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Before the

Subcommittee on Personnel

COMMITTEE ON
ARMED SERVICES

UNITED STATES SENATE

HEARING TO RECEIVE TESTIMONY ON
THE MILITARY SERVICES' PREVENTION OF
AND RESPONSE TO SEXUAL ASSAULT

Wednesday, March 6, 2019

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1 HEARING TO RECEIVE TESTIMONY ON
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5 Wednesday, March 6, 2019
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7 U.S. Senate
8 Subcommittee on Personnel
9 Committee on Armed Services
10 Washington, D.C.
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12 The subcommittee met, pursuant to notice, at 2:32 p.m.
13 in Room SR-222, Russell Senate Office Building, Hon. Thom
14 Tillis, chairman of the subcommittee, presiding.

15 Subcommittee Members Present: Senators Tillis
16 [presiding], Rounds, McSally, Scott, Gillibrand, and
17 Duckworth.
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1 OPENING STATEMENT OF HON. THOM TILLIS, U.S. SENATOR
2 FROM NORTH CAROLINA

3 Senator Tillis: The committee will come to order.

4 I understand Senator Gillibrand will be here briefly.
5 She is in the building. And I think that will give me time
6 to make a few brief opening comments.

7 I want to thank everyone for being here today.

8 We meet this afternoon to receive testimony on sexual
9 assault prevention and response programs and policies in
10 military services.

11 On panel one, we will hear from five witnesses:
12 Colonel Don Christensen, U.S. Air Force, retired, and now
13 Director of Protect Our Defenders. Welcome. Dr. Ellen
14 Haring, U.S. Army, retired, and now CEO of the Service
15 Women's Action Network. Welcome. Lieutenant Commander Erin
16 Leigh Elliott, U.S. Navy. Ms. Angela Bapp, formerly an
17 officer in the U.S. Army, and Colonel Doug James, U.S. Air
18 Force, retired, and now President of Save Our Heroes. Thank
19 you all for coming here.

20 I will introduce the second panel when we transition
21 into their testimony.

22 The Personnel Subcommittee exercises rigorous oversight
23 of DOD sexual assault prevention and response policies and
24 programs, and over the past 10 years, the committee has
25 spearheaded the enactment of hundreds of legislative changes

1 that have affected every aspect of the Military Sexual
2 Assault Prevention and Response Program. These provisions
3 of law include protecting and empowering victims, reforming
4 the military justice process, holding offenders accountable
5 while protecting their due process rights, and ensuring
6 command accountability for the investigation, prosecution,
7 and disposition of allegations of sexual misconduct and
8 retaliation.

9 I feel confident when I say sexual assault prevention
10 and response policies and programs in the armed forces are
11 the most comprehensive and the most aggressive in the United
12 States and perhaps the world.

13 I credit Ranking Member Gillibrand with shining a
14 spotlight on these important issues, and I applaud her
15 persistence for focusing on the subcommittee's actions. I
16 have been in the Senate for 4 years, and she has been a
17 consistent standard bearer for the issue, and I compliment
18 the ranking member. I am glad you are here for me to
19 compliment you directly, Ranking Member.

20 [Laughter.]

21 Senator Tillis: But the subcommittee knows that sexual
22 assault, unwanted sexual contact, sexual harassment and
23 retaliation are issues that affect not only the armed forces
24 but our society as a whole. We expect our armed forces,
25 however, to be better. We expect the military to lead the

1 way in fixing these issues. We expect our military to set
2 the example for the rest of society to follow.

3 The purpose of this hearing today is to help our
4 military do just that. Much has been accomplished, but
5 there remains much more to be done.

6 I will turn to Ranking Member Gillibrand at this time,
7 followed by recognition of Senator McSally. Senator
8 Gillibrand?

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1 STATEMENT OF HON. KIRSTEN E. GILLIBRAND, U.S. SENATOR
2 FROM NEW YORK

3 Senator Gillibrand: Thank you, Chairman Tillis, for
4 holding this hearing. I am very grateful, and I am really
5 grateful to our witnesses today. Thank you so much for
6 being here.

7 I am pleased that our subcommittee is committed to
8 solving our military sexual assault problem, but I have to
9 say that I am incredibly disappointed that after years of
10 fighting this problem, after so many incremental changes in
11 the law, that we are still in the exact same place. Sexual
12 assault in the military is still pervasive. It is still
13 hurting our military readiness. It is still causing
14 thousands of our service members to suffer. The trends and
15 numbers are going in the wrong direction. So we must fix
16 this. We need a fundamentally different approach to how
17 these crimes are being prosecuted because the services have
18 not done nearly enough to solve the problem themselves.

19 My office routinely receives information from a variety
20 of sources about the military's failure to appropriately
21 address sexual assaults and other sexual misconduct.

22 I am counting on our witnesses on the first panel to
23 describe the problems encountered day to day by survivors of
24 sexual misconduct, and I want to note my appreciation of the
25 survivors willing to testify. They have served our country

1 and now are leading additional service by having the resolve
2 to share their painful experiences with us and with the
3 world.

4 Witnesses on the second panel should listen carefully
5 to the testimony of the witnesses on the first panel, as I
6 expect the second panel witnesses to address the issues
7 described by the first panel.

8 It should be clear to any unbiased observer that the
9 military is not attacking the problem with any of the focus
10 or intensity that it would attack just about any other
11 problem. The Department of Defense consistently tells us
12 that addressing sexual assault in the military is a chain of
13 command responsibility and that the chain of command will
14 fix it. But the chain of command has failed in this regard.

15 The most recent survey of prevalence of unwanted sexual
16 conduct found that sexual assaults have increased at the
17 military service academies, and other surveys by the
18 Department itself show increased reporting while cases are
19 decreasing and a very alarming rate of retaliation by those
20 in command against victims of sexual assault. The
21 Pentagon's next annual report on sexual assault in the
22 military will include the results of the most recent survey
23 of military personnel across the Department. It will not be
24 surprising -- but I will be disappointed, though -- to see a
25 similar increase in unwanted sexual conduct throughout the

1 services.

2 One of the main causes of this problem is that despite
3 many good leaders, far too many commanders do not make it a
4 priority to address the problem of sexual assault in the
5 military in a meaningful way. I recently reviewed a
6 military investigation about how the chain of command
7 addressed sexual assault at a major command. The commanding
8 general did not even attend case management group meetings
9 where sexual assault cases were discussed in detail, as
10 required by the DOD in-service regulations. A brigade
11 sexual assault coordinator position was left vacant for 9
12 months. Professional training of officials involved in
13 sexual assault was conducted on an ad hoc basis and not
14 documented in training records. Sexual assault
15 professionals used obsolete forms to inform sexual assault
16 survivors of their rights and options. Survivors were not
17 informed of one of the most important rights, the right to
18 representation by special victims counsel. This command had
19 undergone an earlier inspection that identified these and
20 many other shortfalls in the command sexual assault
21 prevention and response program. Yet, as far as we know, no
22 one was held accountable for these continuing failures.

23 If this is how the chain of command operates to address
24 sexual assaults in the military, it is clear why we are not
25 succeeding. All too often we hear from survivors that they

1 are the ones who are punished when they report sexual
2 assaults. We hear from survivors that they are retaliated
3 against, sometimes by the chain of command, sometimes by
4 their peers. In either case, the chain of command must put
5 a stop to it.

6 In too many cases, survivors are punished for
7 collateral misconduct, such as underage drinking or
8 fraternization, while the assailant who committed sexual
9 assault goes free. This happens even when the only reason
10 that commanders know about this collateral misconduct is
11 because the survivor reported that he or she was assaulted.
12 It is no wonder that survivors are reluctant to report.

13 So I continue to believe that a fundamental reform is
14 warranted in our military justice system. That is how we
15 finally protect our service members from these crimes, and
16 it is how we will strengthen our military.

17 Mr. Chairman, I am committed to working with you on
18 this issue, and I hope that we can use what we learn today
19 to help solve this problem once and for all.

20 Senator Tillis: Thank you, Senator Gillibrand.

21 Senator McSally?

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1 STATEMENT OF HON. MARTHA McSALLY, U.S. SENATOR FROM
2 ARIZONA

3 Senator McSally: Well, thank you, Chairman Tillis, and
4 I also want to thank Senator Gillibrand for her advocacy for
5 women in uniform and her passion for stopping the crime of
6 sexual assault in the military.

7 This is also a passion of mine for many reasons, and I
8 think I bring a unique and important perspective. My drive
9 to fight against sexual assault in the ranks is not from the
10 outside looking in and it is deeply personal.

11 First, for 2 years, I was honored to be a fighter
12 squadron commander in the United States Air Force. Command
13 is the most impactful duty one can have directly on the
14 lives of service men and women and their families. I was
15 greatly privileged to prepare and then lead my amazing
16 airmen in combat, which is the apex responsibility of any
17 warrior leader.

18 Military commanders are placed in a position of
19 authority and responsibility like none in civilian life.
20 They are not like CEOs or managers or any other supervisor.
21 Commanders have a moral responsibility to ensure readiness
22 of their units which, yes, includes warfighting skills but
23 demands that the commander cultivates and protects and
24 enriches a culture of teamwork, respect, and honor.
25 Conduct, any conduct, that degrades this readiness does not

1 just harm individuals in the ranks. It harms the mission
2 and places at risk the security of our country.

3 Commanders also have a covenant with the men and women
4 under their command. The 1 percent who volunteer to serve
5 in uniform -- they are asked to follow lawful orders that
6 could risk their lives for the mission. In return, it is
7 the commander's responsibility to surround their people with
8 a climate of integrity, discipline, and excellence.

9 During my 26 years in uniform, I witnessed so many
10 weaknesses in the processes involving sexual assault
11 prevention, investigation, and adjudication. It motivated
12 me to make recommendations to Air Force leaders. It shaped
13 my approach to command as a commander, and it informed my
14 advocacy for change while I remained in the military and
15 since I have been in Congress.

16 We have come a long way to stop military sexual
17 assault, but we still have a long way to go. When I first
18 entered the Air Force Academy in the ninth class with women,
19 sexual harassment and assault were prevalent. Victims
20 mostly suffered in silence. It took too many years and too
21 many lives ruined. But thanks to the bravery of some
22 survivors like those on our first panel today, significant
23 change has happened. I am so inspired by the many survivors
24 who found the strength to share their stories, report their
25 assaults, and demand accountability, justice, and change.

1 It is because of you that a light has been shined on this
2 silent epidemic, and so many improvements have been made,
3 including more than 100 legislative actions over the last
4 decade on all aspects of military sexual assault.

5 So like you, I am also a military sexual assault
6 survivor. But unlike so many brave survivors, I did not
7 report being sexually assaulted. Like so many women and
8 men, I did not trust the system at the time. I blamed
9 myself. I was ashamed and confused, and I thought I was
10 strong but felt powerless.

11 The perpetrators abused their position of power in
12 profound ways, and in one case I was preyed upon and then
13 raped by a superior officer. I stayed silent for many years
14 but later in my career, as the military grappled with
15 scandals and their wholly inadequate responses, I felt the
16 need to let some people know I too was a survivor. I was
17 horrified at how my attempt to share generally my
18 experiences were handled. I almost separated from the Air
19 Force at 18 years over my despair. Like many victims, I
20 felt the system was raping me all over again.

21 But I did not quit. I decided to stay and continue to
22 serve and fight and lead to be a voice from within the ranks
23 for women and then in the House and now in the Senate.

24 So this is personal for me too, but it is personal from
25 two perspectives: as a commander who led my airmen into

1 combat and as a survivor of rape and betrayal. I share the
2 disgust of the failures of the military system and many
3 commanders who failed in their responsibilities.

4 But it is for this very reason that we must allow, we
5 must demand that commanders stay at the center of the
6 solution and live up to the moral and legal responsibilities
7 that come with being a commander. We must fix those
8 distortions in the culture of our military that permit
9 sexual harm towards women and, yes, some men as well. We
10 must educate, select, and then further educate commanders
11 who want to do the right thing but who are naive to the
12 realities of sexual assault. We must ensure that all
13 commanders are trained and empowered to take legal action,
14 prosecute fairly, and rid perpetrators from our ranks. And
15 if the commander is the problem or fails in his or her
16 duties, they must be removed and held harshly accountable.

17 I do not take this position lightly. It has been
18 framed often that some people are advocating for the victims
19 while others are advocating for the command chain or the
20 military establishment. This is clearly a false choice.
21 There are many commanders who would welcome taking this
22 responsibility off their plate. Those are the very
23 commanders we do not want leading our troops. We cannot
24 command change from the outside alone. It must be deployed
25 from within. It must be built and constantly maintained and

1 expertly managed by commanders who are themselves educated,
2 conditioned, and given the tools to ensure what you survived
3 and what I survived happens to no warrior under their
4 command. To that end, I very strongly believe that the
5 commander must not be removed from the decision-making
6 responsibility of preventing, detecting, and prosecuting
7 military sexual assault.

8 We are survivors together and I am honored to be here
9 and use my voice and unique experience to work on this
10 mission and stop military sexual assault for good.

11 Thank you, Mr. Chairman.

12 Senator Tillis: Thank you, Senator McSally.

13 Any other members wishing to make comments before we
14 hear from the witnesses?

15 [No response.]

16 Senator Tillis: If not, Colonel Christensen, welcome.

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1 STATEMENT OF COLONEL DON M. CHRISTENSEN, USAF,
2 RETIRED, PRESIDENT, PROTECT OUR DEFENDERS

3 Mr. Christensen: Chairman Tillis, Ranking Member
4 Gillibrand, and members of the subcommittee, thank you for
5 the opportunity to appear before you and for your interest
6 in the military justice system.

7 And, Senator McSally, thank you for those amazing
8 words. We do not see eye to eye on the solution, but
9 sharing that was very, very powerful.

10 As a brief introduction, I retired after 23 years of
11 service as an Air Force JAG, and during this time, I focused
12 my career on practicing military justice. I have served
13 twice as a defense counsel, multiple times as a prosecutor,
14 including as the chief prosecutor of Europe and Southwest
15 Asia and as the chief prosecutor for the Air Force, and I
16 also served as a military judge. For the last 4 years, I
17 have served as President of Protect Our Defenders, a human
18 rights organization dedicated to ending sexual assault in
19 the military.

20 The scourge of sexual assault in the military has
21 rightfully brought great scrutiny on the military justice
22 system and the role of the chain of command. The prevalence
23 estimates over the last decade have vacillated from a high
24 of 26,000 to a low of 15,000.

25 But one thing must be recognized. When it comes to the

1 prevalence rate of sexual assault against women, it is
2 unchanged for the last decade. In 2010, 4.4 percent of women
3 were sexually assaulted in a year. In 2016, the most recent
4 numbers we have, it was 4.3 percent. In other words, for
5 women service members, there has been no real improvement
6 despite decades of promises from leadership and claims that
7 commanders are the solution.

