

HEARING TO RECEIVE TESTIMONY ON SEXUAL ASSAULTS IN THE MILITARY

WEDNESDAY, MARCH 13, 2013

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

The subcommittee met, pursuant to notice, at 10:09 a.m. in room SH-216, Hart Senate Office Building, Senator Kristen Gillibrand (chairman of the subcommittee) presiding.

Committee members present: Senators Gillibrand, Blumenthal, Hirono, Kaine, King, Graham, Ayotte, and Blunt.

Other committee members present: Senators Levin, McCaskill, Shaheen, Donnelly, and Inhofe.

Committee staff members present: Leah C. Brewer, nominations and hearings clerk; and Barry C. Walker, security officer.

Majority staff members present: Jonathan D. Clark, counsel; Gabriella E. Fahrner, counsel; and Gerald J. Leeling, general counsel.

Minority staff member present: Steven M. Barney, minority counsel.

Staff assistants present: Jennifer R. Knowles, Kathleen A. Kulenkampff, John L. Principato, and Bradley S. Watson.

Committee members' assistants present: Jason Rauch, assistant to Senator McCaskill; Christopher Cannon, assistant to Senator Hagan; Chad Kreikemeier, assistant to Senator Shaheen; Elana Broitman and Brooke Jamison, assistants to Senator Gillibrand; Ethan Saxon, assistant to Senator Blumenthal; Marta McClellan Ross, assistant to Senator Donnelly; Nick Ikeda, assistant to Senator Hirono; Karen Courington, assistant to Senator Kaine; Steve Smith, assistant to Senator King; Todd Harmer, assistant to Senator Chambliss; Brad Bowman, assistant to Senator Ayotte; Craig Abele and Alice James, assistants to Senator Graham; and Charles Prosch, assistant to Senator Blunt.

OPENING STATEMENT OF SENATOR KRISTEN GILLIBRAND, CHAIRMAN

Senator GILLIBRAND. Thank you all for joining us.

It is an honor and a privilege to chair this hearing of the Personnel Subcommittee this morning. I want to thank the ranking member of the subcommittee, Senator Lindsey Graham, for his support and working with me to move this hearing forward as quickly as possible.

I know that all of our colleagues on the Armed Services Committee share our deep commitment to improving the quality of life of the men and women who serve in our All-Volunteer Force on active duty or in the National Guard and Reserves, their families, military retirees, and Department of Defense personnel.

And that is why this hearing today is so important to me personally and to thousands of servicemembers and their families across this country.

The issue of sexual violence in the military is not new. And it has been allowed to go in the shadows for far too long. The scourge of sexual violence in the military should be intolerable and infuriating to all of us. Our best, brightest, and bravest join our Armed Forces for all the right reasons: to serve our country, to protect our freedom, and to keep America safe.

The United States military has the best in the world and the overwhelmingly vast majority of our brave men and women serving in uniform do so honorably and bravely but there is also no doubt that we have men and women in uniform who are committing acts of sexual violence and should no longer be allowed to serve.

Too often, women and men have found themselves in the fight of their lives not in the theater of war but in their own ranks, among their own brothers and sisters and ranking officers in an environment that enables sexual assault.

And after an assault occurs—an estimated 19,000 sexual assaults happened in 2011 alone according to the Defense Department's own estimates—some of these victims have to fight all over again with every ounce of their being just to have their voice heard, their assailant brought to any measure of justice, and then to fight for the disability claims they deserve to be fulfilled.

Congress would be derelict in its duty of oversight if we just shrugged our shoulders at these 19,000 sons and daughters, husbands and wives, mothers and fathers and did nothing. We simply must do better by them.

When brave men and women volunteer to serve in our military, they know the risks involved, but sexual assault at the hands of a fellow servicemember should never be one of them because not only does sexual assault cause unconscionable harm to the victim, but sexual assault is reported to be the leading cause of post-traumatic stress disorder among women veterans. But sexual assault in the military also destabilizes our military, threatens our unit cohesion and national security. Beyond the enormous human costs, both psychologically and physically, this crisis is costing us significant assets, making us weaker both morally and militarily.

Already this committee and the Pentagon took some first steps on this issue as part of last year's national defense authorization bill that President Obama signed. While obviously our work is not done, I am hopeful that we can build on some of these initial changes which include: one, ensuring that all convicted sex offenders in the military are processed for discharge or dismissal from the Armed Forces regardless of which branch they serve in.

Second, we removed case-disposition authority from the immediate commanding officer in sexual assault cases, which is one of the issues we will look into today as to whether we need to remove

such disposition authority entirely from the chain of command and placed with a trained prosecutor instead.

We pushed the Pentagon to lift the combat ban that prevents women from officially serving in many of the combat positions that can lead to significant promotion opportunities. By opening the door for more qualified women to excel in our military, we have increased diversity in top leadership positions, improving response from leadership when it comes to preventing and responding to sexual assault.

And we passed an amendment that introduced by Senator Jeanne Shaheen that was based on our legislation, the MARCH Act, which means that troops who do become pregnant as a result of a rape no longer have to pay out of pocket for those pregnancies to be terminated.

Concerning our second panel of witnesses, after we hear from Senator Barbara Boxer who has extraordinary passion and leadership on this issue, our second panel will be of men and women who are going to tell their personal stories. And I want to salute each and every one of you for having the courage to tell such painful and personal stories. It is my hope and belief that by committing this selfless act, you are encouraging others to step forward and are also helping to prevent crimes going unpunished. We have a duty to you and thousands of victims that you represent to examine whether military justice is possible and what is the most effective and fairest system that it can be.

Despite some very dedicated JAG officers, I do not believe that the current system adequately meets our standard. The statistics on prosecution rates for sexual assault in the military are devastating. Of 2,439 unrestricted reports filed in 2011 for sexual violence cases, only 240 proceeded to trial. Nearly 70 percent of these reports were for rape, aggravated sexual assault, or nonconsensual sodomy.

A system where less than 1 out of 10 reported perpetrators are taken to trial for their alleged crimes is not a system that is working. And that is just the reported crimes. The Defense Department itself puts the real number closer to 19,000. A system where in reality closer to 1 out of 100 alleged perpetrators are faced with any accountability at all. That is entirely inadequate and unacceptable.

My view is that emphasizing institutional accountability and the prosecution of cases is needed to create a real deterrent to criminal behavior. The system needs to encourage victims that come forward and participating in their perpetrator's prosecution is not detrimental to their safety or their future and that it will result in justice being done because currently, according to the Department of Defense, 47 percent of servicemembers are too afraid to report their assaults because of fear, retaliation, harm, or unjust punishment. Too many victims do not feel that justice is even likely or even possible.

We need to take a close look at the military justice system and we need to be asking the hard questions with all options on the table, including moving this issue outside of the chain of command so that we can get closer to a zero tolerance reality in the armed services. The case we have all read about, the Aviano Air Base case, is shocking and the outcome should compel all of us to take

the necessary action to ensure that justice is swift and certain, not rare and fleeting.

I had the opportunity to press Secretary Hagel on the issue of sexual violence in the military during his confirmation hearing. Secretary Hagel responded by saying, "I agree it is not good enough to say zero tolerance. The whole chain of command needs to be accountable for this." I could not agree more.

I was pleased with the Secretary's public statement earlier this week that he is open to considering changes to the military justice system, as well as legislation to ensure effectiveness of our responses to the crime of sexual assault.

In addition, the Secretary has written two letters to the services requesting a review of article 60 in light of the Aviano decision to be made by March 20 and March 27th. This is a useful first step.

After Ranking Member Graham makes his opening remarks, we will hear the testimony from Senator Barbara Boxer who has been a leading voice on this issue. In last year's defense bill, she successfully including an amendment that prohibits any individual who is convicted of felony sexual assault from being issued a waiver to join the military.

We will then have the following witnesses who have either been victims of sexual assault while serving in the military or are very knowledgeable advocates for addressing the issue of sexual assaults in the military.

I will now defer to Senator Graham to give his opening remarks.

STATEMENT OF SENATOR LINDSEY GRAHAM

Senator GRAHAM. Well, one, I want to thank Senator Gillibrand for having the hearing. When 47 or 49 percent—I cannot remember the number—feel intimidated to come forward because they think they may face reprisal, something is obviously wrong.

Now, having said that, the purpose of military justice is to instill good order and discipline in the units so that when they are called upon to engage the enemy and to train and deploy together, they can do so in the most effective fashion possible.

The military is a unique place. It is not a democracy. It is a place where you are asked to do extraordinarily difficult things and you have to count on the people to your right and to your left to be there when you need them and vice versa.

In the military we have as a crime for a commander to have a personal relationship, sexual in nature or otherwise, overly familiar relationship that would be consensual. It is called fraternization. And we probably should look at that policy as well to make sure that we are dealing with fraternization cases in an appropriate fashion.

And why would you be concerned about a consensual relationship that you would not be concerned about maybe in the private world? If your unit is called into combat, the last thing you want to think about is that the person who has a close relationship with the commander may get a pass at your expense. So we want to keep professional relationships between those who order the unit to engage the enemy so that those who follow the orders will never believe that there is some special relationship between the commander and a particular individual in the unit because that will break good

order and discipline apart. So that is one area where human sexuality can really deal a blow to a unit that is consensual.

But I cannot think of a more devastating blow to a unit than to have one member assault the other. If you want to break a unit apart and create a horrible environment to effectively engage the enemy, allow this to happen because it shows not only physical violence is the ultimate sign of disrespect. I cannot think of a more disrespectful measure than taking advantage of someone or physically violating them. That is just absolutely not only a crime, it is an ultimate detrimental demise of a unit to have such conduct break out. And the reason, Senator Gillibrand, we want to prosecute people who do that is they are destroying the unit's effectiveness. They are the bad guy.

Now, having said that, I have been a military lawyer for 30 years. Another problem that could hurt a unit is for somebody to be wrongfully accused and feel like they have no voice, that the system is going to go from one extreme to the other. So at the end of the day, military justice is about rendering justice in an individual case, but always the theme of military justice is to make that unit as effective as possible to maintain good morale and discipline. And if you are a female in a unit and you feel like nobody cares about what happens, you have destroyed morale. Also, if you are in a unit where people may misunderstand what you are saying and you feel like you cannot defend yourself, we have got to find some balance here.

But to the victims, thanks for coming forward. I know it is not an easy thing to do.

And the numbers are astounding. And if we are going to continue to be the most effective fighting force for freedom and good in the world, we are going to have to solve this problem. And as long as you have human beings, you are going to have problems.

But clearly, the message we are sending to our female members of the military is that we are way too indifferent and that your complaints are falling on deaf ears. And to all of our commanders, how in the world can you lead your unit in a responsible manner if people in that unit feel like the system does not care about them? And I will do everything I can within reason to make sure that that stops and that if you are accused of an offense in the military, you still get a fair trial.

Senator GILLIBRAND. Senator Boxer.

**STATEMENT OF SENATOR BARBARA BOXER, A U.S. SENATOR
FROM THE STATE OF CALIFORNIA**

Senator BOXER. Thank you so much, Madam Chairman and Ranking Member Graham. Thank you both for holding this critical hearing. It is very timely. And thank you so much for this opportunity to testify. I am very honored—very honored.

So today I am here to talk about the violent crime of sexual assault in the military, not about fraternization. I am not here to talk about disrespect but about vicious crimes. And I am not here to talk about false charges but about real charges and the way they are handled.

As you well know, Congress to our great, I think, credit passed the bipartisan Violence Against Women Act, and I thank everyone

on both sides of the aisle who worked so hard for that to pass. And I was so proud that President Obama signed it into law just last week.

That law recognizes that every human being—every human being, male, female—deserves protection from violence. And it sends a clear and unequivocal message that wherever a sexual assault occurs, Madam Chairman, whether on a college campus or on an Indian reservation or in a religious setting or in our military, yes, the offender must be punished. Sexual assault is a heinous and violent crime and it must be treated as such. It is not an internal matter. It is a violent crime and it must be treated as such.

And I want to thank each and every one of you for supporting the Boxer-Cornyn Amendment that said, no, the military cannot take offenders, people who have been convicted of sexual assault, into the military. That will help us going forward. But we need to do much more.

We know this crisis is staggering and despite some important reforms by the Department of Defense—and I thank them for those. They are trying to improve prevention, investigation, prosecution—still too many military sex offenders go unpunished and too many victims do not get the justice that they deserve.

As the chairman said, this is unacceptable and it must stop. And we are the ones who can stop it. And you particularly are the ones who can stop it.

Well, in response to a letter that Senator Shaheen and I sent him last week, Defense Secretary Hagel committed to taking a hard look at the military justice system. He agrees that much more must be done to combat military sexual assault.

Now, let me tell you I do not have all the answers. If I had all the answers, I would tell you that today. But one thing I do know is that immediate steps must be taken to prevent senior commanders from having the ability to unilaterally overturn a decision or a sentence by a military court. And I want to thank Senator McCaskill, who has introduced legislation to do just that. That is the first step and only the first step.

Two recent events I want to share with you highlight the urgent need for dramatic change. The first case involves a decision by an Air Force lieutenant general to dismiss all charges against a lieutenant colonel who had been convicted of aggravated sexual assault. And again, all you had to do was listen to Senator McCaskill's comments on that to understand how deep this hits us. Many in Congress, our military, and our Nation were stunned to read that the general used his discretion as the convening authority to throw out a military jury's guilty verdict, the jury of high-ranking military officers. And I want to say who was on this jury. Four colonels, a lieutenant colonel had sentenced the lieutenant colonel to a year in prison and dismissal from the Air Force. That is a jury of his peers for sure. Under the Uniform Code of Justice, the general's decision to overturn that verdict is final and it cannot be reviewed or changed.

Now, the second event I want you to hear because you may not know of it. It took place in my home State of California. Last month an Army veteran shot and killed two Santa Cruz police detectives who were attempting to question him over a sexual assault

allegation. In the aftermath of this shooting, we learned that even though the former soldier had faced two separate rape charges while serving in the Army, charges against him were dropped and he was discharged without a conviction as part of a plea bargain.

Now, what is it going to take to convince the military that sexual assault is a violent and vicious crime and that those who perpetuate it are capable of other violent crimes, including murder? What is it going to take? It is a vicious, violent crime, and those capable of that vicious crime are capable of other crimes. Yes, murder.

These examples speak for themselves, and there are so many more. You will hear them today, and your heart will break.

It is time for us to take swift decisive steps to ensure that decisions in the military justice system do not rest solely in the hands of one individual. It is not enough that our military says zero tolerance for sexual assault. You can say anything. I can say anything. But the facts speak for themselves. The Department of Defense estimates that 19,000 sexual assaults occur in the military. And I want to point out to my colleagues here, my friends, that many of these cases involve men. Only 17 percent of these cases are ever reported.

I am so grateful to both of you for this hearing. And, Senator Gillibrand, I am so happy that you chose to hold this subcommittee, your first, on military sexual assault. I look forward to working with you on comprehensive solutions to this problem.

Today's hearing is the first on this critical issue in nearly a decade. A decade. It is high time not only for this hearing but for changes in the way the military handles these cases. I know we, all of us, who are touched by this issue, are going to work with our colleagues, Republicans, Democrats, Independents, and with the military. The military, most of all, wants this to go away, and we have to end this terrible tragedy of sexual assault. And just think of what an amazing legacy it will be for this Senate if we succeed. And even more important, think about how many men and women we will rightly protect.

Thank you so much and I am very excited about this hearing. And I know with your leadership, the two of you, we can get this done. Thank you very much.

Senator GILLIBRAND. Thank you, Senator Boxer, for your very, very strong and valuable testimony. We are so grateful for your leadership.

We are now going to welcome the next panel. You can come up and I will read a biography that is very brief of each of you while you get settled.

We have Anu Bhagwati, who is the Executive Director and Co-Founder of the Service Women's Action Network. Anu is a former captain and company commander. She served as a Marine officer from 1999 to 2004. While serving, Anu faced discrimination and harassment as a woman in the military and has borne direct witness to the military's handling of sexual violence.

We have BriGette McCoy, former specialist in the U.S. Army. BriGette served in the U.S. Army from 1987 to 1991. She was just 18 years old when she signed up to serve her country in the first Gulf War. While stationed in Germany from 1988 to 1991, she was sexually assaulted by a noncommanding officer.

We have Rebekah Havrilla, former sergeant in the U.S. Army. Rebekah served in the U.S. Army from 2004 to 2008. She was the only female member of a bomb squad in eastern Afghanistan and was attacked by a colleague at Salerno Forward Operating Base near the Pakistani border during her last week in country in 2007.

We have Brian Lewis, former petty officer third class, U.S. Navy. Brian enlisted in the U.S. Navy in June of 1997. During his tour aboard USS *Frank Cable*, AS-40, he was raped by a superior non-commissioned officer and forced to go back out to sea after the assault.

I encourage each of you to express your views candidly and tell us what is working and what is not working. Help us to understand what we can do to address this unacceptable problem of sexual assaults in the military.

We will hear your opening statements. Your complete prepared statements will also be included in the record. Following the opening statements, we will limit our questions to 7 minutes for the first round for the Senators.

Ms. Bhagwati?

**STATEMENT OF ANU BHAGWATI, EXECUTIVE DIRECTOR AND
CO-FOUNDER, SERVICE WOMEN'S ACTION NETWORK**

Ms. BHAGWATI. Thank you. Good morning, Chairman Gillibrand, Ranking Member Graham, and members of the subcommittee.

My name is Anu Bhagwati. I am the Executive Director of Service Women's Action Network, or SWAN, and a former Marine Corps captain.

SWAN's mission is to transform military culture by securing equal opportunity and freedom to serve without discrimination, harassment, or assault and to reform veterans services to ensure high-quality health care and benefits for women veterans and their families.

Military sexual violence is a very personal issue for me. During my 5 years as a Marine officer, I experienced daily discrimination and sexual harassment. I was exposed to a culture rife with sexism, rape jokes, pornography, and widespread commercial sexual exploitation of women and girls both in the United States and overseas.

My experiences came to a head while I was stationed at the School of Infantry at Camp Lejeune, North Carolina, from 2002 to 2004, where I witnessed reports of rape, sexual assault, and sexual harassment swept under the rug by a handful of field grade officers. Perpetrators were promoted or transferred to other units without punishment, while victims were accused of lying or exaggerating their claims in order to ruin men's reputations.

As a company commander at the School of Infantry, I ultimately chose to sacrifice my own career to file an equal opportunity investigation against an offending officer. I was given a gag order by my commanding officer, got a military protection order against the officer in question, lived in fear of retaliation and violence from both the offender and my own chain of command, and then watched in horror as the offender was not only promoted but also given command of my company.

Many of the women who were impacted by these incidents, including me, are no longer in the military. However, all of the officers who were complicit in covering up these incidents have since retired or are still serving on active duty.

I was devastated because I loved and still love the Marines.

I wish my experience was unique, but in the last few years of working on these issues, and in the hundreds of cases we handle each year on SWAN's helpline, I have discovered that rape, sexual assault, and sexual harassment are pervasive throughout the military. Sexual violence occurs today in every branch of service in both operational and non-operational environments, in both combat arms, as well as support units, and affects both men and women.

The Department of Defense itself estimates that 19,300 assaults occurred in 2010, and that while 8,600 victims were female, 10,700 were male.

This is a critical point. Military sexual violence is not a women's issue. Sexual assault is widely understood by military personnel who have been overexposed to a culture of victim-blaming and rape mythology.

So let us be clear. Rape and assault are violent, traumatic crimes, not mistakes, not lapses of professional judgment, not leadership failures, and not oversights in character. Rape is about power, control, and intimidation.

Thanks to a surge of pressure over the last few years by advocates, the media, and Congress, military leadership has finally been forced to reckon with the issue of military sexual violence. Some victims protections reforms have been sensible like the creation of special victims units, mandatory transfers for victims, or in the Air Force's case, a pilot program which assigns each victim a designated special victims counsel. And yet, while these measures help a victim after an assault, they will neither prevent sexual violence nor change a culture that still condones sexual violence.

Military leadership cannot solve this problem on its own. I urge Congress to enact the following reforms going forward.

First, Congress should grant convening authority over criminal cases to trained, professional, disinterested prosecutors. Commanding officers cannot make truly impartial decisions because of their professional affiliation with the accused and oftentimes with the victim as well.

In recognition of this fact, a number of common law countries have already transferred case disposition away from commanders to prosecutors, deeming the policy of violation of the right to a fair and impartial trial.

Second, open the civil courts to military victims. Civilian victims of workplace crimes, including civilian DOD employees, have one critical avenue for redress currently unavailable to uniformed personnel: access to civil courts.

To this day, the U.S. Supreme Court and the Federal courts below it continue to maintain that servicemembers are barred from bringing claims of negligence or intentional discrimination against the military, depriving military personnel of remedies for violations of their rights. In the face of this judicial doctrine, Congress must ensure that men and women in uniform can access the remedies

available to all other aggrieved individuals under the Federal Tort Claims Act and the Civil Rights Act.

