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COMMITTEE ON ARMED SERVICES

**STATEMENT OF
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BEFORE THE

SENATE COMMITTEE ON

ARMED SERVICES

ON

SEXUAL ASSAULT IN THE MILITARY

4 JUNE 2013

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Chairman Levin, Ranking Member Inhofe, distinguished members of the committee; thank you for the opportunity to testify today about our efforts to address sexual assault and how we can work together to improve our ability to prevent and respond to sexual assaults, support victims, and hold offenders accountable.

Sexual assault is a crime. It is an attack on a shipmate, violates the Navy's Core Values and tarnishes everything we stand for. Sexual assault threatens the safety of our Sailors, and degrades the readiness of our ships and squadrons. The Navy and our commanders are committed to eradicating this crime from our ranks; we owe this to our people and our Nation. I am deeply concerned by the extent to which this crime continues impact the Navy and undermine the trust our Sailors and the American people place in our military. This isn't who we are. However, I cannot afford to simply be outraged. I have to, and I am committed to, working each and every day to solve this problem.

We began a sustained and focused effort to improve our prevention of and response to sexual assault three years ago with the Department of the Navy's Sexual Assault Prevention Summit. This effort has expanded and evolved as we have learned more, particularly in the past year. We started with what became a successful pilot program instituted at our training command in Great Lakes, Illinois. Over the last two years, this initiative substantially reduced the prevalence of sexual assaults through a tailored approach combining training, safety and security measures in housing areas, peer monitoring, direct engagement with local business and civil authorities, and regulated liberty. Armed with these insights, we recently implemented regionally-focused pilot programs in additional Fleet Concentration Areas – San Diego, Naples, Italy and Yokosuka, Japan. So far progress in these areas is positive: feedback from Sailors; reduction in conduct violations (including sexual assault); and increased reporting of past sexual assaults in these Fleet Concentration Areas indicates awareness of, and confidence in, our reporting processes. The foundation of our efforts is focused and engaged leadership at every echelon of command, to include quarterly meeting I hold with my Navy four-star commanders.

We see some clear trends regarding sexual assault in the Navy which enable us to focus our efforts. Most sexual assaults are Sailors assaulting other Sailors; most victims and offenders are junior Sailors; more than half of incidents occur on base or on ship; and alcohol is a factor in the majority of sexual assaults that occur outside of the workspace. Using these insights I see the greatest opportunity for future success in three main areas:

- *Disrupting the factors that contribute to sexual assault* – We continue to focus, in particular, on alcohol as a factor in sexual assault. This year we fielded alcohol detection devices in the fleet to help educate Sailors on their alcohol use. We are also addressing command climate and how it contributes to sexual assault, particularly the impact of sexual harassment and how it contributes to a culture that may enable sexual violence. As described below, we implemented improvements to our leadership development programs and put in place processes to better evaluate and hold leaders accountable for their efforts to keep their Sailors safe and for shaping proper command climate -- the way their commands treat their people and the environment in which their Sailors work. Since most incidents occur in areas we control, our commanders implemented more aggressive security measures in on-base housing areas including patrols by senior personnel, security cameras and improved lighting. Since most victims and offenders are junior Sailors, our training is targeted to those Sailors, and we support peer groups such as Coalition of Sailors Against Destructive Decisions (CSADD) who train, mentor and sponsor awareness-raising events for fellow junior Sailors.
- *Fielding A Special Victim Capability* – Specially trained investigators, victim advocates, prosecutors, and paralegals form the core of our special victim capability to respond to incidents of sexual assault. We established dedicated Naval Criminal Investigative Service (NCIS) agent-teams in Norfolk, San-Diego, Bangor, and Okinawa that exclusively handle adult sexual assault investigations. NCIS is expanding this model during FY2013 to Yokosuka, Japan, Hawaii and Mayport, Florida. To improve the overall quality of Navy court-martial litigation, the JAG Corps established the Military Justice Litigation Career Track. Military Justice Litigation Qualified judge advocates lead trial and defense departments at Region Legal Service Offices and Defense Service Offices, which provide Navy prosecutors and defense counsel, respectively. These officers provide proven experience in the courtroom, personally conducting, adjudicating, or overseeing litigation in sexual assault and other complex cases. The Military Justice Litigation Career Track program leverages trial counsel, defense counsel, and judicial experience to enhance the effectiveness of complex court-martial practice. We also increased the seniority of commanders authorized to decide the disposition of sexual assault cases and required that commanders consult judge advocates in making disposition decisions. These and other improvements are discussed in further detail below.
- *Support for victims* – The Navy is in the process of hiring 66 full-time credentialed Sexual Assault Response Coordinators (SARCs) and 66 full-time, professional, credentialed victim advocates (VAs) to augment the approximately 3,000 existing trained active duty command

