

STATEMENT OF
VADM NANETTE M. DeRENZI
JUDGE ADVOCATE GENERAL OF THE NAVY
BEFORE THE
U. S. COMMISSION ON CIVIL RIGHTS

11 JANUARY 2013

Thank you for this opportunity to testify before the Commission about the Navy's commitment to eliminate sexual assault and, specifically, about the Navy's accountability initiatives.

On behalf of the Honorable Ray Mabus, Secretary of the Navy, and Admiral Jonathan Greenert, the Chief of Naval Operations, I can assure you that the Navy is committed to eliminating the crime of sexual assault in our ranks. In addition to the toll on individual victims, sexual assault directly impacts operational readiness and unit cohesion. This is rightfully recognized as a leadership issue, not just a legal issue. Exemplifying this commitment, Department leadership invested two million dollars in sexual assault prevention and response training this past fiscal year and obligated another two million for Fiscal Year 2013. More broadly, the Navy implemented a multi-faceted approach to address awareness and training, prevention, victim response, and investigation and accountability. These focus areas correspond to the Commission's areas of inquiry.

Beginning with awareness and training, in 2009, Secretary Mabus established the Department of the Navy Sexual Assault Prevention and Response Office (DON SAPRO). Since its inception, DON SAPRO has conducted leadership discussions, stakeholder interviews, and focus groups with Sailors and Marines worldwide. In 2010, DON SAPRO conducted the first Department-wide educational program for Sexual Assault Response Coordinators. This educational program was expanded the following year to include shore installation commanding officers and senior regional leaders. Collaboration between DON SAPRO and a Navy training command at Great Lakes in 2011 and 2012 resulted in several local initiatives that yielded groundbreaking objective evidence of successful sexual assault prevention in a high-risk population of Sailor students.

Throughout Fiscal Year 2012, the Navy's awareness and training initiatives focused on educating the Fleet at all levels. In October 2011, the Navy began its efforts by teaching Bystander Intervention to our enlisted Sailors going through initial skills training. Bystander Intervention is a strategy to motivate and mobilize people to act when they see, hear, or otherwise recognize signs of an inappropriate or unsafe situation in order to prevent harm to another person. To date, 30,000 Sailors have completed this training.

Second, the Navy developed and implemented a dynamic and interactive training program for leaders entitled Sexual Assault Prevention and Response Training for Leaders, or SAPR-L. This training, for naval personnel in pay grades E-7 and above, was specifically developed to focus leaders on sexual assault, and to help them better understand the complex dynamics of this crime and the negative behaviors that can foster inappropriate conduct. We currently have a 95% completion rate for SAPR-L, with over 101,000 active and reserve leaders trained to date.

The third part of this training and awareness campaign involves training the remaining members of the Fleet – all Sailors in the grade of E-6 and below. Using Sexual Assault Prevention and Response Training for the Fleet (SAPR-F), which focuses on bystander intervention, responsible decision making, and core values, the Navy SAPR program will train the entire Fleet. The unmistakable intent of this training is to empower Sailors to recognize and assume personal responsibility to stop inappropriate behavior. All Sailors in pay grades E-6 and below, active duty and reserve, will complete SAPR-F training by March 31, 2013.

The Department of the Navy Sexual Assault Prevention and Response Office is developing a Sexual Assault Prevention and Response Training for Civilians, or SAPR-C, that will be implemented this summer. This course is intended to complement SAPR-L and SAPR-F by training Department of the Navy civilian personnel and to fulfill the training requirement set out in the Fiscal Year 2012 National Defense Authorization Act.

In addition to this group-led training, the Navy Judge Advocate General's Corps (JAG Corps) is ensuring that all commanders are fully trained on how to properly address and respond to allegations of sexual assault. As participants on SAPR-L training teams, judge advocates trained commanding officers, executive officers and command master chiefs (our senior enlisted leaders at each command) on their roles in sexual assault investigations, their responsibilities to support victims and protect the rights of alleged offenders, the new Uniform Code of Military Justice Article covering sexual assault (Article 120), as well as the Secretary of Defense policy that elevates the initial disposition authority for cases involving the offenses of rape, sexual assault, forcible sodomy and attempts to commit those offenses.

