



TESTIMONY OF BRIAN K. LEWIS, FORMER PETTY OFFICER THIRD CLASS, US NAVY  
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Before the  
US Senate Armed Services Subcommittee on Personnel  
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Chairwoman Gillibrand and members of the Subcommittee,

Thank you for holding this hearing today on sexual assault in our military. I am very humbled to be here today. I am the first male survivor to testify in front of Congress on this very important topic. Thank you for making this historic event possible. I also want to thank my partner Andy and all the spouses of military sexual trauma survivors. They shoulder a heavy load and deserve our recognition.

I enlisted in the Navy in 1997 and attended numerous schools and advanced to the rank of Fire Control Technician Third Class. During my tour on the USS Frank Cable (AS-40), in August 2000, I was raped by a superior non-commissioned officer. I was ordered by my command not to report this crime to the Naval Criminal Investigative Service. After my command learned of this crime, I was misdiagnosed as having a Personality Disorder, by the current director of the Defense Center of Excellence for Psychological Health and Traumatic Brain Injury, and I was discharged in August 2001. I received a 100% disability rating from the Department of Veterans Affairs in June 2002 for post-traumatic stress disorder as a result of the rape. In August 2004, my petition to change my discharge from general discharge for a personality disorder to a medical retirement for post-traumatic stress disorder was denied by the Board for Correction of Naval. Therefore, I carry my discharge as an official and permanent symbol of shame, on top of the trauma of the physical attack, the retaliation and its aftermath. I fear it will be discussed, when I apply for law school, when I apply to take the bar exam, even when I apply for a job, and I wonder what opportunities it may destroy for me. No one should be forced to undergo such painful and inappropriate treatment. However, I choose not to dwell on what the past has brought my way. I will graduate in May with a Bachelor of Science degree in Paralegal Studies and graduate in December with Master of Science degree in Forensic Studies. I plan to go to law school. And I choose to work toward stopping this crime in our military.

I am here today because I am not alone. My story is all too common. Protect Our Defenders' regularly hears from active duty personnel seeking help as they are being denied opportunities to report, generally retaliated against, diagnosed with errant medical diagnoses or being charged with collateral misconduct after reporting the attack.

One survivor recently discharged put it this way:

*“I still cannot grasp what happened to me. When mentioned to commanders nothing is done – your report gets lost; people turn their backs on you. For ten years, I was honored to wear the uniform, but I was treated like a second class citizen.”*

The culture of victim blaming and retaliation while failing to punish the perpetrator must end.

The DoD regularly acknowledges the crisis. They estimate that 86.5 percent of violent sexual crimes go unreported, of the approximately 19,000 that occur every year.

The military is 85 percent men and 15 percent women. According to the Naval Personnel Command, (2012 Sexual Assault Awareness Month Training Guide) of those 19,000 victims about 10,700 are men and 8,300 are women. To translate this into percentages about 56 percent of estimated sexual assaults in our military are men and 44 percent are women.

Now, what can we do to stop sexual assault in our military? First we must recognize that rape is not just about sex, it’s about violence and power, and sometimes about abuse of authority,

For over 20 years, repeated scandals of sexual violence, cover up and abuse of authority in the military have come to light: including Tailhook, Aberdeen, The Air Force Academy, Marine Barracks Washington and the still unfolding scandal at Lackland AFB.

Reforms passed by Congress or announced by the DoD to-date have clearly not successfully addressed this epidemic. Despite all the rhetoric, things are not getting better. Between 2010-2011, the number of assaults did not decrease, yet actions taken by Commanders regarding sexual assault cases decreased 23%. The number of perpetrators convicted of any charges, even adultery, in a sexual assault court martial decreased 22%. The number of initiated courts-martial fell 8%.

The reforms haven’t worked because they have targeted the symptoms of this epidemic. They have not addressed the root cause, which is that the military justice system is fraught with inherent personal bias, conflict of interest, abuse of authority and too often a low regard for the victim. While civilians have the constitutional protections of an independent judicial system, service-members do not. Service-members must report rape to their commanders. However, if their commanders take action and prove that rape occurred, they also prove a failure of their own leadership.

It is only natural for commanders to want to believe that a crime did not happen. Making it disappear entails less risk for their careers. And, not pursuing prosecution is much less disruptive for their units. Commanders know and work with the people involved, therefore they have biases. All those within the military hierarchy have strong incentives to follow their commanders’ biases. Commanders have tremendous power over the lives and future careers of those in their command. It is only natural that survivors experience repeated patterns of cover-up and retaliation. No wonder Congress’ reforms have not successfully delivered justice within a

military justice system governed by commanders who have strong incentives not to bring rape to justice.

According to DoD, 51% of male victims report that the perpetrator is of higher rank and 26% report that the perpetrator is actually in their chain of command. And 62% of female victims report that the perpetrator is of higher rank and 23% report that the perpetrator is actually in their chain of command.

Congress, through the UCMJ, put commanders in charge of violent sexual crime - from victim care, through the legal and investigative processes these cases involve. Commanders have too often failed to care for the victim or prosecute the perpetrator. They have failed to end this long standing epidemic.

The quest for a quick resolution or an affinity for the defendant sometimes leads the command to reduce sentences, grant clemency or overturn convictions. These decisions are some of the reasons why 86% of victims do not report.

