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SEXUAL ASSAULT AND VIOLENCE AGAINST WOMEN IN THE MILITARY AND AT THE ACADEMIES

HEARING

BEFORE THE

SUBCOMMITTEE ON NATIONAL SECURITY, EMERGING THREATS, AND INTERNATIONAL RELATIONS

OF THE

COMMITTEE ON GOVERNMENT REFORM

HOUSE OF REPRESENTATIVES

ONE HUNDRED NINTH CONGRESS

SECOND SESSION

JUNE 27, 2006

Serial No. 109–220

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SEXUAL ASSAULT AND VIOLENCE AGAINST WOMEN IN THE MILITARY AND AT THE ACADEMIES

TUESDAY, JUNE 27, 2006

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON NATIONAL SECURITY, EMERGING THREATS, AND INTERNATIONAL RELATIONS,
COMMITTEE ON GOVERNMENT REFORM,
Washington, DC.

The subcommittee met, pursuant to notice, at 2 p.m. in room 2154, Rayburn House Office Building, Hon. Christopher Shays (chairman of the subcommittee) presiding.

Present: Representatives Shays, Marchant, Platts, Turner, Dent, Price, Kucinich, Maloney, Van Hollen, and Ruppersberger.

Staff present: Kristine K. Fiorentino, professional staff member; Robert Briggs, analyst; Dr. R. Nicholas Palerino, staff director; Andrew Su, minority professional staff member; and Jean Gosa, minority clerk.

Mr. SHAYS. A quorum being present, I call the subcommittee to order.

At the 1991 Tailhook Symposium, an annual convention supported by the military and attended by active duty, reserve, and retired aviators, 83 women were assaulted. One of those women, Lieutenant Paula Coughlin, a helicopter pilot, reported the assault to her boss. He said, "that is what you get when you go to a hotel party with a bunch of drunken aviators."

Our military men and women are committed to serving our country. They deserve to be educated, trained, and to operate in an environment that is free of sexual harassment and assault.

After Tailhook, the Department of Defense made changes to their policy addressing charges of sexual assault. Commanders know charges of sexual assault must be taken seriously. The question remains whether they take these charges seriously.

This subcommittee has concern about the Department of Defense's commitment to aggressively prevent and respond to sexual assault incidents. The 2005 Defense Task Force on Sexual Harassment and Violence at the Military Service Academies finds that sexual assault has been inadequately addressed at the academies. The task force states "Sexual harassment typically creates an environment in which sexual assault is more likely to occur." The reports makes several recommendations to prevent and respond to sexual harassment and violence against women.

Today we ask what task force recommendations have been put into effect, including changing service academy culture toward women, protecting communications made by victims of sexual assault, establishing a plan to implement the Department of Defense's sexual assault response policy, amending the Uniform Code of Military Justice to permit closed proceedings to protect the privacy of both sexual assault victims and offenders, incorporating sexual harassment and assault education classes into the academy curriculum, developing an institutional sexual harassment and assault prevention plan, and establishing collaborative relationships with civilian authorities for sexual assault victim support.

Congress recognized sexual assault is more than a service academy problem and directed the Department of Defense establish the Task Force on Sexual Assault in the Military Services. Although this directive was part of the fiscal year 2005 Defense Authorization Act, the task force is not yet operational. In fact, its members have not been appointed. This inaction speaks volumes.

The second major question we ask today is when will the Defense Task Force on Sexual Assault in the Military Services become operational and when will its recommendations be presented to the public.

A viable military comprised of men and women requires continuous dedicated efforts to prevent sexual assault and violence and to respond forcefully once it occurs. But these efforts must begin when the service member enters the military, not just at our service academies where we serve some of our future military leaders. But we should not stop there. We must provide an environment in the military at large that does not condone hostile attitudes and inappropriate actions toward women.

Our military leaders must ensure our men and women who honorably serve our country are fully aware sexual assault and harassment will not be tolerated and know that victims who come forward will receive support, medical care, and legal protection.

This subcommittee thanks all the witnesses for taking the time to appear before us today and we look forward to this hearing.

[The prepared statement of Hon. Christopher Shays follows:]

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AND INTERNATIONAL RELATIONS
Christopher Shays, Connecticut
Chairman
Room B-372 Rayburn Building
Washington, D.C. 20515
Tel: 202 225-2548
Fax: 202 225-2382

"Sexual Assault and Violence Against Women in the Military and at the Academies"

Statement of Rep. Christopher Shays
June 27, 2006

At the 1991 Tailhook Symposium, an annual convention supported by the military and attended by active duty, reserve and retired aviators, 83 women were assaulted. One of those women, Lieutenant Paula Coughlin, a helicopter pilot, reported the assault to her boss. He said, "That's what you get when you go to a hotel party with a bunch of drunken aviators."

Our military men and women are committed to serving our country. They deserve to be educated, trained and to operate in an environment that is free of sexual harassment and assault.

After Tailhook, the Department of Defense made changes to their policy addressing charges of sexual assault. Commanders know charges of sexual assault must be taken seriously. The question remains whether they take these charges seriously. This Committee has concern about the Department of Defense's commitment to aggressively prevent and respond to sexual assault incidents.

The 2005 Defense Task Force on Sexual Harassment and Violence at the Military Service Academies finds that sexual assault has been inadequately addressed at the Academies.

The Task Force states sexual harassment typically creates an environment in which sexual assault is more likely to occur. The Report makes several recommendations to prevent and respond to sexual harassment and violence against women.

Today we ask what Task Force recommendations have been put into effect including:

- changing Service Academy culture toward women;
- protecting communications made by victims of sexual assault;
- establishing a plan to implement the Department of Defense Sexual Assault Response Policy;
- amending the Uniform Code of Military Justice to permit closed proceedings to protect the privacy of both sexual assault victims and offenders;
- incorporating sexual harassment and assault education classes into the Academy curriculum;
- developing an institutional sexual harassment and assault prevention plan; and
- establishing collaborative relationships with civilian authorities for sexual assault victim support.

Congress recognized sexual assault is more than a Service Academy problem and directed the Department of Defense establish a Task Force on Sexual Assault in the Military Services. Although this directive was part of the FY 2005 Defense Authorization Act, the Task Force is not yet operational, in fact its members have not been appointed. This inaction speaks volumes.

The second major question we ask today is when will the Defense Task Force on Sexual Assault in the Military Services become operational, and when will its recommendations be presented to the public?

A viable military comprised of men and women requires continuous, dedicated efforts to prevent sexual assault and violence, and to respond forcefully once it occurs. These efforts must begin when the service member enters the military, not just at our Service Academies where we train some of our future military leaders.

But we should not stop there. We must provide an environment in the military at large that does not condone hostile attitudes and inappropriate actions toward women.

Our military leaders must ensure our men and women who honorably serve our country are fully aware sexual assault and harassment will not be tolerated and know that victims who come forward will receive support, medical care and legal protection.

We thank all the witnesses for taking the time to appear before us today.

Mr. SHAYS. At this time the Chair would recognize the ranking member of this subcommittee, Mr. Kucinich.

Mr. KUCINICH. Thank you, Mr. Shays, for convening this hearing. I want to thank the witnesses for joining us today and I want to thank Beth Davis, in particular, for her bravery in sharing her story with us today.

The cause of this hearing necessitates that it be said that each and every human being is deserving of respect. Color, race, creed, gender do not change this basic right to respect. This truth, the truth of the equality and basic dignity afforded every person, has been fought for throughout our country's history, has been defended by many, many generations of men and women in uniform.

How sad it is that we are here at a moment where we have to acknowledge that those women who have served this country and who continue to serve this country are not being afforded the very basic respect for their human dignity that their service to this country is involved in protecting for others. How ironic and sad that is.

We learned over the past two decades that many women in our military do not always enjoy the same basic rights. Some are victims of sexual harassment and assault, forced to suffer indignities in silence.

We are here to discuss and talk about basic principles of human dignity and to find out whether we are ready to take a stand on that in our own armed forces.

As we get into this discussion today it needs to be said that the attitudes of young men when they come into the military, they don't learn sexual harassment in the military. They don't learn the attitudes that result in sexual assault in the military. When you look at the arc of violence in our own society apart from the military—domestic violence, spousal abuse—underneath that is a lack of education in our culture about the basic rights of women. It starts when children are little. People don't come to the armed services and suddenly change.

So, while it is important that we are looking at this today, we have to remember that this doesn't occur only in the armed services. This is a problem in our culture. That, Mr. Chairman, is one of the reasons why 73 Members of Congress have now signed on to legislation to create a Cabinet-level Department of Peace which looks at the issues of violence in our own society, of spousal abuse, child abuse, violence in the schools, racial violence, and the whole symptomatology of violence in our society, and through education of our children looks to bring to our children the possibility of learning the appropriate responses in their relationships with each other, boys and girls alike.

So when we are speaking about the armed forces today and we must—we know that this troubling pattern beings before many of our servicewomen enter our armed forces. In 2005, 4 percent of female Air Force cadets, 5 percent of female Naval Academy midshipmen, and 6 percent of female cadets at West Point reported being victims of sexual assault in the previous year. Worst still, fewer than half of these young women reported the incidents to the academy authorities, often out of fear of harassment from their peers or placing their career at risk.

The scourge of sexual assault is clearly not limited, as I have mentioned, to the military academies, but many of the positive changes in responses to sexual assaults in civilian life have failed to translate easily to the military. The culture of the academies and strict reporting requirements have often limited options for victims when they are at their most vulnerable.

The initial steps taken by the military to better protect and support victims are a good start. Implementation of the restricted reporting policy allows victims the ability to seek out care and services confidentially when they otherwise might have opted to not seek help at all, but in order to ensure that all victims are able to seek help, additional policy changes may be required.

We need a fundamental change in the culture of the academies to ensure that women are treated with dignity and respect. Over the last decade efforts to better understand and deal with the problem of sexual assault have slowly increased. There is now a heightened commitment by the service academies and the Pentagon to take the issue of sexual assault more seriously by improving the response to sexual assaults and preventing assaults before they even happen. I am encouraged by the initial steps that have been taken by DOD to improve accountability, and I comment recent efforts to expand sexual assault education and training in the military and at the academies. We recognize there is much more work to be done.

I look forward to hearing from our witnesses. I also hope the advocates here today will share their concerns and recommendations for ensuring the basic rights of women in the military are respected.

I will again repeat, Mr. Chairman, that this is not just a matter that relates to our armed services. This is a challenge to our entire society, and I think it is a challenge that we are capable of meeting, that we do have the capacity to evolve, to be more than we are and better than we are, and it may start very well with our children through education.

Thank you.

[The prepared statement of Hon. Dennis J. Kucinich follows:]

Statement of Rep. Dennis J. Kucinich
Ranking Minority Member
House Subcommittee on National Security, Emerging Threats and International Relations
Committee on Government Reform
U.S. House of Representatives

Hearing on "Sexual Assault and Violence Against Women in the Military and at the Academies"

June 27, 2006

Good afternoon. Thank you, Chairman Shays for convening this hearing.

Thank you to the witnesses for joining us today. I want to especially thank Beth Davis for her bravery in sharing her story with us today.

Each human being is deserving of respect. Color, race, creed, and gender do not change the basic right to respect. This truth, the truth of the equality and basic dignity afforded every person, has been fought for throughout our nation's history. Suffrage, the civil rights movement - our nation's history has had many moments during which citizens stood up for the basic rights of everyone.

Unfortunately, over the last two decades, we have learned that many women in our military do not always enjoy such basic rights. Rather, they are all too often the victims of sexual harassment and assault, forced to suffer these indignities in silence.

This troubling pattern begins even before many of our service women enter our Armed Forces. In 2005, 4% of female Air Force

cadets, 5% of female Naval Academy midshipmen, and 6% of female cadets at West Point reported being victims of sexual assault in the previous year. Worse still, fewer than half of these young women reported the incidents to the academy authorities, often out of fear of harassment from their peers or placing their career at risk.

The scourge of sexual assault is clearly not limited to the military or the academies. But many of the positive changes in responses to sexual assaults in civilian life have failed to translate easily to the military. The culture of the academies and strict reporting requirements have limited options for victims when they are at their most vulnerable.

The initial steps taken by the military to better protect and support victims are a good start. Implementation of the "restricted reporting policy" allows victims the ability to seek out care and services confidentially when they otherwise might have opted to not seek help at all. But in order to ensure that all victims are able to seek help, additional policy changes may be required.

We need fundamental change in the culture of the academies to ensure that women are treated with the dignity and respect deserved by all human beings. Over the last decade, efforts to better understand and deal with the problem of sexual assault have slowly increased. There is now a heightened commitment by the service academies and the Pentagon to take the issue of sexual assault more seriously by improving the response to sexual assaults and preventing assaults before they ever happen.

I am encouraged by the initial steps that have been taken at DoD to improve accountability and I commend recent efforts to expand sexual assault education and training in the military and at the academies. However, there is still much work to be done. We

need better policies, but more than that, we need real equality for women in our military.

I look forward to hearing from our witnesses today on the progress of educational programs for service members and changes at the service academies. I also hope the advocates here today will share their concerns and recommendations for ensuring the basic rights of women in the military are respected.

Thank you, Mr. Chairman, and thank you again to the witnesses for being here today. I yield back to the Chair.

Mr. SHAYS. I thank the gentleman.

At this time the Chair would call on the vice chairman, Mr. Marchant.

Mr. MARCHANT. Thank you, Mr. Chairman.

For the sake of time and in order to get to our witnesses sooner, I will submit my opening statement for the record. Thank you.

Mr. SHAYS. Thank you. I appreciate the gentleman.

Mrs. Maloney.

Mrs. MALONEY. Thank you, Mr. Shays and Mr. Kucinich, for holding this important hearing.

It is very troubling to me, ever since Tailhook, through a series of scandals to the recent reported scandals at the academies and Iraq and Afghanistan, that our military cannot seem to get control of this issue. We have the best military in the world, the best trained, the bravest, the best led, best equipped, and it does not seem to move forward, even though requirements are constantly being placed on the military to set up an accounting system, to set up procedures, to get a uniform system to provide information.

It is very troubling we don't seem to be making progress in an area that is totally unacceptable, that women who selflessly decide to go to one of the academies are not protected in the academies, and it is totally unacceptable that women who are risking their lives for their country are also in danger of being assaulted by colleagues. And then they face the hurdle of reporting the incident in what I have been told is a very hostile environment.

The military culture traditionally has not encouraged reporting, has been indifferent to allegations, and has not been responsive to the needs of victims. As Members of Congress we have a responsibility to provide oversight of DOD's effort to reduce the numbers of rape and sexual assault and violence against women that is occurring in the military, or against men.

In the 2005 Defense authorization bill, Congress required the Pentagon to provide annual reports to Congress about the allegations of sexual violence and assault in the military. In its most recent report to Congress the Pentagon stated that in 2005 the total number of reported sexual assaults involving a member was at 2,374. Yet, according to the report, "Fulfilling a Promise to America's Daughters" released by the V.A. Advisory Committee on Women Veterans last year, approximately 17,000 women, 20 percent of the women in the enlisted military, reported being a victim of sexual assault in the previous 3 years.

Clearly, women in the military are facing a tremendous threat when they serve in Iraq and Afghanistan, but they are also facing a threat of being assaulted as they serve, by their colleagues. One in five service women should not face the prospect of being sexually assaulted.

Not only should the Pentagon ensure that women can come forward to report their assaults; it also must guarantee that qualified medical personnel are on hand to collect forensic evidence, that the evidence collected will be stored properly, and that the evidence will be analyzed in a timely manner.

I successfully attached an amendment to the 2005 Defense authorization bill which directed the Secretary of Defense to eliminate the backlog in rape and sexual assault evidence collection kits,

reduce the processing time of those kits, and provide an adequate supply of the kits at all domestic and overseas U.S. military installations and military academies.

I would like to hear from the witnesses from the Department of Defense about whether a backlog still exists and if there are enough kits across the services.

I firmly believe that the only way to tackle a problem effectively such as this one is to have accurate information, accurate data. The Department of Defense has made several promises that the Defense incident-based reporting system, which collects statistics about crimes committed within the military services, would be up and running by now. Congress first mandated that the Pentagon collect crime statistics in 1988. Here we are 18 years later and, as the chairman mentioned, the task force has not even had their members appointed.

Well, the Defense incident-based reporting system is not slated for completion until June 2007; 18 years; 19 years if they do it. But every hearing we have they promised, "Next year we will have it. Next year we will have it." This has been going on for 10 years, the 10-years I have been in Congress. How the greatest military, most organized, most intelligent military in the world cannot get a data system up and running on crime statistics to me is beyond comprehension and it is totally unacceptable.

I, therefore, will be introducing legislation that will direct the Secretary of Defense to ensure that this system is fully implemented by January 1, 2007, 18 years after it was first promised to be completed. And if it is not completed, then I believe we should really place greater enforcement on this. We have mandates that need to be met, and personally I don't understand why you can't get a data base system up and running in this country.

I yield back the balance of my time.

Mr. SHAYS. I thank the gentlelady. I know, for the record, that she has been very active on these issues, and we appreciate it a lot.

I would call on the former vice chairman of the committee, Mr. Turner.

Welcome, Mr. Turner.

Mr. TURNER. Mr. Chairman, obviously this topic is very saddening, and it is not only the issue of the crime and the prevention of those crimes but also the injustice that follows that is identified in the testimony that you have today.

I am a member of the Armed Services Committee and I have participated in hearings on this topic in the Armed Services Committee. I have reviewed the written testimony that was prepared for this hearing, and it is clear that there is additional action that must be taken.

Mr. Chairman, I want to commend you because this hearing will certainly assist in our ability to find accountability and for identifying recommendations on manners in which to address this issue. I want to thank you for your continued efforts to make certain that our men and women in uniform receive what they are entitled to in respect.

Thank you.

Mr. SHAYS. At this time the Chair would recognize Mr. Platts.

Mr. PLATTS. Thank you, Mr. Chairman.

I want to add my words of thanks to you and the ranking member for hosting this hearing on a very important issue, that through this hearing we can help to send a message on behalf of our Nation in an unwavering fashion that sexual violence, sexual assault against women in all settings is criminal and will be treated as such and will not be tolerated by our Nation, especially by our Government when it comes to women attending our military academies and serving in our military.

I certainly appreciate the witnesses who are here today and our panel that we are about to begin with, and am especially grateful for a resident of the 19th District being with us today and her expertise in this area and her devotion to women in Pennsylvania and throughout our Nation who are victims of these heinous crimes. I appreciate all of your testimonies.

Again, my thanks to you, Mr. Chairman, in holding this hearing.

Mr. SHAYS. I thank the gentleman.

I would like to ask unanimous consent to allow David Price from North Carolina and Representative Elijah Cummings, if he does come here from Maryland, to participate in our hearings. Without objection, so ordered.

By right, Mr. Van Hollen, you would go next, but I am going to, at your request, go to Mr. Price and then come to you.

Mr. PRICE. Thank you, Mr. Chairman. I do appreciate the generosity of you and the subcommittee in inviting us to participate in this hearing today. I am here to hear the testimony as a member of the Military Quality of Life Appropriation Subcommittee, but I am particularly here to extend a warm welcome to Ms. Beth Davis, who is from Durham, NC, the District I represent, and who has courageously testified in ways that will, I believe, be of great benefit to her counterparts in the future. So I commend you for that and I wait with great interest what you will have to say, and that of your fellow witnesses, as well.

Thank you.

Mr. SHAYS. I thank the gentleman.

At this time the chair would recognize Mr. Van Hollen.

Mr. VAN HOLLEN. I thank you, Mr. Chairman, and thank you for holding a hearing on this and welcome the witnesses.

One of the greatest privileges we have as Members of Congress is to be able to recommend some of the young men and women from our Congressional Districts to various service academies, and we really have an opportunity to meet the best and the brightest in our communities who are dedicated to serving their country at those academies.

Therefore, I think it is essential that we and the American people have confidence that those academies that we are sending them off to have the highest standards when it comes to issues like sexual harassment policies and policies that deal with the very important issues that are the subject of this hearing.

We all, I think, understand that leadership begins at the top. We need to hold people accountable for the highest standards in our military academies. I know that is the goal that we all share, and the key is to find ways to make sure that we implement those goals in a way that achieves the result we all want, which is that when

we send our men and women off to the military academies that they are upholding the highest standards of honor and integrity, and that especially the young women that are going into our academies can be confident that they will be treated with respect and dignity.

I want to thank all of you here for your testimony.

Mr. Chairman, I look forward to the hearing.

Mr. KUCINICH. Mr. Chairman.

Mr. SHAYS. Mr. Kucinich.

Mr. KUCINICH. Thank you, Mr. Chairman. I ask unanimous consent for the testimony of our colleague, the Honorable Louise Slaughter of New York, be submitted for the record.

Mr. SHAYS. Without objection, so ordered.

[The prepared statement of Hon. Louise Slaughter follows:]

TESTIMONY BY THE HONORABLE LOUISE M. SLAUGHTER

COMMITTEE ON GOVERNMENT REFORM
SUBCOMMITTEE ON NATIONAL SECURITY, EMERGING THREATS AND INTERNATIONAL RELATIONS

HEARING ON SEXUAL ASSAULT AND VIOLENCE AGAINST WOMEN IN THE MILITARY AND AT THE ACADEMIES

TUESDAY, JUNE 27, 2006

Thank you Chairman Shays and Ranking Member Kucinich for allowing me to submit this testimony for the record. I have been a passionate advocate for combating sexual assault and domestic violence in the military, and am pleased that you are holding this hearing today to continue to shed light on a subject that has long warranted Congressional attention.

I first got involved in this issue a few years back, when many of our brave service women returning from Iraq came forward to say they had been raped while on their tour of duty. Because of antiquated policies in the military that punish the victim rather than the perpetrator, many of these women came forward with the full knowledge that it would likely be the end of their military careers. Their courage was admirable.

Subsequent to these brave women speaking out, as well as numerous others who had endured years of abuse at the Air Force Academy, I and my fellow female colleagues decided to act. In March 2004, as Co-Chair of the Congressional Caucus on Women's Issues, I held a hearing on this issue. I will never forget when one of the witnesses spoke about having to salute her rapist every day after the assault. She finally left the military.

Following that hearing, in May 2004, the U.S. House unanimously passed an amendment that I championed requiring the Pentagon to develop a comprehensive and uniform policy to prevent and respond to sexual assault of women in the military. Since enactment of this policy, I have held annual briefings during which DoD has presented its report findings and progress on this issue to Congress.

Unfortunately, sexual assault and domestic violence remain pervasive and serious problems throughout all branches of the military. And sexual assault and domestic violence affects everyone – service women, as well as men, military families, and their children. In March 2006, the Department of Defense (DoD) released their second annual sexual assault report, which stated that there were 2,374 allegations of sexual assaults reported in 2005; this is up from 1,700 the previous year. In 2004, the DoD reported 9,000 incidents of spousal abuse. A 2005 Sexual Harassment and Assault Survey of the Service Academies found 6 percent of females and 1 percent of males said they were sexually assaulted in 2004-2005, and less than half the females who experienced sexual assault reported it. In this same survey, 60 percent of female cadets indicated the incidence of sexual harassment was about the same as when they first enrolled at their academy.

While the DoD has been making efforts to improve its prevention and response to domestic and sexual violence, victim services remain incomplete and inconsistent among the various branches. There have been reports that victims advocates, charged with protecting the victim's rights, have been denied resources to do their job, and in some instances been forced off the base all together. Furthermore, DoD policies are not codified in the Uniform Code of Military Justice (UCMJ) and do not offer the same level of rights and protections afforded to civilian victims. Perhaps most importantly, victims are unable to seek confidential counseling and treatment without fear that their records might become public if they press charges against their assailant.

Frankly, even one sexual assault is too many. And to create barriers to reporting an assault can only result in long-term consequences for the victim and for the military. In the recent case against a cadet at the Coast Guard academy, we may have been able to prevent five additional crimes if DoD had implemented policies to make women less afraid to report assaults to authorities.

During the Congressional Women's Caucus hearing in 2004, service women spoke about the inability of some military healthcare facilities to appropriately care for women who had been sexually assaulted. In some areas, medical providers were not familiar with the gathering and processing of rape kits. More dismaying, some facilities were not even equipped with rape kits. With great emotion, these service women recounted the military's failure to provide them with a private examination or tests for pregnancy and sexually transmitted infections.

Of the 1,275 cases of sexual assault among service members, only 113 cases resulted in a court martial in 2004. More discouraging was the fact that 278 cases were not pursued because the perpetrator could not be identified. And, another 351 cases were not pursued because of unsubstantiated or insufficient evidence. This amounted to 629 sexual assault cases, nearly 50 percent of those reported, where the perpetrator was still out there; free to commit further assaults on our brave service women defending our country.

This information highlighted the need for the Department of Defense to do a better job of training new and existing first responders to respond to sexual assaults occurring in the military. Criminal investigators, medical professionals, and victims advocates all needed to be trained on gathering, protecting, and processing evidence.

For this reason, in May 2005, I introduced an amendment to the Fiscal Year 2006 National Defense Authorization bill (H.R. 1815) to ensure that the DoD provides better care to military victims of sexual assault. Specifically, this language required the Secretary of Defense to assess the availability and accessibility within assigned or deployed units of trained personnel, rape evidence kits, testing supplies for pregnancies and STIs, as well as other critical resources. It also required the Secretary of Defense to develop a plan to enhance accessibility of supplies, trained personnel, and transportation resources in response to sexual assaults occurring in deployed units. I am pleased that this language was part of an en bloc amendment offered by Chairman Hunter, which was approved by voice vote.

This year, I introduced an amendment to the Fiscal Year 2007 National Defense Authorization bill (H.R. 5122) requiring DoD to include the results of disciplinary action, including Article 15s and court-martial convictions, as part of the annual report on sexual assault in the military. As I mentioned, in March of 2006, DoD issued its second annual report. The military criminal investigation organizations received 2,374 reports of alleged cases of sexual assault involving members of the Armed Forces. This was a significant increase from 1,700 cases reported in 2004. Of the 2,374 allegations, 1,386 cases were investigated. Of those, 91 received non-judicial punishments, 18 were discharged in lieu of court-martial, 62 had administrative actions taken against them, and 79 offenders had been court-martialed.

While this annual report has been helpful in presenting a picture of the problem, it fails to provide a complete understanding of how sexual assault cases are prosecuted in the military, because we do not know the results of all disciplinary actions, including Article 15s and convictions. This information is part of our civilian judicial system - the US Department of Justice, Bureau of Justice Statistics reports on conviction rates.

Congress has a responsibility to provide oversight. In order for us to effectively do our job, evaluations must be based on facts and statistics. By including the results of all disciplinary actions in the annual report, we will have a more complete, transparent understanding of how DoD is addressing the problem of sexual assault in the military.

I am pleased that again this year, my amendment was part of an en bloc amendment offered by Chairman Hunter and approved by voice vote.

Without question, under the leadership of Brigadier General McClain, the DoD has made great strides in acknowledging and addressing sexual and domestic violence – but more needs to be done to deter these crimes and to ensure perpetrators are summarily dealt with. Many of these issues – like confidentiality and victims' rights – cannot be left to interpretations of DoD policy directives, but instead should be codified into the Uniform Code of Military Justice. Failure to enact statutory reform will result in failure to protect victims of domestic violence and sexual assault. Congress must act to prevent our brave service members from being victimized twice, once by their perpetrator and then again by the military's lack of appropriate, compassionate, and confidential treatment and response.

For this reason, I have reintroduced comprehensive legislation addressing multifaceted aspects of both sexual assault and domestic violence within the military in order to ensure that women, and men, are not subject to violence and assault by their fellow members of the U.S. Armed Forces.

One way to honor these soldiers in uniform and support their families is to cosponsor my bill - the *Military Domestic and Sexual Violence Response Act*. This important piece of legislation will ensure greater protections for service members and their families if they become victims of violence. It also will strengthen programs to prevent violence against fellow soldiers and military families.

The *Military Domestic and Sexual Violence Response Act* seeks to bring military law up to par with civilian laws by establishing a comprehensive approach for the military to address domestic violence and sexual assault among our soldiers. Specifically, this bill will:

- Establish an Office of Victims Advocate (OVA) within DoD, bring the Family Advocacy Program under OVA, and create a Director of OVA to oversee and coordinate efforts to prevent and respond to cases of family violence, domestic violence, sexual assault, and stalking within the military and among military families;
- Codify rights, restitution policies, treatment and other services for victims within the UCMJ, including creating comprehensive confidentiality protocols to protect the rights of victims within military law;
- Strengthen policies for reporting, prosecuting and treating perpetrators of violence; and

- Create counseling and treatment programs through the Department of Veterans Affairs.

Not only do women have a right to serve in the armed forces, their service is critical to our military operation. This is clearly evident in the number of women now serving in Iraq and Afghanistan.

Still, there are some who are unable to accept or appreciate their sacrifices, and instead espouse the misguided belief that women courageously serving in our armed forces are somehow intruding on an "old boy's club" and deserve what they get. This line of thinking is misogynistic at best and a threat to the safety of our troops at worst. By trivializing sexual assault and sexual harassment, these critics damage the integrity of our military, for which so many Americans have served with honor.

The military should be at the forefront of prosecuting assailants and setting the highest standards for treatment of service men and women, or military family members, victimized by sexual assault and domestic violence. Our Armed Forces must be able to guarantee the most basic protections to ensure these victims can receive necessary counseling, treatment, and justice. If a victim cannot access essential care for fear of stigma, public embarrassment, threats to their career, or because they just do not know what resources are available, the military will continue to lose valuable female and male soldiers.

Furthermore, these service members put themselves in harm's way to protect us and our nation from threats at home and abroad. They should not be given lesser rights and protections than the civilians whose freedoms they protect.

The *Military Domestic and Sexual Violence Response Act* ensures that service members and their families are adequately protected when dealing with the horrible tragedy of sexual assault or domestic violence. I urge my colleagues here today to continue efforts to bring the military in line with the protections afforded civilian victims of domestic and sexual violence and hope you will join me in pressing for the enactment of this critically important legislation.

Thank you.

Mr. SHAYS. Before recognizing our witnesses, I would like to say that I said hello to our first panel and our second panel, and when I came to Jeanette McMann she informed me that her husband, Lieutenant Colonel Michael McMann, was from West Harford. I said, "Was? Ma'am, he is." And then she informed me that Lieutenant Michael McMann, commander of Third Squadron, Fourth Calvary Regimen of the 25th Infantry Division, was killed in action November 27, 2004, in Operation Enduring Freedom in Afghanistan.

I just want to say to you, Colonel McMann, you both served in the military. We appreciate the service of your husband. We appreciate your service. We appreciate your three sons, Michael, Thomas, and Ricky, who are without their dad, and just want to thank you for continuing to serve. Thank you. There are lots of different relationships between men and women, and that is the highest relationship.

At this time the chair would recognize Ms. Delilah Rumburg, executive director of Pennsylvania Coalition Against Rape, National Sexual Violence Resource Center; Ms. Christine Hansen, executive director of the Miles Foundation located in Connecticut; and Ms. Beth Davis, former U.S. Air Force Academy cadet, located in—South Carolina?

Ms. DAVIS. Durham, NC.

Mr. SHAYS. Durham, NC. How could I have ever said South Carolina? I apologize.

Welcome each and every one of you.

Let me just take care of some business. I ask unanimous consent that all members of the subcommittee be permitted to place an opening statement in the record and that the record remain open for 3 days for that purpose. Without objection, so ordered.

I ask further unanimous consent that all witnesses be permitted to include their written statements in the record. Without objection, so ordered.

I will just say that, as you may know, we do swear in all our witnesses, so we would ask you to rise and we will swear you in.

[Witnesses sworn.]

Mr. SHAYS. Note for the record all of our three witnesses have responded in the affirmative.

Just judging, I think, from the Members' statements, this is somewhat of a solemn hearing because the issue is quite significant. We have such respect for the men and women who serve in our military and we want to lick this problem. We want it licked. We want it dealt with. We want it resolved. There is no reason why that can't be resolved.

At this time I call on Ms. Delilah Rumburg.

What we do is we do the 5-minute rule. We will roll it over another 5 minutes, but we would like you to be as close to that 5 minutes as you can, but we don't want you to rush and we want your testimony to be thoughtfully presented.

Welcome.

STATEMENTS OF DELILAH RUMBURG, EXECUTIVE DIRECTOR, PENNSYLVANIA COALITION AGAINST RAPE, NATIONAL SEXUAL VIOLENCE RESOURCE CENTER; CHRISTINE HANSEN, EXECUTIVE DIRECTOR, THE MILES FOUNDATION, INC.; AND BETH DAVIS, FORMER U.S. AIR FORCE ACADEMY CADET

STATEMENT OF DELILAH RUMBERG

Ms. RUMBURG. Thank you. And thank you, Mr. Chairman, for holding these hearings to draw attention, national attention, to sexual assault and violence not only in the military but, as Congressman Kucinich said, it is a greater societal problem. The military is just a microcosm of what is going on throughout this country.

I am very hopeful that these hearings and what we learn and do within the Department of Defense will be a guideline for greater society and our response to the prevention of sexual assault and the treatment of victims.

We want to thank you for this opportunity and also state our frustration. It seems like things take a long time, but the anti rape movement is over 30 years old, and so we are feeling as frustrated as Congressman Maloney about how long it takes things to happen, but we have been doing this work for over 30 years. Although we have had some progress, there is still a long way to go.

Again, thank you. I am pleased to be here representing the Defense Task Force on Sexual Harassment and Violence at the Military Service Academies. As you know, the task force completed our work last fall, and that has been made available to you, but I should remind everyone else that those materials, as well as that report, are available on the Web site of the Sexual Assault Prevention and Response Office at WWW.SAPR.MIL.

I appreciate this opportunity to express my personal views on these issues, but I do wish to assure you that I was in full agreement with the findings and recommendations of our task force. It is the best source for the results of a highly professional effort that took nearly a year, so I will devote the time allotted to me to highlight some of those key results, and I will read them or otherwise I know I won't finish, so bear with me as I read those.

The findings and recommendations contained in our report were reached unanimously by a highly diverse group of 12 individuals, half of whom came from outside the Department of Defense. At the outset, I would like to acknowledge the outstanding rapport that existed between our civilian members and the career military personnel with whom we served. I would also like to recognize Dr. Chu, the Defense Under Secretary for Personnel and Readiness, for his commitment to change and his willingness to look outside the Department of Defense for solutions to a series of intractable problems.

Let me turn now to the substantive aspects of our report.

We believe strongly that the provisions of the Uniform Code of Military Justice that dealt with sexual assault needed to modernized. Our reasons for taking this position were twofold: first, we believed modernization was essential to improved accountability for offenders; second, we concluded that the provisions of the Uniform Code of Military Justice needed to be better understood by the men

and women who are required to live by these standards established by this code. Modernization was essential to ensuring that the troops, as well as the lawyers, understand the meaning of key provisions of the Uniform Code of Military Justice.

While the Department of Defense did not share our view, the Congress in its wisdom was not as reluctant. Accordingly, the Congress made a major stride forward and implemented our recommendation in the National Defense Authorization Act of 2006. While these provisions will not be effective until next year, I take real satisfaction in knowing that our recommendations with respect to keeping military criminal law in step with the civilian world have been accomplished. To me these reforms are an excellent example of combining Government expertise with fresh, outside ideas, leading to congressional action.

Our task force also believes strongly that the victim's advocate should be able to communicate with the victims of sexual assault in such a manner that the courts will protect the confidentiality of those communications. Several States have extended a legal privilege to those communications, and a need for such a privilege is even greater in the military. Why is this so? The reason is simply that the family or community support that is available in the civilian community is not present within military society. For the young enlisted victim, the chain of command does not provide the safe, confidential support that would be available to that same victim in civilian society.

The restricted reporting option established by the Department of Defense is a step in the right direction, but it is not a complete answer. I am also aware that the Department of Defense is studying whether to establish the privilege our task force sought by Executive order in the Manual for Courts Martial, but neither our task force nor I believe that such a measure will be as effective as a privilege established by law. Accordingly, I encourage you to support such a provision through the legislative process.

As you are aware, our task force was committed to improving the rate at which offenders were held accountable for sexual acts of misconduct. We saw real improvement in the manner in which the academies were approaching this issue, but we noted that the record in years prior to the tenure of Admiral Rempt or General Lennox, the superintendents at the time of our assessment, reflected that offenders were neither consistently nor effectively held accountable for their crimes. This is an issue about which all concerned about the health of the academies must maintain continued vigilance. The surveys and reports that Congress required from the academies are effective tools for exercising this vigilance and measuring progress, and I encourage your support for maintaining these tools.

Our task force was also in strong agreement that education and training were key to progress in reducing the threat of sexual misconduct. The academies have programs that were structured to attack the problem, but they were not well coordinated and they were not treated as an integral part of a core curriculum. We were well aware that the demands on the time available for instructing cadets and midshipmen are almost overwhelming; nevertheless, knowledge of the basic human values that are embodied in sexual

assault education is fundamental to effective officer education. While the academies are in agreement on this truism, the difficulty lies in developing a coordinated approach to teaching these lessons that is integrated throughout the 4-years of cadet and midshipman education.

Nearly a year has passed since our report was made available to the academies, and I look forward to hearing how they have addressed this issue.

I would also like to highlight the issue of community collaboration. Within the larger American community, those of us who have devoted substantial portions of our lives to eliminating the scourge of sexual assault understand that getting the whole community involved in attacking the problem is essential.

In Annapolis there is a longstanding tradition of military cooperation with community health and law enforcement officials. We endorse that cooperation and encouraged the academy to formalize much of what was an informal relationship.

At West Point, the establishment of community collaboration is much more difficult due to geography; nevertheless, there is much to be gained by reaching out to engage civilian expertise when it is available.

The principle of community collaboration is true within the larger military community, as well as at the academies, and I encourage you to support cooperative activities among military and civilian communities throughout the armed forces.

In conclusion, I would like to express my appreciation to the members of the Department of Defense, uniformed and civilian, who aided and assisted our task force and me during the year of our efforts. We were truly committed to a common goal of eliminating sexual assault in our society. I would also like to thank my fellow task force members who worked so diligently to assist the Department of Defense to reach the same goal.

As we noted in our report, eliminating sexual harassment and assault is not a fix-and-forget problem. Vigorous, thoughtful, sustained effort is essential to success.

As you can see, there was a part two to my testimony. That is actually information that, in my work with the National Sexual Violence Resource Center, that I have observed and talked to many of my peers throughout the country about not only successes but some still concerns that we hope that you would address.

Thank you.

[The prepared statement of Ms. Rumburg follows:]

STATEMENT OF

DELILAH RUMBURG

EXECUTIVE DIRECTOR
PENNSYLVANIA COALITION AGAINST RAPE
AND THE NATIONAL SEXUAL VIOLENCE RESOURCE CENTER

BEFORE THE

HOUSE COMMITTEE ON
NATIONAL SECURITY, EMERGING THREATS, AND
INTERNATIONAL RELATIONS

COMMITTEE ON GOVERNMENT REFORM
REGARDING

SEXUAL ASSAULT AND VIOLENCE AGAINST WOMEN
IN THE MILITARY AND AT THE ACADEMIES

PART I

Thank you, Mr. Chairman, for inviting me to appear before you today to discuss the work of the Defense Task Force on Sexual Harassment and Violence at the Military Service Academies. Our Task Force has completed its report, and I know that it has been made available to you. In addition, the completed report and other related materials are available on the web site of the Sexual Assault Prevention and Response Office at www.sapr.mil.

I appreciate this opportunity to explain my personal views on these issues, but I wish to assure you that I was in full agreement with the findings and recommendations of our Task Force. That report is the best source for the results of a highly professional effort that took nearly a year. I will devote the time allotted

to me today to highlight some key results our Task Force reached, and then I would be pleased to answer your questions.

The findings and recommendations contained in our report were reached unanimously by a highly diverse group of 12 individuals, half of whom came from outside the Department of Defense. At the outset I would like to acknowledge the outstanding rapport that existed between our civilian members and the career military personnel with whom we served. I would also like to recognize Dr. Chu, the Defense Under Secretary for Personnel and Readiness, for his commitment to change and his willingness to look outside the Department of Defense for solutions to a series of intractable problems.

Let me turn now to the substantive aspects of our report. We believed strongly that the provisions of the Uniform Code of Military Justice that dealt with sexual assault needed to be modernized. Our reasons for taking this position were two-fold. First, we believed modernization was essential to improved accountability for offenders. Second, we concluded that the provisions of the Uniform Code of Military Justice needed to be better understood by the men and women who are required to live by the standards established by the Code. Modernization was essential to ensuring that the troops as well as the lawyers understand the meaning of key provisions of the Uniform Code of Military Justice. While the Department of Defense did not share our view, the Congress, in its wisdom, was not as reluctant. Accordingly, the Congress made a major stride forward and implemented our

recommendation in the National Defense Authorization Act of 2006. While these provisions will not be effective until next year, I take real satisfaction in knowing that our recommendations with respect to keeping military criminal law in step with the civilian world have been accomplished. To me these reforms are an excellent example of combining "Government expertise" with "fresh outside ideas" leading to Congressional action.

Our Task Force also believed strongly that Victim's Advocates should be able to communicate with the victims of sexual assault in such a manner that the courts will protect the confidentiality of those communications. Several states have extended a legal privilege to those communications, and a need for such a privilege is even greater in the military. Why is this so? The reason is simply that the family or community support that is available in the civilian community is not present within military society. For the young enlisted victim, the chain of command does not provide the safe, confidential support that would be available to that same victim in civilian society.

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by law. Accordingly, I encourage you to support such a provision through the legislative process.

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that is integrated throughout the four years of cadet and midshipman education. Nearly a year has passed since our report was made available to the Academies, and I look forward to hearing how they have addressed this issue.

I would also like to highlight the issue of community collaboration. Within the larger American community, those of us who have devoted substantial portions of our lives to eliminating the scourge of sexual assault understand that getting the whole community involved in attacking the problem is essential. In Annapolis there is a long-standing tradition of military cooperation with community health and law enforcement officials. We endorsed that cooperation and encouraged the Academy to formalize much of what was an informal relationship. At West Point the establishment of community collaboration is more difficult due to geography. Nevertheless, there is much to be gained by reaching out to engage civilian expertise when it is available. The principle of community collaboration is true within the larger military community as well as at the Academies, and I encourage you to support cooperative activities among military and civilian communities throughout the Armed Forces.

In conclusion, I would like to express my appreciation to the many members of the Department of Defense, uniformed and civilian, who aided and assisted our Task Force and me during the year of our efforts. We were truly committed to a common goal of eliminating sexual assault in our society. I would also like to thank my fellow Task Force members who worked so diligently to assist the Department of

Defense reach the same goal. As we noted in our report, eliminating sexual harassment and assault is not a "fix and forget" problem. Vigorous, thoughtful, sustained effort is essential to success.

I would like to call your attention to Part II of my testimony. This section reflects what I have observed, as well as heard from many of my constituents throughout the country regarding the current response to sexual violence in the military. I offer to you some recommendations for your consideration.

PART II

Over the duration of the past year, and in response to my invitation to present testimony before this Committee, I have been afforded the opportunity to speak with military personnel and sexual violence advocates who have identified challenges, as well as opportunities in working to address the crime of sexual violence. I would like to begin by identifying several positive issues that have been noted by some of my civilian peers:

1. **"There has been a positive response from the large majority of soldiers (from every level) that this program exists and is attempting to do the right thing for soldiers."**

2. **"The education and awareness provided to soldiers about sexual assault and rape has been beneficial from the evaluations received."**

3. **"This is a good stepping stone and foundation for working within the military for victims of sexual assault. Due to this initiative, other areas of need and support have been identified that may have been grossly overlooked without the initiation of the Sexual Assault Prevention and Response Program."**

4. **"The education and training provided during Unit Victim Advocate (UVA) and Deployed Sexual Assault Response Coordinator (DSARC) training seems to be bridging a gap between the "us and them" attitude from several perspectives; people are beginning to realize this is a community and a cultural problem we need to address together."**

5. **"Systems issues from local level to state and national levels are being identified and worked on."**

6. **"This program is bridging a gap with civilian and military providers and bringing forth collaborations that had not been formed before."**

Let me also outline consistent and identified concerns for the purpose of urging solutions that provide remedies in supporting and sustaining the response to sexual violence. These are as follows:

<u>Military Branches have different protocols:</u>

The new Military regulations tell installations and commands what they must do but not how to do it. The Navy revised their long-standing sexual assault response to meet Department of Defense regulations but their response is not consistent with the Air Force. (e.g., Navy permits civilian responders and Air Force Base does not permit civilian advocates) Additionally, if a Navy victim is seen at an AFB hospital, AFB regulations state an Air Force SARC must respond, rather than a Navy SARC.

⇨ ***Recommendation: There needs to be consistency in regulations throughout, or, at the least permit victims to choose SARCs from their own branch of service.***

Ironically, SARCs are willing to collaborate among services, but the military service housing the hospital dictates protocol; hence, victims are caught in the middle of different military service regulations.

Recommendation: Standardized protocol among services.

Clash between State Law and Military Law:

Healthcare professionals in mandatory reporting states (e.g., Utah, Oklahoma, California, etc.) are required to notify law enforcement when a sexual assault victim presents at a civilian hospital. ***The question that remains unanswered is, "What law takes precedence - restricted reporting in military or the state's mandatory reporting statute?"***

Similarly, there has been confusion as to which law enforcement entity (civilian and/or military) needs to be summoned when active duty military are sexually assaulted off base.

⇨ ***Recommendation to consider: Can there be a protocol developed that would be legally sufficient for state law purposes of reporting that would allow the report be made to SARC's?***

⇨ ***Can states' Attorney's General work with military lawyers to develop a reporting requirement that could preserve restrictive reporting without having to change state statutes?***

Restricted Reporting Option "loopholes":

Restricted reporting is kept intact when victims report to SARC, medical or chaplaincy. However, if victims go to their supervisors (who are reporting officials) and reference sexual assault, their restricted reporting options are destroyed since supervisors are required to report. For example, victims or victims' friends could approach the supervisor indicating they need to seek medical attention but may feel obligated to tell them why (which destroys the restricted reporting option).

⇨ ***Recommendation: The services need to prescribe a protocol for these situations.***

Emergency Contraception (EC):

Women have gone to a civilian hospital for Emergency Contraception (EC) or the morning after pill; not associated with a sexual assault. When victims ask for EC, this has immediately activated a sexual assault response team.

⇨ ***Recommendation: The military needs to prescribe procedures for Emergency Contraception for sexual assault and non-sexual assault.***

Training:

It is important that the person in the SARC role be skilled in interpersonal violence before being put in the position. DOD has done comprehensive training for SARCs in the psychosocial realm, but SARCs need more information on anatomy, physiology, injury patterns, and medical needs of survivors.

⇨ ***Recommendation: Provide SARCs with needed information and training on anatomy, physiology, injury patterns, and the medical needs of survivors.***

Civilian Funding Concerns:

Local rape crisis programs and state sexual assault coalitions are eager to assist and work with sexual assault victims and military installations. However, nationally funds for services continue to diminish for rape crisis programs. Requests for services, training, travel expenses and materials for military installations is unfunded.

⇨ ***Recommendation: Develop a mechanism for military commands to contract with civilian providers to cover costs for time for training and travel expenses, materials as well as other costs identified necessary to be able to work effectively within the MOU's.***

NCIS (Naval Criminal Investigation Services) needs to be audited. A prominent investigator told a training class that in his 22 years as an investigator, there were 200 sexual assault cases and only six were 'real rapes'....all the others were regrettable sex acts.

⇨ ***Recommendation: Audit NCIS and also speak to victims. The Department of Defense needs to get a handle on what really is happening at the investigative end of things.***

JAGs seemed to have the least experience and specialized training in handling sexual assault cases. They are not familiar with medical terminology, forensic issues, or the role of the forensic examiner in sex crimes cases. They are not knowledgeable about trial preparation with medical witnesses, nor strategies of questioning to enable the medical witness to give the most complete and accurate testimony, or the use of exhibits such as drawing to demonstrate anatomical landmarks and injury location. The JAGs were not very effective at redirecting the medical witnesses' testimony or objecting appropriately.

⇨ ***Recommendation: Highly recommend that the JAGs be targeted as a group for some very specific training regarding preparing and trying sex crimes cases.***

Mr. SHAYS. Thank you, Ms. Rumburg. I erred in not acknowledging your service on the task force, particularly as co-chairperson. We do thank you for your work, but my staff told me that you wanted to be recognized as the executive director of the Pennsylvania Coalition Against Rape, National Sexual Violence Resource Center, and that is how we recognized you.

Ms. RUMBURG. Thank you.

Mr. SHAYS. Ms. Hansen.

STATEMENT OF CHRISTINE HANSEN

Ms. HANSEN. Good afternoon, Mr. Chairman and members of the subcommittee.

Mr. SHAYS. Good afternoon.

Ms. HANSEN. I am Christine Hansen, the executive director of the Miles Foundation. The Foundation is a private, nonprofit organization that works with victims and survivors of interpersonal violence associated with the armed forces, provides direct and support services to professionals in the field of criminal justice, as well as human services. We serve as a resource center for policymakers, scholars, journalists, and students; conduct an enormous amount of research in this field; as well as initiate public education campaigns; and serve to ensure that public policy is well informed and constructive.

Since 1996, the Foundation has provided services to over 25,000 survivors of interpersonal violence associated with the U.S. armed forces. This includes 14,000 survivors of intimate partner violence, 7,500 survivors of sexual violence, 3,500 victims of child abuse, 47 former or current cadets from the service academies, and 50 victims of human trafficking.

In the calendar year report that Congresswoman Maloney alluded to, in 2005 the military criminal investigative units acknowledged 2,374 reports of sexual assaults that occurred in the services. Our office has actually received reports of exactly 518 reports of sexual assault occurring in Iraq, Kuwait, Afghanistan, Bahrain, Cutter, otherwise CENTCOM AOR. Regrettably, as Congresswoman Maloney mentioned, not a centralized data base that would accurately reflect all of these reports.

Some of the common threads among the cases of sexual assault in the armed forces include prior victimization of the victim, particularly that of female service members due to child abuse, sexual abuse, or sexual assault as teenagers, and exposure to domestic violence.

Also in regards to the availability and accessibility of services remains an issue, revictimization as victims attempt to navigate through the system once they make a report, again, that lack of privilege or privacy of confidentiality. Justice, regrettably, within the military criminal justice system is illusive for many victims of sexual assault, domestic violence, and child abuse.

Congress took strong action in the year 2004 through its authorization of the Ronald Reagan National Defense Authorization Act. It mandated that the Department of Defense establish and implement certain policies, programs, and protocols to address sexual violence among the ranks. To date, the Department has issued 14 directive type memorandums, included restricted reporting and non-

restricted reporting, a commander's checklist, numerous training protocols, victim support. To date, approximately a million military service personnel have received sexual assault prevention training, and hundreds of military personnel have volunteered to serve as unit victim advocates.

The directives, however, have numerous limitations, including a predominant focus on training without a foundation of law and policy that was only recently passed by Congress in the 2005 fiscal year Defense authorization bill and will be enacted in 2007.

Some of the other limitations include the lack of applicability to survivors of other forms of interpersonal violence, such as those who are victimized by domestic violence, spouse abuse. This piecemeal approach doesn't quite address the entire cycle of violence that Representative Kucinich alluded to in his commentary.

Finally, the failure to educate, inform, and analyze sex offender behavior is missing from the policy directives issued by the Department of Defense, as well as penalties for those who would choose to commit such crimes.

One last note in regards to limitations is the focus upon prevention and victim support without specific guidelines as to intervention which often can inform prevention. A number of the directives or policy matters outlined in the Defense authorization, in fact, have not been completed to date, including protocols for military law enforcement, criminal investigators, and health care protocols.

Further examination of the training conducted to date within the military departments is required. The training was conducted prior to any changes in the Uniform Code of Military Justice, which I mentioned previously goes into effect in 2007. Research also indicates that training does not necessarily correlate to a reduction in incidence or prevalence level.

Also, quarterly training rather than the current mandated annual training is much more effective in regards to retention of material and influence upon prevention rates. Questions should be raised relative to the qualifications of the trainers, their certification, the curriculum, and ongoing continuing education for both military personnel as well as those who choose to serve in certain first responder capacities.

The training, for example, of unit victim advocates is woefully inadequate. Numerous States require specific hours of education and continuing education for victim advocates, such as in the State of Connecticut which requires 40 hours. However, unit victim advocates are currently provided approximately 2 days of training and sent back to units, squadrons, and ships to voluntarily serve. Protections for victim advocates and unit victim advocates are still lacking following public disclosure of disbarments, firings, the pulling of contracts, as well as the limited resources afforded to these professionals.

Two other issues that I'd like to focus upon relative to the restricted and non-restricted reporting policy as serious implications as the rights of privacy for those who are victims and survivors. In fact, we have received numerous anecdotal reports concerning the fact that victims are either being encouraged, coerced, or threatened, depending upon the terminology used by the victim, to choose non-restricted reporting, and in some instances commanders are

making the choice for the victim or overriding the victim's choice prior to them receiving medical care and treatment.

One final note relative to collaborative partnerships, which is part of the Department of Defense protocols. The memorandums of understanding which are being promoted between military installations and service providers, in particular, require additional review, in particular concerning the issues of privacy and the right of privacy. Delilah and many of our colleagues work under grant programs within the Department of Justice, the Department of Health and Human Services, that require confidential reporting and only the reporting of numbers, per se. Regrettable, some of the issues within Violence Against Women Act, as well as HIPAA, may come into play and preclude those type of partnerships, and need to be addressed immediately.

A strategic plan has been established within the first comprehensive legislative initiative which was introduced in 2004. It is being reintroduced this year and is H.R. 5212. The bill provides that foundation of law and policy that is required, the infrastructure for services, support, and treatment. It addresses victims' rights and restitution. It establishes a health care system response. It establishes a military criminal justice response. And it adopts the best professional practices that, over the 30-plus years in the battered women and rape crisis movement, we have come to acknowledge and utilize in our society. It addresses community safety and establishes a coordinated community response that addresses those issues within confidential reporting, as well as establishes additional research and evaluation protocols.

It is ultimately unacceptable to us and we must address the fact that women who choose to serve and those who dream of service deserve a foundation of law and policy, an infrastructure, and offender and system accountability. The loss of the education, the experience, and the expertise of these women who are victimized by sexual harassment, sexual assault, domestic violence, trafficking while serving on active duty is a sacrifice our country can no longer afford.

The initiatives outlined also accede the re-establishment of zero tolerance policy and training as implemented by the Department of Defense to date. The policies are intended to create a policy and social change which ensures both the safety and justice for those who choose to wear the uniform of the United States.

Thank you.

[The prepared statement of Ms. Hansen follows:]

STATEMENT OF CHRISTINE HANSEN,
EXECUTIVE DIRECTOR, THE MILES FOUNDATION

Hearing on Sexual Assault and Violence Against Women in the Military and at the Academies

Testimony Presented to The Honorable Christopher Shays, Chairman, Subcommittee on National Security, Emerging Threats and International Relations of the Government Reform Committee within the United States House of Representatives

June 27, 2006

EMBARGOED UNTIL RELEASED BY THE SUBCOMMITTEE

Introduction

Mr. Chairman and members of the Subcommittee, I am Christine Hansen, Executive Director of The Miles Foundation.

The Miles Foundation is a private, nonprofit organization providing comprehensive services to victims and survivors of interpersonal violence associated with armed forces; coordinating assistance, support, advocacy and networks for criminal justice professionals and human service providers; furnishing professional education and training to uniformed personnel and civilian community-based organizations; conducting research and analysis; serving as a resource center for policymakers, advocates, journalists, students, researchers and scholars; initiating community education campaigns; and serving to ensure that public policy is well-informed and constructive.

The Foundation has provided services to over 25,000 survivors of interpersonal violence associated with the armed forces including 14,000 survivors of intimate partner violence; approximately 7,500 survivors of sexual violence; nearly 3,500 victims of child abuse; 47 former or current cadets of the service academies; and 50 victims of human trafficking since 1996.

I am going to summarize my statement and ask that it be accepted into the record. First, I want to thank Chairman Shays, members of the Subcommittee and staff for providing a forum to review policy directives, training, investigations and programs authorized by Congress to address sexual assault and violence against women in the military and at the service academies. I plan to outline the ongoing nature of sexual violence, detail the challenges of policy development and implementation, and recommend a strategic plan to enhance the response of the military departments.

I want to acknowledge the work and support of numerous organizations dedicated to addressing sexual and domestic violence including the National Coalition Against Domestic Violence, National Network to End Domestic Violence, National Alliance to End Sexual Violence, National Organization for Women, Vietnam Veterans of America, National Military Family Association and Amnesty International. In addition, state coalitions are engaged in furnishing education, training and technical assistance to community based service providers including Wisconsin Coalition Against Sexual Assault, Illinois Coalition Against Sexual Assault, Virginians Against Domestic Violence and Sexual Assault, California Coalition Against Sexual Assault, New Jersey Coalition for Battered Women, Washington Coalition of Sexual Assault Programs, CONNSACS and North Carolina Coalition Against Sexual Assault. The civilian community-based service providers, such as SARA, Alexandria, Virginia; North County Rape Crisis and Child Protection Center, Lompoc, California; Morongo Basin Sexual Assault Services, Yucca Valley, California; YWCA, Chicago, Illinois; Women's Center of Southeastern Connecticut, New London, Connecticut; Saratoga Springs Domestic Violence Shelter, Saratoga Springs, New York; and numerous others are furnishing direct services to armed forces personnel, family members and partners.

Sexual violence associated with the U.S. Armed Forces periodically gains public attention due to sexual misconduct scandals, including Tailhook, Aberdeen, Fort Leonard Wood, Okinawa, Air Force Academy, and recently, the current theater of operations.

The public attention generates correspondence to our office from victims, survivors, family members, servicemembers, veterans, advocates and attorneys. The letters, generally, request information, assistance, accountability and justice. Recently, our office has received a series of letters which are quite different.

The first letter arrived during the investigations and panels reviewing the sexual misconduct scandal at the Air Force Academy. The inquiry was from a 12-year-old girl asking, "I have a dream of attending the Air Force Academy...sorry that they were violated in such a way that I must ask 'Should I go to the Air Force Academy?'" This young woman's letter has been followed by inquiries concerning the services and the service academies, with the most recent inquiries concerning the US Coast Guard Academy.

In honor of women veterans, active duty women, women who serve on the homefront and women who dream of military service, an examination of the prevalence, investigations, policies, laws, services and treatment for victims

and offenders of interpersonal violence within the military community will be presented. The information will hopefully assist with the development of legislative and administrative protocols to enhance the response of the military departments in a timely and appropriate care and treatment and provide justice to those victimized by such crimes. The testimony is specifically intended to address the inquiry of many young women who are contemplating the profession of arms.

Prevalence of Sexual Assault in the U. S. Armed Forces

Sexual assault is an under-reported crime that is deeply traumatizing and stigmatizing for victims. The assessment of prevalence of sexual assault among U. S. Armed Forces is difficult to obtain due to varying methodologies and definitions among surveys and reported cases.

The prevalence of sexual assault among female active duty servicemembers declined from 6 percent to 3 percent between 1996 and 2002, according to the Department of Defense.

A survey conducted within the Veterans' Administration concluded that thirty percent of female veterans have experienced an attempted or completed rape during active duty. Earlier surveys conducted by the Veterans' Administration indicated a prevalence rate as high as forty-one percent.

The disparity between prevalence rates within the military departments and the Veterans' Administration relates to methodological differences, specifically the anonymity for respondents and protocols for the protection of human subjects. Survey responses are available to command in the active duty services. Anonymous surveys are preferred for determining the prevalence of intimate partner violence, sexual harassment and assault among active duty military women. Prevalence and evaluation studies should be conducted under the principles guaranteeing confidentiality to victims as specified by state of the art research protocols utilized within the Bureau of Justice Statistics, the National Institute of Justice and the Center for Disease Control and Prevention.

Data collected by the Department of Defense Inspector General indicates eleven percent of seniors and three percent of freshmen at the Air Force Academy have been victims of an attempted or completed rape. The survey utilized a narrow, legal definition of rape, rather than a scientific or behavioral set of questions. Although the definition was limiting, the rate is disproportionately high for the population of female cadets, comprising sixteen percent of the cadet corps. A flawed comparative analysis was then conducted by the Department of Defense with a landmark study of sexual assault on college campuses. The defintion of rape within the college campus survey included oral and anal penetration and penetration by object. These behaviors were not included in the definition of rape in a the study conducted at the Air Force Academy. These behaviors were categorized as "sexual assault." Furthermore, the AF study, students were asked to report on all sexual assaults that had occurred, since they entered the Academy. College students were asked to report only on those that had occurred since the beginning of the school year in the civilian study.

Defense Department officials compounded the flawed analysis by utilizing the same landmark survey for comparative analysis in regard to the Naval Academy and West Point. Again, the time period, definitions and behaviors varied between the civilian and academy surveys. Thus, a prevalence or evaluation study conducted utilizing the state of the art in civilian studies may result in accurate data, generalizability and comparative analysis.

The Department of Defense has acknowledged 2,374 reported cases of sexual assault during calendar year 2005. This represents an increase of 40 percent over the number of reported cases in 2004 (1700). The calendar year data for 2004 is a 25 percent increase over the 2003 figure (1012). The calendar year data for 2003 is a 41 percent increase over data collected for 2002. The figures for calendar year 2005 include over 400 cases entailing civilian victims and/or assailants.

The Army has revealed that reported cases of rape increased twenty-five percent between 2003 and 2004. The analysis indicates that cases of sexual assault escalated by nineteen percent during the same time period. The number of reported rapes and sexual assaults increased by five percent between 2002 and 2003. The substantial increase in the number of reported cases was correlated to a target rich environment, a twenty percent increase in the number of women serving on active duty; and enhanced reporting and availability of services by Army officials. The conclusions are fundamentally flawed and lack serious evaluation and review.

Military criminal investigators disposed of 1,474 cases of sexual misconduct during 2005. Commanders disciplined 274 alleged offenders including 79 by court-martial; 91 by nonjudicial punishment and 104 with discharges and administrative punishments. The remaining cases, 641, were dismissed for lack of evidence or unsubstantiated. Over two hundred offenders could not be identified or would be subject to civilian or foreign authorities.

Prevalence of Sexual Harassment in the U. S. Armed Forces

The Department of Defense defines sexual harassment as a form of sex discrimination that involves unwelcome sexual advances, requests for sexual favors and other verbal or physical conduct of a sexual nature.

The Department of Defense conducted surveys in 1995 and 2002 which included questions about a range of unprofessional gender-related behaviors as well as behaviors defined as sexual harassment. The survey indicated a general decline in unprofessional behaviors and sexual harassment. The overall rate of sexual harassment declined from 45 percent to 24 percent for women and from 8 percent to 3 percent for men.

According to the 2002 survey, only 30 percent of women and 17 percent of men who experienced sexual harassment reported the incident/s to military authorities. This represents a decline in reporting by women. The most common reason cited for non-reporting was that the respondent did not regard the incident as serious enough. The fear of being labeled a troublemaker and a belief that nothing would be done were additional justifications for non-reporting by respondents.

The experience of sexual harassment among armed forces personnel has been cited in Department of Defense studies as associated with psychological distress, job dissatisfaction and a low retention rate. Risk factors include gender, youth, rank and history of childhood abuse. Workplace characteristics associated with sexual harassment encompass lack of leadership, lack of readiness, poor unit cohesion and a discriminatory climate towards women. The tolerance of sexual harassment among armed forces personnel correlates to negative attitudes towards women in the armed forces and precipitates sexual assault among the ranks.

Prevalence of Sexual Assault and Deployments

The casualty count mounts during times of war, armed conflict and peacekeeping operations. According to the Department of Defense, one-sixth of one percent of female servicemembers experience sexual trauma during deployments. The rate of victimization experienced by women servicemembers deployed during Desert Storm and Desert Shield represents nearly a ten fold increase over rates obtained using female civilian community samples.

Among women veterans seeking VA disability benefits, 69 percent of combat veterans and 86 percent of noncombat veterans reported in-service or post-service sexual assault. The study concluded that sexual assault prevalence was three to ten times higher for females serving in the armed forces than for females in the general population.

The Miles Foundation has received reports of 518 cases of sexual assault associated with deployments in CENTCOM AOR. The distribution by service is as follows: Army, 246; Navy, 77; Air Force, 68; Marines, 89; and Coast Guard, 14. The distribution is based upon identifying information furnished by victims. The victims are predominantly female active duty servicemembers, including guard and reservists called to active duty. The alleged assailants are predominantly male active duty servicemembers, including guard and reservists called to active duty. The reports of sexual assault occuring prior to deployment include 76 cases within active duty forces as well as guard and reserve units training for deployment. The reports continue to include multiple victims of more than a half dozen alleged assailants. The reports also include alleged assaults committed by other nationals and coalition partners, approximately 24.

The number of incidents should not be considered finite as colleagues at local rape crisis centers and shelter programs are providing services to survivors returning from deployments. In addition, cases may overlap among service providers and the Veterans' Health Administration.

Risk Factors: Culture, Hostility, Hypermasculinity, Prior Victimization and Drug Facilitation

The military environment is more powerfully associated with risk than individual factors, encompassing young women entering male dominanted working groups at lower levels of authority; sexual harassment by officers; and

unwanted advances on duty and in sleeping quarters.

The risk associated with rank (enlisted v. officer) has been found in several studies documenting domestic violence among active duty military women. Although victimization should not adversely affect a woman's career, there is widespread concern as to its impact.

The hostility towards women was evident at the Air Force Academy in the form of the "Bring Me Men" sign greeting cadets, visitors and family. Sixty-eight percent of the female cadets were victims of sexual harassment, according to the survey by the Inspector General. The survey revealed the depth of hostility citing one in four male cadets do not support women attending the service academy. The birth of these cadets occurred well after the military academies began accepting women in 1976. Traditional sex roles for men and women are supported by male cadets at the military academies; and egalitarianism appears to lessen as cadets and midshipmen ascend through the ranks, according to numerous studies.

Surveys have been conducted within the military departments which detail the victimization of servicemembers prior to military service. Prior victimization, a factor in future victimization, has been identified by the Army, 49 percent of female soldiers; by the Navy, 36 percent of female sailors; and by the Air Force, 30 percent of airwomen. The studies indicate that individuals who have been victimized by sexual or child abuse prior to recruitment are more vulnerable to revictimization. The research, military and civilian, has not determined the causal factors for such vulnerability. The adoption of notions of instability of victims or the "asking for it" mentality are flawed. Further, conclusions relative to the "predisposition" of female servicemembers to sexual harassment and assault are inappropriate.

The combat theater is also illustrative of the hostility towards women in the U. S. Armed Forces. Survivors of sexual assault have shared information and insight relative to additional challenges in deployed units including lack of privacy to perform daily routines; insufficient lighting in and around the tents; isolation; existence of a sexually charged atmosphere; presence of pornography; and availability of condoms for male troops.

The presence of alcohol noted in case reviews associated with the Pacific Air Command, U. S. Air Force and U. S. Army Europe is indicative of drug facilitation in sexual assaults. The case reviews indicate the presence of alcohol in approximately 70 to 75 percent of reported cases. Alcohol is readily available and ever present among the ranks, according to studies conducted by the Department of Defense. The availability and utilization of a category of drugs, date rape drugs, including Rohypnol (Roofies or Ruffies), Gamma Hydroxy Butyrate (GHB) and Ketamine Hydrochloride (K or Special K), may be limited in the armed forces due to increased drug testing among the ranks.

The application of the disinhibition theory by military authorities fails to assign responsibility to the alleged assailant who utilizes alcohol to diminish the capacity of a victim to say "no." Justice in such cases is lacking due to the diminished capacity, memory loss and charges of collateral misconduct or infractions.

Finally, the overlap of physical, sexual and emotional abuse is routinely found in studies and case histories of survivors. Research relative to active duty military women has cited this overlap concluding that one third of female veterans reporting physical assault by an intimate partner also reported being seuxally assaulted. In another study, researchers discovered that psychological abuse related significantly to psychological distress in active duty military women. The overlap in types of abuse supports the argument for a broad definition of domestic and/or sexual violence within the military.

Reporting Behavior

Sexual assault is the most under-reported crime, according to the National Center for Victims of Crime. Sixteen percent of sexual assaults are reported to law enforcement authorities. The reporting rate for the U. S. Armed Forces in sexual assault cases is 22-23 percent, substantially greater than the reporting rate within the civilian community.

Many factors influence a victim's reporting behavior including acceptance of rape myths, appraisal of blame and cultural context. Research indicates that rape within the armed forces involves the victim knowing the offender (Offender Known Rapes), continued victim-assailant contact after the event and intoxication by both parties. The Pacific Air Command and Army Europe concluded that seventy to eighty percent of assaults entail military personnel who are acquainted and occur in familiar locations, such as barracks or dormitories. The same ambiquity

and self-doubt exists for rape victims in the military and civilian communities.

Data also indicates that military victims fear that the alleged assailant, often higher in rank and command, may be more likely to be believed. The military victim also fears being punished for breaking loyalties to the military unit and punishment for collateral misconduct, such as drinking, adultery or fraternization. For example, cadets at the Air Force Academy reported fear of reprisals and retribution as the reason for not reporting. The fear of being punished by command officials, such as marching the Terrazzo for hours, was cited by 25.2 percent of the female cadets.

The absence of confidentiality of communications, privilege, continues to incumber the reporting of abuse to military authorities. According to the Defense Advisory Commission on the Status of Women in the Services (DACOWITS), the absence of confidentiality is the most significant barrier to victims reporting abuse to military authorities. The lack of confidentiality, trust in the system, may be even more an issue for officers than enlisted women.

A comparative analysis of reporting behavior among Academy cadets and college students indicates significant differences among the populations relative to the fear of reprisals and reasons for not reporting. The fear of reprisal correlates directly to the assailant for victims on college campuses, whereas the fear of reprisals from peers, colleagues and command authorities traumatizes Academy and military assault victims.

Implications for Public Health

Violence against women in the armed forces is a public health concern which impacts national security. Researchers have documented the widespread problem of rape trauma following sexual assault. Sexual assault causes severe psychological distress and long-term physical health problems. Sixty-six percent of victims display symptoms of post traumatic stress disorder (PTSD) referred to as rape trauma. Ninety percent of sexual assault victims experience the onset of rape trauma within one month of the assault. One-third of victims of sexual assault display symptoms more than six months later.

Sexual trauma and combat exposure appear to be strong risk factors for PTSD within the military community. The trauma denoted as military sexual trauma (MST) has implications for the physical and mental health of the survivor, military readiness, unit cohesion and national security while on serving on active duty. The transition from military to civilian life can be escarabated by MST. In addition, the disability assessment within the Veterans' Health Administation may pose additional challenges to MST victims.

MST may occur less frequently than combat trauma, the sexual trauma has a great impact on the symptoms of PTSD. In a recent survey of veterans seeking PTSD disability benefits, 69 percent of female combat veterans reported an in service or post service sexual assault, while 86 percent of female noncombat veterans reported a sexual assault.

Women veterans reporting a history of sexual assault are nine times more likely to have PTSD . If childhood abuse occurred, women veterans are seven times more likely to have PTSD. Health care utilization and cost of services is higher among women reporting an assault while on active duty. Studies also suggest that they are receiving fewer health care services with implications for public health policy.

A variety of studies indicate that depression is twice as high for women reporting a military rape history. In addition, a high incident of substance abuse exists among survivors of MST.

The health implications for victims of MST are not limited to psychological distress. Studies indicate that women who report sexual assault have medical conditions of every domain. Over one-quarter of women reporting sexual assault in the past year have 1 to 24 symptoms or conditions, compared to a litttle over 10 percent of women with no reported sexual assault while in military service.

Further, women reporting repeated violence during military service utilize significantly more outpatient services in a year, have poorer health status, report childhood violence and postmilitary domestic violence. Repeated exposure to violence is a common experience for women in the military with substantial implications for public health.

Women who are raped or assaulted while on active duty are more likely to report chronic health problems, including prescription medication use for emotional problems, failure to complete college, and annual incomes of less than $25,000. Decades after experiencing rape or physical assault during military service women report decreased health-related quality of life, with limitations of physical and emotional health, education and financial attainment, and severe, recurrent problems with social activities.

Panels, Commissions, Task Forces and Policy Reviews

Sexual violence associated with the U. S. Armed Forces has been the subject of over 25 task forces, commissions, panels and reports. In recent years, the Panel to Review Sexual Misconduct Allegations at the Air Force Academy; Defense Task on the Care of Sexual Assault Victims; Defense Task Force on Sexual Harassment and Violence at the Military Academies; and Defense Task Force on Sexual Violence in the Military Services have been appointed to explore the challenges, review current policies and protocols, oversee and treatment services and propose recommendations for policy changes.

The panels have consisted primarily of military personnel, contractors, stakeholders and political appointees with limited access to data, personnel, service providers and survivors. The panels have been fundamentally flawed in their composition. The panels have failed to include a survivor . A sampling of state and municipal commissions, collaborative partnerships and boards of directors in the field routinely include survivors. Survivors have an intimate knowledge and understanding of the practices within a community, and have insights into enhancing services for victims in crisis, such as safety, protection and treatment.

The civilian sector is represented by stakeholders, contractors and political appointees. Contractors for curriculum development and training have been well represented. Regions without a significant military population are overly represented. Few direct service providers for military personnel and families within the civilian community have been assigned to the various panels. Policymakers and program evaluators have been decidely underrepresented.

The civilian panelists, generally, have limited experience with military protocols and military personnel assigned to the panels have limited knowledge of the field. The lack of experience has resulted in a heavy reliance upon data, information and materials from the military departments. The military personnel have been enrolled in training programs with civilian law enforcement and advocates. The panels have also failed to represent the diversity within the military community.

The heavy reliance upon information from the military departments has frequently limited program evaluation and analysis. In some instances, misinformation has been furnished to panel members. For example, information that chaplains have privilege for victims of domestic violence and sexual assault is not supported by military case law which actually limits privilege to expressions of faith and conscience between a chaplain, servicemember or family member.

The reports often neglect to delineate research and education priorities for specific groups within the military community. The reports fail to provide a comparative analysis of civilian and military policies and programs. A thoughtful comparison of the military and civilian communities and best professional practices would enhance the discussion.

Panel to Review Sexual Misconduct Allegations at the U. S. Air Force Academy/Fowler Commission

Secretary of Defense Rumsfeld appointed a seven member panel to conduct a 90 day inquiry following Congressional authorization to explore the victimization of women at the Air Force Academy in 2003. The initial composition of the panel was questioned by numerous organizations, citing bias and lack of a victim advocate or sexual offender behavioral specialist. One panelist resigned after expressing doubts as to the veracity of claims of sexual assault by cadets. A victim advocate was later appointed to the panel.

The panel chaired by the late Congresswoman Tillie Fowler conducted a series of public hearings. The panel examined 142 allegations of sexual assault, an average of 14 allegations per year, for the last decade. The panel interviewed approximately ten survivors of sexual assault associated with the Air Force Academy.

The *Report of the Panel to Review Sexual Misconduct Allegations at the Air Force Academy* noted "the leadership failure helped to create an environment in which assault became a part of life at the Academy." The report referenced previous reviews by the Air Force Surgeon General and Air Force General Counsel as "an effort to shield Air Force headquarters from public criticism."

The Report recommended adopting a psychotherapist-patient privilege for sexual assault victims; transforming the board of visitors into a corporate board of directors; reconfiguring the board of visitors to include fewer members of Congress, more women and minority members; permitting unrestricted private access to telephones in an emergency; mandating character development instruction for all cadets; extending tours of duty for the supertindent and commandant of cadets; crafting choice for cadets when reporting an incident to a victim advocate, psychotherapist or peer counselor; providing transportation to a hospital, and any necessary support, to a victim who choses to have a forensic examination; and training, training and more training.

The recommendations indicate a limited exploration of the challenges associated with sexual violence at the Academy. The panel did not review the Uniform Code of Military Justice (UCMJ) and Manual for Courts-Martial (MCM) relative to command responsiblities, military necessity and exceptions to a privacy privilege. The panel did not address the lack of a rape shield, victim preference or character and evaluation of military service provisions within the Manual for Courts-Martial (Rule 412 and Rule 306 (b)). The military case law resulting from the court-martials associated with Aberdeen Proving Ground which expanded the definition of rape to include acquaintance and abuse of power rapes was not part of the review.

The recommendations of an earlier Congressionally mandated study of military sex crime investigations, *Adapting Military Sex Crimes to Changing Times*, were not reviewed. In addition, the panel neglected to review jurisdictional issues between civilian law enforcement and the Academy. The concurrent jurisdiction at the Academy provides that local law enforcement may investigate and prosecute crimes occurring on Academy grounds. However, the El Paso County Sheriff's Department and the District Attorney's Office have entered into a Memorandum of Understanding which precludes civilian jurisdiction in sexual assault and domestic violence cases on Academy grounds. The Memorandum may deny victims equal protection under the law, as well as enhance municipal and state liability.

Department of Defense Task Force on the Care of Sexual Assault Victims

The Secretary of Defense created the Department of Defense Task Force on the Care of Sexual Assault Victims (DTFCSAV) in response to reports of sexual assault occurring in CENTCOM AOR in early 2004. The Report of the DTFCSAV, issued in the spring, acknowledges that medical care, support services and treatment for trauma are significantly limited for victims of rape and incest within the military community. The Report detailed areas requiring attention and improvement including data collection, policy and program development, coordination of care and services, definition of sexual assault and confidentiality.

The Report attempted to include a wide scope of factors which contribute to sexual assaults. The neutral stance and language, combined with various points relative to victim responsibility and reliability, reveal a cultural climate which may be the largest barrier to the implementation of effective prevention and intervention strategies.

The Report utilizes terminology familiar to the field. However, the terminology is not properly defined or set in the appropriate context.

Several sections of the Report are seriously flawed including sexual assault prevention, community safety, offender accountability, confidentiality for victims and the omission of an analysis of sexual offender behavior. Specifically, prevention constitutes "risk reduction" for potential victims, such as battle buddies, lighting and victim behavior modification. The responsiblity is placed upon the victim to preclude a sexual assault citing prior victimization, vulnerability, behavior and presence of alcohol.

The Report failed to state or suggest that sexual assaults occur because perpetrators chose to commit these crimes, effectively omitting the most important element in the analysis of sexual violence. The Report also lacks a discussion of the behavior of sexual offenders including early onset of such behavior, premediation and drug facilitation. A review of research conducted within the military services reveals only one limited inquiry into sexual aggression among male recruits, noting a significant number of incidents of nonconsensual sex among male recruits.

The Report acknowledges discrepancies among the military services as to a definition of sexual assault. However, the Report again relies upon training, training and more training to alter the culture without a foundation of law and policy to support policy and social change.

The review of disciplinary actions or alternatives fails to review the escalation in offender behavior which often follows limited intervention, such as a reprimand or arrest without charges and prosecution.

The Report recommends the development of collaborative partnerships among military and civilian entities through the development of formal Memorandum of Understanding or Agreement (MOU/MOA). The recommendation fails to review the precarious position that such agreements would force upon civilian law enforcement, municipalities and service providers. The issue of liability has not been sufficiently researched. The requirements of Federal and state grant programs for direct service providers preclude such agreements in light of confidentiality requirements.

Finally, the Report did not prioritize the needs of victims serving in deployed units in CENTCOM AOR nor specify an action plan to furnish necessary supplies, personnel and treatment to deployed units.

Defense Task Force on Sexual Harassment and Violence at the Military Academies

The *Report of the Defense Task Force on Sexual Harassment and Violence at the Military Academies* is the most recent exploration of sexual harassment and assault by the Pentagon. Military personnel and civilian representatives conducted site visits and public hearings at the military academies. The Task Force was not tasked to review policies at U. S. Coast Guard Academy due to limited authorization.

The Report notes sexual harassment as more prevalent than sexual assault at the military academies. The Report touches upon the public health aspects of sexual violence. The Report also recommends the adoption of a confidentiality of communications policy. The Report does not address the disparity between military policy directives cited as restricted and nonrestricted reporting and Federal and state statutes.

Assessment of Department of Defense Policy Directives

The Secretary of Defense appointed a Joint Task Force on Sexual Assault Prevention and Response (JTFSAPR) composed of service personnel to implement the recommendations of the Defense Task Force on the Care of Victims of Sexual Assault (DTFCSAV) in October 2004. The first task of the JTFSAPR was to sponsor by invitation only conferences and advocacy group meetings.

The JTSAPR was subsequently assigned the development and implementation of the Congressional mandates outlined in the Ronald Reagan National Defense Authorization Act for Fiscal Year 2005. The JTSAPR has issued approximately fourteen directive type memorandums (DTMs) including the definition of sexual assult; commander's checklist; training and education; coordinated community response; victim services; collateral misconduct; administrative separation; and restricted and nonrestricted reporting. The following is a brief review of the DTMs:-

Collateral Misconduct in Sexual Assault Cases (JTF-SAPR 001)

The directive is intended to permit access to care without fear of repercussions for a victim of sexual assault, such as charges of fraternization, adultery, underage drinking or drug use. The directive priorizes the level of offense by the victim in relation to a sexual assault. The directive defers or delays disciplinary actions. The directive does not furnish amnesty to victims of sexual assault. Further, the directive permits command to review the victim's behavior as a contributing factor to the sexual assault. The directive neglects the issues associated with drug facilitation, particularly the use of alcohol by sex offenders.

A report is pending relative to a review of administrative separations of survivors of sexual assault as required by Congress. The directive requires consider of administrative separation "in the best interest of the victim or the Armed Forces." These interests may be counter to one another. There are no limits or rights to discharge established.

Increased Victim Support and a Better Understanding of Sexual Assault Cases (JTF-SAPR-002)

The Report of the DTFCSAV acknowledged that medical care, support and treatment for trauma are

significantly limited for victims of rape and incest within the military community, particularly those serving in combat zones.

The directive assigns tasks to victim advocates and the sexual assault response coordinators along with support of service initiatives, such as Victim Support Liasion, US Air Force; SAVI coordinator, US Navy and Unit Victim Advocate, US Army.

The protections to be afforded a victim should include no contact orders and reassignment of the victim and/or assailant.

Data Call for CY04 Sexual Assaults (JTF-SAPR-003)

The U. S. Armed Forces do not currently possess a system to uniformly collect data, determine actual rates and analyze trends, according to the Defense Task Force on the Care of Sexual Assault Victims (DTFCSAV) Report and the Acting Secretary of the Army's Task Force Report on Sexual Assault Policies. The Reprot of the DTFCSA also acknowledged that medical care, support

Review of Administrative Separation Actions Involving Victims of Sexual Assault (JTF-SAPR-004)

Commander Checklist for Responding to Allegations of Sexual Assault (JTF-SAPR-005)

The Checklist is essentially a response protocol or guide for command relative to the needs of a victim of sexual assault, actions to be considered in regard to an alleged assailant and actions to address issues within the unit at large. The directive reinforces precommand training and command school modules. The directive represents the duties of a victim advocate assigned to command. Issues relative to access to private and confidential information within records and the use of command discretion are not well addressed within this directive.

Definition of Sexual Assault (JTF-SAPR-006)

The formal definition of sexual assault announced by the Department of Defense states that "sexual assault is a crime." This is the first acknowledgement by the Pentagon that sexual assault constitutes criminal behavior.

The directive establishes Department wide definitions of sexual assault and other sex related offenses for training and education purposes. The definition represents military case law such as abuse of power rapes associated with the cases at Aberdeen Proving Ground.

Statutory changes associated with the revision of Article 120 of the Uniform Code of Military Justice (UCMJ) have not been enacted.

Training Standards for DoD Personnel on Sexual Assault Prevention and Response (JTF-SAPR-007)

The directive requires training modules in basic military trainin, initial entry training, semi annual training, installation in processing and predeployment. The predeployment training requires a discussion of the cultural differences within a host country and coalition partners. The directive essentially establishes a train the trainer program. Questions relative to the application of such training to national guard and reserve commands remain. Further, the prevention and education modules focus upon definition, risk factors and core values. The prevention module places the responsibility on the victim to address behavior in order to preclude an assault, rather than an assessment and training on the behavior of a potential sexual offender.

A forthcoming study examines attitudes towards women in the military and tolerance of sexual harassment among male and female reserve and guard members. The study found that sexual harassment training was associated with positive attitudes towards women, but not with tolerance of sexual harassment, suggesting that units with positive attitudes may be more willing to promote training on sexual harassment. However, the training itself did not seem to affect individually held attitudes toward sexual harassment. The study confirms the conclusions of preliminary research that negative attitudes towards women in the military significantly predict tolerance of sexual harassment.

Further, a study of intimate partner violence among the ranks showed a correlation between disrespect towards women when off duty (including visiting strip clubs and pornography) results in an increase in intimate partner violence. This "spillover" effect of such cultural practices may influence attitudes and behaviors in the workplace.

Response Capability for Sexual Assault (JTF-SAPR-008)

The model for the directive is the SAVI program within the U. S. Navy. The policy directs the collaboration and coordination of response protocols among command, sexual assault response coordinators, military criminal investigators, victim advocates, chaplains and certain health care professionals. The directive establishes the new

position and bureaucracy of sexual assault response coordinators within the services.

Confidentiality Policy for Victims of Sexual Assault (JTF-SAPR-009)

The Ronald Reagan National Defense Authorization Act for Fiscal Year 2005 mandated the development of a confidentiality policy within the Department of Defense for victims of sexual assault. The Department acknowledged confidentiality as essential to "the well-being of victims...to ensure the best possible care...and if you offer confidentiality, you increase the reproign and more people are willing to say, 'Yes, I'm willing to press charges,' during a press conference on January 4, 2005.

The Department of Defense later issued a Restricted and Nonrestricted Reporting Policy Directive for Victims of Sexual Assault on March 16, 2005. The confidentaility policy established protocols for reporting and nonreporting options for victims of sexual assault enabling victims to access services and treatment. Essentially, victims elect to receive medical care, treatment and support with or without a criminal investigation.

The commander is tasked with "action to safeguard the victim from any formal or informal investigative interviews or inquiries except those conducted by the military criminal investigative organization." This task may inhibit the particpation of a victim in a civilian investigation. Further, victim services reports, reporting avenues for commanders, and aggregate non-personal data collection due to constitute privacy and privilege for a victim within the armed forces.

The Department of Defense was criticized for failing to adopt such a policy for victims of domestic violence and stalking as encouraged by Congress in 2002. Subsequently, the Department issued a directive applying the same policy to domestic violence victims.

The policy continues to support a hierarchy of victims based upon relationship to the U. S. Armed Forces. The inequity is also evident by type of victimization as the policy excludes victims of stalking and trafficking.

Collaboration with Civilian Authorities for Sexual Assault Victim Support (JTF-SAPR-010)

The policy acknowledges the limited nature of resources on military installations relative to sexual assault, particularly military medical facilities. The policy directs commands to establish Memorandum of Understanding (MOUs) with civilian entities to enhance response, care and services. However, the directive does not address jurisdiction, disparity between military protocols and civilian statutes or liability for municipalities and civilian service providers.

