

## Excerpts regarding victim support, prevention and reporting

Much has improved in the past few years with regard to victims' responsive services to assist men and women who have experienced crimes of sexual violence while serving in the military, yet more needs to be done.<sup>1</sup>

SWAN has been leading the charge in sexual violence prevention and policy reform since it was founded in 2007.<sup>2</sup> We've been encouraged to see traction and momentum on these issues continue to grow both in the public, in the services, and in Congress. For example, in 2009, there were only five provisions in the National Defense Authorization Act on this issue, and this year's bill already has dozens. Continuing to reform victims' protection services is critical, not just ensuring that these men and women who have suffered these crimes are cared for, but also so they're resilient enough to assist in the prosecution of perpetrators.

DoD numbers show that year after year, between 10 and 20 percent of criminal cases against alleged perpetrators cannot be tried because a victim has refused to participate in the criminal justice system. SWAN's work on sexual violence, in particular, our policy agenda, centers on what we see as a broad continuum of care for sexual assault victims.<sup>3</sup>

This includes effective prevention training, improving reporting, ensuring victims' protections, effective prosecution and conviction of perpetrators, and changing the culture of the military to include advocating for victims and access to civil courts.<sup>4</sup> We also work on post service issues concerning VHA and VBA reforms.<sup>5</sup>

I'd refer the Panel to an enclosure in my written testimony for a closer analysis of the current bystander intervention approach that DoD is currently using. But in brief, current SHARP and SAPRO training is fraught with victim blaming, ignores male victims, is disempowering in its messaging, and lacks much of the needed emphasis on offender deterrence and consent training.<sup>6</sup>

### Collateral Misconduct:

The next touchstone I'd like to mention occurs after an assault has occurred. DoD reports that nearly nine out of 10 victims do not report their assault primarily due to fears of retaliation and the belief that nothing will happen to their perpetrator.<sup>7</sup> This is a huge issue since in the military, most policies designed to provide victim care are not activated until the report, either

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<sup>1</sup> *Transcript of RSP Public Meeting 336* (November 7, 2013) (testimony of Mr. Greg Jacob, Policy Director, Service Women's Action Network).

<sup>2</sup> *Transcript of RSP Public Meeting 336* (November 7, 2013) (testimony of Mr. Greg Jacob, Policy Director, Service Women's Action Network).

<sup>3</sup> *Transcript of RSP Public Meeting 337* (November 7, 2013) (testimony of Mr. Greg Jacob, Policy Director, Service Women's Action Network).

<sup>4</sup> *Transcript of RSP Public Meeting 337* (November 7, 2013) (testimony of Mr. Greg Jacob, Policy Director, Service Women's Action Network).

<sup>5</sup> *Transcript of RSP Public Meeting 337* (November 7, 2013) (testimony of Mr. Greg Jacob, Policy Director, Service Women's Action Network).

<sup>6</sup> *Transcript of RSP Public Meeting 338* (November 7, 2013) (testimony of Mr. Greg Jacob, Policy Director, Service Women's Action Network).

<sup>7</sup> *Transcript of RSP Public Meeting 338* (November 7, 2013) (testimony of Mr. Greg Jacob, Policy Director, Service Women's Action Network).

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restricted or unrestricted, is made.<sup>8</sup>

Once a report is made, victims face additional hurdles, such as the issue of collateral misconduct and privacy issues.<sup>9</sup> SWAN has found that in many instances, victims are discouraged from moving forward with the prosecution due to possible discipline for relatively minor offenses.

SWAN recommends that the military adopt the policy of a myriad of civilian jurisdictions of setting aside collateral charges entirely so victims are free to do their part to move the case along and prosecutors are not forced to lose a conviction over some relatively minor victim misconduct.<sup>10</sup>

### Victim Support Services:

*Transcript of RSP Public Meeting 341* (November 7, 2013) (testimony of Mr. Scott Berkowitz, President and Founder of Rape, Assault, and Incest Network):

As the Nation's largest anti-sexual violence organization, RAINN works in three keys areas. Our primary focus is helping survivors.<sup>11</sup> We created the National Sexual Assault Hotline, which we operate in partnership with about 1,100 local service providers and which provides help 24/7.<sup>12</sup> Over time, we observed that many victims, particularly younger survivors, were more comfortable reaching out for help online. And so, in response we created the web's first crisis support platform, the National Sexual Assault Online Hotline.<sup>13</sup> Our staff and supervisors 1 provide advice to more than 3,700 survivors through the online platform, and that is also the platform that serves military victims through the Safe Helpline.<sup>14</sup>

In addition to extensive training that we've developed for our hotline staff, we also provide a lot of training and technical assistance for Federal agencies, private companies, and thousands of staff and volunteers at local service providers.<sup>15</sup> We also educate the public about prevention, recovery, and the criminal justice response to rape, and through programs on hundreds of college campuses.<sup>16</sup> I'm working closely with the national media and partnerships with the entertainment industry. Our programs educate more than 130 million Americans each year.

