

**OVERSIGHT HEARING TO RECEIVE TESTI-
MONY ON PENDING LEGISLATION REGARD-
ING SEXUAL ASSAULTS IN THE MILITARY**

TUESDAY, JUNE 4, 2013

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

The committee met, pursuant to notice, at 9:35 a.m., in room SH-216, Hart Senate Office Building, Senator Carl Levin (chairman) presiding.

Committee members present: Senators Levin, Reed, Nelson, McCaskill, Udall, Hagan, Manchin, Shaheen, Gillibrand, Blumenthal, Donnelly, Hirono, Kaine, King, Inhofe, McCain, Sessions, Chambliss, Wicker, Ayotte, Fischer, Graham, Blunt, and Cruz.

Committee staff members present: Peter K. Levine, staff director; Travis E. Smith, chief clerk; and Leah C. Brewer, nominations and hearings clerk.

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

Minority staff members present: John A. Bonsell, minority staff director; Steven M. Barney, counsel; William S. Castle, general counsel; Samantha L. Clark, associate counsel; Allen M. Edwards, professional staff member; Anthony J. Lazarski, professional staff member; Daniel A. Lerner, professional staff member; and Natalie M. Nicolas, staff assistant.

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

Committee members' assistants present: Carolyn Chuhta, assistant to Senator Reed; Jeff Fatora, assistant to Senator Nelson; Jason Rauch, assistant to Senator McCaskill; Casey Howard, assistant to Senator Udall; Christopher Cannon, assistant to Senator Hagan; Mara Boggs, assistant to Senator Manchin; Chad Kreikemeier, assistant to Senator Shaheen; Moran Banai, Brook Gesser, Brooke Jamison, and Kathryn Parker, assistants to Senator Gillibrand; Ethan Saxon, assistant to Senator Blumenthal; Marta McLellan Ross, assistant to Senator Donnelly; Nick Ikeda, assistant to Senator Hirono; Karen Courington, assistant to Senator Kaine; Steve Smith, assistant to Senator King; Paul C. Hutton IV and Elizabeth Lopez, assistants to Senator McCain; Lenwood Landrum, assistant to Senator Sessions; Todd Harmer, assistant to Senator Chambliss; Joseph Lai, assistant to Senator Wicker; Brad

Bowman, assistant to Senator Ayotte; Peter Schirtzinger, assistant to Senator Fischer; Craig Abele, assistant to Senator Graham; Charles Prosch, assistant to Senator Blunt; and Jeremy Hayes, assistant to Senator Cruz.

OPENING STATEMENT OF SENATOR CARL LEVIN, CHAIRMAN

Chairman LEVIN. Good morning, everybody. The committee meets today to receive testimony on pending legislation regarding sexual assaults in the military.

Before we begin our hearing, we note with sadness the passing of our friend Frank Lautenberg, who is the last World War II veteran serving in the Senate.

Seven bills relating to sexual assault have been introduced in the Senate beginning in March and are now pending before the committee.

Senate bill 538, introduced by Senator McCaskill and others on March 12th.

Senate bill 548, introduced by Senator Klobuchar and others on March 13th.

Senate bill 871, introduced by Senator Murray and others on May 7th.

Senate bill 964, introduced by Senator McCaskill and others on May 15th.

Senate bill 967, introduced by Senator Gillibrand and others on May 16th.

Senate bill 992, introduced by Senator Shaheen and others on May 21st.

And Senate bill 1041, introduced by Senator Blumenthal on May 23rd.

More than 40 Senators have sponsored or cosponsored one or more of these bills. There is good reason for this legislative activity. The problem of sexual assault is of such scope and magnitude that it has become a stain on our military.

Last year, for the fourth year in a row, there were more than 3,000 reported cases of sexual assault in the military, including 2,558 unrestricted reports and an additional 816 restricted reports. Restricted meaning that in accordance with the victim's request, they were handled in a confidential manner and not investigated.

A recent survey conducted by the Department of Defense indicates that the actual number of sexual offenses could be considerably higher, as 6.1 percent of active duty women and 1.2 percent of active duty men surveyed reported having experienced an incident of unwanted sexual contact in the previous 12 months.

Even one case of sexual assault in the military is one too many. Nobody who volunteers to serve our country should be subjected to this kind of treatment by those with whom they serve. The problem is made much worse when the system fails to respond as it should, with an aggressive investigation that brings the perpetrators to justice.

The recent documentary "The Invisible War" has provided tragic and heartbreaking examples of some of these system failures. Every member of this committee wants to drive sexual assault out of the military. The question for us is how can we most effectively achieve this objective?

We have previously—in some cases as recently as last year’s National Defense Authorization Act—taken a number of steps to address the problem of sexual assault in the military to ensure the aggressive investigation and prosecution of sexual offenses and to provide victims of sexual assault the assistance and support that they need and should have.

For example, in the area of training, we have required sexual assault training for servicemembers at each level of military education, sexual assault training of new recruits within the first 2 weeks after entrance on active duty, and enhanced training for new and prospective commanders.

In the area of prevention, we have required regular assessments of command climate and regular surveys of gender relations, and we have prohibited the military from granting waivers to individuals with criminal convictions for sexual offenses to allow them to serve in the military.

In the area of victim protection, we have established requirements for legal assistance for victims of sexual assault, provided for expedited transfers for victims of sexual assault, and required general or flag officer review of any involuntary separation of a victim of sexual assault when requested by the victim to ensure that the victim is not victimized a second time.

In the area of reporting, we have authorized restricted reporting of sexual assaults that enables victims to maintain confidentiality when they choose to do so. We have required that each brigade or equivalent unit have its own full-time trained and qualified Sexual Assault Response Coordinator and sexual assault victim advocate. And we have established strong recordkeeping requirements for reports of sexual assault.

In the area of investigation, prosecution, and penalties, we have required DOD investigative agencies establish special capabilities for investigating and prosecuting sexual offenses, and we have required that any servicemember convicted of a sexual offense be processed for administrative separation when the court-martial punishment does not include a discharge.

Some of these steps being recent, their effectiveness is not yet determined. But we know more needs to be done. The bills now before the committee propose a wide variety of additional actions for us to consider.

These include the following: amending the Uniform Code of Military Justice, the UCMJ, to limit the authority of a convening authority to modify the findings and sentence of a court-martial, requiring that special victims’ counsel be provided to victims of sexual assault, as the Air Force has been doing on a test basis since January.

Bills before us would put into statute the existing regulatory requirement that commanders who receive reports of sexual misconduct offenses submit them to criminal investigators.

Bills before us would require commanders who receive reports of such sexual misconduct to submit them to the next higher officer in the chain of command, would direct the Secretary of Defense to establish a separate legal authority outside the chain of command to determine whether and how to proceed with a case. That would

take the place of the commander, who now serves as the initial disposition authority under current law.

Bills before us would amend the UCMJ to establish a separate convening authority outside the chain of command to appoint courts-martial for serious offenses.

And bills before us would modify the manual for courts-martial to remove the character of the accused as one of the factors to be considered in deciding how to proceed with a case and would require that all substantiated sexual-related offenses be noted in the personnel records of the offender.

Now as important as some of these additional protections and procedural changes may be, we cannot successfully address this problem without a culture change throughout the military. Discipline is the heart of the military culture, and trust is its soul. The plague of sexual assault erodes both the heart and the soul.

We expect our men and women in uniform to be brothers and sisters in arms, to be prepared to take care of each other in the toughest of situations in the face of the enemy. That requires a level of trust that is rarely matched in civilian life, trust sufficient that our soldiers, sailors, airmen, Marines, and Coast Guard personnel are ready to put their lives in their comrades' hands.

That trust is violated when one servicemember sexually assaults another and can only be restored when we have decisively restored discipline and addressed this plague.

The key to cultural change in the military is the chain of command. The Military Services are hierarchical organizations. The tone is set from the top of that chain. The message comes from the top, and accountability rests at the top.

But addressing a systemic problem like sexual assault requires action by all within that chain and especially by the commanders of the units. Only the chain of command can establish a zero tolerance policy for sexual offenses. Only the chain of the command has the authority needed to any problems with command climate that foster or tolerate sexual assaults.

Only the chain of command can protect victims of sexual assaults by ensuring that they are appropriately separated from the alleged perpetrators during the investigation and prosecution of a case. And only the chain of command can be held accountable if it fails to change an unacceptable military culture.

The chain of command has achieved cultural change before. For example, two generations ago when we faced problems with racial dissension in the military and, more recently, with the change to the "don't ask, don't tell" policy. And the chain of command can do it again.

The men and women of our military deserve no less. Our sons and daughters contemplating a career in the military and their parents also deserve that commitment.

We have today three panels of witnesses to help us in our review of these issues. We have asked each of them for their views on the bills that are before us. We are very appreciative of their presence here today.

I will introduce our first panel after Senator Inhofe makes his opening statement.

Senator Inhofe.

STATEMENT OF SENATOR JAMES M. INHOFE

Senator INHOFE. Thank you, Mr. Chairman.

Today, we will address the legal and moral foundation of our Nation's military readiness, the Uniform Code of Military Justice. Under the Constitution, Congress has the unique responsibility to make rules to govern and regulate our military. This responsibility is particularly important as we evaluate the effectiveness of the UCMJ in the context of combating sexual assault.

Last year, we created the Independent Panel to Review the UCMJ and Judicial Proceedings of Sexual Assault Cases, under Section 576 of the fiscal year 2013 NDAA. This panel was tasked with assessing the response systems used to investigate, prosecute, and adjudicate crimes involving sexual assault and related offenses and to develop recommendations on how to improve the effectiveness of those systems. The work of that commission, as I said yesterday on the Senate floor, has only just begun, and we have got to allow it an opportunity to do what it was created to do.

Over the last decade, Congress has passed a number of laws to better equip the Services to combat sexual assault, including 10 provisions in last year's NDAA alone. Now I am not going to read those, but I ask that they be included in the record as part of my statement.

Chairman LEVIN. And they will be.

Senator INHOFE. Our commanders haven't had time enough right now to implement the most recent changes, and some think we need to change things again. I guess what I am saying here is we have made these suggestions. We have 10 changes that are out there that we are evaluating right now. They are doing it as we speak, Mr. Chairman, and they have to get—have time to get this done.

As we consider additional changes to the law in this year's National Defense Authorization Act, we should keep three things in mind. First, and fundamentally, we cannot abolish sexual assault by legislation alone. As you point out, eliminating sexual assault requires commanders to drive cultural change and achieve accountability.

Second, we must allow our commanders an opportunity to address those recent changes in the law and to monitor and assess their effectiveness.

And third, while I share Chairman Levin's concerns that we should not delay considering things that could make immediate, positive changes, I strongly believe that we must be deliberate in making fundamental changes to the UCMJ. I have had several conversations, confidential conversations with other members. I think that is a general agreement.

There is a risk of unintended consequences if we act in haste without thorough and thoughtful review. Rushing to change the law yet again could prove counterproductive to our ultimate objective of providing a sound, effective, efficient, and fair military justice system.

Over the past few weeks, several of my colleagues have introduced bills that propose significant changes to the UCMJ. I thank them for their commitment in combating sexual assault in the military and look forward to working collaboratively with them on

these efforts. But I am opposed to any provision that would remove commanders from their indispensable role in the military justice.

I think one of the things, as Senator Ayotte has been talking about, is to maintain this authority in the commanders and even advance that to a higher command. We must remember that the military is, by necessity, uniquely separate from the civilian society. Military Service requires those who serve to give up certain rights and privileges that civilians enjoy. Those of us who have been in the military understand that.

Those who volunteer to serve must, at times, subordinate their will to that of the commanders appointed over them, under the authority of the Constitution and the UCMJ. The UCMJ forms the foundation of command authority and military readiness.

Sexual assault is an enemy to morale and to readiness. But it is more than just that. It is an affront to the dignity of its victims. The men and women of our military must often tolerate arduous duty, separations from loved ones, and loneliness, but they must not tolerate sexual assault.

Some have criticized our commanders and the military justice system because of a recent case in which a court-martial was set aside. But if you take time and look at the statistics, you will see that commanders have only set aside findings of guilt in extraordinarily rare circumstances, in about 1 percent of the cases. Again, specific details are in my statement.

There is also a suggestion that commanders haven't done a good job of preserving good order and discipline or effectively overseeing the conduct of their forces. But the record does not reflect this.

The Defense Legal Policy Board released a report on military justice in combat zones just last week. This is brand new. A lot of us haven't had a chance to look at this yet. I am encouraged that the main theme of the Defense Legal Policy Board report validates my longstanding position concerning the central role of the joint commander in the administration of justice in deployed theaters of operations.

It states, and I am quoting now, "While good order and discipline is important and essential to any military environment, it is especially vital in the deployed environment. The military justice system is the definitive commanders' tool to preserve good order and discipline, and nowhere is this more important than in a combat zone."

Further, still quoting, "A breakdown of good order and discipline while deployed can have a devastating effect on mission effectiveness. The joint commander is ultimately responsible for the conduct of his forces. As such, the subcommittee has determined that the joint commander must have the authority and apparatus necessary to preserve good order and discipline through the military justice system."

I will be asking—my time is for you to respond to this to see if there is general agreement to this statement, which I have just quoted that just came out last week.

Just how critical this military justice system is to our commanders is demonstrated by the frequency of its use. This report states since 2001, the Army alone has conducted over 800 court-martial in deployed environments. The Navy and Marine Corps

conducted 8 courts-martial in Afghanistan and 34 in Iraq. And the Air Force conducted three courts-martial in Iraq and three in Afghanistan.

We must never take this vital readiness tool from our commanders. It is vitally important that we make sexual assault culturally unacceptable, as the chairman said, in our military. But no change is possible without commanders as agents of that change.

Mr. Chairman, I look forward to this hearing.

[The prepared statement of Senator Inhofe follows:]

Chairman LEVIN. Thank you very much, Senator Inhofe.

We now welcome our first panel. General Martin Dempsey, Chairman of the Joint Chiefs of Staff, and the legal counsel to the Chairman, Brigadier General Richard Gross.

General Ray Odierno, Army Chief of Staff, and Lieutenant General Dana Chipman, Judge Advocate General of the Army.

Admiral Jonathan Greenert, Chief of Naval Operations, and Vice Admiral Nanette DeRenzi, Judge Advocate General of the Navy.

General James Amos, Commandant of the Marine Corps, and Major General Vaughn Ary, Staff Judge Advocate to the Commandant of the Marine Corps.

General Mark Welsh, Chief of Staff of the Air Force; Lieutenant General Richard Harding, Judge Advocate General of the Air Force.

And Admiral Robert Papp, Commandant of the Coast Guard, and Rear Admiral Frederick Kenney, Judge Advocate General of the Coast Guard.

I have asked the witnesses on this panel for one opening statement per Service by the Service Chief, and we have asked all of our witnesses to limit their opening statements to 5 minutes.

I have asked General Odierno to take a little extra time to describe in some detail the current process in the Army for addressing allegations of serious offenses, including to whom a victim can report an offense, who is informed of the offense once it is reported, how they are informed, who conducts the investigation, who decides what offenses to charge, and who decides how to deal with the offenses, whether they are handled by court-martial or by some other means.

I invite our other witnesses in other Services to include any clarifying remarks about the process in their own Service so that we can all understand how allegations are handled now and what could change if some of the proposed legislation under consideration by this committee is adopted.

General Dempsey, again, we thank you and your colleagues for being here today, for your service to our Nation, and we will start with your opening statement.

STATEMENT OF GEN MARTIN E. DEMPSEY, USA, CHAIRMAN OF THE JOINT CHIEFS OF STAFF; ACCOMPANIED BY BG RICHARD C. GROSS, USA, LEGAL COUNSEL TO THE CHAIRMAN OF THE JOINT CHIEFS OF STAFF

General DEMPSEY. Thank you, Chairman Levin, Ranking Member Inhofe, members of the committee. Thank you for this opportunity to discuss our commitment to eliminating sexual assault from the Armed Forces of the United States.

The risks inherent to military service must never include the risk of sexual assault. It is a crime that demands accountability and consequences. It betrays the very trust on which our profession is founded.

We are acting swiftly and deliberately to change a climate that has become a bit complacent. We know that lasting change begins by changing the behaviors that can lead to sexual assault. Therefore, we are taking a comprehensive approach that focuses on prevention, victim advocacy, investigation, accountability, and assessment. All is part of our solemn obligation to safeguard the health of the force.

But we can and must do more to protect victims while preserving the rights of the accused, to prevent and respond to predatory and high-risk behaviors, and to ensure a dignified and respectful work environment. We remain open to every idea and option to accelerate meaningful institutional change.

Legal reform can and should continue to be part of our campaign to end sexual assault. Like my fellow chiefs, I have been attentive to every piece of legislation. There are many reasonable recommendations on the table. In fact, I recently conveyed in writing to the chairman and to the ranking member my sincere interest in further considering many of them.

For example, I see the merit in initiatives to prohibit those convicted of sexual assault from joining our ranks in the first place, to oblige administrative discharge for those convicted of sexual assault, to require commanders to report sexual offenses to the next higher commander in a prompt manner, and to increase transparency and accountability of commanders' actions and decisions.

It is my expectation that the panel established under section 576 of the National Defense Authorization Act for Fiscal Year 2013 will take up these and many other initiatives, and we need it to fully assess all the options and all the potential consequences, both intended and unintended.

As directed by Secretary Hagel, we need the panel to deliberate and to deliver on a more accelerated timeline. We won't be idle while giving time for this due diligence. We will be actively implementing my strategic direction on preventing sexual assault and the department's new Sexual Assault Prevention and Response Plan.

In addition to completing a force-wide stand-down by the 1st of July, we are moving out on nearly 90 near-term actions to catalyze change. Over the next several months, we will assess units for command climate, conduct refresher training for response coordinators and victims' advocates, improve victim counsel and treatment, and much more. We welcome the opportunity to update you regularly on our progress.

As we consider further reforms, the role of the commander should remain central. Our goal should be to hold commanders more accountable, not render them less able to help us correct the crisis.

The commander's responsibility to preserve order and discipline is essential to effecting change. They punish criminals, and they protect victims when and where no other jurisdiction is capable of doing so or lawfully able to do so. Commanders are accountable for

all that goes on in a unit, and ultimately, they are responsible for the success of the missions assigned to them.

Of course, commanders and leaders of every rank must earn that trust and, therefore, to engender trust in their units. Most do. Most do not allow unit cohesion to mask an undercurrent of betrayal. Most rise to the challenge of leadership every day, even under the most demanding physical and moral circumstances.

Our force has within it the moral courage to change course and reaffirm our professional ethos. Working together, we can and will restore trust within the force and with the American people.

Thank you.

[The prepared statement of General Dempsey follows:]

Chairman LEVIN. Thank you very much, General Dempsey.

And now let me call on General Odierno.

STATEMENT OF GEN RAYMOND T. ODIERNO, USA, CHIEF OF STAFF OF THE ARMY; ACCOMPANIED BY LTG DANA K. CHIPMAN, JAGC, USA, JUDGE ADVOCATE GENERAL OF THE U.S. ARMY

General ODIERNO. Thank you, Chairman Levin, Ranking Member Inhofe, and other distinguished members of the committee, for allowing us to testify today.

As we all know, today the Army has a serious problem. We are failing in our efforts to fully protect our people from sexual assault and sexual harassment.

As the Chief of Staff of the Army, as a former commander of forces at every level, and as a parent of two sons and a daughter, the crimes of sexual assault and sexual harassment cut to the core of what I care most about, the health and welfare of American sons and daughters. These crimes violate everything our Army stands for, and they simply cannot be tolerated.

Our military profession is built on the bedrock of trust, the trust that must inherently exist among soldiers and between soldiers and their leaders in order to accomplish the difficult mission in the chaos of war. Recent incidents of sexual assault and harassment demonstrate that we have violated that trust because we have failed to address these crimes in a compassionate, just, and comprehensive way.

Two weeks ago, I told my commanders that combating sexual assault and sexual harassment within our ranks is our number-one priority. I said that because, as chief, my mission is to train and prepare our soldiers for war.

These crimes cut to the heart of the Army's readiness for war. They destroy the very fabric of our force, soldier and unit morale. We will fix this problem.

Our actions now and in the future will be guided by five imperatives. First, we must prevent potential offenders from committing sexual crimes. But when a crime has been committed, we must provide compassionate care and protect the rights of survivors.

Second, every allegation of sexual assault and harassment must be professionally investigated and appropriate action taken.

Third, we must create a climate and an environment in which every person is able to thrive and achieve their full potential without concern of retaliation or stigma if they report a crime.

Fourth, it is imperative that all entities understand their responsibilities—individuals, units, and organizations—and specifically, commanders and leaders. We expect them to create an environment and uphold standards consistent with our Army's and our Nation's values. If not, they will be held accountable.

Fifth, it is imperative that the chain of command is fully engaged and at the center of any solution to combat sexual assault and sexual harassment. Command authority is the most critical mechanism for ensuring discipline, accountability, and unit cohesion.

Our military justice system was deliberately designed to give commanders the tools to reinforce good order by prosecuting misconduct with a variety of judicial and nonjudicial punishments so that commanders can not only prosecute crimes, but also punish minor infractions that contribute to indiscipline.

The UCMJ allows us to punish misconduct on any scale quickly, visibly, and locally anywhere in the world, but it is clear we must implement a system of checks and balances to ensure our commanders and their legal advisers reinforce one another's mutual responsibilities to administer the Uniform Code of Military Justice.

Military commanders have a far wider range of options available to them than civilian law enforcement, from four levels of court-martial, nonjudicial punishment, administrative discharge, and nonpunitive measures. These options allow commanders to address the entire spectrum of sexual misconduct from verbal harassment up to and including rape.

It allows commanders to prosecute multiple crimes at the same time, sexual or otherwise, which is essential to the commander's effort to build the right climate within a unit. And it allows commanders to prosecute crimes with the full backing of the U.S. Army.

Take the recent example of a victim who was sexually assaulted by a soldier off post in Colorado. Civilian law enforcement conducted an initial investigation but determined they did not have enough sufficient resources to investigate or prosecute the case.

The local commander directed Army CID to further investigate this dormant case. They uncovered three additional victims that were sexually assaulted or battered by the accused in several locations across Colorado and Texas. The soldier's chain of command referred the case to court-martial, where the accused was convicted of numerous sexual assault offenses and sentenced to 35 years and a dishonorable discharge.

This case illustrates the flexibility of UCMJ to prosecute multiple crimes committed across multiple civilian jurisdictions. If the commander had been removed from this, his or her central role in administering justice for sexual assault case, it could have prevented justice in this particular case.

If I believed that removing commanders from their central role of responsibility in addressing sexual assault would solve these crimes within our ranks, I would be your strongest proponent. But removing commanders, making commanders less responsible and less accountable will not work.

It will undermine the readiness of the force. It will inhibit our commanders' ability to shape the climate and discipline of our units. And most importantly, it will hamper the timely delivery of

justice to the very people we wish to help, the victims and survivors of these horrific crimes.

Let me just take a few moments to explain how the Army responds to a sexual assault. Our process consists of five basic elements.

First, the Army offers victims two options for reporting: a restricted report, which allows a victim to access counselors, medical support, and legal services, and unrestricted report, which triggers an independent law enforcement investigation.

There are nine ways a victim can make an unrestricted report outside of the chain of command: uniformed or civilian victim advocates, to uniformed or civilian Sexual Assault Response Coordinators, military or civilian law enforcement to include 911 calls, military or civilian hospital staff, chaplains, the Office of the Inspector General, Judge Advocates, hotlines managed by DOD and local installations, and several Web sites for online reporting.

Following a report, victims are assigned a victim advocate and are offered legal services. Commanders are also required to protect the care of victims. They must transfer a victim to another unit, if requested; keep the victim informed monthly on the status of the investigation; offer support services to ensure both victim and unit safety.

Second, every sexual assault allegation must be subject to a thorough investigation. Every allegation must be investigated by the Criminal Investigation Division, the Army's felony-level detectives. Our CID agents do not work for the commander, and commanders cannot shape or advise an investigation.

Third, Judge Advocates, including special victim prosecutors which were implemented in 2009, provide legal advice to the investigators and the commanders. They must track every allegation and are responsible for protecting the rights of victims.

When an investigation is complete, a Judge Advocate provides a legal opinion on whether an allegation should be founded or unfounded based upon the evidence presented. An unfounded allegation becomes part of the permanent record, while an allegation that is founded is brought to the commander to consider the options available.

Fourth, every allegation must be tracked on a daily crime blotter, through the installation's Monthly Sexual Assault Review Board, and is provided to Congress in an annual report on sexual assault in the military.

Fifth, the disposition of these cases is reserved for senior commanders with the advice of the Judge Advocate. The relationship between the commander and legal adviser is unique. The commander has the authority to decide the case disposition, while Article 34 UCMJ requires the Judge Advocate provide written advice before charges may be referred to a court-martial.

If a Judge Advocate encounters a commander unwilling to follow his or her advice to take an allegation to trial, the Judge Advocate may elevate the case through Judge Advocate channels or to the next superior commander.

Although the Army's process for reporting disposition of victim care provide a sound base and although the UCMJ provides the commander a powerful tool to shape climate and impose discipline,

it is obvious that it hasn't been working correctly to prevent and prosecute sexual crimes in the Army. I am aware of a number of legislative proposals that contemplate changes to the role of the commander and to the UCMJ. I welcome candid and vigorous discussion about how we can improve our military justice system.

In my written testimony, I offer a number of suggestions on how we can improve the UCMJ and DOD policy. My experience leads me to believe that the majority of problems we are seeing are not the results of failures within our military justice system, but rather the failure of some commanders and leaders to administer that system correctly, to act in compliance with the UCMJ or current DOD policies.

So we must take a hard look at our system from start to finish to ensure that commanders and Judge Advocates are subject to appropriate checks and balances, all while protecting the interests of the victim and due process rights of accused soldiers. I propose a number of such checks and balances in my written statement.

If we find these checks and balances to be insufficient and determine that changes to the UCMJ are required, we must move in a very deliberate fashion to preserve what is good with the system while correcting inadequacies. I am in full support of a response systems panel to determine what changes should be made to law and policy.

I understand that the credibility of the Armed Forces, the credibility of the Army are at stake, but we cannot simply legislate our way out of this problem. Without equivocation, I believe maintaining the central role of commander in our military justice system is absolutely critical to any solution.

The Army and the military, working with Congress, have contributed to positive social changes throughout our Nation's history, from racial integration through repeal of "don't ask, don't tell." Although we have struggled in our efforts to get these issues right in the beginning, we always worked through them until we got it right. And commanders were essential to that success.

Sexual assault and sexual harassment are no different. We can and will do better. We must take deliberate steps to change the environment. We must restore our people's confidence by improving our system of accountability.

It is up to every one of us—civilian, soldier, general officer, to private—to solve this problem within our ranks. Over the last 12 years of war, our Army has demonstrated exceptional competence, courage, and resiliency in adapting the force to the demands of war. We will take on this problem and adapt as well. And with the same resolve, we will fix it.

Thank you, Mr. Chairman and the other distinguished members of the committee, for the opportunity to speak with you today.

[The prepared statement of General Odierno follows:]

Chairman LEVIN. General Odierno, thank you so much.
Admiral Greenert?

STATEMENT OF ADM JONATHAN W. GREENERT, USN, CHIEF OF NAVAL OPERATIONS; ACCOMPANIED BY VADM NANETTE M. DERENZI, JAGC, USN, JUDGE ADVOCATE GENERAL OF THE U.S. NAVY

Admiral GREENERT. Thank you, Chairman Levin, Ranking Member Inhofe, and distinguished members of the committee. I want to thank you for the opportunity to testify today about addressing this deeply troubling issue.

I am grateful for your involvement and for your continued interest in providing our commanders and sailors the tools to help stamp out the crime of sexual assault from within our ranks. Sexual assault is a serious offense. It is contrary to everything that we stand for, and it is not who we are.

For me, this represents a significant safety issue and is an existential threat to our core values. It is a defining challenge for our time.

Our sailors deserve a safe environment in which to serve their Nation, and I am outraged and I find it inconceivable that a shipmate would assault another shipmate, someone with whom they stand watch and trust their lives at sea and with whom they will go into combat.

However, my outrage alone is not enough. We need thoughtful, deliberate, relentless, and effective action. We need to dig into the root causes and establish and put in place sustained improvements that can be institutionalized and assessed over the long term. At a minimum, our current and future readiness are at stake.

Three years ago, we began a sustained effort to improve our prevention and response programs. One outcome was the development and integration of a pilot program that we instituted at our training command in Great Lakes, Illinois.

We chose an environment that we felt we could more readily control, a school environment. And the results over 2 years have been sustained and substantial reduction in the prevalence of sexual assaults and conduct violations.

Based on these positive results, we have instituted similar programs at the aviation training command in Pensacola, the Naval Academy, and Naval Station San Diego. Further, we will be implementing these programs in Naples, Italy, and Yokosuka, Japan, within the next 6 months.

Initial feedback from sailors in San Diego thus far has generally been positive. Again, reduction in conduction violations and sexual assault reports and more confidence in their security environment. The foundation of these pilots has been focused and engaged leadership at every echelon of the command.

Now these are just a snapshot of initiatives to improve command climates, to weed out perpetrators, and to create an environment that dissuades these crimes from occurring. We have much more work to do in this area.

Our sailors must be confident in our reporting process. Sailors inform us that simple, multiple, reliable, and readily available means of discreetly reporting a sexual assault imbues confidence in the reporting process for sexual assault.

All our sailors need to know how to do this, and in April, we completed the training for every sailor in the Navy. We reinforced that

there are multiple options available in every unit to report an assault.

For example, sailors can report a sexual assault to victim advocates, a Sexual Assault Response Coordinator, the DOD safe line by Web or phone, medical personnel, the chain of command, Judge Advocates, 911 or base police, an NCIS agent, or the chaplain. We hired additional professional credentialed response coordinators and victim advocates to augment the existing 3,500 trained active duty advocates that we have today.

In addition to numerous efforts in prevention and victim support, we recognize our military justice system and processes may need to evolve. Previous challenges, such as drug abuse in the '70s and the early '80s, demonstrated that the Uniform Code of Military Justice must be able to adapt to better serve our sailors and to provide adequate support for our commanders.

Accordingly, as with the department's Article 60 proposal, we have to ensure that our proposed modifications to the military justice system are deliberate, they consider second-order effects, and do not ultimately adversely impact the best interests of justice, the victim's rights, and due process rights of the accused.

Further, the unit commander's authority and role as the singular individual accountable for the welfare of his or her sailors should be preserved such that the commander is able to carry out his or her mission. I believe that for complex and comprehensive changes, those that propose structural changes to the military justice system and the Uniform Code of Military Justice, particularly the role of the commander, the response systems panel created by Section 576 should be given the opportunity to complete an independent assessment.

It is clear that preventing and responding to sexual assault is not just a legal issue. It is assuredly a leadership issue and fundamentally embedded in what we call the charge of command. The commanding officer is responsible and accountable for everything that happens in his or her ship, squadron, or unit, and we expect our commanders to create a safe environment founded on dignity and respect, one that reinforces our core values of honor, courage, and commitment.

To reinforce this concept, each sexual assault report is briefed by the unit commander to the first flag in the chain of command, focusing on root causes, location, environment, and the means for future avoidance. I review the collation of these results quarterly with my Navy four-star commanders, focusing on trends, progress, and a framework for further action.

Now we have found that successful, effective, and permanent changes in our military are best done through our commanders, the chain of command. And I believe this is true for the military justice process as well. From initial disposition through convening authority to post trial review, the chain of command should be involved.

Recently, in the interest of improving the military justice process in cases of the commission of or the attempt to commit rape, sexual assault, or forcible sodomy, the department elevated the disposition authority to the O-6 level to enhance seniority, experience, and the objectivity in this important element of the military justice process.

Navy commanders are often required to make independent decisions far from shore in uncertain or hazardous conditions. Given the unique nature of their responsibility and the authority and accountability we bestow on them for the welfare of their crew and mission accomplishment, I believe it is essential that our commanders be involved in each phase of the military justice process.

Mr. Chairman, we know there is more to do. We remain committed to preventing these crimes, to weeding out perpetrators and to providing compassionate, coordinated support for sexual assault victims, to holding commanders accountable, and to ensuring that sexual assault cases are processed through a fair, effective, and efficient military justice system.

Thank you for the opportunity to testify today.

[The prepared statement of Admiral Greenert follows:]

Chairman LEVIN. Thank you very much, Admiral Greenert.
General Amos.

STATEMENT OF GEN. JAMES F. AMOS, USMC, COMMANDANT OF THE MARINE CORPS; ACCOMPANIED BY MAJ. GEN. VAUGHN A. ARY, USMC, STAFF JUDGE ADVOCATE TO THE COMMANDANT OF THE MARINE CORPS

General AMOS. Chairman Levin, Ranking Member Inhofe, members of the committee, thank you for calling today's hearing on this most critical issue.

Let me begin by saying that sexual assault is criminal behavior that has no place in your U.S. Marine Corps. It violates the bedrock of trust that marines must have in one another, the legendary trust that we have always had in one another. It is shameful, it is repulsive, and we are aggressively taking steps to eradicate it.

While there are cases of mixed and same-gender attacks, sexual assault within the Marine Corps is predominantly a male-on-female crime. That said, it is important to note that our data shows that the crime of sexual assault is being committed by roughly 2 percent of our Marine population. Clearly, and importantly, the remaining 98 percent of your marines are keeping their honor clean.

Since June of last year, we have tackled the sexual assault problem head on and have seen measurable improvements in three specific areas: prevention, reporting, and offender accountability. I am encouraged by these positive changes and believe we have momentum on our side.

I testify before you today to let you know that eradicating sexual assault from within our ranks is a top priority with the senior leadership of the entire U.S. Marine Corps. But talking about this issue is not enough. Direct action and a uniform strategy is required.

Our history over the last century is replete with examples where we have changed the Marine Corps as an institution. Following World War II, we knocked down racial barriers, paving a clear road of racial equality in our Corps.

Following Vietnam, as a young lieutenant, I saw firsthand how we attacked a rampant drug problem. We solved this discipline and illegal behavior problem from the top down. We were successful through determined leadership and a combination of education and strict legal actions.

Over time, the Corps changed. Drug users and drug pushers became viewed as what they truly were, pariahs. We exiled them from our ranks. During that time, we pushed separation authority down to commanding officers to enforce discipline standards and to effect swift judgment against offenders. It was our commanders who drove the change.

Today, I have seen how the Marine Corps is tackling our alcohol problem through leadership and deglamorization of irresponsible behavior. While we are far from complete in these efforts, DUIs and other alcohol infractions are no longer acceptable behavior for a professional corps of Marines.

I have watched us change over the past decades in this regard. What was deemed acceptable behavior for Lieutenant and Major Amos is simply not condoned today. It is the evolution of behavior, and it is good for us.

Accountability in the Marine Corps begins and ends with me. Sexual assault prevention within our ranks is front and center with me and at the top of my priorities. Our senior officers and staff noncommissioned officers are all in. They are focusing on making the necessary changes to prevailing conditions and attitudes to create the environment that the American people not only expect, but demand from their Marines.

Over the last year, we have implemented an aggressive three-phase campaign plan that strikes at the heart of this issue. Its goal is complete elimination of sexual assault within our Marine Corps.

As we launched our plan last spring, the Sergeant Major of the Marine Corps and I traveled to every base and station throughout the world to look our Marines in the eye, to remind them of their rich heritage, and to remind them who they are and who they are not. We spoke of the importance of maintaining the spiritual health of the Corps.

Just as I expect to be held accountable for everything the Marine Corps does and fails to do, I, in turn, hold my commanding officers accountable for everything their units do or fail to do. Our commanding officers are the centerpiece of the Marine Corps' effectiveness and professional and disciplined warfighting organization.

Commanding officers are charged with establishing and training to standards and uniformly enforcing those standards. A unit will rise or fall as a direct result of the leadership of its commanding officer. Commanding officers never delegate responsibility. They should never be forced to delegate their authority.

As such, Congress responsibly—as such, as Congress responsibly considers changes to the commanders' authority under the Uniform Code of Military Justice, I plead with you to do it sensibly and responsibly. As strongly as I support the authority of the commanding officer, I reject the status quo in other areas to military justice and policy.

I have reviewed current legislative proposals related to sexual assault and military justice, and I believe there is merit to many of the proposals. I am committed to being an equal partner as we engage in serious debate about the best way to eliminate sexual assault from within our ranks.

Thank you again for holding this important hearing on such a critical issue. And I am prepared to take your questions.

[The prepared statement of General Amos follows:]
Chairman LEVIN. Thank you very much, General Amos.
General Welsh.

**STATEMENT OF GEN. MARK A. WELSH III, USAF, CHIEF OF
STAFF OF THE AIR FORCE; ACCOMPANIED BY LT. GEN. RICH-
ARD C. HARDING, JAGC, USAF, JUDGE ADVOCATE GENERAL
OF THE U.S. AIR FORCE**

General WELSH. Thank you, Chairman Levin, Ranking Member Inhofe, members of the committee, for allowing us to be here today together to address this very difficult, but critically important topic.

Lieutenant General Harding and Chief Master Sergeant of the Air Force Cody and I are privileged to join this group.

Mr. Chairman, may I offer, on behalf of this entire panel and all of our men and women in the U.S. military, our sympathies on the loss of Senator Lautenberg. I know many of you were very close to him, and we are so very sorry for your loss.

Chairman LEVIN. We thank you for that.

General WELSH. General Odierno described very well the reporting process and the action process for response to a sexual assault. The Air Force's process, Mr. Chairman, is almost identical. I will associate myself with the remarks of every Service Chief you have heard so far with the severity of the problem and avoid some of the details and defer to my written statement for that.

Mr. Chairman, I would like to say that sexual assault is a crime, as the Commandant just said, and is unacceptable in any of our Services. Moreover, I believe it undermines the mission effectiveness of our great force. And everyone on this panel is committed to doing whatever is necessary to ensure an environment free from sexual harassment, disrespectful treatment, and the crime of sexual assault.

Air Force leaders have worked hard to make sure our people understand that it is every airman's responsibility to ensure unit climates are free from harassment and disrespect, that every airman is either part of the solution or part of the problem, and that there is no middle ground.

That message starts with me, as does the accountability for the solution. It is my responsibility to ensure that the Air Force welcomes new airmen into a safe, respectful, and professional environment, that new airmen are taught standards of behavior, discipline, and respect for others, that unit commanders and supervisors enforce and live by those same standards, and if they do not, that they are held harshly accountable.

And that if sexual assault does occur, that victims are treated with compassionate care, that they feel confident to report the incident without fear of retaliation or reprisal, and that alleged perpetrators are given a fair and impartial forum and then firmly held accountable if proven guilty.

Nothing saddens me more than knowing that this cancer exists in our ranks and that victimized airmen on what is unquestionably the worst day of their life sometimes feel they can't receive compassionate, capable support from our Air force, or they don't trust us enough to ensure that justice is done.

Clearly, it is time for thoughtful consideration of every reasonable option. Like my fellow Service Chiefs, I believe the 576 panel gives us the option to look at the unintended consequences, the second- and third-order effects of major changes, and decide which ones make sense and which might not.

In the meantime, none of us will be standing still. Commanders shouldn't just be part of the solution. They must be part of the solution, or there will be no solution. That is the way our systems operate.

I will tell you this. None of us are going to slow down in this effort because we all feel the same about one thing. We all love the people in our Service. All of us have families, and we immediately relate to them every time we see a report of this crime.

