

THE ALLAN HOUSE
1104 SAN ANTONIO STREET
AUSTIN, TEXAS 78701



DANIEL B. ROSS
ATTORNEY AT LAW

(512) 474-7677 | PHONE
(512) 474-5306 | FACSIMILE

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www.rosslawpc.com

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Ms. Terri Saunders
Deputy Staff Director, Response Systems Panel
One Liberty Center
875 N. Randolph St., Suite 150
Arlington, VA 22203

Via Email: terri.a.saunders.civ@mail.mil

RE: Request to Make Oral Statement on December 11, 2103
Federal Advisory Committee Meeting in Austin, Texas

Dear Ms. Saunders:

My name is Dan Ross. I am an attorney in Austin, Texas, and Chair of the Advisory Committee for the Institute on Domestic Violence & Sexual Assault at the University of Texas at Austin. This will serve as my request to provide an oral statement to the Response Systems to Adult Sexual Assault Crimes Panel on December 11, 2013. ***Please note that I am traveling out of the country on the 12th and so the 11th is the only day that I will be available to give a statement.***

My experience with the military response to allegations of sexual assault came about during my representation of an American civilian contractor who alleged that she was raped by a fellow contractor and a member of the military in Iraq in 2008. At the invitation of Senator Bill Nelson, I presented my client for testimony before the Committee on Foreign Relations, International Operations and Organizations, Democracy and Human Rights Subcommittee in April, 2008. It was in the course of working on that case that I met Professor Noel Busch-Armendariz, Director of IDVSA and Assistant Dean for Research at the University of Texas School of Social Work. In the course of my legal career I have represented other sexual assault victims, including children, and have extensive experience prosecuting sexual harassment cases in civil court under Title VII.

A common thread in sexual assault and Title VII cases is retaliation against the victim for reporting the offense. My statement to the Panel will focus on providing solutions to the overarching problems of retaliation and the fear of retaliation, and their inhibiting influence on the reporting of sexual assault.

Another similarity between workplace sexual harassment and sexual assault in the military is that the protocol for reporting the offense is to do so within the organization in which it is occurring. The inherent weaknesses in this procedure are:

- The immediate reaction to the report is often to shield the organization;
- An allegation can easily be ignored or dismissed after a cursory investigation;
- Responsibility for investigation may be placed with personnel who are not educated or trained in criminal investigation; and
- In a worst-case scenario, the harasser or assailant is the person to whom the victim is supposed to report the crime.

Making it safe to report sexual assault is, in my opinion, the first step to properly investigating, prosecuting, and ultimately reducing the instances of sexual assault. The military has a unique opportunity to create a safe haven in which to report sexual assault because, unlike the private sector, it has the authority to impose meaningful sanctions not only on convicted perpetrators, but also on those who attempt to intimidate victims or witnesses, ignore or cover up allegations, or retaliate against alleged victims.

A key to reducing the potential for retaliation is mandatory deferment of action for “collateral misconduct” on the part of the alleged victim until the resolution of the investigation and any charges against the alleged perpetrator. The Army’s FAQs on the Sexual Assault Prevention and Response Program describe collateral misconduct as circumstances in which the sexual assault victim “may have engaged in some form of misconduct (i.e. underage drinking or related alcohol offenses, adultery, fraternization or other violations of certain regulations or orders). Such behavior may be considered collateral misconduct, **and may be viewed as a contributing factor to the sexual assault.**” (emphasis added)

Regardless of official encouragement to “keep in mind the critical importance of responding appropriately in order to encourage sexual assault reporting and continued cooperation,” commanders have unrestricted authority to discipline a sexual assault victim for these alleged offenses without regard to the status of the investigation or prosecution of the assault. This raises inevitable questions. Will a victim who was given a rape drug be disciplined for intoxication? Will a married woman who was raped be subjected to corrective action for adultery? What if she is a single woman and the rapist is married? The specter of such “corrective action” can only suppress reporting of sexual assault.

Both alleged perpetrators and victims must be made aware that sexual assault allegations will be investigated promptly, fairly, and without any retaliation. Every member of the military should know that those who obstruct the pursuit of justice will also be held accountable. There must be systems in place to allow subordinates to go “over the heads” of their superior officers to report sexual assault without reprisal.

Finally, victims should have confidence that the sexual assaults they report will be prosecuted without bias. A bill proposed by Senator Kirsten Gillibrand proposes to give military prosecutors, rather than the accuser’s commanders, the power to decide which cases to try. A separate bill proposed by Senator Claire McCaskill would strip commanders of their ability to

overturn jury verdicts. From the perspective of an attorney well versed in the non-military court systems, each of those proposals has merit.

Despite measures such as restricted (confidential) reporting to Sexual Assault Response Coordinator (SARC), Victim Advocates (VA), healthcare providers, and chaplains for Army soldiers, and permission to report rape allegations directly to Army law enforcement (Military Police or CID), anecdotal evidence overwhelmingly indicates that military sexual assault victims are subtly or explicitly told not to report the crime.

The most recent Pentagon figures show that the number of members of the military who reported sexual assaults during the last fiscal year was 3,553, an increase of almost 50 percent over the previous year. Assuming that the increase in reporting was due to a lessening of the fear among victims to report, that is a promising sign; however, a separate survey on sexual assault taken every other year among 1.4 million active duty service members found that about 26,000 men and women said that they were sexually assaulted in 2011. If the time periods for these numbers were the same, that would indicate that only 13% of sexual assaults were reported. Estimates of the reporting rate for sexual assault in the civilian American population generally range from 20-40%.

The energy and attention that the Panel is devoting to these issues is encouraging and I appreciate the opportunity to bring a different perspective into the discussion.

Thank you for your time and attention to this matter, and I look forward to hearing from you and to seeing you on December 11.

Sincerely,

Daniel B. Ross

DBR/las