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<sup>8</sup> *Transcript of RSP Public Meeting 339* (November 7, 2013) (testimony of Mr. Greg Jacob, Policy Director, Service Women's Action Network).

<sup>9</sup> *Transcript of RSP Public Meeting 339* (November 7, 2013) (testimony of Mr. Greg Jacob, Policy Director, Service Women's Action Network).

<sup>10</sup> *Transcript of RSP Public Meeting 339* (November 7, 2013) (testimony of Mr. Greg Jacob, Policy Director, Service Women's Action Network).

<sup>11</sup> *Transcript of RSP Public Meeting 341* (November 7, 2013) (testimony of Mr. Scott Berkowitz, President and Founder of Rape, Assault, and Incest Network).

<sup>12</sup> *Transcript of RSP Public Meeting 342* (November 7, 2013) (testimony of Mr. Scott Berkowitz, President and Founder of Rape, Assault, and Incest Network).

<sup>13</sup> *Transcript of RSP Public Meeting 342-43* (November 7, 2013) (testimony of Mr. Scott Berkowitz, President and Founder of Rape, Assault, and Incest Network).

<sup>14</sup> *Transcript of RSP Public Meeting 343* (November 7, 2013) (testimony of Mr. Scott Berkowitz, President and Founder of Rape, Assault, and Incest Network).

<sup>15</sup> *Transcript of RSP Public Meeting 343* (November 7, 2013) (testimony of Mr. Scott Berkowitz, President and Founder of Rape, Assault, and Incest Network).

<sup>16</sup> *Transcript of RSP Public Meeting 343* (November 7, 2013) (testimony of Mr. Scott Berkowitz, President and Founder of Rape, Assault, and Incest Network).

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So while your focus is on the military, I think there are many parallels to the civilian sector.<sup>17</sup>

First, sexual violence is the rare crime that doesn't discriminate except against the young.<sup>18</sup> Race, income level, sexual orientation, geography all matter very little in the statistics.<sup>19</sup> Youth is the defining demographic.<sup>20</sup>

In the civilian population, nearly half of all victims are under 18, and eight out of 10 are under 30.<sup>21</sup> The age distribution with the military I think is -- there's a lot of similarity to colleges with 43 percent of active duty service members being 25 and younger, and over two-thirds being under 30.<sup>22</sup> And so, like every college in the U.S., it has a significant problem of sexual violence within its community.<sup>23</sup>

All too often, rape tends to be a crime without any consequence. The Justice Department estimates that 60 percent of civilian victims don't report their assault to police because many reports don't lead to an arrest, and many arrests fail to lead to conviction.<sup>24</sup> Only about three out of every 100 rapists will ever spend even a single day in prison.<sup>25</sup>

So what have we learned and what can we do to improve? First, by far the most effective and most important prevention program is arresting and prosecuting more rapists.<sup>26</sup> From DoJ data and academic research, we know that rapists tend to be serial criminals, which is hardly surprising since they learn early on that they can commit crimes with impunity with little risk of apprehension.<sup>27</sup>

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<sup>17</sup> *Transcript of RSP Public Meeting 343* (November 7, 2013) (testimony of Mr. Scott Berkowitz, President and Founder of Rape, Assault, and Incest Network. *Transcript of RSP Public Meeting 343* (November 7, 2013) (testimony of Mr. Scott Berkowitz, President and Founder of Rape, Assault, and Incest Network.

<sup>18</sup> *Transcript of RSP Public Meeting 343* (November 7, 2013) (testimony of Mr. Scott Berkowitz, President and Founder of Rape, Assault, and Incest Network.

<sup>19</sup> *Transcript of RSP Public Meeting 343* (November 7, 2013) (testimony of Mr. Scott Berkowitz, President and Founder of Rape, Assault, and Incest Network.

<sup>20</sup> *Transcript of RSP Public Meeting 344* (November 7, 2013) (testimony of Mr. Scott Berkowitz, President and Founder of Rape, Assault, and Incest Network.

<sup>21</sup> *Transcript of RSP Public Meeting 344* (November 7, 2013) (testimony of Mr. Scott Berkowitz, President and Founder of Rape, Assault, and Incest Network.

<sup>22</sup> *Transcript of RSP Public Meeting 344* (November 7, 2013) (testimony of Mr. Scott Berkowitz, President and Founder of Rape, Assault, and Incest Network.

<sup>23</sup> *Transcript of RSP Public Meeting 344* (November 7, 2013) (testimony of Mr. Scott Berkowitz, President and Founder of Rape, Assault, and Incest Network.

<sup>24</sup> *Transcript of RSP Public Meeting 344* (November 7, 2013) (testimony of Mr. Scott Berkowitz, President and Founder of Rape, Assault, and Incest Network.

<sup>25</sup> *Transcript of RSP Public Meeting 344* (November 7, 2013) (testimony of Mr. Scott Berkowitz, President and Founder of Rape, Assault, and Incest Network.