I have five sisters. I have a mother. They set my moral compass on this issue. I have a daughter who is looking at coming into the U.S. Air Force. I will not be tolerant of this crime. None of us will.

Secretary Hagel said it clearly. Sexual harassment and sexual assault are a profound betrayal of sacred oaths and sacred trusts, and they must be stamped out of America's military. And I know that this hearing is about helping us do exactly that, and I am grateful for your continued commitment to this effort.

I look forward to the conversation.

[The prepared statement of General Welsh follows:]

Chairman LEVIN. Thank you very much, General Welsh.

Admiral Papp.

STATEMENT OF ADM ROBERT J. PAPP JR., USCG, COMMANDANT OF THE COAST GUARD; ACCOMPANIED BY RADM FREDERICK J. KENNEY JR., USCG, JUDGE ADVOCATE GENERAL OF THE U.S. COAST GUARD

Admiral PAPP. Good morning, Chairman Levin, Ranking Member Inhofe, and the distinguished members of the committee. I appreciate the opportunity to testify before you this morning.

Sexual assault is a violent crime that devastates its victim. It also destroys unit discipline. It erodes cohesiveness, and it degrades our readiness. I am personally committed to eliminating it from our Coast Guard.

And we are making progress. New policies, enhanced training, improved access to victim support services, and greater reporting opportunities, including those outside the chain of command, provide us with important tools to achieve our goal of eliminating sexual assault from the Coast Guard. However, we must and we will do more.

In a message last year to all my Coast Guard men and women, I told the Service, "We will intervene to prevent or halt these acts when they are occurring. We will investigate and discipline those who have violated law and service policy. We will insist that all our shipmates live by our core values. And most importantly, there are no bystanders in the Coast Guard."

Recently, I followed this with a commander's intent message that initiates our Service-wide campaign plan for eliminating sexual assault from the Coast Guard. Yesterday, I briefed Secretary Napolitano on our efforts. She directed me to ensure that every member of the Coast Guard is clear regarding their responsibility

and to take whatever action is required to eradicate sexual assault from our Service and to ensure that victims receive immediate, compassionate, and complete support.

The Coast Guard system of reporting and investigation and prosecution of sexual assault cases is largely similar to the Army's, as described by General Odierno. Details that are in any way different are contained in my written statement.

This is, first and foremost, a leadership responsibility. Every commander must create a culture that is intolerant of any unwelcome sexual contact or the behaviors that enable it.

We have enhanced our training so that all hands recognize indicators of this behavior and are prepared to intervene. We must also demand command climates that allow victims to come forward, knowing they will be protected and cared for without fear of reprisal or stigma.

Prevention is the first and best option. However, when a response is necessary, when this crime does occur, we will hold those predators accountable.

The military justice system is a critical tool for doing this. We give commanders great responsibility to act independently and demanding in dangerous situations, and we hold them accountable for the results.

I recognize the military justice system is not perfect, and I welcome considered, well-reasoned improvements where they are needed. However, I have serious concerns about legislation that would fundamentally alter the role of commanders without full consideration of the second- and third-order effects on command authority and the ability to maintain unit discipline.

Stopping sexual assault is also the duty of each and every individual. As I said before, there can be no bystanders. Every Coast Guardsman must take ownership of this problem and be intolerant of any action that minimizes the significance of this crime.

If they see it occurring, they must take action to intervene, prevent, or halt it, and then, most importantly, report it. Failure to help a shipmate in those circumstances demonstrates a lack of courage that is contrary to our core values. I expect every Coast Guardsman will display the same courage in those circumstances as they would while rescuing someone in peril on the sea.

I look forward to working with this committee to eradicate this crime from our midst, and I look forward to your questions.

[The prepared statement of Admiral Papp follows:]

Chairman LEVIN. Thank you very much, Admiral.

We are going to have a 6-minute round of questions.

Under the current law, both the initial disposition authority for a case—that is the official who decides whether to proceed to court-martial or to seek lesser punishment—and the convening authority—that is the official who appoints the military judge and other members for a trial by court-martial—both are part of a chain of command.

That means that the chain of command has ultimate responsibility for addressing misconduct in the ranks, including steps to address command climate that contributes to misconduct, steps to protect the victims of misconduct, and to ensure appropriate punishment for the perpetrators.

Let me start, General Dempsey, with you. If the UCMJ were amended to reduce the commander's discipline authority by taking away his or her power to refer a case for trial by court-martial or by taking away the power to impose nonjudicial punishment, what impact would that have on a commander's authority and control over those who are under his or her command?

General DEMPSEY. Well, in general terms, Mr. Chairman, as one of the chiefs said, we hold the commander responsible for everything the unit does or fails to do on or off duty, and whether in CONUS or deployed in an expeditionary contingency plan. That kind of responsibility is best served by authority that aligns with it.

And so, if you have heard each of us suggest that the role of the commander is central in solving this problem, it is because we believe that the role of the commander is essential to any change, any positive change we will be able to make on this issue.

Chairman LEVIN. General Odierno, is there a relationship between the commander's authority to take action against a member of the Armed Forces and the commander's power to address problems of climate and culture, whether on the issue of sexual assault or with regard to other serious offenses, such as barracks larceny, for instance?

General ODIERNO. A commander sets the tone for all that goes inside of a unit, and he must have the ability to quickly, visibly, and locally administer justice so soldiers understand that the commander will ensure that the climate that they operate in is important. It is also important that we have these capabilities as you are deployed, that we can export this capability.

And I think, as somebody mentioned, I think you mentioned, 800 court-martials were conducted in Iraq and Afghanistan by the Army, and several other case of nonjudicial punishment. And in some cases, this impacted not only our forces discipline, but the Iraqis or Afghans that were involved in the incidents that they saw, that we were able to do it right there, bring them as witnesses and prosecute the soldiers, which helped them to understand that we were holding people accountable as well. So that is an example of the kind of thing that our commanders are willing and have to do.

One other vignette I would just give you is there is cases in the Army, say, you have a soldier in a barracks who has—sometimes we have soldiers who decide they give up. So they refuse to report to formation. They conduct barracks larcenies. They start doing significant amount of drugs in the barracks. And it is incumbent on the commanders and the chain of command to ensure they do not tolerate this.

If we had to give that to an independent authority in order to solve that problem, in my mind, that takes away the power of the commander to set a standard that would say I am responsible for the health and welfare of this unit. I am responsible for the discipline of this unit, and I will take charge of this discipline whether it is here, overseas, or anywhere to ensure that we can operate in a cohesive way. Unit cohesion is the key term.

Chairman LEVIN. Now it has been frequently said in many op-eds and editorials that the only option now available to a victim

of sexual assault is to report to his or her chain of command. In other words, the only option is to report to the commander of his or her unit, to your boss. And it is pointed out how absurd it would be to require somebody to report to his or her boss if, in fact, that person has no confidence in his or her boss, if that is the case.

Now, General Odierno, you have said, and I believe a number of you have said that there are many, many options that a victim of sexual assault has for reporting an offense, and you enumerated them. Reporting to a sexual assault coordinator, sexual assault victim advocate, healthcare professional, military police, local police, appropriate criminal investigative command, DOD Inspector General, DOD hotline, Judge Advocate General, or anyone in the chain of command, including that person's own commander, should he or she make that decision.

Now I believe, Admiral, you indicated that every person in your Service has been informed of those opportunities, those options to report an assault, that they are not limited to report to their own commander. General, is that true in the Army, and more importantly, do the men and women in the Army, are they informed of all these various options to report an assault or other sexual offense or any other offense?

General ODIERNO. So several years ago, we began training this starting in basic training. So within the first 2 weeks that you come a member of the Army in basic training, you are given the basic information about who you can report to for specifically sexual assault offenses. So it begins from the time you come into the Army to the time you progress through the Army.

I would say one caveat to that, which I think is that they all—when they understand they can report, the next step for us is to ensure when they do report, even if it is outside the chain of command, that they are not retaliated against by the chain of command. And so, that is the second step to this process.

So there are many ways for them to report. They are trained to do it, and then it is up to us to make sure that within the chain of command there is no retaliation or consequences, no matter how you report. And we are working on that very carefully as well.

Chairman LEVIN. I just want to ask all of the other Services here, are the men and women in your Service notified that they have the option to report a sexual offense against them in numerous ways? They are not just—they are not required at all to report to their commander?

Starting with you, General. Well, let me ask all of you. Any of you disagree with that? Because we have to have that real clear. There has been a big misunderstanding about this question of having to report to your commander.

In any of your Services, must a victim report an offense to their commander, or are these other options available? So just give me yes or no. Yes, the other options are available in each of your Services, and men and women are so informed.

Admiral, you have already answered the question. General?

General WELSH. Chairman, the options are available, and they are informed.

Chairman LEVIN. They are informed. General, I assume that is the policy for all the Services. General, you have already answered, General Odierno. General Amos?

General AMOS. Chairman, it is exactly the same, and I would add one more thing that we all have is the thing called a uniformed victim advocate. And those are actual young men and women that are probably their same rank that are in these units whose pictures are up on the bulkheads. So it is a lot easier to go to a contemporary. They are trained 40 hours of training.

So the answer is yes.

Chairman LEVIN. Admiral?

Admiral PAPP. The same within the Coast Guard, sir.

Chairman LEVIN. Thanks very much.

Senator Inhofe.

Senator INHOFE. Thank you, Mr. Chairman.

During my opening statement—I think it is very appropriate that the Defense Legal Policy Board report on military justice in combat zones came out just last week. I quoted in my opening statement a rather long part of that is the two-sentence synopsis would be, “The military justice system is a definitive commanders’ tool to preserve good order and discipline, and nowhere is this more important than in a combat zone. A breakdown of good order and discipline while deployed can have devastating results on mission effectiveness.”

Does anyone disagree with that statement? [No response.]

All right. If you agree with that statement, General Odierno, why don’t you give us just an example of how stripping this authority from the commanders affect his or her ability for maintaining good order and discipline or mission effectiveness and why?

General ODIERNO. Well, first off, again, as I said earlier, it is about quickly, visibly, and locally taking action that very quickly makes sure that the unit and other soldiers involved understand that this will not be tolerated. It also ensures them that action will be taken immediately.

And if we can’t do it forward in theater, then it would delay action. Potentially, we would have a problem with witnesses, and so it would cause us not to have something done quickly, very visibly, and locally. So, in my opinion, it is about, again, continuing to have unit cohesion in a forward operating capability that allows our soldiers to continue to perform their mission under very difficult conditions.

Senator INHOFE. That is very good. In reading the Defense Legal Policy Board’s report, it quotes several of you, in fact, most of you on this panel. So Secretary McHugh stated in this report, he said, “The Services are consistent in their position that initial and final disposition authority should reside in the commanders, as is currently the case.”

Now he is not here today, but General Harding, you are. And you are stated in here as saying, “Creating artificial distinctions between offenses should not supplant a commander’s case-by-case evaluation of an alleged offense.”

Is that an accurate statement today?

General HARDING. Yes, sir. It is.

Senator INHOFE. And tell me why.

General HARDING. I believe that after 34 years of practice of law in the military that what I have observed is that commanders are enhanced, their ability to exercise command and control, their ability to discipline their forces is enhanced by holding every member of their command appropriately accountable.

Senator INHOFE. Very good. Very good.

And General Ary, in January of 2012—so we are talking about some time ago—you stated, “In a combat environment, noncompliance with rules and undisciplined operations cost lives and negatively impacts the mission.”

Do you still believe that the commander must maintain the central and permanent role, as you did a year and a half ago?

General ARY. Yes, sir. I do. In fact, I would say whether it is an enemy on a battlefield or sexual assault in the barracks, good order and discipline is just as important.

Senator INHOFE. General Amos, do you agree with that?

General AMOS. Yes, Senator. Absolutely.

Senator INHOFE. He has said that an undisciplined operation costs lives. Could either one of you give us an example of how that could cost lives?

General AMOS. Senator, we have had a couple of occasions several years ago in Afghanistan where we had one or two Marines that were not paying attention to business, falling asleep on duty, falling asleep on watch. And as a result of this, the battalion commander and the company commander had to do something about it.

Marines’ lives were at risk. So there was a nonjudicial punishment in those cases and in one case court-martial that ended up as a result of this. So the behavior forward deployed in combat absolutely is critical and could cost lives.

Senator INHOFE. Thank you, General Amos.

Yesterday, I talked about the 10 provisions that were in the NDAA for Fiscal Year 2013 that were the programs on sexual assaults. Can anyone here give me kind of a status as to what has been done on those 10 recommendations that were in the NDAA for Fiscal Year 2013? [Pause.]

General ARY. Well, sir, it is a long list. But I think one of the big game-changers here is going to be the hiring of those certified, credentialed victim advocates. I think we all recognize that our victims need an advocate that is effective, and we think that those will be a supporting effort for the uniformed victim advocates.

And also the Sexual Assault Response Coordinators. Getting them online is going to be big. And we are in the process of hiring them right now.

Senator INHOFE. Okay. What I am trying to get at here is those are 10 specific things, and I assume you are all aware of those and are working on it. I see nods to the affirmative.

Lastly, General Welsh, the Air Force currently, you and I had talked about that, have a pilot program for a special victims’ counsel. What is the current status of that?

General WELSH. Sir, the program began in January. It was planned to run for 1 year, but we plan to give a report to the Secretary of Defense no later than the 1st of November of this year.

We have so far had 318 victims apply for support through the special victims' counsel.

We currently have 60 special victims' counsel who are fully trained to do this work. They are today supporting 282 victims in various ways, including many all the way through court-martial and final adjudication of their cases.

Feedback from the victims has been very, very positive. We believe the program is working very well for us. We are excited about where it is going.

Senator INHOFE. Yes, and General Welsh, this is an Air Force pilot program. Would you recommend this for the other Services?

General WELSH. Sir, the results we are seeing are very positive. I am going to recommend to my Secretary that we continue the program.

Senator INHOFE. Very good, sir.

General WELSH. There are resource issues associated with it each Service will have to look at separately, but it has been a very, very good program.

Senator INHOFE. Thank you, Mr. Chairman.

Chairman LEVIN. Thank you very much, Senator Inhofe.

Senator REED.

Senator REED. Thank you, Mr. Chairman.

This issues goes to the heart of our military forces, our national security. All the talent and the billions of dollars of technology won't make a difference if soldiers—and I will use the term generically—don't trust their fellow soldiers and certainly if they don't trust their commanders. The essence of the military is that soldiers protect, not exploit, their comrades, and commanders particularly protect and not exploit their commanders.

Having said that, General Odierno, to your knowledge, has the Army relieved a commander who has tolerated an inappropriate environment with respect to sexual abuse?

General ODIERNO. Senator, in the last 4 years, we have relieved 57 commanders, 14 brigade and 43 battalion commanders, and about half of those for command climate. And about half of those cases were specifically related their ability to execute sexual assault and other issues associated with command climate and toxic leadership.

Senator REED. Is this an explicit criteria or criterion, rather, for promotion board consideration for particularly senior ranks?

General ODIERNO. I would say that if you—I would say toxic climates as a whole, which include sexual harassment, are absolutely assessed and a requirement for any type of promotion or job of senior—for any senior members. If you ask me specifically is sexual harassment on there, on our efficiency reports, we don't specifically mention sexual harassment, but we talk about command climate, which sexual harassment is a subset of.

Senator REED. It may be well to consider making that much more explicit not only in terms of relief, but in terms of evaluation and in terms of promotion because if you want the chain of command to be—have the authority that it has today, then it has to be extraordinarily responsible to this specific issue and not to general climate issues. That is my opinion, for what it is worth.

Admiral Greenert, can you answer the same question?

Admiral GREENERT. Yes, sir. The command climate is an explicit part of an officer's fitness report. Command climate of a unit by a unit commander is evaluated by the immediate senior in command, and that is reported to our type commander.

So by virtue of those reports and the synopsis in the report of fitness at a promotion board, the command climate is evaluated by the promotion board. It is an explicit part of an officer's evaluation.

Senator REED. With respect to relief, have you relieved a commander because of the—specifically, not generically, because of bad climate? Specifically because of the failure to respond to sexual abuse in his command or her command?

Admiral GREENERT. Not explicitly due to sexual abuse within a command. However, those—a few who have been removed due to poor command climate, when, unfortunately, after the fact, what we are looking now, we have found that it is an attribute.

Senator REED. General Welsh?

General WELSH. Senator, during my tenure, we have not removed a commander explicitly for climate of sexual assault or sexual harassment. We have removed commanders for command climate, but I don't know of one specific to that in the past.

They are clearly held accountable as far as command performance reports based on their ability to lead and influence their people. This is a major part of that. Maybe equally as important I think are commanders in the field, and for us at the wing commander level especially, need to fully understand how the Air Force and I feel about this topic and about how it will affect their future opportunities.

I called all of them to D.C. last—at the end of last year, late November, early November, and made it real clear to them. I haven't talked to her about this, but in the second panel today is one of my wing commanders. I believe she can tell you what I expect from her in this regard, and I think that is important. And we have all done that.

Senator REED. General Amos?

General AMOS. Senator, to the best of my knowledge, since I have been the Commandant for 2½ years, I don't believe we have relieved anybody from command for having a climate of sexual assault or sexual harassment.

That said, there is an expectation for each of our commanding officers to set the conditions, the climate, in his or her organization that not only does all the combat stuff—equipment, the training, and the personnel readiness—but also sets the environment such the young Marines that are in that unit are comfortable. They are confident in their leadership.

Last month, I signed a policy letter out to every single commanding officer. We have already briefed it. It is instituted now. Every commanding officer will take—the whole unit will take a command climate survey. We just finished it. Thirty-four questions. At least five of those deal with sexual assault, sexual harassment, confidence in the leadership to be able to protect and take care of the interests of the young Marine.

That command climate survey will be done at the beginning of every single commander's term within the first 30 days and annu-

ally at that point. Those results will go to the next higher command.

So as a commander is responsible for everything else, clearly responsible for command climate, Senator. And my expectations are we will probably see more of this in the future.

Senator REED. Admiral Papp, my remaining time, please?

Admiral PAPP. Thank you, sir.

We average probably about a dozen reliefs for cause each year, primarily due to command climate issues. We fill the spectrum. We have officers in charge starting at the chief petty officer, or E-7 level, E-8 and E-9, all the way up through many junior officers commands as well. So primarily due to command climate issues as they are discovered.

We have had one relief of an O-4 2 years ago, was relieved of command for failure to report a sexual assault. The victim went outside the chain of command and made the report. It came back in the chain of command above this particular commander, and he was relieved for failure to report.

Senator REED. Thank you.

Chairman LEVIN. Thank you very much, Senator Reed.

Senator McCain.

Senator MCCAIN. Thank you, Mr. Chairman.

And obviously, we are here today to determine how the Department of Defense can most effectively reduce instances of sexual assault and ensure that offenders are held accountable. Our witnesses have characterized the problem as a crisis and a cancer that threatens the very fabric of our military, and I couldn't agree more.

At its core, this is an issue of defending basic human rights, but it is also a long-term threat to the strength of our military. And we have to ask ourselves if left uncorrected, what impact will this problem have on recruitment and retention of qualified men and women?

Just last night, a woman came to me and said her daughter wanted to join the military, and could I give my unqualified support for her doing so? I could not.

I cannot overstate my disgust and disappointment over the continued reports of sexual misconduct in our military. We have been talking about the issue for years, and talk is insufficient.

I would remind my colleagues that after the Vietnam War, at the end of the Vietnam War and after the—in the aftermath, there was breakdowns in discipline. There was race riots on aircraft carriers. There was instances of fragging. And there was tremendous racial unrest and tensions within our military. We addressed the issue, addressed the issue, and now I believe the military is our most effective equal opportunity employer.

We must do that in the case of this crisis that we are facing now. Today, we all agree that action has to be taken, and I hope that today's hearing will build on that consensus.

General Dempsey, as you stated in your prepared statement, you have endorsed Secretary Hagel's proposed amendments to Article 60. I am sure that members of the panel are familiar with it. They would prohibit a convening authority from setting aside the findings of a court-martial, except for a narrow group of qualified of-

fenses, and require a convening authority to explain any sentence reduction in writing.

Is there anyone on the panel that disagrees with Secretary Hagel's recommendation? [No response.]

Thank you.

General Dempsey, do the Services allow individuals with a history of sex-related crimes to enlist or receive a commission to serve?

General DEMPSEY. There are currently, in my judgment, Senator, inadequate protections for precluding that from happening. So a sex offender could, in fact, find their way into the Armed Forces of the United States. And in fact, there are cases where a conviction wouldn't automatically result in a discharge.

Senator MCCAIN. Obviously, we have to fix that. You would agree?

General DEMPSEY. Absolutely.

Senator MCCAIN. General Odierno, in your prepared testimony, you expressed your support for this proposal but stated you need to "consider several technical amendments to ensure the UCMJ functions properly in practice." Would you submit for the record those technical changes that you would like to see?

[The information referred to follows:]

[COMMITTEE INSERT]

Senator MCCAIN. It is important for our committee to understand the extent to which commanders are following the advice of legal counsel in making disposition determinations. My understanding is that in an overwhelming number of cases in each Service, the commander is following the advice of legal counsel.

Could the Service Chiefs or Judge Advocates tell us how many cases did a commanding officer go against the advice of a Staff Judge Advocate in executing their convening authority? Do you know, General?

General AMOS. Senator, I don't—I am going to let General Ary talk if he has numbers. But in 43 years, I can't think of a single instance where my Judge Advocate, in all the times I have been in command and a convening authority, I can't think of a single instance where my Judge Advocate came to me and said we want you—we recommend that you prosecute these cases, and I didn't do it.

On the other hand, I can think of many where he said we don't have enough evidence, don't prosecute him, and I did anyway.

Senator MCCAIN. General?

General ODIERNO. Something related to this is that I think sometimes people are led to believe that all of a sudden commanders are doing these cases with no experience. From the time you come in the Army or any Service as a commissioned officer, as a platoon leader, company commander, battalion commander—

Senator MCCAIN. I would appreciate—I apologize.

General ODIERNO. Okay. So, yes. So, in every case, I agree totally with General Amos is that in every case in my own experience that when I was—said we have evidence to go, we did. And many times, when we didn't think we had enough, we went to a court-martial anyhow because of the importance of the case.

Senator MCCAIN. Admiral? I am sorry for the request for a short answer. I have only got—

Admiral GREENERT. We scrubbed every case for the last year for sure, and there were no discontinuities. The advice was taken, legal advice was taken by the commander.

Senator MCCAIN. General?

General WELSH. Senator, we reviewed every case, every trial for the last 3 years. There were 2,511 cases, and 22 of those, the initial disposition authority did not agree with the recommendation from the JAG. The recommendation was forwarded in 10 of those cases to a higher convening authority who agreed with the JAG's recommendation, and that was the action that was taken.

In 12 of the 2,511 cases, the commander made a different decision than what his JAG recommended, so less than 1 percent of the time.

Senator MCCAIN. Admiral DeRenzi, you have had a long experience with these issues. Is the problem better, worse, or the same?

Admiral DERENZI. Sir, do you mean sexual assault issues in general?

Senator MCCAIN. Yes.

Admiral DERENZI. I think the problem is improving. I was a junior officer during Tailhook, and I can tell you that I do not recall the training efforts, the response, the prevention, the attention on our ability to prosecute offenders reaching down from leadership to the deckplate level at that time.

I would tell you that in the time since and now, I see a difference. I see a difference in the leadership. I see a difference in how the Judge Advocates are trained to respond and support, and I see a tremendous difference in the prevention and response efforts.

Senator MCCAIN. But you would agree that improvements need to be made?

Admiral DERENZI. Yes, sir.

Senator MCCAIN. And we would be very interested in your support or lack of support of some of the recommendations that we are considering.

Admiral DERENZI. Yes, sir. I would be happy to provide those for the record.

[The information referred to follows:]

[COMMITTEE INSERT]

Senator MCCAIN. Thank you, Mr. Chairman.

Chairman LEVIN. Thank you, Senator McCain.

Senator McCaskill.

Senator McCaskill. Thank you, Mr. Chairman.

And I appreciate all of you being here. I have spent, as many of you know, hours and hours with your prosecutors over the last several months. I have had long conversations with several of you at the table, including those who are heading up our various branches.

I want to start with the fact that I think part of the problem here is you all have mashed together two issues in ways that are not helpful to successful prosecution. There are two problems. One is you have sexual predators who are committing crimes. Two, you

have work to do on the issue of a respectful and healthy work environment.

These are not the same issues. And with all due respect, General Odierno, we can prosecute our way out of the first issue. We can prosecute our way out of the problem of sexual predators who are not committing crimes of lust.

My years of experience in this area tell me they are committing crimes of domination and violence. This isn't about sex. This is about assaultive domination and violence. And as long as those two get mushed together, you all are not going to be as successful as you need to be at getting after the most insidious part of this, which is the predators in your ranks that are sullyng the great name of our American military.

I want to start with I think the way you all are reporting has this backwards because you are mushing them together in the reporting. Unwanted sexual contact is everything from somebody looking at you sideways when they shouldn't to someone pushing you up against the wall and brutally raping you.

You have got to, in your surveys, delineate the two problems because until you do, we will have no idea whether or not you are getting your hands around this. We need to know how many women and men are being raped and sexually assaulted on an annual basis, and we have no idea right now because all we know is we have had unwanted sexual contact, 36,000.

Well, that doesn't tell us whether it is an unhealthy work environment or whether or not you have got criminals. And you have got to change that reporting.

Success is going to look like this. More reports of rape, sodomy, and assault, and less incidents of rape, sodomy, and assault. So everybody needs to be prepared here, if we do a good job, that number of 3,000 the chairman referenced, 3,000 and something, that is going to go up if we are doing well.

But overall, the incidents are going to be going down, but we have no way of being able to demonstrate that with the way you are reporting now. So I hope that you all understand that.

Now reporting is the key. And Senator Gillibrand and I are in complete agreement that this is about creating a culture where victims are comfortable coming forward, and that is incredibly important. And I think a number of steps are being proposed in all the different pieces of legislation, and a number of them you have agreed with, which is progress.

I think we have got to look at restricted reporting with an emphasis on getting the perpetrator ID'd. Right now, no one is really pressing to get the perpetrator ID'd in an unrestricted report. Why is that important? Because the victim who won't come forward today will come forward a year from now if there are two other victims who have come forward.

But if we don't know who the perpetrator was, we can't even go back and talk to that victim. So I think that is one thing that you all need to work on.

Let me ask a question of you, General Amos. I am concerned—I agree with the part of Senator Gillibrand's legislation, and others, I think, have included this, too, in our legislation, that we should not be taking into account how good a military person is in decid-

ing whether or not to try them on a felony. The facts of a felony are the facts of a felony.

I don't care how good a pilot it is. I don't care how good of special ops person it is. Their ability to perform as a soldier or an airman or a member of the Coast Guard is irrelevant to whether or not they committed a crime.

Do any of you disagree with the proposal that we should be not considering how good a military character they have in terms of how well they serve the military as part of the consideration as to whether or not a case should be tried where a felony accusation has been made? Anybody disagree with that? [No response.]

Nobody disagrees with that? Okay. That is good.

General HARDING. Ma'am, I will just comment that assessing the character, to the extent that you can through previous deeds, is an appropriate factor to enter into the equation. It doesn't enjoy overriding weight, but I think that is what the code had in mind. I think DAs also assess an individual's character in the community to determine whether or not the allegation is supported or not supported by that.

But it is one of many characters in the totality of circumstances that you referred to that are taken into consideration in a decision whether or not to prosecute. But it is not, by any stretch of the imagination, overriding factor or one that would result in a decision solely not to prosecute.

Senator MCCASKILL. Well, the character of the perpetrator would come in the trial if the defendant wanted to bring it into the trial, and then there would be an opportunity to impeach. There is no opportunity to impeach on character at a disposition phase. I completely disagree with you, General Harding.

There is not—it is not relevant as to whether or not somebody raped a woman how good a pilot he was.

General HARDING. I am not referring to their job performance, ma'am. I am referring to their character. As a district attorney, would you assess an individual's character before—in the totality of circumstances? Not at all.

Senator MCCASKILL. If the defendant brings it in in a trial, then it is relevant that I have that opportunity to impeach at the trial and show that his character is not that great.

General HARDING. I think—I think you and I agree.

Senator MCCASKILL. Whereas, you don't have that at a disposition phase. You don't have that—I shouldn't say disposition phase because that is confusing to people out there. Because disposition technically in our world is the end of the trial. But for you, disposition is at the beginning.

At the beginning of the trial process, deciding whether or not there is sufficient evidence to support the charges, the character of the defendant should be irrelevant.

General HARDING. To include a bad character, a character for criminal actions in the past.

Senator MCCASKILL. The facts should speak to that. If he has been convicted and if there have been accusations that have been borne out, if he has had other actions against him, then that is a factual determination. That is not this illusive let us put together a big package and say what a great guy this is.

General HARDING. Well, that is not what the process is.

Senator McCASKILL. Okay. Well, we may not disagree or we may disagree. But we will ferret that out.

I just, for the record, Mr. Chairman. I know my time is up. I need to know how many cases you all have taken that civilian prosecutors declined to prosecute. And I also need to know how many cases you have taken after someone has been found not guilty in civilian courts.

I don't think many people realize that you do that, and you do. In talking to the prosecutors, there are cases that you have taken action after someone is found not guilty in the civilian courts. I think that is important for our consideration as we work on the markup of the defense authorization bill.

Thank you, Mr. Chairman.

Chairman LEVIN. Let us ask each of the Service Chiefs here to get the statistics which have been requested along that line by Senator McCaskill.

[The information referred to follows:]

[COMMITTEE INSERT]

Chairman LEVIN. Thank you, Senator McCaskill.

Senator Chambliss.

Senator CHAMBLISS. Thanks, Mr. Chairman.

And first of all, let me say that I think each of you delivered a statement with emotion and passion, and you obviously recognize the seriousness of the issue. And I take you at your word that we are going to get to the bottom of, number one, how we attack the issue and, second, as to the best way to resolve it moving forward, particularly in light of the fact that now if we are going to have women in combat, I think the potential for the issue to increase is going to become even greater.

Admiral Greenert, I want to go back to an incident that didn't occur on your watch. But as I recall, several years ago when we had the first females go out on an aircraft carrier that when they returned to port, a significant percentage of those females were pregnant. Now I don't remember exact percentage, but as I recall, it was pretty high percentage.

Was any investigation made by the Navy following that incident to determine whether or not all of those pregnancies occurred as a result of consensual acts, or was there any investigation made regarding sexual attacks that were made on that carrier?

Admiral GREENERT. Senator, I will have to take that one for the record and go dig up and get those facts behind that.

[The information referred to follows:]

[COMMITTEE INSERT]

Senator CHAMBLISS. Well, my reason for asking that is that I hear and I understand all of you talk about the importance for chain of command and the importance that we follow that. And if we are going to maintain good order and discipline in the military across the board, that has got to be the case. But there has also got to be some kind of fear put into these young people that come to every branch of our Service the very first day that they raise their hand and swear to defend the Constitution.

And the fear has got to be that that chain of command that we allude to really is serious about making sure that these types of

sexual assaults do not occur and, by golly, if they do, starting with the drill sergeant all the way to the top, somebody is going to make sure that you pay the price if this does happen.

And if you look at the private sector, if something like that had happened, there would have been an extensive investigation, and it wouldn't be taken for granted that everything was consensual. But I dare say that after that happened, it made the headlines in the paper.

I was on the Personnel Subcommittee at the time that happened, and frankly, I don't recall any investigation being made of it. And looking back on it, it is easy now to say it should have because of the number of instances that we have seen.

The easiest way to eliminate this problem is to make sure it never happens in the first place and that those men and women are trained early on as to the types of situations they ought to avoid and the consequences if something like this does happen.

So to each of you, let me just ask you, and I will start, General Welsh, with you and come right down the line, is there any background check done during the recruitment process to determine whether or not these young men and young women have had any incidences that might lead to this?

General WELSH. Sir, there are background checks done. But as was previously mentioned, I am sure there have been cases where people have entered the military and entered the Air Force who have had a problem with this in the past that is not in any formal database.

Senator CHAMBLISS. Admiral?

Admiral GREENERT. A criminal—background check in regard to criminal record, those are done. But as General Welsh said, to the degree and the success, we have to go back and check.

Senator CHAMBLISS. General?

General ODIERNO. The same. Background checks are done, but the ability to identify sexual offenders is certainly not 100 percent right now, and we have to do a better job of doing that. We need help with having a better database, but also making sure we are scrutinizing those as we go forward.

General AMOS. Senator, we are plugged in deeply to the FBI database, and we absolutely willingly will not recruit a Marine or candidate that has a sexual assault background at all. And when we find out we have a Marine that has committed and is convicted of it, they are discharged.

Admiral PAPP. Same here, Senator. We do a background on every person that is recruited. And if we find someone who did slip through the cracks and we found there is a previous conviction, that is a fraudulent enlistment, and they are discharged.

Senator CHAMBLISS. Well, I doubt that—there may be some exceptions as, General Dempsey, you responded to Senator McCain on. There may be some exceptions to folks who slip through that crack, but you are going to have to go further than looking at convictions of individuals.

And I don't know how you are going to do that, whether you get additional character references or what. There may be things known within the community about individuals that need to be given to the military to prepare, and it may be on other issues also.

But we have got to do a better job of screening folks before they come in.

And the other thing we have to remember as we think about making changes to the UCMJ in this respect, the young folks that are coming into each of your Services are anywhere from 17 to 22 or 23. Gee whiz, that is the level or the hormone level created by nature sets in place the possibility for these types of things to occur.

So we have got to be very careful how we address it on our side, but guys, we are not doing our job. You are not doing yours, and we are not doing ours with the rates that we are seeing on sexual assaults. As I said to start with, you recognize it. We recognize it. And we have got to figure this thing out because we simply can't tolerate it.

Thank you very much, Mr. Chairman.

Chairman LEVIN. Thank you, Senator Chambliss.

Senator Udall.

Senator UDALL. Thank you, Mr. Chairman.

Good morning to all of you for appearing today, and thank you for being here to discuss what is probably the most troubling issue that this committee has addressed since I was elected to the Senate.

For good reason, the American people trust our military more than any institution in our country, and that trust is well deserved. But now I am afraid that some of the dishonorable actions of our troops and some of our leaders are threatening that trust.

Every sexual assault committed by an American servicemember represents a fundamental failure of leadership, and we are not just talking about one or a few assaults. We are talking about thousands. If the troops can't trust their teammates or their leaders to keep them safe, then we are facing a fundamental breakdown of good order and discipline, and that puts our troops at greater risk than they already face.

We ask a hell of a lot of our troops, but I refuse to ask them to put up with rape. Make no mistake, sexual assault is a national disgrace. But the American people expect our military to set and uphold the highest possible standard of conduct, and frankly, the military is failing to meet that expectation.

I have been working with my colleagues on both sides of the aisle on legislation that will help to end this plague, and I know that you are working toward the same goal. But to be blunt, you need to do more, and it needs to happen much faster.

And as our senior leaders and as fathers, I know you agree that the status quo is unacceptable. So I expect to see bold and immediate action to end this crisis because I can assure you that that is what you will be seeing from me and my colleagues on this committee.

So, General, let me turn to my first question, and I would hope I could receive a yes or no answer. Do you feel that the DOD is lacking the authority or the tools it needs to reduce the incidence of sexual assault in the military? And if not, then why do you believe that the number is not dropping? If the department has the power it needs to solve this crisis, what isn't being done?

General Dempsey, I think it would be appropriate if I started with you.

General DEMPSEY. Well, as I said in my opening statement, Senator—by the way, thanks for your passion about this issue. I assure you we share it.

As I said in my opening statement, there are some things we have had an opportunity to reflect on together as chiefs with our SJAs, with the department, and those things we have actually come forward and said we have had enough time to deliberate on those, and we are eager to move ahead. There is other things that this 576 panel I think will illuminate as we allow it to do its work.

So I think, in general, we have the tools that we need, but we haven't been getting it done. You said so. We agree. And so, there are other measures to be taken, and we hope that that panel allows us to understand them.

Senator UDALL. General Dempsey, I think you speak for the panel here and for all the Service Chiefs.

General DEMPSEY. Well, be careful about that.

Senator UDALL. Okay.

General DEMPSEY. These guys are not bashful characters.

Senator UDALL. Maybe I will start then, start with Admiral Papp, and we can move across to General Amos and General Odierno and in turn? Admiral?

Admiral PAPP. Yes, sir. I think we have all the tools. It is all a matter of focus, and that is our job as leaders. We have been driving that focus now, and I expect to see results.

Senator UDALL. General Amos?

General AMOS. Senator, we absolutely have the tools. We have failed in this in the past. It has not been a top priority in the years past, in the decades past. If it was, we wouldn't be here today.

But it is now. It is now in my Service, and I speak for probably all of us, it is a priority in our Services now. And we are after it, and we hear you loud and clear.

Senator UDALL. General Odierno?

General ODIERNO. I would just say I think we have adequate tools, but I think there is some refinement that we can work together with on this. And I think that is around the edges, and I think we just have to make sure we understand the second- and third-order effects of those refinements.

And I think that, to me, is the critical piece to this as we move forward.

Senator UDALL. Admiral Greenert?

Admiral GREENERT. I think we have the tools, that the commander has the tools, we have the tools to provide a proper atmosphere of dignity, respect, and make sure the command climate is there. I think the Congress and this committee have come forward with some ideas to further those tools, and I think that is great, and we should continue to pursue those, to move faster, to your point, Senator Udall.

And we should evaluate these tools to make sure we understand them, the second- and third-order effects, so we don't—so we do make the progress that are intended.

Senator UDALL. General Welsh?

General WELSH. Senator, I believe that the tools are there. But I also agree that we can refine them. I think that is what this discussion of reasonable alternatives should include, everything from punishments to deterrent capabilities, to make sure people clearly understand what the result of this crime will be if you commit it.

I also think that one of the things we are lacking isn't the tool. It is just expertise in this arena. We don't have a lot of people who are brilliant in this area. We are trying to develop knowledge and expertise because we are so focused on this now. But it is going to take some time, and it is going to take partnering with people who really understand the problem.

Senator UDALL. Mr. Chairman, I will stop there. I know we are going to have a series of rounds, and I have many, many more questions, as do my colleagues. But this is truly something that needs immediate attention, and I know that we can solve this.

Thank you all.

Chairman LEVIN. Thank you, Senator Udall.

Senator Wicker.

Senator WICKER. Thank you very much, Mr. Chairman.

And thank you to each member of the panel.

Let me start with General Odierno because I was interested in your statement about the Colorado case, where the civilian authorities concluded that there was not enough evidence to proceed and then the military court came out with a different result.

General Odierno, as I understand it, we have a lot of legislative proposals. Among changes that are being advocated are three that I want to ask you about and how it would have impacted that particular case that you mentioned. One would be removing unit commanders from the military justice decisionmaking process when a crime is reported.

A second would be placing the convening authority for courts-martial for sex-related crimes outside the chain of command for either the accuser or the accused. And three, prohibiting convening authorities from setting aside convictions in courts-martial for sex-related crimes only.

So let me ask you, in the case that you mentioned, how would these changes have impacted the, in your view, successful result in prosecuting a member of the military who turns out was a multiple offender?

General ODIERNO. I think the commander has information that is available to him and tools that are available to him that maybe might raise some doubt. So what the commander did in this case was then ask for further investigation by our Criminal Investigation Division.