VAs. We will have these SARCs and VAs at every one of our Fleet Concentration Areas and major overseas bases, with additional positions added proportionally to areas with larger populations. Complementing the support provided by SARCs and VAs, Navy prosecutors and legal assistance attorneys provide victims' with an understanding of their rights, the military justice process, and assistance with wide variety of issues related to being the victim of a crime.

Proposed Changes to the Military Justice System

A critical aspect of our focused efforts is ensuring a fair, efficient, and effective military justice system. Consistent with previous challenges such as drug abuse in the 70s and early 80s, the UCMJ and Manual for Courts Martial (MCM) must be able to evolve. We recently endorsed a significant change to Article 60 of the Uniform Code of Military Justice (UCMJ) to prohibit a convening authority from setting aside the findings of a court-martial except for a narrow group of qualified offenses (those ordinarily addressed through non-judicial punishment or adverse administrative action) and require a convening authority to explain any sentence reduction in writing. The process the Secretary of Defense followed in proposing an amendment to Article 60 of the UCMJ ensured a careful and full evaluation of the proposal both in terms of accomplishing intended objectives and avoiding unintended second and third-order effects.

As with the Department's Article 60 proposal, we must ensure that other proposed changes to the military justice system do not adversely impact the interests of justice, the rights of crime victims, and the rights afforded the accused. To maintain the proper balance of these interests and ensure the system remains constitutionally sound and responsive in peace and war we must continue to evaluate proposed changes to the UCMJ by carefully assessing their overall impact.

The Response Systems Panel created by Section 576 of the FY13 National Defense Authorization Act should be given the opportunity to conduct an independent assessment of the systems used to investigate, prosecute, and adjudicate sexual assaults prior to the adoption of sweeping structural changes to those systems. I look forward to the opportunity to work with Congress now and in the future to ensure our commanders have the right tools to help them prevent and respond to sexual assault. In addition to the Secretary of Defense's proposed amendment to Article 60 of the UCMJ, we should carefully consider other proposals, including:

enhanced protection for recruits and members of the armed forces in entry-level processing and training environments; prohibition against military service for any person with a conviction for sexual assault; enhanced authority for commanders to temporarily reassign or remove from a position of authority a member alleged to have committed a sexual assault offense; and elimination of the five-year statute of limitations applicable to sexual assault offenses other than rape.

Sexual Assault Reporting

In the Navy, there are two reporting options for victims of sexual assault: restricted and unrestricted. There are multiple means available for Sailors to make reports at all commands – afloat or ashore. Sexual assault reports can be made to personnel as described below inside or outside the victim’s command and can be confidential, as desired by the victim.

Restricted reports are kept confidential; an investigation is not initiated, and the command is notified that an assault has occurred with no identifying information regarding the victim or suspect. Victims can make restricted reports to SARC, VAs, medical personnel, or by contacting the DoD SafeHelpline by phone (877-995-5247) or online (<https://www.safehelpline.org/>), 24 hours per day, 7 days a week. SARC, VAs, and SafeHelpline personnel ensure victims understand their reporting options and available resources. Victims who make restricted reports will still receive medical treatment, including a Sexual Assault Forensic Examination, counseling services, victim advocacy support, chaplain support, and legal assistance as they desire.

