

## **National Assault Conference: A National Conference**

### **On Sexual Violence Prevention and Intervention**

**Thursday, September 29, 2005**

Good afternoon, ladies and gentlemen. I appreciate the opportunity of speaking to you about what the Department of Defense is doing to confront sexual assault.

I thank the Pennsylvania Coalition Against Rape and the National Sexual Violence Resource Center for organizing this National Sexual Assault Conference. The topic could not be of greater importance to our society and to our Armed Forces. All of you have contributed significantly to addressing sexual assault, and many of you have meaningfully assisted the Department of Defense in developing an effective policy in a short time. I want particularly to thank Delilah Rumburg, Anita Carpenter, Linda Ledray, and Teresa Scalzo.

Our perspective is straight-forward: Sexual assault is a crime. It inflicts incalculable harm on victims and their families; it tears at the very fabric of civilian and military communities; and it destroys trust among individuals and faith in our institutions.

Today I will discuss the significant changes the Department of Defense is making to prevent sexual assault—our first priority—and to respond more effectively to sexual crimes when they occur. Our collaboratively developed program reflects the commitment of both civilian and military leaders to confront a major social issue. We are vigorously implementing each element of this program. Our standard is clear: As Secretary of Defense Donald Rumsfeld stated, “The Department does not tolerate sexual assault of any kind.”

Concerned about reports of sexual assault in Iraq and Kuwait, in February 2004, Secretary Rumsfeld commissioned a special task force to examine the problem. He directed the task force “to review how the Department handles treatment of and care for victims of sexual assault.” Of particular concern was how we responded to these crimes in combat theaters.

Under the direction of Ms. Ellen Embrey, our Deputy Assistant Secretary of Defense for Force Health, Protection, and Readiness, the Care for Victims of Sexual Assault Task Force closely examined Department procedures and programs. Ms. Embrey’s team conducted 21 site visits and several dozen focus groups, and

consulted with subject matter experts both within and outside the Federal government.

The Task Force concluded that the Department lacked a comprehensive approach that applied to all four Military Services. The lack of standard definitions and consistent programs within DoD hampered efforts to confront sexual assault. In its April 2004 report, the Task Force reported 35 findings and offered nine recommendations.

A first recommendation called for the establishment of a single point of accountability for sexual assault policy within the Department. The Department's leadership approved the establishment of such an organization and the Joint Task Force for Sexual Assault Prevention and Response began operations in October 2004.

In parallel, Congress focused on sexual assault in the military, and in the National Defense Authorization Act for Fiscal Year 2005 mandated the promulgation of a comprehensive DoD policy by January 2005, covering prevention measures, medical treatment, commander oversight, and victim advocacy and intervention.

The Department met that deadline thanks to the collaborative efforts of the JTF, the Military Departments, and subject matter

experts, many of whom are here today. To expedite the approval process and place in effect the emerging program, DoD issued a series of Directive-type Memoranda, that each addressed a specific facet of sexual assault policy. It was my privilege to approve the first DTM only a month after the JTF stood up, and we publicly announced the first 11 DTMs on January 4, 2005. We now have in effect 14 DTMs, and the Department is currently in the process of integrating them, and other provisions, into two permanent policy documents: a Department of Defense Directive and its implementing Instruction.

Our challenge was to craft a policy that can be consistently applied throughout all four Military Services, while retaining the flexibility to address the diverse environments in which each Service operates. Our programs significantly enhance education and training to help prevent sexual assaults; significantly improve our treatment and support of victims to speed their recovery; and significantly enhance accountability to ensure system effectiveness.

Our cornerstone is training and education. The Department will conduct education programs to align personal moral values with the institutional values of the Armed Forces. The Department will ensure that its first responders—health care providers, victims advocates,

law enforcement personnel, chaplains, and others—are properly trained in their duties, and that installations have agreements in place with civilian institutions to provide services that would otherwise be unavailable. The end result should be a climate of confidence that prompts victims to seek treatment and to report sexual assaults, and one that ensures service members will not tolerate behaviors conducive to sexual misconduct of any kind.

Surveys both within and external to the military documented widely divergent opinions on what constitutes sexual assault and how it differs from sexual harassment. Service definitions differed from one another and were couched in legal terms that made them inaccessible to many service members. So our first priority was to craft a definition of sexual assault common to all of DoD that the average service member could understand. Advocacy groups provided particularly valuable assistance in this effort.

The resulting training definition clearly states the Department's view that sexual assault is a crime. It is not a misjudgment, an error, or a case of one drink too many. Sexual assault is a crime that the Department cannot and does not tolerate. The definition enumerates

the acts that comprise sexual assault—rape, non-consensual sodomy, indecent assault and attempts to commit such acts.

