

**STATEMENT OF
SAMANTHA KUBEK
STAFF ATTORNEY, LEGALHEALTH DIVISION
NEW YORK LEGAL ASSISTANCE GROUP
BEFORE THE
COMMITTEE ON VETERANS' AFFAIRS
SUBCOMMITTEE ON OVERSIGHT AND INVESTIGATIONS
UNITED STATES HOUSE OF REPRESENTATIVES
FEBRUARY 5, 2020**

Chairman Pappas, Ranking Member Bergman, and members of the Subcommittee, on behalf of the New York Legal Assistance Group (NYLAG), thank you for the opportunity to testify today.

My name is Samantha Kubek, and I am a Staff Attorney in the LegalHealth division of the New York Legal Assistance Group, a nonprofit law office dedicated to providing free legal services in civil law matters to low-income New Yorkers. NYLAG addresses emerging and urgent needs with comprehensive, free civil legal services, direct representation, impact litigation, policy advocacy, financial counseling, medical-legal partnerships, and community education.

LegalHealth, a division of NYLAG, partners with medical professionals to address the nonmedical needs of low-income individuals with serious health problems. This past year, we served 7,940 clients, including nearly 1,000 veterans through our partnership with three New York VA Hospitals. Working closely with veterans' healthcare providers, we expand access to needed veterans' services by upgrading bad paper discharges, stabilize incomes for veterans with significant health needs, and help to reduce veteran homelessness by preventing evictions.

I joined NYLAG specifically to open the nation's first women veterans legal clinics, with the goal of creating a safe space where female veterans, especially those who are survivors of sexual assault in the military, could receive trauma-informed legal services. In 2017, we opened clinics at the Bronx and Manhattan VA Medical Centers, which I continue to staff today.

When we opened these clinics, we did so with the knowledge that VA hospitals have traditionally been male-dominated spaces, and that many women veterans report feeling unwelcome. We wanted to create a space where women could feel safe. Yet

even with this goal and this specialized clinic, it wasn't easy to get women veterans to come to the clinic. After opening, I learned that because the clinic's waiting room was located in a mixed gender outpatient mental health space, women were hesitant to sit there—a fact that could have explained the many clients I had scheduled who would not show up for their appointment. With the support of our VA hospitals, I found space inside the women's health clinics at each hospital. Since then, I've met with over 300 women veterans in my clinics.

Today, in addition to my clinics for women, I also staff clinics for male veterans. As a consequence, I have represented male and female survivors of military sexual trauma, or MST. My clients have served in every branch of service, from WWII until just months ago. They come from a wide variety of backgrounds, races, and life experiences. They have served in combat and they have served stateside. While their symptoms often manifest in different ways, one thing is true for every single one: the current system in the VA, both in terms of benefits and healthcare, has, at one time or another, stood as a barrier in their recovery.

Survivors of military sexual assault can apply for service-connected benefits when their related health conditions persist. The impact of benefits on survivors is far more than simply increasing their income. I have seen the ways in which these benefits are life-changing and transformative. I've seen clients who, after receiving their benefits, gain a sense of validation—a government agency has told them that they are seen and believed. For some, this results in less frequent visits to their mental health providers and an increased level of engagement in their daily lives. A client of mine, Rebecca, came to me surviving on food stamps. She lived in a cramped, studio apartment in the Bronx with her son and granddaughter. Rebecca had survived a sexual assault while in the Marines. She never knew she qualified for VA benefits, believing her injury had to occur during combat for it to “count.” We worked together for almost a year, painstakingly putting together a claim for benefits despite minimal in-service records and the passage of almost thirty years between her service and the time of filing her claim. Ultimately, Rebecca was awarded 100% disability compensation. With this money and this new status, we worked to help her obtain a VA home loan, which she went on to use to purchase a home for herself and her family. All of them—Rebecca, her son, and her granddaughter—are now living a completely different life as a result of these benefits. They have gained something intangible but essential: hope for a better future.

