

**WRITTEN TESTIMONY OF
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**BEFORE THE
RESPONSE SYSTEMS PANEL**

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Introduction

Good afternoon, Honorable Judge Jones and distinguished members of the Panel. Thank you for the opportunity to testify before this Panel about the Coast Guard's efforts to eliminate sexual assault from our service and to provide my views with respect to the role of the commander in the military justice system.

Every sexual assault case that occurs in our service devastates the victim, violates the Coast Guard's Core Values, and degrades our readiness. First and foremost, sexual assault is a crime. It cannot be tolerated. As the Judge Advocate General of the Coast Guard, I share in the Commandant's commitment that each service member who volunteers to serve in U.S. Coast Guard should not be victimized by sexual assault by those they trust the most. To this end, we are committed as a military agency to preventing sexual assault from occurring; and when it does occur, to responding with comprehensive support services for the victim and with aggressive investigation and prosecution against the alleged perpetrator.

The Commandant's overarching goal is to eliminate sexual assault from the Service. We must succeed in this endeavor for two reasons. First, to protect our people. Second, to ensure that the mutual bonds of trust and respect that are so critical to successful mission execution are preserved. What Coast Guard men and women do every day is inherently hazardous. Whether it be a rescue swimmer diving into the waters off Alaska to save fishermen in distress, or a Coast Guard boarding team interdicting drug smugglers in the Caribbean, or a port state control officer inspecting dangerous cargo on a ship bound for New York Harbor, what Coast Guard men and women do all day, every day is dangerous, and requires each one of us to work as a team, with strong bonds of mutual trust and respect that is critical to safe, efficient mission execution.

Sexual assault is a cancer to those bonds of mutual trust and respect. It degrades our people; it inhibits our missions. Coast Guard men and women accept risk every day, but we will not, and cannot, accept the risk of sexual assault. As a military service and a federal law enforcement agency, the Coast Guard is committed not to reducing the crime of sexual assault, but to eliminating it from our service all together. In that way, we can better protect our own people, that serve America by protecting those on the sea, protecting America from threats delivered by sea, and protecting the sea itself.

The issue of sexual assault has also sparked a vigorous conversation on reforming the military justice system. There is good reason for this discussion. While we have made considerable

progress, there is more work to be done. I believe there is merit to many of the legislative initiatives. However, I remain concerned about legislative change that would remove the role of the commander in the military justice system.

The eradication of sexual assault within the Coast Guard requires more than extra lawyers or added legal procedures. It requires a cultural change. Cultural change requires leadership; and leadership in the military is provided by the commander. Only the commander, viewed as the unitary authority of a unit, can set the right tone of rejecting sexist mindsets and prejudices. Only the commander, often operating in remote locations or on the high seas, can ensure the protection of victims. Only the commander, held ultimately accountable for the unit's successes and failures, has the necessary authority to address the issue of morale, safety, and security of his or her unit. Commanders must be part of the solution. Like the Commandant, I am committed to changing our organizational culture. However, I am concerned that dramatically changing our system of justice at the same time could impede those cultural changes. Any enduring change to our service culture must include the Commander's ability to instill that cultural change.

Sexual Assault Prevention and Response Policies and Programs

In order to eradicate sexual assault from the Coast Guard, we have focused on prevention and the initial response to allegations. The Coast Guard has put significant resources toward this focus. We will continue to improve our Sexual Assault Prevention and Response (SAPR) Program.

Our efforts to improve our prevention and response capabilities began as early as early as 2002, when Coast Guard policy required commands to report any allegations of rape or sexual assault to the Coast Guard Investigative Service (CGIS) for investigation. In 2006, CGIS formally established a distinct Sex Crimes Program and hired a Senior Special Agent to oversee the stand-up of that program.

In 2007, the Coast Guard SAPR regulations were significantly amended to include the addition of the restricted reporting option for victims, which aligned the Coast Guard's reporting options with the options offered by the Department of Defense (DoD) - restricted and unrestricted. Restricted reporting is the process used to disclose to specific individuals on a confidential basis that he or she is the victim of a sexual assault. Unrestricted reporting is the process used to disclose a sexual assault to the chain of command and law enforcement authorities. The official policy and guidance was issued in December of that same year.

