

LAWRENCE J. MORRIS
Springfield, VA

It was my great honor to serve 30 years in uniform, 27 of them as an active duty judge advocate, and 3 as a reservist while in law school. I had a pretty typical Army career, trying cases as a prosecutor and defense counsel at posts in the U.S., Europe, and Panama and, later, in deployed locations in Bosnia and southwest Asia. I had the privilege of advising commanders at all levels, supervising prosecutors at several locations, and later, supervising all Army defense counsel when I served as the Army's chief defense counsel, the one job I sought in my career. I also chaired the criminal law department at the Army's law school, served as the chief prosecutor in Guantanamo Bay, and as the SJA or general counsel at West Point. I had the honor of traveling to Russia, South Africa, Bosnia, and Mongolia to teach military justice to the troops of foreign nations. I helped initiate the Army's training program regarding sexual assault for prosecutors and defense counsel for my first two years after leaving active duty, and I have been at Catholic University, here in DC, since 2011, first as general counsel, now as chief of staff. I also served on the Response Systems Panel from 2012-14. I am the son and father of West Pointers, and also the father of a Marine. The views I express today are my own.

In many respects I expect that I differ little in my biases and experiences from Col Christiansen. We had parallel careers in many respects - starting from Marquette Law School about 10 years apart - and I expect we have particular affection for and loyalty to those who serve. I have just a couple of points to make before offering to answer your questions.

Data. I'm not an expert in it and I take all of the recent data mainly for the proposition that there is an element of intractability to the sexual assault problem – an intractability not unique to the academies but that is reflected in civilian institutions of higher education and our society. Still, there is a persistent problem that merits our attention so that our people are protected and, when assaulted, have sufficient confidence in the system and their leaders to make prompt reports. It is also worth considering that the rate of trust in their senior leaders noted in the surveys is remarkably high compared to most civilian institutions. We expect more of the academies, of course, but it is a notable contrast.

Training is not a panacea, but it works - and is part of the solution. I grant that training can be a conceit of the military, as we think we can train to most any standard, ambition, or behavior – and have a history that proves that, not only on operational matters of great complexity, but on behavioral matters such as smoking, drug and alcohol use, nutrition and fitness. Sexual behavior is comparatively harder to "train out of," in part because, by its nature, it is not as amenable to the solitary self-discipline of the military member. Moreover, society's messages regarding sexuality are not always clear or consistent to the emerging adult. All of our service academy cadets come to us from the wider culture, and there are aspects of that culture that do not prepare our mainly teen-aged new cadets to make the wisest choices in that realm. Training alone is not the answer, but training + accountability surely is; change in the culture both precedes and follows training and accountability, as the DUI campaign and many others have shown.

Administering discipline. There is a range of disposition options in the military that is unmatched anywhere. Because of the administrative options, corrective measures, and nonjudicial punishment, the military is able to address and try to snuff out "precursor behavior" and address lower levels of misconduct with sanctions that provide the opportunity to correct behavior and send a message of accountability to survivors and observers. Again, there is no civilian equivalent to this rich range of options; furthermore, civilian institutions operating under the guidance of Title IX have generally been strong in their informational campaigns regarding sexual assault, but highly frustrated in trying to design and execute amateur systems of justice. The military administers discipline in a wider range of offenses than the civilian world does, and I am sure my experience is not unique in having taken to trial cases that civilian authorities would not pursue.

Fundamentals of the system. Having served on both sides of the courtroom, I hope that I have a disinterested perspective on the system. It seems that the central question you are tangling with is whether and how much to trust commanders (and their counsel) to rightly exercise the considerable justice-related instruments available to them to deter sexual assault and hold offenders accountable. If you think commanders are unsuited by training (not being lawyers) or perspective (self-protective, disinclined to attack sexual misconduct) then you want another system or a great change to the current one. A complete understanding and exercise of the system suggests otherwise, however. Commanders are responsible for all aspects of good order and discipline; the uniting of command authority with disciplinary authority, leavened by the required involvement of judge advocates along the way, is appropriate to the requirements of the service and the expectations of command. Disassociating that authority would reduce accountability and would not enhance discipline in general nor in the realm of sexual misconduct in particular.

Defending soldiers and coaching and training defense counsel was the hardest and most rewarding work I did. I am also aware of the risks of unlawful command influence and happen to believe, unlike our appellate courts, that there *is* such a thing as "command influence in the air" – that some participants in the system might be inclined to convict or to adjudicate harsher punishment based on a perception of a commander's predilections. For the sake of the suspects and the accused, it is important to guard against formal and informal influence that can distort the justice system and jeopardize its integrity. You don't have to travel to the Civil Rights era to be reminded of the institutional vulnerabilities of our civilian system as well, a system that still has many elected prosecutors and judges and produces the occasional Duke lacrosse case as a counterweight to the great number of men and women of integrity who populate both the civilian and military systems. And we are training future commanders in how to navigate the military justice system, so a "cut out" system for the academies would forfeit that important development. Finally, we should be cautious in seeking justice-related "metrics" such as preferral rates, conviction rates, or average sentences; they might provide some insight into trends and tendencies, but should not be the major indicators of success in combating sexual assault.

There have been significant changes to the system in recent years, changes that are part of the disciplinary culture and may be producing results for which there are not yet meaningful data. It would not be imprudent to give these time to work and then evaluate the disciplinary landscape.

I am happy to answer any questions.