred and after the initial disposition decision. Therefore, the commander would likely proceed as he or she currently does upon receipt of a sexual assault allegation. This includes reporting to NCIS; providing victim advocate and SARCs to the victim; making legal assistance attorneys available to consult with the victim; processing expedited transfer requests; filing a Serious Incident Report to the Commandant of the Marine Corps; filing an 8-day brief to the first general officer in the victim's chain of command; making a pre-trial confinement decision; possibly removing the accused from the command; facilitating the expedited transfer of the victim, if requested; and issuing military protective orders as needed. These actions would all be taken after consultation with the commander's staff judge advocate.

Admiral KENNEY. Yes. It is within the commander's inherent authority to issue military no-contact orders as well as reassign members within their command. Moreover, under the Coast Guard's SAPR Program, a victim of sexual assault will be reassigned if requested by the victim or it is in the victim's best interest and a transfer does not compromise or hamper ongoing investigative activity. Likewise, reassignment of the alleged offender is made when it is in the best interest of the victim and the unit. Reassignment decisions are made in conjunction with the commander, staff judge advocate, CGIS agent, victim advocate, and the victim.

7. Senator LEVIN. General Chipman, Admiral DeRenzi, General Harding, General Ary, and Admiral Kenney, would an accused have a right to be represented by a lawyer before the new disposition authority?

General CHIPMAN. The legislative proposal, S. 967, does not address the right to counsel for an accused before the disposition authority, nor does it define the process for the disposition decision.

Under current policy, an accused soldier may seek the advice of a trial defense attorney at any time during an investigation. Once charges are preferred, if the accused has not already sought the advice of a trial defense counsel, a counsel will be detailed to represent the soldier.

Current statutes, regulations and policies set forth a comprehensive and interconnected set of procedures and responsibilities for multiple first responders, commanders, investigators, and prosecutors that govern the reporting, investigation, victim response and accountability for sexual assault. Implementation of S. 967 that would represent the most significant amendment to the UCMJ since 1968 without consideration of the second- and third-order effects on the system will generate legal challenges, confusion and inefficiency.

Admiral DERENZI. The right to receive advice and representation of counsel would not be affected by legislation requiring a new disposition authority. An initial disposition authority considers investigation reports from the NCIS and, in consultation with a judge advocate, makes an initial disposition decision. Later proceedings require the presence of the accused, counsel, victim, and witnesses; however, the initial disposition determination does not.

Prior to charges being preferred, servicemembers may seek advice from counsel pertaining to their rights during an investigation, Article 15 NJP, administrative proceedings, and court-martial.

The UCMJ requires that defense counsel be detailed to an accused facing charges at general or special court-martial. The right to counsel extends to pre-trial hearings, such as Article 32 investigations. The authority to assign detailed defense

counsel to a particular case rests with the commanding officer of the cognizant Defense Service Office, and not the convening or disposition authority.

General HARDING. It appears an accused would retain the ability to be represented by counsel before the new disposition authority to the same extent he is eligible to be represented by counsel before the convening authority today.

General ARY. The accused's right to be represented by a lawyer before the new disposition authority is not discussed in S. 967. The Marine Corps believes that the accused would maintain the same rights to counsel currently in place for marines charged with violations of the UCMJ. Military defense counsel are assigned to an accused after preferral of charges by the Defense Services Organization. Under Article 27, a military accused has a right to counsel during a special or general court-martial (including an Article 32 hearing). A marine does not have a right to be represented by counsel at NJP, or while any alleged criminal offenses are being investigated by the law enforcement.

Because the new disposition authority is responsible for making an initial disposition decision, based upon a review of law enforcement investigations, the Marine Corps does not believe that an accused would have a right to military a lawyer before the new disposition authority.

Admiral KENNEY. Yes. All accused are entitled to no-cost, independent military defense counsel or may seek civilian counsel. The right to consult with an attorney may be invoked when a servicemember is advised of Article 31(b) rights against self-incrimination. The right to representation by a military defense counsel attaches when charges are preferred against a servicemember.

8. Senator LEVIN. General Chipman, Admiral DeRenzi, General Harding, General Ary, and Admiral Kenney, how many of these new disposition authorities would you need and where would they be located?

General CHIPMAN. The Army estimates that we would need approximately 74 new disposition authorities to ensure the timely and efficient processing of UCMJ actions. The new disposition authorities would need to be co-located with, although not assigned to, the command to allow the military justice process to remain portable, local and visible.

The 74 new disposition authorities would need to be dedicated to this task only given the volume of work. The legislative proposal S. 967 covers offenses under Articles 92 and 118–133 with maximum punishments of more than 1 year in confinement. Army fiscal year 2012 crime statistics indicate that there were 18,945 allegations of unique offenses (committed by 13,816 unique offenders) that would have required review by the new disposition authority.

S. 967 requires that the new disposition authority be outside the chain of command of the member subject to the charges. Presumably, this would disqualify the use of Staff Judge Advocates, who are assigned to the same command as the General Court-Martial Convening Authority, and are currently the advisors to the convening authority on military justice matters. Therefore, a separate 0–6 disposition authority would be required at each of the 74 current General Court-Martial Convening Authorities.

The Army would require new authorizations to fill the new disposition authority positions. S. 967 requires the new disposition authority be an 0–6 colonel with significant trial experience. The Army Judge Advocate General Corps currently has 152 colonels. Of the 152 colonels: 95 colonels would not be eligible to serve as a new disposition authority as they are currently serving as Staff Judge Advocates, military judges, criminal appellate attorneys, or in defense counsel supervisory positions. Of the remaining 57 colonels, 11 colonels are in military professional education schools, 10 Colonels work in DOD positions, and the remaining 36 colonels are assigned to non-criminal law positions. Not all of these Colonels have significant trial experience.

If S. 967 were imposed, the Army would require additional authorizations but would not be able to immediately fill those authorizations with personnel that meet the requirements of S. 967. The Army's potential bridging strategy, to assign existing colonels with significant trial experience as disposition authorities as a collateral duty, would generate inefficiencies and a backlog of cases to be disposed of.[1]

Admiral DERENZI. On April 20, 2012, the Secretary of Defense withheld initial disposition authority from all commanders within DOD who do not possess at least

[1] If an offender is alleged to have committed offenses, some of which fall under the jurisdiction of the new disposition authority and some of which still fall under the jurisdiction of the commander, it is unclear under the new legislation how these offenders would be handled and what Constitutional issues would arise if an offender was subjected to multiple disciplinary proceedings for a single course of misconduct.

special court-martial convening authority and who are not in the grade of O–6 or higher with respect to the following alleged offenses: rape, in violation of Article 120 of the UCMJ; sexual assault, in violation of Article 120 of the UCMJ; forcible sodomy, in violation of Article 125 of the UCMJ; and all attempts to commit such offenses, in violation of Article 80 of the UCMJ. This withholding applies to all other alleged offenses arising from or relating to the same incidents(s), whether committed by the alleged perpetrator or the alleged victim of the rape, sexual assault, forcible sodomy, or the attempts thereof. The SA–IDA must review the investigation into the allegations and consult with a judge advocate before making any disposition decision.

A detailed assessment of any specific proposal to change the current SA–IDA construct would be necessary to determine location and resource requirements.

General HARDING. There were 875 total courts-martial in the Air Force in calendar year 2012 (includes general, special and summary courts-martial). Of those, 330 would have gone to an O–6 JAG convening authority for disposition under the Military Justice Improvement Act. Given this number, we would require 7 disposition authorities and 26 support personnel, for a total of 33. This would allow for the timely review of all cases forwarded to the office. Further, we would likely centralize the office in one location to capture efficiencies in staffing and allow for cases to be shifted from one authority to another if the situation required it.

General ARY. The Marine Corps believes there is a substantial risk that the commander's ability to ensure good order and discipline will be severely limited if the commander is removed from the initial military justice disposition decision in certain cases. The following paragraphs detail the specific resourcing impact that the current proposal would have on military justice in the Marine Corps.

The Marine Corps estimates that in the last 2 fiscal years, under the current proposal to remove the commander from the initial disposition of certain offenses, approximately 82 percent of GCMs and 46 percent of SPCMs would require a disposition decision by the O–6 judge advocate, (Felony IDA). The number of cases that would actually go to trial, however, does not fully represent the number of cases that would require Felony IDA involvement. On average, Marine Corps Legal Services Support Sections (LSSS) receive 2567 requests for legal services (RLS) per year that result in an average of 538 GCMs and SPCMs. That leaves 2029 RLSs that the LSSSs review but that do not end up at a GCM or SPCM. The Marine Corps does not have the ability to accurately count what offenses were initially listed in each RLS, but it is very likely that a significant number of those RLSs initially contained Felony IDA-level offenses that would have required Felony IDA case review and analysis.

The Marine Corps would organize its new Felony IDA offices along a regional construct that aligns with our Legal Services Support Areas (LSSA—East, West, Pacific, and National Capital Region). To implement this requirement, the Marine Corps would place two Felony IDAs within each LSSA, one to handle cases within operational commands (i.e., Marine Expeditionary Force) and one to handle cases within the Marine Corps Installations Command (MCICOM). Two Felony IDAs are needed per region to comply with the requirement in the current proposal for the Felony IDA to not be in the chain of command of the victim or the accused. The total Marine Corps requirement, therefore, would be eight Felony IDAs to handle all cases involving an offense requiring a Felony IDA decision. The existing Regional Trial Counsel (RTC) offices' structure and personnel in each region would provide the Felony IDAs with investigation review, command liaison, and legal research support. Additionally, the Marine Corps would establish the newly required Office of the Chief of Staff on Courts-Martial at Headquarters Marine Corps. This office would serve as a back-up Felony IDA in cases where the regional Felony IDAs were conflicted out (e.g., a MEF accused and an MCICOM victim), and also serve as the GCMCA for deployed military justice cases. This office would be led by an experienced O–6 judge advocate and have a staff of four additional officers, four Legal Services Support Specialists, and one civilian.

The Marine Corps would therefore require an increase of nine additional O–6 billets to meet the Felony IDA requirement. The current colonel LSSS officers-in-charge (OIC) O–6 judge advocates) would remain in place to supervise trial support for cases that do not require GCMCA action, legal assistance, civil law, and review. All GCMCA SJAs would also remain in place because commanders' requirements to have a legal advisor on many different legal issues remain.

The mission placed on the RTC offices to support the Felony IDAs creates a supervisory void for the remaining trial counsel in each region that would handle the non-Felony IDA cases (case analysis/preparation, liaison with the convening authority). The RTC is currently responsible for all training and supervision of these trial counsel. To fill this responsibility, the Marine Corps would need one O–4 judge advocate

in each region (four total) to act as the OIC for the remaining trial counsel in the region, and one O–3 judge advocate per region (four total) to act as the OIC's deputy. Additionally, support staff would be needed for regional GCMCAs that would be appointed under the proposal. Altogether, the Marine Corps estimates the need for 49 additional billets to implement the Felony IDA concept.

Admiral KENNEY. Coast Guard judge advocates currently report to their local chain of command. Because the proposed legislation places judge advocates in a separate and independent entity outside the control of commanders, a detailed examination is required to thoroughly assess the required resources needed and potential geographic locations.

QUESTIONS SUBMITTED BY SENATOR MARK UDALL

REPRISAL

9. Senator UDALL. General Odierno, Admiral Greenert, General Amos, General Welsh, and Admiral Papp, many victims of sexual assault are afraid to come forward for fear of reprisal by lower level commanders or noncommissioned officers (NCO). Part of empowering officers with command responsibilities is to hold them accountable for maintaining good order and discipline. Reprisal or retaliation for victims that come forward is not good order and discipline. What steps need to be taken to truly hold members of a unit, their NCOs, and commanders accountable for retaliation against victims?

General ODIERNO. Retaliation against victims is prohibited under the UCMJ and under Army regulations. Commanders must take a central role in both setting a command climate in which victims feel comfortable reporting and in holding soldiers accountable if they retaliate against a victim, including anyone in the chain of command. Commanders who fail to execute either of these responsibilities will also be held accountable. Since 2009, the Army has relieved 36 commanders for failure to set an appropriate command climate, including issues related to sexual assault and harassment. As the Chief of Staff of the Army, I have made it clear to commanders that, when it comes to taking care of soldiers, the fight against sexual assault and sexual harassment is my number one priority.

Admiral GREENERT. There are eight independent means for victims to bring a complaint of reprisal and/or retaliation against any individual in their chain of command. Specifically, victims may file a reprisal and/or retaliation complaint with (1) the Naval Inspector General (IG), (2) DOD IG, (3) equal opportunity advisor, (4) law enforcement personnel, (5) a Member of Congress, or (6) submit a complaint against their commanding officer under Article 138 of the UCMJ, or (7) raise a complaint against any other superior in the chain of command under Article 1150 of U.S. Navy Regulations, or (8) make an anonymous complaint to an IG Hotline. Complaints brought by victims under any of these alternatives result in an independent investigation and subsequent review by flag officers in the chain of command. If the complaint is substantiated, appropriate administrative or disciplinary action will be taken.

We have a number of means to hold personnel accountable for acts of retaliation against victims. Personnel accused of retaliation may be charged under several different UCMJ articles:

- Article 78 (accessory after the fact)
- Article 92 (failure to obey order or regulation)
- Article 93 (cruelty and maltreatment)
- Article 98 (Noncompliance with procedural rules)
- Article 107(false official statements)
- Article 117 (provoking speech or gestures)
- Article 133 (conduct unbecoming an officer and a gentleman)
- Article 134 (general offense prejudicial to good order and discipline)

In these circumstances, numerous administrative actions will be available, as well.

This is our issue to solve. Commanders are accountable for establishing command climates of dignity and respect, incorporating sexual assault prevention measures into their commands, providing responsive victim support, ensuring all unrestricted sexual assault allegations are promptly reported to NCIS and investigated, and holding offenders appropriately accountable. It is a clear and concise part of the "Charge of Command." This covenant is acknowledged (by signature) by every commander of a Navy unit.

We will continue to focus on providing commanders the appropriate tools to remain effective, accountable leaders, and hold these commanders accountable for the safety and well being of the sailors under their command.

General AMOS. A commander's responsibility for his or her command is absolute until the commander is relieved of responsibility by their chain of command. Ultimately, the most practical service-driven administrative tool for holding commanders accountable is the ability to relieve him or her from command due to a loss in confidence. This action is immediate and final.

Commanders receiving a reprisal allegation against a member of his or her command shall fully investigate the matter and take appropriate administrative or punitive action under the UCMJ. There are also multiple reporting mechanisms that allow victims to report upon members in their chain of command. A marine may file an IG complaint, which may be anonymous to avoid the possibility of reprisal. In addition, the Military Whistleblower Protection Act (10 U.S.C. § 1034) also protects victims from reprisal as a result of communications to Congress or the IG. In response to a complaint, the IG, would direct an investigation into the matter and recommend appropriate punitive or administrative action.

Victims may additionally submit a Complaint of Wrongs under Article 138 of the UCMJ, which requires redress if a commanding officer wronged a victim. If the commanding officer refuses to redress the wrong, the victim can forward the complaint to the next officer exercising general court-martial convening authority. Finally, if any retaliation negatively impacted the victim's records, the victim may petition the Board for Correction of Naval Records, which has authority to remove injustices from current and former victim records.

General WELSH. The UCMJ provides tools for commanders to maintain good order and discipline and hold their airmen accountable. We expect our commanders to create a respectful and professional environment where every airman can maximize their potential to meet our mission requirements. When this does not occur, we hold commanders appropriately accountable, as we have done in the past and will continue to do so in the future. We do so utilizing a wide range of available administrative and disciplinary options.

The statistical data provides a number of reasons that cause victims not to report, and we are pursuing lines of effort to address those concerns. From the 2012 Workplace & Gender Relations Survey of Active Duty Members, of the 67 percent of women who did not report, the reasons in 2012 were:

Reason	DOD (percent)	Air Force (percent)
Did not want anyone to know	70	79
Felt uncomfortable making a report	66	73
Did not think their report would be kept confidential	51	NR
Did not think anything would be done	50	NR
Thought they would be labeled a troublemaker	47	40
Were afraid of retaliation/reprisals from the person(s) who did it or from their friends	47	NR
Heard about negative experiences other victims went through who reported their situation	43	NR

NR = Not reportable due to low reliability as the number of responses were too low to provide a statistically relevant amount.

Additionally, the Air Force contracted Gallup in 2010 to study the barriers to reporting and broke the data out by gender and type of criminal act to better target our efforts. The Air Force will conduct a follow-on survey in fiscal year 2014 to evaluate against the 2010 baseline. Table 12 from the Findings from the 2010 Prevalence/Incidence Survey of Sexual Assault in the Air Force is included below:

Table 12. Barriers to Reporting by Gender and Type of Act

	Women			Men		
	Sexual Contact	Oral or Anal Sex	Sex Act	Sexual Contact	Oral or Anal Sex	Sex Act
Did not want superiors to know	45.6%	50.1%	58.9%	31.5%	43.0%	36.1%
Did not want fellow Airmen to know	49.9%	50.4%	63.4%	34.8%	43.0%	39.6%
Did not want to cause trouble in your unit	46.4%	32.5%	48.3%	32.1%	17.1%	27.2%
Did not want family to know	37.2%	50.1%	54.0%	29.7%	40.0%	39.8%
Lack of proof that incident happened	49.5%	47.2%	53.9%	34.5%	23.9%	41.2%
Fear of being treated badly	42.7%	39.2%	49.7%	27.4%	33.8%	30.3%
Not clear it was a crime	40.1%	38.7%	37.0%	39.1%	22.5%	45.1%
Did not know how to report	12.5%	11.6%	13.2%	8.6%	13.1%	8.4%
Afraid it would happen again	25.0%	23.0%	29.2%	14.7%	14.9%	8.4%
Did not think it was serious enough to report	58.1%	50.6%	43.2%	63.3%	57.2%	63.2%
Did not trust reporting process	23.4%	27.7%	29.0%	19.9%	20.1%	12.1%
Concern over protecting identity	31.2%	37.2%	43.7%	23.6%	35.3%	24.4%

SARCs and Victim Advocates brief victims in their care to let them know immediately if the victims feel reprisal. Should this occur, the victim will be advised to file a complaint with the IG in person, on-line, or through the 1–800 number. The IG will investigate and the parties will be held accountable. Additionally, as of February 2013, we have enhanced our SAPR training programs to include educating our Commanders and Senior Enlisted about biases and helping victims of trauma to heal. These lessons will help immensely with giving our leadership the tools they need during the turbulence of an assault in their unit and to increase the trust that the victims have in the entire process.

Admiral PAPP. The Military Whistleblower Protection Act, 10 U.S.C. § 1034, prohibits any person from taking, withholding, or threatening any personnel action against a member of the Armed Forces as reprisal for making or preparing any protected communications. A protected communication is any lawful communication to a Member of Congress or an Inspector General, as well as any communication made to a person or organization designated under competent regulations to receive such communications, which a member of the Armed Forces reasonably believes reports a violation of law or regulation, including sexual assault, sexual harassment, unlawful discrimination, gross mismanagement, a gross waste of funds, an abuse of authority, or a substantial or specific danger to public health or safety.

The Coast Guard Whistleblower Protection Regulation, 33 C.F.R. Part 53, establishes policy and implements Title 10 U.S.C. § 1034 to provide protections against reprisal to members of the Coast Guard.

Reprisal occurs when a responsible management official takes or threatens to take an unfavorable personnel action, or withholds or threatens to withhold a favorable personnel action against a member of the Coast Guard because he or she made or was preparing to make a protected communication. A personnel action is any action taken against a member of the Coast Guard that affects or has the potential to affect that member's current position or career. Examples would include: performance evaluations, transfer or reassignment, changes to duties or responsibilities, disciplinary or other corrective actions, denial of reenlistment, decisions concerning awards, promotions or training, decisions concerning pay or benefits, referrals for mental health evaluations, access to classified material, and authorization to carry weapons.

Retaliation for reporting any UCMJ offense, whether it's the alleged offender, NCOs or anyone else within the command will not be tolerated. Victims of sexual

assault who experience retaliation are encouraged to report the retaliation to their supervisor, Chain of Command, Victim Advocate, SARC, or Special Victim Counsel.

Members who retaliate against a victim of sexual assault may be held accountable in a number of ways.

First, every military member—officer and enlisted—receives employee evaluations. To the extent the individual has failed to perform their expected duties—either negligently or willfully—that failure in performance or conduct will be captured in their evaluation. Members who take retaliatory action against a victim would receive poor evaluations, which have a range of negative career consequences such as: failure to promote, prohibitions on attending training, and failure to be selected for command cadre positions.

Second, members in command may be relieved for cause.

