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COMMITTEE ON ARMED SERVICES

STATEMENT OF

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BEFORE THE

SENATE

COMMITTEE ON ARMED SERVICES

SUBCOMMITTEE ON MILITARY PERSONNEL

ON

SEXUAL ASSAULT IN THE MILITARY

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Thank you for this opportunity to testify before the Committee about the Navy's commitment to eliminate sexual assault and, specifically, about the Navy's accountability initiatives.

On behalf of the Honorable Ray Mabus, Secretary of the Navy, and Admiral Jonathan Greenert, the Chief of Naval Operations, I want to assure you that the Navy is committed to eliminating the crime of sexual assault in our ranks. In addition to the toll on individual victims, sexual assault directly impacts operational readiness and unit cohesion. This is rightfully recognized as a leadership issue, not just a legal issue. Exemplifying this commitment, the Navy implemented a multi-faceted approach to address awareness and training, prevention, victim response, and investigation and accountability.

Beginning with awareness and training, in 2009, Secretary Mabus established the Department of the Navy Sexual Assault Prevention and Response Office (DON SAPRO). Since its inception, DON SAPRO has conducted leadership discussions, stakeholder interviews, and focus groups with Sailors and Marines worldwide. In 2010, DON SAPRO conducted the first Department-wide educational program for Sexual Assault Response Coordinators. This educational program was expanded the following year to include shore installation commanding officers and senior regional leaders. Collaboration between DON SAPRO and a Navy training command at Great Lakes in 2011 and 2012 resulted in several local initiatives that yielded groundbreaking objective evidence of successful sexual assault prevention in a high-risk population of Sailor students.

Recognizing that a majority of the sexual assault cases in the Navy involve a perpetrator who is a co-worker or acquaintance of the victim, and that many involve alcohol use, in October 2011, the Navy began teaching Bystander Intervention to our enlisted Sailors going through

initial skills training. Bystander Intervention is a strategy to motivate and mobilize people to act when they see, hear, or otherwise recognize signs of an inappropriate or unsafe situation in order to prevent harm to another person.

Second, the Navy developed and implemented a dynamic and interactive training program for leaders entitled Sexual Assault Prevention and Response Training for Leaders, or SAPR-L. This training, for naval personnel in pay grades E-7 and above, was specifically developed to focus leaders on sexual assault, and to help them better understand the complex dynamics of this crime and the negative behaviors that can foster inappropriate conduct. SAPR-L training has been completed across the Fleet.

The third part of this training and awareness campaign involves training the remaining members of the Fleet. Sexual Assault Prevention and Response Training for the Fleet (SAPR-F) was developed for all Sailors in the grade of E-6 and below and focuses on bystander intervention, responsible decision-making, core values, and de-glamorizing the irresponsible use of alcohol. The unmistakable intent of this training is to empower Sailors to recognize and assume personal responsibility to stop inappropriate behavior. Over 243,000 Sailors (88 percent) in pay grades E-6 and below, active duty and reserve, have completed SAPR-F training to date. The remaining Sailors are scheduled to complete the training by March 31, 2013.

The Department of the Navy Sexual Assault Prevention and Response Office is developing a Sexual Assault Prevention and Response Training for Civilians, or SAPR-C, that will be implemented this summer. This course is intended to complement SAPR-L and SAPR-F by training Department of the Navy civilian personnel and to fulfill the training requirement set out in the Fiscal Year 2012 National Defense Authorization Act.

The Navy Judge Advocate General's Corps (JAG Corps) has been involved at all levels of the Navy's efforts to eliminate sexual assault. Judge advocates are actively engaged in the development and delivery of the Navy's innovative and dynamic training programs, focused on educating the Fleet at all levels. Judge advocates also ensured all commanders were fully trained on how to properly address and respond to allegations of sexual assault. As participants on SAPR-L training teams, judge advocates trained commanding officers, executive officers and command master chiefs (our senior enlisted leaders) on their roles in sexual assault investigations, their responsibilities to support victims and protect the rights of alleged offenders, the Uniform Code of Military Justice (UCMJ) Article covering sexual assault (Article 120), as well as the Secretary of Defense policy that elevates the initial disposition authority for cases involving the offenses of rape, sexual assault, forcible sodomy and attempts to commit those offenses. These training efforts are in addition to the advice judge advocates provide to their commanders on a routine basis.