<sup>26</sup> *Transcript of RSP Public Meeting 344* (November 7, 2013) (testimony of Mr. Scott Berkowitz, President and Founder of Rape, Assault, and Incest Network.

<sup>27</sup> *Transcript of RSP Public Meeting 344-45* (November 7, 2013) (testimony of Mr. Scott Berkowitz, President and Founder of Rape, Assault, and Incest Network.

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The most effective way to stop a serial criminal is, well, to stop them before they commit more crimes.<sup>28</sup> While other sorts of prevention programs have value, and I'll talk more about them in a moment, the primary method of preventing sexual violence is to lock up those who commit it.<sup>29</sup> Obviously that's a lot easier said than done, and it remains as big a problem in the civilian sector as it does in the military one.<sup>30</sup> But it starts with doing everything possible so that victims want to report, and that's, I think, where our biggest hurdle is now.<sup>31</sup>

With its extensive data, DoD actually has an advantage in this area over the civilian world. Thanks to the DMDC last year, I think we have a clear view directly from victims of why they're reluctant to report.<sup>32</sup> Of women who didn't report their unwanted sexual contact, 50 percent said they believe nothing would be done.<sup>33</sup> Forty- three percent had heard of others' negative experiences and said that that influenced them not to report.<sup>34</sup> So I would encourage you to make addressing that list a top priority because until we've created an environment and a system in which the norm is to report, we're never going to solve the problem.<sup>35</sup>

As far as secondary prevention, there are three distinct audiences, each of which needs to hear and tends to respond to different messages. These audiences are perpetrators, those at risk of assault, and bystanders.<sup>36</sup>

Perpetrators need to know that sexual violence will not be tolerated, but this needs to be more show than tell.<sup>37</sup> Keep in mind that perpetrators have been listening to these messages all their lives from their parents, and pastors, teachers, and TV shows. They know that sexual violence isn't legal, but they often just don't care.<sup>38</sup>

Many perpetrators rationalize their behavior with distorted logic, or they conclude that the

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<sup>28</sup> *Transcript of RSP Public Meeting 345* (November 7, 2013) (testimony of Mr. Scott Berkowitz, President and Founder of Rape, Assault, and Incest Network).

<sup>29</sup> *Transcript of RSP Public Meeting 345* (November 7, 2013) (testimony of Mr. Scott Berkowitz, President and Founder of Rape, Assault, and Incest Network).

<sup>30</sup> *Transcript of RSP Public Meeting 345* (November 7, 2013) (testimony of Mr. Scott Berkowitz, President and Founder of Rape, Assault, and Incest Network).

<sup>31</sup> *Transcript of RSP Public Meeting 345* (November 7, 2013) (testimony of Mr. Scott Berkowitz, President and Founder of Rape, Assault, and Incest Network).

<sup>32</sup> *Transcript of RSP Public Meeting 345* (November 7, 2013) (testimony of Mr. Scott Berkowitz, President and Founder of Rape, Assault, and Incest Network).

<sup>33</sup> *Transcript of RSP Public Meeting 345-46* (November 7, 2013) (testimony of Mr. Scott Berkowitz, President and Founder of Rape, Assault, and Incest Network).

<sup>34</sup> *Transcript of RSP Public Meeting 346* (November 7, 2013) (testimony of Mr. Scott Berkowitz, President and Founder of Rape, Assault, and Incest Network).

<sup>35</sup> *Transcript of RSP Public Meeting 346* (November 7, 2013) (testimony of Mr. Scott Berkowitz, President and Founder of Rape, Assault, and Incest Network).

<sup>36</sup> *Transcript of RSP Public Meeting 346* (November 7, 2013) (testimony of Mr. Scott Berkowitz, President and Founder of Rape, Assault, and Incest Network).

<sup>37</sup> *Transcript of RSP Public Meeting 346* (November 7, 2013) (testimony of Mr. Scott Berkowitz, President and Founder of Rape, Assault, and Incest Network).

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benefits outweigh the risks.<sup>39</sup> Even so, helping them understand what the law is and what 1 behavior won't be tolerated may lead some to make better decisions, and I still think it should still be part of the mix.<sup>40</sup>

But here's the show part. Messages about zero tolerance need to be credible to be effective.<sup>41</sup> I think these messages are credible in one sense. In working with the military leadership, it's pretty clear to me that there's a desire to change. There's a desire to fix the system.<sup>42</sup> But until the data show that there is a real significant chance that someone who commits an act of sexual violence will actually be caught and prosecuted, perpetrators will continue to discount zero tolerance messages.<sup>43</sup> Only once the results catch up to the intent will we start reaping the deterrence benefits of these messages.<sup>44</sup>

The next level of messaging is to those at risk of assault. I know that this approach is controversial.<sup>45</sup> Some believe that talking about 1 risk reduction tactics leads to blaming victims for not having avoided the crime.<sup>46</sup> I think it should go without saying that not every crime can be avoided, and certainly we should never blame the victim no matter the circumstances were.<sup>47</sup> That said, risk reduction messaging is valuable.<sup>48</sup> It's widely applicable to all crime prevention from property crimes to other violent crimes, and it needs to be part of DoD's continuing messaging.<sup>49</sup>

These messages, I think, to a listener can sound simplistic sometimes, but hearing repeated reminders of the risks and hearing about the steps that one can take, even if they're simple steps - things like trusting your instincts, drinking safely, relying on friends -- hearing those messages

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<sup>40</sup> *Transcript of RSP Public Meeting 346-47* (November 7, 2013) (testimony of Mr. Scott Berkowitz, President and Founder of Rape, Assault, and Incest Network).

