

THE FORTY-FIRST KENNETH J. HODSON LECTURE IN CRIMINAL LAW¹

* Congresswoman Loretta Sanchez represents California's 46th Congressional District. She began her congressional career in January of 1997 and is currently serving her ninth term in the U.S. House of Representatives.

A recognized leader on military and national security issues, Representative Sanchez is the second-highest-ranking Democrat on the House Armed Services Committee. She serves as the Ranking Member of the Tactical Air and Land Forces Subcommittee, where she is working to prepare Armed Forces for a new generation of security challenges. Representative Sanchez is also a senior member of the Subcommittee on Strategic Forces, where she served as Ranking Member during the 112th Congress. Representative Sanchez is a leader in securing non-proliferation programs funding. She works to implement missile defense systems that are effective and efficient. Democratic Leader Nancy Pelosi appointed Representative Sanchez to the prestigious Board of Visitors of the U.S. Military Academy at West Point and Ms. Sanchez also sits on the U.S. Air Force Academy Board of Visitors.

Representative Sanchez is the leading voice in Congress for women in the military. She is founder and chair of the Women in the Military Caucus and is the highest-ranking female on the Armed Services Committee. Representative Sanchez championed efforts to allow female service members to serve in combat roles. She has implemented significant measures to fight sexual assault in the military, successfully updating outdated sexual assault provisions in the Uniform Code of Military Justice. She also led the legislative effort to implement a sexual assault database in the 2009 National Defense Authorization Act, Public Law 110-417, and to mandate rules for use of rape kit examinations. Representative Sanchez fought for better accountability of commanders by requiring commanders to conduct climate survey assessments in order to ensure healthy environments for service members. She has been a leader in improving oversight of sexual harassment cases in the military through thorough records of substantiated sexual harassment cases.

As a member of the House Homeland Security Committee and Subcommittee on Border and Maritime Security, Representative Sanchez provides strict oversight on important security issues, including the Transportation Worker Identification Credential (TWIC) card program and the US-VISIT Program. She guided key maritime security provisions through Congress in the Security and Accountability for Every Port Act (Safe Port Act) in 2006. She is also a member of the Subcommittee on Counterterrorism and Intelligence.

A product of public schools and Head Start, Sanchez is a graduate of Chapman University and American University's MBA program. Before serving in Congress, she was a financial manager at the Orange County Transportation Authority, an assistant vice president at Fieldman, Rollap and Associates, and an associate at Booz, Allen, and Hamilton. Congresswoman Sanchez is married to Lieutenant Colonel (Retired) Jack Einwechter. They have a son serving in the U.S. Army.

¹ This is an edited transcript of a lecture delivered on April 23, 2013 by Congresswoman Loretta Sanchez to members of the staff and faculty, distinguished guests, and officers attending the 61st Graduate Course at The Judge Advocate General's Legal Center and School, Charlottesville, Virginia. Established at The Judge Advocate General's School on 24 June 1971, the Kenneth J. Hodson Chair of Criminal Law was named after Major General Hodson, who served as The Judge Advocate General, U.S. Army, from 1967 to 1971. General Hodson retired in 1971, but immediately was recalled to active duty to

CONGRESSWOMAN LORETTA SANCHEZ*

Good morning, General Chipman, General Miller, General Darpino, General Cuthbert, Colonel Carpenter, faculty, students, judges, and friends. It is an honor to present the Hodson lecture in military justice.

I believe that I am the first non-lawyer to present this lecture, but don't worry because I have seen many episodes of *Law and Order*, *NCIS*, *JAG*, *CSI-Miami*, and I slept at a Holiday Inn Express last night. I am also married to a retired Army JAG, who formerly served as a professor at this wonderful institution.

Since 1997 I have visited American Soldiers, Marines, Airman and Sailors in many remote and dangerous places, including the Horn of Africa, Afghanistan, Iraq, and the jungles of Columbia with the Army Special Forces. I know what you do for our Country, and I have seen the hardships, the mortal threats, the risks that you face. I have also seen the sacrifices your families endure in these times of war. I am truly honored and privileged and humbled by the service that you have given to our country. So, I want to begin by thanking you for all you do.

