didn't used to be covered, but the deductible is now so big that the plan people thought protected their needs doesn't really protect their needs. For most families, $12,000 is catastrophic. It doesn't take $120,000 or $500,000 to be catastrophic; $12,000 is catastrophic. If that becomes your new deductible year after year, you will have a problem you didn't have when your deductible was $1,200.

Randy McArthur says:

The very thing that ObamaCare was supposed to do was to protect the working people—to give them access to affordable insurance—but it's actually doing the exact opposite.

Instead, this law will mandate coverage for things you will have to pay for that you didn't have to pay for before and apparently will offset that by being sure you pay a lot more of your own money up front.

I think we are going to continue to see these problems develop. I hope we can find ways to fix that. I introduced a number of bills in 2009 that I thought were better alternatives than this one. We may have to go back and start all over. But right now, the one thing we do know is that the law of unintended consequences appears to be hitting a lot of families and hitting a lot of families very hard.

Madam President, I yield the floor, and I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. BARRASSO. Madam President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. BARRASSO. Madam President, how much time remains?

The PRESIDING OFFICER. Eight and a half minutes.

Mr. BARRASSO. Madam President, I come to the floor today and would note a headline on the front page of Politico today regarding the ObamaCare Web site. ''Tech Chief: Up to 40% Work Is Left On ObamaCare. Financial management tools are unfinished.''

This Web site has been a debacle. People all around the country are angry. They are anxious, frustrated, and bothered, but mostly I am hearing anger from people in Wyoming. And it is not just the Web site. The Web site is just the tip of the iceberg. People are furious when they get letters of cancellation, when they have coverage canceled and then they see higher premiums. All across the country people are finding out that because of the health care law, they can't keep their doctor. They are hearing stories about fraud, identity theft, and higher copays and deductibles. So I bring to the floor today a couple of letters I have received from people in Wyoming.

Last week, Veterans Day, I was in Douglas, WY, for the flag-raising ceremony at the American Legion at 7 a.m. talking to folks—some who had gotten cancellation letters. Let me read a letter from a family in Douglas, WY, a small community in Converse County. They say:

We just found out that our current health insurance policy with Blue Cross Blue Shield of Wyoming (which is a $20,000 deductible for our family) will not be allowed after January 1st . . . that only those under age 30 will be able to have catastrophic plans. We ranch, work very hard, have been healthy . . . can't afford and don't believe a lower deductible makes sense for us.

So this is a family who decided what was best for them as a family—not what the government told them they had to buy but what worked for them as a family. They say that what they bought was something that made sense for them.

Continuing to read from their letter:

. . . basically have had insurance to avoid losing our cows and land if something catastrophic happened to us. Don't know what we will do if you guys don't get this derailed.

Madam President, as someone from the Rocky Mountain West, I can tell you that in a community of lots of ranchers and farmers, what they are trying to do is insure against this catastrophic loss.

They go on to say:

Quick side note—we think most people expect health insurance to cover everyday costs—it wouldn't make sense and it would cost way too much to get insurance to cover new tires, oil changes, washer fluid, new batteries (regular expected upkeep) for our vehicles—if we only had insurance for the big health issues, it wouldn't cost as much for all of us in the end.

Of course, that is what they wanted to do.

They go on:

Obamacare doesn't deal with any of the issues of why health care in America costs what it does and truly seems to make it all worse.

Thank you for what you do—we know you already understand this. We just thought you should know what we are dealing with.

That is a ranch family in Douglas, WY, in Converse County.

This past Saturday night I was in Lusk, WY, in Niobrara County, and I have an email I wish to share with you from Lusk, WY. Again, this is somebody who has had coverage canceled, higher copays, and all of the things we are talking about.

Just for a second, let me show the list of the number of people who have been canceled. Some 4.7 million Americans have had their health insurance canceled in 32 States, and we don't even have the numbers for a number of other States. This is what people all across the country are seeing.

Let me read this email from Lusk, WY. This individual says:

I have supported the President and the Affordable Health Care act since the beginning. That changed on Thursday. All along we have been told if we have insurance, and we are satisfied, no changes will be necessary. That is a misleading statement. I was informed by my company my policy will be canceled in December. Then they will offer me another policy but with huge changes. My premium will go up . . . my deductible will rise . . . That is not the same as my current policy. I feel like, after decades of paying my own insurance, I am being penalized. I won't call it lying, but the President certainly misled a lot of us middle aged Americans.

I do have one alternative I am pursuing. I can buy insurance that does not meet the guidelines of the Act. However, I will be forced to pay the penalty for noncompliance. I can afford my insurance and the penalty.

Once again, Americans do not like to be misled from the top leadership down. It simply helps to solidify the mistrust we have in government.

Thank you for your solid leadership.

That is why I am here today on the floor. We need to hear more stories from people around the country—not just Republicans but Democrats need to hear these stories. Tweet us your story at hashtag ''your story.''

Republicans have better ideas about ways we can actually help people get the care they need from a doctor they choose at a lower cost.

This health care law is hurting many millions of Americans. We now know that the President knew it at the time he continued to repeat the line—which we now know is a misleading line—to the American people. Very soon we will find that the line ''if you like your doctor, you can keep your doctor'' was misleading as millions more will be losing their doctor. There is great damage continuing to be done. We need to start over.

Madam President, I yield the floor, and I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mrs. GILLIBRAND. Madam President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

CONCLUSION OF MORNING BUSINESS

The PRESIDING OFFICER. Morning business is closed.

NATIONAL DEFENSE AUTHORIZATION ACT FOR FISCAL YEAR 2014

The PRESIDING OFFICER. Under the previous order, the Senate will resume consideration of S. 1197.

The clerk will report the bill by title.

The legislative clerk read as follows:

A bill (S. 1197) to authorize appropriations for fiscal year 2014 for military activities of the Department of Defense, for military construction, and for defense activities of the Department of Energy, to prescribe military personnel strengths for such fiscal year, and for other purposes.

Pending:

Reid (for Levin/Inhofe) amendment No. 2123, to increase to $5 billion the ceiling on the general transfer authority of the Department of Defense.

Reid (for Levin/Inhofe) amendment No. 2124 (to amendment No. 2123), of a perfecting nature.

Reid motion to recommit the bill to the Committee on Armed Services, with instructions, Reid amendment No. 2305, to change the enactment date.

Reid amendment No. 2306 (to (the instructions) amendment No. 2305), of a perfecting nature.

Reid amendment No. 2307 (to amendment No. 2306), of a perfecting nature.

The PRESIDING OFFICER. Under the previous order, there will be up to 6 hours of debate only.

The Senator from New York.

Mrs. GILLIBRAND. Madam President, I rise today to speak about my amendment to the National Defense Authorization Act, an amendment known as the bipartisan Military Justice Improvement Act. I wish to start by thanking my colleagues on both sides of the aisle for their strong and unwavering leadership on behalf of our brave men and women in uniform. I could not be more proud of the bipartisan work that has been done to do the right thing.

I thank Senator REID, Senator BOOKER, and Senator HELLER, the three most recent supporters of our bill. I thank them for their extraordinary leadership and determination to end the scourge of sexual violence in the military.

I also thank my colleague and friend from Missouri for her unwavering commitment to helping victims of sexual assault. Although we disagree on my amendment, I remind all of our colleagues that the Defense Authorization Act has been made stronger in enumerable ways by Senator MCCASKILL's work, advocacy, and dedication. I also will be supporting her amendment today because I think the provisions in her amendment will add even more positive changes to the command climate and will help victims feel like they have a stronger voice.

However, while the changes in the McCaskill amendment are very good, I do not believe they are enough to truly ensure justice for victims of sexual assault. For that, we essentially need impartial, unbiased, objective consideration of the evidence by trained military prosecutors, which is what my amendment will provide.

Yesterday, I proudly stood with retired generals, leaders of veterans organizations, and survivors, who represent a growing chorus of military voices, to urge Congress to take its oversight role head-on and finally create an independent, unbiased military justice system the men and women who serve in our military so deeply deserve.

Leaders such as retired Maj. Gen. Martha Rainville, the first woman in history of the National Guard to serve as an adjutant general, who has served in the military for 27 years, including 14 years in command positions, wrote to me:

As a former commander, endorsing a change that removes certain authority from military commanders has been a tough decision. It was driven by my conviction that our men and women in uniform deserve to know, without doubt, that they are valued and will be treated fairly with all due process should they report an offense and seek help or face being accused of an offense.

When allegations of serious criminal misconduct have been made, the decision whether to prosecute should be made by a trained legal professional. Fairness and justice require sound judgment based on evidence and facts, independent of pre-existing command relationships.

Leaders such as BG (retired) Lorree Sutton, who served as the top psychiatrist in the U.S. Army, wrote, saying:

Failure to achieve these reforms would be a further tragedy to an already sorrowful history of inattention and ineptitude concerning military sexual assault.

In my view, achieving these essential reform measures must be considered as a national security imperative, demanding immediate action to prevent further damage to individual health and well-being, vertical and horizontal trust within units, military institutional reputation, operational mission readiness and the civilian military compact.

Far from ''stripping'' commanders of accountability, as some detractors have suggested, these improvements will remove the inherent conflict of interest that clouds the perception and, all too often, the decision-making process under the current system.

Implementing these reforms will actually support leaders to build and sustain unit cultures marked by respect, good order, and discipline.

LTG (retired) Claudia Kennedy, the first three-star female general in the Army, wrote:

Having served in leadership positions in the U.S. Army, I have concluded that if military leadership hasn't fixed the problem in my lifetime, it's not going to be fixed without a change to the status quo. The imbalance of power and authority held by commanders in dealing with sexual assault must be corrected. There has to be independent oversight over what is happening in these cases.

Simply put, we must remove the conflicts of interest in the current system. . . . The system in which a commander can sweep his own crime or the crime of a decorated soldier or friend under the rug protects the guilty and protects serial predators. And it harms military readiness . . .

Until leadership is held accountable, this won't be corrected. To hold leadership accountable means there must be independence and transparency in the system.

Permitting professionally trained prosecutors rather than commanding officers to decide whether to take sexual assault cases to trial is a measured first step toward such accountability . . . I have no doubt that command climate, unit cohesion and readiness will be improved by (these) changes.

BG (retired) David McGinnis, who also served as a Pentagon appointee, wrote:

I fully support your efforts to stamp out sexual assault in the United States military and believe that there is nothing in (the Military Justice Improvement Act) that is inconsistent with the responsibility or authority of command. Protecting the victims of these abuses and restoring American values to our military culture is long overdue.

It is because they love the military that they are making their voices heard—standing united behind brave survivors. I will share some of those stories because it is their stories which inform some of this legislation.

Kate Weber, from Protect Our Defenders, was awarded the 2013 Woman Veteran Leader of the Year by the California Department of Veteran Affairs, and Sarah Plummer came to Washington, DC, all the way from Colorado. Yesterday they came to courageously tell their stories so that their brothers and sisters in uniform get a military justice system that is finally worthy of their great service to our Nation.

Sarah's story is extremely disturbing. She was raped as a young marine in 2003. She said:

I knew the military was notorious for mishandling rape cases, so I didn't dare think anything good would come of reporting the rape.

Having someone in your direct chain of command doesn't make any sense, it's like getting raped by your brother and having your dad decide the case.

Kimberly Hanks, the brave survivor from the infamous and horribly unjust Aviano case, who I spoke to months ago about this issue when our journey began, just wrote an op-ed published this week:

Regardless of all the promises by military leadership and half measures offered in the name of reform nothing short of removing the prosecution and adjudication authority away from the commander and placing it with independent, military professionals outside the accused's and victim's chain of command will end this nightmare.

Trina McDonald, who at 17 enlisted in the Navy, was stationed at a remote base in Alaska. Within 2 months, she was attacked, repeatedly drugged, and raped by superior officers over the course of 9 months. She said:

At one point my attackers threw me in the Bering Sea and left me for dead in the hopes that they would silence me forever. They made it very clear that they would kill me if I ever spoke up or reported what they had done.

Listen to Army SGT Rebekah Havrilla, who served in Afghanistan and was raped in 2007, and said reporting the crime to her commanding officer to her was ''unthinkable'':

There was no way I was going to my commander. He made it clear he didn't like women.

A1C Jessica Hinves, who was raped in 2009 by a coworker who broke into her room at 3:00 in the morning, said:

Two days before the court hearing, his commander called me on a conference call at the JAG office, and he said that 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 is going to go through court. We had the court date set for several months. And two days before, this commander stopped it. I later found out the commander had no legal education or background, and he had only been in command for four days.

Her rapist was given the award for Airman of the Quarter. She was transferred to another base.

We also can't forget that more than half of the victims last year alone were men.

Blake Stephens, now 29, joined the Army in 2001, just 7 months after graduating high school. The verbal and physical attacks started quickly, he says, and came from virtually every level of the chain of command. In one of the worst incidents, a group of men

tackled him, shoved a soda bottle into his rectum, and threw him backward off an elevated platform onto the hood of a car.

When he reported the incident, his drill sergeant told him: ''You're the problem. You're the reason this is happening.'' His commander refused to take action.

Blake said:

> You just feel trapped. They basically tell you you're going to have to keep working with these people day after day, night after night. You don't have a choice.

His assailants told him that once they deployed to Iraq, they were going to shoot him in the head. ''They told me they were going to have sex with me all the time when we were there.''

This is the problem: There were 26,000 sexual assaults estimated by the Department of Defense last year alone based on confidential surveys, but only 3,374 were actually reported. Of those reported, 302 went to trial.

So if you are starting with 26,000 estimated cases and only 302 go to trial, that is a 1-percent rate of conviction in the U.S. military for the heinous crime of degradation, aggression, and dominance of rape and sexual assault. One percent. And we just heard from these victims. There are too many command climates that are toxic, that do not ensure good order and discipline, that do not protect against rape and sexual assault, that do not create a sense that if I come forward and report, that justice could be done.

In this survey—this a confidential survey—the reason victims didn't report is they said they didn't believe anything would be done. They also said they either feared or witnessed retaliation. This is the problem. About 23,000 cases weren't reported. It means in 23,000 command climates, these assaults are happening and victims feel they will not get justice.

So I am grateful for every reform we have put in place in this underlying bill. They are good, strong reforms that will help victims who report. But every single one of them applies only to these 3,000 cases. They apply to the cases that are reported, where the command climates are sufficient that a victim feels: I can come forward. I can at least report these cases. In the 23,000 other cases, those victims don't have that confidence.

So if we don't create a transparent, accountable system that is outside the chain of command, the hope of getting more victims to come forward and report so we can at least weigh the evidence and see if we can go to trial is not there. The hope isn't there. The confidence in an objective review by someone who doesn't know the perpetrator and doesn't know the victim doesn't exist.

So while we have these 3,000 cases which were reported and commanders did make sure 1 in 10 went to trial—and when they did go to trial, there was a 95-percent conviction rate. So they are not making the wrong decisions about what case to try. It is just that only 3,000 command climates were strong enough. We can't train their way out of this problem. There are 23,000 command climates that weren't strong enough, that didn't ensure justice, that created fear of retaliation. That is the problem.

So without an objective system, without creating transparency and accountability, without saying the decider doesn't know the victim of the perpetrator, there is no bias, because in too many cases, as we heard from these stories, the perpetrators may well be more valuable to the commander, may well have several tours of duty under his belt, may well have done great acts of bravery, may well have two kids and a wife at home. So when that commander, looking at the case file, says: You know, it can't possibly have happened; it didn't happen this way; he weighs the evidence differently than someone objective, who is trained, who actually knows the difference in these crimes and knows what a rape is. They know rape is not a crime of romance. They know rape is a crime of dominance. They know rape is a crime of violence. It is not about a date gone badly. It is not about hormones. It is not about a hookup culture. It is actually a crime that is brutal and violent, committed by someone who is acting on aggression and dominance and violence.

That is why the training matters. I want somebody who knows that, who has been trained as a lawyer, who understands prosecutorial discretion and can weigh evidence objectively.

We have to look at who is advocating for this bill—our veterans organizations: Iraq and Afghanistan Veterans of America wants this reform. Vietnam Veterans of America wants this reform. Service Women's Action Network wants this reform. They are all speaking in one voice, and they say: ''A vote for an independent and objective military justice system is a vote for our troops and a vote to strengthen our military.''

They know. They have served. They are veterans. They are no longer Active Duty. They can speak their mind.

This week we released a letter of 26 retired generals, admirals, commanders, colonels, captains, and senior enlisted personnel, including two generals and two admirals known as flag officers, who are saying to Congress:

> We believe that the decision to prosecute serious crimes including sexual assault should be made by trained legal professionals who are outside the chain of command but still within the military.
>
> This change will allow prosecutorial decisions to be made by facts and evidence and not be derailed by preexisting relationships, attitudes, biases, and perceptions.
>
> It is our sincere belief that this change in the military justice system will provide the opportunity for real progress toward eliminating the scourge of sexual assault in the military.

I am hopeful our colleagues will listen to these collective voices because nobody knows the military and what needs to be done to fix this broken system better than they do. Listen to the victims who have clearly told us over and over how a system that only produces 302 prosecutions out of the DOD's estimated 26,000 cases of rape, sexual assault, and unwanted sexual contact last year must be fundamentally changed to restore trust and accountability.

These men and women of America's military have put everything on the line to defend our country. Each time they are called to serve they answer that call. But too often these brave men and women find themselves in the fight of their lives, not on some far-off battlefield against an enemy but right here on their own soil, within their own ranks, with their commanding officers, as victims of horrible acts of sexual violence.

Sexual assault is not new, but it has been allowed to fester in the shadows for far too long because instead of the zero tolerance pledge we have heard for two full decades now, since Dick Cheney was the Secretary of Defense, first using those words in 1992, what we truly have is zero accountability.

There is no accountability because any trust that justice will be served has been irreparably broken under our current system where commanders hold all the cards over whether a case moves forward to prosecution.

There are those who argue that removing these decisions out of the chain of command into the hands of independent prosecutors in the military will diminish good order and discipline. This is not a theoretical question. We actually know the answer to this. Our allies have already made these reforms and they have not seen a diminishment in good order and discipline. The UK, Israel, Australia, Canada, Netherlands, Germany—all of them have taken the decisionmaking whether to prosecute the cases outside the chain of command for civil liberties reasons—some in interests of defendants' rights, some in interests of victims' rights—to make their justice system better. We could use a better justice system. We could use that transparency and accountability. We have a unique problem. I think this reform solves our problem.

Director general of the Australian Defence Force Legal Service Paul Cronan said that Australia has faced the same set of arguments from military leaders in the past. Cronan said:

> It's a little bit like when we opened up [to] gays in military in the late '80s. There was a lot of concern at the time that there'd be issues. But not surprisingly, there haven't been any.

There are those who argue that our reform would somehow take commanders off the hook or that they would no longer be accountable. Let me be clear. There is nothing in this bill that takes commanders off the hook. They are still the only ones responsible for setting command climate, for maintaining good order and discipline, for making sure these rapes

and assaults do not happen, for making sure there is no retaliation and the victim comes forward, for making sure the command climate is sufficient when they do come forward.

This is a legal decision and actually most commanders never get to make this legal decision. Your platoon sergeant, your drill sergeant, they are never going to be able to be the convening and disposition authority. That is not their job. But they still have to maintain good order and discipline. They are on the hook and the underlying bill is strong because we make retaliation a crime to give them just one more tool to help them set their command climate.

There are those who argue that this reform will cost too much. I do not know how you could possibly say that forwarding cases and prosecuting rape in the military costs too much. Our men and women in uniform are worth much more. Not only do these critics ignore the facts that we already have trained JAGs serving in our military, they actually ignore the financial cost of sexual assault in the military. The RAND Corporation has estimated that this scourge cost $3.6 billion last year alone.

There are those who say commanders move forward on cases that civilian prosecutors will not. To claim that keeping prosecutions inside the chain of command will increase the prosecutions is not supported by the statistics. If you only have 3,000 or so cases being reported and 23,000 cases not being reported under the current system, if you change that system and those 23,000 cases start becoming reported cases, you will have more prosecutions, you will have more convictions, you will have more justice.

The bottom line is simple. The current system oriented around the chain of command is producing horrible results and has been producing horrible results for 25 years. The current structure is producing 1 percent of cases that go to trial. That is not good enough. It is not a system that is deserving of the sacrifice that the men and women in uniform give to our country every single day.

It is also contrary to the fundamental values of our American justice system. Our justice system relies on the fact that a decision about whether to go to trial is never made on bias, it is always made on facts and evidence. It is not made on whether it is good for the commander. It is made on whether there are facts and evidence to prove a serious crime has been committed.

For all those who say this is a radical idea and should wait until next year, the DOD has an advisory panel that actually has opined for the past 50 years on the status of women in the military. That panel, called the DACOWITS—that panel had a vote on these proposals. They voted in favor overwhelmingly, with no one against. Of the 10 votes that we have, 9 are former military, 4 are high-ranking generals and officers. The nonmilitary voice is the head of a women's law center—knowledgeable individuals who are actually tasked by the Department of Defense, handpicked by the Department of Defense, to opine on the status of women in the military. They have voted to support these measures.

Secretary Hagel has even said he places ''a great premium'' on the voices of this panel.

I have not come lightly to the conclusion that we need to fundamentally reform our military justice system in order to strengthen it, but this is a commonsense proposal. It is not a Democratic idea. It is not a Republican idea. It is just doing what is right. If you listen to these survivors, veterans, retired generals, and commanders, they believe this change is needed. But even our current military commanders at the Department of Defense do not dispute the problem or the facts or the reason for the problem. The Commandant of the Marine Corps Gen. James F. Amos said earlier this year the victims do not report these cases because ''they don't trust us, they don't trust the chain of command, they don't trust the leadership.''

We have to restore that trust. If you have too many commanders and too many command climates with 23,000 unreported cases where that trust is broken, you are not going to fix it by keeping it with the commanders. That is the problem. This is a fundamental problem.

Listen to the Chairman of the Joint Chiefs of Staff, General Dempsey, who said that the military is sometimes ''too forgiving'' in these cases, admitting bias in the system toward decorated officers.

I firmly believe it is our obligation to restore that trust. Our fundamental duty as Senators, as Members of Congress, is to provide the needed oversight and accountability over the armed services. We should not do what the generals are telling us to do. This is our job.

Every time I meet with a member of the military I am overwhelmingly grateful for their service, for their sacrifice, for their courage. They deserve better. They deserve a military justice system that is consistent with our core, fundamental American values of objectivity, of truth, of evidence, of fact, and of justice.

I urge my colleagues to support our amendment.

I yield the floor.

The PRESIDING OFFICER. The Senator from Missouri.

Mrs. MCCASKILL. Mr. President, I ask unanimous consent that any time spent on quorum calls during this debate on the sexual assault issue be equally divided between Senator GILLIBRAND on one side and Senator AYOTTE and Senator MCCASKILL on the other side.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mrs. MCCASKILL. I yield 5 minutes of the time of Senator AYOTTE to the Senator from Missouri, Mr. BLUNT.

The PRESIDING OFFICER. The Senator from Missouri.

Mr. BLUNT. I thank Senator MCCASKILL, my colleague from Missouri, and Senator GILLIBRAND both for the effort, the time, the commitment, the focus they have made on this issue. They have clearly both been at the frontlines of changing the underlying bill.

There are two things Senator GILLIBRAND said that I absolutely agree with. The underlying bill is strong. It is a step in the right direction. It is the result of our committee debate, our committee action. I think I heard the Senator from New York say she was supporting the McCaskill amendment which adds even additional strength to that.

I also am supporting that amendment. I think it does make the bill even stronger. It says the commanders will be evaluated based on this as one of the factors; that no longer would this just be something if it happens to come up you talk about it, but the commanders will be evaluated based on what they did to change the command atmosphere, what they did to protect people against sexual assault, what they did to create an atmosphere where these things not only do not happen, but when they do happen, they are vigorously dealt with and looked to as something that has to be dealt with, and the commander should be evaluated in that way.

There is another layer of review in the McCaskill amendment. If the commander disagrees with something that has happened in this process, they have to kick that review up another level. The so-called good soldier defense is no longer a defense. This is about this incident, this assault, this accusation, and dealt with solely in that way because of this additional amendment that I think many of us will support that will be added to what is already a strong underlying bill.

Also, this amendment would allow victims to express a preference, whether they would have this pursued in a civilian trial or in a military trial, a court-martial. Those are all good additions. I think that is why—not only why Senator MCCASKILL proposed them, but the Senator from New York and I would be supporting that amendment.

I believe the amendment improves what the committee did. But I think the committee had a full debate and a long debate and a vigorous debate on how important it is the commanders be involved. Senator MCCASKILL, my colleague from Missouri, has been a leader on this all her time in the Senate. When she came to the Senate, one of the things in her background was her work as a county prosecutor and, more specifically, a prosecutor for sexual assault cases. I have relied on her judgment as we looked at these issues, and I think her judgment is borne out by so many things we heard in the committee.

Senator AYOTTE will be speaking in support of the McCaskill amendment

and underlying bill. Senator FISCHER, a member of the Armed Services Committee, will also be part of that debate.

The Armed Services Committee introduced a bill that has the most comprehensive legislation targeting sexual assault that has ever been considered by the Congress. We added to that amendment these important elements of another McCaskill amendment. There are 26 provisions in the underlying bill which deal with this issue. It was among the most difficult decisions I think we met, but also one of the most important decisions we met: the idea that commanders would have responsibility for the atmosphere they create.

One of the things that was mentioned more than once was the integration of the Armed Forces. I stand by Senator Truman's desk, one of our predecessors in this Senate from Missouri. He signed the order that integrated the Armed Forces. President Eisenhower pursued that further, but only when the command structure was given absolute responsibility to deal with what had become a real problem. There were even race riots on ships, according to Senator MCCAIN, who talked to us about this issue. It was when the commanders were given the responsibility to see that this problem was solved that it was solved.

I think this bill, and the additional amendment I will be supporting, the McCaskill amendment, clarifies in new ways how important it is that commanders accept this as part of their command responsibility.

The numbers Senator GILLIBRAND talked about are totally unacceptable. One of the things commanders will be evaluated on in the future will be what they did about changing that environment. In my view, taking them out of the command responsibility in this area makes it less likely, not more likely, that the atmosphere will change.

I ask unanimous consent for 1 additional minute. Since Senator AYOTTE is not here to object, I will take it from her time.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. BLUNT. The fact that this is in the bill and further improved, I believe, by the amendment, clearly says we are going to change the culture of the military.

Had it not been for the hard work of my colleagues, particularly Senator MCCASKILL and Senator GILLIBRAND, this bill would not be as far along as it is. Their difference of opinion is not about solving this problem, because we all believe this problem is going to be solved. I think we all believe this bill takes a significant and strong step toward doing that. I feel most Senators will believe the McCaskill amendment adds another element to the bill.

I am glad the defense committee, the Armed Services Committee, and now the U.S. Senate, are taking additional steps to solve this problem. It is a tragedy for every individual in the military, man or woman, who has been the victim of a sexual assault, reported or not. Whatever we can do to see that they are reported, minimized, and finally ended is what ought to happen. I hope this bill does that, and I believe it does.

I was pleased to be part of bringing this bill to the floor, and I will be pleased when the McCaskill amendment is added to it today, and we face a new view of how this issue is dealt with.

I yield the floor.

The PRESIDING OFFICER (Mr. MURPHY). The Senator from Missouri.

Mrs. MCCASKILL. Mr. President, I thank Senator BLUNT for his comments and appreciate his hard work on the Armed Services Committee as we tackle an issue that all of us have an emotional commitment to for all the right reasons.

I thank Senator GILLIBRAND. We both want fundamental reform. We are both working as hard as we know how to get it. We have a fundamental disagreement on how best to obtain that goal, and I would like to go through some of that disagreement for the next few minutes.

The 26 historic reforms that are in the bill are going to make our military the most victim-friendly criminal justice system in the world. In no other system does a victim get their own lawyer. In no other system will they have the protection, empowerment, and the deference we are creating for them in this bill.

In my years of experience in handling these cases—hundreds of them with victims—I would have given anything if that victim had had the confidence of independent advice. I think it would have made a tremendous difference in the staggering number of victims who refused to go forward.

This is the most personally painful moment of anyone's life. Make no mistake about it, no matter what we do in this Chamber and no matter what this bill accomplishes, we will never be able to get every victim to come forward because of the nature of this horrific crime, but we have to do better.

Like Senator GILLIBRAND, I have talked to dozens and dozens and dozens of victims. I have talked to and spent hundreds of hours with prosecutors—military prosecutors, women and men, veterans, commanders, active and retired—and just as there is not agreement among all the women in this Chamber, there is not agreement among all the victims, there is not agreement among all the veterans, there is not agreement even among all the commanders, although most women commanders have acknowledged that even though this sounds seductively simple, it is much more complicated, and we will be creating more problems than we will be solving if we make the change as advocated by Senator GILLIBRAND.

Let's get at what we are trying to do. We have no disagreement that there are too many of these crimes and that they are not reported enough—complete agreement. The goal here is how do we get more reporting. There is a theory that if we do this—if we take this decision away from any command at all to go forward, that that will magically have victims come forward.

Senator GILLIBRAND talked about our allies. I am grateful we have their experience because we can look and see what happened. Our allies have done this, and not in one instance has reporting gone up. We know this is not the silver bullet because if it were, we would have seen an increase in reporting in all the countries that have adopted this system.

The response systems panel was put in place by the Armed Services Committee to recommend to the Pentagon changes in this area. We know they have formally acknowledged that our allies—many of whom did this to protect defendants' rights—have not seen an increase in reporting.

If the theory is that reporting can only go up if we do this, then why are we seeing a spike in reporting right now? There is a 46-percent increase of reporting this year over last year. That is because some of the military are already putting in the reforms we are codifying in the underlying bill. They are giving victims their own lawyers. They are ramping up the protection, information, and deference they give victims. That is the single most important factor, based on all of my experience, that will dictate whether a victim has the courage to come out of the shadows, and finally that somehow doing this will stop retaliation. That unit is still going to know that that crime was reported.

Keep in mind that currently, and under our reforms, the victim does not have to report to the chain of command. Right now the victim does not have to report to the chain of command. Many of my colleagues didn't realize that a victim has many places they can report this crime. Under our reforms, they will immediately get a lawyer and have that level of protection immediately. They will also have the information that they don't have to report to the chain of command.

I am trying to understand how reporting, investigating, and deciding half a continent away—a group of lawyers making that decision—stops retaliation. How does that keep the people in your unit from acting inappropriately toward you because you have reported a crime? There is nothing magical about that. In most instances the word will get out.

Let's use our common sense. Say you are back in your unit after having been assaulted. Which way are you going to have more protection? Will you have more protection if a group of colonels a half continent away is looking at the facts of the case or if your commander has signed off? Of course, if your commander has signed off, because that sends a message to the unit: We are getting to the bottom of this.

Probably the most telling fact about this debate is: Is this happening now? Because at this time outside investigators investigate these cases, and outside JAGs make recommendations. We have that in our system now. So the question is: If these outside lawyers are recommending that we go forward based on their independent investigation, are commanders shutting them down? Are commanders saying: We will not go forward? No one can find me a case where that happened and the prosecutors said: We need to go and the commanders said no.

On the other hand, over the last 2 years, there have been 93 separate times the outside lawyer said: You know, this case is too weak, this case doesn't have enough facts—93 times. You know what happened in every one of those cases? The commander said: We are going to get to the bottom of it. So almost 100 victims over the last 2 years would not have had their day in court under Senator GILLIBRAND's proposal.