Equally important, our definition strongly focuses on the issue of consent. Department policy states that “consent shall not be deemed or construed to mean the failure by the victim to offer physical resistance. Consent is not given when a person uses force, threat of force, coercion or when the victim is asleep, incapacitated, or unconscious.”

This definition should eliminate any ambiguities that individual service members might have about sexual assault. They will be taught this definition repeatedly throughout their military service, beginning with initial entry training. This is particularly important due to the confusion among the nation's youth as to what constitutes sexual assault.

Let me cite a survey of Wisconsin teens. Forty-four percent believed a sexual assault had NOT occurred if a couple had prior consensual sex and the man subsequently forced the women to have intercourse. Forty-eight percent also agreed that sexual assault had not occurred if a woman initially agreed to have sex, changed her mind, and the man then forced her to have intercourse.

We must ensure that service members understand such conduct is not only unacceptable, it is criminal. Thus, the importance of our training program.

The Department worked closely with the Military Services to develop baseline training that is consistent among the Services for all military personnel. This instruction will be a component of initial entry training for new officers and enlisted. It includes the military service academies. And it continues throughout a career at the unit level and in all professional military education programs—even at our war colleges. We will discuss the different elements that constitute sexual assault and address with each service member, from the most junior enlistees to senior commanders, their roles in preventing and responding to sexual assault.

Additionally, there will be rigorous training geared to our first responder groups – designated personnel to help sexual assault victims. These individuals include sexual assault response coordinators, healthcare providers, victim advocates, law enforcement and criminal investigators, judge advocate general officers and chaplains. Training topics will include sensitivity to victims; timeliness of care; collection of forensic evidence; victim

advocate assistance; reporting guidelines and procedures; and availability of mental health and other support resources. I want to emphasize that this training has begun. This week, the Joint Task Force conducted its fifth national training conference for responders. That conference focused on victim advocates and sexual assault response coordinators. The JTF has trained nearly 900 responders in the past three months.

The Department will also be conducting pre-deployment training so service members will know what sexual assault services are available to them when their units deploy overseas to Southwest Asia, Korea, Western Europe, the Balkans, or other regions. This training includes information about the environment they are entering, with a special emphasis on the customs, mores and religious practices of those countries. In addition, we will assess whether there is a response capability already in place in the deployment locations or whether we need to ensure a robust sexual assault response capability deploys with a unit.

In addition, DoD has directed that sexual assault training be incorporated into all pre-command training. Commanders at all levels are critical to the success of the sexual assault prevention and



response program. They establish the command climate, they are responsible for maintaining discipline and good order, and they implement many important provisions of sexual assault policy. By gaining a fuller appreciation of our sexual assault policy and the impact of sexual assault on individuals and unit readiness, commanders will be better able to create and maintain an environment that prevents sexual assaults.

The Department has developed a *Commander's Checklist for Responding to Allegations of Sexual Assault*. The checklist assists commanders in navigating the myriad of competing requirements associated with responding to sexual assault, an event that they may only encounter once or twice during their command tenure. It coaches commanders on how to ensure the appropriate balance between a victim's right to feel secure and the accused's rights to due process under the law, and the checklist provides guidance on military protective orders, no contact orders, and related actions.

As I mentioned earlier, DoD has established standards for responders that ensure that victims, regardless of their duty station, will receive thorough, well-trained response services that fully

address their needs. However, this is a baseline; Military Services may establish more demanding standards, if desired.

Response groups consist of sexual assault response coordinators, or SARCs; victim advocates, also known as VAs; healthcare providers; law enforcement and criminal investigators; judge advocates; and chaplains. Consistent with each victim's unique privacy concerns, these responders will work together to ensure the victim receives the best care possible and to resolve speedily the sexual assault case.

Synchronizing this effort is the sexual assault response coordinator. SARCs, together with their team of victim advocates, provide victims with responders whose duties are to ensure that victims receive timely and appropriate services. Some of the Military Services had advocates prior to 2005, but the Directive-Type Memorandum entitled *Response Capability for Sexual Assault* standardized the positions and responsibilities of the SARC and VA throughout DoD. This ensures that SARCs and VAs trained at one installation can readily assume their duties at another location, including locations overseas.

SARCs serve as the center of gravity for each installation's sexual assault prevention and response program. They serve as the single point of contact to coordinate sexual assault victim care and to track the services provided to the victim from initial report of a sexual assault through disposition and resolution of the victim's health and well-being. These duties may include coordination with other facilities should the victim be reassigned to another installation.

SARCs also train victim advocates; serve as chairperson of the case management group that meets monthly; track the dispositions of all military sexual assault cases for their designated area of responsibility; and provide regular updates to the commander on the disposition status of a case. Moreover, SARCs assist commanders throughout the installation to fulfill annual sexual assault prevention and response training requirements. They also conduct liaison with civilian sexual assault response providers.