Turning to prevention, the Navy has implemented several new initiatives over the past year that focus on the responsibility of senior leaders to promote a positive command climate in order to prevent sexual assaults. To that end, commanders are required to conduct command climate surveys within 90 days of assuming command and annually thereafter. The results of these surveys are used to critically evaluate the command climate, determine if and where systemic problems may exist, and drive change. Furthermore, when an allegation of sexual assault is reported, every commander must now provide an in-person assessment to the first Flag officer in his or her chain of command within 30 days. This requirement ensures that senior leaders are aware of every sexual assault allegation and are in a position to conduct a meaningful discussion concerning the command climate and the impact of sexual assault upon the command. That Flag officer will, in turn, report to the Chief of Naval Operations on the effectiveness of the Navy's sexual assault prevention and response efforts. This tiered feedback structure enables the Navy's highest levels of leadership to look for trends and undertake necessary course changes based on timely, direct input from the Fleet.

Recognizing that a majority of sexual assault cases involve the use of alcohol, the Navy continues to discourage the irresponsible use of alcohol through education, enforcement and prevention tools, a concept that was reiterated in SAPR-Fleet training. Furthermore, in September 2012, the Navy completed an Alcohol Detection Device pilot program. We are currently reviewing policies and procedures for the potential use of Alcohol Detection Devices to complement our current command efforts to educate sailors on the responsible use of alcohol.

Regarding victim response, the Navy is dedicated to ensuring that victims of sexual assault receive proper and timely support to include medical treatment, counseling, and legal assistance. Enabling the victim to begin the healing process is a priority and, to that end, the Navy has instituted a number of policies to support victims.

First, victims have the right to make a restricted or unrestricted report of sexual assault. An unrestricted report of sexual assault will trigger a full investigation. The victim will be able to access all support services (medical, counseling, and legal assistance) and the identity of both the victim and the alleged offender will be released on a strict need-to-know basis to support the investigation and accountability processes. With a restricted report, victims may receive medical treatment, counseling and legal assistance, but an investigation into the crime is not initiated. Because a restricted report is confidential, the alleged offender is not made known to the command, nor is the victim's identity revealed. While we encourage unrestricted reporting so that the Navy can properly investigate and hold offenders accountable, we understand the importance of having a mechanism for victims to confidentially report in order to receive services and assistance.

Second, the Navy is in the process of hiring 66 full-time professional credentialed victim advocates who will be assigned to work throughout the Navy, distributed based on active-duty population. These victim advocates will augment the over 3,000 current trained active-duty command victim advocates to increase the level and professionalism of immediate and long term support available to victims, and will work in a coordinated manner with NCIS investigators and JAG Corps prosecutors. The Navy also uses the Department of Defense Safe Helpline as a Navy sexual assault crisis response resource as well as local phone numbers in every geographical region. The individuals who staff the helpline are knowledgeable about victim support, are able to take restricted reports from victims, have immediate access to victim advocates and sexual assault response coordinators (SARCs) in the victim's local area and serve as a conduit for the victim to tap into the resources that the Navy can provide. The publishing of victim reporting phone numbers is regularly audited to ensure accuracy in local publications and on websites to ensure program permanence.

Third, the Navy instituted the Legal Assistance for Crime Victims conference and has trained more than 150 Navy and Marine Corps attorneys, paralegals, and enlisted personnel to ensure victims' rights are understood and protected. These trained legal professionals deliver direct legal aid to victims. Victims can contact counsel, and victims eligible for military legal assistance services also have access to legal assistance attorneys to assist with a wide variety of legal issues related to being the victim of a crime. Additionally, Navy prosecutors provide an

explanation of all of the victim's rights, an overview of the court-martial process, and available federal, state or local victim services and compensation.

Fourth, in this last year, the Navy implemented an expedited transfer policy for victims who make an unrestricted report of sexual assault; 79 expedited transfer requests were submitted and approved this past calendar year. This important initiative is an additional resource that sexual assault victims can avail themselves of to assist with the healing process.

The Navy is also focused on offender accountability, which has both an investigative and military justice component. The Naval Criminal Investigative Service (NCIS) investigates all allegations of sexual assault and has agents who are specially trained to conduct adult sexual trauma investigations. NCIS has improved its Special Victim Capability through a formalized investigator training continuum for NCIS special agents, partnership with Army Criminal Investigative Division investigators on joint training, and joint training with judge advocates and advocacy providers. Additionally, the Navy's Sexual Assault Forensic Examination training model provides the vital capability to conduct forensic examinations throughout U.S. based facilities and in deployed locations (at sea and on shore). This model enhances the Navy's ability to ensure expedient responses to sexual assault incidents and improves the ability to obtain forensic evidence.