In 2008, a dedicated Sexual Assault Prevention Program Manager was hired to implement and oversee the day-to-day administration of the USCG SAPR Program. Today, the Coast Guard has thirteen full and part-time Sexual Assault Response Coordinators, or SARCs, around the country to implement the program regionally.

In March 2011, CGIS established a cadre of specially trained and credentialed CGIS special agents – known as Family and Sexual Violence Investigators (FSVIs). In addition to their standard investigatory training, these agents attend advanced courses and seminars on sexual assault, domestic violence, and child abuse. CGIS has credentialed twenty-two FSVI special agents to date.

In April 2011, the Vice Commandant of the Coast Guard chartered a Sexual Assault Prevention and Response Task Force to examine holistically the Coast Guard's posture toward sexual assault in five discipline areas: Education /Training; Policy/Doctrine; Investigation/Prosecution; Communications; and Climate/Culture. Subject matter experts from each of these five disciplines met for over a year to provide input to the Vice Commandant on ways to improve our SAPR Program. The Vice Commandant approved the thirty-nine recommendations from the Working Groups on January 31, 2013.

In April 2012, the Coast Guard issued a new and comprehensive SAPR policy that clearly defines roles and responsibilities mandates significant education and training, defines reporting processes and response procedures, and ensures greater victim safety. The policy also clarifies that commands must immediately notify not only CGIS, but also work-life and victim advocacy specialists, as well as the servicing legal office, upon receipt of an unrestricted report of sexual assault. This helps ensure that a comprehensive, inter-disciplinary approach toward managing the victim's safety and support is in place, and that the investigation begins immediately.

Also noteworthy within the last year was the creation and roll-out of the Coast Guard's bystander intervention training program known as the "Sexual Assault Prevention Workshop". The workshop is presented live by CGIS special agents, Judge Advocates and Coast Guard Work-Life specialists, who, in addition to providing information about the SAPR program in plenary session, then engage in gender specific break-out sessions to have a frank dialogue about sexual assault and SAPR. Since its inception in 2012, the workshop has provided training to nearly 100 units and thousands of Coast Guard personnel. This training initiative received the Department of Homeland Security Office of General Counsel Award for Excellence in Training on January 11, 2013, and many Coast Guardsmen have reported that this training is the most meaningful and effective training they have ever received. More importantly, since the launch of the workshop, the Coast Guard has received several spontaneous reports of sexual assaults from victims who had previously been unwilling to report, an indication that the Coast Guard's efforts are creating an environment where victims have gained confidence in our system of prevention and response. In addition to Sexual Assault Prevention Workshops, SAPR training sessions are being incorporated into all command and leadership courses in the Coast Guard.

The Coast Guard also has trained over 900 Victim Advocates, and is in the process of recertifying and credentialing each volunteer to ensure the best support and care for victims of sexual assault.

In June 2012, the Commandant of the Coast Guard, consistent with an order issued by the Secretary of Defense, issued a Coast Guard wide order to withhold the initial disposition authority for serious sexual misconduct to a Special Court-Martial Convening Authority having achieved the grade of Captain with a dedicated Staff Judge Advocate assigned. The Commandant included in his withholding order not only the most serious felony-level sexual offenses under the Uniform Code of Military Justice, such as rape, sexual assault and forcible sodomy, but also each of the lesser sexual offenses under Article 120 of the UCMJ such as abusive sexual contact. Due to the organizational structure of the Coast Guard, for all intents and purposes, with the exception of several senior Base and Training Center Commanders, all serious

sexual offenses will be reviewed by a Flag Officer level having a senior and experienced Staff Judge Advocate personally advising them. My staff judge advocates report that the convening authorities are highly sensitive to the issues associated with sexual assault and are freely engaging in dialogue with their lawyer to ensure that they understand all the legal intricacies of the case before making a disposition. In short, the staff judge advocates have a strong voice and an eager audience.

