

**THE MILITARY SERVICES' PREVENTION OF AND
RESPONSE TO SEXUAL ASSAULT**

HEARING

BEFORE THE

SUBCOMMITTEE ON PERSONNEL

OF THE

COMMITTEE ON ARMED SERVICES
UNITED STATES SENATE

ONE HUNDRED SIXTEENTH CONGRESS

FIRST SESSION

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THE MILITARY SERVICES' PREVENTION OF AND RESPONSE TO SEXUAL ASSAULT

WEDNESDAY, MARCH 6, 2019

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

The subcommittee met, pursuant to notice, at 2:32 p.m. in Room SR-222, Russell Senate Office Building, Senator Thom Tillis, (presiding) chairman of the subcommittee.

Subcommittee Members present: Senators Tillis, Rounds, McSally, Scott, Gillibrand, and Duckworth.

OPENING STATEMENT OF SENATOR THOM TILLIS

Senator TILLIS. The committee will come to order.

I understand Senator Gillibrand will be here briefly. She is in the building. I think that will give me time to make a few brief opening comments.

I want to thank everyone for being here today.

We meet this afternoon to receive testimony on sexual assault prevention and response programs and policies in Military Services.

On panel one, we will hear from five witnesses: Colonel Don Christensen, United States Air Force, retired, and now director of Protect Our Defenders. Welcome. Dr. Ellen Haring, U.S. Army, retired, and now CEO [Chief Executive Officer] of the Service Women's Action Network. Welcome. Lieutenant Commander Erin Leigh Elliott, U.S. Navy. Ms. Angela Bapp, formerly an officer in the U.S. Army, and Colonel Doug James, U.S. Air Force, retired, and now president of Save Our Heroes. Thank you all for coming here.

I will introduce the second panel when we transition into their testimony.

The Personnel Subcommittee exercises rigorous oversight of DOD [Department of Defense] sexual assault prevention and response policies and programs, and over the past 10 years, the committee has spearheaded the enactment of hundreds of legislative changes that have affected every aspect of the Military Sexual Assault Prevention and Response Program. These provisions of law include protecting and empowering victims, reforming the military justice process, holding offenders accountable while protecting their due process rights, and ensuring command accountability for the investigation, prosecution, and disposition of allegations of sexual misconduct and retaliation.

I feel confident when I say sexual assault prevention and response policies and programs in the Armed Forces are the most comprehensive and the most aggressive in the United States and perhaps the world.

I credit Ranking Member Gillibrand with shining a spotlight on these important issues, and I applaud her persistence for focusing on the subcommittee's actions. I have been in the Senate for 4 years, and she has been a consistent standard bearer for the issue, and I compliment the ranking member. I am glad you are here for me to compliment you directly, Ranking Member.

[Laughter.]

Senator TILLIS. But the subcommittee knows that sexual assault, unwanted sexual contact, sexual harassment, and retaliation are issues that affect not only the Armed Forces but our society as a whole. We expect our Armed Forces, however, to be better. We expect the military to lead the way in fixing these issues. We expect our military to set the example for the rest of society to follow.

The purpose of this hearing today is to help our military do just that. Much has been accomplished, but there remains much more to be done.

I will turn to Ranking Member Gillibrand at this time, followed by recognition of Senator McSally. Senator Gillibrand?

STATEMENT OF SENATOR KIRSTEN GILLIBRAND

Senator GILLIBRAND. Thank you, Chairman Tillis, for holding this hearing. I am very grateful, and I am really grateful to our witnesses today. Thank you so much for being here.

I am pleased that our subcommittee is committed to solving our military sexual assault problem, but I have to say that I am incredibly disappointed that after years of fighting this problem, after so many incremental changes in the law, that we are still in the exact same place. Sexual assault in the military is still pervasive. It is still hurting our military readiness. It is still causing thousands of our servicemembers to suffer. The trends and numbers are going in the wrong direction. So we must fix this. We need a fundamentally different approach to how these crimes are being prosecuted because the Services have not done nearly enough to solve the problem themselves.

My office routinely receives information from a variety of sources about the military's failure to appropriately address sexual assaults and other sexual misconduct.

I am counting on our witnesses on the first panel to describe the problems encountered day to day by survivors of sexual misconduct, and I want to note my appreciation of the survivors willing to testify. They have served our country and now are leading additional service by having the resolve to share their painful experiences with us and with the world.

Witnesses on the second panel should listen carefully to the testimony of the witnesses on the first panel, as I expect the second panel witnesses to address the issues described by the first panel.

It should be clear to any unbiased observer that the military is not attacking the problem with any of the focus or intensity that it would attack just about any other problem. The Department of Defense consistently tells us that addressing sexual assault in the

military is a chain of command responsibility and that the chain of command will fix it. But the chain of command has failed in this regard.

The most recent survey of prevalence of unwanted sexual conduct found that sexual assaults have increased at the Military Service academies, and other surveys by the Department itself show increased reporting while cases are decreasing and a very alarming rate of retaliation by those in command against victims of sexual assault. The Pentagon's next annual report on sexual assault in the military will include the results of their most recent survey of military personnel across the Department. It will not be surprising—but I will be disappointed, though—to see a similar increase in unwanted sexual conduct throughout the Services.

One of the main causes of this problem is that despite many good leaders, far too many commanders do not make it a priority to address the problem of sexual assault in the military in a meaningful way. I recently reviewed a military investigation about how the chain of command addressed sexual assault at a major command. The commanding general did not even attend case management group meetings where sexual assault cases were discussed in detail, as required by the DOD in-service regulations. A brigade sexual assault coordinator position was left vacant for 9 months. Professional training of officials involved in sexual assault was conducted on an ad hoc basis and not documented in training records. Sexual assault professionals used obsolete forms to inform sexual assault survivors of their rights and options. Survivors were not informed of one of their most important rights, the right to representation by a special victims counsel. This command had undergone an earlier inspection that identified these and many other shortfalls in the command sexual assault prevention and response program. Yet, as far as we know, no one was held accountable for these continuing failures.

If this is how the chain of command operates to address sexual assaults in the military, it is clear why we are not succeeding. All too often we hear from survivors that they are the ones who are punished when they report sexual assaults. We hear from survivors that they are retaliated against, sometimes by the chain of command, sometimes by their peers. In either case, the chain of command must put a stop to it.

In too many cases, survivors are punished for collateral misconduct, such as underage drinking or fraternization, while the assailant who committed sexual assault goes free. This happens even when the only reason that commanders know about this collateral misconduct is because the survivor reported that he or she was assaulted. It is no wonder that survivors are reluctant to report.

I continue to believe that a fundamental reform is warranted in our military justice system. That is how we finally protect our servicemembers from these crimes, and it is how we will strengthen our military.

Mr. Chairman, I am committed to working with you on this issue, and I hope that we can use what we learn today to help solve this problem once and for all.

Senator TILLIS. Thank you, Senator Gillibrand.
Senator McSally?

STATEMENT OF SENATOR MARTHA MCSALLY

Senator MCSALLY. Well, thank you, Chairman Tillis, and I also want to thank Senator Gillibrand for her advocacy for women in uniform and her passion for stopping the crime of sexual assault in the military.

This is also a passion of mine for many reasons, and I think I bring a unique and important perspective. My drive to fight against sexual assault in the ranks is not from the outside looking in, and it is deeply personal.

First, for 2 years, I was honored to be a fighter squadron commander in the United States Air Force. Command is the most impactful duty one can have directly on the lives of servicemen and women and their families. I was greatly privileged to prepare and then lead my amazing airmen in combat, which is the apex responsibility of any warrior leader.

Military commanders are placed in a position of authority and responsibility like none in civilian life. They are not like CEOs or managers or any other supervisor. Commanders have a moral responsibility to ensure readiness of their units which, yes, includes warfighting skills, but demands that the commander cultivates and protects and enriches a culture of teamwork, respect, and honor. Conduct, any conduct, that degrades this readiness does not just harm individuals in the ranks. It harms the mission and places at risk the security of our country.

Commanders also have a covenant with the men and women under their command. The 1 percent who volunteer to serve in uniform, they are asked to follow lawful orders that could risk their lives for the mission. In return, it is the commander's responsibility to surround their people with a climate of integrity, discipline, and excellence.

During my 26 years in uniform, I witnessed so many weaknesses in the processes involving sexual assault prevention, investigation, and adjudication. It motivated me to make recommendations to Air Force leaders. It shaped my approach to command as a commander, and it informed my advocacy for change while I remained in the military and since I have been in Congress.

We have come a long way to stop military sexual assault, but we still have a long way to go. When I first entered the Air Force Academy in the ninth class with women, sexual harassment and assault were prevalent. Victims mostly suffered in silence. It took too many years and too many lives ruined. But thanks to the bravery of some survivors like those on our first panel today, significant change has happened. I am so inspired by the many survivors who found the strength to share their stories, report their assaults, and demand accountability, justice, and change. It is because of you that a light has been shined on this silent epidemic, and so many improvements have been made, including more than 100 legislative actions over the last decade on all aspects of military sexual assault.

So like you, I am also a military sexual assault survivor. But unlike so many brave survivors, I did not report being sexually assaulted. Like so many women and men, I did not trust the system at the time. I blamed myself. I was ashamed and confused, and I thought I was strong but felt powerless.

The perpetrators abused their position of power in profound ways, and in one case I was preyed upon and then raped by a superior officer. I stayed silent for many years, but later in my career, as the military grappled with scandals and their wholly inadequate responses, I felt the need to let some people know I too was a survivor. I was horrified at how my attempt to share generally my experiences were handled. I almost separated from the Air Force at 18 years over my despair. Like many victims, I felt the system was raping me all over again.

But I did not quit. I decided to stay and continue to serve and fight and lead to be a voice from within the ranks for women and then in the House and now in the Senate.

So this is personal for me too, but it is personal from two perspectives: as a commander who led my airmen into combat and as a survivor of rape and betrayal. I share the disgust of the failures of the military system and many commanders who failed in their responsibilities.

But it is for this very reason that we must allow, we must demand that commanders stay at the center of the solution and live up to the moral and legal responsibilities that come with being a commander. We must fix those distortions in the culture of our military that permit sexual harm towards women and, yes, some men as well. We must educate, select, and then further educate commanders who want to do the right thing but who are naive to the realities of sexual assault. We must ensure that all commanders are trained and empowered to take legal action, prosecute fairly, and rid perpetrators from our ranks. And if the commander is the problem or fails in his or her duties, they must be removed and held harshly accountable.

I do not take this position lightly. It has been framed often that some people are advocating for the victims while others are advocating for the command chain or the military establishment. This is clearly a false choice. There are many commanders who would welcome taking this responsibility off their plate. Those are the very commanders we do not want leading our troops. We cannot command change from the outside alone. It must be deployed from within. It must be built and constantly maintained and expertly managed by commanders who are themselves educated, conditioned, and given the tools to ensure what you survived and what I survived happens to no warrior under their command. To that end, I very strongly believe that the commander must not be removed from the decision-making responsibility of preventing, detecting, and prosecuting military sexual assault.

We are survivors together and I am honored to be here and use my voice and unique experience to work on this mission and stop military sexual assault for good.

Thank you, Mr. Chairman.

Senator TILLIS. Thank you, Senator McSally.

Any other members wishing to make comments before we hear from the witnesses?

[No response.]

Senator TILLIS. If not, Colonel Christensen, welcome.

**STATEMENT OF COLONEL DON M. CHRISTENSEN, USAF,
RETIRED, PRESIDENT, PROTECT OUR DEFENDERS**

Colonel CHRISTENSEN. Chairman Tillis, Ranking Member Gillibrand, and members of the subcommittee, thank you for the opportunity to appear before you and for your interest in the military justice system.

And, Senator McSally, thank you for those amazing words. We do not see eye to eye on the solution, but sharing that was very, very powerful.

As a brief introduction, I retired after 23 years of service as an Air Force JAG [Judge Advocate General], and during this time, I focused my career on practicing military justice. I have served twice as a defense counsel, multiple times as a prosecutor, including as the chief prosecutor of Europe and Southwest Asia and as the chief prosecutor for the Air Force, and I also served as a military judge. For the last 4 years, I have served as president of Protect Our Defenders, a human rights organization dedicated to ending sexual assault in the military.

The scourge of sexual assault in the military has rightfully brought great scrutiny on the military justice system and the role of the chain of command. The prevalence estimates over the last decade have vacillated from a high of 26,000 to a low of 15,000.

But one thing must be recognized. When it comes to the prevalence rate of sexual assault against women, it is unchanged for the last decade. In 2010, 4.4 percent of women were sexually assaulted in a year. In 2016, the most recent numbers we have, it was 4.3 percent. In other words, for women servicemembers, there has been no real improvement despite decades of promises from leadership and claims that commanders are the solution.

To compound this failure to drive down the prevalence rate, the commander-controlled system has failed to deliver accountability. Despite fiscal year 2017 having seen unrestricted reports of sexual assaults skyrocket to an all-time high of 5,111, actual prosecution rates plummeted to 7.9 percent. Moreover, the military failed to achieve a conviction for a sex offense in 60 percent of the cases they took to trial, and that is a very few number of cases, about 400. As a result, only 166 offenders, or about 3 percent of the 5,111 reports, resulted in a conviction for a nonconsensual sex offense. Put another way, 99 percent of the estimated 15,000 victims never saw justice in their case.

To make matters worse, 60 percent of survivors who report openly suffer retaliation that is often career ending. In 2016, the DOD IG [Inspector General] found that one-third of women who report are out of the military within 1 year of reporting, typically within 7 months. And their discharge characterization is much lower than the general military population, denying them benefits such as the GI Bill. One way to look at this is that a woman is 12 times more likely to suffer retaliation than she is to see her perpetrator held to account.

No one can look at these numbers and call this success. We have heard for decades from military leadership how they are going to fix things and how they have zero tolerance. But these statements have proven empty. At the same time, military leadership has pushed back on any effort to modernize the military justice system

by giving military prosecutors the authority to make prosecution decisions rather than the very small number of commanders who now have that authority.

It is time to accept that making prosecution decisions for serious crimes such as rape, murder, sexual assault, child sex abuse, child pornography possession, among many other serious crimes, are best done by attorneys with significant experience in the courtroom trying such cases.

I often hear opponents of reform say we trust commanders to lead our sons and daughters in combat, so why should we not trust them to make prosecution authority. The answer is simple. We trust them to lead in combat because they are members of the profession of arms. By training and experience, they are qualified to make those decisions. However, there is nothing inherent to being a commander that qualifies someone to make prosecution decisions, as the current practice is in the military. We must accept that the profession of law is best suited to make legal decisions just like the medical profession is best suited to make medical decisions. We would never accept a commander telling a doctor how and when to make lifesaving medical decisions. Similarly, we should stop assuming commanders are qualified to make legal decisions.

Removing prosecution decisions for serious crimes from the around 400 commanders who currently have general court martial convening authority would in no way diminish the authority of the remaining 14,000 commanders in the DOD. These commanders would still have all the same authority that they currently have authority to order suspects into pretrial restraint, to issue no contact orders, to ensure both the victim and the accused have access to services and legal representation, to approve expedited transfers, to administratively discharge people. All those authorities remain. It is a false narrative that commanders would no longer have a vested interest in taking care of victims. Instead, removing prosecution authority would empower commanders to be more vocal on the issue by reducing the risk that their comments would be viewed as unlawful command influence.

The ABA [American Bar Association] has long recognized that prosecution decisions should be made by licensed attorneys subject to ethical standards. That is not a radical concept, and it is past time for this standard to be in the military. We should hold as our ideal, whether in the military or in civilian society, that we prosecute those who commit crimes when the evidence is legally sufficient. We should never prosecute someone when the evidence fails to meet that legal standard, and we should absolutely never prosecute to send a message when the evidence to prove guilt is lacking. The persons best suited to make that call are independent prosecutors.

I thank you and look forward to your questions.

[The prepared statement of Colonel Don M. Christensen follows:]

PREPARED STATEMENT BY COLONEL DON M. CHRISTENSEN

Chairman Tillis, Ranking Member Gillibrand and members of the subcommittee, thank you for the opportunity to appear before you and for your interest in the military justice system. As a brief introduction, I retired after 23 years service as an Air Force JAG and spent my career focused on practicing in the military justice arena. I served twice as a defense counsel, multiple times as a prosecutor including

as the chief prosecutor for Europe and Southwest Asia, and as the chief prosecutor for the Air Force. I have also served as a trial judge. For the last four years I have served as the president of Protect Our Defenders, a human rights organization that fights for survivors of military sexual trauma. We provide attorneys free of charge, and I myself represent clients going through the often-hostile process. During this time I have talked with hundreds of survivors of military sexual trauma.

The scourge of sexual assault in the military has rightfully brought great scrutiny on the military justice system and the role of the chain of command. The prevalence estimates over the last decade have vacillated from a high of 26,000 in 2012 to a low of 15,000 in 2016. However, the rate of sexual assault against servicewomen is virtually unchanged from 2010, barely dropping from 4.4 percent to 4.3 percent per year. In other words, for women servicemembers there has been no real improvement despite decades of promises from leadership and claims that “commanders are the solution.”

To compound this failure to drive down the prevalence rate, the commander-controlled justice system has failed to deliver accountability. Despite fiscal year 2017 having seen unrestricted reports skyrocket to an all-time high of 5,111, actual prosecution rates plummeted to 7.9 percent of all allegations. Moreover, the military failed to achieve a conviction for a sex offense in 60 percent of the very few cases that went to courts-martial. As a result, only 166 offenders or about 3 percent of the 5,111 reports resulted in convictions of a nonconsensual sex offense last year. Put another way, 99 percent of the estimated 15,000 victims never saw justice in their case.

To make matters worse, 60 percent of survivors who report openly suffer retaliation that is often career ending. In 2016, the DOD IG found that one-third of women who report are out of the military within a year of reporting and are much more likely to receive a lower discharge characterization depriving them of benefits such as the GI Bill. A survivor is about 12 times more likely to suffer retaliation than they are to see their perpetrator convicted.

No one can look at these numbers and call this success. We have heard for decades from military leadership how they are going to fix this and how they have zero tolerance. But these statements have proven empty. At the same time, the military leadership has pushed back on any effort to modernize the military justice system by giving military prosecutors the authority to make prosecution decisions rather than the small number of commanders who have that authority now.

It is time to accept that making prosecution decisions for serious crimes such as rape, murder, sexual assault child abuse, and child pornography possession, among others, is complex and best done by attorneys with significant experience in the courtroom trying such cases.

I often hear opponents of reform say we trust commanders to lead our sons and daughters in combat, so why shouldn't we trust them with prosecution authority. The answer is simple. We trust them to lead in combat because they are members of the profession of arms. By training and experience they are qualified to make those decisions. However, there is nothing inherent to being a commander that qualifies someone to make prosecution decisions, as is the current practice in the military. We must accept that the profession of law is best suited to make legal decisions just like the medical profession is best suited to make medical decisions. We would never accept a commander telling a doctor how and when to make life saving medical procedures. Similarly, we should stop assuming commanders are qualified to make legal decisions.

Removing prosecution decisions for serious crimes from the around 400 commanders who have general court-martial convening authority would in no way diminish the authority of the remaining 14,000 commanders. These commanders would still have the authority to order suspects into pretrial restraint, to issue no contact orders, to ensure both the victim and the accused have access to services and legal representation, to approve expedited transfers, and host of additional authorities. It is a false narrative that commanders would no longer have a vested interest in taking care of victims. Instead, removing prosecution authority would empower commanders to be more vocal on the issue by reducing the risk their comments would create unlawful command influence.

The ABA has long recognized that prosecution decisions should be made by licensed attorneys subject to ethical standards. This is not a radical concept and it is past time for this to be the standard in the military. We should hold as our ideal, whether in the military or in civilian society, that we prosecute those who commit crimes when the evidence is legally sufficient. We should never prosecute someone when the evidence fails to meet the legal standard and we should absolutely never prosecute to send a message when the evidence to prove guilt is lacking. I am convinced the persons best suited to make that call are independent prosecutors.

I look forward to any questions you may have.

Senator TILLIS. Thank you, Colonel.

Dr. Haring?

I should mention that we do have a time limit. You did very well staying within it. We want to make sure we can get to the questions. If you will be mindful of the time on the monitor. Thank you.

**STATEMENT OF COLONEL ELLEN HARING, USA, RETIRED,
CHIEF EXECUTIVE OFFICER, SERVICE WOMEN'S ACTION
NETWORK**

Dr. HARING. Thank you. Mine will be even shorter. So we will save a little time there.

I am Ellen Haring, the CEO of the Service Women's Action Network (SWAN). I retired from the Army in 2014 after 30 years of Military Service. I am a West Point graduate and I have a master's degree in public policy and a Ph.D. in conflict analysis and resolution from George Mason University. I have taught at the Army's Command and General Staff College, the Army War College, and at Georgetown University. And my academic research and work focus on women and gender in the military.

I commanded Army units like yourself at multiple levels. During my very first Army assignment overseas, one of my soldiers was murdered and I closely watched as the criminal investigation and subsequent conviction unfolded. Years later, in 1998, when I was a major stationed in Hawaii, I was assigned as the investigating officer in three rape cases. The perpetrator, an NCO [non-commissioned officer], was eventually reassigned to another unit. I juxtapose these two experiences to illustrate the very different ways the military has approached how felony crimes are handled. Fortunately and to the credit of Senator Gillibrand and others, the Army is no longer allowed to assign an untrained officer to investigate cases of rape. Now criminal investigators are responsible for such investigation, but commanders remain in the decision-making process.

The Service Women's Action Network is a non-partisan, non-profit organization dedicated to supporting, connecting, and advocating for servicewomen past, present, and future. SWAN was established in 2007 by a group of women veterans who were having trouble getting their VA [Department of Veterans Affairs] claims approved. The VA did not recognize sexual assault as a potential source of post-traumatic stress the way it recognized combat stress. SWAN decided that they needed to spotlight the problem of military sexual assault in order to get the post-traumatic stress that results from it recognized by the VA. SWAN spent the next decade making military sexual assault visible in and outside of the military. We have worked with law and policymakers, Senator Gillibrand in particular, to change the UCMJ [Uniform Code of Military Justice] to better support victims of military sexual assault, to hold perpetrators accountable, and to have the post-traumatic stress that results from a sexual assault recognized by the VA.

SWAN continues to work with victims, connecting them to resources and advocating on their behalf. SWAN supports the Military Justice Improvement Act (MJIA) because it removes untrained commanders from deciding if, when, and how to move forward in

felony cases. Additionally, it eliminates commanders' ability to overturn convictions or to reduce punishments. The UCMJ is a living document and it has repeatedly changed over the years, often in response to or in acknowledgement of its shortcomings. This is one of its shortcomings. And SWAN fully backs a change in the UCMJ at this time.

I look forward to your questions.

[The prepared statement of Dr. Haring follows:]

PREPARED STATEMENT BY DR. ELLEN HARING

I'm Ellen Haring, the CEO of the Service Women's Action Network. I retired from the Army in 2014 after 30 years of service. I'm a West Point Graduate and I have a master's degree in public policy and a Ph.D. in conflict analysis and resolution from George Mason University. I have taught at the Army's Command and General Staff College, the Army War College, and Georgetown University. My academic research and work is on women and gender in the military.

I commanded Army units at company and brigade levels. During my very first Army assignment, one of my soldiers was murdered and I closely watched as the criminal investigation and subsequent conviction unfolded. Years later, in 1997, when I was a major stationed in Hawaii, I was assigned as the investigating officer in three rape cases. The perpetrator, an NCO, was eventually reassigned to another unit. I juxtapose these two experiences to illustrate the very different ways the military approached how felony crimes were handled. Fortunately, and to the credit of Senator Gillibrand and others, the Army is no longer allowed to assign an untrained officer to investigate cases of rape. Now criminal investigators are responsible for such investigations, but commanders remain in the decision-making process.

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SWAN continues to work with victims, connecting them to resources and advocating on their behalf. SWAN supports the MJIA because it removes untrained commanders from deciding if, when, and how to move forward in felony cases. Additionally, it eliminates their ability to overturn convictions or to reduce punishments. The UCMJ is a living document and it has repeatedly changed over the years, often in response to or in acknowledgement of its shortcomings. This is one of its shortcomings.

Senator TILLIS. Thank you.

Commander Elliott?

**STATEMENT OF LIEUTENANT COMMANDER ERIN LEIGH
ELLIOTT, USN**

Lieutenant Commander ELLIOTT. Good afternoon, Senators, and thank you for inviting me here today. I appreciate the opportunity to speak about my experiences and share my thoughts.

I have been in the Navy for a little more than 14 years, have served on six different ships, and lived around the country and the world.

In August of 2014, someone who I considered a close friend raped me. It was an extremely traumatic experience, one that nearly destroyed me.

Initially I made a restricted report. I did not want my commanding officer to know, nor did I want law enforcement involved. I spent months in shock, and the only way I made it through this was with the support of my good friends in the SAPR [Sexual Assault Prevention and Response] team.

As I progressed in my healing, starting to work through the PTSD [post-traumatic stress disorder] anxiety and depression I was diagnosed with due the assault, I moved to a new command with a new commanding officer. I began considering changing my report at this point from restricted to unrestricted. I was very lucky at my new command. I had a wonderful commanding officer and a great work environment. When I decided to change my report to unrestricted, I had amazing support from this commanding officer, someone I consider the best leader I have ever known. He went above and beyond what was required of him in the situation.

Unfortunately, I would learn through my experience and through other victims' experiences that this support team is not the norm. While I did not expect everyone to be the great leader he was, I did expect to be treated with the same dignity and respect he showed me, and I was not.

When I moved to my new duty station overseas to be a commanding officer of a warship myself, it was made immediately apparent to me that the fact I was a sexual assault survivor was a burden and inconvenience to my bosses, and the upcoming court martial for the person who raped me was just a hindrance to them. Due to the appeals regarding a decision the presiding judge in the case had made, when I reported to the new command, it was unknown when the court martial would happen. One of the first things my new boss said to me regarding the court martial was, "Well, I hope it is not during an important part of the ship's life," to which all I could think was, "Well, next time I get raped, I will try to plan it better."

This was the first of multiple comments that my bosses said to me that not only re-victimized me and were extremely insensitive, but made me seriously question continuing to move forward with the case.

One of the most degrading and humiliating experiences was when my boss was forwarded a copy of the NCIS [Naval Criminal Investigative Service] report that discussed intimate details of the assault. I was called into his office where he told me he had received and read the report. After he handed me the report, I read it. I very seriously considered dropping the case as I did not want my boss reading about my vagina.

When I left my ship for a few weeks to be at the court martial, my boss told me how we had to temporarily relieve someone in command for several months because they had cancer and needed to get treatment. He told me that he would much rather go through what I went through than have cancer. I can tell you that after being diagnosed and treated for breast cancer last year, I would much rather go through that than the assault.

Upon returning from the court martial, nothing within the command environment got better. I was humiliated, ostracized, outcast, and ridiculed from people of every rank. There were multiple events for commanding officers that I was not invited to attend. My

ship was given unfair scrutiny, magnitudes greater than what any other ship saw. What nearly broke me and what was almost as bad as the assault itself, my personal information regarding the assault was divulged to my peers, including counseling information I had only discussed with my bosses who then used it to humiliate and demoralize me. If I could have gotten out of the Navy at that point, I would have, but I was in a contract.

As commanding officers in the Navy, we are given a 3-day legal course in preparation for our tours. I, by no means a legal expert, was equipped to deal with the minor infractions that affect good order and discipline. It is my belief, not just as a military sexual assault survivor but as a former commanding officer, that some infractions are so grievous, so heinous that they must be elevated to a higher level than just the command level. Sending sexual assault cases to trained military judges shows how seriously this crime is taken, that we will not allow perpetrators to get away with this crime, and reinforces to countless victims that they will be taken seriously.

Thank you for your time, Senators, for allowing me to share a small piece of my story with you.

Senator TILLIS. Thank you, Commander Elliott.

Ms. Bapp?

STATEMENT OF MS. ANGELA BAPP

Ms. BAPP. Chairman Tillis, Ranking Member Gillibrand, and Members of the subcommittee, thank you for this opportunity to speak to you as a survivor of military sexual assault. I am here to share my story and to shine light on the systemic failures that made justice impossible in my case.

I graduated in the top 3 percent of my class at West Point and soon after arrived at Fort Rucker, Alabama (AL) to begin my career as an aviation officer. Throughout flight training, I grew to become close friends with a mentor and flight school classmate of mine who was going through a divorce. He arrived at flight school married to an officer, who was given a leadership role in our battalion. After some time, his wife became my company commander, but the relationship between he and I had already progressed. During their divorce, both he and my company commander sought comforts outside of their marriage.

Then a different flight school classmate of mine sexually assaulted me. When it occurred, my classmate, married to my commander, was the only who I trusted enough to tell what had just happened to me, to discuss filing a report, and to care for my wellbeing.

The sexual assault occurred on a Sunday, and I reported it the following Tuesday. On Friday, I was informed that Fort Rucker's Criminal Investigative Division was investigating me for adultery with my commander's husband not even 3 days after I reported my sexual assault. It became immediately clear that the Army and its Criminal Investigative Division showed more interest in the affair rather than the sexual assault.

The following conflicts of interest occurred thereafter.

My commander's position of authority gave her immediate access to my higher levels of command, my prosecutor, the investigators, and my cadre members.

Prior to my report, my commander contacted the prosecutor who would eventually be assigned to my case about personal business, seeking advice for a personal investigator to investigate her husband's suspected adultery. When her husband came forth as a witness in my case, the prosecutor linked my case to my commander's personal situation. I believe that hurt my case's ability to move forward to trial.

My commander also had a preexisting relationship with the installation commanding general, the two-star convening authority responsible for deciding if my sexual assault would go forward to trial. Previously, the general was her brigade commander while she was a lieutenant at Fort Campbell. She requested his audience about the matters of her divorce prior to my sexual assault investigation concluding. This too I believe hurt my case's ability to move forward to trial.

Unfortunately, I did not have a commander who was able to serve in the best interests of a sexual assault victim due to these and several other personal conflicts. The incestuous nature of the relationships found in my chain of command made it impossible for me to have a truly objective case.

There were many injustices throughout the investigation and thereafter. Most haunting is how the evidence that I volunteered from my body to process my rape kit was later used to substantiate adultery claims instead of to provide justice for the sexual assault. Despite the overwhelming quantitative evidence that my assailant violated my body, the results only seemed to confirm my mischaracterization as an adulterer. My brigade commander initiated a commander's investigation for inappropriate relationships and adultery with both my witness and assailant prior to the conclusion of my sexual assault case.

I was given a General Officer Memorandum of Record from the previously mentioned commanding general, which was filed in my permanent record and effectively ended my career.

The following are excerpts from the Army's internal investigation into Fort Rucker's sexual assault failures which resulted in response to me reporting these injustices to Congress.

"That victim advocates and the Criminal Investigative Division at Fort Rucker provided outdated forms to sexual assault victims that did not fully inform them of their rights, particularly if the victims are suspected of misconduct, which includes representation by a special victim's counsel."

"The brigade did not properly maintain hard-copy records of these forms, as required by law."

The commanding general's extensive travel and improper delegation of SHARP [Sexual Harassment Assault Response Prevention] Program duties to levels of command lower than that required of the minimum TRADOC [Training & Doctrine Command] standard led to a deteriorated monthly Sexual Assault Response Board.

During that same time, the brigade did not have a sexual assault response coordinator for a 9-month period.

“Command-subordinate relationships” and “Show obvious conflict of interest. This led to lack of lower level command support for victim and confirms her complaint of feeling isolated.”

All I ever wanted to do was serve my country, lead American soldiers, and fly the Apache helicopter. The loss of my military career and my inability to trust larger organizations such as our military has deeply impacted who I am today. I struggle with accomplishing even minor daily tasks, and the quality of my mental and emotional health has greatly deteriorated.

I hope this testimony highlights that preexisting opinions about an individual can greatly influence the execution of justice in our military. This can negatively impact either the victim or the alleged offender. If my case were handled outside of my chain of command by a truly objective and trained legal professional, I do believe the outcome of my case and life would be different.

Thank you again for your time.

[The prepared statement of Ms. Bapp follows:]

PREPARED STATEMENT BY MS. ANGELA BAPP

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Then, a different flight school classmate of mine sexually assaulted me. When it occurred, my classmate—married to my commander—was the only person who I trusted enough to tell what just happened to me, to discuss filing a report, and to care for my well-being.

The sexual assault occurred on a Sunday, and I reported it on the following Tuesday. On Friday, I was informed that Fort Rucker’s Criminal Investigative Division was investigating me for adultery with my commander’s husband—not even 3 days after I reported my sexual assault. It became immediately clear that the Army and its Criminal Investigative Division showed more interest in the affair rather than the sexual assault.

The following conflicts of interest occurred thereafter:

My commander’s position of authority gave her immediate access to the higher levels of my command, my prosecutor, the investigators, and my cadre members.

- Prior to my report, my commander contacted the prosecutor who would eventually be assigned to my case about her personal business—seeking advice for a private investigator to investigate her husband’s suspected adultery. When her husband came forth as a witness in my case, the prosecutor linked my case to my commander’s personal situation, which I believe hurt my case’s ability to move forward to trial.
- My commander also had a pre-existing relationship with the installation commanding general, the two-star convening authority responsible for deciding if my sexual assault case would go to trial. Previously, the general was her brigade commander while she was a lieutenant at Fort Campbell. She requested his audience about the matters of her divorce prior to my sexual assault investigation concluding. This too, I believe, hurt my case’s ability to move forward to trial.

Unfortunately, I did not have a unit commander who was able to serve in the best interests of a sexual assault victim due to these and several other personal conflicts. The incestuous nature of the relationships found in my chain of command made it impossible for me to have a truly objective case.

There were many injustices throughout the investigation and thereafter. The most haunting is how the evidence that I volunteered from my body to process my rape kit was later used to substantiate adultery claims instead of to provide justice for the sexual assault. Despite the overwhelming, quantitative evidence of my assailant violating my body, the results only seemed to confirm my mischaracterization as an adulterer. My brigade commander initiated a commander's investigation for inappropriate relationships and adultery with both my witness and assailant prior to the conclusion of my sexual assault case.

