

UNITED STATES DEPARTMENT OF DEFENSE  
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RESPONSE SYSTEMS TO ADULT SEXUAL ASSAULT  
CRIMES PANEL

ROLE OF THE COMMANDER SUBCOMMITTEE

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RETIRED SENIOR OFFICERS AND COMMANDERS ON  
THE COMMANDER'S ROLE IN MILITARY JUSTICE  
PROCESSES AND SEXUAL ASSAULT CASES

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WEDNESDAY  
JANUARY 8, 2014

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The Subcommittee met in  
Conference Room 150 at One Liberty Center,  
875 North Randolph Street, Arlington,  
Virginia, at 8:30 a.m., Barbara Jones,  
Chair, presiding.

PRESENT:

Honorable Barbara Jones, Chair  
Major General John Altenburg, Retired  
Joye Frost  
General Carter Ham, Retired  
Professor Elizabeth Hillman  
Honorable Elizabeth Holtzman  
Vice Admiral James Houck, Retired  
Colonel Lisa Turner

DESIGNATED FEDERAL OFFICIAL:

Maria Fried

PRESENTERS:

General Roger Brady, U.S. Air Force  
(Retired)\*  
Rear Admiral Marty Evans, U.S. Navy  
(Retired)  
General Fred Franks, U.S. Army (Retired)\*  
Lieutenant General Mike Gould, U.S. Air  
Force (Retired)  
Major General Mary Kay Hertog, U.S. Air  
Force (Retired)\*  
Lieutenant General Ken Hunzeker, U.S. Army  
(Retired)\*  
Lieutenant General Claudia Kennedy, U.S.  
Army (Retired)\*  
K. Denise Rucker Krepp, former U.S. Coast  
Guard JAG and former Chief Counsel,  
U.S. Maritime Administration  
Captain Lory Manning, U.S. Navy (Retired)  
Major General K.C. McClain, U.S. Air Force  
(Retired)\*  
Lieutenant General Tom Metz, U.S. Army  
(Retired)  
Hon. Patrick Murphy, former U.S. Army JAG  
Colonel Paul McHale, U.S. Marine Corps  
Major General Martha Rainville, U.S. Air  
Force (Retired)  
Rear Admiral Harold Robinson, U.S. Navy  
(Retired)  
Lieutenant General John Sattler, U.S. Marine  
Corps (Retired)  
Brigadier General Loree Sutton, U.S. Army  
(Retired)  
Vice Admiral Scott Van Buskirk, U.S. Army  
(Retired)

STAFF:

Colonel Patricia Ham, Staff Director  
Lieutenant Colonel Kyle Green  
\*present by teleconference

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1 P-R-O-C-E-E-D-I-N-G-S

2 9:36 a.m.

3 (The Designated Federal Official  
4 opened the meeting.)

5 CHAIRPERSON JONES: Good morning,  
6 everybody. Before we start with our  
7 presentations at 10:30 we did have our full  
8 panel deliberations in Texas, presentations  
9 and deliberations in Texas last month.

10 And we also did visits to Fort  
11 Hood and to Lackland Air Force Base. And so  
12 I thought this morning I could ask Joye Frost  
13 to give us a report with respect to it would  
14 be Lackland right? No, you're doing Fort  
15 Hood, that's right.

16 And Ms. Holtzman could talk to us  
17 a little bit about Lackland.

18 MS. FROST: Good morning,  
19 everyone. I think everybody knows on December  
20 10th members of this subcommittee held a  
21 session at Fort Hood in Killeen, Texas.

22 We gathered information and

1 analyzed relevant issues and facts in  
2 preparation for future subcommittee meetings.

3 And the members that were present  
4 for these sessions were Judge Jones, Major  
5 General Altenburg, Colonel Turner, Professor  
6 Corn and me.

7 These were not deliberations among  
8 the subcommittee. Instead, we directed our  
9 questions only to the individuals presenting  
10 information.

11 The visit began with a tour of the  
12 installation followed by an overview briefing  
13 that reviewed Fort Hood's history, its  
14 organizations and missions and installation  
15 demographics.

16 And then a member of the 3 Corps  
17 Office of the Staff Judge Advocate provided us  
18 a military justice overview.

19 That briefing reviewed the  
20 framework for Article 120 offenses, statutory  
21 and departmental guidance for sexual assault  
22 prosecution and a review of the cases reported

1 and prosecuted at Fort Hood in the last 3  
2 years.

3 And then this was followed into  
4 separate roundtable discussions. These  
5 discussions were conducted with different  
6 groups of active duty military members. Those  
7 included commanders who have general courts-  
8 martial convening authority, defense counsel,  
9 subordinate commanders without general courts-  
10 martial convening authority and senior  
11 enlisted advisors.

12 We wanted people to be open and  
13 honest. They were -- all the participants  
14 were informed that their participation would  
15 remain anonymous and that sessions were  
16 conducted in a non-attribution environment.

17 We solicited opinions on a variety  
18 of topics including the proposal to remove the  
19 commander's authority to convene courts-  
20 martial, the commander's role in military  
21 justice processes, how commanders receive  
22 information regarding allegations of sexual

1 assault, the nature of training that  
2 commanders receive to conduct their quasi-  
3 judicial functions, what a convening authority  
4 should or does take into consideration when  
5 deciding to refer charges to a court-martial,  
6 how commanders are held accountable, the  
7 commander's role in sexual assault prevention,  
8 the handling of collateral misconduct issues,  
9 retaliation and reprisal, and specifically  
10 what concerns participants would have if the  
11 commander were removed as the convening  
12 authority.

13 I think we all found the trip to  
14 be extremely helpful. Most of the session  
15 participants had very useful insight. And I  
16 certainly want to thank everyone for their  
17 involvement.

18 I'd also like to thank the  
19 personnel at Fort Hood who helped coordinate  
20 our visit and assist us while we were there.

21 So minutes from these sessions are  
22 being finalized and will be provided to the

1           subcommittee members. I think at this point  
2           if people have questions or comments that they  
3           want to add to what I just reported back that  
4           would be appropriate at this point.

5                         GEN HAM: Did you find a  
6           significant difference in opinion in groups  
7           rank, sex, age?

8                         MS. FROST: I personally found  
9           that the commanders with courts-martial  
10          convening authority to be very proactive and  
11          up front in their discussion.

12                        I found, I think it was largely  
13          command sergeant majors were a little more  
14          reticent. Yes, which actually kind of  
15          surprised me. I don't know if others had the  
16          same observation but that's basically.

17                        MAJ GEN ALTENBURG: I'd go a step  
18          up, Joye. I'd say that I found the sergeants  
19          majors at Fort Hood that were there to be  
20          uninformed. Not just reticent to speak but  
21          only one seemed really sharp and on top of the  
22          issue. And the other three were, to

1 characterize it in a kind way, they were  
2 uninformed.

3 MS. FROST: Right.

4 CHAIR JONES: I only sat through  
5 most, I hope, or at least three quarters of  
6 the first meeting with the general who  
7 currently commands Fort Hood. And I agree  
8 with your comment about the commanders.

9 But in later meetings that I had  
10 where I switched to some of the topics on  
11 comparative systems there were gaps in  
12 people's knowledge about some of the new  
13 programs, some of the procedures. And I think  
14 it's simply a question of an awful lot of  
15 things, directives, what have you, new pilots  
16 happening so quickly and there still hasn't  
17 been enough training on a lot of this. Just  
18 sort of questions that --

19 MS. FROST: And that brings up a  
20 really important point. And I do think that  
21 this was what the senior enlisted brought up.  
22 And it may have occurred across the board in

1 all the discussions.

2 But it's not just a lack of  
3 training, it's the type of training that's  
4 being provided, it's almost pro forma at this  
5 point. And you know, when you're getting the  
6 same type of training over and over again  
7 people begin to tune out. And I think that  
8 that was a really important takeaway.

9 But yes, I agree with the general  
10 that there were some disconnects between what  
11 the commanders had to say and what the senior  
12 enlisted --

13 CHAIR JONES: The top commanders  
14 were clearly fully informed.

15 MS. FROST: Right.

16 CHAIR JONES: And I certainly had  
17 the impression they intended for everyone else  
18 to be fully informed but hadn't been able to  
19 be implemented yet. And I don't know whether  
20 there had been more than one training on it or  
21 what have you. But that was noticeable, I  
22 agree.

1                   Okay. Liz, could you tell us  
2                   about Lackland?

3                   MS. HOLTZMAN: Thank you. On  
4                   December 13 members of the Role of the  
5                   Commander Subcommittee held preparatory  
6                   sessions at Joint Base San Antonio Lackland in  
7                   San Antonio, Texas.

8                   The purpose was to gather  
9                   information, conduct research and analyze  
10                  relevant issues and facts in preparation for  
11                  future subcommittee meetings.

12                  The subcommittee members present  
13                  for these sessions were Major General  
14                  Altenburg, Colonel Turner, Professor Corn and  
15                  I.

16                  The objective of the meeting was  
17                  not to deliberate but instead to question the  
18                  people that we met with about issues that we  
19                  were concerned about.

20                  The visit began with a tour, a  
21                  briefing and then we broke into separate  
22                  roundtable discussions. In our subcommittee

1 we conducted roundtable discussions with  
2 different groups of active duty military  
3 members to gain perspectives on the role of  
4 the commander in military justice operations,  
5 at DoD's largest joint installation and the  
6 Air Force's basic military training center.

7 We held separate roundtable  
8 discussions with commanders who had general  
9 courts-martial convening authority, defense  
10 counsels, subordinate commanders without  
11 general courts-martial convening authority and  
12 senior enlisted advisors.

13 In order to promote frank and  
14 honest conversations participants were  
15 informed that their participation would remain  
16 anonymous and that the sessions were to be  
17 conducted in a non-attribution environment.

18 We solicited opinions from  
19 participants in the different roundtable  
20 groups on a range of topics including  
21 proposals to remove the commander's authority  
22 to convene courts-martial, the commander's

1           role in military justice processes, how  
2           commanders receive information regarding  
3           allegations of sexual assault, the nature of  
4           training commanders receive to conduct their  
5           quasi-judicial functions, what a convening  
6           authority should or does take into account  
7           when deciding to refer charges to a court-  
8           martial, holding commanders accountable, the  
9           command role in sexual assault prevention,  
10          handling collateral misconduct and potential  
11          retaliation or reprisal, and what concerns  
12          participants would have if the commander were  
13          removed as a convening authority.

14                        By way of background I think most,  
15                        if not all members of the subcommittee are  
16                        aware that Lackland had brought in a new team  
17                        to deal with the very serious allegations of  
18                        misconduct in those allegations that had taken  
19                        place in the recent past.

20                        And that experience colored our  
21                        whole -- colored the proceedings and the facts  
22                        that were presented to us in my opinion.

1                   This was a very important visit  
2                   for the subcommittee. Information shared by  
3                   the session participants was extremely  
4                   helpful.

5                   And I and I believe on behalf of  
6                   all the members of the subcommittee want to  
7                   thank all the participants. We'd also like to  
8                   thank everyone at the Joint Base San Antonio  
9                   who helped to coordinate our visit and assist  
10                  the subcommittee.

11                  Minutes from these preparatory  
12                  sessions are being finalized and will be  
13                  provided to the subcommittee members. I'll  
14                  try and answer any questions if you have them.

15                  GEN HAM: Did you -- at Lackland  
16                  or at Hood did you meet with the victims?

17                  MS. FROST: Not --

18                  GEN HAM: As a specifically  
19                  gathered group?

20                  MS. FROST: Not at Fort Hood.

21                  PROF. HILLMAN: Sir, the Victim  
22                  Services Subcommittee met with the different

1 advocates on the different parts of the team,  
2 the Sexual Assault Response Team. But --  
3 that's the group that I was on at Lackland.  
4 We did not meet directly with victims.

5 COL HAM: We raised that with both  
6 installations in preparation for the meeting  
7 and the concern was there were ongoing cases.  
8 Those were issues raised. So that issue was  
9 broached as to whether we could do that with  
10 the installations.

11 CHAIR JONES: Don't we have  
12 meetings coming up in the future where there  
13 may be some interviews with the victims?

14 COL HAM: The Victim Services  
15 Subcommittee has asked to meet with additional  
16 victims, yes, ma'am.

17 MS. HOLTZMAN: I think it's fair  
18 to say, and that's not a direct response to  
19 your question, but that the whole spectrum of  
20 people that we met with, everybody was  
21 insistent that the prior atmosphere was  
22 pervaded with a lack of discipline and that

1           that was -- it was imperative to turn that  
2           whole situation around in order to protect  
3           victims.

4                        I think they were very, very aware  
5           of that and everyone felt that responsibility  
6           strongly. That's my impression.

7                        MS. FROST: And so how are they  
8           going to measure that change? Did they  
9           address that at all?

10                      MS. HOLTZMAN: I'm trying to  
11           remember. I think it was -- well, just I  
12           think it was in the training programs that  
13           they had. I think it was in the expectations  
14           of how people were to behave towards each  
15           other. It was in discipline that was to be  
16           imposed in general as well as specifically in  
17           these cases, that the whole -- that there was  
18           --

19                      One of the problems that was  
20           pointed out to us was that there was a gap in  
21           terms of officers supervising what was going  
22           on there. You had the top commander and then

1           you had the noncommissioned officers. And  
2           there was not sufficient supervision.

3                       That has been totally changed in  
4           terms of what they said to us to ensure that  
5           there would be better responsiveness to  
6           protocols and standards and guidelines.

7                       I'm not sure that they were  
8           measuring it except they wanted to see a  
9           change in atmosphere and that was what they  
10          were working very, very hard on.

11                      MS. FROST: I would say that that  
12          would be a bit of a concern for me. You know,  
13          good intentions in putting new protocols in  
14          place are fine, but how do you know --

15                      MS. HOLTZMAN: And new people, and  
16          new people.

17                      PROF. HILLMAN: Madam Chair, could  
18          I jump in? I think I agree with what  
19          Representative Holtzman just said about that.

20                      But the extent to which they  
21          changed things at Lackland in response to  
22          this, and Colonel Turner can speak to this

1           too, was dramatic. From the architecture to  
2           the personnel staffing to the degree of  
3           surveillance and oversight that was missing,  
4           that intermediate level.

5                        They haven't achieved the high  
6           staffing levels that they ultimately want in  
7           order to make sure there is sufficient  
8           redundancy and control over the trainees and  
9           supervision of the trainees with the number of  
10          military training instructors they want.

11                      And they are measuring frequently,  
12          I can't remember all the tools, but you're  
13          absolutely right. And they were locked onto  
14          that issue too of making sure they're checking  
15          up on what's happening.

16                      To give you one minor example, the  
17          trainees all have to check in every 2 hours.  
18          Like, they're trying to make sure they're  
19          aware of a problem faster. That to me felt  
20          like one of the major changes.

21                      MS. FROST: Check in with whom?

22                      PROF. HILLMAN: A computer,

1           literally to verify location. So that's a  
2           minor example of the effort to stay in touch  
3           and not let things -- there's not an  
4           assumption that nothing would ever happen  
5           again. But there's an assumption that when it  
6           happens it won't snowball in the way that it  
7           previously was allowed to.

8                       MS. HOLTZMAN: Cameras,  
9           surveillance camera. And talk about  
10          architecture, the design of rooms so that you  
11          couldn't have privacy. If someone were seeing  
12          a supervisor or a supervisory officer you  
13          couldn't meet in a private room. All those  
14          rooms had windows. They were constructed in  
15          different ways.

16                       So there were efforts at  
17          prevention. Not just oh, be good. It was  
18          serious efforts at prevention, all kinds of  
19          ways as the professor mentioned.

20                       I would say they were very, very  
21          serious and you felt it all the way down.  
22          Every grade of person that we met with felt a

1 very serious mission here.

2 MAJ GEN ALTENBURG: And I'd add  
3 that they were coming from a pretty tough  
4 position because they had taken severe cuts in  
5 terms of personnel and other resources. And  
6 they had come from an environment where there  
7 was I think a lieutenant colonel and it  
8 dropped from a lieutenant colonel straight  
9 down to E7 instructors and their peers. And  
10 there was nobody in between.

11 They had had to put -- because  
12 it's a training base they had actually put  
13 silhouettes up around the fields and so forth  
14 so that the young recruits could practice  
15 saluting because there weren't enough officers  
16 walking around to even salute somebody.

17 So, this is the pushdown-popup  
18 effect of budget cuts and sequester and the  
19 like. But I mean, that's how they found  
20 during wartime to respond to the cuts that  
21 they were suffering was we'll cut out cadre.

22 And it turned out that people at

1 the E7 and below level took advantage of that  
2 and created this monster led pretty much by  
3 one sociopath as it was described to us  
4 anyway. And I can believe that based on what  
5 I saw and what I heard, that there was a very  
6 unusual set of circumstances that confronted  
7 the Air Force at Lackland.

8 And as has been amply discussed  
9 they've reacted in force to ensure that that  
10 be addressed.

11 MS. HOLTZMAN: One of the things I  
12 could also mention is that the new commander  
13 who was brought in did not have general court-  
14 martial convening authority and discussed at  
15 length his concerns about the impact that that  
16 had on his ability to discipline. And  
17 discipline was very important as part of  
18 reestablishing top-down control.

19 COL TURNER: They do have a number  
20 of ways they're also monitoring. And we heard  
21 some of them. Some of them were provided to  
22 us in the report, General Woodward's CDI,

1           General Rice's Post Report that we have as  
2           part of the record.

3                   Those include, for example,  
4           tracking misconduct allegations. Since summer  
5           of I think `12 they had received no more  
6           sexual assault allegations against, or  
7           unprofessional relationship against MTIs.

8                   So, also complaint boxes. They  
9           monitor the complaints, where they come in,  
10          whether it's the end of course survey or they  
11          put anonymous complaint boxes at various  
12          locations. Somebody could drop something in.

13                   They have phone calls where you  
14          can call a SARC directly, that it's not  
15          apparent that you're calling a SARC. So they  
16          do have a number of monitoring mechanisms.

17                   CHAIR JONES: How long is a  
18          recruit at Lackland? Since I wasn't there,  
19          I'm interested. I mean, is there -- are you  
20          there for 6 months?

21                   COL TURNER: The basic course is 8  
22          weeks. If you're recycled you could stay a

1           little bit longer waiting for medical. You  
2           could be at Lackland for your follow-on  
3           technical training, for example, security  
4           forces. But the basic course is 8 weeks.

5                       CHAIR JONES: So there's just  
6           amazing turnover.

7                       COL TURNER: Yes.

8                       PROF. HILLMAN: Five hundred per  
9           week or so is what they've been telling us.  
10          So a new class started each week, 500 each  
11          week.

12                      CHAIR JONES: Wow. Have they  
13          figured out how to do a climate survey at  
14          Lackland?

15                      COL TURNER: They do climate  
16          surveys of the staff, the cadre in the  
17          permanent party. They are doing end-of-course  
18          surveys and other mechanisms now.

19                      CHAIR JONES: Of the recruits?

20                      COL TURNER: Of the recruits. Not  
21          the formal one that we heard testimony on.  
22          They have different mechanisms.

1 CHAIR JONES: Right, that's what I  
2 was curious about.

3 COL TURNER: Yes, ma'am.

4 CHAIR JONES: Thank you. All  
5 right. Do we know whether our first panel is  
6 ready? Five-minute break then.

7 (Whereupon, the foregoing matter  
8 went off the record at 9:58 a.m. and resumed  
9 at 10:05 a.m.)

10 CHAIR JONES: Good morning,  
11 everybody. This is the Role of the Commander  
12 Subcommittee meeting and this morning we have  
13 in attendance very impressive and senior  
14 former commanders who are here to speak with  
15 respect to in particular the role of the  
16 commander as convening authority.

17 We have a twofold at least mandate  
18 from Congress with respect to role of the  
19 commander. It's not just whether or not the  
20 commander should be taken out of the convening  
21 authority role, but it is also to assess how  
22 commanders are doing in terms of setting

1           command climate.

2                           And having said that just a little  
3           bit about process. I think everyone or each  
4           of you was told that we would be happy to hear  
5           an opening statement for maybe up to 5 minutes  
6           but it can be as short as you like. And then  
7           I'm sure we'll have questions and you'll have  
8           lots of comments for us.

9                           So with that I wonder, General  
10          Kennedy, you happen to be the first one on my  
11          list. Would you like to begin?

12                           LT GEN KENNEDY: Thank you. I'm  
13          just pleased to be here even though it's only  
14          be telephone and I really don't have anything  
15          to offer as an introduction. I'll wait until  
16          I hear the questions.

17                           CHAIR JONES: All right, thank  
18          you. General Rainville?

19                           MAJ GEN RAINVILLE: Well, thank  
20          you for having us and for listening this  
21          morning to this.

22                           And I'll just, as a way of

1 introduction I had about 27 years both in the  
2 active Air Force, the Air Force Reserve and  
3 the Air National Guard with about 14 years of  
4 command time in different billets, the last 9  
5 of which I was in command of both the Air  
6 National Guard and the Army National Guard in  
7 the State of Vermont.

8 And in both squadron command and  
9 as adjutant general I had to make career-  
10 ending decisions or career-continuing  
11 decisions if you will. So I strongly support  
12 based on my experience and my observations of  
13 other commanders placing the decision to  
14 prosecute serious crimes, including sexual  
15 assault, with the professional military legal  
16 professionals.

17 I think that for a number of  
18 reasons that is really going to best serve the  
19 military and the nation.

20 Our men and women in uniform  
21 deserve the best treatment. They deserve fair  
22 treatment. They deserve due process, both an

1           accuser and the accused as well. The decision  
2           to prosecute or not must be based only on the  
3           evidence independent of any type of  
4           preexisting command relationships.

5                       And men and women also really  
6           deserve commanders who are leaders and who are  
7           focused on being leaders. And in this whole  
8           conversation that both the Congress and DoD  
9           and the American people have had on this  
10          subject I think that if one area has been  
11          overlooked it's that of leadership.

12                      And I think that we confuse  
13          sometimes command responsibility and the  
14          specific responsibility here of course of  
15          making the decision to prosecute or hold a  
16          courts-martial with what it means to be a good  
17          leader. I think we should expect and demand  
18          that our commanders are good leaders.

19                      And that legal authority that  
20          we're talking about today to prosecute a  
21          criminal offense is simply not an essential  
22          element of leadership. Because to me

1 leadership is that ability to inspire others.  
2 It's the ability of the person to set a moral  
3 example both professionally and personally.  
4 It's the ability to think strategically while  
5 also focusing on mission success, on the  
6 people and the mission.

7 So I think in what I've seen over  
8 the decades since I first joined in 1979 is a  
9 cycle of the number of reports of harassment  
10 and assault that increase. And then we change  
11 a procedure and we educate. And we build  
12 awareness among troops and commanders. And we  
13 hold commanders responsible. And then we just  
14 go and repeat that cycle again.

15 It gets better. The numbers jump  
16 of the reports. We think we've done a great  
17 job at addressing it. But it just continues  
18 that cycle.

19 And I think that that awareness  
20 and education while a good thing, and I think  
21 that the NDAA that just passed has some good  
22 elements to it that will help some in this,

1 but it doesn't go far enough. Because we know  
2 that the basic characteristics of human  
3 behavior really don't change. So what we need  
4 to do is change the system to allow the human  
5 behavior to do a better job.

6 And to me that means that we must  
7 make a substantial and visible change in the  
8 structure of the military's process as it  
9 deals with serious crimes including sexual  
10 assault.

11 So, how can we do this? We can do  
12 this by placing the decisions to prosecute  
13 with the trained military legal professionals.  
14 We can rebuild the faith and confidence that  
15 our military men and women should have in due  
16 process in the military.

17 We can, finally, let commanders  
18 lead. Let them lead. That's what they're  
19 trained for. That's what they do best. And  
20 we can do that by freeing them, freeing them  
21 to have their focus on war-fighting and on  
22 mission readiness.

1                   So thank you for allowing me a few  
2                   opening remarks and that really is what I  
3                   think is most important about this topic.

4                   CHAIR JONES: Thank you, General.  
5                   General Sutton?

6                   BG SUTTON: Yes, hi, I'm Loree  
7                   Sutton. I retired as an Army psychiatrist  
8                   after nearly three decades in uniform. My  
9                   last assignment was that of the founding  
10                  director of the Defense Centers of Excellence  
11                  for Psychological Health and Traumatic Brain  
12                  Injury.

13                  So over the course of my time in  
14                  uniform and then subsequently since retirement  
15                  I've had the chance to work with survivors in  
16                  a clinical basis, oversee those who were  
17                  working with them in my command positions and  
18                  also look at this issue from the perspective  
19                  of a commander.

20                  Since retiring though I've really  
21                  had in some ways the most surprising education  
22                  of all and that is to say when I was asked to

1           participate in the Invisible War documentary  
2           to provide some military, you know, context of  
3           military culture.

4                        It's been over these last 2 years  
5           that I've had the opportunity to talk with  
6           countless survivors of all services, men and  
7           women, all generations. And it's really led  
8           me very reluctantly to my position of  
9           supporting Senator Gillibrand's amendment, the  
10          Military Justice Improvement Act.

11                      I think looking at this from a  
12          systems perspective as General Rainville says  
13          leadership clearly emerges as the critical  
14          factor.

15                      Now, if you look at our military  
16          today this is part of the challenge. The  
17          squad leaders of 2001 when 9/11 happened are  
18          today the first sergeants and sergeant majors.  
19          The company commanders of 2001 are now the  
20          battalion and increasingly brigade commanders.

21                      They've got over a decade of  
22          experience leading in combat. They know how

1 to run a patrol. They know how to run a FOB.  
2 They know how to lead in combat. That's a  
3 very narrow subsection of leadership.

4 When it comes to the fundamentals  
5 of leadership we are really behind the curve.  
6 And this is where I am so concerned that when  
7 it comes to this core issue, this conflict of  
8 interest, both the actual conflict of interest  
9 that's reported by survivors and also the  
10 perceived conflict of interest that if DoD  
11 does not make this change what we've got over  
12 the next months, years.

13 I mean, this issue is not going  
14 away. Some of you may have seen the most  
15 recent story. It seems like they're coming  
16 out every week, certainly every month. The  
17 one published by the Los Angeles Times about  
18 the male airman who is out in California.

19 What we're up against is we're up  
20 against a situation that reminds me a little  
21 bit of the Anita Hill debacle back in the late  
22 eighties when you had sort of the usual

1 suspects of the established lined up in  
2 denying, denying the perspective that emerges  
3 from the victim's experiences.

4 And to a victim, to a survivor  
5 they'll talk about what happened to them was  
6 awful, but the way in which their command  
7 leadership acted in response to what happened  
8 is far worse. So I'm very concerned.

9 That's why in my letter to Senator  
10 Gillibrand, the last paragraph I actually, my  
11 recommendation is that DoD implement this  
12 change for a 5-year period during which time  
13 we really dig down. Let some of the dust  
14 settle from all of the attention that's been  
15 given to this issue over the last couple of  
16 issues.

17 Let's really place the analytics,  
18 the metrics to determine not just what's  
19 happening with the downstream behaviors such  
20 as rape, such as suicide, homicide, but let's  
21 also look upstream.

22 We know that in units whose

1 leaders tolerate sexual harassment the rates  
2 of rape triple. There's a direct relationship  
3 there.

4 And this is where I'm concerned we  
5 have leaders at senior levels who do not know  
6 the fundamentals of leadership. And absent  
7 that this issue is going to become far worse  
8 over the next several years.

9 So that's why I recommend with  
10 some reluctance but also looking at this as a  
11 systems issue I recommend a 5-year period of  
12 time a demonstration project where we look at  
13 both the upstream, the downstream behaviors  
14 and then see where we are and move forward  
15 from there. That's all I had to say. Thank  
16 you.

17 CHAIR JONES: Thank you very much.  
18 Admiral Robinson?

19 RDML ROBINSON: Hi, good morning.  
20 Thank you for taking the time to listen to  
21 this one old chaplain's reflections on 36  
22 years of experience with the Navy and with the

1 Marine Corps, and now 6 more years of  
2 experience as the endorsing agent for  
3 approximately 60 rabbis across the Department  
4 of Defense and the Veterans Administration.

5 Sexual abuse in the military  
6 inflicts a horrific and tragic level of pain  
7 on survivors, on those who love them. It is  
8 a foul stain on the reputation of millions of  
9 extraordinary men and women who serve our  
10 nation with distinction.

11 It reduces our ability to recruit  
12 and retain the best talent our nation has  
13 available. Some of the finest talent is  
14 driven away from us because of this issue, and  
15 wisely so perhaps.

16 And it is a blot ultimately on our  
17 nation's honor. These survivors have served  
18 our nation. They have foregone the life of  
19 comfort and ease so many of us take for  
20 granted day by day.

21 They wage our country's wars, they  
22 wear our country's cloth and we, their nation,

1           owe them better.

2                         Sexual abuse has been a publicly  
3           known issue since Tailhook in 1991 yet in my  
4           view it persists unabated despite a litany of  
5           scandals and numerous promises by leadership.

6                         So it is out of profound despair  
7           for any other solution that I now believe  
8           removing responsibility for prosecution from  
9           the chain of command, though, let me be clear,  
10          the worst possible remedy, may now be the only  
11          possible remedy available to us.

12                        In my view it is the in my view  
13          highly motivated effort by the chain of  
14          command to change the military culture  
15          starting at go, starting at recruitment and at  
16          basic training, at sources of commission and  
17          sustained throughout the force would be a far  
18          more effective means of dealing with this  
19          issue.

20                        And leadership that goes all the  
21          way to removing commanders who don't get it.  
22          In the Navy you don't get to bump your ship

1           against the pier twice. It's one and done.  
2           And we haven't shown that kind of commitment  
3           at the leadership level in any branch of the  
4           service that I have experienced.

5                       So, removing those who fail to get  
6           onboard and making clear why that removal  
7           happened, removal for cause. Not just a quiet  
8           retirement and you get to go home and get a  
9           nice job in the Beltway, but a clear removal  
10          for cause with -- at the rank previously  
11          served honorably would get attention and would  
12          make a difference.

13                      But this solution before us, that  
14          of removing the prosecution from the chain of  
15          command sadly only addresses criminal  
16          behavior, not the underlying culture. That  
17          doesn't address anything up to the criminal  
18          violation.

19                      It fails to utilize the chain of  
20          command's extraordinary capacity to effect  
21          change. And by relieving the chain of command  
22          for responsibility in criminal behavior I'm

1           afraid it will result in the chain's feeling  
2           absolved of all aspects of responsibility for  
3           the matter across the board. After all, we're  
4           trained in the military that if you do not  
5           have authority you can't be held responsible.  
6           The two have to be linked.

7                        I recall coming in in 1971 when I  
8           first raised my hand the difficulties that  
9           Admiral Zumwalt had in trying to effect change  
10          without fully implementing the chain of  
11          command. So I would love to see a chain of  
12          command fully motivated, may I use the simple  
13          expression doing its job.

14                      So why do I consider this  
15          draconian solution as now required? Simply  
16          because they're not doing their job, not at  
17          the top, not all the way down through the  
18          structure.

19                      I feel very much like Charlie  
20          Brown must feel. If you'll recall he  
21          endlessly trusts Lucy to hold the football and  
22          he is endlessly disappointed. An end must

1           come at some point to trust the -- nothing is  
2           said new now that wasn't said, as has been  
3           pointed out already, that hasn't been said as  
4           we have marched through the endless cycle time  
5           and again.

6                        So, I wish there was some  
7           mechanism by which we could trust but verify,  
8           and that is to somehow tell them, the chain of  
9           command, leadership, senior leadership that  
10          you have X amount of time to show us change  
11          or.

12                       Failing that mechanism making the  
13          change and saying it is in effect for X number  
14          of years and then we'll see if we can give you  
15          back your natural responsibility might be a  
16          secondary way of going.

17                       Pardon me with concluding, being a  
18          rabbi, with some spiritual reflections on all  
19          this.

20                       War and war-fighting brings out  
21          both the best and the worst in human spirit.  
22          I've seen acts of enormous self-sacrifice and

1           humanity and I know our soldiers, sailors,  
2           airmen, Marines and Coast Guard are the  
3           finest, the greatest men and women of this  
4           generation.

5                         But war is by its nature  
6           dehumanizing of all who are involved. It is  
7           somehow demonic in its nature.

8                         We chaplains at our best help  
9           people to see the human spirit in themselves  
10          and in those around them. Senior leadership  
11          and our nation writ large has no less  
12          responsibility in this endeavor to preserve  
13          the human values of our service members.

14                        Sexual abuse is ultimately the  
15          denial of the human both in the abused and in  
16          the abuser. That was true of racial  
17          discrimination in the past. And as I have  
18          said I have witnessed the chain of command's  
19          ability to effect change in the military  
20          culture on racial discrimination though the  
21          job isn't done there by any means. We are way  
22          ahead of where we have been. Discrimination

1 still lives but it is dying.

2 It is time for the chain of  
3 command to display that same level of  
4 commitment and effective leadership to make  
5 change in this area. I wish that was easily  
6 seen on the horizon. Thank you for your time.

7 CHAIR JONES: Thank you. Admiral  
8 Evans?

9 RDML EVANS: Thank you so much.  
10 Thank you, Ms. Jones, members of the panel.  
11 I really do appreciate the opportunity to come  
12 and be with the panel today.

13 I've only really come lately to  
14 the issue when recently someone in my  
15 community asked me if the military and the  
16 Naval Academy in particular would be safe for  
17 his daughter. For me that was a real wake-up  
18 call to confront and have to give an honest  
19 answer to that question.

20 And so I do appreciate the work  
21 that you all are doing to seriously consider  
22 what can finally be done to address this

1           pernicious issue of sexual assault in the  
2           military.

3                       By way of background I served in  
4           the Navy for just a couple of weeks under 30  
5           years. Eight of those years were in command  
6           of units ranging from 200 to 6,000.

7                       But probably the most relevant  
8           assignment I had vis-a-vis this panel was to  
9           be the executive director of the Navy Standing  
10          Committee on Military and Civilian Women in  
11          the Navy and Marine Corps.

12                      And that panel was set up in the  
13          wake of the Tailhook scandal and our charter  
14          was to develop a strategy to change the  
15          culture and climate of the Navy and Marine  
16          Corps.

17                      That was in 1992. We finished our  
18          work in 1993. Eighty recommendations we made  
19          including changing the combat exclusion law  
20          were accepted by the Secretary of the Navy for  
21          implementation yet here we are today. So it's  
22          frankly quite discouraging that there's such

1 a sense of the same issues coming forward.

2 I think perhaps what's different  
3 is while in the Tailhook scandal, the wake of  
4 that there was fairly widespread civilian  
5 dismay and disgust today I think it's even  
6 more intense.

7 The media are even more  
8 unrelenting in terms of the coverage of these  
9 incidents that seem to surface every day. And  
10 I think we have a coalition of both civilian  
11 leadership of the Department of Defense as  
12 well as the Capitol Hill leaders who have  
13 stepped up to the plate to address this issue.

14 From my perspective this has  
15 always been first and foremost a readiness  
16 issue. It's about recruiting, training,  
17 organizing, equipping and leading America's  
18 finest men and women to be ready to go into  
19 harm's way to support our nation's interest.