The jurisdictional issues between civilian law enforcement and military installations warrant review. Numerous exceptions exist to the traditional concept of a military installation as an area under complete Federal control. Four types of jurisdiction exist:

- Exclusive Federal Jurisdiction-The Federal government holds all authority in cases of exclusive jurisdiction (18 U.S.C. 13). Offenses are handled only by the military or other elements of the Federal justice system. Civilian authorities can only enter upon invitation of the installation commander in order to serve process, such as Vandenberg Air Force Base, California.
- Concurrent Jurisdiction-State and Federal governments share authority over the area under concurrent jurisdiction, either may be first responders or prosecute offenders.
- Partial Jurisdiction-States may give the Federal government authority in some areas of law and reserve authority in others under partial jurisdiction.
- Proprietary-Interest Jurisdiction-Proprietary interest jurisdiction maintains the right of ownership and use of the land with the Federal government, however, all legal authority is assigned to the state, such as the housing unit at Subbase, Groton, Connecticut

For example, the concurrent jurisdiction at the Air Force Academy provides that local law enforcement may investigate and prosecute crimes occurring on Academy grounds. However, the El Paso County Sheriff's Department has entered into a Memorandum of Understanding (MOU/MOA) which precludes civilian jurisdiction in sexual assault and domestic violence cases on the grounds. The MOU/MOA may deny these victims equal protection under the law, as well as enhance municipal ,state and service provider liability.

Again, the disparity between military protocols and civilian statutes relative to definitions of sexual and domestic violence, mandatory arrests, equal protection and due process may prevent such collaborations.

Training Standards for Sexual Assault Response Training (JTF-SAPR-011)
The directive again outlines training modules to be utilized in training of personnel relative to prevention and response in cases of sexual assault.

Training Standards for Pre-Deployment Information on Sexual Assault and Response Training (JTF-SAPR-012)
The directive stipulates that deploying units receive special instruction on the support systems that will be available during deployment and the procedures for reporting a sexual assault. In addition, information relative to cultural aspects of host countries and coalition partners are to be presented.

Department of Defense Directive 6495.01 Sexual Assault Prevention and Response (SAPR) Program Essential Training Tasks for a Sexual Assault Response (JTF-SAPR-013)
The Directive codifies the variety of tasks required for training modules and personnel in response to sexual assault.

Sexual Assault Evidence Collection and Preservation Under Restricted Reporting (JTF-SAPR-014)
The directive mandates that criminal investigators, healthcare professionals and the other first responders receive specialized training in sexual assault prevention and response as mandated within the National Defense Authorization Act for Fiscal Year 2006. Health care providers training tasks include sexual assault examination process; sexual assault evidence collection kits; and chain of custody. Criminal investigators training includes crime scene management; identification and collection of fragile evidence; preliminary interviews; understanding sex offenders; and suspect and victim interview techniques.

Limitations of the Policy Directives and Memorandums
The Directive Type Memorandums issued by the Department of Defense are not codified by statute. The policy directives focus predominantly upon training, training and more training which may not result in policy, social or cultural changes as evident in preliminary research among active duty, guard and reserve personnel.

Further, the limitations of the directives include, but are not limited to:-

- the lack of applicability to victims and survivors of sexual harassment, domestic violence and stalking;
- lack of justice for victims;
- a piecemeal approach, rather than a strategic plan for policy development;
- the focus upon prevention and support for victims
- the lack of review or notations relative to sex offender behavior;
- the lack of review of the impact of command climate and culture;
- the lack of penalties for offenders;
- the lack of guidance concerning disciplinary actions for sex offenders;
- the lack of evaluation of commands relative to the response to sexual assault; and
- ongoing concern with command discretion in regard to criminal behavior.

Office for Sexual Assault Prevention and Response
The Joint Task Force on Sexual Assault Prevention and Response (JTSAPR) recently morphed into an Office on Sexual Assault Prevention and Response.

Authorizations, Appropriations, Mandates and Revisions to the Uniform Code of Military Justice (UCMJ)
Sexual and domestic violence associated with the U. S. Armed Forces has been the subject of public hearings by the Joint Committee on Veterans' Affairs, the Senate Armed Services Committee, the House Armed Services Committee and the Congressional Caucus for Women's Issues. Congress mandated that the Department of Veterans' Affairs provide treatment to veterans traumatized by sexual assault experienced during active duty in 1992. In 1994, Congress amended the authorization, allowing veterans to receive appropriate care and services for injuries, illnesses and other psychological conditions resulting from sexual trauma.

The *Millenium Health Care and Benefits Act of 2000* establishes a screening tool for sexual trauma within the Veterans' Administration and required the expansion of services to victims and survivors of domestic violence. Data resulting from the screening tool was presented in 2004 indicating that 1.18 percent of male veterans and 20.69 percent of female veterans report experiencing military sexual trauma.

The *Ronald Reagan National Defense Authorization Act for Fiscal Year 2005* mandates an extensive review, policy development and implementation within the Department of Defense to prevent and intervene in sexual and domestic violence. The provisions include, but are not limited to, victim advocates, collaborative partnerships, coordination of services, standardization of prevention and intervention protocols among the services and confidentiality of communications.

Congress appropriated $1.8 million for the establishment of an Office of the Victims' Advocate in 2004 within the *National Defense Appropriations Act for Fiscal Year 2005*. The funders also furnished additional funds to support the victim advocate program. The Department of Defense announced a study rather than implementation of the legislative mandate. Further, the study has not been released publicly. The Pentagon continues to neglect earlier Congressional mandates relative to training, education of first responders, especially military criminal investigators.

The *Trafficking Victims Protection Reauthorization Act of 2005* amends the Manual for Courts-Martial, making the punishment for using a prostitute the same as that for being a prostitute. Any servicemember convicted of patronizing a prostitute can receive a dishonorable discharge, forfeiture of all pay and allowances, and one year of confinement.

The *National Defense Authorizaton Act for Fiscal Year 2006* revises the Uniform Code of Military Justice (UCMJ) to include statutes based upon current Federal law relative to sexual assault and stalking. The revised sexual assault statute encompasses a variety of types and degrees of sexual assault within the UCMJ. The stalking statute is set exclusively within the UCMJ, without addressing the Federal interstate stalking statute in regard to stalkers who chose to use military installations as sanctuaries. The revisions to the UCMJ will be effective in 2007.

The Act also requires the collection of data as to the availability and accessibility of supplies, trained personnel and transportation resources for responding to sexual assault in deployed units. The accompanying committee report requires review of the victim advocates program and protections against adverse career impact and administrative separation of survivors of sexual harassment and assault. To date, the report as to the victim advocate program has not been made public.

Congressional Initiatives: Military Domestic and Sexual Violence Response Act, General Accounting Office Study and Defense Authorizations

The Department of Defense is committed to prevention and response in cases of domestic and sexual violence. However, services remain incomplete and inconsistent among the services. Victim advoctes, dedicated to protecting victim's rights, have been denied resources, forced off the base and unfairly dismissed. The policies within the military departments are not codified, nor offer the same protections as civilian programs. Finally, victims are unable to seek confidential counseling and treatment without fear that counselors will be forced to surrender treatment records, if charges against an assailant are pursued. Congress is considering numerous initiatives to ensure prevention, intervention and justice for military personnel, family members and partners victimized by crime.

Military Domestic and Sexual Violence Response Act, H.R. 5212

The Military Domestic and Sexual Violence Response Act is the first comprehensive legislative initiative to address domestic violence, sexual assault, stalking and family violence within the U S Armed Forces. Its initial introduction was during the 108th Congress in 2004.

The bill builds upon the knowledge gained from more than twenty reports on sexual assault, harassment and domestic violence within the US Armed Forces prepared over the last two decades. The bill also reflects the knowledge gained from the Violence Against Women Act of 1994 and its reauthorizations, victims' advocates programs within the Department of Defense, Armed Forces Domestic Security Act, Servicemembers Civil Relief Act, Military Extraterritorial Jurisdiction Act, PROTECT Act, Trafficking in Persons Acts and its reauthorization and various Federal and state statutes.

The bill provides a foundation of law and policy; infrastructure for services, support and treatment; victims' rights and restitution; health care system response; military justice system response; offender accountability; offender treatment; system accountability; community safety; research; prevention; best professional practices; training; and education.

The bill codifies numerous terms including sexual harassment and assault, domestic violence, stalking, protection orders and family violence within the military system. The definitions are garnered from various Federal and state statutes.

The bill crafts a foundation of law and policy by updating and revising the Uniform Code of Military Justice (UCMJ) and Manual for Courts-Martial (MCM) as well as standardizing policies within the military departments. The UCMJ would incorporate current Federal statutes relative to sexual assault, domestic violence, human trafficking and stalking. The bill would also standardize the policies within the military departments based upon best professional practices adapted from the civilian community, such as pro-arrest policies to preclude inappropriate arrests or charges of mutual abuse and protection orders. The bill also closes loopholes in Federal law relative to interstate domestic violence, stalking and enforcement of protection orders.

The bill addresses the unique needs of the military community including criminal investigations and practices, victim services, offender and system accountability in the development of an infrastructure.

The Office of the Victims' Advocate restores access to services for victims and survivors; fully implements the victim advocates program authorized by Congress in 1994; serves as headquarters program manager for the program; establishes protective provisions and protocols, including a privacy privilege, relocation and protection orders; coordinates and navigates services among civilian and military entities; and reports to the Secretary of Defense and Congress on the current state of affairs as well as proposes initiatives to enhance the response of the military departments.

The bill expands the services available to meet the needs of the military community including deployed and training units. The bill encourages collaboration between military and civilian communities particulary between service providers, law enforcement, prosecutors, health care professionals and educators to create direct access to services. The bill also provides for prevention and public information campaigns specific to the military community.

The bill expands treatment services for victims and perpetrators within the Department of Defense and the Department of Veterans' Affairs to include health care response teams; community health centers; additional sexual trauma counseling centers to furnish both inpatient and outpatient services; and services for reservists and guard members victimized by sexual assault and domestic violence. The proposal entitles servicemembers to extended emergency medical leave in order to seek medical treatment, obtain counseling or victim services, or participate in safety planning as the result of sexual or domestic violence.

The proposal enhances the rights of victims to safety and justice by providing a privacy privilege; furnishing status reports on the progress of investigations and proceedings; enforcement of protection orders; and restitution. The bill prohibits adverse career impact for communications with victim advocates, inspector generals or members of Congress. Victims would be eligible to receive restitution from an assailant based upon procedures mirroring Federal statutes.

Victim advocates would be furnished protections relative to communications on behalf of victims to secure services or accountability as well as safeguards against adverse career impact.

System accountability is achieved through a series of procedures relative to the process of investigations including initation, status and completion. The procedures include the production of reports by military criminal investigators, judge advocates and command. Oversight is outlined within the chain of command as well as outside the immediate chain of command involved in the incident report.

Prevention and training contracts would be authorized in order to support collaborative efforts between military and civilian communities, particularly to enhance the enforcement of protective orders, crisis intervention, hotline

services and system response. Training certification is codified.

The bill authorizes research grants to study prevalence, risk factors, trauma and response within the military departments in order to promote the health and safety of current victims and to prevent crime over the lifespan of servicemembers and veterans. The researchers will utilize the state of the art in research practices including protection of human subjects, behavior based inquiries and data collection. The research studies would include surveys of victim populations with a variety of relationships to the military. The studies would also result in informed data on sex offender behavior applicable to the military community.

Finally, the bill authorizes a conference and summit to be conducted by the Department of Defense in conjunction with the Department of Justice and the Department of Health and Human Services to include a broad agenda to address domestic violence, sexual assault, stalking, family violence and human trafficking.

The proposal is supported by numerous local, state and national organizations as outlined within ***Improving the US Armed Forces Response to Violence Against Women: Recommendations for Change***. Anti-violence groups, women's organizations, battered women shelters, rape crisis advocates, prevention specialists, service providers, treatment centers, human rights advocates and activists have collaborated to ensure the adoption of a strategic plan for current and future generations of military personnel, family members and partners.

Homeland Security Appropriations Act for Fiscal Year 2007

The announcements by the leadership at the Coast Guard Academy relative to the assignment of female counselors to victims of sexual harassment and assault, training on sexual assault awareness and enhanced reporting procedures, the U. S. House of Representatives adopted an amendment to direct the Government Accountability Office (GAO) to conduct a study of actions taken to improve the Coast Guard Academy's response to sexual harassment and to report its findings to the Appropriations Committee within 180 days of enactment of this Act.

National Defense Authorization for Fiscal Year 2007 (S. 2766 and H.R. 5122)

The House and Senate are pending a conference committee and enactment of the National Defense Authorization Act for Fiscal Year 2007. The differences will be among the issues during the conference committee.

The U. S. House of Representatives approved its version of the National Defense Authorization for Fiscal Year 2007, H.R. 5122, on May 11, 2006. The bill expands TRICARE coverage to include forensic examinations following sexual assaults and domestic violence and requires the Secretary of Defense to review procedures of certain pretrial investigations of sexual assault and domestic violence to determine whether the proceedings should be closed to the public. The measure would also require the Secretary of Defense to increase efforts to prosecute human trafficking, mandating several directives to implement a zero tolerance policy. The mandates include requiring the designation of a person within commandant commands to carry out anti-trafficking programs and oversee implementation of anti-trafficking directives; training for military criminal investigators and prosecutors as the use of existing provisions in the Uniform Code of Military Justice, Manual for Courts-Martial and the Military Extraterritorial Jurisdiction Act to identify and prosecute human trafficking cases; a review by the Joint Service Commission on Military Justice as to proscribing within the Uniform Code of Military Justice and Manual for Courts-Martial trafficking offenses; and compilation and dissemination to combatant commands best practices information to combat trafficking. An amendment adopted during floor debate will require the Department of Defense to enhance annual reports on sexual assault relative to disciplinary actions in such cases.

The U. S. Senate is considering its version of the National Defense Authorization for Fiscal Year 2007, S. 2766, provides that forensic examinations following sexual assault and domestic violence would be covered by TRICARE,. The provision addresses the variation of practices among state victim compensation funds and develops a consistent policy of payment withihn the TRICARE system. The Department of Defesnbe will also furnish assessments and reports relative to the military academies response to sexual assault on a biennial basis instead of annually. The bill also specifies that the focus of academy policy be "sexual harassment and sexual violence." The bill authorizes $10 million for pilot projects to assess physical and mental health of servicemembers returning from deployments in regard to Post Traumatic Stress Disorder (PTSD).

Additional Recommendations for Change

During a recent Congressional briefing, members of Congress and staff received additional information, insight

and recommendations from survivors, direct service providers, victim advocates, military criminal investigators and attorneys. Survivors have prepared information, insight and recommendations for the Subcommitte, thus the insights and recommendations of direct service providers, victim advocates and criminal justice professionals are summarized below.

Direct service providers noted the ripple effect of the crimes of sexual and domestic violence within our communities and our society. The primary need of survivors is to be believed and to hear from a person who supports them that this crime is not their fault; and that the assailant is responsible for the choice to harm another person. Survivors also need:-

- an advocate who is trained to navigate through the system and walk through the process with them while supporting them each step of the way. The process following an assault can be retraumizing for a victim.
- confidentiality, a right that should be afforded to all victims for reasons of privacy and safety;
- forensic examinations administrered by specially trained nurses called Sexual Assault Nurse Examiners (SANEs), if they chose to report;
- safety addressed in a timely and appropriate manner with determination if relocation is necessary;
- connection to local civilian resources when possible and appropriate;
- a coordinated response to the crime of sexual assault, such as sexual assault response teams consisting of law enforcement, SANEs, attorneys, victim witness assistance specialists, child protective services, social workers and advocates;
- people who understand that sexual violence impacts victims in different and individual ways. The rape trauma syndrome model articulates various states of the healing process and affirms that ther reactions of a asurvivor are normal reactions to an abnormal event.
- and awareness education that interrupts or stops the cycle of violence within the militiary community.

The former criminal investigator within the military focused upon the speculation on the part of investigators as to whether the victim was being honest, reasons the victim would have for lying and the victim's creditibility. The investigator noted the nature of date or acquaintance rapes as problematic for military investigators due to the "he said, she said" nature of the crime. The investigator recommended review of:

- investigative techniques that get in the way of successful prosecution;
- interviewing witnesses and investigators writing statements for victims to review. The investigator noted the subtle differences in the statements are later detected by defense counsel.
- process which assumes the complaintant is a false witness, often fearful of retaliation and being punished for personal violations of regulations, such as underage drinking or adultery;
- spousal rape charges which often involve ongoing domestic violence. According to the former agent, military criminal investigators do not conduct domestic violence investigations.
- efforts by military criminal investigators to address only felony level investigations and punishments for offenses against children or minors, neglecting the serious nature of the crime. Routinely, criminal investigators cite child sexual assault as carnal knowledge, rather than statutory rape concerning lack of consent for underage victims. Pre-teen and teen victims are often declared promiscuous.
- disciplinary actions and sentencing guidelines which do notfit the crime. Perpetrators are retained on active duty to offend again and again or discharged without notification to the civilian community of any disciplinary actions resulting from sexual offenses.
- training which is targeted to address outdated beliefs within the military justice system. Training conducted by advocates familiar with the trauma of rape and the dynamics involved in offender known rapes.
- the adversial manner in which investigators interact with advocates. The former agent recommended that advocates be contacted at the beginning of an investigation and welcomed to attend victim interviews, rather than being barred from the process.
- UCMJ to enable the recognition of drug and alcohol facilitation as an aggravating factor in rape;
- prosecution of abuse of power rapes;
- initiating court-martial proceedings for suspects of sexual assault rather than nonjudicial punishment, discharge in lieu of punishment and administartive action;
- application of Fifth amendment rights by agents in order to fully inform victims of self incrimination regarding other behaviors and the application of regulations.

- legal advice and counsel for victims along with the document of such services and coordination;
- yearly audit by an independent agency, particularly on investigations that have been labeled as unfounded or insufficient evidence;
- procedures for handling and documenting grievances of victims and notification of these procedures be furnished to victims in writing;
- availability of data regarding military justice system to advocates;
- threats or punishments of witnesses in sexual assault cases. Witnesses should be guaranteed protection from punishment for minor offenses that arise through testimony.
- and zero tolerance policy and training which focuses on the responsibility of victim/soldiers to avoid an assault, instead of sending a clear message to potential sex offenders that rape is a felony offense;

Victim advocates shared disturbing accounts of the challenges for victim advocates within the military departments. The challenges include:-

- disbarment from military installations;
- cancellation of contracts;
- threats of limiting access to victims of sexual and domestic violence;
- changes in job titles among victim advocates and Family Advocacy Program personnel;
- reassignments;
- lack of privacy and confidentiality for victims visiting facilities assigned to victim advocates;
- select education and training opportunities;
- varying contracts among victim advocates serving on the same military installation;
- revictimization of survivors of sexual and domestic violence;
- lack of evaluation of criminal investigative techniques and introduction of victim advocates to support the investigative process;
- termination without sufficient reasons; and
- command discretion impeding safety planning and justice for victims.

The victim advocates recommended the standardization of intervention protocols to adress the crimes of domestic and sexual violence; standardization of employment, support and protections for victim advocates within the armed forces; and confidentiality of communications for victims and victim advocates; and creation of the Office of the Victims' Advocate to ensure support and protections for those who provide direct services to military personnel, families and partners.

Offender and System Accountability

Senior leadership should set a standard for behavior and ensure instruction of officers, senior noncommissioned and noncommissioned officers to fully establish a zero tolerance policy. Recommendations to assess military leadership's response to sexual violence acknowledges the impact upon force protection, readiness and cohesion. A review of disciplinary actions contained within personnel records would illustrate the response of leadership. The precedent for such an analysis is contained in the *Abuse Victims Study* mandated by Congress in 1993. The recommendation mirrors an accountability and personnel system outlined within *Improving the US Armed Forces Response to Violence Against Women: Recommendations for Change.* The Defense Task Force on Domestic Violence and Fowler Commission also proposed the development of system accountability standards.

Trafficking and U. S. Armed Forces

Human trafficking is the illegal practice of procuring human beings for unpaid labor in physically abusive conditions from which they cannot leave. Prostitution is being targeted by the Department of Defense as it represents the main component in human trafficking.

The Department established a new training program to clarify what it is and what the implications are of becoming involved in human trafficking. The training was developed early last year and can be taken in a classroom or online. The training covers four areas: U. S. and DOD policy on human trafficking; origins of the trafficking phenomenon; detection of trafficking; and legal provisions of trafficking. The training is mandatory for all servicemembers, civilian employees and contractors who are to be deployed overseas. Later this year, it will become mandatory for all servicemembers. The Department is developing a separate training module for commands

about how to handle reports of trafficking.

The changes contained within the reauthorization of the Trafficking in Persons Act requires subsequent changes to Uniform Code of Military Justice and Manual for Courts-Martial beyond inclusion among the general articles to support charges of trafficking. In addition, combatant commanders should be supported by advocates specially trained to recognize trafficking in order to respond in a timely and appropriate manner.

Conclusion

Women who chose to serve and those who dream of service deserve a foundation of law and policy, an infrastructure of care and treatment and offender and system accountability. The loss of education, experience, training and expertise of the women who are victimized by sexual harassment, sexual assault, domestic violence, trafficking and stalking while serving on active duty is a sacrifice that our nation can no longer afford to make. The initiatives outlined above exceed the reestablishment of a zero tolerance policy and training as implemented by the Department of Defense and the services to date. The policies are intended to create policy and social change which ensures safety and justice for those who chose to wear the uniform of the United States.

Mr. SHAYS. Thank you very much, Ms. Hansen.

Ms. Davis, we appreciate your being here. You had an inquiry. We have a 5-minute rule, but we roll over for another 5 minutes. It is important, in particular, for you to give your statement as you choose to, so you can feel comfortable that we are eager to hear your statement and appreciate your being here.

STATEMENT OF BETH DAVIS

Ms. DAVIS. Thank you.

Mr. Chairman and members of the subcommittee, I appreciate the opportunity to appear before you today on behalf of the thousands of rape victims, victims of sexual assault and violence at the academies and in the military. I cannot imagine a more courageous group of individuals, and it is an honor to be chosen to aid in making the changes necessary to address the issue of sexual assault and violence against women in our prestigious military institutions and to help arrest the grave constitutional crisis that has arisen within its ranks.

Before beginning my statement, however, I would like to state that, although I am grateful for this opportunity, the allocation of only 5 minutes to the victims is a woefully inadequate amount of time for the victims to give the subcommittee members an idea of the magnitude of these crimes that have been committed against us. These crimes were first committed by our attackers and second by our own officers and a military system that turned against us, rather than protected us, thus destroying our lives, our careers, and our families, while our attackers were allowed to go on with their careers, free from punishment or responsibility for their reprehensible crimes.

Over the past few years the military has had many opportunities to appear before Congress and advocate its position, largely unchallenged, as it will again today, while the victims have not, and while the crime spree against women in our military continues, seemingly unabated.

Accordingly, we urge this subcommittee to hold additional hearings so that the victims will finally be able to be heard and to shine the light of truth on this vast, dark stain on our military and on our Nation. We ask that Congress initiate its own non-military, independent investigation of the problem of rape and assault at the Air Force Academy, the other academies, and in the military at large, including an investigation into the culpability of the officers and officials in charge. Nothing short of this will suffice.

As the media took hold, a widespread culture of misogyny and abuse was revealed to Congress and to the American people, despite the Air Force General Counsel, Mary Walker's, disingenuous Working Group Report of June 2003, which unbelievably stated that there were no systemic problems with sexual assault at the Academy.

The independent Fowler Commission found something much different. In its report, the Commission recognized that a grave scandal had befallen the Academy. It revealed that the Air Force Working Group's Report was rife with conflicts of interest and failed to disclose evidence that the Air Force leadership had known about the problem for years but had not taken adequate steps to address

it, and it revealed a paper trail of evidence which incriminated the officers and whitewashed the injustices at the Academy. The Fowler Commission identified culpable officers and recommended action be taken to hold them accountable.

The Inspector General of the Department of Defense produced the next military-prepared report on the situation at U.S. AFA on December 3, 2004. Rather than following the directives of the Fowler Commission, though, this report shockingly exonerated the very officers that the Fowler Commission found at fault. Representative Tillie Fowler's comment on the DOD report, given shortly before her death, was that the DOD report was shameful.

Around the same time it was revealed in the media that the Air Force's top military leader and Judge Advocate General had resigned amidst scandalous allegations that he had committed sexual misconduct with 13 female subordinates over the past 10 years. It became clear that a deep problem of character, attitude, and example existed throughout the highest ranks of the Air Force leadership.

Yet another shocking example of the Air Force's blatant disregard for congressional mandates and the victims was only weeks away. In a memo delivered to the Secretary of Defense on Good Friday, 2005, the new acting Secretary of the Air Force, Peter Teets, officially exonerated all the Air Force officers implicated in the sexual assault scandal at U.S. SAFA and then promptly resigned. It became clear to us that military establishment was now free to act on its own as an autonomous body and would protect its officers and officials at the expense of the victims, unaccountable to and in blatant disregard of Congress and the public, unchecked by the laws of the United States and the Constitution.

We commend this subcommittee for taking steps that may help us understand the military culture that allows this problem to continue, and we commend the Defense Task Force on its efforts; however, they are inadequate and devoid of leadership accountability.

Please refer to my statement for our recommendations in addressing this problem.

In over 3 very long years of pursuing justice, our constitutionally guaranteed first amendment rights to a redress of grievances against our former commanding officers have been repeatedly denied to us by the U.S. military and the continued inaction of our elected officials.

The Air Force, Department of Defense, and Congress have still done nothing about the accusations we made against the Academy officers who created false, misleading, and incomplete original crime reports and who deliberately disposed of crime scene evidence, and who also persecuted, libeled, slandered, and ruined our careers in the Air Force just for reporting these crimes. No government of the people, by the people, and for the people that truly values justice should allow alleged criminals to investigate themselves, much less grant blanket exonerations to themselves, while their victims and their witnesses are not allowed to testify or present evidence in court or officially before Congress.

The effective result of the last few years of activity has been the denial of justice to the victims and the prevention of the attackers and accused officers from ever being held legally responsible and

accountable. Despite this supposed attention given to this problem and the many millions of taxpayer dollars spent on military reports, studies, and training, the problem persists unabated, while the number of convictions and punishments of attackers and criminal officers at U.S. AFA remains at zero.

I ask how can you, our elected Members of Congress, send U.S. women Soldiers off to fight in Iraq and Afghanistan with the intent of giving citizens of those countries democratic rights and legal justice when, at the same time, those rights are being denied to the women of our own military. We urge you and the other Members of Congress to, at long last, take decisive action to bind the rising tide of injustice and the unchecked wave of rape and sexual assault that washes through our military and continues to flood our Nation's shore with the drowned bodies of our individual liberty.

We ask for the grant of public hearings so that the victims of rape, sexual assault, and reprisal in the military may be clearly heard so that the problem may be properly addressed. We ask for an independent congressional investigation into these matters and the military's response, and that appropriate steps be taken against those found culpable so that an example will be rendered to all Americans that these crimes will not be tolerated by our Nation.

And we ask for the restoration of our honor, reputation, educational and medical benefits, and the financial well-beings of the victims of these crimes so that they may attempt to begin their lives again. Nothing short of this will suffice.

I commend my fellow victims for their courage in coming forward and I urge other victims to do so, as well.

On behalf of all the victims and their families, I thank you so much for this opportunity, and if time permits I would like to go into my story. Would that be OK?

Mr. SHAYS. Time does permit. We would like to hear you tell your story.

Ms. DAVIS. OK.

Mr. SHAYS. We will turn the clock off. Just turn it off.

Ms. DAVIS. I was raped and assaulted repeatedly my freshman year by a superior cadet in my squadron. In earlier——

Mr. SHAYS. Excuse me, Ms. Davis?

Ms. DAVIS. Yes?

Ms. DAVIS. You have no rush, and you can speak slowly and we appreciate your testimony. We have turned the clock off.

Ms. DAVIS. Thank you very much. I greatly appreciate it.

Mr. SHAYS. OK.

Ms. DAVIS. I was raped and assaulted repeatedly my freshman year by a superior cadet in my squadron. In earlier sexual assault briefings during my basic cadet training, upperclass women cadets informed us that it was very likely that we would be raped or sexually assaulted during our time at the Academy, and they instructed us that, if we were attacked, to not report it to the authorities because it would effectively destroy our career.

Images of those women flashed through my mind and deterred me from immediately reporting my crimes to the commanding officers. I remembered my pride in getting accepted to the Academy,

and I dreamt of the day I would graduate and fly my jet in defense of my country.

I thought that was all I needed to survive the grueling physical military and academic tests and challenges I endured every day, but these dreams couldn't carry me through the pain I was suffering at the hands of my superior. I began to get sick frequently and developed inhibitions and phobias that made the work demand at the Academy unbearable.

Finally, after realizing that nothing could possibly hurt more than the pain I was enduring then, I broke down and went to the Office of Special Investigations with my story. The OSI commander sat engrossed as I sopped tears from my eyes reciting every wretched detail for the first time only months after the last incident. He began to weep with me, declaring, "Don't worry, Beth. This SOB is going to jail."

Upon leaving his office I felt I had done the right thing, after all, but it wasn't long before that feeling diminished and disbelief set in. About 6 months into the investigation I was called into OSI and the commander informed me that the legal office had shut my case down. Having been integrally involved in the information throughout those 6 months and seeing the many coinciding testimonies from the other cadets in my squadron, this seemed suspicious to me.

I went directly to the legal office to inquire why they had closed my case and was adamantly told that every case on the base crosses their desk, and, contrary to the statements of my OSI commander, they had never seen my case.

I immediately realized that something was going on and I started to worry that the warnings of the upperclass women in basic training were becoming a reality for me. After questioning the OSI commander again, he apologized for misleading me and told me that, in fact, my training group commander had shut my case down for "my own good," even though he didn't have the authority to do so.

Utterly discouraged, I marched into the training group commander's office and blatantly asked why. As he stumbled for words, he claimed that there was nothing more he could do for me and ordered me to see the base psychologist within the half hour. As I arrived at the psychologist's office, the doctor hung his phone up and declared, "That was your commander, and he says we need to diagnose you with something that gets you sent off base." Not fully understanding what was happening, I sat down as he scribbled on my medical records.

Immediately after leaving, I called a mentor officer of mine and informed him of what had happened and the diagnosis given. He frantically responded, "Beth, he not just only took your pilot qualification, he took your commissioning. Go back into his office and get all his information."

[Crying.] I apologize.

Mr. SHAYS. Ms. Davis, you do not need to apologize. We just are very grateful you are here. Your statement is long overdue. I apologize to you that you have not had this opportunity sooner.

Ms. DAVIS. Thank you. I appreciate it.

He told me, "Go back into his office and get all his information." As I walked back in, the psychologist crumbled before me, claiming

that he was under a direct order and pleading with me not to turn him in.

In the meantime, my training group commander had already scheduled a medical review board to assess the psychologist's diagnosis of me and determine whether or not I would be disenrolled as a result. He was also in the process of officially serving me with three of the Academy's most detrimental punishments, each of which was grounds for disenrollment.

To my shock and dismay, the demerits were for sex in the dorms, because my rapes took place in the dormitories; fraternization, because my rapist was an upperclassman; and alcohol, because I had included in my written statement that he was buying alcohol for my classmates, my under-age classmates. As my world and everything I believed in crumbled before me, I realized I was being castigated and thrown out of the Academy for reporting the heinous crimes that had been committed against me.

As an additional strike against me, I later learned that certain undisclosed codes on my discharge papers effectively prohibited me from ever holding another military job again, and also coded for me accepting my discharge in lieu of receiving those violations that were grounds for my disenrollment.

I returned home and began to hear the stories of many other women cadets that had endured the same mistreatment and retaliation by the Academy after reporting their crimes, one victim raped by a class president at the Academy; another victim raped by a senior cadet and then called a liar by Academy officials after reporting, with her family including her mother, an Air Force colonel at the Academy being affirmatively disparaged by the Academy; another victim being verbally berated and humiliated by the Academy commander, General Taco Gilbert, with his now-infamous $100 billion comments; and another victim raped by a serial rapist whose crimes, including the forcible rape of a young civilian in a wheelchair, were known to the Academy officials, who let him roam free at the Academy.

Other shocking stories were revealed of past gang rapes and violence assaults of women cadets by organized groups of male cadets. Although the details of these stories were a little bit different, they all had the same common thread that after reporting these crimes, the women victims were investigated and persecuted, with their reputation and careers destroyed, while the male attackers went free, oftentimes to go on and continue to rape and assault other women cadets.

Shortly after my dismissal from the Academy, I sent out an e-mail to fellow cadets detailing what they should do in the case of rape and which was eventually brought to the attention of the Secretary of the Air Force. Around the same time, another cadet sent an e-mail to the media and Members of Congress, which helped bring this terrible problem into the light of day and before the eyes of an angry American public and Congress, which later mandated an independent panel be established to assess the problem.

Sir, I would like to stop there. The rest is in my statement. I believe I have covered every main point.

[The prepared statement of Ms. Davis follows:]

Testimony of Elizabeth L. Davis, Former USAF Academy Cadet – Class of 2003, before the House of Representatives Committee on Government Reform, Subcommittee on National Security, Emerging Threats, and International Relations, June 27, 2006, at 2:00 p.m., Room 2154, Rayburn House Office Building, Washington, D.C.

Mr. Chairman and members of the subcommittee, I appreciate the opportunity to appear before you today on behalf of the thousands of victims of rape, sexual assault and violence at the Academies and in the military. I cannot imagine a more courageous group of individuals and it is an honor to be chosen to aid in making changes necessary to address the issue of sexual assault and violence against women in our prestigious military institutions and to help arrest the grave constitutional crisis that has arisen within its ranks.

THERE IS A CRITICAL AND IMMEDIATE NEED FOR CONGRESSIONAL HEARINGS FOR THE VICTIMS.

Before beginning my statement, however, I would like to state that, although I am grateful for this opportunity, the allocation of only five minutes to the victims is a woefully inadequate amount of time for the victims to give the subcommittee members an idea of the magnitude of the crimes that have been committed against us. These crimes were first committed by our attackers and second by our own officers and a military system that turned against us, rather than protected us, thus destroying our lives, our careers and our families, while our attackers were allowed to go on with their careers, free from punishment or responsibility for their reprehensible crimes.

Over the past few years the military has had many opportunities to appear before Congress and advocated its position, largely unchallenged, as it will again today, while the victims have not and while the crime spree against women in our military continues, seemingly unabated.

As the distinguished, former Representative, Tillie Fowler, Chairwoman of the Fowler Commission observed in her Commission's report, " neither a full appreciation of the magnitude and seriousness of the problem, nor complete understanding of the nature or extent of the impact on these young women is possible without hearing from these women directly and personally." Accordingly, we urge this subcommittee to hold additional hearings so that the victims will finally be able to be heard and to shine the light of truth on this vast, dark stain on our military and our nation. We ask that Congress initiate its own, non-military, independent investigation of the problem of rape and sexual assault at the Air Force Academy, the other Academies and in the military at large, including an investigation into the culpability of the officers and officials in charge. Nothing short of this will suffice.

THE REPORTING OF CRIMES AT USAFA AND THE SYSTEMATIC REPRISALS BY THE COMMANDING OFFICERS AGAINST THE VICTIMS.

My name is Beth Davis and I am a former cadet of the Class of 2003 of the United States Air Force Academy.

As has now become well-known, I was raped and assaulted repeatedly my freshman year by a superior cadet in my squadron. In a situation where I was blackmailed, degraded, and threatened daily, I found myself utterly distraught. In earlier Sexual Assault briefings during my Basic Cadet Training, upper-class women cadets informed us that it was very likely that we would be raped or sexually assaulted during our time at the Academy and they instructed us that, if we were attacked, to not report it to authorities because it would effectively destroy our career. Images of those women flashed through my mind and deterred me from immediately reporting these crimes to my commanding officers. I remembered my pride in getting accepted to the Academy and I dreamt of the day I would graduate and fly my jet in defense of my country. I thought that was all I needed to survive the grueling physical, military, and academic tests and challenges I endured everyday. But these dreams couldn't carry me through the pain I was suffering at the hands of my superior. I began to get sick frequently and developed inhibitions and phobias that made the work demand at the Academy unbearable. Finally, after realizing that nothing could possibly hurt more than the pain I was enduring then, I broke down and went to the Office of Special Investigations ("OSI") with my story.

The OSI commander sat engrossed as I sopped tears from eyes reciting every wretched detail for the first time, months after the last incident. He began to weep with me, declaring, "Don't worry Beth, this SOB is going to jail!" Upon leaving his office, I felt I had done the right thing after all, but it wasn't long before that feeling diminished and disbelief set in. About six months into the investigation, I was called into OSI and the Commander informed me that the legal office had shut my case down. Having been integrally involved in the investigation throughout those six months and seeing the many coinciding testimonies from other cadets in my squadron, this seemed suspicious. I went directly to the legal office to inquire why they had closed my case and was adamantly told, that every case on the base crosses their desk, and, contrary to the statements of the OSI Commander, they had never even seen my case.

I immediately realized something nefarious was going on and I started to worry that the warnings of the upper-class women in Basic Training were becoming a reality for me. After questioning the OSI Commander again, he apologized for misleading me and told me that, in fact, the Training Group Commander had shut may case down "for my own good," even though he didn't have the authority to do so. Utterly discouraged, I marched into the Training Group Commander's office and blatantly asked why. As he stumbled for words, he claimed there was nothing he could do for me and ordered me to see the base psychologist within the half hour. As I arrived at the psychologist's office, the doctor hung up his phone and declared, "That was your Commander and he's says we need to diagnose you with something that gets you sent off base!" Not fully understanding what was happening, I sat down as he scribbled on my medical records. Immediately after leaving, I called a mentor officer of mine and informed him of what had happened and the diagnosis given. He franticly responded, "Beth, he not only just took your pilot qualification, he took your commissioning as well! Go back into his office and get all of

his information!" As I walked back in, the psychologist crumbled before me, claiming that he was under a direct order and pleading with me to not turn him in.

In the meantime, my Training Group Commander had already scheduled a Medical Review Board to assess the psychologist's diagnosis of me and determine whether or not I should be disenrolled as a result. He was also in the process of officially serving me with three of the Academy's most detrimental punishments, with each of these Class D demerits being grounds for disenrollment from the Academy. To my shock and dismay, the demerits were for "Sex in the Dorms" because my rapes took place in the dormitory, "Fraternization" because my rapist was an upperclassmen, and "Alcohol" because I had included in my written statement to OSI that my perpetrator had been buying alcohol for my underage peers. As my world and everything I believed in crumbled before me, I realized I was being castigated and thrown out of the Academy for reporting the heinous crimes that had been committed against me.

As an additional strike against me, I later learned that certain undisclosed codes were entered on my discharge papers, thus effectively prohibiting me from holding another military or government job in the future.

ALL-TOO COMMON STORIES OF OTHER USAFA VICTIMS AND A CONTINUING PATTERN OF RETALIATION AGAINST THE VICTIMS.

I returned home and began to hear the stories of many other women cadets that had endured the similar mistreatment and retaliation by the Academy after reporting their crimes: One victim raped by the class president of the Academy; another victim, raped by a senior cadet and then called a liar by Academy officials after reporting, with her family (including her mother, an Air Force Colonel at the Academy) being affirmatively disparaged by Academy officials to members of the media after her story became public; another victim being verbally berated and humiliated by the Academy Commander, General "Taco" Gilbert, with his now infamous "$100 dollar bill" comments; and with another victim raped by a serial rapist, whose crimes, including the forcible rape of a young civilian in a wheel chair, were known to the Academy officials, who let him roam free at the Academy. Other shocking stories were revealed of past gang rapes and violent assaults of women cadets by organized groups of male cadets. Although the details of these and other stories were different, they all had the same common thread; after reporting these crimes, the women victims were investigated and persecuted, with their reputation and careers destroyed, while the male attackers went free, oftentimes to go on and continue to rape and assault other women cadets.

THE MILITARY CAN NO LONGER BE TRUSTED TO INVESTIGATE ITSELF.

Shortly after my dismissal from the Academy, I sent an email out to fellow cadets detailing what they should do in the case of rape and which was eventually brought to the attention of the Secretary of the Air Force. Around the same time, another cadet sent an email to the media and members of Congress, which helped bring this terrible problem into the light of day and before the eyes of an angry American public and Congress, which later mandated that an independent panel be established to assess the problem.

As the media took hold, a widespread culture of misogyny and abuse was revealed, despite the Air Force General Counsel, Mary Walker's disingenuous Working Group Report of June, 2003 which unbelievably stated that there were "no systematic problems with sexual assault at the Academy."

The independent Fowler Commission found something much different. In its Report of The Panel to Review Sexual Misconduct Allegations at the U.S. Air Force Academy of September 2003, the Commission recognized that a grave scandal had befallen the Academy. Worse yet, it revealed that the Air Force's Working Group Report was rife with conflicts of interest and failed to disclose evidence that Air Force leadership had known about the problem for years but had not taken adequate steps to address it. The Fowler Commission expressed great concern over the paper trail of evidence which incriminated officers and whitewashed the injustices at the Academy. The Fowler Commission identified culpable officers and recommended action be taken to hold them accountable.

It was evident that the military could not be entrusted with the task of investigating itself.

I was proud to have provided testimony to the Fowler Commission, along with several other of my fellow cadets, all of whom were victims of rape and sexual assault at the Academy and all of whom were persecuted by Academy officers after they courageously came forward and reported the crimes that had been committed against them.

We then brought our cause before various members of the Senate Armed Services Committee and requested that hearings for the victims be held. As a result of our efforts, Senators McCain, Collins and Clinton officially presented a written request for hearings on our behalf to Senator Warner, who granted the request on the eve of the airing of our appearance on the Oprah Winfrey show in December, 2003, and after the majority of the members of the Armed Services Committee had lent their support to our request, as well. We are unfortunately still awaiting Senator Warner's delivery of his promise and we again urge the members of this subcommittee to continue in their focus on this issue and to hold additional hearings so that the victims can bring their claims before Congress, rather than before the deaf ears of military officers and investigators.

Over a year after the Fowler Commission's recommendation that certain, specific officers be investigated and disciplined for their role in the controversy, the Inspector General of the Department of Defense ("DOD") produced the next military-prepared report on the situation at USAFA in the Evaluation of Sexual Assault, Reprisal, and Related Leadership Challenges at the United States Air Force Academy of December 3, 2004. Rather than following the directives of the Fowler Commission, this report shockingly exonerated the very officers that the Fowler Commission found at fault. Representative Tillie Fowler's direct and concise media comment on the DOD report, given shortly before her death, was that the DOD's report was "shameful."

It became even more apparent to us that the military could not be trusted to either investigate itself or assess or apportion responsibility for its officers' actions and inactions.

Around the same time, it was revealed in the media that the Air Force's top military lawyer and Judge Advocate General had resigned amidst scandalous allegations that he had committed sexual misconduct with 13 female subordinates over the past ten years. According to the Air Force's own Inspector General, Steven Polk, rather than providing guidance to the 1,600 lawyers under his command for the prevention and prosecution of sexual harassment, the Judge Advocate General "exhibited stunning hypocrisy by his own sexual harassment of JAG Corps subordinates." Although this may have come as a shock to the public, it was no shock to the victims at the Academy. Nor was the subsequent resignation of Air Force Secretary, James Roche, in the midst of allegations of scandal over the Air Force Academy sexual assault matter and the proposed leasing of aircraft by Boeing.

It became clear that a deep problem of character, attitude and example existed throughout the highest ranks of Air Force leadership.

Yet another shocking example of the Air Force's blatant disregard for Congressional mandates and the victims was only weeks away. In a memo delivered to the Secretary of Defense on Good Friday, 2005 (the day Pontius Pilate washed his hands of Jesus and during the Congressional recess), the new acting Secretary of the Air Force, Peter Teets, officially exonerated all of the Air Force officers implicated in the sexual assault scandal at USAFA by the Fowler Commission and the Inspector General's office. Teets stated that "... the highly unusual step of imposing disciplinary action... is not warranted" and shortly thereafter resigned his position as Secretary of the Air Force.

It became clear to us that the military establishment was now free to act as an autonomous body, and would protect its officers and officials at the expense of the victims, unaccountable to and in blatant disregard of Congress and of the public, unchecked by the laws of the United States or the Constitution.

THE JUNE, 2005 TASK FORCE REPORT AND ADDITIONAL RECCOMMENDATIONS FOR CHANGE.

We commend the subcommittee for taking steps that may help us understand a military culture that allows this problem to continue and we commend the Defense Task Force on Sexual Harassment & Violence at the Military Service Academies for their efforts. We hope that continued efforts will eventually produce a healthier training environment for our nation's best and brightest and future military officers. The Task Force's recommendations as outlined in its June 2005 Report, however, are inadequate. First, the recommendations are devoid of any leadership accountability. The Air Force, Department of Defense, and Congress have still done nothing about the accusations we made against the officers who retaliated against us, simply for reporting the crimes that had been committed by our attackers.

By the Department of Defense's own statistics, the number of women cadets who have been raped and/or sexually assaulted at the U.S. Air Force Academy likely exceeds 1,000. To this day, the number of male USAFA cadets who have been court martialed, convicted and punished for raping a fellow cadet, however, still stands at zero. In one of the rare recent cases to be pursued, the military court placed the victim in the position of either waiving her privilege

of confidentiality over her private medical and therapeutic records, or loosing her ability to prosecute her attacker. This victim knew that turning her privileged records over to her rapist and his attorney to use against her would create a chilling effect on other victims' willingness to seek medical and therapeutic treatment after an attack. In upholding this important privilege against the mandate of the military court, she was forced to place her attacker's court martial in an indefinite state of suspension. The military court further threatened to have the therapist jailed for her continued refusal to turn over these privileged records.

Properly, the Task Force's Recommendation 9A suggests that "Congress should create a statutory privilege protecting communications made by victims of sexual assault to health care providers and victims advocates." We urge that immediate steps are taken to create this statutory privilege.

Additional necessary recommendations, not included in the June 2005 Task Force Report include the following:

1. The allowance and subsidy of civilian legal counsel for victims of rape and sexual assault, so the victims rights are clearly explained and understood at the critical time immediately following an assault and to provide for nonmilitary oversight throughout the process of reporting and prosecuting these crimes.

2. A Congressionally mandated statutory exception to the Feres Doctrine, so that military victims who report crimes of sexual assaults within the military and/or who are later persecuted by military officers or officials for doing so can seek redress against the military, the attackers and/or the officers in question in civilian courts.

3. The granting of Congressional hearings for the victims of rape and sexual assault at the Air Force Academy, the other Academies, and the military at large. The light of truth must shine on the terrible crimes committed against us by our attackers and our commanding officers and military officials. Only after these crimes are revealed to Congress and to the American public can the true nature of the magnitude of this problem be assessed and effective solutions be accordingly designed and implemented.

4. The institution of an independent, nonmilitary Congressional investigation into the problems of rape, sexual assault and reprisal at the Air Force Academy, the other Academies and the military at large, including an investigation into the actions and/or inactions of the officers and officials in charge, including any and all committees, reports and other studies relating to the problem over at least the past ten years.

5. The vigorous prosecution and punishment of those individuals found culpable in such Congressional investigations.

6. The provision of appropriate redress and compensation for and to the victims for their loss of medical and educational benefits, past, present and future military income and from the loss of the benefit of their military careers and the incurrence of any legal fees in connection with their assaults or related reprisals.

7. The provision of continued, lifetime medical and educational benefits so that the victims of these crimes can seek proper treatment and therapy and have the option to continue their education.

8. The provision of an official apology to the victims of these crimes and the official restoration of their honor before Congress, the military and the American people.

CONCLUSION: WE NOW LOOK TO CONGRESS TO PRESERVE AND PROTECT OUR CONSTITUTIONAL RIGHTS.

In over three very long years of pursuing justice, our Constitutionally guaranteed First Amendment rights to a redress of grievances against our former commanding officers have been repeatedly denied to us by the U.S. military and the continued inaction of our elected officials. We did not give up our Constitutional rights when we joined the military. We have also not lost our Constitutional rights since resigning from the military. The Air Force, Department of Defense and Congress have still done nothing about the accusations we made against the Academy officers who created false, misleading and incomplete original crime reports (if they even bothered to file one in the first place) and who deliberately disposed of crime scene evidence and who also persecuted, libeled, slandered and ruined our careers in the Air Force for reporting these crimes.

No government of the people, by the people and for the people, that truly values justice should continue to allow alleged criminals to investigate themselves, much less grant blanket exonerations to themselves while their victims and their witnesses are not allowed to testify or present evidence in court or officially before Congress. The effective result of the last few years of activity has been the denial of justice to the victims and the prevention of the attackers and accused officers from ever being held legally responsible and accountable.

This negligence in leadership accountability has cemented a dysfunctional paradigm of leadership values and roles in the young minds of the military's budding officers. Cadets believe that if their leadership isn't held to the standards of Academy life, they shouldn't be either… and the statistics prove that to be the case. The perception of cadets is that they are at war with the leadership, simply because the leadership attempts to enforce rules to which they themselves don't adhere. It has bred a cynicism amongst the cadet population that has resulted in a "Lord of the Flies" environment where male cadets wantonly rape, assault and harass female and subordinate cadets with impunity, resulting in the scandalous misconduct that has brought us here today.

It is an outrage that we have to remind those who still deny us justice that we all volunteered to serve our country. We are not anti-military. We are anti-crime. We all reported multiple crimes committed against us, exactly as all law-abiding citizens of any free nation should. This was in spite of repeated and ongoing personal threats of reprisals and humiliations directed at us by our own peers and commanding officers. It was done to all of us. In the pursuit of justice and to bring Congressional and public attention to these crimes, in order that future women may someday safely serve their country at the Academies and in our military, we and our

families have exhausted our savings and our assets and sacrificed years out of our education, careers and lives. So far not one penny of compensation, much less an apology, has ever been offered to any of us.

Despite the supposed attention given to this problem and the many millions of taxpayer dollars spent on military-prepared reports, studies and training, the problem persists unabated, while the number of convictions and punishments of attackers and criminal officers at USAFA remains at zero.

I ask, how can you, our elected members of Congress, send U.S. women soldiers off to fight in Iraq and Afghanistan with the intent of giving citizens of those countries democratic rights and legal justice when at the same time those same rights are being denied to the women of our own military?

We urge you, and the other members of Congress to at long last take decisive action to bind the rising tide of injustice and the unchecked wave of rape and sexual assault that washes through our military and continues to flood our nation's shore with the drowned bodies of our individual liberty. We ask for the grant of public hearings so that the victims of rape, sexual assault and reprisal in the military may be clearly heard so that the problem may be properly addressed; we ask for an independent Congressional investigation into these matters and the military's response and that appropriate steps be taken against those found culpable so that an example will be rendered to all Americans that these crimes will not be tolerated by our nation; and we ask for the restoration of the honor, reputation, educational and medical benefits and the financial well beings of the victims of these crimes so that they may attempt to begin their lives again.

I commend my fellow victims for their courage in coming forward and I urge other victims to do so, as well. On behalf of all of the victims and their families I thank you for this opportunity to present my testimony.

Mr. SHAYS. I was just talking to the ranking member about the need to make sure that you are not the only one who has this opportunity.

Ms. DAVIS. Thank you so much.

Mr. SHAYS. I am going to ask Mrs. Maloney if she wants to start the questions.

Mrs. MALONEY. My first question is why are we forcing our women in the Academies and the military to report in the chain of command when the chain of command repeatedly makes them the victim, ruins their careers, and then they turn around and get promotions. So my first question is why don't we have the victims report, as every other person in our society does, to the closest police department? Now, granted, in Iraq and Afghanistan you cannot do that, but in the academies you can get in a car, you could go to the police department, you could have the DNA taken, you could have your case listened to.

What is so disturbing is this is not the first report. Several years ago Vanity Fair ran a large article. There was Tailhook. There were all these various incidents where the great American military says we are going to end this, and it never seems to end.

So my first question is why don't we change this. I can see that if we are in a battlefield the chain of command is absolutely essential, but why in the world is the chain of command essential when a victim is being raped, then told to go to a psychologist and have them say you are insane so that they can have you thrown out of the military. It is absolutely beyond belief and unfair, obnoxious, unfair, and should be changed. So why, at the academies, at the very least, and bases that are on American soil, have the cases reported to the police department? I'd ask the panel to respond.

Ms. DAVIS. I would like to say that freshmen at the military academies, their lives are restricted in every way, shape, and form. They aren't privy to phone use, to cars. They really don't have those resources available. They aren't even allowed to walk in certain areas of the academies. Most of the time they have to be escorted if they are out on their own.

Mrs. MALONEY. Well, possibly we could set up a program where a police station could send a car to pick up someone so that they could report their crime. Would that have been helpful?

Ms. DAVIS. That may have been helpful. I really feel like my main deterrent was that I knew I was going to be ostracized. The Academy is a very small school and, in turn, a very tight rumor mill, and your reputation at the Academy follows you throughout your career. The feeling there is that women aren't wanted, and everyone is looking for the first reason to get you out. You will sacrifice anything, including your mental health, your well-being, just to survive the Academy.

Ms. RUMBURG. Congresswoman Maloney, I think we have to also recognize in many cases the women that are sexually assaulted do not want to report to the police, and so now they do have two options, restricted and unrestricted reporting. I think the main thing is that they know what their options are. No. 1, Beth should have been believed.

Mrs. MALONEY. But if you have unrestricted reporting—in other words, it is confidential, no one knows what happened—but what happens is the rapist goes free. The rapist goes free.

Ms. RUMBURG. I think that is something we have to deal with, but I think——

Mrs. MALONEY. The rapist goes free, and the culture that says, if you report your career is finished, is basically what you are saying, right, Beth?

Ms. DAVIS. Yes.

Mrs. MALONEY. Then——

Ms. RUMBURG. I still believe the victim should have the option to determine whether or not they go forward, and I think what we are going to find, when those young women have the option and get the emotional support, the medical care that they need in the beginning, we are hopeful that they will go forward with an unrestricted report so that the offender can be held accountable. But I think the first thing we need to make sure is that those resources are available for the victim, whether she chooses to have a restricted report or an unrestricted report. I think it is important for them to know that they have that option and that they will be believed. Once they have the response and the care in place, then I think many of them will go forward.

Mrs. MALONEY. Beth, what would that have meant for your case?

Ms. DAVIS. Well, I am just thinking to myself, one of my recommendations is that rape victims at the academies are provided with civilian legal counsel. It is a very big deterrent that you have to turn to anybody within the Academy. I am not sure if I can convey the importance of that. You don't want to turn to people that are within the Academy because you feel like they are all against you.

I include in my statement there is a feeling, a widespread feeling of a cynicism there because there is a perceived war between the cadets and the leadership because the leadership doesn't adhere to the academy's standards, yet they are trying to enforce the academy standards on the cadets, so the cadets, in turn, resent them for it.

Mrs. MALONEY. Ms. Hansen wanted to make a comment. My time is up, but I——

Ms. HANSEN. Congresswoman Maloney, it actually goes beyond the restricted and non-restricted reporting policies. It gets into the collaborative agreements that we have talked about, the memorandum of understanding. There is currently, with the Air Force Academy, the El Paso County Sheriff's office and District Attorney's office has a memorandum of understanding where any incidents of domestic violence, sexual assault, sexual misconduct, etc., will be handled by Air Force officials. Regrettably, that is counter to the jurisdiction on the Air Force Academy, which is called concurrent jurisdiction. Essentially, the local police department could come onto the Academy with lights and sirens blaring and could respond to a sexual assault that occurred on academy grounds. At this time that memorandum of understanding only permits civilian authorities to have control over criminal cases that occur involving cadets off post. That is one of the serious barriers, let us say, for them

reporting to civilian authorities, because oftentimes then military authorities assume jurisdiction in those cases.

Mrs. MALONEY. You can always change the law.

Ms. HANSEN. Yes.

Mrs. MALONEY. You can always change the law, and if women are raped and the hierarchy and the chain of command does nothing about it except send them to a psychologist and have them thrown out, then change the system.

Ms. HANSEN. Exactly, Congresswoman Maloney.

Mrs. MALONEY. We have a system that works pretty well now in the civilian community.

Ms. HANSEN. Yes.

Mrs. MALONEY. You can go to the police, you can go to the District Attorney, you can go to victim's assistance. If the system is in place, why don't we access that.

Ms. HANSEN. Yes. I concur with you. I think it also gets to some constitutional issues, as well, for young women like Beth and others who have been victimized by these type of crimes and their rights of equal protection under our Constitution and its amendments.

Mrs. MALONEY. My time is up.

Mr. SHAYS. Mr. Price, we'd like to go to you next.

Mr. PRICE. Thank you, Mr. Chairman. Again, my appreciation for being able to join the subcommittee today.

I think I will focus my questions on Ms. Davis, who is a constituent and who obviously has touched us all here with her courage in coming forward with the story she has told. There are so many questions that the testimony raises.

I suppose at the very beginning you stressed the kind of informal orientation you received from senior female cadets, and you imply that, whatever you were told about your legal rights or anything else, that informal advice was what you remembered and what, unfortunately, is what turned out to be accurate.

What were you told officially about sexual assault and harassment and the policies of the Academy and your legal rights and that sort of thing? Were you told anything at all?

Ms. DAVIS. Yes. There actually were briefings on it, and they would tell us that the resources were there, that there was a victim advocate on base, and we could go to the Cadet Counseling Center, we could also turn to OSI, but they would also feature upperclass women cadets. These were briefings that they had actually separated us women from the men going through basic training, so it was only the females in the room, and upperclass female cadets would stand up and give their testimony of what they had been through or what they had known to happen, and they would say that, you know, this will happen. Your career will be ruined if you decide to report. I will never forget it.

And then, when you enter a squadron in the beginning of your freshman year, we had the informal addresses of the upperclassmen. They would come to our rooms and they would say, "If anything ever happens to you, you can come tell us, but don't tell the authorities." They would say, "You'd regret it. It will lead to the end of your career." Believe it or not, being raped my freshman year, my sophomore year, when my sophomore year came I actually

went to the female freshman rooms and did the exact same thing because I could tell what was going on with my case and I didn't want it to happen to them.

Dreams are literally crushed by reported. You work so hard to get into the military academy, and I just didn't want them to suffer what I was going through.

Mr. PRICE. Well, what you say about the culture and the ostracism and the attitudes of fellow cadets is terrible, if maybe understandable, given its apparent pervasiveness, but it is even more striking to me, though, about your story is not just the acquiescence in this but the promotion of it in many ways by the leadership, by the psychiatrist or the psychologist and the various leaders who were involved in your case where, far from an attempt to counter this or to somehow come to your defense or to bolster your efforts, you were essentially being given the same message by those officials that you were given by those female cadets.

Ms. DAVIS. Yes.

Mr. PRICE. And you stress throughout the importance of leadership. What would you like to, apart from some changes in policy and the kinds of things Mrs. Maloney has been addressing in terms of the kind of recourse you might have, but in terms of leadership attitudes and practices what needs to happen?

Ms. DAVIS. I really do believe it starts with leadership accountability. I believe that, while it was conveyed to us that officers see an assignment to a military institution as a respite in their career, and when I was at the Academy they wouldn't show up until 11 a.m., noon, for their work day. Our officer, in particular, was gone by 4 p.m. every day and would actually take off weeks at a time to go hunting in Canada. We all knew about it. He was never there to oversee the squadron. The squadron was running amuck 24 hours a day and it was because of his absence.

So I just can't stress leadership accountability enough. There is an example being made at the academies that is not a healthy one for the cadets, and the cadets end up leaving the Academy with a hate for the institution, for the military, really. They are constantly trying to find the loopholes in the rules.

The cynicism is just pervasive there. Everyone does see it as a war, and especially when you reach your senior year, if you are lucky enough, the phrase is Operation Graduation. That doesn't mean work hard at your grades. That means, you know, cover up anything possible because you don't want to be found out. You are at war with the leadership in the absolute highest sense of that phrase.

Mr. PRICE. Finally, you say something about people's dreams, your own dreams, and the way this situation has brought those to naught in too many cases. There have been some steps taken. The have been commissions, there have been reports, there have been some efforts at improvement. Let me just ask you, bottom line, with the situation as it is now as compared to what you went through, would you now personally feel comfortable recommending to a young woman that she pursue education at a service academy?

Ms. DAVIS. Absolutely not. We are still hearing cases of women coming out of the academies absolutely distraught and having been through the exact same thing that I went through. I specifically

know of one that left just recently, having contracted herpes from her rapist, and there is actually a paper trail between the doctors denying her treatment, the herpes actually in rare form became meningitis, and the meningitis became encephalitis because they wouldn't treat her, and she now has brain damage and vomits daily. She has damage to a nerve. She deals with level eight migraines and has been through morphine addictions because they just pump her full of drugs to deal with it. It is devastating. These cases come out of the military academies all the time, but the media doesn't seem to get a hold of them. I am sure it is because the coverup is just too fine tuned. It is really a shame. It is such an injustice.

Mr. PRICE. Mr. Chairman, again thank you. I would hope that in the course of this inquiry we could get such information as is available from the academies. I know there are reports about the incidents. The Defense Department apparently has given a mixed accounting of that, saying that reporting a 40 percent spike in reported incidents actually shows improvement because incidents are now being reported. It also certainly shows there are lots of incidents. But, to the extent there are records available, not just about the incidents but also about the disposal of cases, disciplinary actions taken, that sort of base of information coming right up to the present I think would be very useful for all of us.

But in the meantime, Ms. Davis, thank you and thanks to your co-witnesses, as well, for some very enlightening testimony.

Ms. DAVIS. Thank you.

Mr. SHAYS. Thank you. Thank you, Mr. Price.

Mr. Marchant.

Mr. MARCHANT. Thank you.

For each of the panelists, have any of you been asked to testify before the Armed Services Committee or any of their subcommittees before?

Ms. HANSEN. Yes, Congressman Marchant, I have testified before the Senate Armed Services Committee and presented written testimony to the House Armed Services Military Personnel Subcommittee.

Mr. MARCHANT. And how long ago was that?

Ms. HANSEN. February 2004 relative to the public information concerning sexual assaults in CENTCOM AOR, Military Personnel Subcommittee, Senate Armed Services, and in June 2004, House Armed Services Military Personnel Subcommittee relative to a report from the Department of Defense Task Force on Care of Sexual Assault Victims.

Mr. MARCHANT. How about before the House?

Ms. HANSEN. Only that one occurrence, and that was actually a written statement.

Mr. MARCHANT. Ms. Rumburg.

Ms. RUMBURG. The task force had the opportunity to submit certainly our report to the Secretary and the staff of the House and Senate Armed Services Committee and to each of the secretaries of the Armed Services in the fall.

Mr. MARCHANT. But as far as a formal House hearing——

Ms. RUMBURG. No, sir.

Mr. MARCHANT [continuing]. There has never been one conducted?

Ms. RUMBURG. No, sir.

Mr. MARCHANT. Ms. Davis.

Ms. DAVIS. Sir, in the winter of 2003 a few victims and I actually came here to Capitol Hill and met with 17 of the Senate Armed Services Committee members, including Warner and Levin, and Senator Warner promised us hearings, on top of holding impromptu hearings that day for the cause, and we have yet to see those hearings. We are hoping that eventually we will have those hearings.

Mr. MARCHANT. But as far as the House goes, the House Armed Services Committee here, any of those committees?

Ms. DAVIS. Congressman, the only public hearing that they've held to date was on June 3, 2004, relative to sexual assault within the Armed Forces.

Mr. MARCHANT. Ms. Davis, were you ever at any time during the process offered any kind of independent counsel?

Ms. DAVIS. No.

Mr. MARCHANT. I know it was a very traumatic period for you, but were you ever counseled that you could have a lawyer if you needed a lawyer?

Ms. DAVIS. No. And I really was too young to understand my rights at that time. I thought I was turning to the authorities and that was the best thing I could do.

Mr. MARCHANT. Would you feel like, after you have been through all this, would you feel like there is such a thing as independent counsel in the service?

Ms. DAVIS. In the service?

Mr. MARCHANT. In the services. I mean, that you could receive independent counsel from someone that was connected to the Academy?

Ms. DAVIS. I just wouldn't have trusted them. I would much rather, as a recommendation for the effort, I would much rather say a civilian, independent attorney should be appointed.

Mr. MARCHANT. Do you think that the environment in itself, the senior cadets, the senior male cadets have to be aware that the female cadets are being told not to report and that it will ruin their career? Does this become common knowledge among the senior cadets and the male cadets that this is something that, maybe even in outside society, you couldn't get away with, but in this society that you are living in you might be able to get away with it because the female has much more to lose? And I suppose that there are male-to-male contact rapes.

Ms. DAVIS. Yes. Absolutely.

Mr. MARCHANT. We have not heard about that.

Ms. DAVIS. Absolutely. Rape is an issue of power, not of sex. The male cadets I am sure are aware of the briefings. It is just too tight of a rumor mill. There are only 4,000 cadets there, and you practically know everyone by name. I'd have to imagine they do. I would like to say, though, that I believe that the situation of rape may be worse in the military because of the power granted to certain individuals over others, and especially in the military academies where you have literally kids training kids. That just can't

be good. Like I said, the officials show up late to work and they leave early.

Mr. MARCHANT. Were you ever aware of faculty or superior officers other than the cadets involved in this kind of activity?

Ms. DAVIS. Yes. Absolutely. It happened a couple of times while I was there, and it was brought to our eyes. I don't ever remember it hitting the media, but it was absolutely disgusting. I don't believe it is as high, you know.

Mr. MARCHANT. Any higher than any institution of higher education?

Ms. DAVIS. Maybe not. The cases I remember were actually civilian professors on the cadets.

Mr. MARCHANT. OK. Well, thank you very much for your testimony today.

Ms. DAVIS. Absolutely. Thank you.

Mr. SHAYS. Let me start out by asking Ms. Hansen and Ms. Rumburg how you reacted to Ms. Davis' testimony, and, Ms. Rumburg, given her testimony, do you feel that this report adequately describes the problem? Do you accept everything that Ms. Davis says? And if you do, tell me why I should feel that this report rises to the level of concern that Ms. Davis described.

Ms. RUMBURG. I think we heard many stories. We actually heard Ms. Davis when we were compiling our report and we had many opportunities to talk to the victims and survivors of sexual assault, and that actually informed the recommendations that we made.

Mr. SHAYS. Is her statement any different than you recall it being when she came before your committee?

Ms. RUMBURG. No, sir. That has been consistent with what we heard. Absolutely. And that reflects our recommendations.

Mr. SHAYS. This would be a typical statement before your committee?

Ms. RUMBURG. It was very similar to some of the things that we heard. We heard, yes, that the cadets and midshipmen didn't want to report because they knew they would be ostracized. There was a culture where there was an understanding that their career may be hurt if they came forward with the sexual assaults. That is why I said the counseling component is so important there.

Mr. SHAYS. Tell me where in this report would most capture the statement that Ms. Davis had. You can look at it. I will ask Ms. Hansen to respond to your reaction to Ms. Davis' testimony.

Ms. HANSEN. Regrettably, Beth's testimony mirrors many of the experiences of our clients, both victims and survivors, whether they are in the military academies or whether they are in active duty services or they might be veterans who were sexually assaulted while on active duty any number of years ago. Predominantly the revictimization we see quite frequently, and we also see issues with violation of their rights as a victim, abuse of power type of sexual assaults, in particular with upperclassmen or those who are superior in rank.

We also notice a significant amount of lack of justice for those who have been victimized. Predominantly court martials are about 2 to 3 percent at this point in time, and the predominant response is an administrative response, non-judicial punishment or an article 15 or resignation in lieu of court martial, forfeiture of pay and

allowances. So, regrettably, Beth's testimony mirrors that of far too many who have been victimized by sexual violence within the armed forces.

Mr. SHAYS. Before I go any further, Ms. Rumburg, Ms. Davis, did you have an opportunity to look at this report?

Ms. DAVIS. I did.

Mr. SHAYS. Do you think this captures the problem? Do you think it captures what you were trying to convey to the task force?

Ms. DAVIS. I don't. There are things in it that I definitely agree with. I think they were right on——

Mr. SHAYS. You said you don't but there are things you agree on?

Ms. DAVIS. Yes.

Mr. SHAYS. OK.

Ms. DAVIS. I would like to state that there are things that I agree with, specifically the confidentiality. It has taken us a long time to get to the point where confidentiality can be granted. We actually put in our statement that recommendation 9A we do agree with. It is Congress should create a statutory privilege—this is regarding the confidentiality—protecting communications made by victims of sexual assault to health care providers and victims' advocates. That is huge, and I think that will——

Mr. SHAYS. We are talking about the recommendations. But let me ask you, do you think this report captured——

Ms. DAVIS. No.

Mr. SHAYS. See, I am not even sure it came close.

Ms. DAVIS. It really didn't. It really didn't.

Mr. SHAYS. I was not prepared for your testimony. Let me ask you this. You almost had so much to testify, is there any part that maybe was a bit overstated? And I say this for a variety of reasons. One, I want to hope that it is not as bad as you portray it, but when you started to talk about the woman with herpes and now is impacted in a very serious physical way beyond that, that is almost beyond my comprehension. In other words, you don't need to make your testimony stronger than it was when you started. Is there anything in your testimony that you may feel would give us a false impression? You started to speculate about what you think exists in the military, which is speculation not personal, so you mixed personal experience with speculation, and so I am just asking you is there anything that you would qualify or want to make sure that we don't over-interpret?

Ms. DAVIS. Honestly, I feel like I have cut a lot out of my story to try to fit it in to the time and the statement. It really is that bad. The young lady that got the herpes and it has become encephalitis, she wanted to prepare a statement for this but it was too overwhelming for her. I know that she would be so happy to talk to you. Her story is devastating, and she and I have cried over it.

Mr. SHAYS. Well, we only have a staff of five in this subcommittee, and we had marked out what we would do to the end of the year, but we are going to revise our hearing schedules. We are going to understand your case personally and directly from start to finish, and then we are going to ask you of other people you would recommend to come testify.

I don't like to think of you as a victim, but we would have you and other victims make sure that what needs to be said is on the

record. When I apologized to you for not being aware and not getting you before this subcommittee sooner, you should not have had to have waited so long.

You were the class of 2003?

Ms. DAVIS. Yes.

Mr. SHAYS. So you started the fall of 2000 or when?

Ms. DAVIS. I started in the summer of 1999.

Mr. SHAYS. The summer of 1999. And you left when?

Ms. DAVIS. I left the first time on a medical term back in 2001, and then for good in the fall of 2002.

Mr. SHAYS. Now, was that, given what you said, your choice?

Ms. DAVIS. No. Absolutely not.

Mr. SHAYS. So you would have been willing to endure all this and stay and graduate, etc?

Ms. DAVIS. Absolutely.

Mr. SHAYS. I will say to you the thing—and it may sound silly to you, given the horrible things you said, but the thing that I think I find the most outrageous is, as you were talking, you were describing how excited you were to be commissioned and to be a pilot, and later on you said, in spite of all this, you said your dreams are literally crushed. I can't think of anything that you could have said that would be more horrific for me. I hope you have lots of dreams, young lady, and I hope they all come true.

Ms. DAVIS. Thank you very much.

Mr. SHAYS. Ms. Rumburg, I want to say to you that I almost have the feeling that this report was trying to be overly sensitive and delicate, given what we just heard, so tell me how I would feel the same kind of passion of Ms. Davis in this report.

Ms. RUMBURG. Well, I need to tell you that we all felt greatly impacted by the statements of the victims. Sometimes we were horrified by what we heard, but I think our challenge——

Mr. SHAYS. But not surprised?

Ms. RUMBURG. We heard the stories not only from the civilian advocates that had been working with the individuals, as well as the media coverage, so we knew what to expect, but I don't know how this report could have conveyed the pain and the horror. That informed our work, but I don't know how we could have conveyed that. We certainly let that inform our work.

I really think the issues, the way we divided the report address the issues that, if we take these recommendations seriously, I think it is a huge step in the right direction. We talked about, No. 1, the culture, and if you notice in the report we did a whole chapter on the culture, recognizing that is the biggest issue of all.

If we could change the culture not only in the military but in our society we could stop sexual violence. So we were clearly aware that imbalance of power in a culture that supports the rape culture in this country and in our military was the biggest issue. And we knew also that we couldn't change that overnight.

But we looked at the other things like confidentiality. As Beth said, that is important to give victims that option in the beginning.

Mr. SHAYS. I don't mean to be disrespectful, but what I am wrestling is you are talking about your recommendations. Tell me where in this report you would feel the outrage that you must have felt when you heard Ms. Davis speak. I am not putting pressure

on you, I don't mean to be putting pressure on you, but this is the report that we in Congress get and look at and the military gets.

I am just not sure it begins to capture. I mean, you basically had brutality take place. You basically had testimony that all the women or almost all were saying, "You will be raped and you have to just deal with it," which is an incredibly unbelievable statement. It is kind of like your rite of passage. You then basically have the testimony that says the people who raped are alive and well and in our military prospering. Tell me how that report captures that.

Ms. RUMBURG. Again, I don't think it can capture that.

Mr. SHAYS. OK.

Ms. RUMBURG. And I don't think that is what we tried to do. What we spent months and months doing was coming up with recommendations that we felt, if they were addressed, that it could begin to address this issue. Again, we made recommendations around the culture, things that we could do. No. 1, holding midshipmen and other cadets responsible for their behavior, to look at bystander behavior, how that allowed this culture of rape to exist. We thought that was one of the key pieces under the culture.

We addressed the things that Beth talked about, how an academy is young people training young people, how that is part of the problem. There were many, many recommendations on the kind of training that we need to put in place, and it started at the top, from the command all the way down to the civilians that were volunteers at the academies. So I think we did address and made recommendations.

You are right. It does not cover the outrage. But we tried to take everything that we heard and put it into a document that the academies could take and use as a guideline to start moving forward. We spent a lot of time under offender accountability and the kinds of changes that we thought should be made in the justice system, and then, again, training and education being a key component.

There is a prevention piece there. What can we do to prevent this? There needs to be more money to look at this issue of prevention because as civilians we are struggling with this. How do we stop this kind of behavior in our culture?

Mr. SHAYS. If I was running the academies, if I was in a power of authority in the military, I think one easy way to deal with it is to send your best experts to determine what the hell is happening and then throw these people out of the service and send them to jail. I think that would be the healthiest thing around.

Ms. Davis should be viewed as a hero.

Ms. RUMBURG. And, sir, she is seen as a hero in the eyes of many, many people. She is.

Mr. SHAYS. I am not sure——

Ms. RUMBURG. And if it wasn't for brave women like Beth coming forward these hearings wouldn't be happening. And it is going to take more and more women like Beth to come forward. I don't want to diminish their stories. I have been an advocate for 30 years, so I took this task very, very seriously. We wanted to create a document that, again, as a road map—it is not going to solve the problem overnight. As Mrs. Maloney said, there is frustration why it has taken so long. We are all frustrated that we have been doing

this work for over 30 years and none of us have seen any real change, not only in the military but in the culture at large.

Mr. SHAYS. Yes, Ms. Hansen?

Ms. HANSEN. Mr. Shays, I think your assessment of Beth's testimony and her presentation to the public as to what has been transpiring at the Air Force Academy as a hero is correct. We see oftentimes within the victims and survivors that we work with an enormous amount of courage, particularly when many of them actually choose to then turn around and to serve those who are in the middle of a crisis following their own victimization. It not only honors us, but the work that they do on behalf of those who are being victimized is quite incredible.

Just one other note. In using the terminology "victim," in our field we use the term "victim" to relate to the fact that this person has been victimized by a crime and has not received justice. We use the term "survivor" when they are in the process of—I hesitate to use the term "healing," but when they are in the process of treatment, care, etc.

Mr. SHAYS. Right. One of my staff said, use survivor instead of victim.

Let me recognize Mr. Van Hollen. I don't think, Ms. Davis, that we have done justice to your testimony in this subcommittee, but I am happy we have it. I, frankly, was not prepared for the extent of your testimony. Is there any point you'd like to make before I go to Mr. Van Hollen?

Ms. DAVIS. I am just thinking we came up with some of our own recommendations.

Mr. SHAYS. Can you just tell me who "we" is?

Ms. DAVIS. Well, my lawyer and a couple of the other victims that were in my class.

Mr. SHAYS. So you do not mind being referred to as a victim?

Ms. DAVIS. No. I just see it as a word, I guess.

Mr. SHAYS. OK. Fair enough.

Ms. DAVIS. If I may, I'd like to go over a couple of them.

Mr. SHAYS. Sure.

Ms. DAVIS. The second one that we outline, a congressionally mandated statutory exception to the Farris Doctrine, the Farris Doctrine is pretty much prohibiting rape victims from being able to sue for civil rights when these injustices occur. We have in here that military victims who report crimes of sexual assault within the military and/or who are later persecuted by military officers or officials for doing so can seek redress against the military, the attackers, and/or the officers in question in civilian courts. I think that the Farris Doctrine is pretty much granting immunity to rapists as it is now.

Third, we have granting congressional hearings for these rape victims. I think for the main reason that hearing the testimonies, I just don't know how a report really can convey how this problem is just absolutely devastating lives. I feel like that is an understatement.

Mr. SHAYS. Well, the significance of the 9/11 Commission was they had basically finding of facts before they did recommendations, and maybe this report would have been helped by just having some real reality in this document before the recommendations.

Maybe that is what I was looking for. So I think the recommendations are probably quite good, and maybe, Ms. Rumburg, because you have dealt with this for 30 years it almost seems like that is not necessary, but I think it is.

Ms. RUMBURG. No, and I didn't mean to convey that it is not necessary.

Mr. SHAYS. No, you didn't convey that.

Ms. RUMBURG. I think every story is——

Mr. SHAYS. I think, though, the fact that you don't find much of it in the report says that to me.

Ms. RUMBURG. And that was the decision, I think, that we decided to keep it in a format that it would be easy to read and the recommendations would be easy to find. But I must tell you we all felt the outrage and a lot of compassion, much compassion for the victims that came before us.

Mr. SHAYS. I know you did. You have answered my question. To have this report have more impact, we need to have a little more finding of fact, I think.

I thank the gentleman for his patience.

I'd like Mrs. Maloney to be able to ask a question, too, again, as well, and Mr. Marchant. We thought we were going to go to the next panel.

I will say to the next panel it is important that this first panel's comments be addressed, and I would imagine that one of the parts of the testimony is, Ms. Davis, you left 4 years ago?

Ms. DAVIS. Yes.

Mr. SHAYS. I would think that what we will be told is that things have changed, and I think your comment is, based on your communication with others, it hasn't.

Mr. SHAYS. No.

Mr. SHAYS. Thank you.

Mr. VAN HOLLEN. Thank you, Mr. Chairman, and thank all of you for your very powerful testimony. I am sorry I had to step out during some of the questioning.

I'd like to ask you, Ms. Davis, in your statement you pointed to so many failures in the system, in the chain of command. You started out going through the OSI, and then you went to the training group commander, and then, of course, there was the psychiatrist or the psychologist. In each step of the way the system failed you.

My question is: what has happened to those individuals who failed you? Because in order, it seems to me, to really fix this problem we have to hold people accountable. And until that signal is sent to other young people in the services, men and women, you are not going to be able to change that culture. You are not going to make people any less afraid to come forward because they are not going to see that anybody is penalized for wrongful behavior.

Let me just start by asking you, the individuals in your chain of command, can you tell us whether they have been held accountable in any way?

Ms. DAVIS. Not at all, no. There is one that I know of that has discharged. I know that he had done other things to other cadets, and there were so many complaints against him that he was pretty much forced to retire early. But no, nothing has happened to them.

It just became very apparent to me that it was a very fine-tuned effort to get me out, and they were all working together. There was actually even one—it was the vice commandant—whose sole job was to pretty much quell the concerns of my parents. He would call my home and make my parents—he actually even tried to make it sound like I had done something to warrant them punishing me. My parents called, concerned. But I had a very clean report. I was actually on my class council, the student government. I didn't have any disciplinary actions against me prior to this. It was a very, very cohesive effort against me.

Mr. VAN HOLLEN. What kind of signal does that send to others, in your opinion, if people who are responsible for failing to take action see no consequences? What kind of message does that send, or did it send?

Ms. DAVIS. You hit it point blank. Yes. Leadership accountability is paramount in this case. It is sending the signal to cadets that as long as you are suave you can get away with it, as long as you cover your bases. It is absolutely sickening to me.

Mr. VAN HOLLEN. Let me just read, if I might, Mr. Chairman. In March of this year there was a Washington Post story regarding sexual assault charges against students at the U.S. Naval Academy, concluding that they are routinely dismissed without trial, according to analysis of Navy documents. A review of 56 midshipmen accused of sexual assault since 1998 found that only 2 were convicted, 1 in a civilian court, according to a review by the Washington Post of Navy incident reports, case summaries, and data released by the school. In virtually every other case deals were struck, forcing the accused student to leave the Academy without facing trial and without a criminal record.

It seems to me that report and those statistics kind of tell the story here. I look forward to the testimony of panels that come after you, but it sounds from this that these sexual assaults are being treated more like someone who cheated on a test——

Ms. DAVIS. Yes.

Mr. VAN HOLLEN [continuing]. Than someone who committed a crime. If you cheat on a test you are thrown out, but if you are committing a crime you should be thrown in jail. And if there is a question as to whether or not you committed the crime, it seems to me you should go through the normal process that any other individual who is accused of a crime should have to go through, the normal court procedure, establishing your guilt or innocence.

I would be interested in all of your sort of sense about that. I don't know if you saw the analysis done by the Washington Post. I assume you did. I know some of you have done your own analyses. But why is it that so many of these cases are essentially dealt with in a way where, "You can leave the Academy, but the criminal charges are not going to be pursued?"

Ms. HANSEN. In regard to the academies, we predominantly see that resignation in lieu of court martial, Congressman. Regrettably, that doesn't address what we know as sex offender behavior, in that oftentimes sex offender behavior begins early, and if there is not significant intervention it can escalate along the way.

So you have to also contemplate the fact that these individuals were not penalized, shall we say. There was no significant inter-

vention. There was no change in behavior so that when they are out in our communities they may offend again. Regrettably, we have a large population of veterans within our State and Federal prisons for sex offenses in that regard who have demonstrated prior histories, shall we say, that were not significantly addressed at the time.

Mr. VAN HOLLEN. All right.

Ms. Davis, I asked you about those in the chain of command who sort of failed you in terms of pursuing your grievances and the complaint and the fact that you were raped. Let me ask you, what has happened to the people who actually perpetrated the crime?

Ms. DAVIS. In the midst of my investigation they actually flew what they considered the best psychologist—I could give her name, but I am not sure I should—the best psychologist in the Air Force in from Germany and out for Turkey the very next day just to evaluate the two of us, and she evaluated my perpetrator first, and then she met with me, and her first words were, "I just want to tell you you don't have to say a thing. I have already diagnosed him as a sociopath." In my squadron it was known that he was an alcoholic. He was actually discharged for dishonorable purposes. They wouldn't tell me what for, but it had nothing to do with me.

Mr. VAN HOLLEN. It had nothing to do with you?

Ms. DAVIS. Nothing to do. And if I could just comment, my commandant was actually instructed to brief the Secretary of the Air Force on my case weekly because the Secretary at the time had branded it the worst that the Air Force Academy had seen, and so there was a very cohesive effort against me all the way back to the Pentagon.

Mr. VAN HOLLEN. But the individual who perpetrated the crime against you was discharged, but beyond that we don't know if any criminal charges have ever been brought against him?

Ms. DAVIS. No. No criminal charges. When they were handing me the three class D hits, the worst hits that the Academy gives, they were telling me, "Don't worry, he's going to be getting them, too," and he never received anything.

Mr. VAN HOLLEN. I just have one more question, Mr. Chairman. Again, thank you for this hearing.

After the Tailhook scandal, because of all the attention I believe that was sort of focused on the military at that point, there were certain individuals who were involved in that who were punished, but the true test of whether or not we have accountability is whether the system does it on its own when there are not the big lights shining on what is going on, whether they have sort of institutionalized a process for holding people accountable.

Outside of the Tailhook situation, do we know of any people in any of the academies who have been punished for failing to do their job in terms of failing to hold perpetrators accountable, people who have failed others as the system failed you, Ms. Davis? Do we know of cases where the military has held those people accountable? I can't think of any better way to send a message to the system than holding those who are in positions of responsibility and trust in the chain of command accountable when they fail in that trust. Do you know of any instances where that has happened?

Ms. HANSEN. Regrettably, Congressman, I do not. And that doesn't mirror our work just relative to the academies but the services, generally.

Mr. VAN HOLLEN. So nobody knows of any case where that has happened?

Ms. RUMBURG. No. No, sir.

Mr. VAN HOLLEN. Mr. Chairman, I would suggest that is part of the problem that we have here. Lots of very important reports documenting the problem, but it doesn't seem like a lot of follow-through in terms of actions taken to punish people who are negligent in terms of fulfilling their duties.

Thank you.

Mr. SHAYS. I thank the gentleman.

We are almost done. Mrs. Maloney I think has a followup question or two, and I have one or two questions, and then we will get to our next panel.

Mrs. MALONEY. After listening to the testimony I would suggest that the best way to improve this report is to include a tally of what happened to the victims, the cadets, the women that were raped, and what happened to the rapist. That would tell us more than all of these words.

From the testimony I have heard today, if you are raped, you are sent to a psychologist and thrown out of the military with charges against you so you cannot get a job in the military or Government again, yet if you are the rapist you just might get a promotion, or if you are discharged you are quietly discharged. There is something very, very wrong with that equation, and I would request that the next report have a tally of what happened to the victims and what happened to the rapists.

If we want to stop this, the best way to stop it is the way we stop it in the civilian community. We take the rapist to court, we have a proceeding, and we convict those that are guilty. This will continue unless we sincerely go after this in a sincere way.

This is a crime. People who rape are criminals, yet the women are sent to psychologists and thrown out and the men continue with their careers or, in extreme cases where they are psychopaths you said they are quietly dismissed. So I would just suggest we just follow the laws of this country that apply to everyone unless you are in the military.

I would like to better understand how the confidentiality proposal helps. I don't see how it helps. I would like to know, Ms. Davis, if you had the 9A provision, if you could have claimed confidentiality, how would that have helped your case? I would assume when you are talking to the chain of command it is a confidential situation. How does this change the case?

Ms. DAVIS. It wouldn't have changed the case so much; it would have given me the opportunity to turn for mental health help for some coping skills. As far as actually helping with the prosecution, it wouldn't have helped with that really.

Mrs. MALONEY. So it would not have helped with the problem, which, in my belief, the way to crack down on a crime is to crack down on a crime.

Ms. DAVIS. Yes.

Mrs. MALONEY. But if people are abused and hurt and violated, the new reform is to allow them to be quiet about it and go to a psychologist? That is the reform?