8 To compound this failure to drive down the prevalence
9 rate, the commander-controlled system has failed to deliver
10 accountability. Despite fiscal year 2017 having seen
11 unrestricted reports of sexual assaults skyrocket to an all-
12 time high of 5,111, actual prosecution rates plummeted to
13 7.9 percent. Moreover, the military failed to achieve a
14 conviction for a sex offense in 60 percent of the cases they
15 took to trial, and that is a very few number of cases, about
16 400. As a result, only 166 offenders, or about 3 percent of
17 the 5,111 reports, resulted in a conviction for a
18 nonconsensual sex offense. Put another way, 99 percent of
19 the estimated 15,000 victims never saw justice in their
20 case.

21 To make matters worse, 60 percent of survivors who
22 report openly suffer retaliation that is often career
23 ending. In 2016, the DOD IG found that one-third of women
24 who report are out of the military within 1 year of
25 reporting, typically within 7 months. And their discharge

1 characterization is much lower than the general military
2 population, denying them benefits such as the GI Bill. One
3 way to look at this is a woman is 12 times more likely to
4 suffer retaliation than she is to see her perpetrator held
5 to account.

6 No one can look at these numbers and call this success.
7 We have heard for decades from military leadership how they
8 are going to fix things and how they have zero tolerance.
9 But these statements have proven empty. At the same time,
10 military leadership has pushed back on any effort to
11 modernize the military justice system by giving military
12 prosecutors the authority to make prosecution decisions
13 rather than the very small number of commanders who now have
14 that authority.

15 It is time to accept that making prosecution decisions
16 for serious crimes such as rape, murder, sexual assault,
17 child sex abuse, child pornography possession, among many
18 other serious crimes, are best done by attorneys with
19 significant experience in the courtroom trying such cases.

20 I often hear opponents of reform say we trust
21 commanders to lead our sons and daughters in combat, so why
22 should we not trust them to make prosecution authority. The
23 answer is simple. We trust them to lead in combat because
24 they are members of the profession of arms. By training and
25 experience, they are qualified to make those decisions.

1 However, there is nothing inherent to being a commander that
2 qualifies someone to make prosecution decisions, as the
3 current practice is in the military. We must accept that
4 the profession of law is best suited to make legal decisions
5 just like the medical profession is best suited to make
6 medical decisions. We would never accept a commander
7 telling a doctor how and when to make lifesaving medical
8 decisions. Similarly, we should stop assuming commanders
9 are qualified to make legal decisions.

10 Removing prosecution decisions for serious crimes from
11 the around 400 commanders who have currently had general
12 court martial convening authority would in no way diminish
13 the authority of the remaining 14,000 commanders in the DOD.
14 These commanders would still have all the same authority
15 that they currently have, authority to order suspects into
16 pretrial restraint, to issue no contact orders, to ensure
17 both the victim and the accused have access to services and
18 legal representation, to approve expedited transfers, to
19 administratively discharge people. All those authorities
20 remain. It is a false narrative that commanders would no
21 longer have a vested interest in taking care of victims.
22 Instead, removing prosecution authority would empower
23 commanders to be more vocal on the issue by reducing the
24 risk that their comments would be viewed as unlawful command
25 influence.

1 The ABA has long recognized that prosecution decisions
2 should be made by licensed attorneys subject to ethical
3 standards. That is not a radical concept, and it is past
4 time for this standard to be in the military. We should
5 hold as our ideal whether in the military or in civilian
6 society that we prosecute those who commit crimes when the
7 evidence is legally sufficient. We should never prosecute
8 someone when the evidence fails to meet that legal standard,
9 and we should absolutely never prosecute to send a message
10 when the evidence to prove guilt is lacking. The persons
11 best suited to make that call are independent prosecutors.

12 I thank you and look forward to your questions.

13 [The prepared statement of Mr. Christensen follows:]

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1 Senator Tillis: Thank you, Colonel.

2 Dr. Haring?

3 I should mention that we do have a time limit. You did
4 very well staying within it. We want to make sure we can
5 get to the questions. If you will be mindful of the time on
6 the monitor. Thank you.

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1 STATEMENT OF COLONEL ELLEN HARING, USA, RETIRED, CHIEF
2 EXECUTIVE OFFICER, SERVICE WOMEN'S ACTION NETWORK

3 Dr. Haring: Thank you. Mine will be even shorter. So
4 we will save a little time there.

5 I am Ellen Haring, the CEO of the Service Women's
6 Action Network. I retired from the Army in 2014 after 30
7 years of military service. I am a West Point graduate and I
8 have a master's degree in public policy and a Ph.D. in
9 conflict analysis and resolution from George Mason
10 University. I have taught at the Army's Command and General
11 Staff College, the Army War College, and at Georgetown
12 University. And my academic research and work focus on
13 women and gender in the military.

14 I commanded Army units like yourself at multiple
15 levels. During my very first Army assignment overseas, one
16 of my soldiers was murdered and I closely watched as the
17 criminal investigation and subsequent conviction unfolded.
18 Years later in 1998 when I was a major stationed in Hawaii,
19 I was assigned as the investigating officer in three rape
20 cases. The perpetrator, an NCO, was eventually reassigned
21 to another unit. I juxtapose these two experiences to
22 illustrate the very different ways the military has
23 approached how felony crimes are handled. Fortunately and
24 to the credit of Senator Gillibrand and others, the Army is
25 no longer allowed to assign an untrained officer to

1 investigate cases of rape. Now criminal investigators are
2 responsible for such investigation, but commanders remain in
3 the decision-making process.

4 The Service Women's Action Network is a nonpartisan,
5 nonprofit organization dedicated to supporting, connecting,
6 and advocating for service women past, present, and future.
7 SWAN was established in 2007 by a group of women veterans
8 who were having trouble getting their VA claims approved.
9 The VA did not recognize sexual assault as a potential
10 source of post-traumatic stress the way it recognized combat
11 stress. SWAN decided that they needed to spotlight the
12 problem of military sexual assault in order to get the post-
13 traumatic stress that results from it recognized by the VA.
14 SWAN spent the next decade making military sexual assault
15 visible in and outside of the military. We have worked with
16 law and policymakers, Senator Gillibrand in particular, to
17 change the UCMJ to better support victims of military sexual
18 assault, to hold perpetrators accountable, and to have the
19 post-traumatic stress that results from a sexual assault
20 recognized by the VA.

21 SWAN continues to work with victims, connecting them to
22 resources and advocating on their behalf. SWAN supports the
23 Military Justice Improvement Act because it removes
24 untrained commanders from deciding if, when, and how to move
25 forward in felony cases. Additionally, it eliminates

1 commanders' ability to overturn convictions or to reduce
2 punishments. The UCMJ is a living document and it has
3 repeatedly changed over the years, often in response to or
4 in acknowledgement of its shortcomings. This is one of its
5 shortcomings. And SWAN fully backs a change in the UCMJ at
6 this time.

7 I look forward to your questions.

8 [The prepared statement of Dr. Haring follows:]

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1 Senator Tillis: Thank you.

2 Commander Elliott?

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1 STATEMENT OF LIEUTENANT COMMANDER ERIN LEIGH ELLIOTT,
2 USN

3 Lieutenant Commander Elliott: Good afternoon,
4 Senators, and thank you for inviting me here today. I
5 appreciate the opportunity to speak about my experiences and
6 share my thoughts.

7 I have been in the Navy for a little more than 14
8 years, have served on six different ships, and lived around
9 the country and the world.

10 In August of 2014, someone who I considered a close
11 friend raped me. It was an extremely traumatic experience,
12 one that nearly destroyed me.

13 Initially I made a restricted report. I did not want
14 my commanding officer to know, nor did I want law
15 enforcement involved. I spent months in shock, and the only
16 way I made it through this was with the support of my good
17 friends in the SAPR team.

18 As I progressed in my healing, starting to work through
19 the PTSD anxiety and depression I was diagnosed with due the
20 assault, I moved to a new command with a new commanding
21 officer. I began considering changing my report at this
22 point from restricted to unrestricted. I was very lucky at
23 my new command. I had a wonderful commanding officer and a
24 great work environment. When I decided to change my report
25 to unrestricted, I had amazing support from this commanding

1 officer, someone I consider the best leader I have ever
2 known. He went above and beyond what was required of him in
3 the situation.

4 Unfortunately, I would learn through my experience and
5 through other victims' experiences that this support team is
6 not the norm. While I did not expect everyone to be the
7 great leader he was, I did expect to be treated with the
8 same dignity and respect he showed me, and I was not.

9 When I moved to my new duty station overseas to be a
10 commanding officer of a warship myself, it was made
11 immediately apparent to me that the fact I was a sexual
12 assault survivor was a burden and inconvenience to my
13 bosses, and the upcoming court martial for the person who
14 raped me was just a hindrance to them. Due to the appeals
15 regarding a decision the presiding judge in the case had
16 made, when I reported to the new command, it was unknown
17 when the court martial would happen. One of the first
18 things my new boss said to me regarding the court martial
19 was, well, I hope it is not during an important part of the
20 ship's life, which all I could think was, well, next time I
21 get raped, I will try to plan it better.

22 This was the first of multiple comments that my bosses
23 said to me that not only re-victimized me and were extremely
24 insensitive, but made me seriously question continuing to
25 move forward with the case.

1 One of the most degrading and humiliating experiences
2 was when my boss was forwarded a copy of the NCIS report
3 that discussed intimate details of the assault. I was
4 called into his office where he told me he had received and
5 read the report. After he handed me the report, I read it.
6 I very seriously considered dropping the case as I did not
7 want my boss reading about my vagina.

8 And when I left my ship for a few weeks to be at the
9 court martial, my boss told me how we had to temporarily
10 relieve someone in command for several months because they
11 had cancer and needed to get treatment. He told me that he
12 would much rather go through what I went through than have
13 cancer. I can tell you after being diagnosed and treated
14 for breast cancer last year, I would much rather go through
15 that than the assault.

16 Upon returning from the court martial, nothing within
17 the command environment got better. I was humiliated,
18 ostracized, outcast, and ridiculed from people of every
19 rank. There were multiple events for commanding officers
20 that I was not invited to attend. My ship was given unfair
21 scrutiny, magnitudes greater than what any other ship saw.
22 And what nearly broke me and what almost was as bad as the
23 assault itself, my personal information regarding the
24 assault was divulged to my peers, including counseling
25 information I had only discussed with my bosses who then

1 used it to humiliate and demoralize me. If I could have
2 gotten out of the Navy at that point, I would have, but I
3 was in a contract.

4 As commanding officers in the Navy, we are given a 3-
5 day legal course in preparation for our tours. I, by no
6 means a legal expert, was equipped to deal with the minor
7 infractions that affect good order and discipline. It is my
8 belief, not just as a military sexual assault survivor but
9 as a former commanding officer that some infractions are so
10 grievous, so heinous that they must be elevated to a higher
11 level than just the command level. Sending sexual assault
12 cases to trained military judges shows how serious this
13 crime is taken, that we will not allow perpetrators to get
14 away with this crime, and it reinforces to countless victims
15 that they will be taken seriously.

16 Thank you for your time, Senators, for allowing me to
17 share a small piece of my story with you.

18 [The prepared statement of Lieutenant Commander Elliott
19 follows:]

20 [SUBCOMMITTEE INSERT]

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1 Senator Tillis: Thank you, Commander Elliott.

2 Ms. Bapp?

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1 STATEMENT OF ANGELA BAPP

2 Ms. Bapp: Chairman Tillis, Ranking Member Gillibrand,
3 and members of the subcommittee, thank you for this
4 opportunity to speak to you as a survivor of military sexual
5 assault. I am here to share my story and to shine light on
6 the systemic failures that made justice impossible in my
7 case.

8 I graduated in the top 3 percent of my class at West
9 Point and soon after arrived at Fort Rucker, Alabama to
10 begin my career as an aviation officer. Throughout flight
11 training, I grew to become close friends with a mentor and
12 flight school classmate of mine who was going through a
13 divorce. He arrived at flight school married to an officer,
14 who was given a leadership role in our battalion. After
15 some time, his wife became my company commander, but the
16 relationship between he and I had already progressed.
17 During their divorce, both he and my company commander
18 sought comforts outside of their marriage.

19 Then a different flight school classmate of mine
20 sexually assaulted me. When it occurred, my classmate,
21 married to my commander, was the only who I trusted enough
22 to tell what had just happened to me, to discuss filing a
23 report, and to care for my wellbeing.

24 The sexual assault occurred on a Sunday, and I reported
25 it the following Tuesday. On Friday, I was informed that

1 Fort Rucker's Criminal Investigative Division was
2 investigating me for adultery with my commander's husband
3 not even 3 days after I reported my sexual assault. It
4 became immediately clear that the Army and its Criminal
5 Investigative Division showed more interest in the affair
6 rather than the sexual assault.

7 The following conflicts of interest thereafter.

8 My commander's position of authority gave her immediate
9 access to my higher levels of command, my prosecutor, the
10 investigators, and my cadre members.

11 Prior to my report, my commander contacted the
12 prosecutor who would eventually be assigned to my case about
13 personal business, seeking advice for a personal
14 investigator to investigate her husband's suspected
15 adultery. When her husband came forth as a witness in my
16 case, the prosecutor linked my case to my commander's
17 personal situation. I believe that hurt my case's ability
18 to move forward to trial.

19 My commander also had a preexisting relationship with
20 the installation commanding general, the two-star convening
21 authority responsible for deciding if my sexual assault
22 would go forward to trial. Previously, the general was her
23 brigade commander while she was a lieutenant at Fort
24 Campbell. She requested his audience about the matters of
25 her divorce prior to my sexual assault investigation

1 concluding. This too I believe hurt my case's ability to
2 move forward to trial.

3 Unfortunately, I did not have a commander who was able
4 to serve in the best interests of a sexual assault victim
5 due to these and several other personal conflicts. The
6 incestuous nature of the relationships found in my chain of
7 command made it impossible for me to have a truly objective
8 case.

9 There were many injustices throughout the investigation
10 and thereafter. Most haunting is how the evidence that I
11 volunteered from my body to process my rape kit was later
12 used to substantiate adultery claims instead of provide
13 justice for the sexual assault. Despite the overwhelming
14 quantitative evidence that my assailant violated my body,
15 the results only seemed to confirm my mischaracterization as
16 an adulterer. My brigade commander initiated a commander's
17 investigation for inappropriate relationships and adultery
18 with both my witnesses and assailant prior to the conclusion
19 of my sexual assault case.

20 I was given a general officer memorandum of record from
21 the previously mentioned commanding general, which was filed
22 in my permanent record and effectively ended my career.

23 The following are excerpts from the Army's internal
24 investigation into Fort Rucker's sexual assault failures
25 which resulted in response to me reporting these injustices

1 to Congress.