I think if you had an independent authority, they wouldn't be privy to some of this information because the commander understands other things that go on within the climate of a command. And so, I think it probably would not have happened if, in fact, the commander was not part of this process.

Now, again, it depends on exactly what the legislation means. I have to take a look at it. But my initial thought is it would have been very, very difficult in this case. So I think the commander, understanding his command, understanding his soldiers, was able to direct the CID to continue to investigate, and when they came

up with more and more information and talked to other people in the unit or other potential victims who came forward, they were then able to prosecute this case over a couple months' worth of investigation.

So, in my opinion, that shows the importance of the role of the commander and why we want him in the system. In terms of—the only other one I would talk about, in terms of overturning convictions, I don't think that plays a role. That legislation did not play a role in this at all because that comes, obviously, after the court-martial would have been completed.

So then you look at overturning results of any sexual offenses, and so I don't think that would have had any difference in this case at all.

Do you want to add anything, Dana, on that?

General CHIPMAN. Yes.

Senator WICKER. Lieutenant General Chipman?

General CHIPMAN. Senator, I think what the chief talked about is, in fact, relevant. The idea that the Criminal Investigation Division can go back to prior duty stations and to gather that pattern of misconduct that may have occurred there. As Senator McCaskill mentioned, one victim comes forward and then others, if you retain that evidence for a sufficient period of time and identify other victims, that can add and have a cumulative effect.

But it would not have altered the ability to set aside. I mean, I don't think that would have occurred in this case. We do think that we are inclined and over our special victim prosecutor history, we have pulled 28 cases that the civilians were not proceeding on and have been able to mount a court-martial prosecution since 2009.

Senator WICKER. Let me ask this question as a former Judge Advocate myself. In every instance that you mentioned, General Odierno—your JAG is sitting at your right hand today—the commander is in constant consultation with the—with his JAG on all of these decisions?

General ODIERNO. Absolutely, Senator. Absolutely.

Senator WICKER. Okay. General Amos, I was intrigued by something you said, and there is a bit of a paradox here. You say you reject the status quo, and yet you say we have the tools.

So help clear up any confusion I might have over that. Which proposals have the most merit in moving from the status quo, and would you just clarify what you were trying to tell the panel?

General AMOS. Senator, we have the tools because we have the leadership, and I think we have the capability and wherewithal internal to the organization, the institution, the commands, to be able to actually make the changes, make the difference, and eradicate sexual assault. So that is what I meant by that.

But when I talked about I reject, what I was saying was—referring to was just the wholesale UCMJ, it is perfect, we are not going to look at it. Truth of the matter, it does need to be reviewed, and it does need to be looked at. And that is what I was referring to by that, sir.

Senator WICKER. Okay.

General AMOS. And I am more than willing to sit down and go through these things, the proposals.

Senator WICKER. You mentioned, General Amos, aggressive steps that you have taken. Since you have taken those steps, is the situation better or worse now in the Marine Corps, in your judgment?

General AMOS. The numbers of reported sexual assaults have gone up 31 percent since I took those steps. And you are going to look and say, "Oh, my gosh." When we began this campaign plan in June of last year, we said if we are going to be successful to set the conditions, the atmosphere, the command climate, such that our victims are comfortable coming forward, then we can expect the numbers of reported incidents to go up.

We don't know what the total number of incidents are. They are up there somewhere. But what we do want to do is try to capture as many of those as we can. So our numbers of reported incidents have gone up. I expected that to happen. I don't take solace in it, but it is the reality of a successful campaign.

Senator WICKER. You think they were occurring, but now more of them are being reported because of your aggression?

General AMOS. Oh, absolutely, sir. What we don't know is the top line. In a perfect world, the total numbers of real assaults, whatever that number is, if we are successful in our campaign plan, will come down. And the numbers of actual reports will go up, and somewhere they will meet, and we will have absolute ground truth, which is what I think Senator—

Senator WICKER. Okay. Admiral Greenert, is that happening in the Navy in these particular locales where you have really been pressing it? At schools, at the Naval Academy, at Pensacola, are things getting better or getting worse? Are we seeing more reports because reporting is okay now?

Admiral GREENERT. We are just getting started at the Naval Academy and in Pensacola. But in San Diego and in Great Lakes, where our training command is, we are getting more reports. Navy overall is a 50 percent increase in reports.

We are getting a significant amount, I have to give you the numbers, of incidents that occurred a couple of years before, where somebody has decided to come forward from the past. But overall, in those sites that I described, in Great Lakes and in San Diego, particularly in Great Lakes, the number of incidents has gone down by two-thirds.

It is still we have promising information in San Diego some, but it is not statistically significant, from 21 to, say, 13 over a 6-month period. That is just data right now, Senator. We have to look at it.

Senator WICKER. Thank you.

Chairman LEVIN. Thank you very much, Senator Wicker.

Senator MANCHIN.

Senator MANCHIN. Thank you, Mr. Chairman.

And thank all of you for being here today.

I had the privilege of meeting with Secretary Hagel a few weeks ago at the Pentagon, and I know that he is serious about cutting this cancer from the ranks of the military. It is a tough issue and one that has plagued our military for far too long, and I think you all would agree on that.

Congress—I believe you are understanding that Congress is serious about not going to sit back and let this continue. I know that all of you are completely committed to working with us, and we

can't change what has happened, but we can work very hard to make sure it doesn't continue to happen.

To all of you, I would say this is not a new problem. I look at the Navy Tailhook scandal, 1991. The Army basic training scandals in the mid 1990s. The Coast Guard captain who was kicked out in 2010 for improper relationship with subordinates. You had the Air Force basic training scandal at Lackland. And there are many, many more. Most disturbing are the recent abuses by those charged to prevent sexual assault.

After each of these instances, Department of Defense leaders all said "never again" or used phrases like "zero tolerance." So I guess I would ask what is different this time? What is different this time? If we have a history of this repeating itself and nothing ever being done, what is different now?

General Dempsey?

General DEMPSEY. Well, I will respond, and then you can redirect to the chiefs. But I will have 39 years in the Service tomorrow. So I have been through periods of enormous change and also periods where we have had this issue.

And you talk about the 1990s, I have actually spoken—we have actually spoken about that as well. I think what happened in the 1990s is we focused on victim protection. We immediately focused our energy on victim protection probably out of balance—

Senator MANCHIN. Versus prevention.

General DEMPSEY. Right, versus prevention. That is right.

And then, as we have reflected on it, we entered this period of 12 years of conflict. And frankly, I think we probably—I will speak for myself. I think I took my eye off the ball a bit in the commands that I had. The chief talks about doing command climate surveys. At the optempo we were operating, some of that stuff, frankly, just got pushed to the side, and we didn't do the right amount of command climate surveys.

What you are hearing, I think, today is the recognition that we have got to go back to take some of these tools that we have and make better use of them and focus our energy on it. We are also spending a lot more time now working on the prevention side of it.

I think we also have to acknowledge that coming out of this period of conflict, we have got soldiers, sailors, airmen, and Marines, Coast Guardsmen, who engage in some high-risk behavior as they come out of the conflict. And so, when you tie it all together, I wouldn't say that we have been inactive, but we have been less active than we probably need to be.

And what you are hearing reflected here today is a willingness to take the tools we have, but also consider other tools as well.

Senator MANCHIN. I would just say that I think that the Senate or Congress is more balanced with our Senators of different gender, if you will, who bring a balance to us and bring this, and you can see all the different aspects of what we are all concerned about, and we support all of their efforts.

But with that being said, do you believe by leaving it in the chain of command, if anybody—and General Amos, I would say that there is a lot of power in the military. And you know, with the ranks, and I think that is the concerns we may have, is it truly

going to be able to correct itself without intervention of really tough legislation we are talking about?

General AMOS. Senator, I would say the legislation, the one we are talking about removing the convening authority out of the chain of command is absolutely the wrong direction to go. I think it is going to take—it will take the eyes off the commander on a problem that is enormously important right at a very critical time when we are committed to making the changes.

The changes in command climate, the changes in confidence can only start at the beginning. I mean only can start at the top. So I think we are going the wrong direction.

Senator MANCHIN. General, these—excuse me. These types of the sexual assault and abuse that has gone on for far too long, and for over 20 years, we have identified some serious, some serious problems that have happened, serious crimes, and have not gone answered. And I think that is why you have seen it get to the level it is today with 26,000 that have been known and only 3,000 reported.

It is almost intolerable that we can continue on this current path by allowing the commanders to be in charge at the level they are.

General AMOS. Senator, I will make a statement here. I am so committed and my service is and we all are, but I will just speak for myself on this thing, to making the changes and turning this completely around that if I honestly believe that pulling the commander officer, the convening authority, the disposition authority out of the chain of command would fix it, then, sir, I would raise my hand and I would vote for it today.

I would vote for it today. It is not clear to me that that is the case because it is not that way in anything else that we deal with in the military.

Senator MANCHIN. Is there anybody here that disagrees with General Amos basically on removing this from the chain of command? Anybody disagree with that statement?

General DEMPSEY. No.

Senator MANCHIN. You all are in agreement that it must stay in the chain of command?

General DEMPSEY. I am. Yes.

Senator MANCHIN. Anybody else want to speak to that?

Admiral GREENERT. Senator, I don't know how to take it out of the chain of command and then in the continuum of responsibility and authority that we tell our people that they are responsible for the welfare, and this goes to training, all the way through combat, all of that, how you take that part out of it and then you put the victim back in, if they come back. Or the report is reviewed, the investigation is reviewed, and it is returned, they say, well, here you go. It is back again.

I just don't understand how to do that yet. And so, from that perspective, I do agree with General Amos because I haven't been able to internalize or understand it. But as I study the proposals, I don't know how that works.

But this I do know. We do hold them accountable for that. That has been forever. And especially those of us in the Navy who go out to sea within the units and that, it can confuse the crew, and that concerns me.

I want to—I have to understand. I think it needs to be reviewed much more closely before we jump on it.

Senator MANCHIN. I will save my other questions for the second round, but thank you very much for your answers.

Chairman LEVIN. Thank you very much, Senator Manchin.

We are not planning, by the way, on a second round on this panel.

Senator MANCHIN. We are?

Chairman LEVIN. We are not. Just so——

Senator MANCHIN. I will wait for another day.

Chairman LEVIN. Thank you. Or you could ask questions for the record.

Any of us, by the way, are free to answer or ask, excuse me, questions for the record, but we are not planning on a second round on this or other panels, given the number of witnesses that we have to cover today.

Thank you, Senator Manchin.

Senator FISCHER.

Senator FISCHER. Thank you, Mr. Chairman.

And thank you all for being here today.

It seems like the talk in the media has focused on the seven women members of this panel, but I would like to point out that all of my colleagues take this issue very, very seriously, and they have been leaders in the past on this—Senator Levin, Senator Inhofe. And we need to resolve it, and it needs to happen soon.

You know, we are looking at a crisis here that is being viewed through the lens of gender, but I think all of us need to acknowledge that this isn't a gender issue. This is a violence issue, as my colleague Senator McCaskill so eloquently reminded all of us. And this is a crisis that I believe the military needs to step up and confront.

In response to a question that we had from Senator Reed previously, many of you indicated that no commanders have ever been removed for setting an inappropriate environment with regard to sexual assault. And in fact, Admiral Greenert, in your prepared statement, you wrote that we are also addressing command climate and how it contributes to sexual assault, particularly the impact of sexual harassment and how it contributes to a culture that may enable sexual violence.

I guess I would first ask you, Admiral, do you believe that this climate we have, this culture that we are kind of just putting aside sexual harassment and not taking action on that, contributes then to sexual assault?

Admiral GREENERT. I believe that a command climate that tolerates innuendos, jokes, posters, and allusions therein involving gender sets the stage for an environment where a predator could, if not flourish, exist. And I believe that that, first of all, you have got to get to that, and we are focused to get to that, and that I am hopeful then because I don't know that it would expose such a person.

Senator FISCHER. I would ask each of you, have you evaluated any ways to enhance the current command climate reports to make commanders more accountable for the environment that they are setting within your ranks. If we could start with you, Admiral?

Admiral PAPP. We have no formal process, ma'am. But that is something that we stress verbally as we go through command and operations school, when we send people out there with all the senior field commanders that I select to take over our major commands, that they are to focus on command climate issues and make sure that any report of any sort of command climate violation is thoroughly investigated.

Most often, we send our senior enlisted member from the district or the area to do a climate survey. We have a couple of units right now that we have heard reports on, and we are doing climate surveys on them.

Senator FISCHER. Do you think it would be beneficial if you had a formal process in place?

Admiral PAPP. That is certainly one of the things that we are looking at through our sexual assault task force.

Senator FISCHER. Thank you.

General?

General AMOS. Senator, I think command climate is the single, my perspective, is single greatest indicator not only for the combat readiness, the equipment readiness, the personnel readiness of the unit, all of those things, but also the health, what we call the spiritual health of that institution. I am not talking religion here. I am talking about the ability to be able or the absolute sacredness of taking care of one another, not being a predator, not preying on one another.

So we started the command climate officially. It begins the end of this month. I approved it last month, as I said in my—verbally a bit ago. And those reports for the climate of that organization, it will be everybody will take it, will go to the next higher in the chain of command. So that the commander's commander will now be able to look into that organization and say, okay, how are they with regards to sexual assault, sexual harassment, and the like.

Senator FISCHER. Thank you.

General?

General ODIERNO. Senator, several things. One is I directed about a year ago the incorporation of command climate surveys done within 3 months when you take command, 6 months, and then 12 months thereafter to get out specifically this year.

Second, we are doing a pilot on 360 assessments of battalion and brigade commanders, which will incorporate questions about the entire command climate to include sexual harassment, sexual assault. And we are in the process of determining what we will do with those assessments, and that is part of the pilot.

And once we get those, I expect that I am looking at directing 360s for every battalion and brigade commander beginning this fall. I am just waiting for the results of this pilot about how we do it.

So with those kind of issues, it is about commanders understanding how important that climate is, and those will be reported to those who they work for as we go through this process.

Senator FISCHER. I know that all of you value trust and its importance within your ranks. So, General, with this pilot program, how do you develop that trust, and how are you going to evaluate

it? By the number of reporting that comes out that General Amos talked about earlier?

General ODIERNO. I think, yes, absolutely. I think one of the things we are struggling with, there is lots of different opinions on this. But the one thing I know is for certain is that we need to make sure commanders understand that we won't tolerate toxic environments, and toxic environments can be created in several different ways. Sexual harassment, sexual assault is part of a toxic environment, and that is what we are looking to correct in this, as we look at this.

Admiral GREENERT. Our Navy Inspector General visits, and inspections include the command climate with regard to in my case that I described to you of sexual harassment. Also General Odierno and General Amos mentioned command climate surveys. They are done at the relief of a commanding officer and then periodically after.

Those results go to the immediate superior in command to review on the unit, and then so those comments then have to be adjudicated—reconciled between the two overall so that you look at the entire ship types. So all the surface ships and air, those are reviewed by what we call the type commander. So they move up.

Senator FISCHER. And how often are those surveys done, and who receives them and responds to them?

Admiral GREENERT. Immediately upon or within I think it is 6 months of relief of a commanding officer—I will get you the details of this. But shortly after relief by the commanding officer. And then I will get you specifically the period. I think it is about annually afterward that you get a command climate survey.

Senator FISCHER. Do you take that into consideration on the next assignment for the officer then?

Admiral GREENERT. Yes, Senator. Because that survey is then reviewed by the immediate superior. So among the things you evaluate your unit commander on would be reports such as this.

Senator FISCHER. Thank you.

Chairman LEVIN. Thank you. Thank you, Senator Fischer.

Senator FISCHER. Thank you, Mr. Chairman.

Chairman LEVIN. Senator Shaheen?

Senator SHAHEEN. Thank you, Mr. Chairman.

Gentlemen and Admiral DeRenzi, we very much appreciate your being here today, and I know that everyone on this committee shares the appreciation for your service and for the service of all of the men and women in our military today. And I know that we are all very concerned about addressing what is a horrible scandal on the good service of most of the men and women who are serving. So thank you for your efforts to do that.

Chairman Levin, when he gave his opening remarks, talked about some of the scandals that have surfaced in the last couple of years from the allegations at the Naval Academy about rape of one of the female midshipmen to the rugby team being suspended at West Point, to the recent videotaping at West Point, to Fort Hood, to the Aviano Air Base, to Lackland. All of these scandals that have surfaced make me wonder if the measures that have been taken are going to be able to fundamentally address this issue and whether it is not going to take a more significant look at how

we operate in the military to really address this scandal at all levels.

So, Admiral Greenert, you talked about the chain of command and how it might be implemented to address some of these crimes outside of the chain of command. I wonder if anybody here has looked at some of our allies, at Britain and Canada and Israel, which have removed the chain of command from serious cases, and how that is working and how they have done that?

General Dempsey or Admiral Greenert, I don't know which one of you might like to respond?

Admiral GREENERT. I have not, Senator. But I will. I know the Israel navy chief very well, and I will have that conversation. I thank you for that tip.

Senator SHAHEEN. General Dempsey, do you want to add anything?

General DEMPSEY. We have just begun that, actually, in preparation for this hearing and for the consideration of some of the legislative recommendations we have. So I have got a briefing from my Australian counterpart and my Israeli counterpart, and I have a couple of other requests outstanding.

Senator SHAHEEN. I hope you will let us know what you find out.

Almost everyone today has talked about the importance of good order and discipline, but I am wondering if you can respond to how sexual assault in a unit that goes unpunished and unreported might undermine unit morale and cohesion, especially as we look at more and more women joining the ranks of our military. What has been your experience on that?

General Odierno, have you got—

General ODIERNO. I think, as I said earlier, it gets to the very fabric of who we are. I mean, we have to rely on each other totally. As a ground force, close combat, no matter what your position is, you have to be able to rely on those to your right and left. And if you can't rely on them to protect you, whether you are a male or a female, it goes against everything we are.

So, in my mind, it gets to cohesion. It gets to our ability to accomplish our mission. So it fundamentally goes at the discipline of our unit, and that is what makes it so disturbing to all of us. We just don't expect that in our units, but we are seeing it. And so, it is why it is so important that we have to deal with this issue.

And as you said, we are increasing the role of women. We are increasing the number of women. We are increasing. They are in the Army significantly as we move forward, and so we have got to deal with this because we rely on them and are going to depend on them more and more because we need their talents. And so, it is important for us to go forward with this.

Senator SHAHEEN. Senator Fischer and I have introduced legislation that would make the sexual assault prevention response positions more high profile, and I was pleased, General Odierno, that in your testimony you addressed this. I am wondering if there is a response from the other chiefs who we haven't heard from about the possibility of enhancing and upgrading those sexual assault prevention and response positions so that commanders have a hand in that selection process.

Do you think this is something that would be helpful, General Amos?

General AMOS. Senator, I think absolutely yes. But if I could just caveat that with how we have done it. A year ago, when we were putting this campaign plan together and said, okay, enough is enough, let us change it. Let us fix it. I personally selected the head of our program and brought—he was out overseas in command of 2,500 Marines, a Marine expeditionary unit. I brought him home early from the WESTPAC to come in and head that up because he had the passion, the intellect, and the capacity to be able to do that.

So, in that regard, Senator, I think those individuals in charge of representing these programs to us absolutely should be hand-picked, and in my Service, I am the guy that does that.

Senator SHAHEEN. General Welsh, do you want to respond to that?

General WELSH. Yes, ma'am, I would. And thank you for the question because it gives me the opportunity to comment on the Sexual Assault Response Coordinators we already have, who are doing absolutely phenomenal work. They feel like they are battling upstream on this issue, and they are more frustrated than anyone is. And anything we can do to enhance their training and their qualifications and the support we give them and the visibility we give them is a good thing.

We are currently in the process of expanding the numbers. Moreover, on the air staff, we are moving the entire office to have it report directly to our Vice Chief of Staff. We have got a two-star general, General Maggie Woodward, who will take over that office now. We will hire an SES deputy. We will expand the number of people in the organization and hire highly qualified experts to come in and help give us the expertise that we need to help move forward in this area.

You asked the question a minute ago about what can happen if a climate is allowed to continue. I believe the Lackland issue that we saw the last couple of years is exactly that. It was allowed to continue. It got very ugly very quickly, and that is the danger.

One of the comments I made earlier had to do with not knowing if we have relieved commanders for this. While I don't think it was directly termed for a climate of sexual assault, we did have two commanders at Lackland that were relieved by General Ed Rice, and it was clearly related to the climate that they had allowed to develop.

And so, I would like to correct that on the record. Somebody reminded me of that a moment ago.

Senator SHAHEEN. Thank you. My time is up.

Chairman LEVIN. Thank you very much, Senator Shaheen.

Senator Graham.

Senator GRAHAM. Thank you, Mr. Chairman.

I think Senator McCaskill made a point that I thought was very intriguing. When people come forward and talk about being assaulted or bad working environment are completely two different things. Is there a system in place to capture those two different things?

Of all the numbers we are talking about, can you tell us from your Services' point of view of the numbers, the thousands, whatever allegations there are being made out there, how many of them fall into the category of inappropriate conduct versus a crime? Can you tell me that in the Coast Guard?

Admiral PAPP. No, sir. I don't have stats or figures that I can give you, and we can certainly do that for the record.

[The information referred to follows:]

[COMMITTEE INSERT]

Admiral PAPP. But just intuitively and anecdotally, whenever we have somebody who is removed for command climate issues, inevitably it goes much deeper, and we find other—

Senator GRAHAM. I guess I would just say command climate doesn't do justice to what we are talking about. Command climate is a hostile workplace to me. A crime is a crime.

So, to me, how do we capture the difference between the sexual perpetrator who somehow got through the gates of straining in the military, who has been able to survive and sometimes flourish in the military performing their duties, but yet have this as a disposition that will destroy the military if not addressed? How do we separate those two? Does anybody have any ideas to make sure we understand the difference?

Admiral PAPP. Well, sir, I agree with Senator McCaskill completely that there are two separate things we measure.

Senator GRAHAM. Yes, but are they being reported in a way? What about the Army?

General ODIERNO. Yes, right now, they are required to be reported together.

Senator GRAHAM. Well, I think—

General ODIERNO. And we have to separate them. We can separate them.

Senator GRAHAM. I think that is a really good place to start.

General ODIERNO. And we understand that.

Senator GRAHAM. Because I don't want everybody in the country to think that every allegation is of rape. Now every allegation of "I was inappropriately talked to" is very important and needs to be dealt with that I was not treated right. But I think there is a big difference between the two systems that she is describing, and I don't believe there is any tolerance for anyone to allow someone who is a sexual predator to get anything other than just as hard a hit as we can give them.

So I would like to follow up on her question and you all report back to us how you would create two tracking systems.

Now about lay people making prosecutorial decisions, that is a bit odd to the average person. I mean, in the civilian community, decisions to prosecute individuals are made by trained lawyers, sometimes elected, sometimes appointed. How would you justify this in the military, to have such a different system?

General ODIERNO. I would just say that I think what we do in the military is very unique. We are asked to do things that are very different than any other profession, and that is why the UCMJ was originally created, for us to have this unique relationship because of the good order and discipline that we often talk

about and the unit cohesion that is necessary to do the things that we are asked to do.

Senator GRAHAM. Would you agree that a military commander has authority that is hard to find a counter to in the civilian community?

General ODIERNO. That is correct.

Senator GRAHAM. Very few of us have the authority to order somebody into battle.

General ODIERNO. That is correct.

Senator GRAHAM. Very few of us have the responsibility of commanding people where they don't really get to discuss among themselves if this is a good idea.

From the Navy point of view, I remember writing a law school paper about the absolute authority of a naval commander at sea. And there was a case where a guy had been up for like 20 hours. He went to sleep for 2 hours, and the ship ran aground, and they court-martialed the commander. Why would you do that?

Admiral GREENERT. Well, we entrust in the commanding officer of the ship all of the people aboard and the ship itself, part of the Nation. And that authority and that delegated authority to the commanding officer is absolute, and they are absolutely responsible for anything that goes on.

Senator GRAHAM. And all I would tell my colleagues, the military is truly a different world.

General Gross, who picks the jury?

General GROSS. Senator, that is the convening authority.

Senator GRAHAM. Is there any such thing as a jury of one's peers in the military?

General GROSS. It is different. I mean, everybody on the panel—

Senator GRAHAM. You are not going to get a jury of your peers?

General GROSS. That is correct. They outrank. They outrank the individual who is on trial. In the case of an officer, it is an all-officer panel, but every officer outranks the individual.

In the case of an enlisted, they can elect to have an enlisted panel, and part of the panel will be enlisted.

Senator GRAHAM. But they will be all senior enlisted people?

General GROSS. That is correct.

Senator GRAHAM. The point is that court-martial panels are not jury of one's peers. They are juries made up of people who have expertise and knowledge and experience for the unit who are assigned to do justice in individual cases, but have that command perspective because the whole point of military justice is to render justice in individual cases, but to make sure the system is moving the unit forward as a whole.

And I understand this is a bit difficult to absorb for a lot of folks who are not in the military. But I would say that from my point of view, that commanders do listen very closely to their JAGs. And it seems like the only cases that go forward are the bad cases. I don't know why you would want to send a case to court-martial where your JAG said we didn't think it was a good case.

Can you tell us why you would do that, General Amos?

General AMOS. I would be happy to, Senator, because there are times when I have sent a case forward when my JAG has said, sir, we don't have enough compelling evidence. It is a "he said, she

said,” which, quite honestly, is—makes up an awful lot of our sexual assault cases.

There is alcohol involved. It is complicated, and I, in those cases, often have forwarded it to a court-martial, forwarded it to an Article 32, then a court-martial because I am going to let the jury, the judge sort it out. But I want to send a signal to the command that it is not tolerated here because it may be “he said, she said” to me, but it may come clearer in the matter of a court.

Senator GRAHAM. Gotcha. And one last question, I am over my time. Article 60 power, the ability to set aside a finding or a specification and reduce a sentence, do you all agree that that should be taken away from commanders in most cases? To me, that is internally inconsistent with your message to us in terms of power of the commander. How do you reconcile that?

General CHIPMAN. Senator, if I can answer that? I think that when the code was promulgated in 1950, it was before substantial reforms had occurred in 1968, where we brought in trained judges, qualified lawyers, to perform those roles. And so, I think that the conditions that warranted that authority back in 1950, coming out of our experience in World War II, no longer pertained.

Chairman LEVIN. Thank you, Senator Graham. Thank you.

Now Senator McCaskill has raised this question of keeping statistics much more separately in terms of assaults, sexual misconduct involving assaults versus other types of sexual misconduct. That might not be the perfect dividing line. I am not sure. But the point that she raised I think is extremely important. Senator Graham has just emphasized that as well.

We would ask you, I think under your leadership, General Dempsey, to propose and to put into place a system of tracking the misconduct in different categories so that we can, number one, understand it better but, number two, have a baseline that we can follow. That would be very helpful to us.

So will you, General Dempsey, take the leadership, see if that is possible with the stats that are currently available. If it is, fine, we will have an earlier baseline.

Senator MCCASKILL. It is not.

Chairman LEVIN. Apparently, it is not. Senator McCaskill said I think it is not, and one of the Services, I think, indicated it is not. So either way, but assuming it is not available, start now. If it is, you can reconstruct something, fine.

Senator MCCASKILL. Mr. Chairman, the numbers that we have been relying on that have been so widely reported is the 36,000 number, and that is from the biannual survey. And the question is, have you had unwanted sexual contact? That is the problem is that that includes sexual harassment, unhealthy work environment, and rapists.

Chairman LEVIN. Right.

Senator MCCASKILL. And that doesn't help us track whether or not we are getting at this or not.

Chairman LEVIN. And I think it is an important point, and we are asking you now, starting now, if you can't reconstruct it earlier, to give us a much more useful system, okay?

General DEMPSEY. We will go to work on it. If I could add, though, just so you know how we got here, because I recalled it

might be now 10 or 12, 15 years ago, a conversation about whether we should separate these categories. Because in separating them, you could encourage some to ignore the unwanted sexual touching or the sexual harassment and focus in only on the sexual assault, and it was our view 15 years ago that this was a problem that was a continuum, not individual acts.

I know, but I am suggesting to you we didn't get to this point by being stupid. We actually got to this point because we were trying to do the right thing. Looking back at it, it is probably time to adjust it.

Chairman LEVIN. Right. Well, we thank you for taking on that task. We think it is now important that we do that.

Senator Gillibrand, thank you for your leadership on your subcommittee, too. You have had hearings on this subject, and you have been leader in this subject. We very much appreciate both of those things.

Senator Gillibrand.

Senator GILLIBRAND. Thank you, Mr. Chairman.

Thank you for holding this hearing, and I think what Senator Levin said when he opened up this hearing, he said discipline is the heart of the military culture, and trust is its soul. I am sure there is not one of you who disagrees with that statement, and this goes to the very reason why we are having this hearing.

I have spent a lot of time over the past several months trying to understand this problem because I appreciate the service and dedication every single one of you gives every single day to this country. And I am extremely grateful with the renewed passion and determination so many of you have shown in this hearing about how you will get to the bottom of this problem and how you end the scourge of sexual violence and assault in the military.

I believe you when you say that is what you want to accomplish. But what I want to talk about today is how we are going to accomplish that and what the actual problems seem to be.

After speaking to victims, they have told us that the reason they do not report these crimes is because they fear retaliation. More than half say they think nothing is going to be done, and close to half say they fear they will have negative consequences. They will be retaliated against. Of the victims who actually did report, 62 percent said they actually did receive some retaliation.

And unfortunately, the reports that we do have, the incidence of reporting has actually dropped in comparison to the number of cases. It has dropped from 13 percent to under 10 percent of the vague estimate of 26,000 incidents. We don't know how many are rapes and sexual assaults and how many are unwanted sexual attempts.

Now Secretary Panetta has said the most important thing we can do is prosecute the offenders, deal with those that have broken the law and committed the crime. And if we can do that, we can begin to deal with this issue. Each one of you have talked about today military trust.

General Odierno, you said military is built on a bedrock of trust. Crimes cut to the heart of military readiness. You have to be able to rely on our troops. It goes to unit cohesion and discipline. You have said it perfectly.

General Amos, you have said the exact same thing, that we need to have trust.

General Welsh, you said the bottom line is, though, they don't trust us enough to report.

General Amos, you said the exact same thing on—in April, you say why wouldn't female Marines come forward? Because they don't trust us. They don't trust the command. They don't trust the leadership.

General Dempsey, you said the same thing. You said that you might argue that we have become too forgiving because if a perpetrator shows up at a court-martial with a rack of ribbons and has four deployments and a Purple Heart, there is certainly the risk that we might be a little too forgiving of that particular crime.

Lieutenant General Harding, you just answered Senator McCaskill's question, saying you think character should be considered whether or not we go to trial. No legal standard in the country agrees with you. That is why we want prosecutors to make that decision.

So my concern is this. You have lost the trust of the men and women who rely on you that you will actually bring justice in these cases. They are afraid to report. They think their careers will be over. They fear retaliation. They fear being blamed. That is our biggest challenge right there. Right there.

So what I want to ask you, now you have all said you could never support taking this out of the chain of command. Now the key question Claire made is very important. I agree with you. The chain of command is essential for setting the climate. Absolutely. You do set the climate.

And that is why when we looked at this problem we have chosen to keep all Article 15 issues in the chain of command. We have also chosen to keep all crimes of mission—going AWOL, not showing up on time, not charging up the hill when you command your servicemember to do so. So we have understood that you do set the tone for all of this.

But there is a difference between setting the tone, dealing with misdemeanor-level behavior and dealing with some criminal behavior. But when we are talking about serious crimes, serious crimes like rape and murder, crimes that have penalties of more than a year or more, what several of us are asserting and arguing today is we think you should do what other countries around the world who we fight with every day, that are our allies. They are side-by-side with us in combat—Israel, the UK, Australia, Germany.

They have taken the serious crimes out of the chain of command for precisely this reason because the commander, while you are all so dedicated and determined, not all commanders are objective. Not every single commander necessarily wants women in the force. Not every single commander believes what a sexual assault is. Not every single commander can distinguish between a slap on the ass and a rape because they merge all of these crimes together.

So my point to you is this has been done before by our allies to great effect, and in fact, in Israel, in the last 5 years because they have prosecuted high-level cases, you know what has increased by 80 percent? Reporting.

So I would like you to tell me specifically if you elevated only the decision point of whether to prosecute the serious crimes to a JAG military trained prosecutor to make that one decision, along with the decision that Secretary Hagel has already recommended, the decision of whether or not to overturn the jury verdict, it is just two decision points for only serious crimes, for no other command climate.

And I do agree with you, U.S. commanders are essential to this. I don't think you can get this done if you are not 100 percent dedicated to eliminating the scourge of sexual assault. So I would like you to say, and starting with General Dempsey, how do you feel about those two decision points? And why can't you maintain good order and discipline without those two decision points?

Because you have those two decision points today, and you do not have good order and discipline. You have, arguably, 26,000 attempts, either unwanted sexual attempts, assaults, or rapes. That does not define, by any of your definition, as stated today, good order and discipline. It goes to the heart of not having military readiness.

So, General Dempsey, please give me your thoughts about those two decision points, and why is overturning okay with you, but whether to go to trial is not okay with you?

General DEMPSEY. Well, we have had the time with the chiefs or our SJAs to give full consideration of the Article 60 adaptation, and we will give consideration as part of the 576 process to the other part of the question.

But as I have said earlier, I haven't had the time to talk to my counterparts. I am not sure they would completely align themselves with you on the success or failure of taking it out of their military chain of command. Some cases they were forced to do it, and they are expressing their support for that.

But I do want to be clear. Though I am aligned very closely with my peers here on the idea that we should try to fix this through the commander, not around him. I also think we should take a look at surrounding him or her with a constellation of checks and balances so that we empower and hold accountable commanders. So that is my initial thoughts.

Senator GILLIBRAND. And General Amos, could you give me your thoughts?

General AMOS. Senator, I just pile on what General Dempsey said about enabling the commander better. So that is something we have not talked about, and actually, that is very encouraging.

But just a little bit, last year we had a total of all our general court-martial cases last year, 97 percent of those under your proposed bill would go to this independent decision authority, independent disposition authority. So 97 percent. So that would be things like failure to obey orders and regulations. Clearly, that is—

Senator GILLIBRAND. No, that is excluded under our bill. Any crime of mission is excluded.

General AMOS. Okay. I am just going by what is listed down here. Assault, Article 134 offenses, adultery, child endangerment, all those things would be would—go to this independent disposition authority. Those are things that are line with a commander's abil-

ity to be able to mete out justice and maintain good order and discipline.

So, as I said earlier, if I thought—and I am not convinced of this. If I thought that moving in an IDA on sexual assault matters would reduce sexual assaults, increase reporting, then I would support it. I am just not there yet because I don't have any proof of this thing, and I am not convinced of it yet.

Senator GILLIBRAND. Since my time has expired, I would like each of you to submit for the record two things. How do you intend to regain trust of the men and women that serve under you that they can get justice within the current system? Because that is clearly what they have told us. They don't have the trust, and many of you have actually said that.

And the second thing, how do you intend to hold commanders accountable if they don't get reporting up and they don't begin to solve this problem? Because none of you has ever reprimanded or held any of these commanders accountable in the past. But if everything starts and falls, stops and starts with the commanders, how do you intend to hold them accountable if they do not solve this problem?

[The information referred to follows:]

[COMMITTEE INSERT]

Chairman LEVIN. That will be asked for the record, but I do think, in fairness, that a number of them have testified that they have held commanders accountable in the past, including for sexual climate.

Senator GILLIBRAND. But never dismissed.

General AMOS. Chairman, can I just—

Chairman LEVIN. We will let their testimony speak for itself on that.

General AMOS. Sir, I would just like to correct the record. My guys behind me reminded me that we have relieved two colonels—

Senator GILLIBRAND. Oh, you have?

General AMOS.—in the last 12 months. Two for sexual harassment and assault, two of them.

Senator GILLIBRAND. Thank you. Just please submit for the record what your hope is, what your measure will be and how you will create a measure of accountability.

Chairman LEVIN. Will you all do that then for the record? We will require that.

Thank you very much, Senator Gillibrand.

Senator Blunt.

Senator BLUNT. Thank you, Mr. Chairman.

And thanks to all of you for your service and for being here.

You know, you don't get to this table that you all are at today without considerable skill in lots of areas—leadership, communication, lots of things. I am always impressed when you come and represent your Service and represent those who serve us and defend us.

I did think, General Dempsey and Admiral Greenert, that your response to the question that Senator Shaheen asked was stunningly bad. The question was, have you talked to people, to Services that have been dealing with this for longer than we have?

Admiral Greenert, you said thanks for the tip about Australia and Israel, which Israel would—and General Dempsey, you said you had just begun that process preparing for this hearing, which I thought was not—it is a good thing we had the hearing. But then in response to what Senator Gillibrand said, General Dempsey, you said you hadn't had time.

So maybe I have heard this wrong. Has anybody who works for you been asking these people? This is not management—this is not a tough management thing.

Where do you go to find out how people have dealt with this before, and how could that possibly, Admiral Greenert, be a “tip” from somebody on this committee to the principal manager of the U.S. Navy? And I will let you answer that first and then General Dempsey.

General GROSS. Yes, Senator, thank you.

As the legal counsel to General Dempsey, that is one of the areas I have looked into. I have done some research on the UK—

Senator BLUNT. I was going to ask Admiral Greenert, and then I will come to your—

General GROSS. Oh, oh.

Senator BLUNT. And that will be good. If somebody is looking into this, I will feel better than I did a minute ago. I am hoping.

Admiral GREENERT. Well, Admiral DeRenzi tells me she, too, has had those conversations with our Navy, but I take—I take that aboard as something that I should have done, Senator, and I didn't, although we have talked about it with my JAG.

Senator BLUNT. Well, now apparently you hadn't talked about it enough to know that she had talked to them about it, or you would have said that to Senator Shaheen. Unless—I am trying to be fair here. I know you have a difficult job. I admire what you do.

But these are—this has been going on now for years. Senator McCaskill has been, since the day she got here, trying to draw attention to this effort. You haven't been in this job all that time, but talking to people who have managed this problem longer than we have seems to me the very easiest place to start. And the guy at the top should know that. The man or woman at the top should know that.

Admiral GREENERT. To be clear, Senator, I have talked about sexual assault in our navies with several of my counterparts. What I have not discussed is litigating and taking litigation or the process, if you will, of litigation outside of the chain of command. I have had numerous conversations with my counterparts.

Senator BLUNT. That is a helpful addition. General Dempsey? Do you want your attorney to answer?

General GROSS. Yes, Senators. As part of my duties, I have been looking into these matters. I mean, I even started thinking about it when I was in ISAF and U.S. Forces Afghanistan back in 2009 and got a chance to learn about some of our allies' systems, to include Germany. And frankly, I heard some dissatisfaction with a criminal justice system that was completely bifurcated from the military chain of command.

An individual who had made a decision that a commander with battlefield experience might not have seen as a violation of the rules of engagement and so forth, but it was handed over to civilian

prosecutors with no military experience, no combat experience, to make decisions about whether or not it was appropriate for that individual in that particular case to call in fire on a position. So there was some dissatisfaction there.

I have recently spoken with a British Judge Advocate. He sent me an article on the British system that I have been in the process of looking at, and some of my folks are as well.

And I know that the Service Judge Advocate, each Service Judge Advocate also has criminal law shops. And just from speaking to some of them, I know that they have considered Australia, the UK, Israel, and others that have looked at this as not necessarily as a solution to sexual assault, but as just a system for pulling all crimes out of the chain of command and into an independent, in some cases civilian prosecutor, in some cases court.