<sup>41</sup> *Transcript of RSP Public Meeting 347* (November 7, 2013) (testimony of Mr. Scott Berkowitz, President and Founder of Rape, Assault, and Incest Network).

<sup>42</sup> *Transcript of RSP Public Meeting 347* (November 7, 2013) (testimony of Mr. Scott Berkowitz, President and Founder of Rape, Assault, and Incest Network).

<sup>43</sup> *Transcript of RSP Public Meeting 347* (November 7, 2013) (testimony of Mr. Scott Berkowitz, President and Founder of Rape, Assault, and Incest Network).

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<sup>46</sup> *Transcript of RSP Public Meeting 347* (November 7, 2013) (testimony of Mr. Scott Berkowitz, President and Founder of Rape, Assault, and Incest Network).

<sup>47</sup> *Transcript of RSP Public Meeting 347-48* (November 7, 2013) (testimony of Mr. Scott Berkowitz, President and Founder of Rape, Assault, and Incest Network).

<sup>48</sup> *Transcript of RSP Public Meeting 348* (November 7, 2013) (testimony of Mr. Scott Berkowitz, President and Founder of Rape, Assault, and Incest Network).

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over and over can lead to changes in individuals' behavior and do lead to such changes, and ultimately lead to a safer community.<sup>50</sup>

The final audience is bystanders, teaching men and women strategies and tactics for helping out a friend or for safely intervening to head off an assault. It treats people as potential allies rather than predators and educates friends to identify situations that may lead to a sexual assault.<sup>51</sup> Bystander intervention is the most promising approach in the field right now, and I know it's already being extensively used by DoD.<sup>52</sup> I'd encourage DoD to continue that, to expand those programs, which give service members the tools and confidence to step in and help prevent assaults.

I know that part of your Panel's mission is to assess victim care, and while I said I'm limited in what I can say because of Safe Helpline, I think there are many things that DoD is doing well in this area, and I want to mention just a few points.<sup>53</sup>

First, crisis intervention and counseling are vital to survivors.<sup>54</sup> We know from serving civilians that these services increase survivors' ability to address the trauma and that they aid and speed up the recovery.<sup>55</sup> We also know that the treatment a survivor receives directly impacts his or her decision to report.<sup>56</sup> So services like the work of SARCs and victim advocates, as well as that of the Helpline, which are based on best practices from the civilian sector, not only help survivors, but they help support the criminal justice process.<sup>57</sup>

And in a couple of ways, DoD victim care, I think, is actually ahead of the civilian world.<sup>58</sup> They've recognized that technology can be valuable and cost-effective in treating survivors, and that we need to create new tools to address the reality that recovery is a process that can take months or years.<sup>59</sup> This understanding has led DoD to create two services that have no civilian parallel: the Safe HelpRoom and Safe Helpline app.<sup>60</sup>

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<sup>51</sup> *Transcript of RSP Public Meeting 348-49* (November 7, 2013) (testimony of Mr. Scott Berkowitz, President and Founder of Rape, Assault, and Incest Network).

<sup>52</sup> *Transcript of RSP Public Meeting 349* (November 7, 2013) (testimony of Mr. Scott Berkowitz, President and Founder of Rape, Assault, and Incest Network).

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<sup>56</sup> *Transcript of RSP Public Meeting 349* (November 7, 2013) (testimony of Mr. Scott Berkowitz, President and Founder of Rape, Assault, and Incest Network).

<sup>57</sup> *Transcript of RSP Public Meeting 349-350* (November 7, 2013) (testimony of Mr. Scott Berkowitz, President and Founder of Rape, Assault, and Incest Network).

<sup>58</sup> *Transcript of RSP Public Meeting 350* (November 7, 2013) (testimony of Mr. Scott Berkowitz, President and Founder of Rape, Assault, and Incest Network).

<sup>59</sup> *Transcript of RSP Public Meeting 350* (November 7, 2013) (testimony of Mr. Scott Berkowitz, President and Founder of Rape, Assault, and Incest Network).