In Senator GILLIBRAND's proposal, when the lawyer says no, it is over, whereas, in our proposal, if this were to ever happen, even though we know this is not a problem now, we have review after review after review. No one is going to be able to turn a victim away from her day of justice without accountability, checks and balances, and oversight. There will be a difference in that unit because now retaliation is a crime and the commander is going to be evaluated on how they are handling this issue within their command.

There are also practical problems—and some of my colleagues will come to the floor today and talk about this. There are a number of implementation issues that I don't think have been thought through, and this is the real world here. We are talking about appeals and challenges. We are talking about not even having enough colonels right now to staff this. We are talking about risking the ability to get a speedy trial. We are talking about eliminating the ability to plea bargain.

Let me tell the Presiding Officer, having handled these cases, I think people sometimes make the assumption that a plea bargain is about copping out, it is about not protecting the victim. Talk about stories of victims, I can tell story after story of real people whom I dealt with who came forward and said: Yes, I think I can do this.

I will never forget this one woman who came to me and said: My mental health counselor said that testifying in court will set me back so far I can't do it, but can you get something on him? In those instances, do you think that defense lawyer is going to plead to a sexual offense or even a serious offense? But many times we were able to get something on him so the next time, if it happened, we at least had a better shot. Many times plea bargains are dictated by victims. Military prosecutors are telling me this, that it will really limit their ability and create serious due process concern.

In her proposal, this outside lawyer picks everybody—picks the defense lawyer, picks the jury, and picks the prosecutor. How is that going to stand up to a due process claim? It is not clear who picks the judge. That is left silent. I don't know who picks the judge. It is not clear. That is another question: Who is going to decide who is going to actually pick the judge?

It eliminates the option of nonjudicial punishment. Take the case of the Air Force airman who was just recently tried in civilian courts. He was initially charged with a sexual offense. It was reduced to a simple assault. If that had been within the military, they couldn't have done that because it wasn't a serious offense so it goes back over to the convening authority within the command and then that soldier knows they are not going to do a trial—they can't—and all he has to do is turn down nonjudicial punishment.

Some of these difficulties will be explored in more detail, as I say, throughout the day.

Here is the one I don't understand. If a person believes deeply in the policy he or she is advocating, why in the world would that person then proactively limit the ability to resource it? In the language of the Gillibrand amendment, it actually says there shall be no funds authorized for this, no personnel billets authorized for this. The military has estimated over $100 million a year just in personnel costs because they have to create a completely different system outside the system they currently have, which will still be operative for some offenses that are related to the military and that are low-level offenses. But we have to have a whole new system for arson, robbery, theft, murder, and for sexual assault. Yet she proactively in her amendment says we can't resource it. That is truly one that makes me scratch my head.

There are a lot of problems surrounding this amendment, but let me emphasize our goals are the same and our motives are pure. We believe—and we believe this is borne out by the data—we will have more prosecutions because it will be very easy for lawyers who are a long way away—overworked, underresourced—to say: This is a consent case. It is a little messy. Everybody was drunk. Let that one go, and then it is over.

Let me briefly talk about what we have in our amendment because it is also very important, once again empowering victims further. In our amendment we are going to allow victims to formally weigh in, whether they would prefer, if there is concurrent jurisdiction, for the civilian authorities to handle the case in addition or whether they would rather the military authorities handle the case. It strengthens the role of the prosecutor because it provides another layer of review over the prosecutor's decisions. It increases the accountability of commanders making this evaluation on their forms and adding that other layer of review. It eliminates the good soldier defense. It is irrelevant whether someone is a good pilot if they have sodomized or raped someone in the military, and our amendment will make it irrelevant and inadmissible.

I thank the Presiding Officer for the time. I know we have others who want to visit on this, and I will be happy to be back later in the day to talk specifically about some of the other issues in this bill.

I do not see anyone else here right now, so I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

The PRESIDING OFFICER. The Senator from New York.

Mrs. GILLIBRAND. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mrs. GILLIBRAND. Mr. President, as we wait for our colleagues to join the floor so they can have their floor time, I wish to address a few of my colleague's concerns.

Some of the technical concerns she raised—we actually took some of those concerns and revised them in the bill that has actually been presented, so some of those concerns have been actually fully addressed.

For example, as to her concern about the convening authority, the disposition authority, our bill is very specific. The disposition authority is the decisionmaking authority. That goes to the trained military legal prosecutor, the JAG counsel, so they actually get to make the decision about whether to proceed to trial on the evidence.

The convening authority, which is a different right, a different duty, is left intact as it is. So the convening authority still will decide judges, juries, and all the details of what the court and the trial will look like. It is two separate authorities in two separate places. That has been clarified in the bill so there is no concern there.

One other concern my colleague raised is this issue of nonjudicial punishment. Our bill is very specific. We exclude 37 specific crimes, including all article 15 crimes, all of the crimes that one would be using nonjudicial punishment to enforce. If the disposition authority decides they do not want to prosecute the case because they don't have enough evidence to go forward, it goes directly back to the commander to use the benefit of the nonjudicial punishment to do whatever kind of punishment he or she thinks is appropriate.

So those are just two technical issues my colleague raised that I think are very important to clarify.

Then the third issue Senator MCCASKILL raised that I think is a misunderstanding of the bill is about this world away problem. Today, in our bill, compared to the current system, the reporting is the same. One can report

anywhere. One can report to a chaplain or to a friend or to a nurse or to a doctor. One can report anywhere. That is not changing. The reporting is exactly the same.

What also is exactly the same is the investigation. So once a person does report, whether to a chaplain or to a commander, investigators will be sent to investigate the case, whether in Iraq or Afghanistan or Germany or anywhere. That stays exactly the same. So it doesn't matter, this world away, because the investigators go to the person. It is not a different set of investigators; it is the exact same set of investigators, and the commanders are still responsible to make sure the investigators do their job. So the commander has to be protecting the victim and has to be making sure the unit is not retaliating. He has to make sure the investigator has access to the evidence, and he has to make sure the command climate stays strong with good order and discipline. That never changes. Those commanders are always responsible for good order and discipline and command climate.

The only difference under this bill is after the investigation is completed and there is a file—a file of evidence—it doesn't go sit on an 06 commander's desk. An 06 commander is colonel and above, so quite a senior commander. He may not even be in Afghanistan or Germany or exactly where that crime has occurred. The 06 commander will look at the file and decide: Has a crime been committed and is there enough evidence to go forward?

Instead of that commander making that decision, this bill proposes that it will be a trained military prosecutor, so it doesn't matter what desk the file goes on. What does matter is whether the person whose desk that file goes on is objective. What matters is that person is actually trained, understands the law, understands the nature of the crime, can weigh the evidence and make a decision based on the evidence, not whether he likes the victim or values or doesn't value the perpetrator. Those biases are what is affecting the system negatively today.

So that is why the world away is not a concern, because the investigation proceeds exactly as it always did. The only difference is on whose desk it goes to make the ultimate legal decision.

Then, lastly, back to this issue of whether commanders are being held accountable. Commanders are held accountable. We actually have it in the underlying bill. Not only is retaliation now a crime, but they will be measured, as Senator BLUNT said, on whether their command climate is strong. Is the command climate strong enough to make sure these rapes aren't happening? Is your command climate strong enough to make sure retaliation of a victim doesn't happen? Is the command climate strong enough to make sure victims believe justice is possible?

So they will be evaluated and commanders will be held accountable.

I don't think it is appropriate to hold a commander accountable based on whether he weighs the evidence properly. That is a legal judgment. It is not based on whether a person is tough or not tough on these rapes. It is based on whether there is enough evidence to show that a crime has been committed. It should be a technical, legal decision, not a decision based on how tough one is on crime. That is not the measurable. It is just not the measurable.

So commanders are going to be held accountable for their command climate, for good order and discipline. Whether they make a legal decision up at the colonel level is not determinative as to whether they have done their job. The commanders who are getting the opportunity to make those legal decisions today, they are not doing a bad job. Of those 3,000 cases reported, 1 in 10 went to trial. That is not a terrible ratio. The ones they do choose to move forward, there is a 95-percent conviction rate.

Yes, I agree in those 100 cases, where the commander said move forward, the conviction rates weren't as high. Some of those cases had convictions and some did not, and those are excellent opportunities for the victims to be heard. But we don't want just 100 more cases going forward; we want tens of thousands of cases to be reported so they have a chance to go forward. It is the difference of thousands, and that is why I feel this reform is so necessary. Still, in light of all of the amazing reforms in the underlying bill, I think it is necessary because that crisis of confidence is so raw, is so real, is so present.

I suggest the absence of a quorum.

The PRESIDING OFFICER. The Senator from Virginia.

Mr. KAINE. Mr. President, I rise to speak about the NDAA which is currently on the floor. I wish to address a couple of issues. One I am passionate about is the veterans unemployment rate and how it is dealt with in the NDAA, another is shipbuilding, another is the critical issue of sexual assault and misconduct and, finally, sequester.

Before I begin, let me talk about how important this bill is. This is a bill the Senate has passed every year for over 50 years. We pass it every year, even if we can't pass a budget, even if we can't do other things, because it is so critical to show those who serve in the military that we are behind them. I have heard some indications, even within the last 24 hours, that because of so many amendments that might be possible on this bill, would that call into question whether we would be able to keep our streak going. If we have to be here Christmas Day, we need to be on the floor Christmas Day to make sure we pass this bill before the end of the year. It is that important. It is the most important bill that comes before this body, and we need to do everything we can to guarantee the certainty to those who serve.

In Virginia, we are so connected to Active-Duty service and to our veterans. My wife and I are a Blue Star Family. This is very important and we have to make sure we pass this bill.

Let me start with a personnel issue that matters a lot to me, which is the veterans unemployment rate. Right now it is unacceptable that veterans, especially enlisted, who have served in Iraq and Afghanistan have an unemployment rate that is higher than the national average.

A report that was issued last week by the Bureau of Labor Statistics states that the unemployment rate for veterans who have served since 9/11 remains around 10 percent, which is higher than nonveterans of the same age. Ten percent represents 246,000 individual veterans of that era who want to work but don't have it.

That is why I introduced as my first legislation in April the Troop Talent Act of 2013. A companion bill in the House was introduced by Representative TAMMY DUCKWORTH. The bills have been incorporated into the NDAAs in both Armed Services Committees. They are now on the floor and virtually identical.

The bill represents a strategy to deal with our veterans unemployment rate by making sure Active-Duty military receive civilian credentials for the skills they obtain in the military at the moment they obtain them.

The bill has a number of provisions. My colleagues on the Armed Services Committee were good enough to include them in the underlying bill. This bill will help us deal with the veterans unemployment rate, and that is one of the reasons I so much wanted to get to it and am so strongly supportive.

Second is shipbuilding. The Presiding Officer and I both have a real interest in this topic, as all Americans do. It is an area of great importance to the State. In Virginia we manufacture the largest items on the planet Earth, which is the nuclear aircraft carrier, at the Huntington Ingalls Shipyard in Newport News.

As the Defense Department reorients, resources its strategy toward Asia, we have to find the Navy bearing more and more of the operational burden of our military in that policy shift, and we have to continue to provide the Navy with adequate resources and funding through this provision to support that shift and to support shipbuilding.

Unfortunately, sequestration—and I will finish with sequestration in a minute—poses grave dangers. So we need to do what we can to maintain this priority for shipbuilding. Right now the sequester has reduced our normal level of three carrier strikers and three amphibious ready groups, which weakens our readiness to deal with challenges in a very challenging world. We have to maintain the priorities mandated and the NDAA does that and that is one of the reasons I support it.

Regarding the issue of sexual misconduct, 2014 is going to be remembered as a potentially historic year for

a good reason in the military. I wish to make sure history is good and is not clouded by our continued inability to grab onto and reduce the issue of sexual misconduct.

Earlier this year, I know Members of this body were very happy when Secretary Hagel and the military leadership embraced the proposition that women should be able to serve in the military without being barred by gender from any military specialty, that military specialties could have rigorous physical or training criteria, but that both men and women should be able to compete to serve in any military specialty, even combat-related specialties.

We will be remembered—2014 will be remembered—for that. But that memory will fade by comparison if what we are really remembered for is we missed an opportunity, an important opportunity, to tackle the important issue of sexual assault.

I congratulate Senators GILLIBRAND and MCCASKILL for all the great work they have done to bring this to the attention of the body and to look the military in the eye and say: This has to stop.

They have said it would stop over and over for 20 years, and it has not. This has to be the moment when it stops, and these Senators, working together with us on the Armed Services Committee, have put together a sizeable package of reforms that I am confident will help this time be different.

I also thank the brave victims who testified. I went to every hearing in the Senate on the sexual assault issue. Senator GILLIBRAND had a Personnel Subcommittee hearing. I was there for that entire hearing. Senator LEVIN had a hearing in Armed Services. I was there for nearly that entire full-day hearing. Committee markups in the Subcommittee on Personnel and the full committee—I have been to all the meetings.

I have heard these victims testify. How brave they are as survivors to come forward and testify. I also thank survivors in Virginia who have come and shared their stories with me personally so I could grapple with what is the right mix. These survivors have done a wonderful job in making sure we address this issue.

I tackled the issue of sexual assault in a way when I was Governor. We were treating victims of sexual assault in the civil justice system poorly in Virginia. We were not unique in that, but there was no excuse for it.

So I impaneled a group of advocates and survivors to look at Virginia law and tell us what we needed to change if we were going to try to deal with this scourge. One of the problems with sexual assault is—together with domestic violence—it is often a very underreported crime.

If somebody breaks into my apartment, I do not hesitate to call the police and say: There has been a break-in. If somebody bashes my car windshield in, I do not hesitate to call in and say: Look, a crime has been committed.

But crimes of sexual assault and crimes of domestic violence—and there tends to be on overlap, not completely but there is an overlap—are crimes where there is underreporting, in both civilian and military, and on college campuses. So one of the most important aspects in any reform is to create an environment where people feel they can come forward with a complaint, when they have one.

The statistics are well known. They have just been cited on the floor. By a statistical sampling, it has been estimated there have been 26,000 instances of unwanted sexual conduct, of sexual assaults in the military, and only 3,000 have been reported. We have to make sure these reforms we are about to embrace help us deal with this reporting issue so people feel a sense of comfort.

What we realized in tackling these issues in Virginia is that for people to feel comfortable with reporting sexual assaults, they have to have time. You cannot make them make the decision about reporting in an instant. There is often a psychological component about deciding what to do. There needs to be privacy and discretion and confidence, and there also needs to be advice and resources. People need to know: what are the avenues they have. What are the legal procedures, how do they look, and what are their rights if they decide to pursue a complaint.

I support the ongoing bill that is on the floor, and I will support some other proposals that are out. The McCaskill-Ayotte proposal I will support. I support the reform for a number of reasons. It affects the training and evaluation of military personnel. It affects the way sexual assault allegations are investigated, the way they are prosecuted, and the way they are punished. It protects witnesses.

An amendment Senator WARNER and I got into the bill—and we will be adding to it on the floor—protects whistleblowers who blow the whistle on an unfortunate or sexually harassing climate.

But the most important part of this bill is what the bill does for anyone who has been victimized by a crime of sexual assault—to create a climate where they can come forward and lodge a complaint.

In the military right now there are a number of avenues whereby somebody who has been victimized by a crime of sexual assault can lodge a complaint. Unique in this form of crime, there is a restricted report, where someone can come forward and report confidentially. That is very, very important.

But this bill adds to it what I think is the core of driving up reporting, which is salutary. It adds to it, also, something that would be unique in the military. It would exist for no other crime category, no other offense category. If someone complains of a sexual assault, they will be assigned a special victims' counsel, whose job it is to have their back, to hear the painful story, to share the various reporting mechanisms, counseling resources that are available, how the crime might be prosecuted. At every step along the way, as that victim is becoming a survivor and dealing with the challenge, that special victims' counsel will be there to help them make decisions and give them the backup and support they need.

This is based on a pilot project in the Air Force, a pilot project in the Air Force that is working. What we are finding, based on this pilot project in the Air Force, is even when people file complaints in a restricted, confidential way—they come in and say: I want to file a complaint, but I don't want to go against the perpetrator because I don't want people to know; I just want help—after they get a special victims' advocate and learn about the proceedings and learn about the protections, and they build up a bond with somebody who has their back, they are very likely to say: You know what, now I have the confidence to actually file my complaint publicly and take on the perpetrator—who needs to be taken on, who needs to be drummed out of the military if they committed a sexual assault.

So I believe the core of getting this right is about giving victims an avenue where they can have the time, they can have the advice, they can have the privacy and discretion to understand what their options are and then make a decision and go forward.

I think if we pass this bill with that special victims' counsel this will be the single best thing we will be able to do to tackle the crime of sexual assault.

Let me conclude by saying a word about sequestration.

A word that none of us knew before the beginning of 2013 has been spoken so many times on the floor of this body. No one intended for sequestration to happen when the votes were cast in the summer of 2011. Everyone was told across the board: Nonstrategic cuts to health care, domestic accounts, and to defense would be harmful to us. We have seen the harm that sequestration is doing to our Nation's military at a time when our military is getting more and more dangerous.

Indiscriminate across-the-board cuts are not only hurting all kinds of military priorities, they are also sending the signal to young men and women who are thinking about military careers or who are in the military and deciding how long they want their careers to be—they are sending them a signal that Congress does not value what they do.

We need to show the men and women of the military we value what they do. We need to show them by getting an NDAA bill done this year. We need to show them by ending sequestration. Will there be savings we can find in our defense spending? Of course. We ought to be looking at every item of government to determine whether we can do

better and save money. But this across-the-board sequester that is grounding air combat wings, that is grounding carrier units, that is making us less able to confront a more challenging world, is not behavior befitting of the greatness of this Nation.

I am a budget conferee right now, working on a budget deal. We are under a Senate- and House-imposed deadline to try to find that deal by December 13 so the appropriators can work on a budget. We will work diligently on that. I have an optimistic sense about finding a budget deal that enables us to replace this foolish sequester with a more strategic approach that will not hurt our military.

Mr. President, I thank you for the time and I now yield the floor.

I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

Mr. BLUMENTHAL. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. BLUMENTHAL. Mr. President, I want to, first of all, thank the chairman of the Armed Services Committee and the ranking member, Senator LEVIN and Senator INHOFE, for the leadership they have provided to this body and to our Nation in fashioning a bill, the National Defense Authorization Act for Fiscal Year 2014, that truly serves our national security and preserves and enhances our national defense.

I want to thank my colleague Senator MCCASKILL for the leadership she has provided, along with others, such as Senator REED and Senator GILLIBRAND, all who have focused on the issues that are raised by the Military Justice Improvement Act—the need to reform and strengthen our system of prosecuting and providing justice to the survivors of sexual assault.

I have joined with Senator GILLIBRAND in supporting the Military Justice Improvement Act because I think it embodies the kind of major reform that is necessary to provide enhanced confidence and trust in this system of military justice—major change that is needed to drive out the scourge of military sexual assault from our Armed Forces and provide the men and women of our military—the strongest and best military in the world now and in the history of the United States—with a system of military justice that matches their excellence.

The legislation before us, the National Defense Authorization Act for Fiscal Year 2014, provides much-needed equipment and training needed by our warfighters. It keeps us dominant across the globe and all of the domains that are necessary for our national defense. It authorizes two new attack submarines for the coming fiscal year, and it keeps us on track for developing the next generation of ballistic missile submarines. These weapon systems, these weapon platforms, and all that is contained in this act, are vitally important for the defense of our Nation. The debate about the Military Justice Improvement Act should in no way distract us from that mission to maintain and enhance the defense of the United States.

This bill enables the Air Force to move forward with a new combat rescue helicopter that will take injured airmen and others to safety. In June I wrote with five of my colleagues to Gen. Mark Welsh, the Air Force Chief of Staff, to support the Air Force in its efforts to replace the current fleet of HH–60G Pave Hawks with helicopters that can carry more and go further, all the while keeping the fuel efficiency and value that the H–60 aircraft provides. This legislation keeps our progress underway in the development and fielding of the Joint Strike Fighter that will assure that our Air Force, Navy, and Marines are ready to respond.

This bill has so many critical and valuable elements that should be at the forefront of this debate and evoke appreciation for Senator LEVIN and Senator INHOFE and the work done by my colleagues on the Armed Services Committee. So I am proud to support this bill. At the same time, Congress has a responsibility to transform the time-worn slogan of ''zero tolerance for military sexual assault'' into a real plan and strategy that will achieve that goal.

For years and years the military has promised zero tolerance toward sexual assault. Yet the actual achievement has fallen short. That is why reporting has been so low and why the crime of military sexual assault is not only underreported but underprosecuted.

The goal of the Military Justice Improvement Act is to improve reporting because without reporting there cannot be investigating and there cannot be prosecution, which means there can be no punishment and no prevention and protection.

Those are the goals of this major reform: better reporting and enhanced prosecution to deter this horrific crime, and to make sure that victims are better protected and the crime itself prevented.

This bill requires the Secretary of Defense to afford rights to victims of crimes prosecuted under the Uniform Code of Military Justice, such as protections from unreasonable delay and the right to be heard. This bill gives those protections even without the Military Justice Improvement Act. It also obligates the Secretary of Defense to ensure these rights are enforceable and affords every victim a special victim's counsel—again, measures on which there is consensus provided in the bill right now.

I am pleased that in response to my request to the defense appropriations committee, when this provision is authorized in this legislation, there will be $25 million appropriated to stand up this program systemwide and defensewide.

So the legislation before us has many good things even without the Military Justice Improvement Act. I am proud of the reforms that are accomplished in this bill on which we agree. Where we disagree is on the proposal to take prosecutorial decisions out of the chain of command. That is a narrower change that many people appreciate because the rest of the system, which is required for the present command and control authority, would be essentially maintained. What is taken out of the chain of command is simply the prosecutorial decision so that an experienced, trained, objective professional can make those decisions.

I really believe this measure, if adopted, as I hope it will be, will lead the military at some point—those commanders who may resist it now—to actually thank the Senate and the Congress for taking these decisions out of their hands so that they can focus on the incredible challenges of military readiness and preparedness, so they can do what they are trained to do, which is to train their men and women and maintain and enhance their readiness so that they can do professionally what is their prime mission, which is to fight wars and defend our Nation.

These decisions about prosecuting sexual assault cases can be better made by trained, experienced prosecutors who have the expertise in their field that our military commanders have in their field. I think it will serve the entire interests of our military to make sure that these decisions are made by those military professionals in JAG offices, just as they are trained in other areas of expertise that require that kind of training.

I am listening to the voices of the victims as to what will enhance their reporting and eliminate their fear of reprisal and retaliation. On Monday I was joined by four survivors of military sexual assault to discuss the need for reforming military justice. I wish to express my appreciation for Army SST Sandra Lee, Army SGT Cheryl E. Berg, Air Force SSgt Pattie Dumin, and Marine Corps Cpl Maureen Friedly. Each demonstrated that day that their shared experiences of military justice warrant the reforms contained in the Military Justice Improvement Act.

I would like to share just one—Marine Corps Cpl Maureen Friedly, who was sexually assaulted by a fellow marine in 2006 while attending the Navy School of Music. She pressed charges against her attacker and requested an unrestricted investigation. I will now read her words into the RECORD:

I went to an NCIS investigator who questioned me about the day I was attacked and, after hearing my testimony, told me that I would have to take a lie detector test to insure I was not filing falsely. I agreed to it but was never asked anything by my investigator again. My chain of command made it very clear that they preferred my attacker,

who was a platoon leader, over me and supported him through everything. When I graduated from the school and went to my duty station in San Diego, CA, my new chain of command tried to help me find out what had happened to my case as I had not heard about it for several months. A few weeks passed before we found that my paperwork had been mishandled, and I was told that nothing could be done and my attacker would go out to the fleet.

Eventually it was found that he had sexually assaulted several other women and he was administratively separated from the Corps, not charged, and not given a dishonorable discharge.

Her remarks say more than I ever could about the need for enacting the Military Justice Improvement Act. The reforms contained in the measure already are a vitally important step in the right direction. Taking these decisions out of the chain of command is important to good order and discipline because eliminating the crime of sexual assault and providing for greater reporting is vital to good order and discipline. Our experience shows that it has worked when our allies implemented it. Whatever the claims about numbers of cases reported in those allies' armies, clearly they are satisfied with the way it has worked there.

Finally, let me just say that I appreciate the bipartisan efforts on this bill on both sides. I think that eventually we will see this kind of reform. Whether or not it is approved today, history is moving in this direction, demanded and driven by the brave men and women who have suffered from this crime, the survivors and victims whose voices we have heard, and the commanders and veterans who have come forward to us, all of the major veterans organizations that have made their voice heard to us and who wholeheartedly have said: This kind of reform is necessary to vindicate and support the brave men and women who put their lives on the line for our Nation day in and day out, whose excellence should be matched by a military justice system that truly and really looks for zero tolerance and achieves zero tolerance in sexual assault.

I yield the floor.

The PRESIDING OFFICER (Ms. BALDWIN.) The Senator from Oregon.

Mr. WYDEN. Madam President, before he yields the floor, I wish to commend my colleague from Connecticut in terms particularly—and I am going to go into some of the history with respect to this so-called zero tolerance policy because I think when we look back over history, there is a very big gap between the past pledges of zero tolerance for sexual assault and the realities of what we have seen. That is one of the key points the Senator from Connecticut has made, among many others. I thank him for it. It was a very valuable presentation.

I also commend the Presiding Officer for her extraordinary work. Again and again, she has outlined what I think is very constructive; that is, the areas where there is common ground here, common ground to try to address an issue that I just went through with Senator BLUMENTHAL. We have heard past pledges about it, and it has not really come to be. The Presiding Officer has done very fine work. Senator GILLIBRAND, Senator MCCASKILL, Senator AYOTTE, I know the best, but a whole host of Senators have been interested in this issue. I also see my friend from Rhode Island Senator REED. He and Senator LEVIN have been very interested in this issue over the years. So there has been plenty of good work. I think the question now really is: How are we going to make a fundamental break from policies that over the last couple of decades simply have not worked?

Go back to the Tailhook scandal. That was in 1991. Over the course of a 4-day conference in Las Vegas, more than 100 Naval and Marine Corps aviation officers sexually assaulted 90 victims. We watched the Secretary of the Navy resign after Tailhook. His replacement said that ''sexual harassment will not be tolerated'' and that ''those who do not get the message will be driven from our ranks.''

Then there was the Aberdeen debacle 5 years later. Five years after we were told this would not be tolerated, 5 years later, we had the Aberdeen debacle. Army Secretary Togo West delivered remarks to the Senate Armed Services Committee titled ''There's a Problem, And We Mean To Fix It.''

Once again, years go by, and we have another such problem. That was the 2003 scandal at the Air Force Academy where 19 percent of women cadets reported having been sexually assaulted and 7 percent reported having been the victim of a rape or attempted rape. The Air Force Secretary told Congress, ''We will not tolerate in our Air Force, nor in our Academy, those who sexually assault others; those who would fail to act to prevent assaults.''

So, again, we heard—and certainly I am not here to doubt the sincerity of those who made those comments, but yet the pattern continues. We have a horrible set of sexual assaults, not just one but multiple ones. We have these pledges for zero tolerance. Yet we have one event after another. After the 2003 scandal, there were again the pledges of zero tolerance. We had the Joint Base San Antonio-Lackland scandal where some 30 training instructors were accused of offenses ranging from improper relationships with trainees to sexual assault and rape. In response, the Secretary of Defense said—as did many of his predecessors in the military—''the command structure from the chairman on down have made very clear to the leadership in this department that this is intolerable and it has to be dealt with. We have absolutely no tolerance for any form of sexual assault.''

So the pattern through all of these instances is ''zero tolerance. We will fix this.'' These comments—as I say, I do not question the sincerity of those who made them. These were officials in the military who served their country with great distinction and great valor. But the bottom line is the bottom line: When they said there would be zero tolerance, somehow those policies did not actually work as it related to real life for those who wear the uniform of the United States.

Today the military officer in charge of sexual abuse education at Fort Hood is under investigation for running a prostitution ring. Two Navy football players await trial in a military court on charges of sexual assault. Today a West Point sergeant stands accused of secretly videotaping female cadets in the shower. So it seems to me that because of the good work of so many here—I cited the Presiding Officer; Senator REED, who is managing the bill at this point; Senator GILLIBRAND; Senator MCCASKILL—I believe we are now in a position to finally make some significant changes and turn these past pledges of zero tolerance into a new reality that really ensures that those who wear the uniform of the United States do have a new measure of protection from sexual assault.

In effect, this is a new zero tolerance policy, a new policy that says: Zero tolerance for promises that go unfulfilled. Zero tolerance for a culture in which these assaults are treated as something less than the violent crimes they are. Zero tolerance for a system that continues to fail so many victims.

The Pentagon estimates that in 2012 some 26,000 servicemembers experienced sexual assault. Some, I know, have looked at this issue as sort of a glorified hazing matter, boys being boys, a discipline issue.

Senator FISCHER, one of our colleagues who has come to the Senate most recently, has been correct to point out this is not a gender issue, this is a violence issue. It is a violence issue because sexual assault is called assault for a reason. It is assault. We are talking about a violent crime that involves control and domination.

I think it is also worth noting that somewhere in the vicinity of close to half of military assault victims are men. In fact, the Department of Defense estimates that 14,000 of those 26,000 victims last year were men.

Colleagues are waiting to speak, and I would simply wrap up by way of saying that I think the bill, the committee bill, takes some constructive steps in the right direction. I wish to see it go further. It is why I joined a bipartisan group of colleagues to support Senator GILLIBRAND's legislation that would remove the decision to prosecute from the chain of command and give it to experienced, impartial military lawyers.

Suffice it to say we are going to have to come to grips, colleagues, with this question of assault—and particularly sexual assault—in a variety of forums.

This is not the place to discuss it, but yesterday Senator CORNYN, I, and Senator KLOBUCHAR introduced a fresh approach to dealing with sex trafficking,

which is also sexual assault. There will be an opportunity to discuss that bipartisan bill in the future.

This is the time. This is the time to close the gap between all of those unfulfilled promises about how there will be zero tolerance for sexual assault and a new reality that affords a new measure of protection from sexual assault for those who wear the uniform of the United States. This is the opportunity we have in the Senate today and the opportunity we have to achieve that goal in a bipartisan manner.

I yield the floor.

The PRESIDING OFFICER. The Senator from Rhode Island.

Mr. REED. When sexual abuse occurs in a military unit or when a servicemember is a victim or a perpetrator of sexual abuse, we have failed.

Certainly the military has failed, but Congress with its constitutional mandate to ''make rules for the government and regulation of the land and naval forces'' and to ''provide for . . . disciplining the militia'' shares in that failure.

This is why the efforts of Senator MCCASKILL, Senator GILLIBRAND, and indeed all of my colleagues are so important and so commendable. They have elevated this debate and challenged this Congress and our military to act. They have recognized, through their passionate advocacy, that sexual abuse not only is a violation of an individual, but it is a corrosive force that can undermine the trust that is essential for the functioning of any military unit.

The essence of military service is selfless service in which every soldier, sailor, marine, and airman must be prepared to give his or her life for a comrade. Sexual abuse is the antithesis of that ethic. It represents predatory behavior and exploitation, not selfless sacrifice and protection of those you serve with. It has no place in the military, and if not eliminated, it will insidiously destroy our military. No technology, no amount of military resources can assure military success if courage and character fail. Sexual abuse is a cowardly act that betrays the ethic and character of the military.