Senator BLUNT. And I would think from a greater management point of view, in addition, and I think you are doing this—I hope you are doing this. But all of the thoughts we can get from other people dealing with this, or how do you stop it from happening? How do you minimize the chances you are going to have to deal with this at a litigated level by whatever you do in the culture of the command? What do you do to stop this from happening?

And if we find out they are doing no better than we are, that is something that we should know. But I think they, in many cases, dealt with this in the situations particularly we are going into now longer than we have—in combat and other situations.

The question I am going to submit for the record, and I don't have time for everybody to answer it now, but among others, it will be is to each of the Service Chiefs, is the soldier, sailor, airman, marine, or coast guard person less fearful of being retaliated against for reporting instances of sexual harassment or assault than they were in the past?

And I may put a couple of qualifiers on how—than they were, say, 18 months ago, and how do you feel that the guidance that commanders are issuing is restoring the trust among members of the Service that we need to have?

And thank you, Mr. Chairman.

Chairman LEVIN. Thank you very much, Senator Blunt.

That question for the record will be answered. Then would that be addressed to all of them, all the chiefs?

Senator BLUNT. It will be to the Service Chiefs.

Chairman LEVIN. All right. And to the Chairman, I assume, as well, and all questions for the record that we have identified so far, kindly answer those promptly.

And any other questions that are not referred to specifically today should be in to me so that we can pass them along no later than, let us say, by Thursday. So we can put some kind of a finite end to questions for the record.

[The information referred to follows:]

[COMMITTEE INSERT]

Chairman LEVIN. Senator Blumenthal?

Senator BLUMENTHAL. Thank you, Mr. Chairman.

I want to join in expressing appreciation to you for being here today. I know this moment is a challenging and difficult and even a painful one because you share our view that the crime of sexual

assault sullies the good name and honor of the greatest military in the history of the world. And each of you has given your lives, your professional and your personal life, to serving that military, and many under your command have literally given their lives under your command to serve that military and to keep faith and to maintain the trust that we all agree is at the core of the great service that you perform.

And I have no question, having spoken to you before today and many under your command, that they share your determination to root out this cancer and to do what the civilian world has, in many instances, failed to do, which is improve our justice system there. And I think that the military has a great opportunity to teach some lessons to the civilian world, just as you did on the issue of race relations and desegregation, which General Amos has alluded to.

I know something about prosecuting because I did it for a number of years, and I know that it is very, very difficult to make the kind of judgments about whether to charge someone with a crime. It is the most difficult part of being a prosecutor because you know in charging someone, with many crimes, you are going to ruin that person's life forever, whether there is a conviction or not. And the kind of factors and issues to be considered are what kept me awake at night.

So I have supported making those decisions by someone who is trained and experienced and has the responsibility exclusively not only for making the decisions, but then trying the case. And I welcome General Dempsey's suggestion that we need to have checks and balances, a constellation of checks and balances. I welcome General Odierno's suggestion in his testimony that we need to take a hard look at the present system.

But what I would suggest to you, very respectfully, is that decisions about prosecuting are as difficult and demanding and challenging as some of the decisions that you make about the expertise that is within your training, and the military would be well served by having those decisions made by someone who is perhaps not completely outside the chain of command, but at least within it, and not maybe a Judge Advocate, who is, again, not necessarily trained in this function, but someone who does have that role exclusively. So that he or she can bring to bear that expertise and experience.

Reporting is the key factor here, and I am encouraged by some of the numbers that we have heard, the 31 percent in the Marine Corps, which I think is a basis for hope or optimism. But reporting will not occur in greater numbers unless we do refine, to take the word of the day, refine the present system.

So I have suggested in legislation I proposed that victims be given restitution out of a compensation fund as an incentive to come forward, but also a means of making them whole. Let me ask all of you, considering that someone can get restitution as a victim for having a car robbed, isn't it appropriate for restitution to go to a victim or survivor of sexual assault?

General Dempsey?

General DEMPSEY. Well, as I said in my opening statement, Senator, I have been attentive to all of the legislative proposals. And I am hopeful that as part of the 576 panel that that issue of res-

titution would come up. But I am not prepared to give you an answer on it today because I don't understand—by the way, Australia has done that in some ways successfully, in some ways unsuccessfully, and I am still trying to learn the lessons of our allies in that regard.

But I don't have a view on it today, but I understand it.

Senator BLUMENTHAL. I assume you would agree, from what you have said, that mandating a punitive discharge for a convicted sexual offender would be something you would support, another measure that I have proposed?

General DEMPSEY. Yes, I have actually said that automatic discharge for convicted felony offenses, particularly in the case that we are discussing, sexual assault, is an idea that I would align myself with.

Senator BLUMENTHAL. And what about the idea of some bill of rights that is incorporated in the Uniform Code of Military Justice, a bill of rights for victims or survivors? Is that something that would seem to serve the purpose of eliciting more reporting?

General DEMPSEY. Yes. I believe it is. The only one we have actually put forward our military advice on collectively at this point is the Article 60 change. These others we would hope to put forward as part of the outcome of the 576 panel.

Senator BLUMENTHAL. Including, for example, a right against repeated interrogation without some kind of counsel being present, a right against inordinate delay, a right to be present in a proceeding, the right to speak at the proceeding if credibility or past sexual history is raised, to set the record straight. Those kinds of rights are basic to fairness and to trust, it seems to me.

And finally, some kind of ombudsman or authority within the Department of Defense that would be a source of action in the event there were a miscarriage of the justice system. Would you support that kind of change as well?

General DEMPSEY. Well, again, Senator, I am not trying to avoid your question, but I am suggesting to you that I have said that we will consider any of the options presented by 26 pieces of legislation, by the way, through the 576 process.

Senator BLUMENTHAL. Let me just close, and I appreciate being given this opportunity to question. One of the most impressive and startling facts at this hearing was the suggestion by—the testimony from General Amos and General Odierno that they actually went ahead to prosecute despite the recommendations to the contrary in many cases from their Judge Advocate, which I think indicates the passion and zeal that needs to be brought to this problem by the commanding officers.

And I am confident that if that kind of zeal and passion are brought to decision to charge, it will change this, the command climate, and eliminate this cancer from the military system.

Thank you, Mr. Chairman.

Chairman LEVIN. Thank you, Senator Blumenthal.

Before I call on Senator Ayotte, we are going to—after this panel is completed, we are going to move directly to the next panel, and we are not going to be stopping for lunch today at all. We are going to work right through the lunch hour. That is good news I wanted to deliver as early as possible.

Senator Ayotte.

Senator AYOTTE. Thank you, Mr. Chairman.

I want to thank all of our witnesses who are here today for their service and leadership to our country.

And let me just—there are a few questions that I feel, number one, has not been answered. And Senator Graham asked, touched upon it. General Dempsey, Senator Gillibrand touched upon it. But I think it is a very important question, and if you can't answer it today, then I think it needs to be taken for the record.

And that is why is it that you support the changes to Article 60, and yet when it comes to the dispositional authority for crimes of sexual assault that you believe that it would undermine the chain of command to make those changes or some changes to the dispositional authority? And I have not heard a clear answer on that today.

And I am asking just as someone who I believe this is something we need answered. As a panel, we have our markup next week. We have all these pieces of legislation, and I think this is an important threshold issue that we have to address.

So if you would like to take that for the record, I would like a clear answer so we can understand what the differences are between what I think has already been described and can be viewed very much as an inconsistent position on one end with the chain of command versus the dispositional authority. So I would appreciate your response to that.

I am not asking for it today. I just think it would be important for us in this markup to have a full understanding of what you think about that.

And then I wanted to ask—

Chairman LEVIN. Is that addressed to each of the chiefs?

Senator AYOTTE. I think it would be appropriate, Mr. Chairman.

Chairman LEVIN. It is. I think that it has been asked today, and whether it has been answered fully or clearly, we will leave up to each member here to decide.

However, it is an important question, and it goes to the heart of the matter. We are asking each of the chiefs, the Chairman, to give us your response to that question no later than this Friday—your answer to that question no later than this Friday, given the fact that markup is next week.

[The information referred to follows:]

[COMMITTEE INSERT]

Senator AYOTTE. Thank you, Mr. Chairman. I appreciate it.

I know, General Welsh, that you were asked earlier about the Air Force Special Victims' Counsel Pilot Program. And Senator Murray and I, we have a bill Combating Military Sexual Assault Act of 2013. It has 33 cosponsors. As I understand it, you said that the response has been very, very positive in the Air Force to this program?

General WELSH. Yes, Senator. Overwhelmingly positive.

Senator AYOTTE. Overwhelmingly positive.

General WELSH. Yes, ma'am.

Senator AYOTTE. In other words, victims feel that they have the support of the system, which has been—when I look at your survey, that is one of the issues that comes loud and clear when you

have people who are reporting saying 43 percent heard about negative experiences of other victims that went through that reported their situation.

So, General Dempsey, I would like to ask you what your position is on our legislation in terms of giving this special victims' counsel not only to those in the Air Force victims, but in every branch of our military?

General DEMPSEY. Yes, Senator, thanks.

We have discussed that as chiefs, and there is a distinction between special victims capabilities and special victims advocacy that we are trying to work through and understand the resource implications. But we are very much in agreement that we need to do more for the victims.

Senator AYOTTE. Okay, General. So I also would appreciate if you are able to give us—I know that you are talking about it at a command level with the Secretary, but as we go into the markup next week, it would be very helpful to know.

Because this piece of legislation does have 33 cosponsors in the Senate, and I want to make sure that every victim of sexual assault gets the support that they need in the system to make sure that people—we turn this around in terms of people not—there is a group of people that are not coming forward because they fear how they are going to be treated in this system.

And so, I think knowing that there is a representative that represents them and will represent their rights and respect their rights within the system I think is very important. So I would appreciate any follow-up you have on that with your meetings within.

I wanted to ask also in our legislation, one of the incidents that we have been—when we talk about incidents that we are all troubled by, one of them has happened at Lackland, where you have 43 female trainees alleged to have been victimized by their military training instructors. Seventeen instructors were accused of offenses ranging from improper relationship all the way to rape.

And one of the components of the legislation that Senator Murray and I have introduced actually prohibits sexual contact between instructors and trainees during while the training is going on and within 30 days of the completion of basic training. I think all of you, as leaders of the military, appreciate that there certainly is a vulnerability to those who are in a training setting with those who are the commanders there and the people that they are reporting to that are training them.

So, General, I wanted to—when I saw your written response to that piece of the legislation, I was troubled by the fact that there wasn't an endorsement of that. And so, I need to understand where do you stand on the notion of prohibiting sexual contact between instructors and trainees during basic training?

General DEMPSEY. We have spoken about special protections for, for example, cadets in basic training. But we find ourselves at a little bit on the horns of a dilemma. We have got the 576 process that the Secretary of Defense has been chartered to go through, and we haven't had a chance, frankly, to speak with him about any of these in particular, which is why I have said on a couple of occasions now that, personally, I think some of these issues have real

merit and potential, but I have to also be true to the legislation and the panel that will try to see this thing holistically.

So I am not—I am not trying to avoid the question, Senator. But I am trying to make sure that I have the opportunity with the Secretary to bring it into context.

Senator AYOTTE. I know that my time is up, and I just think it would be hard to justify not supporting what seems to be basic common sense when you have incidents like Lackland. Just the relationship between a trainee in a basic training setting and the individuals who have command over them who are training them, that there should not be sexual contact there because that, obviously, can lead to issues of coercion.

So I would hope that that would be something that would just pass the basic common sense test. So I look forward to hearing more about that from you as you have these meetings.

Thank you.

Chairman LEVIN. Thank you, Senator Ayotte.

Senator Donnelly?

Senator DONNELLY. Thank you, Mr. Chairman.

And I want to thank all of you for your service, and I know how hard you are working to try to get this right.

We have heard about the risk of unintended consequences, but here is the risk that concerns me. And I know you all feel the same. We have brothers and sisters, sons and daughters, husbands and wives. And when this happens, it is the risk of personal violation of somebody. It is the risk of destroying that person's internal soul, their emotional state, their physical state.

And in some cases, by a person who they look to as their leader, their commander, and that they look to with a sacred trust. General Amos, you put it best. You said this is a sacred trust that we have in front of us and that we have an obligation to get this right.

And we are in this with you. When you said the buck stops here, the buck stops with us, too. We have an obligation to get this right.

I was at the Indy 500 a week before the race, and we inducted a couple hundred young men and women into the Service. And I want to be able to know when I look them in the eyes that I can keep my obligation to tell them you can serve our country, serve with dignity, have your dignity respected. And that is what we are trying to do.

And General Odierno, you said we have a commander problem, and so my question is we ask a lot of our commanders. And in many cases, they are in the middle of fighting a war at the same time. They have a lot on their plate.

And it doesn't, in my eyes, make them less capable that they don't handle this. They have other things to handle. I don't know or why would a soldier think less of their commander simply because their commander doesn't handle this area?

General ODIERNO. Well, having been a commander in combat on three occasions—

Senator DONNELLY. Right.

General ODIERNO.—I would tell you that is essential because they depend on you for everything that goes on in that unit. And one of the things we talked about, by the way, is this threat about

retaliation. That is not going to change if you take it outside the chain of command. You still have the threat of retaliation.

I want the commander fully involved in the decisions that have an impact on the morale and cohesion of the unit, to include punishment, to include UCMJ. That is their responsibility. It is not too much responsibility.

In my mind, it sets the tone for the unit in order for them to execute under the most strenuous conditions, and I need commanders who can do that. And I think, ultimately, if they can't do it, then we hold them accountable. That is their responsibility.

So I feel very strongly about it. Because what we ask them to do—I agree with you. What we ask them to do is very unique and very complex, and it requires a commander who sets the tone for every issue. And as we increase the role of women, it becomes even more important in my mind that the commanders take this on themselves and that they are part of the process to solve these problems.

The other thing I would just say is they are not making these decisions independently. You have a very experienced Judge Advocate by your side the whole time, walking you through and helping you through this process.

Senator DONNELLY. Do they have—what is the training that they have, the commanders, as well in terms of classes that they take or book learning that they take that they can look at this and go, “It is this or it is that,” where they have the same kind of prosecutorial ability.

General ODIERNO. Yes. We require commanders to go through legal orientation courses before they take command. That is part of the requirement for a battalion command, brigade command, and when general officers take command, they are required to go through a course that we teach at the Judge Advocate General School in Charlottesville.

And they go through that course to specifically outline for them what their responsibilities are. One of the key pieces of that is if you don't understand the responsibility, you go to your Judge Advocate General for them to explain to you the details and technical responsibilities that you have. So it is not only do they get trained, they are taught to rely on their Judge Advocate Generals.

Senator DONNELLY. And this would be for any of the people. Are you aware of how often, and I am sure you are, that people who have suffered the sexual assault, that not long after there is often suicidal thoughts or suicidal problems? I mean, this seems to compound another issue that we deal with.

General ODIERNO. You are right.

Senator DONNELLY. Well—

General ODIERNO. You are right, Senator. It does, and that is why it gets to the overall issue of climate, environment, et cetera.

Senator DONNELLY. And I would like to ask our Coast Guard admirals who are here with us, there is a documentary, “The Invisible War.” There is a young lady in there who is a member of the Coast Guard, stationed not far—stationed on Lake Michigan, not far from where I live. Went through an extraordinary and horrible series of events.

And I was just wondering after having seen that—she has been working with the VA and working with others—has the Coast Guard reached out to her? Have you contacted her or sat with her or talked with her to say, “Hey, how can we help put this back together for you?”

Admiral PAPP. Senator, we have made attempts to—some of the allegations she makes were not revealed when she was a member of the Service. And every time we have made the offer to further investigate or take up those allegations, we have received no response.

I watched that, and it broke my heart. I brought it home and had my wife watch it to me. I know many of our spouses go on the road with us, and they are dealing with the families. They are dealing with the crews. And we have gone on a—we have made that mandatory viewing for our senior leaders, and we have also engaged in seminars, every single senior leader within the Service.

In fact, we are going to finish up with our headquarters component next week. And it is our intent that nothing like that happen again.

Senator DONNELLY. Okay. I guess the point I also want to make with this, and this is to all of you, and I know you are all committed to this as well, is that we continue to follow-up. We continue to try to get it right for some of these folks who have felt, look, I have put forward my best claims. I have been put aside.

Or as this process goes through, that once a decision is made that we don't just leave them to the side. That they are continuing to deal with a whole host of issues that we, like I said, when I looked at those kids at the Indy 500, the buck stops here, too. And I have an obligation to make sure they get it right and have an awesome and wonderful career, just like all of you have had.

Thank you, Mr. Chairman.

Chairman LEVIN. Thank you very much, Senator Donnelly.

Senator KAINE.

Senator KAINE. Thank you, Mr. Chair.

Admiral Greenert, in your testimony you departed a little bit from your written testimony in one way that I thought was interesting. You said this issue of sexual assault in the military represents an existential threat to our core values, and I think that is a great way to put it.

And there has been a lot of testimony today and questions eliciting testimony about the inside effect, the effect upon those who are serving, the debilitating effect that sexual assault of any kind would have. But I just want to say a word about my concern about the external effects, not just those currently serving.

First, the recruiting concern is a major one. I was recently at the Mary Baldwin College in Virginia. There is a Virginia Women's Institute for Leadership. It is an 800-person women's college in Staunton, VA. One hundred of the women are in an institute that is focused on training people to take commissions in the military. They have a commissioning rate that is higher than most of the senior military colleges in the United States, about 60 percent.

And as the students and I were in dialogue about what they thought about for their future, they had two major concerns that they wanted to raise with me. One is on our soldiers. Is Congress,

with sequester and all these other things, really committed to the mission? Would we want to sign up for a career if a political leadership wasn't committed to us?

But the second they were asking me about was the sexual assault issue. And when somebody says I will put my life on the line and I will risk death to go in harm's way, but I don't know whether I want to risk a culture that has allowed this to grow so much, that is a very serious concern.

And you all and we all want to make sure that the best leaders in the future feel like this is a career that they can pursue because we want to be sitting here 25 years from now with leaders who are entering today because they know they can do it.

The second external effect that this has in a very dramatic way is one on society. Every society needs heroes, and you all are as good as we have right now. But when people start to question their heroes or think that there is a cancer or something within the heroic class, it not only affects their view about the military, it affects their view about our entire society.

And I think they feel the same if they look at Congress. If they look at Congress and they feel like we don't treat each other civilly or we are too gridlocked, it doesn't just affect their view about Congress. It affects their view about our country.

And so, when people look at the military and they see these stories about sexual assault, it is not just affecting their view about the military. It weakens their confidence in our Nation. And that is why the stakes in getting this right are so high.

I tend to agree with the line of questioning that Senator Gillibrand and others were pursuing that one of the main issues here is this fear of reporting. And the DOD report that came out in April has some staggering numbers.

For those who do report unwanted sexual contact, 62 percent say that they have experienced something that they would believe is retaliation as a result. And for those who do not report—and we know, I guess, maybe 7 of 8 don't report, based upon the recent survey—47 percent don't report because of fear of retaliation, and 43 percent don't report for another reason that is very close, which is the experience of others who have had the same reason, which would either be retaliation or, well, nothing was done. Why bother?

So 90 percent of people who don't report are reporting for something, either retaliation or a sense of I have seen others who have gone through it, and it just doesn't make any difference. I think we have got to get at that issue of the reporting and the retaliation.

General Welsh, one of the things that I think is interesting. You talked briefly in your comments and also to Senator Ayotte about this Air Force special victims' counsel, the response that you have gotten. And I would kind of be interested in knowing about the positive response.

I am sure it is positively received that along the way there is someone who can help understand the process, but I wonder whether the special victims' counsel, whether you are getting reports about it, "It makes me fear retaliation less knowing that I have someone who is going to be with me through every step of the process."

If we can't get the fear of retaliation down, then we are not going to solve this problem. And so, I think that the special victims' counsel pilot project that you guys are working on, that may have an impact on the fear of retaliation. But if we can't whittle that fear down, we are not going to solve this problem.

So I would be curious as to whether you are seeing that in any of the initial reports about the project?

General WELSH. Senator, we haven't seen any comments back from the victims who do the survey debriefs with us that specifically relate to "I feel better about the risk of retaliation because I had a special victims' counsel."

The positive return rate is about 95 percent on these surveys, overwhelmingly positive about the benefits of having someone who understood the legal process, who was by their side supporting them primarily the entire time, who shielded them from unnecessary questioning, who helped them understand the intricacies and the confusion and the tax law of the legal system that they are now in.

The positive results we are seeing are, number one, that feeling from victims. Even in some cases where the alleged perpetrator was acquitted, the victim still had usually positive things to say about the special victims' counsel.

A couple of other areas that are really positive for us are that we are finding fewer victims of the ones represented by special victims' counsel deciding not to proceed forward with prosecution, and I agree with the comments that have been made earlier today about prosecution being a very, very, very critical piece of this. And so, the more cases we can get to a court with good victim support to get the facts in the case right, I think the better we will be in the future.

And the other thing we are seeing is that there is a higher propensity for victims who start as a restricted report. Once they are assigned to special victims' counsel and have someone who is helping guide them through this what must be an incredibly confusing maze they face, more are deciding to come forward and change from restricted to unrestricted, about 50 percent more than have in the past.

And those two statistics are really positive for us. And the special victims' counsel, in my mind, is one of a set of game-changing things that can help us in this area across the spectrum of issues related to sexual assault. Right now, it is the only one we have found that is really gaining traction. We have got to keep looking for all the others.

Senator KAINE. And Mr. Chair, just you earlier indicated, all of you, that you thought you had the tools you needed right now. But General Welsh, you did say that on the special victims' pilot that resources are a component of how broadly you can implement that, either in the Air Force or system wide. Correct?

General WELSH. Yes, sir. And it would be different by Service, based on numbers of legal, of SJAs that are available and size of your Service. But this is an issue. We just can't define it clearly enough yet because we don't know what the top end of our support capacity is.

Hopefully, we will find that out by the time we finish the 1-year pilot and be able to report on that in our paper.

Senator KAINE. Thank you.

Thank you, Mr. Chair.

Chairman LEVIN. Thank you very much, Senator Kaine.

Senator King.

Senator KING. You all have a great deal of experience with leadership. In my experience, the personality and qualities and character of the leader infect the whole organization, whether it is for good or ill, whether it is a company or a small unit or a governmental entity.

We have talked a lot today about culture, and it just seems to me that one of the most important things is for you all to mean it. To mean it. To make it absolutely clear, no jokes, no winks, no nods, and don't tolerate people that make jokes, winks, and nods. That is going to be a powerful way to communicate it.

And I am not suggesting that you don't, but I am just saying that. And down the line that has to be part of this that we can change the rules and do all those kinds of things, but it is the culture that has to change, that this is unacceptable conduct.

And along those lines, is retaliation an offense? If it isn't, it should be. General Dempsey, is retaliation an offense in one of these situations?

General GROSS. Senator, there may be ways to charge that. There is interference with the justice system and certain things that there may be threats that could be charged. There may be—there are different ways under the UCMJ that you could get at that behavior.

Senator KING. Well, I would suggest maybe you want to look at something more specific than tampering with the system. But we are talking about more subtle offenses, and perhaps think about defining an offense of retaliation for reporting one of these crimes because nonreporting is the big problem here. That is the big issue.

General GROSS. I mean, I truly do think there is adequate provisions within the UCMJ now that you could charge almost all the behavior that fell within that span.

Senator KING. Does it ever happen?

General GROSS. I know that I have recently seen charges where there was obstruction of justice. I don't know that it was retaliation, per se. But it was the idea that somebody was encouraging someone not to testify or threatening them not to tell the truth.

And I have seen that a number of times over my career. I don't know of a recent example of someone being charged with retaliation, per se, but some of the Service TJAGs might have an idea about that.

Senator KING. Anybody else want to address that issue?

General CHIPMAN. Senator, I will address part of it. We talk about retaliation, and in fact, the top three reasons that people don't report relate to loss of privacy, a desire not to undergo the process, the idea that too many people will know, so a lack of confidentiality. Those are the reasons that actually outnumber retaliation.

Much of the retaliation that our survivors report actually relates to ostracism from fellow unit members. And so, it is not a com-

mand-driven retaliation, but it is this idea that through social media and other contexts, victims feel that they are now isolated from the base of support within the unit that they may have once shared because of this report of misconduct within the unit, that same unit whose values and cohesion and ethos they share.

Senator KING. Well, I would just suggest that that—this issue of retaliation is significant. Whether it is in the command chain or whether it is in the unit, again, it is creating a culture of zero tolerance. I think that is important.

Let me change the subject for a minute. A lot of this discussion is about Senator Gillibrand's bill to take these decisions out of the chain of command. That is the issue that all of you addressed in your opening comments, and I think it is an important one.

Are there any figures, and there may be—I apologize if I didn't pick them up. Any figures on how many decisions not to prosecute after a complaint is made? Is this, how big a problem is this of a decision of the O-6 or higher who decides not to prosecute? Is it 1 percent, 2 percent, 10 percent, 20 percent? Do we have any figures on that?

General CHIPMAN. Senator, I think much of our experience would be anecdotal. We have that check and balance with the Judge Advocate and the commander discussing each and every case. In the Army, for example, we have 50 major jurisdictions that last year tried 2,400 cases. And so, I would have 50 general court convening authorities making the individual decision on the merits of each case, accompanied by a discussion with his or her Judge Advocate following a pretrial investigation.

Senator KING. But you see, the point of my question is Senator Gillibrand has suggested that we ought to take this out of the chain of command because that is a problem in the prosecution. I am trying to get at is it a problem in terms of the numbers? Does it happen once every 1,000 cases or once every 10 cases?

If you can comb the studies and the records and perhaps answer that for the record, I would appreciate it.

[The information referred to follows:]

[COMMITTEE INSERT]

General CHIPMAN. Senator, we will do that. There is very little daylight between the cases that a Judge Advocate think is worth prosecuting and the decision of the commander to refer that case. So on the order of 1 percent would be more realistic.

Senator KING. That is a perfect intro to my final question, and that is instead of taking—I am looking for an alternative to taking it out of the chain of command but to still have a check and balance. What about a situation where a decision not to prosecute would have to have the written concurrence of the JAG officer associated with that decision? In other words, it is a two-person decision, as opposed to one.

That is an attempt to find a middle ground between not tampering with the chain of command in any way, shape, or form and the bill that would take these decisions out of the chain of command. Any reflections on that?

General ODIERNO. Senator, as I said in my opening comments, that is required. The Judge Advocate General is required today to

give his opinion in writing. So if it disagrees with the commander's decision, it could be pushed up to the next higher level.

Senator KING. It could be or would be? That is my question.

General ODIERNO. Yes, I think—I will let you answer that.

General CHIPMAN. Senator, I think could be. I don't think there is an automatic. It really depends upon the nature of the disagreement between the commander and the Judge Advocate. But certainly, there have been convening authorities and Judge Advocates who have called me in my current duties to say can I talk through this case with you and get your own assessment as to the merits of this particular decision.

Senator KING. My suggestion would be that it would be—it would go up one level if the Judge Advocate General disagrees with the decision not to prosecute. Again, I am searching for an option here that maintains the chain of command but still provides another check and balance in these cases, which we all agree are unacceptable.

Thank you very much, gentlemen.

Thank you, Mr. Chairman.

Chairman LEVIN. Thank you very much, Senator King.

Senator Nelson.

Senator NELSON. I would like to ask the commanders in determining whether or not to prosecute, do you feel that the accused's military service record should be a determination aid/determining factor in whether or not to prosecute? General Dempsey, I will start with you.

General DEMPSEY. We had this conversation a little bit earlier, actually, and the question was at what point does character enter into a decision to prosecute? And I think we were pretty clear, I thought, that the decision to prosecute was made in the context of the overall character of service, but always in light of the crime and the evidence that supported the criminal prosecution.

In my own experience now, character generally comes into sentencing and punishment far more than it does into the decision to prosecute.

Senator NELSON. Yes. Character in the sense of a person's exemplary military record, that is what I am talking about. So is there anybody that disagrees that a decision to prosecute could be mitigated by an exemplary record of the servicemember accused?

General AMOS. Senator, I don't believe a valorous record or a substantive record should have anything to do with the decision as to whether or not an individual should be prosecuted, number one.

Number two, in 43 years, and having done this now many times, I can't think of a single instance where my SJA sat down with me and said, you know, sir, we ought to reconsider this because this Marine XYZ has a tremendous record. Not a single time.

Senator NELSON. Does anybody disagree with General Amos? [No response.]

Okay. Now is it—do I understand that you all have already discussed this, that you all agree that a commanding officer can, at whatever level, cannot reverse a conviction by a military court? Is there anybody that disagrees that, in other words, you would agree that a commanding, convening authority could not reverse a conviction by a military court?

General GROSS. Senator, I think—I can't speak for everybody on the panel. But I think what was said earlier is that we support Senator Hagel's proposal to modify Article 60 that a commander, a convening authority couldn't reverse a conviction in all except certain minor qualified offenses, if those were the only ones remaining. And he or she would still retain the authority to reduce sentences for different purposes.

I think that was the earlier testimony.

Senator NELSON. Could any of you speak—I guess, General Welsh, could you speak to the circumstances where this has happened that Senator McCaskill has been so involved in with regard to the Air Force general?

General WELSH. Senator, I am not sure exactly what you are looking for. The case was the Aviano case, but are you talking about the convening authority's actual overturning of the verdict?

Senator NELSON. Yes. In the case of General Helms.

General WELSH. Yes, sir. General Helms is actually a case in Vandenberg Air Force Base in California, and General Helms' case was a case where an individual was charged with two counts, two sexual assault charges, and then some additional lesser charges.

In the court, one of the sexual assaults, the principal sexual assault charge was found to be not guilty. The perpetrator was found guilty of the second charge and the subordinate charges. General Helms, in her Article 60 review, as the convening authority felt that the court had not met the burden of proof for the allegation of guilt or for the finding of guilty.

And so, she set aside that finding in the court, and she punished that finding under a lesser charge and the subordinate findings of the court under nonjudicial punishment. That is what happened.

Senator NELSON. And my question is do you believe that a commander should have that authority to overturn the decision of a military court?

General WELSH. No, Senator. I completely agree with Secretary Hagel's recommended changes to Article 60.

Senator NELSON. Thank you.

Chairman LEVIN. Thank you, Senator Nelson.

Senator HIRONO.

Senator HIRONO. Thank you, Mr. Chairman.

We have heard a number of you testify that the victims in these circumstances can make an initial report in a number of ways to a number of people. Now when the report is not to the person that is in the chain of command and it is to some nonmilitary entity, what happens to that report? Are these entities required in any way to submit a report to that person's, the complainant's chain of command?

General WELSH. Senator, each of the Services may be a little bit different on how this starts, but I think we are fundamentally all the same. If the report goes to someone who then reports to the chain of command, the chain of command or anyone in the chain of command, the chain of command must now consider it an unrestricted report and it is reported through the command chain through standard reporting procedures.

If the initial call goes to one of our Special Assault Response Coordinators, to a victim advocate, or to a medical person as part of

that initial string of notifications, if they get it first and contact the victim, then the victim will have the opportunity to file an unrestricted report—or excuse me, a restricted report. And it starts with focus on victim care.

The commander is then only notified through the command chain that an incident has occurred. There is no identifying information.

Senator HIRONO. I can—excuse me. I can understand when it is all in the military environment, and so there is that. But we all know that one of the major issues with regard to these kinds of crime is the tremendous underreporting that is going on.

So my interest is to make sure that whatever reporting is done is being captured in some way by the military, and the testifiers said that sometimes civilian authorities or anonymously these crimes are reported. So how do those get tracked, if at all?

General WELSH. In some cases, they don't. In many cases, our SARCs actually have done an awful lot of work to connect to and cooperate and communicate with victim care agencies in the regions around the bases. In those cases, those organizations, unless there is a privacy restriction imposed upon them, will share information or encourage victims to talk to the Sexual Assault Response Coordinator, and we will get the reporting back into the military chain.

Senator HIRONO. So you all do your best, and all of you chiefs and all of our Services, you do your best to capture this kind of information, I hope? Good.

There was also a discussion about command climate surveys and how important they are to determine what kind of environment our men and women are serving in. And it seems as though these are not institutionalized. It is not formalized.

I would suggest, and following up on some of my other colleagues' line of questioning, that I would like to know who does the survey? Who gets asked to participate in the survey? What questions are asked in the survey? What happens in those surveys?

And I think that these surveys should be institutionalized because of the importance.

General ODIERNO. Yes. In fact, I believe they are institutionalized. First, the entire unit answers the question. So, in other words, if it is a company or a battalion, the entire unit will be part of the command climate survey, or at least a proper representation of the unit of every rank.

Involved in the questions are anything to do with the readiness of the unit to discipline within the unit, to sexual assault, sexual harassment, to suicide information, to how they feel the command reacts to what they do, what they don't do. So it gives you overall assessment of a capability of a unit from readiness to climate issues, and we have questions that are specifically built for them to answer that have been studied and continue to be adjusted over time throughout the Army.

And then those answers are taken. There is assessments done, and then feedback is given to the chain of command.

Senator HIRONO. So these surveys are institutionalized in the Army. What about the other Services? And also there is a question of confidentiality. Are these reports or are these surveys done confidentially?

General ODIERNO. They are.

Senator HIRONO. What about the other Services?

General AMOS. Senator, we have institutionalized it. It is mandatory for each command. As soon as a commander takes over, within 30 days, he or she has to have this 34-question command climate survey taken on 100 percent of the individuals in their unit. And then it will be done on the anniversary of that taking, so every year.

That information is confidential, and it goes to the next higher command, and in that, out of that, the next higher commander. So if the command is a battalion that is having the survey, a regimental commander is going to know the climate of that organization. Are the Marines happy? Is the equipment up, and are they—what is the climate for sexual harassment and sexual assault?

Senator HIRONO. Thank you. I am running out of time, and I have a couple of important questions.

We know that there are a number of bills that have been introduced, and several of them is to remove the chain of command from certain decisions. And we know that we have allies—Israel, UK, Australia, Germany—who have done the kinds of things, removal of chain of command on certain decisions.

And the response to the question of whether or not any of you have talked with our allies with regard to their experience I thought was unusual in that you had—apparently you haven't had those discussions. I like to make decisions based on information and experience. I would really like to hear from you as to when you intend to or if you intend to talk with our allies as to what their experience is in moving in the direction that some of these bills move in.

And is there any timeframe when you are going to be doing that, any of our chiefs?

General WELSH. Senator, I think we have all done a little bit of this work. General Harding, for example, has spoken with the Australians, with the Canadians, and with the British TJAG or member of the JAG staff to get their views on this.

I have spoken with the former Canadian and British air chiefs, also the Israeli air chief on a visit to Washington. And on my visit to Israel in about a month, it is one of the topics we have on the agenda to discuss with his legal team. So I think this actually is happening. There is people interested.

The problem is getting to the details, and to get the details of how they operate, we have to go to them to talk to them and their staff. And that is what was not available when we spoke originally with the air chief.

Senator HIRONO. Mr. Chairman, I would very much appreciate a response from all of our Services as to when they intend to talk with our allies, if they intend to, and with specifically regarding the removal of the chain of command on some of these decisions.

Chairman LEVIN. You want that for the record?

Senator HIRONO. I would appreciate—I would like to have that in the record.

Chairman LEVIN. And please tell us whether you and your JAGs have had such conversations and, if not or even if you have, what your plans are to have additional conversations with our allies. A

number of people have raised that question. So we will ask each of you for the record to give us that information.

[The information referred to follows:]

[COMMITTEE INSERT]

Chairman LEVIN. Thank you, Senator Hirono.

Senator Hagan.

Senator HAGAN. Thank you, Mr. Chairman.

And Mr. Chairman, I really do appreciate you holding this hearing today, and I appreciate all of you being here and your testimony.

And I also appreciate the fact that we have All-Volunteer Service today. And I think our men and women who are serving us, they have a mission, and they have a job to do. And they should not have to worry whether today is going to be the day that they are sexually assaulted.

And I want to tell General Amos and Admiral Papp, I believe in your opening sentence, both of you said that this is a crime, sexual assault is a crime, and we have got to address it as such. And that is what this hearing is for, to discuss this.

One of the concerns that I have heard and that has been raised with me is an environment in which commanders—and this is a little bit of background—are hesitant to report issues like sexual assault up to the chain of command because of the fear that making these incidents known might possibly reflect poorly on them as commanders. Commanders may fear that if they are not “handling it at their level,” they might be passed over for promotions and future command.

And while I realize that the official message from our senior leaders is different, I am concerned that at the lower levels, especially at the lower levels, there may be an environment in which commanders believe that they have got to sweep sexual assault reports under the rug in order to avoid a perception that they are not properly leading their units.

So, General Odierno and General Amos, if you could tell me, are there any concerns that our commanders, especially at these more junior levels, feel they need to handle the situation rather than properly reporting sexual assaults? And in particular if it would impact on their careers?

General ODIERNO. I think, first off—thank you, Senator, for the question. I think, first off, what we have to discuss is that this is everybody’s problem. It is not their problem. It is every commander’s problem. It is every soldier’s problem. It is everybody’s problem. We have to work this together.

And in fact, what we are trying to establish is that the worst thing we can do is not report this and not deal with it. That is our responsibility. And so, what I am trying to emphasize is the fact that if you don’t do the things we are asking, reporting, setting the right climate, it is about what actions you are taking. Inaction is what we don’t like.

And so, I think the constant discussion that you have to have from command level to command level to command level is what you have to do to ensure this does not happen, what you described, and that is what we are really focusing on. Because in order for us to solve this problem, everybody has to be all in on this problem.

General AMOS. Senator, I think it could happen, and I suspect, as I look back over years, decades, it probably has. But I will just say that we talked a lot about command climate here. We have talked about, to me, that, in and of itself, is a commander's report card of sorts.

I mean, there is a lot of other things that a senior evaluates a junior on, but in there, you will know right away whether you have got a climate that supports and protects victims of sexual assault and sexual harassment.

But this is a different—today is different than it was even a year ago. Our commanders now, just as the chief was saying, understand that the problem is a Service-wide problem. We are all in it together. I am not going to take a commander that has a sexual assault in a unit and say, "Shame on you." I will say "shame on you" if you don't protect the victim and you don't handle it well, and you back away from it.

But my sense is we are leaving that environment. We probably had that environment in the past.

Senator HAGAN. I just want to be sure that there is not negative professional consequences to the commanders who are doing the job to report these incidents and to prosecute them.

Admiral Greenert?

Admiral GREENERT. Senator, if I may? For about 6 months now, we have had a process in place where the unit commander briefs a sexual assault to the first flag in the chain of command. So there is—they sit down and say this is what happened. This is the environment behind it. These are the specifics of it.

All sexual assaults are reported in our OPREP, our operation reporting system. So there is no hiding it, per se. Now we want to get to the details, bring that together, and find out—

Senator HAGAN. Well, you have got to report it in order to get to that point.

Admiral GREENERT. Yes, ma'am. But once they are—once it is reported, I mean, it is out there. And so, again, to General Amos and General Odierno's point, it is a conversation that we all have to have. Then quarterly, I sit down with my four-star commanders and say what are we learning about all of this? What are our commanders telling us?

So there is a broader conversation, and there can be more focused action. We do this for big things like collisions, airplane crashes, and things of that nature. It is embedded in important operational issues for us.

Senator HAGAN. Thank you.