Given the prevalence of retaliation against servicemembers who report incidents of sexual assault and harassment, the absence of these remedies for military personnel is especially shameful.

I will close by saying that today we are looking at an institution that desperately needs to be shown the next steps forward. Senators, do not let today's servicemembers become another generation of invisible survivors.

Thank you.

[The prepared statement of Ms. Bhagwati follows:]

Senator GILLIBRAND. Ms. McCoy?

STATEMENT OF BRIGETTE MCCOY, FORMER SPECIALIST, U.S. ARMY

Ms. MCCOY. Thank you very much for having me here. I have deep gratitude towards those who have worked tirelessly for our voices to be heard and to those here listening with compassionate and open hearts poised to make positive changes toward these matters at hand, changes that need to come from the root.

I am a Gulf War-era, service-connected, disabled veteran.

I was raped during military service and during my first assignment. That was 1988. I was 18 years old. It was 2 weeks before my 19th birthday. This happened in a foreign country, away from American soil, while I was stationed in Germany.

I did not report it for reasons which will become clear as I tell my story. That would not be the last time I would be assaulted or harassed. This is my story, but it is not mine alone. More than 19,000 men and women every year share similar stories.

That year, the year that I was raped, that same year I was raped again by another soldier in my unit.

Another year, I was sexually harassed by a commissioned officer in my unit.

Between 1990 and 1991, another NCO in my unit began to harass me through inappropriate touching, words, and behavior. This NCO then requested from my command that I be moved to work directly for him in a work environment where there was no access, closed and window-less, key entry coded vault. Upon receiving my new shift schedule, I can only compare the anguish of this entrapment to discovering your child has been constantly molested by a person of authority. I was at mental and emotional collapse.

A senior woman NCO in my unit helped me to write a written statement to present to my command and to file a formal complaint, a complaint that my command answered by no official hearing, no written response, and it was only answered later with a verbal response from my first sergeant who asked me what did I want and that I had misunderstood this NCOs' intentions toward me.

The only thing that I wanted at that time was two basic things. One was an apology and for the harassment to stop. That was all.

I did not know what was happening, and at no time did anyone ever move forward with my formal complaint. Nor was anyone willing to discuss the process with me. They did, however, remove me

from his team and his formal apology consisted of him driving by me on base, rolling down his window, and saying to me sorry.

So after that in the days that followed, I was verbally and socially harassed, put on extra duties that conflicted with my medical profile, and socially isolated. Eventually I was given a choice to either get out or to face possible UCMJ action myself.

Most women who are victims of sexual harassment or abuse are threatened and charged with UCMJ action. And so I felt I had no choice. I was literally terrified. And so in that terrified position, I was paralyzed and I just chose to get out because that was the option that was given to me.

Within a week, I had orders out of Germany and I was escorted by two NCO's to my plane and that was it. My career was over.

And please note that in unit I was not the only one that was sexually assaulted or sexually harassed. Many women came to me and said they had had the same situation happen, but they never told me who in fact did this.

Returning to the U.S. and civilian life was difficult, and I had a lot of false starts. I had a lot of negative behaviors that got carried from the military. I was anxious and overly protective. I became suicidal and had suicidal attempts. I went through severe depression and had multiple severe medical illnesses and was unable to carry on the rigors of work for which I was highly trained. I repeatedly moved from place to place and was homeless and medically disabled, but not even the VA would recognize this and help me until some 2 decades later.

I lost many material things and emotional relationships in my lifetime and struggled with my faith. I grieved because I feel I was the lucky one. I left my unit alive with an honorable discharge. And although discombobulated and scared for my life and my future, many leave with less than honorable discharges and personality disorders on their records, furthering hindering them from applying for medical treatment and medical claims. Some, like PFC Lavina Johnson, do not come home to their parents alive.

22 years later almost to the day of my early ETS, I was awarded veteran service compensation and service connection for military sexual trauma. Can you tell me why did it take so long? Why did I have to go through so much before anyone would listen to me? Why did I have to be violated again through the process of asking for help and seeking claim status?

Today I volunteer and this helps to ground me. I volunteer through different veterans organizations, outreach foundation. I participate in listening sessions to help organizations like the Sierra Club and Warrior Songs better understand the many facets of women veterans' needs for their programmatic purposes.

My history is chronicled with other women and men veterans—well, women in the documentary service, “When Women Come Marching Home.” I am a social media peer supporter and technology advocate through Women Veterans Social Justice, and I collaborate with both community and veteran organizations and dozens of other organizations.

I speak and spoke at the Surgeon General's Task Force for Suicide Prevention because suicide and homelessness are two huge issues in the military sexual trauma community and with the

claims denial and lack of purposeful medical treatment exacerbating those issues. Of course, PTSD from MST is the main contributing factor.

I have to say I no longer have any faith or hope that the military chain of command will consistently prosecute, convict, sentence, and carry out the sentencing of sexual predators in uniform without absconding justice somehow. Only 8 percent of them are prosecuted. How many are relieved of their duties, their pensions, their careers? How many of them are placed on the national registry as sex offenders before they are returned to civilian life? And even asking that, what happens to the 92 percent that were not sentenced or prosecuted?

Let's not allow sexual predators who happen to wear a uniform the opportunity to become highly trained, highly degreed, military decorated sexual predators. Let's make sure they are convicted and dishonorably discharged and listed on the national registry. Let's do this before they go on notice in our communities to further harm our servicemembers, our community, and our family members.

Sexual assault and trauma has deep and broad roots in the military. Let's not just pluck a few leaves and trim the branch. Let's deal with this from the roots. Please make it stop.

[The prepared statement of Ms. McCoy follows:]

Senator GILLIBRAND. Thank you.

Ms. Havrilla.

**STATEMENT OF REBEKAH HAVRILLA, FORMER SERGEANT,
U.S. ARMY**

Ms. HAVRILLA. Good morning. My name is Rebekah Havrilla. I am currently the Outreach and Education Coordinator for Service Women's Action Network (SWAN). I previously managed SWAN's National Helpline for Legal and Social Services from May 2011 to December 2012. During that time, I assisted and provided referrals for over 600 servicemembers, veterans, and their families on issues related to military rape, sexual assault, and sexual harassment. These included overcoming barriers to getting VA military sexual trauma claims accepted, overcoming homelessness and accessing housing, and finding quality mental health care.

I hail from the great State of South Carolina where I grew up and lived until I joined the Army in 2004. I was an explosive ordnance disposal technician and I achieved the range of sergeant in 3 years and 3 months. I deployed to Afghanistan from September 2006 to September 2007 and spent the majority of my time in the eastern provinces where I was assigned to Taskforce Paladin, a combined explosives exploitation cell tasked with IED response and intelligence operations. I also spent time running route clearance missions with multiple combat engineer companies. I was awarded the Joint Service Commendation Medal for my achievements while deployed and was given an Army Achievement Medal and Good Conduct Medal before I left active duty.

My deployment brought more than just the stress of occupational hazards. During my tour, one of my team leaders continuously sexually harassed me and was sexually abusive towards me. This behavior caused me so much anxiety that I ended up self-referring to mental health and on medication to manage not just the stress of

my deployment, but also the stress of having to live with an abusive leader and coworker.

1 week before my unit was scheduled to return back to the United States, I was raped by another servicemember that had worked with our team. Initially I chose not to do a report of any kind because I had no faith in my chain of command as my first sergeant previously had sexual harassment accusations against him and the unit climate was extremely sexist and hostile in nature towards women.

After disclosing my rape to a few close friends, I ended up filing a restricted report 60 days before I left active duty against both my rapist and my team leader, but had no intentions of ever doing a formal investigation.

I began a job as a contractor and entered the Reserves at Fort Leonard Wood, Missouri and tried to start a different life for myself. Reintegration was challenging and I had few support systems to rely on. I struggled with depression and the effects of post-traumatic stress.

Approximately a year after separating from active duty, I was on orders for job training, and during that time I ran into my rapist in a post store. He recognized me and told me that he was stationed on the same installation. I was so re-traumatized from the unexpectedness of seeing him that I removed myself from training and immediately sought out the assistance from an Army chaplain who told me, among other things, that the rape was God's will and that God was trying to get my attention so that I would go back to church. Again, I did not file an unrestricted report against my rapist.

6 months later, a friend called me and told me they had found pictures of me online that my perpetrator had taken during my rape. At that point, I felt that my rape was always going to haunt me unless I did something about it. So I went to Army Criminal Investigation Division, CID, and a full investigation was completed.

The initial CID interview was the most humiliating thing that I have ever experienced. I had to relive the entire event for over 4 hours with a male CID agent, whom I had never met, and explain to him repeatedly exactly what was going on in each of the pictures. After the interview was completed, I heard nothing from the investigator until 4 months later when CID requested that I come back in to repeat my statement to a new investigator who was taking over my case. I almost refused.

During the 4 months of waiting without any word on the case except phone calls from my friends who had been interviewed, I lived in constant fear that I might run into my rapist again or that he might retaliate against me in some way. I decided to continue with the case even though I felt that nothing was ever going to be resolved, and 6 months later I was told that even though my rapist had admitted to having consensual sex with me while married, his chain of command refused to pursue any charges of adultery and the case was closed.

The military criminal justice system is broken. Unfortunately, my case is not much different from the many other cases that have been reported. I feared retaliation before and after I reported, the investigative process severely re-traumatized me, many of the insti-

tutional systems set up to help failed me miserably, my perpetrator went unpunished despite admitting to a crime against the UCMJ, and commanders were never held accountable for making the choice to do nothing.

What we need is a military with a fair and impartial criminal justice system, one that is run by professional and legal experts, not unit commanders. We also need an additional system that allows military victims to access civil courts if the military system fails them. Without both military criminal justice reform and access to civil courts, military sexual violence will continue to be widespread and a stain on the character of our Armed Forces.

Thank you for your time.

[The prepared statement of Ms. Havrilla follows:]

Senator GILLIBRAND. Thank you.

Mr. Lewis.

**STATEMENT OF BRIAN K. LEWIS, FORMER PETTY OFFICER
THIRD CLASS, U.S. NAVY, ADVOCACY BOARD MEMBER, PRO-
TECT OUR DEFENDERS**

Mr. LEWIS. Chairwoman Gillibrand and Ranking Member Graham, members of the subcommittee, thank you for holding this hearing today on sexual assault in our military. I am humbled to be sitting here today before you as the first male survivor to testify in front of Congress on this very important issue, and thank you for allowing that privilege to me.

I also want to take a minute to thank my partner Andy and all the spouses and partners of survivors of military sexual trauma survivors. I would also like to thank the parents and caregivers that work so hard to keep us on a level playing field. Some days they shoulder a very large load and deserve our recognition.

I enlisted in the Navy in 1997 and advanced to the rank of petty officer third class. During my tour on the USS *Frank Cable*, I was raped by a superior noncommissioned officer. I was ordered by my command not to report this crime.

After this crime had taken place, I was misdiagnosed with a personality disorder by the current director of the Defense Centers of Excellence for Psychological Health and Traumatic Brain Injury. I filed retaliation claims to no avail. I was given a general discharge for a personality disorder in August 2001.

My petition to change my discharge from a general discharge for a personality disorder to a medical retirement for PTSD was denied by the Board for Correction of Naval Records. I carry that discharge as an official and permanent symbol of shame on top of the physical attack, the retaliation, and the aftermath. I fear it will be discussed when I apply for law school, when I apply to be admitted to the bar, even when I apply for a job. I wonder what opportunities it may destroy for me.

However, I choose not to dwell on what the past has brought my way. I will graduate in May with a bachelor of science degree from Stevenson University in Maryland, and I will graduate in December with a masters of science degree from the same university. I plan to go to Hamline University School of Law, and I choose to work towards stopping this crime in our military. Needless to say,

because of my discharge, I have had to pay for all of these degrees on my own.

I am here today because I am not alone. My story is all too common. Protect our Defenders regularly hears from active duty personnel seeking help as they are being denied opportunities to report, generally retaliated against, diagnosed with errant medical diagnoses, or being charged with collateral misconduct after reporting the attack. The culture of victim-blaming and retaliation while failing to punish the perpetrator must end.

The Department of Defense regularly acknowledges this crisis. They estimate 19,000 sexual assaults occur each year and 86 percent of victims do not report mostly out of fear of retaliation. Of those 19,000 victims, about 10,700 are men and 8,300 are women. To translate this into percentages, about 56 percent of estimated victims in our military are men. This is the part of the crisis that the Department of Defense does not acknowledge.

Now, just what can we do to stop sexual assault in our military? First, we must recognize that rape is not just about sex. It is about violence, power, and sometimes about abuse of authority. General Franklin's recent action to set aside the guilty verdict against Lieutenant Colonel Wilkerson of aggravated sexual assault is yet another example of an abuse of authority taken by a commander that will have a chilling effect on military judges, prosecutors, and juries and inhibit victims from coming forward. A system that elevates a single individual's authority and discretion over the rule of law often precludes justice and hinders it long into the future.

Colonel Wilkerson's victim has been in contact with Protect our Defenders, and she wants you to know, quote, I endured 8 months of public humiliation and investigations. Why bother to put the investigators, prosecutors, judge, jury, and me through this if one person can set aside justice with the swipe of a pen?

I have here a copy of her statement which has already been submitted for the record, Madam Chairwoman.

Reforms to date, have clearly not successfully addressed this epidemic because they have targeted the symptoms without addressing the root cause, which is that the military justice system is fraught with inherent personal bias, conflicts of interest, abuse of authority, and too often a low regard for the victim. Whereas civilians have the constitutional protections of an independent judicial system, servicemembers do not. Servicemembers must report an assault to their commanders. However, if those commanders take action and prove that an assault occurred, they also prove a failure of their own leadership. Congress has put commanders in charge of violent sexual crime from victim care, through the legal and investigative processes, through adjudication, and post-trial. Commanders have too often failed to care for the victim or prosecute the perpetrator. They have failed to end this longstanding epidemic.

We also need to ensure that prevention efforts are inclusive of male servicemembers. The majority of prevention efforts are targeted toward females. As I demonstrated, men are a majority of the victims in our military. We cannot marginalize male survivors and send a message that men cannot be raped and therefore are not real survivors.

Survivors of military sexual trauma also need a fair review of their discharges. The military has shoved many survivors out the back door with inaccurate, misleading, and very harmful, almost weaponized medical diagnoses like personality disorders that affect their benefits and future employment opportunities. We need to establish a system separate and apart from the boards for correction of military records to examine these discharges and grant survivors the medical retirements they are due from the Department of Defense. Currently the correction boards only change about 10 percent of their discharges. These discharges make it much harder for veterans to find meaningful employment, often re-victimize the veteran, make it impossible often for these veterans to use their earned education benefits.

In conclusion, this epidemic has not successfully been addressed in decades of review and reform by the Department of Defense or by Congress. Some of the reasons for this include men being invisible and ignored as survivors of military sexual trauma, inherent bias and conflict of interest present in a broken military justice system. The reporting, investigation, prosecution, and adjudication of sexual assault must be taken out of the chain of command and into an independent office with professional military and civilian oversight.

The established discharge review process is a rubber stamp that causes lifelong harm and needs overhaul badly. It is another way that the Department of Defense fails us.

Congressional legislation created these systems that are inherently biased, unfair, and do not work. It is now Congress' duty to pass legislation so servicemembers can receive justice that is fair, impartial, and finally addresses the military's epidemic of sexual assault. It should also be noted that a lot of survivors, as the other panelists have said, do not come home. There are people like Harry Goodwin and so many others that do not survive from their sexual assaults, and we need to do this in memory of them.

Madam Chairwoman, this concludes my remarks. I am prepared for your questions and those of the subcommittee.

[The prepared statement of Mr. Lewis follows:]

Senator GILLIBRAND. Thank you to each of you for such direct and thoughtful testimony.

Each of you has recommended in your own way that you would like the disposition authority removed from the chain of command and in fact that there should be an independent legal review and a prosecution.

Ms. Bhagwati, if we are able to institute a prosecution system that does not involve having to report to your chain of command, do you think that will increase the number of cases that are reported? And do you think it will increase the number of cases that are prosecuted? And do you think it will increase the number of cases where a conviction is found?

Ms. BHAGWATI. Thank you, Senator Gillibrand.

Yes, I do. It is really a two-pronged system, though, that needs to be change. We have the pipeline of accused being prosecuted and hopefully convicted, but also the retaliation that so many servicemembers face in the process which cannot just be dealt with through the criminal justice system within the military. Yes, abso-

lutely, an independent prosecutor being given case disposition authority, given convening authority will dramatically shift the way victims, I think, approach whether or not to report. Victims' care is a huge piece of that as well.

I sort of look at it as kind of a cynical way of thinking about sexual assault being inevitable in the military if all we focus on is prosecution and victims' care. We need to do something on the front end to prevent sexual assault from happening at all. And right now, there is really no deterrent with the military to prevent these crimes. There is no deterrent to cause sweeping culture change.

Senator GILLIBRAND. Well, do you think that if we have more convictions and justice is served, that that will signal change within the military, that if you do commit these crimes, you will be caught, you will be prosecuted, you will be punished?

Ms. BHAGWATI. Absolutely. It is a huge step we need to take. But I would just like to sort of encourage the Senate to consider the fact that criminal justice is not a perfect system either in the military or the civilian world, and that victims need more than just a criminal justice system to achieve closure to get any sort of full access to justice. And civilian victims right now within our United States have much more access to redress, and that is why the civil court system needs to be open to military victims as well. Right now military victims have less access to justice than the civilian victims whom they have sworn to honor and protect and defend.

Senator GILLIBRAND. How do you think if you could open the civilian court system to victims, that will change the culture in the military?

Ms. BHAGWATI. Civil courts traditionally have been designed to serve victims. There is a lower burden of proof and victims are likely to get more justice in that system. It also acts as a deterrent to workplace discrimination, harassment, and assault. That is why it functions within the civilian context. You cannot go a week without reading a case in the news, in the mainstream news, about a civilian victim of discrimination, harassment, or assault actually getting, it is usually, her day in court because even the civilian criminal justice system has not been able to give her justice.

Senator GILLIBRAND. And what are some other ways, do you think, that we can change the culture within the military to create less of a climate of discrimination and a possibility of assault and abuse?

Ms. BHAGWATI. One very integral piece to this kind of unfortunate puzzle is really the legalized sex discrimination, which still exists in the military, and despite Secretary Panetta's fantastic news last month, only one military occupational specialty has actually been open to women as far as we know thus far. And so we are very much looking forward to what the service chiefs announce in the way of how the lift of combat exclusion will actually be implemented. But sex discrimination within the military goes hand in hand with sexual harassment and sexual assaults.

Senator GILLIBRAND. Thank you.

For the other three witnesses, if you were able to have reported your case of sexual assault and rape to a prosecutor directly, how do you think it would have changed how your case was handled,

and what differences do you think it would have shown? Ms. McCoy, you can go first, if you like.

Ms. MCCOY. I really have to reach back over 20 years to think about it, but I believe I would have moved forward with pursuing some type of—pursuing it. I would not have backed away. In my case, I did present the documentation that was necessary to move forward, and they did not do anything. So I would have had something in place or someone in place to go to to have that conversation so that we could have moved forward with some type of legal process. Ultimately I would have still had my career. I would have still been serving. I would not have been forced out. I would not have been scared for my life because I would have had someone, an intermediary, to go to.

Senator GILLIBRAND. Ms. Havrilla?

Ms. HAVRILLA. I am not sure if I would do much differently. I was in a unit of 22 people. Even if I had an independent prosecutor, up until I believe not this year but last year's NDAA, there was no potential for base transfers. So had I actually gone through with a full investigation while serving, I still would have had to live with many of the men who were abusive towards me, and that is not anything that I would have ever wanted to go through, independent prosecutor aside.

The challenge is partially changing the culture within the military of how women are viewed. Until the leadership is held accountable for the actions of some of their subordinates, when leadership is allowed to push those things under the rug, when leadership is never made to stand for the actions others that they, hands down, could have easily said this is unacceptable behavior, it will stop, until that happens within certain units—not all units were like mine. I just happened to get a bad one. But had I been in that situation with that unit, I will probably would have not reported at that time.

Senator GILLIBRAND. Mr. Lewis?

Mr. LEWIS. Thank you for your question, Madam Chairwoman.

I want to be absolutely clear that my perpetrator was not just a perpetrator against me. He has perpetrated this crime against other victims at that same command while under the command of the same CO. So, yes, an independent prosecutor would have made a world of difference. It would have gotten the reporting outside of the chain of command and not enabled my commanding officer to sweep this under the rug. Even if I had had to stay on board ship with my command and perpetrator, I would have still been able to access some form of justice, and that at the end of the day, would have saved me, I feel, a lot of heartache and a lot of disappointment. Hearing one of my senior members of my chain of command come to me and say you are not going to report this, that is devastating to any survivor, male, female, whatever. It feels like your heart breaks when your commanders break faith with you in that fashion. An independent prosecutor would have made all the difference.