Once an investigation is complete, the case is forwarded to the appropriate commander to make an initial disposition determination. In June 2012, the Secretary of Defense implemented an Initial Disposition Authority policy for the most serious sexual assault cases to ensure senior officer review. Under the policy, reports of sexual assault must be reviewed by Navy captains (pay grade O-6) or above who are designated as Special Court-Martial Convening Authorities. Additionally, these Initial Disposition Authorities must consult with a judge advocate prior to making disposition determinations.

Once the Initial Disposition Authority decides to prosecute a case, the Navy Judge Advocate General provides prosecutors, defense attorneys, and military judges to conduct the court-martial, as well as active duty and reserve judge advocates with fleet and litigation experience to serve as Investigating Officers at Article 32 pretrial investigation hearings. The JAG Corps' statutory mission is to provide a fair, effective, and efficient military justice system, and we are intensely focused on upholding the special trust placed upon us in the prosecution and defense of sexual assault cases. Accordingly, the JAG Corps has implemented a number of initiatives to ensure that its clients (the government and the accused) receive the highest level of advocacy.

First, in 2007, to improve the overall quality of Navy court-martial litigation, the JAG Corps established the Military Justice Litigation Career Track. JAG Corps officers apply for designation as military justice specialists or experts based on their litigation experience. Military Justice Litigation Qualified (MJLQ) officers are detailed to lead trial and defense departments at Region Legal Service Offices and Defense Service Offices, which provide Navy prosecutors and defense counsel, respectively. These officers provide proven experience in the courtroom, personally conducting or overseeing litigation in sexual assault and other complex cases. Many also serve as military judges and appellate judges and in leadership positions. The capstone position of the Military Justice Litigation Career Track is the Chief Judge of the Department of

the Navy. This officer is one of four Assistant Judge Advocates General and is promoted to the rank of rear admiral (lower half) (O-7) upon retirement. This position ensures vitality and career progression to Flag rank of Navy judge advocates committed to military justice and litigation. Overall, the Military Justice Litigation Career Track program increases the experience levels of trial and defense counsel and leverages that experience to enhance the effectiveness of criminal litigation practice.

Second, the Navy sends career litigators to civilian post-graduate schools such as George Washington University, Georgetown, Temple University, and California Western School of Law to receive Master of Laws degrees in litigation or trial advocacy. Many of the programs require students to participate in externships with local U.S. Attorney offices or defense clinics, providing practical civilian criminal justice experience to Navy litigators.

Third, in 2009, the Navy hired two civilian experts with extensive prosecution experience in sexual assault and child sexual abuse for positions in the Criminal Law Division of the Office of the Judge Advocate General. Both were hired as GS-15 employees and were Highly Qualified Expert (HQE) equivalents. One was a senior attorney with the National Center for the Prosecution of Child Abuse, a division of the National District Attorney's Association (NDAA) and assumed duties as the deputy director of the Criminal Law Division. The other was the Director of the National Center for the Prosecution of Violence Against Women, also a division of the NDAA, and a noted author in the field. She led efforts to enhance SAPR policies and victim and witness assistance program improvements, in addition to a number of sexual assault litigation training and evaluation initiatives.

Fourth, in 2010, the Navy created Trial Counsel and Defense Counsel Assistance Programs. The programs are led by experts in military justice who provide direct support to prosecution and defense counsel around the world. The Navy's Trial Counsel Assistance Program (TCAP) provides high-quality advice, assistance, support and resources for trial counsel (the Navy's court-martial prosecutors) worldwide through every phase of the court-martial process. TCAP provides full-spectrum advice to trial counsel, serving as a resource through the pretrial investigation and the court-martial, including charging decisions, theme and theory, motions and responses, discovery issues, securing and preparing expert witnesses, devising trial strategy, assisting with post-trial matters, compliance with the Victim Witness Assistance Program and professional responsibility. The current director is an O-5 MJLQ expert and is a former Naval Legal Service Office commanding officer and military judge. The deputy director is an HQE equivalent, but GS-15 permanent hire who was promoted into the position from the Criminal Law Division to provide direct trial, prevention and response, and victim and witness assistance program support. TCAP is also staffed with an O-4 who is an MJLQ specialist with several years of litigation experience. TCAP is also in the process of hiring a new HQE with several years of civilian criminal litigation and training experience.