Third, in the case of officers, retaliation may be serious enough to warrant a Board of Inquiry to determine whether that officer should be separated from active duty. Similarly, enlisted personnel may be separated from the Service through an administrative board process.

Last, if after a thorough investigation, there is probable cause to believe that a servicemember has committed an offense under the UCMJ, that member could face NJP or, if the offense is more serious, trial by court-martial.

OPPORTUNITIES FOR WOMEN

10. Senator UDALL. General Odierno, Admiral Greenert, General Amos, General Welsh, and Admiral Papp, do you believe that opening up all military occupations and specialties to women would help end the sexual assault crisis?

General ODIERNO. The Army's approach to expanding positions and occupations to women includes reinforcement training on equal opportunity and sexual harassment and assault prevention and response. The feedback received from opening the maneuver battalion headquarters in nine Brigade Combat Teams indicates this training was effective in men and women treating each other with dignity and respect. The expansion of opportunities will enable our soldiers to develop and maintain professional relationships and, to the extent that this will contribute to the culture change the Army needs, it could potentially contribute to a reduction in sexual assaults.

Admiral GREENERT. The Navy supports the Secretary of Defense's decision to open all occupational specialties to women. Within the Navy, we have already opened 88 percent of our billets to women so it is very difficult to speculate that opening additional billets to women will, by itself, end sexual assault in our Navy. We believe addressing command climate, accompanied by specific actions directed at the safety and security of our sailors, will decrease the incidence of sexual assault in the Navy.

General AMOS. In 2012, the Marine Corps implemented its "Exception to Policy (ETP)." Since that time, approximately 463 job opportunities for female officers and staff NCOs have opened in previously closed units with open Military Occupational Specialties (ex. assignment of a female supply officer to a tank battalion). Since repeal of the Secretary of Defense policy excluding women from combat positions, the Marine Corps has continued to refer to these assignments as the ETP. Due to the success of the ETP program, the Marine Corps plans on expanding the ETP to include Marine NCOs at all closed units except for infantry and infantry-like units this fall. Since the implementation of the Marine Corps' ETP program, the Marine Corps has not received any correlative data that supports a relationship between opening previously closed units to women and its impact on the sexual assault statistics. It is too early to tell how changes in the assignment process will impact sexual assault rates in the Marine Corps.

General WELSH. Sexual Assault is not based on military occupation. Sexual assault is a crime of power, disrespect and control. Women have been in combat for years. Seeing women in more combat jobs could cause an overt recognition of their equal skill sets, but I do not believe it alone will hasten cultural change. It is one piece of a multipronged approach to changing biases and preconceived notions.

Admiral PAPP. All military occupations and specialties within the Coast Guard are open to women.

11. Senator UDALL. General Odierno, Admiral Greenert, General Amos, General Welsh, and Admiral Papp, if women are allowed to serve in all occupations and in units currently closed to them, would that speed up the cultural change necessary to end this crisis?

General ODIERNO. The Army's approach to expanding positions and occupations to women includes reinforcement training on equal opportunity and sexual harass-

ment and assault prevention and response. The feedback received from opening the maneuver battalion headquarters in nine Brigade Combat Teams indicates this training was effective in men and women treating each other with dignity and respect. The expansion of opportunities will enable our soldiers to develop and maintain professional relationships and, to the extent that this will contribute to the culture change the Army needs, it could potentially contribute to a reduction in sexual assaults.

Admiral GREENERT. We currently have 88 percent of our billets open to women. I cannot predict if the additional 12 percent of billets will bring about a cultural change to reduce sexual assaults. We believe assuring a safe environment and command climate of dignity and respect, accompanied by specific actions directed at the safety and security of our sailors, will decrease the incidence of sexual assault in the Navy.

General AMOS. We do not have any data that suggests integrating women into previously closed units or Military Occupational Specialties has any effect on sexual assault rates in the Marine Corps. However, we are actively monitoring this transition for any relevant trends as we further integrate female marines into Military Occupational Specialties and units that were previously closed to them.

However the following is the list of what we have done to speed up the changes necessary to fight sexual assault:

- Delivered over 25 CMC briefings to all officers and staff NCOs across 3 continents
- Issued three formal letters to all marines addressing with them sexual assault, leadership, and command climate concerns of the Commandant of the Marine Corps
- Held a leadership summit for all commanding generals, commanding officers, and senior enlisted advisors
- Conducted a 2-day SAPR General Officer Symposium
- Conducted a Sergeants Major Symposium with all Senior Enlisted Advisors across the Corps
- Conducted standardized enterprise-level training for all marines across the force
- Produced and distributed three videos on sexual assault prevention by CMC and the Sergeant Major of the Marine Corps
- Created a CMC command climate survey conducted within 30 days of a commandeer assuming command; this tool has already proven effective in stamping out toxic leadership
- Published all courts-martial results on www.marines.mil accessible to all marines in furtherance of general deterrence
- Implemented "Take a Stand" bystander intervention training, identified as a service-wide best practice
- Implemented Ethical Decision Scenarios to promote healthy and candid small group conversations about prevention at the smallest unit level
- Established Sexual Assault Response Teams (SART) coordinated by the Marine Corps Installations SARC and made up of the following personnel: NCIS investigator, CID military police officer, SARC/Victim Advocate, Judge Advocate/Trial Counsel, and a mental health services representative and Sexual Assault Forensic Examiner.
- For those installations where an immediate SART response capability is not available, the SART includes community representatives, local law enforcement, rape crisis centers, district attorneys, Federal task forces, existing civilian SARTs, or nongovernmental organizations specializing in sexual assault
- All SAPR personnel now receive 40 hours of focused sexual assault advocacy training and go through an accreditation process administered by the National Organization for Victim Assistance (NOVA)
- Added 47 new full-time civilian SARCs and VAs and nearly 1,000 collateral duty SARCs and Uniformed Victim Advocates (UVAs)
- 24/7 help-lines
- SECNAV has authorized the addition of 50 additional NCIS agents
- Reorganization of the entire Marine Corps Judge Advocate community to include establishment of Complex Trial Teams supervised by Regional Trial Counsel (a Lieutenant Colonel with significant litigation experience)
- Embedded CID agents and Highly Qualified Experts (HQEs) within Regional Complex Trial Teams
- Continue to utilize the Defense Equal Opportunity Management Organization Climate Survey (DEOCS)

- Implemented of the CMC Command Climate Survey taken within 30 days of a commander assuming command

General WELSH. Cultural change takes time. While there is no single cure, no magic bullet to fixing sexual assault, creating an environment of dignity and respect is imperative to improving the Air Force culture. Women have been in combat for years, and seeing women in more combat jobs could cause an overt recognition of their equal skill sets, but I do not believe it alone will hasten cultural change. It is one piece of a multipronged approach to changing biases and preconceived notions.

Admiral PAPP. Women officer and enlisted personnel are not restricted from any military occupation and/or from serving at any Coast Guard unit. However, there are some afloat units (cutters) that cannot accommodate women onboard because they do not have berthing areas that are segregated to allow for males and females to have the necessary privacy.

HEALTH CARE OPTIONS

12. Senator UDALL. General Odierno, Admiral Greenert, General Amos, General Welsh, and Admiral Papp, the Government Accountability Office (GAO) issued a report of January 29, 2013, that found military health providers do not have a consistent understanding of the responsibilities associated with caring for sexual assault victims. The report also noted that many health care providers do not understand what restricted sexual assault reporting entails or what is expected of military health care providers in those cases. What has been done since the GAO report was issued to address this shortcoming and how will you commit to ensuring that all military health care providers have received this essential training?

General ODIERNO. After the January 2013 GAO–13–182 report was published, the DOD released DOD Instruction (DODI) 6495.02, Sexual Assault Prevention and Response Program Procedures, 28 March 2013, which includes two medical enclosures addressing healthcare provider procedures and responsibilities. This policy clearly delineates restricted and unrestricted reporting options and the procedures associated with each option. DOD concurred with the GAO report recommendation to take steps to improve compliance with completing annual refresher training on sexual assault response and prevention.

The U.S. Army Medical Command follows DOD policy guidance requiring all personnel assigned to the Military Treatment Facility (MTF), to include healthcare providers involved in the direct or indirect delivery health services or patient care, to receive initial and annual refresher Sexual Assault Prevention/Response Training. This training specifically explains the difference between "Reporting Information for Restricted and Unrestricted Options."

The Army Medical Command is currently updating Regulation 40–36 (21 Jan 2009), Medical Facility Management of Sexual Assault, to implement DODI 6495.02. This regulation will set the appropriate standards for how Army healthcare providers will respond to sexual assault patients. Sexual assault medical information is maintained in accordance with current Health Insurance Portability and Accountability Act (HIPAA) guidelines regardless of whether the victim elects Restricted or Unrestricted reporting. Improper disclosure of covered communications and improper release of medical information are prohibited and may result in disciplinary actions under the UCMJ, loss of credentials, or other adverse personnel or administrative actions.

Admiral GREENERT. The Navy is committed to providing quality medical care to victims of sexual assault. All Navy Military Treatment Facilities will have the sexual assault medical-forensic examination (SAFE) capability no later than September 30, 2013. This certification includes reporting procedures. Additionally, we have established and are enforcing training requirements for all healthcare providers that conduct SAFE exams. These training requirements are tracked on a weekly basis and include:

- A patient-centered medical-forensic examination covering the patient interview, evidence collection and analysis, survivor experiences, pre-trial preparation and court testimony as a factual witness.
- Navy specific training, including restricted and unrestricted reporting and the policy guidance on both.

Finally, we conduct competency assessments for non-licensed independent practitioners (Registered Nurses and Independent Duty Corpsmen).

General AMOS. Navy personnel assigned to Marine Corps units are required to participate in annual SAPR training that emphasizes the differences between restricted and unrestricted reporting. General health care personnel receive initial

and annual refresher training on the following essential training tasks: sexual assault response policies for DOD, DON, as well as DOD confidentiality policy rules and limitations; victim advocacy resources; medical treatment resources; sexual assault victim interview best practices; and overview of the sexual assault examination process. In addition, all health care personnel are required to familiarize themselves with local military treatment facility SAPR policies and procedures.

General WELSH. The March 2013 update to Department of Defense Instruction (DODI) 6495.02 outlined new requirements for "First Responder Training for Healthcare Personnel." This training is required in addition to all other DOD and Air Force-directed SAPR training. The training specifically targets the knowledge and skills required to provide appropriate care and support to sexual assault victims.

"First Responder Training for Healthcare Personnel" is required by DODI 6495.02 on an annual basis and Healthcare Providers are among those required to take this training. The number of Air Force Healthcare Personnel who completed "First Responder Training for Healthcare Personnel" jumped from 6,000 in 2010 to greater than 24,000 in 2012. The Air Force Medical Service will continue to capitalize on this successful training venue, developing revisions and placing additional emphasis on key areas of concern as those needs occur. Revisions to existing training have been submitted with a targeted release date of July 2013. The revision focuses on enhancing healthcare personnel understanding of critical areas of concern: the DODI 6495.02 update heightened emphasis on Restricted Reports, the role of the SARC, victim privacy, and penalties for violation of patient confidentiality and privacy.

In fiscal year 2014 the Air Force Medical Operations Agency Mental Health Division will fund the development of a computer-based training module to provide additional training for all Air Force mental health providers involved with the mental health treatment of survivors of sexual assault and trauma. The estimated completion date is February 1, 2014.

Air Force Instruction (AFI) 44–102, Medical Care Management, Chapter 16.5, is the governing AFI for SAPR clinical program management. Significant revisions regarding provider training were made to this Instruction in January 2012. Further revisions have also been submitted to expand the list of strategic tools that Healthcare Providers are required to be familiar with and requires those tools to be readily available to Healthcare Providers. The strategic tools referenced include: the U.S. Department of Justice, "A National Protocol for Sexual Assault Medical Forensic Examinations, Adults/Adolescents," Office on Violence Against Women, April 2013; DODI 6495.02, SAPR Program Procedures, 28 March 2013; and AFI 36–6001, SAPR. Web links for these references are also provided in the instruction.

With this amplified emphasis on critical training information, nodes and resources, Air Force Healthcare Personnel and Providers have the foundation to understand the complexities of providing healthcare to the sexual assault victim. To monitor progress and compliance of this program, many of the changes noted here are being added as Unit Effectiveness Inspection items that require Air Force Medical Treatment Facility Executive Staff oversight and will be monitored under the new Air Force Inspection System.

Admiral PAPP. Mandatory all hands training was conducted in April 2013 at every unit (including medical facilities) to reinforce the policies and procedures regarding the report of sexual assault cases. In addition, the Coast Guard Director of Health and Safety Directorate (CG–11) tasked the Coast Guard Health, Safety, and Work Life Service Center (HSWL SC) with oversight of a mandatory sexual assault drill at every Coast Guard HSWL regional practice site during the month of April. Confirmation was received prior to the end of the month that all facilities had complied, as well as that they had completed the Coast Guard-wide General Mandatory Training (GMT) on the subject.

The Coast Guard Operational Medical Division (CG–1121) and CG–111 are currently in the process of updating Section 6.J. of the SAPR Program Instruction governing the role and responsibilities of Medical Officers (MO) and Health Care Providers (HCP) in the Coast Guard when caring for a victim of sexual assault. This revision will clarify the importance of qualified personnel performing forensic examinations, the duty of MO and HCP to fully inform the victim of Restricted vs. Unrestricted Reporting options, and the duty to provide care to the victim even if not performing the forensic examination (consistent with the principles of the Patient Centered Wellness Home).

SEXUAL ASSAULT RESPONSE COORDINATORS

13. Senator UDALL. General Odierno, Admiral Greenert, General Amos, General Welsh, and Admiral Papp, would you consider making victim's advocates and SARCs competitive assignments selected by senior leaders though a board selection process?

General ODIERNO. We are assessing all means to ensure we select the best people for these positions. On May 28, 2013, the Secretary of the Army directed the Assistant Secretary of the Army (Manpower and Reserve Affairs) to establish a department-wide working group "to explore other options for ensuring the qualifications and suitability of, and incentivizing service as, a SARC or SAPR victim advocate to ensure that the best-qualified and most suitable individuals seek out and are selected for service in these positions." The group's recommendations will be provided to the Secretary of the Army not later than October 31, 2013.

Admiral GREENERT. Navy has been very successful in applying a competitive selection process to hire highly-qualified civilians for full-time SARC and victim advocate positions, pursuant to section 584 of Public Law 112–81 (National Defense Authorization Act (NDAA) for Fiscal Year 2012). In each case, a selection committee reviews applicant qualifications for each position, interviews the most highly-qualified applicants and forwards a recommendation to the selecting official, who, in most cases, is the installation commanding officer or region commander. Command victim advocates who perform this as a collateral duty are selected by the unit commanding officer based on recommendations from his leadership team. These military personnel are trained and certified by the full-time civilian installation SARC and victim advocates.

General AMOS. The selection process we have in place is rigorous and designed to ensure that knowledgeable advocates are present everywhere throughout the Marine Corps. A central role of the commander includes selecting and appointing all SARCs and UVAs. The minimum qualifications for SARCs include a 4-year degree in behavioral health or social science and 4 years of experience that demonstrates acquired knowledge of behavioral health or social science equivalent.

SAPR victim advocates are selected based on their proven ability to provide direct support to individuals or groups experiencing victimization, or an appropriate combination of education and experience that demonstrates possession of this knowledge. In particular, SAPR victim advocates must be able to utilize intervention strategies to stop victimization, reduce incidences of re-victimization, and work effectively within a multi-disciplinary environment during crisis situations.

Commanders are required to select UVAs from the rank of sergeant or higher. Candidates must not have any adverse fitness reports, history of sexual harassment or sexual assault allegations, courts-martial, drug-related incidents, domestic violence allegations, or referrals to the command-directed Family Advocacy Program. Additionally, UVA candidates must not have any NJPs or alcohol-related incidents within the last 3 years. All SAPR personnel must be credentialed by the National Organization of Victim Assistance, which requires the completion of a 40-hour specialized advocacy training program and 16 hours of continuing education annually.

General WELSH. Yes. The Air Force SAPR Office would consider making SARCs and victim advocates competitive assignments selected by senior leaders through a board selection process.

The Air Force may either conduct a board selection process or the Personnel Officer Developmental Team may conduct the selection of military SARCs. The full-time civilian victim advocates and civilian SARCs are currently selected through the Air Force civilian hiring process. We can also explore options to modify this hiring process, as long as those changes are compliant with law and the Office of Personnel Management regulations.

Admiral PAPP. No, Coast Guard victim advocates are volunteers and are therefore personally motivated to assist sexual assault victims and help with prevention efforts. Coast Guard SARCs are competitively hired GS–12s and the majority are mental health providers.

14. Senator UDALL. General Odierno, Admiral Greenert, General Amos, General Welsh, and Admiral Papp, how can the personnel culture be changed so that these are highly sought after and competitive assignments?

General ODIERNO. We are actively exploring this important personnel assignment issue. On May 28, 2013, the Secretary of the Army directed the assistant Secretary of the Army (Manpower & Reserve Affairs) to establish a department-wide working group "to explore other options for ensuring the qualifications and suitability of, and incentivizing service as, a SARC or SAPR victim advocates to ensure that the best-qualified and most suitable individuals seek out and are selected for service in these

positions." The group's recommendations will be provided to the Secretary of the Army not later than October 31, 2013.

Admiral GREENERT. By opting to fill statutorily-required SARC and victim advocates positions with civilian employees, we are identifying the most highly-qualified applicants who have a genuine desire to make a difference in this area, and who are fully focused on SAPR, without distractions from competing military priorities. Significant emphasis is placed on the importance of these positions in the Navy SAPR program, and we have designed a career path to foster progression from victim advocates to installation SARC to regional SARC, as assigned personnel gain experience and training. Our goal is to establish and foster a dedicated and highly qualified cadre of SAPR Program professionals who we can retain by providing opportunities for training, experience, and growth through a rewarding career path and upward mobility.

General AMOS. Commanders play the largest role in preventing sexual assault and holding offenders accountable and our command screening process is highly competitive. Our Commanders understand that if he or she fails to gain the trust and confidence of his or her marines in garrison; he or she will be unsuccessful in leading them in combat. Marine commanders also recognize that command climates where sexual assault is tolerated have no place in today's Marine Corps. If a commander fails to adequately address sexual assault in his unit, he or she will be relieved of their command.

The requirements for assignment as a SARC are strict and intended to result in the assignment of the most qualified personnel. Two types of SARC assignments are available, Installation SARCs and Command SARCs, the most prestigious of which is the Installation SARC. Installation commanders are required to appoint an Installation SARC and Installation SARCs shall be full-time civilian employees who must undergo a highly selective and competitive hiring process. Command SARCs will be uniformed officers of the rank of O–4/Major and above or Chief Warrant Officer 3 through Chief Warrant Officer 5. Therefore the Command SARCs have served between 10 and 30 years in the Marine Corps. To put this in perspective, a typical Marine Corps combat arms battalion has only two majors assigned to the unit—the executive officer and the operational officer—who serve as second and third in command of the unit. As a result, SARCs are only assigned to highly qualified and trained civilian personnel at the installations or to a representative of the command deck, all highly sought after and competitive assignments.

General WELSH. The personnel culture can be enhanced by making this a competitive and nominative process for military officers and civilians, while emphasizing to commanders that they "push" their most outstanding officers for these SAPR jobs. Only officers with the maturity, demeanor, and compassion to lead this vitally important mission should be considered. Officers selected for SARC positions will be expected to quickly develop the knowledge and skills we expect from our applicants for civilian SARC positions. Civilians should have knowledge of laws, regulations, executive orders, and a wide range of social work principles and have the ability to recommend and/or implement solutions for improvements. In addition, advertising the nomination criteria across the Air Force via commander's calls, base newspapers, Air Force Times, civilian personnel and USAJobs will help keep leadership informed on the opportunities to serve in SAPR positions. The key to recruitment is command emphasis and desirable follow-on assignments that provide upward development and acknowledge this career field.

Admiral PAPP. These positions are already highly sought after and competitive.

QUESTIONS SUBMITTED BY SENATOR JOE DONNELLY

SEXUAL ASSAULT AND SUICIDE PREVENTION

15. Senator DONNELLY. General Dempsey, General Odierno, Admiral Greenert, General Amos, General Welsh, and Admiral Papp, sexual assault has been found to increase the risk for death by suicide by as much as 14 times for female victims compared to women who have never been assaulted, even after controlling for psychiatric diagnoses present prior to the assault. According to results of a new study by researchers at the University of Utah, military personnel have experienced increased risk of suicidal thoughts or actions if they were the victims of physical or violent sexual assault as adults. How does the current system respond to the psychological needs of a sexual assault victim and are there specific suicide prevention trainings and/or discussions with a victim?

