

**Military Personnel Subcommittee Chairwoman Jackie Speier –
Opening Statement
Hearing on Examining the Role of the Commander in Sexual Assault
Prosecutions
April 2, 2019**

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Video link to hearing here: <https://armedservices.house.gov/2019/4/examining-the-role-of-the-commander-in-sexual-assault>

The hearing will now come to order. I want to welcome everyone to this hearing of the Military Personnel subcommittee on the commander's role in prosecuting sexual assault cases. I have been fighting the epidemic of sexual assault in our military since 2011. We have made meaningful, if fitful, progress addressing this scourge. Survivors have more resources and there is more accountability for some commanders who would prefer to sweep assaults under the rug.

We have also made important changes to the legal process, so that it more closely resembles the civilian justice system. Commanders can no longer unilaterally throw out convictions, the "good soldier" defense is gone, though one of our witnesses suggests not all commanders are following the law, and survivors don't have to suffer through excruciating Article 32 processes that required them to endure up to 48-72 hours of cruel cross examination absent normal legal checks. These reforms have undoubtedly made the system better for survivors and more credible overall.

Yet, assault rates remain far too high—nearly 15,000 in fiscal year 2016—and reporting rates perilously low—only 32% that year. The experience of some survivors is better, but it's not good. More service members trust female and male survivors when they report assaults or harassment, but a culture of endemic retaliation and doubt persists—45% of all students who reported assault at the Military Service Academies suffered from ostracism. Too many of our servicemembers live and work in toxic cultures characterized by pervasive, unrelenting harassment and assault. Victims of sexual assault spend the rest of their lives coping with the mental and physical after-effects of their attack. Perpetrators often get off scot free, get promoted, and collect accolades. Many survivors resign from service humiliated and dejected.

I believe that the Department and services care about fixing this problem. I just think they've tied their own hands by refusing to admit current efforts aren't working. Incremental solutions are not good enough. Something here is fundamentally broken and we need to act, urgently.

Reforming this system requires balancing justice for survivors, the rights of the accused, and commanders' ability to build effective units with diverse and inclusive cultures and minimal sexual assault.

I am convinced finding this balance must involve keeping decision-making in the military but transferring the decision to try special victim cases from commanders to an independent prosecution authority. Our allies in the United Kingdom, Canada, Australia, and

Israel already exclude commanders from sexual assault prosecutions and it works. Giving a special prosecutor this responsibility would make it easier for survivors to receive just outcomes, reduce aimless prosecutions, and allow commanders to better focus on addressing and improving their units' cultures.

A special prosecutor would be better for survivors. Survivors would know that an authority not influenced by conflicts of interest, readiness concerns, or outside perceptions would decide whether to prosecute their cases. Too often those factors, not legal concerns, drive the military criminal justice process. There are countless cases of commanders abusing their power to issue favorite subordinates wrist slaps, ignore victim preference for trial jurisdiction, or who are culpable themselves. Sen. McSally's commander raped her. No one in her chain of command should've decided whether her case was prosecuted. Limiting the commander's legal role would encourage more survivors to report, to trust the system, and to believe that, no matter the outcome of their case, they had been given a fair shake.

A special prosecutor would also be better for the accused. Over the last few years, I've heard that commanders never countermand their lawyers when the recommendation is to try a case. That the commander brings charges in every case in which a survivor wants to proceed. I've heard that commanders are trying cases district attorneys would never touch.

Those are not signs of a healthy system, they are the sign of a system that has overcorrected. In which the pendulum has swung wildly to an opposite extreme. Most years, less than 5% of sexual assault cases are referred to courts-martial and, of those cases, only 20% result in successful convictions. Clearly, many commanders are far better at trying cases to dodge political pressure than they are doing the hard work of preferring charges when it's most appropriate. That approach wastes time and money and makes the system less credible.

I don't want the military to try a case every time a survivor names a perpetrator. I want the military to believe the survivor, provide them the resources they need, and investigate the offense. If there is sufficient evidence to prefer charges, then charges should be preferred. I trust military lawyers to make that determination far more than I trust commanders.

Commanders would also be freer to fight sexual assault if they didn't also serve as convening authorities. In a string of recent decisions, the Court of Appeals for the Armed Forces has raised the specter of unlawful command influence in a shocking number of sexual assault cases. They have thrown out convictions because the court believed the commander compromised proceedings by preferring charges or choosing jury members in response to political pressure. Having the commander make prosecution decisions jeopardizes convictions. And commanders' awareness of this legal risk limits their ability to vocally and actively stamp out sexual assault in their units. Loudly opposing assault today can get a conviction thrown out tomorrow.

If a special prosecutor instead determines whether to try cases, it would remove those risks. Commanders could trade something they are not experts in—making legal decisions—for what they do very well: setting tone and expectations. Commanders could more freely build and enforce their unit cultures, while still being held accountable for fixing the problem. Senior commanders could mentor their subordinates on the frontline to help them fight the problem

without worrying about legal ramifications. This isn't a slippery slope, it's a way to strengthen the foundation of military criminal justice.

Today we will be joined by two panels, including three brave survivors who will tell us about their experiences reporting their sexual assaults and the way their chain of command responded when they did. I encourage my colleagues to learn about their experiences and how the commander's role in the justice system complicated the legal response. These survivors will be joined by outside military legal experts. I'm interested to hear what they view as the military justice system's strengths and weaknesses responding to sexual assault and changes they would propose. After a quick break, we'll be joined by the top judge advocates from each service. I will be eager to hear how they think commanders can participate most effectively in the military justice process, especially given recent rulings about unlawful command influence.