

**Prepared Statement**

**of**

**The Honorable David S. C. Chu**

**Under Secretary of Defense**

**(Personnel and Readiness)**

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## **PREVENTING AND RESPONDING TO SEXUAL ASSAULTS**

**Thank you, Mr. Chairman, for inviting me to appear before you today to discuss Department of Defense policies and programs related to sexual assault. The Secretary of Defense has clearly stated that we will not tolerate sexual assaults in the Armed Forces of the United States. I shall address the policies and programs of the Department of Defense, and the Vice Chiefs of Staff of the Services, who are prepared to testify with me, will address the policies and programs of their Services.**

**Sexual assault is criminal conduct and will not be tolerated in the Department of Defense. Commanders at every level have a duty to take appropriate steps to prevent sexual assaults, protect victims and ensure the best possible medical and support services are available to them, and hold those who commit offenses accountable. All the elements of these policies are essential to morale, good order and discipline within our Armed Forces. Regardless of whether our service members are deployed in combat environments in foreign lands or are serving in peacetime garrisons within the United States or elsewhere, they have a right to believe, and to expect that these policies will be fully enforced throughout the chain of command.**

**I will relate additional details of these policies throughout this statement, but let me reiterate at the outset that Secretary Rumsfeld has expressly stated to the Department his concern about recent reports of sexual assaults. Twenty days ago Secretary Rumsfeld directed me to review how the Department handles treatment of and care for victims of sexual assault, with particular attention to any special issues that may arise from the circumstances of a combat theater. Secretary Rumsfeld's directive to me emphasized that we are responsible for ensuring that the victims of sexual assault are properly treated, their medical and psychological needs are properly met, our policies and programs are effective, and we are prompt in dealing with all issues. This review will address the reporting of sexual assaults, including the availability of private channels of reporting within combat theaters, and whether additional instruction may be needed for deploying and redeploying service members.**

**I have appointed Ms. Ellen Embrey, Deputy Assistant Secretary of Defense for Force Health Protection and Readiness, to lead a Department of Defense Task Force on Care for Victims of Sexual Assaults. This task force has already begun its work. As I testify before you today she is in Central Command's areas of operations to begin the inquiry of her task force. The task force consists of ten members who have been selected from the services**

**and the Joint Staff. They will draw upon experts from the medical, personnel, social services, legal and criminal investigative communities. They will also engage with numerous military and civilian experts, including victim advocates, to address objectively the treatment and care of sexual assault victims.**

**Ms. Embrey's plan includes field review within the combat theater of operations. She has my full authority to engage, as necessary and appropriate, the Military Departments, the Joint Staff, the Combatant Commands, the Office of the Secretary of Defense, the Inspector General of the Department of Defense, Defense Agencies and Department of Defense Field Activities to provide the information needed to complete the review. The findings and recommendations of this task force are due to me no later than April 30, 2004. I will make my report to Secretary Rumsfeld in May. Once he has made his decision I will be glad to brief this committee.**

**Let me assure you that we are not limiting our efforts to this individual task force. Last summer, a panel led by former Congresswoman Fowler, investigated allegations of sexual misconduct at the Air Force Academy. The panel made recommendations with a single priority in mind: the safety and well-being of the women at the Air Force Academy. The report contained 21 specific recommendations that the panel believed would put the Air Force**

**Academy back on track, and would ensure the continued success of the institution as it trains future leaders of our Air Force. Senior leaders in the Air Force are implementing those recommendations now as Congress directed in the 2004 National Defense Authorization Act. As a separate and distinct effort, Secretary Rumsfeld is in the process of appointing the Defense Task Force on Sexual Harassment and Violence at the Military Service Academies. This task force will conduct an extensive review of policies and programs relating to these issues at the Service Academies. They will have full authority to make recommendations concerning policies and the laws governing the Armed Forces.**

**Let me now turn to our fundamental policies. First, we must care properly for the victim.**

**Today there is, in the United States, a heightened concern about the rights of victims of all criminal offenses, and that concern is acute when the victim has suffered through a sexual assault. The Department of Defense program for the protection of victims' rights is based on federal law, and is expressed in Department of Defense Directive 1030.1. The rights of a crime victim under this Directive are:**

- 1. The right to be treated with fairness and with respect for the victim's dignity and privacy.**