Ms. DAVIS. Yes.

Mrs. MALONEY. I don't consider that much of a reform, quite frankly.

Ms. DAVIS. Yes. I agree.

Mrs. MALONEY. I feel like it is a "speak no evil, say no evil, pretend there is not a problem." If that occurred, how would that have helped your case? Your rapist would still probably be in the military and you would be talking to a psychologist. How does that help?

Ms. DAVIS. I guess it would have prevented the ostracization to some extent.

Mrs. MALONEY. But who ostracized you? Your fellow cadets did not?

Ms. DAVIS. Well, they did to some extent.

Mrs. MALONEY. The women ostracized you?

Ms. DAVIS. The military teaches you to cut the weakest link out. Unfortunately, in the military the women are the weakest link in many respects. Academically they usually excel, but physically they absolutely don't. The physicality of things is held to a very high—that is valued there, how physical you are.

So if you cut the weakest link out, the women are at the bottom of the chain trying to fight to not be cut out, and a lot of them just don't talk to each other. They can't confide in each other. There is a lot of competition there. It is like a bunch of hungry dogs biting for meat. It is not a healthy situation. So a lot of my friends, as soon as I left the Academy we started talking candidly about our experience, and every single one of them had been raped or assaulted. I am ashamed to say it, but we had no idea.

Mr. SHAYS. Could I just ask you, when you say "every one," could you just be sure it is every one or almost every one? I don't want to put you in a setting where you say something and then people come back later.

Ms. DAVIS. I really appreciate that. I feel free to say that because the percentage of females at the Academy is so low. I really didn't know that many females. There were only five in my class, in my squadron, so——

Mr. SHAYS. So that statement you are comfortable making?

Ms. DAVIS. Yes, I absolutely am.

Mr. SHAYS. OK.

Ms. DAVIS. I know for a fact that the women that I was——

Mr. SHAYS. OK. I just——

Ms. DAVIS. Unfortunately, it is true.

Mr. SHAYS. It is, and it is very unfortunate.

I do want to ask one question of you, Ms. Rumburg and Ms. Hansen and then Ms. Davis. I will just read it, but I would like to put it on the record.

Why do you believe it has taken over 25 task forces, commissions, panels, and reports to address the issue of sexual violence in the U.S. armed forces? Why so many? In other words, are we getting anywhere?

Ms. RUMBURG. I think, again, it is the bigger problem that nobody takes this as seriously as they need to. I know what we tried to do—and I think Beth has been able to convey it today—is create an outrage at every level of our society of what we feel every time we see a victim, and for some reason or another we have not been able to convey that outrage that everyone should feel that it could be my daughter, it could be my son, my grandchild. That is our biggest struggle. How do we make every one of the people that are in positions to make these decisions feel the same outrage that each one of us feels day in and day out.

Can I give you an example of what I just did in Pennsylvania trying to create an awareness in my legislature, because there is no money to provide services or it is dwindling? I took a pair of baby shoes to everybody on the Appropriations Committee to say this is a child that is on a waiting list in Pennsylvania. This represents a child who cannot get services. I think it takes that kind of action, you know, with people like Beth going out and saying, "You have to hear my story."

I think that is the best thing that we can do is allow victims an opportunity to tell their stories so that everyone else that is making those decisions is going to feel the same outrage that you and the rest of the panel feels. It is critical that they are heard and that they begin to realize how serious this problem is, in any way that we can convey it. That is our struggle.

Ms. HANSEN. Mr. Chairman, I don't think there is an excuse that is acceptable. Women have always volunteered to serve. We currently have an all-volunteer force. This has been an ongoing problem for decades. There are reports of women who were sexually assaulted in the Vietnam era that are one of the more significant influxes to the Veterans Administration at this time, that 30 to 35 years later they have not received appropriate care and treatment, and the issues in their lives have escalated tremendously. I don't think there is an excuse.

I think also, in regards to what Mrs. Maloney said, we have an enormous amount of information within our case files relative to mental health evaluations of those who filed complaints of sexual harassment and sexual assaults, particularly women who are serving in the intelligence community, at this point in time. I think that it is important for us to do the tally that has been suggested as to what you see, what the response is, what transpires for the victim/survivor and what transpires for an alleged offender. Within our case files there is a significant disparity and a lack of justice for those who have been victimized.

Mr. SHAYS. Ms. Davis.

Ms. DAVIS. I just feel like the efforts are somewhat spinning wheels. It is hard. I just have to go back to the leadership accountability. I just don't feel like anything of substance has ever been done. There is a lot of protocol in regards to dealing with an issue that we can implement these ideas and the civilian counsel. It will all help to some degree, but unless people are actually held accountable it is just sabotaging the effort.

Mr. SHAYS. Well, is there anything that you would like to have as a last word? I am going to have the very last word, but is there anything, Ms. Davis, that you would like to say, wish we had asked

you, wish you put on the record, Ms. Hansen or Ms. Rumburg, something that we just need to put on the record that we didn't?

Ms. RUMBURG. I don't think so. Thank you.

Mr. SHAYS. OK. Ms. Hansen.

Ms. HANSEN. I'd just like to expand the conversation beyond sexual assault into domestic violence, as well, within our forces, particularly spousal abuse when you are talking about violence against women. Also, human trafficking and sexual exploitation, regrettably we are seeing some issues in that regard of an ongoing nature.

Mr. SHAYS. Thank you.

Mrs. MALONEY. What are you seeing in sexual trafficking in an ongoing basis?

Ms. HANSEN. Regrettably, we are actually seeing in some of the combattant commands it has become an issue, and within some of our coalition partners, as well. We have also seen Beth's terminology, "sham marriages," "sham engagements," in which women are brought here into the United States for purposes other than a happy marriage and family life, essentially for prostitution purposes.

Mrs. MALONEY. And who are you reporting this to?

Ms. HANSEN. We have spoken to numerous Members of Congress and we have also spoken to various individuals within the services in that regard.

Mrs. MALONEY. Thank you. I'd like to know more about it. Thank you.

Ms. HANSEN. We will get you more information.

Mrs. MALONEY. Thank you. Thank you, Mr. Chairman.

Mr. SHAYS. If you would direct that to the subcommittee, we will also make sure that Mrs. Maloney gets that information at the same time we get it.

Ms. Rumburg, anything we need to put on the record?

Ms. RUMBURG. Yes, sir. Again I want to thank you, because, as I said in the beginning, this light that you are shining on this problem within the military and the Department of Defense is only going to open a broader conversation about our responsibilities as citizens to continue to address this problem until we no longer have to deal with sexual violence, not only in the military but in the society, as a whole.

And I just want to make one observation, getting back to what Beth said. One of our recommendations was that we really pay attention to the screening as it relates to the individuals that are admitted into the academy. If there had been appropriate screening of the individuals that come into the academy, we could eliminate some of the men, particularly someone that is a sociopath, so we did address that in our recommendations. We really need to pay attention to the way we screen individuals before they go to the academy.

Mr. SHAYS. Thank you.

What I would like all of you to know is that when we started chairing these hearings in 1995 we used to have the Government officials come first and then the victims/survivors of any particular issue, like Gulf war illness, come second. Then what happened is sometimes the Government officials would say there is no problem

and then some would leave and then we would have the victims describe the problem, so we reversed that, and we appreciate the Government officials recognizing it is important to hear from the experts in this field and the victims/survivors.

To you, Ms. Rumburg and Ms. Hansen, you are, in fact, experts on this issue, have dealt with it for a long time, and you probably had more patience than you would like to have. I'd like to think that you would see this committee have some impact. That is fully my pledge to you.

To you, Ms. Davis, you are a remarkable young woman. You were very candid from the moment you spoke. I was a little taken aback because I thought, my goodness, you are getting a chance to speak, but you were right on target. You should have been heard sooner by Congress.

I will say you are one of the most articulate witnesses I have ever had come before any committee that I have ever served. You are a good teacher. You are articulate. You are a remarkable person. I was thinking how proud I would be to have you as my daughter, and to think of the contribution you have made.

I would like to ask you to say what you would like to come from these hearings. In other words, what would you like to see happen as a result of your testifying? What would be your hope? What would be your dream about the result of your testimony, not just in the short run, in the long run.

Ms. DAVIS. I guess it is more or less the impression that the victims make on Congress. I feel like Congress just hasn't been influenced enough to really take hold of this. The DOD is running wild with it. They are kind of running their own show. There is just no oversight. I feel like these hearings would impress upon the Members of Congress the dire need for an oversight, for the congressional influence on their efforts. I just don't feel like the DOD is running an honest show and it is really disheartening.

Mr. SHAYS. You would like to see your testimony result in Congress doing more oversight, questioning the so-called "internal efforts" of DOD, and you would obviously like to be able, I would think, in the future be able to recommend to another young woman, "You know, the best thing in the world would be to join the academy and to pursue your dream, and I would be advocating your doing that," and right now your testimony is you wouldn't.

Ms. DAVIS. No.

Mr. SHAYS. But would that be a fair thing to say, that you would hope that some day real soon you could say what?

Ms. DAVIS. I hope that I could say that the Academy is living up to its prestigious title. All of the military academies are acclaimed as some of the best institutions in this country, and to hear of someone that is admitted, is nominated, just the grueling process that you have to go through to get admitted, it should be that wondrous thing and it is just not right now.

It is not a place that I would wish anybody of any substance, of any great intelligence, that is a wonderful, great person with great dreams, I wouldn't wish them to go there at all. I just feel like you'd be throwing them into the wolf pit. I really do hope some day that the Academy can become that prestigious thing. They have a

lot of values and standards that are great if they could follow them, if they could live up to them, but they fall very short.

Mr. SHAYS. OK. Thank you all very much. I think what we will do is—does anybody know how many votes we have? I am going to say to our next panel that we will probably not be back until at least 10 of or 5, so if you want to just take a short break from here I think we will just empanel the second panel when we get back.

Thank you all very much. We stand at recess.

[Recess.]

Mr. SHAYS. I'd like to call this hearing back to order. We thank our second panel, No. 1, for understanding why we wanted you to be second and not first, and I am sure that some of the testimony was a little difficult to listen to.

We have before us Dr. Kaye Whitley, Acting Director, Sexual Assault Prevention and Response Office, Department of Defense; Vice Admiral Rodney P. Rempt, Superintendent of the U.S. Naval Academy; Brigadier General Robert L. Caslen, Jr., Commandant of the U.S. Military Academy; Brigadier General Susan Y. Desjardins, Commandant of the U.S. Air Force Academy; and Rear Admiral Paul J. Higgins, Director of Health and Safety, U.S. Coast Guard.

As you know, we swear our witnesses. We'd request that you rise, raise your right hands, and we will swear you in.

[Witnesses sworn.]

Mr. SHAYS. Note for the record our witnesses have responded in the affirmative.

I want to say at the outset that we appreciate your service to our country. We are grateful for your service to our country. Ultimately, we have the same goal, and that is to just have this country be a blessing to everyone and to make sure, particularly in your tasks in the military, that the highest standards are upheld. I know that is your goal and your desire.

I would like to just start with Dr. Whitley. We will have you start off. We do the 5-minute rule, but we do roll over. I don't want you to think you have to be done in 5 minutes if you can finish in 7 or 8 or whatever, but you don't want to go past 10.

Thank you.

STATEMENTS OF KAYE WHITLEY, ACTING DIRECTOR, SEXUAL ASSAULT PREVENTION AND RESPONSE OFFICE, DEPARTMENT OF DEFENSE; VICE ADMIRAL RODNEY P. REMPT, SUPERINTENDENT OF THE U.S. NAVAL ACADEMY; BRIGADIER GENERAL ROBERT L. CASLEN, JR., COMMANDANT OF THE U.S. MILITARY ACADEMY; BRIGADIER GENERAL SUSAN Y. DESJARDINS, COMMANDANT OF THE U.S. AIR FORCE ACADEMY; AND REAR ADMIRAL PAUL J. HIGGINS, DIRECTOR OF HEALTH AND SAFETY, U.S. COAST GUARD

STATEMENT OF KAY WHITLEY

Dr. WHITLEY. Thank you, Chairman Shays, for inviting me to discuss the Department of Defense's sexual assault prevention and response program. I would also like to take this opportunity to thank Ms. Davis and acknowledge her courage.

I am the Acting Director of the Department's Sexual Assault Prevention and Response Office, but I fully understand the devastating impact that sexual assault can have on victims and our society. When I was a counselor, several of my clients struggled with the long-term effects of sexual assault, and all of them suffered from post traumatic stress disorder. They all had to muster incredible courage just to get through each day. I sometimes think of these individuals and that reinforces my commitment to ensuring that DOD's program truly protects and assists the men and women who protect our Nation.

As you have heard, sexual assault is a challenge to our society, and it is the Nation's most under-reported violent crime. Some studies indicate that 1 of 6 women and 1 of 33 men will experience rape or attempted rape in their lifetime. Since the military reflects the society it serves, this criminal offense confronts the Department, as well. But, moreover, sexual assault is a readiness issue that strikes the core of our military preparedness.

As Secretary Rumsfeld stressed to senior leadership in a May 2005, memorandum, such acts are an affront to the institutional values of the armed forces of the United States of America, and then he charged them with effecting a concerted, successful implementation of the Department's sexual assault policy. That policy strikes at sexual assault three different ways. First, it emphasizes career-long training and education to prevent sexual assault. Second, it ensures that, in the event of an assault, the victim receives complete and effective services from well-trained responders. And, third, it provides for system accountability.

This policy applies to active and reserve components, alike, as well as the three military surveillance academies. In addition, it provides for consistent programs wherever military units are stationed.

I believe the Department is off to a great start. During the past year the military services trained more than 1 million service members. They also established sexual assault program offices at every major installation and every deployable command. They trained more than 5,000 sexual assault response coordinators and victim advocates, and 2,500 were deployable SARCs and victim advocates.

In addition to a comprehensive response structure, DOD established a protocol to ensure a consistent level of care and support for victims and implemented a fundamental change in how the Department responds to sexual assault by instituting confidential reporting. Since June 2005, victims may not elect to make a restricted report and receive care and support without notifying command channels or law enforcement. Restricted reporting also allows victims the time, care, and empowerment to consider pursuing an investigation at a later date.

This provision and others designed to eliminate barriers to reporting are succeeding. More victims came forward in 2005 than in the previous year, and 435 requested restricted reporting. But, more significantly, 108 of those later changed to unrestricted reporting and pursued criminal investigations.

These accomplishments underscore DOD's efforts to transform into action its commitment to sexual assault prevention and response. I am confident that 2006 will show greater progress. I am

particularly looking forward to the Defense Task Force on Sexual Assault in the Military Services beginning its examination of the Department's program. Their assessment will provide a thorough and independent assessment of our program, and as we refine each facet of our prevention response program we will create a climate of confidence and trust where everyone is afforded respect and dignity.

Thank you again, and I will look forward to answering any of your questions.

[The prepared statement of Ms. Whitley follows:]

Prepared Statement

of

Dr. Kaye Whitley

Acting Director
Sexual Assault Prevention and Response Office

Before the

House Government Reform
National Security, Emerging Threats and International Relations Subcommittee

"Sexual Assault Prevention and Response: Program Overview"

June 27, 2006

Not for publication until released by the committee

Dr. Kaye Whitley is the Deputy Director of the Sexual Assault Prevention Office (SAPRO). This office is the Department of Defense's single point of accountability for all sexual assault policy matters and reports to the Office of the Under Secretary of Defense for Personnel and Readiness. SAPRO develops policy and programs to improve prevention efforts, enhance victim support, and increase offender accountability, and it collaborates closely with the four Military Services to implement fully those policies and programs.

Dr. Whitley is a graduate (Summa Cum Laude) of The University of Georgia. She received her doctorate in counseling and human development from The George Washington University where she focused her studies on the military and women's issues. She began her post doctoral career with the DoD School System. Following a position on the graduate faculty at the University of Texas at El Paso, she then became the Assistant Executive Director for the American Counseling Association. Prior to her position at SAPRO she served in the Defense Prisoner of War/Missing Personnel Office as Senior Director for Communication and as the single point of contact in the Office of the Secretary of Defense for family members whose loved ones are missing in action from our nation's wars. Her numerous awards include the Distinguished Civilian Service Medal and the Molly Pitcher Award for service to the military community.

INTRODUCTION

Mr. Chairman and members of this distinguished Subcommittee, thank you for the opportunity to be here today.

The Department of Defense concurs fully with you that sexual assault has no place in our Armed Forces. Sexual assault is a crime. It inflicts incalculable harm on victims and their families; it tears at the very fabric of civilian and military communities; and it destroys trust among individuals and faith in our institutions.

Today I will discuss the significant changes the Department of Defense has taken to prevent sexual assault—our first priority—and to respond more effectively to sexual crimes when they occur. This collaboratively developed program reflects the commitment of both civilian and military leaders to confront a major issue that cuts across American society. We are vigorously implementing each element of this program, and our standard is clear. As Secretary of Defense Donald Rumsfeld stated, "The Department does not tolerate sexual assault of any kind."

CARE FOR VICTIMS OF SEXUAL ASSAULT TASK FORCE

Concerned about reports of sexual assault in Iraq and Kuwait, in February 2004, Secretary Rumsfeld commissioned a special task force to examine the problem. He directed the task force "to review how the Department handles treatment of and care for victims of sexual assault." Of particular concern was how commands responded to these crimes in combat theaters.

Under the direction of Ms. Ellen Embrey, Deputy Assistant Secretary of Defense for Force Health, Protection, and Readiness, the Care for Victims of Sexual Assault Task Force closely examined Department procedures and programs. Ms. Embrey's team

conducted 21 site visits and several dozen focus groups, and consulted with subject matter experts both within and outside the Federal government.

The Task Force concluded that the Department lacked a comprehensive approach that applied to all four Military Services. The lack of standard definitions and consistent programs within DoD hampered efforts to confront sexual assault. In its April 2004 report, the Task Force reported 35 findings and offered nine recommendations.

One recommendation called for the establishment of a single point of accountability for sexual assault policy within the Department. The Department's leadership concurred and authorized the Joint Task Force for Sexual Assault Prevention and Response.

JOINT TASK FORCE

The Department convened a conference in September 2004 to provide the Joint Task Force (JTF) a plan of action and to resolve important policy issues such as the disposition of reported sexual assaults and increasing the privacy of victims. Subject matter experts, both government and civilian, collaborated with DoD and Military Service representatives to develop effective and actionable policy recommendations.

Concurrently, Congress mandated in the National Defense Authorization Act for Fiscal Year 2005 that the Department promulgate a comprehensive sexual assault policy by January 2005. Provisions included prevention measures, medical treatment, commander oversight, and victim advocacy and intervention, issues on which the September conference had also focused.

The Department met that deadline thanks to the collaborative efforts of the JTF, the Military Departments, experts and advocates. To expedite the approval process

and place in effect the emerging program, DoD issued a series of Directive-type Memoranda (DTM) that each addressed a specific facet of sexual assault policy. The Department publicly announced the first 11 DTMs on January 4, 2005. DoD eventually approved 14 DTMs, and the Department has completed the process of integrating them, and other provisions, into two permanent policy documents: a Department of Defense Directive and its implementing Instruction.

DoD released the permanent Directive, which covers overarching sexual assault prevention and response policy, less than one year after establishing the JTF. In point of comparison, the approval process for directives from established DoD offices normally require at least 12 months. Dr. Chu approved the Instruction last week, and we have already distributed it to the field and posted it on the web.

POLICY

The Department endeavored to craft a policy that can be consistently applied throughout all four Military Services, to include the Service Academies, while retaining the flexibility to address the diverse environments in which each Service operates. DoD's program significantly enhances education and training to help prevent sexual assaults; significantly improves treatment and support of victims to speed their recovery; and significantly enhances accountability to ensure system effectiveness.

The program's cornerstone is training and education. The Department is conducting education programs to align personal moral values with the institutional values of the Armed Forces. The Department is ensuring that its first responders—health care providers, victims advocates, law enforcement personnel, chaplains, and others—are properly trained in their duties, and that installations have agreements in place with

civilian institutions to provide services that would otherwise be unavailable. The end result will be a climate of confidence that prompts victims to seek treatment and to report sexual assaults, and one that ensures service members will not tolerate behaviors conducive to sexual misconduct of any kind.

Surveys both within and external to the military documented widely divergent opinions on what constitutes sexual assault and how it differs from sexual harassment. Service definitions differed from one another and were couched in legal terms that made them inaccessible to many service members. Accordingly, the Department crafted a definition of sexual assault common to all of DoD that the average service member could understand. Advocacy groups provided particularly valuable assistance in this effort.

The resulting training definition clearly states the Department's view that sexual assault is a crime. It is not a misjudgment, an error, or a case of one drink too many. Sexual assault is a crime that the Department cannot and does not tolerate. The definition enumerates the actions that constitute sexual assault and emphasizes that "consent shall not be deemed or construed to mean the failure by the victim to offer physical resistance. Consent is not given when a person uses force, threat of force, coercion or when the victim is asleep, incapacitated, or unconscious."

This definition should eliminate any ambiguities that individual service members might have about sexual assault. They will be taught this definition repeatedly throughout their military service, beginning with initial entry training. This is particularly important due to the confusion among the nation's youth as to what constitutes sexual assault.

A survey of Midwest teens showed that 44 percent believed a sexual assault had not occurred if a couple had prior consensual sex and the man subsequently forced the women to have intercourse. Forty-eight percent also agreed that sexual assault had not occurred if a woman initially agreed to have sex, changed her mind, and the man then forced her to have intercourse. These views are not just inconsistent with DoD values, we are committed to changing those views. Hence, the critical importance of training.

TRAINING

The Department worked closely with the Military Services and subject matter experts to develop baseline training that is consistent among the Services for all military personnel. This instruction is a component of initial entry training for new officers and enlisted. It is mandatory for all cadets and midshipmen at the three military service academies. And it continues throughout a career at the unit level and in all professional military education programs—even at the war colleges. This training also addresses each service member's role, from the most junior enlistees to senior commanders, in preventing and responding to sexual assault. The Military Services have developed training modules, films and other products to facilitate unit instruction and, in 2005, more than one million cadets, midshipmen, and active duty members received sexual assault awareness training.

In addition, DoD and the Military Services have initiated rigorous training for first responder groups – designated personnel to help sexual assault victims. These individuals include sexual assault response coordinators (SARC), healthcare providers, victim advocates (VA), law enforcement and criminal investigators, judge advocate general officers and chaplains. Training topics include sensitivity to victims; timeliness

of care; collection of forensic evidence; victim advocate assistance; reporting guidelines and procedures; and availability of mental health and other support resources. The Joint Task Force conducted six national training conferences for responders in 2005, preparing more than 1,500 SARCs, chaplain, investigators, and judge advocates. That same year the Army and Marine Corps trained more than 2,500 deployable uniformed victim advocates, the Air Force prepared almost 400 SARCs to support active and reserve component units, and the Navy trained or recertified over 7,500 victim advocates.

The Military Services have also been conducting pre-deployment training so service members will know what sexual assault services are available to them when their units deploy overseas to Southwest Asia, the Balkans, and other regions. This training includes information about the environment they are entering, with a special emphasis on the customs, mores and religious practices of those countries. In addition, the Service will assess whether there is a response capability already in place in the deployment locations or whether a more robust sexual assault response capability must deploy with a unit.

In addition, sexual assault training has been incorporated into all pre-command training. Commanders at all levels are critical to the success of the sexual assault prevention and response program. They establish the command climate, they are responsible for maintaining discipline and good order, and they implement many important provisions of sexual assault policy. By gaining a fuller appreciation of sexual assault policy and the impact of sexual assault on individuals and unit readiness, commanders will be better able to create and maintain an environment that prevents sexual assaults.

The Department also developed a *Commander's Checklist for Responding to Allegations of Sexual Assault*. The checklist assists commanders in navigating the myriad of competing requirements associated with responding to sexual assault, an event that they may only encounter once or twice during their command tenure. It coaches commanders on how to ensure the appropriate balance between a victim's right to feel secure and the accused's rights to due process under the law. In addition, this checklist provides guidance on military protective orders, no contact orders, and related actions. The recently approved DoD Instruction includes an updated checklist.

SEXUAL ASSAULT RESPONSE COORDINATORS

DoD has established standards to ensure that victims, regardless of their duty station, will receive thorough, competent response services that fully address their needs. Consistent with each victim's unique needs and privacy concerns, response teams will work together to ensure the victim receives the best care possible and to resolve speedily the sexual assault case.

Synchronizing this effort is the sexual assault response coordinator. SARCs, together with their team of victim advocates, provide victims with responders whose duties are to ensure that victims receive timely and appropriate services. Some of the Military Services had advocates prior to 2005, but the Directive-Type Memorandum entitled *Response Capability for Sexual Assault* standardized the positions and responsibilities of the SARC and VA throughout DoD. This ensures that SARCs and VAs trained at one installation can readily assume their duties at another installation, including locations overseas.

The Military Services responded promptly to this DoD mandate. In less than six months, they had assigned SARCs and VAs to all major installations world-wide and ensured that all of those more than 2,000 responders received 40 hours of training.

SARCs serve as the center of gravity for each installation's sexual assault prevention and response program. They serve as the single point of contact to coordinate sexual assault victim care and to track the services provided to the victim from initial report of a sexual assault through disposition and resolution of the victim's health and well-being. These duties may include coordination with other facilities should the victim be reassigned to another installation.

SARCs also train victim advocates; serve as chairperson of the case management group that meets monthly; track the dispositions of all military sexual assault cases for their designated area of responsibility; and provide regular updates to the commander on the disposition status of a case. Moreover, SARCs assist commanders throughout the installation to fulfill annual sexual assault prevention and response training requirements. They also conduct liaison with civilian sexual assault response providers.

While the SARC primarily provides system advocacy, the victim advocate or VA provides 24/7 direct response to victims. VAs help victims to navigate our response network. They are not counselors, therapists, or investigators. VAs support victims and furnish accurate and comprehensive information on available options and resources so the victim can make informed decisions such as obtaining a military protective order or moving to another set of living quarters. They also help victims identify other needs and obtain appointments for them with counselors, healthcare providers and chaplains. In addition, the VA accompanies the victim, at the victim's request, during investigative

interviews and medical examinations. Advocate services normally continue until the victim no longer identifies the need for support.

These various measures and others that will be discussed below will create a climate of confidence for our service members. The importance of creating such an environment cannot be overemphasized. It is the key to ensuring that service members prevent sexual assault; that victims receive care and support and feel comfortable reporting sexual assaults; and that combat readiness is maximized through the fostering of trust and mutual respect amongst all personnel.

CLIMATE OF CONFIDENCE

Several new provisions will help establish this climate of confidence. One important requirement is a mandatory monthly status report to victims who have sought an investigation. The Care for Victims Task Force noted the frustration and disappointment of many victims who reported sexual assaults but never received any information on the investigation or actions taken. This failure did not represent command efforts to keep victims in the dark or to cover up a crime. Rather, it reflected the lack of any policy guidance designating a particular agency or official to update the victim. Responders performed their duties but assumed that someone else would keep the victim informed when, in fact, no one had done so. To remedy this, commanders now have the responsibility to ensure that the victims receive, as a minimum, monthly updates on the status of their cases until final disposition. DoD policy defines final disposition as the conclusion of any judicial, non-judicial, and administrative action, including discharges, taken in response to the offense.

The Care for Victims Task Force also documented victim perceptions that sexual assaults received lower priority than other crimes. The Department has no room for perpetrators of sexual assault, and it is taking necessary action to make them accountable for their crimes. Therefore, only military criminal investigative organizations—the elite of each Military Department's law enforcement capability—will investigate sexual assaults. The Joint Task Force conducted specialized training for criminal investigators in Autumn 2005 that focused on investigative procedures unique to sexual assault and how to be sensitive to the needs of victims of this crime.

DoD has also mandated that senior commanders be responsible for handling cases of sexual assault. Previously, junior commanders often handled these cases. While well-intentioned, these officers lacked the life experience to deal with the complexities of sexual assault incidents. To ensure these cases receive consistent and appropriate level of command attention and the full responses required by the sensitivities and complexities involved, the Military Services have designated a level of command, commensurate with the maturity and experience needed, to be the disposition authority for sexual assault cases.

Designated senior officers are also responsible for reviewing administrative discharges for victims of sexual assault to ensure all determinations are consistent and appropriate. Circumstances associated with a reported sexual assault incident may ultimately result in a determination that the administrative separation of the victim is in the best interests of either the Armed Forces or the victim, or both. If a victim is to be separated, regardless of the reason for initiating the separation action, each such victim

will receive a full and fair consideration of the victim's military service and particular situation.

DoD's collateral misconduct provision also contributes to an increased climate of confidence, and it addresses a significant barrier to reporting. In some cases, a victim may have violated a regulation or standing order at the time of the sexual assault (for example, underage drinking or being in an off-limits area). Rather than face punishment for the offense, some victims have opted not to report their sexual assault. Collateral misconduct provisions permit commanders to defer taking action on victim wrongdoing until final disposition of the sexual assault case. Exceptions can be made only if overriding, extenuating circumstances exist. This policy clearly signals the Department's view that sexual assault is a crime and ensures that victims do not receive punishment while perpetrators await action on their offenses.

CONFIDENTIALITY

A far more significant barrier to reporting is the fear, embarrassment, shame, and sense of violation that prevent the majority of victims in civilian and military communities from reporting their sexual assault. Understandably these victims are not prepared for the intrusiveness of a criminal investigation. DoD's previous policy of mandatory reporting did not address this sad reality, and required healthcare providers and others to report all sexual assaults to law enforcement. This policy inadvertently resulted in some—perhaps many—military victims choosing to forego medical care, treatment, and counseling rather than participate in a criminal investigation.

The Department's new confidentiality policy takes direct aim at this barrier and represents a fundamental change in how DoD responds to victims of sexual assault. This

policy applies only to sexual assault victims who are service members and includes cadets and midshipmen. The Department will consider expanding this policy to include civilian victims as the sexual assault program matures.

First announced in March 2005, confidentiality went into effect after a 90-day period that permitted the Military Services to inform their personnel and prepare their sexual assault responders. Confidentiality establishes a disclosure option where military victims can receive medical treatment and support without triggering the investigative process. It rebalances the Department's focus from one that concentrated exclusively on offender accountability to one that also emphasizes victim access to services. This change represents a major cultural shift, and it will further enhance a climate of confidence.

Confidentiality provides victims additional time and personal space, together with increased control over the release and management of their personal information. This should empower them to seek relevant information and the support needed to make more informed decisions about participating in the criminal investigation.

The policy permits victims to choose between two reporting options: unrestricted reporting and restricted reporting. Unrestricted reporting meets the needs of service members who have been sexually assaulted and desire medical treatment, counseling and an official investigation of their allegations. Victims report the assault using current reporting channels such as the chain of command, law enforcement, and the SARC. Upon notification, the SARC appoints a victim advocate to assist the victim, and the victim will receive monthly updates and other support described earlier in my presentation. Commanders are also be notified. However, details regarding the incident

are being limited to only those personnel with a legitimate need to know. For example, a supervisor may learn that an assault occurred but not receive information detailing the crime.

Restricted reporting, in contrast, enables victims of sexual assault to receive medical treatment and support without triggering the investigative process. Service members who select this option may report the sexual assault only to SARCs, healthcare providers, or victim advocates. Consistent with existing policy, communications with chaplains and therapists continue to be privileged under the Military Rules of Evidence. Healthcare providers will provide appropriate care and treatment and also report the sexual assault to the SARC. Upon notification, the SARC appoints a victim advocate to assist the victim and to provide the victim accurate information on the process to include the process of restricted vice unrestricted reporting.

At the victim's discretion, the healthcare provider, if appropriately trained and supervised, conducts a forensic medical examination, which may include the collection of evidence. In the absence of a DoD provider, the treatment facility will refer the victim to a civilian agency for the forensic examination. The Department has established procedures for anonymously storing this evidence for up to one year in the event that the victim changes from a restricted to an unrestricted report and pursues a criminal investigation.

The SARC, the assigned victim advocate, and healthcare providers may not disclose their communications with the victim to law enforcement or command authorities. These communications include oral, written or electronic exchanges of personally identifiable information made by a victim to the SARC, assigned victim

advocate or to a healthcare provider related to the alleged sexual assault. Only a very few, narrowly defined exceptions to this policy, are allowed, such as the victim posing a clear and imminent danger to herself or himself, or others. Even then, only minimal information will be disclosed, and the report will remain restricted.

For purposes of public safety and command responsibility, the SARC will notify command officials within 24 hours of the sexual assault that an incident has occurred. But the SARC will not provide information that could reasonably lead to personal identification of the victim. Depending on the size and population characteristics of the installation, permissible information might include time, location, gender, rank, Military Service, and the nature of the sexual assault. Learning of an assault that previously would have gone unreported allows commanders to gain more accurate information about the safety of their installations and to take preventive action in the form of increased police patrols, greater command emphasis, and additional sexual assault training. Significantly, commanders may not initiate investigations based on the information SARCs provide.

Confidentiality has resulted in more victims of sexual assault coming forward and receiving the medical care and support they need. In the last six months of 2005 when the confidentiality policy was in effect, 435 victims chose restricted reporting. Significantly, restricted reporting accounted for 65 percent of the total increase in reporting from Calendar Year 2004 to Calendar Year 2005. More important, increased reporting resulted in more victims receiving dearly needed medical treatment and other services. Also noteworthy, 108 of these victims (nearly 25 percent) switched from restricted to unrestricted reports, in some cases after only a few weeks of care. By

participating in criminal investigations, these brave individuals furthered Department efforts to increase offender accountability.

Confidentiality and the other elements of the new sexual assault policy represent fundamental changes in how the Department addresses sexual assaults. Together, they constitute ground-breaking improvements that we believe will be the benchmark for the nation.

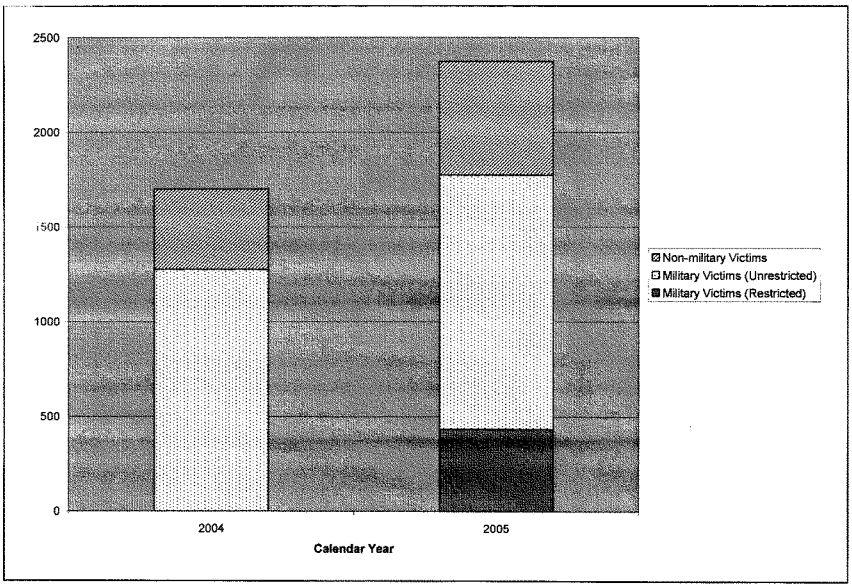
REPORTS TO CONGRESS

The Ronald W. Reagan National Defense Authorization Act for Fiscal Year 2005 requires the Department to submit an annual report to Congress on reported allegations of sexual assault. This report includes data on alleged sexual assaults in which a service member is the victim and/or perpetrator. DoD submitted its first report, which detailed allegations made in Calendar Year 2004, in May 2005. That report provides a reliable baseline for comparing sexual assault data from year to year. Data from previous years did not conform to a consistent standard or definitions and cannot be compared to the annual reports for 2004, 2005, and future years.

The annual report of allegations of sexual assault serves as an important metric for evaluating the Department's sexual assault prevention and response (SAPR) program. A comparison of data from the 2004 and 2005 reports shows that this policy is meeting expectations.

Since sexual assault is the most underreported violent crime in American society and the military, a key component of DoD's SAPR program is to reduce barriers to reporting. We believe that policy provisions to facilitate reporting, such as confidentiality and SAPR training programs, contributed greatly to the 40 percent

increase in allegations from 1,700 in 2004 to 2,374 in 2005. Increased reporting means more victims receiving help and more investigations that will enable commanders to punish offenders. Significantly, restricted reporting accounted for 65 percent of this increase, enabling 435 individuals to receive medical services. As noted previously, 108 victims—about 25 percent—switched from restricted to unrestricted reports and participated in criminal investigations.



I believe that the report for 2006 will show even greater progress in the fight against sexual assault. In addition, we will also have the results of the FY 2006 DoD survey of the Active Components on sexual assault and sexual harassment. The data from that confidential survey, together with information from the 2006 annual report, will

enable the Department to compare prevalence data with actual reporting rates and determine whether efforts to instill a climate of confidence are succeeding.

Another annual report that the Department submits to Congress shows that the sexual assault programs at the three Military Service Academies (MSAs) are also succeeding. The National Defense Authorization Act for FY 2004 requires DoD to submit a report on the MSAs regarding sexual assaults, changes to their sexual assault programs, and the results of a survey on sexual misconduct. The 2005 report indicates that sexual assault victims at the academies are more likely to report the crime than students attending civilian schools.

The voluntary survey was offered to all female cadets and midshipmen and to a representative sample of males, and 85 percent of the students participated. The responses indicated that 5 percent females were sexually assaulted during the Academic Program Year. MSA officials received 38 reports of sexual assault, resulting in an estimated reporting rate of 40 percent. The Department of Justice-sponsored study of civilian colleges, *Sexual Victimization of College Women* (2000), indicated that only 5 percent of victims report their sexual assault to law enforcement.

Cadet and midshipmen responses also showed that training has been effective. More than 90 percent of each MSA's students reported that they knew: the difference between sexual assault and sexual harassment; how to avoid sexual assault; and how to report incidents of sexual assault and sexual harassment. Cadets and midshipmen in almost similar numbers knew: how to obtain medical care; how to receive counseling; and where to obtain information about sexual assault and sexual harassment.

The Department completed collecting data in April for its 2006 survey of cadets and midshipmen, and the results will be released later this year. DoD expects the results to reflect the commitment of all concerned—leadership, staff and faculty, and the cadets and midshipmen—to eliminate sexual assault at the academies.

DEFENSE TASK FORCE ON SEXUAL HARASSMENT AND VIOLENCE AT THE MILITARY SERVICE ACADEMIES

Congress directed the Department in the National Defense Authorization Act for FY 2004 to establish a task force to recommend ways to more effectively address sexual harassment and violence at the United States Military and Naval Academies. The 12-person Defense Task Force (DTF) conducted a comprehensive review that focused on service academy culture; victims' rights and support; offender accountability; data collection and case management tracking; training and education; prevention; and coordination between military and civilian communities.

The DTF based its 44 findings and 43 recommendations on site visits, interviews, consultations with subject matter experts, and an extensive review of academy and military department policies, records, and reports. In general, the Department conceptually concurred with most of the findings and recommendations, differing in some cases only in terms of degree or the particulars of recommended responsive actions. Also, several findings involved issues, such as recruiting, that do not fall within the purview of sexual assault and harassment prevention but can affect the success of these two programs.

The DTF did not consider many provisions of DoD's sexual assault policy, particularly confidentiality, because they were implemented after the task force had concluded its policy review. However, the DTF report largely validated core DoD

concepts. The report's key findings and recommendations identify issues addressed in the Department's sexual assault policy or targeted in Service-level sexual assault and harassment programs.

For example, the DTF emphasized the need for confidentiality, prevention, increased reporting avenues, deferring collateral misconduct determinations, specialized training for investigators and prosecutors, and increased coordination with civilian communities. In each case DoD had an existing policy in place and, just as important, the Military Departments had already taken action to ensure its implementation in the Service Academies, the active force, and the Reserve Components.

DEFENSE TASK FORCE ON SEXUAL ASSAULT IN THE MILITARY SERVICES

Congress directed the Department in the Ronald W. Reagan National Defense Authorization Act for FY 2005 to extend the DTF, rename it the Defense Task Force on Sexual Assault in the Military Services (DTF-SAMS) and shift its focus to an examination of "matters relating to sexual assault cases in which members of the Armed Forces are either victims or commit acts of sexual assault." The legislation directed DTF-SAMS to assess and make recommendations on 11 specific issues as well as any that the task force identified. In his charge letter to DTF-SAMS, Secretary Rumsfeld asked that particular emphasis be placed on assessing the effectiveness of training and education components of the Department's SAPR program.

Like its predecessor, DTF-SAMS will consist of equal numbers of military and non-DoD members. Although approval of task force members is pending, staff members have already collected and reviewed information from the Office of the Secretary of Defense and the Military Departments. Staff are using methodologies similar to those

used in the previous assessment of the Military Service Academies. In addition, staff have attended training conferences that the Joint Task Force conducted in 2005 and also observed the SAPRO Sexual Assault Response Coordinator Conference that was held in St. Louis last week.

DTF-SAMS will formalize a campaign plan to assess key issues once it is empanelled. Its evaluation of DoD's comprehensive sexual assault policy and its implementation at the unit level will provide the Department and the Military Services valuable feedback on their programs. SAPRO will observe the site visit public meetings to enable rapid dissemination of key information to program offices and throughout the field and also to expedite necessary changes and additions to SAPR policy.

We look forward to the task force's report, which is due to the Secretary of Defense one year after the initiation of its examination, and highly value the opportunity to obtain a thorough and independent assessment of our program.

CONCLUSION

The Department of Defense fully believes that adopting a vigorous sexual assault policy is the right thing to do. Moreover, we understand that only a comprehensive policy that targets the prevention of sexual assault; that significantly enhances support to victims; and that increases system accountability, can create a climate of confidence and a community that treats each of its members with dignity and respect.

We're off to a good start, but let me be clear – to prevail over sexual assault will take time. However, the Department's commitment to this issue is unwavering. We will continue our efforts to ensure that all our service members, including our most junior

enlisted personnel and our cadets and midshipmen, enjoy an environment free of sexual assault, harassment and other related acts.

To that end, the Department has transitioned the Joint Task Force into a permanent office that works under me. The Sexual Assault Prevention and Response Office, SAPRO, serves as the single point of accountability for sexual assault prevention and response policy. It continues to collaborate with the Military Departments to maintain the momentum we have created and to ensure that our sexual assault policy remains relevant and ever responsive to the needs of our men and women in uniform.

As we institutionalize and refine each facet of our prevention and response program, we will create a climate of confidence and trust where everyone is afforded respect and dignity. Not too many years from now, I am confident that the number of reports will drop because the number of sexual assaults has decreased while the percentage of victims who report keeps increasing. I ask your continued support so that vision will become reality sooner rather than later.

Mr. Chairman, in conclusion, I want to thank you and members of this Subcommittee for your advocacy on behalf of the men and women of the Department of Defense.

Mr. SHAYS. Thank you, Dr. Whitley.

Vice Admiral Rodney P. Rempt, thank you.

STATEMENT OF ADMIRAL RODNEY REMPT

Admiral REMPT. Thank you, Mr. Chairman and other members of the subcommittee. I am honored to appear before you today on behalf of the outstanding men and women of the U.S. Naval Academy. The subject that you are addressing is critical and very important to our academies, the services, and our Nation. Sexual harassment, misconduct, and assault should not be tolerated in the Navy and Marine Corps, and I can assure you that they are not tolerated at your Naval Academy.

I can report to you good progress with respect to our sexual harassment, misconduct, and assault prevention and response efforts, but we still have work to do. We expect our midshipmen to live and uphold the highest standards, just as they will be expected to do in setting the example as junior officers in the Navy and Marine Corps.

Many of you have constituents attending the Naval Academy. Our over 4,300 member brigade of midshipmen is made up of the best young people from your Districts and States, and our faculty and staff are also comprised of top-notch academia and military officers. The very idea that anyone in the Academy family could behave in a way that fosters sexual harassment, misconduct, or even assault is of great concern to me as superintendent. Preventing and deterring this unacceptable behavior is a leadership issue that I take to heart.

My goal is to do all in my power to ensure situations like Ms. Davis never occur. As you know, our mission at the Academy focuses on developing midshipmen morally, mentally, and physically to become combat leaders of the highest character to lead sailors and Marines, and it is not by chance that moral development is listed first in our mission because it is the most important. We want our graduates to become leaders of strong character, with the highest ethical standards and unimpeachable values. With this in mind, we attempt to develop a culture that fosters dignity and respect among everyone at the Naval Academy, while also encouraging personal responsibility and accountability.

Our policy to prevent and deter sexual harassment, misconduct, and assault within the brigade and at the Academy as a whole is focused on seven key elements: first, awareness, training, and education to ensure our midshipmen, staff, and faculty know what is expected of them and what our standards are; 24/7 response and support to rapidly and compassionately respond to any incidents; fostering an environment that encourages incident reporting so we know what is occurring and we can respond appropriately; multiple paths for reporting, midshipmen, officers, enlisted, chaplains, counselors, medical personnel, and many others; prompt, thorough investigative procedures employing fully trained and sensitive NCIS investigators; immediate and continuous support for the victim and all involved; and case resolution and follow-on counseling, holding perpetrators accountable, and providing long-term support to victims.

Key to deterring unacceptable behavior is a climate within the brigade of midshipmen, specifically how men and women treat each other. We teach our future officers to be inclusive of all, regardless of race, background, or gender, to value diversity, and to develop teamwork within their shipmates. The vast majority of midshipmen exceed our standards every day.

Annual climate surveys given to the midshipmen indicate that the culture in the brigade is improving. Our most recent survey conducted in 2005 shows a steady downward trend in sexual harassment. While 93 percent of the brigade reported that they did not experience sexual harassment, the fact is that unwanted comments and jokes and innuendo among the 18 to 24 year old midshipmen still occur within the brigade. Acceptance of women within the brigade continues to improve, but young women coming to Annapolis are still a minority in a predominately male environment.

In August 2005, the Defense Task Force both challenged and applauded the Academy's efforts at preventing and responding to sexual harassment and violence and recommended improvements and noted it would take some significant resources to implement all its recommendations. This report was the latest of seven studies and assessments addressing gender relations that the Naval Academy has undergone within the last 15 years. The outcomes of these 7 studies resulted in 243 recommendations for change or improvement, and of those recommendations most have been implemented, many have ongoing actions, and few have not yet been or will not be implemented.

The recent Defense Task Force report which was discussed earlier identified 44 findings and 62 accompanying recommendations within 7 key areas, and they range from the need for external assistance for statutory reform, to internal process changes, and responses detailing actions taken or planned were provided to Academy oversight and guidance bodies, including our Presidentially appointed Naval Academy Board of Visitors and the Secretary of the Navy appointed Executive Steering Group. The Naval Academy has the full support and encouragement of the chief of Naval Operations and the Secretary of the Navy, as well as our Board of Visitors and Executive Steering Group to continue the gains we have made.

We have answered your specific questions with my prepared statement. I am happy to touch on each area, but I will wait for questions in that area.

I do want to say that this year marks the 30 year anniversary of the first admission of women to the academies. At this milestone of 30 years we show a remarkable trend from the beginning year when 80 women were admitted in 1976 to 136 admitted in 1990 to more than 270 women who are projected to report tomorrow as new members of the Class of 2010.

The key elements of the Naval Academy sexual harassment, misconduct, and assault prevention and response plan includes 68 specific actions that I and my staff are working on, organized into 7 key areas of the Defense Task Force report. They are aimed at improving gender culture, increasing dignity and respect, better preventing and responding to sexual harassment, misconduct, and assault.

In addition to the findings and recommendations from the Defense Task Force, we continue to gain valuable insight from other survey and management tools. In April 2005, the Defense Manpower Data Center administered the service academies' sexual assault survey to 682 female and 1,082 male midshipmen, and as a result of those findings what they showed us was that sexual assault incident rates are very low, sexual harassment incident rates are more prevalent than assault, as we would expect, sexist behavior is a lingering concern in Academy culture, alcohol is often a factor in sexual assaults, and the reason most often indicated for not reporting sexual assaults was that victims thought they could deal with it themselves.

Nearly all midshipmen acknowledged having had training on sexual harassment and assault, and the majority of midshipmen feel that sexual harassment and assault have become less of a problem.

These results indicate that the Academy is making positive progress, but we are continually working to improve our prevention and response efforts. Our own values survey most recently conducted in October 2005, assesses command climate and asked a number of questions in different areas. In response to this, what we learned was the most frequent offense regarding sexual harassment, negative comments, remarks, and offensive jokes, about 6 percent, and 93 percent reported they were not harassed, 93 percent of women do not feel that sexual harassment impeded their development as midshipmen, and 98 percent of both men and women reported that they did not experience sexual assault. Of the remaining 2 percent who did, the most common offenses were unwanted touching or kissing.

Resentment against midshipmen who report harassment dropped to a low of 10 percent among males, down from 24 percent in 2001, and 5 percent among females, down from 50 percent in 2001. Respect for midshipmen who report harassment grew from 34 percent to 56 percent amongst males, and from 25 percent in 2001 to 65 percent amongst females. And 97 percent of the women and 98 percent of the men feel safe sleeping in Bancroft Hall. And 97 percent of women and 98 percent of men rate teamwork and cooperation between themselves and midshipmen of the opposite gender as favorable.

These are encouraging results. They tell us that we are making progress in the area of fairness and gender relations.

As you well know, sexual assault on the Nation's college campuses has been receiving more attention lately. In an October 2002, report to Congress, the National Institute of Justice provided a comprehensive benchmark of sexual assault policy on the Nation's campuses and delineated promising practices in the area of sexual assault prevention policy, reporting, investigation, adjudication, and victim support.

I am pleased to report that the Naval Academy has in place through its sexual assault/victim intervention program each of the promising practices of that research report. We are continuing to expand those.

In the interest of time I will skip our recurring and new initiatives. They are contained in my statement.

I will conclude. I have consistently made clear to all of our staff and midshipmen that the Navy does not tolerate sexual harassment, misconduct, or assault. These actions have no place in the Navy or Marine Corps and are contrary to the values of the Naval Academy and what we are striving to develop in our future officers.

Public trust that the academies will adhere to the highest standards and that we will serve as a beacon for the Nation that exemplifies character and dignity and respect, and we will continue our efforts to meet that trust.

Destined to be the future leaders of sailors and Marines, we hold our midshipmen to the highest standards. These high standards apply equally to each and every midshipmen in the brigade.

I invite each of you and your colleagues to visit us at the Naval Academy and to talk to your midshipmen, and perhaps that is something I'd suggest for this subcommittee, to have a chance to actually talk to midshipmen to get information on these and other subjects firsthand. Preventing and deterring sexual harassment, misconduct, and assault is a critically important issue that needs to be continuously emphasized. We are on the right track and this serious issue has our fully focused attention.

As superintendent, I ensure you that we will continue to do the right thing and uphold the Academy's standards when dealing with these cases. The Naval Academy will continue to focus on improving gender relations toward the goal of greater dignity and respect among midshipmen and eliminating sexual harassment, misconduct, and assault.

Thank you, sir.

[The prepared statement of Admiral Rempt follows:]

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HOUSE SUBCOMMITTEE

STATEMENT OF

VICE ADMIRAL RODNEY P. REMPT, USN,

SUPERINTENDENT OF THE UNITED STATES NAVAL ACADEMY

BEFORE THE

HOUSE SUBCOMMITTEE

ON

NATIONAL SECURITY, EMERGING THREATS, AND INTERNATIONAL RELATIONS,

COMMITTEE ON GOVERNMENT REFORM

JUNE 27, 2006

NOT FOR PUBLICATION
UNTIL RELEASED BY THE
HOUSE SUBCOMMITTEE

Introduction

Mr. Chairman, distinguished members of this committee, thank you for the opportunity to appear before you today on behalf of the outstanding men and women of the United States Naval Academy. The subject you are addressing is critically important for our academies, services and the nation. I am pleased to be able to report solid progress with respect to preventing and responding to sexual harassment, misconduct and assault at the Naval Academy and will provide you a summary of the actions we are taking in our Sexual Harassment, Misconduct and Assault Prevention and Response Program.

We expect our midshipmen to live and uphold the highest standards, just as they will be expected to do in setting the example as junior officers in the Navy and Marine Corps. The very idea that anyone in the Academy family could behave in such a way that fosters sexual harassment, misconduct, or even assault is of great concern to me as Superintendent; it keeps me awake at night. Preventing and deterring this unacceptable behavior is a leadership issue that I take to heart. I expect everyone at the academy; seniors, peers and subordinates, to set the very best example of leadership and character for our midshipmen to emulate.

Mission

The mission of the Naval Academy is "To develop midshipmen morally, mentally and physically and to imbue them with the highest ideals of duty, honor and loyalty in order to provide graduates who are dedicated to a career of naval service and have potential for future development in mind and character to assume the highest responsibilities of command, citizenship and government." It is not by chance that moral development is listed first, because it is the most important. We want our graduates to become leaders of strong character with the highest ethical standards and unimpeachable values.

Preventing and Deterring Sexual Harassment, Misconduct, and Sexual Assault:

Sexual harassment, misconduct and assault are not tolerated in the Navy and Marine Corps and they are not tolerated at the Naval Academy. The Naval Academy remains focused on preventing, deterring and effectively responding to these unacceptable behaviors. These issues are taken seriously. All allegations are thoroughly investigated, and individuals are held accountable for their actions. At the same time, accused are always presumed innocent until proven otherwise.

Our policy is to prevent and deter sexual harassment, misconduct and assault within the brigade and at the academy as a whole. One incident of sexual harassment, misconduct or assault is too many. However, when incidents do occur, we encourage reporting so that we can provide maximum support to the victim, prevent revictimization and resolve the issue appropriately.

Our Sexual Assault Victim Intervention (SAVI) program contains seven key elements:

- Awareness training and education- to ensure everyone- midshipmen, staff and faculty- know what is expected of them.
- 24/7 response and support- rapidly and compassionately responding to any incidents that do occur.
- Fostering an environment that encourages incident reporting- so that we know what is occurring and can respond appropriately.
- Multiple paths for reporting- midshipmen, officers, enlisted, chaplains, counselors, medical personnel and others.
- Prompt, thorough investigative procedures- employing fully trained and sensitive NCIS investigators.
- Immediate and continuous support- for the victim and all involved.
- Case resolution and follow on counseling- holding perpetrators accountable and providing long term support to victims.

Gender Culture in the Brigade

Key to deterring unacceptable behavior is the climate in the Brigade of Midshipmen with respect to how men and women treat each other.

Our Naval Academy culture builds from naval traditions and heritage and is characterized by honor, courage and commitment in officer professional development. We endeavor to develop a professional culture at the Academy that fosters dignity and respect, while also encouraging personal responsibility and accountability. The highest standards and highest expectations of character and conduct apply equally and fairly to each and every midshipman in the Brigade. We teach our future officers to be inclusive of all, regardless of race, background or gender, to value diversity and to develop teamwork with their shipmates. The vast majority of midshipmen meet and exceed our exacting standards each and every day of their four years at the Academy.

Annual climate surveys given to the midshipmen indicate that the culture in the Brigade is improving, but that we still have a ways to go. Our most recent survey, conducted in 2005, shows a steady downward trend in sexual harassment. While 93% of the Brigade reported that they did not experience sexual harassment, the fact is unwanted comments, jokes and innuendo amongst the 18-24 year old midshipmen still occur within the Brigade. The differences in uniforms, physical readiness test standards, and perceptions of bias one way or the other perpetuate a feeling of separateness, just as we are teaching them teamwork and unity. We are encouraged by our progress in this area, but these issues require constant attention. Acceptance of women within the Brigade continues to improve, but young women coming here are still a minority in a predominantly male environment. This area remains a challenge, as we can regulate behavior, but we cannot regulate what people think. Changing perceptions and opinions takes a relentless and concerted effort.

We strive to establish a climate which encourages reporting of sexual harassment, misconduct and assault incidents so we can support the victim and respond to allegations fairly and appropriately. The Naval Academy has maximized reporting avenues in belief that accessibility and confidentiality will further encourage victims to come forward, report incidents and access support services.

Defense Task Force Results

In August 2005, the Defense Task Force (DTF) released its report assessing the efforts and effectiveness of the Naval and Military Academies at preventing and responding to sexual harassment and violence. This report was a follow on to the 2003 Report of The Panel to Review Sexual Misconduct Allegations at the U.S. Air Force Academy. The DTF assessment found that both the Naval and Military Academies had been actively addressing the issues of sexual harassment and assault prior to the Task Force's review. The Task Force applauded the Academies' efforts and recommended improvements, noting that it will take significant resources to implement its recommendations. Of note, this report was the latest of seven studies/assessments addressing gender relations that the Naval Academy has undergone within the last 15 years. The outcomes of the seven studies resulted in 243 recommendations for change/improvement.

Of those recommendations, most have been implemented, many have ongoing actions and a few have not yet been or will not be implemented. Examples of each are:

- Eliminate exclusionary language and discriminatory policies - We have changed the language in the USNA Song Book to be gender neutral, changed the pregnancy/paternity policy to allow for a Leave of Absence, and have established a hair salon separate from the men's barber shop for female midshipmen.
- Establish an ongoing education program for all Academy personnel- We have recently completed annual awareness training for over 1,700 faculty and staff, in addition to the training that midshipmen receive during Plebe Summer in leadership and ethics courses, and during company level training throughout the academic year.
- Midshipmen should assume more accountability for each other's behavior- This action is ongoing, as we still have a ways to go to get midshipmen to hold each other accountable.
- Congress should amend Article 32 of the Uniformed Code of Military Justice to close sexual assault hearings to protect privacy- This recommendation is not being pursued at this time. A

Department of Navy leadership response indicated that a 1997 U.S. Court Of Appeals of the Armed Forces decision may limit the ability to enact legislation on this issue. The Court of Appeals observed that overly broad, blanket rules of closure, for privacy concerns, had been held unconstitutional.

The Defense Task Force Report identified 44 findings and 62 accompanying recommendations within seven key areas:

- Service Academy Culture
- Victims' Rights and Support
- Offender Accountability
- Data Collection and Case Management Tracking
- Training and Education
- Prevention
- Coordination between Military and Civilian Communities

The recommended actions for improving effectiveness within those areas range from statutory reform requiring external assistance, to internal process changes. While nearly all recommendations have been pursued, specific improvement actions and initiatives are in varying degrees of implementation within each key area. By the Naval Academy's continued emphasis on training and education (prevention and response awareness - curricular and non-curricular); victim support (immediate and continuous); culture (equity, dignity and respect); and support resources (adequate and accessible), we are confident we will continue our overall improvement and progress in all related areas.

Responses detailing actions taken or planned were provided to Academy oversight and guidance bodies, including the Presidentially appointed Naval Academy Board of Visitors and the Secretary of the Navy appointed Executive Steering Group. The Naval Academy's Sexual Harassment, Misconduct and Assault Prevention and Response Plan has been recently updated and expanded to incorporate the means

to better address sexual harassment and assault issues and further develop a professional culture that fosters dignity and respect.

In order to satisfy the subcommittee's specific request that the Service Academies address several issues from the DTF Report, the following information is provided:

a) **What are the Service Academies plans for increasing the number and visibility of female officers and Non-Commissioned Officers (NCOs) in key positions?**

In the past three years, the Academy has been working to increase the number of female midshipmen in the Brigade. Numbers admitted in each class include:

Class	**2006**	**2007**	**2008**	**2009**	**2010****
Total	1214	1228	1244	1227	1220
# of Women	192	205	250	237	278
% of Women	15.8	16.7	20.1	19.3	22.8

** Numbers projected to report on 28 June 2006.

In concert, Navy leadership has followed through with the assignment of top female officers and enlisted to the faculty and staff. Currently the Academy has 70 female officers out of 392 officers assigned (17.8%). Sixteen are Senior (O5-O6) Officers compared to nine in 2003. Women officers hold key leadership positions including Deputy Superintendent/Chief of Staff, Director of Admissions, Division Director of Math and Science, and two of six Battalion Officers. Female junior officers are serving many positions at the Naval Academy as company officers, instructors, and support staff. Additionally, there are currently five authorized billets for female Senior Enlisted Leaders to serve in the brigade; however, with the increased number of female midshipmen, a total of six billets are required. Further, only four of those billets are currently filled with females.

The Naval Academy is working closely with the Navy Personnel Command for a fully representative Brigade leadership. Retaining the number of senior and junior female officers currently on board, and increasing the number of female Senior Enlisted Leaders will require continued action by all concerned.

Significantly, because our faculty is around 55% civilian, the availability of role models for women in our faculty is significant. 28% of the civilian faculty are women, including 7 of 18 Department Chairs (one of which is an active duty Captain).

b) What training and education are the Academies providing to their students addressing sexual harassment and assault?

Over the past several years, significant effort has been expended to improve the effectiveness and relevance of such training at the Academy. Midshipmen receive sexual harassment, misconduct and assault prevention and response training throughout their four-year development. Basic training is provided during plebe summer orientation and then throughout their course curriculum as midshipmen progress in seniority and responsibility - ultimately emphasizing a leader's responsibility in ensuring a safe, cohesive, and professional shipboard or company environment. A good portion of midshipman training is performed by midshipman GUIDEs (Guidance, Understanding, Information, Direction, and Education), who are trained peer educators. The SAVI GUIDEs are trained in a 20 hour program and then continuously updated with resources and lesson plans. They in turn train other midshipmen in their company using lecture, discussion, and experiential learning. Experience has also shown that midshipmen are most comfortable reporting incidents of sexual assault to their peer GUIDEs. GUIDEs quickly and effectively notify the chain of command of a reported assault and put midshipmen in touch with the proper resources.

In addition to midshipman training in their Company each semester, midshipmen are exposed to related academic subjects each year. For instance, the 4/c (Freshman year)

leadership course includes a case study in which a Midshipman 1/C and a Midshipman 4/C begin a relationship that eventually results in a date-rape scenario as part of a lesson titled Perception vs. Reality. The 3/C (Sophomore year) ethics course includes a case study titled "We treat her like everyone else", which explores the differences between innocent and manipulative mishandling of a Commanding Officer's professional relationship with a female junior officer. By 1/C (Senior) year the case studies address an assault issue involving a young Sailor/Marine requiring the students to carry out his/her responsibilities as a junior officer.

Throughout the year each class receives pointed instruction from nationally renowned guest lecturers and presentations aimed at the midshipmen as a group.

These include:

- "Sex Signals"- A seventy-five minute, two-person presentation that explores how social norms, mixed messages, unrealistic fantasies, and false preconceptions of the opposite sex, contribute to misunderstanding and miscommunication often found in dating. The presentation serves to address date rape myths and increase audience awareness in an effort to prevent and deter sexual assault.

- Katie Koestner- A speaker with extensive experience in giving presentations to colleges and high schools throughout the country discussing her experiences with sexual assault. Katie discusses her journey from victim to survivor, interweaving her own story with vignettes from survivors across the country. Her emotionally charged talk creates an environment of understanding, and helps to lay the groundwork for proactive, long-term behavioral transformation.

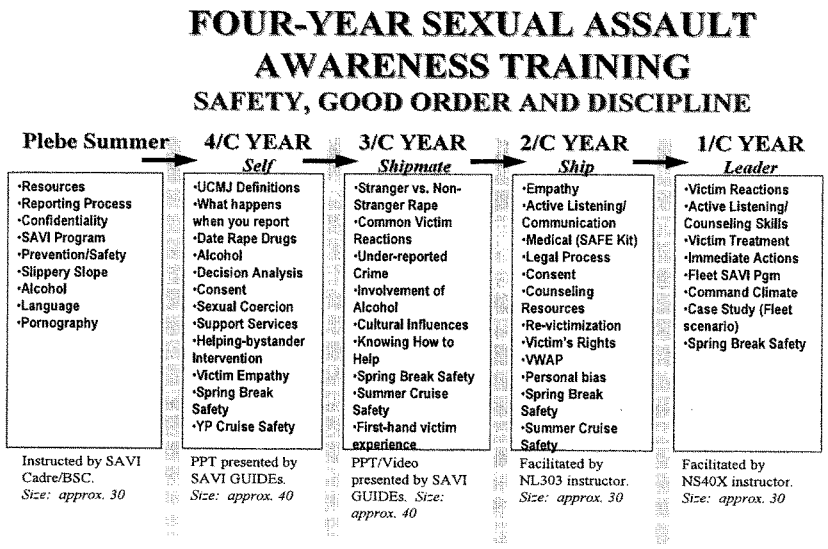
- "1 in 4"- *One in Four*, named after the statistic that 1 in 4 college women report surviving a rape or attempted rape since age fourteen, is an all-male group of peer educators that presents to colleges nationwide. The program is specifically intended for an all-male audience. Published research has shown that this program has the dual benefit of educating men how to help

women recover from a sexual assault while lowering men's rape myth acceptance and their self-reported likelihood of committing such an offense.

This often graphic and realistic training is essential to help young people understand their proper role in the face of varying societal mores in their formative years.

All training addresses DoD as well as the Naval Academy's policies, reporting paths and confidentiality, and resources for victim support; additionally midshipmen receive wallet cards with basic response information and phone numbers for primary Sexual Assault Victim Intervention (SAVI) points of contact. All personnel are additionally referred to the Academy's SAVI website for more information. At the same time we recognize the need for more expert education and training and have asked the Navy to support the assignment of 3 expert instructors to further improve our education efforts. We want to expand the number of qualified instructors devoted to formal classroom instruction in this area.

The below chart is a visual depiction of the current training and education content for midshipmen:



c) **Describe the key elements of the institutional sexual harassment and assault plan that the institutions developed based on the recommendation of the TASK Force Report?**

In January 2006 the Naval Academy updated and expanded its overall Sexual Harassment, Misconduct and Assault Prevention and Response Plan. An Academy Project Team reviewed and coordinated efforts to determine actions which would further improve the existing plan. Our current plan includes 68 specific actions organized within the key areas of the Defense Task Force Report. Included are actions aimed at improving gender culture, ensuring dignity and respect between midshipmen, and better preventing and responding to sexual harassment, misconduct, and assault.

The key areas of the DTF Report and a few of our actions in response are:

- Prevention (and Response) – Clarify policy guidance, increase awareness, provide adequate and accessible resources.
- Academy Culture – Increase number of female midshipmen and of female faculty and staff to serve as role models.
- Victim's Rights and Support – Maximize reporting avenues, improve 24/7 response with trained victim advocates.
- Training and Education – Continue to increase focus on prevention, while maintaining and improving our strong education and training program.
- Offender Accountability – Ensure consistency and appropriateness in our judicial and administrative systems of accountability.
- Data Collection and Case Management – Maintain thorough records of all reported incidents, following up on each case as it develops.
- Coordination with Military and Civilian Communities – Continue to build interactive relationships with civilian and military resources outside of the Academy, including participation in state and national level sexual assault prevention and response conferences.

d) **What actions have the Academies taken to institute the Task Force Report recommendation that the Academies follow the DoD policy regarding establishment of a collaborative relationship with civilian authorities for sexual assault victim support?**

The Naval Academy has had excellent relationships and cooperation with local law enforcement, medical, and counseling agencies including participation in the local civilian Sexual Assault Response Team. In June 2005 we formalized pre-existing, informal collaborative relationships with community support agencies through a Memorandum of Understanding with the 7 local agencies:

- Annapolis & Anne Arundel County Police Departments
- Anne Arundel & Baltimore Washington Medical Centers
- Anne Arundel Abuse Counseling Center
- YWCA of Annapolis and Anne Arundel County
- Anne Arundel County State's Attorney's Office

The Naval Academy's Sexual Assault Prevention and Intervention Specialist (SAPIS) is currently a board member for the Maryland Coalition Against Sexual Assault (MCASA), participates in monthly state-wide Domestic Violence/Sexual Assault Coordinating Council meetings, and participates in bi-monthly state-wide Domestic Violence/Sexual Assault Prevention educators meetings.

e) **What are the Academies policies related to privileged communications between victims of sexual assault and health care providers and counselors?**

The Naval Academy affirms that privileged ("restricted") reporting is one of the most effective means of encouraging reports of sexual assault. We implemented the forerunner to restricted reporting, limited confidentiality, in 2003. The Naval Academy has in place all DoD designated Sexual Assault Prevention and Response (SAPR) confidential reporting contacts

(i.e., Sexual Assault Response Coordination (SARC) Officer and Liaisons, Victim Advocates, Health Care Providers, and Chaplains). Full confidentiality is reserved for those conversations between victims of sexual assault and chaplains/psychotherapists. Naval Academy policy and midshipmen, faculty and staff training follow Navy/Marine Corps policy and specifically address and explain the bounds of confidentiality afforded to specific SAPR contacts.

For the past three years, limited confidentiality (now "restricted" reporting) has successfully encouraged a greater number of midshipmen to report sexual assaults and receive information and referrals to support services without having to provide any personal or identifying information to the command. Increasingly, midshipmen who initially opt for restricted reporting are changing to unrestricted reporting after receiving confidential advocacy and support services. This allows the command to maintain situational awareness of any incidents, while protecting the privacy of the victim. It also gives a reluctant victim time, information, and support to consider pursuing a case.

In addition to the issues the subcommittee specifically asked the Service Academies to address, I would like to add additional information that I think is valuable and will be helpful for committee members so that they gain a better understanding of the Sexual Harassment, Misconduct, and Assault Prevention and Response program at the Naval Academy.

Naval Academy Progress

The Naval Academy is steadily improving in this critical area as a result of enhanced prevention and response, more relevant education and training, increased awareness initiatives, and focused leadership. In addition to the findings and recommendations from the Defense Task Force, the Naval Academy continues to gain valuable insight from other methods of assessment. Continued use of survey and management tools helps the Academy and Navy leadership determine the effectiveness of our efforts and determine where renewed attention should be focused. Various surveys have been completed and

their data, together with that of other assessment tools, is being carefully reviewed to help gauge effectiveness of on-going efforts and direct the focus of future efforts in order to provide a safe and professional environment.

DMDC Survey Results

In April 2005, the Defense Manpower Data Center (DMDC) administered the Service Academies Sexual Assault (SASA) 2005 Survey to 682 female (a census) and 1,082 male midshipmen. SASA 2005 was the second of five annual surveys (2004-2008) directed by the FY 2004 National Defense Authorization Act to track the underlying incidence of sexual harassment and assault at the Service Academies. SASA 2005 queries sought information on training, academy culture, personal experiences relating to sexual harassment, sexual assault and sexist behavior, and assessment of progress.

Overall the SASA 2005 Survey data is in sync with assessment findings of the Report of the Defense Task Force on Sexual Harassment and Violence at the Military Service Academies and the Naval Academy's internal Quality of Life/Values Survey. Naval Academy SASA 2005 results indicate:

- Sexual assault incident rates are low (4.7% female/1.5% male).
- Sexual harassment incident rates are more prevalent than assault (59% female/14% male).
- Sexist behavior is a lingering concern in Academy culture (93% female/50% male).
- Alcohol is often a factor in sexual assaults (62% female/male % not reportable).
- The reason most often indicated for not reporting sexual assault was that victims thought they could deal with it themselves.
- Nearly all midshipmen acknowledged having had training on sexual harassment and assault.
- The majority of midshipmen feel that sexual harassment and assault have become less of a problem.

Results indicate that the Naval Academy is making positive progress. While encouraged, we still have a ways to go and are continually working to improve our prevention and response efforts.

Values Survey Results

Since 1996, the Naval Academy has conducted an annual Values survey which assesses command climate and programs through a series of questions about various areas of importance to midshipmen and measures midshipmen's attitude and experiences in a variety of areas, including sexual harassment, misconduct and assault. Our most recent survey, conducted in October 2005, shows that we're making steady progress in several areas such as sexual harassment and assault, perceptions of fairness and overall satisfaction. These issues require constant attention, but we are encouraged by the most recent survey results. The Academic Year 2005/06 survey data indicated:

- Most frequent offense regarding sexual harassment: Negative comments, remarks and offensive jokes (6%). 93% reported they were not harassed.
- 93% of women do not feel that sexual harassment impeded their development as midshipmen.
- 98% of both men and women reported that they did not experience sexual assault. Of the remaining 2% who did, the most common offenses were unwanted touching or kissing (1.2%).
- Resentment against midshipmen who report harassment dropped to a low of 10% among males (down from 24% in 2001) and 5% among females (down from 50% in 2001).
- Respect for midshipmen who report harassment grew from 34% (2001) to 56% (2005) amongst males and from 25% (2001) to 65% (2005) amongst females.
- 97% of the women (and 98% of men) feel safe sleeping in Bancroft Hall.
- 97% of women and 98% of men rate teamwork and cooperation between themselves and midshipmen of the opposite gender as favorable.

These are encouraging results that we are making good progress.

Naval Academy Promising Practices

Sexual assault on the Nation's college campuses has been receiving more attention lately. In 1999, Congress asked the National Institute of Justice to study school compliance with Federal Law concerning security procedures, reporting crime data and ensuring victims' rights. The resulting report,

"Campus Sexual Assault: How America's Institutions of Higher Education Respond", was submitted in October 2002 and provides a comprehensive benchmark of sexual assault policy on the Nation's campuses. The report details promising practices in the area of sexual assault prevention policy, reporting, investigation, adjudication and victim support services. I am extremely pleased to report that the Naval Academy has in place, through its Sexual Assault Victim Intervention (SAVI) Program, each of the promising practices of the Research Report.

1) Prevention efforts

We have been aggressive in our efforts to prevent and respond to sexual harassment, misconduct, and assault. In April 2004, the Naval Academy established the permanent position of Program Manager for Sexual Harassment, Misconduct, Assault Prevention and Response (now SARC) and this senior officer position is currently filled by a senior Navy Commander who reports directly to me. All sexual harassment, misconduct and assault prevention and response training addresses DoD and Naval Academy policies, reporting paths and confidentiality, and resources for victim support. All personnel are informed about the Naval Academy's SAVI website, which contains more detailed information. In addition to the midshipmen training detailed above, Naval Academy faculty and staff also receive orientation upon reporting to the Academy for duty, and during annual refresher training; Mental Health Providers and first responders participate in more specialized training.

2) Sexual Assault Policy

The Naval Academy's sexual assault policy clearly defines all forms of sexual assault according to the DoD standard. Our training details points of contact and available reporting options, and strongly encourages victims to report incidents. It provides for initial response, compassion and support for victims, and rapid investigation of all allegations. All midshipmen, faculty and staff receive detailed annual training on all aspects of this policy.

3) Reporting

The Naval Academy works hard to foster an environment that encourages reporting. Our training delineates reporting options, confidentiality and resources available to victims. The Academy's SAVI program provides identity protection and restoration of control to victims of Sexual Assault. We fully support increased confidentiality and believe that it is essential for victims to come forward. Midshipman SAVI GUIDEs and the Officer SAVI Liaisons (trained full time officers) with confidential reporting authority have permitted victims to obtain information and assistance (e.g., counseling), without their identity being disclosed or an investigation being initiated. "Restricted" (confidential) reporting is essential to our program.

4) Investigation and prosecution

Although our number one priority is to properly care for victims and provide continuous support, we also want to make victims aware of their rights and available resources. We encourage reporting so that we can provide the appropriate care for victims, investigate allegations, and initiate legal action as appropriate. As soon as a report is received, the Naval Criminal Investigative Service is contacted, and an official investigation begins, unless the alleged victim declines to participate. Based on evidence collected in an investigation, the Naval Academy may forward a case to judicial proceedings and possible prosecution. When required, Navy and civilian officials cooperate fully as a unified team during the investigation and associated prosecution of cases.

5) Adjudication

Although every report of sexual assault is investigated and treated as if it may be tried at a court-martial, not all sexual assault investigations support judicial action. An investigation may reveal sexual or other misconduct most appropriately addressed at an administrative level. The Naval Academy may use the Administrative Conduct System, Nonjudicial Punishment, or other administrative procedures, in

addition to Courts Martial, to hold midshipmen and/or other service members accountable for misconduct.

6) Victim Support Services

The Naval Academy ensures a sensitive, coordinated approach to victim support. A midshipman who experiences a sexual assault can obtain immediate, 24/7 assistance and support through multiple channels, including SARC and SAVI Liaisons, SAVI Advocates (officers and senior enlisted), midshipmen SAVI GUIDEs, psychotherapists, chaplains, medical support personnel, their chain of command and through other assigned faculty and staff. The alleged victim is immediately assigned a trained personal advocate to provide support and assistance throughout the medical, administrative, legal and counseling process. This support continues until the victim no longer requires or desires it. In June 2005, the Naval Academy hired a licensed clinical social worker as the Sexual Assault Prevention and Intervention Specialist (SAPIS) who specializes in sexual assault/trauma therapy. The Naval Academy's Command Managed Equal Opportunity Program responds to allegations of sexual harassment and refers midshipmen, faculty, and staff to many of the same support services, including psychotherapists and chaplains.

Prevention and Response Initiatives

Navy leadership resource and policy support are being sought to ensure a full prevention and response capability, specifically - assignment of additional female role models; support of a review of current occupational specialty restrictions on females; financial resources to provide more qualified instructors; and support of Congressional action to amend Article 32 of the Uniform Code of Military Justice to permit closed hearings in sexual assault cases. With continued Navy leadership help and support, measurable long-term improvements can be made to address these

complex issues. The Naval Academy team is determined to provide the continuous dedicated effort and required resources to meet this continuing challenge.

Recurring efforts

- Sexual Assault Victim Intervention (SAVI) Program focus groups are conducted quarterly, and are designed to get direct feedback from midshipmen on a wide range of issues, from how safe they feel in Bancroft Hall, to assessment of the climate with respect to gender and the prevalence of sexual harassment, misconduct and assault within the Brigade. The focus groups provide an opportunity to gain feedback on the SAVI Program, as well as to determine how well it is being implemented and how effective the educational material is in delivering the right message to midshipmen.
- Equal Opportunity Exit Interviews are conducted with every female midshipman that departs the Naval Academy prior to graduation, regardless of the reason, to determine if she experienced sexual harassment or assault while at the Naval Academy. This interview is also intended to ascertain whether their departure (voluntary resignations) was in any way related to their treatment as a female or any negative perceptions they may have of the Academy environment and its treatment of female midshipmen.
- The Naval Academy will continue to administer its annual Quality of Life/Values Survey (since 1995) as directed by the Board of Visitors. These surveys are administered by the Academy's Office of Institutional Research, which provides technical oversight to ensure the results are scientifically sound. They are intended to gain perspective of midshipmen's beliefs and experiences in a variety of areas including sexual harassment, misconduct and assault.
- The Academy continuously screens and trains SAVI contact/ response personnel. The training has included a focus on the various reporting resources, i.e., identified multiple

reporting paths, those which have confidentiality and the level of confidentiality afforded each.

- Continue to increase the percentage of female midshipmen and female officer and senior enlisted role models.
- Increase emphasis on midshipmen responsibility and accountability through focused training, additional review and monitoring of midshipmen behavior and assessment of information retention and relevancy.
- Review Leadership, Ethics and Law Curricula to expand and enhance existing sexual harassment and assault course content and instructional methods.
- Continue extracurricular awareness training and availability of expanded sexual assault confidential reporting resources to maximize avenues for reporting and support. Increase awareness of confidential reporting options through focused training.
- Continue active liaison with Navy's SAVI Program Management Office for information sharing, program updates, coordination and support.
- Seek Naval leadership assistance in attaining resources to ensure full sexual harassment and assault prevention and response capability. Specifically, resources for specialized training of key response and support personnel (e.g. psychotherapists) and to bring onboard additional personnel for SAPR Program oversight, support, education and training (3 military and 4 civilian positions).
- Increase officer and senior enlisted supervision of midshipmen in Bancroft Hall during evening and weekend hours.
- Update and further improve USNA's overall Sexual Harassment, Misconduct and Assault Prevention and Response Plan. Provide Prevention and Response Plan to Academy's Executive Steering Group for review.

New initiatives

- In the academic year 2006-07, the Naval Academy will host a conference in which service Academies and their preparatory schools will participate, focusing on prevention of sexual assault, misconduct and harassment.
- The peer education curriculum is currently being updated, and the Naval Academy is enhancing training for the midshipmen trainers.
- The Naval Academy has published articles in SHIPMATE, the alumni magazine, addressing our sexual harassment, misconduct and assault policy.
- Updating the Naval Academy SAVI Website has provided more comprehensive information, e.g., addressing what to do if assaulted, confidentiality policy, contact info, links to other relevant sites, and made it much easier to access, i.e., quick link from the Naval Academy Homepage.
- The Naval Academy is working proactively with the Navy Personnel Command to seek funding and billets to make measurable improvements in program effectiveness.
- In May 2006, the Naval Academy hired a nationally renowned expert on trauma and therapy with sexual assault victims to conduct continuing education training for all Naval Academy psychotherapists.
- The Faculty Liaison Program (FLP) has been implemented to expand the readily available resources that provide awareness information, victim guidance and support. FLP is a subsidiary program of the Naval Academy's SAVI Program in which faculty members volunteer and are trained to act as contact points for faculty, staff and midshipmen seeking information or assistance relating to sexual assault.

Conclusion

I have consistently made clear to all our staff and midshipmen that the Navy does not tolerate sexual harassment, misconduct or sexual assault. These actions have no place in the Navy and Marine Corps and are contrary to the values the Naval Academy strives to develop in our future officers. The public trusts that the Naval Academy will adhere to the highest standards and that we will serve as a beacon that exemplifies character, dignity and respect. We will continue our efforts to meet that trust.

Destined to be the future leaders of Sailors and Marines, we hold our midshipmen to the highest of standards. As prospective Navy or Marine Corps officers, midshipmen must set the example and must not conduct themselves in such a way that indicates questionable personal morals or is not consistent with the Navy's core values of honor, courage and commitment. These high standards apply equally to each and every midshipman in the Brigade.

In closing, preventing and deterring sexual harassment, misconduct and assault is a critically important issue that needs to be emphasized time and time again. Improving our climate at the Naval Academy to where all people treat each other with dignity and respect is among our highest priorities. As Superintendent, I assure you that we'll continue to do the right thing and uphold the Academy's standards when dealing with these cases. The Naval Academy will continue its focus on improving gender relations toward the goal of greater dignity and respect among midshipmen, and eliminating sexual harassment, misconduct, and assault.

Mr. SHAYS. Thank you, Admiral.

The statistics that you were providing, were those statistics done by——

Admiral REMPT. They are contained in my statement, yes, sir.

Mr. SHAYS. Are they statistics that were done by an outside firm or done internally? And if they were done internally, can the individual——

Admiral REMPT. There have been three separate surveys——

Mr. SHAYS. Let me just finish. If they were done internally, can the cadets be absolutely convinced that, whatever their response, it was totally and completely confidential?

Admiral REMPT. Yes. There were three separate surveys, and all of them are done completely anonymously and they are assured of that.

Mr. SHAYS. Done internally though?

Admiral REMPT. Only one was an internal survey. The other two were done from the Defense Task Force and from the DOD SASA survey.

Mr. SHAYS. OK. Thank you, Admiral.

General Caslen.

STATEMENT OF BRIGADIER GENERAL ROBERT L. CASLEN, JR.

General CASLEN. Mr. Chairman and distinguished members of the subcommittee, thank you for inviting the U.S. Military Academy to discuss the sexual assault prevention and response program at West Point. Thank you for the opportunity to testify before this subcommittee to highlight the study recommendations from the Defense Task Force Report and our subsequent efforts to address sexual assault and violence against women at West Point.

We also would like to thank the first panel, and in particular Ms. Davis, and recognize her courage and acknowledge each of their efforts in changing a culture that will not only affect our service academies but also our services at large.

Many personnel at the Academy have worked very hard with the task force during the year it conducted its data collection, its analysis, and published its report. The task force found the academies have been actively addressing these issues prior to their assessment and applauded our efforts. In addition, a recent Department of the Army IG inspection on our program applauded the efforts made thus far in implementing the sexual assault response program, and their final summary highlighted the West Point program as a model for the Army at large.

The U.S. Military Academy revised policy now states that sexual assault is a leadership issue and is inconsistent with the concepts of officership and leadership and contrary to the good order, discipline, and values of the Army. Leaders of good character do not commit sexual assault. They do not, under any circumstance, tolerate sexual assault by superiors, peers, or subordinates. Academy leaders will continue to take ownership of this issue and make every effort to support the Army's initiative to eliminate sexual assault.

Respect and dignity for all are inherent in the Army's Warrior Ethos, where our Soldier's Creed states, "I am a member of a team, mission first, never accept defeat, never quit, and never leave a

fallen comrade. I am disciplined, I am professional." Sexual harassment, sexual assault, and violence against women have no case in that non-negotiable contract of who we are and what we stand for as a profession of arms.

In the 1-year since the release of the DOD Task Force Report we have developed action plans and, based on the 44 recommendations, we have developed 107 actions to improve our overall program. Of these, 78 are green, 29 are amber, and none are red. Additionally, we have identified 53 actions that, although currently green, they require continuous or periodic review.

The first question asked us to address are plans for increasing the number and visibility of female officers in key positions. We have increased the numbers and visibility of female officers by increasing from 8 to 20 percent the women selected in our advanced schooling programs. We have increased 14 percent the number of women in our tactical department. We have selected seven women for senior faculty positions, to include a department head and a permanent professor, selected women for cadet leadership details from 10 to 16 percent. We have assigned two female chaplains, women in military and civilian counselors, women doctors and coaches, and two sexual assault response coordinators, one for the installation staff and one for the corps of cadets, and also two advisors, one for the office of the dean and one for the intercollegiate athletic office.

In order to increase visibility of women war fighters, women are included in all lecture series which bring combat veterans with recent tours in Iraq and afghanistan back to the Academy to highlight their experiences.

The subcommittee also requested we address the type of training we are providing to our cadets regarding sexual harassment. The cadet leader development system is our process for continuing that tradition as we develop tough, competent, confident leaders for the Army. This program develops the attributes needed in future Army leaders and includes over 70 hours of respect training, which covers sexual assault, sexual harassment, and gender discrimination.

This past year we revamped the cadet lecture series, making the sessions during academic hours, bringing in new speakers, incorporating new material obtained from national sexual assault resource centers. Highlights included outstanding performances by Veraunda Jackson, a rape survivor, and Tony Porter, head of a men's group to stop violence against women, both nationally known advocates for sexual assault programs.

Academic directors made changes to core curriculum courses which included course objectives on human sexuality, the impact of sex roles on behavior, rape myths, communications in sexual relationships, officer counseling to emphasize building strategies to combat sexual harassment and assault in units, Uniform Code of Military Justice definitions of sexual harassment and assault and rape, and why voluntary intoxication fails as a defense to rape and gender discrimination in the context of equal protection. Course material is tested during the term and again on the final exam.

I have further details on the third, the fourth, and the fifth questions, sir, but I am going to leave those for the record in order to keep us on time.

In my concluding comments I would like to mention a little bit about where we are on our amber programs quickly.