The process to obtain benefits, to see outcomes like Rebecca's, is too difficult. Along the way, veterans are repeatedly re-traumatized and held to standards far too high, given the circumstances of sexual assault. While the changes proposed in bills such as H.R. 1092 would go a long way to improving this system, I offer this testimony to share the experiences of my clients of the ways this system often re-traumatizes survivors, the heavy burden placed on veterans and their representatives, and changes that could help alleviate this situation.

The steps required when a veteran seeks to file or appeal a claim for service-connected benefits relating to MST are complex and convoluted. For those who are represented, representatives like myself can bear some of the administrative burden of these claims, yet the system still requires too much of survivors, and unnecessarily re-traumatizes them. For veterans without representation, they must navigate this system alone, which is all but impossible.

When a client comes to me about MST, my main challenge is to show that I am someone they can trust; I am someone who understands that this system is unduly hard; and I will do my best to make it less difficult to the extent I can.

I tell them right away that I do not need to hear their story immediately. For those who have been through the VA claims processes before, this is a welcome surprise. They've just met me, and telling someone about the sexual trauma they've endured is difficult and painful. And very intimate. I do tell them, because I have to tell them, that at some point, we will need to compose a personal statement—a written retelling by them of the incidents that occurred to them in the military, and the ways in which those incidents have caused them pain—pain that they still feel today. I tell them that I am open to their doing this in whatever way is best for them—they can write something for me to review, they can come in and tell me their story and have me help them put it onto paper, or they can work with their therapist.

Nothing in law school prepares a lawyer for sitting in a room with someone as they pour their heart out about the worst moment of their life. My clients are the strongest men and women I know—if they weren't, they wouldn't have made it this far. But re-telling their story forces them to relive it. Many tell me they don't sleep for nights before or nights after they come to see me. I often implore them to schedule therapy appointments for immediately following our appointment in which they discuss this event in detail. That way, I know they will be safe in the likely event that their powerful and overwhelming feelings are re-triggered. I've had clients become

suicidal after re-telling their trauma, and I've had clients struggle to fight relapsing into drug or alcohol addiction they have been fighting since their service.

In the meantime, I must painstakingly gather all of their medical records, both from in the military and from since they were discharged. For some, this record is in the thousands of pages. I must comb through their personnel files, many of which are handwritten from years ago, searching for words like "rape" or "assault," visits to the gynecologist or the base psychologist, checking for STD or pregnancy tests. Often, the records come back completely illegible or incomplete. Sometimes I get a letter back telling me the records have been sent elsewhere, and when I send the request to the second place, I get another similar letter, and this paper chase continues like this for months. I once received an email from the Department of Defense informing me that they only hold on to "restricted reports"—a common form of sexual assault reporting—for five years. After that, they throw them out. In some cases, I'm told records cannot be obtained- whether it's due to the records being lost, destroyed, or for no reason at all. This is despite FOIA requests, the involvement of senators, and diligent and persistent follow-up.

As part of a veteran's application, they are asked to state in which Veterans Health Administration (VHA) facility they have received treatment, so that the Veterans Benefits Administration (VBA) can obtain the records from them directly, as they are both part of the larger Department of Veterans Affairs. Sometimes the VBA tells me that they cannot obtain records from the VHA. This happens in one of two ways. In the first, the veteran receives a letter after filing their claim or appeal in which the VBA states they cannot obtain the veteran's health records from a VA hospital. In almost every instance of this occurring with my clients, I have a copy of these same records in my files, and I obtained this copy by filing a request with the VHA. In this case, I then send the VBA the records. The second way is that the veteran receives a negative decision on their claim or appeal, in which the VBA lays out the evidence they considered in deciding the claim. In such a letter, they may state that they tried to obtain records from a VA health facility and were unable to obtain them. When this happens, it reflects two failures. One, the VBA should *always* send the letter laid out in the first scenario. As per their "duty to assist," they should be requesting missing records, even ones they should already have, if they cannot obtain them. Secondly, the VBA has now denied a claim due to its inability to get records simultaneously being held within the larger VA system. The veteran is being denied benefits because of a failure within the VA system, not because of any inadequacy or failure of the veteran's claim.