20 And I speak from the perspective  
21 of having spent several years as the commander  
22 of Navy recruiting. So I know how tough it is

1 to recruit when these incidents and issues are  
2 foremost in the public psyche.

3 Since at least 1992 and Tailhook  
4 commanders have said that they get it, yet  
5 statistics tell a different story.

6 When incidents of unwanted sexual  
7 conduct are alleged to have occurred victims  
8 should, must feel confident in reporting them  
9 to their chains of command and believe that  
10 the system will handle the complaints  
11 seriously and sensitively.

12 And I would say to you, I feel  
13 it's as important for the alleged perpetrators  
14 to feel that they will be treated fairly in  
15 the military justice system and that they  
16 won't become victims of political correctness.

17 As a commanding officer and  
18 commander I as much as many of my colleagues  
19 appreciated the particular prerogatives  
20 entrusted to us in the military justice  
21 system. I too believe they were essential to  
22 the maintenance of good order and discipline

1           in my commands. Yet today I believe some of  
2           those same prerogatives contribute to a  
3           culture that is not in fact or perception  
4           promoting a climate free from unwanted sexual  
5           conduct in safeguarding the rights of both the  
6           accused and the victims.

7                       And I do applaud, enthusiastically  
8           applaud the most recent changes in the  
9           military justice system. In my judgment they  
10          represent significant and long-needed  
11          progress, particularly with regard to the  
12          crimes we are considering today that seem to  
13          be an epidemic.

14                      There's no question a full court  
15          press is on, yet I'm not convinced it is all  
16          that's necessary to address the crisis and  
17          change leadership which is why I support  
18          Senator Gillibrand's proposal.

19                      With commanders retaining the  
20          decision on which cases go to trial I believe  
21          overcoming the fact and/or appearance of  
22          conflict of interest is a huge mountain to

1 climb.

2 From my own experience it was gut-  
3 wrenching to receive a sailor's allegation of  
4 sexual assault by another member of the  
5 command, particularly one who was senior and  
6 perhaps had an excellent performance record.

7 It is even more gut-wrenching,  
8 though, to reflect on what crimes may not have  
9 been reported because a man or woman in my  
10 command may not have believed that their side  
11 of the story would be believed, or that there  
12 would be retaliation.

13 I think I would have accepted, as  
14 a command would have accepted and perhaps even  
15 welcomed a senior JAG officer with prosecuting  
16 experience weighing the evidence and making a  
17 decision based on that evidence about whether  
18 to move forward with a court-martial. In my  
19 view that would be in the best interest of  
20 both the alleged victim and the accused.

21 I cannot see how a commander's  
22 authority would be undermined and that he or

1 she would somehow not be able to set the  
2 proper command climate to support the unit's  
3 mission if cases proceed to trial based on the  
4 strengths and weaknesses of the evidence.

5 When I was a commander in my very  
6 first command assignment back in the mid-  
7 eighties in San Francisco I did not have  
8 general court-martial convening authority. I  
9 was an O5.

10 The regional commander, a one-star  
11 admiral, held that authority. And my having  
12 to refer the most serious cases, happily there  
13 were only a couple, my having to refer those  
14 serious cases to him did not in any way lessen  
15 my charge and my ability to lead my sailors  
16 and officers effectively.

17 And certainly it did not absolve  
18 me of any accountability for good order and  
19 discipline and for the command to accomplish  
20 its mission.

21 I believe Senator Gillibrand's  
22 legislation strikes exactly the right balance

1           between military command needs and supporting  
2           victims and accused, and that's why I'm a  
3           supporter.

4                           And I couldn't agree more with  
5           Rabbi Robinson that what we really need is a  
6           change in the whole leadership culture of the  
7           military. But failing that I believe Senator  
8           Gillibrand's legislation is the appropriate  
9           next step to address this horrible issue.

10                           Thank you for giving me the  
11           opportunity to speak with you today.

12                           CHAIR JONES: Thank you very much.  
13           Colonel McHale?

14                           COL MCHALE: Ladies and gentlemen,  
15           members of the panel, like all of the other  
16           witnesses I am deeply honored, truly honored  
17           to be here this morning to provide testimony  
18           to the panel and to assist you as best I can  
19           in achieving your mission to review the  
20           various options available to you and to our  
21           country in order to remediate what I think is  
22           a continuing and very serious problem.

1           As a former congressman, member of  
2           the House Armed Services Committee, Defense  
3           Department official and Marine my involvement  
4           with our nation's military spans nearly 42  
5           years.

6           I have commanded three platoons, a  
7           rifle company, an infantry regiment and was  
8           the assistant division commander of the Fourth  
9           Marine Division for approximately a year and  
10          a half. I added together the bits and pieces  
11          and I think I have about 8 years of command  
12          time.

13          My words cannot convey the respect  
14          and admiration I have for our men and women in  
15          uniform. They are the finest people I have  
16          ever met. Commanders, enlisted, officers, we  
17          are blessed as a nation to have such men and  
18          women in the service of our country.

19          Having served in the Marine Corps  
20          for over 33 years and having served as an  
21          Assistant Secretary of Defense for 6 more I  
22          strongly support Senator Gillibrand's Military

1 Justice Improvement Act for the following  
2 reasons.

3 Number one, focus on war-fighting.  
4 I'm a retired grunt, a retired rifleman.  
5 First and foremost an effective commander  
6 needs to focus his or her attention on the  
7 war-fighting responsibilities of the command.

8 Our commanders are superbly  
9 trained and carefully chosen to fulfill this  
10 duty. By contrast commanders are rarely  
11 trained or prepared to exercise informed  
12 judgment regarding the weight of evidence in  
13 pending criminal matters.

14 It's simply not what they do for a  
15 living. They are talented, they are well-  
16 educated, they are superb war fighters, but  
17 they cannot adjudicate or weigh properly  
18 evidence brought to their attention regarding  
19 alleged criminality.

20 On issues such as eyewitness  
21 testimony a commander simply doesn't bring an  
22 attorney's experienced eye to a question of

1           whether or not a truthful witness is credibly  
2           describing what he or she might have seen. I  
3           suspect a judge or a litigator brings far more  
4           skepticism to eyewitness testimony than a  
5           commander would because he or she has little  
6           or no experience and virtually no training in  
7           these matters.

8                       I think that's especially true  
9           when the person providing the testimony is  
10          previously known as a truthful person and has  
11          a preexisting relationship with that  
12          commanding officer.

13                      Our commanders are trained to  
14          prepare their troops for battle. The  
15          Gillibrand legislation will allow commanders  
16          to be combat leaders while permitting military  
17          lawyers to weigh questions of evidence and  
18          potential criminality.

19                      Number two, ensure due process. A  
20          good commander develops close personal and  
21          professional relationships with members of the  
22          command. It's part of the job. For this

1           reason when two members of the command are  
2           placed within an adversarial relationship,  
3           accused and accuser, it is very difficult for  
4           the commander to be truly impartial.

5                         Yes, a strong and worthy commander  
6           can and should exercise objective judgment  
7           under these circumstances, but commanders are  
8           human beings and there will always be  
9           lingering doubts as to the commander's  
10          impartiality regarding previously well-known  
11          subordinates.

12                        And number three, avoid an  
13          inherent conflict of interest. Commanders are  
14          rightly held accountable for their command  
15          climate. Indeed, on December 23 the  
16          Department of the Army adopted a new  
17          regulation requiring yet one more survey of  
18          the command climate within the Army at every  
19          level above the company.

20                        In that context each court martial  
21          referral may be seen by some as proof of a  
22          poor command climate potentially affecting a

1 commander's own career and thereby deterring  
2 justified criminal referrals.

3 By contrast, some commanders may  
4 be tempted to pursue unwarranted prosecutions,  
5 try the accused, to quickly distance  
6 themselves and the command from notorious  
7 criminal allegations.

8 To ensure prompt punishment a  
9 commander, a regimental commander, a colonel  
10 during the Gulf War ordered me as the  
11 investigating officer to complete a very  
12 complex criminal investigation within 24  
13 hours. He was angered by the allegations, he  
14 was embarrassed by the potential reflection on  
15 the command and he gave me a direct order to  
16 complete the investigation within 24 hours.

17 In either case the commander's  
18 decision is potentially tainted by a lack of  
19 impartiality. To paraphrase President James  
20 Madison, "If men were angels there would be no  
21 need for law."

22 Many commanders are indeed able to

1 train for combat while concurrently and fairly  
2 assessing allegations of serious criminal  
3 misconduct. But a significant number cannot.

4 To ensure justice the Uniform Code  
5 of Military Justice now requires a structural  
6 change, not merely a plea for more thoughtful  
7 and impartial command intervention. Men are  
8 not angels and for that reason the time has  
9 come for law. And in my judgment the change  
10 must be substantial.

11 According to the Department of  
12 Defense recent statistics occurrences of  
13 unwanted sexual contact in the military rose  
14 to 26,000 in 2012 from 19,000 in 2010.

15 Both the accused and the accuser  
16 are entitled to a fair and informed assessment  
17 of these matters. Senator Gillibrand's  
18 legislation will ensure due process of law and  
19 the application of professional legal judgment  
20 on questions of evidentiary probity while  
21 allowing military commanders to focus on their  
22 war-fighting responsibilities.

1 I agree with General Rainville,  
2 and not merely because she's my wife, I agree  
3 with General Rainville that the decision  
4 whether or not to prosecute is not an  
5 essential element of command leadership.

6 It really is a question of  
7 evidentiary assessment. A commander absent  
8 that authority can be a very fine commander by  
9 using every other tool of leadership available  
10 to him or to her.

11 CHAIR JONES: Thank you very much.  
12 Captain Manning?

13 CAPT MANNING: Good morning. I'm  
14 very pleased to be here and I'm one of the  
15 lucky ones who only had to ride the Metro 2  
16 miles to arrive here today.

17 I've been retired from the Navy  
18 for a while now and during that time I have  
19 been running the Women in the Military Project  
20 for the Women's Research and Education Center  
21 on Capitol Hill here. So I have followed this  
22 issue for a long time as well as many other

1 issues involving women in the military.

2 As an O5 when I was a Navy  
3 commander I was commanding officer of the  
4 Naval Telecommunications Station on Diego  
5 Garcia in the British Indian Ocean territory.

6 For those of you who don't know  
7 where that is picture India and then head  
8 2,000 miles due south. It's smack in the  
9 middle of the Indian Ocean. It's an  
10 unaccompanied tour. There are no non-working  
11 adults on the entire island.

12 As commanding officer I ran a  
13 command with about 350 people. It had a 24/7  
14 mission. And I was the convening authority  
15 for summary and special court-martials only as  
16 Admiral Evans said when she was -- had her  
17 command.

18 The general court-martial  
19 authority was held by the commanding officer  
20 of the Naval Support Facility at Diego Garcia,  
21 a Navy captain with whom I'd had an  
22 extraordinarily strong working relationship.

1           And should any of my people need a  
2           general court-martial which fortunately wasn't  
3           the case I know he would have kept me fully  
4           cut in on what was going on. So it would not  
5           have bothered me at all that I wasn't the  
6           convening authority for general court-martial.

7           The most important disciplinary  
8           tool I had while in command and I believe this  
9           applies to any commanding officer was my  
10          Article 15 -- captain's mast as we call it in  
11          the Navy -- authority.

12          I had a good number of mast  
13          hearings and since I could also convene a  
14          summary or special court-martial should one of  
15          my crew members decline mast I was equipped to  
16          handle just about any sort of disciplinary  
17          problem that could arise.

18          This authority and those tools  
19          will remain untouched by the Military Justice  
20          Improvement Act.

21          That act also has the advantage as  
22          several of my colleagues here have noted of

1           freeing commanding officers from making legal  
2           judgments with respect to felonies for which  
3           they have scant training.

4                       I had more training than most  
5           commanding officers because I had been lucky  
6           enough as a lieutenant to go to a 7-week legal  
7           officer course where they taught you how to be  
8           a lawyer in 7 weeks, believe it or not,  
9           because there were a lot fewer lawyers in the  
10          Navy. But I did not have the judgment or the  
11          experience to make some of the legal decisions  
12          that could arise.

13                      Felonies, by the way, and  
14          Gillibrand's bill applies to felonies, are not  
15          disciplinary problems, they're crimes and  
16          should be adjudicated from start to finish by  
17          professionals. That is, by trained  
18          investigators and lawyers, albeit with the  
19          commanding officer of both the accused and the  
20          victims if they are two separate commanding  
21          offices kept in the loop through the entire  
22          process.

1           I think of the distinction between  
2           discipline problems and felonies as akin to my  
3           command responsibility for medical decisions.  
4           When someone had a cold, for example, I could  
5           allow their supervisors the authority to let  
6           them leave work early, or to not report for  
7           their shift that day.

8           On the other hand, when one of my  
9           sailors was more seriously ill or injured the  
10          decision had to be shifted from those within  
11          the command to the medical professionals.

12          For example, when one of my  
13          sailors was badly injured in a bicycle  
14          accident the medical professionals made all  
15          the decisions on whether or not he should be  
16          medevac'd, what sort of treatment and rehab he  
17          should be given, and when he should report  
18          back to work.

19          I was, of course, kept informed of  
20          the medical decisions. The use of medical  
21          professionals for medical decisions did not  
22          relieve of my command responsibility to that

1 sailor.

2 For instance, ensuring that his  
3 next of kin was notified about his injuries  
4 and the medical evacuation, securing his  
5 belongings while he was off the island,  
6 ensuring his workload was covered. Checking  
7 up on his progress and needs as he recuperated  
8 in Singapore 1,500 miles away from Diego  
9 Garcia.

10 So, just as in a medical case, a  
11 commander's responsibilities for the welfare  
12 of a member of his or her command who was  
13 accused of a felony or who was the victim of  
14 one continued whether or not he or she is also  
15 the convening authority.

16 I think those who claim that  
17 losing convening authority lessens a CO's  
18 ability to maintain good order and discipline,  
19 or his or her responsibility for the welfare  
20 of all command personnel are quite wrong.

21 Those responsibilities are not  
22 vested in convening authority. They're vested

1 in the command authority and those are two  
2 very different things. And they remain with  
3 the command no matter who is the convening  
4 authority. That is why I support Senator  
5 Gillibrand's bill.

6 As to command climate issues I  
7 think the heart of the matter and the two  
8 things we have to come to grips with before we  
9 are going to see a falling off of sexual  
10 assaults is, one, doing a much better job of  
11 teaching people the difference between legal  
12 and illegal orders. I don't think we do that  
13 at all, particularly with young enlisted  
14 personnel or with junior officers and NCOs as  
15 they progress through the ranks.

16 And we need to tell peers. When  
17 there is a sexual predator in a command  
18 somebody knows what he's up to, one of his  
19 peers, more than one of his peers. And we  
20 need to find a way to convince those peers  
21 that their responsibility is not to the  
22 friendship they have with the predator, but to

1 the command, and to come forward and blow the  
2 whistle.

3 And secondly, we do a lousy job at  
4 preventing retaliation. A lot of that is  
5 conducted at the peer level. I mean, I was  
6 appalled to hear there was an Article 32  
7 hearing at the Washington Navy Yard this year  
8 with a young midshipman who was kept on the  
9 stand forever. But when she went back to the  
10 Naval Academy she has been undergoing severe  
11 peer retaliation since she's been there.

12 And it's because people that are  
13 engaged in that have ways of keeping that  
14 hidden from the chain of command. And we need  
15 to set up structures within the command from  
16 the commanding officer, the senior enlisted  
17 personnel, to ferret that out and deal with  
18 it.

19 And until that fear of being  
20 retaliated against goes away and until those  
21 who do the retaliation really are punished for  
22 it we're going to have a problem getting

1 people to come forward.

2 Thank you for the opportunity to  
3 address you.

4 CHAIR JONES: Thank you, Captain  
5 Manning. Mr. Murphy.

6 MR. MURPHY: Thanks, Ms. Jones,  
7 and thanks for the panel for all the work that  
8 you do. I would say that if your work results  
9 in just one less sexual assault in the  
10 military your work will be well worth it. So  
11 thank you and thanks to all our other panel  
12 members as well.

13 Let me give you just my quick  
14 perspective. I'm honored -- this is the House  
15 caucus table because Paul and I both served  
16 about 700,000 folks in Pennsylvania but in  
17 different districts. He was just to the north  
18 of me. I was in Bucks County and he was in  
19 Lehigh County. But it's an honor to be here.

20 My perspective is one that I have  
21 served two combat deployments after 9/11. My  
22 first deployment I was the command judge

1 advocate for the 21st Theater Support Command  
2 in Bosnia right after 9/11. I served -- my  
3 high, high boss was General Petraeus at that  
4 time.

5 And then my second deployment was  
6 part of the invasion force in Iraq as the 2nd  
7 Brigade Combat Team Judge Advocate with the  
8 82nd Airborne Division.

9 In that second role in Iraq we had  
10 court-martialed 16 of our paratroopers and  
11 brought three cases to the Supreme Court in  
12 Iraq. Two of them were terrorists. So I have  
13 advised commanders in both deployed and  
14 garrison environments.

15 And prior to those two deployments  
16 I was a military and constitutional law  
17 professor at West Point as a young Army  
18 captain. And then after my military service  
19 served two terms in the Congress on the Armed  
20 Services Committee, the Appropriations  
21 Committee and the Intelligence Committee.

22 And currently I'm a partner at Fox

1 Rothschild law firm in Philadelphia and with  
2 MSNBC as a military analyst and host of a show  
3 called Taking the Hill.

4 Sexual assaults are a cancer in  
5 both the military and the civilian sector.  
6 And especially when you look at the age group  
7 of especially -- both the perpetrators and the  
8 victims are usually within the ages of 18 to  
9 24.

10 But the men and women who serve in  
11 our military are expected to be better than  
12 their civilian counterparts. And I support  
13 Senator Gillibrand's efforts because I do  
14 believe that we need systematic change right  
15 now.

16 I have no doubt that almost every  
17 commander who serves our country wants to do  
18 the right thing. But to me this is a problem  
19 that is ongoing. I think we can make with the  
20 current changes and current focus some  
21 differences on the margin. But to me it is  
22 imperative that we have a systematic change.

1                   And those instances where there is  
2                   a felony committed we should take them out of  
3                   the discretion of the commander. We should  
4                   remain as Senator Gillibrand has offered, we  
5                   should continue to allow these commanders to  
6                   have authority at the Article 15 or non-  
7                   judicial punishment level.

8                   But much like Captain Manning's  
9                   analogy, military doctrine, if a soldier is  
10                  hung over or there's something minor medically  
11                  wrong a commander can deal with it. But if  
12                  it's something serious those hospital  
13                  commanders, those doctors have independent  
14                  judgment. And that's why I believe the  
15                  efforts that Senator Gillibrand is doing  
16                  through the Military Justice Improvement Act  
17                  to allow an independent military justice  
18                  system need to be done.

19                  A couple of brief points, and I  
20                  know most of our time is for question and  
21                  answer. But when I talk about -- to me it's  
22                  perception becomes reality.

1                   In the civilian sector the  
2           Department of Justice reports 65 percent  
3           under-reported in the civilian criminal  
4           justice system when dealing with sexual  
5           assault, 65 percent. In the military it's  
6           higher. In 2012 it was about 89 percent don't  
7           report. I know those numbers for last year  
8           have increased meaning more have come forward,  
9           but that's roughly about 80 percent right now.  
10          Still higher though under-reported in the  
11          military.

12                   And when you look at the reasons  
13          why, you look at the Pentagon's estimate, the  
14          SAPRO, 66 percent of active duty women who did  
15          not report unwanted sexual conduct was because  
16          they felt uncomfortable. There is a  
17          perception out there. Soldiers don't  
18          understand what's going on. And when they're  
19          victims they fear the worst. And that's why  
20          if you have an independent military justice  
21          system at the felony level I do believe more  
22          women will come forward.

1                   And I do believe more women will  
2                   feel justified in that some of these  
3                   assaultants will become convicted at court-  
4                   martial. As you know in 2012 it was about 1  
5                   percent of the cases resulted in court-  
6                   martial, 1 percent.

7                   Now, I don't think that this is a  
8                   problem, an issue where commanders are saying  
9                   well, let's not court-martial so-and-so in  
10                  most cases, 99.9 percent of the cases.

11                  But within the ranks I would ask  
12                  this panel to have empathy of those soldiers  
13                  who don't understand exactly the system. They  
14                  trust the military to do the right thing. And  
15                  I trust and I suggest to this panel that they  
16                  should do the right thing by understanding  
17                  that this is a systematic issue, that just a  
18                  focus, albeit a genuine one, won't result in  
19                  the changes that need to happen immediately.

20                  I would echo Colonel McHale's  
21                  comments that commanders should be focused on  
22                  war-fighting. They are focused on war-

1 fighting.

2 The reality of this situation is  
3 as a judge advocate you, whether it's an  
4 Article 15, you still in Article 15's, those  
5 soldiers can turn them down and still take  
6 them to court-martial. So you make sure that  
7 when you do that charge sheet you have all  
8 your elements lined up so you can prosecute  
9 that. And you go with your commanders.

10 But in cases where it's a felony  
11 where it's a sexual assault those commanders,  
12 if you actually had a truth serum and you  
13 talked to them about this, they would probably  
14 say I don't really want the jurisdiction. If  
15 you can handle it separately and I don't have  
16 to deal with it so be it. That would be fine.

17 I understand change is hard. As  
18 Bobby Kennedy said once, "Change is hard  
19 because change has enemies." Well, that's  
20 just the way we always did it. I get it.

21 But the military justice system  
22 has evolved over the centuries. It is better

1           today than it was 200 years ago. But it's our  
2           duty to make sure that the military justice  
3           system is better tomorrow than it is today.

4                        To make it better tomorrow we need  
5           this panel to recommend the changes in my  
6           opinion outlined by Senator Gillibrand. I  
7           think they are thoughtful. I think they will  
8           make a serious difference when we talk about  
9           one of the cancers in the military and in  
10          civilian society.

11                       And I do believe that it will make  
12          a difference and strike the right balance  
13          between a commander's authority and military  
14          justice being accomplished. Thank you very  
15          much.

16                       CHAIR JONES: Thank you, Mr.  
17          Murphy. Ms. Krepp? Good morning.

18                       MS. KREPP: I joined the military  
19          in 1998. I joined the Coast Guard. And I did  
20          so because that's what my family did. My  
21          husband, my father, my mother, my cousins, my  
22          uncles, my great-grandfathers, my great-great-

1           grandfathers served in the military. We  
2           covered all the branches. We did so for 200  
3           years.

4                       My daughters will not join the  
5           military and they will not join the military  
6           because of what I saw on active duty in the  
7           Coast Guard and because of what I saw as chief  
8           counsel of the U.S. Maritime Administration.

9                       As chief counsel of the U.S.  
10          Maritime Administration I had oversight over  
11          Kings Point. Now, everybody remembers West  
12          Point. My father is an alumni. They remember  
13          the Naval Academy. They remember the Air  
14          Force Academy and a couple still remember the  
15          Coast Guard Academy up in New London. But a  
16          lot of folks forget about Kings Point.

17                      Kings Point is pretty important.  
18          It was started in the nineteen forties. It  
19          was started because we needed U.S. merchant  
20          mariners, because we need them to be able to  
21          transport the items that the military needed.

22                      So these men and women who

1 graduate from Kings Point have military  
2 obligations just like West Pointers do. They  
3 either serve on the reserve capacity and the  
4 U.S. Military Sea Lift Command has  
5 responsibility for that, or they serve on  
6 active duty.

7 And they've served in every  
8 capacity. In fact, we had a Kings Point  
9 become an astronaut. It was like how did a  
10 merchant mariner become an astronaut? But  
11 they do. It's kind of a crazy thing but it  
12 happens.

13 What I learned though is that we  
14 were graduating students that didn't trust  
15 their command. There was a report that was  
16 done, it was a survey that was done in 2009  
17 and 2010. And we found that the cadets when  
18 they came in as first and second years trusted  
19 their command.

20 But by the time they left they  
21 didn't. They would only trust their rabbis.  
22 They would trust their priests, they would

1 trust their parents. And it was appalling.  
2 It was absolutely appalling.

3 I had to deal with rape. I had to  
4 deal with sexual assault. Student on student  
5 and everything else in between. And a lot of  
6 these girls wouldn't report it.

7 Now, I've been dealing with sexual  
8 assault issues for 20 years. A good friend of  
9 mine was raped 20 years ago and I saw what it  
10 did to her family. I saw what it did to her  
11 mother. I saw what it did to her father.  
12 I've seen what it's done to her marriage 20  
13 years later. So with that in mind when I was  
14 chief counsel my goal was to make sure that  
15 these girls never suffered.

16 And by the way, it was not just  
17 girls. It was girls and boys, which was truly  
18 shocking. Because 20 years ago I thought it  
19 was just girls. Just girls. Men couldn't be  
20 raped. Oh boy, was I wrong. Men could be  
21 raped.

22 So I saw what was going on. And

1           then I realized you know what? We're teaching  
2           these young men and women not to trust their  
3           command. And they would never want to go into  
4           the military. Then they're going to see what  
5           happened at the U.S. Naval Academy where that  
6           nice young lady had to sit on the witness  
7           stand and be asked the question did you feel  
8           like a ho. Okay. Now, you talk about culture  
9           change. You've just wrecked an entire  
10          generation, folks. Because all of these young  
11          men and women are going to think it's okay for  
12          you to be asked do you feel like a ho on the  
13          stand.

14                        So 30 years from now when they're  
15          an admiral or they're a general they're going  
16          to remember that. They're not going to  
17          remember that they're equals. They're going  
18          to remember that it's okay to do that. And  
19          I'm appalled by that.

20                        Because when my mother joined the  
21          Army in 1970 it was a separate command. My  
22          father had to go to his general and say,

1           General, would you talk to my wife's, my new  
2           wife's command to make sure that they could  
3           report together to the same place. You know,  
4           they're separate, supposedly separate but  
5           equal, but I don't think so. So that was back  
6           in the early seventies.

7                        Then I joined in the late  
8           nineties. We're now at 2014. Nothing has  
9           changed. So when you start talking about  
10          culture, culture has to change now. Because  
11          you are teaching the next generation and that  
12          next generation will be leaders in 20 to 30  
13          years.

14                      But I do not believe the current  
15          reporting structure provides for the change,  
16          and that's why I support Senator Gillibrand.  
17          Because you have to trust what's going on.  
18          You have to trust your leadership.

19                      I mean, General Odierno spoke  
20          before the National Press Club yesterday and  
21          talked a lot about trust and said that you  
22          have to be able to trust those that are next

1 to you.

2 These men and women aren't  
3 trusting each other, and trust has to come  
4 with change. So my proposal to you is support  
5 Senator Gillibrand. Support changing the  
6 commanding structure. Support changing the  
7 culture so that in 20 years from now we're  
8 going to see men and women who trust each  
9 other.

10 And not only do you support them,  
11 but you need to get more women in. And the  
12 only way you get more women in is to change my  
13 mind, for example. To say it's okay, Denise.  
14 Let Megan and Cason go to West Point like  
15 their grandfather did. It's all right.  
16 Nothing will happen to them.

17 Let them go to Kings Point and  
18 trust that it's all right, that your daughter  
19 won't be raped. I don't think I can do that  
20 right now and that pisses me off because my  
21 family has served for 200 years. But they  
22 will not continue in this environment. Thank

1           you for having me.

2                           CHAIR JONES: Thank you, Ms.  
3           Krepp. Should we begin questions or take a  
4           break? Begin questions? All right.  
5           Professor Hillman?

6                           PROF. HILLMAN: Thank you, Ms.  
7           Jones. Thank you all for coming. I'm  
8           grateful for your initial remarks and also  
9           your willingness to respond to our questions.  
10                          We've heard from a lot of people  
11           on these issues. You're by far the loudest  
12           chorus of voices advocating for this kind of  
13           change.

14                          One of the questions about your  
15           credibility on this issue is how much you know  
16           about what's happening in the military right  
17           now because so much has changed in recent  
18           years with respect to -- I mean just in the  
19           past 30 days we've had another set of changes  
20           that we're trying to understand.

21                          I think several of you mentioned  
22           this, but I think maybe Mr. Murphy said it

1 most clearly. Trying to explain to an  
2 enlisted person, a private on the ground what  
3 the command structure looks like and what the  
4 military justice system is like is no easy  
5 task.

6 I actually think explaining to me  
7 what the military justice system is like is no  
8 easy task, and I've come to appreciate the  
9 complexities that we're dealing with here.

10 But I just wonder to what extent  
11 do you feel confident in your recommendations  
12 based on your understanding of what's  
13 happening now given that we've had, for  
14 instance, two new iterations of the rape and  
15 sexual assault statute in the UCMJ, one in  
16 2007, another in 2012. We've had a new lawyer  
17 added to the process. We now have special  
18 victims counsel so that victims when they  
19 report get access to an attorney who will  
20 advocate for them.

21 And other changes that have  
22 happened that are a part -- you pointed out

1           that you don't have faith that culture has  
2           changed a lot. But I just wonder can you tell  
3           us to what extent you know what's going on  
4           right now so that we have a sense of whether  
5           or not your perspectives are the right ones  
6           for today because we're here in 2014 and not  
7           at the point in time when you actually were in  
8           the service and you had the sense of what was  
9           happening in your units and under your  
10          commands.

11                       RDML ROBINSON: I'm going to jump  
12          right on that. I serve right now as the rabbi  
13          supervising as the endorsing agent it's called  
14          over 30 rabbis on active duty in the  
15          Department of Defense. I'm in a sense their  
16          rabbi.

17                       And I hear from them regularly and  
18          they are dealing with these issues regularly.  
19          Sometimes they are ill-equipped. Usually a  
20          trusted person within the command has been  
21          mentioned. They're the first responder.

22                       CHAIR JONES: I'm sorry, I just

1           didn't hear who you were dealing with. Are we  
2           talking about victims?

3                       RDML ROBINSON: No, I'm dealing  
4           with 30 active duty rabbis that  
5           ecclesiastically report to me.

6                       CHAIR JONES: I didn't hear --  
7           okay, I've got it. Thank you.

8                       RDML ROBINSON: And -- over 30 on  
9           active duty and some others in the reserve  
10          component, some of those mobilized.

11                      And they are typically first  
12          responders. They are the person trusted with  
13          knowledge with which other people are not  
14          trusted. And I know their angst in this  
15          process has not changed. The needle hasn't  
16          moved since I retired in 2007.

17                      Now, that's awful that the needle  
18          hasn't moved despite all the clamor around it.

19                      One of my chaplains told me and I  
20          did a very unscientific informal poll of as  
21          many of those 30 as I could get a hold of in  
22          the last 6 weeks.

1                   And one of those chaplains told  
2                   me, you know, the SAPR training went from  
3                   being inadequate, a kind of ticket punch  
4                   ineffective, to now being ubiquitous, but  
5                   still ineffective. Because it's now seen as  
6                   a punishment on the whole community for the  
7                   actions of a few.

8                   Whereas in fact it's imposed on  
9                   the whole community because the whole  
10                  community supports the actions of a few. In  
11                  all kinds of subsidiary ways, by either  
12                  ignoring it, or supporting it.

13                  The commanders send all kinds of  
14                  signals that play to the -- and it's not just  
15                  about men assaulting women, it's also males  
16                  that are assaulted. But that play on the  
17                  testosterone level in that age group. And it  
18                  is necessary for war-fighting at some visceral  
19                  level.

20                  So, somebody said that the  
21                  commanders, I think it was Mr. Murphy, the  
22                  Honorable Mr. Murphy said that the commanders

1 want to do the right thing. I truly believe  
2 they think they're doing the right thing right  
3 now. They think that this is all a bunch of  
4 malarkey and that they've been doing the right  
5 thing all along.

6 I go back to my experiences in  
7 1971. I served with people, African-Americans  
8 who had -- one African-American master chief  
9 by the time I met him who had been a steward  
10 at the Naval Academy for 20 years, never went  
11 from serving that same group of tables that he  
12 served when he first entered the service. And  
13 then finally in the sixties and then later in  
14 the seventies was able to break out of that  
15 over a 30-year career.

16 I've seen the change. The people  
17 who were discriminating against African-  
18 Americans and others back in the sixties and  
19 seventies truly, and this is the most  
20 frightening aspect of this stuff, believed  
21 what they were doing was God's will. Not all  
22 of them. Some of them weren't able to see the

1           mote in their own eye, but many, too many  
2           actually thought this was the divine plan.

3                         And I just am afraid that the  
4           needle hasn't moved. And that's a perspective  
5           the last one of these chaplains, a colonel, at  
6           least an O6 I spoke to on three occasions  
7           including yesterday, no one is seeing the  
8           needle move. That's up to yesterday. I don't  
9           think that the recent change in the last  
10          month.

11                        Take a look just at the form a  
12          servicemember has to sign for an unrestricted  
13          report. If you're a 19-year-old woman who has  
14          been assaulted, you're a survivor and you look  
15          at that, the rights that you give away. The  
16          knowledge that you will be -- you're a 19-  
17          year-old. You might be prosecuted for  
18          underage drinking. It's clear you will be  
19          prosecuted for subsidiary -- that's on the  
20          form.

21                        PROF. HILLMAN: Thank you,  
22          Admiral. Collateral misconduct is a big

1 issue. We've definitely heard about that.  
2 I'd like to hear from the other folks too.  
3 Thank you very much.

4 CAPT MANNING: In my day job I do  
5 work continually with victims and command  
6 members of people currently on active duty.  
7 And it took me a while perhaps because I was  
8 a commanding officer and thought I had a good  
9 grip on what was going on in my command to  
10 understand that no matter how hard you try  
11 stuff goes on.

12 And a pattern I've seen is, and I  
13 will use this common one but it's not the only  
14 one, a fairly senior NCO is a sexual predator.  
15 He might be an E5, an E6. To an E2 or E3 male  
16 or female he looks like God. He's competent  
17 at his day job. His own chain of command has  
18 great confidence in his skill at whatever the  
19 day job is.

20 And he knows how to pick a victim.  
21 He looks for somebody who's maybe not the best  
22 performer and he begins to slur him or her up

1 the chain of command before he even starts to  
2 assault them so that their reputation is  
3 ruined, their credibility is ruined by  
4 somebody who is competent professionally  
5 before he assaults them.

6 And when they come, a lot of them  
7 do not understand that they can go to anybody  
8 and report it. You can tell them till you're  
9 blue in the face, they don't hear it. They  
10 think they've got to go to their commanding  
11 officer and that guy is in the way. That guy  
12 has already poisoned the chain of command all  
13 the way up to the top.

14 So the victim comes forward and  
15 says I was sexually assaulted. Nobody  
16 believes him or her. They think the person is  
17 trying to retaliate. They think they're lazy  
18 and they're trying to get excused from work.  
19 The well has been poisoned.

20 And I think that is something that  
21 is very difficult to ferret out no matter how  
22 careful a commanding officer you are.

