



**Report of
The Defense Task Force**

on

**Sexual Assault
in the
Military Services**

December 2009

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DEFENSE TASK FORCE ON SEXUAL ASSAULT IN THE MILITARY SERVICES

2850 EISENHOWER AVENUE, SUITE 100
ALEXANDRIA, VIRGINIA 22314

December 1, 2009

The Honorable Robert M. Gates
Secretary of Defense
U.S. Department of Defense
1000 Defense Pentagon
Washington, DC 20301-1000

Dear Mr. Secretary:

We are pleased to submit the report of the Defense Task Force on Sexual Assault in the Military Services. This report fulfills the requirements of the Ronald W. Reagan National Defense Authorization Act for Fiscal Year 2005, Subtitle K, Section 576 and guidance provided in the charge. The Task Force first convened August 11, 2008; this report is a culmination of fact-finding and analysis from our dedicated Members who represent all the Military Services and leaders and experts from the civilian sector. The findings and recommendations we provide are based on the sixty installations we have visited in sixteen states and nine countries, which included six locations in-theater and six visits with Service Members returning from Afghanistan and Iraq as directed by that legislation.

Our report recognizes the significant progress the Department has made in responding to the victims of sexual assault since the establishment of its Sexual Assault Prevention and Response (SAPR) program in 2005. However, this report points to the need for more structural, organizational, and strategic clarity for progress to continue. Our recommendations cover the spectrum from strategic proposals to specific actions that would improve prevention, victim response, and accountability. There is a critical need to designate funding and resources for the SAPR Program. As part of this process of institutionalization, standardizing terminology and program design across all the Military Services is critical. A number of findings and recommendations point to the fact that sexual assault programs must be given a more permanent place within the military organization and culture.

The Task Force expresses sincere appreciation to all of those who contributed to this report. We especially want to thank the Service Members who gave of their time and

talent by participating in focus groups, answering surveys, and sharing their experiences as we conducted site visits and collected data.

The vast majority of the men and women in the Military Services serve with honor and personal dignity, and many put themselves in harm's way to protect our Nation's freedoms. We present these findings and recommendations with confidence that the Department of Defense will continue to move forward in its efforts to eliminate the scourge of sexual assault, a crime that is an anathema to the values and ethic of our military.

Sincerely,



Louis V. Iasiello, PhD
Task Force Co-Chair



Millicent Wasell
Task Force Co-Chair

DEFENSE TASK FORCE ON SEXUAL ASSAULT IN THE MILITARY SERVICES

To the Secretary of Defense
To the Secretary of the Army
To the Secretary of the Navy
To the Secretary of the Air Force

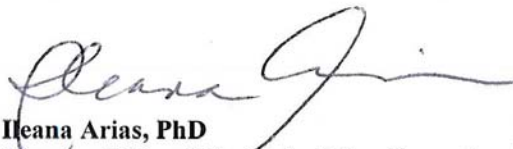
We, the appointed members of the Defense Task Force on Sexual Assault in the Military Services, do hereby submit the results of our findings and offer our best recommendations to improve the overall readiness of the US Armed Forces.



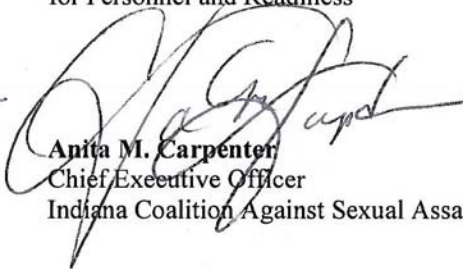
Louis V. Iasiello, PhD, Co-Chair
Rear Admiral, U.S. Navy (Retired), 14th Chief
of Navy Chaplains (USN, USMC, USCG)



Millicent Wasell, Co-Chair
Former Advisor to the Under Secretary of Defense
for Personnel and Readiness



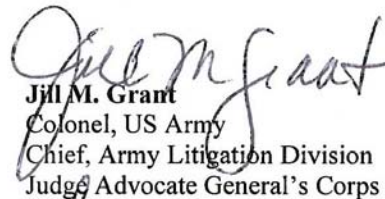
Ileana Arias, PhD
Director, National Center for Injury Prevention
and Control
Centers for Disease Control and Prevention



Anita M. Carpenter
Chief Executive Officer
Indiana Coalition Against Sexual Assault



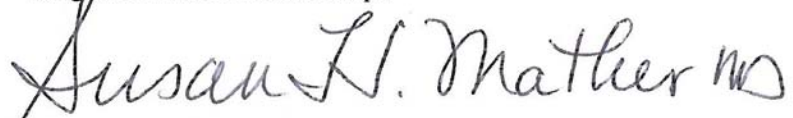
Sharon K.G. Dunbar
Brigadier General, US Air Force
Director, Manpower, Organization and
Resources



Jill M. Grant
Colonel, US Army
Chief, Army Litigation Division
Judge Advocate General's Corps



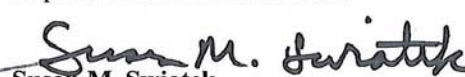
Donald P. Henry
Captain, US Navy
Assistant Chief of Staff for Intelligence,
Commander THIRD Fleet Joint Task Force
Maritime Component Commander



Susan H. Mather, MD
Retired Chief Officer, Office of Public Health and
Environmental Hazards
Veterans Health Administration
Department of Veterans Affairs



Delilah F. Rumburg
Executive Director, Pennsylvania Coalition
Against Rape and the National Sexual Violence
Resource Center



Susan M. Swiatek
Colonel, US Marine Corps
Judge Advocate

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THE SECRETARY OF DEFENSE
WASHINGTON, THE DISTRICT OF COLUMBIA

OCT 3 2005

MEMORANDUM FOR MEMBERS OF THE DEFENSE TASK FORCE ON
SEXUAL ASSAULT IN THE MILITARY SERVICES

SUBJECT: A Charge to Achieve Excellence

Pursuant to Public Law 108-375, I hereby charge the Defense Task Force on Sexual Assault in the Military Services (the SAMS Task Force) to examine matters relating to sexual assault cases in which members of the Armed Forces are either victims or commit acts of sexual assault. I seek your recommendations for ways by which civilian leaders within the Department of Defense and leadership within the Armed Forces may continue to improve the Department's response to matters relating to sexual assault.

You are about to embark on the third major effort concerning these matters during my tenure as the Secretary of Defense. We are making progress. We now have new and improved policies in place that enhance our support and care of victims, improve our prevention efforts, and increase offender and system accountability. However, as with any new policies, the proof is in the implementation. Although these policies are still maturing, I ask you to assess service implementation with particular emphasis on the training and education provided to our military and civilian personnel. I also urge you to operate in close coordination with the Director of the Sexual Assault Prevention and Response Office, the Department's single point of accountability for sexual assault policy matters.

Your report to me and to the Secretaries of the Military Departments shall include your findings, as well as an assessment of, and recommendations for, measures to improve the items listed at the attachment. In addition, you should consider the findings and recommendations of previous reviews and investigations of sexual assault conducted by the Department of Defense and the Armed Forces. Your report must also include the following:

- Recommendations to overcome any barriers impacting the effective implementation of DoD policy for the Prevention and Response to Sexual Assault.
- The findings, to include best practices, and conclusions of the task force.
- Any recommendations for changes to policy and law that the task force considers appropriate.
- Other areas of concern not previously addressed in prior reports.



OSD 12633-05

Your report is due one year after you initiate your assessment. The scope of your work is more comprehensive than your past effort, but our efforts to eliminate this anathema to honorable service are critically important. Prompt action is essential. To that end, I encourage you to be swift as well as thorough.

A handwritten signature in black ink, appearing to read "Z. R. Miller". The signature is fluid and cursive, with the first letter of each name being capitalized and prominent.

Attachment
Topics for Assessment

TOPICS FOR ASSESSMENT

(1) Victim care and advocacy programs.

Are the training and policies for victim response adequate to ensure that all victims receive the prescribed standard of care regardless of the location?

Are the Combatant Commanders' implementations of these new policies effective in the deployed locations?

(2) Effective prevention.

Are Service members who may be bystanders to sexual assault able to recognize indicators and prevent assault from occurring?

(3) Collaboration among military investigative organizations with responsibility or jurisdiction.

Are investigative organizations working cooperatively?

(4) Coordination and resource sharing between military and civilian communities, including local support organizations.

What opportunities exist to leverage other existing federal, state and local programs to address sexual assault prevention and response involving members of the Armed Forces?

(5) Reporting procedures, data collection, tracking of cases, and use of data on sexual assault by senior military and civilian leaders.

Has the prescribed case management model been implemented effectively?

(6) Oversight of sexual assault programs, including development of measures of the effectiveness of those programs in responding to victim needs.

Is the training provided to Sexual Assault Response Coordinators effective to fulfill their role as the center of gravity for Sexual Assault Prevention and Response at the installation level?

Do the Coordinators function effectively?

(7) Military Justice issues.

Is military justice in the joint commands being exercised or left for component commanders?

Should joint commands exercise military justices over personnel assigned or attached?

(8) Progress in developing means to investigate and prosecute assailants who are foreign nationals.

Are the Combatant Commanders' implementations of these new policies effective in deployed locations?

(9) Adequacy of resources supporting sexual assault prevention and victim advocacy programs, particularly for deployed units and personnel.

Are current resources adequate to support the requirements established by recent DoD policies?

(10) Training of military and civilian personnel responsible for implementation of sexual assault policies.

Are military and civilian leaders responsible for sexual assault prevention and response policy implementation adequately trained and supported?

What is the effectiveness of the training related to sexual assault prevention and response provided to Commanders?

How well has sexual assault prevention and response training been incorporated into their commands?

Do the DoD and Service training programs adequately incorporate the definition of sexual assault and the behaviors that constitute sexual assault?

(11) Programs and policies, including those related to confidentiality, designed to encourage victims to seek services and report offenses.

(12) Other issues identified by the Task Force relating to sexual assault.

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EXECUTIVE SUMMARY

This executive summary highlights key recommendations and findings in this report. For a full exposition of recommendations and findings, see specific sections addressing Strategic Direction, Prevention and Training, Response to Victims, and Accountability.

TASK FORCE CHARGE

The Task Force on Sexual Assault in the Military Services was established on October 3, 2005, pursuant to Section 576 of Public Law 108-375, the Ronald W. Reagan National Defense Authorization Act for Fiscal Year 2005, to examine matters relating to sexual assault in which members of the Armed Forces are either victims or commit acts of sexual assault. The Task Force consisted of five members from the Department of Defense (DOD): one civilian official from the Office of the Secretary of Defense (OSD) and one Service Member from each Military Service; and five members from outside the Department of Defense.

METHODOLOGY

In compiling this report, the Task Force gathered and analyzed information from two detailed data calls to the Office of the Secretary of Defense (OSD), the Joint Chiefs of Staff (JCS), the Combatant Commands, and the Military Services. We conducted site visits at sixty installations in the United States, the Middle East, the Pacific Rim, and Europe, including deployed locations. During these site visits, we interviewed key decision makers and service providers responsible for addressing sexual assault. We also conducted focus groups at each site to assess Service Members' understanding of sexual assault, as well as military sexual assault prevention and response programs, policies, and practices. With the assistance of the Defense Manpower Data Center (DMDC), the Task Force developed, administered, and then analyzed results of surveys of Sexual Assault Response Coordinators (SARCs), their supervisors and Victim Advocates (VAs). Within the realm of military justice, we conducted extensive interviews with prosecutors, defense counsel, military judges, convening authorities, and senior policy officials, and we made site visits at the US Disciplinary Barracks (USDB) at Fort Leavenworth, Kansas, Naval Consolidated Brig at Miramar, California, and Department of Defense forensic laboratory at Fort Gillem, Georgia. We considered results from our review of hundreds of criminal investigative files from the Military Services, as well as interviews with law enforcement officials during site visits and within the Washington, D.C. region. The Task Force sought public comment at each of our site visits and public meetings. More than sixty victims of sexual assault provided information for our consideration. We generated this report based upon the efforts outlined above, a thorough review of related reports, studies, and articles, and a series of subcommittee and full Task Force public meetings.

CULTURAL CONTEXT

Sexual assault occurs in all cultures, but the conditions under which it occurs and the responses to it differ based on the values and norms of the culture. Military culture is a part of American culture, but in many ways has its own values, rules, customs, and norms. Therefore, sexual assault in the Armed Services cannot be addressed in exactly the same way as it is in civilian society. The Task Force believes, however, that culture change is essential for the Military Services to improve how they prevent and address sexual assault. This section addresses key components of military culture as they relate to sexual assault: training, chain of command, unit cohesion, military operations, and readiness. The Task Force developed our findings and recommendations based on this military cultural context.

RECOMMENDATIONS AND FINDINGS

The Task Force divided our assessment into four critical topics: strategic direction, prevention and training, response to victims, and accountability. These topics will be addressed in order.

Strategic Direction

Organizational Placement of the Sexual Assault Prevention and Response Office (SAPRO)

The Task Force believes that the current placement of SAPRO within OSD has constrained critical aspects of the Sexual Assault Prevention and Response (SAPR) Program. We recommend SAPRO receive higher-level attention to effect greater progress. Specifically, the Task Force recommends that the Deputy Secretary of Defense take responsibility for SAPRO for at least one year and until the Secretary of Defense apprises Congress that the Program is meeting established institutional goals.

Program Funding

During our field assessments, the Task Force repeatedly observed sexual assault prevention and response program funding to be sporadic and inconsistent. Commanders and their staffs frequently noted that sexual assault prevention and response was yet another unfunded program mandate to be resourced locally.

Personnel in the SAPRO expressed similar concerns. Predictable and distinct funding is essential to building a credible and stable foundation for the SAPR Program. Without consistent program funding, SAPR will continue to be viewed as a program that lacks permanence. Accordingly, the Task Force recommends that DOD include SAPR in its budgeting process and ensure adequate funding is allocated to the Military Services.

Functions and Structure of SAPRO

The Task Force determined that SAPRO does not provide either policy or oversight for several of its significant responsibilities. Moreover, SAPRO does not interface with operating forces or military officials responsible for accountability. Because SAPRO has limited itself to policy matters, it does not provide individual victim assistance. Therefore, the Task Force recommends DOD:

- Revise the structure of SAPRO to reflect the expertise necessary to lead and oversee its primary missions of prevention, response, training, and accountability;
- Appoint to SAPRO a director at the general or flag officer level, active duty military personnel from each Service, and an experienced judge advocate; and
- Establish a Victim Advocate position whose responsibilities and authority include direct communication with victims.

With this improved organizational structure, SAPRO must also establish standards to assess and manage the Program and ensure the Services comply with these standards. Further, SAPRO must be actively engaged in prevention policy development and legislation.

Sexual Assault Prevention and Response Program Personnel

The Task Force concluded that permitting the Services to adopt their own terminologies and personnel structures for sexual assault prevention and response has adversely affected the quality and consistency of sexual assault prevention and response support services. Accordingly, we recommend that the Secretary of Defense establish uniform sexual assault prevention and response terminology and core structures at the execution level to ensure consistency among the Services.

It is also our assessment that the duties and responsibilities of Sexual Assault Response Coordinators are inherently governmental and must not be performed by contractor personnel. Accordingly, the Secretary of Defense should require that SARCs be full-time military or DOD civilian personnel, with each installation or similar organizational level having a SARC and Deployable SARC (DSARC). A DSARC will deploy with each unit at the brigade, wing, or equivalent level unless SARC support is available at the deployed location. For these reasons, SAPRO must develop standardized duty descriptions for the SARC and DSARC to ensure qualified personnel are appointed to fill these critical positions, and to clarify roles and responsibilities. The Task Force further recommends that the Secretaries of the Military Departments ensure that SARCs and DSARCs have direct access to senior commanders and other commanders within their areas of responsibility.

The Task Force concluded that DOD would be better served by fewer but better qualified and more senior Victim Advocates. Specifically, we found that the current Unit Victim Advocate (UVA) program is not effective. We recommend this program be replaced with a small cadre of trained and credentialed personnel, recognized as qualified by the general court-martial convening authority, to provide better victim support.

The Task Force makes additional recommendations with regard to improving sexual assault program oversight, metrics, visibility of trends, and trend analysis.

Prevention and Training

Since its establishment, DOD SAPRO has focused on increasing general awareness about sexual assault and developing an effective response process; sexual assault prevention has historically received less focus. Recent prevention efforts center primarily on “bystander intervention;” although positive, these initiatives are not guided by an overarching prevention strategy in which “effective prevention” is clearly defined. Accordingly, the Task Force recommends that SAPRO develop a comprehensive prevention strategy that encompasses strategic direction, prevention, response, and accountability. This strategy must guide SAPR initiatives, processes, training, and communication plans. Service-specific prevention activities and programs must also align with DOD’s strategy. Given the importance of developing a comprehensive prevention strategy, we recommend that SAPRO work in close collaboration with the Military Services and national experts in sexual assault prevention.

The Task Force found that SAPRO has no systematic evaluation plan or feedback mechanism for assessing overall effectiveness of sexual assault prevention and response training efforts. We thus recommend that SAPRO develop a plan to routinely evaluate the efficacy and effectiveness of its prevention strategy based on intended outcomes at DOD and Military Service levels. The Task Force realizes that availability of proven science-based prevention evaluation models is limited; therefore, we recommend that SAPRO collaborate with civilian experts in designing a systematic evaluation plan. DOD should include results from these prevention program assessments in its annual report to Congress.

Effective training is a critical component of a successful prevention strategy. However, the Task Force found sexual assault prevention and response training was predominantly computer-based, or conducted

with briefing slides in large group settings with mixed ranks and genders, and focused principally on awareness and reporting options instead of prevention. Commanders and other unit leaders are not routinely involved or participate in sexual assault prevention and response training for their personnel, and training for DOD civilian personnel does not occur consistently. Likewise, training among the Reserve Components varies across the Services, states, and locations.

Accordingly, the Task Force recommends that SAPRO develop training policies and exercise oversight over Military Service training programs. Sexual assault prevention and response training must strengthen individual knowledge, skills, and capacity to prevent and respond to sexual assault. Given the importance of leadership involvement in sexual assault prevention and response, we recommend this training be tailored to levels of leadership responsibility (e.g., first-line supervisors and leaders, commanders, senior enlisted personnel) as well as be developmental over the course of military or government service. Specialized sexual assault prevention and response training for responders and care providers is similarly essential.

The Task Force has concerns with the adequacy of sexual assault prevention efforts in military recruiting environments. In this regard, we recommend the Military Services review recruiter screening and selection criteria and training, and ensure prospective recruits are aware of the SAPR Program, military recruiter conduct requirements, and procedures to report recruiter offenders.

Response to Victims

The Department of Defense has made demonstrable progress in providing assistance to victims of sexual assault. Restricted reporting that permits a victim to obtain immediate care and counseling without engaging law enforcement and command authority is an important first step in respecting the needs of victims of sexual assault. However, much remains to be accomplished.

Communications between sexual assault victims and Victim Advocates are afforded no privilege under military law. In contrast, thirty-five states provide a privilege for communications between a victim and a Victim Advocate. The absence of a privilege limits the effectiveness of Victim Advocates in the military community. Accordingly, the Task Force recommends that Congress enact a comprehensive military justice privilege for communications between a Victim Advocate and a victim of sexual assault.

Effective Victim Advocates are essential to a victim-centered SAPR Program. In the civilian community, Victim Advocates are trained to provide privileged communications during crisis intervention and longer-term support. Military victims of sexual assault need and deserve comparable services; however, DOD requires only minimal education and no formal certification for its Victim Advocates. Although these Victim Advocates perform commendable victim support, they lack the qualifications necessary for privileged communications with victims of sexual assault. The Task Force therefore recommends that the Secretary of Defense ensure that members of the Armed Forces who report they were sexually assaulted be afforded the assistance of a nationally certified Victim Advocate.

The Task Force found that sexual assault victims are frequently dissatisfied with how they are treated during the investigative process. One reason is that victims participate in this process without fully understanding their rights and what to expect. Although active duty victims may confidentially communicate with a military attorney at any time during the investigative process, many are unaware of this right or the meaning of “privileged communication.” Furthermore, many victims believe that the prosecutor will represent their interests in the process. Ensuring that victims understand their rights, and the limitations of these rights, will help minimize victim confusion during the investigative process. Accordingly, the Task Force recommends that the Secretary of Defense ensure that members of the

Armed Forces who report they were sexually assaulted be given the opportunity to consult with legal counsel qualified in accordance with Article 27(b), Uniform Code of Military Justice (UCMJ). We further recommend that victims be informed of their opportunity to consult legal counsel as soon as they seek assistance from a SARC or any other responsible official.

The Task Force makes further recommendations that relate to improving medical care for victims of sexual assault, particularly those in deployed areas, improving care of victims in training status, and ensuring gender appropriate care for male victims of sexual assault.

Accountability

DOD's Annual Report on Sexual Assaults in the Military

The Task Force has concerns with data included in the annual report to Congress and thus questions the utility of this report. We provide a series of recommendations for DOD to better comply with data requirements specified by Congress, while at the same time providing consistent and comparable data. Specifically, the Task Force recommends that the Secretary of Defense:

- Separately report the number of sexual assaults involving Service Member victims and number of sexual assaults involving Service Member offenders;
- Have The Judge Advocates General (TJAG) verify the accuracy of the report's disposition information, to include their Services' courts-martial data;
- Require the Inspector General (IG) to establish a consistent definition of the term "substantiated" and ensure military criminal investigative organizations (MCIOs) only provide synopses of those cases to the Secretary of Defense;
- Provide Congress case synopses for substantiated cases only and organize the synopses into categories from the most to the least serious cases;
- Establish a consistent policy on whether to include data for domestic violence or child victim cases, and ensure the Services comply accordingly; and
- Ensure that a database on sexual assault incidents in the Armed Forces is implemented in an expedited manner, and it tracks case disposition.

To ensure the database is developed, implemented, and maintained, the Task Force recommends that Congress fund the information database on sexual assault incidents in the Armed Forces that it mandated in Section 563 of Public Law 110-417.

At the request of the Secretary of Defense, the Task Force examined reporting procedures, data collection, case tracking, and use of sexual assault data by senior military and civilian leaders. We determined that the case management model prescribed in the DOD Directive and the DOD Instruction has not been implemented. Although a substitute is being developed, progress remains slow.

THE MILITARY JUSTICE PROCESS

A new, comprehensive Article 120 of the Uniform Code of Military Justice (UCMJ) went into effect on October 1, 2007. Practitioners consistently advised Task Force members that the new Article 120 is cumbersome and confusing. Prosecutors expressed concern that it may be causing unwarranted acquittals. In addition, significant issues related to the constitutionality of Article 120's statutory affirmative defense of "consent" and to lesser included offenses have evolved. Accordingly, the Task Force recommends that the Secretary of Defense direct a follow-up review of the effectiveness of Article 120, UCMJ.

The military justice system has an important role in victim care and recovery. As such, trial counsel must inform and consult with victims at every significant stage of the military justice process. The Task Force found that neither victims nor other military personnel were routinely informed of the results of disciplinary actions relating to sexual assault. We recommend that victims and other Service Members be so informed.

JOINT BASING AND JOINT COMMANDS

At the request of the Secretary of Defense, the Task Force examined the impact of increasingly joint operations on the SAPR Program. Commanders and their legal advisors are well aware that military justice authority follows command lines. For the most part, the Task Force found few issues with the manner in which commanders are exercising their UCMJ authority. Although the SAPR Program follows Service lines, most joint commands and Service proponents find practical accommodations between the two lines of authority. Law enforcement authorities (MCIOs) have reached similar accommodations in joint commands. It is our assessment that practical problems arising in this context are minimal. Hence, the Task Force recommends that the Secretary of Defense continue to monitor Service sexual assault prevention and response programs and military justice and jurisdictional processes to ensure consistent treatment of similarly situated victims and offenders across the Services.

CONCLUSION

Over the past fifteen months, this Task Force conducted a detailed assessment of DOD programs, policies, and practices that address sexual assaults involving members of the Armed Forces – as either victims or assailants. The Department’s progress in addressing sexual assault since the establishment of the SAPR Program in 2005 is evident, but uneven. Specifically, DOD has made significant progress in improving response to victims’ needs; we have noted success when commanders take an active role. However, greater focus and effort are required to fully address the spectrum of sexual assault prevention and response. With this in mind, the Task Force offers major recommendations concerning strategic direction and oversight of the SAPR Program, prevention and training strategies, response to victims, and accountability. Our recommendations highlight the need for institutional change to more effectively prevent sexual assault and address related issues. Doing so is not only ethically and morally correct, but also essential to military readiness – all the more critical at this time in our Nation’s history.

ABSTRACT OF TASK FORCE RECOMMENDATIONS

Congress

- Congress should fund research to identify and validate metrics that can more accurately measure the incidence of sexual assault within and outside the military. (Recommendation 3b1)
- Congress should require the Secretary of Defense to review sexual assault prevention and response in the Reserve Components. (Recommendation 7)
- Congress should enact a comprehensive military justice privilege for communications between a Victim Advocate and a victim of sexual assault. (Recommendation 20c)
- Congress should enact a law exempting federal medical personnel from state provisions requiring them to report sexual assaults to civilian law enforcement to ensure all Service Members have the restricted reporting option. (Recommendation 23a)
- Congress should fund the information database on sexual assault incidents in the Armed Forces that it mandated the Secretary of Defense to implement pursuant to Section 563 of Public Law 110-417 to ensure the database is developed, implemented, and maintained. (Recommendation 28b2)

Secretary of Defense

- The Secretary of Defense place responsibility for the Sexual Assault Prevention and Response Office (SAPRO) directly with the Deputy Secretary of Defense, for at least one year and until the Secretary of Defense apprises Congress that the program has established a strong organizational base.* (Recommendation 1)
- The Secretary of Defense include the SAPR Program in its Program Objective Memorandum (POM) budgeting process to ensure a separate line of funding be allocated to the Services. (Recommendation 2)
- The Secretary of Defense establish consistent SAPR terminology, position descriptions, minimum program standards, and organizational structures throughout the Military Services. (Recommendation 3a)
- The Secretary of Defense conduct a bi-annual gender relations survey of an adequate sample of Service Members to evaluate and manage DOD's SAPR Program. A summary of the survey results should be included in the annual report to Congress on sexual assault in the Military Services. (Recommendation 3b2)
- The Secretary of Defense set forth clear guidance on the distinct but related issues of sexual harassment and sexual assault as well as their associated organizational entities. (Recommendation 3c)
- The Secretary of Defense establish standards to assess and manage each of the Service's sexual assault prevention and response programs and ensure the Services comply with those standards. (Recommendation 3e)

* These recommendations have been summarized. See Chapter 5 for the complete recommendations.

- The Secretary of Defense establish a Sexual Assault Advisory Board (SAAB) modeled after other Defense advisory boards such as the Defense Business Board, Defense Policy Board, or Defense Science Board. This board should include outside experts on criminal law and sexual assault prevention, response, and training, as well as representatives from other federal agencies.* (Recommendation 4a)
- The Secretary of Defense reorganize and limit the current Sexual Assault Advisory Council (SAAC) to DOD personnel. The SAAC should oversee the Department's overall SAPR Program and its comprehensive prevention strategy and the Service programs' accountability, and suggest changes and improvements.* (Recommendation 4b)
- The Secretary of Defense ensure that the Military Services and DOD SAPRO consult with one another on policy and legislative efforts that have implications for sexual assault prevention and response.* (Recommendation 5a)
- The Secretary of Defense ensure the Department's SAPRO structure reflects the expertise and staffing necessary to accomplish the primary missions of prevention, response, training, and accountability. (Recommendation 5b)
- The Secretary of Defense restructure the SAPRO, to be led by a general or flag officer and staffed with at least one uniformed member from each Service, a judge advocate who served as the staff judge advocate in an active general court-martial jurisdiction, and other OSD personnel, to include a Victim Advocate whose responsibilities include direct communication with victims. (Recommendation 5c)
- The Secretary of Defense require that Sexual Assault Response Coordinators (SARCs) be full-time Service Members or DOD civilian employees and ensure each military installation or similar organizational level has a SARC.* (Recommendation 6a1)
- The Secretary of Defense develop standardized SARC and DSARC duty descriptions in the SAPR DODI to ensure qualified personnel are appointed to fill these critical positions, and to clarify roles and responsibilities. (Recommendation 6a3)
- The Secretary of Defense ensure that the Services discontinue use of Unit Victim Advocates and replace this program as directed below. (Recommendation 6a5)
- The Secretary of Defense direct SAPRO to work with the Services to determine the appropriate number of Victim Advocates based on military population and mission. (Recommendation 6a8)
- The Secretary of Defense direct the Services to establish two installation-level sexual assault case management groups: a Sexual Assault Response Team (SART), responsible for overseeing unrestricted reported cases; and a Sexual Assault Review Board (SARB), responsible for installation-level systemic issues. (Recommendation 6b1)
- The Secretary of Defense establish a SART protocol.* (Recommendation 6b2)
- The Secretary of Defense direct the Services to establish a quarterly sexual assault multi-disciplinary group organized as a Sexual Assault Review Board (SARB) and establish guidelines to include that it be chaired by the senior commander, senior deputy commander, or chief of staff.* (Recommendation 6b3)
- The Secretary of Defense ensure the Services include sexual assault prevention and response programs in their Inspector General (IG) assessments, using DOD SAPRO metrics and standards.* (Recommendation 6c1)

- The Secretary of Defense ensure that IG personnel are not performing SARC duties. (Recommendation 6c2)
- The Secretary of Defense direct that DOD SAPRO collaborate with the Military Services and national leaders to develop a comprehensive sexual assault prevention strategy.* (Recommendation 8)
- The Secretary of Defense direct SAPRO to develop and implement an evaluation plan for assessing the effectiveness of the prevention strategy and its intended outcomes at the DOD and Service levels. The results of this assessment should be included in DOD's annual report to Congress. (Recommendation 9)
- The Secretary of Defense direct SAPRO to develop training policies and exercise oversight of Military Service sexual assault prevention and response training programs.* (Recommendation 10)
- The Secretary of Defense direct that managers of specialty skills associated with first responders integrate sexual assault response training in their initial and recurring training courses.* (Recommendation 15)
- The Secretary of Defense direct SAPRO to professionalize initial and continuing education requirements for SARCs and VAs. (Recommendation 16)
- The Secretary of Defense ensure that each member of the Armed Forces who reports that he or she has been sexually assaulted is given the opportunity to consult with legal counsel qualified in accordance with Article 27(b) UCMJ. The victim will be informed of this opportunity to consult as soon as he or she seeks assistance from a sexual assault response coordinator or any other responsible DOD official. (Recommendation 20a)
- The Secretary of Defense ensure that each member of the Armed Forces who reports that he or she has been sexually assaulted is offered the assistance of a Victim's Advocate who has been certified by the National Victim Assistance Academy and has been recognized by a general court-martial convening authority as qualified to perform Victim Advocate duties within the Armed Forces. (Recommendation 20b)
- The Secretary of Defense implement a SARC-led process for victims to "opt out" of participating in the investigative process.* (Recommendation 21a)
- The Secretary of Defense ensure that sexual assault victims are informed that the services of the SARC and Victim Advocate are optional and these services may be declined, in whole or in part, at any time. (Recommendation 21b)
- The Secretary of Defense ensure appropriate sexual assault prevention and response services are provided to family members, retirees, and DOD civilians and contractors.* (Recommendation 22a)
- The Secretary of Defense ensure that victims of sexual assault in training environments are provided confidential access to victim support services and afforded time for recovery. Victims should not be required to repeat training unless support services and recovery time significantly interfere with their progress. (Recommendation 22b)
- The Secretary of Defense ensure that a victim of sexual assault reserves the right to make a restricted report despite disclosing to a third party. Victims would lose this right only if they disclose to their direct chain of command or law enforcement, or information regarding the assault independently reaches the chain of command or law enforcement. (Recommendation 23b)

- The Secretary of Defense direct that Service Members are trained that responsibilities to report sexual assaults are satisfied by informing the SARC, the preferred method of reporting sexual assaults. (Recommendation 23c)
- The Secretary of Defense direct the establishment of protocols for medical care of both male and female victims of sexual assault, including appropriate prophylaxis. (Recommendation 24)
- The Secretary of Defense establish a Sexual Assault Forensic Examiner education program at military teaching hospitals and wherever medics and corpsmen are trained. (Recommendation 25a)
- The Secretary of Defense direct that medical records of sexual assault victims are accurate and complete with respect to the physical and emotional injuries resulting from the assault. (Recommendation 26a)
- The Secretary of Defense direct that military separation physicals shall include an assessment of sexual trauma, previously disclosed or undisclosed, during active duty service. (Recommendation 26b)
- The Secretary of Defense establish a universal hotline to allow victims to report and be connected with a local SARC in the United States or overseas. (Recommendation 27)
- The Secretary of Defense separately report the number of sexual assaults involving Service Member victims and the number of sexual assaults involving Service Member offenders, and refrain from combining these numbers. (Recommendation 28a1)
- The Secretary of Defense provide Congress with case synopses for only substantiated cases organized by offense.* (Recommendation 28a3)
- The Secretary of Defense establish a policy clarifying whether the report should include data on cases involving domestic violence or child victims, and ensure Services comply with the policy. (Recommendation 28a4)
- As mandated by Congress, the Secretary of Defense ensure that a database on sexual assault incidents in the Armed Forces is implemented in an expedited manner. The Secretary of Defense ensure this database tracks case disposition. (Recommendation 28b1)
- The Secretary of Defense ensure the Services consistently implement the titling standard. (Recommendation 29a)
- The Secretary of Defense direct a follow-up review by military justice experts of the effectiveness of Article 120, UCMJ. (Recommendation 29c)
- The Secretary of Defense and the Combatant Commanders ensure that sexual assault prevention and response programs are codified and executed, particularly relating to issues that arise in remote and deployed environments, including coalition operations. (Recommendation 30a)
- The Secretary of Defense monitor the implementation of sexual assault prevention and response programs as well as military justice and jurisdiction issues at joint basing locations.* (Recommendation 30c)
- The Secretary of Defense monitor the Department's investigative process and disposition of cases involving foreign national assailants. (Recommendation 30d1)

Service Secretaries

- The Secretaries of the Military Departments set forth clear guidance to all commanders that their leadership of their commands' sexual assault prevention and response program is a non-delegable responsibility. (Recommendation 3d)
- The Secretaries of the Military Departments create committees at the Service level paralleling the DOD Sexual Assault Advisory Council, if they have not already done so.* (Recommendation 4c)
- The Secretaries of the Military Departments establish Military Deployable Sexual Assault Response Coordinators (DSARCs) who will train with SARCs on their specific roles and responsibilities in preparation for deployment. DSARCs should serve as back-up for the SARC when not deployed. Appropriate number of DSARCs should be a function of military population and mission. (Recommendation 6a2)
- The Secretaries of the Military Departments ensure that SARCs have direct access to senior commanders and every commander within their areas of responsibility. (Recommendation 6a4)
- The Secretaries of the Military Departments establish Victim Advocates, certified by the National Victim Assistance Academy. (Recommendation 6a6)
- The Secretaries of the Military Departments establish Military Deployable Victim Advocates (DVAs) certified by the National Victim Assistance Academy who will train with the VA on their specific roles and responsibilities in preparation for deployment. DVAs should serve as back-up for the VA when not deployed. Appropriate number of DVAs should be a function of military population and mission. (Recommendation 6a7)
- The Secretaries of the Military Departments establish developmental sexual assault prevention and response training and education curricula for Active Duty, Guard, Reserve, and DOD civilians.* (Recommendation 11)
- The Secretaries of the Military Departments ensure all commanders and senior enlisted leaders are actively involved in sexual assault prevention and response training and awareness programs. (Recommendation 12a)
- The Secretaries of the Military Departments ensure that each installation and operational commander assess the adequacy of installation measures to ensure the safest and most secure living and working environments. (Recommendation 12b)
- The Secretaries of the Military Departments develop and establish peer education programs. (Recommendation 17)
- The Secretaries of the Military Departments ensure that installation commanders, with their SARCs, collaborate with supporting community organizations. (Recommendation 19)
- The Secretaries of the Military Departments ensure that in all courts-martial in which victims of sexual assault testify, victims should, at their request, be provided a verbatim copy of the record of trial at no expense to the victims. Victims should be informed of this right. (Recommendation 20d)
- The Secretaries of the Military Departments ensure that SARCs work with supporting medical staff, mental health staff, and chaplains to offer unit counseling options for commanders of units in which either victims or alleged offenders of sexual assaults are assigned. (Recommendation 22c)

- The Secretaries of the Military Departments ensure sexual assault forensic exam (SAFE) kits are either available or accessible in sufficient time to preserve evidence. The Secretaries should also ensure military personnel have access to qualified medical personnel to conduct evidence collection in a safe, confidential, and gender-unbiased manner, especially in deployed and remote environments. (Recommendation 25b)
- The Secretaries of the Military Departments and the DOD Inspector General direct that military law enforcement agencies coordinate with local law enforcement authorities and obtain written agreements that clearly state what agency should be notified and respond to all reports of sexual assault, when the victim or offender is a Service Member.* (Recommendation 29b)
- The Secretaries of the Military Departments ensure commanders consider the full range of disciplinary actions when acting on allegations. Before those decisions are made, the trial counsel should consult the victim to determine his or her wishes regarding case disposition and provide that information to the commander. (Recommendation 29d1)
- The Secretaries of the Military Departments ensure commanders, after consulting their servicing judge advocates, inform members of their command of case outcomes. (Recommendation 29d2)
- The Secretaries of the Military Departments and The Judge Advocates General use military judges from other Services more frequently to ensure expeditious disposition of courts-martial cases. (Recommendation 29e)
- In those cases where the joint commander declines to exercise jurisdiction, the Secretaries of the Military Departments ensure a subordinate commander exercises general court-martial convening authority. (Recommendation 30b2)

Combatant Commanders

- The Secretary of Defense and the Combatant Commanders ensure that sexual assault prevention and response programs are codified and executed, particularly relating to issues that arise in remote and deployed environments, including coalition operations. (Recommendations 30a)

DOD Inspector General

- The Department of Defense Inspector General establish a consistent definition of “substantiated” and ensure military criminal investigative organizations (MCIOs) only provide synopses for those cases to Secretary of Defense.* (Recommendation 28a3)
- The Secretaries of the Military Departments and the DOD Inspector General direct that military law enforcement agencies coordinate with local law enforcement authorities and obtain written agreements that clearly state what agency should be notified and respond to all reports of sexual assault, when the victim or offender is a Service Member.* (Recommendation 29b)

Judge Advocates General

- Prior to the Secretary of Defense's submission of the report to Congress, The Judge Advocates General verify the accuracy of the annual report disposition information including courts-martial data. (Recommendation 28a2)
- The Secretaries of the Military Departments and The Judge Advocates General use military judges from other Services more frequently to ensure expeditious disposition of courts-martial cases. (Recommendation 29e)

Joint Commanders

- Joint commanders maintain oversight and continue to allow component commanders the opportunity to exercise jurisdiction. On a case-by-case basis, the joint commander may withhold authority to dispose of alleged offenses. (Recommendation 30b1)

Commanders of Recruiting Organizations

- Commanders of recruiting organizations ensure that recruiters are carefully screened and trained, that sexual assault prevention and response program information is effectively disseminated, and that effective oversight is in place to preclude the potential for sexual misconduct. (Recommendation 18a)
- Commanders of recruiting organizations and Military Entrance Processing Stations (MEPS) ensure that sexual assault prevention and response awareness campaign materials are available and posted in locations visible to potential and actual recruits. (Recommendation 18b)

SAPRO

- The DOD SAPRO must be proactively engaged in DOD sexual assault policy development and legislation. (Recommendation 5a)
- The DOD SAPRO ensure that all sexual assault prevention and response training emphasizes the importance of immediately contacting the SARC after a sexual assault to ensure preservation of the restricted reporting option and receive guidance on available services and victim care. (Recommendation 13)
- The DOD SAPRO develop training with the Services on the Sexual Assault Response Team (SART) protocol, with emphasis on the importance of delivering a coordinated response, and mandate its use throughout the Department of Defense. (Recommendation 14)
- In its annual Report on Sexual Assault in the Military, DOD SAPRO summarize substantiated sexual assault cases involving foreign national assailants and identify any gaps in investigating and adjudicating these cases. (Recommendation 30d2)

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CHAPTER 1: INTRODUCTION

For years after the parachute accident that ended his Army service, Cody Openshaw spiraled downward.