General DEMPSEY. Our immediate concern is to ensure victims of sexual assault receive timely access to comprehensive medical and psychological services. Medical

practitioners are required to assess the sexual assault victim's need for behavioral health services and make provisions for a referral, if necessary or requested by the victim. If it is determined that a victim is at risk for suicide, appropriate care will be provided and prevention/intervention measures will be implemented. The Department is working hard to encourage victims of sexual assault to get the treatment and counseling they need or desire. Victims are offered trauma counseling and receive assistance to help during the healing and recovery process. Behavioral health services remain available to all servicemembers at any time of need.

General ODIERNO. Sexual assault patients are given priority in military medical treatment facilities and treated as emergency cases regardless of whether physical injuries are evident. Patients' needs are assessed for immediate medical or mental health intervention regardless of their behavior because when severely traumatized, sexual assault patients may appear to be calm, indifferent, jocular, angry, emotionally distraught or even uncooperative or hostile towards those who are trying to help. By ensuring sexual assault victims receive sensitive care and support and are not revictimized as a result of reporting the incident, many of the factors that lead to suicidal ideation may be averted. Soldiers are entitled to continuing no-cost medical care, to include behavioral health care.

Admiral GREENERT. The mental health care of sexual assault victims is a priority within the Navy. When a sexual assault is reported, the command Victim Advocate is notified immediately and care is provided with the same priority as other emergency health care. Victim Advocates are in contact with trained mental health providers who are available at all Navy Medicine sites to treat trauma-related psychological health issues. Treatment is available on an outpatient basis for any sexual assault victim who desires such care.

Trained mental health providers are also located within our primary care settings as part of the Navy's Behavioral Health Integration Program (BHIP). This program is available at 26 Navy Medicine primary care clinics today and will be available at all 69 primary care clinics with patient populations greater than 3,000 by the end of fiscal year 2016. By placing trained mental health providers in a primary care setting, BHIP helps remove much of the stigma that is associated with mental health care, which can be particularly important for victims of sexual assault.

We recognize that servicemembers who have experienced traumatic events are at heightened risk for behavioral health problems, and may, in turn, be at a higher risk for suicide. In light of this, Navy Medicine policies provide detailed guidance for the evaluation and disposition of all patients presenting with suicidal ideation, regardless of the type of event that may have precipitated these suicidal thoughts. We seek to ensure that all potentially suicidal servicemembers are identified and encouraged to seek care. This is done by training health care providers in the screening and assessment of suicidal patients, and through the application of counter-stigma and bystander intervention practices that encourage all patients with suicidal thoughts to seek help.

General AMOS. SAPR personnel are required to inform sexual assault victims of all available medical, mental health, and counseling resources. If an urgent concern for the victim's well-being is identified, SAPR personnel will immediately notify medical services. Additionally, support is available via our online DSTRESS Line or our toll-free line. These resources are available to marines, attached sailors, and their family members, providing "one of their own" to speak with about whatever challenges they may be facing, including thoughts of suicide.

The Military Healthcare System provides a full spectrum of care for sexual assault victims. If a victim goes to an emergency room for care, either the emergency physician assesses the need for immediate mental health consultation (e.g. thoughts of suicide) or the patient requests care. If mental health support is not needed immediately, the victim is advised before discharge from the emergency room that mental health support is available. This support ranges from support provided by the victim's primary care provider, with consultation from a mental health specialist, through outpatient care, to inpatient hospitalization as needed. Suicide is addressed as part of an overall course of assessment and treatment is tailored to each patient on a case by case basis. Suicide prevention awareness and prevention training is integrated throughout the Marine Corps.

Additionally we have implemented the requirement for Commander's to complete an 8-day SAPR Brief for use as a comprehensive checklist to ensure victims receive support services within the first 8 days following the initial report. The 8-day SAPR Brief is forwarded to the first O–6 in the chain of command or next General Officer in the chain of command if the Commander is an O–6. The 8-day SAPR brief is an enforcement mechanism that holds Commanders accountability for caring for victims of sexual assault. As part of the checklist, Commanders ensure victims receive medical treatment, access to counseling and Chaplain services, and assignment to

a Uniformed Victim Advocate or Victim Advocate. The SAPR 8-day brief is recognized as a DOD best practice, and serves as an additional tool in suicide prevention.

General WELSH. The Air Force responds to the psychological needs of sexual assault victims through medical care, victim advocates, and SARCs. SARCs are trained to recognize and work with people who have experienced trauma. SARCs also receive specific training to work with victims of sexual assault. The training includes education on individual and cumulative risk factors for suicide and identifying both indirect and direct suicidal warnings signs. In addition, sexual assault victims are assigned a victim advocate who receives Air Force-mandated annual training on suicide prevention. The Air Force does not have specific suicide prevention training for victims, but offers sexual assault victims mental health services. For those victims who seek mental health services, mental health providers follow The Air Force Guide to Managing Suicidal Behavior when assessing for suicide risk. Additionally, the Air Force requires annual training on the Air Force Guide to Managing Suicidal Behavior in accordance with Air Force Instruction 90–505. Some airmen may not choose to report an incident of sexual assault; however, commanders and supervisors have a duty and responsibility to monitor all airmen in their units for signs of suicidal tendencies and behavior.

All Air Force personnel receive annual suicide prevention training, including victims of sexual assault, SARCs and victim advocates. Annual suicide prevention training is carefully crafted to: (1) educate on suicide risk factors and warning signs using the Ask, Care, Escort (ACE) model; (2) provide an overview of available resources; (3) attempt to reduce barriers to help seeking; and (4) promote responsible help-seeking behaviors.

Admiral PAPP. Coast Guard SARCs are also trained as Employee Assistance Program Coordinators (EAPC) and are fully aware of all the services available through both the Coast Guard SAPR Program and EAP to assist with the psychological needs of victims.

ADMINISTRATIVE SEPARATION AND ACCRUAL OF VETERANS' BENEFITS

16. Senator DONNELLY. General Dempsey, S. 548, the Military Sexual Assault Prevention Act of 2013, requires the administrative separation of any member of the military who is convicted of rape, sexual assault, forcible sodomy, or an attempt thereof. Do you support the requirement to discharge any servicemember convicted of sexual assault?

General DEMPSEY. Yes, I support requiring administrative discharge for individuals convicted of the most serious sexual offenses, including rape, sexual assault forcible sodomy, or attempts to commit those offenses. All Services currently mandate that individuals who have been convicted of serious offenses, including sexual assault, and who have not already received a punitive discharge, be processed for administrative discharge.

17. Senator DONNELLY. General Dempsey, if a servicemember is administratively separated from service, what veterans' benefits accrue?

General DEMPSEY. A servicemember's veterans' benefits are based on the characterization of the administrative discharge he or she receives. There are three characterizations: honorable, general (under honorable conditions), and under other than honorable conditions. Both current laws and Department of Veterans Affairs regulations restrict the most important veterans' benefits to those servicemembers who receive an honorable or general discharge. However, each individual agency, State, or awarding entity oversees its own application of these benefits.

18. Senator DONNELLY. General Dempsey, in your opinion, should a servicemember discharged for a sexual offense be allowed veterans' benefits?

General DEMPSEY. If a servicemember receives a punitive discharge at court-martial, or a less-than-honorable administrative discharge, stemming from a sexual assault, that individual will only receive those benefits allowed by law. The current law Reserves the most important veterans' benefits to those personnel who receive an honorable or general discharge.

QUESTIONS SUBMITTED BY SENATOR MAZIE K. HIRONO

SEXUAL ASSAULTS IN THE MILITARY

19. Senator HIRONO. General Dempsey, General Odierno, Admiral Greenert, General Amos, General Welsh, and Admiral Papp, DOD has been trying to work on the

issue of sexual assault for a significant period of time. DOD established the SAPR program in 2005. I am interested in your thoughts as to why we are still where we are today in terms of this terrible crime in the military. What have been the biggest hurdles and what has to be changed to stamp out this terrible crime which hurts our military in so many ways and what is most important in terms of fixing it as we move forward?

General DEMPSEY. Since 2005, while we have taken deliberate steps to better understand, identify, and reduce predatory and high-risk behaviors which can lead to sexual assaults, our efforts have focused more specifically on victim response. Our renewed commitment, as published in the Joint Strategic Direction to the Force in May 2012, emphasizes a balanced approach. Our biggest hurdles continue to be: (1) our ability to preserve a culture of trust and respect consistent with our core values; and (2) to create and maintain an environment where those predatory and high-risk behaviors that precede sexual assault are not tolerated. As leaders, we must not tolerate a climate that could be perceived as complacent towards sexual harassment or assault. When confronted with a case of assault, we must be aggressive in our pursuit of justice to hold offenders appropriately accountable and continue to build a support system. In order to hold offenders and leaders at every level appropriately accountable, victims must report inappropriate sexual behavior. We all must identify ways to improve our ability to prevent and respond to sexual assault.

General ODIERNO. I think the biggest hurdle has been the fact that we have been an Army at war for almost 12 years, with all the stress and strain that entails. Sexual assault is a national problem, and the Army is not immune from the larger culture. However, because ours is an institution based on discipline and trust, the Army has a special responsibility to make sure we get this right. Sexual harassment and sexual assault are antithetical to our Army values—what has to change is a culture that has been evolving over time, but too slowly. We must and will create a positive command climate built on trust and respect in which every person is able to thrive and achieve their full potential. Leaders must take action to establish and sustain standards at every level and take steps to create a positive command climate. Every soldier must believe that when an incident of sexual assault or harassment is reported, that the chain of command will respond quickly to protect the victim and hold the perpetrators accountable.

Admiral GREENERT. Our most significant hurdle is sustaining the changes needed to eliminate sexual assault within the force while bringing in approximately 40,000 new sailors each year. Every 4 years, we effectively replace half of our workforce. The result is a constant cycle of indoctrinating new sailors into a system of core values that may or may not reflect the values they brought with them upon entering the Service.

The most important and effective mechanism for sustaining change with this constant influx of new personnel is creating climates of professionalism, respect, and core values at the individual command level. At the command level, we reach the individual sailor and are most effective at changing the way they view themselves and other sailors. At the individual unit level where sailors work, and often live, we create climates of dignity and respect that prevent sexual assaults, respond when prevention fails, support victims and ensure prosecution and accountability of offenders. An important element is overcoming the stigma of reporting and the perception it could affect the individual sailor's reputation and standing within command unit. Commanding officers are at the front line of this work and we hold them accountable for this change.

The cumulative effect of individual command climate changes is an institutional climate change. We work to sustain institutional change through training and education programs, taking specific actions directed at the safety and security of our sailors, ensuring appropriate accountability for the perpetrators, and providing strong support for the victims. Our efforts at the institutional level are designed to reinforce the work done at the individual command level to promote professionalism, respect, core values and trust—and in which every sailor exercises the personal courage to intervene when others are engaging in, or are subjected to, inappropriate behaviors of any kind.

General AMOS. One of the largest hurdles to tackling the sexual assault crisis within DOD has been under-reporting as a result of the mistrust between victims and their chain of command. Since launching our June 2012 SAPR Campaign Plan, the Marine Corps has experienced an increase in unrestricted to restricted reporting conversion rates, and a 31 percent increase in our reporting rates. We interpret this rise in reporting to reflect an increased trust of victims of sexual assault that their leadership will do the right thing, provide the care they need, and hold offenders accountable.

The sexual assault training conducted across the Marine Corps encourages a step up and step in approach to preventing sexual assault, and focuses on bystander intervention; both approaches shifting the focus from victim prevention to community prevention.

Another hurdle we have faced is raising the priority of victim care within a system of competing interests. In response, we have professionalized the level of care we provide our victims. All SAPR personnel are required to complete 40 hours of sexual assault advocacy training through an accreditation process administered by the NOVA. We have hired 47 full-time positions in support of nearly 100 highly-trained, full-time civilian SARCs and victim advocates and nearly 1,000 collateral-duty SARCs and UVAs. SAPR personnel are handpicked by commanding officers; Command SARCs are required to be officers (major or above or CWO3–CWO5) or their civilian equivalent. Installation SARCs are full-time civilian employees.

Our greatest asset to overcoming any hurdles is commander involvement and constructive dialogue. Engaged leadership remains the key to changing our culture and our commitment to combat sexual assault is unrelenting.

General WELSH. When the SAPR program stood up in 2005 the main focus was to have our airmen understand that sexual assault in DOD ranges from touching to completed rape, and our available reporting options and services. From 2005 to 2010 we were victim/response focused and wanted to ensure our airmen understood there were services available. In 2010, we began bystander intervention which taught our forces how to intervene and recognize a potentially dangerous situation. It took until 2012 to have all 448,000 of our military and civilians trained. These initiatives have helped us immeasurably to enable victims to heal but I agree the time has come for a new approach. The biggest hurdles in SAPR are fully understanding the root cause for sexual assault, providing an environment of trust in which the victim feels safe to come forward, and changing the culture and climate. All airmen should treat each other with dignity and respect and have absolute trust in one another. If a sexual crime of any nature occurs, the victim should feel entirely safe to come forward and allow the opportunity for the perpetrator to be held accountable.

In addition, we need to instill in our airman the skills of how to recognize a predator. Further, we need to hold those responsible for sexual assault accountable for their conduct. To accomplish this we have hired more Office of Special Investigation agents to investigate and work with forensic evidence, increased special victims counsel to help victims, and trained prosecutors in working with victims of trauma. Finally, we have invested resources to help us determine and assess sexual assault/harassment in the Air Force. In the fiscal year 2014, we will roll out the follow-on to the Gallup survey conducted in 2010. This new survey will help us determine if sexual assault prevention programs are making a positive impact.

Admiral PAPP. Sexual assault is a terrible crime across society, and as a microcosm of society, it is an issue that we all are dealing with. The military must be the catalyst for change and we must eliminate sexual assault from our ranks. It takes time to change a culture and societal attitudes and biases, and that is not an excuse but a reality. As leaders and members of the armed forces, we must eliminate sexual assault from our midst, but we know there is no "silver bullet'; to solve this prevalent problem. We have stood up a Military Campaign Office to work with our SAPR Program, as well as with the DOD, to continue reviewing, strategizing, training, and looking at all angles to develop an effective strategy that will succeed.

20. Senator HIRONO. General Dempsey, General Odierno, Admiral Greenert, General Amos, General Welsh, and Admiral Papp, please describe the sexual assault prevention training that takes place for new recruits to include basic training for new enlistees as well as for the Service Academies and other accessions.

General DEMPSEY. The Department requires the Military Services to conduct sexual assault training during all accession (officer and enlisted) programs and at the Service Academies. The training includes the entire cycle of prevention, reporting, response, and accountability. The Services are expanding SAPR training to include Recruit Sustainment Programs prior to arrival at Basic Training. I defer to Service Chiefs to provide additional details on their Service programs.

General ODIERNO. To educate new soldiers in an attention-getting and intriguing manner the Army developed a set of 10 "Sex Rules" which break down the elements of sexual harassment and sexual assault and define them in simple, relatable terms. By linking each Sex Rule to an Army Value, this focused sexual assault prevention training helps establish the social behavior expected of all soldiers.

The new Initial Entry Training (IET) also includes 90 minutes of facilitated instruction and incorporates a live, two-person, audience interactive "Sex Signals" pro-

duction. This program includes skits dealing with dating, consent, rape, body language, gender relations, alcohol use and intervention.

Basic Officer Leader Course-Accession (BOLC–A) and the U.S. Military Academy (USMA) curriculum includes 3 hours of facilitated instruction, supplemented with Sexual Harassment/Assault Response and Prevention (SHARP) web-based training, "Sex Rules" messaging, subject matter experts, hip pocket reinforcement training, and Sex Signals during summer camp (ROTC) and during fall semester at USMA.

Basic Officer Leadership Course-Branch (BOLC–B) curriculum is similar to our IET training (90 minutes of facilitated training, sex rules for reinforcement training, and sex signals).

Admiral GREENERT. Recruit Training Command. Prospective recruits in transit to Recruit Training Command (RTC) receive SAPR training, which covers sexual harassment, staff-to-student contact, and the responsibility of reporting inappropriate behavior. During the second week of recruit training, recruits receive additional training, during which they are provided the definition of sexual assault, unrestricted and restricted reporting options, the role of SARCs and victim advocates, contact information for SAPR personnel and guidance on acceptable behavior.

Officer Candidate School. Students at Officer Candidate School (OCS) receive similar training during the first week of OCS, but also attend SAPR-Leadership (SAPR–L) training, which emphasizes the role of leaders in preventing sexual assault and creating an appropriate command climate.

U.S. Naval Academy. U.S. Naval Academy (USNA) midshipmen attend Sexual Harassment and Assault Prevention Education, a 30-hour tiered program, aligned with the 4-year USNA leadership curriculum, which utilizes a small-group discussion format focused on broadening sexual harassment and assault awareness, and fostering each midshipman's role as an active bystander. Fourth-class midshipmen (freshmen) receive initial SAPR indoctrination within 14 days of arrival at USNA followed by a refresher brief from the USNA SAPR staff. Content includes discussions on sexual harassment, sexual assault and consent, restricted and unrestricted reporting, and an overview of available support personnel (e.g., SARC, Victim Advocates, chaplains). Each midshipman receives a SAPR wallet card containing phone numbers, reporting options, and USNA SAPRO website information.

NROTC, SSO, STA–21, and MECEP. Navy Reserve Officer Training Corps (NROC) and Strategic Sealift Officer (SSO) fall and spring first-year orientation programs include SAPR–Fleet (SAPR–F) training at the beginning of each academic year. New students who do not attend freshman orientation receive SAPR–F training within 14 days of arrival. SAPR–F training is repeated for sophomore and junior students in all programs within the first 60 days of each academic year. Students in their final year attend leadership-level (SAPR–L) training within 90 days of the start of the academic year. Each unit tailors SAPR–F and SAPR–L training to include campus-specific information and guidance.

General AMOS. SAPR training has been incorporated into the Delayed Entry Program, Recruit Training, and Military Occupational Specialty (MOS) schools. Prior to attending either Recruit Training or Officer Candidates School (OCS), all selectees receive newly developed values-based training. The training focuses on the "whole of character" and ethical behavior expected of marines; instilling a refined and sustained understanding of our core values of Honor, Courage, and Commitment. The training curriculum reinforces our foundational principles; that the success of the Marine Corps relies within the character of all marines and their ability to make sound ethical decisions in any situation. The training includes scenarios that address sexual assault, sexual harassment, racial discrimination, alcohol abuse, and hazing. Upon completion of the training, recruits, and candidates are required to sign a Statement of Understanding affirming their transformation and acceptance of the Marine Corps ethos.

Recruits and candidates receive sexual assault training within the first 14 days of both Recruit Training and Officer Candidates School (OCS). This training communicates the nature of sexual assault in the military environment and includes the entire cycle of prevention, reporting, response, and accountability procedures. The program emphasizes all available reporting options, including the limitations of each option, and methods of prevention, such as bystander intervention. Later in the training, senior drill instructors discuss sexual assault with all recruits. The total training is 7½ hours, administered during several classes.

General WELSH. Basic trainees are briefed by their group commander on the first day of basic military training (BMT) regarding sexual assault prevention as well as how they should expect to be treated. This training includes the definition of sexual assault, identifies who is available to help and how to contact them, the "Rights of an Airman," what constitutes restricted and unrestricted reporting, and what assistance is available to them if they were assaulted before entering the military. This

is the same information presented to existing members of the Air Force, but in a format digestible to new airmen. Squadron commanders also brief the first week and courses are taught by SAPR professional trainers for a total of 6 hours of training by week 4.

The Air Force Academy has a program dedicated to teaching the cadets over the 4 year period; cadets receive the same training taught at BMT and continue with social skill training, peer mentoring and life skills; they have a total of 10 hours of training over the 4 years. Reserve Officers' Training Corps and Officer Training School follow the same training path as BMT. Our goal is to standardize officer training across all accession sources as much as is practical.

Admiral PAPP. New recruits at the Coast Guard Training Center in Cape May, NJ, receive online training upon arrival to ensure they understand the reporting options and who the SARCs and victim advocates are. Recruits also receive specific SAPR training during their 7 week basic training course. Cadets at the Coast Guard Academy (CGA) receive specialized training that is spread out during their 4 years, and there is also a cadet group titled "Cadets Against Sexual Assault." These cadets are specifically trained to assist their peers as well as help the CGA SARC with prevention efforts.

21. Senator HIRONO. General Dempsey, General Odierno, Admiral Greenert, General Amos, General Welsh, and Admiral Papp, after the initial training, how often is it repeated as these servicemembers progress in their careers?