- 2. The right to be reasonably protected from the accused offender.**
- 3. The right to be notified of court proceedings.**
- 4. The right to be present at all public court proceedings related to the offense, unless the court determines that testimony by the victim would be materially affected if the victim heard other testimony at trial.**
- 5. The right to confer with (the) attorney for the Government in the case.**
- 6. The right to restitution.**
- 7. The right to information about the conviction, sentencing, imprisonment, and release of the offender.**

**For these rights to be exercised the victim must normally bring the offense to the attention of the command structure or law enforcement personnel. We are keenly aware that confidentiality is a major concern to victims. Our challenge is to sustain these rights in a way that is sensitive to confidentiality concerns. As our task forces conduct their reviews, we shall address such concerns and attempt to determine whether victims' rights are being protected throughout the Armed Forces.**

**Health care support of victims is also a key element of our program as it is implemented in the field. To this end, the Services each provide health care**

**support to victims. Health care and support services are available to service members in the current deployment theaters as well as in the United States and at overseas duty stations. In-theater response to sexual assault is provided both through the health care systems and law enforcement. Combat support hospitals are equipped with Department of Defense sexual assault forensic kits to ensure appropriate evidence collection, and victim support is provided by behavioral health and chaplain resources. At the unit level, combat stress detachments, combat stress companies, and division level health assets are available to victims of sexual assault. To ensure support for victims of sexual assault in the combat theater, the Embrey Task Force will address the efficacy of their existing programs and propose improvements.**

**Even with resources, programs and policies, a key element in this process is that the victim must make the decision to seek medical assistance. At the medical facility, the victim may consent to a forensic examination for the purpose of obtaining potential evidence. This process is strictly voluntary. To protect the rights of the individuals, consent cannot be obtained through coercion or by a direct order. If performed, the forensic examination is conducted following standard chain of custody procedures.**

**Follow-on care for behavioral health support is available and highly encouraged. If the service member requires more extensive physical and emotional support, she or he can be medically evacuated to a medical facility in Europe or the United States.**

**Within the Department of Defense, the most fundamental policy with respect to sexual assault has been clearly established by Congress. Congress, without specifically using the term “sexual assault,” has described a broad spectrum of conduct as criminal. Accordingly, “sexual assault” is a generic term that we all use to describe a spectrum of criminal conduct. Every form of sexual assault is a felony that carries a maximum punishment that includes a substantial period of confinement as well as a punitive discharge.**

**The most serious form of sexual assault, the crime of rape, is a crime that is, in addition, potentially punishable by death under the Uniform Code of Military Justice.**

**The Uniform Code of Military Justice also proscribes as felonies attempted rape, and forcible assault with intent to commit rape. Similar to a lesser form of the civilian offense of sexual battery, the military offense of indecent assault comprises any unwanted touching done with intent to gratify lust or sexual desire.**

**Because Congress did not specify indecent assault as a crime, it is prosecuted under Article 134, the general article, but this fact does not change the felony character of the offense. As is the case with all general article offenses, including indecent acts, indecent exposure, indecent language, prostitution and pandering, the Government must establish that the conduct was prejudicial to good order and discipline or of a nature to bring discredit upon the Armed Forces. As you might expect, these are not difficult burdens to carry.**

**The military offense of cruelty or maltreatment of a subordinate is particularly effective in cases of sexual harassment or misuse of authority to obtain sexual favors. This is a serious offense under the Uniform Code of Military Justice and does not require violence or physical mistreatment of a subordinate. This charge would clearly be appropriate where a subordinate consented to sexual relations with a military superior who used his authority to obtain an advantage in the relationship.**

**Conduct unbecoming an officer is also an offense under the Uniform Code of Military Justice which may be used to deal with dishonorable or disgraceful conduct by the officer when the conduct involves a member of the opposite gender regardless of military or civilian status.**

**Where the offense and the surrounding circumstances are serious, court-martial with all its attendant rights and requirements is the appropriate disposition. Courts-martial require the services of professional judge advocates and, proof beyond a reasonable doubt.**

**Not all the offenses that arise, however, are appropriate for court-martial disposition. Where the offense is minor, and swift resolution is imperative, non-judicial punishment or administrative action may be appropriate. Article 15 of the Uniform Code of Military Justice authorizes commanders to take summary actions for minor offense, including minor sexual offenses. Deciding the appropriate disposition of these offenses requires training, experience and professional judgment. The Department maintains a highly trained corps of professional judge advocates to advise and assist commanders with these decisions. Today, these are matters where the views of the victim, as well as the need for discipline, are appropriate for consideration prior to decision.**