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- That Victim Advocates and the Criminal Investigative Division at Fort Rucker provided outdated forms to sexual assault victims that did not fully inform them of their rights, particularly if the victims are suspected of misconduct, which includes representation by a special victim's counsel.
- The brigade did not properly maintain hard-copy records of these forms, as required by law.
- The commanding general's extensive travel and improper delegation of SHARP Program duties to levels of command lower than the required TRADOC standard led to a deteriorated monthly Sexual Assault Response Board.
- During the same time, the brigade did not have a Sexual Assault Response Coordinator for a 9-month period.
- Command-subordinate relationships *show obvious conflict of interest*. This led to lack of lower level command support for victim and confirms her complaint of feeling isolated.

All I ever wanted is to serve my country, lead American soldiers, and fly the Apache helicopter. The loss of my military career and my inability to trust larger organizations such as our military has deeply impacted who I am today. I struggle with accomplishing even minor daily tasks, and the quality of my mental and emotional health has greatly deteriorated.

I hope this testimony highlights that pre-existing opinions about an individual can greatly influence the execution of justice in our military. This can negatively impact either the victim or the alleged offender. If my case were handled outside of my chain of command, by a truly objective and trained legal professional, I do believe the outcome of my case and life would be different.

Thank you again for your time.

Senator TILLIS. Thank you, Ms. Bapp.
Colonel James?

**STATEMENT OF COLONEL DOUG JAMES, USAF, RETIRED,
PRESIDENT, SAVE OUR HEROES**

Mr. JAMES. Senators, thank you. I really appreciate the opportunity to be here, and these comments by all here are very riveting and I appreciate it.

My name is Doug James. I am an Air Force retired colonel, fighter pilot by trade. I flew the A-10 and the F-15. Now I am honored to be here as president of a non-profit supporting what we believe are innocent servicemembers.

Since our inception in 2015, Save Our Heroes has received approximately 300 cases. A large number involve an allegation of sexual misconduct. Most of those have been vetted and unfortunately reveal a staggering level of false allegations. The false allegation cases all have similar motives: contentious divorce proceedings, breakup of a relationship, or something as simple as a PCS, or a permanent change of station move.

I am here to offer testimony as president of Save Our Heroes, specifically our non-profit's view of the military judicial system. Let

me state unequivocally that our organization, Save Our Heroes, deplores any form of sexual harassment and assault, and when facts and evidence are present, those found to be responsible should and must be held accountable in accordance with the rule of law.

With that said, our organization strongly believes the Uniform Code of Military Justice has become a threat to national security. Our experience reveals there exists an epidemic of military law enforcement misconduct, procedural misconduct, and unlawful command influence. The common thread of career killing, family destruction, and the lack of holding false accusers accountable has turned the military judicial system into a silent killer and, we believe, a threat to national security. I do not say that statement lightly, and I understand the sensationalism.

The way the military currently addresses allegations of sexual misconduct, everything from the initial investigation through the procedural and administrative stages, is not working. Unfortunately, there is not one silver bullet that can fix the problem, but interestingly there is some agreement amongst this panel on how to start. All of us sitting here understand the system is not working and we all seek justice.

We share the understanding the military system is not built nor designed for justice. It is designed to maintain good order and discipline. Justice is different. Justice expects those falsely accused to receive a vigorous investigation in which the truth comes to light where the innocent are not forced into a court martial out of fear to protect a career. Justice also expects the same vigorous investigation when an assault has occurred.

The Uniform Code of Military Justice is really just a code. Leave justice out of it. It is a system built on a commander's discretion. If a commander believes a case should move forward regardless of the innocence of the accused, it happens. If a commander believes a case should not move forward because it will not serve him or her in the pursuit of good order and discipline, well, that arbitrary decision is allowed too. The military system is designed to handle military issues. Non-military issues such as sexual assault are best left up to the civilian authorities.

That is why Save Our Heroes believes congressional pressure has been ineffective. Congressional pressure, whether direct or indirect, has pushed innocent servicemembers to court martials with no legal basis and has not served the needs of real victims. I am sure it was not your intent, but we have found congressional pressure has exacerbated the weakness of the system. Commanders are not interested in the truth but more interested in appeasing Congress. We see commanders doing everything possible to convict someone for something they did not do just to protect their career.

At Save Our Heroes, in reference to the UCMJ, we say guilty until proven guilty. Some investigators use underhanded tactics with the goal of disregarding the truth, and, at a minimum, convict the accused for some sort of derivative collateral charge. Why? A conviction for a collateral charge allows the Government to statistically show a sexual assault conviction.

Most importantly, we see the Services shifting to non-judicial punishment (NJP) because they know a baseless allegation would not be validated in a court martial. The military's illogical solution

to use non-judicial punishment is almost impossible to defend. Most shockingly, we have seen commanders willing to falsify facts to justify their decisions with NJP. Again, the Services can show Congress they are handling the problem in an attempt to maintain their convening authority.

Your statistics and this hearing show congressional pressure is not doing what was intended. This cannot be a band-aid fix. A shock to the system is required to change a culture of legal corruption which has permeated the military chain of command.

I know there is some discussion about removing the convening authority, but I caution you. In 5 years, Congress may feel the military has a problem with some other crime, maybe spousal abuse as an example. Are we going to make similar changes then? The changes must be able to pass the test of time.

In conclusion, I understand the politics associated with this issue. I stand by my strong statement. This is a threat to national security and something needs to be done as soon as possible. When I took an oath, I pledged to defend the Constitution against all enemies foreign and domestic. I believe the UCMJ in its current state is a domestic threat to national security.

Thank you again. It is an honor to be here, and I am prepared to answer your questions.

[The prepared statement of Mr. James follows:]

PREPARED STATEMENT OF MR. DOUG JAMES

Pursuant to the Rules of the Senate, I, Doug James, president and chairman of the Board of Directors of the Texas based non-profit organization, Save Our Heroes (SOH) respectfully requests this opening statement to be considered for the Subcommittee on Personnel meeting scheduled for 6 March 2019.

Good afternoon Senators, it is an honor to be with you today at this very important Senate Armed Service Committee hearing discussing the military judicial system. My name is Doug James. I am a retired Air Force colonel, a fighter pilot by trade—I flew the A-10 and F-15C. I now fly for a major airline, I run my own consulting business, but most importantly I'm honored to be the president of a non-profit dedicated to supporting innocent servicemembers.

Since our inception in 2015, Save Our Heroes has received approximately 300 cases, most of which involve an allegation of sexual misconduct. Most of those have been vetted and unfortunately reveal a staggering level of false allegations. The false allegation cases all have similar motives: contentious divorce proceedings, break-up of a relationship, or something as simple as a desire to obtain a Permanent Change of Station (PCS) objective.

I am here today to offer testimony as president of Save Our Heroes, specifically our non-profit's views of the military justice system. Let me state unequivocally that our organization, Save Our Heroes deplores any form of sexual harassment and assault, and when facts and evidence are present, those found to be responsible should and *must be held to account in accordance with the rule of law.*

With that said, our organization *strongly believes the Uniform Code of Military Justice (UCMJ) has become a threat to national security.* Our experience reveals that there exists an epidemic of military law enforcement misconduct, prosecutorial misconduct, and unlawful command influence. The common thread of career killing, family destruction, and the lack of holding false accusers accountable, has turned the military judicial system into a silent killer and threat to national security. Please know, *I do not say that statement lightly and I understand the danger of sensationalism.*

The way the military currently addresses allegations of sexual misconduct—everything from the initial investigative stage, through the prosecutorial and administrative stages—is not working. Unfortunately, there is not one silver bullet that can fix the problem, but interestingly there is some agreement amongst this panel on how to start. All of us sitting here understand the system is not working and all are seeking justice.

We share the understanding the military system is not built, nor designed for justice. It is designed to maintain good order and discipline. *Justice is different.* Justice expects those falsely accused to receive a vigorous investigation in which the truth comes to light; where the innocent are not forced into a court martial proceeding out of fear and to protect a career. Justice *also* expects the same vigorous investigation when an assault *has* occurred.

The Uniform Code of Military Justice is really just a code. *Leave justice out of it.* It is a system built on a commander's discretion. If the commander believes a case should move forward regardless of the innocence of the accused it happens. If the commander believes a case should not move forward because it will not serve him or her in pursuit of good order and discipline, well, that arbitrary decision is allowed too. The military system is designed to handle military issues. *Non-military issues*, such as sexual assault, are best left up to civilian authorities.

That is why Save Our Heroes believes congressional pressure has been ineffective. Congressional pressure, whether direct or indirect, has pushed innocent servicemembers to court martials with no legal basis and has not served the needs of real victims. I'm sure it isn't your intent, but we have found congressional pressure has exacerbated the weaknesses of the system. Commanders are not interested in the truth, but more interested in appeasing Congress. We see commanders doing everything possible to convict someone for something they didn't do just to protect their career.

At SOH, in reference to the UCMJ we say, "Guilty, until proven guilty." Some investigators use tactics, which I won't disclose, with the goal of disregarding the truth, and at a minimum convict the accused for some sort of derivative collateral charge. Why? A conviction for a collateral charge allows the Government to statistically show a sexual assault conviction.

Most recently, we see the Services shifting to non-judicial punishment (NJP) because they know a baseless allegation would not be validated in a court martial. The military's illogical solution is to use non-judicial punishment, which is almost impossible to defend. Most shockingly, we have seen commanders willing to falsify facts to justify their decisions with NJP. Again, the Services can show Congress they are "handling the problem" in an attempt to maintain convening authority control.

Through FOIA [Freedom of Information Act] requests, we've seen general and flag officers say, "Let's just send it to a court martial and see what happens," or a one star who said, "It was just bad timing," when discussing pushing a case forward when he believed in the innocence of the accused. How about an e-mail to a service secretary, knowing the innocence of the accused, which said, "A case was dropped two weeks before a court martial because a TV show wasn't on?" These should be shocking to any American who believes in our Constitution, let alone the complete waste of American taxpayer funds. *None of this helps a real victim get justice!* Something needs to be done!

Your statistics, and this hearing, show congressional pressure is not doing what was intended. This can't be a band-aid fix. A shock to the system is required to change a culture of legal corruption which has permeated the military chain of command.

I know there is some discussion about removing the convening authority, but I caution you. In five years, Congress may feel the military has a problem with some other crime, 'Spousal Abuse' as an example. Are we going to make similar changes then? The changes must be able to stand the test of time.

Most importantly remember *justice is supposed to be blind!* The UCMJ system was designed to be battlefield efficient, with a speedy result. Sexual assault cases deserve thorough investigations to ensure justice for both the alleged victim and the accused. SOH has been on the Hill for two years offering solutions, and we will continue to do so for everyone involved.

In conclusion, I understand the politics associated with this issue, but I stand by my strong statement. This is a threat to national security, and something needs to be done as soon as possible. When I took the oath, I pledged to defend the Constitution against all enemies foreign and domestic. *The UCMJ in its current state is a domestic threat to national security.* Thank you again. It was an honor to be here, and I am prepared to answer your questions.

Senator TILLIS. Thank you, Colonel James.

If we could have the staff clear those three chairs between Senator Scott and Colonel James so they can actually see him.

I am going to put my time on the end and yield to Senator McSally for the first questions, then Ranking Member Gillibrand.

Senator MCSALLY. Thank you, Chairman Tillis.

Again, I want to say thanks to Lieutenant Commander Elliott, and Ms. Bapp for having the courage to share your stories. I am sorry for what you went through, both with the assaults and then also how you were treated afterwards. So thank you for being an example of courage for all of us as we all have a common goal to try and stop this from happening to anybody else. I am really grateful for you.

Colonel Haring, it is good to see you again. We have worked together for many efforts to try and open all positions for women in the military back at the time where they were closed. So I am grateful for your longstanding commitment and study and leadership on these issues.

Part of what your testimony shares and what I have heard you talk about before and what we have talked about before is the underlying root cause of much of what we are talking about here, which is the culture. How do we address the culture of our military that is, again, responsible for fighting and winning America's wars, that is responsible for the men and women under its care in a very power-based relationship that is very difficult for many people to understand? How do we ensure that that culture is one of respect and honor and dignity, to include everyone, men and women, not being assaulted, not being retaliated against, not being harassed, and everything on the continuum of harm? What are your views on that?

Dr. HARING. Thank you. It looks like you lined up my very first response here perfectly because it is a cultural problem. I think that changing the UCMJ will ultimately—not an immediate, but an ultimate impact—will ideally improve the culture. Culture is at the root of the sexual assault problem in the military. Sexual assault is simply not seen as a serious crime. Until it is viewed as a serious crime and treated as a felony, it will continue to pervade our culture. Removing commanders from the decision-making process sends the signal that there are some crimes that are so severe that commanders have no place in deciding if, when, or how they are prosecuted. I believe that it will fundamentally shift how we view sexual assault and ultimately impact our culture in a way that says this behavior is absolutely unacceptable. That is why I think that it is important to remove commanders—I do not have the same confidence in their skills or abilities as you have.

Senator MCSALLY. Thanks. Again, I appreciate the perspectives of everybody on this panel. I respectfully disagree for some of the reasons that I shared. I do not want to take up my time talking more about my strongly held views on that.

But there are other cultural underpinnings of what we are talking about here that again create an environment. I cannot figure it out. In all my years, I talk about how you have high school kids go off to basic training, and they are okay with having a female valedictorian or class president, but somehow they get inculcated where there is this resentment that could breed harassment and abuse of power and assault.

So that is what I am trying to get at. You are the one with a Ph.D. What are the other issues in the culture that we can be working on together and what we can agree upon so that the military is known and the commanders are equipped to be leading with

honor and integrity and ensuring that there is dignity and respect for everyone under their command?

Dr. HARING. Yes, that is a great question. A lot of Ph.D.s have studied this problem and we have not come up—if we had come up with the answer or a solution to this, everybody would know it by now. It is culturally based. I do not have the answer for you. I just think it is going to take a long time. It is going to take multiple pressure points. I think the UCMJ is simply one pressure point or one change, but there are many more that need to occur.

Senator MCSALLY. I do not want commanders to be off the hook. I need them to be more responsible for solving this issue and every other issue that degrades good order and discipline in our ranks. That is what America's mothers and fathers, sons and daughters, husbands and wives have asked them to do, and they need to step up to that responsibility.

Lieutenant Commander ELLIOTT, thanks again for sharing your horrific experiences. It sounds like you have experienced the best and the worst of command and how they dealt with you. Did you have a special victim's advocate for this process at all? Could you just share, if you did, what that experience was and how they interacted with you?

Lieutenant Commander ELLIOTT. Yes. Excuse me. Are you talking, Senator, about the lawyer or my victim advocate?

Senator MCSALLY. Yes. Sorry. The lawyer.

Lieutenant Commander ELLIOTT. Yes, ma'am. I did have a special victim's counsel, yes, ma'am. She was with me every step of the way. I retained her probably about 3 months after I made the restricted report when I started thinking about going unrestricted. So I had some concerns as a lot of people in the military do. So she was with me, and she was a great service from when I retained her all the way through the court martial and even after that.

Senator MCSALLY. Other than changing commanders, which sounds like it needed to happen, other than not having people like your commander in command, what else would you change in the process and the experience that you went through?

Lieutenant Commander ELLIOTT. When I became in command myself and when I was treated like that, I felt like I had no option. I felt like if I tried to say, "Hey, you are saying this or doing this," or whatever, that I would lose my command. I feel like that we need to have—and maybe at the time I was not in the right mindset for that. But we need to have a better process for reporting retaliation and who we can talk to about it, because if you report and then it is investigated by the same command, it is likely what is going to really happen. I feel we need an outside process for that.

Senator MCSALLY. Well, I agree. Some of the experiences I observed in the military, clearly there was retaliation and ostracizing and isolating the individual, especially when they are in the same unit. I know that was not the case with you. Again, people take a very complex issue and they come down on either he is a rapist or she is a liar, and everybody has to still go to work together. Then there is this isolation by peers, not just by superiors, but by peers that sometimes is the cruelest. Did you experience that?

Lieutenant Commander ELLIOTT. Absolutely. When I went to go be in command overseas, I was. It was someone that was known

as the guy for our boss. He could do no wrong according to our boss, and he was the one that my boss told my personal counseling information to. He came up and yelled at me, told me I was making it up, and I was a horrible officer, all sorts of things like that. He left me in tears. Since he did not like me, other people stopped inviting me to stuff. Then, in fact, he was sent later on to do inspections on my ship, be the lead inspector, and was extremely critical even though my ship had outside inspectors who had done very well.

Senator TILLIS. Senator McSally—

Senator MCSALLY. I know I am over time.

Senator TILLIS. I would be happy to yield to another round if you choose to.

Senator Gillibrand?

Senator GILLIBRAND. Thank you all for testifying. I am exceedingly grateful.

I was very grateful for Senator McSally's personal testimony, and I am deeply affected by that testimony.

I want to talk a little about the questions that she had because I think these are the questions. What the Senator said is that she wants to make sure that commanders stay in charge because she believes they need to be preventing, protecting, and prosecuting these cases. I agree on the preventing and protecting. I just disagree on the prosecuting. When we say you cannot take commanders off the hook, the intention is never to take them off the hook. In fact, the biggest problem is because the military insists on keeping them in charge when they have a poor record of enforcing cases against sexual assault and investigating these cases, we do not actually hold them accountable. There is no leverage to hold them accountable at all.

So, Colonel Christensen, if we take this decision out of the chain of command, are we taking commanders off the hook? What is your view on what the impact actually will be in their ability to continue to maintain good order and discipline and do their jobs as commanders?

Mr. CHRISTENSEN. Well, thank you, Senator Gillibrand. That is a good question.

No, it does not take them off the hook. I think one thing that is lost when people talk about the commander's role, the vast, vast, vast majority of commanders do not have prosecution authority. Senator McSally as a squadron commander did not have prosecution authority. That was at the special court martial level or the general court martial level. Only about 140 general court martial convening authorities in the most recent data we have actually sent a case to trial. We are talking about those 140 people making that decision.

Everybody below that has the same exact authority. So you have a commander who did what the commander did to Lieutenant Commander Elliott. That person is still on the hook for that bad conduct. A commander has an absolute obligation to be taking care of victims and the accused just as they would if that faraway general court martial convening authority has the authority or not. It does not change anything at all.

But one thing does change when we talk about accountability. Right now, if you try to hold a commander accountable for making bad decisions when it comes to sexual assault, it violates the concept of unlawful command influence (UCI). The Court of Appeals for the Armed Forces is very serious about that right now and is overturning case after case where there is absolutely no question about the accused's guilt of rape. They are being overturned because of unlawful command influence because of this idea that somebody was going to be held accountable.

General Franklin in the Wilkerson case is the perfect example. He was held accountable. He was relieved of command, forced to retire, and as a result, we have had other cases overturned for unlawful command influence.

Senator GILLIBRAND. Thank you, Colonel.

Continuing on with Senator McSally's questions, one of the things that she asked that I thought was a very good question is how do you change the culture. When we have asked servicemembers what would make you actually report, overwhelmingly they have answered if you took it out of the chain of command because they are not reporting because they do not have the faith as you did, Ms. Bapp, that your actual commander had your back. I know from the many examples of sexual assault we have heard, the assault often comes from the chain of command. So if there is an inviolate chain of command, if you do not believe your commander is going to have your back because they are the assailant, then you do not necessarily believe his boss or his boss is going to have your back because of that chain.

So from a survivor perspective we have heard over and over again that the reason you take it out of the chain of command is because you want someone who is actually trained to make the decision, a technical decision. Is there enough evidence to you, Colonel James? You were very clear that you are very upset because the scales of justice seemed tipped, that if a commander just has to be aggressive about making sure there is no sexual assault under his command, they are going to prosecute all cases whether there is evidence or not. We do not want one. It is as egregious for a guilty man to go free as an innocent man to be convicted. Equally as egregious. Justice is blind.

So to the question I want to ask about this issue of culture. In your professional opinion, Colonel Christensen, as a former JAG, do you think the MJIA, if we passed it, which would establish an independent chain of command of prosecutors to make the decisions for the most egregious felony crimes across the board as all felonies, as stated by the other panel members—do you think that would allow more perpetrators to be brought to trial and would we be able to protect more innocent defendants if we had a more clinical and professional way of handling these cases with no bias? Do you think it would then affect the culture because we would actually be convicting people who are guilty and not convicting people who are not guilty?

Mr. CHRISTENSEN. I absolutely do. Right now, we have a system where we have people who have no faith in the process. If you have faith in the process that independent prosecutors—and there are ample surveys that have shown such as IAVA, Iraq, Afghanistan

Veterans America, where they show that people have more faith if independent prosecutors have this. They also would not diminish their view of the commander. We will get to the point where we can start moving that cultural ball.

The Air Force Academy, the other academies have been fighting this culture issue. They have not been able to get at it. And yet, they prosecute almost nobody despite having an horrific amount of sexual assaults at those institutions.

Senator GILLIBRAND. Just last, Commander Elliott, do you believe that if we did change the system, if we allowed trained military prosecutors to make these decisions, not commanders, that would change the retaliation rates and the perception of retaliation by survivors?

Lieutenant Commander ELLIOTT. Absolutely. I believe that both the perceived and real retaliation rates would be far less. People would feel a lot less retaliated against. And that is on both sides, both the accused and—excuse me. It would remove bias from all the sides too.

I have talked to other victims who have been retaliated against, “Oh, well, you made the CO [commanding officer] do this.” You made the commanding officer—excuse me—do that because by reporting this to retaliate against because these sailors had to leave because of something you did. If it was not that bias, that retaliation would not be there if the COs, or commanding officers, are not making those decisions.

Senator GILLIBRAND. Even if you take this decision outside the chain of command, is it still not the commander’s responsibility to ensure good order and discipline and make sure you are not being retaliated against? That still is in their hands, and that is what they are not doing. They are not even doing the things that still rest with them.

Lieutenant Commander ELLIOTT. I agree with you, yes. No matter what, you always have good order and discipline that you are in charge of as a commanding officer. Like I said earlier, I believe some crimes are so bad that we are taking this seriously and we are moving this outside the chain of command. That is how serious this is.

Senator TILLIS. Senator Rounds?

Senator ROUNDS. Thank you, Mr. Chairman.

First, let me just say thank you to all of you for sharing these episodes in your life.

Colonel Christensen, in your view and given your significant military experience and your engagement with victims of sexual assault, what policies and programs have you observed to be effective in the prevention of sexual assault? Are there some programs out there that have been successful?

Mr. CHRISTENSEN. Senator Rounds, I think there have been. I think the training—although it is often maligned, I think it has raised awareness among the men and women of the Services. When I talk to younger servicemembers, I talk to cadets at the academies or cadets in ROTC [Reserve Officers’ Training Corps], I have hope there because I think they are in a better position than the people of my age who are in the service. So I think those are working.

I think one of the most significant reforms that has been made is the creation of the special victims counsels, the victim's legal counsel, that advocate in the corner of the victim when they were not there before has been a game changer for victim confidence.

I think also where we have talked about the de-glamorization of alcohol. Senator McSally, you know that decades ago, alcohol was a huge problem in the military. We have pushed that back.

I also think when we look at the sexual assault numbers, cracking down on hazing and initiation is one of the reasons the male sexual assault rate dropped so much between 2014 and 2016.

Senator ROUNDS. I would also like to touch a little bit on retaliation. In past testimony, you have suggested that most retaliation suffered by the victims of sexual assault comes from their peers from social ostracism, from social media bullying and blaming and shaming.

In your view, how can the military system best tackle the online retaliation? I mean, look, young people today—they are all online. How does the military deal with this? If there is an employer situation, in many cases employers have taken different approaches. What is the appropriate way for the military to approach this?

Mr. CHRISTENSEN. Number one would be be aware. There are only so many military publications out there, the Air Force Times, Military Times, Stars and Stripes, where you have comments. All you have to do is look at the comments on any kind of article dealing with sexual assault, and they are horrific. Oftentimes those people writing those comments are putting their Facebook name right there, or any other major newspaper that is covering that issue. Just look at it and start holding the people who are making these horrific comments accountable. There is freedom of speech, but that does not allow you to bully your fellow members. So be aware of it.

Number two, set the standard. Make sure that you are addressing sexual harassment. The sexual harassment rates are so high both in the Active force and at the academies, and yet we see no one ever held accountable for it. I believe there were two article 15s given out the last year we have numbers for retaliation. Start taking some people to court. It is okay. It is a discipline tool. Use it as a discipline tool.

Senator ROUNDS. Colonel Haring, the same approach with retaliation. I see you nodding your head. Your thoughts on this in terms of your professional judgment. What is the appropriate way to address the issue of retaliation?

Dr. HARING. I have to go back to our earlier discussion on culture. I wish I had a better formulated response because I think it is a multi-pronged attack that we need to take here. It is not just one thing. Changing the UCMJ is not going to solve this problem alone. I think there are multiple things that we need to be doing.

I, Senator McSally, we have long struggled to even the playing field, allowing women these jobs that they were not viewed as capable of doing. I think that kind of changes the mindset of the way we view women rather than a lesser subcategory of the military. But these changes are happening now and it takes time. I think it is many things simultaneously, and I just think this is one of those things.

The other one is letting women serve in all positions and seeing women who are capable and qualified, and that will change the way we view women and then the way that we treat them.

And then the retaliation thing. That is a commander issue right there, but that is not something that the UCMJ—you made a good point. When have we held commanders accountable for the way that they treat it? We never have. We never do as far as I can tell. Very few cases of retaliation are ever brought to trial and are found.

Senator ROUNDS. Thank you.

I am out of time, but thank you, Mr. Chairman.

Senator TILLIS. Senator Duckworth?

Senator DUCKWORTH. Thank you, Mr. Chairman.

Let me just remark on how in awe I am of the bravery of Lieutenant Commander Elliott, and Ms. Bapp for your testimony today and awe also of my colleague, Senator McSally.

Let me just start off by saying that I do agree that the military has shown that it has utterly failed at handling sexual assault through the UCMJ process. I certainly do support removing sexual crimes out of the UCMJ process.

But here is where I struggle. As a former commander of an assault helicopter company myself, there are crimes that I want to remain in control of for good order and discipline and the functioning of my unit. For example, violent assaults that are not sexual in nature that have to do with racism, hate crimes, that sort of thing. That is where my struggle is.

Certainly our ranking member has been so kind in working with me, and we have been working on this for years and, Martha, you have as well from our time in the House. And this is something we struggle with. I have to say I still do not see the improvement in the UCMJ process in the military. I remain supportive of taking sexual crimes out, but I am not sure that I am there on all felonies or even violent crimes.

What I would like to touch on here, though, is beyond the criminal convictions, which we are going to work on—you have our pledge that we will keep working on this. The criminal convictions do provide some sense of justice, but I still do not think it makes you whole, not that you could ever be made whole again the way you were before.

But what is there that we can make the lives of survivors better? What more can we do for survivors to make sure that they have what they need to process and heal? And that includes stopping the retaliation. That includes letting you resume your careers and be successful in the careers that you dreamt about from the time that you entered the military.

Colonel Haring, Colonel Christensen, could you talk about that? Maybe the four of you could talk a little bit and touch on what would make it—I hesitate to say better, but what else can be done.

Mr. CHRISTENSEN. Well, it is very controversial for some reason, but I would say start by believing. From the survivors we talked to and protected offenders—survivors I talked to when I was Active Duty, it is very hurtful when they feel like their chain of command is not believing them and not supporting them. So start by believing does not mean you are going to prosecute. To start by believing

means I accept that you have been through this traumatic event and I want to be there to help you.

I think Congress has done a great deal to help survivors on the back end with the VA. Still a ways to go on that, but the survivor community appreciates that.

The other thing is just being able to flourish after this happens and understand that any survivor who has gone through trauma is going to have stumbles. Do not hold those stumbles against them to the degree that they are driven out as the DOD IG has shown. Give them that chance to thrive in the environment even after they have been assaulted.

Senator DUCKWORTH. Colonel Haring?

Dr. HARING. Thank you.

There have been a bunch of changes to try assist victims, and I think the victims can speak more directly. We do see a lot of victims at SWAN. We hear from a lot of victims. One of the things they have asked for is an actual legitimate, anonymous reporting mechanism, not the restricted versus the unrestricted reporting, but something similar to what has been developed and has been fielding on a number of university campuses and now is actually getting some widespread coverage. It is CALISTO. It is an anonymous reporting system or database where a victim can report their assault and their assailant, just put it into a database. Then what happens is they connect victims that have the same assailant and they allow those victims to connect with each other. Then you are more likely, if you are not alone, if you have been assaulted by somebody that assaulted another person and now you have connected, you are more likely to come forward. You are more likely to be mutually supportive of each other.

That is one idea that we have recommended to the DOD, and I understand this summer they may be fielding something similar for the very first time. It is a way for victims to tell their story, to unburden themselves in a certain way, and then potentially be connected to somebody else who was similarly assaulted by the exact same person.

Lieutenant Commander ELLIOTT. Senator, I think there are a couple ways to go about it. First of all, commanders need to be better trained to understand that every victim is different. Every victim is different. I wanted to go to work and I focused on work. We had, I know, a victim on our ship, and she got transferred off and she needed a lot of time to process.

The other thing is discussing our training. We have improved our training a lot, but I still do not think we address it appropriately. Like me, when I was going through this, I thought, "I am officer. I am the third highest ranking person on the ship. This does not happen to me. This happens to these junior people." The women are raped in our training. The men are grabbed or body parts put on them. They are not raped. Why do we not address these problems? We are still not doing effective training.

Ms. BAPP. Yes. I believe just have more of a preventative before you even get to be a victim, and I think that that comes from a true understanding. Going back to Senator McSally's comment about how do we change that culture, so I think that right now sexual assault is seen as a fear-based knowledge and it is not taken

seriously. I personally, after graduating from the Academy, did not believe in the sexual assault response program for many reasons, and it took a truly inspiring leader who I reported to—we had a candid discussion one day prior to my sexual assault even occurring. The way that he was able to passionately stand up for women who he has experienced while he was in command—if we could put those leaders, identify them, truly incentivize them to become these advocates and not just randomly assign the role, those people who actually want to be there and want to be able to protect past, future, and every type of victim, I believe that that would help change the culture.

Having people stand up. We have signs that say stand up, speak up, see something, say something. Honestly, as a victim being in the Army after a year while I was waiting for the trial, it was insulting to see these signs in the hallways, to see my victim advocate still posted, even though it was not a good experience for me, and to see people draw mustaches on them. SHARP is a joke. We need true leaders to stand up and truly train what we need our soldiers to be expected of. Hold them to the higher standard.

Knowledge. Teach them how psychologically to recognize these signs of predation. That was really big for healing for me, understanding what had happened to me, understanding the cycle of abuse. If commanders could be able to recognize this abuse cycle instead of blaming the victim and instead of maybe even blaming the alleged, they are more knowledgeable and they have the power still.

Senator DUCKWORTH. Thank you.

You have been very generous, Mr. Chairman. Thank you.

Senator TILLIS. Senator Scott?

Senator SCOTT. First, I want to thank everybody for being here. Senator McSally, Lieutenant Commander Elliott, and Ms. Bapp. I have got two daughters. It is disgusting that these things happen. When you are raising daughters, you are always scared to death this is going to happen to them. It is very disappointing that anybody would do this to another human being.

For Lieutenant Commander Elliott and Ms. Bapp, when you reported, were you assigned counsel? How does it work?

Lieutenant Commander ELLIOTT. Are you talking about the victim's legal counsel?

Senator SCOTT. Do you have counsel that is going to represent you?

Lieutenant Commander ELLIOTT. Yes.

From my experience through the court martial, I realized I am merely a witness for the Government. But, yes, so the victim's legal counsel—they are a lawyer who is there to represent my interest through the entire process and they are with me every step of the way. You are not assigned that. You retain them. So if I met a lawyer and I did not like that victim's legal counsel, I could go to another one.

Senator SCOTT. But you do not have to pay for it.

Lieutenant Commander ELLIOTT. No, sir.

Senator SCOTT. And you had the same thing?

Ms. BAPP. No, sir, I did not. I was given an outdated form that did not have the special victim counsel. I had never even heard of

a special victim counsel. It took me contacting my colonel aunt. She is a retired brigadier general after serving 30 years in the Army. I contacted her and had to share my personal experiences. She was floored that I had never heard of one or was not given one.

Once I had one, things felt a lot better. He was able to provide services for me.

However, at a certain point in my investigation, since my commander—it was a small installation. She had gone to him seeking some advice prior. He technically represented her. There was a conflict of interest, and I lost one of the only people who truly had my back. It was a great loss for me, and something that I was not even afforded the opportunity to have in the beginning.

Senator SCOTT. What did they tell you in the beginning? Did they give you advice that this is not going to go well? How did they handle it?

Lieutenant Commander ELLIOTT. The victim's legal counsel, Senator? No. They are actually there to support our wishes. Mine—I started restricted and then went unrestricted. I talked through all the legal processes of that and the things that I was scared of, the things that worried me. She was just supportive of whatever decision I wanted to make. I remember she told me at one point, even if you change your mind right before you want to testify at a general court martial, she said, if that is what you tell me, then that is what we will do. They are very supportive.

Unfortunately, the Navy only has victim legal counsels for sexual assault survivors, but other services have them for domestic violence and that sort of stuff too. It started expanding.

Senator SCOTT. So you had a different experience then.

Ms. BAPP. Yes, sir, I did.

When I first reported, I reported to a victim advocate who was not a legal counsel. I expressed my concerns with adultery, and I would like to take the time to say that I do not believe in that. I was very naive, 22 years old, graduating from the Academy. I had no idea that that was where these friendships were headed to. But I did express to her my concern when it said collateral misconduct and she brushed it off, said, "Oh, no, that is if you are underage drinking or something. You cannot get in trouble for that. So, no, you are good. Keep filling out the form. So that was my experience with my collateral misconduct on the day that I reported.

Senator SCOTT. Then once there was a conflict, you got nothing.

Ms. BAPP. I sought out the special victim counsel at that point. He was very helpful, as I mentioned prior. He was a little hesitant just knowing the three lawyers inside the case, knowing that the prosecutor had known that my commander had reached out to him with personal business. That just inevitably taints the investigation and makes it subjective at that point. You just cannot deny that knowledge.

Senator SCOTT. Colonel Christensen, you said a high percentage of cases that go to trial are still—there is not a conviction. Is there a common theme of why it does not end in conviction?

Mr. CHRISTENSEN. Well, that is an hour-long answer.

Senator SCOTT. I am sure every case is a little bit different.

