



OFFICE OF THE CHAIRMAN OF THE JOINT CHIEFS OF STAFF

WASHINGTON, DC 20318-9999

July 19, 2013

Honorable Carl Levin
Chairman
United States Senate
Committee on Armed Services
Washington, D.C. 20510-6050

Dear Senator Levin:

Yesterday at the reconfirmation hearing for General Dempsey and Admiral Winnefeld, and earlier at the recent Senate Armed Services Committee hearing on sexual assault, several Senators had questions about our allies' military justice systems. As you know, most or all of our allies have removed commanders as convening authorities and use independent military or civilian prosecutors to make charging decisions. General Dempsey has spoken with many of his counterparts on this topic, and I recently met with legal advisors from the United Kingdom, Canada, Australia, New Zealand, the Netherlands, and Germany and conducted a survey of their military justice systems. I am writing to outline what we have discovered so far.

From these conversations and research, we've learned quite a few things, some of which General Dempsey mentioned at his reconfirmation hearing. First, no allied country changed its system in response to sexual assault crimes specifically or the rights of victims generally. In most cases, commanders were removed as convening authorities to better protect the rights of the accused, often in response to decisions by domestic courts and/or the European Court of Human Rights (human rights treaties usually have a requirement for an "independent and impartial" tribunal). In contrast, the U.S. Supreme Court has repeatedly upheld the Uniform Code of Military Justice (UCMJ) and the U.S military justice system as consistent with the Constitution and federal law.

Second, none of the allies surveyed could draw a correlation between their new system and any increased (or decreased) reporting by victims of sexual assault. There was no statistical or anecdotal evidence that removing commanders from the charging decision had any effect on victims' willingness to report crimes. Similarly, we found no studies by our allies that examined the impact of the changes on prosecution rates, conviction rates, or processing times, although generally their cases now take longer.

The scope and scale of our allies' caseloads are vastly different. None of our allies handle the volume of cases the US military does (e.g., one ally only tried 75-80 courts-martial last year); this is likely due to the greater size of the U.S. armed forces in comparison.

One critical feature of our justice system is its expeditionary nature--the ability to administer justice anywhere in the world our forces deploy. By law, most of our allies cannot conduct courts-martial in deployed environments; those whose systems allow it rarely do so in practice and often are incapable of doing so. Practical impediments include the short lengths of their combat tours, the small numbers of forces deployed, and the availability of defense counsel, judges, and court personnel in theater.

We also discovered that the allied systems we surveyed generally maintained two roles for commanders. First, their systems generally allow commanders to conduct disciplinary proceedings, often called summary proceedings or summary trials, for minor military offenses. These summary proceedings are somewhat analogous to our nonjudicial punishment proceedings under Article 15 of the UCMJ or our summary courts-martial. Often, prior coordination (and/or approval) is required with the independent prosecutor before proceeding. Second, our allies' commanders generally retain the responsibility and authority to make recommendations to the independent prosecutor; however, these recommendations are advisory only and not binding.

Finally, of the six allies we surveyed, four countries maintained military justice systems with independent military prosecutors and military courts-martial (the UK; Canada; Australia; and New Zealand) and two countries surveyed had civilian prosecutors, with cases tried in civilian court (Germany and the Netherlands). Five of the countries (all but Germany) indicated that the changes in their systems resulted in the process slowing down and taking longer.

Thank you for the opportunity to share this information with you and the committee. This is an extremely important issue to all of us, and I appreciate the open lines of communication on this topic. If you need any more information or have any questions, I would be happy to provide more detail.

Sincerely,

A handwritten signature in black ink, appearing to read "Richard C. Gross". The signature is fluid and cursive, with a large initial "R" and "G".

Richard C. Gross
Brigadier General, US Army
Legal Counsel to the Chairman
of the Joint Chiefs of Staff