I want to look to now look at sex offenders in the military and then how it relates to the civilian component. Back in 2008, there were guidelines where sex offender registration required military correctional and supervision personnel to actually notify State authorities concerning the release of sex offenders to their States. And there are instructions that must inform the convicted person of his or her duty to register and must inform the appropriate officials in the offender's State and jurisdiction of residence.

The Secretaries concerned "shall establish a system to verify that these required notifications have been made." And I agree that military personnel convicted of sexual offenses should be punished

and then separated from the Service, out of the Service. But I also believe our obligation doesn't end at that point when a sex offender walks out the gates.

So my question is, and perhaps General Chipman and Ary, how are the Services verifying that these required notifications to State authorities have been made for sex offenders as they separate from the military or after they have been convicted?

General CHIPMAN. Senator, part of the issue depends on the point of departure. So, for example, from an installation, that responsible installation would be the notification entity. If it is from a confinement facility, there are provisions within the confinement, also the administrative entity that supports the confinement facility that would make those notifications.

Where we have a challenge is when that ex-soldier or ex-prisoner then moves to another State, and how do we follow up to ensure that that individual has then notified? Is that our follow-on obligation to ensure that that gaining State is also aware of this sex offender?

Senator HAGAN. What State do they report it, and are you positive that that reporting takes place?

General CHIPMAN. In other words, when they move, they have an obligation—

Senator HAGAN. Right. Well, no, when they actually—when they get out the first time.

General CHIPMAN. Well, from the point of the State in which they separate or in which they are discharged.

Senator HAGAN. General Ary?

General ARY. We have a similar process. Both the brig system will do the notification, and then NCIS will do a notification for qualifying offenses.

Senator HAGAN. And you are positive this takes place?

General ARY. It is required. I think making sure it happens in each and every case to the follow-on States and the moving challenges, that is going to be an issue. But it is in the system.

Senator HAGAN. And the individuals here, do you see reports like that that this has, in fact, been done?

Admiral DERENZI. Yes, ma'am. Those reports come up through the brig system. Our briggs are responsible. They notify the individual that he or she has to register as a sex offender, and they notify the State that the offender is going to so that the State is on alert that we are going to be releasing someone who has to register as a sex offender when they move.

And as the general said, when the individual doesn't receive confinement, the Naval Criminal Investigative Service does that for us.

Senator HAGAN. Thank you, Mr. Chairman.

Chairman LEVIN. Thank you very much, Senator Hagan.

We thank you, this panel very, very much. We thank those with whom you serve. Thank you for your service, your families for your service.

This panel is excused, and we will now call our second panel.

We are going to take a 5-minute break for the sake of our reporter here.

[Recess.]

Chairman LEVIN. We now welcome our second panel, a panel of commanders. Colonel Donna Martin, U.S. Army, Commander of the 202nd Military Police Group.

Captain Stephen Coughlin—did I pronounce your name correctly?

Captain COUGHLIN. It is Coughlin, sir.

Chairman LEVIN. Coughlin. Thank you, Captain. U.S. Navy, Commodore, Destroyer Squadron Two.

Colonel Tracy King, U.S. Marine Corps, Commander, Combat Logistics Regiment 15.

And Colonel Jeannie Leavitt—did I pronounce your name correctly? U.S. Air Force, Commander of the 4th Fighter Wing.

We welcome you all. We thank you for your service and those with whom you work, and we will call you in the order, I guess, that I just stated.

So, Colonel Martin, welcome to your testimony, and please limit your testimony to 5 minutes. Colonel?

**STATEMENT OF COL DONNA W. MARTIN, USA, COMMANDER,
202ND MILITARY POLICE GROUP**

Colonel MARTIN. Chairman Levin, Ranking Member Inhofe, and distinguished members of the committee, thank you for the opportunity to testify before you today.

My name is Colonel Donna Martin, and for the past 2 years, I have commanded the 202nd Military Police Group Criminal Investigation Division, or CID, which provides world-class investigative and protective services to the European Command, Africa Command, and Central Command. Our mission is to protect and safeguard DOD personnel and resources.

I lead personnel assigned to 13 military installations throughout Germany, Italy, Belgium, and Kosovo. I have commanded military police units at the company, battalion, and brigade levels. My experience with and authority under the UCMJ has grown at each stage of command.

As a company commander, I attended a Company Commander-First Sergeant Pre-Command Course, which included instruction on military justice. The Company Commander-First Sergeant Course emphasizes the role and relationship between the Judge Advocate and the commander. This relationship is critical. It is a relationship that is built on mutual trust and respect. From my time as a company commander through brigade command, I have received instruction on military justice, and I have relied upon my Judge Advocate as I have considered military justice actions.

Military justice becomes more complex as you become more senior. Prior to assuming my duties as battalion commander, I attended the Senior Officer Legal Orientation Course at the Army's Judge Advocate General School.

This course acquaints senior Army officers with the legal responsibilities and issues commonly faced by battalion, brigade, and installation commanders and by those commanders assuming special court-martial convening authority. As a battalion commander, I relied heavily on my past instruction, along with the advice of my Judge Advocate in making military justice decisions.

I currently serve as the commander of the Army's premier felony investigative unit in Europe. Being a CID commander not only gives me the inherent authorities of command, but it also exposes me to the crime trends throughout the units in Europe. Part of my mission is to educate and inform leaders at all levels of possible causes for crime trends and assist in the development of strategies to prevent further crimes.

We have conducted over 100 crime trend analysis briefings in Europe, specifically oriented to a requesting unit. In my capacity as a CID commander, I have had the unique opportunity to build a Special Victims Unit consisting of both skilled sexual assault investigators and a special victims prosecutor, all of whom receive additional specialized training.

This collaborative team develops the facts, builds a rapport with the victim, and advises the commander so that he or she can make an informed decision regarding adjudication. The Special Victims Unit is notified of and tracks every allegation of sexual assault. They confer early and often with investigators to ensure a thorough and professional investigation.

We are in constant contact with the commanders that we support as investigators. My criminal investigators offer commanders additional resources to combat sexual assault, included targeted prime analysis briefings, newcomers briefings, and a sharing of best practices aimed at solidifying our commitment to providing the best possible investigative support so that commanders can execute their UCMJ authorities.

In summary, I would just reiterate that I have been educated in military justice at each stage of command, and I have worked closely with Judge Advocates at every step. It is of paramount importance that commanders are allowed to continue to be the center of every formation, setting and enforcing standards and disciplining those who do not.

The commander is responsible for all that happens or fails to happen in his or her unit. They set the standard, and we enforce them. The Uniform Code of Military Justice provides me with all the tools I need to deal with misconduct in my unit from low-level offenses to the most serious, including murder and rape. I cannot and should not relegate my responsibility to maintain discipline to a staff officer or someone else outside of the chain of command.

Thank you for the opportunity to speak with you today. I look forward to answering your questions.

[The prepared statement of Colonel Martin follows:]

[COMMITTEE INSERT]

Chairman LEVIN. Thank you very much, Colonel.

Captain Coughlin?

**STATEMENT OF CAPT STEPHEN J. COUGHLIN, USN,
COMMODORE, DESTROYER SQUADRON TWO**

Captain COUGHLIN. Good afternoon, Chairman and members of the committee. Thank you for allowing me this opportunity to speak with you today and to provide any information that may be useful on how we in the Navy are responding to the crime of sexual assault from the perspective of a unit-level naval commander.

I am serving in my third command assignment at sea, and I am currently the commander of Destroyer Squadron Two, home ported in Norfolk, VA. My squadron is comprised of 8 *Arleigh Burke*-class destroyers, consisting of just under 2,500 personnel. These units deploy across the globe independently as ballistic missile defense ships or components of a carrier strike group.

I am a career service warfare officer and a graduate of the U.S. Naval Academy. Beginning in Annapolis, I have been a leader in a mixed-gender environment throughout my career. From the beginning, we were all taught to recognize the value of each individual sailor and annually trained in sexual assault prevention and response, fraternization, equal opportunity, and other aspects of military law and accountability.

More specifically, prior to every leadership position I have held, I have received mandatory refresher training on these subjects, particularly in sexual assault. In addition, I have had legal counsel and technical guidance by a local or embedded Staff Judge Advocate at every command that I have been assigned to, and like any prudent commander, I have never hesitated to seek advice for any case that I have handled.

And in all those cases, the use of the UCMJ authorities enable me to set a tone, shape a culture, establish good order and discipline in my organization by quickly and visibly taking action to hold those under my command accountable for misconduct and to protect those I am responsible to with the preventive measures enabled by the UCMJ.

As the commodore of a destroyer squadron, I ensure all of my commanding officers are trained on the UCMJ and that they use it as a tool for maintaining a squadron-wide environment where all personnel are treated with respect and dignity and where rules and regulations are not violated.

This is a vital component of the commander's ability to establish the conditions where the result is unit efficiency, team cohesion, and trust up and down the chain of command. And since the commander of a military unit is responsible and accountable in every respect for the welfare of all assigned personnel, there must be authorities in place for that commander to take appropriate actions for every infraction and disturbance that negatively affects his or her people.

Any change to this will erode the commander's ability to command by reducing his or her effectiveness in the eyes of the crew. Taking authority away from unit commanders could have direct adverse effects, such as warfighting inefficiencies, noncompliance with battle orders and rules of engagement, and the lack of damage control and fire fighting effectiveness in moments of crisis.

In short, the authority of a naval commander at sea is essential for fighting the ship. The failure of a commander to exercise his authority, in turn, should and does result in the immediate removal of that commander, a practice the Navy persistently maintains.

Based on my unit-level perspective, the process for victim reporting, with the option for a restricted or unrestricted report and the many avenues available for reporting sexual assault, has encouraged more victims to come forward and receive the care and support that they need.

I have also noticed the effects of the new fleet-wide training initiatives that have been targeted at smaller groups and have us openly and candidly talking to each other about violent crimes, the importance of bystander intervention, the role of alcohol, and related topics.

Our current training efforts are not the typical “death by PowerPoint” or block-checking exercises, but personal and meaningful facilitated engagement that is building trust and changing our culture.

Thank you for this opportunity to be here today and discuss this very important issue in our military, and I look forward to your questions.

[The prepared statement of Captain Coughlin follows:]

[COMMITTEE INSERT]

Chairman LEVIN. Thank you very much, Captain.

Colonel King?

**STATEMENT OF COL. TRACY W. KING, USMC, COMMANDER,
COMBAT LOGISTICS REGIMENT 15**

Colonel KING. Chairman Levin, Ranking Member Inhofe, and members of the committee, I am honored and humbled at this opportunity to address you today on this critical issue.

Preventing sexual assault or any other form of misconduct in my regiment is my personal responsibility. It is a responsibility I don't take lightly.

My name is Colonel Tracy King, and I have the honor of leading approximately 3,000 men and women of Combat Logistics Regiment 15. I have commanded marines and sailors of platoon, company, battalion, and most recently in my current assignment as a regimental commander. I have served in all three Marine expeditionary forces and with all elements of the Marine Air-Ground Task Force. My operational experiences include numerous deployments in the Middle and Far East.

Like all commanders at my level, I have received legal training on numerous occasions to include the Senior Officer Legal Course at Newport, RI, the Naval War College, and most recently at the Commanders Course just last year. Accountability in my regiment begins and ends with me. This includes the prevention and adjudication of any form of misconduct, especially all instances of sexual assault.

Please allow me to be blunt. My job is to ensure that my regiment is ready to fight today's fight today. This kind of readiness demands a level of unit cohesion that can only stem from strong bonds between marines and complete trust between marines and their commander. I cannot afford and my Commandant will not allow an environment absent that trust.

Thank you again for holding this important hearing. I look forward to the opportunity to answer your questions.

[The prepared statement of Colonel King follows:]

[COMMITTEE INSERT]

Chairman LEVIN. Thank you very much, Colonel.

Colonel Leavitt?

**STATEMENT OF COL. JEANNIE M. LEAVITT, USAF,
COMMANDER, 4TH FIGHTER WING**

Colonel LEAVITT. Good afternoon. Chairman Levin, Ranking Member Inhofe, and distinguished members of the committee, thank you for the invitation to join you today.

My name is Colonel Jeannie Leavitt, and for the past year, it has been my privilege to command the 5,000 men and women of the 4th Fighter Wing, located at Seymour Johnson Air Force Base, NC.

Our mission is to deliver dominant Strike Eagle air power any time and any place when called upon to do so in defense of our great Nation. Within a matter of hours, we can deploy to provide precision combat air power and hold targets at risk anywhere in the world.

I have been in the United States Air Force for more than 21 years. I am an F-15E instructor pilot with more than 2,600 hours, including more than 300 combat hours over Iraq and Afghanistan. I have served at various State-side locations as well as in South Korea, and I have deployed to locations in Saudi Arabia, Kuwait, Turkey, Bahrain, Qatar, and Afghanistan. I have commanded at the squadron and wing levels.

My experience with the military justice system began well before I became a commander. From pre-commissioning academics to continuing coursework, training, education, and leadership briefings, these experiences instilled in me a deep sense of the vital role military justice plays in maintaining a disciplined force. As a result, I take my duties and responsibilities as a commander very seriously today.

As the commander of the 4th Fighter Wing, I am responsible to ensure that our airmen are properly trained and equipped to go into harm's way at a moment's notice, should the need arise. Our Nation has entrusted the lives of America's sons and daughters to our military, and ultimately, it is the commander who shoulders that responsibility.

An absolutely indispensable attribute of a combat-ready force is discipline. Commanders must have the ability to hold airmen accountable for their behavior. This is what enables a highly disciplined force, which increases the lethality of our weapons systems and improves the safety of our airmen.

Discipline is not punishment. It is a state of readiness that allows flawless execution of a mission. A disciplined airman follows orders. The UCMJ gives commanders the ability to enforce the high standards they set.

I often address 4th Fighter Wing airmen and reiterate my expectations of them. I expect them to abide by the Air Force core values of integrity first, service before self, and excellence in all we do. I also expect them to be professional and disciplined and to always have respect for others. When I talk about respect, I emphasize that there is absolutely no tolerance for sexual assault.

If a sexual assault happens, we will ensure the victim is taken care of and ensure any guilty people are held accountable. Sexual assault is a vile crime against the victim and against society. It erodes trust, damages the unit, and weakens our military.

The UCMJ gives commanders the ability to prosecute the guilty and hold them accountable for their actions. As we continue our ef-

forts to eradicate sexual assault, we must strive to set a climate where prevention is the norm, a climate where airmen feel the duty and desire to protect one another.

We must aggressively combat sexual assault to ensure we remain the world's greatest military. I won't set a goal of anything below 100 percent bombs on target for my fighter wing, and I won't set a goal of anything below 100 percent eradication of this wretched problem.

Thank you again for the chance to testify before this committee today. I look forward to answering your questions.

[The prepared statement of Colonel Leavitt follows:]

[COMMITTEE INSERT]

Chairman LEVIN. Thank you very much, Colonel.

We will have a 6-minute round.

When a commander offers an Article 15 or a nonjudicial punishment, the accused has a right to decline the punishment and to insist upon a trial by a court-martial instead. If the accused does that, however, he or she risks more serious punishment that could be assessed by a court-martial. Is that correct?

Colonel KING. That is correct, sir.

Chairman LEVIN. Okay. Now let me ask each of you, is the availability of nonjudicial punishment, under Article 15 of the UCMJ, to quickly and efficiently punish servicemembers for some serious offenses, let us say barracks larceny, for instance, is that an important tool for the commander?

Let me start first with you, Colonel Martin. Is the availability of nonjudicial punishment under Article 15, is that an important tool for the commander?

Colonel MARTIN. Thank you, Senator.

Yes, it is an absolute important tool for the commander to have. Number one, to be able to effect discipline in my unit, I must have the tools to do that. The UCMJ allows me to do that.

But it also sends a message in my unit of what the standard is. And so, if I, as a commander, don't have a tolerance for, say, barracks larceny in this case, then I have the tool to punish that offender under the article, Article 15.

Thank you.

Chairman LEVIN. Okay. Thank you.

Captain?

Captain COUGHLIN. Yes, sir. Absolutely, without question. That is probably the number-one tool for the commander to quickly and visibly establish discipline in his unit based on some infraction of a regulation.

Chairman LEVIN. Okay. Colonel King?

Colonel KING. Sir, without question. It is quick. It is effective. So, yes, sir. It is an effective tool.

Chairman LEVIN. Okay. Colonel Leavitt?

Colonel LEAVITT. Yes, sir. The Article 15 is absolutely a critical tool in the commander's toolbox.

Chairman LEVIN. Now the question is whether we take away the—one of the questions that has been raised in one of the bills before us is whether we should remove from the commander the authority to refer cases for trial by court-martial.

Now, first of all, what impact would that have on the commander's authority and control over those who are under his or her command? Why don't we start at the other end? Colonel Leavitt?

Colonel LEAVITT. Yes, sir. I think it is absolutely critical that the commander has the ability to prosecute offenses. You know they say that actions speak louder than words. I need to be able to back up my words. When I say there is absolutely no tolerance for sexual assault, I need to have the ability to back that up.

I need to be able to take action against any perpetrators and hold people accountable. That is part of my responsibility as a commander.

Chairman LEVIN. Now when you say to hold someone accountable, do you mean by, for instance, referring a case for trial by court-martial?

Colonel LEAVITT. Yes, sir.

Chairman LEVIN. Okay. Colonel King?

Colonel KING. Sir, I will give you a straightforward answer. If you remove my authority to convene a court-martial, my suspicion is that the overwhelming majority of marines will refuse NJP.

Chairman LEVIN. Will do what?

Colonel KING. They will refuse NJP. They will not accept it. They are not going to do it. They are going to take their chances with the person they have never met, a convening authority that is not there with them every single day. I think they will refuse it.

Especially for the high-order cases where I can refer charges, the preponderance of evidence supports that the event has occurred, but I am not quite sure whether or not I can get beyond a reasonable doubt, they are going to never accept Article 15, if I am not the convening authority.

Chairman LEVIN. A nonjudicial punishment?

Colonel KING. Yes, sir. They are not—

Chairman LEVIN. So your ability to successfully use the tool of nonjudicial punishment, in your judgment, is dependent upon, at least in some cases, having the power to refer a matter to a general court-martial?

Colonel KING. That is correct, sir.

Chairman LEVIN. Okay. Captain Coughlin?

Captain COUGHLIN. Sir, in my mind, it comes down to a very simple matter of trust, and I know we mentioned that earlier today. But I want to refer back to what the CNO mentioned in his testimony about this charge of command that we use in the Navy, and there is a passage in that that refers to trust.

And I would just like to read before you. "As the commanding officer, you must build trust with those officers and sailors under your command. You build trust through your character and in your actions, which demonstrate professional competence, judgment, good sense, and respect for those you lead."

Now every person who takes command of a naval vessel reads this, acknowledges it, and signs it, and that is credibility and trust. So I have to be viewed as being trusted by my chain of command in the eyes of my crew. That gives me credibility and, therefore, leads to good order and discipline.

Chairman LEVIN. Thank you. Colonel Martin?

Colonel MARTIN. Senator, I would agree with my colleagues on the panel that having that ability to refer a case to court-martial is crucial. Not only to the commander's credibility, but we also speak of trust in this matter as well. It is a crucial element.

And I do believe exactly what Colonel King said that soldiers knowing or understanding that you don't have the authority as a commander to refer a case to court-martial, they will never take—they will never accept an Article 15.

Chairman LEVIN. All right. Now there is—the commander has a broader goal when considering whether to refer a case to a court-martial, such as protecting his or her troops and sending a message that, for instance, the conduct at issue—sexual misconduct, barracks stuff, whatever—will not be tolerated.

Would you be concerned that professional prosecutors, without the responsibilities of a commander, might actually be less likely to pursue court-martials in those—in close cases?

Colonel Martin?

Colonel MARTIN. Yes, Senator. I think that because the commander is so in tune to discipline and setting standards inside of their units that they would fiercely pursue NJP, or nonjudicial punishment, and I don't think that someone outside of the chain of command or a staff officer would have that same passion for discipline inside of their unit.

Chairman LEVIN. Okay. Now we are also saying, my question, though, is might a commander be more likely to pursue a court-martial than even an outside independent officer because of the desire of a commander to send a message to his unit?

So—

Colonel MARTIN. Yes, Senator. I do believe the commander would.

Chairman LEVIN. Captain Coughlin?

Captain COUGHLIN. Sir, I think it goes to the severity of the crime. I mean, there are some crimes that clearly need to go to a higher level, and I think most commanders have that sense and judgment when to elevate it. And when questioned, that is where they seek the advice of the Staff Judge Advocate.

Chairman LEVIN. Okay. Colonel King?

Colonel KING. Sir, my comment on that would be that commanders at our level don't even consider judicial economy. I think that if we had a separate and distinct panel of civilian prosecutors that judicial economy is something that is always factored in, whether or not it is worthwhile to try the case. I don't even consider that.

What I consider is, number one, protecting the victim; number two, achieving justice for whatever crime was committed; and also the message that I send to the thousands of Marines that are aptly watching what is going on. So I can—even if I fail to achieve a conviction at whatever level, I can still send a powerful message to them that this kind of conduct, even alleged, even not proven, is completely unacceptable.

Chairman LEVIN. Colonel Leavitt?

Colonel LEAVITT. Yes, Senator. I could absolutely see the scenario where a prosecutor may not choose to prosecute a case or recommend prosecuting a case because the likelihood of a conviction.

However, as a commander, I absolutely want to prosecute the case because of the message it sends so that my airmen understand that they will be held accountable.

And then we will let the jury decide what happened in the case and whether or not it will be convicted. But that message is so important, whereas an independent prosecutor may not see the need to take it to trial if the burden—if the proof is not necessarily going to lead to a conviction.

Chairman LEVIN. Thank you.

Senator Inhofe.

Senator INHOFE. Mr. Chairman, I don't think I have ever heard four opening statements so precise, specific, and I am just real impressed with that.

Of course, with all of your commands that you have had, Colonel Martin, including CID, and you, Captain, and of course, Colonel Leavitt, you are a fellow flight instructor. So I know what you feel about discipline.

And Colonel King, I was listening to you. I can tell that you are a very well-educated man. Where did you get that education? Boomer Sooner, sir.

Senator INHOFE. Oh, Oklahoma. There you go. [Laughter.]

Let me just be—I wouldn't expect that you folks have had time, since it just came out, to have read and digested the Defense Legal Policy Board report. I know you will be doing it, and it is certainly appropriate to what our discussion is today.

I would like just to quote one thing out of it and ask for your opinions. The quote is, "The notion that commanders have the ability to deal swiftly, fairly, completely, and visibly with all misconduct, both in and out of the field environment, is necessary to achieve effective deterrence and discipline. Executing fair, prompt military justice reinforces command responsibility, authority, and accountability."

I would like to ask you, in your view, would creating a centralized initial disposition authority with oversight by an O-6 Judge Advocate, combined with the centralized authority to detail judges and members of courts-martial, impact the qualities of portability and agility of the military justice system? And then getting back to the four qualities, how would a system like this impede your ability to deal with misconduct swiftly, fairly, competently, and visibly?

Can you give me any thoughts on that? Start with you Colonel Martin.

Colonel MARTIN. Thank you, Senator.

One of the things that as I think about this, I think about a case in question that I had, maybe anecdotally, about one of the times when I had to relieve a senior noncommissioned officer in my command. And what happened was the senior noncommissioned officer was having an inappropriate relationship with a junior member of the command.

And so, while it wasn't a sexual relationship, it was inappropriate because of the rank differential, and my ability to deal with that was certainly swift. And it gave me the ability to send a message, number one, to the victim, the very junior enlisted member of that offense, that I took her complaint, because she did complain

about it, I took her complaint very seriously. And just because he was a very senior member, she knew that I would act on that, on the issue.

And that spread across my unit. It was very, very transparent, and it affected very positively the morale in the unit. So just having that ability to affect those is very, very positive.

Senator INHOFE. Well said. Captain Coughlin?

Captain COUGHLIN. Sir, my first thought on that is just possibly the logistics behind providing that kind of support in dispersed naval forces, and the ability to act quickly by the commander is what is going to set the tone and establish those conditions.

Some of this information, depending on it may have a half-life, but to deal with it quickly is essential.

Senator INHOFE. That is good. Colonel King?

Colonel KING. Senator, resident in the four folks you see sitting right here today is a nexus that I think is important. That is, we tell our marines—it comes from our mouths—this is the standard we want to hold you to.

And we tell them why we have that standard. These are the things that we are going to achieve. And then we hold them to that standard. That is actually the same person.

So, right now, we have the tools to do what I just described. It is not always precise, but it works, and they know. And the deterrent value, the prevention of misconduct is actually where I know I spend most of my time. I don't want it to occur. So I attempt to set the conditions where it can't flourish.

That is what is most important, and that is what I think we need to very cautious about changing.

Senator INHOFE. Well said. Colonel Leavitt?

Colonel LEAVITT. Yes, Senator. I believe that the commander's ability to issue swift and fair justice is critical to enforcing the high standards we set. When we are able to enforce those standards, that is when we are able to build discipline and trust, and that is when we build combat capability, and that is when we have combat effectiveness. And that is how we become victorious, and that is how we maintain our state as the best military in the world.

So I think this portion of it is critical that you allow a commander to command by being able to enforce the standards they set.

Senator INHOFE. Yes. Well, thank you.

And you know, Mr. Chairman, I think this has been a really good panel to get people on the ground, doing it on a day-to-day basis, as opposed to looking at all the theories and all that. And so, I appreciate your responses very much.

Thank you, Mr. Chairman.

Chairman LEVIN. Thank you, Senator Inhofe.

Senator Reed.

Senator REED. Well, thank you, Mr. Chairman.

And thank you, ladies and gentlemen, for your service to the Nation and to your individual Services.

Let me put my two questions, and they are not rhetorical. I am searching, with your guidance, for answers.

I commanded a paratrooper company a long time ago. It was not mixed gender so this issue of sexual assault was not as central as

it is today. But I have given Article 15s, and I have referred people to general court-martials, and I have seen some of my soldiers actually sent to Fort Leavenworth. It was not a good day for either one of us.

And there is, I think, two or three issues that I would like to explore. First of all, and I say this not rhetorically, but how do you separate a chain of command from a legal process in the fact that—and I think there is a presumption if we had this independent process outside the chain of command, it will encourage reporting. It will be much more effective.

But the reality in a company particularly is if something bad happens, most people know about it. And if the company commander knows about it last, that is probably the worst thing for the company and for the company commander.

But just in sort of practical detail, if a serious offense, even if it is reported through an independent channel, very quickly CID agents will show up in the company. Company mates will be—I use the term generically, but it applies to squadrons and also ships. You will have individual soldiers who have to be interviewed.

And then you will have to take some action as a company commander. It might not be the formal referral of charges. Do you separate the individuals? Do you transfer an individual out of the company, et cetera? Will that be perceived as prejudicial or discriminatory or retribution?

And again, this is the reflections of someone who 30-plus years ago, being kind, had to do this, but not in the same context today. So your comments, Colonel Martin and then down the row, about this issue.

Colonel MARTIN. Thank you, Senator.

I think the anecdote that I gave may suit this question very well with my sergeant major and a very junior victim in my command. We moved the victim in this case, but I suspended the sergeant major of his duties. So she moved by her request to go to another installation, and I suspended him of his duties.

I think that responsibility has to lie with the commander, and the commander has to make difficult choices because we always have to do what is best for our organization. And so, that is in the forefront of our minds at all time.

That discipline that we have all talked about and setting the tone, those are actions that the commander has to take. So separating or bifurcating that process of the command from the legal authority, I think, would set us back in discipline.

Senator REED. Captain?

Captain COUGHLIN. Sir, accountability is such a broad term, and I think when you try to separate one element of accountability from my responsibility as a commanding officer, that would be confusing. And I don't think people under my command really could list a definite list of what elements of accountability did I own. I think you add confusion to the chain of command, and a crew of a ship or ships in a squadron will eventually wonder who is really doing all of the commanding.

The question about investigation, you know, an outside entity comes in, conducts an investigation. I do that. I conduct command

investigations that are thorough by using the JAGMAN, and we are trained on doing that. It is not uncommon.

Senator REED. Colonel King, briefly?

Colonel KING. Senator, I don't think you can separate it. In fact, it is my opinion that if we do separate these two things that you are talking about, you are actually going to have a significant decrease in reporting. That is my opinion. I can't prove a negative, but that is my opinion.

I would be very hesitant to do this. I know I have read some studies in the past year since this has become our number one priority that show that reporting in the civilian community is even worse. Well, they don't have a chain of command out there. So I can't—I am attempting to rationalize that in my mind right now.

I actually think that our commanders' involvement and how we have really taken this at issue is going to get after the reporting issue because reporting is the bridge to everything. It is the bridge to victim services. It is the bridge to justice. So it is about reporting.

You pull those two apart, reporting is going to go down.

Senator REED. Let me follow up quickly. Colonel Leavitt, your comments on this question, and then I have another question which I want to address.

Colonel LEAVITT. Yes, sir. I agree that the command and the legal aspect have to be hand-in-hand. For me to be able to enforce the standards I have set, I have to be able to take action when people don't follow the guidance I give. I have to be able to hold people accountable.

The command team works in conjunction with legal. So I have advice on any legal matters from my Judge Advocate.

Senator REED. Colonel King, let me go back to your comment because there is another—this is part of the complex nature of this issue. There are compelling statistics that there are numerous cases of improper sexual contact between members of the military. And then there are also and I think very compelling statistics that a lot of them go unreported.

And when you ask the young marine, the young sailor, the young soldier or airman why, it is "I don't trust the commander. I don't trust the whole system." And I think there is enough there not to dismiss that as sort of, well, it is worse in the civilian life. And the intention of many of the proposals is to provide that kind of trust, et cetera.

So how do you respond to this issue most specifically, and if anyone else has a quick comment also, how do you respond to this issue of—because it is all about trust. Colonel?

Colonel KING. Sir, I can only speak from my own experience. My experience with actually working through sexual assaults is actually pretty limited. But in my experience, this is such a personal crime. It is so embarrassing.

That is what in my experience causes the lack of reporting. That is the number-one reason. It is embarrassing, sir. You have got an 18-year-old kid who just wants to do well, who is embarrassed by it. That is what causes it.

And also, sir, in my experience, sir, I have never met a commander that wouldn't jump—wouldn't stop time when they hear

that something like this is occurring. I have never seen that. I have never smelled it. I have never heard of it.

Now I read the newspapers, too, sir, and I see what is going on out there. But I don't see it where I work.

Senator REED. Anyone else? Captain?

Captain COUGHLIN. Yes, sir. Just to add to that, also personal experience. My experience is that people under my charge trust the leadership. I know that from reading command climate surveys, speaking to sailors face-to-face on my ships.

I think they are uncomfortable, they are not confident with the process. They are not as familiar with it as we are. They know that these things take a long time, and just the thought of going through that process, even if it is swiftly acted upon at the command, is, I think, a huge concern.

Senator REED. Anyone else have a comment on this? And I have one final question. I apologize to my colleagues.

You know it is ultimately about leadership, and that is accountability and responsibility. I have no doubt, Colonel, if you will let or even without your knowledge an intoxicated pilot got in one of your aircraft, you would be relieved.

Colonel, if an intoxicated supply sergeant drove a truck into a wall, you would be relieved, even if you had nothing to do with that. You would let someone at the helm intoxicated, et cetera.

Colonel, same thing, one of your MPs drove 80 miles an hour because they were under the influence.

Do you feel that the same responsibility would be extracted if there were an incident of a serious sexual assault in your unit, i.e., you would be relieved almost without question? Colonel?

Colonel LEAVITT. Senator, I believe it is absolutely the commander's responsibility to set the climate where people know there is zero tolerance for sexual assault and that if anything happens, it is absolutely everyone's responsibility to report that, to take care of the victim.

Senator REED. But I—you know, it is actually everyone's responsibility to prevent someone getting in the aircraft who is intoxicated. But if it happens, you would be gone. I have no doubt about that, or at least I have a sense of that.

My point is if the chain of command is going to be the chain of command, then commanders have to understand pretty quickly that there are some things that if it happens, even if they had no ability to deter it, they would be responsible for it and they would accept it and salute and say, "Yes, sir. I understand."

Colonel KING. Sir, a proven sexual assault occurs in my command and I don't report it, I am gone. There is no question in my mind.

Captain COUGHLIN. Yes, sir. Same here, and also if it has become known through an investigation that I have tolerated a climate that accepts any kind of behavior like that, then I should be accountable for that.

Senator REED. I presume you concur, Colonel?

Colonel MARTIN. Absolutely, Senator.

Senator REED. Thank you.

Thank you, Mr. Chairman.

Chairman LEVIN. Thank you, Senator Reed.

Senator Ayotte.

Senator AYOTTE. Thank you, Mr. Chairman.

And I want to thank the witnesses for being here and for your service to our country.

I wanted to ask Colonel Leavitt whether you have had any experience with the special victims' counsel in the Air Force, the pilot program?

Colonel LEAVITT. Yes, Senator. I have spoken with—one of my prosecutors is a special victims' counsel and spoken in broad terms.

And he said that it has been very well received, and truly, it gives victims a voice. It gives them an understanding of how the process works. It makes them feel like someone is on their side to help them through the process for them to understand what options they have available.

Senator AYOTTE. Because one of issues we are struggling with is if you look at the recent SAPR report, one of the real fundamental issues is that some people aren't coming forward because they have expressed that they have heard other victims talk about a negative experience in the situation that they went through.

So I wanted to get the impression from the other branches if you have got any understanding what the Air Force program is and what your thought is of their program of having a special victims' counsel represent victims within the system?

Colonel MARTIN. Thank you, Senator. I will go next.

In the Army, we have a Special Victims Unit. That Special Victims Unit is made up of a sexual assault investigator. It is also made up of a special victims prosecutor, and it is also in coordination with a victim witness liaison. All of these resources are available to the victim to help them through the process, establish a rapport, which is actually the foundation of our investigation, and then it works very, very well.

And the interview techniques that we have developed in the Army, called the FETI technique, where we use a lot of different questioning techniques, I think that word has spread. Because I guess, you know, I watched "The Invisible War," too. And so, the CID agent in "The Invisible War" talks about how we had a mantra where we tried to prove, when we were talking to the victim, you disprove it that something didn't happen.

Now we don't do that. We don't take that approach. And we spend so much time with the victim establishing a rapport, I think that spreads. And so, we have more reporting.

We also see an uptick in victims who initially did a restricted report now come forward and want to do an unrestricted report.

Senator AYOTTE. So, Colonel, the one thing I will say is what the Air Force has is that the individuals that would be the advocate in the Army, are they trained lawyers? I mean, meaning, that what their pilot has trained lawyers helping victims. So do you have the same thing happening in the Army and other branches?

Colonel MARTIN. Yes, Senator. We have a special victims prosecutor who is a trained attorney.

Senator AYOTTE. And they represent the person with the same authority as the special victims' counsel?

Colonel MARTIN. Yes, Senator.

Senator AYOTTE. Well, I would like to understand, if you can get me some more information about that because I understood—Senator Murray and I have a bill that extends what the Air Force is doing to every single branch, has 33 cosponsors in the U.S. Senate, and it was our understanding that the Air Force had this pilot. So if there are similar programs in other branches, I would like to get more information on that because our understanding is that the Air Force pilot really had somewhat of a unique standing in the Services.

Colonel MARTIN. I will certainly provide that to you, Senator.

[The information referred to follows:]

[COMMITTEE INSERT]

Senator AYOTTE. Thank you.

Colonel LEAVITT. Senator, just one thing to add in terms of our process. The special victims' counsel is separate from the prosecution chain. So they are not part of the prosecution for that sexual assault. They are there purely for support for the victim.

Senator AYOTTE. Well, that is a huge difference. So, of course, absolutely. In fact, if you are in the prosecution chain, then you have a different purpose than if you are there just to solely advocate for the victim and who may have a different opinion on the plea result in a case, who may want their counsel to express that opinion to the prosecutor who has a different.

And so, victims having their own voice is really important. It is something that has happened in certainly the civilian sector. So I appreciate your clarifying that distinction for me because my vision of it, as I didn't understand it, for how it works in the Army is much more what happens in the Air Force.

Because I think victims can have very different feelings about a disposition and also if they feel they are part of the—if they are just treated within the prosecution, that is different than someone representing just their interests.

I wanted to ask about the situation at Lackland Air Force Base, and can you help me, Colonel, understand what that tells us about some of the issues we have with basic training, the culture during basic training, and the fact that there were certainly basically victims there that were either through inappropriate sexual contact or, in some instances, criminal rape type situations in Lackland. What is your view on this issue with regard to basic training, and how much of a problem do you think this is?

And do you all think we should be prohibiting sexual contact between military instructors and trainees during basic training? Because I see this as a situation where, as you are—I mean, you are in basic training. You are very—you are new. Most of them are young, and they want to succeed.

And if there is contact between the person that they are reporting to that is training them, then there is a real coercion issue there. So could you give me some insight on that, what you think?

Colonel LEAVITT. Senator, I haven't been to Lackland anytime recently. I am familiar from reading the papers. But my view is that any kind of climate or situation that allows sexual assault or rape to happen is completely unacceptable, and people should be held accountable. That kind of climate, there should be zero tolerance.

Senator AYOTTE. Well, what about sexual conduct in general between—doesn't that create a potential for coercion while someone is in basic training between someone who is a trainee and the person that they are reporting to? I mean, what kind of culture would that create within that unit within the trainees as well?

Colonel KING. Senator, any form of contact that wasn't professional, that wasn't part of the curriculum, is contrary to good order and discipline. So I will tell you up front I have no problem with what you are proposing. I think it will help.

But I also say that we do that now. We just, obviously, messed up in that one case. My—I can only speak from my personal experience. My personal experience, traveling through the Marine Corps, is that the level of institutional control, boot camp, when it is higher, the Marines are actually safer.

That is what I have seen with my own eyes, and that is a little bit contrary to the point you are making, but that is what I have seen.

Captain COUGHLIN. Ma'am, certainly at a basic training environment, there should be a huge level of control and regimentation, and there is also a chain of command, just like any place else. In fact, if you go to the Navy's basic training site, it mirrors ships and divisions and departments on ships.

And so, there is a clear chain of command. All those same rules should apply, and anything inappropriate is obviously a violation.

Colonel MARTIN. And Senator, I would agree. I would concur. I have no issue with what you are proposing either. I don't believe there should be a sexual relationship. It is not the place. That is not why they are there. And it does erode discipline in that environment.

Senator AYOTTE. Thank you all. Appreciate it.

Chairman LEVIN. Thank you, Senator Ayotte.

Senator McCaskill.

Senator MCCASKILL. Thank you.

And thank you all for being here.

I am a little taken aback. It sounds like you all are very bullish on the status quo, just listening to your testimony from a distance. And I just want to tell you that with this Senator and I think other Senators, the status quo is not acceptable.

So I will start with that, and let me first ask all four of you, have any of you referred a sexual assault case for a court-martial? Start with Colonel Martin.

Colonel MARTIN. Yes, Senator. I have.

Senator MCCASKILL. Captain Coughlin?

Captain COUGHLIN. No, ma'am. I have not.

Senator MCCASKILL. Colonel King?

Colonel KING. Yes, ma'am.

Senator MCCASKILL. And Colonel Leavitt?

Colonel LEAVITT. Yes, Senator. I have.

Senator MCCASKILL. Okay. Have any of you referred a sexual assault case for court-martial when your JAG officer did not recommend it?