I come before you at a very critical time in our nation. It is time of war and dynamic change in the United States military. We are living in an age of unprecedented threats, when our forces have been in combat for over twelve years. And we have seen dramatic changes in our military, in warfare, in the means and methods of war, in the way we organize, in the way that we fight our wars.

One example of such change is the repeal of the gender-based Combat Exclusion Policy, which we hope will end what I call the "brass ceiling" of the military. This change was not an exercise in social experimentation. Like you, Congress is committed to a strong and ready and effective military defense capability. Repeal of the Combat Exclusion was done to enhance our military readiness in recognition of the heroic contributions of women warriors, especially during the last twelve years of conflict. It has been said that "truth is the first casualty

serve as the Chief Judge of the Army Court of Military Review. He served in that position until March 1974. General Hodson served over thirty years on active duty, and he was a member of the original staff and faculty of The Judge Advocate General's School in Charlottesville, Virginia. When the Judge Advocate General's Corps was activated as a regiment in 1986, General Hodson was selected as the Honorary Colonel of the Regiment.

of war.” Well, I would say that war has a way of exposing essential truths and purging entrenched prejudices.

The Army led the way in integration of the races in World War II, setting an example for our nation and enhancing the readiness of the force. In the same way, the change to the Combat Exclusion Policy will ensure that female soldiers are co-equal in the American defense forces. In that regard, I am proud to share the stage today with General Darpino, who I believe is the first female Commander of this Legal Center and School. Thank you, General, for your example to all of our troops.

As the senior woman on the House Armed Services Committee, nothing has been more important to me in this Congress than the matters that affect the readiness, morale, good order, and discipline of our Armed Forces. “Discipline is the soul of the Army,”² and I believe that military justice and the JAG Corps play a critical role in maintaining that discipline and that readiness. Those of us who work on military justice in Congress look to the JAG Corps as a partner, a source of reliable information, and our best hope for maintaining the military justice system that is worthy of our American values.

We are here today to speak frankly about the current state of military justice and the growing belief among many of my colleagues in the Congress that fundamental changes to military justice are needed to address the specter of sexual assault and sexual harassment in our military workplace. You are all familiar with the troubling statistics the Department of Defense (DoD) estimates that there are about 19,000 rapes a year in our military forces.³ That’s over fifty a day, and that is unacceptable.

A Soldier today, even in a time of war, is more likely to be sexually assaulted than to be killed or wounded by hostile forces. And yet we also know that less than twenty percent of sexual assaults are reported. Why is that? It is because victims do not believe that they will get justice, and criminals do not believe that they will be punished.

² George Washington. “Discipline is the soul of an army. It makes small numbers formidable; procures success to the weak, and esteem to all.” Letter of Instructions to the Captains of the Virginia Regiments (29 July 1759).

³ See *Military Sexual Assault Epidemic Continues To Claim Victims As Defense Department Fails Females*, http://www.huffingtonpost.com/2012/10/06/military-sexual-assault-defense-department_n_1834196.html.

I know that we have confirmed these numbers through countless surveys, studies and anecdotal evidence. Many want to compare these statistics against the criminal justice statistics in civilian jurisdictions. Comparisons to civilian criminal justice systems may yield some useful insights; but there is a strong sense that military justice can, should, and must do better than the civilian world. You have the tools and the resources to do better, and the national security of our nation demands that you do better. This is not a woman's issue; it is a commander's issue, it is a leadership issue, it is your issue. It is your issue because it is your duty is to enforce and defend the law and you are responsible for the welfare of every soldier entrusted to you by the American People.