I believe we are united on this point. This debate is about preventing sexual abuse, a shared goal of every Member of the Senate, of Congress, of the military, and of this Nation. The question is how best to achieve this essential goal.

I believe it requires leadership at every stage: recruitment, training, evaluation, promotion, retention, and punishment. I believe commanders must be involved in every step. They must be responsible and their subordinates must recognize this responsibility and their authority. To remove the commander from any of these responsibilities will, in my view, weaken his or her effectiveness in every one of these dimensions.

I had the privilege of commanding a company of paratroopers in the 82nd Airborne Division. I was responsible directly for nonjudicial company-grade punishment under the Uniform Code of Military Justice. But it was clear to me and to my troops that the battalion and brigade commanders and the division commander had court-martial authority and would necessarily confer with their subordinate commanders in the execution of this authority. This reality, this authority, permeated everything we did and reinforced the policy orders of every commander, including myself.

I will admit that my experience is decades old, and it preceded the integration of women into combat units such as an airborne infantry battalion, but the central role of the commander has not diminished. Moreover, the experiences of the sixties and the seventies also reveal a military struggling with serious and corrosive problems, principally racial integration and drug use. Congress ultimately dealt with these problems, not by bypassing commanders but by holding them, and through them every member of the Armed Forces, to a higher standard.

Today the American military is the first institution anyone points to when noting the progress we have made in racial equality and opportunity. This was not always the case.

> Incidents with racial overtones plagued the Vietnam period [and the post-Vietnam era.] Among the most widely publicized were a race riot among prisoners in a stockade in Vietnam in 1968 and several incidents aboard naval vessels in the early 1970s.

In one of these incidents in 1972 on the carrier Kitty Hawk, there was a 15-hour melee between Black and White sailors. Effectively, that carrier, that ship—a capital ship of the Navy—was absolutely ineffectual. They weren't prepared to fight the enemy, they were fighting each other.

In May of 1971, there were 4 days of rioting at Travis Air Force Base in California ignited by racial incidents on the base; over 100 individuals were arrested and more than 30 Air Force personnel were treated for riot-related injuries. The Marine Corps saw serious racial clashes at Camp Lejeune, NC, and Kaneohe Naval Air Station in Honolulu. In the Army, especially in Germany, there were frequent racial clashes.

In December of 1970, a special investigating team reported to President Nixon on the situation in Europe and declared that black troops were experiencing ''acute frustration'' and ''volatile anger'' because of their treatment.

Interestingly, this report cited as a major cause of this frustration ''the failure in too many instances of command leadership to exercise the authority and responsibility in monitoring the equal opportunity provisions that were already a part of military regulations. . . . ''

The military has made significant progress on racial opportunity. I am sure more can and should be done, but the progress to date has been driven principally by command leadership at every stage, including the enforcement of the Uniform Code of Military Justice.

The point was made by Charles Moskos and John Sibley Butler, two of the utmost authorities on race relations in the military. In 1996 they wrote:

> Perhaps surprisingly, no Army regulation deals solely with race relations or equal opportunity. Instead, these issues fall under Army Regulation (AR) 600–20, whose broad concern is ''Army Command Policy.'' This title is more than symbolic. The Army treats good race relations as a means to readiness and combat effectiveness—not as an end in itself. This is the foundation for the Army's way of overcoming race. Racial concerns are broadened into a general leadership responsibility, and commanders are held accountable for race relations on their watch.

Once again, the emphasis is on commanders, not specialized legal procedures that bypass commanders. My best judgment is we will make the most progress addressing the issue of sexual abuse by holding commanders accountable, not by excluding them from a critical aspect of military life.

Under the leadership of Senator LEVIN and Senator INHOFE, the Armed Services Committee made significant changes to provisions regarding sexual abuse in the military. Moreover Senators MCCASKILL, AYOTTE, and FISCHER will make additional changes in their proposed amendment that will further strengthen our commitment and ability to respond to the crisis of sexual abuse in the military. But it is also important to describe the ongoing efforts by the Department of Defense to deal with sexual abuse in the military.

I am drawing on testimony of LTG Flora D. Darpino, the Judge Advocate General of the Army, and she described policies effective in the Army, but generally there are equivalent procedures in the other services.

The Army began a major effort to combat sexual abuse beginning in 2004 with the creation of the Sexual Assault Prevention and Response Program, the SAPR Program, and the implementation of restricted reporting. This allows victims of sexual assault to confidentially disclose a crime to specifically identified individuals and receive medical treatment and counseling without triggering the official investigative process.

This program has evolved into a comprehensive effort ''fielding a capability of over 11,000 personnel, deployable and available 24 hours a day,'' to respond to the victims' needs.

Included in the procedures available under the SAPR Program are new reporting options for the victim, expedited transfers, access to victim advocates and, most recently, access to victim counsel.

In addition, this program has a significant educational component that ''saturates Soldier training from the first days of initial entry training to senior leader forums.'' The training focuses on bystander intervention and is

linked to ''Army values that bond Soldiers as a team.'' It reinforces the military ethic of selfless service over predation and self-gratification.

''In 2009, the Army recognized the need for improved training and resources for the prosecution of these crimes.'' Special Victim Prosecutors were created in the Judge Advocate General's Corps and sexual assault investigators were created in the Criminal Investigative Division, CID. Together, these specially trained and experienced professionals work only special victim cases. They are able to apply unprecedented expertise. In addition, all JAG prosecutors and defense counsels have received enhanced training regarding cases of sexual abuse.

With all of these changes, Lieutenant General Darpino still identifies the commander as the ''critical'' element. In her words: ''The most critical element of this institutional effort, however, is the focus of commanders.''

As such, she points out:

The Army, like the other services, has moved aggressively to hold commanders accountable for setting a command climate that encourages reporting, deplores conduct that degrades or harasses individuals, and provides a safe environment, free of retaliation, for victims after they come forward. To support this effort, officers and commanders are receiving enhanced training at every level. Specifically, ''the officers entrusted with the disposition of sexual assaults, withheld to the 0–6 (Colonel) Special Court Martial Convening Authority, are required to attend Senior Legal Orientation Courses at the Judge Advocate General's Legal Center and School with a focus on the proper handling of sexual assault allegations. General officers, who will serve as convening authorities, are offered one-on-one instruction in legal responsibilities, again with a focus on sexual assault.''

Most significantly, in my view, and most recently, the Secretary of the Army, on September 27, 2013, directed that every officer and noncommissioned officer will be rated on how well he or she ''fostered a climate of dignity and respect and adhered to the Sexual Harassment/Assault Response (SHARP) Program.''

Secretary McHugh and General Odierno have made it clear that commanders and senior leaders are responsible. Their advancement, their retention, their standing in the Army will rest with an annual, explicit, written review of their efforts to combat sexual abuse.

I wish to return for a moment to my discussion of the racial challenges facing the Army while I served. Let me also return to the comments of Charlie Moskos, the most respected academic authority and also an Army veteran. In 1986 he wrote:

More important for blacks than the new race relations curriculum was the revision of the efficiency report, a performance evaluation that carries a lot of weight in all promotions. Starting in the early 1970s, a new category appeared in the official report for officers and NCOs: race relation skills. Filling out this section was mandatory and the requirement was rigorously enforced. More blacks received promotions. Some officers with a poor record on race were relieved of command. All of this set a tone. If for only self-interest, Army officers and NCOs became highly sensitive to the issue of race. Today—

He is talking about 1986.

one is more likely to hear racial jokes in a faculty club than in an officers' club. And in an officers' club one will surely see more blacks.

I think we have made great progress, finally, by focusing on the evaluation and efficiency reports that every officer and NCO must receive each year.

Now in the context of what the military is doing to combat sexual assault and in the context of glaring examples of what it is not doing and what it is failing to do, the Armed Services Committee adopted provisions that should rapidly and dramatically combat sexual abuse within the military. The Secretary of Defense has already taken administrative steps to implement some of these provisions. Senator MCCASKILL will offer additional provisions with her amendment that I wholeheartedly support.

It is important to recognize the comprehensive and critical nature of these provisions that are already in the National Defense Authorization Act—from improving measures to prevent sexual assault, to protecting victims when it does happen, and strengthening the judicial process to discipline those who commit such heinous crimes.

The bill makes important changes that will improve the prevention of sexual assaults. First, the bill prohibits the commissioning or enlistment of individuals convicted of rape, sexual assault, forcible sodomy, or incest, or attempting to commit these offenses.

Second, the bill requires the Secretary of Defense to report on whether legislative action is required to modify the UCMJ to prohibit sexual acts and contacts between military instructors and their trainees.

The next step is to ensure that all servicemembers understand how they can and must prevent and respond to incidents of sexual assault. Each of the services is conducting a variety of training programs on sexual assault prevention and response. This bill requires the Secretary of Defense to conduct a comprehensive review of the adequacy of this training and to then prescribe in regulations such modifications to address any inadequacies identified by this review. The bill also requires the Secretary of Defense to review the adequacy of the training, qualifications, and experience of individuals assigned to positions responsible for sexual assault prevention and response, to retrain or reassign any individual who does not have adequate training or qualifications, and to improve the requirements for selection and assignment to sexual assault prevention and response billets.

Servicemembers who have been sexually assaulted or raped should have every resource available to report the incident, to receive care, and to see that justice is done. In crafting this bill, the committee acknowledged that many victims do not report such incidents because of a fear of retaliation from their peers and leaders. So this legislation includes a provision that makes retaliation against servicemembers for reporting criminal offenses a punishable offense under the Uniform Code of Military Justice. This will ensure that both victims and witnesses to such crimes are able to report the occurrence without facing retaliatory action or threat of such action. This bill also requires the DOD inspector general to review and investigate allegations of retaliatory personnel actions for reporting a rape, sexual assault, or sexual misconduct.

Next, the bill expands certain existing protections to victims who are members of the National Guard and Reserves, and members of the Coast Guard. First, it requires the service secretaries to ensure that members of the National Guard and Reserves have access to a sexual assault response coordinator not later than 2 business days following the request for such assistance. These coordinators explain the reporting process, address the victim's safety and security needs, and offer expertise and available services, including medical care, counseling, and legal support.

Second, it clarifies that an existing requirement for the expedited change of station or unit transfer requested by a victim of sexual assault also applies to members of the Coast Guard.

The bill requires the service secretaries to provide a special victims' counsel to provide legal advice and assistance to servicemembers who are victims of a sexual assault committed by a member of the Armed Forces. This resource was initially created by the Air Force, in a program that began in January of this year. Since the committee's markup of this bill, Secretary of Defense Hagel has directed each of the services to implement such a program. This provision will codify administrative action that has already been taken.

The bill also authorizes the service secretaries to provide guidelines to commanders regarding their authority to temporarily reassign or remove from an assignment a servicemember on active duty who is accused of committing or attempting to commit a sexual assault offense, not as a punitive measure but solely for the purpose of maintaining good order and discipline within the member's unit. In addition, the bill directs the Secretary of Defense to provide information and discussion of this authority as part of the required training for new and prospective commanders at all levels of command.

The bill also makes several changes to further strengthen the judicial process. First, the bill eliminates the element of the character and military service of the accused—the so-called good soldier defense—from the factors a commander should consider in deciding how to dispose of an offense.

I should add that Senator MCCASKILL's amendment further limits the defendant's use of good military character as evidence.

Second, the bill requires the defense counsel in courts martial to make requests to interview complaining witnesses through the trial counsel, and, if requested by the witness, requires that defense counsel interviews take place in the presence of the trial counsel, counsel for the witness, or outside counsel. This is to protect against the abuse of this process.

Next, the bill changes Article 60 of the UCMJ to limit the ability of a convening authority to modify the findings of a court-martial to specified sexual offenses. In other words, this provision eliminates a commander's ability to overturn a jury's conviction for sexual assault, rape, and other crimes.

Additionally, the bill requires a mandatory minimum sentence of dismissal or dishonorable discharge of a servicemember convicted of a sexual assault offense.

The bill also eliminates the 5-year statute of limitations on trial by court-martial for certain sexually related offenses, and requires that substantiated complaints of a sexually related offense resulting in a court-martial conviction, nonjudicial punishment, or administrative action be noted in the service record of the servicemember, regardless of the member's grade.

Importantly, the bill maintains and strengthens the role of commanders in the judicial process. During the markup of this bill, the committee adopted an amendment on a bipartisan basis that preserves the ability of commanders to initiate court-martial proceedings. Removing this authority, which some of our colleagues advocate, would weaken accountability and undermine efforts to combat sexual assault. Commanders have the responsibility to train their subordinates, they are charged with maintaining good order and discipline within their units, and they are responsible for the safety of the men and women they lead. The commander is essential to instilling among the members of his or her unit that sexual assault and related behaviors will not be tolerated and will be adjudicated.

The bill includes several provisions that address the role of the commanding officer. First, it requires commanding officers to immediately refer to the appropriate military criminal investigation organization reports of sexually related offenses involving servicemembers in the commander's chain of command. Next, the bill requires automatic higher level review of any decision by a commander not to prosecute a sexual assault allegation, with the review going all the way to the service secretary in any case in which the commander disagrees with the military lawyer's recommendation to prosecute.

If a legal counsel advises prosecution, and the commander does not do it, ultimately it will be resolved by the service secretary. Most commanders do not want their decisions reviewed by the service secretary. I think this will add more sense and more purpose to their efforts to combat sexual abuse.

All of these changes take significant steps forward in addressing these horrible crimes. However, we must remain committed to further improving both prevention and response. That is why the bill includes several provisions related to the review that is currently under way by the independent panel created by last year's Defense authorization bill—the Response Systems to Adult Sexual Assault Crimes Panel. This committee is assessing the systems used to investigate, prosecute, and adjudicate crimes involving sexual assault. The bill we are considering today assigns additional issues to be considered by this panel and requires the panel to produce its report no later than 1 year from its first meeting, which occurred in July, rather than 18 months, as originally laid out in last year's law.

As I mentioned before, Senators MCCASKILL, AYOTTE, and FISCHER are proposing an amendment that further strengthens all of these provisions that are already in the committee's bill. First, their amendment requires the special victims' counsels to advise victims of the advantages and disadvantages of their cases being prosecuted in a civilian court with jurisdiction or through the Uniform Code of Military Justice. The victim may express his or her preference, and this preference must be afforded great weight in the determination to prosecute the offense by court-martial or by a civilian court.

The amendment codifies the decision by the Department of the Army to evaluate the performance of soldiers in adhering to the standards regarding sexual assault prevention and response. It extends this provision to every service in the Department of Defense. As previously noted in the context of race relations, this provision is likely to make a profound and lasting contribution to the prevention of sexual abuse. That is what we are about here—preventing sexual abuse. This could be one of the key drivers in that effort.

The amendment also improves accountability of commanders by requiring that a command climate assessment be performed after an incident involving a covered sexual offense, as defined in the legislation, for both the command of the victim and the command of the accused, if they are in separate commands, or a single assessment if they are in the same command. These assessments will be completed promptly and provided to the military criminal investigation organization conducting the investigation of the offense concerned and to the next higher commander in the chain of command of the affected unit.

You will know, if you are a commander, if there is an incident in your unit that all the details will be known by your battalion commander, your brigade commander, your division commander, and all the way up. That will be another strong incentive to make sure that nothing happens in your unit. That is part of the amendment proposed by my colleagues.

This provision, particularly in conjunction with the requirement to evaluate servicemembers' compliance under the official report, will go a long way to provide the accountability and the emphasis on commanders to do their jobs.

GEN Bruce Clarke, a distinguished officer wounded in the Battle of the Bulge and who was awarded the Silver Star—one of the great heroes of the U.S. Army—famously instructed his units that, in his words, ''an organization does well only those things the boss checks.'' Well, we are checking each individual to make sure commander and noncommissioned officer—they are doing their best. We are checking each unit, if there is an incident in that unit, and we are living up to the advice of General Clarke. It will get done because, finally, it will be checked consistently, thoroughly and appropriately.

The amendment also establishes a confidential process that will enable a victim of a sexual assault who is subsequently discharged to challenge the terms or characterization of his or her discharge in order to correct possible instances of retaliation. This provision will help ensure that a discharge accurately reflects the service of the individual, taking into consideration the effects of sexual assault and also helping to remove the concern that reporting sexual abuse could influence the character of a military discharge. Reporting such a crime should never influence the character of a military discharge.

The amendment strengthens the role of the prosecutor in advising commanders on courts martial. The committee language requires the civilian service secretary review all cases where a commander does not choose to prosecute when his or her legal counsel/judge advocate recommends prosecution. The amendment extends that mandatory review if the prosecutor recommends prosecution and the commander demurs. In effect, if either the prosecutor or the legal counsel/judge advocate recommends prosecution and the commander demurs, the case will automatically be referred to the civilian service secretary. You will have the highest ranking civilian in the uniform service making the final call. Every commander will know that.

The amendment modifies the Military Rules of Evidence to prevent defendants from introducing evidence of good military character as a general defense of a charge. Such evidence may only be admitted if that trait is relevant to an element of the offense for which the accused has been charged. Too often, the good soldier defense has been seen as overcoming specific evidence directly related to a crime. This

appearance undermines the essential perception that a verdict is determined by direct evidence supporting the elements of the crime, not the previous reputation of the defendant. This provision builds upon a section of the underlying bill that eliminates the character and the military service of the accused from the factors a commander should consider in deciding how to dispose of an offense.

Finally, the amendment ensures that all of the protections of this legislation are extended to the cadets and midshipmen of our service academies. The McCaskill-Ayotte-Fischer amendment strengthens the committee bill. Through enhanced accountability of commanders and additional changes to the Uniform Code of Military Justice, we will strengthen prevention and prosecution of sexual abuse.

Those who argue for the exclusion of the commander from the judicial process point to the policies of our allies, including Canada, the United Kingdom, Australia, and Israel. These countries have removed commanders as convening authorities and use independent military or civilian prosecutors to make charging decisions. While it can be useful at times to draw comparisons between our Armed Forces and those we serve alongside, there are several points to be made with respect to our military justice system that do not align.

First, none of these countries changed their system in response to a sexual assault crisis among their ranks or to protect rights of victims more generally. In most cases the system was changed to protect the rights of the accused.

Second, none of the allies can draw a correlation between their system and any change in reporting by victims of sexual abuse. Many argue that removing the commander as the decisionmaker will remove a significant hurdle that victims face in deciding whether to report sexual assaults. There is no statistical or anecdotal evidence that removing commanders from the charging decision has had any effect on victims' willingness to report crimes in these judicial systems among our allies.

In materials provided to the Response Systems Panel, the deputy military advocate general for the Israeli Defense Force noted an increase in sexual assault complaints between 2007–2011, attributing no specific reason for the increase but noting that it could represent an increase in the number of offenses or it could be a result of campaigns by service authorities to raise awareness on the issue.

Similarly, the commodore of Naval Legal Services for Britain's Royal Navy has assessed that recent structural changes to their military judicial system had no discernible effect on the reporting of sexual assault offenses.

Third, the scope and scale of our allies' caseloads are vastly different, primarily because of the much greater size of the U.S. Armed Forces. For example, the Canadian military only tried 75 to 80 courts-martial last year, which is roughly comparable to one U.S. Army division's annual caseload. But several of our allies who have changed their military justice system have indicated that the changes have resulted in the process slowing down and taking longer. Frankly, that is one of the issues victims have raised in terms of why they aren't reporting and why they are so terribly frustrated—because of the length and duration of the process.

Furthermore, most allies cannot conduct courts-martial in a deployed environment. BG Richard Gross, the legal counsel to the Chairman of the Joint Chiefs of Staffs, stated in a letter:

> One critical feature of our justice system is its expeditionary nature—the ability to administer justice anywhere in the world our forces deploy.

Notably, the Army alone tried over 950 cases in deployed areas over the past 10 years. In one case in Iraq, four soldiers committed multiple crimes in a single night. The commander referred all four soldiers to court-martial, and they were charged with consuming alcohol, breaking into local Iraqi homes, and stealing property and money from the locals. Because the commander in Iraq had authority to refer these cases to trial, the first trial was underway within 2 months of the incident. All of the co-accused and many defense witnesses were in the same unit, and local Iraqis were available as fact witnesses. Because the commander had a fully deployable military justice system at his disposal, he was able to send a strong message to the unit that such conduct would be dealt with swiftly and decisively. Simultaneously, he was able to restore positive relations with the local community.

The Army has also cited instances of allied soldiers committing sexual assault crimes against U.S. soldiers, and because of the allied nation's system removing the authority of the chain of command and removing the process from the battlefield, our commanders would demand but not receive timely information on the status of any prosecution. We had a soldier victim, and they could not find anything about the process that was going on.

Tragically, sexual assault is a crime that historically is underreported, and this is not only with respect to the military. The Rape, Abuse, and Incest National Network cites Department of Justice crime surveys that show that an average of 60 percent of assaults in the last 5 years were not reported to police. However, in numbers released earlier this month, DOD showed that more servicemembers are coming forward to report sexual assaults. From October 2012 to June 2013, 3,553 sexual assault complaints were reported to DOD. That is a 46-percent increase over the same period a year ago. These cases include sexual assaults by civilians on servicemembers and by servicemembers on civilians. A significant number of the reported incidents occurred before the victim had even entered military service.

Another argument for removing the commander's authority is that independent JAGs or even civilian authorities will prosecute more cases. However, statistics show that commanders from all services have exercised jurisdiction and pursued courts-martial for sexual assault cases over the determination of civilian authorities. Over the last 2 years, Army commanders have exercised jurisdiction in 49 sexual assault cases the local civilian authorities declined to pursue, and 32 of those cases were tried by court-martial, resulting in 26 convictions. The U.S. Marine Corps exercised jurisdiction in 28 sexual assault cases, all of which were tried by court-martial, and 16 cases resulted in conviction. This goes on throughout every service.

Commanders also have an interest in pursuing a court-martial as a way to demonstrate the seriousness of the crime and its impact on unit discipline, not merely because of the quantity or quality of evidence that a crime occurred.

On June 4 the Armed Services Committee held a hearing on the legislative proposals to address sexual assault in the military. We heard from four colonels from the Army, Navy, Marine Corps, and Air Force. They all spoke about the importance of seeking legal advice from their command judge advocate and having the responsibility to adjudicate crimes within their command.

COL Donna Martin, commander of the Army's 202nd Military Police Group Criminal Investigation Division, stated:

> 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.

She went on to say:

> The Uniform Code of Military Justice 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 the chain of command.

When asked about whether a commander might be more likely to pursue a court-martial than even an outside independent officer because of the desire to send a message to his or her unit, Marine Colonel King replied that he considers ''achieving justice for whatever crime was committed and also the message that I send to the thousands of Marines that are actively watching what's going on. So I can, even if I fail to achieve a conviction at whatever level, still send a powerful message to them that this kind of conduct, even alleged, even not proven, is completely unacceptable.''

Col. Jeannie Leavitt, commander of the 4th Fighter Wing, stated:

I could absolutely see the scenario where a prosecutor may not choose to prosecute a case or recommend prosecuting a case because of the likelihood of conviction. However, as the 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. And then we'll 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 proof is not necessarily going to lead to conviction.''

Additionally, our service JAGs have expressed several concerns about the proposed amendment my colleague from New York is introducing. I will take a moment and talk about the amendment.

I thank and commend Senator GILLIBRAND because without her persistence and passion, we would not be here today. She perhaps has done more than anyone else to focus our attention on this incredibly heinous crime done to individuals and the threat to good order, discipline, and efficiency of the military.

Her objective—the elimination of sexual abuse in the ranks of our military—must be our objective, and it must be realized. She and her cosponsors have determined, in their view, that the removal of the commander from the application of the Uniform Code of Military Justice for a wide variety of offenses is the best approach to achieve the goal of ending sexual abuse in the military, but, as my previous comments clearly indicate, I disagree. Indeed, given the nature of military service, which is significantly different from civilian life, I believe that without the active involvement of commanders in every phase of military life, this goal cannot be effectively and rapidly achieved.

The approach in the amendment proposed by my colleague from New York poses significant problems in practice that could unwittingly complicate rather than accelerate efforts to end sexual abuse.

The amendment attempts to divide crimes designated by specific articles of the UCMJ into two broad categories: traditional military offenses subject to command adjudication, such as AWOL and insubordination, and a broad category of serious offenses that would typically constitute civilian criminal offenses, such as murder, robbery, and rape and sexual crimes. In fact, here is a chart depicting the division of the articles of the Uniform Code of Military Justice.

This second category of offenses would be removed from command adjudication and would be referred to an independent prosecutor. This independent prosecutor must be at least a full colonel with ''significant experience in trials by general or specific court martial'' and be ''outside the chain of command of the member subject to such charges.''

This bifurcated system—especially considering the scope of crimes excluded from the chain of command—will have profound effects on the ability of commanders and units to function effectively.

Let's take the case, which is not uncommon, of a soldier who writes five checks on five separate occasions for $30 each to the PX knowing he doesn't have the funds to cover his purchases. The Criminal Investigations Division investigates and informs the commander. Under the Gillibrand amendment, the CID must refer this case to the independent prosecutor because it falls under article 123a. These are referred to special prosecutors if they fall under the category. The five separate incidents, although they individually have a maximum punishment of 6 months, would be charged together, leading to 30 months, which exceeds the 1-year threshold for the Gillibrand amendment. As a result, this would be sent forward to the special prosecutor.

I hardly think that charging this soldier for writing bad checks is the intent of the Gillibrand amendment, but it will be the effect. It also raises the very practical questions of how the independent prosecutor will deal with an onslaught of cases like this when the expectation is that he or she will be focused on sexual abuse and other serious crimes, such as murder. There is a practical issue: Are you going to take a bad check case when you have 15 pending attempted murders, assaults, rapes, et cetera? That is a practical issue, and I think the answer is probably no.

Under the amendment, the independent prosecutor has the choice of convening a special court-martial or a general court-martial. A special court-martial consists of a panel of at least three members or, at the servicemember's election, a military judge sitting alone. There is a prosecutor, referred to as the trial counsel, and a defense counsel. In comparison, a general court-martial is the military's highest level court where servicemembers are tried for the most serious crimes—roughly analogous to a civilian felony court—and the maximum punishments are increased.

Before any charge can be sent to a general court-martial, an Article 32 investigation must be conducted, which is a hybrid of a civilian grand jury proceeding and a preliminary comprehensive discovery proceeding. The Article 32 investigation is intended to be more than a mere formality; it is a valuable right for the accused and a source of information for the commander. The general court-martial may consist of a military judge and not fewer than five members or a military judge alone if the defendant chooses. Capital cases require 12 members.

As we can see, these proceedings are intensive in terms of time, in terms of commitment of military personnel, and in terms of investigatory efforts. In fact, the average length of special court-martial proceedings ranges from 3 to 5 months. General courts-martial can take anywhere from 5 to 8 months. In cases involving sexual assault, both special and general courts-martial take longer—an average of 9 months. Again, this is probably going to delay the process, not accelerate the process.

Given the time and resources involved in a general or special court-martial, in the case of a young soldier writing bad checks and the long-standing practice of reserving general and special courts-martial for the most serious offenses, I seriously doubt that an independent prosecutor would take this case. At some point, the independent prosecutor will inform the commander, which raises another issue. If this notification is delayed extensively, there is a related problem of what to do with the soldier under suspicion. Do you deploy him or her subject to recall? Do you leave him behind? So all of these issues are important.

The independent prosecutor's decision is binding on any applicable convening authority for a trial by court-martial on such charges. It is binding on every commander. The amendment, however, does attempt to preserve authority to punish these types of offenses by declaring that the independent prosecutor's decision ''shall not operate to terminate or otherwise alter the authority of commanding officers'' to employ a summary court-martial or to impose nonjudicial punishment under Article 15 of the UCMJ. But this authority is absolutely an illusion.

Under the UCMJ, every soldier has the right to turn down a summary court-martial or an Article 15. Once he is informed by counsel that he will not be subject to a general court-martial or a special court-martial, and he can turn down a summary court-martial and article 15, the soldier will invariably refuse the summary court-martial or article 15. Ironically, in doing so he will demand a court-martial. But the commander cannot comply, as he can now, because he has already been preempted by the independent prosecutor.

This scenario will play out over and over again. A unit is plagued by a series of barracks thefts which, if unchecked, erodes good order and discipline. The commander has information that one soldier is boasting about ripping off people but he has no other evidence. During a routine health and welfare inspection, an iPhone valued at over $500 and reported missing is found in the boasting soldier's room. Under the Gillibrand amendment, the commander must refer the case to the independent prosecutor and again you will have the issues of whether the independent prosecutor takes such a case, and if not, the likelihood that the accused will refuse a summary court-martial or an Article 15 and walk free.

Incidents like this—and this is not the intent of the legislation, but this is what will happen—will erode unit cohesion and raise questions at least implicitly: Who is really running the

unit? The commander? An unseen and unknown JAG, hundreds of miles away? Or individual soldiers who may appear to be violating the rules with impunity?

This question is important here, but it is critical when a commander has to order soldiers to do dangerous things, and ultimately, that is what commanders have to do and soldiers have to have no doubt that the commander, he or she, is fully in charge.

As I referenced earlier, the bifurcation of the articles of the UCMJ poses significant challenges. The problem with the drafting of this amendment complicates not just cases of common theft, not just issues that you say we could throw out, but the very issue of sexual assault we are trying to address.

Let's take another example of a married couple, both of whom are Active Duty servicemembers, who get into a shouting match in their quarters on post. The husband stabs the wife with a kitchen knife and knocks her unconscious. She provides a statement to CID but later retracts it. They have another argument which results in his assaulting her with an attempt to commit rape. Under the Gillibrand amendment, the first offense of aggravated assault, Article 128, would have to be referred to the independent prosecutor to decide whether to send the case to a court-martial, while the offense of assault with intent to commit rape, which is specified under Article 134, is exempt from the Gillibrand proposal and would be referred to the chain of command. Assuming both the independent prosecutor and the independent commander seek a general court-martial, this particular victim will now have to have two separate Article 32 hearings, two subsequent courts-martial, at least doubling the number of times she must recount her nightmare and prolonging the administration of justice.

The accused will demand and likely get two separate panels for each set of offenses, thus doubling the number of officers unavailable for their duties in the command and more than doubling the administrative, personnel, and witness costs associated with the general court-martial.

This is a situation where, rather than streamlining, reinforcing, and clarifying the military's efforts to deal with sexual assault, we have confused them, we have delayed them, and we have put commanders in the position of competing with independent prosecutors. This is not going to add to the solution on a practical basis of how we deal with sexual assault.

We know so many of the men and women in our Armed Forces serve our nation selflessly. Every day they are prepared to give their lives. Sexual assault is the antithesis of this ethic. It has no place in the Armed Forces, and if not eliminated, it will insidiously destroy our military. I believe preventing sexual abuse requires leadership at every stage and that commanders must be involved in every step. I believe that we will make the most progress in addressing this issue by involving and holding commanders accountable, not by excluding them from a critical area of militarily life.

We have worked extensively to include provisions in this bill that will improve the prevention of sexual assault, the protection of victims, and the prosecution of perpetrators. We must pledge to do more, to continue our oversight of these programs and make further changes if needed. We owe it to all those who bravely and honorably wear the uniform of our Nation.

Madam President, I yield the floor.