General DEMPSEY. Training is conducted annually and is mandatory for all servicemembers. Other SAPR training required for servicemembers includes pre- and post-deployment training, Commander and senior enlisted training prior to assuming command, and SAPR training at all levels of professional military education (PME). I defer to Service Chiefs to provide additional details on their Service programs.

General ODIERNO. The SHARP Life-Cycle training component consists of comprehensive education and training across two of the Army's overlapping domains of training (institutional and operational), and includes mandatory self-study).

SHARP institutional training includes progressive and sequential education and training conducted at each of the five levels of PME and Civilian Education System (CES): Level 1 is Initial entry training; Level 2 includes Basic Officer Leader—Branch, Warrant Officer Basic Course, Warrior Leader Course for NCO, and CES Basic; Level 3 includes Captain Career Course, Warrant Officer Advanced Course, Advance Course for NCOs, and CES Intermediate; Level 4 includes Intermediate Leader Education, Warrant Officer Staff Course, Senior Leader Course for NCOs, and CES Advanced; and Level 5 includes Army War College, Senior Officer Legal Orientation Course, Warrant Officer Senior Staff Course, Sergeant Major Course for NCOs, and CES Continuing Education for Senior Leader. Functional (specialized) courses include: Pre-Command Course (PCC) for brigade and battalion command teams; Company Commander/First Sergeant Course; Recruiter, Advanced Individual Training, Platoon Sergeant, and Drill Sergeant Courses; and CES Action Officer Course, Supervisor Development Course, and Managers Development Course.

Operational training includes installation orientation, pre- and post-deployment, and an annual mandatory training requirement for all Army units/organizations. Part 1 comprises of three hours of facilitated instruction using video and scenario-based exercises to reinforce learning. Commands are encouraged to invite sexual assault Survivors that are willing to share their story into annual training to help reinforce the serious issue and how it affects soldiers and families. Part 2 of the mandatory annual training requirement is self-study distributed learning delivered via the Army Learning Management System.

Operational training also includes the use of the "Invisible War" video, which is used as part of Officer and NCO Professional Development. The film is a great training tool for taking a hard look at our system, for understanding the long-term consequences for victims of sexual assault, and for understanding the public perceptions of sexual assault in the military. Additionally, some units currently enter into an independent contact with Catharsis Productions to have the 90-minute live, two-person, audience interactive "Sex Signals" presentation held for their units. This training is currently part of Initial Entry Training [Basic Combat Training, Basic Officer Leadership Course-Accession (ROTC), Basic Officer Leadership Course-A (New Second Lieutenants), and the U.S. Military Academy]. This training consist of skits dealing with dating, consent, rape and other associated topics such as body language, gender relations, alcohol use and intervention. The SHARP Office is also looking into providing a 90-minute presentation called "After Burner" to all operational units in fiscal year 2014. This is an extension of the "Sex Signals" presentation.

One of the primary goals of SHARP training is to facilitate sexual assault prevention through awareness and education about situations that may set the conditions for incidents of sexual assault—including gender relations and alcohol use/abuse. Army SHARP training is intended to influence soldier behavior. The SHARP training is designed to communicate and model the desired skill sets, and provide both soldiers and civilians an opportunity to practice the skill sets.

This is supplemented by monthly discussions between the Chief of Staff of the Army and/or Vice Chief of Staff of the Army with brigade/battalion commanders at the Pre-Command Course. Additionally, periodic commanders' conferences are conducted with all two- and three-star commanders to ensure everyone understands programs, roles, responsibilities, and implementation of specific supporting actions by commanders.

Admiral GREENERT. After the SAPR training delivered in their initial training, all sailors continue to receive SAPR training every year. In addition, all sailors participate in Sexual Assault Awareness Month initiatives every April. This year, all sailors also participated in a Secretary of Defense-directed 2-hour SAPR stand-down.

We have integrated SAPR modules into all courses for enlisted advancement from E–4 to E–7, in curriculum at the Senior Enlisted Academy, as well as at Command Leadership School.

We are in the process of integrating SAPR modules into our Navy Leader Development Continuum. This will ensure that SAPR training is linked to leadership training throughout every sailor and officer's career. We expect this integration to be complete by October 1, 2013.

General AMOS. Marine Corps regulations mandate that all marines are required to complete sexual assault prevention and awareness annual training to ensure a thorough understanding of the nature of sexual assault in the military environment and the entire cycle of prevention, reporting, response, and accountability. Annual training requirements are being customized in a manner specific to grade. All promoted Corporals and Sergeants, for example, must complete our "Take A Stand" training program to fulfill their annual training requirement, emphasizing the importance of bystander intervention in their new leadership roles. Currently, a new bystander intervention training program is being customized for junior marines (E–1 to E–3) who are our highest-risk population. Additionally, as part of the 2012 SAPR Campaign Plan, the Marine Corps implemented revised SAPR training programs for: Delayed Entry Programs, Recruit Depots, Marine Combat Training, MOS schools, Enlisted PME, Officer PME schools, and pre-deployment environments. SAPR training for prospective commanders and senior enlisted leaders has also been updated to meet all core competencies and set learning objectives as defined by the Office of the Secretary of Defense, with further training direction from the Commandant.

General WELSH. SAPR training began annually in 2005. In 2007, a workshop with 25 subject matter experts on sexual assault identified bystander intervention as the most effective prevention effort within the military culture and environment. To that end, Air Force prevention initiatives for the last 2 years focused on Bystander Intervention Training (BIT). Mandatory Air Force-wide BIT began in January 2010 and was completed in September 2012. Because of the depth and length of BIT, the Air Force requested and received a DOD waiver to substitute the BIT training for the otherwise mandated annual training. Over 448,000 airmen (regular, Reserve, and Guard) and civilian supervisors of military were trained. All airman (regular, Reserve, and Guard, and civilians) will be briefed, face-to-face, by the base SARC annually.

In addition to annual mandatory training, currently officers may receive additional training in PME (155 minutes), Pre-command (170 minutes), and Executive Summits (1,050 minutes). Our enlisted force receives additional training in PME (260 minutes) and duty specific training for First Sergeants, Chief Master Sergeants, and Military Training Instructors (60 minutes). We are working to create a new cradle-to-grave training plan to increase knowledge and awareness of all Air Force members.

Admiral PAPP. SAPR training is an annual mandatory requirement for all Coast Guard personnel. There are several career checkpoints that afford further SAPR training, as well as involvement in additional SAPR trainings, such as the events that occur during Sexual Assault Awareness Month (SAAM) each April.

22. Senator HIRONO. General Dempsey, General Odierno, Admiral Greenert, General Amos, General Welsh, and Admiral Papp, is it the same training or is it modified by where people are in their careers?

General DEMPSEY. SAPR training takes place at multiple levels: department-wide baseline training, accession training, PME programs, deployment training, and com-

mander and senior enlisted training. The training takes into consideration the needs of the audience and their increased responsibilities at senior ranks. I defer to Service Chiefs to provide additional details on their Service programs.

General ODIERNO. The level of SHARP training is different depending on where a soldier or civilian is in his or her level of professional development; however, the base of the training is the same.

The operational SHARP Annual Unit Refresher Training (URT) is the same training presented to all soldiers, civilians, and contractors who deploy in support of military operations. This facilitated training includes leader and soldier videos. The training addresses high-risk behaviors and models skill-sets to effectively intervene to stop potential sexual assaults.

Admiral GREENERT. As enlisted sailors and officers progress through their careers, expectations of leadership skills, roles and responsibilities progress. SAPR training is divided into two versions for junior personnel ("SAPR-Fleet") and leaders in grades E–7 and above (SAPR-Leader"). However, training in moral character and the outcomes we expect from it are modified in leadership training segments delivered throughout enlisted and officer career paths, commensurate with their rank and increasing leadership responsibilities. For example, we expect our junior sailors to respect others and have integrity. At more senior levels, we expect our enlisted leaders and junior officers to foster ethical behavior in others. And at the highest levels, we expect our commanding officers to act as a moral arbiter for their commands and become exemplars for the Navy in terms of character.

General AMOS. SAPR is tailored across a marine's career to include annual, pre-deployment, post-deployment, PME schools, and pre-command/senior enlisted leader SAPR training. SAPR training is also required during recruit training and at military occupational specialty (MOS) schools. To ensure SAPR training is current and up to date, we continually review and update our curriculum to ensure it is appropriate to the individual's rank and commensurate with his or her level of responsibility. SAPR training is an annual requirement for all marines.

Currently all newly promoted corporals and sergeants are required to complete "Take a Stand" training to meet their annual training requirement in order to reinforce the tenants of leadership and bystander intervention. In order to maintain the integrity of SAPR training, only Uniformed Victim Advocates, certified by a master training team led by an Installation SARC (full-time civilian position) are permitted to provide "Take a Stand" training to NCOs. The course is taught in a small group discussion format in order to promote discussion and reduce the stigma associated with sexual assault. Units are required to report completion of all annual SAPR training via Marine-On-Line training module or the Marine Corps Total Force System (MCTFS). Additionally, the Marine Corps has produced a deterrence training video, titled "Lost Honor," where convicted sexual assault offenders describe the lost honor they experienced through their conviction for sexual offenses in the military justice system. This video has been provided to commanding generals as supplemental training and is also available on-line to all marines.

General WELSH. When SAPR training began annually in 2005, it was "one-size-fits-all" aimed at providing a general understanding of the new program and its components. In 2007, a workshop with 25 SMEs on sexual assault identified bystander intervention as the most effective prevention effort within the military culture and environment. To that end, Air Force prevention initiatives for the last 2 years focused on Bystander Intervention Training (BIT). Unlike previous SAPR training, BIT had breakout groups based on gender and rank. This allowed for training tailored to a particular audience and/or peer group. Mandatory AF-wide BIT began in January 2010 and was completed in September 2012. Over 448,000 airmen (Regular, Reserve, and Guard) and civilian supervisors of military were trained.

Beginning in 2012, SAPR training was revamped again to ensure quality, face to face scenario-based training at entry level and accessions, re-emphasized at PME courses, and on an annual basis. Commander and Senior Enlisted training has been greatly enhanced to address leadership responsibilities and challenges. Training is structured so leaders have the ability to understand SAPR from a base leadership perspective; it is specialized to recognize the nuances of victim care from initial reporting to case disposition. Additionally, First Sergeant training was expanded to include investigation and prosecution familiarity, hands-on victim assistance scenarios, and identifying/overcoming biases. Furthermore, we are working to mirror all officer accessions training to the comprehensive U.S. Air Force Academy model. Finally, enlisted accessions are trained from A to Z on the SAPR basics, focusing primarily on reporting options and bystander intervention. We plan to further augment and re-emphasize training in technical school. Our goal is to create a cradle-to-grave learning process for all airmen and continuously build on the foundation

they receive at initial entry through all levels of development focused on dignity and respect.

Admiral PAPP. All personnel receive annual mandatory SAPR training, and additional trainings are being developed and modified for specific career levels.

RETALIATION

23. Senator HIRONO. General Dempsey, General Odierno, Admiral Greenert, General Amos, General Welsh, and Admiral Papp, what happens in your Service if a superior makes an unwanted sexual proposition toward a subordinate who rejects and is later subject to retaliation?

General DEMPSEY. Mission effectiveness and good order and discipline are bettered through establishing an environment where servicemembers are free from harassment. Each Service, DOD Component, and the Joint Staff have military equal opportunity programs designed to promote the equal opportunity and treatment of its members. In the situation you describe above, a servicemember has the option to file either informal or formal discrimination complaints with their equal opportunity offices. Each equal opportunity office is staffed with advisors who provide counseling, information, referral, and other assistance to members who have experienced unlawful discrimination. When a complaint of sexual harassment is substantiated, the individual who committed the offensive act may be subject to disciplinary action. Anyone in a supervisory or management position who is aware of sexual harassment and fails to take action may also be disciplined. Additionally, a member who believes they have been subject to retaliation may seek the assistance of their IG.

General ODIERNO. Sexual advances by a superior to a subordinate, whether wanted or unwanted, are punishable under the UCMJ as fraternization (Art. 134), maltreatment of subordinates (Art. 93), violation of regulation (Art. 92), conduct unbecoming an officer (Art. 133), or conduct prejudicial to good order and discipline (Art. 134) depending on the individual facts and circumstances. Any retaliatory actions taken by a superior against a subordinate as a result of a rejection of a sexual proposition or advance are also punishable under the UCMJ as maltreatment, violation of regulations, conduct unbecoming, or conduct prejudicial to good order and discipline. The criminalization of sexual harassment and retaliation is an important tool for military commanders to establish climates of dignity and respect that is not available in civilian jurisdictions.

Members of the Military who reject unwanted sexual propositions from a superior member in their chain of command (or from others), who report it to higher superiors in the chain of command or to others designed to receive such reports, and who are then retaliated against, are protected from such retaliation by section 1034 of title 10, U.S.C., the Military Whistleblower Protection Act. The provisions of this act are further reinforced in DOD Directive 7050.06, Military Whistleblower Protection; Army Regulation (AR) 20–1, IG Activities and Procedures; and AR 600–20, Army Command Policy. Essentially, the statute and implementing regulations prohibit taking any unfavorable personnel actions in reprisal for a protected communications. Protected communications are the disclosures of information that one reasonably believes constitutes evidence of a violation of law or regulation and would include allegations of unwanted sexual assaults, propositions, or similar sexual misconduct.

The statutory guidance and implementing regulations require all Service IGs to notify the DOD IG of reprisal complaints in accordance with established procedures. Although the DOD IG has oversight over all such reprisal complaints, most are referred to the particular Service IG at the headquarters level for investigation. The Office of the Department of the Army IG decides which office is in the best position to gather the evidence and address the facts, normally the local IG.

If a local IG does conduct the investigation, there are protections built into the system. An IG may not investigate his or her supervisors and, where conflicts of interest exist, a higher level IG retains the case for investigation. Furthermore, all of the investigations are reviewed by the appropriate IG assigned to the appropriate Army Command (or equivalent organization). That review is then forwarded back up to a whistleblower reprisal investigations specialist at the Department of the Army level, and then on to the DOD IG for final review.

The approved results of an IG whistleblower reprisal investigation are turned over to the chain of command for disciplinary action as appropriate against any person substantiated for retaliation. Furthermore, the complainant has direct and priority access to the Army Board for Correction of Military Records, which retains broad,

sweeping authority to correct any error or injustices in the complainant's record on behalf of the Secretary of the Army.

Admiral GREENERT. Sexual harassment, reprisal, and retaliation have no place in the Navy. Current regulations provide victims with several ways to bring a complaint of sexual harassment against anyone in their chain of command. Victims may file a complaint of sexual harassment, reprisal, or retaliation with an equal opportunity advisor, law enforcement personnel, the Naval IG, the DOD IG, or a Member of Congress; or submit an anonymous complaint via the IG Hotline, submit a complaint against their commanding officer under Article 138 of the UCMJ, or raise a complaint against any other superior in the chain of command under Article 1150 of U.S. Navy Regulations. Complaints brought by victims under any of these alternatives result in an independent investigation and subsequent review by senior officers in the chain of command. If the complaint is substantiated, appropriate administrative or disciplinary action will be taken.

We have a number of means to hold personnel accountable for acts of retaliation against victims. Personnel accused of retaliation may be charged under several different UCMJ articles:

- Article 78 (accessory after the fact)
- Article 92 (failure to obey order or regulation)
- Article 93 (cruelty and maltreatment)
- Article 98 (Noncompliance with procedural rules)
- Article 107(false official statements)
- Article 117 (provoking speech or gestures)
- Article 133 (conduct unbecoming an officer and a gentleman)
- Article 134 (general offense prejudicial to good order and discipline)

In these circumstances, numerous administrative actions will be available, as well.

General AMOS. Commanders receiving a reprisal allegation against a leader in his or her command are required to investigate the matter and take appropriate administrative or punitive action under the UCMJ, to include court-martial, NJP, and/or administrative separation processing. If a member chooses to file a report against a superior in their chain of command, there are multiple reporting mechanisms are available to victims. A marine may file an IG complaint, for example, which may be anonymous to avoid the possibility of reprisal. The Military Whistleblower Protection Act (10 U.S.C. § 1034) also protects victims from reprisal as a result of communications to Congress or the IG. In response to a complaint, the IG, would direct an investigation into the matter and recommend appropriate punitive or administrative action. Victims may additionally submit a Complaint of Wrongs under Article 138 of the UCMJ, which requires redress if a commanding officer wronged a victim. If the commanding officer refuses to redress the wrong, the victim can forward the complaint to the next officer exercising general court-martial convening authority. Finally, if any retaliation negatively impacted the victim's records, the victim may petition the Board for Correction of Naval Records, which has authority under to remove injustices from current and former victim records without.

General WELSH. Although sexual harassment generally falls under the purview of the Equal Opportunity(EO) office, depending on the circumstances, a criminal investigation may be conducted or the IG may be involved. The combination of the unwanted sexual proposition and retaliation based on the rejection may be covered under the UCMJ. Once a sexual harassment complaint is investigated, the findings are provided to the subject's commander for appropriate disciplinary action.

The notification to EO office of the unwanted sexual proposition is considered a protected communication under 10 USC 1034 and any retaliatory actions linked to the protected communication would be investigated by the IG as an allegation of reprisal. The results of the reprisal investigation would be presented to the subject's commander for appropriate disciplinary action.

For reference, an unwanted sexual proposition would be considered sexual harassment under the DOD definition: "a form of sex discrimination that involves unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature when:

- Submission to such conduct is made either explicitly or implicitly a term or condition of a person's job, pay, or career, or

Submission to or rejection of such conduct by a person is used as a basis for career or employment decisions affecting that person, or

Such conduct has the purpose or effect of unreasonably interfering with an individual's work performance or creates an intimidating, hostile, or offensive working environment."

Admiral PAPP. If this situation were to occur, Commandant's Instruction M5350.4C, Civil Rights Manual directs all parties in what actions must be taken, by whom, and by when. Some of the relevant requirements follow:

- If the aggrieved person reports the incident directly to the Civil Rights Directorate, the director will conduct an investigation in accordance with the EEO/EO complaint process.
- The victim can report the alleged action to anyone in the chain of command.
- If the alleged offender is the commanding officers and officers-in-charge (COs/OICs), the victim can report the action to the next higher authority in the chain of command.
- COs/OICs must conduct an investigation into the matter within 30 days.
- COs/OICs must report the incident to the Civil Rights Directorate (which is in a separate reporting chain from local commands).
- COs/OICs must inform the aggrieved party of his/her right to pursue an EEO/EO complaint.
- Matters that violate UCMJ or Federal law must be reported to CGISs.
- While the investigation proceeds, the Coast Guard directs involved units to take proactive steps to prevent retaliation, such as separating the parties.
- Any findings of reprisal are subject to penalties as explained in Question #6 above.

Civil Rights Service Providers (CRSPs) provide guidance and assistance to commands, employees, and military members to ensure that all harassment complaints are addressed and handled in a timely manner. CRSPs are stationed throughout the Nation. Their names and contact information, along with procedures for entering the complaint process, are posted conspicuously at all Coast Guard units, to assist personnel who wish to raise claims of retaliation. As of 2010, CRSPs report up to the Commandant through the Civil Rights Directorate, not to local commands. The decisional authority for military retaliation claims is, therefore, neither the accused individual's nor the complainant's supervisory chain; claims are decided by the Commandant of the Coast Guard with appeal rights to the Secretary of Homeland Security.

24. Senator HIRONO. General Dempsey, General Odierno, Admiral Greenert, General Amos, General Welsh, and Admiral Papp, what protections are in place to ensure that the subordinate's career is not affected by retaliatory acts by the superior in the military chain of command?

General DEMPSEY. Servicemembers are protected under law and DOD policy from retaliatory personnel actions based on protected communications. 10 U.S.C. § 1034 prohibits taking (or threatening to take) an unfavorable personnel action, or withholding (or threatening to withhold) a favorable personnel action, as a reprisal against a member of the armed forces for making or preparing protected communications. Protected communications include complaints that a servicemember reasonably believes constitutes evidence of violations of laws or regulations, including allegations of sexual assault and/or sexual harassment. Retaliatory action may also constitute a violation of the Articles 92, 133, or 134 of the UCMJ. A servicemember may report retaliation to their Service Inspectors General, the IG of a DOD component, or to the DOD IG.

General ODIERNO. Servicemembers are protected from reprisal and retaliation under the provisions of section 1034 of title 10, U.S.C., the Military Whistleblower Protection Act (MWPA), and DOD and Army implementing authorities. These authorities prohibit taking or threatening an unfavorable action or withholding or threatening to withhold a favorable personnel action in reprisal for making a protected communication.

