



TESTIMONY OF

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ON

“SEXUAL ASSAULT IN THE UNITED STATES MILITARY”

BEFORE THE
SENATE ARMED SERVICES COMMITTEE

JUNE 4, 2013

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

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

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

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

As I told Coast Guard men and women worldwide a little over a year ago: “We will intervene to prevent or halt these acts when they are occurring. We will investigate and discipline those who have violated law and service policy. We will insist that all of our Shipmates live by our Core Values. And let me be clear, there are no bystanders in the Coast Guard. Respect for our Shipmates demands that each of us have the courage to take immediate action to prevent or stop these incidents.”

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

Sexual Assault Prevention and Response Policies and Programs

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

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

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

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

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

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

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

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

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

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

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

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

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

Most recently, I issued my Commander’s Intent launching a service wide “Campaign to Eliminate Sexual Assault from Our Coast Guard” on May 26, 2013. In this mandate, I make clear to everyone in the Coast Guard, including active, reserve, civilian, and auxiliary, my expectation to create a culture intolerant of sexual assault. This includes stopping sexual assault by recognizing indicators

of predicate behavior and ensuring all personnel know they are empowered to intervene. We will also improve the availability and quality of response resources; improve reporting, investigative, and military justice processes; and enhance victim aftercare.

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

Reporting Options and Processing of Sexual Assault Crimes

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

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

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

Under the restricted reporting option, the victim notifies only certain authorized individuals, including a Victim Advocate, Family Advocacy Specialist, or Health Care Provider, about the incident. The report is "restricted" because the allegation is not to be reported to the chain of command and the victim's identity and all information about the allegation is protected. The victim receives advocacy, medical treatment, and counseling but a formal investigation is not triggered. The authorized individual who receives the restricted report will notify the appropriate Sexual Assault Response Coordinator.

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

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

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

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

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

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

The alleged offender's unit commander also has obligations during the investigation. He or she must ensure that CGIS has been notified, limit the dissemination of pertinent information to only those personnel with a need to know, ensure procedures are in place to inform the alleged offender about the investigative and legal processes, provide for counseling for the alleged offender, and monitor the general well-being of the alleged offender, especially for any indications of suicide ideation.

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

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

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

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

Military Justice Process and Legislative Improvements

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

The modern military justice system apparatus – with specific rules of procedure, evidentiary court rules, professionalized practitioners, and independent judicial bodies – has more in common with the federal civilian courts than differences. The United States military justice system today is arguably one of the best, most fair, and just systems in the world. However, the argument for the status quo should not be because it is the status quo. While the system works well, it is not perfect. There should be, and there is, a never-ending quest to improve it. Our current system of military justice is

worthy of robust examination and debate. It is important that serious thought go into what in the UCMJ should be changed and how that change should be accomplished. As Service Chief, I am committed to changing our organizational culture. I am concerned that dramatically changing our system of justice at the same time could impede those cultural changes.

With that said, a core tenet of the military justice system is the central role commanders play in the administration of military justice. Military justice, unlike the civilian criminal system, has a dual role of seeking justice and enforcing discipline. This reflects the notion that commanders are in charge of their units, not lawyers or other officials. Any changes to the military justice system should not needlessly undermine commanders' ability to maintain good order and discipline. While the Coast Guard shares the goal of improving the system of justice within the military, it generally opposes legislation that would fundamentally alter the role of commanders in a piece-meal fashion without a full appreciation for the second and third order effects on the unit discipline and command authority.

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

Closing

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

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

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

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

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