Victim response is critical to enable a victim to begin the healing process. The Navy is dedicated to ensuring victims of sexual assault receive proper and timely support, to include medical treatment, counseling, and legal assistance. The Navy is hiring 66 credentialed sexual assault prevention and response coordinators and 66 full-time professional, credentialed victim advocates. They will augment the more than 3,000 active-duty command victim advocates, and will work with specially-trained Naval Criminal Investigative Service (NCIS) investigators and JAG Corps prosecutors to form the core of our special victim capability. Our trained legal professionals also deliver direct legal assistance to victims. The JAG Corps instituted a Legal Assistance for Crime Victims conference and has trained more than 150 Navy and Marine Corps attorneys, paralegals, and enlisted personnel to ensure victims' rights are understood and

protected. Victims can contact counsel, and victims eligible for military legal assistance services also have access to legal assistance attorneys to help with a wide variety of legal issues related to being the victim of a crime. Additionally, Navy prosecutors provide victims with explanations of victims' rights; the court-martial process; and available federal, state, or local victim services and compensation.

The Navy JAG Corps' primary mission within sexual assault prevention and response resides with accountability. Offender accountability has both investigative and military justice components. All allegations of sexual assault are referred to NCIS for investigation; NCIS agents are specially trained to conduct adult sexual trauma investigations. Seamless coordination with NCIS is essential. Judge advocates and NCIS special agents who investigate sexual assault allegations coordinate directly in a number of ways. Prosecutors frequently serve as visiting instructors for NCIS courses at the Federal Law Enforcement Training Center in Georgia, and judge advocates participate in Mobile Training Teams to instruct special agents, trial counsel, and paralegals on best practices in sexual assault investigation and prosecution. This cross-training model will also be employed with the 66 full-time civilian victim advocates.

The JAG Corps is also conducting a pilot program with the NCIS Sexual Assault Task Force. The Task Force consists of a small group of special agents assigned to sexual assault allegation investigations. The Task Force meets weekly to review specific case progress and monthly with the senior regional prosecutor and installation Sexual Assault Response Coordinators. This multi-disciplinary approach allows investigators, prosecutors, and sexual assault prevention and response personnel to troubleshoot sexual assault investigations, prosecution, and victim care issues as they arise. It also promotes early cooperation between stakeholders to improve quality of practice and provides the model for our special victim

capability. On the East Coast, the Task Force began meeting in November 2012. On the West Coast, the Task Force began meeting in January 2013. The teams have already identified several means of improving coordination between investigators, prosecutors, and victim advocates. As the pilot program develops, leadership will continue to assess best practices for use in other regions.

Once an NCIS investigation is complete, the case is forwarded to the appropriate commander to make an initial disposition decision. Reports of sexual assault must be reviewed by Navy captains (pay grade O-6) or above who are designated as Special Court-Martial Convening Authorities. Additionally, Initial Disposition Authorities must consult with a judge advocate prior to making disposition determinations.

Once an Initial Disposition Authority decides a case should be prosecuted, the Navy JAG Corps provides prosecutors, defense attorneys, and military judges to conduct the court-martial, as well as active duty and reserve judge advocates with fleet and litigation experience to serve as Investigating Officers at Article 32 pretrial investigation hearings. The JAG Corps' mission includes providing a fair, effective, and efficient military justice system, and we are intensely focused on upholding the special trust placed upon us in the prosecution, defense, and adjudication of sexual assault cases. Accordingly, the JAG Corps has implemented a number of initiatives to ensure the highest level of advocacy in sexual assault litigation.

In 2007, to improve the overall quality of Navy court-martial litigation, the JAG Corps established the Military Justice Litigation Career Track. JAG Corps officers apply for designation as military justice specialists or experts based on their litigation experience. Military Justice Litigation Qualified officers are detailed to lead trial and defense departments at Region Legal Service Offices and Defense Service Offices, which provide Navy prosecutors and defense

counsel, respectively. These officers provide proven experience in the courtroom, personally conducting, adjudicating, or overseeing litigation in sexual assault and other complex cases. The Military Justice Litigation Career Track program increases the experience levels of trial and defense counsel and leverages that experience to enhance the effectiveness of criminal litigation practice.

In 2010, the Navy created Trial Counsel and Defense Counsel Assistance Programs. These separate programs are led by experts in military justice who provide direct support to prosecution and defense counsel. The Navy's Trial Counsel Assistance Program (TCAP) provides high-quality advice, assistance, support and resources for trial counsel (the Navy's court-martial prosecutors) worldwide through every phase of the court-martial process. TCAP counsel may be detailed to serve as trial counsel or assistant trial counsel and have been so detailed in several high visibility cases, to include five sexual assault cases. The TCAP Director is an O-5 Military Justice Litigation Qualified expert and is a former Naval Legal Service Office commanding officer and military judge. The TCAP Deputy Director is a GS-15 expert who specializes in sexual assault prosecution and victims' rights. A former state prosecutor with extensive experience, she previously served as the Director of the National Center for the Prosecution of Violence Against Women and is a noted author in the field. TCAP is also staffed with an O-4 Military Justice Litigation Qualified specialist with several years of litigation experience.