A series of high-profile sexual assault cases and the military response have caused some to lose confidence in the military justice system. Like it or not, the entire concept of a command-driven military justice process is now under intense congressional scrutiny. The purpose of this lecture is to offer you a current congressional perspective on military justice reform; to reason with you, as partners, about the process and the goals of such reform; and to challenge you to be responsible guardians of military justice, leaders of change in military culture and true partners with the Congress for the positive evolution of American's military justice system.

Let us review some essential background. How did we get here? Let us talk about how and why Congress is so focused on these issues. Since 9/11, the military departments have been called upon once again to do our nation's heavy lifting. You have been ordered into combat, into nation-building, direct action missions, detainee operations, military commissions, and countless other roles. You have been tested, scrutinized, criticized, and lavished with enormous appropriations and many well-deserved honors and recognition. All of that attention has also brought intensified congressional oversight, judicial scrutiny, and public interest in the welfare and the readiness of our forces.

Reports of sexual assault among our deployed forces and the controversial military commissions' process have focused enormous attention on our military justice system and the court-martial process. It is fair to say that scrutiny of military justice is greater now than at any other time since the inception of the Uniform Code of Military Justice (UCMJ) in 1950.

Sexual assault in the ranks has been an area of long-term interest to the Congress. This interest has often spiked in the wake of high-profile cases, such as the Tailhook scandal in 1991, systematic abuse of AIT trainees at Aberdeen Proving Ground in 1996, and reports of chronic sexual harassment and rape at the military academies in 2003. In 2004, we began to hear about assaults on our military women while deployed in OIF and OEF. This problem became a national scandal at the same time that we were hearing about prisoner abuse at Abu Ghraib, and congressional interest in military justice began to increase. These reports shook our confidence in military culture and discipline and caused intense interest in the response of commanders, prosecutors, and victim support systems.

What followed was a period of intense congressional and DoD focus on military justice and discipline. Department of Defense leaders acknowledged that there was a systemic, cultural problem of sexual assault and harassment in the ranks. And with the nation at war and facing such threats, military discipline and readiness took on a new urgency in our public discourse. Pressure for decisive action mounted on all sides, and both the DoD and Congress took steps to investigate the problem and to put in new measures to fight the internal threat of sexual abuse.

The period from 2005 to 2012 saw a broad range of legislative and executive initiatives to strengthen military sexual assault investigation, prosecution, and our victim support. Legislative and regulatory actions during this period addressed the revision of UCMJ Article 120; victim assistance programs; sexual assault prevention and response programs; a victim assistance evidentiary privilege; transfer of victims in appropriate cases; enhanced victim support services; creation of SAPRO in the Office of the Secretary of Defense (OSD); various training, database and reporting requirements; SAFE exam procedures (i.e., rape kits); special victim units; new command policies at the military academies; withholding of disposition authority in sexual assault cases to the special court-martial convening authority level, and other reforms and initiatives. You saw real and significant changes in law and policy over the past 10 years.

A great deal of systemic progress has been made, and we have seen some dramatic success in individual cases. We want to see these reforms take hold. I am encouraged, in particular, by the Army leadership in the implementation of real and effective special victim investigator and prosecutor teams. This is a tremendous program and I salute your

efforts. In fact, we liked it so much that the Congress mandated it in last year's National Defense Authorization Act. It is a model for all of the military services, and even civilian jurisdictions can learn from it. It is so great that eventually I expect that it will be a TV series (laughter).

So a great deal of work has already been done. Much of it is first class. And I believe if we give these reforms a chance to take root, that they will bear fruit. There are some statistical indications that the rate of victim reporting in the military has begun to increase. And I am familiar with specific cases where the Army SVU teams have done marvelous work, and they have achieved a standard of justice in many cases.

A year ago, my colleagues and I began to feel that these changes were actually making a difference. Then we got the reports from Lackland Air Force Base (AFB) of widespread sexual abuse, assaults, harassment.⁴ Those reports landed in Congress with the force of a Joint Direct Attack Munition. It was, frankly, a very discouraging event for me. I flew to Lackland AFB, and I met with commanders and JAGs and investigators to see firsthand about these reports.

