Mr. BARRASSO. Madam President, I yield the floor, and I suggest the absence of a quorum.

The PRESIDING OFFICER. The legislative clerk proceeded to call the roll.

Mr. BARRASSO. Madam President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. BARRASSO. Madam President, how much time remains?

The PRESIDING OFFICER. Eight and a half minutes.

Mr. BARRASSO. Madam President, I come to the floor today and would note a headline on the front page of Politico today regarding the ObamaCare Web site. "Tech Chief: Up to 40% Work Is Formed by My Company My Policy Will Be."

It is not the Web site. The Web site is just the tip of the iceberg. People are furious when they get letters of cancellation, when they have coverage canceled and then they see higher premiums. All across the country people are finding out that because of the health care law, they can’t keep their doctor. They are hearing stories about fraud, identity theft, and higher copays and deductibles. So I bring to the floor today a couple of letters I have received from people in Wyoming.

Last Veterans’ Day, I was in Douglas, WY, for the flag-raising ceremony at the American Legion at 7 a.m. talking to folks—some who had gotten cancellation letters. Let me read a letter from a family in Douglas, WY, a small community in Converse County. They say:

"We just found out that our current health insurance policy with Blue Cross Blue Shield of Wyoming (which is a deductible, with our family will not be allowed after January 1st. . . . that only those under age 30 will be able to have catastrophic plans. We ran, work very hard, bosses is not, I don’t say you afford and don’t believe a lower deductible makes sense for us.

So this is a family who decided what was best for them as a family—not what the government told them they had to do. We worked for them as a family. They say that what they bought was something that made sense for them.

"Continuing to read from their letter: . . . basically have had insurance to avoid losing our cows and land if something catastrophic happened to us. Don’t know what we will do if you guys don’t get this derailed."

Madam President, as someone from the Rocky Mountain West, I can tell you that in a community of lots of ranchers and farmers, what they are trying to do is insure against this catastrophic loss.

"They go on to say: Quick side note—we think most people expect health insurance to cover everyday costs—it wouldn’t make sense and it would cost too much to get insurance to cover new tires, oil changes, washer fluid, new batteries (regular expected upkeep) for our vehicles—if for catastrophic health issues, it wouldn’t cost as much for all of us in the end.

Of course, that is what they wanted to do.

"They go on: Obamacare doesn’t deal with any of the issues of why health care in America costs what it does and truly seems to make it all worse.

Thank you for what you do—we know you already understand this. We just thought you should know what we are dealing with.

That is a ranch family in Douglas, WY, in Converse County."

This past Saturday night I was in Lusk, WY, in Niobrara County, and I have an email here that I can share with you from Lusk, WY. Again, this is somebody who has had coverage canceled, higher copays, and all of the things we are talking about.

Just for a second, let me show the list of people who have been canceled. Some 4.7 million Americans have had their health insurance canceled in 32 States, and we don’t even have the numbers for a number of other States. This is what people all across the country are seeing.

Let me read this email from Lusk, WY. This individual says:

"I have supported the President and the Affordable Health Care act since the beginning. That changed on Thursday. All along we have been told if we have insurance, and we are satisfied, no changes will be necessary. That is a misleading statement. I was informed by my company my policy will be canceled. Democrats will offer me another policy but with huge changes. My premium will go up . . . my deductible will rise . . . That is not the same as my current policy. I feel like, after decades of paying my own insurance, I am being penalized. I won’t call it lying, but the President certainly misled a lot of us middle aged Americans.

I do have one alternative I am pursuing. I can buy insurance that does not meet the guidelines of the Act. However, I will be forced to pay the penalty for noncompliance. I can afford my insurance and the penalty. Once again, Americans do not like to be misled from the top leadership down. It simply helps to solidify the mistrust we have in government. Thank you for your solid leadership.

That is why I am here today on the floor. We need to hear more stories from people around the country—not just Republicans but Democrats need to hear these stories. Tweet us your story at hashtag ‘your story.’"

Republicans have better ideas about ways we can actually help people get the care they need from a doctor they choose at a lower cost.

Once again, this law is hurting many millions of Americans. We now know that the President knew it at the time he continued to repeat the line—which we now know is a misleading line—to the American people. Very soon we will find that the line is “If you like your doctor, you can keep your doctor” was misleading as millions more will be losing their doctor. There is great damage continuing to be done. We need to start over.

Madam President, I yield the floor, and I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mrs. GILLIBRAND. Madam President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

CONCLUSION OF MORNING BUSINESS

The PRESIDING OFFICER. Morning business is closed.

NATIONAL DEFENSE AUTHORIZATION ACT FOR FISCAL YEAR 2014

The PRESIDING OFFICER. Under the previous order, the Senate will resume consideration of S. 1197. The clerk will report the bill by title. The legislative clerk read as follows:

A bill (S. 1197) to authorize appropriations for fiscal year 2014 for military activities of the Department of Defense, for military construction and for defense activities of the Department of Energy, to prescribe military personnel strengths for such fiscal year, and for other purposes.

Pending:

Reid (for Levin/Inhofe) amendment No. 2123, to increase to $5 billion the ceiling on the general transfer authority of the Department of Defense.

Reid (for Levin/Inhofe) amendment No. 2124 (to amendment No. 2123), of a perfecting nature.

Reid motion to recommit the bill to the Committee on Armed Services, with instructions, Reid amendment No. 2295, to change the enactment date.
Reid amendment No. 2306 (to the instructions amendment No. 2305), of a perfecting nature.

Reid amendment No. 2307 (to amendment No. 2306), of a perfecting nature.

The PRESIDING OFFICER. Under the previous order, there will be up to 6 hours of debate only.

The Senator from New York.

Mr. MURPHY. Madam President, I rise today to speak about my amendment to the National Defense Authorization Act, an amendment known as the bipartisan Military Justice Improvement Act. I wish to start by thanking my colleagues on both sides of the aisle for their strong and unwavering leadership on behalf of our brave men and women in uniform. I could not be more proud of the bipartisan work that has been done to do the right thing.

I thank Senator REID, Senator BOOKER, and Senator HELLER, the three most recent supporters of our bill. I thank them for their extraordinary leadership and determination to end the scourge of sexual violence in the military.

I also thank my colleague and friend from Missouri for her unwavering commitment to helping victims of sexual assault. Although we disagree on my amendment, I remind all of our colleagues that the Defense Authorization Act has been made stronger in enumerable ways by Senator McCaskill’s work, advocacy, and dedication. I also will be supporting her amendment today. I find the provisions in her amendment will add even more positive changes to the command climate and will help victims feel like they have a stronger voice.

However, while the changes in the McCaskill amendment are very good, I do not believe they are enough to truly ensure justice for victims of sexual assault. For that, we essentially need impartial, unbiased, objective consideration of the evidence by trained military adjudicators, which is what my amendment will provide.

Yesterday, I proudly stood with retired generals, leaders of veterans organizations, and survivors, who represent a growing chorus of military voices, to urge Congress to take its oversight role head-on and finally create an independent, unbiased military justice system the men and women who serve in our military so deeply deserve.

Leaders such as retired Maj. Gen. Martin Van Fossen, the first woman in history of the National Guard to serve as an adjutant general, who has served in the military for 27 years, including 14 years in command positions, wrote to me:

As a former commander, endorsing a change that removes certain authority from military commanders has been a tough decision. It was driven by my conviction that our men and women in uniform deserve to know, without doubt, that they are valued and will be treated fairly with all due process should they report an offense and seek help or face being tried by a court-martial.

When allegations of serious criminal misconduct have been made, the decision whether to prosecute should be made by a trained legal professional. Fairness and justice require sound judgment based on evidence and facts, independent of pre-existing command relationships.

Leaders such as BG (retired) Lorree Sutton, who served as the top psychiatrist in the U.S. Army, wrote, saying:

Failure to achieve these reforms would be a further tragedy to an already sorrowful history of inattention and ineptitude concerning military sexual assault.

In my view, achieving these essential reform measures must be considered as a national security imperative, demanding immediate action to eliminate the damage to individual health and well-being, vertical and horizontal trust within units, military institutional reputation, operational mission readiness and the civilian military compact.

Far from “stripping” commanders of accountability, as some detractors have suggested, these improvements will remove the inherent conflict of interest that clouds the perception and, all too often, the decision-making process under the current system.

This立法matic mandate will actively support leaders to build and sustain unit cultures marked by respect, good order, and discipline.

LTG (retired) Claudia Kennedy, the first three-star female general in the Army, wrote:

Having served in leadership positions in the U.S. Army, I have concluded that if military leadership hasn’t fixed the problem in my lifetime, it’s not going to be fixed within a change to the status quo. The imbalance of power and authority held by commanders in dealing with sexual assault must be corrected. There has to be independent judgment over what is happening in these cases.

Simply put, we must remove the conflicts of interest in the current system. The system in which a commander can sweep his own crime or the crime of a decorated soldier or friend under the rug protects the guilty and protects serial predators. And it harms military readiness.

Until leadership is held accountable, this won’t be corrected. To hold leadership accountable means there must be independence and transparency in the system.

Permitting professionally trained prosecutors rather than commanding officers to decide whether to take sexual assault cases to trial is a measured first step toward such accountability. I have no doubt that command climate, unit cohesion and readiness will be improved by these changes.

BG (retired) David McGinnis, who also served as a Pentagon appointee, wrote:

I fully support your efforts to stamp out sexual assault in the United States military and believe that there is nothing in the Military Justice Act that is inconsistent with the responsibility or authority of command. Protecting the victims of these abuses and restoring American values to our military culture is a long overdue.

It is because they love the military that they are making their voices heard—standing united behind brave survivors. I will share some of those stories because it is their stories which inform some of this legislation.

Kate Weber, from Protect Our Defenders, was awarded the 2013 Woman Veteran Leader of the Year by the California Department of Veteran Affairs, and Sarah Plummer came to Washington, DC, all the way from Colorado. Yesterday they came to courageously tell their stories so that their brothers and sisters in uniform get a military justice system that is finally worthy of their great service to our Nation.

Sarah’s story is extremely disturbing. She was raped as a young marine in 2003. She said:

I knew the military was notorious for mishandling rape cases, so I didn’t dare think anything good would come of reporting the rape.

Having someone in your direct chain of command doesn’t make any sense, it’s like getting raped by your brother and having your dad decide the case.

Kimberly Hanks, the brave survivor from the infamous and horribly unjust Aviano case, who I spoke to months ago about this issue when our journey began, just wrote an op-ed published this week:

Regardless of all the promises by military leadership and half measures offered in the name of reform nothing short of removing the prosecution and adjudication authority away from the commander and placing it with independent, military professionals outside the accused’s and victim’s chain of command will end this nightmare.

Trina McDonald, who at 17 enlisted in the Navy, was stationed at a remote base in Alaska. Within 2 months, she was attacked, repeatedly drugged, and raped by superior officers over the course of 9 months. She said:

At one point my attackers threw me in the Bering Sea and left me for dead in the hopes that they would silence me forever. They made it very clear that they would kill me if I ever spoke up or reported what they had done.

Listen to Army SGT Rebekah Havrilla, who served in Afghanistan and was raped in 2007, and said reporting the crime to her commanding officer to her was “unthinkable”:

There was no way I was going to my commander. He made it clear he didn’t like women.

AIC Jessica Hinves, who was raped in 2009 by a coworker who broke into her room at 3:00 in the morning, said:

Two days before the court hearing, his commander called me on a conference call at the JAG office, and he said that he didn’t believe that [the offender] acted like a gentleman, but there wasn’t reason to prosecute.

I was speechless. Legal had been telling me this is going to go through court. We had the court date set for several months. And two days before, this commander stopped it. I understood why the sind had no legal education or background, and he had only been in command for four days.

Her rapist was given the award for Airman of the Quarter. She was transferred to another base.

We also can’t forget that more than half of the victims last year alone were men.

Blake Stephens, now 29, joined the Army in 2001, just 7 months after graduating high school. The verbal and physical assault started quickly, he says, and came from virtually every level of the chain of command. In one of the worst incidents, a group of men
tackled him, shoved a soda bottle into his rectum, and threw him backward off an elevated platform onto the hood of a car.

When he reported the incident, his drill sergeant told him: "You're the problem. You're the reason this is happening." His commander refused to take action.

Blake said:

You just feel trapped. They basically tell you you're going to have to keep working with these people day after day, night after night. You don't have a choice.

His assailants told him that once they deployed to Iraq, they were going to shoot him in the head. "They told me they were going to have sex with me all the time when we were there."

This is the problem: There were 26,000 sexual assaults estimated by the Department of Defense last year alone based on confidential surveys, but only 3,574 were actually reported. Of those reported, 302 went to trial.

So if you are starting with 26,000 estimated cases and only 302 go to trial, that is a 1-percent rate of conviction in the U.S. military for the heinous crime of degradation, aggression, and dominance of rape and sexual assault. One percent. And we just heard from these victims. There are too many command climates that are toxic, that do not ensure good order and discipline, that do not protect against rape and sexual assault, that do not create a sense that if I come forward and report, that justice could be done.

In this survey—this a confidential survey—the reason victims didn't report is they said they didn't believe anything would be done. They also said they were afraid or witnessed retaliation. This is the problem. About 23,000 cases weren't reported. It means in 23,000 command climates, these assaults are happening and victims feel they will not get justice.

So I am grateful for every reform we have put in place in this underlying bill. They are good, strong reforms that will help victims who report. But every single one of them applies only to these 3,000 cases. They apply to the cases that are reported, where the command climates are sufficient that a victim feels: I can come forward. I can at least report these cases. In the 23,000 other cases, those victims don't have that confidence.

So we don't create a transparent, accountable system that is outside the chain of command, the hope of getting more victims to come forward and report so we can at least weigh the evidence and see if we can go to trial is not there. The hope isn't there. The confidence isn't there. The objective review by someone who doesn't know the perpetrator and doesn't know the victim doesn't exist.

So while we have these 3,000 cases which were reported and commanders did make the cases go to trial—and when they did go to trial, there was a 95-percent conviction rate. So they are not making the wrong decisions about what case to try. It is just that only 3,000 command climates were strong enough. We can't train their way out of this problem. There are 23,000 command climates that weren't strong enough, that didn't ensure justice, that created fear of retaliation. That is the problem.

So without an objective system, without creating transparency and accountability, without saying the decision doesn't know the victim of the perpetrator, there is no bias, because in too many cases when told these stories, the perpetrators may well be more valuable to the commander, may well have several tours of duty under his belt, may well have done great acts of bravery, may well have two kids and a wife at home. So when that commander, looking at the case file, says: You know, it can't possibly have happened; it didn't happen this way; he weighs the evidence differently than someone objective, who is trained, who actually knows what a victim knows in these crimes and knows what a rape is. They know rape is not a crime of romance. They know rape is rape of a crime of dominance. They know rape is a crime of violence. It is not about a date gone badly. It is not about hormones. It is not about a hookup culture. It is actually a crime that is brutal and violent, committed by someone who is acting on aggression and dominance and violence.

That is why the training matters. I want somebody who knows that, who has been trained as a lawyer, who understands prosecutorial discretion and can weigh evidence objectively.

We have to look at who is advocating for this bill—our veterans organizations: Iraq and Afghanistan Veterans of America wants this reform. Vietnam Veterans of America wants this reform. Service Women's Action Network—they support this bill.

This week we released a letter of 26 retired generals, admirals, commanders, colonels, captains, and senior enlisted personnel, including two generals and two admirals known as flag officers, who are saying to Congress: We believe that the decision to prosecute serious crimes including sexual assault should be made by trained legal professionals who are outside the chain of command but still within the military.

They know. They have served. They are veterans. They are no longer Active Duty. They can speak their mind.

This change will allow prosecutorial decisions to be made by facts and evidence and not be derailed by preexisting relationships, attitudes, biases, or beliefs.

It is our sincere belief that this change in the military justice system will provide the opportunity for real progress toward eliminating the scourge of sexual assault in the military.

I am hopeful our colleagues will listen to these collective voices because nobody knows the military and what needs to be done to fix this broken system better than they do. Listen to the victims who have clearly told us over and over how a system that only produces 302 prosecutions out of the DOD's estimated 26,000 cases of rape, sexual assault, and unwanted sexual contact last year must be fundamentally changed to restore trust and accountability.

These men and women of America's military have put everything on the line to defend our country. Each time they are called to serve they answer that call. But too often these brave men and women find themselves in the fight of their lives, not on some far-off battlefield against an enemy but right here on their own soil, within their own ranks, with their commanding officers, as victims of horrible acts of sexual violence.

Sexual assault is not new, but it has been allowed to fester in the shadows for far too long because instead of the zero tolerance pledge we have heard for two full decades now, since Dick Cheney was the Secretary of Defense, first using those words in 1997 that we too must have is zero tolerance accountability.

There is no accountability because any trust that justice will be served has been irreparably broken under our current system where commanders hold all the cards over whether a case moves forward to prosecution.

There are those who argue that removing these decisions out of the chain of command into the hands of independent prosecutors in the military will diminish good order and discipline. This is not a theoretical question. We actually know the answer to this. Our allies have already made these reforms and they have not seen a diminishment in good order and discipline. The UK, Israel, Australia, Canada, Netherlands, Germany—all of them have taken the decisionmaking whether to prosecute the cases outside the chain of command for civil liberties reasons—some in interests of defendants' rights, some in interests of victims' rights—to make their justice system better. We could use a better justice system. We could use that transparency and accountability. We have a unique problem. I think this reform solves our problem.

Director general of the Australian Defence Force Legal Service Paul Cronan said that Australia has faced the same set of arguments from military leaders in the past. Cronan said:

It's a little bit like when we opened up [to] gays in military in the late '80s. There was a lot of concern at the time that there'd be issues. But not surprisingly, there haven't been any.

There are those who argue that our reform would somehow take commanders off the hook or that they would no longer be accountable. Let me be clear. There is nothing in this bill that takes commanders off the hook. They are still the only ones responsible for setting command climate, for maintaining good order and discipline, for making sure these rapes
and assaults do not happen, for making sure there is no retaliation and the vic-
tim comes forward, for making sure the command climate is sufficient when they do come forward.

This is a legal decision and actually most of them have never given the impression this legal decision. Your platoon se-
gant, your drill sergeant, they are never going to be able to be the con-
vening and disposition authority. That is not their job. But they still have to main and go on and do their jobs. They are on the hook and the under-
lying bill is strong because we make re-
taliation a crime to give them just one more tool to help them set their com-
mmand climate.

There are those who argue that this reform will cost too much. I do not know how you could possibly say that forwarding cases and prosecuting rape in the military costs too much. Our men and women in uniform are worth much more. Not only do these critics ignore the fact that we already have trained JAGs serving in our military, they actually ignore the financial cost of sexual assault in the military. The RAND Corporation has estimated that this scourge cost $3.6 billion last year alone.

There are those who say commanders move forward on cases that civilian prosecutors will not. To claim that keeping prosecutions inside the chain of command will increase the prosecu-
tions is not supported by the statistics. If you only have 3,000 or so cases being re-
ported and 23,000 cases not being re-
ported under the current system, if you change that system and those 23,000 cases start becoming reported cases, you will have more convictions, you will have more convictions, you will have more justice.

The bottom line is simple. The cur-
rent system oriented around the chain of command is producing horrible re-
sults and has been producing horrible results for 25 years. The current cur-
structive is producing 1 percent of cases that go to trial. That is not good
enough. It is not a system that is de-
serving of the sacrifice that the men and women in uniform give to our coun-
try every single day.

It is also contrary to the funda-
mental values of our American justice system. Our justice system relies on the fact that a decision about whether to go to trial is never made on bias. It is always made on facts and evidence. It is not made on whether it is good for the commander. It is made on whether there are facts and evidence to prove a serious crime has been committed.

For all those who say this is a radical idea and should wait until next year, the DOD has an advisory panel that ac-
tually has opined for the past 50 years on the status of women in the military. That panel, called the DACOWITS—
do not trust the chain of command, they
don't trust the leadership.''

We have to restore that trust. If you have too many commanders and too many command climates with too many unreported cases where that trust is broken, you are not going to fix it by keeping it with the commanders. That is the problem. This is a fundamental problem.

Listen to the Chairman of the Joint
Chiefs of Staff, General Dempsey, who said that the military is sometimes
"too forgiving" in these cases, admit-
ing bias in the system toward decor-
at ed officers.

I firmly believe it is our obligation to restore that trust. Our fundamental duty as Senators, as Members of Con-
gress, is to provide the needed over-
sight and accountability for our armed services. We should not do what the generals are telling us to do. This is our job.

Every time I meet with a member of the military I am overwhelmingly grateful for their sacrifice, for their courage. They deserve better. They deserve a military justice system that is consistent with our core, fundamental American values of objectivity, of truth, of evidence, of fact, and of justice.

I urge my colleagues to support our amendment.

I yield the floor.

The PRESIDING OFFICER. The Se-
ator from Missouri.

Mrs. McCASKILL. Mr. President, I ask unanimous consent that any time spent on quorum calls during this de-
bate on the sexual assault issue be equally divided between Senator GILLI-
BRAND on one side and Senator AYOTTE and Senator McCASKILL on the other side.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mrs. McCASKILL. I yield 5 minutes of the time of Senator AYOTTE to the Senator from Missouri, Mr. BLUNT.
and underlying bill. Senator Fischer, a member of the Armed Services Committee, will also be part of that debate.

The Armed Services Committee introduced a bill that has the most comprehensive legislation targeting sexual assault that has ever been considered by the Congress. We added to that amendment these important elements of another McCaskill amendment. There are 26 provisions in the underlying bill which deal with this issue. It was among the most difficult decisions I think we met, but also one of the most important decisions we met: the idea that commanders would have responsibility for the atmosphere they create.

One of the things that was mentioned more than once was the integration of the Armed Forces. I stand by Senator Truman’s desk, one of our predecessors in this Senate from Missouri. He signed the order that integrated the Armed Forces, President Eisenhower pursued that further, but only when the command structure was given absolute responsibility to deal with what had become a real problem. There were even race riots on ships, according to Senator McCain, who talked to us about this issue. It was when the commanders were given the responsibility to see that this problem was solved that it was solved.

I think this bill, and the additional amendment I will be supporting, the McCaskill amendment clarifies in new ways how important it is that commanders accept this as part of their command responsibility.

The numbers Senator Gillibrand talked about are totally unacceptable. One of the things commanders will be evaluated on in the future will be what they did about changing that environment. In my view, taking them out of the command responsibility in this area makes it less likely, not more likely, that the atmosphere will change.

I ask unanimous consent for 1 additional minute. Since Senator Ayotte is not here to object, I will take it from her time.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. BLUNT. The fact that this is in the bill and further improved, I believe, by the amendment, clearly says we are going to change the culture of the military, the way they are ramping up the protection, information, and deference they give victims. That is the single most important factor, based on all of my experience, that will dictate whether a victim has the courage to come out of the shadows, and finally that somehow doing this will stop retaliation. That unit is still going to know that that crime was reported.

Keep in mind that currently, and under our reforms, the victim does not have to report to the chain of command. Right now the victim does not have to report to the chain of command. Many of my colleagues didn’t realize that a victim has many places they can report things. Under our reforms, they will immediately get a lawyer and have that level of protection immediately. They will also have the information that they don’t have to report to the chain of command.

I am trying to understand how reporting, investigating, and deciding half a continent away—a group of lawyers making that decision—stops retaliation. How does that keep the people in your unit from acting inappropriately toward you because you have reported a crime? There is nothing magical about that. In most instances the word will get out.

Let’s use our common sense. Say you are in your unit after having been assaulted. Which way are you going to have more protection? Will you have more protection if a group of colonels a half continent away is looking at the facts of the case or if your commander has signed off? Of course, if your commander has signed off, because that sends a message to the unit: We are getting to the bottom of this.

Mr. BLUNT. The PRESIDING OFFICER. Without objection, it is so ordered.

Mrs. McCaskill. The PRESIDING OFFICER. The Senator from Missouri. Mr. President, I thank Senator Blunt for his comments and appreciate his hard work on the Armed Services Committee as we tackle an issue that all of us have an emotional commitment to for all the right reasons.

I thank Senator Gillibrand. We both want fundamental reform. We are both working as hard as we know how to get it. We have a fundamental disagreement on how best to obtain that goal, and I would like to go through some of that disagreement for the next few minutes.

The 26 historic reforms that are in the bill are going to make our military the most victim-friendly criminal justice system in the world. In no other system does a victim get their own lawyer. In no other system will they have the protection, empowerment, and the deference we are creating for them in this bill.

In my years of experience in handling these cases—hundreds of them with victims—I would have given anything if that victim had had the confidence of independent advice. I think it would have made a tremendous difference in the staggering number of victims who refused to go forward.

This is the most personally painful moment of anyone’s life. Make no mistake about it: we do in this Chamber and no matter what this bill accomplishes, we will never be able to get every victim to come forward because of the nature of this horrific crime, but we have to do better.

Like Senator Gillibrand, I have talked to dozens and dozens and dozens of victims. I have talked to and spent hundreds of hours with prosecutors—military prosecutors, women and men, veterans, active service and retired—and just as there is not agreement among all the women in this Chamber, there is not agreement among all the victims, there is not agreement among all the veterans, there is not agreement even among all the commanders, although most women commanders have acknowledged that even though this sounds seductively simple, it is much more complicated, and we will be creating more problems than we will be solving if we make the change as advocated by Senator Gillibrand.