Thank you, Madam Chairwoman.

Senator GILLIBRAND. Thank you.

Senator Graham.

Senator GRAHAM. Do all of you believe if you had had somebody in your corner, someone assigned to kind of help you through the system, an advocate, that that would have helped?

Ms. HAVRILLA. I initially went to the sexual assault response coordinator, and I found them to be very helpful and very supportive. But they have absolutely no authority with these issues. And while it was comforting in some respect to know that they were supportive and they were there, there is nothing that they can really do for you when you are going through the military judicial system. I think having someone who—because I eventually did a full investigation, and even then I had no one to guide me through that to explain to me what was going on. Again, I did not hear from CID for 4 months after my initial report. And so I think that having someone like a special victims individual who is trained in the legal aspects of what is happening and what is going on would have been extremely beneficial for me when I was going through the actual investigation process.

Senator GRAHAM. Could you give the committee not in public here but privately the name of the chaplain who told you that?

Ms. HAVRILLA. I honestly do not remember his name, but I can easily find it out for you.

Senator GRAHAM. Would you please find that out?

Ms. HAVRILLA. I can do that for you.

Senator GRAHAM. About opening to civilian litigation—is it Bhagwati?

Ms. BHAGWATI. It is Bhagwati.

Senator GRAHAM. Would you suggest that the claim be against the Government or the individual member?

Ms. BHAGWATI. Well, as I understand it, claims against the Government are really the key piece here. It is claims against your employer that Federal tort claims and Civil Rights Act cases have been traditionally brought up for the victims. I mean, all of this, I think, needs to be closely looked at, but in our system, in our culture, civil courts are aware victims get justice much more frequently than in the criminal courts. And so we have to look at how we can make the military more on par with the civilian system. It makes no sense that a young American should put on the uniform and then sacrifice their constitutional rights. It makes no sense.

Senator GRAHAM. Mr. Lewis, you received a general discharge. Is that correct?

Mr. LEWIS. Yes, Senator.

Senator GRAHAM. Again, maybe we can do this in the committee privately. Do you mind if we look at your file?

Mr. LEWIS. No problem, Senator.

Senator GRAHAM. From your point of view, do you think having a victim advocate would have been helpful if there is somebody that you could have went to that would have sort of been in your corner to kind of educate you of the things you could do when you hit a roadblock?

Mr. LEWIS. Some survivors have had success with a victim advocate, but I think that in order to be feasible, any person that would be in my corner would have to be of rank and able to issue orders and able to do things to help me directly. I was fortunate enough

to see mental health, and I thought that doctor was in my corner and he was not.

Senator GRAHAM. He was not?

Mr. LEWIS. No, sir. I just cannot imagine a case where someone of lesser rank could effectively be in my corner while being subject to the chain of command.

Senator GRAHAM. Ms. McCoy, you were victimized multiple times. Is that correct?

Ms. MCCOY. That is correct.

Senator GRAHAM. Did you ever go through a CID process?

Ms. MCCOY. I did not. I did go through the process of filing the paperwork with another NCO. They helped me—you know, come alongside of me. At that time, I do not know that there was necessarily a victim's advocate. I know that we had sexual harassment training and we were already given some steps to how to handle sexual harassment, but there was no one that could come alongside—

Senator GRAHAM. One thing I want to make sure people understand. Rape is not sexual harassment. It is a violent crime subject to severe punishment under the UCMJ.

So do you think a victim advocate may have been helpful to you?

Ms. MCCOY. I have to say that the victim's advocate, if they have the proper rank and if they are set aside and they supersede maybe the unit and they have more authority and more power, because if they just come along and they are just kind of supportive, I do not know how that is going to help that individual who is going through that day-to-day maybe some backlash for even reporting it and the isolation. I do not know how that is going to help that individual while they are still stationed in that unit where they are receiving that type of treatment.

Senator GRAHAM. Maybe all of you could comment on this individually from your own personal experience. Why do you think the command, the commanders, the senior NCO leadership—why were they so hostile to these claims?

Ms. BHAGWATI. In my own experience in the Marine Corps, there were signs of hope along the way. When I was at the School of Infantry, it was actually the infantrymen on the enlisted side that were just as outraged as victims of sexual harassment and assault were. However, on the officer side, there was definitely a sense of an old boys' club, colonels protecting lieutenants, colonels protecting staff sergeants. Whether or not that has to do with an inclination to protect one's own career looking out for a future star or whether or not there is some sort of misguided attempt to protect a good man because you know his family and he has served for 20 years—I mean, you hear this language all the time. And officers—there are fewer of us and we spend time with one another, hanging out at the Oak Club. It is a completely different culture.

That is why the Wilkerson case was even more egregious. I mean, you have got two pilots. There is this appearance of impropriety even without looking at the facts of the case. That is typical in every unit throughout the armed services.

Ms. HAVRILLA. One of the things that I really do stress is it is about leadership. The hostility is not necessarily even towards women. The hostility is towards the feminine, the perception of

being less than and the perception of being weak. Even though I was the only female in my unit, I was not the only one that was targeted for abuse. We had two other males in my unit that were targeted regularly for sexual harassment and sexual abuse that went through a lot of the same stuff that I did. It was not a gender issue. It was we are targeting what we see as less than, and just by being a woman, I was automatically less than even though I was just as good as they were.

So the mind-set when you have that mentality and then again you have the leadership that allows it to continue every day—I cannot tell you a single day that did not go by without some type of rape joke, sex joke, sex play, simulated sex play between men.

I mean, we had a sexual assault and harassment training that we went through, and one of our sergeants got up on the table and stripped completely naked and danced and laughed at it. I mean, that is the kind of culture that I lived in on a daily basis. And then when you deploy, you are stuck with these people in very small units in very small places. Why would I go to a chain of command that I knew was going to allow those things?

So it is not even a hostility towards women in general. It is that is the kind of culture that some of these units' commanders allow to thrive, and when you have that type of culture, these issues are going to continue to be perpetuated.

Senator GILLIBRAND. Thank you.

Senator Blumenthal.

Senator BLUMENTHAL. Thank you, Senator Gillibrand. And I want to thank you and other members of this panel who have been working for some time on this issue. I think Senator McCaskill, Senator Shaheen, Senator Gillibrand obviously. And I have been privileged to be involved in some of the work that has preceded this hearing.

But I think the hearing is critically important because it really highlights why we are here today, which is that in the aftermath and the wake of 10 years of war, we want to assure that we continue to have in our military the best, the brightest, and the bravest. And obviously, sexual assault is one of the primary and predominant obstacles to attracting and retaining good people to our military. So it is not just the victims, although we deeply respect and care for the horrific experience that you have encountered. It is the National interest that brings us here today.

And it is the interest of our extraordinary military that also brings us here today. They have demonstrated that they are aghast and disgusted by this problem and that they are acting to do something about it, not just Defense Secretary Hagel but I believe many of our leaders in the military and that they will do something about it.

So I view today's hearing as a cooperative effort, cooperative between this panel and our Department of Defense, in seeking to address a problem that ought to have zero tolerance, literally zero tolerance.

As a parent of two sons who are currently serving in the military and one who serves on this panel and has spent some of the best moments of my 2 years as a Member of the Senate with our military, three times visiting Afghanistan, having the privilege of

working with of our military, I believe that we have in our military right now the next greatest generation, and that if we can deal with this problem, we will assure that we continue to have that quality of people in the military. And I believe the leaders of our military are determined to make it so.

But this issue is more complicated than just making a speech or saying that we have zero tolerance. Literally deterrence is in the details. And I say that as a former prosecutor, as United States Attorney in Connecticut for 4 and a half years, as State Attorney General for 20 years. The details of evidence, of sentencing, of review, and appeal are what will enable us to solve this problem. And I really welcome the suggestion, for example, that we have independent prosecutorial authority outside the chain of command, which might be welcome by many of the officers who have to make these decisions. And I think these issues ought to be explored.

You know, the Wilkerson case is extraordinary not just for the reversal of the decision and the conviction, but the sentence was only a year, as I understand it, and even more troublingly—and I am going to quote from the full statement, Mr. Lewis, that was provided by the victim. I endured 8 months of public humiliation and investigations, interviews by OSI and the prosecution, apparently without an attorney. And to continue the quote, I was interrogated for several hours by Wilkerson's legal counsel without the benefit of legal counsel myself. She was interrogated by hours by the defense counsel without any aid of an attorney herself.

So let me ask you, Ms. Bhagwati, would you suggest that we ought to have not just a victims advocate, but a victims advocate who would serve, in effect, as legal representation for the victim so that that victim's rights and perhaps expanded rights would be better protected?

Ms. BHAGWATI. Senator, that is a very sensible recommendation or suggestion, and I would refer you to the Air Force's pilot program. I imagine General Harding will be touching on that in a few hours. We have actually referred a couple of clients just for this purpose, airmen who have needed that extra buffer, because it is an incredibly intimidating process even under the best circumstances because there is so much hierarchy and power and intimidation in the process of coming forward. And yes, that measure, as it has been briefed to us, even goes beyond what civilian victims have, which is fantastic because military victims do need that extra buffer because of the hierarchical nature or environment in which they operate every single day, especially junior enlisted troops.

Senator BLUMENTHAL. Well, you know, we should be very clear. Civilian victims who come forward do so in a highly intimidating process, and they have needed—I can tell you, as one who has seen this process improve over the years, they have needed the kind of advocacy that the military is beginning to provide. And I commend the pilot program that has been started. And we will be hearing later from folks who can tell us more about it. But I ask you as victims or their advocates now whether that kind of separate unit, which I have advocated, ought to be made institutional.

Ms. BHAGWATI. I believe it should be.

And I would just add I do think there is extra pressure on military victims. It is a very different environment. It is a confined environment in which you cannot quit your job or you will be charged. In the civilian environment—rape, assault, and harassment are horrendous under any condition in any environment, but within the military you just have less freedom of movement, less access, and you have this incredibly hierarchical system in which 9 times out of 10, you are told to stay silent. That is how we are trained in basic training and officer candidate school, not to talk back.

Senator BLUMENTHAL. And Ms. Havrilla, I think you have highlighted that point by calling attention to the culture within your unit, the practices within your unit which, in essence, were unreviewable because of both the physical and the command structure that you encountered.

Ms. HAVRILLA. Yes. It is something that I saw outside as well. I spent the majority of my time with infantry special forces and combat engineers. I spent 99 percent of my time deployed as the only female. So I have had exposure to other units in other capacities, and there were some that were just as bad and there were some that were not. There were some that treated me with absolute professional respect and dignity and I never had any problems with some. So in my mind, it really does kind of come to what is allowed, what does that leadership say goes and does not go and where they draw their lines, and that filters down to the lower levels and continues to do so.

Senator BLUMENTHAL. My time, unfortunately, has expired but I just want to close by saying that your testimony in particular—really all of your testimony—calls attention to the need for prevention. Part of it is deterrence. I say that as a prosecutor. I am a big believer in deterrence, firm punishment, excellent prosecution, but also education. And I know the military has begun using an extraordinary documentary called “Invisible War,” which I hope will be shown to everybody, all of our brave men and women in the Armed Forces, so that we can prevent the kind of unit culture that you have described so movingly.

And I just really want to thank all of you for being here today, for having the courage to step forward, but also for your service in our military and thank all of the military and veterans who are present here today for your service as well. Thank you.

Senator GILLIBRAND. Thank you, Senator Blumenthal.

Senator Ayotte.

Senator AYOTTE. Thank you, Madam Chair. I want to thank you for having this important hearing today.

And I want to thank the witnesses for their service to our country and, in particular, for their courage for being here today. We really appreciate what you have to say. And this is an incredibly important issue.

I wanted to ask about this idea of prevention. And what do you think we can do more effectively? I do not pretend to have a very good understanding. Now, I know that the military has made some steps in terms of what kind of education they are doing, whether it is showing individuals ?The Invisible War? film, but also it seems to me that we will not have prevention unless we have at

the military academies, at basic training this be a core component of readiness, a core component of training up the chain of command as a priority.

What was your experience with that, and any sense of what we could do more on that end to make this, as you say, changing the culture means this being a core component of every aspect of when you receive training and your readiness—awareness and reporting and accountability?

Ms. MCCOY. Well, I have to say that it even starts at recruitment because we have quite a few of our men and women that are being raped and sexually harassed during the recruitment process. So I would say even before you get to the MEPS center where you are having this process of you being examined and all of your background history interrogated, it needs to start at the very beginning before you even get into the military so that when people come in, they know that there is a no tolerance, that this is not going to be this area, this breeding ground for you to wreak havoc against other people. It has to start at the very beginning. And that is just what I believe.

Mr. LEWIS. Thank you, Senator.

One of the key components, as I said in my opening statement, was that we not marginalize the idea of a male survivor. The Department of Defense's campaign last year or so was "ask her when she is sober." The whole idea of that campaign marginalizes the idea of a male survivor being able to come forward, and given the strong societal, almost blind eye that is turned toward the idea of a male survivor, we need to empower them to come forward.

The other things, in terms of prevention, is yes, it must be a core part of readiness. It must extend, as Ms. McCoy said, all the way back to recruitment. And commanders must actually put the things they learn in training into practice. If they receive an expedited request for a transfer, the benefit of the doubt should automatically be with the victim, and the transfer should be granted unless there is some extenuating circumstances against it. I would be hard-pressed to think of any.

But prevention also has to be a way of thinking and it has to be accepted all the way down almost to the very bones of people that we do not this against each other. We do not hide the crime when it comes up, and even if this crime does come up, it is not a failure in my leadership to say this has happened and I need to report it up the chain of command properly.

Ms. HAVRILLA. Thank you. This is a question I have thought a little bit about. The DOD has direction about how sexual harassment trainings are to be conducted. A few years ago, the GAO did a report on those trainings, and it just does not happen the way it is supposed to happen for numerous reasons. We have been at war for over a decade now. Time is crunched. It becomes a PowerPoint, check the block here, read this, go on, move on. We have got to get this done. Let's get through this. One of the things that we always saw is we had E-6 in the unit click through our slides. Everybody sign here and move on.

So I think that by actually implementing the DOD's recommendations of having outside educators come in and do these trainings—that is very important that you have someone, again,

who is not in the military system who understands the military system that can come in and say this is what consent is. They can lay out exactly and define it and then say this is what is going to happen if you do this and have actual consequences, as we have discussed all morning, for those actions if they occur.

But I think it is very important—the training is there. It is just not being implemented properly. There is not enough educators out there that are doing this. SARC's—sometimes there is only one or two to an entire installation. They cannot handle reports and do training at the same time. So it is a budget issue, a funding issue of how are we going to provide appropriate educators for this topic exactly from recruitment on.

Senator AYOTTE. Thank you.

Ms. Bhagwati.

Ms. BHAGWATI. I think Brian's point is really important. Messaging is critical. Culture change cannot happen without an entire rethinking of how this issue is messaged within the military. I mean, generally I think the way servicemembers and veterans talk about this issue, there is this assumption that you are harassed or assaulted because you are weak. Weakness somehow plays into the entire makeup of why this does not—this is such a hard problem within the military. We are not trained to think of ourselves as weak. Victimhood is not something that any veteran wants to kind of own. It is completely out of sync with being in the military. But when there is messaging that is sort of small women who are not strong enough are victims—and you see variations on that theme constantly, which is a complete myth. It has nothing to do with the sex of a victim. When there is mixed messaging about alcohol and rape, where there is an assumption that there is just a lapse of professional judgment on the part of a young man in most cases, you see messaging about them. "Ask her when she is sober" posters is a perfect example of that. There is an inappropriate mixing of messages, which is also just based on mythology. It is not based on fact.

Rapists tend to be serial. They use tools like alcohol to undermine their victim's credibility. It is not a matter of young people partying and the wrong thing happening. Rapists lay out tactics to do what they want to do. There is really just a lack of understanding about what rape is, what sexual harassment is.

And the final thing I would say is the culture is so entrenched right now when it comes to sexual violence, and because chain of command is really how we learn to operate from day one of basic training or OCS, you really need outside systems that are available to victims within the military because it is hard for your mind to really think outside of that box once it becomes your 24-hour norm. The uniform really—it changes you for all the right reasons because it is very effective operationally to be trained that way, but when it comes to being violated, to being attacked, to losing your dignity at the hands of a fellow servicemember, we need outside systems because they are obviously perceived as safer and they are definitely more functional. They work better.

Senator AYOTTE. I want to thank all of you. My time is up.

Just briefly, first of all, sexual assault and rape is not about the weakness of the victim. It is about power and control and the as-

sersion of that. And that, obviously, in a military context becomes an even greater problem. My background is as a prosecutor too. I want you to know, Mr. Lewis, that I very much appreciate that men are victims of sexual assault both in the civilian sector but in the military. I can imagine this is an even greater issue that we need to address for both men and women and all people's dignity.

Two things I wanted to say briefly, which is that, you know, in my State in the civilian side, we had what is called a victim's bill of rights. And it seems to me like there needs to be some kind of bill of rights also when you are in the military in terms of you know how you will be treated, and that has to also be something that the chain of command is held accountable for.

So I appreciate all of you being here today and look forward to hearing what you have to say and listening to what you have to say beyond this hearing, as we try to make sure that we address this issue and stop what is happening. Thank you.

Senator GILLIBRAND. Thank you.

Senator Hirono.

Senator HIRONO. Thank you, Madam Chair and Ranking Member Graham, and thank all of you for your testimony and the information that you provided.

I realize that this situation is very complicated, and one of the hardest things to change, of course, is the culture of an institution such as the military. And we are very proud of the service of our men and women in uniform, but these kinds of assaults—we must move in the right direction. And some of the suggestions that you made were, I think, steps that we should consider seriously.

Ms. Havrilla, one of the questions that you were asked was if we were to remove the decision to prosecute or even to investigate from the chain of command and giving it to an independent authority, would that help. Something you said really struck me. You said that while this is all going on, though, are still in the environment. You are still feeling very vulnerable.

So what are some things we could do during the process? Basically I want to know what kind of privacy is afforded to someone who comes forward to report these crimes. What can we do even if we were to remove the decision from the chain of command?

Ms. HAVRILLA. I think when you are in the military, you feel like you have absolutely no privacy at all anyway. When it comes to medical issues, there really is no privacy.

As mentioned, I think that implementing the concept of base transfers or unit transfers are getting you away from those people that were perpetrators against you. I cannot imagine being in my unit going through an investigation at any point in time. But had I that option, I am saying, hey, for example, say I go to the SARC and say, you know, this happened to me. I am thinking about reporting it, but I am really not sure because I do not want to stay in this unit and have to deal with all of the potential backlash that is going to come for me. What are my options? Had they given me the option of saying, you know, we can transfer you to another unit, another duty station—again, EOD is very small. It is not like I can go from one unit to another, one platoon to another. I would have to literally PCS or go TDY in some capacity to get away from—change duty stations. I would have to move States basically.

So then you have the challenges that might come with that. I am in another location. I have decided to press charges, and I am having to do all of this from a remote location.

I mean, there are complications as everybody has discussed, but I really think that had I the option to say you can go forward with a prosecution and not be in the unit that you are in, I might have considered that very seriously. But I cannot imagine doing it while embedded and entrenched with the same unit that was causing all of my difficulties.

Senator HIRONO. Would the rest of you agree that that should have been an option presented to you, to be removed from the environment in which these incidents occurred? Mr. Lewis?

Mr. LEWIS. Absolutely. Thank you, Senator Hirono. And absolutely.

One of the current problems with the unit transfer idea is that a unit may be in the same geographic location. For instance, if this had happened to me aboard a ship stationed out of Pearl Harbor—I was stationed on a submarine before I went to the Frank Cable out of Pearl Harbor. But if I could have been moved from that submarine to Naval Submarine Support Command right there in the same base, almost the same building, that should not be. Speaking personally, I would rather deal with the pressures of having to deal with the prosecution from half a State away or wherever than to be in a situation where I have to look my perpetrator in the face, where I have to eat, sleep, breathe, go to the bathroom, or anything else with that perpetrator.

Senator HIRONO. Thank you.

Would all of you agree that removing the decision to go forward with either investigation or prosecution should be removed and should go to an independent authority and out of the chain of command? Would all of you agree that that would be a desirable step?

[No verbal response.]

Senator HIRONO. Ms. Bhagwati, there are other countries that have removed the chain of command from making these decisions. I think Great Britain has done so. Are you familiar with the experiences in these countries, whether the incidence of sexual assault went down, whether prosecutions went up, whether reports went up? Are you familiar enough to talk to us a little bit about what your impressions are of these other countries that have made this kind of change?

Ms. BHAGWATI. We have done some research. It is my understanding that the UK and Canadian systems are ones we should look at in closer detail. The Australian system is also one you can look at, although we have seen less success in that system. I think beyond that though, I would refer you to some additional subject-matter experts. It requires a great deal of further study. But the UK has done it successfully, and it is my understanding that the prosecutors themselves are military but that the supervisor of those prosecutors is civilian. So it is a bit of a mix in the UK system.