Ladies and gentlemen, over the years I have staked my reputation as a leader in this policy debate on the belief that we could work within the structure of the UCMJ, making significant adjustments while avoiding a radical reengineering of the military justice system. That is what I have been working toward. I also believe that military leaders were taking this crisis to heart and backing up their rhetoric with real reforms. I believed that in time, with the changes we had put in place, we could change the culture of the military, gain the initiative against sexual assault in the ranks, encourage victims to report, and ensure that sex offenders would be punished and would be eliminated from the ranks.

The Lackland cases embolden those who had been advocating for more radical change to the military justice system. And they have made it difficult to believe that we have made real progress in reducing sex crimes, increased reporting and prosecution rates in the twenty years since Aberdeen. In short, it has become harder to defend this military justice system in its present form. Then things got even more complicated in March 2013 when a GCMCA in Europe seemed to abuse

⁴ See *31 Victims Identified in Widening Air Force Sex Scandal*, CNN.COM, <http://www.cnn.com/2012/06/28/justice/texas-air-force-scandal/> (last visited Mar. 13, 2014).

the Article 60 provision by reversing the conviction of a duly convicted officer who had attacked a female civilian nurse at Aviano Air Base in Italy—against the advice of his JAG, I might add. I realized that this was an aberration, but I cannot exaggerate the combined effect that these two incidents had on the opinions of my colleagues in Congress. Now, when leaders testify that there is a zero tolerance for sexual assault, there was new skepticism among congressional leaders.

The *Wilkinson* Article 60 case convinced many that not only do some senior leaders tolerate sexual assault, but they will go to extreme lengths to protect predators.⁵ The *Wilkinson* case was the final straw for many members of the House and Senate, and we have seen the legislative response. We have seen dozens of new bills by my colleagues, both in the Senate and in the House. We have seen Secretary Hagel and various members of the Congress proposing to terminate the convening authority's power to reverse findings, except in summary courts. It has reinvigorated the discussion about possible structural reforms of military justice--from proposals to elevate disposition authority in sexual assault cases to the GCMCA level, to more robust reforms, such as taking disposition authority away from commanders and giving it entirely to JAG prosecutors or creating a centralized chief sexual assault prosecutor in the Pentagon. Some have advocated turning the entire system of military felony prosecution over to civilian jurisdictions.

This is the situation in which we are gathered today. Today there are a host of proposals pending in Congress to modify the military justice process. When I survey many of these proposals, I think about the old saying that “hard cases make bad law,” and I am deeply mindful of the perils of hasty legislation. I recoil from the reactionary impulse to do radical restructuring, when so many excellent reforms are taking root and moving forward. My colleagues and I want to do the right thing. Nobody goes to Congress to do the wrong thing. The way to get this right is by getting you to help us get it right. We need the JAG Corps to partner with us to keep the UCMJ legislation reform on the right track. We know JAGs have played a valuable and sometimes heroic effort during the debates over interrogation policies, torture, commissions, detainees, etc.—you have helped us. We need your help now.

⁵ Molly O'Toole, *Hagel Orders Military Sexual Assault Case Review As Controversy Comes to Congress*, HUFFINGTON POST POL., Mar. 13, 2013.

So let us turn to the main topic: the process and goals of UCMJ legislation reform and oversight. I firmly believe that the Congress and military leaders must work together on the basis of shared values and goals in order to maintain the effectiveness and the excellence of the military justice system. This vision of collaboration has not always been realized. Too often there have been antagonisms between the military departments and the Congress. This has to end. A lack of cooperation between the military departments and the Congress undermines intelligent reform and sometimes leads to bad law. Allow me to recommend this morning some ground rules for the process.