Let’s get at what we are trying to do. We have no disagreement that there are too many of these crimes and that they are not reported enough—complete agreement. The goal here is how do we get more reporting. There is a theory that if we do this—if we take this decision away from any command at all to go forward, that we will magically have victims come forward.

Senator Gillibrand talked about our allies. I am grateful we have their experience because we can see and look out for them and our men. We have done this, and not in one instance has reporting gone up. We know this is not the silver bullet because if it were, we would have seen an increase in reporting in all the countries that have adopted this system.

The response systems panel was put in place by the Armed Services Committee to recommend to the Pentagon changes in this area. We know they have formally acknowledged that our allies—many of whom did this to protect defendants’ rights—have not seen an increase in reporting.

If the theory is that reporting can only go up if we do this, then why are our allies—who are all doing a great job—right now? There is a 46 percent increase of reporting this year over last year. That is because some of the military are already putting in the reforms we are codifying in the underlying bill. They are giving victims their own lawyers. They are ramping up the protection, information, and deference they give victims. That is the single most important factor, based on all of my experience, that will dictate whether a victim has the courage to come out of the shadows, and finally that somehow doing this will stop retaliation. That unit is still going to know that that crime was reported.

Keep in mind that currently, and under our reforms, the victim does not have to report to the chain of command. Right now the victim does not have to report to the chain of command. Many of my colleagues didn’t realize that a victim has many places they can report things. Under our reforms, they will immediately get a lawyer and have that level of protection immediately. They will also have the information that they don’t have to report to the chain of command.

I am trying to understand how reporting, investigating, and deciding half a continent away—a group of lawyers making that decision—stops retaliation. How does that keep the people in your unit from acting inappropriately toward you because you have reported a crime? There is nothing magical about that. In most instances the word will get out.

Let’s use our common sense. Say you are in your unit after having been assaulted. Which way are you going to have more protection? Will you have more protection if a group of colonels a half continent away is looking at the facts of the case or if your commander has signed off? Of course, if your commander has signed off, because that sends a message to the unit: We are getting to the bottom of this.
Probably the most telling fact about this debate is: Is this happening now? Because at this time outside investigators investigate these cases, and outside JAGs make recommendations. We have that in our system now. So the question is: If these outside lawyers and the prosecutors recommending that we go forward based on their independent investigation, are commanders shutting them down? Are commanders saying: We will not go forward? No one can find me a case where that happened, and I can tell you my colleagues will come to me and say: We need to go to the commander and then the commander said no. We are getting to the bottom of it. So as I wrote to the commander just over 2 years would not have had their day in court under Senator GILLIBRAND’s proposal.

In Senator GILLIBRAND’s proposal, when the outside lawyer says no, it is over, whereas in our proposal, if this were to ever happen, even though we know this is not a problem now, we have review after review. No one is going to be able to turn a victim away from the day of justice without accountability, checks and balances, and oversight. There will be a difference in that unit because now retaliation is a crime and the commander is going to be evaluated on how they are handling this issue in their command.

There are also practical problems—and some of my colleagues will come to the floor today and talk about this. There are a number of implementation issues that I don’t think have been thought through. Right now, it is unclear whether or not, in our proposal, if this were to ever happen, even though we know this is not a problem now, we have review after review. No one is going to be able to turn a victim away from the day of justice without accountability, checks and balances, and oversight. There will be a difference in that unit because now retaliation is a crime and the commander is going to be evaluated on how they are handling this issue in their command.

Let me tell you, the Presiding Officer, having handled these cases, I think people sometimes make the assumption that a plea bargain is about coping out, it is about not protecting the victim. Talk about stories of victims, I can tell story after story of real people whom I dealt with who came forward and said: Yes, I think I can do this.

I will never forget this one woman who came to me and said: My mental health counselor said that testifying in court will set me back so far I can’t do it, but can you get something on him? In those instances, do you think that defending the victim, that the victim in some way can really get something on the perpetrator? In those cases, we are looking at sexual offenses or even serious offenses. But many times we were able to get something on him so the next time, if it happened, we at least had a better shot. Many times plea bargains are dictated by victims. Military prosecutors are telling me this, that it will really limit their ability and create serious due process concern.

In her proposal, this outside lawyer picks everybody—picks the defense lawyer, picks the jury, and picks the prosecutor. How is that going to stand up to a due process claim? It is not clear who picks the judge. That is left silent. I don’t know who picks the judge, and that is another question: Who is going to decide who is going to actually pick the judge?

It eliminates the option of nonjudicial punishment. Take the case of the person who had been tried in one of the cases that was recently tried in civilian courts. He was initially charged with a sexual offense. It was reduced to a simple assault. If that had been within the military, they wouldn’t have done that because it wasn’t a serious offense so it goes back over to the convening authority within the command and then that soldier knows they are not going to do a trial—they can’t—and all he has to do is turn down nonjudicial punishment.

Some of these difficulties will be explored in detail, as I say, throughout the day.

Here is the one I don’t understand. If a person believes deeply in the policy he or she is advocating, why in the world would that person then proactively limit the ability to resource it? In the language of the Gillibrand amendment, it actually says there shall be no funds authorized for this, no personnel billets authorized for this. The military has estimated over $100 million a year just in personnel costs because they have to create a completely different system outside the system they currently have, which will still be operative for some offenses that are related to the military and that are low-level offenses. But we have to have a whole new system for arson, robbery, theft, murder, and for sexual assault. Yet she proactively in her amendment says we can’t resource it. That is truly one that makes me scratch my head.

There are a lot of problems surrounding this amendment, but let me emphasize our goals are the same and our motives are pure. We believe—and we believe this is borne out by the data—we will have more prosecutions because it will be very easy for lawyers who are a long way away—overworked, underresourced—to say: This is a consent case. It is a little mess. Everybody was drunk. Let that one go, and then it is over.

Let me briefly talk about what we have in our amendment because it is also very important, once again empowering victims further. In our amendment we are going to allow victims to formally weigh in, whether they would prefer, if there is concurrent jurisdiction, for the civilian authorities to handle the case in addition or whether they would rather the military authorities handle the case. It strengthens the role of the prosecutor because it becomes the role of review over the prosecutor’s decisions. It increases the accountability of commanders making this evaluation on their forms and adding that other layer of review. It eliminates the good soldier defense. It is irrelevant whether someone is a good pilot if they have sodomized or raped someone in the military, and our amendment will make that irrelevant.

I thank the Presiding Officer for the time. I know we have others who want to visit on this, and I will be happy to be back later in the day to talk specifically about some of the other issues in this bill.

I do not see anyone else here right now, so I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

The PRESIDING OFFICER. The Senator from New York.

Mrs. GILLIBRAND. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mrs. GILLIBRAND. Mr. President, as we wait for our colleagues to join the floor so they can have their floor time, I wish to address a few of my colleagues in this chamber.

Some of the technical concerns she raised—we actually took some of those concerns and revised them in the bill that has actually been presented, so some of those concerns have been actually fully addressed. For example, as to her concern about the convening authority, the disposition authority, our bill is very specific. The disposition authority is the decision-making authority. That goes to the trained military legal prosecutor, the JAG counsel, so they actually get to make the decision about whether to proceed to trial on the evidence.

The convening authority, which is a different right, a different duty, is left intact as it is. So the convening authority still will decide judges, juries, and all the details of what the court and the trial will look like. It is two separate authorities in separate places. That has been clarified in the bill so there is no concern there.

One other concern my colleague raised is this issue of nonjudicial punishment. Our bill is very specific. We exclude 37 specific crimes, including all article 15 crimes, all of the crimes that one would be using nonjudicial punishment to enforce. If the disposition authority decides they do not want to prosecute the case because they don’t have enough evidence to go forward, it goes directly back to the commander to use the benefit of the nonjudicial punishment to do whatever kind of punishment he or she thinks is appropriate.

So those are just two technical issues my colleague raised that I think are very important to clarify.

Then the third issue Senator McCASKILL raised that I think is a misunderstanding of the bill is about this world away problem. Today, in our bill, compared to the current system, the reporting is the same. One can report
anywhere. One can report to a chaplain or to a friend or to a nurse or to a doctor. One can report anywhere. That is not changing. The reporting is exactly the same. What also is exactly the same is the investigation process. A report, whether to a chaplain or to a commander, investigators will be sent to investigate the case, whether in Iraq or Afghanistan or Germany or anywhere. That stays exactly the same. So it does not matter where this world goes, because the investigators go to the person. It is not a different set of investigators; it is the exact same set of investigators, and the commanders are still responsible to make sure the investigators do their job. So the commander has to be protecting the victim and has to be making sure the unit is not retaliating. He has to make sure the investigator has access to the evidence, and he has to make sure the command climate stays strong with good order and discipline. That never changes. Those commanders are always responsible for good order and discipline and command climate.

The only difference under this bill is after the investigation is completed and the file is turned over to evidence—it doesn’t go sit on an O6 commander’s desk. An O6 commander is colonel and above, so quite a senior commander. He may not even be in Afghanistan or Germany or exactly where that crime has occurred. The O6 commander will look at the file and decide: Has a crime been committed and is there enough evidence to go forward?

Instead of that commander making that decision, this bill proposes that it will be a trained military prosecutor, so it doesn’t matter what desk the file goes on. What does matter is whether the person whose desk that file goes on is objective. What matters is that person is actually trained, understands the investigation, and understands the nature of the crime, can weigh the evidence and make a decision based on the evidence, not whether he likes the victim or values or doesn’t value the perpetrator. Those biases are what is affecting the system negatively today.

So that is why the world away is not a concern, because the investigation proceeds exactly as it always did. The only difference is on whose desk it goes to make the ultimate legal decision.

Thank you to this Senator for making sure whether commanders are being held accountable. Commanders are held accountable. We actually have it in the underlying bill. Not only is retaliation now a crime, but they will be measured, as Senator BLUNT said, on whether their command climate is strong. Is the command climate strong enough to make sure these rapes aren’t happening? Is your command climate strong enough to make sure retaliation of a victim doesn’t happen? Is the command climate strong enough to make sure victims believe justice is possible?

So they will be evaluated and commanders will be held accountable.
a good reason in the military. I wish to make sure history is good and is not clouded by our continued inability to grab onto and reduce the issue of sexual misconduct.

Earlier this year, I know Members of this body were very happy when Secretary Hagel and the military leadership embraced the proposition that women should be able to serve in the military without being barred by gender from any military specialty, that military specialties could have rigorous physical or training criteria, but that both men and women should be able to compete to serve in any military specialty, even combat-related specialties.

We will be remembered—2014 will be remembered—for that. But that memory will fade by comparison if what we are really remembered for is we missed opportunities, an important opportunity, to tackle the important issue of sexual assault.

I challenge the Honorable Senators GILLIBRAND and MCCASKILL for all the great work they have done to bring this to the attention of the body and to look the military in the eye and say: This has to stop.

They have said it would stop over and over for 20 years, and it has not. This has to be the moment when it stops, and these Senators, working together with us on the Armed Services Committee, have put together a sizeable package of reforms that I believe will help us deal with this reporting issue so people feel a sense of comfort.

What we realized in tackling these issues in Virginia is that for people to feel comfortable about reporting sexual assaults, they have to have time. You cannot make them make the decision about reporting in an instant. There is often a psychological component about deciding what to do. There needs to be privacy and discretion and confidence, and there also needs to be advice and resources. People need to know: what are the avenues they have. What are the legal procedures, how do they look, and what are their rights if they decide to pursue a complaint.

I support the ongoing bill that is on the floor, and I will support some other proposals that are out. The McCaskill-Ayotte proposal I will support. I support the reform for a number of reasons. It affects the training and evaluation of military personnel. It affects the way sexual assault allegations are investigated, the way they are prosecuted, and the way they are punished. It protects witnesses.

An amendment Senator W ARNER and I got into the bill—and we will be adding it to the floor—protects whistleblowers who blow the whistle on an unfortunate or sexually harassing climate.

But the most important part of this bill is what the bill does for anyone who has been victimized by a crime of sexual assault—to create a climate where they can come forward and lodge a complaint.

In the military right now there are a number of avenues whereby somebody who has been victimized by a crime of sexual assault can lodge a complaint. Unique in this form of crime, there is a restricted report, where someone can come forward and report confidentiality, that is very, very important.

But this bill adds to it what I think is the core of driving up reporting, which is salutary. It adds to it, also, something that would be unique in the military. It would exist for no other crime category. If someone complains of a sexual assault, they will be assigned a special victims’ counsel, whose job it is to have their back, to hear the painful story, to share the various reporting mechanisms, counseling resources that are available, how the crime might be prosecuted. At every step along the way, as that victim is becoming a survivor and dealing with the challenge, that special victim will be there to help them make decisions and give them the backup and support they need.

This is based on a pilot project in the Air Force, a pilot project in the Air Force that is working. What we are finding, based on this pilot project in the Air Force, is even when people file complaints in a restricted, confidential way—they come in and say: I want to file a complaint, but I don’t want to go against the perpetrator because I don’t want people to know; I just want help—after they get a special victims’ advocate and learn about the proceedings and learn about the protections, and they build up a bond with somebody who has their back, to hear the painful story, to share the various reporting mechanisms, counseling resources that are available, how the crime might be prosecuted. At every step along the way, as that victim is becoming a survivor and dealing with the challenge, that special victim will be there to help them make decisions and give them the backup and support they need.

So I believe the core of getting this right is about giving victims an avenue where they can have the time, they can have the advice, they can have the privacy, discretion and confidence and they also need to be advice and resources. People need to know: what are the avenues they have. What are the legal procedures, how do they look, and what are their rights if they decide to pursue a complaint.

I support the reform for a number of reasons. It affects the training and evaluation of military personnel. It affects the way sexual assault allegations are investigated, the way they are prosecuted, and the way they are punished. It protects witnesses.

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But this bill adds to it what I think is the core of driving up reporting, which is salutary. It adds to it, also, something that would be unique in the military. It would exist for no other crime category. If someone complains of a sexual assault, they will be assigned a special victims’ counsel, whose job it is to
better and save money. But this across-the-board sequester that is grounding air combat wings, that is grounding carrier units, that is making us less able to confront a more challenging world, is not behavior befitting of the greatness of this Nation.

I am here conferees right now, working on a budget deal. We are under a Senate- and House-imposed deadline to try to find that deal by December 13 so the appropriators can work on a budget. We will work diligently on that. I have an optimistic sense about finding a budget deal that enables us to replace this foolish sequester with a more strategic approach that will not hurt our military.

Mr. President, I thank you for the time and I now yield the floor.

I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

Mr. BLUMENTHAL. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. INHOFE. Mr. President, I want to, first of all, thank the chairmanship of the Armed Services Committee and the ranking member, Senator Levin and Senator Inhofe, for the leadership they have provided to this body and to our Nation in fashioning a bill, the National Defense Authorization Act for Fiscal Year 2014, that truly serves our national security and preserves and enhances our national defense.

I want to thank my colleague Senator McCaskill for the leadership she has provided, along with others, such as Senator Reed and Senator Gillibrand, all who have focused on the issues that are raised by the Military Justice Improvement Act—the need to reform our system of prosecuting and providing justice to the survivors of sexual assault.

I have joined with Senator Gillibrand in supporting the Military Justice Improvement Act because I think it embodies the kind of major reform that is necessary to provide enhanced confidence and trust in this system of military justice—major change that is needed to drive out the scourge of military sexual assault from our Armed Forces and to provide the men and women of our military—the strongest and best military in the world now and in the history of the United States—with a system of military justice that matches their excellence.

The legislation before us, the National Defense Authorization Act for Fiscal Year 2014, provides much-needed equipment and training needed by our warfighters. It keeps us dominant across the globe and all of the domains that are necessary for our national defense. And it provides two new attack submarines for the coming fiscal year, and it keeps us on track for developing the next generation of ballistic missile submarines. These weapon systems, these weapon platforms, and all that is contained in this act, are vitally important for the defense of our Nation. The debate about the Military Justice Improvement Act should in no way distract us from that mission to maintain and enhance the defense of the United States.

This bill enables the Air Force to move forward with a new combat rescue helicopter that will take injured airmen and others to safety. In June I wrote with five of my colleagues to Gen. Mark Welsh, the Air Force Chief of Staff, to support the Air Force in its efforts to replace the current fleet of HH–60G Pave Hawks with helicopters that can carry more and go further, all the while keeping the fuel efficiency and value that the H–60 aircraft provides. This legislation keeps our progress underway in the development and fielding of the Joint Strike Fighter that will assure that our Air Force, Navy, and Marines are ready to respond.

This bill has so many critical and valuable elements that should be at the forefront of this debate and evoke appreciation for Senator Levin and Senator Inhofe. Indeed, done by my colleagues on the Armed Services Committee. So I am proud to support this bill. At the same time, Congress has a responsibility to transform the timeless and powerful language of “zero tolerance for military sexual assault” into a real plan and strategy that will achieve that goal.

For years and years the military has promised zero tolerance toward sexual assault. Yet the actual achievement has fallen short. That is why reporting has been so low and why the crime of military sexual assault is not only underreported but underprosecuted. The goal of the Military Justice Improvement Act is to improve reporting because when victims cannot be investigating and there cannot be prosecution, which means there can be no punishment and no prevention and protection.

Those are the goals of this major reform: better reporting and enhanced prosecution to deter this horrific crime, and to make sure that victims are better protected and the crime itself prevented.

This bill requires the Secretary of Defense to report to victims of crimes prosecuted under the Uniform Code of Military Justice, such as protections from unreasonable delay and the right to be heard. This bill gives those protections even without the Military Justice Improvement Act. It also obligates the Secretary of Defense to ensure these rights are enforceable and affords every victim a special victim’s counsel—again, measures on which there is consensus provided in the bill right now.

I am proud that in response to my request to the defense appropriations committee, when this provision is authorized in this legislation, there will be $25 million appropriated to stand up this program systemwide and defense-wide.

So the legislation before us has many good things even without the Military Justice Improvement Act. I am proud of the reforms that are accomplished in the bill on which we disagree is on the proposal to take prosecutorial decisions out of the chain of command. That is a narrower change that many people appreciate because the rest of the system, which is reformed by this control authority, would be essentially maintained. What is taken out of the chain of command is simply the prosecutorial decision so that an experienced, trained, objective professional can make those decisions.

I really believe this measure, if adopted, as I hope it will be, will lead the military at some point—those commanders who may resist it now—to actually thank the Senate and the Congress for taking these decisions out of their hands so that they can focus on the incredible challenges of military readiness and preparedness, so they can do what they are trained to do, which is to train their men and women and maintain and enhance their readiness so that they can do professionally what is their prime mission, which is to fight wars and defend our Nation.

These decisions about prosecuting sexual assault cases can be better made by trained, experienced prosecutors who have the expertise in their field if our military commanders have in their field. I think it will serve the entire interests of our military to make sure that these decisions are made by those military professionals in JAG offices, just as they are trained in other areas of expertise that require that kind of training.

I am listening to the voices of the victims as to what will enhance their reporting and eliminate their fear of reprisal and retaliation. On Monday I was joined by four survivors of military sexual assault to discuss the need for reforming military justice. I wish to express my appreciation for Army SST Sandra Lee, Army SGT Cheryl E. Berg, Air Force SSgt Pattie Dumin, and Marine Corps Cpl Maureen Friedly. Each demonstrated that day that their shared experiences of military justice warrant the reforms contained in the Military Justice Improvement Act.

I would like to share just one—Marine Corps Cpl Maureen Friedly, who was sexually assaulted by a fellow marine in 2006 while attending the Navy School of Music. She pressed charges against her attacker and requested an unrestricted investigation. I will now read her words into the RECORD:

I went to an NCIS investigator who questioned me about the day I was attacked and, after hearing my testimony, told me that I would have to take a lie detector test to insure I was not lying falsely. I agreed to it because I had never asked anything of my investigator again. My chain of command made it very clear that they preferred my attacker,
who was a platoon leader, over me and supported him through everything. When I graduated from the school and went to my duty station in San Diego, CA, my new chain of command tried to help me find out what had happened to my case as I had not heard about it for several months. A few weeks passed before I found that my paperwork had been lost and I was told that nothing could be done and my attacker would go out to the fleet.

Even in my case, I found that he had sexually assaulted several other women and he was administratively separated from the Corps, not charged, and not given a dishonorable discharge.

Her remarks say more than I ever could about the need for enacting the Military Justice Improvement Act. The reforms contained in the measure already are a vitally important step in the right direction. Taking these decisions out of the chain of command is important to good order and discipline because eliminating the crime of sexual assault and providing for greater reporting is vital to good order and discipline. Our experience shows that it has not always been well imple-mented. Whatever the claims about numbers of cases reported in those allie’s armies, clearly they are satisfied with the way it has worked there.

Physically, I say that I appreciate the bipartisan efforts on this bill on both sides. I think that eventually we will see this kind of reform. Whether or not it is approved today, history is moving in this direction, demanded and driven by the brave men and women who have suffered from this crime, the survivors and victims whose voices we have heard, and the commanders and veterans who have come forward to us, all of the major veterans organizations that have made their voice heard to us and who wholeheartedly have said: This kind of reform is necessary to vindicate and support the brave men and women who put their lives on the line for our Nation day in and day out, whose excellence in our Academy, those who sexually assaulted 90 vic-
tims. We watched the Secretary of the Air Force Academy told Congress, “We will not tolerate in our Air Force, nor in our Academy, those who sexually assault others; those who would fail to act to prevent assaults.”

GILLIBRAND: And certainly I am not here to doubt the sincerity of those who made those comments, but yet the pattern continues. We have a horrible set of sexual assaults, not just one but multiple ones. We have these pledges for zero tolerance. Yet we have one event after another. After the 2003 scandal, there were again the pledges of zero tolerance. We had the Joint Base San Antonio-Lackland scandal where some 30 training instructors were accused of offenses ranging from improper relationships with trainees to sexual assault and rape. In response, the Secretary of Defense said—as did many of his predecessors in the military—“the command structure from the chairman on down have made very clear to the leadership in this depart- ment that this is intolerable and it has to be dealt with. We have absolutely no tolerance for any form of sexual assa ult.”

Suffice it to say we are going to have to come to grips, colleagues, with this question of assault—and particularly sexual assault—in a variety of forums. This is not the place to discuss it, but yesterday Senator CORNYN, I, and Senator KLOBuchar introduced a fresh approach to dealing with sex trafficking,
Airborne Division. I was responsible directly for nonjudicial company-grade punishment under the Uniform Code of Military Justice. But it was clear to me and to my troops that the battalion and brigade commanders and the division commander had court-martial authority, but they were not confident with their subordinate commanders in the execution of this authority. This reality, this authority, permeated everything we did and reinforced the policy orders of every commander, including myself.

I will admit that my experience is decades old, and it preceded the integration of women into combat units such as an airborne infantry battalion, but the central role of the commander has not diminished. Moreover, the experiences of the sixties and the seventies also reveal a military struggling with serious and corrosive problems, principally racial integration and drug use. Congress ultimately dealt with these problems by giving commanders but by holding them, and through them every member of the Armed Forces, to a higher standard.

Today the American military is the first institution anyone points to when noting the progress we have made in racial equality and opportunity. This was not always the case. Incidents with racial overtones plagued the Vietnam period (and the post-Vietnam era). Among the most widely publicized were a race riot among prisoners in a stockade in Vietnam in 1968 and several incidents aboard naval vessels in the early 1970s.

In one of these incidents in 1972 on the carrier Kitty Hawk, there was a 15-hour melee between Black and White sailors. Effectively, that carrier, that ship—a capital ship of the Navy—was absolutely ineffectual. They weren't prepared to fight the enemy, they were fighting each other.

In May of 1971, there were 4 days of rioting at the Air Force Base in California ignited by racial incidents on the base; over 100 individuals were arrested and more than 30 Air Force personnel were treated for riot-related injuries. The Marine Corps saw serious racial clashes at Camp Lejeune, NC, and Kaneohe Naval Air Station in Honolulu. In the Army, especially in Germany, there were frequent racial clashes.

In December of 1976, a special investigating team reported to President Nixon on the situation in Europe and declared that black troops were experiencing "acute frustration" and "volatile anger" because of their treatment. Interestingly, this report cited as a major cause of this frustration "the failure in too many instances of command leadership to exercise the authority and responsibility in monitoring the equal opportunity provisions that were already a part of military regulations."

The military has made significant progress on racial opportunity. I am sure more can and should be done, but the progress to date has been driven principally by command leadership at every stage, including the enforcement of the Uniform Code of Military Justice.

The point was made by Charles Moskos and John Sibley Butler, two of the utmost authorities on race relations in the military. In 1996 they wrote:

"Perhaps surprisingly, no Army regulation deals solely with race relations or equal opportunity. Instead, these issues fall under the Army Regulation 600–20, whose broad concern is "Army Command Policy." This title is more than symbolic. The Army treats good race relations as a means to readiness and combat effectiveness and in itself. This is the foundation for the Army's way of overcoming race. Racial concerns are broadened into a general leadership responsibility, and commanders are held accountable for race relations on their watch.

