



January 12, 2017

United States Senate Committee on Armed Services  
Russell Senate Building, Room 228  
Washington, D.C. 20510-6050

Honorable Chairman and Members of the Committee,

I am writing to express our deep concern with the failure of Congress to adopt long overdue sentencing reform proposed by the Department of Defense and submitted by the President. The reform was part of an extensive proposal drafted by the Military Justice Review Group (MJRG) that included a host of provisions to modernize and improve the military justice process. The provisions to address the military's current sentencing procedure were far reaching and a crucial aspect of the proposed reforms. The sentencing provisions would have eliminated member sentencing except in death penalty cases and created sentencing guidelines for judges to follow. The legislation would have resulted in the elimination of the haphazard sentencing practices that currently plague the military and would have been a vital step toward a modern and much more effective military justice system.

As it now exists, the sentencing process in the military provides no meaningful guidance to either the judge or the members when crafting a sentence. This is especially problematic when members sentence an offender. Members simply lack the experience and legal training to determine an appropriate sentence. In most cases the sentencing options for offenses at a general court-martial range from no punishment to lengthy confinement, including life. With such a broad range of sentences and virtually no guidance for court members, the law offers no meaningful standard for determining an appropriate sentence and no assurance that offenders will be held appropriately accountable.

After serving as an Air Force judge advocate for over 23 years, including as a military judge and Chief Prosecutor of the Air Force, I have personally witnessed how this lack of structure can result in vast disparity in sentences for virtually identical offenses. Under the current system, some offenders are clearly punished too harshly, but more commonly the sentences are shockingly light, especially for sex offenders. I have seen some military rapists sentenced to multiple decades, while others received only a few months confinement. I have even witnessed **convicted rapists** sentenced to **no confinement**.

Last year, a six-month sentence for a Stanford swimmer convicted of sexually assaulting an unconscious woman, engendered national headlines, enraged citizens across the country and led

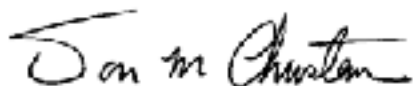
to calls for changes in the civilian system. Sadly, in the military, as a direct result of the archaic sentencing process, similarly offensively light sentences for sex offenders are the norm and occur on a weekly basis.

This problem with sentence disparity is not limited to sexual offenses, but extends across the full spectrum of crimes. Confidence in the system is severely eroded, when one accused is punished harshly and another leaves the courtroom with no meaningful punishment for committing the same offense. Sentence disparity is not an anomaly in the military, but rather a constant throughout the system. Sadly, in failing to adopt the MJRG sentencing provisions, Congress missed the opportunity to bring an end to this inherently unfair practice.

The MJRG proposal was truly one of the most substantial DoD proposals to modernize the military justice sentencing process since the creation of the UCMJ in the 1950s. It provided for sentencing by military judges aided by guidelines that allowed sentences to be adjusted to greater or lesser severity within a specified range. This would have resulted in sentencing uniformity with an understandable variance for extenuation and mitigation. Just as importantly, it would have brought an end to serious offenders escaping with unjustly light sentences. Inappropriately light punishment denies societal retribution, a sense of justice for victims, and the opportunity to rehabilitate offenders.

The failure to pass the sentencing reform provisions recommended by the MJRG constitutes a substantial missed opportunity to make a dramatic improvement to military justice that Congress must rectify.

Victims of crime deserve to know Congress takes seriously the pain they have experienced by ensuring sentences reflect society's expectations that offenders serve an appropriate sentence. Military members must know their sentence will not be determined by the whim of untrained, inexperienced court-members or the luck of draw as to which judge may be assigned to their case. Good order and discipline demands it.



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President, Protect Our Defenders