**While the Uniform Code of Military Justice is the principal expression of Department of Defense policy concerning sexual assault, policy concerning sexual harassment is expressed in Department of Defense Directive 1350.2.**

**This directive defines sexual harassment as:**

- (1) A form of sex discrimination that involves unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature when:**
- (a) Submission to or rejection of such conduct is made either explicitly or implicitly a term or condition of a person's job, pay or career, or;**
  - (b) Submission to or rejection of such conduct by a person is used as a basis for career or employment decision affecting that person, or;**
  - (c) Such conduct interferes with an individual's performance or creates an intimidating, hostile or offensive environment.**
- (2) Any person in a supervisory or command position using or condoning implicit or explicit sexual behavior to control, influence, or affect the career, pay, or job of a military or civilian employee.**
- Similarly, any military member or civilian employee making deliberate or repeated unwelcome verbal comments, gestures, or physical contact of a sexual nature.**

**Violations of this directive by military personnel may be treated as felonies and can be tried by court-martial. The maximum punishment could include a substantial period of confinement and a punitive discharge. Most often, the offense of sexual harassment is resolved administratively under the provisions**

**of service regulations, but our policy is clear and it is also effective. Since 1991, the Inspectors General of the Military Services and of the Department of Defense have included sexual harassment prevention and education as special interest items in their inspections and base visits. We will continue this emphasis in order to ensure the Department's policies are being adequately implemented.**

**In summary, the Department has, through the laws enacted by Congress, strong and effective policies for dealing with offender accountability. If any of the Task Forces I described earlier in my statement proposes changes in these policies or practices, we will bring such proposals to your attention without delay.**

**While these policies and resulting punishments can serve as valuable deterrents to undesirable behavior, prevention is the pre-eminent objective. We know that training and active leadership involvement can produce an environment that is intolerant of such behaviors, and we are confident that creating such an environment will reduce the incidence of assault To this end, our policies require training at every level from the leader to the led. A**

**principal means by which we assess the effectiveness of these policies is through surveys conducted by the Defense Manpower Data Center. Recent survey results indicate that such preventative measures are being taken seriously and are having positive results.**

**In 2002, the Department conducted its third Joint-Service survey assessing gender issues in the military as required by law. We have just finished tabulating the results, and I am pleased to report on them today and provide you with the report, because despite its title, it covers all elements of inappropriate sexual behavior, including sexual assault.**

**The survey was fielded between December 2001 and April 2002. Service members had the option to complete the survey using either a paper-and-pencil version of the survey or they could complete it on the Web. Using a stratified random sampling approach, over 60,000 Service members were selected to participate in the survey and almost 20,000 did for a response rate of 36%. Overall, the findings are encouraging. The 2002 survey results indicate that Defense officials and military leaders take the issue of sexual harassment seriously and significant improvements have occurred. The survey results indicate that in 2002 compared to 1995 – the date of the previous survey, all forms of unprofessional gender-related behaviors are less**

likely to occur. When they do occur they are less likely to occur on an installation, at work, or during duty hours. Sexual assault is least likely to occur on an installation, at work, or during duty hours.

Between 1995 and 2002, reports of sexual assault on women declined from 6% to 3%, and reports of perceived sex discrimination, measured for the first time, were low. Most important, the survey results indicate service members are being trained, they understand sexual harassment policies and the behaviors that constitute sexual harassment, and their ratings of their leaders for making honest and reasonable efforts to stop sexual harassment are significantly higher in than in 1995. Seventy-four percent of members in 2002 (compared to 65% in 1995) indicated leaders at the Service level were making honest efforts to stop sexual harassment. At the installation level, these figures were 75% in 2002 and 65% in 1995; and similarly, at the local-level, these figures were 75% in 2002 compared to 67% in 1995--an overall improvement of over 10% at all levels.

While the Military Services, overall, have made real advances in combating sexual harassment, it is clear that there are some locations where it is still occurring. Finding those locations and taking corrective actions are logical follow-on actions to this survey effort.

**In closing, let me state that the leaders of the Department of Defense, from Secretary Rumsfeld to the commanders in the field share your commitment to preserving the integrity of our Armed Forces, and to ensuring that every service member is treated with the utmost dignity and respect. Sexual assault will not be tolerated. Our reviews of the issues before us today will be thorough and complete, and we will give you a comprehensive report.**