Senator HIRONO. So there are some things, evidently, that we can learn from these other countries.

I happened to read an article in the Maklachi newspapers, March 10, 2013, and it is talking about the Aviano case. And it notes that

because of all of the attention being paid to this terrible situation—these assaults—that somehow there is a political climate where commanding officers feel pressure to prosecute sexual assault allegations. And the article goes on to say that commanding officers sometimes use their prosecutorial discretion to proceed with weak cases. They cite some examples of when this happened. So it seems to me would this not point to the desirability of removing these kinds of decisions from the chain of command so that they would not feel political pressure to prosecute weak cases? Would you like to comment?

Ms. BHAGWATI. Absolutely. It is a really critical point that professionalizing the system, actually putting legal experts in charge of the process serves everyone better. It creates a fairer and more impartial trial for the accused as well.

The classic kind of example of why the current problem is so serious is the Commandant of the Marine Corps doing the right thing as the head of the Marine Corps by speaking out strongly against sexual assault in the Marines. We were very excited to hear that kind of language, but because he is in everyone's chain of command, it is seen as problematic. But if he were removed from that process like all other unit commanders, he could speak strongly about this issue, as he should, as everyone within the Armed Forces should. But we have this perception that there is undue influence by the Commandant or other military commanders because commanders have this discretion over these cases. It does not need to be that way. If we professionalize the system and go in the direction of, for example, the UK, we will not see this undue influence.

Senator HIRONO. Thank you.

Madam Chair, my time is up and I thank you.

Senator GILLIBRAND. Thank you.

Senator McCaskill.

Senator MCCASKILL. Thank you, Senator Gillibrand, and thank you for being here today.

Rape is the crime of a coward. Rapists in the ranks are masquerading as real members of our military because our military is not about powers.

Now, our military does an amazing job of training. I am so proud of our military. But, unfortunately, I believe that this is not a crime that we are going to train our way out of because the crime of rape has nothing to do with sexual gratification. It has nothing to do with dirty jokes, and frankly, there are a lot of studies that say it is not even connected necessarily with people who like to look at dirty pictures. It is a crime of assault, power, domination. And I believe, based on my years of experience, that the only way that victims of sexual assault are going to feel empowered in the military is when they finally believe that the focus on the military is to get these guys and put them in prison.

So I believe that the focus of our efforts should be on effective prosecution and what do we need to do to make sure that these investigations are done promptly and professionally, that the victims are wrapped in good information, solid support, and legal advice, that the prosecutors have the wherewithal and the resources to go forward in a timely and aggressive way, and you do not have the ability of some general somewhere who has never heard the testi-

mony of factual witnesses in a consent case who can wipe it out with the stroke of a pen.

And so what I would love from you all—your cases are all compelling, they are all moving. I, like Senator Graham, am infuriated at that chaplain. I am infuriated that the notion that some of the men who put up with what happened to you or even perpetrated what happened to you are still serving in our military.

I would like to hear from you, especially those whose cases were more recent, what happened when you reported in terms of getting good legal information about what your rights were and what to expect.

Ms. HAVRILLA. Thank you, Senator McCASKILL.

As mentioned, I had none. When my friend notified me that he had found the pictures of my rape online, again it was actually kind of a spur of the moment decision. I was like, okay, enough is enough. This has gone on long enough. I am going to do an investigation. Like this is ridiculous.

Senator McCASKILL. If I could go back to your initial decision because we know that there is a huge number of these cases, that there is never a restricted or an unrestricted report. And just so we make the record clear, a restricted report is kept for 5 years; an unrestricted report is kept for 20 years.

Ms. HAVRILLA. I believe those just changed. I believe that restricted reports now are to be kept for 50, but previously there was a much lower cap on that.

Senator McCASKILL. Okay. Well, whatever the amount is, the difference between a restricted report and an unrestricted report is how timely we can get after it because if it is a restricted report, it is not going to be investigated.

Ms. HAVRILLA. Correct. You basically just become a statistic.

Senator McCASKILL. So if, in fact, one of the reasons you made your report restricted was the unique nature of the victim being embedded with her perpetrator in a work environment that is intense and depends on working together, what would have happened when you went in if you were told that if there is probable cause found in the next 30 days that this crime was committed, your perpetrator would be removed from the unit? What would your response have been?

Ms. HAVRILLA. It probably would have been worth considering. At that point, you have a timeline, a light at the end of the tunnel, so to speak, with set standards and guidelines of, okay, this will happen in the event that this, this, this are found.

Again, when you are in the middle of it—you look back on it with kind of 20/20 or Monday morning quarterback style, and you are like, oh, I can look back on this and be like, oh, I might have done it differently. But when you are in the middle of it, it is extremely difficult to be able to think clearly. I mean, it is a huge trauma. It affects your mental health. It affects how you see the world, how you see yourself. But had I had more information, had there been some type of recourse of saying, you know, this is not about me, this is about him, and had there been probable cause for some type of prosecution—and I was actually asked later when I did my full investigation. They said if they find enough, are you willing to take this to court-martial, and I said, yes, absolutely. But in the begin-

ning that was not even an option for me. That was not something that was given to me. Again, we can do the “what if’s” all we want.

Looking forward, I am a different person now than I was. If I were to be in the same situation now and have that happen to me, I would say, yes, absolutely I am willing to take that as this perpetrator is going to be done in 30 days or at least the potential for that. Let’s move forward with this.

Senator McCASKILL. Do you feel like your SARC, your special advocate that you talked to—do you feel like they were neutral, supportive, tried to talk you out of it, tried to talk you into it?

Ms. HAVRILLA. Most of them were very supportive and they wanted to be helpful, but they all understood that their hands were tied to what they could actually do for you as a victim. When I went in to do my restricted report against my rapist, I mentioned in passing the constant sexual harassment and sexual assault of my team leader. And they said, oh, do you want to do a report against him too. And I was like, I had not even thought of that. But sure, why not? So they were not pressuring me into anything. It was just kind of you have the option of also making a restricted report against this individual as well. Is that something that you are willing to do?

At that time, my end of the tunnel, my light at the end was I had 60 days and I was out of the Army, and that is all I wanted. I just wanted out. I wanted to be done. I wanted to be away from the unit that I was in.

Senator McCASKILL. Mr. Lewis, what about you? Did you feel like, at the point in time you reported, that there was any legal help or any kind of help at all that would have allowed you to move forward with some kind of effort to—and is your perpetrator still in the Navy?

Mr. LEWIS. I honestly do not know, and at this point I hope that I have moved far enough away from it that I honestly do not care. It has to be about me at this point, not what my perpetrator—

Senator McCASKILL. I appreciate that, but I care, just so you know.

Mr. LEWIS. I appreciate that, Senator.

Senator McCASKILL. I care.

Mr. LEWIS. But honestly, when the situation came to light, there was an eerie silence that emanated from the JAG office.

Senator McCASKILL. And what year was this?

Mr. LEWIS. 2000.

And it was like a black hole had all of a sudden surrounded the JAG office because the judge advocate general at that command is subordinate to the commanding officer. At some point, it becomes about preservation of their own career rather than helping me. And, no, there was no effective legal situation that I could access, Senator.

Senator McCASKILL. My time is out. I do want to say I have spent a number of hours with amazing professional prosecutors in the area of sexual assault at the Pentagon on Monday—decades of experience. And I do feel that there is some progress being made in some branches, some more than others, recognizing that they have failed at getting after this and doing what our military usually does best and that is focus on a mission and make it happen.

And what you all are doing today allows us to focus on the mission to get the coward rapists out of the ranks, and we are going to do everything we can to make that happen.

So thank you all very, very much for being here.

Senator GILLIBRAND. Thank you, Senator.

Senator Shaheen.

Senator SHAHEEN. Thank you, Madam Chair, and thank you for holding the hearing today.

Thank you all very much for your testimony. We especially appreciate your willingness to come forward and tell your stories in a way that allows us to hopefully follow up and take some action to try and address with the military what is obviously a continuing challenge.

And, Mr. Lewis, I especially appreciate your willingness to point out that this is a crime that victimizes not just women but men.

Senator McCaskill said and, Ms. Bhagwati you have said in your testimony—and I think it is very important to start with—the fact that rape and sexual assault are not about sexual activity. They are about power, control, and intimidation. And I think that is an issue that has taken a long time for the civilian world to appreciate. I was on the Commission on the Status of Women in New Hampshire back in 1980 when we were working with law enforcement and other advocates to try and get across that point. And clearly, it is still an issue and it is still something that not everyone understands, particularly people who have not been in your situation.

I was amazed to see that in your statistics that SWAN brought forward that one in three convicted sex offenders remain in the military and that the only branch of the service that says they discharge all sex offenders is the Navy. It seems to me that that is a pretty basic bar that we should think about as we are looking at people who have been convicted of rape and sexual assault.

Ms. Bhagwati, we hear that there is a connection between resistance to pursue sexual crimes and careerism among military officers. There is concern for the reputation of the accused and the commanding officer. Those concerns have been presented as reasons to frustrate the efforts to bring criminals to justice.

So I wonder if you could talk more. You have made several recommendations in your testimony. But how can we more effectively show that covering up sexual crimes is not a way to advance careers?

Ms. BHAGWATI. I will go back to what I think some of my colleagues here were talking about. When these crimes happen—you know, in my case I was a junior officer reporting these crimes to senior officers. Sort of thinking back 20/20, as Rebekah said, on those experiences, I had so much more rank and authority than the average servicemember navigating these issues, by far. So much more freedom of movement, but there is something that I think happens beyond the company grade level with officers who definitely are staying in for the full 20 years or more.

It was suggested to me by an Equal Opportunity officer that I should charge my battalion commander for failure to do the right thing in these cases, which was an absolutely overwhelming prospect. It just, I mean, shut me down completely. And here I was a

captain. Right? And I could not even fathom what it was like for somebody who was maybe E-2/E-3 going through the exact same thing. I could not do it because I was literally—the thought of doing it made me dysfunctional. I had command. I had to command my company. And to do that in addition to filing an Equal Opportunity investigation against a lieutenant—I mean, it was just overwhelming.

You know, the old boys' club, which I was referring to earlier, is very much alive and well within each Service branch. I think the fact that for women in the military, there are still significant barriers to career progression and that there are not enough women throughout the services at top levels, that there are not enough flag officers who are women, all of this is related ultimately. We need a sea change in which so many more women are entering the military. You know, 6 to 7 percent of the marines are not female, but we are moving toward a quarter or a third and maybe even more eventually. We see at that rate, you know, beyond 20 percent, where climates start to shift when it comes to discrimination, harassment, and assault. That is what we need to aim for. You cannot isolate women from all of these positions and expect your institution to treat its servicemembers fairly. Everyone suffers as a result.

Senator SHAHEEN. Does SWAN have metrics that show overall career impact to servicemembers who have been subjected to sexual assault? How many of those who report assault choose to remain in the military, and how many get out because of the trauma they have experienced? Are those numbers that have been collected?

Ms. BHAGWATI. Not to my knowledge. We have been in discussion with several congressional offices about discussing the retention issue alone. To my knowledge, the military is not yet, at least, suffering a recruitment crisis when it comes to more Americans learning about sexual violence in the ranks. But we are all examples of the retention crisis. There are thousands of our colleagues every year who are adding to those numbers because they know it is not a safe or welcoming environment for them to stay in.

Senator SHAHEEN. Absolutely. And as the percentage of women in the military now is close to 15 percent, as you say, it has not reached the critical mass where it will begin, hopefully, to have more of an impact on how sexual assault is treated. But this could become an issue of recruitment, and as we look at how we attract the best and the brightest people to our military, obviously this is an issue when it comes to both women and men that is going to greatly affect our ability to do that.

So thank you all very much for your testimony.

Senator GILLIBRAND. Senator King?

Senator KING. Thank you, Madam Chairman.

Thanks to all of our witnesses for joining us.

On the issue of culture, which keeps coming back, I lived through a period of change in this country of culture that was very significant and it was the culture of drunk driving. When I was a kid, it was sort of a badge of honor. You know, how did you get home from the party? I do not remember. Ha, ha, ha. And that really changed.

And I have tried to think through why it changed. One reason was the laws changed, and punishment became immediate and certain. In Maine, anyway, if you are caught drunk driving, you are going to spend the weekend in jail. Period. And you are going to lose your license for a period of time. It is very certain and no doubt about it.

So I think part of what the message you are sending us is it is the length of time and the uncertainty of punishment that has allowed this culture to continue to exist in the military. Would you agree with that?

Mr. LEWIS. Yes, Senator, I would absolutely. It is unconscionable that punishment is solely up to the discretion of one individual who, as has been noted, was not even in the courtroom. It is also unconscionable that a sexual assault on a person brings a year in prison. It is sending the wrong message that the military does not value what happened to the victim.

Senator KING. What is the typical lapse of time between the time a charge is filed and the time the charge is disposed of one way or the other within the military system? Is there an average? Is it weeks, months, years?

Mr. LEWIS. That I am not certain of. I imagine that the military panel would be able to address that far better than I would. But I can get back to you on that, Senator.

Senator KING. Other thoughts? Ms. McCoy?

Ms. MCCOY. Well, I would like to say that I received more reprimand for not passing a PT test during my time than the perpetrator of sexual harassment and sexual assault toward me received with me filing official papers to my command.

Senator KING. What does that tell you?

Ms. MCCOY. That is what I am saying. There is no standardized if you assault someone, if you sexually harass, these are the things that are going to happen to you in an absolute and finite way. It absolutely depends on the command. It absolutely depends on the individual within the command and what their relationship is with the commander and the people who are going to possibly move that case forward.

Senator KING. We have been talking about various solutions today involving independent prosecution and those kinds of things, but it seems to me one of the other things we ought to talk about is the period of time. The charges shall be considered within 30 days or some period and a schedule of what the penalties are so that there is certainty. To me, that is what led to the change in the culture of drunk driving, that people understood that there were consequences, and then it became socially unacceptable. And now drunk driving is way down. A lot of lives are being saved.

Ms. MCCOY. And again, in my particular case, I was systematically exited from the military following my bringing forward this case of sexual harassment and just purely asking for something to be done. Within 90 days, I was out of the military completely.

Senator KING. I want to follow up with you on a different question that is not strictly within the purview of this committee, but it is being considered here at the Capitol, and that is how long it took you to get VA benefits after this because, as you know, there is a bill, the Ruth Moore bill, that is named after a very stalwart,

wonderful Maine woman. Talk to me about your experience on that, on the VA side.

Ms. MCCOY. Well, when I got out, on my documentation, my medical exam, I specifically stated that I was scared, that I was fearful and that I had physical injuries, multiple physical injuries. It took probably 2 years for them to finally get me processed and send me a document stating that I had a—my injuries were service-connected, but there was 0 percent compensation. That was in 1992.

So from 1992, because I did not understand the process—there was really no one there to guide me even though there were VSOs—

Senator KING. That is a separate issue. We will talk about that.

Ms. MCCOY. Yes. Even though there were VSOs there, going to the VA—at that time I was in North Carolina. I mean, it was a daunting experience to walk in as a young woman amidst nothing but older male veterans and try to go through that process.

Fast forward to 2006–2007, somewhere in there when I went again and put in paperwork, again for multiple medical issues—I had not even touched on anything military sexual trauma because I did not even know that there was anything like that at that time. They sent me paperwork back, process, process, 10 percent again. So, I mean, it was just a constant, constant—

Senator KING. We are talking almost 20 years.

Ms. MCCOY. It was 22 years before I actually received some response to the military sexual trauma portion of the case—my benefits—and again, another 18 years before the physical injuries that I sustained partially because of the sexual trauma and partially because of patrol, being out on patrol.

But it is amazing to me that one in three military sexual trauma cases are awarded. I mean, one in three. So you have to go through this long process of filing paperwork, explaining to people exactly what happened to you step by step, and then get a doctor's note from the VA. And most veteran women are not even in the VA system. They just do not want to even touch it. And so you have to go through that process to even get them to look at your case to be approved for your benefits for compensation.

Senator KING. So our country is letting you down in three places: first by the perpetrator, second by the military while you are there, and third by the VA.

Ms. MCCOY. It is absolutely awful.

Senator KING. Ms. Bhagwati, comments on the Ruth Moore Act.

Ms. BHAGWATI. Yes, thank you, Senator King, for mentioning the Ruth Moore Act. It is my testimony as well. I just did not have time to add that. It is the easiest thing that the Senate can do at this point to alleviate the third betrayal of the three betrayals that you just outlined, which is the military may have betrayed servicemembers, but the VA can very easily award compensation which is well deserved. The standard which the Ruth Moore lays out would be comparable to the standard for post-traumatic stress that is currently laid out by VA policy for combat-related trauma. And this legislation would easily resolve that problem.

Senator KING. Thank you.

Thank you, Madam Chairman.

Senator GILLIBRAND. Thank you, Senator.

Senator KAINE.

Senator KAINE. Thank you, Madam Chair.

And to the witnesses, I very much appreciate your testimony. And I apologize for stepping out for another committee meeting in the middle, and I hope I do not repeat questions.

This is a very important hearing, and I thank the chairwoman for putting this first up to draw attention to this very serious issue. I was a civil rights lawyer for 17 years before I got into statewide politics, and this is a fundamental issue of civil and human rights and we need to get it right.

The experience that you share, painful experience, is going to help others, and so let me begin by thanking you and then thanking you additionally for being advocates for others, as I know you all are. You present sort of an interesting timeline for us because we have the four of you from different service branches and you have served at different points in time from the 1980s through very recently. And in your capacity as advocates, you are working for people who are serving today. So I feel like we can kind of get a little bit of the timeline of the military culture.

I guess where I would like to start is, are things changing? In your own experiences or in the work you are doing with victims, are things changing? Are things changing for the good? Are things changing for the bad? Are people more willing to open up and share their experience? And I am kind of hearing each of you address that because, to the extent that things are changing for the positive, if there are things that are changing for the positive, then we will want to do more of them, and to the extent that things are changing for the negative, then we will want to address solutions directly at things that are changing for the negative. So sort of in your experiences during the time you served but especially as advocates, do you see changes in the culture, steps being taken that are either moving us in the right direction or moving us in the wrong direction.

Ms. MCCOY. Well, from my perspective, I come to this—I started a social media project that basically I just wanted to connect with other people who had been through the same things that I had been through. And so I perceive that social media and grassroots community activism has been the single most thing that brought people together to help solidify the groups of different, varying issues and brought all these people together to say, hey, we have an issue, let's work together to get something done in a positive direction.

Senator KAINE. When did you start the social media activity, Ms. McCoy?

Ms. MCCOY. I had a Ning site called Veteran Social Justice. Initially it was very secret. You could not get on it unless you were invited. And that was to protect women who had been sexually assaulted. At that time, people did not want to come forward and say anything. But then I felt that Facebook would be a better venue to move forward to gather more people together, to bring the community together, the community supporters together, the people who were starting organizations who were advocating on behalf of

veterans. So it just made sense to me. If everyone was on Facebook, then everyone was on Facebook.

Senator KAINE. So your sense is that that has been a positive change because it gives people first a safe way to share their stories and then find out there are others that have their stories. They need not suffer in silence. It is a way to better the community.

Ms. MCCOY. Well, for peer support in suicide prevention, absolutely. Absolutely.

Senator KAINE. How about other thoughts about things that are changing either for the positive or the negative in your experience? Ms. Havrilla?

Ms. HAVRILLA. Yes, thank you, sir.

I managed SWAN's helpline for 18 months, and I noticed a lot of interesting trends and dynamics as I started tracking a lot of the demographic data. One of the things that really has made a huge impact over the last 2 years is the constant media attention around these issues. The more education and awareness that the general population gets or even other veterans and survivors get, again it kind of goes to the social media aspect, but the concept that we as survivors are not alone with our shame, our stigma, whatever label we choose to put on our experiences. SWAN did a summit last year in Washington, DC, and we had one woman who came and she told us—she is like I have never met another survivor before, ever. I did not know that other women and other men had even gone through this. I was completely by myself and alone with my own experiences.

So, unfortunately, our helpline is set up to help people who have been through these things. So, obviously, we get a lot of the negatives. We get a lot of the people who have experienced these traumas who need assistance with mental health, homelessness, VA claims benefits.

So one of the other interesting things that I have noticed too is I do get a lot of older clients, a lot of older women who served in Vietnam in careers starting to speak out about their experiences.

There has been a shift in momentum over the last 2 years. There has been a shift forward. There have been baby steps made through legislation in the NDAA. There has been some positive progress. That is what I try to hold onto.

But at the same time, we are still dealing with a lot of individuals. I get calls from active duty women and emails from active duty men who are still going through these things every day. I get calls from Korea, from Germany, from Japan, and from everywhere in the United States. The climate is still very much the same in a negative capacity. Obviously, we would not be having this hearing if this still was not a problem.