2 Quote: that victim advocates and the criminal
3 Investigative Division at Fort Rucker provided outdated
4 forms to sexual assault victims that did not fully inform
5 them of their rights, particularly if the victims are
6 suspected of misconduct, which includes representation by a
7 special victim's counsel.

8 The brigade did not properly maintain hard-copy records
9 of these forms, as required by law.

10 The commanding general's extensive travel and improper
11 delegation of SHARP Program duties to levels of command
12 lower than that required of the minimum TRADOC standard led
13 to a deteriorated monthly Sexual Assault Response Board.

14 During that same time, the brigade did not have a
15 sexual assault response coordinator for a 9-month period.

16 Command-subordinate relationships -- and I quote --
17 show obvious conflict of interest. This led to lack of
18 lower level command support for victim and confirms her
19 complaint of feeling isolated. End quote.

20 All I ever wanted to do was serve my country, lead
21 American soldiers, and fly the Apache helicopter. The loss
22 of my military career and my inability to trust larger
23 organizations such as our military has deeply impacted who I
24 am today. I struggle with accomplishing even minor daily
25 tasks, and my quality of mental and emotional health has

1 greatly deteriorated.

2 I hope this testimony highlights that preexisting
3 opinions about an individual can greatly influence the
4 execution of justice in our military. This can negatively
5 impact either the victim or the alleged offender. If my
6 case were handled outside of my chain of command by a truly
7 objective and trained legal professional, I do believe the
8 outcome of my case and life would be different.

9 Thank you again for your time.

10 [The prepared statement of Ms. Bapp follows:]

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1 Senator Tillis: Thank you, Ms. Bapp.

2 Colonel James?

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1 STATEMENT OF COLONEL DOUG JAMES, USAF, RETIRED,
2 PRESIDENT, SAVE OUR HEROES

3 Mr. James: Senators, thank you. I really appreciate
4 the opportunity to be here, and these comments by all here
5 are very riveting and I appreciate it.

6 My name is Doug James. I am an Air Force retired
7 colonel, fighter pilot by trade. I flew the A-10 and the
8 F-15. Now I am honored to be here as President of a
9 nonprofit supporting what we believe are innocent service
10 members.

11 Since our inception in 2015, Save Our Heroes has
12 received approximately 300 cases. A large number involve an
13 allegation of sexual misconduct. Most of those have been
14 vetted and unfortunately reveal a staggering level of false
15 allegations. The false allegation cases all have similar
16 motives: contentious divorce proceedings, breakup of a
17 relationship, or something as simple as a PCS, or a
18 permanent change of station move.

19 I am here to offer testimony as President of Save Our
20 Heroes, specifically our nonprofit's view of the military
21 judicial system. Let me state unequivocally that our
22 organization, Save Our Heroes, deplores any form of sexual
23 harassment and assault, and when facts and evidence are
24 present, those found to be responsible should and must be
25 held accountable in accordance with the rule of law.

1 With that said, our organization strongly believes the
2 Uniform Code of Military Justice has become a threat to
3 national security. Our experience reveals there exists an
4 epidemic of military law enforcement misconduct, procedural
5 misconduct, and unlawful command influence. The common
6 thread of career killing, family destruction, and the lack
7 of holding false accusers accountable has turned the
8 military judicial system into a silent killer and we believe
9 a threat to national security. I do not say that statement
10 lightly, and I understand the sensationalism.

11 The way the military currently addresses allegations of
12 sexual misconduct, everything from the initial investigation
13 through the procedural and administrative stages, is not
14 working. Unfortunately, there is not one silver bullet that
15 can fix the problem, but interestingly there is some
16 agreement amongst this panel on how to start. All of us
17 sitting here understand the system is not working and we all
18 seek justice.

19 We share the understanding the military system is not
20 built nor designed for justice. It is designed to maintain
21 good order and discipline. Justice is different. Justice
22 expects those falsely accused to receive a vigorous
23 investigation in which the truth comes to light where the
24 innocent are not forced into a court martial out of fear to
25 protect a career. Justice also expects the same vigorous

1 investigation when an assault has occurred.

2 The Uniform Code of Military Justice is just really a
3 code. Leave justice out of it. It is a system built on a
4 commander's discretion. If a commander believes a case
5 should move forward regardless of the innocence of the
6 accused, it happens. If a commander believes a case should
7 not move forward because it will not serve him or her in the
8 pursuit of good order and discipline, well, that arbitrary
9 decision is allowed too. The military system is designed to
10 handle military issues. Non-military issues such as sexual
11 assault are best left up to the civilian authorities.

12 That is why Save Our Heroes believes congressional
13 pressure has been ineffective. Congress pressure, whether
14 direct or indirect, has pushed innocent service members to
15 court martials with no legal basis and has not served the
16 needs of real victims. I am sure it was not your intent,
17 but we have found congressional pressure has exacerbated the
18 weakness of the system. Commanders are not interested in
19 the truth but more interested in appeasing Congress. We see
20 commanders doing everything possible to convict someone for
21 something they did not do just to protect their career.

22 At Save Our Heroes, in reference to the UCMJ, we say
23 guilty until proven guilty. Some investigators use
24 underhanded tactics with the goal of disregarding the truth,
25 and at a minimum, convict the accused for some sort of

1 derivative collateral charge. Why? A conviction for a
2 collateral charge allows the government to statistically
3 show a sexual assault conviction.

4 Most importantly, we see the services shifting to non-
5 judicial punishment because they know a baseless allegation
6 would not be validated in a court martial. The military's
7 illogical solution to use non-judicial punishment is almost
8 impossible to defend. Most shockingly, we have seen
9 commanders willing to falsify facts to justify their
10 decisions with NJP. Again, the services can show Congress
11 they are handling the problem in an attempt to maintain
12 their convening authority.

13 Your statistics and this hearing show congressional
14 pressure is not doing what was intended. This cannot be a
15 band-aid fix. A shock to the system is required to change a
16 culture of legal corruption which has permeated the military
17 chain of command.

18 I know there is some discussion about removing the
19 convening authority, but I caution you. In 5 years,
20 Congress may feel the military has a problem with some other
21 crime, maybe spousal abuse as an example. Are we going to
22 make similar changes then? The changes must be able to pass
23 the test of time.

24 In conclusion, I understand the politics associated
25 with this issue. I stand by my strong statement. This is a

1 threat to national security and something needs to be done
2 as soon as possible. When I took an oath, I pledged to
3 defend the Constitution against all enemies foreign and
4 domestic. I believe the UCMJ in its current state is a
5 domestic threat to national security.

6 Thank you again. It is an honor to be here, and I am
7 prepared to answer your questions.

8 [The prepared statement of Mr. James follows:]

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1 Senator Tillis: Thank you, Colonel James.

2 If we could have the staff clear those three chairs
3 between Senator Scott and Colonel James so they can actually
4 see him.

5 I am going to put my time on the end and yield to
6 Senator McSally for the first questions, then Ranking Member
7 Gillibrand.

8 Senator McSally: Thank you, Chairman Tillis.

9 Again, I want to say thanks to Lieutenant Commander
10 Elliott and Ms. Bapp for having the courage to share your
11 stories. I am sorry for what you went through, both with
12 the assaults and then also how you were treated afterwards.
13 And so thank you for being an example of courage for all of
14 us as we all have a common goal to try and stop this from
15 happening to anybody else. I am really grateful for you.

16 Colonel Haring, it is good to see you again. We have
17 worked together for many efforts to try and open all
18 positions for women in the military back at the time where
19 they were closed. So I am grateful for your longstanding
20 commitment and study and leadership on these issues.

21 Part of what your testimony shares and what I have
22 heard you talk about before and what we have talked about
23 before is the underlying root causes of much of what we are
24 talking about here, which is the culture. How do we address
25 the culture of our military who is again responsible for

1 fighting and winning America's wars, who is responsible for
2 the men and women under their care in a very power-based
3 relationship that is very difficult for many people to
4 understand? How do we ensure that that culture is one of
5 respect and honor and dignity, to include everyone, men and
6 women, not being assaulted, not being retaliated against,
7 not being harassed, and everything on the continuum of harm?
8 What are your views on that?

9 Dr. Haring: Thank you. It looks like you lined up my
10 very first response here perfectly because it is a cultural
11 problem. And I think that changing the UCMJ will ultimately
12 -- not an immediate but an ultimate impact will ideally
13 improve the culture. Culture is at the root of the sexual
14 assault problem in the military. Sexual assault is simply
15 not seen as a serious crime. Until it is viewed as a
16 serious crime and treated as a felony, it will continue to
17 pervade our culture. Removing commanders from the decision-
18 making process sends the signal that there are some crimes
19 that are so severe that commanders have no place in deciding
20 if, when, or how they are prosecuted. I believe that it
21 will fundamentally shift how we view sexual assault and
22 ultimately impact our culture in a way that says this
23 behavior is absolutely unacceptable. So that is why I think
24 that it is important to move commanders -- I do not have the
25 same confidence in their skills or abilities as you have.

1 Senator McSally: Thanks. Again, I appreciate the
2 perspectives of everybody on this panel. I respectfully
3 disagree for some of the reasons that I shared. I do not
4 want to take up my time talking more about my strongly held
5 views on that.

6 But there are other cultural underpinnings of what we
7 are talking about here that again create an environment. I
8 cannot figure it out. In all my years, I talk about how you
9 have high school kids go off to basic training, and they are
10 okay with having a female valedictorian or class president,
11 but somehow they get inculcated where there is this
12 resentment that could breed harassment and abuse of power
13 and assault.

14 So that is what I am trying to get at. You are the one
15 with a Ph.D. What are the other issues in the culture that
16 we can be working on together and what we can agree upon so
17 that the military is known and the commanders are equipped
18 to be leading with honor and integrity and ensuring that
19 there is dignity and respect for everyone under their
20 command?

21 Dr. Haring: Yes, that is a great question. And a lot
22 of Ph.D.s have studied this problem and we have not come up
23 -- if we had come up with the answer or a solution to this,
24 everybody would know it by now. It is culturally based. I
25 do not have the answer for you. I just think it is going to

1 take a long time. It is going to take multiple pressure
2 points. I think the UCMJ is simply one pressure point or
3 one change, but there are many more that need to occur.

4 Senator McSally: I do not want commanders to be off
5 the hook. I need them to be more responsible for solving
6 this issue and every other issue that degrades good order
7 and discipline in our ranks. That is what America's mothers
8 and fathers, sons and daughters, husbands and wives have
9 asked them to do, and they need to step up to that
10 responsibility.

11 Lieutenant Commander Elliott, thanks again for sharing
12 your horrific experiences. It sounds like you have
13 experienced the best and the worst of command and how they
14 dealt with you. Did you have a special victim's advocate
15 for this process at all? Could you just share, if you did,
16 what that experience was and how they interacted with you?

17 Lieutenant Commander Elliott: Yes. Excuse me. Are
18 you talking, Senator, about the lawyer or my victim
19 advocate?

20 Senator McSally: Yes. Sorry. The lawyer.

21 Lieutenant Commander Elliott: Yes, ma'am. I did have
22 a special victim's counsel, yes, ma'am. And she was with me
23 every step of the way. I retained her probably about 3
24 months after I made the restricted report when I started
25 thinking about going unrestricted. And so I had some

1 concerns as a lot of people in the military do. And so she
2 was with me, and she was a great service from when I
3 retained her all the way through the court martial and even
4 after that.

5 Senator McSally: Other than changing commanders, which
6 sounds like needed to happen, other than not having people
7 like your commander in command, what else would you change
8 in the process and the experience that you went through?

9 Lieutenant Commander Elliott: When I became in command
10 myself and when I was treated like that, I felt like I had
11 no option. I felt like if I tried to say, hey, you are
12 saying this or doing this or whatever, that I would lose my
13 command. I feel like that we need to have -- and maybe at
14 the time I was not in the right mindset for that. But we
15 need to have a better process for reporting retaliation and
16 who we can talk to about it because if you report and then
17 it is investigated by the same command, it is like what is
18 going to really happen. I feel we need an outside process
19 for that.

20 Senator McSally: Well, I agree. And some of the
21 experiences I observed in the military, clearly there was
22 retaliation and ostracizing and isolating the individual
23 especially when they are in the same unit. I know that was
24 not the case with you. Again, people take a very complex
25 issue and they come down on either he is a rapist or she is

1 a liar, and everybody has to still go to work together. And
2 then there is this isolation by peers not just by superiors,
3 but by peers that sometimes is the cruelest. Did you
4 experience that?

5 Lieutenant Commander Elliott: Absolutely. When I went
6 to go be in command overseas, I was. It was someone that
7 was known as the guy for our boss. He could do no wrong
8 according to our boss, and he was the one that my boss told
9 my personal counseling information to. He came up and
10 yelled at me, told me I was making it up, and I was a
11 horrible officer, all sorts of things like that. He left me
12 in tears. Since he did not like me, other people stopped
13 inviting me to stuff. And then in fact he was sent later on
14 to do inspections on my ship, be the lead inspector, and was
15 extremely critical even though my ship had outside
16 inspectors who had done very well.

17 Senator Tillis: Senator McSally --

18 Senator McSally: I know I am over time.

19 Senator Tillis: I would be happy to yield to another
20 round if you choose to.

21 Senator Gillibrand?

22 Senator Gillibrand: Thank you all for testifying. I
23 am exceedingly grateful.

24 I was very grateful for Senator McSally's personal
25 testimony, and I am deeply affected by that testimony.

1 I want to talk a little about the questions that she
2 had because I think these are the questions. What the
3 Senator said is that she wants to make sure that commanders
4 stay in charge because she believes they need to be
5 preventing, protecting, and prosecuting these cases. I
6 agree on the preventing and protecting. I just disagree on
7 the prosecuting. And when we say you cannot take commanders
8 off the hook, the intention is never to take them off the
9 hook. In fact, the biggest problem is because the military
10 insists on keeping them in charge when they have a poor
11 record of enforcing cases against sexual assault and
12 investigating these cases, we do not actually hold them
13 accountable. There is no leverage to hold them accountable
14 at all.

15 So, Commander Christensen, if we take this decision out
16 of the chain of command, are we taking commanders off the
17 hook? What is your view on what the impact actually will be
18 in their ability to continue to maintain good order and
19 discipline and do their jobs as commanders?

20 Mr. Christensen: Well, thank you, Senator Gillibrand.
21 That is a good question.

22 So, no, it does not take them off the hook. And I
23 think one thing that is lost when people talk about the
24 commander's role, the vast, vast, vast majority of
25 commanders do not have prosecution authority. Senator

1 McSally as a squadron commander did not have prosecution
2 authority. That was at the special court martial level or
3 the general court martial level. Only about 140 general
4 court martial convening authorities in the most recent data
5 we have actually sent a case to trial. We are talking about
6 those 140 people making that decision.