A detailed investigation is required to determine whether an adverse command action was appropriate given a soldier's performance, conduct, or behavior—or was motivated by reprisal. During an investigation, the command retains full authority and responsibility to take appropriate actions with respect to the individuals involved in the inquiry—to include the complainant—as necessary to maintain good order and discipline and unit readiness.

In practice, that means a soldier may have received an unfavorable action in the short-term; but if the inquiry determines the action was taken in reprisal, the complainant has priority access to the Army Board for Correction of Military Records (ABCMR). The ABCMR retains broad, sweeping authority to correct the record for errors or injustices on behalf of the Secretary of the Army.

When reprisal is found, the soldier receives a redacted copy of the completed report of investigation along with the appropriate forms to initiate and facilitate an appeal through the ABCMR. Under the provisions of the MWPA, soldiers receive direct and priority access to and review from the ABCMR for actions resulting from a substantiated reprisal allegation. In the last several years, the ABCMR and the Army Inspector General Agency have worked closely to ensure soldiers receive the information necessary to make them whole and correct the soldiers' records for any inappropriate personnel actions—to the greatest extent possible.

Admiral GREENERT. Existing law and regulations afford significant protections and recourse with respect to alleged retaliatory acts by superiors in the military chain of command.

The Military Whistleblower Protection Act, 10 U.S.C. § 1034, prohibits personnel actions being taken as reprisal against a servicemember for making or preparing to make a "protected communication" to a Member of Congress, an IG, a member of a DOD law enforcement organization, or any person in the chain of command. Such retaliation is also specifically prohibited in the Department of the Navy by regulation, violation of which is punishable under Article 92 of the UCMJ.

Complaints of reprisal are required to be investigated under the supervision and oversight of the Naval IG, and servicemembers who make reprisal complaints are to be specifically informed of the investigative process and their associated rights. Where allegations of reprisal are substantiated, the servicemember has the statutory right to apply for relief with the cognizant Board for the Correction of Military Records.

Article 138 of the UCMJ and Article 1150 of U.S. Navy Regulations further permit a sailor to petition for redress of wrongs committed by a commanding or superior officer to the cognizant general court-martial convening authority. All such complaints, associated investigations, and actions by the general court-martial convening authority are reviewed by the Office of the Judge Advocate General.

A servicemember may also file a formal complaint involving sexual harassment or unlawful discrimination under the Navy's Equal Opportunity Program, for which there is a coordinator at every command. As with Article 138 and 1150 complaints, the associated investigation is reviewed by the general court-martial convening authority and the Office of the Judge Advocate General.

Navy Regulations, Article 1155, further provide that no person may restrict any member of the armed forces in communicating with a Member of Congress in the member's personal or private capacity.

General AMOS. There are also multiple reporting mechanisms that allow victims to report upon members in their chain of command. A marine may file an IG complaint, for example, which may be anonymous to avoid the possibility of reprisal. The Military Whistleblower Protection Act (10 U.S.C. § 1034) also protects victims from reprisal as a result of communications to Congress or the IG. In response to a complaint, the IG, would direct an investigation into the matter and recommend appropriate punitive or administrative action. Victims may additionally submit a Complaint of Wrongs under Article 138 of the UCMJ, which requires redress if a commanding officer wronged a victim. If the commanding officer refuses to redress the wrong, the victim can forward the complaint to the next officer exercising general court-martial convening authority. Finally, if any retaliation negatively impacted the victim's records, the victim may petition the Board for Correction of Naval Records, which has authority under to remove injustices from current and former victim records without.

General WELSH. The Office of the IG and 10 U.S.C. § 1034 are in place to help protect the subordinate's career from retaliatory acts by the superior in the military chain of command. 10 U.S.C. § 1034 specifically prohibits retaliatory personnel actions following complaints of wrongdoing to a Member of Congress; an IG; a member of the DOD audit, inspection, investigation, or law enforcement organization; or any person in the chain of command, and any person or organization designated to receive such communications. The Equal Opportunity office would be one such organization. If the retaliatory actions are linked to the protected communication, 10 U.S.C. § 1034 would call for the IG to investigate the allegation of reprisal. The results of the reprisal investigation would be presented to the subject's commander for appropriate disciplinary action.

For substantiated allegations of reprisal against a military member, the Air Force Board for Corrections of Military Records will be notified. They will review the investigation and have the authority to correct any action taken against the member in reprisal.

Admiral PAPP. Subordinates are protected from retaliation in several ways. As discussed above, many penalties exist to deter retaliatory acts. Federal and military

codes, regulations, and policies (as summarized below) protect personnel from retaliation.

- Military personnel may be punished for illegal discrimination, harassment, and retaliation under Article 93 of the UCMJ–Cruelty and Maltreatment. The maximum punishment under this Article is a dishonorable discharge, forfeiture of all pay and allowance, and confinement for 1 year.
- Article 138 of the UCMJ affords rights to redress grievances against actions of commanding officers. In addition, a member may petition or present any grievance to any Member of Congress (10 U.S.C. § 1034).
- The Notification and Federal Employee Antidiscrimination and Retaliation Act (No FEAR Act) of 2002 protects civilian employees against reprisal and allows them to report offenses directly to the Office of Special Counsel.
- 29 C.P.R. Part § 1614 contains provisions to protect employees against reprisal and make the aggrieved party "whole." While this regulation applies to civilian employees, through policy issuance, the Coast Guard affords military members the same protections to the extent possible under the UCMJ.

COMMAND ACCOUNTABILITY

25. Senator HIRONO. General Dempsey, General Odierno, Admiral Greenert, General Amos, General Welsh, and Admiral Papp, does your Service annotate in a commander's personnel records the data about the numbers of sexual assaults which were reported, investigated, prosecuted, dismissed, et cetera, during the term of their command? If not, I am interested in your thoughts on adding this information and maybe command climate information as part of the whole picture of the candidates as they are considered for future promotions and assignments.

General DEMPSEY. Getting accurate data on sex-related crimes is a challenge in the military, as it is in society. Low numbers may be a good thing, or low numbers may mask a real problem. I'm more confident right now assessing our processes—how we take reports, investigate them, refer cases to trial and prosecute—than I am in our statistical data. On process, the Service Chiefs have relieved commanders for loss of confidence in their leadership related to handling sexual assault. So I'd say we are already going further than recording performance for future consideration—we are acting immediately when we see something amiss. That said, I support efforts to better define the breadth and depth of sexual assault in the ranks statistically.

The commander sets the tone for his or her command. That is why assessing command climate is essential in evaluating the success and potential of our leaders, and we capture it in our evaluations in several ways. Recently, I also initiated 360 degree evaluations on our general and flag officers, which should provide a more holistic view of a leader's potential.

General ODIERNO. The Army does not annotate the personnel records of commanders with data about the number of sexual assaults that were reported, investigated, prosecuted, dismissed, or otherwise adjudicated during the term of their command. However, the officer evaluation report does contain a field concerning dignity, fairness, consideration, and equal opportunity. A "negative" response on this portion automatically results in mandatory comments on the evaluation to substantiate the rating.

Additionally, the Army is in the process of changing the way command climate information is distributed. Command climate surveys are required within the officer's initial 30 days for the Active component and 90 days for the Reserves; again at 6 months for the Active component and 9 months for the Reserves; and annually thereafter for all components.

Command climate findings will be given to the officer's next higher level of leadership. Seniors commander will use these as a mentoring tool to coach and teach their subordinates. This information will also provide insight into how the individual officer affects the unit during his or her tenure.

Admiral GREENERT. Under current policy governing the Navy performance evaluation system, there is no requirement to annotate in a commander's fitness report or personnel record data about the numbers of sexual assaults that were reported, investigated, prosecuted, and/or dismissed during the term of their command.

We hold commanders accountable for their command climate, their efforts to maintain a safe work environment of dignity and respect, and the good order and discipline of their commands. Today, we do this by requiring commanders to assess their organizational climate at regular intervals, while requiring those with multiple commands under their leadership to monitor the climates of subordinate commands. We evaluate our commanders (and all officers) in their regular fitness reports (per-

formance evaluations used for determination of advancement) in three areas: Command Climate/Equal Opportunity, Leadership and in written summary, where documentation of poor command climates would be listed. We hold our commanders responsible and accountable when they do not meet acceptable standards.

IG investigations, and fully adjudicated administrative investigations conducted pursuant to requirements of the Manual of the Judge Advocate General (JAGMAN), which substantiate adverse information, such as command climate or leadership failures, can be placed in a commander's official record and will be considered by promotion selection boards and in selecting officers for future assignments.

We believe the current system adequately addresses the issue; however, we routinely review the Navy fitness report system to ensure it provides a comprehensive officer assessment consistent with the prevailing needs of the Navy.

General AMOS. The Marine Corps does not annotate in a commander's personnel records the data about the numbers of sexual assault which were reported, investigated, prosecuted, dismissed, et cetera, during the term of their command. However, the Marine Corps uses two separate Command Climate surveys to measure a commander's effectiveness in maintaining the trust and confidence of their marines. The DEOCS is created and distributed through the Marine Corps' cooperation with the Defense Equal Opportunity Management Institute (DEOMI). All marines take the DEOCS survey and its results are consolidated and provided to the commander and the next higher commander in the chain of command. In addition, I directed the implementation of a new Command Climate Survey. This Command Climate Survey is required within 30 days of a commander assuming command and again at the 1 year mark. The results are required to be briefed to the first O–6 or O–7 in the commander's chain of command as a way of holding commander accountable.

General WELSH. No, the Air Force does not currently record this data relating to sexual assaults in commander's personnel records. Establishing a command climate of dignity and respect is a priority for Air Force commanders, and incorporating an appropriate, standardized, SAPR posture is essential to defining a successful Air Force leader. The Air Force is working with DOD to evaluate the methods used to assess the performance of military commanders, including command climate studies and other responsibility standards.

Admiral PAPP. Data about the numbers of sexual assaults which were reported, investigated, prosecuted, dismissed, etc., during the term of commander's tour is not consistently annotated in the records or evaluations of officer (commanding officer) or enlisted (officer-in-charge) personnel. Indicators of command climate deficiencies are monitored and addressed. If substantiated, a Relief For Cause (RFC) could result. Corrective action resulting from command climate issues become part of the member's permanent record and are considered in subsequent promotion, advancement, and assignment panels.

QUESTIONS SUBMITTED BY SENATOR SAXBY CHAMBLISS

FIRST FEMALE SAILORS ON USS *DWIGHT D. EISENHOWER*

26. Senator CHAMBLISS. Admiral Greenert, during the period when female sailors first started to serve aboard U.S. Navy aircraft carriers, in particular the USS *Dwight D. Eisenhower* in 1994, there was a high rate of pregnancies and inappropriate sexual episodes. What percentage of female sailors became pregnant during the first deployment of the USS *Dwight D. Eisenhower* with women serving aboard?

Admiral GREENERT. This information is not available as the Navy did not officially track operational pregnancies prior to 2007.

27. Senator CHAMBLISS. Admiral Greenert, due to the pregnancies aboard the USS *Dwight D. Eisenhower*, was there an investigation as to which pregnancies were from consensual or possible unwanted sexual acts? Provide the results of the investigation if an investigation was conducted.

Admiral GREENERT. An investigation would have been initiated if a sailor reported a sexual assault. In 1988, the NCIS began maintaining records of sexual assault investigations (records are maintained for 50 years). In review of these archives, we found no reported sexual assaults during the first deployment of USS *Eisenhower* with women on board (October 1994–March 1995). Additionally, there were no delayed reports of sexual assaults upon the ship's return from deployment.

QUESTIONS SUBMITTED BY SENATOR ROGER F. WICKER

SALE OF SEXUALLY EXPLICIT MATERIAL AT MILITARY EXCHANGES

28. Senator WICKER. General Dempsey, Section 343 of the NDAA for Fiscal Year 1997 prohibits the sale of material deemed to be sexually explicit in nature at military exchanges. This legislation grants the Secretary of Defense authority to determine which products and materials qualify as sexually explicit and which do not. The lack of a precise definition for the term sexually explicit in the NDAA for Fiscal Year 1997 has resulted in the availability of materials at military exchanges that many would consider as vulgar, misogynistic, and degrading. Multiple attempts by Congress to rectify this issue legislatively over the ensuing 15 years have been unsuccessful. The prominent theme of this hearing, one that I believe was stressed individually by each of the Joint Chiefs, was the need to continue to shape the culture of the military into one in which all servicemembers are treated with respect and dignity. Do you believe that making sexually explicit material available for sale at military exchanges is sending the wrong message to servicemembers and may be contributing to the problem of military sexual assault?

General DEMPSEY. DOD is committed to upholding both the Military Honor and Decency Act and First Amendment protections of publishers and readers, which the men and women in our Armed Forces defend every day. The Department does not sell sexually explicit materials as defined by the 1997 NDAA in the military exchanges or other property under the jurisdiction of DOD. Secretary Hagel recently directed DOD component heads to conduct a comprehensive visual inspection of all DOD workplaces to ensure all DOD facilities, including military exchanges are free of materials that create a degrading or offensive work environment.

29. Senator WICKER. General Dempsey, do you believe that the sexually explicit materials that are currently being sold on base may be contributing to a military culture that tolerates acts of sexual aggression?

General DEMPSEY. Section 2495b of title 10, U.S.C. defines "sexually explicit material." The Department, in close coordination with the General Counsel's Office, applies the law's definition to determine what materials are deemed sexually explicit and ensures that material is not allowed to be sold on DOD property. DOD is committed to upholding both the Military Honor and Decency Act, and publishers and readers First Amendment protections, which the men and women of the U.S. Armed Forces defend every day.

30. Senator WICKER. General Dempsey, are any sexually explicit materials currently prohibited from sale on military installations, or is the selection of sexually-oriented material available at military exchanges comparable to what can be found off base?

General DEMPSEY. DOD established the Resale Activities Board of Review to review material offered for sale or rental on property under DOD jurisdiction and make recommendations to the Secretary of Defense regarding what material should be prohibited from sale or rental in accordance with 10 U.S.C. section 2495b(a). Since its inception in 1998, the Board has reviewed 418 titles and determined 251 (60 percent) to be sexually explicit. Of those items determined not sexually explicit, 48 titles are currently authorized to be sold in military exchanges. Any material that is determined to be sexually explicit as defined by section 2495b of title 10, U.S.C. is not offered for sale or rental on property under DOD jurisdiction. If such materials are found on store shelves, they are removed.

31. Senator WICKER. General Dempsey, in light of the recent allegations, would it be appropriate for the Office of the Secretary of Defense to make another attempt at developing a workable definition of sexually explicit?

General DEMPSEY. The term "sexually explicit" is defined by law in section 2495b of title 10, U.S.C. DOD, in close coordination with the General Counsel's office, applies the law's definition to determine what materials are deemed sexually explicit and not allowed to be sold on DOD property. To that end, the Joint Chiefs will provide input as requested to the Department on revisions to the law's definition of sexually explicit should the Secretary deem it necessary.

QUESTIONS SUBMITTED BY SENATOR KELLY AYOTTE

LACKLAND AIR FORCE BASE SCANDAL AND THE VULNERABILITY OF TRAINEES TO SEXUAL ASSAULT

32. Senator AYOTTE. General Welsh, in your prepared statement you confirm that 63 trainees and technical school students were involved in the scandal at Joint Base San Antonio-Lackland, including 12 victims of sexual assault. You state that, "The mending of the BMT environment at Lackland Air Force Base has taken time . . . " How was the training environment damaged at Lackland and why has it taken time to repair the damage?

General WELSH. We identified five major areas of weakness within BMT: (1) leadership, where deterrence was found to be hindered by insufficient leadership oversight; (2) the military training instructor (MTI) selection and manning process, where the MTI corps consisted of members with minimal leadership experience and too much power resident with a single MTI; (3) MTI training and development, where the MTI culture and training did not adequately emphasize NCO responsibilities; (4) reporting and detection, which addressed barriers that exist in reporting by MTIs, trainees, and students; and (5) policy and guidance, where enduring institutional safeguards are necessary.

Given the nature of the BMT environment, the opportunity for abuse of power must be understood and eliminated. To guard against misconduct, BMT incorporates institutional safeguards to dissuade, deter, detect, and hold accountable individuals who engage in unprofessional conduct. We found weaknesses in those safeguards and flaws in the leadership oversight and MTI culture that enabled the weaknesses to be exploited.

From this information we drew three overarching conclusions: (1) over time, weaknesses developed in each of the previously described institutional safeguards; (2) leadership failed to detect and prevent these weaknesses, and: (3) our MTIs did not sufficiently police themselves.

Of these three, leadership stood out as the most important area to address. Strong leadership can overcome weaknesses in institutional safeguards and/or weaknesses in the MTI culture. Average or weak leadership will struggle to successfully navigate through the unique challenges that exist in the BMT environment. Given the singular importance of leadership in maintaining an effective, safe, and secure BMT environment, we took aggressive action in this area.

Training squadron commander positions are being filled with high-potential officers; this is happening now and will be complete by July. We also increased the number of leadership positions within the squadrons by adding operations officers and flight commanders to the rosters. We increased the experience level of leaders by upgrading the squadron first sergeant positions from master sergeant to senior master sergeant and the squadron superintendent positions from senior master sergeant to chief master sergeant. Leadership preparation has also been strengthened considerably through an expanded leadership orientation course that places additional emphasis on the potential for abuse of power, sexual assault, unprofessional relationships, and maltreatment or maltraining. Finally, we instituted a set of policy changes to ensure leadership receives timely notification of potential misconduct, credible allegations of misconduct result in immediate removal from the training environment, and more appropriate thresholds were set for the temporary or permanent removal of an MTI from the instructor corps. Taken together, these actions directed at strengthening the leadership team provided the most effective means of ensuring that we are well positioned to address the critical issues impacting BMT today, and that we maintain this position of strength for the long run. All these changes will be complete by the end of the summer of 2013.

A second set of initiatives that will pay significant dividends involves placing MTIs in a stronger position to successfully execute their duties. In this regard, we believe the single most important decision they can make is to reduce the MTI duty day, which can extend as long as 16 hours for weeks at a time. To this end, we will assign two MTIs to each BMT flight, which will allow splitting the duty day in half. We will also increase the required grade level for MTI duty to technical sergeant, which will bring more experience and maturity to the MTI corps. MTI initial qualification and supplemental training will also be improved through changes in the qualification training course and the establishment of a deliberate development program.

Our goal is to raise professionalism in BMT to the highest level possible. The command cannot achieve this goal unless it selects the most highly-qualified airmen for MTI duty and then provides them with high-quality training and a reasonable workday. The changes we've made concerning MTI selection, professional development,

and work period have contributed significantly to enhancing the ability of MTIs to execute their duties professionally.

Along with leadership and MTIs, there is a third group of people who are an instrumental part of the solution set for strengthening the effectiveness, safety, and security of the BMT environment. This group is the trainees, who play a critical role in the ability to detect and deter misconduct. Moreover, we must do better at taking advantage of the unique opportunity afforded in BMT to prepare our newest airmen to deal effectively with sexual assault and unprofessional behavior throughout the remainder of their Air Force careers. This process of increasing the capacity of our trainees to be part of the solution set will begin before they enter BMT. From their recruiter, they receive a briefing that covers sexual assault, sexual harassment, unprofessional relationships, maltreatment and maltraining, and the reporting of misconduct during BMT. This briefing is repeated after the trainees arrive at BMT. Additionally, we increased the number of sexual assault response counselors (SARC) in BMT. This will not only provide more trainee contact with SARCs but also increase the portion of the sexual assault prevention training curriculum instructed by SARCs.

Feedback from trainees is another area where we needed to improve. AETC improved feedback mechanisms through better positioning of critique boxes and improved survey mechanisms, and added hotline phones for direct connection to the SARC.

A significant policy change concerning trainee safety is expansion of the wingman policy, which now requires trainees to be accompanied by another trainee any time they are outside a group setting. This single policy change dramatically decreased the potential for sexual assault or misconduct since these types of activities almost always occur in a one-on-one setting.

The misconduct discovered at BMT tore at the foundational trust and core values that hold the Air Force together. We are fully committed to enduring solutions for the BMT environment and a zero-tolerance standard for misconduct or abuse of power in this key training program. Since discovering the breadth and depth of the misconduct, we engaged directly and rapidly. The changes mentioned above are nearly complete and are a result of a measured and thoughtful approach to ensure that we could tie the initiative to a predictable outcome. We expect to complete all the structural changes needed except for returning the MTI corps to 100 percent manning by the end of this summer. Our MTI corps will be fully manned by the early spring of 2014.fully manning our MTI corps is critical, but lead time for personnel movement, training and MTI certification is over six months-we're focused on this and all other aspects of BMT and we are well underway to completion.