He entered college but couldn't keep up with his studies. He had trouble holding a job. He drank too much. He had trouble sleeping, and when he did sleep, he had nightmares. He got married and divorced in less than a year. He had flashbacks. He isolated himself from his friends and drank more.

"His anxiety level was out of this world," his father said. "This was a young man who got straight A's in high school, and now he couldn't function."

Openshaw had the classic symptoms of post-traumatic stress disorder, even though he had never been in combat. His parents attributed the trauma to the accident and heavy medications he was taking for the continuing pain.

But there was more.

Finally, he broke down and told his father.

A few months after the accident, as he was awaiting his medical discharge from the Army, he had been sexually assaulted.

The attack left him physically injured and emotionally shattered. Inhibited by shame, embarrassment, sexual confusion and fear, it took him five years to come forward with the full story.

Daniel Cody Openshaw
June 28, 1982 - April 5, 2008¹

The sexual assault of Private First Class Cody Openshaw is but one disturbing example of the thousands of sexual assaults that have occurred in the military over the past decade. This Task Force was convened to address sexual assault in the military and the devastating consequences of this crime. Our report assesses the Department of Defense's sexual assault policies and practices, and offers recommendations to more effectively prevent this crime from occurring and improve response to its many victims.

Our assessment began on August 11, 2008. Over the course of the past year, we visited sixty locations worldwide and spoke to over 3,500 people. The Task Force interviewed military personnel (both active duty and Reserve Component), general court-martial convening authorities, legal and investigative officials, Sexual Assault Response Coordinators, Victim Advocates, primary responders, and civilian sexual assault responders in communities adjacent to US military facilities. We also interviewed sixty-one victims of sexual assault and received written accounts from other victims.

Our report begins with a discussion of key aspects of military culture. Eliminating sexual assault requires a culture change, which reinforces the military's core values of honor, integrity, excellence, commitment, courage, loyalty, and selfless service. The Task Force believes that change in military culture must occur from the strategic to the tactical levels.

¹ See Appendix F to read Private First Class Cody Openshaw's full story.

The Task Force found the overall progress of the Sexual Assault Prevention and Response Program uneven. Since its inception in 2005, the Department of Defense and the Military Services have made major strides toward improving their capacity to respond to reports of sexual assaults. Unique to the military, it is the commander's responsibility to protect the rights of the military victim and the military alleged perpetrator. The restricted reporting option now affords medical and crisis counseling for victims who otherwise might not have sought medical care or support.

Although there has been some progress, lack of strategy and ineffective organizational structures have hindered adequate prevention and response to sexual assault. Our assessment found that many functions of sexual assault prevention, response, and accountability reside outside the purview of SAPRO.² Further, SAPRO is inadequately resourced and structured to carry out its responsibilities. Accordingly, the first set of Task Force recommendations focuses on strategic changes to relieve organizational stresses within the Programs; these include inconsistencies among the Services and in the Joint environment.

The Task Force made several site visits to assess Reserve Component issues, received an extensive briefing from the National Guard Bureau, and included Reserves and National Guard personnel serving at the sites we visited. We are concerned that there are sexual assault issues of special concern to the Reserve Components that differ from issues affecting active duty forces and should be addressed in detail. Accordingly, we propose that Congress should require the Secretary of Defense to review sexual assault prevention and response in the Reserve Components.

Progress towards developing effective sexual assault prevention programs likewise remains mixed. DOD's commitment to eradicate sexual assault in the Armed Forces requires better prevention programs. The Military Services have been collaborating with sexual assault prevention experts in the civilian community, and, as a result, have developed many education and training programs. However, these prevention efforts are limited by the lack of a discernable uniform prevention strategies and program assessment measures across the Military Services.

Since the inception of the SAPR Program, DOD has made strides in victim support. Additional measures are necessary to ensure that victims receive the full measure of support they deserve. Specifically, we propose that DOD, with Congress' support, modify the Uniformed Code of Military Justice to ensure that military victims' rights are protected similarly to the rights of victims in the civilian community.

At the request of the Secretary of Defense, the Task Force assessed whether the MCIOs – the Army Criminal Investigation Command (CID), the Naval Criminal Investigative Service (NCIS), and the Air Force Office of Special Investigations (AFOSI) – are collaborating. The Task Force found that MCIOs are working cooperatively and, in all likelihood, will work even more synchronously when their headquarters (HQ) are co-located at Quantico, Virginia as a result of the Base Realignment and Closure process.

In our final section of recommendations, the Task Force focused on accountability as well as challenges related to the deployed environment. We focused on the difficulty in obtaining convictions in sexual assault cases. We thus propose that DOD carefully review the effectiveness of the new sexual assault provision, Article 120, UCMJ. The Task Force also believes that the Department needs to redouble its efforts to ensure the sexual assault prevention and response programs function well in deployed environments where the only resources available to victims are those internal to the operating forces.

² Please see the Table 6 which outlines the variety of sexual assault program functions.

As the Secretary of Defense stated, sexual assault is anathema to the principles of military service, corrosive to military readiness, and cannot be tolerated. For the past five years, the Department of Defense and the Military Services have made considerable progress in addressing this scourge but, as of yet, there is no comprehensive Departmental strategy integrating the critical components of prevention, training, response, and accountability as they relate to sexual assault.

Our Task Force recognizes the progress that DOD and the Military Services have steadily made in addressing sexual assault. At the same time, we realize that much more must be done. Restructuring SAPRO and improving the visibility of its mission are essential. So too is the need to develop a credible data and reporting system and to establish consistency in SAPR programs and structures among the Military Services. Creating DOD billets for SARCs and the professionalization of Victim Advocates are critical for program success. Finally, we urge DOD and the Military Services to reinvigorate their victim support programs and to develop strategic prevention strategies supported by a clear plan for continuous program evaluation. The memory of Private First Class Cody Openshaw and other victims of sexual assault compel us to push for greater progress.

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CHAPTER 2: CULTURAL CONTEXT

INTRODUCTION

Sexual assault occurs in all cultures, but the conditions under which it occurs and the responses to it differ, depending upon the values and norms of the culture. Military culture is a part of American culture, but in many ways it has its own values, rules, customs, and norms. Therefore, sexual assault in the Armed Services cannot be addressed in exactly the same way as it is in civilian society. The Task Force believes, however, that culture change is essential for the Military Services to improve how they prevent and address sexual assault. This section provides a foundation for understanding the key components of military culture as they relate to sexual assault: training, chain of command, unit cohesion, military operations, and readiness. The Task Force developed its findings and recommendations to specifically address this military cultural context.

BACKGROUND: THE CONCEPT OF CULTURE

Culture is a multi-faceted concept referring to the beliefs, values, rules, norms, customs, and behaviors generally shared among members of a group, community, or society. Although members need not universally or consistently agree with all aspects associated with their culture, they share a common core of consensus; this general consensus is a central feature to the concept of culture.³ Culture influences both social relations and a community's physical environment.⁴

Individuals and groups define themselves through their culture, adapting to the environment by conforming to shared values and behaviors. Shared beliefs, values, and styles of behavior are preserved over time through socialization and education of new members. Culture evolves over time as communities interact, acquire new members and new attributes, and potentially sheds ineffective or unacceptable traits. Deliberate culture change takes time; it is difficult for any one individual or group to effect a desired culture change.

Cultural Aspects of Sexual Assault

Historically and across all cultures, the act of sexual assault is more about power and control than sexual gratification.⁵ It is a crime that affects both genders, and those of every race, ethnicity, socioeconomic class, education, occupation, and age. Yet sexual assault remains one of the most under-reported crimes in American society.⁶ Factors contributing to under-reporting are the stigma, shame, and fear associated with sharing such a personal violation. Rape has such strong emotional connotations that many victims are reluctant to use the term even if they were forced to have sex.⁷ Of the sexual assault cases that are prosecuted, low conviction rates are a further deterrent to many victims reporting. A third troubling

³ Irwin Altman and Martin M. Chemers, *Culture and Environment* (New York: Cambridge University Press, 1984), 3.

⁴ Id., 4.

⁵ Nicholas A. Groth and B.A. Birnbaum, *Men Who Rape: The Psychology of the Offender* (New York: Plenum, 1979).

⁶ Just forty percent (40 %) of rapes/sexual assaults were reported to police according to 5-year statistical average; Bureau of Justice Statistics, *Rape and Sexual Assault: Reporting to Police and Medical Attention 1992-2000* (Washington, DC: Government Printing Office, 2000); See also Shannan M. Catalano, *Criminal Victimization, 2005* (Washington, DC: Government Printing Office, 2006); Catalano calculates that under 39 % of sexual assaults and rapes were reported to law enforcement.

⁷ Robert T. Michael, and others, *Sex in America*. (New York: Little Brown and Company, 1994), 221.

factor is the continued lack of clarity as to which acts constitute sexual assault. In the United States, legal definitions of sexual assault and rape vary from state to state and to further complicate understanding of these terms, sexual assault, rape, and sexual violence are often incorrectly used interchangeably.

Perhaps the most vexing challenge in addressing sexual assault is dispelling myths associated with sexual assault. These myths circulate through the general culture and are stereotyped, prejudicial, or false – yet, they persist. Most sexual assault myths shift blame from the perpetrator to the victim; as a result, victims are less likely to report assaults or receive adequate care. Commonly accepted myths include: sexual assaults are not premeditated; if victims do not resist, it is not sexual assault; victims invite or cause sexual assault through their dress or demeanor; sexual assaults do not occur between spouses; and people who are not actually victims of sexual assaults frequently make false reports. In fact, estimates for false reports range from 2 to 8 percent, similar to other felonies.⁸

Another challenging myth involves male sexual assault. Male victims of sexual assault contend with myths of male strength and sexuality which lead many to believe that “real” men do not get raped and that males raped by another man must be homosexual.⁹ This is another example of victim-blaming. In fact, in the United States, five to ten percent of rapes are of males.¹⁰ With such low apparent numbers of male sexual assaults among the general population, civilian terminology and sexual assault prevention and response programs remain focused principally on female victims. This terminology and these programs have been adopted by the military without consideration of the fact that the Armed Forces are comprised of 85% males and 15% females.¹¹ This focus on female victims in a predominantly male environment makes it all the more difficult for male sexual assault victims to seek assistance; likewise, within the military, incidents involving male victims are under reported.

Left unaddressed, these cultural myths reinforce beliefs and behaviors inconsistent with the realities of sexual assault. In turn, these beliefs and behaviors reinforce a culture that does not adequately prevent or respond to sexual assault, potentially making victims less likely to report assaults or receive adequate care. These myths, aspects of both American and military culture, must be addressed to more effectively prevent and respond to sexual assault.

Military Culture

Although each military Service has distinctive cultural attributes, military culture in general is considered to be a cornerstone of military effectiveness – the ability to efficiently accomplish assigned missions within time and resource constraints and with minimal casualties.¹² Military culture has other unique aspects not routinely evident in broader civilian society. For example, military culture creates and perpetuates unit cohesion and *esprit de corps*, vital to units under the stress of battle¹³ and the accomplishment of daily missions. These attributes give rise to important standards of behavior that include honor, integrity, discipline, teamwork, courage, loyalty, selfless duty, and the customs that

⁸ Kimberly Lonsway and others. “False Reports: Moving Beyond the Issue to Successfully Investigate and Prosecute Non-Stranger Sexual Assault.” *The Voice* 3, (2009), 2.

⁹ *Id.*, 121.

¹⁰ U.S. Department of Justice Statistics. *2005 National Crime Victimization Study*; See also Scarce, Michael. *Male on Male Rape: The Hidden Toll of Stigma and Shame* (Cambridge: Perseus Publishing, 1997), 9.

¹¹ Manning, Lory. *Women in the Military, 6th Edition* (Washington DC: Women’s Research and Education Institute, 2008), 14.

¹² Walter Ulmer and others, *American Military Culture in the 21st Century: A Report of the CSIS International Security Program*. (Center for Strategic and International Studies. Washington, DC: November 1999), xviii.

¹³ *Id.*, xviii.

support those elements.¹⁴ Thus, the Armed Forces strive to maintain a culture in which Service Members' actions are guided and supported by these shared values.¹⁵

As with all cultures, military culture has some aspects which make preventing and responding to sexual assault challenging. These challenges differ in some respects from those that affect the broader American culture. The military community has advantages such as the ability to mandate training. Described below are key aspects of military culture that affect how the military is able to prevent and respond to sexual assault. Many of these elements are also negatively affected when sexual assault occurs.

Training and Socialization

Each year, the Armed Forces bring in new Service Members with diverse experiences, values, beliefs, and cultural backgrounds. It is imperative that all military personnel be sufficiently trained to be capable and ready to respond to the many circumstances they may face, professionally and personally, regardless of their backgrounds. Structured and frequent training is integral to military culture and incorporates instruction in military skills, knowledge, and attitudes essential to performance as a member of the Armed Forces.¹⁶ Initial military training serves as the primary socialization process for integrating and instilling in recruits a common sense of purpose, an understanding of military expectations, core values and standards, structure and discipline, teamwork, and pride. Socialization during military service is continual, and is used to reinforce standards as well as to effect change. In short, military training introduces and reinforces the culture necessary to ensure military effectiveness and mission readiness.

Military training creates unique challenges for preventing and responding to sexual assault. If not closely monitored, training environments may create conditions conducive to abuse of authority and perceived power. Those undergoing training view their training cadre as authority figures based on their expertise and position in the chain of command. Trainers provide close and constant supervision, set and enforce conditions, and have the power to influence trainees' success. Further, associated with the tightly controlled training environment, routine accountability checks are performed that verify trainees' whereabouts. As a result, seeking and receiving confidential support for a sexual assault can be a challenge. One training commander remarked:

The expectations of a training environment are to get them in, get them trained, get them fit to fight . . . a sexual assault report stops this process momentarily . . . some leaders may view it as an inconvenience rather than a crime. . . . Although many leaders know how to talk about zero tolerance, the fact remains that many people's behaviors don't always match up, and that sends a mixed message to our younger folks.

Mixed messages about sexual assault prevention and response during training, particularly at the inception of military service, diminishes the Services' ability to leverage training to convey a military culture of zero tolerance for sexual assault and other unacceptable behaviors, and to instill confidence in the SAPR Program.

Most Military Services specify special selection criteria for training cadre to reduce the risks of mistreatment of recruits or inappropriate relationships between trainers and trainees.¹⁷ However, if trainers fail to live up to these standards, trainees may feel limited as to what actions they can take, especially in the case of a sexual assault.

¹⁴ Id., xvii.

¹⁵ Thomas W. Britt and others, "Military Culture: Common Themes and Future Directions" *Military Life: The Psychology of Serving in Peace and Combat*. (Westport, CT: Praeger Security International. 2006), 234.

¹⁶ See DOD Directive 1322.18, "Military Training," January 13, 2009.

¹⁷ Similar concerns exist in military recruiting environments.

Training and socialization within the military are not without challenges. Recruits bring well-formed beliefs and established behaviors with them when they enter the military. In addition, many junior personnel see binge drinking and casual sexual encounters as nothing more than social activities. There are clear generational and socio-cultural differences between the more senior and junior military personnel. One commander communicated the need for the Military Services to more effectively address cultural differences:

It is a challenge because people are coming from all walks of life and there is a collision of value systems and cultures with different values. In society today these folks are exposed to violence, rap music which includes disrespect, violence, and pornography. . . . We must use a holistic view which includes excellence in healthfulness, respect – where these folks are taught this is their teammate, their partner, and there should be no room for sexual assault.

Despite these challenges, military training and socialization offer opportunities to build personal skills to better identify, prevent, and respond to sexual assault. Some leaders advocate that junior military personnel receive training on developing effective interpersonal skills, building constructive relationships, and initiating candid discussions on relationships.

Beyond building skills, military training effects culture change by socializing individuals from diverse backgrounds into military standards and expectations. Racial integration is a well-known example of how the military has led culture change and set the standard for other institutions to emulate. The military has an unprecedented opportunity to now lead culture change by better enabling Service Members to identify, prevent, and appropriately respond to sexual assault.

Chain of Command

The military chain of command has an important influence on how Service Members deal with sexual assault. The chain of command is a hierarchical system that outlines direct authority, responsibility, and accountability from the highest to lowest levels of an organization. It is also the primary structural mechanism that provides order and discipline to daily operations within and among units. Inherent in a chain of command is the responsibility for leaders to support subordinate personnel by providing clear and accurate orders, instructions and information, and being accessible to obtain subordinates' feedback and to respond accordingly. Subordinates are likewise expected to use their chain of command as the first recourse for addressing issues. Thus, the chain of command has a profound influence on how Service Members deal with sexual assault.

What occurs outside the realm of the chain of command also influences how military personnel deal with sexual assault. Because social norms outside of the military are less defined, military culture and values may be less evident in the private or social behavior of Service Members. The more tightly controlled a social structure in the public arena, the greater the need for subordinates to express their independence or relieve tension in private situations or off duty.¹⁸ Some do so in constructive or harmless ways, while others engage in risky or harmful behavior, such as driving or riding at excessive speeds, driving under the influence, disregarding safety precautions, engaging in indiscriminate sexual behavior,¹⁹ or excessively consuming alcoholic beverages. Alcohol is a significant factor in sexual assault incidents in

¹⁸ James C. Scott, *Domination and the Arts of Resistance: Hidden Transcripts*, (New Haven: Yale University Press, 1992), 174-178.

¹⁹ Indiscriminate sexual behavior is defined as having multiple partners; having risky, casual or unknown partners; and failure to discuss risk topics prior to intercourse; M. Lynne Cooper. "Students and Youth: Evaluating the Evidence." *Journal on Studies on Alcohol* 14, (2002), 102.

the military,²⁰ similar to trends at colleges and universities.²¹ The link between extreme alcohol use and sexual assault in the military deserves further investigation.

Military commanders and other leaders in the chain of command are responsible for the behavior and welfare of their military personnel at all times, whether on or off duty. Those in the immediate chain of command seek to stay aware of major issues affecting their subordinates, positive as well as negative, and take action as required. Given commanders' responsibility to actively ensure proper support and discipline of those under their charge, the restricted reporting option for military sexual assault victims presents a challenge to some commanders.²² This reporting option requires commanders to respect the protections offered to victims to ensure confidentiality and support. Confidentiality runs counter to commanders' traditional expectations of accountability.

Focus on accountability and discipline – important attributes of the chain of command – may prevent some military personnel from reporting sexual assault. This is particularly an issue when sexual assault victims may have engaged in misconduct for which they could be disciplined, such as underage drinking, fraternization, or adultery.

The intended purpose of the chain of command is to reinforce order, accountability, discipline, and trust. Even so, there are acceptable circumstances when Service Members can address issues outside the chain of command. Military personnel can seek legal assistance or support from chaplains, or medical and mental health providers. In addition to these resources, the SAPR Program affords sexual assault victims a confidential avenue to report sexual assault and seek assistance from Sexual Assault Response Coordinators or Victim Advocates. Moreover, if Service Members are not satisfied with action taken by their direct chain of command, they are entitled to take their concerns to others outside their chain of command, including their Inspector General and members of Congress.

Unit Cohesion

A military unit's cohesion is a key contributor to mission success. Cohesion requires a quality of relationships among group members that sustains their will and commitment to each other, their unit, and the mission.²³ In this vein, trust and mutual respect are fundamental elements of unit cohesion. Leadership is also a pivotal factor, particularly in creating a supportive unit climate with focus on mission accomplishment.²⁴ Unit cohesion is reinforced by long hours working as a team, developing and integrating individual skills to achieve mission success, as well as operating and often living within close confines. Other factors that contribute to unit cohesion are a shared mission purpose, consistency in operations, commonality of training, and support among unit members. Military personnel are expected

²⁰ See Chapter 5: Prevention and Training for supporting data on drinking and sexual assault; Department of Defense, *Defense Task Force on Sexual Violence at the Military Service Academies* (Washington DC: Government Printing Office, 2005), 24.

²¹ In an article that summarizes numerous research efforts that were conducted for over a decade, the connection between excessive use of alcohol by college students and sexual assault is well documented. This research describes the connections between alcohol abuse and sexual assault in the military. Abbey states that at least 50% sexual assaults among college students are associated with alcohol use. She concludes that "because of the strong association of alcohol use and sexual assault, programming and intervention of these two areas should be coordinated." Antonia Abbey, "Alcohol-Related Sexual Assault: A Common Problem among College Students," *Journal of Studies on Alcohol* 14(2002), 118-128.

²² See Appendix B for definition of restricted reporting.

²³ J. H. Johns, *Cohesion in the US Military*. (Washington, DC: National Defense University, 1984), ix.

²⁴ F. R. Kirkland and others, "Commanders Priorities and Psychological Readiness." *Armed Forces and Society*, (1994), 579-598.

to subordinate self-interest in support of the unit mission and are trained to support other unit members over themselves.

Certain attributes of unit cohesion could dissuade victims from reporting a sexual assault to their chain of command. Particularly when victims and their alleged assailants are in the same unit, victims fear being disbelieved, judged, or ostracized by co-workers, and not being considered a member of the team. One former commander commented on these unique dynamics:

I can tell you that junior people don't believe they can complain. They have a 'suck it up' mentality. They want to get the job done. Service Members do not want to dime out their buddies. Victims end up making excuses for behavior of the alleged offenders.

Service Members joining pre-existing units, as individual augmentees (IAs) or replacements, face particular challenges. They are not part of the group when they arrive, may be from a different Service or from a Reserve Component.²⁵ Positive attributes of unit cohesion are less predictable in these environments, as are clarity of and proximity to these Service Members' chain of command. The isolating nature of these conditions may also increase vulnerability to sexual assault and could certainly complicate timely reporting and receipt of care.

Sexual assault fractures cohesion in military units by weakening critical bonds of trust and creating internal strife. When this happens, the lack of unit cohesion creates a direct threat to mission readiness and effectiveness.

Military Operations

One constant in military culture is change; Service Members must rapidly adapt to changes in the nature and conduct of military operations that, in turn, impact military culture. Frequent and sustained deployments, often with accelerated training between deployments, continue to have unforeseen consequences on the Armed Forces. This high operational tempo takes a toll on the family and personal lives of Service Members. The stress of current operations is reflected in higher rates of post-traumatic stress disorder (PTSD), suicides, and effects of domestic violence. It is unclear yet as to whether these stresses have an associated increase in sexual assault incidents.

Given the demands of military operations, it is important to address the unique stressors that military units and personnel experience. These stressors affect the health and personal readiness of Service Members. In discussing emotional resilience under military operational stress, Paul T. Bartone outlines six primary dimensions of stress affecting military personnel: danger, workload, isolation, powerlessness, ambiguity and boredom.²⁶ Although these stressors could be considered a "cost of doing business" in the Armed Forces, their potential manifestations should be considered and addressed as they relate to associated

²⁵ In addition to being embedded into other military service units, IAs and small teams may be integrated with predominantly coalition forces.

²⁶ Paul T. Bartone. "Resilience under Military Operational Stress: Can Leaders Influence Hardiness?" *Military Psychology* 18 (2006), 131-146; Operating under constant danger and exposure to death is a cause of understandable psychological stress. Moreover, the increased frequency, duration and pace of military deployments produces stress among those who deploy as well as those working in support. During deployments, stress from isolation can surface; military personnel must often operate in remote locations, adapt to foreign cultures and language, and adjust to new people and units while separated from family and friends. Bartone believes that having little control over deployment lengths and enduring forced separations also creates stress over being unable to control critical aspects of one's own life and being powerless to influence otherwise. Ambiguity associated with constant change also produces stress, as does being bored. Boredom most frequently occurs when there are insufficient recreational outlets or military personnel no longer perceive their duties to be meaningful or important. See Id. for a more extensive discussion on military dimensions of stress.

concerns, such as sexual assault. In considering the stressors associated with military operations, a foremost concern is the affect of these stressors on the health, safety, security, and welfare of Service Members and their families.

Readiness

A vital aspect of military capability, military readiness refers to the ability of a military unit to accomplish its assigned mission. Unit readiness is a function of the sufficiency of its equipment, spare parts, and logistics, as well as the training and personal readiness of each unit member. Medical and legal issues are the primary factors that can negatively affect Service Members' personal readiness and fitness for duty.

A unit's military readiness is highly dependent on the quality and quantity of its personnel. Sexual assault directly and indirectly diminishes readiness, adversely affecting the units of both victims and alleged assailants. These impacted Service Members are frequently absent from duty because of medical, legal, investigative, and administrative matters. Their absences affect unit divisions of labor, productivity, teamwork, and cohesion.

Beyond the physical wounds of sexual assault, victims' psychological reactions can be prolonged and deleterious. Common reactions include PTSD, fear and anxiety, difficulty sleeping, lack of concentration, depression, poor self-esteem, withdrawal and insecurity, and social adjustment issues.²⁷ Military victims of sexual assault may be unable to perform their assigned duties due to medical treatment or counseling, or if relocated from the unit to ensure their safety. Victims who continue to serve in the same unit with their alleged assailant are likely to have diminished abilities to perform their duty due to concerns over personal safety and potential re-victimization.

Ultimately, inadequate prevention and response to sexual assault in the military undermines military readiness.

Culture Change

Sexual assault is contrary to military values. Whether the victim is a Service Member or civilian, sexual assault violates military cultural values of self-discipline, trust, selflessness, and honorable conduct, and undermines the reputation of the Armed Forces. The DOD SAPRO and the Military Services must fully integrate prevention strategies and training, the right to receive care and treatment, and the appropriate legal processes into military culture. Military training, standards, organizations, and accountability are crucial avenues for inducing culture change while maintaining time-honored military values. Enhancing the elements of the culture that support warriors taking care of warriors leads to the elimination of sexual assaults and increases the readiness of the Armed Forces to defend the freedoms and values of the United States.

²⁷ Patricia A. Resick, "The Psychological Impact of Rape." *Journal of Interpersonal Violence*. 8 (1993), 223-255.

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CHAPTER 3: METHODOLOGY

The Task Force used a robust multi-method approach to assess policy, programming, current implementation, and best practices for sexual assault in four areas: prevention and training, victim response, accountability, and strategic oversight. The Task Force chose these areas because they are a reflection of how DOD and the Services presently address and organize their services.

INFORMATION COLLECTION STRATEGY

The Task Force initiated two data calls to the Office of the Secretary of Defense (OSD), the Joint Chiefs, and each of the Secretaries of the Military Departments. We obtained documents prepared during or pertaining to the time period from January 1, 2006 to August 31, 2009. These documents included, but were not limited to: SAPR Program policy memoranda, directives, instructions, regulations, manuals, summaries of SAPR training methods and content, and reports related to the medical, mental health, investigative, and military justice responses to sexual assault. Based on initial review of these documents, the Task Force structured additional questions for the SAPR Office in order to obtain further information. In addition, the Task Force conducted structured roundtable discussions and interviews with sixty-three key personnel, from the strategic and the tactical level,²⁸ to better identify areas of concern, barriers to progress, and best practices.

Military Site Visits

The Task Force conducted site visits at sixty installations (see Figure 1 and Appendix E) to gather information about the effectiveness of the SAPR Program at the aggregate military installation and specific unit level. At each of the locations²⁹ the Task Force met with installation personnel, received briefings from sexual assault prevention and response staff and commanders, and conducted structured interviews and focus groups.

The Task Force chose to visit military sites of varying sizes, Military Service representation, location (stateside, overseas, and deployed), and mission focus (operational and training). The Task Force purposefully visited installations with previously documented incidents of sexual misconduct, as a random sampling of installations may not have illuminated particular issues of concern.

²⁸ See Annex D for a complete list of interviews conducted at the Military Service, Joint Staff, and OSD levels.

²⁹ See Annex D for a complete listing.



Figure 1. Primary Locations Visited by Task Force

Focus Groups. During our site visits, the Task Force held 216 structured focus group discussions, with a total of 2003 participants.³⁰ Focus groups were conducted by rank so Service Members could speak more freely. The Task Force sought insights from junior, mid-grade, and senior enlisted members and from company and field grade officers. At the junior enlisted ranks, we segregated focus groups by gender to give participants the opportunity to share views without concern about how members of the opposite sex might perceive them. Additional focus groups with commanders and senior enlisted advisors were conducted to ensure the Task Force saw the issue from the most junior to the leadership levels.

The Defense Manpower Data Center helped design the methodology and trained the facilitators and recorders on how to conduct focus groups. Facilitators used standard introductory remarks, materials, and questions to conduct each session. Focus group participation was voluntary, and facilitators advised participants that responses would not be attributed to any individual in the recorded data.

Interviews with Personnel. The Task Force conducted individual and small group structured interviews with 1320 military and civilian personnel at various installations. Whenever possible, we interviewed senior commanders (including general court-martial convening authorities), SARCs, supervisors of SARCs, Victim Advocates, chaplains, military and civilian law enforcement officials, Equal Opportunity and substance abuse program staff, Family Advocacy Program (FAP) staff, medical staff, mental health/counseling Service staff, staff from community agencies (such as a local rape crisis center or hotline), Victim Witness Liaisons, staff judge advocates, trial and defense counsel, and Inspectors General.³¹

³⁰ See Annex D for a listing of focus group questions.

³¹ See Annex D for structured interview protocols.

Supplemental Sessions

Because of security and logistics constraints, the Task Force was not able to speak to a broad sampling of individuals at every deployed location; we conducted twenty-five supplemental focus groups and eleven supplemental interviews at six locations with personnel who recently returned from deployment.³² These focus groups enabled Task Force members to understand the experiences of those who served at smaller forward operating bases (FOBs) and those who deployed as individuals rather than with their assigned military units.

Quick Compass Surveys

With the assistance of DMDC, the Task Force fielded three web-based surveys of sexual assault prevention and response program staffing, training, resources, care, coordination, and implementation, tailored to a specific respondent group.³³ The surveys provided quantitative indicators of program capacity and effectiveness, and also offered respondents the opportunity to comment on implementation challenges and recommend improvements.

Respondent Groups. The Task Force sent an electronic request for participation to government civilian and uniformed members of three identified groups: SARCs, supervisors of SARCs, and deployable Victim Advocates. Contractors were not included in these samples because DMDC cannot survey them without approval of the Office of Management and Budget.

Service sexual assault prevention and response program managers identified potential respondents. The process of identification proved problematic because personnel data often fail to include identifiers for who has received SARC or VA training or for personnel currently fulfilling these roles (particularly when deployed). Identifying Victim Advocates for response was especially difficult because they often volunteer for the position and perform their victim advocacy role as a collateral duty. Inconsistent use of the term “Victim Advocate” added identification challenges, especially in the Navy, which uses different terminology from the other Services.