Once again, the emphasis is on commanders, not specialized legal procedures that bypass commanders. My best judgment is we will make the most progress addressing the issue of sexual abuse by holding commanders accountable, not by excluding them from a critical aspect of military life.

Under the leadership of Senator LEVIN and Senator INHOFE, the Armed Services Committee has made significant changes to provisions regarding sexual abuse in the military. Moreover Senators McCASKILL, AYOTTE, and FISCHER will make additional changes in their proposed amendment that will further strengthen our commitment and ability to respond to the crisis of sexual abuse in the military. But it is also important to describe the ongoing efforts by the Department of Defense to deal with sexual abuse in the military.

I am drawing on testimony of LTG Flora D. Darpino, the Judge Advocate General of the Army, and she described policies effective in the Army, but generally there are equivalent procedures in the other services.

Army began a major effort to combat sexual abuse beginning in 2004 with the creation of the Sexual Assault Prevention and Response Program, the SAPR Program, and the implementation of restricted reporting. This allows victims of sexual assault to confidentially disclose a crime to specifically identified individuals and receive medical treatment and counseling without triggering the official investigative process.

This program has evolved into a comprehensive effort "fielding a capability of over 11,000 personnel, deployable and available 24 hours a day," to respond to the victims' needs.

Included in the procedures available under the SAPR Program are new reporting options for victims, expedited transfers, access to victim advocates and, most recently, access to victim counsel.

In addition, this program has a significant educational component that is mandated Soldier training from the first days of initial entry training to senior leader forums." The training focuses on bystander intervention and is
linked to "Army values that bond Soldiers as a team." It reinforces the military ethic of selfless service over pre- 
dation and self-gratification.

"In 2009, the Army recognized the need for improved training and re- 
sources to prevent sexual assault and sexual crimes." Special Victim Prosecutors 
were created in the Judge Advocate General's Corps and sexual assault in- 
vestigators were created in the Criminal 
Investigative Division, CID. To- 
gether, they effectively tracked and deterred sexual crimes. One former 
head of the 35th Army Command Criminal Investigating Unit, Colonel E. B. 
Flanders, stated, "I do not believe that sexual assault can be combated with 
discipline alone. It has to be a part of training from the very beginning."

As such, she points out: 

The Army, like the other services, has moved aggressively to hold commanders ac-
countable for setting a command climate that encourages, deplores conduct that degrades or harasses individuals, and provides a safe environment, free of retali- 
ation, for victims after they come forward. To support this effort, officers and commanders are receiving enhanced training at every level. Specifically, "the officers entrusted with the disposition of sexual assaults, with- 
held transfer (Colonel) Special Court Mar- 
tial Convening Authority, are required to at- 
tend Senior Legal Orientation Courses at the Judge Advocate General's Legal Center and 
School with a focus on the proper handling of sexual assault allegations. General officers, 
who will serve as convening authori- 
ties, are offered one-on-one instruction in legal responsibilities, again with a focus on 
sexual assault."

Most significantly, in my view, and most recently, the Secretary of the Army, on September 27, 2013, directed that every officer and noncom- 
misioned officer will be rated on how well he or she "fostered a climate of dignity and respect and adhered to the Sexual 
Harassment Assault Response Program." Secretary McHugh and General 
Odierno have made it clear that com-
manders and senior leaders are respon- 
sible. Their advancement, their reten- 
tion, their standing in the Army will 
be rated on how well they prevent and 
respond to sexual assault by either service- 
men or their trainees.

I wish to return for a moment to my 
discussion of the racial challenges fac- 
ing the Army while I served. Let me 
also return to the comments of Charlie 
Moskos, the most respected academic 
authority and also an Army veteran. In 
1986 he wrote:

With all of these changes, Lieutenant 
General Darpino still identifies the commander as the "critical" element. 
In her words: "The most critical ele- 
ment of this institutional effort, how- 
ever, is commanders."

that justice is done. In crafting this 
bill, the committee acknowledged that 
many victims do not report such inci- 
dents because of a fear of retaliation 
from their peers and leaders. So this 
legislation includes a provision that 
provides a victim of sexual assault with 
the ability to reassign or remove from 
an assignment a servicemember on ac-
tive duty who is accused of committing 
or attempting to commit a sexual as- 
sault offense, not as a punitive meas- 
ure but solely for the purpose of main- 
taining good order and discipline with- 
in the member's unit. In addition, the 
bill directs the Secretary of Defense to 
provide information and discussion of 
this authority as part of the required 
training for new military and civil- 
ian leaders at all levels of command.

The bill also makes several changes to 
further strengthen the judicial proc- 
ess. First, the bill eliminates the ele- 
ments of the character and military 
service of the accused—the so-called 
good soldier defense—from the factors 
a commander should consider in decid- 
ing how to dispose of an offense.
I should add that Senator McCaskill’s amendment further limits the defendant’s use of good military character as evidence.

Second, the bill requires the defense counsel in courts martial to make requests for discovery complaining witnesses through the trial counsel, and, if requested by the witness, requires that defense counsel interviews take place in the presence of the trial counsel, counsel for the witness, or outside counsel to protect against the abuse of this process.

Next, the bill changes Article 60 of the UCMJ to limit the ability of a convening authority to modify the findings of a court-martial to specified sexual offenses. In other words, this provision eliminates a commander’s ability to overturn a jury’s conviction for sexual assault, rape, and other crimes.

Additionally, the bill requires a mandatory review of the service secretary in any case in which the service secretary reviews the trial record of a conviction for sexual assault of a service member convicted of a sexual assault offense issued by a court-martial.

The bill also eliminates the 5-year statute of limitations on trial by court-martial for certain sexually related offenses, and requires that substantiated complaints of a sexually related offense resulting in a court-martial conviction, nonjudicial punishment, or administrative action be noted in the service record of the servicemember, regardless of the member’s grade.

Importantly, the bill maintains and strengthens the role of commanders in the judicial process. During the mark-up of this bill, the committee adopted an amendment on a bipartisan basis that preserves the ability of commanders to initiate court-martial proceedings. Removing this authority, which is one of our colleagues or advocates, would weaken accountability and undermire efforts to combat sexual assault. Commanders have the responsibility to train their subordinates, they are charged with maintaining good order and discipline within their units, and they are responsible for the safety of the men and women they lead. The commander is essential to instilling among the members of his or her unit that sexual assault and related behaviors will not be tolerated and will be adjudicated.

The bill includes several provisions that address the role of the commanding officer. First, it requires commanders to immediately refer to the appropriate military criminal investigation organization reports of sexually related offenses involving servicemembers in the commander’s chain of command. Next, the bill requires a commander to review any decision by a commander not to prosecute a sexual assault allegation, with the review going all the way to the service secretary in any case in which the commander disagrees with the military lawyer’s recommendation to prosecute.

If a legal counsel advises prosecution, and the commander does not do it, ultimately it will be resolved by the service secretary. Most commanders do not want their decisions reviewed by the service secretary. I think this will add more sense and more purpose to their efforts to combat sexual abuse.

All of these steps are significant steps forward in addressing these horrible crimes. However, we must remain committed to further improving both prevention and response. That is why the bill includes several provisions related to efforts to bring the independent panel created by last year’s Defense authorization bill—the Response Systems to Adult Sexual Assault Crimes Panel. This committee is assessing the systems used to investigate, prosecute, and adjudicate crimes involving sexual assault. The bill we are considering today assigns additional issues to be considered by this panel and requires the panel to produce its report no later than 1 year from its first meeting, which occurred in July, rather than 18 months, as originally laid out in last year’s law.

As I mentioned before, Senators McCaskill, Ayotte, and Fischer are proposing an amendment that further strengthens provisions that are already in the committee’s bill. First, their amendment requires the special victims’ counselors to advise victims of the advantages and disadvantages of their cases being prosecuted in a military court-martial or a civilian court. This provision will help ensure that a discharge accurate reflects the service of the individual taking into account the effects of sexual assault and also helping to remove the concern that reporting sexual abuse could influence the character of a military discharge. Reporting such a crime should never influence the character of a military discharge.

The amendment strengthens the role of the prosecutor in advising commanders on courts martial. The command language requires the civilian service secretary to review all cases where a commander does not choose to prosecute when his or her legal counsel/judge advocate recommends prosecution. The amendment extends that mandatory review if the prosecutor recommends prosecution and the commander demurs. In effect, if either the prosecutor or the legal counsel/judge advocate recommends prosecution and the commander demurs, the case will automatically be reviewed by the civilian service secretary. You will have the highest ranking civilian in the uniform service making the final call. Every commander will know that.

The amendment modifies the Military Justice Act of 1990 to prevent defendants from introducing evidence of good military character as a general defense of a charge. Such evidence may only be admitted if that trait is relevant to an element of the offense for which the accused is charged. Too often, the good soldier defense has been seen as overcoming specific evidence directly related to a crime. This...
appearance undermines the essential perception that a verdict is determined by direct evidence supporting the elements of the crime, not the previous reputation of the defendant. This provision builds upon a section of the underlying bill that eliminates the character evidence that military authorities in the United Kingdom, Australia, and Israel. These countries have removed commanders as convening authorities and use independent military or civilian prosecutors to make charging decisions. While it can be useful at times to draw comparisons between our Armed Forces and those we serve alongside, there are several points to be made with respect to our military justice system that do not align.

First, none of these countries changed their system in response to a sexual assault crisis among their ranks or to protect rights of victims more generally. In most cases the system was changed to protect the rights of the accused.

Second, none of the allies can draw a correlation between their system and any change in reporting by victims of sexual abuse. Many argue that removing the commander as the decision-maker makes a significant difference in the likelihood that victims face in deciding whether to report sexual assaults. There is no statistical or anecdotal evidence that removing commanders from the charging decision has had any effect on victims’ willingness to report crimes in these judicial systems among our allies.

In materials provided to the Response Systems Panel, the deputy military advocate general for the Israeli Defense Force noted an increase in sexual assault complaints between 2007-2011, attributing no specific reason for the increase but noting that it could represent an increase in the number of offenses or it could be a result of campaigns by service authorities to raise awareness on the issue.

Similarly, the commodore of Naval Legal Services for Britain’s Royal Navy has assessed that recent structural changes to their military judicial system had no discernible effect on the reporting of sexual assault offenses.

Third, the scope and scale of our allies’ caseloads are vastly different, primarily because of the much greater size of the U.S. Armed Forces. For example, the Canadian military only tried 75 to 80 courts-martial last year, which is roughly comparable to one U.S. Army division’s annual caseload. But several of our allies who have changed their military justice system have indicated that it has resulted in the process slowing down and taking longer. Frankly, that is one of the issues victims have raised in terms of why they aren’t reporting and why they are so terribly frustrated—because the length and duration of the process.

Furthermore, most allies cannot conduct courts-martial in a deployed environment. BG Richard Gross, the legal counsel to the Chairman of the Joint Chiefs of Staffs, stated in a letter:

One critical feature of our justice system is its expeditionary nature—the ability to administer justice anywhere in the world our forces deploy.

Notably, the Army alone tried over 950 cases in deployed areas over the past 10 years. In one case in Iraq, four soldiers committed multiple crimes in a single night. The commander referred all four soldiers to court-martial, and they were charged with consuming alcohol, forcing standards, and stealing property and money from the locals. Because the commander in Iraq had authority to refer these cases to trial, the first trial was underway within 2 months of the incident. All of the co-accused and defense witnesses were in the same unit, and local Iraqis were available as fact witnesses. Because the commander had a fully deployable military justice system at his disposal, he was able to send a strong message to the unit that such conduct would be dealt with swiftly and decisively. Simultaneously, he was able to restore positive relations with the local community.

The Army has also cited instances of allied courts-martial of U.S. military personnel tried by court-martial, and because of the allied nation’s system removing the authority of the chain of command and removing the process from the battlefield, our commanders would demand but not receive timely information on the status of any prosecution. We had a soldier victim, and they could not find anything about the process that was going on.

Tragically, sexual assault is a crime that historically ignored, and this is not only with respect to the military. The Rape, Abuse, and Incest National Network cites Department of Justice crime surveys that show that an average of 60 percent of assaults in the last 5 years were not reported to police. However, in numbers released earlier this month, DOD showed that more servicemembers are coming forward to report sexual assaults. From October 2012 to June 2013, 3,553 sexual assault complaints were reported to DOD offering an increase over the same period a year ago. These cases include sexual assaults by civilians on servicemembers and by servicemembers on civilians. A significant number of the reported incidents occurred before the victim had even entered military service.

Another argument for removing the commander’s authority is that independent NGOs or authori-
ties will prosecute more cases. However, statistics show that commanders from all services have exercised jurisdiction and pursued courts-martial for sexual assault cases. The Army did not change its system in response to a sexual assault crisis among their ranks or to protect rights of victims more generally. Over the last 2 years, Army commanders have exercised jurisdiction in 49 sexual assault cases the local civilian authorities declined to pursue, and 32 of those cases were tried by court-martial, resulting in 26 convictions. The U.S. Marine Corps exercised jurisdiction in 28 sexual assault cases, all of which were tried by court-martial, and 16 cases resulted in conviction. This goes on throughout every service.

Commanders also have an interest in pursuing a court-martial as a way to demonstrate the seriousness of the crime and its impact on unit discipline, not merely because of the quantity or quality of evidence that a crime occurred.

On June 4 the Armed Services Committee held a hearing on the legislative proposals to address sexual assault in the military. We heard from four colonels from the Army, Navy, Marine Corps, and Air Force. They all spoke about the importance of seeking legal advice from their command judge advocate and having the responsibility to adjudicate crimes within their command.

COL Donna Martin, commander of the Army’s 202nd Military Police Group Criminal Investigation Division, stated:

It is of paramount importance that commanders are allowed to continue to be the center of every formation, setting and enforcing standards, and disciplining those who do not. The commander is responsible for all that happens or fails to happen in his or her unit.

She went on to say:

The Uniform Code of Military Justice provides me with all the tools I need to deal with misconduct in my unit from low-level offenses to the most serious, including murder and rape. I cannot and should not relegate my responsibility to maintain discipline to a staff officer or someone else outside the chain of command.

When asked about whether a commander might be more likely to pursue a court-martial than even an outside independent officer because of the desire to send a message to his or her unit, Marine Colonel King replied that he considers “achieving justice for whatever crime was committed and conveying the message to the thousands of Marines that are actively watching what’s going on.” So I can, even if I fail to achieve a conviction at whatever level, still send a powerful message to them that this kind of conduct is unacceptable.”

Col. Jeannie Leavitt, commander of the 4th Fighter Wing, stated:
I could absolutely see the scenario where a prosecutor may not choose to prosecute a case or recommend prosecuting a case because of the likelihood of conviction. However, as a commander, I absolutely want to prosecute the case because of the message it sends so that our airmen understand that they will be held accountable. And then we'll let the system decide whether or not it will be convicted. But that message is so important, whereas an independent prosecutor may not see the need to take it to trial if the proof is not necessarily going to lead to conviction.

Additionally, our service JAGs have expressed several concerns about the proposed amendment my colleague from New York is introducing. I will take a moment and talk about the amendment.

I thank and commend Senator Gillibrand because without her persistence and passion, we would not be here today. She perhaps has done more than anyone else to focus our attention on this incredibly heinous crime done to individuals and the threat to good order, discipline, and efficiency of the military.

Her objective—the elimination of sexual abuse in the ranks of our military—objective, and it must be realized. She and her cosponsors have determined, in their view, that the removal of the commander from the application of the Uniform Code of Military Justice for a wide variety of offenses is the best approach to achieve the goal of ending sexual abuse in the military, but, as my previous comments clearly indicate, I disagree. Indeed, given the nature of military service, which is significantly different from civilian life, I believe that without the active involvement of commanders in every phase of military life, this goal cannot be effectively and rapidly achieved.

The approach in the amendment proposed from New York poses significant problems in practice that could unwittingly complicate rather than accelerate efforts to end sexual abuse.

The amendment attempts to divide crimes designated by specific articles of the UCMJ into two broad categories: traditional military offenses subject to command adjudication, such as AWOL and insubordination, and a broad category of serious offenses that would typically constitute civilian criminal offenses—murder, robbery, rape and sexual crimes. In fact, here is a chart depicting the division of the articles of the Uniform Code of Military Justice.

This second category of offenses would be removed from command adjudication and would be referred to an independent prosecutor. This independent prosecutor must be at least a full colonel with “significant experience in trials by general or specific court martial” and be “outside the chain of command of the member subject to such charges.”

This bifurcated system—especially considering the scope of crimes excluded from the chain of command—will have profound effects on the ability of commanders and units to function effectively.

Let’s take the case, which is not uncommon, of a soldier who writes five bad checks in the amount of $30 each to the PX knowing he doesn’t have the funds to cover his purchases. The Criminal Investigations Division investigates and informs the commander. Under the Gillibrand amendment, the commander has the choice to refer the independent prosecutor because it falls under article 123a. These are referred to special prosecutors if they fall under the category. The five separate incidents, although they individually have a maximum punishment of 6 months, would be charged together, leading to 30 months, which exceeds the 1-year threshold for the Gillibrand amendment. As a result, this would be sent forward to the special prosecutor.

I hardly think that charging this soldier for writing bad checks is the intent of the Gillibrand amendment, but it will be the effect. It also raises the very practical questions of how the independent prosecutor will deal with an onslaught of cases like this when the expectation is that he or she will be focused on sexual abuse and other serious crimes, such as murder. There is a practical issue: Are you going to take a bad check case when you have 15 pending attempted murders, assaults, rapes, et cetera? That is a practical question of how the independent prosecutor would take this case. At some point, the independent prosecutor will inform the commander, which raises another issue. If this notification is delayed extensively, there is a related problem of what to do with the soldier under suspicion. Do you deploy him or her subject to recall? Do you leave him behind? So all of these issues are important.

The independent prosecutor’s decision is binding on any applicable convening authority for a trial by court-martial on such charges. It is binding on every commander. The amendment, however, does attempt to preserve authority to punish these types of offenses by declaring that the independent prosecutor’s decision “shall not operate to terminate or otherwise alter the authority of commanding officers” to employ a summary court-martial or to impose nonjudicial punishment under Article 15.

But this authority is absolutely illusion.

Under the UCMJ, every soldier has the right to turn down a summary court-martial or an Article 15. Once he is informed by counsel that he will not be subject to a general court-martial or a special court-martial, he can turn down a summary court-martial and article 15, the soldier will invariably refuse the summary court-martial or article 15 because he will demand a court-martial. But the commander cannot comply, as he can now, because he has already been preempted by the independent prosecutor. This scenario will play out over and over again. A unit is plagued by a series of barracks thefts which, if unchecked, erodes good order and discipline. The commander has information that one soldier is stealing off of people but he has no other evidence. During a routine health and welfare inspection, an iPhone valued at over $500 and reported missing is found in the boasting soldier’s room. Under the Gillibrand amendment, the commander must refer the case to the independent prosecutor and again you will have the issues of whether that independent prosecutor takes such a case, and if not, the likelihood that the accused will refuse a summary court-martial or an Article 15 and walk free.

Incidents like this—and this is not the intent of the legislation, but this is what will happen—will erode unit cohesion and raise questions at least implicitly: Who is really running the
unit? The commander? An unseen and unknown JAG, hundreds of miles away? Or individual soldiers who may appear to be violating the rules with impunity?

This question is important here, but it is essential that the chain of command has to order soldiers to do dangerous things, and ultimately, that is what commanders have to do and soldiers have to have no doubt that the commander, he or she, is fully in charge.

As I referenced earlier, the bifurcation of the articles of the UCMJ poses significant challenges. The problem with the drafting of this amendment complicates not just cases of common theft, not just issues that you say we could throw out, but the very issue of sexual assault we are trying to address.

Let's take another example of a married couple, both of whom are Active Duty servicemembers, who get into a shouting match in their quarters on post. The husband pushes the wife with a kitchen knife and knocks her unconscious. She provides a statement to CID but later retracts it. They have another argument which results in his assaulting her with an attempt to commit rape. Under the Gillibrand amendment, because of aggravated assault, Article 128, would have to be referred to the independent prosecutor to decide whether to send the case to a court-martial, while the offense of assault with intent to commit rape, which is specified under Article 134, is exempt from the Gillibrand proposal and would be referred to the chain of command. Assuming both the independent prosecutor and the independent commander seek a general court-martial, this particular victim will now have to have two separate Article 32 hearings, two subsequent courts-martial, at least doubling the number of times she must recount her nightmare and prolonging the administration of justice.

The accused will demand and likely get two separate panels for each set of offenses, thus doubling the number of officers unavailable for their duties in the command and more than doubling the administrative, personnel, and witness costs associated with the general court-martial.

This is a situation where, rather than streamlining, reinforcing, and clarifying the military's efforts to deal with sexual assault and sexual misconduct, we have delayed them, and we have put commanders in the position of competing with independent prosecutors. This is not going to add to the solution on a practical basis of how we deal with sexual assault.

We know a majority of the men and women in our Armed Forces serve our nation selflessly. Every day they are prepared to give their lives. Sexual assault is the antithesis of this ethic. It has no place in the Armed Forces, and if not eliminated, it will insidiously destroy our military. I believe preventing sexual abuse requires leadership at every stage and that commanders must be involved in every step. I believe that we will make the most progress in addressing this issue by involving and holding commanders accountable, not by excluding them from a critical area of militarily life.

We have not extended extensively to include provisions in this bill that will improve the prevention of sexual assault, the protection of victims, and the prosecution of perpetrators. We must pledge to do more, to continue our oversight of these programs and make further changes if needed. We owe it to all those who bravely and honorably wear the uniform of our Nation.

Madam President, I yield the floor.

The PRESIDING OFFICER. The Senator from Maryland.

Mr. CARDIN. Madam President, first, let me thank Senator GILLIBRAND for her leadership on this issue of sexual assault in our military. I support her amendment, and I think it is needed, but we are at a new level of dealing with sexual assault, we have confused them, we have delayed them, and we have put aside the administrative, personnel, and with the impact of sequestration and that deal with human rights issues with U.S. leadership global-ly, and that deal with human rights issues with U.S. leadership globally, and that deal with human rights issues with U.S. leadership globally.

Mr. CARDIN. Madam President, we are now dealing with the NDAA bill, the National Defense Authorization Act, and it is our opportunity as a Senator to weigh in on one of the primary roles of government and that is the security of our country, how we can support our men and women in our military to make sure they have the best equipment and the best support and live up to our commitments to our veterans when they return to civility. I think that is the responsibility. I know each of us in our own capacities need to rely on outside help in order to be able to carry out this responsibility.

We have staff. In my case, I have been blessed to have a director from the Department of Defense from the Air Force. That person is Maj. Nate Somers. I mention that because he will be leaving my assignment very shortly, but he has helped me in developing provision of all of the issues ranging from confrontational to weapons systems.

He has helped me in developing provisions that are an offshoot of that deal with military health issues, that deal with regional security concerns, that deal with the impact of sequestration and how we can deal with the impact of sequestration and that deal with human rights issues with U.S. leadership glo-bally as well as within the military.

To say the least, I could not have done this as effectively as I needed to on behalf of the people of Maryland if it were not for Maj. Nate Somers. He comes to this assignment with an incredible background. His military record is unbelievable. Major Nate Somers has dedicated his life to serving the United States. He entered the service with the U.S. Air Force in 2001 when he graduated and received his commission through the Officer Training Program at Mississippi State University. He also, I might add, has two master's degrees, the one in military studies and the one in criminology, including the Meritorious Service Medal and the Air Force Commendation Medal. His receiving these awards comes as no surprise to those who know him. Nate demonstrates his extraordinary talent to our Nation and to our Armed Forces each and every day.

There is a hard way that goes by that I am not better informed because of this assignment to my Senate office. To say that Major Somers will be missed is an understatement. Nate has truly been a integral part of my staff. Whether ensuring our Maryland veterans get the services they need or advancing our concerns on coalition issues, there was no task Nate would not do or could not do in order to help our office. The Air Force should be proud of the extraordinary talent he have in Maj. Nate Somers. I thank him for his service to his Nation.

I also want to take this opportunity to thank Nate's wife and sons for sharing Nate with the Senate and for his service to the country. I yield the floor.

The PRESIDING OFFICER. The Senator from Alaska.

Ms. MURKOWSKI. Madam President, yesterday morning I was pleased to be able to come to the floor of the Senate and join with a good, strong, group of women from both sides of the aisle to express our joint commitment—really the commitment of every Member of this body—to address the scourge of sexual assault, sexual misconduct within the military.

I thought it was a good way to start off the debate yesterday on the issue of sexual assault within the military, recognizing that some are in different places in terms of how we deal with these very important issues. But ultimately the goal of each of us is the same. The goal is that we make things right for those who are serving our Nation, and that when it comes to instances of sexual assault, military sex-ual trauma, sexual harassment, that really there is no place in our military for this.
We use different terminology when we are discussing the issue of sexual misconduct in the military. How we define what we are seeking to eradicate is important. We have used the more generic term sexual assault probably more often to describe the problem that we are addressing. The VA’s term, military sexual trauma, means “the trauma resulting from a physical assault of a sexual nature, battery of a sexual nature, or sexual harassment which occurred while the veteran was serving.”

