

## **Summary of Testimony of Bridget J. Wilson, Esq. to the U.S Commission on Civil Rights, Briefing on Military Sexual Assault, January 11, 2013**

Members of the Commission: Thank you for allowing me to speak on sexual assault in the armed forces from my perspective as a defense counsel and a woman with an interest in this issue.

When I was reviewing the numerous reports in preparation for speaking with you a statement in the FY 2010 report to SAPRO of the Army's statistical data on Military Sexual Assault caught my eye. At page 33 of the report, it notes:

"The decrease in reported cases is not in line with the Army's strategic goal which called for increasing Soldier's propensity to report (to 50% in FY10) and causing a corresponding, near-term increase in reported cases."

That statement is one of the indicators of what many of us, defense counsel and if they are honest, those prosecuting military sexual assault cases see as a problem in how these cases are being pursued. The latest similar broadside is of more reports of sexual assault at the service academies. The military way is that if the command wants more reports, they will get those reports, one way or another even if those reports are not accurate.

No institution is more singled minded in its pursuit of a goal than the armed forces. The words "mission first" are practically engraved on the tongues of those who serve. When those in charge express the "desire" to see something done, it will be done, often without regard for the collateral damage. That is the current approach that we are seeing with regard to sexual assault in the military. Those who would rather not report are being pressured to do so. A junior enlisted woman is lectured by a senior non-commissioned officer that the events of the drunken party were a rape regardless of the misgivings of the woman. An individual convicted of the sexual assault for putting his hand on another man's thigh.

What we have all seen are cases being pursued that would not be in a civilian courtroom. It is difficult to discuss this in the presence of those who have been victimized by sexual assault in what many of us know all too well as a structure that can bury its problems under the immense power of military command. But that influence is being turned to the unfair detriment of the accused who have not been convicted of anything. The recent statement of the Commandant Marine Corps that "80%" of those accused are guilty and demanding more convictions is but one visible example of the pressure being placed on those making decisions about sexual assault charges outside or within the courtroom.

Even more than in a civilian court, there tends to be a belief that if we have this guy in a court-martial that there is a good reason for it. There is an historical debate about the balance between military justice as a mode of discipline and justice for the accused. Indeed, discipline is an important part of military law. But, servicemembers have not completely surrendered their rights by donning the uniform. The product of our concerns about sexual assault ought not to be disregard for the rights of the accused.

A number of those seeking my assistance over the years have been men accused of assaulting another man. As you can imagine, the mere existence of the former regulations that prohibited the service of those known to be gay was a powerful motive to lie, not to mention criminal prohibitions on virtually any form of same sex sexual activity. In the course of my career I have spoken with a number of individuals who were falsely accused of sexual assault because a sexual partner had been discovered and decided that if he made the accusation of assault, he or she would not be in trouble. I do not by any stretch of the imagination believe that most sexual assault reports are fabricated. But, I know that this does occur and that false reports taint all others.

The good intention of addressing sexual assault in the military is being buried by a campaign that now lacks credibility in the ranks. There is an increasing perception that the deck is stacked against someone accused of a sexual assault. We speak with those who are told in sexual assault training that if a woman has had a single drink she cannot consent to sex. We have seen commands that fear that if they do not forward every allegation, no matter how dubious, for prosecution that it will cost them their careers. When one tries to address the huge problem of binge drinking in the military as a contributing factor to sexual assaults, they are accused of trying to blame the victim. I do not suggest that we blame the victim. I do suggest we take measures to keep service members from being assaulted.

The prosecution of sexual assault now is privately being dismissed by many in the armed forces as a political witch hunt, something that will damage the cause of protecting victims for years to come. It will damage the status of women in the institution for years to come. It will give rapists a cover for years to come.

I strongly favor effective methods to combat sexual assault in the military. I know that this is an institution which has the power to hide its problems and obstruct efforts to change its culture. The power of command is an awesome power. It is literally power over the lives of those in a command. But, simply swinging the pendulum farther from the center is not a solution. The results are cynicism, skepticism, which discredits victims and see some innocent of crimes being convicted. None of that protects victims of sexual assault.