Our amber actions include our requirement to address cadet responsibilities, accountability, and maturity in the changing Academy culture category. We are doing this with our social maturation plan and we are integrating it into our cadet leader development system. The social maturation plan is designated to teach cadets personal and leader accountability in social settings. We want to get them through puberty as quickly as we can.

Other key amber items we are working include continuing to increase the number of women on the staff and faculty in the corps, ensure female representation in all training positions out there at Camp Buckner where we do our Cadet field training for both the cadets and cadre, reviewing our Academy policy that establishes appropriate consequences for harassment and gender discrimination, updating victim/witness liaison training programs, assessing recently implemented academic course revisions, and obtaining approval in order to publish our recently updated West Point sexual assault response policy, the West Point Experience Handbook, and a memorandum of understanding with our Orange County Rape Crisis Center.

We feel it is important to work with and share our best practices with our sister academies and we look forward to providing possible assistance to the task force and to the services at large based on our own experiences.

Our current emphasis has shifted from awareness to prevention, developing a culture in which sexual assault and sexual harassment are unacceptable. All leaders at the Academy are aggressively pursuing actions to better educate our community academy ensure we can eliminate the behaviors that may lead to assault or harassment in our workplace.

The militaries goal remains steadfast: to produce leaders of character for our Nation.

Sir, again the Academy thanks the subcommittee and the Congress for its longstanding commitment to and substantial support for the U.S. Military Academy.

[The prepared statement of General Caslen follows:]

BG Robert L. Caslen Jr.

Commandant, United States Corps of Cadets

United States Military Academy

West Point, New York

HOUSE OF REPRESENTATIVES COMMITTEE ON GOVERNMENT REFORM

SUBCOMMITTEE ON NATIONAL SECURITY, EMERGING THREATS, AND INTERNATIONAL RELATIONS HEARING

ON

Sexual Assault and Violence Against Women in the Military and at the Academies

JUNE 27, 2006

NOT FOR PUBLICATION

UNTIL RELEASED BY THE

UNITED STATES HOUSE OF REPRESENTATIVES

GOVERNMENT REFORM COMMITTEE

STATEMENT BY
BG ROBERT L. CASLEN JR.
COMMANDANT, UNITED STATES CORPS OF CADETS
UNITED STATES MILITARY ACADEMY

Mr. Chairman and distinguished members of the committee, thank you for inviting the United States Military Academy to discuss the Sexual Assault Prevention and Response Program at West Point. Thank you for the opportunity to testify before this committee to highlight the study recommendations of the 2005 Defense Task Force Report on Sexual Harassment and Violence at the Military Service Academies and our subsequent efforts to address sexual assault and violence against women at West Point. I am testifying on behalf of the Superintendent of the Academy, who is responsible for developing and executing the Sexual Assault Prevention and Response Program and our actions in response to the study recommendations.

In general, our policy states that sexual assault is a leadership issue and is inconsistent with the concepts of officership and leadership and contrary to the good order, discipline, and values of the Army. Leaders of good character do not commit sexual assault, and they do not, under any circumstance, tolerate sexual assault by superiors, peers, or subordinates. Academy leaders will take ownership of this issue and make every effort to support the Army's initiative to eliminate sexual assault. The public trusts that the Service Academies will adhere to the highest standards and serve as point of the spear for the Army's values.

Respect and dignity for all are inherent in the Army's Warrior Ethos, where our Soldier's Creed states....."I am a member of a team, mission first, never accept defeat, never quit, and never leave a fallen comrade. I am disciplined.....I am a professional." Sexual Assault, harassment, and

violence against women have no place in that non-negotiable contract of who we are and what we stand for as a profession of arms.

The Subcommittee specifically requested that the Academy address the issue of plans for increasing the number and visibility of female officers and Non-Commissioned Officers in key positions. Not only have we increased the numbers of women in Staff and Faculty positions, but we have increased the quantity of women in the more senior positions. Specifically, we have increased the number of women selected for Advanced Civil Schooling from eight percent to twenty percent this past year, which will increase the numbers of women on the rotating Staff and Faculty. Senior leader demographics have improved with seven women selected for senior faculty positions, to include the Head of the Department of Law and a Permanent United States Military Academy Professor (PUSMA) in the Department of Social Sciences, and the Staff Judge Advocate, the first women to be selected for these types of positions.

Although one of our four Regimental Tactical Officers who is a woman was transferred to one the Academic Departments, another woman was selected for another regiment, which will keep a visible presence of women in senior leadership positions within the Tactical Department. The Brigade Tactical Department will be filled at fourteen percent women officers and thirteen percent women non-commissioned officers for this summer training period. Additionally, the number of women in cadet leadership positions, over the summer military training details, varies between ten to sixteen percent. The Academy selected eighteen percent women for the Eisenhower Leader Development Program, which is our training ground for our future tactical officers (TAC Officers); those personnel will begin as TAC Officers in June 2007. The Academy also has a woman chaplain, women military and civilian counselors, women doctors, and women coaches.

To increase visibility of women warfighters, women are included in the Warfighter Lecture Series to include the Veterans Panel, Junior Leader Panel, and the Combat Leader Lecture, all of which bring combat veterans with recent tours in Iraq and Afghanistan back to the Academy to highlight their experiences. Prominent women have spoken at numerous events (500th Night, and the Flipper Dinner), and Sandra Day O'Connor had a huge impact when she was awarded the Thayer Award and had numerous speaking engagements at the Academy. Additionally, the Academy hosted a very successful women's conference in April to celebrate 30 years of attendance at West Point. There were more than 410 participants, including 263 women graduates, over 50 cadets, 50 Staff and Faculty Members, and 7 General Officers (of whom 5 were women). The Academy has graduated 2, 815 women to date, and continues to assimilate approximately 150-180 each year and graduate 130-160 with each class.

The Subcommittee also requested that we address what type of training and education we are providing to our cadets addressing sexual harassment and assault. For more than 200 years West Point has provided commissioned leaders of character for our Army and Nation. The Cadet Leader Development System (CLDS) is our process for continuing that tradition as we develop tough, competent, and confident leaders for our Army. CLDS develops the attributes needed in future Army leaders.

The West Point Experience – the 47 months cadets invest at West Point – is all about planned change: a transformational development process that includes a multi-dimensional array of challenges building skills, maturity, judgment, values, and character. The academic curriculum is broad-based and demanding, causing cadets to think, innovate, and explore. Our military and physical training is challenging and standards-based. The West Point Experience must inspire

cadets, it must make them proud to be a member of the Long Gray Line, and it must give them a passion for the profession of arms and a desire to pursue a career of Army service.

This past academic year, we revamped the cadet lecture series, making the sessions during academic hours, bringing in new speakers, and incorporating new material obtained from National Sexual Assault Resource Centers. Highlights included outstanding performances by Veraunda Jackson, a rape survivor, and Tony Porter, head of a men's group to stop violence against women, both nationally known advocates for Sexual Assault programs. Academic Directors made changes to PL100 (Psychology Leadership 100), PL 300, and LW 403 (Law 403) which are required core courses for all cadets. The revised PL100 content now includes course objectives on Human Sexuality, Sexual Assault, and Counseling. Sexual Assault objectives include the impact of sex roles on behavior, sexual assault myths, and communications in sexual relationships. These topics emphasize "saying clearly what you mean" building strategies to combat sexual harassment and assault in units. Counseling objectives include four scenarios that deal with some aspect of sexual harassment or gender prejudice. The material is tested during the term and again on the final exam.

Additionally, PL300 has been revised with content added on Values Based Leadership. Cadets must explain the relationship between respect and appropriate attitudes and behavior. Two counseling scenarios for the counseling lab now involve sexual assault issues. Law 403 is also a required course for all First Class cadets (seniors) and now includes the Uniform Code of Military Justice (UCMJ) definitions of sexual harassment, assault, and rape, and why voluntary intoxication fails as a defense to rape. The course also includes gender discrimination in the context of Equal Protection, and a case discussion of *U.S. v. Virginia*, which deals with the admission of women to the Virginia Military Institute. Course Objectives are graded on a major essay question on the Term

End Exam based entirely on a sexual assault crime scenario, and a graded role-playing exercise featuring a fact scenario involving the offense of sexual harassment.

In addition to changes in academic course content, the Office of the Dean coordinated for the United States Corps of Cadets Sexual Assault Response Coordinator to conduct briefings for each of the 15 Academic Departments Staff and Faculty on Sexual Assault. These presentations explained the background for the DoD Task Force recommendations regarding a perceived corrosive culture, reporting procedures, confidentiality, support services, and the instructor's role as mentor and educator. To emphasize the training conducted, we ran a front page article in the post paper, *The Pointer View*, on the Sexual Assault Team personnel and resources available at West Point. Each weekly paper now has Sexual Assault contact information. The United Stated Corps of Cadets Sexual Assault Response Coordinator has also distributed posters and flyers for the Corps living area, and the Installation Sexual Assault Response Coordinator has distributed handouts to all assigned personnel.

The Subcommittee also asked us to address the key elements of the institutional sexual harassment and assault plan developed based on the recommendations of the Department of Defense Task Force Report. The key elements of our plan include our revised policies, the Cadet Respect Program, monthly Sexual Assault Review Board Meetings, quarterly updates on the status of actions taken based on the recommendations of the DoD Task Force (with follow-on quarterly reports to the Secretary of the Army), and quarterly meetings of the Cadet Health Promotion and Wellness Council. All of these initiatives focus on the specific recommendations of the Task Force Report to include: culture, victim's rights and support, offender accountability, data collection and case management tracking, training and education, collaborative relationships with civilian agencies, and prevention. After the release of the Task Force Report, the United States Corps of

Cadets published a Sexual Assault Response and Prevention Policy, dated 18 August 2005, which established procedures and designated responsibilities for the implementation of the Sexual Assault Prevention and Response Program at the cadet level. This policy incorporated many of the Task Force recommendations, such as procedures for confidential and restricted reporting, and assigning victim advocates and victim witness liaisons.

An overarching USMA policy, currently in staffing, provides guidance to the Corps of Cadets and the Installation activities, and outlines the total program components for all organizations at West Point. Regularly administered surveys also provide valuable information on how well this program is perceived and is understood by the cadet population. Recent surveys show that harassment, sexist behaviors, and gender discrimination are reduced from previous years, but still an issue. Initiatives accomplished this past academic year include the strategic communication efforts on the value of women in the military, improved climate in the classrooms and companies, revision of the Professional Military Ethic Education Program, implementation of the Army Confidentiality Program, establishment of the monthly SARB, a nearly complete MOU with local civilian agencies, Regular Women's Team Building Retreats sponsored by the Chaplain, and mandatory door locking during the evening rest period in the barracks.

The Subcommittee was interested in what actions we have taken to institute the Task Force Report recommendation regarding the establishment of a collaborative relationship with civilian authorities for sexual assault victim support. On September 30, 2005 we conducted an initial meeting with the Mental Health Association of Orange County, Rape Crisis Service, through the Installation Sexual Assault Response Coordinator (SARC). Items covered were briefing on the Army Sexual Assault Prevention and Response Program and an overview of services provided by Rape Crisis Service. We had joint meetings with SARB members and Rape Crisis Service staff on

October 13, 2005 and November 7, 2005 to discuss each other's scope of service, New York State reporting laws on sexual assault/rape, victim/survivor advocacy services, training opportunities, and developing a Memorandum of Understanding (MOU) to address sexual assault prevention and collaborative services. The MOU is in the final stages of staffing and could be signed as early as the beginning of the Academic Year.

The Academy conducted a civilian law enforcement working lunch on December 5, 2005 hosted by the Directorate of Emergency Services (DES) and the Installation SARC, with attendance from representatives of the Mental Health Association of Orange County, Rape Crisis Service. The Academy provided a briefing by the DES and the Installation SARC for civilian law enforcement officers (NY State Police, Orange County Sheriff, Town of Woodbury, Town of Highlands and others) on the Army Sexual Assault Prevention and Response Program. The Academy coordinated for Victim Advocacy Training by nationally renowned speaker and subject matter expert Linda Ledray in May 2006, which was attended by representatives from multiple academies and civilian agencies.

The Subcommittee also asked for information regarding the Academies' policies relating to privileged communications between victims of sexual assault and health care providers and counselors. The Academy follows current Army policy on both privileged communications and confidential reporting, which should not be confused. Privileged communications refer to the legal privilege that certain professionals have with clients (chaplains, doctors, lawyers). Confidentiality with regard to Sexual Assault was granted at the Academy on February 21, 2003 for the counselors in the Center for Personal Development.

Confidentiality allows a victim to report an assault to certain specified people and make a restricted report, which does not trigger an official investigation, but allows the victim to pursue

support services. This policy is outlined in Army Regulation (AR) 600-20 and the Department of Defense Instruction. It defines a process by which a Cadet or service member may confidentially report or disclose to a healthcare provider, SARC, or victim advocate that he or she is the victim of a sexual assault. Under these circumstances, the victim's report and any details provided to the healthcare provider, the SARC, or the victim advocate will not be reported to law enforcement to initiate the official investigative process. The USCC policy clearly states the following: Members of the USCC community who are victims of sexual assault will be treated with respect. Members of the command, law enforcement officials, and medical staff will ensure the sensitive, coordinated, and effective management of sexual assault cases. Tactical Officers, coaches, supervisors, members of the Staff & Faculty and members of a victim's Chain of Command, including the Cadet Chain of Command, that witness or know of a sexual assault incident or an alleged sexual assault are required to report the incident. The only exception to this is if a victim informs an Unrestricted Source of a desire to make a Restricted Report, then the Unrestricted Source will ensure that the victim is referred immediately to a Restricted Channel. Victims have the option of reporting through restricted or unrestricted channels. If a victim chooses to seek assistance from a Restricted Reporting Channel, the victim's confidentiality and privacy choice will be respected.

The Academy will continue to develop its Sexual Assault Program as times change, and policies are further refined. We look forward to providing any possible assistance to the Task Force and the Services based on what we have learned from our experience with the process. Taking care of victims/survivors and prosecuting whenever possible remain essential elements of our program. Our current focus has shifted from awareness to prevention – developing a culture in which sexual assault and sexual harassment are unacceptable. All leaders at the Academy --and this is a leadership issue-- are aggressively pursuing actions to better educate our community and ensure we

can eliminate the behaviors that may lead to these behaviors in our workplace. The Military Academy's goal remains steadfast: to produce leaders of character for our nation.

Again, the Academy thanks the Committee and the Congress for its long standing commitment to, and substantial support for the United States Military Academy.

Mr. SHAYS. Thank you, General.

General Desjardins.

STATEMENT OF BRIGADIER GENERAL SUSAN Y. DESJARDINS

General DESJARDINS. Mr. Chairman, distinguished members of the subcommittee, thank you for the opportunity to discuss the progress we have made at the Air Force Academy in preventing and responding to sexual assault and violence against women. I would also like to thank the previous panel, in particular Ms. Beth Davis for her courage and for her articulate and moving testimony.

We have studied the 2005 report of the Defense task force on Sexual Harassment and Violence at the Military Service Academies and we believe we are responding to its concerns. The Air Force Academy has come a long way in addressing sexual assault and violence since the events of 2003 and before. We have changed and institutionalized processes that makes victim care our first priority. In 2003 we established the Academy Response Team composed of victim advocate, the sexual assault response coordinator, OSI, and the JAG, under the supervision of the training wing vice commander, providing dedicated assistance to victims of sexual assault.

We strongly supported the confidential reporting option to allow victims to come forward and receive care without automatically triggering a law enforcement investigation, while maintaining that option for them.

We made significant progress but we know and understand the challenge remains to keep the focus on this national problem of sexual assault as it affects the Air Force Academy and to continue our journey for long-term cultural change.

America demands its Air Force and its Air Force leaders adhere to the highest standards of conduct; task force, we have refocused our efforts on building leaders of character that reach and exceed these higher standards.

Our efforts to combat sexual assault fall into three broad areas I will briefly review for the subcommittee: prevention, cultural change, and victim care. I will also summarize our progress in these areas and highlight the challenge that remains.

Prevention. In order to prevent sexual assault we first had to understand sexual assault as a continuum of inappropriate behaviors ranging from sexual harassment to physical sexual violence that are contrary to the concepts of honor in service that we in the Air Force have embraced through our core values: integrity first, service before self, and excellence in all we do.

Through consultations with nationally renowned experts such as Dr. David Lisak of the University of Massachusetts in Boston, the Air Force Academy began to understand better the nature of these crimes and to educate all Academy personnel, cadets and permanent party, on a standard definition of sexual assault, on the means by which the most egregious sexual assaults occur, and on insights into the methods for the community to prevent all sexual assaults. These prevention efforts are some of the steps we have taken to effect cultural change.

Long-term, institutional change to enhance prevention will be based on making cultural changes through education and institu-

tionalizing positive behaviors, including respect. Respect for self and others is at the core of our cultural change.

Our graduated approach devotes over 150 structured curriculum hours to character and leadership development. More than 55 of these hours are devoted to lessons with respect as the baseline on topics such as substance abuse, accountability, and human relations, including sexual assault and sexual harassment training.

This education supports the basic premise that interpersonal bonds are not forced in times of war; rather, they are formed according to the strength of the relationship experienced prior to combat. Our education and training programs focus on helping cadets internalize and respect their identity and that of their fellow cadets as members of our U.S. Air Force, while also equipping our permanent party members to mentor cadets throughout their time at the Academy.

Victim care. If sexual assault does occur, the need for victim care is our first priority. The Academy's sexual assault response coordinator, working with the Academy response team, provides immediate and long-term assistance and ensures victims receive appropriate physical and emotional care for as long as needed. We also initiated small group education and training lessons for cadets and permanent party on the means to report sexual assault and receive care. These lessons are largely provided by a small cadre of hand picked instructors to ensure consistency of our message, explaining the victim focus of our response is to maximize the care available to a victim while keeping options open for prosecution of perpetrators.

Through agreements with local helping agencies we provide a wide range of services to ensure confidentiality and preservation of evidence so victims will be encouraged to report these crimes so that perpetrators will be held accountable once the victim has recovered to the point of opening a criminal investigation.

Equipping every cadet in the Academy's permanent party with the tools and knowledge regarding our network of integrated professionals who are devoted to preventing and responding to sexual assaults has enhanced victim trust and confidence, as evidenced by the willingness of those assaulted to seek medical, legal, and emotional support.

We had a handful of restricted reports filed with our sexual assault response coordinator during the academic year 2005–2006. This is good news as an indicator of trust and confidence in our reporting system and the treatment of victims as a first priority.

The willingness to report is supported by anonymous survey data collected by the Defense Manpower Data Center annually in compliance with the National Defense Authorization Act for fiscal year 2004. Since 2003, we have seen a marked decline in sexual assault allegations with a cadet/victim reporting rate of almost 36 percent in 2004, which was nearly double the rate from the 2003 rate of 18.6 percent.

For 2005, the DMDC survey was modified, but 44 percent of women cadets that identified themselves as having experienced a sexual assault since 2004 responded that they discussed or reported the assault to some authority, individual, or organization. These rates point to program success in terms of an increasing will-

ingness to seek assistance when sexually assaulted. This is both good news and part of the challenge that remains.

Our sexual assault education and training programs have made a difference in our impact in the climate and culture of the Air Force Academy. The incoming class of 2010 has 277 women, the largest number of women ever entering the Academy in a single class and the largest percentage of women for any class. Clearly, the parents of the class of 2010 feel that the Academy is a safe place to send their sons and daughters.

But we know that more needs to be done so we continue to refine our lesson plans, processes, and programs, employ the best guest speakers to discuss sexual assault with our cadets early and often, train and equip our staff to focus first on victims while preserving the victims' options for future action, and continue to educate everyone on sexual assault as a national issue. We will also continue to stress that your Air Force and your Air Force Academy have zero tolerance for sexual assault. Sexual assault is a crime, one we will not condone, enable, or overlook. We will continue our efforts of cultural change to embed the overarching concept of respect for each other and to each and every member of the Academy.

America has entrusted its finest sons and daughters to the Air Force Academy. They are proud to wear the cadet uniform, and they cannot wait to help defend our Nation by joining the operational Air Force after graduation.

This year we graduated the first class of cadets that volunteered for the Academy after the terrorist attacks of September 11th. Each and every member of the Class of 2006 knew when they sought admission to the Academy that they were volunteering for military service during wartime. Every class that has entered since then has knowingly volunteered for the same responsibility. The Academy will mold these men and women into leaders of character that America demands, especially during war time. We know we can count on Congress' assistance in this important task.

Thank you again for the opportunity to maintain attention on the sexual assault prevention and response at the U.S. Air Force Academy.

[The prepared statement of General Desjardins follows:]

DEPARTMENT OF THE AIR FORCE

PRESENTATION TO THE NATIONAL SECURITY, EMERGING THREATS, AND INTERNATIONAL RELATIONS SUBCOMMITTEE

COMMITTEE ON GOVERNMENT REFORM

UNITED STATES HOUSE OF REPRESENTATIVES

SUBJECT: SEXUAL ASSAULT AND VIOLENCE AGAINST WOMEN IN THE MILITARY AND AT THE ACADEMIES

STATEMENT OF: BRIGADIER GENERAL SUSAN Y. DESJARDINS
COMMANDANT OF CADETS
UNITED STATES AIR FORCE ACADEMY

JUNE 27, 2006

NOT FOR PUBLICATION UNTIL RELEASED
BY THE GOVERNMENT REFORM COMMITTEE
UNITED STATES HOUSE OF REPRESENTATIVES

INTRODUCTORY STATEMENT OF
BRIGADIER GENERAL SUSAN Y. DESJARDINS
USAF ACADEMY COMMANDANT OF CADETS
FOR
HOUSE GOVERNMENT REFORM COMMITTEE HEARING ON
SEXUAL ASSAULT AND VIOLENCE AGAINST WOMEN
JUNE 27, 2006

Mr. Chairman, Members of the House Government Reform Committee, thank you for the opportunity to discuss the progress we have made at the Air Force Academy in preventing and responding to sexual assault and violence against women.

We have studied the June 2005 *Report of the Defense Task Force on Sexual Harassment and Violence at the Military Service Academies*, and we believe we are responding to its concerns.

The Air Force Academy has come a long way in addressing sexual assault and violence since the events of 2003.

We have changed and institutionalized processes that make victim care our first priority. In 2003 we established an Academy Response Team (ART) under the supervision of the training wing Vice Commander, providing dedicated assistance to victims of sexual assault. We strongly supported a confidential reporting option to allow victims to come forward and receive care without automatically triggering a law enforcement investigation—while maintaining that option for them.

We made significant progress, but we know and understand the challenge remains to keep the focus on this national problem of sexual assault as it affects the Air Force Academy and to continue our journey for long-term cultural change. America demands its Air Force and its Air Force leaders adhere to a higher standard of conduct. Therefore, we have refocused our efforts on building leaders of character that reach and exceed these higher standards.

Our efforts to combat sexual assault fall within three broad areas I will briefly review for the Committee—Prevention, Cultural Change, and Victim Care. I will also summarize our progress in these areas and highlight the challenge that remains.

PREVENTION: In order to prevent sexual assault, we first had to understand sexual assault as a continuum of inappropriate behaviors ranging from sexual harassment to physical sexual violence that are contrary to the concepts of honor and service that we in the Air Force have embraced through our core values of Integrity First, Service before Self and Excellence in all we do.

Through consultations with nationally-renowned experts such as Dr. David Lisak of the University of Massachusetts in Boston, the Air Force Academy began to understand better the nature of these crimes and to educate all Academy personnel—cadets and permanent party members—on a standard definition of sexual assault, on the means by which the most egregious sexual assaults occur, and on insights into methods for the community to prevent all sexual assaults. These prevention efforts are some of the steps we have taken to affect institutional cultural change.

CULTURAL CHANGE: Long term, institutional changes to enhance prevention will be based on making cultural changes through education and institutionalizing positive behaviors including respect. Respect—for self and others—is at the core of our cultural change. Our graduated approach devotes over 150 structured curriculum hours to character and leadership development. More than 55 of those hours are devoted to lessons with respect as the baseline on topics such as substance abuse, accountability, and human relations (including sexual assault/harassment training). This education supports the basic premise that interpersonal bonds are not forged in times of war; rather, they are formed according to the strength of the relationship experienced prior to combat. Our education and training programs focus on helping cadets internalize and respect their identity, and that of all their fellow cadets, as members of our United States Air Force, while also equipping our permanent party members to mentor cadets throughout their time at the Academy.

VICTIM CARE: When sexual assault does occur, the need for victim care is our first priority. The Academy Sexual Assault Response Coordinator working with the ART provides immediate and long-term assistance and ensures victims receive appropriate physical and emotional care for as long as needed. We also initiated small group education and training lessons for cadets and permanent party on the means to report sexual assault and receive care.

These lessons are largely provided by a small cadre of hand-picked instructors to insure consistency in our message—explaining the victim-focus of our response is to maximize the care available to a victim while keeping options open for prosecution of perpetrators.

Through agreements with local helping agencies, we provide a range of services to ensure confidentiality and preservation of evidence so victims will be encouraged to report these crimes so that perpetrators will be held accountable once the victim has recovered to the point of opening a criminal investigation.

PROGRESS: Equipping every cadet and the Academy's permanent party with the tools and knowledge regarding our network of integrated professionals who are devoted to preventing and responding to sexual assaults has enhanced victim trust and confidence, as evidenced by the willingness of those assaulted to seek medical, legal, and emotional support.

We have had a handful of restricted reports filed with our Sexual Assault Response Coordinator during Academic Year 2005-2006–this is good news as an indicator of trust and confidence in our reporting system and the treatment of victims as a first priority.

This willingness to report is supported by anonymous survey data collected by the Defense Manpower Data Center (DMDC) annually in compliance with the National Defense Authorization Act for Fiscal Year 2004. Since 2003 we have seen a marked decline in sexual assault allegations, with a cadet-victim reporting rate increase of almost 36% in 2004, which nearly doubles the 2003 rate of 18.6%.[1]

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[1] 2003 DMDC report.

For 2005, the DMDC survey was modified, but 44% of women cadets that identified themselves as having experienced a sexual assault since June 2004 responded that they discussed / reported the assault to some authority, individual, or organization—17% felt it made the situation better; 17% felt it made no difference; and 10% felt it made the situation worse.[2] These rates point to program success in terms of an increasing willingness to seek assistance when sexually assaulted. This is both good news and part of the challenge that remains.

THE CHALLENGE: Our sexual assault education and training programs have made a difference and are impacting the climate and culture of the Air Force Academy. The incoming Class of 2010 has 281 women—the largest number of women ever entering the Academy in a single class and the largest percentage (20.6%) of women for any class.

Clearly, the parents of the Class of 2010 feel that the Academy is a safe place to send their sons ***and*** daughters. But we know that more needs to be done, so we continue to refine our lesson plans, processes, and programs; employ the best guest speakers to discuss sexual assault with our cadets early and often; train and equip our staff to focus first on victims while preserving the victims' options for further action; and continue to educate everyone on sexual assault as a national issue.

We also will continue to stress that your Air Force and your Air Force Academy have zero tolerance for sexual assault. Sexual assault is a crime, one we will not condone, enable, or overlook.

We will continue our efforts of cultural change to embed the overarching concept of respect for each other into each and every member of the Academy.

America has entrusted its finest sons and daughters to the Air Force Academy. They are proud to wear the cadet uniform, and they cannot wait to help defend our nation by joining the operational Air Force after graduation.

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[2] 2005 DMDC report, Tabulations of Responses, page 350.

This year, we graduated the first class of cadets that volunteered for the Academy after the terrorist attacks of 9/11. Each and every member of the Class of 2006 knew when they sought admission to the Academy that they were volunteering for military service during wartime.

Every class that has entered since then has knowingly volunteered for this same responsibility. The Academy will mold these men and women into the leaders of character that America demands, especially during wartime. We know we can count on Congress's assistance in this important task.

Thank you again for the opportunity to maintain attention on Sexual Assault Prevention and Response at the United States Air Force Academy.

Mr. SHAYS. Thank you, General.

Before recognizing you, Rear Admiral Higgins, I just want to say that the catalyst for this hearing was a briefing I had in which a former cadet at the Coast Guard Academy, Ms. Katelyn Stopper, made testimony that certainly caught our interest, and that is why we are having this hearing today, and we thank her for that.

At this time we would recognize you, Rear Admiral.

STATEMENT OF REAR ADMIRAL PAUL J. HIGGINS

Admiral HIGGINS. Good afternoon, Mr. Chairman and distinguished members of the subcommittee, and thank you to our distinguished witnesses from both panels. I am heartened by this subcommittee's interest in this important subject and grateful for the opportunity to appear before you today to discuss what the Coast Guard and the Coast Guard Academy are doing to thwart sexual harassment, abuse, and violence.

Today at the Coast Guard Academy 28 percent of the Academy cadets are women and 28 percent of the staff of over 500 are also women. The newly reported Commandant of Cadets, Captain Judith Keene, is a 1981 graduate of the U.S. Coast Guard Academy and the first female to hold this esteemed position. Many female officers and senior enlisted members are currently serving in senior leadership positions at the Academy, as well.

Despite that critical mass, we have had nine reports of sexual assault or harassment since the year 2000 at the Coast Guard Academy. We are currently holding a court martial of a Coast Guard cadet for allegations of sexual assault. Since that case is not resolved, it is inappropriate for me to discuss that case further.

The class of 2010, which reports aboard next Monday, will attend 12 value training sessions during Swab Summer. The goal of this training is to instill the Coast Guard's core value of honor, respect, and devotion to duty in each newly reported cadet. Within this framework are training sessions on sexual harassment prevention, sexual assault prevention, diversity, human relations, substance abuse prevention, the Uniform Code of Military Justice, and human relations and civil rights. This training continues throughout the 4-years as a cadet at the Coast Guard Academy and annually thereafter as a Coast Guard active duty member.

The Coast Guard Academy adopted its own distinct sexual assault policy predating the June 2005, Defense Task Force Report on Sexual Harassment and Violence in the Military Academies. The policy provided clear guidance and procedures to ensure our primary goal: that victims receive appropriate mental and physical health care in a timely manner, in addition to providing crucial victim empowerment by allowing a victim to report sexual assault either confidentially or non-confidentially, a feature subsequently recommended by the task force and now known as "restricted reporting." All unrestricted reports initiate an immediate investigation by trained Coast Guard investigative service agents. Our policy has since been upgraded to align with the task force report.

In summary, the Coast Guard strives to employ a diverse work force by maintaining a workplace that is one of inclusion, free of violence, discrimination, or harassment of any kind. Through constant monitoring of and improvements to the cadet environment,

we will enable ourselves to continue to attract America's best and brightest young men and women to our Academy, where they will train to be the future leaders of the U.S. Coast Guard.

Thank you for this opportunity to testify before you today. I ask that my written statement be admitted to the record, and I will be happy to answer any questions you may have, Mr. Chairman, and to the other distinguished subcommittee members.

I would like to say that Ms. Katelyn Stopper and her mom I believe are here in the room. I talked to her earlier this evening.

[The prepared statement of Admiral Higgins follows:]

U. S. Department of
Homeland Security

United States
Coast Guard

Commandant
United States Coast Guard

2100 Second Street, S.W.
Washington, DC 20593-0001
Staff Symbol: G-ICA
Phone: (202) 366-4280
FAX: (202) 366-7124

DEPARTMENT OF HOMELAND SECURITY

U.S. COAST GUARD

STATEMENT OF

REAR ADMIRAL PAUL J. HIGGINS

ON

SEXUAL ASSAULT AND VIOLENCE AGAINST WOMEN IN THE MILITARY AND AT THE ACADEMIES

BEFORE THE

COMMITTEE ON GOVERNMENT REFORM

HOUSE SUBCOMMITTEE ON NATIONAL SECURITY, EMERGING THREATS, AND INTERNATIONAL RELATIONS,

JUNE 27, 2006

Good afternoon, Mr. Chairman and distinguished members of the Committee. It is unfortunate that women face sexual abuse and violence in the workplace and educational institutions. At the Coast Guard we strive to employ a highly qualified and diverse workforce that is free of all types of discrimination, and resulting abuses. The Academy and the Coast Guard have a strict "zero tolerance" policy regarding discrimination or harassment of any nature. Therefore, I am heartened by this Committee's interest in this important subject and grateful for the opportunity to appear before you today to discuss what the Coast Guard and the Academy are doing to thwart these kinds of abuse.

As you may already know, the Coast Guard Academy was the first Federal Service Academy to admit women in July of 1976, and today twenty-nine percent of cadets are women. In addition, twenty-eight percent of the Academy's staff of over 500 are women. To ensure success in the arena of gender diversity, the Academy maintains one full-time civilian employee on staff as the Director of Diversity Affairs. The newly reported Commandant of Cadets, Captain Judith Keene, is a 1981 graduate of the Academy, and the first female officer in Academy history to serve in this esteemed position. The Director of Admissions, the Chief of Cadet Training, and the Chief of Military Personnel are also female officers currently serving in key senior leadership positions at the Academy. They prominently serve as role models and mentors to both cadets and junior officers.

The Coast Guard Academy has a considerable workforce of female junior officers and chief petty officers (CPOs) who interact with the Corps of Cadets on a daily basis. Over twenty-five percent of all officers within the Commandant of Cadets Department are women, including two company officers. In addition, one of the eight CPOs who serve as cadet enlisted advisors is also a woman. Cadets routinely work with female officers, chiefs, and junior enlisted members throughout the course of the academic and summer cadet training programs. It would not be unusual for a cadet's "advisory team" to be comprised of a female company officer, academic advisor, and coach.

The next step is to capitalize upon and continue the positive momentum we have already accumulated in achieving greater visibility for female officers and CPOs in key positions at the Academy. Several projects are underway that will increase the visibility of women at the Academy. During the coming months, the Director of Diversity Affairs will present a strategic initiative to the Academy's Senior Management Team addressing long-term faculty diversity planning. As several of CGA's faculty members near retirement, maintaining a diverse workforce is the primary goal of this initiative. In July, a year-long observance celebrating the significant contributions made by female members of the Officer Corps will commence, including an August conference commemorating the thirtieth year of women being admitted to the Coast Guard Academy. Recently, the Coast Guard Academy formed a partnership with the American Association of University Women (AAUW). As a result, Dr. Judy Youngman, a Humanities Instructor at CGA, is diligently working to form a Chapter of the AAUW to introduce an additional medium of awareness and education for female cadets at the Academy. Specifically, the cadet chapter of the AAUW will look forward to attending national conferences sponsored by the AAUW, engaging in dialogue with other chapters of the AAUW and forming mentoring relationships with the female officer and civilian faculty and staff of the Academy.

Coupled with visibility of female officers and chief petty officers in key advisory and leadership positions, training and awareness are keys to prevention of sexual assault and harassment. The Coast Guard Academy provides its cadets with a comprehensive training program that begins during "Swab Summer," the initial indoctrination period for new cadets, and continues throughout the 200-week Academy experience. The Class of 2010, which reports aboard on July 3, 2006, will attend twelve "values training" sessions during Swab Summer. The goal of this training is to instill the Coast Guard's Core Values of Honor, Respect, and Devotion to Duty in each newly reported cadet. Within this

framework, and directly pertaining to the Core Value of Respect, are four training sessions on Sexual Harassment Prevention, Sexual Assault Prevention, Diversity, and Human Relations. Each seventy-five minute training session will be conducted by faculty and staff extensively trained in the subject matter. All cadets receive recurring training tailored to the response and prevention of sexual assault and harassment, as well as training that addresses substance abuse prevention, the Uniform Code of Military Justice, and human relations/civil rights. The training is centered on establishing and maintaining a culture of respect. The training is specifically targeted to individual audiences in order to address the changing roles that cadets have as they advance from being newly reported fourth-class cadets to more senior cadets, who hold leadership positions within the Corps of Cadets. The Coast Guard Academy's training program ensures that all cadets meet the Coast Guard's General Military Training (GMT) requirements, which ensures consistency in training topics with the rest of the Coast Guard's military workforce. The Academy has actively sought out and provided unique training opportunities to continue strengthening and updating current sexual assault awareness and prevention training programs. In January 2006, the Academy conducted Corps-wide Respect training and hosted an all-hands event featuring Ms. Katie Koestner, a renowned speaker on the topic of sexual assault within the college and university environment.

To address the nuances of its specialized training environment – unique within the Coast Guard – the Coast Guard Academy adopted its own distinct sexual assault policy. While predating the June 2005 Defense Task Force Report on Sexual Harassment and Violence at the Military Service Academies, the policy provided clear guidance and procedures to ensure that victims received appropriate mental and physical health care in a timely manner. In addition, it provided crucial victim empowerment by allowing a victim to report a sexual assault either "confidentially" or "non-confidentially" – a feature subsequently recommended by the Task Force. Confidential reporting allowed victims to seek help without exposure of the incident, victim, or perpetrator through the process of a formal, criminal investigation. In contrast, non-confidential reporting through the chain of command would ensure that the victim received the same level of medical, psychological and pastoral care while simultaneously identifying the perpetrator and initiating an immediate investigation by trained Coast Guard Investigative Service (CGIS) members.

In May 2006, the Academy incorporated lessons learned from experience under its first sexual assault reporting and investigation policy into a revised policy. The revised policy fine tunes the earlier policy and clarifies the procedures and options for "restricted" and "unrestricted" reporting (formerly referred to as "confidential" and "non-confidential" reporting). In addition, the instruction incorporates an easy to follow flow chart that was widely distributed throughout the Academy campus. In conjunction with the new policy, thirty-five staff and faculty members volunteered to be trained as part of an extensive victim advocate program. In June 2006, the Academy made procedural improvements to the policy by instituting a sexual harassment and assault response checklist based on feedback from previous victims. This checklist was developed to enhance the understanding of the policy for victims and those rendering assistance to them.

The Coast Guard Academy uses the Coast Guard's Sexual Harassment Policy Statement as its guiding doctrine. The Academy and the Coast Guard have a strict "zero tolerance" policy regarding discrimination or harassment of any nature. The Cadet Regulations clearly define the procedure that is followed in the event of an allegation of discrimination or harassment. Within the Corps of Cadets, the position of Regimental Human Relations Officer (RHRO) was established to process complaints of discrimination or other possible violations of Civil Rights. The Academy routinely provides extensive training in this area to all personnel.

Multiple resources and reporting avenues are available from various sources to any cadet who may be a victim of sexual assault. The Coast Guard Academy has an ongoing relationship and a formal Memorandum of Agreement with the Sexual Assault Crisis Center of Eastern Connecticut – an off-base resource – to provide counseling and support services for Coast Guard Academy personnel who may be victims of sexual assault or harassment. The Crisis Center provides a confidential "help line" and direct support to victims who desire assistance apart from the Academy's victim support services. In accordance with current policy, the Coast Guard Academy provides its cadets with options for privileged communications with both health care providers and counselors onboard the Academy grounds as well as in an off-base setting. Victims of sexual assault have the option of privileged communications with Academy counselors, chaplains, and/or fellow cadets who comprise the peer support group Cadets Against Sexual Assault (CASA) and are advised by the Academy's professional Cadet Counseling staff. If a victim were to be in need of immediate medical care and reported to the Academy Health Clinic, he/she would be treated and transported to an emergency room, as necessary. If the victim asks for restricted reporting, the Senior Medical Officer would refer the victim to a professional cadet counselor or chaplain and advise the Assistant Superintendent of the action taken, while preserving the confidentiality of the victim. Finally, additional off-base confidential communications are provided for cadets and officer candidates through the Coast Guard's Employee Assistance Program (EAP).

As described earlier in my statement, a concerted effort is made at our accession points, including the Coast Guard Academy, to indoctrinate our newest service members with our core values of Honor, Respect, and Devotion to Duty. Although the central theme of this hearing focuses on sexual assault and violence against women at the Federal Service Academies, I would be providing the committee with an incomplete statement without addressing the issue of sexual assault as it relates to Coast Guard members in general. All Coast Guard military and civilian employees are required to participate in annual training for both rape and sexual assault prevention/awareness and sexual harassment prevention. Each allegation of sexual assault is treated with the utmost concern and is investigated by specially trained members of the Coast Guard Investigative Service. The Coast Guard's Office of Work-Life manages a network of trained professionals throughout the field through the Employee Assistance Program, which provides a wide range of counseling services, including counseling for victims of sexual assault. Counseling is also available to our service members through our network of Coast Guard chaplains.

The Coast Guard strives to employ a diverse workforce by maintaining a workplace that is one of inclusion – free of violence, discrimination, or harassment of any kind. It is through these enduring efforts that the Coast Guard will remain an employer of choice. Likewise, through constant monitoring of and improvements to the cadet environment, we will enable ourselves to continue to attract America's best and brightest young men and women to our Academy, where they will train to be the future leaders of the United States Coast Guard. Thank you for the opportunity to testify before you today. I will be happy to answer any questions you may have.

Mr. SHAYS. Thank you. Thank you for your testimony.

I am going to go to Mr. Marchant, who is the vice chairman of the subcommittee. I am just going to say what I will be looking for is connecting what is, for me, a theory of how it works to the reality of what we heard earlier. And I am going to be asking you to relate what you heard, particularly from Ms. Davis, as to why that could have happened in the past and why it wouldn't happen today. And if you tell me it couldn't happen in the past, then we are on a total different wave length. And then I have to know why it won't happen today.

Then I will want to know—I am just giving you a chance to think about this—I will want to know what does a person like her have as any recourse in terms of potentially coming back, of potentially making sure that she has no financial liabilities, and so on. I need you to connect your statements to what I think is the real world.

I want to acknowledge that you put your lives on the line for our country, and I have tremendous respect for your service. General Caslen, I have a sense that you probably served in Iraq and Afghanistan, one or both?

General CASLEN. Afghanistan, sir.

Mr. SHAYS. Well, thank you for your service.

General CASLEN. Yes, sir.

Mr. SHAYS. I know this is not necessarily a comfortable experience for all of you to deal with this issue, but it is very important.

I am taking the liberty of the subcommittee a bit, but I just know the Code of Conduct that has had some cadets I am aware of be kicked out because they left campus without having the right or permission to leave. Lying has sent them packing. So when I hear about these other events dealing with sexual harassment it just strikes me that somehow the code just disappears, and I need someone to explain to me why that is the case. But that will happen when my turn comes.

Mr. Marchant, you have the floor.

Mr. MARCHANT. Thank you, Mr. Chairman.

If you would please, for your respective academies, just answer the two questions for me, and we will just go down the line. First of all, would you explain how a victim's accusations would be investigated and processed through your Academy today. How would it go from start to finish? And then, to the best of your knowledge, how many court martials and/or ejections from the Academy have there been since let's say 2000 as a result of an investigation of a sexual assault?

Admiral REMPT. Yes, sir, I would be happy to answer that.

Clearly, any accusation involving a sexual assault is, in fact, immediately investigated, given that the victim desires to proceed. We will initiate investigations at the NCIS. We have three trained people at the Academy that are well trained in how to do this in a very sensitive manner. The victim, of course, is assigned an advocate to proceed with them through the whole process—medical, legal, counseling, etc. So in every case that we can we will open an investigation and get to the bottom of the facts that are involved.

With respect to the numbers of cases and what occurred, I think it is very important that the subcommittee understand the different ramifications and things that can occur here. In the past 5

years, if I take that timeframe, we have had 60 accusations of sexual assault at the Naval Academy.

Now, if we go through these, of those 60, 41 involved midshipmen accused of assault, which means there were another 19 where midshipmen were not accused but were, in fact, victims, so a potential perpetrator or alleged perpetrator from outside the Academy. So we then have 41 cases of concern for discipline, 60 cases of concern for counseling and care.

Out of these accusations, only nine were substantiated as sexual assaults. That may seem like an astonishing number when you look at the number of accusations, but, in fact, 31 were investigated by either NCIS or a civilian agency with NCIS assistance. Ten of them were not investigated because the victim either declined to participate or continue the case further.

There are many reasons for this. It can be it is a friend of theirs and they don't want to proceed, they are embarrassed by the situation. There are many different reasons. We provide them extensive counseling to help them through that decision and what is right for them, but it is still a difficult one for them.

Out of these 31 investigations, 2 are still ongoing, 15 investigations yielded evidence of a range of misconduct other than assault. So, in looking at the evidence it turned out it was not an assault, it was something else violating Academy rules, participating in something prohibited, etc. They were handled in the Academy's administrative conduct system.

Three were sent to an article 32 hearing, which is much like a grand jury precursor to going to trial, and were determined to have insufficient evidence to proceed further.

In one case the victim recanted. We know that victims recant because they just don't want to deal with the situation, so again counseling is appropriate to try to help a victim think through what are the circumstances.

In one investigation the victim declined to participate any further. We don't know the reason why they elected to do that.

Of the nine cases in which the evidence supported sexual assault, six midshipmen referred to court martial or civilian trial and the remaining three midshipmen referred to the Academy's administrative conduct system. There are specific reasons for that in each case. Eight of these nine midshipmen were separated from the Academy. We still have two cases ongoing.

We strive to establish a climate to encourage reporting of sexual harassment and misconduct and assault so we can support the victim and we can, in fact, respond to the allegations fairly and appropriately. Very important here is protecting the confidentiality of the victim, ensuring the rights of the accused, and some degree of privacy for both of them.

Mr. MARCHANT. Thank you.

General CASLEN. Sir, for the U.S. Military Academy, obviously we work on each investigation on whether or not it is a restricted investigation, restricted reporting or non-restricted reporting, and if it is restricted reporting—first, let me just say in either case the primary concern is the victim and the necessary care that the victim gets. We have the whole plethora of support for the entire installation, whether it is the chaplain or the health clinic to the hos-

pital to the emergency room and to all the different psychologists to support for the victim. That is in both cases. That is, I think, the primary concern as we enter into this.

As we go to unrestricted reporting, in an unrestricted case we assign a victim assistant who accompanies a victim to CID for the investigation, so that person accompanies the victim through the entire investigation process and stays with her and provides the necessary psychological counseling and other type of counseling that she may need or that the victim may need.

Mr. MARCHANT. I feel maybe that I didn't state my question clearly enough. You have all done a good job of explaining what you are doing for the victims. At this point I would like to know what the process is for the accused, what process the accused goes through other than I know they are investigated, but how timely is it. Is it immediate? Is there a set process? And do both victim and accused stay in the system?

General CASLEN. I can get you specific dates and timelines for the record and a follow-on report.

Mr. MARCHANT. That would be fine.

General CASLEN. Being I am kind of new in this sort of thing I don't have personal experience at the U.S. Military Academy with each one of these, but I do know it follows the Uniform Code of Military Justice. The criminal investigation division does the investigation and they go through the investigation, and then they refer it, as necessary, to the commander. And then the commander will then make a decision if it requires an article 32 investigation or whether or not, you know, whatever disposition he makes, because the gravity of some of these article 32 is often the case is followed. Then it would go to a court martial or not.

I do have, though, the statistics from last year. I can offer those to you, as well. But I do know that at the U.S. Military Academy they follow the Uniform Code of Military Justice in the criminal investigation procedures that are normally done with CID and article 32 investigations when directed by the convening authority.

Of the 18 cases that the U.S. Military Academy had last year, 15 of them went to criminal charges. The three that didn't did not go to criminal charges. The 15 that did went through the complete process. Of those 15, 3 were unfounded because of evidence, which means 12 were disposed of to completion. Two ended with court martial, and the other were with separation or resignation, all with the agreement of the victim, but they went through the entirety of the process, itself.

Mr. MARCHANT. Thank you.

General DESJARDINS. As far as the Academy's response, when a victim is sexually assaulted there is one number that we tell the cadets to call and notify, and that is 333-SARC, a sexual assault response coordinator. That energizes then the Academy response team. That is the one number to call and that energizes the Academy response team, which is which is composed of the OSI, JAG, the victim advocate, as well as a SARC in the first tier, and then the next tier involves the chaplain and other counselors.

But then an investigation is open and a cadet is allowed to determine whether she or he wants to keep the report restricted. In other words, just get the medical care and the physical care that

they need first, until they get to the point where they might want to go unrestricted and have an investigation, a law enforcement type investigation completed.

So that is the initial response. The SARC is notified. And we also have other avenues for cadets. This 18 to 22 year old group, they are going to talk to their peers before they talk to anyone, and so we do have cadets assigned to each squadron on a voluntary basis that understand. In fact, they are called PEERS, professional education and ethics representatives, that understand intimately the process of reporting, and they actually encourage and they are available to encourage cadets within their squadron of about 100 cadets to the proper reporting, what help is available.

That is what happens on a sexual assault report and that is how the Academy response team is energized.

As far as Academy response team cases, since academic year 2003 we have had 49, and each of those cases was thoroughly investigated. None of them went to a court martial, but all of them were investigated fully, and some of them—I don't have the exact number—were criminally charged on lesser accounts that could be proven. Those are numbers there.

Mr. MARCHANT. Thank you.

Admiral HIGGINS. We have very similar processes to the other academies. We have a group of about 125 cadets called the "cadets against sexual assault," CASA, who do have specialized training to counsel folks. The cadets at the Coast Guard Academy can go through the chaplains, medical, through CASA, to employee assistance program, or can still use their chain of command.

I can quickly give you the results of the nine. We have one ongoing court martial right now that is unresolved, although it is my understanding is that this morning at 11 the Defense rested. It is now with the panel. We had five sexual assaults, most of which were inappropriate touching, and with agreement of the victims we had five disenrollments from the Coast Guard Academy.

We had three sexual harassment cases. All received administrative punishment, and that is done through the commandant of cadets and a group of cadet officers who do that. That is since the year 2000, the nine cases that we had. The one ongoing court martial, that went to an article 32 and may be resolved within a week or so.

Mr. MARCHANT. Thank you, Mr. Chairman. And thank you for your responses.

I know that I am out of time, but I would like just one followup comment.

Mr. SHAYS. You may have that followup comment.

Mr. MARCHANT. I would just like to know, and no response necessary, if there is a tracking system in place where you track the victims that have reported the assaults and tracked whether they have stayed in school or they have left.

Thank you, Mr. Chairman.

Mr. SHAYS. I thank the gentleman. He certainly had the time to make that comment.

I am going to call on Mr. Kucinich, but I still feel a disconnect from this panel and the previous panel. I just feel like we are in

two different worlds. To hear, for instance, that there is no court martial since 2003 at the Air Force Academy is surprising to me.

Mr. Kucinich.

Mr. KUCINICH. I want to thank the Chair for causing this hearing to happen and, once again, you have caused this committee to be an important committee for public policy and, in particular, on this issue of how the women who serve this country in the military academies are treated when it comes to being assaulted.

Now, Brigadier General, I read your testimony very carefully and, in light of what my chairman just said, I have to tell you it is somewhat surprising to see the extent of Former Cadet Davis' testimony and to see the rather discursive response to this general issue. Would you like to take a moment on behalf of the U.S. Air Force to respond definitively to charges that the entire chain of command or a good part of your chain of command was involved in trying to discourage this woman's rights from being defended?

General DESJARDINS. Yes, sir.

In 1999 Cadet Davis said the sexual assault started and then continued on to 2000, 2001, and then when she left for the second time, I believe, in 2002. This was brought to light very clearly, all of this, in absolute crisis at our Air Force Academy in 2003. That is how we all looked at it. I was out in the operational Air Force by then, and those of us who are graduates—I graduated in 1980 in the first class of women at the Air Force Academy—it was total dismay. It was just awful to see.

So in 2003, when this was all brought to light, the Academy and the Air Force, the Secretary of the Air Force, responded aggressively and, in fact, the Secretary of the Air Force lost confidence in the leadership at the Air Force Academy and replaced the leadership team with an entire new team from the commandant to the training group commander and ultimately a new superintendent came in.

Since that time, which was 2003, in 2005 when the Defense Task Force did its report——

Mr. KUCINICH. Were those people replaced or did they resign? You mentioned some replacements. Were people replaced or did they quit?

General DESJARDINS. Sir, I think the superintendent actually retired and then they were replaced, the other two were replaced. But then there was a full court press on what do we do now and how do we respond and how do we change, because this absolutely can't continue to happen. This identified a problem not only at the Air Force Academy but in the Air Force and ultimately in the Department of Defense.

The crisis turned into an opportunity to make change, and I can't overstate how important it is to make this change and continue to shine this light. This is not one of these problems that will go away. We have to always keep our focus on it. I am optimistic that we are making good changes, but we have a long way to go. We have a very long way to go.

Mr. KUCINICH. One of the things I thought was very telling in the former cadet's testimony was she went to the base psychologist, "As I arrived at the psychologist's office, the doctor hung up his phone and declared, 'That was your commander and he says we

need to diagnose you with something that gets you sent off base.'" How long have you been in the chain of command over at the U.S. Air Force Academy?

General DESJARDINS. Sir, I took command as the commandant in December 2005; 6 months.

Mr. KUCINICH. And do you have an entire new chain of command?

General DESJARDINS. Yes, sir.

Mr. KUCINICH. And are you confident that your chain of command would respond appropriately in case of a sexual assault on one of your cadets?

General DESJARDINS. Yes, sir, I absolutely am. In fact, our superintendent, his daughter was in the class of 2003, and so he takes it as an absolute personal commitment that every sexual assault is thoroughly investigated and the victim care is utmost in our minds. I will tell you, sir, I also have a lot of confidence in the chain of command below me. All of our tactical officers or air officers commanding in charge of each one of the squadrons, majors or 04s, are hand selected to be good role models for our cadets. They are 20 percent women and they come from all specialties across the Air Force. It is a very select panel. They have to have a record of success.

And so above and below me I have the utmost confidence in the chain of command at the Air Force Academy to handle aggressively and with vigilance the issue of sexual assault.

Mr. KUCINICH. How many psychologists do you have on staff?

General DESJARDINS. Sir, we have in the Academy Counseling Center four psychologists.

Mr. KUCINICH. And are those individuals free to make their own assessment absent the requirements of the higher command?

General DESJARDINS. Yes, sir, they are.

Mr. KUCINICH. They are not dictated as far as assessments——

General DESJARDINS. No, sir.

Mr. KUCINICH [continuing]. To be made?

General DESJARDINS. No, sir.

Mr. KUCINICH. I notice in your testimony you pointed with pride to the incoming class of 2010, the largest number of women ever entering the Academy.

General DESJARDINS. Yes, sir.

Mr. KUCINICH. So you have taken even greater responsibility now.

General DESJARDINS. Absolutely. I do, sir.

Mr. KUCINICH. I would like to thank you.

I'd like to ask Brigadier General a question, if I may.

General CASLEN. Yes, sir.

Mr. KUCINICH. This question relates to the extent of your engagement with local law enforcement. I see that on December 5, 2005, your testimony was that you had a civilian law enforcement working lunch and talking to some local people, and that you also provided a briefing for civilian law enforcement officers. What is the position of West Point with respect to if a rape occurs do you handle it in-house first at this point or do you share it with the local law enforcement authorities? And is that dependent on your restricted or unrestricted rule?

General CASLEN. Well, sir, as necessary, when local law enforcement agencies get involved in a particular case, whether it is through reporting or through a service that is provided, we are in the process of developing that relationship and refining it through a memorandum of understanding on exactly how that would be played out and who would do what and how you would respect confidentiality when that occurs and so forth and so on. The good news is that, as a result of the task force's recommendation, it was the impetus for us to gain contact with the local authorities and to establish that relationship, teach them on what our Army policies are, what our West Point policies are, and then establish the lines of communication and the procedures for reporting and care as necessary, so——

Mr. KUCINICH. How many women are at West Point now, General?

General CASLEN. About 600 or so.

Mr. KUCINICH. That is 600 out of how many cadets?

General CASLEN. I believe 4,400, sir.

Mr. KUCINICH. OK, 4,400. And how long have you been in the chain of command?

General CASLEN. Since last week, sir.

Mr. KUCINICH. Welcome.

General CASLEN. Sir, I will tell you, sir, I just went through R-day yesterday where our cadets reported, but it was really my sixth R-day. I went there, of course, as a plebe, but then as an upperclassman in the cadre, twice as a tactical officer, the title 10 commander. Last year was No. 5 as a parent because my son was a cadet at West Point. He's now an upperclass yearling, third classman. And yesterday was No. 6.

I think last year as a parent gave me the best preparation to be the commandant of cadets over any other preparation I had because, you know, I have seen my son, who really experienced everything of a fourth class year that you could experience, whether it is walking on the area or struggling through academics or whatever, and it was really helpful to me. It brought into my mind's eye the whole relationships that he has, because I think he is developing a relationship with a cadet girl, as a matter of fact, and we have been around some of these girls in some of the social settings, as well, so it has been very helpful for me the last year in that regard.

Mr. KUCINICH. Well, you know, Mr. Chairman, I had to step away for business on the floor of the House earlier, but during the testimony, particularly by former Cadet Davis, I was watching you in the back row, General. I was watching your face. When you just told me that you took the command a week ago, I could see—Mr. Chairman, I could see the concern on the General's face. I could see how you responded to what she was saying, and your response was not just as a General but you seemed to be responding as a parent, as well.

It was really interesting. I was watching you. I hope what that means is that, as you take responsibility for West Point in your new responsibilities there as a Commandant, that all of the information that we have here and all the testimony that has been given and your sense of what is really going on—and any of us who

have ever had sons or daughters, we understand when they get to that age all the complexities that occur. But you know now.

General CASLEN. Oh, yes, sir.

Mr. KUCINICH. You know the whole range of things that can happen, so what we need here in this House, as my colleague Chris Van Hollen said earlier, we need your assurance that wherever this sexual harassment or sexual assault exists that you are going to make sure that all the way through the ranks this is not just pursued but that a culture of respect is developed, that cadets will see respect for one another as part of their duty, and that young men will see respect for young women as part of their duty, and vice versa. I really appreciate hearing your personal story there.

General CASLEN. Yes, sir. I firmly believe strategically that our military academies embody everything that is right with America, and particularly the values, the ethics, and our traditions, and as the average American citizen looks at the military academies, it is inherent on us, the senior leaders, to maintain that responsibility, to maintain those values, and in so doing it is our responsibility to pass those values down to this next generation to the point where they assume ownership of it. When they assume ownership of it, I mean the whole line of it, then the culture will begin to change.

What does it take to change a culture, not only in the service academies but even in our services, even in our country, itself, and our college campuses? What does it take to change that culture? We are going to start at the service academies and I think these plans and programs that are now in place are the beginning of that. That is why I give credit to the courageousness of Ms. Davis and her testimony and what she is doing, because a lot of that is the impetus of this change that is going to take place.

Mr. KUCINICH. I think the academies would do well to, on occasion, invite her in as a speaker to remind people how serious this is. I mean, she gave something up. She gave something up.

General CASLEN. Yes, sir.

Mr. KUCINICH. I think that we need to find ways of recognizing her service.

I also want to say that, as someone who recommends for consideration by the Academy young women in my District, I want their parents to know that myself and other Members of Congress are vitally concerned about how the young women who are their pride and joy——

General CASLEN. Yes, sir.

Mr. KUCINICH [continuing]. Are going to have their safety and security assured.

General CASLEN. Yes, sir.

Mr. KUCINICH. Thank you, General.

General CASLEN. Yes, sir.

Mr. SHAYS. Before calling on Mr. Platts, I would like to say that in my many trips to Iraq I will interact with men and women in the service, and you can't help but be impressed with both the men and women who serve. But I remember one dialog, and I feel very badly that I don't remember her name. She was an enlistee, and I asked her if this was her first tour, and she said, "No, sir, it is my second tour." And I asked her if she had any children, and she said she had one 4 months old and 2 years old. This was her sec-

ond tour. And I said, "You have to return safe to your kids." She said, "Sir, I am not concerned about returning safely home to my children; I am only concerned that they forgive me for leaving them." She responded by saying but she knew she needed to be here. That was the nature. She was in the Army. You don't forget comments like that.

Mr. Platts.

Mr. PLATTS. Thank you, Mr. Chairman.

I want to first thank each of the witnesses for their testimony and add my words of thanks for each of your personal service to our Nation. We certainly are a blessed Nation because of all who wear the uniform.

I apologize. I am running late for another commitment but I wanted to stay because the disconnect that the chairman referenced a number of times, the way it came across to me in each of your written testimonies is I believe—and I may have missed one here or there—but in the four academy testimonies I only find the words "crime" or "criminal conduct" referenced in one of the four. "Inappropriate behavior," "irresponsible behavior," lots of words about wrongful behavior, but only in the Air Force, General Desjardins, I believe only in your testimony do I see an open acknowledgement for what we are talking about.

General DESJARDINS. Yes, sir.

Mr. PLATTS. Criminal conduct. I think that is the disconnect that we are missing here is, whether it is at a military academy or on the streets of America, sexual assault, rape is criminal.

General Caslen, I appreciate you are in this job 1 week and clearly you have a belief in doing right by the cadets, but in referencing your opening statement you are referencing the policy of the institution and you say, "In general, our policy states that sexual assault is a leadership issue." I would start by changing the way we talk about this and say it is a criminal issue. The cadets need to know that it is a sign of weakness as a leader to engage in this conduct, but first and foremost it is a criminal issue which we will pursue to its fullest and throw the book at you. I see that as the disconnect here. Let's call it what it is, a crime.

I think until America began to treat violence against women in the home or any place for what it is, a crime, we didn't really get serious about it. I would encourage you. I believe I am accurate that in three of your four testimonies the word "crime" does not appear. It is about unacceptable behavior. I think that is part of the challenge we have.

I don't doubt and I appreciate the efforts that each of your academies are making. I look at this hearing in several fashions. One is as a member of this subcommittee in our oversight responsibilities, as one who has the privilege of nominating courageous and dedicated men and women to the academies, and, probably most importantly, as the parent of a 10-year old and 7 year old. My thoughts as Ms. Davis testified were if I was her father I don't know I would have been very restrained. I would have been at the Academy door seeking justice one way or another, which clearly has not been achieved.

I hope that we can go forward. General Desjardins, your statement here referencing the increase of women attending the Air

Force Academy, which is great to see, but you say clearly the parents of the Class of 2010 feel that the Academy is a safe place to send their sons and daughters. I would imagine that Ms. Davis' parents thought that they were sending their daughter to a safe place, as well.

All of our institutions have a responsibility, and especially our military academies. I think we need to be careful how we talk about this issue and be frank about it. The more frank, the better, especially to those midshipmen and to those cadets. They need to know that we are not just talking about inappropriate behavior; we are talking about criminal conduct.

I do thank each of you for your efforts. I do come away from this hearing with the efforts being made that the experiences that Ms. Davis, the horrific experiences that she experienced will not be repeated. That, in the end, will be up to you and those within your chain of command to ensure it never is repeated.

I believe that we are on the right track, but call it what it is, a crime, and treat it for what it is, a crime, and throw the book at those individuals who truly are not leaders and not deserving to wear the uniform of this Nation.

I thank each of you.

I do apologize. I need to run. It is so important. We are so grateful for those who are serving, and when we make our nominations as an office I just cannot express my gratitude enough to the sons and daughters and the parents who are sending their loved ones to our academies and knowing what they will be going into, especially as I think was referenced in one of the testimonies, in a post-September 11th environment where we are a Nation at war.

Again, I thank each of you for your individual service throughout your careers. Distinguished careers they are, and we are fortunate to now have you in place of authority at these academies so we do right by all of our men and women attending your academies.

Thank you, Mr. Chairman.

Mr. SHAYS. Thank the gentleman very much.

We are going to go to Mrs. Maloney, and then we are going to go to Mr. Van Hollen.

Mrs. MALONEY. I would like to thank everyone for their testimony and for your service to our country, and I would like to focus on the Defense Incident Based Reporting System, which I understand has been under development for 18 years; that is correct?

Dr. WHITLEY. We are developing a Defense case record management system which has only been in development for about a year.

Mrs. MALONEY. Well, the DIBRS program that was around for a long time, the Defense Incident Based Reporting System.

Dr. WHITLEY. I am sorry. I don't have an answer for that, ma'am.

Mrs. MALONEY. Well, could you get an answer for the committee?

Dr. WHITLEY. I will get back to you and find out.

Mrs. MALONEY. And could you get us a report on where the DIBRS system stands, what success rate it has had, exactly where it stands?

Dr. WHITLEY. Yes, ma'am.

Mrs. MALONEY. What system are you working on? The sexual assault data management system? Is that what you are working on?

Dr. WHITLEY. We have created a system for sexual assault response coordinators to help them manage their caseload and track victim care.

Mrs. MALONEY. OK. Could you explain how that system works?

Dr. WHITLEY. It is a data base. The only person that has access to the entire data would be the sexual assault response coordinator in the field. There was nothing in existence——

Mrs. MALONEY. Is the coordinator in what field?

Dr. WHITLEY. The installation. The sexual assault response coordinator. There is one at every installation.

Mrs. MALONEY. At all of the academies, you mean?

Dr. WHITLEY. Yes, by have sexual assault response coordinators, and also I am talking about the entire Department of Defense.

Mrs. MALONEY. Now, this system will be for all of the academies and the entire Department of Defense, so every man and woman in the military, if they are assaulted, would be in this system?

Dr. WHITLEY. Yes, ma'am.

Mrs. MALONEY. So it is program wide. What data is collected about the victims in this system?

Dr. WHITLEY. Certainly the information about the incident, the care that the victim receives. I don't think it specifies exactly what care, but it would account for how many times they went to counseling, if they sought medical care or had a forensic exam. It also does keep up with what is happening to the offender, and——

Mrs. MALONEY. So it keeps four elements? Could you break it down? Actually, I would like to see the system. I would like to see how it is collected. So you have to have the name of the person in it, right?

Dr. WHITLEY. We do.

Mrs. MALONEY. Can you go exactly through the elements of it for the victims? So you have the name?

Dr. WHITLEY. And the last four of the Social Security number.

Mrs. MALONEY. OK.

Dr. WHITLEY. We do not have anything in our data base that isn't in another data base. In other words, criminal investigative offices have data bases, the medical has their data bases. This is an attempt to bring all of that together.

Mrs. MALONEY. Yes.

Dr. WHITLEY. And it is a tool so that the SARC can manage their caseload.

Mrs. MALONEY. I understand it, but I want to know specifically what elements are in. The name, the last four digits, then the incident. Is that the time, date, and place?

Dr. WHITLEY. Exactly.

Mrs. MALONEY. And then the care that they've gotten.

Dr. WHITLEY. Right.

Mrs. MALONEY. And then the counseling they've gotten and any forensic exam. So six elements are in it?

Dr. WHITLEY. There may be more that I have forgotten. But also, because we require the commander to give the victim an update, they also keep where they are with the case as far as what has happened to the offender.

Mrs. MALONEY. So this is the victim. What elements do you keep in for the offenders?

Dr. WHITLEY. We do not put anything in the data base such as the name of the offender unless they have been prosecuted and found guilty.

Mrs. MALONEY. So the name of the offender is not even in there?

Dr. WHITLEY. Correct. But what we do, because we have to give reports to the victim, we require that the victim be given reports and updates on the case. We do keep up with that.

Mrs. MALONEY. So you don't keep anything on the offender unless the offender is convicted; is that correct?

Dr. WHITLEY. Yes, ma'am.

Mrs. MALONEY. So it is zero on the offender. Now, are all of the academies sending information to this system now?

Dr. WHITLEY. Our system has not gone live yet. We have done training. I recently came back. Last week we had a conference where we trained over approximately 400 SARCs. We had set up computer labs and we gave them hands-on training for the system. So no, everyone has not been trained yet. That was a train the trainer. The system will go live hopefully in July.

Mrs. MALONEY. It is going to go live in July. Well, let me tell you something. Ever since Tailhook, the Women's Caucus has been working with the Department of Defense on developing this DIBRS system. At other prior testimony a member of the Department of Defense said it had been in process for 18 years. I would like the background information on DIBRS which we have put in legislation repeatedly, and for some reason it just never seems to be completed. If you could get back to us, we want to see the system exactly.

Dr. WHITLEY. Yes, ma'am.

Mrs. MALONEY. If I could ask one question, Mr. Chairman, my time is up, but on this to the academies?

Mr. SHAYS. You can have more time.

Dr. WHITLEY. Can I clarify that DIBRS does track criminal activity. The system that I brought up is a system that is a tool for the sexual assault response coordinator just to help them manage their caseload. There is two entirely different systems. But I will get you the background on DIBRS as soon as we get back.

Mrs. MALONEY. What I'd like on DIBRS, which we were told from the Department of Defense, tracked cases of rape, allegations, and sexual violence, and I would like to know exactly what the elements are in DIBRS. We have been told by the Department of Defense repeatedly by people in charge of it that it would be completed by 2007. I'd like to ask the rear admiral, is your Academy coordinated with DIBRS on sexual assaults at the Academy?

Admiral HIGGINS. Ma'am, currently our data is held by the Coast Guard Investigative Service. We are aware of DIBRS and we are willing to join once it becomes operational, but at this time, since we are Department of Homeland Security, not Department of Defense, we are not involved in the creation of the program.

Mrs. MALONEY. But have they told you what elements you have to collect in order to go into DIBRS? Have they given you a guideline of what elements are supposed to be collected by your Academy to go into the DIBRS system?

Admiral HIGGINS. Ma'am, I personally am not familiar with that, but I can take that question for the record and we can get you an official response back.

Mrs. MALONEY. Thank you.

Brigadier General, are you aware of the DIBRS system, the Defense Incident Based Reporting System?

General DESJARDINS. My lawyer behind me is, but I am not personally aware. I, again, can get you the information that you'd like.

Mrs. MALONEY. Are you processing your information into the DIBRS system now?

General DESJARDINS. If not the Academy, specifically, it is being done at the headquarters Air Force level. So we report to the Air Force our statistics and they input it into the DIBRS system.

Mrs. MALONEY. OK. So the Air Force Academy is connected to the Air Force that goes into the DIBRS system?

General DESJARDINS. As far as we know. Yes, ma'am.

Mrs. MALONEY. The Coast Guard, you don't even know if you are connected to the DIBRS system?

Admiral HIGGINS. Ma'am, my understanding is we use our Coast Guard Investigative Service data and we do send our data to DOD for inclusion.

Mrs. MALONEY. You send your data, too?

Admiral HIGGINS. We send our data, but it comes from our source that we collect and hold through our Coast Guard Investigative Service.

Mrs. MALONEY. So if you are sending it to DOD, I have to assume you are part of the DIBRS system, but get back to me.

Can you give me, Brigadier General, what elements—when you keep a computer system you have specific elements of information that goes into it. Does your attorney know the exact elements that are going into DIBRS?

General DESJARDINS. Yes, ma'am. The case identification number, type of report, restricted or unrestricted, victim military affiliation, subject military affiliation, the offense alleged, and the victim's name. That is masked for restricted cases.

Mrs. MALONEY. What information do you give to the DIBRS system on the—I will call it the rapist, the offender, the alleged rapist?

General DESJARDINS. Ma'am, I don't know that and I don't have that information.

Mrs. MALONEY. Could you get it?

General DESJARDINS. On the accused?

Mrs. MALONEY. Yes, on the accused.

General DESJARDINS. I don't have that information, ma'am.

Mrs. MALONEY. Could you get that information back to the committee?

General DESJARDINS. Yes, ma'am.

Mrs. MALONEY. And exactly how you are connected to this system, which I was told was 18 years.

Brigadier General, you have been busy. I saw you were anti-terrorism. We appreciate that. Does your attorney know if your are connected to the DIBRS system?

General CASLEN. Here's what I know right now, ma'am. Yes, we are connected. It is connected through our criminal investigation

division [CID]. Those are the ones that do the investigation, so it is really for the prosecution piece. For the sexual assault response coordinator, they are going to operate that same information that goes into DIBRS, the same data base information that was just laid out for you, but that same sort of information will go into the SATF system, which is the system——

Mrs. MALONEY. I am interested in the DIBRS system. If you could get back to me the elements.

Vice Admiral, I know my time is up, but I have to ask. Are you connected to the DIBRS system?

Admiral REMPT. We are not directly connected. Our Naval criminal Investigative Service [NCIS], collects data on all of its cases and I believe they submit to it. We also submit personnel incident reports on all the cases that arise.

Mrs. MALONEY. Can you get back to me? So the Navy has finished your reporting system?

Admiral REMPT. We have several different reporting systems.

Mrs. MALONEY. The DIBRS reporting system.

Admiral REMPT. I don't know that, ma'am. I will have to get back to you.

Mrs. MALONEY. I was told that the Naval Academy has not participated and is not participating in the system. Could you get back to me exactly?

Admiral REMPT. Certainly.

Mrs. MALONEY. Where it stands?

Admiral REMPT. Yes.

Mrs. MALONEY. Thank you.

Mr. SHAYS. The Chair would recognize Mr. Kucinich. I think he has a question.

Mr. KUCINICH. I want to thank Mr. Van Hollen for indulging me for a second and thank the Chair.

Brigadier General——

Mr. SHAYS. We have two.

Mr. KUCINICH [continuing]. Actually I was out of the building and the thought occurred to me. Maybe the question has already been answered, but I just had to come back and ask this.

Mr. SHAYS. Is this Air Force or——

Mr. KUCINICH. The Air Force, Desjardins.

Has Cadet Davis' record been expunged?

General DESJARDINS. Sir, I don't know that answer. She resigned from the Air Force Academy, so——

Mr. KUCINICH. She testified that she had demerits for sex in the dorms because the rape took place in the dormitory, fraternization because the rapist was an upperclassman, alcohol because in a written statement the perpetrator was buying alcohol for her under-aged peers. Has that record been expunged?

General DESJARDINS. Yes, sir. Those things that happen as a cadet that are those kinds of cadet actions, if you will, fraternization, sex in the dorms, those are cadet incidents, if you will. Those don't follow them.

Mr. SHAYS. Can I just say that is really an uncomfortable answer. The implication is the other way. Sometimes they should count. I mean, that is the whole point of this hearing. I am sorry to interrupt my colleague, but we have two interests. One, we want

to move forward, but we do care about Ms. Davis' record because she came before this subcommittee and basically has been told that she reports rape and now she is blamed for having sex in the dorm. Hello? So I thank the gentleman for yielding.

Mr. KUCINICH. So then, Mr. Chairman and members of the subcommittee, so how is this handled then? How is her record handled? If an employer in the future wants to go and inquire of the Air Force about her time in the Air Force, what are they told?

General DESJARDINS. Sir, there are no records. When a cadet resigns from the Air Force Academy for such cadet incidents, if you will, not crimes but cadet incidents, then their record is destroyed.

Mr. SHAYS. To be continued, all right? This is unsettling.

Mr. KUCINICH. Thanks, Mr. Chairman. Thank you, members of the committee.

Mr. SHAYS. The gentleman has the floor, Mr. Van Hollen.

Mr. VAN HOLLEN. Thank you. Thank you, Mr. Chairman.

I join my colleagues in thanking all of you for your service to our country and for your testimony here today.

Let me just start where I think Ms. Davis left off, which is I think she was clearly of the mind that in her particular case she has still not seen any justice, and she also seemed in her testimony to be clear that she's not convinced that the system has been adequately changed to make sure that those who come through it now are adequately protected.

If I could just begin with you, General Desjardins, with respect to Ms. Davis' case and the particular individuals who, according to her testimony, clearly failed her and the interest of justice—and she named a number of individuals in the immediate chain of command—have any of them ever faced any question or disciplinary action regarding their failure to follow through appropriately with respect to her allegations?

General DESJARDINS. Sir, as I stated, this was all brought to light in 2003, and the Secretary of the Air Force indicated and took action because he had lost confidence in the leadership at the Air Force Academy.

Mr. VAN HOLLEN. Right. Do we know whether any of the specific individuals in her case——

General DESJARDINS. Sir——

Mr. VAN HOLLEN [continuing]. In the chain of command——

General DESJARDINS. I am not aware of any.

Mr. VAN HOLLEN. OK. Because I think that the test here, as I said earlier, with respect to whether the system is changed to respond appropriately is whether it responds when the spotlight is not on the system. I mean, after Tailhook and the hearings that were held after Tailhook, yes, people were disciplined. After 2003 and the publicity that surrounded what happened at the Air Force Academy, yes, there was action. I guess my question—and I ask all of the members of our panel here—do you know of any case where someone in the chain of command has been disciplined for their failure to take appropriate action, for their failure to make sure that justice was served, because in all these cases clearly the testimony suggests that there are many instances or have, at least in the past 10 years, been many instances where people have dropped the ball and been negligent in their duty. And so my question is:

outside of Tailhook, just as part of the normal day-to-day process, are you aware of anybody who has been disciplined for failure to protect the interests of the victims of sexual assaults or sexual harassment? That is a question for each of the members of the panel.

General DESJARDINS. Sir, I know that both the Air Force and the Department of Defense Investigating General reviewed Cadet Davis' case. In no cases but one there were no derelictions found. So an internal Department of Defense investigating general and the Air Force investigating general looked at Cadet Davis' case and in none of these investigations but one was there any dereliction of duty found.

Mr. VAN HOLLEN. OK. I mean, if I could just enter——

Mr. SHAYS. On the part of whom, if the gentleman would yield, just so we are clear.

Mr. VAN HOLLEN. Yes.

Mr. SHAYS. As to dereliction on the part of the—on the attackers or——

Mr. VAN HOLLEN. On the leadership, the immediate leadership of the Air Force Academy at that time.

Mr. SHAYS. So you are speaking code? In other words, the person who raped her was not found to have raped her?

General DESJARDINS. No, sir. The chain of command—the question was, was there anyone held accountable, was I aware of anyone that was held accountable in the Cadet Davis case, and there were two investigations, one by the Headquarters Air Force Inspector General, one by the Department of Defense Inspector General, and only in one case of one leader was any dereliction of duty determined or found.

Mr. VAN HOLLEN. I thank you. With respect to the other cases of sexual harassment and assault—and we have heard back at the time of the 2005 report, the Task Force Report, that listed the number of occasions where there have been allegations of sexual assault and sexual harassment—in any of those other cases, to your knowledge has anybody been held accountable for dereliction of duty in failing to prosecute these cases appropriately? I would just go right down the line if we could begin with you, Rear Admiral.

Admiral HIGGINS. Sir, I am not aware of any cases at the Coast Guard Academy. In the last several years there has been one case in the field of a supervising officer who did an inappropriate investigation, but that was not at the Coast Guard Academy.

General DESJARDINS. Sir, for the Air Force Academy, no derelictions were found except the one mentioned.

Mr. VAN HOLLEN. Thank you.

General CASLEN. Sir, I am not aware but that is probably not appropriate since I haven't been there that long. My folks said that they are not aware of any incidents that resulted in this, but that is not to say there weren't any. But I can clearly state that, not only because of the events of today but the events of what has transpired and the policies that the institution has now put in place, that type of command climate is not an acceptable command climate. This is a policy that is clear is a zero tolerance policy with regard to this, so that type of behavior occurs, you can trust that I believe I speak for all my colleagues at the table here that our

leadership will take action as a result of that, and I know we will at the U.S. Military Academy.

Mr. VAN HOLLEN. Thank you. I appreciate that.

Admiral REMPT. Sir, I have not had to discipline anyone for failure to act responsibly in this area. In fact, my observation is I have a highly motivated staff who work this issue with great heart and compassion and determination.

The commandant and I routinely review the judgment of junior officers to ensure consistency in the maintenance of standards at the Academy, and certainly in this area where there is misconduct or harassment occurs.

In the area of harassment, I have, in fact, disciplined a senior officer, faculty members, others, as well.

Mr. VAN HOLLEN. For harassment, itself?

Admiral REMPT. For harassment. That is correct, sir.

Mr. VAN HOLLEN. Thank you. I think that as I listened to Ms. Davis and the testimony that others have given in this area, they are looking for a sort of signal on behalf of the institutions that dereliction of duty and failure to adequately and appropriately address these issues will be addressed appropriately, beyond just the individuals who committed the crimes or committed sexual harassment. I appreciate the commitment here everybody has, but I think the numbers from the past at least suggest that in the past this has not been dealt with in any really serious fashion, so we look forward to going forward with a change of attitude. I appreciate your testimony in that regard.

If I could just ask with respect to the line of questioning that my colleague Mr. Platts was pursuing, you do get, throughout this whole area, a sense that this has been treated in the academies somewhat as a violation of regulations and rules rather than a violation of the criminal law. I guess would you object if we ended up handling this as a normal criminal procedure? For example, if somebody in one of your academies calls the local police to report a sexual assault, do you have an objection to the local police coming onto one of the service academies and investigating it like they would any other citizen of the United States in a similar situation?

Admiral REMPT. We certainly have had a number of cases where we have jointly investigated them with the local police, county sheriff, D.C. police, etc., so we have MOUs in place. We do a number of joint things together in that regard.

I think what is important here, sir, is that typically the sexual assault cases that are reported reflect what are really national characters of alleged sexual assault cases. They are perpetrated against an acquisition and they involve two people, normally behind closed doors with no witnesses, and they often involve the use of alcohol. Because of these factors they impact the availability of evidence that is necessary to prove that an offense occurred when they are taken to military or civilian court. It is frustrating to us in that we frequently are unable to develop evidence. But, of course, that is not our task. Our task is to evaluate the evidence that is, in fact, developed.

In these courts, the standard of proof is beyond a reasonable doubt, which is a purposefully very high constitutional standard.

That is why so few of these accusations result in sufficient evidence to take the matter to military or civilian court.

What we see at the Naval Academy in the cases that we have are one-night stands and failed relationships or failing relationships and alcohol-fueled events. Our circumstances are such that we certainly, in my experience there thus far, I have not seen the level of cases that we were talking about earlier. So I agree that we should call crimes crimes and criminal cases criminal cases, but, as it turns out, in the majority of these cases it is very, very difficult to come to that conclusion.

Mr. VAN HOLLEN. I understand that, Admiral, but I think our normal criminal justice system every day has to address these same kind of issues——

Admiral REMPT. Right.

Mr. VAN HOLLEN [continuing]. Every day through our criminal courts, and the question is: why should they be addressed any differently with respect to these kind of allegations that happen with respect to actions taken on the service academy campus? I'd be interested in the policy with respect to each of the service academies. If something happens, if someone on campus, if Ms. Davis was to have picked up the phone and called the police to report a sexual assault on the service academy campus, are the local police welcome to come on the campus——

Admiral REMPT. Yes, sir.

Mr. VAN HOLLEN [continuing]. Investigate the crime in the normal course and prosecute that individual in the local court system?

Admiral REMPT. They are certainly welcome to do that. We would probably assist them, work together as a team, but we would have no problem with that. It is straightforward. We have an agreement in place to do exactly that.

Mr. VAN HOLLEN. They can come right on campus and do that?

Admiral REMPT. Yes. Let me make one other point on this. In a recent case that was handled by the D.C. Police, ended up going to the prosecuting attorney in the District of Columbia, they ended up turning it down for lack of evidence. They didn't want to proceed with the case. We took the case back to the Academy and that is one of our court martial cases that we are currently proceeding with. So what we try to do is find the best way to proceed that we can in all of these cases, realizing that one of our primary responsibilities is to protect the rights of the accused, and that is very important to us.

Mr. VAN HOLLEN. I understand.

General CASLEN. Sir, thank you for the question. Actually, I really like Mr. Platts' suggestion when he told us that sexual assault is a leadership issue. He challenged that and said that sexual assault was a criminal issue that would be prosecuted to its fullest. I think that is a fair suggestion and we will take that back and we will have our lawyers and our policy people review it. I think there is some goodness in that we should incorporate that and communicate strategically out to our corps.

As I say, we are developing the memorandum of understanding that we will work with the local authorities and what that looks like.

Our cadets are under the Uniform Code of Military Justice, and as such when a criminal offense occurs they should be prosecuted under the Uniform Code of Military Justice. Having said that, we have worked on a couple of occasions with local authorities or even not local authorities, for example, the Miami Police, Washington, DC, Police, and the New York City Police, for crimes that were committed in their jurisdiction. We work with them.

Mr. VAN HOLLEN. I understand. I am specifically referring to crimes committed or allegations made with respect to things that happened on the facilities and campus of the Academy and whether or not you would be willing to have the local police investigate and prosecute those cases in the normal course.

General CASLEN. I think what I should get you is a copy of the current memorandum of understanding so that it will lay the specifics out so I won't speak out of turn for what they are, but personally I would say I think that is a fair suggestion, even the one that you are suggesting, and that we ought to take that into consideration. But let me offer for the record the full MOU and what it states.

Mr. VAN HOLLEN. I would appreciate that. Thank you.

General DESJARDINS. Sir, the Air Force would have no objection; however, in the past the local community often defers to the Air Force because we can do an investigation a little bit more quickly, more swiftly, and a more complete investigation. By conducting our own investigation—and, again, we work on a case-by-case basis with the circumstances of the particular incident—but by conducting our own investigation in courts it gives a big sign to the victims that we consider this a crime.

Mr. VAN HOLLEN. Thank you.

Admiral HIGGINS. Sir, I would like to take that question for the record, but I will say that the local authorities in New London, CT, work with the Coast Guard Investigative Service. I do not believe that the New London Authorities would come on to the Coast Guard Academy without discussing with CGIS first. An article 32 is like a grand jury, and that can be the convening authority, could be a civilian police department or the Coast Guard Investigative Service. But I would like to give your question an answer for the record on that.

Mr. VAN HOLLEN. I appreciate that.

I will just close with this, Mr. Chairman. I think that the testimony we heard from Ms. Davis was clearly indicated that there was not confidence in the system through the regular chain of command to prosecute and fully investigate these issues. So if the academies would at least allow as an alternative the local authorities, who are obviously not in the chain of command, who would be hopefully not part of whatever pressures may or may not exist within that chain of command, it seems to me that might instill greater confidence in the process if that was an option available to people. So I appreciate the responses we have gotten. Thank you.

Thank you, Mr. Chairman.

Mr. SHAYS. I thank the questions of the subcommittee members. I am pretty convinced that we have a huge problem that is underneath the surface and that the fact that no one really sees the incredible outrage of a young woman who basically was raped and

testified she's raped, asks for help, discloses that she was raped in a dorm where liquor was involved, and she's out and the person who raped her is still in and progressing through the system, to hear all of you congratulate her for her courage, but courage is one of the things she should be congratulated for, but what she basically said was there was, particularly at the Air Force Academy, a huge tolerance.

To have been told by her fellow cadet women that you will probably be raped, but you can't talk about it because you will lose your commission, and she ends up talking about it finally and loses her opportunity to have a commission, somehow we are just like ships passing in the night here.

I was waiting for someone in the Air Force Academy to say, "You know what? We want this young lady back. With courage like that, we want her back." Then give her the opportunity to say no thank you, but say, "We want you back. You are the kind of person we want in the Academy." I would have loved to have seen that.

This subcommittee has two objectives: one, to make a difference in what happened and to investigate potential cases like Ms. Davis and make sure that she is made whole. I have religion on that.

I will start with you, Dr. Whitley. I have no confidence in DOD for the simple fact that we had this, the Defense Task Force on Sexual Harassment and Violence. They did their job, but Public Law 108–375, subtitle K, Sexual Assault in the Armed Forces, made it very clear this would be the first, and then what was to happen after, Ms. Whitley?

Dr. WHITLEY. There is supposed to be another task force as a transition from that one to examine sexual assault in the military services.