During the past two years, TCAP provided on-site assistance visits, delivering trial advocacy training and prosecution process assessments to all nine Region Legal Service Offices worldwide. Further, TCAP personnel conducted outreach training using a multi-disciplinary approach to improve efforts between prosecutors, NCIS agents, military investigators and other military justice stake-holders, including Sexual Assault Response Program contributors. TCAP

staff conducted advanced family and sexual violence training at the Federal Law Enforcement Training Center and alcohol facilitated sexual assault training at the Army JAG School and Air Force Keystone conference. TCAP personnel also routinely serve as instructors in a variety of courses, military and civilian, including for other services. TCAP personnel are also frequent instructors at the Naval Justice School, including the Trial Counsel Orientation, Basic Trial Advocacy, Intermediate Trial Advocacy, Senior Trial Counsel, Litigating Complex Cases, Sexual Assault Investigation and Prosecution, and Prosecuting Alcohol Facilitated Sexual Assault courses. TCAP coordinates training and advice closely with Marine Corps TCAP and leverages expertise from other services, including Army TCAP, HQEs, sexual assault investigators and Special Victim Prosecutors. Finally, TCAP counsel may be detailed to serve as trial counsel or assistant trial counsel and have been so detailed in several high visibility cases, to include five sexual assault cases.

The UCMJ requires that qualified military defense counsel be detailed to military members facing trial by special or general court-martial. The Defense Counsel Assistance Program (DCAP) was created to support and enhance the proficiency of the Navy defense bar, provide experienced reach-back and technical expertise for case collaboration, and develop, consolidate and standardize resources for defense counsel. The office primarily supports the Navy trial defense bar with active cases. Although not typically assigned as detailed defense counsel, DCAP personnel may be detailed to cases. Like TCAP, DCAP is currently led by an O-5 MJLQ expert who is a former military judge. He is supported by an O-4 MJLQ specialist and a recently hired HQE, a retired Marine Corps O-5 who completed two tours as a military judge while on active duty and has over 15 years of civilian experience as an assistant federal public defender and preeminent civilian military criminal defense attorney.

DCAP personnel are authorized to consult with detailed counsel through every phase of the court-martial process. During the two past years, DCAP assistance included developing case strategies, drafting motions for appropriate relief and crafting arguments for motion sessions, developing investigations, discovery, requests for witnesses and expert assistants, developing voir dire strategies and questions, assisting with complex or “emergency” legal research, preparing clients and witnesses for testimony, and helping counsel prepare opening statements, closing arguments, and direct and cross-examination. DCAP personnel were available for on-site visits during the trial preparation phase and to assist “behind the bar” during trial as requested. DCAP provided advice on post-trial matters and also frequently consulted with defense counsel concerning professional responsibility and ethics issues. DCAP also overhauled the Senior Defense Counsel course to focus on supervisory counsel responsibilities and continued to develop the Navy and Marine Corps Defending Sexual Assault Cases Course hosted by the Center for American and International Law in Plano, Texas. In addition to these initiatives, DCAP presented training during field assist visits, web seminars, and participated as instructors at a number of courses and seminars.

DCAP also provides military justice policy advice and routinely coordinates with the defense services of the Army, Air Force, Marine Corps, and civilian defense organizations to maximize efficiency and capitalize on expertise. For example, the Navy and Marine Corps DCAP programs share experience and training daily, across the globe. DCAP has worked closely with

civilian defense organizations to make use of the resources at federal and state public defenders' offices.

To further refine the JAG Corps' litigation capabilities, the Navy established in 2012 an externship program and assigned two mid-level career officers to work in the sex crimes units in the Office of the State Attorney in Jacksonville, Florida, and the San Diego District Attorney's Office in San Diego, California. These six-week clinical training externships enabled the officers to gain valuable practical experience and insight into how civilian prosecutor's offices manage a high volume of sexual assault cases. We intend to expand the program this year, targeting those officers who complete their Master of Laws degrees in trial advocacy.