This process is infuriating for all veterans, but it creates greater harm in cases of MST. Most MST survivors have no in-service records to back-up their assertions. Most do not seek treatment during the service, due to the stigma for needing mental health treatment in the military and for the myriad reasons survivors of sexual assault in all walks of life rarely seek help. Many do not report the assault to anyone for the same reason, and so personnel files do not reflect anything either. As a result, these cases rely very heavily on the veteran's medical records from their life post-service. When the VA's two bodies are unable to communicate, the system fails them yet again.

I also ask for statements--from family members, friends, in-service buddies--anyone who may know what happened to them and saw how it changed them. I speak with doctors, social workers, and psychologists. As an attorney in a medical-legal partnership, I have enhanced access to my clients' providers, and am able to have extensive conversations with them and to request letters directly from them to support the veteran's case.

At the end of this long and frustrating process, I at last have a completed case to file with the VA. I tell the client that now we file and then we wait. I also must tell them that two things will happen between now and when their claim is decided.

The first is that they will receive a call out of the blue from someone at the VBA. This will be a stranger, someone they do not know and have never spoken with. And this person, who may be male or female, will ask them for details about their sexual assault and whether they filed a report at the time of the assault. This will happen regardless of whether we explicitly stated in the file that they did or did not so file. This will happen regardless of the fact that they have appointed me as their attorney, and in any other legal proceeding, the agency would speak with me, rather than with the individual. Not only their answers, but the very wording of their answers in this conversation, will have an impact on the decision made in their case.

The second is that they will be called by the VA to schedule their Compensation & Pension exam. For some, this will be scheduled at the VA. For others, it will be scheduled with an independent contractor. They will have no control over whether this exam is with a man or a woman. When it is time for their exam, they will meet with this doctor, who is a stranger to them, and upon meeting them, will be asked yet again questions regarding what happened in the service, how it impacted them, what their symptoms are. This will happen regardless of the level of detail we have included in their statement. This meeting can last for hours.

I have had clients who leave this appointment so distraught that they are admitted to inpatient psychiatry. I have had clients who are unwilling to go. Other clients have struggled to maintain sobriety, sobriety only achieved after a long and difficult struggle. Far too many have called me expressing suicidal thoughts and inclinations such that I strongly encourage and offer to connect them with the VA's Crisis Line or with their therapist.

Finally, after all of this, a process which, more often than not, lasts for months, or in the case of appeals, sometimes years, a decision is issued. When claims are denied, the VA's wording has a profound impact upon the veteran. A client, Sarah, called me one day in tears. Sarah had served in the Army in the 1980s. During her service, she was raped, and then became pregnant from the attack. She carried the baby to term and now has a daughter who is in her twenties. Sarah loves her daughter; nonetheless, the daughter is also a constant reminder of the brutal attack Sarah endured. We presented this to the VA in her personal statement, supported by years of therapy and medical treatment. When the VA denied Sarah's claim, they wrote, "The evidence of record does not provide credible evidence that the claimed stressor occurred." Further on they expanded, "The service treatment records and personnel file show no credible evidence that would establish reasonable doubt and allow us to conclude that you were, in fact, assaulted."

I understand that claims will be denied. I understand that sometimes meritorious claims may be denied improperly—that is why we have the appeals system. But this language is extremely insensitive and inhumane. Sarah called me in tears from her car. Her husband was driving her to the VA—she had become suicidal after reading these callous and unfeeling words.

I wish that I could say that Sarah's situation is rare, but it is not. The VA makes many statements that it is concerned about the high rate of veteran suicide—a cause deserving of the highest level of concern—yet its own words can cause veterans to consider taking their lives. It is one thing to state that a veteran has not met a burden of proof. It is another thing altogether to discount completely their most traumatic moment and to tell them that they find no credibility that it occurred.