Unrestricted reports provide victims the same support services as restricted reports. These reports are investigated by the Naval Criminal Investigative Service (NCIS) and reviewed for prosecution by a commander with the rank of O-6 or above with disposition authority for sexual assault cases. Victims who desire to make an unrestricted report are encouraged to report sexual assaults to a SARC or VA, medical personnel, command leadership, judge advocate, base police, master at arms, NCIS or civilian law enforcement as soon as possible after the incident. The decision to make a restricted or unrestricted report rests with the victim; a victim can make a restricted report and later change to an unrestricted report. Once a victim files an unrestricted report, investigation and reporting requirements are mandated. The Navy trained every Sailor on reporting procedures during our Sexual Assault Prevention and Response for Leaders and Fleet

training completed in April 2013. The Navy also implemented policies to ensure victim safety and support following an unrestricted report of a sexual assault. For example, victims may request an expedited transfer to another command or duty station. Additionally, commanders may issue military protective orders to order a military suspect to have no contact with the victim, temporarily transfer the accused pending resolution of the case, or place the accused in pretrial confinement.

Whether a victim chooses to make a restricted or unrestricted report of sexual assault, command SARCs and VAs are specially trained to respond quickly to victims; provide information; accompany victims to medical, investigative interviews, and legal proceedings as the victim desires; make referrals for military and community assistance; and help victims through this potentially life altering event. The Navy is in the process of hiring 66 full-time credentialed SARCs and 66 full-time, professional, credentialed VAs to augment the approximately 3,000 existing trained active duty command VAs. This will be complete by June 2013. We will have these SARCs and VAs at every one of our Fleet Concentration Areas and major overseas bases, with additional positions added proportionally to areas with larger populations. By hiring these credentialed professionals, we are improving not only our capacity for victim support, but also program continuity and quality.

The Navy's legal professionals support sexual assault victims. The Navy has trained more than 150 Navy and Marine Corps attorneys, paralegals, and enlisted personnel to provide legal assistance to crime victims in order to ensure victims' rights are understood and protected. Navy prosecutors contact victims to provide them with explanations of victims' rights; the court-martial process; and available federal, state, or local victim services and compensation. Additionally, active-duty and dependent victims are eligible for military legal assistance services and may contact or be directed by VAs or prosecutors to legal assistance attorneys to receive help pertaining to victims' rights, understanding the court-martial process, and a wide variety of legal issues related to being the victim of a crime.

Sexual Assault Investigation and Adjudication

Prompt, thorough investigation is critical to the effective prosecution of sexual assault cases. Every unrestricted report of sexual assault triggers an independent investigation by NCIS. This includes sexual contact offenses, such as groping someone over their clothes. From the

outset of an investigation, NCIS works closely with Navy trial counsel (prosecutors) in order to ensure a thorough investigation sufficient to make an appropriate charging recommendation. To facilitate the prompt collection of evidence, the Navy will equip and certify all Medical Treatment Facilities and operational units to perform Sexual Assault Forensic Exams by the September 2013. To ensure appropriate care, each Navy unit with women Sailors has at least one female corpsman or physician. In the past two years, NCIS established specially-trained teams around the country and overseas that investigate only sexual assault cases. These NCIS agent teams better enables NCIS to effectively investigate each case of sexual assault. In Norfolk, for example, these teams reduced the average time to investigate sexual assaults from 300 days to about 80 days.

Once an NCIS investigation is complete, the case is forwarded to the accused's commander. In accordance with Secretary of Defense policy, the initial disposition decision for reports of rape, sexual assault, forcible sodomy, and attempts to commit these offenses must be made by Sexual Assault Initial Disposition Authorities (SA-IDAs), who are Navy Captains (pay grade O-6) or above designated as Special Court-Martial Convening Authorities. If the accused's commander is not an SA-IDA, the commander must forward the case to the appropriate SA-IDA in the chain of command for the initial disposition decision. SA-IDAs must consult with a judge advocate prior to making disposition decisions, ensuring that appropriate legal considerations for these major offenses are fully evaluated and balanced with good order and discipline. Having received legal advice from a trained and experienced staff judge advocate and/or prosecutor, based on the nature of the offenses and an analysis of the evidence available, the SA-IDA may recommend that the suspect face charges at a general court-martial. The SA-IDA also has the option, when appropriate, to send charges to a special court-martial, summary court-martial, or non-judicial punishment and may also process the suspect for administrative separation. If the SA-IDA does not recommend general court-martial, the SA-IDA can also return the case to the suspect's commanding officer for disposition deemed appropriate by that commanding officer, based on the nature of the offenses and an analysis of the evidence available, including special court-martial, summary court-martial, non-judicial punishment, or administrative separation processing.

