Navy Leader on Sexual Assault Cases, Fallujah, Afghanistan
U~T San Diego
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Secretary of the Navy Ray Mabus was in San Diego last week and met with the U-T San Diego Editorial Board to talk about the handling of military sexual assault cases, Fallujah and NAASCO's importance to the Navy. Here are condensed and edited excerpts of the interview.

Q: One of the things discussed over the last year was the military sexual assault prevention issue. What is your position on the Gillibrand amendment, the proposal by Sen. Kirsten Gillibrand, D-N.Y., to remove military sexual assault cases from the chain of command? We'd also like to ask, as sort of a devil's advocate, what would be the harm of that, putting the prosecution power in the hands of the military lawyers instead of the commanders?

A: I'm going to go a little broader and then I'll come back and answer your specific question. I think one of my first acts was I appointed a sexual assault prevention coordinator in my office who reports directly to me. And I think we are getting down the road of figuring out what works in this because you know this is an attack. This is a crime. When a sailor or Marine raises their hand and swears to defend the United States they also are promising their shipmates that they will protect each other. If somebody was walking through taking shots at sailors or Marines at random, we'd do something about it. This is the same thing. This is a crime. And we take it extraordinarily seriously. We're seeing things that are beginning to work. We're trying to do things to make sure that people know, sailors and Marines know that it's not just enough to "not" commit a sexual assault. They've got a responsibility to step in if they see something that might be developing. We've also supported very strongly some changes to the law that now have been made. One is that court martial-convening authorities should not have the ability to overturn verdicts. The second is Article 32 hearings, which happen before the court martial to see if there are grounds for a court martial, have turned into full-blown evidentiary hearings. And when Article 32 was set up it was to protect the rights of the defendant. In the civilian world the parallel is the grand jury. And so rules of evidence have moved along pretty far and you've got a lot of discovery now. So you don't have to have this thing. When somebody would come forward and say they were a victim of sexual assault they would go on the stand and defense attorneys would attack them, sometimes mercilessly, about their sexual history, about the circumstances, and things like this. One of the pushes that I encouraged and now Congress has passed is that these things are going to be probable cause hearings. Victims do not have to testify. And, finally, on the notion of putting charging power in the hands of an attorney, an attorney is going to make that decision based on the probability of success at trial. And there have been instances where the legal counsel to the convening authority recommended against court martial — not because they didn't think there was probable cause to believe that a crime had been committed, but because they had evidentiary problems. Somebody hadn't been read their rights early enough. Or there may be evidence that couldn't be brought forward. And so they would recommend no court martial because the chances of success, they think, were not great enough because of some of these evidentiary problems. Well, the convening authority said

no. We're going to convene a court martial and we're going to do it, not only because we think we can get a conviction, but also to send a message to that command that we take this seriously. And to send a message to the victim that if you come forward, we are going to take this seriously.

Q: So you're opposed to the Gillibrand amendment in part because you think it will not lead to enough trials because of what you just described.

A: I do think that commanding officers need to retain the power to convene those court martials because there are times when they will proceed with a court martial whereas an attorney, for example, would not because of evidentiary problems or things like that.

Q: What do you do about the whole issue of command influence, because as you know, one of the complaints is that a commander might favor the person who has been accused of doing the crime because of a prior relationship and that the victim feels like there wasn't a dispassionate decision made about whether to charge?

A: I think you're going to have that issue no matter who has the convening authority because of previous relationships and things like that. I think that commanders now understand how serious this is and they are not going to just say, "no prosecution," and it will go away. I think that is a better way to do it.

Q: We recently wrote about Fallujah. As you know, Camp Pendleton Marines were a large part of the force that fought those battles in 2004 and Ramadi as well. And some of those we interviewed said that they felt like it was sort of a kick in the butt to see al-Qaeda take over Fallujah. They felt their buddies had fallen, or spilled blood, for nothing, at this point. What is your reaction to that.

A: Well, No. 1, it's understandable. I mean, Secretary Kerry announced that we're sending some aid to Iraq. But the chaos, some of the things that have happened in places like Fallujah, are disappointing on any number of levels, not the least of which is those Marines who fought so well and so bravely. And you can only go so far. I can't even imagine how it feels for a Marine who fought there.

Q: Are you optimistic we'll be able to reach an agreement in Afghanistan so the same thing won't happen there?

A: I hope so. I've made 12 trips to Afghanistan and talked to our commanders there. I think that the Afghans are doing a pretty good job. The Afghan army and the Afghan national police, as well as the Afghan local police, are stepping up in some pretty impressive ways. But I think there is going to be some sort of training, advising, residual force for some time in the future. Even the president says that, and even our military commander said it. It is in the Afghans' best interest, I

believe, and it is in our best interest that an agreement be reached. I think there's support in Afghanistan.

Q: In a consolidation effort to make the defense of our country stronger and obviously enable the Navy and Marine Corps and all the other branches of the service to perform as well as possible, is there any portion anywhere in the world that we are currently positioned that perhaps you would consider pulling back from?

A: It's not pulling back from, but it's putting more emphasis, putting emphasis on the Western Pacific, putting emphasis on the Arabian Gulf. And what that does is it means perhaps fewer assets in some other places, fewer assets around Africa, perhaps, or around South America.

Q: You were asked this morning about the shipyard issue in San Diego, the (Barrio Logan) ballot measure that's coming up. Basically, you said you didn't really want to be involved in local politics. But can you talk at all about what impact this may have?

A: I went a little further than that now. I said because it was on the ballot, I did not think it was appropriate for me or the Navy to take a side. It's for the voters of San Diego. Then I repeated what I said from almost the day I got this job, which is I want to protect the industrial base. I want to make sure the Navy gets the ships it needs and I want to make sure that we repair the ships that we need to do the mission of the Navy. And San Diego, and NASSCO, are very important in that effort. And that whatever happens in this vote, we're going to keep working with NASSCO. We're going to keep working with the ship repair industry and all the businesses that we do, and with the city to make sure that we get the ships that the Navy and the nation need, that we get the repair work done, and that we protect those folks who are out there today, the industrial base that is so important to us.

Q: Understood, but do you believe this community plan as it is now will adversely affect your ability to work with NASSCO and the industrial base?

A: That's where I'm not going to take a side.

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