

SWAN Service Women's Action Network

220 East 23rd Street, Suite 509 | 1225 Eye Street NW, Suite 307
New York, NY 10010 | Washington, DC 20005
646-569-5200 | 646-569-5216

HEARING TESTIMONY OF GREG JACOB
POLICY DIRECTOR, SERVICE WOMEN'S ACTION NETWORK.
BEFORE THE RESPONSE SYSTEMS TO ADULT SEXUAL ASSAULT CRIMES PANEL
NOVEMBER 7, 2013

INTRODUCTION

Good afternoon Judge Jones and distinguished members of the Panel. On behalf of the Service Women's Action Network I would like to thank you for the opportunity to provide testimony for the panel.

The Service Women's Action Network (or SWAN) is a veteran's founded, veteran's led non-profit. SWAN's mission is to transform military culture by securing equal opportunity and freedom to serve without discrimination, harassment or assault; and to reform veterans' services to ensure high quality health care and benefits for women veterans and their families. We accomplish our mission through: Policy reform, media advocacy, litigation and direct services.

Prior to my work as the policy director for SWAN, I served from 1994 to 2004 in the United States Marine Corps. I was deployed in Harm's Way and combat as an infantry Non-Commissioned Officer and after my commissioning served as an infantry Officer in platoon commander, company commander and operations officer billets.

During my last tour, I was a company commander at an entry-level training command. While there I learned of the presence of what I would call a sexual predator in the company, an E-6 who was systematically targeting, harassing and assaulting the young Privates and PFCs who were in his charge. After conducting thorough investigation and referring this individual to higher headquarters for discipline, I saw firsthand how senior commanders discredited the victim, punished her supervisors and in the end simply transferred the perpetrator to another unit. Last hearing the panel discussed the Role of the Commander and based on my experience I would like to share a few comments on that issue before moving forward with the remainder of my testimony.

COMMENTS ON ROLE OF THE COMMANDER

During my service as an enlisted infantry Marine and an infantry Marine Officer, I found myself on both the giving and (sometimes) the receiving end of military discipline. I can tell you from experience, unequivocally, time and again that the force that shapes the conduct of units, determines the climate of units, ensures the readiness and morale of units, and enables units to accomplish everything from marching to the chow hall to seemingly impossible combat missions is the leadership exhibited daily from the ranks of the Non-Commissioned Officers, Staff Non-Commissioned Officers and the company grade Officers, and none of them have this sacrosanct court martial convening authority. For the Pentagon to assert that such authority is the lynchpin of good order and discipline is not only wrong, it insults the service and sacrifice of these front line leaders. Ask any Marine and they will tell you that troops don't charge up hills, or kick down doors, or drag a wounded comrade to safety because they fear a court martial. Simply put they follow orders because good leadership inspires and good discipline compels.

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When a sexual assault occurs it actually does damage to the unit, traumatizes everyone to a degree and puts the operational readiness of the unit at risk. The commander's priorities must be to ensure that the victim is cared for (if they are in the chain of command) and to restore unit cohesion and operational readiness. Under the current system, commanders are forced to split their priorities and their resources between managing their unit and managing the court martial process. And along with the time and resources of commanders, the Staff Judge Advocates and Senior Staff NCOs have to expend their resources on advising the commander, leaving the unit and at times even the victim to twist in the wind.

On top of all that commanders are already swimming upstream trying their best to change the culture around sexual violence. But under the current command-centric system, commanders lack the freedom to talk directly and effectively about preventing sex crimes due to the looming specter of Undue Command Influence (UCI). The command-centric system ties commander's hands so that they are unable to exercise the critical proactive leadership that is the key preventing retaliation, maintaining unit readiness, and enforcing good order and discipline. The current system forces commanders to put a priority on prosecuting sex crimes rather than preventing them in the first place.