Mr. CHRISTENSEN. Every case is a little bit different, but there are systemic issues the way the UCMJ is written that I think

skews heavily in favor of conviction. The voting process—unlike the voting process in the civilian world where you reach a unanimous verdict either guilty or not guilty, so you have a consensus verdict—in the military, there is one vote. If you receive now three-quarters guilty, you are guilty. If you receive less than three-quarters guilty, it is not guilty. I think that skews very heavily in favor of not guilty verdicts because there is no compulsion to reach a verdict that everybody agrees with. I think that is one of the problems.

Another problem too is that the military has resisted—I am assuming that the two JAGs will testify this is not true, but they have resisted efforts to allow people to become real experts at this throughout their career. I left 4 years ago. I was the only colonel prosecuting in the Air Force, and I do not think anybody has prosecuted since.

Why is that important? Well, sexual assault is complex, and it takes a long time. On the flip side, the accused can go out and hire the most experienced defense counsels in the world in the military justice system and they are going up against 2 to 3-year captains. There is an imbalance too in that arena.

Senator SCOTT. Thank you.

Senator TILLIS. Thank you.

Colonel James, I am kind of curious. I noticed some of our allies have moved to the framework that I believe most of this panel would support. I am curious about what learnings they have. Are they in the same place they were when they first made the transition? I think many of them were motivated to make sure that they were—or making sure that the rights of the accused were being addressed. So I was curious. What has been their real world experience in terms of convictions, incidents of sexual assault? I do not know how long they have been in place. But give me some idea of how this movement has had a material positive or negative effect among our allied—

Mr. JAMES. Sir, I am not prepared to talk about our allies, but we will certainly get back to you and report back because I think that is a fantastic question.

But I will say, following up with what Don said there, about the reason we see a lot of these cases going all the way to court martial is there is not really a clear-cut definition in the DOD of what a sexual assault is in the first place. We have cases—one recently—where somebody just brushed up against somebody on a bus, and she claimed he looked at her like he wanted to have sex with her. That is a conviction. That is what non-judicial punishment is going to be used against. That is one issue.

The other is training. There is not clear training amongst what sexual assault is. This is not just me talking. We have got multiple lawyers that we have talked to, military defense attorneys, that have worked through the system and think tanks that have worked through, and we are trying to figure out answers. That is why even though I disagree with Colonel Christensen, Don, on this one subject, we do agree that something needs to be done. When I said it is a national security issue, I meant it. It really is.

I also will disagree with him on UCI. I think there is a lot of UCI in the system. I could name off a bunch of cases right now. The Wright case. We have got the Chief Barry case, and we have got

the Vargas case. Those are just a couple that came to mind when I was sitting here.

So I will get back to you, sir, and your staff.

Senator TILLIS. I think it would be helpful. It would be interesting just to know the timeline, what their experiences have been, and what policy changes they may have made, if they got out ahead of their blockers. I think that would be very helpful as we continue this discussion.

Colonel Christensen, I know in some of either your past statements or past testimony, you have talked about the nature of retaliation. I think many people here, who have not studied the subject, would think that this is a commanding officer's retaliation or a superior officer's retaliation. Could you talk a little bit more about what we generally see as retaliation that victims are experiencing?

Mr. CHRISTENSEN. Sure. The SAPR report looks at basically three areas of retaliation. You have retaliation from peers, and that is about a third of it. You have retaliation from supervisors. That is about a third. Then you have punitive retaliation, and that is about a third.

Senator TILLIS. Tell me a little bit about the punitive retaliation.

Mr. CHRISTENSEN. Sure. These are self-reports from the survivors, and what they say is that after they report, kind of like what Lieutenant Commander Elliott is talking about. You have a career-ender. Or what Ms. Bapp is talking about. You have a career-ending event. That can happen in a number of ways. So, for example, you can be very overt and we are going to give you an article 15 and we are going to court martial you and we are going to kick you out. Or it can be less obvious and it is a downgrade in your performance report. For those of us who have been in the military, just changing a couple words in a performance report will end somebody's career. So that is part of it. It can also be you do not get selected for the next level of school, to go in residence, which will also hurt your career. Or you may not get the assignment that you were hoping for. Those are very difficult to prove, but when you look at it systemically over there and you see so many survivors having that same story, you come to a conclusion that it is happening.

Senator TILLIS. Thank you all.

I want to move to the next panel. I know that we are going to be having a vote probably coming up in the middle of the panel.

So I want to thank you all for your time here and then follow up. I know that you have collaborated with Members, and we hope you will continue to do that. And Colonel James and any others, information that you would like to submit for the record, we would welcome it. Thank you, Lieutenant Commander Elliott, Ms. Bapp, and Senator McSally, for your courage and your leadership.

We will now transition to the next panel. If we can get the witnesses to be seated, hopefully we can get in your opening comments, and then I will figure out a way to transition in the hearing in the middle of votes. As the witnesses are being seated, I will go ahead and introduce and then have you make your opening statements. Again, we may have some Members go in and out once the vote is called, but we have got at least 15 or 20 minutes before that. Hopefully, we can get most of your opening comments in.

Our witnesses on the second panel include Dr. Elizabeth Van Winkle, Executive Director, Office of Force Resiliency in the Office of the Secretary of Defense. Welcome. Lieutenant General Charles Pede, the Judge Advocate General of the Army; Vice Admiral John Hannink, Navy Judge Advocate General; Lieutenant General Jeffrey Rockwell, the Judge Advocate General of the Air Force; and Major General Daniel Lecce—I knew him as a colonel—Staff Judge Advocate for the Commandant of the Marine Corps.

We will start with Dr. Van Winkle and move straight down the line.

STATEMENT OF ELIZABETH P. VAN WINKLE, EXECUTIVE DIRECTOR, OFFICE OF FORCE RESILIENCY

Dr. VAN WINKLE. Thank you. Chairman Tillis, Ranking Member Gillibrand, and other distinguished Members of the subcommittee, thank you for having me here today to discuss sexual assault prevention and response in the military.

I am extremely concerned by the results of the most recent survey of the service academies (MSA) showing another increase in sexual assault and about the trends and data that we are seeing. However, I sit before you committed and dedicated to making this right.

To be clear, these are not merely data points in yet another DOD report. These are dedicated servicemembers who volunteered and stepped forward out of commitment and loyalty to our nation. We have a profound, sacred obligation to our servicemembers and their safety. The Department remains committed to our goals of ending sexual assault in the military, providing the highest quality response to servicemembers, and holding offenders appropriately accountable.

My office oversees the Department's programs and policies that address our critical challenges, including sexual assault, harassment, suicide, and drug use, all of the behaviors or issues we as a society have not yet solved. As the Department of Defense, we are the ones who have been entrusted by this country to lead the way. We must lead, and we are working to do just that.

We assess our efforts in a number of ways, using a robust data surveillance system. We conduct scientific surveys every other year to understand the scope of sexual assault and harassment in the force. We conduct focus groups in the survey off-years to detect emerging issues, and we study sexual assault reporting data each year so we can understand more about those who made the courageous decision to report. While we want annual prevalence, that is, the number of people who experience sexual assault each year, to go down, we want the rates of reporting to go up.

We have been measuring ourselves in this fashion for more than 10 years, and the last survey with the Active force in 2016 found that overall past year prevalence of sexual assault had decreased over the past decade. Our rates of sexual assault reporting more than quadrupled during the same time frame. But we are not seeing the same trends in the Military Service academies, and that is gravely concerning.

In addition, our surveys indicate that retaliation is perceived by an appreciable portion of students and servicemembers who make

a report, and these types of behaviors gravely undermine all of our efforts in this space. And while we have seen some periods of progress, our history also shows that sexual assault rates can and do rebound, as they have in the academies. We know we must adjust our approaches as we analyze trends and patterns in the data and as the science evolves.

Our early prevention and response efforts were necessary but not sufficient to reduce and eliminate sexual assault across the Department. Measurable and sustained reductions require a strategic approach beyond training, and my written statement offers some of the strategies we will be employing moving forward.

The path we are on together is not an easy one. No one action in isolation will take us where we need to be, and there is no single solution to the problem of sexual assault. But we are committed to this battle for the long run.

This is not just another job assignment for me. My experience, both outside Federal Government and within the Department, have made me an eyewitness to the human toll that sexual assault can take. I have held countless hands in hospitals during sexual assault forensic exams and in courts during testimonies and verdicts. I have spent time holding a survivor as they sobbed on the floor of a convenience store because they saw somebody that looked a lot like the person that raped them. I have driven to a hospital at 2 o'clock in the morning because my client tried to take her life rather than live with the memories of her sexual trauma. And I have held on tightly to a 12-year-old girl as she looked through a photo lineup in a police department to identify her rapist when she was walking home from school. I have spoken personally to and I have received emails from brave and amazing military members who want nothing more than to serve this country honorably, but have instead been subjected to this crime.

This is personal. I take it personally. I am not alone. I have spoken directly with the Acting Secretary of Defense, the service secretaries, and the military chiefs. I have heard their shared concern. I have seen their frustration and their commitment to eliminating this misconduct from the ranks. At every corner of our military, we must do better. We can do better and we are capable of being better. We are committed to being transparent as we tackle this significant problem.

Your interest, your insights, and your support are always welcome, and I want to thank you for everything you do to partner with both my office and the Department on this important issue. I look forward to your questions.

[The prepared statement of Dr. Van Winkle follows:]

PREPARED STATEMENT BY DR. ELIZABETH P. VAN WINKLE

Chairman Tillis, Ranking Member Gillibrand, and other distinguished Members of the Subcommittee—Thank you for having me here today to discuss sexual assault prevention and response in the military.

I am extremely concerned by the results of the most recent survey of the service academies indicating another increase in rates of sexual assault—and about many of the trends and data we are seeing in regards to sexual misconduct within the military at large. However, I sit before you committed and dedicated to making this right. We are leaders in changing culture—you all have provided us the resources and authorities to tackle this—yet our rates show we have not yet solved this complex and difficult challenge.

To be clear, these are not merely data points in yet another DOD report. They are dedicated servicemembers who volunteered and stepped forward out of commitment and loyalty to our Nation. That's why our commitment to solving this problem is absolute. We have a profound, sacred obligation to our servicemembers and their safety. Our commitment to their well-being must be no less than the commitment they made when they stepped forward and volunteered to our country. The Department remains committed to our goals of ending sexual assault in the military, providing the highest-quality response to servicemembers, and holding offenders appropriately accountable.

As you are aware, my office oversees the Department's programs and policies that address our critical challenges including sexual assault, harassment, suicide, and drug use. The Sexual Assault Prevention and Response Office is the Department's authority on this issue and unifies the prevention and response efforts of the Army, Marine Corps, Navy, Air Force, and National Guard. All of the behaviors within my portfolio are challenging issues we, as a society, have not yet solved. As the Department of Defense, we are the ones who have been entrusted by this country to lead the way. We must lead, and we are working to do just that.

The offices under me develop policies and programs aimed at reducing harmful behaviors and preventing violence. We inform our efforts by relying on quantitative and qualitative data from the force and from our partnerships with other experts in this field who have dedicated their lives to addressing these harmful behaviors.

The Department has a tremendously robust data surveillance system we employ to report on the scope of sexual assault within the force. It is this transparency that allows us to have open conversations about our progress and the considerable work we have left to do.

We assess our efforts in a number of ways. We conduct scientific surveys every other year to understand the scope of sexual assault and harassment in the force. We conduct focus groups in the survey off-years to detect emerging issues. And, we study sexual assault reporting data each year so we can understand more about those who made the courageous decision and come forward to report. While we want annual prevalence—that is, the number of people experiencing sexual assault each year—to go down, we want the rates of reporting to go up.

We have been measuring ourselves in this fashion, using scientific methods, for more than 10 years. Scientific surveys provide us the top line estimates for how many servicemembers, including cadets and midshipmen, have experienced these prohibited behaviors in the past year. While we recognize we will see some variations in rates over time, we want this number to progressively decline over time until we eliminate the crime from the ranks. Our last survey with the Active force in 2016 found that past-year prevalence of sexual assault had decreased by a third for women and two thirds for men over the past decade. But we are not seeing this same progress in the military service academies. This is gravely concerning.

In addition to our prevalence estimates, we closely track the number of reports we receive. It may seem counterintuitive, but we want reporting numbers to increase. We want more members to come forward to report so we can hold offenders appropriately accountable and provide restorative care. We have seen progress in this area as well; our rates of sexual assault reporting more than quadrupled over the last decade, going from 7 percent in 2006 to 32 percent in 2016. But again it is extremely concerning that we are not seeing this same progress in the service academies.

We also know it is a very personal decision as to whether someone will come forward and report the experiences they may have had. In both civilian and military sectors of our society, the vast majority of survivors never report the crime. Unfortunately we cannot, as an institution, hold offenders appropriately accountable without individuals feeling comfortable coming forward and reporting. While we will not always be able to address the very personal reasons some individuals choose not to report, we must remove any systematic barriers. To that end, we offer choices in reporting, helping resources, and restorative care, designed to empower victims on their personal pathway to recovery. This includes offering restricted reporting where a member can confidentially access healthcare, advocacy services, and legal services without an investigation or disclosure to command. And we know a share of servicemembers later convert their restricted report to unrestricted and participate in the military justice process. We are now working to expand this process to more specifically address repeat offenders.

All servicemembers who make the decision to report and participate in the military justice system are offered the assistance of their own attorney to represent and support them throughout the process. These special victims' counsels are resources not found in civilian jurisdictions.

As many of you know, fear of retaliation complicates and degrades our efforts to bring more victims forward. Our scientific surveys indicate that retaliation is perceived by an appreciable portion of servicemembers who make a report. While not all behaviors perceived as retaliatory meet the legal threshold for prosecution, the behaviors that our members indicate experiencing are often incongruent with our expectations for dignity and respect and gravely undermine all of our efforts in this space.

In addition to these quantitative metrics, the Department conducts focus groups, in the off-year from the scientific survey, to hear directly from academy students and Active Duty members. This process allows us to often get a sense of trends or culture shifts that may be occurring. In 2017, we went out to the Active force and received some feedback that was troubling. Specifically, Active Duty members across the Services indicated a burgeoning gender divide. Male and female servicemembers alike noted a discomfort between the sexes. Some servicemembers told us they felt uncomfortable interacting professionally with members of the opposite sex. Servicemembers who had been in the Department for some time highlighted some positive environmental shifts, including the belief that outward behaviors that were once dismissed as a part of the culture are no longer tolerated. However, other participants indicated that troubling behaviors still transpire but are now more covert, less obvious, and take place on line.

Over the last decade we have seen some periods of progress, but our history also shows that sexual assault rates can rebound—as they have in the academies. And the sentiments from our most recent Active Duty focus groups echoed some culture concerns similar to what we heard in the academies prior to the rebound in rates we saw in 2016. We know we must adjust our approaches as we analyze trends and patterns in the data and as the science evolves.

Our prior prevention efforts—that coincided with the reduction in prevalence within the Active Duty force—mark the early stages of prevention across the Department. Specifically, we focused on building awareness of the problem and an understanding that sexual assault is preventable. We infused training with preventative practices, such as bystander intervention, and identified and addressed unique prevention needs within the Department, such as the magnitude and impact of male servicemembers' experiences of sexual assault. In this stage we found several best practices, including our systematic assessment of prevalence of sexual assault across the total force, adaptation and implementation of evidence-based prevention training for entry-level servicemembers, and the creation of forums for sharing best practices and lessons learned across the Military Departments.

These early efforts were necessary, but not sufficient, to reduce and eliminate sexual assault across the Department. Activities focused on raising awareness about the crime likely contributed to increases in victim reporting and access of support services, but recent civilian-sector research suggests awareness programming does not always translate into the desired long-term behavior change necessary to sustain progress. Measurable and sustained reductions in sexual assault require a strategic approach.

To push sexual assault rates down further and sustain progress, we are aligning sexual assault prevention activities at all levels of the Department with the current state of sexual assault prevention science. In addition, the Department will align sexual assault prevention policy and oversight with scientific standards for sustaining organization-level impact.

This means that we are building on our current prevention efforts by ensuring that the Department is poised to identify, implement, and evaluate sexual assault prevention activities that effectively meet each organization's unique needs.

We recognize the limitations of a top-down, one-size-fits-all approach to prevention and understand that measureable change across the Department is achievable only if measureable change is occurring in each service. Therefore, we are empowering leaders and a prevention workforce by equipping them with effective prevention planning, assessment, and evaluation tools. By implementing a prevention planning process that is the cornerstone of a public health approach to prevention, we are bringing rigorous methods to sexual assault prevention that military leaders use in other aspects of warfighting.

The path that we are on together is not an easy one. We all recognize that true progress against this horrible problem is more akin to a marathon than a sprint. We have made the commitment to being in this battle for the long run. To be frank, progress in our response efforts has come from leadership emphasis, your continued engagement on this issue, and relatively quick programmatic and procedural changes. Progress with prevention is not quite as intuitive or expedient. Some argue that greater deterrence through heavier criminal penalties is key. Others suggest that better training and awareness of the problem is the solution. Yet others press

for greater employment of inspirational speakers to win hearts and minds. All of these may be beneficial, but none of them in isolation will take us to where we need to be. In sum, there is no single solution to the problem of sexual assault. We must all be resolved to learning how to coordinate and execute many different evidence-based activities, each targeting specific factors that will erode the cultural and environmental foundations of this problem, stone by stone. It is through these combined efforts that we have the best chances for progress.

Combatting these challenges is not just another job assignment I have to address, it is my life's work. My experiences both outside Federal Government and within the Department have made me an eyewitness to the human toll that sexual assault can take. I have held countless hands in hospitals during sexual assault forensic exams and in courts during testimonies and verdicts. I have spent time holding a survivor as they sobbed on the floor of a convenience store because they saw someone who looked a lot like the person that raped them. I have driven to a hospital at 2 o'clock in the morning because my client tried to take her life rather than live with the memories of her sexual trauma. I have held on tightly to a 12-year-old girl in a Boston Police Department as she tearfully looked through a photo line-up to try to identify the man that raped her in an abandoned parking lot as she walked home from school. I have spoken personally to, and received emails from, brave and amazing military members who want nothing more than to serve this country honorably, but have instead been subjected to this abhorrent crime.

This is personal. And I take it personally. I am not alone. I have spoken directly with the Acting Secretary of Defense, the service secretaries, and the military chiefs. I have heard their shared concern, their frustration, and their commitment to eliminating this misconduct from the ranks. They do understand the devastation of this crime. And while we all recognize the impact on the mission, we also recognize there are names and faces and souls behind each of these reports. At every corner of our military, we must do better. We can do better. We are capable of bring better. And we are committed to being transparent as we tackle this significant problem. We will return each year to tell you about our progress and our challenges with our annual results through our fiscal year reports for Active Duty forces and academic program year reports for the MSAs. Your interest, your insights, and your support are always welcomed. Thank you for everything you do to partner with the Department on this important issue.

Senator TILLIS. General Lecce?

**STATEMENT OF MAJOR GENERAL DANIEL J. LECCE, USMC,
STAFF JUDGE ADVOCATE TO THE COMMANDANT OF THE
MARINE CORPS**

Major General LECCE. Chairman Tillis, Ranking Member Gillibrand, and distinguished Members of the subcommittee, on behalf of the Secretary of the Navy and the Commandant of the Marine Corps, thank you for the opportunity to testify today.

Chairman, I enjoyed your visit to Camp Lejeune a while back. It is good to see you, sir.

In addition to my formal written remarks, which I respectfully request be made part of the record, I would like to address the Marine Corps' efforts focused on sexual assault prevention and response.

One sexual assault is too many. The Marine Corps strives to eradicate sexual assault from our ranks by capitalizing on the detailed work of congressional advisory committees and diligently implementing the many statutory changes made in recent years.

Like sexual assault, retaliation is unacceptable. Eliminating retaliation is central to the Marine Corps' efforts to combat all destructive behaviors such as harassment, hazing, and bullying. The Marine Corps has developed a comprehensive and holistic approach to eliminate these destructive behaviors.

In pursuit of these goals, the Commandant established the Marine Corps Personnel Studies and Oversight Office. Reporting di-

rectly to the Assistant Commandant of the Marine Corps, the Director of the Personnel Studies and Oversight Office assesses and provides feedback on initiatives focused on strengthening the Marine Corps' culture and mission readiness. In addition, the Personnel Studies and Oversight Office manages the execution of pending initiatives, collaborates with Training and Education Command on new curriculum content, and establishes advisory committees to ensure the Marine Corps and key stakeholders have an opportunity to participate in the process and meet current and future challenges.

Further, nearly 1 year ago, the Commandant published a Marine Corps order on prohibited activities and conduct. Violations of this directive are punishable under the Uniform Code of Military Justice. This order, first, addresses a wide spectrum of conduct, including sexual harassment, hazing, social media misconduct, including the distribution of intimate images, retaliation against victims or those who report criminal offenses and discrimination. Second, it requires all commanders to investigate all complaints and to protect complainants from retaliation. Third, it requires all complaints to be documented in a central database known as the Discrimination and Sexual Harassment Repository. And fourth, it requires all commanders to conduct follow-up assessments and to measure effectiveness through regular command climate surveys both at the assumption of command and at the relief of command.

As has been true throughout the history of Marine Corps, commanders are central to the process. They are responsible and accountable for good order and discipline and the welfare of all their marines. The individual marine is our greatest asset. Commanders are responsible and accountable for ensuring all marines are treated with dignity and respect.

Finally, all Services are in the midst of implementing the Military Justice Act of 2016. This is the broadest reform to the military justice system since its inception. Many of these reforms are aimed at making the military justice system more fair and transparent both to the public victims and the accused.

I believe our collective efforts briefly described above will serve to strengthen the justice system and reinforce public trust and confidence in the military justice system.

I look forward to working with you and answering your questions. Thank you.

[The prepared statement of Major General Lecce follows:]

PREPARED STATEMENT BY MAJOR GENERAL DANIEL J. LECCE

INTRODUCTION

Chairman Tillis, Ranking Member Gillibrand, and distinguished Members of the Subcommittee, on behalf of the Secretary of the Navy and the Commandant of the Marine Corps, thank you for the opportunity to testify today.

One sexual assault is too many. The Marine Corps' efforts to eliminate sexual assaults incorporate the detailed work of the Response Systems Panel, the Defense Advisory Committee on Investigations, Prosecution, and Defense of Sexual Assault in the Armed Forces, and the Congress. Like all the Services, the Marine Corps is in the midst of implementing the most sweeping changes to the military justice system since the inception of the Uniform Code of Military Justice (UCMJ). The last 15 years have been a time of significant changes in military justice. The Marine Corps legal community remains focused on providing timely, effective, and appropriate legal advice and legal services.

My remarks today will begin with a summary of Marine Corps prevention and response measures, followed by a discussion of initial and specialized training for Marine judge advocates. In addition, I will describe the structure of the Marine Corps legal community and how that structure facilitates response mechanisms within the Marine Corps. Finally, I intend to address the Marine Corps' coordinated efforts over the past 2 years in addressing all forms of retaliation, including ostracism and bullying, which are of particular concern as these forms of misconduct often occur via social media. All of these efforts are individually and collectively focused on preventing sexual assault through increased awareness, intervention, victim support, reporting, thorough investigation, and the imposition of just accountability.

SEXUAL ASSAULT PREVENTION

The Marine Corps conducts specialized training across all ranks to ensure that all leaders have a clear understanding of sexual assault prevention mechanisms throughout the Marine Corps. This training promotes leadership action within the scope of each leader's responsibility. For example, the Marine Corps "*Take A Stand*" training for non-commissioned officers (NCOs) focuses on leadership action specific to NCO roles and responsibilities. *Take A Stand* training builds skills and characteristics primarily focused on the prevention of sexual assaults, such as effective communication techniques, empathy, and the fostering of healthy relationships. In addition, marines of all ranks receive annual training on the laws and policies governing sexual assault, reporting options, and sexual assault and retaliation prevention. This training was recently augmented to include small-group discussions and practical application exercises.

Judge advocates are involved throughout these training processes. At the headquarters level, judge advocates assist in developing and reviewing proposed training plans and content to ensure its legal accuracy. Judge advocates also often assist in delivering this training at the unit level.

SEXUAL ASSAULT RESPONSE

Judge Advocate Training. Training focused on the enhanced victim protections in the Military Justice Act (MJA) of 2016 represents another vital part of our prevention and response efforts. The MJA of 2016 represented a sea change to the military justice system, resulting in significant changes to the court martial process. Many of these changes involved the enhancement of existing protections for victims throughout the military justice process. The new article 132 specifically prohibits retaliation, which has been prohibited by various orders and regulations in the past. A provision in Rule for Court-Martial 405 imposes greater restrictions on how evidence regarding a victim's sexual behavior or predisposition can be used at preliminary hearings prior to referring charges to a general court-martial. Further, rules and procedures have been added which focus on protecting a victim's privacy and ensuring victims have the right to be heard.

Throughout 2018, the Marine Corps legal community completed a phased training plan which included 24 hours of in-person instruction on the MJA of 2016 changes. The training included significant instruction on protecting victims' rights, as well as preventing and punishing retaliation. Additionally, all staff judge advocates were required to train commanders with general court-martial (GCM) or special court-martial (SPCM) convening authority on changes to the law.

Ensuring Expert Litigation Training. The Marine Corps ensures expert litigation of sexual assault cases through both structure and training. The provision of legal services, including litigation support, is provided through four Legal Services Support Sections (LSSS), each responsible for a geographic region. Until 2012, legal centers in the Marine Corps were decentralized and operated independently of each other. In 2012, the Commandant directed a regionalized model that could better leverage training and experience to provide the proper level of expertise on the most complex courts-martial. Now, each region is able to capitalize on additional resources, such as regional trial counsel, complex trial teams, regional trial investigators, and civilian litigation attorney advisors, in the litigation of sexual assault cases.

The Marine Corps strives to develop and maintain skilled litigators. Central to this effort is our Master of Laws (LL.M.) degree program for criminal law. There are currently 62 marine judge advocates with an LL.M. in criminal law. These marines hold key leadership billets across the trial services, defense services, and victims' legal counsel organizations. Board-selected judge advocates receive their criminal law LL.M. from the Army's Judge Advocate General's Legal Center and School (TJAGLCS) or a civilian law school accredited by the American Bar Association.

Judge advocates who obtain an LL.M. in criminal law receive the additional military occupational specialty (AMOS) of 4409, identifying them as uniquely qualified to serve in supervisory military justice billets and complex litigation billets wherein they handle special victim cases. Marines are eligible to pursue an LL.M. in criminal law as either a captain or a major, but only marines serving in the grade of major and above are awarded the AMOS. This ensures that these judge advocates have a high level of maturity and experience—approximately 10 years of service for a major—in addition to specialized education.

The Marine Corps also assigns an AMOS to military judges. The military judge AMOS 4411 is awarded to marines who have the required experience, maturity, and temperament, are screened and certified by the Judge Advocate General of the Navy, and are graduates of the Military Judge's Course at TJAGLCS. The AMOS ensures those performing the duties of military judge possess the requisite education, experience, and temperament, and also allows for more effective tracking, assignment, and career development.

Prosecution of Sexual Assault Cases. Sexual assault cases are among the most complex types of cases to prosecute. From fiscal year 2012 to 2014, the number of contested sexual assault prosecutions in the Marine Corps more than tripled. By fiscal year 2017, 38 percent of all general courts-martial were contested. In fiscal year 2018, the Marine Corps tried 158 cases at general courts-martial, a 25 percent increase over the previous year. All of these trends confirm that the types of cases prosecuted in the Marine Corps are becoming increasingly complex, and are more likely to be contested cases prosecuted at general courts-martial. Equipping and training prosecutors to litigate these complex cases remains a top priority.

All trial counsel (TC) must meet the minimum requirement for Special Victim Investigation and Prosecution (SVIP) before being detailed to prosecute a sexual assault case. The minimum requirements a TC must have are:

- At least 6 months of services as a TC;
- Have prosecuted a SPCM as lead counsel, or a GCM as Assistant TC;
- Completed the Naval Justice School Article 32 Officer course;
- Served as Assistant TC during a special victim case;
- Attended an intermediate level trial advocacy training course; and
- Received a recommendation from their leadership.

Each regional trial counsel (RTC), who is the senior prosecutor within a given geographic region, also maintains a complex trial team (CTT) built to prosecute the most complex sexual assault cases. The CTTs are comprised of SVIP qualified attorneys, a senior legal services chief, a legal administrative officer, and a regional trial investigator (RTI). The RTIs are law enforcement experts embedded into the prosecution offices for the purposes of facilitating the prosecutors' continuing investigations and communication with military criminal investigation organizations (MCIOs). The CTT mentors first tour TC who are assigned to their cases for the purpose of gaining the experience necessary to obtain their SVIP qualification.

Each region also benefits from the advice and guidance provided by civilian litigation attorney advisors (LAA). LAAs are civilian attorneys who possess extensive experience and expertise in the field of prosecuting special victim cases. LAAs are stationed across the Marine Corps, with each assigned to an RTC. The LAAs collaborate with TCs on preparation of case analysis memos, charging documents, witness interviews, and affirmative and responsive government motions. They also help identify expert witnesses and help organize evidence to improve case presentation. Additionally, the LAAs work closely with the RTC and Marine Corps Trial Counsel Assistance Program (TCAP) to develop training and education programs for marines seeking SVIP qualification.

TCAP is led by a major holding an LL.M. in criminal law. The mission of TCAP is to assist and train TCs on the full range of prosecution tasks, including pre-trial investigation, general trial advocacy, post-trial actions, and professional responsibility. TCs have 24/7 access to TCAP personnel and the TCAP web portal. TCAP also conducts an annual week-long SVIP training event focused on the best practices for prosecuting sexual assault at court-martial.

Victims' Legal Counsel. The Marine Corps established its Victims' Legal Counsel Organization (VLCO) in 2014 to provide legal representation to qualifying victims. The VLCO is comprised of 18 Active Duty full-time judge advocates, and includes an officer-in-charge (OIC), a deputy OIC, four supervisory regional victims' legal counsel (RVLC), and 12 victims' legal counsel (VLC). These counsel are distributed across the same four LSSS regions as their TC and DC [defense counsel] counterparts.

Marine Corps VLCs attend special victims' counsel certification training at either The Army Judge Advocate General's Legal Center and School (TJAGLCS) or the Air Force Judge Advocate General's School (TJAGS). Marine VLCs also receive specialized training on representing child victims, attend the annual VLCO training symposium, and participate in local quarterly training. In addition, VLCs have the opportunity to attend other military and civilian training courses throughout the year, including courses at the National Advocacy Center, the National Computer Forensics Institute, and the Naval Justice School. The VLCO also provided victim-specific legal training during Judge Advocate Division directed MJA of 2016 training, including instruction on the changes in victims' rights and training on Article 6b of the UCMJ, the Privacy Act, and Military Rules of Evidence 412 and 513.

Selection of Marine Corps VLCs includes a thorough nomination, screening, interview, and vetting process. This process satisfies the Department of Defense requirement that individuals considered for VLC positions undergo an "enhanced screening" process before selection, including a review of the nominee's military records and background to ensure that the nominee does not have a disqualifying investigative or criminal record.

VLCs provided legal services to approximately 713 victims during fiscal year 2018, including initial counseling and guidance. Of these victims, approximately 85 percent were victims of sexual assault, while approximately 15 percent were victims of other crimes, including domestic violence. The VLCO assisted approximately 655 and 661 victims in fiscal years 2017 and 2016, respectively.

Defense Services. The American criminal justice system is based upon fundamental fairness to all involved in the process. Like its prosecutorial counterpart, the Marine Corps Defense Services organization (DSO) provides legal services through the employment of teams of defense counsel located at each installation.

The Defense Counsel Assistance Program (DCAP) is the primary source for training Marine Corps DCs. A major possessing an L.L.M. in criminal law leads DCAP, and DCAP also employs two civilian GS-15 [General Service] LAAs. The DCAP directly supports DCs in the field and advises on complex motions and best practices. DCAP maintains a secure website available to all personnel assigned to the DSO. The website includes a discussion forum where counsel can post questions and provide feedback in real-time, a motions database, copies of court rulings, standard forms and advice, and a variety of trial advocacy tools and templates.

DCAP also maintains a training program requiring counsel to attend formal week-long training events, such as defense counsel orientation, basic trial advocacy, and defending sexual assault cases courses. These Marine Corps specific training efforts are supplemented through civilian trial advocacy courses offered by the National Criminal Defense College, the Trial Lawyers College, and the National Association of Criminal Defense Lawyers. This training program ensures DSO judge advocates possess the knowledge and experience needed to provide high quality representation in complex sexual assault cases.

Integrating Legal Resources in Responding to Sexual Assault. All members of the Marine Corps legal community are integrated in appropriate stages of the sexual assault response process in the Marine Corps, from initial report through victim counseling and adjudication. Whether the initial report is restricted or unrestricted, the Marine Corps assigns VLCs to ensure victims are advised on and able to assert their legal rights. In the case of unrestricted reports, the Staff Judge Advocate (SJA) advises the convening authority on command legal obligations related to providing support for victims and ensuring a fair military justice process for alleged offenders.

When advising a commander, the SJA relies on the TC to provide factual detail and analysis for all sexual assault cases through consultation and completion of a case analysis memorandum (CAM). The purpose of a CAM is to enable and enhance the advice of the SJA to a convening authority on the disposition decision through careful evaluation of the evidence in a case and potential charges. A CAM analyzes the type and strength of evidence in a particular case. In March 2018, the Marine Corps made significant improvements to the CAM process, which closely mirrors the practices and standards employed by federal civilian and state prosecutors. A CAM is required in all cases involving death, infliction of grievous bodily harm, or any sex offense. The CAM must also record the victim's preference regarding jurisdiction and disposition.

Protecting all victims is an integral part of a commander's responsibility. All sexual assault response coordinators and victim advocates are required to inform victims of resources available to report retaliation, to request a transfer, and to request a military protective order. Additionally, the Case Management Group (CMG), led by each installation commander and comprised of the victim's commander, the unit's Sexual Assault Response Coordinator, the victim advocate, an NCIS representative, the SJA, the VLC, and a senior TC, meets monthly to address any concerns about

retaliation or other victim concerns. Finally, VLCs have been instrumental in proactively working with commanders on behalf of victims to help eliminate retaliation by advocating for clients.