Once charges are preferred (sworn to), the suspect becomes "the accused" and is provided a military attorney. The charges can immediately be referred to a summary court-

martial or special court-martial. However, before a case can be referred to a general court-martial, the accused has the right to have the charges considered at an Article 32 pre-trial investigation.

An Article 32 investigation is similar to a civilian preliminary hearing, and a victim may have to appear and testify at the hearing. The accused will be present at the Article 32 hearing along with the defense counsel who may cross-examine the victim. In the Navy, judge advocates serve as Article 32 investigating officers for sexual assault offenses. The Article 32 investigating officer will hear the evidence and write a report, which will include the investigating officer's determination as to whether there are reasonable grounds to believe that the accused committed the offenses charged and, if so, a recommendation on the forum for disposition of the charges. After considering the investigating officer's report and the recommendation of a staff judge advocate, the SA-IDA may decide to recommend to a general court-martial convening authority (generally an O-7 or above) that he or she convene a general court-martial, or the SA-IDA may send the accused to a special court-martial, summary court-martial, impose NJP or, if appropriate, dismiss the charges. The accused may also be processed for administrative separation. In the alternative, the SA-IDA may return the case to the suspect's commanding officer for appropriate disposition.

If the charges are referred to a general or special court-martial, the accused has the right to choose to be tried by a military judge alone or by a panel of service members who serve as jurors (or "members" in a court-martial). To convict a service member, a two-thirds majority of the court-martial panel members, or the military judge if the case proceeds with the military judge alone, must be convinced of the accused's guilt beyond a reasonable doubt. If the accused is found guilty, the case will proceed to the sentencing phase and the military judge or members decide what punishment to apply. During a sentencing hearing, both sides may again call witnesses to help determine an appropriate sentence. The victim can testify about the impact of the sexual assault, which may include the emotional, physical, and financial suffering the victim experienced.

Post-trial appeal and review processes under Articles 64, 66, and 69 of the UCMJ occur after the court martial proceedings. Article 66 reviews apply to cases in which a punitive discharge or sentence of confinement for one year or more was approved; those convicted are assigned appellate defense counsel, and cases on appeal are decided by senior judge advocates

serving as Navy and Marine Corps Court of Criminal Appeals appellate judges or by civilian judges of the U.S. Court of Appeals for the Armed Forces. Article 69 reviews apply to general courts-martial where a punitive discharge or confinement for one year or more was not approved; the records of trial are reviewed by the Office of the Judge Advocate General. Article 64 reviews are conducted for all other courts-martial cases and are submitted to a judge advocate who must respond to any allegation of error made by the accused.

Throughout the legal process, the victim has certain basic rights. For example, a victim has the right to communicate his or her position about the disposition of the case and plea negotiations. Although the convening authority is not bound to dispose of the case as the victim desires, the victim's views must be carefully considered. In addition to the general guidance Navy prosecutors provide, victims can contact counsel, and active-duty and dependent victims also have access to legal assistance attorneys to provide information on the military justice process, victim's rights, and help with a wide variety of legal issues related to being the victim of a crime.

Under the Victim and Witness Assistance Program (VWAP), the victim has certain basic rights throughout a court-martial, including:

- Being treated with fairness and respect for the victim's dignity and privacy;
- Being reasonably protected from the accused;
- Being notified of court proceedings;
- Being present at all public court proceedings related to the offense, unless the investigating officer or military judge determines that the victim's testimony would be materially affected if he or she heard other testimony at the pretrial investigation or at trial;
- Conferring with the trial counsel;
- Receiving available restitution, if appropriate; and
- Being provided information about the conviction, sentencing, imprisonment, and release of the offender.

The role of the commander

Preventing and responding to sexual assault is not just a legal issue – it is a leadership issue. The performance, safety and climate of a unit begin and end with the commander. As

described in the “Charge of Command” that all Navy officers sign in the presence of their reporting senior upon taking command, the commanding officer is responsible and accountable for everything that happens in their ship, squadron or unit. By virtue of experience, skill and training, our commanders are the best assessors of their people and are the key to sustaining the readiness of their unit. If we want to implement effective, permanent change in our military, we must do so through our commanders.