33. Senator AYOTTE. General Welsh, you also say that the basic military environment requires "high levels of professional conduct." You correctly state that our trainees deserve and the American people expect that sort of professional environment. Why do you believe it is especially important to demand a high level of professional conduct between military trainers and military recruits during basic training?

General WELSH. Our military trainers are placed in positions of trust that demand they train our future airmen to defend our country and win our Nation's wars. This cannot be accomplished without an environment of trust and respect. It is especially important to demand a high level of professional conduct between military trainers and military recruits during basic training in order to reflect the highest standards of personal conduct, morality, and professionalism in our Air Force. The Code of Ethics, the Airman's Creed, and the Air Force Core Values are basic principles that demand respect and foster the morale, welfare, and esprit de corps of all airmen.

34. Senator AYOTTE. General Dempsey, why do you believe it is especially important to demand a high level of professional conduct between military trainers and military recruits during basic training?

General DEMPSEY. I strongly believe a high level of professional conduct between trainers and military recruits is crucial during basic training because it establishes servicemembers' expectations of their peers and their leadership throughout their careers. Basic training is the first real opportunity to introduce young recruits to military life, instill discipline and foster trust. Recently, we have seen how those who do not respect or share our core values of dignity and respect can rock the very foundation we are trying to build for those entrusted in our care.

NAVY FORENSIC EXAMINATIONS

35. Senator AYOTTE. Admiral Greenert, according to a January 2013 GAO report, the Navy does not require that its vessels deploy with a provider trained to conduct a forensic examination, and will instead transfer a victim to the nearest trained provider, whether at sea or ashore. According to GAO, Navy medical providers "also told us that if a transfer is not possible they would do their best to conduct the forensic examination using the instructions provided with examination kits." Is that accurate?

Admiral GREENERT. While not all operational commands at the time of the GAO inspection were trained to complete forensic examinations, the forensic kits to complete medical-forensic examinations are available in all shore and operational settings. Training is in progress now and fully-trained personnel will be in place in all shore and operational settings by September 30, 2013.

36. Senator AYOTTE. Admiral Greenert, what is the Navy doing to quickly address this unacceptable status quo?

Admiral GREENERT. Navy is committed to providing quality care and follow-up to victims of sexual assault. All Navy Military Treatment Facilities will have the SAFE capability no later than September 30, 2013. This certification includes reporting procedures. Additionally, we have established and are enforcing training requirements for all healthcare providers that conduct SAFE exams. These training requirements are tracked on a weekly basis and include:

- A patient-centered medical-forensic examination covering the patient interview, evidence collection and analysis, survivor experiences, pre-trial preparation and court testimony as a factual witness.
- Navy specific training, including restricted and unrestricted reporting and the policy guidance on both.

Finally, we conduct competency assessments for non-licensed independent practitioners (registered nurses and independent duty corpsmen).

GUARD AND RESERVE VICTIMS ACCESS TO SEXUAL ASSAULT RESPONSE COORDINATORS

37. Senator AYOTTE. General Dempsey, General Odierno, Admiral Greenert, General Amos, General Welsh, and Admiral Papp, do you believe that victims of sexual assault in the military should have access to a SARC or a similarly trained individual who can support victims and help them access the support and care they need?

General DEMPSEY. Every victim of sexual assault deserves and receives the best possible care and support the Department can provide. The Department has ensured that victims of sexual assault can access first responders, to include SARCs and SAPR victim advocates, who are trained and certified. The DOD Sexual Assault Advocate Certification Program (D–SAACP) was established to standardize sexual assault response to victims and professionalize victim advocacy roles of SARCs and SAPR victim advocates. The certification of SARCs and SAPR victim advocates is guided by a Competencies Framework, which identifies and organizes the core knowledge, skills, and attitudes for performing sexual assault victim advocacy.

General ODIERNO. Yes. DOD requires all sexual assault victims have access to a trained individual who can support and help victims access care (counseling and medical and advocacy services). In accordance with Army policy, victims are provided a variety of options by which they can reach out for this help by making either a restricted or an unrestricted report.

Admiral GREENERT. Yes.

General AMOS. Yes. All SAPR program services are available to our Reserve component marines. If victims report a sexual assault that occurred prior to or during periods when they are not performing active service or inactive training, they are still eligible to receive SAPR support services from a SARC and a SAPR victim advocate and are eligible to file a restricted or unrestricted report.

Our fiscal year 2013 initiative to increase SAPR personnel across the Marine Corps included the addition of five new positions, three full-time civilian Command SARCs and two full-time civilian SAPR victim advocates, all dedicated to Marine Forces Reserve and located at the 4th Marine Division, 4th Marine Aircraft Wing, and 4th Marine Logistics Group. All five positions have been filled through a competitive selection process with qualified professionals.

General WELSH. Absolutely! Victims of sexual assault in the military should have access to a full spectrum of care. We provide medical care, spiritual counseling, and legal support to all victims regardless of the reporting option they choose.

Admiral PAPP. Absolutely.

38. Senator AYOTTE. General Dempsey, do you believe that members of the Guard and Reserve who are victims of sexual assault should have the same access to SARCs as Active Duty members?

General DEMPSEY. Yes. National Guard (NG) and Reserve component members who are sexually assaulted when performing inactive duty training and Active service have the same access to SARC support as Active Duty members. If reporting a sexual assault that occurred prior to or while not performing active service or inactive training, NG and Reserve component members are eligible to receive limited SAPR support services from a SARC and a SAPR victim advocates.

39. Senator AYOTTE. General Dempsey, do you agree that SARCs be available to members of the National Guard and Reserve at all times regardless of whether they are operating under title 10 or title 32 authority?

General DEMPSEY. National Guard (NG) and Reserve component members who are sexually assaulted when performing active service, as defined in 10 U.S.C. section 101(d)(3), and inactive duty training have the same access to SARC support as Active Duty members. Full-time State SARCs have been in place for the NG since 2008. Our efforts are cognizant of a National Guard member's status under Title 32 to ensure State authorities are not compromised.

QUESTIONS SUBMITTED BY SENATOR CARL LEVIN

COMPARISON WITH MILITARY JUSTICE SYSTEMS OF CERTAIN U.S. ALLIES

40. Senator LEVIN. General Chipman, Admiral DeRenzi, General Harding, General Ary, and General Altenburg, the United Kingdom, Canada, Australia, Germany, and Israel have changed their military justice systems to significantly reduce the role and authority of military commanders. Have you examined the military justice systems of these allies? If so, how do they differ from the military justice system in the U.S. military?

General CHIPMAN. Army Judge Advocates have examined the structure of the military justice systems of our allies and met on numerous occasions with their counterparts. There is no single model for military justice among our allies. Each force has developed a system that compensated for or corrected actual or perceived short comings in the due process afforded accused servicemembers, balanced with the need for the efficient administration of discipline given the size, missions and capabilities of the individual forces. The United Kingdom, Canada, Australia, Israel, and Germany have modified the authority and responsibilities of the commander, to varying degrees, but have retained military court jurisdiction over servicemembers.

The Canadian Military Prosecution Service (CMPS) is led by the Director of Military Prosecutions (DMP), a military officer who is statutorily appointed by the Minister of National Defense. A prosecutor's advice is required before a charge can be 'laid', and the DMP ultimately determines whether or not charges will be "preferred" to court-martial (similar to U.S. "referral"). It is noteworthy that the commander actually 'lays' charges and, if there is a disagreement on laying charges, it is the commander who makes the final decision, not the DMP. Thus, while Canada has created a separate body to prosecute cases, they have retained command discretion in the charging process. The Canadian approach is similar to our process of providing legal advice at the preferral of charges, and requiring legal advice at the referral of charges to court-martial. The DMP was established in 1997.

In the United Kingdom, when a commander believes that an accused has committed a serious offense, the commanding officer must refer the case to the service police for investigation. Since 1997, the service police report the results to the Director of Service Prosecutors (DSP), who is appointed by the Queen. The DSP may direct the accused's commanding officer to bring the charges to court-martial; specify the form of the charges; dismiss the charges; or leave the charging decision up to the accused's commanding officer. The DSP is not required to be a member of the Armed Forces, but must have been a barrister or solicitor for at least 10 years. The current director is a civilian. The United Kingdom has retained jurisdiction over all offenses.

In Israel, evidence is gathered by the Military Police and transferred to the Prosecutorial Division of the Military Judge Advocate General's Corps (MAG), led by a military attorney. The Prosecution Division decides whether to (1) submit an indict-

ment to the military court, or (2) transfer the case to the commander for exercise of disciplinary jurisdiction, or (3) order the closure of the case.

In Australia, whether or not a charge goes to court-martial is determined by the Director of Military Prosecutions (DMP), a military attorney. Once a charge is referred to the DMP, the DMP may direct the charge be not proceeded with; refer the charge to a superior summary authority or commanding officer for trial; request the Registrar, another statutorily appointed military attorney, to refer the charge to a Defence Force magistrate for trial; or request the Registrar to convene a general court-martial or a restricted court martial to try a charge. Prior to 2005, the Australian military justice system relied on convening authorities to convene courts-martial.

Admiral DERENZI. Admiral Greenert, the Deputy Judge Advocate General of the Navy, and I have had meetings with our counterparts from the United Kingdom, Canada, and Australia to discuss the management of military justice cases, including sexual assault. The role of the military commander in these nations differs from the role of the commander in the U.S. military justice system.

In the United Kingdom, a civilian Director of Service Prosecutions makes the decision to prosecute at court-martial and determines the charges. Military commanders may try minor offenses at a Summary Hearing (similar to NJP under Article 15 of the UCMJ); however, serious offenses are referred to General Court-Martial and, in contrast to the U.S. military justice system, commanders may not grant clemency following a conviction at court-martial. Homicide and rape cases occurring in the United Kingdom are traditionally tried by civilian authorities in the United Kingdom.

In Canada, commanders may try minor offenses at a Summary Trial (similar to NJP). For more serious offenses, a commander, a commander's delegate, or a military police officer may charge the offenses, which are then referred to the CMPS. The CMPS was created to separate the court-martial system from military commanders; the Director is appointed by the Defense Minister and CMPS ranks are staffed with active-duty attorneys. CMPS decides which cases should proceed to trial, designates the trial forum, drafts appropriate charges, and provides prosecutors for court. CMPS may also decide to not proceed with charges. Military commanders have no authority to grant post-trial clemency following conviction at court-martial. Offenses committed by servicemembers in Canada may also be prosecuted in civilian courts.

In Australia, a military commander may try minor offenses before a Summary Authority (similar to NJP). More serious offenses are investigated by the Provost Marshal, who has the discretion to submit the investigation to the commander or to the independent Director of Military Prosecutions (DMP). The DMP, appointed by the Defense Minister, consults with the Superior Authority (typically a two-star commander) to ensure chain-of-command input is considered in the disposition decision. For offenses with concurrent military/civilian jurisdiction, the DMP is required to consult with civilian authorities to determine whether the offense is sufficiently connected to service discipline to allow trial by court-martial. If the DMP determines that court-martial is warranted, the DMP determines the charges and provides the prosecuting attorney. Through the Registrar of Military Justice, a panel of jurors is chosen at random from all available officers of the defense force. This system was instituted in Australia 8 years ago. Although generally thought to have provided more transparency and fairness in the eyes of the Australian populace, the changes have not markedly changed the rate of criminal offenses, serious crimes, or conviction rates. The Australian force has expressed an interest in the U.S. system's restricted reporting options to encourage sexual assault victims to come forward.

In Germany, servicemembers are tried exclusively under civilian law in civilian courts. As a result of alleged offenses committed by German servicemembers during military operations in Iraq and Afghanistan, Germany is considering creating a specialized court for military offenses.

Israeli Defense Force (IDF) commanders may try minor offenses under the "Disciplinary Law" (similar to NJP). More serious offenses are addressed through the military court system. Military police conduct criminal investigations and transfer evidence to the Prosecutorial Division of the Military Advocate General's (MAG) Corps-a specialist corps of legal officers who oversee case disposition, including evaluation of the evidence, and decide whether to pursue an indictment in military court, transfer the case to disciplinary jurisdiction, or close the case. Non-military offenses committed by servicemembers may be tried by court-martial or in civilian court; the MAG selects the forum for trial, which is determined by the degree of correlation between the offense and military service.

General HARDING. We examined the military justice systems of some of these allies, specifically the United Kingdom, Canada, and Australia. I spoke with a number of our allies about the role and authority of military commanders in their systems, and we have begun evaluating the merits of their approaches. Specifically, I had meetings with my Australian and Canadian counterparts on the topic in the last 6 months and I intend to engage with my British counterparts later this year.

The systems vary primarily in their increased centralization and reduced role of commanders for certain criminal offenses within their military justice systems. For example, in Australia, commanders still dispose of 92 percent of cases occurring in their units, although the most serious cases have been removed from the commander and referred to the Director of Military Prosecutions since 2005. Despite the removal of the commander from the disposition decision in the most serious sexual assault cases, there has been no decline in sexual assault allegations.

My staff recently finished a review of the United Kingdom's 2010 Service Prosecuting Authority inspection report for any lessons learned that may have application to our system. It is a thorough inspection report for the first year of the Service Prosecuting Authority's operation, and it is largely focused on efficiency and effectiveness of the standup of the new organization. It does not evaluate its impact on good order and discipline or the satisfaction of commanders with the system. The Authority's report is available on-line at: http://www.hmcpsi.gov.uk/documents/reports/OTHER/SPA/SPA—Dec10—rpt.pdf.

While we have been examining these military justice systems, we are not aware of any studies that evaluate the impact on good order and discipline after the changes to the systems of our allies that would indicate that we should adopt their approach.

General ARY. Major General Ary had meetings with counterparts from Canada and Australia to discuss their justice systems. Vice Admiral DeRenzi also had meetings with our counterparts from the United Kingdom, Canada, and Australia. The role of the military commander in these nations' military justice systems differs from the role of the commander in the U.S. military justice system.

In the United Kingdom, a civilian Director of Service Prosecutions may direct an accused's commander to bring charges at court-martial, specify the form of charges, dismiss charges, or leave the charging decision to the commander. Military commanders may try minor offenses at a Summary Hearing [similar to NJP under Article 15 of the UCMJ]; however, serious offenses are referred to Court-Martial and, in contrast to the U.S. military justice system, commanders may not grant clemency following a conviction at court-martial. Homicide and rape cases are traditionally tried by civilian authorities.

In Canada, commanders may try minor offenses at a Summary Trial (similar to NJP). For more serious offenses, a commander, a commander's delegate, or a military police officer may charge the offenses, which are then referred to the CMPS. The CMPS was created to separate the court-martial system from military commanders; the Director is appointed by the Defense Minister and it is staffed with active-duty attorneys. The CMPS decides which cases should proceed to trial, designates the trial forum, drafts appropriate charges, and provides prosecutors for court. The CMPS may also decide to not proceed with charges. Military commanders have no authority to grant post-trial clemency following conviction at court-martial. Offenses committed by servicemembers in Canada may also be prosecuted in civilian courts.

In Australia, a military commander may try minor offenses before a Summary Authority (similar to NJP). More serious offenses are investigated by the Provost Marshal, who has the discretion to submit the investigation to the commander or to the independent Director of Military Prosecutions (DMP). The DMP, appointed by the Defense Minister, consults with the Superior Authority (typically a two-star commander) to ensure chain-of-command input is considered in the disposition decision. For offenses with concurrent military/civilian jurisdiction, the DMP is required to consult with civilian authorities to determine whether the offense is sufficiently connected to service discipline to allow trial by court-martial. If the DMP determines that court-martial is warranted, the DMP determines the charges and provides the prosecuting attorney. This system was instituted in Australia 8 years ago. Although generally thought to have provided more transparency and fairness in the eyes of the Australian populace, the changes have not markedly changed the rate of criminal offenses, serious crimes, or conviction rates.

In Germany, servicemembers are tried exclusively under civilian law in civilian courts. As a result of alleged offenses committed by German servicemembers during military operations in Iraq and Afghanistan, Germany is considering creating a specialized court for military offenses.

Israeli Defense Force (IDF) commanders may try minor offenses under the "Disciplinary Law" (similar to NJP). More serious offenses are addressed through the military court system. Military police conduct criminal investigations and transfer evidence to the Prosecutorial Division of the Military Advocate General's (MAG) Corps-a specialist corps of legal officers who oversee case disposition, including evaluation of the evidence, and decide whether to pursue an indictment in military court, transfer the case to disciplinary jurisdiction, or close the case. Non-military offenses committed by servicemembers may be tried by court-martial or in civilian court; the MAG selects the forum for trial, which is determined by the degree of correlation between the offense and military service.

General ALTENBURG. All are different from U.S. Military Justice—and all are different from each other in multiple ways. United Kingdom, Canada, Australia, and Israel are Common Law countries; Germany is a civil law country. Common law and civil law traditions influence national military justice systems. The greatest difference between the named countries' military justice systems and the U.S. system is that the U.S. system retains the Commander's role as Convening Authority. The other countries have placed prosecutorial decision making with attorneys—military attorneys in most instances, civilian attorneys in others. When comparing other nations' military justice systems with a view toward possible change, it is prudent to analyze and compare force end strength, prosecution, conviction, and sentencing statistics and compare them to U.S. military justice statistics. Although statistics from U.S. allies are limited, it is clear that the U.S. military justice system prosecutes more sex offenses per capita and produces more convictions than the allies. Please see also my response to Question 5. Reliance on the Australian system is especially dubious. Revisions to the Australian Military Justice system in October 2007 were subsequently declared unconstitutional by Australia's highest court. The court decision caused considerable disarray and confusion for the Australian military. This reinforces the importance of thoughtful, fully researched studies and committee hearings before effecting significant change to the UCMJ.

41. Senator LEVIN. General Chipman, Admiral DeRenzi, General Harding, General Ary, and General Altenburg, what is your understanding of the historic basis for these differences?

General CHIPMAN. The United Kingdom, Australia and the Canada changed their military justice systems to ensure the accused had the right to an independent and impartial tribunal.

In 1997, the United Kingdom changed its system in response to the ruling of the European Court of Human Rights (ECHR) in Findlay v. The United Kingdom. In Findlay, the ECHR held that the central role of the convening officer violated Article 6 of the European Convention on Human Rights, which guarantees an accused the right to "an independent and impartial tribunal."

Canada modified its system in 1997 after a Report of the Special Advisory Group on Military Justice and Military Police Investigative Services recommended that the court-martial prosecution process be separated from the chain of command.

Australia changed its system in 2005 in response to a Senate Foreign Affairs, Defence and Trade Reference Committee Report, "The Effectiveness of Australia's Military Justice System." That report directed changes to the military justice system to promote transparency and independence.

None of the countries noted changed their system out of a concern for victim rights.

Admiral DERENZI. The reduction of the commander's role in military justice in the United Kingdom was influenced by litigation brought by a servicemember convicted before the ECHR, *Findlay* v. *United Kingdom* (1997). In *Findlay*, the ECHR held that "the central role played by the convening officer" in the United Kingdom court-martial system violated Article 6 of the ECHR, which guarantees an accused the right to "an independent and impartial tribunal."

Changes in the Canadian system were prompted by the Supreme Court of Canada's decision in *R.* v. *Genereux* (1992). In *Genereux*, the Court held that a parallel system of military tribunals was not inconsistent with the Canadian Charter of Rights and Freedoms, provided the accused was afforded the constitutional guarantee of an independent and impartial tribunal. In the context of the case, the court found that the requirement for judicial independence was not met, and therefore the accused's right to an independent and fair tribunal was violated.

Following World War II, Germany eliminated trial by court-martial and provided for the prosecution of servicemembers in the civilian court system.

The Israeli Supreme Court has narrowly interpreted the military justice powers vested in commanders and held that a military commander may not make a prosecution decision which contradicts that of the Military Advocate General.

General HARDING. Our understanding of the historical basis for the differences is that each country has adapted to a unique legal and political climate different from ours.

As an example from Australia, the most recent legislation creating a new Australian military justice court was found unconstitutional by their High Court, and they now have new legislation that is pending.

For the United Kingdom, from 1996 to 2006, the driving factor in changes to the military justice systems was compliance with the European Convention on Human Rights, of which the United Kingdom is a party, and the decisions of the ECHR. Our understanding is the Court rendered this decision to protect rights of the accused rather than to correct perceived injustice to victims. Therefore, treaty obligations or court decisions were the impetus behind the changes, not any particular crime.

General ARY. The reduction of the commander's role in military justice in the United Kingdom and Canada was influenced by litigation brought by a convicted servicemember before the ECHR, *Findlay* v. *United Kingdom*. In Findlay, the ECHR held that "the central role played by the convening officer" in the United Kingdom court-martial system violated Article 6 of the European Convention on Human Rights, which guarantees an accused the right to "an independent and impartial tribunal."