Mr. SHAYS. And when did they complete this work?

Dr. WHITLEY. Almost a year ago.

Mr. SHAYS. Almost a year ago. Some time in the fall, correct?

Dr. WHITLEY. Right.

Mr. SHAYS. Almost a year. So why should I have confidence that the Department of Defense takes this seriously when the law requires you, the Department of Defense, to have a task force on sexual harassment and violence in the military, why should I take seriously any of this dialog when that hasn't occurred?

Dr. WHITLEY. I can tell you, sir, the infrastructure is in place. They have a staff. The staff has been doing data calls and collecting data, doing research. I don't know a lot about how the selection process is going, because it would be a conflict of interest for me because——

Mr. SHAYS. Let me just tell you, though, the law said that this had to be completed, but it didn't say they had to start to find people afterwards. They could have been ready to go as soon as this report had been submitted if the Department of Defense was serious, but the Department of Defense can't be serious because if they were they would have done this. So I believe that DOD is just simply giving us a very real message, "It ain't a priority." That is what I get.

Dr. WHITLEY. Well, if I could take the opportunity to just go over the chronology of how things have happened since that——

Mr. SHAYS. No, I don't want you to. I want you to tell me why this hasn't been done.

Dr. WHITLEY. I know the decisions on who will be on that task force is being considered at the highest levels of my leadership and they are taking their time to make sure they find the right people and it is not an easy process.

Mr. SHAYS. Yes, it is. Yes, it is. That is silly. They've have 2 years, because the law was written and passed October 28, 2004. That is embarrassing to say, you know, they haven't had time. They don't take it seriously.

Dr. WHITLEY. I will take that back to my leadership, sir.

Mr. SHAYS. What this subcommittee is going to do is it is going to have another hearing fairly soon. We are going to meet with a number of victims privately. We are going to have them tell us their story. We are going to have them sign papers that allow us to get all the information that we need from the academies, and the academies will be required to provide us how they have dealt with every case, and there can't be any argument that this is confidential because we will have a sign-off. That is how we are going to proceed.

I think everybody's heart in theory is in the right place, but I don't think there is really a sense of how you all came across to me in telling me that you congratulate Ms. Davis for her courage. What does that mean? I would like to know, Admiral Higgins, what does it mean by congratulating her for her courage.

Admiral HIGGINS. Well, I think I am not terribly proud 5 years ago of the Coast Guard's policy or our responses. I think recently we have taken it much more seriously. We have better policies now. We have better integration with the local system. We have better training for our people. But it is going to continue to be a problem if we don't get reports. I look forward to the day when our number of reports are identical to the Miles Foundation, because some of our folks still don't feel comfortable coming forward, and until the atmosphere is that good—we still need people to come forward. They need to tell their difficult stories so we can act on that difficult story and make progress. I hope to see the day when our numbers are identical to the Miles Foundation, because that means our folks trust us as much as they trust the Miles Foundation.

I think it is important that we do consider these folks as heroes and courageous for coming forward. It is very difficult for them to do that. Without that suffering, unfortunately, we are not going to make as good a progress.

Mr. SHAYS. Well, there is a huge disincentive for her to come forward. I mean, she's the one who is out, and the one who raped her is in. There is a huge irony in that. The fact that you can't prove the rape does not mean that the reality is that he's in and she's out.

General Desjardins.

General DESJARDINS. Yes, sir, her perpetrator was discharged from the Air Force Academy.

Mr. SHAYS. Because of that case?

General DESJARDINS. Subsequent cases.

Mr. SHAYS. Right.

General DESJARDINS. Subsequent issues.

Mr. SHAYS. Think about it. Not because of her case.

General DESJARDINS. Yes, sir.

Mr. SHAYS. So she stepped forward. When you said to me and to this subcommittee that there is no record because these kinds of things are viewed not as significant because they happened—whatever, I am assuming because they are college kids, and, that was like another disconnect that I had in the testimony. The reason why it shouldn't be a record is what? Do you believe her? Do you congratulate her on her courage but don't believe her? That is what I am missing in here.

General DESJARDINS. Sir, I absolutely believe her.

Mr. SHAYS. OK.

General DESJARDINS. I absolutely believe her and it was very painful for me to sit through her testimony, so I absolutely believe her.

Mr. SHAYS. Thank you. So the fact is she should have no record because of why? Because you just get rid of these, or because of what? Shouldn't there be a proactive acknowledgement? Has there been any acknowledgement to her, not publicly but in writing, that these have been dismissed because the complaints against her were found the be warrantless?

General DESJARDINS. Sir, in fact, we keep in contact with Cadet Davis and, in fact, she recently, when we heard about this hearing, she spoke with our former vice commandant for policy, Colonel Deb Gray.

Mr. SHAYS. I understand you have stayed in contact. I want to know does she have any document that she can turn to that says, "Thank you for your courage, because there is a record." You said it, but, "Thank you for your courage. We want you to know that all charges against you were dropped because they were without merit, and we apologize that they were ever there." Is there any kind of letter like that?

General DESJARDINS. Sir, what she went through—and, in fact, we learned so many lessons from her case. One of the things that we have done because of her case and the discipline that she was faced with, the discipline action that she was faced with while we were investigating the sexual assault is now we have a completely different process now.

Mr. SHAYS. I understand the impact of her case. I want to know has anyone provided her a document like what I described, or even, as you describe it now, congratulated her for helping to change what takes place at the Air Force Academy? Does she have such a document?

General DESJARDINS. Sir, I am not aware of any document that was given to her.

Mr. SHAYS. Maybe you want to think about that.

General DESJARDINS. Yes, sir.

Mr. SHAYS. Let me just ask, is there anything that any of you want to put on the record before we adjourn? Excuse me. Let me do this. Let me turn to Mrs. Maloney. Let me then turn to have the professional staff ask a question.

I am going to do this. Mrs. Maloney, this is out of protocol. I hope I don't pay the penalty, but I am going to ask you to take the chair

because I don't want to end this hearing and I have to leave, so I am going to ask you to sit here and take the Chair.

Mrs. MALONEY [presiding]. Thank you.

First of all I would like to ask unanimous consent to place in the record press reports and testimonials of other women that have had experiences similar to Beth Davis. Without objection, so ordered.

[The information referred to follows:]

Andrea Kaye Prasse
[redacted]
Houston, TX 77058
6 July 2006

Congressman Christopher Shays
Chairman
Subcommittee on National Security
B-372 Rayburn House Office Building
Washington, D.C. 20515

Mr. Chairman and members of the Subcommittee on National Security, Emerging Threats, and International Relations;

Thank you for the opportunity to finally share my story of the harassment and sexism I endured while a cadet at the United States Air Force Academy and the failure of my entire chain of command to respond to my concerns and complaints. This failure resulted in the loss of my Air Force career, and to this day, no one has been held accountable for his or her actions in this deliberate sabotage. The opportunity for all of us so harmed by the actions of the Air Force to finally tell our stories is not only important for our own healing, but to hopefully make it better someday for those that follow us. It is my fervent hope that Congress will take our stories seriously and seek meaningful change.

Attached you will find the official "leave behind" document my legal team created in the fall of 2002 when we sought assistance for my case from members of Congress and the media, which provides an overview of the systemic failures of due process. This document will provide a synopsis of what transpired but it does not provide sufficient detail of what exactly I was forced to endure. I hope to give you some idea of that through this statement.

I am a graduate of the USAFA, class of 2002. My journey to that end was not easy and while I am a graduate, I am not an officer. Too much damage was inflicted on me by the leadership of the Academy such that I could not serve safely or without prejudice and I regrettably had to resign the commission and pilot slot I had worked so hard to achieve.

Eight days before graduation, I was put on trial for allegedly violating the honor code and wrongly found guilty. I was immediately told to resign and when I refused to do so, I was recommended for disenrollment by my chain of command. The honor board proceedings were the result of retaliation by a male cadet, Matthew Rabe, and the finding of guilt was the retaliation of the commandant of cadets, General Taco Gilbert, due to my request to file a harassment complaint against Matthew Rabe. Following a nineteen-

month appeal, the Secretary of the Air Force (Roche) overturned the honor board's finding of guilt and granted my degree and commission. Unfortunately, due to the extremely hostile environment I experienced after being found guilty and the Air Force's inability and more importantly, their unwillingness to ensure my safety, I had no choice but to request an honorable discharge from the Air Force.

By the time I was 12, I knew the USAFA was where I wanted to go to college. When the day finally arrived, I was so excited to finally be going there. As you know, the Air Force Academy, as with all the academies, has a reputation of great prestige. For me to have gained admission was a dream come true! I was idealistic, enthusiastic and dedicated to the idea of serving my country. I did not go there for a free education as my parents had the means to send me to any college in the country. My dream was to fly and eventually become an astronaut. After I earned my pilot slot my senior year, my dream was to fly the A-10.

When I arrived at the academy during the summer of 1998, I could immediately see that as a female, I was going to have a very different experience than that of the males in my squadron. On the first or second day, my roommate and I were nicknamed "Frat Trap 1" and "Frat Trap 2" (in reference to fraternization) by the upperclass male cadets. We were given that nickname because they thought the upperclass male cadets would find us attractive. I came to learn that being an attractive female is indeed a liability at the academy. Because we are, in number, the minority sex and life at the academy is so restricted, women draw a significant amount of unwanted attention from the young men. While the men believe women like this, I did not. It became an annoyance to be asked out on dates continuously and when a male was turned down, rumors about a woman's sexual behavior were generated which escalated with each retelling. In addition, accusations would be leveled that you were conceited because you generated all this male attention. Believe it or not, I was there because I wanted to be an officer and pilot in the United States Air Force. This was difficult, if not impossible, for male cadets to accept.

Within the first week or two the different physical fitness requirements and expectations became an issue. Male cadets felt the female cadets should be able to meet the men's requirements. This discrepancy led to the assumption by males that females "had it easier" and were not as well qualified as them. The situation was exacerbated when in fact some of the upperclassmen cadre did show more leniency towards the women enraging some males who then took it upon themselves to make life very difficult for the females. This biased treatment in either direction resulted in some male cadets deciding females should not be at the service academies and in a survey from 2003, 20% of the cadets did indeed admit that they felt women should not be at the service academies. Unfortunately, that attitude resulted in the hostile treatment of women in subtle and not so subtle ways.

On a daily basis during noon meal formation, cadets would tell jokes to pass the time before their turn to march. These jokes were probably 90% about women and derogatory in nature. The AOC's (officers assigned to each squadron) and MTL's (enlisted personnel assigned to each squadron) were almost always present and heard these jokes

but nothing was ever said and no action was ever taken to indicate the inappropriateness of this behavior. If the young men did not perceive this as a hostile environment towards women, certainly the adult men in charge should have! While these may have seemed like rather innocent and harmless jokes to the men, this was quite offensive. It was also sexual harassment that we had to endure on a daily basis. Cadets who may have felt uncomfortable did not speak up because when the officer who heard these jokes doesn't say anything and laughs along with the cadets, it was a pretty clear indication that they would not be receptive to complaints. As a minority, you never want to be the one to make waves because you know you won't have much, if any, support. In fact, you will be viewed as a troublemaker.

Crude, disparaging jokes were rampantly exchanged through email as well and freely sent to us from our fellow male cadets with no thought that it might be insulting as well as inappropriate.

Perhaps one of the most disturbing outcomes of this behavior was that many of the women became immune to its offensiveness and/or would laugh along with it in order to be accepted, to be "one of the boys". After awhile a Stockholm syndrome effect took over and many of the women either didn't recognize this as sexual harassing behavior or would defend the men and disparage their fellow women.

The men also enjoyed insulting women by saying they had "terrazzo butt" or "CHD" (Colorado Hip Disease). "Falcon glasses" were fictional glasses that a male cadet needed to wear in order to see a female cadet as attractive. According to them, all female cadets were unattractive and wearing "falcon glasses" altered the view of women. Women who weren't attractive became attractive.

Nasty rumors about women were rampant. Women were also labeled in one of three ways: Bitch, Slut or Dyke. If you wouldn't date a male cadet, that cadet would either tell everyone you were a bitch or they would tell grand stories of their sexual exploits with you. If you did date another cadet after having turned someone else down, then you were labeled a slut. If you kept to yourself, you were called a Dyke. It was a no win situation.

Nakedness was a big thing with the male cadets and they enjoyed engaging in naked study nights, naked dormitory inspections, naked picture taking on the static displays, and other naked gatherings. Some women reported men walking down the hall naked to the bathroom or dancing in the hallway with their robes on backward and the back open. This last action was called "butt dancing." Indeed the 2001 yearbook includes a group picture of squadron 16 in which a cadet is exposing himself. This man is now an officer. In the civilian world, such behavior would garner an arrest for lewd and lascivious behavior. At the academy, it's just funny.

The sexist behavior was not just confined to the cadets. It was apparent in faculty and staff in any number of ways, both overt and covert. For example, as stated earlier, the fact that the officers and enlisted personnel would hear the sexist jokes yet do nothing to stop it was implicit sanctioning of this behavior.

In one of my math classes, the instructor wanted us to ask permission before altering the uniform of the day. It was warm in the room one day so I asked the instructor if I could remove my BDU blouse. (The blouse is the jacket over the shirt.) His response was, "Yes, Cadet Prasse, but unfortunately, that's all you can remove." I was shocked and appalled by this response, but when I looked around the classroom at my classmates, who were all males, no one seemed the least bit fazed by this comment.

During football games, the class of 1979 would always attend wearing hats that were embroidered with LCWB (Last Class With Balls) across the front. Everyone, including the administration found this funny, charming and cute and not once was it ever deemed inappropriate. This was the attitude that was brought to us by the leaders of the academy and by men who should have known better.

Unfortunately, during my time at the academy (1998-2002), our top leaders were all former graduates from a time when women were not allowed to attend the academies and they carried with them the attitude that women did not belong in their sacred institution, an attitude that was conveyed to us in many, many ways every single day. As with all institutions, leadership attitudes filter down into the ranks from the top and the AFA is no exception. This attitude permeated my own situation on a more personal level and ultimately cost my career. It is my belief that if these men had respect for women as equals, what happened to me would not have happened. In other words, had I been a male, this never would have even happened to me.

The inappropriate behavior of Matthew Rabe towards me started innocently enough my junior year and progressed into full-blown harassment and stalking during my senior year. We were both aeronautical engineering majors. During my junior year, Cadet Rabe and I had three classes together and were lab partners in all of them. Because of that, often the instructors would refer to us as boyfriend/girlfriend and I would quickly correct their erroneous assumption. If we were together when this happened, Cadet Rabe would not only not correct the instructors but lead them to believe we were, in fact, dating. He would nudge me and whisper to "play along." I refused.

During my senior year, the number of classes I had with Cadet Rabe increased to five. In addition, we lived across the hall from each other where we both served on Group Staff. I had my own room. Cadet Rabe did not. He used all three of those reasons as an excuse to constantly be in my room to the point where he was like my roommate. I had no privacy. When I wanted to go to bed, he would refuse to leave my room, instead stating he would close the door when he was done. He would never knock on my door before entering my room acting as though this was indeed his room. Despite telling him over and over again to knock first and wait for my permission to enter, Cadet Rabe refused to do so. He had no respect for anything about me.

Cadet Rabe's intrusions moved into other areas of my private life as well. In addition to his constant presence in my personal space, when I would leave the Academy grounds, he demanded to know where I was going, who I was going with, and when I would be back.

He would demand that I leave him the key to my room so he could use my computer for our projects while I was gone. I suspected he was going through my personal things while I was away.

Numerous times, Cadet Rabe would Instant Message my family on my computer using my screen name. One time when I asked him to stop doing this he refused and physically pushed me away to keep me from getting to my phone to call my mother and let her know it was not me to whom she was speaking. After that incident, prior to any IM conversation my parents initiated, they would ask questions that only I would know the answer to to confirm it was me on the other end of the computer. Cadet Rabe would also IM my friends pretending to be me.

Cadet Rabe would frequently make demeaning comments about women, making statements such as sports played by women weren't really sports and my job was to make food because I was a woman. He would also ask for EI (extra instruction) in kissing.

Cadet Rabe's real hostility towards me however was often demonstrated publicly and in virtually any setting. He thoroughly enjoyed humiliating and demeaning me personally and it was of little interest to him who was around. In my job as third group Director of Operations, he routinely tried to undermine my authority and take over my responsibilities. He would constantly email the squadrons for which I was responsible, going behind my back to give direction to my squadron staffs. He would demand to know when I held meetings with my squadron staffs and constantly tell me how to do my job. If he wasn't trying to take over my job, he was criticizing the way I was doing it.

Cadet Rabe demonstrated the same behaviors in the classroom. I was the CEO for a group project and Cadet Rabe tried everything he could think of to undermine my authority, including telling other team members not to listen to me. He would criticize my work, attempt to reassign the work, and tell me I was too busy or incapable of handling my responsibilities. One night, towards the end of the first semester of my senior year, Cadet Rabe came into my room and proceeded to delete five hours of my work from my computer that I had just completed on our project. That particular night, after he did that, I was beside myself with anger and it was the last straw. I asked him to leave my room but he returned just a few minutes later, knocking on my door (only because I had locked it so he couldn't walk in). He continued to knock on my door for the next two or three hours. He also called my cell phone, my room phone, and emailed me for hours. He sent his roommate out looking for me. I was finally able to sneak out of my room to get away from his constant harassment and called home distraught. The following day, I went to my instructor and informed him of what had been going on and asked him for help.

You are probably wondering why I allowed him to have my key and access to my room when I was gone. The answer is simple. We had five classes together and we were partners in all five. As such, we did have many projects that required we work together and he always used that as an excuse for needing open access to my room. The problem was that Cadet Rabe did not understand or heed the boundaries that a normal person

would have heeded and he had grown obsessive towards me. He was constantly argumentative and demanding and it was just so tiring to always be engaged in that, that it was easier to just give him the key and leave.

My last semester at the Academy was by far my worst semester. We only had one class together but we were in the same group again. While I was absent from class one day, Cadet Rabe decided to make me the CEO of our group. He didn't do this because he thought I'd be the best person for the job. He did it because he saw it as an opportunity to publicly humiliate and demean me some more.

After a few classes, I discovered the three males would meet without me or the other female to work on the project. They would constantly exclude us and not tell us they were meeting. They systemically excluded the other female cadet because they knew if she attended the meetings, she would question them as to why I wasn't there and proceed to tell me about the meetings. Cadet Rabe wanted to set me up. Cadet Rabe would then get angry, but only at me and say I wasn't working on the project.

During one of the meetings in which I was excluded, Cadet Rabe divided up the work to all of the group members and a week later, he started harassing me about having the easiest part. In disgust over the whole situation, I finally resigned as CEO because I was not actually functioning in this role.

The group met with the instructor to once again divide up the work among the group members and write up descriptions that the members agreed upon as being fair. But once again, a few weeks later, the problems resurfaced and the harassment grew even more intense.

Now Cadet Rabe began an email campaign. I received a constant barrage of emails from him wanting to know where I was all the time. He would incessantly instant message me to see if I had my work done. He always rechecked my work and then would throw away my submitted work and redo it himself. He would make changes to the design and not tell me about them even though those changes affected my work. He systematically ignored my suggestions and questions. In addition, if I did not respond to his emails or IMs, he would email or IM my roommate to track me down or send his roommate to track me down. He also asked the male group members to engage in his harassment of me. One refused, but the international cadet was more than willing to help out, including stealing my room key. This latest act was very alarming to me.

I reported the ongoing harassment to my AOC (Air Officer Commanding), including reporting my stolen room key within five minutes of it happening. I also emailed and met with our instructor and the instructor I had spoken with about Cadet Rabe's behavior back in December. I asked the instructor of the class to intervene on my behalf but the international cadet asked him not to so he didn't! I was very upset that my requests for help were not taken seriously.

By April, the situation was out of control and Cadet Rabe escalated his harassment of me to a new level. He had come up with the ultimate harassment and humiliation plan by accusing me of a number of honor violations that changed hourly. The attachment details what took place from this point on.

Over the course of nearly six months, I tried desperately to take action to protect myself from Cadet Rabe's harassment to no avail. I went to my AOC, I went to my professors, I went to my cadet chain of command. I requested harassment regulations. I requested to file a harassment complaint. I requested a "no contact" order. Everything I asked for was denied. My parents then stepped in. They asked to file a complaint. They asked that something be done to stop Cadet Rabe. They asked for a "no contact" order. Instead on 15 May 2002, I was ordered by Gen Taco Gilbert, the then Commandant of Cadets, to sign a no contact order stating that I would not contact Cadet Rabe! Please understand that for months I had refused to be in the same room with him without the professor or my AOC there and I had long ago refused to respond to any of his emails unless directed to do so and only after my response was approved by my AOC. For General Gilbert to order me to sign a "no contact" order was the height of insult and affirmation of the extent of institutionalized gender-based harassment and discrimination.

In addition, I was told this was my fault, that I didn't know how to get along with people. I was told my officership was being questioned. I was told I didn't set boundaries and I needed counseling! I was told no harassment had taken place and I was called a liar. I was told to tell my parents not to call the generals and I was told not to "ruffle feathers." I was told I had a character defect. And I was ultimately stripped of all I had earned: my rank, my honors, my pilot slot, my degree, my commission, my career.

And Matthew Rabe? On graduation day he approached my best friend and said, "I didn't mean for this to go so far." That was no comfort to me. Beyond that, he was a distinguished grad who went on to graduate school for his Master's Degree at Air Force expense, is currently in the prestigious ENJPT (Euro-NATO Joint Pilot Training) program and married to my former roommate, the girl who first introduced us and in whom he confided as he tortured me.

What is perhaps most disappointing and disheartening to me is the fact that it was the then commandant of cadets, General Taco Gilbert, and the then Dean of Students, David Wagie, who ultimately supervised, and facilitated the ongoing harassment and then orchestrated the demise of my career, my dream and everything I had worked for up to that point in my life. I went to these men for help but instead of help, they destroyed my career as a pilot and officer in the Air Force. Most frustrating to me is that to this day I don't know why they did this to me. I was a model cadet. I had never had any disciplinary action taken against me. I held high leadership positions. I was on the Dean's list. I was one of only two women in my major (aeronautical engineering). I was well liked. I volunteered regularly for Big Brothers/Big Sisters. I did not get into trouble or cause trouble. I can only conclude it was because of gender based discrimination and the distain these men have for women in their military.

In fairness, my AOC and the first professor I sought help from supported me fully, at least initially. However, once Generals Gilbert and Wagie became involved, my AOC's support was stifled and the professor was neutralized. My AOC was told he would not get his next promotion if he didn't shut up and he agonized severely over the horrible position they thrust him into. The professor did what he could, but they discounted him and prevented him from testifying. Anyone who tried to help me was stopped by these generals. Other officers were ordered by General Gilbert to orchestrate my expulsion and they did so willingly. No one was held accountable.

The unfairness and unjustness of it all was staggering and it took years for me to get over it. Even the overturning of the honor board's finding of guilt and overturning of the recommendation of disenrollment by the Secretary of the Air Force did not alleviate the disappointment and depression I felt. I never got a chance to walk across the stage with my classmates, I never got to throw my cap in the air, I never got to see the Thunderbirds perform at my graduation, and I never got to go to pilot training. And I still mourn that loss.

In the aftermath, June 2002, my parents immediately filed a complaint against Gen Gilbert with the Air Force Inspector General at the Pentagon. There were approximately 6 pages of allegations against Gen Gilbert and we presented a four-inch binder of documents tied to a 255- point chronology of events. We met personally with the head of the agency who stated their office had never seen a case come in so well documented. My case is not speculative. It cannot be blown off as a "he said/she said" incident. It is very clear in demonstrating the harassment that took place, my efforts to get help, Cadet Rabe's lies and false official statements and Gen Gilbert's direct interference and manipulation of the honor system. After a half year "investigation", Gen Gilbert was cleared of all charges. However, when we were finally provided with the report, we learned the investigation was nothing but a cover up and a poor one at that.

After the larger sexual assault scandal finally broke, my case was re-investigated by the DOD but again the ensuing conclusion was not only false but simply another cover up. This time however, instead of blaming no one, they blamed a black female cadet who had little to do with the situation other than being told she was the one who would run the honor board proceeding. There was no accountability for what Cadet Rabe did, what Gen Gilbert did or what Gen Wagie did.

In view of what happened to me I would like this committee to know several things. There are and there remain serious problems at the Air Force Academy and despite what the new Commandant is saying, they have yet to even admit what those problems are.

I sincerely believe the majority of high school kids receiving appointments and choosing an Academy do so with good intentions. They have a dream. They want to serve their country. They feel a "calling" if you will. I think they are, for the most part, students with a good sense of right and wrong. But they come to the academy and something happens to them.

One of those things is the honor code. It is my belief that while the honor code is an admirable ideal, implementing it has resulted in widespread corruption. Cadets have corrupted the very spirit of its meaning. By that I mean, cadets have taken on a very limited and narrow view of what those words mean ("We will not lie, steal or cheat, nor tolerate among us anyone who does.") As a result, they do not interpret the honor code the way normal people do. They interpret it to facilitate their survival at the academy.

Cadets see nothing wrong with breaking rules and laws because it is not part of the honor code. If you are engaged in underage drinking in your room or hiding liquor in your room, to them, this is all right as long as you don't lie about it if asked. (To protect themselves further, they made up rules against asking in the first place.) Or if you hide liquor in your ceiling and someone asks if you have liquor in your room, a cadet will answer "no" with a clear conscience because technically the liquor is not in his room. If you leave campus without permission or at a time when you are expressly forbidden to leave, it is ok as long as you don't lie about it if asked. To a normal person, the very act of leaving without permission or when restricted is deceitful and a lie. But to a cadet, it's not a violation of the honor code.

I could fill up a book with the type of rationalizations cadets have devised to convince themselves what they are doing is within the confines of the honor code. A behavior may not be honorable by any stretch of the imagination but to a cadet, he has not violated the honor code if he doesn't lie about it when asked. And as the public has seen through the eyes of the sexual assault scandal, this type of thinking has led to some very devious and illegal behavior.

The flip side to this is that the honor code can be and is used against people as a vendetta or simply to demonstrate that it can and will be used to weed out people. It can be used at any time, against anyone for any thing. In my case, Cadet Rabe was the one who lied, yet with the assistance of the commandant, Cadet Rabe made something up that didn't even make sense, and with no evidence, Gen Gilbert manipulated the system to ensure I would be found guilty and expelled. As with the sexual harassment/assault scandal, I could tell you heartbreaking stories of cadets who were expelled as I was for bogus honor violations because someone had a vendetta and sadly some had outcomes that were far worse than mine.

I recognize that the honor code system is only as good as those that administer it and if those that administer it are corrupt, no changes will solve anything. I have no solution for ensuring that people with integrity are put in charge except to say, that much like an abusive child who grows up to be an abusive parent, it seems unwise to put academy graduates in charge since they bring their warped sense of honor with them.

Nevertheless because the honor code is the heart of the institution, the academy is unwilling to take a hard look at the affect it really has on life at the academy and until they are willing to do so, the problems will continue.

Secondly, the sexual assault problem is indeed a real problem at the academies yet I have read over and over again statements from the Air Force that justify and/or excuse their problem by stating one of two things: 1) this is the MTV generation and they have no morals so what can you expect and 2) all college campuses have these problems and ours are less than everyone else.

When I read statements in the media like this, I am appalled. The first excuse they use is just nonsense. As stated above, coming to the Academy is what corrupts a student, not the other way around. As for the second frequent excuse the AF uses, when will they learn this is not about comparisons? The AFA (as with all the academies) prides itself on having the "best and brightest", and on having much higher standards than everyone else. That alone should compel them stop using that excuse. But if they don't recognize their own contradictions, at least they should recognize that to compare themselves to other institutions of higher education is irrelevant. It doesn't matter what is happening next door. They need to clean up their own house.

Further, I would just like to state, the AFA does have a much bigger problem with sexual harassment and sexual assault than any other college campus. I went to the University of Wisconsin for my graduate degree in Engineering Mechanics (another male dominated area) and I did not once experience any sexual harassment, sexual assault or put downs from anyone because I was female. At the academy, sexual harassment and female put-downs were a daily occurrence and sexual assault widespread.

Females have been present at the service academies for thirty years this summer and yet there are still those in the military who feel it is not the place for women. What kind of an example does it set when James Webb, the former Secretary of the Navy, writes that women in the military upset the "code of conduct"? (Webb, James. "The War on the Military Culture". The Weekly Standard. 20 Jan 1997). While you may notice he said this almost ten years ago, it was said only 18 months prior to my entrance to the academy. It is this attitude from the top on down that has continued to allow women to be treated as second-class citizens in the military.

Since the spring of 2003, the United States government has been acutely aware of the latest harassment, assault and rape scandal to hit the Academy yet as Beth Davis noted in her statement to the congressional committee, no one has been held accountable. Until that happens, you can expect no real change. One of the things that allowed Gen Gilbert and Gen Wagie to do what they did to me was their belief that they could do what they wanted without having to account for it to anyone. As Gen Gilbert said to my mother one day, "We have congressional investigations all the time. They don't bother us." Of course not...congress so far has ignored what they do.

Please do not ignore what they have done to us.

Submitted By:

//Signed//

Andrea Kaye Prasse
[redacted]

Attachment

Andrea K. Prasse, Air Force Academy Cadet

Overview

Air Force Academy Cadet Andrea K. Prasse was just 8 days away from graduation when the Academy disenrolled her due to an alleged violation of the Honor Code[1] for "lying." Prasse was one of only two female aeronautical engineering majors in her class, and she held high ranking military positions in the Cadet Wing. Prasse initially was accused by two male cadets of cheating, and then when the charge of cheating could not be sustained on the evidence, these same cadets accused her of lying about the very charge of cheating that they could not prove. At the conclusion of an honor proceeding in which Prasse was denied due process under the Academy's established procedures, she was found guilty, *beyond a reasonable doubt*, of "lying by stating [that she] drew an after-burner liner in Aero 483 and later stating [that she] cut, pasted, and modified another group's drawing." The evidence shows that neither the charge, nor the finding, is substantiated. Cadet Prasse did not lie.

As a result of the disenrollment decision, Prasse was not allowed to graduate although she had successfully completed all course work at the Academy (including a "B" in the class in which the alleged "lying" took place). She was denied her diploma, she lost her post-graduation flight slot, she lost her commission as a Second Lieutenant in the Air Force along with a monthly salary of approximately $2,900, and she faces an enlisted tour of 3 years to pay back the government for her education. Because her diploma was withheld, she cannot further her education without great difficulty. Even if the facts of this case were construed most unfavorably to Prasse, the punishment exacted is utterly disproportionate to the incident.

Background

The Honor Code charge for "lying" was brought against Prasse by two male cadets whose harassment of Prasse had caused her to seek the intervention of Academy officials in December 2001 and February 2002 and to seek help on numerous occasions in April 2002. According to a cadet familiar with the relationship between Prasse and her accusers, the accuser cadets had "personal grievances" with Prasse, were overly critical of her work, attacked her and badgered her. No action was taken by the Academy on Prasse's behalf. A short time later, these same cadets accused Prasse of multiple honor violations, including both cheating and lying.

The honor allegations involved a jet engine design class Prasse and other cadets were taking which had unorthodox rules. The cadets were allowed to use anything and everything to develop their engine designs, including the work of other cadets. Each cadet team was assigned the task of designing certain key engine parts -- the compressor, turbine, nozzle, etc. Other parts of the drawing, such as the gearbox, spinner, and afterburner liner were included for design detail but were irrelevant to the drawing and not part of the design assignment. The specific allegation of "lying" involved only one of these irrelevant engine components, the afterburner liner.

While Prasse's engine design teammates took off for Spring Break, Prasse volunteered to put together the overall drawing incorporating the team's design. Prasse used a computer program named Microsoft Paintbrush to prepare the drawing and, consistent with the class rules, obtained a number of the background components from a variety of sources, including the internet. As to the afterburner liner, Prasse used another cadet team's drawing as a reference, cutting and modifying the other cadet team's afterburner liner to fit into her team's design, which was allowable under the class rules. Again, the afterburner liner was an irrelevant design detail and was provided only to put the team's work in context. It was not part of the design assignment. According to the written testimony of one cadet, all of Prasse's work in furtherance of the assignment was known by and reviewed by the accuser cadets. Prasse's drawing of the team's design was distributed to the team on April 1st. Neither the accuser cadets, nor anyone else on Prasse's team, initially raised any objection to the drawing prepared by Prasse, despite the fact that every team member viewed the other team's design. The accuser cadets asked Prasse on April 2nd how she created the drawing, and she told them, including a specific explanation of how she drew the afterburner liner by cutting, pasting, and modifying or "shortening" the other cadet group's liner into her group's drawing. Prasse's primary accuser cadet later documented Prasse's answer both verbally and in writing. Prasse told him that "[she] had just shortened theirs" -- *i.e.* the afterburner liner of the other cadet group. Apparently satisfied with Prasse's answers, the accuser cadets themselves included the drawing as a slide in the team's presentation.

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[1] The "Honor Code Handbook" referenced is the *Air Force Cadet Wing Honor Code Reference Handbook*, August 2001.

Prasse's team and another cadet team presented their drawings to representatives of Honeywell on April 4, 2002. After the briefing, and despite Prasse's prior answers, the accuser cadets demanded to know where Prasse had obtained various parts of her drawing, initially contending that she had cheated by copying portions of the other team's drawing. Prasse again explained how she had drawn the team's overall design and attempted to identify the specific sources of the various background design components to the accuser cadet's satisfaction. Despite these efforts, the accuser cadets demanded that Prasse apologize to them, to the class professor and to the other cadet team. Knowing that it was within the assignment guidelines to use the work of other cadets, and that the "open book" nature of the assignment made cheating impossible, Prasse refused to apologize to the accuser cadets. Prasse did, however, apologize to both the class professor and the other cadet team, if they thought she had done something wrong. After talking to one of Prasse's accusers and the team leader of the other cadet group, the class professor stated that there were "no honor implications" caused by Prasse's conduct. He later testified that he did not suspect Prasse of lying or cheating and that at most there was an "honest mistake." Yet, the two accuser cadets persisted in their claims and in their repeated, unsupported demands for a personal apology from Prasse. One of Prasse's accusers remarked more than 9 times during the irregular process that led to Prasse's disenrollment that he would not have charged Prasse with "lying" if she had only apologized to him.

The "Clarification," First Failure of Due Process

If a cadet suspects another cadet of committing an honor violation after an initial confrontation, the Honor Code Handbook requires a "clarification."[2] Before a clarification was held in this case, and before any formal charge of violating the Honor Code was brought against Prasse, the accuser cadets initiated, on their own, a perversely intense 21-day period of interrogation, telephone calls, e-mails, group sessions, and personal meetings during which Prasse was questioned repeatedly about how she created various aspects of the drawing. She was asked the same questions over and over, and allegations of cheating and lying were made and withdrawn. The alleged "lie" which ultimately resulted in Prasse's disenrollment occurred during one of these after-the-fact interrogation sessions; it was not a product of the initial charging incident, the Honeywell presentation, but of the improper process itself.

On April 18, 2002, during a meeting with the class professor and Prasse's team to discuss group dynamics, Prasse's primary accuser launched into an aggressive, badgering and threatening 45 minute interrogation of Prasse. The cadet not only asked the same questions multiple times during the meeting, he also asked questions that Prasse had answered on previous occasions. At the end of this questioning, the cadet *again* asked about the afterburner liner and Prasse replied angrily with the shorthand explanation "I drew it" out of frustration and a desire to put an end to the badgering. Four days later, Prasse's primary accuser *again* raised the afterburner liner in a series of email questions, stating: "[S]o I asked you about the afterburner liner and again you claimed you drew it, but I thought it was relatively obvious from the drawing that it is a shortened version of theirs and you had told me earlier that you had just shortened theirs . . . ." Prasse answered: Yes, that's correct. It was a shortened version of theirs. I pasted it and shortened it. . . ." Prasse further explained: *"[W]hich is what I meant when I said I drew it. . . ."* That is what Prasse told the cadet the very first time he raised the issue. Yet, Prasse's explanation fell on deaf ears. Seizing on statements that they purported to view as inconsistent, the accuser cadets unreasonably and without justification continued to press their claims.

During the intense 21-day period of interrogation, which itself contravened the procedures in the Honor Code Handbook, the Academy did not follow its own rules and procedures, denying Prasse due process. A clarification should have been initiated immediately after the initial confrontation. Instead, the answers Prasse provided to the accuser cadets during this interrogation period were twisted and used against her to make it appear she was giving conflicting explanations. Even if a clarification had been properly sought at this time, the Honor Code Handbook requires that it is to be "a fact finding meeting, not an interrogation." In violation of this rule, Prasse was interrogated verbally and in writing on multiple occasions. Moreover, the Honor Code Handbook itself proscribes the conduct of the accuser cadets, including condemning truth tests, boxed-in questions, entrapping questions and "questions for which the answers are already known" as themselves unethical and violative of the Honor Code. Despite the fact that the Honor Code Handbook provides, "[d]o not ask questions you already know the answers to," Prasse was asked the same questions more than 4 times during this 21 day period. She was asked specifically about how she drew the afterburner liner *at least* 3 times, even though her accusers knew the answer from the onset -- Prasse had "shortened" the other team's afterburner liner.

During this time period, one of the accuser cadets admitted in writing to Prasse that he was aware, before bringing formal honor charges against her in a clarification, that Prasse was building a file against him and was "going to

[2] In the United States Air Force Academy Honor System, a "clarification" is supposed to be a fact finding meeting that takes place after a suspected violation of the honor code occurs, but before the suspected violation is deemed a case that must continue through Academy procedures.

bring [him] up on harassment [charges]." Indeed, this cadet admitted in writing that he was aware earlier in the semester that Prasse was discussing his offensive behavior toward her with Academy officials. This same cadet was called into the office of the engineering class professor during the 21-day interrogation period, and was told by the professor that Andrea felt she was being attacked. This cadet wrote to Prasse that he was being questioned by the professor about "some very serious accusations of harassment" and felt he had to "defend" himself.

The accuser cadets finally initiated a formal clarification involving allegations of both cheating and lying on May 3, 2002. Prasse *again* was asked all of the same questions regarding all of the same, multiple engine components. Contrary to the mandate of the Honor Code Handbook, the Primary Honor Officer presiding over the clarification did not control and direct the meeting. The Primary Honor Officer later testified that "there were many arguments raised by the initiators, but they seemed arbitrary and just added to the confusion of the clarification." Prasse's own accuser testified that "it was quite possibly the worst clarification I've ever seen or heard of." At the conclusion of the clarification, which should have crystallized and defined any proper charges, not confused them, Prasse first was charged with cheating and lying. Then, following more confusion, the cheating charge was dropped. After 6 weeks of questioning and repeated accusations of cheating and lying with respect to multiple engine components, a *single* allegation of lying with respect to a *single* engine component, that was irrelevant to the assignment, remained. Prasse was charged with "lying by stating [that she] drew an after-burner liner in Aero 483 and later stating [that she] cut, pasted, and modified another group's drawing." In essence, having failed to identify any improper conduct relating to the Honeywell presentation, Prasse's accusers manufactured a charge out of their own improper conduct and in direct violation of the same Honor Code they claimed to uphold.

The Honor Board Hearing, Second Failure of Due Process

On May 21, 2002, an Air Force Academy Honor Board found Prasse guilty, beyond a reasonable doubt, of "lying by stating [that she] drew an after-burner liner in Aero 483 and later stating [that she] cut, pasted, and modified another group's drawing." That finding cannot be sustained by the evidence or the Academy's own rules and procedures.

As to the evidence, a "[r]easonable doubt is based on reason and common sense. A reasonable doubt is not mere conjecture; it is an honest conscientious doubt suggested by the evidence or lack of it."[3] The evidence does not support the Honor Board's determination that Prasse is guilty beyond a reasonable doubt. It is incontrovertible that Prasse **first** stated that she "had just shortened" the other cadet team's afterburner liner for use in her drawing. Prasse's primary accuser's own words document this fact.[4] It also is incontrovertible that Prasse's **last** statement on the afterburner liner was: "It was a shortened version of theirs. I pasted it and shortened it." The only possible question, then, is whether Prasse lied when she said, "I drew it," in between these two statements. She did not.

Under the Honor Code, a lie requires both an act and an intent to deceive. Neither element exists here. First, to Prasse, drawing the afterburner liner using a computer program described the **same** process as cutting, pasting and shortening it. Her statements on the afterburner liner were consistent, and true, throughout the entire ordeal. Second, Prasse's "I drew it" statement could not have been intended to deceive because she already had told the accuser cadets that she had "just shortened" the other team's afterburner liner for use in her drawing. Simply put, Prasse's accusers *knew* what Prasse meant when she stated that she "drew" the afterburner liner; they simply chose to assign a different meaning to the word for the purpose of manufacturing a charge of lying. Third, even if the accuser cadets misunderstood Prasse's "I drew it" statement, consistent with the Honor Code, Prasse immediately clarified that misunderstanding once she learned of it. She told the accuser cadets: Yes, that's correct. It was a shortened version of theirs. I pasted it and shortened it (which is what I meant when I said I drew it . . . ." The Honor Code Handbook itself both allows for, and requires, such a clarification.[5] Prasse did not lie, and she certainly cannot be found guilty of lying by a reasonable doubt.

As to the Academy's rules and procedures, the transcript of the Honor Board hearing where Prasse was found in violation of the Honor Code reveals a confused and flawed proceeding. The Presiding Officer did not intervene when one of Prasse's accusers raised issues irrelevant to the specific charge, including issues involving cheating and other engine components, and the Presiding Officer refused Prasse the right to voice an objection to terminate the irrelevant

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[3] Honor Code Handbook, Section 2.7.6.5.7.

[4] This same cadet later admitted in front of an Air Force Colonel, Prasse and another cadet that Prasse had told him at the outset that she cut, pasted and shortened the afterburner liner from the other group's drawing.

[5] Honor Code Handbook, Section 1.2.1.2.

questions and answers. Despite the fact that allegations of cheating had been dropped, and other issues relating to the drawing had similarly been dropped, the proceeding did not focus exclusively on the specific charge. Rather, the proceeding focused alternately on the drawings of the afterburner liner, the gearbox and the spinner, as well as allegations of lying and cheating. Indeed, written witness statements submitted as evidence to the Honor Board addressed both allegations of cheating and lying, because the cadet responsible for collecting the statements had not obtained new statements limited to the lying charge when the cheating charge was dropped. Focus on these ancillary issues gives the appearance that the Honor Board did not find Prasse guilty on the merits of the sole and actual charge, but instead considered as relevant conduct that had not been charged and could not be charged against her.

The selection and composition of the Honor Board itself also is subject to due process challenge. Academy rules mandate that an Honor Board involving allegations against a First Class cadet like Prasse must be comprised of one officer and seven *randomly* selected cadets of a certain class rank who reside in a squadron other than the respondent's squadron. There are indications that the members of Prasse's Honor Board were not randomly selected from the pool of qualified cadets, but in effect were hand-selected from that pool by encouraging other cadets to "recuse" themselves. There are also indications that the Honor Board was assembled not on the basis of impartiality, but rather on the basis of whether the members would agree to find Prasse guilty. In addition, one of Prasse's accusers was an honor representative although he did not sit on the Honor Board for Prasse's proceeding because he was an initiator.

Further, one of the cadets who initiated the case against Prasse was not present at her hearing. The Honor Code Handbook requires that all witnesses testify prior to closing of the deliberations and that no Honor Board should take place without the initiator present to testify. In failing to require the presence of this cadet, the Academy not only violated its own rules, but also denied Prasse her underlying constitutional right to confront her accusers. Furthermore, new evidence was presented at Prasse's hearing for which she was not given 72 hours prior notification as required by the Honor Code Handbook. Prasse did not waive the notification requirement.

Prasse also requested and was denied the testimony of two important witnesses who had made written statements on Prasse's behalf -- the only other woman cadet on her design team and Major Scott Morton, an officer at the Academy whom Prasse contacted regarding the abusive conduct of the accuser cadets before the honor incident occurred. The cadet in charge of her hearing arbitrarily determined that each side needed an equal number of witnesses. There is no rule to this effect in the Honor Code Handbook and Prasse was never told which witnesses were expected to testify for which side.

Each of these gross procedural defects both before and during the formal procedures require that the findings of the Honor Board be set aside. The foregoing simply highlights, and is not a complete list of, Prasse's due process challenges. Moreover, according to the Honor Code Handbook,[6] the punishment exacted for a violation is supposed to reflect the cadet's entire record and to weigh a number of factors, including the egregiousness of any violation. In light of the foregoing, while no punishment was appropriate, the punishment exacted against Prasse was far too severe and indefensible on the facts.

Relief

The decision to disenroll Prasse has been appealed to the Superintendent of the Air Force Academy. The ultimate military decision authority resides with the Secretary of the Air Force.

She understands that the somber and unfortunate events of the past year may follow her into the service and make it extraordinarily difficult to succeed. Barring the achievement of her dream of receiving her commission, her minimum goals now reflect her resilience and are practical and achievable:

- Award of her diploma (a Bachelor of Science degree in Aeronautical Engineering)
- Release of any claims by the Air Force Academy, including for her tuition or enlistment,
- Expungement of her educational record for the alleged Honor Code violation, if her record reflects such a violation,
- Expungement of her FBI file, if this incident is reflected in a Prasse FBI file, and
- Honorable discharge.

Prasse is only twenty-two years old. She seeks the opportunity to put this incident behind her and begin her life. The Air Force has had Prasse's fate under consideration since May of 2002.

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[6] Honor Code Handbook, Section 2.8.2.

June 22, 2006

To Whom It May Concern:

I am writing today in hopes to address changes that need to be made to the Military's policy on rape and investigation of the rape. I am a victim of rape that occurred on March 29th 2006 and also a spouse of an Active duty Army member.

On the night of March 29th 2006, I went out to a bar with friends. I drank excessively and realized at some point my friends had left. I knew that I could not drive myself home so I got a ride home with another military member whom I had been shooting pool with. Upon arriving home this man entered my house without permission and raped me.

The next morning I went to the hospital and asked for medical treatment only. I was told by the nurses that I had to report it. The MP's and CID Agents were brought in to question me. This is where the trouble begins. First the MP's took there report and everything went well. As the nurse was beginning the rape kit a Agent with CID came into the room and began asking me if he could have permission to enter my house. I told him no, I would rather be there, and he kept insisting, while I was being examined, so of course to get him out of there I caved and signed giving them permission to enter. Upon leaving the hospital I had to report to CID where I was held for six hours. During this six hours I was only questioned for about two. When released from CID I went home to find out that I didn't have a home to go to. CID was not through and I was told I would have to find somewhere else to go. At this point, I am homeless and without a car to try and go anywhere because CID also had possession of my vehicle. The next morning I reported back to CID for more questioning and then had to report back to the hospital for a follow-up exam. Before leaving CID one of the Agents told me he needed the clothes I wore out of the hospital. I told him when I was finished at the hospital I would get them to him. The agent however, proceeded to call me numerous times and then showed up at my appointment stating "I was taking too long and should have been done hours ago". I finally leave the hospital and attempt to go home, only to find the keys didn't work. I called CID and informed them and the Agent argued with me about it for twenty minutes before actually coming to my house to see for himself that they didn't work. At this point I also found out that they still had not done anything with my vehicle, so I declined consent to search. They told me they would get a warrant and seize my car. So I told the Agent that I declined to press charges against the man, in hopes to get my possessions back. I was at that point told that I would be arrested for giving a false statement, even though no false statement had been made.

The following Monday, I went to CID headquarters and told the Agents again that I did not want to press charges and I would no longer talk to them. I was told they would make a note of that. Approximately two weeks later I hear from friends that CID is asking them to identify the suspect out of a photo lineup. However they did not ask me, which I feel I was the most important person to ask. I figured that they were requesting my wish to not speak to them. However, in May 2006 I receive a call from an Agent requesting I go in and give another statement and take a polygraph. I declined and reminded him that I had previously said I would no longer talk to them. Two days later another Agent called me requesting he be able to question me. I stated I would not talk and he said he needed a written statement saying that. I typed up and had notarized a statement saying that I again am saying I would not talk and did not want to press charges. Three weeks later, two Agents showed up at my new home, off post, trying to question me. When I asked why they were there considering I have told them on numerous occasions I would not talk, the Agent told me I was no longer a victim but a suspect. I made a phone call to my husbands Rear D commander and the Agent demanded he know who I was talking to. I told him and advised that he needed to leave. The agent left my house and then called the Rear D commander. He advised him of the status of the case and told him that "I was lying, and he needed me to recant my statement so they could at least get the soldier on adultery charges." He also told the commander that "CID was trying to prove a point to women that they could not lie and get away with it". This was the last communication I have had from CID.

However, CID Agents were sent out to question my husband in Iraq, while questioning him they asked him "how soon after meeting your wife did you have sex with her?"

In June, I went to a group counseling session on base. In this session to my amazement I found out that every single one of us women in there were being told the same thing, that we are all lying and we are just cheating wives and that we would be prosecuted for making a false statement. I was shocked by this. How can all of us be lying?

At this point I would like to address the issues in which I feel need to be addressed and changed.

1. I believe that the spouses need to have the same treatment as the soldiers do in reporting. Restricted reporting should be an option for us as well. In the civilian world we are able to go get treatment without triggering an investigation, it should be the same in the Military.

2. I think that the initial report should be the only thing done at the hospital. Agents should not be allowed in the room at any point for any reason, especially when a woman is under going a rape exam.

3. The Agents need to learn compassion. They need to know that they cannot prejudge someone's case. I feel that all CID Agents need to undergo a MANDATORY 40 hour training on rape and how to investigate.

4. These Agents need to be told that they are not medical doctors and therefore cannot base their findings on what they think they know. They seem to love to offer a medical opinion and love to argue that the Dr is wrong.

5. CID Agents also need to take a MANDATORY training which outlines the effects of date rape drugs and alcohol and how long these effects could last, how long it would stay in your system, etc.

6. The Agents need to be held responsible for their actions. If they mistreat, or form an early opinion about a case without facts, they need to be removed from the case.

7. The victim needs to have someone in which she can report an Agent to and be assured that he will be removed and disciplined.

8. Their need to be more resources available for the victim. I have found out most of my information by doing research on my own because their aren't enough resources out there for us.

9. The soldiers need to undergo more training/awareness about rape. Obviously what we have isn't working.

10. There needs to be stricter punishment for these soldiers who commit rape. An article 15 for something ridiculous is not acceptable. (Adultery)

11. The Military needs to live up to what it says. The Military advertises everywhere how there is no tolerance for sexual assault in the Army. However, when it occurs they are trying everything in their power to cover for the soldiers, because Rape looks bad for the Military. Well consider the fact that it will look worse, when this guy does it again because you let him off the first time. If your not going to hold these Soldiers accountable then you need to stop saying you don't tolerate it. Rip down every sign and take it out of your Army Values because it means nothing if you don't live up to it.

12. A victims past sexual history should have no bearing whatsoever on a case. This line of questioning should not even be allowed. The only thing that matters is that the victim has reported a rape and you need to look into that and that only. The suspects history is never questioned. It should be equal.

13. We as a society need to change the fact that a victim has to explain why she did what she did. This is the only crime in which a woman has to explain her actions, when in fact her actions have nothing to do with it. The only thing that matters is if she says no, she says no, it doesn't matter if she is lying in her bed naked with the guy. Lets face it, if your wife was mugged on the street she doesn't have to explain why she was carrying her purse or walking on that street.

14. Agents need to be trained that every victim reacts differently, even Psychiatrists can't predict how a victim of rape should act. Everyone has a different reaction to trauma.

15. Agents and Soldiers need to be trained on what Lack of Consent is. If the Soldier disregards the fact that there is Lack of Consent, he needs to be held accountable. They need to realize that when a person is drugged or intoxicated it falls under this category.

In my opinion, in some instances there are only a few questions that need to be asked. Such as in my case and one very similar that happened at the same base. In these instances both females were intoxicated. In both cases the Soldiers admit to having sex, but say it was consensual. Why do we still insist that the guy is right? The only thing that should be asked here is that 1. Did you have sex with her? 2. Was she drunk and did you know that? If the answer is yes, then it should be determined that a rape occurred because under "Lack of Consent" the woman could not legally consent to the act as she was both physically and mentally incapacitated. Do I think that he should be charged with the most serious one, no not at all, but why should he go free with no punishment at all?

The point to this letter is to inform the Government that there are serious issues in how cases are handled. They need to be addressed. I firmly believe that the Agents need training and lots of it. I strongly believe the Soldiers need it as well and feel even stronger that these Soldiers need to be held accountable for their actions. It is a slap in the face to women everywhere when you let these men go free. It is also a slap in the face when you treat the victim like they are the criminal. Then you actually wonder, why it is so many women don't report rape? It is for fear that they will be humiliated and prosecuted for something they didn't do.

I decided that I will no longer be a victim. I choose to be a survivor. I choose to take a stand for women throughout this country who are victimized every day by the Soldiers. If someone doesn't make a stand and put up a fight this will never change. I feel if I don't take the stand I am doing a great injustice to other women like me.

I hope that you consider my recommendations and begin a thorough investigation into this problem plaguing so many Military bases across the Nation.

I thank you for your time and consideration.

Sincerely,

Jenn

Honorable Christopher Shays
Chairman, Subcommittee on National Security,
Emerging Threats and International Relations
Committee on Government Reforms
U.S. House of Representatives
B-372 Rayburn House Office Building
Washington, D.C. 20515

July 10, 2006

Dear Congressman Shays:

Thank you for considering my comments as you continue your hearings and review the Department of Defense's attempts to address the problem of sexual assault. I will focus on how the military justice system responds to allegations of crimes of this type.

Personal Background

I am a 1976 graduate of the Air Force Academy. I flew for four years and then attended Duke Law School, graduating in 1984. For the next two decades, I served as an Air Force judge advocate. I was a staff attorney and prosecutor and taught at the Air Force Judge Advocate School. I was the senior legal advisor to commanders and supervised legal staffs at two major Air Force installations. I had two tours and almost nine years as a military judge. My second judge position was as Chief Judge of the Air Force's largest and busiest circuit, which included the Air Force Academy. As a judge, I presided over hundreds of courts-martial, including allegations of sexual assault and cases involving Academy cadets and graduates. I conducted the pretrial hearing in the case of the F-16 pilots accused of homicide in the "friendly fire" bombing of Canadian troops in Afghanistan. I retired as a full colonel after more than 27 years of service.

I have a daughter who graduated from the Academy in 2001 and a son who graduated in 2003. I am on the Board of Directors of the Academy Association of Graduates, but these remarks are mine alone and do not necessarily reflect the position or opinion of the Association or its members.

Sexual Assault and the Military Justice System

The committee has taken testimony that commanders, investigators, and legal personnel did not aggressively pursue the prosecution of sexual assault cases. The Committee briefing memorandum notes that the Defense Task Force found offenders at the Academy were not consistently or effectively held accountable by the military justice system.

It was my experience that once a complaint was made and the military justice system engaged, it responded as well as it could, given the competing interests of protecting victims, punishing wrongdoers, maintaining military discipline, and affording the accused his or her constitutional and statutory rights. In almost 20 years as a judge advocate, I never saw a commander fail to take an allegation of sexual assault seriously and attempt

to fully protect and vindicate the interests of the complainant. While I would not suggest that it has never happened, my personal observations and discussions with other judge advocates from all of the services make me confident that it would be highly aberrational.

However, that is not to say that the military justice system is perfect or always responds in a manner the complainant finds completely acceptable. As the committee well knows, the more common type of military sexual assaults do not involve a stranger attacking with great physical violence and subduing the victim. They are instead more pernicious, with some previous relationship or at least acquaintance between the two parties. The relationship may be a social one with mutual use of alcohol leading to a question of consent. The relationship may be a superior-subordinate one with the imbalance of power leading to the same question. In short, the more typical sexual assault allegations which confront the military justice system involve issues of disputed consent.

My experience with these complaints is that commanders would error on the side of sending them forward. It was not at all unusual for commanders to prefer charges and direct an Article 32 hearing based on evidence that would not lead them to take those actions in an allegation of drug use or theft, for example. Commanders sent sexual assault cases forward because of the sensitive nature of the offense and because they did not want to be viewed as unsupportive of the victim. In many cases, even though the commander did not believe the evidence justified prosecution, he or she still sent the case to an Article 32 hearing. The goal was to more fully and fairly develop the evidence and evaluate the case. An additional thought was that if the Article 32 officer independently recommended dropping the case, it would be easier to explain to the complainant why the allegations were not being prosecuted.

Of course, defense counsel would fulfill their ethical duty by vigorously attacking the credibility of complainants and using every tool to impeach their testimony. They would regularly request disclosure of personal information that complainants considered irrelevant, misleading, or unfair. Investigators and prosecutors would warn complainants about and try to prepare them for these attacks. If that was done without sensitivity, complainants could conclude that no one believed them and everyone wanted them to withdraw their complaints. Even if done as carefully as possible, some complainants could still conclude that command was somehow blaming them for the assault.

In many cases the Article 32 officer would find the evidence insufficient to support going forward and recommend dropping the charges. Normally, commanders would follow that advice. However, in some cases they still sent the case to trial. While proceeding to trial against an Article 32 recommendation was not unheard of, it was much more likely to happen in a sexual assault case.

Once a case goes to trial it is less subject to the discretion of command. It becomes a function of the rules of court-martial evidence and procedure, which for most purposes are the same that commonly apply in state and federal criminal trials. I never saw or heard of a half-hearted effort by prosecutors who were trying a sexual assault case. Of course, the same was true of the defense counsel, who did everything within the bounds

of ethics to discredit the complainant. The quality and dedication of military counsel in these cases equaled the best I have seen in civilian trial lawyers.

Social Acquaintance Sexual Assault

While every case is unique, I presided over a trial involving an allegation of rape by officer against another that offers a meaningful illustration of these issues. The complainant and accused knew each other and had previously socialized, traveling together and sharing sleeping quarters as part of a group. The alleged offense took place after a night of drinking and dancing at a club, when the group went to a house and spent the night there. The complainant could only recall waking up with the accused and testified that he apologized for having taken advantage of her while she was asleep. His version was that she had consented. She was sure she had not, but even the next day could not recall much of what had happened that evening. Witnesses testified about her actions during a span of time that she could not recall. The defense called an expert witness on alcohol induced blackouts. Their theory was that she had either actually consented or through her actions made it reasonable for the accused to believe she consented, even if she could not remember those things because of her blackout.

This is the difficulty the military justice system (and indeed criminal law in general) has with these cases. The prosecution has to prove beyond a reasonable doubt not only that the complainant did not consent, but that under the circumstances, the accused could not have reasonably believed she consented. Accordingly, it is very difficult to obtain a conviction if there is any level of ambiguity in the evidence of consent.

Commanders understand this and in the case of the Academy are faced with a situation in which they know there was underage drinking and fraternization, but are unable to determine with any certainty if there was a sexual assault. They are then faced with the difficult choice of punishing only the accused for the drinking and fraternization and granting the complainant immunity. One of the problems with granting immunity to the complainant for any drinking or other coincidental military offenses is that it gives defense counsel another basis for impeaching the complainant—she may be raising the assault allegation to gain immunity for the other offenses. It is certainly not unreasonable to wonder why the assault would not be punishment enough and suggest that penalizing the complainant for drinking or AWOL is ridiculous. But that assumes her allegations are true, and if they are true, the commander should not let the attacker off with punishment for only the lesser offenses. So, the commander may see it as a choice of prosecuting a sexual assault case, letting both parties go, or punishing both parties for the lesser offenses.

That illustrates the difference between the civilian and military manifestation of this problem. When a district attorney declines to prosecute the case of a college student who alleges an assault, at least that complainant does not have to go back to live and work with the person who she has accused. Moreover, the District Attorney is not likely to prosecute the complainant for underage drinking.

I would suggest that the military justice system deals with sexual assault crimes much in the same way the civilian criminal system does, particularly in the decision to take cases to trial. My experience is that cases are, if anything, *more* likely to go to trial in the military. I never saw a district attorney take a case when prosecution was declined by the military, nor am I aware of any civil suits.

The problem of acquaintance sexual assault is not unique to the military, but it can be exacerbated by the nature of military service. Our young people have been raised in a society that has infused sex into every aspect of its culture. They belong to a generation which, for better or worse, attributes much less significance to consensual sexual activity than did previous generations. They consume alcohol at a high rate. The academies (and the military) place those young people in close quarters and situations of high stress. When alcohol is added to the mix, no one should be surprised to find more cases where consent is disputed.

Sexual Assault in the Superior-Subordinate Context

I have also presided over trials in which the sexual assault allegations are in the context of a superior-subordinate relationship. Theses cases present slightly different issues. Because alcohol is less frequently involved, the complainant's recollection is more reliable, and there is less doubt about what actually occurred. The ambiguity of consent arises when the senior person maintains there was no pressure and the junior person entered the relationship of their own free will.

The problem, of course, is that in a relationship between service members of disparate ranks and perhaps ages, the junior person will appear so subservient that the senior person will infer consent from what was simply acquiescence to military authority. Another problem is that the junior person may like and respect the senior person and have some honest subjective confusion as to why he or she allowed the sexual contact. Moreover, it is not surprising that the junior party would be very reluctant to come forward with a complaint.

In order to obtain a conviction for sexual assault, the prosecution must prove that the accused did not reasonably believe the junior party consented. That is very difficult to do, particularly since the junior party was not in a position to comfortably manifest lack of consent in the first place. Moreover, there are some instances in which the junior party felt free to say no but nevertheless decided to consent to the sexual activity.

The only way to avoid these ambiguous situations is to prevent any sexual relationships between senior and junior service members. The services have attempted do that for years, but have encountered various problems. First, it runs counter to human nature and it is almost impossible to stop adults who are working in close quarters under stress from developing personal relationships that in some cases lead to sex. Second, many Americans do not understand the need for the military to prohibit consensual sexual relationships between some military members. They believe rules against fraternization

are based on archaic notions of class. The furor over the Kelly Flynn case underscores this perception.

Therefore, the first step in addressing this type of sexual assault is to consistently and firmly enforce rules against fraternization. Based on my personal observations and reports from my son and daughter, I believe this is an area where the Academy leadership failed. At least at the time I was trying cases there and my children were cadets, fraternization was very common and rarely punished.

The committee has received testimony suggesting that the Air Force's handling of the recent fraternization charges against the former Air Force Judge Advocate General demonstrates a lack of commitment to address the issue of sexual assault. In my experience, complaints of sexual assault or fraternization against senior officers were taken very seriously. I believe that the outcome of that specific case says more about the unwillingness of those particular decision makers to impose upon a fellow general officer the same degree of punishment they would have imposed on a junior or non-commissioned officer, rather than a systemic disregard for the victims. It was in principle no different than the governor or mayor weighing in on the prosecutor to cut a lenient plea bargain for a defendant. The good old boy system is unfortunate to be sure, but it is not a problem exclusive to the military.

Closed Article 32 Hearings and Confidential Communications

The fundamental problems I have discussed are not going to be solved or even significantly affected by changes to the military justice system. Nonetheless, in closing, I offer my observations on two specific subjects before the committee.

The first is the amendment of the code to allow commanders to close Article 32 hearings. My only hesitation is that the military justice system is understandably vulnerable to complaints that it is unfair and subject to manipulation by command. The best way to answer such allegations is to keep the process as open as possible. Nonetheless, there are times when the interests of justice are served by allowing testimony to be taken in closed session. I would go further and allow either the convening authority or investigating officer to close the hearing upon good cause shown and have the reasons noted in either the Article 32 report or the pretrial advice.

The second is the extension of confidential communications by sexual assault victims. The allowance for confidentiality balances the interests of the military in discipline and ridding its ranks of rapists against the needs of the victim to openly communicate and seek help without engaging command. Since men and women who join the military do so knowing they may be ordered to put their lives at risk or suffer physical injury for the mission, it seems reasonable to require them to endure what may be significant emotional and psychological pain in order to help identify and remove a threat to other service members. Nonetheless, I recognize data shows that victims are more likely to make full disclosures if they can first privately confide in someone.

I would, however, limit the confidentiality in one important aspect. If at any time a service member seeks any accommodation or change in duty status because of a sexual assault he or she would be required to waive their confidentiality prospectively. In other words, a victim who simply wants advice or a chance to obtain medical or psychological care would have confidentiality. A victim seeking to be removed from a unit or a deployment or requesting any similar change in duty would retain the confidentially of prior statements, but could be required to disclose to command information relative to the assault. Such an approach seems to properly balance the victim's need for confidentiality with command's need to maintain discipline.

I hope my comments have been helpful and stand ready to answer any questions you might have. I thank you for this opportunity and wish you the best as you continue your hearings. The issues facing the committee are real. Setting aside the degree of accuracy of the perceptions reflected in the testimony and studies before you, the fact that they exist justifies your hearings. Our nation, our armed forces, and hundreds of thousands of servicemen and women, including my daughter and son, deserve a fresh examination of these issues and insightful approaches that address the fundamental problems.

/s/
Patrick M. Rosenow
Colonel, USAF (Retired)

I, Shanell Darbyshire would like to bring attention to sexual assault on Ft. Campbell. I have personally been raped by my next door neighbor, and the case has been handled poorly by the Criminal Investigation Department. This not only involves myself, but several women who spoke of remarkably similar situations in the sexual assault support group at Blanchfield Army Community Hospital mediated by Dr. Sherry Fanara.

On May 3rd I had dinner at my next door neighbors' house and had consumed approximately three drinks. I became highly intoxicated after very little alcohol, and later that night I was raped by SGT Christopher Ordner in the presence of his wife, Leeann Ordner. I was extremely weak and unable to stop SGT Ordner. The next day I had just enough sense to take myself to the hospital to be tested for sexual transmitter diseases and to obtain emergency contraception.

This is where suspicion arose of a possible assault. I was not able to make much sense with them, nor could I recall most of the night. I had been losing consciousness, had amnesia, and was acting completely out of character from only 3 drinks. This led the nurses to believe that I could have been drugged. They also told me that it was a rape because I am unable to consent if intoxicated. I remained intoxicated for about three days afterward. Once I was able to think more reasonably, I contacted Family Advocacy to ask their advice on the situation. I had an appointment with them on May 8th, and after speaking with PJ Rawlins I went to CID.

This case was opened on May 8th, 5 days after the assault with Agent Dodrell. I was directed to speak with him by Victim Advocate PJ Rawlins of Fort Campbell Family Advocacy. At this interview, I wrote a personal statement which I cannot include a copy of because it is not being released to me. I also completed extensive questioning, a full

sexual assault forensics kit and had a Crime Scene Investigation done at my house later that evening. Agent Dodrell Handled the case in a professional manner; I had no problems with him.

Approximately a month later, I was contacted by Agent Smith for another interview. The case was transferred to him, and no longer handled by Agent Dodrell. Agent Smith had told me that "no one has done anything wrong" in this case, although SGT Ordner and his wife confessed to the incident. They had both acknowledged that I was incapacitated by alcohol intoxication, and that he had sex with me which fits the conditions of rape.

He asked me to try to remember the blacked out portions of my memory, which I am unable to do. He kept telling me that I remember what happened, even though I told him that I in fact remembered nothing. Agent Smith simply did not listen to me. He said that I need to remember the events although I have experienced amnesia, and if I could not do that, we would have to end the case.

Agent Smith told me that I simply cheated on my husband and that no crime was committed. He told me "Shit happens; women who have their husbands deployed will have sex with another man and get embarrassed. They will tell doctors in the hospital that they were raped because they don't know how to tell their husbands." I assured him that this was not the case, but he continued to ignore my claims.

I explained to Agent Smith that there is suspicion that I may have been drugged because of my amnesia, intoxication from so little alcohol consumption, my intoxication lasting for about 3 days afterwards, etc. My blood tests did not identify any date rape drugs, however MAJ Lyons, the sexual assault nurse who performed the rape kit

confirmed that the drug would have likely metabolized by the time my blood was tested. He rebutted the opinion of the medical practitioner, stating that it would have been detected.

Agent Smith explained that SGT Ornder was "just being a man, and that's what he was going to do". He explained that since I found him attractive, all that happened was we slept together and now I regret it. He said there was no way I could have been so intoxicated by so little alcohol, so what happened was my responsibility even though SGT Order and his wife admitted that I was incapacitated and didn't know what I was doing at the time, and was passing in and out of consciousness for most of the night. He told me my amnesia was due to being traumatized, which does not make sense because if I was traumatized, there must have been a rape. He said I do not remember having sex by making an inappropriate joke, stating that it was not "earth shattering", among various inappropriate comments. He also said that the reason I was helpless and unable to stop SGT Ordner was because of being dizzy from rolling onto my back, which makes no sense; rolling onto your back does not render you paralyzed and helpless.

I ended up completing another statement in which he told me that my case does not fit the definition of rape. Agent Smith told me that this did not fit the definition of rape, so I trusted his credibility as a knowledgeable CID agent and answered appropriately. He then told me I filed a false statement although I said I did not. He continued to ignore my claims.

When I got in touch with Agent Smith about my case about a week later, he claimed that he said none of this, which is completely dishonest. He also let me know that charges were not going to be pressed against me for filing a false statement, because of

my amnesia. I did not file a false statement in the first place, which is a lie. SGT Ordner and his family are being PCSed to Ft. Riley, Kansas in July even though they are suspects of Rape and Conspirator of Rape under CID Investigation.

There are many sexual assaults taking place on Ft. Campbell, civilians and soldiers alike, some of whom are in the sexual assault support group held by Dr. Sherry Fanara at Blanchfield Army Community Hospital. These cases are being handled improperly by several members of the Criminal Investigation Division and their supervisors are supporting these decisions. Raped women are being lied to, and being told that they are simply cheating wives trying to make excuses for their promiscuous behavior.

I also ask for military policy to be reviewed due to the fact that the punishment for sexual assault is an Article 15. I would like to know why violent crimes are not punished appropriately, and why these criminals are not sent to Ft. Leavenworth. This is a very serious matter which will not be solved by turning the other cheek.

Dr. Fanara may be reached through the Adult Behavioral Health Desk at (270) 798-8179.

Congressman Shays:
My father, a decorated Lt. Cmdr. in the navy assaulted and raped me the first 18 years of my life. I spent 23 years in therapy and went through 5 hospitalizations to recover. My brother, who was also in the navy, is a child molester. He was convicted of two felonies of oral copulation with a minor by a civilian judge but was not thrown out of the navy. I am now speaking publicly about this horrific behavior.
I watched you on C-SPAN today and called your office wanting to meet with you. I understand my situation doesn't meet the scope of your sub-committee hearing, however, I would like very much to speak to you anyway about widening your investigations. Perhaps this is not possible. If not, and if not you, who in the United States Congress is interested in hearing about child sexual abuse? I can't find anyone.
In closing, I would like to tell you what the military should do in Beth Davis' case – if this is what she wants. The military should reinstate her, provide back pay, and continue her service. AND, in their military newsletters, publications, etc., they should print her picture and praise her for coming forward. If she doesn't want to be reinstated, she certainly should not be obligated for any payment of tuition because she was kicked out.
I live in Maryland and recently gave my presentation to Attorney General Joe Curran and his staff. On July 26th I will be presenting to Governor Ehrlich's office.
I am sending an attachment with other comments about my presentation.
I am frustrated and tired of hitting the same old "brick wall of ignorance, denial and lack of concern" about child sexual abuse in this country. Hopefully you are interested in doing something about it
Thank you for your time.

"The Hardest Thing To Do In Life Is To Look At Reality and Do Something About It."

- E. Diane Champé

WHAT PARTICIPANTS ARE SAYING ABOUT DIANE CHAMPE'S PRESENTATIONS...

"Your compelling history, and ***your obvious passion to help other survivors****, make for a powerful presentation. I was glad so many of our Senior Staff were available to attend this event."*

Kevin Enright – Director of Communications
State of Maryland – Office of the Attorney General

"As a survivor yourself, you offer a ***refreshing and authentic perspective*** *that is valuable for helping clinicians understand the impact of their actions and words in treating trauma survivors. You are* ***well-versed in standards of care for treating PTSD and DID*** *in abuse survivors."*

Catherine Busch, Ph.D., L.P. Clinical Director
Sexual Trauma Treatment, Advocacy & Treatment Center

"Presented in such a professional manner, your speech was ***compelling and truly gripped everyone*** *in the room. Your speech is an* ***effective weapon in the fight against child sexual abuse****."*

Bootsie Humenansky – President
Childhelp USA – Washington Area Chapter

"You are a survivor and ***the work you do is invaluable****. The information you shared, laced with your personal experience,* ***compels your audience to take action*** *and has the power to help others who may be suffering in silence."*

Patricia C. Jessamy – State's Attorney
Office of the State's Attorney for Baltimore City

"My staff greatly benefited from your presentation. Your elaboration on the treatment process in terms of ***preparing for trauma work, working through the trauma, and re-entry was enlightening*** *and gave concrete examples for clinicians."*

Alissa G. Putman, Ph.D.
Howard Community College

"After hearing your presentation it is easy to understand why you are so passionate about the topic and want to share your story with others. You are without a doubt a ***dynamic speaker*** *with a* ***personal story that can be matched by few others****."*

Steven F. Geppi – Chair, Division of Social Sciences and Legal Studies; Carroll Community College

Bobby Jennings
Meridian, MS 39301
June 25, 2006

Dear Kristine Fiorentino,

My name is Bobby Jennings and I am the victim of sexual assault. I put my career and future in jeopardy when I went into NCIS on October 17, 2005 to report my self as the victim of three non-consented sexual assaults. I like most male victims am devastated. Despite being a good sailor and recommended for officer programs I was given a General Unger Honorable conditions.

I am extremely disappointed with the manner in which I was treated. My Commanding Officer violated several of my rights including violation of the HIPPA policy, and pulling information from a criminal investigation still ongoing in order to suggest that my assault was consented. He also tried to suggest the existence of aggravating factors in my receiving a General; however, he failed to provide evidence to suggest such.

I have been grossly violated. In the military men don't come forward about male-on-male harassment is because you put your career, and future, at risk. Just because a person is gay, lesbian, or bisexual does not men that a same sex assault is consent. When one reports a same sex assault to NCIS the investigator asks if they are gay, or lesbian. What does this have to do with a non-consented matter? Besides, saying that you are gay or lesbian subjects you to discharge under the UCMJ Don't Ask, Don't Tell Policy. A policy that says a member may receive an Honorable or a General for making a Homosexual statement or engaging in a Homosexual Act.

I received a General under Honorable Conditions. If I had kept quiet about what had happened to me I would still have my job, and possibly be an officer. Please aide me as I seek to get my discharge corrected to Honorable.

Respectfully,

Bobby Jennings

"I don't think any of us think of men as being rape victims, and certainly the military does not. I suspect men are quiet about it, because they want to preserve their career in the military."

1910
GJN
27 Dec 05

From: LT GOPI J. NADELLA, JAGC, USNR, Counsel for the Respondent
To: Commanding Officer, USS FRANK CABLE (AS-40)
Via: Legal Officer

Subj: LETTER OF DEFICIENCY ICO SEAMAN BOBBY JENNINGS, USN, ADMINISTRATIVE SEPARATION PROCESSING

Ref: (a) MILPERSMAN 1910
(b) DOD 6025.18-R (DOD HEALTH INFORMATION PRIVACY REGULATION)
(c) Constitution of the United States of America
(d) Crawford v. Washington, 541 U.S. 36 (2004)

1. Counsel for respondent submits this letter of deficiency in accordance with reference (a), and requests that the Board's decision to separate Seaman Jennings is overturned and that he be retained in the naval service. Alternatively, the respondent respectfully requests a new administrative separation board be granted. If neither of the two aforementioned remedies are granted, the respondent respectfully requests that the Board's determination of characterization of service be changed to Honorable.

2. Seaman Jennings was processed by an administrative board convened on 20 DEC 05, for administrative separation based on Separation by Reason of Homosexual Conduct As Evidenced By: member engaging in, attempting to engage in, or soliciting another to engage in a homosexual act(s). The board recommended separation with a characterization of General (under honorable conditions).

3. Seaman Jennings approached NCIS on October 17, 2005 to report himself as the victim of three sexual assaults occurring in late December 2003 or early January 2004 during his A-School in Meridian, Mississippi. In his statement to NCIS, Seaman Jennings acknowledges committing one prior, experimental homosexual act while in A-School. As a result of this statement, Seaman Jennings was investigated for homosexual conduct and ultimately separated by an Administrative Separation Board, with the characterization of service of general (under honorable conditions).

4. Seaman Jennings has expressed his desire to be retained as a Sailor in the United States Navy. Seaman Jennings has taken responsibility for his actions by admitting to a single experimental homosexual act. Seaman Jennings has not partaken voluntarily in any homosexual acts since this initial experimentation. Seaman Jennings has maintained throughout the investigation of his sexual behavior and throughout the course of the Administrative Separation Board that he is not a homosexual and does not desire to engage in future homosexual acts.

5. Before deciding whether to accept the board's recommendation, I respectfully ask that you consider the following:

a. That reference (a) is the controlling instruction concerning the United States Navy's Administrative Separation Process..

Subj: LETTER OF DEFICIENCY ICO SEAMAN BOBBY JENNINGS, USN, ADMINISTRATIVE SEPARATION PROCESSING

b) That section 148 of reference (a) does not require mandatory separation.

c) That section 148 of reference (a) allows for retention when it can be shown that, "such acts are a departure from the member's usual behavior; and such acts are unlikely to recur; and such acts were not accomplished by use of force coercion, or intimidation; and under the particular circumstances of the case, the member's continued presence in Navy is consistent with Navy's interest in good order and discipline, and morale; and the member does not have the propensity to engage in homosexual acts."

d) The recorder failed to provide sufficient legal and competent evidence that would demonstrate Seaman Jennings had a propensity to engage in homosexual acts. The lack of evidence regarding the sexual history of Seaman Jennings indicates that Seaman Jennings experimental homosexual conduct was a departure from his usual behavior.

e) No evidence was provided indicating that Seaman Jennings used force to accomplish his single experimental act.

f) That at no time during his multiple interviews with NCIS or his multiple conversations with his shipmates did Seaman Jennings ever admit to any homosexual conduct or the specific desire to commit homosexual acts.

g) That the recorder produced no evidence during the course of the administrative separation board that indicated that Seaman Jennings had committed any homosexual acts since his experimentation in December 2003.

h) That while evidence indicating that Seaman Jennings may have been experiencing questions about his sexual identity entered into the administrative separation board. The evidence also showed that Seaman Jennings did not act upon those questions; instead he proactively sought assistance from medical personnel.

i) It is the Respondent's position that exhibit 8 should not have been entered into evidence pursuant to reference (b). When the Recorder offered this exhibit into evidence, the Counsel for the Respondent objected. The Senior Member overruled the objection and considered the evidence.

j) The Recorder's position in the Administrative Separation Board was Exhibit 8 was properly attained and submitted before the board. The Respondent asserts that he did not authorize the release of Exhibit 8 from his medical record. Further, no documentation was ever introduced by the recorder at the Administrative Separation Board indicating a formal request by the command to utilize Seaman Jennings' medical records in an Administrative Separation Board (as required by reference (b)).

k) Even if the procedural mandates of reference (b) were observed by the government, that under principles of Due Process pursuant to reference (c),

Subj: LETTER OF DEFICIENCY ICO SEAMAN BOBBY JENNINGS, USN, ADMINISTRATIVE SEPARATION PROCESSING

Seaman Jennings was not allowed the opportunity to confront and cross-examine the individual who drafted exhibit 8. See reference (d).

l) While acknowledging that Administrative Separation Boards are not criminal proceedings and rules of evidence do not apply, it is the respondent's position that the provisions provided for under Article Six of reference (c) do attach to Administrative Separation Boards.

m) That section 302 of reference (a) indicates that, "[g]enerally characterization will be based upon the member's total performance of duty and conduct during the current enlistment…"

n) That Section 304 of reference (a) indicates that service should characterized as Honorable when, "the quality of the member's service generally met the standard of acceptable conduct and performance for naval personnel…"

o) That all of Seaman Jennings' performance evaluations indicate him to be a must promote sailor, and that his most recent evaluation indicates that he should be retained, advanced and recommended for officer programs.

p) That five witnesses recommended retention, one witness recommended an honorable discharge and that one witness only indicated that Seaman Jennings should be separated.

q) That no aggravating circumstances where presented that suggest a lesser separation than honorable.

6. Based on the forgoing, I respectfully request that the administrative board's finding of separation be reversed or in the alternative a new administrative separation board be granted. Finally, I respectfully request that the characterization of service of Seaman Jennings be changed to Honorable. Additionally, I respectfully request that copies of the following be forwarded to me, when completed: endorsements by intermediate addressees to the Report of Administrative Board, or to this Letter of Deficiency; endorsements or reports forwarded to SECNAV or BUPERS; and results of final action taken by any ultimate Separation Authority.

7. The requested information can be mailed to me at Naval Legal Service Office Pacific, Detachment Guam, PSC 455 Box 177, FPO AP 96540, or faxed to (671) 339-4200. If you have any questions, please contact me at (671) 339-2361. Thank you for your time and consideration.

G.J. NADELLA
LT, JAGC, USN

Copy:
SEAMAN JENNINGS

Statement for the Record of Elaine Donnelly
President, Center for Military Readiness

Committee on Government Reform

Subcommittee on National Security, Emerging Threats, and International Relations

Hearing on Sexual Assault and Violence Against Women in the Military and at the Academies

June 27, 2006 – 2154 Rayburn House Office Building, Washington D.C.

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I appreciate the opportunity to submit this statement for the record on a subject that the Center for Military Readiness has been following closely. CMR is an independent, non-partisan public policy organization that specializes in military personnel issues. I founded CMR in 1993, following my term as a member of the 1992 Presidential Commission on the Assignment of Women in the Armed Forces. The Center is supported by civilians, active duty and retired military people in all 50 states, and receives no government funding.

A. Introduction: Close Scrutiny Required

This statement discusses findings and recommendations of the August 2005 Report of the Defense Task Force on Sexual Harassment & Violence at the Military Service Academies, hereinafter known as the DTF-SH &V. CMR agrees with the affirmation in this and similar reports that women should not have to fear harassment or abuse at America's military academies.

The Report requires close scrutiny, however, because constructive recommendations in this report were overshadowed by unjustified presumptions, significant omissions, and problematic proposals. If implemented without question and expanded by its successor group, the Defense Task Force on Sexual Assault in the Military Services (DTF-SAMS), these recommendations could cause serious turmoil in the military.

Having served as a member of the Presidential Commission on the Assignment of Women in the Armed Forces in 1992, I am familiar with the phrase "People are policy." The makeup of any advisory commission influences its findings and recommendations. An over-representation of civilian "victim advocate" groups seems to have skewed the presumptions, findings, recommendations and tone of the August 2005 DTF-SH&V Report, which are more extreme than those of previous panel reports on the same subject. [1]

Although every organization is different, the core assumptions and prejudices of most victim advocate groups are frequently perceived as chauvinistic toward women and hostile toward men. Professional victim advocates frequently confuse one-sided allegations with substantiated crimes, excuse women of the consequences of their own high-risk behavior, demand punishment even when self-proclaimed victims do not report offenses to authorities, and are not satisfied with anything less than courts-martial and convictions, even when allegations are questionable. [2]

These attitudes reflect a profound misunderstanding of the differences between civilian law and the Uniform Code of Military Justice (UCMJ). The military's unique legal system, for example, imposes serious penalties for personal offenses, such as "conduct unbecoming an officer," which do not exist in civilian law.

Sensational sex scandals at the Air Force Academy, which made headlines nationwide in 2003, already have been investigated and reported by various official panels, agencies, and committees seven different times. [3] These panels recommended a number of constructive plans of action, most of which have been implemented with positive results.

Some recommendations in the August 2005 Defense Task Force Report were worthwhile, but many should be rejected. The succeeding group established by Congress, known as DTF-SAMS, should evaluate the previous Task Force's recommendations objectively, and reject those that could cause more serious problems than they solve.

The following comments summarize problematic elements of some recommendations made by the 2005 Defense Task Force on Sexual Harassment & Violence at the Military Service Academies:

B. Attitudes and Presumptions

Presumptuous Labels and Prejudice

The August 2005 Report of the DTF-SH&V correctly recommends that persons who want to report misconduct or assault should be informed of legal rights and resources available to them. The report also should have noted that every person accused of misconduct is entitled to legal help and the presumption of innocence.

- Unless legal proceedings substantiate allegations of a crime, it is premature to label one of two parties a "victim." Constant use of the loaded, emotionally charged word "victim," without the modifier "alleged," reflects a pervasive prejudice against men that is common among victim advocates.

- Presuming the status of "victim" for complainants, but not innocence for persons accused, contradicts fundamental principles of law. The prejudice also fails to recognize that in order to secure convictions of real offenders, it is essential to protect rights of due process.

- Some activists believe that guilt is determined by the seriousness of the charge, and all complainants must be believed without question. But false or recanted accusations do occur in some cases, for a variety of reasons. These include remorse after an impulsive sexual encounter, an attempt to escape accountability for behavior that violates academy rules, jealousy or revenge when a romantic relationship ends, emotional instability, or an inordinate desire for attention. [4]

- The Task Force should have sought the views of midshipmen and cadets who have been unjustly accused of misconduct without substantiation, or their legal counsel. The panel also should have sought the views of investigators who are skilled in distinguishing genuine charges from those that are unfounded or self-serving. [5]

Unconcern About Fraudulent Allegations

The Defense Task Force Report barely acknowledged and did not address the demoralizing problem of false or exaggerated accusations. It mentioned two incidents of fraudulent reporting out of 85 cases, but claimed that an unspecified number of allegations were recanted because the [alleged] victims did not want to endure the investigative and judicial process. (p. 34) This dismissive speculation ignored perceptions and problems evident in other studies of attitudes toward sexual misconduct at the academies:

- According to a survey conducted by Joseph E. Schmitz, the Department of Defense Inspector General, fraudulent complaints are perceived as a problem by an average of 73% of women at the Air Force Academy, West Point, and Annapolis. The comparable average percentage for men at the three academies was 72%. [6]

- The Task Force Report mentioned these figures only in an obscure footnote, and apparently did not investigate *why* these perceptions persist.

- Sexual abuse and personal misconduct are evidence of poor character, but so are false or exaggerated accusations. All such infractions violate the Uniform Code of Military Justice and the Honor Codes of the service academies. In a pattern of policies called "double standards involving women," or DSIW, which have been evident since the early 1990s, false accusations of sexual misconduct are rarely punished. [7]

- To promote fairness and integrity, the report should have recommended appropriate penalties for complainants who make unfounded allegations.

Additional evidence of fraudulent allegations have emerged elsewhere:

- Unfounded claims occur in every criminal category—usually between 1.5 and 5 percent of the time. Numbers of such claims are higher for forcible rape—as high as 9 percent—based on numbers reported to the FBI as well as police and prosecutorial records. [8] False accusations are hurtful to women as well as men, since they tend to discount complaints that are legitimate.