First, you must understand and embrace Congress's role in UCMJ reform. Article 1, Section 8, says "the Congress shall have power to raise and support Armies, to provide and maintain a Navy, to make rules for the government, and regulation of the land and Naval forces, and to make all laws which shall be necessary and proper for carrying into execution the foregoing powers."⁶

Under the Constitution the war-making power and the responsibility of raising Armies and Navies is shared by the legislative and executive branches. Yet, the power and responsibility for writing the rules to govern military justice is explicitly allocated to the Congress. As such, we are the architects and guardians of the military justice system. The President is the Commander in Chief, and his commissioned officers have the duty to execute the law and serve as responsible and conscientious custodians of our military justice system.

Congress recognizes that the responsibility of reforming the UCMJ is and should be a shared and collaborated responsibility. It is reflected in Article 36, which delegates to the President critical rule-making power under the UCMJ.⁷ It is reflected in Article 146, which mandates a Joint Services Committee whose responsibility includes making proposals for UCMJ reform.⁸ The power to make law implies the power to oversee its execution and implementation, because legislation is a perpetual cycle. This is called congressional oversight.

Congress has authorized and created courts-martial through the UCMJ, and we will modify the UCMJ if Congress believes it is

⁶ U.S. CONST. art. 1, sec. 8.

⁷ UCMJ art. 36 (2012).

⁸ *Id.* art. 146.

necessary for the good order and discipline of the force and the defense of our nation. Congress does the work on military justice mainly through our annual authorization bill. Bills proposing changes to the UCMJ are vetted through the committee process, which includes requesting DOD to comment on the legislation, hearings, and reports. Hearings are not just political theater. We learn a lot in hearings if they are done correctly. We learn even more if we can get the essential information we need from the experiences of the people who are before us testifying. They shape our attitudes toward the reform. In order for the process to work well, there has to be an established relationship of trust.

Second, we must forge the relationship of mutual trust and respect between Congress and military leaders. Our public and constitutional responsibilities demand that we act, at all times, for the good of our nation. We must respect each others' views and treat every proposal with comity required by the separation of powers and constitutional roles, both the Congress and the Executive Branch. True, some proposals reflect a profound misunderstanding of military justice, but this should be reviewed as an opportunity to educate. Most members of Congress are eager to learn, open to persuasion, and they want to get it right. But it helps if a rapport has been established through mutually respectful engagement over the long haul. Make no mistake about it, Congress is a formidable power, and politics is a brutal battleground that can distort the goals of reform. You cannot afford to simply circle the wagons and hope that we will go away. Congress is a formidable partner, and it can also be a formidable challenge.

When legislative proposals from Congress are not taken seriously, law reform can sometimes be derailed. For example, when I initiated the proposal to reform Article 120 in 2004, my proposal was pretty simple. I said, "Let's base it on the sexual assault provisions in Title 18, U.S. Code, and use the civilian examples we have." The federal government and thirty-seven states have the same system for over 25 years, which meant we could carry over case law. My proposal did not exceed five pages, double spaced. But instead of partnership and collaboration, the Joint Service Committee opposed any reform of Article 120. They came to my office to explain all the reasons my bill was bad. What they did not count on was the determination among my colleagues to reform Article 120. And so the result was a hastily drafted alternative to my bill, which sailed through the Congress despite its confusing complexity and legal defects. After military courts ruled the double burden-shifting provisions unconstitutional, Article 120 was amended last year, making

it a little bit closer to my original bill. Cooperation with my original proposal, modeled on Title 18, might have avoided all this trouble, appellate litigation and legislative correction.

The most important lesson from that experience is that we must come together in the spirit of shared values and agree on what our goals for sexual assault prosecution should be. Let us agree on how to measure progress. What are the milestones? What is the measuring stick? Let us collaborate to develop programs that we believe will improve the system. We must discard the model of an angry Congress dictating radical reforms and embrace a two-way street where everyone participates in a sound policy development.

Third, we must approach the task with caution and due deliberation. This means we must lead, and not merely react to the latest horror story and the 24-hour news cycle, with all of its exaggeration and inevitable distortion. A reactionary approach leads to bad law most of the time. Instead, we should learn the facts, collaborate, reflect, deliberate, work together to solve systemic problems; and we must look at the issue strategically, not merely react to one problem at a time.

