



**Statement by Nancy Parrish, President Protect Our Defenders
Senate Armed Services Committee Hearing:
Pending Legislation Regarding Sexual Assaults in the Military
June 4, 2013**

Chairman Levin and members of the Senate Armed Service Committee, thank you for holding this hearing and for your visible determination to address the critical issue of military sexual assault. Thank you for the opportunity to address your committee today.

Protect Our Defenders is a human rights organization that works with victims of military sexual assault, providing support services and advocating for military justice reform. Our experience working directly with sexual assault survivors, active duty and veteran, as well as our work educating the public and policy makers on this issue have left us critically aware of the shortfalls within the current system and the need to implement fundamental reforms.

The argument currently circulating that sexual assault reform is an old problem, predominantly solved through recent changes in the law, is simply not correct.

It is well understood that the numbers are going up not down.

We regularly receive desperate pleas from current victims of sexual assault, who are having their attempts to report thwarted, mishandled, or swept under the rug.

Increasingly we intervene, hiring lawyers, to block retaliation and reverse errant medical diagnoses. We frequently hear from highly rated service members, who soon after they report, suffer persecution, are isolated in psych wards with wrongful diagnoses, or become targets of investigations. Soon after, they are frequently being forced out of the service.

One soldier explained, quote: "I got raped by this bastard.... When I tried to talk to my squad leader I got shut down and reminded that he (the rapist) was a Senior NCO.... I waited and spoke with my platoon SFC (sgt. first class) and Lt, [And, they told my perpetrator.].... Then, I got told if I say another word to ANYONE, I was going to be charged with Adultery.... I was sent back to the states.... I told my squad leader...and the next thing...I get told they are chaptering me on an adjustment disorder.... I am one of the 'Unreported statistics' but not without trying.... He is free and able to do it again as long as he wears the Uniform.... The Uniform represents a Protective Shield if you're a rapist with rank."

A mother reported to us, quote: "Our daughter's career and life nearly ended on base 4/7/12, days before her tech training was to begin. That day other service member(s) gave

her cigarettes laced with embalming fluid and raped her...she was locked up, prescribed medications, denied repeated requests for expedited transfer.... Only weeks later, Command initiated an Article 15 letter of reprimand and proceeded to discharge her with an errant medical diagnosis. (This was later overturned with outside legal assistance.) She endured months of anguish, hospitalizations, humiliation, punishment ...having to clean and work in the area where she was assaulted a second time--raped, sodomized, threatened reporting further, and forced to live in close proximity to her perpetrators.... (A letter is attached the to Committee from the mother.)

Last year, an officer of 18 years, still on active duty, said: I was deployed overseas. The first advice you get when you get there... ALWAYS carry a knife. Even in the daylight, almost every woman carried a knife. Not for battle against the Taliban, but to cut the person who tries to rape her. I was drugged and raped...if you report people are going to ostracize you.... If you report rape you are done.... Check their crime records here, and [see] how many IG complaints were pushed under the rug... why? Because, the IG office is also a deployment position. They don't want to deal with big issues, because it takes too long to investigate."

USAF Lt. Adam Cohen is on active duty. He deployed three times for Operation Enduring Freedom, flying over 40 combat missions in Afghanistan.

Lt Cohen is an example of a failed system, a system that permits the weakest within it to suffer manipulation and castigation for having the temerity to come forth with an allegation of sexual assault. According to Lt. Cohen, for years he suffered blackmail, at the hands of his assailant and his assailant's friends, designed to keep him from coming forward with his allegation. When he finally came forward, he was initially ignored by Air Force law enforcement. Pressing his claim further, he was punished by investigators and manipulated into providing evidence that was meant not to hold his assailant accountable, but rather to prosecute him. Through the actions of the Air Force, Lt Cohen's alleged assailant (still on active duty) is statutorily barred from prosecution, while Lt Cohen remains the subject of a constitutionally suspect prosecution. He has been retaliated against, attacked, and denied an expedited transfer. Upon learning the expedited transfer was denied, SVC Major Bellflower asked the commander to provide a safety plan. If we are to make any headway in curbing sexual assault in the military, we must act to protect those that come forward, by ensuring that the system does not punish them for doing so. (SVC Counsel, Major John Bellflower's redacted report is attached with his permission. Also attached with permission is Lt. Cohen's background and statement.) There should be a DOD investigation of the entire matter.

Several months ago a commander wrote: "I have a young female soldier.... As her commander...I have supported and encouraged her reporting, but have been disappointed in the way it has been handled and the lack of support given to her by her command (higher than me). I would appreciate...any direction you could advise.... As I am still in the Command - discretion would be appreciated."

Civilian oversight of our military is a founding principle of our democracy. Yet, for decades we have seen Congress approach reform efforts with great deference, to what military leaders would like to accept. This has remained the case, even after it became painfully evident the reforms to date were not sufficient and that the failure is quite damaging. This failure has come at great cost to our service members, our military, and our national security.