The PRESIDING OFFICER. The Senator from Maryland.

Mr. CARDIN. Madam President, first, let me thank Senator GILLIBRAND for her leadership on this issue of sexual assault in our military. I support her amendment. I believe we need to look at a new way to deal with this issue so there is not only confidence within the military but within our country that sexual assault will not be tolerated in our military and that we have an effective way to deal with it. I thank Senator GILLIBRAND. It is quite clear, as Senator REED said, without her leadership we would not be having these discussions on the floor of the Senate today. I applaud her for that.

TRIBUTE TO MAJOR NATE SOMERS

Mr. CARDIN. Madam President, we are now dealing with the NDAA bill, the National Defense Authorization Act, and it is our opportunity as a Senate to weigh in on one of the primary roles of government and that is the security of our country, how we can support our men and women in our military service to make sure they have the best equipment and the best support and live up to our commitments to our veterans when they return to civilian life. It is an awesome responsibility. I know each of us in our own capacities need to rely on outside help in order to be able to carry out this responsibility.

We have staff. In my case I have been blessed to have a detailee from the Department of Defense from the Air Force. That person is Maj. Nate Somers. I mention that because he will be leaving my assignment very shortly, within the next week or so. I wanted to take this time to let my colleagues know, but also to let all the people know, that these detailees who are assigned to our office play a critical role. He has helped me in developing provisions that are in the National Defense Authorization Act and amendments that we are offering that deal with military health issues, that deal with regional security concerns, that deal with the impact of sequestration and how we can deal with the impact of sequestration and that deal with human rights issues with U.S. leadership globally as well as within the military.

To say the least, I could not have done this as effectively as I needed to on behalf of the people of Maryland if it were not for Maj. Nate Somers. He comes to this assignment with an incredible background. His military record is unbelievable. Major Nate Somers has dedicated his life to serving our Nation. Nate started his career with the U.S. Air Force in 2001 when he graduated and received his commission through the Officer Training Program at Mississippi State University. He also, I might add, has two master's degrees. Nate then went on to serve in Arkansas, Florida, and Virginia, and was deployed in support of both Operation Iraqi Freedom and Operation Enduring Freedom. Prior to joining my office, Major Somers served as liaison between the Air Combat Command and the Air Force Legislative Liaison Director on issues ranging from constituent inquiries to weapons systems.

Over the course of his incredible career, Major Somers has earned 17 different major awards and decorations, including the Meritorious Service Medal and the Air Force Commendation Medal. His receiving these awards comes as no surprise to those who know him. Nate demonstrates his extraordinary service to our Nation and to our Armed Forces each and every day.

There is hardly a day that goes by that I am not better informed because of his assignment to my Senate office. To say that Major Somers will be missed is an understatement. Nate has truly been a integral part of my staff. Whether ensuring our Maryland veterans get the services they need or advising me on complex defense issues, there was no task Nate would not do or could not do in order to help our office. The Air Force should be proud of the extraordinary talent they have in Maj. Nate Somers. I thank him for his service to this Nation.

I also want to take this opportunity to thank Nate's wife and sons for sharing Nate with the Senate and for his service to the country.

I yield the floor.

The PRESIDING OFFICER. The Senator from Alaska

Ms. MURKOWSKI. Madam President, yesterday morning I was pleased to be able to come to the floor of the Senate and join with a good, strong, group of women from both sides of the aisle to express our joint commitment—really the commitment of every Member of this body—to address the scourge of sexual assault, sexual misconduct within the military.

I thought it was a good way to start off the debate yesterday on the issue of sexual assault within the military, recognizing that some are in different places in terms of how we deal with these very important issues. But ultimately the goal of each of us is the same. The goal is that we make things right for those who are serving our Nation, and that when it comes to instances of sexual assault, military sexual trauma, sexual harassment, that really there is no place in our military for this.

We use different terminology when we are discussing the issue of sexual misconduct in the military. How we define what we are seeking to eradicate is important. We have used the more generic term sexual assault probably more often to describe the problem that we need to address, but I suggest that definition is probably a bit too narrow. I prefer to use the term military sexual trauma, which is the term that the VA, the Veterans Administration, uses to describe a spectrum of harms. Their term, the VA's term, military sexual trauma, means ''the trauma resulting from a physical assault of a sexual nature, battery of a sexual nature, or sexual harassment which occurred while the veteran was serving.''

I prefer this term because it emphasizes the various traumas that can occur, both with and without physical assaults and batteries. This definition also calls to our attention the fact that whatever the instrument of trauma there are psychological scars that need to be addressed. These are psychological scars that can last a lifetime. I think it is fair to say that this spectrum of scars is broad and it is deep.

I have looked very carefully at the work that came out of the Senate Armed Services Committee. I have looked at Senator GILLIBRAND's amendment very carefully. I have considered all that is being incorporated in the Defense Authorization Act. Again, as I mentioned yesterday, I am pleased with how in so many different areas we have been working together to address these issues of military sexual trauma.

I am a supporter of Senator GILLIBRAND's approach to ensure justice for victims of military sexual trauma. Today, I would like to explain some of the reasons why I have chosen to support that approach.

The current system of military justice relies upon the individual decisions of commanders for a decision on whether or not an offense is to be punished, and which charges are to be brought. In our complex military there are many commanders. We all know that. While our code of military justice may be uniform, I think we are seeing strong evidence that its implementation is anything but uniform.

Senator GILLIBRAND's approach ensures that charges will be investigated and that the charging decision will be made by disinterested military prosecutors. Decisions will be made by disinterested prosecutors whose only interest is that the perpetrators account for their actions, that victims' interests are protected, and that the integrity of the process is paramount. I think that this is very important. I think this is a breath of fresh air.

The recent experiences I have had, as a Senator from Alaska, with the transparency of decisions made within the chain of command leaves much to be desired. Unfortunately, we have learned about these situations from what we read in the headlines, and it makes you say: Oh my gosh. I cannot believe this is happening in our military.

It makes your stomach turn. We are not hearing this from the chain of command. We are reading this in our newspapers. We are seeing this reported in the media, and that is the first time we hear of them.

Case in point: The 49th Missile Defense Battalion, which operates our Nation's missile defense at Fort Greely. The missile defense establishment at Fort Greely is a very important facility for us in Alaska—as well as for the Nation. Last spring it was widely reported that unlawful fraternization among certain members of the battalion—rising up into the chain of command—was creating an uncomfortable situation for those who were not part of what I would describe as the incrowd at Fort Greely.

Just when I thought I understood what was going on at Fort Greely—after I was told not to worry and that everything was all fixed—there was a bizarre series of events which showed up on my doorstep. The complainant, who was a member of the Alaska National Guard, was involved in a child custody dispute with another member of the Alaska National Guard. For reasons I don't understand, the complainant's chain of command decided to inject himself into this custody dispute by causing the complainant to be detained in an electrical closet on a secure U.S. military base for a period of days in order to deny him lawful visitation with his children. It is also alleged that DOD civilian police and Fort Greely military police were complicit in these actions.

All of this is detailed in a sworn affidavit, which the complainant submitted to my office.

You just have to shake your head. Are we supposed to call this military justice? Maybe it is frontier justice. Maybe it is military justice in the last frontier. I don't like it, and I don't think we should ever accept it.

I asked the Army CID to look into this incident because it was my impression then that an unlawful denial of one's freedom is a criminal offense. I understand that the complaint my office forwarded was not pursued by the Army CID, but was referred to the Space and Missile Defense Command.

I am most appreciative that an investigation was pursued, but one might legitimately ask the question: How did it end? What was the outcome of this story? I don't know. Alaskans don't know. We don't know. Neither I nor the individual who sought the investigation has been informed of the outcome, just that the chain of command had looked into it. Where is the transparency?

The complainant has been told he needs to file a Freedom of Information Act request in order to get an answer. None of this sits right with me as an example of how the chain of command is an impartial, unbiased, and vigorous protector of victims. I am not able to see that in this instance. In this case it is alleged that the chain of command were either the perpetrators or complicit with the perpetrators.

Think of the message that sends. Fort Greely is a very small installation. Folks pretty much know what is going on at smaller installations. We know of this incident. It has been reported in the papers. We were told the chain of command has looked into it, but then nothing happened after that.

I would like to suggest that this is the only incident that has come to my attention, but that is not the case. Literally, less than a month ago, on October 27, the Anchorage Daily News reported on allegations that were made by senior Alaska National Guard chaplains of pervasive and longstanding sexual assault and sexual misconduct within Guard ranks.

There were allegations of some 26 different sexual assault and sexual misconduct incidents that were reported in the news. The chaplains become aware of these incidents through their own observations and through complaints that were brought to them by Guard members.

I had an opportunity to ask senior leaders of the National Guard Bureau what they knew about this situation. I asked them when they found out about this situation. You know what the answer was? They read about it in the news clippings. Really? I mean, it just stuns me to hear this after we heard about how we have this system—throughout the chain of command—that has been addressing this issue. Somewhere there is a broken link in this chain.

When the media finds out first and reports about it, and the senior leaders here are unaware of 26 different allegations, it just causes one to wonder.

It is a truism of management that if you want a problem managed, you have to know about it. You have to measure it and let your subordinates know that their performance is being evaluated on that measure.

So answer this question: How can the Secretary of Defense and our senior military leaders ever hope to manage the critical problem before us when the deplorable facts—and I am not talking about the number of complaints—are buried within a decentralized and far flung chain of command? How can I develop any sense of comfort that those who were responsible for these hideous activities have been brought to justice and not just simply moved around the military? It does cause one to wonder.

It is a horrible truth that we are still dealing with in Alaska, but we have all heard—and are very aware—of the widespread allegations of child sexual abuse within the Catholic Church. We have come to learn that the Church, in fact, was aware of many of these allegations. Unfortunately, for a period of time, the way they handled the problem was to move the offending clergy to other places. Some of them were

moved to the State of Alaska. If they acted inappropriately in an urban community, they were shipped out to a bush community—a very remote place.

Out of sight, out of mind, and free to offend again. That is not responsibility. That is not accountability. That is not how it should be done within the church, and it certainly should not happen within our military.

We have all shared many different victim stories here on the Senate floor. I want to add that the more this issue of military sexual trauma and sexual assault has been discussed on the Senate floor, more victims have come to speak to me.

I was in my home State 2 weeks ago for a big outdoor community event. It was a pretty cold Saturday afternoon. I was approached by a woman who had seen me from across the street. She was attending a conference at the time. She came across the street and into the town square. She was not wearing a coat. She wanted to make sure that I knew she too had been a victim but had not had the strength to report the crime. She just left the service.

She said to me: Don't give up on this because I had to step down from my military career and the perpetrator stayed on, and as he stayed on, he continued to be promoted. Her plea to me was: Please don't let that continue.

I want to share another story that is very personal to me. I think all of us as Members of the Senate know what a privilege and honor it is to nominate qualified constituents to attend our Nation's service academies. The military stands very tall in the eyes of Alaskans, so in my State these nominations are highly competitive.

Last spring I became aware that one of my nominees who was accepted into one of the service academies and did phenomenally well was sexually assaulted at the academy. I was following this young woman because I knew her family.

She graduated and was commissioned, but now the burden of dealing with the fact that she was not protected from the crime has caused her to resign her commission. She put 4 years of very hard work toward a military career, and now that career is in the garbage.

I contacted her recently. She is a strong woman, but her dreams have been completely dashed by what she experienced.

Many of my colleagues know I have taken a keen interest in the work of our service academies. I served for a short time on the Board of Visitors of one of the academies, but I was not aware of the trauma my constituent had suffered until she contacted me long after graduation. I don't recall any substantial discussions about issues like this during my tenure on the Board of Visitors. It needs to be discussed. It not only needs to be discussed but action needs be taken to eliminate instances like that from ever happening.

These issues are all current issues, but not all of these issues are new. Earlier this year I came to know a woman by the name of Trina McDonald. At one point in time she had the opportunity to live in the State of Alaska as a servicemember. So many of our servicemembers who have been stationed in Alaska want to stay for life. They want to retire there because they love it. Unlike many of her colleagues, Trina chose to try to forget everything that had been attached to her service in Alaska. She prefers to forget that experience. That is because she was sexually assaulted while serving in my home state.

Many of you may have seen ''The Invisible War.'' Ms. McDonald speaks of the experiences she had when she was assigned to the Navy and stationed at Adak, which is now a closed naval base on the Aleutian Chain. This happened about 20 years ago. Trina asserts she was repeatedly drugged, raped, and ultimately dumped in the Bering Sea by superior officers.

What did the chain of command do? Trina states that she had no place to turn because both the police and her superiors were the perpetrators. What do you do? Where do you go? Where is the redress? It pains me to think that the issues, which today are very high in the attention of this body, have been out here for 20-plus years. I have listened to my colleagues on the floor talk about the Tailhook scandal, and we have talked about so many of the other high profile instances where we have heard our military leaders say, Never again; never again; zero tolerance. They are using all the right words.

It really does cause us to ask the question: Are we to attribute this cycle of violence we are seeing to attention deficit on the part of us here in Congress or attention deficit on the part of our military leaders? This is not what zero tolerance looks like. Whatever the case, I think it is going to take some very strong medicine to break through this powerful attention deficit we have seen historically.

Incremental steps, in my view, don't cut it anymore. For the young woman, again, whose military career is no longer; the woman I met out in the cold 2 weeks ago who gave up her dream and has just had to stand by and watch her perpetrator ascend his career ladder, incremental measures don't cut it.

I think it is time for profound change. I think the amendment offered by the Senator from New York, while it is strong medicine, and I acknowledge that, I think it is the right tool for what we are dealing with at this time.

With that, I thank the Presiding Officer and I yield the floor.

The PRESIDING OFFICER. The Senator from Iowa.

Mr. GRASSLEY. Madam President, I wish to reiterate my strong support for Senator GILLIBRAND's reforms to the military justice system. I am proud to be an original cosponsor of this act, and I should add it has been a pleasure working with Senator GILLIBRAND on the issue. Her passion and commitment to rooting out sexual assault in the military ought to be inspiring to all of us, and watching how she negotiates and how she lobbies for her ideas can teach all of us a good lesson.

I should also add that I appreciate the work of the Armed Services Committee, which added a large number of commonsense reforms to the underlying bill. In fact, some of them are so commonsense that one has to wonder why the military hasn't adopted them already or, if need be, asked for legislation to do so before now.

For instance, the bill before us provides that people convicted of certain sexual assault offenses may not join the Armed Forces—common sense. It requires mandatory discharge from the Armed Forces of any member convicted of certain sexual assault offenses—common sense. It directs a comprehensive review of the adequacy of training pertaining to sexual assault prevention and response—common sense.

The underlying bill also has a number of provisions to address certain concerns about commanding officers not handling sexual assault charges properly but still keeps this judicial process in the chain of command. That is inappropriate; hence, this amendment.

We have tried working within the current system. This isn't a new issue. Military leaders have been making emphatic promises about tackling the problem of sexual assault for years and years, but the problem only seems to be getting worse. What is more, the current system appears to be part of the problem. There is a culture that has to change, and it won't change by itself.

According to a recent Defense Department report, 50 percent of female victims stated they did not report the crime. Why? Because they believed that nothing would be done with their report.

Seventy-four percent of females and 60 percent of males perceive one or more barriers to reporting sexual assault. Sixty-two percent of the victims who reported a sexual assault indicated they received some form of professional, social, or administrative retaliation. This should not happen in a military where everybody ought to be looking out for everybody else.

A very cohesive unit is essential for everybody's protection but also for the success of the mission. So it is a terrible deterrent when sexual assaults ought to be reported 100 percent but aren't. If sexual assault cases are not reported, it is quite obvious, common sense tells us they can't be prosecuted. If sexual assault isn't prosecuted, common sense ought to tell us it leads to predators remaining in the military and a perception that that sort of activity will be tolerated or a person can get away with it. Common sense tells us that people get away with it.

By allowing this situation to continue, we are putting at risk the men and women who have volunteered to place their lives on the line. We are also seriously damaging military morale and military readiness. Taking prosecutions out of the hands of commanders and giving them to professional prosecutors who are independent of the chain of command will help ensure impartial justice for the men and women in uniform.

I know some Senators will be nervous about the fact that the military is lobbying against this legislation. There is a certain awe that permeates among Senators when people with stars on their shoulders appear among us. We are being asked, once again—that environment is here—to wait and see if the latest attempt to reform the current system will do the trick. I respond that the time for trying tweaks to the current system and waiting for another report or study has long since passed.

We also hear that this measure will affect the ability of commanders to retain good order and discipline. I would like to be clear that we in no way take away the ability of commanders to punish troops under their command for their military infractions. Commanders also can and should be held accountable for the climate under their command. But the point here is sexual assault is a law enforcement matter, not a military one.

If anyone wants official assurances that we are on the right track, we can take confidence in the fact that an advisory committee appointed by the Secretary of Defense himself supports our reforms. On September 27 of this year, the Defense Advisory Committee on Women in the Services—and I believe that acronym is DACOWITS—voted overwhelmingly in support of each of the components of the Military Justice Improvement Act amendment.

This advisory committee isn't something new. These various advisory committees under different Secretaries of Defense have been around since 1951 when they were created by then-Secretary of Defense George C. Marshall. The committee is composed of civilian and retired military men and women who are appointed by the Secretary of Defense to provide advice and recommendations on matters and policies relating to the recruitment and retention, treatment, employment, integration, and well-being of highly qualified professional women in the Armed Forces. Historically, this advisory committee's recommendations have been very instrumental in affecting changes to laws and policies pertaining to military women.

The bottom line is—and, again, this is common sense—this isn't some advocacy group or fly-by-night panel. It is a longstanding advisory committee handpicked by the Secretary of Defense, and it supports the substance of our amendment to a tee.

I know it is easier to support incremental reforms. That is even prudent in some cases. However, when we are talking about something as serious and life-altering as sexual assault, we cannot afford to wait any longer than we already have. Our men and women serving in this military deserve bold action to solve this problem—not in a few years or a little bit at a time but right now. So I urge my colleagues to be bold and join us in this effort. It is the right thing to do.

It seems to me as though a lot of debates in this body get complicated, and this one seems to be complicated too by some people. But it is really a very simple issue. It doesn't need to be this complicated, because it talks about changing the culture. I know there are cultures in every bureaucracy that need to be changed that affect their operations, but none of them are as damaging as the No. 1 responsibility of the Federal Government. So a culture in the Defense Department has to be taken seriously. We have to change the culture.

When one joins the military—and I haven't been in the military so I don't speak with authority, but it seems to me as I understand the military—I have a grandson in the Marines and I had sons in the military. But when a person joins, they join because they feel that everybody in that unit will have each other's back. There should be no fear of anyone—anyone—in the unit. There should be nothing but respect for each other. Members of the military should have confidence in each other and loyalty toward each other. They are all on the same mission. None of them should be considered an enemy. None of them should have any particular power over another. That is what this sexual assault thing is all about—power over weak individuals—not weak because of who they are, but weak because of the power of the people above.

This is badly needed legislation.

I yield the floor.

The PRESIDING OFFICER. The Senator from North Dakota.

Ms. HEITKAMP. Madam President, this is a tough issue. It is a tough issue because good people don't agree. Good people don't see the issue the same way. But we cannot lose sight of the fact that so many of the reforms we will be voting on to guarantee a safe haven, to guarantee a safe experience, a common camaraderie, are all parts of a big plan for change. What we are debating today is one small portion of that—not small in the sense of impact. We need to make sure we reward all of the great work the committee has done, the great work that has been done with the leadership of Senator MCCASKILL from the great State of Missouri, and the commitment that this body is making today, in a very unified way, to change the outcome.

I will spend a moment with that in mind to talk about how I came to my decision to support the Gillibrand amendment. I wish to first talk about my experience. I am probably one of the few people in this body who has actually sat across a table as somebody who had the power to make the decision on whether we were going to, in fact, pursue a prosecution and have that discussion. I know that is a shared experience I have with Senator MCCASKILL, and those are experiences we will never forget—the damage that is done so often when people are victims of sexual assault, beyond other kinds and other forms of physical assault, the power and the responsibility. So I recognize the great need we have to deal with this issue. I recognize the great need we have to have professionals make the decision.

The bottom line for me is, if someone came forward and appendicitis was suspected, he or she wouldn't ask the commanding officer to make the decision for the doctor. What I am suggesting today is that these are very difficult decisions on whether one is going to pursue or decline a prosecution and they should be made by people who are trained. There should be a whole system—as we have seen in the civil side—a whole system of support.

Frequently we talked about, back in the 1980s and the 1990s—as we were moving through these same questions in the civil courts—not revictimizing the victim. I think what you are hearing today is story upon story where victims of sexual assault in the military feel not only let down but they feel revictimized.

So I want to very quickly go through a couple of the points we have heard over and over, which is that this change in the Gillibrand amendment would affect good order and discipline in the military. I have heard this from many of the military, the good military leaders who have come to my office to talk about this problem: that they need this authority, this specific convening authority, because their orders will fall on deaf ears or their leadership will be questioned.

I am not an expert in leadership, but I have to ask you: Do we really believe that sort of authority is truly essential to being someone whom the troops will follow, someone who demands respect, who inspires devotion or truly will stand and fight side by side no matter what the cost?

The conclusion I make is that I do not think so. Because when I talk to our brave veterans in North Dakota or our noncommissioned officers who lead our servicemembers every single day, that is not what I hear. I hear: I knew he would do the same for me. Not: Well, he has convening authority.

That is what I believe inspires and maintains good order and discipline: the shared values of a mission, of trust, of concern, and respect.

I also have heard great reforms, especially in the Air Force—and we have a special relationship in North Dakota to the Air Force, having two air bases. The Air Force JAG came in and told me about the new process and the new procedures and impressed upon me this

great opportunity they had taken now for change. I said one thing. I said: It is too late. It is too late to expect that we are going to believe it this time. It's the old adage: ''Fool me once, shame on you; fool me twice, shame on me.'' We are at that point now where something very dramatic needs to happen in order to send the very important message that you matter and this behavior does not reflect behavior that is becoming of our troops, of our country, and the people who step up to serve our country.

Progress that has been made does not go far enough. I think it is time to boldly act and step up for people who serve, who have stepped up bravely and said: What can I do, no matter the cost or the sacrifice—knowing the hardship they will endure and the distance from home and family who love and care for them; that when they go, our military personnel say: I am yours. I will go and do whatever I need to do, whatever you tell me, to protect our values and to protect our way of life.

It seems a small thing to do everything we can to protect those who protect us. The time has come to address this, to send a strong and important message to our volunteer service that we will not tolerate this and that we will put this decision in the hands of the people who are best equipped to make this important decision. And that is the prosecutors.

I yield the floor.

I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. ALEXANDER. Madam President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. ALEXANDER. Madam President, I ask unanimous consent that I be allowed to speak as in morning business for 10 minutes, without taking the time from either side.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. ALEXANDER. Madam President, I thank the Senator from Texas and the Senator from Missouri for their courtesy, and I will endeavor to do it a little quicker than in 10 minutes.

CHANGING SENATE RULES

Madam President, this weekend, Vanderbilt plays Tennessee in a football game in Knoxville. Let's say Vanderbilt gets on the 1-yard line of Tennessee and Tennessee then says: Well, we are the home team. Let's add 20 yards or whatever it takes to win the game. Or let's say in the World Series recently the Red Sox were behind St. Louis in the ninth inning and the Red Sox said: Well, we are the home team. Let's add a couple of innings or whatever it takes to win the game. Everyone, I think, would say that is cheating. Everyone would say: You are destroying the game of football or baseball.

If a home team could change the rules at any time during the game or whatever it takes to win the game, what kind of game is it? That is what Senator Vandenberg said after World War II and Senator LEVIN repeated to all of us—that a Senate in which a majority can change the rules any time the majority wants to change the rules is a Senate without any rules.

Yet we hear that is what the Democratic majority may be seeking to do this week. They are unhappy, they say, that Republicans have said it is premature to vote up or down on three circuit judges nominated by President Obama—even though that was exactly the position of the Democratic Senators in 2006 and 2007 when they argued that the DC Circuit Court is underworked and that we should transfer judges from where they are needed the least to where they are needed the most. So they are going to change the rules of the game during the game or whatever it takes to get the results they want.

We have a lot of new Senators on both sides of the aisle. Nearly half the Senate, 44 members, are in their first term. It is important for them to remember that in Senator REID's book he said that to do this would be the end of the U.S. Senate, that Senator Robert Byrd—probably the most distinguished Senate historian in its history—said in his last speech to us that the filibuster is the necessary fence against the excesses of the majority and of the Executive. It is the fence against what de Tocqueville called in the early 1830s the greatest danger to our country that he saw, which was the tyranny of the majority.

You may ask, how could this possibly happen? Here is how I am afraid it is happening. Sometimes we get off in our rooms by ourselves—and Republicans do it as well as Democrats—and we give ourselves our own version of the facts. The last time this came up, we tried to address this in the Old Senate Chamber. I think all of us thought it was a pretty good session. But this is my third opportunity to respond to these nuclear threats, and I am not going to do it again.

The President said during the government shutdown that he was not going to negotiate with a gun to his head. Neither am I. Democrats have had their finger on the nuclear button for 2 years. I hope they will reconsider.

No. 1, I hope they will read Senator LEAHY's letter, which I ask unanimous consent to have printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

U.S. SENATE,
Washington, DC, July 27, 2006.

Hon. ARLEN SPECTER,
Chairman, Committee on the Judiciary, Washington, DC.

DEAR CHAIRMAN SPECTER: We write to request that you postpone next week's proposed confirmation hearing for Peter Keisler, only recently nominated to the DC Circuit Court of Appeals. For the reasons set forth below, we believe that Mr. Keisler should under no circumstances be considered—much less confirmed—by this Committee before we first address the very need for that judgeship, receive and review necessary information about the nominee, and deal with the genuine judicial emergencies identified by the Judicial Conference.

First, the Committee should, before turning to the nomination itself, hold a hearing on the necessity of filling the 11th seat on the DC Circuit, to which Mr. Keisler has been nominated. There has long been concern—much of it expressed by Republican Members—that the DC Circuit's workload does not warrant more than 10 active judges. As you may recall, in years past, a number of Senators, including several who still sit on this Committee, have vehemently opposed the filling of the 11th and 12th seats on that court:

Senator Sessions: ''[The eleventh] judgeship, more than any other judgeship in America, is not needed.'' (1997)

Senator Grassley: ''I can confidently conclude that the DC Circuit does not need 12 judges or even 11 judges.'' (1997)

Senator Kyl: ''If . . . another vacancy occurs, thereby opening up the 11th seat again, I plan to vote against filling the seat—and, of course, the 12th seat—unless there is a significant increase in the caseload or some other extraordinary circumstance.'' (1997)

More recently, at a hearing on the DC Circuit, Senator Sessions, citing the Chief Judge of the DC Circuit, reaffirmed his view that there was no need to fill the 11th seat: ''I thought ten was too many . . . I will oppose going above ten unless the caseload is up.'' (2002)

In addition, these and other Senators expressed great reluctance to spend the estimated $1 million per year in taxpayer funds to finance a judgeship that could not be justified based on the workload. Indeed, Senator Sessions even suggested that filling the 11th seat would be ''an unjust burden on the taxpayers of America.''

Since these emphatic objections were raised in 1997, by every relevant benchmark, the caseload for that circuit has only dropped further. According to the Administrative Office of the United States Courts, the Circuit's caseload, as measured by written decisions per active judge, has declined 17 percent since 1997; as measured by number of appeals resolved on the merits per active judge, it declined by 21 percent; and as measured by total number of appeals filed, it declined by 10 percent. Accordingly, before we rush to consider Mr. Keisler's nomination, we should look closely—as we did in 2002—at whether there is even a need for this seat to be filled and at what expense to the taxpayer.

Second, given how quickly the Keisler hearing was scheduled (he was nominated only 28 days ago), the American Bar Association has not yet even completed its evaluation of this nominee. We should not be scheduling hearings for nominees before the Committee has received their ABA ratings. Moreover, in connection with the most recent judicial nominees who, like Mr. Keisler, served in past administrations, Senators appropriately sought and received publicly available documents relevant to their government service. Everyone, we believe, benefited from the review of that material, which assisted Senators in fulfilling their responsibilities of advice and consent. Similarly, the Committee should have the benefit of publicly available information relevant to Mr. Keisler's tenure in the Reagan Administration, some of which may take some time to procure from, among other places, the Reagan Library. As Senator Frist said in an interview on Tuesday, ''[T]the DC Circuit

. . . after the Supreme Court is the next court in terms of hierarchy, in terms of responsibility, interpretation, and in terms of prioritization.'' We should therefore perform our due diligence before awarding a lifetime appointment to this uniquely important court.

Finally, given the questionable need to fill the 11th seat, we believe that Mr. Keisler should not jump ahead of those who have been nominated for vacant seats identified as judicial emergencies by the non-partisan Judicial Conference. Indeed, every other Circuit Court nominee awaiting a hearing in the Committee, save one, has been selected for a vacancy that has been deemed a ''judicial emergency.'' We should turn to those nominees first; emergency vacancies should clearly take priority over a possibly superfluous one.

Given the singular importance of the DC Circuit, we should not proceed hastily and without full information. Only after we reassess the need to fill this seat, perform reasonable due diligence on the nominee, and tend to actual judicial emergencies, should we hold a hearing on Mr. Keisler's nomination.

We thank you for your consideration of this unanimous request of Democratic Senators.

Sincerely,

PATRICK LEAHY.
CHUCK SCHUMER.
RUSS FEINGOLD.
TED KENNEDY.
DIANNE FEINSTEIN.
DICK DURBIN.
HERB KOHL.
JOE BIDEN.

Mr. ALEXANDER. It was signed in 2006 by all the Democratic members of the Judiciary Committee: Senator LEAHY, Senator FEINSTEIN, Senator Kennedy, Senator BIDEN, Senator SCHUMER, Senator DURBIN, Senator Feingold, and Senator Kohl. These Senate Democrats said under no circumstances should we consider confirming a judge to the DC Circuit when it is so underworked. So the Republican President and the Democratic Senate agreed with that and reduced the Court's size by one judge—just the same argument being made today.

No. 2, any suggestion that the President's nominations are being held up is completely wrong. I invited the Congressional Research Service into my office. I asked that question. They have said: No. President Obama's cabinet nominations in his second term are being considered at about the rate as those of President Clinton and President George W. Bush.

On every Senator's desk is an Executive Calendar. Every person who could be confirmed by the Senate is on this calendar. There are about 11 pages. The one who has been on there the longest goes back to February and six were reported in the Summer. But all the rest of them go back just to September 12—just a few weeks. Most of them have been there just 3 or 4 weeks.

So people are not being held up. The only way a nominee can be reported to the Senate floor is by a Democratic committee. The only person who can bring them from the calendar to be confirmed is the Democratic leader. Why doesn't he bring them to the floor and let them be confirmed?

In the history of the Senate—and this is from the Congressional Research Service—there have only been 17 executive nominees in its history who have failed to be seated because of a filibuster vote, a failed cloture vote. There have been two under the Clinton administration, three in the Bush administration, two in the Obama administration. There have been five Bush circuit judges and five Obama circuit judges. Never a Supreme Court Justice—there was a little exception with Abe Fortas, which was different—never a district court judge, and never a Cabinet member denied a seat by a filibuster—a failed cloture vote. So where is the crisis?