SARCs (N = 307) are the focal point for sexual assault prevention and response programs at each military location. The Task Force sought to understand how they are trained, what functions they perform, and their perceptions of program support and execution. Unfortunately, many Army and Navy SARCs are contractors, and could therefore not be included in our sample.³⁴ The Army does train and deploy uniformed SARCs and these individuals were included in our sample.³⁵

SARC supervisors (N = 240) who are either a DOD civilian or Service Member, were surveyed due to their direct oversight of their respective military community’s sexual assault prevention and response program. SARC supervisors are also in a position to assess the adequacy of program placement in the

³² The Services provided lists of recently redeployed Service Members at the request of the Task Force.

³³ See Annex D for survey questions.

³⁴ Thirty-one of sixty-two (50%) Navy SARCs are contractors; twenty-three of Army installation SARCs are contractors.

³⁵ The exclusion of contractor SARCs from our sample limits the ability to generalize the survey results. This sample over represents uniformed SARCs, those who serve in deployed environments, and those who perform SARC duties collateral to some other primary responsibilities. Whenever possible, we compared survey results with information collected on site visit interviews to determine whether both sources of data led to similar or different conclusions.

organizational structure and sufficiency of resources to achieve program goals. Responses from supervisors of contracted SARCs ensured that these military locations were represented in the survey results.

Deployable Victim Advocates³⁶ (N = 410) provide personal assistance to victims of sexual assault. The Task Force was particularly interested in understanding how these front-line caregivers are selected, trained, and supervised in their duties. In stateside locations, Victim Advocates are often civilian contractors. For these reasons, we only sampled those uniformed Victim Advocates who were deployable.

Survey Content. The Task Force structured the survey into eight major sections:

- Training and experience;
- Resources;
- Availability and quality of victim care;
- SARC access to commanders, visibility and leadership;
- Coordination between victim care, investigative, and legal agencies;
- Collaboration between sexual assault prevention and response staff and allied programs (EO, domestic violence, and substance abuse);
- Command support for the sexual assault prevention and response program; and
- Restricted reporting implementation.

Response Rates. The weighted response rates were 47% for SARCs, 45% for SARC supervisors and 34% for deployable Victim Advocates.³⁷

Military Justice Review

The Task Force collected data from site visits, interviews, briefings, investigative and judge advocate case file reviews, and legal research. During site visits, we met with staff judge advocates, prosecutors, trial defense counsel, military judges (when available), military and civilian law enforcement personnel to include uniform patrol and criminal investigators, and victim witness liaisons. In some locations, to identify flaws and gaps in the adjudicative process, we met with and spoke to victims regarding their experiences with the military justice system. The Task Force also visited the Navy Consolidated Brig, Miramar, Marine Corps Air Station Miramar, San Diego, California, and the US Disciplinary Barracks, Fort Leavenworth, Kansas, to meet with military corrections personnel regarding offender treatment programs and interview convicted sex offenders. We toured and received briefings at the US Army Criminal Investigation Laboratory, Fort Gillem, Georgia which provides forensic laboratory Services to DOD investigative and other federal law enforcement agencies. At the DOD and HQ level, the Task Force met with and received briefings from the Services' military criminal investigative offices, as well as the Deputy Chief, Assistant Inspector General Office of Investigative Policy and Oversight, The Judge Advocates General (TJAGs) of all Services, the Joint Service Committee on Military Justice, Service Chiefs of Criminal Law, Associate Deputy General Counsel (Military Justice and Personnel Policy), and the DOD SAPR Office Senior Policy Advisor. To assess and identify potential issues in the military justice system at the trial level and provisions in the *Manual for Courts-Martial (MCM)*, we also met with military officials involved in the criminal appellate process, including Service Criminal Courts of Appeals judges.

³⁶ There are several types of Victim Advocates in the Military Services. See Appendix B: Glossary for the differences between Deployable Victim Advocate, Unit/Uniformed Victim Advocate, Installation Victim Advocate and Victim Advocate.

³⁷ See Annex D for detailed descriptions of the populations and samples.

At each military site visited, the Task Force requested the military investigative agencies to provide closed case files for sexual assaults from fiscal year 2007 to 2008. Prior to the site visits, the Task Force reviewed investigative files for sexual assault cases occurring during fiscal year 2004 through 2006. The Task Force reviewed judge advocate files during site visits. Specifically, staff judge advocate offices at each site visit location were requested to provide summaries of closed sexual assault courts-martial cases for the preceding two years and to allow Task Force access to review associated judge advocate files and/or courts-martial records of trial. In evaluating each case file, the Task Force reviewed witness statements, laboratory reports regarding forensic evidence, investigator summaries, and final disposition information. During some site visits, the Task Force discussed specific sexual assault cases with prosecutors and trial defense counsel in order to better understand their experiences with the trial and adjudicative process and challenges they faced.

To assess sexual assault incident report data reliability, database limitations, and collection processes, the Task Force obtained and assessed the case synopsis charts in DOD's annual reports to Congress for fiscal year 2007 and 2008 as well as those of each Military Service. We also obtained courts-martial data from the Service Chiefs of Criminal Law and the US Army Court of Criminal Appeals, reflecting charges and dispositions of sex offenses for cases involving Service Member offenders and adult victims for sex offenses for fiscal year 2007 and part of 2008, as well as specific data regarding the new Article 120 rape cases in fiscal year 2008. By evaluating investigative and judge advocate sexual assault case files, annual report synopsis charts, and courts-martial data, we also sought to determine whether investigators conducted thorough fact-finding processes, whether false reporting was a frequent occurrence, if prosecutors were trying difficult cases, if commanders were taking appropriate action based on the facts in each case, and to assess sex offense acquittal rates. Because every sexual assault case is different, our team scrutinized each file on a case-by-case basis, evaluating the evidence based on the elements of proof for every offense investigated.

Concurrent with the site visits, interviews, briefings, case file reviews, synopsis chart evaluations, and courts-martial data assessment, we conducted relevant legal research. During the legal research process, our team reviewed court opinions from the Service Courts of Criminal Appeals and the Court of Appeals for the Armed Forces (CAAF), legal opinions which set precedent for sexual assault offenses. The Task Force also reviewed law review articles and periodicals regarding relevant criminal law issues raised during the data collection and evaluation process. Included in its legal research, the Task Force examined sexual assault statutes including the recent major modification to Article 120, UCMJ, United States Code Title 18 (applicable sexual abuse offense provisions), and summaries of state sex offense statutes.

Expert Briefs and Congressional Visits

The Task Force received additional information from subject matter experts³⁸ and during meetings with Members of Congress.³⁹ Although not part of the quantitative data analyses, these meetings provided valuable insight on the complex issue of sexual assault.

Public Comments

The Task Force interviewed sixty-one victims and other interested parties who came forward in response to one of sixty public service announcements posted online, printed in a local military base newspaper, or shown on television. Some victims learned of the Task Force from their local SARCs or from

³⁸ See the Annex G for a listing of subject matter expert briefs.

³⁹ See the Annex G for a listing of Members of Congress visited.

community-based non-profit organizations that agreed to share our information with survivors of military sexual trauma.

Early Task Force interviews with military sexual assault victims were unstructured: individuals described their experiences without prompting from the interviewers. As interview data accumulated, the Task Force adopted a more structured approach that facilitated a comparison of victims' accounts. The Task Force used this structured protocol whenever possible, however, the Task Force opted to collect whatever accounts victims offered, rather than risk losing the victims' trust or willingness to share their stories.

During open Task Force meetings, time was specifically set aside for public comment in order for the Task Force to hear from Service Members and their families on this issue.

DATA ANALYSES

Content analysis is a systematic method for analyzing and summarizing textual information.⁴⁰ Transcribed reports and notes from focus groups and interviews were submitted to a detailed content analysis to reveal and capture themes, patterns, and relations in the data.⁴¹ This analysis allowed the Task Force to identify major issues and assess differences in perspective across rank, position, branch of Service, and duty location.

Completed Quick Compass surveys were weighted for non-response according to the industry standard. This weighting produces statistics that are representative of the population of interest. The percentage of individuals from each reporting category who selected each response option was tabulated. In this analysis, margins of error reflect 95% confidence intervals and differences between reporting categories are reported only if they are statistically significant.

REPORT WRITING

The Task Force held a series of meetings throughout the year to make major decisions on the direction of this report, to host subject matter expert briefs, and to give the public the opportunity to comment. We held these meetings throughout the continental United States (CONUS) as well as overseas.⁴² The Task Force also held a series of subcommittee meetings to work on specific findings and recommendations. At these meetings, we worked with our staff social scientist to understand themes and trends in the data we collected that would inform the shape of our findings and recommendations. The Task Force developed findings and recommendations based on quantitative analyses, qualitative analyses, insights gleaned from interviews, meetings, and briefings while carefully considering our Congressional charter and our charge from the Secretary of Defense.

⁴⁰ United States General Accounting Office, *Content Analysis: A Method for Structuring and Analyzing Written Material* (Washington DC: Government Printing Office, 1996).

⁴¹ In some cases, it was not possible to code individual participants' responses because transcripts did not accurately identify individual speakers or because not all individuals responded to a particular item. When this occurred, the focus group as a whole was used as the unit for analysis. These data are identified in the data analysis chapter. For example, in 22% of focus groups, one or more participants did not know, or incorrectly identified, the difference between restricted and unrestricted reporting. This percentage refers to the number of focus groups, not the number of individuals who misunderstand restricted and unrestricted reporting. The number of individuals who do not know the difference could not be calculated from our focus group data.

⁴² See Appendix D for a complete listing.

CHAPTER 4: RESULTS OF DOD-WIDE TASK FORCE DATA COLLECTION AND ANALYSES

This section describes the results of analyses that aided the Task Force’s assessment of the SAPR Program and informed our findings and recommendations. The issues presented in each subsection are interrelated and must be considered together to gain a comprehensive view of sexual assault prevention, training, response, and accountability in the Military Services.

The Task Force analyses began with examining rates of sexual offenses in the military. In the most recent anonymous survey of active duty Service Members,⁴³ 6.8% of women and 1.8% of men indicated they experienced unwanted sexual contact⁴⁴ in the past 12 months. Junior enlisted members (11% of women and 2.8% of men) were more likely to indicate they had experienced unwanted sexual contact than other personnel.

The Department of Defense restricted and unrestricted reports of sexual assault are less frequent than anonymous survey responses. Although reports have increased in recent years, restricted and unrestricted reports continue to underestimate the prevalence of sexual assault in the military. The total number of cases reported to Congress in DOD annual reports for calendar years (CY) 2004 through 2006 and fiscal years (FY) 2007 through 2008 is summarized in Table 1. In interviews, commanders and sexual assault prevention and response staff attributed increased reporting to the addition of the restricted reporting option and improved trust in reporting the process.⁴⁵

Table 1. Official Reports of Sexual Assault in the Military Services from DOD Annual Reports

	CY 2004	CY 2005	CY 2006	FY 2007*	FY 2008
Total Reports	1700	2374	2947	2688	2908
Unrestricted	1700	2047	2277	2085	2265
Restricted**	N/A	327	670	603	643
% Converted from Restricted to Unrestricted	N/A	25%	11%	14%	15%

* Note: The Department’s annual report changed from calendar years to fiscal years in 2007. For further clarification of the data overlap, see the SAPRO’s annual report.

**Note: The numbers listed in this table have been adjusted to include only those reports that remain restricted. Those reports that became unrestricted are counted as unrestricted reports. Restricted reporting was made available mid-calendar year 2005, so that number, 327, does not reflect twelve full months of restricted reporting.

⁴³ Department of Defense, *2006 Gender Relations Survey of Active Duty Members*. (Washington, DC: Government Printing Office, 2006).

⁴⁴ Id., 4-5.

⁴⁵ Comparisons between the frequencies of unwanted sexual contact reported in anonymous surveys and the number of officially reported incidents might shed light on this issue. Unfortunately, survey definitions of unwanted sexual contact do not precisely match the legal definition of sexual assault and Service-wide surveys are conducted too infrequently to offer useful comparisons.

STRATEGIC DIRECTION

Senior officials in the Department of Defense framed initial SAPR Program goals and created organizations to accomplish them. In this section, we assess the strategic direction of the Program and evaluate organizations that establish SAPR policy and strategy. The Task Force reviewed the status of program resources, including funding, personnel, and leadership support, and evaluated the methods used to assess program progress.

DOD SAPR Program Development

During interviews, senior officials stated that the SAPR Program initially had two main objectives: decrease the number of incidents of sexual assault, and care for victims. Because data to evaluate incidence rates were not readily available, victim care became the primary focus of the Program's efforts. Although senior officials discussed developing a comprehensive program, they recognized that the culture change necessary to develop such a program takes time, and thus emphasized taking a long-term approach toward sexual assault.

Information obtained from DOD SAPRO suggests there is no coherent OSD-level program to accomplish prevention, response, and accountability for sexual assault. Program development has occurred in each Service independently, and their programs are at different stages of development and institutionalization. Although our OSD-level interviewees emphasized Service autonomy in responsibility for implementing sexual assault and prevention programs, those personnel directly involved in caring for victims and holding offenders accountable indicated the need for greater consistency among Service programs. Specifically, differences in definitions and terminology⁴⁶ complicate provision of care and sharing of resources. Those involved in implementing sexual assault prevention and response programs indicated that they would benefit from cross-Service training so they can address the Program with consistency and be part of a military-wide campaign that provides greater visibility and credibility.

Current SAPRO staffing, structure, and skills do not lend themselves to a programmatic focus. To add depth and expertise to its efforts, SAPRO frequently collaborates with non-DOD experts. For example, SAPRO contracted with RAND scientists to compile a compendium of recent sexual assault research to potentially inform program development, and used external subject matter experts to draft its recent prevention strategy. These efforts emerged too late to inform the Services' programs. In many regards the Services' programs are more developed than those of SAPRO.

The SAPRO's current priorities include developing a case management database to centralize sexual assault incident information, creating a structure for accountability, and ensuring that appropriate resources are in place. The SAPRO developed these priorities based on its need for sound data from which it can make program decisions, as well as congressional interest in tracking offender accountability. It is important to note that SAPRO was established as a policy office; its mission does not include offender accountability.⁴⁷

⁴⁶ Most notable differences include the Navy's use of SAVI-program terminology to refer to Victim Advocates and the terms formal and informal reporting in lieu of unrestricted and restricted reporting.

⁴⁷ The SAPRO mission statement reads: "The Sexual Assault Prevention and Response Office will serve as the single point of accountability and oversight for sexual assault policy, provide guidance to the DOD components, and facilitate the resolution of issues common to all Military Services and joint commands. The objectives of DOD's Sexual Assault Prevention and Response policy are to specifically enhance and improve: [p]revention through training and education programs, [t]reatment and support of victims, [and] [s]ystem [a]ccountability"; (<http://www.sapr.mil/HomePage.aspx?Topic=About%20SAPRO>).

Organizational Structure

Among its many responsibilities, SAPRO is in charge of the Department's sexual assault policy and for providing an annual report to Congress. The Task Force examined the organizational placement and composition of the SAPRO and its relationships with other entities, including the Services and the Sexual Assault Advisory Council (SAAC).

Composition and Placement of SAPRO

Although Service officials were generally pleased with their relationships with SAPRO, they noted the lack of active or retired Service Members in leadership or senior positions on the SAPRO staff. Greater military experience, particularly in operational, command, and staff duties, would add credibility to the office while improving policy development and implementation.

Role and Composition of the SAAC⁴⁸

Service sexual assault prevention and response officials and SAPRO staff stressed the important role of the SAAC and expressed a strong desire that SAAC subcommittees continue to assist in maintaining effective program coordination. The Services value the SAAC because it keeps senior leaders involved. Our analysis suggests that, while initiatives from the SAAC have been instrumental in moving sexual assault and prevention forward, the SAAC frequently performs the work of a policy office staff.

Relation of the Services to SAPRO

Service officials reported positive working relationships with SAPRO, but expressed a desire for better responsiveness from and coordination with entities within the Office of the Secretary of Defense. Service officials want to maintain their collaborative relationships with SAPRO, and to participate in ongoing strategic planning.

Assessment Mechanisms

Information provided by SAPRO indicates that its office has not established Service program evaluations and/or oversight mechanisms. Each Service, however, has established internal oversight mechanisms. In addition, SAPRO does not ensure that data are stored and maintained in the Defense Incident-Based Reporting System (DIBRS) or the Defense Case Record Management System (DCRMS), despite its policy requirements to do so.⁴⁹ Notably, DCRMS was never implemented and is to be "replaced" by Defense Sexual Assault Incident Database (DSAID), a new database to track incident data across the Services which is in the design phase of development.⁵⁰ Both SAPRO and the Services believe this database will provide much of the information needed for program oversight and the annual reports to Congress. The Joint Staff is also eager for the database to become operational, because it will provide combatant commanders visibility into sexual assaults that occur in their commands, regardless of which branch of Service provided care or conducted the investigation. In addition, the database should ensure greater consistency in information collected and how it is accounted.

⁴⁸ The SAAC is a multidisciplinary, multi-agency advisory board on sexual assault.

⁴⁹ Defense of Defense Instruction 6495.02, "Sexual Assault Prevention and Response Program Procedures," June 23, 2006, incorporating change 1, November 13, 2008: 5.3.5 and 5.3.6.

⁵⁰ This database is intended to replace the DCRMS, which was never implemented.

Although SARC supervisors⁵¹ indicated their programs have been evaluated by a number of agencies in the past twenty-four months, including the installation or command Inspector General's office,⁵² the Government Accountability Office (GAO), and this Task Force, these evaluations are not part of an ongoing coordinated SAPR Program evaluation.

Resources

Each Service resources its programs internally; as a result, the resources expended on sexual assault and prevention vary widely. Our data reveal the resources devoted to sexual assault and prevention are inadequate.⁵³ SARCs indicated that the requirement for around-the-clock coverage contributes to staff burnout and turnover. Workload demands on SARCs and VAs and the 24-hour responsibility for victim care often come at the expense of program oversight and prevention activities. In addition, scarce resources for training and promotional materials limit prevention activities and outreach efforts.

SARC supervisors expressed significant concern over the use of contracted and collateral duty SARCs.⁵⁴ Although SARCs in the Air Force and Marine Corps are exclusively DOD civilians or active duty Service Members, over half of Navy (53%) and Army (59%) installation SARCs are contractors. Contracted SARCs are not always well-trained⁵⁵ and their supervisors sometimes have difficulty addressing performance issues, as they have only indirect supervisory control. One commander offered:

If I had the opportunity to make a suggestion, it would be that there is a full-time SARC who is paid appropriately. When a case does come in, it is 'stop all.' This makes the SARC a reactive position and a person who responds due to emergencies. The SARC should be a proactive position who consistently thinks about SARC duties.

Leadership Support for Sexual Assault Prevention and Response

Leaders at all levels voiced support for the sexual assault prevention and response program and favorably assessed the Services' progress to date. Individual leaders' levels of engagement with the program and personal commitment to the issue of sexual assault varied. One officer shared:

We're seeing the paradigm shift...but I've yet to see someone in the leadership position stand in front of me and say 'this is where I stand with regard to sexual assault.'

Eighty-five percent of focus groups reported that commanders take sexual assault seriously; however, the participants also commented that zero tolerance is often just an "empty slogan." One IG explained:

Our leaders need to really have a no tolerance attitude and not just a policy letter...[personnel] can tell when they aren't genuine. When we say we're going to nail the accused and then go ridicule the victim for [his/her] choices, that attitude gets out and erodes trust in the process.

⁵¹ See Chapter 3: Methodology and Annex D for information regarding the respondent groups and limitations of Quick Compass Survey data collected. The full Tabulation Volume of survey results is available through the Defense Technical Information Center (ADA 508 930).

⁵² Overall, 35% of SARC supervisors indicated they were evaluated by the installation/command IG. Inspector General assessments occurred more frequently in the Marine Corps (50%) and Air Force (49%).

⁵³ More than half of the SARC supervisors we surveyed said personnel resources are adequate only "to a moderate or small extent."

⁵⁴ Other duties that SARCs may perform include Family Advocacy Program Manager (FAPM), Equal Opportunity Advisor (EOA), and IG. Some of these duties may also present conflicts of interest.

⁵⁵ Some contracted SARCs reported receiving their 40-hour training by DVD or telephonic instruction; neither means was considered sufficient or effective.

Most SARCs indicate that they are well supported by senior commanders, and have access to their command leadership. However, some commanders have inappropriately pressured SARCs and Victim Advocates to reveal case details, especially when the victim chose the restricted reporting option.

Noncommissioned Officer (NCO) leadership is critical to the success of sexual assault prevention and response programs, because NCOs are frequently the leaders with whom junior Service Members interact. However, commanders reported challenges. In training environments, the ratio of NCOs to trainees is often inadequate to provide the oversight and mentoring new Service Members need. One commander commented, “I am missing a lot of the right leaders. The NCO corps has too many folks that are inexperienced, don’t have enough training, and aren’t ready to lead.” Junior enlisted personnel also voiced concerns about immature NCOs. Focus group participants commented that NCOs lack credibility when they are observed engaging in the same behavior they tell their subordinates to avoid.

PREVENTION AND TRAINING

Risk Factors for Sexual Assault

Understanding risk factors for sexual assault is critical to prevention and training efforts. Personal, interpersonal, and community-level risk factors impact the incidence of sexual assault, the number of victims who choose to report, and response effectiveness.

Alcohol

Data from Service Members, sexual assault prevention and response personnel,⁵⁶ and law enforcement personnel indicate that alcohol is a significant factor in military sexual assaults. Alcohol consumption is associated with impaired decision making, lowered inhibitions, social norm violations, and underestimation of risk for sexual assault.⁵⁷ In some cases, alcohol may be used strategically by perpetrators who understand its effects on behavior and know that intoxication will impair the victim’s memory of events.

The fact that alcohol consumption increases the risk of sexual assault does not deter all Service Members from drinking. In the 2008 Status of Forces Survey of Active Duty Military Members, 25% of respondents agreed that “[d]rinking is part of being in the military” and 37% reported drinking alcoholic beverages one to two days per week or more.⁵⁸ Among junior enlisted members, 21% reported they consume five or more drinks on the same occasion one or two days per week or more. Although not all Service Members consume alcohol, one fifth of Service Members do so regularly and at relatively high levels.

⁵⁶ Seventy-five percent (75%) of SARC supervisors, 68% of SARCs, and 50% of deployable VAs surveyed agreed that use of alcohol or other substances contributes to sexual assault.

⁵⁷ Kelly Cue Davis and others, “Alcohol’s Effects on Sexual Decision Making: An Integration of Alcohol Myopia and Individual Differences,” *Journal of Studies on Alcohol and Drugs* 68, no. 6 (2007): 843-851; Charlotte A. Dudley, “Alcohol, Sexual Arousal, and Sexually Aggressive Decision-Making: Preventative Strategies and Forensic Psychology Implications,” *Journal of Forensic Psychology Practice* 5, no. 3 (2005): 1-34; Claude M. Steele, and Lillian Southwick, “Alcohol and Social Behavior: I. The Psychology of Drunken Excess,” *Journal of Personality and Social Psychology* 48, no. 1 (1985): 18-34; Claude M. Steele, and Robert A. Josephs, “Alcohol Myopia: Its Prized and Dangerous Effects,” *American Psychologist* 45, no. 8 (1990): 921-933.

⁵⁸ Drinking behavior among junior enlisted Service Members, who are at greatest risk of sexual assault, varies by Service. Fifty-four percent (54%) of junior enlisted Marines indicated they drink alcoholic beverages one to two days per week or more, compared to 27% Army, 44% Navy, and 35% Air Force junior enlisted members; See 2008 *Status of Forces Survey*, Id.

Individuals may react against constraints in the military environment that limit their behavioral choices and overreact when restrictions are eased. Focus group participants indicated that some Service Members seek out alcohol and sexual gratification after periods of deprivation and thus may find themselves in risky situations.

Difficulties with Interpersonal Boundaries

Learning to set and respect boundaries are important skills for preventing sexual assault. Working and living in close proximity and with little privacy limits and may confuse individuals' interpersonal boundaries. In seeking to be accepted by peers and superiors, junior military personnel may not set appropriate limits or respect those of others. Focus group participants reported that new recruits and trainees are particularly vulnerable due to their junior rank, inexperience, and relative isolation. Individual augmentees (IAs) are also vulnerable since they generally deploy individually.

Prior Victimization

Previous victims of sexual abuse or assault are at increased risk for future sexual assault,⁵⁹ in part because their response to risky situations may be delayed or inadequate.⁶⁰ Although the number of military recruits who have experienced prior sexual assault is unknown, one recent survey of female recruits found that 56% had experienced some form of unwanted sexual contact⁶¹ before entering military service, with 25% reporting rape.⁶² Data relating Service Members' prior adult victimization to victimization during military service are not available, but another study of female recruits found victims of childhood sexual abuse were five times more likely to experience subsequent rape.⁶³ A number of military chaplains who counsel victims expressed great concern about the number of victims who have been previously victimized and the implications for their professional and personal development in the military.

Environmental Factors

Focus group participants recognize that solitary duty (especially at night), poor barracks security, and insufficient environmental lighting can increase the risk of sexual assault. Commanders report that they proactively address these risks by installing door locks, lights, and security cameras, and by adding security patrols. Increasing leadership presence in dorms, barracks, or other living areas, and creating viable alternatives to off-duty alcohol-focused activities are other means to mitigate the risk of sexual assault.

⁵⁹ Terri L. Messman-Moore, and Patricia J. Long, "Child Sexual Abuse and Revictimization in the Form of Adult Sexual Abuse, Adult Physical Abuse, and Adult Psychological Maltreatment," *Journal of Interpersonal Violence* 15, 5 (2000): 489-502.

⁶⁰ Terri L. Messman-Moore, and Amy L. Brown, "Risk Perception, Rape, and Sexual Revictimization: A Prospective Study of College Women," *Psychology of Women Quarterly* 30, 2 (2006): 159-172.

⁶¹ The researchers included only unwanted sexual contact that occurred after the victim was 14 years of age.

⁶² Valerie A. Stander and others, "Premilitary Sexual Assault and Attrition in the US Navy," *Military Medicine* 172, no. 3 (2007): 254-258. While the number of female recruits reporting unwanted sexual contact in this study was consistent with prior studies, the number who reported rape was somewhat lower than has been reported in prior studies in which survey respondents were anonymous. In those studies, as many as 36% of female Navy recruits reported being prior victims of rape; Lex L. Merrill and others, "Prevalence of Premilitary Adult Sexual Victimization and Aggression in a Navy Recruit Sample," *Military Medicine* 4 (1998), 209-212.

⁶³ Lex L. Merrill and others, "Childhood Abuse and Sexual Revictimization in a Female Navy Recruit Sample," *Journal of Traumatic Stress* 12, no. 2 (1999): 211-225.

Perceptions of Safety

Despite acknowledging risk factors, many Service Members maintain a false sense of security with regard to sexual assault.⁶⁴ Junior personnel indicated they feel safe because they have good situational awareness and try to appropriately manage their risk.⁶⁵ As a junior sailor commented, “You’re safe until you’re not safe. Everyone thinks they’re safe until it happens to them.”

Prevention Efforts

Prevention efforts to date focus mostly on risk management and training. Installation commanders direct risk management efforts at reducing environmental risks and use training to increase individual knowledge and skills.

Risk Management

Commanders and senior enlisted leaders understand they are responsible for mitigating sexual assault risk. In focus groups and interviews, they described risk management strategies that include ensuring gender separation in barracks or dormitories, installation of cameras and additional lighting, enacting curfews, and increasing the number of safety patrols. Commanders also recognize that social marketing campaigns, including the use of sexual assault prevention campaign posters, and consistent leadership messages on sexual assault are critical to prevention efforts.

Sexual Assault Prevention and Response Training

Our data indicate the Services have done well in ensuring that all personnel receive training on sexual assault prevention and response (see Table 2). Ninety-six percent (96%) of focus group participants indicated receiving sexual assault prevention and response training, although some indicated that there was a push to complete training prior to the Task Force’s site visit. Fewer (75%) indicated having been trained on the difference between restricted and unrestricted reporting.

Table 2. Percentage of Focus Group Participants that Indicated They Have Received Training

Branch of Service	Received Sexual Assault Prevention and Response Training	Received Training on Restricted/Unrestricted
Air Force	97.0%	95.2%
Army	97.3%	76.4%
Marine Corps	90.9%	49.4%
Navy	98.0%	76.4%
All Combined	96.0%	75.1%

⁶⁴ This is especially true among men, who often claim they are at no risk of sexual assault because they work in all-male units or live in all-male barracks.

⁶⁵ For instance, by limiting their alcohol consumption and using the “buddy system.”

Training Effectiveness

The Task Force’s interactions with Service Members suggest training is only marginally effective. Most sexual assault prevention and response training is conducted online or in large group briefings. Service Members described their level of engagement in this training with phrases such as “death by PowerPoint” and “click, click, click, done.” When units combined sexual assault prevention and response training into long briefing sessions, personnel did not pay close attention. In fact, many reported they cannot recall the information presented. SARC supervisors, SARCs, and Deployable Victim Advocates (DVAs) who were surveyed indicated that training is more effective in providing basic knowledge than in promoting prevention strategies (see Table 3).

Table 3. Quick Compass Survey Ratings of Prevention and Training Effectiveness

In your opinion, how effective is the SAPR program in...		SARC Supervisors	SARCs	DVAs
Explaining what behaviors constitute sexual assault.	Agree	95	74 ⁶⁶	87
	Disagree	0	10	3
Advertising the SAPR program and how to contact a SARC.	Agree	94	92	81
	Disagree	6	2	2
Promoting prevention strategies.	Agree	89	78	81
	Disagree	1	2	4
Explaining the consequences of committing SA.	Agree	91	80	80
	Disagree	1	2	2

Defining Sexual Assault. When asked to define sexual assault, focus group participants most commonly responded “unwanted sexual touching.” Some indicated that sexual assault is subjectively determined (i.e., sexual assault is whatever makes the person uncomfortable), while others commented that the current definition is too broad to be useful.⁶⁷ In 54% of focus groups, one or more participants confused sexual harassment and sexual assault, usually by referencing unwanted verbal remarks as examples of sexual assault. It is unclear whether this confusion is a policy problem⁶⁸ or a failure in training.

Understanding of Reporting Options. In 22% of focus groups, one or more participants did not know or incorrectly identified the difference between restricted and unrestricted reporting. In 14% of groups, one or more participants mistakenly believed they could make a restricted report to a person or agency that is actually required to report sexual assault (e.g., to the chain of command, law enforcement or legal personnel, or EOAs).⁶⁹ Service Members’ understanding of these options is often simplistic and inaccurate.

⁶⁶ Sexual Assault Response Coordinators answered this question in a different context than the other groups. They were asked “In your experience interacting with personnel at your military location, to what extent do you agree or disagree that they understand what behaviors constitute sexual assault?” This wording may be responsible for SARCs’ less favorable evaluation of training effectiveness.

⁶⁷ One junior sailor pointed out that SAPRO’s definition of sexual assault is longer than the Gettysburg Address.

⁶⁸ See Appendix B: Glossary for definitions of sexual assault and sexual harassment; See also Recommendation 3.

⁶⁹ Surveys of SARCs and DVAs also indicate victims have difficulty understanding the implications of choosing restricted or unrestricted reporting at the time they make their choice.

Bystander Intervention Training. Less than half of Army, Navy, and Marine Corps focus groups indicated that they received bystander intervention training;⁷⁰ even those with training do not adequately understand the concept or what it entails. Most associate bystander intervention with being a “wingman” or “battle buddy” or with reporting an incident to authorities, instead of identifying specific skills or strategies to prevent a sexual assault.

Most participants said they would intervene to prevent a sexual assault; however, many indicated that it would be difficult to know when to do so. Some would not intervene unless the victim specifically asked for help, screamed, or fought back, because they would not want to intrude in others’ affairs.

Alcohol-related Training. Although focus group participants and personnel interviewed routinely stated that alcohol contributes to sexual assaults, SARCs and DVAs surveyed did not generally agree that programs to promote responsible drinking have reduced the risk of sexual assault.⁷¹ Integrated sexual assault and alcohol abuse training is rare; typically training programs are developed and presented separately, frequently in close succession as part of a longer training event.

When asked what the Services can do to eliminate sexual assault, focus group participants most often ask for better training, delivered by credible and compelling trainers. Many indicated that current training is aimed too narrowly at women, ignoring male-on-male sexual assault and addressing men as potential perpetrators and women as potential victims. They want relevant, realistic, interactive training, and are particularly interested in hearing first-hand accounts of sexual assault victims and offenders. The vividness of personal testimony engages trainees, builds empathy, and emphasizes that anyone could be a victim of sexual assault.

First Responder and Commander Training

Sexual assault program staff, responders, and commanders are vital to prevention efforts. The public messages they send regarding attitudes and behavior can bolster or stifle the effects of other strategies.

Sexual Assault Response Coordinators

Sexual Assault Response Coordinators receive specialized training,⁷² and indicate that their training provides adequate preparation for the duties they perform (see Figure 2). Less than 5% of SARCs surveyed indicated that they are poorly prepared, but interviews with contracted SARCs suggest these individuals receive less effective training than DOD civilian or active duty military SARCs.⁷³ SARCs’ training was generally rated favorably by their supervisors as well.⁷⁴

⁷⁰ Eighty percent (80%) of Air Force focus groups participants reported having received bystander intervention training.

⁷¹ Only 30% of SARCs and 45% of DVAs agreed. Navy DVAs were more likely than DVAs in other Services to see these programs as effective (67% versus 32% of Army and 44% of Marine Corps DVAs).

⁷² Ninety-six percent (96%) of SARCs surveyed received SARC training, 83% indicated they received Victim Advocate training as well. Fifty-three percent (53%) of currently deployed SARCs said they received some additional training for performing their duties in a deployed environment.

⁷³ Contractor SARCs reported their training was provided by DVD or telephonic instruction, neither was sufficient nor effective. They prefer hands-on, scenario-based preparation for their duties.

⁷⁴ Seventy-two percent (72%) of SARC supervisors surveyed agreed that SARCs’ training is adequate “to a large extent.” Air Force SARC supervisors were significantly more likely to say their SARCs had received adequate training “to a large extent” (92%) than SARC supervisors in the Army (60%), Navy (64%), and Marine Corps (78%).