My experience shows that the issue is with the system, not the people. Most commanders want to do the right thing when it comes to playing the reluctant role they have been given in the current command-centric military justice system. The problem is that when it comes to the prosecution and conviction of serious criminal conduct, good intentions are not good enough. Commanders must be leaders not lawyers in the battle against sexual violence and we cannot expect them to win as long as they are forced to carry a rifle in one hand and a gavel in the other.

VICTIM RESPONSE AND SERVICES

Much has improved in the past few years to assist men and women who have experienced crimes of sexual violence while serving in the military, yet more needs to be done. SWAN has been the leading charge on sexual violence prevention and policy reform since it was founded in 2007. We have 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 5 provisions in the National Defense Authorization Act on this issue and this year's bill has dozens. Legislation around this issue is bipartisan, bicameral, and strongly supported by the administration. In addition many provisions found in our bills are being directly adopted for implementation by the Secretary of Defense and the Service Chiefs outside of the legislative process. SWAN will continue to fight for survivors by ensuring our military is a safe place for everyone to serve.

Continuing to reform victim protections and services is critical not just in ensuring these men and women who have suffered these crimes are cared for, but also so they are resilient enough to assist in the prosecution of their perpetrators. DOD numbers show that every year between 10 and 20 percent of

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criminal cases against alleged perpetrators cannot be tried because the victim has refused to participate in the criminal justice system.¹

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. 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 access to civil courts. We also work on post-service issues concerning VHA and VBA reforms.

I would refer the panel to SWAN's testimony before the US Commission on Civil Rights for further information on the importance of opening the civil courts to sexual assault survivors.²

This continuum begins with proper training of troops and leaders in understanding sexual violence as early in their enlistment as possible including 360 degree instruction on how to properly respond to an incident in the ranks. I would refer the panel to the 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/SAPR training is fraught with victim blaming, disempowering messaging and lacks a much needed emphasis on offender deterrence and consent training.

The next touchstone I'd like to mention occurs after an assault has happened. DOD reports that nearly 9 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.³ This is a huge issue since in the military most policies designed to provide victim care are not activated until a report (either restricted or unrestricted) is made. Once a report is made, victims face additional hurdles such as the issue of collateral misconduct. SWAN has found that in many instances victims are discouraged from moving forward with a prosecution due to possible discipline for relatively minor offenses. SWAN recommends that the military adopt a policy that mirrors 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 minor victim misconduct.

SWAN has advocated for years now for a shift away from the current command-centric criminal justice system to restore faith and confidence in military law and empower commanders to protect victims from retaliation and ensure continued unit cohesion and readiness. Should a commander fail in his or her role of victim care, policies that allow victims to transfer away from hostile units as well as a new proposal to transfer accused perpetrators from units go a long way in ensuring victims are not in jeopardy.

Additionally, providing victims with legal counsel (as in the Air Force's Special Victims' Counsel program) assists them in navigating a confusing and difficult legal system. SWAN supports the adoption of this program by all the services.

¹ Department of Defense, SAPRO. 2013. "Fiscal Year 2012 Annual Report on Sexual Assault in the Military." Available: http://sapr.mil/public/docs/reports/FY12_DoD_SAPRO_Annual_Report_on_Sexual_Assault-VOLUME_ONE.pdf;

² <http://servicewomen.org/wp-content/uploads/2013/01/USCCRtestimonyRachel.pdf>

³ See *Supra* 1

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SWAN has also worked on and supports current legislation that would change the Article 32 hearing in order to improve this now-hostile, arduous and traumatizing process for victims to include a provision that prevents victims from being compelled to testify at an Article 32.

In addition to the specific issues highlighted in this oral testimony, I would refer the panel to my written testimony for enclosures related to changing Article 120 to a consent-based statute, an analysis and recommendations on current DOD SHARP/SAPR training and a much-needed exception to Question 21 on the Questionnaire for National Security Positions security clearance form, Standard Form 86 for sexual assault survivors.

I appreciate the Panel's time and am happy to answer any questions you may have.