ADDRESSING RETALIATION

The Marine Corps has extended its holistic approach to sexual assault prevention into assessing and addressing retaliation for reports of sexual assaults and other crimes. Following widely-publicized social media incidents, the Commandant established both Task Force Purple Harbor and the Talent Management Executive Council (TMEC). Task Force Purple Harbor focused on initial responses to social media misconduct, including discrimination, harassment, and retaliation. The Task Force coordinated policy, focus, and resources across the Marine Corps. The work of the Task Force included a detailed assessment of over 150 initiatives impacting nearly every Marine Corps practice and program, from investigations of sexual harassment at the unit level to further integration of females in boot camp. The TMEC complements Task Force efforts by harnessing senior leadership perspectives and experience in determining on how best to implement Task Force efforts.

New punitive order addressing prohibited activities and conduct. Eliminating retaliation was a core concept integral to both the Task Force and TMEC. After careful review and staffing, the Commandant published Marine Corps Order 5354.1E on Prohibited Activities and Conduct (PAC). This order addresses a wide spectrum of conduct including hazing, discrimination, sexual harassment, social media misconduct, and retaliation against victims or those who report criminal offenses. This order requires commanders to investigate all complaints, protect complainants from retaliation, conduct follow-up assessments for substantiated and unsubstantiated dispositions, and to measure effectiveness of command implementation through regular surveys.

The PAC order was a major step forward in the Marine Corps' efforts to identify abusive conduct and hold offenders accountable through administrative, disciplinary, and criminal charges, where appropriate. Training all marines on this new order was a vital part of the Marine Corps' efforts in 2018 to further develop a culture where sexual assault and retaliation are not tolerated.

THE COMMANDING OFFICER'S RESPONSIBILITY

Commanders are responsible and accountable for the morale, welfare, good order, and discipline of their units. This responsibility and accountability extends to every aspect of the command, including warfighting readiness and effectiveness and the discipline of the unit. Commanders are entrusted with the Marine Corps' greatest asset, the individual marine. Commanders must instill trust and confidence that offenders will be held accountable, victims will receive full support, and the military justice process is fair and just.

Judge advocate advice and support to commanders is integral to this process. For all unrestricted reports of sexual assault, a Marine Corps TC works closely with criminal investigators to ensure unity between the investigative and prosecutorial functions of the military justice system. The commander is advised by his or her SJA, an experienced judge advocate well versed in the military justice system and able to advise the commander on the full spectrum of legal actions required during and after the investigation.

CONCLUSION

The Marine Corps legal community is focused and ready to address the crime of sexual assault. The commander's role in the military justice process is fundamental to ensuring the preservation of good order, discipline, and welfare in the Marine Corps. As a result, commanders must remain central to the process. Marine Corps judge advocates support the commander in every step of the military justice process with advice and legal services support. I am committed to ensuring the Marine Corps legal community continues to be best manned, trained, and equipped to address sexual assault and eliminate it from our ranks. I look forward to working with Congress to meet our goals.

Senator TILLIS. General Rockwell?

STATEMENT OF LIEUTENANT GENERAL JEFFREY A. ROCKWELL, USAF, THE JUDGE ADVOCATE GENERAL OF THE AIR FORCE

Lieutenant General ROCKWELL. Chairman Tillis, Ranking Member Gillibrand, distinguished Members of the subcommittee, military commands, led by commanders, are responsible for executing our National Defense Strategy to defend the nation and win America's wars. Throughout our history, we have accomplished this because of four simple key components: the best people, the best training, the best equipment, and fourth, the most important element that binds together the other three, discipline. Discipline lies at the heart of command and control. Commanders command and control airmen, armed with the best training and equipment to execute our national defense missions. Discipline is commanders' business since they have the ultimate responsibility to build, maintain, and lead the disciplined force necessary to succeed in combat across multiple domains. Discipline makes us ready. Discipline makes us lethal.

To build this disciplined force to execute these missions, the military justice system works to strike a careful constitutional balance between all competing equities in the process. That balance is best struck when, at every critical juncture in the process, a commander is armed with the relevant facts, including victim input, and advised by a judge advocate before making a decision on the next critical step in the process.

We also know that good order and discipline are best when command operates and executes discipline across the entire continuum of discipline, from prevention efforts in setting standards, duties, and command climate on the left side of that continuum, to the response of courts martial on the right side when standards are not met, and everywhere in between. This disciplinary continuum embodies the concepts of unity of command, unity of effort, and command and control needed to build a ready, lethal, and disciplined force to execute the missions the Nation asks of us.

This committee and Congress have been instrumental in our efforts to improve military justice, particularly with regard to sexual assault. You have focused the system to be more fair and timely to appropriately address allegations of misconduct, that fosters progressive discipline designed to deter and rehabilitate wrongdoing, to respect the dignity of victims of crimes, to protect the rights of accused, and to maintain the trust of airmen and the American people.

We have increased our commander training to ensure they are better prepared to exercise their authorities. Before taking command, all commanders receive extensive legal training so they fully understand their responsibilities under the Code and the manual. Officers receive similar training at all levels of their professional military education, as do enlisted members.

Most importantly, as a matter of process, safeguards have been incorporated and gaps closed to maximize legal advice during every key phase or decision point of a case through investigation, adjudication, and final disposition. Our existing statutory authorities mandate that this critical legal advice be independent. Like with all decisions, commanders never make them in a vacuum. Deci-

sions are informed and evidentiary standards are applied at each stage of the process with the advice of a staff judge advocate, along with input from the prosecutor, victim, and accused.

A critical component to our fight against sexual assault in the military has been our quest to build trust and confidence in victims. We know that victims must be empowered at every stage of the process. Survivors must believe that their privacy can be protected and that they can regain a sense of control in their lives. Sex assault is a personal violation, and victims must be heard without having the process itself further make them feel victimized. Victims must know that they have a say before any decision is made. Our special victims' counsel have become vital teammates in our sexual assault prevention and response arsenal.

Removing command authority from our process and efforts to date would have a negative effect on military discipline and readiness, jeopardizing ongoing efforts to combat sex assault through a holistic, command-based approach across the continuum of discipline, prevention, and response.

Responsibility to uphold the broad system of laws set out in the Manual for Courts-Martial is not an additional duty for commanders. It is interwoven into the concepts of command and unity of effort. It is fundamental for our airmen to have no doubts about who will hold them accountable for mission performance and adherence to standards 24/7, both on and off duty.

Our work must continue to prevent and respond to criminal behavior within our ranks. With our holistic focus, we have seen increases in victims reporting and seeking services, with a commensurate increase in investigations, prosecutions, trial, and appellate litigation. Our next steps, I believe, should focus on addressing evolving issues of retaliation, collateral misconduct, timeliness, and education on the general deterrent effect generated by the cases tried.

While there has been much progress, we as judge advocates remain committed to survivors of sexual assault. We remain committed to airmen, and we remain committed to providing sound, independent legal advice to our commanders in a military justice system that has made us the most ready, lethal, and disciplined force in the world.

Thank you for hearing us today.

[The prepared statement of Lieutenant General Rockwell follows:]

PREPARED STATEMENT BY LIEUTENANT GENERAL JEFFREY A. ROCKWELL

Chairman Tillis, Ranking Member Gillibrand, distinguished Members of the subcommittee; thank you for the opportunity to talk about military justice and how we are combatting sexual assault in the Air Force.

I. The National Security Strategy, the National Defense Strategy, and Discipline. Military commands, led by commanders, are responsible for executing our National Defense Strategy to defend the Nation and, when called upon, win America's wars. Throughout our history, we have defended the Nation, fought and won our wars because of four simple yet key components: first, the best people; second, the best training; third, the best equipment; and fourth, the most important element that binds together the other three—*discipline*. Discipline lies at the heart of command and control, with commanders commanding and controlling airmen, armed with the best training and equipment, to execute our national defense missions. Discipline is commanders' business, since commanders have the ultimate responsibility to

build, maintain, and lead the disciplined force necessary to succeed in combat across multiple domains. Discipline makes the force ready. Discipline makes the force lethal.

To build this disciplined force to execute these missions, the *military justice system works to strike a careful constitutional balance* between all competing equities in the process, including the respect for and protection of the rights of victims of crime, and the rights of an accused. Based on years of experience, we know that a fully empowered commander, advised and guided by judge advocates trained in the professions of law and arms, is the right approach to strike this balance. That balance is best struck when, at every critical juncture of the process, a commander is armed with the relevant facts, including victim input, and advised by a judge advocate before making a decision on the next critical step in the process.

We also know that good order and discipline is best met when command operates and executes discipline across the *entire continuum of discipline*, from prevention efforts in setting standards, duties, and command climate on the left side of the continuum, to the response of courts-martial on the right side when standards aren't met, and to operating and executing discipline everywhere in-between. This disciplinary continuum embodies the concepts of unity of command, unity of effort, and command and control needed to build a ready, lethal, and disciplined force to execute the missions the Nation asks of us.

Judge Advocates, as members of both the profession of law and of arms, are duty bound and committed to the principles that have enabled our country's system of laws and our military to thrive. We are duty-bound to a constitutionally sound and fair military justice system, committed to uphold the purpose of the military justice system and military law as spelled out in the preamble to the Manual for Courts-Martial, "to promote justice, to assist in maintaining good order and discipline in the Armed Forces, to promote efficiency and effectiveness in the military establishment, and thereby to strengthen the national security of the United States." These first three—"promoting justice, maintaining good order and discipline, and promoting efficiency and effectiveness"—although sometimes competing are inexorably linked. The three come together to provide what the Nation asks of us, to "thereby strengthen the national security of the United States." With these principles as our guide, we attack the scourge of sexual assault in our ranks.

II. Progress to Date. Over the last several years, this committee and Congress have been instrumental in our efforts to improve military justice, particularly with regard to rape, sexual assault, and related offenses. You have focused the system to be more fair and timely, to appropriately address allegations of misconduct that foster progressive discipline designed to deter and rehabilitate wrongdoing, to respect the dignity of victims of crime, to protect the rights of accused, and to maintain the trust of airmen and the American people.

The Services fully implemented the *Military Justice Act of 2016, effective 1 January 2019*, in the Manual for Courts-Martial and their respective service policies. The Act is the most significant overhaul of the military justice system since 1983. The Act preserves the foundational principle of the commander as convening authority. It also affects the entire spectrum of court martial proceedings and related disciplinary proceedings. While we know that these sweeping changes to our military justice system will have significant impacts, we are still determining the long term effects, both positive and negative, on the overall effort to strengthen discipline and maintain the integrity of processes. We will continue to ensure the system and changes are properly challenged at trial and appellate levels to ensure that these changes are correct as a matter of law. We have yet to fully realize the effect of these changes because the system has not been provided the opportunity to evaluate the implementation of these reforms. New legislation coming at such a rapid pace limits our ability to see the results of changes made 1, 2, or sometimes 3 years earlier. For example, Article 120 of the Uniform Code of Military Justice itself has undergone multiple substantive changes over the last several years which has in turn led to increased trial and appellate litigation at the trial court level, the Services' Courts of Appeal, and the Court of Appeals for the Armed Forces. By ensuring the law is correct through transparent judicial review, we ensure trust, confidence, and reliability in the system.

Given commanders' critical and central role in this process, we have increased our training to ensure they are better prepared to exercise their authorities. Before taking command, all squadron, group, vice, and wing commanders receive extensive legal training so they fully understand their responsibilities under the Uniform Code of Military Justice and Manual for Courts-Martial. All officers receive similar training at all levels of their professional military education, as do all senior enlisted and enlisted members.

Most importantly as a matter of process, safeguards have been incorporated and gaps closed to *maximize legal advice during every key phase or decision point of a case, through investigation, adjudication, and final disposition*. 10 U.S.C. 806 and 8037, the statutory authorities of The Judge Advocates General, ensure that this critical legal advice is independent. In practice, like with all decisions, commanders never make them in a vacuum. Their decisions are informed and evidentiary standards are applied at each stage of the process with the advice of a staff judge advocate, along with input from a prosecutor, victim, and accused. The attachment, *Military Justice Decision-Making Process*, walks through in detail how we accomplish this in the Air Force.

A critical component of our fight against sexual assault in the military has been our quest to build trust and confidence in victims. We know that *victims must be empowered* in this very difficult process. Survivors must believe that their privacy can be protected and that they can regain a sense of control in their lives. Sexual assault is a personal violation and victims must be heard without having the prosecutorial process itself further make them feel victimized. Victims must know that they have a say in the process before a decision is made. In 2013, the Department created and staffed the Nation's first large scale effort to provide trained attorneys to victims of sexual assault. The program was designed to give victims the help, support, advice, and tools they need to enable them to pursue what is in their best interests, endure, and thrive. We believe the Special Victims' Counsel (SVC) Program has been a great success. SVCs deliver privilege-protected, victim-centered advice and advocacy through comprehensive, independent representation to sexual assault victims worldwide, assist them in obtaining support and recovery resources, and promote greater confidence in the military justice process and the United States Air Force. SVCs help champion victims' rights with representation at law enforcement interviews, trial, and defense counsel interviews, pre-trial hearing, in trial and on appeal. They help enforce victims' rights to safety, privacy, and the right to be treated fairly and respectfully. As a testament to SVC capability and quality of service, in fiscal year 2018, 100 percent of responding victims were satisfied with their SVC representation and virtually 100 percent would recommend SVC representation to others. SVCs have become a vital teammate in our sexual assault prevention and response arsenal.

III. Command-Based Military Justice. Removing command authority from this process would have a *negative effect on military discipline and readiness* while jeopardizing ongoing efforts to combat sexual assault through a holistic, command-based approach across the continuum of discipline, prevention, and response.

Every day, across the spectrum of prevention and response, we are committed to finding new solutions and approaches, being accountable, and being transparent. Every airman, from the commander down to the most junior member, is responsible for fostering and reinforcing a culture of respect and dignity in which criminal acts will not be tolerated. Commanders set the tone for their unit, and given their unique position and responsibilities are best postured to significantly reduce sexual assault from our ranks. Unlike any other institution in the United States, military commanders have not only the legal authority but also have a moral authority to set standards and enforce them. Commanders are the biggest part of the solution, not the biggest part of the problem.

Commanders are selected based in part on their education, training, experience, length of service, temperament, judgment, and most importantly, their decision-making ability. Because of these qualities, commanders are entrusted with the authority and the responsibility to ensure a disciplined fighting force consistent with military standards, American values, and established expectations. Moreover, commanders are trained in the military justice system, and checked and balanced with independent legal advice as they execute their decision-making responsibilities to ensure they are upholding standards and the military justice system. If commanders do not meet standards, they are held accountable for their actions or inaction by superior commanders.

Removing commanders as a central disposition authority for offenses under the Uniform Code of Military Justice could *send a conflicting message to our airmen and dilute the holistic approach* required to achieve good order and discipline in a military organization. If commanders are trusted with the decision to send airmen into harm's way, where command judgment may cost lives, they should also be trusted to discipline and hold accountable those who commit offenses. Responsibility to uphold the broad system of laws set out in the Manual for Courts-Martial is not an additional duty; it is interwoven into the concepts of command and unity of effort. Unity of command and unity of effort are indispensable elements of authority in a military unit and critical to achieve the mission. It is fundamental for our airmen to have no doubts about who will hold them accountable for mission performance

and adherence to standards, 24/7, both on and off duty. Furthermore, commanders are naturally incentivized to eliminate misconduct within the unit long before it metastasizes into criminal conduct as they operate across the continuum of discipline. Furthermore, bifurcation of jurisdiction would not only diminish the unity of the command efforts, it could also delay processing of cases, with the attendant negative effects all of concerned parties.

There is evidence that the current system of command accountability, supported by highly-professional judge advocates, is essential to the military justice system. A congressionally-formed and independent panel, the *Response Systems to Adult Sexual Assault Crimes Panel (RSP)*, studied the question and after a year-long, deep, and substantial review, concluded that commanders, advised by judge advocates, are best positioned to handle disposition decisions. Discussion of this issue should account for the vital and integral role of the staff judge advocate, who advises the commander throughout the life of a case, from report and investigation to adjudication and disposition. Each disposition decision by a convening authority concerning a sexual assault case is subject to multiple levels of review by superior staff judge advocates and convening authorities.

A commander-based disciplinary system, with direct, candid, and independent legal advice, is indispensable to building a ready, disciplined force to execute mission. Ultimately, experience indicates that commanders are well-positioned for the oversight, review, disposition, and adjudication of cases because they also have responsibility and sensibilities for the larger national security efforts that military justice exists to support.

IV. In Conclusion. When it comes to preventing and responding to criminal behavior within our ranks, our work must continue. Our holistic focus on preventing and responding to sexual assault has seen great results with increases in victims' reporting and seeking services, as further evidenced by an increase in investigations, prosecutions, trial and appellate litigation. Our next steps, I believe, should focus on addressing evolving issues of retaliation, collateral misconduct, timeliness in investigations and adjudications, and education on the specific and general deterrent effect generated by the cases tried.

While there has been much progress, we, as judge advocates, remain committed to survivors of criminal acts like sexual assault. We remain committed to airmen. And we remain committed to providing sound, independent legal advice to our commanders in a military justice system that has made us the most ready, lethal, and disciplined force in the world. Thank you for hearing us today.

ATTACHMENT 1: MILITARY JUSTICE DECISION-MAKING PROCESS

In the Air Force, squadrons, groups, and wings located at installations around the world are our organizational building blocks. Wings and installations are generally under the command of a numbered air force, and in turn a major command. Convening authorities are commanders authorized to convene courts-martial for serious violations of the Uniform Code of Military Justice. In the Air Force generally, wing commanders are special court-martial convening authorities and numbered air force and center commanders are general court-martial convening authorities. Thus, the authority to make court-martial disposition decisions is limited to senior commanders who must receive advice from judge advocates before determining appropriate resolution. With this in mind, we provide the following overview of how cases are generally administered by commanders, advised by judge advocates at every step of the process. It is a process founded on due process with checks and balances at every step.

The installation or wing legal office is led by the staff judge advocate who is the principal legal advisor to the convening authority. Both the staff judge advocate and the deputy staff judge advocate are selectively assigned leaders with litigation experience in military justice, to include previous experience as trial counsel, area defense counsel, and often as circuit defense counsel or circuit trial counsel. Each military justice program at the installation level is further managed by a chief of military justice who works for the SJA and whose primary responsibility is to oversee and manage the investigation and prosecution of courts-martial.

When an installation judge advocate, normally the chief of military justice, becomes aware of a criminal allegation through law enforcement or a representative from the subject's command, the judge advocate or chief of justice assists with the investigation. Once the staff judge advocate determines an allegation may result in a court-martial, the staff judge advocate details a trial counsel who works the case in a prosecutorial capacity from investigation to conclusion. This approach leverages the "vertical prosecution model" and promotes consistency, reduces the risk of lost information, and enhances relationships with victims of crime. The vertical prosecu-

tion model was promoted under the *Child Abuse, Domestic Violence, Adoption and Family Service Act of 1992*.

During the investigative process, an installation judge advocate provides constant advice and feedback to the investigative agency conducting the investigation. Judge advocates also assist investigators by developing lines of investigation, discussing elements of relevant criminal offenses, providing assistance on evidentiary issues, and securing evidence through means such as subpoenas and search authorizations. In investigations involving complex criminal allegations like sexual assault, a circuit trial counsel from the Air Force's cadre of prosecutors with the most experience in complex litigation, assist by providing advice in investigation development and potential charging considerations for any future criminal disciplinary action. For cases involving an allegation of sexual assault, this model of constant engagement is required as part of the Special Victims Investigation and Prosecution capability mandated in the National Defense Authorization Act for Fiscal Year 2013.

A victim may choose to communicate with investigators, judge advocates, and command through the special victims' counsel. Airmen accused of a crime are provided an experienced area defense counsel, and in cases involving serious misconduct a circuit defense counsel, free of charge to assist them. The defense counsel will frequently communicate on behalf of the accused to judge advocates, investigators, and members of command throughout the process.

Throughout the investigation, the installation staff judge advocate remains responsible for updates and receives feedback from his or her functional chain of command, which includes the numbered air force and major command staff judge advocates. These updates are also provided to the relevant entities and experts within the Air Force Legal Operations Agency, who serve as reach-back for the field, oversee the justice process, and advise The Judge Advocate General of the Air Force on the status of military justice cases. The installation judge advocates continue to coordinate with the circuit trial counsel on the investigation and case development. The installation staff judge advocate will also provide regular updates on the status of the investigation to the convening authority, commanders, and other interested members of command throughout the investigative process.

Once an investigation is complete, the investigation is reviewed with the subject's command. The commander, with the advice of a judge advocate, makes the final decision on disposition unless disposition authority has been withheld by a superior commander. The commander, advised by the staff judge advocate, has the full benefit of any views communicated by any circuit trial counsel or other judge advocate who has previously advised on the case during the investigatory stage. The input of any victim on disposition is communicated to command either through the judge advocate or, if involved, a special victims' counsel. The command also considers any information provided by the defense counsel prior to disposition. If trial by court-martial is determined to be the appropriate disposition, an installation judge advocate, advised by a circuit trial counsel in complex cases, drafts the charges and forwards them to the member's commander for referral of charges. For sexual assault cases, charges must be reviewed by a circuit trial counsel prior to referral. The draft charges are also typically vetted through the general court-martial convening authority's staff judge advocate, generally located at a numbered air force, prior to referral.

The staff judge advocate advises the special court-martial convening authority on whether subsequent referral of the preferred charges to a court-martial is appropriate. If a general court-martial is recommended, the special court-martial convening authority, with the advice of his or her staff judge advocate, will direct a preliminary hearing in accordance with article 32 of the Uniform Code of Military Justice. The preliminary hearing is conducted by an independent experienced judge advocate, and in cases of sexual assault, a military judge is usually detailed. The installation staff judge advocate ensures any views of the victim regarding disposition are communicated to the convening authority. Ordinarily, a circuit trial counsel is assigned, if they had not been assigned sooner, to ensure he or she is available for all significant developments in the case. In the case of an anticipated general court-martial, upon conclusion of the preliminary hearing, the charges are forwarded to the general court-martial convening authority. Before making a recommendation on referral, the staff judge advocate will provide the convening authority pretrial advice. This advice often includes input from the circuit trial counsel or other judge advocates involved in this case. The standard of review for cases under Rule for Courts-Martial 601(d) is that there is probable cause to believe that an offense triable by a court-martial has been committed and that the accused committed it. Upon referral to a court-martial, the staff judge advocate formally details trial counsel to the court-martial. This counsel is generally a judge advocate located at the installation and, as noted above, who has been involved in the development

Senator TILLIS. Thank you.

The vote has been called. It is a hard 15-minute vote, but this is the U.S. Senate, which means we have got about 25 minutes, and then they will be back to back.

So, Senator Scott, if you intend to ask questions, I will yield my time to you if you would like to ask questions before you go to vote. Admiral Hannink?

**STATEMENT OF VICE ADMIRAL JOHN G. HANNINK, USN,
JUDGE ADVOCATE GENERAL OF THE NAVY**

Vice Admiral HANNINK. Chairman Tillis, Ranking Member Gillibrand, and Members of the subcommittee, thanks for the opportunity to appear today.

Our Navy guidance clearly states sexual assault is a criminal act, incompatible with Navy core values, high standards of professionalism, and personal discipline.

As I listened to the testimony of the first panel, I am reminded again of the importance of constant assessment and reevaluation of our efforts to improve our institutional capacity to prevent and respond to sexual assault.

Everybody's role is important, from the sexual assault response coordinators and victim advocates that lead the response efforts to the agents who investigate, and yes, to the colleagues who have to treat each other with dignity and respect.

Our Navy regulations emphasize the great responsibility of the commanding officer for his or her command, and it states that the authority of the commanding officer is commensurate with his or her responsibility. In my view, it must remain so, and this authority should not be eroded.

The contributions of judge advocates and our legal offices are also an important part of our capability. I would like to highlight two areas.

First, in court martial litigation. The Navy JAG Corps established the litigation track in 2007 to improve the overall quality of court martial litigation. This recognized that criminal litigation skills are perishable and that repeated tours in military justice billets are needed to develop the expertise and competence to litigate complex cases, serve as judges, and then to train and supervise more junior attorneys. We now have 81 officers in the litigation track, including 13 captains and 25 commanders. These officers, most of whom are, at any given time, in activities related to courts martial, benefit everyone. They are the special victim investigation and prosecution-trained prosecutors who work with the Naval Criminal Investigative Service and that lead the independent prosecutorial review of cases and prosecute those efforts and proceed to court martial. They also serve as defense counsel, providing critical expertise in doing their demanding work, zealously defending those who are accused of crimes, and doing their utmost to ensure that any conviction only follows a fair trial that adheres to American constitutional standards of due process in a system that seeks justice. They serve as military judges, impartial arbiters of courtroom proceedings, who must have as their only interest that everyone's rights are protected, the accused and the victim. Their efforts pro-

vide counsel to commanding officers who consult with judge advocates regularly regarding the disposition of allegations.

The judge advocate, however, cannot replace the commanding officer's role in the process. The commanding officer must assess the effect of the offense on the morale, health, safety, welfare, and good order and discipline of the command.

Second, I would say related to the litigation aspect is the work of our victims legal counsel. These 33 attorneys, 5 of whom are currently drawn from the litigation track, are dedicated to serving individual victims. They explain the investigation process in the military justice process. They safeguard victim rights and represent their interests and serve as an advocate if there are concerns of retaliation. Of all military justice related initiatives over the past 6 years, this program may have had the biggest positive impact on victim awareness, understanding, and trust in the system.

I know there is more work ahead. As the recent report related to the Military Service academies showed, nothing can be taken for granted. And as the Judge Advocate General of the Navy, it is my responsibility to help look ahead and ask what else needs to be done.

I am grateful for the work of congressionally chartered panels that have produced numerous reports over the past 6 years, from the Response Systems Panel to the Judicial Proceedings Panel and the ongoing advisory committee reviewing the investigation, prosecution, and defense of sexual assault cases. The work of these panels has and will continue to inform my thinking and I am sure many others.

I am also grateful for the support of this subcommittee and the organizations represented by the first panel to ensure that we continue to make improvements to our response systems and prevention efforts.

Thank you again, Chairman Tillis and Ranking Member Gillibrand.

[The prepared statement of Vice Admiral Hannink follows:]

PREPARED STATEMENT BY VICE ADMIRAL JOHN G. HANNINK, U.S. NAVY

INTRODUCTION

Chairman Tillis, Ranking Member Gillibrand, distinguished Members of the subcommittee; thank you for the opportunity to testify today about our continued efforts to combat sexual assault in the Armed Forces.

Six years ago one of my predecessors—Vice Admiral Nan DeRenzi—testified before this subcommittee about the Navy's multi-faceted approach to address awareness and training, prevention, victim response, and investigation and accountability.

In this statement, I will provide an update focused on the roles judge advocates have within the Navy's framework for sexual assault prevention and response (SAPR). This statement will:

- Note the Navy's continued efforts related to training and prevention;
- Outline aspects of the Navy JAG Corps organization that enhance our capabilities related to court-martial litigation;
- Provide an update on the Victims' Legal Counsel Program;
- Describe the current process by which disposition decisions are made on sexual assault reports; and,
- Emphasize our desire to learn and adapt, to improve our ability to serve the Navy, its commanders, and its sailors.

TRAINING AND PREVENTION EFFORTS

The Navy continues to require annual SAPR training for all personnel. This training is provided in a face-to-face format, and uses video-based scenarios and vignettes to facilitate understanding and to prompt discussion among sailors. Training is often enhanced by the presence of sexual assault response coordinators, deployed resiliency counselors, and victim advocates. This and other SAPR training is reviewed in the Office of the Judge Advocate General to ensure consistency with the Uniform Code of Military Justice, and with Department of Defense and Navy definitions and policies. From a military justice perspective, such review ensures potential court-martial members receive accurate training and minimizes the chance that errors in training material can adversely impact a court-martial prosecution. In fiscal year 2018, the Office of the Judge Advocate General reviewed 28 packets of material ranging from advertising posters to interactive plays and outside speaker presentations.

Beyond annual training, the Chief of Naval Operations has established a Culture of Excellence campaign to combat a range of destructive behaviors, including harassment and sexual assault. This effort seeks to use data from a number of sources to understand trends, conduct root cause assessments, and identify key protective and risk indicators. It also aims to develop a behavioral learning continuum to identify prevention touch points across a sailor's career.

ORGANIZATIONAL CONSTRUCT

Military Justice Litigation Career Track (litigation track). The Navy JAG Corps established the litigation track in 2007 to improve the overall quality of court-martial litigation. Creation of the litigation track recognized that criminal litigation skills are perishable, and that repeated tours in military justice-related billets are required to develop the experience and competence needed to litigate complex cases, to serve as military judges and preside over courts-martial, and to train and supervise more junior attorneys in developing litigation skills.

Selection into the litigation track occurs by a competitive board process. To be considered, judge advocates must have served a minimum of 4 years on Active Duty and demonstrated exceptional aptitude for litigation. The selection process includes review of in-court experience and assessments by supervisors, military judges, and other litigation track officers. Once in the litigation track, judge advocates begin as "Specialist I," and based upon continued development can apply to subsequent selection boards for designation as "Specialist II" or "Expert."

At the close of fiscal year 2018, there were 81 litigation track officers—just under 10 percent of the Navy JAG Corps' officers. At any given time, the vast majority of these litigation track attorneys serve in billets for prosecutors, defense counsel, victims' legal counsel, and trial or appellate military judges. During their careers, many will serve as both prosecutor and defense counsel, giving them a balanced basis for understanding the strengths and weaknesses of cases. Each year, some litigation track officers are detailed to assignments outside the career track, such as sea duty onboard aircraft carriers, staff judge advocate billets, and assignment to post-graduate studies. These assignments develop judge advocates as naval officers and legal professionals by broadening their fleet perspective or providing advanced training in litigation skills and processes.

Prior to the implementation of the litigation track, the Navy typically assigned relatively junior judge advocates (i.e., senior O-3s/junior O-4s) to fill senior trial counsel (STC) and senior defense counsel (SDC) billets. The positions of STC and SDC were filled from a pool of officers who rotated through a variety of different substantive legal experiences unassociated with litigation. With typically one prior litigation tour, these attorneys assumed responsibility for an entire prosecution or defense office, to include all aspects of investigation, charging recommendations or defense strategies, motions practice, and courtroom arguments.

The Navy JAG Corps found itself detailing relatively inexperienced counsel to senior litigation positions for a confluence of reasons: officers were traditionally counseled that they needed a diverse career path to promote; officers viewed other career paths (e.g., national security law or environmental law) as being more promising; and "born litigators" saw no clear future for themselves in the Navy, instead choosing to leave for civilian positions with U.S. Attorney's offices, Federal Public Defender offices, the Department of Justice, District Attorney of Public Defender offices, or private practice. As a consequence, our STC and SDC were "generalists" rather than specialists, junior in paygrade, and relatively inexperienced given the gravity of their duties.

In 2019, the Navy is reaping the benefits of our litigation track initiative. A key aspect of the track is cultivating senior litigators who can assume leadership posi-

tions and then supervise and mentor junior officers. Officers who were selected for the litigation track in 2007 and 2008 have matured into senior officers, providing a nucleus of litigation expertise—we now have 13 O-6s and 25 O-5s in the track. At all nine prosecution commands, the STC is a track officer; and at commands serving the largest fleet concentration areas, the STC is an O-5, supported by two O-4 litigation track officers. The litigation track also benefits sailors who are accused of crimes or who are victims. At all four defense commands, the SDC is a litigation track officer, and each command has at least one other track officer as well. The Victims' Legal Counsel Program has two billets designated for litigation track officers, and currently five such officers serve as Victims' Legal Counsel.

Created in 2010, the Trial Counsel Assistance Program (TCAP) and the Defense Counsel Assistance Program (DCAP) provide training to trial and defense counsel worldwide, both in established courses and in mobile targeted training, which responds to emergent issues in a particular geographic area or judicial circuit. Equally important, TCAP and DCAP provide real-time assistance in individual trials and vital reach-back resources for litigators throughout the enterprise. A critical aspect of the litigation track, both TCAP and DCAP are staffed by track officers recognized as being experienced and proficient litigators.

Finally, the litigation track also benefits our judiciary. Currently, 12 of the 13 Navy military trial judges are litigation track officers; all 12 have extensive experience in the courtroom, both as litigators themselves and as supervisory counsel.

First Tour Judge Advocate Program. The Navy JAG Corps established the First Tour Judge Advocate Program in 2012 to provide first-tour officers exposure to the primary legal practice areas of judge advocates in a more structured manner. Under the program, new judge advocates spend 6 months providing legal assistance to sailors and family members and an additional 6 months learning to advise Navy commanders—most often as part of a command services department or as an assistant staff judge advocate. Judge advocates also spend 1 year as either an assistant prosecutor or defense counsel, working on court-martial cases under close supervision of more senior attorneys. Under this system, more senior attorneys are responsible for taking the lead role in cases, and more junior attorneys can hone litigation skills and learn about the military justice and administrative processes before becoming “core” prosecutors, defense counsel, or victims' legal counsel in subsequent assignments.

Region Legal Service Offices (RLSOs) and Defense Service Offices (DSOs). The Navy's prosecution offices are aligned under nine RLSOs, and the defense counsel offices are aligned under four DSOs. Both RLSOs and DSOs report to Commander, Naval Legal Service Command (a flag officer). This construct places both on an equal footing for personnel and resources needed to ensure quality representation. This construct also means that RLSO prosecutors who review Naval Criminal Investigative Service (NCIS) investigations and provide prosecution recommendations to Navy convening authorities do so from an independent prosecutor's perspective. I will discuss later the process by which Navy prosecutors tie in with NCIS, staff judge advocates, and commanders who make disposition decisions.

VICTIMS' LEGAL COUNSEL PROGRAM

Perhaps the most important change to the military justice system over the past 6 years has been the victims' legal counsel (VLC) program (in the Army and Air Force, this is known as special victims counsel (SVC)). Originally an Air Force initiative, the SVC/VLC concept quickly gained support and was enacted by the National Defense Authorization Act for Fiscal Year 2014 and implemented by the Secretary of Defense on August 14, 2013. It provides eligible victims of a sexual offense with a dedicated attorney to help them understand the investigation and military justice process, safeguard their legal rights and interests, and obtain additional support in accessing resources that may assist in recovery. Victims' legal counsel complement the care and support victims receive from sexual assault response coordinators, victim advocates, and in the case of domestic sexual violence, Family Advocacy Program personnel.