1 I mean, I used to appear in my  
2 various watch sections and there were 11 of  
3 them around the island of Diego Garcia at 3 in  
4 the morning just so I could see what was going  
5 on sometimes. But people have a way of  
6 telephoning ahead and saying oh, she got into  
7 her car, she might be coming your way. Stuff  
8 goes underground and it goes underground very  
9 easily.

10 And until we come to grips with  
11 the fact that there are predators out there.  
12 And it took me a long time to believe there  
13 were. I just couldn't get it through my head  
14 that they were there and they've been there  
15 for years, some of them. That's what we've  
16 got to get at. And as I said before, at least  
17 one of their peers always knows it's going on.

18 And it's a problem not just of  
19 women. The majority of the victims are in  
20 fact men. And it's not gays raping them, it's  
21 bullying, it's hazing. It's, oh, he's the guy  
22 that's not carrying his workload, let's get

1 him.

2 MR. MURPHY: I still serve on the  
3 Board of Visitors at West Point in advising  
4 commanders on an informal basis, both in the  
5 Pennsylvania National Guard and elsewhere.

6 I would just say just because the  
7 panel members might not be on active duty any  
8 longer or serving in that capacity they do  
9 have a valuable perspective to give. And I  
10 understand the criticism.

11 My best analogy is when I was a  
12 19-year-old cadet and had read Colin Powell's  
13 book, when I was asked how do you feel about  
14 the Don't Ask Don't Tell policy I agreed with  
15 it. I said well, Colin Powell said it, and  
16 it's a choice.

17 But it wasn't until I had the  
18 perspective to see soldiers get thrown out for  
19 not doing anything wrong but just because they  
20 were gay did I see firsthand that it was  
21 wrong. So, the perspective that I think that  
22 this panel brings and others bring to this

1 argument is a worthy one.

2 And I would suggest, to make  
3 another analogy, when I was leading the fight  
4 to repeal Don't Ask Don't Tell in Congress a  
5 lot of folks said how this was going to change  
6 the military dramatically. We need all this  
7 training and et cetera. And that came from  
8 the Secretary of Defense himself.

9 When we asked the tactical  
10 commanders at West Point that were in charge  
11 of 120 cadets, men and women, how the  
12 implementation within the first few months of  
13 Don't Ask Don't Tell, how was it being  
14 implemented and what they thought. They said  
15 sir, you know, we prepared for a collision and  
16 it wasn't even a bug on the windshield.

17 And the changes that we're asking  
18 for and supporting today won't really make  
19 that much of a difference as far as the  
20 commander's responsibility. These are small  
21 technical changes.

22 Commanders when I was in Iraq or

1 my deployments or when I was even in garrison  
2 they would say Captain Murphy, what do you  
3 think we should do. And I'd say this is what  
4 we should do, X, Y, Z, and they'd say okay  
5 because I had that trust. And it worked in  
6 most of those cases.

7 But the reality of it is that  
8 ignoring the fact that there's a perception  
9 out there within the ranks that these cases  
10 aren't being reported.

11 Dick Cheney. The year before -- I  
12 joined the military when I was 19. It was  
13 1993. Dick Cheney in 1992 argued for a zero  
14 tolerance policy when it comes to sexual  
15 assaults. Every Secretary of Defense argued.  
16 And again, their intention is pure. But  
17 that's why we need a systematic change. And  
18 so, that's to answer your question.

19 MAJ GEN RAINVILLE: Since I  
20 retired in 2006 I have stayed involved in a  
21 number of ways. I am with the National Guard  
22 as a senior statesperson. They changed it

1 from graybeards for me to senior statesperson  
2 which I appreciate.

3 (Laughter.)

4 MAJ GEN RAINVILLE: But what that  
5 is really is a senior-level experience level  
6 advisory group that works with the chief of  
7 the National Guard Bureau as well as in my  
8 case the director of the Air National Guard on  
9 a variety of issues looking strategically at  
10 where the Guard is and how the Guard needs to  
11 handle some of these larger issues.

12 I also serve as a trustee on the  
13 board of Norwich University which if you're  
14 not aware is the nation's oldest private  
15 military college, and at least up until the  
16 ROTC scholarships took such a funding hit was  
17 one of the largest producers of Marine Corps  
18 officers next to the Naval Academy.

19 We track very closely the issues  
20 that affect the military academies, the  
21 services and what they are doing, and how our  
22 young men and women who are commissioned are

1           doing once they go out and they begin their  
2           service to the nation.

3                       I also have been privileged to  
4           speak to a number of groups since I retired  
5           including a Guard military women's workshop  
6           where we had a day of discussing many issues  
7           affecting women. And veterans groups as well  
8           as most recently, and what really focused me  
9           on the urgency of this matter is I was asked  
10          to speak to a group of women Marine aviators,  
11          enlisted and officer, coming from a number of  
12          different installations and meeting near Camp  
13          Lejeune in the fall.

14                      They were gathering for the main  
15          reason of education and training on the  
16          Commandant's new policies regarding sexual  
17          harassment and sexual assault, and how to  
18          report it, and how it would be dealt with in  
19          the chain.

20                      I stayed for most of that and I  
21          was able to speak to these women not only as  
22          a keynote speaker but informally as well.

1                   I was really taken aback with  
2                   their stories and just their comments. Not  
3                   even drawing attention to a story because to  
4                   them it was a day-to-day occurrence.

5                   My career in the Air Force started  
6                   as a maintenance officer. I worked on the  
7                   flight line. I experienced in `79, `80 and  
8                   `81 the same kind of baloney or malarkey that  
9                   these very dedicated, very professional women  
10                  were still having to deal with.

11                  And it's stuff that you would look  
12                  at and go that's just stupid that anybody  
13                  would think they could behave in this way.  
14                  And it went from the minor to not-so-minor  
15                  harassment issues. And some of the women  
16                  discussed offline about to me what is sexual  
17                  assault, short of rape. They didn't discuss  
18                  that in this forum.

19                  But clearly there is a climate  
20                  across several commands that has not  
21                  materially changed since the late seventies.  
22                  And I truly was stunned.

1 I really talked to them and tried  
2 to get a better feel for that. I've followed  
3 it up with conversations with others.

4 And I realize that that is  
5 anecdotal but it really enlightened me on what  
6 I mentioned before, those cycles, that we tend  
7 to go through cycles.

8 There is a desire to improve it,  
9 but there is such a resistance to change. And  
10 as a commander I can understand and sympathize  
11 with some of that.

12 But there's such a resistance to  
13 real and substantive change that that  
14 overcomes, I believe, the desire to really  
15 improve these issues.

16 And we too easily I think look for  
17 the change, look for the improvement without  
18 really taking the time to analyze is this  
19 lasting, is this real. Are the changes that  
20 we've made enough.

21 And I really became focused on it.  
22 I support Senator Gillibrand because I was so

1 frustrated thinking how can I help. I speak  
2 to groups. What can I do more than just speak  
3 and listen and encourage and motivate. What  
4 can I do.

5 And at this time I really feel  
6 it's important for all of us who really care  
7 about the military and their calling, and the  
8 fact that every citizen should be free to  
9 serve if they're physically and mentally  
10 capable regardless of gender or any other  
11 determining factor. What can we do?

12 And I think that this change in  
13 the system is the best and perhaps the only  
14 way to put in place a change that can be  
15 lasting. Because it really, I think, will  
16 support the commanders in their efforts to  
17 improve the command climate. Because they  
18 don't have to be the judge and jury.

19 They can be the commander and they  
20 can analyze their units and the command  
21 climate. They can work to change it. They  
22 don't have to pass forward to their superior

1 service Secretary any case where they disagree  
2 with their JAG or where they and the JAG agree  
3 not to prosecute.

4 You know, we take all of that  
5 away. We leave it in the hands of  
6 professionals and the commanders then can  
7 really command and they can lead. And our men  
8 and women can have faith in the system.

9 And those women who have  
10 sacrificed a lot and who really challenge  
11 themselves every day to be Marine Corps  
12 aviators can know that they're going to be  
13 backed up. That the careers they've chosen,  
14 the life they've chosen is a good and  
15 honorable one.

16 And I think that a lot of them are  
17 questioning that and we're going to lose a lot  
18 of them. And that would be a disservice to  
19 the country.

20 So I kind of roll together all of  
21 those experiences and all of those backgrounds  
22 in looking not only at the university level

1 and how we're preparing future leaders, but  
2 what those future leaders, what those young  
3 leaders out there are doing and experiencing.

4 And I again just ask you please  
5 look seriously at this change. A lot of the  
6 changes in the NDAA are good ones. There are  
7 a couple of that are really concerning that I  
8 think may set the system up not to do well.

9 But this one concrete change to  
10 the system itself separating out the judge and  
11 jury responsibility for serious crimes,  
12 putting it in the professionals' hands,  
13 leaving the commanders to be professional  
14 military leaders and commanders I think is  
15 really going to serve everyone better. So,  
16 thank you for listening again.

17 MS. KREPP: You pose a very  
18 interesting question, what is our credibility.  
19 But I think I would turn it around and say  
20 what is the credibility of the senior  
21 leadership of the Department of Defense right  
22 now.

1                   The majority of the senior  
2                   leadership in the Department of Defense  
3                   graduated college before women were allowed to  
4                   be there. General Odierno who's the Army  
5                   Chief of Staff right now graduated West Point  
6                   in 1976. So he was the last class that didn't  
7                   see a female there. No women, none. None.  
8                   Nineteen seventy-seven saw one because that  
9                   was the class of 1980. Nineteen seventy-eight  
10                  saw a couple more, 1979 maybe more. So we've  
11                  got an entire corps of men, didn't go to  
12                  school with women.

13                         Yet they went to school with --  
14                         they might have seen a couple. And then, you  
15                         know, you saw a couple more because they came  
16                         in as direct commissions, or they came in as  
17                         OCS. So that's what they came in as.

18                         So when you talk about credibility  
19                         I'm going to go right back at you and say  
20                         what's theirs.

21                         And that's important. Because if  
22                         these are the men that are going to be telling

1 us that we're going to be changing our culture  
2 then Generals, how are you changing yours?  
3 And I say that because it's important to get  
4 more women in the senior leadership.

5 This panel here doesn't look like  
6 the top leadership of the military. Nope,  
7 nope, nope. There's maybe one, there's maybe  
8 two.

9 PROF. HILLMAN: There's two judge  
10 advocates.

11 MS. KREPP: Yes. And guess what?  
12 I had to leave the Coast Guard to become the  
13 equivalent of a judge advocate general. I was  
14 chief counsel of the U.S. Maritime  
15 Administration. I was the same level as Fred  
16 Kenney is right now, Coast Guard.

17 But there's never been a female  
18 Coast Guard admiral TJAG. In fact, in the  
19 Coast Guard there's a little bit of a quota  
20 going on. You get one female per year that  
21 makes admiral. So maybe in 10 years there  
22 might be 10 more female admirals coming in.

1           So it's going to take time.

2                       So again, the credibility, what's  
3           the current command credibility and how long  
4           is it going to take to give them more  
5           credibility. Because the changes you talked  
6           about don't happen immediately.

7                       Just because you've got a lot more  
8           folks in there being instructors, fantastic.  
9           It's not going to flip overnight. It's going  
10          to take time. And it's going to take time for  
11          people to believe in them. And if they don't  
12          believe in them now don't expect for them to  
13          believe in them tomorrow.

14                      MS. HOLTZMAN: Can I just follow  
15          up? On that line, and I want to join  
16          Professor Hillman in thanking you all for  
17          coming here and sharing your experience and  
18          your concern and your perspective.

19                      But it's not going to happen  
20          overnight was your concern about the changes  
21          that have taken place. It's not going to make  
22          any difference overnight.

1 MS. KREPP: Right.

2 MS. HOLTZMAN: And that may be  
3 true. Changing the rule as a commander, will  
4 that make a difference overnight?

5 MS. KREPP: Yes.

6 MS. HOLTZMAN: And can you explain  
7 that, please?

8 MS. KREPP: Because it will send  
9 the signal that the commander doesn't have the  
10 authority to make the decision anymore. It  
11 will help build trust. It will give people  
12 the ability to have greater trust.

13 Right now you have a conflict of  
14 interest. I believe one person already talked  
15 about how you have a command structure. You  
16 have people, you have responsibilities. You  
17 know all of these men and women. And then at  
18 some point something happens --

19 MS. HOLTZMAN: But the O6 is the  
20 one who makes the decision now. Does the O6  
21 know everyone personally in his or her  
22 command?

1 MS. KREPP: Ma'am, if the O6  
2 doesn't the O6 knows how to pick up the phone  
3 and find out. The chain is amazing --

4 MS. HOLTZMAN: But I'm asking you  
5 do they personally know everybody in the  
6 command? I'm sorry, I'm not a military person  
7 so you're talking to tabula rasa. It's not  
8 because I'm challenging you.

9 RDML ROBINSON: Ma'am, if I can  
10 help out on this issue. The O6 is not  
11 operating in a vacuum. The O6 is trusting the  
12 word of the O5 and the others. So they don't  
13 know everybody personally.

14 MS. HOLTZMAN: Okay, that was my  
15 question.

16 COL MCHALE: I'm a retired O6 and  
17 I commanded at the O6 level. And I knew every  
18 officer in my command.

19 MS. HOLTZMAN: Okay, but you  
20 didn't know all the --

21 COL MCHALE: I did not.

22 MS. HOLTZMAN: -- enlisted people.

1           Okay.

2                           COL MCHALE:   But for officers at  
3           that level of command you're probably talking  
4           40, 50 officers.   I knew every one of them.  
5           I knew most of the staff NCOs and I had a  
6           strong familiarity with many of the enlisted  
7           personnel.   And so your depth of personal and  
8           professional rapport is very deep and very  
9           strong throughout the entire institution.

10                           And if an officer is involved in  
11           one of these accusations you almost certainly  
12           know that officer before the allegations are  
13           raised.

14                           RDML ROBINSON:   On the issue of  
15           credibility, ma'am, I can't speak for others  
16           but -- well, just from my own perspective.   I  
17           retired from the Navy when I reached what was  
18           by policy the highest grade I could receive.  
19           But my flag classmates went on to other --  
20           some are four-stars.   Some retired recently as  
21           two- or three-stars.   And I'm in touch with  
22           them.   We remain bonded in a lot of ways.

1                   And that's true of the Marine  
2                   generals with whom I served, some within the  
3                   Fourth Marine Division community. So I'm not  
4                   out of touch and I've spoken to them recently,  
5                   some of whom are currently serving at the  
6                   four- and three-star level.

7                   And I hate to use this expression  
8                   but I'm going to come back to -- to a man,  
9                   because it's the only ones I spoke to, to a  
10                  man they all said -- we were talking about  
11                  signals. When the Secretary of Defense didn't  
12                  call the Chief of Staff of the Air Force and  
13                  say two strikes and you're out to the three-  
14                  star that signal was a signal of tolerance  
15                  that as somebody said the civilian leadership  
16                  wants to do the right thing. None of the  
17                  people I spoke to who are serving now or  
18                  recently retired at the flag and general  
19                  officer level understood why that call wasn't  
20                  made.

21                  So you ask is our information  
22                  current. I was in communication with two

1 four-stars and a two-star within the last 48  
2 hours. How much more current and how much  
3 more damning?

4 RDML EVANS: I would like to just  
5 say a couple of words about credibility. I  
6 did retire a number of years ago but  
7 subsequent to my retirement I served for 5  
8 years as a Presidential appointee to the Board  
9 of Visitors at the military academy in the  
10 mid-two thousands.

11 I also just recently finished a 9-  
12 year term as a director of the Naval Academy  
13 Foundation which is the primary fund-raising  
14 arm for the Naval Academy.

15 And in that role we came to the  
16 Academy quite often. Always had opportunities  
17 to interact with not only midshipmen but also  
18 junior and senior officers, but particularly  
19 junior officers. And I had a special interest  
20 in the experience of the junior women officers  
21 because I had been a battalion officer for 2  
22 years at the Naval Academy in the eighties and

1           chaired the first study of the progress of  
2           women at any of the service academies.

3                       So I've had a continuing interest  
4           in the integration of women into the Academy  
5           and then their subsequent experiences out in  
6           the fleet.

7                       I also speak professionally to  
8           large groups, small groups on issues of  
9           leadership. And those experiences have taken  
10          me to most recently, for example, in Hawaii  
11          the Hawaii Women's Conference where they have  
12          a very large component of military women  
13          attending. So I've had the opportunity to  
14          have continuing interaction with women.

15                      Moreover, I live in a Navy town.  
16          I live in the Jacksonville area where we have  
17          Mayport Naval Station as well as the Naval Air  
18          Station in Jacksonville. So I have some  
19          contact with both men and women active and  
20          retired there.

21                      What has come through loud and  
22          clear in my encounters, particularly recently,

1 is optimism from women who are serving.

2 Optimism that this is a time of change.

3 They're paying attention to the  
4 policy changes, the structural changes.  
5 They're also reading about some of the other  
6 things that are happening and questioning  
7 them.

8 But I would say overall there was  
9 a sense of optimism. And it was not unlike  
10 the sense of optimism I remember back in 1992  
11 after Tailhook when the standing committee was  
12 convened with very senior military and  
13 civilian members on it that now finally  
14 something was going to be done.

15 So I sense now that a number of  
16 the women I've spoken to at least get it that  
17 there's a lot of attention to this.

18 And it seems to me that the  
19 changes that have been made most recently in  
20 the last couple of weeks are a good signal to  
21 the women that there is change afoot.

22 What I don't think is that these

1 younger women, the O2's, O3's, some of the  
2 younger enlisted women I've spoken with, I  
3 don't think they necessarily understand the  
4 implications of what we're talking about in  
5 the Gillibrand legislation.

6 But I think that those of us who  
7 have had many years of experience, have seen  
8 the cyclical aspect. The optimism that's  
9 generated when the senior leadership says aha,  
10 we get it and we're fixing the problem. That  
11 goes along for a while until it's dashed. And  
12 it happens again, and it happens again.

13 I think it's irresponsible not to  
14 complete the package that will represent the  
15 greatest possibility for fixing the system.

16 At the same time there's no  
17 question that leadership, where do you start  
18 in overhauling the culture and the climate.  
19 I can dig up 80 recommendations that  
20 supposedly were going to work in 1993 and we  
21 can embellish those. But there's a tremendous  
22 amount of work to be done for every level of

1 leadership from the old-timers down to the  
2 newest leaders in the system.

3 But I see this last piece of  
4 removing the chain of command conflict of  
5 interest. It's just such a compelling issue  
6 from my perspective that it is so hard to make  
7 a decision when you know that this sailor has  
8 an exemplary record, is a senior person in the  
9 command, and this E3 says that she was  
10 assaulted by him.

11 I cannot tell you how hard it is  
12 to make those kinds of decisions where when  
13 you get it the credibility of the individuals  
14 is so front and center. And you have the  
15 entire chain of command arguing, well Captain  
16 or Admiral, you can't send this to a general  
17 court-martial. He is such a good sailor.

18 I just think that that's kind of  
19 like the last piece of what can be done today  
20 to not just keep the optimism alive in the  
21 force, but also make sure that in perpetuity  
22 we have reason to be optimistic that people

1 will be treated properly.

2 VADM HOUCK: How does that  
3 decision become easier for the senior, the  
4 hypothetical senior prosecutor?

5 RDML EVANS: I think that the  
6 senior prosecutor who has -- I would look to  
7 that senior prosecutor who has significant  
8 experience.

9 I mean, I think O6 I would hope at  
10 that level would have had a variety of  
11 different assignments, understand the  
12 perspective of the commander as well as the  
13 needs of the defense.

14 Would evaluate the evidence,  
15 evaluate the evidence in a way that my  
16 training experience just doesn't give me the  
17 opportunity to make that judgment.

18 I've had O5-O6 lawyers advise me,  
19 but I still have that issue of credibility of  
20 people involved. I have made some of those  
21 decisions to send a senior chief, for example,  
22 to a general court-martial. It was very hard.

1           And I can see that it might facilitate the  
2           military justice process if a commander could  
3           rely on an experienced prosecutor making that  
4           decision.

5                       COL MCHALE: In specific response  
6           to your question at least in my experience a  
7           judge advocate, a senior prosecutor is not  
8           likely to have the same depth of personal and  
9           professional relationships throughout the  
10          entire affected command that the commanding  
11          officer would have.

12                      He or she will certainly have  
13          contacts, there will be friendships, but it's  
14          not the same kind of visceral tie to virtually  
15          every member of the command that a commander  
16          often does have and certainly feels he or she  
17          should have in order to embody the leadership  
18          of that command.

19                      The judge advocates have a little  
20          bit of distance from those kinds of  
21          preexisting personal and professional  
22          relationships.

1                   And also I think on the issue of  
2                   avoiding an inherent conflict of interest a  
3                   senior prosecutor I think almost inevitably is  
4                   going to be less concerned than the commander  
5                   about blowback, that the command climate would  
6                   be defined by the referral to court-martial,  
7                   or perhaps multiple referrals over a period of  
8                   time.

9                   A commander is going to worry  
10                  about that. He or she is going to worry about  
11                  it substantively and that is what is in the  
12                  command that may be generating such a number  
13                  of sexual assaults.

14                 The judge advocate's going to be a  
15                 lot more objective about this. His or her  
16                 career will not likely be affected by the  
17                 number of referrals. A commander's career  
18                 might well be affected by that, particularly  
19                 when you get to the point of Senate  
20                 confirmation where all of this becomes part of  
21                 the record when the officer is being  
22                 considered for advice and consent.

1                   And also I think a judge advocate  
2                   is far less, like I told you briefly the story  
3                   that I confronted back in the Gulf War. My  
4                   last tour of duty was Afghanistan 2007 but I  
5                   served in the Gulf War.

6                   And we had some Marines who  
7                   violated the rules for the use of force, rules  
8                   of engagement, or apparently did and then they  
9                   lied about it.

10                  I was appointed the investigating  
11                  officer. And probably 70 or 80 rounds were  
12                  fired at it turned out to be a British  
13                  ambulance. They thought it was a terrorist  
14                  threat.

15                  The commander was embarrassed by  
16                  that occurrence. And he called me into his  
17                  office, looked me in the eye and said this  
18                  investigation, Major, will be done within 24  
19                  hours.

20                  And I said sir, a responsible  
21                  investigation can't be done in 24 hours. He  
22                  said you're not listening. This investigation

1 will be done within 24 hours.

2 And I said sir, I will obey your  
3 order but I will also attach an affidavit to  
4 my investigation indicating undue command  
5 influence. And then he backed off.

6 A judge advocate is not likely to  
7 feel that kind of visceral intent to fry the  
8 accused in violation of due process when the  
9 allegations may be embarrassing to the  
10 command.

11 A commander in some cases may feel  
12 that impulse and that was the situation in the  
13 case that I described. So essentially you get  
14 professional training on the part of the judge  
15 advocate that the commander lacks and you get  
16 a more dispassionate weighing of the evidence  
17 that a commander in many cases can provide.

18 MR. MURPHY: Can I just pop in  
19 real quick? The question was a good one when  
20 you -- if you look at the Army, the largest  
21 branch of service, they have 34 combat brigade  
22 teams, 3,500 soldiers per brigade team which

1 is an O6 level. The argument of Gillibrand is  
2 to have an O6-level judge advocate which  
3 doesn't answer to that commander.

4 But as Colonel McHale said that  
5 colonel, that brigade commander has three to  
6 five lieutenant colonels battalion commanders,  
7 has about 20 to 25 captains all within the  
8 chain of command and then about 100  
9 lieutenants. And that colonel will know those  
10 officers and those senior enlisted.

11 But my argument, and I think our  
12 argument is that that soldier, or that Marine,  
13 or that airman, or that sailor is going to  
14 look at that lieutenant, that captain who  
15 knows the boss and say well, I can't go  
16 forward, I can't do this. It's a perception  
17 issue.

18 That is why these are being under-  
19 reported dramatically within the military  
20 ranks. And as I said in my opening the  
21 military is -- we have tremendous folks who  
22 serve in the military. They are expected and

1 usually do better than their civilian  
2 counterparts but there are bad apples. But  
3 those bad apples sometimes know the system and  
4 game the system.

5 And so I would say the focus of  
6 the panel should be on what is the perception  
7 within those privates, those specialists,  
8 those young troopers who need to feel  
9 confident to go forward through an independent  
10 military justice system.

11 And if I could make one last  
12 analogy because I'm trying to keep it short  
13 for everyone.

14 If you have a mayor of a city or  
15 you have a Governor, they have district  
16 attorneys, they have attorneys general, but  
17 they are independent arms within that. And  
18 you're basically asking these -- you know,  
19 going to a mayor or to a Governor and say  
20 should we prosecute so-and-so who works within  
21 the government. It should be independent.  
22 It's always independent in the civilian sector

1 and it should be in the military as well.

2 And it doesn't mean that under  
3 this change they will still have judge  
4 advocates advising them, keeping them in the  
5 loop, asking for their recommendations. They  
6 will still be involved in a process, but it  
7 takes their hands away of making those  
8 decisions at the felony level. But it still  
9 gives them that important authority with non-  
10 judicial punishment within their command.

11 RDML ROBINSON: Admiral Houck, you  
12 asked would it be easier. One member of the  
13 panel wrote a book "Who Said it Would be  
14 Easy?" And I don't think it would be easier,  
15 but the result would be better because of all  
16 the things that have been said at this side of  
17 the table.

18 The question is not how to make it  
19 easier, but how to get better results, produce  
20 the right results more often.

21 I happen to disagree with the  
22 Honorable Mr. Murphy as to that being the only

1           reason why we're not getting more reporting.  
2           I think we're not getting more reporting for  
3           a host of reasons of which that's up there in  
4           the higher -- high up on the list.

5                         But there is a general culture of  
6           disrespect mostly for women, of not  
7           understanding them as being full colleagues,  
8           as not seeing -- objectifying them, of not  
9           seeing their common humanity and their  
10          collegiality.

11                        And I can remember my first Marine  
12          Corps command where to this day I can't easily  
13          talk about how two women in the command -- I  
14          apologize -- passed around. And that was  
15          understood as their task for being in the  
16          Marine Corps, that's what they thought --  
17          that's what the men thought that they were  
18          accepting by serving in the Marine Corps.

19                        And that attitude, attitudinally  
20          that hasn't changed. Where if a woman -- and  
21          most of my service was with Marines, by the  
22          way. Where a woman comes into the armed

1 forces and is a survivor of this sort of  
2 behavior is told well, what did you expect?  
3 I mean, that's what you took on. You don't  
4 have to go forward as part of a line company  
5 but everybody has their role.

6 And that's not just 1971, that's  
7 still today. Men, speaking only of this  
8 aspect of it, abuse of women will continue as  
9 long as men tolerate the abuse of women.

10 MS. FROST: I'd like to follow up  
11 on that because all of you have talked about  
12 the role of culture and the role of  
13 leadership.

14 I'm someone who's worked in  
15 victims' rights and advocacy now going on for  
16 four decades. And I started out working with  
17 child sexual abuse victims and work a great  
18 deal with sexual assault victims now. And I  
19 don't think there's any criminal victimization  
20 issue that is more problematic for our society  
21 to deal with because it is so intertwined with  
22 cultural mores and so forth.

1                   And you're seeing a compression  
2                   and a microcosm in the military. We know it's  
3                   a crime of the young and the military gets to  
4                   deal with the people that are recruited.

5                   But I'm particularly focused on  
6                   the role of leadership because setting aside  
7                   just for a minute whether or not the convening  
8                   authority stays or goes away, there is still  
9                   this huge issue of leadership and changing the  
10                  culture and the role of the commander in  
11                  changing that culture.

12                  And several of you have talked  
13                  about Don't Ask Don't Tell investigation. And  
14                  the military I think particularly compared to  
15                  the civilian sector has done a pretty good  
16                  job. At least the trajectory is in the  
17                  positive direction.

18                  Why do you feel that's not  
19                  happening with sexual assault? And it's not  
20                  just an issue of women because I think one of  
21                  you indicated that the majority of victims,  
22                  maybe not the percentage but the majority of

1 victims are men. So I'd really like to really  
2 drill down why you think that change isn't  
3 happening.

4 CAPT MANNING: I think if you look  
5 at the greater culture from which particularly  
6 our young recruits come being gay is no big  
7 deal anymore. You can come right out and say  
8 I'm gay, I'm trans and nobody thinks anything  
9 about it. The problem is with the older  
10 people, Baby Boomers and above. But the whole  
11 culture is changing on that issue.

12 But turn on the television. Look  
13 at Jersey Shore. Look at any television show.  
14 The idea is that everybody hooks up with  
15 everybody, and if you don't want to hook up  
16 with me there's something wrong with you.

17 The attitudes come from the larger  
18 culture and there's been a sea change with  
19 respect to gays but not with respect to sexual  
20 assault. I mean, I think a lot of the younger  
21 people I talk to don't even understand when  
22 they have been sexually assaulted sometimes.

1                   And alcohol. That's the other big  
2                   thing that we haven't said that word today,  
3                   but when you mix those kind of attitudes with  
4                   -- both the perpetrator and the person who is  
5                   assaulted alcohol everything else goes out the  
6                   window.

7                   COL MCHALE: If I may, Rabbi, my  
8                   apology in advance. You took the proper  
9                   liberty of respectfully disagreeing with  
10                  Patrick and if I may do the same now I  
11                  respectfully disagree with you.

12                  You referenced 1971 and that  
13                  things have not changed. I came in in 1972  
14                  and things have changed. And I believe that  
15                  the culture is far better today than it was in  
16                  1972.

17                  The problem is that cultural  
18                  change is by no means complete, it is still  
19                  far short of what it needs to be and we have  
20                  many challenges that lie ahead to ensure that  
21                  these kinds of violent acts are not  
22                  perpetrated by what is becoming a smaller and

1 smaller number of people who are culturally  
2 and personally predisposed to this kind of  
3 violent action in a military environment.

4 So as a Marine, I mean I remember  
5 1972 and I remember what it was like. And the  
6 culture is far better today but still woefully  
7 inadequate on the part of a distinct minority.

8 With that said, we must press  
9 forward to achieve further positive cultural  
10 change. Leadership. Commander accountability  
11 for the command climate and the activities  
12 that take place within that command.

13 I just don't think the authority  
14 to refer a case to court-martial is an  
15 essential element of that leadership in  
16 achieving the unmet cultural change that lies  
17 ahead.

18 PROF. HILLMAN: Could we get  
19 General Sutton and then maybe General Kennedy  
20 on the phone?

21 BG SUTTON: What a great question.  
22 You know, if this was easy we wouldn't be here

1           because we've got great leaders at all levels  
2           throughout the military and all services. And  
3           as we've seen both in 2007 when facts came  
4           forward there were changes that were made.

5                       The education curve has been very  
6           steep. I remember I was a hospital commander  
7           at Fort Hood in 2007 when the sexual assault  
8           program was being rolled out.

9                       We spent the first 3 hours of that  
10          afternoon, and this was with O6 levels and  
11          above. So O6 and general officer levels and  
12          command sergeant majors arguing as to whether  
13          or not two people who knew each other,  
14          acquaintances, could commit rape and whether  
15          rape could be committed in the context of  
16          marriage. We never even got to the sexual  
17          harassment which, you know, I mean that was  
18          the level.

19                      And I'm not saying that it was  
20          much different in the military than it was on  
21          the outside. That's part of why I'm here is  
22          I believe that DoD can take this issue and can

1 show the rest of the country, the rest of the  
2 world really how it is done.

3 And I think that in response to  
4 the question of, you know, this Gillibrand  
5 bill, is this going to be the magic pill? No,  
6 it's not going to turn things around  
7 overnight.

8 But here's the issue, that we've  
9 had this sort of wave of momentum. And you  
10 know in 2012 when Secretary Panetta became  
11 aware of these issues and immediately made  
12 huge changes that are still in effect. The  
13 training, all of the things that have been put  
14 into place. And then Secretary Hagel has  
15 followed up with that momentum and now these  
16 things that are being debated in Congress and  
17 the fact that we're all sitting here today is  
18 all for the good.

19 I will say that from the  
20 standpoint of the victims, the targets of this  
21 kind of behavior this is the issue that gets  
22 to the heart of the matter. And when they see

1 things like the two-, the three-star in the  
2 Air Force who takes the fighter pilot out of  
3 jail, one of the few who did get prosecuted  
4 for sexual crimes, and puts them back on the  
5 flight line.

6 Several years ago they had no  
7 place to go. They now do have a place to go  
8 which is why my concern is it's going to get  
9 even -- you know, better for us who have been  
10 in the DoD who care passionately about this to  
11 be on the side of all fighting together  
12 knowing that this is just one element and then  
13 we can say for sure that this is going to be  
14 as important as those of us who have talked  
15 today really feel it will be.

16 But from the perspective of the  
17 victims I can assure you without this change  
18 going through that erosion of trust will  
19 continue to accelerate and it will make the  
20 crescendo which is already heartbreaking. I  
21 mean, you know, I've been out for 3 years and  
22 the credibility issue I think is so important.

1                   Because I don't have the same  
2                   perspective that I had when I was in uniform.  
3                   I have a very different perspective. And it's  
4                   a perspective that perhaps may be useful in  
5                   this context given that when you started -- I  
6                   was so glad you raised that question because  
7                   I sort of just -- what are the things that  
8                   have come to me from folks who are still in  
9                   uniform over the last 6 months.

10                   Well, actually if I go back 2  
11                   years ago I'll go back to when Invisible War  
12                   had its premier showing at Sundance. It was  
13                   the same weekend that the Marine Corps Public  
14                   Affairs Office sent an all-service message out  
15                   to its command leaders naming the Marine  
16                   couple who were featured in that movie.

17                   I spent several hours that night  
18                   with that couple. They had already received  
19                   three suicide threats. That didn't make it  
20                   any easier.

21                   When I was still in uniform I was  
22                   getting increasingly as the suicide epidemic

1 was really coming to a boil, increasingly  
2 getting notes, getting calls, getting hey-yous  
3 by folks who felt the moral distress with this  
4 top-down approach of we've got to do something  
5 about this. That's genuine, it's good  
6 intentions.

7 But what was happening on the  
8 ground in units was sort of like, you know,  
9 back in the eighties when you know, we're not  
10 going to have a suicide on my watch and you  
11 have privates that are handcuffed to the CQ  
12 desk so it wouldn't happen on their watch.  
13 And so folks were reporting the moral distress  
14 of what it is like to -- unless there's a  
15 suicide note it's an accident. So that's on  
16 the suicide front.

17 Spiritual fitness. Company  
18 commander just 6 months ago said ma'am, ma'am,  
19 help me out. This is a company commander from  
20 Korea saying I have two soldiers who just came  
21 to me very upset because they're spiritual.  
22 They're not religious. They filled out the

1 Army's Global Assessment Inventory and they're  
2 worried because what they got back was that  
3 they are low in spiritual fitness and they  
4 need to go to the chapel program and get  
5 plugged in. So this is kind of some of the  
6 cultural issues.

7 I will tell you another one. My  
8 office when I was at DCOE, the Defense Centers  
9 of Excellence, my last 3 years here in D.C.  
10 the SAPRO office was adjoining. So I saw  
11 those posters when they came in and was  
12 horrified.