7 Everybody below that has the same exact authority. And
8 so you have a commander who did what the commander did to
9 Lieutenant Commander Elliott. That person is still on the
10 hook for that bad conduct. A commander has an absolute
11 obligation to be taking care of victims and the accused just
12 as they would if that faraway general court martial
13 convening authority has the authority or not. It does not
14 change anything at all.

15 But one thing does change when we talk about
16 accountability. Right now, if you try to hold a commander
17 accountable for making bad decisions when it comes to sexual
18 assault, it violates the concept of unlawful command
19 influence. The Court of Appeals for the Armed Forces is
20 very serious about that right now and is overturning case
21 after case where there is absolutely no question about the
22 accused's guilt of rape. And it is being overturned because
23 of unlawful command influence because of this idea that
24 somebody was going to be held accountable.

25 General Franklin in the Wilkerson case is the perfect

1 example. He was held accountable. He was relieved of
2 command, forced to retire, and as a result, we have had
3 other cases overturned for unlawful command influence.

4 Senator Gillibrand: Thank you, Colonel.

5 Continuing on with Senator McSally's questions, one of
6 the things that she asked that I thought was a very good
7 question is how do you change the culture. When we have
8 asked service members what would make you actually report,
9 overwhelmingly they have answered if you took it out of the
10 chain of command because they are not reporting because they
11 do not have the faith as you did, Ms. Bapp, that your actual
12 commander had your back. I know from the many examples of
13 sexual assault we have heard, the assault often comes from
14 the chain of command. So if there is an inviolate chain of
15 command that if you do not believe your commander is going
16 to have your back because they are the assailant, then you
17 do not necessarily believe his boss or his boss is going to
18 have your back because of that chain.

19 So from a survivor perspective we have heard over and
20 over again that the reason you take it out of the chain of
21 command is because you want someone who is actually trained
22 to make the decision, a technical decision. Is there enough
23 evidence to you, Colonel James? You were very clear that
24 you are very upset because the scales of justice seemed tip,
25 that if a commander just has to be aggressive about making

1 sure there is no sexual assault under his command, they are
2 going to prosecute all cases whether there is evidence or
3 not. We do not want one. It is as egregious for a guilty
4 man to go free as an innocent man to be convicted. Equally
5 as egregious. Justice is blind.

6 So to the question I want to ask about this issue of
7 culture. In your professional opinion, Colonel Christensen,
8 as a former JAG, do you think the MJIA improvement act, if
9 we passed it, which would establish an independent chain of
10 command of prosecutors to make the decisions for the most
11 egregious felony crimes across the board as all felonies, as
12 stated by the other panel members -- do you think that would
13 allow more perpetrators to be brought to trial and would we
14 be able to protect more innocent defendants if we had a more
15 clinical and professional way of handling these cases with
16 no bias? Do you think it would then affect the culture
17 because we would actually be convicting people who are
18 guilty and not convicting people who are not guilty?

19 Mr. Christensen: I absolutely do. Right now, we have
20 a system where we have people who have no faith in the
21 process. If you have faith in the process that independent
22 prosecutors -- and there are ample surveys that have shown
23 such as IAVA, Iraq, Afghanistan Veterans America, where they
24 show that people have more faith if independent prosecutors
25 have this. They also would not diminish their view of the

1 commander. We will get to the point where we can start
2 moving that cultural ball.

3 The Air Force Academy, the other academies have been
4 fighting this culture issue. They have not been able to get
5 at it. And yet, they prosecute almost nobody despite having
6 an horrific amount of sexual assaults at those institutions.

7 Senator Gillibrand: And just last, Commander Elliott,
8 do you believe that if we did change the system, if we
9 allowed trained military prosecutors to make these
10 decisions, not commanders, that would change the retaliation
11 rates and the perception of retaliation by survivors?

12 Lieutenant Commander Elliott: Absolutely. I believe
13 that both the perceived and real retaliation rates would be
14 far less. People would feel a lot less retaliated against.
15 And that is on both sides, both the accused and -- excuse
16 me. It would remove bias from all the sides too.

17 I have talked to other victims who like they have been
18 retaliated again, like, oh, well, you made the CO do this.
19 You made the commanding officer -- excuse me -- do that
20 because by reporting this to retaliate against because these
21 sailors had to leave because of something you did. If it
22 was not that bias, that retaliation would not be there if
23 the COs, or commanding officers, are not making those
24 decisions.

25 Senator Gillibrand: And even if you take this decision

1 outside the chain of command, is it still not the
2 commander's responsibility to ensure good order and
3 discipline and make sure you are not being retaliated
4 against? That still is in their hands, and that is what
5 they are not doing. They are not even doing the things that
6 still rest with them.

7 Lieutenant Commander Elliott: I agree with you, yes.
8 No matter what you always have good order and discipline
9 that you are in charge of as a commanding officer. Like I
10 said earlier, I believe some crimes are so bad that we are
11 taking this seriously and we are moving this outside the
12 chain of command. That is how serious this is.

13 Senator Tillis: Senator Rounds?

14 Senator Rounds: Thank you, Mr. Chairman.

15 First, let me just say thank you to all of you for
16 sharing these episodes in your life.

17 Colonel Christensen, in your view and given your
18 significant military experience and your engagement with
19 victims of sexual assault, what policies and programs have
20 you observed to be effective in the prevention of sexual
21 assault? Are there some programs out there that have been
22 successful?

23 Mr. Christensen: Senator Rounds, I think there have
24 been. I think the training -- although it is often
25 maligned, I think it has raised awareness among the men and

1 women of the services. When I talk to younger service
2 members, I talk to cadets at the academies or cadets in
3 ROTC, I have hope there because I think they are in a better
4 position than the people of my age who are in the service.
5 So I think those are working.

6 I think one of the most significant reforms that has
7 been made is the creation of the special victims counsels,
8 the victim's legal counsel, that advocate in the corner of
9 the victim when they were not there before has been a game
10 changer for victim confidence.

11 And so I think also where we have talked about the de-
12 glamorization of alcohol. Senator McSally, you know that
13 decades ago, alcohol was a huge problem in the military. We
14 have pushed that back.

15 And I also think when we look at the sexual assault
16 numbers, cracking down on hazing and initiation is one of
17 the reasons the male sexual assault rate dropped so much
18 between 2016 and 2014.

19 Senator Rounds: I would also like to touch a little
20 bit on retaliation. In past testimony, you have suggested
21 that most retaliation suffered by the victims of sexual
22 assault comes from their peers from social ostracism, from
23 social media bullying and blaming and shaming.

24 In your view, how can the military system best tackle
25 the online retaliation? I mean, look, young people today --

1 they are all online. How does the military deal with this?
2 If there is an employer situation, in many cases employers
3 have taken different approaches. What is the appropriate
4 way for the military to approach this?

5 Mr. Christensen: Number one would be be aware. There
6 is only so many military publications out there, the Air
7 Force Times, Military Times, Stars and Stripes, where you
8 have comments. And all you have to do is look at the
9 comments on any kind of article dealing with sexual assault,
10 and they are horrific. And oftentimes those people writing
11 those comments are putting their Facebook name right there,
12 or any other major newspaper that is covering that issue.
13 Just look at it and start holding the people who are making
14 these horrific comments accountable. There is freedom of
15 speech, but that does not allow you to bully your fellow
16 members. So be aware of it.

17 Number two, set the standard. Make sure that you are
18 addressing sexual harassment. The sexual harassment rates
19 are so high both in the active force and at the academies,
20 and yet we see no one ever held accountable for it. I
21 believe there were two article 15's given out the last year
22 we have numbers for retaliation. Start taking some people
23 to court. It is okay. It is a discipline tool. Use it as
24 a discipline tool.

25 Senator Rounds: Colonel Haring, the same approach with

1 retaliation. I see you nodding your head. Your thoughts on
2 this in terms of your professional judgment. What is the
3 appropriate way to address the issue of retaliation?

4 Dr. Haring: I have to go back to our earlier
5 discussion on culture. And I wish I had a better formulated
6 response because I think it is a multi-pronged attack that
7 we need to take here. It is not just one thing. Changing
8 the UCMJ is not going to solve this problem alone. I think
9 there are multiple things that we need to be doing.

10 I, Senator McSally -- we have long struggled to even
11 the playing field, allowing women these jobs that they were
12 not viewed as capable of doing. I think that kind of
13 changes the mindset of the way we view women rather than a
14 lesser subcategory of the military. But these changes are
15 happening now and it takes time. I think it is many things
16 simultaneously, and I just think this is one of those
17 things.

18 The other one is letting women serve in all positions
19 and seeing women who are capable and qualified, and that
20 will change the way we view women and then the way that we
21 treat them.

22 And then the retaliation thing. That is a commander
23 issue right there, but that is not something that the UCMJ
24 -- you made a good point. When have we held commanders
25 accountable for the way that they treat it? We never have.

1 We never do as far as I can tell. Very few cases of
2 retaliation are ever brought to trial and are found.

3 Senator Rounds: Thank you.

4 I am out of time, but thank you, Mr. Chairman.

5 Senator Tillis: Senator Duckworth?

6 Senator Duckworth: Thank you, Mr. Chairman.

7 Let me just remark on how in awe I am of the bravery of
8 Lieutenant Commander Elliott and Ms. Bapp for your testimony
9 today and awe also of my colleague, Senator McSally.

10 Let me just start off by saying that I do agree that
11 the military has shown that it has utterly failed at
12 handling sexual assault through the UCMJ process. And I
13 certainly do support removing sexual crimes out of the UCMJ
14 process.

15 But here is where I struggle. As a former commander of
16 an assault helicopter company myself, there are crimes that
17 I want to remain in control of for good order and discipline
18 and the functioning of my unit. For example, violent
19 assaults that are not sexual in nature that have to do with
20 racism, hate crimes, that sort of thing. And that is where
21 my struggle is.

22 And certainly our ranking member has been so kind in
23 working with me, and we have been working on this for years
24 and, Martha, you have as well from our time in the House.
25 And this is something we struggle with. I have to say I

1 still do not see the improvement in the UCMJ process in the
2 military. And so I remain supportive of taking sexual
3 crimes out, but I am not sure that I am there on all
4 felonies or even violent crimes.

5 What I would like to touch on here, though, is beyond
6 the criminal convictions, which we are going to work on --
7 you have our pledge that we will keep working on this. The
8 criminal convictions do provide some sense of justice, but I
9 still do not think it makes you whole, not that you could
10 ever be made whole again the way you were before.

11 But what is there that we can make the lives of
12 survivors better? What more can we do for survivors to make
13 sure that they have what they need to process and heal? And
14 that includes stopping the retaliation. That includes
15 letting you resume your careers and be successful in the
16 careers that you dreamt about from the time that you entered
17 the military.

18 Colonel Haring, Colonel Christensen, could you talk
19 about that? Maybe the four of you could talk a little bit
20 and touch on what would make it -- I hesitate to say better,
21 but what else can be done.

22 Mr. Christensen: Well, it is very controversial for
23 some reason, but I would say start by believing. From the
24 survivors we talked to and protected offenders -- survivors
25 I talked to when I was active duty, it is very hurtful when

1 they feel like their chain of command is not believing them
2 and not supporting them. And so start by believing does not
3 mean you are going to prosecute. To start by believing
4 means I accept that you have been through this traumatic
5 event and I want to be there to help you.

6 I think Congress has done a great deal to help
7 survivors on the back end with the VA. Still a ways to go
8 on that, but the survivor community appreciates that.

9 The other thing is just being able to flourish after
10 this happens and understand that any survivor who has gone
11 through trauma is going to have stumbles. And do not hold
12 those stumbles against them to the degree that they are
13 driven out as the DOD IG has shown. Give them that chance
14 to thrive in the environment even after they have been
15 assaulted.

16 Senator Barrasso: Colonel Haring?

17 Dr. Haring: Thank you.

18 There have been a bunch of changes to try assist
19 victims, and I think the victims can speak more directly.
20 We do see a lot of victims at SWAN. We hear from a lot of
21 victims. And one of the things they have asked for is an
22 actual legitimate, anonymous reporting mechanism, not the
23 restricted versus the unrestricted reporting, but something
24 similar to what has been developed and has been fielding on
25 a number of university campuses and now is getting actually

1 some widespread coverage. It is CALISTO. It is an
2 anonymous reporting system or database where a victim can
3 report their assault and their assailant, just put it into a
4 database. And then what happens is they connect victims
5 that have the same assailant and they allow those victims to
6 connect with each other. Then you are more likely -- if you
7 are not alone, if you have been assaulted by somebody that
8 assaulted another person and now you have connected, you are
9 more likely to come forward. You are more likely to be
10 mutually supporting to each other.

11 That is one idea that we have recommended to DOD, and I
12 understand this summer they may be fielding something
13 similar for the very first time. It is a way for victims to
14 tell their story, to unburden themselves in a certain way,
15 and then potentially be connected to somebody else who was
16 similarly assaulted by the exact same person.

17 Lieutenant Commander Elliott: Senator, I think there
18 is a couple ways to go about it. First of all, commanders
19 need to be trained better to understand that every victim is
20 different. Every victim is different. I wanted to go to
21 work and I focused on work. We had, I know, a victim on our
22 ship, and she got transferred off and she needed a lot of
23 time to process.

24 The other thing is discussing our training. We have
25 improved our training a lot, but I still do not think we

1 address it appropriately. Like me, when I was going through
2 this, I am like I am officer. I am the third highest
3 ranking person on the ship. This does not happen to me.
4 This happens to these junior people. The women are raped in
5 our training. The men are grabbed or body parts put on
6 them. They are not raped. Why do we not address the
7 problems? We are still not doing effective training.

8 Ms. Bapp: Yes. So I believe just have more of a
9 preventative before you even get to be a victim, and I think
10 that that comes from a true understanding. And going back
11 to Senator McSally's comment about how do we change that
12 culture, so I think that right now sexual assault is seen as
13 a fear-based knowledge and it is not taken seriously. I
14 personally, after graduating from the academy, did not
15 believe in the sexual assault response program for many
16 reasons, and it took a truly inspiring leader who I reported
17 to -- we had a candid discussion one day prior to my sexual
18 assault even occurring. And the way that he was able to
19 passionately stand up for women who he has experienced while
20 he was in command -- if we could put those leaders, identify
21 them, truly incentivize them to become these advocates and
22 not just randomly assigned the role, those people who
23 actually want to be there and want to be able protect past,
24 future, and every type of victim, I believe that that would
25 help change the culture.

1 And having people stand up. We have signs that say
2 stand up, speak up, see something, say something. And
3 honestly as a victim being in the Army after a year while I
4 was waiting for the trial, it was insulting to see these
5 signs in the hallways, to see my victim advocate still
6 posted, even though it was not a good experience for me, and
7 to see people draw mustaches on them. SHARP is a joke. We
8 need true leaders to stand up and truly train what we need
9 our soldiers to be expected of. Hold them to the higher
10 standard.