In conclusion, I would make this suggestion: I think what makes Americans angry about ObamaCare is it is taking us in the wrong direction, it is the 3,000-page bill, but as much as anything else it is the raw exercise of political power in the middle of the night during a snowstorm to pass a bill by a partisan vote, without any bipartisan support.

If the Democrats proceed to use the nuclear option in this way, it will be ObamaCare II, it will be the raw exercise of political power to say: We can do whatever we want to do.

Grantland Rice, a famous sportswriter, once said: ''It's not whether you win or lose, it's how you play the game.'' In this case, it is not so much what the rule is, it is how you change the rule. There have always been a few Senators on either side of the aisle who care enough about our institution and enough about our Constitution of checks and balances to stop a stampede that we will later regret. I hope that will be true again. I hope we will resist turning the Senate into an institution where the home team can cheat to win the game, to get whatever result it wants at any time it wants. Because as Senator Vandenberg said, and Senator LEVIN has repeated: A Senate where a majority can change the rules any time it wants is a Senate without any rules at all.

I ask unanimous consent to have printed in the RECORD a 1-page summary of the 17 nominations that have not been confirmed after a failed cloture vote, which, according to the Congressional Research Service, is the entire number in the history of the U.S. Senate that have ever been denied their seat by a filibuster.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

NOMINATIONS NOT CONFIRMED AFTER A FAILED CLOTURE VOTE

EXECUTIVE BRANCH

CLINTON NOMINEES

Sam Brown—to be Ambassador to the Conference on Security and Cooperation in Europe

Henry Foster—to be U.S. Surgeon General

G. W. BUSH NOMINEES

Thomas Dorr—to be Undersecretary of Agriculture for Rural Development and Board Member, Commodity Credit Corporation

John R. Bolton—to be U.S. Representative to the United Nations

Peter Flory—to be Assistant Secretary of Defense

OBAMA NOMINEES

Craig Becker—to be member of the National Labor Relations Board

Mel Watt—to be director of the Federal Housing Finance Agency

CIRCUIT COURT JUDGES

BUSH NOMINEES

Miguel Estrada
Charles Pickering
William Myers
Carolyn Kuhl
Henry Saad

OBAMA NOMINEES

Goodwin Liu
Caitlin Halligan
Patricia Millet
Cornelia Pillard
Robert Wilkins

Source: Congressional Research Service.

The PRESIDING OFFICER (Mr. HEINRICH). The assistant majority leader.

Mr. DURBIN. Mr. President, I will take a few minutes to respond to the statement just made by my colleague from Tennessee, my friend, LAMAR ALEXANDER.

We have a circumstance here in the U.S. Senate which is——

The PRESIDING OFFICER. On whose time does the Senator speak?

Mr. DURBIN. Mr. President, I am sorry. I did not know we were in controlled time, so I yield the floor.

The PRESIDING OFFICER. The Senator from Texas.

Mr. CRUZ. Mr. President, I rise in support of the Gillibrand amendment. I am proud to support Senator GILLIBRAND's concerted effort to deal with the problem of sexual assault in our military.

I want to begin by commending her persistent leadership in forging a bipartisan coalition to tackle this serious problem. I supported the Gillibrand amendment in committee, and I am proud to be a cosponsor of the amendment here on the floor of the Senate. I rise today to share my reasons for supporting it and to encourage my colleagues to continue to come together in support of this amendment.

Everyone in this body wants to support the men and women of our military. In the course of the Senate Armed Services Committee hearings on sexual assault, we heard testimony after testimony after testimony about the persistent problem of sexual assault in the military. I found myself persuaded by the arguments that Senator GILLIBRAND raised in defense of her amendments.

Indeed, when I said at the hearing that I had been persuaded by the arguments, I have to tell you, afterwards a reporter from a newspaper came up to me astonished, and asked, in wonderment: Were you really persuaded by arguments at a hearing? I thought everyone came in with their views already set in stone, and nothing that was said here made a difference.

I chuckled and said: Well, the arguments Senator GILLIBRAND put forth I

found powerful in terms of how do we deal with a serious problem.

There were two arguments in particular that I found persuasive. The first is that sexual assault has proven to be a persistent problem in the military. According to the Defense Department, 3,374 cases of unwanted sexual contact were reported last year.

More than 23,000 additional cases of unwanted sexual contact went unreported. This has been a problem that has been present in the military for decades. Our commanders, our generals, our admirals, have worked in good faith, have worked diligently to correct this problem. It has proven a persistent problem. Yet, unfortunately, their efforts to correct the problem have not proven successful.

In the civilian side, one of the great challenges when it comes to sexual assault is the relatively low rate of reporting. Sadly, on the military side, that problem is even greater. The most significant barrier we see to deterring and preventing sexual assault is that many of the victims are unwilling, are not comfortable coming forward and reporting the assaults they are experiencing. Despite the repeated good-faith efforts of our military commanders, we have been unable to fix that problem.

The second argument Senator GILLIBRAND raised that I find quite persuasive is that a number of our allies, including Great Britain, including Israel, including Canada, including Germany, have implemented reforms quite similar to the reforms she is proposing, which is namely that the decision whether to bring a prosecution for a crime like sexual assault should be made by an impartial military prosecutor and not by the commanding officer who may well be the commanding officer both of the victim of the crime and the perpetrator of the crime. Those reforms have been implemented by our allies. Our allies have not seen good order and discipline undermined. Indeed, the data suggests they have seen an increase in reporting rates. Those are the arguments that persuaded me that we need to solve this problem, we need to stop this problem.

Let me point out that the coalition supporting the Gillibrand amendment is a bipartisan coalition. This cuts across party lines.

In my view, there are two strong conservative principles, both of which the Gillibrand amendment furthers. No. 1, all of us want to strengthen our military, ensure that good order and discipline are protected; that our commanders are effective; that we maintain the strongest fighting force on the face of the planet. But, No. 2, all of us want to prevent and deter violent crime and to ensure that anyone who commits violent crime, and in particular a crime of a sexual nature, meets swift and sure punishment.

Prior to being elected in the Senate I spent many years in law enforcement working to ensure that those guilty of violent crimes, and in particular crimes of sexual violence against children, against women, received the swiftest and surest punishment.

In my view, the Gillibrand amendment furthers both of these conservative objectives. I have tried to think about this issue not just from the perspective of a Senator but also from the perspective of a father. My wife and I have two little girls, Caroline and Catherine, who are 5 and 3. I have tried to think if some years hence Caroline or Catherine made a decision to step forward and volunteer to serve in our Armed Forces, what are the rules I would want to be in place to ensure that my daughters were protected against any risk of sexual assault.

Given the two-decade-plus history that we have seen in the military of not being able to effectively prevent these crimes and not having victims willing to come forward and report, in my view, shifting not to a civilian authority but to an impartial military prosecutor is going to significantly increase the reporting rates, which, in turn, is going to deter these crimes from being committed.

All of us owe a duty to our soldiers, our sailors, airmen, and marines, the young men and women who voluntarily step forward to risk everything to defend our Nation. For one of those young soldiers to find himself or herself the victim of sexual assault is an absolute violation of that trust.

The Supreme Court has referred to rape as ''short of murder, the ultimate violation of self.'' All of us have an obligation to make sure we are protecting our soldiers. An environment where young men and women in the military fear the risk of sexual assault or are not able to come forward and report those crimes is not an environment that furthers good order and discipline. So I would encourage all of my friends in this body, both Democrats and Republicans, to come together in support of this commonsense proposal to strengthen our military, and at the same time to deter and punish the unacceptable, unspeakable crimes of sexual assault so we can together honor the commitment we owe to all men and women in the military.

I yield the floor and I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

Ms. AYOTTE. I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Ms. AYOTTE. Mr. President, I rise today to talk about a very important issue I spoke about on the floor yesterday; that is, eliminating sexual assaults in our military, making sure victims are supported, that they get the support they need.

Yesterday on the floor I talked about important reforms we are doing together on a bipartisan basis to make sure victims receive special victims' counsel, so each victim is now going to receive an attorney who represents him or her in the system, and stands up for their rights.

We make retaliation a crime under the Uniform Code of Military Justice so that victims of sexual assault understand if they are retaliated against, there will be a crime for that. In fact, those who retaliate will be brought to justice.

There are many other dozens of reforms that are in the Defense authorization, but today I want to talk about a very important issue. I see on the floor Senator MCCASKILL. I want to commend her for her leadership on this issue. She has been a tremendous leader. Senator MCCASKILL, Senator FISCHER from Nebraska, and I have offered an amendment that will further strengthen historic reforms that we discussed yesterday on the Defense authorization, including allowing a victim to formally express their wish about how their case will be handled, in addition to their being, of course, provided special victims' counsel, to provide the prosecuting attorney the ability to disagree with a commander's decision, which I will talk about more, and to have a review of that decision by the civilian head of each force.

Then we eliminate things such as the good soldier defense. Then those who feel like they have been discharged from the military or how their discharge has been described will now get an opportunity to have their case reviewed. So we are not only looking forward, but we are going to look backward to make sure that victims of crimes know they will be treated with dignity and respect.

I have come to this issue as someone who was a prosecutor. Most of the cases I prosecuted were murder cases, but I also had the chance to serve as attorney general of our State, where I worked with not only murder victims but also victims of sexual and domestic violence. This is a set of crimes that is unacceptable in society, but particularly unacceptable in our military, where we expect the very best from our military.

I looked at this issue very carefully, the issue that has been discussed so much on the floor today, that is, in handling sexual assault cases and other types of cases, should the military justice system be changed fundamentally to take the commander out of the decision on whether a charge will be brought after an independent investigation. I came down on the side of we need to hold commanders more accountable, not less accountable, because everything within our military, of course, is deployable. We have the finest men and women who serve our country in the world. We have to have a military justice system structured in a way that it can bring justice in Afghanistan as easily as it can bring justice in the United States of America, wherever our men and women are situated. If we take commanders out of the

decisionmaking process, then fundamentally we are holding them less accountable for the results of how these cases are handled. So I would like to talk about the proposal Senators MCCASKILL, FISCHER, and I have that I think will hold commanders much more accountable.

Right now, as we look at cases of sexual assault in our military, we want victims to understand they can come forward. When they come forward, and we want them to come forward, they will get the support they need and deserve; that their perpetrators will be held accountable for the crimes they have committed.

We want commanders to establish a climate within their unit to say no tolerance when it comes to sexual assault. If you do not handle a sexual assault case properly, you will be relieved of your command. That is what this is about.

So in our proposal, rather than remove commanders from the decisionmaking—let me say how this works so people understand. Right now, a victim of a sexual assault or another serious crime comes forward. They do not have to come forward through their chain of command. They can come forward through a health care professional, they can come forward through a 911 call, they can come forward through their pastor to report a sexual assault. Then it is independently investigated.

From there, that investigation is presented to a JAG lawyer in the chain of command who then makes a recommendation to the commander of whether a charge should be brought and whether they should be going to a military trial at that point. So to take out of that the decision of the commander is now to leave the victim in a situation where—let's put this victim in Afghanistan. They are in a situation where the case has been investigated. It comes back. The commander now does not take responsibility for whether a charge is brought. The commander is now put in a situation where: I am sorry, that decision is being made by another set of JAG lawyers who are outside of the chain of command, so go talk to the lawyers over here, not me. It puts the commander in a bystander responsibility rather than taking responsibility for these decisions.

So what we have done is made commanders more accountable. When the JAG lawyer comes to the commander for a recommendation, saying this case should be brought on a sexual assault case, if the commander says: No, it should not, that will go all the way up to the civilian secretary of whatever force is involved, whether it is the Secretary of the Army, the Secretary of the Air Force, each branch, and will be reviewed separately. That will hold commanders more accountable than turfing it over to a lawyer over here where the victim has to hear that: I am sorry, I cannot tell you what the decision is on your case because there is a lawyer over here making this decision.

Even in a case where the commander and the JAG lawyer both agree that a charge should not be brought, under our proposal there will be another review of those cases up the chain of command to say someone else should look at it. There should be accountability. There should be accountability at every level of our military to ensure that victims of sexual assault will be supported and that these cases will be handled and the perpetrators will be brought to justice.

There has been a lot of discussion on the floor today. All of us want more victims to come forward and feel that they can report their case, because not enough of them have come forward.

Yet the evidence shows that if we take commanders out of it, we are not necessarily going to get any more reporting. In fact, we have cases that may not be brought to justice. The evidence shows that commanders are being more aggressive than the actual JAG lawyers in terms of cases that are being brought. If we look over the last 2 years, there are 26 Army victims where the JAG lawyer said: Don't bring the case.

The commander overruled the JAG, went to trial, and the perpetrator was convicted. There was justice for this victim.

Under this proposal those cases would not have gone forward because the JAG lawyer said: No, don't bring it. There were 16 cases in our Marine Corps over the last 2 years where that would have happened as well, where 16 victims wouldn't have received justice.

There was one Navy victim, and nine Air Force victims would not have seen a conviction for their perpetrators—the rapists, who deserve to go to trial, to be convicted, and to be judged. Those cases would not have gone forward.

When I hear Senator GILLIBRAND's proposal—and I respect her so much, and there is so much we agree on, and I respect the work that she has done and the work that we have done together on many of the provisions that I have talked about—the discussion that taking it out of the chain of command will cause more reports to come forward, then if less cases will go to conviction, if I am the victim, how does that make me feel more as if I want to come forward and report my case? Maybe my case won't be brought or there is a set of cases that would not ever be brought if a commander—who has responsibility within his or her unit for this—hadn't recommended this case go forward.

The other argument we have heard a lot about is many of our allies have taken it out of the chain of command, including Canada, Great Britain, Israel, Germany, and Australia. There has been a misunderstanding, because as we researched this issue as to why our allies took it out of the chain of command, we discovered the truth is they took the decision out—of whether a commander would make the decision to go to a trial on a sexual assault case or other serious felony—to protect defendants, not victims.

I can assure people—with all due respect to defendants, and I have defended cases as well because they certainly have rights under our laws and I respect that—this is about protecting victims. Our allies changed their system to protect defendants. What we are trying to do is to have a victim-friendly environment where people will come forward and where perpetrators will be held accountable.

If we look at those countries such as Canada, Great Britain, Israel, and Australia, that have changed their system, they have not seen any greater reporting. In other words, it is one thing if we looked at it and said when they changed their systems the victims came forward. That is not the case. That is not what the evidence shows. Facts are stubborn things.

As a former prosecutor, I want to make decisions on how to address this very real and important problem based on facts. The facts are that there are cases that wouldn't have been prosecuted if we took it out of the chain of command—perpetrators that should have been held accountable. Our allies did it, but they haven't seen any greater reporting, and they did it to protect defendants.

What do we want to do? Let's hold our commanders more accountable. This is what some former peers of our military have said, such as COL Lisa Schenck, U.S. Army retired former Judge Advocate General, who spent 25 years in the military. We asked her about these two proposals. She said: If you take out the convening authority—meaning the decisionmaking process from the commander—you are essentially gutting the military justice process. If you take the court-martial process away from the convening authorities for sexual assaults or for major offenses, that allows them to say: Hey, the JAGs are dealing with it. They need to be held accountable, and they need to be part of a process.

We don't want to create a situation where we say: I have turfed it to my lawyer over here, and the lawyers over here are going to make the decision.

Commanders should be held accountable for those decisions.

In fact, we had a woman who is currently in the Marine Corps come to the Republican Conference, a woman commander. She is very impressive to have reached the level she has in the Marine Corps. She works training our marines. I was very impressed with her experience. She has commanded at every level. She said: If you want to get this done for victims, don't make the commanders bystanders.

This is what makes me very worried. If I thought that taking the commanders out of the decisionmaking process would help victims further, I would do it. As she describes: If you make a commander a bystander—which is what the proposal on the table of Senator GILLIBRAND is, who I very

much respect, and I know her passion is very real for this and I share it. I don't want commanders to be bystanders. If they are bystanders, then how do we relieve them from command when they don't do their job on this because we have taken the decisionmaker standard from it.

This is another issue that concerns me. We have spent a great deal of time, rightly so, trying to address the issue of sexual assault in the military. The Gillibrand amendment that is on the floor doesn't only take sexual assault out of the chain of command, it takes out murder, manslaughter, death or injury of an unborn child, stalking, rape—we talked about rape—larceny and wrongful appropriation, robbery, forgery; making, drawing, or uttering a check, draft or order without sufficient funds; maiming, arson, extortion, assault, burglary, housebreaking, perjury, and frauds against the United States.

We need to understand that the reason we have the military justice system structured this way is because we deploy to places such as Afghanistan. Not only in sexual assault cases will the decision of the commander—whether or not to refer the charge for a trial—be changed under the Gillibrand proposal, but in all of these crimes in which we have not received any testimony about. We have not received evidence that the commanders are mishandling murder cases, manslaughter cases, arson cases, extortion, assault, burglaries, fraud.

This is very much a fundamental change, not only in an area we all care passionately about getting right, to make sure that victims of sexual assault are supported, but all of these crimes will now be removed from the chain of command.

How will that work in Afghanistan and Iraq? I am trying to figure this out. There have been over 900 cases in Iraq and Afghanistan, as I understand it, where some type of trial has had to be held because of offenses that were committed in Afghanistan, all different types. I am not only talking about sexual assault, I am talking about all different types of crime.

How is that going to work? Are we going to say we will wait to see whether we should bring this to trial? The lawyers are located somewhere else. We don't know where; it could be in the Pentagon. So we will wait for the lawyers from the Pentagon, or wherever this separate set of lawyers are located, until we have justice in places such as Afghanistan.

This is for all of these cases on all of these crimes about which we haven't even had any testimony before the Armed Services Committee to address an issue that we all care very much about.

There were 900 cases from Iraq and Afghanistan. As we know, Iraq could have been as much of an issue in terms of having a deployable, military justice system to ensure that victims of all types of violent crimes, no matter where they are, will get justice and that perpetrators, no matter where they are, will be held accountable for their actions. This is what this is about.

I thank the Chamber for all of the work that is being done, for all of this work done on this important issue. I know that after we vote on all of these proposals—Senator GILLIBRAND's proposal, as well as the proposal that Senator MCCASKILL, Senator FISCHER and I have—that we will be working together to make sure that there is accountability on this issue. Reforms have already been passed that are in the Defense authorization. They are very important items such as the special victims' counsel that I mentioned earlier.

I see Senator MCCASKILL, and I know that she and I, as members of the Armed Services Committee, are not going to let this issue go. There will be follow-up to make sure that the military is held accountable. We have the best military in the world.

This does go to the core of our readiness of good order and discipline. We can't have good order and discipline if we put commanders on the sidelines. We will hold them more accountable under our amendment, amendment No. 2170.

I thank the Chair for the opportunity to speak on this important issue.

I yield the floor.

The PRESIDING OFFICER. The Senator from California.

Mrs. BOXER. I understand Senator LEE is on his way to the floor. I will yield to him when he arrives.

I came to the floor today to say what a good debate we are having. Let us be clear, there is only one amendment that puts in place a fundamental change; that is the Gillibrand amendment.

We have had 20 years of promises that this problem would be fixed. I have a chart I will bring out later to show that every Secretary of Defense for 20 years, Republican and Democratic, has said exactly what Senator AYOTTE has said: Oh, we are going to fix this, and it is going to be fine.

We are picking up steam in our support. I wish to state the reason we are picking up steam. It is because, with all due respect, every single victims' organization that I know of supports the Gillibrand amendment. When victims say to me the reason I don't report is because I don't want to take it to my commander, I think we ought to listen.

With all due respect, I love the Senators on the other side and I have great respect for the people in the military, but they are not the victims. The victims are standing behind the Gillibrand amendment.

The committee that advises the Pentagon on the treatment of women in the military is called DACOWITS. This committee came out overwhelmingly in favor of the Gillibrand amendment.

My colleagues are saying don't make this fundamental change. But the one committee that advises the military—made up of retired military members and civilians—had a chance to say go with the status quo or go with the Gillibrand amendment. They voted without a single dissent in favor of the Gillibrand amendment.

When one stands here and defends the status quo in terms of the way this is decided, we have to understand they are in essence saying a 10-percent reporting of these incidents is OK with them. Otherwise they would vote to change it.

They can think they know why more people aren't reporting and fix it around the edges. I am so pleased we have some reforms in the bill. But the main, major reform and the reason the victims' rights groups are so behind the Gillibrand amendment is because it is the only fundamental change that is in the bill.

I compliment my colleagues for what they have done. It is wonderful, but they don't get to the heart of it, which is why we have a 90-percent problem. Of 26,000 cases, only 10 percent are reported. I thought it was bad in the civilian world where 50 percent are reported.

I say to my colleagues, we all have staffs and we run a workplace. I don't know how many people each of us has in their offices. I say to my colleagues, suppose there was a horrible sexual assault that took place in our workplace. We knew the alleged perpetrator, and we knew the alleged victim. We would call the police. We wouldn't become the decider. We wouldn't become the jury, the judge, as these commanders do.

What is really interesting is Senator GILLIBRAND called a press conference, and we had a commander who commanded troops in Iraq, and he said: Honestly, the last thing I wanted as I was getting my troops ready to fight and win battles was to deal with some horrible incident that occurred among those I was commanding. I wanted to get a professional in there.

The Gillibrand amendment is important not only for the victims but, yes, for good order and discipline. How can people stand here and say there is good order and discipline when there are 26,000 incidents of sexual assault and only 10 percent are reported? There are thousands of people walking around the military not being charged, and sometimes the deal they get is to get kicked out.

I will tell a story of one of my constituents because I think it is instructive. She joined the Marines. She was out with friends, and she was drugged. She was brutally raped. She was tossed on the street in the early morning hours. She woke up dazed. She reported it to her commander. Let me tell you what happened. The perpetrator got

out of the military—probably to continue his rampage on the streets of some city we represent—and my constituent was investigated by the military for drug use because she was drugged that night and abandoned on the street.

So I hope the people who support the status quo will hear that story and hear the other stories. We have a 90-percent problem; 90 percent do not report. We have DACOWITS advising the military it is made up of former military members and civilians saying support Gillibrand. We have every victims' rights group I know supporting Gillibrand. I will just say that if a minority of this Senate stops us today, we are going nowhere. We had a press conference yesterday where we revealed the new Republican on our team; today, a new Democrat. We want to have the best servicemembers in the world. We want our commanders concentrating on what they have to concentrate on. We have men and women being assaulted, and we have a plan in front of the Senate, and that plan is the Gillibrand amendment. It is smart, and it has strong bipartisan support.

Believe me, I was at a press conference with Senator GRASSLEY, Senator CRUZ, Senator PAUL, Senator SHAHEEN, of course, Senator GILLIBRAND, Senator HIRONO, and our group is growing. So if a minority of the Senate stops this, I will hearken back to the many reforms that have been made—whether it is don't ask, don't tell, gays in the military—you can just name them. Yes, it may take us a time or two. I remember having an amendment that lost that said you can't take convicted felons into the military if they have been convicted of a sex crime. I lost. I lost. But years later I won, and now you cannot take these felons into the military. So these reforms are hard. This one is 20 years in the making. History will record who stood on the side of positive change, who stood with the victims, and who obstructed.

I know everybody is doing it for reasons, and I respect that, OK. Let's be clear. But I am passionate about this because I have been here before. I was in the Congress during the Tailhook scandal, and I said to myself after that was publicized: This will never happen again. We won't see harassment. We will see a reduction in rapes.

Remember, half of the victims are men. This is a crime of violence. This is a crime of terror. We have to make sure there is justice, and that means trained people making the decision of whether to go forward, trained people running the trial and not putting this on the commanders. At the end of the day, when you talk to them—and I haven't talked to all of them, but I have talked to many of them—they say the last thing they want is this power.

No one can tell me there is good discipline when we have a 10-percent reporting record here—10 percent of the crimes are reported. It just can't be. That isn't good discipline. That isn't good order when you have rapists walking around because people are too scared to go to their commander.

I know my colleagues are trying to do the best for this country, but listen to the victims. We don't know better than the victims. We don't know better. We should be humble. We should listen to the victims.

Our allies have gone this way, and they have been pummeled here today, saying they have bad records and the rest of it. I think the reputation of the Israeli military is second to none. They have taken this outside the chain of command. Many of our other allies and friends—Australia. I visited there and talked about this. Frankly, this is the way to go.

Sixty percent of the American people support the Gillibrand amendment—60 percent in a poll that just came out. So the people are for the Gillibrand amendment, the victims are for the Gillibrand amendment, and the one committee that advises the Pentagon on women's rights in the military is for the Gillibrand amendment.

I praise everyone who has worked on so many other reforms in this bill. I am so proud. This is a reform bill. But I beg my colleagues to make that fundamental change we need to make and have the professionals decide whether there is a case from beginning to end. That is what justice really is.

I will close with this. There is a woman who has been put up for Under Secretary of the Navy. I have a hold on her nomination. I don't believe in secret holds. This is from the Obama administration. She was asked about the Gillibrand proposal, and do you know what she said, Mr. President? Here is what she said: If you take this outside the chain of command, decisions on this crime will be made based on the evidence, not on good order and discipline.

Can you believe that? This is the truth. We don't have decisions being made based on the evidence. This woman was honest, I give her that. She said that if we took this outside the chain of command, decisions on these crimes would be made based on the evidence. Well, she made our case, and I am proud to stand with a very strong bipartisan coalition in favor of the Gillibrand amendment.

I yield the floor.

The PRESIDING OFFICER. The Republican whip.

Mr. CORNYN. Mr. President, I ask unanimous consent to engage in a colloquy with my colleagues for 30 minutes and that those 30 minutes not count against the current 6-hour commitment to debate the amendments on military sexual assault.

The PRESIDING OFFICER. Is there objection?

Without objection, it is so ordered.

Mr. CORNYN. Mr. President, I have been a member of this Chamber for a while now, and during my time here few of our colleagues have done more to expose waste and duplication and overspending than our colleague from Oklahoma Senator COBURN. I am, of course, cognizant of the fact that Senator MCCAIN, the senior Senator from Arizona, has quite a reputation himself in this area. I am pleased to join both of my colleagues, along with, I anticipate, the junior Senator from Arizona, to talk about some very important work Senator COBURN and his staff have done to help highlight the savings we can find within the Defense Department budget due to duplication and waste and failure to exercise reasonable management practices, such as audits. We can save money and reallocate that money to help our fighting men and women in uniform, help keep them safe and help maintain America's role as a preeminent military leader in the world.

Senator COBURN has pointed out in a new report I am sure he will talk about that we can save more than $60 billion by consolidating half the Federal Government's duplicative programs. Each of these programs has its own overhead, and through consolidation we can eliminate that overhead and still make sure the same amount of money is used to deliver the particular service. For that matter, if we were to consolidate just a third of the renewable energy programs, we could save $5 billion alone. If we stop sending unemployment checks to millionaires, we could save another $30 billion.

I am a proud defense hawk. We call it the Yellow Pages test in Texas. If you can look in the yellow pages and see a service being provided by the private sector, you have to ask, why is the government providing that service? But there is no ability of anyone to provide national security except for the Federal Government. It is the No. 1 reason for the Federal Government's existence, and it is a tragedy to see so much money wasted when it is needed so desperately by our military during these very dangerous times. It is, indeed, embarrassing that the Pentagon cannot even conduct an audit. They do not know where the money is. They do not know how it is being spent, how it is being misspent. So I am a proud cosponsor of my colleague's Audit the Pentagon Act. The Pentagon isn't scheduled to actually perform an audit until 2017, and I doubt they will be able to meet that deadline. I am sure we will hear more about that from the Senator from Oklahoma.

There is no good reason why the Pentagon shouldn't be able to tell the American people exactly how it is spending hundreds of billions of dollars in taxpayer money. Don't get me wrong. If our military needed the money in order to protect the American people and to keep us safe, I would vote for that expenditure 10 times out of 10. But when I am told there is money that should be spent helping keep us safe and protecting our national security that is wasted through duplicative programs, through inefficiencies, through the inability to simply manage the hundreds of billions of

dollars the Pentagon manages, it makes me livid, as I think it should all of the American people.

We know DOD continues to experience serious cost overruns with major acquisition programs. I know Senator MCCAIN, in his capacity on the Armed Services Committee, has been an eloquent critic of these cost overruns of various acquisition systems. A 10-percent reduction in DOD waste could yield an annual savings of $60 billion—$60 billion. That is real money, and that is money that could either be reallocated to pay down the debt or could be reallocated to help fund very important overseas operations by our military in dangerous parts of the world or here at home.

The bottom line is that even those of us who are proud national security hawks should be pushing first and foremost to eliminate wasteful defense spending and to audit the Pentagon. In my view, those are no-brainers. We should not continue down the path of wasteful Washington spending and say: Well, we don't have enough money, so we are just going to bust the budget caps in the Budget Control Act. We shouldn't say: Well, we are not going to address the hard issues of wasteful spending at the Pentagon; we are just going to raise taxes. Those are cop-outs, and we shouldn't go there.

With that, I yield the floor for my good friend from Oklahoma.

Mr. COBURN. I thank the Senator from Texas. I have worked on these areas for a long time. I too am a defense hawk. I am not often accused of that because I am critical of wasteful spending in the Pentagon.

Let me outline for my colleagues that the Pentagon's budget is near $600 billion, counting the extra money for overseas efforts today. Just by auditing the Pentagon, the GAO estimates the Pentagon itself would save $25 billion. The only branch of the Pentagon that has come close to an audit so far is the Marine Corps. For every dollar they are spending now on managing, they are saving $3 in the Marine Corps.

So we have repeated attempts through the year to address the symptoms of the problems rather than the real problem. Let me outline that.

The Pentagon has a broken procurement system. If we think about the programs which have been canceled and the penalties paid because of the programs which have been canceled—and Senator MCCAIN can talk about those better than I ever could—we have never fixed the real problem, and the real problem is what Eisenhower warned against. It is the defense industrial complex. The only way we will ever solve the procurement problem of major weapons systems is to force the defense industry to have capital at risk on new weapons systems. In other words, they have to have money in the game.

What routinely happens are two things: One is they don't have money in the game and we start out at cost-plus programming. Then the second problem—which Senator MCCAIN identified with me today and I have long known—is there is never a grownup in the room when it comes to adding on the bells and whistles in terms of the costs. As a matter of fact, half of the major weapons systems the Pentagon is buying today are on the high-risk list by GAO. So what we have to do is fix the real problems, not continue to treat the symptoms.

Let me run through a list in terms of savings in the Pentagon. These are not 1-year but 10-year numbers. So if we instituted this, we would save one-tenth of what I mention.

Just consolidation of the defense IT structure could save $160 billion over the next 10 years. There are 80,000 employees working in IT for the Pentagon. That is twice the population of my hometown. They have more data centers in the Pentagon than we have in all the rest of the government combined. As a matter of fact, Senator BENNET and I have coauthored a bill to reduce those data centers. They are not highly utilized. They are very expensive to run. They also put us at risk for cyber security.

The other thing not mentioned about IT is in weapons system procurement we have other ITs that aren't even counted in this, managing those procurement programs.

If we took the V–22 Osprey we have on order and replaced it with MH–60 helicopters—which can accomplish almost exactly the same thing—we can save $600 million a year, every year, over the next 10 years. Boeing doesn't like that—Boeing and their partner in contracting don't like that. But there hasn't been a weapons systems we have deployed that has had as many problems as the V–22 Osprey. Yet we are going to buy more, rather than a proven vehicle transport system which can accomplish almost everything the Osprey can. It is not the latest, it is not the newest, but it actually accomplishes the goal.