So I think that we need to recognize the problems and we are, and then we need to continue to make forward progress, continue to educate the public, continue to educate our own military, continue to educate ourselves around these issues, and continue to take the steps that we have made already and continue on the path that we have already started on. And we will continue to see more positives. We will continue to, hopefully, see less of these instances occur. We will continue to see that culture shift that we have been discussing so far.

Senator KAINE. Thank you.

Please, others? Mr. Lewis?

Mr. LEWIS. Thank you, Senator.

The unfortunate reality is that Department of Defense is not leading the charge on change that you are mentioning. The change has been coming externally. One Senator mentioned "The Invisible War" by Kirby Dick as an agent for change. This summer, another documentary focusing on male survivors will be coming out, "Justice Denied." They have been agents for change.

There have been veterans as a result of advocacy organizations going as far back as World War II to come out and talk about what happened to them in terms of military sexual trauma. So you are right, Senator. We do have a timeline here. And just from my own personal knowledge, it goes at least all the way back to World War II.

In change, I think that a greater emphasis should come from the Department of Defense Sexual Assault Prevention Response Office. The branches themselves need to be reaching out to the MST advocacy organizations and saying you have this expertise, you have the survivors, what can you do to help us because, time and again, the military has proven themselves incapable of addressing this problem.

Another avenue of change also has to come, as I said, that men need to be validated and lifted up. Survivors in general need to be validated and lifted up and say that we believe you. And there needs to be a system whereby survivors that have been kicked out in the last 20, 40, 50 years need to be able to go back to the military and get the medical retirements for PTSD that they are due and not have to suffer through life with a bad piece of paper saying, in essence, they pushed me out. It is unconscionable, but that change is not happening and it really needs to.

Thank you, Senator.

Senator KAINE. And finally, Ms. Bhagwati, do you have thoughts on that question?

Ms. BHAGWATI. I would echo what all of my colleagues said.

I would love to see the Department of Defense come out with a poster that says "don't rape." Don't rape. Period. End of story.

Senator GILLIBRAND. Well, thank you to each of you for not only your courage but your determination and your unbelievable passion and advocacy on behalf of others. It makes a difference. And I am sure for any survivor, they cannot imagine how such a horrible crime committed against them could ever make a difference. But because of your experience, you are making a difference. And I can tell you we as Senators cannot do this job alone without your stories, without your courage, without your dedication. We cannot find the right solution.

I am grateful that many members of the armed services who are currently in command sat here for your testimony. They heard everything you said. And this is the beginning of a much longer conversation, a conversation that we need to have not just as a committee in the Senate, but as a Nation. And I want to thank you for your unbelievable strength and courage in leading that conversation. Thank you very much.

[Whereupon, at 12:17 p.m., the subcommittee recessed to reconvene at 1:00 p.m.]

Afternoon Session - 1:00 p.m.

Senator GILLIBRAND. Our hearing of the subcommittee will resume.

Thank you, each of you, for your service, for your dedication, for your sacrifices you have made for our country. I am so grateful that you are here today for this important hearing. I am also incredibly grateful that many of you came this morning and participated and listened to the first two panels. That means a great deal, not just to our witnesses, but also to their families and to all of our military families. We appreciate it very, very much.

I know that this has become a very debated issue, both within the military and in everyday conversation. I also know that many of you have seen the film, "The Invisible War," as sort of a jumping-off point on how important this issue is for our military and their families.

I am very, very eager to hear your testimony, and each of you will have 5 minutes to give an oral statement, and you can submit for the record any additional material that you want to submit today and after your testimony.

We are going to hear from Robert Taylor, the acting General Counsel of the Department of Defense; Lieutenant General Dana Chipman, the Judge Advocate General of the U.S. Army; Vice Admiral Nanette DeRenzi, Judge Advocate General of the U.S. Navy; Lieutenant General Richard Harding, Judge Advocate General of the U.S. Air Force; Major General Vaughn A. Ary, Staff Judge Advocate to the Commandant of the Marine Corps; Major General Gary Patton, Sexual Assault Prevention and Response Office; Rear Admiral Frederick Kenney, Judge Advocate General of the U.S. Coast Guard.

Thank you all, and I think we can start with Mr. Kenney.

**STATEMENT OF RADM FREDERICK J. KENNEY, JR., USCG,
JUDGE ADVOCATE GENERAL OF THE U.S. COAST GUARD**

Admiral KENNEY. Good afternoon, Madam Chair Gillibrand, and distinguished members of the subcommittee.

Thank you for the opportunity to appear before you to discuss the Coast Guard's efforts to prevent and respond to sexual assault in our Service.

And good afternoon to you, Ranking Member Graham.

I share the Commandant's commitment to the safety and well-being of each of our servicemembers, ensuring that Coast Guard personnel have a collaborative, cohesive work environment that allows them to accomplish their mission, protecting those on the sea, protecting America from threats delivered by sea, and protecting the sea itself.

Eliminating incidents of sexual assault within the Coast Guard was a significant, central theme of the Commandant's State of the Coast Guard address delivered 3 weeks ago. Sexual assault is intolerable in the Coast Guard. It is devastating to its victims. It has broad repercussions throughout the service. We are committed to doing everything we can to prevent sexual assault, to investigating every allegation, to holding people accountable through military

justice and other actions, and to ensuring victims of sexual assault are protected, treated with dignity, and provided appropriate ongoing support.

I would like to now address some of the highlights of our policies and programs. More detailed information is contained in my written testimony submitted for the record.

All allegations of serious sexual misconduct must be reported to the Coast Guard Investigative Service for investigation, and CGIS has formally established a sex crimes investigation program. CGIS has also established a cadre of 22 specially trained and credentialed agents known as family and sexual violence investigators.

Coast Guard regulations on sexual assault prevention and response have been updated in the last year to more clearly define roles and responsibilities, mandate significant education and training, and ensure greater victim support and safety.

In April 2011, the Vice Commandant chartered a task force to holistically examine the Coast Guard's posture toward sexual assault prevention and response. The Vice Commandant approved 39 recommendations from the task force in January, including the establishment of the Sexual Assault Prevention Council, for the SAP-C. The SAP-C is a standing body of the most senior Coast Guard admirals and subject-matter experts designed to, among other things, oversee the implementation of the task force recommendations and order immediate and actionable course corrections to the Coast Guard SAPR policy as needed. The Vice Commandant held the inaugural meeting on February 27th of this year.

We place great importance on the need to train and empower all Coast Guard personnel to recognize and respond appropriately when they observe situations that involve disrespectful behavior. Last year, the Coast Guard created and rolled out a new Sexual Assault Prevention Workshop presented live by CGIS agents, judge advocates, and work-life specialists. It includes gender-specific breakout sessions to have a frank dialogue about sexual assault, how to prevent it, and how to respond. Since its inception, the workshop has provided training to 48 units and approximately 7,500 Coast Guard personnel. This initiative received the Department of Homeland Security's Office of General Counsel Award for Excellence in Training in 2012. Many Coast Guardsmen have reported that this training was the most meaningful and effective training they have ever received.

SAPR training sessions are and have been incorporated into all command and leadership courses in the Coast Guard, as well as at our recruit training center in Cape May, New Jersey, and the Coast Guard Academy in New London, Connecticut. We have also significantly expanded the number of trained victim advocates across the Coast Guard with nearly 400 new victim advocates added in the last few years.

I am committed to enhancing the expertise of Coast Guard lawyers serving as counsel in sex assault cases. Coast Guard judge advocates serve in Navy and Marine Corps trial shops to gain experience the relatively small Coast Guard trial docket would otherwise not allow. Coast Guard judge advocates also attend advanced training to hone their litigation skills in sex assault cases.

In closing, our goal is to eliminate sexual assault within the Coast Guard by building a strong culture of prevention, education and training, response capability, victim support, appropriate reporting procedures, and accountability.

Thank you again for the opportunity to testify today and I am pleased to answer any questions that you may have.

[The prepared statement of Admiral Kenney follows:]

Senator GILLIBRAND. Thank you.

Lieutenant General Harding?

**STATEMENT OF LT. GEN. RICHARD C. HARDING, JAGC, USAF,
JUDGE ADVOCATE GENERAL OF THE U.S. AIR FORCE**

General HARDING. Madam Chair and members of the committee, I also thank you for the opportunity to speak today about sexual assault prevention and response efforts in the Air Force.

We are committed to supporting victims of sexual assault while we do everything humanly possible to eradicate this awful crime from our Service.

Our Secretary, the Honorable Michael Donley and our Chief of Staff, General Mark Welsh, are fully committed to eliminating sexual assault within our ranks. They have made their position abundantly clear. The Air Force has zero tolerance for this offense. One sexual assault is one too many.

We believe that our sexual assault challenge, like other challenges we have faced in the past and will face in the future, will be overcome by staying rooted to our core values, integrity, service, and excellence, and acting on those values.

We have actively engaged in improving our efforts to prevent and respond to sexual assault across many different lines of effort. While we have many ongoing efforts to combat sexual assault, time constraints will limit my comments to just one at this time. Specifically, I would like to talk to you about our Special Victims Counsel Program that we initiated in January. I believe it represents a positive and profound change in the way we approach sexual assault cases.

The pilot program provides airmen who report that they are victims of sexual assault with an attorney to represent them. Our Special Victims Counsel Program is unique among Federal agencies in providing that level of support to victims of sexual assault. This pilot program's primary purpose is to give the very best care to our people. Our special victims counsel operate independently of the prosecution's chain of command. They establish an attorney-client relationship with victims, and they zealously represent on their client's behalf, thereby protecting victims' privacy and immeasurably helping victims not feel revictimized by having to endure alone what can be a complex, exhausting and often confusing criminal justice process.

We are in the early stages of this program, but we are extremely excited about what the future holds. In December, we trained our first cadre of 60 experienced military attorneys as special victims counsel. To date, we are representing about 200 clients in various stages of the investigation and adjudication phases of their cases, and feedback from victims to date has been very positive. The SVC

program is the right thing to do in caring for airmen, and SVCs are already making a difference for their clients.

In closing, the men and the women who raised their right hand with great pride and volunteered to serve this great Nation became more than just airmen. They became part of our Air Force family. Therefore, we strongly believe that we have a sacred obligation to provide a work environment that welcomes them, that keeps them free from sexual abuse by their fellow airmen, and provides the very best care and advocacy on their behalf.

I look forward to answering your questions. Thank you.

[The prepared statement of General Harding follows:]

Senator GILLIBRAND. The next speaker is Lieutenant General Chipman.

**STATEMENT OF LTG DANA K. CHIPMAN, JAGC, USA, JUDGE
ADVOCATE GENERAL OF THE U.S. ARMY**

General CHIPMAN. Madam Chair and members of the committee, on behalf of the Honorable John McHugh and General Ray Odierno, thank you for the opportunity to testify before you here today.

Listening to survivors who bravely testified this morning about breaks firsthand in those bonds of trust that should lie at the core of Army values—how do we restore those bonds? How do we retain the trust of the very best of America's daughters and sons, those who continue to answer the call to serve our Army because it defends all of us?

For me the answer lies with a system of justice that gives voice and support to victims, maintains good order and discipline for our force, and protects due process for any soldier who stands accused of a crime.

Sexual assault crimes destroy the trust that enables mission accomplishment. Because of the harsh reality of these cases, we have developed a tailored approach to handle them. In the Army, professional and independent investigators and prosecutors form the vanguard for a special victims' capability directed by the Congress last year. We actually began the transformation to a special victims' focus in 2008.

The capability starts with a report of a sexual assault. Victims have various options to report an allegation. Our goal is simple: to encourage victims to come forward. We understand that victims are often reluctant to report.

Every unrestricted sexual assault allegation reaches the Army's Criminal Investigation Division, or CID. There, specially trained criminal investigators, independent of the command, pursue their investigations without interference or agenda. These agents receive extensive training in sexual assault investigations. Working hand in hand with these investigators are the Army's special victim prosecutors. These experienced judge advocates are seasoned trial lawyers and are trained specifically to focus on victim care. They complete career prosecutor courses offered by the National District Attorneys Association and on-the-job training with a civilian special victim unit in a large metropolitan city.

In addition, both CID and the JAG Corps have hired civilian investigators and prosecutors to mentor, train, and assist these spe-

cial victim teams. These experts bring decades of experience and expertise from civilian police agencies, other Federal law enforcement agencies, and State district attorneys offices.

Special victim prosecutors serve the interests and rights of the victim, the community's safety interests, and the good order and discipline of the unit by holding offenders accountable. Testimonials from victims and their families attest to the dedicated support these attorneys provide, such as that from a victim's mother who described the SVP as a member of her family who made her daughter feel stronger and more capable than she knew she could feel.

11 years of war have reaffirmed that commanders have a central role in administering military justice in the same way that they are accountable for health, training, welfare, safety, morale, discipline, and mission readiness.

A recent court-martial conviction set aside by a commander has focused concern over the post-trial role of the commander. Should we evaluate needed changes to that post-trial role? Absolutely. We collectively evaluate military justice processes and procedures in an ongoing forum, the Joint Service Committee established by the Defense Department. Moreover, we have congressionally mandated panels that could responsibly consider changes to the code. These vehicles, like this hearing, are signs of a healthy system of justice subject to scrutiny, transparency, and accountability.

Although the focus of your hearing today is the prosecution of these offenses, we cannot assume we can prosecute our way out of this problem. Accountability remains critical. But real change will occur only when both prevention and response measures yield culture change. So we begin with every new recruit focusing on Army values and bystander intervention techniques.

Our system of justice is not perfect. No system is. We have worked dramatic changes to our system over six consecutive legislative cycles. Policy, programmatic, and statutory changes over that period are comprehensive. We make mistakes. Every day in every jurisdiction around this country, prosecutors make difficult decisions on cases. We are no different. But my commitment to you is that we will do everything in our power to retain the trust of the men and women who serve our Army and to preserve a system of justice of which we can be proud.

Thank you, and I look forward to your questions.

[The prepared statement of General Chipman follows:]

Senator GILLIBRAND. Mr. Taylor?

**STATEMENT OF ROBERT S. TAYLOR, ACTING GENERAL
COUNSEL OF THE DEPARTMENT OF DEFENSE**

Mr. TAYLOR. Chairman Gillibrand, Ranking Member Graham, and members of the subcommittee, thank you for the opportunity to testify here today.

The Department is determined to combat and prevent sexual assault in the military. The men and women who put their lives on the line to protect this country must be assured that they have the opportunity to serve without fear of sexual assault. Sexual assault in the military is not only an abhorrent crime that does enormous harm to the victim, but it is also a virulent attack on the discipline

and good order on which military cohesion depends. We must combat this scourge with all the resources at our disposal. Secretary Hagel has made it crystal clear to the senior military and civilian leadership of the Department that combating this blight is a major priority for him and that he demands results.

I watched the hearing this morning and I want to take this opportunity to thank the witnesses for coming forward, and I believe that their testimony will contribute to making our military better.

The Department is in the process of implementing a multifaceted effort to address sexual assault in the military. In the legal arena, my office, along with the

Judge Advocates General, and the Joint Service Committee on Military Justice are working to improve the Department's legal policies pertaining to sexual assault. These efforts are designed to make our judicial, investigative, and support structures more efficient, effective, and responsive to the rights and needs of victims while preserving the rights of the accused.

The Department has recently authorized the U.S. Air Force to implement a pilot program that assigns special victims counsel to victims who report a sexual assault. Special victims counsel are experienced attorneys who may advocate on behalf of the victim to commanders, convening authorities, staff judge advocates, trial counsel, and to the extent authorized by the Manual for Courts-Martial, military judges. Although the pilot has been operational for just 6 weeks, I understand that numerous victims have already requested assistance.

We need to evaluate the program's effectiveness and to resolve questions concerning the proper role of special victims counsel in the military justice system, which is critical to ensuring that this expansion of victims' rights does not have unintended consequences that could hinder the pursuit of justice. To that end, I have tasked the Joint Service Committee, military justice experts from across the Department and the Coast Guard, with evaluating the program.

A longstanding issue of concern is the significant role that commanders have in the administration of military justice generally and specifically in cases involving allegations of sexual assault. The recent action of a convening authority to disapprove the findings and sentence and to dismiss the charges of sexual assault after a conviction by a court-martial has underscored continuing concerns with the role of commanders. Article 60 of the Uniform Code of Military Justice authorizes a convening authority in his or her sole discretion to modify the findings and sentence of a court-martial.

Over the years, Congress has preserved the central role of commanders. However, the role of commanders has been narrowed numerous times to provide protections for the accused. So it would be a misreading of the long legislative history of the UCMJ to put the role of the commander beyond a careful reexamination.

We must strive for a military justice system that impartially considers evidence, respects the rights of the accused and victim alike, punishes the guilty, and reinforces military discipline. To be effective, members of the military must have confidence that the military justice system will treat both accused and victim fairly.

With that in mind, the Department has initiated a number of reviews to inform Congress and the Secretary of Defense regarding the advisability of additional changes to the administration of military justice.

Specifically, Secretary Hagel directed me to ensure that the panel of independent experts to examine the systems used to investigate, prosecute, and adjudicate crimes involving military assault, required by section 576 of last year's NDAA, considers the role of convening authorities in the military justice process, including the authority to set aside a court-martial's findings of guilt. The panel presents an excellent opportunity to solicit independent advice on the appropriate role of the convening authority in today's military justice system, which includes robust rights of appeal.

Proceeding with care and listening to all those affected by the military justice system and to experts on the administrative justice under other systems will ensure that changes to the administration of military justice are constructive and avoid any unintended negative repercussions.

But care and caution must not be allowed to become an excuse for inaction where further action is needed. Our men and women in uniform serve to protect us every day. They put their lives on the line for us for this great country of ours. We owe them a military in which sexual predators have no part and sexual assault has no place. Until all sexual assault in the military is eradicated, it is our duty to ensure that the victims find support, and we lawyers at this table have a special obligation to ensure that the military justice system works effectively to provide justice in every case and to all involved.

I look forward to your questions. Thank you.

[The prepared statement of Mr. Taylor follows:]

Senator GILLIBRAND. Thank you.

Vice Admiral DeRenzi.

**STATEMENT OF VADM NANETTE M. DeRENZI, JAGC, USN,
JUDGE ADVOCATE GENERAL OF THE U.S. NAVY**

Admiral DERENZI. Thank you. Good afternoon, Madam Chair, Ranking Member Graham, members of the subcommittee. Thank you for this opportunity to appear before you this afternoon to address the Navy's commitment to fighting sexual assault and specifically about the Navy's accountability initiatives.

Please let me state upfront this is not just a legal issue. It is a leadership issue for every one of us, and in recognition of this, the Secretary of the Navy, the Honorable Ray Mabus, and the Chief of Naval Operations, Admiral Jonathan Greenert, implemented a multifaceted approach to combat sexual assault, including comprehensive training and awareness that emphasizes active, involved leadership and bystander intervention.

When an incident does occur, the Navy is dedicated to ensuring that victims receive full-spectrum and timely support to include medical treatment, counseling, and legal assistance. And certainly meeting and listening to the members of the earlier panel who put a face and a voice to the impact of sexual violence underscores the importance of victim care.

And to that end and consistent with the 2012 NDAA, the Navy is hiring 66 civilian credentialed, full-time sexual assault response coordinators and 66 full-time civilian credentialed victim advocates. They will augment the more than 3,000 active duty command victim advocates, and they will work with specially trained NCIS investigators and specially trained JAG Corps officers to form the core of our special victim capability.

The JAG Corps is intensely focused on upholding the special trust that is placed in us to provide a fair, effective, and efficient military justice system. We have implemented several key initiatives to ensure that our clients, both the Government and the accused, receive the highest level of advocacy.

In 2007, to improve the overall quality of court-martial litigation, we established the military justice litigation career track. JAG Corps officers apply for the designation as military justice specialists or experts based on their litigation experience and aptitude. Those selected for the designation lead trial and defense departments and provide proven experience in the courtroom, personally conducting, overseeing, or adjudicating complex cases to include sexual assault. This program leverages trial counsel, defense counsel, and judicial experience to enhance the effectiveness of our court-martial practice for complex cases.

In 2010, we established the trial counsel and defense counsel assistance programs, TCAP and DCAP, respectively, led by experts in military justice.

TCAP has delivered trial advocacy training and prosecution process assessments worldwide. They have conducted outreach training to improve efforts between prosecutors, investigators, and other military justice stakeholders. They served as trial counsel or assistant trial counsel in several complex cases, to include sexual assault cases. The TCAP deputy director is a GS-15. She is a former State prosecutor with extensive sexual assault prosecution experience. She previously served as the director of the National Center for the Prosecution of Violence Against Women, and she is a noted author in the field.

DCAP was established to support and enhance the defense bar, provide technical expertise for case collaboration, and standardize resources for defense counsel. The office leads training efforts and consults with detailed counsel through every phase of the court-martial process worldwide.