The Navy's VLC Program currently includes 33 judge advocates stationed at 23 locations around the world, all led by an O-6 chief of staff and a senior civilian deputy chief of staff. The VLC Program's chief of staff reports directly to commander, Naval Legal Service Command, ensuring equal organizational standing with the chiefs of staffs for RLSOs and DSOs. This arrangement keeps the VLC Program visible to Navy JAG Corps leadership, and ensures prompt consideration of policy matters and resource needs. We seek to maximize the opportunity for meaningful connections between VLC and their clients. Our actions include establishing a new VLC office in Sigonella, Italy, based on feedback from commanders in that region;

adding billets to places where high demand for VLC services was noted, including Japan and Norfolk; and issuing smart phones to enable counsel-client communication by live video and text.

All VLC candidates are vetted for professional experience, maturity, and judgment, and all candidates are personally interviewed by Commander, Naval Legal Service Command and by me. Approved officers serve as VLC for at least one 2-year assignment, and many continue to serve a third year.

All VLC must complete the Special Victims' Counsel Certification Course offered by the Army or the Air Force. VLC also attend specialized courses such as Prosecuting Special Victims Cases, Representing Child Victims, and the National Crime Victim Law Institute. In addition to outside training and monthly internal training, the VLC Program holds an annual training symposium, bringing together attorneys and administrative support staff for instruction and discussion covering areas such as vicarious trauma, child victims, developments in the military justice system, veterans' benefits for victims of sexual violence, and litigation strategies.

During fiscal year 2018, Navy VLC provided legal support to 1,890 sexual offense survivors (930 of whom were new clients during fiscal year 2018), and had an average of 1,070 open cases. VLC participated in approximately 490 military justice and administrative proceedings, and conducted 676 outreach briefs to approximately 28,000 Active Duty and civilian personnel.

The Role of Judge Advocates in the Investigation and Disposition Process

Each commanding officer, executive officer, and senior enlisted leader in the Navy is trained in person by a judge advocate on the Military Rule of Evidence 514 privilege, retaliation, sexual assault initial disposition authority, and case disposition reporting requirements should a sexual assault allegation involve a member of their command, whether as perpetrator or victim. These commander-focused responsibilities include the formal reporting of sexual assault reports, providing victim advocate support, processing requests for expedited transfer, and issuing military protective orders when appropriate. All commanders who have an open, unrestricted report of sexual assault from a victim assigned to their unit attend a monthly multidisciplinary sexual assault case management meeting to obtain updates on case information and then personally relay this information to the victim. This monthly meeting also assesses and refers for appropriate action all reports of retaliation, ostracism, maltreatment, or reprisal from a victim, witness, or first responder in conjunction with a report of sexual assault.

The JAG Corps' nine RLSOs each have a trial department that provides independent prosecution support to NCIS and to convening authorities in their respective areas of responsibility. A Special Victim Investigation and Prosecution (SVIP)-trained prosecutor is assigned in every special victim crimes (SVC) case, either as lead counsel, assistant counsel, or supervisory counsel. Assignment occurs within the first 24 to 48 hours of report of the SVC case to the RLSO. NCIS is required to notify the local RLSO within 24 hours of the report of a SVC case, and within 48 hours, the NCIS case agent is required to collaborate with a SVIP-trained prosecutor. The assigned prosecutor maintains a close relationship with the investigating agents, and tracks all active cases through an internal case management system database.

After receiving an investigation from NCIS, the prosecutor reviews the case and prepares a recommendation for the disposition authority. For cases involving penetrative sexual assault, the disposition authority—known as Sexual Assault Initial Disposition Authority (SAIDA)—must be an officer in the grade of O-6 who has Special Court-Martial Convening Authority.

The RLSO practice is to provide a written Prosecutorial Merit Review (PMR) to SAIDAs for each sexual assault case. In cases where the prosecutor recommends prefferal of charges, the RLSO PMR provides an outline of the case and offers a verbal briefing on the case. If the prosecutor recommends *not* preferring charges, the PMR additionally describes the basis for that recommendation. PMRs that contain a recommendation not to prefer charges in cases involving penetrative sexual assault must be signed by the RLSO commanding officer (a command-screened O-6); in other cases, the PMR may be signed by the senior trial counsel. Victim input on disposition is solicited and included for consideration by the RLSO and the disposition authority. RLSO recommendations are not binding on the disposition authority. The objective is always to ensure the disposition authority decision is informed by a thorough and independent prosecutor's assessment.

After prefferal of charges that may be tried at a general court-martial, a preliminary hearing officer conducts an Article 32 preliminary hearing and submits a written report to the SAIDA for consideration, accompanied by comments and recommendations from the prosecutor. If the SAIDA determines that referral to a gen-

eral court-martial is appropriate, the case is forwarded to the general court-martial convening authority with a recommendation for referral to a general court-martial. The general court-martial convening authority considers the report of the preliminary hearing officer along with any endorsements and recommendations, as well as independent advice from his or her staff judge advocate prior to taking any action.

If the SAIDA declines to forward penetrative sexual assault charges to the general court-martial convening authority, offenses other than penetrative sexual assault may be referred to a special court-martial, or disposed of through other administrative measures, such as nonjudicial punishment, and/or an enlisted administrative separation board, or a Board of Inquiry for officers. The SAIDA may also decline to take any punitive or administrative action in a case. Following conclusion of any sexual assault case, whether through the military justice process, administrative measures, or no action, the case disposition is recorded in a Sexual Assault Disposition Report, and the victim is notified.

READINESS TO LEARN AND ADAPT

As outlined above, the past 6 years have included organization and process developments that enhance the Navy JAG Corps' ability to further the Navy's sexual assault prevention and response efforts. But we are not perfect. So we must be, and are, open to looking at where we can do better.

One example is an ongoing assessment of the military justice litigation career track. This assessment is intended to see if any changes can better ensure the litigation track meets the needs of the Navy for military justice expertise in a variety of roles.

Another example is our desire to learn from the material published by congressionally-directed reviews. These reviews began with the Response Systems to Adult Sexual Assault Crimes Panel, continued with the Judicial Proceedings Panel (JPP), and are now ongoing with the Defense Advisory Committee on Investigation, Prosecution, and Defense of Sexual Assault in the Armed Forces (DAC-IPAD).

DAC-IPAD's Case Review Working Group plans to identify trends in investigations, identify factors that may affect commanders' disposition decisions, and assess whether those decisions were reasonable. This independent analysis of 2,069 investigations in which a servicemember was accused of committing a penetrative sexual assault offense against an adult victim is the kind of detailed review—based on real cases—that can help answer the important questions, “How are we doing?” and “What changes should be considered?” Going further, results from DAC-IPAD and other information can be taken into account in future comprehensive reviews of the Uniform Code of Military Justice required by article 140, UCMJ. The first such review is in fiscal year 2021, with subsequent reviews taking place during fiscal year 2024 and every 8 years thereafter.

CONCLUSION

The Navy remains firmly committed to combating sexual assault. I am committed to equipping all members of the Navy JAG community, including enlisted personnel, our civilian staff, and judge advocates, with the tools needed to carry out our roles in this effort. I look forward to working with Members of Congress to review our processes and ensure that we are doing this in a fair, effective, and efficient manner.

Senator TILLIS. Thank you.
General Peđe?

STATEMENT OF LIEUTENANT GENERAL CHARLES N. PEDE, USA, THE JUDGE ADVOCATE GENERAL OF THE ARMY

Lieutenant General PEDE. Chairman Tillis, Ranking Member Gillibrand, and Members of the committee, thank you very much for the opportunity to appear before you.

We have the best Army in the world, and our Army is the most effective force on the battlefield because our commanders and our soldiers are the product of a system of accountability that, at its core, has consequences.

A justice system that for 243 years has rested in the hands of those who are responsible for the Army's mission to fight and win wars. That is our commanders.

Like many on this committee, for over 15 years, I have worked directly on confronting the issue of sexual assault. In those years, I have worked on numerous legislative changes, most especially article 120 beginning with the tectonic changes of 2007. I was personally involved with Secretary Gerren's efforts to resource the fight and had a direct hand in the establishment of our special victim prosecutor program and later our special victim counsel program. I appear before you, however, today recognizing there is still much work to do. Our first panel is a reminder of this sacred charge.

As the Army Judge Advocate General, I tell you that we shall remain relentless in the Army and focused in getting after this problem and in the protection of our victims, our communities, and of course, always the rights of the accused of these crimes.

In short, the commander has always been and must always be the fulcrum to any solution in the Army. Look at our current housing crisis. We outsourced responsibility for housing our soldiers to privatized partners. Who do our families look to for solutions? Who do you look to to drive change? Soldiers look to their commanders. Every town hall is hosted by a commander. Will every commander deal with mold or leaky basements perfectly? Of course not. But there is no set of leaders on this earth better trained, better resourced, and more consistently successful than an American commander.

In my view, so it must be with sexual assault. All of us in this room recognize there is no easy solution. I have been fighting this crime hand in hand with commanders for 31 years. But certainly no solution in the military excludes commanders. The notion that stripping commanders of authority over serious crimes will reduce crime, result in more or better prosecutions, or higher conviction rates in my view and experience simply is not supported by any empirical evidence. Indeed, the proposition is actually disproved by the empirical evidence.

We know this. In the multitude of congressionally mandated studies where diverse panels of experts have exhaustively examined the military justice system, hearing hundreds of witnesses and thousands of hours of testimony, they reported back to you one critical consistent conclusion: the commanders should not be removed from the military justice system.

The scope of the sexual assault problem and crisis is as big as the society from which we draw our soldiers. As you know, the Army is refreshed every year with 75,000 new soldiers from every city in America. We are drawn from our society and we face the same problems. In a timely illustration of the breadth of the sexual assault problem, a highly esteemed university recently released the results of a prevalence study wherein nearly half of their female undergraduates said they were sexually assaulted since enrolling at the university. A staggering 48 percent. These females reported an annual rate between 18 and 22 percent.

I share these statistics not to place blame elsewhere or to distract from the Army's 4.4 percent prevalence data or the 18 percent recently reported at our military academy or to suggest somehow that the Army is like a university because it is certainly not. But the numbers at the university speak to the pervasiveness of the

problem in our society at large, especially within certain demographics.

Despite the challenge, the Army owns this problem. Discipline is, as George Washington said so many years ago, the soul of an army. It is foundational. It is our DNA.

In my professional view, taking away a commander's decision over discipline, acts of misconduct, including the decision to prosecute crime at court martial will fundamentally compromise the readiness and lethality of our Army today and on the next battlefield.

Congress and the Services have made unprecedented strides to attack this crime. Our statute is aggressive, expansive, forward-thinking. In Army courtrooms 10 years ago, sexual assault offenses comprised 18 percent of Army trials. This past year, 50 percent of Army trials were sexual assault trials. Our statute gave voice to victims. Our SVC program gave voice to victims.

We know there is much that remains to be done. We promise you we will continue to get after it, and I thank you for your time.

[The prepared statement of Lieutenant General Peđe follows:]

PREPARED STATEMENT BY LIEUTENANT GENERAL CHARLES N. PEĐE

COMMANDERS' CENTRAL ROLE IN ENFORCING DISCIPLINE—THE KEY TO READINESS AND LETHALITY

Chairman Tillis, Ranking Member Gillibrand, and Members of the Senate Armed Services Committee, thank you for the opportunity to appear before you and speak with you on this important issue.

The American Army is the best Army in the world. But, as the National Security Strategy wisely recognizes, "America's military has no preordained right to victory." Countless attributes make us the best, but first among these, are our leaders—courageous, responsible, and committed to the care of soldiers who are willing to give their lives for this Nation and for their fellow soldiers.

For over 243 years, commanders in our Army have led this exceptional force through the careful exercise of discipline. Discipline is, as George Washington stated, "the soul of an Army." Discipline is foundational; it is in our DNA. In my professional view, taking away a commander's decision over all discipline—including when appropriate, the decision to prosecute crimes at court-martial—will fundamentally compromise the readiness of our Army today and on the next battlefield.

This is especially true for serious offenses, like sexual assault. Ten years ago, sexual assault offenses comprised 18 percent of Army trials. In 2018, 50 percent of trials in Army courtrooms were sexual assault trials. This is not a coincidence. A new statute in 2007 strengthened the voice of victims. Additional reforms within the Army, such as the special victim prosecutor, special victim teams, and the special victim counsel program have changed the landscape of accountability and improved the administration of justice. Within this framework, leaders developed a comprehensive prevention program and a fully resourced accountability process that put emphasis and resourcing in the hands of commanders to address the problem. This is what commanders do: commanders see a problem, and in response, they set priorities and standards, enforce them, and devote resources to solving the problem. Indeed, Congress and the Services have worked closely together over the intervening years to reform and improve our prevention and response measures. With congressional assistance, the military justice system has undergone truly unprecedented reforms—many of which took effect only 9 weeks ago.

COMMANDER AUTHORITY AND ACCOUNTABILITY

An expeditionary Army requires a justice system that is portable, swift, just, and transparent. Soldier behavior is governed, built, shaped, and reinforced over a soldier's career by commanders and leaders who set and model standards, and who punish bad behavior.

The commander is vested with that authority because he or she is accountable for all that goes on in the unit—in conflict or in peace, at home or abroad. The commander—trained, experienced, and in partnership with his or her judge advocate

legal advisor—must be able to dispose of indiscipline quickly, visibly, and locally. A commander who is denied the tools necessary to combat a crime will not be as accountable for preventing that crime as one who is appropriately equipped with that necessary authority—accountability for something must depend on the authority to do something about it. This is as true for sexual assault and other serious offenses as it is for any other crime.

Although American soldiers are the world's best, it is, ultimately, a commander's authority to enforce discipline—including, when appropriate, by the highest sanction our society recognizes, a criminal conviction imposed after a fair trial—that ensures American soldiers uphold the high standards of behavior expected of them, in war and in peace. The chain of command is, and must remain, the center of gravity for solutions. This includes sexual assault.

Commanders have the moral and legal authority to drive the United States Army toward preventing significant crimes in a way that lawyers do not. Courts-martial of soldiers accused of murder in violation of the Law of Armed Conflict, for example, have drawn criticism from some commentators as examples of lawyers applying unreasonable laws to prosecute American heroes. Over the past 18 years, the Army has tried over 790 courts-martial in a deployed environment. That is almost 800 instances where a commander decided to emphasize good order and discipline in order to achieve greater ends on the battlefield. Importantly, only 10 percent of those 790-plus cases were purely military offenses.

The commander ensures soldiers retain their dignity in combat. One necessary method to enforce battlefield standards is through the court-martial. Indeed, at its foundation, the preservation of good order and discipline is why the commander has this authority. James McDonough expressed this notion most eloquently in his famous book *Platoon Leader*, an autobiographical account of his experience leading soldiers in Vietnam. "I had to do more than keep them alive. I had to preserve their human dignity. I was making them kill, forcing them to commit the most uncivilized of acts, but at the same time I had to keep them civilized. That was my duty as their leader. They were good men, but they were facing death, and men facing death can forgive themselves many things. War gives the appearance of condoning almost everything, but men must live with their actions for a long time afterward. A leader has to help them understand that there are lines they must not cross. He is their link to normalcy, to order, to humanity. If the leader loses his own sense of propriety or shrinks from his duty, anything will be allowed. And anything can happen."

As good as Army lawyers are, they cannot substitute their legal experience for a commander's expertise and moral authority in the unit. It is this moral authority (highlighted by McDonough) that soldiers follow, even at the risk of their own lives. If that authority is outsourced—even to lawyers in uniform—soldiers will lose respect for their commander and the natural constraints command authority places upon them. Further, commanders are uniquely suited to address insidious behavior within the unit stemming from reports of crimes. For example, commanders understand that retaliation against victims who report sexual assault is a very real threat to victim safety, readiness, and unit cohesion. Commanders are in the best position to take meaningful action to address retaliation.

Retaliation for any report of a crime is unacceptable. By policy, any allegation of retaliation must be thoroughly investigated. On January 1, Article 132—the first punitive Article that expressly prohibits retaliation—went into effect. Even before January 1, though, commanders have prosecuted crimes that affected witnesses in the military justice system, from violating a no-contact order to obstruction of justice. Social retaliation is complex: although clearly harmful, much of it is not criminal, but a commander's commitment to fostering an environment in which victims are supported is key to establishing a culture in which such acts rarely occur.

CALCULUS IN COMMAND DECISIONS—GOOD ORDER AND DISCIPLINE

I fully acknowledge that the Army is not a perfect institution when it comes to addressing sexual assault and sexual harassment. We will, like any institution or system, make mistakes. But we are an accountable organization, one that subjects itself to a level of scrutiny for which there is no parallel in civilian society. I believe this is what we owe the mothers and fathers who send us their sons and daughters.

Some may point to prosecution or conviction rates and argue that these are litmus tests of our ability to handle sexual assault cases. I do not agree. Just because something can be measured does not mean it is a valuable metric. Conviction rates are the quintessential poor metric: they are simple to record, yet they reveal little.

Further, no criminal system should be graded by a conviction rate alone. Show me a 98 percent conviction rate, and I'll show you a system that doesn't try the

hardest cases. Nonetheless our overall conviction rate is 86 percent. It is true that a narrow subset of fully-contested sexual assault cases is lower—around 40 percent in any given year. Yet, some cases that should be tried are also harder to try than others. To take these deserving cases to trial means accepting a lower conviction rate. And anyone who has experience in trying sexual assault cases will acknowledge this fact—these can be, quite simply, the toughest cases often for such reasons as the victim’s word against the accused’s, alcohol, bad memory, and little-to-no physical evidence or witnesses.

I embrace the criticism that comes with trying these hard but meritorious cases. We will take cases to trial that a civilian jurisdiction will not because our commanders have a different calculus—one based on the unique requirements of discipline in a warfighting Army where soldiers must rely on each other, have confidence that they can count on the person to their left and right, and that when one soldier gets out of line that their commander will fix the problem and enforce the standard. Whether it is weapons safety or victim safety, this is the essence of discipline. This is good order. This is what commanders enforce. And so, a commander’s discipline, good order, and safety calculus is different from any United States district attorney’s (DA), commonwealth’s attorney’s, or state’s attorney’s calculus.

A commander may decide to prosecute a case of an aircraft mechanic who distributes small amounts of cocaine to his fellow soldier mechanics even when the local DA’s threshold may be higher. Why? The commander may have 12 soldiers on that Blackhawk tomorrow. Our calculus in the best Army in the world is simply different.

So it is with sexual assault crimes for which there may be little corroborative evidence. Law enforcement and judge advocates spend significant time developing cases and assessing the available evidence. Based on that work, our commanders take cases not because they know to a certainty that the Government will win, but rather when they believe the victim and that victim seeks justice in court and there is a reasonable chance of a conviction—and then only after receiving the benefit of their judge advocate’s thorough review of the evidence. When that is true, the crucible of the courtroom—bound by the requirements of due process—is the American way of deciding what the facts are. We must remember that the military justice system is an adversarial criminal process that must honor the non-negotiable constitutional protections for an accused. Our scales of justice are balanced for sound reasons—our sacred charter is to ensure we show proper respect for both sides of the scale.

Commanders must also carefully consider the concerns of the victim and the safety of our community when addressing any allegations of crime—most especially sexual assault. As a society, we must be concerned for the victim, but we cannot lose sight of the potential for future victims, should an accused not be prosecuted and held accountable. In a recent case where a victim declined to participate in a rape prosecution, the United States, after careful, thoughtful consideration, decided to subpoena the victim, who ultimately testified, albeit reluctantly. The soldier was convicted and given a lengthy sentence. This is a rare occurrence, admittedly, but noteworthy as it is a reminder that the safety of our community is one of the foundational principles of every criminal justice system, to include our own. It can be a very difficult balance with many considerations: we must also think of how forcing a victim to participate in a prosecution might negatively affect reporting in the future as word potentially spreads. Yet, public safety is paramount.

CONGRESSIONALLY MANDATED EMPIRICALLY BASED COMMISSIONS HAVE CONCLUDED
COMMANDERS SHOULD REMAIN IN THE SYSTEM.

The proposal to remove the commander from the military justice process is not a new one. Significantly, where the role of the commander has been thoroughly examined, the conclusion is clear: removing commanders from the military justice process will not improve either reporting or prosecutions of sexual assault.

Over the past several years, three significant external reviews have examined the military response to sexual assault and each of those reviews has focused on the role of the commander. Not one has recommended removing the commander.

The congressionally-mandated Response Systems Panel (RSP), which consisted of nine civilian members, led by retired federal Judge Barbara Jones, exhaustively studied sexual assault in the military: more than 70 public meetings, testimony from over 600 witnesses, 10 site visits, and thousands of pages of information. Multiple advocacy organizations were invited to submit materials and appear before the RSP. This was, in short, a comprehensive, evidence-based review of our system by outside experts.

After conducting their thorough review of the military's response to sexual assault, the RSP found the evidence did not support the conclusion that removing commanders would reduce sexual assault or increase reporting. It would not, the RSP concluded, improve investigations or prosecutions. Finally, and importantly, the panel concluded removing the commander would not increase victim's confidence in the military justice system or reduce concerns about potential reprisal.

More recent evidence suggests that commanders are making sound decisions in sexual assault cases. The Defense Advisory Committee on Investigation, Prosecution, and Defense of Sexual Assault in the Armed Forces (DAC-IPAD), another congressionally-chartered commission, recently released the preliminary results of a study in which members evaluated a commander's disposition decision in 164 randomly selected cases—74 percent of which did not involve a court-martial. That ongoing review, conducted largely by lawyers, concluded in a preliminary report that commanders' decisions were reasonable in 94 percent of the cases, and even in that 6 percent remainder, more often than not, the attorneys could not come to a unanimous conclusion on whether the commanders' decisions were reasonable or not. This demonstrates that even trained, experienced lawyers can disagree, especially in these tough cases.

When evidence shows that change is needed, the Services have welcomed it. Indeed, following the RSP, the Services embraced reviews by the Judicial Proceedings Panel and the Military Justice Review Group (MJRG). In particular, from 2014 to 2015, a Secretary of Defense-established entity, the MJRG, which included judge advocates from each of the Services, comprehensively reviewed the UCMJ and identified areas in which we could strengthen our system.

Congress accepted most of these recommendations, and with the Military Justice Act (MJA) of 2016, the most significant changes to the military justice system in more than 50 years went into effect. Over the 24 months that followed passage of MJA 16, our Military Justice Training Team trained over 6,000 people at 50 installations, in 23 states and 6 countries on the changes brought by MJA 16. Though it is too early to reach any conclusions about those changes, one thing is clear: we welcomed them, trained accordingly, and are focused (along with commanders) on moving forward and improving our system.

Of course, the sweeping changes to our criminal justice system by MJA 16 follow successive years of hundreds of statutory and policy changes to our criminal justice system. For any criminal justice system to be effective, it must be predictable and stable. Article 120, UCMJ, alone has undergone four substantive changes in 10 years, and the statute we have is indeed the most progressive and responsive sexual assault statute in existence. Yet, even justified change carries the risk of unintended consequences. Only because of the energy and skill of judge advocates across the Services and the flexibility and adaptability of our commanders have we been able to absorb the sheer volume of changes and ensure justice is done. Yet, with every change, there exists an element of judicial uncertainty. Take, for example, the challenges made to the burden-shifting elements in the 2007 version of Article 120. In those cases, victims who came forward and bravely gave testimony saw those cases overturned at the appellate level. We must, as responsible policy makers, allow the system to breathe normally for a period of time to absorb the changes.

ALLIES' EXPERIENCE AND HISTORICAL CONTEXT

Many of our allies have seen commanders removed from disposition decisions for cases involving serious misconduct, and it can be tempting to want to follow suit. Of course upon closer inspection, none of our allies made this change because of concerns about sexual assault. Their experiment in removing commanders has also shown that there is no evidence that removing commanders from disposition decisions has made their armies more ready or lethal by reducing incidence of serious crimes like sexual assault.

The past can also be instructive. In 1947, General Eisenhower (then the chief of staff) testified before the Senate Committee on the Armed Services and when asked about the commander's role in military justice, he said something prophetic: "Remember this: you keep an Army and Navy to win wars. That is what you keep them for. The line officer is concerned with the 4,000,000 men on the battle line far more than he is with the small number who get in trouble. The lawyer is there, of course, to protect their absolute rights under our system to the ultimate, but these men who are in charge of and are responsible for these things which come from the President through the Secretary of War to the commanders, have to win the war." General Eisenhower continued, "If you make a completely separate staff body to whom is charged no responsibility for winning the war and you say, 'you can do as you please about these people,' you are going to have trouble."

ONGOING EFFORTS

Commanders and their judge advocates have spent the last 12-plus years focused on preventing, and responding to, sexual assault, with positive results, including an increase in victims reporting, seeking services, investigations, and prosecutions. There have been improvements, but like any such effort, there will be some setbacks, such as the recently released prevalence reports from the academies.

We know that there remains much more to do, and the Army remains committed to doing it. Like the rest of society, we cannot prevent every crime, and we cannot, consequently, prosecute our way out of this problem. What we can do is continue to make preventing sexual assault the priority it must be—which is something that, in the military, only commanders can do. We can hold commanders accountable, but only if we give them the authority that they need.

In the end, commanders drive priorities and emphasis on those priorities yields results. Commanders, not uniformed prosecutors, are in the best position to make decisions affecting good order and discipline because, in the end, it is ultimately a commander's responsibility to ensure good order and discipline—a well-trained, well-equipped, and well-disciplined force that is ready for any mission that they are assigned.

I thank the committee for your attention and the opportunity to speak with you today, and I look forward to answering your questions.

Senator TILLIS. Senator Scott, I know is going to go vote. You had a brief question?

Senator SCOTT. First of all, thank you for your concern about this. Thanks for your service and thank you for your commitment.

The first thing is, has anybody been held accountable—has any commanding officer been held accountable for their failure to properly deal with sexual harassment? Does anybody have any examples of people that have been held accountable for not handling it the proper way?

Lieutenant General PEDE. Sir, I can tell you that we have—if we speak to retaliation issues, we have—I have got a number of cases this year in fiscal year 2018 where I can identify command elements, either the officers that were responding to the allegations, similar to things described in the first panel, that were held accountable. I do not have evidence of courts martial.

I would simply offer to the committee that notions of retaliation comprise a spectrum, and some of it is very difficult to criminalize with criminal sanction. But that which is, we have a couple cases where it resulted in a charge at a court martial. But it is very difficult thing to get after criminally, sir.

Senator TILLIS. Senator Scott, one thing I will tell you is that one of the privileges that Senator Gillibrand and I have as the chair and the ranking member is that we are consulted with promotions that are sent forward. One of the questions that I have asked of the DOD is if those are ones that pass muster within the Department in each of the branches. I know that some promotions are held back as a result of somebody's adverse activities being in the file, and then some make it past, a handful that come before us. I will guarantee you if there is any credible evidence in a file, that person will never get promoted as long as I am in the U.S. Senate. I said there is that congressional responsibility as well. It is not foolproof. I do think that there are probably other actions that we need to take, but there are those checkpoints that you may not have been familiar with being relatively new to the committee.

Senator Gillibrand, I think Senator Scott and I are going to go vote. The cloakroom said they are going to close in about 5 minutes.

Senator GILLIBRAND. Lieutenant General Rockwell, your prepared remarks were inaccurate. You said that as further evidence by an increase in investigations, prosecutions, trial, and appellate litigation. In fact, just looking at the last 3 years, we have seen such a reduction in performance, it is mind-blowing. In 2015, 46 percent of the cases were command action considered; in 2016, 47 percent; and 2017, 53 percent.

So you assume the commanders are looking at more cases and they had actually sent more to trial. No. So in 2015, 33 percent went to trial—excuse me—court martials preferred. 33 percent were court martial preferred; 2016, 27 percent; in 2017, 22 percent.

You would say, well, at least more must be going to trial. Right? No. In fact, in 2015, 20 percent went to trial; in 2016, 13 percent went to trial; in 2017, 11 percent went to trial.

You say, well, surely convictions must be up. No. In fact, in 2015, 15 percent were convicted, 413 cases; in 2016, 9 percent were convicted, 261 cases; and in fact, in 2017, 8 percent resulted in conviction, 284 cases.

So we are not going in the right direction on any possible measure that you could create.

What I am most disturbed about in your testimony is that you feel you are doing a good job, and I am just trying to tell you if commanders are in charge of good order and discipline, then why do we have a 59 percent retaliation rate? Why do they allow so much retaliation to happen in the ranks, both professional, both career-wise, and both peer-to-peer? Look, all of these forms of retaliation sit within your jobs of maintaining good order and discipline.

So I am very concerned that you are not even briefed well by your people who are helping you to be here to testify because I am sure you did not mean to testify a false statement, General Rockwell. I am certain of that. But the person who wrote your remarks did not look at the actual facts. So it is disturbing to me that you might not realize the depth of the problem, the depth of the absolute problem.

No one is trying to make commanders less responsible. Nobody. We would like you to maintain good order and discipline. We would like you to stop retaliation. We would like you to stop sexual assault. We would like you to prevent sexual assault. But when it comes to the technical decision, as if there is enough evidence that 3 percent of you who get to decide this, let us leave it to an expert, someone who is trained in criminal justice, who has prosecuted cases and defended cases, somebody who has a career in it because you are trying to make these decisions yourself, and it is only 3 percent of you anyway. It is not the average commander. We are not making you less responsible. We are taking one thing off your to-do list that you are not very good at. That is it. We are just taking one thing off your list.

To say that we are making commanders less involved is a false statement because, first of all, 97 percent of you never have the right to be a convening authority. You are just not senior enough. You are not there. You will never have that right. 97 percent of you have to instill good order and discipline and not have the right to decide whether a case goes to trial.

When we had a hearing about article 60 in the beginning of—6 years ago, every commander said, oh, commanders must have the right to overturn a jury verdict because that goes to these things that you mentioned, Vice Admiral Hannink. You say we have to be able to assess the effect on morale, safety, health, and wellness of the unit. Well, you insisted that you have this right. The Secretary of Defense said, yes, it is a vestige of pre-World War I. We really do not need it. Everyone said, oh, yes, it was not necessary.

I promise you this is the same thing. You do not need to decide a technical decision about whether a felony has been committed. You do not need to do that because your job is to make sure that crimes do not get committed, to make sure they get investigated properly, to make sure there is no retaliation, and to make sure you have unit cohesion, and that you actually have good order and discipline, and you do not have 15,000 rapes, sexual assaults, and unwanted sexual contacts a year.

So that is the truth of the matter, and so your testimony is leaving me wanting because I do not think you are up to the task. Every Secretary of Defense for 20 years has said zero tolerance. Never would you accept this level of failure for any other mission you are asked to complete. Never. Never would you say over 25 years, we have been doing our best, zero tolerance, and still have a conviction rate of 3 percent. That is so sad.

And, yes, you are right. There is sexual assault everywhere, in society, at college campuses, in the military.

The reason why I am spending so much time trying to professionalize the Services is I want you to be state-of-the-art. I want the world to look to the U.S. military and say, yes, we have the greatest men in the world and women, and we have the greatest ability to win wars and to keep national security. We have the best and the brightest. So why not give you the tools that I really think you need to be really good at this too?

A lot of DAs around the country are terrible at this. DAs. They are professionals. Their conviction rates are terrible because they do not handle sexual assault well.

So why not, as the Navy has done, allow for a professionalization of their JAG system to become career criminal justice lawyers? It is exactly what all the Services should do. Then let the prosecutor make the ultimate decision about whether there is enough evidence to go forward to convene a court martial. There is no reason why commanders should not opine on it, should not be part of the process, should not influence the process. But just let it be a technical decision because as our defendants' rights advocates have said, why do we want to push the scales either way?

I think a lot of commanders did overreact and say, oh, I am going to send every case to court martial. Well, maybe they did, but if you are sending false cases forward, you are not going to instill confidence in the system. If all of your cases that you move forward end up not convicting and saying that it did not happen, do you think a survivor is going to think that system works? No. So you only want to send forward the cases that actually have the legitimate basis and have the evidence that a prosecutor would look at and say, "I can win this case."

I would love to work with all of you on trying to address how we deal with sexual assault better. I do not think you need to retain this right. I think it is a red herring to say we are making you less in charge. We are not. We are just taking one technical decision away so that when Senator McSally testified she was actually assaulted by her commanding officer, that a survivor can say the chain of command still has my back because you need to have their back. Let someone else decide, who has no skin in the game, who just is going to make a technical decision on the merits of the evidence.

I do not think you should fight me on this. I do not think you should fight the millions of survivors who have said this is the one change they want in criminal justice. That is all they are asking, for one change because they just feel like if there is no skin in the game, if there is nobody who has a bias against the accused or against the accuser, that in fact justice might be possible.

If you had a higher conviction rate, to Senator McSally's question, what do you do about the culture? I promise you if more bad guys went to jail for sexual assault and rape, you would have less sexual assault and rape. It is how it changes.

I have gone over my time. I do not have questions for any of you. I just want you to know that I deeply want to work with you on this. I want to solve this problem. I think our failure in this is embarrassing.

One thing that Senator Tillis asked about was other jurisdictions. So Israel did it in the 1960s. The UK [United Kingdom] did it maybe 10 years ago. Australia, Canada, Germany, Netherlands—all of them took this one decision point out of the chain of command for one reason. They did it because of defendants' rights. They thought if you can put someone in jail for more than a year of their life, why not allow a professionalized system to look at it.

We know our commanders have so many responsibilities. We know they do an amazing job in winning wars and training troops. I do not know why we ask them to be good at sexual assault cases. It is the hardest case in the world to prosecute. It is the hardest case in the world to get right. People who professionalize in this area still do not do very well at it.

That is my only request. Please work with me on these issues.

I am now going to put our hearing in recess to go vote. Thank you for your service. Thank you for your commitment, and thank you for your dedication to our country.

[Recess.]

Senator TILLIS. We will have the committee come back to order.

It turns out I was off by about 20 minutes. Apparently the 15-minute vote was roughly 40 minutes.

So I suppose I may be the final person to ask questions.

General Peđe, I want to start with you. You were talking about the empirical data in your opening comments that would seem to refute the benefits or that it would produce numbers that would, on their face, be an improvement. Tell me more about that and what the basis of the research was.

Lieutenant General PEĐE. Mr. Chairman, yes, thank you.

I was referring in particular to the various commissions' studies that have been directed through congressional and DOD oversight, beginning with the Response Systems Panel, then followed by the

Joint Judicial Proceedings Panel, and then now we have the—well, it is called DAC-IPAD for short. But it is reviewing our cases, our investigations, and our prosecutions. So taken together, although DAC-IPAD is still meeting and their results are preliminary, the Response Systems Panel spoke directly to the issue of the role of the commander.