Military sexual trauma is unique in the ways it can consume a person's life. It is an intimate and personal invasion that occurs both where you live and where you work, that may have been committed by someone who is your superior, your commander, your colleague upon whom you must rely. It often occurs in a place where your life

may already been in danger, and in a situation that you have no way to escape for some substantial period thereafter. Many of my clients, now senior citizens, decades after their assault, still struggle to overcome the burden of that trauma.

In recognition of the severity and duration of trauma from military sexual assault, the VA changed its policies to allow veterans who are survivors, regardless of their discharge status, to, at the very least, obtain care at the VA when the treatment is directly tied to their trauma. One of my clients, Maria, is such a survivor. She was discharged from the Army with an “uncharacterized” discharge, without enough days of service to qualify for care. During her time in the Army, Maria had been gang raped, and is engaged in an ongoing struggle with her mental health. As per the VA’s policy, she is eligible to obtain mental health treatment at the VA. But every time Maria goes to the VA for an appointment, she is told she is ineligible for treatment. No explanation. On more than one occasion, she was told she was ineligible because she wasn’t a veteran. Each time this would occur, Maria would say to the VA staff, “I was raped in the service, and I’m here for care related to that.” As if those were magic words, the staff person would then realize their error, and allow Maria to check in for her appointment. It is important to understand that this conversation, the prerequisite to her getting an appointment to have care she is entitled to, occurs in a crowded waiting room, filled with men and women who are strangers. This unnecessarily invasive revelation must be aired publicly.

Considering all of this, I respectfully propose the following recommendations to best support survivors:

1. The VA, as in any other legal proceeding, should respect veteran-appointed representatives and speak directly with *them*, rather than with the veteran.
 - This should be the default in all cases. The VA should be required to contact a veteran’s representative when explicitly asked to by the veteran. To do otherwise should be considered a failure of the VA’s “duty to assist.”
2. When records are unobtainable due to no fault of the veteran, the VA should bear that responsibility. Veterans should not be denied benefits because government agencies lost, mismanaged, or have not found their files.
3. Examiners and VBA employees should be required to review a veteran’s statement *prior to the exam or any other conversation with the veteran regarding their assault*.
 - Currently, VA examiners are required to state whether they reviewed the veteran’s electronic file before writing their report. However, they

are not required to do so prior to meeting the veteran—if this was required, the doctor could avoid rehashing details that are already stated in the record and that are agonizing to relate.

- VBA staff should, when possible, avoid calling veterans to provide sensitive information already present in the claims file.
4. The VA must establish trauma-informed language and protocols to be used across the VA, from the claims agents to the hospital receptionists, to ensure the VA is not creating further trauma when addressing survivors.
 - Systems should be developed to note in the electronic records that the client is eligible for care for various conditions so that veterans are not turned away when checking in or asked to publicly disclose extremely private and intimate information.
 - Trauma-informed VBA staff should be required to review all language in denial letters to ensure veterans are not unnecessarily re-traumatized.
 5. Congress should enable the VA to provide funding for free legal services to assist veterans with these claims. As demonstrated by my testimony today, the VA benefits system is extremely complicated and legal representation is often a necessity, yet there are not enough of us, often due to lack of resources.
 - Legislation such as H.R. 3749, the Legal Services for Homeless Veterans Act, would enable the VA to provide funding for legal services for at-risk veterans.

The VA needs to become the place that fixes wrongs the military has failed to fix. It must serve survivors—all survivors—while bearing in mind the unique nature of military sexual trauma.

Chairman Pappas, Ranking Member Bergman, and members of the Subcommittee, in closing, I want to thank you and the Subcommittee for your continued interest in improving VA's response to and support of survivors of military sexual trauma. Now is the time to address the ways in which, even after service, the very system intended to help our veterans is often causing additional stress and harm. We must do all we can to ensure that survivors view the VA as a place where they are safe, supported, and believed. Please know that NYLAG is ready to assist you in these efforts. This completes my statement. I will be happy to respond to any questions you may have.