11 Knowledge. Teach them how psychologically to recognize
12 these signs of predation. That was really big for healing
13 for me, understanding what had happened to me, understanding
14 the cycle of abuse. And if commanders could be able to
15 recognize this abuse cycle instead of blaming the victim and
16 instead of maybe even blaming the alleged, they are more
17 knowledge and they have the power still.

18 Senator Barrasso: Thank you.

19 You have been very generous, Mr. Chairman. Thank you.

20 Senator Tillis: Senator Scott?

21 Senator Scott: First, I want to thank everybody for
22 being here. Senator McSally, Lieutenant Commander Elliott
23 and Ms. Bapp. I have got two daughters. It is disgusting
24 that these things happen. When you are raising daughters,
25 you are always scared to death this is going to happen to

1 them. So it is very disappointing that anybody would do this
2 to another human being.

3 For Lieutenant Commander Elliott and Ms. Bapp, when you
4 reported, are you assigned counsel? How does it work?

5 Lieutenant Commander Elliott: Are you talking about
6 the victim's legal counsel?

7 Senator Scott: Do you have counsel that is going to
8 represent you?

9 Lieutenant Commander Elliott: Yes.

10 So from my experience through the court martial, I
11 realized I am merely just a witness for the government.
12 But, yes, so the victim's legal counsel -- they are a lawyer
13 who is there to represent my interest through the entire
14 process and they are with me every step of the way. You are
15 not assigned that. You retain them. So like if I met a
16 lawyer and I did not like that victim's legal counsel, I
17 could go to another one.

18 Senator Scott: But you do not have to pay for it.

19 Lieutenant Commander Elliott: No, sir.

20 Senator Scott: And you had the same thing?

21 Ms. Bapp: No, sir, I did not. I was given an outdated
22 form that did not have the special victim counsel. I had
23 never even heard of a special victim counsel. It took me
24 contacting my colonel aunt. She is a retired brigadier
25 general after serving 30 years in the Army. I contacted her

1 and had to share my personal experiences. She was floored
2 that I had never heard of one or was not given one.

3 Once I had one, things felt a lot better. He was able
4 to provide services for me.

5 However, at a certain point in my investigation, since
6 my commander -- it is a small installation. She had gone to
7 him seeking some advice prior. He technically represented
8 her. There was a conflict of interest, and I lost one of
9 the one truly person who had my back. So it was a great
10 loss for me and something that I was not even afforded the
11 opportunity have in the beginning.

12 Senator Scott: So what did they tell you in the
13 beginning? Did they give you advice that this is not going
14 to go well? I mean, how did they handle it?

15 Lieutenant Commander Elliott: The victim's legal
16 counsel, Senator? No. They are actually there to support
17 our wishes. Mine -- like I started restricted and then went
18 unrestricted. And I talked through all the legal processes
19 of that and the things that I was scared of, the things that
20 worried me. She was just supportive of whatever decision I
21 wanted to make. I remember she told me at one point like
22 even if you change your mind right before you want to
23 testify at a general court martial, she is like if that is
24 what you tell me, then that is what we will do. They are
25 very supportive.

1 Unfortunately, the Navy only has victim legal counsels
2 for sexual assault survivors, but other services have them
3 for domestic violence and that sort of stuff too. It
4 started expanding.

5 Senator Scott: So you had a different experience then.

6 Ms. Bapp: Yes, sir, I did.

7 So when I first reported, I reported to a victim
8 advocate who was not a legal counsel. I expressed my
9 concerns with adultery, and I would like to take the time to
10 say that I do not believe in that. I was very naive, 22
11 years old, graduating from the academy. I had no idea that
12 that was where these friendships were headed to. But I did
13 express to her my concern when it said collateral misconduct
14 and she brushed it off, said, oh, no, that is like if you
15 are underage drinking or something. You cannot get in
16 trouble for that. So, no, you are good. Keep filling out
17 the form. So that was my experience with my collateral
18 misconduct on the day that I reported.

19 Senator Scott: And then once there was a conflict, you
20 got nothing.

21 Ms. Bapp: I sought out the special victim counsel at
22 that point. And he was very helpful, as I mentioned prior.
23 He was a little hesitant just knowing the three lawyers
24 inside the case, knowing what the prosecutor had known that
25 my commander had reached out to him with personal business.

1 That just inevitably taints the investigation and makes it
2 subjective at that point. You just cannot deny that
3 knowledge.

4 Senator Scott: Colonel Christensen, you said a high
5 percentage of cases that go to trial are still -- there is
6 not a conviction. Is there a common theme of why it does
7 not end in conviction?

8 Mr. Christensen: Well, that is like an hour-long
9 answer.

10 Senator Scott: I am sure every case is a little bit
11 different.

12 Mr. Christensen: Every case is a little bit different,
13 but there are systemic issues the way the UCMJ is written
14 that I think skews heavily in favor of conviction. The
15 voting process unlike the voting process in the civilian
16 world where you reach a unanimous verdict either guilty or
17 not guilty, so you have a consensus verdict -- in the
18 military, there is one vote. And if you receive now three-
19 quarters guilty, you are guilty. If you receive less than
20 three-quarters guilty, it is not guilty. And so I think
21 that skews very heavily in favor of not guilty verdicts
22 because there is no compulsion to reach a verdict that
23 everybody agrees with. So I think that is one of the
24 problems.

25 Another problem too is that the military has resisted

1 -- I am assuming that the two JAGs will testify this is not
2 true, but they have resisted efforts to allow people to
3 become real experts at this throughout their career. I left
4 4 years ago. I was the only colonel prosecuting in the Air
5 Force, and I do not think anybody has prosecuted since.

6 Why is that important? Well, sexual assault is
7 complex, and it takes a long time. On the flip side, the
8 accused can go out and hire the most experienced defense
9 counsels in the world in the military justice system and
10 they are going up against 2 to 3-year captains. And so
11 there is an imbalance too in that arena.

12 Senator Scott: Thank you.

13 Senator Tillis: Thank you.

14 Colonel James, I am kind of curious. I noticed some of
15 our allies have moved to the framework that I believe most
16 of this panel would support. And I am kind of curious about
17 what learnings they have. Are they in the same place they
18 were when they first made the transition? I think many of
19 them were motivated to make sure that they were -- or making
20 sure that the rights of the accused were being addressed.
21 So I was kind of curious. What has been their real world
22 experience in terms of convictions, incidents of sexual
23 assault? I do not know how long they have been in place.
24 But give me some idea of how this movement has had a
25 material positive or negative effect among our allied --

1 Mr. James: Sir, I am not prepared to talk about our
2 allies, but we will certainly get back to you and report
3 back because I think that is a fantastic question.

4 But I will say, following up with what Don said there,
5 about the reason we see a lot of these cases going all the
6 way to court martial is there is not really a clear-cut
7 definition in the DOD of what a sexual assault is in the
8 first place. We have cases -- one recently -- where
9 somebody just brushed up against somebody on a bus, and she
10 claimed he looked at her like he wanted to have sex with
11 her. And that is a conviction. And that is what non-
12 judicial punishment is going to be used against. So that is
13 one issue.

14 And the other is training. There is not clear training
15 amongst what sexual assault is. And this is not just me
16 talking. We have got multiple lawyers that we have talked
17 to, military defense attorneys, that have worked through the
18 system and think tanks that have worked through, and we are
19 trying to figure out answers. And that is why even though I
20 disagree with Colonel Christensen, Don, on this one subject,
21 we do agree that something needs to be done. And when I
22 said it is a national security issue, I meant it. It really
23 is.

24 I also will disagree with him on UCI. I think there is
25 a lot of UCI in the system. I could name off a bunch of

1 cases right now, the Wright case. We have got the Chief
2 Barry case, and we have got the Vargas case. Those are just
3 a couple that came to mind when I was sitting here.

4 So I will get back to you, sir, and your staff.

5 Senator Tillis: I think it would be helpful. It would
6 be interesting just to know the timeline, what their
7 experiences have been, and what policy changes they may have
8 made, if they got out ahead of their blockers. I think that
9 would be very helpful as we continue this discussion.

10 Colonel Christensen, I know in some of your either past
11 statements or past testimony, you have talked about the
12 nature of retaliation. I think many people here, who have
13 not studied the subject, would think that this is a
14 commanding officer's retaliation or a superior officer's
15 retaliation. Could you talk a little bit more about what we
16 generally see as retaliation that victims are experiencing?

17 Mr. Christensen: Sure. The SAPR report looks at
18 basically three areas of retaliation, and so you have
19 retaliation from peers, and that is about a third of it.
20 You have retaliation from supervisors. That is about a
21 third. Then you have punitive retaliation, and that is
22 about a third.

23 Senator Tillis: Tell me a little bit about the
24 punitive retaliation.

25 Mr. Christensen: Sure. So these are self-reports from

1 the survivors, and what they say is that after they report,
2 kind of like what Lieutenant Commander Elliott is talking
3 about. You have a career-ender. Or what Ms. Bapp is
4 talking about. You have a career-ending event. And that
5 can happen in a number of ways. So, for example, you can be
6 very overt and we are going to give you an article 15 and we
7 are going to court martial you and we are going to kick you
8 out. Or it can be less obvious and it is a downgrade in
9 your performance report. For those of us who have been in
10 the military, just changing a couple words in a performance
11 report will end somebody's career. And so that is part of
12 it. It can also be you do not get selected for the next
13 level of school, to go in residence, which will also hurt
14 your career. Or you may not get the assignment that you
15 were hoping for. Those are very difficult to prove, but
16 when you look at it systemically over there and you see so
17 many survivors having that same story, you come to a
18 conclusion that it is happening.

19 Senator Tillis: Thank you all.

20 I want to move to the next panel. I know that we are
21 going to be having a vote probably coming up in the middle
22 of the panel.

23 So I want to thank you all for your time here and then
24 follow up. I know that you have collaborated with members,
25 and we hope you will continue to do that. And Colonel James

1 and any others, information that you would like to submit
2 for the record, we would welcome it. Thank you, Lieutenant
3 Commander Elliott, Ms. Bapp, and Senator McSally, for your
4 courage and your leadership.

5 We will now transition to the next panel. If we can
6 get the witnesses to be seated, hopefully we can get in your
7 opening comments, and then I will figure out a way to
8 transition in the hearing in the middle of votes. As the
9 witnesses are being seated, I will go ahead and introduce
10 and then have you make your opening statements. Again, we
11 may have some members go in and out once the vote is called,
12 but we have got at least 15 or 20 minutes before that. So
13 hopefully, we can get most of your opening comments in.

14 Our witnesses on the second panel include Dr. Elizabeth
15 Van Winkle, Executive Director, Office of Force Resiliency
16 in the Office of the Secretary of Defense. Welcome.
17 Lieutenant General Charles Pede, the Judge Advocate General
18 of the Army; Vice Admiral John Hannink, Navy Judge Advocate
19 General; Lieutenant General Jeffrey Rockwell, the Judge
20 Advocate General of the Air Force; and Major General Daniel
21 Lecce -- I knew him as a colonel -- Staff Judge Advocate for
22 the Commandant of the Marine Corps.

23 We will start with Dr. Van Winkle and move straight
24 down the line.

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1 STATEMENT OF ELIZABETH P. VAN WINKLE, EXECUTIVE
2 DIRECTOR, OFFICE OF FORCE RESILIENCE

3 Dr. Van Winkle: Thank you. Chairman Tillis, Ranking
4 Member Gillibrand, and other distinguished members of the
5 subcommittee, thank you for having me here today to discuss
6 sexual assault prevention and response in the military.

7 I am extremely concerned by the results of the most
8 recent survey of the service academies, showing another
9 increase in sexual assault, and about the trends and data
10 that we are seeing. However, I sit before you committed and
11 dedicated to making this right.

12 To be clear, these are not merely data points in yet
13 another DOD report. These are dedicated service members who
14 volunteered and stepped forward out of commitment and
15 loyalty to our nation. We have a profound, sacred
16 obligation to our service members and their safety. The
17 Department remains committed to our goals of ending sexual
18 assault in the military, providing the highest quality
19 response to service members, and holding offenders
20 appropriately accountable.

21 My office oversees the Department's programs and
22 policies that address our critical challenges, including
23 sexual assault, harassment, suicide, and drug use, all of
24 the behaviors or issues we as a society have not yet solved.
25 As the Department of Defense, we are the ones who have been

1 entrusted by this country to lead the way. We must lead,
2 and we are working to do just that.

3 We assess our efforts in a number of ways, using a
4 robust data surveillance system. We conduct scientific
5 surveys every other year to understand the scope of sexual
6 assault and harassment in the force. We conduct focus
7 groups in the survey off-years to detect emerging issues,
8 and we study sexual assault reporting data each year so we
9 can understand more about those who made the courageous
10 decision to report. While we want annual prevalence, that
11 is, the number of people who experience sexual assault each
12 year, to go down, we want the rates of reporting to go up.

13 We have been measuring ourselves in this fashion for
14 more than 10 years, and the last survey with the active
15 force in 2016 found that overall past year prevalence of
16 sexual assault had decreased over the past decade. Our
17 rates of sexual assault reporting more than quadrupled
18 during the same time frame. But we are not seeing the same
19 trends in the military service academies, and that is
20 gravely concerning.

21 In addition, our surveys indicate that retaliation is
22 perceived by an appreciable portion of students and service
23 members who make a report, and these types of behaviors
24 gravely undermine all of our efforts in this space. And
25 while we have seen some periods of progress, our history

1 also shows that sexual assault rates can and do rebound, as
2 they have in the academies. We know we must adjust our
3 approaches as we analyze trends and patterns in the data and
4 as the science evolves.

5 Our early prevention and response efforts were
6 necessary but not sufficient to reduce and eliminate sexual
7 assault across the Department. Measurable and sustained
8 reductions require a strategic approach beyond training, and
9 my written statement offers some of the strategies we will
10 be employing moving forward.

11 The path we are on together is not an easy one. No one
12 action in isolation will take us where we need to be, and
13 there is no single solution to the problem of sexual
14 assault. But we are committed to this battle for the long
15 run.

16 This is not just another job assignment for me. My
17 experience, both outside Federal Government and within the
18 Department, have made me an eyewitness to the human toll
19 that sexual assault can take. I have held countless hands
20 in hospitals during sexual assault forensic exams and in
21 courts during testimonies and verdicts. I have spent time
22 holding a survivor as they sobbed on the floor of a
23 convenience store because they saw somebody that looked a
24 lot like the person that raped them. I have driven to a
25 hospital at 2:00 in the morning because my client tried to

1 take her life rather than live with the memories of her
2 sexual trauma. And I have held on tightly to a 12-year-old
3 girl as she looked through a photo lineup in a police
4 department to identify her rapist when she was walking home
5 from school. I have spoken personally to and I have
6 received emails from brave and amazing military members who
7 want nothing more than to serve this country honorably, but
8 have instead been subjected to this crime.