I am suspicious of any broad structural changes to the UCMJ as the solution to enhance prosecution of one category of offenses. Every justice system has bad verdicts or decisions that cause public outrage. But this is when we see the difference between true statesmen and mere politicians. True statesmen resist knee-jerk legislation, hasty restructuring of the system, and unfair denunciations of all commanders. Likewise, military leaders should not circle the wagons, indulge in denial or defend the indefensible.

I honestly believe that Congress needs to exercise what I call “strategic patience” in pursuing this reform of the UCMJ. We need to give reforms already implemented time to work to see if they solve the problem. What if we make major structural changes to the UCMJ and then we have another Aberdeen, another Lackland, something else happens like that? Should we then conclude that the reform was a failure or should we go on to another reform? Is that what we should do--one reform after another in an endless cycle of scandal and reform? No. We have to avoid this reactionary spiral and proceed more deliberately, because there is too much at stake to make hasty decisions and bad legislation; and I hope that we can agree on these process concerns.

Sexual assault, like any crime, is a fact of life that we must always fight and strive to prevent. We must understand its causes and learn how to control it effectively. Any population of young people far from home, under pressure, with healthy (or unhealthy) libidos, and occasional doses of alcohol will fall into sexual trouble. It is biology. We see a similar problem with sexual assault rates on college campuses. Also, to be fair, reporting of sexual assaults is a serious problem in all jurisdictions, and investigation closure rates and conviction rates are notoriously low in civilian as well as in military jurisdictions. Yet as the Lackland case reminds us, the problem of sexual assault can be particularly pernicious in a military setting where victims may be subject to the command of the perpetrator.

So we must continue to work for victims and for justice so that our land, air, and naval forces are ready to defend our nation. The goals for additional legislative reform and executive action fall under four broad headings.

Protecting the victim is an area of urgent concern and one of the areas where you can have a tremendous impact. I have to tell you, I've had women come in and tell me that they have gone to the hospital and that there is a military doctor there and half of them do not know how to do a rape kit. They were reading the directions for the first time. I had one tell me that she could hear behind the screen the doctor throwing a fit to another doctor that he even had to administer this. So we have to educate, train, and resource our victim support systems. Commanders have to embrace the responsibility to protect the soldier from sexual predators before and after a crime occurs. Punishing the criminal or transferring the victim to another unit may cause a difficult challenge for a unit; but failing to do those things will have a devastating impact on victims and combat readiness.

We need to do justice and deter crime. Notice that I did not simply say "punish the guilty." We must always preserve the rights of the accused. Americans are innocent until proven guilty. Doing justice means thoroughly and fairly investigating and trying these cases so that the guilty can be punished according to the offense and their individual culpability. False accusations, overcharging, or the rush to judgment can do tremendous harm to those accused of sexual assault. I worry that all the talk of "zero tolerance" and stripping commanders of Article 60 power could actually have a chilling effect on the appropriate exercise of

discretion and clemency, and I worry about unlawful command influence, writ large.

I am always amazed that people who are ordinarily defense-oriented in criminal matters, suddenly become like Inspector Javert in *Les Misérables*, where the crime involves sexual assault, becoming determined to punish without any regard to the rights of the accused. Similarly, some oppose military commissions and demand that Al Qaeda suspects be tried by regular courts-martial, because they profess to trust the UCMJ; but when it comes to American servicemen accused of sexual assault, these same people flip-flop and declare the UCMJ and the military justice system incompetent!

While such excessive rhetoric is troubling, please do not paint all of my colleagues with the same brush. What I advocate is evenhanded justice for victims and the accused alike. There are many verified stories of victims who were disappointed by the military justice system or mistreated by commanders. There are also stories that get less media attention of accused soldiers who are mentally, professionally, and financially devastated by false accusations of sexual assault or harassment. Military justice must meet both challenges effectively.