13 I thought it was some sort of a  
14 joke that had been played on SAPRO and I went  
15 straight to Dr. Whitley and said have you seen  
16 these posters. Ask her when she's sober. Our  
17 strength is for defending. And was told no,  
18 this is the greatest thing. This is our new  
19 -- I went up my chain of command. I was told  
20 no. You know, you girls are just going to get  
21 into a hen fight over this, aren't you?  
22 Cultural issues.

1                   VADM HOUCK: I will tell you that  
2                   there were men on active duty at the time who  
3                   were deeply offended by that poster who spoke  
4                   up about it.

5                   BG SUTTON: Absolutely. And that  
6                   gives me great hope this is not a women's  
7                   issue. And I guess that's one of the things  
8                   I'm so glad has come out. It's not a sexual  
9                   attraction issue.

10                  I had no idea. This is part of  
11                  the education that I mentioned since I got out  
12                  of active duty which makes my perspective very  
13                  different.

14                  I had no idea that the average  
15                  sexual predator has 300 victims over the  
16                  course of their career. So when 2 months ago  
17                  I was contacted. There was a husband-wife  
18                  dual military team furious. The husband was  
19                  furious with me, the wife. She was, you know,  
20                  what do I do at home. We got on the phone  
21                  together.

22                  Well, the husband was in a combat

1 arms position, had been in for close to 20  
2 years, had never seen anything like this  
3 happen. I said that's absolutely, that's part  
4 of what makes this issue so vexing is it's a  
5 little bit like terrorism. You don't need a  
6 huge percentage of terrorists or predators in  
7 a population to absolutely wreak havoc. And  
8 so that's part of the issue that gets to the  
9 culture as well.

10 I could go through some -- I will  
11 say this. Most recently a month ago I went  
12 and was part of Senator Gillibrand's news  
13 conference. I happened to mention that I was  
14 standing up in addition to the victims as well  
15 standing up on behalf of the vast majority of  
16 leaders at all levels who would never think of  
17 treating people in their command like this.

18 But the third point I made was I  
19 am standing up today on behalf of those who  
20 may today be serving in units where there are  
21 the upstream behaviors of disrespect,  
22 humiliation, hazing, bullying and mobbing.

1           Since that a month ago I have heard from a  
2           senator who said I'm so glad that you  
3           mentioned the word not just bullying but  
4           mobbing when an institution gangs up and  
5           targets an individual.

6                       I've heard from a psychologist in  
7           Vancouver who's working with members of their  
8           military who's seen this. And I had coffee  
9           with a captain who's a graduate student in  
10          Brooklyn and he, special operations, he got  
11          out of the Army just last spring because of  
12          this very issue that didn't have anything to  
13          do with sexual assault per se but had to do  
14          exactly precisely with this culture.

15                      So that's why I'm here is I think  
16          that -- I know that DoD can do better. We've  
17          shown that we can do better when we have the  
18          information and the courage to act on it.

19                      CHAIR JONES: Can I just ask  
20          General Kennedy if you had anything you wanted  
21          to add? Since you're not here except by phone  
22          I wanted to give you a chance.

1                   LT GEN KENNEDY: Well, thank you  
2                   so much. Thank you. I appreciate that. I  
3                   hesitate to speak from a speakerphone because  
4                   it is hard to hear sometimes. But I heard  
5                   almost every single syllable that was spoken  
6                   in the room. I just felt very, very good  
7                   about the thoughts that were being expressed.

8                   I just wanted to go back to the  
9                   question, I believe it was Professor Hillman  
10                  who asked how much do you know about what is  
11                  happening in the military today. And she  
12                  cited new processes, new changes.

13                  And I feel like that is not the  
14                  same question as what is happening between  
15                  people. What is happening in human behavior  
16                  and relationships and the creation and the  
17                  destruction of reputations, either reputations  
18                  of people, or of units, or of commanders in  
19                  general.

20                  So I just feel like the question  
21                  of processes and changes that have been made  
22                  in the last even 2 years would be a question

1           that mostly only DoD is going to be able to  
2           answer with the help of the services.

3                       So, the thing that is so timeless  
4           and so universal and it's so striking to me as  
5           you listen to each of the people speak today,  
6           not a lot has changed.

7                       I first went in the Army in 1968  
8           and I retired in 2000 and the differences in  
9           the behavior was only a question of whether or  
10          not it became more and more underground  
11          behavior rather than overtly in the office,  
12          words said aloud, gestures done in front of  
13          others.

14                      And after I retired I was serving  
15          with the Defense Advisory Committee on Women  
16          in the Services. Most of you are familiar  
17          with DACOWITS. And was active with them  
18          between 2010 and 2011 and in the fall of 2011  
19          turned over my role to Holly Hemphill or Nancy  
20          Campbell I believe it was at first.

21                      But in any case, we were in the  
22          midst of quite an important study. I know

1           that the results are available to you. The  
2           surveying is conducted in groups divided by  
3           gender and by senior as well as junior  
4           officers and senior and junior noncommissioned  
5           officers. So it's rich with the anecdotes  
6           that you've already heard about.

7                        You've seen them in the case  
8           brought by Anu Bhagwati against the Secretary  
9           of Defense a couple of years ago. I guess a  
10          dozen people gave all sorts of testimony,  
11          sworn testimony.

12                      And I just think it's terribly  
13          important to distinguish between policies and  
14          processes and the bureaucracy around  
15          leadership and the leadership itself.  
16          Leadership, values, human behavior. The  
17          culture that is created within the larger  
18          social fabric of our country and of our  
19          military. I think those are very different  
20          universes really.

21                      And I was thinking because I  
22          thought it was an interesting question about

1           why is this change so slow. Why is it that  
2           with all of the declarations of we are going  
3           to make this change and many good people  
4           putting their best effort, why has it been so  
5           slow.

6                       Well, for one thing the criminal  
7           activity has itself evolved as I said a minute  
8           ago from being more public to being more  
9           private. Less acceptable to the group but  
10          more accessible in a kind of tacit way.

11                      Because if someone knows of the  
12          reputation of someone and has reason to  
13          believe it to be a valid reputation why aren't  
14          they reporting it? Well there's, you know,  
15          this shame that's being used to not only shame  
16          the person who's the target, but also to shame  
17          the commander whose reputation as a leader is  
18          believed to be at play.

19                      The lack of witnesses keeps this  
20          from being recognized. If you see someone  
21          who's an African-American or Hispanic or a  
22          woman that's their identity group and everyone

1           can see the differences in how they're treated  
2           and how a mainstream might be treated. So  
3           that's much more open to public inspection.  
4           Plus we have a lot of data about it that we  
5           don't have in this issue.

6                       And I think that one of the  
7           biggest things that we just never do get to  
8           acknowledge and I suspect General Sutton is  
9           the best qualified to deal with it though I  
10          know time is getting short is how closely  
11          intertwined so many aspects of our personal  
12          and our collective history are that create the  
13          climate in which it is more likely or less  
14          likely that this sort of behavior will be  
15          stopped.

16                      So I know that we have to look at  
17          the processes. I support Senator Gillibrand  
18          completely in her proposals.

19                      But I would say that I think we  
20          ought to acknowledge that we can refine the  
21          processes as much as we wish but it will only  
22          work if the institution has a fundamental

1 intention to create a fair environment, using  
2 the word "fair" to encompass a lot of  
3 different things.

4 And we can refine the processes  
5 with even greater vigor, but it will not work  
6 if the problem is not really informed by a  
7 knowledge of human behavior, and if the  
8 problem is being supported if not created by  
9 a cynical attitude in leadership both at the  
10 noncommissioned officer and at the political  
11 level, a cynical attitude which plays off  
12 change that's real and change that's cosmetic.

13 And I guess the last little bit is  
14 not so much connected to those as it is  
15 connected to what you all were talking about  
16 toward the end about just repeating this  
17 question of who is it that could have  
18 disinterested expert role to play in  
19 prosecuting felonies.

20 You look at intelligence and the  
21 security clearances we have. We have  
22 investigators and we have adjudicators and

1           there are a lot of other levels of the process  
2           in which we decide whether someone can be  
3           trusted with a high-level security clearance,  
4           and if so, how high-level.

5                         Well, those are not the commander.  
6           That's not -- the commander interacts not at  
7           all. Maybe occasionally is interviewed  
8           because of personal knowledge of the given  
9           person being considered. But you've got to  
10          have experts doing things that require intense  
11          focus and deep knowledge.

12                        And a commander is supposed to be  
13          able to look at the entire battlefield, you  
14          know, on and off of the battlefield and will  
15          not be able to do it if they have to stay  
16          really on top as though they are a prosecutor  
17          or an investigator.

18                        So with that I just say thank you  
19          so much for looking into this and I really  
20          appreciate being included in this call.

21                        GEN HAM: Thanks, Judge. And I'd  
22          just add to Judge Jones thanks for all of you.

1           Your lives would be a lot simpler if you  
2           weren't doing this today so thank you for  
3           taking this on.

4                        As one of a couple of the retired  
5           members on the panel I think the question of  
6           credibility is a good one. I don't have any  
7           questions about your credibility. I think  
8           you've earned the right to be heard on this  
9           matter. I think that's very, very important.

10                      I do have a couple of specific  
11           questions. General Sutton, you mentioned in  
12           your opening statement that in your  
13           interaction with survivors that you found a  
14           general -- generally that they felt failed by  
15           their chain of command.

16                      In those interactions in your  
17           personal experience as a commander did you  
18           find the opposite? Did you find some  
19           instances where survivors, victims were well  
20           treated and effectively treated by their  
21           commanders?

22                      BG SUTTON: Absolutely.

1                   GEN HAM:   And what can we learn  
2                   from that given our role, this subcommittee's  
3                   role of looking at the role of the commander?

4                   BG SUTTON:  Absolutely.  Sir,  
5                   thanks for the question.

6                   The situations where victims feel  
7                   like they were well-served by their chain of  
8                   command were those where, first of all, the  
9                   expectation of command.  You know, the best  
10                  division commander I ever had was one who told  
11                  every commander on his team as well as those  
12                  -- I was the division surgeon at the time --  
13                  told us from the very beginning entry  
14                  interview, listen, I understand bad things are  
15                  going to happen to you in your command in your  
16                  tenure here with our division.

17                  What I'm going to be looking for  
18                  as your boss is not whether bad things happen  
19                  to you but how you deal with them.  What you  
20                  learn from them and what you do then to really  
21                  prepare your team, your command to move  
22                  forward.

1                   With units that have that  
2                   expectation from the get-go, those are  
3                   commanders, those are leaders who are not  
4                   going to act in a way as though gosh, you  
5                   know, a rape charge has come up and I'm going  
6                   to be painted with that brush.

7                   Unfortunately there are all too  
8                   many commanders who absolutely do that. So  
9                   that's part of the culture, the issue that  
10                  needs to be more broadly taught, more broadly  
11                  lived and circulate is that bad things will  
12                  happen. We know that as human beings. But as  
13                  leaders how will you deal with those? How  
14                  will you learn from those and how will you  
15                  treat those fairly?

16                  This is another component is to  
17                  treat both the accused and the accuser fairly.  
18                  This is another part where I really do think  
19                  like the Gillibrand removal of the disposition  
20                  authority frees the commander and the leaders  
21                  at all levels to really care for those in  
22                  their command, especially those who have been

1 accused of bad things and those who have been  
2 the alleged victims of bad things. That's a  
3 critical, critical component.

4 Another piece of this has to do  
5 with commanders understanding both the factual  
6 reality of whatever their relationship may be  
7 and the perception. From the standpoint of  
8 those who are junior in rank they assume their  
9 squad leader is God, much less someone who  
10 wears a star on their shoulder or a command  
11 sergeant major's wreath.

12 And so I think that's another part  
13 that this, it's not just the actual, the  
14 reality of this conflict of interest that, you  
15 know, the commander may not know me. He knows  
16 my squad leader, he knows my company  
17 commander. I see them smoking and joking, I  
18 see them around post, I see them going to  
19 golf. And so it frees the commander from that  
20 cloud of just perception.

21 And I think those units, those  
22 situations that I've been involved with and

1 observed and have heard from the victims  
2 themselves those are some critical components.

3 I'm still thinking about this  
4 question of leadership which I also brought up  
5 in my initial points in terms of the  
6 fundamentals of leadership have really been --  
7 it's not that anyone made a deliberate intent  
8 we're not going to worry about the  
9 fundamentals of leadership.

10 No, we've had more than enough  
11 work continuously, successively deploying,  
12 coming back, doing the impossible over and  
13 over and over again. And I think in addition  
14 to missing out on some of the fundamental  
15 lessons of leadership and human understanding  
16 that comes from a more let's say diverse range  
17 of experiences as opposed to just continuous  
18 and successive deployments.

19 I think we also have to look at  
20 what makes this generation of veterans  
21 different. I get this question all the time.  
22 Got it when I was in uniform, I'm getting it

1 still now, and that is well you know, Doc,  
2 aren't we really just kind of coddling these  
3 kids today? You know, if they were really  
4 tough, if they were Vietnam, World War I,  
5 World War II, would we be treating them this  
6 way?

7 My response is always I've never  
8 found it useful to compare the difference  
9 between generations of veterans. It doesn't  
10 go much better than it does at the kitchen  
11 table, who had it worse.

12 But I do think it's instructive to  
13 look at the comparisons. God bless our World  
14 War I, World War II and with a very different  
15 social context especially our Vietnam veterans  
16 for what they had done.

17 When you look at the one factor  
18 that we know from our research has the  
19 greatest impact on long-range sequelae in  
20 terms of anxiety, depression, PTS, we know  
21 it's days of combat exposure. By that one  
22 measure alone this generation of veterans has

1 had orders of magnitude, 500, 1,000, 1,500  
2 days. General Petraeus, over 2,500 days of  
3 combat exposure since 9/11.

4 Now, in your background, you'll  
5 appreciate this. In the sexual assault  
6 literature, the child sexual assault, there's  
7 come this model, the predator-prey-witness.  
8 And it's a very useful construct. It uses  
9 biological language. So predator, prey,  
10 witness. But typically a different person  
11 occupies each of those roles.

12 When it comes to being in combat  
13 what our troops have been facing day after  
14 day, year after year since 9/11 is to occupy  
15 each one of those roles simultaneously. With  
16 the addition of what I would add particularly  
17 from a military perspective the role of being  
18 the protector.

19 And so we have leaders at all  
20 levels who are never going to darken my door.  
21 They're never going to come to a shrink's  
22 door. They're never going to say they're

1 sick. No, I'm good, I'm good.

2 But like Jeremy Renner in the Hurt  
3 Locker, you know, they're the ones who they're  
4 not right. And they're the ones who when they  
5 come back they're completely lost in a cereal  
6 aisle because of all of the changes. In other  
7 words, their mind-body system is disregulated.  
8 And that's got to be part of this cultural  
9 change.

10 If our commanders and leaders at  
11 all levels knew what to do better I believe  
12 firmly the vast majority of them would. The  
13 vast majority of them right now are themselves  
14 worn out from 12 years of conflict and  
15 themselves are disregulated. And I think  
16 there are definitely things we could do to  
17 help them out at that level as well.

18 But it's going to have to be a  
19 systems-based approach. There's not going to  
20 be one given act, whether it be Senator  
21 Gillibrand's amendment or any other action  
22 that's going to turn the corner on this.

1                   But I will say from the eyes of  
2                   the victims, the survivors, this Gillibrand  
3                   amendment is huge. It is to them a proxy for  
4                   what might have made it different in their  
5                   situation.

6                   And for so many of them, you talk  
7                   to them, the only reason that they've been  
8                   willing to come forward and expose themselves  
9                   and their families to this kind of notoriety  
10                  is to think that maybe it would prevent  
11                  somebody else from having the same experience.

12                  CHAIR JONES: Could I ask this  
13                  question though? Let's look at the population  
14                  of current military male and female sexual  
15                  assault victims that are there now. Eighteen  
16                  to twenty-four, mostly alcohol, what have you.  
17                  That seems to be the largest number.

18                  Why is telling them that the chain  
19                  of command is out, or that the convening  
20                  authority is no longer a commander, but now  
21                  you have military prosecutors, why is that  
22                  going to make a difference if earlier we

1           talked about how they don't even know who  
2           they're supposed to be reporting their own  
3           sexual assault to in many instances?

4                        I'm just trying to focus on  
5           whether this particular remedy which I think  
6           maybe, Rabbi Robinson, you talked about as  
7           being drastic, why this particular remedy we  
8           think is going to increase reporting.

9                        RDML ROBINSON:   Since you  
10          mentioned my name I'll take a personal  
11          prerogative.

12                      CHAIR JONES:   Okay, fair enough.

13                      RDML ROBINSON:   And I'd also like  
14          to address a little bit on this process  
15          question about why is this so vexing over so  
16          long a period of time, so tenacious an issue.

17                      But on your question first, what  
18          will make a difference is effective  
19          prosecution.  This change which I think you  
20          identify correctly as "nuancal" from the  
21          perspective of a 19-year-old in the ranks  
22          doesn't --

1 CHAIR JONES: But that's the  
2 population we're looking at, right?

3 RDML ROBINSON: Right. But what  
4 will influence them is seeing more than 200-  
5 plus people a year actually tried and  
6 convicted and put out of the service and  
7 jailed and all the other appropriate  
8 punishments which they're not seeing. That's  
9 what will send the strong message.

10 If this proposal from Senator  
11 Gillibrand effects that change so that we have  
12 more than what really amounts to a handful if  
13 you take a population of over 1 million people  
14 and you get 250 successful prosecutions that's  
15 nothing. So no one sees it and it has no  
16 impact.

17 We have a whole bunch of people  
18 who through Article 15 authority might be  
19 moved out of the service but on a hush-hush  
20 basis and no one knows. They're not removed  
21 for cause.

22 We have as I've already pointed

1 out general officers who are -- you know, I've  
2 seen general officers retired one star below  
3 their current serving grade and everybody  
4 knows why. But we don't see that on this  
5 issue.

6 So I forget which pundit in  
7 America said a few hangings will get  
8 everybody's attention. And I'm not suggesting  
9 we go back to hanging, for the record. But it  
10 is the successful completed prosecutions.

11 One of the things that the 2010  
12 report of the task force from the -- it was a  
13 federal task force recommended was that people  
14 who are removed from command, that the reasons  
15 be given that people who receive Article 15  
16 punishment, that the victims know -- that was  
17 their term. We would use the term "survivor"  
18 I hope -- know what was the adjudication.

19 None of that's really happening in  
20 significant ways yet. And so I think that's  
21 the answer. We need effective.

22 Real quickly, to your question

1           about why is this such a tenacious problem.  
2           Because we are dealing with a fundamental  
3           taboo within our area, taboo area within our  
4           society.

5                         Human sexuality is understood to  
6           be naughty and nasty, not natural. And we  
7           cannot talk about it out loud and publicly  
8           with comfort. And many more books have been  
9           written about it than we could ever study  
10          today. But it is at the most visceral level.

11                        One other issue is that toxic  
12          leaders find human sexuality a convenient  
13          tool. You can motivate people using sexuality  
14          as a convenient tool within the command. And  
15          all too brief, but I didn't want you to go.

16                        CHAIR JONES: Can I just throw out  
17          one more question? And then I'll hear from  
18          Captain Manning, Ms. Krepp and General  
19          Rainville.

20                        I think everybody has mentioned  
21          how important it is for commanders to say zero  
22          tolerance and say what they mean, mean what

1           they say, whatever the expression is. And  
2           that's either going to happen or not happen,  
3           right?

4                           What effect is removing the role  
5           of the commander going to have to make that  
6           aspect of what I think we all agree is  
7           incredibly important. Is that going to  
8           enhance our chances that commanders will do a  
9           better job at command climate?

10                           I guess whoever would like to  
11           start. Yes, Captain Manning?

12                           CAPT MANNING: My remarks go to  
13           your earlier question.

14                           CHAIR JONES: Okay.

15                           CAPT MANNING: As I say there are  
16           networks, and I work with them, of victims  
17           both male and female, both veterans and still  
18           on active duty of sexual assault within the  
19           military who are hanging on the outcome of the  
20           Gillibrand bill. They are focused on it.  
21           They have Facebook sites, Twitter sites,  
22           Instagram sites. They talk to each other

1           continually about it. And the media has  
2           focused a lot on it.

3                       They may not know what a convening  
4           authority is but they know this bill is going  
5           to help them somehow. It has grown huge  
6           psychologically in their minds and if it fails  
7           there will be a seem incongruous.

8                       That may or may not be the truth  
9           of the matter, that nobody cares, but they  
10          believe that this bill, they've built it up in  
11          their minds and it's got great psychological  
12          weight to them now.

13                      And when it looked like, when they  
14          didn't vote on the NDAA before Christmas all  
15          over the internet, all over the social media  
16          there were reams of them coming on saying oh  
17          my God, I'm triggered, I'm hurting. That  
18          stopped when it looked like they were going --  
19          they're now going to do it as a stand-alone.

20                      But there is so much psychological  
21          focus on that that if it fails there will be  
22          repercussions within what they call themselves

1 the victim community. And the media will glom  
2 on it also. But that's in response to your  
3 first question.

4 CHAIR JONES: Ms. Krepp, did you  
5 want to add anything to that?

6 MS. KREPP: I do. Changing the  
7 structure will encourage the 18- to 24-year-  
8 old population to report because of the  
9 reasons that Rabbi Robinson mentioned. It's  
10 going to send a message that there will be  
11 prosecutions.

12 It will also encourage people to  
13 join the military. We're talking about the  
14 future generation of leaders that are 20 to 30  
15 years out. We need to bring everybody in and  
16 we need to send a signal to them that you can  
17 come in and that you can come in and be  
18 treated fairly.

19 And we need men and women to come  
20 in. We need to have the best and the  
21 brightest in 30 years. We can't stop somebody  
22 from coming in because they think they're not

1 going to be treated well if something does  
2 occur.

3 We also need to view this as a  
4 bigger picture. Senator Gillibrand's  
5 proposals aren't going to fix everything.  
6 It's part of the entire package.

7 And the entire package includes  
8 one more bit and that says look at some cases  
9 that you've settled but that should be  
10 reopened.

11 I submitted a poem to you written  
12 by Nicki Finney talking about Lavina Johnson  
13 who supposedly committed suicide. I'm not  
14 sure how you commit suicide by putting a  
15 bullet to your head and having lye poured  
16 inside your body at the same time.

17 Reopening cases like that will  
18 send a signal that says you know what? We're  
19 willing to re-look at cases. We're willing to  
20 say that maybe we were wrong. That sends a  
21 signal.

22 The last signal, and this is

1 something that I would urge you to do as the  
2 panel, open your meetings to the public,  
3 please. There have been a lot of criticism  
4 from folks saying that Senator Gillibrand and  
5 others who have never served in the military  
6 shouldn't be writing legislation because they  
7 don't have the military experience.

8 The public should know that those  
9 of us who did proudly serve in the military  
10 are coming out in support. And the public  
11 should have the opportunity to watch us. They  
12 should have had the opportunity to watch us  
13 today.

14 Because the men and women I'm  
15 sitting with today have a background that is  
16 so incredible that people should see this.  
17 And people should say you know what? There  
18 are both sides to this story and I should be  
19 able to see those of us who testified this  
20 morning and those that will be testifying this  
21 afternoon.

22 CHAIR JONES: General?

1 MAJ GEN RAINVILLE: Well, I'm in  
2 awe listening to some of these speakers  
3 because they have such great backgrounds.  
4 Mine is as a commander so I'm going to bring  
5 it back with my comments to what I learned  
6 growing up in the Air Force and the Reserve  
7 and the Guard.

8 Being in aircraft maintenance I  
9 worked with some of the most incredible men  
10 and women who were crew chiefs. And I learned  
11 that you can either as a commander of 400 or  
12 a commander of 4,000 you could have the best  
13 policies, you could have the best commander's  
14 intent distributed, but you can't fool the  
15 crew chiefs. And the crew chiefs know what's  
16 real, and they know when you're serious and  
17 they know how it really works.

18 So when you ask -- and I'm  
19 serious. You get down to those 18- to 24-  
20 year-olds, they only believe what they see.  
21 And they come in now I think with a propensity  
22 to drink, to party hard, to fight hard, work

1           hard and party hard because of their  
2           circumstances.

3                       But what does this mean to that  
4           18- to 24-year-old group? They're not  
5           strategic thinkers. They don't know the  
6           policies of DoD, or their service, or probably  
7           even their O6 commander.

8                       What they know is what happens to  
9           their friend when that friend is assaulted, or  
10          hurt, or attacked, or raped. And that friend  
11          either tells or doesn't tell but somebody  
12          tells for them.

13                      And what then happens in the  
14          process to that friend and to the other maybe  
15          18- to 24-year-old that's the alleged  
16          perpetrator. That's what they see and know  
17          and base their judgments on whether they re-  
18          enlist, how they talk to others about the  
19          military and how they're motivated to perform  
20          their job.

21                      If they are treated in a way that  
22          causes them to see that if something bad

1 happens I'll be treated fairly or my friend  
2 will, if my friend is the alleged perpetrator  
3 that friend will also be treated fairly.

4 And they know what's going on.  
5 They know what happened.

6 And it's so important I think that  
7 we allow them to have faith in the system.  
8 Because the military is an amazing institution  
9 and it is honorable to serve at all levels in  
10 the military. But we can make it better. And  
11 I think it's the responsibility of every one  
12 of us to do that.

13 As much as you can't fool the crew  
14 chief you also I think have to help the  
15 commander. And all commanders aren't good and  
16 all commanders aren't bad.

17 And if anything that hasn't been  
18 mentioned it's the fragility of a command  
19 climate and how a unit can change and the  
20 climate can change by the change of  
21 commanders.

22 And if you want to understand how

1 something can change a culture or change an  
2 environment look at units that have had  
3 changes in commanders who are very different  
4 in their experience and in their personality,  
5 how they relate to people, and you can see the  
6 importance of it.

7 And that's why I think that to  
8 provide justice and fairness and due process  
9 and all of those things. But also to allow  
10 the commanders to be commanders by taking what  
11 really can be a very onerous burden of this  
12 particular responsibility away from commanders  
13 and placing it with the professional JAG  
14 Corps. You do that. You ensure due process.

15 You also I really believe are  
16 helping the commanders focus on being  
17 commanders and reaching out to those 18- to  
18 24-year-olds. Helping them build faith in the  
19 system and focusing on how to lead and how to  
20 prepare, how to maintain readiness, how to go  
21 to the war and win.

22 And I think that this is good. As

1 a commander it's good. And I was not a  
2 commander who would give up responsibility  
3 lightly. I was a commander who felt very,  
4 very passionate and very close to everyone in  
5 the Vermont National Guard and I still feel  
6 that way today.

7 And I get very emotional about it  
8 because they are giving us everything we ask  
9 and more every day. And when you send them to  
10 Bosnia or Iraq, Afghanistan or wherever they  
11 do incredible things.

12 And by this one further action of  
13 making this change in the system I really  
14 think we can begin to change, just begin to  
15 change that culture as each person reports  
16 what happens to them and sees it dealt with  
17 fairly.

18 CHAIR JONES: One other question  
19 from me. I heard a couple of you mention the  
20 possibility of doing this for 5 years. And I  
21 thought you might have been alluding to some  
22 sort of a let's see how it works, a pilot

1 perhaps. Maybe it was you again?

2 RDML ROBINSON: Well, it was  
3 actually two of us.

4 CHAIR JONES: Sorry, which -- so I  
5 was just curious as to your thinking.

6 RDML ROBINSON: In the spectrum of  
7 opinions here I'm the closest to the afternoon  
8 group.

9 CHAIR JONES: Okay.

10 RDML ROBINSON: Because on your  
11 earlier question I'm really concerned that  
12 this has the potential if not perfectly  
13 crafted to have the commanders walk away from  
14 the issue. It's somebody else's issue.  
15 Forget it, it's not my job anymore and let the  
16 special prosecutors deal with it.

17 And so I'm not sanguine about how  
18 this -- and I would like to see it work for 5  
19 years. I believe that it could work like the  
20 IG program where waste, fraud and abuse is  
21 still a commander's responsibility but there's  
22 always an IG up the chain that has greater

1 expertise and greater knowledge, who can drop  
2 a dime all the way up. And the commander  
3 operates within that as a kind of blunt  
4 instrument hung over his or her head. So I  
5 would love to see the chain of command looked  
6 at every 5 years and evaluated so that if they  
7 are playing effectively and this has changed  
8 where would we go next.

9 CHAIR JONES: I just didn't hear  
10 the last thing you said.

11 RDML ROBINSON: I would like to  
12 see the chain of command and the effectiveness  
13 looked at conscientiously every 5 years. It's  
14 been almost 5 years since the last commission  
15 on sexual abuse in the military actually  
16 reported out in 2010 so that's 4 years ago.  
17 But its work was prior to that. And 4 or 5  
18 years in the military is a generation.

19 CHAIR JONES: Right. Yes.

20 RDML EVANS: I would strongly  
21 endorse not having a sense in the findings  
22 that there should be a test period or any kind

1 of a trial period. There is always the  
2 provision to examine the workings of any  
3 processes in the military, any point in time,  
4 whether it's by leadership direction or by  
5 congressional direction.

6 But I think to give a sense that  
7 somehow this is temporary, or we're going to  
8 go back to the old days, or they got it wrong  
9 because of the political correctness of moving  
10 forward, however somebody who doesn't support  
11 it if it does become a change casts it I think  
12 would delay the enthusiastic implementation  
13 for it to be passed.

14 I remember so many times when  
15 Section 6015 of Title 10 was rescinded and  
16 combat assignments were opened to Navy and  
17 Marine Corps women, and how many people said  
18 well, it was done for political reasons and  
19 it's going to be changed because it's not  
20 going to work. And just hang in there, it'll  
21 be changed. And we can go back to the old  
22 days when women didn't go to the service

1 academies and so on and so on.

2 And I think that the more  
3 enthusiastic the implementation is the better  
4 in a change like this.

5 BG SUTTON: And if I could revamp  
6 my earlier comments because I think I used the  
7 term demonstration period. I should have just  
8 read from my letter.

9 I would add one further  
10 stipulation to the current legislative  
11 proposals under consideration to require --  
12 this is assuming that the change goes through  
13 -- to require a 5-year independent review of  
14 how the reform measures have affected progress  
15 in a number of critical areas.

16 Metrics would include sexual  
17 assault incidence, reporting and prosecution  
18 trends, leader, servicemember, family member  
19 perspectives and unit command climate  
20 assessments to include data on bullying,  
21 suicide, homicide, sexual harassment, actions  
22 and other high-risk behaviors.

1                   This independent review  
2                   requirement would allow all concerned to  
3                   assess the impact of the reform initiatives  
4                   and provide timely data to guide future  
5                   legislative and policy changes as deemed  
6                   appropriate.

7                   I would just say to bring it back  
8                   to a very personal level, ma'am, you asked  
9                   about the 19-year-old and what they know about  
10                  the disposition authority. The average 19-  
11                  year-old doesn't -- thankfully has no  
12                  experience with felony-level crimes.

13                  I will tell you that from, as has  
14                  been said, from the perspective of the  
15                  targets, victims and survivors. And I use all  
16                  three of those terms because it depends on  
17                  where someone is in their recovery, targets,  
18                  victims, survivors and even thrivers. They  
19                  are very smart on this issue.

20                  And I think their level of trust  
21                  in reviewing how their case was mangled and  
22                  due process was shredded, and they were shamed

1 and humiliated, and all of the -- in the awful  
2 cases. They're not every case thankfully, but  
3 in the awful cases they know what happened.

4 And as they told me, so many of  
5 them, surely an independent judge, prosecutor,  
6 legal person at the O6 level, if they just had  
7 the responsibility of weighing the evidence,  
8 if they weren't in the chain of command and  
9 could then just make the decision I would  
10 trust that person. And I think that's a huge  
11 piece of this.

12 I will say that I have been  
13 watching this issue for a while. And when I  
14 first heard about Senator Gillibrand's  
15 proposal I thought that's going too far.

16 As I continued to talk to  
17 survivors, targets, victims of these actions  
18 what turned it for me was hearing the  
19 testimony of a senior DoD political appointee  
20 who when asked about the Gillibrand amendment  
21 said yes, the difference with the Gillibrand  
22 proposal would be that under that plan it

1 would be the evidence that would decide cases.

2 And I said that is exactly the  
3 issue. That is exactly the issue that is at  
4 stake here from the perception -- it doesn't  
5 matter whether that's not true throughout DoD  
6 or at any of the services, but the fact that  
7 you have a senior DoD political appointee who  
8 says under Gillibrand's proposal that means  
9 that the evidence would -- that's what the  
10 victims are looking for.

11 And that's when I sat down to  
12 write this letter including the 5-year  
13 independent review which I think is so  
14 critical. Because it brings together not just  
15 sexual assault and rape which as has been said  
16 are hot button issues no matter what.

17 It also brings together all of  
18 those other high-risk issues from upstream,  
19 the shame, things that may seem like good  
20 military leadership. We show a little  
21 pornography here. We talk trash. We talk  
22 about Muslims. We talk about hos and bitches

1           and all of the rest that we've heard of.  
2           Those are the upstream behaviors that rapidly  
3           then can set the conditions for these kind of  
4           downstream felony-level crimes.

5                         And I think that it has to be a  
6           comprehensive systems-based perspective and I  
7           hope that you'll take that account seriously.  
8           Thank you.

9                         CHAIR JONES: Thank you, General.  
10          One last question. I'm sorry, go ahead.

11                        MS. HOLTZMAN: Thank you. I'm  
12          sorry, I have two basic sets of questions I  
13          want to ask.

14                        First, for those of you who have  
15          been a convening authority in any respect have  
16          you -- well, I guess you're not going to say  
17          it about yourself. Let's just broaden the  
18          question.

19                        Those of you who have been in the  
20          military and experienced the issues of  
21          referrals by convening authorities, have you  
22          in your experience encountered commanders who

1           made referrals that were inappropriate or have  
2           you encountered situations where commanders  
3           refused to make a referral that was  
4           inappropriate? I don't care which way we  
5           start.

6                       RDML ROBINSON: We don't have time  
7           for that list, ma'am.

8                       MS. HOLTZMAN: Excuse me, I want  
9           to start -- let's start this way.

10                      CAPT MANNING: When I was on Diego  
11           Garcia there was a situation that came up in  
12           which there were two accused --

13                      PROF. HILLMAN: In a sexual  
14           assault case.

15                      CAPT MANNING: Yes. There were  
16           two of them accused that belonged to different  
17           commands, not mine but there were four  
18           commands there. One was prosecuted and the  
19           other one wasn't. And the accusation was a  
20           dual rape, a rape by two different men on one  
21           woman. And one was taken to court-martial  
22           where he was not convicted. The other's

1           commanding officer didn't even let it get  
2           investigated. That was a number of years ago.

3                   PROF. HILLMAN: And did the JAG  
4           disagree with that?

5                   CAPT MANNING: We had no JAG there  
6           at that time.

7                   PROF. HILLMAN: I see. So it was  
8           solely on the commander's --

9                   VADM HOUCK: When was that?

10                   CAPT MANNING: That was on Diego  
11           Garcia about 20 years ago. Our JAG support  
12           came out of the Philippines. And they  
13           eventually flew for the court-martial which  
14           was not a general court-martial a military  
15           judge to act as a special court-martial for  
16           the guy that was tried from the Philippines  
17           legal center.