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Safe HelpRoom is an online peer-to-peer support system which allows survivors in the military to help each other in a safe and anonymous community.<sup>61</sup> Well-trained moderators provide help while the service members themselves get to discuss the topics most important to them. It's a tool that could be of great use in the civilian world, and one that survivors -- civilian survivors have been asking us for for years.<sup>62</sup>

The Safe Helpline app enables survivors to create a customized self-care plan, and so it's particularly useful for those who are stationed abroad.<sup>63</sup> The plan, along with the recovery tips and recommended exercises, is stored only on their device for privacy, and it's successful even if they're offline.<sup>64</sup> And this app, which is the first of its kind, won this year's American Telemedicine Association's Innovation Award.<sup>65</sup>

As others have talked about, I'm also impressed with DoD's creation of the Special Victims' Counsel Program.<sup>66</sup> I'm encouraged by the results of the Air Force pilot, and glad to see that members of the other services are going to get access to this legal aid.<sup>67</sup> And I'm also glad to see that the Navy is a partner in the Justice Department's Office for Victims of Crime's pilot program on telehealth.<sup>68</sup> This is going to provide access to SANEs through telemedicine, and it's a project that RAINN is also a partner in.<sup>69</sup> And I think it's great that the Navy is really in the lead here.

The victims' rights movement has continually focused on and consistently focused on affirming dignity and respect for victims of crime, and we've heard that reiterated over and over.<sup>70</sup> Practically speaking, that means that those who are a part of a system working for justice, as we describe it, either formally or informally, they need to have competence, commitment, and compassion.<sup>71</sup>

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<sup>61</sup> *Transcript of RSP Public Meeting 350* (November 7, 2013) (testimony of Mr. Scott Berkowitz, President and Founder of Rape, Assault, and Incest Network.)

<sup>62</sup> *Transcript of RSP Public Meeting 350* (November 7, 2013) (testimony of Mr. Scott Berkowitz, President and Founder of Rape, Assault, and Incest Network.)

<sup>63</sup> *Transcript of RSP Public Meeting 350-51*(November 7, 2013) (testimony of Mr. Scott Berkowitz, President and Founder of Rape, Assault, and Incest Network.)

<sup>64</sup> *Transcript of RSP Public Meeting 351*(November 7, 2013) (testimony of Mr. Scott Berkowitz, President and Founder of Rape, Assault, and Incest Network.)

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<sup>67</sup> *Transcript of RSP Public Meeting 351*(November 7, 2013) (testimony of Mr. Scott Berkowitz, President and Founder of Rape, Assault, and Incest Network.)

<sup>68</sup> *Transcript of RSP Public Meeting 351*(November 7, 2013) (testimony of Mr. Scott Berkowitz, President and Founder of Rape, Assault, and Incest Network.)

<sup>69</sup> *Transcript of RSP Public Meeting 351*(November 7, 2013) (testimony of Mr. Scott Berkowitz, President and Founder of Rape, Assault, and Incest Network.)

<sup>70</sup> *Transcript of RSP Public Meeting 356* (November 7, 2013) (testimony of Dr. Will Marling, Executive Director of the National Organization for Victim Assistance).

<sup>71</sup> *Transcript of RSP Public Meeting 356* (November 7, 2013) (testimony of Dr. Will Marling, Executive Director of the National Organization for Victim Assistance).

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All three are necessary values for effective service. No one wants a compassionate doctor who knows nothing about medicine. And when it comes to a victim, I haven't found a victim that wants an incompetent investigator, an incompetent prosecutor, an incompetent adjudicator.<sup>72</sup> We need those skills and that commitment, along with the necessary compassion.<sup>73</sup>

First of all, there should be an official empowered mechanism installed in this military process to address the complaints from victims about their treatment by those in the system.<sup>74</sup> I don't know of any official holistic approach. There are mechanisms I know through the Office of the Inspector General for the Department of Defense.<sup>75</sup> But to my knowledge, there is no place for a person to say, you know, my protections were not honored, I did not get what I needed, and that can be raised.<sup>76</sup> The information can not only be aggregated, but also investigated for the notion of protection of victims' rights or enforcement of victims' rights.<sup>77</sup>

I would also add to that if the military is going to take care of its own when it comes to crime victims, and a discussion earlier was about the sizable investment that revolves around victim services, which clearly is in view there, there should also be commensurate funding mechanisms associated with, for instance, the needs of those victims even with maybe compensation and the like.<sup>78</sup>

Again, I don't know of specific mechanisms apart from them seeking their State Victim Compensation Fund. We have parallels, of course, in the civilian world with the Office for Victims of Crime and the Victims' Crime Act Fund.<sup>79</sup> But as was affirmed even by the officers who spoke earlier, competence and commitment flow from resourcing.<sup>80</sup>

Along with empowering a mechanism to investigate the potential for the victims' rights violations and commensurate funding mechanisms for the victims themselves, I might also suggest that even changing the culture at large in the military is so crucial because the notion of

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<sup>72</sup> *Transcript of RSP Public Meeting 356-57* (November 7, 2013) (testimony of Dr. Will Marling, Executive Director of the National Organization for Victim Assistance).

<sup>73</sup> *Transcript of RSP Public Meeting 357* (November 7, 2013) (testimony of Dr. Will Marling, Executive Director of the National Organization for Victim Assistance).

<sup>74</sup> *Transcript of RSP Public Meeting 357* (November 7, 2013) (testimony of Dr. Will Marling, Executive Director of the National Organization for Victim Assistance).