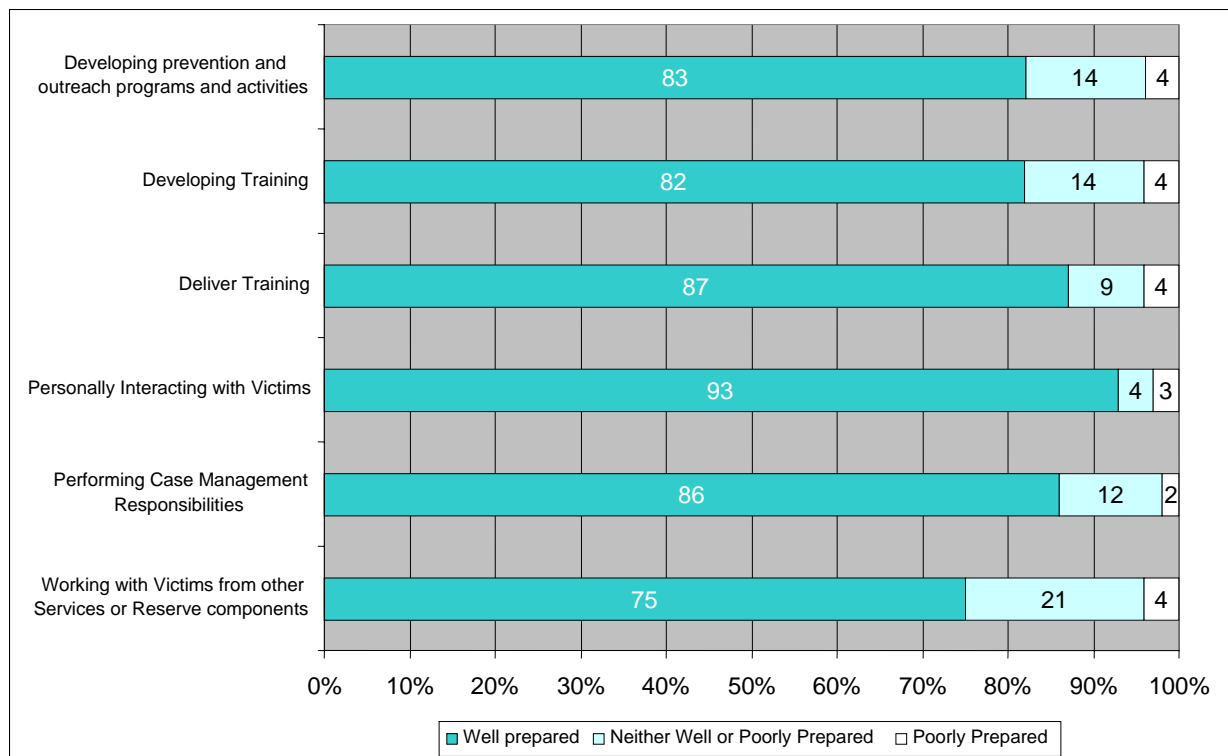


Figure 2. SARCs' Preparedness Ratings from Quick Compass Survey Data

Victim Advocates

Most VAs are volunteers, although some are appointed regardless of their interest, skills, maturity, or experience. Most receive forty hours of initial training. Of SARCs surveyed, 86% agreed that VAs are effectively trained to provide high-quality victim care. Refresher training varies in frequency from monthly to annually, and is usually provided by the SARC.

Deployable Victim Advocates usually receive the same training as Victim Advocates, although the Task Force found that some DVAs were appointed only after they reached their deployed locations. When DVAs were not provided training in advance, they were trained in the deployed environment. The percentage of DVAs who feel well or poorly-prepared is provided in Figure 3.

Although most VAs indicated their initial training is adequate, some reported that their refresher training is not. This can be problematic for VAs with little or no case experience. As one DVA explained:

I would truly be unprepared if a sexual assault were to occur and my services were needed. It is my opinion that active duty Unit Victim Advocates [(UVAs)] are not prepared to deal with sexual assaults and could potentially deter individuals from coming forward.

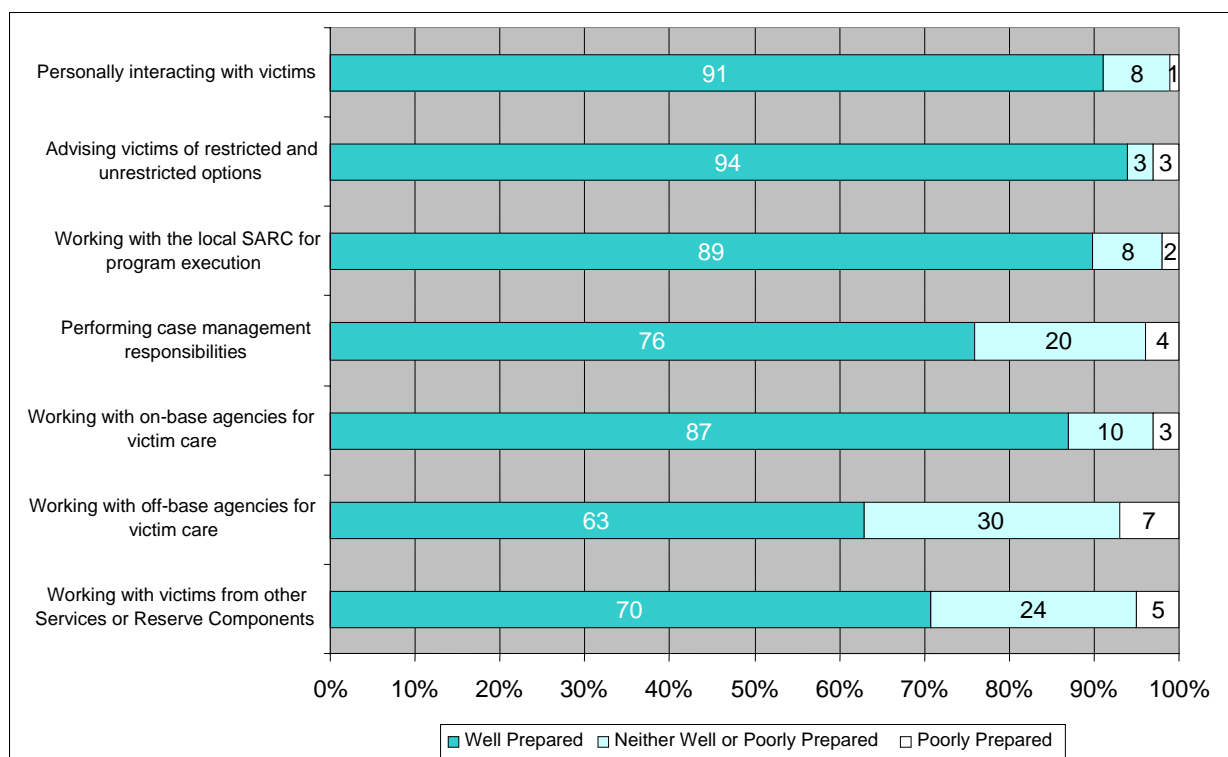


Figure 3. Deployable Victim Advocates' Preparedness Ratings from Quick Compass Survey Data

Other Responders

Sexual assault training for chaplains, medical and mental health providers, law enforcement personnel, and investigators varies widely. Most chaplains and health care providers indicated that any specialized training they received was part of their professional or continuing education and outside the context of the sexual assault prevention and response program.⁷⁵ Most described this training as minimal. Some reported attending sexual assault symposia or completing Victim Advocate training voluntarily to improve their skills in providing victim care. Conversely, military law enforcement personnel indicated that they receive strong training on sexual assault and that routine work experience helps keep their skills sharp. Overall, it appears that training in professional programs has improved in recent years, but responders cited both time and funding as reasons training remains limited.

Commanders

Many first responders who were queried⁷⁶ said that commanders need better training on sexual assault prevention and response. Interviews with commanders confirm this belief. Although some commanders indicated they received training on their role in sexual assault prevention and response at a pre-command course, many rely on on-the-job training and information they receive from SARCs and VAs as their subject matter experts. It may be difficult for SARCs, however, to ensure commanders understand sexual assault prevention and response program policy and their role in sexual assault prevention and response

⁷⁵ Most reported the SAPR training they receive is the annual online training or briefing received by all personnel.

⁷⁶ E.g., Sexual Assault Response Coordinators, VAs, chaplains, and mental health providers.

when the SARC does not have direct access to the commander and is responsible for training the entire installation population.⁷⁷

VICTIM RESPONSE AND CARE

One of the primary challenges to sexual assault response is successfully encouraging victims to seek the care they need. Although survey respondents agreed that current procedures encourage victims to come forward,⁷⁸ SAPRO, in their FY 2008 annual report to Congress, estimates that less than 10% of sexual assaults are reported through either the restricted or unrestricted reporting processes.

Barriers to Reporting

When asked, “What would keep you from reporting a sexual assault?” focus group participants most often mentioned shame or embarrassment (see Table 4). Focus group participants also identified other threats to personal identity, such as self-blame or pride. Male focus group participants often indicated that they would not report sexual assault because they believe others would see them as less of a man or that their sexual orientation would be questioned.⁷⁹

The second most common response was fear of being stigmatized. Participants expressed concern that “everyone will talk about me” and that they would be “labeled.” These concerns were particularly salient among junior Service Members who are intensely focused on belonging to the unit. Members also believe they may be blamed for what happened, or that no one would believe them.⁸⁰

The third most common reason participants mentioned for not reporting was fear of reprisal. Most participants did not explain the types of reprisals they expected to encounter.⁸¹ One junior officer expressed concern that “...some responsibilities would be taken from you or not given to you...it would be reflected in the language on your performance reports...even when you [move to a new duty station], someone would find out, especially if you’re in a small career field.” Service Members also fear punishment for collateral misconduct such as underage drinking, fraternization, adultery, or for being at an unauthorized location.

Mistrust of the reporting, investigative, and legal processes, or concerns that “nothing would be done” represent the fourth most common barrier to reporting. For example, one participant said, “I’ve heard different stories where it has just been covered up. The victim goes forth and tells, but it doesn’t go anywhere.” Other participants expressed concern that they would be re-victimized by the process, typically because it would be so difficult to recount repeatedly what happened, especially to strangers.

⁷⁷ Sexual Assault Response Coordinators who were interviewed indicated that training of commanders is difficult to accomplish because of victim care and other significant training responsibilities.

⁷⁸ Eighty-seven percent (87%) of SARC supervisors, 83% of SARCs, and 78% of DVAs agreed.

⁷⁹ In exclusively male focus groups, perceived threats to their masculinity was the most common reason participants said they would not report.

⁸⁰ In exclusively female focus groups, fear of social consequences was the most common reason participants said they would not report.

⁸¹ Some individuals in focus groups indicated that they would rely on their own support networks rather than come forward to make a report, particularly because they feared they would be deemed unfit for duty if they reported a sexual assault.

Finally, some focus group participants indicated that characteristics of the perpetrator would deter reporting. For example, Service Members might not want to report friends, family members, or coworkers who may be punished for their actions. Participants also said it would be difficult to report sexual assault if the perpetrator was of higher rank and/or in the victim's chain of command. In these cases, participants felt they would face reprisal for reporting or that senior leaders would protect the accused.

Table 4. Barriers to Reporting Sexual Assault Described by Focus Group (FG) Participants

Theme and Description	Sub-Categories	Percent of FG that mentioned (Top 5)
1. Personal Identity is Threatened Responses in this category suggest the victim's sense of self is threatened, either by the sexual assault itself or by the anticipated reporting process and its aftermath.	Shame/embarrassment Self-blame Threats to manhood Pride	56% (1) 24% (4) 15% 13%
2. Social Consequences Responses in this category reflect concerns that "everyone will know" and will ostracize, label, or otherwise humiliate the victim who reports.	Stigmatized Won't be believed Will be blamed	45% (2) 17% 14%
3. Fear of Reprisal or Punishment Responses in this category include general concerns that the victim would face reprisal or retribution for reporting and specific concerns about career reprisals. Punishment for collateral misconduct is included as well.	Fear of reprisal Punishment for own actions Career impact	33% (3) 21% 16%
4. Mistrust of the Process Responses in this category reflect a sense of mistrust in the reporting, investigative, or legal processes. Poor outcomes include lengthy trial process and beliefs that the offender won't be held accountable or "nothing will be done."	Poor outcome General lack of trust Re-victimization	21% (5) 16% 14%
5. Perpetrator Characteristics Responses in this category indicate some personnel would not report because the perpetrator is someone they know and they do not want to subject that person to investigation and punishment. Victims are less likely to report if the perpetrator was a superior.	Family/friend/coworker Higher rank	16% 14%

Senior leaders and chaplains who counsel victims of sexual assault believe that reporting would increase if victims had greater trust in the reporting system and a sense that they control the process. Trust in the reporting system is paramount, but our data suggest it may not always ameliorate personal and interpersonal anxiety over reporting a sexual assault. Powerful personal concerns – establishing and maintaining a strong identity and making meaningful connections with others – are central factors in reporting decisions.

Restricted Reporting

The Department of Defense initiated restricted reporting in 2005 to make it possible for military victims of sexual assault to receive care without triggering an investigation. Although the majority of sexual assault prevention and response staff surveyed agreed that restricted reporting policies have benefited victims of sexual assault, they also consider restricted reporting to be a challenge.

Interviews and focus groups reveal that victims often jeopardize restricted reporting by sharing information about the assault with a friend, family member, or superior. As one SARC noted, “The first thing a victim wants to do is tell someone they trust.... In the military, this is bad. It is really hard to explain to them and have them understand that restricted reporting is only restricted if no one knows.” For this reason, many of the first responders interviewed said that trusted friends should be able to help the victim seek care without jeopardizing restricted reporting.

Chaplains, medical and mental health providers, and Victim Advocates identified few problems⁸² with keeping restricted reports of sexual assault confidential. They are well trained on their obligations to protect victims’ privacy and seem genuinely dedicated to doing so. Many intentionally maintain limited records because they are aware that their records could be subpoenaed.⁸³

Sexual assault responders indicated that most commanders respect the confidentiality of restricted reports,⁸⁴ although some feel that commanders push for information or try to deduce what might have happened and to whom.⁸⁵ This behavior manifests some commanders’ frustration that restricted reporting prevents them from holding offenders accountable and protecting other unit members from a potential perpetrator. As one commander commented, “I’ve had situations where I felt very restricted by the restricted reporting.”

Focus group participants do not believe that restricted reports will be kept confidential. This perception was not limited to junior Service Members; even senior officers and senior enlisted members stated that they believe information would be disclosed somehow.⁸⁶ One focus group participant quipped, “If you want something to get out, all you have to do is say it’s a secret.”

⁸² Some chaplains feel pressured to reveal details to commanders. One chaplain commented, “The medical privilege is well known to commanders but the chaplains’ privilege isn’t as well understood; [we] need to train commanders on this so they don’t pressure chaplains to divulge what they were told.”

⁸³ Seventy-eight percent (78%) of trial defense counsel interviewed indicated they would subpoena SARC or VA records.

⁸⁴ Most SARCs (86%) agree that commanders and supervisors understand restricted and unrestricted reporting options, and that they are supportive of the restricted reporting option (84% agreed). Army SARCs were less likely to agree that commanders and supervisors support restricted reporting (64%) than were SARCs in the Air Force (89%), Navy (93%) or Marine Corps (94%).

⁸⁵ Eighty-eight percent (88%) of SARC supervisors, 74% of SARCs, and 67% of DVAs agreed that commanders respect the confidentiality of restricted reports. Agreement was notably lower among Army SARC supervisors and Army SARCs.

⁸⁶ The most common explanation for violations of confidentiality was that the victim would share information in confidence with someone who would then share the information with others. Other concerns focused on the possibilities for rumors and immature attitudes of Service Members in their units.

Concerns about False Reporting

Although interviews with MCIOs and other data indicate that false reports of sexual assault are rare, participants in more than 60% of focus groups indicated that false reports occur and many believe they are common. Some Service Members believe individuals make false reports for revenge, to protect themselves from repercussions for infidelity or other misconduct,⁸⁷ or when they regret having engaged in consensual sex. Participants also believe there are no negative consequences for false reporting.⁸⁸

Focus group participants may overestimate the number of false reports for several reasons: the victim may recount the incident differently during the course of the investigation; the case may not have gone to trial due to insufficient evidence; the case may have resulted in an acquittal, or the results of the investigation, trial, or final consequences may not have been published or shared. The distinction between a false report and an unsubstantiated report is usually not obvious. In addition, delayed reports of sexual assault are likely to be unsubstantiated because physical evidence is not available and witnesses are difficult to locate. In these ambiguous cases, Service Members may assume that the victim was lying. Unfortunately, misperceptions about false reporting make it difficult for victims to come forward with confidence.

Availability of Care

Although the SAPR Program does not apply to DOD civilians or contractors, most SARCs interviewed said that they provide services to civilians. Many SARCs did not realize that family members and retirees are eligible for all SAPR Program services, as family members are covered under the FAP. Some SARCs provide only advocacy and referral services to non-Service Members, but more than half say they coordinate care with community agencies and offer the same types of services those in the military receive. Sexual Assault Response Coordinators' survey responses suggest that SARCs want services extended to the "total force," including civilians.

Medical Treatment

Some Military Treatment Facilities (MTFs) conduct sexual assault forensic exams (SAFE). Those MTFs that do not conduct SAFEs have agreements with local civilian hospitals. MTF staff at some military locations where SAFEs are performed state that personnel resources are insufficient: either there are insufficient Sexual Assault Nurse Examiners (SANE) or the training to conduct SAFEs is inadequate.⁸⁹

Mental Health Treatment and Counseling

In general, installation Victim Advocates who were interviewed report that mental health services are available and easily accessible to victims of sexual assault. Some victims may be reluctant to seek mental health treatment from military providers because mental health records may be subpoenaed. In such situations, victims may receive counseling from a chaplain, although chaplains do not have a similar level of psychological training. In some situations, victims may receive counseling via teleconference because mission or training demands render in-person counseling impractical.

⁸⁷ E.g., underage drinking or a violation of the restriction against drinking in theater.

⁸⁸ Interviews with MCIOs indicated some will open a separate investigation if a victim's accusations are proven false. Some criminal investigators feel there is no punishment for false reporting.

⁸⁹ When only one trained SANE is available, other personnel must perform SAFE exams when that individual is not available. These personnel may not have sufficient training and may not want to conduct SAFE exams.

Quality of Care

SARCs and Victim Advocates interviewed described a well-developed response system that ensures 24-hour care in most locations. Quality of care ratings from surveys varied across respondent groups, with SARC supervisors giving the most favorable assessment and DVAs the least favorable (see Table 5). Most SARCs indicated that they have effective working relationships with community agencies, including rape crisis centers, shelters and hospitals, and civilian law enforcement, and representatives from community agencies that the Task Force interviewed agreed.

Table 5. Ratings of Victim Care from Quick Compass Surveys

		SARC Supervisors	SARCs	DVAs
Victims of SA receive the best care possible.	Agree	97	85	78
	Disagree	3	3	2
Victims are protected from further physical harm (e.g., from offenders).	Agree	93	89	75
	Disagree	7	2	3
Victims are protected from negative consequences for participating in SAPR.	Agree	87	78	68
	Disagree	1	4	5

Deployment

Focus group data from military personnel serving in deployed environments or who recently redeployed from Afghanistan or Iraq do not suggest sexual assault is more common there, or that deployed members are more hesitant to report.⁹⁰ The presence of unknown personnel, including third country nationals, coalition partners, and members from other branches of service, along with environmental conditions such as poor lighting and shared housing, may create risk. However, most deployed Service Members reported that they felt safe from sexual assault.

Social dynamics in the deployed environment can also create risk. Service Members report that normal social constraints on behavior are diminished on deployment, and relaxed expectations for fidelity is common. In addition, some military personnel indicated that predators may believe they will not be held accountable for their misconduct during deployment because commanders' focus on the mission overshadows other concerns.

Access to Services

The nature of deployed operations places unique stresses on the sexual assault prevention and response program. Deployed SARCs indicated that staffing, victim care, and coordination are extremely difficult

⁹⁰ A survey of military women returning from the Persian Gulf War and a more recent study of men and women returning from Iraq and Afghanistan are frequently cited in the popular media as evidence of high rates of sexual assault in deployed environments. However, severe methodological limitations (including the use of small or biased samples, inconsistent definitions of sexual assault, and differences in the time context addressed) and the wide range of sexual assault prevalence estimates for comparison make such inferences suspect. See Jessica Wolfe and others, "Sexual Harassment and Assault as Predictors of PTSD Symptomatology among U.S. Female Persian Gulf War Military Personnel," *Journal of Interpersonal Violence* 13, no. 1 (1998), 40-57; Rachel Kimerling and others, "Burden of Mental Illness Associated with Military Sexual Trauma among Veterans Deployed to Iraq and Afghanistan," presented at the 136th annual meeting and exposition of the American Public Health Association, October 2008, San Diego, CA.

at forward operating bases (FOBs). Small FOBs may not have a Victim Advocate. Even at larger, more established installations, most UVAs are inexperienced and inadequately supported.⁹¹ Although Victim Advocates generally feel their SARC would support them, 47% of the deployable Victim Advocates we surveyed indicated they talk with the SARC less than once a month.

Geographically isolated units may have inadequate access to medical or mental health care in the event of a sexual assault. There appears to be only one Sexual Assault Nurse Examiner in Afghanistan and one in Iraq. These personnel are located at well-established bases⁹² and victims may be airlifted to these locations. Although mental health care providers and chaplains may travel to serve clients at dispersed deployed locations, counseling may not be provided in a timely manner. In addition, counseling sessions are likely to focus on acute trauma response rather than long-term healing.

Restricted Reporting

Many Deployable SARCs indicated that restricted reporting is more challenging in deployed environments because commanders feel an added burden of accountability – they expect to know where their personnel are at all times to ensure their safety and mission accomplishment.⁹³ Commanders may also want a detailed justification for airlifting Service Members out of the area because doing so creates risks and constrains resources. Military personnel have limited privacy on smaller bases: people may make assumptions when they see someone meeting with the DVA or DSARC.

Joint Environments

Military personnel routinely serve alongside those from other branches of Military Service, particularly when deployed. SARCs and VAs collaborate to ensure victims receive care. All indicated they would provide victim support regardless of military service affiliation. In fact, 83% of SARCs surveyed have coordinated with another Service or Reserve Component for victim care. Fifty-eight percent said they coordinated with a federal partner or coalition force. Many SARCs indicated that procedural guidance is not available regarding how cases in a joint environment are to be handled; these SARCs indicated that they rely on informal agreements with representatives of other Services or coalition partners.⁹⁴

Male Sexual Assault

Men are less likely than women to be sexually assaulted; however, due to the high male-to-female ratio, there are likely similar numbers of male and female victims in the military.⁹⁵ In fiscal year 2008,

⁹¹ Sexual Assault Response Coordinators may be supervising large numbers of UVAs from multiple Services, potentially at geographically-dispersed FOBs. This span of control makes it difficult to maintain contact. Both DVAs and DSARCs may benefit from having the ability to receive “reach back” assistance or advice from other, more experienced, SARCs or VAs at permanent military locations. Sixty percent (60%) of deployed SARCs and 55% of deployed VAs said they have “reach back” support to a large extent, but 14% of deployed VAs indicated they have no “reach back” support at all. Army (22%) and Marine Corps (17%) DVAs were most likely to report no “reach back” support. “Reach back” support is a critical resource given the relative inexperience and isolation of VAs in deployed environments.

⁹² These bases were located at Bagram, Afghanistan and Balad, Iraq.

⁹³ Similar challenges exist in military training environments.

⁹⁴ Forty-six percent (46%) of deployable SARCs indicated they do not have case management procedures for handling cases in a joint environment; 66% of SARCs did not know of procedures for handling cases involving foreign nationals.

⁹⁵ *The 2006 Gender Relations Survey of Active Duty Members*, v.

179 men (10% of all Service Member victims) reported they were sexually assaulted; seven (12%) of the sixty-one victims who were interviewed by the Task Force were male.

Men are assaulted by other men as well as by women. The 2006 Gender Relations Survey of Active Duty Members indicates that male-on-male assaults and female-on-male assaults happen with equal frequency.⁹⁶ However, most incidents reported by males in fiscal year 2008 were male-on-male assaults.⁹⁷ This may be because female-on-male incidents are more likely to involve unwanted touching than more serious sexual misconduct.⁹⁸

Service Members do not believe there is a significant problem of male sexual assault; male focus group participants report a greater sense of safety than their female peers. Many men believe that they are not vulnerable to sexual assault if they are in an all-male unit and they, therefore, do not need sexual assault prevention and response training. Some commanders and senior enlisted advisors share this view.

Men may be less likely to report a sexual assault, and those who do could risk stigmatization. One male Service Member explained, “You’d never live down the shame. You lost your manhood. You’d be the guy people talked about, the headline...what guy would risk that happening by reporting?” Male victims we interviewed often questioned their own sexual orientation as a result of their assault, and many experience lifelong psychological difficulties, including post-traumatic stress disorder.⁹⁹

ACCOUNTABILITY

Investigation and prosecution are critical to holding offenders accountable for sexual assault. Although nonjudicial punishment can be used by commanders, most commanders believe sexual assault is a crime that should be prosecuted. Our interviews suggest challenges remain in holding offenders accountable and in creating a climate of candor in addressing sexual assault.

The Investigative Process

The military and civilian investigators we interviewed had significant experience investigating sexual assault; all placed high priority on these cases. Time to complete an investigation varied dramatically, from one month to two years or more, depending on the complexity of the case, the availability of evidence and witnesses, and the requirement for laboratory analysis. Delayed reporting and collateral misconduct concerns complicate the investigative process as well. Data indicate that collaboration

⁹⁶ Ninety-six percent (96%) of women and 44% of men who reported an incident of unwanted sexual contact on the 2006 *Gender Relations Survey of Active Duty Members* indicated that the perpetrator was male. Forty-six percent (46%) of men indicated that the perpetrator was female.

⁹⁷ U.S. Department of Defense, *FY08 Report on Sexual Assault in the Military*. (Washington DC: Government Printing Office: 2009).

⁹⁸ The 2006 *Gender Relations Survey of Active Duty Members* indicated that men are more likely than women to be sexually assaulted by multiple perpetrators in the same incident. This was also true among victims who spoke with the Task Force.

⁹⁹ Sexual assault is associated with high lifetime rates of PTSD for men (65%) and with increased risk of psychiatric hospitalization and of suicide. Amy Street and Jane Stafford, “Military Sexual Trauma: Issues in Caring for Veterans,” *National Center for Post-Traumatic Stress and Walter Reed Army Medical Center, Iraq War Clinician Guide, 2nd Ed.*, (Washington DC: Government Printing Office, 2004); Melissa A. Polusny and Maureen Murdoch, “Sexual Assault among Male Veterans,” *Psychiatric Times*, 22, no. 4 (April 1, 2005).

between military and civilian investigators is effective, and will become increasingly important as military housing is privatized.¹⁰⁰

Issues that Affect Prosecution

The perception is that sexual assault cases are not frequently or effectively prosecuted. Prosecutors disagree. Prosecution rates are difficult to interpret because the definition of sexual assault in the military is broad; cases of unwanted sexual contact are unlikely to go to courts martial and are combined with cases of rape and sodomy when prosecution rates are calculated. Prosecutors indicated that they routinely try cases that civilian authorities would not. The prosecutors recognize that evidence is often weak, especially when the victim's memory is impaired by alcohol use at the time of the incident or when delayed reporting compromises evidence quality. In addition, victims may initiate the investigative process but later become uncooperative should the investigation and trial overwhelm them.

Commanders expressed dissatisfaction with the length of time it takes to investigate and prosecute sexual assault, and caregivers voiced concern over how victims are treated during the process. One chaplain said, "I wouldn't try to persuade a victim to report because of the low conviction rate that only tends to humiliate the victim further.... I can't in good conscience tell them that is a good idea; they are coming to me for help, I don't want to send them on the path to more humiliation." Another added, "The biggest reality is that the victim gets punished by the system but the offender does not."

Prosecutor Preparation

Two main factors affect prosecution: inadequate prosecutor training and inexperience. Prosecutors indicated that they receive some specific sexual assault training at judge advocate training schools, but many who prosecuted sexual assault cases said they learned on their own initiative. Most prosecutors said they had no formal training in working with victims of sexual assault except for the annual sexual assault prevention and response training all Service Members must receive. Training on alcohol-facilitated sexual assault is limited; both prosecutors and defense counsel indicated that more training in this area would be useful.

Our interviews with trial counsel indicated that most have little or no experience prosecuting sexual assault cases.¹⁰¹ One prosecutor noted, "There is an advantage of having more experienced attorneys. In the civilian world, you would not have a one-year-out-of-law-school person working on a rape case."

Collateral Misconduct

Fear over being punished for wrongdoing can keep victims from reporting sexual assault or make them hesitant to fully disclose details of the event to investigators. When a victim of sexual assault is found to have committed a violation of military regulations or a crime, most military law enforcement officers say their focus remains on the sexual assault, but they document victim misconduct in their report and refer the matter to the appropriate commander.¹⁰² Most law enforcement and legal personnel said they

¹⁰⁰ Military criminal investigative agencies have primary responsibility for investigating crimes that occur on military installations. However, civilian agencies may have responsibility for investigating crimes committed in privately-managed base housing.

¹⁰¹ Individuals who indicated they have prosecuted sexual assault often said the cases they prosecuted were child sexual abuse cases rather than adult sexual assault cases.

¹⁰² Some investigators indicated the victim would be titled for the collateral misconduct offense and a separate investigation would be opened with a different lead investigator. This was the exception rather than the rule.

recommend commanders wait until the sexual assault is adjudicated before taking action on a collateral offense. Others expressed concerns that waiting to punish collateral misconduct exposes the victim to aggressive questioning on the stand and reinforces the belief that the victim reported the assault to avoid punishment for his or her own misconduct.

Victim Perspective on Investigation and Prosecution

Victims currently have little visibility into the investigative or legal process. Investigators state that they provide feedback to victims on the status of their case but feedback may be very limited.¹⁰³ Victims frequently do not understand the roles and responsibilities of the trial counsel. Sexual Assault Response Coordinator, VA, and victim interviews revealed that some victims mistakenly believe that the prosecutor is their attorney and few understand that the prosecutor's first responsibility is to the government, not to them. This is particularly problematic when the victim witness liaison also serves as the prosecutor.

In their desire to hold offenders accountable, some victims may be pressured to make an unrestricted report. Even when they voluntarily report, victims do not always want a case to go to trial after they experience the lengthy and emotional process of reporting, investigation, and trial preparation. Victims may regret initiating an investigation once they find they are unable to control the process after it starts. For example, one defense counsel recommended, "There needs to be a method for victims to stop the investigation process without facing charges for false reporting. Some victims have regrets about reporting...they should be able to decide to stop the process."

Leadership Accountability

Focus group participants indicated that they want leaders to do more than talk about zero tolerance; they want commanders to take action. They want perpetrators punished harshly, but fairly; consistency is critical. Service Members expressed concern that policies regarding sexual assault (what is and what isn't included) and the punishment perpetrators receive are dependent on rank, branch of service, or the accused's relationship with a commander. There is a perception that senior military personnel are not held accountable in the same way junior personnel.

Lack of transparency reinforces perceptions of unfairness. Many Service Members noted that they receive much information about drunk driving and suicide, but do not know how many sexual assaults are reported at their military location or what actions were taken in response. One SARC supervisor recommended "Similar to the community approach to drunk driving, it would be effective to identify those who have been guilty of sexual assault including (especially) officers. This would be a way of clearly documenting that sexual assault would not be tolerated, that there are consequences, and that no one can escape the consequences." In short, better visibility would improve awareness and increase confidence in the program.

¹⁰³ Victims may be informed whether the case is open or closed, or whether the investigation is ongoing. Some investigators provide feedback directly; others pass information through the SARC, VA, or VWL.

CHAPTER 5: COMPLETE RECOMMENDATIONS AND FINDINGS

This chapter contains a complete listing of Task Force recommendations and findings organized as follows:

- Strategic Direction
- Prevention and Training
- Response to Victims
- Accountability

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STRATEGIC DIRECTION

INTRODUCTION

Sexual assault in the Armed Forces is contrary to military values and must be eradicated for many reasons, including its impact on mission readiness. For DOD to succeed in this effort, it must establish an effective sexual assault prevention and response program with clear direction, leadership involvement, adequate funding, consistency across Services, appropriate organizational structures and staffing, and permanence. Our review of DOD's SAPR Program¹⁰⁴ revealed many strategic weaknesses in these areas. Without a strong strategy, successful tactical implementation is unlikely, and the goal of eradicating sexual assault will not be achieved.

Our Task Force found SAPRO's placement, organization, and functions ill-suited to accomplish DOD's objectives. As a result, we recommend temporarily shifting responsibility for SAPRO to the Deputy Secretary of Defense. This will heighten the leadership emphasis and program visibility necessary to provide much-needed strategic direction and institutionalize the program throughout DOD. We also recommend establishing a strategic advisory council comprised of experts external to DOD to infuse new ideas and leverage resources.

During the course of our review, we noted that inconsistent funding adversely affected the SAPR Program at all levels. The absence of dedicated program funding conveys the message that the Program lacks importance and permanence. Accordingly, the Task Force recommends DOD program the funding necessary to ensure long-term SAPR Program success.

The Task Force further recommends that DOD establish SAPR Program standards and oversight, with a particular focus on standardizing terminology, policies, and organizational structure across the Services. Standardized policies, terminologies, and organizational structures are particularly essential in deployed, remote, and joint-basing environments. Our recommendations also include establishing advisory and oversight boards from DOD to the installation level to achieve coherence and consistency.

The Department of Defense must reorganize SAPRO to expand its range of expertise and capabilities. The Sexual Assault Prevention and Response Office's original mission focused primarily on victim response and general awareness of sexual assault. However, to be effective across a range of critical areas, staff expertise must include prevention, training, response, and accountability.

Both SAPRO and the DOD SAPR Program require enhanced strategic direction. This direction includes temporary oversight by the Deputy Secretary of Defense to increase the Program's visibility; sufficient funding for the Program throughout DOD to ensure permanence; consistency across all the Services; and leadership by professionals experienced in prevention, training, and accountability. Only through a comprehensive strategy can DOD fulfill its commitment to zero tolerance of sexual assault.

¹⁰⁴ See Chapter 3: Methodology.

RECOMMENDATIONS AND FINDINGS

Recommendation 1: Temporarily Place Responsibility for the Sexual Assault Prevention and Response Office with the Deputy Secretary of Defense

The Secretary of Defense place responsibility for SAPRO directly with the Deputy Secretary of Defense, for at least one year and until the Secretary of Defense apprises Congress that the program has established a strong organizational base. Although ultimate responsibility for the SAPR Program may be appropriately placed with the Under Secretary of Defense (Personnel & Readiness), DOD's senior leadership participation would ensure the Program receives enhanced cooperation from all DOD organizations involved in sexual assault matters.¹⁰⁵

Findings for Recommendation 1

- The Under Secretary of Defense for Personnel and Readiness (USD(P&R)) is responsible for the SAPR Program. As Table 6 depicts below, many DOD organizations (outside the USD(P&R)) with cross-organizational responsibilities and various areas of expertise are involved in sexual assault prevention and response. The current organizational placement of the SAPRO has hindered critical aspects of the Department's SAPR Program. Without higher-level attention or the ability to control funding, SAPRO is limited to those initiatives where it can achieve consensus among all responsible entities.
- DOD SAPRO has not established a strategic plan to institutionalize the SAPR Program. The cross-cutting response to sexual assault requires high-level attention to achieve what the Task Force believes is imperative.

¹⁰⁵ See Appendix L for a statement from the SAPRO director regarding this issue.

Findings for Recommendation 1

Table 6. Sexual Assault Prevention and Response Functions Outside USD(P&R)

Activity	Responsibility within Office of the Secretary of Defense	Responsibility within Military Departments	Responsibility within Joint Staff, Combatant Commands
Prosecution of offenders	N/A	The Judge Advocates General of the Services, Commanders, and staff judge advocates	Commanders and staff judge advocates
Investigation of incidents	Inspector General (policy only)	Military Criminal Investigative Organizations and other law enforcement agencies	N/A
Pastoral counseling by chaplains	N/A	Service Senior Chaplains	Chaplains assigned to Combatant Commands
Congressional Communications	Legislative Affairs	Legislative Liaison	Legislative Liaison
Budgeting and Funding	Comptroller, Cost Assessment and Program Evaluation (CAPE)	Military Department Financial Management Offices and Service Comptrollers	N/A
Oversight, compliance, and program evaluation	Inspector General, CAPE	Service Secretaries, Inspectors General, and Departmental and Service program evaluation organizations	Combatant Commanders' Inspectors General
Setting leadership tone	Secretary of Defense and Deputy Secretary of Defense	Military Department Secretaries, Military and Naval Service Chiefs, senior military and civilian officials	Chairman and Vice Chairman of the Joint Chiefs of Staff, Combatant Commanders, Joint Commanders

Recommendation 2: Ensure Adequate Funding

The Secretary of Defense include the SAPR Program in its Program Objective Memorandum (POM)¹⁰⁶ budgeting process to ensure a separate line of funding be allocated to the Services.