In 2012, we hired two highly-qualified experts, one to work at our headquarters level and another to work in DCAP. They are channeling significant sexual assault litigation experience into enhanced litigation skills and practices for prosecution and defense teams in the field. We are now in the process of hiring another highly-qualified expert to work in our Trial Counsel Assistance Program.

We provide our litigators with extensive trial advocacy training throughout the course of their careers. The Naval Justice School, in conjunction with our Criminal Justice Division, our TCAP and our DCAP, coordinate specialized training on litigating complex sexual assault crimes, and they leverage knowledge from the civilian sector and from our sister services through cross training. We

send career litigators to civilian post-graduate schools to receive master of law degrees in trial advocacy.

To further refine our complex litigation capabilities, just last year, the Navy established an externship program and assigned two mid-level career officers to work in the sex crime units in two civilian prosecution offices, one in California and one in Florida.

What I hope is clear from these and other initiatives that are described more fully in my statement is that Secretary Mabus, Admiral Greenert, and the entire Navy leadership team remain steadfastly committed to getting in front of the problem and to eliminating sexual assault from our ranks.

For our part, the JAG Corps remains actively engaged in sexual assault awareness and prevention training, victim response, and accountability initiatives.

Thank you again for this opportunity, and I look forward to taking your questions.

[The prepared statement of Admiral DeRenzi follows:]

Senator GILLIBRAND. Thank you.

General Ary?

**STATEMENT OF MAJ GEN VAUGHN A. ARY, USMC, STAFF
JUDGE ADVOCATE TO THE COMMANDANT OF THE MARINE
CORPS**

General ARY. Thank you. Chairman Gillibrand, Ranking Member Graham, and members of the subcommittee, thank you for the opportunity to testify here today.

I must begin by assuring you that Secretary Mabus and General Amos continue to make the elimination of sexual assault a top priority in our Department.

Within the Marine Corps, our Commandant is personally leading this fight not just in words but through actions. In June 2012, the Commandant issued a Sexual Assault Prevention and Response Campaign Plan. This plan is a blueprint for institutional and cultural change within our corps and sets us on a course to improve our ability to prevent and respond to sexual assaults.

In July 2012, our Commandant directed every Marine general officer to attend a sexual assault prevention and response symposium. This training event included subject-matter experts who spoke about prevention, the use of alcohol as a weapon, inadvertent victim-blaming, and dispelling myths.

Our Commandant also spent much of 2012 traveling around the world speaking to his leaders in a series of heritage briefs, making it clear that sexual assault would never be tolerated. As he recently stated—and I quote—we are determined to eradicate sexual assault in the Marine Corps. It is a personal thing to me.

I want to address two main areas today. First, I want to highlight the progress of the military's initiatives to combat sexual assault.

During the past few years, there have been significant statutory and regulatory changes made to the military justice system that affect sexual assault prevention and response. As we implement these changes, we must carefully balance three main interests: the commander's inherent responsibility to maintain good order and discipline, the constitutional rights of an accused, and our funda-

mental obligation to protect and care for victims. Military commanders are uniquely positioned to balance these three interests and ensure the military justice system serves and protects each of them.

Second, I want to address the improvements to our legal response capability. In 2012, the Commandant directed a complete reorganization of our legal community, a reorganization that affected over 49 different commands and over 800 legal billets. This new organization established four regional legal service support sections designed to ensure that we place the right counsel, both trial and defense, with the appropriate expertise, supervision, and support staff on the right case regardless of location.

Each region has a regional trial counsel office that gives us a special victims capability. The centerpiece of each office is a complex trial team composed of experienced senior prosecutors. These regional offices also contain criminal investigators, a legal administrative officer, paralegal support, and highly-qualified experts. Our highly-qualified experts are experienced civilian prosecutors who provide training, mentoring, and advice on trial strategy and tactics to all military prosecutors in the region.

All of these improvements protect victim's interests while ensuring the accused receives the due process rights guaranteed by the Constitution.

In addition to increasing the available expertise to litigate sexual assault offenses, the Commandant expanded the scope of the Secretary of Defense policy on the disposition authority for sexual offenses to cover not only penetration offenses, but also all contact sex offenses, all child sex offenses, and attempts to commit such offenses. In essence, we now have a smaller group of more senior and experienced officers making disposition decisions for all sexual offense allegations and any related misconduct.

In addition, to gain more visibility and command attention on this critical issue, the Commandant directed a new 8-day brief to the first general officer in the chain of command from the date of the victim's unrestricted report of sexual assault. This 8-day brief serves as a checklist guaranteeing each victim's care is supervised by a senior commander.

Elimination of sexual assault is a top priority for our corps, and the Commandant's personal leadership and commitment are making a difference. By using a top-down, comprehensive approach and by attacking on all fronts from prevention to prosecution, I truly believe we are making a positive change in the culture of our corps.

As we consider additional action in the area of sexual assault, I believe the Response Systems Panel and the Judicial Proceedings Panel, established in the National Defense Authorization Act for Fiscal Year 2013 provide an opportunity to analyze any future reforms, and we look forward to participating.

Again, I thank you for the opportunity to testify here today, and I welcome your questions.

[The prepared statement of General Ary follows:]

Senator GILLIBRAND. Major General Patton?

**STATEMENT OF MG GARY S. PATTON, USA, DIRECTOR, SEXUAL
ASSAULT PREVENTION AND RESPONSE OFFICE**

General PATTON. Madam Chair, Ranking Member Graham, and members of the subcommittee, thank you for inviting me to appear today.

First, I would like to thank the sexual assault survivors who testified earlier today. I appreciate their personal courage in standing up and speaking out. Their words inspire all of our efforts and renew my commitment every day to this cause.

It has been my honor to serve our Nation with servicemembers just like them over the past 33½ years, and during that time, I am no stranger to leading culture change, to include helping de-stigmatize mental health care for our combat veterans, more fully integrating women in the Armed Forces with last year's Department's Women in Service report, and also managing the Department's successful repeal of Don't Ask/Don't Tell. The common denominator in all of these complex institutional challenges has been an unequivocal commitment to mission success, readiness of the force, and the welfare of our men and women in uniform.

Now, as the Director of the Department of Defense's Sexual Assault Prevention and Response Office for the past 9 months, I want to say that the Department recognizes that sexual assault is a terrible crime and more needs to be done in combating it. It is a national problem in our society, but we in the military must hold ourselves to a higher standard. Sexual assault has no place in my Army and no place in my military. It is an affront to the values that we defend, and it erodes the cohesion that our units demand.

It is unacceptable that 19,000 men and women servicemembers in 2010 are estimated to have experienced some form of unwanted sexual contact. This estimate is based on feedback from a Department anonymous survey of the Active-Duty Force. That same year, just over 2,600 victims of sexual assault took the difficult step of coming forward and making an official report of these crimes, ranging from rape to abusive sexual contact. This number, when compared to the survey estimate, demonstrates the significant under-reporting of this crime. This under-reporting prevents victims from receiving the care they need and it limits our ability to investigate these crimes and hold offenders appropriately accountable.

As this reporting problem demonstrates, sexual assault is a complex issue. There is no single silver bullet solution. Our DOD-wide mission is to prevent and respond to this crime in order to enable military readiness and to reduce, with a goal to eliminate, sexual assault from the military. Reducing and eliminating sexual assault requires a multi-pronged approach, one that leverages a wide range of initiatives and engages every servicemember to prevent the crime from occurring in the first place. But when one does occur, effective processes and expert people are in place to support victims and ensure the delivery of justice.

Underpinning all our efforts is the need for enduring culture change, requiring leaders at all levels to foster a command climate from top to bottom where sexist behavior, sexual harassment, and sexual assault are not tolerated, condoned or ignored: a climate where dignity and respect are core values that we must all live by and define how we treat one another; where a victim's report is

taken seriously, their privacy is protected, and they are treated with sensitivity; where bystanders are trained and motivated to intervene and prevent unsafe behaviors; and finally, a command climate where offenders know they will be found and held appropriately accountable for their actions. These climate factors are being stressed and taught today at multiple levels of non-commissioned officer and officer education and training across the force, and we are getting positive feedback from this training.

I often get asked how we will know when this culture change has taken hold. My answer relates back to some of my formative experiences growing up in the Army spanning the past 5 decades. I believe we will know change has occurred when prevention of sexual assault is as closely scrutinized as the prevention of a fratricide or friendly fire. We will know change has occurred when sexist behavior and derogatory language produce the same viscerally offensive reaction as hearing a racist slur. We are not there yet, but we are heading in the right direction and we need to remain persistent in moving this forward.

The Department's multidisciplinary strategy is organized along five lines of effort: prevention, investigation, accountability, victim advocacy, and assessment. All five are described in detail in my written statement submitted for the record.

In the interest of time, I will conclude my oral statement at this time with a few personal observations.

I firmly believe we can turn this around, but it will take time. It will also take continued emphasis on all five lines of effort and at all levels. Culture change starts at the top, and I have seen in my 9 months in this job unprecedented senior and mid-level leader attention and energy right now focused on sexual assault prevention and response programs across all the services. The key now is transferring this energy and focus from top to bottom across the force through quality training and strong leadership.

I began my remarks by stating that sexual assault is a national problem. I will conclude by stating that it is my view that the Department of Defense can and must be a leader in solving this problem for America.

Thank you for your attention. I look forward to your questions.

[The prepared statement of General Patton follows:]

Senator GILLIBRAND. Thank you all.

We have a number of statements for the record, including statements from Nancy Parrish, President of Protect our Defenders; Lisa Macks of the American Association of University Women; Mr. Ben Clay; and from the victim of the Aviano Air Base sexual assault case. If there is no objection, these and other statements we receive will be included in the record of this hearing.

[The prepared statements follows:]

[SUBCOMMITTEE INSERT]

Senator GILLIBRAND. I would now like to turn the proceedings over to our chairman, Chairman Levin.

Senator LEVIN. Madam Chairman, first thank you for your leadership in holding this hearing, and to all of those who have joined in this effort, it is a major effort. It is a huge initiative. It is vitally important.

I just very much appreciate your recognizing me for a few moments, and I want to thank our colleagues as well who have been here waiting to ask questions, and this will just take a few moments.

First of all, Mr. Taylor, I want to thank you. I wrote you a letter asking you for the legislative history of article 60, and as of, I believe, just today, you responded to my letter with your own letter, and included in that letter is a fairly lengthy legislative history, which I would ask you, Madam Chairman, to incorporate in the record.

Senator GILLIBRAND. Without objection.

[The information referred to follows:]

[SUBCOMMITTEE INSERT]

Senator LEVIN. And then I just have a couple questions for Mr. Taylor.

The legislative history that you provided indicates that the authority of a convening authority under article 60 of the Uniform Code dates back to the Articles of War adopted by the Continental Congress in 1775.

Now, at the time that that authority was established, did a servicemember convicted by a military court-martial have the ability to appeal his conviction to a higher military court?

Mr. TAYLOR. No, sir.

Senator LEVIN. Now, given that a servicemember can now appeal his conviction to the Air Force Court of Criminal Appeals, in the case we are talking about, and into the United States Court of Appeals for the Armed Forces, is there any reason now to allow convening authorities to overturn a court-martial conviction on the basis of legal errors at trial?

Mr. TAYLOR. There have been many developments since 1775 to get us where we are today.

The robust appellate procedures provided by today's Uniform Code of Military Justice do raise a very serious question about whether the authority provided by article 60, which was most recently dealt with by the Congress in 1983—whether the unlimited authority of the commander to dispose of a finding of a court-martial is any longer required or continues to serve a vital purpose. We are going to look into that very thoroughly with very much of an open mind. But the change in the robustness of appellate procedures over time, designed to protect the victim—excuse me—to protect the accused makes this a very different question certainly than existed in 1775.

Senator LEVIN. Thank you very much, Mr. Taylor.

I want to thank all of our witnesses, and again, thank you, Madam Chairman, for your leadership here and for the others who have joined with you. Again, I thank my colleagues and you for allowing me just a few minutes upfront.

Senator GILLIBRAND. Thank you, Mr. Chairman.

I am now going to allow Senator Graham to ask his questions because he has a time constraint. Senator Graham?

Senator GRAHAM. Thank you, Madam Chairman. Just indulge me a bit here and I will try to be as quick as possible, but I do have a Budget markup.

I want to thank you for holding the hearing. I think it has been very informative to all of us.

Convening authority statistics regarding setting aside findings. From the Marine perspective, you gave us data from 2010 to 2012. There were 1,768 special and general court-martials resulting in findings of guilty. In 7 cases out of those 1,768, the convening authority took action to disprove findings of guilty. None involved sexual assault. That is .4 percent. Does that sound right, General?

General ARY. Yes, it does.

Senator GRAHAM. Okay. The Air Force. In the last 5 years, the convening authority disapproved findings of guilt in 1.1 percent of cases, 40 out of 3,713. Five of the 40 were sexual assault cases. Does that sound right, General?

General HARDING. Yes, sir. That is correct.

Senator GRAHAM. The navy does not have a tracking system for article 60 disposition, but you will get one, will you not? [Laughter.]

Okay, good.

But you have been able to go around to your regional commands and collect evidence from those who have been involved in reviewing cases, and what we have from the Navy is we found one known case where the convening authority took action to disapprove the findings. That one case was a sexual assault case.

In the Army, since 2008, there have been 4,603 cases that went to court-martial with some conviction. In 68 cases, the convening authority either dismissed all specifications or disapproved the findings of guilt, 1.4 percent. No Army convening authority has approved the findings and sentence of a soldier who committed a sexual assault. Does that sound right for the Army?

General CHIPMAN. It does, Senator.

Senator GRAHAM. The reason I bring that up is I want to make sure that people understand one case has to be put in terms of the whole system. The convening authority, General Harding, for a general court-martial is at what rank usually?

General HARDING. For the Air Force, that would be O-9, lieutenant general is the usual rank of our—a general court-martial convening authority. A special court-martial convening authority would be normally an O-6.

Senator GRAHAM. What about the Army?

General CHIPMAN. Sir, our general court-martial convening authority, typically an O-8 or an O-9; special court, O-6.

Senator GRAHAM. Navy?

Admiral DERENZI. Typically, sir, for a GCM it is a one- or a two-star, an O-7 or an O-8, and for a special court-martial, typically an O-6.

Senator GRAHAM. Marine Corps?

General ARY. One-, two-, and three-star generals, sir, typically.

Senator GRAHAM. Army?

General PATTON. Sir, I think General Chipman gave you the Army.

I am representing the Sexual Assault Prevention and Response Office.

Senator GRAHAM. Okay, I am sorry. I apologize. I should have paid better attention.

Coast Guard? You are always last. That is not fair.

Senator GILLIBRAND. I called on him first.

Senator GRAHAM. I know. Good for you, changing tradition here.

Admiral KENNEY. Well, thank you, Senator. To answer the question, in the Coast Guard, general court-martial convening authority are one-, two-, or three-star admirals. Special court-martial convening authorities can range from O-3 lieutenant to O-6 captain.

Senator GRAHAM. So if there is a case generated at a local unit—let us say, a squadron or a flight—the person reviewing that case, General Harding, is quite a distance away from the instant in terms of command. Is that correct?

General HARDING. That is correct, Senator.

Senator GRAHAM. So this concern that this is a buddy-buddy system, I just want the public to understand that the convening authority, particularly for general court-martials that would involve a case of rape or some serious sexual assault, is a distance away from the unit in question, just from the way the system works.

Now, the history of article 60—and people in the civilian community may wonder why does a convening authority have the ability to set aside a punishment. You do have a robust appeals system. So if there is a legal error in a case, the accused has the right to appeal all the way to the Supreme Court if necessary to correct legal errors. But we still have the convening authority in the decision-making role about setting aside findings.

When you go back to the history of this concept, you do start with the Continental Army.

But General Eisenhower testified to the House Armed Services Committee before the Olston Act, which is the predecessor to the UCMJ of 1950, that in his opinion, it is necessary that the person in the chain of command have the power to take final action on court-martials. He opposed a proposal to move the power to mitigate or remit certain types of sentences from the commanders to the judge advocate general.

You had another general, Collins, who offered similar testimony. He was the commander at Guadalcanal. He believed that the commander must have power to initiate and review charges in order to effectuate good order and discipline.

So there is legal error problems that can be corrected by the appellate system, but when it comes to good order and discipline of a command, we have generally held the view that the one person that has the power to determine good order and discipline and to make sure it is present is the military commander.

Could each of you give me an opinion as to whether or not that concept is still viable and relevant in 2013?

General HARDING. Well, Senator, if I could, I will start.

I think it is incredibly viable. It is part of the reason why we succeed in the Nation's armed conflicts. Over the course of 238 years, we have largely been successful in armed conflict. It is because we bring more things to every fight. We bring the best people. We are an All-Volunteer Force. We give them the best training. That is the second element. Third is we bring the very best equipment. Congress helps us in that regard. Those are three legs of a four-legged table. The table wobbles and falls without the fourth, and that is discipline. And command and control is an important element in

discipline. It ties all those things together. And the convening authority's ability to exercise some accountability on every aspect of an airman's, soldier's, sailor's, marine's behavior is incredibly important, creating a responsive disciplined force.

So it was incredibly important in 1775, and the reason why we stayed in the field for 8 years and bested the best army on the planet at the time. And it is still important today.

Senator GRAHAM. Could you indulge me?

Senator GILLIBRAND. Sure.

Senator GRAHAM. From the Army's point of view, do you concur?

General CHIPMAN. Senator, I would add this. In the cases where we have set aside findings or the entire case by the convening authority, it has typically been where we have a greater result to achieve by doing so. So, for example, a very light sentence on what was charged initially as a very severe set of crimes—the light sentence was such that it was equivalent to non-judicial punishment. Therefore, we set aside those findings in return, for example, a post-trial resignation in lieu of court-martial to get the greater good of getting the offender out of our service.

Senator GRAHAM. And I want people to understand the convening authority cannot increase the sentence.

General CHIPMAN. That is correct, sir, but he can, in fact, take an action in a post-trial—

Senator GRAHAM. In lieu of it.

General CHIPMAN. In lieu of. That is correct.

Senator GRAHAM. In the Navy's point of view, does this command authority resonate in 2013?

Admiral DERENZI. Yes, sir, I believe it does. Commanders are responsible for life and death decisions, the safety, welfare, well-being, and good order and discipline of those under their charge. My experience has been that these convening authorities and these commanders take these decisions to heart. They strive day in and day out to do the right thing. They are people of integrity. They are advised by well qualified and well trained legal counsel.

Having said that, the military justice process has matured greatly since the last time article 60 was reviewed, and there are lawyers at every stage of that process now, trial counsel, defense counsel, staff judge advocates, and it is a good time to look at article 60 again in light of those changes but ever mindful of the second and third order effects of adjusting or restricting somehow the convening authority's authority.

Senator GRAHAM. Is it the Navy's position that the convening authority should not have this power and it should be placed into someone else's hands?

Admiral DERENZI. No, sir, that is not our position at all.

Senator GRAHAM. What about the Marine Corps?

General ARY. Sir, thank you for the opportunity to talk on this issue.

I think for so long as we hold our commanders accountable for everything that a command does or fails to do, then they must have these types of authorities. They are responsible for setting command climate. They are responsible for the culture, and it is their leadership that we have to hold accountable. And they need

to be able to hold everyone in their unit accountable to preserve that good order and discipline to accomplish their missions.

Senator GRAHAM. The Coast Guard?

Admiral KENNEY. Thank you, Senator.

As the Coast Guard is the smallest of the Armed Forces, our units tend to be smaller as well, and that commander is the embodiment of leadership and discipline within those small units, and to maintain that discipline, I concur with my colleagues.

I would add that we have also reviewed our past court-martial practice to determine if a commander has ever overturned, in the last 4 years, a charge or specification involving sexual assault, and of the over 200 courts-martial convened in the Coast Guard, there have been three instances where a specification, a part of a finding, was overturned, but that was always on the advice of a judge advocate who had found plain legal error.

Senator GRAHAM. Now, what I will do, I will just wrap up here very quickly. I think that the hearing today shows the need—that the first panel shows the need for the Congress to be involved. And I think these programs that you are coming up with have a great possibility to pay dividends. But it is a cultural problem and it has to be changed. All I would urge my colleagues to do is if there has been a longstanding tradition in the military of allowing the commander this authority for the reasons just cited better than I could ever articulate.

General Harding, I would like in private for you to offer to brief the members of the committee about the Aviano case. You briefed me. It is quite an interesting case, and I would just ask every member of the committee to spend some time, if you could, being briefed about the facts of that particular case.

But as to the climate in the military, the fact that victims feel they cannot come forward, clearly this has to be addressed. And I just want to thank you, Madam Chairman, for bringing this up to the Nation's attention, to the committee's attention, and I look forward to finding a way to continue the progress that seems to be made.

Senator GILLIBRAND. Thank you, Senator Graham.