If we reduce the spending for other procurement programs—and let me say why this is important. The Defense Logistics Agency has no idea what they have in inventory. There is a public law which says they will have an inventory. They have ignored it for years. So they have never taken an inventory. It is ''too big'' to take an inventory. There are hundreds of billions of dollars of equipment and parts and supplies at the DLAs, at the depots around the country, that are in excess and we continue to buy new parts for because we don't know we have them. Fix the real problem. That is $52 billion over the next 10 years.

If, in fact, we took nonmilitary jobs at the Pentagon being filled by uniformed personnel today and replace them with civilian Federal employees, we would save $53 billion over the next 10 years. These do not require a trained soldier to do these jobs. That is $5 billion a year. That is 10 percent of the sequester on the Pentagon. All we have to do is to decide to do it. Do it. But we will not do it.

If we reduced contractor support and did more stuff internally by the military—and I will give a great story. Offutt Air Force Base in southwest Oklahoma, C–17 training. The most recent commander down there saved $136 million the first year he tried in running that base. He got the heck kicked out of him for doing it by the higher-ups because they wanted him spending all the money. But what he did is demonstrate there was $136 million we could save on that one base. The question is, Where is the leadership to do that? So we could save that $53 billion—$37 billion in terms of decreasing contract support.

If we just consolidated the three military health care services, we would save $380 million a year. At the same facilities, at the same locations we have duplicative military health care services. So we can consolidate that, give more consistent care, give better care, and yet save a significant amount of money.

The Department of Defense has over 104 science, technology, engineering, and math programs. Governmentwide we have 207. Over half of them are at the Department of Defense. Why 104 from the Department of Defense? Why not one that incentivizes science, technology, engineering, and math? If we consolidated them, we could save $1.7 billion over the next 10 years. That is $170 million a year.

What will that do for the operations and maintenance budget? What will that do for flying time for our pilots? What will it do for training that is not happening now for people deploying to Afghanistan? Those should all happen.

Domestic schools. We have 16 bases that still have domestic schools on them, where we run schools by the Pentagon. The cost per student in the United States is $50,000 per student, five times what we spend everywhere else in this country on elementary and high school education. If we just ran those in the local school district and paid them $1,000 or $2,000 more than their average cost, we would save over the next 10 years $9.8 billion. We would save $1 billion a year.

If we consolidated the DOD-administered grocery and retail stores—and, by the way, Walmart has offered to do that, to offer the same prices—we lose money every year on those, and that doesn't include the cost of running them. When we have gone out to price things against the grocery store or Costco or Walmart or everywhere else, we can actually buy it as cheaply in the private sector as we can at a base PX. The point is here is a perceived benefit which is costing us a lot of money but isn't truly there.

Mr. MCCAIN. Will the Senator yield for a question?

Mr. COBURN. I would be happy to yield.

Mr. MCCAIN. As my friend from Oklahoma knows well—and, by the

way, I wish every American could have a chance to read this list of waste, fraud, and incredible misuse of Americans' tax dollars. But one of the areas not in this document that the Senator from Oklahoma and I have talked about is the issue of cost overruns in our weapons systems.

For example, the latest aircraft carrier which was just christened with great fanfare, the Gerald R. Ford, is now at a $2 billion cost overrun of what the original cost estimate was. That is for one ship. When I think about what the $2 billion cost overrun could do in my home State of Arizona, it is even more staggering. Yet somehow we let this cost overrun accumulate over a long period of time, and the ship still, by the way, was recently christened, which does not mean finished, commissioned.

At a hearing we had in the Armed Services Committee the other day where the effects of sequestration—which I think are devastating—were described by each of the service chiefs, the Chief of Naval Operations, my old service, said: We need $500 million more for the Gerald R. Ford. I was stunned. I said to him: Admiral, there is a $2 billion cost overrun on that ship. I asked him if anyone had been fired. His answer, I tell my friend from Oklahoma, was he didn't know if anyone had been fired over the cost overrun of over $2 billion, with a request for $500 million more.

The Senator from Oklahoma mentioned the military industrial complex that President Eisenhower so wisely spoke about. I would disagree. I think it is a military industrial congressional complex because never has Congress canceled a program once it has been in full production.

I ask my friend from Oklahoma, what do we do about what I think is the No. 1 cost right now in the Pentagon; that is, cost overruns. I could mention the $1 trillion F–35 and many other programs. What is to be done about that?

Mr. COBURN. There are a lot of ideas. No. 1, our biggest problem is when we buy, we don't know what we want. So don't even start a proposal until we truly know what we want. That is No. 1.

No. 2 is there has to be capital at risk by the person building the ship or building the airplane. The only way to incentivize the private industry to control cost is to make sure half the cost is coming out of their hide. If we do that, what will happen is we will see real cost control because they don't do it on the commercial side. They only do it on the military side.

The third thing is having a grownup in the room when we decide to make modifications. The fact is, when we think we have an unlimited budget, nobody is there to say: You don't have an unlimited budget. You can't add this. It may be nice.

There is a great story on that. It was an Army backpack helicopter developed by Honeywell—on time, on price. Here is Honeywell delivering what the Army wanted on time and on price, and the military buyers added bells and whistles. It ended up weighing 12 pounds more, tripling the cost, and delaying the onset, to where they finally cancelled it—not because the supplier didn't supply it on time and on price, but the military was out of control in terms of what they were asking for. So they didn't get it. So we didn't have the availability to our troops in Iraq and Afghanistan to look behind walls, which was available and on time. But it was our purchasing system.

So we can't worry about the symptoms. We have to change the structure. We have to change the leadership.

I will make one final point. Right now we have more admirals than we have ships. At the end of World War II, we had 10,500,000 people under arms, we had over 2,200 general staff officers. Today, we have half that many and 1,500,000 in arms. There is one of the big problems. One of the biggest problems is that we have way too many staff officers—general staff officers who each have a cadre of people and then protect their turf. They don't protect the country, they protect their turf, and that is not to take anything away from their service. It is human nature. What we need is a marked reduction in general officers.

Mr. FLAKE. Would the Senator yield?

Mr. COBURN. I would be happy to yield.

Mr. FLAKE. The Senator mentioned the problem we have of the Defense Department running schools which ought to be run by local school districts. It goes even beyond that.

Just in the past couple of years we have absorbed into the defense budget a capital maintenance—new capital building and replacement of schools that are managed by the local district. Several hundred million dollars just in the past couple of years, and obligated for the next several years, will be used to rebuild or refurbish or to maintain schools which are the responsibility of local districts.

What has happened is people say the local districts may not be able to afford it or the Department of Education doesn't have jurisdiction. There is a defense budget we can put it in. We have seen that in other areas as well. So the Department of Defense is assuming responsibilities it just shouldn't have. When it does, typically the costs are much greater as well.

So I take the Senator's point and just say it is worse than we know because we have added new responsibilities and new budget items just in the past couple of years.

Mr. COBURN. I would add one thing and then yield back to my colleagues.

Inside the Defense Department, over the next 10 years, we are going to spend approximately $60 billion on things that have nothing to do with defense. Ten percent of that is health care research conducted by the military which doesn't have anything to do with the military. We have the NIH, the world's premier leading research organization, and we ought to transfer that out of the military.

As a matter of fact, the guy who started that was a friend of mine, Ted Stevens. One of the last things he told me is one of the biggest mistakes he ever made is putting medical research into the Pentagon, because now it gets funded, and we are duplicating things at the Pentagon which we are doing at NIH on diseases such as breast cancer, prostate cancer. I happen to have a little experience with that one. The fact is we are not spending the money wisely. We are spending money we do not have duplicating what we are already spending money on.

I yield to my senior colleague.

Mr. CORNYN. I ask the Senator from Oklahoma, isn't it true he has the materials Senator MCCAIN referred to posted on his Web site?

Mr. COBURN. If people are interested, coburn.senate.gov, and they can get that information. Everything we have, every study we have published, all the waste, all the duplication.

I have one other item.

There is at least $200 billion a year that the GAO—not TOM COBURN—has identified in waste and duplication in the Federal Government. We have not acted. Only one committee of Congress, Education and The Workforce, in the House, has acted on one of the recommendations as far as duplication. So the problem is us.

Mr. CORNYN. I ask the senior Senator from Arizona, as we discussed, he has been a critic and pointed out waste in the procurement process. I know the military, in designing state-of-the-art weapons systems, the F–35, for example, built in the notion of concurrency, where they are actually designing it while they are building it which creates cost overrun challenges. But I know the Senator was also instrumental in finally getting the Pentagon to negotiate a fixed-price contract. Could the Senator talk a little bit about some of the challenges?

Mr. MCCAIN. For years, I say to my colleague from Texas, the cost overruns went unchecked. When someone has a roof that leaks and they hire someone to fix the roof on a cost-plus contract, I guarantee that the cost to have your roof fixed will probably exceed the initial estimate the roof fixer provides you. When we go into cost-plus contracting, which is justified by many of the contractors saying, well, we are not sure what the additional costs will be, they do not seem to have difficulty once those contracts are fixed cost.

The best example—best or worst example—I can tell my friend from Texas is the original effort to replace Marine One, the Presidential helicopter. This helicopter, over a period of a couple of years, went from requirement to requirement to requirement, to the point where it was even a requirement that

the helicopter could withstand a nuclear blast. It ended up, before it was even off the drawing board, at a greater cost than Air Force One. At a greater cost than Air Force One. So finally they had the good sense to scrap it and we are still using the old reliable helicopter which seems to fairly suit the purpose of transporting the President.

Another interesting story was the Air Force now believes that one of their primary acquisitions has to be a long-range bomber. We are starting in this process again. At one point there was a proposal to put a kitchenette—I am not making this up—a kitchenette into the long-range advanced Air Force bomber. Finally someone decided maybe that doesn't look too good, to have a kitchenette on this airplane. But that is the case of what happens in the system we have today.

God knows the chairman Senator LEVIN and I and other members of the Armed Services Committee have gone time after time to try to bring these costs under control. I guess one of the favorite stories is of the famous Kelly Johnson of ''Skunk Works'' of the old Lockheed team. They went out in the desert of Nevada and came back 7 weeks later with the SR–71. Now it takes literally decades to come forward with a weapons system, and never once in recent years that I can recall has there been a weapons system on time and on cost.

Then you understand, I say to my friend from Texas, where the defense industry is so important and vital to the economy of his State, as it is with mine. The Apache helicopter, which I am very proud of, is built out in the east valley of Phoenix, AZ. But the American people then become cynical about defense spending. That really does erode our ability to sponsor and support those requirements that are so badly needed.

I thank the Senator from Oklahoma for all he has done to continue to bring this to the attention of the American people.

I want to make one additional comment about this medical research. There is not a person I know in America who does not support medical research. Particularly cancer is one of the big projects we appropriate money for. But it is the classic Willie Sutton syndrome. What in the world does the Defense Department have to do with cancer research? It is the Willie Sutton syndrome. They asked Willie why he robbed banks and he said: That is where the money is. So we are robbing Defense appropriations for programs and projects that have nothing to do with defense, but because the money is there we are spending it.

Meanwhile, we do not have, particularly as a result of sequestration, adequate funding, in my opinion, that will enable us to continue to defend this Nation.

All of us are for medical research. I do not know anybody in the world who is not. But for us to take money out of Defense appropriations and put it into medical research is something that is not any way justified except for the fact that the money is there.

Mr. CORNYN. Mr. President, how much time remains?

The PRESIDING OFFICER. There is 1 minute 40 seconds remaining.

Mr. CORNYN. I yield the remaining time to the junior Senator from Arizona.

Mr. FLAKE. Mr. President, it is interesting in terms of the money being used where it should not be. I gave the example last week, and I am coming down every week and speaking at least 5 minutes on waste and duplication in government. I talked a couple of weeks ago about the Department of Agriculture. The Department of Agriculture—this is the Department of Agriculture, but you would not know it when you look at some of the programs run by the Department of Agriculture. No. 1, they have a Single-Family Housing Direct and Guaranteed Loan Program in the Department of Agriculture. It provides zero downpayment mortgage loans. It has cost the taxpayer about $10 billion since 2006. That is the Department of Agriculture, running a housing program.

We see this all over government. It is wrong. Eliminating the duplication that Senator COBURN, the Senator from Oklahoma, has spoken of many times can save our government and the taxpayers billions of dollars a year.

I appreciate, my colleagues, this colloquy we have had, and I look forward to more.

Mr. CORNYN. Mr. President, we yield the remainder of our time.

The PRESIDING OFFICER. The Senator from Maine.

Mr. KING. Mr. President, I rise to address one of the most difficult issues we have faced in this bill, an issue on which the Armed Services Committee spent a great deal of time, in fact more time than on any other issue this year. It is the issue of sexual assault in the military.

At our very first hearing where we were discussing this with a group of people, I made the observation that the only sure, long-term way to confront and defeat this tragic problem is through a change in the culture. It has to become unacceptable in the culture of our armed services that sexual assault is in any way tolerated or ignored. We have to solve this. It is a problem that has been festering for years. I understand the impatience of those who say we have been waiting for too long, we have to take strong steps. I think it is very important to realize that in the bill that is already before us are strong steps, the most comprehensive package of sexual assault provisions that has ever been in any Defense bill, to my knowledge, in the history of this institution. It has been taken seriously. It has been dealt with in a comprehensive way, some of the strongest changes ever.

I think one of the most important I want to highlight is the criminalization of retaliation. A great deal of the discussion has been about reporting and the reluctance of victims to report, in part because of retaliation. One of the provisions in this bill is to make it a crime to retaliate against a victim for reporting one of these horrendous crimes. The debate today is about one particular provision, one particular provision dealing with sexual assault that is not in the bill, and the question boils down to who makes the decision to refer a sexual assault case to prosecution.

I have heard the debate. I should have said at the outset, I so admire Senator GILLIBRAND for her intellect, for her passion, for her dedication, for her perseverance on this issue. Everybody involved in this debate has exactly the same goal, which is to get rid of this problem, to diminish it, to reduce it to zero, to not tolerate it. That is the goal of everyone involved. The question is whether removing the decision to refer to court-martial from the commander will further that goal or in fact will undermine it.

After listening to the arguments, discussing it at length with Senator GILLIBRAND and others, I have concluded that to take this decision out of the chain of command would in fact do harm to the cause of victims' rights.

The reason is simple. I want the commander to be fully responsible for this problem. I don't want a commander saying: It is not my problem anymore; the Congress of the United States has said I don't have to worry about this; I will check that box.

I believe, going back to my original point, that the way you change the culture is in a multifaceted approach, but certainly one of the ways you do it is through the decisions that come from the commander. That is what sets the tone in the unit. Leadership always infects an entire unit in good or bad ways, and I believe it would be a mistake on the side of the victims if we change the system and allow the commanders to say this is not my problem, this is not my responsibility.

As Senator REED mentioned on the floor earlier today, the Senator from Rhode Island, one of the most important changes is a change the Pentagon has itself made which is to hold commanders responsible for the sexual assault record in their unit as part of their evaluation for promotion. That is part of the way you change the culture.

This is a very difficult decision, but I think it is important to realize that the decision on this amendment is not: Are you in favor of victims' rights or are you in favor of the brass? I reject that dichotomy because already within the bill are these very strong provisions which are directed at this serious problem. What we are talking about is a fairly narrow discussion of who makes that decision. As a former practicing attorney who has had experience in criminal cases, prosecutors I think may be more conservative and less likely, in some cases, to bring cases to

trial than the commanding officer who wants to ensure that justice is done for that victim. What we want is no victims. We want this problem to end. We want this era to change because the culture changes within the military, and that which was acceptable at one time is no longer acceptable.

The best example I can cite for that in my life is drunken driving—OUI. When I was a young man, there was an epidemic of drunken driving in this country, and it was considered as kind of a joke. It was considered as a sort of a rite of passage. Suddenly, through law changes and societal changes over a generation, it is no longer acceptable or funny, and it is no longer tolerated, and as a result we have seen a decline because the culture has changed. That is what has to happen in the military, and I think it begins with the commanding officer.

In my opinion, to take this responsibility away from the commanding officer is not siding with the brass, it is siding with the victims, because I want those commanding officers fully engaged in this decision. I want them fully responsible for their decision. I want them to be what, in fact, they are, leaders—leaders who can make change, and leaders who can make change in this critical area. If it doesn't work, as my father used to say, Congress is always in session. We can come back and correct it.

I believe we are at a moment where the military is being given a last chance to deal with this within the chain of command. I think we have given them the tools to do so in this bill, and I urge my colleagues to support Senator MCCASKILL's amendment and to move forward with this bill which we can be very proud of in terms of its recognition of this horrendous issue, but also in terms of the solutions and tools it provides to our military to solve this problem once and for all.

I yield the floor.

The PRESIDING OFFICER (Mr. COONS). The Senator from Arizona.

Mr. MCCAIN. Mr. President, I thank my friend and colleague from Maine for his very thoughtful statement. After having several conversations with him, I know he did not come to this decision easily, but I certainly think he made a very strong argument for the decision he arrived at.

He and I—and all of us—share a deep and abiding concern about the issue that is before the Senate in the form of the amendment to the National Defense Authorization Act that is being debated on the floor. This is a very difficult situation. It is an unacceptable situation where men and women in the military may be exposed to sexual assault but, more importantly than that, the individuals who are responsible for those assaults need to be held accountable.

What we are asking today is: Are we going to hold the people who are in charge accountable for bringing offenders to justice or are we going to farm that responsibility out to some other entity, individual, or some other part of the bureaucracy? That is the question before us.

I trust these commanders. I have known thousands of them. I trust them, and I believe in them. Has there been an insufficient effort devoted to preventing these horrible crimes from taking place? Yes. I trust these commanders—these men and women in command—to take the proper action necessary because it is their responsibility.

The changes that are in this legislation include removing the ability of commanders to overturn jury convictions, require review of decisions not to reverse charges, criminalize retaliation against victims, provide a special victims' counsel to victims of sexual assault, and support and assist them through all their proceedings. That is why I supported Senator BOXER's amendment which reforms article 32 of the Uniform Code of Military Justice. Her amendment will help prevent the abuse of victims of military sexual assault in a pretrial setting.

We are taking action in this legislation. Maybe we can be found guilty of not acting soon enough. Basically this deals with a fundamental question: Do we not trust the commanders—whose responsibility is the very lives of the men and women under their command—to do the right thing? That is the difference between the Gillibrand amendment and what has already been done in this legislation.

We have had extensive hearings, debate, and discussions on this piece of legislation. The question is: Do we trust the commanders to do the right thing within the proper parameters, such as removing the ability of commanders to overturn jury convictions, require review of decisions not to prefer charges, and criminalizing retaliation against victims?

As far as I can tell, we have taken significant and important steps that will protect our men and women not only from assault but the abuses and recriminations that may be visited upon them in cases where they are victims.

I am not saying the legislation before us will eliminate sexual assault, but I am saying that what we are doing is exactly what we did at other times when there were crises in our Armed Forces. I am referring back to the post-Vietnam war era. I was a commanding officer in 1975, 1976, and 1977, and we had racial, drug, and discipline problems. We had the post-Vietnam war syndrome where our military was in total disarray. We were dealing with drug abuse and racial discrimination. There were race riots on aircraft carriers.

What did we do? We placed the responsibility directly on the commanding officer, and if they didn't take action and failed, they were relieved. That is the way the military should function, and that is the way the military has functioned successfully. We had programs, advisers, indoctrination, and punishment—punishment for those who refused to adhere to the standards of conduct we expect every man and woman in the military to adhere to.

What does the Gillibrand amendment do? It removes the commander. It removes the person—the man or woman in command—who has the ultimate responsibility, unfortunately, from time to time of taking these young people into battle and risking their very lives. That is what makes them different from any other part of America and any other part of our society.

The Gillibrand amendment says we don't trust these commanders. Well, we trust those commanders with the lives of these young people. We ask them to have the ultimate responsibility, which is that of defending this Nation, but we don't trust them to prosecute and do their job and their duties? Well, that flies in the face of every encounter I have ever had with the men and women who were in command, and the senior petty officers, master chief petty officers, and master sergeants who are responsible for the good order and discipline of the men and women in our Armed Forces.

I won't go into the fact that this Gillibrand amendment includes matters such as burglary, perjury, robbery, and forgery. It has been expanded beyond belief in its areas that have to be referred out of the chain of command. I will not even bother with that.

I say to my colleagues as passionately as I can that if we do not trust the commanding officers who take our most precious assets—the young men and women of the military—into battle, then we obviously need to reevaluate our entire structure of the military. But I do trust them. The finest people I have ever known in my life are those who have worked their way up to positions of authority in command through a very severe screening process. Have they made mistakes? Can we find an example or a case where the right thing was not done? Of course we can. There is nowhere in our society where we can't find examples of people who have not done the right thing.

Today I am embarrassed that it seems naval officers were involved in some kind of bribery scheme about overseas ships. Sometimes we are embarrassed by leaders of our military, but they are the exception and not the rule.

If the Gillibrand amendment is passed, the message we will send to the men and women in command in the military is that we don't trust you and we don't believe in you. That is what this is all about. If we follow through with the 26 changes that have been made in the Defense authorization bill and ensure that if there is a wrong decision made in some cases, that decision will be sent all the way up the chain of command to the service secretary.

This is a terrific and horrific problem in our Armed Forces today. We have

done what we believe and what our military and military leaders believe is right—leaving the commanding officer in the decisionmaking process concerning the lives and welfare of men and women under their command. I hope we will realize that if we pass the Gillibrand amendment, our signal to the men and women in leadership—whether they are our senior enlisted personnel or our officers—is we don't have any confidence in you, and we don't trust you. That is the message we will send if we pass this amendment today.

Are they perfect? No. Have they made mistakes? Yes. That is why we put provisions in this bill which would circumscribe much of the decisionmaking process but still leaves final decisions in the chain of command.

I urge my colleagues to reject the Gillibrand amendment.

I yield the floor.

The PRESIDING OFFICER. The Senator from Nebraska.

Mrs. FISCHER. Mr. President, I rise today to speak on the series of historic reforms adopted by the Armed Services Committee to combat sexual assault in the military. The women have taken the lead on this matter. Sexual assault is not a gender issue, it is a violence issue.

I rise to voice support for a bipartisan amendment that I have offered with Senator MCCASKILL and Senator AYOTTE to directly confront this violence, and I urge my colleagues to oppose any radical changes that would undermine justice for the victims and take away responsibility from commanders.

I am proud to have supported several measures to strengthen the rights of victims, hold perpetrators accountable, and strengthen oversight of military commanders to ensure that justice is delivered.

As a result of a truly bipartisan effort, the committee has put forth a bill that takes an unprecedented step of providing victims with a special victims' counsel to make certain they are receiving unbiased, independent legal advice. It strips commanders of the ability to overturn jury convictions, makes retaliation against victims a crime, requires dishonorable discharge or dismissal for those convicted of sexual assault, and provides critical civilian oversight.

Despite achieving these unprecedented reforms in committee, my colleagues and I continue to explore ways to enhance the current bill after the committee's work had concluded.

Senators MCCASKILL, AYOTTE, and I introduced an amendment last week to expand upon the committee's progress. Our proposal extends current protections to service academies, boosts evaluation standards for commanders, and allows victims increased input. It also eliminates the good soldier defense in most cases.

These changes, both in our amendment and in the whole NDAA, are significant but, importantly, they are also serious and thoughtful. They are based on sound policy, not on political sound bites.

Rather than radically remaking the entire military justice system, which would carry significant risks, our proposals improve and update the current system. To do so, we applied lessons from history.

In 2006, Congress hastily changed portions of the Uniform Code of Military Justice to address instances of rape. These changes disrupted victims' paths to justice, and Congress was forced to rewrite its own changes a few years later.

Congress can't afford to get something this important wrong. We cannot let our deep desire to solve this problem lead to imprecise solutions because victims suffer when we do. Any changes to the UCMJ should come after a deliberate and transparent process, with feedback from all sides. The McCaskill-Ayotte-Fischer amendment is the result of such a process, and I encourage my colleagues to support it.

Finally, I urge my colleagues to oppose any amendment that undermines a commander's responsibility for his or her troops. Senator MCCASKILL put it so well when she spoke on the floor earlier today: The amendment offered by my friend and colleague, the junior Senator from New York, offers a solution that is ''seductively simple,'' but its simplicity creates a host of complex policy problems.

In addition to technical concerns, I do not agree with the underlying goal of removing commanders from the military justice system. As Senator MCCASKILL noted, we know commanders pursue courts-martial when their legal advisers recommend against doing so. We know, based on the experiences of our allies, that removing commanders from that judicial process does not achieve the desired results. And we know that commanders have risen to the challenge in the past to confront contentious issues within their units, including integration. These facts lead me to conclude that the changes in this bill, combined with the reforms included within our amendment, will best serve the interests of victims and punish those responsible.

I commend the Senator from Missouri for her leadership on this issue, and I am grateful for the opportunity to work closely with her, Senator AYOTTE, and many other colleagues to help our men and women in uniform.

I yield the floor.

The PRESIDING OFFICER. The Senator from Oklahoma.

Mr. INHOFE. Mr. President, first of all, I agree with the comments of the Senator from Nebraska.

I have to say I was a little disturbed because I have heard a couple of reports—one was in a news conference on November 6 and one on November 19—yesterday, I guess—that Senator GILLIBRAND was saying that I was objecting to her amendment. Yes, I oppose her amendment but not to the extent that I would hold back the bill. My gosh, there is no one on the floor of this Senate who has been working harder to get this bill through—no two people more than the chairman and me. So I want to make sure people understand that.

In terms of the alternative, I have been watching it very closely, and my strongest possible support is for that amendment, No. 2170, offered by Senators Ayotte and McCaskill, which provides additional enhancements to the historic enhancements for sexual assault prevention and response activities in our military. I commend my two colleagues on the Armed Services Committee for their tireless efforts and their leadership, and I urge all Senators to join me in supporting this amendment.

It doesn't mean that if someone is opposed to the Gillibrand amendment, that someone is not wanting change. Yes, we do. This is major change.

It adds the senior trial counsel to the officers who make recommendations on whether to proceed to trial and, if the convening authority decides not to proceed, results in the case being referred to the service Secretary.

It adds duties for the special victims' counsel to inform victims of options for military and civilian prosecution of sexual offenses. It gives them a voice. They can express a preference. It requires commanders to give weight to that preference and to notify the victims if the civilians decline prosecution.

These are changes. These are changes in the current system that are coming with the amendment offered by Senators AYOTTE and MCCASKILL, amendment No. 2170.

It requires including written performance appraisals of every member of the Armed Forces—officers and enlisted people—an assessment of that member's support for sexual assault prevention and response programs.

It requires every commander to be evaluated in their performance appraisals on whether they have or have not established a command climate where allegations of sexual assault are properly managed and fairly evaluated and ensures that a victim can report sexual assaults without fear of retaliation, ostracism, or any kind of group pressure from members of the command.

It also requires command climate assessments to be performed after a sexual assault incident, with copies of that assessment to be provided to superiors in the chain of command and the military criminal investigation organization.

It creates, finally, a process through the boards for correction of military records for confidential review of discharges of individuals who were victims of sexual offenses, to require consideration of psychological and physical aspects of the victim's experience that may have had a bearing on the separation.

So this is a major change. It is one I strongly support. I give the Senator from New York the benefit of the doubt that she did not mean what some people would interpret it to mean—that I would hold up a bill in opposing her amendment. I certainly would not do that. I am for reform, and we have an opportunity to do that which is bipartisan and accomplishes the very thing we should have accomplished many years ago.

I thought there were others waiting here, but let me make one comment. I agree with my colleague, the junior Senator from Oklahoma. I know he has worked tirelessly in trying to do something to stop waste in the Pentagon, and, quite frankly, I think there is some there.

This chart shows the devastation of sequestration. What it shows is the bottom line—these are deficiencies. This is what he is talking about. I want my colleagues to see this because this goes from fiscal year 2014 all the way to 2023. If we take the sequestration as it is right now, without any adjustments—now, Senator SESSIONS, Senator MCCAIN, and I have tried to make adjustments so that there are greater cutbacks here and not so many in the first 2 years.

The orange—and that is where almost everything comes out—represents readiness. That is readiness. Readiness is what we need to support our fighters in the field to save lives.

The green is modernization. That is not affected by these inefficiencies we are talking about.

The force structure is a major cost item, and it is demonstrated by the yellow on the chart.

So what I am saying is I know there is room for improvement, and I want Senator COBURN and others to work on areas within the Pentagon where money can be saved. But if that happens, it is still going to all be found down here—everything. TRICARE and all of it is down in this blue line. So we can see that the devastation that comes from sequestration to our military is still going to take place.

I think if we look at the level there of the sequestration cuts that take place, it is almost entirely in the readiness. ''Readiness'' is a term we have used for a long time. That is our ability to save lives. That is our ability to train and equip our men and women in harm's way.

We have testimony right now that I wish to share with my good friend and the Chair, who was there and heard it, from all four services talking about how much more risk is involved if we have to go through sequestration. Risk equals lives. I agree with those who want to do all they can through efficiencies. I am for them. I will do all I can to help them. That doesn't solve the problem. The problem is immediate. It is today. I still believe there should be something we can do to stop draconian cuts in our readiness and our force structure accounts that would come with sequestration.

It wouldn't do me any good to read all of the quotes we have from various individuals, but I can assure my colleagues that the Chair and anyone who sat through the Armed Services Committee hearings has heard all four of the chiefs talk about how devastating this will be if we are not able to correct this.

With that, I yield the floor, and I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant bill clerk proceeded to call the roll.

The PRESIDING OFFICER. The Senator from Hawaii.

Ms. HIRONO. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Ms. HIRONO. Mr. President, there is not a single Senator here who does not acknowledge the seriousness of sexual assault in the military and that we must do something to prevent and prosecute these crimes. Yes, there are differences of opinion as to what we need to do, but make no mistake, we share the common goal of preventing and prosecuting these crimes.

I thank two strong women on the Armed Services Committee, Senator MCCASKILL and Senator GILLIBRAND, for their leadership in pushing for solutions that will make a difference. I also thank Chairman LEVIN for his commitment and leadership in bringing forth a bill that includes a number of important improvements to the current system. We all support these changes. However, I believe there is a fundamental structural problem with how sexual assault cases are prosecuted in the military. We need to make the changes proposed by the Gillibrand amendment.

I am a cosponsor of the Gillibrand amendment. I spoke on the floor last week and explained why I think we need to remove disposition authority from the chain of command. I don't want to repeat everything I said last week, so let me make a few points.

First, for two decades or longer the Department of Defense has had a zero tolerance policy for sexual assault and sexual harassment. Yet the problem persists. Servicemembers continue to be assaulted and raped, and in too many cases the perpetrators continue to go unpunished. Year after year, Secretary after Secretary and commander after commander has told us about all the efforts to correct this problem, but those efforts have not worked. There are probably many reasons why these incremental changes have not worked, but every year that these changes do not work, many more of our brave men and women in the military endure the trauma of sexual assault. It is time to make a major change to the military justice system.

Second, too often these attacks are not reported, which allows the attacker to prey on more victims. The survivors tell us the biggest reason they do not report these crimes is because they do not believe their chain of command will ensure that justice is done. Even the Commandant of the Marine Corps, General Amos, has acknowledged that many victims do not come forward because ''they do not trust the command.''