Findings for Recommendation 2

- The Sexual Assault Prevention and Response Office and the SAPR Program are inadequately funded to accomplish their primary missions of prevention, response, training, and accountability within an operational military force.
- At present, SAPR is one among many important programs that must compete for funds from the Service to the field level.
- Field-level representatives consistently indicated that their sexual assault prevention and response programs lack resources.
- Irregular funding results in inconsistent and, in some cases, inadequate logistical support and resources for the SARC. For example, there is a need for more secure and private areas for victims to meet with support personnel such as the SARC and Victim Advocates.

Recommendation 3: Establish Consistent Terminology and Program Standards

- a. The Secretary of Defense establish consistent SAPR terminology, position descriptions, minimum program standards, and organizational structures throughout the Military Services.**

Findings for Recommendation 3a

- The Department of Defense does not set forth position descriptions, professional selection criteria, or minimum performance standards for SARCs and Victim Advocates.
- The lack of joint SAPR terminology and program structures has proven problematic for deploying Service Members, especially for those IAs who deployed in support of units in other Services. The Task Force anticipates the same level of difficulty in joint basing environments. For example, the Army program consists of SARCs, Installation Victim Advocates, Unit Victim Advocates, and Sexual Assault Review Boards (SARBs), while the Navy has Regional SARCs, installation SARCs, Sexual Assault Victim Intervention (SAVI) Command Liaisons, SAVI Points of Contact, Command Data Collection Coordinators, Victim Advocates, and Sexual Assault Case Management Groups.
- Differences in terminology may also present problems in establishing DOD's proposed sexual assault database.
- This Task Force recognizes the Navy's pioneering efforts in establishing a program specifically targeted at addressing sexual assault response as embodied in its SAVI program years before the other Services. When DOD established the initial SAPR Program in 2005, it employed different terminology and structure than the Navy. Service Members in focus groups have voiced concern about the absence of joint terminology and SAPR Program structure and appreciate the benefits of program consistency in the joint environment.

¹⁰⁶ The Department of Defense initiates the POM process to allocate resources and programming to agencies and the Services. Program Objective Memorandums include, among other things, a dollar amount as well as a detailed, comprehensive description of proposed programs.

Recommendation 3: Establish Consistent Terminology and Program Standards

b. Program Metrics

- 1) **Congress should fund research to identify and validate metrics that can more accurately measure the incidence of sexual assault within and outside the military.**
- 2) **The Secretary of Defense conduct a bi-annual gender relations survey of an adequate sample of Service Members to evaluate and manage DOD's SAPR Program. A summary of the survey results should be included in the annual report to Congress on sexual assault in the Military Services.**

Findings for Recommendation 3b

- The Department of Defense's methods to measure and track sexual assault data do not assist senior leaders in assessing the Department's success in responding to and eradicating sexual assault. Although the SAPR Program's goal should be to reduce or eliminate the incidence of sexual assault, DOD's primary management metric has been the reported incidents of sexual assault, which may only capture a fraction of the underlying incidence.
- DOD conducts gender relations surveys of personnel every four years. The Reserve Component is offset from the active force by two years.

Recommendation 3: Establish Consistent Terminology and Program Standards

c. Program Scope

The Secretary of Defense set forth clear guidance on the distinct but related issues of sexual harassment and sexual assault, as well as their associated organizational entities.

Findings for Recommendation 3c

- The majority of personnel interviewed during Task Force site visits indicated confusion over the meanings of the terms sexual assault and sexual harassment and the separate programs that address them.
- Most Services prohibit or discourage combining the equal opportunity and sexual assault functions and, accordingly, conduct separate training. As a result, Service Members have difficulty understanding the complexity of the definitions, the potential interrelationships, and the different reporting and response mechanisms.
- Conversely, the Army has begun to merge its sexual harassment program into its sexual assault prevention and response program.¹⁰⁷ With regard to training, the impact of this merger may be positive in that it provides a single focus on sexual misconduct. However, because the reporting and response mechanisms are so different, the Task Force is concerned that this merger will cause further confusion.

¹⁰⁷ The newly-designated Sexual Harassment/Assault Response and Prevention (SHARP) Division was organized to assume the lead for the military sexual harassment policy/program from the Army Headquarters (HQDA) Equal Opportunity Office (EO) and the civilian sexual harassment policy/program mission from the Assistant Secretary of the Army (Manpower & Reserve Affairs) Equal Employment Opportunity Office (EEO). The Secretary of the Army tasked a working group to examine and analyze the programs to determine where efficiencies may be gained, determine the highest level of field integration, and develop a bridging strategy. The working group has not completed this process or delivered recommended courses of action. Currently, the Army's SAPR, EO, and EEO programs remain unchanged below the Service-headquarters level.

Recommendation 3: Establish Consistent Terminology and Program Standards

d. Program Responsibility

The Secretaries of the Military Departments set forth clear guidance to all commanders that their leadership of their commands' sexual assault prevention and response program is a non-delegable responsibility.

Findings for Recommendation 3d

- Direct command involvement is critical to the success of the sexual assault prevention and response program. For example, at installations where the commanding general participated in the sexual assault case management group and clear command interest existed, participants, including subordinate commanders, were more responsive to the sexual assault prevention and response program.
- The Department of Defense Directive (DODD) and Department of Defense Instruction (DODI)¹⁰⁸ provide ambiguous guidance to the Services as to what level commander is responsible for the sexual assault prevention and response program. Operational commanders are not consistently involved in executing the program. As a result, the sexual assault prevention and response program is not effectively integrated and addressed by all commanders as a unit readiness concern. By Instruction, the Air Force specifies that the installation wing commander, or equivalent, implements local sexual assault prevention and response programs. The Army and Navy¹⁰⁹ often delegate implementation and oversight of SAPR/SAVI Programs to installation management (garrison) commands, rather than operational/mission commands. In addition, sexual assault prevention and response programs managed by fixed (non-deployable) commanders at the installation level may be insufficiently addressing expeditionary force requirements.

Recommendation 3: Establish Consistent Terminology and Program Standards

- e. The Secretary of Defense establish standards to assess and manage each of the Service's Sexual Assault Prevention and Response programs and ensure the Services comply with those standards.¹¹⁰**

Finding for Recommendation 3e

- The Department has not established standards of measurement to assess and manage the Program. Furthermore, the DOD SAPR Program does not provide comprehensive cross-Service policy; conduct ongoing oversight; or establish consistent methods, terminology, or standards for the Services to use.

¹⁰⁸ DOD Directive 6495.01 and DODI 6495.02.

¹⁰⁹ In most cases, the Air Force installation commander is the senior mission commander. In the Marine Corps, there are installation SARCs responsible for providing SAPR services for those Marines who fall under the responsibility of the installation commander as well as operational Command SARCs. The installation SARC provides assistance to the operational Command SARC.

¹¹⁰ See also Recommendation 10.

Recommendation 4: Establish Sexual Assault Prevention and Response Program Advisory Groups

- a. The Secretary of Defense establish a Sexual Assault Advisory Board (SAAB) modeled after other Defense advisory boards such as the Defense Business Board, Defense Policy Board, or Defense Science Board. This board should include outside experts on criminal law and sexual assault prevention, response, and training, as well as representatives from other federal agencies.¹¹¹ The Deputy Secretary of Defense or USD(P&R) should chair this group which should meet at least biannually. The purpose of this board is to assess and advise the Secretary on the Department's overall SAPR Program and its comprehensive prevention strategy and Service programs' effectiveness, and suggest changes and improvements. The intent of this advisory group is not to replace the organic capabilities which must reside in the SAPRO, but to infuse best practices from both the civilian and military community perspective into the program design, development, and performance.
- b. The Secretary of Defense reorganize and limit the current Sexual Assault Advisory Council (SAAC) to DOD personnel. The Secretary of Defense should ensure the SAAC continue to identify cross-cutting issues and solutions in the area of sexual assault. The SAAC should oversee the Department's overall SAPR Program and its comprehensive prevention strategy and the Service programs' accountability, and suggest changes and improvements. This group should meet quarterly and be chaired by the Deputy Secretary of Defense or his or her designee. Membership should include principals or deputies from every OSD office with responsibilities involving the SAPR Program, the Assistant Secretaries of each of the Military Departments with responsibility for their programs, the Services' Vice Chiefs (or equivalent), a flag or general officer from each of the Service staffs that has responsibility for the Program, and a general officer from the National Guard Bureau.
- c. The Secretaries of the Military Departments create committees at the Service level paralleling the DOD Sexual Assault Advisory Council, if they have not already done so (as recommended and described above).¹¹²

Findings for Recommendation 4

- Recommending improvements in the Department's response to sexual assault is different from coordinating the management of the program within the Department and providing oversight. Two distinct groups are appropriate for these roles at the DOD and Service level.
- The current DOD SAAC is a forum to develop solutions to cross-organizational problems. Interviews indicated that the SAAC has been involved in policy analysis and decisions.¹¹³

¹¹¹ E.g., the Department of Justice and Department of Health and Human Services.

¹¹² Such committees should meet quarterly and be chaired at a minimum by the cognizant Assistant Secretary. The flag or general officer, who reports to the Service Chief of Staff and oversees the program, should be the deputy chair. Members should include the director of the sexual assault prevention and response program, the Chief of Chaplains, The Judge Advocate General, the director of the proponent military criminal investigative agency, and the Surgeon General, as well as representatives from lower echelon commands. This committee should identify problems and solutions within the Service sexual assault prevention and response program, plan for implementing solutions within their respective Service, and raise issues to the DOD-level advisory council.

¹¹³ See Chapter 4: Results of Data Collection and Analyses for further discussion of SAAC involvement.

- The present SAAC does not effectively use outside expertise to either introduce new ideas into the DOD or evaluate the effectiveness of the program.
- Current SAAC membership includes individuals with limited or no combat arms experience. The only Service Member of the SAAC is the Vice Chairman, Joint Chiefs of Staff.
- Most of the Services have established their own SAAC or equivalent body.

Recommendation 5: Revise Sexual Assault Prevention and Response Office Functions and Structure

- a. **The DOD SAPRO must be proactively engaged in DOD sexual assault policy development and legislation. The Secretary of Defense should ensure that the Military Services and DOD SAPRO consult with one another on policy and legislative efforts that have implications for sexual assault prevention and response.**

Findings for Recommendation 5a

- The DOD SAPRO has made minimal efforts to determine the policy and legislative needs of DOD and the Services.
- The DOD SAPRO is not leveraging the SAAC to support and improve upon all aspects of the program, for example, accountability.

Recommendation 5: Revise Sexual Assault Prevention and Response Office Functions and Structure

- b. **The Secretary of Defense ensure the Department's SAPRO structure reflects the expertise and staffing necessary to accomplish the primary missions of prevention, response, training, and accountability.¹¹⁴**
- c. **The Secretary of Defense restructure the SAPRO to be led by a general or flag officer¹¹⁵ and staffed with at least one uniformed member from each Service, a judge advocate who served as the staff judge advocate in an active general court-martial jurisdiction, and other OSD personnel, to include a Victim Advocate whose responsibilities include direct communication with victims.**

Finding for Recommendation 5b, 5c

- The DOD SAPR Program and SAPR Office are not currently structured (see Figure 4 for the SAPRO organizational chart) to effectively accomplish their primary missions of prevention, response, training, and accountability¹¹⁶ within an operational military force. For example, the SAPRO does not include a position responsible to interact with investigators or conduct accountability.¹¹⁷ Furthermore, the current DOD SAPRO structure does not include a single point of accountability for victim assistance and oversight.

¹¹⁴ See Appendix L for a statement from the SAPRO director addressing this recommendation.

¹¹⁵ Or government Senior Executive Service member with a deputy who is a colonel (or captain in the Navy).

¹¹⁶ I.e., military justice and policy compliance.

¹¹⁷ I.e., tracking case disposition/UCMJ action; conducting policy development and compliance. See Recommendation 28 for discussion of requirements for the Congressional report.

Findings for Recommendation 5b, 5c

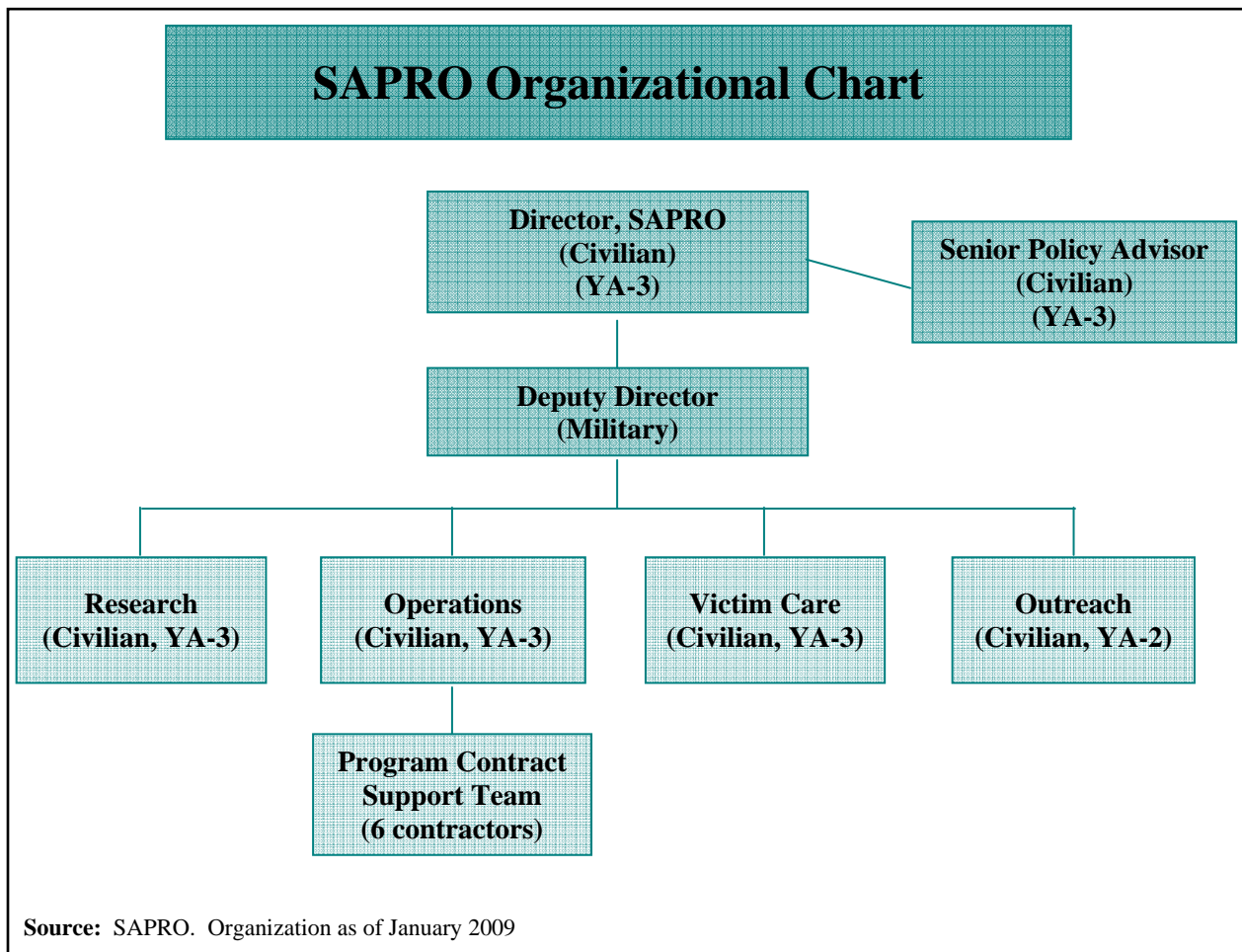


Figure 4. SAPRO Organizational Chart

Recommendation 6: Modify Sexual Assault Program Personnel and Oversight

a. Sexual Assault Prevention and Response Program Personnel

- 1) The Secretary of Defense require that SARCs be full-time Service Members or DOD civilian employees and ensure each military installation or similar organizational level has a SARC.¹¹⁸
- 2) The Secretaries of the Military Departments establish Military Deployable Sexual Assault Response Coordinators (DSARCs)¹¹⁹ who will train with SARCs on their specific roles and responsibilities in preparation for deployment. DSARCs should serve as back-up for the SARC when not deployed. Appropriate number of DSARCs should be a function of military population and mission.
- 3) The Secretary of Defense develop standardized SARC and DSARC duty descriptions in the SAPR DODI to ensure qualified personnel are appointed to fill these critical positions, and to clarify roles and responsibilities.
- 4) The Secretaries of the Military Departments ensure that SARCs have direct access to senior commanders and every commander within their areas of responsibility.

"If I had the opportunity to make a suggestion it would be that there is a full time SARC paid appropriately. When a case does come in it is 'STOP ALL.' This makes the SARC a 'reactive' position and a person who responds due to emergencies. The SARC should be a proactive position who consistently thinks about SARC duties, not just during emergencies."

- General Court-Martial Convening Authority

Findings for Recommendation 6a1-4

- Currently, SARCs can be Service Members, DOD civilians, or contractors. Their respective status impacts their abilities to perform the full range of SARC duties. For example, contractor SARCs cannot chair the sexual assault multi-disciplinary case management group, cannot supervise military or DOD civilian employees, and may have limitations on their training and their ability to work the overtime hours necessary to adequately perform SARC duties. In addition, a higher turnover rate for contractor SARCs may occur. Data regarding sexual assault reports may impact retention of contractor positions. Contractor SARCs often have limited access to the commander.
- Many SARCs perform sexual assault prevention and response functions as a collateral duty. For example the deputy inspector general at some Marine Corps units performs SARC duties. Also, at other military units, Service Members performed SARC functions as a collateral duty.
- Access to commanders is a key component of a sexual assault prevention and response program's success. The Department of Defense requires that the SARC report to the Military Service-designated senior commander.¹²⁰ At many installations the Task Force visited, this is not the case. In the Army, the FAPM supervises the installation SARC, and in some cases this interferes with direct reporting.

¹¹⁸ Pay grade GS-11 civilian or higher, or O-3/E-7 Service Member or higher.

¹¹⁹ Military pay grade O-3/E-7 or higher.

¹²⁰ "...commander of a military installation, base, post or comparable unit, and has been designated by the respective Military Service to oversee the SAPR Program." DOD Directive 6495.01.

Recommendation 6: Modify Sexual Assault Program Personnel and Oversight

a. Sexual Assault Prevention and Response Program Personnel

- 5) The Secretary of Defense ensure that the Services discontinue use of Unit Victim Advocates and replace Unit Victim Advocates as described below.
- 6) The Secretaries of the Military Departments establish Victim Advocates,¹²¹ certified by the National Victim Assistance Academy.¹²²
- 7) The Secretaries of the Military Departments establish Military Deployable Victim Advocates (DVAs) certified by the National Victim Assistance Academy who will train with the VA on their specific roles and responsibilities in preparation for deployment. DVAs should serve as back-up for the VA when not deployed. Appropriate number of DVAs should be a function of military population and mission.
- 8) The Secretary of Defense direct SAPRO to work with the Services to determine the appropriate number of Victim Advocates based on military population and mission.¹²³

“I would truly be unprepared if a sexual assault were to occur and my services were needed. It is my opinion that active duty UVAs are not prepared to deal with sexual assaults and could potentially deter individuals from coming forward. If I was a UVA for three years but never had a case, I would have less experience than someone who was qualified for one year but dealt with multiple cases. I think that a civilian is far better qualified to deal with any case that comes along because civilians are specialists, as opposed to an active duty service member who commits less than 1% of his time dealing with sexual assault.”

- Unit Victim Advocate

Findings for Recommendation 6a5-8

- The selection process for UVA does not ensure appropriate personnel are assigned. Some commanders assign UVAs duties rather than request volunteers.
- The skills needed to perform UVA duties have been inadequately identified and cannot be found in every military unit. Victim Advocate responsibilities require specialized training and experience.
- Professionalism of VAs¹²⁴ will provide them the opportunity to practice and develop expertise.
- Victims have expressed concern about commanders obtaining information from VAs regarding their case. During focus groups Service Members stated they felt the UVAs were inexperienced and uninformed. Removing the VAs from the battalion/brigade level may help allay some of these fears.¹²⁵

¹²¹ These VAs should be equivalent to a pay grade E-7/GS-9 or higher and supervised by the installation SARC.

¹²² See findings under Recommendation 20b.

¹²³ See Recommendation 20 for further information. Population refers not only to the number of people, but the demographics of where they are located.

¹²⁴ The intent of appointing credentialed VAs is to professionalize their role and ensure they receive training through a nationally-recognized source. The Task Force recommends a model that includes a minimum of one full-time permanent civilian Victim Advocate per major military organization followed by an assessment in concert among SAPRO and the Services to determine the appropriate number of certified Victim Advocates based upon population demographics, risk factors, and other identifiable elements.

¹²⁵ In addition, establishing that VAs are autonomous from commanders may better ensure confidentiality of communications. Victim Advocacy in the civilian model relies heavily on confidentiality of discussions. However, this requires training, experience and professionalism that is not possible with UVAs who are often appointed in the deployed environment. Trained professional VAs must be available in adequate numbers to ensure that the confidential needs of those deployed are met. See also Recommendation 20 for further discussion of confidentiality.

- Many Reserve and National Guard VAs did not receive training on their role in sexual assault and prevention prior to their deployments. Some only received training on their role in their reserve capacity but not on their responsibilities when deployed.
- Some VAs are not appointed until they arrive at their deployed location, and therefore do not receive the required training prior to appointment.
- Although most Victim Advocates indicated their initial training was adequate, some reported that refresher training is not. This can be problematic for VAs with little or no case experience.¹²⁶

Recommendation 6: Modify Sexual Assault Program Personnel and Oversight

b. Sexual Assault Multi-Disciplinary Case Management Groups¹²⁷

- 1) The Secretary of Defense direct the Services to establish two installation-level sexual assault management groups: a Sexual Assault Response Team, responsible for overseeing unrestricted reported cases;¹²⁸ and a Sexual Assault Review Board, responsible for installation-level systemic issues.
- 2) The Secretary of Defense establish a SART protocol. At a minimum, this protocol should include that the SART convene within twenty-four hours of a reported sexual assault. The SART should also meet on a monthly basis to review individual cases, facilitate timely victim updates, and ensure system coordination, accountability (to include tracking case adjudication), and victim access to quality services. The SART, led by the SARC, should include the relevant military criminal investigator, healthcare provider, chaplain, trial counsel, the Victim Witness Liaison, and Victim Advocate. This membership should be flexible to accommodate the resources available at different locations. To ensure situational awareness, affected commanders should attend the initial SART response meeting.¹²⁹
- 3) The Secretary of Defense direct the Services to establish a quarterly sexual assault multi-disciplinary group organized as a Sexual Assault Review Board and establish guidelines to include that it be chaired by the senior commander,¹³⁰ senior deputy commander, or chief of staff. The SARB members should include the SARC, command legal representative or staff judge advocate, command chaplain, and representation of senior commanders or supervisors from the Military Criminal Investigative Organizations, military law enforcement, healthcare, alcohol and substance abuse office, and the safety office. The responsibilities of the SARB should include addressing safety issues, developing prevention strategies, analyzing response processes, community impact and overall trends, and identifying training issues. These functions should be flexible to accommodate the resources available at different locations.

¹²⁶ See Chapter 4: Results of Data Collection and Analyses, for further discussion.

¹²⁷ The Services use different terminology when referring to these groups.

¹²⁸ Restricted cases are managed by the first responders with confidentiality.

¹²⁹ See Recommendation 12.

¹³⁰ DOD Directive 6495.01, Enclosure 2.

Findings for Recommendation 6b

- Existing national protocols and guidelines describe the purpose, conduct, and composition of a SART, a multi-disciplinary team designed to coordinate services to victims and to strengthen the integrated response to an allegation of sexual assault. One issue that is unique to the military is the commander's responsibility to all parties in the initial response to a report of sexual assault. In the first SART meeting, the senior commander and SARC need to address issues for both victims and alleged perpetrators to ensure stabilization of the situation.
- The monthly sexual assault multi-disciplinary case management group, as defined in the SAPR DODI Enclosure 7, reviews "individual cases, facilitate[s] monthly victim updates and ensure[s] system coordination, accountability, and victim access to quality services." This more accurately describes the functions of a Sexual Assault Response Team (SART).
- As required by the DODI, locations the Task Force visited had established a monthly review board to address case management issues (e.g., Sexual Assault Case Management Group or Sexual Assault Review Board (SARB)). These monthly case management groups primarily focus on individual case review and update rather than more strategic issues surrounding sexual assault (e.g., safety concerns and corrective measures, prevention strategies, analyzing response processes and overall trends, and identifying training issues).¹³¹ Although some Service guidance adds further responsibilities to the case management group, this group is more reactive than proactive in dealing with sexual assault issues.
- Command interest and participation at the case management review group (CMRG) impact the group's effectiveness and signal the importance of the sexual assault prevention and response program. Increased command interest results in more regular participation of installation and unit leadership, but could raise unlawful command influence issues if the group discusses specific case information. Commanders unintentionally may influence subordinate commanders to take a specific action on a case that is discussed at the review meeting, thereby creating a potential unlawful command influence issue.
- Many appointed case management review group participants fail to consistently attend meetings. Some appointed participants designate junior representatives who themselves do not attend.
- The DOD Instruction does not specifically include Victim Witness Liaisons in the monthly sexual assault multi-disciplinary case management group.
- Although the vast majority of reported sexual assault cases involve alcohol use, the Secretary of Defense's guidance does not require alcohol and substance abuse professionals attend the case management group.

¹³¹ The Task Force recommendations seek to clarify this distinction by bifurcating the overall program management duties between the Sexual Assault Response Team (SART), chaired by the SARC, and the Sexual Assault Review Board (SARB), chaired by the commander. A SART should focus on individual case management, while the SARB oversees more macro-level issues.

Recommendation 6: Modify Sexual Assault Program Personnel and Oversight

c. Role of the Inspector General (IG)

- 1) The Secretary of Defense ensure the Services include sexual assault prevention and response programs in their IG assessments, using DOD SAPRO metrics and standards. The IG teams should include a member with DOD expertise and knowledge of Service-specific sexual assault prevention and response program policies.**

Finding for Recommendation 6c1

- Although some Service-level Inspectors General conduct compliance assessments of their Service sexual assault prevention and response programs, they do not routinely conduct follow-up reviews to determine whether recommendations have been implemented. Also, some but not all installation commanders use the IG to assess the sexual assault prevention and response programs.

Recommendation 6: Modify Sexual Assault Program Personnel and Oversight

c. Role of the Inspector General (IG)

- 2) The Secretary of Defense ensure that IG personnel are not performing SARC duties.**

Findings for Recommendation 6c2

- An inherent conflict exists for IG personnel to perform SARC duties as a collateral duty. For example, if a victim has a complaint regarding the SARC, he or she would find it difficult to request the IG office investigate that issue.
- Generally, the Services preclude individuals assigned to the IG staff from performing SARC duties.
- The Marine Corps recognizes that conflict and Marine Corps Order (MCO) 17452A, “SAPR Program” “strongly encourages [commanders] not to select” IGs to perform SARC duties. Nevertheless, to ensure adequate victim response, in many cases Marine Corps IG personnel are also performing SARC duties.

Recommendation 7: Review Armed Forces Reserve Component Sexual Assault Prevention and Response Program

Congress should require the Secretary of Defense to review sexual assault prevention and response in the Reserve Components.

Findings for Recommendation 7

- The Task Force met with a limited number of Reserve Component personnel, most of whom were deployed or just returning from deployment.¹³² Based on those interviews, the Task Force concluded that the quality of Reserve Component sexual assault prevention and response training¹³³ varied greatly. The lack of training was especially evident for IAs, many of whom deployed without their units.
- The Task Force received credible evidence that Reserve Component personnel had particular difficulty obtaining medical care and sexual assault and prevention services after they were released from active duty.
- It is difficult to integrate and implement disparate Air Force and Army sexual assault prevention and response policies for the National Guard at the state level.
- The Task Force addressed Reserve Component issues during several site visits to Fort Dix, McGuire Air Force Base, and Naval Air Engineering Station Lakehurst, New Jersey; Camp Shelby and Headquarters Mississippi National Guard, Jackson, Mississippi; and Guam National Guard. The National Guard Bureau also provided a detailed briefing on sexual assault and prevention issues.
- The Task Force made no distinction between Regular and Reserve Components personnel during all other site visits. Although we considered active duty Reserve Component issues, our assessment did not address home station, drill, and training issues.
- Given the timeline, the Task Force was unable to fully assess Reserve Component sexual assault prevention and response programs.

¹³² See Recommendation 30 for further discussion of deployment issues.

¹³³ Includes annual SAPR training, pre-deployment SAPR training, post-deployment SAPR support, and DSARC and DVA training prior to assuming these roles while deployed.

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PREVENTION AND TRAINING

INTRODUCTION

Prevention should be the primary goal of DOD's SAPR Program. Prevention of sexual assault warrants close scrutiny of community beliefs, values, practices, and structures. To be successful, community awareness and involvement are essential.¹³⁴ Although an effective prevention program is critical to the Department's efforts, the SAPR Program lacks a comprehensive prevention strategy. Each Service has developed and implemented its own prevention initiatives and these efforts are commendable. The Task Force nevertheless believes that progress in effectively preventing sexual assaults is limited by the lack of strategic emphasis and consistency in approach by the Services.

We recommend collaborative development of a DOD-wide prevention strategy and measures of prevention and response effectiveness. The Task Force believes that DOD has a tremendous opportunity to collaborate with outside experts in developing a comprehensive prevention strategy, improving current sexual assault prevention and response training, and engaging leadership at all levels to improve military culture with regard to sexual harassment and assault. The Department of Defense should inform their strategy development with a well-studied prevention model.¹³⁵ Likewise, SAPRO must leverage the expertise, information, and resources of the Military Departments, public and private entities facing similar challenges, and national organizations and coalitions dedicated to eliminating sexual assault and caring for victims.

The Department of Defense must also achieve greater standardization and coordination among the Services' prevention and training programs. This is particularly essential with military personnel increasingly serving in joint and deployed environments. The Department of Defense and the Services lack standardization in significant areas such as sexual assault prevention and response program structures, consistency of sexual assault prevention and response training and deployment preparation, terminologies used in policies and training, reporting and response procedures, and interpretation of DOD SAPR guidance.

Leaders can profoundly influence prevention strategy development and execution. All commanders and leaders must take an active role in developing and executing a sexual assault prevention plan that will assist with changing beliefs and modeling correct behavior. The Task Force found that, when leadership was not involved, sexual assault and prevention was generally perceived as just another "check-the-box program" or "training requirement." Sexual assault prevention and response must also not be addressed in isolation from other personnel concerns. Leaders need to understand the role of this prevention effort in their overall responsibility to care for their personnel.

Commanders, as well as other military and civilian leaders, must be well-trained on sexual assault prevention and response. Additionally, all personnel who conduct sexual assault prevention and response training must be better qualified and trained to address the complex subject of sexual assault. Therefore DOD and the Services must prescribe sexual assault prevention and response instructor qualification and training standards. Sexual assault prevention and response is a subject that needs to be addressed in developmental training over the course of military and DOD civilian service, tailored to specific leadership levels.

¹³⁴ Mary P. Koss and Mary Harvey. *The Rape Victim: Clinical and Community Interventions*. (Newbury Park, CA: Sage Publications, 1991): 250.

¹³⁵ See Appendix G for discussion of prevention models.

Although training alone is insufficient for the prevention of sexual assault, it is a critical component of a successful prevention strategy. The Services' training programs have increased the awareness necessary for behavior change. Training now must build on this awareness to create a military culture intolerant of sexual assault, and effectiveness must be the priority rather than efficiency.

The Task Force found the quality and effectiveness of current training programs uneven. In addition, effective training programs are not isolated events, but are part of a larger training framework. The most effective training for adult learners, as confirmed by focus groups, is interactive and participant-oriented, drawing upon the life experiences and cultural perspectives of participants.

In summary, DOD needs a comprehensive prevention strategy similar to successful civilian prevention models, increased leader involvement, greater standardization of programs among the Services, and a dynamic group of well-qualified sexual assault prevention and response trainers. In addition to a comprehensive strategy and active leadership involvement, SAPRO must have a robust evaluation plan to ensure sustained effectiveness.

RECOMMENDATIONS AND FINDINGS

Recommendation 8: Create Comprehensive Prevention Strategy

The Secretary of Defense direct that DOD SAPRO collaborate with the Military Services and national leaders to develop a comprehensive sexual assault prevention strategy. The SAPRO should develop a number of efficacious and effective prevention practices from which the Services can choose. All Service-specific activities and programs must align with and support the DOD strategy.

Findings for Recommendation 8

- Since its inception, DOD SAPRO has been working to increase general awareness about sexual assault and to develop an effective response process. Limited attention has been devoted to strategies and training to prevent sexual assault. As a result, there is no overarching prevention strategy to guide the development of organizational structure, processes, and training. Although some Services are developing bystander intervention training, their efforts are generally disconnected from any SAPRO strategy. Moreover, bystander intervention represents only one subset of an effective prevention strategy.
- The DOD SAPRO has authority to develop and execute a comprehensive prevention strategy for the Military Services; however, they have not done so. This is a critical aspect that drives consistency among the Services. The recently released DOD prevention strategy is a step forward, but represents just one facet of the comprehensive strategy required to align the Services' approach to sexual assault prevention and response. There is little consistency among Service strategies; SAPR Program Managers have been executing DOD guidance differently because they have disparate interpretations and Service needs.
- Sexual assault prevention and response program structures are not standardized among the Military Services. Specifically, differences in terminologies, responsibilities, resources, organization, and reporting chains create differences in training and reporting processes, coordination of efforts, and accountability.¹³⁶

¹³⁶ See Recommendation 3 for discussion regarding consistency among Services.

- Sexual assault awareness campaigns are not consistent or coordinated at the DOD, Service, and installation levels, making a consistent message difficult to sustain.

Recommendation 9: Develop and Implement Evaluation Plan for Prevention Efforts

The Secretary of Defense direct SAPRO to develop and implement an evaluation plan for assessing the effectiveness of the prevention strategy¹³⁷ and its intended outcomes at the DOD and Service levels. The results of this assessment should be included in DOD's annual report to Congress.

Findings for Recommendation 9

- The Task Force realizes that availability of proven science-based prevention evaluation models is limited. Military programs are also nascent.¹³⁸ As a result, the Task Force believes there is great value in collaborative work among military, federal, state, and local programs to leverage expertise to develop viable evaluation strategies.
- There is no systematic evaluation plan in place to determine overall effectiveness of training efforts. Furthermore, there is neither a systemic process for evaluating the effectiveness of training nor a feedback mechanism, such as a survey, for determining the effectiveness, appropriateness, or relevance of training efforts.

Recommendation 10: Develop Training Policies and Exercise Oversight of Service Training Programs

The Secretary of Defense direct SAPRO to develop training policies and exercise oversight of Military Service sexual assault prevention and response training programs. This training must be designed to strengthen individual knowledge, skills, and capacity to prevent and respond to sexual assault. This training must occur regularly over the course of military or government service.