In fact, if I can say in my experience, most were inclined to support Senator Gillibrand's bill as they began their work with that committee. In particular, Representative Holtzman was quite clear on the record that her mind was changed through the course of, I think, over 60 public hearings and thousands of witnesses' testimony. She changed her mind. She saw no evidence that taking the commander out of the process of justice would solve anything, whether it would improve prosecutions or anything. So her testimony, her statements are quite compelling. But the RSP actually published a statement to that effect as well, sir. The Judicial Proceedings Panel drew similar results.

That is particularly what I was referring to, and then my own sense, sir, of the empirical data that I know dealing with commanders and dealing with lawyers. My experience is that the desired end state of some kind of improvement, whatever that might be, if it is more prosecutions, higher conviction rates, will not result by removing commanders. That was the context of my statement, sir.

Senator TILLIS. Does anyone else have to add to that? I have other questions.

Vice Admiral HANNINK. Sir, I would just add the feedback I received from our victims legal counsel is that the role of the commander is not the thing that factors into the concerns that they are hearing. They deal a lot with the peer ostracism that was talked about in the last panel. But I think the sense that I get from them kind of reinforces what the Response Systems Panel indicated which, as General Peede said, found no evidence that removing the commander would decrease sexual assaults or increase reporting.

Senator TILLIS. I did want to go back and ask about in the first panel the discussion of the Fort Rucker incident and the SHARP office. Can I get some information from you, General Peede, on exactly what actions occurred after this was brought to your attention?

Lieutenant General PEDE. Sir, yes. Again, I would start by offering this committee and you, sir, an acknowledgement that we are not perfect and we will make mistakes. That investigation, the manner in which Ms. Bapp described some of the errors in the processing of her allegation were mistakes made at the local level. When we became aware of those, the Army took notice of that. Fort Rucker itself conducted an investigation, and because of our concerns about what we were hearing, the TRADOC commander, the four-star level commander, decided to conduct an investigation. So we had a very senior level oversight look that discovered and examined the details of, from A to Z, what we think happened in her particular case.

We identified errors, and as a result, certain required actions were directed to fix those. One was the training of certain SHARP personnel. One was the termination of SHARP personnel. There

were other actions taken. The forms that were used, for example, were out of date. All of that has been fixed.

Subsequent to that a DA-IG [Department of the Army Inspector General] investigation was conducted to ensure compliance with the requirements of the program and that yielded a positive report back that things had been fixed at that location.

Then, of course, sir, I would offer that Army senior leadership was very concerned as well. They looked at this case very carefully and took appropriate action.

Senator TILLIS. In the prior panel, I asked a question about our allies who have moved to a program similar to what is being proposed by Senator Gillibrand, or frameworks. And they were doing it, at least based on the information that I have read, to protect the rights of the accused.

There have been some who have said that the standard of evidence or proof, if you were to move this out of command, is a higher bar, and you could have a risk of fewer cases actually being brought forward. Do you all agree or disagree with that? General Lecce, we will start with you.

Major General LECCE. Thank you, Mr. Chairman.

I have to state that in the current process, there are lawyers throughout the process, sir. So from really the inception, as we have been briefing, the victims legal counsel is involved in the case, and that as it moves through, we have specially trained prosecutors, special victims investigation prosecutors, and a full team that deals with these cases, sir. Additionally, each general court martial convening has a staff judge advocate assigned who provides advice. So regarding the entire chain of command, lawyers are involved providing advice, good, sound, and accurate advice, on how to handle cases.

Frankly, I think if you took the commanders out, then you strip the system of the bedrock, the mantel of command, sir, and that is the welfare of all the marines—for the Marine Corps—under his or her command. That includes the victim and the accused and the unit itself, sir.

So if you took the commander out, how would that affect prosecution rates? I could not say exactly, sir, but I do not think that you would see an improvement in the rates. You actually might see a decline, sir.

Senator TILLIS. Anything to add down the line and Dr. Van Winkle, of course.

Lieutenant General ROCKWELL. Mr. Chairman, that was driven by a European Court decision, and it was focused on accused's rights, defendant's rights, which drove that decision or some of that pressure to remove the commanders from that process. We do not see any evidence that it has gotten better—sexual assault and how we handle it across the board—in looking at those systems. We are hesitant to look at those systems because we do not tell other countries how to do things, but we are convinced things have not gotten better and probably have gotten worse with regard to attacking sex assault based on that unity of command and unity of effort and continuum issue that we see.

Senator TILLIS. Admiral, anything to add?

Vice Admiral HANNINK. I would just add it is very clear that probable cause has to exist for charges to be referred. In the non-binding disposition guidance that was required by the Military Justice Act of 2016, put out by the Secretary of Defense, it also requires consideration of whether admissible evidence will likely be sufficient to obtain and sustain a conviction in a trial by court martial. So I think that standard is there, and I think in the Navy, just like in the Marine Corps and the other services, lawyers are there in a process talking to and informing the commanders at every step.

Senator TILLIS. What do you say to the—and, Dr. Van Winkle, I see you taking notes. So I want to come back to you and maybe you do cleanup on some of the questions, or I should say not cleanup, but you know, like in baseball.

What about the pushback that says, yes, I have got a lawyer, but it is not a trained lawyer? What is your response to that? I got a lawyer, but they are not somebody who is an expert in sexual assault. I do not know what your resources are and who is in the loop when you have legal advisors, but how would you all respond to that assertion? We will start with General Peede.

Lieutenant General PEDE. Sir, with respect to the last 10 years in particular, we have devoted extraordinary attention to the development of expertise in the prosecution, and defense as well, of sexual assault. So whether it is not a prosecutor and a prosecution function, defense function, and now the special victim counsel, sir, superbly trained—I just attended and spoke to a course in our JAG School in Charlottesville, our special victim counsel course. The training is just top notch. So the level of training and experience that counsel for each of the components of our system is superb. They are well trained. They are also well exercised, sir. The number of cases that we have, as you know, is going up. The allegations are up, and that requires a level of robust energy that I think we would all admire.

That does not mean we are not making mistakes, sir. That does not mean there is not a learning curve. There is. It is very, very hard. These are the hardest cases to try and win and also to defend, sir.

Senator TILLIS. Similar position among the others?

Vice Admiral HANNINK. Yes, sir. In the military justice litigation track that I mentioned, we have 81 officers in there. That is about 10 percent of our Navy JAG Corps: 16 billets on the prosecution side, 14 on the defense side. We currently have five in victims legal counsel. These are people who, through the course of their career, are spending the majority of their tours in military justice in the courtroom or helping victims.

Senator TILLIS. Is that somewhat unique to the Navy?

Vice Admiral HANNINK. I believe that we are the only one with a track, but the other Services can tell you how they try to develop similar capability.

Senator TILLIS. General Rockwell?

Lt. Gen. ROCKWELL. Yes, sir. It is similar if you look across the Services. Although we may not call it a litigation track, we have a military justice capability that includes significant litigation. When you look at it from an institutional capability across the

Services—and I think you need to look at it from a special victims prosecutor standpoint, which we have several of who handle these complex cases, particularly sex assault—equally our defense counsel are getting very smart in these cases. Our victims counsel are phenomenal.

Our victims counsel are driving change. A lot of times, we say they are too young and inexperienced to help this effort. I think it is the other way around. They are actually young and know what they are doing, and they are telling us things that otherwise we would not know about. The power of that program is phenomenal. When you bring all these pieces together, I think we all equally have an institutional capability that is as good as anyone's.

Senator TILLIS. General Lecce?

Major General LECCE. Mr. Chairman, I have almost 70 LLM, master of law, trained judge advocates in criminal justice. They all have their advanced degree. They rest both on the trial and the defense side. In any complex litigation, sir, involving felony level, including all sexual assaults, these cases are handled by a complex trial team that is made up of—4409 is the additional MOS. That is an LLM trained criminal prosecutor and a civilian, a GS-15 level attorney advisor that has a lot of experience and provides expert advice. Also, sir, we have a specially trained SVIP, as we call it, special victims investigative prosecution investigator, a CID investigator also assigned to the team, along with a legal administrative officer. That is for every case. Every case that is at this level, felony level case, gets this team assigned.

Resource-wise, looking at my civilian counterparts, I think I outpace any of them. Getting to Colonel Christensen's point, what we do not have is the number of sets and reps, which may be a good thing because we do not have the level of sexual assault that is occurring out in the civilian world. But I will match my team against any team that you have out there on the civilian side, sir.

Senator TILLIS. Dr. Van Winkle, in the prior panel CALISTO was mentioned as a tool that allows victims to possibly connect the dots. I think most of what I have read suggests that somebody who is guilty of sexual assault seldom does it only one time. Have we taken a look at this as a tool that we could use within the DOD?

Dr. VAN WINKLE. We have, and thanks for the question.

Trying to get folks to come forward and report is our primary way of holding offenders appropriately accountable. So it is very critical to us to get more people to come forward and report, understanding it is a personal decision, and we certainly rely on the victim to make that decision themselves.

One of the things we hear, particularly from our academy students, is the concern about coming forward on their own and concern about it being a label that they have to live with. That is something we hear in colleges and universities too. The CALISTO program aims to do a number of things, both address repeat offenders, but also address that concern of being the voice of one.

What we are doing in terms of this is in the summer, we will be implementing something we are calling the CATCH program, which aligns with what CALISTO does. It allows somebody to make a restricted report and then, in their own time, to provide us information about the offender, their name, biomarkings, tattoos,

those types of things, as well as social media handles, any information that identifies the offender. That then gets locked, only accessible to the military criminal investigative organizations. If somebody else, even years later, identifies the same offender, the military criminal investigative organization is notified. They then notify those victims to let them know that somebody else identified their offender and would they be willing to come forward and make a report. So, again, it aligns with the goals of CALISTO, and we are hoping that it will address some of the concerns that we hear.

Senator TILLIS. Final question. And we may follow up or our committee staff will be following up because, obviously, this is something we will continue to focus on.

Right now, when you are sitting down and you are talking with commanders about expectations, standard operating procedure for how a commander should deal with this, is there a consistent message that every line of service conveys, or is there an adjustment based on the branch? In other words, is this the whole of the DOD, this is how we deal with it, this is what we expect of our commanders, or is that left to each of the Services to determine how to do that?

Dr. VAN WINKLE. I would have to defer to my colleagues for the specifics on that.

I will say that we do often recognize that within this space, not all servicemembers look the same. What resonates for a member of the Air Force does not always resonate for the Marine Corps. So we do allow some of that unique culture.

Senator TILLIS. Let me poison the well before you answer the question. I do not see any rational basis for any difference. Sexual assault is sexual assault. The expectation that you have of the command should be the same. Period. End of story. It would be the same sort of response I would get from somebody that says that housing is different for the Army than it is for the Marines when I am dealing with this family housing situation.

Now, one of the problems is we do have some adjustments in changes, and I think that is going to be the root cause of the issues we have.

If we want to create a pervasive culture, if we want to have a standard, if we want to have the same expectation of the commanders, I tend to be biased more towards keeping this with the command. I think that it has to start with the whole of the DOD because, incidentally, this is not limited to just people who work in the DOD who happen to have uniforms. We hold you all to a higher standard because of the jobs that you do.

But I really think we need to look long and hard at for say, for some reason the way that I tell a commander in the Marines to deal with a sexual assault is different than something I tell somebody in the Army, I do not see any rational basis for it. If we want to perpetuate, we want to make pervasive a culture that is a consistent message in every case, we really ought to think about comparing notes and building on better or best practices.

Final comments for any of you on that?

Lt. Gen. ROCKWELL. I think the linchpin of this decision, if you break down a process, is in the referral process. That is where you sit down with the commander and say are you going to refer this

to court martial or not. The standardization is there under the rules of court martial. Do you have probable cause to determine whether or not an offense has been committed that would take it to the next piece of this process, which is the trial? We are more comfortable with that process, of course, the trial, because it is judge-driven and all the rules that you see at a trial come out then. But you are right, sir. That is what I think is the primary, fundamental point.

Senator TILLIS. I do not mind somebody taking a lead, but it is like you get to a best practice and build on a best practice versus going four different ways and creating four different cultures.

The other thing I will tell you that the Lieutenant Commander brought up in a prior panel, whatever person in the chain of command would have inappropriately shared information about her personal circumstances, I am sure that is a violation somewhere along the lines. We have to make sure that that is also a part of the culture. I mean, what a disgrace to have somebody do that. That is, somebody whose file comes before me better be thinking about a new line of work because that is not the way to deal with these cases.

Look, it was really impactful to see the housing. Again, I was down at Fort Bragg on Friday. It was amazing to me to see these young people apprehensive about reporting that they have mold growing on their walls. Right?

Now, imagine somebody who has been a victim of sexual assault, the bar that that raises for them to actually come out and have trust and feel like they will have the support of their command as they are going through it.

I know that not everybody who is accused is guilty. That is why we have a legal process that we have to go through to determine guilt or innocence. But all along the way, we need to show respect for all the parties. We need to keep their information in the utmost confidence, and there needs to be very clear accountability for anybody to share in this information along the way.

Well, I want to thank you all for being here today. I tend to go last so that I can go over. I appreciate you all indulging me on two or three times more time than I had.

But this is only the beginning. We will be asking you additional questions. We will be asking you for suggestions on how we can improve things. I will also have the committee reach out.

I want to see how some of our allies have done this and I want to learn from their strengths, weaknesses, and their own implementation failures.

But I tend to agree with the positions of the folks before us today that we can get better. I also believe that Senator Gillibrand brings a lot of expertise and a lot of ideas on things that can improve the process regardless of whether or not we shift responsibility from the commands.

Thank you all for being here.

The meeting is adjourned.

[Whereupon, at 5:01 p.m., the committee was adjourned.]

[Questions for the record with answers supplied follow:]

QUESTIONS SUBMITTED BY SENATOR KIRSTEN E. GILLIBRAND

RETALIATION

1. Senator GILLIBRAND. Dr. Van Winkle, chain of command retaliation against survivors not only is a gross injustice against them, but too often results in our military losing good soldiers, sailors and marines who no longer feel like they have received fair treatment in the military. We heard from just such a soldier, one of West Point's top graduates, on the earlier panel. It makes those who have not reported hesitant to come forward, undermining justice and good order and discipline. The most recent DOD data show that unpunished retaliation continues to be a major problem. Seventy percent of respondents perceived retaliation, but DOD tallied less than 5 percent of retaliations being addressed—and only through administrative actions or counseling. And perhaps the most chilling of reports on unpunished retaliation, this year the DOD Inspector General substantiated allegations against 350 officials for retaliation against whistleblowers, but only one of the officials was fired. Of the survivors you interview, how many cite retaliation as a reason that they are reluctant to come forward or make their reports unrestricted?

Dr. VAN WINKLE. Survivors we speak with do cite concerns about retaliation. The results of the Department's 2018 Workplace and Gender Relations Survey provide additional relevant information for this matter: While most respondents who experience sexual assault and do not report cite reasons related to privacy (e.g., "You did not want more people to know;" 61 percent of non-reporting women and 41 percent of non-reporting men) or wanting to move on with their lives (e.g., "You wanted to forget about it and move on;" 73 percent of non-reporting women and 49 percent of non-reporting men), some do indicate concerns about negative experiences associated with reporting. These reasons for not reporting were unchanged from the last survey in 2016. Of the Active Duty members who indicated experiencing a sexual assault in the past year and did not report it to a DOD authority, a number of them provided responses that may indicate they were concerned about retaliatory behavior, including responses such as:

- You thought it might hurt your performance evaluation/fit rep/career (25 percent of non-reporting women; 23 percent of non-reporting men; both statistically unchanged from 2016)
- You were worried about potential negative consequences from supervisor/someone in chain of command (26 percent of non-reporting Active Duty women; 26 percent of non-reporting Active Duty men; unchanged from 2016).
- You were worried about potential negative consequences from your coworkers or peers (37 percent of non-reporting Active Duty women; 32 percent of non-reporting Active Duty men; unchanged from 2016).

2. Senator GILLIBRAND. Dr. Van Winkle, our office works with a multitude of survivors, and many of them relate that once they get the courage to report a sexual assault, the command immediately charges them with a lesser, collateral misconduct offense such as drinking. In fact on the last panel, we heard from two such survivors and they unfortunately know similar stories of many others. At a minimum this makes investigation and determinations more complex and undermines survivors' willingness to continue with the case. At worst these are focused retaliatory measures by the chain of command that punish the survivor and leave the accused unpunished. This adversely affects the justice process and morale. Have you seen fear of collateral misconduct charges chill reporting?

Dr. VAN WINKLE. Some victims note that collateral misconduct is a concern. In the 2018 survey of the Active Duty, of servicemembers who indicated experiencing a sexual assault in the past year and did not report it to a DOD authority, 34 percent of non-reporting women and 26 percent of non-reporting men selected a response of, "You thought you might get in trouble for something you did/get labeled as a troublemaker" as a reason for not reporting a sexual assault. For women, this is a more prominent concern among junior enlisted members (41 percent of non-reporting E1–E4 women) and points to a specific need to address this issue in this population, who are also at greatest risk of experiencing a sexual assault.

3. Senator GILLIBRAND. Dr. Van Winkle, from your perspective, would command climate suffer if collateral misconduct charges were brought only after finishing the sexual assault investigation in the case?

Dr. VAN WINKLE. The Department recognizes that every sexual assault case presents unique facts and circumstances. Since a number of factors impact command climate, isolating the effects of a single change is a near impossibility. Nonetheless, the Department's current SAPR policy recognizes that "[c]ollateral misconduct by

the victim of a sexual assault is one of the most significant barriers to reporting assault because of the victim's fear of punishment." Consequently, the policy requires the secretaries of the Military Departments to "[e]stablish Military Service-specific guidance to ensure collateral misconduct is addressed in a manner that is consistent and appropriate to the circumstances, and at a time that encourages continued victim cooperation." In addition, the SAPR policy explicitly states that "Commanders shall have discretion to defer action on alleged collateral misconduct by the sexual assault victims (and shall not be penalized for such a deferral decision), until final disposition of the sexual assault case, taking into account the trauma to the victim and responding appropriately so as to encourage reporting of sexual assault and continued victim cooperation, while also bearing in mind any potential speedy trial and statute of limitations concerns." Effective, January 1, 2019, the Manual for Courts Martial was revised to facilitate commands in dealing with collateral misconduct. Before that change, only general court-martial convening authorities could grant immunity for such misconduct. Now, subject to service regulations, the power to grant immunity may be delegated to special court-martialing convening authorities. In practice, this change should make it easier for those reporters who wish to do so to seek and receive immunity for collateral misconduct (the Department has heard from some sexual assault victims who did not want to receive immunity for collateral misconduct and who thought their credibility would be damaged if they did not receive discipline comparable to that which other servicemembers receive for the same misconduct). Discussion has also been added accompanying Rule for Courts-Martial 704 stating: "When the victim of an alleged offense requests an expedited response to a request for immunity for misconduct that is collateral to the underlying offense, the convening authority should respond to the request as soon as practicable."

FALSE ALLEGATIONS

4. Senator GILLIBRAND. Dr. Van Winkle, are you aware of studies or analyses on how many allegations of sexual assault are false allegations?

Dr. VAN WINKLE. There are a variety of studies in the civilian sector that attempt to discern how many allegations of sexual assault are false cases. However, the Department can speak best to our own data that we report to Congress each year. Since about fiscal year 2013, about 2 to 3 percent of subject case dispositions each year are determined by a command and legal review of the evidence in each case to be what the Department refers to as "unfounded," which is our category for false cases. Unfounded cases are those for which the evidence showed the accused did not commit the crime or the crime did not occur. The 2 to 3 percent "unfounded" disposition statistic is not a binary statistic and no inference can be drawn that an allegation not disposed of as "unfounded" is or is likely accurate.

5. Senator GILLIBRAND. Dr. Van Winkle, it was disturbing to read the recent Annual Report on Sexual Harassment and Violence at the Military Service Academies for Academic Program Year 2017–2018. Despite years of promises from the Pentagon to eliminate sexual harassment and assault from the service academies, unwanted sexual contact has increased at the academies by almost 50 percent in the last 2 years and more than doubling in the last 4 years. Despite these alarming numbers, only 12 percent of survivors are reporting assaults at all and only 9 percent in a way that can result in investigation. This all amounts to 4 convictions for unwanted sexual contact out of 747 cases. This is a clear sign that they do not feel confident in the military's ability to adjudicate and prosecute these crimes without retaliation. What steps are you taking to stem what can only be described as a systemic problem?

Dr. VAN WINKLE. In June 2017, the Secretary of Defense directed that the academies develop and implement plans prior to the start of classes in 2018 to reinvigorate sexual assault prevention, improve reporting of sexual assault and harassment, enhance a culture of respect, and promote responsible alcohol choices. The impact of these plans will be assessed in future reports. The survey results and self-report information in the Academic Program Year 17–18 report will function as a baseline for future years' assessments of progress. Sexual assault has no place at the Military service academies or anywhere in the DOD. It is imperative that the Department and the academies fortify efforts to promote and sustain safe and respectful climates. Cadets and midshipmen must play an active role in combating misconduct at the academies. The Department will continue to partner and collaborate with other experts in this field who have found strategies in certain subpopulations that show promise. Furthermore, in support of the Services, OSD [Office of the Secretary of Defense] will be fully engaged and will use our summer on-site visits to assess

progress and provide technical assistance. We have hired prevention specialists from the Centers for Disease Control and Prevention to inform our efforts and assessments. We will provide additional reporting options available throughout the Armed Forces, but geared towards the unique concerns of cadets and midshipmen and aimed to address repeat offenders. We will refocus our efforts to look at the full lifecycle of the cadets and midshipmen, from selection through graduation, and work to ensure our efforts target the peer cadre specifically. Our focus will be on employing our resources in the right combinations, at the right times, in the right places, in order to not only achieve progress, but sustain it over time. Our approach must change. It is imperative that cadets and midshipmen understand their responsibilities to hold each other, and their subordinates, appropriately accountable for treating each other respectfully.

6. Senator GILLIBRAND. Dr. Van Winkle, after all these years of addressing the problem, how can the prevalence of sexual assault be going in the wrong direction?

Dr. VAN WINKLE. In the decade between 2006 and 2016, rates of sexual assault in the Active Duty decreased for men by two thirds and decreased for women by a third. So the evidence indicates that—while there have been certain fluctuations between specific shorter periods of time viewed in isolation—when we look at trends over time, the overall prevalence data is going in the right direction: sexual assault in the Active force occurs much less often than it did over the last several years as the Department has substantially increased its prevention and response efforts. Nonetheless, we must do better at understanding why rates may fluctuate from year to year. The Department's Fiscal Year 2018 Annual Report on Sexual Assault in the Military showed the greatest increase was in sexual assaults against servicewomen ages 17 to 24. The challenge we have is every generation we have coming into the military is new and different and coming from a different place. We have a responsibility as a military to change the behavior of our servicemembers as they come in, to teach them what is right and wrong in the military, and what our expectations are for them no matter where they come from. That is our charge and we take it very seriously. What we are finding is we have not identified the strategies that work, consistently over time, with this 17 to 24 year old group. Social media has also changed attitudes in the newest generation of servicemembers and often leads to different ways of interaction. The evidence we currently have indicates that unit climate is a significant driving force behind changes in sexual assault prevalence. Our data consistently shows that men and women who serve in disrespectful climates have much higher rates of sexual assault than those that serve in climates that are comparatively healthy. As a result, our focus going forward must provide leaders, from our junior first line supervisors to our most seasoned commanders, with the preparation and tools they need to foster climates of dignity and respect.

7. Senator GILLIBRAND. Dr. Van Winkle, what systemic changes must be made to improve survivor reporting?

Dr. VAN WINKLE. In the summer of 2019, the Department will field the Catch A Serial Offender Program, which will allow servicemembers, including cadets and midshipmen, to make a Restricted Report and confidentially provide information about their alleged offender or incident. The military criminal investigative organizations will review this information against other reports of sexual assault, and—should there be a match—servicemembers will have an opportunity to change their report to unrestricted and participate in the military justice system. We must also ensure that the military service academy environments promote and support the reporting of sexual assaults. As a result, we have tasked the academies to take specific action on this point. One new program we are watching closely is the Air Force Academy's "Safe to Report" program, which allows cadets to report sexual assault without fear of being charged with minor collateral misconduct, such as possessing or using alcohol underage or being outside academy boundaries improperly. While this program is still too new for us to evaluate, concerns about collateral misconduct are consistently indicated on academy surveys as a reason not to report sexual assault.

8. Senator GILLIBRAND. Dr. Van Winkle, in your prepared statement for this hearing, you said that the sentiments from your most recent Active Duty focus groups echoed culture concerns similar to what you had heard from focus groups at the service academies before the rebound in sexual assault rates at the academies. Specifically, what did you learn from these focus groups, and what does that tell us about what we might learn when the latest survey results are released next month?

Dr. VAN WINKLE. Participants noted that relationships between the genders were not optimal and attitudes had become somewhat cynical largely because men were

concerned that what they say or do may be misinterpreted as sexually harassing behavior or other misconduct. Female participants in the groups felt as though they had been somewhat marginalized because academy men did not know what to say to them or how to say it. We also noted these similar themes in Active Duty focus groups in the summer of 2017, the year before we fielded the Workplace and Gender Relations Survey. These findings are concerning, and I think it may speak to the broader cultural issues that underlie experiences of sexual harassment and sexual assault in the military force. Unfortunately, no one in the country has a full account of all factors that drive changes in sexual assault rates. As a result, it is difficult to conclude with statistical certainty how observations in focus groups predict changes in sexual assault rates.

COMMUNITY COORDINATION

9. Senator GILLIBRAND. Dr. Van Winkle, sexual violence and intimate partner violence advocates and professionals who work in community-based response agencies (e.g., victim-witness specialists attached to district attorneys' offices, rape crisis center advocates, domestic violence shelter staff, etc.) often have minimal knowledge of the military IPV [intimate partner violence] and sexual assault programs. In addition, military installation personnel often lack a basic understanding of the programs and types of assistance available to military victims of IPV and sexual violence in the communities in which they reside and serve. This disconnect can lead to negative experiences for military survivors using community resources. Although DOD Instruction 6400.06, Domestic Abuse Involving DOD Military and Certain Affiliated Personnel, has many references to DOD personnel participating in local coordinated community response efforts, and DOD Instruction 6495.02, Sexual Assault Prevention and Response (SAPR) Program Procedures, includes language that encourages military sexual assault programs to "collaborate with local community crisis counseling centers, as necessary, to augment or enhance their sexual assault programs" and engage in partnerships with community-based programs for prevention. Please let us know how often such collaborations occur, and whether any new procedures are needed to support greater collaborations.

Dr. VAN WINKLE. In addition to the policy language referenced, DOD's Office of the Under Secretary of Defense for Personnel and Readiness (OUSDP&R) and the Department of Justice's Office for Victims of Crime have a long-standing cooperative agreement related to this very issue. Our joint training initiative, "Strengthening Military-Civilian Community Partnerships to Respond to Sexual Assault," brings together civilian and military responders, including local Department of Veterans Affairs (VA) personnel, on or near an installation to improve response to the needs of military sexual assault victims who choose to seek assistance off-installation. DOD has already completed over 40 such trainings around the country in locations with a large military presence. In addition, we have continued to enhance our partnership with the VA to ensure servicemembers and those transitioning out of the military are aware of the availability of VA's MST coordinators around the country. This information is also available from the DOD Safe Helpline (SHL), which has a publicly searchable database, wherein victims and their supporters can search by installation or zip code to receive not just military responders phone numbers, but also a link to Vet Centers and phone numbers to nearby civilian sexual assault service providers. All civilian service providers on SHL have been vetted by The Rape, Abuse, and Incest National Network (RAINN), giving us additional independent confidence servicemembers will receive a quality response off-base.

SOCIAL MEDIA

10. Senator GILLIBRAND. Major General Lecce, social media is frequently used to bully and retaliate against survivors who report a sexual assault. The Commandant of the Marine Corps established a task force, Task Force Purple Harbor, to look at the issue of social media misconduct. What did this task force learn about the use of social media?

Major General LECCE. The Task Force learned how the use of social media can be a medium to commit a variety of offenses. The Task Force reviewed and revised Marine Corps policies regarding unlawful discrimination, harassment, hazing, and other conduct that is prejudicial to good order and discipline. On 26 Mar 2018, the Commandant of the Marine Corps signed the Marine Corps Prohibited Activities and Conduct Prevention and Response Policy, Marine Corps Order 5354.1E.

11. Senator GILLIBRAND. Major General Lecce, did the Marine Corps develop any best practices for addressing the issue of retaliation through the use of social media?

Major General LECCE. Yes. In March 2017, the Marine Corps created a headquarters element task force to review allegations of social media misconduct, to include retaliation through the use of social media. This task force involved a multidisciplinary team of senior Marine Corps leaders, law enforcement, judge advocates, and equal opportunity and force preservation personnel. The task force studied the issues that contributed to servicemembers engaging in destructive behaviors against one another and developed efforts to curb this conduct. The Marine Corps also issued a Leader's Handbook and Discussion Guide for use in small group discussions about social media misconduct as it relates to gender discrimination, harassment, non-consensual sharing of intimate images, and other types of misconduct online. Furthermore, the discussion guide provides leaders with scenario based training and resource links for victims and those who report these offenses. In March 2018, the Marine Corps consolidated its regulations governing prohibited activities and conduct into a single order which streamlines reporting requirements, creates a more robust legal review process, and ensures Headquarters, U.S. Marine Corps level visibility.

12. Senator GILLIBRAND. Major General Lecce, how does the Marine Corps address social media retaliation against survivors of sexual assault?

Major General LECCE. The Marine Corps takes every report of retaliation against a victim of sexual assault seriously, whether it is conducted on social media or in person. The Naval Criminal Investigative Service investigates all reports of sexual assault. As a result, any report of retaliation against a victim will be referred to law enforcement.

MILITARY HOUSING PRIVATIZATION INITIATIVE

13. Senator GILLIBRAND. Lieutenant General Pele, in your opening statement, you referenced the Military Housing Privatization Initiative (MHPI) as a failure of the military to "outsource" command responsibilities: "Look at our current housing crisis, we outsource responsibility for housing our soldiers to privatized partners. Who do our families look to for solutions? Who do you look to to drive change? Soldiers look to their commanders. Every town hall is hosted by a commander. Will every commander deal with mold or leaky basements perfectly? Of course not. But there is no set of leaders on this earth better trained, better resourced and more consistently successful than an American commander. And in my view, so it must be with sexual assault." Are you aware that installation commanders have remained responsible for the quality of housing under MHPI?

Lieutenant General PEDE. Yes, commanders remain responsible for their units and installations, including housing. But like the Military Justice Improvement Act (MJIA), privatized housing puts a third party between commanders and their soldiers. It turned the housing of soldiers into a business relationship—one that was governed largely by contracts. Yet, when the issues in privatized housing received scrutiny, it was commanders who were expected to address the problem.

The MJIA would also insert someone between commanders and unit discipline, and commanders will be able to achieve that discipline only by acting through—and, perhaps, only with the permission of—lawyers. Commanders will remain responsible for discipline; they will just be less able to ensure it.

14. Senator GILLIBRAND. Lieutenant General Pele, do you believe that the MHPI in any way excused commanders from being responsive to problems in housing units?

Lieutenant General PEDE. Please see response to question 13.

15. Senator GILLIBRAND. Lieutenant General Pele, given the widespread failure to address housing issues—at installations nationwide—do you believe commanders have met their responsibilities to address the MHPI crisis?

Lieutenant General PEDE. Improving and sustaining the quality of Army housing is an ongoing process. Army senior leaders and commanders at every level have been, and will remain, focused on this issue. Commanders have taken immediate steps to address the situation in MHPI, including through town halls and regular visits to MHPI housing. The health and welfare of Army soldiers, families, and civilians is of paramount importance to the Army and its commanders.

MISHANDLING OF THE LT BAPP (RET.) CASE

16. Senator GILLIBRAND. Lieutenant General Pele, in response to Senator Tillis' questioning on the mishandling of Ms. Bapp's alleged sexual assault at Fort Rucker, Alabama, you provided the following response: "... the manner in which Ms. Bapp

described some of the errors in the processing of her allegations, were mistakes made at the local level. And when we became aware of those, the Army took notice of that and Fort Rucker itself conducted an investigation. And because of our concerns about what we were hearing, the TRADOC commander, the four-star level commander, decided to conduct an investigation. So we had a very senior level oversight look that discovered and examined the details from A-Z what we think happened in her particular case.” To my knowledge, the Army did not take notice of local issues with the SHARP program—which Ms. Bapp had voiced to her Special Victims Counsel—until congressional engagement with senior Army leadership. Independent of top-down scrutiny from Army leadership to TRADOC, did Fort Rucker’s Commanding General proactively elevate any of the failures identified by Ms. Bapp at the lowest level?

Lieutenant General PEDE. Privacy interests prevent me from disclosing relevant details in my public response to this question, but I or other members of my staff are available to provide those details to the subcommittee privately, for subcommittee use only, if the subcommittee chairwoman so requests.

Every commander is necessarily empowered to resolve issues within his/her command at the lowest-level possible and to seek assistance from higher headquarters when necessary. The special victim counsel program also ensures victims’ voices are heard throughout the processing of sexual assault allegations. As soon as the Fort Rucker Commanding General learned of concerns about the processing of sexual assault allegations on Fort Rucker, he began to look into those concerns—and take appropriate actions—before the Army received any relevant congressional inquiries and before TRADOC began its investigation into the Fort Rucker SHARP program. Actions the Fort Rucker Commanding General took did not require elevation to higher levels within the Army and included revising local SHARP procedures to ensure compliance with Army policy, creating a process of continuous updates to the local standard operating procedure, confirming that SHARP professionals were using the most up-to-date forms, and ensuring victims had access to uninterrupted victim-advocacy services.

QUESTIONS SUBMITTED BY SENATOR ELIZABETH WARREN

SEXUAL ASSAULT

17. Senator WARREN. Dr. Van Winkle, Lieutenant General Pele, Vice Admiral Hannink, Lieutenant General Rockwell, Major General Lecce, do you believe that removing prosecution decisions for serious crimes from the commanders who have general court-martial convening authority would meaningfully diminish the authority of the remaining commanders that do not have such authority, and if yes, in what ways? Please explain.