During the past two years, TCAP provided on-site assistance visits, delivering trial advocacy training and prosecution process assessments to all nine Region Legal Service Offices worldwide. Further, TCAP personnel conducted outreach training using a multi-disciplinary approach to improve efforts between prosecutors, NCIS agents, military investigators and other

military justice stake-holders, including Sexual Assault Response Program contributors. TCAP staff conducted advanced family and sexual violence training at the Federal Law Enforcement Training Center and training on alcohol-facilitated sexual assault at the Army JAG Legal Center and School and Air Force Keystone conference. TCAP personnel are frequent instructors at the Naval Justice School, including the Trial Counsel Orientation, Basic Trial Advocacy, Intermediate Trial Advocacy, Senior Trial Counsel, Litigating Complex Cases, Sexual Assault Investigation and Prosecution, and Prosecuting Alcohol Facilitated Sexual Assault courses. TCAP coordinates training and advice closely with Marine Corps TCAP and leverages expertise from other services, including Army TCAP, Highly Qualified Experts, sexual assault investigators, and Special Victim Prosecutors.

The UCMJ requires that qualified military defense counsel be detailed to military members facing trial by special or general court-martial. The Defense Counsel Assistance Program (DCAP) was created to support and enhance the proficiency of the Navy defense bar; provide experienced reach-back and technical expertise for case collaboration; and develop, consolidate and standardize resources for defense counsel. The office primarily supports the Navy trial defense bar with active cases. DCAP personnel are authorized to consult with detailed defense counsel through every phase of the court-martial process. Although not typically assigned as detailed defense counsel, DCAP personnel may be detailed to cases. Like TCAP, the DCAP Director is an O-5 Military Justice Litigation Qualified expert and former military judge. The Director is supported by an O-4 Military Justice Litigation Qualified specialist and a recently hired Highly Qualified Expert, discussed further below.

During the past two years, DCAP provided military justice policy advice and routinely coordinated with the defense services of the Army, Air Force, Marine Corps, and civilian

defense organizations to maximize efficiency and capitalize on expertise. DCAP overhauled the Senior Defense Counsel course to focus on supervisory counsel responsibilities and continued to develop the Navy and Marine Corps Defending Sexual Assault Cases course hosted by the Center for American and International Law. DCAP personnel routinely present training during field assist visits, web seminars, and participate as instructors at a number of courses and seminars. DCAP works closely with civilian defense organizations to make use of the resources at federal and state public defenders' offices.

In 2012, the Navy hired two Highly Qualified Experts (HQEs). One HQE works at the headquarters level to enhance sexual assault litigation training, trial practice, and policy. She has nearly 20 years of experience prosecuting sex crimes, domestic violence, and human trafficking crimes. As part of the JAG Corps' Criminal Law Division, she coordinates with the Naval Justice School and TCAP to ensure prosecutors and defense counsel receive specialized training on prosecuting complex sexual crimes, including the 2012 changes to UCMJ Article 120 and the intricacies of the rape shield provision under Military Rule of Evidence 412. The other HQE works with DCAP. He is a retired Marine Corps Lieutenant Colonel who completed two tours as a military judge while on active duty and has over 15 years of civilian experience as an assistant federal public defender and preeminent civilian military criminal defense attorney. We are in the process of hiring a third HQE with significant civilian criminal litigation and training experience to provide litigation assistance within TCAP.

The Naval Justice School; TCAP or DCAP, as appropriate; and the JAG Corps' Criminal Law Division coordinate specialized training for Navy prosecutors and defense counsel on litigating complex sexual assault crimes. Prosecution of Alcohol-Facilitated Sexual Assaults is a week-long course taught in conjunction with AEquitas, the Prosecutor's Resource on Violence

Against Women. It focuses on substantive aspects of prosecuting alcohol-facilitated sexual assaults and includes small-group practical exercises to hone skills such as conducting direct and cross examinations of sexual assault nurse examiners, toxicologists, victims, and the accused. The Naval Justice School also facilitates Sexual Assault Prosecution and Investigation Mobile Training Teams for prosecutors and NCIS agents. Defending Sexual Assault Cases provides defense counsel training on sexual assault litigation and is taught in conjunction with the Center for American and International Law. The Navy also sends career litigators to civilian post-graduate schools to receive Master of Laws degrees in litigation or trial advocacy.

To further refine the JAG Corps' litigation capabilities, in 2012 the Navy established an externship program and assigned two mid-level career officers to work in the sex crimes units in the Office of the State Attorney in Jacksonville, Florida, and the San Diego District Attorney's Office in San Diego, California. These six-week clinical training externships enabled the officers to gain valuable practical experience and insight into how civilian prosecutor's offices manage a high volume of sexual assault cases.

In summary, the Navy is actively engaged in sexual assault awareness and training, prevention, victim response, and accountability initiatives. The Navy's leaders remain steadfastly committed to getting in front of this problem, eradicating sexual assault within our ranks, and ensuring that sexual assault cases are processed through a fair, effective, and efficient military justice system. I look forward to taking your questions.