- The 2005 report on Sexual Offenses Involving Members of the Armed Forces, released on March 16, 2006, by the Sexual Assault and Prevention Response Office (SAPRO), reported that among 848 investigations in which the DoD had no

jurisdiction, 641 were unsubstantiated, unfounded, or involved insufficient evidence. SAPRO provided no explanation or analysis of this information.

- Vice Admiral Rodney Rempt, Superintendent of the Naval Academy, reportedly told a group of USNA Board of Trustee members that of 40 cases of sexual harassment in the 12 months prior to the meeting, all but 11 were closed due to lack of evidence or dropped claims. (Three midshipmen were separated and sent to jail.) [9] If the board member's report is accurate, roughly 72% of the complaints were unsubstantiated or otherwise invalid. This figure is consistent with evidence of the problem reflected in the 2004/2005 survey of DoD Inspector General, cited above.

Unequal Resources

Numerous pages in the DTF-SH&V Report set forth a long list of officials and institutions that are available for the support of [alleged] victims at all three academies. These include chaplains, psychotherapists, medical staff and family support counselors, military and civilian "victim advocates," volunteer crisis support organizations and offices with various names, judge advocates who provide counsel and prosecutors on campus, associated civilian hospitals and law enforcement agencies, academy boards of visitors and superintendents, plus numerous Department of Defense officials charged to enforce DoD Directives guaranteeing numerous rights to persons who decide to pursue legal remedies, including full consultation and information as legal proceedings progress. (pp. 11-13)

- By contrast, the Report said almost nothing about the scarcity of resources available to persons accused of misconduct. It noted that there is only one full-time legal defender available on the Naval Academy campus, and at West Point, legal help is six hours away at Fort Drum, NY.

- The Task Force made the inadequate recommendation that the West Point legal advisor be available on campus. (pp. 15, 34)

In addition to all of the above, the Task Force recommended the designation of a Sexual Assault Response Coordinator (SARC), plus a Victim Witness Coordinator (different from the Victim Advocate) at each academy. (p. 27)

- Before the numbers of SARCs are greatly increased, the Defense Department should objectively evaluate the costs associated with the hiring and retention of these individuals, and the consequences of empowering authorities who effectively operate outside of official chains of command.

- Grants for most of the professional services to be provided would benefit victim advocates and affiliated groups seeking government funding. This may be a reflection of that community's over-representation on the Task Force.

B. <u>DoD Task Force Proposals and Recommendations</u>

Gender Quotas and Double Standards

The Report of the 2005 DTF-SH&V begins with the unsupported assertion that major causes of sexual harassment and assault include the minority status of women at the academies, the existence of different standards to allow for physical differences, and women's "exclusion" (a.k.a., exemption) from combat specialties, which causes academy men to *"not value women as highly as men."* (ES-1)

- With the exception of a footnote citing undocumented focus group conversations, the report cites no support for the statement that women are undervalued at the academies because they are exempt from direct ground combat. (pp. ES-1, 8, fn 21)

- Nor does the report include any information to support the belief that greater numbers of female "role-models" in key admissions, faculty hiring and promotion boards would improve acceptance of women. (If that is the case, why not call for 50-50 gender balance?)

The panel nevertheless recommends higher gender-based admission and promotion quotas, downplaying or ignoring evidence that perceptions of favoritism actually hurt academy women:

- In 1991 and 1994 the General Accounting Office found that complaints about double standards favoring women were the second-most common form of "sexual harassment" at all of the service academies. (p. 23) Implementation of the Task Force's recommendations, therefore, might *increase* tensions between male and female midshipmen and cadets, instead of reducing them.

- The greatest need in the Army and Marine Corps is for *male* officers to lead reorganized land combat infantry/armor battalions, Special Operations Forces, Marine infantry and Navy SEALS. Gender quotas would create an oversupply of female officers who will demand "career opportunities" in all these occupations, and in submarines. [10]

- This prospect meshes with the Task Force's unsupported claim that academy women are harassed because of their exemption from direct ground combat that, they say, should be dropped. This expectation gives higher priority to career considerations than the needs of the military. It is also ironic and illogical, since it implies that violence against women is wrong, unless it happens at the hands of the enemy.

Training and Education: Physical Differences

To increase acceptance of women, the Task Force suggests that male cadets and midshipmen be taught to fully support "gender specific" standards and allowances, which are obvious at the academies and other officer training centers. (p. 39) "Success" in this effort

requires mandatory doublethink; i.e., special treatment for women is the same as "equality," and a willful forgetting of facts relevant to combat readiness and effectiveness."

- A 1998 Naval Academy research project (one of many studies on physiology) reported that in military related training, women are nine times more prone to knee ligament injury than men, and the higher level of risk exists throughout a military career. [11]

- At the Marine Corps Officer Candidate School at Quantico, the tallest obstacle course bars are two feet higher for men than bars on the nearby course for women. Small wooden "assist" sticks nailed to the support posts help women to tackle the elevated bars. Female trainees also benefit from flat "assist" boards nailed about 12 inches from the bottom of obstacle course climbing walls, which test upper body strength. [12]

- These special devices help women to "succeed" in training, even if they don't pass the course. The problem is that everyone knows the enormous physical demands associated with deliberate offensive action in land combat, or even in surface warfare emergencies such as the attacks on the Navy ships USS *Stark* and USS *Cole*, cannot be modified in the same way. Trying to "re-educate" midshipmen to accept "double standards involving women," or DSIW, could increase tensions instead of reducing them.

Training and Education – Sexual Harassment and Assault

The Task Force Report recommends that several sexual harassment and assault (SH&A) classes at the academies be: a) mandatory; b) scheduled in "prime time" usually devoted to academic subjects; and c) graded for inclusion in calculations for class ranking. These recommendations would unnecessarily duplicate a wide array of academy values and ethics education programs, and be counter-productive. (p. 38)

- Male midshipmen and cadets are unlikely to support the elevation of such classes to the same importance as electrical engineering, especially if grades affect class standing. Accomplished female cadets and midshipmen may not appreciate self-conscious displays, lecture series, readings and theater performances. [13]

- The Task Force further recommends a "*variety of instructional methods*," to include even more sensitivity/diversity training conducted by the Defense Equal Opportunity Management Institute (DEOMI), and by outside speakers or consultants on "*gender violence-related topics.*" This amounts to a jobs program for DEOMI and civilian consultants, who have been known to conduct controversial presentations. [14]

- It is not clear what the Task Force means in saying that such programs are *"remiss in not acknowledging current youth culture, trends, and social norms."* (p. 39) This suggests that the academies should devote valuable time to civilian-conducted classes

or performances that include profanity or reflect misogynist trends in popular culture.[15]

Confidentiality: Counseling and Disciplinary Hearings

The Report recommends passage of a new law creating special privileges for health care providers and civilian "victim advocates," even though it also notes that limited confidentiality is already available prior to a decision to prosecute an alleged offender. (pp. ES-2, 14, 26) This recommendation is overly simplistic and focused on only the first two of three "stakeholders" in a triangle of interests. The three parties in interest are:

1. Complainants alleging harassment or assault;
2. Commanders who need to know about incidents of misconduct
3. Alleged offenders, whose rights of due process must be protected to achieve justice

As recommended by the Sexual Assault Prevention and Response Office (SAPRO), it is reasonable to hold sensitive matters confidential during the early stages. However, once charges are filed and someone's career and/or liberty are at stake, confidentiality should end. If the accusation is true, it should be provable without providing special rules that do not apply in other disciplinary matters.

The Task Force Report recommends that Article 32 of the UCMJ be amended to permit commanders to close the proceedings *"to protect the privacy of victims and alleged offenders."* (pp. ES-2, 33) This would violate the rights of anyone accused of misconduct, and conflict with a clear legal precedent upholding legal rights to open hearings.

- In 1998 the Court of Appeals for the Armed Forces, in *ABC Inc v. Powell*, ruled that proceedings must be open unless there is a compelling need to close them. The petition to that Court was part of the highly publicized prosecution of Army Sgt. Maj. Gene McKinney for sexual misconduct.[16]

- Commanders have the responsibility to evaluate the readiness and competence of all personnel at all times. Withholding information due to the potential embarrassment of complainants could interfere with this command responsibility.

"Blanket Amnesty"

Some advocates have demanded "blanket amnesty" for [alleged] victims, since they might be subjected to "retaliation" without it. This implies that complainants should escape accountability for their own high-risk behavior or violation of personal conduct rules.

The DTF-SH&V correctly avoided endorsement of blanket amnesty.

- Such a policy would have created a perverse incentive for women involved in personal misconduct to make false allegations of abuse or rape in order to escape accountability for their own misconduct. (pp. 28-29)

- The Task Force also endorsed postponement of discipline while investigation of the accused offender is pending, which makes sense in some cases. Investigations should be conducted with sensitivity for the feelings of the complainant, combined with full protection of the rights of the accused.

Proposals to Change the UCMJ

The Report makes the unsupported and overstated assertion that the academies did not hold alleged offenders "accountable" over the past ten years. This allegation reflects civilian misunderstandings about the UCMJ and non-judicial punishment.

Some people believe any sort of punishment short of court martial and conviction amounts to no punishment at all. To the contrary, military people are routinely punished severely for behavior that would not be considered misconduct or a crime in civilian life.

- Military law and regulations, for example, forbid senior/subordinate fraternization, on-campus drinking and sexual activity, failure to obey orders, and "conduct unbecoming an officer"—a punishable offense that has no counterpart in civilian codes of law.

- The panel nevertheless makes a sweeping recommendation for statutory changes to reflect the "full range of sexual misconduct." (p. 31) But changes in the UCMJ will not add to mandates already present in law, regulation, and the academies' Codes of Honor. The only effect would be to create new criminals whose guilt would be no less difficult to prove.

The 2003 Air Force Working Group study of sexual misconduct at the Air Force Academy, which examined each case in excruciating detail, found that many prosecutions for rape were not conducted due to insufficient evidence. [17]

- It does not benefit anyone to pursue a weak or questionable case that is sure to be dismissed by jury members who take their job, and instructions from a judge, seriously.

- The threshold of proof of forcible rape is justifiably high, since persons convicted are subject to severe penalties, including life imprisonment.

- Reasonable doubts are inherent in *"he said, she said"* situations that usually occur in private, especially when illegal drinking by underage midshipmen and cadets elevates

the risk of misconduct. Criminalizing such offenses would not make it easier to determine guilt, but it would mandate even more severe penalties and the possible designation of "sex offender" for life.

- Inaccurate news reports frequently describe all forms of sexual misconduct, ranging from inappropriate jokes to rape, as always credible and equally egregious. Comparatively minor incidents do not justify new legislation. [18]

Recommendations for Prevention

The Report asserts, *"the majority of sexual assaults at both Academies involve alcohol to some degree,"* which contributes to *"poor judgment, lowered inhibitions, and increased aggression and/or vulnerability to sexual assault."* Task Force proposals to address these factors are less than adequate. (pp. 8, 24)

- Footnote 25 reports that alcohol was involved in 58% of Military Academy cases and 57% at the Naval Academy cases. Despite years of negative publicity, alcohol offenses at the Air Force Academy jumped 57% since the fall of 2003. [19]

- More official supervision on campus, particularly during evening and weekend hours, would be helpful in reducing high-risk behaviors. To be effective, however, such plans must involve firm enforcement of rules against alcohol and sexual encounters on campus.

Coordination Between Military and Civilian Communities

The Task Force recommends the training of civilians to counsel [alleged] victims. This is not the role of the military.

- The sole emphasis on *victim* support implies that officials should take sides in complex, emotional proceedings.

- It would be problematic to give civilians semi-official status, and to extend to them special privileges that could undermine the due process rights of midshipmen and cadets, and cause the courts to dismiss some cases for that reason.

- Many civilian victims advocates do not understand or support basic concepts of the military's legal system, such as the need to avoid command interference. Some advocates have reportedly worsened matters by being openly critical of this fundamental concept and other elements of the military's legal system.

Inadequate DoD Response

Defense Under Secretary for Personnel and Readiness David S. C. Chu issued comments in response to the Task Force Report on September 29. Chu's response correctly takes issue with the call for confidentiality in preliminary legal proceedings for the same reasons noted by CMR.

The Chu response takes issue with several more of the proposed UCMJ changes, but "conceptually concurs with most of the findings and recommendations" of the Task Force Report. It also repeats the assumption that all complainants are "victims," even before it is known that a crime has occurred.

- The Pentagon's apparent acceptance of the panel's most controversial recommendations will, unfortunately, encourage more of the same from the DTF-SAMS and future advisory panels.

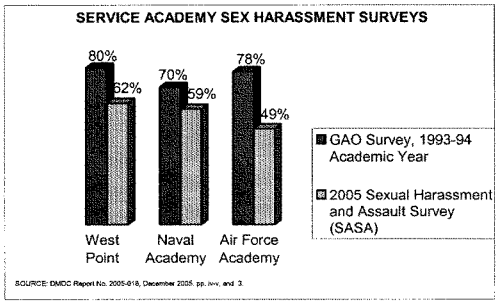
- What's worse, the Defense Department's apparent concurrence could be seen as a green light for an Office of the Victim Advocate (OVA) in the Pentagon—a feminist boondoggle that the Pentagon can do without. [20]

D. <u>Scolding About Sex Scandals Unfair to Service Academies</u>

Reports of Complaints Greatly Exaggerated

On December 23, 2005, the Department of Defense released a 2005 poll of service academy men and women regarding sexual harassment and assault. Contrary to most news stories, the survey indicated that reports of sexual harassment at the service academies have gone down instead of up. [21]

The 124 page Service Academy 2005 Sexual Harassment and Assault Survey (SASA2005), produced by the Defense Manpower Data Center (DMDC), was authorized by legislation passed in 2003. Data gathered in this survey, and another one done by the General Accounting (now Accountability) Office in the 1990s, show a downward trend in sexual harassment and behaviors over the past 15 years. [22] (See graph below)



The percentage of survey respondents reporting some form of sexual harassment—most of them minor—dropped from 80% to 62% at West Point, 70% to 59% at the Naval Academy, and 78% to 49% at the Air Force Academy. Inappropriate jokes and unkind comments still occur, but reports of severe abuse of women at the military academies are greatly exaggerated.

Some reports on sexual misconduct since 2003 have required hard data on "substantiated" cases, but the 2005 SASA report is only a poll, done with pen-on-paper responses to survey questions answered anonymously. Suggestive jokes and rude behavior are annoying, but "sexist behaviors," including offensive gestures and horseplay, can be observed almost everywhere. Resourceful women usually can handle the problem without a court order, but professional P.C. Police tend to treat every offense as the equivalent of assault or rape.

Sexual Assault vs. Harassment

Graphically worded survey questions about sexual assault are frequently highlighted by the media, creating the impression that hundreds of service academy women are being abused every day. Sexual assault is always wrong and must be punished with due process. It is inaccurate and demoralizing, however, to suggest that all allegations are equally serious, and that women cannot cope unless the military provides even more professional services than are already available.

The "victim advocate" service industry has an economic interest in exaggerating the problem, even though numbers of substantiated assaults are relatively small and probably comparable to or lower than incidents in the civilian world.

A table in the SASA Report (p.13) shows the numbers of men and women surveyed. Doing the math on the percentages of academy women reporting sexual assault we find that 6% (37 of 618) women at the Military Academy (USMA), 5% (35 of 693) women at the Naval Academy (USNA), and 4% (30 of 738) women at the Air Force Academy (AFA) reported some form of sexual assault, defined most often as "unwanted touching of private parts."

Even one case of assault is too many, but perspective is in order. All the bad publicity aimed at West Point, which was tagged with the largest percentage (6%), resulted from anonymous reports from only seven more women than those who anonymously reported assaults at the Air Force Academy. [23]

Questions Not Asked by the SASA: Fraudulent Complaints and Lowered Standards

The SASA Report did not continue questions included in the 2004/2005 survey of the service academies conducted by the Defense Department Inspector General, Joseph E. Schmitz.

- The Schmitz DoD IG Report, released in March 2005, found that fraudulent complaints are perceived as a problem by an average of 73% of women at the Air Force Academy, West Point, and Annapolis. The comparable average percentage for men at all three academies was 72%.

- Figures of that size indicate a problem worthy of further investigation. But in the 2005 SASA report, described as a "baseline" study, *there are no questions about fraudulent complaints.* [24] The omission, which was intentional, should not be repeated by the DTF-SAMS or future surveys.

- The 2005 survey also omits any questions about "complaints that standards have been lowered," even though this was identified by the GAO in 1991 and 1994 as the second most prominent type of sexual harassment at the academies.

Concerns about false accusations and differing standards simply do not count—probably because they do not conform to the template into which stories in this news category must fit. In fact, the survey seems to omit any mention of men's concerns at all—unless they complain about sexual harassment or assault.

Awareness of What to Do

According to the 2005 SASA Report, at the USMA 95% of female cadets who did not report incidents of sexual harassment said they *"believed they could handle the situation themselves."* At the Naval Academy, the figure was 100%. But at the Air Force Academy, the same figure was only 70%.

- This seems to suggest that women at West Point and the Naval Academy know how to deal with guys who get out of line, but fewer Air Force Academy women feel prepared to handle it. So they turn to professionals in the "victim advocate" service provider industry for help. This is progress? [25]

- At all three institutions, percentages of men and women who said they knew how to report sexual misconduct were 90-98% at the USMA, 91-96% at the USNA, and 93-99% at the AFA. These figures undermine the credibility of requests for increased funding for even more programs.

- Bad news is good news for "victim advocate" service providers. This is a special interest like all others, with professional contractors seeking millions of Defense Department dollars for multi-year projects, career opportunities, prestigious offices, conferences, surveys, and provocative performances about date rape. [26]

Sexual misconduct must be discouraged, but is perfection a realistic goal when we are dealing with young human beings? Or is it a rationale for more service provider contract proposals? The nation expects academy instructors to indoctrinate discipline and high moral standards, but no one expects the academies to produce candidates for sainthood only.

Conclusion: Enough Already!

As of now the 2005 SASA survey mandated by Congress must be repeated annually through the 2008 academic year. Instead of tracking progress in a constructive way, these polls

embarrass the academies, demoralize cadets, and make the case for more lucrative contracts for "victim advocates" and other professionals—including those who produced the SASA report.

Since Congress has already mandated three more surveys of this kind, the Defense Department should correct deficiencies in the survey questions, and produce a useful report that presents accurate data, but does not cause needless embarrassment for the Defense Department and the military academies.

It is long past time for Defense Secretary Rumsfeld to think about the negative impact of such reports, and terminate subsidies for them. A decision to do so would be more helpful to women in the military than millions in subsidies for professional feminist advocates.

Civilians who have little knowledge or respect for military culture, law, and regulations should not be allowed to relentlessly criticize the culture and people of the military, with government funds and prestige that amplify their criticisms to increasingly unfair levels. Feminist pork needs to be trimmed from the DoD budget, not expanded even more.

****

Elaine Donnelly is President of the Center for Military Readiness, an independent public policy organization that concentrates on military personnel issues. CMR defends high, uncompromised training standards, and advocates sound priorities that reflect American cultural values, strengthen morale, and encourage discipline and readiness in the armed forces.

In 1984, Defense Secretary Caspar Weinberger appointed Mrs. Donnelly to the Defense Advisory Committee on Women in the Services (DACOWITS) for a three-year term. In 1992 she was appointed by President George H.W. Bush to serve as a member of the Presidential Commission on the Assignment of Women in the Armed Forces.

Donnelly founded the Center for Military Readiness in 1993, and has become a recognized expert on military personnel issues that are in the news constantly. More information about CMR and the subject of this statement is available on the Center's website, www.cmrlink.org.

ENDNOTES:

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[1] The panel Co-Chairs were Vice Admiral Gerald Hoewing, Chief of Naval Personnel, and Delilah Rumburg, Executive Director, PA Coalition Against Rape. Names of additional members and the full report can be viewed at www.dtic.mil/dtfs/. Despite subsequent claims to the contrary, there is no indication that the panel operated in compliance with the Federal Advisory Committee Act (FACA), which is designed to avoid self-interested influence by civilians serving on government advisory committees.

[2] Statement of Christine Hansen, Executive Director, Miles Foundation, speaking at a news conference with Amnesty International at the National Press Club in Washington D.C., March 5, 2004.

[3] These investigative bodies included the 2003 Air Force Working Group, headed by General Counsel Mary Walker, the 2003 Congressional Panel headed by former Congresswoman Tillie Fowler, a 2004 USAFA Cadet Climate Survey, a 2004 Air Force Inspector General Report, and three Department of Defense Inspector General surveys in 2003, 2004, and 2005.

[4] Linda Fairstein "Why Some Women Lie About Rape," Cosmopolitan, November 2003. Author Fairstein is a former prosecutor and head of the sex-crimes unit of the Manhattan District Attorney's office.

[5] For example, Dr. Charles P. McDowell, Ph.D., author of "False Allegations," *Forensic Science Digest*, 1981, and Eugene J. Kanin, Ph.D., Purdue University, author of "False Rape Allegations," Archive of Sexual Behavior, 1994. Victim advocates disdain these experts, but their articles deserve consideration. Both describe reasons why some alleged "victims" fabricate stories that ruin the lives or careers of others, and explain basic techniques of investigation that help to differentiate genuine allegations from charges that are less than credible.

[6] Report No. IP02005E001, March 4, 2005, Executive Summary, fn #15, p. xi, and report tables referenced.

[7] See "The Tailhook Scandals" *National Review*, Mar. 7, 1994. by Elaine Donnelly. Then-Navy Ensign Beth Warnick accused three naval aviators of gang raping her, but later admitted she had lied because she did not want her boyfriend to know of her activities at the Tailhook convention. Warnick was never punished appropriately for this serious ethical violation, but the men she accused suffered severe career penalties.

[8] Fairstein, *Ibid.*

[9] Report of Region Trustee #4 of the USNA Board of Trustees, Steve Andres of the Las Vegas Chapter, May 2006.

[10] A comprehensive report prepared for the Department of the Navy by Science Applications International Corporation (SAIC), titled "Submarine Assignment Policy Assessment," analyzes reasons why the Navy should not assign female sailors to submarines. In addition to unacceptably cramped quarters, potential health risks to the unborn children of female sailors would make it impossible to assign women of child bearing age to submarines. This report and additional information on the subject is available from the Center for Military Readiness.

[11] Memo from Staff Orthopedic Surgeon, Naval Medical Clinic, Annapolis, to Superintendent, USNA, covering "Relative Gender Incidence of ACL Injury at the U.S. Naval Academy," accepted for presentation at the Society of Military Orthopedic Surgeons Annual Meeting, 7 December 1998.

[12] In the OCS Combat Readiness Test, men and women do the same CRT events, but with different time requirements. Even with these and other allowances, in the second OCS class of 2005, the attrition rate for women was 30%, compared to 8.3% for the men. Of the candidates who graduated, 48% of the females failed the CRT event, compared to 5% of the males.

[13] A presentation at Fort Hood in 2005 involved a high-school type re-enactment of statements from several historic suffragists, plus a slide show, a poem, and the introduction of former Spec. Shoshana Johnson, one of three women captured in Iraq in March 2003.

[14] Matt Labash, "How the Military Indoctrinates Diversity, *Weekly Standard*, August 18, 1997.

[15] The Naval Academy seems to be moving in this direction. In January 2006 Superintendent Rempt invited midshipmen to attend several performances of a civilian production called "Sex Signals," which features abundant profanity, risque situations, and misinformation about "date rape" that conflicts with Academy regulations and the UCMJ. In April the USNA decided to celebrate "Sexual Assault Awareness Month" by exhibiting the 2005 film "North Country," starring actress Charlize Theron. The film features crude language, explicit sexual references, factual errors, and anachronisms that provide unintended humor.

[16] Decided Nov. 5, 1997. Advocates for five witnesses argued that a closed hearing would make it easier for the women to testify against Sgt. Maj. McKinney. The Court concluded that fear of embarrassment by adult females

was not a good enough reason to close Article 32 hearings. Despite intense media interest that largely prejudged the defendant's guilt, McKinney was acquitted on 18 of 19 charges.

[17] Some sensational news reports about the 2003 Air Force Academy scandal created the impression that rapes and assaults were occurring constantly, with little or no serious punishment. A 2003 investigation by the Air Force Working Group headed by General Counsel Mary L. Walker, found that there had been 43 *allegations* of sexual assaults and rape that occurred over 10 years, and nearly all of the cases were handled properly. Punishments ranged from letters of censure to expulsion or imprisonment.

[18] See page 3 of the Task Force Report, referring to General Accounting Office (GAO) studies done in January 1994 and 1995. Both surveys found that complaints about more serious incidents, such as unwanted sexual advances or pressures for dates by superiors, were quite rare, while derogatory comments, nicknames, and jokes were mentioned far more often.

[19] *Air Force Times,* "Alcohol Abuse Up at Air Force Academy," Feb. 21, 2005.

[20] An OVA in the Pentagon, an example of "feminist pork," could become a tax-funded, unaccountable and uncontrollable "Office of Male Bashing," with the potential to disrupt military operations worldwide. This subject is discussed extensively in articles posted on the CMR website, *www.cmrlink.org.*

[21] An exception was the January 9 *Washington Times* article by Rowan Scarborough, titled "Military Academies See Less Harassment."

[22] The 1994 GAO Survey cited on p. 3 of the 2005 SASA Report, done in the academic year 1993-94, inquired about types of sexual harassment. Listed in descending order of frequency they included: Derogatory comments, jokes or nicknames; Comments that standards have been lowered; Comments that women don't belong; Offensive posters, signs, graffiti, T-shirts, or pictures; Mocking gestures, whistles, catcalls, etc.; Derogatory letters or messages; Exclusion from social activities and informal gatherings; Unwanted horseplay or hijinks; Unwanted pressure for dates by a more senior student; and Unwanted sexual advances. (GAO/NSIAD-95-58, March 1995, pp. 9-11)

[23] These small percentages generated the scathing headline "Sexual Misconduct Reports are Highest at West Point" in *Army Times,* followed by an article leaving the impression that 97% of survey respondents (actually, 97% of 6%) had experienced a particular form of sexual assault.

[24] An appropriate place to include the issue would have been survey Question #6, which asked respondents about *"behaviors that would disrupt good order and discipline."* This would have been consistent with the authorizing legislation, which directed that the survey *"assess the perceptions of academy personnel on...any other issues relating to sexual harassment and violence involving academy personnel."*

[25] Perhaps it is time for the Pentagon to re-evaluate all policies based on the assumption that women can handle personal adversity with the same self-reliance as men.

[26] Several strategies are used to expand the "market" for these services. The 2005 SASA survey, for example, rates opinions about the "effectiveness" of sexual harassment and assault (SH&A) training. This implies that more training will yield perfect people who never interact inappropriately with persons of the opposite sex, and that elimination of all human failings is an appropriate mission for the military.

Thank you for the opportunity to submit this testimony and thank you to Christine Hansen and the Miles Foundation for their hard work on this important issue.

My name is Wendy Murphy. I am a law professor at the New England School of Law in Boston where I teach a seminar on sexual violence and co-direct two related projects at NESL's Center for Law and Social Responsibility. I served as a visiting scholar at Harvard Law School in 2002-03 where my work focused on the status of women as victims in the criminal justice system. I have published many papers and law review articles on the criminal justice system, victims', womens' and childrens' rights and I sit on the Massachusetts Governor's Sexual and Domestic Violence Commission. I have consulted with the Violence Against Women Office and numerous state and federal agencies, non profits, for profits and NGOs around the country. As a former prosecutor who specialized in child abuse and sex crimes, I also serve as an editor of the Sexual Assault Report, published by Civic Research Institute, and the Violence Against Women journal, published by Sage. I have written dozens of appellate briefs and argued numerous appellate cases as a prosecutor, private attorney for a victim and/or third-party service provider and as amicus counsel in cases around the country. I have drafted many pieces of legislation and initiated several test cases to improve the state of the law on behalf of victims of violence. Since 1992, I have provided free legal services for victims of violence in connection with an organization I founded called the Victim Advocacy and Research Group.

Although my area of legal expertise regarding sexual violence is not specific to military law, and I've been involved in only a few military cases, I have seen firsthand the failure of the military's legal system responsibly to redress violence against women.

This is a common sentiment even among individuals and organizations who may not submit testimony to this committee. Please do not take the silence of national womens' and victims' rights organizations as a sign that they are not concerned about the state of affairs in the current military justice system. Most of the better-known organizations are funded by DOJ, DOD and/or HHS - and without that money, they would cease to exist. As a result, they cannot safely criticize civilian or military legal systems. But make no mistake about it, there is much outrage across the country because too many women victims of violence in the military have been denied meaningful justice.

Let me also say that it is heartening to hear that the military appears eager to make improvements and while we might not know for a while what the impact of those efforts might be, it is commendable that this Committee is taking steps to gather information and develop proposals for change.

Prevention is obviously a priority but because some violence against women is inevitable, it is also important to ensure that the military's investigative, prosecutorial and punishment responses are fair. Justice for victims supports deterrence, helps restore the injured victim and promotes a healthy military culture.

A key problem in the military's justice system, as in the civilian system, is that victims rarely report sexual violence. This is due in

part to the perception that if a report is made, nothing will be done, or worse, the victim will suffer additional personal harm as a cost of participating in the process.

I have a few suggestions that might improve the system while encouraging victim participation in the military's justice process.

First, on the important topic of confidentiality, I am one of very few private lawyers who have had an opportunity to litigate issues of privacy and confidentiality on behalf of a rape victim and her therapist in a military court martial proceeding -- though I've done so countless times in civilian criminal cases around the country since 1992 and I've written dozens of articles and briefs on the topic. The fact that so few victims and caregivers have lawyers to represent them in their personal capacity is a primary problem because the lack of zealous representation means important privacy rights are being violated without due process.

Last year, I represented Jessica Brakey and Jennifer Bier, a rape victim and her civilian therapist, in a court martial proceeding. Ms. Bier contacted me to assist her in responding to a defense-generated summons for Ms. Brakey's post-assault therapy records. The case began when Ms. Brakey was sexually assaulted at the Air Force Academy in Colorado by a superior officer who was also accused of sexually assaulting other women.

All the cases against the man who assaulted Ms. Brakey were eventually dismissed without resolution or punishment. This is sadly consistent with overall data from the Air Force Academy which shows that despite numerous reports of rape and sexual assault since the early 1990s, not a single incident has resulted in a conviction for rape.

For this reason, Jessica Brakey, like so many military victims, was concerned from day one that there might never be justice in her case. Yet she persevered and did all that was required of her. She sought counseling within the military because that's what she was told to do. But time and again she was told she needed to change therapists because the military would no longer cover treatment with a particular provider. By the time the trial was on the horizon, she had seen several different therapists which enabled the defense to claim the victim must have had severe mental health problems because only a mentally ill person could have so many different therapists.

Luckily, Jessica also sought counseling from a civilian therapist, Jennifer Bier. Unlike the others, Ms. Bier was not under the control of the military. This meant that Ms. Bier not only could but ethically was obligated to refuse to comply when she received a subpoena for her entire file. This is the point at which I became involved.

I filed various pleadings and eventually argued the case in front of a military judge in San Antonio. Based on my training and experience and a careful review of the law, it was absolutely clear the subpoena was unlawful as a matter of law.

Here's why:

The counseling privilege at issue -- Military Rule of Evidence 513, states that a therapist's file is privileged and although the rule contains an exception that allows for disclosure when "constitutionally required", this had no application to Ms. Brakey's case because federal constitutional law is well-settled that the accused enjoys NO right to "discovery" from a private third-party. This is not in dispute.

In addition, Rule of Court Martial 701(f) explicitly forbids the accused to even ask for access to material protected by Military Rule of Evidence 513. Thus, not only is there no constitutional right to obtain "discovery", an affirmative court rule prevents the parties from even discussing the issue.

Aside from rules protecting Ms. Bier's files, I cited all the appropriate public policy arguments about how victims cannot heal without meaningful confidentiality and I cited the United States Supreme Court in the Jaffee decision where the Court noted the "transcendent importance" of our citizenry's mental health and rule that therapeutic privacy must be absolute because a qualified promise of confidentiality is tantamount to no confidentiality at all. I even mentioned the obvious point that if disclosure was warranted in Jessica's case, then all therapists who treat military rape victims have a legal and ethical obligation to advise victims at the outset of treatment that nothing they say is confidential and everything will be disclosed in a court martial proceeding. Obviously, such a disclaimer at the moment of informed consent would inhibit healing, prevent justice or both.

All these arguments were unsuccessful in front of the court martial judge who ruled that the defendant has a constitutional right to full disclosure - at least to the judge alone in the first instance, and likely to the accused as well. Seemingly reasonable to the uninformed, it is clearly problematic to allow even the judge alone -- an agent of the government -- virtually automatic access to such sensitive information. It was an especially serious problem in Ms. Brakey's case where the judge ruled the defendant did not even have to make a showing of any kind before the victim's entire privileged file would have to be produced. A simple request would suffice - even if the entire file was clearly irrelevant.

This type of access to privileged information is disallowed in other court martial proceedings when other types of crimes are being prosecuted and other types of victims are involved. For example, a larceny victim is never obligated to produce the private files of her personal therapist.

While I was confident the judge was clearly wrong in Ms. Brakey's case, the victim had no redress. We couldn't appeal because as a private third-party, the victim and her therapist were unable to utilize special writ proceedings. Ms. Bier was served with a warrant threatening her arrest if she failed to comply, which might have facilitated the filing of a writ of habeus corpus in federal court, but it hardly seemed reasonable to force a therapist to sit in prison as a necessary prerequisite to judicial review of a plainly unlawful subpoena. In any case, the miilitary refused to execute the arrest warrant.

Refusing to arrest Ms. Bier, the military judge eventually ordered Ms. Brakey to sign a release authorizing disclosure of her entire counseling file. She refused and as a sanction for her refusal, the judge dismissed the rape charges. This was yet another unjust response by the military judge given that a court cannot lawfully dismiss a public prosecution to punish the actions of a private person.

That this was unchartered legal territory made the judge's decision especially unreasonable because appellate court attention would have clarified at least some of the gray area, to the benefit of all who participate in court martial proceedings.

Without an opportunity for judicial review, affected third-parties turned to Congress for help where a proposal for new legislation was drafted by Rep. Louis Slaughter.

Though Congresswoman Slaughter's bill is a good start, it doesn't go far enough and I have outlined specific suggestions for amendments to her proposal at the end of this piece. While we're waiting for the legislative branch to act, advocates around the country are prepared to take up new challenges in the judicial branch, even filing a federal lawsuit if necessary, to enjoin the military from violating the rights of future rape victims.

In the meantime, policy changes could take place immediately; changes that would greatly improve the experience of victims as they participate in the military's justice system.

First -- instead of sending victims immediately to therapy in the aftermath of reporting an assault, they should be advised to seek counsel from a civilian lawyer. A civilian lawyer will not only advise victims of all their rights but help protect victims' legal and health interests before harm is done. For example, an attorney could advise a victim not to seek therapy from a military counselor but only from a civilian caregiver where confidentiality is better protected than it is for military-controlled treatment. Lawyers could also protect victims from unjust investigative procedures and intimidation tactics -- and help them to assert their rights to privacy and other rights under victims' bill of rights laws.

This "lawyer-before-therapy" approach could be coupled with a mandate that all victims be advised of their privacy rights by a military officer in the immediate aftermath of the report. Think of this as a kind of "Victim Privacy Miranda" rule; an idea that will discourage people from asking a victim inappropriate questions while empowering victims with knowledge of their rights AND the ability to say "I'm not comfortable answering that question" if anyone asks them a probing irrelevant question about their sex life, past drug use, alcohol history, etc.

Here's another idea. Victims need more information about how to assert their rights under Title IX and the Clery Act - two federal laws that apply to at least SOME military schools -- such as Norwich and VMI -- and require compliance with certain procedures in all matters related to sexual assault. Title IX deals with gender discrimination and sexual harassment, the most severe form of which is sexual assault, and mandates that administrative policies and procedures be "prompt and

equitable". The Clery Act requires fairness in disciplinary hearings and public notification of reports of criminal activity on campus, among other disclosures. Noncompliance can be reported to federal officials and result in economic sanctions.

Next, one of the points I must emphasize because it directly affected Jessica Brakey's ability to achieve justice, is that had Jessica's case been brought in the real world, under Colorado state law rather than in the military legal system, her counseling records would have been entitled to absolute protection from disclosure in the criminal proceedings.

This double standard occurred because of a Memorandum of Understanding that exists between civilian prosecutors and military officials that allowed the Air Force Academy to take jurisdiction over Jessica's case. There's no question civilian officials had the right to pursue charges, but because of the MOU, the Academy was given permission to take over.

In light of overwhelming data over more than a decade demonstrating that sexual assault victims are not achieving justice via courts martial, it seems clear that MOUs should be abolished or re-crafted to disallow court martial proceedings in rape cases.

This systemic failure, coupled with the reality of the legal dichotomy - that civilian law is far more protective of counseling records than military law -- is ample justification for an adjustment in MOUs such that all sexual assault cases should be reported to and prosecuted by civilian law enforcement officials.

Stepping away from policy and back into the legislative reform arena, let me suggest a bold change to the military's rape laws -- a reform initiative taking place around the country and an idea that makes particularly good sense in any institutional setting where power differentials enable the crime of rape to occur without the use of force.

The legal definition of rape is "penetration without consent PLUS force", but it should also be a crime to cause penetration of another person without consent irrespective of force. This is not the case under military law.

Codifying the crime of rape without force would better honor the values of personal autonomy and bodily integrity Such laws are already in place to protect personal property. When someone takes my money without my consent, it's called larceny. When someone takes my money without my consent and WITH force, it's called robbery. There should be analogous provisions for sex crimes such that the taking of someone's bodily integrity without consent is a crime, and if force is used, it's a more serious crime. Indeed, rape without force should readily be adopted because bodies are more important than money.

A few other states have already enacted "rape without force" laws in an effort to promote better respect for the autonomy rights of others. Such provisions in military law would send an essential message that individuals who need to trust each other to ensure survival and success in battle owe each other the highest level of respect and duty of care - especially when trust occurs in a chain of command where obedience is

expected. Mutual respect is impossible in the absence of rules that strictly prohibit violent exploitation of trust and obedience. Codifying the idea that all nonconsensual sex is offensive best promotes the value of mutual respect.

Adjustments must be made to military law to ensure that victims participating in courts martial are not are not receiving less protection for their privacy rights than victims participating in civilian criminal proceedings.

Last but not least, let me make two specific suggestions for amendments to Rep. Slaughter's proposal:

1-Modify Rule 701(f) to state clearly that the accused cannot under any circumstances -- during the pretrial or trial period -- seek direct or in camera access to a victim's privileged records including counseling files, lawyer/client records, etc. This is the current state of the law in Colorado and in other states where an accused cannot assert a right of access to such information under any circumstances.

Some legislative/rule-based changes on this issue have been proposed by Rep. Slaughter, but they will be effectively meaningless if this prohibition is not also enacted.

2-Codify protections such that if any personal or private third-party information from a victim is ever disclosed, a victim will have an opportunity to obtain judicial review without facing contempt charges or other sanctions, such as dismissal of the underlying charges. The body of law defining the contours of privacy rights law will develop in a more balanced manner if victims and other third-parties have automatic access to appellate courts.

Finally -- let me make a brief comment on the proposal to change the way information and data about sexual assault in the military is gathered and stored. The current proposal would require central filing of information about victims but NOT about alleged perpetrators.

This proposal is exactly backward.

Centralized gathering of information about victims is not a safe way to protect privacy rights or incentivize openness and candor during the healing process, especially given that victims often choose to receive care from within the military system, an option that offers little privacy protection. At the same time, the absence of centralized information about perpetrators accused of sexual violence means that deterrence will be less effective because it will be harder to know who is engaged in patterns of harmful behavior. Even if victims refuse to file formal reports, it is essential that dangerous and predatory offenders be easily identified. The lack of centralized information in this regard is inexplicably risky and inconsonant with the goal of violence prevention. Simply put, the military has a far greater need to monitor the bad behavior of criminals than the health care records of innocent victims.

Thank you for your time.

Wendy Murphy

Boston, MA 02116

My name is Major Brenda E. Moy, I am a nurse and an Army Reserve Officer. I have been in the reserves for 16 years and a nurse for 23. I was mobilized for deployment overseas in the summer of 2005. While training at Ft. Hood, Tx for this mission I was drugged and sexually assaulted by a member of my unit.

Unfortunately that was not the worst of it. The Special Agent from CID who investigated my case accused me of being a drug addict and a liar. I was turned from victim to suspect and my command did nothing. I know who assaulted me and how I was drugged, I made a sworn statement and still nothing was done. I feel that the commander for the unit treated with matter with utter incompetence and betrayed me. I did not deploy with the unit but a sexual predator did.

As a result of being accused I contacted a Defense lawyer, the Inspector General for III Corps, the Family Advocate Group and the Sexual Assault Coordinator for Ft. Hood. I also wrote to my Congressman, spoke to the Command Sergeant Major for Reserve Affairs at the Pentagon and Sexual Assault Coordinator at FORSCOM. Still nothing was done, the criminal went unpunished and I was eventually released from active duty after 8 months.

The Army has instituted a Restricted and Unrestricted means to report sexual assaults, but I must ask why. Either way the victim loses. If the victim remains restricted then the criminal is not accused and suffers no consequences while the victim does. If the victim chooses Unrestricted reporting they risk being accused by their commanders and CID and still the criminal goes unpunished.

This new policy does not help the victims but rather relieves the commanders from the responsibility of having to do it right. I think that the Army and the military has a responsibility to the victims to change the way commanders and CID agents are taught and trained. The old way of doing things is obsolete. The commanders must be held accountable for their actions and the CID agents who try to make victims into suspects should be relieved of their duties for incompetence.

I appreciate being able to tell my story and hope that this will perhaps help another victim in the future.

Sincerely,

Brenda E. Moy
MAJ, AN, USAR

Deceitful and untrustworthy is how my colleagues and superiors described me for reporting a crime of sexual assault on 30 May 2002 and rape on 10 June 2002. I was only 10 days into my first duty station in Germany when the offender sexually assaulted me. 10 days after that the same offender raped me. "it's your fault", my command stated. "He done it because you look like his wife," as they laughed. "Why didn't you want to have sex with him when he is soooooo... cute", laughing again. "Keep your mouth shut, there is too much red tape," the sergeant stated over and over again.

That's only a few words that I was harrassed with during my time at my post. I never heard of so many horrific statements that could be made to one person or about one person. It took 7 days after the incidents that I was finally took to CID. After a number of attempts at reporting these crimes, a Sergeant finally took me serious and reported the crimes up the chain of command. I was immediately sent to fire my weapon. The next morning I had to take a physical fitness test when I wasn't even healed from the physical problems from the rape. After returning to the barracks, I found that the command moved the perpetrator into the same building in which I lived. When I asked about it, I was told he wasn't a dangerous man. Yet, three months prior to assaulting me he had an account of simple assult consumattd by battery and disorderly conduct. It took a Surgeon to get him removed from the building in which I resided.

Next, the rapist, was placed to work in the gym-a place that he could've repeated another crime of rape, sodomy, indecent exposure, and indecent assault very easily. He definitely did not need to be placed in an area where women's bodies were more exposed than usual while working out. It also caused me to lose my pivilege of working out because he worked in there. I had to face this offender on a daily basis for four months.

Harrassment was from privates all the way up to Colonel's. When I learned about IG and what their careers were about, I turned to them for help. Not long after calling the IG, I was took into the First Sergeant's office and threatned and forced to say that I would never call IG again.

All of my rights as a victim of sexual assault and rape were violated numerous times. Even after the trial and when I was finally moved back to the U.S., I was threatned with obstruction of justice and perjury if I didn't quit trying to find out the perpetrators status in prison and why his military lawyer was calling all the individuals that I was working with.

I barely had enough strength to fight off the horrific events the command had put me through. I had to keep repeating the fact that I wanted to pursue chages against him. He confessed and should have been put into pre-trial confinement, however, he plead not guilty. One of the most disturbing acts was the fact that the legal team lost the prelimanary hearing tape recorded testimony. I had to go through a second preliminary hearing in order to keep fighting to have him convicted. In the end, I came out strong during the trial. He was found guilty of rape, sodomy, indecent exposure, and indecent assault. My military lawyer ask that he be sentenced to 15 years. He did receive 15 years, forfeiture of all pay, loss of rank, and a bad-conduct discharge. With a bad-

conduct discharge he has the opportunity to get his discharge upgraded. He should have definitely received a dishonorable discharge.

Still, four years after the incidents (the sexual assault, rape, and revictimazation by the ARMY), I have to be in psychotherapy twice weekly. I also still have to see a pshychiatrist once a month. I remain to have severe PTSD, major depressive episode, and self-mutilation. Why, you might ask-I see his face and hear his voice. However, I also see the faces and hear the voices of all of those who harrassed me. This is only a small portion of all the things I was put through because I reported a sexual assault and rape.

It is only and only in your hands to protect other victims of crimes from being treated in such a horrific way that I was. For those who do not follow the 7 Army Core Values and make sure they protect the victims, should get a stiff punishment. It is your power to employee victim advocates who are trained well enough to help the victim out instead of push them out of the way. You must create safe places that can be provided to victims. It is your duty to make all necessary changes to protect and treat victims with respect. You need to create and find a safe place that a victim can receive therapy when needed. While going through therapy, it is important that it be made private to protect the victims' privacy. It shouldn't be known to the whole post that a victim is getting therapy, just like the way that I was put out there for everyone to know I was raped and going to therapy.

It's not isolated incidents. Similar things are happening to the men and women who serve our country. They expect to be treated unfairly by an enemy, but not by someone wearing a U.S. military uniform, not their colleagues, nor their superiors. It will be a tremendous challenge for you to make necessary changes to protect our own men and women from our own military.

Those who are wounded in war have to live with those wounds for the rest of their lives. We, too, have to live with the wounds from being raped. The incident never fades and all the revictimazation from our military doesn't fade away either. The only good memories I have of the military is basic training and advanced individudal training-the things that most service members hate. There are no words for the horror I encountered for the rest of the period I had to stay in the military. Even when serving in the military, I had to seek support from those working outside of the military.

I had to be placed on Temporary Disabled Retired List because of the severity of the PTSD and depression. I currently receive a 100% rating from the Veteran Affairs because the PTSD, depression, and self-mutilation continue in my life. My life will forever be horrified by not only the perpetrator, but also the coleagues and superiors who I had to work with. It was nothing but pure revictamazation each day of my military career.

I ask that you please make necessary adjustments to protect our military women and men from being punished for reporting crimes. Victims of sexual assault and rape should feel comfortable enough that they can report the assaults without feeling they will be

punished for keeping their loyalty, duty, respect, selfless serivce, honor, integrity, and personal courage. It is in your hands to protect our own from our own. Education can be a part of this plan, but other measures need to be taken to ensure that victims safety is priority. Anyone who violates a victims rights should be punished to the fullest. You must make this happen. Protect our own military personnel. You are the power to upholding victims' rights.

Susan N. Upchurch

I am a military member that on 1 Feb 2003, I was date raped by another military officer. I was on the fourth date with this person and he had kissed me earlier that day, but stopped. Later that same day, about 1835, he went past me saying, "No," "I don't want to do this yet," and physically trying to hold my underwear in place. I also told him during the rape, "You know I really didn't want to do this, right?" That was the only time he was willing to stop.

How did the military response – ineptly! I did not come forward right away; I was in denial – I had it wrong, it was my fault, it couldn't have happened like that, etc. I called OSI (Office of Special Investigation) 3 weeks after the rape anonymously. I had told them what happened and asked if I had something to come in for. They had told me, "Yes. Come in and talk to us." When I went in about 1 ½ weeks later, all I got out was that I was the one that called them. Without hearing another word, Agent Ledbetter told me that they (Agents Ledbetter and Miller at Malmstrom AFB, MT) had talked it over and decided I did not have a case because I told them that I said, "No and I don't want to do this yet, etc." and finally I consented. They said I did not have a case because I used the word consent. I then asked him, "What about me trying to hold my underwear on?" He said, "Oh, I didn't know about that." Unfortunately, they already made up their minds. He had to go to Sick Hall and told me to either talk to some other agent or come back later. I left and went back to my Squadron Commander (SQ/CC) in tears. He told me a couple of days later that I should go back to OSI and that someone from HQ OSI was there **just** to talk to me. Of course, my obligation factor went through the roof. I went to JAG (Judge Advocate General) first. He, Lt Col Anderson, told me that he thought I had a case and needed to go back to OSI. I went back to OSI at the beginning of March 2003. I met the first agent and he told me he was in charge of the detachment there. I asked him if he was from HQ OSI. He looked at me and told me, "There is no one here from HQ OSI." So, I was lied to.

I finally moved out of my apartment, where it happened, and gave away furniture because I couldn't have any association with the crime. I asked OSI on 21 March 2003 if they wanted to look at my apartment before I moved out – they never looked. They told me, "No." It took them another 2 months to question my offender (May 2003). He told them that nothing happened. They came back to me and questioned me again. Then they closed my case and said it was unfounded. I had to ask them to do their job in the first place and then it is unfounded?

While all of this is happening, I had my PRP (Personnel Reliability Program) status pulled so I could not do my job. While I was not doing my job, my offender kept harassing me (he would come to some place I was at and stare at me), my squadron ostracized me, and I was a base black eye.

I next went to JAG again after being called in July 2003. I was told by Lt Col Anderson that he read my file and said if he was a defense attorney he would tell me, "That I gave the guy mixed signals and that my 'No' was **not** enough." I went through about 7 Kleenexes during this meeting with him. I eventually went to the IG (Inspector General) with a complaint about JAG and OSI. I had nothing done.

I emotionally broke down in Nov 2003 due to my offender's harassment and the ostracism. I then lost my job.

I never went to the civilian authorities. It never occurred to me and I was pushed to go to OSI. I was told later that civilians would have just pushed me back to base.

Suggestions: Jesus, use common sense here. Don't treat a person like they are a lying, slutty, bimbo. That was how I was perceived. I lost my credibility too. Victims are just like everyone else, but have been through a horrible trauma. If your job is to investigate, investigate. Do not sit there and do nothing. Do not turn people away. Do not tell them it is their fault.

I know things are **not** going to change. They never do in situations like this. In my opinion, anything the military does on this topic is for show and ends up being a Dog and Pony Show – leading higher officials around and showing them all the things they are doing to make it better when they are actually just putting up a front.

Since this, I have moved to another base, got a job I NEVER wanted and did not have on my list, had a freeze put on my promotion to Captain (I did pin on on time), and had a 286 A (a permanent decertification on PRP) with derogatory info in it in my UPRG (Base Personnel Record) where it did not belong. It had medical info and a diagnosis in it, but people in my squadron could pull my record and look at it.

Tobey H. Thatcher, Capt, USAF

******COMPLAINT FILED WITH THE DEPARTMENT OF DEFENSE INSPECTOR GENERAL******

15 May 2006

William D. Parker

Salado, Texas 76571

Re: **Resubmission** of Original Complaint dated 01 March 2006, Complaint of Reprisal and Retaliation against SERCO Inc., and Fort Hood Army Community Service Managers.

DEFENSE HOTLINE
THE PENTAGON
WASHINGTON DC 20301-1900

Dear DODIG/BUDDY:

Did you make or prepare a communication protected by statute? YES

1. (fraud, Misuse of government funds) Lack of funds allocated for the Victim Advocate program by ACS? WHERE WERE THE FUNDS? Inadequate work area and supplies for working with abused victims. WHY WERE ADVOCATES NOT PROVIDED FOR?

2. (Contract fraud by ACS managers, Abuse of Authority) Undisclosed/illegal duty requirements that had nothing to do with victim services that advocates were made to do. WHY WAS THIS REQUIREMENT NOT DISCLOSED DURING HIRING?

3. (Fraudulent hiring) of Victim Advocates by not disclosing to applicants the REAL contract stipulations signed with the Army in September 2004. Most applicants were told this was a 3 year contract renewable every year. I was given a CAC card with a 3 year expiration. Advocates then discover we were hired for a year contract. WHY WAS THIS DOCUMENT NOT PROVIDED TO APPLICANTS SO THEY COULD MAKE AN INFORMED DECISION ABOUT THE POSITION?

4. (Illegal Exempt Status) Unlawful exempt status placed on Victim Advocates BY SERCO Inc., based on job description, not the actual duties the advocate performs. Victim Advocates by DoL regulation are non-exempt and eligible for overtime based on the duties we perform. WHY WASN'T THIS LOOKED AT PROPERLY BY SERCO MANAGEMENT AND CORRECTED?

5. (Abuse of Authority) Why was I told I was terminated for issues related to sexual assault cases. I was hired as a Domestic Violence Advocate. I was not hired to perform non-family criminal sexual assault advocacy. Even if I did make a mistake or anger somebody regarding my advocacy for sexual assault victims,

that was no reason to just ruin a persons career and livelihood. WHY WAS I NOT ASSISTED AND GIVEN GUIDANCE BY MY SUPERIORS, INSTEAD OF JUST BEING THROWN OUT LIKE GARBAGE, ESPECIALLY SINCE THIS WAS A FIRST TIME ISSUE.

(1). I questioned GS-12 Army Community Services managers regarding what they wanted advocates to do, as compared to what advocates were hired to do concerning disclosed pre-hire job responsibilities. I also spoke out where the funding is for the program. Other issues were type of and lack of work space given to advocates. This area was completely unacceptable for the work advocates were to do to include victim accessibility for services. There was no privacy or confidentiality. It was open work space, was overcrowded, noisy with a complete lack of resources of equipment, supplies. Fort Hood ACS, GS managers seemed to careless.

(2). I disclosed that our employer contractor RCI hired people as military domestic violence victim advocates. Three months later RCI/SERCO tells us we will be responsible for sexual assault and other related duties. Non Family Sexual Assault is another completely different arena/field to work in.

(3). In June 2005, advocates were shown a document that the Army signed with RCI/SERC0 effective September 2004. This document explained further requirements of the contractor and the employee victim advocate. When this was presented most of us were upset because if we had been shown this document we/I felt that I would not have excepted this position as some of the others indicated to. I communicated that our position descriptions are therefore mistaken as compared to what our duties are. I communicated that we should be classified as non-exempt and eligible for overtime under FLSA.

(4). Due to undisclosed and added job duties I requested a reasonable accommodation many times, both verbally and in writing, in order to perform these new changes required by Fort Hood ACS managers. For 10 months my requests were completely ignored by FAPM, Ms. Billy Floyd and Jeanie Barton.

(5). I was given two sexual assault cases to work by the SARC in October and November 2005. Because of the offensive manner in which these victim's were treated by CID, I was aggressively advocating for them without receiving any real or knowledgeable support from the SARC or local supervisors. I was happy to assist the two victims but sexual assault advocacy was not what I signed on to perform.

(6). When I reported the sexual assault victim's treatment and requested assistance from the DOD-JTF-SAPR, I was e-mailed an unauthorized fabricated written reprimand by the Project Director from Virginia. To this date I have not received the questions I asked in Good Faith, from DOD-JTF-SAPR or the Army Sexual Assault Program.

(7). Finally, on December 30, 2006, my accommodation was approved by e-mail. However, the accommodation description was not what I requested. I was then terminated 4 working days later without being given a reason.

(8). Later SERCO Inc. clandestinely indicated they were forced by the Fort Hood, ACS Director Jeanie Barton to remove me.

To whom did you make the communication and when? On all of the above issues I wrote and verbally communicated to the Lead Advocate Monroe Woodard. I then communicated with the new Project Director starting in May 2005. Then to GS-12, Billy Floyd the FAPM, who took it to ACS Director Jeanie Barton GS-13. I reported the above to Mr. Woodard the SERCO Ethics Manager in August 2005 and Ms. Floyd and Mr. Wooden from December 2004 all the way through to my termination date on 01/05/2006. (SEE DOCUMENTS)

What information did you disclose to that official? I provided the above with DoL regulations on FLSA. Showing them the wrong classifications related to advocate duties. I provided medical documentation several times for my accommodation. I provided SERCO with FLSA documentation to correct job status. I reported improper behavior by a Fort Hood CID agent and requested assistance for two sexual assault victims from DOD-JTF-SARP. I reported that the Installation SARC did nothing to correct issues with sexual assault victims.

Was an unfavorable personnel action taken or threatened, or was a favorable action withheld or threatened to be withheld following the protected communication? The Project Director had always seemed to view my work in high regard. His attitude changed very quickly and negatively towards me in December 2005, due to my advocacy with the sexual assault victims. Again I was not hired to perform sexual assault work, nor did I have any official specific sexual assault training up to that point.

What was the location and organization where the personnel action occurred? Fort Hood, Texas 76544, Army Community Service, SERCO INC., Virginia

What was the date of the personnel action: 01/05/2006, and what date did you first become aware of the personnel action 01/05/2006.

Did the official(s) responsible for taking, withholding, or threatening the personnel action know about the protected communication(s)? Yes, That is why I am dealing with this insanity now.

How do you know that the official who took the personnel action was aware of your protected communication before he/she took the action against you? I verbally spoke to them, provided them documentation. I explained it to Ms. Floyd and spoke to Monroe Woodard several times. I sent regulations to Virginia and emailed SERCO and spoke to their ethics manager in August 2005. I brought it up to Mr. Bryan Wooden in September 05 and on the 20th of December 2006. They knew!

If you had not made the protected communication, would the personnel action have been taken, withheld or threatened anyway? NO. If had just said or done nothing about these issues to include performing advocacy the army's way, I would still have a job and be supporting my family.

What evidence do you have that the official took the adverse personnel action against you in reprisal because you made the protected communication(s)? E-mails, contract documents, statements Monroe Woodard told me several times

Jeanie Barton didn't want this contract with RCI. He stated Barton did not want a male/me as an advocate in the program to begin with.

******THE FOLLOWING IS A LETTER TO SERCO ATTORNEY******

From the Desk of William D. Parker

1 May 2006

William D. Parker
Salado, Texas 76571

Melinda M. Renshaw, Attorney
Atlanta, GA. 30308

Dear Ms. Renshaw:

I wanted to contact you because I have no problem communicating with you regarding the issues with what I believe to be an unlawful termination of my employment by U.S. government contractor SERCO Inc., your client. I know most attorney's representing me would be angry for doing so. However, I have nothing to hide nor did I act in the manner I have been described by SERCO. I wanted you to know my feelings and the documented truthful context of this issue. Even though you are attempting to defend SERCO I believe you may have second thoughts when you realize that your client either through ignorance or simple disregard of the protected issues failed to assist me, correct them, and then simply fired me for professionally insisting those issues be addressed, an employee right in the workplace.

I received notice from the Dallas EEOC Office that my complaint against the Respondent SERCO Inc., is being handled by your Law Office. Additionally, I have been informed that my complaint has been placed into Dismissal status based on the fact that at this time the EEOC is unable to conclude from the information I provided they could establish your client violated my protected status in government contracts, civil and work place rights when they unlawfully terminated my employment at Fort Hood, Texas on 01/05/2006. The EEOC does indicated that this action of dismissal does not certify that the Respondent, SERCO was in compliance of the protected statutes involved in this case.

Therefore, due to those facts I am appealing that decision and providing the EEOC with additional information to prove your client violated my civil and workplace rights by fabricated and fraudulent statements made in an unauthorized e-mailed reprimand that was sent from that authority without permission of SERCO Corporate HR Manager from over 1500 miles away in Virginia. Further violating my workplace rights when that

person knew that those statements were false, misrepresented and fabricated actions regarding my professionalism, character and workplace behaviors.

Furthermore, your client/Respondent has not only made false statements regarding my workplace professionalism but has continued to provide false statements regarding this matter to not only me, but also to DoD Investigators, Federal Civil Investigators, you and your law firm, to include prospective employers seeking information regarding my professional performance while under SERCO's employment.

The EEOC has also informed me that you under "the color of law" for your client and law firm wrote the EEOC office in Dallas and repeated the same false and fabricated responses to a Federal Investigator, that were written by Mr. Bryan Wooden from an unauthorized, misrepresented reprimand sent to me by e-mail and discussed on 12/20/05. An act that I believe prompted the EEOC to consider the decision to dismiss my complaint.

You wrote or indicated to the EEOC investigator:

Mr. Wooden provided me with an accommodation on 10/21/05: **This is untrue**. In an e-mail I have dated 11/07/05, I requested Mr. Wooden address the accommodation issue because I was still on the 7 night straight duty roster. In reply Mr. Wooden states, "I will take your request send it to Billie in my voice and see what we get." Therefore for him to state to you that he approved my request is a lie. I never heard anything from him about my request until I brought it up again on 12/20/05 when he e-mailed me the unapproved fabricated reprimand and I reminded him again to address my RA issue.

In further summation page #1 of unauthorized reprimand in **Nature of Violations you communicate to the EEOC:**

INSUBORDINATION: On 12/20/05 when I asked how and when was I insubordinate to anybody regarding my employment at SERCO nobody on the phones from SERCO including Mr. Wooden could or would give me a date and time when I was insubordinate prior to this fabrication or at any time!
OTHER: Conduct/behavior detrimental to the image of SERCO: On 12/05/05, when I asked about when, where and how my conduct has been detrimental to the image of SERCO, have I had any complaints about me on this date or prior, related to my work or behavior, no one on the phones including Mr. Wooden could or would give me a date and time when my actions weren't professional or were detrimental to SERCO Inc. (I have a sworn statement to that fact).

IN REMARKS, Mr. Wooden wrote and you communicated to the Dallas EEOC:

1. I failed to follow written and verbal instructions/directions given me on 10/20/05, I failed to follow my chain of command on 12/01/05. I failed to seek guidance in this matter in question on12/01/05.

2. **SERCO lie #1:** I was given specific orders by my Lead Advocate the late morning of 10/20/05 to e-mail Ms. Jeanie Barton at her request who is the ACS Director at Fort Hood and explain an issue I had with advocates selling breakfast tickets to Battalion Commanders and Sergeant Majors for an unrelated victim advocacy event taking us away from our victim services.
3. I sent that e-mail at 10/20/05 at 12:11pm. I received later, a thank you from Ms. Barton on 10/21/05 for sharing the information with her. Mr. Wooden knew this: I have the e-mails to prove it. Mr. Wooden then reprimands me on Dec/20/05 for this same e-mail and issue he supported me on. The Fact is my e-mail went out before his instructions on 10/20/05. At further issue is, I took as meaning personnel issues with ACS managers.
4. **SERCO lie #2: Mr. Bryan Wooden made his statement of instruction to me on October 20, 2005 at 3:29pm. I sent an e-mail to him and local supervisors before that at 1:09pm requesting that these issues be correct and that I am not retaliated for bringing them up again. Later the next day 10/21/05, over the phone speaker Mr. Wooden personally told me in the presence of the Lead Advocate, "Jeanie Barton wants my job, but he refused to fire me for her silly issues." Mr. Wooden stated to me and Monroe Woodard that "Ms. Barton has a serious problem with me and he can't figure her out." Ms. Barton held no other advocates accountable for not selling tickets as I was being held accountable.** This can be proven by statements I have obtain from advocates who did not participate in that event either. I also will prove this by sworn deposition from Monroe Woodard, Lead Advocate who witnessed and heard this statement.
5. Mr. Monroe Woodard refused to go out and sell the tickets also. Yet he is told to write me up by Ms. Barton for doing the same thing he did but not held accountable for.
6. **SERCO Lie #3: Mr. Wooden states I emailed the Joint Task Force on Domestic Violence on 1 Dec 05 stating I was being "Victimized" by a CID agent and requested information on my options.** I did not e-mail this office, I emailed the Department of Defense Sexual Assault Response and Prevention office, DoD-JTF-SARP on 12/01/05 and asked them two questions because I could not get any answers from any supervisors. Out of courtesy I explained who I was and that I have two sexual assault cases that I feel are being re-victimized by a CID agent in the manner in which they are being treated interrogatively and being read their Miranda Rights before being questioned. I believed CID needed training with working with sexual assault victims. I never indicated in this e-mail I was being victimized. I have e-mails that prove this!
7. **SERCO Lie#4:_Mr. Bryan Wooden states this action was taken contrary to instructions of 10/20/05. He goes on to state I failed to follow the chain of command.** Mr. Wooden fails to tell you that I e-mailed him on 11/24/05 and again on 12/02/05 in the morning advising him of the situation and he never responded back to me. Mr. Wooden also fails to tell you that prior to contacting him I went to my local chain of command supervisors as events developed about the CID agent and SA victims treatment. My local supervisors did not know what to do. I was told to speak with the Sexual Assault Response Coordinator. I went

to her and explained what the issues were. Her reply to me was "Oh well that's just how CID operates." In a personal e-mail to Mr. Wooden 12/2/05, I explained to him that after my attempts of assistance I felt victimize also. Meaning I can relate to what the sexual assault victims felt. Mr. Wooden goes on to say he is confused as to how I really handled asking the victim's to write statements.

8. Mr. Wooden seems to feel I solicited the victims to write statements. I did ask one victim if they wanted to write a statement about what happened with CID. The other victim had already complained and wrote a statement to the Fort Hood IG's office prior to my receiving their case. However, this is a non-issue. There is no protocol, written policy or regulation that prevents an advocate to suggest to a victim to write a statement to place in their file regarding an event or improper treatment. You as an attorney should know that. Therefore, Wooden again is reaching for issues to make me seem incompetent. I have documents proving this! Another fabrication and twisting of my actions by SERCO!

Ms. Renshaw that is just a sampling of the lies and fabrications used to ruin my career for whatever reason at Fort Hood. I have many other lies and contradictions from SERCO supported with documents, statements and e-mails.

Mr. Wooden works in Vienna, Virginia with his new staff. He told you he was my direct supervisor. Before this fabrication Monroe Woodard and Billy Floyd I was told were the supervisors for Fort Hood advocates. Supervisory changes occurred several times throughout the year 2005. Later after 10/20/05 Mr. Wooden states Olivia Logan is our/my supervisor. I never met her or had ever spoken to her either. She also works 1500 miles away in Virginia. Then later after that Mr. Wooden tries to clarify that Monroe Woodard is our local supervisor with guidance from Billy Floyd.

Mr. Wooden and the other SERCO employees in Virginia are so confused that they have no idea who should be or is the supervisor or understand the issues or venue the advocates work in at Fort Hood, Texas. SERCO management being in Virginia is extremely out of touch with the daily workings or the issues we faced daily at Fort Hood. All the advocates under SERCO at Fort Hood became confused and frustrated at these actions.

During Mr. Wooden's presentation of his fabricated and unauthorized reprimand on Dec/20/05 he again states I failed to use my chain of command by not contacting him or Olivia or my local supervisors. Another fabrication! (I have the e-mails to prove I did contact them)

The two last pages of Mr. Bryan Wooden's unauthorized e-mailed reprimand of Dec/20/05 to me are such fraudulent misrepresentations of what actually occurred or what I did and said, that I find it almost comical that SERCO would even share it with any legal representative, especially when Mr. Wooden would not seek approval for the reprimand from the Corporate HR Manager before sending it to me. By this time I am sure they have come up with an excuse for that debacle to. The reprimand twists my e-

mails, contextual meanings and distorts my actions and words in a manner that Mr. Wooden can use to substantiate his fabrication.

I have all my e-mails regarding this entire issue. All e-mails prior to 9 Dec 2005 has Mr. Wooden supporting me and contradicts the fabrications he devised in my communications and behavior.

I also have e-mails with Mr. Wooden giving me praise and being thankful for bringing all these issue to his attention two months before he e-mails his unauthorized reprimand to me, citing the same e-mails he supports me on. I believe Mr. Wooden's reprimand was created to upset me so much that I would resign so he would not have to fire me for non-legitimate reasons. I would still be working except for the fact that Ms. Jeanie Barton wanted me gone or SERCO would have problems with the Army contract. I have also obtain information that Ms. Barton did not want me hired in the first place, but Kathy Robertson the first hiring authority from RCI refused to negate my employment offer of 11/22/04. I also believe that if I did not resign Mr. Wooden felt the reprimand would allow him a basis to later use as a smoke screen to terminate me later if necessary.

Ms. Renshaw this small sampling of the mismanagement and incompetence all SERCO related advocates had to deal with. This entire matter was brought on by initial fraudulent hiring, with all the initial hiring authorities then resigning and SERCO replacing them with new staff in Virginia. These individuals whom had no idea what was told to us, or knew how to deal with issues when brought up to them, based on what was told to us, in the very beginning of the hiring process. I have recently had e-mails sent to me and phone calls from many other SERCO advocates and former SERCO advocates world wide who were treated unprofessionally, the same or worse by SERCO. All lend their support to me. My own former co-workers at Fort Hood are upset with SERCO and the entire matter but are limited to what they can say or do because many are single moms or have families. Additionally they saw what happened to me for speaking up. My work and workplace behavior background history is impeccable and always has been. I have never been terminated in my profession as a social science professional. I have numerous awards and many many letters of recommendation from passed employers and supervisors. The picture of me that has been painted by SERCO and Jeanie Barton is untrue, incorrect and I feel it boarders on slander and defamation of my professional name.

To be given a reprimand written by a person who has never worked around me, or knows me or the entire issue in question is suspect. Mr. Wooden was hired by SERCO six months into our program. Wooden was nothing more than a voice on a phone, not a workplace supervisor or my direct supervisor. My behavior, ethics and professionalism was the same working for SERCO at Fort Hood as in my past employment. I would ask you to ask your client Bryan Wooden the following:

Ask Bryan Wooden how many times I helped him with information and operating procedures.

Ask Bryan Wooden if I allowed him to take credit for an SOP I developed when he wanted to present it to other professionals.

Ask Bryan Wooden how he or Olivia Logan could individually supervised advocates all over the world from Vienna, Virginia.

Ask Bryan Wooden why he supported me in regards to the issues I brought up on 10/20/05, then turned on me when confronted by ACS, and then fabricated an unauthorized reprimand over the same issue he support me on.

Ask Bryan Wooden how many times the Lead Advocate at Fort Hood told him I was doing a great job and I was the best advocate at Fort Hood. Ask Him!! This alone will keep YOU from being embarrassed in Court.

When advocates were told our responsibilities and duties would be changing by Fort Hood ACS managers and we would have to perform 7 nights of straight duty to include working the next day I requested a reasonable accommodation in writing for a scheduling accommodation with medical documents to support my request through the local chain of command. My request under the ADA was ignored for 10 months. When I also explained to the local chain of command that advocates are non-exempt now because of the duty changes I was ignored. I also provided them with DoL statutes and regulations and still was ignored. When I brought these issues to SERCO's Chuck Mayfield in August 05 and then both him and Mr. Wooden, in September 2005, they never responded. When I spoke to the SERCO ethics manager when he visited Fort hood in August 05 also, I never heard back from him nor did he changed us to non-exempt. When I spoke to Mr. Wooden about it again, he said that it was HR's problem. I have witnesses to all of this!

I believe SERCO improperly classified us under FLSA and knowingly continued to cheated advocates out of overtime by using illegitimate job descriptions to classify us as exempt rather than using our real duties to classify us properly as DoL regulations state. Soon after I pressed ACS and SERCO to correct these matters I was given the fabricated unauthorized reprimand that does not in any way accurately described that entire issue properly. SERCO then terminates me and blames it on the ACS Director. When I contact ACS at Fort Hood they blame my termination on SERCO. (I have several emails from SERCO and Fort Hood, TX ACS and one letter from the Fort Hood AG's office proving this). Incredibly, shortly after I was terminated SERCO sent revisions of job descriptions and changes in hours of work to all advocates attempting to correct everything I told them was improper related to FLSA. However they still did not get it right. Ask your client about that!! (I have copies of those new revisions).
SERCO has provided me and my co-workers with so many job descriptions and changes in supervisors over the last year that we never knew what to expect from one day to the other.

On 12/20/05 when I brought up the fact that Wooden had time to fabricate his reprimand and e-mail it to me instead of addressing and correcting exempt status for all the

advocates and properly addressing my requested reasonable accommodation, he told me and Monroe Woodard the lead Advocate that those are different issues to addressed later.

It is mind boggling that the very first time I am given two of these types of sexual assault cases in October and November 2005, and I asked for assistance and help, none was given nor was I responded to from Virginia.(I have the e-mails to prove I contacted my chain of command). I then went to the best source possible DOD-JTF-SAPR as they said advocates could do to ask them technical questions or help with problems advocates might be having. (I have email to validate and prove this) The work I did with those two sexual assault cases are then used as part of the unauthorized reprimand on 12/20/05. *It was like I was given a task that was not what I was hired to do, nor had that type of experience in and told well that's OK do it anyway. Then when I performed the task and after asking for assistance and without receiving any assistance or help, I am then reprimanded for doing what I was told.* Unbelievable and very frustrating!! I felt like I was set-up for failure no matter how I worked the cases.

Additionally you use the same written correspondence to a response to the Dallas EEOC as for a reason for SERCO's validation of my termination. A reasonable person would think that the right thing to do as an employer would be to help the advocate/employee. Or understand that these two cases were the first of there type and nature given to a Fort Hood advocate since they both were assaults/attacks from the same gender. A reasonable person would see that it would be improper to use the issue as a reprimand. Mr. Wooden used the to cases to set an agenda to destroy my creditability and professionalism, added onto the vicious act of a total fabrication giving you a reason to justify SERCO's termination of my employment.

Then on 12/30/05 Mr. Bryan Wooden e-mails me my approval for my reasonable accommodation two months after the fact. He removes me from all on call duty. This went way beyond what I had requested. I asked Monroe the Lead Advocate to call him and let him know I can perform 24/7 duty on days where I know ahead of time I will be working. I then can manage my medications and be awake and able to get to the victim.

Four working days later on 01/05/2006, Mr. Wooden Terminates me and won't give me a reason. He is ugly in his attitude towards me and has no concern for what he has just done to my family, me professionally and my financial future. I have not been given a viable reason to this date from SERCO or ACS on Fort Hood. As I indicated before, all I get is finger pointing from Fort Hood ACS blaming SERCO, and SERCO blaming the ACS Director for my termination. (again I have letters, emails proving this).

I would ask that you have a candid direct conversation with your client. You really need to tell SERCO that they better tell you everything and come clean. This case is not good for them to litigate. In my opinion and other advocates opinion it will only open a can of worms for SERCO to continually defend for years to come. This case is going to embarrass them and you to include your law firm due to their not telling you all the truth about this issue and their fraudelent hiring practice of myself and the other 87 original army victim advocates.

As I said most all of VA, SERCO staff are replacements of the original hiring SERCO authorities and staff. I will give the new staff credit in terms that they probably had no idea of the amount of lies that were told to the original 88 advocates when hired in the beginning of the hiring phases back in 2004. To include the advocate job and it's real duties coming further on down the road. However, even after the new Virginia based staff were made aware of many of these issues your client has continued down this road without correcting them. RCI/SERCO instead of being forthright, continued to lie to all the advocates and failed to listen or correct their employment mistakes in my opinion.

Lastly all advocates in 2004 were hired for military spouse and family Domestic Violence Advocacy. We were not hired or knew we were going to be working non-family military or active army soldier on soldier Sexual Assault cases as advocates. Therefore the reprimand which is falsely presented, was extremely improper and clearly shows arterial motives stirring up illogical reasoning for my unlawful termination and without cause under a protected employee status, especially in government contracts.

Ms. Renshaw, after reading this and you feel your client can't be effectively defended please contact me. I am not out to hurt anyone, SERCO Inc. or seek money damages from SERCO. I just want the truth to be put out there, be treated fairly and the fabrication and negative picture of me removed as best as possible. Mr. Wooden knows what really happened but because he elected to write a bull-nosed fabricated lie, now he is culpable.

My professional reputation has been damage by this and needs to be corrected by SERCO by stop giving me bad references. I would be glad to discuss these issues or settle this with written apologies by those involved with reinstatement of my position, back pay with restoration of benefits lost.

Otherwise I will file a lawsuit with my attorney in The Western District of Texas Federal Court against your client, the Respondent SERCO Inc. Presently, I have 90 days to file unless my appeal to reopen the investigation of your client is approved.

Respectfully,

William D. Parker
Salado, Texas 76571

Myla Haider

As one of hundreds of women who served honorably in the military only to lose their careers because of rape, I implore our nation's government to do something about this issue. It's time to stop ignoring and denying this serious problem and start addressing it adequately. This requires confronting ideas about sexual assault and reframing them into a context that will solve the problem rather than attempting to cover it up with minimal reforms and claim it is fixed when it is not. This problem has been covered up for far too long, and it's time that real and direct action be taken to put it to an end.

I was shocked to discover that, after serving honorably in the Army for 10 years and three combat deployments, my entire military career was ruined because of my involvement in the trial against my rapist. I intended to make the military a lifetime career, but my hopes were abruptly ended upon being labeled as a rape victim. When I had a hard time dealing with the fact that my rapist (like most) got off scot-free for what he did to me and several other women, the Army's answer was to label me as unfit to serve and end my career. I was punished for struggling with the trauma of my assault and administratively discharged with no benefits while struggling with Post Traumatic Stress Disorder.

I couldn't understand why it happened to me, since I had always done the right thing and given 110%, had been "Soldier of the Year" and heavily decorated for numerous deployments and training exercises. If not for my family, I would have wound up on the streets like countless other survivors of sexual assault in the military. Upon doing some research, I discovered I was not alone, because hundreds of victims have come forward with similar complaints. If the trauma I suffered was understood and treated, my offender convicted, and my chain-of-command supportive instead of punitive, I would probably still be in the Army today.

If you put the phrase "sexual assault in the military" into a search engine, you will find more than two million matches for the phrase. Why are we continuing to minimize this problem in spite of the overwhelming amount of reporting on the issue? Why are we so hesitant to acknowledge it for the problem that it is, instead denying the issue and justifying its toll on the lives and careers of those who survive it (or do not)? I have brought my situation to my representative in the Senate, and have concluded based on the response I received that it is easier to attempt to justify what happened to me personally than address this as the widespread, pervasive problem that it is.

Based on my experience, the solution of this problem is much simpler than it is being portrayed by Department of Defense officials. It has been pointed out over and over again by advocates and by survivors, but as of yet, few have had the fortitude to challenge the archaic thought patterns that cloud the issue and put a real solution in motion. Most who have the power to do something hold back, which I suspect is because the issue has to do with the military. Nobody wants to seem like they're against the military, and isn't this an issue that is natural in the military, that should be expected within its ranks? I think not.

While the Department of Defense has announced that it has zero tolerance for sexual assault, nothing has actually been done to back up this statement. Instead, they have "sensitivity training" to teach soldiers how not to be rapists and to place further restrictions on the actions of military women in the name of "prevention." The real offenders are beyond this training, and the rest do not need it. This is rape we are talking about, not some minor disciplinary infraction. Everyone is not a sex offender, so why are they blanketing this to everyone instead of punishing the offenders who have proven they are criminals? Perhaps it is because they believe that soldiers are the root of the problem when, in reality, sex offenders are. I ask the creators of these weak reforms: Who do you think you are defending? I would like to point out that they are not defending the military, but the sex offenders who prey on the sons and daughters of our nation who serve honorably and who are punished for the actions of a few offenders who do not belong in their ranks.

The answer has been spoken out time after time, and as a veteran who loved my career and lost it, I am asking that somebody please listen and act. It is time to stop putting all the focus on healing victims and shift some to convicting offenders and getting them on the sex offender registry before they can rape again. We need to realize that survivors who come forward are not enemies of the Department of Defense, and that defensive actions to avoid scandal are the most counterproductive of all. Why not stop trying to justify the miscarriages of justice that happen every day and instead work hard on improvement of the legal process so that history doesn't repeat itself? Rape is not a liberal or conservative issue, and happens to people of all classes, colors and genders. It is harmful not only to its victims, but to society as a whole. In the military, it is the ultimate betrayal after having given one's life to the service of this country to be isolated, stigmatized, and punished even after suffering such an indignity. Somebody who has the power to do so needs to stand up, take it seriously, and take real action to make it stop.

Mrs. MALONEY. I would also like to place in the record an information paper that was given to me by Tom Jones, who is the legislative liaison for the Department of Defense. It is on the DIBRS system. I keep coming back to it because if you don't have a record of what happens, you don't have an understanding of the extent of the problem.

Congress passed legislation in 1988 calling upon the Department of Defense to maintain a centralized data base on crimes throughout the military and the academies. I am focusing in particular on sexual assault, which was the focus of this, and the elements that are in the DIBRS system. According to this memorandum, the Army is now participating in the DIBRS system, and you will be getting back to us the exact elements that pertain to it in the academies. The Air Force is up to date and participating, and your attorney is going to get back to us the exact elements that you are sending to the DIBRS system and that are maintained in it. I understand the Navy is converting from another system. There will be a little bit of time before you get up to it, but you should be up and reporting by June 2007, according to this information paper from DOD.

The question that I would ask, I have been told by the Department of Defense through a series of task forces and meetings that they will have the DIBRS system fully implemented by January 1, 2007. Do you believe that this is possible, that it can be up and running? I will ask you, Admiral, yes or no.

Admiral HIGGINS. I can't answer that question, ma'am. I am not familiar enough with the system to say.

Mrs. MALONEY. Brigadier General, it is wonderful to call a woman a brigadier general. Congratulations on your career.

General DESJARDINS. Thank you, ma'am.

Mrs. MALONEY. Congratulations to all of you.

General DESJARDINS. Thank you, ma'am, and yes, ma'am.

Mrs. MALONEY. You will. Do you believe, Brigadier General, that this will be——

General CASLEN. Yes, ma'am.

Mrs. MALONEY. And Vice Admiral.

Admiral REMPT. I don't know enough about the system to answer that, ma'am. I will have to give you that for the record.

Mrs. MALONEY. Could you get back to us once you check on this.

Admiral REMPT. Yes.

Mrs. MALONEY. What I find incredibly disturbing, on top of the personal stories that I have heard, is that a mandate, a directive of Congress has been totally ignored by one of the most efficient departments in the entire country, maybe the entire world, and it goes back to the sentiments of my friend here, the chairman, and the gentleman over there that spoke so passionately about it. It is a crime and it should be treated as a crime.

We have passed legislation over and over and over again asking to keep the data, and for some reason it can't happen. Ultimately the Department of Defense is headed by the Secretary of Defense. It is his responsibility to make things happen. I am considering putting in legislation that if this system is not up and operating by January 1, 2007, that we begin to dock the pay of the Secretary

of Defense. There is absolutely no excuse. Congress has written about this, requested it, legislated it for 18 years.

What I find so disturbing, the military has led this country on major reforms. I come from a military family. My father served in World War II. My brother served in the Army in Vietnam. My brother-in-law is a graduate of your great institution, the Naval Academy. Some of the finest young people in my District ask for appointments to your establishments. They turn down some of the finest universities in the country to go to the Naval Academy, West Point, the Air Force Academy. Why you can't get a culture that respects the rights of every individual, that if you are raped your case is going to be listened to, is just beyond me.

I want to go back to the point that my colleague raised on having the civilians take more of a roll. As it was explained to me by many military leaders, our goal is to win a war. Our goal is a line of command. It is very important. But if you are not in a war zone, why use your resources on this? Why not let the local police department come in and handle allegations of sexual assault and let that happen, as opposed to really what has turned into a scandal, an absolute recurring scandal?

The stories, many people are disturbed by the story of Ms. Davis today. I have heard stories for 10 years that have come into my office that are exactly the same photocopy of what she's saying today, and yet the change doesn't happen. Civil rights in this country first took place in the military. We led the country in civil rights reform. I keep waiting for the military to lead the country in equality of rights for men and women and basic respect, and I am incredibly disappointed.

The one thing I totally agree with Secretary Rumsfeld—and I don't usually agree with Secretary Rumsfeld—but he said that sexual assault in the military would not be tolerated. Well, it is hard for me to believe that he really believes that if you can't even get the Secretarial data base system that would track the depth and challenge of the problem in place. I don't doubt for a second if the Department of Defense wanted this to happen it would happen tomorrow, because they can make things happen and I have seen them make things happen, and I am extremely disturbed by the lack of seriousness on this.

I just want to ask you, basically, why do you feel we haven't been able to get a data base system running? Why do you feel that we have testimony like we heard today from an outstanding young woman who probably could have gone to any university in the United States and chose the Air Force Academy? You report a crime and you are ostracized? There is something wrong with the culture in a community for that to happen in the finest institutions in America.

I would like, starting with you, Brigadier General, you are part of the system. You were the first woman in a pretty wonderful legacy that your life represents, to be the first class in the Air Force Academy, to now head the Air Force Academy. Why is this? I am sure you have read the reports on the Air Force Academy. I assume that they have never been refused, so I assume that they are accurate. How has this happened?

General DESJARDINS. Ma'am, back in 2003 it was difficult to watch, but I think that, having been put in this position now and having those events of 2003, I would like to refer to Ms. Beth Davis as not a victim but as a change agent. I think that we all agree and we are all working very, very hard to correct those problems, those issues, to learn from them and really be relentless in pursuing, eliminating sexual assault, providing care for our victims of sexual assault, and allowing them to report where they are not ostracized, where our victims are not harassed, where our victims are free to report without getting disciplined for other collateral kinds of issues until the sexual assault investigation is complete, and continue to educate and train and turn this tide.

We are all, all of the academies, all of the services, this came to light in 2003, and we are all incredibly aware now and working toward progress.

Mrs. MALONEY. One last question. Do you think we should pass a legislation similar to whistleblower protection for victims of sexual assault, that they will not be victimized further and punished for having reported? We have to do that to protect whistleblowers in the Federal Government and in the private sector. Do we need to have a law to protect women and men who report sexual assault, that they will not be punished for having spoken up for their rights?

General DESJARDINS. Ma'am, it certainly bears consideration.

Mrs. MALONEY. Would anyone like to comment further?

[No response.]

Mrs. MALONEY. Thank you very much.

Mr. SHAYS [presiding]. Thank you all for your patience. We are almost done. I will have a question after the professional staff.

Ms. FIORENTINO. Thank you, Mr. Chairman. My question for Vice Admiral Rodney Rempt, you had mentioned there were 60 accusations at the Naval Academy and only 9 substantiated as sexual assault charges. The question is, you said six were referred to a court martial but three were referred for an administrative hearing. Why was a substantiated sexual assault charge put into an administrative hearing instead of a court martial, and how are those administrative hearings handled in regards to sexual assault claims and accusations?

Admiral REMPT. Sure. Each case is, obviously, unique and viewed for its facts and the severity and the situation with the victim and what is the best thing to do in every case. As I mentioned, in nine of the cases—and this is over a period of time. I don't have personal knowledge on several of them which occurred before I was assigned as superintendent, but over that period of time decisions were made in each case as to how to proceed. Obviously, our goal is to hold perpetrators accountable. We have to follow the legal procedures correctly. It is very important that each case be given the light of day with respect to the legal process, and we are very careful to do that. Those decisions are made very deliberately.

Ms. FIORENTINO. It is still a little unclear about the use of an administrative hearing when it has been substantiated as sexual assault, charges are legitimate somewhat.