<sup>75</sup> *Transcript of RSP Public Meeting 357-58* (November 7, 2013) (testimony of Dr. Will Marling, Executive Director of the National Organization for Victim Assistance).

<sup>76</sup> *Transcript of RSP Public Meeting 358* (November 7, 2013) (testimony of Dr. Will Marling, Executive Director of the National Organization for Victim Assistance).

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sexual assault perpetrated by intimate partners should not necessarily be -- should not be treated any differently than those that are experienced by nonintimate partners.<sup>81</sup> Sexual assault is sexual assault, and we have categories and classifications for the codification of these things. But we need an attitude that says it's wrong. If you're doing it, it's wrong. It doesn't matter that you're doing it to somebody you know, or somebody you don't know, or somebody you're married to, or have an intimate relationship with.<sup>82</sup>

Number four, we should also focus on enforcement of victims' already existing legal protections because it appears that they are in some good measure inadequate, which is why it's certainly -- it is, as has been described, game changing to have special victim counsel.<sup>83</sup> That is a very meaningful commitment to offer legal counsel to provide that kind of guidance and assistance in support to victims.<sup>84</sup>

But I want to suggest that we actually have to ask the word -- we have to ask ourselves what does it mean for victims to have rights? What are we saying by those rights? There are legal -- certainly legal protections that exist in the civilian side, but it's a military order that's on the military side.<sup>85</sup> It's not even, as such, law. And when you talk about the concept of rule of law and the notion of victims' rights, there is some inherent notion that victims should have rights, and we just naturally respect that, yes, but they need to be codified.<sup>86</sup>

Number six, continuing integration of the sexual harassment and sexual assault programs.<sup>87</sup> The connection between the two in terms of the growing escalation of the violation is clear, and people need to be educated about that.<sup>88</sup> And as the military -- I'm sorry -- as the Army is the one that fully integrates those at present, it appears that those kinds of programs should be distributed more widely among the services.<sup>89</sup>

And number seven and my last recommendation is this. I offer it humbly, and probably you'll say brazenly. But I would suggest this, that victims of crime in the military need

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<sup>81</sup> *Transcript of RSP Public Meeting 359* (November 7, 2013) (testimony of Dr. Will Marling, Executive Director of the National Organization for Victim Assistance).

<sup>82</sup> *Transcript of RSP Public Meeting 359-60* (November 7, 2013) (testimony of Dr. Will Marling, Executive Director of the National Organization for Victim Assistance).

<sup>83</sup> *Transcript of RSP Public Meeting 361* (November 7, 2013) (testimony of Dr. Will Marling, Executive Director of the National Organization for Victim Assistance).

<sup>84</sup> *Transcript of RSP Public Meeting 361* (November 7, 2013) (testimony of Dr. Will Marling, Executive Director of the National Organization for Victim Assistance).

<sup>85</sup> *Transcript of RSP Public Meeting 361* (November 7, 2013) (testimony of Dr. Will Marling, Executive Director of the National Organization for Victim Assistance).

<sup>86</sup> *Transcript of RSP Public Meeting 361* (November 7, 2013) (testimony of Dr. Will Marling, Executive Director of the National Organization for Victim Assistance).

<sup>87</sup> *Transcript of RSP Public Meeting 361-62* (November 7, 2013) (testimony of Dr. Will Marling, Executive Director of the National Organization for Victim Assistance).

<sup>88</sup> *Transcript of RSP Public Meeting 362* (November 7, 2013) (testimony of Dr. Will Marling, Executive Director of the National Organization for Victim Assistance).

<sup>89</sup> *Transcript of RSP Public Meeting 362* (November 7, 2013) (testimony of Dr. Will Marling, Executive Director of the National Organization for Victim Assistance).

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United States' constitutional protections.<sup>90</sup> As was noted earlier, there are 23 protections for the accused in the United States Constitution.<sup>91</sup> Right at this point, there's not one for a victim of the same crime of which that individual is being accused.<sup>92</sup> And I'm not a lawyer, so I'm giving you the layperson's version of this. But I would understand that under the Uniform Code of Military Justice, actually victims don't have any rights as such, not as I understand what I would want to have as a United States citizen under the United States Constitution.<sup>93</sup>

Right now, sexual assault victims are continually crushed by justice systems within the military and outside of the military, and they have no recourse.<sup>94</sup> They have no standing actually under the law, and already violated by another human being. It might be one reason why they're reluctant to report because there is no ultimate highest standard under our rule of justice, rule of law, where they can stand and have a footing, a place, where their personal liberty is protected under the law.<sup>95</sup>

Some 30 years ago, President Reagan's Task Force on Victims' Crime made some 60 recommendations to enhance dignity, compassion, and fairness for victims.<sup>96</sup> The final recommendation of that impressive task force was that a United States constitutional amendment for victims of crime should be pursued.<sup>97</sup>

MS. FERNANDEZ: But I guess at the end of the day, are we -- I mean, they've shown us that more victims are reporting, and that the policies -- I mean, that the procedures in each service are going pretty well. I mean, whether there's consistency and uniformity is another issue. But at the end of the day, are victims being treated better, and so are we seeing really an exponential process or not is my question.<sup>98</sup>

But between 2006 and 2011, the IG Office only fully investigated about 29 percent of the IG complaints of retaliation that they received.<sup>99</sup> And only, overall, six percent of those complaints were

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<sup>90</sup> *Transcript of RSP Public Meeting 362* (November 7, 2013) (testimony of Dr. Will Marling, Executive Director of the National Organization for Victim Assistance).