18                   MS. KREPP: Yes. And I will go  
19           further if you turn the court reporter off.

20                   PROF. HILLMAN: This meeting is  
21           public so I don't think we can turn the -- I  
22           mean it will be made public, am I right?

1 CHAIR JONES: It's being  
2 transcribed and as is our practice it will be  
3 public. Every word said.

4 MS. KREPP: Then the answer is  
5 yes.

6 CHAIR JONES: All right.

7 MS. KREPP: A little over 2 years  
8 ago in my capacity as chief counsel of the  
9 U.S. Maritime Administration allegations came  
10 forward from a whistleblower making certain  
11 statements. I asked for an inspector general  
12 investigation.

13 The next day I was called before  
14 then Secretary of Transportation LaHood and  
15 told that I needed more supervision and that  
16 I should not have asked for an IG  
17 investigation. So, yes, ma'am, I have seen  
18 some very interesting things in my life.

19 PROF. HILLMAN: All right. Anyone  
20 else?

21 RDML ROBINSON: In the same vein -  
22 -

1                   PROF. HILLMAN: Pardon me?

2                   RDML ROBINSON: In the same vein  
3 where command, where the culture and thus the  
4 commander did not want to accept the reality  
5 of something that I as the chaplain knew was  
6 absolutely going on. And --

7                   PROF. HILLMAN: And sexual  
8 assault?

9                   RDML ROBINSON: Sexual harassment.  
10 Sexual assault, inappropriate sexual behavior  
11 dealing with what we used to call the  
12 international divorce line.

13                  PROF. HILLMAN: Right, but I'm  
14 trying to get at the referral for prosecution.  
15 Where there is -- where you have noticed an  
16 impropriety with regard to the decision on  
17 referral, whether to refer or not to refer.

18                  RDML ROBINSON: The situation --

19                  PROF. HILLMAN: And this would be  
20 felony-level.

21                  RDML ROBINSON: The situation --  
22 well, I'm not a JAG. I don't know if it would

1 have been felony.

2 PROF. HILLMAN: Okay.

3 RDML ROBINSON: It was clearly out  
4 of bounds behavior and there should have been  
5 serious consequences. Was it a felony? I'm  
6 a chaplain.

7 PROF. HILLMAN: And did you report  
8 it to somebody else aside from the commander?

9 RDML ROBINSON: I was receiving it  
10 in confidentiality. It was reported. It was  
11 quashed.

12 In other words, as the chaplain  
13 people come to me --

14 PROF. HILLMAN: No, I understand  
15 that. But you have no place else to report  
16 aside from the commander?

17 RDML ROBINSON: That's correct.  
18 That's correct, yes, ma'am.

19 PROF. HILLMAN: General Rainville?

20 MAJ GEN RAINVILLE: I'm going to  
21 stick a little bit differently only because I  
22 was in the National Guard and depending on the

1 status that the guard is serving in you would  
2 have different actions that you would take.

3 And when they were Title 10 then I  
4 was not in their chain of command and my other  
5 commanders would not have been.

6 But I will say, and the reason I  
7 feel very strongly about command climate and  
8 the fragile nature of command climate as set  
9 by different commanders is that I came in to  
10 a position as adjutant general having to  
11 address issues, having to deal with  
12 misbehavior, sexual misbehavior.

13 No one came forward to say that  
14 they had been violently raped, but they had  
15 clearly been the victims of sexual harassment  
16 and abuse.

17 Several had been medically retired  
18 and none of them had seen any kind of  
19 disciplinary action taken against any  
20 perpetrators. And these were women that had  
21 come forward once I was in there.

22 PROF. HILLMAN: Had they come

1 forward before? Excuse me for interrupting.  
2 Had they come forward before?

3 MAJ GEN RAINVILLE: Well, I can  
4 only take what they had said. They had  
5 reported it to different level commanders,  
6 lower-level commanders. But nothing had been  
7 done once it came to the adjutant general's  
8 desk who had the authority to do a final  
9 decision.

10 COL TURNER: Ma'am, just to be  
11 clear, the adjutant general didn't have the  
12 authority to convene a court?

13 MAJ GEN RAINVILLE: Right, right.  
14 But the adjutant general had the authority to  
15 either turn it over to civilian law  
16 enforcement if a criminal act, or it appeared  
17 as though a criminal act may have occurred.  
18 And that's what the Guard does. So we're  
19 actually very comfortable with turning over  
20 those issues to prosecutors and judges.

21 CHAIR JONES: And I guess the  
22 victim could go to civilian authorities,

1 right? Or not?

2 MAJ GEN RAINVILLE: They could  
3 have certainly, yes.

4 CHAIR JONES: To report it.

5 MAJ GEN RAINVILLE: certainly.  
6 Certainly. But again it comes into the  
7 perceived authority of the military chain of  
8 command. And when you're in the Guard you can  
9 work either traditionally on weekends or you  
10 can also have full-time positions as well.  
11 And these were a mixture of both.

12 And I also saw later that there  
13 were possible criminal actions in distribution  
14 of pornography, sexual related, that were not  
15 reported that in fact were hushed up. And  
16 there were some repercussions on that but not  
17 through any kind of judicial process at all.  
18 It was more of a political reaction to that.

19 So, fortunately I never had anyone  
20 while I was commander report a rape. But I  
21 also was very clear from the get-go with all  
22 my commanders and sergeants major and chief

1           master sergeants, et cetera, what was expected  
2           and what wouldn't be tolerated.

3                       And then you work very hard at it.  
4           And it takes a commander who has the time and  
5           the intent to work at those issues and to  
6           understand human behavior as best they can and  
7           to do that.

8                       Again, I think that the best thing  
9           we can do is take the authority to convene a  
10          courts-martial, the authority whether to  
11          prosecute or not and put it with professionals  
12          and give that commander the support they need  
13          to be able to build a command climate that's  
14          positive and really work with all their  
15          people.

16                      PROF. HILLMAN:   Anybody else want  
17          to answer that?

18                      CHAIR JONES:   Did you have another  
19          question?

20                      PROF. HILLMAN:   Yes, I want to go  
21          to another point which is on the issue of  
22          conflict of interest.

1 I'm getting two messages, and  
2 maybe I'm not hearing it clearly, about the  
3 importance of the change and whether the  
4 commander can refer a matter for prosecution.

5 Some of you are saying that you  
6 want to see more convictions and more  
7 prosecutions and a signal to everybody that  
8 there's going to be more, more, more.

9 And some of you are saying we want  
10 fair. More and fair are not necessarily the  
11 same thing. They may be quite contradictory.

12 What are we hearing here?

13 RDML ROBINSON: On the more side -  
14 -

15 PROF. HILLMAN: I'm sorry, if you  
16 don't mind I'd like to hear from Colonel  
17 McHale.

18 COL MCHALE: I come down very  
19 firmly on the side, because I think we must,  
20 of fair, not necessarily more.

21 I also happen to be convinced  
22 intuitively that if greater fairness,

1 consistency and impartiality is introduced  
2 into the system we will see more as well.

3 But I'll let the facts, the  
4 evidence lead where they may in terms of an  
5 increase in the number of prosecutions. That  
6 is not my goal per se. My goal is to  
7 introduce fairness and due process in an area  
8 of the law where the current system denies  
9 fairness and due process.

10 If I may piggyback on a comment  
11 that the rabbi said earlier. If the  
12 Gillibrand legislative proposal becomes law  
13 commander accountability for the command  
14 climate will nonetheless remain in full force.

15 The leadership responsibilities of  
16 the commander will remain. The character of  
17 the command climate will reflect upon the  
18 commander's, the quality of his own or her own  
19 performance in that billet.

20 But what you will have is  
21 objectivity on the part of the judge advocate  
22 who will determine whether or not sufficient

1 evidence exists to warrant an ongoing  
2 prosecution.

3 And the bottom line is this. The  
4 ethos of a military unit should be that no one  
5 is bulletproof. No one is above the law.  
6 Whether it's a lance corporal or the general's  
7 aide if there is evidence of criminal  
8 impropriety the prosecution should go forward.

9 And if, in fact, that objectivity  
10 is introduced into the system by the  
11 Gillibrand proposal I promise you it won't  
12 take very long after a major based on the  
13 facts is referred to court-martial, after a  
14 sergeant based upon the evidence is referred  
15 to a court-martial a 19-year-old female lance  
16 corporal will have confidence in the system  
17 and will step forward with her allegations.

18 PROF. HILLMAN: And so the  
19 premise, though, of your -- or the thrust of  
20 your comment though is now under the present  
21 system majors, brigadier generals, others are  
22 not being prosecuted because of the system

1           that we have in place.

2                       COL MCHALE:   Some are not being  
3           prosecuted and there is the perception that  
4           some stand so close to the flagpole that they  
5           get special protection.  If it's the general's  
6           aide will the general refer that captain to a  
7           court-martial?  And do the subordinates who  
8           see that action or failure to act have  
9           confidence that there really is due process in  
10          the system?

11                       I would argue they lack a sense of  
12          confidence in the system because there is a  
13          perception in some cases that favoritism is  
14          shown.  And conversely as I mentioned in my  
15          earlier remarks sometimes you have a commander  
16          who is so eager to distance himself from the  
17          allegations that the accused, particularly in  
18          cases not involving sexual assault, is denied  
19          due process.  He wants to hammer them.

20                       Recent allegations have been  
21          raised and covered prominently in the media  
22          where it was asserted that the Commandant of

1 the Marine Corps had improperly influenced an  
2 ongoing investigation because he was  
3 apparently outraged by the nature of the  
4 allegations. And so it can go both ways.

5 But my real concern is that there  
6 is a perception that some are protected. And  
7 so long as there is a belief that some stand  
8 in that privileged and unwarranted position a  
9 19-year-old woman is not going to step forward  
10 with her allegations.

11 RDML ROBINSON: And I completely  
12 align with what the colonel has just said.

13 Just expanding on the sense that  
14 200 prosecutions out of 3,000 reported,  
15 unrestricted reports, when we know that the  
16 Department of Defense suggests that 92 percent  
17 of all reports are valid, that people are not  
18 lying except in 8 or less percent. So that if  
19 92 percent of the 3,000 are valid and we only  
20 get less than 300 prosecutions I believe that  
21 fairness will inevitably result in more.

22 PROF. HILLMAN: And if you knew,

1 Rabbi, that the figures for when you have  
2 comparative statistics on the referral of  
3 cases that the military takes that civilian  
4 prosecutors don't take, if you knew that the  
5 military was taking more cases than civilian  
6 prosecutors, would that change your view of  
7 this?

8 RDML ROBINSON: No ma'am, because  
9 as has been pointed out the military is a  
10 unique environment where we exercise a good  
11 deal more command and control over the entire  
12 environment. A sailor never gets to go home  
13 while deployed but a college student lives in  
14 a different dorm.

15 PROF. HILLMAN: But those figures  
16 suggest that the evidence which having been a  
17 former district attorney myself which is not  
18 always scientific as to what is sufficient  
19 evidence to prosecute and there are different  
20 standards for that. Whether you have  
21 standards and so forth. It's a matter of  
22 judgment.

1                   But I think that if the figures  
2                   are at all correct that the military is  
3                   bringing more of these prosecutions than  
4                   civilian prosecutors the conclusion is not  
5                   necessary that taking this out of the  
6                   commander's responsibility and putting it in  
7                   the hands of prosecutors is going to increase  
8                   the number of prosecutions. That's my only  
9                   point here. It's just a statement.

10                   BG SUTTON: The results may not  
11                   improve.

12                   COL MCHALE: Let the evidence  
13                   determine.

14                   CHAIR JONES: Professor, did you  
15                   have any last questions? All right, well I  
16                   can't thank you enough.

17                   MS. HOLTZMAN: I think Colonel  
18                   Turner had questions.

19                   CHAIR JONES: Oh, I'm sorry,  
20                   Colonel.

21                   COL TURNER: Just short, direct,  
22                   not a lot of narrative. Has anyone served as

1 a general court-martial convening authority  
2 before? So affirmative response from Admiral  
3 Evans. Thank you.

4 CHAIR JONES: Okay.

5 MAJ GEN ALTENBURG: Could I ask  
6 one question?

7 CHAIR JONES: Yes, of course.

8 MAJ GEN ALTENBURG: Doesn't the  
9 current Uniform Code require that prosecutors  
10 and chiefs of military justice and staff judge  
11 advocates review the evidence, weigh the  
12 evidence, make specific findings about  
13 probable cause and then present that to the  
14 general?

15 COL MCHALE: I believe that's  
16 correct.

17 MAJ GEN ALTENBURG: And so taking  
18 it away from the commander and having those  
19 same people do those same things with maybe  
20 another O6, how would that change things?

21 RDML EVANS: I'm not so sure it  
22 necessarily would be an O6 with the

1           significant prosecutorial that's making those  
2           recommendations. I mean, in my experience  
3           it's been my staff judge advocate who,  
4           lieutenant, lieutenant commander, commander  
5           with not as much experience as I think that  
6           the proposal -- is inherent in the proposal.

7                       RDML ROBINSON: And also the  
8           individual making the determination would not  
9           report directly to the commander.

10                      MAJ GEN ALTENBURG: I just  
11           wondered how there would be a difference in  
12           terms of weighing evidence.

13                      COL MCHALE: Two words I think:  
14           passion and professionalism. I've been a  
15           commander and I was passionate about the units  
16           that I was privileged to lead.

17                      I felt that I had an enormous  
18           moral responsibility to those commands, to  
19           every man and woman in the command. And when  
20           something happened in the command I felt that  
21           I was fully accountable for it under all  
22           circumstances. I was viscerally engaged, I

1 was passionate and in my case I happen to be  
2 a lawyer so I had some professional training  
3 in terms of evaluating evidence, but that's  
4 usually not the case.

5 With a JAG you're not likely to  
6 have the same kind of passion toward the  
7 character of the unit that a commander is  
8 going to feel. He's going to be or she's  
9 going to be a step or two removed. In some  
10 ways it is like a DA. I thought Patrick made  
11 a very good point.

12 A major is going to be viscerally  
13 engaged for the city. A DA is going to be  
14 able to take a step back from the immediate  
15 political pressure, the command climate, and  
16 look at the evidence and determine a little  
17 less passionately that the evidence justifies  
18 a prosecution and professionalism.

19 A mayor is going to be under all  
20 kinds of conflicting pressures. The crime  
21 rate, making an example, setting a standard,  
22 all the policy issues that a mayor must -- but

1 a lawyer, the JAG, is going to be  
2 professionally trained to evaluate the  
3 evidence.

4 So I would say to you, sir, that  
5 with regard to the difference it is that  
6 you're going to have a JAG who's a little less  
7 passionate, a little more objective, and more  
8 professionally trained to evaluate the  
9 evidence much like a district attorney.

10 CHAIR JONES: All right. Thank  
11 you all very, very much. I hope I thanked you  
12 for coming in the beginning. I want to thank  
13 you now. It's been very helpful to us,  
14 tremendously helpful. I appreciate it.

15 (Whereupon, the foregoing matter  
16 went off the record at 12:57 p.m. and resumed  
17 at 1:42 p.m.)

18 CHAIR JONES: This is the  
19 afternoon session of the Role of the Commander  
20 Subcommittee for the response panel. And  
21 we're very pleased to have all of you come to  
22 share your perspectives with us.

1           As you know there are two tasks  
2           that we've been asked to look at primarily  
3           with respect to the role of the commander.  
4           The first is his role as convening authority  
5           in the UCMJ. And of course the second one is  
6           on all the issues that surround the commander  
7           and his responsibilities to set the right tone  
8           for the top climate command.

9           I think it would be great if each  
10          of you could give us a short statement, maybe  
11          4 or 5 minutes, and then we could open it up  
12          to questions that way.

13          And if I could perhaps I'll start  
14          with Admiral Van Buskirk.

15          VADM VAN BUSKIRK: Great. Well,  
16          good afternoon. First let me thank you for  
17          this opportunity to be part of the panel to  
18          provide I think perspective on the role of the  
19          commander in military justice and sexual  
20          assault in the military.

21          I'm recently retired Vice Admiral  
22          of the Navy. My most recent assignment was

1 the Chief of Naval Personnel. In that  
2 position from October of 2011 to October 2013  
3 I was responsible for the Navy's personnel  
4 policy associated with combating sexual  
5 assault which included standing up recently  
6 our Navy's 21st Century Sailor Office which  
7 oversees the Navy's efforts to eradicate  
8 sexual assault from its ranks.

9 Prior to that assignment I served  
10 as the Navy's Seventh Fleet Commander and had  
11 several other tours as a commander with UCMJ  
12 authority.

13 In my opinion as a commander I was  
14 both responsible and accountable for any of my  
15 unit's command climate as reflected by its  
16 readiness, its good order and discipline, and  
17 the security, safety and well-being of all of  
18 my sailors, my men and women, and sometimes  
19 even Marines who served for me.

20 Having served in positions that  
21 led up to command I think I gained a  
22 perspective, an understanding and an expertise

1           that shaped my ability to make critical  
2           decisions, including those associated with  
3           military justice.

4                         With this experience-based  
5           expertise and perspective, and with the legal  
6           expertise and counsel of staff judge advocates  
7           I thought I was well-equipped to execute my  
8           authorities under the UCMJ, whether they be  
9           judging or making recommendations.

10                        And with my staff judge advocates  
11           providing their legal assessment  
12           recommendations I think I could make informed  
13           decisions that took on the full breadth and  
14           merit of the cases that I faced. All  
15           circumstances and all the things that would  
16           impact the good order and discipline and the  
17           command climate that I was responsible for.

18                        Bottom line, I'm convinced that  
19           the commanders have a clear responsibility for  
20           the performance, development and the readiness  
21           of their personnel. They must have the  
22           requisite tools and the opportunity to guide,

1 to mold, to shape and to lead their respective  
2 commands.

3 I think any removal or lessening  
4 of the authority of the commander will have  
5 attendant impact on the commander's ability to  
6 lead, to lead, to shape, to mold the command  
7 climate, to hold people accountable and to  
8 aggressively I think really attack all of the  
9 leadership challenges including sexual  
10 assault.

11 The commander should remain in the  
12 front line of the total force in its  
13 commitment to combat sexual assault. They are  
14 ultimately responsible and accountable to  
15 solve this challenge. Thank you for this  
16 opportunity again.

17 CHAIR JONES: Thank you very much.  
18 General Gould?

19 LT GEN GOULD: Yes, ma'am. Thank  
20 you for inviting all of us as well as those  
21 who are going to call in here. I think this  
22 is an absolutely critical panel and a group to

1           have, those of us speaking in favor of  
2           retaining court-martial convening authority in  
3           the hands of commanders.

4                        I recently retired as  
5           superintendent of the U.S. Air Force Academy  
6           in Colorado Springs and there as  
7           superintendent I was not only commander of all  
8           forces at the Academy but university president  
9           as well.

10                      And in that role I had a lot of  
11           interaction with my counterparts, other  
12           university presidents, other people in higher  
13           education. And as you might expect we  
14           oftentimes talked about these types of issues.

15                      And I got a real sense of the  
16           magnitude of the problem at the Air Force  
17           Academy and in the military as compared or  
18           contrasted with that same problem they have in  
19           higher education all across the country.

20                      In addition to that, prior to  
21           going to the Academy I commanded six other  
22           units, two numbered air forces. One was Third

1 Air Force at RAF Mildenhall in the UK was  
2 where my headquarters was.

3 My area of responsibility was all  
4 of Europe north of the Alps and all of Sub-  
5 Saharan Africa. And we had people deployed  
6 through that entire region as well as in  
7 southwest Asia conducting combat ops.

8 As a commander I needed to have  
9 total oversight and a feel for what was going  
10 on in all those areas.

11 In addition to that I moved on to  
12 command Second Air Force headquartered in  
13 Biloxi at Keesler Air Force Base. The mission  
14 at Second Air Force was overseeing all of the  
15 Air Force's technical training to include  
16 basic training at Lackland and all the other  
17 tech training that goes on around the country  
18 and around the world dealing with a lot of  
19 brand new airmen, first term airmen in their  
20 initial skills training and the like.

21 And as you might imagine there we  
22 had a lot of cases of violations of various

1 aspects of the UCMJ. As a commander it was  
2 absolutely critical that I had oversight and  
3 authority to deal with these cases. Otherwise  
4 we simply couldn't have gotten the mission  
5 done.

6 I had other operational commands.  
7 And again, I feel very strongly that having  
8 this ability is key to a commander's ability  
9 to perform a mission and to be able to have  
10 that sense of good order and discipline within  
11 the unit.

12 I'd also like to mention that some  
13 points that counter the arguments that are in  
14 favor of removing this authority from  
15 commanders. And there's three that come to  
16 mind that I've seen.

17 One argument says that members of  
18 the services deserve to know they're valued  
19 and will be treated fairly. It's not a matter  
20 of who holds convening authority to make  
21 members feel valued and understand they'll be  
22 treated fairly. It's about a commander's role

1 across the board to make sure people -- our  
2 members are valued.

3 Another argument says that  
4 district attorneys and attorneys general don't  
5 have to get permission from mayors and  
6 Governors in order to prosecute out in the  
7 civil world. I don't think this argument  
8 holds a bit of water. There's a big, big  
9 difference between the role of a Governor, or  
10 a mayor, or any other elected official and  
11 that role of a commander who is entrusted with  
12 the well-being of all his soldiers, sailors,  
13 airmen and Marines.

14 Then the last one I'd mention is  
15 an argument that says by taking sexual  
16 assaults out of the chain of command and  
17 handing it over to independent, unbiased  
18 military prosecutors we can curb the rising  
19 rates of sexual assault and restore faith in  
20 the military justice system.

21 I would argue that while it's  
22 important we do have a robust system in place

1 to prosecute for sexual assault and any other  
2 violation that isn't the key to curbing the  
3 rates. The key is commander involvement and  
4 everybody's involvement down through a chain  
5 of command to emphasize that fact that it's  
6 all about respect for human dignity and that  
7 without that level of respect we simply cannot  
8 get our jobs done.

9 For these reasons and many more  
10 that I'm sure will come up in the discussion  
11 I think it's absolutely critical that  
12 commanders retain this authority. Thank you,  
13 ma'am.

14 CHAIR JONES: Thank you, General  
15 Gould. General Sattler?

16 LT GEN SATTLER: Again, I welcome  
17 and am excited about the opportunity to hear  
18 other points of view but also to throw out  
19 some thoughts of my own.

20 I'm not going to re-beat a very  
21 well-played drum in that I associate myself  
22 with the comments that have already been made.

1 I'll just jump on a couple of key ones.

2 Command climate. You talk about  
3 the commander is responsible from lieutenant  
4 all the way up through four-star general to  
5 establish the command climate. That's the  
6 ethos and philosophy of the organization.

7 I had some great advice when I was  
8 a young officer. Keep it simple, say it  
9 often, but live it daily. If a commander is  
10 not out and about actually doing his or her  
11 own research on a daily basis just by their  
12 presence, looking for drooping shoulders,  
13 looking for terrified looks on the faces of  
14 individuals within certain commands, then the  
15 commander is not doing his or her job.

16 And they should not have that --  
17 that particular type of commander should not  
18 have general court-martial convening  
19 authority. But I think those commanders are  
20 far and few between.

21 I think if we get it right on the  
22 front side as we train our leaders that they

1           have the responsibility to set the tone, to  
2           beat the drum constantly so everybody  
3           understands there's no doubt when you run into  
4           a situation whether it be a violation of the  
5           law of armed conflict, whether it be sexual  
6           assault, sexual harassment, there's no middle  
7           ground. It's an uncompromising standard.

8                         Then good order and discipline  
9           within the unit will self-correct. Because  
10          folks will see something going wrong and they  
11          won't tolerate it because they know,  
12          absolutely know in their heart of hearts that  
13          it is wrong.

14                        Steven Covey's book Speed of Trust  
15          talks about the speed how you can accomplish  
16          things. In a military command, I'll use a  
17          military command. When a commander tells a  
18          soldier/sailor/airmen/Marine to do something  
19          they do it if that speed of trust has been  
20          built.

21                        I think back to what General Gould  
22          said. I think nothing would steal that trust

1           for me as a young warrior to know that my  
2           boss, he or she has been entrusted to tell me  
3           to clear that building, fly that mission, sail  
4           into those waters but they're not trusted to  
5           look out for my well-being when it comes to a  
6           certain microcosm of the UCMJ.

7                        When I say microcosm I am not  
8           playing down the importance of this because  
9           good order and discipline is what every unit  
10          hangs their hat on. And if you have that lack  
11          of trust between genders, between whatever  
12          inside that unit then you're never going to  
13          get that cohesion that helps us go to war, go  
14          to battle and come home victorious.

15                      So I guess I would say I'm a  
16          strong believer that the UCMJ as it's written  
17          is solid and we need to maintain it. I  
18          believe that some commanders will probably get  
19          it wrong on occasion, judgment calls. There's  
20          a reason why the Supreme Court doesn't vote 9-  
21          0 on every case. When you think wow, the  
22          Constitution is the baseline here. How can we

1 go 5-4 or whatever? Because these are hand-  
2 picked individuals. So commanders are going  
3 to have those same kind of judgment calls  
4 along the way.

5 But I think based on they live  
6 there, they created the ethos, they grew up in  
7 the culture, they understand the men and women  
8 in their command, I believe that they're much  
9 more qualified to make those tough calls than  
10 somebody on the outside who doesn't  
11 necessarily, and I'm not saying that they're  
12 bad people on the outside, but they don't  
13 enjoy that same culture and ethos that the  
14 commander does. And I'll stop there.

15 CHAIR JONES: Thank you. General  
16 Metz?

17 LTG METZ: First of all, I echo my  
18 fellow flag officers here in thanking you for  
19 the opportunity to be here. But also I would  
20 like to thank you for the time you are  
21 investing in this very important subject.

22 As I prepared and thought my way

1 through today I continued to reflect over my  
2 career. I was a very lucky 17-year-old who  
3 enlisted in the United States Army, won an  
4 appointment to the Academy and spent `67 to  
5 `71 there which were tough times for our  
6 nation with the Vietnam War, with the growth  
7 in the use of drugs, the civil rights  
8 challenges that our nation had.

9 And upon commissioning that first  
10 unit had all those problems. It was a very  
11 ill-disciplined Army. But it was good  
12 leadership that caused many of us to stay and  
13 the examples they set in the discipline that  
14 they imposed upon units to clean up the  
15 problems we had.

16 I am very confident we have that  
17 same leadership and discipline today to work  
18 on the problems we have.

19 So instead of going through my  
20 whole career and telling you all those little  
21 examples which there are many I would tell you  
22 that may main thing in the 4 years I've been

1           retired is to support the Chief of Staff of  
2           the Army's Strategic Leader Development  
3           Program.

4                       I won't give an advertisement and  
5           all that, but this week all the young  
6           promotable colonels and young flag officers  
7           are meeting and the Chief has clearly given  
8           his guidance. And yesterday -- that was  
9           Monday. Yesterday the Secretary clearly gave  
10          his guidance.

11                      And they could not have been more  
12          clear how important eradicating the sexual  
13          assault and sexual harassment is to the force.

14                      Having led soldiers as an  
15          infantryman from the platoon to the corps  
16          level and the multinational corps in Iraq it  
17          is my responsibility to have the good order  
18          and discipline so that those units can do what  
19          the nation asked us to do.

20                      And that good order and discipline  
21          requires the authorities that the Uniform Code  
22          of Military Justice gives us. And good

1           leaders will indeed solve this problem.

2                       As I've looked at the direction  
3           that the Secretary of the Army has given, that  
4           the Secretary of Defense has given the clear  
5           guidance that the Chief of Staff of the Army  
6           and the Secretary gave those young colonels  
7           and brigadiers, I am confident that we will  
8           solve this problem within the tools that we  
9           currently have.

10                   CHAIR JONES:  Thank you, General.  
11           Do we have anyone on the phone?  General  
12           Hunzeker?  General Brady, are you there?

13                   GEN BRADY:  Yes, ma'am, I am.  
14           Thank you.

15                   CHAIR JONES:  Thank you.  Go  
16           ahead.

17                   GEN BRADY:  I'm Roger Brady and  
18           I'm -- first of all, thank you for the  
19           opportunity to discuss this.  And I certainly  
20           associate myself with the comments that are  
21           made by the gentlemen that have spoken before  
22           me.  And I look forward to hear others.

1           The U.S. military and specifically  
2           its commanders are charged with the  
3           responsibility for every aspect of the lives  
4           of the young men and women who make up the 1  
5           percent of our nation who serve in uniform.

6           And when any part of this goes  
7           wrong, whether it's the support provided to  
8           members and families, or mission results, or  
9           behavior of ours members the very first  
10          question that is asked is who is the  
11          commander. No official in our society, no  
12          official in our society is given such direct  
13          responsibility for such breadth or depth.

14          And that individual whoever he or  
15          she is can be dismissed with minimal due  
16          process the sum total of which is this simple  
17          statement by their superior, "I have lost  
18          confidence in your ability to command."

19          Commanders have significant  
20          authority and virtually unlimited  
21          accountability, and none of us would have it  
22          any other way.

1                   But the question is whether a  
2                   commander should retain the authority for  
3                   dealing with a specific set of behaviors, or  
4                   if they should be handled by another set of  
5                   authorities outside the chain of command.

6                   I served as an officer for more  
7                   than 41 years retiring in February of 2011.  
8                   I retired as the Commander of U.S. Air Forces  
9                   in Europe and Air Commander Ramstein which is  
10                  a NATO position.

11                  Since entering active duty in 1969  
12                  I've been a group commander, a base commander,  
13                  a wing commander and a major command commander  
14                  serving as a court-martial convening  
15                  authority.

16                  I had responsibility for one of  
17                  the Air Force's last prisons at what was then  
18                  Lowry Air Force Base. And before assuming  
19                  command in Europe I was the Air Force Deputy  
20                  Chief of Staff for Personnel. So like one of  
21                  the gentlemen that spoke earlier I'm a  
22                  recovering personnelist.

1 (Laughter.)

2 GEN BRADY: In that position I  
3 headed the Air Force's efforts to deal with  
4 sexual assault in the 2004-2008 time frame and  
5 was charged with the responsibility for  
6 developing sexual assault response coordinator  
7 positions at our bases.

8 And as a brigadier general I  
9 served as a senior member of a court-martial  
10 panel that tried a senior colonel for sexual  
11 assault. I'll be happy to discuss any of  
12 that.

13 Commanders by virtue of the UCMJ  
14 have great authority and responsibility. And  
15 they also have a vast array of disciplinary  
16 tools that are not available to courts.

17 We have great discretion in  
18 handling the wide scope of cases. Simply put,  
19 we have the best tools at our disposal for  
20 obtaining justice.

21 Major General Charlie Dunlap whose  
22 article on the Gillibrand bill has been

1 provided to the panel has expressed this much  
2 better than I can and I highly recommend you  
3 consider his counsel.

4 The one thing I am absolutely  
5 confident will not come out of these  
6 proceedings is a recommendation that we do  
7 away with the chain of command. Assuming I'm  
8 correct we must not take actions that make  
9 them less effective.

10 Now, at this point anybody would  
11 be justified in thinking well, here's another  
12 old guy from the chain of command saying we're  
13 doing just fine so leave us alone. But on the  
14 contrary, I think there's much that's wrong.

15 First, we have some small  
16 percentage of commanders that simply don't get  
17 it, we really do. They remain ignorant of the  
18 nature of this crime and its ramifications.  
19 The services absolutely must choose commanders  
20 who get it and either educate or remove those  
21 who do not.

22 Second, we have what I can only

1 describe as terrible data on this crime in all  
2 of our services. No commander, trust me, ever  
3 wakes up in the morning and says gee, I wish  
4 I had more help from OSD. But this is an area  
5 in which we need OSD's help.

6 All of the legal departments, law  
7 enforcement, investigative organizations of  
8 the service must collect the same data the  
9 same way, and only OSD and the Joint Staff can  
10 drive that kind of change.

11 Major General K.C. McClain who's  
12 on the phone here with me I think can give you  
13 some expert advice from firsthand experience  
14 on that subject, as can General Hertog.

15 Finally, the Department of Defense  
16 needs to realize that we are in the parenting  
17 business. Our society by any measure is  
18 coarsening. And while I have the ultimate  
19 respect for the young men and women who choose  
20 to serve this nation, too often they do not  
21 respect the opinions, the bodies, or the basic  
22 humanity of those around them. They come to

1 us with 18 years of society's conditioning and  
2 some of it is absolutely inimical to teamwork,  
3 respect, good order and discipline, and  
4 ultimately the success of our mission.

5 But given that we need a certain  
6 number of people we have to accept the  
7 responsibility for educating those whose  
8 outlook on life is not conducive to an  
9 appropriate military culture. The services  
10 must accomplish this, but OSD must ensure that  
11 they do.

12 Finally, I encourage all of us to  
13 maintain some perspective on this subject.  
14 We've had a couple of commanders who have made  
15 controversial decisions. We need to keep this  
16 all in perspective. We can make it worse, or  
17 we can make it better. Thank you for  
18 listening.

19 CHAIR JONES: Thank you. Is  
20 General McClain on the phone?

21 MAJ GEN MCCLAIN: Yes, I am.

22 CHAIR JONES: Great.

1 MAJ GEN MCCLAIN: I too appreciate  
2 the opportunity to speak to the subcommittee  
3 and wish I could have participated in person  
4 to facilitate the exchange.

5 I served in the Air Force for 33  
6 years and was a commander on five different  
7 occasions. Additionally I was commander of  
8 the Joint Task Force for Sexual Assault  
9 Prevention and Response which was the  
10 forerunner of the current OSD SAPRO office.

11 The task force created the policy  
12 to include restricted reporting that forms the  
13 foundation of the current OSD Sexual Assault  
14 Prevention and Response Program.

15 Much progress as has been pointed  
16 out by the other speakers has been made by the  
17 services and will continue to be made.

18 However, I strongly believe that  
19 removing the commander from the military  
20 justice process in sexual assault would not  
21 make the sexual assault prevention and  
22 response effort stronger, and in fact would be

1 a step back.

2 As you've heard in the military  
3 the relationship between commanders and their  
4 subordinates is the backbone of mission  
5 accomplishment. The key to that relationship  
6 is trust. By removing commanders we, the  
7 system, would in effect be saying that we  
8 don't trust our commanders to be just, to be  
9 unbiased, to be committed to finding the truth  
10 when it comes to sexual assault. This message  
11 will erode the trust of subordinates.

12 For instance, a junior enlisted  
13 who is being held accountable by the commander  
14 for another issue would justifiably ask why  
15 can the commander's judgment on this issue be  
16 trusted but not on sexual assault.

17 A system where the commander has  
18 authority in some instances and not in others  
19 would be bifurcated, leading to a rupture  
20 between commander and subordinates.