Another important factor is the preservation of command authority under the UCMJ. I have opposed radical restructuring of military justice because I know, from many years of legislating, that attempts to reengineer government systems, especially as a hasty response to a perceived crisis, are fraught with unintended consequences and rarely live up to their asserted expectations.

Military law has grown organically from centuries of experience. The UCMJ was forged through years of congressional and executive deliberations and accumulated wisdom of the greatest generation of Americans. Since 1951 it has been reformed in important beneficial ways, especially in the 1968 reforms, to make it the best military justice system in the world. Major General Hodson, for example, for whom this lecture is named, was influential in the passage of the 1968 legislation.

While some of my colleagues disagree, I still believe the commander is and must be the principal authority of military justice. This is rooted in one of the cardinal principles of war, unity of command. It is also consistent with the vital principle of command responsibility, and it reflects the realities of military organizations. We must be wary of any

proposal that would undermine command authority to maintain the cohesion, the readiness, and the discipline of our forces. Commanders must remain responsible and accountable for the readiness of any unit anywhere, at anytime, anywhere in the world. I doubt that, if we strip commanders of that responsibility, we can effectively hold them accountable for good order and discipline in other matters.

Proposals to centralize prosecution authority and functions in a chief legal officer at the staff judge advocate level are also, in my view, not likely to improve the investigation and prosecution of sexual offenses in the ranks for several reasons. First, military justice must remain command-driven. The commander sets priorities in a military organization. If good order and discipline is not a primary command mission and responsibility, a lawyer-driven justice program will not flourish in the military.

Second, military justice has to be portable. A chief sex crimes prosecutor located in the Pentagon, as some legislators would propose, is less likely to be effective in handling local crimes involving local witnesses, crime scenes, and evidence, especially in overseas combat zones.

Third, removing commanders from the disposition decision will undermine the quality of those decisions. I believe that the close interaction between the commander and his SJA or trial counsel produces a better disposition decision than a lawyer acting alone. The preparation required to advise the commander and the commander's independent judgment improves the legal advice given, and it offers the benefit of the give-and-take deliberation that goes on between two people.

The assumption that commanders are ignoring legal advice is not correct most of the time. And, thus, removing the commander from the disposition decision will not yield more positive results in processing sexual assault cases. While measures to enhance JAG authority in disposition decisions may have some merit, the commander must remain central to the process. By the way, that is not to say that proposals to curtail command authority in military justice matters should be automatically dismissed. We are going to take a look at such proposals, and I promise you that that is being actively looked at right now in the Congress.

Finally, we arrive at what I consider to be the heart of the matter, changing the military culture. When all is said and done, we must make positive changes to military culture. My commitment to cautious reform is a matter of legislative philosophy and seventeen years of legislative experience. I believe that we have a fundamentally sound military justice system under the UCMJ and the *Manual for Courts-Martial*. I also believe that there are ways to improve it and that close legislative oversight must continue. However, I do not believe that military justice is working as well as it should in the area of sexual assault reporting, investigation, and prosecution. I believe the source of this systemic failure lies not in the basic structure of military justice but in institutionalized attitudes of apathy, sexism, and some dereliction of duty with regard to caring for our soldiers.

My belief in the need for cultural change is based on hearing the stories of thousands of victims and working on this problem for the past two decades. Law reform alone will never solve the problem of sexual abuse in the ranks until the culture of the military changes. Commanders, military police, and JAGs must make the law a living and a powerful agent of change.

We have given you a military justice system with all of the tools and resources you need to succeed. We have given you the finest training of any military in the history of our world. We have created the most educated officer corps in the history of the world. We have given you military budgets larger than the military spending of all of the rest of the nations in the world. We have given you our sons and our daughters. There is no excuse for thousands of sexual assaults in this prior year, not one. We should not have them in the military, and it has got to end.

