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 service women is virtually unchanged from 2010 barely dropping from 4.4% to 4.3% per year. In other words, for women service members 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 FY17 having seen unrestricted reports skyrocket to an all-time high of 5111, actual prosecution rates plummeted to 7.9% of all allegations. Moreover, the military failed to achieve a conviction for a sex offense in 60% of the very few cases that went to courts-martial. As a result, only 166 offenders or about 3% of the 5111 reports resulted in convictions of a nonconsensual sex offense last year. Put another way, 99% of the estimated 15,0000 victims never saw justice in their case.

To make matters worse, 60% of survivors who report openly suffer retaliation that is often career ending. In 2016, the DoD IG found that 1/3 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, 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 or 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 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.