I prefer this term because it emphasizes the various traumas that can occur, both with and without physical assaults and batteries. This definition also calls to our attention the fact that whatever the instrument of trauma is, whatever the nature of the trauma is, there are psychological scars that need to be addressed. These are psychological scars that can last a lifetime. I think it is fair to say that this spectrum of scars is broad and it is deep.

I have had the opportunity to work that came out of the Senate Armed Services Committee. I have looked very carefully at the work that came out of the Senate Armed Services Committee. I have considered all that is being incorporated in the Defense Authorization Act. As I mentioned yesterday, I am pleased with how in so many different areas we have been working together to address these issues of military sexual trauma.

I am a supporter of Senator GILLIBRAND’s approach to ensure justice for victims of military sexual trauma. Today, I would like to explain some of the reasons why I have chosen to support that approach.

The current system of military justice is based upon the individual decisions of commanders for a decision on whether or not an offense is to be punished, and which charges are to be brought. In our complex military there are many commanders. We all know that. While our code of military justice may be uniform, I think we are seeing strong evidence that its implementation is anything but uniform.

Senator GILLIBRAND’s approach ensures that charges will be investigated and that the decision of commanders is based on investigation by disinterested military prosecutors. Decisions will be made by disinterested military prosecutors who only interest is that the perpetrators account for their actions, that victims’ interests are protected, and that the integrity of the perpetrators are being evaluated. I think this is very important. I think this is a breath of fresh air.

The recent experiences I have had, as a Senator from Alaska, with the transparency of decisions made within the chain of command leaves much to be desired. Unfortunately, we have learned about these situations from what we read in the headlines, and it makes you say: Oh my gosh. I cannot believe this is happening in our military.

It makes your stomach turn. We are not hearing this from the chain of command. We are reading this in our newspapers. We are seeing this reported in the media, and that is the first time we hear of them.

Case in point: The 49th Missile Defense Battalion, which operates our Nation’s missile defense at Fort Greely. The missile defense establishment at Fort Greely is a very important facility for us in Alaska—as well as for the Nation. Last spring it was widely reported that unlawful fraternization among certain members of the battalion—rising up into the chain of command—was creating an uncomfortable situation for those who were not part of what I would describe as the incrow at Fort Greely.

Just when I thought I understood what was going on at Fort Greely—an incident had occurred that everything was all fixed—there was bizarre series of events which showed up on my doorstep. The complainant, who was a member of the Alaska National Guard, was involved in a child custody dispute with another member of the Alaska National Guard. She filed a sworn affidavit with the Office of the Defense Counsel on October 26, 2013, that a military police officer and Fort Greely military police officers were involved in this custody dispute.

All of this is detailed in a sworn affidavit, which the complainant submitted to my office.

You just have to shake your head. Are we supposed to call this military justice? Are we supposed to call this justice? Is it military justice? Maybe it is military justice in the last frontier. I don’t like it, and I don’t think we should ever accept it.

I asked the Army CID to look into this incident because it was my impression then that an unlawful denial of one’s freedom is a criminal offense. I understand that the complaint my office forwarded was not pursued by the Army CID, but was referred to the Space and Missile Defense Command.

I am most appreciative that an investigation was pursued, but one might legitimately ask the question: How did it end? What was the outcome of this story? I don’t know. Alaskans don’t know. We don’t know. Neither I nor the individual who sought the investigation have been informed of the outcome.

The complainant has been told he needs to file a Freedom of Information Act request for unclassified information. Unfortunately, none of this sits right with me as an example of how the chain of command is an impartial, unbiased, and vigorous protector of victims. I am not able to see that in this instance. In this case it is alleged that the chain of command was either the perpetrators or complicit with the perpetrators.

Think of the message that sends. Freedom of Information Act requests. Folks, you might as well say that there is the only incident that has come to my attention, but that is not the case. Literally, less than a month ago, on October 27, the Anchorage Daily News reported on allegations that were made by senior Alaska National Guard chaplains of pervasive and longstanding sexual assault and sexual misconduct within Guard ranks.

There were allegations of some 26 different sexual assault and sexual misconduct incidents that were reported in the news. The chaplains become aware of these incidents through their own observations and through complaints that were brought to them by Guard members.

It was an opportunity to ask senior leaders of the National Guard Bureau what they knew about this situation. I asked them when they found out about this situation. You know what the answer was? They read about it in the news. Really? I mean, it just stuns me to hear this after we heard about how we have this system—throughout the chain of command—that has been addressing this issue.

Somewhere there is a broken link in this chain.

When the media finds out first and reports about it, and the senior leaders here are unaware of 26 different allegations, it just causes one to wonder.

It is a truism of management that if you don’t know about it you can’t manage it. I would like to think that we have the chance to manage this.

It is a horrible truth that we are still dealing with in Alaska, but we have all heard—and we are very aware—of the widespread allegations of child sexual abuse within the Catholic Church. We have come to learn that the Church, in fact, was aware of many of these allegations. At some point of time, the way they handled the problem was to move the offending clergy to other places. Some of them were
moved to the State of Alaska. If they acted inappropriately in an urban community, they were shipped out to a bush community—a very remote place.

Out of sight, out of mind, and free to offend again. That is not responsibility or accountability. That is not how it should be done within the church, and it certainly should not happen within our military.

We have all shared many different victim stories here on the Senate floor. I want to add that the more this issue of military sexual trauma and sexual assault has been discussed on the Senate floor, more victims have come to speak to me.

I was living at my home State 2 weeks ago for a big outdoor community event. It was a pretty cold Saturday afternoon. I was approached by a woman who had seen me from across the street. She was attending a conference at the time. She came across the street and into the town square. She was not wearing a coat. She wanted me to make sure that I knew she too had been a victim but had not had the strength to report the crime. She just left the service.

She said to me: Don’t give up on this because I had to step down from my military career and the perpetrator stayed on, and as he stayed on, he continued to be promoted. Her plea to me was: Please don’t let that continue.

I want to share another story that is very personal to me. I think all of us as Members of the Senate know what a privilege and honor it is to nominate qualified constituents to attend our service academies. The military stands very tall in the eyes of Alaskans, so in my State these nominations are highly competitive.

Last spring I became aware that one of my nominees who was accepted into one of the service academies and did phenomenally well was sexually assaulted at the academy. I was following this young woman because I knew her family.

She graduated and was commissioned, but now the burden of dealing with the fact that she was not protected some time has caused her to resign her commission. She put 4 years of very hard work toward a military career, and now that career is in the garbage.

I contacted her recently. She is a strong woman, but her dreams have been completely dashed by what she experienced.

Many of my colleagues know I have taken a keen interest in the work of our service academies. I served for a short time on the Board of Visitors of one of the academies, but I was not aware of the trauma my constituent had suffered until she contacted me long after graduation. I don’t recall any discussion about issues like this during my tenure on the Board of Visitors. It needs to be discussed. It not only needs to be discussed but action needs to be taken to eliminate instances like that from ever happening.

These issues are all current issues, but not all of these issues are new. Earlier this year I came to know a woman by the name of Trina McDonald. At one point in time she had the opportunity to live in the State of Alaska as a service member. So many of our service members who have been stationed in Alaska want to stay for life. They want to retire there because they love it. Unlike many of her colleagues, Trina chose to try to forget everything that had been attached to her service in Alaska. She prefers to forget that experience. That is because she was sexually assaulted while serving in my home.

Many of you may have seen “The Invisible War.” Ms. McDonald speaks of the experiences she had when she was assigned to the Navy and stationed at Adak, which is now a closed naval base on the Aleutian Chain. This happened about 20 years ago. Trina asserts she was repeatedly drugged, raped, and ultimately dumped in the Bering Sea by superior officers.

What did the chain of command do? Trina states that she had no place to turn and her superiors were the perpetrators. What do you do? Where do you go? Where is the redress? It pains me to think that the issues, which today are very high in the attention of this body, have been out here for 20-plus years. I have listened to my colleagues on the floor talk about the Tailhook scandal, and we have talked about so many of the other high profile instances where we have heard our military leaders say, Never again; never again; zero tolerance. They are using all the right words.

It really does cause us to ask the question: Are we to attribute this cycle of violence we are seeing to attention deficit on the part of us here in Congress or attention deficit on the part of our military leaders? This is not what zero tolerance looks like. Whatever the case, I think it is going to take some very strong medicine to break through this powerful attention deficit we have seen historically.

Incremental steps, in my view, don’t cut it anymore. For the young woman, another instance is no longer. The woman I met out in the cold 2 weeks ago who gave up her dream and just had to stand by and watch her perpetrator ascend his career ladder, incremental measures don’t cut it.

I think it is time for profound change. I think the amendment offered by the Senator from New York, while I think it is strong medicine, and I acknowledge that, I think it is the right tool for what we are dealing with at this time.

With that, I thank the Presiding Officer and I yield the floor.

The PRESIDING OFFICER. The Senator from Iowa.

Mr. GRASSLEY. Madam President, I wish to reiterate my strong support for Senator GILLIBRAND’s reforms to the military justice system. I am proud to be an original cosponsor of this act, and I should add it has been a pleasure working with Senator GILLIBRAND on the issue. Her passion and commitment to rooting out sexual assault in the military ought to be inspiring to all of us, and watching how she negotiates and how she lobby’s for her ideas can teach all of us a good lesson.

I should also add that I appreciate the work of the Armed Services Committee, which added a large number of commonsense reforms to the underlying bill. In fact, some of them are so commonsense that one has to wonder why the military hasn’t adopted them already or, if need be, asked for legislation to do so before now.

For instance, the bill before us provides that people convicted of certain sexual assault offenses may not join the Armed Forces—common sense. It requires mandatory discharge from the Armed Forces of any member convicted of certain sexual assault offenses—common sense. It directs a comprehensive review of the adequacy of training pertaining to sexual assault prevention and response—common sense.

The underlying bill also has a number of provisions to address certain concerns about commanding officers not handling sexual assault charges properly but still keeps this judicial process in the chain of command. That is inappropriate; hence, this amendment.

We have tried working within the current system. This isn’t a new issue. Military leaders have been making emphatic promises about tackling the problem of sexual assault for years and years, but the problem only seems to be getting worse. What is more, the current system appears to be part of the problem. There is a culture that has to change, and it won’t change by itself.

According to a recent Defense Department report, 50 percent of female victims stated that they did not report the crime. Why? Because they believed that nothing would be done with their report.

Seventy-four percent of females and 60 percent of males perceive one or more barriers to reporting sexual assault. Sixty-two percent of the victims who reported a sexual assault indicated they received some form of professional, social, or administrative retaliation. This should not happen in a military service where everyone ought to be looking out for everybody else.

A very cohesive unit is essential for everybody’s protection but also for the success of the mission. So it is a terrible deterrent when sexual assaults ought to be reported 100 percent but aren’t. If sexual assaults cases are not reported, it is quite obvious, common sense tells us they can’t be prosecuted. If sexual assault isn’t prosecuted, common sense ought to tell us it leads to predators remaining in the military and that sort of activity will be tolerated or a person can get away with it. Common sense tells us that people get away with it.
By allowing this situation to continue, we are putting at risk the men and women who have volunteered to place their lives on the line. We are also seriously damaging military morale and military readiness. Taking prosecutions out of the hands of command and placing them in the hands of professional prosecutors who are independent of the chain of command will help ensure impartial justice for the men and women in uniform.

I know some Senators will be nervous about the fact that the military is lobbying against this legislation. There is a certain awe that permeates among Senators when people with stars on their shoulders appear among us. We are being asked, once again—that environment is here—to wait and see if the latest attempt to reform the current system will do the trick. I respond that the time for trying tweaks to the current system and waiting for another report or study has long since passed.

We must decide that this measure will affect the ability of commanders to retain good order and discipline. I would like to be clear that we in no way take away the ability of commanders to punish troops under their command for their infractions. Commanders also can and should be held accountable for the climate under their command. But the point here is sexual assault is a law enforcement matter, not a military one.

If we are to give official assurances that we are on the right track, we can take confidence in the fact that an advisory committee appointed by the Secretary of Defense himself supports our reforms. On September 27 of this year, the Defense Advisory Committee on Women in the Services—and I believe that acronym is DACOWITS—voted overwhelmingly in support of each of the components of the Military Justice Improvement Act amendment. The committee isn’t saying anything new. These various advisory committees under different Secretaries of Defense have been around since 1951 when they were created by then-Secretary of Defense George C. Marshall. The committee is composed of civilian and retired military men and women who are appointed by the Secretary of Defense to provide advice and recommendations on matters and policies relating to the recruitment and retention, treatment, employment, integration, advancement, training, and assignment of highly qualified professional women in the Armed Forces. Historically, this advisory committee’s recommendations have been very instrumental in affecting changes to laws and policies pertaining to military women.

The bottom line is—and, again, this is common sense—this isn’t some advocacy group or fly-by-night panel. It is a longstanding advisory committee handpicked by the Secretary of Defense, providing the substance of our amendment to a tee.

I know it is easier to support incremental reforms. That is even prudent in some cases. However, when we are talking about something as serious and life-altering as sexual assault, we cannot afford to wait any longer than we already have. Our men and women serving in this military deserve bold action to solve this problem—not in a year, but right now. So I urge my colleagues to be bold and join us in this effort. It is the right thing to do.

It seems to me as though a lot of debates in this body get complicated, and this one gets complicated too by some people. But it is really a very simple issue. It doesn’t need to be this complicated, because it talks about changing the culture. I know there are cultures in every bureaucracy that need to be changed that affect their operations, but none of them are as damaging as the No. 1 responsibility of the Federal Government. So a culture in the Defense Department has to be taken seriously. We have to change the culture made up of individuals—not weak because of who they are, but weak because of the power of the people above.

This is badly needed legislation. I yield the floor.

The PRESIDING OFFICER. The Senator from North Dakota.

Ms. HEITKAMP. Madam President, this is a tough issue. It is a tough issue because good people don’t agree. Good people don’t see the issue the same way. But we cannot lose sight of the fact that so many of the reforms we will be voting on to guarantee a safe haven, to guarantee a safe experience, are commensurate all parts of a big plan for change. What we are debating today is one small portion of that—not small in the sense of impact. We need to make sure we reward all of the great work the committee has done, the great work that has been done with the leadership of Senator McCaskill from the great State of Missouri, and the commitment that this body is making today, in a very unified way, to change the outcome.

I will spend a moment with that in mind. When I came to my decision to support the Gillibrand amendment, I wish to first talk about my experience. I am probably one of the few people in this body who has actually sat across a table as somebody who had the power to make the decision on whether we were going to, in fact, pursue a prosecution and have that discussion. I know that is a shared experience I have with Senator McCaskill, and I am very impressed by those who will never forget—the damage that is done so often when people are victims of sexual assault, beyond other kinds and other forms of physical assault, the power and the responsibility. So I recognize the great need we have to have professionals make the decision.

The bottom line for me is, if someone came forward and appendicitis was suspected, he or she wouldn’t ask the commanding officer to make the decision for the doctor. What I am suggesting today is that these are very difficult decisions on whether one is going to pursue or decline a prosecution and one wonders how people who are trained. There should be a whole system—as we have seen in the civil side—a whole system of support.

Frequently we talked about, back in the 1980s and the 1990s—as we were coming through the allegations in the civil courts—not revictimizing the victim. I think what you are hearing today is story upon story where victims of sexual assault in the military feel not only let down but their leadership will be questioned.

So I want to very quickly go through a couple of the points we have heard over and over, which is that this change in the Gillibrand amendment would affect good order and discipline in the military. I have heard this from many of the military, the good military leaders who have come to my office to talk about this problem: that they need this authority, this specific convening authority, because their orders will fall on deaf ears or their leadership will be questioned.

I am not an expert in leadership, but I have to ask you: Do we really believe that sort of authority is truly essential to being someone whom the troops will follow, someone who demands respect, who inspires devotion or truly will stand and fight side by side no matter what the cost?

The conclusion I make is that I do not think so. Because when I talk to our brave veterans in North Dakota or other commissioned officers who lead our servicemembers every single day, that is not what I hear. I knew: I heard he would do the same for me. Not: Well, he has convening authority.

That is what I believe inspires and maintains good order and discipline: the shared values of a mission, of trust, of concern, and respect.

I also have heard great reforms, especially in the Air Force—and we have a special relationship in North Dakota to that—and the experience will be different. The Air Force JAG came in and told me about the new process and the new procedures and impressed upon me this
great opportunity they had taken now for
good. I said one thing. I said: It is
to late. It is too late to expect that we
are going to believe it this time. It’s
the old adage: “Fool me once, shame
on you; fool me twice, shame on me.”
We are at that point now where some-
thing really needs to happen in order to
send the very important mes-
sage that you matter and this behavior
does not reflect behavior that is be-
coming of our troops, of our country,
and the people who step up to serve our
country.

Progress that has been made does not
go far enough. I think it is time to
boldly act and step up for people who
serve, who have stepped up bravely and
said: What can I do, no matter the cost
or the sacrifice—knowing the hardship
they will endure and the distance from
home and family who love and care for
them; that when they go, our military
personnel say: I am yours. I will go and
do whatever I need to do, whatever you
tell me to do. I will do our values and to
protect our way of life.

It seems a small thing to do every-
ting we can to protect those who pro-
tect us. The time has come to address
this, to send a strong and important
message. We must let our soldiers know
that we will not tolerate this and that we
will put this decision in the hands of
the people who are best equipped to
make this important decision. And
that is the prosecutors.

I yield the floor.
I suggest the absence of a quorum.

The PRESIDING OFFICER. The
clerk will call the roll.

The assistant legislative clerk pro-
ceeded to call the roll.

Mr. ALEXANDER. Madam President,
I ask unanimous consent that the order
for the quorum call be rescinded.

The PRESIDING OFFICER. Without
objection, it is so ordered.

Mr. ALEXANDER. Madam President,
I ask unanimous consent that I be al-
lowed to speak as in morning business
for 10 minutes, without taking the
time from either side.

The PRESIDING OFFICER. Without
objection, it is so ordered.

Mr. ALEXANDER. Madam President,
I thank the Senator from Texas and
the Senator from Missouri for their
courtesy, and I will endeavor to do it a
little quicker than in 10 minutes.

CHANGING SENATE RULES

Madam, this weekend, Vanderbilt plays Tennessee in a foot-
ball game in Knoxville. Let’s say Van-
derbilt gets on the 1-yard line of Ten-
sesse and Tennessee then says: Well,
we are the home team. Let’s add 20
yards or whatever it takes to win the
game. Or let’s say in the World Series
recently the Red Sox were behind St.
Louis in the ninth inning and the Red
Sox said: Well, we are the home team.
Let’s add a couple of innings or what-
ever it takes to win the game. Every-
one, I think, would agree that is cheat-
ing. Everyone would say: You are de-
stroying the game of football or base-
ball.

If a home team could change the
rules at any time during the game or
whatever it takes to win the game,
what kind of game is it? That is what
Senator Vandenbergh said after World
War II and Senator LEVIN repeated to
all of us—that a Senate in which a ma-
jority can change the rules at any time
the majority wants to change the rules
is a Senate without any rules.

Yet we hear that is what the Dem-
cratic majority may be seeking to do
to us. They are unhappy, they say,
that Republicans have had it and it is pre-
mature to vote up or down on three cir-
cuit judges nominated by President
Obama—even though that was exactly
the position of the Democratic Sen-
ators in 2006 and 2007 when they argued
that the DC Circuit Court is under-
worked and that we should transfer
judges from where they are needed the
least to where they are needed the
most. So they are going to change the
rules of the game during the game or
whatever it takes to get the results
they want.

We have a lot of new Senators on
both sides of the aisle. Nearly half the
Senate, 44 members, are in their first
term. It is important for them to re-
member that in Senator RETZ’s book he
said that to do this would be the end of
the U.S. Senate, that Senator Robert
Byrd—probably the most distinguished
Senator historic in its history—said in
his last speech to us that the filibuster
is the necessary fence against the ex-
cesses of the majority and of the Exec-
utive. It is the fence against what de
Toqueville called in the early 1830s
the greatest danger to our country that
he saw, which was the tyranny of the
majority.

You may ask, how could this possibly
happen? Here is how I am afraid it is
happening. Sometimes we get off in our
rooms by ourselves—and Republicans
do it as well as Democrats—and we
give ourselves versions of the facts. The
last time this came up, we tried to address this in the Old Senate
Chamber. I think all of us thought it
was a pretty good session. But this is
my third opportunity to respond to
these nuclear threats, and I am not
going to do it again.

The President said during the gov-
ernment shutdown that he was not
going to negotiate with a gun to his
head. Neither am I. Democrats have
denied him the power to tense the nu-
clear button for 2 years. I hope they will reconsider.

No. 1, I hope they will send Senator
LEAHY’s letter, which I ask unanimous
consent to have printed in the RECORD.

There being no objection, the mate-
rial was ordered to be printed in the
RECORD, as follows:

U.S. SENATE,

HON. ARLEN SPECTER,
Chairman, Committee on the Judiciary, Wash-
ington, DC.

DEAR CHAIRMAN SPECTER: We write to re-
quest that you postpone next week’s pro-
session of Peter Levison, who is the
only recently nominated to the DC
Circuit Court of Appeals. For the reasons set
forth below, we believe that Mr. Keisler
should under no circumstances be consid-
ered—much less confirmed—by this Com-
mittee before we first address the very need
for the judgment, resolution of the neces-
sary information about the nominee, and
deal with the genuine judicial emergencies
identified by the Judicial Conference.

First, draining the nomination, turn-
ing to the nomination itself, hold a hearing
on the necessity of filling the 11th seat on
the DC Circuit, to which Mr. Keisler has
been nominated. There has been long con-
cern—much of it expressed by Republican
Members—that the DC Circuit’s workload
does not warrant more than 10 active judges.

As I recall, a number of Senators, including several who still sit on
this Committee, have vehemently op-
posed the filling of the 11th and 12th seats on
the DC Circuit.

Senator Sessions: “[The eleventh] judge-
ship, more than any other judgeship in
America, is not needed.” (1997)

Senator Grassley: “I can confidently con-
clude that the DC Circuit does not need 12
judges or even 11 judges.” (1997)

Senator Kyl: “If a senator vacancy oc-
curs, thereby opening up the 11th seat again,
I plan to vote against filling the seat—and,
of course, the 12th seat unless there is a sig-
ificant increase in the workload in the 11th seat or some other extraordinary circumstance.” (1997)

More recently, at a hearing on the DC Cir-
cuit, Senator Sessions, Chief Judge of the DC Circuit, reaffirmed his view
that there was no need to fill the 11th seat:
“I thought ten was too many . . . I will op-
pose going above ten unless the caseload is
up.” (2002)

In addition, these and other Senators ex-
pressed great reluctance to spend the esti-
imated $1 million per year in taxpayer funds
to finance a judgeship that could not be jus-
tified based on the workload. Indeed, Senator
Sessions even suggested that filling the 11th seat
would be “an unjust burden on the tax-
payers of America.”

Since these emphatic objections were
raised in 1997, by every relevant benchmark,
the caseload for that circuit has only
dropped further. According to the Adminis-
tration, the Circuit’s caseload, as measured by writ-
te and appeals per active judges, declined by 17 percent since 1997; as measured by number of appeals resolved on the merits per active judge, declined by 17 percent and, as mea-
sured by total number of appeals filed, it de-
clined by 10 percent. Accordingly, before we rush to con-
side Mr. Keisler’s nomination, we should look closely—as we did in 2002—at
whether there is even a need for this seat to be
filled and at what expense to the tax-
payer.

Second, given how quickly the Keisler
hearing was scheduled (he was nominated
only 28 days ago), the American Bar Associa-
tion has yet not even completed its evalua-
tion. Whether there is even a need for this seat to
be filled.

The American Bar Association recently
assisted Senators in fulfilling their respon-
sibilities, and we believe, benef-
ited from the review of that material, which
assisted Senators in fulfilling their respon-
sibilities of advice and consent. Similar-
y, the Committee should have the benefit of
publicly available information relevant to
Mr. Keisler’s tenure in the Reagan Adminis-
tration, some of which may take some time
to receive from the Department of Justice,
the Reagan Library. As Senator Frist said in an interview on Tuesday, “[T]he DC Circuit

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November 20, 2013
John R. Bolton—to be U.S. Representative to the United Nations
Peter Flory—to be Assistant Secretary of Defense

OBAMA NOMINEES
Craig Becker—to be member of the National Labor Relations Board
Mel Watt—to be director of the Federal Housing Finance Agency

CIRCUIT COURT JUDGES
Miguel Estrada
Charles Pickering
William Myers
Carolyn Kuhl
Henry Saad

OMB NOMINEES
Goodwin Liu
Caitlin Halligan
Patricia Millet
Cornelia Pillard
Robert Wilkins

Source: Congressional Research Service.

The PRESIDING OFFICER (Mr. HEINRICH). The assistant majority leader.

Mr. DURBIN. Mr. President, I will take a few minutes to respond to the statement just made by my colleague from Tennessee, my friend, LAMAR ALEXANDER.