Colonel MARTIN. Yes, Senator. I have.

Senator MCCASKILL. You have? Colonel King? No? Colonel Leavitt?

Colonel LEAVITT. No, ma'am.

Senator MCCASKILL. Has there been an instance where your JAG has recommended a court-martial, and you have instead taken an Article 15 and done a nonjudicial punishment. Colonel Martin?

Colonel MARTIN. No, Senator.

Captain COUGHLIN. No, ma'am.

Senator MCCASKILL. Colonel King?

Colonel KING. For a sexual assault, ma'am?

Senator MCCASKILL. Yes.

Colonel KING. No, ma'am.

Senator MCCASKILL. Colonel Leavitt?

Colonel LEAVITT. No, Senator.

Senator MCCASKILL. Okay. The reason I asked this is because there is a difference between discipline and punishment, and I see that Article 15 and nonjudicial punishment, I certainly appreciated the points that Senator Reed was making with you on this regard. But one of the issues here is removing the problem versus punishing the felon.

Do you think, any of you think that there may be a tendency for commanders to see, okay, I have got enough on him over here to go to a court-martial. But maybe the court-martial is not a slam dunk, and I want to remove the problem. So let us just revert to an Article 15, get him out of here. And then I remove the problem, and then we don't have the problem in existence anymore.

Colonel LEAVITT. No, Senator. Absolutely not.

If I have a case of sexual assault, I absolutely want to prosecute it. I want it to be visible. I want the unit to understand that there is absolutely zero tolerance. And so, if I just make the problem go away, I have eroded the trust and confidence that that unit has in its leadership.

So I do not see a case that that would happen.

Senator MCCASKILL. Colonel King?

Colonel KING. Senator, I am not a lawyer, but I have had somewhat legal training, and I have done a couple of court-martials. And what I have learned with regards to sexual assault is these are hard to prove because they normally revolve around whether or not consent was given.

Senator MCCASKILL. It is about believability, isn't it?

Colonel KING. It is. And that is—

Senator MCCASKILL. It is about the finders of the facts being able to hear the testimony in a courtroom and decide who is telling the truth.

Colonel KING. Yes, ma'am.

Senator MCCASKILL. Because you don't have an opportunity to talk to that victim, do you?

Colonel KING. Yes, ma'am. And I don't like that, but it is absolutely true. So, in many cases, I can get to where—I can get above the 51 percent where I can prefer charges, but I can never get above 90 percent. I just can't. There is not enough evidence.

Senator MCCASKILL. Well, what is the 51 percent and the 90 percent? What are you referring to?

Colonel KING. Normally, ma'am, I would decide that I can prefer charges when one of three things happen. The findings of a formal

investigation. So an investigation comes back from NCIS that says this occurred.

The conviction of a criminal court out in town or the findings of a civil case out in town. Again, that is preponderance of the evidence.

Or when just all the evidence as I took it in got me to believe that, you know what, it is more likely this occurred than it didn't occur. When I reach that level, I am comfortable with sending charges forward.

Senator MCCASKILL. Okay. So, but you are saying that you have never disagreed with your professional lawyers who have made recommendations on these cases?

Colonel KING. No, Senator.

Senator MCCASKILL. Okay. When you decide to do an Article 15, for whatever reason, a nonjudicial punishment as opposed to a court-martial, have any of you ever had an opportunity to talk to the victim about that before you did it?

Captain COUGHLIN. Ma'am, depending on the crime, we have a process on the—

Senator MCCASKILL. We are just talking about sexual assault today.

Captain COUGHLIN. Okay. No, ma'am. I have not.

Senator MCCASKILL. Anybody ever talk to a victim before doing an Article 15 in lieu of a court-martial? No. Don't you think you should? Don't you think that victim at that point—I mean, this is a huge decision you are making.

And one of the things we are struggling with here is how many cases are going to trial versus how many are reported. We don't know many incidents there are because all we know is how many have been reported because the only thing that you guys collect is sexual contact, unwanted sexual contact. Well, that can be a far cry from a rape.

So if we know there have only been 3,300 or so many reported and if we only know there has been several hundred of that that have gone to trial, the huge difference there, a lot of that is NJP. A lot of that is Article 15. But I don't sense that the victim is being consulted about this momentous decision to avoid a criminal conviction that will mean prison versus, you know, a demotion or 60 days without pay or even an administrative separation from the military.

Colonel LEAVITT. Senator, I can only speak for the 4th Fighter Wing specifically. And since January 2012, we have had six unrestricted cases. Five of those either have gone or are going to courts-martial. The only one that did not was when the victim recanted.

So, under oath, the individual swore that it was consensual in all instances. So NJP was never even considered.

Senator MCCASKILL. Anybody who had a 15 where it might have been appropriate to talk to the victim before you did it? No?

Well, you see the point I am making? I mean, you do have, and I like it. I mean, believe me, when I was a prosecutor, there were cases that fell apart for reasons that were not within the control of the victim, and I would have liked to have a backup of something I could do to get on this guy's record because very rarely does anybody do this once or twice.

I want to ask you this, and do you all feel like you have had enough training about the difference between sexual harassment and sexual assault?

Colonel MARTIN. Yes, Senator. I do.

Captain COUGHLIN. Yes, Senator.

Senator MCCASKILL. You do?

Colonel KING. Yes, ma'am.

Senator MCCASKILL. I mean, I would just want to tell you—and I know I am out of time. I just want to say this on the record. General Franklin, in the Aviano case, when he felt compelled to justify what he had done, he wrote—have you all read his letter that he wrote?

I recommend you read it because it was astoundingly ignorant. He opened it that she didn't get a ride home when she had a chance. Are you fricking kidding me? That that is somehow relevant to whether or not he crawled in bed with her and tried to have sex with her?

I mean, that was his first thing he started recounting, and what a great husband he was and how their marriage was picture perfect. All of this completely irrelevant to whether or not he committed the crime.

And so, if you are making these decisions, which you are, and if you have the ability to look at these cases, I recommend his letter to you as a poster case of a lack of training and understanding the nature of sexual assault. You can have a perfect marriage and be a predator, and believe me, there aren't very many wives that step forward and admit that their husbands, and there aren't very many husbands that would step forward and admit that their wives were what is being accused of them being.

I mean, it is not unusual for those people to come forward and try to justify that they were innocent. And so, I just want to make sure. You all are here, and you are on the front lines. I want to make sure you read that letter, and if you need it—I am sure you can get it through your command. But if you need it, my office would be happy to provide it to you.

Thank you all for being here.

Thank you, Mr. Chairman.

Chairman LEVIN. Thank you, Senator McCaskill.

Just for the record, a number of times the NJP acronym has been used. I think we all know what it means. You all know what it means. But just for the record, that is nonjudicial punishment.

Okay. Senator Gillibrand?

Senator GILLIBRAND. Thank you all for being here today. Thank you for your service.

I have been disturbed by some of the testimony in this panel. There seems to be a lack of awareness of incidents where a victim does not feel he or she has received justice and does not feel that they can go to their command because they feel they will either be marginalized, retaliated against, or blamed.

And there are so many instances of this, it is astounding to me that you don't know them personally or haven't seen them. I don't know have you seen "The Invisible War." I don't know what due diligence you have done. But there is a real problem. You have 26,000 cases of unwanted sexual contact, sexual assault, or rape.

And as Senator McCaskill pointed out, we don't know how many of each.

But we have 3,300 reported cases, and of the 3,300 reported cases just from last year alone, only 1 in 10 go to trial. Once it goes to trial, we have a pretty good conviction rate. But why is 1 in 10 going to trial, and why is only 1 in 100 cases actually resulting in conviction? We have a serious issue with a victim's willingness to report.

So, Colonel Leavitt, I recently learned of a disturbing case of Airman First Class Jessica Hinves. She reported that she was raped by a coworker who broke into her room at 3:00 a.m.

She said, "Two days before the court hearing, his commander called me at a conference at the JAG office, and he said he didn't believe that the offender acted like a gentleman, but there wasn't reason to prosecute. I was speechless. Legal had been telling me this was going through court. We had the court date set for several months, and 2 days before, his commander stopped it.

"I later found out the commander had no legal education or background, and he had only been in command for 4 days."

Her rapist was given the award for airman of the quarter, and she was transferred to another base. Please explain to me how this incident would provide any victim of sexual assault in the military comfort that if they are willing to come forward, to have the courage to tell their story, report that rape, that they have any chance of receiving impartial justice when the decision to prosecute is left within the chain of command?

Now your own personal record sounds very strong, Colonel, but I don't know if that is true for everyone in your position.

Colonel LEAVITT. Yes, Senator. I am familiar with the case, happened a few years ago, and I have a little bit of summary information. I was not there. I don't know why the commander chose what he did.

However, I feel it is very important that we set a climate so people feel comfortable to come forward because I was very clear. In terms of "The Invisible War," when our new chief took command, he quickly made this a huge emphasis item, and it was very, very clear. So early November, I called in all of my commanders, all of my first sergeants, and together in a theater, we all watched "The Invisible War."

And we talked in detail about what we can do, how we can set an environment where people feel it is okay to come forward because I was crystal clear with them. I am not judging you by whether or not you have sexual assaults. I am judging you by what you do if there is one.

You need to set the climate to make sure that everyone knows it is unacceptable. And if it happens, we will take care of the victim, and we will bring justice to the perpetrator.

Senator GILLIBRAND. If 62 percent of the victims who have actually come forward to report a sexual assault or rape believe they have been retaliated against, how do you think you are going to instill that trust?

Colonel LEAVITT. I think you have to build that trust, ma'am. And that is what I have been working on since I took command a year ago, is trying to build that trust.

Senator GILLIBRAND. And how long do you think that will take? How many more victims have to suffer through a rape and a sexual assault until you rebuild that trust?

And why wouldn't you let someone who is experienced to make that decision, who is a prosecutor, so that you have an objective reviewer, someone who can't be biased in any way? Why wouldn't you allow that to happen, to instill better discipline and order? Because if you don't have trust, you have nothing.

Colonel LEAVITT. Yes, Senator. And I truly believe that I need to be able to back up my words. So when I tell my commanders that there is zero tolerance, that I will not tolerate any sexual assault, if I can't back it up, if I have to now turn to a separate entity to say now I really want to prosecute, please do that.

Because there could be cases where my legal advice given to me is we shouldn't prosecute because we don't have enough evidence, but I need to send that message that it is unacceptable because people in the unit know. They know what happened.

And so, even though we may not get a conviction, it is very important to send that message that there is no tolerance. And so, as a commander, I need to be able to do that, even if legal is not advising to do so.

Senator GILLIBRAND. Colonel King, you said that you have never seen this instance of a commander not moving forward. In 2006, not a mile and a half from where we sit today, Marine Lieutenant Elle Helmer was attacked and raped by a superior officer. According to Marine Lieutenant Helmer, she immediately appealed to her rapist's supervisor, who refused to press charges or significantly punish the assailant.

She has reported that he said, "You are from Colorado. You are tough. You need to pick yourself up and dust yourself off. I can't babysit you all the time."

In this instance of extreme sexual violence, not only was Lieutenant Helmer's attacker not prosecuted, she was investigated for public intoxication and conduct unbecoming. She was ultimately forced to leave the Marine Corps. Her accused rapist remains a Marine in good standing.

Given these kind of stories, this one from Lieutenant Helmer, the statements from your commander, Marine Corps General Amos, saying that sexual assault victims do not report because, "They don't trust us. They don't trust the command. They don't trust the leadership." Even the Commandant of the Marine Corps say the trust of the chain of command does not exist now.

Do you not agree that this must have a chilling effect on reporting?

Colonel KING. Senator, I wasn't at 8th and I. I can't speak to those circumstances. What I do know about it is, is that there were—there was collateral misconduct on the part of some of the members, and that was what was adjudicated. I can't speak to the charge of sexual assault.

What I can tell you is what we are doing in my unit. We are doing ethical decision games. We do have a positive command climate. Senator, and my unit is kind of unique in the Marine Corps. I have a little less than 3,000 marines. I have 16 percent women.

That is a lot, especially in the Marine Corps. The Marine Corps has got about 7 percent women.

So I have a significant amount of women in my unit. I have two cases right now, two. And I know, just from reading the literature that is out there, that I have a reporting issue. I am not saying I don't have a reporting issue. I am going after that. But those are the numbers that I work with right now.

Senator GILLIBRAND. Thank you.

Colonel KING. Thank you.

Chairman LEVIN. Thank you, Senator Gillibrand.

Senator Blumenthal.

Senator BLUMENTHAL. Colonel King, in one of your answers, you describe the way you make a decision about whether to pursue charges. And I know you are not a lawyer, and by the way, lawyers are sometimes confused about these standards as well. But you said that you looked at whether it was more likely that it happened or not, or whether there was a preponderance of evidence, or whether you were 90 percent sure.

The 90 percent sure, I guess, is guilt beyond a reasonable doubt. Those are three separate, different standards. And I guess one of the reasons why a lot of folks feel that it makes sense to have a trained prosecutor making these decisions rather than the commanding officer is that the standards are easily confused. They are difficult to discern.

I have heard the charge given to the jury about reasonable doubt, and I must tell you, I wonder sometimes whether the jury understands it, not to mention sometimes the judges in the way that they describe it.

So I wonder whether you can tell us, and this is a question really for all the members of the panel, to pursue Senator Gillibrand's line of questioning, whether maybe somebody who does this for a living, so to speak, who day in and day out thinks about what those standards mean, sees a lot of different cases, makes these decisions every day, and maybe consults with you. But at the end of the day says this is how we can win this case. We can win it. We can pursue it. And even if we are not sure we can win it, after consulting with the commanding officer of the unit, this will serve the good order and discipline of the unit?

Colonel KING. Senator, thank you for that question. I will start off, if you don't mind.

What I meant to say was when I am considering an alleged act of misconduct of any kind, it has got to get above a preponderance of the evidence in order for me to refer charges to a court-martial. So that is a barrier that I am not making up. That is in the manual for courts-martial, and it is generally seen as 51 percent.

There are three ways I can get there, and those are the ways that I laid out. But that is a long ways between a preponderance of the evidence and beyond a reasonable doubt, which is a very, very high bar. A lot of cases of misconduct and, unfortunately, a lot of cases of alleged sexual assault fall into that gray area. That is the problem that we have with our cases.

But to get specifically to your question, sir, with respect, I don't agree with you. I don't agree. I think that having that authority

resident inside of the commander who is responsible for the discipline of that unit is what is required.

Thank you.

Senator BLUMENTHAL. Let me ask you this. Suppose there were a fund, a restitution fund to compensate victims and maybe encourage them to come forward. Right now, as I said earlier today, somebody is entitled to restitution if their car is hit by a truck in some cases.

Wouldn't it make sense to have a victim or survivor be entitled to some kind of compensation? Anybody, I will open it to anyone.

Captain COUGHLIN. Sir, I think you are asking about incentivizing the reporting through monetary gain, and my intuition tells me that because of the severity of this crime—and I have asked the SARCs in Norfolk at the Fleet and Family Support Center just how severe is this crime? And it is orders of magnitude greater than any other kind of crime you commit to somebody.

So I personally don't think any kind of compensation would encourage people much more to come forward. But—

Senator BLUMENTHAL. Well, don't you think maybe they are entitled to it because of the harm they have suffered?

Captain COUGHLIN. They may be entitled to something, but they would have to come forward, and we would have to investigate and go through that process in order to give them that entitlement, I would think.

Senator BLUMENTHAL. Well, no, I am not talking about rewarding them for reporting. I am talking about if there is, for example, a court-martial and conviction or even if there is some discipline. In other words, a result, an adjudicated result, not just an allegation.

Captain COUGHLIN. Well, I think that would get back to my role in that process, and again, I am not an expert on this either. But as long as I am viewed as the commander, as being central to that process and the one that is accountable for solving the problem, I think that is what it comes back to, any kind of deviation from what we have right now.

Senator BLUMENTHAL. And well, let me ask you this. How about some kind of bill of rights for victims or survivors so that if there is a delay, if their credibility is challenged, if their sexual history is raised, they have some ability to be represented and to have a right to redress?

Captain COUGHLIN. Yes, sir. I think they deserve all the rights that we can afford them. They have rights now, and there is a process now that through victim advocacy and the SARC system. And I think no matter what you call it, they have got to believe it, ultimately, in order to come forward.

Senator BLUMENTHAL. They have to believe that their rights will be vindicated?

Captain COUGHLIN. Yes, sir.

Senator BLUMENTHAL. And wouldn't you agree that right now there is that lack of credibility and trust?

Captain COUGHLIN. I think it depends on the unit. And again, I can only speak to my command, and I don't think I have a—I can't prove it. I can't prove there is something going on right now that is not being reported.

Senator GILLIBRAND. It is being reported.

Senator BLUMENTHAL. We know from the numbers, though, and you do that there is a lack of reporting. Doesn't that reflect also a lack of trust and credibility?

Captain COUGHLIN. Yes, sir.

Senator BLUMENTHAL. Anybody disagree?

Colonel KING. I don't disagree, but I will make the point it doesn't only reflect just that. It could also reflect the nature of the crime.

Senator BLUMENTHAL. Which raises the issue of embarrassment—

Colonel KING. This crime is so personal—

Senator BLUMENTHAL. Embarrassment, shame, which you mentioned earlier.

Colonel KING. Right. I have done a cursory look at universities, for example. They have even worse numbers of reporting. Other institutions, cities, they have the same. So what is that a lack of trust in?

Senator BLUMENTHAL. Well, there may be—you may be absolutely right, and Senator Gillibrand has just pointed my attention to these graphs on victim reporting, which reflect perhaps a lower rate of reporting than other institutions. But the fact of the matter is the rate is low, and the Commandant of the Marine Corps pointed to the fact that it has increased 31 percent, which he cited as progress. And I agree.

And he said, and I also agree, that eventually the numbers of reporting and the numbers of crime will meet each other. And hopefully, the numbers of criminal incidents will come down, and the numbers of reporting will rise, which will eventually produce better reporting and more deterrence. Because you can't have reporting—you can't have prosecution without reporting. You can't have deterrence without prosecution.

And I think you would agree, would you not, that deterrence is a very powerful means, the fear of punishment?

Colonel KING. Without question, Senator.

Senator BLUMENTHAL. My time has expired. I thank the chairman.

Thank you all for your service and for your dedication to dealing with this problem.

Thank you.

Chairman LEVIN. Thank you, Senator Blumenthal.

Senator Donnelly.

Senator DONNELLY. Thank you, Mr. Chairman.

And thank you all for your service.

Just to follow up, do you think it is easier for a member of your command to tell someone else about a sexual assault rather than their commander, who they live with every day and who they see every day, that they might be more embarrassed to tell you than to tell a victims assistance person?

Captain COUGHLIN. Sir, there are a lot of ways of reporting this, not just through the chain of command. You can make a 911 call. There is a help line.

Senator DONNELLY. Right.

Captain COUGHLIN. So I think we are getting that training out there and those resources available, and I don't think there is—it depends on the level of trust again, whether a member is going to go right to their chain of command. That is certainly the easiest way to do it, but there are many other ways to report.

Senator DONNELLY. Do you feel that it would make—it reflects that a commander is less of a commander because you don't have full responsibility for this process?

Captain COUGHLIN. Yes, sir. I think I need full responsibility and accountability for any form of welfare for somebody in my command.

Senator DONNELLY. Well, then let me follow up with, and this isn't to give you a hard time, but the legal training that you then have. What legal training do you have?

Captain COUGHLIN. I have had command—at all the command schools I have gone to in my career, every time—essentially in the Navy, every time you go to a ship in a different level of leadership, you go through a pipeline, depending on the ship you are going to. But it all includes legal training.

And you actually do case studies, and you do JAGMAN cases, and you have a handbook and you have resources available to you.

Senator DONNELLY. Well, how does it make you less of a commander to not have full responsibility for this?

Captain COUGHLIN. Because my job is to be accountable for everything in this command, all forms of welfare for my crew. So whether it is safe navigation or it is proper healthcare or pay problems or violent crimes, it all falls within the commanding officer's responsibility and accountability to solve.

Senator DONNELLY. And what type of training do you give your sailors in regards to sexual assault and how serious this is taken? And this would be for all of you. How do you get the message across when we have seen so many awful cases? How do you get the message across that this is serious?

Captain COUGHLIN. Well, sir, we have instituted a new method of rolling out training to the fleet. We have had the SAPR-L leadership training at that level, then the SAPR fleet wide, and these are targeted at small groups.

It is video driven. There are vignettes. There are case studies. There is participation. It is very interactive. It is facilitated by fleet concentration area SARC, professionally trained people.

So I feel it is very effective. I feel like junior sailors understand methods of reporting, the severity of this crime, and how they can get help if they need it.

Senator DONNELLY. Colonel Martin?

Colonel MARTIN. Yes, Senator. I think one of the most effective training methods that we used was the viewing of "The Invisible War." And as an investigative unit watching that, and then it was amazing to me how many of my special agents still questioned the victim's response.

And so, I think what was very important as we watched that movie was to talk about the lack of trust that the victims had for the chain of command, to talk about how they felt revictimized, especially in our area, in the investigation of the crime. And so, what was very important to us and what we spent a great deal of time

on is the interview technique and how we treat victims and how we believe every victim should be treated with respect during the investigative process. Very powerful.

Senator DONNELLY. Let me ask you this. Okay, so they have watched the movie. Are there any documents that they sign off, "Hey, I have read this? I understand the serious nature of this." Or you mentioned that even after watching the movie, some of the folks questioned the validity of some of the claims.

Or I don't want to put words in your mouth. But how more than just watching that movie is the point driven home?

Colonel MARTIN. I think it is not just—Senator, it is not just watching the movie. It is the discussion that goes on while the movie and then after the movie is being played. And that discussion about how we treat victims and even in our case how we investigate, how we interview victims was very, very powerful.

We have changed significantly in the criminal investigation role in how we interview victims. We have gone from a system where we put the blame on the victim or try to make the victim tell us specifically what happened all the time. Instead, what we do now is we try to build that rapport with the victim, and so it establishes a trust in the system that we can actually get to what happened, make her or him feel comfortable.

Senator DONNELLY. Is there a class or classes given, for instance, a group gets to one of the forts. Do they have a class on, look, this is serious. This is critical. This is a sacred obligation to have one another's back, and we will not stand for that being violated.

I mean, is there any formal process that you use?

Colonel MARTIN. Yes, Senator. That message comes from me, the commander of that unit.

Senator DONNELLY. I mean, is there any formal process that you use. Hey, here is what I told them. Here is the way the Army does it. Here is step one, two, three, four.

I mean, you know you tell them this is serious. Then they watch the movie, and then they are done. Is there anything more formal than that?

Colonel KING. So, Senator, I can tell you from a Marine Corps perspective, we have what we call "Take a Stand" training, and that is every noncommissioned officer in the Marine Corps, and the Army has something that is very similar to it. And it is about 60,000 guys go to 40 hours of training a week.

That is a significant training commitment. I can name a handful of other things that are that significant. We also have command team training. So command team is CO, sergeant major, and whoever else he directs, chaplain. I always bring my chaplain with me. That is where we get about another week's worth of training that is specified for the command teams.

Following the "Take a Stand" and the command team training, we have all-hands training, and that is just what it sounds like. Get in a theater, let us talk about this for an hour.

And you heard the Commandant mention his campaign plan. During Phase 1, he even upped that ante. All 85 general officers were brought to Quantico. I have never heard of that before. I have never heard of it since. And they had one subject. It was sexual assault.

So he started by reading them his white letter, talking to all of his general officers, sending them back out, and then making 60,000 NCOs take "Take a Stand," which is a formal training continuum, do the command team training, and do the all-hands training.

Senator DONNELLY. So you feel confident every Marine from here to there has been fully immersed in that culture to tell them no more?

Colonel KING. Above 95 percent, yes, Senator.

Senator DONNELLY. Okay. Thank you very much.

Thank you, Mr. Chairman.

Chairman LEVIN. Thank you very much.

Senator KAINE.

Senator KAINE. Thank you, Mr. Chair.

I think this has been a helpful panel, but I feel a little bit of it has gotten into kind of a tug of war over your reactions to proposals that we might make on this side of the aisle, and that is as it ought to be. But I want to set aside any proposals from this side of the dais and ask you just to be problem solvers with us here and not to talk about what is being done, but just to engage your problem-solving skills because you are dealing with folks on the front line all the time.

Colonel King said reporting is key. The key to this thing is reporting. And I think a number of the other Senators have said the same thing throughout the course of the panel. But the stats that were given from the DOD survey show that this is—if reporting is the key, that we clearly got a lot of problems.

Seven out of eight people do not report. Seven out of 8 who have an experience of unwanted sexual contact do not report, and 90 percent of them report that it is either because of fear of retaliation or the negative experience of other victims that they have seen. That they are not treated right or they are not treated significantly.

Of the 1 of 8 who do report, 62 percent say they experience some form of retaliation, 38 percent do not. So if reporting is key, and I think we all believe that to be the case, and if we are not likely to solve this problem, absent a culture that allows reporting to occur more significantly, based on your own experience in dealing with your people in each of your Service branches, what is the reason for the lack of reporting?

And what do you think can be done that will make a culture or create a culture where reporting is easier for folks to do?

Captain COUGHLIN. Sir, a couple of thoughts come to mind about the retaliation, which is preventing the reporting, and I don't think we have had enough time yet to see the effect of the expedited transfer option by the victim. I think once that starts being leveraged and victims know that is what is going to happen, I think that is going to reduce some retaliation. It should reduce all of it if you transfer them swiftly.

Another option is military protective orders. Really use them. Really enforce them and keep the people retaliating away from a victim.

Senator KAINE. Other thoughts?

Colonel MARTIN. Just to key on that, too, is you must set the condition in your command where others know that retaliation will never be tolerated and set a zero tolerance for retaliation as well.

Senator KAINE. Colonel King or Colonel Leavitt?

Colonel LEAVITT. Yes, Senator. I agree that there has to be a climate, a climate where victims feel that they can come forward, and command needs to understand at all levels that they will be held accountable if they do not identify sexual assaults when they happen.

Now there are a lot of other avenues, like, in our case, our SARC. She is very visible throughout our wing. She briefs at every ride start, at every first-term airman center. I mean, she briefs at unit level. She is out and about and visible.

On every marquee on my base, it cycles through, and one of the things that cycles through is "Do you need to talk to the SARC?" with her number. So it is going to take some time. We are trying to get the word out. We are trying to change that climate to make sure people understand, victims understand they can come forward. We will take care of them, and we will hold people accountable.

Senator KAINE. Colonel Leavitt, real quick before Colonel King answers. The special victims' counsel pilot project within the Air Force, maybe one of the fears of reporting is that fear of you are going to isolated and alone. You could be ostracized. The retaliation may not be from command, but it may be from folks within your unit if you report.

Is the structure of the special victims' counsel set up to—so that a victim knows, well, I have got an ally. I have got an advocate. I am not going to be completely isolated if I have got somebody going through this with me?

Colonel LEAVITT. Yes, Senator. The special victims' counsel does exactly that. I mentioned it gives the victim a voice. It also empowers them. It helps them understand the rapid transfer, that that option is available.

It helps them understand that maybe I should go unrestricted because they are offered the special victims' counsel whether it is a restricted or unrestricted report. And what we have seen is the number of restricted cases that shift into unrestricted has increased when they are able to talk to a special victims' counsel and understand what options they have available and how the whole process works.

So we have—

Senator KAINE. Just to make sure I—because this is new terminology to me. This is my first instance of dealing with the UCMJ-type setup. But somebody comes in and makes a restricted complaint, meaning I want to tell you about it, but I don't really want it known other than in our conversation.

But then as the victim who describes what has happened gets more comfortable with what the process will be, you have seen in the special victims' counsel scenario that they become more willing to go ahead and make it an unrestricted complaint that would be known within the chain of command?

Colonel LEAVITT. Yes, Senator. Because whether they make a restricted or unrestricted case, they are offered special victims' counsel. And so, even with the restricted report, they can still have that

ally, that expert who can help them through the process. And once they understand it, then they have been more willing to make it unrestricted, and then we are able to prosecute.

Senator Kaine. Colonel King, how about your thoughts about how to fix this, setting aside anything we have proposed to fix it?

Colonel King. You told us to do problem-solving, right, Senator? You should have seen me when I was 18. I knew everything, and I really couldn't be told anything. Well, Senator, I have a regiment full of those guys right now.

So around 60 or 70 percent of my ranks are young men and women who are right out of high school who are bullet proof. So when I hear terms, Senator, like the chain of command is retaliating, what I think that that mostly means is peer pressure. I remember what peer pressure felt like. I have two teenage kids right now, and that is front and foremost in their world.

So they don't want to be different. These are—they have volunteered to wear the Nation's cloth. They don't want to be different. Anything that makes them different feels like retaliation.

Again, I can only speak from my own experience. I have never seen the chain of command retaliate, and I haven't done anything else my entire adult life.

Senator Kaine. And just to be fair, Mr. Chair, the stats reported in the DOD report do not suggest fear of retaliation from the chain of command. It is just fear of retaliation generally. So that could encompass what you are saying.

Thank you, Mr. Chair.

Chairman Levin. Thank you, Senator Kaine.

Senator King.

Senator King. Colonel King, you used the words that were the first words of my note for my first question, which is peer pressure. I am not asking for policy or prescriptions, but just for your kind of analysis of what is going on in the field right now. Is the peer pressure against sexual assault, or is it against reporting sexual assault?

Try to tell me what you are hearing and seeing.

Colonel King. Senator, I would say that—I would honestly tell you that there is peer pressure against reporting right now, but the tide is changing. I believe that. I can't give you a number. I can't tell you when.

But there is a lot of peer pressure out there. I mean, these are young, strong, driven men and women who we ask to do some pretty amazing stuff. The primary group bonding that they go through in order to do that stuff that their Nation asks for them, I mean, the sense of belonging is very, very powerful.

So that character, that, for lack of a better term, personality, it can have some negative connotations. So, yes, I would honestly tell you that sometimes it is peer pressure that causes them not to report. Sometimes they will just tell a friend.

In my experience, I have learned about misconduct in a very circuitous fashion. And when it does get to my level, which is truly the chain of command, I know myself and the ladies and gentlemen that are sitting up here, we immediately act, immediately.

Senator King. So the real question before us all is how do we reverse that impulse at the grassroots level in terms of this is unac-

ceptable conduct, that is the sexual assault, and reporting is okay? I mean, it seems to me that is really the nub of this problem.

Because we can talk about generals and officers and admirals, but it has really got to happen in and amongst the troops. Colonel? Anyone?

Colonel LEAVITT. Yes, Senator. That is absolutely critical, going to the grassroots. We have got to create a climate and an environment where the peer pressure is that you don't commit sexual assault and you don't tolerate it. You step in, and you stop it. And that is something we are trying to get to.

Our chief has had increased emphasis on sexual assault from day one, how we prevent it, what we do about it, how we respond. In late November, he had a global wing commander call, unprecedented. Never had all wing commanders around the world been brought to one location, and they were brought to one location with one goal in mind—how to address the problem of sexual assault.

And we all watched "The Invisible War" together and talked in great depth because he said you are the ones who are going to have to make this change, the wing commanders. You set that climate. You set that environment, and you need to make that change.

Following that, I had a series of commanders calls, and we looked at a clip from "The Invisible War," and we talked about it. And we talked about that climate and that culture. We had a health and welfare inspection where we went through, and we hit the reset button. What is acceptable? What kind of environment is respectful, has professionalism, discipline written all over it?

Every class that comes in of new airmen, first-term airmen, I go brief them in detail. And I make sure it is crystal clear in their minds what the standard is, what is acceptable and what is not. Because I truly believe it is going to have to be grassroots. We are going to have to create that peer pressure and that culture where we hold ourselves to a higher standard, and that is not acceptable in our Air Force or our military.

Senator KING. Well, I lived through the period where we went from drinking and driving being a kind of semi-humorous, "How did you get home last night? I don't remember. Ha-ha-ha." To "That is not acceptable." And it came not only from the legal system, but from your colleagues.

It came from your peers, and that was what really changed that culture, which there has been a remarkable change in the last 35 or 40 years.

Here is question. Should retaliation be an offense? If someone retaliates against someone for reporting, should that, in itself, be some kind of punishable offense?

Captain COUGHLIN. Sir, that is like any kind of a crime against a shipmate. That is unacceptable. So, yes, that should be a punishable offense.

Senator KING. Do we need language to that effect, or does the code already have sufficient language?

Captain COUGHLIN. I have all the tools I need to take care of that in my command right now through nonjudicial punishment.

Senator KING. Do you recall any evidence or any occasion where someone has been disciplined for retaliation in a case like this?

Captain COUGHLIN. I can't prove it was retaliation for a report of a sexual misconduct, but there have been many cases of non-judicial punishment where two sailors get into a fight. That is punishable. That is not good order. That is not discipline. That is not teamwork.

So we prosecute those things within the lifelines all the time.

Senator KING. Well, I would suggest that this might be an area to, again, get the word out that if the word gets back that somebody is being retaliated against in some way—shunned, ostracized, whatever—that that in itself ought to be, in some way, punishable, not necessarily with a court-martial, but nonjudicial discipline.

Captain COUGHLIN. Sir, another method gets back to the grass-roots theory is bystander intervention that is being very, very focused upon in the fleet-wide training, and then reward that, reward that kind of bystander intervention, and you are kind of attacking the problem from the other end. So that then, hopefully, as we get more run time on this, people will come forward more.

Senator KING. One final question. As you know, a great deal of discussion here this morning has been about taking these decisions out of the chain of command. What about an alternative whereby if you decide not to prosecute, that that has to be signed off on affirmatively by your JAG officer. And if the JAG officer disagrees, it gets bumped up a level.

How would you—I am trying to find something that doesn't violate the chain of command, but at the same time provides a check and balance to give people the confidence that this is a real—they are going to get a fair hearing.

Colonel MARTIN. Senator, there is already a process where if a JAG advises a commander to go forward on a case and they decide not to, the commander does, then the JAG can take it to the next higher commander.

Senator KING. And my question is the key word you used was "can." And my question is should that be "shall"? In other words, should it be an automatic proposition if the JAG officer disagrees that it goes up, not a further discretionary decision?

Colonel MARTIN. I think if there is an agreement, and the JAG feels very strongly about it, then he shall go forward.

Senator KING. Any other thoughts you have? Colonel King?

Colonel KING. Senator, I wouldn't have a problem with that at all. We are so close with our JAGs. I mean, since I have been a battalion and a regimental commander, I don't have these conversations without them. So I honestly thought that we did what you are describing anyways.

Now I never went against their recommendation, but I thought we did that. I know he would go to the general.

Senator KING. Okay.

Colonel KING. So I would be fighting this fight anyway. So—

Senator KING. Thank you very much, and thank you all for your service.

Chairman LEVIN. Thank you very much, Senator King.

Senator Sessions.

Senator SESSIONS. Thank you very much, and I am sorry I missed much of the morning. I am ranking on the Budget Committee, and we had a Budget Committee hearing I had to attend.

This is an important subject, and we are proud that you are here to testify about it. You know, I had time in the Army Reserve. I even held a JAG slot, but I never was Charlottesville trained. So I am a pretty weak JAG officer, not like Senator Lindsay Graham, who actually served in those areas.

But my experience with JAG officers are that they are not—they don't see themselves like the average corporate counsel for some CEO. They see themselves as an advocate for the values of the United States military and proper enforcement of the law.

So, first, let me ask you would it generally be so that the JAG officers work hard and are prepared to be aggressive in prosecuting cases that involve sexual misconduct, or do you think there is a lack of aggressiveness in that regard?

Captain COUGHLIN. Senator, all my experience with Staff Judge Advocates is that they are very aggressive. They are very plugged in, and they view themselves as to support me in making a good decision.

Senator SESSIONS. And what I just remember it, advanced officer school, we had an African American that had not cleared the course, and we complained to the JAG officer. He happened to be from Alabama, and he grilled—we had a hearing. He grilled that colonel shockingly, really, and he ended up reversing the position.

So I just would say that my observation with JAG officers are they are courageous and independent and not afraid to take on difficult cases.

Do you—I am not fully familiar with your roles at this point in your career. But are our captains, colonels, majors, are they talking with their officers and leadership team, NCOs, about this problem today, and is it being emphasized in a regular way in your command? And if there is a problem, do you call your leadership team together, and is it being discussed with them?

Captain COUGHLIN. Yes, sir. It is a huge focus. There is fleet-wide training that is ongoing.

Senator SESSIONS. Now does that happen—been emphasized more in recent months as a result of some of the reports we have seen?

Captain COUGHLIN. I have seen since 2011, we have been aggressively tracking this problem and attacking it. The Navy is going to have a stand-down from the 10th of June to the 1st of July Navy wide. We have rolled out fleet-wide training, at the fleet level and leadership level.

So I can't think of many more things that are more focused than this right now in the Navy.

Senator SESSIONS. And so, there is no doubt that a person would from the lowest rank on up know that this is an increasingly important emphasis from the command? You have already done that? That has already been done?

Captain COUGHLIN. Yes, sir.

Senator SESSIONS. Mr. Chairman, I just had a letter and a document here that were given to me. Morality in Media. Pat Trueman used to be in the Department of Justice. I knew him when he was there. Points out that a picture here of a newsstand in an Air Force base exchange with sexually explicit magazines being sold.

So we live in a culture that is awash in sexual activity. If it is not sold on base, it is right off base. There are videos and so forth that can be obtained, and it creates some problems, I think.

Let me just say this. Let us say that you had a female soldier who had felt she was assaulted by an NCO, higher rank. What would happen? When that comes to your attention—Colonel Martin, I see you nodding—what would you do? And you think what you would do is typical of what other officers would do?

Colonel MARTIN. Senator, I nod because this is exactly a situation that I had in my command where I had a young female who was sexually harassed by a senior noncommissioned officer. And that noncommissioned officer was relieved of his duties, and then at her request, she was transferred to another unit.

Senator SESSIONS. And if it carried on to—if it were criminal assault, is a JAG officer notified first or the Defense Investigative Services, or who would investigate the facts of the case?

Colonel MARTIN. That would have been investigated by CID.

Senator SESSIONS. And you did that?

Colonel MARTIN. That is correct.

Senator SESSIONS. Okay.

Colonel KING. Senator, just to be clear, we are not allowed to investigate allegations of sexual assault.

Senator SESSIONS. How does it work?

Colonel KING. Our commands are not. That has to be investigated by NCIS, in our case.

Senator SESSIONS. All right. Then who do they make a report to?

Colonel KING. The report comes back to the convening authority, sir, which in this case would be one of us.

Senator SESSIONS. And then you would take—you would convene a court-martial or not convene a court-martial proceeding? But there is a procedure for that to be done.

I am just trying to—for the people that are wondering how this happens in the real world, and I am trying to flesh that out, what happens in the real world is that a complaint is not ignored, first. Is that correct? Would you all agree with that?

And then there are mechanisms to investigate and, if necessary, prosecute those cases, and the person can be removed from the military, placed in jail, or given other kinds of discipline as a result of misbehavior.

Colonel KING. And sir, and in a recent change, any substantiated allegation of sexual assault results in automatic processing for discharge. So now we normally—

Senator SESSIONS. Automatic processing?

Colonel KING. Automatic processing. Now we hold that in abeyance if there is legal proceedings still going on. We don't want to discharge someone who we are going to have a general court-martial for.

But if that court-martial proceeds forward and comes back with a verdict of not guilty, then we can process them. That is a recent change.