While the SARC primarily provides system advocacy, the victim advocate or VA provides 24/7 direct response to victims. VAs assist victims navigate our response network. They are not counselors, therapists, or investigators. VAs furnish accurate and comprehensive information on available options and resources so the victim can

make informed decisions such as obtaining a military protective order or moving to another set of living quarters. They also help victims identify other needs and obtain appointments for them with counselors, healthcare providers and chaplains. In addition, the VA accompanies the victim, at the victim's request, during investigative interviews and medical examinations. Advocate services normally continue until the victim no longer identifies the need for support.

These various measures and several others that I shall discuss shortly will help create a climate of confidence for our service members. I cannot overemphasize the importance of creating such an environment. It is the key to ensuring that service members prevent sexual assault; that victims seek care and report sexual assaults; and that combat readiness is maximized through the fostering of trust and mutual respect amongst all personnel.

Several new provisions will help establish this climate of confidence. One important requirement is a mandatory monthly status report to victims who have sought an investigation. The Care for Victims Task Force noted the frustration and disappointment of many victims who reported sexual assaults but never received any information on the investigation or actions taken. This failure did not

represent command efforts to keep victims in the dark or to cover up a crime. Rather, it reflected the lack of any policy guidance designating a particular agency or official to update the victim. Responders performed their duties but assumed that someone else would keep the victim informed when, in fact, no one had done so. To remedy this, commanders now have the responsibility to ensure that the victims receive, as a minimum, monthly updates on the status of their cases until final disposition. DoD policy defines final disposition as the conclusion of any judicial, non-judicial, and administrative action, including discharges, taken in response to the offense. "Final" is determined by whichever is later in time.

The Care for Victims Task Force also documented victim perceptions that sexual assaults received lower priority than other crimes. The Department has no room for perpetrators of sexual assault, and it will take all necessary actions to make them accountable for their crimes. Therefore, only military criminal investigative organizations—the elite of each Military Department's law enforcement capability—will investigate sexual assaults. The Joint Task Force conducted specialized training for criminal investigators last week that focused on investigative procedures

unique to sexual assault and how to be sensitive to the needs of victims of this crime.

DoD has also mandated that senior commanders be responsible for handling cases of sexual assault. Previously, junior commanders often handled these cases. While well-intentioned, these officers lacked the life experience to deal with the complexities of sexual assault incidents. To ensure these cases receive consistent and appropriate level of command attention and the full responses required by the sensitivities and complexities involved, we have directed the Military Services to designate a level of command, commensurate with the maturity and experience needed, to be the disposition authority for sexual assault cases.

Designated senior officers will also be responsible for reviewing administrative discharges for victims of sexual assault to ensure all determinations are consistent and appropriate. Circumstances associated with a reported sexual assault incident may ultimately result in a determination that the administrative separation of the victim is in the best interests of either the Armed Forces or the victim, or both. If a victim is to be separated, regardless of the reason for initiating the separation action, each such victim will receive a full and

fair consideration of the victim's military service and particular situation.

I also want to address provisions that not only contribute to an increased climate of confidence but overcome two significant barriers to reporting. One barrier is victim misconduct, which the Department terms collateral misconduct. A victim may have violated a regulation or standing order at the time of the sexual assault (for example, underage drinking or being in an off-limits area). Rather than face punishment for a minor offense, some victims opted not to report their sexual assault. DoD created a policy that permits commanders to defer taking action on victim misconduct until final disposition of the sexual assault case. Exceptions can be made only if overriding, extenuating circumstances exist. This policy clearly sends the signal on the Department's view that sexual assault is a crime and ensures that victims do not receive punishment while perpetrators await action on their offenses.

A far more significant barrier to reporting is the fear, embarrassment, shame, and sense of violation that prevent the majority of victims in civilian and military communities from reporting their sexual assault. Understandably these victims are not prepared

for the intrusiveness of a criminal investigation. Our previous policy of mandatory reporting did not address this sad reality, and required healthcare providers and others to report all sexual assaults to law enforcement. This policy inadvertently resulted in some—perhaps many—military victims choosing to forego medical care, treatment, and counseling rather than be included in a criminal investigation.

The Department's new confidentiality policy takes direct aim at this barrier and represents a fundamental change in how DoD responds to victims of sexual assault. I first announced the policy in March, and it went into effect on June 14 after a 90-day period that permitted the Military Services to inform their personnel and prepare their sexual assault responders. Confidentiality establishes a disclosure option where victims can receive medical treatment and support without triggering the investigative process. It rebalances our focus from one that concentrated exclusively on offender accountability to one that also emphasizes victim access to services. This change represents a major cultural shift, and it will further enhance a climate of confidence.

