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Good morning. I am Don Christensen, and until last July I served as the Chief Prosecutor for the Air Force. I served in that position for four years both prosecuting cases and supervising 18 senior prosecutors tasked with trying the Air Force's most serious crimes across the world. Frequently those crimes involved sexual assaults committed by members of the Air Force. In September I retired after 23 years as a JAG having spent my entire career devoted to military justice. I have had the opportunity see how sexual assault is handled in the military as a defense counsel, a prosecutor and as a military judge.

I want to thank Senator Gillibrand for having me here. I look forward to working with you Senator, and with members on both sides of the aisle who are advocating to provide an impartial and professional justice system for our service men and women, who risk their lives to protect our freedoms and American values.

Though the voices of those within the military who support this change aren't often heard, I can assure you they exist.

It is vital to align military justice process with American civilian justice.

We know a very small percentage of victims report, and of those few who do, 60% state they were retaliated against either personally or administratively. We know only a few hundred cases result in convictions. And we know of those convicted few receive comparable sentencing to predators who face civilian justice. Our sex offenders – these predators - know that they can commit these offenses with almost impunity. That must change.

After 23 years of seeing how our military process all to often deny justice to victims of military sexual assault while protecting predators the time for fundamental military justice reform is now. I wholeheartedly agree that reform starts with making independent military prosecutors responsible for the decision of whether serious crimes such as rape and sexual assault should be prosecuted and what those charges should be. Many Americans would be surprised to find out that somebody other than a prosecutor is making that decision.

Currently we have system of justice, unlike any other in the United States, in which a person, who is not a lawyer, and without specialized training or significant experience in military justice or criminal investigations makes these weighty decisions. For in the military, a commander serving as convening authority makes the call on whether a case will be prosecuted, what the charges will be and who sits on the jury.

Instead the convening authority is an officer trained with an entirely different skill set, usually in waging armed conflict as a pilot, ship captain or infantry officer. For that skill set they bring decades of training and experience to bear. And in that they excel. The same cannot be said for military justice.

They do not possess the skills required to determine the complexity of the right course of action in allegations of criminal misconduct, especially sexual assault and rape.

It takes years of experience to become proficient in the prosecution of complex cases. By the time I became the chief prosecutor I had tried over 150 courts-martial and presided over another 100 as a military judge. I had 19 years experience, and I was still learning new things about litigation.

It is simply unfair to victims, and to the accused military members that a convening authority makes these weighty calls based on a few hours of training. It is unfair to the commanders to put them in this position as well. It is a system set up for failure.

Those opposed to fundamental reform often claim that the convening authority only makes these choices based on the advice of a trained prosecutor. Let me make this very clear. Convening authorities are not advised by prosecutors. Instead, by law they are advised by a staff judge advocate (SJAs). SJAs are not prosecutors and most have limited prosecutorial experience. That experience is many years if not decades in the past and rarely were they ever lead counsel in serious cases. Rather, most SJAs are generalists, who serve in a managerial role more akin to a corporate counsel. In other words, commanders, legal neophytes often advised by someone with more expertise in contract or environmental law than criminal law decides whether to take an allegation to trial. Importantly, the SJA is not independent. He works directly for the convening authority. The SJA is significantly junior to the convening authority, who literally controls his SJA's future. In my experience, the independent prosecutors almost never have direct access to the convening authority and have limited influence on whether cases go to trial.

Others who oppose reform have argued that Commanders are tougher than Prosecutors in bringing these cases forward. In my 23 years, I have not ever seen that to be the case.

To compound the inherent problem of having someone who is not a prosecutor making prosecutorial decisions is the commanders' inherent bias. By law, the accused, with rare exception, works for the convening authority, either directly or indirectly. If the convening authority doesn't know the accused, he likely knows the accused's direct commander. Often times there are mutual friends of commander and the accused who weigh in on the case, usually in support of the accused.

Over the last two years since the Aviano case debacle, I still have seen commanders who use their pull to skew justice. In the Wilkerson case itself, 30 current and former commanders wrote letters attacking the prosecution, the judge, the jury, the criminal investigators, and the victim. These commanders included three general officers and both past, current and future convening authorities.

Even the public outcry of having a convicted sex offender set free by Lt Gen Franklin has done nothing to quench the zest for commanders from trying to tilt the scales in favor of the accused. Commanders continue to try to use their influence from keeping sex offenders from going to trial. In a recent case in England two retired four star generals,

including the former Chief of Staff of the United States Air Force wrote letters trying to deny justice for a rape victim based on nothing more than their belief her rapists was a “nice guy.” In my last case, which was reported on by The New York Times last Sunday, the victim watched as her commander testified for the man who sexually assaulted her. As a final injustice, in her next performance report, the commander told the victim she was “too emotional” and downgraded her. The reality is commanders cannot solve this cancer because too many of them are enablers.

Imagine, if you will, an employee at Walmart. An employee is raped by a popular store manager, maybe the “employee of year.” The victim is brave and reports the rape to the police. Now imagine that the police work for the store’s corporate headquarters and that the CEO for the store will make the decision on whether the case will be prosecuted. In making that decision, the CEO will not consult with the local DA. Instead, he will ask his in house counsel whether it is “in the corporation’s best interest” to prosecute a rape allegation that occurred in one of their stores. Imagine that the DA didn’t make that decision. Imagine that even if the CEO “allowed” the DA to prosecute the case that the CEO would tell the DA what the charges would be. Imagine that the CEO would tell the DA whether she could call expert witnesses or enter a plea agreement. Imagine if you will that the CEO picked the jury pool for the case and everybody on the jury works for the CEO. And finally imagine that the rapist’s coworkers would be allowed to testify about what a great employee the accused is and that the jury would be instructed that being a great employee is enough to raise reasonable doubt. Could that victimized employee have any faith in that system? Change Walmart to Air Force Base, CEO to convening authority and store manger to pilot and you have the military justice system. It is a miracle the small percentage of victims who report do so.

As a military prosecutor, I have personally seen the abuse and injustice victims of sexual assault face in the military. If you really knew what victims have to go through when they walk into a military courtroom; walk by their co-workers, their bosses, their commanders, their first sergeants, their squad leaders; all sitting behind her rapist; you would understand why we need to change the way we do things in the military.

At first, I truly believed as the Chief Prosecutor of the Air Force I could help fix the broken military justice system from the inside. This changed as I watched Commanders persecute victims, while failing to prosecute predators. I realized that in order to see substantial change, I would need to leave the Air Force, breaking a military tradition that has been a part of my family for over 150 years.

The ineffective, broken system of justice undermines the military I love. For the past two decades Leaders have spoken of “zero tolerance.” Yet, year after year, decade after decade the scale of justice continues to lean in favor of the accused. The rapist boss should not determine the fate of a victim’s case.

It’s easy to say we have zero tolerance for sexual assault in the military, but talk is cheap. The reality is, every time we say “zero tolerance” we have a victim who’s told not to report their attack. Every time we say “zero tolerance” we have commanders supporting those accused of committing rape or sexual assault.

This crisis is ripping the fabric of the force apart. Undermining unit cohesion and good order and discipline. It is time for the President and Congress – our civilian leadership - to exercise their authority, and mandate an impartial, professional military justice system. This is a force protection issue.

The top military commander's in the Pentagon have argued that reforming the military justice system as proposed would undermine good order and discipline. This is exactly the same argument that was originally made to oppose ending "don't ask don't tell." When the President and Secretary of Defense supported that change, the brass got behind it and implemented it without any disruption within the ranks.

We need a professional justice system. Our victims deserve better. Someone who has been accused of a crime deserves better, and the American people deserve better.