

Senate Armed Services Committee
Chairman Carl Levin
Ranking Member James Inhofe
United States Senate
Washington DC 20510

Re: Powers of Convening Authorities

Dear Chairman Levin, Ranking Member Inhofe and All Committee Members,

I write with respect to the hearing scheduled for Tuesday, June 4, 2013 before the Senate Armed Services Committee addressing pending legislation regarding sexual assaults in the military.

By way of background: I served for 19 years (1986-2005) in the Judge Advocate General's Corps of the Israel Defense Forces, retiring as a Lieutenant Colonel. In the course of my career I served as the Judge Advocate to the IDF Navy and Home Front Command, as a Judge of the Gaza Strip Military Court, as the Legal Advisor to the Gaza Strip, and as Commander of the IDF School of Military Law.

The significance is that I have served as both a Judge Advocate and Legal Advisor. It is in this context that I hope my comments below will be of help to the Committee.

The Israeli system is profoundly different from the current American system. The primary difference relates to the "balance of power" between the commander and the Judge Advocate. In short, while serving as Judge Advocate to the Navy and Home Front Command I was solely entrusted with the decision to order the filing of an indictment against a soldier or officer. The commander was granted no authority in the matter. While I notified the commander of my charging decision and was open to his input, the decision was exclusively mine (in consultation with my own commander, The Judge Advocate General).

The decision to create a system whereby indictment decisions are in the exclusive bailiwick of the Judge Advocate reflects a profound belief that the separation between Judge Advocates and commanders is necessary in order to prevent undue command influence. It is, needless to say, a bone of contention, particularly when commanders are of the opinion that an indictment decision may impact Israeli national security.

While commanders understandably express reservations as to their lack of a role in the decision making, the system properly (and effectively) minimizes command influence in the criminal process to maintain fuller accountability and impartiality in meeting out justice.

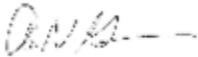
That process, it is important to add, is distinct from the disciplinary process that is within the commanders' jurisdiction. However, a word of caution is in order: when the Judge Advocate receives the case file from the Military Police Investigation Unit there are four possible courses of action: filing an indictment; transferring the file to the commander for a disciplinary hearing; closing the file; and ordering further investigation.

On a related note, it is also important to add that the Israeli Supreme Court (sitting as the High Court of Justice) has the power to issue an *ex parte* order nisi against IDF commanders in response to petitions filed either by aggrieved individuals or human rights organizations acting on behalf of the aggrieved, even though minimal standing requirements have not been met. I call this to your attention as it shows that commanders are subject to rigorous and robust judicial review (by the Israel Supreme Court) in other respects.

There is little doubt that recent high profile prosecutions have significantly enhanced the trust Israel Defense Forces soldiers feel in reporting instances of sexual assaults and harassment. A recent report reflecting an 80% increase in complaints filed with respect to sexual assault and harassment suggests an increase in soldiers' confidence that their complaints will be forcefully dealt with. The cause for this is, arguably, two-fold: the requirement imposed on commanders to immediately report all instances of sexual assault and harassment and the forceful prosecution policy implemented by JAG officers who are not in the "chain of command."

It would be my pleasure to answer any questions you and the Committee may have; needless to say, should the Committee so decide, it would be my honor to testify. I take the liberty to add that I have twice testified before Congress, once before the Senate Judiciary Committee regarding US detention policies (I was asked to compare to Israeli practices and models) and once before the House Homeland Security Committee.

Very truly yours,



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