Aviano Air Base commander, General Franklin's recent action to set aside the guilty verdict by a court-martial, against Lt. Col. Wilkerson, for aggravated sexual assault, is yet another example of an action taken by a Commander that will have a chilling effect on military judges and prosecutors, potentially effect future cases and inhibit victims from coming forward. A system that elevates a single individual's authority and discretion over the rule of law often precludes justice and hinders it long into the future.

Colonel Wilkerson's victim reached out to Protect Our Defenders and asked that we communicate on her behalf, in order to protect her identity. A portion of her statement is as follows:

Quote: "I am an independent contractor working at Aviano Air Base since September 2011. I had been working at Aviano for six months when, in March 2012, Colonel Wilkerson sexually assaulted me. I endured eight months of public humiliation and investigations, interviews by OSI and the prosecution. I was interrogated for several hours by Wilkerson's legal counsel without benefit of legal counsel myself. The defense did everything they could to drag my name and character through the mud, and I still went to work and did my job. My superiors and the prosecution team were supportive, professional, worked very hard and believed in me. After the conviction, I was relieved that I could put it behind me and get my life back, hold my head up that I did the right thing

"The actions taken by General Franklin are shocking and disappointing. Why bother to put the investigators, prosecutors, judge, jury and me through this if one person can set justice aside with the swipe of a pen. I was sexually assaulted. The memory will remain but it will not define who I am. I want the focus to be on the ethical issue of a single person wielding the power to derail a decision that was made in a methodical, objective manner with the swipe of a pen. I would like to use the result of my experience to change the process of law to separate sexual assault cases from the military justice system."

Her entire statement has been submitted for the record.

It's time to address the fundamental problem to end this epidemic and eliminate the bias and conflict of interest inherent in the military justice system.

We need to take the reporting, investigation, prosecution, and adjudication outside the chain of command and into an independent office with professional military and civilian oversight. This step is vital to ensuring that victims feel safe to come forward and report. This will also ensure that victims and the accused receive a fair and unbiased look at their cases from a disinterested party.

We also need to ensure that prevention efforts are inclusive of male service members. The majority of prevention efforts are targeted toward females.

As I demonstrated, men are a majority of the victims in the military. DoD's infamous "Ask her when she's sober" marginalizes to male survivors and sends a message that men cannot be raped and therefore are not real survivors.

Men need medical and psychological services crafted specifically for them and made available in gender specific settings. In 2009 the DTFSSAMS recommended this specific step and it is not known whether this recommendation was implemented. Currently there are no residential treatment facilities specializing in treating only male survivors of military sexual trauma. Women can be sent by DoD to any one of a dozen currently run by the Department of Veterans Affairs. Often men cannot even receive effective outpatient therapy. This contributes to a suicide problem. Thirty-five veterans commit suicide every day and only 15 percent are combat related.

Another form of victim blaming comes from military doctors. Under pressure from commands, doctors often diagnose survivors with personality or similar disorders, as a way to discharge survivors from the service. Survivors of MST need to be treated equally with combat troops suffering from PTSD. This means that the ban on Personality Disorder discharges currently in effect should be extended throughout DoD to include survivors of military sexual trauma. Personality Disorders, by definition, cannot come about as the result of a rape. Military doctors need to be held accountable for these false diagnoses. Such weaponizing diagnoses are unfair and unjust to our service men and women who have been victims of sexual assault in our military.

Survivors also need a fair review of their discharges. The military has shoved many survivors out the back door with inaccurate, misleading and very harmful discharges that effect their benefits and future employment opportunities. We need to establish a system separate and apart from the Boards for Correction of Military Records to examine these discharges and grant survivors the medical retirements they are due. Currently the BCMR only changes about 10 percent of discharges. These discharges make it much harder for veterans to find meaningful employment and often impossible to use their earned education benefits. In reviewing the discharges, the Boards, by federal regulation (32 C.F.R. §723.3(e)(2) and other analogous provisions concerning the Army, Air Force, and Coast Guard), must "presume regularity in the conduct of governmental affairs." In other words, they assume the military does not make mistakes. The

military's own sexual assault statistics, though, show it would be far more appropriate to presume that, at least where rape is involved, the military's conduct is predominantly characterized by mistakes. Therefore, today, the system of reviewing discharges is a rubber stamp for a process known to be a deeply flawed. It is broken and unfair to service men and women who have been victims of military sexual trauma. Survivors need to be able to have their discharges reviewed by an independent authority and not the same organization that unjustly damaged them. There should be no presumption that the organization that hurt them did so correctly. This is why we support HR 975, which would allow these erroneous discharges to be reviewed by the same Physical Discharge Review Board that is evaluating combat veterans for medical retirement

In conclusion, even after decades of review and reform by the Department of Defense and by Congress, this epidemic has not been successfully addressed. Men are still invisible and ignored as survivors of military sexual trauma. Reform won't be effective until conflict of interest is removed in military justice, and the reporting, investigation, prosecution, and adjudication of sexual assault is taken outside the chain of command and into an independent office with professional military and civilian oversight. Discharge review is a rubber stamp that causes life-long harm, and needs overhaul. Congress' legislation created these systems that are inherently biased, unfair, and don't work. It is now Congress's duty to pass legislation, so service members can receive justice that is fair, impartial, and finally addresses the military's epidemic of sexual assault.

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