From our analysis of sexual assault reports and cases, we know many of the factors surrounding the majority of sexual assaults. The commander is responsible to address these factors by fostering an appropriate command climate of dignity and respect for everyone and ensuring a safe workplace and living areas. Overall, the commanding officer is responsible for good order and discipline of the unit and the well being of his or her Sailors.

The responsibility, authority, and accountability we repose in the commander requires that we provide him or her tools to maintain appropriate readiness and safety every day. Military justice is one of those tools. The fundamental structure of the military justice system and UCMJ, centered on the role of the commander as the convening authority, is sound. Navy commanders are often required to make independent decisions far from shore, in uncertain or hazardous conditions. In this environment, it is essential that our commanders be involved in each phase of the military justice process, from the report of an offense through adjudication under the UMCJ.

The importance of accountability

The Navy continues to evaluate the tools we provide commanders to ensure they can execute their charge of command. In particular, we are focused on improving the development of leadership and character in our leaders on their way to command. Today, all of our leaders complete high-quality, tailored training on sexual assault prevention and response. This training, provided by professional mobile training teams, is designed to help leaders identify factors and environment that surround or contribute to sexual harassment or sexual assault, and understand the response requirements when a sexual assault occurs.

While tailored to sexual assault prevention and response, this training is not enough to fully prepare commanders to create an appropriate command climate. The Navy recently instituted a concerted leader development program to guide young officers and enlisted personnel to be effective commanders and senior enlisted leaders. Over the next year, we will

advance this program as a cornerstone of our training for future commanders and Senior Enlisted Advisors and leaders.

Because of the inherent responsibility of our commanders, our screening processes to select them are rigorous. They include:

- a formal command qualification program reviewed and approved by each community flag officer leader (normally, a Vice Admiral)
- professional qualification standards for each selected commander
- an oral qualification board for each candidate in front of former commanders
- a command screen board, led by flag officers
- full training on, and acknowledgement of, the “Charge of Command”

Despite the rigors of the selection and training process, we inevitably have failures and must hold commanders accountable for their command climate, their efforts to maintain a safe work environment of dignity and respect, and the good order and discipline of their commands. Today, we do this by requiring commanders to assess their organizational climate at regular intervals, while requiring those with multiple commands under their leadership to monitor the climates of subordinate commands. We also evaluate our commanders (and all officers) in their regular fitness reports (performance evaluations used for determination of advancement) in three areas: Command Climate / Equal Opportunity, Leadership and in written summary, where documentation of poor command climates would be listed. We hold our commanders responsible and accountable when they do not meet acceptable standards.

There are 1,254 command positions in the Navy. In 2012, Navy relieved 11 commanders for personal misconduct and eight commanders were relieved for failure to provide effective leadership; four of these eight were relieved for poor command climate. This year, we have relieved five commanders for failure to provide effective leadership, two of whom were relieved for poor command climate.

As part of the Navy’s accountability process, commanders are required to brief their Immediate Superior in Command and the first flag officer in the chain of command on each sexual assault incident occurring in their command. Commanders evaluate the command climate of the suspect’s command, as well as the factors surrounding the sexual assault, such as location and environment surrounding the incident, demographics, and the role of alcohol. Means to prevent further incidents are discussed.

Our Navy four-star flag officers reinforce accountability for command climate by reviewing these “first flag” reports. I meet with my four stars every quarter to review “first flag reports”: trends, demographics, common features and environments and best practices to prevent sexual assaults. We apply the insights from the reports to ongoing initiatives, particularly our regionally-focused programs in Great Lakes, San Diego, Japan and Europe.

Conclusion

We remain steadfastly committed to eradicating sexual assault within our ranks and ensuring that sexual assault cases are processed through a fair, effective, and efficient military justice system.

Sexual assault is a crime that threatens the safety of our Sailors, is utterly inconsistent with our Core Values, and impacts the ability of the Navy to execute our mission. We must more effectively prevent and respond to sexual assault, or our readiness and credibility as a fighting force will suffer.

The Navy is making progress in areas where we empowered commanders to undertake regionally-focused approaches that address the factors surrounding sexual assault. Our efforts must continue to focus on providing commanders the appropriate tools to remain effective, accountable leaders, and hold these commanders accountable for the safety and well being of all their Sailors. I look forward to working with Congress on a deliberate, thoughtful review of the systems used to investigate, prosecute, and adjudicate sexual assaults.