I am extremely disturbed, based on the last round of question and answer, that each of you believes that the convening authority is what maintains discipline and order within your ranks. If that is your view, I do not know how you can say that having 19,000 sexual assaults and rapes a year is discipline and order. I do not understand how you can say that of those 19,000 cases, to only have approximately 2,400 even reported because the victims tell us that they are afraid to report because of retaliation and the blame they will get and the scorn they will get from their colleagues is order and discipline. And I really cannot understand how 2,400 cases, only 240 of which go to trial, can result in you believing that that authority is giving you discipline and order. It is the exact opposite of discipline and order.

And I am very grateful for all of the changes that have been made. Each of you gave opening testimony that was very strong and thoughtful about the kinds of changes you are making, and I appreciate it that I heard from each of you that there is a zero tolerance. And I appreciate that I hear from each of you about the

training that you are giving your lawyers and the training that you are giving your prosecutors and training that you are giving your advocates. And that is all well and good.

But if the convening authority is the only decisionmaker of whether a case goes to trial or proceeds and the only decisionmaker about whether to overturn a case, well, then all that training and all those excellent lawyers and prosecutors you have do not mean a difference. It does not make a difference because the person with the authority is not the one who has that years of training in terms of legal ability and prosecutorial discretion and the understanding of the nature of a rape, that it is a violent crime. It is not "ask her when she is sober." That is not what this issue is about.

So I appreciate the work you are doing. I honestly do. But it is not enough. And if you think you are achieving discipline and order with your current convening authority framework, I am sorry to say you are wrong. And every victim that has come in front of this committee and every story we have heard over the weeks and months shows that we have not even begun to address this problem.

So to Lieutenant General Harding, let us talk about the Aviano case. Do you think justice was done in that case?

General HARDING. I think that the convening authority reviewed the facts and made an independent determination. That was his obligation as given to him by this body. Granted, it was 65 years ago, but he fulfilled a statutory obligation, and he did so with integrity.

Senator GILLIBRAND. And do you think the five senior officers that were the jury in that trial did not do justice?

General HARDING. I cannot say that they did not, ma'am. I think both the jury and the convening authority did their duty.

Senator GILLIBRAND. Well, as they reached the opposite decision, in one instance justice was not done. Which instance do you believe justice was not done?

General HARDING. I cannot say. I am not going to conclude that justice was or was not done. What I will conclude is that all parties did their job. From my review, all parties did what they were asked to do by the law.

Senator GILLIBRAND. Well, one of the parties was wrong. And if you are the victim in that case, to have gone through 8 months of testimony, of providing evidence, I can assure you she does not believe justice was done.

I would like to move towards some questions concerning how we can evaluate a stronger system. Mr. Taylor, what do you think of the Aviano case?

Mr. TAYLOR. I am very concerned about the message received as a result of that case.

To back up just a little bit, each of the people at this table gave a response to Senator Graham's question except for me. I believe that we have to look very carefully about whether there is a continuing value to the authority provided to the convening authority to throw out the findings, to reject findings of a military trial, of a court-martial. As Senator Levin indicated, there is a very robust system of appellate rights that are available to protect the accusers, and I think we have to very carefully reconsider whether there

needs to be changes to article 60, whether there needs to be further guidance on how article 60 is to be employed.

But the Secretary has charged me to take a thorough and open and searching look into the continued need for article 60 as it exists today, and I intend to do so. It will be informed certainly by the experience of these very fine lawyers and leaders and by others to make sure that we do not do damage to good order and discipline. But there is something that seems odd about the power to reject findings that came out of a jury in the absence of some major obvious problem.

So I am concerned by the message that is received. I think we have to redouble our efforts to make sure that victims are willing to come forward and are willing to entrust the military justice system. I think we need to redouble our efforts to ensure that victims feel supported and respected and honored for the service that they are doing by coming forward and saying no.

Senator GILLIBRAND. Thank you.

I have many other questions that I will submit for the record for each of you.

Our next Senator is Senator Blumenthal.

Senator BLUMENTHAL. First of all, let me thank Senator Gillibrand not only for the focus on this issue in convening this hearing, but also for the passion and commitment that she brings to this issue, which I share.

Let me begin by saying that you have all given very thoughtful and informed answers and, if I may say, very lawyer-like answers, which is to say cautious and careful. This issue really demands immediate action and not just tinkering around the edges.

In my first visit to Afghanistan—I have been there three times—my mission was to find out what could be done to protect our military men and women against the IEDs that continue to cause more than half of all our casualties. And we have since dealt with that problem more effectively through a combination of body armor, better equipment to detect them, a range of actions.

When I first visited Camp Leatherneck, I was shown what the Marine Corp was doing in the absence of the body armor and all the other measures that took time to do. And they had rigged up a 10-foot long pole with what looked like the end of a coat hanger, which they used very effectively to detect roadside bombs because they could not wait.

This problem is the equivalent of an IED in every unit of every Armed Forces. It is the equivalent of an immensely destructive force which the Aviano case has brought to the public's attention in a very dramatic way, much like the photograph of a roadside bomb going off in Iraq or Afghanistan would be. But I think it is equally potentially destructive to the good order and discipline and most especially to recruitment, to retention of the best and the brightest and the bravest that you now have. And I could not agree more, Lieutenant General Harding, that all of those elements are necessary, but people ultimately are our greatest asset in the military. And as I said this morning—I do not know how many of you were here—I truly believe we have the best and the brightest and the bravest now and the next greatest generation in the military, and we need to continue to attract and retain them, which is why

this issue is so important and why the lack of effective action will be the equivalent of an IED for our Armed Forces.

So my view is we need to do more than tinkering around the edges of the system and we need to do reform right away.

Chairman Levin asked a very thoughtful question about the convening authority's power to overturn a conviction. And even if we were to remove that power, in my view it would not really deal with some of the systematic shortcomings of this system, which are not your doing. In part, they are our doing because one of those shortcomings is the lack of sufficient resources. I know as a prosecutor to gain a conviction, you need evidence. For sufficient evidence that is conviction beyond a reasonable doubt, which is by no means an easy standard, you need really expert investigative elements. And we have an obligation to provide you with those resources, as well as to assist you in dealing with this issue by helping to reform that system.

So I want to begin by asking you, Mr. Taylor. You know, you have the panel. You have various ideas. You have said you are considering them. What is your timetable?

Mr. TAYLOR. The Secretary has directed me to provide a preliminary assessment of the need for change in article 60 and the nature of any such changes by March 27th.

The panel is necessarily on a much longer timeframe. It is a panel that is mandated by the 2013 NDAA. Four members of the panel are to be appointed by the chairman and ranking of the Senate Armed Services Committee and the House Armed Services Committee. And it will be subject to FACA I believe. It is on a much more extended timeframe.

So we will do an internal effort, and then there will be this external, independent panel effort. And then, of course, the timeframe ultimately is up to you.

Senator BLUMENTHAL. Is your assessment something that you can share with us at the end of this month? I assume it is March 27th of this year.

Mr. TAYLOR. Yes, it is. That, of course, would be up to the Secretary.

Senator BLUMENTHAL. Well, I would like to make a request on my behalf—others may join—in asking that it be made available on March 28th or as soon thereafter as possible. I know I do not have authority to issue subpoenas the way I did when I was a prosecutor, but I hope that the Secretary of Defense will share the sense of urgency that we have in moving forward as quickly as possible.

You have been asked about the rates convictions are overturned. Do you have numbers on the rates of conviction where courts-martial are convened on sexual assault cases?

Mr. TAYLOR. I believe that each of the Service TJAGs provided that during the answer, and I did not write it down. But it is very low specifically in cases involving sexual assault.

Senator BLUMENTHAL. Can you give me an explanation—unfortunately, my time has expired, but I have one last question for you and I will have others that I want to submit for the record—as to why the rates of conviction are so low?

Mr. TAYLOR. The rates of conviction—sexual assault can be a difficult charge to prove beyond a reasonable doubt. I think that many of the efforts that you heard about in improving the professionalism and the resources available for sexual assault cases, the creation of special victims prosecutors and that capability, the increased support to victims may result in an improvement in the conviction rate, but it can be hard to prove.

Senator BLUMENTHAL. Well, my time has expired, and I will submit these questions. But I would respectfully suggest that that issue be part of your preliminary assessment submitted to the Secretary of Defense and then to us.

I thank you all for your extraordinary service to our Nation. None of this is personal to you or to the military, as I hope you understand. I firmly believe that you will solve this problem because you have been so effective at solving similar issues, whether they are cultural or strictly logistical or otherwise military, in our history. And thank you for your service.

Senator GILLIBRAND. Senator Hirono?

Senator HIRONO. Thank you, Madam Chair.

And thank you to all the testifiers.

We heard from witnesses this morning, and I am sure you may have been in the audience listening to the testimony from them where they described going through a very difficult process even reporting their sexual assaults. And you have testified this afternoon about the various programs, training, education, your efforts to change the culture in the military.

My question is do you know whether all of this focus to change the culture, to provide the kind of support, education, whether that is working? Do you ask the victims, the survivors whether these programs are working for them?

General PATTON. Ma'am, I will take that first, if that is okay with my colleagues.

I direct the Sexual Assault Prevention and Response Office, and I do talk to survivors on a regular basis. We also have other informal mechanisms of hearing from them and other people on the issue, such as an anonymous safe helpline which we have had tens of thousands of calls into over the 2 years that it has been in effect.

One of the things that we have been hearing fairly recently in those sorts of informal feedback is that they are encouraged by the reforms, the initiatives, and the programs that are being put in place. But it is something that we need to remain persistent on.

We have also got very positive feedback on the training that has been essentially revamped in the past year. The PowerPoint slides and things we heard about this morning are done. They are over. There is no training that solely consists of PowerPoint slides. They are interactive. They involve, in some cases, victim testimony, scenario-driven discussions, videos that are presented, ethical decision scenarios that are presented. I mean, I have been a part of training at multiple different levels on different bases, and this is revamped training that we are getting good feedback on and it is having some effect in terms of pushing this interest, awareness, and education not only at the top level, but pushing it down through the ranks to the very bottom, to the influence leaders that we really truly

need to affect if we are going to make this an enduring culture change.

Senator HIRONO. And I would say that that is probably a very long process.

In the meantime, we also heard a suggestion today that we should take out the decision to prosecute, to investigate from the chain of command and go to an impartial kind of an adjudicatory system and decisionmaking. And I would like to ask you if you can briefly comment on—do you foresee major problems with going that route? Because countries such as Great Britain and Canada have gone that route.

General PATTON. I will answer it first and if I can pass it down the row. I am the only non-lawyer sitting at the table, but I have commanded infantry units for 7½ years. So I am speaking from a command perspective on this answer.

My point of view would be that we want commanders involved in the process. We want commanders paying attention to victims. We want commanders caring for them, taking their report seriously. We want commanders paying attention to crimes and other acts of indiscipline and harassment and derogatory language and all these things along the continuum of harm. We want commanders paying attention to that. We want commanders setting standards for what is acceptable and unacceptable in a unit where dignity and respect are the only standard in how we treat one another. We want commanders doing that.

As a commander, I am responsible for the health and welfare of my men and women in my unit. I take that as my ultimate responsibility and take it very seriously. I have led men and women in combat with that same responsibility.

And so we expect and hold commanders accountable for establishing standards in their unit and then holding people accountable that do not meet those standards, whether they be standards of performance or standards of behavior. As a commander, I want to know who that offender and perpetrator is of this crime because that person is degrading the readiness of my unit, and it is also committing a crime against another human being in my unit. So I feel we need commanders very involved in this.

Senator HIRONO. I think they should be involved, but on the other hand, should they be basically judge and jury? I think that is the question that we are confronted with.

General CHIPMAN. Senator, if I could add at this point. I visited my counterparts that run those systems in the UK, in Canada, and in Australia. I visited every one of the judge advocates general from those respective Armed Forces. That model that they have is not a model to which we should aspire. Moreover, they are not comparable in any way, shape, or form to the size, the length, the frequency of our deployments of U.S. military forces. When we have 300,000 soldiers in two theaters of operations in Afghanistan and Iraq, we need a system that punishes swiftly, visibly, and locally and not independent of the chain of command, not an independent adjudicative authority, but under the direction, control, and focus of that responsible commander in the theater.

Senator HIRONO. Well, that is just it because we have a huge number of people who are serving and thousands and thousands of

them are being assaulted through information from the Pentagon. So this continues. And I would say that we do need to acknowledge and face some facts. And I do commend all of you for the work that you are doing to address what is a large issue. And in fact, one of the testifiers mentioned that getting the convictions or pursuing sexual assault cases are very difficult because often it becomes 'she said, you said, or he said he said,' that kind of situation.

And I have some experience in having to actually change a law in Hawaii when I was in the State legislature where the law allowed for the victims and the survivors to be revictimized, which is what we are hearing time and time again from our testifiers this morning. And I think that this is a situation, another situation, where the actual underlying law and the authority probably needs to be addressed.

And, Mr. Taylor, I think I heard you say that this authority of the convening officer to be able to just undo a decision, a court-martial decision, that you think that in the situation where we do have a robust appellate process available to defendants in the military, that perhaps this kind of an ultimate authority to overturn a decision should not rest in one person's hands who may not even have any kind of legal training because that is what we are talking about. These are legal results. These are legal processes. And in my view, anybody who is going to overturn a legal process should have a legal background, and that is not the case. And I am glad that this does not happen frequently, which just says to me that perhaps we can eliminate this particular authority on the part of the convening authority.

Do you want to comment?

Mr. TAYLOR. Yes, ma'am. We will take a very hard look at that. We are absolutely committed to doing so and directed by the Secretary to do so, and we will. And as I indicated, I have a deadline imposed on me by the Secretary of March 27th to give a preliminary assessment.

Senator HIRONO. Thank you.

Madam Chair, my time has expired. Thank you.

General HARDING. Sorry. If I could add, we also have a deadline set by the Secretary of Defense to the Secretary of the Air Force of the 20th. So we have got 1 week to let him know what our thoughts are on the very same subject.

Senator HIRONO. Thank you.

Senator GILLIBRAND. Senator Ayotte?

Senator AYOTTE. Thank you, Madam Chair.

I want to thank the witnesses for being here today on this very important issue which we have got to address. It is undermining, as you mentioned, our readiness, our military. And it is totally unacceptable and it is not consistent with the greatest military on Earth.

I want to ask about a GAO report that was issued in January. Mr. Taylor, the GAO report found that military health care providers do not have a consistent understanding of their responsibilities in caring for sexual assault victims because the Department has not established guidance for the treatment of injuries stemming from sexual assault and that there are certainly specific steps of care if someone is a victim, steps that have to be taken to protect

their confidentiality, and also in some instances, steps that need to be taken to preserve evidence that may be needed if they choose to report. We, obviously, hope that they are able to do that, report their victimization and the crime that has been committed against them.

So where are we in light of this GAO report? Do you have any established guidance from DOD for the treatment of injuries that could be transmitted to medical providers so that they properly treat victims of sexual assault in the military?

Mr. TAYLOR. Senator, I believe that General Patton would be in a better position to answer this question.

Senator AYOTTE. General?

General PATTON. Yes, ma'am. We have a standing Department instruction and it is very close to being reissued with the revised instruction. I expect that to be out by the end of this month. And the revised instruction addresses in detail some of the inconsistencies that were found in the GAO report. And I personally have read the GAO report and then looked at both the two enclosures, number 7 and 8. And I have brought them with me here, if you are interested in having those. But these are enclosures in the revised instruction, the policy, that will be promulgated and which will address some of the very specific points that you were mentioning, specifically how restricted reports, victims, and survivors who make restricted reports—how they are to be dealt with confidentiality and with regard to the other procedures that our medical practitioners must afford and the counseling that must be available and the examinations that must be given and those sorts of things.

Equally, I think one of the gaps determined by the GAO report was the gap between unrestricted care and the gap with the restricted reports. And those points are specifically addressed in the revision of policy which, again, has completed the OMB and inter-agency coordination. I expect they will be promulgated here within the next couple weeks.

But like any policy, a policy is only as good as the paper it is on. It has to be promulgated and it has to be enforced, and there has to be training that is based on that policy. And then the medical community—I know our Assistant Secretary for Health Affairs has conferred with the Surgeon Generals in all the services, and they are focused on addressing that point and ensuring that those changes to the policy are promulgated and put in action as soon as possible.

Senator AYOTTE. General, in formulating the policy, before being in the Senate, I was an Attorney General. For example, in my State there was specific guidance issued from the Attorney General's office after having brought together stakeholders, including physicians, victims, basically all stakeholders and formulating these guidelines—law enforcement—to make sure that they were appropriate, that they were thorough, and that this was not just something from the top down, but it came from really getting the stakeholders who are involved in it to make sure that they are right.

So how did the process that you undertook to put these together—what did that involve? Who did you consult? There are

very good models for this even in the civilian sector, and I wondered if you consulted any of those.

General PATTON. Ma'am, it was a very collaborative process. All the Services were involved, their medical experts were involved in this particular portion of the policy. Our health affairs staff was involved. And we do confer with the experts in the field. I know one of the women on my staff has been involved in victim advocacy and has been working side by side, really on the front lines of victim advocacy and care for victims for most of her adult life. Another woman involved in the formulation of policy was the Sexual Assault Response Coordinator of the Year for the Air Force and has a lot of hands-on experience in dealing with victims and getting them through not only the difficult step of coming forward and going through the reporting step, but then also into the medical system as well. So I am pretty comfortable that it has been a broad and collaborative process.

And like I said, the inconsistencies that were identified in the GAO report—I have made a comparative look between the GAO report and then what we have in our revised DODI and I believe that it does cover all those areas.

Senator AYOTTE. So when will this be issued, and then also, what are the implementation plans? I mean, one of the biggest issues we heard this morning from the panel of victims was the culture issue. This is only one component of the culture issue, but how do you implement these guidelines to make sure that victims are also receiving the proper treatment and respect within the medical system?

General PATTON. Well, the first step is the policy. And like I said, we expect to have this back from the Office of Management in and out and promulgated by the end of this month. So that is the first step.

But the policy then has to be taken—the Department policy has to be taken by the services and then promulgated in some fashion. And on this case, being a medical—just take the medical component out. You know, I would expect that the Surgeon Generals would be issuing guidance and reinforcing guidance on those aspects of the policy then within their Service.

Education programs then have to be based on the changes in the policy so people can be educated and they know the new standards of performance in terms of medical practice and care for all type of survivors.

And then lastly, there is an assessment step, which is to say we should be out there and we need to be out there identifying how these policies are being applied by the medical practitioners. And I know that Dr. Woodson, our assistant Secretary of Defense for Health Affairs, has a plan that he has shared with me. I do not know the timeline, but he does have a plan that once this policy is promulgated and education in place and so forth, to go out and audit various medical communities to ensure that these standards are being applied and our victims are being cared for as they demand.

Of course, we also hear from the survivors, and they tell us things. I mean, I had a summit of survivors in my office several weeks ago, and one of the survivors shared with me a very difficult tale of how she was treated in an emergency room in a military

hospital. And those types of inputs are very important to how we go about this.

Senator AYOTTE. Thank you, General. I would ask that you provide that policy to the committee, and I would also ask that you provide us with the action implementation plan so that we can follow up on this issue. And thank you for being here. Appreciate it.

[The information referred to follows:]

[SUBCOMMITTEE INSERT]

General PATTON. Yes, ma'am.

Senator GILLIBRAND. Senator McCaskill?

Senator McCASKILL. Thank you.

After meeting with many of you and many of your colleagues, I have gotten much more familiar with the UCMJ. In fact, on the advice of one of the Army JAGs, I actually downloaded it on my iPad and now have it as an app.

And I keep coming back to the structure that is very strange the more I think about it. I have tried every kind of criminal case there is from a low-level shoplifting burglary to a capital murder death penalty case. And in the criminal justice system, we build a fence around the fact finders, and we make sure that the evidence they hear is relevant and judges are in charge of making sure that the evidence is relevant and that the rules are followed. And generally in our system, the only people that can overturn the fact finders are people who have also heard the witnesses unless there is a legal problem with how the trial was actually conducted.

Now, your system is much different. In your system, a defendant can refuse to take the stand, which is certainly their right, and therefore their character does not come into evidence because the only way someone's character comes into evidence is if they place it in evidence. So the fact finders do not get to hear what a great guy someone is. They are listening just to the facts of the case.

Now, it is bizarre to me that when that is over, you begin a clemency process. I am going to read the quote from the victim in Aviano about the clemency process. The clemency process was a travesty. The vast majority of the statements were personal attacks on the judge, the prosecutors, and me. A few were actual clemency letters stating their relationship with Wilkerson. Please think of his family, et cetera. Many of them, especially the ones from the pilot community and their wives, wrote caustic, vitriolic letters alleging that the judicial system is corrupt and that the trial was not legitimate. They claimed the prosecutors were bullies and unethical. The panel was biased because they weren't pilots. The judge made bad decisions. I am a slut, a liar, unprofessional.