Confidentiality provides victims additional time and personal space, together with increased control over the release and



management of their personal information. This will empower them to seek relevant information and the support needed to make more informed decisions about participating in the criminal investigation. Let me explain how this policy works.

The policy permits victims to choose between two reporting options: unrestricted reporting and restricted reporting. Unrestricted reporting meets the needs of service members who have been sexually assaulted and desire medical treatment, counseling and an official investigation of their allegations. Victims report the assault using current reporting channels such as the chain of command, law enforcement, and the SARC. Upon notification, the SARC will appoint a victim advocate to assist the victim, and the victim will receive monthly updates and other support described earlier in my presentation. Commanders will also be notified. However, details regarding the incident will be limited to only those personnel with a legitimate need to know. For example, a supervisor may learn that an assault occurred but not receive information detailing the crime.

Restricted reporting, in contrast, enables victims of sexual assault to receive medical treatment and support without triggering the investigative process. We hope this will empower victims to seek

relevant information and support, and to make more informed decisions about participating in the criminal investigation.

Service members who select this option may report the sexual assault only to SARCs, healthcare providers, or victim advocates. (Consistent with existing policy, communications with chaplains and therapists continue to be privileged under the Military Rules of Evidence.) Healthcare providers will provide appropriate care and treatment and also report the sexual assault to the SARC. Upon notification, the SARC will appoint a victim advocate to assist the victim and to provide the victim accurate information on the process to include the process of restricted vice unrestricted reporting.

At the victim's discretion, the healthcare provider, if appropriately trained and supervised, will conduct a forensic medical examination, which may include the collection of evidence. In the absence of a DoD provider, the victim will be appropriately referred to a civilian agency for the forensic examination. The Department has established procedures for anonymously storing this evidence for up to one year in the event that the victim changes from a restricted to an unrestricted report and pursues a criminal investigation.

The SARC, assigned victim advocate, and healthcare providers may not disclose covered communications to law enforcement or command authorities, either within or outside DoD. Covered communications include oral, written or electronic communications of personally identifiable information made by a victim to the SARC, assigned victim advocate or to a healthcare provider related to the alleged sexual assault. Only a very few, narrowly defined exceptions to this policy, are allowed, such as the victim posing a clear and eminent danger to herself or himself, or others. Even then, only minimal information will be disclosed, and the report will remain restricted.

For purposes of public safety and command responsibility, the SARC will notify command officials within 24 hours of the sexual assault that an incident has occurred. But the SARC will not provide information that could reasonably lead to personal identification of the victim. Depending on the size and population characteristics of the installation, permissible information might include time, location, gender, rank, Military Service, and the nature of the sexual assault. Learning of an assault that previously would have gone unreported will allow commanders to gain more accurate information about the

safety of their installations and to take preventive action in the form of increased police patrols, greater command emphasis, and additional sexual assault training. Significantly, commanders will not be permitted to initiate investigations based on the information SARCs provide.

We believe confidentiality will lead to more victims of sexual assault coming forward and receiving the medical care and support they need. Preliminary data indicate that the new policy is meeting expectations. Reporting has increased, meaning more victims are receiving dearly needed medical treatment and other services. Significantly, some victims have already changed from a restricted to an unrestricted report after only a few weeks of care.

Confidentiality and the other elements of the new sexual assault policy represent fundamental changes in how the Department addresses sexual assaults. Together, they constitute groundbreaking improvements that we believe will be the benchmark for the nation.

The Department of Defense fully believes that adopting a vigorous sexual assault policy is the right thing to do. Moreover, we understand that only a comprehensive policy that targets the

prevention of sexual assault; that significantly enhances support to victims; and that increases system accountability, can create a climate of confidence and a community that treats each of its members with dignity and respect.

We're off to a good start, but let me be clear – to prevail over sexual assault will take time. However, the Department's commitment to this issue is unwavering. We will continue our efforts to ensure that all our service members, including our most junior enlisted personnel and our cadets and midshipmen, enjoy an environment free of sexual assault, harassment and other related acts.

To that end, the Department is transitioning the Joint Task Force into a permanent office that works under me. The Sexual Assault Prevention and Response Office, SAPRO, will be the single point of accountability for sexual assault prevention and response policy. It will continue to collaborate with the Military Departments to maintain the momentum we have created and to ensure that our sexual assault policy remains relevant and ever responsive to the needs of our men and women in uniform.

I am confident that the Department will succeed. Thanks to many of you here today, we have laid the sound foundation for a long-term program. It enjoys the support of senior leaders, both civilian and military, and the response from the field has been simply superb.

I thank you for your many contributions and your on-going efforts to prevent sexual assault and provide care for victims of this crime. Thank you for your interest in all those who defend our freedom.