The rising numbers of unreported cases of rapes and sexual assault, coupled with unacceptably low prosecution rates have left victims discouraged, intimidated, disdained, retaliated against, and all too often, broken. They are dismissed by a legal system, tightly controlled within the chain of command. Many victims are coerced to keep their complaints unrecorded and officially unheard. In sum, the criminals are not prosecuted and victims are persecuted.

There are three fundamental issues regarding this crisis plaguing the military:

- The broken justice system, which is biased toward retaliating against the victim, while protecting the often higher-ranking perpetrator;
- A culture of objectifying and denigrating women and refusal to recognize male victims; and,
- A failure of military leadership to exhibit resolve and forcefully and effectively address this issue.

On May 22nd, 2013, former General Counsel to the Pentagon, Mr. Jeh Johnson said, “I have recently come to the conclusion...the problem, I believe has become so pervasive. The bad behavior so pervasive, we need to look at fundamental change in the military justice system itself.” These are powerful words from the nation’s former top military legal official.

Congress must assume its responsibility and no longer approach reform based on what military leaders would like to accept. We cannot afford to simply continue to make marginal changes.

The military leadership has long insisted that absolute command discretion is required in order to maintain good order and discipline, and to ensure mission readiness and unit cohesion. Yet, when victims are punished and perpetrators go free and everyone knows it to be the case, trust, the essential ingredient to an effective, functioning military is undermined. It would also undermine unit cohesion and trust, if as defense counsels frequently argue, commanders, in response to political pressure, simply pursue witch-hunts against anyone accused. Why have the commander in a position where so many people may question their objectivity, both those that believe the victim and those that support the accused? We need to remove from the process all those with a personal interest or even an appearance of potential conflict of interest and bias.

Our military leaders have consistently failed to specifically explain how or why removing the convening authority from commanders and placing it in the hands of capable and trained prosecutors would cause this alleged break down in the system. They said the same

about repealing Don't Ask Don't Tell. Commanders would still have a multitude of tools at their disposal to maintain good order and discipline. We need only look to our closest ally, the United Kingdom in this regard.

For commanders, administering justice and referring cases to court-martial is only a small part of their job. The Convening Authority has many other high priority, non-judicial responsibilities that consume the majority of their time and attention. Why should a legal decision be left to a non-lawyer, particularly someone often directly connected with those involved and with an inherent interest in the outcome? How could one expect this to consistently produce unbiased justice?

Taking administration of the legal process out of the chain will increase accountability. Many members of the military have stressed that it is critical that commanders remain accountable for the climate within their command. We agree. After taking legal decisions out of the Chain, Commanding officers will still be required and able to create and maintain a command climate that will minimize the occurrences of these incidences. With the responsibility to administer the legal process out of their hands, the reality and perception of victims will be that the system is more legitimate and fair. More victims will report, more prosecutions will occur and Commanders will be held more accurately accountable for the climate they maintain.

The current system produces a perverse consequence. There is no good way to know which commander is doing a better job. Which is better, a commander who has 20 victims come forward in his unit or a commander who has zero reports. Today the truth is not knowable. Victims have little or no faith in the system and the system lacks transparency. The commander with 20 reports may be doing a good job, encouraging and fairly dealing with reports. The commander with no reports may not tolerate reporting and his unit may actually have a much greater incidence of sexual assault.

Taking responsibility and authority for administering the legal process out of the chain will increase accountability. Victims will understand that they will more likely get a fair shake. More victims will report. As more report, it will become clearer which commanders are creating a good climate, strong unit cohesion, and good order and discipline and which are not.

Congress must face reality. For justice to prevail, you must end commanders' unfettered authority over the legal aspects of military justice. Nothing less will end the damaging cycle of scandal and continued incidence.

The civil justice system provides an apt model for how the military justice system could work well. To make the military justice system more effective, we would recommend the following changes:

1. As in civilian justice, place the duty to determine whether to go forward to trial (the disposition authority), into the hands of professionally trained senior prosecutors.

Although you will not likely hear it in this room, many commanders would prefer such a change.

2. Require that court-martial panels be randomly selected from a pool of eligible candidates, in a manner similar to the civilian justice process. As in the civilian process, there should be exceptions for those with conflicts precluding assignment.
3. The chief judge of each service should continue to assign judges as required.
4. Department of Defense should establish minimum sentencing guidelines, which follow the well-established civilian federal system.
5. Assign military judges the exclusive responsibility to administer sentences. Military panel members are not trained as to what is appropriate and are notorious for inappropriately light sentences.
6. Rely totally on the appeals courts for post trial assessment of legal issues.
7. Elevate authority to overturn or reduce sentences to the service Secretaries or Chief of Staffs. As in the civilian systems, overturning conviction or reduction of sentencing should be a last resort, only available after completion of any appeals process, with decisions taken by a fully independent, unbiased, previously uninvolved authority.
8. Remove Good Military Character defense from the trial, as well as pre-trial proceedings. The ability to raise reasonable doubt based solely on the accused military record is biased and should not be relevant to findings of guilt in criminal matters. There is no civilian equivalent. Imagine a rapist being set free merely because he has a good reputation as an auto mechanic, a popular teacher, or business executive. It is offensive to the notion of justice.
9. Provide that all services should have Special Victims Counsels empowered to provide actual legal representation to help victims protect their rights. Do not eviscerate the Air Force Special Victims Counsel program. If access to counsel were provided, retaliation would be greatly reduced.
10. Create an independent, victim centered, protective reporting process.
11. Mandate that each service create a military justice track for JAGs. The current system does not sufficiently nurture military justice expertise. The Navy has recently implemented such a track. It enables talented JAGs, who enjoy litigation, to specialize in justice and continuously serve in that capacity.