Now, this information goes to this general and he is to look at that contemporaneously with supplanting his judgment for the fact finders. There is no good reason for that. I cannot think of one, and I would love it if one of you would tell me why—in our system, after the appeal is finished, then there is an opportunity for clemency by an executive authority to commute a sentence, to pardon someone, but not prior to a decision on whether the case was, in fact, conducted legally. How can someone's judgment about the factual determination in a case be clear if they are being bombarded with evidence of character of the defendant who had not taken the stand for an opportunity of the fact finders for his character to be

cross examined for bad acts? And I would like some explanation from you as to how the good and discipline of the order is enhanced by the ability of the mixing of those two very different deliberations.

General CHIPMAN. Senator, I would like try first on that question.

I think we have two distinct aspects to this, the convening authority's authorities on findings and those authorities on the sentence, because I can see that clemency, of course, extends also to sentence revision. In some cases, for example, a convening authority might delay the imposition of forfeitures that were part of the sentence to provide continued support financially to the accused's family, dependent spouse and children. So that is one aspect where clemency would be appropriate from the outset.

As you know, in some cases, clemency might be appropriate to address a legal error that was identified either by the judge during the course of the trial, by the staff judge advocate on his or her review that we know will be taken care of by the appellate court, but why not go ahead and clean that error up with the action by the convening authority?

Senator MCCASKILL. I understand the point you made, but I think that there will have to be a stronger argument than that for me not to come down on the side that clemency belongs at the end of a legal determination, not in the middle of it. I am not somebody who believes that somebody who has not heard the evidence presented should be making a determination on who was telling the truth. A transcript never tells the full story as to who was telling the truth. That is why we have trials. And to supplant that judgment for the people who actually heard the testimony, particularly in these cases because these cases are "he said/she said." These cases are all about the believability of the witnesses. And juries are very good at sniffing out who is telling the truth.

I am not sure a general, far removed with no legal training looking at a stack of clemency contemporaneously with a dry transcript, is given the right information to make the kind of decision that is going to be for the good order and discipline of the whole.

So that is one issue.

Another issue I have is that if this power, this amazing power that is given this one individual, is about the good of the whole—and we talked about this, General, in my office with General Welsh—it appears to me that the Aviano general has really failed because if this decision is because you want them to have the ability of looking at the good of the whole, I do not think anybody is going to argue that this decision has been terrible for the whole. This decision has turned the military on its ear as it relates to the criminal justice system that is contained therein. He was not looking at the good of the whole. He was looking at this individual case.

So the irony is the very power he has is because of the good of the whole, but yet he is narrowly looking at the facts in evidence in a stack of clemency, in this case, and making a decision that sets the Air Force back. We may be all the way back to Tailhook at this point in terms of all the work you have tried to do to move the Air Force forward.

Mr. Taylor, could you comment on that as to whether or not these cases are really being decided on an individual basis or whether or not this good of the whole is being considered because I think Senator Gillibrand's point is a really good one. If it is about the good of the whole, I do not know that we are doing a very good job since this problem is as pervasive as it is and is getting worse and not necessarily better.

Mr. TAYLOR. Senator, I think you have a very good point. It is entirely possible that there is a disconnect between the rationale for this authority, which is the good of the whole, and how it has come to be utilized. That is one of the things that I will need to consider in making my preliminary assessment, but it is a serious issue and it requires a very serious response and hard thinking. And I commit to you that I will think hard about that. I think it is a very good point.

Senator MCCASKILL. My time is out. Let me first just make sure. Has everybody seen "Invisible War" on the panel?

[No verbal response.]

Senator MCCASKILL. General Ary, I would certainly like from you later what, if any, action for the good and discipline of the whole unit happened to any command at the military barracks here in Washington as a result of the incident. You do not have to tell me now. But I am dying to know what commander was relieved, what commander was dismissed. Clearly, the facts around that case have serious implications beyond the sexual assault that is alleged. I will never look at the Friday night ceremonies the same way again after seeing that movie. And on behalf of the Marines, I would think that there would be a deep desire to clean that up and show that it is a new day at the Washington barracks.

General ARY. Yes, ma'am. We will get you that response.

[The information referred to follows:]

[SUBCOMMITTEE INSERT]

Senator MCCASKILL. And finally, I have a long list of others about investigators and their specialized training.

Senator GILLIBRAND. We will have another round.

Senator MCCASKILL. Okay, great. I will wait then. Thank you very much.

Senator GILLIBRAND. Thank you, Senator MCCASKILL.

We are going to take a second round because there is interest by the Senators sitting here.

Mr. Taylor, we have talked a little bit about how other nations have addressed their previous practices of having a convening authority, Britain, Canada, Australia. Have you had an opportunity to study what they did in those jurisdictions and whether it had any beneficial effect on increasing the amount of reporting, increasing the amount of prosecutions? Did it have any effect on unit cohesion, unit morale, on discipline, on order? Did they see a loss in discipline and order by removing convening authority?

Mr. TAYLOR. I have done a little reading on the topic. But as I understand it, the rationale for the action taken in Canada and in Great Britain and some other countries has been focused really on protecting the accused, and it is to provide a further layer of insulation for the benefit of the accused. And whether it has had any impact at all on sexual assault cases I do not know. I plan to be

talking with counterparts and try to gather some of that information over time, not for the 27th.

Senator GILLIBRAND. I want to talk with each of you about this real challenge of under-reporting. Anecdotally listening to the testimony this morning, each of the victims said if I had an advocate early on to tell me what my rights were, to stand by me, to have some authority, if I knew that I could be transferred immediately or the perpetrator could be transferred immediately, that might give me the courage to withstand the 30, 60, 90 days it would take to have a case reviewed. They said if I knew my allegations would be taken seriously and I had a real chance that this perpetrator could be convicted and he would be held accountable, I might have been willing to report.

So I would like each of the Services to tell me their view of why do you think there is so little under-reporting. I mean, if it is literally 19,000 and more than half are sexual assaults against men and if only 2,400 are actually unrestricted reported, that is a terrible reporting rate. What do you think the reasons are? Are the things that are being implemented now—will they begin to address it? What do you think the most important reform in your mind is there to increase the number of reports that are made for the sexual assaults? Lieutenant General Harding, you can start there and we will go across.

General HARDING. Well, that is one of the reasons, ma'am, that we structured that special victims counsel program.

The majority, at least the survey tells us, of our sexual assaults are not reported. We believe that if victims believe that there is somebody on their side, as they go through this complicated process that can be very exhausting, that we will see more of them come forward. That is our hope in part.

Also, when we looked at fiscal year 2011, the last batch of statistics we gave you, we noticed that in the unrestricted reporting side, that we had 29 percent of our victims who had said I want to cooperate with law enforcement, walk away, and refuse to cooperate before they got to the courthouse door. That was 90—in the Air Force's case, 96 victims. So we believe that that helps us encourage and embolden them as well to get through that process and to feel less like they have been re-victimized by that process when they have got somebody there to explain why things are happening the way they are.

So I believe there are multiple reasons. Our surveys have shown multiple reasons why people do not report. We know that one of them is the belief that this is a difficult process to get through. That is not the only reason.

I think I would turn it over to Major General Patton to let you know what the survey revealed and told us among the various reasons why people do not report.

Senator GILLIBRAND. Lieutenant General Chipman?

General CHIPMAN. Senator, I think to follow on what General Harding said, these are the most difficult kinds of allegations to share with anyone. These are the intimate details of our personal lives, our bodily integrity. I think there is a natural reluctance there. I think there is a great desire for privacy on the part of these victims to avoid general knowledge among unit members, the

community of the kinds of things that have been inflicted upon them.

And finally, what is difficult about military service is this idea that you take on this member of a team, cohesion, esprit, good order, discipline. I think that was shown very well in the documentary that you asked us if we had seen. One of the biggest crimes was, first, the assault, but second the attitude of the military when it was reported, the lack of support that those victims received, and that sort of violation of the fundamental belief that they were part of the team that would take care of them that would not allow this to happen. So I think that still plays out in the under-reporting.

Senator GILLIBRAND. Vice Admiral?

Admiral DERENZI. Yes, ma'am. I agree with General Chipman and with General Harding as well.

I think it comes down to victims knowing that they will be responded to, supported, cared for through the process. We are in the process of hiring professional, full-time victim advocates, which is different than having a lawyer serve as a victim advocate. We are striving to form a core relationship between prosecutors, investigators, and the victim advocate to work with the victims who come forward in a constructive, cohesive way. We are watching with interest the Air Force pilot on what a special victims counsel role could be within the system where we do not have one very well defined, but they would not supplant a victim advocate.

We have all instituted expedited transfer. Last year, the Navy approved 79 of them—none were disapproved—within 72 hours. And if a command declines, the request goes to the next flag in the chain. There were no declinations.

I think the training that we have devised, informed in large part by the experiences shared so powerfully in "The Invisible War," are helping at the deck plate fleet level people to understand the resources that are available, what actually happens when an allegation is made. Commanders do not investigate these allegations. That is given immediately to NCIS. Commanders support the victims. They need to be mindful of the due process rights of the accused. They need to initiate an investigation.

The training has gone to great lengths to dispel myths about this crime, to ensure that people understand that it is a crime that involves men, as well as women, to ensure that we protect the most vulnerable among us, that we have the proper training for investigators, for lawyers, for first responders. We have hotlines that can be reached through text, through phone, through email.

Restricted reporting is something that I know is difficult for people to completely understand. I think the truth is we are trying to give people options to come forward. Ideally we want people to come forward to us and make an unrestricted report so that we can pursue accountability aggressively, but not everyone—as we heard this morning, it is so difficult to come forward, the courage to come forward, the trust to come forward. We are working to earn that. Until we do and until an individual finds that courage, supported by the people around them, they have the ability to make a restricted report which allows them to get medical care, counseling, and victim support without going through the accountability proc-

ess. And it is our hope that with that support, they will find the courage to change into an unrestricted report.

Senator GILLIBRAND. My time has expired. So I am going to turn now to Senator Graham.

Senator GRAHAM. Thank you.

This is an emotional topic, so I will be pushing back a bit to some of the things said. But having said that, please do not mistake the push-back for an understanding that sexual assaults in the military need to be addressed and we need to improve upon the current system because what we have today is not working.

But in terms of whether or not we have a good ordered and well disciplined military, I would say the answer is yes. The answer is yes because you see it in the way they conduct themselves in battle. The enemies of this Nation have never faced a finer military force than exists today, and we have problems. There are human beings involved in our military, and there is no justification when people act badly and poorly. But I want America to know that the best test of discipline is when the flag or the balloon goes up. We are the best in the world.

Now, this idea that fighter pilots take care of fighter pilots. We are going to talk about that a little bit. General Harding, do you know the convening authority?

General HARDING. I do, yes, sir.

Senator GRAHAM. Is there any suggestion that he set aside the findings because of the career field he was in or a personal relationship with the accused?

General HARDING. Absolutely not. As a matter of fact, he does not know the accused.

Senator GRAHAM. I just want to set this straight. You may not agree with what the general did, but I actually know these people. They take this job very seriously of sending people into combat. They take their job very seriously as a convening authority to make sure that in their view for the units in question, justice was rendered. We are talking about a handful of convening authority actions, given thousands of cases. Please do not over-indict the system.

Mr. Taylor, I want you, if you could, to have people in your office to review every convening authority in the military in terms of special court-martial, general court-martial convening authority, and see if you can find somebody who is not up to the task because I believe, ladies and gentlemen, that our commanders who get to this rank have been chosen for a reason.

Now, the problem of reporting sexual assault in the military. Mr. Patton, is it any greater a problem in the military than it is in the civilian community?

General PATTON. Sir, I believe they are on par in both sectors.

Senator GRAHAM. I would say that what happens in the civilian community in this area is probably duplicated in the military. ?On par? may be the right word, but I promise you this. There is no city, there is no State, there is no county that is going to take it more serious than the men and women before you.

Now, when it comes to defending somebody in the military, I have been a defense counsel and I have been a prosecutor in the civilian world and in the military world. The one thing I never had

to worry about defending a military member is cost. I got every witness I ever wanted. I did not have any overhead to pay, and I did not have hundreds of cases. As a military prosecutor, I spent an inordinate amount of time preparing a case that our civilian colleagues would envy. Are there district attorneys out there not bringing cases they should? Absolutely. Sometimes the system fails. But I just want people to understand in the military justice arena, it is a focused effort to get this right, that the defense counsels are an independent chain.

I was on 60 Minutes once trying to take the drug labs down that the Air Force had created that I thought was producing false positives, and we voided 60,000 results because the system worked. My boss had my back, and the military judge was a real hero.

So the only thing I can say is that the purpose of this hearing is a good purpose. People are not feeling comfortable with telling what is going on in that unit regarding sexual assault. But the idea, quite frankly, that convening authorities are the problem is not what I see here. I see the system broken.

And I do believe that if you are going to give a man or woman the power to send someone in battle and to literally go and die, that we should trust their judgment when it comes to disciplining that unit. Now, that is just my personal bias.

Having said that, I think there is a tremendous amount to build on here. And, Mr. Taylor, I look forward to working with you and the administration to try to find ways to make this system work better.

So, Madam Chairman, this is a difficult issue, but let us please not—I want you to read, if you can, a summary of the Aviano case. You may not come out where the convening authority did, but I just do not believe that he did it in a cavalier fashion. I just do not believe that.

So, finally, Mr. Taylor, as we go forward, what can we do in terms of sequestration? I mean, you know, we are talking as if nothing else is going on out there. Everybody is doing more with less. There are less lawyers. There is more responsibility. So please tell us what you need in terms of budgets to enhance these programs, and I think everybody on this committee—and, Senator McCaskill, you have been terrific about focusing on this. Let us find out what we need to resource that is not being resourced and make this a priority because I will end with this thought.

If women in the military—and men are victims too. But if you really believe that there is no place for you to go and you are being abused, that has got to be the worst possible feeling in the world. I would not want one member of my family to ever have to live under those conditions. So this command climate I think is beginning to change. But how did we get here? These cases were a nuisance. Nobody wanted to talk about it. Nobody wanted to embarrass the command. They wanted to shove this stuff under the rug. There is no other answer for it to get this out of hand.

I believe a new day is here, and all I ask is that when we find this new way forward, that we still preserve the ability of the system to judge every individual case based on the individual facts, that we do not paint with a broad brush everybody is guilty.

Thank you very much.

Senator GILLIBRAND. Senator McCaskill?

Senator MCCASKILL. Well, first, I certainly agree with Senator Graham, especially the first part of his statement. I am compelled to be passionate about this because I agree with him. We are the best in the world.

And my comment about the overall health and good order and discipline of the unit is based on what I believe is a military that is grappling with a problem that the military knows you do not have under control. I do not think I am saying anything that most of you do not agree with. I think you know we need to do better. I think you know there are women out there that feel like because of the particular facts and circumstances of their military service, their ability to get a piece of justice is limited. And I know you all want them to. So I do not think there is a significant disagreement between Senator Graham and me about that.

I just think that some of the convening authority's power does not appear to be rational to me, particularly the way it is currently set up in terms of the order of things and the ability, which I think most of you are uncomfortable with the notion that the rules say this can be done for no reason at all. As General Welsh, I think said to me, we are not in a time where you are dragging people out of prison to put them on the front lines because we need the warm body. Some of these rules date from that time when you did not have to give any reason at all. And I think you explained to me why it said no reason at all. It came from the mouth of General Eisenhower in a hearing like this or something to that effect.

Let me talk about a couple of things that I wanted to get to. It is my understanding that if a member of the military needs to update their security clearance, they must self-report counseling around their sexual assault, and they do not have to report counseling for combat-related issues, grief, or family matters. Is that true, Mr. Taylor?

Mr. TAYLOR. It generally is true. It is question 21. There are different interpretations, but generally that is accurate. I think there are serious issues with question 21, and I would just like to say that the issues are not limited to those who are receiving the care that we want them to receive. That is true whether the need for care is a result of sexual assault or something else. I personally am very concerned about question 21 and would like to see some action on it.

Senator MCCASKILL. Well, I think we need to really take a look at that because if you are looking at someone's mental health, what you are really saying is if your mental health issues come from combat or a problem in your family, that does not impact your security clearance, but if you have been a rape victim, it does. Now, I cannot imagine any of you agree with that outcome. Does anybody think that is right or fair? [No response.]

Okay. So be sure and let us know if you have a problem with us looking at that because I want to get that changed right away. If I was a woman in the military and I had been raped and I had a security clearance, that sure would impact my willingness to come forward. It sure would impact my willingness in terms of giving up my career.

What about the suggestion I made earlier? If we have probable cause based on a sound criminal investigation and the JAG's are recommending to the convening authority that we go to a general court-martial proceeding, why are we so focused about moving the victim? Why are we not moving the perpetrator at that point?

General CHIPMAN. Senator, we do have the authority to move a perpetrator to another command or another installation, another unit. That is within the discretion of the chain of command, so that that is an available option. It would make it a little more tedious in the sense of the proceedings that have to go forward with the article 32 investigation, any motions hearings. So you might have to move that accused back and forth to the installation that is holding the court-martial. But certainly it is an option within the chain of command's authority.

Senator MCCASKILL. As tedious it would be for the victim in terms of potentially having—although, I guess you would say that the defense lawyers could go to her wherever she is for interviews?

General CHIPMAN. That is correct, Senator.

Senator MCCASKILL. Well, to me once you have crossed the line of probable cause, after a competent criminal investigation, the least disruption should occur to the victim, not to the alleged perpetrator. That certainly is the way it is in the civil system. We arrest him and they have to bail out and be reporting to an authority, a pretrial, or they are held in jail to stay away from the victim. And the notion that a victim and an alleged perpetrator are working shoulder to shoulder during this particular period of time I think is going to impact the quality of your cases and your ability to get sound prosecutions.

How soon in the process for each branch of the military do your criminal investigators have contact with the prosecutors that would be responsible for trying the case? And if you would go down the line and just tell me. If you do not know, say that. If you know it is within 30 days or within a week or if there is some requirement that they check in with them immediately or maybe never, I would like some sense from each branch how closely dovetailed are the investigative efforts with the advice and counsel of a prosecutor who is going to direct the evidence in trial.

Admiral KENNEY. Thanks, Senator.

In the case of the Coast Guard, that contact is almost immediate because of the way our reporting system works. It actually will come, in many cases, up the same chain that a significant search and rescue case, a major oil spill. Those communication networks are used, and CGIS, as well as our attorneys and our district legal offices or our area legal offices, are notified through that communication network immediately.

General HARDING. Ma'am, it is about the same for the Air Force. It is pretty quick. When I was in that role at base level, we knew a report within 24 hours. The lash-up with the investigators is immediate. We provide them a proof analysis, a list of elements that they need. We walk hand in hand. They report back to us as the investigation is ongoing. And then later, we fold in one of our senior trial counsels, our most experienced. We have eight of them that are dedicated to prosecuting sexual assault cases. So the lash-up is immediate and constant.

General CHIPMAN. Senator, recall that part of our special victim capability is the special victim prosecutor and the sexual assault investigator. The best practice for us is to have our special victim prosecutor actually located in the CID offices so that there is that immediate lash-up and case coordination that is so critical to perfecting these cases from the outset.

Admiral DERENZI. Yes, ma'am, we have the immediate lash-up as well with our agents and our prosecutors.

Senator MCCASKILL. Marines?

General ARY. It starts at day one, and then our complex trial teams also have investigators embedded with them that continue to work the liaison as they develop the theory of the case and the evidence, ma'am.

Senator MCCASKILL. Thank you for your patience, Madam Chairman.

I have one last question, and that is if any of you have a good reason why there should be a different period of time that you would keep a restricted report versus a non-restricted report.

And I would like all of you, for the record, to let us know what attempts are made formally—when you get a new report on an alleged perpetrator, what attempts formally are made to go back and look at reports and re-contact victims on restricted reports with the news that there has been another victim and have they changed their mind. You do not need to do that now, but I want that for the record because I know that from experience that when a woman knows there has been someone else victimized after her, it changes her perspective about the importance of stepping forward. And I want to make sure we have a system in place that is accessing those records quickly and getting back to those victims as quickly as possible and securing their cooperation and moving forward against the defendants.

[The information referred to follows:]

[SUBCOMMITTEE INSERT]

Senator MCCASKILL. I know you all are trying hard, and I know even the general who made the decision in Aviano, I absolutely do not think he did that maliciously or cavalierly. But I think it is time to take a hard look at whether or not the rules of the road can be adjusted to still give the unique aspect to military justice that it deserves. I am not saying it should be like the civil criminal system, but there do seem to be some things that make absolutely no sense. And I hope rather than getting a push-back from the military, we will get your cooperation and support in making some of those changes. Thank you all very much.

Thank you, Madam Chairman.

Senator GILLIBRAND. Thank you all for your testimony today. I am very grateful for your determination to solve this problem. I think there is no problem the military cannot solve if it puts its mind to it. So thank you for your commitments today, and thank you for working with this committee going forward.

[Whereupon, at 4:30 p.m., the subcommittee adjourned.]