"I think with all the sources of instruction and training . . . OSD, each Service, Joint and Combatant Commands, Defense Agencies . . . it causes confusion. We need a DOD-wide program instead of Army or Navy or . . . We need to get out of individuality. It is a DOD program. I think if we compiled it all into one source, there is a lot of info out there."

- Supervisor of SARC

Findings for Recommendation 10

- The Services are developing Service-specific training materials independent of SAPRO and largely without benefit of supporting scientific evidence regarding training effectiveness.
- Training currently prioritizes efficiency over effectiveness.
 - Training is conducted predominantly with electronic briefing slides, in larger group settings, with mixed ranks and gender, and focused on basic awareness and reporting options. The Task Force

¹³⁷ Training is a component of a prevention strategy.

¹³⁸ See Chapter 6 on Best Practices for information on an Air Force evaluation plan.

- consistently heard that mass training and briefing slides are ineffective means of delivering information as important as sexual assault and prevention.
- Focus groups report that scenes depicted in training videos and computer-based training do not accurately reflect the reality of their lifestyle and thus lack credibility.
 - Feedback was consistently negative on the use of computer-based training for sexual assault prevention and response.
 - The majority of sexual assaults involve alcohol use and abuse, yet sexual assault training does not address the relationship between the two.
 - In addition to independent training on alcohol abuse, the Services conduct separate training on personal safety, drug abuse, sexually-transmitted diseases, domestic violence, stress, and suicide, all of which are related to sexual assault. Conducting independent training on interrelated issues is not only inefficient, but also a missed opportunity to improve awareness and understanding.
 - Only Service Members and their civilian supervisors are required to receive annual and refresher training. This training is not tailored to progressive levels of leadership and responsibility.
 - At some locations, SARCs have taken the initiative to train all DOD civilians and family members.
 - Reserve Component training varies considerably.

Recommendation 11: Establish a Continuum of Total Force SAPR Training

The Secretaries of the Military Departments establish developmental sexual assault prevention and response training and education curricula for Active Duty, Guard, Reserve, and DOD civilians. This training and education should encompass initial entry/accesion programs, annual refresher training, professional military education, and specialized leadership training.¹³⁹ Training should be tailored for specific leadership levels and local area requirements.

“If every time an assault occurred and it was reported and the person got overwhelming support from the people they reported to, and if the men surrounding the offender would say ‘this is wrong’ and ‘how could you do such a thing’ . . . then [they] would quit doing it.”

- Sexual Assault Victim

Findings for Recommendation 11

- Current sexual assault prevention and response training is not generally developmental in nature: it is not tailored to leadership and professional maturity levels to develop necessary skills for effectively addressing the issue at these levels.
- The format of sexual assault training is critical to ensure key messages are presented and received during training. Focus groups report increased attention and valued learning when training was: reality and scenario-based, small group, interactive, led by a subject matter expert, and included perspectives from survivors and/or perpetrators as well as the use of case studies.
- The content of sexual assault training must be standardized among the Services and address the full range of issues associated with sexual assault.
 - Training consistently includes definitions and basic reporting options, but needs to improve Service Members’ understanding of definitions and basic reporting options.

¹³⁹ E.g., training for military and civilian first line supervisors, enlisted leaders, commanders and civilian leaders.

- Each Military Service effectively ties its core values to the incompatibility of sexual assault at a conceptual level. However, the Task Force's data suggest that there is a great deal of situational and social pressure against intervention to be overcome through training.
- Training does not routinely address appropriate peer-to-peer interaction, or provide tools to develop healthy relationships.
- Training on sexual assault focuses primarily on male-on-female sexual assaults. The reality of male-on-male, female-on-female, and female-on-male sexual assaults is not adequately addressed.
- Current sexual assault training does not routinely address sexual harassment. Service Members continue to be confused over the distinctions between sexual harassment and sexual assault.¹⁴⁰ The two are interrelated on the continuum of behaviors from sexual harassment to sexual assault.
- Leadership training fails to include information on the scope of sexual assault in society, the military, and at the installation and community levels. Additionally, specialized training for officer, enlisted, and civilian leadership does not address:
 - Risk factors for victimization and perpetration of sexual assault.¹⁴¹
 - The full range of consequences of sexual assault for the victim, the perpetrator, the unit, and the installation.
 - Options to address victims' collateral misconduct.
 - A leader's role in working with the SARC to effectively prevent, respond, and ensure cases are resolved in a fair and timely manner.
 - How to interact with victims of sexual assault and alleged perpetrators.

Recommendation 12: Leaders Must be Actively Involved

- a. **The Secretaries of the Military Departments ensure all commanders and senior enlisted leaders are actively involved in sexual assault prevention and response training and awareness programs.**

Findings for Recommendation 12a

- Commander participation in training is infrequent.
 - Most commanders perceive that their support of the sexual assault prevention and response program is sufficiently demonstrated by providing support and access to the SARC. Few are personally involved in the training and are thus rarely aware of the specific content or effectiveness of the training their personnel receive.
 - Military personnel indicate that their commanders take the issues of sexual assault very seriously. At the same time, Service Members would like to see increased commander presence and participation in sexual assault prevention and response training.¹⁴²

¹⁴⁰ See Chapter 4: Results of Data Collection and Analyses for discussion. In 55% of focus groups, one or more participants confused sexual harassment and sexual assault, usually by referencing unwanted verbal remarks as examples of sexual assault.

¹⁴¹ Id.; Prior victims of sexual abuse or assault are at increased risk for future sexual assault.

¹⁴² Id.; Increasing leadership presence in dorms/barracks and providing alternatives to the alcohol-focused activities after hours is also being used to mitigate environmental risk factors; Id., Eighty-five percent (85%) of focus groups reported commanders take sexual assault seriously, but personnel know when leaders are sincerely felt and when 'zero tolerance' is just an empty slogan. One inspector general explained, "Our leaders need to really have a no tolerance attitude and not just a policy letter...[personnel] can tell when they aren't genuine. When we say we're going to nail the accused and then go ridicule the victim for her choices, that attitude gets out and erodes trust in the process."

- During installation visits, Task Force members noted that there were fewer commanders' letters emphasizing zero tolerance of sexual assault than those addressing use of drugs and alcohol. Military personnel noted that commanders' zero tolerance letters are seen as an important indicator of a commanders' commitment to an issue.
- Some military and civilian leaders do not understand or appreciate their roles or responsibilities in sexual assault prevention and response. Consequently, SARCs become the primary focal point at the installation level. Numerous commands¹⁴³ at a single location further complicate clarity of prevention and response roles and responsibilities.
- Commander and senior enlisted leader involvement sends a strong message to those with whom they serve. Moreover, visible leader involvement in sexual assault prevention and response programs sets the example for noncommissioned officers, many of whom are less professionally mature¹⁴⁴ due to accelerated promotion rates. Visible command commitment and dedicated sexual assault prevention and response activities are not always apparent.
- During focus groups, junior Service Members noted that their commanders rarely attended sexual assault prevention and response training with them. Others noted that their commanders left the training before its conclusion.

Recommendation 12: Leaders Must be Actively Involved

- b. The Secretaries of the Military Departments ensure that each installation and operational commander assess the adequacy of installation measures to ensure the safest and most secure living and working environments.**

Findings for Recommendation 12b

- Some focus group participants expressed concern about their personal safety.
- With the exception of the Marine Corps, officer and senior enlisted unit leaders do not routinely walk through junior enlisted living areas during off-duty hours.
- Certain installations have maximized technology and improved security in junior enlisted living areas through construction design, internal and external cameras, self-locking doors, and peepholes in doors for individual rooms.

Recommendation 13: Training Should Emphasize the Importance of Contacting the SARC to Preserve Restricted Reporting Option

The DOD SAPRO ensure that all sexual assault prevention and response training emphasizes the importance of immediately contacting the SARC after a sexual assault to ensure preservation of the restricted reporting option and receive guidance on available services and victim care.

Findings for Recommendation 13

- See Recommendation 23c.

¹⁴³ E.g., tenant units.

¹⁴⁴ See Id. for further discussion.

Recommendation 14: Train to the SART Protocol

The DOD SAPRO develop training with the Services on the Sexual Assault Response Team (SART) protocol, with emphasis on the importance of delivering a coordinated response, and mandate its use throughout the Department of Defense.

Findings for Recommendation 14

- Existing national protocols and guidelines describe the purpose, conduct, and composition of a SART, a multi-disciplinary team designed to coordinate services to victims and to strengthen the integrated response to an allegation of sexual assault.¹⁴⁵ One issue that is unique to the military is the commander's responsibility to all parties in the initial response to a report of sexual assault. In the first SART meeting SARCs need to assess issues for both victims and alleged perpetrators to ensure stabilization of the situation.
- See Recommendation 6b2.

Recommendation 15: Integrate Sexual Assault Response Training into Initial and Recurring First Responder Training Courses

The Secretary of Defense direct that managers of specialty skills associated with first responders¹⁴⁶ integrate sexual assault response training in their initial and recurring training courses. The SAPRO must periodically review training with these managers to ensure accuracy and consistency across the Services.

Findings for Recommendation 15

- Training for first responders and providers is developed and managed by various organizations within each Service and by specialty. The oversight and integration of first responder/provider training is not centralized, multidisciplinary, consistent, or comprehensive.
- There is limited opportunity for first responders/providers to receive follow-on training beyond their initial professional training. For example, medical providers indicate that their current professional education and training do not prepare them adequately to work with victims of sexual assault. Medical providers usually do not receive military-specific training to explain community response and support processes.
- All professional responders (e.g., chaplains, health care providers, lawyers) would benefit from training programs tailored to their community specialties to include a focus on victim response.
- There is no consistent standard of training for deployable Victim Advocates.
- Beyond mandatory annual sexual assault prevention and response awareness training, most Victim Witness Liaisons indicate that they do not receive specialized training on sexual assault response or the SAPR Program in general.

¹⁴⁵ Multiple sample SART protocols and guidelines are available from the National Sexual Violence Research Center. See <http://www.nsvrc.org/projects/sart/protocols-and-guidelines-sexual-assault-response-teams-sart>.)

¹⁴⁶ E.g., chaplains, judge advocates, law enforcement, investigative agencies, medical and mental health providers.

Recommendation 16: Professionalize Initial and Continuing Education for SARCs and VAs

The Secretary of Defense direct SAPRO to professionalize initial and continuing education requirements for SARCs and VAs.

Findings for Recommendation 16

- The DODI¹⁴⁷ mandates initial and refresher training for SARCs and VAs. The Services have developed and are providing initial training for SARCs and VAs, independent of SAPRO oversight. The content of the initial training varies by Military Service.
- The Services and SAPRO, on alternating years, conduct an annual conference which they consider to be continuing education. Not all SARCs and few VAs attend, but those who did find this forum and its content basic and limited in scope. Refresher training for VAs varies in frequency from monthly to annually, and inadequate refresher training is especially troubling for VAs with little or no case experience. Specific continuing education requirements will serve to further professionalize each of these positions.
- Many SARCs expressed the desire for more sophisticated continuing education.

Recommendation 17: Develop and Establish Peer Education Programs

The Secretaries of the Military Departments develop and establish peer education programs.

Findings for Recommendation 17

- Because many sexual assault victims initially confide in a peer, peer education programs are an essential component of a successful training program. Mandatory reporting policies create a dilemma for effective peer support.¹⁴⁸
- Peer education programs in the high school and college environments have proven very effective in both educating and providing support to these populations across a broad range of issues: sexual assault, sexual harassment, alcohol and drug-related issues, sexual conduct, and a broad range of mental health issues. The strategy behind peer education programs is to increase awareness of interrelated issues and available support services. These programs are effective at encouraging peers seek appropriate help at the earliest possible time. The Service Academies use peer education to address a number of issues, including sexual assault.¹⁴⁹

¹⁴⁷ DODI 6495.02.

¹⁴⁸ See Recommendation 23b.

¹⁴⁹ In 2008, the BACCHUS peer education network awarded the Air Force Academy Outstanding Network Affiliate in the 5000 and under category for excellence in peer education programs.

Recommendation 18: Ensure Effective Recruiter Selection and Oversight

- a. **Commanders of recruiting organizations ensure that recruiters are carefully screened and trained, that sexual assault prevention and response program information is effectively disseminated, and that effective oversight is in place to preclude the potential for sexual misconduct.**
- b. **Commanders of recruiting organizations and Military Entrance Processing Stations (MEPS) ensure that sexual assault prevention and response awareness campaign materials are available and posted in locations visible to potential and actual recruits.**

Findings for Recommendation 18

- Recruiter screening, selection, training, and accountability requires specific and continued emphasis. It is unclear whether recruiter screening and selection processes are sufficiently rigorous, or whether recruiter training and accountability processes are sufficient to ensure appropriate professional behavior with both male and female recruits.
- Military recruiters often work independently. Investigations and media coverage of military recruiter sexual misconduct indicate that the Services and DOD must give greater attention to selecting highly qualified and disciplined personnel for military recruiter duty.
- Because prospective recruits may be easily influenced, military recruiter's personal and professional conduct must be above reproach in interactions with prospective recruits.
- Potential military recruits are unlikely to be familiar with standards of conduct for military recruiters and procedures for reporting military recruiter misconduct.

Recommendation 19: Engage with Community Organizations

The Secretaries of the Military Departments ensure that installation commanders, with their SARCs, collaborate with supporting community organizations.¹⁵⁰

Findings for Recommendation 19

- All Sexual Assault Response Coordinators do not consistently collaborate with local non-military prevention and response entities.
- Memoranda of Understanding (MOU) are effective tools in defining the relationship between the installation sexual assault and prevention entities and local community partners. However, MOUs are infrequently used and SARCs are not always involved in their establishment.
- Although Service regulations specifically require SARCs to establish close relations with their counterparts in surrounding communities, our observations in the field indicated that field practice did not yet meet regulatory requirements.

¹⁵⁰ E.g., local rape crisis centers, state coalitions for sexual assault prevention and response, medical, law enforcement, and legal resources. See DODI 6495.02, E3.2.5.2.13., E3.2.10.; E3.2.10.2.

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RESPONSE TO VICTIMS

INTRODUCTION

Sexual assault victim response issues such as medical, investigative, adjudicative, and command responsibilities have been SAPRO's focus since the DOD SAPR Program was established in 2005.

A key element of the Program is affording sexual assault victims a restricted reporting option, which allows access to confidential medical care and counseling. The restricted reporting option also provides victims an opportunity to consider their rights and responsibilities before deciding whether to make a formal complaint.

Despite these positive strides, restricted reporting does not provide a truly confidential resource for the victim throughout the healing and legal processes. The Task Force believes this limitation is a significant barrier to providing effective response to victims; this barrier is even more pronounced in deployed and isolated environments. Therefore, to strengthen confidentiality and other matters of significance to victims, we propose granting victims privileged communications with a trained and certified Victim Advocate and legal counsel serving in the Armed Forces.

The Task Force applauds DOD for following the well-established civilian practice of leveraging volunteer Victim Advocates. As our report indicates, however, this practice is not always practical or effective in the military community. Victim Advocate qualifications, appointments, and training vary by Military Service. As a result, we propose that DOD establish selection criteria for developing professionalized, nationally-certified Victim Advocates. Doing so would incorporate the virtues of volunteer advocacy while professionalizing support and improving effectiveness of Victim Advocates.

Although the Task Force observed that practicing health care professionals in DOD have taken a leadership role in providing assistance to sexual assault victims, we found aspects of the military medical system that require improvement. We make specific recommendations for improving medical support to sexual assault victims. The Task Force also recommends improvements to various aspects of the SAFE process. We make further recommendations regarding proper care, such as offering prophylaxis to any Service Member and assurance that medical professionals accurately record victims' medical records.

The Task Force is cognizant of the important role of military justice in victim recovery. To this end, we found that the response of military investigative agencies and trial counsel to victims' needs has improved. However, the Task Force recommends additional refinements to this process as it is essential to an effective sexual assault and prevention response. Those who report sexual assault must be treated with dignity and respect. To this end, we make recommendations designed to empower victims to make decisions about their healing as well as provide input in the criminal justice processes.

In this chapter, the Task Force recommends that DOD improve and expand upon programs geared to support victims of sexual assault. Specifically, we propose that military victims receive benefits and protections comparable to those in the civilian community. We further recommend that victims of sexual assault in deployed and isolated environments be afforded timely access to confidential and competent sexual assault support services. Improving response to victims of sexual assault will bolster confidence in DOD's SAPR Program effectiveness as well as its contribution to military readiness.

RECOMMENDATIONS AND FINDINGS

Recommendation 20: Ensure Victims are Offered Adequate Legal Assistance and Appropriate Privileged Communications

- a. **The Secretary of Defense ensure that each member of the Armed Forces who reports that he or she has been sexually assaulted is given the opportunity to consult with legal counsel qualified in accordance with Article 27(b) UCMJ.¹⁵¹ The victim will be informed of this opportunity to consult as soon as he or she seeks assistance from a Sexual Assault Response Coordinator or any other responsible DOD official.**

Findings for Recommendation 20a

- Many members of the Armed Forces on active duty are unaware that they are authorized to consult with counsel for legal assistance, subject to availability of legal staff resources, in accordance with regulations prescribed by the Service Secretaries.¹⁵²
- Many victims believe incorrectly that the trial counsel (i.e., the prosecutor) is their lawyer, without understanding that the prosecutor's first obligation is to the government.
- A significant concern raised by sexual assault victims, SARCs, and VAs is that victims have no one in whom to confide once they decide to make an unrestricted report.
- During site visits, the Task Force found and reviewed cases where punitive actions were taken against victims for collateral misconduct, without the victim having the advice of counsel.
- An attorney, operating within a legal privilege, is in the best position to ensure that the victim is fully informed of his or her rights, obligations, and roles in a sexual assault investigation and criminal prosecution.

Recommendation 20: Ensure Victims are Offered Adequate Legal Assistance and Appropriate Privileged Communications

- b. **The Secretary of Defense ensure that each member of the Armed Forces who reports that he or she has been sexually assaulted is offered the assistance of a Victim Advocate who has been certified by the National Victim Assistance Academy and has been recognized by a general court-martial convening authority as qualified to perform Victim Advocate duties within the Armed Forces.**

"Inexperienced advocates create distrust."

- Sexual Assault Victim

Findings for Recommendation 20b

- Effective sexual assault Victim Advocates are essential for appropriate care of victims.

¹⁵¹ Title 10 United States Code Section 1044 only authorizes legal assistance to Reservists while on active duty or a limited time after mobilization. Congress should amend this section to make treatment of Reserve Component sexual assault victims consistent with this Recommendation and to expand services to military sexual assault victims regarding collateral misconduct matters. Although legal assistance is generally limited to civil matters, authorizing sexual assault victims to obtain legal assistance for collateral misconduct would avoid conflicts within the Military Services' trial defense programs.

¹⁵² Title 10 U.S.C. Section 1044. See Prevention and Training section. Service Members should be trained to see the SARC and should also be trained that they have rights to legal counsel.

- Current rules established by the Department of Defense for the use of Victim Advocates require only minimal education and no formal certification.
- The Task Force interviewed victims who felt that their UVAs or SAVI representatives were unprepared and unqualified to provide advocacy services.
- In civilian communities, Victim Advocates are trained to provide privileged services during crisis intervention and longer term support.

Recommendation 20: Ensure Victims are Offered Adequate Legal Assistance and Appropriate Privileged Communications

- c. **Congress should enact a comprehensive military justice privilege for communications between a Victim Advocate and a victim of sexual assault.**

Findings for Recommendation 20c

- Thirty-five states have a privilege for communications between Victim Advocates and victims of sexual assault.¹⁵³ Civilian support services may not be available to military victims of sexual assault and, in the military, only communications between victims and chaplains or lawyers are privileged. According to some chaplains and focus group participants, not all Service Members are comfortable consulting with chaplains.
- Communications between victims and Victim Advocates, medical personnel and the chain of command are afforded no privilege under military law.
- Victims do not believe they can communicate confidentially with medical and psychological support services provided by the Department of Defense. Psychotherapists have a limited privilege for some of the victim's communications, but there are eight exceptions to this privilege set forth in Military Rule of Evidence 513, and experienced practitioners regard this as ineffective.
- Defense counsel can discourage victims from continuing Victim Advocate services by identifying a Victim Advocate as a potential defense witness in a court-martial. Because no privilege exists between VAs and victims, VAs testifying at trial, in all likelihood, will have to divulge statements that victims make to them.
- The Task Force interviewed Service Members who reported being re-victimized when their prior statements to medical personnel and Victim Advocates were used to cross-examine them in court-martial proceedings. A strategy defense attorneys use to undermine victims' credibility is to highlight inconsistencies in their prior statements.

¹⁵³ See Summary of Domestic Violence/Sexual Assault Advocate Confidentiality Laws, American Bar Association Commission on Domestic Violence, http://www.abanet.org/domviol/Advocate_Confidentiality_Chart_8_2007.pdf.)

Recommendation 20: Ensure Victims are Offered Adequate Legal Assistance and Appropriate Privileged Communications

- d. The Secretaries of the Military Departments ensure that in all courts-martial in which victims of sexual assault testify, victims should, at their request, be provided a verbatim copy of the record of trial at no expense to the victims. Victims should be informed of this right.

“I was involved in the court-martial as a witness, but didn’t receive any transcripts. He [the accused] did.”

- Sexual Assault Victim

Finding for Recommendation 20d

- Victims who testified in cases resulting in acquittals complained that they did not have an opportunity to obtain a detailed explanation for the acquittal. Victims who testify at trial cannot be present in the courtroom during the trial except while testifying. A verbatim record of trial reflects what transpired during the entire court proceedings.

Recommendation 21: Give Victims the Opportunity to Decline to Continue Participation in Sexual Assault Investigations and Decline SAPR Services

- a. The Secretary of Defense implement a SARC-led process for victims to “opt out” of participating in the investigative process. Victims should be able to coordinate with the Victim Advocate and/or SARC and, with advice of that individual, complete a form indicating their preference not to participate further in the investigative process.
- b. The Secretary of Defense ensure that sexual assault victims are informed that the services of the SARC and Victim Advocate are optional and these services may be declined, in whole or in part, at any time.

“There needs to be a method for victims to stop the investigation without facing charges for false reporting. Some victims have regrets about reporting . . . There is no room to recant or take it back once they are in the SARC process – the train pulls out of the station. They should be able to decide to stop the process.”

- Trial Defense Counsel

Findings for Recommendation 21

- If military victims want to halt their participation in the investigative process, some believe they can only do so by recanting their statements.
- The Services use the Victim Preference Statement (DD Form 2910) to inform victims of their reporting options and document the victim’s reporting preference. The Naval Investigative Service uses NCIS 5580/28 (2/2001), Victim Preference Statement, which allows victims to opt out of assisting in the investigation. However, the Army and the Air Force do not have similar forms to allow victims to decline to cooperate further with the investigation.
- Many victims believe they cannot decline advocacy services, especially when the SARC or Victim Advocate holds a position of higher rank and/or authority.
- Some victims/Service Members were not aware that they may release the Victim Advocate and obtain a new Victim Advocate or continue without Victim Advocate services.

Recommendation 22: Provide Access to SAPR Services

- a. The Secretary of Defense ensure appropriate sexual assault prevention and response services are provided to family members, retirees, DOD civilians and contractors. Information on their eligibility for these services must be made available.**

Findings for Recommendation 22a

- Although the current DODI¹⁵⁴ authorizes sexual assault and prevention services to any sexual assault victim who is eligible to receive treatment in military medical treatment facilities, the services provided as part of the SAPR Program have not been routinely provided to family members and retirees.
- The DODI establishes that “non-eligible civilians requiring emergent care for sexual assault shall be given appropriate life-saving intervention, if available, and assisted with the transition to civilian healthcare, law enforcement, and/or other support resources. Although the installation may provide information on community resources, it shall be the decision of the civilian whether to pursue follow-on intervention, unless the individual is physically unable to make that determination.” This provision has not been followed in all CONUS locations.
- In many locations visited, the SARC was notified of all sexual assaults in which there was a military interest. The SARC, with the victim’s approval, coordinated with the appropriate organizations, either FAP, or a civilian agency to provide the victim with appropriate follow-up services. A number of contract SARCs and some VAs, interviewed in the CONUS, believed the terms of their contracts limited them from providing services to non-Service Members.

Recommendation 22: Provide Access to SAPR Services

- b. The Secretary of Defense ensure that victims of sexual assault in training environments are provided confidential access to victim support services and afforded time for recovery. Victims should not be required to repeat training unless support services and recovery time significantly interfere with their progress.**

Findings for Recommendation 22b

- Strict accountability and tightly-controlled schedules in basic training environments make it difficult for those in training to receive medical care; this is especially problematic for those who have made a restricted report.
- Military training programs of instruction have specific guidance detailing the number of training hours that can be missed before a student must be recycled. Many victim appointments can be scheduled during non-training times.

¹⁵⁴ DODI 6495.02.

Recommendation 22: Provide Access to SAPR Services

- c. The Secretaries of the Military Departments ensure that SARCs work with supporting medical staff, mental health staff, and chaplains to offer unit counseling options for commanders of units in which either victims or alleged offenders of sexual assaults are assigned.**

Findings for Recommendation 22c

- Sexual assault adversely affects the unit environment. Focus group participants noted that unit cohesion suffers when unit members side with either the victim or the alleged perpetrator or spread rumors about the incident. Some also mentioned that trust is violated by allegations of sexual assault, and that concerns for personal safety interfere with mission focus.
- Members of units in which a sexual assault occurs do not receive necessary counseling—similar to that which occurs after a suicide—to assist them in learning how to interact with the victim and the alleged offender.
- Because sexual assault affects both the victim and the unit, commanders must address the potential impact on command climate and be ready to provide the assets necessary to address the issue so as not to negatively impact military readiness.¹⁵⁵

Recommendation 23: Ensure Restricted Reporting Option

- a. Congress should enact a law exempting federal medical personnel from state provisions requiring them to report sexual assaults to civilian law enforcement to ensure all Service Members have the restricted reporting option.**

Finding for Recommendation 23a

- Some state laws are inconsistent with the federal Violence Against Women Act and DOD policy that establishes restricted reporting.

¹⁵⁵ See Chapter 2: Cultural Context chapter for further discussion on unit cohesion and readiness.

Recommendation 23: Ensure Restricted Reporting Option

- b. The Secretary of Defense ensure that a victim of sexual assault reserves the right to make a restricted report despite disclosing to a third party. Victims would lose this right only if they disclose to their direct chain of command or law enforcement, or information regarding the assault independently reaches the chain of command or law enforcement.
- c. The Secretary of Defense direct that Service Members¹⁵⁶ are trained that responsibilities to report sexual assaults are satisfied by informing the SARC, the preferred method of reporting sexual assaults.¹⁵⁷

“If you tell your best friend you should still be able to go restricted.”

- Sexual Assault Victim

Findings for Recommendation 23b, 23c

- Barriers still exist which prevent victims from exercising their restricted reporting option. Restricted reporting is most problematic in deployed and training environments where command and control is particularly vital and personal autonomy is severely constrained.
- Many victims initially confide the details of a sexual assault to a peer, expecting it will be held in confidence. These peers may feel pressure to report sexual assaults to their chain of command and believe that failure to report may result in punitive action against them. In some deployed environments, there is no one to whom a victim can make a restricted report and peers may be the most viable support option. Victims have limited opportunities to make a restricted report.

Recommendation 24: Establish Protocols for Medical Care of Both Male and Female Victims

The Secretary of Defense direct the establishment of protocols for medical care of both male and female victims of sexual assault, including appropriate prophylaxis.

“I didn't have anywhere to go, being a male . . . I was alone. . . . I thought only women got raped so I couldn't share that. I am still suffering now.”

- Sexual Assault Victim

Findings for Recommendation 24

- Responding to male sexual assault is especially challenging.¹⁵⁸ Military hospitals are conducting SAFE exams and follow-up exams on some victims, including males, in obstetrics/gynecology (OB/GYN) and women's health clinic areas. Male victims of sexual assault require a location other than a women's health clinic for immediate and follow-up medical care.
- Medical professionals do not consistently offer male victims prophylaxis for HIV.

¹⁵⁶ Not in the chain of command or law enforcement.

¹⁵⁷ See also Recommendation 13.

¹⁵⁸ 2006 Gender Relations Survey of Active Duty Members.

Recommendation 25: Improve Sexual Assault Forensic Exam Practices

- a. **The Secretary of Defense establish a Sexual Assault Forensic Examiner education program at military teaching hospitals and wherever medics and corpsmen are trained.**¹⁵⁹

Findings for Recommendation 25a

- There is a need for an internal capability to conduct SAFEs in military environments where civilian resources are limited. This is particularly true in deployed environments and overseas.
- Few CONUS military medical facilities conduct SAFE exams, citing the cost effectiveness of using community resources. This is inconsistent with DOD practice for most medical capabilities in which DOD provides resources to meet operational needs (including rotation in and out of an operational environment) and depends on community resources for shortfalls.
- Even some of the premier DOD teaching hospitals do not offer SAFEs on site or teach the methods.

Recommendation 25: Improve Sexual Assault Forensic Exam Practices

- b. **The Secretaries of the Military Departments ensure SAFE kits are either available or accessible in sufficient time to preserve evidence. The Secretaries should also ensure military personnel have access to qualified medical personnel to conduct evidence collection in a safe, confidential, and gender-unbiased manner, especially in deployed and remote environments.**

Findings for Recommendation 25b

- Most military medical clinics and hospitals do not perform SAFEs because their staffs are not trained in performing these exams or do not perform these exams frequently enough to maintain their proficiency.
 - National standards stipulate that evidence should be collected within seventy-two hours¹⁶⁰ to maximize its preservation. Evidence collection procedures last two to four hours or longer dependent upon the injuries sustained. Well performed SAFEs increase rates of arrest and potential convictions. It is therefore critical that qualified personnel be available and have access to SAFE kits.
- Medical training facility staff at some installations where SAFEs are performed said personnel resources are insufficient: either there are not enough SANEs or training to conduct SAFE exams is inadequate.
- In deployed environments, appropriate medical care, including SAFEs, may not be available, necessitating medical evacuation of victims to receive care. Although DOD policy permits medical evacuation of victims of sexual assault in deployed areas, deployable SARCs indicated problems may arise if/when victims must be airlifted to receive higher-level care.¹⁶¹

¹⁵⁹ This program will include training for physicians, nurses, and medics/corpsmen allowing much greater access to SANE examinations in operational, deployed, and overseas areas. This proposal would assure DOD internal capabilities meet operational needs.

¹⁶⁰ Anne Davies and Elizabeth Wilson. "The Persistence of Seminal Constituents in the Human Vagina," *Forensic Science*. 3,no. 1 (1974):45-55; Saferstein, R. "The Identification and Individualization of Semen Stains," *Forensic Science Handbook, Volume II*. (Englewood Cliffs, NJ: Regents/Prentice Hall, 1982).

¹⁶¹ See Recommendation 30 for further discussion of issues in the deployed environment.

Recommendation 26: Ensure Victims' Medical Records Are Complete and Accurate

- a. The Secretary of Defense direct that medical records of sexual assault victims are accurate and complete with respect to the physical and emotional injuries resulting from the assault.

Finding for Recommendation 26a

- Military health care facilities are not adequately annotating victims' military health records regarding sexual assaults. When military health records are incomplete, the Department of Veterans Affairs has difficulty adjudicating claims for sexual trauma disability, particularly post-traumatic stress disorder.

Recommendation 26: Ensure Victims' Medical Records Are Complete and Accurate

- b. The Secretary of Defense direct that military separation physicals shall include an assessment of sexual trauma, previously disclosed or undisclosed, during active duty service.

Finding for Recommendation 26b

- Separation physical examinations do not include questions regarding sexual assault and do not provide information concerning sexual assault services. This would be beneficial for victims seeking future benefits at the Department of Veterans Affairs.¹⁶²

Recommendation 27: Establish Universal Hotline to Facilitate Victim Reporting

The Secretary of Defense establish a universal hotline to allow victims to report and be connected with a local SARC in the United States or overseas.

Findings for Recommendation 27

- A civilian national hotline is available to victims of sexual assault who wish to contact a local rape crisis center.
- Military OneSource¹⁶³ is not an appropriate avenue for handling restricted reports of sexual assault because its counselors must report sexual assaults to law enforcement authorities.
- The Task Force attempted to contact SARCs or VAs via published telephone numbers. In some cases, the Task Force received no response; in others, the response took several hours.¹⁶⁴

¹⁶² See Recommendation 7. Reservists do not routinely receive separation physicals.

¹⁶³ Military OneSource is an online and telephonic information and referral clearinghouse for Service Members and their families.

¹⁶⁴ The Task Force went to twelve installation websites to locate the VA and/or SARC contact information for after-business hours. Contacting three installations from each Service, we found that for some installations, the website contact information was inadequate for reaching an after-hours VA or SARC.

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ACCOUNTABILITY¹⁶⁵

INTRODUCTION

Accountability is absolutely essential for instilling confidence and trust in the SAPR Program. The Task Force therefore examined issues associated with DOD's sexual assault data collection, analysis, and reporting procedures. We also examined particular issues of concern with the military justice process.

The Task Force found DOD's procedures for collecting and documenting data about military sexual assault incidents lacking in accuracy, reliability, and validity. The SAPRO expends much effort compiling DOD's annual report to Congress, but this report falls short in measuring the underlying incidence of sexual assault. Specifically, SAPRO has not established a database or the necessary tools to accurately track the incidence, investigation, and prosecution of sexual assaults in the Armed Forces. The absence of this database and associated tracking tools precludes the ability of DOD and the Military Services to gain an accurate understanding of the pervasiveness and nature of military sexual assaults and impact on military readiness. The Task Force therefore recommends that DOD ensure that the planned database is completed expeditiously. We also urge DOD to modify its annual report to better inform military and civilian leaders, and to better apprise Congress, on sexual assaults in the Military Services.

In assessing sexual assault case investigation and disposition, the Task Force was mindful that the military justice system¹⁶⁶ was created to serve the unique nature and mission of the Armed Forces. The military justice system is a tool for commanders to maintain good order and discipline while protecting individual rights and enhancing the Services' abilities to accomplish their missions during war and peace in all locations near and abroad, on land, at sea, and in the air.¹⁶⁷

The Task Force assessed three groups of equal importance to the military justice process: the military criminal investigative organizations which investigate crimes, the judge advocates who prosecute and defend the accused, and the commanders who take action. All three groups must work cooperatively, yet independently, to ensure that facts are discovered, documented, and presented to a court of law. Our findings and recommendations identify areas of improvement, including examining the recently revised Article 120, UCMJ,¹⁶⁸ as well as proposing commanders consider the full range of administrative and punishment options.

The Task Force further recommends that the Secretary of Defense closely review and address SAPR Program issues unique to deployed and remote environments, issues related to jurisdiction in joint commands and joint basing, and cases involving foreign assailants.¹⁶⁹

¹⁶⁵ Accountability is defined as data reporting, periodic program review, and oversight of the investigative process and case adjudication. Policy compliance, which is normally part of accountability, is addressed in the Strategic Direction section.

¹⁶⁶ See Appendix H for an overview of the military justice system.

¹⁶⁷ See Westmoreland, William C. "Military Justice—A Commander's Viewpoint," *American Criminal Law Review*. (July 1971), 5.

¹⁶⁸ This statute defines sex-related crimes.

¹⁶⁹ These areas were specifically addressed in the Task Force charter.