Senator SESSIONS. I don't know how many million people in all our branches of Service. What? Three million, Mr. Chairman? Most of them from 18 to 30, let us say. And if you had a city of 3 million

with a lot of young men and some women, we know there will be certain problems. We know that just mathematically.

But I do believe the military has a serious commitment. I have read and heard General Dempsey's comments today, and I really believe he is focused on reversing these bad reports that we are seeing that are unacceptable, and whether legislation is needed or not, we will see. But it is very important that each of you, to the lowest level, are aggressive in ensuring that we have a safe workplace.

And I thank you for what you have done and your service to your country.

Chairman LEVIN. Thank you, Senator Sessions.

Senator Hagan.

Senator HAGAN. Thank you, Mr. Chairman.

And first, I want to say to Colonel Leavitt, congratulations for being the first female wing commander in the history of the Air Force, and we are pleased that you are here today.

I know a lot of the conversation this afternoon has been centered around making the command environment where victims are comfortable reporting crimes of sexual assault, and these victims in this process need to feel that they are going to be listened to, that they are going to be protected. They are going to be cared for, their case will be taken at the appropriate level of investigation. And hopefully, they are not going to be retaliated against, and the stigma, hopefully, will not stick with the victim.

Colonel Leavitt, I know General Welsh was talking about the pilot program for the special victims' counsel. Have you been directly involved with one of these pilot programs?

Colonel LEAVITT. Senator, I do have familiarity with the special victims' counsel. One of the prosecutors that works in my chain of command, he is a special victims' counsel. Now he can't give me any specifics, but what I did is ask him about the program and how it was working. And he said it has been very positive feedback.

It really gives a victim a voice. It empowers them. It helps them under the process and understand what options they have. And in cases, it has been able to allow people who initially file the restricted report, once they understand the whole process and they feel they have an ally, they are willing to go to an unrestricted report, in which case we are able to prosecute.

Senator HAGAN. So how many current victims get access to a special victims' counselor?

Colonel LEAVITT. Ma'am, any victim, anyone who makes a case for sexual assault, if they file either a restricted or unrestricted report, they are offered special victims' counsel.

Senator HAGAN. And is that true in the other branches?

Colonel KING. Ma'am, we don't have a Special Victims Unit. We do have complex trial teams. So it is more training our litigators, our prosecutors to properly try these cases. One of the things that we noticed—

Senator HAGAN. But that is not available to the victim from day one?

Colonel KING. No, ma'am. And the reason for that is, in my opinion, we do the take care of the victim side of it pretty well

today. I know the Commandant has said we are going to look at the SVU. I think it is a great idea.

Senator HAGAN. Why don't you give me a run-through as to what happens for the victim?

Colonel KING. So for the support mechanisms they have? They have—in every unit, we have a response coordinator who really handles the process of once the report has been done. We also have a uniformed victim advocate. So that person is specifically trained to not only be there in those initial phases of the very—reporting that very traumatic experience, but to open up all of the things that are available to help a victim, which are mostly on the installation side.

So that uniformed victim advocate will walk through with that victim through every step of whatever counseling or whatever medical help they need. Does that answer your question, Senator?

Senator HAGAN. It does. Over the last 20 years, States have gotten involved in special victims' counsel. They been involved in advocates for sexual assault victims, domestic shelters, domestic violence, all sorts of these issues. And I want to be sure that these resources that are available at the State levels, that the military either makes use of them or actually is following what is going on.

And I guess, Colonel Martin, in your case—and tell me if I am correct—that you oversee the investigators who are investigating many of these crimes?

Colonel MARTIN. Yes, Senator. I do.

Senator HAGAN. And one of my—one question I have is you were talking about “The Invisible War” and that some of your investigators find it hard to believe the victim.

Colonel MARTIN. No, Senator, what I was saying was the discussion was centered around where we have come from when we started investigations to the additional training that we have given our agents, to where they are now and how we treat victims. And they all believe that all victims should be treated with dignity and respect.

Senator HAGAN. Okay. I have seen “The Invisible War,” and I am pleased that some of you have actually witnessed it and are using it. But it wasn't put together as a training mechanism, and I want to be sure that the training that goes into the people that help the victim when they present at a hospital stand by their side.

This is a traumatic situation. So much has been done on the civilian side over the last 20 years that I want to be sure that the military is using that as good examples of best practices. And I think the special victims' counsel is certainly an area that all the branches need to be moving into, and I am certainly hoping that this doesn't just be a pilot program, that it continues to be a program that is acted upon.

Do you feel it is appropriate, Colonel Leavitt, to dispose of sexual assault or other serious offenses at the O-6 level of command?

Colonel LEAVITT. Senator, I believe that the commander needs to have the ability to back up what they say. They need to be able to enforce the standards they set. And so, if I say there is no acceptable level of sexual assault, I need to be able to back that up, not look to an independent counsel and ask them to then take it to courts-martial.

Senator HAGAN. I am concerned about how the victims are continually being treated, and why are they not reporting at a larger number than they are right now? And I have heard the testimony, and I have heard we have a zero tolerance. We are going to do this. We are going to do better.

What specific steps are going to change that reporting behavior? And if you could just quickly, Colonel Martin?

Colonel MARTIN. Senator, I think command climate would change that reporting. Positive command climate and belief that the chain of command is going to—

Senator HAGAN. But have we not been doing that for the last couple of years?

Colonel MARTIN. Yes, ma'am. But I think we just have to continue. We have to reiterate our concern for our victims.

Senator HAGAN. Captain Coughlin?

Captain COUGHLIN. That is the hardest question of all, ma'am. And we have good command climates, and I am comfortable that my commanding officers are addressing this problem and talking to me about it, and we are adjudicating it the best we can.

But the stigma associated with this is the tough thing to get through, and I just think we have to break down those barriers little by little by little, and hopefully, those who would have a tendency to not report would then come forward.

Colonel KING. Senator, I think it is going to take continuous pressure and time. I don't think this is an intractable problem, but it is definitely a hard one. It is a complex one. It is going to take some time.

Colonel LEAVITT. Yes, Senator. I think it is going to be a continuous process in order to improve the environment and ensure that victims do feel comfortable, and we have done a number of things, but we have to continue it.

And there is a big, increased emphasis I have seen with our new chief and his focus for our airmen.

Senator HAGAN. Well, hopefully, the victims will start coming forward in higher numbers. But should also, I hope, discourage the perpetrators of sexual violence to also take note and realize that this is a crime, and it is unacceptable in the military and in the civilian world.

Thank you, Mr. Chairman.

Chairman LEVIN. Thank you very much, Senator Hagan.

We very much appreciate this panel. We appreciate the service that you and the men and women with whom you serve, your families. We thank you for coming forward today and giving us your own testimony from your own perspectives. It is extremely important that we hear from you, helpful to this committee and, I hope, helpful to the final outcome of our deliberations.

So you are now all excused with our thanks. We will move immediately to the third panel. [Pause.]

Our final panel, a panel of outside witnesses, and we are welcoming first Ms. Nancy Parrish, president of Protect Our Defenders.

Ms. Anu Bhagwati, executive director and co-founder of the Service Women's Action Network. Major General, Retired, John Altenburg, chairman of the American Bar Association's Standing Com-

mittee on Armed Forces Law. And Colonel Lawrence Morris, Retired, general counsel of Catholic University.

We are grateful for your presence, for your patience here today. And we will call on you in the order in which I introduced you. So, first, Ms. Parrish?

STATEMENT OF NANCY PARRISH, PRESIDENT, PROTECT OUR DEFENDERS

Ms. PARRISH. Thank you, Mr. Chairman.

Protect Our Defenders regularly receives pleas from current sexual assault victims whose attempts to report are thwarted, mishandled, or made to disappear. We try to intervene, hire lawyers, block retaliation, reverse errant medical diagnoses.

Servicemembers with outstanding records after they report are often isolated in psych wards, investigated, and forced out. One soldier explained, "I got raped. When I told my squad leader, I got shut down. I waited, spoke with my platoon leaders. I got told if I say another word, I would be charged with adultery.

"I told my new squad leader. In December 2012, they chaptered me on an adjustment disorder. He is free, wears the uniform. It represents a protective shield if you are a rapist with rank."

A mom reported, "In April 2012, servicemembers gave our daughter cigarettes laced with embalming fluid and raped her. She was locked up, denied requests for expedited transfer. Weeks later, an Article 15 and an attempt to discharge with errant medical diagnoses."

Last year, an active duty officer of 18 years said, "I was deployed overseas. The first advice you get, always carry a knife, not for battle, to cut the person who tries to rape you. I was drugged and raped. Check the base IG records. See how many complaints were pushed under the rug."

Lieutenant Adam Cohen violently sexually assaulted and endured botched investigations. Today, he faces command retaliation, harassment, threats to his life, and finds himself the investigation target.

Several months ago, a commander wrote, "I have a young female soldier. I encouraged her reporting. I have been disappointed in the lack of support given by her command higher than me. I would appreciate any direction you could advise."

Congress must assume its responsibility and not approach reform based only on what military leaders would like to accept. Common sense tweaks to a dysfunctional biased system will not fix this.

Place the duty to determine whether to go forward to trial with trained senior prosecutors. Third-party accountability will help fix the culture and legitimize the system.

Why should a legal decision be left to a non-lawyer often connected with those involved and with vested interest? How could this consistently produce justice? And in deployed areas, justice would still occur with the JAG system.

Remove good military character defense from trial. Instruction on GMC tells members that it, on its own, can raise reasonable doubt. And only if the accused has committed another crime can you impeach at trial.

Remove commanders' authority to reduce sentences. Provide victims with absolute legal representation to protect their rights, not just advice. Judges, not juries, should pronounce sentences.

Military juries are notorious for light sentencing. Mandate minimum sentencing guidelines. Juries should be selected randomly, not by someone who may have an agenda.

Many insist that absolute command discretion is required to maintain good order and discipline. Yet when victims are punished and perpetrators go free, troops know it, and trust is undermined.

Whether you agree with how our allies have set up their outside system, the bottom line is it hasn't reduced a commander's ability to train and lead warfighters. Many have stressed the critical involvement of commanders in addressing this crisis. We agree. Commanders must create a command climate that minimizes these incidences.

Commanders must be held accountable. Status quo supporters have failed to explain how placing the disposition authority in the hands of capable prosecutors would undermine effectiveness. The opposite is true. Today, more reports may mean a commander is fair and effective, and a commander with no reports may be intimidating victims and burying offenses.

Third-party accountability will help legitimize the system and fix the culture. Victims will report, retaliations shrink, and prosecutions increase. Today, there is absolutely no tracking of how a convening authority performs this part-time duty.

Forceful leadership and accountability is also required. Recently, General Franklin, exhibiting faulty analysis and bias, set aside the sexual assault conviction of Colonel Wilkerson. Leadership's only response? Franklin acted within his authority.

Of course, he did. That is the problem. What about his duty to promote good order and discipline and see justice served? He failed on both counts. Will he be held accountable?

Furthermore, Franklin's commander, General Breedlove, speaking before 500 majors, rising commanders, publicly defended Franklin's analysis and erroneously attacked the prosecution. This circling the wagons above the interests of the service is common.

The panel today said they rarely relieved anyone for having a climate of sexual assault. What does it take?

Survivors have found their voice. Americans are watching. Fundamental change is required. It will come. How long will it take?

[The prepared statement of Ms. Parrish follows:]

Chairman LEVIN. Thank you very much, Ms. Parrish.

Now Ms. Bhagwati?

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

Ms. BHAGWATI. Good afternoon, Chairman Levin, Ranking Member Inhofe, and members of the Armed Services Committee.

Thank you for convening this hearing and for the privilege of testifying before you today.

My name is Anu Bhagwati. I am the executive director of Service Women's Action Network and a former Marine Corps captain.

SWAN has been at the forefront of working to end military sexual violence since 2007. We are nonpartisan. We are veterans led,

and we are a nonprofit organization. It is our mission to transform military culture by securing equal opportunity and freedom to serve without discrimination, harassment, and assault, and to reform veterans services to ensure high-quality healthcare and benefits for women veterans and their families.

I would like to begin by saying that I have a deep abiding love for the military that comes from spending 5 years serving as an officer of Marines. I want to see our servicemembers succeed and our Armed Forces thrive.

The issue of sexual violence in the military has been a priority for our organization since its inception. Daily interactions with servicemembers and veterans on our legal and social services help line have shown us that the impact of sexual violence, the impact that it has had on our military in terms of recruitment, readiness, and retention is profound, and the pain and damage to individual survivors is, in many cases, irreparable.

Even more distressing, the continued failure of the military to address this situation has caused troops to completely lose faith in their leadership and in the military's criminal justice system. This is evident in abysmally low reporting rates for sexual assault.

Servicemembers tell us that they do not report for two reasons primarily. They fear retaliation, and they are convinced that nothing will happen to their perpetrator.

With approximately 26,000 members of the military having experienced some form of sexual assault over the past year alone, this issue calls for immediate attention. Sexual violence presents a challenge to the force that requires the same level of planning, leadership, and execution that goes into the most critical military operations. Resolving this crisis will require a comprehensive approach as well as a joint effort by DOD, Congress, the White House, and outside experts and advocates.

Issues that must be addressed include victim services, protection from retaliation, military justice reform that reevaluates the role of the commander and removes bias against both victim and the accused, and wholesale changes to military culture.

These issue areas require solutions that transcend traditions or rhetoric. Everything must be put on the table, and a climate of cooperation and change must prevail if we are to restore the military's standing in the eyes of its own members, the Nation, and the world.

SWAN believes that part of this change requires a dramatic increase of accession rates of women in the Service branches and all commissioning sources. The answer to the sexual violence crisis in part lies with the need to drastically increase women's presence in the Armed Forces. And until women are afforded the same access to all jobs and assignments as men, until sex discrimination ends, we will also have a military that condones sexual harassment and assault.

We simply cannot expect to recruit or retain enough women in the force when they are treated so poorly, and we cannot expect military culture to improve with so few women at the highest echelons of enlisted and officer leadership.

As you may know, I come to this hearing having personally experienced and witnessed widespread discrimination and sexual har-

assment during my own military career, having witnessed my own senior officers sweep numerous cases of rape and sexual assault under the rug, and having experienced personal and professional retaliation for reporting abuse in my unit.

I know intimately what intimidation by the chain of command feels like. I know deeply what long-term personal trauma from reporting these incidents feels like. And I know deeply how it feels to lose a career I loved because of my own commanding officers doing nothing to support my troops or me when we did the right thing.

For any servicemembers, veterans, or civilians who are here in this room or who are watching this hearing today who have experienced rape, military sexual assault, or harassment, please know that you are not alone. I believe you, and millions of Americans across this Nation believe you.

We know that the military justice system has not worked effectively for you. We know that the trauma, fear, intimidation, and retaliation you experienced is a travesty of justice. It is a violation of everything that your fellow servicemembers swore to uphold. It is a betrayal of the oaths that your officers swore to uphold.

You didn't deserve this when you volunteered to serve your Nation. I am so proud of you for making it through each and every day while your fellow brothers and sisters in arms may have blamed you for what was never your fault, while your chain of command and even your own families may not have believed or supported you, while the VA made it nearly impossible for you to get the benefits you deserved, making you feel again and again that like what happened to you was your fault and not the fault of those who violated your trust.

Mr. Chairman, we are facing a crisis in the ranks. Our military today is a hostile environment in which women and men must put up with all kinds of degrading behavior, not random acts, but rather routine rites of passage that are still condoned by senior enlisted and officer leaders—going to strip clubs, brothels, red light districts both within the United States and overseas, exposure to violent, bestial pornography, rape jokes, and constant verbal harassment.

We should not be surprised that in the age of Steubenville, it is also not safe to be a woman at the Service Academies, where a culture of silence and the glorification of student athletes has allowed a culture of sexual violence and mistreatment of women cadets and midshipmen to flourish.

In a culture that is so deeply rooted in sexist tradition in which sexual assault of men occurs even more often than sexual assault of women; in which sexualized hazing and abuse rituals to allegedly toughen up our male servicemembers are routine; in which service women practically become numb to sexual harassment because it is so common; when even service women often do not support fellow service women who are abused or harassed because few of them want to be considered troublemakers or rabble rousers; in this kind of proud warrior society, where stepping in line is the norm and the very idea of being a victim is considered antithetical to everything we were taught is strong, heroic, and valued, we need to think well outside the box to find transformative solutions.

In the interest of time, I have submitted several Senate bills in my testimony, which SWAN supports for the record. I will just highlight three bills at this time.

The first is Senate bill 871, the Combating Military Sexual Assault Act. The second is Senate bill 1032, the BE SAFE Act. And the third is Senate bill 967, the Military Justice Improvement Act, a critical bill that professionalizes the military justice system by ensuring that trained professional, impartial prosecutors control the keys to the courthouse for felony-level crimes while still allowing commanders to maintain judicial authority over lesser crimes and crimes that are unique to the military.

Unless and until we professionalize the military justice system and afford servicemembers at least the same access to civil redress that civilian victims have, including critical access to civil suit, we will not change this culture. Military perpetrators will continue to be serial predators, taking advantage of a broken system, and tens of thousands of victims of sexual assaults, sexual harassment, and rape will continue to suck up their pain year after year and decade after decade with no hope for justice.

I now urge the committee please put yourselves in the shoes of the average victim, junior enlisted, powerless, and shamed into silence and vulnerability. Please think of them and move this critical legislation forward. To wait any longer is to welcome the next generation of American victims.

Thank you.

[The prepared statement of Ms. Bhagwati follows:]

Chairman LEVIN. Thank you very much, Ms. Bhagwati.

Mr. Altenburg?

**STATEMENT OF MG JOHN D. ALTENBURG JR., USA, RETIRED,
CHAIRMAN, AMERICAN BAR ASSOCIATION STANDING COMMITTEE ON ARMED FORCES LAW**

General ALTENBURG. Thank you, Chairman Levin, Ranking Member Inhofe, and members of the committee, for allowing me to testify here today.

These views are my personal views. They do not reflect the views of the Department of Defense, the American Bar Association, or any other entity.

We all agree, I think, that the problem of sexual assault in the military is appalling. How to solve this issue is critical to our Nation's ability to field an effective military force. I approach this issue from a perspective shaped by three experiences.

First, my service as an enlisted soldier. Including reserve time, I was an enlisted soldier for more than 5 years, including a year in combat.

Second, my service as an Army Judge Advocate for more than 28 years, including almost 8 years personally prosecuting serious crimes in the United States and Germany and, later, another 6 years as a Staff Judge Advocate in the two busiest general court-martial jurisdictions in the Army, and I deployed with both of those organizations. I have prosecuted and I have overseen the prosecution of numerous rape and sexual assault cases.

The third is the fact that I am the father of five children. They are all adults now. Two served in the Army, including my oldest

daughter, who served 6 years active, most of it deployed, and another 6 years in the Reserve. All of this after attending and graduating from the military academy at West Point. My youngest daughter also is considering military service next year.

Sexual assault in the military is one of the most serious problems I have seen in more than 45 years observing military issues. We know from accounts of victims that there has been inadequate command accountability for addressing this insidious problem.

Clearly, some leaders have failed to take care of victims, and many victims have been horribly retraumatized by the process, frequently because of insensitive leaders.

I agree that change is needed, but many of the changes already urged and passed by the Congress are leading to change that is needed to cope with this problem. Many of the changes demanded by victims advocates have only been in place less than 3 years. If we argue for major change, we should check to see how effective recent changes have been before more major changes.

There are more than 130 convening authorities across the Department of Defense, who review and approve or disapprove of findings in more than 2,000 cases annually. We must be careful of judgments based on 1 or 2 of those decisions in the last 5 years, compared to the 10,000 decisions by all the other convening authorities.

It is not enough to point out that statistics are misstated by critics, that survey responses are extrapolated by mathematicians to reflect 26,000 unwanted sexual contacts but then translated by critics and journalists to be 26,000 actual rapes or sexual assaults. This problem is serious. There is no need to exaggerate statistics.

The military prosecutes sexual assault more aggressively than most civilian jurisdictions. The military prosecutes many cases after civilian jurisdictions decline them. Those who claim otherwise simply don't know the facts.

No commander ever refers a case to a general court-martial without first reviewing the pretrial advice of his or her Staff Judge Advocate. Those who say that non-lawyers run the prosecution of cases do not understand how fully commanders understand their quasi-judicial responsibilities and the direct link those duties have with the combat readiness of the force.

Nor do critics understand that lawyers are fully engaged in the exercise of prosecutorial discretion. Rarely does a commander not follow the recommendation of the Staff Judge Advocate. Taking authority from commanders and giving it to lawyers solves nothing, in my opinion. It is a 50-year-old solution looking for a problem to solve. Lawyers are already fully engaged.

Prosecution is critical to prevention, but only leader accountability will solve this problem in all of its complexity the same way leader accountability in the 1970s began to solve race issues and in the 1980s to counter the misuse of alcohol and drugs and drunk driving.

There have been crises in child abuse and spouse abuse in the military. In each instance, military leaders created the change that was required. Withholding disposition authority to a higher level was instrumental in each of those matters.

Leaders must understand that while sexual assaults occur with similar frequency in the civilian sector, the military setting creates two unique circumstances that commanders must address. One, a unique opportunity for predators unlike anything outside the military.

The professor or teacher with a student in no way compares to a military supervisor and a young trainee. Consent as a practical matter, in my opinion, is impossible for a trainee. There should be strict liability for supervisors in the military training environment.

And second, a unique vulnerability of victims, who frequently don't realize the many ways they can report an assault, that they could even prefer the charges themselves or go to six or seven different possible places to report, even personally prefer charges, as I said. And that is because of the intimidating unit environment for young soldiers, as alluded to earlier.

If we are to modify the military justice system, then it must be done with care to understand fully the complexity and the balance of a system and to think through the potential unintended consequences. Holding leaders accountable can be approved immediately. The leaders who testified earlier will see to that.

I look forward to your questions.

[The prepared statement of General Altenburg follows:]

[COMMITTEE INSERT]

Chairman LEVIN. Thank you very much, Mr. Altenburg.

Mr. Morris?

**STATEMENT OF COL LAWRENCE J. MORRIS, USA, RETIRED,
GENERAL COUNSEL, CATHOLIC UNIVERSITY**

Colonel MORRIS. Good afternoon, Chairman Levin, Ranking Member Inhofe, and distinguished members of the committee.

Thanks for the opportunity to contribute to this important discussion.

I am here as a citizen, 2 years removed from having served as the Army's Chief of Advocacy, which is a civilian position charged with implementing the improved training of Army prosecutors and defense counsel regarding sexual misconduct.

Before that, I had the great privilege of serving in uniform for 30 years, 27 of them as a Judge Advocate around the world, trying about 100 courts-martial both as a prosecutor, including capital cases, and a defense counsel and then supervising the trial of many others; serving as the SJA, the chief legal adviser to general court-martial convening authorities in the States and while deployed and as the SJA or general counsel at West Point.

Before I served as the chief prosecutor for the Guantanamo Bay war crimes trials, I sought the opportunity to serve as the Army's Chief Public Defender, supervising the 300 or so Judge Advocates charged with the ethical and independent defense of their fellow soldiers. And I have five brief observations.

First, the military justice system essentially works as a productive collaboration between commanders and lawyers. Now though the system is command run, commanders rarely make a move and certainly not a significant move involving cases of the complexity and gravity of sexual misconduct without consulting their counsel.

These aren't episodic or formal occasions. They are constant and deeply embedded in the law, procedure, and military culture.

Second, the military justice system is essential for good order and discipline. Command is a sacred trust, and it must include the ability to effect discipline in a military whose sole purpose is to fight and win our Nation's wars.

We do take a risk in giving that awesome power to commanders, which is why it is notable and damaging when they breach it. But it is an essential element of the authority and trust of a servant leader.

Third, the military tries hard cases. I know lots of civilians who do, too. But I also know that because of the military's culture and the abundance of resources, that the military is generally more willing to try the close case undeterred by possible acquittal.

I did it many times, and I know my experience was not unique. Cases should never be tried for show or out of solidarity, but victim trust can be sustained and enhanced when the victim devotes legal resources and energy to trying a close case.

Fourth, we must be mindful of soldier rights and command influence. Dating as far back as Harry Truman's critical letters from the front, through my generation's service as Judge Advocates, the greatest concern about military justice has been its most persistent scourge—unlawful command influence.

In our rightful zeal to eradicate sexual misconduct, we must make sure that all participants in the process, all participants exercise independent and dispassionate judgment in that in the process, accused soldiers do not face a compromise of their rights under the Constitution or the UCMJ to fully defend themselves, including the ability to prepare cases and call witnesses on their behalf.

Fifth and last, we are right to demand a lot from our military and our military justice system, but only what each is reasonably able to accomplish. Any justice system is a reactive instrument. We do and we should have high expectations of our military and its justice system, but we also must candidly face the attitudes toward sexuality that our patriotic volunteers bring with them into the force and recognize the commitment in education and leadership that is required to modify them.

Congress should be satisfied that the military is doing all it can to remove factors that might make sexual misconduct easier, including the availability of alcohol, unsupervised living arrangements, and the consumption of pornography.

Our military justice system never has been static, and there are changes I would recommend to better balance efficiency and soldier protections. The committee would be well served to demand carefully prepared data on current practices and to understand how the commitment to justice is operationalized in a serious and appropriate manner.

Thanks, and I look forward to your questions.

[The prepared statement of Colonel Morris follows:]

Chairman LEVIN. Thank you all.

First is the question of retaliation, what we know long before today's hearing, but it has been emphasized at today's hearing is that most of the women who do not report, or most of the troops that

don't report—men or women—do not do so because they are afraid of retaliation.

A huge percentage are very much afraid of humiliation or embarrassment. But it is the retaliation issue which we want to put some focus on, or at least I want and I think all of us want to put some focus on.

The question is whether or not, and I think, Ms. Bhagwati, you made reference to one of the bills here, Senator Gillibrand's bill, which would require that serious offenses be sent to a new disposition authority outside of the chain of command for a determination of whether the allegation should be prosecuted at a general or special court-martial.

And my question is would doing that, how would doing that stop retaliation? That is the question I guess I will ask of you, Ms. Bhagwati.

Ms. BHAGWATI. Well, the first thing it will do is restore faith and trust in the system. Right now, victims don't have any of that. They have lost all hope in the military justice system, unfortunately.

Retaliation happens in many respects. We see on a day-to-day basis that our callers, both servicemembers and veterans who have recently been discharged, have been punished with anything from personal retaliation from roommates and family members to professional retaliation by their chain of command from the lowest levels to the highest levels, platoon sergeants all the way up the chain.

They are also retaliated in more kind of insidious ways. They are given false diagnoses, mental health diagnoses, like personality disorders, which bar them from service, which force them to be discharged, which ban them from getting VA services, VA benefits. So it is comprehensive retaliation.

Chairman LEVIN. Mr. Altenburg, let me ask you a question about the investigation process. Colonel King said that the investigation in the Marines, and I think this is generally true, is handled by professional investigators. Is that your understanding?

General ALTENBURG. That is my understanding, and that is a recent change, I mean, in the last 3 years, I think.

Chairman LEVIN. Now have you read the bill, Senator Gillibrand's bill?

General ALTENBURG. I have.

Chairman LEVIN. If there were a new disposition authority created, independent of the chain of command that would make a determination of whether allegations should be prosecuted at a court-martial or not, would that affect the investigation process?

General ALTENBURG. I don't think it would necessarily. If they left the investigation with the CID in the Army, the CSIS in the other Service, and the OSI, then they would do their investigation, and then it would get passed, I guess, to this court-martial command is what it was called 50 years ago when people tried to do that.

Chairman LEVIN. All right. Now in terms of who would make the decision, as you read the bill, who would make the decision, the determination as to whether an offense meets the threshold of a serious offense that would have to be referred to the new disposition authority? Who would make that determination?

General ALTENBURG. Excuse me, sir. I assume a lawyer would. Just as now, lawyers make not command decisions—

Chairman LEVIN. Lawyer, which lawyer, where?

General ALTENBURG. Prosecution, a prosecutor.

Chairman LEVIN. In that same independent office? I mean, that is the threshold question as to whether or not there is evidence of a serious offense or not so that that new independent approach would be triggered. Who would make that, as you read the bill?

General ALTENBURG. As I read the bill, a lawyer and the Staff Judge Advocate would make that call, as I read the bill.

Senator Levin, if you please—

Chairman LEVIN. Does anyone else have a—yes, go on. Go on.

General ALTENBURG. I beg your indulgence in making a couple of comments, one related to retaliation, the other regarding investigations. Investigations have now become mandatorily done by the professional investigative services. That is a change that was a response to this problem.

And second, with regard to retaliation, I think it is even more complex and subtle than Ms. Bhagwati talks about. I agree with everything that she said, that she has experienced. But it is so subtle that it can just be soldiers attending an investigative hearing and glowering at the victim to make her feel uncomfortable.

Chairman LEVIN. Do you have any suggestions as to how we can get to the peer pressure type of retaliation?

General ALTENBURG. I think the only way to get to that is through the command, is through leadership. They have to seize this issue. They have to understand the cultural dimensions of it, realize how unique the military is in terms of the vulnerabilities of the victim, and the opportunity for this predator mentality that it is like a wolf around a pack of sheep that seeks out different types of people and tests them and probes them and then finally decides to strike when they are one-on-one.

I mean, whether they do it subliminally or whether they do it with malice of forethought, they are predators to the Nth degree, and many of them, we are finding from studies, are repeat offenders and they are serial offenders. And some of the things that have been suggested to keep people from coming in the military who have that kind of background will be—will help solve this.

But that mentality and that culture is what the leaders have to attack. The same way they attacked racism in the '70s and the '80s. And there were racist lieutenant colonels and colonels, and they got discovered. They got out.

You couldn't cope. You couldn't deal without modifying your behavior or getting out, and we have done that with several other social issues. It takes leadership. And that doesn't mean that all the leaders are going to be the good people and the ones that get it, but that is how we will effect change in this culture.

Chairman LEVIN. Senator Inhofe?

Senator INHOFE. Thank you, Mr. Chairman.

First of all, Ms. Bhagwati, I appreciate your comments about the Naval Academy. I am just concerned enough about it that I called Admiral Mike Miller, visited this morning, the superintendent up there. And this is a deplorable situation that we need to pursue.

Not being a lawyer, I am going to ask a question a little bit differently than the chairman did of the two. Perhaps you, Colonel Morris, or you, General Altenburg. On the second panel, I asked a question of—that came out of a recommendation from this Defense Legal Policy Board report. Now that is just a week old, and so I doubt seriously everybody has spent some time.

But they feel very strongly that the notion that commanders have the ability to deal, commanders now, swiftly, fairly, competently, and visibly. And I asked the question of that panel, and of course, you guys are JAGs so you might be—you would come from a different perspective perhaps that creating the centralized initial disposition authority with an oversight by an O-6 Judge Advocate.

How would a system like this, or would it, impede with the ability to deal with misconduct using those four characteristics—swiftly, fairly, competently, and visibly? Any thoughts about that, either one of you?

Colonel MORRIS. Senator, I think that there is no doubt that lawyers can and always have accurately been able to assess the evidence, assist in the energizing of investigators, and give their best legal analysis and advice to commanders. So in terms of analyzing a case, there would be no degradation in a kind of a JAG unique bubble there, working those cases.

The concern is what you would give up, and what you would give up is the unitary aspect of a commander being responsible for everything that happens in his unit. The military justice system is a component of that. It is not the only one, obviously. If you lead just out of fear or lead just out of consequence, you are not a full-spectrum leader.

But to be able fully to lead, you need to be able to have the ability directly to effect discipline, which means, as you know, a full range of punishments. I mean, we are talking at the court-martial end of the spectrum. But what the military justice system provides is punishments that civilians would love to have, from admonition, reprimand, nonjudicial punishment.

A lot of the conduct that is kind of the low level and sometimes precursor conduct to serious sexual misconduct can be addressed directly, severely, and swiftly with that range of sanctions available to commanders.

Senator INHOFE. I appreciate that answer because that also answered my second question, which was to have you go into this range that is that they would have that is not found in the civilian approach to this. You have done that very well.

Let me ask you something. As I read as a non-lawyer, one of the proposals would, and I use the word “require,” would require the defense to request interviews with the complaining witness in a sexual assault case, but would prohibit the defense from interviewing the complaining witness unless it was in the presence of the trial counsel, counsel for the witness, or the outside counsel.

Now General Altenburg and Colonel Morris, do you think that that restriction on the defense would be workable in a military justice case?

General ALTENBURG. Well, I would say, first of all, that no one can force a victim to talk to a defense counsel. I mean, it may, as

a practical matter, impede the trial of the case. But certainly before an investigative hearing—

Senator INHOFE. This didn't say—it says prohibit. So go ahead.

General ALTENBURG. The proposal would prohibit the defense lawyer from talking to the victim?

Senator INHOFE. From interviewing, yes.

General ALTENBURG. I think it—I understand why victims don't want to talk to the defense lawyer. I get that. But in our system of justice in this country, they got to talk to the defense lawyer eventually. They have to be confronted.

And so, I think that is something that would tilt the delicate balance of military justice too much against the accused. It would impede the preparation of trial.

Senator INHOFE. Would it impede it enough to question the constitutionality of such an arrangement?

General ALTENBURG. I am not qualified, I don't feel qualified at all to comment on the Constitution. But I have no doubt that there would be a motion in every case where that was exercised. The defense would have a motion at trial that they were prohibited from preparing for trial, and they couldn't adequately defend their client because they couldn't—

Senator INHOFE. I see. Any thoughts on that, Colonel?

Colonel MORRIS. Similar, Senator. The concern would be, ultimately, it is your Sixth Amendment right to confront a witness, which only has to happen in the courtroom. So the question would be then whether that Sixth Amendment right is effectively exercised, depending on your ability to prepare.

I don't think it would automatically unconstitutional to limit access to the victim ahead of time. But as always, it ends up with what details otherwise attach to that.

One other piece of that is, as you know, the Article 32 investigation a unique process to the military. It is often and inaccurately analogized as the military's grand jury. But it is a required step before a case can go to a general court-martial.

And in that process, the Government most always would present its witnesses, which is an opportunity, a controlled opportunity for the defense to cross-examine a complaining victim, a complaining witness there.

Senator INHOFE. I see. I see.

Thank you, Mr. Chairman.

Chairman LEVIN. Thank you very much, Senator Inhofe.

Senator Reed.

Senator REED. Well, thank you very much, Mr. Chairman.

And thank you, witnesses, for your testimony. It is extraordinarily helpful dealing with an issue of great not only significance, but that is goes to the essence of our military force.

Colonel Morris, just as a point of reference, when did you leave Active Service?

Colonel MORRIS. 2009, Senator.

Senator REED. 2009. And one of the issues that everyone has spoken about is accountability, and I think Ms. Bhagwati and her experiences suggest that there really isn't very good accountability when you go—when your squad leader ignores you, when your platoon leader ignores you, et cetera.

So from your most recent perspective, how common was it for a company commander to be relieved for or have a bad report done because he or she was indifferent to complaints by subordinates about mistreatment and sexual misconduct?

Colonel MORRIS. I would think I would remember if I knew of any.

Senator REED. Yes.

Colonel MORRIS. My experience, of course, was quite the opposite, that they were highly energized and that you had an intensive and immediate collaboration. And it is really three parties—the leader, the lawyer, and the law enforcement person—and all of them working closely together.

Senator REED. It just—if the chain of command wants to retain these powers under UCMJ, it has to be a chain of command that is accountable. We all agree on that. And what I think we are looking for, and I am going to ask Ms. Bhagwati to comment, too, is that it is hard to put a finger on specific cases where squad leaders, platoon leaders, et cetera, who are indifferent.

And it goes back to Major General Altenburg's point. If you were insensitive and made insensitive racial comments, if you were—had other behaviors back in the 1970s, you would not last very long, in the 1980s, in the '1990s, et cetera. The question, I think, is do you think we are getting close to that, or we are just beginning that process now with respect to sexual assault?

And if we can't get there through the existing rules, then we are going to have to make some changes. So, General Altenburg?

General ALTENBURG. I think, candidly, that we are just getting at it in the last year or two. I think that for a variety of reasons, including fighting two wars, I guess, it wasn't the priority that it should have been and certainly that it is now.

And I think that commanders who have to get it first, and then they have to work their way through the rest of the people that work for them, that the commanders are starting to understand the dimensions of this. They are starting to learn that false allegations is a very low rate, even though the conventional wisdom among men is that it is high.

And things like that. As they become more knowledgeable about this issue, then they will do a better job of getting a handle on it. And it is subtle. It is complex, and so is the change.

I mean, it is somebody caring enough to get up from the computer and go out and make sure he is talking to the troops and make sure he is looking them in the eye when he is talking to them about whether it is in the motor pool or whether it is at formation or on PT in the morning and watching how they operate and what they say.

And good leaders have always done that, and the kind of mediocre leaders that Ms. Bhagwati is talking about have never done that. And those kind of people have always been a problem for us.

Senator REED. Let me ask you another question, and I want Ms. Bhagwati to have an opportunity to respond. There is a certain sort of a macro issue here. We have a warrior culture, which has been dominated for centuries by males.

We have an expectation that these now men and women will be able to destroy our enemies, literally, and at the same time give

their own lives for their comrades and for their country. And in that culture, is it likely that we will find people who function very highly as warriors, but are in fact, as you describe, the sexual predators and that it is hard for the system to sort those out? It is hard for individual commanders to say, okay, I am going to really make an example of this, my best soldier.

General ALTENBURG. Well, I don't think now it is hard for a commander to do that. As they learn how invidious this conduct, this behavior is, I think that more and more of them are going to be willing to go after this.

Senator REED. Thank you.

General ALTENBURG. What is remarkable is that it is a manhood "boys will be boys" problem that enlightened commanders will get a handle on. And I visited Ms. Bhagwati's Web site last night, and I was—or yesterday, and I was looking at some of the documents that she had submitted somewhere. And there were bad songs, ribald songs, you know, people talking about going in the bars and hitting on women and their teammates and all the rest of it.

And I thought to myself as I read it, this is 10 years old, Bhagwati, why have you got this stuff out here, you know? I mean, I know that was our culture 10 years ago, and it was a 2012 document from a unit. That is appalling.

Senator REED. Thank you.

Ms. Bhagwati, please, can you comment on—you have a lot to comment on.

Ms. BHAGWATI. Senator Reed, I think, if you are suggesting that the military somehow kind of creates a culture of rape or there is something—

Senator REED. No, I am not.

Ms. BHAGWATI. No. Because I would disagree with that. I don't think the military creates rapists. I think, however, we still condone sexual violence in the day-to-day, which is different. And that when we still mistreat women, and I have not met a woman in the military yet who has not experienced some form of discrimination or harassment.

When that is sort of the average experience of a woman in the military, a culture of harassment is created, and sexual predators will thrive in that culture. These serial predators that are entering the ranks, they are hitting a target-rich environment. They really are.

I think until we create systems and policies, until we tighten the military justice system, until we potentially open up additional forms of redress like civil suits to servicemembers—I think we really have to think outside the box here—we are not going to change that culture. And the presence of women at the highest echelons of leadership is really important.

I mean, we talked today about a presence of women in the Senate making a difference. Well, the presence of women in the military also will make a difference, but only if there is a critical mass of women. And right now, there aren't enough women at the top.

Ms. PARRISH. Mr. Reed?

Senator REED. Surely.

Ms. PARRISH. If I could say that this problem predated our most recent wars. It predated the increase in women in the military.