How do we change military culture in a way that will help solve that problem? We cannot legislate cultural change, but the prevention and the response to sexual assault in the ranks could change tomorrow, if the Army would simply live up to the values of loyalty, duty, respect, selfless service, honor, integrity, and personal courage.

Culture change must first and foremost be led from the top of every military organization. Let us be brutally clear: No commander who really cares about his or her soldiers would ignore a report of sexual assault. No commander who really cares can leave a victim under the direct supervision of the alleged offender. No commander who really cares about the law can ignore allegations of sexual assault or sweep it

under the dayroom rug. If we really believe in Army values, then we will work to eliminate sexual misconduct and punish duly convicted offenders. There is no place in the military for sexual predators, and there is no place in the military for leaders who would fail to lead in this mission.

Second, we must continue to aggressively respond to sexual assaults, including the precursor behaviors of sexual harassment, indecent assaults, etc. I do not need to lecture you on the severe impact that these crimes have on the military organization, but somewhere the connection between the rhetoric and the military practice is breaking down too often. We all know that the Army knows how to train and lead, so do it. Ensure that every Soldier, every Sailor, every Marine, every Airman understands that this is a life-and-death issue, that victims will be respected and protected, and that offenders will be punished.

Third, we must realize the promise of full equality for women warriors. While the Combat Exclusion Policy has been eliminated, it will take time to implement and to change attitudes that prevail in combat arms organizations. You know what I am talking about—the good ole’ boy networks and, the Viking ship mentality. Some say its endemic, some say that it is needed in those units. I am here to tell you, it is not.

Finally, I believe that Judge Advocates can make a decisive difference. You can set the tone on this with your commanders. In order to deter predators, encourage victims to report, and eliminate offenders. You must make military justice work.

You all know how our democracy works when bad things happen: the media dramatizes the scandal; the Sunday talk shows spin; leaders hold press conferences; constituents call congressmen; special interest groups shift into high gear; everyone demands action. We hold dramatic hearings and demand executive accountability. The President calls the Secretary of Defense and says, “do something or you're out.” Everybody has an opinion, and everybody scrambles to offer those opinions for significant action. Legislators write bills and make speeches. On the other side of the Potomac at the Pentagon, military leaders want more soldiers, they want more weapon systems, and they need more resources. So they rush to plug the holes in the system in order to placate the political beast. What happens in Washington is often mere theater, but it

is also strategically decisive and crucial to our war fighters on the ground.

Now let us think about this from a different perspective. Imagine that last night a female soldier was raped by her sergeant. And as the sun rises over Kandahar, she feels traumatized, alone, 10,000 miles away from home, and completely shattered as a human being. Mortar rounds claim the life of a soldier on the other side of the FOB that night. Her squad leader yells at her for failing to clean her M4 correctly. Her unit is supposed to escort the convoy through IED alley on the brigade MSR; everyone is stressed, tired, and extremely busy. She does not know whom to tell.

The commander and the first sergeant are laser focused on the mission at hand. She has never spoken to either one-on-one. She does not perceive them as the warm and fuzzy guys that she needs to go and talk to. She has never spoken to a JAG. She does not know where the military police are, the chaplain is from another denomination, and the field hospital is at another Forward Operating Base.

When she thinks about reporting the crime, she realizes that it could distract them from their mission at hand, and it could cost lives. And that makes her feel guilty, and that makes her feel scared. And she heard from another friend who reported a rape back at Fort Bragg that nothing happened. And she is ashamed. So she decides that a report will have to wait. She just wants to feel safe and proud, and she probably just wants to go home.

That soldier is a soldier about whom we speak today. That soldier is the reason that I care about this issue. She is the reason why we all want to take effective action to end the prevalence of sexual abuse in the ranks. She is depending on you.

You are responsible for your soldiers; and together we are the guardians of military justice. This is not just a political or policy issue, it is not a women's issue. It is about caring for soldiers and doing justice. Caring for soldiers has become the calling of my life, and I hope that it's the calling of your life.

Thank you.