Reforming the military justice system is necessary but, alone, will not be sufficient to end this epidemic. Only with forceful leadership from the top and accountability throughout the command structure, will we see the necessary positive shift in the military culture and less

negative attitudes toward victims of sexual assault. Good laws alone do not create good government.

This issue was brought to light most recently in the sexual assault case at Aviano Air Base. Lt. General Craig Franklin set aside the conviction of fellow pilot, Lt. Col. Wilkerson, overturning the guilty verdict rendered by a court-martial panel of five colonels he personally selected, and against the recommendation of his legal advisor.

Lt. General Franklin's letter explaining his decision to overturn the conviction clearly exhibits faulty analysis, misjudgment, and personal bias. Protect Our Defender's analysis of the General's explanation, with extensive excerpts from trial record, has been previously provided to the committee. No one, after a careful, unbiased analysis of the trial record, could reasonably conclude that General Franklin's action was well-reasoned and balanced, solely based on the facts of the case. It appears that he simply could not believe or accept that this fellow fighter pilot would commit such an act. Lt. Gen. Franklin's twisted reasoning and reliance on the accused's alleged strong character and veracity is an awkward attempt to justify and reconcile his own belief in a fellow pilot, rather than rely on the evidence at trial. This bias coupled with his gratuitous exercise of unilateral and unchecked authority is an archetypical example of what plagues the military justice system.

There was bi-partisan condemnation of Lt. General Franklin's action and subsequent explanation. Yet, the only response from the Pentagon has thus far been that Lt. General Franklin acted within his authority. Of course he did. That is the problem. What about his duty to promote good order and discipline? What about his duty to see that justice is served? Having failed on both counts, will he be held accountable? Thus far, we see no sign that his career will even be affected.

To further compound the egregious and reverberating effects of this decision, on March 15, Lt. General Franklin's commander, General Breedlove, speaking before 500 Majors and rising commanders at the Air Command and Staff College, publicly defended Franklin's decision on the merits and falsely attacked the prosecution team. There is no way, had he carefully reviewed the record, that General Breedlove could have rationally reached his conclusion. It appears as though he may have simply read and accepted Lt. General Franklin's account. This sort of "circling the wagons" mentality, where the bad actions of one or a few individuals are defended, over the best interests of the service and the troops, is all too common.

The Aviano case was and is a stark opportunity for DoD and the Air Force top leadership to exercise their responsibility and stated commitment to hold accountable those who countenance sexual offenses. The facts are on the record, very clear, and easy to analyze. Instead, General Breedlove doubled down and supported Franklin on the merits in a very public and gratuitous manor. The Pentagon, thus far, has correctly and repeatedly stated that Franklin acted within his authority. There is thundering silence from the Pentagon regarding whether any one even doubts that he made the right decision. Such silence emboldens predators and those who would be inclined to protect predators or sweep this issue under the rug. It sends a chilling signal to victims who must decide whether to report

and can only be deeply demoralizing to investigators, prosecutors and panel members, who face similar cases every day.

Ultimately, our military leaders must understand that they will be held personally accountable for their decisions on this issue. Those, as the President recently said, who are doing the right thing should be incentivized. However, it is even more important that those leaders who countenance sexual assault and protect predators must themselves suffer severe consequences. They must be relieved of command. Right now, all too often, the opposite occurs. Commanders fail to effectively address the issue, predators survive and advance in rank, and victims suffer retaliation and are pushed out of the service.

The bottom line is the culture will not change until top leaders take strong action and leaders who fail to do their duty are clearly and swiftly held accountable.

Legislation currently pending before the Senate Armed Services Committee includes many crucial measures, particularly those in the Military Justice Improvement Act, which, if passed, would improve the situation regarding rape and sexual assault in the military, and could, if effectively implemented, go a long way to prevent future crimes. The reform must be sweeping to make appreciable change.

The failure of the military to effectively deal with this cancer has been very damaging to the thousands of victims, the quality of our military, and the prestige and honor of our troops. Americans are finally, starkly aware of this crisis, and on August 2, 2012 according to Stars and Stripes, General Welsh stated, “[Sexual assault] just has the potential to rip the fabric of your force apart. I think it is doing that to a certain extent now.” We agree.

Survivors have found their voice. The American people are paying attention. There is no longer any doubt that change will come. The question is how long will it take and, meanwhile, at what cost to our service men and women, our military as a whole, and our prestige around the world.

We are extremely grateful for the work and attention the Senate Armed Services Committee is devoting to this issue. We are encouraged by many of the proposed reforms. We believe that, along with our additional proposals, they, if enacted and effectively implemented, will result in significant improvement over the status quo.