We have a circumstance here in the U.S. Senate which—

The PRESIDING OFFICER. On whose time does the Senator speak?

Mr. DURBIN. Mr. President, I am sorry. I did not know we were in controlled time, so I yield the floor.

The PRESIDING OFFICER. The Senator from Texas?

Mr. CRUZ. Mr. President, I rise in support of the Gillibrand amendment. I am proud to support Senator GILLBRAND’s concerted effort to deal with the problem of sexual assault in our military.

I want to begin by commending her persistent leadership in forging a bipartisan coalition to tackle this serious problem. I supported the Gillibrand amendment in committee, and I am proud to be a cosponsor of the amendment here on the floor of the Senate. I rise today to share my reasons for supporting it and to encourage my colleagues to continue to come together in support of this amendment.

Everyone in this body wants to support the men and women of our military. In the course of the Senate Armed Services Committee hearings on sexual assault, we heard testimony after testimony about the persistent problem of sexual assault among our men and women in uniform. I have been persuaded by the arguments that Senator GILLBRAND raised in defense of her amendments.

Indeed, when I said at the hearing that I had been persuaded by the arguments, I have to tell you, afterwards a reporter from a newspaper came up to me astonished, and asked, in wonderment: Were you really persuaded by arguments at a hearing? I thought everyone came in with their views already set in stone, and nothing that was said here made a difference.

I chuckled and said: Well, the arguments Senator GILLBRAND put forth I
found powerful in terms of how do we deal with a serious problem.

There were two arguments in particular that I found persuasive. The first is that sexual assault has proven to be a persistent problem in the military. The Department of Defense, in the fiscal year 2013, reported 3,374 cases of unwanted sexual contact were reported last year.

More than 23,000 additional cases of unwanted sexual contact went unreported. This has been a problem that has been present in the military for decades. Our commanders, our generals, our admirals, have worked in good faith, have worked diligently to correct this problem. It has proven a persistent problem. Yet, unfortunately, their efforts to correct the problem have not proven successful.

In the civilian side, one of the great challenges when it comes to sexual assault is the relatively low rate of reporting. Sadly, on the military side, that problem is even greater. The most significant barrier we see to stopping and preventing sexual assault is that many of the victims are unwilling, are not comfortable coming forward and reporting the assaults they are experiencing. Despite the repeated good-faith efforts by commanders, we have been unable to fix that problem.

The second argument Senator GILLIBRAND raised that I find quite persuasive is that a number of our allies, including Great Britain, including Israel, including Germany—our allies have implemented reforms quite similar to the reforms she is proposing, which is namely that the decision whether to bring a prosecution for a crime like sexual assault should be made by an impartial military prosecutor and not by the commanding officer who may well be the commanding officer both of the victim of the crime and the perpetrator of the crime. Those reforms have been implemented by our allies and have not seen good order and discipline undermined. Indeed, the data suggests they have seen an increase in reporting rates. Those are the arguments that persuaded me that we need to solve this problem, we need to stop this problem.

Let me point out that the coalition supporting the Gillibrand amendment is a bipartisan coalition. This cuts across party lines.

In my view, there are two strong conservations of the military. In my view, both of which the Gillibrand amendment furthers. No. 1, all of us want to strengthen our military, that we maintain the strongest fighting force on the face of the planet. But, No. 2, all of us want to prevent and deter violent crime and to ensure that anyone who want to prevent and deter violent crime. This is a set of crimes that is unacceptable in society, but particularly unacceptable in our military, where we expect the very best from our military.

I looked at this issue very carefully, the issue that has been discussed so much on the floor today, that is, in handling sexual assault cases and other types of cases, should the military justice system be changed fundamentally to give commanders the ability to disagree with a commander's decision on whether a victim will get fair treatment. It is a set of crimes that is unacceptable in society, but particularly unacceptable in our military, where we expect the very best from our military.

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Right now, as we look at cases of sexual assault in our military, we want victims to understand they can come forward. When they come forward, and we want them to come forward, they will get the support they need and deserve; that their perpetrators will be held accountable for the crimes they have committed.

We want commanders to establish a climate within their unit to say no tolerance when it comes to sexual assault. If you do not handle a sexual assault case properly, you will be relieved of your command. That is what this is about.

So in our proposal, rather than remove commanders from the decision-making—let me say how this works so people understand. Right now, a victim of a sexual assault or another serious crime comes forward. They do not have to come forward through their chain of command. They can come forward through a health care professional, they can come forward through a 911 call, they can come forward through their pastor to report a sexual assault. Then it is independently investigated.

From there, the investigation is presented to a JAG lawyer in the chain of command who then makes a recommendation to the commander of whether a charge should be brought and whether they should be going to a military trial at that point. So to take out of that the decision of the commander is now to leave the victim in a situation where—let’s put this victim in Afghanistan. They are in a situation where the case has been investigated. It comes back to the commander, and the commander does not take responsibility for whether a charge is brought. The commander is now put in a situation where: I am sorry, that decision is being made by another set of JAG lawyers who are outside of the chain of command, so go talk to the lawyers over here, not me. It puts the commander in a bystander responsibility rather than taking responsibility for these decisions.

So what we have done is made commanders more accountable. When the JAG lawyer comes to the commander for a recommendation, saying this case should be brought on a sexual assault case, if the commander says: No, it should not, that will go all the way up to the civilian secretary of whatever force is involved, whether it is the Secretary of the Army, the Secretary of the Air Force, each branch, and will be reviewed separately. That will hold commanders more accountable than turfing it over to a lawyer over here where they take the case away. If they take the case away, I cannot tell you what the decision is on your case because there is a lawyer over here making this decision.

Even in a case where the commander and the JAG lawyer both agree that a charge should not be brought, under our proposal there will be another review of those cases up the chain of command to say someone else should look at it. There should be accountability at every level of our military to ensure that victims of sexual assault will be supported and that these cases will be handled and the perpetrators will be brought to justice.

There has been a lot of discussion on the floor today. All of us want more victims to come forward and feel that they can report their case, because not enough of them have come forward.

Yet the evidence shows that if we take commanders out of it, we are not necessarily going to get any more reporting. In fact, we have cases that may not be brought to justice. The evidence shows that commanders are being more aggressive than the actual JAG lawyer who is very responsible for being brought. If we look over the last 2 years, there are 26 Army victims where the JAG lawyer said: Don’t bring the case.

The commander overruled the JAG, went to trial, and the perpetrator was convicted. There was justice for this victim.

Under this proposal those cases would not have gone forward because the JAG lawyer said: No, don’t bring it. There were 16 cases in our Marine Corps over the last 2 years where that would have happened as well, where 16 victims wouldn’t have received justice.

There was one Navy victim, and nine Air Force victims would not have seen a conviction for their perpetrators—the rapists, who deserve to go to trial, to be convicted, and to be judged. Those cases would not have gone forward.

When I hear Senator Gillibrand’s proposal—and I respect her so much, and I think she is on the right track, and I respect the work that she has done and the work that we have done together on many of the provisions that I have talked about—the discussion that taking it out of the chain of command will cause more reports to come forward, then if less cases will go to conviction, if I am the victim, how does that make me feel more as if I want to come forward and report my case? Maybe my case won’t be brought, but the JAG lawyer said: Don’t bring it. I could not ever be brought if a commander—who has responsibility within his or her unit for this—hadn’t recommended this case go forward.

The other argument we have heard a lot about is many of our allies have taken it out of the chain of command, including Canada, Great Britain, Israel, Germany, and Australia. There has been a misunderstanding, because as we researched this issue as to why our allies took it out of the chain of command, the truth is that they took the decision out—of whether a commander would make the decision to go to a trial on a sexual assault case or other serious felony—to protect defendants, not victims.

I can assure people—with all due respect to defendants, and I have defended cases as well because they certainly have rights under our laws and I respect that—that this is about protecting victims. Our allies changed their system to protect defendants. What we are trying to do is to have a victim-friendly environment where people will come forward and where perpetrators will be held accountable.

What do we want to do? Let’s hold our commanders more accountable.

This is what some former peers of our military have said, such as COL Lisa Schenck, U.S. Army retired former Judge Advocate General, who spent 25 years in the military. She was asked about these two proposals. She said: If you take out the convening authority—meaning the decisionmaking process from the commander—you are essentially gutting the military justice process. If you take the court-martial process away from the convening authorities for sexual assaults or for major offenses, that allows them to say: Hey, the JAGs are dealing with it. They need to be held accountable, and they need to be part of a process.

We don’t want to create a situation where we say: I have turfed it to my lawyer over here, and the lawyers over here are going to make the decision.

Commanders should be held accountable for those decisions.

In fact, we had a woman who is currently in the Marine Corps come to the Russian Consul. She was a Marine. She is very impressive to have reached the level she has in the Marine Corps. She works training our marines. I was very impressed with her experience. She has commanded at every level. She said: If you want to get this done for victims, don’t make the commanders bystanders.

This is what makes me very worried. If I thought that taking the commanders out of the decisionmaking process would help victims further, I would do it. As she describes: If you make a commander a bystander—which is what the proposal on the table of Senator Gillibrand is, who I very
much respect, and I know her passion is very real for this and I share it. I don’t want commanders to be bystanders. If they are bystanders, then how do we relieve them from command when they don’t do their job on this because we have to update the decisionmaker standard from it.

This is another issue that concerns me. We have spent a great deal of time, rightly so, trying to address the issue of sexual assault in the military. The Gillibrand amendment that is on the floor is not only take sexual assault out of the chain of command, it takes out murder, manslaughter, death or injury of an unborn child, stalking, rape—we talked about rape—larceny and wrongful appropriation, robbery, forgery; making, drawing, or uttering a check, draft or order without sufficient funds; maiming, arson, extortion, assault, burglary, housebreaking, perjury, and frauds against the United States.

We need to understand that the reason we have the military justice system structured this way is because we deploy to places such as Afghanistan. Not only in sexual assault cases will the decision of the commander—whether or not to refer the charge for a trial—he changed under the Gillibrand proposal, but in all of these crimes in which we have not received any testimony about. We have not received evidence that the commanders are mishandling murder cases, manslaughter cases, arson cases, extortion, assault, burglaries, fraud.

This is very much a fundamental change, not only in an area we all care passionately about getting right, to make sure that victims of sexual assault are supported, but all of these crimes will now be removed from the chain of command.

How will that work in Afghanistan and Iraq? I am trying to figure this out. There were over 900 cases from Iraq and Afghanistan, as I understand it, where some type of trial has had to be held because of offenses that were committed in Afghanistan, all different types. I am not only talking about sexual assault, I am talking about all different types of crime.

How is that going to work? Are we going to go to the floor in the early morning hours. She woke up dazed. She reported it.

She was brutally raped. She was tossed on the street in the early morning hours. She woke up dazed. She was brushed off. She was tossed on the street in the early morning hours. She woke up dazed. She reported it to her commander. Let me tell you what happened. The perpetrator got

theChain of Command.

I yield to the Chair for the opportunity to speak on this important issue. I yield the floor.

The PRESIDING OFFICER. The Senator from California.

Mrs. BOXER. I understand Senator LEE is on his way to the floor. I will yield to him when he arrives.

I came to the floor today to say what a good debate we are having. Let us be clear, there is only one amendment that puts in place a fundamental change, that is the Gillibrand amendment.

We have had 20 years of promises that this problem would be fixed. I have a chart I will bring out later to show how the chain of command is doing for 20 years. Republican and Democratic, has said exactly what Senator Ayotte has said: Oh, we are going to fix this, and it is going to be fine.

We are picking up steam in our support. I wish to state the reason we are picking up steam. It is because, with all due respect, every single victim’s organization that I know of supports the Gillibrand amendment. When victims say to me the reason I don’t report it because I don’t want to take it to my commander, I think we ought to listen.

With all due respect, I love the Senators on the other side and I have great respect for the people in the military, but they are not the victims. The victims are standing behind the Gillibrand amendment.

The committee that advises the Pentagon on the treatment of women in the military is called DACOWITS. This committee came out overwhelmingly in favor of the Gillibrand amendment.

My colleagues are saying don’t make this fundamental change. But the one committee that advises the military—made up of retired military members and civilians—had a chance to say go with the status quo or go with the Gillibrand amendment. They voted without a single dissent in favor of the Gillibrand amendment.

When one stands here and defends the status quo in terms of the way this is decided, we have to understand they are essence saying an 10-percent reporting of these incidents is OK with them. Otherwise they would vote to change it.

They can think they know why more people aren’t reporting and fix it around the edges. I am so pleased we have some reforms in the bill. But the main, major reform and the reason the victims’ rights groups are so behind the Gillibrand amendment is because it is the only fundamental change that is in the bill.

I compliment my colleagues for what they have done. It is wonderful, but they don’t get to the heart of it, which is why we have a 90-percent problem. Of 26,000 cases, only 10 percent are reported. I thought it was bad in the civilian world where 50 percent are reported.

I say to my colleagues, we all have staffs and we run a workplace. I don’t know how many people each of us has in their offices. I say to my colleagues, suppose there was a horrible sexual assault that took place in our workplace. We knew the alleged perpetrator, and we knew the alleged victim. We would call the police. We wouldn’t become the decider. We wouldn’t become the jury, the judge, as these commanders do.

What is really interesting is Senator GILLIBRAND called a press conference, and we had a commander who commanded troops in Iraq, and he said: Honestly, the last thing I wanted as I was getting my troops ready to fight and win battles was to deal with some horrible incident that occurred among those I was commanding. I wanted to get a professional in there.

The Gillibrand amendment is important not only for the victims but, yes, for good order and discipline. How can people stand here and say there is good order and discipline when there are 26,000 incidents of sexual assault and only 10 percent are reported? There are thousands of people walking around the military not being charged, and sometimes the deal they get is to get kicked out.

I will tell a story of one of my constituents because I think it is instructive. She joined the Marines. She was out with friends, and she was drugged. She was brutally raped. She was tossed on the street in the early morning hours. She woke up dazed. She reported it to her commander. Let me tell you what happened. The perpetrator got
out of the military—probably to continue his rampage on the streets of some city we represent—and my constituent was investigated by the military for drug use because she was drugged that night and abandoned on the side of the road. So I hope the people who support the status quo will hear that story and hear the other stories. We have a 90-percent problem; 90 percent do not report. We have DACOWITTS advising the military up of former servicemembers and civilians saying support Gillibrand. We have every victims’ rights group I know supporting Gillibrand. I will just say that if a majority of this Senate stops us today, we are going nowhere. We had a press conference yesterday where we revealed the new Republican on our team; today, a new Democrat. We want to have the best servicemembers in the world. We want our commanders concentrating on what they have to concentrate on. We have men and women being assaulted, and we have a plan in front of the Senate, and that plan is the Gillibrand amendment. It is smart, and it has strong bipartisan support.

Believe me, I was at a press conference with Senator Gillibrand, Senator Cruz, Senator Paul, Senator Shaheen, of course, Senator Gillibrand, Senator Hirono, and our group is growing. So if a minority of the Senate stops this, I will hear back to the many reforms that have been made, whether it is don’t ask, don’t tell, gays in the military—you can just name them. Yes, it may take us a time or two. I remember having an amendment that lost that said you can’t take convicted felons into the military if they have been convicted of a sex crime. I lost. I lost. But years later I won, and now you cannot take these felons into the military. So these reforms are hard. This one is 20 years in the making. History will record who stood on the side of truth. We don’t have decisions being made based on evidence, not on good order and discipline. Many of our other allies and friends—Australia, I visited there and talked about this. Frankly, this is the way to go.

Sixty percent of the American people support the Gillibrand amendment—60 percent in a poll that just came out. So the people are for the Gillibrand amendment, the victims are for the Gillibrand amendment, and the one department that advises the Pentagon on women’s rights in the military is for the Gillibrand amendment.

I praise everyone who has worked on so many other reforms in this bill. I am so proud. This is a reform bill. But I beg my colleagues to make that fundamental change we need to make and have the professionals decide whether there is a case from beginning to end. That is what justice really is.

I will close with this. There is a woman who was raped by avale, a midshipman at the USNA. The commander was caught and was on trial. He was sentenced to eight years in prison. She was raped by a 3rd class midshipman, and the chain of command, decisions on this crime will be made based on the evidence, not on good order and discipline. Can you believe that? This is the truth. We don’t have decisions being made based on the evidence. This woman was honest, I give her that. She said that if we took this outside the chain of command, decisions on these crimes would be made based on the evidence. Well, she made our case, and I am proud to stand with a very strong bipartisan coalition in favor of the Gillibrand amendment.

I yield the floor.

The PRESIDING OFFICER. The Republican leader.

Mr. CORNYN. Mr. President, I ask unanimous consent to engage in a colloquy with my colleagues for 30 minutes and that those 30 minutes not count against the current 6-hour committee to debate the amendments on military sexual assault.

The PRESIDING OFFICER. Is there objection?

Without objection, it is so ordered.

Mr. CORNYN. Mr. President, I have been testimony of this Chamber for a while now, and during my time here a few of our colleagues have done more to expose waste and duplication and overspending than our colleague from Oklahoma Senator Coburn. I am, of course, cognizant of the fact that Senator McCain, the senior Senator from Arizona, has quite a reputation himself in this area. I am pleased to join both colleagues and anticipate, the junior Senator from Arizona, to talk about some very important work Senator Coburn and his staff have done to help highlight the savings we can find within the Defense Department budget due to duplication and waste and fail to exercise reasonable management practices, such as audits. We can save money and reallocate that money to help our fighting men and women in uniform, help keep them safe and help maintain America’s role as a preeminent military leader in the world.

Senator Coburn has pointed out in a new report I am sure he will talk about that we can save more than $60 billion by consolidating half the Federal Government’s duplicative programs. Each of these programs has its own overhead, and through consolidation we can eliminate that overhead and make sure the same amount of money is used to deliver the particular service. For that matter, if we were to consolidate just a third of the renewable energy programs, we could save $5 billion alone. If we stopped deployment checks to millionaires, we could save another $30 billion.

I am a proud defense hawk. We call it the Yellow Pages test in Texas. If you can look in the yellow pages and see a service being provided by the private sector, you have to ask, why is the government providing that service? But there is no ability of anyone to provide national security except for the Federal Government. It is the No. 1 reason for the Federal Government’s existence, and it is a tragedy to see so much money wasted when it is needed so desperately by our military during these very dangerous times. It is, indeed, embarrassing that we cannot even conduct an audit. They do not know where the money is. They do not know how it is being spent, how it is being misspent. So I am a proud co-sponsor of my colleague’s Audit the Pentagon Act. The Pentagon isn’t scheduled to actually perform an audit until 2017, and I doubt they will be able to meet that deadline. I am sure we will hear more about that from the Senator from Oklahoma.

Believe me, I was at a press conference with Senator Grassley, Senator Cruz, Senator Paul, Senator Shaheen, of course, Senator Gillibrand, Senator Hirono, and our group is growing. So if a minority of the Senate stops this, I will hear back to the many reforms that have been made, whether it is don’t ask, don’t tell, gays in the military—you can just name them. Yes, it may take us a time or two. I remember having an amendment that lost that said you can’t take convicted felons into the military if they have been convicted of a sex crime. I lost. I lost. But years later I won, and now you cannot take these felons into the military. So these reforms are hard. This one is 20 years in the making. History will record who stood on the side of truth.
dollars the Pentagon manages, it makes me livid, as I think it should all of the American people.

We know DOD continues to experience serious cost overruns with major acquisition programs. I know Senator McCain has been critical on the Armed Services Committee. He has been an eloquent critic of these cost overruns of various acquisition systems. A 10-percent reduction in DOD waste could yield an annual savings of $60 billion—$60 billion. That is real money, and that is money that could either be reallocated to help fund very important, massive overseas operations by our military in dangerous parts of the world or here at home.

The bottom line is that even those of us who are proud national security hawks should be pushing first and foremost to eliminate wasteful defense spending and to audit the Pentagon. In my view, those are no-brainers. We should demand that the Pentagon stop this wasteful Washington spending and say: Well, we don’t have enough money, so we are just going to bust the budget caps in the Budget Control Act. We shouldn’t say: Well, we are not going to address the issues of wasteful spending at the Pentagon; we are just going to raise taxes. Those are cop-outs, and we shouldn’t go there.

With that, I yield the floor for my good friend from Oklahoma.

Mr. COBURN. I thank the Senator from Texas. I have worked on these areas for a long time. I too am a defense hawk. I am not often accused of that because I am critical of wasteful spending in the Pentagon.

Let me outline for my colleagues that the Pentagon’s budget is near $600 billion, counting the extra money for overseas efforts today. Just by auditing the Pentagon, the GAO estimates the Pentagon itself would save $25 billion. A small branch of the Pentagon that has come close to an audit so far is the Marine Corps. For every dollar they are spending now on managing, they are saving $3 in the Marine Corps.

So we have repeated attempts through the year to address the symptoms of the problems rather than the real problem. Let me outline that.

The Pentagon has a broken procurement system. If we think about the programs which have been canceled and why they have been canceled because of the problems which have been canceled—and Senator McCain can talk about those better than I ever could—we have never fixed the real problem, and the real problem is what Eisenhower warned against. It is the defense industrial complex. The only way we will ever solve the procurement problem of major weapons systems is to force the defense industry to have capital at risk on new weapons systems. In other words, they have to have money in the game.

What routinely happens are two things: One is they don’t have money in the game and we start out at cost-plus programming. Then the second problem—which Senator McCain identified with me today and I have long known—is there is never a grownup in the room when it comes to adding on the bells and whistles in terms of the costs. As a matter of fact, what major weapons systems have the Pentagon is buying today are on the high-risk list by GAO. So what we have to do is fix the real problems, not continue to treat the symptoms.

Let me go through a list in terms of savings in the Pentagon. These are not 1-year but 10-year numbers. So if we instituted this, we would save one-tenth of what I mention.

Just consolidation of the defense IT structure could save $160 billion over the next 10 years. There are 80,000 employees working in IT for the Pentagon. That is twice the population of my hometown. They have more data centers in the Pentagon than we have in all the rest of the government combined. Senator BENNET and I have coauthored a bill to address the hard issues of wasteful spending in the Pentagon. We have 207. Over half of them are at the Department of Defense. Why 104 from the Department of Defense? Why not cut the infrastructure systems that incentivizes science, technology, engineering, and math? If we consolidated them, we could save $1.7 billion over the next 10 years. That is $170 million a year.

What will that do for the operations and maintenance budget? What will that do for flying time for our pilots? What will it do for training that is not happening now for people deploying to Afghanistan? Those should all happen.

Domestic schools. We have 16 bases that still have domestic schools on them, where we run schools by the Pentagon. The cost per student in the United States is $50,000 per student, five times what we spend everywhere else in this country on high school education. If we just ran those in the local school district and paid them $1,000 or $2,000 more than they still have domestic schools on them. We have 16 bases that still have domestic schools on them. Where is the leadership to do that? We could save $53 billion—$57 billion in terms of decreasing contract support.

If we just consolidated the three military health care services, we would save $380 million a year. At the same facilities, at the same locations we have duplicative military health care services. So we can consolidate that, give more consistent care, give better care, and yet save a significant amount of money.

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way, I wish every American could have a chance to read this list of waste, fraud, and incredible misuse of Americans’ tax dollars. But one of the areas not in this document that the Senator from Oklahoma and I have talked about is the issue of cost overruns in our weapons programs.

For example, the latest aircraft carrier which was just christened with great fanfare, the Gerald R. Ford, is now at a $2 billion cost overrun of what the original cost estimate was. That is for one ship. When I think about what the $2 billion cost overrun could do in my home State of Arizona, it is even more staggering. Yet somehow we let this cost overrun accumulate over a long period of time, and the ship still, by the way, was recently christened, which does not mean finished, commissioned.

At a hearing we had in the Armed Services Committee the other day where the effects of sequestration—which has been described by each of the service chiefs, the Chief of Naval Operations, my old service, said: We need $500 million more for the Gerald R. Ford. I was stunned. I said to him: Admiral, there is a $2 billion cost overrun on that ship. I asked him if anyone had been fired. His answer, I tell my friend from Oklahoma, was he didn’t know if anyone had been fired over the cost overrun of over $2 billion, with a request for $500 million more.

The Senator from Oklahoma mentioned the military industrial complex that President Eisenhower so wisely spoke about. I would disagree. I think it is a military industrial congressional complex because never has Congress had more influence. I think there is a $2 billion cost overrun on that ship. I asked him if anyone had been fired. His answer, I tell my friend from Oklahoma, was he didn’t know if anyone had been fired over the cost overrun of over $2 billion, with a request for $500 million more.

The Senator from Oklahoma mentioned the military industrial complex that President Eisenhower so wisely spoke about. I would disagree. I think it is a military industrial congressional complex because Congress has never had more influence.

I ask my friend from Oklahoma, what do we do about what I think is the No. 1 cost right now in the Pentagon; that is, could someone of us who build ships and building the airplane. The only way to incentivize the private industry to control costs is to make sure half the cost is coming out of their hide. If we do that, what will happen is we will see real cost control because they don’t do it on the commercial side. They only do it on the military side.