9 This is personal. I take it personally. I am not
10 alone. I have spoken directly with the Acting Secretary of
11 Defense, the service secretaries, and the military chiefs.
12 I have heard their shared concern. I have seen their
13 frustration and their commitment to eliminating this
14 misconduct from the ranks. At every corner of our military,
15 we must do better. We can do better and we are capable of
16 being better. We are committed to being transparent as we
17 tackle this significant problem.

18 Your interest, your insights, and your support are
19 always welcome, and I want to thank you for everything you
20 do to partner with both my office and the Department on this
21 important issue. I look forward to your questions.

22 [The prepared statement of Dr. Van Winkle follows:]

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1 Senator Tillis: General Lecce?

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1 STATEMENT OF MAJOR GENERAL DANIEL J. LECCE, USMC,
2 STAFF JUDGE ADVOCATE TO THE COMMANDANT OF THE MARINE CORPS

3 General Lecce: Chairman Tillis, Ranking Member
4 Gillibrand, and distinguished members of the subcommittee,
5 on behalf of the Secretary of the Navy and the Commandant of
6 the Marine Corps, thank you for the opportunity to testify
7 today.

8 Chairman, I enjoyed your visit to Camp Lejeune a while
9 back. It is good to see you, sir.

10 In addition to my formal written remarks, which I
11 respectfully request be made part of the record, I would
12 like to address the Marine Corps' efforts focused on sexual
13 assault prevention and response.

14 One sexual assault is too many. The Marine Corps
15 strives to eradicate sexual assault from our ranks by
16 capitalizing on the detailed work of congressional advisory
17 committees and diligently implementing the many statutory
18 changes made in recent years.

19 Like sexual assault, retaliation is unacceptable.
20 Eliminating retaliation is central to the Marine Corps'
21 efforts to combat all destructive behaviors such as
22 harassment, hazing, and bullying. The Marine Corps has
23 developed a comprehensive and holistic approach to eliminate
24 these destructive behaviors.

25 In pursuit of these goals, the Commandant established

1 the Marine Corps Personnel Studies and Oversight Office.
2 Reporting directly to the Assistant Commandant of the Marine
3 Corps, the Director of the Personnel Studies and Oversight
4 Office assesses and provides feedback on initiatives focused
5 on strengthening the Marine Corps' culture and mission
6 readiness. In addition, the Personnel Studies and Oversight
7 Office manages the execution of pending initiatives,
8 collaborates with Training and Education Command on new
9 curriculum content, and establishes advisory committees to
10 ensure the Marine Corps and key stakeholders have an
11 opportunity to participate in the process and meet current
12 and future challenges.

13 Further, nearly 1 year ago, the Commandant published a
14 Marine Corps order on prohibited activities and conduct.
15 Violations of this directive are punishable under the
16 Uniform Code of Military Justice. This order, first,
17 addresses a wide spectrum of conduct, including sexual
18 harassment, hazing, social media misconduct, including the
19 distribution of intimate images, retaliation against victims
20 or those who report criminal offenses and discrimination.
21 Second, it requires all commanders to investigate all
22 complaints and to protect complainants from retaliation.
23 Third, it requires all complaints to be documented in a
24 central database known as the Discrimination and Sexual
25 Harassment Repository. And fourth, it requires all

1 commanders to conduct follow-up assessments and to measure
2 effectiveness through regular command climate surveys both
3 at the assumption of command and at the relief of command.

4 As has been true throughout the history of Marine
5 Corps, commanders are central to the process. They are
6 responsible and accountable for good order and discipline
7 and the welfare of all their marines. The individual marine
8 is our greatest asset. Commanders are responsible and
9 accountable for ensuring all marines are treated with
10 dignity and respect.

11 Finally, all services are in the midst of implementing
12 the Military Justice Act of 2016. This is the broadest
13 reforms to the military justice system since its inception.
14 Many of these reforms are aimed at making the military
15 justice system more fair and transparent both to the public
16 victims and the accused.

17 I believe our collective efforts briefly described
18 above will serve to strengthen the justice system and
19 reinforce public trust and confidence in the military
20 justice system.

21 I look forward to working with you and answering your
22 questions. Thank you.

23 [The prepared statement of General Lecce follows:]

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1 Senator Tillis: General Rockwell?

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1 STATEMENT OF LIEUTENANT GENERAL JEFFREY A. ROCKWELL,
2 USAF, THE JUDGE ADVOCATE GENERAL OF THE AIR FORCE

3 General Rockwell: Chairman Tillis, Ranking Member
4 Gillibrand, distinguished members of the subcommittee,
5 military commands, led by commanders, are responsible for
6 executing our National Defense Strategy to defend the nation
7 and win America's wars. Throughout our history, we have
8 accomplished because of four simple key components: the
9 best people, the best training, the best equipment, and
10 fourth, the most important element that binds together the
11 other three, discipline. Discipline lies at the heart of
12 command and control. Commanders command and control airmen,
13 armed with the best training and equipment to execute our
14 national defense missions. Discipline is commanders'
15 business since they have the ultimate responsibility to
16 build, maintain, and lead the disciplined force necessary to
17 succeed in combat across multiple domains. Discipline makes
18 us ready. Discipline makes us lethal.

19 To build this disciplined force to execute these
20 missions, the military justice system works to strike a
21 careful constitutional balance between all competing
22 equities in the process. That balance is best struck when,
23 at every critical juncture in the process, a commander is
24 armed with the relevant facts, including victim input, and
25 advised by a judge advocate before making a decision on the

1 next critical step in the process.

2 We also know that good order and discipline is best
3 when command operates and executes discipline across the
4 entire continuum of discipline, from prevention efforts in
5 setting standards, duties, and command climate on the left
6 side of that continuum, to the response of courts martial on
7 the right side when standards are not met, and everywhere in
8 between. This disciplinary continuum embodies the concepts
9 of unity of command, unity of effort, and command and
10 control needed to build a ready, lethal, and disciplined
11 force to execute the missions the nation asks of us.

12 This committee and Congress has been instrumental in
13 our efforts to improve military justice, particularly with
14 regard to sexual assault. You have focused the system to be
15 more fair and timely to appropriately address allegations of
16 misconduct that fosters progressive discipline designed to
17 deter and rehabilitate wrongdoing, to respect the dignity of
18 victims of crimes, to protect the rights of accused, and to
19 maintain the trust of airmen and the American people.

20 We have increased our commander training to ensure they
21 are better prepared to exercise their authorities. Before
22 taking command, all commanders receive extensive legal
23 training so they fully understand their responsibilities
24 under the code and the manual. Officers receive similar
25 training at all levels of their professional military

1 education, as do enlisted members.

2 Most importantly as a matter of process, safeguards
3 have been incorporated and gaps closed to maximize legal
4 advice during every key phase or decision point of a case
5 through investigation, adjudication, and final disposition.
6 Our existing statutory authorities mandate that this
7 critical legal advice be independent. Like with all
8 decisions, commanders never make them in a vacuum.
9 Decisions are informed and evidentiary standards are applied
10 at each stage of the process with the advice of a staff
11 judge advocate, along with input from a prosecutor, victim,
12 and accused.

13 A critical component to our fight against sexual
14 assault in the military has been our quest to build trust
15 and confidence in victims. We know that victims must be
16 empowered at every stage of the process. Survivors must
17 believe that their privacy can be protected and that they
18 can regain a sense of control in their lives. Sex assault
19 is a personal violation, and victims must be heard without
20 having the process itself further make them feel victimized.
21 Victims must know that they have a say before any decision
22 is made. Our special victims' counsel have become a vital
23 teammate in our sexual assault prevention and response
24 arsenal.

25 Removing command authority from our process and efforts

1 to date would have a negative effect on military discipline
2 and readiness, jeopardizing ongoing efforts to combat sex
3 assault through a holistic, command-based approach across
4 the continuum of discipline, prevention, and response.

5 Responsibility to uphold the broad system of laws set
6 out in the Manual for Courts-Martial is not an additional
7 duty for commanders. It is interwoven into the concepts of
8 command and unity of effort. It is fundamental for our
9 airmen to have no doubts about who will hold them
10 accountable for mission performance and adherence to
11 standards 24/7, both on and off duty.

12 Our work must continue to prevent and respond to
13 criminal behavior within our ranks. With our holistic
14 focus, we have seen increases in victims reporting and
15 seeking services, with a commensurate increase in
16 investigations, prosecutions, trial, and appellate
17 litigation. Our next steps I believe should focus on
18 addressing evolving issues of retaliation, collateral
19 misconduct, timeliness, and education on the general
20 deterrent effect generated by the cases tried.

21 While there has been much progress, we as judge
22 advocates remain committed to survivors of sexual assault.
23 We remain committed to airmen, and we remain committed to
24 providing sound, independent legal advice to our commanders
25 in a military justice system that has made us the most

1 ready, lethal, and disciplined force in the world.

2 Thank you for hearing us today.

3 [The prepared statement of General Rockwell follows:]

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1 Senator Tillis: Thank you.

2 The vote has been called. It is a hard 15-minute vote,
3 but this is the U.S. Senate, which means we have got about
4 25 minutes, and then they will be back to back.

5 So, Senator Scott, if you intend to ask questions, I
6 will yield my time to you so that if you would like to ask
7 questions before you go to vote.

8 Admiral Hannink?

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1 STATEMENT OF VICE ADMIRAL JOHN G. HANNINK, USN, JUDGE
2 ADVOCATE GENERAL OF THE NAVY

3 Admiral Hannink: Chairman Tillis, Ranking Member
4 Gillibrand, and members of the subcommittee, thanks for the
5 opportunity to appear today.

6 Our Navy guidance clearly states sexual assault is a
7 criminal act, incompatible with Navy core values, high
8 standards of professionalism, and personal discipline.

9 And as I listened to the testimony of the first panel,
10 I am reminded again of the importance of constant assessment
11 and reevaluation of our efforts to improve our institutional
12 capacity to prevent and respond to sexual assault.

13 Everybody's role is important from the sexual assault
14 response coordinators and victim advocates that lead the
15 response efforts to the agents who investigate, and yes, to
16 the colleagues who have to treat each other with dignity and
17 respect.

18 Our Navy regulations emphasize the great responsibility
19 of the commanding officer for his or her command, and it
20 states that the authority of the commanding officer is
21 commensurate with his or her responsibility. In my view, it
22 must remain so, and this authority should not be eroded.

23 The contributions of judge advocates and our legal
24 offices are also an important part of our capability. I
25 would like to highlight two areas.

1 First, in court martial litigation. The Navy JAG Corps
2 established the litigation track in 2007 to improve the
3 overall quality of court martial litigation. This
4 recognized that criminal litigation skills are perishable
5 and that repeated tours in military justice billets are
6 needed to develop the expertise and competence to litigate
7 complex cases, serve as judges, and then to train and
8 supervise more junior attorneys. We now have 81 officers in
9 the litigation track, including 13 captains and 25
10 commanders. And these officers, most of whom are, at any
11 given time, in activities related to courts martial, benefit
12 everyone. They are the special victim investigation and
13 prosecution-trained prosecutors who work with the Naval
14 Criminal Investigative Service and that lead the independent
15 prosecutorial review of cases and prosecute those efforts
16 and proceed to court martial. They also serve as defense
17 counsel, providing critical expertise in doing their
18 demanding work, zealously defending those who are accused of
19 crimes, and doing their utmost to ensure that any conviction
20 only follows a fair trial that adheres to American
21 constitutional standards of due process in a system that
22 seeks justice. They serve as military judges, impartial
23 arbiters of courtroom proceedings, who must have as their
24 only interest that everyone's rights are protected, the
25 accused and the victim. And their efforts provide counsel

1 to commanding officers who consult with judge advocates
2 regularly regarding the disposition of allegations.

3 The judge advocate, however, cannot replace the
4 commanding officer's role in the process. The commanding
5 officer must assess the effect of the offense on the morale,
6 health, safety, welfare, and good order and discipline of
7 the command.

8 And second, I would say related to the litigation
9 aspect is the work of our victims legal counsel. These 33
10 attorneys, five of whom are currently drawn from the
11 litigation track, are dedicated to serving individual
12 victims. They explain the investigation process in the
13 military justice process. They safeguard victim rights and
14 represent their interests and serve as an advocate if there
15 are concerns of retaliation. Of all military justice
16 related initiatives over the past 6 years, this program may
17 have been the biggest positive impact on victim awareness,
18 understanding, and trust in the system.

19 I know there is more work ahead. As the recent report
20 related to the military service academies showed, nothing
21 can be taken for granted. And as the Judge Advocate General
22 of the Navy, it is my responsibility to help look ahead and
23 ask what else needs to be done.

24 I am grateful for the work of congressionally chartered
25 panels that have produced numerous reports over the past 6

1 years from the Response Systems Panel to the Judicial
2 Proceedings Panel and the ongoing advisory committee
3 reviewing the investigation, prosecution, and defense of
4 sexual assault cases. The work of these panels has and will
5 continue to inform my thinking and I am sure many others.

6 I am also grateful for the support of this subcommittee
7 and the organizations represented by the first panel to
8 ensure that we continue to make improvements to our response
9 systems and prevention efforts.

10 Thank you again, Chairman Tillis and Ranking Member
11 Gillibrand.

12 [The prepared statement of Admiral Hannink follows:]

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1 Senator Tillis: Thank you.

2 General Pede?

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1 STATEMENT OF LIEUTENANT GENERAL CHARLES N. PEDE, USA,
2 THE JUDGE ADVOCATE GENERAL OF THE ARMY

3 General Pede: Chairman Tillis, Ranking Member
4 Gillibrand, and members of the committee, thank you very
5 much for the opportunity to appear before you.

6 We have the best Army in the world, and our Army is the
7 most effective force on the battlefield because our
8 commanders and our soldiers are the product of a system of
9 accountability that, at its core, has consequences.

10 A justice system that for 243 years has rested in the
11 hands of those who are responsible for the Army's mission to
12 fight and win wars. That is our commanders.

13 Like many on this committee, for over 15 years, I have
14 worked directly on confronting the issue of sexual assault.
15 In those years, I have worked on numerous legislative
16 changes, most especially article 120 beginning with the
17 tectonic changes of 2007. I was personally involved with
18 Secretary Gerren's efforts to resource the fight and had a
19 direct hand in the establishment of our special victim
20 prosecutor program and later our special victim counsel
21 program. So I appear before you, however, today recognizing
22 there is still much work to do. Our first panel is a
23 reminder of this sacred charge.

24 As the Army Judge Advocate General, I tell you that we
25 shall remain relentless in the Army and focused in getting

1 after this problem and in the protection of our victims, our
2 communities, and of course, always the rights of the accused
3 of these crimes.