The concerns of survivors in coming forward makes sense because there are inherent biases and conflicts of interest in the chain of command. These concerns are echoed in a letter from GEN Claudia Kennedy that was signed by more than two dozen former officers from all branches of the military. The letter states:

> We know that, in too many cases, servicemembers have not reported incidents of sexual assault because they lack confidence in the current system. The inherent conflicts that exist in the military justice system have led servicemembers to believe that their allegations of sexual assault will not receive a fair and impartial hearing and that perpetrators will not be held accountable.

We should give weight to these concerns and act today to remove the chain of command from prosecutorial decisions in sexual assault cases and instead put these decisions in the hands of an impartial, experienced military lawyer.

Third, removing prosecutorial decisions from the chain of command will not harm good order and discipline. I have heard this concern from many military leaders, as well as from others who oppose this amendment. They say eliminating a commander's ability to decide whether a case should go to trial would undermine the commander's ability to maintain good order and discipline within the unit, and yet—and yet—we have heard from many others who have command experience who support the Gillibrand amendment.

Good order and discipline should not depend upon a commander's ability to decide whether to prosecute a sexual crime. A commander's authority and leadership must certainly be based on more than that.

Furthermore, the Gillibrand amendment preserves a commander's disposition authority over crimes that are uniquely military—crimes such as desertion, AWOL, contempt, and noncompliance with procedural rules. This ensures that commanders will have the authority they need to maintain good order.

In closing, it is undeniable that the current system does not work. We know it does not work because, according to the Department of Defense, in 2012 there were an estimated 26,000 cases—26,000 cases—of unwanted sexual contact.

We know that not all survivors report these crimes because, in the words of General Amos, ''They do not trust the command.'' We know we can eliminate bias and conflicts of interest by entrusting prosecutorial decisions to

an impartial, experienced military lawyer. We know that removing disposition authority from the chain of command will not undermine good order and discipline.

We know what needs to be done. We ought to do it and do it today. We owe it to the men and women who serve our country in uniform. We owe it to the families and loved ones of those who serve because the trauma of sexual assault often extends beyond the trauma experienced by the survivor. I urge my colleagues to support the Gillibrand amendment.

I yield the floor.

Mr. LEAHY. Mr. President, earlier this year, as many others were, I was shocked when the Department of Defense released a stunning report about the increase in sexual assault among the branches of the Armed Forces. Sexual assault in the military is neither a new issue, nor an uncommon one. It has been a problem for decades. Its occurrence is a stain on the honor of our military and Nation that we must all work to eliminate. Military bases are where our troops are supposed to be safe, and to know that they risk being in harm's way not only when deployed but among their fellow servicemembers as well is horrible.

I have worked hard to bring greater attention to the ongoing problem of sexual violence in our communities and am proud of the significant improvements we made in the recent reauthorization of the Violence Against Women Act earlier this year. It is time we bring the same level of attention to the crisis on our military bases.

While this epidemic is not representative of the vast majority of our service men and women, who serve honorably and conduct themselves commensurate with our expectations of those in uniform, it is also not isolated to just a handful of bad actors. We can no longer ignore that the time is long overdue for meaningful changes to help end sexual assault and harassment in the ranks of our Armed Forces. We must work together to protect victims and provide appropriate help and support and to ensure that those responsible for such crimes are held accountable.

Just as our civilian justice system is the envy of the world, our military justice system must also meet that standard. That is why I am a cosponsor of Senator GILLIBRAND's Military Justice Improvement Act, and why I support her amendment to the National Defense Authorization Act, NDAA.

In last year's Defense authorization bill, Congress included provisions meant to address sexual assault in the military. That legislation required the Secretary of Defense to prescribe standards for victim support and mandated an independent review and assessment of the systems used to adjudicate crimes involving sexual assault and related offenses.

When the Department of Defense released its fiscal year 2012 report on sexual assault in the military earlier this year, its findings were jarring, and for many myself included they were infuriating. To make matters worse, the problem seems only to be growing.

The status quo for how we deal with sexual assault and unwanted sexual contact in the military is untenable. If we are serious about curing this problem, we need to get serious about making fundamental changes to how it is addressed. We cannot expect that by doing the same thing over and over again we will achieve different results.

I supported Secretary of Defense Chuck Hagel's proposals this summer to limit a commander's authority to overturn major court martial verdicts, among other reforms to the system. I am pleased that the members of the Senate Armed Services Committee included this key provision, as well as other measures to address the so-called ''good soldier'' defense and to require commanders to immediately report alleged sexual assaults to the investigative office, in this year's Defense authorization bill.

Senator GILLIBRAND's proposal is another move in the right direction, taking these reforms a step further by removing the determination to bring sexual assault cases from the chain of command and giving that discretion to an experienced military prosecutor. This is a commonsense solution, and I commend her for her clear-eyed and energetic leadership on this issue.

Senator MCCASKILL's proposal also includes strong protections for victims so that the process of getting justice for these crimes does not revictimize those who come forward to report them. I believe Senator MCCASKILL's proposal also is a step in the right direction to encourage victims to come forward and report these crimes. Our Nation's troops should not have to fear sexual assault, and if they are victims, they certainly should not fear any stigma after bringing to light unwanted sexual contact.

Surely we can all agree that we have an obligation to ensure that our men and women in uniform are protected from the threats we can control. Holding perpetrators of sexual assault and unwanted sexual contact accountable and caring for, supporting, and protecting those victims is within our control. I hope Senators on both sides of the aisle will join me in supporting reforms that will fundamentally change the way we approach this issue in order to achieve better results.

The PRESIDING OFFICER. The Senator from Michigan.

Mr. LEVIN. Mr. President, I yield myself 6 of my 10 minutes.

One of the issues we address in this bill is the problem of sexual assault in the military. Too many of the men and women who volunteer for our military to serve and protect us are victims of sexual assault and other misconduct. That is deeply offensive to our conscience and a stain on an honorable institution.

The bill that was reported by the committee includes groundbreaking new measures to reduce sexual assault and misconduct. On a bipartisan basis, members debated and approved more than two dozen measures related to preventing sexual assault and to delivering justice for the victims of these crimes.

The bill that we approved, and which is now before us, would provide sexual assault victims a counsel, a lawyer, who works not for commanders, prosecutors, defense attorneys or a court but for the victim. It includes strong new protections for victims that are designed to combat the No. 1 problem we have in preventing assaults and dealing with perpetrators: the fact that many assaults remain unreported to authorities. Of great importance, the committee-reported bill for the first time makes it a crime under the Uniform Code of Military Justice to retaliate against a servicemember who reports a sexual assault.

It also requires that the Department of Defense inspector general review and investigate any allegation of retaliation against those who make communications regarding sexual assault or sexual misconduct.

Our bill includes important criminal justice system reforms, including reforms on how commanders respond to sexual assaults. Our bill includes a requirement that commanders who become aware of a reported sexual assault immediately forward that information to criminal investigators. It eliminates the consideration of the accused's character from the factors a commander should weigh in deciding whether to prosecute a sexual assault allegation. It restricts the authority of commanders under Article 60 of the UCMJ to set aside court-martial verdicts in cases involving sexual assault and other crimes. It requires that a decision by a commander not to prosecute a sexual assault complaint undergoes an automatic review by a higher command authority, in nearly all cases a general or flag officer. In the case where a commander's decision not to prosecute contradicts the recommendation of his or her legal advisor, that automatic review is conducted by the service Secretary. The committee-reported bill also makes clear that we expect and demand that commanders will use their authority to rein in this problem by fostering a climate of zero tolerance toward sexual misconduct and one in which servicemembers believe they can come forward to report cases of sexual assault.

These important reforms were the product of the work of almost every member of the Armed Services Committee. The desire to remove this stain from our military is bipartisan and it is strong.

Despite widespread bipartisan agreement on significant reforms, one significant issue of dispute remains. This is the question of whether military commanders should retain their authority to prosecute sexual assaults.

Senator GILLIBRAND proposed in committee, and proposes again here on the floor, to remove our commanders' authority to prosecute. Along with a strong majority of the Armed Services Committee, I opposed Senator GILLIBRAND's proposal, which was defeated on a bipartisan 17–9 vote. I oppose it for a simple reason: I do not believe its passage would strengthen efforts to end military sexual assault and other misconduct, and in fact I believe it could weaken those efforts.

The Gillibrand amendment would uproot major portions of the military justice system and require the establishment of a parallel justice system within the military. Our top military lawyers have told us that the amendment leaves large gaps and unexplained issues that could make the new system unadministrable and bog it down in litigation.

Despite those problems, if I believed that the proposed amendment would remove more sexual predators from the ranks and put more of them behind bars, or lead more victims to report sexual assaults, I could support it. But the evidence we received in our committee shows the opposite.

First, we learned that military commanders are more likely, not less likely, more likely, to prosecute sexual assaults than military or civilian lawyers. The committee heard from many commanders, at all levels, that they see important value in sending cases to court-martial even if a conviction is not a slam-dunk. But we have more than the assurances of commanders. We have hard data. Over the last two years, in nearly 100 sexual assault cases which civilian prosecutors declined to prosecute, military commanders stepped in and took the case to court. Trials are complete in 63 of those cases, resulting in 52 convictions an 83 percent conviction rate. Those victims would not have seen justice if a military commander had not stepped in where professional prosecutors declined to act. The evidence before us indicates that commanders are ready to prosecute these cases, and that removing their judgment and replacing it with career attorneys will result in fewer prosecutions of these cases.

The evidence is that when victims do come forward, their reports are properly investigated, and when commanders are presented with the facts, our commanders do their job. They often send cases to trial even when professional prosecutors hesitate to do so. So why would we want to take that authority away?

Second, the supporters of this proposal have argued that it will increase victims' willingness to come forward. They do not provide any data to support the assertion that victims will be more willing to come forward in a system that is less likely to bring them justice. Why would victims feel more confident in a system that is less likely to aggressively prosecute these crimes?

The Response Systems to Adult Sexual Assault Crimes Panel, which was established in the National Defense Authorization Act for Fiscal Year 2013 and has looked in depth at the experience of our allies on this issue, reported last week: ''We have seen no indication that the removal of the commander from the decision making process has resulted in an increase in reporting and there is nothing in the experiences of our foreign Allies that suggests adopting their systems as a model will have any impact on the reporting of sexual assaults.''

I believe the contention that this amendment would increase reporting stems in many cases from a fundamental misunderstanding of how sexual assaults are reported. One member of the Senate, in announcing his support for taking away commanders' authority to prosecute, said: ''To me, it's as simple as this: Should you have to report to your boss when you've been abused or when you've been a victim of a crime?''

Well, of course you shouldn't have to. And in the military, you don't. There are many different avenues by which a member of the military may report a sexual assault. Reporting it to your commanding officer is only one. Victims can report an assault to civilian police, to military criminal investigators, to a health care professional or to a sexual assault response coordinator. The Gillibrand amendment does not affect any of those reporting channels. Its only effect is to change what happens once an assault is reported and investigated.

Supporters of this proposal have argued that our allies have adopted changes to their military justice systems along the lines they propose, and that these changes have better served sexual assault victims. What this argument ignores is the fact that our allies' decisions have not been aimed at protecting sexual assault victims. In fact, with allies such as Canada and Great Britain, commanders' authority to prosecute was removed not out of concern for crime victims, but out of concern for the rights of the accused. I have yet to hear anyone argue that the problem with our handling of military sexual assault is that it is too tough on perpetrators. Yet that has been why allied militaries removed the decision to prosecute from their commanders.

Perhaps the most basic reason to oppose the amendment of the Senator from New York is that it removes a powerful tool from those who are indispensable to turning around the problem we have. Our military commanders are the indispensable tool to turn around this problem. I have met at length with several groups of retired military women.

I specifically chose to meet with retired military personnel to ensure that they would be free to speak their minds. These women—all of whom have seen cases of sexual assault and sexual harassment in the course of their military careers—told me the problem is not commanders. The problem is a military culture, they told us, that tolerates excessive drinking and barracks banter that borders on sexual harassment or crosses that line. The problem is there is a failure to recognize the existence of servicemembers who appear to be good soldiers but in fact are sexual predators, and a culture that values unit cohesion to such an extent that those who report misconduct are more likely to be ostracized than respected. None of these problems are unique to the military, but they are exacerbated in the military by the frequent rotation of military assignments, which can make it easier for predators to hide.

The military has a unique tool for addressing this problem: commanders who can bring about changes in command climate through mandatory training and by issuing and enforcing orders that are not possible in a civilian environment. That is what they did in addressing racial discrimination and in ending don't ask, don't tell. That is what they can and should do here. Weeding out sexual predators and the climate that makes it possible for them to hide is an essential ingredient in any solution to the sexual assault problem. The military women whom I met with over the summer told me that our commanders are in the best position to make that change.

Weakening the authority of commanders will do serious damage to their ability to accomplish this change. All of us seek the strongest, most effective response to the plague of military sexual assault. The amendment Senator GILLIBRAND proposes will not strengthen our response. The evidence before us shows it will, in fact, weaken our response by removing the decision from the hands of commanders.

We have two dozen historic reforms in our bill, but a number of Senators, led by Senators MCCASKILL and AYOTTE and FISCHER, have continued to work on policies to strengthen our response to the military assault problem. This has resulted in the amendment they have proposed.

Their amendment would ensure that the duties of special victims' counsels include advising victims on the advantages and disadvantages of prosecuting a case in the civilian or military justice systems, giving victims a greater voice in where a case is heard. It would require that performance evaluations of commanding officers consider their success or failure in creating a command climate in which victims can report sexual assaults without fear. It would require command climate assessments of any unit in which a servicemember is the victim of a sexual assault or is accused of committing one. It would give the victims of sexual assault who leave the military the ability to challenge the terms or characterization of their separation or discharge. It would prohibit introduction as evidence during judicial proceedings a sexual assault defendant's general military character—the so-called

''good soldier defense.'' In other words, the fact that a defendant happens to be a good troop would no longer be allowed as evidence that he or she did not commit a sexual assault. These reforms are aimed at the problems we do have that is, at rooting out retaliation against victims, and providing victims better support—and not at a problem we don't have—that is, the decisions our commanders make relative to prosecution of these crimes.

I will conclude by saying that these additional reforms in the McCaskill-Ayotte-Fischer amendment are significant additions to what is in the committee bill, and I support them. What I cannot support—and what I hope the Senate will not support—is legislation that will remove from our commanders the authority to combat this problem. The real, strongest tool to combat this problem is the ability to send a matter to a court-martial.

We cannot strengthen our efforts to prevent sexual assault by reducing the likelihood of prosecutions. We know from history and from the facts that is the result of taking this decision away from the hands of the commanders. We know of the 100 cases where other authorities, civilian authorities, have decided not to prosecute but where the commanders then decided to pursue it anyway. That is just within the last 2 years, and we do not know of any cases that go in the other direction.

We cannot strengthen our efforts to prevent sexual assaults by reducing the likelihood of prosecutions. We cannot strengthen our efforts by weakening the authority of our commanders to act against sexual assault. Commanders were tasked, again, with making those monumental changes in military culture, from combating racial discrimination in the 1950s to ending don't ask, don't tell in 2011. If we are to accomplish the change in military culture that we all agree is central to combating sexual misconduct and sexual assault, commanders are essential. We cannot fight sexual predators if we make it more difficult to try and convict them. We cannot hold our commanders accountable for accomplishing that needed change in culture if we remove their most powerful weapon in the fight.

I yield the floor.

The PRESIDING OFFICER. The Senator from New York.

Mrs. GILLIBRAND. Mr. President, I wish to thank Chairman LEVIN for his extraordinary leadership on combating sexual assault in the military. He has led a process over the last year to ensure that our base bill has a set of historic reforms that make a huge difference in how cases that are actually reported are handled. In fact, the reforms that Chairman LEVIN has put forward and that our colleagues are continuing to perfect do make the handling of the cases that are reported better.

They make sure every victim who reports has a victim's advocate to help him or her steer through the process. They also make sure that if that victim is so lucky enough to get that conviction, that it cannot be overturned by a commander on a second-level review.

They also make sure we have better recordkeeping. They make sure the rules of evidence are better. They make sure victims are protected throughout the process. Most important, we as a committee have put forward in the bill a law that makes sure retaliation is now a crime.

Those reforms help the victims who are strong enough and able enough and have a command climate that is strong enough to report their cases. But one thing the chairman said that is not true: Commanders do not need this legal right to be able to set the command climate. In fact, most commanders will never have this legal right. Just look at the Army rankings. Second lieutenants, they will command 16 to 44 soldiers. They do not have convening authority. First lieutenant commanders—110 to 140 personnel—do not have this authority. Captains—62 to 190 soldiers—do not have this authority. Majors, lieutenant colonels, lieutenant colonels, who typically command battalion-sized units—300 to 1,000 soldiers—do not have this legal right.

Most commanders will never get to look at a case file and say: Are we going to trial? So I disagree that the ability to decide if something goes to court-martial is necessary to set good order and discipline because almost every commander—all of them here—these commanders, they all have to set good order and discipline as part of their job. They have to set a command climate where the rape does not happen. They have to set a command climate where that victim feels comfortable enough to come forward. They must, by law, now ensure that victim is not retaliated against. It is their job—whether they ever have this right. Commanders can do this and must do this without this legal right. It does not weaken their ability.

To have one guy way up here in the Army who wears the bird—the man who is the colonel, O6 level and above—he will make a legal decision, and he is not a lawyer. He is not trained. He does not know the ins and outs of prosecutorial discretion.

He may be biased. He may value the perpetrator more than the victim. He does not need to make this legal decision. He should not be judged on how tough he is on crime. He should not even be judged after he weighs the evidence if he does his job properly. He should weigh the evidence fairly. You can only do that if you are objective. That is why we want it to go to trained military prosecutors outside the chain of command.

Those commanders, every single one of them, should be judged on what the command climate is. Most of them will never get to weigh legal evidence as part of that. Chairman LEVIN, my colleague, has said: They have never heard of examples where commanders did not go forward but a lawyer did.

I talked about one this morning. We heard from many victims. In fact, one victim said she was on her way to trial, and the commander was changed. The new commander had been in command for 4 days. He decides that the trial is not going forward. He actually discontinued the trial.

You know what he said to her? Your rape was not a crime. He may not have been a gentleman. So I do not believe this legal right undermines our military system. I believe it strengthens our military system. I believe it gives commanders the chance to do their jobs, fighting and winning wars, training men and women. Commanders are entirely on the hook by our base legislation. They will be judged on the command climate. They will be judged on whether there is retaliation. They will be able to prosecute retaliation as a crime.

I believe that if you create transparency and accountability in the system, we will be able to have many more cases be reported, first of all. More of those 23,000 cases will be reported. When you have more of the 23,000 cases being reported, you will have more investigations. You will, therefore, have more trials. You will, therefore, have more convictions.

If you are ever going to change the culture, you need to do it by showing there is accountability. You need to do it by showing there is justice. You need to show it by showing that justice can be done. We need the active involvement of commanders. This is never going to happen if we do not. So they need to start focusing on retaliation. They need to start focusing on command climate. They need to make sure these rapes are not happening.

They will do that whether or not they ever have this legal right. When our allies changed their laws to elevate all serious crimes out of the chain of command, they did not see a falling apart of their military. They did not see good order and discipline going out the window. They did not see any change at all, in fact. So I know our military can do the same. I know our military can build a transparent, accountable system that responds to what victims have asked. They want to be able to have the decisionmaker be outside of their chain of command.

If we do that, we have a chance of building a criminal justice system within our military that is good, and it is just, as our men and women deserve.

I am heartened by the conversation we are having on the floor today and I am grateful to all of my colleagues for their engagement and involvement on this critical issue. I have heard some questions about the technical implementation of the Military Justice Improvement Act mentioned on the floor today and during the past few months and I would like to address those concerns.

First of all, thanks to feedback that we received about the MJIA, we made some technical changes to the amendment that I would like to note.

One such concern was the omission of the Coast Guard, we have now included the Coast Guard in the amendment.

Another concern we heard about was how to handle attempts of crimes, both in the new system and those that are excluded. In the amendment, conspiracies, solicitations and attempts have all been included.

We were also asked about crimes that happen simultaneously. For example, what if during a sexual assault, crimes are also committed that fall under the old system? In order to clarify any confusion about this question, the amendment says that all known crimes will be charged under the new system.

There were also questions about whether the convening authority will be able to pick the judge, prosecutor and defense counsel. The newly filed amendment has been clarified to ensure that it is clear that the new, independent, convening authority has the same power as the previous convening authority—the commander—in overseeing the process of convening a trial. The processes for detailing judges, prosecutors and defense counsels remains as they are today.

Other concerns we have heard seem to take as a negative the fact that the MJIA leaves some issues up to the military to implement.

We see this as one of the strengths of the MJIA.

We wanted to ensure that the military had the ability to best interpret and implement the legislation in a way that was effective for the whole military, and for each service, each of which have slightly different systems.

Let me give you an example. Some have argued that that plea bargaining will not work under our system. That is not true. The amendment transfers the commander's responsibilities for convening authority to the office of the Chiefs of Staff of each service; therefore, the offices of Chiefs of Staff will now have the authority to oversee pretrial agreements.

We specifically leave interpretation and implementation of the plea bargain up to the military to ensure that it is most expeditious—therefore the military can choose to include the commander's perspective in the pretrial agreement conversation and send the case back to him or her for non-judicial punishment or summary court martial.

Let me give you another example. Article 32 is not explicitly mentioned in the amendment. This is intentional. Most if not all of the members of this body agree that the article 32 hearing needs to be fixed, but equally that it must be maintained. Because under the MJIA a trained, independent prosecutor will now be making the decision about whether to go to court martial, this may change the way that article 32 may best be implemented. We want to leave the military, and these trained prosecutors, with the ability to best implement the UCMJ.

I have also heard a lot of questions about non-judicial punishment. As I have said all along, the amendment leaves all crimes with punishment under 1 year of confinement, and 37 military-specific crimes with the commander, thereby leaving the vast majority of crimes punishable by courts martial in the hands of commanders.

However, to suggest that crimes as serious as rape and murder be handled with anything but a clear look at the evidence is at the heart of the importance of this amendment. If evidence exists to send a case to court martial, there is absolutely no reason anyone should consider non-judicial punishment as an option. This is exactly why this decision should be in the hands of an impartial attorney.

Further, the amendment even allows for a failsafe if the independent JAG decides that there is not enough evidence to proceed to trial that the charges would not be appropriately addressed at a court-martial, then the commander would still be able to exercise non-judicial punishment. In the event that the military member demanded a trial by court martial, the decision authority would at that point still be able to send the charge to the convening authority for referral to trial. There is nothing unique about this situation.

I want to assure all of my colleagues that I have spoken to military justice experts and to retired JAGs about how to ensure that the Military Justice Improvement Act addresses potential issues and to ensure that the military has the ability to implement it in the best manner possible.

I yield the floor and I suggest the absence of a quorum.

The PRESIDING OFFICER (Mr. BROWN.) The clerk will call the roll.

The bill clerk proceeded to call the roll.

Mr. COONS. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. COONS. Mr. President, I come to the floor today to speak on the tragedy, on the ongoing crisis of sexual assault in our Armed Forces and what I believe we must do. There are several options before us, each of which has been the subject of lengthy and passionate debate, a debate that I think is healthy, and needed, and welcome here in this Chamber.

I commend my many colleagues—Chairman LEVIN and Senator INHOFE, Senator MCCASKILL and Senator AYOTTE—for the very real progress, the very significant steps taken both in the base bill, the NDAA, and in the amendments to be offered by Senators MCCASKILL and AYOTTE, serious and important steps forward to protect victims, to ensure that commanders are held accountable and to criminalize retaliation. A wide range of important and significant reforms that will make real progress towards addressing the ongoing decades-old scourge of sexual assault in the United States military.

As was said recently on the floor by another of my colleagues, this disagreement today is over one of more than a dozen important and needed reforms. But in the end, we have to decide. I believe the measure offered by Senator GILLIBRAND of New York, of which I am a cosponsor, is the right additional path forward. Because at the end, here is the bottom line: Sexual assault has been a disease, a corrosive and widespread and horribly negative influence on our military that has simply not been effectively treated.

I think this significant, dramatic step is the needed driver for extensive reform. I understand that the chain of command is essential, that it is central to the proper functioning and order of the military, especially during war time. In fact, the chain of command is nearly sacred.

But ensuring that our spouses and our siblings and our children can serve with honor and not have to face another enemy within our ranks is sacred. This is, in the end, a debate about justice—justice within our own Armed Forces, justice so we can fulfill that sacred duty of protecting men and women in uniform as well as they protect us.

Despite many years of good-faith efforts by leaders in our Armed Forces to work within the parameters of our current system, literally tens of thousands of sexual assaults are still occurring annually within our Armed Forces.

That is, frankly, unacceptable and it reflects a fundamental breakdown in order and discipline that in my view we cannot tolerate anymore. The current system, in this important and vital way, is failing. I understand the intense desire our leaders feel to fix what was broken and for our military leaders to atone for taking their eyes off the ball, to paraphrase the testimony of the Chairman of the Joint Chiefs.

But, once again, this debate is not about them, about their commitment or about their strategy or about their determination. It is about justice. In America, justice must be blind. Whether someone receives it or not should not depend on the fact of whether or not he or she serves in the military rather than in other workplaces. We know the chilling facts, that according to the Department of Defense's own Sexual Assault Prevention and Response Office, 50 percent of female victims state they did not report the crime in the first place because they believed nothing would be done, and one-quarter or 25 percent who received unwanted sexual contact indicated the offender was in their chain of command.

In my view, we strengthen our military when victims of sexual assault have the confidence to come forward and to report crimes and when we remove fear and stigma from the process.

We strengthen our military when we are able to deliver fair and impartial justice on behalf of victims.

When we know the military chain of command in this one area is failing, we should not continue to tolerate an exception we would not make in other settings. I came to this decision with great reluctance, recognizing as many in my family have, that the importance of the chain of command, the importance of respecting the unique and different traditions and structures of the military is something that we should only come to with great hesitation.

One of the responsibilities of serving in the Senate that I take seriously is my annual responsibility to review and approve candidates for the military academies who are selected by my independent military academy advisory board, and personally calling the top candidates to inform them that they will be the ones—of the dozens and dozens of highly qualified competitors, they will be the ones selected to go to the Merchant Marine Academy, the Air Force Academy; to Annapolis, the United States Naval Academy, or to the U.S. Military Academy, to West Point.

This is a moving experience each of the 3 years I have had the chance to do this. But this past year, the three top candidates for West Point, for Annapolis or for the Air Force Academy were all women—impressive, compelling, determined to serve our Nation.

Meeting with them and their families, the nervous and proud parents of these confident cadet candidates is also a great annual experience. It reminds me always of my responsibility to them. I promised their parents that we will support and respect them and their service. When we speak to the cadets and thank them for their willingness to serve, I am reminded we have a responsibility to not send them into an institution where they will face threats that we can and should address.

I believe I have a responsibility to send them into an institution I know is well equipped to respond strongly and swiftly to threats to their safety. Yet, today, I am not able to uphold that responsibility because we have not protected our men and women in uniform from sexual assault.

I thought of my picks for the service academies when I heard another Senator say to General Dempsey that the Senator would not advise a parent to encourage his or her daughter to join the military. What made this decision difficult for me to join Senator GILLIBRAND on this particular amendment was an unfortunate, tragic case.

Last spring while I was trying to decide which path to follow on this bill, my office received a gut-wrenching call from the father of a young woman serving honorably in our military. He was calling against his daughter's wishes, and only as a desperate last resort.

She had been the victim of sexual assault and, as so many others, reported it to her commanding officer up the chain of command. As so many others, her case went nowhere. Her by-the-book reporting and patient waiting for results was met with delays, excuses, and nonresponse. Ultimately, during these repeated delays, she was physically assaulted after she had warned leadership she feared for her safety.

We took action and, ultimately in this instance, justice was done. A chain of command such as that isn't strengthening unit cohesion and morale, it is harming it.

After this particularly troubling case, I made a decision to join Senator GILLIBRAND as a cosponsor, to say to all of us, how can we accept this? How can this situation that has gone on for years be tolerated? How can we justify the status quo?

I am grateful for the leadership of the many Senators on the Armed Services Committee and throughout this body who have taken real steps to add significant improvements to the UCMJ and to the code that underlies our military and the requirements for leadership in the service to take on and tackle these very real problems of sexual assault in the military.

In my view, taking decisions out of the chain of command should only be done under the most serious of circumstances, but that is exactly what we have. We wouldn't find justice if this was the way that any other workplace in America operated. How can we argue that we have justice today for these thousands of victims in our military? The men and women who dedicate themselves to keeping us safe and protecting our rights deserve equal dedication on our part to their safety and to those same rights.

I wish to speak about three bills I am offering as amendments to the NDAA that all relate to a topic I have spoken to many times on the floor, to manufacturing and manufacturing jobs.

The first is the American Manufacturing Competitiveness Act, a bill I introduced last week with Illinois Senator MARK KIRK. It enjoys the support of the Presiding Officer, as well as Senator BLUNT and Senator STABENOW. It is a simple but important objective, to require the creation of a national manufacturing strategy.

We need to know our country's direction as we try to support the growth in manufacturing. We have grown more than half a million manufacturing jobs in the last 3 years, an encouraging sign, but one we need to strengthen and support with a coordinated strategy between the Federal Government, State governments, and private sector to align all our investments in research and development, new skills, and new infrastructure, to make sure they are all heading in the right direction. Our leading competitors all have successful and well-deployed national manufacturing strategies. Whether Germany, China, India, South Africa, or Russia, they have all thoroughly developed, deeply researched, and prominently successful strategies, which we lack.

Our amendment would require that every 4 years the Secretary of Commerce, advised by a board of 15 different folks, pull together and think through, research, and then deliver a national manufacturing strategy.

This amendment is bipartisan, simple, does not cost the Federal Government a dime and doesn't create a new program, Like the next two amendments I will speak about, it is a commonsense measure that I hope we will adopt.

Secondly, I wish to speak to an amendment I am cosponsoring with Congressman BLUNT to ensure small businesses are not subject to conflicting guidance from Federal agencies.

In the 1970s Congress passed a measure for the Small Business Administration to ensure that small businesses that get contracts from the government aren't actually fronts for much larger companies.

Last year we passed similar but distinctly different rules for the Department of Defense. Most of the time these two sets of rules can peaceably coexist, but in a few cases they come into conflict, creating significant compliance difficulties for very small business. This amendment would say that when both sets of rules apply to a small business contract, the SBA rules would apply, while DOD rules would not.

This amendment is bipartisan, has no cost, and will help small businesses focus on effectively delivering products and services without worrying about compliance.

Last, I wish to speak about an amendment I am cosponsoring with Senator BOOKER of New Jersey to ensure that our defense and intelligence communities maintain their vital technological edge. This is an important measure that would create more opportunities to train America's best talent and pave the way to new innovations.

Recently, the commission on R&D in the U.S. Intelligence Committee reviewed our current and future R&D capacity to support our intelligence community's vital work. Their unclassified report shows, in fact, that we have insufficient funding and a critical deficiency of human capital, of skilled workers, and the cutting-edge thinkers we need in this area. Specifically, for one example it said we may not have the kind and number of people we need to build the next generation of satellites to gather and process the intelligence upon which our national security relies.