There is a great story on that. It was an Army backpack helicopter developed by Honeywell—on time, on price. Here is Honeywell delivering what the Army wanted on time and on price, and the military buyers added bells and whistles. It ended up weighing 12 pounds more, tripling the cost, and delaying the onset, to where they finally cancelled it—not because the supplier didn’t do it on time, but the military was out of control in terms of what they were asking for. So they didn’t get it. So we didn’t have the availability to our troops in Iraq and Afghanistan to look behind walls, to find out who was on our turf out of our turf and it was our purchasing system.

So we can’t worry about the symptoms. We have to change the structure. We have to change the leadership.

I will make one final point. Right now we have more admirals than we have ships. At the end of World War II, we had 10,500,000 people under arms, we had over 2,200 general staff officers. Today, we have half that many and 1,600,000 in arms. There is one of the biggest problems is that we have too many staff officers—general staff officers who each have a cadre of people and then protect their turf. They don’t protect the country, they protect their turf. It is not just in the military. It is not just in the government. It is human nature. What we need is a marked reduction in general officers.

Mr. FLAKE. Would the Senator yield?

Mr. COBURN. I would be happy to yield.

Mr. FLAKE. The Senator mentioned the problem we have of the Defense Department running schools which ought to be run by local school districts. It goes even beyond that.

Just in the past couple of years we have absorbed into the defense budget a capital maintenance—new capital building and replacement of schools that are managed by the local district. Several hundred million dollars just in the past couple of years, and obligated for the next several years, will be used to rebuild or refurbish or to maintain schools which are the responsibility of local districts.

What has happened is people say the local districts may not be able to afford it or the Department of Education doesn’t have jurisdiction. There is a defense budget we can put it in. We have seen that in other areas as well. So the Department of Defense is assuming responsibilities that it doesn’t have. When it does, typically the costs are much greater as well.

So I take the Senator’s point and just say it is worse than we know because we have added new responsibilities and new budget items just in the past couple of years.

Mr. COBURN. I would add one thing and then yield back to my colleagues. Inside the Defense Department, over the next 10 years, we are going to spend another $300 trillion on things that have nothing to do with defense. Ten percent of that is health care research conducted by the military which doesn’t have anything to do with the military. We have the NIH, the world’s premier leading research organization, and we ought to transfer that out of the military.

As a matter of fact, the guy who started that was a friend of mine, Ted Stevens. One of the last things he told me is one of the biggest mistakes he ever made is putting medical research into the Pentagon, because now it gets funded, and we are duplicating things in the Pentagon which we are doing at NIH on diseases like Parkinson’s disease, cancer, prostate cancer. I happen to have a little experience with that one. The fact is we are not spending the money wisely. We are spending money we do not have duplicating what we are already spending money on.

I yield to my senior colleague.

Mr. CORYN. I ask the Senator from Oklahoma, isn’t it true he has the materials Senator MCCAIN referred to on his Web site?

Mr. COBURN. If people are interested, coburn.senate.gov, and they can get that information. Everything we have, every study we have published, all the waste, all the duplication.

I have one other item. Mr. MCCAIN. For years, I say to my colleague from Arizona, as we discussed, he has been a critic and pointed out waste in the procurement process. I know the military, in designing state-of-the-art weapons systems, the F-35, for example, built in the notion of concurrency, where they are actually designing it while they are building it which creates cost overruns. Challenges. But I know the Senator was also instrumental in finally getting the Pentagon to negotiate a fixed-price contract. Could the Senator talk a little bit about some of the challenges?

Mr. MCCAIN. For years, I say to my colleague from Texas, the cost overruns went unchecked. When someone has a roof that leaks and they hire someone to fix the roof on a cost-plus contract, I guarantee that the cost to have your roof fixed will probably exceed the initial estimate the roof fixer provides you. When we go into cost-plus contracting, which is justified by many of the contractors saying, well, we are not sure what the additional cost will be, they do not seem to have difficulty once those contracts are fixed cost.

The best example—best or worst example—I can tell my friend from Texas is the original effort to replace Marine One, the Presidential helicopter. This helicopter over a period of a couple of years, went from requirement to requirement to requirement to requirement, until the point where it was even a requirement that
the helicopter could withstand a nuclear blast. It ended up, before it was even off the drawing board, at a greater cost than Air Force One. At a greater cost than Air Force One. So finally they had the good sense to scrap it and we are still using the old reliable helicopter which seems to fairly suit the purpose of transporting the President.

Another interesting story was the Air Force now believes that one of their primary acquisitions has to be a long-range bomber. We are starting in this process all over again. At one point there was a proposal to put a kitchenette—I am not making this up—a kitchenette into the long-range advanced Air Force bomber. Finally someone decided maybe that doesn’t look too good, to have a kitchenette on this airplane. But that is the case of what happens in the system we have today.

God knows the chairman Senator Levin and I and other members of the Armed Services Committee have gone time and time again to try to bring costs under control. I guess one of the favorite stories is of the famous Kelly Johnson of “Skunk Works” of the old Lockheed team. They went out in the desert of Nevada and came back 7 weeks later with the SR-71. It takes literally decades to come forward with a weapons system, and never once in recent years that I can recall has there been a weapons system on time and on cost.

The President, I understand, I say to my friends from Texas, where the defense industry is so important and vital to the economy of his State, as it is with mine. The Apache helicopter, which I am very proud of, is built out in the east valley of Phoenix, AZ. The American people then become cynical about defense spending. That really does erode our ability to sponsor and support those requirements that are so badly needed.

I think the Senator from Oklahoma for all he has done to continue to bring this to the attention of the American people.

I want to make one additional comment about this medical research. There is not a person I know in America who does not support medical research. Particularly cancer is one of the big projects we appropriate money for. But it is the classic Willie Sutton syndrome. What in the world does the Defense Department have to do with cancer research? It is the Willie Sutton syndrome. They asked Willie why he robbed banks and he said: That is where the money is. So we are robbing Defense appropriations for programs and projects that have nothing to do with defense, but because the money is there we are spending it.

Meanwhile, we do not have, particularly as a result of sequestration, adequate funding, in my opinion, that will enable us to continue to defend this Nation.

All of us are for medical research. I do not know anybody in the world who is not. But for us to take money out of Defense appropriations and put it into medical research is something that is not any way justified except for the fact that the money is there.

Mr. CORNYN. Mr. President, how much time remains?

The PRESIDING OFFICER. There is 1 minute 40 seconds remaining.

Mr. CORNYN. I yield the remaining time to the junior Senator from Arizona.

Mr. FLAKE. Mr. President, it is interesting in terms of the money being used where it should not be. I gave the example last week, and I am coming down every week and speaking at least 5 minutes on waste and duplication in government. Suppose 8 weeks ago about the Department of Agriculture. The Department of Agriculture—is this the Department of Agriculture, but you would not know it when you look at some of the programs run by the Department of Agriculture. No. 1, they have a Single-Family Housing Direct and Guaranteed Loan Program in the Department of Agriculture. It provides zero downpayment mortgage loans. It has cost the taxpayer about $10 billion since 2006. That is the Department of Agriculture, running a housing program.

We see this all over government. It is wrong. Eliminating the duplication that Senator Coburn, the Senator from Oklahoma, has spoken of many times in recent years that can save our government and the taxpayers billions of dollars a year.

I appreciate, my colleagues, this colloquy we have had, and I look forward to more.

Mr. CORNYN. Mr. President, we yield the remainder of our time.

The PRESIDING OFFICER. The Senator from Maine.

Mr. KING. Mr. President, I rise to address one of the most difficult issues we have faced in this bill, an issue on which the Armed Services Committee spent a great deal of time, in fact more time than on any other issue this year. It is the issue of sexual assault in the military.

At our very first hearing where we were discussing this with a group of people, I made the observation that the only sure, long-term way to confront and defeat this tragic problem is through a change in the culture. It has to become unacceptable in the culture of our armed services that sexual assault is in any way tolerated or ignored. You talk about a problem that has been festering for years. I understand the impatience of those say we have been waiting for too long, we have to take strong steps. I think it is very important to realize that in the bill that is already before the Senate is not any provision dealing with sexual assault that is not in the bill, and the question boils down to who makes the decision to refer a sexual assault case to prosecution?

I have heard the debate. I should have said at the outset, I so admire Senator Gillibrand for her intellect, for her passion, for her dedication, for her perseverance on this issue. Everybody involved in this debate has exactly the same goal, which is to get rid of this problem, to diminish it, to reduce it to zero, to not tolerate it. That is the goal of everyone involved. The question is whether removing the decision from the commander who is the primary acquisitions has to be a long-range bomber. We are starting in this process all over again. At one point there was a proposal to put a kitchenette—I am not making this up—a kitchenette into the long-range advanced Air Force bomber. Finally someone decided maybe that doesn’t look too good, to have a kitchenette on this airplane. But that is the case of what happens in the system we have today.

God knows the chairman Senator Levin and I and other members of the Armed Services Committee have gone time and time again to try to bring costs under control. I guess one of the favorite stories is of the famous Kelly Johnson of “Skunk Works” of the old Lockheed team. They went out in the desert of Nevada and came back 7 weeks later with the SR-71. Now it takes literally decades to come forward with a weapons system, and never once in recent years that I can recall has there been a weapons system on time and on cost.

The President, I understand, I say to my friends from Texas, where the defense industry is so important and vital to the economy of his State, as it is with mine. The Apache helicopter, which I am very proud of, is built out in the east valley of Phoenix, AZ. The American people then become cynical about defense spending. That really does erode our ability to sponsor and support those requirements that are so badly needed.

I think the Senator from Oklahoma for all he has done to continue to bring this to the attention of the American people.

I want to make one additional comment about this medical research. There is not a person I know in America who does not support medical research. Particularly cancer is one of the big projects we appropriate money for. But it is the classic Willie Sutton syndrome. What in the world does the Defense Department have to do with cancer research? It is the Willie Sutton syndrome. They asked Willie why he robbed banks and he said: That is where the money is. So we are robbing Defense appropriations for programs and projects that have nothing to do with defense, but because the money is there we are spending it.

Meanwhile, we do not have, particularly as a result of sequestration, adequate funding, in my opinion, that will enable us to continue to defend this Nation.

All of us are for medical research. I do not know anybody in the world who is not. But for us to take money out of Defense appropriations and put it into medical research is something that is not any way justified except for the fact that the money is there.

Mr. CORNYN. Mr. President, how much time remains?

The PRESIDING OFFICER. There is 1 minute 40 seconds remaining.

Mr. CORNYN. I yield the remaining time to the junior Senator from Arizona.

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trials than the commanding officer who wants to ensure that justice is done for that victim. What we want is no victims. We want this problem to end. We want this era to change because the culture changes within the military, and that which was acceptable at one time is no longer acceptable.

The best example I can cite for that in my life is drunken driving—OUI. When I was a young man, there was an epidemic of drunken driving in this country, and it was considered as kind of a joke at the time. It was considered as a sort of a rite of passage. Suddenly, through law changes and societal changes over a generation, it is no longer acceptable or funny, and it is no longer tolerated, and as a result we have seen a decline because the culture has changed. That is what has to happen in the military, and I think it begins with the commanding officer.

In my opinion, to take this responsibility away from the commanding officer is not in the brass’ best interest nor is it siding with the victims, because I want those commanding officers fully engaged in this decision. I want them fully responsible for their decision. I want them to be what, in fact, they are, men and women who can make change, and leaders who can make change in this critical area. If it doesn’t work, as my father used to say, Congress is always in session. We can come back and correct it.

It brings me to a moment where the military is being given a last chance to deal with this within the chain of command. I think we have given them the tools to do so in this bill, and I urge my colleagues to support Senator McCaskill’s amendment and to move forward with this bill which can be very proud of in terms of its recognition of this horrendous issue, but also in terms of the solutions and tools it provides to our military to solve this problem once and for all.

I yield the floor.

The PRESIDING OFFICER (Mr. Coons). The Senator from Arizona.

Mr. MCCAIN. Mr. President, I thank my friend and colleague from Maine for his very thoughtful statement. After having several conversations with him, I know he did not come to this decision easily, but I certainly think he made a very strong argument for the decision he arrived at.

He and all of us—share a deep and abiding concern about the issue that is before the Senate in the form of the amendment to the National Defense Authorization Act that is being debated on the floor. This is a very difficult situation. It is an unacceptable situation where men and women in the military may be exposed to sexual assault but, more importantly than that, the individuals who are responsible for those assaults need to be held accountable.

What we are asking today is: Are we going to hold the people who are in charge accountable for bringing offenders to justice or are we going to farm that responsibility out to some other entity, individual, or some other part of the bureaucracy? That is the question before us.

I trust these commanders. I have known thousands of them. I trust them, and I think there has been an insufficient effort devoted to preventing these horrible crimes from taking place? Yes. I trust these commanders—these men and women in command—to take the proper action necessary because it is their responsibility.

The changes that are in this legislation include removing the ability of commanders to overturn jury convictions, require review of decisions not to reverse charges, criminalize retaliation against victims, provide a special victims’ counsel to victims of sexual assault, and support and assist them through all their proceedings. That is why I supported Senator BOXER’s amendment which reforms article 32 of the Uniform Code of Military Justice. Her amendment will help prevent the abuse of victims of military sexual assault in a pretrial setting.

We are taking action in this legislation. Maybe we can be found guilty of not acting soon enough. Basically this deals with a fundamental question: Do we trust the commanders—whose responsibility is the very lives of the men and women under their command—to do the right thing? That is the difference between the Gillibrand amendment and what has already been done in this legislation.

We have had extensive hearings, debate, and discussions on this piece of legislation. The question is: Do we trust the commanders to do the right thing within the proper parameters, such as removing the ability of commanders to overturn jury convictions, require review of decisions not to prefer charges, and criminalizing retaliation against victims?

As far as I can tell, we have taken significant and important steps that will protect our men and women not only from assault but the abuses and recriminations that may be visited upon them in cases where they are victims.

I am not saying the legislation before us will eliminate sexual assault, but I am saying that what we are doing is exactly what we did at other times when there were crises in our Armed Forces. I am referring back to the post-Vietnam war era. I was a commanding officer in 1975, 1976, and 1977, and we had racial, drug, and discipline problems. We had the post-Vietnam war syndrome where our military was in total disarray because we were dealing with drug abuse and racial discrimination. There were race riots on aircraft carriers.

What did we do? We placed the responsibility directly on the commanding officer, and if they didn’t take action and failed, they were relieved. That is the way the military should function, and that is the way the military has functioned successfully. We had programs, advisers, indoctrination, and punishment—punishment for those who refused to adhere to the standards of conduct we expect every man and woman in the military to adhere to.

What does the Gillibrand amendment do? It removes the commander. It removes the person—the man or woman in command—who has the ultimate responsibility, unfortunately, from time to time of taking these young people into battle and risking their lives. That is what makes these young people different from any other part of America and any other part of our society.

The Gillibrand amendment says we don’t trust these commanders. Well, we trust those commanders with the lives of these young people. We ask them to have the ultimate responsibility, which is that of defending this Nation, but we don’t trust them to prosecute and do the right thing. That flies in the face of every encounter I have ever had with the men and women who were in command, and the senior petty officers, master chief petty officers, and master sergeants who are responsible for the good order and discipline of the men and women in our Armed Forces.

I won’t go into the fact that this Gillibrand amendment includes matters such as burglary, perjury, robbery, and forgery. It has been expanded beyond belief in its areas that have to be referred out of the chain of command. I will not even bother with that.

I say to my colleagues as passionately as I can that we trust the commanding officers who take our most precious assets—the young men and women of the military—into battle, then we obviously need to reevaluate our entire structure of the military. But I do trust them. The finest people I have ever known in my life are those who have worked their way up to positions of authority in command through a very severe screening process. Have they made mistakes? Can we find an example where the right thing was not done? Of course we can. There is nowhere in our society where we can’t find examples of people who have not done the right thing.

Today I am embarrassed that it seems naval officers were involved in some kind of bribery scheme about overseas ships. Sometimes we are embarrassed by leaders of our military, but they are the exception and not the rule.

If the Gillibrand amendment is passed, the message we will send to the men and women in command in the military is that we don’t trust you and we don’t believe in you. That is what it’s all about. If we do go through with the 26 changes that have been made in the Defense authorization bill and ensure that if there is a wrong decision made in some cases, that decision will be sent all the way up the chain of command to the service secretary.

This is a terrific and horrific problem in our Armed Forces today. We have
done what we believe and what our military and military leaders believe is right—leaving the commanding officer in the decisionmaking process concerning the lives and welfare of men and women under their command. I hope we will realize that if we pass the Gillibrand amendment, it will send our signal to the men and women in leadership—whether they are our senior enlisted personnel or our officers—is we don’t have any confidence in you, and we don’t trust you. That is the message we will send if we pass this amendment today.

Are they perfect? No. Have they made mistakes? Yes. That is why we put provisions in this bill which would circumscribe much of the decision-making process but still leaves final decisions in the chain of command. I urge my colleagues to reject the Gillibrand amendment.

I yield the floor.

The PRESIDING OFFICER. The Senator from Nebraska.

Mrs. FISCHER. Mr. President, I rise today to speak on the series of historic reforms adopted by the Armed Services Committee to combat sexual assault in the military. The women have taken the lead. Senator Ayotte and Senator McCaskill said it is not a gender issue, it is a violence issue.

I rise to voice support for a bipartisan amendment that I have offered with Senator McCaskill and Senator Ayotte, to protect victims of sexual assault.

The amendment makes retaliation a crime, requires dishonorable discharge or dismissal for those convicted of sexual assault, and provides critical civilian oversight.

As a result of a truly bipartisan effort, the committee has put forth a bill that takes an unprecedented step of providing victims with a special victims’ counsel to make certain they are receiving unbiased, independent legal advice. It strips commanders of the ability to overturn jury convictions, makes retaliation against victims a crime, requires dishonorable discharge or dismissal for those convicted of sexual assault, and provides critical civilian oversight.

Despite achieving these unprecedented reforms in committee, my colleagues and I continue to explore ways to enhance the current bill after the committee's work had concluded.

Senators McCaskill, Ayotte, and I introduced an amendment last week to expand upon the committee’s progress. Our proposal extends current protections to service academies, boosts evaluation standards for commanders, and allows victims increased input. It also eliminates the good soldier defense in most cases.

These changes, both in our amendment and in the whole NDAA, are significant but, importantly, they are also serious and thoughtful. They are based on sound policy, not on political sound bites.

Rather than radically remaking the entire military justice system, which would carry significant risks, our proposal actually builds on the current system. To do so, we applied lessons from history.

In 2006, Congress hastily changed portions of the Uniform Code of Military Justice to address instances of rape. These changes disrupted victims' paths to justice, and Congress was forced to rewrite its own changes a few years later.

Congress can’t afford to get something this important wrong. We cannot let our deep desire to solve this problem lead to imprecise solutions because victims suffer when we do. Any changes to the UCMJ should come after a deliberate and transparent process, with feedback from all sides. The McCaskill amendment is the result of such a process, and I encourage my colleagues to support it.

Finally, I urge my colleagues to oppose any amendment that undermines a commander’s responsibility for his or her troops. Senator McCaskill put it so well when she spoke on the floor earlier today: The amendment offered by my friend and colleague, the junior Senator from New York, offers a solution that is “seductively simple,” but its simplicity creates a host of complex policy problems.

In addition to technical concerns, I do not agree with the underlying goal of removing commanders from the military justice system. As Senator McCaskill noted, we know commanders pursue courts-martial when their legal advisers recommend against doing so. We know, based on the experiences of our allies, that removing commanders from that judicial process does not achieve the desired results.

And we know that commanders have risen to the challenge in the past to confront contentious issues within their units, including integration. These facts lead me to conclude that the changes in this bill, combined with the reforms included within our amendment, will best serve the interests of victims and punish those responsible.

I commend the Senator from Missouri for her leadership on this issue. And I am grateful for the opportunity to work closely with her, Senator Ayotte, and many other colleagues to help our men and women in uniform.

I yield the floor.

The PRESIDING OFFICER. The Senator from Oklahoma.

Mr. INHOFE. Mr. President, first of all, I agree with the comments of the Senator from Nebraska.

I have to say I was a little disturbed because I have heard a couple of reports that was in a news conference on November 6 and one on November 19—yesterday, I guess—that Senator GILLIBRAND was saying that I was objecting to her amendment. Yes. I oppose her amendment but not to the extent that I would hold back the bill. My gosh, there is no one on the floor of this Senate who has been working harder to get this bill through—no two people more than the chairman and me. So I want to make sure we understand that.

In terms of the alternative, I have been watching it very closely, and my strongest possible support is for that amendment. No. 2170, offered by Senators Ayotte and McCaskill, provides additional enhancements to the historic enhancements for sexual assault prevention and response activities in our military. I commend my two colleagues on the Armed Services Committee for their tireless efforts and their leadership, and I urge all Senators to join me in supporting this amendment.

It doesn’t mean that if someone is opposed to the Gillibrand amendment, this is someone is not wanting change. Yes, we do. This is major change. It adds the senior trial counsel to the officers who make recommendations on whether to proceed to trial and, if the convening authority decides not to proceed, results in the case being referred to the service Secretary.

It adds duties for the special victims’ counsel to inform victims of options for military and civilian prosecution of sexual offenses. It gives them a voice. They can express a preference. It requires commanders to give weight to that preference and to notify the victims if the civilians decline prosecution.

These are changes. These are changes in the current system that are coming with the amendment offered by Senators Ayotte and McCaskill. Amendment No. 2170.

It requires including written performance appraisals of every member of the Armed Forces—officers and enlisted people—an assessment of that member’s support for sexual assault prevention and response programs.

It requires every commander to be evaluated in their performance appraisals on whether they have or have not established a command climate where allegations of sexual assault are properly managed and fairly evaluated and ensures that a victim can report sexual assaults without fear of retaliation, ostracism, or any kind of group pressure from members of the command.

It also requires command climate assessments to be performed after a sexual assault incident, with copies of that assessment to be provided to superiors in the chain of command and the military criminal investigation organization.

It creates, finally, a process through the boards for correction of military records for confidential review of discharges of individuals who were victims of sexual offenses, to require consideration of psychological and physical aspects of the victim’s experience that may have had a bearing on the separation.
So this is a major change. It is one I strongly support. I give the Senator from New York the benefit of the doubt that she did not mean what some people would interpret it to mean—that I would hold up a bill in opposing her amendment. I certainly would not do that. I am for reform, and we have an opportunity to do that which is bipartisan and accomplishes the very thing we should have accomplished many years ago.

I thought there were others waiting here, but let me make one comment. I agree with my colleague, the junior Senator from Oklahoma. I know he has worked tirelessly in trying to do something to stop waste in the Pentagon, and, quite frankly, I think there is some there.

This chart shows the devastation of sequestration. What it shows is the bottom line—these are deficiencies. This is what he is talking about. I want him to continue this because it goes from fiscal year 2014 all the way to 2023. If we take the sequestration as it is right now, without any adjustments—now, Senator Sessions, Senator McCain, and I have tried to make adjustments so that there are greater cutbacks here and not so many in the first 2 years.

The orange—and that is where almost everything comes out—represents readiness. Readiness is what we need to support our fighters in the field to save lives.

The green is modernization. That is not affected by these inefficiencies we are talking about.

The force structure is a major cost item, and it is demonstrated by the yellow on the chart.

So what I am saying is I know there is room for improvement, and I want Senator Coburn and others to work on areas within the Pentagon where money can be saved. But if that happens, it is still going to all be found down here—everything, TRICARE and all of it is in this blue line. So we can see that the devastation that comes from sequestration to our military is still going to take place.

I think if we look at the level there of the sequestration cuts that take place, it is almost entirely in the readiness. “Readiness” is a term we have used for a long time. That is our ability to save lives. That is our ability to train and equip our men and women in harm’s way.

We have testimony right now that I wish to share with my good friend and the Chair, who was there and heard it, from all four services talking about how much more risk is involved if we have to go through sequestration. Risk equals risk. We have seen—those who want to do all they can through efficiencies. I am for them. I will do all I can to help them. That doesn’t solve the problem. The problem is immediate. It is today. I still believe there should be something we can do to stop these draconian cuts in our readiness and our force structure accounts that would come with sequestration.

It wouldn’t do me any good to read all of the quotes we have from various individuals, but I can assure my colleagues that the Chair and anyone who sat through the Armed Services Committee hearings has heard all four of the chiefs talk about how devastating this will be if we are not able to correct this.

With that, I yield the floor, and I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant bill clerk proceeded to call the roll.

The PRESIDING OFFICER. The Senator from Hawaii.

Ms. HIRONO. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Ms. HIRONO. Mr. President, there is not a single Senator here who does not acknowledge the seriousness of sexual assault in the military and that we must do something to prevent and prosecute these crimes. Yes, there are differences of opinion as to what we need to do, but make no mistake, we share the common goal of preventing and prosecuting these crimes.

I thank two strong women on the Armed Services Committee, Senator McCaskill and Senator Gillibrand, for their leadership in pushing for solutions that will make a difference. I also thank Chairman Levin for his commitment and leadership in bringing forth a bill that includes a number of important improvements to the current system. We all support these changes. However, I believe there is a fundamental structural problem with how sexual assault cases are prosecuted in the military. We need to make the changes proposed by the Gillibrand amendment.