<sup>91</sup> *Transcript of RSP Public Meeting 362* (November 7, 2013) (testimony of Dr. Will Marling, Executive Director of the National Organization for Victim Assistance).

<sup>92</sup> *Transcript of RSP Public Meeting 362* (November 7, 2013) (testimony of Dr. Will Marling, Executive Director of the National Organization for Victim Assistance).

<sup>93</sup> *Transcript of RSP Public Meeting 362-63* (November 7, 2013) (testimony of Dr. Will Marling, Executive Director of the National Organization for Victim Assistance).

<sup>94</sup> *Transcript of RSP Public Meeting 363* (November 7, 2013) (testimony of Dr. Will Marling, Executive Director of the National Organization for Victim Assistance).

<sup>95</sup> *Transcript of RSP Public Meeting 363* (November 7, 2013) (testimony of Dr. Will Marling, Executive Director of the National Organization for Victim Assistance).

<sup>96</sup> *Transcript of RSP Public Meeting 363* (November 7, 2013) (testimony of Dr. Will Marling, Executive Director of the National Organization for Victim Assistance).

<sup>97</sup> *Transcript of RSP Public Meeting 363-64* (November 7, 2013) (testimony of Dr. Will Marling, Executive Director of the National Organization for Victim Assistance).

<sup>98</sup> *Transcript of RSP Public Meeting 385-86* (November 7, 2013) (question by RSP member M. Fernandez).

<sup>99</sup> *Transcript of RSP Public Meeting 387* (November 7, 2013) (Ms. Peterson response to question by RSP member M. Fernandez).

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substantiated and could be acted upon.<sup>100</sup> So if you face retaliation and then you get out of the service and you try to change your service record, and you're trying to rely on a report, only six percent of people who filed a complaint were able to do so.<sup>101</sup> So no one is listening to the victims.<sup>102</sup>

And it's great to say these programs should work this way, but what we hear is they don't always work that way.<sup>103</sup> And then where do they go? Do they have to call a member of Congress every single time that they have this problem? Do they have to file an IG complaint? There doesn't seem to be a system in place to adequately measure that.<sup>104</sup> And so, it's really hard for us to say other than anecdotally that we see people aren't getting access to the help that they need and can't fight the retaliation when it occurs.

BRIGADIER GENERAL (RET.) MCGUIRE: Just a quick follow up between you and then also Mr. Berkowitz then is, when -- the reason why they want to -- or they prefer unrestricted or they don't want to report unrestricted reports, do you have any statistics or reasons as to why they don't want to?<sup>105</sup>

DR MARLING: We have a victim assistance line, a national victim assistance line. And we take calls from around the country and sometimes from Canada as well. And people -- in that context it's not speaking specifically to military victims, but we do get an occasional victim -- a call from somebody associated with the military, either married into the military or part of the system.<sup>106</sup> And they have a number of reasons why they might not want to report, and the struggles that they have can revolve around that embarrassment even on the civilian side, declaring that they've been vulnerable, or the embarrassment associated, from their perspective, what we call the cataclysm of emotion -- shame, guilt, and all of these things associated with such a horrific personal violation of sexual violence.<sup>107</sup>

MR. BERKOWITZ: The service victims I've seen over the years, the reasons have evolved.<sup>108</sup>

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<sup>100</sup> *Transcript of RSP Public Meeting 387* (November 7, 2013) (Ms. Peterson response to question by RSP member M. Fernandez).

<sup>101</sup> *Transcript of RSP Public Meeting 387* (November 7, 2013) (Ms. Peterson response to question by RSP member M. Fernandez).

<sup>102</sup> *Transcript of RSP Public Meeting 387* (November 7, 2013) (Ms. Peterson response to question by RSP member M. Fernandez).

<sup>103</sup> *Transcript of RSP Public Meeting 387-88* (November 7, 2013) (Ms. Peterson response to question by RSP member M. Fernandez).

<sup>104</sup> *Transcript of RSP Public Meeting 388* (November 7, 2013) (Ms. Peterson response to question by RSP member M. Fernandez).

<sup>105</sup> *Transcript of RSP Public Meeting 390* (November 7, 2013) (Question by BG (RET) McGuire regarding why victims don't report sexual assault incidents).

<sup>106</sup> *Transcript of RSP Public Meeting 391* (November 7, 2013) (testimony of Dr. Will Marling, Executive Director of the National Organization for Victim Assistance responding to question regarding why victims don't report sexual assault incidents).