4 In short, the commander has always been and must always
5 be the fulcrum to any solution in the Army. Look at our
6 current housing crisis. We outsourced responsibility for
7 housing our soldiers to privatized partners. Who do our
8 families look to for solutions? Who do you look to to drive
9 change? Soldiers look to their commanders. Every town hall
10 is hosted by a commander. Will every commander deal with
11 mold or leaky basements perfectly? Of course, not. But
12 there is no set of leaders on this earth better trained,
13 better resourced, and more consistently successful than an
14 American commander.

15 In my view, so it must be with sexual assault. All of
16 us in this room recognize there is no easy solution. I have
17 been fighting this crime hand in hand with commanders for 31
18 years. But certainly no solution in the military excludes
19 commanders. The notion that stripping commanders of
20 authority over serious crimes will reduce crime, results in
21 more or better prosecutions or higher conviction rates in my
22 view and experience simply is not supported by any empirical
23 evidence. Indeed, the proposition is actually disproved by
24 the empirical evidence.

25 We know this. In the multitude of congressionally

1 mandated studies where diverse panels of experts have
2 exhaustively examined the military justice system, hearing
3 hundreds of witnesses and thousands of hours of testimony,
4 they reported back to you one critical consistent
5 conclusion: the commanders should not be removed from the
6 military justice system.

7 The scope of the sexual assault problem and crisis is
8 as big as the society from which we draw our soldiers. As
9 you know, the Army is refreshed every year with 75,000 new
10 soldiers from every city in America. We are drawn from our
11 society and we face the same problems. In a timely
12 illustration of the breadth of the sexual assault problem, a
13 highly esteemed university recently released the results of
14 a prevalence study wherein nearly half of their female
15 undergraduates said they were sexually assaulted since
16 enrolling at the university. A staggering 48 percent.
17 These females reported an annual rate between 18 and 22
18 percent.

19 I share these statistics not to place blame elsewhere
20 or to distract from the Army's 4.4 percent prevalence data
21 or the 18 percent recently reported at our military academy
22 or to suggest somehow that the Army is like a university
23 because it is certainly not. But the numbers at the
24 university speak to the pervasiveness of the problem in our
25 society at large, especially within certain demographics.

1 Despite the challenge, the Army owns this problem.
2 Discipline is, as George Washington said so many years ago,
3 the soul of an army. It is foundational. It is our DNA.

4 In my professional view, taking away a commander's
5 decision over discipline, acts of misconduct, including the
6 decision to prosecute crime at court martial will
7 fundamentally compromise the readiness and lethality of our
8 Army today and on the next battlefield.

9 Congress and the services have made unprecedented
10 strides to attack this crime. Our statute is aggressive,
11 expansive, forward-thinking. In Army courtrooms 10 years
12 ago, sexual assault offenses comprised 18 percent of Army
13 trials. This past year, 50 percent of Army trials were
14 sexual assault trials. Our statute gave voice to victims.
15 Our SVC program gave voice to victims.

16 We know there is much that remains to be done. We
17 promise you we will continue to get after it, and I thank
18 you for your time.

19 [The prepared statement of General Pede follows:]

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1 Senator Tillis: Senator Scott, I know is going to go
2 vote. And you had a brief question?

3 Senator Scott: First of all, thank you for your
4 concern about this. Thanks for your service and thank you
5 for your commitment.

6 So the first thing is, has anybody been held
7 accountable -- any commanding officer has been held
8 accountable for their failure to properly deal with sexual
9 harassment? Does anybody have any examples of people that
10 have been held accountable for not handling it the proper
11 way?

12 General Pede: Sir, I can tell you that we have -- if
13 we speak to retaliation issues, we have -- I have got a
14 number of cases this year in fiscal year 2018 where I can
15 identify command elements, either the officers that were
16 responding to the allegations, similar to things described
17 in the first panel, that were held accountable. I do not
18 have evidence of courts martial.

19 I would simply offer to the committee that notions of
20 retaliation comprise a spectrum, and some of it is very
21 difficult to criminalize with criminal sanction. But that
22 which is, we have a couple cases where it resulted in a
23 charge at a court martial. But it is very difficult thing
24 to get after criminally, sir.

25 Senator Tillis: Senator Scott, one thing I will tell

1 you is that one of the privileges that Senator Gillibrand
2 and I have as the chair and the ranking member is that we
3 are consulted with promotions that are sent forward. One of
4 the questions that I have asked of the DOD is those are ones
5 that pass muster within the Department in each of the
6 branches. I know that some promotions are held back as a
7 result of somebody's adverse activities being in the file,
8 and then some make it past, a handful that come before us.
9 And I will guarantee you if there is any credible evidence
10 in a file, that person will never get promoted as long as I
11 am in the U.S. Senate. I said there is that congressional
12 responsibility as well. It is not foolproof. I do think
13 that there are probably other actions that we need to take,
14 but there are those checkpoints that you may not have been
15 familiar with being relatively new to the committee.

16 Senator Gillibrand, I think Senator Scott and I are
17 going to go vote. The cloakroom said they are going to
18 close in about 5 minutes.

19 Senator Gillibrand: Lieutenant General Rockwell, your
20 prepared remarks were inaccurate. You said that as further
21 evidence by an increase in investigations, prosecutions,
22 trial, and appellate litigation. In fact, just looking at
23 the last 3 years, we have seen such a reduction in
24 performance, it is mind-blowing. In 2015, 46 percent of the
25 cases were command action considered; in 2016, 47 percent;

1 and 2017, 53 percent.

2 So you assume the commanders are looking at more cases
3 and they had actually sent more to trial. No. So in 2015,
4 33 percent went to trial -- excuse me -- court martials
5 preferred. 33 percent were court martial preferred; 2016,
6 27 percent; in 2017, 22 percent.

7 You would say, well, at least more must be going to
8 trial. Right? No. In fact, in 2015, 20 percent went to
9 trial; in 2016, 13 percent went to trial; in 2017, 11
10 percent went to trial.

11 And you say, well, surely convictions must be up. No.
12 In fact, in 2015, 15 percent were convicted, 413 cases; in
13 2016, 9 percent were convicted, 261 cases; and in fact, in
14 2017, 8 percent resulted in conviction, 284 cases.

15 So we are not going in the right direction on any
16 possible measurable that you could create.

17 And what I am most disturbed about your testimony is
18 that you feel you are doing a good job, and I am just trying
19 to tell you if commanders are in charge of good order and
20 discipline, then why do we have a 59 percent retaliation
21 rate? Why do they allow so much retaliation to happen in
22 the ranks, both professional, both career-wise, and both
23 peer-to-peer? Look, all of these forms of retaliation sit
24 within your jobs of maintaining good order and discipline.

25 So I am very concerned that you are not even briefed

1 well by your people who are helping you to be here to
2 testify because I am sure you did not mean to testify a
3 false statement, General Rockwell. I am certain of that.
4 But the person who wrote your remarks did not look at the
5 actual facts. And so it is disturbing to me that you might
6 not realize the depth of the problem, the depth of the
7 absolute problem.

8 And no one is trying to make commanders less
9 responsible. Nobody. We would like you to maintain good
10 order and discipline. We would like you to stop
11 retaliation. We would like you to stop sexual assault. We
12 would like you to prevent sexual assault. But when it comes
13 to the technical decision, as if there is enough evidence
14 that 3 percent of you who get to decide this, let us leave
15 it to an expert, someone who is trained in criminal justice,
16 who has prosecuted cases and defended case, somebody who has
17 a career in it because you are trying to make these
18 decisions yourself, and it is only 3 percent of you anyway.
19 It is not the average commander. And we are not making you
20 less responsible. We are taking one thing off your to-do
21 list that you are not very good at. That is it. We are
22 just taking one thing off your list.

23 And to say that we are making commanders less involved
24 is a false statement because, first of all, 97 percent of
25 you never have the right to be a convening authority. You

1 are just not senior enough. You are not there. You will
2 never have that right. 97 percent of you have to instill
3 good order and discipline and not have the right to decide
4 whether a case goes to trial.

5 When we had a hearing about article 60 in the beginning
6 of -- 6 years ago, every commander said, oh, commanders must
7 have the right to overturn a jury verdict because that goes
8 to these things that you mentioned, Vice Admiral Hannink.
9 You say we have to be able to assess the effect on morale,
10 safety, health, wellness of the unit. Well, you insisted
11 that you have this right. The Secretary of Defense said,
12 yes, it is a vestige of pre-World War I. We really do not
13 need it. Everyone said, oh, yes, it was not necessary.

14 I promise you this is the same thing. You do not need
15 to decide a technical decision about whether a felony has
16 been committed. You do not need to do that because your job
17 is to make sure that crimes do not get committed, to make
18 sure they get investigated properly, to make sure there is
19 no retaliation, and to make sure you have unit cohesion, and
20 that you actually have good order and discipline, and you do
21 not have 15,000 rapes, sexual assaults, and unwanted sexual
22 contacts a year.

23 And so that is the truth of the matter, and so your
24 testimony is leaving me wanting because I do not think you
25 are up to the task. Every Secretary of Defense for 20 years

1 has said zero tolerance. Never would you accept this level
2 of failure for any other mission you are asked to complete.
3 Never. And never would you say over 25 years, we have been
4 doing our best, zero tolerance, and still have a conviction
5 rate of 3 percent. That is so sad.

6 And, yes, you are right. There is sexual assault
7 everywhere, in society, at college campuses, in the
8 military.

9 And the reason why I am spending so much time trying to
10 professionalize the services is I want you to be state-of-
11 the-art. I want the world to look to the U.S. military and
12 say, yes, we have the greatest men in the world and women,
13 and we have the greatest ability to win wars and to keep
14 national security. We have the best and the brightest. So
15 why not give you the tools that I really think you need to
16 be really good at this too?

17 A lot of DAs around the country are terrible at this.
18 DAs. They are professionals. Their conviction rates are
19 terrible because they do not handle sexual assault well.

20 So why not, as the Navy has done, allow for a
21 professionalization of their JAG system to become career
22 criminal justice lawyers? It is exactly what all the
23 services should do. And then let the prosecutor make the
24 ultimate decision about whether there is enough evidence to
25 go forward to convene a court martial. There is no reason

1 why commanders should not opine on it, should not be part of
2 the process, should not influence the process. But just let
3 it be a technical decision because as our defendants' rights
4 advocates have said, why do we want to push the scales
5 either way?

6 I think a lot of commanders did overreact and say, oh,
7 I am going to send every case to court martial. Well, maybe
8 they did, but if you are sending false cases forward, you
9 are not going to instill confidence in the system. If all
10 of your cases that you move forward end up in not convicting
11 and saying that it did not happen, do you think a survivor
12 is going to think that system works? No. So you only want
13 to send forward the cases that actually have the legitimate
14 basis and have the evidence that a prosecutor would look at
15 and say I can win this case.

16 So I would love to work with all of you on trying to
17 address how we deal with sexual assault better. I do not
18 think you need to retain this right. I think it is a red
19 herring to say we are making you less in charge. We are
20 not. We are just taking one technical decision away so that
21 when Senator McSally testified she was actually assailed by
22 her commanding officer, that a survivor can say the chain of
23 command still has my back because you need to have their
24 back. So let someone else decide who has no skin in the
25 game, who just is going to make a technical decision on the

1 merits of the evidence.

2 I do not think you should fight me on this. I do not
3 think you should fight the millions of survivors who have
4 said this is the one change they want in criminal justice.
5 That is all they are asking, for one change because they
6 just feel like if there is no skin in the game, if there is
7 nobody who has a bias against the accused or against the
8 accuser, that in fact justice might be possible.

9 If you had a higher conviction rate, to Senator
10 McSally's question, what do you do about the culture? I
11 promise you if more bad guys went to jail for sexual assault
12 and rape, you would have less sexual assault and rape. It
13 is how it changes.

14 So I have gone over my time. I do not have questions
15 for any of you. I just want you to know that I deeply want
16 to work with you on this. I want to solve this problem. I
17 think our failure in this is embarrassing.

18 One thing that Senator Tillis asked about was other
19 jurisdictions. So Israel did it in the 1960s. The UK did
20 it maybe 10 years ago. Australia, Canada, Germany,
21 Netherlands -- all of them took this one decision point out
22 of the chain of command for one reason. They did it because
23 of defendants' rights. They thought if you can put someone
24 in jail for more than a year of their life, why not allow a
25 professionalized system to look at it.

1 We know our commanders have so many responsibilities.
2 We know they do an amazing job in winning wars and training
3 troops. I do not know why we ask them to be good at sexual
4 assault cases. It is the hardest case in the world to
5 prosecute. It is the hardest case in the world to get
6 right. People who professionalize in this area still do not
7 do very well at it.

8 So that is my only request. Please work with me on
9 these issues.

10 I am now going to put our hearing in recess to go vote.
11 Thank you for your service. Thank you for your commitment,
12 and thank you for your dedication to our country.

13 [Recess.]

14 Senator Tillis: We will have the committee come back
15 to order.

16 It turns out I was off by about 20 minutes. Apparently
17 the 15-minute vote was roughly 40 minutes.

18 So I suppose I may be the final person to ask
19 questions.

20 General Pede, I want to start with you. You were
21 talking about the empirical data in your opening comments
22 would seem to refute the benefits or that it would produce
23 numbers that would, on their face, be an improvement. Tell
24 me more about that and what the basis of the research was.

25 General Pede: Mr. Chairman, yes, thank you.

1 I was referring in particular to the various
2 commissions' studies that have been directed through
3 congressional and DOD oversight, beginning with the Response
4 Systems Panel, then followed by the Joint Judicial
5 Proceedings Panel, and then now we have the -- well, it is
6 called DAC-IPAD for short. But it is reviewing our cases,
7 our investigations, and our prosecutions. So taken
8 together, although DAC-IPAD is still meeting and their
9 results are preliminary, the Response Systems Panel spoke
10 directly to the issue of the role of the commander.

11 In fact, if I can say in my experience, most were
12 inclined to support Senator Gillibrand's bill as they began
13 their work with that committee. In particular,
14 Representative Holtzman was quite clear on the record that
15 her mind was changed through the course of, I think, over 60
16 public hearings and thousands of witnesses' testimony. She
17 changed her mind. She saw no evidence of that, taking the
18 commander out of the process of justice would solve
19 anything, whether it would improve prosecutions or anything.
20 So her testimony, her statements are quite compelling. But
21 the RSP actually published a statement to that effect as
22 well, sir. The Judicial Proceedings Panel drew similar
23 results.

24 That is particularly what I was referring to and then
25 my own sense, sir, of the empirical data that I know dealing

1 with commanders and dealing with lawyers. My experience is
2 that the desired end state of some kind of improvement,
3 whatever that might be, if it is more prosecutions, higher
4 conviction rates, will not result by removing commanders.
5 So that was the context of my statement, sir.