One of the most significant recommendations of the Task Force, the establishment of a Flag-level Sexual Assault Prevention Council (SAP-C), has already been implemented, with the inaugural meeting being held on February 27, 2013. The SAP-C is a standing body chaired by a Vice Admiral and comprised of subject matter specialists designed to oversee the implementation of the Task Force recommendations; consider and discuss SAPR policy generally; direct empirical studies and trends (root cause analyses) based on accurate and reliable data; and order immediate and actionable course corrections to Coast Guard SAPR policy as needed. The SAP-C has formed three working groups, assigning the implementation of the Task Force's recommendations to each on an aggressive schedule. The SAP-C was instrumental in developing the Coast Guard's Sexual Assault prevention and Response Strategic Plan issued by the Commandant in April, 2013. Also as part of the SAP-C's efforts, in May 2013, the Deputy Commandant for Mission Support established the Sexual Assault Prevention and Response Military Campaign Office (MCO), responsible for rapidly operationalizing the Strategic Plan and the Task Force recommendations. Under the guidance of the SAP-C, the MCO oversees the implementation of near-term strategies that will create the processes, training regimens, measurements, and support system integrity that will best position the service to achieve the ultimate goal of eliminating sexual assault from the service. A Captain has been assigned as the full-time lead and a support staff has also been assigned, including a Commander as a Coast Guard Liaison to DoD's Sexual Assault Prevention and Response Office. This Liaison position will optimize alignment between DoD and the Coast Guard with Strategic Plan implementation.

The Vice Commandant of the Coast Guard gives regular updates on the SAP-C and MCO's work to senior leaders at the Department of Homeland Security and to the White House staff.

In April 2013, in observance of Sexual Assault Awareness Month (SAAM), the Commandant directed all Commanders, Commanding Officers, Officers-in-Charge, Deputy and Assistant Commandants, and Chiefs of Headquarters staff elements to conduct a unit all-hands SAAM discussion. A standardized training toolkit was developed and featured videos from the Commandant and the Master Chief Petty Officer of the Coast Guard offering personal messages on the imperative to focus efforts on preventing sexual assault. Additionally, the toolkit provided a training film and a script to facilitate open, frank, and productive unit-level discussion about sexual assault prevention and response.

On May 26th, 2013, the Commandant issued his Commander's Intent, launching a service wide "Campaign to Eliminate Sexual Assault from Our Coast Guard" on May 26, 2013. In this mandate, he makes clear to everyone in the Coast Guard, including active, reserve, civilian, and auxiliary, his expectation to create a culture intolerant of sexual assault. This includes stopping sexual assault by recognizing indicators of predicate behavior and ensuring all personnel know they are empowered to intervene. The Coast Guard is also committed to improving the

availability and quality of response resources; improve reporting, investigative, and military justice processes; and enhance victim aftercare.

Most recently, on September 16-17 2013, the MCO conducted a “Coast Guard SAPR Summit” in Washington, DC. This Summit brought over 200 people of all ranks, and geographic assignments together to conduct training and to also engage in frank discussions across the entire Service on the subject of sexual assault. The lessons learned and the recommendations coming from the Summit are currently being evaluated by the MCO and results will be reported to the SAP-C for possible further action in the near future.

Military Justice Process and Improvements

The administration of justice within the military has been subjected to increased scrutiny in the last few years, in particular the role of the commander. That criticism is not entirely unjustified, and the Coast Guard has not ignored those critiques. As an institution, the Armed Forces have continuously strived to improve its system of justice. History has shown that the modern military justice system has evolved in efforts to make constructive changes. From the enactment of the Uniform Code of Military Justice in 1950, to the Military Justice Acts of 1968 and 1983, the military justice system has not remained a static legal regime. Moreover, the services themselves have helped shape changes to the UCMJ and Manual for Courts-Martial through the Joint Service Committee (JSC) on Military Justice. The Coast Guard is an active participant on the JSC, has embraced those changes, and continues to seek ways to improve the administration of military justice and build victims’ advocacy capability.