Admiral REMPT. It may depend on the gravity. The definition of sexual assault includes unwanted kissing, unwanted touching. It

depends on the circumstances that are involved. I think that is what you would find if we looked through the record.

Mr. SHAYS. What I would like to do is I would like to ask each of you how Ms. Davis' case would be handled today, and I am going to read some of her testimony.

She said, "As has now become known, I was raped and assaulted repeatedly my freshman year by a superior cadet in my squadron. In a situation where I was blackmailed, degraded, and threatened daily, I found myself utterly distraught. In earlier sexual assault briefings during my basic cadet training, upperclass women cadets informed us that it was very likely that we would be raped or sexually assaulted during our time at the Academy, and they instructed us that, if we were attacked, to not report it to the authorities because it would effectively destroy our careers."

Well, she was right about that, wasn't she?

"Images of those women flashed through my mind and deterred me from immediately reporting these crimes to my commanding officer. I remembered my pride in getting accepted to the Academy and I dreamt of the day I would graduate and fly in my jet in defense of my country. I thought that was all I needed to survive the grueling physical, military, and academic tests and challenges I endured every day. But these dreams couldn't carry me through the pain I was suffering at the hands of my superior. I began to get sick frequently and developed inhibitions and phobias that made the work demand at the Academy unbearable. Finally, after realizing that nothing could possibly hurt more than the pain I was enduring, then I broke down—" that is an interesting phrase to say I broke down—"I broke down and went to the Office of Special Investigations, OSI, with my story."

I will stop in a second.

"The OSI commander sat engrossed as I sopped tears from my eyes reciting every wretched detail from the first time months after the last incident."

This person comes in to you, said, "I was raped repeatedly," said, "I was blackmailed, I was degraded, and threatened daily." She is obviously very distraught. And she, in fact, informs you that her fellow female cadets told her not to bring a complaint forward because it would probably mean—which is exactly what happened to her—that she would be out.

Now, I want each of you to tell me how now, in your academies, what she had to deal with wouldn't have been dealt with the way it was.

I think I will start with you, Admiral.

Admiral REMPT. Yes, sir, I would be happy to relate. Our hope would be that she would come forward, talk to a roommate, talk to a savvy guide, one of our peer counselors, and inform people, or to our SARC or other individual, and be counseled and encouraged to report and assigned an advocate as we proceed through the process that will stick with her through the whole way.

Mr. SHAYS. This is what I am going to say, and this is no disrespect to you, Admiral, but as you say this I want you to visualize our committee, whether it is Republican or Democrat, whether I chair it or whether Mrs. Maloney does, having contact with cadets now in the system.

Admiral REMPT. Right.

Mr. SHAYS. This is all going to be a matter of public record. Maybe a year or two from now or three there is going to be someone who looks exactly what you said, and there is going to be a cadet who comes in and said how it actually happened. We hope and pray it will be like what it is, but I want you to think of that as you are saying this, OK?

Admiral REMPT. I am actually relating to you the most recent cases and how they proceed in the Academy.

Mr. SHAYS. Fair enough. Good.

Admiral REMPT. We would then initiate an impartial investigation conducted by NCIS, which does not report to me, it reports to the NCIS director, so I have no control over the investigation as it proceeds.

Once we get the facts we make decisions as to how we proceed, consulting with the victim, continuing to provide counseling and support for the victim.

It is a pretty set forward process, and it is focused on support to the victim as No. 1 priority, with the second being seeing if we can get at the facts and develop the case.

I would like to make one other comment, sir, concerning Ms. Davis. I agree that because of her and others we are all taking it seriously. We are working this hard. We are making good progress. Because of her, the situation she described 4 years ago is considerably different than what we see at the academies today. We have a completely different circumstance.

For instance, we have more data. I have more data about all this than I need. I don't need more data. What I need is the ability to educate and train and encourage and support our young men and women as to how they should treat each other and ensure that culture is established there.

One of the questions that was raised of the earlier panel is: would you recommend coming to the Academy to a friend? Well, our most recent data of our survey——

Mr. SHAYS. I don't want you to go down there right now.

Admiral REMPT. I want to mention one thing.

Mr. SHAYS. No, I let you mention it. I just want to know how the system works right now, because I really want to go down the line. You will have a chance to make your point. All I asked you, the question I asked you, Admiral, was how it would be handled. You will have a chance to make your other point before we adjourn.

How would this case be handled? I am sorry, Admiral. So this individual brings a complaint. I will just say that it is Ms. Davis, and she comes back and reports to you that the person who is charged, the complaint she brought against, found out about it obviously because he was involved and questioned and he told some of his fellow cadets and she started to receive some real anger on the part of some of the cadets. How would you deal with that?

Admiral REMPT. If there was any physical or risk of any intimidation or ostracism, we would remove the accused midshipman from Bancroft Hall.

Mr. SHAYS. Let me ask you this: if he had disclosed that she had done this, would that have been grounds for—if the man who was alleged to have raped her in this theoretical case—well, in this case

who raped her, told someone else that he was under investigation, would he have been breaking part of the code?

Admiral REMPT. Not at all.

Mr. SHAYS. Why not? He's allowed to tell his friends that a charge has been brought against him?

Admiral REMPT. He's free to say whatever he wishes.

Mr. SHAYS. Well, doesn't that potentially put her at risk?

Admiral REMPT. Not in the cases that we have seen.

Mr. SHAYS. Maybe you don't understand the question. I am not trying to play a game. She brings a complaint. She comes in to bring a complaint, a confidential complaint. In the process of your investigating, and you have told no one else but that young man, and that young man tells someone, then what privacy does she now have?

Admiral REMPT. I can't constrict what young men and women are going to say, sir. There is no way I can do that. What I can do is counsel them and provide them education and encourage them to do the right thing.

Now, certainly this is one of the issues that we see day in and day out in the press on these cases. The only information that gets into the press is from the defense, from the one who is protecting the accused. The reason is because they get access to the reports. They are able to redact and provide information to the press that covers their viewpoint in part. That is what we all see occurs in the newspaper, because we are held to a higher standard, which is providing privacy. We want to protect the accused's rights, we want to protect the individual who is a victim, we want to protect their confidentiality. Every time we see this occur and repeated in the press it undermines the willingness of young people to come forward and talk about very sensitive and private matters.

Mr. SHAYS. I am not quite sure of this one aspect, and the part I am not sure of is, if you bring a complaint forward confidentially and the accused then tells his friends that this female cadet is after him, and then she starts to feel the pressure——

Admiral REMPT. If it is a confidential report, we would not initiate an investigation until the individual, the victim, is willing to proceed and is willing to step away from what is now called a restricted report.

Mr. SHAYS. So, in other words, you don't even contact and investigate until that cadet has given you permission?

Admiral REMPT. In the case of a restricted report where a victim does not desire her name or his name revealed or any personal information, we have no basis to proceed on an investigation until that occurs. We provide counseling, we provide advice, we provide help for them to help them come to the decision to go to an unrestricted report so we can initiate an investigation.

Mr. SHAYS. OK. Thank you.

Admiral REMPT. OK.

Mr. SHAYS. General.

General CASLEN. Sir, I think it is a good question because it will measure the effectiveness and give us an assessment of our sexual assault prevention and response plan. Now that plan is put in place, we are hoping—and hope is not the real course of action, but we are hoping that it will have a significant impact on changing

our culture, because I think if you get to the root of the issues, it is the culture.

The first thing that we would like to see is how this incident was reported, because that would give us some indicators and some metrics for whether or not the culture is changing, because if the cadets take responsibility for it and the cadets police immediately their ranks in terms of the perpetrator and any other rumors, insinuations, and the fact that the cadet, itself, felt comfortable enough, confident in the chain of command to report it, those are cultural changing indicators. So I think the reporting thing is significant, and we will measure these in the future.

The first thing in how we handle this is victim care once it is reported, and that is the victim care, the victim's right, the advocate and other things, even what the vice admiral had mentioned.

The second piece is the investigation. That is the criminal investigation that will, exactly as the Admiral had said. The Army has a criminal investigation detachment that works at CID, and then they will refer to the superintendent, who has the convening authority for an article 32 investigation as necessary.

Let me point out that is a criminal investigation. I agree, I think that is the proper way to proceed for this.

Third is the institution's response. Besides the institution's response for the protection of the victim, the institution has some recurring plans and programs that are in place. We have a monthly sexual assessment review board that takes all the people in the entire institution—the doctors and the counselors and the chaplains—and they are involved in sexual assault cases so that we look at it from the victims' standpoint and the proper care, and then we look at it from the perpetrator's standpoint and the progression of the investigation.

We also have the cadet health promotion and wellness clinic that works with the cadets. We meet on a monthly basis and get the reports back, as well. That is how that would be handled today, and all of that is in accordance with the Military Academy Sexual Assault Prevention and Response Plan.

Mr. SHAYS. Thank you.

General DESJARDINS. Sir, the process is the same at the Air Force Academy. The one thing or two things that I would add is the first thing when a person who thinks that they have been sexually assaulted reports to the SARC or the sexual assault response coordinator, the first thing we do is believe her or him, because if they believe that they have been sexually assaulted, perception is reality. That is the first thing.

Then, as was indicated by Admiral Rempt and General Caslen, we run through the restricted report and allow the victim to get the care that he or she needs to get to a place where they can go unrestricted and we can do a full, very thorough investigation and get the perpetrator.

Mr. SHAYS. Let me ask you of the ethics. If you believe that a rape has occurred, if you believe that blackmail has occurred, if you believe someone has been degraded and threatened daily, if you believe that and the victim, eventual survivor, isn't willing to have it go public, what do you do?

General DESJARDINS. Well, that remains restricted then, and in the restricted reporting realm, and so the best we can do is provide her or him all the medical, physical, and counseling care to make them well again that we can, within that very restricted guidelines. But that has to be first. That victim care has to be first.

Mr. SHAYS. What about the perpetrator?

General DESJARDINS. Sir, if the individual who was assaulted is unwilling to open up an investigation because she wants to maintain power, maintain control, then we have to respect that.

Mr. SHAYS. Wait. I don't understand.

General DESJARDINS. If she or he wants to keep it in the restricted realm, so wants to be——

Mr. SHAYS. We are talking about the victim, whether it is a he or she, right?

General DESJARDINS. Yes, sir.

Mr. SHAYS. Yes.

General DESJARDINS. So if they want to keep it in those confidential lines, then we really can't do anything to get to the perpetrator. If she wants to maintain her——

Mr. SHAYS. I will come back to this.

General DESJARDINS. Yes, sir.

Mr. SHAYS. Thank you. I realize you have given me a straightforward answer.

You had a question? Why don't you jump in?

Mrs. MALONEY. With a restricted report, as I understand this is a new development coming out of the DOD Task Force that you have a restricted and non-restricted report. Is the restricted report part of the DIBRS data base?

General CASLEN. No, ma'am.

Mrs. MALONEY. It is not? OK. Thank you.

Mr. SHAYS. I am going to come back to this question though before we close up, but Admiral Higgins?

Admiral HIGGINS. I will answer the question in what happened in a recent court martial case, Mr. Chairman. That victim came forward with an unrestricted report. We simultaneously started mental and physical health care for the victim and started an aggressive, professional investigation by our CGIS agents. In addition, in this particular case the perpetrator was quickly reassigned, disenrolled from its classes, restricted to a certain part of the Coast Guard Academy, and removed from the dormitory, so, to avoid contact with the victims as well as with other cadets, this member was taken out of class, restricted to a part of the Academy, and taken out of the dormitory. In that particular case, because of the issues involved in that case, we did temporarily disenroll that member from the classes.

We held an article 32 hearing when we got the evidence back from the professional investigation. We had enough evidence to go forward with the victim's testimony to a court martial. That is how the recent case was handled, sir.

Mr. SHAYS. You all are aware of the exceptions to confidentiality? What would they be? We will start with you, Admiral Rempt.

Admiral REMPT. Certainly. There are a number of people who have full confidentiality, which means that their discussions are privileged. Those are normally the clergy, our chaplains, and our

counselors in our Midshipmen Development Center. They are the ones that have full confidentiality and are only ethically required to report if they are aware of something that could be a future danger to someone.

Mr. SHAYS. Are you aware of any other exceptions? Anybody? There are others? What are some others?

Admiral HIGGINS. Sir, our medical providers at the Coast Guard Academy have limited confidentiality and, to some extent, the PEER programs, the cadets against sexual assault, have some limited confidentiality.

Admiral REMPT. That would be the same thing at the Naval Academy. We have designated individuals who have limited confidentiality who can receive a report but must, in fact, report the fact that something has occurred without identifying information.

Mr. SHAYS. I am really not trying to test you, though it sounds like it. I am just trying to have a dialog. If someone is raped and is alleged to have raped others and has been involved in blackmail and threatening activity on a daily basis, and the individual is not willing to step forward, I make an assumption that some of the exemptions would apply. The command officer law enforcement disclosure is necessary to prevent or lessen a serious and imminent threat to the health or safety of the victim or another person. I mean, isn't it very possible that if he raped one person he will rape someone else? And so, I mean, you have to tell a potential victim that they have confidentiality, but——

Admiral REMPT. Sir, you are asking us to make a big leap in assumption here, and that is why we are struggling.

Mr. SHAYS. OK.

Admiral REMPT. The leap that you are asking us to make is you are saying a rape has occurred and someone had been blackmailed and these events have occurred. We typically have no facts or data to support that when we first hear about a case. We will hear about a case that something has occurred. In order to get to the point where we know that a violent crime has occurred, we have to do some level of investigation. Otherwise, we have no information. That is what we struggle with, is whether the facts that we are basing it on that will enable us to go to an article 32 will enable us to go to further disciplinary action. Until we develop that information and that data, it is very hard.

Now, if we believe someone is at imminent risk, we will take immediate action to separate people, to isolate them, or to do what is necessary to preserve their safety.

Mr. SHAYS. And I want to say obviously we have had very powerful testimony on the part of the young lady. I realize that not every accusation is true, and I understand that. I understand that a rape may, in fact, not have occurred. I understand that.

What I am just wrestling with is we have a process, it seems to me, kind of unfolding because, frankly, if someone came to me and I was aware that this person is violent and I believe the individual that this is not the first person, she's not the first person, I am struck with the fact that I will want to know—you are told who that person is, so you are aware of him.

I can't believe that somehow there is not some oversight of that individual just to make sure that individual doesn't do something

harmful. So it seems to me that we are putting you in a bit of a quandary, and you have to use some judgment here. That is what it seems.

Mrs. MALONEY. The FBI rates rape as the worst crime, preceded only by murder, in the psychological damage and lasting impact on an individual. In the private sector now most rapists are sick people. They strike seven to eight times. We passed legislation—it happened to have been my legislation—that created a data base in the FBI of DNA so that rapists could be tracked and put behind bars.

What I think is troubling to some people is this particular man that was eventually, after he abused several people. The problem is if someone makes an allegation is there a way to track that this person, even though you don't convict this person, the allegation is there so that if the allegation comes again and again and again and again then the degree of probability is that this is a sick person. I mean, that is what we do in the private sector now. We keep that information, and if there is another attack we have the DNA to build a case that this is the third reported rape, the DNA is there, and the case is stronger.

I'd just give that as an example of what we are doing in the private sector. Again, this is a serious, serious crime. I have talked to women who have been raped and they have never recovered. They have not been able to function. They have not been able to hold jobs. It is a very, very serious crime. So, to the extent we can prevent another man or women from being violated and destroyed, I think it is our civic and moral responsibility to do so.

So if you want to keep your military chain of command, then maybe you should try to think of a way to sort of mirror what we have done in the private sector so that you don't get to the fifth victim before you feel like you have enough evidence to remove them from the military and convict them.

Admiral REMPT. I certainly didn't mean to give you any impression that we are waiting around for evidence. We are going to move on exactly what we know and what we are about. We are going to move immediately in a case. Very few of our cases are——

Mrs. MALONEY. Admiral——

Admiral REMPT [continuing]. Of the type that are being described by the admiral from the Coast Guard or in other cases. Most of them are much more difficult to discern what has occurred.

Mrs. MALONEY. But the first step in building a case is maintaining an accurate data base. What I have learned today is the Navy is not part of this data base. The Army and Air Force are. Now, in the elements that are in the data base, the elements are put in on the victim. Nothing is put in on the alleged rapist until he is convicted. That is the difference with the civilian. The information is put in on the allegation. So absolutely nothing, based on the testimony today, is put into that system.

Admiral REMPT. I am happy to report that, in fact, DNA is collected on every single person that comes to any one of the academies, so we should have a good data base for future cases.

Mrs. MALONEY. But not in the DIBRS system that keeps the information on rape. It is not in there. And then, as was testified by all of you, you have now this dual system where you can decide

whether your case goes forward or not. And even though you may believe it and a person does not want to go forward, that particular rape is not put into the system. That I see is problematic in maintaining accurate information of what is happening. Do you follow what I am saying? And your response to that? Do you believe that element should be in the system?

General DESJARDINS. Ma'am, we track restricted and unrestricted cases by case number, but, again, because it is a restricted case, the whole idea—it is so important. I am sure you all know the most important thing about victim care in a restricted report is so that they, the victims, will not be revictimized before they are ready to open up a full investigation. That is why the restricted reporting and getting the individual to a place where she is ready to open up—we don't want to go down the road of revictimizing someone who has undergone such a traumatic event, and so that is why the restricted reporting is so important.

But we do keep track and, in fact, restricted reporting and unrestricted reporting, this process has been in place for almost a year, since June 2005, for all the academies and for the Department of Defense.

Mr. SHAYS. I want to clarify one point with you, Admiral Higgins. Given that you are under the Department of Homeland Security, how many of the 25 task forces, commissions, panels, and reports looked into the U.S. Coast Guard and U.S. Coast Guard Academy?

Admiral HIGGINS. I know we participated in several. Sir, I would have to get——

Mr. SHAYS. Would you provide that?

Some but not all?

Admiral HIGGINS. That is correct.

Mr. SHAYS. OK. I feel in this last bit of time I have been functioning almost with a filibuster, but I think I have figured out why, what I am wrestling with. It strikes me that one of the things that the military is never willing to do is admit a mistake. They will do it in an offhanded way by saying, "You know, Cadet Davis, you are the reason why all these good things are happening," but it doesn't happen directly. That is why I made reference to has anyone ever given her a document that thanks her.

And then I began to think, if you all agree that the system sucked before and it is getting better now, and you all agree that it was really bad in the past, that tells me there are a lot of other people like Ms. Davis that got really hurt badly. It would strike me that one of the ways that you would help make cadets now have comfort in the system, that you would go back in the past, try to identify some of those individuals, exonerate them in a way that is meaningful, maybe even invite them to the Academy in a way that salutes them and honors them, but in a way that is so meaningful that female cadets now will say, "You know, the military is taking this seriously."

I think until you are willing to not just acknowledge that mistakes were made in the past, but try to right some of those mistake, I don't really think you are going to be believed. I just don't think you will be. That is kind of what I am getting out of this. I believe that you all want to be believed, but I just think it is

against your culture to want to say, "We screwed up. There are people who were hurt. We are going to find out who they were and we are going to try to make amends." That would be a huge thing.

I am not holding my breath, but I tell you if you wanted to move this process along faster that is my judgment of how it could happen.

Ms. Whitley, I didn't allow you to make a point you wanted to make earlier because I wanted to make sure you heard my point about the task force, but I am happy to have any of you—I know, Admiral, I interrupted you at a point where you wanted to describe something. I don't want you to leave here without you feeling that you made the point that you need to make, and lord knows Carol Maloney and I have been able to make the points we wanted to make.

Dr. Whitley, what would you like to say?

Dr. WHITLEY. Well, I would like to thank you again for this opportunity and basically three points to kind of bring some things together.

First, I would like to point out that the Department of Defense office responsibility for this policy stood up just in October 2005. That is how new this is.

Mr. SHAYS. That is helpful to know. Thank you.

Dr. WHITLEY. We also are outraged, just as you are, and my leadership is determined to do something about this. We recognize it is a crime and we know we have a lot of work to do, and a lot of that work will be in the area of prevention.

The second point I wanted to make is I am not sure everyone understands the benefits of restricted reporting. Victims come forward that would not otherwise come forward, and for commanders in the field they might not know who is sexually assaulted but they would know that it is a problem in their unit or on their base and they can take action. For example, they may put extra help in the barracks, they may install lighting. So we have more information than we had before. And we all know that victims feel a loss of control and power, and this restricted reporting option gives that back to them.

Of course, we would like for them to come forward so that we can go after the alleged offender, but sometimes just having that power given back they can go away and gather the courage and gather confidence in our system to come forward later. But also, even with the restricted report, we can do a full forensic exam and keep the data on file in case they come forward later. At least we get some information.

And, finally, sir, I pledge to you that the Department will do everything we can. We do recognize it is a problem. I think we have an extremely unique opportunity. It is a problem in society, but society doesn't have some of the tools that we have. We can get to every person in the Department of Defense, every cadet in every academy, and we can train them and educate them, and that is something that I don't think society can do.

I am looking forward to the challenge ahead, and I pledge to you the Department will do our best to make this not a problem.

Mr. SHAYS. Thank you. That was a very helpful statement. I am very grateful you put it on the record. Thank you.

Dr. WHITLEY. Thank you.

Mr. SHAYS. Admiral.

Admiral REMPT. Sir, just to sum up, preventing and deterring sexual harassment, misconduct, and assault are very complex issues. There are no simple answers here. We take these issues extremely seriously. We encourage reporting. We investigate allegations. We do that objectively and fairly. We endeavor to protect the confidentiality of the victims and the rights of the accused and the privacy of both.

As I was mentioning before, we try to use all the data in our surveys and focus groups to learn what is actually occurring and applying our best leadership ability and programs to where we can make a difference.

As I mentioned, on the panel raised earlier the question of would you recommend going to the Academy to a friend. Well, in our last survey, 91 percent of our men said yes, but 95 percent of our women said yes. That is a pretty good indicator to me that the conditions are, in fact, improved over where they were a few years ago.

Since women were first admitted to the Academy in 1976, we have come a long way, but we have to continue to improve. This has our full focus and attention, and we are going to continue making solid progress.

Mr. SHAYS. Thank you very much.

General CASLEN. Sir, thank you very much for the opportunity to sit on your subcommittee. I certainly learned a lot and there is a lot I am going to take back and we will implement those that we need to. I think, in particular, your comment here at the end was very interesting. We are studying that and I will take that back, for sure, about going back in the past. I think it is very helpful.

In that regard, what we did here recently in April at the U.S. Military Academy is that we had a Women's Conference to celebrate 30 years of women at West Point. We had 410 ladies that came back and participated. We had a number of sexual harassment/sexual assault panels that addressed some of these issues. But I think it is worth, like you said, going back and digging in and finding the ones we need to and restore some dignity and honor that we need to.

Again, thank you for the invitation, sir.

Mr. SHAYS. General Caslen, thank you.

General Desjardins.

General DESJARDINS. Yes, sir. I have one correction to an earlier question that you had asked. I answered it part right, part wrong. It was I think Congressman Marchant asked how many court martials we had since 2000 that dealt with sexual assault, and we have had three. I said zero. We had zero convictions of rape. We had one conviction of a lesser charge.

Again, I also want to thank the committee for asking us to come here today. We will continue our journey to change the culture at the Air Force Academy and embed the culture that is one of respect for human dignity, respect for each other. We will continue to get role models, women, in their contributions to the military, in their contributions to our Nation, and continue in our journey.

Again, I thank you.

Mr. SHAYS. General Desjardins, thank you very much.

General DESJARDINS. Yes, sir.

Mr. SHAYS. I appreciate your statement, as well.

Admiral Higgins.

Admiral HIGGINS. Mr. Chairman and Mrs. Maloney, I also thank you for the opportunity to come here. I have also learned a lot, and I pledge to take this and the Coast Guard will take this as seriously as you two take it. We do have lessons to learn. We try in the Coast Guard to learn lessons on the run, and we will learn these lessons, as well. Thank you, sir.

Mr. SHAYS. I thank you all very much.

Mrs. Maloney, any last comment?

Mrs. MALONEY. Thank you very much.

Mr. SHAYS. OK. I just want to thank you, Mrs. Maloney, for working on these issues for years and being so informative in making sure that this hearing was as helpful as I think it was because of your presence.

Thank you all very much.

To our recorders, thank you for sitting in. I am sorry we have kept you here so late.

This hearing is adjourned.

[Whereupon, at 8 p.m., the subcommittee was adjourned.]

[The prepared statement of Hon. C.A. Dutch Ruppersberger and additional information submitted for the hearing record follow:]

Congressman C.A. Dutch Ruppersberger
Committee on Government Reform

"Sexual assault and Violence Against Women in the Military and at the Academies"

June 27, 2006

STATEMENT:

Thank you Mr. Chairman for holding this hearing entitled " Sexual Assault and Violence Against Women in the Military and at the Academies."

You know Mr. Chairman, it really bothers me when I read and hear stories of sexual harassment and violence against women remaining a persistent and troublesome problem in our military and military service academies.

Serving on the Intelligence Committee, I know what these men and especially women have to deal with on a day-to-day basis serving in combat. The last thing that any cadet, enlisted, or officer who is serving or has served their country needs to deal with is being abused or mistreated.

Since the early 1990s, studies, scandals and news accounts have shown that women in uniform are plagued by sexual abuse.

We know that there have been disclosures that have led to a succession of investigations about sexual harassment. I want to know why only minor policy changes have occurred?

See I think that the first step to address this issue is being accountable for your actions. Most people who know me know that I am big on accountability and find that without attacking the issue at that level then there will be no resolution.

I am not interested in numbers between the Air Force over the Navy and the Army over the Marine Corps instead I want to know how can this go on time and time again.

How can we expect the female soldiers to up hold and protect the ideals and principles of this society when in return the people who they take command from can not do the same? Please help me to understand that concept.

With the War on Terrorism, it is increasingly urgent to recognize the effects of war on women. There can be no true peace while the pandemic of violence against women continues, a pandemic that is greatly exacerbated by militarism. Making the connection between militarism and violence against women is critical to ending the siege of violence under which all women live and serve.

I look forward to hearing the testimony presented today and I look forward to asking questions of the witnesses.

TOM DAVIS, VIRGINIA,
CHAIRMAN

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INDEPENDENT

SUBCOMMITTEE ON NATIONAL SECURITY, EMERGING THREATS,
AND INTERNATIONAL RELATIONS
Christopher Shays, Connecticut
Chairman
Room B-372 Rayburn Building
Washington, D.C. 20515
Tel 202 225-2548
Fax 202 225-2382

Hon. Robert Willkie
Secretary of Legislative Affairs
Office of Congressional Affairs
Department of Defense

Dear Mr. Willkie:

During a June 27, 2006 hearing on Sexual Assault at the Military Academies, Members asked questions or requested information for your response following the hearing for incorporation into the record.

A list of those matters for your response is attached.

Please furnish your response to the Subcommittee no later than August 2. Please address your response to:

[redacted]
Committee on Government Reform
Subcommittee on National Security,
Emerging Threats, and International Relations
[redacted]
Washington, DC 20515

Thank you,

Robert Briggs
Analyst

Hearing Date: June 27, 2006
Committee: House Government Reform Committee
Member: Rep Maloney
Witness: Dr. Kaye Whitley
Question # 62

Defense Incident Based Reporting System (DIBRS)

Question: Please provide information as to exactly what the Defense Incident Based Reporting System (DIBRS) consists of (what information is stored in the system, etc.)

Answer: The Defense Incident-Based Reporting System (DIBRS) contains 196 data elements which cover the life cycle of a criminal incident, including:

- Administrative Data
- Offense Data
- Property Data
- Victim Data
- Offender/Arrestee Data
- Commander's Report of Action Taken Data
- Results of Trial Data
- Corrections Data

The data elements in DIBRS are standard for the Department, applying to all Military Services, and do not vary by installation. Data element detail is contained in the attached extract of Appendix 6 of the DIBRS Manual.

AP6. APPENDIX 6

DATA ELEMENT DICTIONARY

AP6.1. INCIDENT REPORT - HEADER INFORMATION

Numbers correspond to the column, "FIELD NUM" in Figures C2.F1. to C2.F8. The following fields are assigned to all segments and are essential to the construction of the database:

1 FBI LOCATION NUMBER - 9 characters.

The FBI Location Number must be included in each Incident Report Segment. The FBI Location Number must be left justified. The first seven positions identify the locale of the incident. Enter the first 7 characters of the FBI Location Number of the city or county law enforcement agency that most specifically describes the incident's location. The use of the local law enforcement FBI Location Numbers to identify the locales of criminal incidents and arrests shall greatly facilitate merging Federal and State/local data into comprehensive nationwide statistics. The DoD Component shall then identify itself by entering a 2-character "Federal Identifier" or "FID" into the last two character positions. The codes currently assigned include:

DA	U.S. Air Force
DB	Marine Corps Military Police
DC	Army Criminal Investigation Command
DG	Inspector Generals Office
DI	Naval Criminal Investigative Service
DK	Defense Criminal Investigative Service
DL	Defense Logistics Agency
DM	Army Military Police
DN	U.S. Navy
DO	Air Force Office of Special Investigations
DP	Defense Protective Service
DR	U.S. Army
DS	Air Force Security Police
DT	Navy Law Enforcement
DZ	Department of Defense
YC	U.S. Coast Guard
YE	Coast Guard Law Enforcement
YF	Coast Guard Criminal Investigations

Contact the DMDC DIBRS File Manager for assistance in adding new codes. The DMDC can also provide a soft copy listing of local codes to the Component-Responsible Official and Consolidating Activities. Overseas locations should be identified by the two-position Country Code (FIPS Std 10-4), followed by the five-position APO/FPO, followed by the two-position FID. The DMDC file manager should be notified if the DoD Components find it necessary to deviate from this convention.

2 INCIDENT NUMBER - 12 characters.

This is the number assigned by your agency to each Incident Report to identify it uniquely; e.g., the Originating Agency Case (OAC) Number. The number is 12 characters in length. The Incident Number must be included in each "segment" of the Incident Report. The number is composed of 2 digits for year, one digit for Uniform Service Code (Army used "W" for UIC designation), five digits for unit, and four digits for a sequential number assigned by the originating agency (e.g., 95W4H7AA1234). This pattern is recommended but not required as long as the Incident Number submitted by the agency allows unique identification. The incident number must be present and left-justified; it cannot have embedded blanks between the first and last character; and it must be a unique number, no two incidents can have the same incident number.

3 SEGMENT TYPE - 1 character.

This number is assigned to the segment to facilitate data base construction. It identifies the segment (e.g., offender, victim, property) being submitted.

Administrative Segment	M			
Offense Segment	F			
Property Segment	P			
Victim Segment	V			
Offender/Arrestee		Category:	AC	Suspect/Offender
			AA	Arrestee
			AJ	Subject
Commanders Report Segment	D			
Results of Trial	T			
Corrections Segment	R			

4 REPORT TYPE - 1 character.

This code is assigned to the segment to facilitate database construction. A is used to identify the initial submission of any segment. M is used when a modification is being made to an existing segment. D is used when it is necessary to delete a segment.

AP6.2. ADMINISTRATIVE SEGMENT

5 REPORTABLE TO NIBRS - 1 character.

Allowable codes are:

Y=Yes
N=No

This code is assigned to the incident as a quality control check for data that need to be reported to the FBI. Non-Criminal Fatalities such as suicide are not reportable to the NIBRS; however, these high interest incidents are tracked at the DoD level and should be reported. "No" should be entered in Reportable to the NIBRS for this category of incidents. Incidents referred to local, State, or Federal Agencies not responsible for reporting under (reference (a)) should also be flagged "No." These agencies are responsible under the NIBRS guidance to report the incident. Incidents referred to foreign authorities are not NIBRS reportable incidents, but are of interest to the Department of Defense. An incident that is reportable to the NIBRS, as determined by the reporting agency, must comply with the requirements specified in Volumes 1 to 4 of reference (g). Figure AP6.F1., below, indicates DIBRS fields that are always required or may be conditionally required depending on the circumstances of the incident. For example, Field 5 (Reportable to NIBRS) is always required, while Field 28 (Type Weapon/Force Used) is required when certain offenses, e.g., aggravated assault, are reported. Additionally, Figure AP6.F1. details the conditions and the recode values that are possible. Note that DIBRS does not collect or report NIBRS Field 30, Resident Status. All DIBRS incident data shall be stored in DIBRS database with the agency's originally provided data content. However, NIBRS bound records may have data elements recoded. Fields that are not provided to DIBRS shall be recoded where necessary to comply with the NIBRS requirements ONLY on the OUTPUT process if field 5 is "Y" and only in accordance with Figure AP6.F1. The data recode shall not be stored in DIBRS.

Figure AP6.F1. DIBRS Field Recode Conditions and Possible Recode Values

DIBRS FIELD #	REQUIRED OR CONDITIONAL	CONDITION	ACCEPT/RECODE FOR NIBRS
1	REQUIRED		
2	REQUIRED		
3	REQUIRED		
4	REQUIRED		
5	REQUIRED		
6	REQUIRED		IF "I" RECODE TO BLANK, ELSE RECODE "R"
7	REQUIRED		
8	REQUIRED		
11	REQUIRED		IF (BLANK, U, X) RECODE TO "N"=NOT APPLICABLE
12	CONDITIONAL	IF INCIDENT CLEARANCE REASON CODED A-E	
15	REQUIRED		
16	REQUIRED		RECODE UCMJ TO NIBRS OFFENSE CODE
17	REQUIRED		
19-21	REQUIRED		IF DIBRS 19&20&21 ARE "NO" RECODE TO "N"=NOT APPLICABLE
22	REQUIRED		ACCEPT: (01 - 28) IF BLANK RECODE TO "25"=OTHER/UNKNOWN; IF 26-28 RECODE TO "25"
25	CONDITIONAL	BURGLARY/B&E AND THE "HOTEL RULE" IS APPLICABLE	
26	CONDITIONAL	BURGLARY/B&E	
27	CONDITIONAL	SELECTED OFFENSES	
28	CONDITIONAL	SELECTED OFFENSES	ACCEPT: (11-15,20,30,35,40,50,60,65,70, 85,90,95,99) "15"=OTHER FIREARMS "90"=OTHER "95"=UNKNOWN; IF BLANK RECODE TO "95"=UNKNOWN
29	CONDITIONAL	SELECTED TYPE WEAPON CODES AND SELECTED OFFENSES	ACCEPT: (A,M,S) IF "S" OR "M" RECODE TO BLANK
30	REQUIRED		RECODE TO NIBRS NUMBERIC CODE IF BLANK RECODE TO "88"=NONE
31	CONDITIONAL	SELECTED OFFENSES	ACCEPT: (1 - 8) "8"=UNKNOWN
32	CONDITIONAL	SELECTED OFFENSES	
33	CONDITIONAL	SELECTED OFFENSES AND PROPERTY LOSS BY = 5	
35	CONDITIONAL	STOLEN/RECOVERED VEHICLES AND SELECTED OFFENSE	
36	CONDITIONAL	SELECTED OFFENSES	
39	CONDITIONAL	SELECTED OFFENSES	ACCEPT: (A-Q,U) IF GREATER THAN 3 DRUGS RECODE TO "X" IF "Q" RECODE TO "P"

DIBRS FIELD #	REQUIRED OR CONDITIONAL	CONDITION	ACCEPT/RECODE FOR NIBRS
40	CONDITIONAL	SELECTED OFFENSES	
41	CONDITIONAL	SELECTED OFFENSES	ACCEPT: (GM,KG,OZ,LB,ML,LT,FO,GL,DU,NP,XX) XX=NOT REPORTED
42	REQUIRED		
43,15	REQUIRED		
43,16	REQUIRED		RECODE UCMJ TO NIBRS OFFENSE CODE
44	REQUIRED		ACCEPT: (I,B,F,G,R,S,O,U) O=OTHER U=UNKNOWN IF BLANK RECODE TO "U"
50	CONDITIONAL	IF VICTIM TYPE IS INDIVIDUAL	IF BLANK THEN RECODE "00"=UNKNOWN
51	CONDITIONAL	IF VICTIM TYPE IS INDIVIDUAL	ACCEPT: (F,M,U) U=UNKNOWN IF BLANK RECODE TO "U"
56	CONDITIONAL	IF VICTIM TYPE IS INDIVIDUAL	RECODE TO NIBRS CODE ACCEPT: U=UNKNOWN IF BLANK RECODE TO "U"
57	CONDITIONAL	IF VICTIM TYPE IS INDIVIDUAL	ACCEPT: (H,N,U) U=UNKNOWN NOT COLLECTED OR REPORTED TO NIBRS
58	CONDITIONAL	SELECTED OFFENSES	ACCEPT: (01-10,20-21,30-34) 09=OTHER CIRCUMSTANCES 10=UNKNOWN CIRCUMSTANCES
59	CONDITIONAL	SELECTED OFFENSES	
60	CONDITIONAL	IF VICTIM TYPE IS INDIVIDUAL AND SELECTED OFFENSES	ACCEPT: (B,I,L,M,N,O,T,U) N=NONE; IF BLANK RECODE TO "N"
61	CONDITIONAL	SELECTED OFFENSES	
62	CONDITIONAL	SELECTED OFFENSES	RECODE TO NIBRS CODE RECODE TO BLANK WHEN OFFENDER ID="00"; RECODE BLANK TO "RU" WHEN OFFENDER ID=01-99
64	REQUIRED		
76	CONDITIONAL	WHEN OFFENDER ID CODED 01-99	IF BLANK RECODE TO "00"=UNKNOWN
51	CONDITIONAL	WHEN OFFENDER ID CODED 01-99	ACCEPT: U=UNKNOWN IF CODED "I" RECODE "U"; IF BLANK RECODE TO "U"
56	CONDITIONAL	WHEN OFFENDER ID CODED 01-99	RECODE TO NIBRS CODE ACCEPT: U=UNKNOWN IF BLANK RECODE TO "U"
64	REQUIRED		
87	CONDITIONAL	WHEN CATEGORY = AA	
88	CONDITIONAL	WHEN CATEGORY = AA	

DIBRS FIELD #	REQUIRED OR CONDITIONAL	CONDITION	ACCEPT/RECODE FOR NIBRS
89	CONDITIONAL	WHEN CATEGORY = AA	
91	CONDITIONAL	WHEN CATEGORY = AA	ACCEPT: (C,M,N) N=NOT APPLICABLE IF BLANK RECODE "N"
92,15	CONDITIONAL	WHEN CATEGORY = AA	
92,16	CONDITIONAL	WHEN CATEGORY = AA	
85		WHEN CATEGORY = AA	ACCEPT: (01,11-17) 15=OTHER FIREARM
86	CONDITIONAL	WHEN CATEGORY = AAAND SELECTED CODES OF ARMED WITH	ACCEPT: (A,M,S) IF "S" OR "M" RECODE TO BLANK
76	CONDITIONAL	WHEN OFFENDER ID CODED 01-99	IF BLANK RECODE TO "00"=UNKNOWN
51	CONDITIONAL	WHEN OFFENDER ID CODED 01-99	ACCEPT: U=UNKNOWN
56	CONDITIONAL	WHEN OFFENDER ID CODED 01-99	RECODE TO NIBRS CODE ACCEPT: U=UNKNOWN IF BLANK RECODE TO "U"
57	CONDITIONAL	WHEN OFFENDER ID CODED 01-99	ACCEPT: (H,N,U) U=UNKNOWN
94	CONDITIONAL	PERSON UNDER 18 YEARS	

6 INCIDENT/REPORT OCCURRED DATE CATEGORY - 1 character.

Allowable codes are:

I=Incident
R=Report

The incident date and time should be recorded IF AVAILABLE. Otherwise use the report date, and leave the time blank. This code is used to indicate which has been provided.

7 INCIDENT/REPORT OCCURRED BEGIN DATE (YYYYMMDD) - 8 characters.

This data element is used to enter the year, month, day when the incident occurred or started, or the beginning of the time period in which it occurred (as appropriate).

8 INCIDENT/REPORT OCCURRED BEGIN TIME (24 hour) - 4 numbers.

9 INCIDENT/REPORT OCCURRED END DATE (YYYYMMDD) - 8 characters.

This data element is used to enter the year, month, day when the incident ended or the end of the time period in which it occurred.

10 INCIDENT/REPORT OCCURRED END TIME (24 hour) - 4 numbers.

11 INCIDENT CLEARANCE REASON - 1 character.

Allowable codes are:

U=Unfounded
X=Arrest
A=Death of Offender
B=Prosecution Declined
C=Extradition Declined
D=Victim Refused to Cooperate
E=Juvenile, No Custody

This data element is used to indicate why the incident was cleared. If the incident is not cleared by "U" or "X" then the incident is considered to be exceptionally cleared. In a multiple-offense incident, the exceptional clearance of one offense, clears the entire incident. An incident cannot be cleared exceptionally if it was previously or at the same time cleared by an arrest; i.e., if an Arrestee Segment was or is being submitted. In order to clear an offense by exceptional means, the following four conditions must be met:

(1) the investigation must have clearly and definitely established the identity of at least one offender;

(2) sufficient probable cause must have been developed to support the arrest, charging, and prosecution of the offender;

(3) the exact location of the offender must be known so that an arrest could be made; and

(4) there must be a reason outside the control of law enforcement that prevents the arrest.

If blank, this data element shall be recoded to "Not Applicable." If Exceptional Clearance Date is coded, Incident Clearance Reason should contain the values A-E.

12 EXCEPTIONAL CLEARANCE DATE (YYYYMMDD) - 8 characters.

If an incident was cleared by exceptional means, the year, month, and day when the incident was cleared is to be entered. If Incident Clearance Reason contains the values A-E, this field is required. The clearance date cannot be earlier than the incident date.

13 NUMBER OF VICTIMS NOTIFIED - 3 characters.

Enter the number (000-999) of victims notified of their rights using DD Form 2701.

14 NUMBER OF WITNESSES NOTIFIED - 3 characters.

Enter the number (000-999) of witnesses notified of their rights using DD Form 2701.

AP6.3. OFFENSE SEGMENT

15 OFFENSE STATUTORY BASIS - 1 character.

Allowable codes are:

A=Uniform Code of Military Justice
B=Non-Criminal Fatality (High Interest)
C=State
D=Local
E=Foreign
F=Federal, Non-Uniform Code of Military Justice

See Appendix 1. This data element indicates the source of the statute violated, i.e., the statutory basis of the offense and the jurisdiction involved. Federal includes any Federal Statute other than the UCMJ.

16 OFFENSE IDENTIFIER - 6 characters.

See Appendix 1. This data element is the offense code and was created to clearly indicate the nature of the offense reported. In the case of violations of the UCMJ, the numbers listed correspond closely with the punitive article of the UCMJ. For instance, Code entry 112AC2 clearly indicates a violation of Article 112A of the UCMJ.

17 OFFENSE RESULT - 1 character.

Allowable codes are:

A=Attempted
C=Completed

See Appendix 1. This data element indicates whether the offense was completed or merely attempted. If there was more than one occurrence of the same offense within an incident and one was completed, then completed should be entered. If Attempted is coded, no property loss segment should be associated.

18 INVOLVEMENT - 1 character.

Allowable codes are:

P=Principal
A=Accessory
C=Conspiracy
S=Solicit

See Appendix 1. This data element indicates the level of participation in the offense.

19 OFFENDER SUSPECTED OF USING ALCOHOL - 1 character.

Allowable codes are:

Y=Yes
N=No

This data element is to be used to indicate whether any of the offenders in the incident were suspected of consuming alcohol. For example, witnesses to an assault reported that the victim and offender were in a bar drinking beer when an argument broke out and the offender attacked the victim with a knife. If blank, this element shall be coded "No."

20 OFFENDER SUSPECTED OF USING DRUGS - 1 character.

Allowable codes are:

Y=Yes
N=No

This data element is to be used to indicate whether any of the offenders in the incident were suspected of using drugs. For example, a medical supply warehouse was burglarized and large quantities of methadone, morphine, and valium were stolen. While drugs were the object of the crime, there was no indication that the offender used drugs or narcotics before or during the incident. "No" should be entered. If blank, this element shall be coded "No."

21 OFFENDER SUSPECTED OF USING COMPUTER EQUIPMENT - 1 character.

Allowable codes are:

Y=Yes
N=No

This data element is to be used to indicate whether any of the offenders in the incident were suspected of using computer equipment to perpetrate the crime. Larceny of computer equipment should not be included in this element. If blank, this element shall be coded "No."

22 LOCATION OF OFFENSE - 2 characters.

Allowable codes are:

01=Air/Bus/Train Terminal
02=Bank/Savings and Loan (includes other financial institutions, credit union)
03=Bar/Night Club/Officer Club/NCO Club
04="Church/Synagogue/Temple" (includes other religious buildings)

05=Commercial/Office Building
06=Construction Site
07=Convenience Store, Shoppette
08=Department/Discount Store, Exchange
09=Drug Store/Doctor's Office/Hospital, Clinic (includes medical supply building)
10=Field/Woods, Training Area
11=Government/Public Building
12=Grocery/Supermarket, Commissary
13=Highway/Road/Alley (includes street)
14=Hotel/Motel/Etc. (Includes other temporary military lodging)
15=Jail/Prison/Corrections Facility (includes penitentiary)
16=Lake/Waterway/Ocean
17=Liquor Store, Class VI
18=Parking Lot/Garage, Motor Pool
19=Rental Storage Facility (includes "Mini-Storage" and "Self-Storage" buildings)
20=Residence/Home (includes apartment, condominium, and nursing home, Quarters, Barracks, BOQ/BEQ)
21=Restaurant, Dining Facility (includes cafeteria)
22=School/College (includes university)
23=Service/Gas Station
24=Concessionaire/Specialty Store
25=Child Care Center
26=Recreation Area/Park
27=Training Center/Service School
28=On Board Ship

This data element is to be used to report the type of location/premises where each offense took place. Only one location can be entered for each offense.

23 ON UNIFORMED SERVICE INSTALLATION - 1 character.

Allowable codes are:

Y=Yes
N=No

"Yes" should be entered into this data element if the offense occurred on DoD or Coast Guard property.

24 U.S. STATE OR POSSESSION - 2 characters.

Allowable codes are in Appendix 2. Enter the FIPS State Codes for the location of the offense. If the offense occurred in a location not included in the State Codes in Appendix 2., the field should be null.

25 NUMBER OF PREMISES ENTERED - 2 characters.

This data element is to be used only if the crime is Burglary/B&E and the "Hotel Rule" is applicable. In such cases, the number (01-99) of structures (premises) entered is to be reported.

In the Summary Reporting System, the Hotel Rule is applied to only temporary lodgings. It states: If a number of dwelling units under a single manager are burglarized and the offenses are most likely to be reported to the police by the manager rather than the individual tenants, the burglary should be scored as one offense. The hotel rule may include military living quarters with multiple dwelling units. For example, if 6 BEQ are entered at the same time, it should be reported as one incident.

The Hotel Rule has been expanded to include rental storage facilities; i.e., "Mini-Storage" and "Self-Storage" buildings. Therefore, this data element is to be used if the offense is Burglary/B&E and either "14"= Hotel/Motel/Etc. or "19"= Rental Storage Facility is entered into Location Type. The total number (up to 99) of individual rooms, units, suites, storage compartments, etc., entered is to be reported in this data element.

26 METHOD OF ENTRY - 1 character.

Allowable codes are:

F=Forced
N=Not Forced

This data element is to be used only if the offense is Burglary/B&E. It is for reporting whether "Force" or "No Force" was used by the burglar(s) to enter the structure. A forced entry is where force of any degree, or a mechanical contrivance of any kind (including a passkey or skeleton key), was used to unlawfully enter a building or other structure. An unforced entry is one where the unlawful entry was achieved without

force through an unlocked door or window. If both forced and unforced entries were involved in the crime, the entry should be reported as having been accomplished through "Force."

27 TYPE OF CRIMINAL ACTIVITY - 1 character; can occur up to 3 times in each Offense Segment.

Allowable codes are:

B=Buying/Receiving
C=Cultivating/Manufacturing
D=Distributing/Selling
E=Exploiting Children
O=Operating/Promoting/Assisting
T=Transporting/Importing
U=Using/Consuming
P=Possessing/Concealing

This data element is to be used to provide additional information on the criminal activity of the offender(s) in the incidents involving:

Counterfeiting/Forgery
Drugs/Narcotics
Drug Equipment
Gambling Equipment
Pornography/Obscene Material
Stolen Property
Weapons

Up to three types of activity may be entered for each of the offenses listed data element 27 above.

28 TYPE WEAPON/FORCE USED - 2 characters; can occur up to 3 times in each Offense Segment.

The allowable codes are:

11=Firearm (type not stated)
12=Handgun

13=Rifle
14=Shotgun
20=Knife/Cutting Instrument
30=Blunt object
35=Motor vehicle
40=Personal Weapons
50=Poison
60=Explosives
65=Fire/incendiary
70=Narcotics/drugs
85=Asphyxiation
99=None

This data element is to be used to enter the type(s) of weapon(s) or force used by the offender(s) in committing the following offenses:

Murder and Non-negligent Manslaughter
Negligent Homicide
Justifiable Homicide
Kidnapping/Abduction
Forcible Rape
Forcible Sodomy
Sexual Assault with an Object
Forcible Fondling
Robbery
Aggravated Assault
Simple Assault
Extortion/Blackmail
Weapon Law Violations
Suicide

Up to three types of weapons/force may be entered for each of the offenses listed in data element 28 above.

29 GUN CATEGORY - 1 character; can occur up to 3 times in each Offense Segment.

Allowable codes are:

A=Fully Automatic
M=Manual
S=Semi-automatic

This element is used to report whether the weapon was an "automatic," "manual," or "semiautomatic" firearm.

30. BIAS MOTIVATION - 2 characters.

Allowable codes are:

AV=Anti-White
AH=Anti-Black
AD=Anti-Arab
AM=Anti-Hispanic
AC=Anti-American Indian
AB=Anti-Alaskan
AE=Anti-Asian
AT=Anti-Pacific Islander
AR=Anti-Multi-Racial Group
AO=Anti-Jewish
AI=Anti-Catholic
AN=Anti-Islamic (Moslem)
AU=Anti-Protestant
AS=Anti-Multi-Religious Group
AA=Anti-Agnostic
AW=Anti-Homosexual
AQ=Anti-Male Homosexual
AK=Anti-Female Homosexual
AL=Anti-Heterosexual
AG=Anti-Bisexual
AX=Unknown Bias
AY=Anti-Other Religions
AZ=Anti-Other Ethnicity
BA=Anti-Mental Disability
BB=Anti-Physical Disability

The object of this collection is to indicate whether the offender was motivated to commit the offense because of bias against a racial, religious, ethnic/national origin,

sexual orientation, or disability group. Because of the difficulty of ascertaining the offender's subjective motivation, bias is to be reported only if investigation reveals sufficient objective facts to lead a reasonable and prudent person to conclude that the offender's actions were motivated, in whole or in part, by bias. While no single fact may be conclusive, facts such as the following, particularly when combined, are supportive of a finding of bias:

a. The offender and the victim were of different racial, religious, ethnic/national origin or sexual orientation groups, or disability status.

b. Bias-related oral comments, written statements, or gestures were made by the offender which indicate bias.

c. Bias-related drawings, markings, symbols, or graffiti were left at the crime scene.

d. Certain objects, items, or things that indicate bias were used or left behind, e.g., the offenders wore white sheets with hoods covering their faces.

e. The victim is a member of a racial, religious, ethnic/national origin sexual orientation, or disability group that is overwhelmingly outnumbered by members of another group in the neighborhood where the victim lives and the incident took place. This factor loses significance with the passage of time, i.e., it is most significant when the victim first moved into the neighborhood and becomes less and less significant as time passes without incident.

f. The victim is visiting a neighborhood where previous hate crimes had been committed against other members of his or her racial, religious, ethnic/national origin, sexual orientation, or disability group and where tensions remain high against the group.

g. Several incidents have occurred in the same locality, at or about the same time, and the victim are all of the same racial, religious, ethnic/national origin, sexual orientation, or disability group.

h. A substantial portion of the community where the crime occurred perceives that the incident was motivated by bias.

i. The victim was engaged in activities promoting his or her racial, religious, ethnic/national origin, sexual orientation, or disability group, e.g., the victim was a member of the NAACP, participated in gay rights demonstrations, etc.

j. The incident coincided with a holiday relating to, or a date of particular significance to a racial, religious, ethnic/national origin, sexual orientation, or disability group, e.g., Martin Luther King Day.

k. The offender was previously involved in a similar hate crime or is a member of a hate group.

l. There were indications that a hate group was involved, e.g., a hate group claimed responsibility for the crime or was active in the neighborhood.

m. A historically established animosity exists between the victim's group and the offender's group.

n. The victim, although not a member of the targeted racial, religious, ethnic/national origin, sexual orientation, or disability group, is a member of an advocacy group supporting the precepts of the victim group.

The aforementioned factors are not all-inclusive of the types of objective facts that evidence biased motivation. Reporting agencies must examine each case for facts that clearly evidence that the offender's bias motivated him or her to commit the crime. Agencies must be alert to misleading facts, e.g., the offender used an epithet to refer to the victim's race, but the offender and the victim were of the same race. Agencies must be alert to evidence left by the offenders, which is meant to give the false impression that the incident was motivated by bias. Even if the offender was mistaken in the belief that the victim was a member of a racial, religious, ethnic/national origin, sexual orientation, or disability group, the offense is still a hate crime as long as the offender was motivated by bias against that group. For example, a middle-aged, non-gay man walking by a bar frequented by gays was attacked by six teenagers who mistakenly believed the victim had left the bar and was gay. Although the offenders were wrong on both counts, the offense is a hate crime because it was motivated by the offenders' anti-gay bias. If, after an initial incident report was submitted, a contrary finding regarding bias occurs, DIBRS record must be updated with the new finding.

EXAMPLE 1: While driving through a predominantly Mexican-American neighborhood, a black male stopped his car to repair a flat tire. A group of Mexican-Americans leaving a bar across the street accosted the driver and attacked him with bottles and clubs. During the attack, the offenders called the victim by a well-known and recognized epithet used against blacks and told him that blacks were not welcome in the neighborhood. This incident would be reported as Anti-Black because blacks were not welcome in the neighborhood. This incident would be reported as Anti-Black because the victim and

offenders are of different races, the offenders used a racial epithet, and the facts reveal no other reason for the attack than the stated one, i.e., to keep blacks out of the neighborhood.

EXAMPLE 2: A white juvenile male snatched a Jewish woman's purse, and in doing so, knocked her down and called her by a well-known and recognized epithet used against Jews. The offender's identity is not known. Although the offender used an epithet for Jews, it is not known whether he belongs to another religious group or whether his motive was anything more than robbery. Because the facts are ambiguous, agencies should not report this incident as bias motivated.

EXAMPLE 3: Overnight, unknown persons broke into a synagogue and destroyed several religious objects. The perpetrators left a large swastika drawn on the door and wrote "Death to Jews" on the wall. Although valuable items were present, none was stolen. Report this incident as Anti-Jewish because the offender destroyed religious objects, left anti-Semitic words and graffiti behind, and theft did not appear to be the motive for the burglary.

EXAMPLE 4: A 29-year-old Chinese-American male was attacked by a 51-year-old white male wielding a tire iron. The victim suffered severe lacerations and a broken arm. The incident took place in a parking lot next to a bar. Investigation revealed that the offender and victim had previously exchanged racial insults in the bar, the offender having initiated the exchange by calling the victim by a well-known and recognized epithet used against the Japanese and complaining that the Japanese were taking away jobs from Americans. Anti-Asian/Pacific Islander offense would be reported based on the difference in race of the victim and offender, the exchange of racial insults, and the absence of other reasons for attack.

EXAMPLE 5: An adult white male was approached by four white teenagers who requested money for the bus. When he refused, one of the youths said to the others, "Let's teach this (epithet for a gay person) a lesson." The victim was punched in the face, knocked to the ground, kicked several times, and robbed of his wristwatch, ring, and wallet. When he reported the crime, the victim advised he did not know the offenders and that he was not gay. The facts are ambiguous. Although an epithet for a gay person was used by one of the offenders, the victim was not gay, such epithets are sometimes used as general insults regardless of the target person's sexual orientation, and in this case the offenders' motivation appeared to be limited to obtaining money from the victim. Therefore, the incident would not be designated bias motivated.

EXAMPLE 6: A small neighborhood bar frequented by gays burned down after being closed for the night. Investigation revealed that the fire was deliberately set, the fact that the bar was frequented by gays may have been coincidental. Therefore, the incident is not reported as bias motivated. Two weeks later, three white adult males were arrested on a tip from an informant. They admitted burning down the bar, saying they did it to keep gays out of the neighborhood. As a result, this incident should now be reported as a bias crime.

EXAMPLE 7: Six black men assaulted and seriously injured a white man and his Asian male friend as they were walking through a residential neighborhood. Witnesses said that the victims were attacked because they were trespassing in a "black" neighborhood. An Anti-Multi-Racial Group bias incident should be reported because the victim and offenders were of different races and witnesses reported that the victims were attacked because they were not black.

EXAMPLE 8: Overnight, an auditorium, which was being used by representatives of several religious denominations to hold an ecumenical conference, was vandalized by unknown subjects. Extensive damage was caused and statements, such as "There is but one true religion" and "Down with the nonbelievers," were spray painted onto the walls. An Anti-Multi-Religious Group incident should be reported because the offenders clearly evidenced their hostility against a group representing more than one religion.

AP6.4. PROPERTY SEGMENT

31 PROPERTY LOSS BY- 1 character.

Allowable codes are:

1=No Property Loss
2=Burned
3=Counterfeited/Forged
4=Damaged/Destroyed/Vandalized
5=Recovered
6=Seized
7=Stolen

This data element is to be used to describe the type(s) of property loss, recovery, seizure, etc., which occurred in an incident. A separate Property Segment is to be

submitted for each type of loss and Property Description combination, when the incident involved one or more of the following offenses:

Kidnapping/Abduction
Robbery
Arson
Extortion/Blackmail
Burglary/B&E
Pocket-Picking
Purse-Snatching
Shoplifting
Theft From Building
Theft From Coin-Operated Machine or Device
Theft From Motor Vehicle
Theft of Motor Vehicle Parts or Accessories
All Other Larceny
Motor Vehicle Theft
Counterfeiting/Forgery
False Pretenses/Swindle/Confidence Game
Credit Card/Automatic Teller Machine Fraud
Impersonation
Welfare Fraud
Wire Fraud
Embezzlement
Stolen Property Offenses (Receiving, etc.)
Destruction/Damage/Vandalism of Property
Drug/Narcotic Violations
Drug Equipment Violations
Betting/Wagering
Operating/Promoting/Assisting Gambling
Gambling Equipment Violations
Sports Tampering
Bribery

The types of offenses in the incident (i.e., Arson, Bribery, Burglary/B&E, Counterfeiting/Forgery, Larceny/Theft, etc.) determine which type(s) of loss/etc. and data elements apply.

32 PROPERTY DESCRIPTION - 2 characters; can occur up to 10 times in each Property Segment.

Allowable codes are in Appendix 4. This data element is to be used to enter descriptions of the property which was burned, counterfeited, destroyed/damaged/vandalized, etc., as a result of the incident. Each property description within a Property Loss By is an individual record.

Up to 10 property descriptions can be entered for each Property Segment (i.e., each type of property loss/etc.) involved in the incident. If more than ten types of property are involved, the nine (9) most valuable specifically codeable types of property are to be entered and the remaining types of property are to be combined and entered as "77"= Grouped Items.

33 DATE RECOVERED (YYYYMMDD) - 8 characters; can occur up to 10 times in each Property Segment.

If previously stolen property is recovered, the year, month, day of its recovery is to be entered into this data element. Accordingly, this data element is to be used only if Recovered is entered into Data Element Type Property Loss/Etc. If there is more than one date of recovery for the same "Property Description," enter the earliest date. If the recovery date is unknown, enter the date of the report.

34 DATE RETURNED (YYYYMMDD) - 8 characters; can occur up to 10 times in each Property Segment.

When previously stolen property is returned to its owner, the year, month, day of its return is to be entered into this data element. Accordingly, this data element is to be used only if Recovered or Seized is entered into Data Element Property Loss/Etc.

35 QUANTITY - 9 numbers; can occur up to 10 times in each Property Segment.

This data element is used to report the number (up to 999,999,999) of items of a specific property description. This field is null for property description codes: Drugs/narcotics, Money, Negotiable Instruments, and Nonnegotiable Instruments.

36 VALUE OF PROPERTY - 9 numbers; can occur up to 10 times in each Property Segment.

This data element is to be used to enter the total dollar value (up to $999,999,999) of the property that was burned (includes damage caused in fighting the fire), counterfeited, destroyed/damaged/vandalized, recovered, seized, stolen, etc., as a result of the incident.

The value should be reported in whole dollars. The value entered for each property description should be the total value of the property loss/etc., for all of the victims in the incident. If the value is unknown, enter one dollar ($1.00), which means unknown; i.e., "1"= Unknown. The following guidelines should be used to report the value of property:

a. Use fair market value for articles that are subject to depreciation because of wear and tear, age, or other factors that cause the value to decrease with use.

b. Use cost to the merchant (wholesale cost) of goods recovered, seized, stolen, dollar amount etc., from retail establishments, warehouses, etc. In other words, use the value representing the actual cash loss to the victim without any markup or profit added.

c. Use victim's valuation of items such as jewelry, watches, and other similar goods that decrease in value slightly or not at all with use or age.

d. Use replacement cost or actual cash cost to victim for new or almost new clothes, auto accessories, bicycles, etc.

e. When the victim obviously exaggerates the value of stolen/destroyed/damaged property for insurance or other purposes, common sense and good judgment shall dictate a fair market value to be placed on the stolen items by law enforcement.

f. For Government property, use fair market value for articles that are subject to depreciation. Use replacement cost for other types of property.

In most instances, accept the victim's valuation. The theft of nonnegotiable instruments such as traveler's checks, personal checks, money orders, stocks, bonds, food stamps, etc., should be scored but no value recorded. Again, "hair splitting" refinements are unnecessary. Negotiable instruments such as bonds payable to the bearer, etc., are valued at the current market price at the time of the theft, seizure, etc. Values should be rounded to the nearest whole dollar. Often the condition of the property is different at recovery than it was when stolen. The market value at the time of recovery should be used even though it is less than the value reported at the time of the theft. If the value has increased by the time the property is recovered, the recovery value should not exceed its value at the time it was stolen.

If drugs or narcotics were seized in a drug case, no value is to be entered into this data element, but the estimated quantity of the drugs/narcotics is to be reported. Therefore, when the offense is Drug/Narcotic Violations, "6"= Seized was entered into Property Loss/Etc., and "10"= Drugs/Narcotics was entered into Property Description, no value is to be entered into this data element and Drug Code, Drug Quantity, and Type Drug Measure are to be used instead.

However, when drugs or narcotics are involved in other types of crime (e.g., they were stolen through burglary, robbery, theft, etc., or destroyed by arson) their value is to be entered into this data element, and Drug Code, Drug Quantity, and Type Drug Measure are null.

37 <u>OWNERSHIP - 1 character; can occur up to 10 times in each Property Segment</u>.

Allowable codes are:

A=U.S. Federal Government
B=U.S. State Government
C=U.S. City Government
D=U.S. County Government
E=Foreign Government
F=Private Sector

This data element captures whether the property is owned by the Government or a private individual.

38 SECURED/UNSECURED - 1 character; can occur up to 10 times in each Property Segment.

Allowable codes are:

S=Secured;
U=Unsecured.

This data element specifies the level of security of the property.

39 DRUG CODE - 1 character; can occur up to 4 times in each Property Segment.

Allowable codes are:

A='Crack' Cocaine
B=Cocaine
C=Hashish
D=Heroin
E=Marijuana
F=Morphine
G=Opium
H=Other Narcotics
I=LSD
J=PCP
K=Other Hallucinogens
L=Amphetamines/Methamphetamines
M=Other Stimulants
N=Barbiturates
O=Other Depressants
P=Other Drugs
Q=Steroids
U=Unknown Type Drug

This data element is to be used to identify the types of drugs or narcotics that were seized in a drug case. Therefore, it is used only if one of the offenses in the incident was Drug/Narcotic Violations, "6"= Seized was entered into Property Loss/Etc., and "10" = Drugs/Narcotics was entered into Property Description. It is also to be entered if one of the offenses was Drug/Narcotics Violation and "1=No Property Loss" was entered into Data Element 31 (Property Loss By). Up to four types of drugs can be entered.

40 ESTIMATED DRUG QUANTITY - 12 numbers; can occur up to 4 times in each Property Segment.

This data element is to be used to indicate the quantity (up to 999,999,999.999) of drugs or narcotics seized in a drug case. Therefore, it is used only if one of the offenses in the incident was Drug/Narcotic Violations, "6"= Seized was entered into Property Loss/Etc., and "10"= Drugs/Narcotics was entered into Property Description.

This data element is not to be used when drugs or narcotics were burned, stolen, etc., in connection with other offenses, such as Arson, Burglary/B&E, Larceny/Theft, etc.

Nine positions are available to enter the number of whole pounds, ounces, grams, etc., and three more characters are available to enter the decimal amount. Up to four entries can be made to match the up to the four Drug Code entries. If more than four drugs or narcotics are involved, the quantities of the four most important (as determined by the reporting agency taking into account their quantity, value, and deadliness) are to be entered.

41 TYPE DRUG MEASURE - 2 characters; can occur up to 4 times in each Property Segment.

Allowable codes are:

GM=Gram
KG=Kilogram
OZ=Ounce
LB=Pound
ML=Milliliter
LT=Liter
FO=Fluid Ounce
GL=Gallon
DU=Dosage Unit
NP=Number of Plants

This data element is to be used to indicate the type of measurement used in quantifying drugs or narcotics seized in a drug case. Therefore, it is used only if one of the offenses in an incident was Drug/Narcotic Violations, "6"= Seized was entered into Property Loss/Etc., and "10"= Drugs/Narcotics was entered into Property Description.

This data element is not to be used when drugs or narcotics were stolen, burned, etc., in connection with other offenses, such as Arson, Burglary/B&E, and Larceny/Theft.

Up to four entries can be made to match the up to four Drug Code entries.

AP6.5. VICTIM SEGMENT

42 VICTIM IDENTIFIER - 3 characters.

Each victim in an incident is to be assigned a sequence number from "001" to "999." A separate Victim Segment is to be submitted for each of the victims involved in an incident.

43 OFFENSE INFORMATION RELATING TO VICTIM - 9 characters; can occur up to 10 times in each Victim Segment.

This group of data elements is used to link each victim to the up to ten most serious (as determined by the reporting agency) offenses that are perpetrated against him or her during the incident. See data elements Offense Statutory Basis (15), Offense Identifier (16), Offense Result (17), and Involvement (18).

44 VICTIM TYPE - 1 character.

Allowable codes are:

I=Individual
B=Business
F=Financial
G=Government
R=Religious Organization
S=Society/Public

The type of victim is to be entered into this data element. Only one code is to be entered for each victim. For example, during a bank robbery, the offender pointed a gun at a teller and demanded and received money. The robber also pistol whipped a

customer who stood in his way as he made his getaway from the bank. There were three victims, i.e., the bank, the teller, and the pistol-whipped customer. Therefore, their codes should be entered into their respective Victim Segments. The victim type must agree with the offense information. For example, assault offenses should have Victim Type = 'T'.

45 ZIP CODE - 9 characters.

Enter the ZIP, Military Post Office, or Foreign Postal Code.

46 PAY PLAN - 2 characters.

Allowable codes are:

EM=Enlisted
WM=Warrant Officer
OM=Commissioned Officer
CM=Cadet/Midshipman
GS/GM=General Schedule
ES=Senior Executive Service
WG=Wage Grade/Other

Enter the military or civilian pay plan, if applicable. Note that the common usage for military personnel of "E" for "enlisted" has been coded "EM," "O" is "OM", "CM" is Cadet/Midshipman and "W" is "WM" in the standard data element. The combination of Pay Plan and Grade should result in the commonly used data element paygrade.

47 GRADE - 2 characters.

Allowable codes are:

1=Grade 1
2=Grade 2
3=Grade 3
4=Grade 4
5=Grade 5
6=Grade 6
7=Grade 7
8=Grade 8

9=Grade 9
10=Grade 10
10=Grade 11
10=Grade 12
10=Grade 13
10=Grade 14
10=Grade 15

Enter the grade, if applicable.

48 SERVICE - 1 character.

Allowable codes are:

A=Army
N=Navy
F=Air Force
M=Marine Corps
C=Coast Guard
O=NOAA
H=Public Health
D=DoD

Enter the Uniformed Service Code if applicable.

49 COMPONENT - 1 character.

Allowable codes are:

R=Regular
V=Reserve
G=National Guard

Enter Uniformed Service Component, Regular, Reserve, National Guard, if appropriate.

50 AGE - 2 characters; can occur up to 2 times.

Allowable codes are:

Low Range	NN=Under 24 Hours NB=1-6-Days Old BB=7-364-Days Old 01-98=Years Old 99=Over 98-Years Old
High Range Only	01-98=Years Old 99=Over 98-Years Old

Age is to be entered into this data element either as an exact age, a range of days or years, or as unknown (null value). If the age is known, it should be entered in the first age field. The second age field is only used if it is necessary to enter an age range. If only an age range is known, use the first age field for the low range and the second for the high. For victim age, enter only if the victim was a person (i.e., "I"= Individual was entered into Victim Type).

51 SEX - 1 character.

Allowable codes are:

M=Male;
F=Female.

Enter the sex of the victim. For victim sex, enter only if the victim was a person (i.e., "I"= Individual was entered into Victim Type).

52 FEDERAL CIVIL SERVANT - 1 character.

Allowable code is:

C=Civil Service.

Use this element to identify Government civil servants.

53 UNIFORMED SERVICE RETIREE - 1 character.

Allowable code is:

G=Uniformed Service Retiree.

Use this element to identify members who are retired from either Active or Reserve service.

54 FEDERAL CONTRACTOR - 1 character.

Allowable code is:

J=Contractor.

Use this element to identify Government contractors.

55 UNIFORMED SERVICE FAMILY MEMBER - 1 character.

Allowable code is:

F=Family Member.

Enter this field for military family members.

56 RACE - 1 character.

Allowable codes are:

A=American Indian
B=Asian/Pacific Islander
C=Black
D=White
M=Mixed

The race is to be indicated in this data element. For victim Race, enter only if the victim was a person (i.e., "I"= Individual was entered into Victim Type).

57 ETHNICITY - 1 character.

Allowable codes are:

H=Hispanic
N=Not Hispanic

The ethnic origin of the arrestee or victim if the victim was a person (i.e., "I"= Individual was entered into Victim Type) is to be entered into this data element.

58 AGGRAVATED ASSAULT/HOMICIDE CIRCUMSTANCES - 2 characters; can occur up to 2 times.

Allowable codes are:

01=Argument
02=Assualt on Law Enforcement Officer
03=Drug Dealing
04=Gangland
05=Juvenile Gang
06=Domestic Quarrel
07=Mercy Killing
08=Other Felony Involved
20=Criminal Killed by Private Citizen
21=Criminal Killed by Police Officer
30=Child Playing with Weapon
31=Gun-Cleaning Accident
32=Hunting Accident
33=Other Negligent Weapon Handling
34=Other Negligent Killings

This data element is used to describe the circumstances of either an aggravated assault or a homicide. Therefore, it is to be used only with Aggravated Assault and Homicide Offenses.

59 ADDITIONAL JUSTIFIABLE HOMICIDE CIRCUMSTANCES - 1 character; can occur up to 2 times.

Allowable codes are:

A=Criminal Attacked Police Officer and that Officer Killed Criminal
B=Criminal Attacked Police Officer and Criminal Killed by Another Police Officer
C=Criminal Attacked a Civilian
D=Criminal Attempted Flight from a Crime
E=Criminal Killed in Commission of a Crime
F=Criminal Resisted Arrest
G=Unable to Determine

This data element is to be used to further describe the circumstances of a justifiable homicide. Therefore, it is used only for Justifiable Homicide (i.e., when either "20"= Criminal Killed by Private Citizen or "21"= Criminal Killed by Police Officer was entered into Aggravated Assault/Homicide Circumstances. Only one code can be entered.

60 INJURY TYPE - 1 character; can occur up to 5 times.

Null value indicates no injury. Allowable codes are:

B=Apparent Broken Bones
I=Possible Internal Injury
L=Severe Laceration
M=Apparent Minor Injury
O=Other Major Injury
T=Loss of Teeth
U=Unconsciousness

This data element is to be used to describe the type(s) of bodily injury suffered by a person (i.e., "I"= Individual was entered into Victim Type) who was the victim of one or more of the following offenses:

Kidnapping/Abduction
Forcible Rape
Forcible Sodomy
Sexual Assault With An Object
Forcible Fondling
Robbery
Aggravated Assault

Simple Assault
Extortion/Blackmail

61 OFFENDER IDENTIFIERS RELATED TO THIS VICTIM - 2 characters (00-99); can occur up to 10 times.

This data element is to be used, along with Relationship of Victim to Offender to report the relationships of the victim to offenders who have perpetrated a "Crime Against Person" or a Robbery against the victim. Therefore, this data element is used only if one or more of the following offense codes was entered into **Offense Information Related to the Victim**:

Murder and Negligent Manslaughter
Negligent Homicide
Justifiable Homicide
Kidnapping/Abduction
Forcible Rape
Forcible Sodomy
Sexual Assault With An Object
Forcible Fondling
Robbery
Aggravated Assault
Simple Assault
Intimidation
Incest
Statutory Rape

62 RELATIONSHIP OF VICTIM TO OFFENDER - 2 characters; can occur up to 10 times.

Allowable codes are:

AA=Spouse
AB=Child
AC=Sibling
AD=Parent
AE=Parent-In-Law
AF=Stepchild
AG=Grandparent

AH=Stepparent
AK=Grandchild
AV=Stepsibling
AZ=Friend
BA=Neighbor
BB=Common-Law Spouse
BC=Acquaintance
BD=Babysittee (the baby)
BE=Love Interest
BF=Child of Love Interest
BH=Former Spouse
BL=Homosexual Relationship
BN=Extended Family Member
BY=Employee
BZ=Employer
BX=Stranger
CA=Otherwise Known
CB=Relationship Unknown
VO=Offender

This data element is to be used, along with Offender Identifiers Related to this Victim to report the relationship of the victim to offenders who have perpetrated a "Crime Against Person" or a Robbery against the victim. Therefore, this data element is to be used only if one or more of the following UCR Offense Identifiers was entered into **Offense Information Related to the Victim**:

Murder and Negligent Manslaughter
Negligent Homicide
Justifiable Homicide
Kidnapping/Abduction
Forcible Rape
Forcible Sodomy
Sexual Assault With An Object
Forcible Fondling
Robbery
Aggravated Assault
Simple Assault
Intimidation
Incest
Statutory Rape

This data element is to be used to indicate the victim's relationship with up to ten offenders involved in the incident.

AP6.6. SUSPECT/SUBJECT/OFFENDER/ARRESTEE SEGMENT

63 CATEGORY - 2 characters.

Allowable codes are:

AC=Suspect/Offender
AA=Arrestee
AJ=Subject
AB=Business or Enterprise
AE=Arrest Equivalent

Each offender segment is classified as Subject, Suspect, Offender or Arrestee. When the category Arrestee is used, the original Offender Identifier assigned should be used in the Offender Identifier. Arrest information should be null on Subject, Suspect, and Offender segments. AJ=Subject is used to record the victim of a suicide or attempted suicide.

64 OFFENDER IDENTIFIER - 2 characters.

Each offender in the incident is to be assigned a sequence number from 01 to 99. A separate "Offender Segment" should be submitted for each numbered offender. If nothing is known about the offender(s), enter "00" into this data element and leave the rest of the segment null.

65 NAME, LAST - 21 characters.

Enter the last name. The Cadency (Jr., Sr., and III) should be entered in data element 68.

66 NAME, FIRST - 14 characters.

Enter the first name.

67 NAME, MIDDLE - 14 characters.

Enter the middle name.

68 NAME, CADENCY - 4 characters.

Enter the Cadency (Jr., Sr., III) name, if applicable.

69 NAME, ALIAS/NICKNAME - 21 characters; (last name) and 14 characters (first name).

Enter any alias or nickname, if applicable.

70 SSN/ALIEN REGISTRATION DESIGNATOR - 1 character.

Enter "S" if a SSN is provided, an "R" if an alien registration number is provided, or an "T" if a foreign country identification card number is used. "N" is used to denote non-existent or unknown.

71 SSN/ALIEN REGISTRATION - 9 characters.

Enter the Social Security Number or Alien Registration number of the Offender.

72 DATE OF BIRTH (YYYYMMDD) - 8 characters.

Enter the date of birth.

73 CITY OF BIRTH - 20 characters.

Enter the City Name of the place of birth.

74 STATE OF BIRTH - 2 characters.

Allowable codes are in Appendix 2. Enter the Postal State Code of the place of birth.

75 COUNTRY OF BIRTH - 3 characters.

Enter the country code of the place of birth. See FIPS Pub 10-4.

76 AGE - 2 characters; can occur up to 2 times.

The age of the offender is to be entered either as an exact number of years, a range of years, or as unknown. Should the exact age be unknown, an age range can be reported using both occurrences. Any range in years is acceptable.

77 DRIVER'S LICENSE NUMBER - 15 characters.

Enter the driver's license number.

78 DRIVER'S LICENSE SOURCE - 2 characters.

Enter the State issuing the driver's license. Use appropriate postal State code (see Appendix 2), IT=International, or FR=Foreign.

79 OFFENDER'S UNIT IDENTIFICATION CODE (UIC) - 8 characters.

Enter the UIC of the offender/subject/suspect, if applicable.

80 IDENTIFYING MARK TYPE - 1 character.

Allowable codes are:

A=Tattoo
B=Scar
C=Mark

The type of mark is to be indicated in this data element.

81 IDENTIFYING MARK LOCATION - 3 characters.

Allowable codes are:

AAA=Left Eye
AAB=Right Eye
AAC= Face
AAD=Scalp
AAE=Teeth Set
AAF=Left Hand
AAG=Right Hand
AAH=Left Foot
AAI=Right Foot
AAJ=Left Upper Leg
AAK=Right Upper Leg
AAL=Left Upper Arm
AAM=Right Upper Arm
AAN=Right Shoulder
AAO=Left Shoulder
AAP=Right Hip
AAQ=Left Hip
AAR=Abdomen
AAS=Chest
AAT=Back
AAU=Neck
AAV=Buttocks
AAW=Right Lower Leg
AAX=Left Lower Leg
AAY=Right Lower Arm
AAZ=Left Lower Arm
ABA=Right Wrist
ABB=Left Wrist
ABC=Right Ankle
ABD=Left Ankle

The position on the body of the mark is to be indicated in this data element.

82 IDENTIFYING MARK DESCRIPTION - 30 characters.

A short description of the mark is to be indicated in this data element, (for example, a flower.)

83 HEIGHT - 2 numbers.

The height in inches of the offender is to be indicated in this data element.

84 WEIGHT - 3 numbers.

The weight in pounds of the offender is to be indicated in this data element.

85 ARMED WITH - 2 characters, occurs 2 times.

This data element is to be used to indicate whether the arrestee was armed with a commonly known weapon at the time of his/her apprehension. Up to two (2) entries can be made. Allowable codes are:

01=Unarmed
11=Firearm (type not stated)
12=Handgun
13=Rifle
14=Shotgun
16=Lethal Cutting Instrument
17=Club/Blackjack/Brass Knuckles

86 GUN CATEGORY - 1 character; can occur up to 2 times.

Allowable codes are:

A=Fully Automatic
M=Manual
S=Semi-automatic

This data element is used to indicate whether the weapon entered in Armed With is automatic, semiautomatic, or manual. For example, if "Rifle" is entered into Armed With and the "Rifle" is designed to shoot, more than one shot at a time by a single pull of the trigger without manual reloading "Automatic" should be entered into Gun Category.

87 ARREST/CITATION NUMBER (Service specific) - 12 characters.

The tracking number assigned by the agency. Must be present and left justified.

88 ARREST/APPREHENSION DATE (YYYYMMDD) - 8 characters.

The year, month, and day when the arrest took place.

89 ARREST TYPE - 1 character.

Allowable codes are:

O=On-View Arrest
S=Summons
T=Taken into Custody

This data element indicates the type of apprehension. On-View Arrest includes arrests when the arrestee is taken into custody without a warrant or previous incident report. Summoned/cited type are not taken into custody. Taken into custody arrest types are based on warrant and/or previously submitted incident report.

90 ARRESTING ORGANIZATION UIC - 8 characters.

The Unit Identification Number of the arresting military organization.

91 MULTIPLE INCIDENTS CLEARED - 1 character.

Allowable codes are:

C=First Record of Multiple
M=Multiple

This data element is to be used to indicate whether or not the apprehension of the arrestee resulted in the clearance of more than one previously reported incident within the jurisdiction served by the reporting agency. If so, it is important to indicate that there was only one arrestee responsible for the multiple clearances.

This is done by entering "M"= Multiple into all but one of the Arrestee Segments, and by entering "C"= First Record of Multiple into the remaining Arrestee Segment.

92 ARRESTING OFFENSE INFORMATION - 9 characters.

See data elements Offense Statutory Basis (15), Offense Identifier (16), Offense Result (17), and Involvement (18). Code the offense for which the arrestee was apprehended in this data element. If the arrestee was apprehended for more than one offense, the reporting agency is to determine which was the **most serious** offense and enter it as the arrest offense.

93 DETENTION TYPE - 1 character.

Allowable codes are:

N=Non-Uniformed Service
U=Uniformed Service

This data element indicates whether the detention is DoD (to include Coast Guard) or another Government Agency.

94 DISPOSITION OF PERSON UNDER 18 - 1 character.

Allowable codes are:

H=Handled within Department
R=Referred to Other Authorities

AP6.7. COMMANDER'S ACTION SEGMENT

95 REFERRAL DATE (YYYYMMDD) - 8 characters, can occur up to 7 times.

The date an action is referred to the appropriate agency for evaluation.

96 REFERRAL AGENCY - 1 character, can occur up to 7 times.

The agency to which a commander refers an individual for assistance. Enter up to seven as appropriate. Allowable values are:

F=Family Advocacy
E=Equal Opportunity
M=Mental Health
D=Drug/Alcohol Abuse Office
L=Legal Office
R=Relief Agency
S=Special Referral

97 REFERRAL AGENCY RESPONSE DATE (YYYYMMDD) - 8 characters, can occur up to 7 times.

The date the agency responds accepting action for this incident.

98 ACTION TAKEN TYPE - 1 character.

This data element characterizes the level of action taken. Allowable values are:

A=No Action Taken
B=Administrative
C=Non-Judicial
D=Judicial

99 NON-JUDICIAL TYPE - 1 character.

If the Action Taken Type is Non-Judicial, this data element defines the level. Allowable codes are:

F=Field Grade (O4 and Above)
C=Company Grade (O3 and Below)
S=Summarized
P=Principal Assistant
O=Officer Exercising General Court-Martial Jurisdiction
G=General/Flag Officer

Field and Company Grade are presumed to be the commanding officer. "Summarized" is a local authority capable of handling non-judicial punishment without the ability to adjudge forfeitures and reductions. If the officer exercising General Court-Martial Jurisdiction is a General Officer, "G"=General/Flag Officer should be entered.

100 SANCTION TYPE - 2 characters, can occur up to 10 times.

The type of action taken to resolve the situation. Up to 10 actions may be recorded to describe the action taken. Allowable codes are:

AA=Withholding of Privileges
AB=Adverse Performance Evaluation
AC=Mandatory Reassignment
AD=Transfer
AF=Denial of Reenlistment or Continuation
AG=Withholding of Promotion
AH=Delay of Promotion
AI=Reduction in Grade
AJ=Clearance Revocation
AK=Control Roster
AL=Promotion Revocation
AM=Resignation
AN=Retirement
AO=Transfer to Inactive Reserve Status
AP=Administrative Separation
AQ=Retirement at Lower Grade
AR=Military Occupational Speciality (MOS) Reclassification
AS=Counseling
AT=Nonpunitive Admonition, (Reprimand, Censure)
AU=Fines
AV=Extra Duty
AW=Restricted
AX=Correctional Custody
AY=Administrative Separation in Lieu of Trial

101 ACTION INITIATION DATE (YYYYMMDD) - 8 characters.

This data element contains the date the commander's action begins.

102 ACTION APPEALED DATE (YYYYMMDD) - 8 characters.

This data element contains the date the action was appealed, if appropriate.

103 ACTION COMPLETION DATE (YYYYMMDD) - 8 characters.

This data element contains the date the commander's action ends.

104 ON RECORD - 1 character, can occur up to 10 times.

Allowable codes are:

Y=Yes
N=No

If the sanction type could be characterized as on the record, this data element is used, (e.g., counseling, reprimand).

105 SANCTION FORM - 1 character, can occur up to 10 times.

Allowable codes are:

O=Oral;
W=Written.

If the sanction type could be written or oral, this data element is used, (e.g., reprimand, counseling).

106 SANCTION AMOUNT - 9 numbers, can occur up to 10 times.

If the sanction includes an associated amount, this field is used for the amount (e.g., fines, forfeitures).

107 SANCTION DAYS - 5 numbers, can occur up to 10 times.

If the sanction type requires time associated, the number of days is entered into this field.

108 GRADES REDUCED - 1 number, can occur up to 10 times.

If the sanction type is Administrative Reduction of Enlisted Members or Retirement at Lower Grade, this data element is completed with the number of grades reduced.

109 SENTENCE SUSPENDED - 1 character can occur up to 10 times.

Allowable codes are:

Y=Yes;
N=No;
V=Vacation of Suspended Sentence.

This element indicates whether the specified sanction was suspended. Enter "Y" if this part of the sanction is suspended, "N" if not. "V" applies when changes in the Commander's Report of Action Taken Segment are reported based upon the vacation of a suspended sanction.

110 DISCHARGE TYPE - 2 characters.

If Administrative Separation is selected as the Sanction Type, this data element records the type of discharge assigned. Allowable codes are:

HO=Honorable
UH=Under Honorable Conditions (General Discharge)
UN=Uncharacterized
UO=Under Other than Honorable Conditions

111 OFFENSE COMMITTED INFORMATION - 9 characters.

See Appendix 1. See data elements Offense Statutory Basis, Offense Identifier, Offense Result, and Involvement. This element is the offense committed **as determined after appeal**.

112 SEXUAL HARASSMENT RELATED - 1 character.

Allowable codes are:

Y=Yes
N=No

This data element is used to record whether sexual harassment was related to the incident.

113 JUDICIAL ACTION TYPE - 1 character.

This data element indicates the court to handle the commander's referral. Allowable codes are:

A=Referred to Court-Martial
B=Remanded to Civilian Criminal Court

114 CIVILIAN CRIMINAL COURT DISPOSITION - 1 character.

The finding of the civil court is recorded using this element. Allowable codes are:

G=Guilty
N=Not Guilty
D=Deferred
C=Nolo Contendere

115 CIVILIAN CRIMINAL OFFENSE CATEGORY - 1 character.

Allowable codes are:

F=Felony
M=Misdemeanor

This data element details the magnitude of the offense.