<sup>107</sup> *Transcript of RSP Public Meeting 391* (November 7, 2013) (testimony of Dr. Will Marling, Executive Director of the National Organization for Victim Assistance responding to question regarding why victims don't report sexual assault incidents).

<sup>108</sup> *Transcript of RSP Public Meeting 391-92* (November 7, 2013) (testimony of Mr. Scott Berkowitz, President and Founder of Rape, Assault, and Incest Network responding to question regarding reporting of sexual assault).

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Twenty years ago, the biggest reasons tended to be I think I'm going to be blamed, I think that -- I don't think they're going to believe me, I think that they're going to put me on trial.<sup>109</sup> That has fallen down the list of reasons.<sup>110</sup>

And there tend to be sort of two big reasons, one personal and one systemic. The personal tends to revolve around it's a private matter. I'm embarrassed about what happened. I don't want my family to know. I don't want my boyfriend to know. I don't want my colleagues to know, which is particularly relevant in the military context.<sup>111</sup>

And then the systemic reason is that -- is their evaluation of the odds of anything coming of it. Almost every victim I've ever talked to wants justice. You know, that's something that's almost universal. And if they believe that the outcome of this process, despite its personal embarrassment, despite how hard it's probably going to be, is going to lead to justice, they're going to be vastly more likely to report and 1 to be willing to put themselves through that.<sup>112</sup> It's when they think that at the end of that process they're going to just put themselves through a terrible time and nothing is going to -- there's not going to be any good result at the end that they decide it's not worth it.<sup>113</sup>

MR. JACOB: If I could just put the privacy issue sort of into a military context. When you're dealing with junior members of the military, which a preponderance of these victims are, they don't have a lot of agency. They don't have a lot of control. They are accountable to either their squad leader, or their team leader, or their platoon sergeant for every second of the day.<sup>114</sup>

They can't just up and head to medical or go -- even, you know, go see a VA or a SARC. The first question they get is, where are you going? Who are you taking with you? Where's your buddy? I mean, in an infantry unit when we have -- we have giant, we call them, "new join dumps" that come, and we'll get 30 new joins at a time.<sup>115</sup> And we march them around. We assign them an NCO and we march them to medical, we march them to dental, and we march them to the chow, and we march them to supply, because they don't know where they're going.<sup>116</sup> And I'm -- as the platoon commander I'm accountable for these people, so I'm going to make sure

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<sup>109</sup> *Transcript of RSP Public Meeting 392* (November 7, 2013) (testimony of Mr. Scott Berkowitz, President and Founder of Rape, Assault, and Incest Network responding to question regarding reporting of sexual assault).

<sup>110</sup> *Transcript of RSP Public Meeting 392* (November 7, 2013) (testimony of Mr. Scott Berkowitz, President and Founder of Rape, Assault, and Incest Network responding to question regarding reporting of sexual assault).

<sup>111</sup> *Transcript of RSP Public Meeting 392* (November 7, 2013) (testimony of Mr. Scott Berkowitz, President and Founder of Rape, Assault, and Incest Network responding to question regarding reporting of sexual assault).

<sup>112</sup> *Transcript of RSP Public Meeting 392-93* (November 7, 2013) (testimony of Mr. Scott Berkowitz, President and Founder of Rape, Assault, and Incest Network responding to question regarding reporting of sexual assault).

<sup>113</sup> *Transcript of RSP Public Meeting 393* (November 7, 2013) (testimony of Mr. Scott Berkowitz, President and Founder of Rape, Assault, and Incest Network responding to question regarding reporting of sexual assault).

<sup>114</sup> *Transcript of RSP Public Meeting 393* (November 7, 2013) (testimony of Mr. Greg Jacob, Policy Director, Service Women's Action Network responding to question regarding reporting of sexual assault).

<sup>115</sup> *Transcript of RSP Public Meeting 393-94* (November 7, 2013) (testimony of Mr. Greg Jacob, Policy Director, Service Women's Action Network responding to question regarding reporting of sexual assault).

<sup>116</sup> *Transcript of RSP Public Meeting 394* (November 7, 2013) (testimony of Mr. Greg Jacob, Policy Director, Service Women's Action Network responding to question regarding reporting of sexual assault).

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that somebody is with them all the time.<sup>117</sup> So this issue of privacy goes -- extends far beyond whether or not just my co-workers find out or my mom finds out. You are literally having to, you know, reveal the intimate details of your day in terms of your scheduling to your superiors when you're in the military.<sup>118</sup>

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<sup>117</sup> *Transcript of RSP Public Meeting 394* (November 7, 2013) (testimony of Mr. Greg Jacob, Policy Director, Service Women's Action Network responding to question regarding reporting of sexual assault).

<sup>118</sup> *Transcript of RSP Public Meeting 394* (November 7, 2013) (testimony of Mr. Greg Jacob, Policy Director, Service Women's Action Network responding to question regarding reporting of sexual assault).