For example, beginning in FY 2013, Coast Guard Judge Advocates began attending along with their CGIS Special Agent counterparts, the nationally recognized US Army Special Victim Investigator Unit course. To date 17 Coast Guard Judge Advocates have complete the course, each stating at the conclusion of the course that it was the best training they had every received as a prosecutor. Eighteen additional trial counsel are scheduled to receive training by the conclusion of FY14. In addition, two Coast Guard Judge Advocates completed the Prosecuting Alcohol Facilitated Sexual Assault Cases course at the Naval Justice School in FY 2013.

The Coast Guard has a close working relationship with the Army and Navy Trial Counsel Assistance Programs. Through our long standing Memorandum of Understanding with the Navy, Coast Guard judge advocates gain significantly more trial experience than the small size of the Coast Guard’s trial docket would generate through assignment to Navy offices around the country. Over the last eight years, we have also been able to send our judge advocates to gain experience as prosecutors with the Marine Corps at Marine Corps Base Quantico, Camp Lejeune, and Camp Pendleton.

More recently, in July 2013, the Coast Guard established the Office of Special Victims’ Counsel (OSVC). Coast Guard active duty and reserve personnel, as well as family members, who report they are a victim of sexual assault and some other sexual offenses may be eligible to be assigned a Coast Guard judge advocate serving as a Special Victims Counsel. SVCs are active duty judge advocates who have also been trained and designated as Victim Advocates and will provide legal assistance to victims in a confidential VA relationship throughout the investigation and any

related proceedings. SVCs support victims of sexual assault by assisting them in understanding and preparing for the investigative and accountability processes required to bring perpetrators to justice.

Role of the Commander in the Military Justice System.

Military justice, unlike the civilian criminal system, has a dual role of seeking justice and enforcing discipline. This reflects the notion that commanders are in charge of their units, not lawyers or other officials. Any changes to the military justice system should not needlessly undermine commanders' ability to lead and maintain discipline.

Inherent in the concept of military discipline is an accepted senior-subordinate relationship. If that is diminished because the commander cannot hold accountable those in his unit who commit the most serious offenses, the discipline of the military structure will erode. As a former commanding officer of a Coast Guard field operational unit, I observed firsthand the effect on discipline when I was able to act under the Uniform Code of Military Justice to hold individuals accountable. The authority is vital for effective leadership.

It is imperative that the commander have a role in the disciplinary process so that they remain engaged in the fight to eliminate sexual assault and that their subordinates see that commitment. If the commander's role is removed, it will lessen the importance of sex assault prevention in the eyes of the subordinates.

Currently, our commanders are openly and frankly discussing the issues of sexual assault with their subordinates while at the same time backing up that talk by holding those accountable who fail to follow the law. If the ability to hold members accountable is removed, the importance of the prevention message will also be diminished, no matter how much the commanders stress it. Additionally, removing the disposition from the commander will weaken the commander's authority and erode the loyalty that she needs from her subordinates to get the job done.

Closing

I recognize that our system of justice is not perfect. We can and we should improve the system with well-thought-out reform.

I believe that my background as both an operational commander and a now as judge advocate have given me valuable insight into the vital role that commander plays in the military justice process. Based on this experience, I do not believe that removing the commander from the decision-making process and replacing him or her with a lawyer will result in more referrals or courts-martial convictions. I also firmly believe that preserving the authority of military commanders is the most effective way to eliminate sexual assaults within the armed forces.

The Commandant of the Coast Guard, Admiral Robert J. Papp, is fully committed to the goal of eradicating sexual assault from the Coast Guard. Our goal is simple – to eliminate the crime of sexual assault from our service and ensure that no Coast Guard man or woman ever needs to fear the crime of sexual assault from a Shipmate. If he or I believed that removing the commanders' role in the military justice process would prevent sexual assault of our service members, we

would be the first to demand that change. However, we believe that making drastic changes that remove the commander from that position will have a detrimental effect on the discipline of the service without providing the corollary benefit of more prosecutions.

I am grateful for the opportunity to speak today on this issue. I am convinced that this body is the appropriate forum to discuss and identify the best legal reforms necessary improve the military justice system and help combat the crime of sexual assault within our ranks. I look forward to your questions.