Coordinated by the Naval Justice School, TCAP, and the OJAG Criminal Law Division, Navy prosecutors and defense counsel receive specialized training on prosecuting complex sexual assault crimes. The training is centrally managed under the oversight of a Litigation Training Coordination Council, comprised of military justice experts from the prosecution and defense, policy advisors, instructors and senior judges. Course requirements are established by a board of advisors from the Navy, Marine Corps and Coast Guard who have extensive experience in litigation and training. The Navy conducts joint training with investigators, Marine Corps prosecutors, Sexual Assault Nurse Examiners and Sexual Assault Prevention and Response personnel, including victim advocates and legal assistance attorneys who support victims.

The Navy also hired another HQE in September 2012 to enhance sexual assault litigation training, trial practice and policy. She has nearly 20 years of experience prosecuting sex crimes, domestic violence and human trafficking crimes. She replaced the GS-15 deputy director in the Criminal Law Division of OJAG and provides advice at the policy and training oversight level. In enhancing our sexual assault litigation training, she will have the benefit of two case studies that we conducted in 2010 and 2012. These studies were critical reviews of completed sexual assault court-martial cases (convictions and acquittals), with a focus on identifying areas of improvement and developing standards and recommendations for future litigation training and skill development.

Coordination with NCIS is essential. Judge advocates and NCIS special agents who investigate sexual assault allegations coordinate directly in a number of ways. Prosecutors frequently serve as visiting instructors for NCIS courses at the Federal Law Enforcement Training Center in Georgia. Judge advocates also participate in Mobile Training Teams to instruct special agents, trial counsel, and paralegals on best practices in sexual assault investigation and prosecution.

The Navy is also conducting a pilot program with the NCIS Sexual Assault Task Force. The Task Force consists of a small group of special agents assigned to all sexual assault allegation investigations. The Task Force meets weekly to review specific case progress and monthly with the senior regional prosecutor and installation Sexual Assault Response Coordinators. This multi-disciplinary approach allows investigators, prosecutors, and sexual assault prevention and response personnel to troubleshoot sexual assault investigations, prosecution, and victim care issues as they arise. It also promotes early cooperation between stakeholders to improve quality of practice. On the East Coast, the Task Force began meeting in November 2012. The team has already identified several means of improving coordination between investigators, prosecutors,

and victim advocates. On the West Coast, the Task Force will begin to meet this month. As the pilot program develops, leadership will continue to assess best practices for exportation to other regions, and will incorporate those best practices as the 66 full-time civilian Victim Advocates are hired.

Finally, the JAG Corps critically evaluated how we provide training to judge advocates and the quality of that training. In response to the evaluation, we determined to change not only our training program, but how we are organized to better provide legal services to the Fleet.

In order to more adequately meet the demand for legal services in the Fleet, in October 2012 the JAG Corps reorganized Naval Legal Service Command and established four Defense Service Offices (DSOs) headquartered in Washington, D.C.; Norfolk, Virginia; San Diego, California; and Yokosuka, Japan. The DSOs' mission is to defend service members in military justice proceedings, represent them at administrative boards, and provide other representational services, including advice on non-judicial punishment and adverse personnel actions. This reorganization separated the defense services function into free-standing commands and moved the legal assistance function into Region Legal Service Offices.

Additionally, as part of the realignment, the JAG Corps will focus the first two years of all new judge advocates' careers on comprehensive training in prosecuting and defending cases, providing legal assistance, and advising Navy commands. New judge advocates are required to complete Professional Development Standards at their first duty station, following completion of the Basic Lawyer Course at Naval Justice School. These standards ensure that our judge advocates are fully equipped to operate effectively in their first-tour assignments, including supporting criminal litigation, providing command services, and providing legal assistance to Sailors and their families. We assigned mid-level officers as Professional Development Officers (PDOs) to manage and track judge advocate training. First-tour judge advocates have reading and writing requirements, as well as knowledge assessments performed by PDOs and senior leadership.

In summary, the Navy remains steadfastly committed to being in front of this problem, eradicating sexual assault within our ranks, and ensuring that sexual assault cases are processed through a fair, effective, and efficient military justice system. We are actively engaged in awareness and training, prevention, victim response and accountability initiatives. I look forward to taking your questions.