6 Senator Tillis: Does anyone else have to add to that?

7 I have other questions.

8 Admiral Hannink: Sir, I would just add the feedback I
9 received from our victims legal counsel is that the role of
10 the commander is not the thing that factors into the
11 concerns that they are hearing. They deal a lot with the
12 peer ostracism that was talked about in the last panel. But
13 I think the sense that I get from them kind of reinforces
14 what the Response Systems Panel indicated which, as General
15 Pede said, found no evidence that removing the commander
16 would decrease sexual assaults or increase reporting.

17 Senator Tillis: I did want to go back and ask about in
18 the first panel the discussion of the Fort Rucker incident
19 and the SHARP office. Can I get some information from you,
20 General Pede, on exactly what actions occurred after this
21 was brought to your attention?

22 General Pede: Sir, yes. And again, I would start by
23 offering this committee and you, sir, an acknowledgement
24 that we are not perfect and we will make mistakes. And that
25 investigation, the manner in which Ms. Bapp described some

1 of the errors in the processing of her allegation were
2 mistakes made at the local level. And when we became aware
3 of those, the Army took notice of that. And Fort Rucker
4 itself conducted an investigation, and because of our
5 concerns about what we were hearing, the TRADOC commander,
6 the four-star level commander, decided to conduct an
7 investigation. So we had a very senior level oversight look
8 that discovered and examined the details of, from A to Z,
9 what we think happened in her particular case.

10 We identified errors, and as a result, certain required
11 actions were directed to fix those. One was the training of
12 certain SHARP personnel. One was the termination of SHARP
13 personnel. There were other actions taken. The forms that
14 were used, for example, were out of date. All of that has
15 been fixed.

16 Subsequent to that a DA-IG investigation was conducted
17 to ensure compliance with the requirements of the program
18 and that yielded a positive report back that things had been
19 fixed at that location.

20 And then, of course, sir, I would offer that Army
21 senior leadership was very concerned as well. And they
22 looked at this case very carefully and took appropriate
23 action.

24 Senator Tillis: In the prior panel, I asked a question
25 about our allies who have moved to a program similar to what

1 is being proposed by Senator Gillibrand, or frameworks. And
2 they were doing it, at least based on the information that I
3 have read, to protect the rights of the accuser.

4 There have been some who have said that the standard of
5 evidence or proof, if you were to move this out of command,
6 is a higher bar, and you could have a risk of fewer cases
7 actually being brought forward. Do you all agree or
8 disagree with that? General Lecce, we will start with you.

9 General Lecce: Thank you, Mr. Chairman.

10 I have to state that in the current process, there are
11 lawyers throughout the process, sir. So from really the
12 inception, as we have been briefing, the victims legal
13 counsel is involved in the case, and that as it moves
14 through, we have specially trained prosecutors, special
15 victims investigation prosecutors, and a full team that
16 deals with these cases, sir. Additionally, each general
17 court martial convening has a staff judge advocate assigned
18 who provides advice. So regarding the entire chain of
19 command, lawyers are involved providing advice, good, sound,
20 and accurate advice, on how to handle cases.

21 Frankly, I think if you took the commanders out, then
22 you strip the system of the bedrock, the mantel of command,
23 sir, and that is the welfare of all the marines -- for the
24 Marine Corps -- under his or her command. That includes the
25 victim and the accused and the unit itself, sir.

1 So if you took the commander out, how would that affect
2 prosecution rates? I could not say exactly, sir, but I do
3 not think that you would see an improvement in the rates.
4 You actually might see a decline, sir.

5 Senator Tillis: Anything to add down the line and Dr.
6 Van Winkle, of course.

7 General Rockwell: Mr. Chairman, that was driven by a
8 European Court decision, and it was focused on accused's
9 rights, defendant's rights, which drove that decision or
10 some of that pressure to remove the commanders from that
11 process. We do not see any evidence that it has gotten
12 better -- sexual assault and how we handle it across the
13 board -- in looking at those systems. We are hesitant to
14 look at those systems because we do not tell other countries
15 how to do things, but we are convinced things have not
16 gotten better and probably have gotten worse with regard to
17 attacking sex assault based on that unity of command and
18 unity of effort and continuum issue that we see.

19 Senator Tillis: Admiral, anything to add?

20 Admiral Hannink: I would just add it is very clear
21 that probable cause has to exist for charges to be referred.
22 And in the non-binding disposition guidance that was
23 required by the Military Justice Act of 2016, put out by the
24 Secretary of Defense, it also requires consideration of
25 whether admissible evidence will likely be sufficient to

1 obtain and sustain a conviction in a trial by court martial.
2 So I think that standard is there, and I think in the Navy,
3 just like in the Marine Corps and the other services,
4 lawyers are there in a process talking to and informing the
5 commanders at every step.

6 Senator Tillis: What do you say to the -- and, Dr. Van
7 Winkle, I see you taking notes. So I want to come back to
8 you and maybe you do cleanup on some of the questions, or I
9 should say not cleanup, but you know, like in batting.

10 What about the pushback that says, yes, I have got a
11 lawyer, but it is not a trained lawyer? What is your
12 response to that? I got a lawyer, but they are not somebody
13 who is an expert in sexual assault. I do not know what your
14 resources are and who is in the loop when you have legal
15 advisors, but how would you all respond to that assertion?
16 We will start with General Pede.

17 General Pede: Sir, with respect to the last 10 years
18 in particular, we have devoted extraordinary attention to
19 the development of expertise in the prosecution and defense
20 as well of sexual assault. And so whether it is a
21 prosecutor and a prosecution function, defense function, and
22 now the special victim counsel, sir, superbly trained -- I
23 just attended and spoke to a course in our JAG School in
24 Charlottesville, our special victim counsel course. The
25 training is just top notch. So the level of training and

1 experience that counsel for each of the components of our
2 system is superb. They are well trained. They are also
3 well exercised, sir. The number of cases that we have, as
4 you know, is going up. The allegations are up, and that
5 requires a level of robust energy that I think we would all
6 admire.

7 That does not mean we are not making mistakes, sir.
8 That does not mean there is a learning curve. There is. It
9 is very, very hard. These are the hardest cases to try and
10 win and also to defend, sir.

11 Senator Tillis: Similar position among the others?

12 Admiral Hannink: Yes, sir. In the military justice
13 litigation track that I mentioned, we have 81 officers in
14 there. That is about 10 percent of our Navy JAG Corps: 16
15 billets on the prosecution side, 14 on the defense side. We
16 currently have five in victims legal counsel. And so these
17 are people who, through the course of their career, are
18 spending the majority of their tours in military justice in
19 the courtroom or helping victims.

20 Senator Tillis: Is that somewhat unique to the Navy?

21 Admiral Hannink: I believe that we are the only one
22 with a track, but the other services can tell you how they
23 try to develop similar capability.

24 Senator Tillis: General Rockwell?

25 General Rockwell: Yes, sir. It is similar if you look

1 across the services. Although we may not call it a
2 litigation track, we have a military justice capability that
3 includes significant litigation. When you look at it from
4 an institutional capability across the services -- and I
5 think you need to look at it from a special victims
6 prosecutor standpoint, which we have several of those who
7 handle these complex cases, particularly sex assault --
8 equally our defense counsel are getting very smart in these
9 cases. Our victims counsel are phenomenal.

10 Our victims counsel are driving change. A lot of
11 times, we says they are too young and inexperienced to help
12 this effort. I think it is the other way around. They are
13 actually young and know what they are doing, and they are
14 telling us things that otherwise we would not know about.
15 The power of that program is phenomenal. When you bring all
16 these pieces together, I think we all equally have an
17 institutional capability that is as good as anyone's.

18 Senator Tillis: General Lecce?

19 General Lecce: Mr. Chairman, I have almost 70 LLM,
20 master of law, trained judge advocates in criminal justice.
21 They all have their advanced degree. They rest both on the
22 trial and the defense side. In any complex litigation, sir,
23 involving felony level, including all sexual assaults, these
24 cases are handled by a complex trial team that is made up of
25 -- 4409 is the additional MOS. So that is an LLM trained

1 criminal prosecutor, a civilian, a GS-15 level attorney
2 advisor that has a lot of experience and provides expert
3 advice. Also, sir, we have a specially trained SVIP, as we
4 call it, special victims investigative prosecution
5 investigator, a CID investigator also assigned to the team,
6 along with a legal administrative officer. That is for
7 every case. Every case that is at this level, felony level
8 case, gets this team assigned.

9 So resource-wise, looking at my civilian counterparts,
10 I think I outpace any of them. And getting to Colonel
11 Christensen's point, what we do not have is the number of
12 sets and reps, which may be a good thing because we do not
13 have the level of sexual assault that is occurring out in
14 the civilian world. But I will match my team against any
15 team that you have out there on the civilian side, sir.

16 Senator Tillis: Dr. Van Winkle, in the prior panel
17 CALISTO was mentioned as a tool that allows victims to
18 possibly connect the dots. I think most of what I have read
19 suggests that somebody who is guilty of sexual assault
20 seldom does it only one time. Have we taken a look at this
21 as a tool that we could use within DOD?

22 Dr. Van Winkle: We have, and thanks for the question.

23 Trying to get folks to come forward and report is our
24 primary way of holding offenders appropriately accountable.
25 So it is very critical to us to get more people to come

1 forward and report, understanding it is a personal decision,
2 and we certainly rely on the victim to make that decision
3 themselves.

4 One of the things we hear particularly from our academy
5 students is the concern about coming forward on their own
6 and concern about it being a label that they have to live
7 with. That is something we hear in colleges and
8 universities too. And so the CALISTO program aimed to do a
9 number of things, both address repeat offenders, but also
10 address that concern of being the voice of one.

11 And so what we are doing in terms of this is in the
12 summer, we will be implementing something we are calling the
13 CATCH program, which aligns with what CALISTO does. So it
14 allows somebody to make a restricted report and then, in
15 their own time, to provide us information about the
16 offender, their name, biomarkings, tattoos, those types of
17 things, as well as social media handles, any information
18 that identifies the offender. That then gets locked, only
19 accessible to the military criminal investigative
20 organizations. If somebody else, even years later,
21 identifies the same offender, the military criminal
22 investigative organization is notified. They then notify
23 those victims to let them know that somebody else identified
24 their offender and would they be willing to come forward and
25 make a report. So, again, it aligns with the goals of

1 CALISTO, and we are hoping that it will address some of the
2 concerns that we hear.

3 Senator Tillis: Final question. And we may follow up
4 or our committee staff will be following up because,
5 obviously, this is something we will continue to focus on.

6 Right now, when you are sitting down and you are
7 talking with commanders about expectations, standard
8 operating procedure for how a commander should deal with
9 this, is there a consistent message that every line of
10 service conveys, or is there an adjustment based on the
11 branch? In other words, is this the whole of DOD, this is
12 how we deal with it, this is what we expect of our
13 commanders, or is that left to each of the services to
14 determine how to do that?

15 Dr. Van Winkle: I would have to defer to my colleagues
16 for the specifics on that.

17 I will say that we do often recognize that within this
18 space, not all service members look the same. What
19 resonates for a member of the Air Force does not always
20 resonate for the Marine Corps. So we do allow some of that
21 unique culture.

22 Senator Tillis: Let me poison the well before you
23 answer the question. I do not see any rational basis for
24 any difference. Sexual assault is sexual assault. The
25 expectation that you have the command should be the same.

1 Period. End of story. It would be the same sort of
2 response I would get from somebody that says that housing is
3 different for the Army than it is for the Marines when I am
4 dealing with this family housing situation.

5 Now, one of the problems is we do have some adjustments
6 in changes, and I think that is going to be the root cause
7 of the issues we have.

8 If we want to create a pervasive culture, if we want to
9 have a standard, if we want to have the same expectation of
10 the commanders, I tend to be biased more towards keeping
11 this with the command. I think that it has to start with
12 the whole of DOD because, incidentally, this is not limited
13 to just people who work in the DOD who happen to have
14 uniforms. We hold you all to a higher standard because of
15 the jobs that you do.

16 But I really think we need to look long and hard and
17 for say, for some reason the way that I tell a commander in
18 the Marines to deal with a sexual assault is different than
19 something I tell somebody in the Army, I do not see any
20 rational basis for it. And if we want to perpetuate, we
21 want to make pervasive a culture that is a consistent
22 message in every case, we really ought to think about
23 comparing notes and building on better or best practices.

24 Final comments for any of you on that?

25 General Rockwell: I think the linchpin of this

1 decision, if you break down a process, is in the referral
2 process. That is where you sit down with the commander and
3 say are you going to refer this to court martial or not.
4 The standardization is there under the rules of court
5 martial. Do you have probable cause to determine whether or
6 not an offense has been committed that would take it to the
7 next piece of this process, which is the trial? We are more
8 comfortable with that process, of course, the trial, because
9 it is judge-driven and all the rules that you see at a trial
10 come out then. But you are right, sir. That is where I
11 think is the primary, fundamental point.

12 Senator Tillis: I do not mind somebody taking a lead,
13 but it is like you get to a best practice and build on a
14 best practice versus going four different ways and creating
15 four different cultures.

16 The other thing I will tell you that the Lieutenant
17 Commander brought up in a prior panel, whatever person in
18 the chain of command would have been appropriately shared
19 information about her personal circumstances, I am sure that
20 is a violation somewhere along the lines. And we have to
21 make sure that that is also a part of the culture. I mean,
22 what a disgrace to have somebody do that. That is, somebody
23 whose file comes before me better be thinking about a new
24 line of work because that is not the way to deal with these
25 cases.

1 Look, it was really impactful to see the housing.
2 Again, I was down at Fort Bragg on Friday. And it was
3 amazing to me to see these young people apprehensive about
4 reporting that they have mold growing on their walls.
5 Right?

6 Now, imagine somebody who has been a victim of sexual
7 assault, the bar that that raises for them to actually come
8 out and have trust and feel like they will have the support
9 of their command as they are going through it.

10 I know that not everybody who is accused is guilty.
11 That is why we have a legal process that we have to go
12 through to determine guilt or innocence. But all along the
13 way, we need to show respect for all the parties. We need
14 to keep their information in the utmost confidence, and
15 there needs to be very clear accountability for anybody to
16 share in this information along the way.

17 Well, I want to thank you all for being here today. I
18 tend to go last so that I can go over. And I appreciate you
19 all indulging me on two or three times more time than I had.

20 But this is only the beginning. We will be asking you
21 additional questions. We will be asking you for suggestions
22 on how we can improve things. And I will also have the
23 committee reach out.

24 I want to see how some of our allies have done this and
25 I learn from their strengths, weaknesses, and their own

1 implementation failures.

2 But I tend to agree with the positions of the folks
3 before us today that we can get better. And I also believe
4 that Senator Gillibrand brings a lot of expertise and a lot
5 of ideas on things that can improve the process regardless
6 of whether or not we shift responsibility from the commands.

7 Thank you all for being here.

8 The meeting is adjourned.

9 [Whereupon, at 5:01 p.m., the hearing was adjourned.]

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