Dr. VAN WINKLE. I would respectfully defer to the Military Department’s Judge Advocates General and the Staff Judge Advocate to the Commandant of the Marine Corps on this issue. However, I take seriously the critical findings announced by The Role of the Commander subcommittee of the congressionally-mandated Response Systems Panel (Sec.576, FY13NDAA). The subcommittee found that:

- “Finding 19–5: None of the military justice systems employed by our Allies was changed or set up to deal with the problem of sexual assault, and the evidence does not indicate that the removal of the commander from the decision making process in non-U.S. military justice systems has affected the reporting of sexual assaults. In fact, despite fundamental changes to their military justice systems, including eliminating the role of the convening authority and placing prosecution decisions with independent military or civilian entities, our Allies still face many of the same issues in preventing and responding to sexual assaults as the United States military.”
- “Finding 19–6: It is not clear what impact removing convening authority from senior commanders would have on the military justice process or what consequences would result to organization discipline or operational capability and effectiveness.” o “Abstract of Subcommittee Recommendations and Findings,” Annex to the Report of the Response Systems to Adult Sexual Assault Crimes Panel, p. 13. <http://responsesystemspanel.uhs.mil/Public/docs/Reports/00—Final/RSP—Report—Annex—Final—20140627.pdf>

Lieutenant General PEDE. Yes. Taking the decision to prosecute serious crimes from a general courts-martial convening authority (GCMCA) removes the entire chain of command from that decision. The disposition of charges goes through the chain of command, and although a GCMCA is near the top of that chain, the GCMCA is an integral part of it. In addition, unless withheld by a higher authority,

all commanders have the authority to act on allegations of misconduct within the scope of their authority. Often that will mean forwarding a matter—with recommendations—to a higher level commander, but that is not always the case.

More importantly, when a GCMCA acts, soldiers understand that it is a commander in her or his chain—even if at a high-level—that is acting. As a consequence, that fact alone reinforces the authority of every other commander within that unit. A commander makes the decision to prosecute a case, and when that happens, it communicates that commanders are the officers responsible for—and fully empowered to—enforce good order and discipline throughout the force.

Vice Admiral HANNINK. I believe removing the prosecution decision for serious crimes from commanders who have general court-martial convening authority would have a detrimental impact on the ability of those commanders—and other commanders—to ensure good order and discipline. Commanders are called upon every day to make difficult decisions to accomplish their assigned missions while simultaneously protecting the wellbeing of their subordinates. The authority that commanders exercise under the Uniform Code of Military Justice (UCMJ) is important to achieving these goals. Military commanders, who are entrusted with the lives of their subordinates and the security of our Nation, can and must be trusted to make decisions, informed by advice from military lawyers, concerning the disposition of offenses. Good order and discipline in subordinate commands is a shared responsibility of that unit's immediate commander and the superior commander.

Lieutenant General ROCKWELL. Yes. Limiting prosecution decisions of general court-martial convening authorities diminishes the ability of subordinate commands to create, foster, and maintain the correct culture within their units. A commander's role in the prosecution decision-making process is an essential tool for commanders at every level of command to maintain good order and discipline. Command authority allows a commander to set the expectations, enforce standards and hold airmen accountable when they fail to meet them. While felony-type offenses are generally referred to a general court-martial, subordinate commanders in the command chain are critical in providing unit-level input and being involved in the decision-points along the way. If we do not involve our commanders at the lower echelons, we limit their opportunity to develop into senior commanders. Moreover, removing a commander's authority to refer charges has the unintended effect of relieving the commander of accountability for the disposition results. Command involvement must be holistic and empowered; it cannot be as effective if the most serious form of accountability, the authority to refer charges to a court-martial, is severed from command authority. There are two main components to the prosecution decision: preferral and referral. Preferral is the step at which the initial charges are formalized and delivered to the accused. Commanders at any level may prefer charges if they have personal knowledge of, or have investigated, the matters set forth in the charges and specifications, and if they assert the matters set forth in the charges and specifications are true to the best of their knowledge and belief. Referral is the step whereby a court-martial is ordered to try the offenses. Only convening authorities have the power to order a court-martial. Once charges are preferred, they are forwarded to the special court-martial convening authority (SPCMCA) for review. In the Air Force, the SPCMCA is normally an O-6 wing commander. The SPCMCA must consult with their SPCM staff judge advocate, and if they believe the allegation constitutes a felony-level offense then the SPCMCA orders an Article 32 preliminary hearing. At the hearing an independent judge advocate reviews the evidence and recommends whether probable cause exists to prosecute and the appropriate court-martial forum. Based on the advice of the staff judge advocate and the Article 32 hearing officer, the SPCMCA decides whether to refer the case to a special court-martial or forward it to a general court-martial convening authority (GCMCA), who receives independent advice from their staff judge advocate. Throughout this process, the SPCMCA and GCMCA legal offices are fully engaged to identify issues that warrant GCMCA attention. Commanders stand at the center of the military justice system, and when a GCMCA orders a court-martial a clear and impactful message is sent about the proper disposition of allegations of misconduct within the Air Force. The safeguards in processing a case alleging a penetrative sexual assault allegation are even more extensive. Per DOD policy, only a SPCMCA in the grade of O-6 or above may take initial disposition on a penetrative sexual assault allegation. The Air Force increased the review process by requiring any decision made by the SPCMCA to be forwarded to the GCMCA for review. This additional step provides the GCMCA the opportunity to intervene if they believe a different disposition is appropriate. Even though a GCMCA makes the ultimate decision whether to refer charges to a court-martial, this discretion is also checked by a series of reviews. With these review mechanisms in-place, it is unnecessary to diminish subordinate command authority by elevating all serious offenses to the GCMCA-level.

Major General LECCE. Commanders do not make prosecution decisions; they make disciplinary decisions by determining the appropriate forum to adjudicate allegations of misconduct. One of these forums is a general court-martial. In the Marine Corps, attorneys handle prosecution decisions. These decisions consist of drafting appropriate charges, determining the evidence to present at trial, and, if there is a conviction, determining the sentence to seek. These decisions are separate and distinct from a senior commander's authority to send serious crimes to a general court-martial. Removing a commander's authority to send serious crimes to a court-martial would prohibit the visible and engaged action by a commander necessary to good order and discipline and combat effectiveness. Commanders must have the authority to engage in visible efforts to prevent and respond to offenses of all kinds. An inability to do so would lead to a loss of trust in the commander, degraded discipline, and a corresponding threat to combat effectiveness. Removing disciplinary authority from commanders also frustrates prevention and response efforts by impairing unity of command, leaving commanders responsible for the discipline and effectiveness of a unit without the authority essential to meet that responsibility. The proposal to remove a commander's authority to send sexual assault cases to courts-martial has been studied extensively by multiple federal advisory committees. They found no evidence to suggest this will protect victims, reduce crime, or result in more prosecutions. There is no reason to believe the results would be different if we remove this authority for other offenses.

18. Senator WARREN. Dr. Van Winkle observed in her testimony, "Removing command authority from our process and efforts to date, would have a negative effect on military discipline and readiness." Please describe in detail how removing prosecution decisions for serious crimes from the commanders who have general court-martial convening authority would harm military discipline and readiness.

Dr. VAN WINKLE. I believe the quote in the question was misattributed and I respectfully defer to The Judge Advocate General of the Air Force, Lieutenant General Rockwell, who made the statement in testimony.

19. Senator WARREN. Dr. Van Winkle, Lieutenant General Pele, Vice Admiral Hannink, Lieutenant General Rockwell, Major General Lecce, in your view, what is inherent to being a commander that qualifies that person to make prosecution decisions on serious crimes versus the qualifications and experience of a licensed attorney that has tried cases involving such crimes?

Dr. VAN WINKLE. I respectfully defer to my colleagues on this issue. I know that every command decision in this space is informed by a licensed attorney who advises the commander on legal considerations, the available evidence, and the means by which the allegations before him or her may be addressed in the military justice system. Concerns about this system should focus on improving a commander's ability to support victims, ensure appropriate accountability, and create a command climate in which sexual assaults are less likely to take place because servicemembers understand such behaviors undercut the good order and discipline necessary for a military unit to be effective and ready.

Lieutenant General PELE. Commanders have led a disciplined Army for more than 243 years. Indeed, as George Washington argued, "Discipline is the soul of an Army." In a very real sense, commanders are commanders because they are able to enforce good order and discipline with the highest sanction our society recognizes—a criminal conviction. We are not the best Army in the world because of coincidence. We are the best because we are unique. Command authority is what sets us apart—what makes us unique. We tinker with it at our peril on the next battlefield.

In addition, a commander bears the ultimate authority over acts enforcing discipline because a commander is ultimately responsible for discipline. But importantly, commanders never exercise their authority in a vacuum. Commanders are fully trained and carefully advised on how to exercise this authority at every level of command. Allegations of serious criminal misconduct are fully investigated by trained criminal investigators, and a commander is carefully advised by a qualified, licensed attorney. A commander combines that investigation and a lawyer's advice with the commander's training and experience to make the best decision possible to further the interests of good order and discipline throughout the commander's unit. In the rare instance in which a commander and a lawyer disagree, a disposition decision can be continued up the chain of command. There is a formal process in place to review specific disposition decisions under section 541 of the fiscal year 2015 National Defense Authorization Act. This is, in short, a robust system.

Finally, it is worth noting that the hypothesis that removing commanders will improve the military's response to sexual assault is unsupported by the data. In 2014,

the Response Systems to Adult Sexual Assault Panel found that there is no evidence that removing commanders will result in more reporting, more thorough investigations, or more effective prosecutions. Unsurprisingly, the panel recommended against further limiting a commander's authority. Further, in 2019, the Defense Advisory Committee on the Investigation, Prosecution, and Defense of Sexual Assault in the Armed Forces published the results of its first-of-a-kind study of commander decision making, concluding that commanders' decisions to bring charges or not "were reasonable in the overwhelming majority (95 percent) of cases reviewed." The committee further concluded that there is "no systematic problem with command decision making" in these cases. This is the latest evidence available; it was developed through rigorous examinations by outside experts; and it simply does not support removing commanders.

Vice Admiral HANNINK. In the civilian sector, the District Attorney (DA) is an elected or appointed official who has the responsibility to make prosecution decisions. In making these decisions, the DA acts as the "representative of the community," deciding which actions, and in what circumstances, merit prosecution.

In the Military Services, the commander is responsible for accomplishing the unit's mission, for protecting the wellbeing of subordinates, and for ensuring good order and discipline within the unit. Given these responsibilities, in the Military Services, it is the commander who is the best "representative of the community," and who can best evaluate the circumstances and impacts in determining the right prosecutorial course of action. Commanders do this in close coordination with lawyers. The Secretary of Defense (SECDEF) has issued factors that military commanders should consider when determining the proper disposition of a case, including the mission-related responsibilities of the command and the effect of the offense on morale, health, safety, welfare, and good order and discipline of the command. SECDEF also emphasizes that military commanders should seek advice from a judge advocate regarding all possible dispositions of an allegation.

Congress established the Response Systems Panel (RSP) as an independent Federal Advisory Committee to assess, among other matters, whether commanders should continue to exercise prosecutorial discretion in the military justice system. The RSP expressly concluded that "[t]he evidence does not support a conclusion that removing authority to convene courts-martial from senior commanders will reduce the incidence of sexual assault or increase reporting of sexual assault in the Armed Forces." The RSP also concluded that "[t]he evidence does not support a conclusion that removing authority to convene courts-martial from senior commanders will improve the quality of investigations and prosecutions or increase the conviction rate in these cases."

Lieutenant General ROCKWELL. The purpose of military law, as stated in the Preamble to the Manual for Courts-Martial, is to promote justice, to assist in maintaining good order and discipline in the Armed Forces, to promote efficiency and effectiveness in the military establishment and thereby to strengthen the national security of the United States. It is the commander who is responsible for mission success. A commander brings all of their training, background, experience, and judgment to the fight. They command all of the people and resources within their organization which can be employed to shape the environment and instill confidence in our airmen. There is much more to military discipline than criminal prosecution and commanders possess an arsenal of tools to effectuate and change behavior. This is why, unlike a civilian District Attorney or a licensed attorney, the commander must remain at the forefront, responsible for ensuring justice and maintaining disciplined forces in defense of the Nation. In a military environment, prosecution decisions on serious crimes require the commander's informed judgement on the particular circumstances and stresses a disposition decision will have on the unit. We believe the best model to achieve both justice and discipline is the teaming of the commander with a staff judge advocate.

Major General LECCE. Commanders must have authorities commensurate with their responsibilities. A commander is responsible and accountable for maintaining good order and discipline, and for ensuring the welfare of every member of the unit. Prosecutors do not bear that responsibility. Forcing a commander to request permission from a prosecutor to discipline the members of a unit will degrade unity of command at the expense of victims and those accused of offenses. Commanders do not make these disciplinary decisions in a vacuum. They are advised at every step of the process by trained attorneys, to include senior prosecutors and civilian litigation attorney advisors with significant experience in military justice. Ultimately, the commander must be the one to make the decision because the commander is the one responsible and accountable for the consequences of sending or not sending a case to trial.

20. Senator WARREN. Dr. Van Winkle, Lieutenant General Pede, Vice Admiral Hannink, Lieutenant General Rockwell, Major General Lecce, are there any improvements that you would recommend to the current legal assistance and survivor advocate services available to survivors of sexual assault in the military, and if yes, what are those improvements? Please explain.

Dr. VAN WINKLE. I respectfully defer to my colleagues on the legal assistance/legal advocacy aspects of this question. I do note that servicemembers consistently cite Special Victims' Counsel/Victims' Legal Counsel (SVCs/VLCs) as one of the most-used and highest-rated resources available to them in the DOD response system. The Department believes that the approximately four-fold increase in victims choosing to come forward and report may, in part, be a result of the improvements we have made in our support to victims, including the availability of SVCs/VLCs. Nonetheless, the Department must continue its efforts to address sexual assault in our ranks.

Lieutenant General PEDE. Army Special Victim Counsel (SVC) services are instrumental in improving victims' confidence in the UCMJ process and increasing resilience. An SVC is the most effective when able to establish a relationship with the client through face-to-face interactions. As SVCs have begun representing more children, they must determine the capacity of those children to enter into an attorney-client relationship. SVCs have little expertise, however, with assessing a young child's capacity to understand that relationship. The development of a framework to make this assessment and to ensure the child's holistic interests are addressed, like a guardian ad litem program, would be helpful.

Vice Admiral HANNINK. Navy Victims' Legal Counsel (VLC) serve victims of misconduct, including indecent viewing/recording (Article 120c, UCMJ) and stalking (Article 130, UCMJ), in addition to victims of sexual penetration and contact offenses. However, victim advocates currently only serve victims of penetration and contact offenses.

Lieutenant General ROCKWELL. Additional mental health resources that do not require records would be an improvement to services available to survivors. Mental health resources are a critical piece of a victim/survivors' recovery. However, many do not seek services due to stigma and privacy concerns. Sexual assault victims in the military are encouraged to seek mental health counseling at medical treatment facilities. When they do so, the treating mental health provider creates records which include statements that a victim makes to them, and may contain a clinical diagnosis, a list of prescribed medication and other observational thoughts. Military Rule of Evidence (MRE) 513 prescribes procedures trial judges must perform in order to determine whether the victim's mental health records will be disclosed to trial counsel, defense counsel, and accused during a court-martial proceeding. Protecting private mental health records is very important to sexual assault victims, and the record's potential disclosure by military trial judges to the trial counsel, defense counsel, and the accused has a chilling impact on whether sexual assault victims will pursue the mental health care that the Service provides them. The recommendation is for the Services to provide additional resources for mental health care that does not produce mental health records which may become discoverable to the parties during litigation. This could be similar to the limited privilege suicide prevention program available to individuals under investigation.

Major General LECCE. The VLC program in the Marine Corps will benefit from additional personnel and funding for training in domestic violence (DV). We are currently the only service whose VLCs represent DV victims as a matter of policy. Sexual assault and DV often go hand in hand. Many of the victims our VLCs represent are victims of both sexual assault and DV. Domestic violence has its own complexities. Our VLCs could use more training in this area. Legal assistance services are available for all persons, including victims of sexual assault, who are eligible to receive military legal assistance under Federal law and implementing Department of the Navy and Marine Corps regulations. Eligible persons include Active Duty members, spouses, children, retirees, and others allowed by regulations. Services include legal counseling involving family law matters, consumer protection, immigration and naturalization, landlord/tenant issues, income tax matters, Exceptional Family Member educational issues and special needs trusts, estate planning, deployment-related matters, and the Servicemembers Civil Relief Act. If the Legal Assistance Program is not able to provide a needed service to a sexual assault victim, attorneys have access to other family support services to which they can refer victims.

21. Senator WARREN. Lieutenant General Pede, Vice Admiral Hannink, Lieutenant General Rockwell, Major General Lecce, would you agree that commanding officers who fail to respond to allegations of rape, sexual assault, or other sexual misconduct should be held accountable for such inaction?

Lieutenant General PEDE. A commander who fails to follow law, policy, or appropriate procedures in that commander's response to an allegation of sexual assault should be held appropriately accountable.

Vice Admiral HANNINK. Commanding officers who fail to respond to allegations of rape, sexual assault, or other sexual misconduct should be held responsible for such inaction. By regulation, commanding officers must immediately notify Sexual Assault Response Coordinators (SARCs) and appropriate Military Criminal Investigative Organizations (MCIOs) upon receipt of unrestricted reports of sexual assault. Additionally, command climate surveys allow Navy leadership another opportunity to determine if a commanding officer has failed to respond to an unrestricted report of sexual assault.

Lieutenant General ROCKWELL. Yes. commanders who fail to properly respond, according to the laws, Department of Defense regulations, and Air Force regulations, to allegations of such misconduct should be held accountable for inaction. Commanders have the lawful authority and responsibility to promote and safeguard the morale, physical well-being, and the general welfare of persons under their command. Moreover, commanders are expected to display exemplary conduct as outlined in Title 10 United States Code, Section 9233. Specifically, they are required to be vigilant in inspecting the conduct of all persons who are placed under their command; to guard against and suppress all dissolute and immoral practices, and to correct all persons who are guilty of them; and to take all necessary and proper measures to promote and safeguard the morale, the physical well-being, and the general welfare of the officers and enlisted persons under their command or charge. Failure by a commander to respond to an allegation of sexual assault would violate the law and Air Force policy, which requires commanders to immediately refer any alleged sexual assault to the Air Force Office of Special Investigations and the Sexual Assault Response Coordinator. Further, the commander is required to prepare and submit a Sexual Assault Incident Response Oversight Report (SAIRO) within 8 days of learning about the allegation to the first general officer in the subject's and victim's chain-of-command. Just like with any violation of policy, a violation of this policy should be properly addressed by appropriate levels of command. It is critical to consider the response to this question against the backdrop of the safeguards and review processes currently in place. While commanders still possess a great amount of authority in the disposition decision of sexual assault cases, every case is subject to multiple levels of review by independent senior commanders at each level with the advice and counsel of their own staff judge advocate. These reviews also include a thorough review of the evidence and, in sexual assault cases, an outside review by our most experienced prosecutors, who fall under an independent chain of command through the Chief, Government Trial and Appellate Division in Air Force Legal Operations Agency. These cases are also tracked through the Air Force's Automated Military Justice Analysis and Management System, which provides notification of the status of a case all the way up to The Judge Advocate General, in appropriate cases.

Major General LECCE. Yes. Commanders must respond to allegations of rape, sexual assault, or other sexual misconduct in accordance with the law and applicable orders and regulations. A commander who does not respond to an allegation of rape, sexual assault, or other sexual misconduct should be held appropriately accountable.

22. Senator WARREN. Lieutenant General Pele, Vice Admiral Hannink, Lieutenant General Rockwell, Major General Lecce, how many commanding officers, if any, for each year in fiscal years 2014–2018 were disciplined for failing to respond to allegations of rape, sexual assault, or other sexual misconduct?

Lieutenant General PEDE. In fiscal year 2017, two battalion commanders were disciplined (relieved from command) for failing to properly respond to allegations of rape, sexual assault, or other sexual misconduct. The Army is unaware of any disciplinary actions for the other fiscal years requested.

Vice Admiral HANNINK. No commanding officers were court-martialed for failing to respond to sexual assault allegations. We do not have databases that give us fidelity on the reasons for other disciplinary actions such as nonjudicial punishment or administrative forms of censure. There have been commanding officers relieved based on command climate over this timeframe. I welcome the opportunity to arrange a briefing to provide a more detailed accounting of these circumstances, as desired.

Lieutenant General ROCKWELL. During the specified timeframe, we are aware of one commanding officer who was disciplined for failing to respond to allegations of sexual misconduct. An Air Force Inspector General investigation determined a brigadier general failed to investigate allegations of sexual harassment made by a female employee against a male employee, which constituted an abuse of his author-

ity. Due to this misconduct, the brigadier general received a Letter of Counseling, which is a quality force management tool to improve, correct, and instruct those who depart from standards of performance. The brigadier general is still serving on Active Duty, has not been promoted, and is no longer serving in a command position. The system is designed in such a way that would make it nearly impossible for a commander to fail to respond to an allegation of sexual assault and, as demonstrated above, there is a method to investigate any claims of a failure to respond. Victims have several reporting options to include the Sexual Assault Response Coordinator, the chain of command, law enforcement, and the legal office. All of these agencies are required to immediately forward sexual assault reports to the Air Force Office of Special Investigations (AFOSI). In addition, victims may make a report directly to AFOSI or other law enforcement agencies. AFOSI must open an investigative case file, and then AFOSI and the local legal office monitor the case until final disposition is complete. In other words, a commander could not simply sit on an allegation without making a disposition decision or forwarding the case to the proper disposition authorities, because the allegation is actively monitored by investigative and legal channels until completion.

Major General LECCE. The Marine Corps is not aware of any cases, from fiscal years 2014–2018, in which a commanding officer was disciplined for failing to respond to an allegation of rape, sexual assault, or other sexual misconduct. However, the Marine Corps is also not aware of any case in which a commander failed to respond to such an allegation.

23. Senator WARREN. Lieutenant General Pele, Vice Admiral Hannink, Lieutenant General Rockwell, Major General Lecce, how many general and flag officers, if any, were not promoted in each fiscal year from 2014–2018 because credible evidence was discovered that he or she failed to respond to allegations of rape, sexual assault, or other sexual misconduct?

Lieutenant General PEDE. Since fiscal year 2014, four general officers have been disciplined for failing to meet policy requirements related to the handling of sexual-assault allegations. None were subsequently promoted, and two officers were retired at lower grades.

Vice Admiral HANNINK. From 2014–2018, no Navy flag officers, selected or nominated for promotion, were not promoted based on credible evidence of failure to respond to allegations of rape, sexual assault, or other sexual misconduct.

Lieutenant General ROCKWELL. During the specified timeframe, we are aware of no general officers who failed to promote due to the specified misconduct.

Major General LECCE. The Marine Corps has no record of general officers not promoted in each fiscal year from 2014–2018 because credible evidence was discovered that he or she failed to respond to allegations of rape, sexual assault, or other sexual misconduct.

24. Senator WARREN. Dr. Van Winkle, in January 2019, a Defense Department survey entitled “Annual Report on Sexual Harassment and Violence at the Military Service Academies, Academic Program Year 2017–2018” found that the number of unreported sexual assaults at three military service academies (United States Military Academy at West Point, the United States Naval Academy, and the United States Air Force Academy) increased by nearly 50 percent—to 747 during the 2017–18 academic year—compared to the number of unreported assaults in the 2015–16 academic year. In a January 31, 2019 hearing, you were quoted as saying: “We are disheartened that the strategies we have employed have not achieved the results we had intended.” Why have the strategies to reduce cases of unwanted sexual conduct and increase reporting rates at the service academies not worked better?

Dr. VAN WINKLE. We know that our approaches can work in many circumstances. However, we must constantly reassess and adjust based on variety of evolving factors, including—for example—evolving research and changes in our populations at large and at local levels. After many years in this mission space and despite the commitment of resources and leadership efforts, we are fully aware that we have not mastered the factors that drive prevalence and reporting rates. In fact, no subject matter experts in the country have fully succeeded to date. At the same time, we have learned that there are certain environments, such as the academies, that require different approaches than those we employ in the Active force. This year’s military service academies report emphasized that the climate factors strongly associated with sexual assault at the academies did not improve—they worsened. As a result, our efforts at the academies will be to improve leadership’s ability to address climate factors and to provide technical assistance to identify what efforts appear to be working, what efforts need improving, and areas in which we can shift resources from less effective to more effective efforts.

25. Senator WARREN. Dr. Van Winkle, Lieutenant General Pele, Vice Admiral Hannink, Lieutenant General Rockwell, Major General Lecce, the Defense Department survey entitled “Annual Report on Sexual Harassment and Violence at the Military Service Academies, Academic Program Year 2017–2018” proposed four categories of actions to address sexual assault in the service academies: 1) Promote Responsible Alcohol Choices, 2) Reinvigorate Prevention of Sexual Assault, 3) Enhance a Culture of Respect, and 4) Improve Sexual Assault and Harassment Reporting. Are there any recommendations in this report regarding the service academies that are useful to commanding officers in the services? Please explain.

Dr. VAN WINKLE. Yes. The recommendation that these problems are the responsibility of leadership and can be mitigated by addressing the overall climate of dignity and respect within the unit is useful for every leader. Sexual assault is strongly correlated with experiences of sexual harassment and other misconduct within military units. As a result, we must prepare leaders at all levels, including those leaders interacting with our most junior personnel, to promote a climate that prevents misconduct before it happens and ensures our personnel are treated with the dignity and respect to achieve unit readiness and, thus, our critical national security missions.

Lieutenant General PELE. Although the U.S. Military Academy and the other service academies are unique in terms of their structure and their missions, the proposed actions in the report can be helpful with continuing the effort against sexual assault in the Services.

Sexual violence fundamentally undermines readiness and lethality, and consequently, Army commanders are the center of gravity for the prevention of sexual misconduct. In 2015, the Chief of Staff directed commanders to develop prevention plans to reduce the likelihood of sexual assault across the Army, including promoting active leader engagement, addressing alcohol use, monitoring barracks, and regularly assessing these plans. Commanders and their staffs can also consider the lessons from the military service academy reports as they work to refine these efforts.

Vice Admiral HANNINK. These objectives discussed in the report are driven by the overarching commitment across the Department of Defense (DOD) and Military Services to create behavioral and culture changes that will eliminate sexual assault from our organizations. Social research informs us that such measures are most effective when tailored to the organization or community targeted. Accordingly, the initiatives undertaken by the military service academies are specifically designed for efficacy in the academic setting and in the sociocultural setting unique to each institution.

However, the initiatives described in the report reflect broader strategies that can be implemented in any military community. In fact, many of the initiatives described in the report, though tailored for the academy environment, are comparable to programs already in use by military commanders. Discussed below are some specific considerations that have broader Service applicability:

1) Promoting Responsible Alcohol Choices. The Navy is focused on promoting responsible alcohol choices across the Service, including prevention efforts such as modifying on-base alcohol beverage sales policies to reduce availability and footprint, authorizing commanders to use alcohol detection devices as an additional tool for deterrence, and implementing a “Keep What You’ve Earned” prevention campaign targeting younger sailors.

2) Reinvigorating Prevention of Sexual Assault. All Navy leaders are accountable for what happens in their units and are key to affecting institutional change. Leaders are charged with fostering a command climate that neither condones nor ignores sexist behavior, sexual harassment, or sexual assault.

3) Enhancing a Culture of Respect. The Navy’s ongoing Culture of Excellence campaign builds on our understanding of the continuum of harm and findings of the 2016 Workplace and Gender Relations Survey of Active Duty members. The campaign is an integrated, holistic approach to preventing destructive behaviors—from suicide and sexual assault to excessive use of alcohol—that leverages behavioral science and analytics, and is aimed at promoting signature healthy behaviors.

4) Improve Sexual Assault and Harassment Reporting. There is a correlation between improved reporting and victim confidence in response efforts. The Navy continues to prioritize victim support and investigative and legal capabilities, through high-quality services provided by trained and accessible personnel. Highly-effective and responsive victim assistance and advocacy services instill confidence and trust, strengthen resilience, and encourage victim reporting.

Lieutenant General ROCKWELL. Our airmen come into our Service from every demographic, economic, and cultural background. In other words, they are merely a reflection of society with one main difference, they have made a choice to defend our

Nation through military service. Once they become a member of the Air Force, it becomes the responsibility of leadership to mold them into a cohesive fighting force. This charter does not come without its challenges. For many of our young airmen, this is their first step to becoming adults. We expect them to grow, learn, and adhere to the professional standards expected of our military. This is a process and a part of this process is understanding they are responsible for their own conduct. Accordingly, Air Force policy recognizes that alcohol misuse negatively affects individual behavior, duty performance, and/or physical and mental health. Through its Alcohol and Drug Abuse Prevention and Treatment Program, the Air Force provides comprehensive clinical assistance to Active Duty servicemembers, and will support referral coordination for other eligible beneficiaries, seeking help for an alcohol problem. The primary objectives of the Alcohol and Drug Abuse Prevention and Treatment Program are to: promote readiness, health, and wellness through the prevention and treatment of substance misuse and abuse; to minimize the negative consequences of substance misuse and abuse, to the individual, family, and organization; to provide comprehensive education and treatment to individuals who experience problems attributed to substance misuse or abuse; and to restore function and return members to unrestricted duty status, or to assist them in their transition to civilian life, as appropriate. These objectives are met through four levels of activities: universal prevention and education, selected prevention, indicated prevention, and treatment and continuing aftercare. Universal prevention and education include population-based outreach, education, prevention programs, screening, and consultation. Moreover, selected prevention involves global screenings for alcohol misuse, as well as initiatives to prevent future alcohol misuse. Indicated prevention is indicated for those who are engaging in risky drinking. Additionally, treatment and continuing aftercare provide evidence-based substance use disorder treatment for individuals who are abusing or are dependent on alcohol. Finally, Staff Judge Advocates, Sexual Assault Response Coordinators and Violence Prevention personnel must provide installation commanders with information on trends and characteristics of sexual assault crimes and relevant risk factors, including alcohol related incidents, to enable local sexual assault prevention and response efforts. In response to the Under Secretary of Defense's initiative to promote responsible alcohol choices, the United States Air Force Academy (USAFA) also took some additional steps to address alcohol abuse. All three-degree cadets (sophomore) since academic year 2018 participate in Alcohol Skills Training conducted by the Peak Performance Center (PPC) in small group sessions. Alcohol Skills Training highlights responsible drinking skills and responsible alcohol consumption prior to beginning their sophomore academic year. The PPC and Substance Abuse Prevention Services (SAPS) clinic provides cadets with alcohol assessments, psychoeducational materials, and regularly conducts outreach to proactively address responsible alcohol consumption. Staff from USAFA SAPR and the legal office identified an opportunity for additional efforts and created and conducted training for bartenders at the cadet area bar, Hap's, about bystander intervention and laws concerning sexual assault and intoxication. USAFA SAPR also utilizes the Bystander Intervention Training for Alcohol Servers which was developed by the Air Force. Additionally, the Safe to Report policy was instituted at around the same time that the alcohol policy changes were made. While at the same time promoting responsible alcohol choices, USAFA aimed to remove barriers to reporting sexual assaults that involved alcohol misuse. The Safe to Report policy is specifically designed to address issues within the academic environment of the USAFA in an effort to explore barriers to reporting among the cadets and change the culture at the institution. While expanding this policy Air Force-wide may appear to be beneficial, we oppose its Air Force-wide implementation due to its serious, unintended consequences. First, this type of blanket immunity for collateral misconduct would inadvertently and unnecessarily challenge the credibility of victims in many cases, and degrade the fair and impartial adjudication in every case. A blanket immunity for collateral misconduct fails to take into account that the facts and circumstances of each sexual assault case are unique, and therefore requires tailored approaches to maximize support for victims and ensure appropriate accountability of offenders. Our objective is to maximize support for victims, encourage them to come forward and report these crimes, and ensure they are more likely to participate in the military justice system so that we can hold offenders appropriately accountable. While waiving collateral misconduct in some cases helps achieve these objectives, in a few other cases a requirement of blanket immunity may inadvertently make it less likely that a victim comes forward to report, receive support and resources, and participate in the military justice system. For example, a few victims have indicated that they do not want any form of immunity for collateral misconduct, while expressing their concerns about even the slightest suspicion among any colleagues that the victim reported a sexual assault in order to 'get out

of an otherwise minor issue. Conversely, we also know that in many cases, encouraging commanders to not consider collateral misconduct—particularly when in the interest of encouraging victims to come forward, get needed support and resources, and help participate in the military justice system so we hold offenders appropriately accountable—is appropriate. But a blanket, inflexible requirement on consideration of collateral misconduct, despite the best of intentions, may in fact harm our efforts to support certain victims and hold offenders appropriately accountable. For a variety of reasons, sexual assault allegations are particularly difficult to prosecute and, in many cases, challenges to a victim’s credibility through cross-examination can be the difference in the outcome. A grant of immunity for collateral misconduct is a “soft” target because instead of limiting cross-examination to the unique facts of a particular case, in practice, a blanket application of Safe to Report would open the victim’s report of sexual assault to defense challenges alleging the report was made merely to escape disciplinary or punitive action, detract from the victim’s testimony, and may lend itself to injecting “reasonable doubt” into the case, in turn frustrating the military justice system’s ability to fairly adjudicate each case on its merits. From our Special Victims’ Counsel’s perspective, most victims do not want to be treated differently than any other airman who commits minor misconduct and want to avoid the appearance of preferential treatment or implication that their sexual assault report was made to avoid being held accountable for their minor misconduct, when testifying at a court-martial or administrative hearing. From our Air Force Integrated Resilience Office, while this proposal seeks to minimize barriers to reporting for some victims, it may actually have an adverse impact on reporting and victims as a whole. Misconceptions of false reporting already exist where there is an assumption that sexual assault reports are made to receive a “benefit” such as an expedited transfer. If the policy were to be implemented Service-wide, there is the potential that it will reinforce these misconceptions by further reinforcing an incorrect belief that victims make reports to avoid punishment for misconduct. This is of particular importance given the prevalence of alcohol-facilitated sexual assault. Such attitudes may not only present additional barriers for victims seeking to make a report, but could actually increase the risk of retaliatory behavior towards them. Second, pursuant to Section 547 of the John S. McCain National Defense Authorization Act for Fiscal Year 2019, the Services recently conducted a data call to be provided to the Defense Advisory Committee on Investigation, Prosecution, and Defense of Sexual Assault in the Armed Forces (DAC-IPAD) on collateral misconduct. Raw data of AF Office of Special Investigations Reports of Investigation published and disseminated for command action between 1 April 2017 and 31 March 2019 reveals only 4.5 percent of sexual assault victims were accused of collateral misconduct. Applying an immunity policy across the AF would unnecessarily cloud the testimony of the other 95.5 percent of victims not accused of collateral misconduct in a manner that negatively impacts the military justice system. Finally, the USAFA Safe to Report Policy was constructed to target the unique academic environment where cadets and cadet candidates are afforded fewer due process protections and far greater consequences for similar misconduct than traditional airmen. For example, in certain academic disciplinary scenarios at USAFA, an individual victim accused of collateral misconduct does not have a right to legal representation. In contrast, there is no scenario in the operational Air Force in which disciplinary action may be taken without the opportunity for representation by a Special Victims’ Counsel in conjunction with joint representation by a trial defense counsel. Moreover, at this point, there is insufficient data to demonstrate that the USAFA policy, rather than other external factors, has had a statistically significant impact on victim reporting.