I am a co-sponsor of the Gillibrand amendment. I spoke on the floor last week and explained why I think we need to remove disposition authority from the chain of command. I don’t want to repeat everything I said last week, so let me make a few points.

First, for two decades or longer the Department of Defense has had a zero tolerance policy for sexual assault and sexual harassment. Yet the problem persists. Servicemembers continue to be assaulted and raped, and in too many cases perpetrators continue to go unpunished. Year after year, Secretary after Secretary and commander after commander has told us about all the efforts to correct this problem, but those efforts have not worked. There are probably many reasons why these incremental changes have not worked, but every year that these changes do not work, many more of our brave men and women in the military endure the trauma of sexual assault. It is time to make a major change to the military justice system.

Second, too often these attacks are not reported, which allows the attacker to prey on more victims. The survivors tell us the biggest reason they do not report these crimes is because they do not believe their chain of command will ensure that justice is done. Even the Commandant of the Marine Corps, General Amos, has acknowledged that many victims do not come forward because “they do not trust the command.”

The concerns of survivors in coming forward make sense because there are inherent biases and conflicts of interest in the chain of command. These concerns are echoed in a letter from GEN Claudia Kennedy that was signed by more than two dozen former officers from all branches of the military. The letter states:

We know that, in too many cases, servicemembers have not reported incidents of sexual assault because they lack confidence in the current system. The inherent conflicts that exist in the military justice system have led servicemembers to believe that their allegations of sexual assault will not receive a fair and impartial hearing, and that perpetrators will not be held accountable.

We should give weight to these concerns and act today to remove the chain of command from prosecutorial decisions in sexual assault cases and instead put these decisions in the hands of an impartial, experienced military lawyer.

Third, removing prosecutorial decisions from the chain of command will not harm good order and discipline. I have heard this concern from many military leaders, as well as from others who oppose this amendment. They say eliminating a commander’s ability to decide whether a case should go to trial would undermine the commander’s ability to maintain good order and discipline within the unit, and yet—and yet—we have heard from many others who have command experience who support the Gillibrand amendment.

Good order and discipline should not depend upon a commander’s ability to decide whether to prosecute a sexual crime. A commander’s authority and leadership must certainly be based on more than that.

Furthermore, the Gillibrand amendment preserves a commander’s disposition authority over crimes that are uniquely military—crimes such as desertion, AWOL, contempt, and non-compliance with procedural rules. This ensures that commanders will have the authority they need to maintain good order.

In closing, it is undeniable that the current system does not work. We know it does not work because, according to the Department of Defense, in 2012 there were an estimated 26,000 cases—26,000 cases—of unwanted sexual contact.

We know that not all survivors report these crimes because, in the words of General Amos, “they do not trust the command.” We know we can eliminate bias and conflicts of interest by entrusting prosecutorial decisions to
Senator GILLIBRAND's Military Justice
practice system must also meet that stand-
sable. Those responsible for such crimes are held account-
port and to ensure that those respon-
must work together to protect victims
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the increase in sexual assault among
branches of the Armed Forces. Sex-
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new issue, nor an uncommon one. It
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work to eliminate. Military bases are
where our troops are supposed to be
safe, and to know that they risk being
in harm's way not only when deployed but also when they yellow servicemembers
as well is horrible.
I have worked hard to bring greater
attention to the ongoing problem of
sexual violence in our communities and
am proud of the significant im-
provements we made in the recent re-
authorization of the Violence Against
Women Act earlier this year. It is time
we bring the same level of attention to
the crisis on our military bases.
While this epidemic is not represent-
ative of the vast majority of our serv-
icemen and women, who serve honor-
ably and conduct themselves commen-
surate with our expectations of those
in uniform, it is also not isolated to
just a handful of bad actors. We can no
longer ignore the truth that at times is
overdue for meaningful changes to help
end sexual assault and harassment in
the ranks of our Armed Forces. We
must work together to protect victims
and provide appropriate help and sup-
port and to ensure that those respons-
sible for such crimes are held account-
able.

Just as our civilian justice system is
the envy of the world, our military jus-
tice system must also meet that stand-
ard. That is why I am a cosponsor of
Secretary of Defense's Military Justice
Improvement Act, and why I support
her amendment to the National De-
fense Authorization Act, NDAA.
In last year's Defense authorization
bill, Congress included provisions
meant to address sexual assault in the
military. That legislation required the
Secretary of Defense to prescribe stan-
dards for victim support and man-
dated an independent review and as-
essment of the systems used to adju-
dicate crimes involving sexual assault
and related offenses.

When the Department of Defense re-
leased its fiscal year 2012 report on sex-
ual assault in the military earlier this
year, its findings were jarring, and for
many myself included they were infuri-
ating. To make matters worse, the
problem seems only to be growing.

The status quo for how we deal with
sexual assault and unwanted sexual
contact in the military is untenable. If
we are serious about curing this prob-
lem, we need to get serious about mak-
fundamental changes to how it is
addressed. We cannot expect that by
doing the same thing over and over ag-
ain we will get different results.

I supported Secretary of Defense
Chuck Hagel's proposals this summer
to limit a commander's authority to
overturn major court martial verdicts,
among other reforms to the system. I
am pleased that the members of the
Senate Armed Services Committee in-
cluded this key provision, as well as
other measures to address the so-called
“good soldier" defense and to require
commanders to immediately report al-
leged sexual assaults to the investiga-
tive office, in this year's Defense au-
thorization bill.

Senator GILLIBRAND's proposal is an-
other move in the right direction, talk-
ing these reforms a step further by re-
quiring that the determination to bring sex-
ual assault cases from the chain of
command and giving that discretion to
an experienced military prosecutor.
This is a commonsense solution, and I
commend her for her clear-eyed and en-
ergietic leadership.

Senator McCASKILL's proposal also
includes strong protections for victims
so that the process of getting justice
for these crimes does not revictimize
those who come forward to report
them. I believe Senator McCASKILL's
proposal also is a step in the right di-
rection to encourage victims to come
forward and report these crimes. Our
Nation's troops should not have to fear
sexual assault, and if they are victims,
they certainly should not fear any stig-
ma after bringing to light unwanted
sexual contact.

Surely we can all agree that we have
an obligation to ensure that our men
and women in uniform are protected
from the threats we can control. Hold-
ing perpetrators of sexual assault and
unwanted sexual contact accountable
and caring for, supporting, and pro-
tecting those victims is within our
control. I hope Senators on both sides
of the aisle will join me in supporting
reforms that will fundamentally change
the way we approach this issue in order
to achieve better results.

The PRESIDING OFFICER. The Sen-
ator from Michigan.
Mr. LEVIN. Mr. President, I yield
myself 5 of my 10 minutes.

One of the issues we address in this
bill is the problem of sexual assault
in the military. Too many of the men
and women who volunteer for our military
to serve and protect us are victims of
sexual assault and other misconduct.
That is deeply offensive to our con-
science and a stain on an honorable
institution.

The bill that was reported by the
committee includes groundbreaking
new measures to reduce sexual assault
and misconduct. On a bipartisan basis,
members debated and approved more
than two dozen measures related to
preventing sexual assaults and to deliv-
ering justice for the victims of these
crimes.

The bill that we approved, and which
is now before us, would provide sexual
assault victims a counsel, a lawyer,
who works not for commanders, pros-
ecutors, defense attorneys or a court
but for the victim. It includes strong
new protections for victims that are
designed to combat the No. 1 problem
we have in preventing assaults and
dealing with perpetrators: the fact that
many assaults remain unreported to
authorities. Of great importance, the
committee-reported bill for the first
time makes it a crime under the Uni-
form Code of Military Justice to retali-
ate against a servicemember who re-
ports a sexual assault.

It also requires that the Department
of Defense Inspector General review and
report any allegations of retaliation
against those who make communica-
tions regarding sexual assault or
sexual misconduct.

Our bill includes important criminal
justice system reforms, including re-
forms on how commanders respond to
sexual assaults. Our bill includes a re-
quirement that commanders who be-
come aware of a reported sexual as-
sault immediately forward that infor-
mation to criminal investigators. It
eliminates the command's discretion
that the accused's character from the factors a
commander should weigh in deciding
whether to prosecute a sexual assault
allegation. It restricts the authority of
commanders under Article 60 of the
Uniform Code of Military Justice to
reconsider sexual assault convictions.

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and women who volunteer for our military
to serve and protect us are victims of
sexual assault and other misconduct.
That is deeply offensive to our con-
science and a stain on an honorable
institution.
Senator GILLIBRAND proposed in committee, and proposes again here on the floor, to remove our commanders’ authority to prosecute. Along with a strong majority of the Armed Services Committee, I opposed Senator GILLIBRAND’s proposal, which was defeated on a bipartisan 17–9 vote. I oppose it for a simple reason: I do not believe its passage would strengthen efforts to end military sexual assault and other misconduct, and in fact I believe it could weaken them.

The GILLIBRAND amendment would uproot major portions of the military justice system and require the establishment of a parallel justice system within the military. Our top military lawyers have told us that the amendment leaves large gaps and unexplained issues that could make the new system unadministrable and bog it down in litigation.

Despite those problems, if I believed that the proposed amendment would remove more sexual predators from the ranks and put more of them behind bars, or lead more victims to report sexual assaults, I could support it. But the evidence we received in our committee shows the opposite.

First, we learned that military commanders are more likely, not less likely, more likely, to prosecute sexual assaults than military or civilian lawyers. The committee heard from many commanders, at all levels, that they see important value in sending cases to court-martial even if a conviction is not a slam-dunk. But we have more than 100 sexual assault cases which civilian prosecutors declined to prosecute, military commanders stepped in and took the case to court. Trials are complete in 63 of those cases, resulting in 52 convictions an 83 percent conviction rate. Those victims would not have seen justice if a military commander had not stepped in where professional prosecutors declined to act. Evidence before us indicates that commanders are ready to prosecute these cases, and that removing their judgment and replacing it with career attorneys will result in fewer prosecutions of these cases.

The evidence is that when victims do come forward, their reports are properly investigated, and when commanders are presented with the facts, our commanders do their job. They often send cases to trial even when professional prosecutors decline to do so. So why would we want to take that authority away?

Second, the supporters of this proposal have argued that the proposed amendment would remove more victims from their commanders. They do not provide any data to support the assertion that victims will be more willing to come forward in a system that is less likely to bring them justice. Why would victims feel more confident in a system that is less likely to aggressively prosecute these crimes?

The Response Systems to Adult Sexual Assault Crimes Panel, which was established in the National Defense Authorization Act for Fiscal Year 2013 and has looked in depth at the experiences of our allies on this issue, reported last week: ‘‘We have seen no indication that the removal of the commander from the decision making processes has an impact in reporting and there is nothing in the experiences of our foreign Allies that suggests adopting their systems as a model will have any impact on the reporting of sexual assaults.’’

I believe the evidence shows that this amendment would increase reporting stems in many cases from a fundamental misunderstanding of how sexual assaults are reported. One member of the Senate, in announcing his support for taking away commanders’ authority to prosecute, said: ‘‘To me, it’s as simple as this: Should you have to report to your boss when you’ve been abused or when you’ve been a victim of a crime?’’ Well, of course you shouldn’t have to. And in the military, you don’t. There are many different avenues by which a member of the military may report a sexual assault. Reporting it to your commanding officer is only one. Victims can report to the civilian police, to military criminal investigat ors, to a health care professional or to a sexual assault response coordinator. The GILLIBRAND amendment does not affect any of those reporting channels. It’s only effect is that what happens once an assault is reported and investigated.

Supporters of this proposal have argued that our allies have adopted changes to their military justice systems along the lines they propose, and that these changes have better served sexual assault victims. What this argument ignores is the fact that our allies’ decisions have not been aimed at protecting sexual assault victims. In fact, 9th Amendment to the British, commanders’ authority to prosecute was removed not out of concern for crime victims, but out of concern for the rights of the accused. I have yet to hear anyone argue that the problem with our handling of military sexual assault is that it is too tough on perpetrators. Yet that has been why allied militaries removed the decision to prosecute from their commanders.

Perhaps the most basic reason to oppose the amendment is the Senator from New York is that it removes a powerful tool from those who are indispensable to turning around the problem we have. Our military commanders are the indispensable tool to turn around this problem. I have met at length with several groups of retired military women.

I specifically chose to meet with retired military personnel to ensure that they would be free to speak their minds. These women—all of whom have seen cases of sexual assault and sexual harassment in the course of their military careers—told me the problem is not commanders. The problem is a military culture, they told us, that tolerates excessive drinking and barracks banter that borders on sexual harassment or crosses that line. The problem is there is a failure to recognize the existence of servicemembers who appear to have acted against their will, and to treat them as sexual predators, and a culture that values unit cohesion to such an extent that those who report misconduct are more likely to be ostracized than respected. None of these problems are new to the military, but they are exacerbated in the military by the frequent rotation of military assignments, which can make it easier for predators to hide.

The military has a unique tool for addressing this problem: commanders who can bring about changes in command climate through mandatory training and by issuing and enforcing orders that are not possible in a civilian environment. That is what they did in addressing racial discrimination and I don’t ask the military what is what they can and should do here. Weeding out sexual predators and the climate that makes it possible for them to hide is an essential ingredient in any solution to the sexual assault problem. The military women from New York I met with over the summer told me that our commanders are in the best position to make that change.

Weakening the authority of commanders will do serious damage to their ability to accomplish this change. All of us seek the strongest, most effective response to the plague of military sexual assault. The amendment Senator GILLIBRAND proposes will not strengthen our response. The evidence before us shows it will, in fact, weaken our response by removing the decision from the hands of commanders.

We have two dozen historic reforms in our bill, but a number of Senators, led by Senators McCASKILL and Ayotte and FISCHER, have continued to work on policies to strengthen our response to the military assault problem. This has resulted in the amendment they have proposed.

Their amendment would ensure that the duties of special victims’ counsels include advising victims on the advantages and disadvantages of prosecuting a case in the civilian or military justice systems, giving victims a greater voice in where a case is heard. It would require that performance evaluations of commanding officers consider their success or failure in creating a command climate in which victims can report sexual assaults without fear. It would require command climate assessments of any unit in which a service member is the victim of a sexual assault or is accused of committing one. It would give the victims of sexual assault who leave the military the ability to challenge the terms or characterization of their separation or discharge as evidence during judicial proceedings a sexual assault defendant’s general military character—the so-called
Mr. President, I am heartened by the conversation that we have had today and during the past few months about this critical issue. I have heard some things that I think are absolutely true. I think it is just, as our men and women deserve, to have a command climate that is strong against victims and providing victims better support—and not at a problem we don’t have—that is, the decisions our commanders make relative to prosecution of these crimes.

I will conclude by saying that these additions in the McCaskill-Ayotte-Fischer amendment are significant additions to what is in the committee bill, and I support them. What I cannot support—and what I hope the Senate will not support—is legislation that will remove from our commanders the authority to combat this problem. The real, strongest tool to combat this problem is the ability to send a matter to a court-martial. We cannot strengthen our efforts to prevent sexual assault by reducing the likelihood of prosecutions. We know from history and from the facts that is the result of taking this decision away from the hands of the commanders. We know of the 100 cases where other authorities, civilian authorities, have decided not to prosecute but where the commanders then decided to pursue it anyway. That is just within the last 2 years, and we do not know of any cases that go in the other direction.

We cannot strengthen our efforts to prevent sexual assaults by reducing the likelihood of prosecutions. We cannot strengthen our efforts by weakening the authority of our commanders to act against sexual assault. Commanders were tasked, again, with making those monumental changes in military culture, from combating racial discrimination in the 1950s to ending don’t ask, don’t tell in 2011. If we are to accomplish the change in military culture that we all agree is central to combating sexual misconduct and sexual assault, commanders are essential. We cannot fight sexual predators if we make it more difficult to try and convict them. We cannot hold our commanders accountable for accomplishing that needed change in culture if we remove their most powerful weapon in the fight.

I yield the floor.

The PRESIDING OFFICER. The Senator from New York.

Mrs. GILLIBRAND. Mr. President, I wish to thank Chairman Levin, for his extraordinary leadership on combating sexual assault in the military. He has led a process over the last year to ensure that our base bill has a set of historic reforms that make a huge difference in how cases that are actually reported are handled. In fact, the reforms that Chairman Levin has put forward and that our colleagues are continuing to perfect do make the handling of the cases that are reported better.

They make sure every victim who reports has a victim’s advocate to help him or her steer through the process. They also make sure that if that victim is so lucky enough to get that conviction, that it cannot be overturned by a commander on a second-level review. They also make sure we have better recordkeeping. They make sure the rules of evidence are better. They make sure victims are protected throughout the process. Most important, as a committee have put forward in the bill a law that makes sure retaliation is now a crime.

Those reforms help the victims who are strong enough and able enough and have a command climate that is strong enough to report their cases. But one thing the chairmain said is that is not true: Commanders do not need this legal right to be able to set the command climate. In fact, most commanders will never have this legal right. Just look at the Army rankings.

Commanders, they will command 10 to 35 soldiers. They do not have convening authority. First lieutenant commanders—110 to 140 personnel—do not have this authority. Captains—62 to 190 soldiers—do not have this authority. Majors, lieutenant colonels, lieutenants colonel, typically, command battalion-sized units—300 to 1,000 soldiers—do not have this legal right.

Most commanders will never get to look at a case file and say: Are we sure this Commander is capable of doing this, the ability to decide if something goes to court-martial is necessary to set good order and discipline because almost every commander—all of them here—these commanders, they all have to set good order and discipline as part of their job. They have to set a command climate where the rape does not happen. They have to set a command climate where that victim feels comfortable enough to come forward. They must, by law, now ensure that victim is not retaliating against them for their job—whether they ever have this right.

Commanders can do this and must do this without this legal right. It does not weaken their ability.

To have one guy way up here in the Army who wears the bird—the man who is the colonel, O6 level and above—he will make a legal decision, and he is not a lawyer. He is not trained. He does not know the ins and outs of prosecutorial discretion. He may be biased. He may value the perpetrator more than the victim. He does not need to make this legal decision. He should not be judged on how tough he is on crime. He should not even be judged after he weighs the evidence? So I disagree that he should weigh the evidence fairly. You can only do that if you are objective. That is why we want it to go to trained military prosecutors outside the chain of command.

Those commanders, every single one of them, should be judged on what the command climate is. Most of them will never get to weigh legal evidence as part of that. Chairman Levin, my colleague, has said: They have never heard of examples where commanders did not go forward but a lawyer did.

I talked about one this morning. We heard from many victims. In fact, one woman said she was in the trial, and the commander was changed. The new commander had been in command for 4 days. He decides that the trial is not going forward. He actually discontinued the trial.

If you know what he said to her? Your rape was not a crime. He may not have been a gentleman. So I do not believe this legal right undermines our military system. I believe it strengthens our military system. I believe it gives commanders the chance to do their jobs, fighting and winning wars, training men and women. Commanders are entirely on the hook by our base legislation. They will be judged on the command climate. They need to start focusing on whether there is retaliation. They will be able to prosecute retaliation as a crime.

I believe that if you create transparency and accountability in the system, we will see many more cases being reported, first of all. More of those 23,000 cases will be reported. When you have more of the 23,000 cases being reported, you will have more investigations. You will, therefore, have more trials. You will, therefore, have more convictions.

If you are ever going to change the culture, you need to do it by showing there is accountability. You need to do it by showing the need to do it. You need to show it by showing that justice can be done. We need the active involvement of commanders. This is never going to happen if we do not. So they need to start focusing on retaliation. They need to start focusing on command climate. They need to make sure these rapes are not happening.

They will do that whether or not they ever have this legal right. When our allies changed their laws to elevate a zero tolerance climate in the chain of command, they did see a falling apart of their military. They did not see good order and discipline going out the window. They did not see any change at all, in fact. So I know our military can do the same. I know our military can build a transparent, accountable system that responds to what victims have asked. They want to be able to have the decisionmaker be outside of their chain of command.

If we do that, we have a chance of building a criminal justice system within our military that is good, and it is just, as our men and women deserve. I am heartened by the conversation we are having on this today and I am grateful to all of my colleagues for their engagement and involvement on this critical issue. I have heard some questions about the technical implementation of the Military Justice Improvement Act mentioned on the floor today and during the past few months and I would like to address those concerns.
First of all, thanks to feedback that we received about the MJIA, we made some technical changes to the amendment that I would like to note.

One such concern was the omission of the Coast Guard, we have now included the Coast Guard in the amendment.

Another concern we heard about was how to handle attempts of crimes, both in the new system and those that are excluded. In the amendment, conspiracies, solicitations and attempts all become misdemeanors.

We were also asked about crimes that happen simultaneously. For example, what if during a sexual assault, crimes are also committed that fall under the old system? In order to clarify any confusion about this question, the amendment says that all known crimes will be charged under the new system.

There were also questions about whether the convening authority will be able to pick the judge, prosecutor and defense counsel. The newly filed amendment clarified to ensure that it is clear that the new, independent, convening authority has the same power as the previous convening authority—the commander—in overseeing the process of convening a trial. The commander will no longer be deciding whether the convening authority, prosecutors and defense counsel remains as they are today.

Other concerns we have heard seem to take as a negative the fact that the MJIA leaves some issues up to the military to implement. We see this as one of the strengths of the MJIA.

We wanted to ensure that the military had the ability to best interpret and implement the legislation in a way that was effective for the whole military, and for each service, each of which have slightly different systems.

Let me give you an example. Some have argued that plea bargaining will not work under our system. That is not true. Amendment transfers the commander's responsibilities for convening authority to the office of the Chiefs of Staff of each service; therefore, the offices of Chiefs of Staff will now have the authority to oversee pretrial agreements.

We specifically leave interpretation and implementation of the plea bargain up to the military to ensure that it is most expeditious—therefore the military can choose to include the commander in the amendment transfers the commander's responsibilities for convening authority to the office of the Chiefs of Staff of each service; therefore, the offices of Chiefs of Staff will now have the authority to oversee pretrial agreements.

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Let me give you another example. Article 32 is not explicitly mentioned in the amendment. This is intentional. Most if not all of the members of this body agree that the article 32 hearing needs to be fixed, but equally that it must be maintained. Because under the MJIA, the Guard in the amendment, the prosecutor will not be making the decision about whether to go to court martial, this may change the way that article 32 may best be implemented. We want to leave the military, and these trained prosecutors, with the ability to best implement the UCMJ.

I have also heard a lot of questions about non-judicial punishment. As I have said all along, the amendment does not entirely eliminate the non-judicial punishment of the current system, under 1 year of confinement, and 37 military-specific crimes with the commander, thereby leaving the vast majority of crimes punishable by courts martial in the hands of commanders.

However, we also believe that crimes as serious as rape and murder be handled with anything but a clear look at the evidence is at the heart of the importance of this amendment. If evidence exists to send a case to court martial, there is absolutely no reason anyone should consider non-judicial punishment as an option. This is exactly why this decision should be in the hands of an impartial attorney.

Further, the amendment even allows for a failsafe if the independent JAG, if I may, or the district attorney found that there is not enough evidence to proceed to trial that the charges would not be appropriately addressed at a court-martial, then the commander would still be able to exercise non-judicial punishment. In the case of summary court-martial, if the commander demanded a trial by court martial, the decision authority would at that point still be able to send the charge to the convening authority for referral to trial. There is nothing unique about this situation.

I want to assure all of my colleagues that I have spoken to military justice experts and to retired JAGs about how to ensure that the Military Justice Improvement Act addresses potential issues and to ensure that the military has the ability to implement it in the best manner possible.

I yield the floor and I suggest the absence of a quorum.

The PRESIDING OFFICER (Mr. Brown): The clerk will call the roll.

The bill clerk proceeded to call the roll.

Mr. COONS. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. COONS. Mr. President, I come to the floor today to speak on the tragedy, on the ongoing crisis of sexual assault in our Armed Forces and what I believe we must do. There are several options before us, each of which has been the subject of lengthy and passionate debate, a debate that I think is healthy, and needed, and welcome here in this Chamber.

I commend my many colleagues—Chairman LEVIN and Senator INHOFE, Senator MCCASKILL and Senator AYOTTE—for the very real progress, the very significant steps taken both in the base bill, the NDAA, and in the amendments to it supported by Senators MCCASKILL and AYOTTE, specifically and important steps forward to protect victims, to ensure that commanders are held accountable and to criminalize re-

taliation. A wide range of important and significant reforms that will make real progress towards addressing the ongoing decades-old scourge of sexual assault in the United States military.

As was said recently on the floor by another of my colleague, this disagreement today is over one of more than a dozen important and needed reforms. But in the end, we have to decide. I believe the measure offered by Senator GILLIBRAND of New York, of which I am a cosponsor, is the next best additional path forward. Because at the end, here is the bottom line: Sexual assault has been a disease, a corrosive and widespread and horribly negative influence on our military that has simply not been effectively treated.

I think this significant, dramatic step is the needed driver for extensive reform. I understand that the chain of command is essential, that it is central to tolerate any further loss of the military, especially during war time. In fact, the chain of command is nearly sacred.

But ensuring that our spouses and our siblings and our children can serve with honor and not another enemy within our ranks is sacred. This is, in the end, a debate about justice—justice within our own Armed Forces, justice so we can fulfill that sacred duty of protecting men and women in uniform as well as they protect us.