RECOMMENDATIONS AND FINDINGS

Recommendation 28: Ensure More Complete Sexual Assault Data Reporting

- a. **The DOD's Annual Report on Sexual Assaults in the Military**
 - 1) **The Secretary of Defense separately report the number of sexual assaults involving Service Member victims and the number of sexual assaults involving Service Member offenders, and refrain from combining these numbers.**
 - 2) **Prior to the Secretary of Defense's submission of the report to Congress, The Judge Advocates General verify the accuracy of the annual report disposition information including courts-martial data.**
 - 3) **The Department of Defense Inspector General establish a consistent definition of "substantiated" and ensure MCIOs only provide synopses for those cases to Secretary of Defense. The Secretary of Defense should provide Congress with case synopses for only substantiated cases organized by offense.**
 - 4) **The Secretary of Defense establish a policy clarifying whether the report should include data on cases involving domestic violence or child victims, and ensure Services comply with the policy.**

Findings for Recommendation 28a

- Congress requires the Secretary of Defense to submit an annual report that includes the number of sexual assaults against members of the Armed Forces (i.e., involving victim Service Members) and the number of sexual assaults by members of the Armed Forces (i.e., involving Service Member alleged offenders). The annual report must also stipulate the number of cases that were substantiated.
- In 2008, Secretary of Defense reported a combined total of 2,908 sexual assaults involving Service Members. This number combines victim and offender sexual assaults, which is problematic. First, focusing on the combined number overshadows the more meaningful numbers requested by Congress. Second, featuring the combined number hinders DOD's ability to evaluate where to focus preventive measures, to assess the victim response and offender accountability processes, and appropriately allocate resources. This combined number also includes cases where commanders do not have jurisdiction such as those involving non-military and unknown offenders. Therefore, this combined number leads to the perceptions that: 1) there are more cases involving Service Member offenders than there actually are and 2) the Military Services are not prosecuting sexual offenders at the same rate as their civilian counterparts.
- Secretary of Defense courts-martial data for some Services included in the annual report may be inaccurate. There are inconsistencies in the numbers reported by MCIOs and the Service Judge Advocates General. Prior to submission, these numbers have not always been reviewed by The Judge Advocates General of the Military Services.
- Congress requires the Secretary of Defense to provide a synopsis (including disposition) for each "substantiated" case that was reported in that year. Although Congress requests only substantiated cases for the annual report, the Secretary of Defense provides a synopsis of all cases including "unsubstantiated" cases. To fulfill the Congressional mandate, the Secretary of Defense requests the Services provide case synopses for only "substantiated" cases, but does not define that term. Service MCIOs which provide the case synopses to the Secretary of Defense use different terminology in, and standards for, evaluating cases. Specifically, no Service MCIO uses the term "substantiated" when evaluating the results of an investigation. Additionally, only one of the Service MCIOs reports an investigative conclusion.

- The data in the DOD's Annual Report on Sexual Assault in the Military in some cases includes sexual assaults involving domestic violence or child victims, which causes the report to be unreliable and contributes to an inaccurate total.¹⁷⁰
- The case synopses presented in this annual report now include substantiated and unsubstantiated cases which are not adequately organized. The synopsis section, by intermixing cases ranging from rape to inappropriate touching, fails to convey the nature of cases reported within the Department of Defense.

Recommendation 28: Ensure More Complete Sexual Assault Data Reporting

b. Reporting Procedures, Data Collection, Case Tracking, and Use of Data

- 1) As mandated by Congress, the Secretary of Defense ensure that a database on sexual assault incidents in the Armed Forces is implemented in an expedited manner. The Secretary of Defense ensure this database tracks case disposition.**
- 2) Congress should fund the information database on sexual assault incidents in the Armed Forces that it mandated the Secretary of Defense to implement pursuant to Section 563 of Public Law 110-417 to ensure the database is developed, implemented, and maintained.**

Findings for Recommendation 28b

- As the Secretary of Defense directed, the Task Force examined reporting procedures, data collection, tracking of cases, and use of sexual assault data by senior military and civilian leaders.
- The prescribed case management model that the Secretary of Defense identified in the DODD and DODI as the DCRMS has yet to be implemented. Although progress is being made in development of the DSAID, this system is not yet in place as directed by Congress.¹⁷¹ Due to inconsistencies in terminology, the Services might encounter difficulties integrating their data into the DSAID once it is fielded.
- The current proposal for DSAID does not include tracking of case dispositions.

¹⁷⁰ Even when MCIOs indicated these cases were not included in the report, the 2008 annual report synopses included several sexual assault cases involving "subject-husband" perpetrators and child victims.

¹⁷¹ Public Law 110-417 Section 563 "[d]irects the Secretary to implement a centralized, case-level database for the collection and maintenance of information regarding sexual assaults involving a member of the Armed Forces. Requires the: (1) Secretary to submit to the defense and appropriations a database implementation plan; and (2) database to be used to develop sexual assault-related reports to Congress as required under various defense authorization Acts and federal armed forces provisions. Directs the Secretary to report to the defense committees: (1) the current status of the Defense Incident-Based Reporting System; and (2) how that System will relate to the sexual assault database."

Recommendation 29: Change Aspects of the Military Justice Process

a. Titling of Subjects

The Secretary of Defense ensure the Services consistently implement the titling standard.

Finding for Recommendation 29a

- Department of Defense Instruction (DODI) 5505.7, *Titling and Indexing Subjects of Criminal Investigations in the Department of Defense*, requires the MCIOs to title and index a person who is a subject of a criminal investigation “as early in the investigation as it is determined that credible information exists that the subject committed a criminal offense.” The Services’ regulatory guidance pertaining to this process is consistent with the DOD Instruction. Application, however, is inconsistent. For example, some Services are not making a titling determination until and based on the commander’s disposition. In other cases, the MCIO is making a titling determination before credible evidence of a criminal offense exists to support that decision.

Recommendation 29: Change Aspects of the Military Justice Process

b. Coordination between Military and Civilian Law Enforcement

The Secretaries of the Military Departments and the DOD Inspector General direct that military law enforcement agencies coordinate with local law enforcement authorities and obtain written agreements that clearly state what agency should be notified and respond to all reports of sexual assault, when the victim or offender is a Service Member. To the greatest extent possible, ensure military law enforcement agencies report and conduct concurrent investigations for cases involving sexual assault.

Finding for Recommendation 29b

- Military law enforcement agencies do not always have jurisdiction over some areas on military installations. This has become more problematic with the increased privatization of federal property. For example, at some installations new housing is being built where local law enforcement authorities have primary police jurisdiction and investigative authority.

Recommendation 29: Change Aspects of the Military Justice Process

c. Article 120, Uniform Code of Military Justice

The Secretary of Defense direct a follow-up review by military justice experts of the effectiveness of Article 120, UCMJ.

Findings for Recommendation 29c

- In May 2001, the Cox Commission recommended the Department of Defense repeal the UCMJ rape and sodomy provisions and the offenses specified under the General Article 134 regarding criminal sexual misconduct. The Commission also recommended the Department of Defense propose a

comprehensive criminal sexual conduct article.¹⁷² In October 2004, the National Defense Authorization Act for Fiscal Year 2005 required the Secretary of Defense to review the UCMJ and *Manual for Courts-Martial* to determine changes needed to conform the UCMJ sexual assault offenses to federal provisions. The new comprehensive sexual misconduct article became effective for offenses committed on and after October 1, 2007.

- Judge advocates find the new Article 120 cumbersome and confusing and are concerned that it may lead to unwarranted acquittals. Significant issues related to the new Article 120 and its statutory affirmative defense of “consent” have evolved. Constitutional challenges have been raised regarding whether that defense shifts the burden of proof to the accused. The Court of Appeals for the Armed Forces (CAAF) has granted review of the Constitutional issues involved with the new Article 120.¹⁷³ Issues involving lesser-included offenses as they relate to charging decisions and panel instructions continue to create confusion.

Recommendation 29: Change Aspects of the Military Justice Process

d. Sexual Assault Case Disposition

- 1) **The Secretaries of the Military Departments ensure commanders¹⁷⁴ consider the full range of disciplinary actions¹⁷⁵ when acting on allegations. Before those decisions are made, the trial counsel should consult the victim to determine his or her wishes regarding case disposition and provide that information to the commander.**

“We don’t lose cases due to lack of effort or care. They are tough cases. . . . We prosecute a lot that our counterparts say they ethically could not prosecute because they have serious reservations that enough facts exist to support all elements of the allegation.”

- Prosecutor

Findings for Recommendation 29d1

- Available data do not support the perception that judge advocates hesitate to try difficult cases. The Military Services prosecute many types of sexual assault cases that civilian prosecutors choose not to pursue, and do so often in cases involving allegations of acquaintance rape.
- Many¹⁷⁶ sexual assault reports in the military involve inappropriate touching that in the civilian community might not be categorized as sexual offenses and even if reported may not be further investigated. These inappropriate touching incidents are not only reported in the military, but are also thoroughly investigated and carefully evaluated to determine appropriate disposition.
- Across the Services, in the majority of sexual assault cases reported, commanders appoint Article 32, UCMJ, pretrial investigative officers to conduct hearings to examine the allegations. Practitioners report many sexual assault courts-martial result in acquittals.

¹⁷² Similar to the Model Penal Code or Title 18, United States Code.

¹⁷³ The US Court of Appeals for the Armed Forces heard oral argument on *United States v. Raymond L. Neal*, No. 09-5004/NA on September 21, 2009 regarding the constitutionality of Article 120, UCMJ.

¹⁷⁴ In close coordination with their servicing judge advocates.

¹⁷⁵ Both criminal and administrative.

¹⁷⁶ Department of Defense, *FY08 Report on Sexual Assault in the Military*. (Washington DC: Government Printing Office, March 2009); The Sexual Assault Prevention and Response Office reported the following numbers: Wrongful sexual contact (Art 120) 442, Abusive sexual contact (Art 120) 142, Aggravated sexual contact (Art 120) 68, Aggravated sexual assault (Art 120) 498.

- If found guilty of an Article 120 offense, an accused in all likelihood will have to register as a sex offender for life. This stigmatizing classification is also accompanied by severe social and legal ramifications. Consequently, individuals involved in the disposition process (including victims and panel members) may hesitate to pursue a criminal conviction.
- There are several reasons victims may not wish to participate in the judicial process. Many victims choose not to participate in the lengthy and emotionally-taxing judicial process in a public forum. In some cases when a victim does participate, his or her preferences may be influenced by the possibility of acquittal.
- Victims may also delay reporting sexual assaults, making prosecution more difficult. Crucial physical evidence may be compromised or degraded, investigators have lost the opportunity to identify and locate potential witnesses, and witnesses' recall of events has diminished.

Recommendation 29: Change Aspects of the Military Justice Process

d. Sexual Assault Case Disposition

- 2) The Secretaries of the Military Departments ensure commanders, after consulting their servicing judge advocates, inform members of their command of case outcomes.**

Findings for Recommendation 29d2

- Focus group participants of all ranks indicated that commanders generally did not communicate case results to members of their command and this lack of information often led to misperceptions, rumors, and assumptions that allegations were unfounded.
- Focus groups and judge advocates interviewed at the majority of the installation visits voiced concerns that victims initiated false reports, but could not identify any specific cases involving false reports. Available data did not support the perception that there were a significant number of false reports. The Task Force reviewed criminal cases from all Services, and these data indicated that the incidence of false reporting to be very low.
- Focus groups indicate that an opportune time for commanders to convey facts and results is during sexual assault training.¹⁷⁷ Leaders can control rumors by clarifying misperceptions, particularly with regard to false reports. They can also reinforce the commander's stance of zero tolerance of sexual assault and harassment.

¹⁷⁷ See Recommendation 12 for more information on leadership involvement in training.

Recommendation 29: Change Aspects of the Military Justice Process

e. Using Military Judge Resources

The Secretaries of the Military Departments and The Judge Advocates General use military judges from other Services more frequently to ensure expeditious disposition of courts-martial cases.

Findings for Recommendation 29e

- The Services have an agreement to share military judge resources,¹⁷⁸ but those resources are underutilized.
- Some prosecutors experience significant delays in scheduling cases for trial especially in overseas locations where regionally-assigned military judges reside outside of the immediate area. These delays often result in the perception among commanders and members of the unit that no action is being taken against the accused. Also, victims may lose interest in participating in such a lengthy process, witnesses change duty stations and have to be returned for trial (which may be costly and may result in further delay), and memories may fade.

Recommendation 30: Other Issues Examined as Required by the Task Force Charter

a. SAPR Program Issues in Joint and Remote Environments

The Secretary of Defense and the Combatant Commanders ensure that sexual assault prevention and response programs are codified and executed, particularly relating to issues that arise in remote and deployed environments, including coalition operations.

“I know of one location occupied by a coalition nation that had no procedure/cross-national agreement to allow US victims choosing the restricted option to obtain MEDEVAC to a Level 3 facility without breaking confidentiality. Medical facilities were present and even though there were US providers ([including] one that was a SAFE-certified OB-GYN), they were not set up to properly handle the administrative requirements to get Corps Surgeon clearance to provide a SAFE. The current policies break in a war zone. It is irritating, and a disservice to service members. Commanders treat such problems as an afterthought.”

- Deployed SARC

Findings for Recommendation 30a

- There are several unique issues that arise in deployed environments: inconsistent safety and security practices; unclear reporting chains, especially in coalition commands; inconsistent response infrastructure, particularly in regard to Victim Advocates; and the absence of procedural guidance. For example, many deployed SARCs report they do not have case management procedures for handling cases in a joint environment and cases that involve foreign nationals.¹⁷⁹

¹⁷⁸ The Judge Advocate General of the Air Force must approve use of military judges from other Services to preside over Air Force courts-martial.

¹⁷⁹ See Chapter 4: Results of Data Collection and Analyses for discussion.

- The Task Force visited numerous deployment sites and is concerned that safety and security planning considerations were not always evident in the actual placement of housing and facilities. Issues such as: where the latrines, showers, and living areas are located; measures in place to ensure the safety of living areas (charge of quarters or locks); and the illumination level of walk areas on which troops must travel late at night did not always appear to be adequate.
- The Deputy Under Secretary of Defense for Plans (DUSD (Plans)) in a Memorandum for the Director of the Joint Staff (J-1),¹⁸⁰ provided items regarding deployment planning for incorporation into pertinent joint publications. While a change to deployment planning has not yet occurred, the Joint Staff indicates the changes are incorporated into the revised Joint Publication 1-0, “Personnel Support to Joint Operations” that is currently in the staffing process.
- During site visits, the Task Force noted issues regarding sexual assault prevention and response in joint and remote environments similar to those DOD identified.¹⁸¹ Issues included accuracy of sexual assault reports and problems obtaining victim services. In deployed environments access to victim advocacy services tended to be ad hoc and there was not a system in place under which the Victim Advocate and the SARC were clearly identified and accessible to sexual assault victims. See recommendation 20b and its associated findings.
- Combatant Commanders are not informed of the sexual assault incidents that occur within their commands. The reporting channels for sexual assaults remain with the individual Services. It is believed the oversight issue will be remedied by the fielding of the new DOD database (DSAID).¹⁸²

Recommendation 30: Other Issues Examined as Required by the Task Force Charter

b. Joint Commands

- 1) Joint commanders maintain oversight and continue to allow component commanders the opportunity to exercise jurisdiction. On a case-by-case basis, the joint commander may withhold authority to dispose of alleged offenses.**
- 2) In those cases where the joint commander declines to exercise jurisdiction, the Secretaries of the Military Departments ensure a subordinate commander exercises general court-martial convening authority.**

Findings for Recommendation 30b

- In the majority of Army, Air Force, and Marine Corps cases involving sexual assault allegations, the component commander is exercising military justice in joint commands. The joint commander has oversight of military justice in his or her command.
- In the majority of Navy cases involving sexual assault allegations, the regional commander, who has no direct command relationship to the accused, is exercising military justice authority. The joint commander has oversight and, on a case-by-case basis, may withhold authority from a lower level to dispose of alleged offenses.

¹⁸⁰ See Annex I1 for memo.

¹⁸¹ See Id.; See also Annex I2 for David S.C. Chu, *Sexual Assault Prevention and Response In-Theater*, memorandum to Secretaries of the Military Departments, Chairman of the Joint Chiefs of Staff, Under Secretaries of Defense, and Commanders of the Combatant Commands, November 20, 2008.

¹⁸² Joint Staff Interview.

Recommendation 30: Other Issues Examined as Required by the Task Force Charter

c. Joint Basing

The Secretary of Defense monitor the implementation of sexual assault prevention and response programs as well as military justice and jurisdiction issues at joint basing locations. Service entities at joint base locations must closely collaborate on sexual assault prevention and response issues to ensure consistency in approach and messaging within joint basing communities.

Finding for Recommendation 30c

- Joint basing locations involve co-locating members of different Services; it is in its early stages of implementation. The Services have agreed to retain court-martial jurisdiction over their own personnel in the joint basing environment. However, in some circumstances that may not be appropriate (e.g., Service Members from different Services jointly engaging in the same criminal activity may receive disparate treatment from convening authorities from different Services).

Recommendation 30: Other Issues Examined as Required by the Task Force Charter

d. Foreign National Assailants

- 1) **The Secretary of Defense monitor the Department's investigative process and disposition of cases involving foreign national assailants.**
- 2) **In its annual Report on Sexual Assault in the Military, DOD SAPRO summarize substantiated sexual assault cases involving foreign national assailants and identify any gaps in investigating and adjudicating these cases.**

Findings for Recommendation 30d

- The Military Criminal Investigative Organizations are fully engaged in investigating sexual assault cases within their purview involving foreign national assailants.
- The Task Force reviewed investigative files and did not find an extensive number of sexual assault cases involved foreign national assailants. Criminal misconduct by foreign national contractors is not a significant issue because of the deterrent effect on potential assailants of immediate employment termination and extradition to their country of origin.
- New legal authorities seem to adequately provide for prosecutorial jurisdiction over foreign national assailants.¹⁸³ Because so few cases have been prosecuted pursuant to these authorities, it is too early to assess the adequacy of these provisions.

¹⁸³ See Military Extraterritorial Jurisdiction Act, 18 U.S.C. Section 3261; Article 2(a)(10), UCMJ; and Status of Forces Agreement between Iraq and the United States (Nov. 2007).

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CHAPTER 6: BEST PRACTICES

In his charge, the Secretary of Defense directed the Task Force to identify best practices. Accordingly, during our review, the Task Force not only found areas for improvement but also identified emerging best practices. These best practices include current programs, processes, events, or functions that seem promising, have potential for success, are replicable, and may be helpful to other Services or organizations. The following are examples of prevention, response, and accountability practices that constructively address sexual assault in the Military Services.¹⁸⁴

- All of the Service Senior leaders (Secretaries and Service Chiefs) have sponsored and attended summits to emphasize their commitment to eliminating sexual assault. Summits typically include outside experts to provide information on the complexity of issues related to sexual assault.
- The Navy's Region Mid-Atlantic developed a well-received prevention program entitled "Coalition of Sailors Against Destructive Decisions." This outreach program addresses a number of issues (suicide, alcoholism, sexual harassment, and sexual assault, among others). Specific to sexual assault, the training encourages Sailors to watch out for one other and intervene as appropriate to prevent adverse consequences associated with destructive decisions.
- The Air Force instituted a similar program entitled Culture of Responsible Choices (CoRC). Using a four-tiered approach to underscore responsible behaviors, this commanders' program is intended to foster greater individual, leader, base, and community involvement and to reduce high risk behavior. Since one goal is to prevent sexual assaults by encouraging appropriate and responsible behavior, the CoRC program addresses interrelationships of high-risk behaviors such as alcohol consumption and sexual assault. More detailed information and toolkits are available at: <http://www.afcrossroads.com/websites/corc.cfm>.
- At Fort Jackson, South Carolina, the Army's largest gender-integrated initial entry training center, sexual assault is addressed within the first two days of training in single-gender focus groups led by an NCO of the same gender. Soldiers and training cadre indicate this training to be highly effective in addressing a complex issue; small, gender-specific focus groups afford an important opportunity for new soldiers to ask questions. Sexual assault prevention and response is further addressed in single as well as both-gender focus groups that convene over the course of initial entry training.
- The Marine Corps Base Okinawa Sexual Assault Response Coordinator (SARC), in coordination with the hospital SARC and Victim Advocates, initiated an annual Women's Symposium as well as a Men's Symposium. The Sister-to-Sister Women's Symposium was a proactive effort for women from different units to network and learn from each other while the Men's Symposium addressed similar topics tailored to the male perspective.
- At Andrews Air Force Base, Maryland, volunteers from throughout the 316th Wing perform skits highlighting the interrelationships between alcohol, sexual harassment, and sexual assault. These skits are performed by junior personnel to demonstrate to an audience of predominantly junior personnel that there is no stereotypical description of a sexual assault, offender, or victim. Through a variety of scenario-based skits, the Airmen inform about the SARC, reporting options, and sexual assault response and support.
- Pensacola Naval Air Station, Florida, and Sheppard Air Force Base, Texas, maximize security by: effective construction design in junior enlisted dorms/barracks/berthing areas, use of internal and

¹⁸⁴ This list of best practices was drawn from Task Force site visits and is not all inclusive. It represents a sampling of the many ongoing, creative practices being implemented by the Services and DOD.

external cameras, self-locking doors and security peepholes, and the active presence of senior noncommissioned officers in the dorms/barracks/berthing areas.

- Sheppard Air Force Base, Texas, provides popular, safe, non-alcoholic entertainment for junior enlisted at the Solid Rock Café. In addition, the base offers self-defense empowerment courses.
- Great Lakes Naval Training Center, Illinois, and Eielson Air Force Base, Alaska, both utilized full-time assistant SARCs to provide training.
- Military criminal investigative organizations have established teams specializing in sexual assault and family violence. The Navy Criminal Investigative Service has had designated Domestic Violence and Sexual Assault Teams for some time, comprised of agents who receive specialized training. The Army Criminal Investigation Command (CID) has hired experienced criminal investigators as sexual assault team chiefs at large installations, as well as training commands. Army CID also provides agents with annual sexual assault refresher training that is interactive, scenario-based, and focused on improving sexual assault case investigation techniques.
- Marine Corps Base Okinawa offers weekly support group meetings open to all survivors of sexual assault and incest.
- The Air Force is sponsoring a comprehensive, peer-reviewed, year-long, cross-sectional study to determine prevalence and incidence of sexual assault committed against airmen in the Air Force. They anticipate the study results in late 2010 or early 2011.
- The Air Force has also contracted for the development of a peer-reviewed quality study measuring the sexual assault prevention and response program training effectiveness. The study will assess four training events: Accessions I, Accessions II, the Leader's Course, and Bystander Intervention. The report from this study is anticipated in early 2011.
- At Fort Monroe, Virginia, the SARC held a mock exercise to both practice and test response procedures. This practice provided the SARC, first responders and installation leadership with critical information as to how well current procedures work and where potential gaps exist. At the same time, conducting the exercise alone conveyed a strong message to those directly and indirectly involved in its execution.
- Judge advocates have begun to tailor their litigation training to concentrate on effective sexual assault prosecution strategies. The Army is hiring seven highly qualified experts (HQE) in the field of sexual assault litigation and training, fifteen special victim prosecutors (experienced trial attorneys), and five new judge advocates in the Trial Counsel Assistance Program. Similarly, the Department of the Navy has employed two sexual assault litigation specialists at Office of the Judge Advocate General. In addition, Army, Navy, and Marine judge advocates have the opportunity to obtain special litigation assignment codes. The Navy has forty-seven highly skilled litigators in a military justice litigation career track. One Army staff judge advocate in Germany dedicated nearly 100% of training for trial counsel on sexual assault cases. She explained that sexual assault cases often include all the most difficult elements of a criminal trial including scientific evidence, witness credibility issues, and impaired recollections.

The best practices above reflect the Services' exemplary efforts to more effectively address sexual assault, particularly with regard to prevention. From the headquarters of the Military Services to the small-unit level, the key factor among these best practices is consistently engaged leadership. The Task Force commends their actions and encourages the DOD SAPRO to develop an overarching strategy that can leverage these best practices and their results.

APPENDIX A – ABBREVIATIONS AND ACRONYMS

A

AD: Active Duty
AB: Air Base (OCONUS locations)
AFB: Air Force Base
AFI: Air Force Instruction
AFN: American Forces Network
AFOSI: Air Force Office of Special Investigation
AFRICOM: Africa Command
AOR: Area of Responsibility
AR: Army Regulation

C

CAAF: United States Court of Appeals for the Armed Services
CENTCOM: Central Command
CGO: Company Grade Officer
CID: Criminal Investigation Command
CMRG: Case Management Review Group
CODIS: Combined DNA Index System
CONUS: Continental US
CoRC: Culture of Responsible Choices

D

DCRMS: Defense Case Record Management System
DIBRS: Defense Incident-Based Reporting System
DNA: Deoxyribonucleic Acid
DMDC: Defense Manpower Data Center
DOD: Department of Defense
DODI: Department of Defense Instruction
DODD: Department of Defense Directive
DON: Department of Navy
DSAID: Defense Sexual Assault Incident Database
DSARC: Deployable SARC
DUSD (Plans): Deputy Under Secretary of Defense for Plans
DV: Domestic Violence
DVA: Deployable Victim Advocate

E

EEO: Equal Employment Opportunity Office
EO: Equal Opportunity
EOA: Equal Opportunity Advisor
EUCOM: European Command

F

FAP: Family Advocacy Program
FAPM: Family Advocacy Program Manager
FG: Focus Group
FOB: Forward Operating Base
FY: Fiscal Year

G

GAO: Government Accountability Office

H

HIPPA: Health Insurance Portability and Accountability Act
HQ: Headquarters
HQDA: Headquarters, Department of the Army
HQE: Highly Qualified Experts

I

IA: Individual Augmentee
ID: Infantry Division
IET: Initial Entry Training
IG: Inspector General

J

JAG: Judge Advocate General
JCS: Joint Chiefs of Staff
JFCOM: Joint Forces Command

L

LOAC: Law of Armed Conflict

M

MAJCOM: Major Commands
MARSOC: Marine Corps Special Operations Command
MCB: Marine Corps Base
MCM: Manual for Courts-Martial
MCIO: Military Criminal Investigative Organization
MCO: Marine Corps Orders
MCRD: Marine Corps Recruit Depot
MEJA: Military Extraterritorial Jurisdiction Act
MEU: Marine Expeditionary Unit
MRRS: Marine Corps Sexual Assault Prevention and Response Responsibilities
MOA: Memorandum of Agreement
MOU: Memorandum of Understanding

MRA: Manpower and Reserve Affairs
MTF: Military Treatment Facility

N

NAS: Naval Air Station
NATO: North Atlantic Treaty Organization
NCIS: Naval Criminal Investigative Service
NCO: Noncommissioned Officer
NOTAM: Notice to Airman
NTC: Naval Training Command

O

OB/GYN: obstetrics/gynecology
OCONUS: Outside the Continental United States
OPNAVINST: Chief of Naval Operations Instruction
OSD: Office of Secretary of Defense
OUSD(P&R): Office of Undersecretary of Defense for Personnel and Readiness

P

PACOM: Pacific Command
PCC: Pre-command Course
PCS: Permanent Change of Station
PM: Program Managers
POM: Program Objective Memorandum
POSH: Prevention of Sexual Harassment
POV: Privately Owned Vehicle
PTSD: Post-Traumatic Stress Disorder

R

RC: Reserve Component

S

SAAB: Sexual Assault Advisory Board
SAAC: Sexual Assault Advisory Council
SAFE: Sexual Assault Forensic Exam
SAIRD: Sexual Assault Incident Reporting Database (Marine Corps)
SANE: Sexual Assault Nurse Examiner
SAPR: Sexual Assault Prevention and Response
SAPRO: Sexual Assault Prevention and Response Office
SARB: Sexual Assault Review Board
SARC: Sexual Assault Response Coordinator
SART: Sexual Assault Response Team
SAVI: Sexual Assault Victim Intervention
SECNAVINST: Secretary of the Navy Instructions
SHARP: Sexual Harassment/Assault Response and Prevention
SJA: Staff Judge Advocate

SME: Subject Matter Expert
SNCO: Senior Noncommissioned Officer
SOP: Standard Operating Procedure
SOUTHCOM: Southern Command
STRATCOM: Strategic Command

T

TDS: Trial Defense Service
TDY: Temporary Duty
TJAG: The Judge Advocate General
TRANSCOM: Transportation Command

U

UCMJ: Uniform Code of Military Justice
US: United States
USA: United States Army
USACIL: United States Army Criminal Investigation Laboratory
USAREUR: United States Army Europe
USAF: United States Air Force
USDB: US Disciplinary Barracks
USD(P&R): Under Secretary of Defense for Personnel and Readiness
USMC: United States Marine Corps
USN: United States Navy
USSOCOM: United States Special Operations Command
UVA: Unit Victim Advocate

V

VA: Victim Advocate
VWAP: Victim and Witness Assistance Program
VWL: Victim Witness Liaison

Y

YWCA: Young Women's Christian Association

APPENDIX B – GLOSSARY OF TERMS

Administrative Separation – Early termination of Military Service based upon conduct on the part of the Service Member. A Service Member may be administratively separated based on a pattern of misconduct, drug abuse, or convenience of the government.

Confidential Reporting – For the purposes of the policies and procedures of the SAPR Program, confidential reporting is restricted reporting that allows a Service Member to report or disclose to specified officials that he or she has been the victim of a sexual assault. This reporting option gives the member access to medical care, counseling, and victim advocacy, without requiring those specific officials to automatically report the matter to law enforcement or initiate an official investigation.¹⁸⁵

Focus Group – A small group selected from a wider population and studied, through open discussion, to assess its members' opinions about or emotional response to a particular subject or area.

General Court-Martial – A court-martial consisting of a military judge and usually at least five members and having authority to impose a sentence of dishonorable discharge or death.

Joint Basing – A location at which the 2005 Base Closure and Realignment Committee directed that installation management functions be consolidated between two or more Military Services operating at two or more locations within close proximity.

Military Criminal Investigative Organization (MCIO) – Refers to the Army Criminal Investigation Command (CID), the Naval Criminal Investigative Service (NCIS), and the Air Force Office of Special Investigations (OSI).

Military Training – Structured training to enhance the capacity of Service Members to understand issues and concepts, as well as to perform specific tasks.

Permanent Change of Station (PCS) – To permanently move from an assignment at one military installation to an assignment at another installation.

Prophylaxis – A measure taken for the prevention of a disease or condition.

Quick Compass Survey – A brief, focused web-based survey designed to assess the Sexual Assault Prevention and Response program-related training, experiences and perceptions of respondents.

Reserve Component – Reserve Components of the Armed Forces of the United States, which include the National Guard (Army and Air Force) and Reserve (Army, Air Force, Navy, Marine Corps, and Coast Guard).

Restricted Reporting – A process used by a Service Member to report or disclose that he or she is the victim of a sexual assault to specified officials on a requested confidential basis. Under these circumstances, the victim's report and any details provided to healthcare personnel, the SARC, or a VA will not be reported to law enforcement to initiate the official investigative process unless the victim consents or an established exception is exercised under this Directive (DODD 6495.01).¹⁸⁶

¹⁸⁵ Definition derived from DODD 6495.01.

¹⁸⁶ Id.

Revictimization – Process by which a victim experiences acts of violence, power, or control imposed by systems, professionals, peers, or others, causing the victim to be traumatized after the original incident.

Sexual Assault – Intentional sexual contact, characterized by use of force, threats, intimidation, abuse of authority, or when the victim does not or cannot consent. Sexual assault includes rape, forcible sodomy (oral or anal sex), and other unwanted sexual contact that is aggravated, abusive, or wrongful (to include unwanted and inappropriate sexual contact), or attempts to commit these acts. “Consent” means words or overt acts indicating a freely given agreement to the sexual conduct as issue by a competent person. An expression of lack of consent through words or conduct means there is no consent. Lack of verbal or physical resistance or submission resulting from the accused’s use of force, threat of force, or placing another person in fear does not constitute consent. A current or previous dating relationship by itself or the manner of dress of the person involved with the accused in the sexual conduct as issue shall not constitute consent.¹⁸⁷

Sexual Assault Forensic Examination (SAFE) – The medical examination of a sexual assault victim under circumstances and controlled procedures to ensure the physical examination process, and the collection, handling, analysis, testing, and safekeeping of any bodily specimens meet the requirements necessary for use as evidence in criminal proceedings.¹⁸⁸

Sexual Assault Prevention and Response (SAPR) Program – A DOD program for the Military Departments and the DOD Components that establishes sexual assault prevention and response policies to be implemented worldwide. The program objective establishes an environment and military community free of sexual assault.

Sexual Assault Response Coordinator (SARC) – Military personnel, DOD civilian employees, or DOD contractors under the senior commander’s supervision, who: Serves as the central point of contact at an installation or within a geographic area to oversee sexual assault awareness, prevention and response training. Ensures appropriate care is coordinated and provided to victims of sexual assault; and tracking the services provided to a victim of sexual assault from the initial report through final disposition and resolution.¹⁸⁹

Sexual Assault Victim Intervention (SAVI) Program – A Department of Navy (DON) program in which prevention education, victim intervention services, and comprehensive Victim Advocate and command point of contact training are addressed. The intervention component is designed to support sexual assault victims and their families.

Sexual Harassment – A form of discrimination that involves unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature that create an intimidating, hostile, or offensive environment.

Sexual Violence – A term without a specific federal legal meaning, but widely used to denote sexual acts of force against the will of victims.

¹⁸⁷ Id.

¹⁸⁸ Id.

¹⁸⁹ Id.

Social-Ecological Model – A public health model used by the Centers for Disease Control and Prevention to examine and consider the complex interplay between individual, relationship, community, and societal factors of violence.

Special Court-Martial – A court-martial that consists of at least three officers, a military judge, a trial counsel, and a defense counsel and that has authority to impose a limited sentence and hear only noncapital cases.

Summary Court-Martial – Lowest level court-martial in terms of punishment authority. The court-martial is composed of one commissioned officer who need not be an attorney. A Service Member can be represented by a civilian attorney but has not right to representation by a military counsel.

Titling – Placing the name, and other identifying data, of an individual or entity on the subject block of an investigative report and central index, for the potential retrieval and analysis for law enforcement and security purposes.¹⁹⁰

Trial Defense Counsel – A judge advocate who represents a Service Member in any adverse action, such as a court-martial, administrative separation, or nonjudicial punishment proceedings.

Unrestricted Reporting – A process a Service Member used to disclose, without requesting confidentiality or restricted reporting, that he or she is the victim of a sexual assault. Under these circumstances, the victim's report and any details provided to healthcare personnel, the SARC, a VA, command authorities, or persons are reportable to law enforcement and may be used to initiate the official investigative process.¹⁹¹

US Army Criminal Investigation Laboratory (USACIL) – Located at Fort Gillem, Georgia, provides forensic laboratory services to DOD investigative agencies and other federal law enforcement agencies. The USACIL also operates an Army school to train forensic laboratory examiners and manages the USACIDC criminalistics and visual information programs. The USACIL has been accredited by the American Society of Crime Laboratory Directors since 1985. The laboratory provides state of the art forensic examinations in the following disciplines: Drug Chemistry, Trace Evidence, Serology/Deoxyribonucleic Acid (DNA), Latent Prints, Questioned Documents, Imaging & Technical Services and Firearms & Toolmarks.