Major General LECCE. Yes. The Marine Corps is implementing the recommendations to the military service academies in the following ways: 1) Promote Responsible Alcohol Choices. The Marine Corps promotes responsible alcohol choices through low-risk to no-risk use of alcohol. USMC targets alcohol misuse through education, deterrence, and evidence-based marketing. The goal is to build and sustain an understanding of risk levels concerning alcohol consumption and ensure both officers and staff non-commissioned officers support, mentor, and empower their subordinates to make healthier, low/no risk choices involving alcohol consumption. 2) Reinvigorate Prevention of Sexual Assault. The Marine Corps continues to leverage subject matter experts, research efforts, and training programs to help combat this crime. Prevention remains the highest and most enduring priority. The USMC is building an inclusive prevention system that integrates a variety of stakeholders and builds skills that promote protective factors and mitigate risk factors that lead to sexual assault. The Marine Corps is developing rank-specific leadership training to address skills and knowledge of the SAPR program applicable to each phase of a marine’s career, including training for staff non-commissioned officers (SNCO) and officers. USMC is working with DON [Department of the Navy] and

DOD SAPRO to integrate the recently signed DOD Prevention Plan of Action, and an enterprise-wide self-assessment of sexual assault prevention efforts. 3) Enhance a Culture of Respect. Cultivating a culture of respect is inherent to the ethos of the Marine Corps. Leadership at all levels must enforce the core values of the Marine Corps and set a tone that fosters respect, cohesion, and communication. USMC empowers front-line leaders with tools, knowledge, and training to help them create and maintain a healthy culture. In addition, symposiums and small-unit leadership-led discussions are used to address topics including: social media misconduct, sexual communication in the digital age, recognizing and reducing victim blaming, and barriers to reporting. These efforts empower marines to be more cognizant of the different forms of sexual assault and harassment. 4) Improve Sexual Assault and Harassment Reporting. To minimize reporting barriers, the Marine Corps includes retaliation prevention and response content in all SAPR annual training and leadership courses. Leaders, Sexual Assault Response Coordinators, and SAPR Victims' Advocates receive instruction and information related to individual responses to trauma. The Marine Corps continues to explore ways to leverage the sphere of influence of peers and first-line leaders within education, training, and intervention efforts, and by developing tools to assist leaders at all levels to set the standards for a climate of respect within their area of responsibility.

26. Senator WARREN. Dr. Van Winkle, Lieutenant General Pele, Vice Admiral Hannink, Lieutenant General Rockwell, Major General Lecce, the Defense Department survey entitled "Annual Report on Sexual Harassment and Violence at the Military Service Academies, Academic Program Year 2017-2018" reportedly evaluated the role of alcohol consumption in unwanted sexual contact for the first time. How do the Services promote responsible alcohol choices?

Dr. VAN WINKLE. While the Services will speak to their Service-specific efforts, the DOD approach is to leverage a combination of education, robust policy, and strong accountability to improve outcomes. That said, we are aware that civilian environments also face challenges when applying best practices to drive more responsible alcohol choices for people of this age and stage of development among our military service academies' population. Nonetheless, we continue our efforts to get this right.

Lieutenant General PELE. Ensuring that any consumption of alcohol is done responsibly is an issue of readiness. Commanders at every level reinforce this through local prevention plans and active leader engagements.

The Army supplements these efforts through a comprehensive healthcare framework. This framework includes education efforts, training materials, and Substance Use Disorder Clinical Care (SUDCC) providers, who are now co-located with Embedded Behavioral Health teams at units across the Army. Soldiers can now voluntarily seek alcohol-related behavioral healthcare. A pilot of this initiative demonstrated a 34-percent reduction in the number of soldiers who were not deployable while receiving voluntary care.

Finally, leaders are equipped with tools to help reduce risk factors and improve leaders' visibility of their soldiers. These tools help leaders to "see" their soldiers and identify behaviors that may be an indicator of a larger problem. These tools include the Commander's Risk Reduction Dashboard, which provides individual soldier and overall unit risk history, trends, and the impacts on personnel readiness.

Vice Admiral HANNINK. The Navy continues to reinforce healthy alternatives to alcohol, and promotes responsible use for those of legal drinking age who choose to consume alcohol. We have also modified on-base alcohol beverage sales policies to reduce availability and footprint, authorized commanders to use alcohol detection devices as an additional tool for deterrence, and implemented a "Keep What You've Earned" prevention campaign targeting younger sailors.

Lieutenant General ROCKWELL. Air Force policy recognizes that alcohol misuse negatively affects individual behavior, duty performance, and/or physical and mental health. Through its Alcohol and Drug Abuse Prevention and Treatment Program, the Air Force provides comprehensive clinical assistance to Active Duty servicemembers, and will support referral coordination for other eligible beneficiaries, seeking help for an alcohol problem. The primary objectives of the Alcohol and Drug Abuse Prevention and Treatment Program are to: promote readiness, health, and wellness through the prevention and treatment of substance misuse and abuse; to minimize the negative consequences of substance misuse and abuse, to the individual, family, and organization; to provide comprehensive education and treatment to individuals who experience problems attributed to substance misuse or abuse; and to restore function and return members to unrestricted duty status, or to assist them in their transition to civilian life, as appropriate. These objectives are met through four levels of activities: universal prevention and education, selected

prevention, indicated prevention, and treatment and continuing aftercare. Universal prevention and education include population-based outreach, education, prevention programs, screening, and consultation. Moreover, selected prevention involves global screenings for alcohol misuse, as well as initiatives to prevent future alcohol misuse. Selected prevention is indicated for those who are engaging in risky drinking. Additionally, treatment and continuing aftercare provide evidence-based substance use disorder treatment for individuals who are abusing or are dependent on alcohol. Finally, Staff Judge Advocates, Sexual Assault Response Coordinators and Violence Prevention personnel must provide installation commanders with information on trends and characteristics of sexual assault crimes and relevant risk factors, including alcohol related incidents, to enable local sexual assault prevention and response efforts.

Major General LECCE. The Marine Corps promotes responsible alcohol choices through low-risk to no-risk use of alcohol by targeting alcohol misuse through education, deterrence, and evidence-based marketing. The Marine Corps Substance Abuse Program emphasizes:

- Building and sustaining an understanding of risk levels concerning alcohol consumption.
- Shifting the focus from alcohol-related incidents to the consumption of alcohol itself.
- Ensuring staff non-commissioned officers and officers support, mentor, and empower their subordinates to make healthier, low/no risk choices involving alcohol consumption (they are key in decreasing alcohol misuse). Program initiatives include the Alcohol Screening Program (ASP) and PRIME For Life (PFL).
- ASP is a key tool for deterring alcohol misuse. The program utilizes random breathalyzer testing of marines and sailors to screen for underage drinking and alcohol use while in a duty status.
- PFL is an early intervention, evidence-based prevention and education program that provides marines with the ability to self-assess high-risk behaviors. PFL influences changes in attitudes, beliefs, and behaviors related to alcohol use. It emphasizes the value/benefit of making low risk/no risk alcohol-related choices.

27. Senator WARREN. Dr. Van Winkle, Lieutenant General Pede, Vice Admiral Hannink, Lieutenant General Rockwell, Major General Lecce, under current military justice procedure, are sexual assault survivors required to be provided, or given the option to be provided, all non-privileged court material filings at the time a case is filed? If not, why not?

Dr. VAN WINKLE. As these matters fall outside my purview, I respectfully defer to my colleagues on this legal question.

Lieutenant General PEDE. The military is in the process of fully implementing the new Article 140a. In addition, the Department of Defense recently submitted a legislative proposal to clarify that the Privacy Act does not prohibit the Military Services from making non-privileged court filings available to the public, including to any victim of any offense.

Until the legislative solutions are fully enacted, however, the Army has instituted a disclosure policy. Under that policy, once a case is filed in court, that is, it is referred to a court-martial, the victim is provided with: the referred charges that pertain to that victim; any request to interview the victim from the defense counsel; the court's scheduling orders; a copy of any pleading that may affect a victim's ability to participate in the trial; a victim's possessory interest in any property; and a victim's privileged communications or private medical information. A victim also has standing to litigate any issue that affects that victim under Military Rules of Evidence 412 (victim sexual behavior), 513 (psychotherapist patient privilege), and 514 (victim-victim advocate privilege), and the law allows the victim to file a writ of mandamus in the courts of criminal appeals to enforce these rights.

Finally, these disclosure rights are in addition to pre-referral disclosures under Army policies. These include the preferred charges that relate to the victim; a copy of all statements or evidence provided by the victim; and a copy of the victim's summarized testimony from any preliminary hearing. The victim is also kept informed of any pre-trial confinement hearing or preliminary hearing.

Of note, any disclosure policy that would exceed the disclosure rights of the public should be carefully evaluated to ensure that the right of the accused, and of the community, to a fair trial is protected and the privacy interests of others are assured.

Vice Admiral HANNINK. Our procedures allow all statements provided by or adopted by a victim to be given to him or her upon request. Additionally, victims receive motions and accompanying evidence for litigation that implicate a victim's rights,

such as a victim's mental health records, evidence of prior sexual behavior under Military Rule of Evidence 412, or other matters under Article 6(b), UCMJ.

Victims are not provided other court materials at the time of filing. One situation of potential concern is that trial witnesses, including victims, might gain access to other witnesses' statements or evidence in the case. Such access could potentially distort the victim's memory of an event or otherwise affect the victim's testimony about the event. As a consequence, the practice of providing filings containing other witnesses' statements and other evidence concerning the case could lead to a damaging line of cross-examination by the defense against the victim.

In accordance with Article 140a, UCMJ, the Secretary of Defense (SECDEF) has recently prescribed military justice case management, data, and accessibility uniform standards to be implemented not later than December 23, 2020. This policy provides that, to the greatest extent possible, military justice docket information, filings, and records should be no less accessible to the public than comparable information and documents from the federal civilian criminal justice system. However, an important legal distinction exists between the two systems: the Privacy Act applies to the military justice system. SECDEF also acknowledged that Privacy Act concerns are directly relevant to the manner in which information and documents from the military justice system may be made available to the public. Therefore, according to the SECDEF prescribed standards, if the law is changed to exempt from the Privacy Act the release of military justice docket information, filings and records, then all dockets, filings, and court records will be made available to the public on a website as soon as practicable after filing. If the law is not changed, then the SECDEF prescribed guidelines would require dockets, filings, and court records to be published as soon as practicable after the completion of the following two events: a) the certification of the record of trial, and b) when all such documents to be published have been properly redacted in compliance with the Privacy Act.

Lieutenant General ROCKWELL. Court-martial filings are protected by the Privacy Act, which prevents the Government from freely providing all court records and filings to victims. That said, there are certain records that must be provided to the victim as a matter of law. That is the audio recording or transcript from an Article 32 preliminary hearing (upon request) and the completed record of trial (provided automatically to victims who testify, provided to all others upon request). Though these laws do not serve as an exception to the Privacy Act per se, the Air Force's system of records notice allows the Government to provide records to victims as required by law without violating the Privacy Act. In addition, Special Victims' Counsel (SVC) may request any court-martial filings or other records as an "official use" exception to the Privacy Act. As long as the record is needed to assist SVCs in the performance of their official duty to represent their client, then the Government may provide it unredacted without violating the Privacy Act. Air Force policy specifically outlines these official use procedures to allow more efficient flow of information between the Government and SVC community. Finally, the Uniform Rules of Practice Before Air Force Courts-Martial require all motions filed under Military Rules of Evidence 412, 513, 514, 615, or any other motion that relates to Article 6b, UCMJ, to be served on the Special Victims' Counsel.

Major General LECCE. Under Marine Corps regulations, victims of sexual assault are provided with a redacted copy of the charging document, copies of motions related to the victim's rights, copies of their testimony during the pretrial proceedings, and any statements they made during the investigation. Victims are not provided all non-privileged filings because those filings are subject to Privacy Act restrictions. Additionally, providing victims with routine access to all non-privileged filings may jeopardize the Government's ability to obtain convictions at courts-martial. The practice risks contaminating victims' and witness' testimony. For example, by providing all non-privileged filings to a victim, that victim may gain access to another witness' statement or other evidence in the case. This will result in the victim being subjected to greater scrutiny on cross-examination. Even if receipt of this information does not actually change the victim's testimony, a defense counsel could still argue that the testimony has been contaminated by the victim reviewing other statements or evidence in the case.

28. Senator WARREN. Dr. Van Winkle, Lieutenant General Pede, Vice Admiral Hannink, Lieutenant General Rockwell, Major General Lecce, under current military justice procedure, are sexual assault survivors always provided the opportunity to be heard through an impact statement or other testimony at the sentencing phase of a court martial proceeding? If not, why not?

Dr. VAN WINKLE. As these matters fall outside my purview, I respectfully defer to my colleagues on this legal question.

Lieutenant General PEDE. Under Rule for Courts-Martial 1101(c), any victim of an offense of which the accused was convicted is provided the opportunity to be heard—whether in sworn testimony or through a victim impact statement—at a presentencing hearing. In addition, such victims are offered the opportunity to submit matters for the convening authority’s consideration after the trial has concluded.

Vice Admiral HANNINK. Yes. Rule for Courts-Martial 1001(c) allows victims of the crime of which an accused has been found guilty to be reasonably heard at the presentencing proceeding. However, our Victims Legal Counsel Program leadership have recently informed me that there are occasionally challenges encountered by victims who wish to testify remotely, but have to overcome certain procedural requirements associated with using video teleconference capabilities in lieu of in-court testimony. I have provided those concerns to the Chief Judge, Department of the Navy and to the Chief Judge, Navy-Marine Corps-Trial Judiciary (NMCTJ) so that they may consider revision to the NMCTJ Uniform Rules of Practice to address this issue.

Lieutenant General ROCKWELL. Under the Rules for Courts-Martial, when a charge and specification with a named victim results in a conviction, that victim may provide a victim impact statement as part of the sentencing phase of a court-martial proceeding. The victim impact statement may be oral, in writing or both. The victim may also provide either a sworn or unsworn statement. However, if the court-martial proceeding results in an acquittal on all specifications for a particular victim or all specifications are dismissed regarding a particular victim prior to a verdict, that victim would not be able to provide an impact statement because the charges and specification regarding that victim did not result in a conviction.

Major General LECCE. Yes, victims are provided an opportunity to be reasonably heard during the sentencing phase of a court-martial. In the majority of cases, victims may exercise this right through submission of a sworn statement, an unsworn statement, or both. In capital cases, the victim’s right to be reasonably heard is limited to sworn statements. Sexual assault victims are provided the opportunity to be heard throughout the court-martial process, including during the investigation, before making a decision on whether to prosecute a case, during trial, and during the sentencing phase of court-martial proceedings.

29. Senator WARREN. Dr. Van Winkle, Lieutenant General Peede, Vice Admiral Hannink, Lieutenant General Rockwell, Major General Lecce, would you support a modification to the current way in which military sexual assault survivors obtain protective orders so that the survivor is not required to obtain a protective order through the survivor’s chain of command, and can instead obtain a protective order directly from a military judge or military magistrate?

Dr. VAN WINKLE. As protective orders fall outside my purview, I respectfully defer to my colleagues on this question.

Lieutenant General PEDE. I am not aware of any issue with a victim seeking a military protective order, but of course, I am open to considering any effort to ensure a victim’s safety. No victim is required to directly ask the alleged offender’s chain of command for a military protective order. Such orders are routinely issued and a special victim counsel or victim advocate can assist a victim with obtaining a military protective order. In addition to military protective orders, a victim can obtain a state order of protection, which have robust procedures to enforce them.

Vice Admiral HANNINK. I support efforts to enhance the safety, well-being and readiness of all servicemembers. The consideration of whether to issue a protective order is a responsibility that resides with commanders. Under DOD and Navy regulations, denial of a protective order in a sexual assault case must be raised to the installation commander or equivalent command level for final decision in consultation with a judge advocate. I am open to further considering whether this authority should be provided to military judges or military magistrates as well.

Lieutenant General ROCKWELL. We do not support a modification giving military judges the authority to grant protective orders. We refer and rely upon the Office of Management and Budget’s Follow-On to Statement of Administration Policy on S. 2987, the John S. McCain National Defense Authorization Act for Fiscal Year 2019 (June 26, 2018). The statement provided in relevant part: Although the Administration strongly supports providing necessary protection to victims, the Administration objects to section 544, which would authorize military judges to issue and enforce domestic protective orders, because it would strain the military judiciary’s limited resources and greatly expand the authority of military judges into an area that has been reserved to civil courts. Currently, servicemembers, DOD dependents, and non-DOD affiliated civilian victims in the United States have access to State civil courts, which have robust and long-standing procedures to issue and enforce protective orders that meet the requirements for registration in Federal and civilian

databases for background checks and firearms purchases. Military Victim-Witness personnel, Special Victims' Counsel, Victim Advocates for both the Family Advocacy Program and the Sexual Harassment/Assault Response and Prevention Program, and law enforcement personnel are all trained on referring and assisting victims with obtaining these civilian court orders and ensuring that the orders are registered with military police for enforcement on installations. Additionally, for victims both in the United States and overseas, military commanders can issue protective orders in appropriate circumstances. Additionally, we note that a military judge often has jurisdiction over only one of the parties involved in the conflict giving rise to the need for a protective order (i.e. in the case of a civilian spouse or intimate partner). Thus, they do not have jurisdiction to adequately protect all parties involved. A civilian court would have full jurisdiction over all parties. For these reasons, we recommend maintaining the current process whereby commanders issue military protective orders and refer them immediately to law enforcement for proper indexing in criminal databases. The parties then seek a complementary civil protective order to maximize personal security both on and off base.

Major General LECCE. Protecting victims is a priority. The current system in place is fast, effective, and places minimal burdens on victims. This proposal is similar to a provision opposed last year in the Follow-On to Statement of Administration Policy on S. 2987. That statement explains that such a change would strain the military judiciary's limited resources and expand the authority of military judges into an area that has been reserved to civil courts. I am open to expanding the role of military judges and magistrates to earlier in the military justice process. However, military magistrates are not currently trained or well positioned to deal with the many legal facets of issuing restraining orders. This area of the law often requires expertise or support in family law matters. Additionally military judges and magistrates would only have authority over Active Duty servicemembers whereas state courts have authority over all parties regardless of their civilian or military status. State civil courts have robust and long-standing procedures to issue and enforce protective orders. Those orders meet the requirements for registration in Federal and other databases used for background checks and firearms purchases. Furthermore, those orders are enforceable on military installations.

30. Senator WARREN. Dr. Van Winkle, Lieutenant General Pede, Vice Admiral Hannink, Lieutenant General Rockwell, Major General Lecce, please describe your understanding of the appropriate role of military commanders, in relation to the chain(s) of command of the alleged perpetrator and the alleged survivor, in preventing or stopping retaliation for reporting a sexual assault claim.

Dr. VAN WINKLE. DOD's SAPR Policy requires that all supervisors, (officer, enlisted, civilian) down to the most junior supervisor, receive training that explains:

- The appropriate, professional response by peers to a victim and an alleged offender when a sexual assault is reported in a unit. This training uses scenarios to facilitate discussion of appropriate behavior, to include discussing potential resentment of peers for victims, bystanders, or witnesses who report a sexual assault. Additionally, the training must explain that incidents of retaliation, reprisal, ostracism, and maltreatment violate good order and discipline, erode unit cohesion, and deter reporting of sexual assault incidents.
- That all supervisors in the victim's chain of command, officer and enlisted, are required when they become aware of allegations of retaliation, reprisal, ostracism, or maltreatment, to take appropriate measures to protect the victim from retaliation, reprisal, coercion, ostracism, and maltreatment.
- What constitutes retaliation, reprisal, ostracism, and maltreatment in accordance with Service regulations and Military Whistleblower Protections and procedures for reporting allegations of reprisal.
- The resources available for victims (listed in Enclosure 4 of DOD Instruction 6495.02) to report instances of retaliation, reprisal, ostracism, maltreatment, or sexual harassment or to request a transfer or military protective order.
- That victims who reported a sexual assault or sought mental health treatment for sexual assault, have the opportunity to communicate with the general officer/flag officer regarding issues related to their military career that the victim believes are associated with the sexual assault. In addition, our approach emphasizes that command climate largely addresses how servicemembers making a report of sexual assault will be treated. For this reason, we have provided commanders questions about the reporting climate on climate surveys. We have also enacted a proactive means by which senior mission commanders at installations collect information about retaliation allegations through Case Management Groups. This senior leader focus allows them to understand the nature

of such allegations at their installations and get the allegations to the appropriate authority for review and investigation, as appropriate.

Lieutenant General PEDE. Every commander across the Army is responsible for preventing or stopping any act of retaliation for reporting a sexual assault. The Uniform Code of Military Justice criminalizes acts of professional retaliation; and punitive regulations reinforce the prohibition against retaliation. Under Army policy, a Sexual Assault Response Coordinator asks every victim at least monthly whether the victim has suffered from either professional or social retaliation. Any allegation of retaliation must thoroughly be investigated. All allegations are reported both to an installation's senior commander through the Sexual Assault Response Board and in the Army's annual report on sexual assault. Finally, each commander must conduct anonymous command climate surveys upon assumption of command and at least annually after that, which ask the servicemembers' opinions of the unit's climate regarding, among other concerns, sexual assault, sexual harassment, and retaliation. The results are shared with higher level commanders. The results inform a commander whether proactive action to prevent such acts is necessary.

Vice Admiral HANNINK. The Navy is concerned with retaliation for sexual assault reporting. Accordingly, Navy leaders are responsible for establishing prevention and response programs that ensure their servicemembers are treated with dignity and respect, including fostering a climate of inclusion that does not tolerate retaliation for reporting. This responsibility holds true for the commanders of both the alleged perpetrator and the survivor of the alleged assault. Article 132, UCMJ provides an additional mechanism for commanders to hold leadership and peers accountable under appropriate circumstances. Although the military has more control over the workplace and social behaviors of its sailors than a civilian employer would, social ostracism is a complex behavior that is challenging to deter. To overcome this, we continue to educate the Fleet and keep expedited transfers as an option for victims to avoid social ostracism if necessary.

Lieutenant General ROCKWELL. An act of retaliation can be charged as a violation of Article 132 of the Uniform Code of Military Justice, which provides to the commander the full range of disciplinary tools in order to punish those who engage in retaliation and to deter future violations. Most importantly, if a victim of sexual assault experiences any form of retaliation, whether it be reprisal, ostracism, or maltreatment, there are multiple avenues to raise concerns and seek assistance, including the Inspector General, Area Defense Counsel/Special Victims' Counsel, Sexual Assault Response Coordinator or Victim Advocate, Staff Judge Advocate, or Air Force Office of Special Investigations. Every report of retaliation is referred for investigation. The commander's Case Management Group (CMG) is charged with monitoring sexual assault cases, providing victims support, and tracking retaliation allegations brought to the Group's attention. The CMG is required to track retaliation against victims, SARCs, and SAPR Victim Advocates until resolution, and the CMG Chair refers cases against witness, bystanders, and responders to the appropriate authority. Early engagement by leadership makes a difference. It is the commander who carries the message as to the seriousness of every allegation of sexual assault and that any form of retaliation will not be tolerated. Commander's authority to set standards and enforce them is at the core of the military justice system. Commanders have the ability, opportunity, and responsibility to shape the expectations and standards within their units. Experience has taught us that, if we wait to address issues surrounding sexual misconduct until after it has occurred, we are many times too late. As a result, we train our senior commanders at the Air Force's Senior Officer Legal Orientation about the importance of talking to their airmen about these cases and their perspectives before an incident occurs. It is imperative commanders protect the rights and the reputations of all the parties involved in an allegations of sexual assault.

Major General LECCE. Commanders are responsible for ensuring their marines understand that retaliation is not tolerated. In addition to required Sexual Assault Prevention and Response training, which explains that retaliation for reporting a sexual assault is prohibited, all commanders are required to conduct training on the Marine Corps Order prohibiting destructive behaviors. That order also prohibits retaliation and ostracism for making a report of sexual assault. Commanders of the accused and victims both play vital roles in preventing and responding to retaliation. Commanders must take seriously and investigate all reports of retaliation. Where that investigation substantiates a complaint of retaliation, commanders have a range of disciplinary tools to hold accountable those who engage in retaliation, and to deter future violations.

31. Senator WARREN. Dr. Van Winkle, Lieutenant General Pede, Vice Admiral Hannink, Lieutenant General Rockwell, Major General Lecce, please describe your

understanding of the responsibilities of the Special Victims Counsel when retaliation occurs against a survivor of sexual assault.

Dr. VAN WINKLE. As these matters fall outside my purview, I respectfully defer to my colleagues on this legal question.

Lieutenant General PEDE. A special victim counsel is responsible for representing her or his client's interests to the best of their ability within the scope of the SVC program.

In the event of an allegation of retaliation, an SVC has a number of options to represent their client effectively. Often, an SVC is able to quickly address the issue through the trial counsel who advises the command of the perception. In other circumstances, the SVC can assist a client by raising the issue with the chain of command directly or, when in the best interests of the client, through law enforcement or the inspector general.

Social retaliation is often the most difficult to formally address, but here, the SVC can ensure clients are aware of services available to them, including a request for an expedited transfer to a new unit.

Vice Admiral HANNINK. Where a victim of a sexual offense has been retaliated against after making a report, VLC advise the client on all of the options available to him/her to make a complaint about the retaliation, to include filing complaints with the Inspector General and congressional members. By instruction, VLC are authorized to assist in the drafting and filing of these complaints. VLC have generally been successful in addressing the issue on behalf of the victim directly with the chain of command; commanders have been accessible and responsive in correcting the issue. Additionally, VLC advise and assist victims in taking advantage of the Expedited Transfer Program or a temporary duty assignment in order to move to another command.

Lieutenant General ROCKWELL. The 10 USC 1044e permits Special Victims' Counsel (SVC) to represent eligible sexual assault victims who have reported an allegation of sexual assault. As a part of that representation, SVCs assist clients with reporting retaliation claims when there is a connection between the retaliation claim and the underlying reported sexual assault. SVCs assist sexual assault victims who want to file a complaint of retaliation or reprisal through various reporting channels to include, but not limited to, command channels, the Department of Defense or service Office of the Inspector General, Equal Opportunity Office or to members of the United States Congress. In addition to assisting clients with reporting retaliation claims, SVC assist victims who participate in any investigation related to the claim and coordinate with investigation authorities to keep victims informed as to the status of the investigation and the disposition of allegations.

Major General LECCE. Our VLCs take retaliation very seriously. The standard VLC introductory brief that all victims receive upon entering a VLC office includes an explanation of retaliation as well as an assurance that it should not be happening. With regard to the VLC's responsibilities in handling a report of retaliation, VLCs normally try to handle the situation at the lowest level possible, and elevate as necessary. The lowest level is generally the commanding officer or a senior enlisted marine. Commanding officers are responsible for establishing a command climate free from a fear of retaliation. They take that responsibility very seriously. We do not often see retaliation, but when we do it is generally in the form of ostracism or gossip by the victim's peers or coworkers. A commanding officer or sergeant major can address those situations quickly and successfully. In the event that a command is unable to address the situation, VLCs will assist the victim in communicating concerns to other resources, such as a higher level of command or the IG. Success is ultimately measured by the victim's satisfaction that the situation has been remedied.

32. Senator WARREN. Dr. Van Winkle, Lieutenant General Pede, Vice Admiral Hannink, Lieutenant General Rockwell, Major General Lecce, why do you believe sexual assault continues in the Armed Forces despite your attempts to reduce it, and are there steps, beyond what you are currently doing, that would significantly reduce and potentially eliminate the incidence of sexual assault?

Dr. VAN WINKLE. Despite the reductions in the prevalence of sexual assault observed in the force between 2012 and 2016, researchers continue their efforts to better understand the factors that drive increases and decreases in prevalence. We can and must do better in driving these rates down. The Department of Defense will implement the Prevention Plan of Action to help optimize and coordinate prevention systems throughout the Department. In addition, as we have recommended in the military service academies report, we know we must prepare leaders, including student leaders, to better address these problem behaviors within their climates. Acting Secretary of Defense Patrick Shanahan also issued a memorandum on May 1, 2019,

which is accessible on defense.gov, that has a full suite of actions to address sexual assault and sexual harassment.

Lieutenant General PEDE. Sexual assault is a society-wide problem, and it will take a society-wide effort to reduce it. Data from throughout the United States demonstrate that this is truly a national problem. It is also complex and arises from multiple contributing factors. Although criminal prosecution has an important role in addressing this crisis, we cannot prosecute our way out of this, either in the military or in communities across the United States.

Changing culture in the military is a question of empowered leadership, and leaders at every level—and especially commanders—must be at the center of this effort. The authority our commanders have to use a disciplinary system that allows for the criminalization of conduct not possible in the civilian community, allows the military to take action on the wide-variety of misconduct that ultimately contributes to the rate of sexual assault. I am committed to working with Congress, civilian partners, and leaders at every level of the Army to ensure that we build a culture in which every servicemember understands that acts of sexual assault and sexual harassment are abhorrent and impede our readiness to fight. We must build a culture in which every servicemember works to eliminate this crime from our ranks.

Vice Admiral HANNINK. Sexual assault is a persistent challenge across all Military Services—the results from this year’s report highlight critical challenges the DOD and the Services must, and will, address.

At the request of Senator McCally during the Senate Armed Services Committee Hearing on March 14, 2019, Acting SECDEF Shanahan formed a team of experts to take a fresh look at issues involving sexual assault, with a focus on the investigative and accountability processes. The Sexual Assault Accountability and Investigation Task Force (SAAITF) was tasked with identifying, evaluating, and recommending immediate and significant actions to improve the investigative process and disposition of cases. On April 30, 2019, the SAAITF issued its report with recommendations to help commanders set command/organizational climate, enhance victim support, and ensure fair and just support for the accused. On May 1, 2019, Acting SECDEF Shanahan directed the Department to implement the recommendations of the SAAITF’s report as well as developing new climate assessment tools focused on providing leaders information on the extent of their unit’s climate, launching the Catch a Serial Offender (‘CATCH’) Program to improve the identification of repeat offenders, enhancing efforts to select recruits of the highest character, preparing new leaders and first-line supervisors for applied leadership challenges, and executing the DOD Sexual Assault Prevention Plan of Action.

Lieutenant General ROCKWELL. It is critical to recognize our airmen come from every cultural, economic, and demographic background. We attempt to shape them into a professional, disciplined fighting force, but this objective takes time and we are faced with the same challenges our counterparts in society face. The difference is our airmen generally do not get to elect those they work with or the locations they are stationed. This increases our obligation to identify ways to educate, identify, and prevent behaviors which may culminate in a sexual assault. It is an unrealistic expectation to believe we can eliminate every instance of sexual assault. Our culture demands we remain dedicated to finding tools and methods to reduce sexual assault within the military. We also recognize these cases within the military automatically move to the forefront and are consistently reviewed and scrutinized. The Air Force embraces the challenge. We have made significant strides in addressing allegations of sexual assault. The Air Force has always provided victims a voice through the Victim Witness Assistance Program, and has always pursued cases which, at times, solely rest on the testimony of the victim in the case. Those cases are among the most difficult to prosecute. Across the Military Services, victims are represented by Special Victims’ Counsel, a program first initiated by the Air Force. To make any true assessment on the effects of our efforts is premature. Change takes time and an allegation of an offense today may take years to work through the court-martial process to be compounded by the time a case takes to work through the appellate process. But one needs look any further than the congressionally-established Response Systems Panel that found commanders must take the lead in implementing and overseeing DOD’s prevention programs and strategies. Proposals for systemic changes to the military justice system should be considered carefully in the context of the many changes that have been made to the form and function of the military justice system. Additionally, the Panel concluded that Congress should not further limit the authority of convening authorities to refer charges for sexual assault crimes to trial by court-martial. The Military Justice Act of 2016 created the greatest changes to the Uniform Code of Military Justice (UCMJ) in 30 years, and its impacts are still being realized. These vast changes must be given time to take effect and to be studied. The Air Force is committed to strengthening

our system. We are working to launch the CATCH program which will improve reporting and ensure greater accountability. In May 2019, the Sex Assault Accountability and Investigation Task Force made a number of recommendations to our system which will ensure that our military justice system continues to serve as a strong deterrent to criminal conduct. We are also reviewing legislation designating sexual harassment as a specific crime in the UCMJ. This is intended to assist with cultural climate, as our studies show that the likelihood of sexual assault increases in an environment with a higher prevalence of sexual harassment or disregard for sexual harassment complaints. While the majority of our efforts should be focused on preventive measures, recently we have worked with our Military Criminal Investigative Organizations to develop more effective ways for reducing the time for completing investigations and adjudications. The Air Force remains committed to identifying new inroads to combat these offenses, as well as instill a culture of dignity and respect in our airmen at the earliest possible point.

Major General LECCE. Sexual assault is a crime and an affront to everything marines and the Marine Corps represent. It erodes the trust and cohesion within the Marine Corps team, degrades our lethality and readiness, and is incompatible with our core values of honor, courage, and commitment. Prevention begins with leadership. Commanders must enforce standards and set a tone that fosters respect, communication, and cohesion. Empowering front-line leaders, young company grade officers and non-commissioned officers, with the knowledge, training, and tools to swiftly address sexual assaults in their units is key to combating this issue. The most at-risk population are female marines 24-years-old and younger, serving in the ranks private through corporal. Their perpetrators are often peers within one or two ranks. With this knowledge, commanders and front-line leaders need to ensure they are building teams that do not tolerate sexual assault.