There is currently a program run by the Department of Defense designed to address one element of this problem. It is called the Science, Mathematics & Research for Transformation Scholarship Program, or the SMART Scholarship Program. This amendment calls on the Secretary of Defense to report back to Congress on two things: Whether the SMART Scholarship Program, or similar fellowship and scholarship programs, are, in fact, providing

the necessary number of undergraduate and graduate students in the fields of science, technology, engineering, and math to meet the recommendations of the commission's report, and to recommend how those programs can be concretely improved. Those amendments have already passed the House of Representatives by a voice vote and would be an important if small step toward paving the way toward job creation and ensuring our national security now and into the future.

I urge my colleagues to support these amendments.

I am grateful for the opportunity to contribute to the debate on these important issues.

I yield the floor.

The PRESIDING OFFICER. The senior Senator from South Carolina is recognized.

Mr. GRAHAM. I wish to speak in support of the McCaskill, Ayotte, Fischer, and Levin amendment.

Before we begin, I wish to thank Senators LEVIN, REED, MCCASKILL, AYOTTE, FISCHER, and others who have been trying to carry the burden here to make sure that we reform the military justice system and the way the military operates vis-a-vis sexual assault and misconduct but at the same time make sure we still have a military that can continue to be the most effective fighting force on the planet at a time when we absolutely need it.

If one believes, as I do, that our military is the best in the world, we have to ask ourselves why. Is it because of the equipment? We have great equipment. I would argue that the reason our military has become the most effective fighting force in the world is the way we are structured.

If one is looking for a democracy, don't look to the military. The military is a hierarchical and paternalistic organization that is focused on meeting the challenges of the Nation, being able to project force at a moment's notice to deter war and, if war ever comes, to decisively end it on our terms.

I have been a military lawyer for over 30 years. I have been assigned as a military defense counsel for 2½ years and a senior military prosecutor in the Air Force for 4½ years. I have been a military judge, and I have served in the Guard and Reserve, and on Active Duty for 6½ years. I have learned a lot, as a military lawyer, about the military.

To my colleagues who are trying to decide what to do and what is appropriate, the goal should be to make sure that America remains the most effective fighting force on the planet. This is the proposition: They can't be an effective fighting force if they have rampant sexual assault or misconduct within the ranks. This idea that sexual assaults in the military are unacceptable, too large in number and scope—sign me up for that proposition. However, the problems of society don't stop at the gate; they continue inside the fence. I would daresay that if we did surveys in South Carolina, Missouri, New Hampshire, and New York about sexual assault and their frequency, we would all be disturbed.

The goal of our time in the Senate is to make sure that when it comes to our military, we turn a corner and create a legal system where people feel that if they file a complaint, they are going to be fairly treated and also a legal system where if one is accused of something, they will be fairly treated.

I say to my colleagues, there is a reason that every judge advocate general of all the services has urged us not to adopt Senator GILLIBRAND's solution to this problem.

In the military, it is possible, in my view, to correct a problem without commander buy-in and holding commanders responsible. Military commanders have awesome responsibility and almost absolute liability for the job we give them. It is their job to make sure that all under their command are ready to go into combat, perform their assignment in the most difficult task, make sure that medical records are up to date, and to make sure they are squared away when our Nation needs them.

This concept of the authority of the commander goes back to the very beginning of this Nation. Military justice is an essential part of good order and discipline.

After 30 years of experience in this area, the number of cases where a judge advocate recommends to a commander to proceed to trial in a sexual assault or, for that matter, almost any other alleged crime is a rounding error. Please don't suggest that under our current system someone can't get a case to trial because our commanders routinely blow off legal advice. That is not the case. Commanders decide as to whether to proceed to a court-martial, and what level of court-martial, based upon advice of the judge advocate community, whose job it is to provide professional advice. The commander's job is to make sure that unit is ready to go to war. The lawyer's job is not to pick and choose who goes into the battle. The lawyer's job is to give that commander the best legal advice possible, including who to court-martial and who not.

One thing I hope people understand in this debate is that no lawyer, no judge advocate, is ever going to have to deal with the situation of picking and choosing in that unit who takes the most risk. We have for 200 years allowed commanders the authority, under the Uniform Code of Military Justice since 1952 and before, and the ability to maintain good order and discipline, the absolute responsibility to make sure force is effective when it comes to the fight, and giving them the tools to make sure that happens.

What would bother me greatly is if this conversation occurred: Sir or ma'am—depending on who the commander is, as there are more and more female commanders in the military—there was an alleged rape last night, a sexual assault in the barracks last night, and the commander would say: That is no longer my problem. Send that to Washington.

Ladies and gentlemen of the Senate, that is the commander's problem.

To those commanders who have failed to make sure we have the right climate in the military when it comes to sexual assault, your job is at stake.

The military justice system, when it comes to rendering justice, I will put up against any system in your State. The reforms in this bill are going to become the gold standard, I hope, over time, and very few jurisdictions will be able to do what we have been able to do. With thanks to Senators MCCASKILL, AYOTTE, LEVIN, and others, we have taken a problem in the military and brought a good solution. Every victim will now be assigned a judge advocate to help them through the legal process. I wish that were true in South Carolina, but it is not. Every commander who is advised to go to trial in a sexual assault case and who declines to accept the JAG's, the judge advocate, recommendation, that case is automatically sent up to the Secretary of the service in question.

In the future, as commanders have to decide how to deal with sexual assault allegations, when the lawyer tells them: Sir, ma'am, this is a good case, and if for some reason the commander decided: I disagree, that case goes up to the highest member of that civilian service, the Secretary of the Air Force, in the case of my service. This, to me, is a reform that will emphasize from the chain of command how important it is that we take these cases seriously.

If we take the chain of command out, this is what we are saying to every commander in the military: You are fired. We, the Senate, have come to conclude that you, the commander—all commanders of the group—are either intellectually insufficient to do this job or you don't have the temperament or are morally bankrupt. We are going to take away from you this part of being a commander. You are fired.

I will never, ever say that unless and until I am convinced that there is no hope for our commanders, that our commanders are hopelessly lost when it comes to these types of issues. I don't believe we are remotely there.

In the 1970s we had upheaval throughout the country, particularly in the military. We had race riots on aircraft carriers and tension ran high. How did we fix it? We made sure every commander was held responsible for the atmosphere in their unit when it came to race relations. And now I would daresay the most equal opportunity employer in the whole country is the U.S. military because commanders changed the climate.

Under the approach of Senator GILLIBRAND, we take out a group of military offenses. To the commander: You are fired; you can't do this anymore. And we send these decisions to an 06 judge

advocate—which I happen to be one of, by the way—in Washington. I cannot stress to my colleagues enough how ill-conceived that system would be from a military justice point of view and the damage that will be done to the command and to the fighting force if we go down this road. Let me tell you why.

A troop is in Afghanistan. There is a larceny. Senator COONS mentioned the workplace. A barracks thief is one of the worst things you can be in the military. A soldier doesn't pick and choose whom they room with; we pick whom they room with. No one gets to decide where they are going to stay; we pick for them. We throw them into the most incredible of conditions, we don't give them the comforts of home, and they have to trust their fellow soldiers in the barracks and in deployment. Soldiers, like everybody else, most are great, some are bad. In the military the bad apples, thank God, are few.

Under this construct we are coming up with, if there was a barracks theft case—a tent theft case—in a deployed environment, that really does hurt morale because if you have to worry about somebody stealing your stuff, that is really tough given the conditions under which you are living. So if the commander could not deal with this, it would go all the way to Washington, DC, to be disposed of rather than being disposed of onsite. And why does it need to be disposed of onsite? You need to render justice quickly and effectively so the troops can see what you are doing. If you are the commander, they have to respect you and they have to understand your role.

So I cannot understand why the Senate, when we have been at war for 11 or 12 years, would come up with a solution to a problem that is real that does harm to the very concept of what makes our military special—the ability to go to war, the ability to be effective and to have the commander make decisions that only a commander should be making.

I am a military lawyer. I am telling you right now, don't give me this decision, because I am not required to decide who goes to battle. Don't take away from our commanders in a theater of operation the ability to render justice in a way the troops can see.

Mrs. MCCASKILL. Would the Senator yield for a question?

Mr. GRAHAM. Yes.

Mrs. MCCASKILL. I want to make sure I understand something about nontraditional punishment. Since the Senator is discussing the barracks thief in Afghanistan and the notion that everything is going to stop and this case is going to be sent off to a lawyer half a continent away to make a decision, let's assume the lawyer—the colonel in Washington—decides there is insufficient evidence for that barracks thief. That might be 4 months later. Meanwhile, the barracks thief is still there. And let's assume it then comes back. It is my understanding—and I think there is some confusion about this by the people who are advocating this amendment—that you cannot exercise nonjudicial punishment on a soldier if he chooses a court-martial proceeding. Is that correct?

Mr. GRAHAM. That is exactly right. A nonjudicial punishment is an authority the commander has to put people in confinement for up to 30 days, reduce in rank one or two levels, depending on the rank of the commander, and to withhold pay. It is nonjudicial punishment. You don't have a trial. The person is represented by a lawyer, but there is no jury. The commander is the jury.

The Presiding Officer. The Senator has spoken for 15 minutes.

Mr. GRAHAM. I thank the Chair.

Mrs. MCCASKILL. So that commander who has to now send——

Mr. GRAHAM. He loses that authority.

Mrs. MCCASKILL. That case to Washington—that soldier is not going to agree to nonjudicial punishment. He is going to say: I will take my chances with the lawyers in Washington. And if the lawyers in Washington say no, then that commander's hands are completely tied to even putting him in the brig for 30 days.

Mr. GRAHAM. Exactly right.

Every military lawyer who has looked at this is very worried about what we are about to do in terms of practical military justice.

Imagine being 18 years of age. You have too much to drink and you write a bad check. Part of being a commander and a first sergeant is the paternalistic aspect of the job. How many of us have made mistakes at 18? Instead of going to college, you are going into a military unit. You bounce four or five checks. Has that ever happened? Under this proposed system, the military commander no longer has the ability to deal with it in the unit. He sends that case off to Washington. The ability to give an article 15—a lesser punishment—is taken off the table. So we are taking an 18-year-old's mistake and potentially turning it into a felony. Does that help sexual assaults?

Our commanders can send you to your death, but we don't trust them to deal with manslaughter cases? All I can tell you is that for 30 years I have been a practicing military lawyer. From my point of view, our commanders take the responsibility to impose discipline incredibly seriously. They are skilled men and women.

We have let the soldiers, sailors, airmen, and marines down when it comes to sexual assault. All of us are to blame in the military. We are going to fix that. But the problem, my colleagues, is not the military justice system. We don't have a military justice system where commanders say to the lawyers: Go to hell; we are not going to deal with that. That is not the way it works.

This new proposed system takes a portion of offenses out of the purview of the commander and sends them to somebody in Washington whom nobody in that unit will ever get to see. That will delay justice, and it will take tools off the table to make sure that is an effective fighting force in terms of dealing with the barracks thief, in terms of dealing with the bounced check, but it will also take young people who make mistakes and put them in an arena where the only avenue is to potentially charge them with a felony.

Ms. AYOTTE. Would the Senator from South Carolina yield for another question?

Mr. GRAHAM. Yes.

Ms. AYOTTE. So under the situation where the Senator says we have commanders who aren't going to ignore what is brought before them in an investigation from their JAG lawyers, particularly on a sexual assault, let's assume they did do that. Even though the evidence isn't there, they do it. Under our proposal—the proposal of myself and Senators MCCASKILL and FISCHER—if the commander makes the decision not to bring the sexual assault case and it then goes up for review before the civilian secretary of whatever force is at issue—the Army, the Air Force, the Navy—what does the Senator think that will do in terms of accountability?

Mr. GRAHAM. If you want to improve the system, and we all do—I am not questioning anybody's motives—if a commander knows that when they turn down the JAGS's advice in one of the four situations we have identified—sexual assault, the nature of the discussion here—that decision will be reviewed by the Secretary of the service, I can assure you that will do more good to make sure commanders understand how important this situation is to the country than taking their authority away.

We will be doing absolutely the worst possible thing to solve the problem with the approach of Senator GILLIBRAND, in my view, although every judge advocate agrees with what I am saying. You will throw the military justice system in chaos and basically take the commander's authority away in an irrational way.

What we should do is hold the commander more accountable by having what is the commander's worst nightmare—I guess anybody in the military—and that is having the boss look at your homework. How do you get promoted in the military? People over you judge your work product.

Let me just say this. It is not a military justice problem here. The reforms we are going to engage in are historic, and they will be the model for systems in the future. Very few people can afford what we are about to impose upon the military because we are going to make this a priority and we are going to assign judge advocates to victims. There is no other State in the Nation that will be able to do that. We will have something of which we can all be proud. We are going to hold commanders more accountable.

Here is the essence of the argument: We have to take this out of the chain of command because there is something defective about the commander; because the commander doesn't have the ability or they have a bias against victims, we no longer can trust them to do the right thing.

That, to me, is an indictment of every commander in the military. That, quite frankly, is not what we should be doing or saying given the track record of how our military has performed.

In the area of sexual assault, the problems we see in the military are all over the country; they are just talked about more in the military. The people in the military should be held to the highest standard, but we will fix no problem in the U.S. military if we deal that commander out.

Ms. AYOTTE. Would the Senator yield for a comment? Looking at the facts, the evidence we have reflects that commanders are bringing more cases, are pursuing more cases than those recommended by their JAGs in sexual assault cases.

We received a letter from ADM Winnefeld, Deputy Chairman of the Joint Chiefs of Staff, basically pointing out that there were over 90 cases where commanders had a different view than their JAGs that a case should go forward. Guess what. Convictions were had and people were held accountable.

Mr. GRAHAM. There are situations where joint jurisdiction lies—the military has jurisdiction, the civilian community has jurisdiction. There have been cases where the civilian community went first. There were 49 cases in the Army where the civilian community decided not to prosecute on a sexual assault and the Army took it up and they got an 81-percent conviction rate. In the Marine Corps, 28 cases were turned down by the civilian community where the Marine base was and they went to court with a 57-percent conviction rate. In the Navy and in the Air Force, it is the same. We see a civilian jurisdiction saying no to the case and the military saying yes, we are going to go to court. And that is because there is a difference between what the civilian community is trying to accomplish and what the military community must be trying to accomplish; that is, to let the troops know there is certain conduct that is out of bounds, and if it is even close, you are going to pay a potential price.

Having said that, please do not blame sexual assault problems in the military on a broken military justice system because it is not broken. The commanders are not telling the lawyers to take a hike. The cases the lawyers recommend to go to trial actually do go to trial.

Juries in the military are not juries of one's peers. This is not a civilian system. Everybody who goes to trial as an enlisted man is judged by officers. You can request one-third of the military jury to be enlisted members, but they will be the most senior people on the base.

Please understand that military juries are not constructed the way civilian juries are. They are told to be fair, and they do their best to be fair. But it goes into the concept of how the military works. The only person in the military entitled to a trial of the equivalent rank is an officer. An officer cannot be tried by people of lesser rank. That may sound unfair, but in the military it makes perfect sense, doesn't it? Officers eat in one corner of the base and enlisted people eat in the other corner of the base not because they hate each other. They admire and respect each other. This chain of command, these lines of authority make us—Mr. President, I ask unanimous consent for 1 additional minute.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. GRAHAM. This unusual situation for most Americans works in the military. It may not sound right to most, but it works because the military is about when you are ordered to do something, you answer the order; you don't debate.

So if we don't elevate the commander to have the tools available to make the right decisions, and if we don't instill those below the commander to follow, it all breaks down. When a commander lets the troops down—and they do sometimes—fire the commander. Don't take away the authority of the commander to win wars that we will inevitably fight. This is not a civic organization. This is not a democracy. This is a situation where one person can choose to send another person to their death. That person is the commander, and there are plenty of checks and balances.

Ladies and gentlemen, sexual assault is a problem. But for God's sake, let's not tell every commander in the military: You are fired. You are morally bankrupt. You are incapable of carrying out the duties of making sure that justice is done in these cases.

The PRESIDING OFFICER. The Senator's time has expired.

The majority leader is recognized.

Mr. REID. Mr. President, I ask unanimous consent that the motion to recommit be withdrawn; the pending Levin amendment No. 2123 be set aside for Senator GILLIBRAND, or designee, to offer amendment No. 2099 relevant to sexual assault; that the amendment be subject to a relevant side-by-side amendment from Senators MCCASKILL and AYOTTE, amendment No. 2170; that no second-degree amendments be in order to either of the sexual assault amendments; that each of these amendments be subject to a 60-affirmative-vote threshold.

I am told each side would like 10 minutes; that is, the McCaskill side and the Gillibrand side would receive 10 minutes to close. If there are other people who wish to speak, now is the time to say something.

The PRESIDING OFFICER. The assistant majority leader is recognized.

Mr. DURBIN. I understood there were 30 minutes left on the Gillibrand time.

Mr. REID. How much time does the Senator need if I get a consent agreement?

Mr. DURBIN. Ten minutes.

Mr. REID. So we need 10 minutes for McCaskill also. That would be 20 minutes on each side.

That the time then until 5:30 be equally divided between the proponents and the opponents of the Gillibrand amendment and the McCaskill amendment; that the Senate proceed to vote in relation to Gillibrand first; that upon disposition of the Gillibrand amendment, the Senate proceed to vote in relation to the McCaskill-Ayotte amendment; that there be 2 minutes equally divided between the votes; finally, that no motions to recommit during the consideration of these amendments be in order.

The PRESIDING OFFICER. Is there objection?

Mr. COBURN. Reserving the right to object.

The PRESIDING OFFICER. The senior Senator from Oklahoma.

Mr. INHOFE. Mr. President, I would ask the leader if he would amend his request to add the following language: Following the disposition of the McCaskill-Ayotte amendment, all pending amendments be withdrawn and the Republican manager, or his designee, be recognized to offer the next amendment in order, followed by an amendment offered by the majority side, and that the two sides continue offering amendments in alternating fashion until all amendments are disposed of.

The PRESIDING OFFICER. Will the majority leader modify his UC?

Mr. REID. Mr. President, we went through this yesterday. I reluctantly object.

The PRESIDING OFFICER. Objection is heard. Is there objection to the majority leader's request?

Mr. COBURN. Reserving the right to object.

The PRESIDING OFFICER. The junior Senator from Oklahoma is recognized.

Mr. COBURN. This is a very important bill for our country in terms of authorizing the defense of this country. Many of us have relevant amendments—not amendments outside the scope of this bill, but relevant amendments—which will actually markedly improve the way we conduct policy in the Defense Department. Without the assurance that those amendments are going to be able to be offered—they can be tabled, but without that assurance, it makes it difficult to agree to a consent not knowing whether or not we will have the opportunity to represent the people we represent in offering amendments which will make positive improvements to this bill.

So I put forward that we are really not conducting the business of the country if we are limiting the ability

of Members of the Senate to offer amendments. Absent that guarantee, I will object.

The PRESIDING OFFICER. Objection is heard.

Mr. REID. Mr. President, we have 350 amendments which have been filed on this bill. I know every person who has filed an amendment feels entitled to offer that amendment. I just think we are not in a position to deal with this for all the reasons we have talked about here for several months. We are not seriously legislating anymore.

We can pass the blame to anyone we want, but we have tried all kinds of things. How about so many amendments on each side? We have done that before. It is not anything unique. We have done that lots of times in the past. It doesn't work. How about 13 amendments? No. It won't work because we want more amendments after that.

So I understand, and I am not denigrating anyone's intent. I know the intentions are good. The record reflects how I feel about this bill. I am sorry we are at the point we are. Couldn't we at least have everybody vote on this amendment which people have spent days of their lives working on? It doesn't matter how we feel about what has been done, but there has been tremendously important work done on the sexual assault issue, and we should at least have the opportunity, with the work that has been put into this, to have a vote. No one is disenfranchised by doing that—or move to try to figure something else out after that. But, gee whiz, couldn't we do that? Otherwise, we will walk away not having done anything on this. I think that is just so unfair to the people who worked on this.

I know other people have worked hard on their amendments. But I have to say, in the last year or two, no one has worked harder on amendments than the proponents and opponents of this amendment.

So having said that, I ask unanimous consent that we move to a period of morning business for debate only until 7:30 p.m. tonight.

The PRESIDING OFFICER. Is there objection? The Senator from Michigan.

Mr. LEVIN. Is that a unanimous consent request?

Mr. REID. Yes, it was.

Mr. LEVIN. Of course, while reserving the right to object—I will not, but I will say this. I can't tell everybody in this body how disappointing it would be if we do not finish this bill tomorrow or Friday, because the issue is this, and we all ought to face it: There is only 1 week left where both the House and the Senate are going to be in session. If we don't finish this bill this week, there cannot be a conference report; and then, for the first time in 52 years, there will not be a Defense authorization bill in the absence of some miracle.

I would plead with our colleagues, let us vote on this amendment. The alternative was a list of 13 amendments which we were willing to then move to. That wasn't satisfactory. We have got to do this a step at a time, and we have done it that way before. We can't even get cleared amendments agreed to where both sides have cleared them into a manager's package.

If Senators want to vote tomorrow or Friday against the cloture motion because their amendments haven't been reached, they are free to do so. That is plenty of ''leverage,'' which I guess is the currency around here, tragically. But I plead—and Senator INHOFE and I have worked so hard on this bill and I think he feels this same way—we need to get this bill finished this week or else we are not going to get a conference report.

Mr. COBURN. I would like to object.

The PRESIDING OFFICER. The majority leader is recognized.

Mr. REID. I am sorry.

Mr. INHOFE. I reserve the right to object.

Mr. REID. I would say, while they are reserving the right to object, there is still time left. With the tentative agreement we had, which was just kind of a handshake, there would be 6 hours, and there is still time left on that. So that time for debate only, that time could still be used.

The PRESIDING OFFICER. Is there objection to the request?

Mr. COBURN. Reserving the right to object.

Mr. INHOFE. Reserving the right to object.

The PRESIDING OFFICER. The junior Senator from Oklahoma is recognized.

Mr. COBURN. First of all, the amendment we are talking about isn't pending because the tree has been filled. So we don't even have an amendment pending. Seventy-six times the majority leader has filled the tree, more than two times all the rest of the Senate majority leaders in history.

Last year, under Senators LEVIN and MCCAIN's leadership, we considered 125 amendments or thereabouts, some in a manager's package with others. There were over 300 amendments offered. The average length of time to consider this bill is about 2½ weeks. We have had it up less than 1 week, and the fact is this is the consideration for an authorization bill in excess of $500 billion, and we are not going to have amendments on it.

So there is not a unanimous consent that I will agree to, until we agree to open the Senate to allow Members to offer their ideas. Table them. The fact is, if we run this just like we did last year, we will be through with this in 5 to 7 days. If we continue to do what we are doing now, we won't finish it, and it won't be because we don't want to finish it. It will be because we won't have the opportunity to have input into a bill that is over 50 percent of our discretionary spending in this country.

The PRESIDING OFFICER. Is there objection?

Mr. INHOFE. Reserving the right to object.

The PRESIDING OFFICER. The senior Senator from Oklahoma.

Mr. INHOFE. I think when we are going through an exercise like this there are some people who want to have their program placed on a must-pass bill in order to get something through. The junior Senator from Oklahoma made it very clear that he is talking about something he feels is relevant to the defense of this country, and I think that sounds reasonable.

What I would like to suggest to the majority leader and to my very good friend with whom I have worked for many years, the chairman of the committee Senator LEVIN, is that we can qualify and work on a UC which would either use the words germane, relevant or related, in some way so that those amendments—which have nothing to do with defending America—might be able to be considered in some form, maybe a limited form. I would like to be able to sit down and see if something like that can be worked out before giving up.

The PRESIDING OFFICER. Is there objection? The majority leader.

Mr. REID. I know there is a unanimous consent pending. I have no problem in the world with continuing to work to see if we can come up with something. We have tried. It is not as if we have not tried. But my disappointment is that we are just not doing any legislating here, and people can bring the blame to me all they want. We can get into all kinds of statistics that we want about what has happened in years past and why it has been necessary to fill the tree, but that doesn't accomplish anything. Everyone knows what is going on around here. So I am not going to get into a he said, they said situation.

I know the two managers of this bill want to get something done. Let's give them the time it takes to get that done.

So my consent is pending, and I would like the Chair to rule on that.

The PRESIDING OFFICER. Is there objection to the request?

Mr. COBURN. I object.

Mr. REID. I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. REID. Mr. President, I ask unanimous consent the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. REID. Mr. President, I renew my request that was just denied.

The PRESIDING OFFICER. Is there objection?

Mr. REID. I also add to that that I be recognized at 7:30.

The PRESIDING OFFICER (Mr. BLUMENTHAL). Is there objection?

Without objection, it is so ordered.

THE DOOLITTLE RAIDERS

Mr. BROWN. Mr. President, it is with pride and humility that I stand and thank my colleagues for passing S. 381 by unanimous consent last night. Once passed by the House and signed by the President, this bill will award Congressional Gold Medals to the surviving World War II heroes we know as the Doolittle Tokyo Raiders.

The effort to pass this measure has been a personal one to me. I thank 78 of my colleagues who have cosponsored the resolution. It proves the Senate can still reach consensus. I especially thank Senator BOOZMAN, who is my original Republican counterpart, in introducing this bill in February. Also, original cosponsors Senator MURRAY and BAUCUS and TESTER and NELSON and CANTWELL and SCHATZ—original cosponsors.

I wish Senator Lautenberg, also an original cosponsor and close personal friend, the last World War II veteran in the Senate, were here today to see its passage.

My special thanks to Senator CORNYN for his work on this and especially Senator AYOTTE. They have my personal thanks for helping to bring so many Republicans to sponsor this bill with us.

Many of you know the story of the Doolittle Raid. More than 71 years ago, following the attack of Pearl Harbor just 4 months earlier, 80 brave American airmen launched a mission that would become our Nation's first offensive action against Japanese soil in the Second World War. They volunteered for what was called an ''extremely hazardous mission'' without knowing at the time what it actually entailed. Under the leadership of LTC James Doolittle, the raid involved launching 16 U.S. Army Air Corps B–25 Mitchell bombers from the deck of the USS Hornet, a feat that had never been attempted in combat before.

On April 18, 1942, again just a few months after Pearl Harbor, 650 miles from its intended target, the Hornet encountered Japanese ships. Fearing the mission might be compromised, the raiders decided to launch 170 miles earlier than anticipated. These men accepted the risk that they might not have enough fuel to make it safely beyond Japanese-occupied China. The consequences meant the Raiders would almost certainly have to crash land or bail out, either above Japanese-occupied China or over the home islands of Japan. Any survivors would certainly be subjected to imprisonment or torture or death.

After reaching their targets, 15 of the bombers continued to China. The 16th, dangerously low on fuel, headed to Russia. The total distance traveled by the Raiders averaged 2,250 nautical miles over a period of 13 hours, making it the longest combat mission ever flown in a B–25 during the war. Of the 80 Raiders who launched that day, 8 were captured. Of those eight prisoners, three were executed, one died of disease, and four survived as prisoners of war and returned home after the war.

The Doolittle Raid was a turning point for the Pacific theater and set the stage for Allied victory. Of the original 80 Raiders, 4 survive today. A Raider from Cincinnati, my home State, MAJ Tom Griffin, passed away on February 26 of this year, the very night I introduced S. 381. Major Griffin was the navigator of plane No.9, the Whirling Dervish, on the Doolittle Raid. He survived the mission and continued to fly until he was shot down in 1943 and held in a German POW camp for 2 years.

When the war ended, Major Griffin returned home to Cincinnati and later owned his own accounting business.

Similar to our veterans past and present, he asked for nothing. These veterans served simply because their Nation asked. For many years the surviving raiders gathered to celebrate the mission and to honor their departed fellow Raiders. This year's celebration was bittersweet. It was their final reunion, they decided. All the remaining Raiders are in their nineties and it is becoming hard for them to make the trip. It was decided this would be their final reunion.

This is an article, a story in the Plain Dealer in Cleveland, of the final reunion which took place in Dayton, OH. The three remaining survivors who could make the trip called out ''here'' as a historian read the rollcall. They then raised a goblet inscribed with their names and toasted their fellow Raiders with a bottle of 1896 Cognac, a bottle that Commander Jimmy Doolittle passed down for the Raiders' final toast. Seventy-six other goblets were turned upside down, one for each of the comrades who had passed away. Hundreds of people watched the solemn ceremony and offered their respects.

Speaker BOEHNER, whose district is nearby Dayton, OH, sent a letter in honor of the occasion.

In an Associated Press article on the ceremony, a 12-year-old boy whose grandparents brought him to the event said, ''I felt like I owed them a few short hours of the thousands of hours I will be on this Earth.''

This journey started 2 years ago for me when Brian Anderson, the Sergeant at Arms for the Doolittle Tokyo Raiders Association, approached my office seeking a proclamation for the 70th anniversary of the raid. We achieved that goal, passing S. 418 in August 2012 by unanimous consent. But that was not enough for Brian. It was not enough to honor these men and what they had accomplished. We set our goal of awarding the Congressional Gold Medal, the highest civilian award bestowed by Congress, limited to two a year in this body, to the Raiders.

This honor is designated to those who ''have performed an achievement that has an impact on American history and culture that is likely to be recognized a major achievement in the recipient's field long after the achievement.''

These 80 veterans met that description. They exemplified our highest ideals of courage and service. They deserved to be recognized.

President Kennedy said ''a nation reveals itself not only by the men it produces but also by the men it honors and the men it remembers.''

We, our Nation, honor those who serve. I call on the House and I call on the Speaker to quickly act on this legislation. Sitting in the Chamber today is a Senator from Texas, the senior Senator from Texas, who played a major role with Senator AYOTTE and others in gathering cosponsors for this Congressional Gold Medal. I thank Senator CORNYN for his work.

I yield the floor.

The PRESIDING OFFICER. The Senator from Texas.

Mr. CORNYN. Mr. President, I wish to turn the compliment around and extend my appreciation to the Senator from Ohio Mr. BROWN for his leadership on this issue. This is long overdue to these great American patriots, the recognition they so justly earned.

FORT HOOD AND PURPLE HEARTS

Mr. CORNYN. Mr. President, 4 years ago an Islamic radical who identified with Al Qaeda and supported the cause of global jihad opened fire at Fort Hood Army base in Killeen, TX. The shooter eventually killed 12 soldiers and 1 civilian, while wounding 30 others. He might have killed or wounded many more but for the selflessness of a civilian physician's assistant by the name of Michael Cahill and an Army captain named John Gaffaney, both of whom charged the gunman and gave their lives in order to save the lives of others.

Four years later we continue to honor their tremendous sacrifice and we continue to honor the memories of all those who gave their lives or were injured on that awful day. Back in August, the Fort Hood shooter was sentenced to death for his crime and appropriately so. Let me be clear about what the nature of this crime was. This was not an ordinary criminal event. This was a terrorist attack, plain and simple, committed by a man who had reportedly had at least 20 different email communications with a senior Al Qaeda figure by the name of Anwar al-Awlaki. The late Mr. Awlaki, who was killed by a U.S. drone strike in September 2011, also had contacts, well documented, with the so-called Underwear Bomber, who tried to blow up Northwest Airlines flight 253 just 7 weeks after the massacre at Fort Hood.

Following the Fort Hood attack, Awlaki celebrated the shooter as a hero. He called him a hero. He also told Al Jazeera that prior to the attack, the gunman had specifically asked him whether Islamic law justified ''killing U.S. soldiers and officers.''

The Fort Hood shooter had repeatedly and unapologetically said that