21 Removing the commander and giving  
22 the responsibility to a far-removed group will

1 not increase transparency and communication.  
2 The commander of the victim as well as  
3 commander of the accused would not have access  
4 to the status of the case, decisions that are  
5 being made, much less the rationale for those  
6 decisions. By placing the commander on the  
7 sideline the services lose an asset and the  
8 commander loses credibility and in turn  
9 effectiveness.

10 During my time I saw many  
11 commanders in action. They were committed to  
12 the mission and understood that the only way  
13 the mission was going to be accomplished, by  
14 taking care of their people. Commanders who  
15 didn't understand this failed and were  
16 removed.

17 Taking care of people sounds easy  
18 but it requires commanders to juggle many  
19 issues. Taking authority from commanders  
20 would only make a tough job more difficult.

21 Additionally, actions could be  
22 viewed by some commanders as a removal of

1 sexual assault from their job jar.

2 As stated earlier, much progress  
3 has been made and there is still work to be  
4 done. Many changes that have been directed by  
5 previous NDAAs and OSDs are in the early  
6 stages.

7 While I understand the desire to  
8 do something the better course would be to get  
9 these changes fully implemented and mature,  
10 then measure their effectiveness and adjust as  
11 needed.

12 However, I also realize that the  
13 current climate does not allow DoD to just say  
14 no.

15 Therefore, I would recommend that  
16 OSD focus on three areas. As mentioned  
17 previously, training and education.

18 Some people have asserted that we  
19 cannot train our way out of this issue, but I  
20 disagree. Training and education is the key  
21 to prevention. Some of the programs are  
22 effective but we need to ensure that they are

1 standardized across the services.

2 Secondly, as General Brady  
3 mentioned we need to refine our statistics  
4 that are gathered through the annual report  
5 and through surveys to ensure there is a  
6 complete understanding of the issue which will  
7 then help target follow-on actions.

8 Lastly and most importantly, we  
9 need to continue to focus on victim care and  
10 recovery. Removing the commander from this  
11 issue will complicate if not degrade victim  
12 care and recovery.

13 Again, I thank you for your time  
14 and look forward to your questions.

15 CHAIR JONES: Thank you very much,  
16 General. Kyle, was there anyone else on the  
17 phone? Oh, General Hertog, sorry. Are you  
18 there, sir? Ma'am? Sorry.

19 MAJ GEN HERTOOG: Yes, ma'am, I'm  
20 there. Thank you for the opportunity to  
21 address this important issue.

22 CHAIR JONES: All right, thank

1           you.

2                           MAJ GEN HERTOG: I'm speaking  
3           today from the viewpoint of an officer who's  
4           had the privilege to command six times in my  
5           almost 34-year career and at many different  
6           levels, both squadron, group, wing and  
7           numbered Air Force.

8                           I also came up in the security  
9           forces career field, i.e., military police,  
10          spending 27 years as a cop and culminating in  
11          assignment as the top cop for the Air Force.

12                          And because of my years as a cop  
13          and training group commander and wing and  
14          numbered Air Force commander I'm really  
15          familiar with sexual assault and the  
16          devastating effect it's had on our military  
17          members and the readiness of our units.

18                          My background led to my final  
19          assignment in the military. That was as the  
20          director of OSD SAPRO, Sexual Assault  
21          Prevention and Response Office. So my  
22          comments are framed not only by my command

1           experience but my experience with SAPRO.

2                         Bottom line is I am adamantly  
3           opposed to removing a commander's legal  
4           authority to refer sexual assault offenses to  
5           courts-martial and turning that authority over  
6           to a person outside of the chain of command.

7                         Now, I said this repeatedly as I  
8           went up to Capitol Hill and visited staffers  
9           and congressional members during my tenure as  
10          the SAPRO director. And trust me when I tell  
11          you we had some pretty spirited conversations.

12                        It was disheartening and  
13          disturbing to have personally heard and read  
14          the gross generalizations that were made about  
15          thousands of commanders in the field who every  
16          day do their utmost to take care of their men  
17          and women.

18                        I heard personally congressional  
19          members say that we have a conflict of  
20          interest if we're a commander, that we're  
21          corrupt and we cannot be trusted.

22                        I cannot substantiate those

1           comments. We trust these same commanders to  
2           take our men and women into war, but we don't  
3           trust them to appropriately take care of  
4           victims of sexual assault and prosecute the  
5           offenders?

6                        Many of my fellow flag officers  
7           have talked about the command climate so I  
8           won't repeat that. All I'll say is that, as  
9           they said, we are charged with maintaining  
10          good order and discipline, and that means  
11          we're responsible for setting the climate, a  
12          climate of mutual respect and trust, and  
13          everybody must know what our commander's  
14          intent is.

15                      And our commanders need every tool  
16          in the UCMJ including non-judicial punishment  
17          to enforce that climate of trust and respect.

18                      Now, we sometimes have commanders  
19          that don't do that job and don't do what's  
20          right, absolutely, but I firmly believe  
21          they're in the minority. And we find to those  
22          commanders, remove them and discipline them

1 for failing their troops.

2 But I will state the majority of  
3 commanders know it's a privilege to command,  
4 will take care of their people and will do  
5 what's right by their unit members.

6 A commander without the authority  
7 to discipline is not a commander or leader,  
8 they're just mere managers. Shifting the  
9 authority to discipline to a separate entity  
10 miles away is not the answer. A bifurcated  
11 system in my opinion will delay justice for  
12 victims of sexual assault and erode the  
13 authority of a commander.

14 Discipline is and should be up  
15 close and personal. Now, by this I mean there  
16 is a significant impact when the accused is  
17 standing before the commander and informed  
18 what articles of the UCMJ have been violated  
19 and what they intend to do.

20 And the impact is not just on the  
21 accused, but it's also on the other members of  
22 the unit who closely watch what a commander

1 does or does not do.

2 Now finally, the most significant  
3 strides in combating sexual assault to  
4 protecting our victims of sexual assault have  
5 really occurred in the last 3 years. These  
6 initiatives were developed by SAPRO, the  
7 services and legislated by Congress with  
8 coordination from DoD.

9 Commanders now have the ability to  
10 offer victims an expedited transfer out of  
11 their duty section or station. DoD now  
12 retains sexual assault documentation for those  
13 that file unrestricted reports for more than  
14 50 years to make it much easier for them to go  
15 to the VA and ask for consideration for  
16 disability.

17 Services have formed Special  
18 Victims Units. We've developed specialized  
19 training for attorneys on how to handle sexual  
20 assault cases because they are so very  
21 different to handle, as well as specialized  
22 training for investigators from NCIS, CID and

1 AFOSI.

2 DoD IG has been reviewing closed  
3 sexual assault cases from all the services to  
4 ensure that their investigators are  
5 investigating the cases properly.

6 And one of the most significant  
7 changes made in 2012 was allocating sexual  
8 assault to the O6 courts-martial convening  
9 authority in the chain of command.

10 And more changes have been  
11 proposed or implemented that will hopefully  
12 improve reporting, such as giving sexual  
13 assault victims their own attorney and  
14 requiring JAG officers to preside over Article  
15 32 hearings instead of just a field grade  
16 officer.

17 So the point I'm trying to make  
18 here is that the majority of these changes  
19 have been legislated and initiated in the last  
20 3 years. And we need to give the services and  
21 our commanders a chance to fully implement and  
22 measure the effectiveness of these

1 initiatives.

2 We've not done that. We keep  
3 overlaying more initiatives hoping they're  
4 going to work. We need metrics and not panic  
5 when more victims of sexual assault come  
6 forward and file reports. To me that means  
7 victims trust their commanders to protect them  
8 and take the case as far as it can go.

9 And like K.C. I think there is no  
10 one solution to eliminating sexual assault  
11 within the military. It's got to be attacked  
12 from all sides.

13 Training and education at all  
14 levels, not just once but throughout one's  
15 career. Accountability at all levels,  
16 commanders, junior officers, and NCOs because  
17 I have heard many times from victims that it's  
18 not the commander who's the problem but the  
19 supervisors in between the victim and the  
20 commander.

21 And oversight. Everything a  
22 commander does has to be transparent.

1           Everybody's got a boss and superior officers  
2           have to know what their subordinate commanders  
3           are doing with these cases.

4                         And if they don't agree with that  
5           subordinate commander's action they have the  
6           authority to pull that case to their level for  
7           action. And when they do that they should  
8           also hold that subordinate commander  
9           accountable for failing to do their job.

10                        The bottom line is commanders must  
11           have oversight and I would predict they want  
12           it. They should be required to explain to  
13           their boss why a case did not go forward.

14                        Our commanders deserve our support  
15           and deserve to have every means available to  
16           them to eliminate sexual assault from the  
17           ranks. Eliminating their authority to take  
18           these cases forward is not the answer.

19                        Thank you and I'll be standing by  
20           for any questions you may have.

21                        CHAIR JONES: Thank you, General.  
22           Is General Franks on the phone? General

1 Hunzeker, are you there? All right. Then I  
2 think we should go ahead with questions.

3 Beth, I know you have to leave.  
4 Do you want to get started?

5 PROF. HILLMAN: Thank you. I'm  
6 humbled by the experience that you bring to us  
7 and I'm grateful for your time. And I'm vexed  
8 by this issue.

9 Let me phrase this in one  
10 particular way that one could look at it, it's  
11 certainly not the only way, and just get your  
12 reaction on it.

13 One way to assess this issue is  
14 should we defer to senior military leaders  
15 with the kinds of experience and service that  
16 you've had, or should we defer to victims of  
17 sexual assault who tell us that we have to  
18 make this change?

19 LTG METZ: I would tell you you  
20 must defer to the chain of command. I am  
21 convinced as I mentioned earlier and not only  
22 the words that came out of the Chief of Staff

1           and the Secretary of the Army but knowing that  
2           I was coming here the informal polling I took  
3           of assistant division commanders or others  
4           throughout the 150 or so that are out there,  
5           the Mark Center.

6                           They know that we have the  
7           problem. They know the Secretary of Defense  
8           and Secretary of the Army's guidance over the  
9           past year. They are using those tools to  
10          improve.

11                          I think we need to be very careful  
12          of the second and third order effects of  
13          taking the commander out of this particular  
14          piece of the Uniform Code of Military Justice.  
15          And my experience tells me as I tried to say  
16          earlier we faced a lot of tough problems in my  
17          career and since and we will face this one and  
18          whip it correctly.

19                          VADM VAN BUSKIRK: If I could add  
20          to that. This may seem a little strange how  
21          I put this, but I think for the victim's sake,  
22          for the victim's sake we need to keep it defer

1 to senior leaders.

2 CHAIR JONES: I'm having trouble  
3 hearing you, sorry.

4 VADM VAN BUSKIRK: I think for the  
5 victims there's an either/or the way you  
6 phrased the question. But I think as we look  
7 at this problem we have a unique opportunity.  
8 It is an either/or and for the victim's sake  
9 I think we need to keep deferred to our senior  
10 leaders and this is why.

11 Because the military has a chain  
12 of command, because there is a person  
13 responsible accountable and because he has the  
14 authority we have a unique opportunity with  
15 this focus like this panel has in here for our  
16 nation to settle this or make significant  
17 progress in the military institutions. And I  
18 think that's first and foremost what we need  
19 to go do.

20 Because unfortunately a lot of  
21 this is being characterized as the military  
22 against the victim. And we're going to lose

1           this battle if it becomes inwardly a battle  
2           among ourselves in here. Because it's a  
3           national problem.

4                       And if we can solve it in the  
5           military we ought to be talking about it and  
6           thinking about what's next and where are we  
7           going to go to next in this fight which I  
8           think is a university system. Having had two  
9           daughters who have gone through a university  
10          system and seeing what they have been through.

11                      So we have an opportunity to put  
12          other institutions on notice about how we're  
13          solving this problem, how we're going after  
14          it.

15                      And I think they should be paying  
16          attention to what's going on in here because  
17          we are making progress here. Maybe not as  
18          fast as people want to but it is progress in  
19          here. And we're experimenting with new and  
20          different tactics and seeing what works. I  
21          think that has a lot of merit to it.

22                      But I think we've got to make an

1           example for our nation. This is the nation  
2           against sexual assault, not the military  
3           against the victim in here. Otherwise we're  
4           going to lose ground on this and it will get  
5           lost in some of the noise in here and people  
6           will be happy that it's not in their backyard.  
7           It needs to be in everybody's backyard.

8                         So I think uniquely we have an  
9           opportunity here with this panel, with the  
10          recommendations that come out with, with  
11          taking the testimony of everybody here and  
12          whoever else you have really to make a genuine  
13          statement here to our nation.

14                        LT GEN GOULD: I have to respond  
15          as well. I heard you -- or when you first  
16          made your statement that who should you listen  
17          to, the victims or commanders.

18                        I've had a lot of victims who are  
19          very, very grateful for what we have done, the  
20          action we have taken as commanders. And I had  
21          to think twice when you said victims are  
22          saying we need to take this authority out of

1 the hands of commanders. Some may be but I  
2 wouldn't -- I think that's an over-  
3 generalization.

4 And I could go through many cases  
5 of young women at the Air Force Academy who  
6 felt free to report and with the restricted  
7 and unrestricted reporting system it's  
8 catching on and growing in popularity, and  
9 it's a sense of security for victims.

10 But they come forward, tell their  
11 story and the notion that commanders don't  
12 have time to deal with that is patently false.  
13 We took every one of these as seriously as we  
14 possibly could. We investigate to the nth  
15 degree. And when the facts bear it out we  
16 will take it to court. So I think your basic  
17 notion is maybe not totally accurate.

18 LT GEN SATTLER: And I would add  
19 if I was the victim and others knew I was a  
20 victim and nothing was done about it, even  
21 though I might not have pressed it up through  
22 the highest levels of command where somebody

1 with general court-martial authority had it  
2 sat in front of him or her when they could say  
3 whoa, this is not what we stand for, this is  
4 not building the team that we want to take to  
5 war, action will be taken.

6 But if it stayed at this level and  
7 I felt sold out by my fellow soldier, sailor,  
8 airmen or Marine and became a bystander when  
9 something was going on I would feel the band  
10 of brothers and sisters is broken and maybe it  
11 needs to be pulled out somewhere else.

12 But I'm, maybe I'm being  
13 Pollyanna-ish about it, but I'm convinced if  
14 that surfaces through the system or through  
15 the individual or the commander, just by being  
16 out and about as all commanders should be,  
17 noticing something is not right, making  
18 themselves accessible, chow hall, wherever it  
19 is, giving the opportunity to have that  
20 surface, I'm confident, I'm very confident  
21 that the preponderance. We don't get it right  
22 all the time in our command selection, I got

1           it.

2                         But I'm convinced the  
3           preponderance of commanders would be all over  
4           that to make sure the uncompromising standard  
5           we're talking about here was not compromised  
6           by a small group. So I can see both sides of  
7           that one.

8                         The ones who brought it forward  
9           and action was taken are saying you know what,  
10          the system works. But if it never got to the  
11          commander, somebody else mentioned that,  
12          somewhere along the line it was snuffed out or  
13          they were basically told that yes, he said,  
14          she said and pushed off to the side, if I was  
15          that individual I would feel strongly somebody  
16          else has got to take charge of this.

17                        But I guess my bottom line is I  
18          think commanders own it as they own everything  
19          else. They own life and death cases just as  
20          much as they own these. We ought to hold the  
21          commanders accountable to set that tone, that  
22          command climate and make it work.

1                   And if we can alleviate, as  
2           Admiral Miller said back at the Naval Academy,  
3           we've got to -- you know, bystanders are not  
4           leaders. If you're a bystander and you call  
5           yourself a leader that's an oxymoron. You've  
6           got to get in the game, off the bench, and if  
7           you see something that needs to be done you  
8           need to take action on it.

9                   And I think that's where our  
10          problem is, especially at the lower level.

11                   CHAIR JONES: Admiral Houck?

12                   VADM HOUCK: I was interested in  
13          General Metz's comments about second and third  
14          order effects. And I ask about it because we  
15          heard from witnesses this morning, some of  
16          whom have been in command and some of whom  
17          have served in the military not in command,  
18          that if you gave commanders truth serum that  
19          they would say they don't want the authority  
20          of making these decisions, that it's gut-  
21          wrenching, that it's difficult, and in fact  
22          that it would make commanders freer to lead if

1           they did not have the responsibility of making  
2           these military justice decisions.

3                        So I just wanted to explore that  
4           with you or anybody else who wants to address  
5           it, this notion of the consequences of  
6           removing authority from commanders and whether  
7           or not the comments this morning resonate with  
8           you at all.

9                        LTG METZ: Well, it doesn't  
10          resonate with me. Compassion is certainly a  
11          very important part of leadership. But what  
12          outweighs compassion is tough love.

13                       If you really want to have the  
14          very best unit at whatever level then that  
15          leadership has got to be able to handle the  
16          tough questions. And I don't think many  
17          commanders that I know, any that I know who  
18          took a truth serum would come up with the  
19          answer that you apparently have received  
20          before.

21                       GEN BRADY: This is General Brady.  
22          Can I comment on this?

1                   CHAIR JONES:  Yes, General.  I  
2                   think -- did you finish, General Metz?  Okay,  
3                   go ahead, General Brady.

4                   GEN BRADY:  I'm sorry, I didn't  
5                   mean to cut anyone off.

6                   Listen, as a commander anybody who  
7                   is disrespectful of other members of my  
8                   command I absolutely want them to know that  
9                   they're going to deal with me.  And I don't  
10                  think I'm at all unique in that.  I think all  
11                  commanders feel that.  No, it does not  
12                  resonate with me that somebody would not want  
13                  that responsibility.

14                  I have the authority to award  
15                  them, reward them, to promote them, and I want  
16                  the commensurate ability to tell them when  
17                  they're not meeting standard and to do  
18                  something about it.

19                  I think it's just absolutely,  
20                  absolutely critical.  I think we want that  
21                  responsibility and I think we will feel like  
22                  important critical tools to the command

1 environment, our ability to accomplish our  
2 mission has been taken from us if the proposed  
3 action were to take place.

4 LT GEN SATTLER: One sentence.  
5 Command without accountability is a failed  
6 model. It absolutely will not work.

7 There's plenty of people, we used  
8 to call them bar room commanders when I was  
9 younger where I certainly hope a command opens  
10 because I can't wait to get one. When the  
11 command opened up they were always too  
12 important on the staff. You know, the job I'm  
13 doing for the boss is so important I really  
14 can't take command because they didn't have  
15 the stomach for the responsibility and the  
16 accountability of the things we're talking  
17 about right here.

18 So if somebody said, you know, if  
19 you took all this responsibility and  
20 accountability off me I could be a great  
21 commander it wouldn't be in my organization.  
22 They would not command.

1                   VADM VAN BUSKIRK:  Where does that  
2                   argument end, Admiral, when you said that?  
3                   They would be freer to do other things.  Do  
4                   you just end it with sexual assault?  I mean,  
5                   where do you keep going.  That is leadership.

6                   I mean, you've got to be able to  
7                   address a problem and exhibit the leadership  
8                   it takes to do that because you've had a  
9                   problem in your command.  And that needs to be  
10                  addressed.  And the people are waiting to see  
11                  you do that.

12                  That goes -- we were talking  
13                  earlier beforehand about this Washington Post  
14                  article which I think was very good 2 years  
15                  ago.  And it talked about -- you recognize  
16                  leadership when it goes absent.  And used Penn  
17                  State as an example and several other ones and  
18                  cases.  The thing going on in New Jersey and  
19                  Japan's crisis in its government.

20                  And I think that's kind of a  
21                  little bit about what you're saying.  It would  
22                  be an absence of leadership to be able to

1 address the problem there. And people  
2 recognize that.

3 VADM HOUCK: One of the analogies  
4 that came up this morning was to the -- the  
5 analogy to the medical community. And we had  
6 a witness that said really this is no  
7 different than a medical problem in that if  
8 you have somebody who has a cold which is a  
9 low-level kind of thing a commander can be  
10 trusted to make a decision to give somebody a  
11 couple of days off work to get over a cold.

12 But if it's a serious medical  
13 problem they have to go to the doctors. And  
14 nobody thinks less of a commander because they  
15 outsource the medical decision to a doctor for  
16 a serious illness.

17 The point the witness was making  
18 was that therefore nobody should think less of  
19 a commander or trust a commander less for  
20 outsourcing the decision to prosecute a case  
21 or to conduct a disciplinary action in a  
22 situation.

1           So I don't know if I've fully done  
2           justice to the description that the witness  
3           was trying to lay out, but do any of you see  
4           a distinction between the medical decision and  
5           a military justice decision like this?

6           LT GEN GOULD: Absolutely. Mike  
7           Gould here. I would say that the situation  
8           you described has to do with a one-on-one  
9           decision where the commander says I'm not  
10          qualified to handle your particular case. Not  
11          so with sexual assault. That is inherently  
12          the role of a commander because of its  
13          influence on the rest of the unit. I just  
14          don't see where that comes into play at all.

15          And I also want to go back to the  
16          notion of truth serum and commanders don't  
17          want the added burden. I'd really like to  
18          talk to whoever it is that brought that up.  
19          My guess is that person has not commanded very  
20          often if at all. And I question what level  
21          they may have commanded at.

22          I don't know a commander, like my

1 counterparts have said, who would not want  
2 that as an added burden as you say.

3 LTG METZ: I would say on the  
4 analogy, the medical analogy, the doctor's  
5 core competency is making those decisions in  
6 all sorts of disciplines, whether it's cancer  
7 or a cold. The commander's core competency as  
8 we come up through the ranks is to have and  
9 create the atmosphere and discipline to run  
10 the unit.

11 And granted, you take all the  
12 company battery troop commanders at that  
13 level, there will be those that weren't  
14 properly educated and made mistakes.

15 What I think we've done correctly  
16 is we've brought the decisions to the colonel  
17 level and by that time your core competency is  
18 the leadership of your unit. And certainly  
19 sexual assaults and harassment and those kind  
20 of crimes are crimes of discipline that he's  
21 well prepared to take on.

22 CHAIR JONES: Yes, General Ham.

1                   GEN HAM:  Thanks, Judge.  And  
2                   again, thanks to all for appearing.

3                   Some who propose supporting the  
4                   change that Senator Gillibrand has proposed  
5                   say this is largely a generational issue,  
6                   frankly that senior commanders, general court-  
7                   martial convening authorities who are  
8                   overwhelmingly old white guys don't get it and  
9                   it's a different issue with a younger  
10                  generation.

11                  And so I'm curious, General Gould,  
12                  from your experience at the Air Force Academy,  
13                  General Sattler, I know your ongoing  
14                  engagement with midshipmen at the Naval  
15                  Academy, could the two of you kind of give us  
16                  a short synopsis of what are the midshipmen,  
17                  what are the cadets thinking about this?

18                  LT GEN GOULD:  I'd be glad to  
19                  address that.  And I know General Sattler is  
20                  intimately involved in this at the Naval  
21                  Academy.

22                  But I know I've spent an awful lot

1 of time with the generation we're dealing with  
2 and they are different for sure than we were  
3 at that age for a lot of different reasons.

4 But I'll tell you that the cadets  
5 that I dealt with really appreciated the  
6 emphasis we put on, number one, the climate,  
7 the culture and climate at the Academy, our  
8 absolute demands that we have to do everything  
9 with this basis of respect. And they really  
10 appreciated the fact that we have a system  
11 where victims can come forward.

12 At the same time subjects of  
13 investigations have rights as well. And I  
14 think the subjects who in most of the cases  
15 we're talking about are men, they appreciated  
16 the fairness of the system as well. And they  
17 understand that commanders have the entire  
18 unit's well-being in mind as we approach this.

19 So I think this generation is  
20 responsive to what we're doing and they  
21 understand. And more and more they're  
22 understanding why it's important that we live

1 in a culture of respect.

2 LT GEN SATTLER: Just a quick shot  
3 at the Naval Academy. I've been there about  
4 2 and a half years. I have the privilege of  
5 having the leadership chair inside the Vice  
6 Admiral James Stockdale Ethical Leadership  
7 Center. So in that position we've had the  
8 opportunity to do a lot of work.

9 Our goal this year and last year  
10 is influence the influencers. Go after the  
11 ones who have risen to leadership positions  
12 which we're talking about leaders and  
13 commanders here, those who run the companies,  
14 the midshipmen who have been based on their  
15 performance morally, mentally and physically  
16 they've risen to the top and have the trust,  
17 back again to that word "trust."

18 We found out a lot of them want to  
19 do things by example. I am not a correction  
20 type person. I don't get in people's face.  
21 I just lead by example by really shining my  
22 shoes, by really being where I'm supposed to

1           be. By my own personal character I will bring  
2           the masses along.

3                       And it's been a heartbreaker for  
4           them to realize as we're pounding into them it  
5           doesn't always work. If somebody does  
6           something wrong and if you do it double right  
7           that won't correct them. And oh, by the way,  
8           if you let them get away with it three more  
9           will say that looked like fun.

10                      Because normally when you violate  
11           the uncompromising standard it's easy, it's  
12           fun and you become what we've now labeled as  
13           bottom-dwelling minimalists. The folks that  
14           are down here, I mean I pull no punches. They  
15           want to do the minimum to be called a graduate  
16           and to wear the Air Force, Army, whatever,  
17           West Point, Naval Academy graduate. I got the  
18           shirt. I didn't earn it. People up here  
19           working hard earned it, but I still got it  
20           type thing.

21                      So, what we've found is we're  
22           holding them accountable to the uncompromising

1 standard not personally, but if you're in a  
2 leadership position you can't be a bystander.  
3 You walk away when it's violated, you've  
4 lowered the standard.

5 So, what we've found is when  
6 they're confronted with that and it's laid on  
7 them in a rational way, and they're in a  
8 position where they can't walk away from that  
9 responsibility because it's been outsourced,  
10 it's theirs, that they're taking it on.

11 And I'm not Pollyanna-ish enough  
12 to stand here and tell you that all 33 varsity  
13 team captains we've been working with, the  
14 team, the atmosphere on the teams, the culture  
15 of the teams has improved over the past 2  
16 years. I firmly believe that. And now  
17 working with the leadership in Bancroft Hall.

18 But the most important thing is if  
19 we get these leaders to rise up and define the  
20 uncompromising standard as cool, not violating  
21 everything you can is cool. If this becomes  
22 cool and it becomes what people strive to do

1           you'll slowly but surely bring the  
2           organization up.

3                       And all of these men and women,  
4           the goal is they don't graduate at the ending  
5           of an era, they commence, the beginning of an  
6           era when they become ensigns and second  
7           lieutenants.

8                       And the goal is we get them out  
9           there with this infection of knowing that  
10          servant leadership is the only kind that  
11          works, selfless, servant leadership.

12                      And the last thing we pound into  
13          them is if not me, then who. If not now, then  
14          when. If I see something wrong, somebody  
15          ought to do something about it, somebody ought  
16          to fix that. Turn that finger around.

17                      And again, that's -- and Admiral  
18          Miller's totally behind this as a  
19          superintendent. But his comment was, and he's  
20          absolutely right, you can't turn an aircraft  
21          carrier in 5 minutes. It's going to take time  
22          to change the culture.

1                   So, these are bright young men and  
2                   women. They're sharp as a tack. Most of them  
3                   want to do good all the time. But we've kind  
4                   of gone back to that basic drumbeat of  
5                   standards, loyalty, not misplaced loyalty but  
6                   defined vertical and horizontal loyalty and  
7                   then what's your action to enforce the top  
8                   two.

9                   MAJ GEN HERTOOG: General Ham, this  
10                  is General Hertog. May I address that,  
11                  please?

12                  CHAIR JONES: Sure, go ahead.

13                  MAJ GEN HERTOOG: Thank you. What  
14                  I wanted to comment on is something that  
15                  General Brady had brought up. It's very  
16                  interesting and I think an accurate statement  
17                  about there's been a coarsening in our  
18                  culture. And I saw that as a numbered Air  
19                  Force commander in charge of technical  
20                  training at Second Air Force as well as a wing  
21                  commander at Lackland.

22                  We have young women today and men

1 coming into the military service that they  
2 understand what rape is but they don't  
3 understand what abusive sexual contact or some  
4 of the other nuances of this definition of  
5 sexual assault.

6 They don't understand that  
7 sometimes you just can't go up and grab  
8 somebody's genitals as a way of greeting  
9 because that's what they've done in high  
10 school. And I'm not exaggerating when I say  
11 this because I have seen that firsthand.

12 Every week we assess hundreds of  
13 new airmen, soldiers, sailors and Marines and  
14 we have to go ahead and start the education  
15 process for them to understand what sexual  
16 assault is and the definitions and what trust  
17 and respect is. And it's something that you  
18 just can't ever let up on.

19 I witnessed many times when I  
20 would go into our on-base club and I'd watch  
21 my technical training students or my airmen  
22 doing things where I would have to pull them

1 off the tables in various states of dress or  
2 undress and say come with me, this is not  
3 tolerated, we're not going to engage in this  
4 kind of behavior.

5 But that's what you have to do.  
6 You have to start the process of education at  
7 the very beginning, be it in the academies or  
8 be it in enlisted training, and it has to go  
9 on throughout your entire career, over and  
10 over and over again.

11 And a commander has to be out  
12 there day after day after day setting the  
13 tone, establishing their commander's intent to  
14 make sure that they understand this is what's  
15 going to happen to you if you violate these  
16 rules and you commit these kinds of crimes.

17 Because if a commander doesn't do  
18 it chaos will ensue. And you have a totally  
19 ineffective commander.

20 And the last statement, I really  
21 had a visceral reaction to that about cold  
22 versus surgery and these other things, and

1 truth serum.

2 A commander is a commander. If  
3 they can't handle everything including sexual  
4 assault they do not need to be a commander.

5 And I go back to the statement  
6 that I made. These are our same commanders  
7 that are preparing and taking our young men  
8 and women into war. They have got to be able  
9 to do it all. Thank you.

10 LT GEN GOULD: Can I add one  
11 thing?

12 CHAIR JONES: Yes, Lieutenant  
13 Gould.

14 LT GEN GOULD: To what General  
15 Hertog just brought up about the education and  
16 training. We've seen a vast increase in the  
17 numbers not just at the Academy but across the  
18 Air Force of reported sexual assaults of  
19 various degrees that occurred before people  
20 joined the military.

21 Well, nothing really changed other  
22 than the fact that we go to great lengths to

1 help them understand that, like Mary Kay says,  
2 somebody come up and grab you in an  
3 inappropriate place, that is not the norm and  
4 that is not what we're going to tolerate in  
5 our business.

6 So they reflect on that and then  
7 they come and they get help from a SARC saying  
8 hey, I have been assaulted. So, that's one  
9 look at what we're doing that is very, very  
10 positive in that regard and it helps to change  
11 the culture as slow as it may be.

12 MS. HOLTZMAN: I'd like to address  
13 another issue that was raised earlier this  
14 morning by supporters of the Gillibrand  
15 proposal.

16 And it has to do with conflict of  
17 interest. And maybe you could help me  
18 understand this.

19 Somehow they believe that there is  
20 an inherent conflict of interest when a  
21 commander has to make a decision about  
22 referring a case for a court-martial because

1 both the accused and the victim are in that  
2 commander's command. In other words, a  
3 commander under those circumstances is  
4 inherently conflicted and cannot make a fair  
5 decision about that.

6 Could you tell me have you  
7 addressed this yourself and is it inherently  
8 impossible? And can you be fair under these  
9 circumstances? I really value your -- that  
10 was a central point that they made. And so I  
11 would really --

12 GEN BRADY: Ma'am, this is General  
13 Brady. Can I address that?

14 CHAIR JONES: Yes, go ahead.

15 MS. HOLTZMAN: Of course. And the  
16 others on the phone, anybody who wants to. I  
17 would really value that because that was I  
18 would say one of their most important  
19 arguments.

20 GEN BRADY: I don't remember  
21 exactly the year but it was 2004-ish, 2005  
22 when I was the Deputy Chief of Staff of

1 Personnel. We had a brigadier general who ran  
2 under me the General Officer Matters Office.  
3 He was accused of sexual assault and he had  
4 been my friend for 20 years.

5 With Lisa Turner who's probably in  
6 that room sitting there as a very young  
7 officer handling the paperwork I gave him an  
8 Article 15 and he was reduced from -- because  
9 that's what our commander had -- I was not a  
10 commander at the time but they delegated this  
11 little duty to me.

12 And I gave a very good friend of  
13 mine an Article 15 that probably took \$1  
14 million away from him for the rest of his  
15 life. And as much as I had liked him in the  
16 past, he had helped me a lot, there was no  
17 conflict of interest.

18 We are about mission success, and  
19 we are about respect, and we are about  
20 teamwork. And people that violate that, this  
21 was -- was it pleasant? No. Did I want to do  
22 it? No. Was there any debate about what was

1 the right thing to do? Absolutely not.

2 People have said to me when --  
3 don't you think it was a hard decision for  
4 President Obama to remove General McChrystal.  
5 And I said absolutely not. Pleasant? No.  
6 Hard decision? No. Obvious decision.

7 People don't give us much credit.  
8 We're about mission, and we're about trust,  
9 and we're about teamwork. And even if your  
10 favorite guy, your best wide receiver, your  
11 best quarterback, your best fighter pilot  
12 violates what centrally your organization is  
13 about no commander that's worth anything can  
14 overlook that.

15 MS. HOLTZMAN: And just to refine  
16 that point a little bit, aren't commanders  
17 making those decisions all the time? Aren't  
18 you preferring --

19 GEN BRADY: All the time, all the  
20 time.

21 MS. HOLTZMAN: Aren't you  
22 preferring some people over others for

1 promotion?

2 GEN BRADY: Of course.

3 MS. HOLTZMAN: Aren't you doing  
4 that when you have to evaluate? Aren't you  
5 doing that in decisions of who's going to do  
6 what task? Okay. But I'd like others to  
7 comment whether it's out of your own --  
8 particularly if you have examples such as  
9 that. Because I think it's very important to  
10 address this issue of how commanders can deal  
11 with two people in their own command who may  
12 be on different sides of this equation.

13 LT GEN SATTLER: One breath, I'm  
14 going to promise. You have assault, assaults  
15 between two people in your command.  
16 Disrespect between two people within your  
17 command. A commander who is a toxic leader  
18 who works for you, you relieve that commander.  
19 That is -- those are all, there's no easy  
20 decision for a true commander who takes on the  
21 mantle of command and the responsibility and  
22 accountability that comes with it.

1                   There are no easy choices you can  
2                   run out and ring the bell every day and feel  
3                   good about. So, to say that an accused and a  
4                   victim, they're there in assault, they're  
5                   there in disrespect, they're there when the  
6                   toxic leader violates that special trust with  
7                   the command.

8                   They're there in a Law of Armed  
9                   Conflict violation. Somebody commits a  
10                  violation of the Law of Armed Conflict, the  
11                  report comes back, the commander owns both.  
12                  He has to hold that part individual or part of  
13                  an organization accountable in some of the  
14                  most onerous circumstances.

15                  MS. HOLTZMAN: And have you seen  
16                  that yourself?

17                  LT GEN SATTLER: Well, yes.  
18                  Haditha Dam, I hate to bring it up, but I was  
19                  the convening authority and had the task after  
20                  the investigation came forward putting those  
21                  Marines in pre-trial confinement much to the  
22                  chagrin of half the world who didn't know the

1 facts who complained about it.