In Australia, they used a system of military justice similar to ours until 2005, when it was revised following changes in Canada and the United Kingdom that dealt with transparency and independence in the prosecution of cases.

Following World War II, Germany eliminated trial by court-martial and provided for the prosecution of servicemembers in the civilian court system.

The Israeli Supreme Court has narrowly interpreted the military justice powers vested in commanders and held that a military commander may not make a prosecution decision which contradicts that of the Military Advocate General.

General ALTENBURG. I understand that the United Kingdom, Australia, and Canada modified their Military Justice systems in response to complaints that the then-existing systems failed to protect adequately the rights of defendants. The basis for the complaints varied among the Nations, but all included lack of transparency generally and lack of independence from the command. These are the same complaints about the U.S. Military Justice System in the 1940s that led to the development and passage by Congress of the UCMJ in 1950 to replace both the Articles of War and Articles for the Government of the Navy. Other complaints in the 1960s regarding lack of fairness led, after considerable study and analysis, to the 1968 UCMJ amendments. In the case of the United Kingdom, two decisions by the ECHR, *Findlay* v *United Kingdom*, [1997] ECHR 8; (1997) 24 EHRR 221, and Grieves v United Kingdom, [2003] ECHR 688; (2004) 39 EHRR 2, dictated that their Military Justice system be modified to afford greater protection to military personnel accused of crimes. The Canadian system was reformed after the Supreme Court of Canada's decision in *R*. v. *Généreux*, [1992] S.C.R. 259, which held that the Canadian court-martial system violated accused servicemembers' rights under the Canadian Charter of Rights and Freedoms. The Australian system was modified by the Parliament in 2006 after extensive research and analysis by special government entities. Unlike the courts requiring change in countries such as the United Kingdom and Canada, the U.S. Supreme Court has specifically upheld the U.S. military justice system in decisions like *Parker* v. *Levy*, 417 U.S. 733, 743 (1974) (upholding the constitutionality of Articles 133 and 134, UCMJ and finding that the military is "a specialized society separate from civilian society" with "laws and traditions of its own [developed] during its long history."); *Middendorf* v. *Henry*, 425 U.S. 25 (1976) (upholding summary courts-martial proceedings); *Solorio* v. *United States*, 483 U.S. 435 (1987) (upholding courts-martial jurisdiction over military members for other than service-related offenses and requiring only military status for jurisdiction); *Weiss* v. *United States, Weiss* v. *United States,* 510 U.S. 163 (1994) (rejecting constitutional challenges to the appointment of military judges by the Service Judge Advocates General and Due Process Clause challenge to military judges' lack of fixed terms of office); and *Loving* v. *United States*, 517 U.S. 748 (1996) (rejecting constitutional challenge to the military death penalty procedures).

The research and study groups in allied nations may well have been modeled on similar groups in the United States created to research and study Military Justice before congressional action in 1950, 1968, and 1983. There was extensive research and analysis by military and civilian experts in the United States especially in connection with the Vanderbilt Commission, the Doolittle Commission, and the Forrestal (Morgan) Commission. Review of the findings and recommendations of commissions, other studies, and extensive congressional hearings led to passage of the UCMJ in 1950. The current proposal to remove commanders from Military Justice

decisionmaking is more far reaching and significant than all the changes of the other three major pieces of legislation (1950, 1968, 1983) taken together. I respectfully submit that the permutations and unintended consequences of such an historic change should be evaluated carefully by special committees of experts, military and civilian. The recently appointed Response Systems Panel, established by section 576 of the NDAA, 2013, is but one example of a group whose final report should be reviewed and analyzed before legislation is considered to change in so profound and fundamental ways the U.S. Military Justice system. Finally, it is noted that victims' rights, sexual assault offenses, or considerations other than protecting defendants had nothing to do with changing the Military Justice systems in any of the named countries.

42. Senator LEVIN. General Chipman, Admiral DeRenzi, General Harding, General Ary, and General Altenburg, have you discussed the administration of military justice with your counterparts in these countries? If so, what did you learn from these discussions?

General CHIPMAN. Army Judge Advocates have studied the military justice systems of our allies and met on numerous occasions with their counterparts. Canada, Australia, and the United Kingdom were forced to change their military justice systems to protect the rights of the accused and ensure a fair and impartial tribunal. None of our allies indicated that concerns about the reporting, investigation or prosecution of sexual assault contributed to military justice reform in their respective countries. Further, the role of the commander has been, and continues to be, essential to the success of their systems.

In Canada, the United Kingdom, and Australia, most disciplinary actions are handled by the commander-controlled summary system, a disciplinary process similar to our NJP. In Australia, the crime rates have remained the same from before the system was modified in 2005 until now, and there is no indication that victims are more likely to come forward and make complaints.

Admiral DERENZI. Admiral Greenert, the Deputy Judge Advocate General of the Navy, and I have had meetings with our counterparts from the United Kingdom, Canada, and Australia to discuss the management of military justice cases, including sexual assault. Our discussions served to compare and contrast our respective systems of military justice and exchange views on the challenges we face.

Significant changes were made to the military justice systems in the United Kingdom, Canada, and Australia; many changes resulted from perceived system unfairness, lack of transparency, or court rulings pertaining to the rights of accused servicemembers. Each system retains the authority of the commander to adjudicate minor offenses and maintains differing roles for the military commander in the disposition of more serious offenses.

General HARDING. Yes, we examined the military justice systems of some of these allies, specifically the United Kingdom, Canada, and Australia. I spoke with a number of our allies about the role and authority of military commanders in their systems, and we have begun evaluating the merits of their approaches. Specifically, I had meetings with my Australian and Canadian counterparts on the topic in the last six months and I intend to engage with my British counterparts later this year.

The systems vary primarily in their increased centralization and reduced role of commanders for certain criminal offenses within their military justice systems. For example, in Australia, commanders still dispose of 92 percent of cases occurring in their units, although the most serious cases have been removed from the commander and referred to the Director of Military Prosecutions since 2005. Despite the removal of the commander from the disposition decision in the most serious sexual assault cases, there has been no decline in sexual assault allegations.

My staff recently finished a review of the United Kingdom's 2010 Service Prosecuting Authority inspection report for any lessons learned that may have application to our system. It is a thorough inspection report for the first year of the Service Prosecuting Authority's operation, and it is largely focused on efficiency and effectiveness of the standup of the new organization. It does not evaluate its impact on good order and discipline or the satisfaction of commanders with the system. The Authority's report is available on-line at: http://www.hmcpsi.gov.uk/documents/reports/OTHER/SPA/SPA—Dec10—rpt.pdf.

While we have been examining these military justice systems, we are not aware of any studies that evaluate the impact on good order and discipline after the changes to the systems of our allies that would indicate that we should adopt their approach.

General ARY. Major General Ary had meetings with counterparts from Canada and Australia to discuss their justice systems. Vice Admiral DeRenzi also had meetings with our counterparts from the United Kingdom, Canada, and Australia. Our

discussions served to compare and contrast our respective systems of military justice and exchange views on the challenges we face.

The Marine Corps' initial research into the changes made by our allies indicates that in many cases, those changes were undertaken because of court decisions that found the military justice system did not adequately protect the rights of the accused. This is a fundamentally different situation than the one currently being evaluated by Congress as recent hearings have been focused on ensuring that the military protects the interests of victims in the military justice system. U.S. Federal courts, including the Supreme Court, have consistently upheld the Constitutionality of our military justice system.

Perceived system unfairness, lack of transparency, and court rulings pertaining to the rights of accused servicemembers led to the significant changes in the military justice systems in the United Kingdom, Canada, and Australia. Each system retains the authority of the commander to adjudicate minor offenses and maintains differing roles for the military commander in the disposition of more serious offenses. At least in the case of Australia, the changes have not markedly impacted the rate of criminal offenses, serious crimes, or conviction rates.

The Marine Corps will continue to research lessons learned from our allies, both individually and collectively as part of the Joint Service Committee on Military Justice, the Code Committee, the Response Systems Panel, and the Judicial Proceedings Panel. These lessons learned will continue to advance the cause of justice in the military.

General ALTENBURG. I have discussed these matters with several United Kingdom military attorneys. I have not discussed these matters with military attorneys from the other countries. Some of my United Kingdom colleagues approve of the changes mandated by the ECHR. They perceive no detriment to the United Kingdom military as a result of the changes. Others confided that they believe the changes are negatively affecting the capabilities of their military. Objections included the time away from units and installations to attend civilian courts as witnesses and the perceived lack of unit control by commanders. No one would address objections for record. All noted that neither sexual assault cases nor victims' rights had any role in the development of changes to their Military Justice system.

43. Senator LEVIN. General Chipman, Admiral DeRenzi, General Harding, General Ary, and General Altenburg, have you discussed the impact of their systems on sexual assaults and reporting of sexual assaults?

General CHIPMAN. Army Judge Advocates have discussed with our allies the impact of their systems on sexual assaults and reporting of sexual assaults. Most are unable to determine the impact of their systems on sexual assaults and reporting. Whether or not there is a link between reporting, investigation, and prosecution is unknown. While our allies agree that sexual assault is under reported, they are only now beginning to study the problem.

Canada conducted the Canadian Forces Workplace Harassment Survey in August 2012; the results are scheduled to be released later this fall. Canadian soldiers were asked to voluntarily complete a survey that asked 100 questions ranging from harassment to sexual assault.

In 2009, the United Kingdom Army commissioned the Watts-Andrews Inquiry to report on the Army's progress on Equality and Diversity (E&D). The inquiry found that female servicemembers were seven times more likely to experience harassment and twice as likely to experience bullying as their male counterparts. The inquiry expressed concerns about willingness of female servicemembers to report misconduct.

In 2012–2013, the Australian military conducted its first gender relations survey that concluded that only 20 percent of sexual assaults are reported. Prior to this, in 2011, the Australian Human Rights Commission conducted a Review into the Treatment of Women in the Australian Defence Force Academy and the Australian Defence Force. The Commission concluded that under-reporting of "sexually related misconduct is a significant issue for the ADF." The Commission also recommended the establishment of a "Sexual Misconduct Prevention and Response Office ('SEMPRO')" that is scheduled to be operational in July 2013.

In Israel, a 2008 survey indicated that one in seven female soldiers reported being assaulted or harassed. As a result, Israel established a two-week self-defense course for all women recruits and increased education efforts. Ynetnews reported that in 2007 there were 318 complaints of sexual assault and in 2011 there were 583 complaints of sexual assault. This would represent an 80 percent increase in reports. However, this increase is not related to a change in the role of the commander, which has not changed since 1955. According to the IDP Manpower Directorate, "No one can say whether the rise in the number of complaints indicates a rise in the

number of cases of sexual harassment, or rather a rise in the awareness to the issue and the duty to report." Ynetnews.com, August 5, 2012.

Admiral DERENZI. Admiral Greenert, the Deputy Judge Advocate General of the Navy, and I have had meetings with our counterparts from the United Kingdom, Canada, and Australia to discuss the management of military justice cases, including sexual assault. Our counterparts believe changes to their systems of military justice have addressed human rights and fairness concerns pertaining to the rights of an accused and provide fairness and transparency to the civilian populace. It is less clear whether these changes impacted reports of crime or conviction rates when compared to their prior systems of military justice. In fact, the Australian force reports no change in these rates and believes there still is underreporting of sexual assaults. They also expressed an interest in the U.S. system's restricted reporting options to encourage victims to come forward.

General HARDING. Yes. I have spoken about this with my Australian counterpart and they have found no impact on reporting of sexual assault due to their new system, which changed in 2005 to centralize prosecutions for serious offenses warranting court-martial under an independent prosecutor. In fact, based on their survey data, they believe approximately 80 percent of sexual assaults go unreported, despite having an independent prosecutor.

Further, I am not aware of any change in a system of military justice that was prompted or designed to specifically impact sexual assault or the reporting of sexual assaults. I will be discussing this matter later in the year with my United Kingdom counterpart. The United Kingdom approved the Armed Forces Act of 2006 at the end of 2006, although its provisions were not implemented until 2009. The Act did not create any specific or unique system for dealing with sexual offenses; serious offenses are dealt with in the same manner, by referral to the Director of Service Prosecutions for a decision on prosecution.

General ARY. Major General Ary had meetings with counterparts from Canada and Australia to discuss their justice systems. Vice Admiral DeRenzi also had meetings with counterparts from the United Kingdom, Canada, and Australia.

Our counterparts believe changes to their systems of military justice have addressed human rights and fairness concerns pertaining to the rights of an accused and provide fairness and transparency to the civilian populace. What is not clear is whether the changes in these countries' systems resulted in any changes in reports of crime or conviction rates when compared to their prior systems of military justice.

General ALTENBURG. I have not, but recent assessments in Australia available to the public have emphasized that the lack of military involvement in investigations and prosecutions of military personnel are a primary cause of sex offense victims' failure to report hundreds of sexual crimes within Australian units. Please see also my response to Question 5.

44. Senator LEVIN. General Chipman, Admiral DeRenzi, General Harding, General Ary, and General Altenburg, are you aware of any studies of the systems of justice of these allies to assess their effectiveness and impact on sexual assaults and reporting of sexual assaults as compared to the more traditional model like that of the United States?

General CHIPMAN. No, we are not aware of any studies of the systems of justice of these allies to assess their effectiveness and impact on sexual assaults and reporting of sexual assaults as compared to the more traditional model like that of the United States. As discussed above, our allies did not adapt their systems of justice in response to issues related to sexual assault or victims' rights. Studies conducted by our allies have focused on the impact of changes to the military justice system on the rights of the accused servicemembers.

All of our allies have acknowledged that sexual assault and sexual harassment is a pervasive and persistent issue, generating not only sensational publicity for specific cases but eroding discipline and morale. Until very recently, most of our allies have not engaged in the in-depth studies, surveys and research into sexual assault rates of incident, rates of reporting and reasons for underreporting that the U.S. military has conducted over the past decades. Several of our allies, including Canada and Australia, have recently conducted surveys that may allow us to study and compare the systemic responses of the various systems. Some of these allies have recently established prevention and education campaigns, based on U.S. models.

Admiral DERENZI. I am not aware of studies of the systems of justice of our allies to assess their effectiveness and impact on sexual assaults and reporting of sexual assaults as compared to the United States.

General HARDING. No, I am not aware of any such study.

General ARY. The Marine Corps is not aware of studies of the systems of justice of our allies to assess their effectiveness and impact on sexual assaults and reporting of sexual assaults as compared to the United States.

General ALTENBURG. I am generally aware that other countries are assessing the effects of changes in the administration of Military Justice since the mid-1990s. Years ago I discussed with several colleagues the effect of the ECHR decisions, but I have not discussed with anyone the effect on sexual assault specifically because the changes to Military Justice were completely unrelated to specific crimes, but rather were related to protections and individual rights of accused persons. I believe that there is greater awareness in all nations of the insidious effect of sexual assault on societies generally and militaries specifically, but I also believe that when it becomes a political issue the likelihood of careful, studied analysis generating thoughtful change that considers permutations and unintended consequences is lessened substantially. Change to Military Justice in this country and by the U.S. Congress has always been preceded by extensive study and analysis. An exception was the 2006 amendment to Title 10, Section 920 [NDAA for Fiscal Year 2006, Pub.L. No. 109–163, div. A, tit. V, § 552(a)(1), 119 Stat. 3136, 3257 (2006)], the UCMJ sexual assault statute, which Congress then had to modify yet again in 2011 [NDAA for Fiscal Year 2012, Pub. L. No. 112–81, § 541, 125 Stat. 1298 (2011)] because permutations and unanticipated consequences were not considered thoroughly before its 2006 passage.

Much of the critical discussion about military disposition of sex offenses has relied on statistics to argue that the UCMJ should be amended. The total number of military sex crimes has been widely debated. The data in the following paragraphs responding to question five were provided to me by Professorial Lecturer in Law Lisa M. Schenck, Associate Dean for Academic Affairs, The George Washington University Law School in Washington, DC. This information is extracted from Professor Schenck's draft Fact Sheets, July 19, 2013. In fiscal year 2012, DOD investigators referred 1,714 sex offense investigations to DOD commanders for consideration of disciplinary action against military subjects. 302 DOD military personnel were tried by courts-martial for sexual assault offenses, resulting in a prosecution rate of 18 percent (302 cases tried divided by 1,714 cases referred by investigators) and 79 percent (238 convicted divided by 302 tried) were convicted. The rate per thousand of DOD personnel tried by courts-martial for sexual assault offenses was .22 (302 tried by court-martial/1,388,000) and the conviction rate per thousand was .17 (238 convicted/1,388,000).

United Kingdom

In fiscal year 2012, the active duty strength of the U.S. DOD was eight times as large as the United Kingdom Active-Duty Forces total of 175,940. An average of 101 United Kingdom military sexual assaults and rapes were investigated by the police each year from 2005–2010; an average of 53 serious sex offenses cases (52 percent of investigated cases) were referred to the United Kingdom Special Prosecuting Authority (SPA) from 2007 to 2010. From 2005 to 2010, the United Kingdom tried an average of 2.3 sex offenses per year; the United Kingdom annual prosecution rate per thousand is .013. The rate per thousand of prosecution of DOD sex offenses is 17 times higher than the United Kingdom.

Another perspective on the prosecution rate is based on the number of investigations referred by police for a disposition decision. The United Kingdom court-martial prosecution rate by this metric is 4.3 percent (2.3 cases prosecuted divided by 53 cases referred by investigators to the United Kingdom SPA). The U.S. DOD prosecution rate for sex offenses is 18 percent, or four times higher.

The United Kingdom changed to a system of centralized prosecutions handled by military lawyers after decisions by the ECHR. The modified system was designed to protect the rights of the accused from and avoid any perception of an overbearing chain of command intent on achieving unjust convictions. The United Kingdom change in charging and referral authorities had nothing to do with increasing prosecution rates for crime in general or sex offenses in particular. With an average of less than three sex offense prosecutions per year by courts-martial and more than 100 sex offenses investigated annually, the United Kingdom model does not appear to be a framework that the U.S. Armed Forces should adopt.

Canada

From April 1, 2009 to March 31, 2010, nine Canadian military personnel were referred to court-martial with sexual assault charges: five were found not guilty; two were withdrawn; two were found guilty; and both of those who were convicted received sentences that included confinement. One received 20 months confinement

for sexual assault, and one received 3 months for sexual interference and other offenses.

From April 1, 2009 to March 31, 2010, Canada tried 56 courts-martial (most of their disciplinary proceedings are summary trials, which are for minor disciplinary problems, similar to nonjudicial dispositions under Article 15, UCMJ). The Canadian court-martial rate per thousand for all offenses was .8 (56/70,000). The Canadian sex offense prosecution rate per thousand was .10 (7/70,000), and the conviction rate was .03 (2/70,000). The Canadian conviction rate was 29 percent (2/7). The DOD rate per thousand for sex offense convictions was six times higher than Canada's.

Some DOD general courts-martial jurisdictions have tried more courts-martial, obtained more convictions, tried more sexual assault cases, obtained more sexual assault convictions, and sent more sexual assault perpetrators to confinement than the entire Canadian armed forces, even though those jurisdictions have substantially fewer assigned personnel than Canada. For example, Fort Hood, Texas has 45,000 active duty military personnel, compared to Canada's 70,000. In fiscal year 2011, Fort Hood prosecuted 115 courts-martial (including 18 sex offenses), resulting in 112 convictions (including 13 sex offense convictions—the number of convictions is higher if cases are included where the accused was acquitted of a sex offense but convicted of other offenses). In fiscal year 2012, Fort Hood prosecuted 121 courts-martial (including 26 sex offenses), resulting in 114 convictions (including 21 sex offense convictions). More important, in fiscal year 2011, 10 military personnel were sentenced to more than 1 year of confinement; in fiscal year 2012, 17 military personnel were sentenced to more than 1 year of confinement. In sum, Fort Hood by itself in fiscal year 2012, tried 3.7 times (26/7) as many sex offenses by courts-martial as the entire Canadian military and obtained 10 times (21/2) as many sex offense convictions, and sentenced 17 times (17/1) as many sex offenders to confinement.

Australia

Australia's military justice system has been in turmoil for several years. The Australian Parliament modified their military justice system in 2006 to make it more like the systems in the United Kingdom and Canada. The goal was to increase the "appearance of fairness" for the accused (not to enhance justice for victims or to increase prosecutions). The Australian Government implemented the changes on October 1, 2007 by replacing general and restricted courts-martial and trial by a Defense Force Magistrate (DFM) with trial by a military tribunal (the Australian Military Court (AMC)) for the specific purpose of increasing protections for the accused. DFM and restricted courts-martial have identical jurisdiction and authority. Their sentencing authority is limited to a maximum of six months confinement, or half the punishment authority of a U.S. special court-martial. An Australian general court-martial, like a U.S. general court-martial, may impose up to the maximum authorized punishment for the specific offense.