Over half the victims are male. For 25 years, we have had scandal, self-investigation, reports pointing to failed leadership, reforms failing to address the core issue.

Until you remove the bias and conflict of interest out of the chain of command, you will not solve this problem. The retaliation is not about peer pressure. The retaliation is about the lower-ranking victim being disbelieved by the higher-ranking perpetrators and their friends.

And it is about accountability. As I said in my statement, when General Franklin overturned the conviction of Colonel Wilkerson and then his commander, General Breedlove, supported his action and those even who sat on the panel this morning also applauding General Franklin, that accountability, that failure to hold him accountable, that is—will continue to cause a command climate that is promoting sexual assault.

Senator REED. Well, I agree with you. I think it is about accountability. It is about command climate. But that is about commanders stepping up and commanding. Part of that might be better UCMJ procedures, but we could improve the UCMJ, but if we don't have commanders who are ready to stand up for their troops, then we are not going to solve this problem. And we are not going to fight effectively.

Ms. PARRISH. But sir, if I could just say until you change the culture, and civil rights, when it came to integrating blacks in the military, first, there was a Civil Rights Act. Fundamental reform was passed.

And then military commanders decided that it was time to create rules and enforce them. You need fundamental reform.

Chairman LEVIN. Thank you, Senator Reed.

Senator Cruz.

Senator CRUZ. Thank you, Mr. Chairman.

And I would like to thank each of the witnesses for being here today, for providing testimony on this tremendously important topic.

And I would like to thank the committee for focusing attention on this issue. There is no more solemn obligation we have than that to stand up for and protect the men and women who have stepped forward to join our military and to defend our Nation.

And when young men and women volunteer to be part of the armed services, they are willingly putting themselves in harm's way and subjecting themselves to risk of violence or death at the hands of our enemies. But they are not putting themselves willingly at risk to assault or violence from their superiors, from their colleagues, from other Americans. And so, I applaud the efforts of those witnesses here today and the efforts of this committee to get to the bottom of this issue because it goes fundamentally to the trust and the duty of protection we owe the men and women who are defending us.

I would note my wife and I have two little girls now. They are 5 and 2. So they are not of age where military service is at least an immediate prospect. But the reports we have heard about the prevalence of sexual assault and harassment should disturb every parent, every mother, every father, every brother, every sister, everyone who would want our children and loved ones to be able to

serve in a capacity where they can trust their colleagues to be shoulder-to-shoulder defending our Nation.

So I would like to begin with several questions addressed to all of the panel, the first of which is the Department of Defense has estimated, as I understand it, that in 2011 there were roughly 19,000 sexual assaults in the military. And I want to ask the members of the panel, in your judgment, how accurate is that assessment, and how widespread, how prevalent is sexual assault today in the military?

And I would address that to any members of the panel that would care to answer.

General ALTENBURG. I will start. There was a 2010 survey that was probably from the previous year that showed 19,000. There was a 2012 survey that showed 26,000 unwanted sexual contacts. Hard to tell how many of that is sexual assault. Too many, that is for sure, and it indicates a big problem.

But journalists especially have taken those numbers, 19,000 in 2010 and 26,000 in 2012, and called them sexual assaults. And it could have been if I put my hand on Ms. Bhagwati's shoulder and she didn't like it and thought it was unwanted sexual contact, she would have reported that in the survey.

I don't know what number of those reported unwanted sexual contacts are like that and what number are sexual assaults. I suspect that if we drilled down, the number of actual sexual assaults is pretty darned disgusting anyway. And so, the number is way too high. But it is also, it is an extrapolation based on how many answered the survey, multiply it by the end strength, and you come up with a mathematician's figure of this is what it is.

At any rate, it is obvious, based on the testimony of many, many people, that it is far too prevalent in the military, that we have unique circumstances that allow it to flourish, and that it is going to be a—it is a great challenge to the leadership to get at this.

Senator CRUZ. Are there others who would care to amplify on the topic?

Ms. PARRISH. Yes, sir. The problem is getting worse. It is not improving. Until more victims report, there will not be more prosecutions. You will not have more victims report until you remove the bias out of the process.

Professional prosecutors must be able to look at this professionally. Convening authorities have this job as a part time. They are not trained, and they are biased and conflicted. They believe the higher-ranking perpetrator.

Until you remove that from the system, you are not going to fix it. Until more victims report, you won't have more prosecutions.

Transparency is vital. Third-party accountability, that is what prosecutors outside the normal chain will bring to this. There will be no solution. The problem is getting worse. There is more and more victims coming forward.

Over the weekend, I received a call from one of the victims' moms in Fort Hood. When it is unconscionable that we give any more time—the patience and deference we have shown our military leaders to address this problem has come at great costs to our service men and women. It is time to do what our allies have done.

You won't ever get rid of rapes or assaults, but you can punish the perpetrators, and you can stop the retaliation.

Senator CRUZ. Thank you for that.

Let me follow up on Ms. Parrish's comment with a final question to the panel, which is, in your judgment, what are the major impediments to reporting and prosecuting sexual assault today in the military? Are they cultural or structural or legal? And what are the most important changes that, in your judgment, could be implemented to change that?

Ms. BHAGWATI. I would start certainly with professionalizing the criminal justice system, which Senator Gillibrand's bill certainly will do, while still allowing commanders to deal with lesser crimes and military-specific crimes. Also there is really no deterrent right now to sexual assault in the military, and I think access to civil remedies is a very important part of this conversation, and I hope and encourage that Members of Congress will work on that in this coming year.

When you can't—we talk about retaliation, there are several bills on the table which will do a great many things for victims services and to improve the military criminal justice system. But civil remedies is what will deal with the issue of retaliation, and that is what is available to civilian victims in the civilian workforce, where harassment and discrimination and assault is also prevalent. But if the criminal justice system fails us, in the civilian world we have access to civil suits. That is the fallback.

So I would strongly suggest that.

Colonel MORRIS. Senator Cruz, I would suggest two things. One is continued, sustained addressing of the conduct at all levels. The least of the concerns is the ability effectively to prosecute rape cases. The greater concern, not because of consequence, obviously, because of the gravity of those, you don't need to wake somebody up to pay attention to a rape.

There is an awful lot of conduct short of rape that is repellant, degrading, and harms mission. So a clearer intolerance for that will do a lot to not just weed out people before their conduct becomes more serious, but attack to a degree the conduct and the atmosphere that has been suggested as constituting retaliation. I am not sure "retaliation" is exactly the right word, but we sure know that there is no crime that is harder to report that a person feels more uncomfortable about reporting.

So fixing some of those things by using the whole array of the justice system can do something to redress that. And then sometimes action so swift that it makes people's heads turn.

Look, this afternoon's action at West Point. Just stop the functioning of the rugby team for a while, while everybody wakes up and pays attention.

Senator CRUZ. Thank you very much.

Chairman LEVIN. Thank you, Senator Cruz.

Senator McCaskill.

Senator McCASKILL. Thank you, Mr. Chairman.

Let me shift gears a little bit and talk to particularly Ms. Parrish and Ms. Bhagwati about victims' experience as they begin down this road. I am curious about the unique situation that a victim finds herself in, in that where do you go? Do you go to a civilian

hospital? Do you go to the medical facility on base? Do you go to a local police department? Do you go to a military police department? Do you go to the SARC?

And in your experience in working with these victims, what is impacting their decision about where they go? Because that initial contact, in my experience, is more determinative of what comes after than almost anything else. And I am wanting to know what your sense is of that because maybe that is another area where we need to focus on getting more information out about the best place to go.

Because as you guys know, the civilian prosecutors can file charges. So can the military. One can choose not to, the other one can. They can both file charges. They can both file different charges. They can wait until one to get finished, the other one can begin.

And no one has been able to really explain to me in a way that I can put down on paper how this is working in all these instances.

Ms. PARRISH. Well, victim reporting for a victim is very confusing, and depending on the individual circumstance, whether they go to the hospital, whether they go to a SARC, and then depending on where you go, whether it is automatically an unrestricted—if you go to an investigator or your command—or if you go to a hospital, then you have a choice, those are very confusing to a victim. And they are not sure what to do or where to turn in that regard.

We know that victims' privacy rights through that process are often violated early on.

Senator MCCASKILL. Have you all made suggestions that we could maybe consider in the defense authorization bill of a requirement that people entering the military get some kind of form in writing that what their choices are and what the pros and cons are of those so that you know?

I mean, my experience is the civilian system, and the vast majority of our victim reports came through the emergency rooms and/or 911 and/or someone showing up at the police department. Those were the three primary ways that victims entered the system.

There is probably about another two dozen ways that they can enter the system with a sexual assault in the military. Have you given much thought as to how we could empower the victim earlier so that they are making the right choices, so that they get the help at the initial stage?

Ms. BHAGWATI. We have referred clients to the Air Force's special victims' counsel program. It has been, I think, a remarkably positive development. Certainly Senator Ayotte's and Senator Murray's bill would bring that program to the rest of the Service branches. I don't think there has been anything quite as effective as that on the table.

Senator MCCASKILL. Okay. That is great. And tell me about the healthcare piece of this. Are all of these victims being offered emergency contraception when they are going to medical facilities, either on base or off base if they are reporting a rape?

Ms. PARRISH. Not in our experience, Senator. When they go to these different health facilities, depending on the situation, it is

often a time when the form of prejudice against the victim, that retaliation begins to take place in subtle ways.

So quickly a victim who reports finds themselves being evaluated, be given a psych evaluation, and before you know it, the attention is turned on his or her stability, mental ability, mental health situation. All of a sudden, it becomes this, well, are they—a personality disorder, is it bipolar disorder?

We have sent—we have hired lawyers and sent them in to bases to fight these errant medical diagnoses. So the process of victim reporting is all part of the—and then into the investigation.

Senator MCCASKILL. So you are saying, Ms. Parrish, that in the medical facilities on bases they do not have a rape protocol?

Ms. PARRISH. Well, if they do, the victims that we have talked with don't know it.

Senator MCCASKILL. Would you agree with that, Ms. Bhagwati, that there is not a rape protocol in the medical facilities on military bases in this country and abroad?

Ms. BHAGWATI. There is a rape protocol, but in terms of the access to emergency contraception or now it is federally funded abortions, there is some disparity there. We are not sure that this is happening in every facility.

Senator MCCASKILL. Well, obviously, if we are talking about a medical facility at the time of report, in most instances, we are just talking about the morning after pill.

Ms. BHAGWATI. Right.

Senator MCCASKILL. We are talking about emergency contraception because you have been raped.

Ms. BHAGWATI. I couldn't say.

Senator MCCASKILL. Okay. I think that is something we need to look into further and find out about that.

The last question I would have is for the lawyers. Just briefly, because I am out of time, in your experience—because I have talked to a lot of prosecutors about this—who is making the call? Is it a deferral to the civilian prosecutors first, and if they refuse to file, then a consideration of court-martial in the military? Or is there a give-and-take?

I mean, is it “I will take this one, and you take the next one?” I mean, in your experience, how did that work in terms of that dual jurisdiction, which is unique in this sense. And people don't realize the Federal Government doesn't have jurisdiction over rape in 99.9 percent of the cases. This is really the only place I am aware of that you have this dual jurisdiction that exists from the get-go.

General ALTENBURG. And we had it in Germany also. But in my experience in the United States, it is a question of equities and comity, the same way it is between a U.S. attorney in Raleigh, an AUSA, and a State attorney in a bank robbery. If it is above a certain amount, maybe the Feds say they will take it.

And when a crime is committed off post near a military base, usually the staff has a working relationship with the assistant district attorney or the district attorney. And if they feel the equities are on their side because the victims were mostly civilian residents, then they take it.

But there is a discussion, and there is a give-and-take and, in my experience, handled very professionally. And usually, there is kind

of a consensus, well, this one, this soldier, you are a soldier, but he killed four of your citizens in a pizza—in an Italian restaurant, you know, 3 miles from post. And I deferred to the prosecutor.

I say I was ready to take it. We wanted to take it. We wanted to prosecute it. But I certainly understood why he wanted to prosecute it, and I deferred to him.

Senator MCCASKILL. So it is a case-by-case basis?

General ALTENBURG. Yes, ma'am.

Senator MCCASKILL. Colonel Morris?

Colonel MORRIS. Senator McCaskill, not so different in my experience, except that in—oh, sorry. Similar experience. Almost all of my experience was civilians being willing to have us take the case. Some of it was a resource decision, but in general when they had a confidence in our ability to bring a case to an effective conclusion.

In Germany, in Oklahoma, and then later in my career, when I was the Staff Judge Advocate in northern New York, we visited all the local DAs, and there were a couple who had thought they were dissatisfied with outcomes in the military justice system. We were able to assure them of our approach and in all cases obtained kind of clearance to prosecute. Really, technically, a clearance is not required. It is in some ways a race to the courthouse.

But a willingness to have us do so, and it wasn't—it was motivated mainly out of good order and discipline, but also out of a sense of commitment to those neighboring communities and part of our fidelity to them and our accountability to them, even though the primary concern is the soldier's accountability in our system.

Senator MCCASKILL. Thank you.

Thank you, Mr. Chairman.

Chairman LEVIN. Thank you, Senator McCaskill.

Senator Shaheen.

Senator SHAHEEN. Thank you, Mr. Chairman.

And thank you all very much for being here this afternoon. I do think it is very important for us to hear from experts who have worked both within the military and outside about what has worked to address sexual assault and rape.

I wonder, Ms. Bhagwati, one of the things, one of the pieces of legislation that Senator Fischer and I have introduced is legislation that would make the highest-level sexual assault prevention and response positions nominative ones. The change would, I think, help facilitate getting people with more experience and more committed to upholding the values of the position. And it would also, I think, better hold the commanding officers responsible for those appointments.

I wonder if you could speak to whether you think that would be helpful?

Ms. BHAGWATI. I do think it would be helpful.

Senator SHAHEEN. And is there anything in particular that you would advise us as we are thinking about that or that you would advise the military to do?

Ms. BHAGWATI. We have talked a lot today or I have heard a lot today about the qualifications of an officer with moral leadership. And I think with over a decade of deployments right now, we need to think outside the box a little bit on who is the right person for a sexual assault, sexual harassment leadership position.

Someone with kind of—someone who has proven himself or herself on the battlefield may not be the best person. Maybe he or she would be, but there need to be sort of tests for that kind of moral courage in terms of sticking up for someone who maybe the rest of the unit wouldn't have stuck up for.

I mean, we see that routinely. And I am not sure how to measure that. I just know that we don't see it very often.

Senator SHAHEEN. Thank you.

Ms. Parrish, I think you may have mentioned a case that we have heard about in our office of an Air Force lieutenant who has contacted us who alleged that he was sexually assaulted and that his case has been ignored by base investigators. And I won't get into the details of the case, but one of the issues is that he says that he has been denied an expedited transfer out of the base.

And I wonder if you could comment on whether that should be one of the usual responses or appropriate responses to somebody who is in this situation, that they be removed from the situation and where they were victimized?

Ms. PARRISH. Well, and I would just say, yes, Senator Shaheen. And the special victims' counsel, John Bellflower, in fact, and I commend—I have attached it to my testimony—had an extensive report on the case that you are speaking of. In this case, he was denied expedited transfer.

And we find while it is a good thing at times, expedited transfer requests, some victims say, yes, I was offered an expedited transfer, but to a job less than what I have now. Why am I being punished for being protected and trying to be sent off base? I am now being asked to make sandwiches for the pilots when once I was on another track in a successful career. And why do I have to leave? Why can't he leave?

And so, I think that is an issue. But also just a lot of times victims are told, well, you don't qualify for expedited transfer. There is this informal conversation going on that those who count the numbers are unaware of, where victims are often just even denied that opportunity.

And so, it is very, very difficult. And that is why it is more than—you can fix pieces of this, but until you remove the bias and conflict of interest out of the legal process, you are not going to solve this problem.

You can tweak it around the edges. Requiring that special victims can represent a victim to protect their privacy rights rather than just give them advice, that they can file motions on behalf of the victim. If there is not a remedy, there is not a right.

And so, those are huge problems, and they need to be addressed, but you have got to remove the bias out of the system.

Senator SHAHEEN. Let me ask another question for anybody who would like to respond to it. Admiral Papp this morning talked about the responsibility that he thought each member of the Coast Guard should have when it came to anything that they saw relative to sexual assault or harassment and reporting that. In the State of New Hampshire when I was Governor, we had a personnel policy that applied to all State employees that said anyone who knew or heard of a report of sexual harassment or sexual assault was required to report that to the personnel officer.

And I wonder if you think that that kind of a policy within the military, recognizing you would have to designate who the appropriate person to report to, and given the chain of command issues, that clearly would need to be looked at. But is there any—would it be helpful to asking everybody to assume responsibility for this issue to say that if you hear about a case, you have a requirement to report?

Ms. BHAGWATI. I think you would have to consider that very carefully. I think that victim's agency needs to be considered carefully and that in many cases a victim would probably prefer not to have that happen, for reasons of confidentiality, safety, retaliation.

I mean, these are very real fears. They are well-justified fears. And so, I would look into that a little more, see what the community thinks about that.

Senator SHAHEEN. Okay. Anybody else want to comment on that? [No response.]

All right. Thank you all very much.

Chairman LEVIN. Thank you, Senator Shaheen.

Senator Gillibrand.

Senator GILLIBRAND. Thank you, Mr. Chairman.

Thank you, each of you, for your testimony.

Ms. Bhagwati, we have heard a lot of testimony today. The previous panel, for example, talked a lot about good order and discipline, and they believed that maintaining the decisionmaking, the disposition authority over these cases had to stay within the chain of command for them to be able to instill good order and discipline.

They didn't seem to take into the account different proposals that would have elevated the decisionmaking for the disposition authority well beyond their level and their tier of seniority. Please explain to me your opinion on what removing Article 30 and Article 22 would have on good order and discipline, and how do you believe good order and discipline would be maintained without those two decisionmaking authorities?

Ms. BHAGWATI. I believe giving trained prosecutors the authority to convene court-martials to determine judges and juries and also backend authority would remove—would remove bias from the system, would also free up commander time to do other extremely important duties, namely operational ones.

I mean, your legislation specifically authorizes commanders to still have authority over a great deal of judicial matters, not just nonjudicial, but also lesser crimes. I mean, it is a very sensible approach. It is something that I think the military could easily implement.

And certainly victims, again, would be much more, much more trusting of the system, much more willing to step forward.

Senator GILLIBRAND. You were a commander yourself. Can you explain to me specifically, everyone who testified in the last panel and everyone who testified on the first panel said it is impossible. If I don't get to decide whether to go to trial or not, it is impossible for people to respect me that I am going to take sexual assault seriously.

What could those commanders do to be taken seriously on sexual assaults and rape in the military if they don't make that one decision?

Ms. BHAGWATI. I really think this is a multipronged approach. This is not really only about military justice reform. We need more women in the military. In order to create a culture that is welcoming of all people, women have to be a part of that culture. Men will also benefit when women are part of this culture and are truly accepted.

And so, my first instinct is to say commanders don't have all the tools, yes, that is true. But you will never have a perfect criminal justice system either. You need additional things within that system. You need access to civil remedies to open the possibility, to acknowledge that there is widespread retaliation.

Senator GILLIBRAND. Ms. Parrish, can you talk a little bit about—you also are of the view that you have to take the decision-making on whether to proceed to a trial outside the chain of command. Why do you believe that, and why do you think it will result in better good order and discipline?

Ms. PARRISH. Well, it is required to change the culture. You won't change the culture until you have accountability, and you won't have accountability until you have transparency. And so, good order and discipline will not—is lacking now within our unit, within these units.

And I would like to just take a moment and read a comment from a victim who had tried to report four separate times, was in the middle of a combat zone, said, "He, the rapist, comes to my truck as I am getting it ready for another mission. I shut down inside. I was lead driver in our convey, and I kept hoping to hit an IED after that."

Unit cohesion, good order and discipline? This young soldier tried four times to report, and what was her thinking at that moment when she was getting ready to get in her truck to lead the convoy? How can I—"I hope I hit an IED."

What will that do for mission readiness and unit cohesion? It is undermined every day by disbelieving the victim. You must remove the bias and conflict of interest. We have seen it for 20 years. It is not going to change until you fundamentally reform the system, until you have professional prosecutors looking at these cases.

Senator GILLIBRAND. So for other cases that you have heard from victims, can you please describe to us what they tell you, why there is so little reporting? If there is only 3,000 cases reported a year and then only 1 in 10 go to trial, there is just a huge falloff in the amount that are reported. What are they telling you about the chain of command that is creating an impediment?

Ms. PARRISH. Well, they don't report because they are disbelieved. They don't report because the often higher-ranking perpetrator is buddies with those that they must report to. They don't report because they are told when they are given their options to report that, oh, by the way, you were drinking. You are under age. You will be charged with collateral misconduct.

You don't report because the thought that you have heard from your friend who tried to report that—and you see what happens to them, and they are being drummed out and diagnosed with a personality disorder. These things are not going to change at any tweaks to the system, even common sense tweaks that are good. It is still not going to fundamentally address this issue.

Senator GILLIBRAND. Thank you.

Thank you, Mr. Chairman.

Chairman LEVIN. Thank you so much.

Let me find out who is next here. After Senator Gillibrand is Senator Blumenthal.

Senator BLUMENTHAL. Thank you, Mr. Chairman. And again, thank you for holding this hearing.

And thank you to the entire panel for being here today.

Just as a parenthetical, beginning Ms. Parrish, you say that the soldier tried to report four times. Could you clarify what you mean by "tried to report"?

Ms. PARRISH. Sure. Well, what I mean by that is they first went to their leader, their immediate supervisor, their superior, and were told that not to speak ill of that higher-ranking individual. And then they tried again to report to a platoon leader and was told that they would be charged with adultery if they wanted to move forward with an official report.

Senator BLUMENTHAL. She would be charged with adultery?

Ms. PARRISH. Adultery. That is right.

Senator BLUMENTHAL. How often, I think this point is critical, are victims or survivors, in effect, threatened with prosecution themselves?

Ms. PARRISH. Well, we don't know the numbers, but I can tell you we hear it all the time.

Senator BLUMENTHAL. And would say it is a predominant reason that discourages victims from reporting, or is it just incidental and occasional?

Ms. PARRISH. I would say it is significant.

Senator BLUMENTHAL. And if you had to rank it, from your experience, compared with other reasons, what would be the top three or top five would you say?

Ms. PARRISH. Well, I think retaliation at all levels would be number one.

Senator BLUMENTHAL. That would be a form of retaliation.

Ms. PARRISH. Well, yes, you are right.

Senator BLUMENTHAL. You will be charged with drinking. You will be charged with adultery. You will be charged with conduct unbecoming.

Ms. PARRISH. Right. Well, being disbelieved and knowing that the odds are, based on what you see, that you won't be—that you will not be believed. And then also just the way in which—for women, the way in which they are harassed and treated generally and that there is no, all the way up the chain, the jokes, the walking into a mess hall and finding yourself what is described as a cat-walk, where your gender and your looks are debased. And superiors at all levels who are in that mess hall treat—that is accepted.

And so, there are—until you—until you affect that type of harassment and retaliation, it is just not going to get fixed.

Senator BLUMENTHAL. But let me just, for the purposes of our conversation here, repeat to you what a number of witnesses have said earlier. Specifically, for example, General Odierno made the point that separating the prosecution authority from the chain of command, from the commanding authority, won't necessarily pre-

vent that kind of shame, embarrassment, disapproval alone. It has to be part of broader changes.

So as I understand your argument, it is one, the change potentially in the prosecuting authority is one step in the right direction, but it won't deal with that phenomenon, will it?

Ms. PARRISH. Well, you have to—you have to hold leaders accountable—

Senator BLUMENTHAL. Right.

Ms. PARRISH.—for their actions, as in the case of General Franklin, who has not been held accountable for his actions. Until you hold, until victims see higher-ups being held accountable, that is part of changing the culture. You must change the culture, and you have to make commanders more accountable for having command climates that ignore sexual harassment and assault.

Senator BLUMENTHAL. Let me ask, Ms. Bhagwati, in terms of victims' bill of rights, is this something that should be in the Uniform Code of Military Justice? A number of witnesses this morning said we don't really see the need for it because it is already there in the rules.

Ms. BHAGWATI. Are you referring to the issue of collateral misconduct or—

Senator BLUMENTHAL. I am sorry. I mean, for example, rights of victims to be heard in the course of a courts-martial, if they wish to be. In punishment or protection against interrogation, victims' rights in terms of what needs to be protected in the process.

Ms. BHAGWATI. I would have to think about that a little bit. I mean, the criminal justice system, as I understand it, is really designed to provide a fair and impartial trial to the accused. And so, a victim is more likely to find his or her day in court in a civil system, a civil court system.

Senator BLUMENTHAL. How often does that happen?

Ms. BHAGWATI. Well, it doesn't happen at all because servicemembers don't have access to civil suits.

Senator BLUMENTHAL. What about restitution or compensation for the victim?

Ms. BHAGWATI. I think it is a very good idea.

Senator BLUMENTHAL. And do you have any thoughts about what process should result in restitution? In other words, whether it ought to be a separate proceeding or part of the criminal proceeding?

Ms. BHAGWATI. I would have to look into it, but it is a good start.

Senator BLUMENTHAL. Thank you.

My time has expired. I want to thank all of the experts who are here today for your great work and for being here.

Thank you, Mr. Chairman.

Chairman LEVIN. Thank you, Senator Blumenthal.

Senator KAINE.

Senator KAINE. Thank you, Mr. Chair.

And to the witnesses, thanks for your patience through a long day.

I also appreciated the opportunity to hear Ms. Bhagwati testify earlier at the hearing that Senator Gillibrand called in the Personnel Subcommittee and also another witness from your organization, Ms. Parrish. Thank you for helping us work this through.

I spent a lot of time in courts as an attorney, but never in military court. So I am still trying to come up to speed on the different procedures, and a comment through earlier panels that I wanted to just follow up on a little bit was restricted versus unrestricted complaints or reports.

Is there sort of a common standard and is it commonly known among the military that in instances of sexual assault, you can file a restricted report?

Ms. BHAGWATI. I believe in this last annual report from the DOD, well over 90 percent of servicemembers said that they were told, that they had been educated about the difference between restricted and unrestricted reporting. I don't think that is a challenge anymore.

Senator KAINE. And is that, and do other witnesses feel the same, that whether you are serving on a base in Germany or you are going through boot camp at Pendleton, folks are aware that in an instance like this you can file a restricted report and have some confidentiality that would connect with the report? Is that now standard, and is it known?

Ms. PARRISH. I think it is known, Senator Kaine. But I think the problem, as we see so few reports, whether restricted or unrestricted. And the problem is even if they report restricted that the word gets out.

So the reason for creating restricted reporting was so that privacy could be maintained. But that is rarely the instance. Very quickly word is out that you have reported, and then the retaliation begins, often.

Senator KAINE. Were you going to say something, Colonel Morris?

Colonel MORRIS. Just, Senator, I think a restricted report is a vote of partial confidence in the system by a victim who is hedging her bets because she doesn't have enough trust in the system. So I think, as you analyze those statistics, you want to figure out what the context means. It means you have problems there, but it also means that is a population whose trust we have not gained.

So it is a frustrating statistic to a prosecutor because that is conduct that you would love to be able to address and bring full accountability for that you cannot because that victim is signifying her lack of trust.

Senator KAINE. It could be a lack of trust or lack of information. I am not sure what the procedure is like. And before I decide how far I want to go, I would like to get more information. Would you agree that might be—

Colonel MORRIS. It sure serves its purpose by inviting that person who has that reticence, for whatever reason, at least to begin to come into the process.

Senator KAINE. How recent is the phenomenon of allowing and having it broadly understood that you can file on a restricted basis?

Colonel MORRIS. It is recent, but I can't pick the year. So several years.

Senator KAINE. Do you know last 10 years or last 20 years, Ms. Bhagwati?

General ALTENBURG. Last 3 years. I think the last 3 years, Senator, I would say.

Senator Kaine. Last 3 years. And is restricted reporting limited to reporting with respect to crimes of sexual assault or unwanted sexual conduct, or is restricted reporting allowed for other kinds of violations of military discipline?

General Altenburg. Senator Kaine, it is my understanding—I have been out of the Army for 10 years. But it is my understanding that victims advocates recommended strongly that we allow restricted reporting because when there was not restricted reporting and a victim wanted to report, it had to go to the CID. The chain of command was going to find out. You were all in.

And there were some victims who at least wanted treatment, somebody to talk to about it, sometimes medical treatment, and whatever else she may or he may need. And so, it was recommended, and the DOD picked up and said, all right, we are going to allow restricted reporting. And the victim makes the call.

Senator Kaine. And Ms. Bhagwati, you testified a little bit earlier and there has been a lot of testimony today about the special victims' counsel pilot within the Air Force. And I think, if I remember the testimony earlier correctly, that one of the things they are seeing is the number of people who come in with restricted reports, but then as they work with their advocate and come to understand the system that they then change their restricted report into an unrestricted report. Are you hearing the same thing in your work?

Ms. Bhagwati. That is right, and I believe General Harding instituted this program in part because victims who had filed unrestricted reports were feeling intimidated through the trial process and were backing out of those cases. And so, this was in part a reaction to that and to encourage victims to stay in the process.

And once you have got that buffer, I mean, there is very little that can, I think, give especially a junior enlisted servicemember that kind of authority and buffer like an attorney, his or her own designated counsel. Because a victim in a criminal case is merely a witness. It is not her or his trial, right?

Senator Kaine. Right.

Ms. Bhagwati. So having that counsel is a huge asset.

Senator Kaine. The first panel there was a question, do you have the tools that you need to deal with this problem? And they all said we think we have the tools we need.

But General Welsh from the Air Force, I think, said with respect to the special victims' counsel that it is a pilot and that it is narrow and additional resources, both I think dollars, but I think he was also saying having the trained, the number of trained people to handle this and to think about doing it either Air Force wide or DOD wide, that that definitely would require some additional, some thoughtful additional granting of resources to the DOD.

Ms. Parrish. Well, that is why I think, Senator, you should require a military justice expertise track, and the Navy has one. And I think it is very important in that regard.

Right now, we don't properly value military justice expertise, and it is a huge problem. And in terms of the special victims' counsel program, we must provide victims with absolute legal representation rights, not just advice. And I worry about some of the legislation that is currently proposed. It is that you will study representa-

tion and that providing advice is what will be required. That concerns us greatly.

We filed an amicus brief in a case right before the highest CAAF right now on the special victims' counsel program, whether or not that victim was entitled to legal representation to protect her privacy rights, from disclosing her prior sexual history or medical health records. That is regularly violated throughout this process, and unless you have a special victims' counsel that is required to represent the victim, to file motions on behalf of the victim, not just to provide advice. Providing advice won't protect a victim in a court procedure.

You have got to have the requirement that they have representation, not just—advice is meaningless when the defense counsel is filing motions left and right, and you have no one there to do it on your behalf.

Senator Kaine. Colonel Morris?

Colonel MORRIS. Senator Kaine, I think it will be useful for all the Services to analyze the results that come from the Air Force, but there is more than one model for it, and the model—a model that the Army has developed over time includes victim witness liaisons at least 20 years running, special victim prosecutors, which was a significant cultural change and probably only seemed so in sort of the inside baseball of the Army.

But the military counsel have almost always, for as long as anybody can remember, be organic to the unit, to the installation. And for 4 years running now, the Army has had these special victim prosecutors, now 22, 23, or so, who are regionally around the world and come in to infuse their expertise on cases.

So that has required some adjustment away from the model of the local prosecutor owns the case, addressing in part Ms. Parrish's concern about a sort of a career track of Judge Advocates. So the best special victim counsel is the prosecutor.

The prosecutor should have such of a comprehensive investment in the case that that includes a developed from the first minute relationship of trust with that victim. Because if he does not have that, that victim is unwilling to bear the risks from civilian life only intensified in the military, the risk and hassle of even in the best case working their way through the complicated process for a trial like that.

But it is reinforcing the authority and obligation on a trial counsel, the prosecutor, parallel to that of a commander that doesn't give any wiggle room, doesn't give any chance to dilute the level of accountability for bringing that case to a conclusion.

Chairman LEVIN. Thank you very much, Senator Kaine.

Senator King?

Senator KING. First, thanks to the panel. I think—I hope it goes without saying that this committee is deeply interested in the solution to this problem. In my short experience here, I have never seen a committee spend as much time focused on a single issue as this committee has on this issue.

There is going to be consensus, I believe, in the committee on a number of the options and alternatives that have been put forward in various bills. The one that I think where there is still some differences and discussions is Senator Gillibrand's bill that would es-

entially take the prosecutorial decision out of the chain of command.

So that is where I want to focus my question because I am struggling to decide myself about where to come down on that. The first question I have is what is the data on commanders failing to prosecute?

In other words, is there data that indicates that in a significant number of cases, a commander at whatever level, and it is at the O-6 level in these cases, has decided not to prosecute? Do we have any information on that, do you know, Ms. Parrish?

Ms. PARRISH. I don't. We only know the statistics that the DOD has put out, and few cases move to prosecution.

Senator KING. I am sorry?

Ms. PARRISH. According to the numbers the Department of Defense has recently put out, few—there are few cases that move to prosecution and then conviction. And preferring charges, prosecutors tell us that, contrary to what we have heard in Senator Gillibrand's subcommittee, that often cases are not preferred.

There is just no—there is no way of right now being able to determine a convening authority's, how effective they are in their process, I think. So I don't know how you ever dig down deep enough to come up with that data. I think you just have to look at the results, and the result is victims don't report. There are few prosecutions. There are fewer convictions.

Senator KING. I understand that, but one of the issues is reporting, which you just mentioned. What evidence is there that the failure to report is a result of the victim's perception that the commander isn't going to prosecute the case?

Do you see what I mean? Obviously, there are a lot of complicated reasons to not report. Is that one of them, and how do you know?

Ms. PARRISH. It certainly is one of them. Well, because they see. Their own experience is what is before them, and they see that oftentimes the perpetrator is not brought up on charges, that victims report and are disbelieved. And so that higher-ranking perpetrators are more believed.

That is part of the chain of command. That is part of the higher ranking you are, the more on your lapel, the more you are believed, the more credibility you have. So until you create some objectivity in the process where there is no bias and influence and prejudice against the victim, the lower-ranking individual in the situation, you are not going to solve this problem.

Senator KING. But one of the things you have talked about, all of you have talked about is accountability. By removing this decision from the chain of command, aren't you relieving that commander of the accountability?

Ms. PARRISH. Absolutely not. Because he will still have the responsibility for his command, for the climate and culture in his command. And he will be required to create a climate that has no tolerance for sexual harassment. It goes hand-in-hand. It is not either/or.

Senator KING. Final question along these lines, two other questions. Retaliation has kept coming up and has come up a number of times in this hearing.

What would you think of the idea of making retaliation itself a punishable offense? Retaliation for reporting of a sexual assault is punishable by 10 days in the brig, or whatever. Do you have any thoughts on that?

Ms. PARRISH. Well, retaliation happens in several forms, and it is not always so obvious. But I am for it, personally.

But just to make my point, we see reports where there are subtle changes into the way in which the process moves forward. And during the investigatory process, for example, Article 32 hearings are often a black hole upon which a victim's—their testimony is twisted to the point upon which they decide not to move forward in a case.

So there are so many ways in which retaliation is hard to prove other than the fact that the victim is on her way out once reporting, even restricted or unrestricted.

Senator KING. Other thoughts on this idea of retaliation being an offense? Colonel?

Colonel MORRIS. There are enough spots in the UCMJ to address it now. There is a particular punitive article that is unique to the UCMJ, essentially for corrupting the judicial process. So that is one, if not cruelty and maltreatment, if not harassment, if not hazing.

So it is more a matter of a commander paying attention to and squashing that conduct with the tools that are available to him, as opposed to needing a particular new offense. I think it is well covered now.

May I answer a couple other concerns?

Senator KING. Yes.

Colonel MORRIS. Just the issue of the statistics, failure to prosecute and all that, I mean, it would be important, I think, to seek a serious audit. Maybe take several installations from different Services to look at reports and look at what they have yielded.

The only numbers I know of any significance are the Army's of the last year or so. We had about 1,268 formal reports that worked its way through several other disposition options, and about 200 some of them were general courts-martial. So about a third of the general courts-martial for that year were rapes or serious sexual assaults, remembering again with 700 or so courts-martial, you have 40,000 incidents of nonjudicial punishment.

The last point was on relieving the commanders of accountability. That is the crux of what the committee is struggling with, I understand. And to then say but the commander is still responsible for the climate, that now less powerful, less effective commander from whom the system can less effectively insist on accountability because now the ability to enforce all that climate that he is trying to set would have been taken away from him.

Senator KING. Thank you.

Mr. Chairman, may I follow with one question? Thank you.

Ms. Bhagwati, one of the things we were discussing earlier in the other panels was a kind of middle ground, where the command decision remained in the chain of command, but it had to be concurred in by the JAG officer, and if it wasn't, it would automatically be bumped up a level. Do you have any thoughts about that as a kind of compromise between taking it out of the chain of command and leaving it as is?

Ms. BHAGWATI. Bumped up to the O-7 level?

Senator KING. Yes.

Ms. BHAGWATI. The problem there is you have fewer O-7s than O-6s, but also I don't think there is that much difference in the mind of a victim or even the accused, for that matter, between an O-6 and an O-7. You still have the same chain of command. You still have the same bias in the system.

And frankly, I think in terms of running a program like that, again, there are only so many generals within the military. That is certainly a proposal we considered about 3 or 4 years ago, and it didn't fly.

Senator KING. I take it that your opinion is similar to Ms. Parrish that so the structural solution is to take this decision out of the chain of command, and you feel that will make a substantive difference in the amount of reporting and, presumably, the amount of prosecuting?

Ms. BHAGWATI. Yes, but I would still, I think, remind the committee that Senator Gillibrand's bill doesn't completely remove judicial authority from commanders. It removes the authority in some cases to include sex crimes that would require more than 1 year of confinement.

Senator KING. Felony-level cases?

Ms. BHAGWATI. Right. And so, commanders would still have the authority over many other crimes, as well as nonjudicial punishment.

Senator KING. Thank you.

I want to thank you, Mr. Chairman, for holding these hearings. This has been important and been a very illuminating day. I appreciate it.

Chairman LEVIN. Thank you. And thank you all.

Let me first thank this panel before I close. Ms. Parrish, Ms. Bhagwati, General Altenburg, Colonel Morris, you have made a major contribution to this committee. Those of you who represent organizations, we thank your organizations that you represent.

And this committee has no greater responsibility than to protect the men and women who wear the uniform of this country. We are going to carry out that responsibility in the next few weeks. I can't tell you precisely how we will end up doing that as a committee, but I can only tell you that we will act as a committee in our bill.

I have no doubt that we will take significant actions. I can't tell you precisely which. That will be decided by the committee after a markup in the subcommittee and then a markup in the full committee. But I have no doubt that, in fact, we will take actions in this area.

We have received three statements with a request that they be made part of the record, and they will be made part of the record.

[The information referred to follows:]

Chairman LEVIN. Questions for the record have been asked of a number of our witnesses on other panels. If questions are asked of any of you, I hope that you would respond to those questions for the record as promptly as possible. I expect there will be additional questions for the record, that we would very much appreciate your responding to, as we appreciate the testimony that you have given us today.

[The information referred to follows:]

[COMMITTEE INSERT]

Chairman LEVIN. With that, we will stand adjourned.

[Whereupon, at 5:09 p.m., the committee adjourned.]