2 And when statements come out  
3 saying Marines take care of their own, I still  
4 remember the saying, but not in this case.  
5 Here was a Marine going after his four-star on  
6 the backs of the Marines who fought in combat.

7 If you do the right thing, you  
8 don't worry about that. I mean that was ugly  
9 as it could possibly get.

10 But and the same thing we've had -  
11 - I told you I'd be quick on this and you're  
12 dragging me into it here.

13 (Laughter.)

14 LT GEN SATTLER: The bottom line  
15 is --

16 MS. HOLTZMAN: I know, I'm guilty.

17 LT GEN SATTLER: -- you know, when  
18 it's time to clear a target and you go oh my  
19 God, I don't know if I want to clear this  
20 target, I'll give it to my boss. Who was my  
21 boss? No. You make the decision, you make  
22 the judgment call and you do it just like a

1 Law of Armed Conflict violation, disrespect,  
2 assault within your organization.

3 So, to say that this is a  
4 different kind of thing goes back to the point  
5 we can trust the commanders to handle these  
6 kinds of things but oh boy, this one's outside  
7 the realm of the trust we've given them over  
8 here. I think that that is the worst thing  
9 you could do for good order and discipline.  
10 And if I was a junior man or woman in that  
11 organization I'd say gee, why do I trust him  
12 over here if they don't trust him here. Take  
13 out this target? I want a second opinion. We  
14 can't operate like that inside our armed  
15 forces.

16 MS. HOLTZMAN: Anybody else want  
17 to answer?

18 VADM VAN BUSKIRK: On the conflict  
19 of interest piece I think the commanders are  
20 in a unique position and it's one -- if you  
21 look on the positive side here.

22 You have a staff judge advocate

1           who is advising you. And I don't know of  
2           anybody who doesn't use a staff judge  
3           advocate. You have this person here, it  
4           happens to be I had one sitting behind you who  
5           happened to be mine working for me at one  
6           time.

7                           And he or she maybe advises you  
8           hey, you're not going to win this case. This  
9           case, if you bring it forward, you're not  
10          going to win it.

11                          But the commander is in the unique  
12          opportunity here to say that doesn't matter.  
13          It's just the opposite here from a victim's --  
14          because he can still, or she can still bring  
15          it forward.

16                          Now we've put in the clauses for  
17          them that they have to be reviewed one step  
18          above which is even better when you think  
19          about this.

20                          Because despite what the staff  
21          judge advocate has said on here I can still  
22          keep it going forward and I can still try the

1 case, have the case convened. Or I can refer  
2 it up to somebody else so they review it.

3 So I think the situation where the  
4 commander's authority in here is a very  
5 positive element for the victim and for  
6 justice when you look at this. And  
7 particularly with some of the new, I think  
8 with this new National Defense Authorization  
9 Act puts another review in there. If the  
10 person decides not to it has to be reviewed to  
11 the next level. So I think it's a positive  
12 element.

13 LT GEN GOULD: I can give you  
14 another real clear example. And the short  
15 answer to your question is yes, commanders are  
16 sometimes conflicted with decisions on this.

17 Three years ago at the Air Force  
18 Academy we had a freshman outside linebacker,  
19 and I'll leave his name out of it because it's  
20 not critical. He has since been convicted and  
21 spent time in jail. But this young man came  
22 in and blocked the Navy punt that enabled Air

1 Force to beat Navy for the first time in 7  
2 years. The guy was a hero, no question about  
3 it.

4 LT GEN SATTLER: Depends on where  
5 you were looking from. Just kidding.

6 (Laughter.)

7 LT GEN GOULD: Unadulterated hero  
8 in Colorado Springs, I'll put it that way. He  
9 was a local guy. Grew up and went to high  
10 school in Colorado Springs. Was the talk of  
11 the town, you know, this young guy comes out  
12 and he's a star at the Academy.

13 Sometime later, 6 or 8 months  
14 later he was accused of aggravated sexual  
15 assault and a whole litany of charges that we  
16 ended up getting out of the investigation.

17 And during the course of the  
18 investigation we also learned of several other  
19 football players who were involved in the same  
20 party activity when this thing happened with  
21 the guy I'm talking about.

22 So the recommendation comes up to

1 me, hey Sup, I think we need to do something  
2 about this. Well, sure I'm conflicted. I  
3 played football at the Academy. I went in  
4 there with the burden, that boy, I don't know  
5 about this guy Gould because he's a football  
6 guy. Is he going to treat everybody fair.

7 It was a no-brainer. We went  
8 through the Article 32. The facts bore out  
9 that we had a case. We sent him to court. In  
10 fact, I had to even pull him out of the dorms  
11 and send him to pre-file confinement which was  
12 unheard of for the type of activity we had  
13 here. But I did it because it was the right  
14 thing to do.

15 So, sure commanders will face  
16 conflicts, but we do the right things for the  
17 right reasons.

18 LTG METZ: As I thought about  
19 coming today I said when was the first sexual  
20 assault incident in my career. And it was  
21 when I was a platoon leader in Alpha Company  
22 First Battalion 509th Parachute Infantry

1           Regiment when soldiers sexually assaulted  
2           another soldier.

3                         And that company commander set the  
4           example. He disciplined. He took care of the  
5           victim. He disciplined those soldiers and set  
6           that example.

7                         Fast forward 2004. I'm the court-  
8           martial convening authority for the Abu Ghraib  
9           incident. We had soldiers that sexually  
10          assaulted and horrible treatment of our enemy.  
11          But it's the right thing to do. So my career  
12          was bounded by doing the right thing.

13                        MS. HOLTZMAN: Thank you.

14                        MAJ GEN ALTENBURG: I'd like to  
15          clarify that record. The right thing to do  
16          was to send it to trial.

17                        LTG METZ: Yes, sir.

18                        MAJ GEN ALTENBURG: The way you  
19          said that it might look funny in print, quite  
20          frankly.

21                        LTG METZ: That's okay, excellent  
22          point.

1 MS. HOLTZMAN: So what you're  
2 saying in essence is that the fact that  
3 there's a conflict of interest doesn't end the  
4 argument, it's the beginning of the argument.  
5 Doesn't mean that because there's a conflict  
6 you can't handle it. You're trained to handle  
7 those conflicts all the time. That's part of  
8 the job of being commander.

9 PROF. HILLMAN: You know, General  
10 Metz, I actually think your experience is not  
11 unusual in the prevalence that sexual assault  
12 has played in the experience of so many senior  
13 officers and so many servicemembers who serve  
14 long careers. And it deeply troubles me that  
15 we're still there after all this time.

16 And I just want to put out there  
17 I'm not sure this isn't a different kind of  
18 problem than the kinds of problems that you  
19 have successfully faced down and solved  
20 effectively.

21 I'm not sure we don't need  
22 specialized expertise every bit as complex as

1 the medical expertise that we need to address  
2 what are actually secondary and tertiary  
3 consequences of medical decisions.

4 Infectious diseases, competence  
5 for flight duty after an illness. Those  
6 medical decisions to which you do defer to  
7 your medical professionals on do have  
8 consequences for your mission and your  
9 operations.

10 And I really do worry about  
11 whether we're making the right decision to  
12 defer to this idea of absolute command as  
13 something that is uncorruptable and total,  
14 that we can't carve out what seems to me a  
15 relatively small piece. All of the things you  
16 talked about doing are so critical to do. I  
17 don't think you're going to agree with me, and  
18 you'll have plenty of time to fire back, don't  
19 worry.

20 But I think this is a small piece.  
21 It's just the felony piece of it. These  
22 things that you talk about, all of them you

1 would still be responsible for doing. We'd  
2 just be saying there's this small piece, this  
3 felony piece.

4 And actually, what we have heard  
5 from folks who understand this much better  
6 than I certainly did before I got into this,  
7 who commits these crimes most of the time, and  
8 what their profiles are like, and how we catch  
9 them, and how they will adapt in response to  
10 every measure that we take. Because it's hard  
11 to find them. Because they actually have lots  
12 of tools at their disposal and they're very  
13 difficult to tell from all the rest of us who  
14 are in the room.

15 And I don't know that the regular  
16 measures that we have to face down the  
17 problems that we've faced in the past are  
18 going to work here. And that's what makes me  
19 worry about deferring to command in this  
20 narrow instance of trying to stop criminal  
21 sexual assault and shift that, just that  
22 decision about whether or not it's going to be

1 a felony charge to a professional prosecutor  
2 with the kind of expertise that you're growing  
3 right now, in the military right now across  
4 all the branches with special victims  
5 prosecutors and the kinds of folks who  
6 understand how to identify and investigate and  
7 actually win these kinds of complicated cases.

8 GEN BRADY: This is General Brady.  
9 May I respond to that?

10 CHAIR JONES: Sure, go ahead.

11 GEN BRADY: Yes. Ma'am, I think  
12 you raise a good point. I mean, I'm a  
13 political science major from Oklahoma so I'm  
14 not a legal expert.

15 But your question or your comment  
16 seems to suggest that were operating in a  
17 vacuum. I mean, all of the folks, ladies and  
18 gentlemen who have testified this morning so  
19 far, they have all stood toe to toe in a room  
20 with their legal experts. We are not without  
21 resources. And we have -- I have been  
22 incredibly well served by legal experts.

1                   Not only that, I'm 100 years old  
2                   so I've had some experience and I've developed  
3                   some judgment over the years, some of it by  
4                   making bad decisions.

5                   But we have the resources  
6                   available to us to avail ourselves of the  
7                   legal expertise we need. But we cannot have  
8                   removed from us the responsibility and  
9                   accountability for making the right decisions  
10                  going forward.

11                  LT GEN SATTLER: As I started to  
12                  say you're saying we don't recognize, can't  
13                  see, they're clever, we can't pick them out.  
14                  So, are you talking about putting folks in the  
15                  ranks from the outside that are going to be  
16                  snooping and looking? Well, it still has to  
17                  surface then.

18                  I believe every man and woman in  
19                  uniform from NCOs all the way up, we know what  
20                  right is right and we know what wrong is  
21                  wrong. And when somebody violates the  
22                  standard it needs to be surfaced. So it's got

1 to get to the folks you're talking about  
2 unless -- because you're saying well, these  
3 people are clever, they're devious, you can't  
4 smell them out. You don't understand, they're  
5 very, very tricky.

6 Well, it still has to be you did  
7 this wrong and now who's going to hold you  
8 accountable. I'm not capable of holding you  
9 accountable because I know you did something  
10 wrong so I'll give it over here. Well, it had  
11 to come through my hands before it went over  
12 there anyway. So I'm missing the point,  
13 ma'am.

14 PROF. HILLMAN: General, you're  
15 right, and I sound all hyperbolic there,  
16 sorry.

17 LT GEN SATTLER: I do too but I'm  
18 passionate about this also.

19 PROF. HILLMAN: The problem is  
20 that we don't know. Somebody here said -- did  
21 you say we have terrible data on this, or was  
22 that before? We just don't have much data

1           because our reporting rates aren't high enough  
2           yet. So we actually don't know most of the  
3           time that this happens.

4                        LT GEN SATTLER: Well, your  
5           reporting rates aren't high enough. So you're  
6           saying, you're making the assumption there's  
7           a whole lot going on that's not reported. I'm  
8           not saying it's a bad assumption, but is that  
9           what you're making the assumption on?

10                      PROF. HILLMAN: I am. Based on  
11           all the data, I don't think it's distinct to  
12           the military. Based on all the data we've  
13           seen, reporting rates 5 to 25 percent, there's  
14           a whole lot of this happening that we just  
15           don't know about.

16                      So it's not only that we have to  
17           deal correctly with the instances that come  
18           forward, and that's one of the challenges, but  
19           we have to get more of those reports going.

20                      GEN BRADY: The presumption is  
21           that if you give it to someone that nobody  
22           knows off in some legal organization somewhere

1           that that's going to increase the confidence  
2           in victims to come forward. There is no proof  
3           of that. And recently in recent years there's  
4           been a spike in the number of reports.

5                       Of course, if you think the  
6           military is the sole place in society that has  
7           this problem you take that data and say see,  
8           they're just as bad as we thought.

9                       But when I was running the sexual  
10          assault business for the Air Force what we  
11          really wanted was a spike in increases. Now  
12          that we've got it maybe that says, maybe we're  
13          increasing the confidence in victims in the  
14          chain of command.

15                      MAJ GEN MCCLAIN: This is Major  
16          General McClain and I'd like to add to that.  
17          When we stood up the Task Force for Sexual  
18          Assault Prevention and Response in late 2004  
19          and we did the first annual report.

20                      And when I took it over to the  
21          Hill we said the numbers are going to grow.  
22          So be prepared. In fact, we want the numbers

1 to grow because it will be a sign that there  
2 is increased trust and understanding of what  
3 sexual assault is and trust that the issue  
4 will be handled.

5 And so as the numbers have gone up  
6 although we're troubled that there are sexual  
7 assaults on the one hand, I am heartened by it  
8 because again it says there is trust in the  
9 system and education is being done and people  
10 have a greater understanding of it.

11 I don't see how taking this  
12 portion away, and you say it's just a small  
13 felony piece would be carved out. I don't  
14 think that's going to increase the trust in  
15 the system at all.

16 In fact, I think if anything it  
17 would obfuscate who's in charge here because  
18 we are trained from the minute we enter the  
19 military your commander is in charge here.  
20 Your commander has the lead on this.

21 And now suddenly we're saying  
22 well, no, now your commander doesn't have the

1           lead on this. And so I don't think that  
2           that's going to increase trust in the system.  
3           In fact, I think if anything it just would  
4           further muddy the issue as to no kidding, who  
5           has the stick. Thank you.

6                        VADM VAN BUSKIRK: I'm a little  
7           maybe just slow on the uptake on trying to  
8           understand this medical analogy that we've  
9           referred to twice. And maybe it's a little  
10          bit dangerous going to this medical analogy.  
11          It seems like it almost makes it a more  
12          sterile so to speak argument.

13                       Because in that case it's one  
14          person, you know, the expert and the one  
15          person. And in sexual assault you have a  
16          victim, you have a perpetrator and you've got  
17          the command, the institution there sitting  
18          there.

19                       And that's why I think you've  
20          heard all of us talk about command climate,  
21          good order and discipline. There's that other  
22          element that's there. And it's not just a

1 simple analogy that handing over to a medical  
2 expert, a medical person that you lose some of  
3 that and you simplify this whole complex  
4 problem in here a little bit.

5 PROF. HILLMAN: Let me just run  
6 out the metaphor for the sake of a different  
7 topic for just a second here. And that is  
8 that medical problems are community, social  
9 and operational problems too, and infectious  
10 disease. A problem, for instance, when I was  
11 at the Air Force Academy we had, when I was on  
12 the faculty we had a big problem with eating  
13 disorders.

14 LT GEN SATTLER: Still do.

15 PROF. HILLMAN: And it's  
16 predictable, the profile of people who would  
17 succumb to that sort of challenge in their  
18 lives is actually a lot of people who would  
19 self-select to want to go to a demanding place  
20 like the Air Force Academy too. And we were  
21 trying to deal with it.

22 That has secondary consequences on

1 the squadrons that those cadets were in and  
2 their friends and their families and a  
3 bystander issue. What do you do when you see  
4 somebody going south in that instance? So  
5 medical and health problems are not separate  
6 from the fabric of the community and the  
7 operation, the mission that you're trying to  
8 do, anymore than the sexual assaults we're  
9 talking about are separate from it.

10 Because these happen at parties  
11 and they get -- there is not as one witness I  
12 think said to us yesterday maybe, or maybe it  
13 was this morning, it's blurring together.  
14 That it's not really he said/she said, it's  
15 often he said/they said if you do an  
16 investigation because there are other folks  
17 who actually have a sense of what might have  
18 happened.

19 And I think that it's that kind of  
20 embedded problem. And I just would suggest  
21 I'm not clear that we actually have the  
22 structures in place that will help us deal

1 with this in the best possible fashion now.  
2 Notwithstanding the unmistakable importance of  
3 command in creating the climate going forward  
4 that will help us limit this and then  
5 eventually get rid of it we hope.

6 LT GEN SATTLER: In that context,  
7 and thank you for clarifying, I understand  
8 what you're saying. General Brady addressed  
9 this right up front. Commanders have that  
10 expert just like you go to the specialist in  
11 the medical world, it's called a staff judge  
12 advocate with a big staff of highly qualified  
13 lawyers. And we use them all the time.

14 MAJ GEN ALTENBURG: I'd like to  
15 follow up on that. Because you all on the  
16 phone and here have articulated the importance  
17 of the commander making these decisions. But  
18 the immense reliance you have on a fully  
19 professional legal staff which is what the  
20 proposed legislation seems to propose but to  
21 my understanding is already there, this legal  
22 experience, these prosecutors reviewing the

1 facts, these prosecutors working with  
2 investigators. I'm not sure how the  
3 legislation would change any of that.

4 It just gets down to this one-on-  
5 one meeting with each of you and your staff  
6 judge advocate. And instead of it being you  
7 and the staff judge advocate, apparently it  
8 would be some other JAG colonel making that  
9 decision.

10 Admiral Van Buskirk, you  
11 articulated extremely well the notion that you  
12 as a commander would be more concerned about  
13 the organization, the victim and the accused,  
14 and you sent cases to trial in the face of a  
15 recommendation from a staff judge advocate who  
16 I inferred said there's probable cause this  
17 offense was committed, you have jurisdiction  
18 over the offense, there is sufficient evidence  
19 for probable cause, and I recommend you not go  
20 to trial because it will be very difficult to  
21 prove this case beyond a reasonable doubt.  
22 And that's the decision most prosecutors would

1           make professionally. And you said to yourself  
2           I guess and to him or her we're going to  
3           trial. Because you were taking into account  
4           all these other considerations.

5                        VADM VAN BUSKIRK: In some cases  
6           it doesn't smell right and it doesn't look  
7           right. And because the facts may bear out  
8           this I still think it has an opportunity to be  
9           -- I may make a decision -- has an opportunity  
10          to be aired or be reviewed by another  
11          authority.

12                       In some cases that's what occurs.  
13          It gets reviewed by another authority.

14                       MAJ GEN ALTENBURG: That's all a  
15          predicate for this one question for all of  
16          you, and that is based on the old system even  
17          before this latest NDAA 2014 are any of you  
18          aware either personally or you've heard about  
19          a convening authority in the United States  
20          military who has said no, we're not going to  
21          trial in the face of a recommendation from the  
22          staff judge advocate you should go to trial?

1           It's the opposite of what you talked about.

2                   VADM VAN BUSKIRK:  No.

3                   GEN BRADY:  No.

4                   LT GEN SATTLER:  No, I can't.  I  
5           can give examples the other way but I cannot  
6           think of one where somebody said I'm mildly  
7           interested in your recommendation which I have  
8           the right to say obviously, but has gone  
9           against the recommendation to go to trial.  
10          No.

11                   MAJ GEN ALTENBURG:  And yet it  
12          would appear that that's the itch that this  
13          legislation is designed to scratch.  And I  
14          don't think there's an itch there.

15                   VADM VAN BUSKIRK:  There might be  
16          data to show support which is exactly what you  
17          said too.  I don't know if we keep that kind  
18          of data.

19                   MS. HOLTZMAN:  So, maybe just to  
20          follow up on the question that was just asked.  
21          Having been in charge of a very big office,  
22          and having taken over when you had very

1 professional prosecutors operating, 400 of  
2 them, sexual assault wasn't a big priority.  
3 Nobody was prosecuting marital rape. Nobody  
4 thought that was even a crime.

5 So, I changed the priorities  
6 because I was -- that was my job as elected.  
7 Maybe their job as a prosecutor was to look at  
8 the case and take the safe way out, or the  
9 less risky way out, or do I want my conviction  
10 rate to be very high because I'm going  
11 someplace else.

12 Well, the person who's in charge  
13 and whether that's the elected DA or the CEO  
14 of a company who has to decide whether to  
15 listen to his or her general counsel as to  
16 whether or not to bring a lawsuit, there are  
17 other factors involved than just the evidence,  
18 you know, one fact, well this witness said X  
19 and this witness said Y.

20 You're going to take into account  
21 how you evaluate those things, your own  
22 personal experience, your own values, the

1 mission of the organization, your conception  
2 of that. You may have very different  
3 priorities and a sense of mission and a sense  
4 of purpose from the people who would be called  
5 line prosecutors or line attorneys.

6 It happens in so many areas of our  
7 experience. We just don't say a lawyer gets  
8 to make all those decisions. Lawyers  
9 generally make those decisions. Clients  
10 approve them, generally. They don't say okay,  
11 you just do what you want to do. No. Lawyer  
12 has to consult.

13 So I'm just trying to say, isn't  
14 what we're talking about here kind of  
15 parallel, or similar, or analogous to the ways  
16 in which professional lawyers are used  
17 throughout the society? Whether it has to do  
18 with criminal prosecution or how corporations  
19 bring lawsuits? Are we talking about  
20 something that's so unique that we can't draw  
21 on analogies?

22 VADM VAN BUSKIRK: Well, I think

1           there's many analogies that make sense. But  
2           we have some unique things in here.

3                         One is as mentioned before that  
4           commander is accountable. And just with the  
5           loss of confidence -- as you've seen this  
6           occur just over the last couple of years in  
7           cases that involve sexual assault, those  
8           commanders if they go the wrong direction can  
9           be held accountable for their actions by their  
10          commanders.

11                        So, that's not the case  
12          necessarily out in the other sectors. There  
13          was such an immediate thing, just a loss of  
14          confidence in another individual, in their  
15          ability and their decisions that they're  
16          making a person can be removed.

17                        As a commander I wasn't thinking  
18          about that every day. But I'll tell you, that  
19          was always there. I knew I was accountable  
20          for the decisions and the recommendation I was  
21          going to be making. And just as quickly I  
22          could be not in that job any longer. May be

1 immediate, may be by no promotion later on,  
2 but that loss of confidence that we have in  
3 there I think is a key component which is  
4 probably absent anywhere else in society which  
5 I think is a positive thing when it comes to  
6 something like this where a commander is being  
7 held accountable and is responsible for the  
8 climate that he or she has --

9 MS. HOLTZMAN: Presumably this  
10 JAG, if I could just finish up on this line of  
11 questioning, the judge advocate general under  
12 the Gillibrand proposal on some level will be  
13 held accountable too. But what will be the  
14 standards under which that person will be  
15 judged? Will it be the conviction rate?

16 VADM VAN BUSKIRK: Hope not.

17 MS. HOLTZMAN: Well, we don't  
18 know, do we? Who's going to set those  
19 standards? Is it going to be some other  
20 commander? Not a judge advocate, not a legal  
21 person? Who is it going to be? Do we know  
22 that? So I just have these questions that

1 occur to me and maybe you have some thoughts  
2 about them.

3 CHAIR JONES: I was just going to  
4 say this would remove felony authority for all  
5 offenses, all serious offenses, not just  
6 sexual assault. Is that anything you want to  
7 comment on?

8 LT GEN SATTLER: I mean, you might  
9 as well throw out the UCMJ if you want to be  
10 totally candid. If the commander has no  
11 responsibility for what happens in the  
12 organization based on the command climate.

13 And back to your point, the  
14 district attorney sets the priorities. I'm  
15 changing it. We're going to go after -- this  
16 will no longer be tolerated. That's -- you  
17 could be a commander having that same  
18 philosophy going from the top commander all  
19 the way down to when Tom started, General Metz  
20 started as a platoon commander.

21 So that is what a command climate  
22 command philosophy is. You define what good

1 looks like and define what's right. And then  
2 you hold people accountable to that standard.  
3 So, if they're going to take anything that's  
4 considered -- would physical assault? I mean  
5 I guess --

6 CHAIR JONES: A serious enough  
7 physical assault would presumably be a felony.  
8 Yes.

9 LT GEN SATTLER: Okay. I guess I  
10 think it would just eviscerate all of -- one  
11 of the tools that's in the commander's toolbox  
12 for he or she to maintain good order and  
13 discipline. You're throwing it away.

14 CHAIR JONES: Go ahead. I'm  
15 sorry, who was that?

16 MAJ GEN HERTOOG: Hi, it's General  
17 Hertog.

18 CHAIR JONES: Yes, go ahead.

19 MAJ GEN HERTOOG: It goes back to  
20 what I said before. You do this, you don't  
21 have a commander, you've got a manager. A  
22 commander has to have that kind of authority.

1 I can't imagine, having been a  
2 commander and having a victim of sexual  
3 assault come up to me and say hey ma'am, what  
4 is the status of my case, and then I'd have to  
5 say stand by, let me call up Washington, D.C.  
6 and see if I can get a hold of the prosecutor  
7 that's handling it.

8 You know, we have to take care of  
9 these people. They're going to be with us  
10 face to face. We're the ones that must get  
11 them through this process and through the  
12 process of healing as well.

13 And it goes back to the previous  
14 speaker. You're eviscerating the command.  
15 That's the bottom line. We have to have it  
16 all in order to be able to do what we're  
17 charged to do.

18 And our priority is to take care  
19 of our people in order to accomplish the  
20 mission. You can't do one without the other.  
21 And this is not the way to take care of our  
22 people.

1                   VADM VAN BUSKIRK: And back to  
2                   your first question, ma'am. The whole list of  
3                   felonies. We've focused here in this  
4                   discussion on sexual assaults. But all of  
5                   those offenses need to stay under the purview  
6                   of the commander. And the list is, it's  
7                   shocking to me to see what they've peeled out  
8                   of what we have right now under our  
9                   jurisdiction.

10                  MS. HOLTZMAN: Knowing that you  
11                  still have Article 15 authority.

12                  VADM VAN BUSKIRK: Non-judicial  
13                  ways of handling things, right.

14                  LT GEN SATTLER: If there's a  
15                  theft in the barracks and you want to handle  
16                  it under Article 15 because it was a theft,  
17                  somebody took someone's ID card and all of a  
18                  sudden, you know, I mean one of the basic  
19                  things, the band of brothers and sisters, you  
20                  would say gee, we're going to have to  
21                  outsource that.

22                  I mean, you have the line. The

1 amount of these things that are handled below  
2 because of all the tools in the commander's  
3 toolbox from restriction all the way up  
4 through depending on the command climate, the  
5 individual, the stock the individual has  
6 already established, this makes it -- you'll  
7 have a lot more people who would love to be  
8 commanders if you took all this responsibility  
9 and heavy lifting away which is why we have  
10 command screening boards and we pick the best  
11 and brightest men and women to go and fill  
12 those slots.

13 VADM HOUCK: Did you mean to say  
14 what you just said?

15 LT GEN SATTLER: I guess I did.  
16 If I said it wrong please --

17 VADM HOUCK: It seemed different  
18 than what you all had been saying earlier.  
19 And you might have -- in that you said if you  
20 took away all these responsibilities then  
21 you'd have a lot more people that want to be  
22 commanders.

1                   LT GEN SATTLER: The bar room  
2                   commanders. The individuals who go boy, I  
3                   hope that command opens because I want a piece  
4                   of it. And then when it does open, we've all  
5                   seen it. Everybody who's worn a uniform, the  
6                   big BS'er, the bravado man or woman, but when  
7                   it's time to pick the command all of a sudden  
8                   it's like the little red hen. I'm too busy.  
9                   I can't plow the field, make the wheat.

10                   They don't want any part of making  
11                   those decisions because those are hard.  
12                   That's heavy lifting. That's what separates  
13                   men from boys and girls from women, those  
14                   decisions do. And every man and woman who  
15                   wears the uniform watches those kinds of  
16                   decisions to see what the moxie is of my  
17                   commander or the commander.

18                   And there's a real fine line for -  
19                   - a civilian would say "my," "the," who cares.  
20                   But when you're in an organization and you  
21                   take ownership of your commander that's  
22                   because they -- he or she gives a damn about

1           you.

2                           And you take all that stuff out  
3           and boy, it's easy to be a facade commander.  
4           So. And I'm not going to talk anymore.

5                           COL TURNER: I wanted to dig a  
6           little bit more at good order and discipline  
7           if I could.

8                           The RSP is going to have to make a  
9           decision based on incomplete data about a  
10          recommendation on the Gillibrand amendment.  
11          You make decisions, commanders on the phone,  
12          in here in the room, all the time, you do  
13          routinely on incomplete data.

14                          Part of making a decision is a  
15          risk assessment. So I'm wondering if we could  
16          talk about in terms of what is at risk here if  
17          the Gillibrand amendment passes.

18                          We've talked a little bit about  
19          the risk to victims' trust in the system.  
20          There could be risk if it's not passed, or if  
21          it is passed and the changes don't happen that  
22          they anticipate there is risk there as well.

1                   What's the risk to good order and  
2                   discipline? And when I ask you that question  
3                   because we've all been in the service for a  
4                   while and I appreciate General Metz calling  
5                   colonels and brigadiers young. Because we've  
6                   all been in the service for a while we use the  
7                   phrase "good order and discipline" frequently.

8                   But if you could answer the risk  
9                   question imagining that you're talking to  
10                  General Brady's sister-in-law, neighbor who  
11                  lives in Oklahoma and explain good order and  
12                  discipline other than saying sit down and  
13                  watch Twelve O'clock High.

14                  GEN BRADY: This is General Brady.  
15                  The nation, those moms and dads from Oklahoma  
16                  and Oregon and every place else, they send us  
17                  the absolute treasure of America, our young  
18                  men and women. And when they hand them over  
19                  to a commander we promise to take care of  
20                  them. And we owe them that.

21                  If good order and discipline is --  
22                  hinges largely upon, not entirely, but largely

1           upon the authority that a commander has. And  
2           if you erode that authority, trust me, the  
3           locker room lawyers are going to know that  
4           your authority has been eroded. Victims are  
5           going to know that your authority has been  
6           eroded.

7                           And I think you do significant  
8           damage. Can I measure it? No. This is not  
9           an empirical thing you can measure. But I'm  
10          absolutely convinced that you erode the  
11          confidence in people who are trying to do the  
12          right thing, and you embolden that very small  
13          handful of people we have that are inclined  
14          not to do the right thing.

15                       COL TURNER: Sir, what does that  
16          look like on a tactical level when you're  
17          trying to get the mission accomplished? The  
18          erosion of confidence and trust in a  
19          particular commander. What does that  
20          breakdown in good order and discipline look  
21          like? The risk we're taking with the change.

22                       GEN BRADY: It means that if you -

1           - it means that you can have an erosion of  
2           respect. You lose the edge about, with that  
3           environment, that climate, that atmosphere  
4           that says we are a band of brothers, people  
5           have mentioned that, and sisters I might add,  
6           that takes care of each other, that absolutely  
7           demands that we be respectful of each other.

8                         And it erodes, makes possible a  
9           crack in that environment that says everybody  
10          in this unit will be taken care of. We'll  
11          crawl out of the foxhole to go get even that  
12          person that's a little weird in our unit and  
13          there's always one that is.

14                        You erode that if you erode the  
15          capability of the commander to have authority,  
16          to make sure that everybody is going to be  
17          taken care of. And perpetrators of bad  
18          behavior are going to be dealt with.

19                        LT GEN SATTLER: Let me add one  
20          thing to that if I could. You asked  
21          specifically what would be the risk to a  
22          commander's ability to maintain good order and

1 discipline if we adopt this proposal.

2 If we outsource these decisions  
3 and this independent third party who has no  
4 skin in the game in that unit makes a decision  
5 that doesn't go in the direction that let's  
6 say a victim would have liked it's finished.  
7 And the victim and other people in the unit  
8 who want to know what happened, they have no  
9 more recourse except to deal with the legal  
10 authorities.

11 They need to be able to come back  
12 to a commander, and a commander can stand up  
13 and tell people here's what happened, and  
14 here's why, and here's why I made my decision.  
15 People will appreciate that, they'll rally and  
16 go back to work.

17 If we take this out of our hands  
18 that's not going to happen, and then the unit  
19 is left floundering. That impacts good order  
20 and discipline in a negative way.

21 VADM VAN BUSKIRK: I have never  
22 been -- since I've been in the military been

1 in an organization that hasn't strived to have  
2 good order and discipline. So I'm not sure I  
3 know what not good order and discipline is.

4 I do hear when we're talking about  
5 1967 through '71, I always heard about the  
6 military of that time, where it was lacking,  
7 what that was like, how it was -- it behaved  
8 in disarray and maybe not ready to fulfill its  
9 mission.

10 If you look at the missions that  
11 we're supporting today and the success that  
12 we've had that may be a metric of what good  
13 order and discipline is.

14 Also, I couldn't explain to this  
15 somebody in Nebraska or somebody's father, but  
16 we're in an organization, you've been a part  
17 of an organization that the standards have  
18 never gotten less, right? They're always  
19 raising the bar on the standards. And that's  
20 as it should be. That's because the nature of  
21 our organization, we're an organization where  
22 the standards can be raised. And I think that

1 is fundamentally because of good order and  
2 discipline.

3 An analogy that you might want to  
4 use this is kind of, I didn't go to Catholic  
5 school but I always heard about the nuns in  
6 Catholic school. If you messed up you were  
7 going to get your hand slapped in there. And  
8 people understood it. They knew what the  
9 standard was.

10 That to me kind of is like good  
11 order and discipline. You knew what the  
12 standard was. You knew what the consequences  
13 were and so you tried to live up to the  
14 standard that you were going to do.

15 And we do that on a day-to-day  
16 basis with our people. They understand what's  
17 right and what's wrong, and they understand  
18 that the commander has the authority to make  
19 a decision that will impact their lives  
20 immediately, immediately. Not to pass onto  
21 somebody where it's going to get judged later  
22 on, where time will be taken and who knows

1           what's going to happen.

2                         We've all seen the cases as things  
3           get on further and further people start to  
4           question in there, question the institutions  
5           where that can happen and for the length of  
6           time. They lose confidence in it. And I  
7           think we have, the American public has a lot  
8           of confidence in our military for the way we  
9           do our missions because of the foundation of  
10          good order and discipline.

11                        That said, the public is not happy  
12          with the dialogue that's gone on with sexual  
13          assault and what they're hearing about what's  
14          going on in the military. That's as they  
15          should be. We're the stewards of that.

16                        I think they are as more they hear  
17          about, they hear about the actions we're  
18          taking and are encouraged by the actions that  
19          we're taking. And whether there's been enough  
20          time to see what the results of some of those  
21          actions have occurred, I would tell you we  
22          lose real quickly the perception of time.

1           NDAA `12 adds something in. As the chief of  
2           personnel to institute that policy by the time  
3           it got down to me it would be 9 months to a  
4           year before I could institute or get a policy  
5           in place for something that happened in NDAA  
6           `12.

7                            You have people remembering that  
8           it occurred, that it went into NDAA `12 and  
9           why haven't things changed yet. So we lose  
10          this time domain in here.

11                           But I think on the positive side  
12          that you are starting to see progress. And  
13          we're changing a lot, and we have changed a  
14          lot. We may be in this case, I think we are,  
15          changing too much and going too far in one  
16          direction before we can see the tangible  
17          results of what we're doing.