The Australian Parliament created the Office of the Director of Military Prosecutions (DMP) effective June 12, 2006. The Director is a Brigadier; DMP has 14 prosecutor positions. The DMP prosecutes in-service offenses at proceedings before courts-martial or a DFM, and seeks the consent of the Directors of Public Prosecutions to prosecute cases where there is overlapping jurisdiction.

On August 26, 2009, the High Court of Australia invalidated the provisions establishing the AMC, Lane v. Morrison, [2009] H.C.A. 29. The Parliament responded by enacting the Military Justice (Interim Measures) Act (No. 1) 2009 and Military Justice (Interim Measures) Act (No. 2) 2009, re-establishing the pre-2007 regime of DFM, restricted courts-martial, and general courts-martial. The invalidation of the original system and uncertainty regarding its replacement created greater challenges to the Australian military's efforts to achieve good order and discipline.

An Australian military sexual abuse scandal led the Australian Minister for Defence Stephen Smith, in April 2011, to announce two important reviews of sexual abuse in the Australian military-one review by the Australian Human Rights Commission, and another by a private sector law firm retained by the government. The law firm review found that once the military passed the investigation and prosecution of serious sex offenses to the civilian sector, the military virtually washed their hands of the matter and withdrew from the process. The law firm review collected 775 complaints; a 2012 follow-up review generated 2,410 complaints of sexual abuse or harassment. Australia is embroiled in a massive review of their handling of sexual assault allegations.

The active duty strength of the U.S. DOD in fiscal year 2012 was 1,388,028 (24 times larger than the Australian Active-Duty Force of 56,856). In 2009, 2011, and 2012, Australia averaged 47 military trials; however, most were DFM hearings or

restricted courts-martial. In 2011 there were but 5 Australian general courts-martial, and in 2012, only 1. In comparison, DOD completed 2,510 general and special courts-martial in fiscal year 2012, including 1,183 general courts-martial and 1,327 special courts-martial, plus another 1,346 summary courts-martial. A U.S. soldier who commits a serious sex crime is far more likely to receive a general court-martial and substantial confinement from that court-martial than an Australian soldier who commits the same offense. The entire Australian military justice system prosecuted an average of three felony-level prosecutions the last 2 years; it seems unwise to apply the Australian model to the U.S. system that prosecutes approximately 400 times as many felony-level cases.

Israel

Unfortunately, the data from Israel is less complete. The following table provides the report and indictment information from 2008 to 2012. The reports include some minor sex conduct that in the United States would be viewed as non-criminal sexual harassment.

Military Sex Offense Reports and Indictments in Israel

	2008	2009	2010	2011	2012	Average
Reports	318	363	Unknown	583	Unknown	
Indictments	28	26	20	14	27	23

The Israeli active duty population is 176,500 or 4 times as large as the active duty population of Fort Hood. (Also noteworthy, women comprise 33 percent of the Israeli Defense Forces; in contrast, women make up approximately 15 percent of active duty DOD personnel.) Yet Fort Hood has approximately the same number of sex offense prosecutions as the entire Israeli forces (Fort Hood averaged 22 sex offense trials in fiscal year 2011 and 2012; Israel averaged 23 indictments from 2008 to 2012). If the goal is to prosecute more sex offenses, the Israeli system seems not to be the model for DOD to emulate.

45. Senator LEVIN. General Chipman, Admiral DeRenzi, General Harding, General Ary, and General Altenburg, in your view, do the U.S. military and military justice systems share the features of the foreign systems that led them to reduce the role on authority of military commanders in the military justice system?

General CHIPMAN. No, the U.S. military and military justice systems do not share the features of the foreign systems that led them to reduce the role on authority of military commanders in the military justice system. The U.S. military justice system has safeguards in place to ensure the accused has the right to a fair and impartial trial. In addition, the UCMJ prohibits unlawful command influence. The U.S. Supreme Court has upheld the constitutionality of our military justice system and its safeguards provided to the accused. Furthermore, the safeguards and due process rights of soldiers are available to them both in garrison and in theater. The military justice system is deployable, when necessary, and has a proven record in theater. Both the rights of an accused soldier and the needs of a victim can be meaningfully protected both in garrison and in theater.

Admiral DERENZI. Significant changes were made to the military justice systems in the United Kingdom, Canada, and Australia; many changes resulted from perceived system unfairness or bias toward the prosecution and court rulings pertaining to the rights of accused servicemembers. Each system retains the authority of the commander to adjudicate minor offenses and maintains differing, albeit generally more limited, roles for the military commander in the disposition of more serious offenses.

The U.S. military justice system protects the rights of accused servicemembers. For example, Article 37 of the UCMJ protects court-martial proceedings and participants from unlawful command influence. Article 32 of the UCMJ guarantees a robust pre-trial investigation, which is more thorough than a civilian grand jury proceeding, prior to referring charges to a general court-martial. Trained military defense counsel are provided to the accused free of charge. Finally, court-martial convictions are subject to robust review and appellate processes. The fundamental structure of the U.S. military justice system and UCMJ, centered on the role of the commander as the convening authority, is sound. The responsibility, authority, and accountability vested in the commander requires the provision of appropriate tools to maintain readiness and safety. Military justice is one of those tools. The UCMJ provides adequate protections to ensure the commander's role does not negatively impact the fundamental fairness of the military justice system.

General HARDING. No, it appears the driving factors behind the changes for our allies were primarily treaty obligations or court decisions which do not impact the United States.

General ARY. The systematic issues that led to changes in the United Kingdom, Canada, and Australia-perceived system unfairness, lack of transparency, and court rulings pertaining to the rights of accused servicemembers-are not present in military justice in the United States. The U.S. military justice system already provides fairness and transparency, and protects the rights of accused servicemembers.

For example, Article 37 of the UCMJ protects court-martial proceedings and participants from unlawful influence. Article 32 of the UCMJ guarantees a robust pretrial investigation, which is more thorough than a civilian grand jury proceeding, prior to referring charges to general courts-martial. Trained military defense counsel are provided to the accused free of charge. Finally, court-martial convictions are subject to robust review and appellate processes. The fundamental structure of the U.S. military justice system and UCMJ, centered on the role of the commander as the convening authority, is sound. The responsibility, authority, and accountability we place in the commander require that we provide tools to maintain appropriate readiness and safety, and good order and discipline, every day. Military justice is one of those tools. The UCMJ provides adequate protections to ensure the commander's role does not negatively impact the fundamental fairness of the military justice system, and balances institutional interests, the rights of the accused, and the interests of victims.

General ALTENBURG. No. The U.S. Military Justice system has evolved effectively since 1950. The rights of U.S. military personnel paralleled, and exceeded in many respects, the rights of U.S. citizens accused of crimes in civilian jurisdictions, local, State, or Federal. Subsequent changes (1968, 1983) to the U.S. Military Justice system threaded the challenge of incremental "civilianization" while retaining the flexibility and vigor that reinforces discipline and combat readiness with an array of disciplinary options, procedures, and protections that satisfied the military, Congress, most critics, and the rank and file. The other nations did not protect their military personnel in similar fashion and ultimately were forced, in at least two cases (the United Kingdom and Canada) by judicial decision, to modify their Military Justice systems. The U.S. Supreme Court, in contrast, has on numerous occasions upheld the constitutionality of the U.S. Military Justice system and its efficacy. The cases prosecuted in Iraq and Afghanistan since 2001 reflect the importance of the commander's role in Military Justice-especially expeditionary courts-martial. During Operation Desert Storm in 1991, courts-martial were conducted at the most forward maneuver brigade base camp assault positions less than 3 miles south of the Iraqi-Saudi Arabian border. Trials conducted 2 days before the February ground assault reinforced discipline, enhanced morale, and were a signal event in demonstrating the system's combination of flexibility, responsiveness, and commitment to fairness and due process. Transporting defense lawyers and judges to forward assault locations was considered important to overall combat readiness. Trials were also conducted in Iraq immediately after the February 28 ceasefire. In one of the cases, the military trial judge had conducted motions hearings with counsel and the defendant in the Kingdom of Saudi Arabia in February and then the Emirate of Kuwait in early March before the trial itself later that month in the Republic of Iraq near Basra while U.S. forces conducted operations there. The contested case with officer and enlisted court members in a combat zone less than 20 days after combat operations demonstrated that the UCMJ must—and can—meet the national security demands of the Nation without compromising the essentials of justice.

46. Senator LEVIN. General Chipman, Admiral DeRenzi, General Harding, General Ary, and General Altenburg, would their models work for the U.S. military? Why or why not?

General CHIPMAN. The U.S. military should not adopt the military justice systems of our allies. First, there is no evidence that changes made to our allies' systems would have any effect on the reporting or prosecution of sexual assaults or other crimes, especially given that the changes were not as a result of problems prosecuting sexual assaults offense, but rather as a result of a perceived deprivation of due process to accused servicemembers. Second, the U.S. military justice system does not suffer from the same perceptions of a failure to provide sufficient protections to accused soldiers that spurred the changes in our allies' systems. Third, the more centralized disposition systems adapted by our allies would generate inefficiencies in the U.S. system due to significant differences in the size of our forces and the scope and depth of our overall mission.

The U.S. military has nearly 10 times the number of total servicemembers as our largest ally. The U.S. military has more deployed servicemembers than some of our

allies have total in their force. The U.S. military justice system tries more courts-martial than any of our allies. For example, our largest ally, the United Kingdom, tried 633 courts-martial in 2010. The U.S. military tried more than 2,800 in the same year. The U.S. also tries courts-martial in combat theaters, unlike our allies. Since 2003, the U.S. Army has tried more than 950 courts-martial in the CENTCOM theater alone. The portability of our system that provides efficient, local, and visible justice worldwide is essential to maintaining good order and discipline and preserving commander authority in conflict and in garrison.

Admiral DERENZI. By virtue of experience, skill and training, our commanders are the best assessors of their people and are the key to sustaining the readiness of their units. If we want to implement effective, permanent change in our military-as we have successfully done with other issues-we must do so through our commanders, and we must do so in a way that responds to factors surrounding sexual assaults in the U.S. military.

From our analysis of sexual assault reports and cases, we know many of the factors surrounding the majority of sexual assaults. The commander is responsible for addressing these factors by fostering a command climate of dignity and respect for everyone and ensuring a safe workplace and living areas. Overall, the commanders are responsible for good order and discipline. As such, it is essential that commanders be involved in each phase of the military justice process, from the report of an offense through adjudication under the UCMJ.

A critical aspect of our focused efforts is ensuring a fair, efficient, and effective military justice system. Consistent with previous challenges such as drug abuse in the 1970s and early 1980s, the UCMJ and Manual for Courts Martial must be able to evolve. We recently endorsed a significant change to Article 60 of the UCMJ to prohibit a convening authority from setting aside the findings of a court-martial except for a narrow group of qualified offenses (those ordinarily addressed through NJP or adverse administrative action) and require a convening authority to explain any sentence reduction in writing. The process the Secretary of Defense followed in proposing an amendment to Article 60 of the UCMJ ensured a careful and full evaluation of the proposal both in terms of accomplishing intended objectives and avoiding unintended second- and third-order effects.

As with the Department's Article 60 proposal, we must ensure that other proposed changes to the military justice system do not adversely impact the interests of justice, the rights of crime victims, and the rights afforded the accused. To maintain the proper balance of these interests and ensure the system remains constitutionally sound and responsive in peace and war we must continue to evaluate proposed changes to the UCMJ by carefully assessing their overall impact. The Response Systems Panel created by section 576 of the NDAA for Fiscal Year 2013 should be given the opportunity to conduct an independent assessment of the systems used by our allies to investigate, prosecute, and adjudicate sexual assaults to determine their viability in the U.S. military's context.

General HARDING. No, it appears the driving factors behind the changes for our allies were primarily treaty obligations or court decisions which do not impact the United States.

General ARY. As each of our allies' systems is somewhat different from each other and from the U.S. system, it is difficult to gauge whether the allies' models would work for the U.S. military.

First, the problems that caused our allies to move to those models do not exist in our military (fairness to the accused and transparency).

Second, the U.S. military is vastly larger than any of our allies' armed forces, with a significant amount of servicemembers deployed outside of the United States or stationed overseas at any given time. The U.S. military continues to need a system of deployable military justice that provides swift and appropriate justice for the entire spectrum of misconduct in any garrison or deployed environment.

Third, our commander-based system of military justice has proven effective in the past, and capable of evolving to new challenges, such as drug abuse in the 1970s and 1980s. We recently endorsed a significant change to Article 60 of the UCMJ that would prohibit a convening authority from setting aside the findings of a court-martial except for a narrow group of qualified offenses and require a convening authority to explain any sentence reduction in writing. The process the Secretary of Defense followed in proposing an amendment to Article 60 of the UCMJ ensured a careful and full evaluation of the proposal both in terms of accomplishing intended objectives and avoiding unintended second- and third-order effects.

Fourth, we are still in the process of determining the effect of the recent changes upon our allies' systems and militaries.

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tice, the rights of crime victims, and the rights afforded the accused. To maintain the proper balance of these interests and ensure the system remains constitutionally sound and responsive in peace and war we must continue to evaluate proposed changes to the UCMJ by carefully assessing their overall impact. The Response Systems Panel created by section 576 of the NDAA for Fiscal Year 2013 will conduct an independent assessment of the systems used by our allies to investigate, prosecute, and adjudicate sexual assaults to determine their viability in the U.S. military's context.

General ALTENBURG. No, in my professional opinion. First, the other nations' militaries are much smaller than the U.S. military. They're much smaller than even the most dramatic and extreme forecasts for a reduced U.S. military. The U.S. Active-Duty Force is 8 times larger than Israel's or the United Kingdom's, 20 times larger than Canada's, and 24 times larger than Australia's. Even taking into consideration their active duty strength being a fraction of the size of the United States, their military justice systems are not nearly as active in the prosecution of serious crimes generally and sex offenses specifically. One large U.S. installation like Fort Hood prosecutes more felony-level cases annually than any of these four countries. Change to Military Justice must account for the enormous resources required. In a larger military, like ours, the resource implications are exponentially greater. Second, the other nations' militaries have neither the unique and diverse responsibilities that the United States imposes on its military nor the variety of deployable forces (5 Services, 3 components, 1,388,028 Active Duty members). The responsibilities include humanitarian relief, peacekeeping, combat operations on multiple continents simultaneously, special operations 24/7 worldwide, foreign military training missions worldwide, and training foreign militaries in the United States. Third, none of the other nations' militaries deploys as many forces, as often, to as many locations as the U.S. military. All of these differences lead one to ask, "Why would the United States emulate another nation's Military Justice system?" We also do not emulate other nation's doctrine; we do not emulate other nation's rules of engagement—even allies. Our military is unique and requires the Military Justice system that suits it best, not one that merely copies dissimilar militaries that happen to be allies.

47. Senator LEVIN. General Chipman, Admiral DeRenzi, General Harding, General Ary,and General Altenburg, how would a requirement to prosecute serious cases, like sexual assault, in a civilian court rather than in a court-martial affect a commander's ability to maintain good order and discipline?

General CHIPMAN. Soldier discipline is the foundation of a trained, focused force capable of accomplishing any mission. Soldier discipline is built, shaped, and reinforced over a soldier's career by commanders with authority—the authority to address criminal behavior quickly, visibly, and locally.

The role of the commander must be preserved in order for our forces to remain effective on the battlefield. One of the key critical tools the commander has at this disposal to accomplish the mission is the ability to administer military justice. To maintain discipline and order, one must have the authority to impose discipline and order. Without that authority or the threat of it, there is no expectation of consequence. In matters of life, death, and danger, the ultimate tool of discipline must be in the hands of the commander on the ground. Prosecution of serious cases which arise in theater would be significantly delayed or hindered if responsibility for the administration of justice was separated from command authority. The military justice system is highly deployable and, therefore, more responsive to the needs of the commander, the military community, the public, and the victim of a serious offense.

Additionally, the commander is entrusted with the overall well-being of all of the soldiers within the command. Removal of the commander's authority to prosecute serious cases removes a key mechanism to be responsive to the needs of the soldiers within the command, especially the needs of the victims. No civilian prosecuting authority will have a similar level of responsibility for the overall well-being of a soldier, either victim or accused, as the commander. Commanders genuinely care for their soldiers and must be seen as being responsible for the needs of their soldiers. The commander is accountable, not only to superior commanders, but also to the civilian leadership, American people, and the parents and family members of each soldier.

Admiral DERENZI. The fundamental structure of the U.S. military justice system and UCMJ, centered on the role of the commander as the convening authority, is sound. The responsibility, authority, and accountability vested in the commander requires the provision of appropriate tools to maintain appropriate readiness and safety. Military justice is one of those tools.

A mandate to prosecute serious crimes, such as sexual assault, in civilian courts would remove the commander from the military justice process and significantly complicate the administration of justice in the deployed environment, detracting from good order and discipline.

As a further complication, many serious crimes have no Federal statute equivalent to the offenses under the UCMJ. Therefore, under current law, prosecution in civilian courts would rely on state law or, in the case of crimes committed overseas, foreign criminal law. Servicemembers who commit similar crimes in different states or countries would be subject to varying charges and criminal processes. Many of the cases currently prosecuted by the military could not be prosecuted under state or foreign law. For example, over 75 percent of states require a higher degree of intoxication of the victim for the perpetrator's conduct to constitute sexual assault. Such disparity in process and accountability would negatively impact good order and discipline.

Additionally, while civilian prosecutors weigh a number of factors in the decision whether or not to try a case, including witness availability, cost, and the likelihood of conviction, civilian prosecutors may not factor in the impact on military good order and discipline.

General HARDING. A requirement to prosecute serious cases, like sexual assault, in a civilian court risks a disconnect between members and their commander. From the commander's perspective, the victim will lose oversight and control over action taken against one of their own and face the prospect of becoming disconnected from one of the most significant events affecting members, including the victim and the accused, within their organization. Further, unit members will lose some measure of trust for the commander, because the message is that the commander—who may be responsible and accountable for sending men and women into combat—cannot be trusted to handle discipline. In short, command involvement must be holistic; it cannot be as effective if the most serious form of accountability is severed from command authority.

Sexual assault damages unit cohesiveness and mission accomplishment at the unit level. Our commanders need to be at the forefront of the fight to reduce sexual assault in the military, using all of the tools available to them. Cultural change does not happen overnight. If commanders do not have responsibility for prosecution of sexual assault offenses, we may promote an environment where commanders are less accountable for what happens in their individual units, which in practice could stifle the cultural change we seek. The U.S. military takes pride in its "can-do" attitude and we embrace challenges. Now is not the time to declare defeat; if we are serious about cultural change we must ensure commanders know their success depends on sound judgment in these matters—we are committed to working to get this right.

General ARY. The fundamental structure of the U.S. military justice system and UCMJ, centered on the role of the commander as the convening authority, is sound. The responsibility, authority, and accountability we place in the commander require that we provide him or her tools to maintain appropriate readiness and safety, and good order and discipline, every day. Military justice is one of those tools.

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Additionally, while civilian prosecutors weigh a number of factors in the decision whether or not to try a case, including witness availability, cost, and the likelihood of conviction, civilian prosecutors may not factor in the impact on military good order and discipline. Commanders, on the other hand, take into account additional factors, such as the views of the victim as to disposition, the interests of justice, military exigencies, and the effect of the decision on the accused and the command.

General ALTENBURG. Requiring the U.S. military to prosecute serious cases, like sexual assault or murder, in a civilian court rather than in a court-martial, would greatly diminish commanders' ability to ensure the combat readiness and combat effectiveness of their formations. More important, it would greatly diminish the ability of commanders to lead the change needed in the service culture regarding sexual assault. Only leaders can forge the change that will stop military personnel from

pressuring victims. Commander responsibilities—especially U.S. commanders—are unlike the responsibilities of supervisors, bosses, chief executive officers, or even other military leaders. I led and managed the two largest judge advocate organizations in the U.S. Army that supported field units. I was the leader of those organizations for 6 years total, including combat and non-combat deployments with each. But I was not a commander; I was a staff officer with leadership responsibilities. Commanders are directly responsible and accountable to the country's elected leaders for the combat readiness and combat effectiveness of their units. Unit combat readiness includes weapons training, equipment maintenance, esprit, morale, teamwork, physical health, emotional health, and the trust in each other to die for each other that ensures combat effectiveness in defense of the Nation. Command knows no counterpart in the civilian sector. Commanders' role in the U.S. Military Justice System is tied intrinsically to their ability to provide the discipline necessary to guarantee the combat readiness to defend the Nation, no matter where deployed.

[Whereupon, at 5:09 p.m., the committee adjourned.]