Despite many years of good-faith efforts by leaders in our Armed Forces to work within the parameters of our current system, literally thousands of sexual assaults are still occurring annually within our Armed Forces.

That is, frankly, unacceptable and it reflects a fundamental breakdown in order and discipline that in my view we cannot tolerate any longer. The current system, in this important and vital way, is failing. I understand the intense desire our leaders feel to fix what was broken and for our military leaders to atone for taking their eyes off the ball, to paraphrase the testimony of the Chairman of the Joint Chiefs.

But, once again, this debate is not about them, about their commitment or about their strategy or about their determination. It is about justice. In America, justice must be blind. Whether someone receives it or not should not depend on the fact of whether or not he or she serves in the military rather than in other workplaces. We know from the chilling testimony to the Department of Defense’s own Sexual Assault Prevention and Response Office, 50 percent of female victims state they did not report the crime in the first place because they believed nothing would be done, and one-quarter or 25 percent who received unwanted sexual contact indicated the offender was in their chain of command.

In any view, we strengthen our military when victims of sexual assault have the confidence to come forward and to report crimes and when we remove fear and stigma from the process.
We strengthen our military when we are able to deliver fair and impartial justice on behalf of victims.

When we know the military chain of command in this one area is failing, we should not continue to tolerate an exception. We should make the decision to change something that we should only come to with great hesitation.

One of the responsibilities of serving in the Senate that I take seriously is my annual responsibility to review and approve candidates for the military academies who are selected by my independent military academy advisory board, and personally calling the top candidates to inform them that they will be the ones—of the dozens and often of the very qualified competitors, they will be the ones selected to go to the Merchant Marine Academy, the Air Force Academy; to Annapolis, the United States Naval Academy, or to the U.S. Military Academy, to West Point.

This is a moving experience each of the 3 years I have had the chance to do this. But this past year, the three top candidates for West Point, for Annapolis or for the Air Force Academy were all women, compelling, determined to serve our Nation.

Meeting with them and their families, the nervous and proud parents of these confident cadet candidates is also a great annual experience. It reminds me always of my responsibility to them. I promised their parents that we will support and respect them and their service. When we speak to the cadets and thank them for their willingness to serve, I am reminded we have a responsibility not to throw them into an institution where they will face threats that we can and should address.

I believe I have a responsibility to send them into an institution I know is well equipped to respond strongly and swiftly to threats to their safety. Yet, today, I am not able to uphold that responsibility because we have not protected our men and women in uniform from sexual assault.

I thought of my picks for the service academies when I heard another Senator say to General Dempsey that the Senator would not advise a parent to encourage his or her daughter to join the military. What made this decision difficult for me to join Senator GILL-BRAND on this particular amendment was an unfortunate, tragic case.

Last spring while I was trying to decide which path to follow on this bill, my office received a gut-wrenching call from the father of a young woman serving honorably in our military. He was calling against his daughter’s wishes, and only as a desperate last resort.

She had been the victim of sexual assault and, as so many others, reported it to her commanding officer up the chain of command. As so many others, her case went nowhere. Her by-the-book reporting and patient waiting for results was met with delays, excuses, and nonresponse. Ultimately, during the pretrial proceedings, she was psychologically assaulted after she had warned leadership she feared for her safety.

We took action and, ultimately in this instance, justice was done. A chain of command such as that isn’t strengthening cohesion and morale, it is harming it.

After this particularly troubling case, I made a decision to join Senator GILL-BRAND as a co-sponsor, to say to all of us, hasn’t this happened? How can this situation that has gone on for years be tolerated? How can we justify the status quo?

I am grateful for the leadership of the many Senators on the Armed Services Committees throughout the Department of Defense. What made this decision so difficult for me was the need to make the decision to join Senator GILL-BRAND on this particular amendment.

Our amendment would require that every 4 years the Secretary of Defense, advised by a board of 15 different folks, pull together and think through, research, and then deliver a national manufacturing strategy. The amendment is bipartisan, simple, does not cost the Federal Government a dime and doesn’t create a new program. Like the next two amendments I will speak about, it is a commonsense measure that I hope we will add.

Secondly, I wish to speak to an amendment I am cosponsoring with Congressman BLUNT to ensure small businesses are not subject to conflicting guidance from Federal agencies.

In the 1970s Congress passed a measure for the Small Business Administration to ensure that small businesses that get contracts from the government communities maintain their vital technical edge for much larger companies.

Last year we passed similar but distinctly different rules for the Department of Defense. Most of the time those two sets of rules can peacefully coexist, but in a few cases they come into conflict, creating significant compliance difficulties for very small business. This amendment would say that when both sets of rules apply to a small business contract, the SBA rules would apply, while DOD rules would not.

This amendment is bipartisan, has no cost, and will help small businesses focus on effectively delivering products and services without worrying about compliance.

Last, I wish to speak about an amendment I am cosponsoring with Senator BOOKER of New Jersey to ensure that our defense and intelligence communities maintain their vital technological edge. This is an important measure that would create more opportunities to train America’s best talent and pave the way to new innovations.

In the 1970s Congress passed a measure that get contracts from the government communities maintain their vital technical edge for much larger companies.

Our amendment would require that the Department of Defense designed to address one element of this problem. It said we may not have one example it said we may not have.
the necessary number of undergraduate and graduate students in the fields of science, technology, engineering, and math to meet the recommendations of the commission’s report, and to recommend how those programs can be concretely improved. Those recommendations are presented to the Honorable Representatives by a voice vote and would be an important if small step toward paving the way toward job creation and ensuring our national security now and into the future.

I urge my colleagues to support these amendments.

I am grateful for the opportunity to contribute to the debate on these important issues.

I yield the floor.

The PRESIDING OFFICER. The senior Senator from South Carolina is recognized.

Mr. GRAHAM. I wish to speak in support of the McCaskill, Ayotte, Fischer, and Levin Amendment.

Before we begin, I wish to thank Senators Levin, Reed, McCaskill, Ayotte, Fischer, and others who have been trying to carry the burden here to make sure that we reform the military justice system and the way the military treats sexual assault and misconduct but at the same time make sure we still have a military that can continue to be the most effective fighting force in the world at a time when we absolutely need it.

If one thinks where we are, I do, that our military is the best in the world, we have to ask ourselves why. Is it because of the equipment? We have great equipment. I would argue that the reason our military has become the most effective fighting force in the world is the equipment is the best in the world, we have great equipment. I would argue that the reason our military has become the most effective fighting force in the world is the way we are structured.

If one is looking for a democracy, don’t look to the military. The military is a hierarchical and paternalistic organization that is focused on meeting the challenges of the Nation, being able to project force at a moment’s notice to deter war and, if war ever comes, to decisively end it on our terms.

I have been a military lawyer for over 30 years. I have been assigned as a military defense counsel for 2½ years and a senior military prosecutor in the Air Force for 4½ years. I have been a military judge, and I have served in the Guard and Reserve, and on Active Duty for 6 years. I am the managing judge advocate general of the United States Air Force. I have learned a lot, as a military judge advocate, is ever going to have to do. If I ever had to make a decision to decide if a commander is intellectually insufficient to do this job or you don’t have the temperament to do this job, I would say: You are fired; you can’t do this anymore. And I would say to my colleagues, there is a reason that every judge advocate general of all the services has urged us not to adopt Senator Gillibrand’s solution to this problem.

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Yes, and we have had a lot of mandates over the years. But if one looks at the historical context of the military justice system and the way in which we have treated sexual assault and misconduct, it is not a very good story.

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advocate—which I happen to be one of, by the way—in Washington. I cannot stress to my colleagues enough how ill-conceived that system would be from a military justice point of view and the damage that will be done to the command and to the fighting force if we go down this road.

A troop is in Afghanistan. There is a larceny. Senator Coons mentioned the workplace. A barracks thief is one of the worst things you can be in the military. A soldier doesn't pick and choose whom they room with. No one gets to decide where they are going to stay; we pick for them. We throw them into the most incredible of conditions, we don't give them the comforts of home, and they have to trust their fellow soldiers in the barracks and in deployment. Soldiers, like everybody else, most are great, some are bad. In the military the bad apples, thank God, are few.

Under this construct we are coming up with a case—a tent theft case—in a deployed environment, that really does hurt morale because if you have to worry about somebody stealing your stuff, that is really tough given the conditions under which. So if the commander could not deal with this, it would go all the way to Washington, DC, to be disposed of rather than being disposed of onsite. And why does it need to be disposed of onsite? You need to render justice quickly and effectively so the troops can see what you are doing. If you are the commander, they have to respect you and they have to understand your role.

So I cannot understand why the Senate, when we have been at war for 11 or 12 years, would come up with a solution to a problem that is real that does harm to the very concept of what makes our military special—the ability to go to war, the ability to be effective and to have the commander make decisions that only a commander should be making.

I am a military lawyer. I am telling you right now, don't give me this decision, because I am not required to decide who goes to battle. Don't take away from our commanders in a theater of operation the ability to render justice in a way the troops can see.

Mrs. McCaskill. Would the Senator yield for a question?

Mr. Graham. I thank the Chair.

Mrs. McCaskill. I want to make sure I understand something about nontraditional punishment. Since the Senator is discussing the barracks thief in Afghanistan and the notion that everything is going to stop and this case is going to be sent off to a lawyer half a continent away to make a decision, let's assume the lawyer—the colonel in Washington—decides there is insufficient evidence for that barracks thief. That might be 4 months later. The barracks thief is still there. And let's assume it then comes back. It is my understanding—and I think there is some confusion about this by the people who are advocating this amendment—that you cannot exercise nonjudicial punishment on a soldier if he chooses a court-martial proceeding. Is that correct?

Mr. Graham. That is exactly right. A nonjudicial punishment is an authorized way to take people in confinement for up to 30 days, reduce in rank one or two levels, depending on the rank of the commander, and to withhold pay. It is nonjudicial punishment. You don't have a trial. The person is represented by a lawyer, but there is no jury. The commander is the jury.

The Presiding Officer. The Senator has spoken for 15 minutes.

Mr. Graham. I thank the Chair.

Mrs. McCaskill. So the commander who has to now send——

Mr. Graham. He loses that authority.

Mrs. McCaskill. That case to Washington—that soldier is not going to agree to nonjudicial punishment. He is going to say: I will take my chances with the lawyers in Washington. And if the lawyers in Washington say no, then that commander's hands are completely tied to even putting him in the brig for 30 days.

Mr. Graham. Exactly right.

Every military lawyer who has looked at this is very worried about what we are about to do in terms of practical military justice. Imagine being 18 years of age. You have too much to drink and you write a bad check. Part of being a commander and a first sergeant is the paternalistic aspect of the job. How many of us have made mistakes at 18? Instead of going to college, you are going into a military unit. You bounce four or five checks. Has that ever happened? Under this proposed system, the military commander no longer has the ability to deal with it in the unit. He sends it to the JAGS's office. The ability to give an article 15—a lesser punishment—is taken off the table. So we are taking an 18-year-old's mistake and potentially turning it into a felony. Does that help sexual assaults?

Our commanders can send you to your death, but we don't trust them to deal with manslaughter cases? All I can tell you is that for 30 years I have been a practicing military lawyer. From my point of view, our commanders and their ability to impose discipline incredibly seriously. They are skilled men and women.

We have let the soldiers, sailors, airmen, and marines down when it comes to sexual assault. All of us are to blame in the military. We are going to fix that. But the problem, my colleagues, is not the military justice system. We don't have a military justice system where commanders say to the lawyers: Go to hell; we are not going to deal with that. That is not the way it works there. This new proposed system takes a portion of offenses out of the purview of the commander and sends them to somebody in Washington whom nobody in that unit will ever get to see. That will delay justice, and it will take tools off the table to make sure that is an effective fighting force in terms of dealing with the barracks thief, in terms of dealing with the bounced check, but it will also allow people who make mistakes and put them in an arena where the only avenue is to potentially charge them with a felony.

Ms. Ayotte. Would the Senator from South Carolina yield for another question?

Mr. Graham. Yes.

Ms. Ayotte. So under the situation where the Senator says we have commanders who aren't going to ignore what is brought before them in an investigation from their JAG lawyers, particularly on a sexual assault, let's assume they did do that. Even though the evidence isn't there, they do it. Under our proposal—the proposal of myself and Senators McCaskill and Coons—the commander makes the decision not to bring the sexual assault case and it then goes up for review before the civilian secretary of whatever force is at issue—the Army, the Air Force, the Navy—what does the Senator think that will do in terms of accountability?

Mr. Graham. If you want to improve the system, and we all do—I am not questioning anybody's motives—if a commander knows that when they turn down the JAGS's advice in one of the four situations we have identified—sexual assault, the nature of the discussion here—that decision will be reviewed by the Secretary of the service. I can assure you that will do more good to make sure commanders understand how important this situation is to the country than taking their authority away.

We will be doing absolutely the worst possible thing to solve the problem with the approach of Senator Gillibrand, in my view, although every judge advocate agrees with what I am saying. You will throw the military justice system in chaos and basically take the commander's authority away in an irrational way.

What we should do is hold the commander more accountable by having what is the commander's worst nightmare—I guess anybody in the military—and that is having the boss look down and say: You just got promoted in the military? People over you judge your work product.

Let me just say this. It is not a military justice problem here. The reforms we are going to engage in are historic, and they will be the model for systems in the future. Very few people can afford what we are about to impose upon the military because we are going to make this a priority and we are going to assign judge advocates to victims. There is no other State in the Nation that will be able to handle this and will have something of which we can all be proud. We are going to hold commanders more accountable.
Here is the essence of the argument: We have to take this out of the chain of command because there is something defective about the commander; because the commander doesn’t have the ability or they have a bias against victims, who no longer can trust them to do the right thing.

That, to me, is an indictment of every commander in the military. That, quite frankly, is not what we should be doing or saying given the track record of how our military has performed.

In the area of sexual assault, the problems we see in the military are all over the country; they are just talked about more in the military. The people in the military should be held to the highest standard, but we will fix no problem in the U.S. military if we deal that commander out.

Ms. AYOTTE. Would the Senator yield for a comment? Looking at the facts, the evidence we have reflects that commanders are bringing more cases, are pursuing more cases than those recommended by their JAGs in sexual assault cases.

We received a letter from ADM Winnefeld, Deputy Chairman of the Joint Chiefs of Staff, basically pointing out that there were over 90 cases where commanders had a different view than their JAGs that a case should go forward. Guess what. Convictions were had and people held accountable.

Mr. GRAHAM. There are situations where joint jurisdiction lies—the military has jurisdiction, the civilian community has jurisdiction. There have been cases where the civilian community went first. There were 49 cases in the Army where the civilian community decided not to prosecute on a sexual assault and the Army took it up and they got an 81-percent conviction rate. In the Marine Corps, 26 cases were turned down by the civilian community—the Marine base was and they went to court with a 57-percent conviction rate. In the Navy and in the Air Force, it is the same. We see a civilian jurisdiction saying no to the case and the military saying yes, we are going to go to court. And that is because there is a difference between what the civilian community is trying to accomplish and what the military community must be trying to accomplish; that is, to let the troops know there is certain conduct that is out of bounds; that is, that even worse, you are going to pay a potential price.

Having said that, please do not blame sexual assault problems in the military on a broken military justice system because that is not the case. Dr. Coburn—commanders are not telling the lawyers to take a hike. The cases the lawyers recommend to go to trial actually do go to trial.

Juries in the military are not juries of one. This is not a civilian system. Everybody who goes to trials as an enlisted man is judged by officers. You can request one-third of the military jury to be enlisted members, but they will be the most senior people on the base.

Please understand that military juries are not constructed the way civilian juries are. They are told to be fair, and they do their best to be fair. But it goes to the notion of how the military works. The only person in the military entitled to a trial of the equivalent rank is an officer. An officer cannot be tried by people of lesser rank. That may sound unfair, but in the military sense, it doesn’t. Officers eat in one corner of the base and enlisted people eat in the other corner of the base not because they hate each other. They admire and respect each other. This chain of command, these lines of authority make us—Mr. President, I ask unanimous consent for 1 additional minute.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. GRAHAM. This unusual situation for most Americans works in the military. It may not sound right to most, but it works because the military is about when you are ordered to do something, you answer the order; you don’t debate. So if we don’t elevate the commander to have the tools available to make the right decisions, and if we don’t instill those below the commander to follow, it all breaks down. When a commander lets the troops down—and they do sometimes—fire the commander. Don’t take away the authority of the commander to win wars that we will inevitably fight. This is not a civic organization. This is a military organization. This is a situation where one person can choose to send another person to their death. That person is the commander, and there are plenty of checks and balances.

Ladies and gentlemen, sexual assault is a problem. But for God’s sake, let’s not tell every commander in the military: You are fired. You are morally bankrupt. You are incapable of carrying out the duties of making sure that justice is served in these cases.

The PRESIDING OFFICER. The Senator’s time has expired.

The majority leader is recognized.

Mr. REID. Mr. President, I ask unanimous consent that the motion to recommit be withdrawn; the pending Levin amendment No. 2123 be set aside for Senator GILLIBRAND, or designee, to offer amendment No. 2099 relevant to sexual assault; that the amendment be tabled; and the opponents of the Gillibrand amendment, the McCaskill-Ayotte amendment, all pending amendments be withdrawn and the Republican manager, or his designee, be recognized to offer the next amendment in order, followed by an amendment offered by the majority side, and that the two sides continue offering amendments in alternating fashion until all amendments are disposed of.

The PRESIDING OFFICER. Will the majority leader modify his UC?

Mr. REID. Mr. President, we went through this yesterday. I reluctantly object.

The PRESIDING OFFICER. Objection is heard. Is there objection to the majority leader’s request?

Mr. COBURN. Reserving the right to object.

The PRESIDING OFFICER. The junior Senator from Oklahoma is recognized.

Mr. COBURN. This is a very important bill for our country in terms of authorizing the defense of this country. Many of us have relevant amendments—amendments outside the scope of this bill, but relevant amendments—which will actually markedly improve the way we conduct policy in the Defense Department. Without the assurance that those amendments are going to be able to be offered—they can be tabled, but without that assurance, it makes it difficult to agree to a consent not knowing whether or not we will have the opportunity to represent the people we represent in offering amendments which will make positive improvements to this bill.

So I put forward that we are really not conducting the business of the country if we are limiting the ability...
of Members of the Senate to offer amendments. Absent that guarantee, I will object.

The PRESIDING OFFICER. Objection is heard.

Mr. REID. Mr. President, we have 350 amendments which have been filed on this bill. I know every person who has filed an amendment feels entitled to offer that amendment. I just think we are not in a position to deal with this for all the reasons we have talked about, and some more. We are not seriously legislating anymore.

We can pass the blame to anyone we want, but we have tried all kinds of things. How about so many amendments on each side? We have done that before. It is not anything unique. We have done that lots of times in the past. It doesn’t work. How about 13 amendments? No. It won’t work because we want more amendments after that.

So I understand, and I am not denigrating anyone’s intent. I know the intentions are good. The record reflects how I feel about this bill. I am sorry we are at the point we are. Couldn’t we at least have everybody vote on this amendment which people have spent days on, and we know we are working on? It doesn’t matter how we feel about what has been done, but there has been tremendously important work done on the sexual assault issue, and we should at least have the opportunity, with the work that has been put into this, to have a vote. No one is disenfranchised by doing that—or move to try to figure something else out after that. But, gee whiz, couldn’t we do that? Otherwise, we will walk away not having done anything on this. I think that is just so unfair to the people who worked on this.

I know other people have worked hard on their amendments. But I have to say, in the last year or two, no one has worked harder on amendments than the proponents and opponents of this amendment.

So having said that, I ask unanimous consent that we move to a period of morning business for debate only until 7:30 p.m. tonight.

The PRESIDING OFFICER. Is there objection? The Senator from Michigan.

Mr. LEVIN. Is that a unanimous consent?”

The PRESIDING OFFICER. The majority leader is recognized.

Mr. REID. I am sorry.

Mr. INHOFE. I reserve the right to object.

Mr. REID. I would say, while they are reserving the right to object, there is still time left. With the tentative agreement we had, which was just kind of a handshake, there would be 6 hours, and that is still time left on that. So that time for debate only, that time could still be used.

The PRESIDING OFFICER. Is there objection to the request?

Mr. COBURN. Reserving the right to object.

Mr. INHOFE. Reserving the right to object.

The PRESIDING OFFICER. The junior Senator from Oklahoma is recognized.

Mr. COBURN. First of all, the amendment we are talking about isn’t pending because the tree has been filled. So we don’t even have an amendment pending. Seventy-six times the majority leader has filled the tree, more than twice as often as the rest of the Senate majority leaders in history.

Last year, under Senators LEVIN and McCaIN’s leadership, we considered 125 amendments or thereabouts, some in a manager’s package with others. There were over 300 amendments offered. The average length of time to consider this bill is about 2½ weeks. We have had it up less than 1 week, and the fact is this is the consideration for an authorization bill in excess of $500 billion, and we are not going to have amendments on it.

So there is not a unanimous consent that I will agree to, until we agree to open the Senate to allow Members to offer their ideas. Table them. The fact is, if we run this just like we did last year, we will be through with this in 5 to 7 days. If we continue to do what we are doing now, we won’t finish it, and it won’t be because we don’t want to finish it. It will be because we won’t have the opportunity to have input into the most important discretionary spending in this country.

The PRESIDING OFFICER. Is there objection?

Mr. INHOFE. Reserving the right to object.

The PRESIDING OFFICER. The senior Senator from Oklahoma.

Mr. INHOFE. I think when we are going through an exercise like this there are some people who want to have their program on a must-pass bill in order to get something through. The junior Senator from Oklahoma made it very clear that he is talking about something he feels is relevant to the defense of this country, and that it is sound and reasonable.

What I would like to suggest to the majority leader and to my very good friend with whom I have worked for many years, the chairman of the committee Senator LEVIN, is that we can qualify and work on a UC which would either use the words germane, relevant or related, in some way so that those amendments—which have nothing to do with defending America—might be able to be considered in some form, maybe a limited form. I would like to be able to sit down and see if something like that can be worked out before giving up.

The PRESIDING OFFICER. Is there objection? The majority leader.

Mr. REID. I know there is a unanimous consent pending. I have no problem in the world with continuing to work to see if we can come up with something. We have tried. It is not as if we have not tried. But my disappointment is that we are just not doing any legislating here, and people can bring the blame to me all they want. We can get into all kinds of statistics that we want about what has happened in years past and why it has been necessary to fill the tree, but that doesn’t accomplish anything. Everyone knows what is going on around here. So I am not going to get into a he said, they said situation.

I know the two managers of this bill want to get something done. Let’s give them the time it takes to get that done.

So my consent is pending, and I would like the Chair to rule on that.

The PRESIDING OFFICER. Is there objection to the request?

Mr. COBURN. I object.

Mr. REID. I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. REID. Mr. President, I ask unanimous consent the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. REID. Mr. President, I renew my request that was just denied.

The PRESIDING OFFICER. Is there objection?

Mr. REID. I also add to that that I be recognized at 7:30.

The PRESIDING OFFICER (Mr. BLUMENTHAL). Is there objection?

Without objection, it is so ordered.
THE DOOLITTLE RAIDERS

Mr. BROWN. Mr. President, it is with pride and humility that I stand and thank my colleagues for passing S. 381 by unanimous consent last night. Once passed by the House and signed by the President, this bill will award Congressional Gold Medals to the surviving World War II heroes we know as the Doolittle Tokyo Raiders.

The effort to pass this measure has been a personal one to me. I thank 78 of my colleagues who have cosponsored the measure. It proves that the Senate can still reach consensus. I especially thank Senator BOOZMAN, who is my original Republican counterpart, in introducing this bill in February. Also, original cosponsors Senator MURRAY and BAUCUS and TESTER and NELSON and CANTWELL and SCHATZ—original cosponsors.

I wish Senator Lautenberg, also an original cosponsor and close personal friend, the last World War II veteran in the Senate, were here today to see its passage.

My special thanks to Senator CORNYN for his work on this and especially Senator AYOTTE. They have my personal thanks for helping to bring so many Republicans to sponsor this bill with us.

Many of you know the story of the Doolittle Raid. More than 71 years ago, following the attack of Pearl Harbor just 4 months earlier, 80 brave American airmen launched a mission that would become our Nation's first offensive action against Japanese soil in the Second World War. They volunteered for what was called an “extremely hazardous” mission without knowing at the time what it actually entailed. Under the leadership of LTC James Doolittle, the raid involved launching 16 U.S. Army Air Corps B-25 Mitchell bombers from the deck of the USS Hornet, a feat that had never been attempted before.

On April 18, 1942, again just a few months after Pearl Harbor, 650 miles from its intended target, the Hornet encountered Japanese ships. Fearing the mission might be compromised, the raiders decided to launch 170 miles earlier than anticipated. These men accepted the risk that they might not have enough fuel to make it safely beyond Japanese-occupied China. The consequences meant the raiders would become our Nation’s first offensive action against Japanese soil in the Second World War. They volunteered for what was called an “extremely hazardous” mission without knowing at the time what it actually entailed.

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