18                           PROF. HILLMAN: Colonel Turner,  
19          were you asking operationally, tactically  
20          apart from sexual assault? What a breakdown  
21          in good order and discipline would look like?

22                           COL TURNER: I appreciate the

1 clarification.

2 PROF. HILLMAN: General Metz,  
3 wouldn't that be Abu Ghraib? General Sattler,  
4 wouldn't that potentially be Haditha?

5 LT GEN SATTLE: And it could even  
6 go back. If you want to see good order and  
7 discipline go back to the late sixties, early  
8 seventies when folks came back. When the  
9 racial tension inside the organization, call  
10 them hate crimes today, was absolutely bizarre  
11 and absurd.

12 Fistfights every night in the  
13 barracks. People cutting each other inside  
14 the same unit. The band of brothers was  
15 anything but.

16 At that point in time all the  
17 services ground to a halt and we went into a  
18 lot of feel good training was sort of the joke  
19 but it worked. It was education and training  
20 back to the point that was brought. Across  
21 level, get ideas and thoughts, different  
22 cultural perspectives from different parts of

1 the nation. Just like we're dealing with in  
2 some cases today.

3 We did not outsource it. We  
4 didn't say anytime a Black on White or problem  
5 exists, we're going to throw it over the  
6 transom so we can concentrate on being good  
7 warriors and fight. Because the units were  
8 replete with Blacks and Whites and Latin  
9 American folks, Latino Americans.

10 So we took it on. It was hard.  
11 Many people got out because it was too hard.  
12 But those that stayed fought their way through  
13 the change, the education. And we're still  
14 growing in that arena I'm sure today.

15 But it was so absolutely, you  
16 know, you wouldn't want to take one of these  
17 platoons to war. Maybe if the enemy  
18 galvanized them to fight the enemy because  
19 there was so much internal strife inside the  
20 organization.

21 And that was -- my stomach burned  
22 and turned over when you talked about good

1           order and discipline. At least the platoon I  
2           had did not have it. We fought our way hard  
3           to try to turn that around. But over the  
4           course of time by virtue of education, getting  
5           the right people, getting folks involved the  
6           understanding was developed that we turned  
7           that corner inside the armed forces. And I'd  
8           say maybe even led society to make that  
9           change.

10                        I see this as being, you know,  
11           it's not quite as obvious today with the  
12           sexual harassment and the sexual assault.  
13           Because as you mentioned the individual  
14           doesn't -- he or she who is that predator,  
15           they can hide it well and they can kind of  
16           slither on through.

17                        But once they're identified I  
18           believe we can do that identification, right,  
19           wrong, good, bad. It's obvious once everybody  
20           understands what good looks like.

21                        And then once that's done I  
22           believe our commanders, men and women, at all

1 levels have the understanding to hold people  
2 accountable and to push it into the system as  
3 it exists and obtain justice. I don't see now  
4 saying we've identified it, which is the hard  
5 part, let's throw it over the transom and  
6 let's wait and see how somebody over here who  
7 I don't know how they could be a better expert  
8 in right and wrong than folks who grew up  
9 inside the institution and understand the  
10 foul, the foul of violating that trust inside  
11 the organization where I don't want to come to  
12 work. I'm sick to my stomach to come to work  
13 because I don't know what's going to happen to  
14 me. That's a classic case of a lack of good  
15 order and discipline.

16 I ought to come in excited,  
17 knowing the command climate's there, I can  
18 work hard, I can grow at my own rate, I can be  
19 promoted in a meritocracy and I will be taken  
20 care of. And if that doesn't exist and I  
21 don't see how throwing bad problems over the  
22 transom. You know, I think it was as General

1 Metz said and waiting for the results to come  
2 back and having the Pontius Pilate. Gee, I  
3 didn't have anything to do with that, but it  
4 looks like this is the end state based on the  
5 charges that were pressed.

6 It all happened out here but the  
7 results come back and they live with it inside  
8 the organization.

9 LTG METZ: I hesitated because the  
10 word "risk" is really, really hard. And I  
11 think a combatant commander, I mean any  
12 commander especially in combat really  
13 struggles with risk. So I was just sitting  
14 here trying to figure out how do I tell the  
15 citizen of Sparta, North Carolina on the top  
16 of the Blue Ridge what risk you're going to  
17 take by imposing this change. And here's the  
18 way I would explain it.

19 The Army has worked real hard to  
20 take those sons and daughters in, the treasure  
21 of our country, and normalize them with seven  
22 values one of which is respect.

1                   If we take and say to the force  
2                   and to those parents that give us those great  
3                   young men and women we're going to outsource  
4                   respect. We're going to set this to hold all  
5                   soldiers in respect and dignity and put that  
6                   over here on the side. But we want them to be  
7                   loyal and have a duty concept and selfless  
8                   service, and honor, integrity, and personal  
9                   courage, but we're going to outsource respect.  
10                  That to me is a description of the risk  
11                  because you need the respect.

12                   And the commander needs to help  
13                   teach it, educate it, train it and to be able  
14                   to count on it in tough times. So that's kind  
15                   of how I would explain to people the risk that  
16                   we're going to run. We're going to remove a  
17                   very important value and hand it to someone  
18                   else other than the commander in the chain of  
19                   command.

20                   GEN BRADY: This is Roger Brady  
21                   again. I'd like to put a twist on something  
22                   that Mike Gould said a while ago.

1           Your commanders are going to make  
2           difficult decisions, all the commanders. And  
3           in sexual assault cases sometimes the  
4           perpetrator is maybe one of the fair-headed  
5           guys in the unit, in the squadron, or the  
6           company, or whatever.

7           In the commander there has to be  
8           one person that stands in front of that unit  
9           and says this happened because here's what  
10          happened and I made the decision to push it  
11          forward.

12          Somebody has to explain that. In  
13          many cases there will be decisions made and  
14          there will be some wide variety of opinions in  
15          the unit about whether or not justice was done  
16          when you prosecute someone.

17          Who is going to stand in front of  
18          that unit and say here's why it happened, and  
19          here's why we had to do it, and here's how  
20          we're moving forward? Only a commander can do  
21          that. Not some agency somewhere can't do that.

22                   MAJ GEN MCCLAIN: This is K.C.

1 McClain. I'd like to weigh in too on the  
2 comment that there are consequences.

3 And if this legislation passes we  
4 are in effect taking the consequences portion  
5 of the equation out of the commander's hands.  
6 And so therefore if they don't have the  
7 authority to pursue the consequence of one of  
8 their people's bad acts then their authority  
9 is eroded and it does affect good order and  
10 discipline.

11 A kind of a different example I  
12 can give you is I taught junior high before I  
13 joined the Air Force. And I learned very  
14 quickly never to send anybody to the  
15 principal's office because by doing that I was  
16 in effect saying I can't handle you. And so  
17 I did not send or even threaten to send people  
18 to the principal's office because it eroded my  
19 authority.

20 So that's a much lower-level  
21 example but I think it has applicability when  
22 you take away the commander's authority to

1           pursue the consequences and to hold people  
2           accountable. Thank you.

3                       CHAIR JONES: Joye?

4                       MS. FROST: I want to change the  
5           subject just a little bit. I always get a  
6           little concerned when anyone purports to speak  
7           for all victims. And I actually am the  
8           director of an agency at the Department of  
9           Justice that advocates on behalf of victims.

10                      And through the years one thing  
11           that I've learned, or several things that I've  
12           learned is that justice does mean different  
13           things to different victims.

14                      And about all you can say in  
15           general about victims is that they want to be  
16           believed, they want to be treated with dignity  
17           and respect, they want to feel safe, and they  
18           want to be kept informed.

19                      Once you go beyond that it  
20           depends. It depends on the victim, it depends  
21           on unique circumstances of the case.

22                      But the advocacy groups are pretty

1 unified in their positions. And I would  
2 really like to hear from each of you maybe  
3 just briefly why you think the advocacy groups  
4 and the victims that they represent feel so  
5 strongly about this change in the UCMJ.

6 LT GEN SATTLER: I'll kick it off  
7 here. It's kind of like Professor Hillman's  
8 point earlier where she said kind of speaking  
9 on behalf of all victims. I think you have to  
10 challenge that notion altogether.

11 Victim advocacy groups that you  
12 talk about, that's what they do. They're  
13 activists in that arena. But it's almost a  
14 separate thing from the challenges of  
15 commander and achievement of mission, and  
16 that's the perspective we're all coming from.

17 I certainly would listen to these  
18 victim advocates, I do, and I listened to  
19 victims throughout my career. But there's  
20 more to the story than just what the victims  
21 would claim.

22 MS. FROST: But that's not really

1           answering my question. I totally get that.  
2           Why do you think that these victim advocacy  
3           groups believe that this change is so  
4           important and would make such a difference?

5                        VADM VAN BUSKIRK: I think it  
6           would be natural for them to think that  
7           without understanding and without experiencing  
8           what a command is all about.

9                        And it would be very difficult for  
10          me to explain to them. It's difficult for me  
11          to tell a young lieutenant what command is all  
12          about, about the authority and responsibility,  
13          everything that goes with command.

14                       So on the face value of it if I'm  
15          looking with an advocacy group, sure, it's an  
16          easy answer to say why not, why worry about  
17          that. But until you understand what goes into  
18          an experience and lived through from a junior  
19          personnel, senior personnel, officer, enlisted  
20          what it's all about it would be very difficult  
21          to understand how critically important it is  
22          with command authority.

1                   And so that's the way I would  
2                   characterize it. It would be hard for them to  
3                   understand it. It's going to be a difficult  
4                   -- I'm not sure you could ever convince  
5                   somebody in that case.

6                   GEN BRADY: This is General Brady.  
7                   I think they believe what they believe and  
8                   they think that it's so important frankly  
9                   because they don't trust us. And just enough  
10                  of us have said stupid things to convince them  
11                  that they're right.

12                  I think that it's important,  
13                  something that I had an opportunity to do just  
14                  by chance. When I knew that I was going to  
15                  become the Deputy Chief of Staff of Personnel  
16                  I knew I was going to deal with this issue.

17                  I was flying at the time and I was  
18                  in a command that happened to have a lot of  
19                  women flying in the command. And it was not  
20                  uncommon for my instructor pilot to be a  
21                  woman. And after 9 hours looking at the  
22                  autopilot you start talking about everything.

1                   And I would ask, tell them where I  
2                   was going. I said tell me about this sexual  
3                   assault thing. I don't get it.

4                   And so over many trips I had a lot  
5                   of women talk to me about this. And I thought  
6                   I knew something about it until I did that.

7                   I think we are about as well-  
8                   informed as we should be. I think the  
9                   advocates, some of them know that. Frankly,  
10                  I think there are also advocates that are  
11                  professional advocates and they are scared to  
12                  death we're going to solve this one.

13                  But I think they have -- there's  
14                  good reason. And so I don't want to come  
15                  across as terribly critical of advocates  
16                  because they've got every reason to be  
17                  outraged. This is outrageous behavior. But  
18                  I think that there's a side of it that they're  
19                  not saying either. They're not saying the  
20                  whole picture either.

21                  And so I think cooler heads have  
22                  got to say, listen, we've got a mission to get

1 done. We have to get it done with people and  
2 it's absolutely critical that everybody be  
3 treated with respect without any equivocation  
4 in order for us to do that. And we're  
5 committed to doing that.

6 So, I don't know. I can't solve  
7 the advocate dilemma, I'm afraid. But I  
8 understand why they believe what they believe,  
9 and I understand why they want the  
10 legislation.

11 What I don't think they understand  
12 is it's not going to get them what they want  
13 and what they need and what they should have.

14 LT GEN SATTLER: I think if I was  
15 a victim and a case went forward and it was  
16 not resolved the way I expected it to be I  
17 would be disenchanted with the system also.  
18 So I'm sure that happens in the civilian  
19 world. I don't think 100 percent guilt  
20 convictions come anytime charges go forward.

21 Do those individuals feel the  
22 system wronged them? Absolutely. Would they

1 be advocates to change whatever the hell  
2 didn't give them the justice they deserved?  
3 Maybe rightfully, maybe it was one of those  
4 cases where the evidence just wasn't there.

5 So I don't fault the victims, I  
6 don't fault the victim advocates, but how  
7 about a group of those who brought it forward  
8 in the system and the system worked for them.  
9 That's the voice I have not heard. I've  
10 looked for it not very hard I might say  
11 because I just don't think it's out there, but  
12 there must be a number of cases that went  
13 forward, were utilized within the system, the  
14 commander stood tall, the charges were  
15 referred, justice prevailed and the individual  
16 stayed in uniform because the system worked  
17 for me.

18 But those are kind of not really  
19 talked about because that doesn't add to the  
20 drumbeat of we've got to get these old folks  
21 who have been around too long, who just don't  
22 get it out of the way and take this problem

1           outsourced to someone who will understand it  
2           and will get it.

3                         And I agree also, I think they  
4           would maybe be disenchanted over here and then  
5           looking for another venue. So I like  
6           advocates, they make us all think, but I've  
7           never been able to convince an advocate on any  
8           side, a zealot on any side of an aisle to see  
9           anything but what they've already experienced  
10          and felt. So I guess that's the way I would  
11          throw it out.

12                        MAJ GEN MCCLAIN: This is K.C.  
13          McClain. When I had the Joint Task Force for  
14          Sexual Assault Prevention and Response I met  
15          with the civilian advocacy groups. In fact,  
16          I held a meeting where we invited 20 of them  
17          in to talk to us.

18                        And it was because I knew I did  
19          not know all sides of this issue and I wanted  
20          their education and their experiences.

21                        One of the things that came out,  
22          and this was late 2004, early 2005, was their

1 for the most part absolute and total belief  
2 that commanders were corrupt. And they  
3 painted all, all commanders with the brush of  
4 maybe one or two bad actors.

5 And so for them they see nothing  
6 except removing things out of the hands of the  
7 commander as the only answer. And that is  
8 because of this foundational belief that  
9 commanders cannot be trusted.

10 Now, this goes against when you  
11 look at the workplace surveys that are done  
12 where people say that they do trust their  
13 commanders, both men and women trust their  
14 commanders. And so I think that's part of the  
15 dichotomy there.

16 I became very good friends with  
17 some of these advocates. In fact, I still am  
18 in communication with some of them. And  
19 trying to help educate them also that there  
20 are other sides to this story, and that just  
21 because the individual was not convicted  
22 doesn't mean that the commander was corrupt.

1           And I think some people make that connection  
2           and therefore they think this will solve the  
3           issue.

4                        As an aside, I did have a friend  
5           who was sexually assaulted on the civilian  
6           side. The case went to court. She testified  
7           and the guy was acquitted. And she was  
8           devastated. And she came back to me and she  
9           said I wasn't believed. So, it happens on the  
10          civilian side too.

11                       But it is a case where all the  
12          evidence is presented and then a jury makes a  
13          decision, or a panel makes a decision. And  
14          sometimes it does not come out the way the  
15          victim believes it should and therefore then  
16          they are disappointed in the system. Thank  
17          you.

18                       MAJ GEN HERTOOG: Hi, this is Mary  
19          Kay Hertog and if I could just make a comment.  
20          Joye, I think that was you that asked this  
21          question and if it was I wanted to say thanks  
22          for all your help with us and SAPRO when I was

1           there helping to strengthen our support to our  
2           victims of sexual assault.

3                         And I want to reiterate too that I  
4           have had the opportunity to talk with many  
5           victims face to face. Less than 2 years ago  
6           I sat down with a dozen of them representing  
7           all services one on one and asked them to tell  
8           me their story, what happened to them. If they  
9           felt comfortable and they all did. And where  
10          did they feel that the military let them down.

11                        And I was expecting to hear more  
12          it was my commander, it was my commander. But  
13          I will tell you the ones I talked to, about  
14          three quarters of them said it was people that  
15          were in between them and their commander that  
16          squelched it. They felt they couldn't get up  
17          to their commander. And by the time the  
18          commander knew about what was going on they  
19          were disgusted, they didn't want to have  
20          anything to do with that unit and they just  
21          wanted the hell out.

22                        So I understand the frustration.

1 I understand what they have gone through. But  
2 most of these people, and K.C. reiterated in  
3 the workplace gender studies, three quarters  
4 of the folks say they have the confidence in  
5 their commander.

6 We have to remove the impediments  
7 in between them and their commanders, even if  
8 they have to go outside of the chain of  
9 command to get the victims and their stories  
10 heard so these cases can be investigated.

11 When a commander is told that  
12 somebody has been sexually assaulted in their  
13 unit by law, by DoD instruction they do not  
14 have a choice. They must bring that case  
15 forward to the appropriate investigating  
16 agency to have it investigated.

17 And I think that's key here. And  
18 any commander that violates that needs to be  
19 held accountable.

20 So I would say that the military  
21 is trying to do the utmost they can to take  
22 care of their victims including an

1 accreditation program, a certification program  
2 at the DoD level that many people have helped  
3 OSD set up so we can get them the best  
4 possible victim advocates to take them through  
5 this very painful process. Thank you.

6 COL TURNER: Thank you. And just  
7 for clarification. Has anyone who is making  
8 a statement to us today not been a general  
9 court-martial convening authority? In other  
10 words everyone here has been a general court-  
11 martial convening authority, is that correct?

12 LT GEN SATTLER: Yes.

13 GEN BRADY: Yes.

14 COL TURNER: Thank you.

15 CHAIR JONES: General Franks, are  
16 you there?

17 GEN FRANKS: I am, finally. Thank  
18 you. Sorry for the delay.

19 CHAIR JONES: That's quite all  
20 right. We're glad you could join us.

21 GEN FRANKS: -- on a project, a  
22 Wounded Warrior ETS/TBI we're having down here

1 in Florida. Sorry for the --

2 CHAIR JONES: Yes, no problem. We  
3 began with everyone giving very sort of short  
4 set of statements. Obviously the key question  
5 here is the role of the commander both in  
6 terms of setting the tone in the command  
7 climate, and as it turns out in the discussion  
8 also very importantly the proposal to remove  
9 the commander as convening authority.

10 So if you have some general  
11 comments we'd be pleased to hear them now.

12 GEN FRANKS: Yes, thank you very  
13 much for the opportunity and with General  
14 Altenburg this opportunity to address the  
15 panel. And thank you for what you all are  
16 doing. It's I think an extraordinarily  
17 important issue for the issue at hand, i.e.,  
18 sexual harassment, sexual assault, and also  
19 for the military justice system.

20 I am -- as a former general  
21 officer convening authority and as a former  
22 commander for any number of years in a variety

1 of units and in a variety of circumstances I  
2 am totally opposed to withdrawal from the  
3 commander the authority to be a general court-  
4 martial convening authority in these cases.

5 I believe the commander, I believe  
6 in the totality of command. And I believe  
7 commanders must pay attention to everything  
8 that goes on in their command in order to see  
9 that the right thing is done for the mission  
10 and for the soldiers of the services and the  
11 families within their command and within their  
12 jurisdiction.

13 They need to pay attention to  
14 everything. And they need to assure their  
15 subordinates that justice is done whenever  
16 there is some fraction of law, or regulation,  
17 or policy, or custom.

18 By the application of the variety  
19 of means available to the commander to include  
20 general court-martial convening authority  
21 commanders ensure that that justice is done  
22 and thereby earn the trust of their

1           subordinates who on a variety of operational  
2           circumstances must enjoy that trust in order  
3           to accomplish the mission.

4                         And for one reason or the other,  
5           one motivation or the other, for that  
6           authority to be removed from the commander  
7           would seriously undermine the ability of that  
8           commander to ensure justice in his or her  
9           entire organization and thereby gain the trust  
10          that is absolutely essential to success in any  
11          kind of military operation.

12                        That would be the end of my  
13          opening statement.

14                        CHAIR JONES: Thank you. I think  
15          the proposed legislation would call for a  
16          separate set of prosecutors who would make the  
17          prosecution decision but would keep the  
18          commanders in the loop if you will, would  
19          advise them about the investigation, consult  
20          them for their opinions, but would retain the  
21          right to make the decision. At least that's  
22          how I'm understanding the Gillibrand

1           legislation.

2                           How does that -- what more does a  
3           commander need beyond being able to talk with  
4           the prosecutorial authority and being kept in  
5           the loop? I guess -- and this is something  
6           that's come up quite frequently. Is there a  
7           good, concrete example of where not being the  
8           person who makes that prosecutorial decision  
9           makes a difference?

10                           I know it's hard because we've all  
11           talked about and we've heard good order and  
12           discipline a lot. Well, not all of us, many  
13           of us have been commanders. I haven't. Some  
14           of us have never even been in the military.  
15           And so it's a very difficult concept to grasp.  
16           And we're always looking for a bit more of a  
17           concrete example. And then I don't know if  
18           anybody has one.

19                           VADM VAN BUSKIRK: Your question  
20           then is if this went through.

21                           CHAIR JONES: Yes, and this is as  
22           I envision it from having read the most recent

1           proposal.

2                           VADM VAN BUSKIRK: Well, if it  
3 went through how do we see that playing out as  
4 the commander?

5                           CHAIR JONES: Sure. That's a  
6 better way to put the question.

7                           VADM VAN BUSKIRK: I just don't --  
8 I mean, I'm looking at the list of the items  
9 and I don't see where much interaction would  
10 occur at all. It would be untimely.

11                           And the commander is going to be  
12 so focused on getting the mission done in  
13 there that I think without being fully  
14 invested in it right now that we would lose --  
15 he would lose some of the requisite focus that  
16 would need to be on their specific cases.

17                           I mean, not that a lot of cases  
18 occur to begin with. It depends. If you're  
19 on an aircraft carrier you've got 6,000 people  
20 working for you and there can be a range of  
21 cases in there.

22                           But once they're off, you know,

1           outsourced and as time goes on you can think  
2           about the time element that would occur in  
3           here. The ship is off doing a mission. Now  
4           it's off the coast of Japan helping in tsunami  
5           relief and the people are back somewhere else  
6           taking care of a case. I'm not sure it would  
7           do due justice, one, to the people involved.

8                         Every time when we have a case  
9           where we've got to pull people from later on  
10          down the line and bring them back in later on  
11          I think we -- the victim and the potential  
12          perpetrator lose some of that I guess -- not  
13          rights, but I mean, certainly clear protection  
14          in how we go forward.

15                        I just, I would worry about a  
16          commander not being actively involved in a  
17          case. And to me it doesn't seem like the  
18          commander could be actively involved when  
19          they're out taking care of a mission. They  
20          could be deployed. Just the logistics of this  
21          thing are -- I just don't know how you'd work  
22          the logistics of it.

1                   GEN FRANKS: This is Fred Franks.  
2                   I can't think of a specific example as you  
3                   requested but somebody earlier had said that  
4                   a victim didn't like the outcome which found  
5                   the perpetrator not guilty. How would you  
6                   answer the victim of sexual assault or sexual  
7                   harassment in your unit who after the verdict  
8                   is delivered not to the satisfaction of the  
9                   victim.

10                   Hey sir, you seem like a pretty  
11                   fair person in a whole variety of other  
12                   circumstances, people trust you here, I trust  
13                   you. You have authority to make life and  
14                   death decisions in terms of committing us to  
15                   combat operations. Yet all you were was an  
16                   advisor in this case. Why is that?

17                   CHAIR JONES: Fair enough.

18                   LT GEN SATTLER: I mean the  
19                   individual does not --

20                   GEN FRANKS: If I were a division  
21                   or a commander in a general court-martial  
22                   convening authority I couldn't answer that.

1 I could answer that by saying, well, at some  
2 point along the line here 10 or 15 years ago,  
3 or 2 years ago some group of people thought  
4 that we couldn't fulfill our duties to you, to  
5 the government and the military justice system  
6 and they withdrew that authority from us.

7 LT GEN SATTLER: The individual is  
8 still in the organization, both perpetrator --  
9 I mean, the victim is still in the  
10 organization as in some cases, at least in the  
11 military. Maybe not in that unit, but any  
12 unit under the umbrella of the commander. So  
13 you still have the parties. And looking at  
14 that list, many parties. And it's racked and  
15 stacked on a docket somewhere.

16 If I am the convening authority I  
17 bring the SJA and I form the court-martial  
18 panel. I tell them when they're going to  
19 convene. They get a defense counsel and a  
20 prosecuting attorney and I am driving their  
21 ship to make sure that we move towards a  
22 decision not on a docket somewhere I don't

1 control, a docket where I'm not sure when  
2 these will come to fruition, yet I still have  
3 the disgruntled and I can't -- when they come  
4 to me and look at me I just give them the  
5 Pontius Pilate look. I'm sorry, it's out of  
6 my hands. We'll just have to wait and see  
7 when they, whoever they are, when they make  
8 the decision based on the command climate, my  
9 command philosophy, and then the way I'm  
10 running this organization.

11 So I think it's contrary. And I  
12 liked what General Franks said, the totality  
13 of command includes not passing out awards,  
14 ice cream and pats on the back.

15 Also enforcing the uncompromising  
16 standard on a daily basis where everybody  
17 looks at the commander and knows when you tell  
18 me to go kick that door down, drop that bomb,  
19 run my ship into these waters I've got total  
20 trust and confidence in you to do that.  
21 That's the totality.

22 I have opportunity to build my

1 character and to earn that trust. Competence  
2 and character equals trust. I don't know how  
3 you look at it. So we're outsourcing some of  
4 the character piece because I'm not good  
5 enough to take care of it. Well, that can't  
6 help but erode the trust.

7 CHAIR JONES: Are there any other  
8 questions? Well, thanks first of all to  
9 everyone on the phone. It's a very difficult  
10 way to participate, I understand that, and we  
11 really appreciate it.

12 And I want to thank each of you  
13 who were here in person. It was a pleasure to  
14 hear your remarks and also your responses to  
15 our questions.

16 Kyle, is there anything else? All  
17 right. Thank you very much.

18 (Whereupon, the meeting went off  
19 the record at 3:56 p.m. and resumed at 4:23  
20 p.m.)

21 CHAIR JONES: I think what's going  
22 to happen next is going to be largely a

1           procedural issue but there may be some  
2           substance to it so we'll do it on the record.

3                       I do not wish to go to  
4           deliberations this afternoon without the  
5           fourth panel member Professor Hillman here.  
6           What I would like to do is take the  
7           opportunity to circulate a draft for talking  
8           points to each member of the subcommittee and  
9           set a date for a telephone conference for us  
10          to deliberate.

11                      And what will happen is hopefully  
12          tomorrow our very good staff will circulate a  
13          memo so that we can find out when everyone's  
14          ability is for this phone conference.

15                      I would rather have the  
16          deliberations once and at length as I say with  
17          Professor Hillman in attendance and she's as  
18          we know unable to be here because she had to  
19          leave to get back home.

20                      I also think it would be good for  
21          us to have some talking points on this  
22          subject.

1 Kyle, did you have any other  
2 comments you wanted to make administratively  
3 or otherwise?

4 LT COL GREEN: I think, ma'am, we  
5 sent everybody a copy of a possible outline in  
6 terms of dealing with the issue in terms of  
7 the convening authority.

8 CHAIR JONES: It's the one that  
9 has "draft" written on it.

10 LT COL GREEN: Yes, ma'am.

11 CHAIR JONES: Okay.

12 LT COL GREEN: The other thing  
13 that we sent out this week at the start of the  
14 week was an ideas list. I guess, and everyone  
15 knows, but we have 89 days until the  
16 subcommittee meets to report out in total to  
17 the panel.

18 And so one of the things in  
19 talking to some of you you've stressed is the  
20 need to start to focus on what areas we're  
21 going to provide recommendations for.

22 We didn't get a chance to talk

1           about that today but that may be a point in  
2           terms of the deliberations meeting where we  
3           also really need to nail down in our remaining  
4           time together what we are going to focus on in  
5           terms of recommendations.

6                         CHAIR JONES:  There is one  
7           question that I would ask now and that is if  
8           anyone has any ideas for either additional  
9           witnesses or additional topics.

10                        And I think you'll see when you  
11           read what Kyle's already sent out that I think  
12           he's covered all the possible additional  
13           topics.  But there may be things that occur to  
14           you.

15                        But as we sit here now are there  
16           any additional witnesses or additional types  
17           of information that anybody feels they need at  
18           the moment in terms of the examination of the  
19           role of the commander?  And let's start with  
20           as convening authority.

21                        The last time we all met and  
22           deliberated at the end of it we agreed that we

1           needed to hear from certainly more of the  
2           victims' advocate side of the position which  
3           is what largely generated our panel this  
4           morning.

5                           Are there any other suggestions?  
6           And if you don't have them now of course you  
7           can send them to Colonel Green at any time and  
8           he'll circulate them to the rest of us.

9                           MS. HOLTZMAN: Just a thought that  
10          occurred to me. And I actually have to give  
11          the Rabbi Robinson the credit for this. But  
12          he wanted to talk about the role of the  
13          commander vis-a-vis these, I forget, the  
14          collateral charges.

15                          We haven't really focused on that  
16          whole point and that may also be a reason to  
17          think about whether the commander should be  
18          relinquishing the convening authority because  
19          how do you resolve those other issues, or do  
20          you resolve them at the same time.

21                          I mean, I haven't really focused  
22          on that. Maybe we have enough information on

1           that.  But maybe that is something that we  
2           just need to look at before we make a final  
3           decision.

4                        I don't know, maybe it could be  
5           separated out.  I just throw that for  
6           consideration.

7                        CHAIR JONES:  I think it's on our  
8           list and I think if everybody took a look at  
9           the two documents that Colonel Ham described  
10          a minute ago you'll see a lot of the topics  
11          and an idea list.

12                       COL HAM:  And those were derived,  
13          just thinking after listing your terms of  
14          reference from your subcommittee charter what  
15          issues have arisen in the presentations and  
16          materials you've received on those -- under  
17          those terms of reference.

18                        I think that you may want to make  
19          recommendations on.

20                        CHAIR JONES:  And I would just  
21          throw out this comment which is that I think  
22          it's Section 1726 in the NDAA just passed that

1 talks about additional duties for the panel.

2 And under role of the commander the --

3 COL HAM: Section 1731.

4 CHAIR JONES: Thirty-one. And  
5 under role of the commander it specifically  
6 asks us to examine -- I could read it but I  
7 don't have it in front of me -- what, if any,  
8 impact removing the commander as convening  
9 authority would have on reporting by victims  
10 of sexual assault. So I wanted to highlight  
11 that since it's now a new task, an additional  
12 task that Congress has given us.

13 And we have exactly the same  
14 amount of time to complete that task as all of  
15 the rest of our tasks.

16 In this instance I think it's  
17 something that we've obviously been  
18 considering all along as part of our entire  
19 examination of the role of the commander. So  
20 I don't think it's going to be difficult for  
21 us, or any more difficult than our task is.  
22 It hasn't added anything because I think we've

1 all, we've been focused on it. But I just  
2 wanted to highlight that.

3 COL HAM: Ma'am, there were two  
4 other items, potential areas that the  
5 subcommittee may want to examine. Although  
6 one does not relate directly to court-martial  
7 convening authority and one does.

8 There was a suggestion to perhaps,  
9 or an idea to perhaps observe one of the  
10 senior legal officer orientation courses or  
11 part of it at the JAG school that you've heard  
12 some information about.

13 Another potential area to examine  
14 is strategic leadership.

15 CHAIR JONES: Is what? I'm sorry.

16 COL HAM: Is strategic leadership  
17 training at perhaps the National Defense  
18 University which is just across the river  
19 here.

20 If you wanted to find out more  
21 about how strategic leaders are taught to lead  
22 cultural change. There are other ideas and I

1 don't know if the subcommittee is interested  
2 in doing any of that.

3 CHAIR JONES: I'll give you my  
4 reaction which is that I think we heard a lot  
5 from the TJAGs about the training generally  
6 speaking.

7 Now, strategic leadership is not  
8 something that I feel I know a lot about. And  
9 my only suggestion might be that perhaps the  
10 subcommittee members and whatever panel member  
11 or members was able to, if they had the time  
12 might be able to do something, make a visit,  
13 site visit or what have you. But we're  
14 running out of time. Or maybe we could have  
15 a presentation on it. Have we had a  
16 presentation on the strategic piece? I don't  
17 recall any.

18 VADM HOUCK: I may have missed it  
19 given my absence physically from the last two  
20 sessions that we've had, but do we have a  
21 clear sense yet of how the Gillibrand bill  
22 would work in person, operationally how that

1 would function?

2 COL HAM: The newest version, sir,  
3 we asked for comments from the TJAGs, any that  
4 they could provide. We have been informed  
5 that Department of Defense would like to  
6 provide a consolidated response. And I do not  
7 know the status of that.

8 We've asked for when we're getting  
9 that and the latest time we asked I think was  
10 yesterday. So we're waiting for their  
11 consolidated response.

12 CHAIR JONES: Excuse me for  
13 interrupting you but they'd be responding to  
14 the most recent legislation --

15 COL HAM: Yes, ma'am.

16 CHAIR JONES: -- which we actually  
17 have not talked about, deliberated on at all,  
18 correct?

19 COL HAM: That's correct. You had  
20 the phone call with Professional Fidel and  
21 that was the morning that we actually received  
22 that new version.

1                   LT COL GREEN: We did receive an  
2                   interpretation of that from the Air Force  
3                   judge advocate general. General Harding  
4                   provided that. But the DoD is still pending.  
5                   And we have provided that. We can provide  
6                   that.

7                   CHAIR JONES: I don't know if it's  
8                   worthwhile asking everybody now their  
9                   availability, or whether we should just do it  
10                  through emails tomorrow. It probably makes  
11                  more sense to wait until tomorrow when  
12                  everybody is back and has their calendars in  
13                  front of them if that's agreeable.

14                  All right, well then maybe we can  
15                  certainly go off the record and discuss dates.

16                  COL HAM: Ma'am, one item for the  
17                  record is again the public meeting on the role  
18                  of the commander is January 30. The Federal  
19                  Register notice has been approved and should  
20                  be published this Friday the 10th. It's a  
21                  Friday, I'm sorry. I'm losing track. The  
22                  10th of January. And I don't know if you

1           wanted to discuss with the subcommittee which  
2           -- what witnesses you think are valuable for  
3           the full panel to hear.

4                       CHAIR JONES: Well, I guess the  
5           question is do we want to invite any or all of  
6           the witnesses that we heard today to make  
7           their presentations in public? Any thoughts  
8           on that?

9                       GEN HAM: I think having  
10          representatives from each group would be good.  
11          I wouldn't have as many. I mean, there was a  
12          fair amount of redundancy in both the morning  
13          and afternoon sessions.

14                      CHAIR JONES: I think I agree with  
15          that. And we can decide who we want and  
16          extend invitations then. Okay?

17                      COL HAM: Yes, ma'am.

18                      CHAIR JONES: Great. Anything  
19          else? All right, thank you very much.

20                      MS. FRIED: The meeting is closed.

21                      (Whereupon, the foregoing matter  
22          was adjourned at 4:34 p.m.)

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C E R T I F I C A T E

This is to certify that the foregoing transcript

In the matter of: Response Systems to Adult Sexual  
Assault Crimes Panel Meeting

Before: US DOD

Date: 01-08-14

Place: Arlington, VA

was duly recorded and accurately transcribed under  
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