116 CIVILIAN COURT LOCATION ZIPCODE - 9 characters.

This is the location of the court.

117 CIVILIAN COURT LOCATION COUNTRY CODE - 2 characters.

This is the country in which the court proceeding was held. See FIPS Pub 10-4.

AP6.8. RESULTS OF TRIAL SEGMENT

118 FINDINGS AND SENTENCE REPORT/REVIEW AUTHORITY CODE - 1 character.

This element denotes the source of the sentence information contained in the segment. The court-martial authority shall submit both the pretrial and the adjudged sentence information. Allowable codes are:

A=Service Secretary
B=Court-Martial Report Authority
C=Convening Authority
D=Clemency and Parole
E=The Judge Advocate General
F=Service Court of Criminal Appeal
G=Court of Appeals for the Armed Forces
H=Supreme Court
I=Civil Court
J=Law Enforcement

119 FINDINGS AND SENTENCE REPORT/REVIEW DATE (YYYYMMDD) - 8 characters.

This data element is used to document the date of the report. It will serve to differentiate between multiple reports on the same incident number by the same Sentence Report/Review authority; e.g., there may be several Clemency and Parole hearings on the same person.

120 COURT TYPE CODE - 4 characters.

This is the type of court martial proceeding that was held. Allowable codes are:

SCM=Summary Court-Martial
NBCD=Non-BCD Special Court-Martial

SPCM=BCD Special Court-Martial
GCM=General Court-Martial

121 LOCATION OF COURT MARTIAL UIC - 8 characters.

Enter the Unit Identification Code of the Findings and Sentence Report/Review Authority, Data Element 118.

122 PROMULGATING ORDER NUMBER - 10 characters.

123 PROMULGATING ORDER DATE - (YYYYMMDD) - 8 characters.

124 CONVENING AUTHORITY UIC - 8 character.

Enter the Unit Identification Code of the Convening Authority.

125 FORUM - 1 character.

This data element documents characteristics of the fact-finders composing the court-martial. Allowable codes are:

J=Judge Alone
O=Officer Members Only
E=Enlisted and Officer Members

126 CONDITIONS OF PRETRIAL AGREEMENT - 1 character.

Can occur up to 9 times. Enter appropriate terms specified in the pretrial agreement. "Special Terms" is intended to capture unusual types of pretrial agreements. Allowable codes are:

M=Military Judge Only
N=Noncapital
R=Restitution
L=Referral to Lower Court
T=Testimony
C=Confinement Limitation

F=Forfeiture Limitation
G=Reduction in Grade Limitation
A=Allotment to Family
V=Allotment to Victim
D=Deferment of Confinement
S=Special Terms

127 EXCEPTIONAL TRIAL CLEARANCE - 1 character.

This data element is used to track the disposition in cases sent to court-martial but not completed. Allowable codes are:

A=Charges Withdrawn
C=Victim/Witness Refused to Cooperate
D=Other Legal Ban

128 CHARGE NUMBER - 2 characters.

Can occur up to 20 times. This data element captures the charge number from the charge sheet. Any combination of charges and specifications up to 20 can be submitted. If more than 20 occurrences would be required to document the proceeding, the reporting agency should use its best judgment on how to best describe the incident. The Charge Number may be repeated, but it can not be null for a repeating group containing data.

129 CHARGE OFFENSE INFORMATION [1] - 9 characters, can occur up to 20 times.

See Appendix 1. See data elements Offense Statutory Basis, Offense Identifier, Offense Result, and Involvement.

130 OFFENSE DESCRIPTION - 20 characters, can occur up to 20 times.

This data element contains a short text explanation of the offense.

[1] Offense Information includes the four data elements that describe the offense code: the Offense Statutory Basis (15), Offense Identifier (16), Offense Result (17), and Involvement (18).

131 SPECIFICATION NUMBER - 2 characters, can occur up to 20 times.

This data element is assigned to specific instances of the offense. For each Specification, a plea, and a finding are required. If either the Plea or the Finding is for Lesser Included Offense, a Lesser Included Offense Code is required. The Specification Number can not be null for a repeating group containing data.

132 PLEA - 1 character, can occur up to 20 times.

This data element indicates whether the defendant entered a plea of guilty, not guilty, or guilty to a lesser included offense. If guilty to a lesser included offense is selected, the Offense Identifier should be entered under Lesser Included Offense Code. Allowable codes are:

G=Guilty
N=Not Guilty
L=Lesser Included Offense
R=Not Guilty by Reason of Insanity

133 LESSER INCLUDED OFFENSE INFORMATION (Plea) [1] - 9 characters, can occur up to 20 times.

If the plea is a Lesser Included Offense, this data element is required to document the offense code plead.

[1] Offense Information includes the four data elements that describe the offense code: the Offense Statutory Basis (15), Offense Identifier (16), Offense Result (17), and Involvement (18).

135 FINDING - 1 character, can occur up to 20 times.

This data element indicates whether the defendant was judged guilty, not guilty, guilty of a lessor included offense or guilty of the charged offense with exceptions and/or substitutions. If guilty to a lesser included offense is selected, the offense code should be entered under Lesser Included Offense Code. Allowable codes are:

G=Guilty
N=Not Guilty
L=Lesser Included Offense
R=Not Guilty by Reason of Insanity

136 LESSER INCLUDED OFFENSE INFORMATION (Finding)[1] - 9 characters, can occur up to 20 times.

If Lesser Included Offense is entered in the Finding, this data element is required to document the offense code specified in the Finding.

138 DATE ADJUDGED (YYYYMMDD) - 8 characters.

This element contains the year, month and day the sentence is pronounced.

139 SENTENCE SUSPENDED - 1 character, can occur up to 9 times.

Allowable codes are:

Y=Yes
N=No
V=Vacation of Suspended Sentence

[1] Offense Information includes the four data elements that describe the offense code: the Offense Statutory Basis (15), Offense Identifier (16), Offense Result (17), and Involvement (18).

This element indicates whether the specified sentence was suspended. Enter "Y" if this part of the sanction is suspended, "N" if not. "V" applies when changes in the Results of Trial Segment are reported based upon the vacation of a suspended sentence in accordance with Article 72 of the UCMJ. If a portion of a specific sentence type (e.g., $100 of a $500 fine) is suspended, two separate elements with the same sentence type must be submitted, one with Sentence Suspended=Y and $100, and one with Sentence Suspended=N and $400. The Sentence Suspended code applies to the Sentence Type in the same repeating segment.

140 SENTENCE AMOUNT - 5 numbers, can occur up to 9 times.

Use this data element to record the appropriate amount for Sentence Types: Specified Forfeitures, Fines.

141 SENTENCE DAYS - 5 numbers, can occur up to 9 times.

This data element is used to record in **days** the sentence for Sentence Types: Restriction, Hard Labor without Confinement, and Specified Confinement.

142 SENTENCE GRADES REDUCED - 1 number, can occur up to 9 times.

If Sentence Type is Loss of Numbers or Reduction in Grade, this data element is used to specify the number of grades.

143 SENTENCE TYPE - 1 character, can occur up to 9 times.

This data element is used to describe the provisions of the sentence. Up to nine types of punishment may be recorded, as appropriate. If Specified Forfeitures or Fines is selected, the Sentence Amount must be included. If Reduction in Grade is selected, the Sentence Grades Reduced must be included. If Restriction, Hard Labor without Confinement, or Specified Confinement is selected, Sentence Days is required. If Discharge/Dismissal is selected, Discharge Type is required. Allowable codes are:

A=No Punishment
B=Reprimand
C=Restriction

D=Hard Labor without Confinement
E=Specified Confinement
F=Confinement for Life
G=Specified Forfeitures
H=Total Forfeitures
I=Fines
J=Reduction in Grade
L=Discharge/Dismissal
M=Death

144 DISCHARGE TYPE - 2 characters, can occur up to 9 times.

This data element records the type of discharge adjudged as part of a court-martial sentence. Enter the discharge type included in the sentence. Allowable codes are:

BC=Bad Conduct Discharge (BCD)
DI=Dishonorable Discharge (DD)
DS=Dismissal

145 PRETRIAL CONFINEMENT DAYS - 3 numbers.

Enter the days of pretrial confinement, if appropriate.

146 JUDICIALLY ORDERED CREDIT DAYS - 4 numbers.

Enter the Judicially Ordered Credit days , if appropriate.

147 CONFINEMENT DEFERRED BEGIN DATE (YYYYMMDD) - 8 characters.

If confinement is deferred enter the date the deferment began.

148 CONFINEMENT DEFERRED END DATE (YYYYMMDD) 8 - characters.

If confinement is deferred, enter the date the deferment ends.

149 NUMBER OF PRETRIAL VICTIMS NOTIFIED (DD Form 2702) - 3 numbers.

Enter the number of victims notified.

150 NUMBER OF PRETRIAL WITNESSES NOTIFIED (DD Form 2702) - 3 numbers.

Enter the number of witnesses notified.

151 NUMBER OF POST-TRIAL VICTIMS NOTIFIED (DD Form 2703) - 3 numbers.

Enter the number of victims notified.

152 NUMBER OF POST-TRIAL WITNESSES NOTIFIED (DD Form 2703) - 3 numbers.

Enter the number of post-trial witnessed notified.

153 NUMBER OF VICTIMS ELECTING TO BE NOTIFIED (DD Form 2704) - 3 numbers.

Enter the number of victims electing to be notified.

154 NUMBER OF WITNESSES ELECTING TO BE NOTIFIED (DD Form 2704) - 3 numbers.

Enter the number of witnesses electing to be notified.

AP6.9. CORRECTIONS SEGMENT

155 REPORT DATE (YYYYMMDD) - 8 characters.

Enter the official date for the reporting period. This would usually be the last day of the month.

156 REPORT TIME - 4 characters (24 hour).

Enter the report time.

157 MAIDEN NAME - 20 characters.

Enter the birth name.

158 CONFINEMENT FACILITY UIC - 8 characters.

Enter the unit identification number of the reporting facility.

159 GANG NAME - 20 characters.

Enter the name of the gang the prisoner is associated with, if appropriate.

160 GANG LOCATION CITY - 20 characters.

Enter the location of the gang entered in Gang Name.

161 GANG LOCATION STATE - 2 characters.

Enter the standard postal code for the location of the gang entered in Gang Name.

162 CULT/EXTREMIST NAME - 20 characters.

Enter the name of the cult the prisoner has an association with, if appropriate.

163 CULT/EXTREMIST LOCATION CITY - 20 characters.

Enter the location of the gang entered in Cult Name.

164 CULT/EXTREMIST LOCATION STATE - 2 characters.

Enter the standard postal code for the location of the gang entered in Cult Name.

165 PRETRIAL CONFINEMENT BEGIN DATE (YYYYMMDD) - 8 characters.

Enter the year, month and day the pretrial confinement began.

166 PRETRIAL CONFINEMENT END DATE (YYYYMMDD) - 8 characters.

Enter the year, month and day the pretrial confinement ended.

167 PRETRIAL CONTROLLING OFFENSE INFORMATION[1] - 9 characters.

Enter the offender's primary offense.

168 POST-TRIAL CONFINEMENT DATE (YYYYMMDD) - 8 characters.

Enter the year, month and day the prisoner arrived at the facility.

169 CONFINEMENT REASON GAINED - 1 character.

This data element details the reason the confinee was sent to the facility. Allowable codes are:

A=New Sentence
B=Parole Revocation
C=Returned Escapee
D=Transfer
E=Vacated Suspension
F=Pretrial Confinement

[1] Offense Information includes the four data elements that describe the offense code: the Offense Statutory Basis (15), Offense Identifier (16), Offense Result (17), and Involvement (18).

170 POST-TRIAL CONTROLLING OFFENSE INFORMATION [1] - 9 characters.

Enter the post-trial primary offense.

171 LOSING CONFINEMENT FACILITY UIC - 8 characters.

This data element contains the unit identification number of the facility transferring the prisoner, when Confinement Reason Gained is "D" Transfer from Another Facility.

172 MINIMUM RELEASE DATE (YYYYMMDD) - 8 characters.

This data element contains the year, month and day of the earliest possible release of the prisoner.

173 FULL-TERM RELEASE DATE (YYYYMMDD) - 8 characters.

This date specifies the year, month and day of the latest possible release of the prisoner.

174 CLEMENCY ELIGIBILITY DATE (YYYYMMDD) - 8 characters.

Enter the year, month and day when the prisoner is eligible for clemency review.

175 PAROLE ELIGIBILITY DATE (YYYYMMDD) - 8 characters.

Enter the year, month and day the prisoner is eligible for parole.

176 RELEASE DATE (YYYYMMDD) - 8 characters.

Enter the year, month and day the prisoner is actually released.

177 RELEASE REASON - 1 character.

Enter the reason for release. Allowable codes are:

A=Appellate
C=Clemency
D=Death

E=Escape
I=Investigative Officer's Release
L=Emergency Leave
M=Magistrate's Release
O=Overturned
P=Parole
R=Returned to Duty
T=Transfer
X=Expiration of Sentence

178 RELEASE AGENCY NAME - 20 characters.

This data elements contains the name of the agency to whom the prisoner is released, if the prisoner is paroled or transferred.

179 RELEASE LOCATION ZIPCODE - 9 characters.

If the prisoner is paroled, or data element 194 is "yes," enter the zipcode where the prisoner will live.

180 FATALITY REASON - 1 character.

If Release Reason is "death" enter the reason for death. Allowable codes are:

E=Execution
N=Natural Causes/Illness
S=Suicide
H=Homicide
A=Accident

181 FATALITY ASSOCIATED FBI LOCATION NUMBER - 9 characters.

If Release Type is "death" enter the FBI LOCATION Number created for the investigation, if appropriate.

182 FATALITY ASSOCIATED INCIDENT NUMBER - 12 characters.

If Release Type is "death" enter the Incident Number created for the investigation, if appropriate.

183 ESCAPEE RETURNED TO CUSTODY DATE (YYYYMMDD) - 8 characters.

Enter the year, month, and day an escaped prisoner is returned to a military confinement facility.

184 FEDERAL BUREAU OF PRISONS TRANSFER FACILITY CODE - 3 characters.

This code is assigned to Bureau of Prisons institutions. See Appendix 5. It is used when data element 177 is "T"and the transfer is to a Federal Bureau of Prisons Facility.

185 MILITARY TRANSFER FACILITY UIC - 8 characters.

Enter the unit identification code of the facility to which the prisoner is being transferred. This data element is only used when data element 177 is "T" and transfer is to a military facility.

186 NUMBER OF VICTIMS ELECTING NOTIFICATION - 2 numbers.

Enter the current number of victims electing to be notified of prisoner status changes.

187 NUMBER OF WITNESSES ELECTING NOTIFICATION - 2 numbers.

Enter the current number of witnesses electing to be notified of prisoner status changes.

188 NOTIFICATION BEGIN DATE (YYYYMMDD) - 8 characters.

Enter the year, month, and day the victims and witnesses were notified.

189 NOTIFICATION REASON - 1 character.

Enter the reason for the victim or witness status notification. Allowable codes are:

A=Parole Eligibility Date
B=Clemency Eligibility Date
C=Parole Hearing
D=Clemency Eligibility Date
E=Transfer
F=Escape
G=Returned Escapee
H=Release
I=Initial Contact

190 NUMBER OF VICTIMS TERMINATING NOTIFICATION - 2 numbers.

Enter the number of victims terminated from the notification program upon request in this reporting period.

AP6.10. ADDITIONAL ELEMENTS

191 NUMBER OF WITNESSES TERMINATING NOTIFICATION - 2 numbers.

Enter the number of witnesses terminated from the notification program upon request in this reporting period.

192 OFFENSE LOCATION COUNTRY CODE - 2 characters.

Enter the Country Code from FIPS PUB 10-4 of the actual location of the incident. If data element 24, U.S. State or Possession, is coded, data element 192 should be null. The Offense Location Country Code should only be entered for OCONUS (not U.S. Territories) locations.

193 SENTENCE DAYS DEFERRED - 5 numbers, can occur up to 9 times.

If the sentence is deferred for fines, forfeitures, or reduction in grade, enter the number of days deferred.

194 SEX OFFENDER PROCESSING REQUIRED – 1 character.

Enter "Y" if the offender has been convicted of a sexually violent offense or an offense involving a victim who is a minor. The following offenses punishable under the Uniform Code of Military Justice shall trigger requirements to notify State and local law enforcement agencies and to provide information to inmates concerning sex offender registration requirements.

UCMJ Article	DIBRS Code	Offense
120	120A	Rape
120	120B1/2	Carnal Knowledge
125	125A	Forcible Sodomy
125	125B1/2	Sodomy of a Minor
133	133D	Conduct Unbecoming an Officer (involving any sexually violent offense or a criminal offense against a minor)
134	134B6	Prostitution Involving a Minor
134	134-C1	Indecent Assault
134	134-C4	Assualt with Intent to Commit Rape
134	134-C6	Assault with Intent to Commit Sodomy
134	134-R1	Indecent Act with a Minor
134	134-R3	Indicent Language to a Minor
134	134-S1	Kidnapping of a Minor (by a person not parent)
134	134-Z	Pornograph Involving a Minor
134	134-Z	Conduct Prejudicial to Good Order and Discipline (involving any sexually violent offense or a criminal offense against a minor)
134	134-Y2	Assimilative Crime Conviction (of a sexually violent offense or a criminal offense against a minor)
80		Atte4mpt (to commit any of the foregoing)
81		Conspiracy (to commit any of the foregoing)
82	082-A	Solicitation (to commit any of the foregoing)

195 DATE NOTIFICATION OF RELEASE PROVIDED TO STATE – 8 characters.

Enter the year, month and day the State and local law enforcement agency is notified that the prisoner is to be released.

196 DATE PRISONER NOTIFIED OF STATE REGISTRATION - 8 characters.

Enter the year, month, and day the prisoner is notified that registration as a sex offender with State and local law enforcement is required.

Statement of Christine Hansen, Executive Director, The Miles Foundation

Subcommittee on National Security, Emerging Threats and International Relations of the Govenment Reform Committee, U. S. House of Representatives

Response to Representative Carolyn Maloney's Inquiry Concerning Sex Trafficking in the U. S. Armed Forces

The deployment of armed forces within a country or into a country have lead to increased prostitution and an increasing number of trafficking victims. The introduction of allied personnel including peacekeepers, contractors and workers also drives the demand for trafficking, exploitation and abuse. A specific focus has been on Korea and policies of the North Atlantic Treaty Organization (NATO) and United Nations (UN) following public literature detailing allegations of involvement of defense contractors in buying women and girls as sex slaves in Bosnia during the U. S. deployment in the late 1990s. A 2002 Pentagon study outlined prostitution, pandering and pimping within U. S. troops serving in South Korea.

The human rights, health and national security challenges of human trafficking and patronization of prostitution were identified with the enactment of the Victims of Trafficking and Violence Protection Act of 2000 (22 U. S. C. 7101, et seq/Public Law No. 106-386, Division A, 114 Stat. 1464) and its reauthorization in 2003 (Pub. L. No. 108-193 (2003). The reauthorization statute ordered Federal agencies to include anti-trafficking provisions in all contracts.

The National Security Presidential Directive (NSPD 22) issued in December 2002 applied to the Department of Defense stating "our policy is based on an abolitionist approach to trafficking in persons, and our efforts must involve a comprehensive attack on such trafficking, which is a modern day of slavery. In this regard, the U. S. Government opposes prostitution and any related activities, including pimping, pandering, or maintaining brothels as contributing to the phenomenon of trafficking in persons."

In September 2004, the House Armed Services Committee and the Commission on Security and Cooperation in Europe held a joint issue forum. The hearing marked the first time that the Armed Services Committee had heard testimony on human trafficking. The hearing focused predominantly on the "demand side" of trafficking, an effort to end service members' patronizing of prostitutes.

The Department of Defense (DOD) announced a zero tolerance policy during the hearing. DOD has employed a strategy of awareness, identification, reeducation and enforcement to address the patronization of prostitution and human trafficking among the ranks, according to witnesses at the hearing. DOD also initiated online training courses and considered revisions to the Uniform Code of Military Justice (UCMJ) to discipline those patronizing prostitutes.

Subsequent hearings conducted in 2005 identified incidents in which uniformed

service members, civilian contractors, and civil servants continue to deny the links between trafficking and peacekeeping deployments. Witnesses at the hearings criticized the inconsistency of prevention programs among the services and recommended centralized efforts at the Department of Defense level, including the development of a central, anti-trafficking office at the Defense Department under the direction of a deputy assistant secretary.

A series of regulations, instructions, directives and orders were issued by the Department of Defense including the commencement of an online training program on human trafficking for service members following the Congressional hearings. The training focuses upon situational awareness emphasizing core values and a noncommissioned officer creed within the U. S. Armed Forces.

Recently, DOD developed training modules for first responders which entail force protection measures, duties and responsibilities and lists of off limit establishments. The limitations of the training module do not enable criminal investigators to recognize human trafficking. DOD has not developed a mechanism to track cases. Further, DOD has not developed a method for reporting criminal behavior of contract employees or ensuring prosecution of those who commit such crimes, although directed by the reauthorization act of 2003 and the Presidential directive of 2002.

The Department of Defense instituted stiff penalties for patronizing a prostitute on October 14, 2005. The executive order issued by President George Bush directs changes to the Manual for Courts-Martial (MCM). The order places "prostitution" and "pandering" among the offenses covered by Article 134 of the Uniform Code of Military Justice (UCMJ). The General Article prohibits "all disorders and neglects to the prejudice of good order and discipline in the armed forces" and " all conduct of a nature to bring discredit upon the armed forces." The order outlines the maximum punishment for the offense of paying for sexual intercourse with a prostitute to include one year of confinement, forfeiture of pay and a dishonorable discharge.

Subsequently, the services issued messages directing TIP (Trafficking in Persons) awareness training. The training directives cite TIP as a violation of human rights, and such incidents as incompatible with military values. For example, Navy personnel are required to receive TIP awareness briefs as a mandatory part of liberty safety briefs before each port of call. .

The Trafficking Victims Protection Reauthorization Act (TVPRA) was recently reauthorized by Congress, extending funding for trafficking prevention and victim protection through 2007 (Pub. L. No. 109-164, (2005). The statute authorizes approximately $180 million per year. TVPRA addresses many dimensions of trafficking, including labor trafficking, the use of child soldiers, and domestic sex trafficking and trafficking associated with foreign and military affairs. The statute reaches into foreign affairs by enhancing efforts to prevent trafficking in peacekeeping and antiterrorism efforts, instituting sex and labor trafficking as criminal offenses under the Extraterritorial Jurisdiction Act within the United States Code, Title 18 (Pub. L. No. 109-164, Section

103 (2005).

The State Department's Office to Monitor and Combat Trafficking in Persons is investigating issues of alleged abuse of workers who are part of an undocumented pipeline used to deliver thousands of Asians to labor on military bases in Iraq. The allegations concern involuntary servitude which resulted in the deaths of 12 Nepalese nationals employed by DOD contractors.

The Department of Defense Office of Inspector General issued recommendations to the Undersecretary of Defense for Personnel and Readiness and subsequently to Ambassador Miller, Trafficking in Persons Office, State Department. The recommendations hinge upon the development of Trafficking in Persons (TIP) clauses within the Federal Acquistion Regulations (FAR) and the Defense Federal Acquisition Regulations (DFAR).

DOD drafted a proposal prohibiting defense contractors involvement in human trafficking for forced prostitution and labor was drafted last summer to enforce the reauthorization act of 2003 and Presidential Directive of 2002. However, the implementation of the proposal has been thwarted by defense contractors. The State Department and Department of Defense continue to work on rules to require U. S. contractors operating overseas to police their subcontractors for human trafficking violations. The Trafficking in Persons (TIP) clauses within the DFAR have not been approved to date, nor submitted to the Office of Management and Budget (OMB).

The Commanding General, Multi-National Force-Iraq published Fragmentary Order 06-188, "Prevention of Trafficking in Persons in Multi National Forces Iraq" in April 2006. The Order focuses upon labor and debt bondage in CENTCOM. The Order does not address the trafficking for sexual exploitation by coalition forces recently uncovered by The Miles Foundation and allied organizations in southern Iraq.

Further, a U. S. State Department report issued in 2005 suggested that the problem in Iraq is "difficult to appropriately guage" under current combat conditions. The Report cited an unknown number of Iraqi women and girls being sent to Yemen, Syria, Jordan and other Persian Gulf nations for sexual exploitation.

The disconnect between Congressional mandates, authorizations, policy development and implementation continue relative to human trafficking within the Department of Defense. The focus upon policy development without substantial implementation was cited during the recent hearing conducted by House Armed Services Committee's Military Personnel Subcommittee and House International Relations Committee's Subcommittee on Africa, Global Human Rights and International Operations.

The changes contained within the reauthorization of the Trafficking in Persons Act require subsequent changes to the Uniform Code of Military Justice and Manual for Courts-Martial beyond inclusion among the general articles to support the prosecution of trafficking. In addition, combatant commanders should be supported by advocates

specifically trained to recognize trafficking in order to respond in a timely and appropriate manner as recommended within the National Defense Authorization Act for Fiscal Year 2007 pending before Congress.

The efforts to date are targeting prostitution, neglecting the "sham" marriages entered into by servicemembers and other nationals. The marriages often result in immigration issues and domestic violence. The special characteristics and challenges of the population of battered immigrant women associated with the military are addressed for the first time in "Immigration Status, Domestic Violence and the Military" published in ***Violence Against Women***, September 2003. The nature of the interviews detail women's victimization including abandonment, immigration issues and prostitution to support family members. Congress also needs to review immigration policies associated with the U. S. Armed Forces relative to "war brides."

Hartford Courant

March 20, 2005

A Roadblock to Justice

By Elizabeth Hamilton, Courant Staff Writer

Kayla Michael says she barely finished introducing herself before the garrison commander's deputy stiffened his spine and narrowed his eyes on a point somewhere just past the top of her head.

"Kayla Michael, you have no affiliation with the U.S. Army and no right to be on my premises today," he barked. "I am going to have you immediately escorted off the base and if you refuse to leave immediately, I will have you removed by force."

Michael imagined men in riot gear rappelling down from the ceiling and beating her to a pulp with batons, but she stood her ground long enough to ask why he hadn't canceled their appointment if all he was going to do was send her away.

"I tried to contact you," he said.

"How did you try?" she pressed.

"I order you to leave now and do not contact ACS [Army Community Service] again and do not contact this office again," he repeated.

She obeyed, looking over her shoulder at the armed soldiers trailing her as she sped away on her bike toward the gates.

And that was the end of Michael's three-year career as an advocate for victims, employed by a civilian contractor for the U.S. Army at its European headquarters in Heidelberg, Germany.

Michael's case is particularly stark – documents show she was fired last August after she advocated aggressively on behalf of a woman who reported being raped by an Army captain and psychologist – but it is not that unusual a case.

Despite proposed changes to the military's sexual assault policies, including one announced Friday that will give rape victims the ability to speak confidentially for the first time to advocates and medical professionals, Michael and four other advocates working for the military say they have been harassed or ignored – or in Michael's case, fired – for doing their jobs.

Michael and others are telling their stories for the first time, just months after Defense Secretary Donald Rumsfeld and other military brass pledged to hire more advocates as a way to address ongoing criticism that the military discourages sexual assault victims from reporting crimes or seeking help. The Pentagon is under intense pressure due to a series of well-publicized cases showing that some military commanders routinely protect batterers and rapists in their ranks.

Rumsfeld has ordered an internal investigation into how commanders have handled assault reports in Iraq. More recently, Rumsfeld appointed a brigadier general to head a newly created office to oversee the military's handling of sexual assault cases. That office is designed to give victims more access to advocates and services, military officials said.

Most of the advocates contacted for this story were unwilling to be identified, for fear they would be targeted for speaking out against the military.

But they all said essentially the same thing: Even as the military devises new policies to protect victims' rights, the advocates assigned to work on the front lines are battling a deep institutional resistance within the ranks.

If the commanding officer doesn't want a criminal case to go anywhere, they said, it won't. And nothing they say or do can affect that decision.

"There's no power. There's no teeth in it," said Becky, who works for the victim witness assistance program for the U.S. Air Force. "I feel like I'm constantly battling commanders to get them to hold their members accountable for what they did. They act like defense attorneys for these guys, even before they have defense attorneys assigned.

"If the commander agrees with me, they can be very respectful," she added. "But when they don't they just ignore me."

Christine Hansen, executive director of the Miles Foundation in Newtown, Conn., said the military must give victim advocates whistle-blower rights if it is serious about changing the culture of sexual abuse within its ranks.

"The victim advocates have no rights," Hansen said. "When they find themselves going toe to toe with the military, what is occurring is they're being fired, their contracts are being canceled, and their job duties and descriptions are being changed."

Hansen said her organization, which advocates for victims of sexual and domestic assault in the military here and abroad, is seeing an increasing number of complaints from advocates serving the military around the world. According to the Department of Defense, there were 215,331 women in active duty in the Army, Air Force, Navy and Marines as of May 31, 2004, with women making up slightly less than 15 percent of the overall force.

"We are seeing serious intrusions by military authorities into the work of victim advocates," she said.

Repeated attempts in the last two weeks to get a response from the Pentagon were unsuccessful.

Hansen said the Miles Foundation called the Senate Armed Services Committee in August to report a half-dozen cases, including Michael's, in which advocates were being harassed or fired, she said.

In at least one case, the intervention seemed to backfire because the advocate was called in for questioning after the Miles Foundation reported the harassment to congressional leaders. In another, the advocate has been ordered not to speak to the press. A few have become so discouraged they're considering leaving their jobs.

"Allowing victims to speak confidentially to advocates is a step in the right direction, but won't solve the larger issue of whether the advocates are allowed by military commanders to do their jobs," Hansen said.

U.S. Rep. Louise Slaughter, a nine-term Democratic congresswoman from New York and co-chairwoman of the Congressional Caucus for Women's Issues, reacted with anger last week when told that advocates report being fired, harassed and disrespected by military brass.

"This is actually a contravention of the rules of the Pentagon and we're going to call them on it," Slaughter said. "We had no idea there was a problem with the advocates. I'm going to demand they respond to this."

Slaughter introduced last year what many advocates believe is the first comprehensive piece of legislation addressing domestic violence, sexual assault and stalking in the military.

The legislation, which is currently being revised by Slaughter's office, would provide whistle-blower protections for advocates.

"We have tried for years to deal with the Pentagon on this," Slaughter said. "Every year they have given us lip service. The advocates are new. They were supposed to be a reform."

The military's victim advocate program was created in 1996, but the four major services have been slow in some places to implement it. There have been no advocates available for servicewomen in Iraq and Afghanistan, for example.

The Army announced last week it will train 1,000 sexual assault victim advocates around the globe and contract for "special assault response coordinators," who will provide training and oversight to the advocates.

Tina Greaves, who worked as an advocate for the Family Advocacy Program in Hanau, Germany, from 2002 to 2004 and is now with a private nonprofit agency in Connecticut, said advocates are almost entirely reliant on the goodwill of the commanding officer, who "has all the discretion."

Although she was not harassed, Greaves said, she had little success convincing commanding officers or military investigators that a soldier should be charged with a crime.

"I didn't see a lot of offenders prosecuted," Greaves said. "Usually it was just some sort of administrative punishment like a counseling statement, where your superior writes down what you've done and what you need to do to correct it – counseling, anger management, drug and alcohol treatment. That was it."

If the advocate dared to disagree with the commanding officer or the military's social work services office, Greaves said, "they could contact our employers and we could be terminated."

Like Kayla Michael.

A Godsend

Kayla Michael, a 32-year-old from Georgia, was a godsend as far as Olivia Marconi was concerned.

Marconi had only been in Germany a few weeks last year, working as an employment counselor at Heidelberg Army Hospital. She didn't speak the language and knew no one except her own mother when she says she was raped by the Army captain who offered to show her around the city while her mother was away.

The captain, who is not being identified by The Courant because he was never charged with a crime, worked with Marconi's mother at the hospital as a psychologist and seemed like a safe bet to Marconi. She arranged to meet him at his apartment before they drove to a club with friends.

Before they got started, Marconi said, she told the captain she wasn't much of a drinker. One, maybe two drinks is all she could handle, she said.

Once they arrived at the club, however, Marconi said she began drinking and by the time they left the bar early in the morning of June 20, she could barely stand. When they got back to his apartment it was clear she couldn't drive home and he didn't offer to take her there in a cab.

"He was like, 'Well, you can sleep on the couch, where the dog sleeps. Or there's the spare bed, under 100 boxes. Or there's my nice clean bed with air conditioning."

Later, Marconi would tell military investigators that it took her days to remember what happened next. When she did, she was horrified.

Keep your legs up, she remembered him saying, move to the end of the bed. She was like a doll he kept moving around and posing, but she couldn't feel what he was doing or make her body obey his commands. She was simply too drunk.

When it sunk in fully, so, too, did the thoroughness of her predicament. Marconi's mother worked in the social work office that would normally handle her case, while the alleged rapist

worked across the hall from her mother in the psychology department. They shared a water cooler.

Marconi, a trained advocate herself, had come to Germany to work as an employment counselor for soldiers leaving the Army and, like Michael, she was a civilian employee working for an outside contractor. She knew that contract employees can be fired for any reason, at any time, so accusing an Army captain of rape had its risks.

But Marconi decided to seek help anyway.

She called the Heidelberg Army Community Service program June 25 and spoke to a supervisor, who assigned the case to Michael even though she technically was assigned to work only on domestic violence cases.

Marconi certainly didn't care about this distinction – she just needed someone who knew how to traverse the complex military complaint system – and Michael wasn't about to turn down a supervisor's orders or a rape victim's request for help, so they went together to the hospital and then reported the rape to military investigators

Both Marconi and Michael said they told investigators and doctors that the case could not be handled by the Heidelberg social work office because of its proximity to the alleged rapist's office and because Marconi didn't want her mother and her mother's co-workers to have access to her file.

They were assured that the case would be transferred to the Mannheim social work office, they said.

But that never happened and when Michael attempted to find out why – and after she met with the alleged offender's commander to discuss Marconi's concerns – she suddenly found herself in trouble.

In an e-mail written June 30 – five days after Marconi reported the rape to military investigators – a friend of the alleged offender and the acting chief of the Heidelberg social work office wrote to Michael's boss complaining about her actions in the case.

In that memo, Capt. Kevin Wagner said Michael had "misrepresented" herself to the victim and to the community as an advocate for sexual assault victims. He also complained that she inappropriately contacted the Army psychologist's commander before he'd been notified officially about the incident and made unrealistic demands for an apology from the alleged offender and a no-contact order to prevent the psychologist from contacting Marconi.

"The commander of course could not give the victim what she was asking for because he still had no finding other than an accusation that something happened," Wagner wrote. "If he had control of both victim and offender in his unit at this point he could issue a no-contact order and do what he could to separate the two and prevent contact, however he could not take any administrative action until he had more to go forward with."

Wagner also accused Michael of "pushing this victim into taking actions that she otherwise would not have taken" – such as calling for an appointment with the Mannheim social work office.

What he didn't say is that he'd already assigned the case to his own office – despite Marconi's concerns that it be handled elsewhere. When Marconi learned that her complaint had been transferred to her mother's office, she was livid.

In a recent interview, Marconi said the situation was completely untenable.

"[Wagner] took the case from Mannheim and brought it back to Heidelberg and assigned it to a counselor I know, who is also a little bit friendly with the rapist," she said. "I was furious."

Wagner has left the Army and is no longer living in Germany, sources said. He could not be reached for comment.

The criminal case wasn't going anywhere, either.

Marconi said she was called back by military investigators the day after she reported the rape and grilled, without Michael or anyone else present, about her complaint, and then told they weren't going to pursue the case.

"I was exhausted. I was crying. That's when they asked me if I was sure I wanted to accuse somebody of that rank," Marconi said. "I said, 'He's working on a Ph.D. I'm working on a Ph.D. Who's outranking whom here?' I wasn't familiar with the military at that time. I'd only been here 21/2 weeks."

And the meeting with the alleged rapist's commander that Wagner accused Michael of bungling and making unreasonable demands? Marconi said the commander did tell her that "he'd already issued a stay-away order and some kind of written reprimand that was put in the file."

"I never knew that wasn't done, but Capt. Wagner wrote in a memo that we knew these things can't be done," Marconi said later. "He never had one of his counselors tell me that? I thought I just hadn't received a copy."

In fact, because they were under the impression that it was being done, Michael said she continued to call and e-mail the commander to find out why they hadn't received a copy of the no-contact order - which was also later held against her.

Michael was told Aug. 5 by her supervisor that her contract would be terminated for "supervision and liability" issues, according to documents.

She didn't know about Wagner's June 30 e-mail complaint about her handling of the Marconi case. Nor did she know about her own boss's letter to the contracting office, written July 30, detailing the reasons she was going to be fired.

The two letters are nearly identical.

Appeal For Help

Michael, who now attends the University of Heidelberg Medical School, complained to everyone who would take a phone call and requested a meeting with the commander of the United States Army, Europe & 7th Army, Gen. B.B. Bell.

On Aug. 10, Michael sent an appeal for help to Bell, who she hoped would be receptive because of the strong no-tolerance position he's taken on sexual harassment and assault. The message – "Sexual Assault, not in OUR Army" – scrolls across the top of the European command's website, with a link to Bell's own directive on the issue.

Michael's e-mail, which she provided to The Courant, read as follows:

"Hello General Bell, I am the Victim Advocate with the Heidelberg Family Advocacy Program at ACS. I was informed a few days ago that my contract will be terminated immediately due to technical reasons.

The true reason my contract is being terminated is because of my assistance in a sexual assault case against a Heidelberg officer and psychologist. Could you possibly assist with my case?"

Bell's response was to order her immediate removal from the base for sending "damaging e-mails," Michael said.

According to documents obtained by The Courant, Lt. Col. Diane M. Vanderpot, commander of the 411th Base Support Battalion in Heidelberg, carried out the order the next morning.

An affidavit, written by a contract specialist for the Army in Heidelberg, spells out how it happened.

The specialist wrote that Michael's boss "received a call from the 411th BSB Commander the previous evening. The commander had been advised from the [U.S. Army Europe Command Gen. Bell] that contractor Kayla Michael, who is in the process of being terminated, had sent out a damaging email to the General and other Army Community Services employees and clients concerning the incidents occurring at ACS."

Michael said there was nothing "damaging" in any of her e-mails, to Bell or others, and she provided copies of them to The Courant.

"The whole thing would be so much easier for me to accept if the general were a 'normal general' and didn't give a damn about soldiers raping whomever," Michael said. "To this day, he makes commercials right and left saying 'sexual assault will not be tolerated in our Army.'"

Jane Crichton, spokeswoman for Bell, said she would get answers to The Courant's questions about Bell's involvement in the case, but had not responded by the end of the week.

Michael's requests for help from the Army's Office of the Inspector General and the U.S. Office of Special Counsel were all denied. According to the responses she received, Michael had no rights once her contract was terminated.

It wasn't until her plea for help reached the Miles Foundation that anyone began to listen.

The Miles Foundation contacted the U.S. Senate Armed Services Committee Aug. 19, which then requested an investigation from U.S. military authorities in Germany.

That investigation, completed in January, wasn't reviewed by Russell Hall, the regional director for the Installation Management Agency Europe, which oversees the Heidelberg base, until mid-March. The Courant's first request to Hall's office was March 2; an earlier request, to the attorney who conducted the investigation for Hall, was made Feb. 10.

Hall's spokeswoman, Kim Walz, said Friday that Hall recently made a recommendation in the Michael case, but she was not able to provide any information about the contents of the report or the recommendation.

Walz said Hall was not available to discuss the report because Friday was a "training holiday for the troops."

Walz said Hall ordered the investigation to determine whether Michael's contract was "illegally terminated and to ascertain if the program had suffered as a result of the termination." She also wasn't able to say Friday exactly when Hall ordered that investigation.

Michael's position as victim advocate has been covered by two other staff members in the office since she was fired, Walz said, and a new Armywide contract for victim advocates will result in one advocate at the 411th in Heidelberg. Walz said the office has served a total of two alleged victims from October to December 2004.

"Mr. Hall takes these programs very seriously," Walz said. "He has made it clear to everyone in IMA-Europe that the Army's sexual assault policy will be strictly enforced in Europe and victims will be treated with dignity and respect."

Whatever the outcome of the Michael investigation, however, Marconi said she does not feel like she was treated with dignity or respect at any point - except by Michael.

"Her professionalism is amazing," Marconi said. "I thought it was really disgusting she was fired. She didn't quit when they wanted her to quit. They wanted her to just give me my rights, tell me the case was over and move on. She wasn't going to do that."

After her case was transferred to her mother's office and not prosecuted by military investigators, Marconi said she gave up trying to get help. She's eager to leave Germany and her job with the Army.

"I got a bill for $148 for my own rape kit and it went to my work on the base. They didn't even send it to my home," Marconi said. "Every once in a while I come into the worst pain."

Incomplete Response

The response from the Army about Michael's case, eight months after the fact, is not yet complete.

Walz said Hall ordered the investigation because of the e-mail Michael sent to Bell requesting help. But documents and interviews suggest the only timely response to Michael's plea for help from the Army or IMA-Europe was to order her from the base – not once, but twice.

In fact, it was a deputy garrison commander under Hall who agreed to meet with Michael after she was removed from the base Aug. 11 and who, according to Michael, kept their appointment only to order her to leave immediately or face forcible removal.

And the timing of the investigation ordered by Hall's office suggests it was a request from the Senate Armed Services Committee in Washington, D.C., not Michael's pleas for help, that prompted military officials in Germany to take a closer look at her case.

Walz said the military might not be getting a fair shake in the Michael case because it is limited in what it can say publicly about its own actions.

"People like Ms. Michael are free to tell their side of the story, but we are not," Walz said. "Our hands are tied because of privacy laws and regulations. I don't think in any of the cases anything is black or white."

After being told that Michael provided documents to back up most of her claims, Walz said she would look into questions about how the advocate was treated by Hall's staff and stated, "If that's what happened, that's bad. I can tell you, Mr. Hall wouldn't tolerate that."

But tolerate this kind of treatment is exactly what the military has done, advocates said, and nothing in the new Defense Department's policies will prevent commanders and others from engaging in the same behavior.

Slaughter said she will work to strengthen her bill to provide even more protections for advocates.

In addition to the whistle-blower protections supported by advocates such as Hansen, Slaughter's bill would establish two senior executive level offices, Director of Special Investigations and Office of the Victims' Advocate.

The first would enforce timely investigations of sexual assault, domestic violence, family violence and stalking, and manage sexual assault response teams and domestic violence response teams. The other would improve access to services for victims and survivors.

Although the Defense Department Friday announced its new confidentiality policy for victims, to be implemented within 90 days, it is unclear whether the Pentagon supports greater protections for the advocates themselves.

The Pentagon's new policy, which it prefers to call "restricted reporting," would allow victims to report a rape confidentially to one of the newly created sexual assault response coordinators or medical staff. The case would then be assigned to an advocate, who would advise the victim of his or her rights. The new policy also allows for evidence to be collected by medical personnel, even if the victim chooses not to formally report the rape.

Commanding officers will be informed within 24 hours about all reported assaults – even those in which the victim chooses not to be identified or formally report a rape – in order to give them "a more realistic assessment of what is happening" in their ranks, said David S.C. Chu, undersecretary of defense for personnel and readiness.

"If we're successful, we'll see more incidents reported," Chu said during a press briefing at the Pentagon Friday. "Given the severe under-reporting we've spoken [about], that's going to be progress, frankly."

The new policy makes no mention of confidentiality for victims of domestic violence, however, and it was unclear Friday whether the same rights would extend to them. Nor does it speak to the types of problems encountered by advocates such as Michael, who is still waiting to hear from commanders in Germany about her case.

She fears that what happens at remote bases is beyond the reach of even the most well-intentioned military brass in Washington, D.C.

In a letter Michael wrote Aug. 20, pleading for help with her case, she describes being chased off the base earlier that day, still clearly rattled by the experience. "I biked as fast as I could to the gate, with the hairs on the back of my head on end. I fully expected to be shot at," she wrote, ending with a question that has yet to be answered: "Guys, all I am is a victim advocate. I am sooo talk-to-able. What on earth is happening to me?"

A discussion of this story with Courant Staff Writer Elizabeth Hamilton is scheduled to be shown on New England Cable News each hour Monday between 9 a.m. and noon.

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Government Reform Subcommittee on National Security 15 July 2006
A sub-committee of the Committee on Government Reform
U.S. House of Representatives
2157 Rayburn House Office Building
Washington, D.C. 20515

Rep Christopher Shays ® Connecticut, Subcommittee Chairman
Rep Chris VanHollen (D) Maryland
Rep Carolyn Maloney (D) New York
Rep Dennis Kucinich (D) Ohio
Rep Todd Platts ® Pennsylvania

Dear Congressman/Congresswoman,

This letter was written quickly and without the benefit of review by others, so please bear with me if it is a little rough. Just last week I happened to view congressional testimony by a former female Air Force Academy Cadet on "how the very system designed to protect her, drove her from the Military". I am writing because I believe I have a solution to the problem that she ran up against and that many others have suffered against silently.

I endured a rather difficult situation in the final years of my career. I was not allowed by the system to transfer away from a horrible situation; nor was I allowed to report the problem up the chain of command, because the chain itself saw my problem as a threat or personal attack by association. I was threatened with an article 15 by the worst offender who, by performance, should have been my subordinate, not my supervisor.

The solution, while surprisingly simple, took a great deal of thought and pondering by me, as well as discussion with peers and subordinates over the years. I was troubled each time I saw a good person voluntarily leave the service. People driven out by what we all call the "crap" that we must endure because of what, ultimately (if we complained), would be viewed as "he said vs. he said OR he said vs. she said, allowing the problem to perpetrate.

When I served in the Pentagon, I was required to take an extensive lie detector test. The purpose, to ensure I was not selling secrets to the enemy or in any way compromising classified.

If you fail the test you are not allowed to remain in a job with crucial access to high level classified. A similar test to ensure honesty in dealing with classified should be used to ensure honesty in those that make up our military's chain of command.

Let's look at some simple guidance for the lie detector test:

1) Grandfather all those already in the system to prevent upheaval and waves as the new system is developed and groomed to eliminate flaws.

2) Require all those applying for a command position to take and be listed on a "passed command screening lie detector list."

3) Require the test to be re-taken each time an officer is eligible or selected to "move up" the chain of command.

4) A key question on the test must be: "Have you ever lied to a subordinate?"
Why? Those in command hold, and sometimes wield, a tremendous amount of power over the lives of their subordinates. If that power is used dishonestly, as it apparently was in the young ladies case, it can destroy careers and dreams of well qualified subordinates.

5) Make a person sign a statement similar to the one that is already used for classified. If they fail the test, or refuse to take it, they will not be allowed to serve in the position of leadership for which they are applying. They must quietly leave the command track and serve in a staff position.

6) If they fail the test, do not eliminate them from the military (unless the reason is extreme and gross). Simply do not allow them into the command track. Allow them to continue to serve in their current position or a position where their technical expertise can be utilized without shaping the lives of young members of their field through the use of command applied power.

Had these rules been in place, I, no doubt, would still be in the military today rather than having retired after 21 years of commissioned service and 25 total years of service.

I hope you take my suggestions to heart and find the time to reply to my letter.

Very Respectfully,
Andy Kohlan
USAF Retired
[redacted]
Offutt AFB, NE 68113

USCG #239: Please provide information on what elements the Coast Guard Academy collects and enters into the Defense Incident Based Reporting System (DIBRS) system.

Response: Currently the Coast Guard is collecting and reporting information to the National Crime Information Center (NCIC)/Federal Bureau of Investigation as required by the Uniform Federal Crime Reporting Act, using a process separate from DIBRS. This process ensures that information about Coast Guard criminal convictions is available to civilian and federal law enforcement agencies and other entities with the capability to query NCIC. The recent conviction of a Coast Guard Academy cadet will be entered in NCIC by CGIS pending the outcome of the appeals process. Elements provided via this process align with DIBRS since DIBRS information feeds into NCIC.

USCG #240: Is the Coast Guard Academy part of the Defense Incident Based Reporting System (DIBRS)?

Response: The Coast Guard Academy (CGA) does not directly enter information in DIBRS, however information about Coast Guard criminal convictions, including those at the Coast Guard Academy, are reported to the National Crime Information Center (NCIC)/Federal Bureau of Investigation by the Coast Guard Investigative Service (CGIS) through a process separate from DIBRS.

USCG #241: What is the procedure for local police response onto the Coast Guard Academy campus?

Response: The procedure for local police response onto the Academy campus would depend on the location of the offense. Much of the Coast Guard Academy campus is under exclusive federal jurisdiction -- meaning that the state and local police do not have jurisdiction to enforce their laws. Most, but not all, of Chase Hall (the cadet barracks) is under exclusive federal jurisdiction. The Coast Guard Academy has two special agents of the Coast Guard Investigative Service (an independent command) assigned full-time to the Coast Guard Academy. Coast Guard Commandant Instruction 5520.5E mandates that the Coast Guard Investigative Service (CGIS) be advised of all rapes and sexual assaults. Only CGIS is authorized to investigate rapes and sexual assaults in the Coast Guard. However, regardless of the jurisdictional limitations of the Coast Guard Academy, the CGIS agents maintain a strong liaison with other federal, state, and local law enforcement officials to ensure a professional and through handling of all cases.

A victim of sexual assault or rape at the Coast Guard Academy has many reporting options ranging from peers, counselors and chaplains, to his/her chain of command, medical, and the police. A victim is not prohibited from contacting or reporting the incident to local authorities. Coast Guard Academy Superintendent Instruction M1754.1B, "Reporting and Responding to Sexual Assault Involving a Cadet or Officer Candidate," promotes a victim-centered approach that allows a victim an opportunity to seek counseling and medical support, deal with what they have experienced, and not have to enter an investigative procedure immediately. It further states that if a victim chooses to report the incident to the police, or to the chain of command, preservation of evidence will be critical for potential use in criminal proceedings. This type of reporting is considered "unrestricted." If the member reports the incident to the chain of command and "unrestricted" reporting is selected, the CGIS agents will be notified immediately and they will begin an investigation. If the member reports the incident to the local police, the police will generally contect the CGIS agents assigned to the Coast Guard Academy to discuss how best to proceed with the investigation. If the incident occurred in an area of Chase Hall where there is exclusive federal jurisdiction, CGIS will investigate the case. If the incident occurred in an area where there is concurrent jurisdiction, CGIS and the local law enforcement officials may collaborate to decide on the most appropriate agency to investigate based on the unique factors involved. In either reporting method, the victim-centered approach is maintained.

USCG #242: Is it possible to have the Defense Incident Based Reporting System (DIBRS) system up and running by January 1, 2007?

Response: It is unlikely that the Coast Guard would be able to fully participate in DIBRS by January 1, 2007. However, using a process that is separate from DIBRS, the Coast Guard currently collects and reports to the National Crime Information Center (NCIC) information regarding investigations conducted by the Coast Guard Investigative Service into alleged violations of the Uniform Code of Military Justice (UCMJ). The violations reported are comparable to crimes reportable under the Uniform Federal Crime Reporting Act.

USCG #243: How are administrative hearings handled in regards to sexual assault claims and accusations?

Response: All reports of sexual assault are fully investigated by the Coast Guard Investigative Service (CGIS). If there is sufficient evidence of a Uniform Code of Military Justice (UCMJ) violation involving sexual assault, the case will proceed under the UCMJ process. Other cases, which do not warrant court-martial or

UCMJ processing, may be referred to an administrative disciplinary process. These can include cases where the evidence is insufficient to meet the burden of proof required for court-martial, or where the victim wants to avoid any participation in a public trial, or where the parties engaged in some form of consensual (though prohibited by the Cadet Regulations) intimate or sexual conduct. These cases are treated as "Class I offenses" – the most serious (but not necessarily criminal) offenses in the Cadet Regulations. Class I hearing authorities include the Commandant of Cadets (O-6), Assistant Commandant of Cadets (O-5), and Company Officers (O-4/O-3) at the discretion of the Commandant of Cadets, or the Cadet Command Cadre (Senior Cadets) with the oversight of a Company Officer. The burden of proof required at an administrative hearing is a preponderance of the evidence (i.e., "Is it more likely than not that the offense was committed by the accused cadet?").

Administrative hearings primarily exist to adjudicate relatively minor offenses. They are generally not an appropriate forum to dispose of sexual assault cases. However, there scenarios sometimes exist where the offense considered is not "minor" (e.g., sexual assault), but the evidence is scant or virtually non-existent. In these cases, the Command in consult with the Staff Judge Advocate may decide to dispose of the case at an administrative hearing instead of a court-martial. This decision is carefully weighed and is based on a number of factors. Some of the many factors considered are the alleged victim's desires for resolution and the fact that the burden of proof at a court-martial is "beyond a reasonable doubt," which reduces the chance of a conviction at a court-martial in a case in which there is a dearth of evidence. Because of the much lower burden of proof required at an administrative hearing, these types of cases may be adjudicated in that forum instead. In these such cases, the Commandant of Cadets or Assistant Commandant of Cadets would be the Hearing Authority.

In every case, the Hearing Authority bases his/her decision, action, and imposition of punishment (if any) on personal observations and verbal and documentary evidence presented at the hearing or hearings. Prior written correspondence may be accepted at the discretion of the Hearing Authority. The Hearing Authority must ensure that these hearings uphold fundamental fairness and due process rights of the accused cadet. Cadets who have allegedly committed misconduct will have, at a minimum, the following rights:

a. The right to be present at the entire hearing or hearings.

b. The right to cross-examine all witnesses testifying.

c. The right to present witnesses reasonably available and present evidence on their own behalf.

d. The right to make statements, including a closing statement, on their own behalf.

e. The right to a "Mast Representative," who will normally be an available first class cadet.

June 29, 2006

Sharon Peacock
Rt 2 Box 2555
Lower River Road
Hawkinsville, GA 31036
(H) 478-783-2555
Cell (478) 230-3955

Congressman Christopher Shays
Chairman of the Subcommittee of National Security
116 Longworth Building
Washington DC 20515-0704

Dear Congressman Shays:

I am writing to say Thank You to Representative Shays for holding hearings on sexual harassment at the Department of Defense. For 3 years I endured bizarre sexual acts from my supervisor on Robins Air Force Base.

I was employed as a civilian employee at Robins AFB for 17 years. In 2000, I was assigned as the secretary to Mark Ferris. Mr. Ferris was a senior manager responsible for the Navigation/Communications Branch at Robins Air Force Base. Not long after I began working for Mr. Ferris, he started exposing his penis to me in my cubicle and began masturbating and ejaculating in my presence. Mr. Ferris is tall which allowed him to see over the cubicle walls. When he saw someone walking near the cubicle he would stop masturbating or exposing himself. He placed his penis on my shoulder while I sat at my desk and attempted to force me to touch his penis with my hand. Mr. Ferris ignored my objections to his bizarre conduct. While Robins Air Force Base was a staging area for the war in Iraq, I was dealing with a supervisor who neglected his duties to support our troops and who spent a large part of his day sexually gratifying himself in my presence. He also spent a large amount of time looking at pornography on his government computer. Mr. Ferris' sexual harassment continued for three years until I was transferred to another position in 2003.

Mr. Ferris was criminally prosecuted and sentenced to prison because of his attacks on co-worker Angela Rainey and myself. He also sexually assaulted his former secretary Linda Adkison. The sentencing Judge recommended Mr. Ferris be placed in a prison psychiatric ward. Nevertheless, the U. S. Air Force does not want to resolve my sexual harassment claim. After Angela Rainey, Linda Adkison and I reported sexual assaults by Mr. Ferris over six years from 1988 to 2004, the Air Force did not help me. Instead, the Air Force dismissed my charge of sexual harassment. Recently, the Equal Employment Opportunity Commission overturned the dismissal of my case and ordered the Air Force to investigate my charge of sexual harassment. I have not been able to resolve my case with the Air Force and this injustice deserves a prompt end.

Linda Adkison was Mr. Ferris' secretary from 1988 to 2000. Ms Adkison gave the Air Force a sworn statement that she was sexually abused by Mr. Ferris. In 2004, Angela Rainey was a co-worker who was sexually assaulted by Mark Ferris also.

In the Summer of 2003, I complained to Senior Manager Lorraine Andrews that Mr. Ferris was "whacking off" in his office. Ms. Andrews simply starred at me and ignored my complaint. It was obvious that I was not the only person observing his bizarre conduct. He masturbated in an open cubicle where anyone who walked by could see him. He supervised roughly 13 employees who were in and out of his office and my cubicle all day. His immediate supervisor's office was around the corner. There were 22 employees in cubicles and offices near by. His conduct could not go unobserved but no one did anything about it.

In July 2004, after learning of the sexual assault on Angela Rainey, I telephoned Senior Manager Charlene Brown to tell her about my sexual abuse by Mr. Ferris. Ms. Brown told me to "keep my month shut and not to tell anyone". Later in July 2004, I reported the sexual abuse to the EEO office. In reprisal, the agency launched an investigation into me and asked supervisors if they had any adverse notes in their files on my conduct or performance. The personal attacks on both Angela Rainey and myself forced us from the Agency. In December 2004, I left work due to stress from the reprisal and sexual assaults. I have been out of work on a stress-based worker compensation claim ever since. The investigation into Angela Rainey resulted in her being fired from her job due to alleged misconduct.

The injustice to me has been reported in the newspapers that I am enclosing. I am also enclosing documents including Mr. Ferris' plea agreement describing his sexual assault on me and Ms. Rainey and the sentencing order.

Again, thank you for holdings the hearings and your concern with the matter of sexual assault and the military. And thank you for taking the time to read my letter.

Respectfully,

Sharon Peacock

The Union Advocate

At Robins, That Depends on Wh[illegible]

EEOC OVERTURNS SEXUAL HARASSMENT CASE DISMISSED BY AIR FORCE

COURT SENTENCED HARASSER TO PRISON PSYCHIATRIC WARD!!!!!!

The EEOC has overturned a decision by **Robins Air Force Base** in central Georgia dismissing sexual harassment and assault charges against a former senior manager who terrorized his secretary over four years. The sexual harassment charge was dismissed by the Air Force in spite of the manager's guilty plea in U.S. District Court to sexual assault and a sentencing order that recommended his confinement in a prison psychiatric ward! *Sharon Peacock v. Department of the Air Force, No. 01A52025 (EEOC April 5, 2006).*

From 2001 to 2003, Sharon Peacock was the secretary to Mark Ferris who was a contracting Branch Chief at Robins Air Force Base. In July 2004, when Ms. Peacock reported sexual harassment to the Department of the Air Force, Ferris called her with threats of reprisal. When Ms. Peacock did not back down, Ferris contacted her husband with additional threats.

Neither Mr. nor Ms. Peacock backed down even when pressured by other senior managers who discouraged Ms. Peacock's filing of a discrimination charge. Nevertheless, when the charge was filed, Robins Air Force Base dismissed the complaint on the grounds that Ferris' reprisal actions and the Agency attempts to discourage the filing of the complaint were not a violation of law and the sexual assault charges were untimely.

Ferris pleaded guilty in "...did assault SHARON PEACOCK, a co-worker, by doing all of the following acts: placing his uncovered penis in her face, running his hands down her pants, placing his hands up her skirt. Defendant admits.... SHARON PEACOCK, did not consent to this behavior or encourage him in his behavior." The EEOC's decision provides graphic detail of other sexual harassment charges against Ferris including masturbating in his office in front of Ms. Peacock. Tests conducted by Robins Air Force Base confirmed semen was present in the carpet of Mr. Ferris' office.

Robins Air Force Base dismissed Ms. Peacocks sexual harassment charge while it was in the EEO administrative process. Ms. Peacock is represented by Attorney Josh Bowers from Washington, D.C. Mr. Bowers stated, "The dismissal of the sexual harassment complaint was a gross abuse of power by the Air Force. The EEO intended to protect employees with a quick and confidential procedure for resolving discrimination actions.

At the same time that Robins Air Force Base obstructed Ms. Peacock's sexual harassment complaint, the Agency expedited Ferris' application for retirement." Mr. Bowers said, "The entire case smacks of injustice and sends a message to the women at Robins Air Force Base with notice sexual harassment charges will not be taken seriously.

Instead, the Agency attempted to evade its responsibility to protect Ms. Peacock by discouraging her complaint and then dismissing a valid sexual harassment complaint. At the same time that Robins Air Force Base obstructed Ms. Peacock's sexual harassment complaint, the Agency expedited Ferris' application for retirement." Mr. Bowers said, "The entire case smacks of injustice and sends a message to the women at Robins Air Force harassment charges will not be taken seriously. The EEOC decision corrected the Agency's wrong-headed dismissal decision."

For additional information and a copy of the EEOC decision, contact Attorney Josh Bowers (202) 271-4868/ email JBdcLaw@aol.com

Another of Ferris' victims, who settled her EEO claim, has since been removed from Robins despite their assurances that she would be given "a clean slate!" Why does telling the truth and attempting to stop a pervert require forgiveness? When that pervert is within Robin's inner sanctum of Senior Management! We are currently attempting to get this travesty of justice

The Telegraph

MIDDLE GEORGIA'S NEWSPAPER

SUNDAY
May 28, 2006

Sexual harassment at Robins leaves damage in its wake

By Gene Rector
TELEGRAPH STAFF WRITER

ROBINS AIR FORCE BASE – The wages of sexual assault and harassment — particularly in the work place — are almost always destructive, unforgiving and brutal.

Reputations and careers are ruined. Emotions and physical well-being become grist for a procedural, legal meatgrinder.

Friendships are lost in a maze of knowing glances and phone calls unreturned. Family unity is stressed and often ruptured. Even the employer must deal with a heavy cloud of suspicion.

Two employees at Robins Air Force Base know the cost all too well. Sharon Peacock, a procurement clerk, said she endured almost 30 months of sexual assault and abuse from her boss, Mark Ferris.

She insists her health was severely impacted, with recovery and vindication still hard to come by.

Peacock said she tried to reason with her supervisor during the 30-month ordeal. "Women are taught that we can fix things," she said. "When it didn't work, I began running. When I came to work in the morning, the anxiety would hit me. I'd be running all day — trying to stay busy, trying to stay away from my desk. I don't know how I did it."

Ferris, the supervisor, said he's lost virtually all he valued after pleading guilty in federal court in January 2005 to two counts of simple assault and spending six months in prison.

"I was raised in Warner Robins," he said. "I had a fabulous reputation on the base. I rose fast. But it's all gone. People I thought were friends won't talk to me."

Even with his conviction and incarceration, Ferris said the full truth has never come out. "She (Peacock) is not the innocent victim, believe me," he said. "She made advancements numerous times. I'm not condoning my actions. I succumbed to it. But she's playing it to the hilt."

Ferris said witnesses that could back up his claims were ignored by investigators.

Peacock denies Ferris' allegations. Her Washington, D.C., attorney, Josh Bowers, also disputed Ferris' claims. "He pled guilty to a misdemeanor to avoid felony charges," Bowers said. "As for the other witnesses, what they thought was consensual was actually sexual assault."

WOMAN SAYS OTHERS ABUSED

Peacock's ordeal ended when she was transferred to a new job in August 2003, a transfer unrelated to her problems with Ferris. Almost a year would pass before she reported what happened. She said a chance meeting with another woman bolstered her courage.

"She also had been abused by Ferris and reported him," Peacock said. "But management moved that girl and kept (Ferris) in his position of intimidation, supervising 26 women."

Peacock said she was not surprised by that outcome. "I'd been on the base long enough — 17 years — to know that management protects management," she emphasized. "I knew I'd be blackballed, labeled a troublemaker, told it was my fault."

She said two division chiefs — both women — tried to intimidate her into not filing a sexual harassment claim. One of them, Ferris' direct boss, told her to keep her mouth shut, Peacock said.

"She said, 'Don't talk to anybody, I'll take care of this,' then slammed the phone down," Peacock said. "She should have called the security police and had him picked up immediately."

The Hawkinsville resident was undeterred. She filed a formal, equal employment opportunity action in October 2004, claiming she had been discriminated against and subjected to sexual harassment. The base's EEO office disallowed the claim two months later, saying it had not been

filed within the required 45-day window and did not state a remedy.

Peacock appealed the decision to the U.S. Equal Employment Opportunity Commission in Washington. The agency ruled last month in her favor, ordering Robins to reopen the case.

The EEOC decision cited graphic complaints of sexual harassment by Ferris in his office, including fondling her and masturbating in front of Peacock.

BASE DEFENDS RESPONSE

Mike O'Hara, the base's civilian personnel director, said Peacock's claims were not ignored by senior officials — at least on the criminal side — even though the EEO action was initially dismissed.

"When we became aware of the complaint and understood it involved a manager, the wheels of justice began to engage very quickly," O'Hara said. "Our Air Force lawyers were the moving party against Mr. Ferris. At the end of the day, he was sentenced and incarcerated because of Air Force actions."

Pete Peterman, acting U.S. Attorney for the Middle District of Georgia, substantiated O'Hara's story. "The Air Force devoted a lot of resources to the criminal prosecution," Peterman said. "Dee Dial, their attorney, is a very energetic prosecutor and she got the full support of the base to pursue this matter. I give them high marks. They took it very seriously."

Base officials said they also looked very closely at Ferris' retirement status but learned their hands were tied. Ferris' medical retirement due to degenerative discs in his neck had been approved before Peacock filed her formal complaint.

"We learned that we have no ability to reduce or eliminate retired pay," O'Hara said. "A retirement is an entitlement once a person reaches legal age and sufficient years. There was nothing we could do but make sure he paid for the crimes he committed."

SUPERVISOR: WITNESSES IGNORED

Despite all the evidence cited in the case, Ferris continues to maintain that the whole story hasn't been told.

He said six employees came forward and wanted to file affidavits claiming Peacock was the aggressor. "They were people I knew and she knew, as well as people neither one of us knew, male and female — people with hard evidence," Ferris said. "She knows what she did. She knows these other people saw her."

He said base officials did not conduct a proper investigation. "They called some of the witnesses liars," Ferris said, "and refused to take their statements."

Even the plea agreement he signed — containing graphic and sordid admissions of sexual activities — was bogus, Ferris said. "I told the prosecutor that I had not admitted to all of that stuff," Ferris said. "But he said I had to accept those words or he was going to court and charge me with indecent exposure. That carried a $100,000 fine and a year in prison. My hands were tied."

Base officials said they are unaware of the six employees who Ferris claims back his assertion that relations with Peacock were consensual. But O'Hara said the case file does show Ferris had a long-standing friendship with Peacock and another woman who alleged harassment.

"There was a lot of social interaction outside the normal duty day," O'Hara said. "I'm not saying there was consensual contact that led to the charges, but there was a fairly lengthy friendship in advance of the events that I call a line in the sand. When Ferris reached that point, he very clearly was in violation of the law and Air Force policy, and needed to have consequences."

INVESTIGATION CONTINUES

Ferris' allegations and the handling of Peacock's claim will be investigated further, O'Hara said. "In the case of the division chiefs, I'm not sure those facts have been substantiated," he said. "We need a vigorous investigation and a finding of facts."

The personnel director said the base has attempted to settle with Peacock, offering her a different job, restoration of sick leave and a significant amount of cash.

Bowers, Peacock's attorney, called the cash amount offered trivial.

"It is regrettable that the agency didn't take this case more seriously," Bowers said. "They first tried to dismiss it, then offered an insignificant amount of money in settlement."

O'Hara said the base's reaction to the Peacock case has indeed been substantial. "In fact, we looked upon it as a watershed event," he said. "It gave us an opportunity to send a message to people who may have aberrant ideas: We don't tolerate it. We're going to come after you. You can run, but you can't hide."

His advice to the almost 4,000 women working at Robins is clear and direct. "People subjected to this type of egregious behavior should report it in a heartbeat," the personnel director said. "Bad behavior doesn't get better with time. The first thing they need to do is kick them where the sun doesn't shine, then report it. I can guarantee that if issues of this nature are brought to the proper level of management in a timely manner, swift and decisive action will be taken."

A CALL FOR STRONGER ACTION

In the meantime, Peacock said she is trying to put her life back together. Although technically a base employee, she has been at home on worker's compensation for a number of months. Her doctor advised her to take that step, she said.

"I was told that upper management was trying to dig up dirt on me," she said. "They told my supervisor to look for things. They began to harass me. It was freaky. It was so stressful and upsetting. I developed high blood pressure and an ulcer."

She said she wants the base to acknowledge that her case was handled improperly. She also wants sexual harassment training for individual women workers.

"Mark had attended the training," Peacock said of her supervisor. "He knew what sexual harassment and assault were and what needed to be done. But it stopped with him. He certainly wasn't going to tell me what to do. The base needs to strategically place signs and billboards to let women know the facts. That also will tell supervisors that this kind of behavior won't be tolerated. Then women won't be afraid to come forward."

Ferris' wife, Gloria, has a much different take on what happened to her husband and the role Peacock played. She also suggests that high doses of medication her husband was taking for his neck pain played a role.

"My husband is not innocent," she admitted. "He made some poor judgments and he accepted his punishment. But the world needs to know that (Peacock) was not innocent. I'm just begging for the truth. He shouldn't have pled guilty because everything would have come out."

Ferris, now on probation, said a handful of friends have stood by him. So has his church. "But it's hard to look people in the eye," he said. "You know they've heard the reports. No one tells you what they're thinking, but they look the other way when they see you. I guess they think I'm some kind of sexual deviant. It's hard. It's really hard."

9R1 m04192

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF GEORGIA
MACON DIVISION

UNITED STATES OF AMERICA	}	**DOCKET #:5: 04-MJ-11-02**
	}	
vs	}	
	}	
MARK FERRIS	}	
	}	

PLEA AGREEMENT

It is agreed by the United States of America, by and through its undersigned attorney, and MARK FERRIS, hereinafter referred to as "Defendant", and defendant's attorney as follows:

(1)

Defendant acknowledges that defendant has reviewed and discussed the information against defendant in this matter with defendant's attorney and defendant's attorney has explained to defendant his understanding of the government's evidence.

(2)

The defendant understands that defendant is not required to plead guilty, and that defendant has the right to plead not guilty, and that defendant has the right to elect to be tried by a jury. The defendant understands that at trial, the defendant would enjoy a presumption of innocence, and that the government would have the burden of proving the defendant's guilt beyond a reasonable doubt. The defendant understands that the he would be entitled to the services of a lawyer at all stages of a trial. The defendant understands that he would be entitled to confront and cross-examine the government's proof, and to present witnesses and evidence in ~~his~~ his own behalf. The defendant understands that he would have the right to testify in his own behalf, but that he could not be compelled to do so. Defendant has discussed these rights with his attorney. Defendant knowingly and voluntarily waives his right to plead not guilty and proceed to trial.

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(3)

Defendant being fully cognizant of his rights, and in exchange for the considerations to be made by the United States in paragraph (4) below, agrees pursuant to Rule 11(e), Federal Rules of Criminal Procedure, as follows:

(A) The defendant is guilty and will knowingly and voluntarily enter a plea of guilty to Counts I and II of the information which charges the defendant with assault, 18 USC Section 113(a)(5). Defendant agrees that he is admitting that he (1) did assault ANGELA RAINEY, a co-worker, by doing all of the following acts: grabbing her hand and placing it on his crotch area, rubbing her legs, trying to kiss her, touching her on the breasts and buttocks, and that he (2) did assault SHARON PEACOCK, a co-worker, by doing all of the following acts: placing his uncovered penis in her face, running his hands down her pants, placing his hands up her skirt. Defendant admits that these women, ANGELA RAINEY and SHARON PEACOCK, did not consent to this behavior or encourage him in this behavior.

(B) That the defendant fully understands that his plea of guilty as set forth in Subparagraph (A), above, will subject him to a maximum sentence of 6 month imprisonment per count, which could be run consecutive, and a maximum fine of $5,000.00 per count, and that such imprisonment and fine could be combined, and a term of supervised release of 1 year. Defendant further acknowledges that the Court is required to impose a mandatory assessment of $10.00 per count.

(C) The defendant acknowledges and understands that the Court is not bound by any estimate of the probable sentencing range that defendant may have received from defendant's counsel, the government, or the Probation Office.

(D) The defendant understands fully and has discussed with defendant's attorney that the Court will not be able to determine the appropriate guideline sentence until after a pre-sentence investigative report and challenge any facts reported therein. The defendant understands and has discussed with defendant's attorney that any objections or challenges by the defendant or defendant's

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attorney to the Pre-Sentence Report or the Court's rulings thereon will not be grounds for withdrawal of the plea of guilty.

(E) Defendant understands and has discussed with defendant's attorney that after the Court determines the applicable guideline range of this case, the Court has the authority under certain circumstances to impose a sentence that is more severe or less severe than the sentence called for by the guidelines. Defendant understands, and has fully discussed with his attorney, that the Court shall order total restitution in this case pursuant to 18 U.S.C. Section 3663A and that the defendant agrees to pay the restitution ordered by the Court.

(F) Defendant agrees to provide a check for the mandatory assessment at the time of sentencing.

(G) Understanding that Title 18, United States Code, Section 3742, provides for appeal by a defendant of his sentence under certain circumstances, the defendant expressly waives the right conferred by Title 18, United States Code, Section 3742, to appeal defendant's sentence. Defendant further expressly waives the right to appeal defendant's sentence on any other ground, and waives the right to challenge defendant's sentence in any post-conviction proceeding except for a claim of ineffective assistance of counsel pursuant to 28 U.S.C. Section 2255.

Notwithstanding these waivers, the defendant expressly reserves the right to file a direct appeal of an upward departure pursuant to U.S.S.G. Section 4A1.3 (criminal history) or Section 5K2.0 (offense level) which the Court specifies at the time of sentencing. The defendant understands and agrees that defendant's waiver as to all other U.S.S.G. finding would still be in force and effect, notwithstanding defendant's reserved right to appeal and upward departure.

The defendant and the United States Attorney agree that nothing in this plea agreement shall affect the government's right or obligation to appeal as set forth in Title 18, United States Code,

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Section 3742(b). If however, the United State Attorney appeals the defendant's sentence pursuant to this statute, the defendant is released from defendant' waiver of his right to appeal.

(4)

In exchange for the consideration set forth in paragraph (3) above, the United States Attorney for the Middle District of Georgia agrees as follows:

(A) That he will accept the plea of guilty by defendant as provided in Paragraph (3)(A) above in full satisfaction of all possible charges known to the United States Attorney as occurring on Robins AFB, Georgia, at the time of the guilty plea. A successful plea will cause the United States to dismiss Counts III and IV at sentencing.

(B) If the defendant affirmatively manifests an acceptance of responsibility as contemplated by the Federal Sentencing Guidelines, the United States Attorney will recommend to the Court the appropriate downward departure for such acceptance. However, the Court alone shall determine whether the defendant is entitled to a downward departure. The United States reserves the right to show non-acceptance of responsibility via defendant's denial of involvement, conflicting statements, or additional criminal conduct by the defendant. Upward departure may be warranted for other conduct known to the defendant as part of these proceedings.

(5)

Nothing herein limits the sentencing discretion of the Court.

(6)

This agreement constitutes the entire agreement between the defendant and the United States. The defendant has not been promised anything else or been coerced or threatened in any way.

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(7)

ACCEPTANCE OF PLEA AGREEMENT

Defendant understands and has fully discussed with defendant's attorney that this agreement shall become effective only upon the Court's acceptance of this agreement and the Court's acceptance of the plea of guilty by the defendant.

SO AGREED, this 4th day of January, 2005.

MAXWELL WOOD
UNITED STATES ATTORNEY

BY: _____
SPECIAL ASSISTANT U.S. ATTORNEY

I, Mark Ferris, have read this agreement. I have discussed this agreement with my attorney and I fully understand it and agree to its terms.

_____
Mark Ferris
Defendant

I, O. Hale Almond, attorney for defendant Mark Ferris, have explained the information and the government's evidence received through discovery and my investigation of the charge to the defendant. I believe defendant understands the charge against ~~his~~ mf and the evidence that would be presented at trial. I have read this agreement, have been given a copy of it for my file, and have explained it to the defendant. To the best of my knowledge and belief, defendant understands this agreement.

_____
O. Hale Almand
Attorney for Defendant

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF GEORGIA
MACON DIVISION

UNITED STATES OF AMERICA	:	
	:	
vs.	:	
	:	CASE NO. 5: 04-MJ-11-02(CWH)
	:	
MARK FERRIS	:	

GOVERNMENT NOTICE OF INTENTION TO PRESENT EVIDENCE

UNDER F.R.E 404(b)

Comes now the United States of America, by and through the United States Attorney for the Middle District of Georgia, and gives notice to introduce evidence of prior bad acts pursuant to FRCP 404(b). The Government shows:

The prior bad acts include acts of assault on Linda Adkison, formerly the secretary to the Defendant. Also, acts of indecent exposure of the Defendant of his genital organs to Ms. Adkison during the last few years she worked for him.

The Government argues that the Defendant has maintained that the acts alleged in the four count information either did not occur or were with the consent, and even encouragement of the alleged victims in those counts. Ms. Adkison's testimony of almost identical acts committed against her also in the work environment show lack of accident or mistake on the part of the defendant. (See US v. Livoti, 196 F.3d 322 (2d Cir. 1999); U.S. v. Leight, 818 F.2d 1297 (7th Cir. 1987)) In addition, this evidence shows a modus operandi probative of the defendant's knowledge and intent in the charged incident. (See U.S. v. McDowell, 250 F.3d 1354 (11th Cir. 2001).

Respectfully submitted, this 15th day of December 2004.

MAXWELL WOOD
United States Attorney

s/Dietlinde A. Dial
By: DIETLINDE A. DIAL
Special Assistant
United States Attorney

CERTIFICATE OF SERVICE

I hereby certify that I have, this day, properly electronically filed the foregoing with the Clerk of Court using the CM/ECF system which will send notification of such filing to the following: Mr. Hale Almond, attorney for Defendant Mr. Mark Ferris: 1922 Forsyth Street, Macon, GA 31202.

Submitted this 15th day of December 2004.

s/Dietlinde A. Dial

DIETLINDE A. DIAL
Special Assistant
United States Attorney

United States District Court
Middle District of Georgia

Filed at 11:30 A. M
2-24, 2005
DEPUTY CLERK, U.S. DISTRICT COURT
MIDDLE DISTRICT OF GEORGIA

UNITED STATES OF AMERICA

Vs.

JUDGMENT IN A CRIMINAL CASE

MARK FERRIS,

Defendant

NO. 5: 04-MJ-11-02 (CWH)

O. Hale Almand, Jr.
Defendant's Attorney

The above-named defendant having entered **PLEAS OF GUILTY** to the offenses described below (as charged in a four-count INFORMATION), the court finding a factual basis for accepting said pleas, he is hereby **CONVICTED** of said offenses and **SENTENCED** as follows:

Title & Section	Nature of Offense	Date Offense Concluded	Count Number(s)
18 U.S.C. §113(a)(5)	Simple Assault	05/12/04	1
18 U.S.C. §113(a)(5)	Simple Assault	08/01/03	2

☒ Count(s) III and IV ~~(is)~~ (are) dismissed on the motion of the United States.

IT IS FURTHER ORDERED that the defendant shall notify the United States Attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this judgment are fully paid.

Defendant's Soc. Sec. No.: ***-**-7657

Defendant's Date of Birth: 1954

Defendant's USM No.: 92312-020

Defendant's Residence Address:

117 Kings Crossing Court
Bonaire, Georgia 31005

Defendant's Mailing Address: Same

A true and certified copy.
This 2-24 20 05
GREGORY J. LEONARD, CLERK
U. S. Dist. Court, MD Ga.
By: DEPUTY CLERK

February 23, 2005
Date of Imposition of Judgment

2005 FEB 24 P 1:33

Signature of Judicial Officer

CLAUDE W. HICKS, JR.
UNITED STATES MAGISTRATE JUDGE
Name and Title of Judicial Officer

February 24, 2005
Date

CRIMINAL MONETARY PENALTIES

The defendant shall pay the following total criminal monetary penalties in accordance with the schedule of payments hereinafter set forth.

	Assessment	Fine	Restitution
Totals	$ 20.00	$ -0-	$ -0-

☐ If applicable, restitution amount ordered pursuant to plea agreement . . . . . $

☒ **THE DEFENDANT SHALL PAY THE COST OF SUPERVISION AT THE RATE OF $292.21 PER MONTH IN CONNECTION WITH THE SENTENCE OF SUPERVISED RELEASE HEREINAFTER IMPOSED UPON HIM.**

FINE

☐ The above fine includes costs of incarceration and/or supervision in the amount of $_____.

The defendant shall pay interest on any fine of more than $2,500, unless the fine is paid in full before the fifteenth day after the date of judgment, pursuant to 18 U.S.C. §3612(f). All of the payment options hereinafter set forth may be subject to penalties for default and delinquency pursuant to 18 U.S.C. §3612(g).

☐ The court has determined that the defendant does not have the ability to pay interest and it is ordered that:

☐ the interest requirement is waived.

☐ the interest requirement is modified as follows:

RESTITUTION

Restitution is <u>not</u> ordered in this proceeding.

SCHEDULE OF PAYMENTS

Payments shall be applied in the following order: (1) assessment; (2) restitution; (3) fine principal; (4) cost of prosecution; (5) interest; (6) penalties.

PAYMENT OF THE TOTAL FINE AND OTHER CRIMINAL MONETARY PENALTIES SHALL BE MADE IN FULL IMMEDIATELY.

☐ The defendant shall pay the cost of prosecution.

☐ The defendant shall pay the following court cost(s):

Unless the court has expressly ordered otherwise, if this judgment imposes a period of imprisonment, payment of criminal monetary penalties shall be due during the period of imprisonment. All criminal monetary penalty payments shall be made to the CLERK OF THIS COURT except those payments made through the Bureau of Prisons' Inmate Financial Responsibility Program. All criminal monetary penalty payments are to be made as directed by the court, the probation officer, or the United States Attorney. Prior to the conclusion of any term of supervision imposed herein, the court reserves the right to address any outstanding balance still owed for mandatory assessment fees, fines, interest, and penalties, and to consider all available sanctions for collection of same through the office of the United States Attorney.

IMPRISONMENT

The defendant is hereby committed to the custody of the UNITED STATES BUREAU OF PRISONS to be imprisoned for a total term of **SIX (6) MONTHS** on each count, to run concurrently.

☒ The court makes the following recommendations to the BUREAU OF PRISONS:

This defendant has a history of very serious physical and mental problems: he suffers from chronic pain in connection with a cervical fusion and degenerative disc disease for which no surgical option is available. He is also being treated for hypothyroidism, arrhythmia, and arthritis. In addition, he has a history of psychiatric treatment for anxiety, panic disorder, and severe depression. He takes numerous medications for his physical and mental problems. The undersigned strongly recommends that he be placed in a hospital/psychiatric type facility to serve the sentence herein imposed upon him, with a further recommendation that mental health treatment and counseling be provided to him.

☐ The defendant is remanded to the custody of the United States Marshal.

☐ The defendant shall surrender to the United States Marshal for this district:

☐ at_____A.M./P.M. on_____.
☐ as notified by the United States Marshal.
☐ as notified by the Probation/Pretrial Services Office.

☒ The defendant shall surrender for service of sentence at the institution designated by the Bureau of Prisons:

☐ before 2:00 P.M. on_____.
☒ as notified by the United States Marshal.
☐ as notified by the Probation/Pretrial Services Office.

FILED
U.S. DISTRICT COURT
MIDDLE DIST. OF GEORGIA
05 APR 21 PM 4:32
DEPUTY CLERK

RETURN

I have executed this judgment as follows:

V/S

Defendant ~~delivered~~ on 04-14-2005 to FCC COLEMAN-LOW
at COLEMAN, FLORIDA, with a certified copy of this judgment.

BRUCE PEARSON, WARDEN
~~UNITED STATES MARSHAL~~

By: G. GATLIN, LIE
~~DEPUTY U. S. MARSHAL~~

SUPERVISED RELEASE

Upon release from imprisonment, the defendant shall be on supervised release for a term of **ONE (1) YEAR**

The defendant shall report to the probation office in the district to which the defendant is released within 72 hours of release from the custody of the Bureau of Prisons.

The defendant shall not commit another federal, state, or local crime.

The defendant shall not illegally possess a controlled substance.

For offenses committed on or after September 13, 1994:

The defendant shall refrain from any unlawful use of a controlled substance. The defendant shall submit to one drug test within 15 days of release from imprisonment and at least two periodic drug tests thereafter.

☑ The above drug testing condition is suspended, based on the court's determination that the defendant poses a low risk of future substance abuse.

☐ The defendant shall not possess a firearm, destructive device, or any other dangerous weapon.

If this judgment imposes a fine or a restitution obligation, it shall be a condition of supervised release that the defendant pay any such fine or restitution that remains unpaid at the commencement of the term of supervised release in accordance with the Schedule of Payments set forth in the Criminal Monetary Penalties sheet of this judgment.

The defendant shall comply with the standard conditions that have been adopted by this court (set forth below). The defendant shall also comply with the additional conditions on the attached page.

STANDARD CONDITIONS OF SUPERVISION

1) the defendant shall not leave the judicial district without the permission of the court or probation officer;
2) the defendant shall report to the probation officer and shall submit a truthful and complete written report within the first five days of each month;
3) the defendant shall answer truthfully all inquiries by the probation officer and follow the instructions of the probation officer;
4) the defendant shall support his or her dependents and meet other family responsibilities;
5) the defendant shall work regularly at a lawful occupation, unless excused by the probation officer for schooling, training, or other acceptable reasons;
6) the defendant shall notify the probation officer at least ten days prior to any change in residence or employment;
7) the defendant shall refrain from excessive use of alcohol and shall not purchase, possess, use, distribute, or administer any controlled substance or any paraphernalia related to any controlled substances, except as prescribed by a physician;
8) the defendant shall not frequent places where controlled substances are illegally sold, used, distributed, or administered;
9) the defendant shall not associate with any persons engaged in criminal activity and shall not associate with any person convicted of a felony, unless granted permission to do so by the probation officer;
10) the defendant shall permit a probation officer to visit him or her at any time at home or elsewhere and shall permit confiscation of any contraband observed in plain view of the probation officer;
11) the defendant shall notify the probation officer within seventy-two hours of being arrested or questioned by a law enforcement officer;
12) the defendant shall not enter into any agreement to act as an informer or a special agent of a law enforcement agency without the permission of the court;
13) as directed by the probation officer, the defendant shall notify third parties of risks that may be occasioned by the defendant's criminal record, personal history, or characteristics and shall permit the probation officer to make such notifications and confirm the defendant's compliance with such notification requirement.

SPECIAL CONDITIONS OF SUPERVISION

1. The defendant shall pay the cost of supervision at the rate of $292.21 per month; and,
2. The defendant shall participate in a program of mental health treatment and counseling as directed by the United States Probation Office.