Victim Advocate (VA) – Military personnel, DOD civilian employees, DOD contractors, or volunteers who facilitate care for victims of sexual assault under the SAPR Program, and who, on behalf of the sexual assault victim, provide liaison assistance with other organizations and agencies on victim care matters, and report directly to the SARC when performing victim advocacy duties. VAs are categorized as follows:

- Installation VA – Non-deployable civil servant or contract employee within the Family Advocacy Program provides advocacy services and on-going advocacy, case management and support to victims of SA and in some instances domestic violence.
- Deployable/Unit/Uniformed/SAVI advocates – Deployable Active duty Service Members who are endorsed by their Commander to perform VA services as a collateral duty primarily in the deployed environment.

¹⁹⁰ National Academy of Public Administration, *Adapting Military Sex Crime Investigations to Changing Times*. (Washington DC: National Academy of Public Administration Press, 1999), 103.

¹⁹¹ Definition came from DODD 6495.01.

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APPENDIX C – TASK FORCE AND STAFF COMPOSITION

Millicent Wasell, Co-Chair	Former Advisor to the Under Secretary of Defense for Personnel and Readiness
Louis V. Iasiello, Ph.D., Co-Chair	Rear Admiral, US Navy (Retired) Chief of Chaplains (USN, USMC, USCG)
Ileana Arias, Ph.D.	Director National Center for Injury Prevention and Control Centers for Disease Control and Prevention
Anita M. Carpenter	Chief Executive Officer Indiana Coalition Against Sexual Assault
Sharon K. G. Dunbar	Brigadier General, US Air Force Director, Manpower, Organization and Resources
Jill M. Grant	Colonel, US Army Chief, Army Litigation Division Judge Advocate General's Corps
Donald P. Henry	Captain, US Navy Assistant Chief of Staff for Intelligence, Commander 3 rd Fleet Joint Task Force Maritime Component Commander
Susan H. Mather, MD	Retired Chief Officer, Office of Public Health and Environmental Hazards, Veterans Health Administration, Department of Veterans Affairs
Delilah Rumburg	Executive Director, Pennsylvania Coalition Against Rape and the National Sexual Violence Resource Center
Susan M. Swiatek	Colonel, US Marine Corps Judge Advocate

TASK FORCE STAFF

Cora M. Jackson-Chandler, Col, Air National Guard, Executive Director and Designated Federal Officer

Michael J. Molnar, CW4, US Army (Ret), Deputy Executive Director and Alternate Designated Federal Officer

Anita M. Boyd, Sexual Assault Prevention and Response Analyst

Pamela S. Branstetter, Senior Administrative Officer

Janice Chayt, CW4, US Army (Ret), Sexual Assault Prevention and Response Analyst

Thomas R. Cuthbert, BG, US Army (Ret), Senior Technical Advisor

Catherine A. Findlay, Management and Program Analyst/Archivist

Debra Dubbe Gray, Col, US Air Force (Ret), Sexual Assault Prevention and Response Analyst

Erin A. Haskins, Sexual Assault Prevention and Response Analyst

Jenny M. Holbert, Col, US Marine Corps (Ret), Communication Consultant

Jennifer L. Kennedy, Sexual Assault Prevention and Response Analyst

Barbara Mahoney Lee, Sexual Assault Prevention and Response Analyst

Heidi Smith Luedtke, Ph.D., Social Scientist

Herman L. Parson, Lt Col, US Air Force (Ret), Sexual Assault Prevention and Response Analyst

Lisa M. Schenck, J.S.D., COL, US Army (Ret), Senior Advisor

Sherry D. Simmons-Coleman, SGM, US Army, Senior Enlisted Advisor

Michael L. Sullivan, Administrative Assistant

Ander J. Swanson, Administrative Assistant

Robert J. C. Swanson, Maj, US Air Force: Operations Officer

Shaka L. Thorne, LT, US Navy, Judge Advocate General Corps: Legal Advisor

Lonnie Weiss, Facilitator

Amy Hoang Wrona, Technical Writer

Adjunct Staff

Nathan Butzlaff, Legislative Consultant

Jim Holley, Communications Consultant

Laurie Leonard, Desktop Publisher

Tara Susman-Pena, Communications Consultant

APPENDIX D – LISTING OF OPEN MEETINGS

- | | |
|---------------------------|---|
| 1. August 11-15, 2008 | Open Meeting, Alexandria, VA |
| 2. October 29-31, 2008 | Partially Open Meeting, Lincolnshire, IL |
| 3. February 13, 2009 | Partially Open Meeting, San Diego, CA |
| 4. April 24, 2009 | Partially Open Meeting, Norfolk, VA |
| 5. June 25-26, 2009 | Open Meeting, Naples, Italy |
| 6. July 6-8, 2009 | Open Meeting, Alexandria, VA |
| 7. July 13-14, 2009 | Prevention & Training Subcommittee Open Meeting, Alexandria, VA |
| 8. July 22-24, 2009 | Open Meeting, Alexandria, VA |
| 9. August 17-19, 2009 | Open Meeting, Alexandria, VA |
| 10. September 1-3, 2009 | Open Meeting, Alexandria, VA |
| 11. September 23-26, 2009 | Open Meeting, Alexandria, VA |
| 12. October 19-21, 2009 | Open Meeting, Alexandria, VA |

NOTE: Partially Open Meeting is an Administrative Meeting (closed to the public) and an Open Meeting is open to the public.

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APPENDIX E – TASK FORCE SITE VISITS

Date	Location/Installation/Command	Service
August 25-27, 2008 August 28-29, 2008	Alaska Fort Richardson Eielson Air Force Base Alaska Air National Guard	Army Air Force Air National Guard
September 9-12, 2008 September 15-18, 2008	North Carolina Fort Bragg Camp Lejeune	Army Marine Corps
September 29-30, 2008 October 1-3, 2008	Germany USA Garrison Heidelberg Ramstein Air Base	Army Air Force
October 14-15, 2008 October 16, 2008	South Carolina Parris Island Marine Corps Air Station Beaufort	Marine Corps Marine Corps
October 28-29, 2008	Illinois Naval Training Center Great Lakes Headquarters, Military Entrance Processing Station	Navy Joint
November 6-7, 2008	Kansas US Disciplinary Barracks (USDB), Fort Leavenworth	Army
November 18-20, 2008	Missouri Fort Leonard Wood	Army
December 2-4, 2008	Texas Sheppard Air Force Base Texas Air National Guard	Air Force Air National Guard
December 9-11, 2008	Georgia Fort Benning	Army
December 19, 2008	Florida US Central Command	Joint
January 12-16, 2009	Texas Lackland Air Force Base Randolph Air Force Base Fort Sam Houston Brooke Army Medical Center	Air Force Air Force Army Army
January 27-28, 2009	Mississippi Camp Shelby State Headquarters, Jackson	Army National Guard Army/Air National Guard
February 9-12, 2009	California Naval Base San Diego Naval Base Coronado Naval Base Point Loma Naval Consolidated Brig Miramar Balboa Naval Medical Center	Navy Navy Navy Navy Navy

Date	Location/Installation/Command	Service
February 24-25, 2009	Maryland Aberdeen Proving Ground	Army
March 7-19, 2009	Kuwait Camp Arifjan Camp Virginia Ali Al Saleem Air Base Iraq Camp Victory Bahrain Naval Support Activity MARCENT Qatar Camp As Sayliyah Al Udeid Air Base	Army/Joint Army Air Force Joint Navy Marine Corps Army Air Force
March 25-26, 2009	Georgia Fort Gillem	Army
April 7-9, 2009	New Jersey Fort Dix McGuire Air Force Base New Jersey Army National Guard Naval Air Engineering Station Lakehurst	Army Reserve Air Force Army National Guard Navy
April 20-23, 2009	Virginia Naval Air Station Oceana Naval Station Norfolk Naval Medical Center Portsmouth Naval Amphibious Base Little Creek Fort Monroe	Navy Navy Navy Navy Army
May 4, 2009 May 5, 2009 May 5-6, 2009 May 7-8, 2009 May 11-14, 2009 May 18-19, 2009	Korea USA Garrison Yongsan Camp Red Cloud Camp Casey Camp Humphreys Okinawa, Japan Camp Courtney Camp Foster/Butler Camp Hansen Camp Kinser Camp Lester Guam Naval Base Guam Territorial Headquarters, Guam National Guard	Army Army Army Army Marine Corps Marine Corps Marine Corps Marine Corps Marine Corps Navy Army National Guard
May 19-20, 2009	Arizona Veterans Administration Hospital Phoenix	

Date	Location/Installation/Command	Service
June 2-3, 2009	South Carolina Fort Jackson	Army
June 5-8, 2009	New Jersey Fort Dix	Army Reserve Army National Guard
June 8-10, 2009	Florida Pensacola Naval Air Station Naval Education and Training Command Naval Air Tech Training Command Naval Hospital Pensacola	Navy/Air Force Navy Navy Navy
June 22-25, 2009	Italy Naval Support Activity Naples Armed Forces South (NATO)	Navy Joint/Coalition
July 13-14, 2009	Kentucky Fort Campbell	Army
July 21 and 27, 2009	Washington D.C. Bolling Air Force Base	Air Force
July 29-30, 2009	North Carolina Camp Lejeune Cherry Point Marine Corps Air Station	Marine Corps Marine Corps
August 5, 2009	Washington D.C. Anacostia Naval Station	Navy

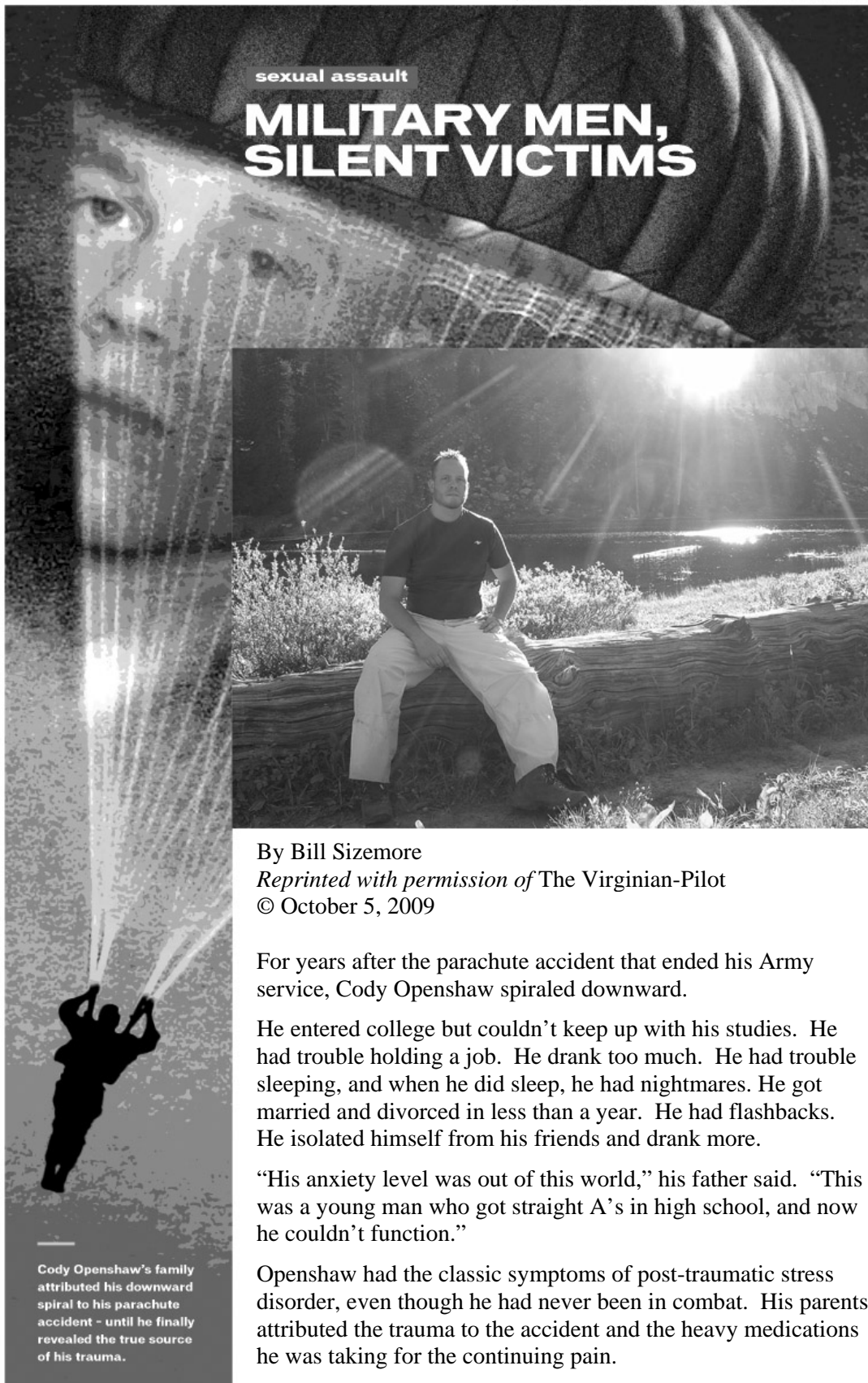
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APPENDIX F – VICTIMS’ STORIES

The illustrative stories in this section highlight important victim issues addressed in this report. The Task Force heard many compelling accounts during the course of our assessment; the following stories touch on many of the complex factors as well as the emotional toll of sexual assault. These stories made victims’ experiences real, and inspired the Task Force to study these issues with rigor and compassion.


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sexual assault

MILITARY MEN, SILENT VICTIMS



By Bill Sizemore
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For years after the parachute accident that ended his Army service, Cody Openshaw spiraled downward.

He entered college but couldn't keep up with his studies. He had trouble holding a job. He drank too much. He had trouble sleeping, and when he did sleep, he had nightmares. He got married and divorced in less than a year. He had flashbacks. He isolated himself from his friends and drank more.

"His anxiety level was out of this world," his father said. "This was a young man who got straight A's in high school, and now he couldn't function."

Openshaw had the classic symptoms of post-traumatic stress disorder, even though he had never been in combat. His parents attributed the trauma to the accident and the heavy medications he was taking for the continuing pain.

Cody Openshaw's family attributed his downward spiral to his parachute accident - until he finally revealed the true source of his trauma.

VIRGINIAN-PILOT PHOTO ILLUSTRATION

But there was more.

Finally, he broke down and told his father.

A few months after his accident, as he was awaiting his medical discharge from the Army, he had been sexually assaulted.

The attack left him physically injured and emotionally shattered. Inhibited by shame, embarrassment, sexual confusion and fear, it took him five years to come forward with the full story.

What truly sets this story apart, however, is not the details of the case, horrific as they are, but the gender of the victim.

There is a widespread presumption that most victims of sexual assault in the military services are women. That presumption, however, is false.

In a 2006 survey of active-duty troops, 6.8 percent of women and 1.8 percent of men said they had experienced unwanted sexual contact in the previous 12 months. Since there are far more men than women in the services, that translates into roughly 22,000 men and 14,000 women.

Among women, the number of victims who report their assaults is small. Among men, it is infinitesimal. Last year the services received 2,530 reports of sexual assault involving female victims - and 220 involving male victims.

One of them was Pfc. Cody Openshaw.

Now his family has made the difficult decision to go public with his story in the hope that it will prompt the military services

to confront the reality of male sexual assault.

As Openshaw's father put it in an interview, "Now that they know, what are they going to do about it."

Openshaw grew up in a large Mormon family in Utah, the fifth of nine children. He was a mild-tempered child, an Eagle Scout who dreamed of becoming a brain surgeon.

He was an athlete, a tireless hockey player and a lover of the outdoors. He was prone to take off on a moment's notice to go hiking or camping - sometimes with a friend, often just him and his tent - among Utah's rugged canyons and brown scrub-covered mountains.

He had a sensitive side, too: He was a published poet.

He looked big and menacing but he was really a teddy bear, one of his brothers said.

When he walked into a room, a sister said, everyone would light up.

He also had a mischievous streak. Once after joining the Army in 2001, he went home on leave unannounced for his mother's birthday. He had himself wrapped up in a big cardboard box and delivered to the front porch. When his mother opened the box, he popped out.

Openshaw volunteered for the 82nd Airborne Division, based at Fort Bragg, N.C., where he excelled as a paralegal and paratrooper. But his military career came to an untimely end shortly after the Sept. 11, 2001, terrorist attacks.

As his unit was training to invade Afghanistan, a parachute malfunction sent Openshaw plummeting 60 feet to the ground, causing severe stress fractures in his spine and both legs.

For months as he awaited his medical discharge, he was plagued by chronic pain. The medications prescribed by the Army doctors only helped so much, and alcohol became a kind of self-medication.

After a night on the town with a fellow soldier, his father learned later, Openshaw returned to the barracks and encountered a solicitous platoon sergeant.

His legs were hurting, and the sergeant said, "Let me rub your legs." Then the contact became violently sexual. Openshaw - drunk, disabled and outranked - was in no position to resist.

The next day the sergeant told him, "Just remember, accidents happen. They can happen to you and to your family. You know, people show up missing."

The story came out in tortured bits and pieces.

Openshaw confided in his older sister the next day in an agonized phone call but swore her to secrecy. He took his assailant's warning as a death threat.

"He was worried about me and the rest of the family," his sister said. "He said 'We need to keep it quiet.'"

Because of the reported threat to Openshaw's family, their names and locations have been omitted from this story.

He finally told his therapist at the Department of Veterans Affairs hospital in Salt Lake City, who referred him to a VA sexual assault treatment center in Bay Pines, Fla. As part of his therapy there, Openshaw shared more of the traumatic episode in a letter to his father.

“He wanted to get better,” his brother said. “He decided, ‘I’m going to beat this. I’m tired of five years of depression. I want to feel alive again.’ ”

A longtime friend thinks guilt was a factor in Openshaw’s reluctance to come forward with his story.

“I think he blamed himself because he was drinking,” the friend said. “When the assault happened, he said he remembered laying there and he was so drunk that he couldn’t do anything about it.

“It really affected him. He struggled even with asking a girl out on a date. He felt unworthy.”

Trauma from sexual assault has become so commonplace in the military that it now has its own designation: MST, for military sexual trauma.

The VA was first authorized to provide sexual assault outreach and counseling to female veterans after a series of congressional hearings in 1992. As the realization dawned that this was not just a women’s issue, those services were extended to male veterans.

According to a 2007 study by a team of VA researchers, a nationwide screening of veterans seeking VA services turned up

more than 60,000 with sexual trauma. More than half of those - nearly 32,000 - were men.

Those numbers almost certainly understate the problem, the researchers wrote, concluding that the population of sexually traumatized men and women under the treatment of the VA is “alarmingly large.”

Sexual trauma, the researchers found, poses a risk for developing post-traumatic stress disorder “as high as or higher than combat exposure.”

Among active-duty personnel, the Defense Department has embarked on what it says is an unprecedented effort to wipe out sexual assault in the ranks.

Key to that effort, the department says, is encouraging a climate in which victims feel free to report the crime without fear of retribution, stigma, or harm to their careers.

In 2005, Congress authorized the creation of the Defense Task Force on Sexual Assault in the Military Services to examine how well the services are carrying out that mission. Its final report is being prepared now.

The task force fanned out across the world, hearing stories from dozens of Service Members who had been victimized by sexual predators. In April, at a public meeting in Norfolk, the group saw a slide presentation prepared by Cody Openshaw’s father.

As the story unfolded, the hotel conference room fell silent. By the end, the staffer who presented it - a crusty retired general - was close to tears.

It was a rare event: Of 58 stories collected by the task force over a year of meetings and interviews, only seven involved male victims.

If the crime is seldom reported, it follows that it is seldom prosecuted. According to Army court-martial records, 65 sexual assault cases involving male victims have been prosecuted worldwide in the past five years. There were almost 10 times that many cases, 621, involving female victims.

The Air Force, Navy and Marines were unable to provide a breakdown of sexual assault cases by gender.

Jim Hopper, a psychology instructor at Harvard Medical School who has studied male sexual abuse, said victims’ reluctance to come forward is rooted in biology and gender socialization.

Males are biologically wired to be more emotionally reactive and expressive than females, Hopper said, but they are socialized to suppress their emotions.

“Boys are not supposed to be vulnerable, sad, helpless, ashamed, afraid, submissive - anything like that is totally taboo for boys,” he said. “The messages come from everywhere. Right from the start, a fundamental aspect of their being is labeled as not OK.”

Military training reinforces that socialization, Hopper said. “It conditions men to accept physical wounds, death and killing while leaving them unprepared for emotional wounds that assault their male identity.

“When they get assaulted, they’re unprepared to deal with their vulnerable emotions. They resist seeking help. They believe that their hard-earned soldier-based masculinity has been shattered. They’re going to feel betrayed, alienated, isolated, unworthy. They feel like they’re a fake, a fraud, not a real man,” Hopper said.

Openshaw’s father, a marriage and family therapist, fears that the plight of male victims will continue to get short shrift.

“The military should take a more proactive role in understanding male sexual assault,” he said.

“They need to set up some way that these young men can get some services without feeling so humiliated. They don’t have to be so macho.”

When Openshaw returned home from treatment in Florida in April 2008, his family and friends were buoyed by hope that he had turned a corner.

The two months of treatment “did a world of good,” one friend said.

“He texted me and said, ‘I’ve learned so many things. I’ve learned that bad things can happen to good people, and it’s not their fault.’ “

“He was so excited to come home,” a sister said. “He was planning a big party. He wanted everybody to see he was better.”

He was still heavily medicated, however - with narcotics for the lingering pain from his parachute accident and antidepressants for his post-traumatic stress disorder.

His first night at home, he went to bed and never woke up.

The cause of death was respiratory arrest from prescription drug toxicity. He was 25.

“These medications that he was on, they build up in your bloodstream to the point of toxicity,” his father said. “And that’s what we’re assuming happened.”

He does not think his son committed suicide.

“I have nine children, including Cody, and 15 grandchildren,” he said. “Cody had made arrangements for them all to come over the next day. There was absolutely nothing in his affect or demeanor that would suggest that he would kill himself.”

He is buried beside a pine tree on a flat, grassy hilltop in the shadow of his beloved mountains. His gravestone is adorned by US flags, flowers and cartoon bird figures recalling his whimsical streak.

A year later, his death remains an open wound for the family. One younger brother is “very angry with God,” his father said. He refuses to visit the grave.

Openshaw’s young nieces and nephews still talk about him and ask when he’s coming over to play.

“Kids loved him to pieces,” his mother said. “He affected everybody he met.”

She, like her husband, hopes her son’s story will prompt the military services to take male sexual assault more seriously:

“Something needs to be done so other Service Members and their families don’t have to go through this.”

The Army Criminal Investigation Command investigated the case, but with the victim dead and no eyewitnesses, the initial conclusion was that there was insufficient evidence to prosecute.

The suspect has been questioned but remains on active duty. He has been recently deployed in Iraq.

If the case is not prosecuted, the suspect may be subject to administrative sanctions.

Louis Iasiello, a retired rear admiral and chief of Navy chaplains who co-chairs the sexual assault task force, said that when commanding officers take the crime seriously, victims - whether male or female - are more likely to come forward.

“The command really does set the tone,” he said. “In places where the command set a positive tone and also set a zero tolerance toward this crime, it was very obvious that people felt more comfortable coming forward and reporting an incident and getting the help they needed to begin the healing process.”

In the Openshaw case, that clearly didn’t happen, said Thomas Cuthbert, the task force staffer who presented the story in Norfolk.

At the time of his attack, Openshaw was in a holding unit at Fort Bragg for soldiers awaiting medical discharge.

“Instead of protecting him while he was being treated, he was left alone and subject to a predator,” said Cuthbert, a retired brigadier general.

“The kid was not in a position where he was fully capable of defending himself, and he got hurt by some hoodlum wearing a uniform. Any Army officer worth his salt, looking at those facts, would get angry.

“He needed help, and instead he received abuse of the worst kind. Leadership can’t prevent all crime. But when someone in authority takes advantage of a subordinate, leadership should be held accountable.”

If the services are serious about coming to grips with male sexual assault, Cuthbert said, there is still much work to be done.

If it can happen to a talented, promising soldier in the 82nd Airborne, he said, plenty of others who aren’t as independent or as capable of taking care of themselves also are at risk.

“Nobody in uniform is very happy talking about this issue. They don’t want to publicly admit it’s there, although we all know it’s there.”

Bill Sizemore, (757) 446-2276, bill.sizemore@pilotonline.com

“YOU DO WHAT YOU NEED TO DO TO SURVIVE”

In 2006, Navy Junior Officer Zulu was living as a transient member in the officer quarter barracks, while deployed to a remote location. It was there where she was sexually assaulted by a male officer.

She went out drinking with friends earlier that evening. There was no regulation against alcohol consumption. After a lot of drinking, her friend brought her back to her quarters and made sure she was safe in her room and then locked her door. The accused broke in to her room, sexually assaulted her, and left. Although she was trained on the SAVI program, she chose not to report the attack since the duty location was so small and there were so few people.

The accused left for a month and then Junior Officer Zulu felt she could get over it before he came back. A week before his return she realized she could not. She then reported to the SAVI representative (also the legal officer for the command and her friend). The SAVI representative told as many people as possible thinking it would protect Junior Officer Zulu.

The accused was in a leadership position at the deployed site and Junior Officer Zulu was a member of a tenant command. Military investigators interviewed them both but couldn't help. Junior Officer Zulu was not allowed to use legal or the chaplains.

Unfortunately, due to the SAVI representative telling everyone about the incident, Junior Officer Zulu was forced into an unrestricted report. There was no physical evidence since she reported one month after the assault occurred.

The commanding officer was worried about her so he restricted her to the ship. He required her to have an escort while off the ship, to be back by 9:00 P.M., was not allowed to hang out with anyone from the duty location without supervision, and was no longer allowed to participate in any of the wardroom functions. Her assaulter was not restricted in any way. The commanding officer also accused her of sleeping around with the men on her ship so he restricted her to her quarters. After she expressed concern about the commanding officer to someone, he removed her from duty. She became depressed, suicidal, and was moved to another location where she was left isolated for another two weeks prior to getting help. Eventually, the commanding officer pushed legal charges against her for defamation of character, dereliction of duty, and disorderly conduct so she sought legal counsel. Legal counsel said she had a case but it would be long, drawn out, and not necessarily “healthy” for her so she did not press back.

After getting help, she decided to pursue an Inspector General investigation against the commander. The senior enlisted person who was aware of the commanding officer's actions refused to make a statement against him. The allegations against the commanding officer were subsequently unfounded.

She now has a chronic medical condition and is unfit for ship duty. She chose an isolated duty station to avoid discharge from the Navy.

At her current location, there is no stable SAVI program and no contingency plan for obtaining one. There is no one to talk to seriously.

The biggest issue for her is that people who were supposed to help her did not and they were completely unsupportive. According to Junior Officer Zulu, “SAVI reps are unprepared and don't know how to help people through trauma.”

Junior Officer Zulu says if she were ever assaulted again, she would not report it to the Navy. She would choose to go out in town for assistance. She no longer trusts senior Naval officers and she now avoids contact with all men. Junior Officer Zulu reports she is seeking therapy, getting help, and coping “okay”. She says, “I'm proud of being able to stand up for what I know was right but the consequences are sometimes very hard to stomach. It all builds character though, right?”

THE LEGAL PROCESS – A VICTIM'S OUTRAGE

The legal process, from reporting the assault to trial of the offender, is a significant element in the survival and recovery of a sexual assault victim. To many of the victims who were willing to share their experiences concerning the sexual assault, however, the legal process was not helpful. Indeed, in some cases the legal process exacerbated the victim's dilemma and delayed the recovery process. The case that follows occurred in one Service; it is not typical, but it does illustrate issues that arise in all the Services. The concerns expressed are the concerns of the Airman we interviewed. It is her story.

Airman First Class (E-3) Alpha¹⁹² is a 22 year old who shakes and has difficulty speaking when she discusses the topic of sexual assault and how she was treated by the legal system of the Air Force. She was concerned about the sexual assault, but she was dealing with that. What outraged her and dismayed the Task Force members who met with Airman Alpha was her treatment by the legal system of the Air Force.

Airman Alpha was deployed to Iraq in late 2007 with a small group of airmen from her home station. In Iraq, no one in her chain of command was from her home station. Her supervisor in Iraq, a married Technical Sergeant (E-6) Delta, embarked on a pattern of sexual harassment that led to a serious sexual assault. At one point in this process, another female airman passed Airman Alpha's concerns to the chain of command and Sergeant Delta was formally counseled about his behavior but neither he nor Airman Alpha were reassigned. Thereafter his behavior worsened. At the time of the serious sexual assault, Sergeant Delta also struck Airman Alpha near her eye with a telephone. When asked by the First Sergeant about the black eye she received from the telephone assault, she fabricated a response because she concluded no one would believe her.

Thereafter, she sought the assistance of the local Sexual Assault Response Coordinator (SARC). Airman Alpha chose not to seek the help of a Victim Advocate at that time, but did see a chaplain in hopes of getting assigned away from Sergeant Delta. Sergeant Delta was reassigned, but Airman Alpha still had to see him every day. In addition, she was visited by the Security Police who wanted to investigate the sexual assault allegation that she did not wish to pursue. About three weeks after she made a statement to the police, she was contacted by phone by a prosecutor from another base; and he required her to repeat every detail of the assault. She had not asked for the investigation, and now she was required to discuss intimate details with someone she had never met. Two weeks later, she was flown from Iraq to Qatar on the same lengthy flight with her assailant for an Article 32 Investigation. She met the prosecutor who had called her earlier, and he required her to again recount every detail of the sexual assault and her dealings with Sergeant Delta. Airman Alpha also met and confided in a Victim Advocate who was an officer. Thereafter, Airman Alpha communicated extensively with the Victim Advocate by email.

Following the Article 32 Investigation, Airman Alpha returned to her home station, but she was ordered back to the United States Central Command (CENTCOM) area of responsibility (AOR) for a new investigation. She traveled by herself for 4 days to get to the CENTCOM AOR, but when she arrived she was given 30 minutes to shower and prepare for an interview with Sergeant Delta's two defense counsel. Although the defense counsel treated her courteously, she was completely traumatized by having to discuss these events once again under those circumstances. She also met, at this time, the third prosecutor assigned to her case, necessitating yet another extensive interview.

Thereafter, Airman Alpha returned to her home station, but the defense counsel were not far behind her. They interviewed everyone she worked with and went door-to-door in her dorms. Before these

¹⁹² Names have been changed to protect privacy.

interviews, personnel at her home station had no knowledge of Airman Alpha's sexual assault. Soon thereafter, the whole base was buzzing with rumors about her. People she didn't know would approach her and ask her if she was "that girl."

Approximately 6 months after the assault, the court-martial began at an Air Force base 3,000 miles away. The prosecutor she felt comfortable with was no longer on the case, and Airman Alpha had to deal with yet another prosecutor she had never met. Airman Alpha and the attorney talked only 3 to 4 hours about the case prior to trial, and over half of that was on the phone. Shortly after she arrived at her motel near the base where the court-martial was being held, her assailant and his friends confronted Airman Alpha, and she "freaked out." The prosecutor tried to calm her down, but was unsuccessful.

At trial, Airman Alpha had no one to whom she could turn for support. One close friend was present, but she could not talk with him because he was a witness. She could not talk to her previous Victim Advocates because they were potential witnesses. The officer Victim Advocate in whom Airman Alpha had confided was the star witness for the defense. All of the emails Airman Alpha and the Victim Advocate had exchanged were introduced against Airman Alpha as evidence at trial. Her journals and even notes from counseling sessions with off-base counselors were taken as evidence. The defense said the ways she was behaving on the stand (unable to talk, shaking, stammering) were not normal, and she left the stand without telling her full story.

While Airman Alpha was awaiting the verdict in a restaurant near the courtroom, she received a text message from her supervisor back at her home station. He was texting to see if she was all right because he had heard there was a full acquittal in the case. Airman Alpha was extremely upset that her chain of command was informed of the verdict before she was.

Airman Alpha asked for a copy of the record of trial, but at the time of her last interview with the Task Force, she had not received one. Current procedures in all the Services do not require the preparation of a verbatim record for acquittals, and one was not prepared in this case.

A MARINE'S STORY – IN HER OWN WORDS

When I woke up the morning after my incident, I was scared and angry. I was not exactly sure what to do or how to handle the situation at hand. I kept the whole incident a secret for a good couple weeks before I got the courage to tell anyone.

When I finally told my Staff Sergeant, everything spun out of my hands very quickly. The Marines in my office and in my chain of command¹⁹³ took great care of me. At first we had decided that we were going to keep the incident very low and between the Marines (myself and my assaulter) and our Company First Sergeant. This was before I had any idea of restricted and unrestricted reporting. We did not know that because I told my Staff Sergeant, that my case had become Unrestricted.

Once our Battalion's Uniformed Victim Advocate heard about the incident, the whole process was put into his hands. From this point on, the situation became political; I was rushed from the offices of my Battalion Adjutant, Executive Officer, and Battalion Commander to the Base Naval Criminal Investigative Services. I talked with our Base Military Police, the Navy Chaplain, and the Uniformed and Civilian Victim Advocates.

This was the first time since the stand up of our Battalion that one of our Marines was sexually assaulted. Because of this, my chain of command and the surrounding units were very adamant about getting me the help and assistance I needed, while punishing the Marine for his individual actions.

I had to go through a couple of months of questioning by my chain of command, the military police and NCIS; the court-martial did not take place until almost a year after the incident. With all of this in mind, I have to say that my unit and the Marines in charge of me did everything they could to make sure I got what I needed, and that this type of thing would not happen again under their watch.

The hardest part for me during this time was the opinion of my peers. Being in the Marine Corps or the military in general is very hard for females. It is hard because you are outnumbered and trying as hard as you can to be seen as equal, and normal. After my incident, many of my peers and the peers of my assaulter looked at me differently. It was almost like I wore the scarlet letter, when in fact I was the victim. No Marine wants to accept that one of their own would do something like that to another person. So I think, they all just assumed that I was lying, making it up, wanted attention, or I was mad at him.

This was not the case for me, we were friends before this happened, and not only was I alienated from my peers and the Marines in my command, but I had lost a close friend.

On the up side, my Battalion started giving bi-annual classes on Sexual Harassment and Sexual Assault, and made the whole process much easier to understand.

¹⁹³ The accused in this case was convicted at a special court-martial of unlawfully entering a barracks room, and drunk and disorderly conduct. He was sentenced to sixty days restriction, sixty days hard labor without confinement, forfeiture of \$1,127.00 per month for three months, reduction to E-3, and a reprimand.

APPENDIX G – COMPREHENSIVE FRAMEWORK FOR PREVENTION

The Centers for Disease Control and Prevention (CDC) has developed a public health framework that can be useful to DOD in planning how best to develop and execute sexual assault prevention efforts. The framework brings together the various facets of the term “prevention” that must be addressed in order for programs to be effective. Myriad prevention models exist, and many of them are valuable. The CDC’s framework provides a way to draw upon the most effective and universally relevant models to best inform a prevention strategy.

Before outlining the framework itself, it is important to define both “prevention” and “public health” approach. The CDC conceptualizes prevention as “population-based and/or environmental and system-level strategies, policies, and actions that prevent sexual violence from initially occurring. Such prevention efforts work to modify and/or entirely eliminate the events, conditions, situations, or exposure to influences (risk factors) that result in the initiation of sexual violence and associated injuries, disabilities, and deaths. Additionally, sexual violence prevention efforts address perpetration, victimization, and bystander attitudes and behaviors, and seek to identify and enhance protective factors that impeded the initiation of sexual violence in at-risk populations and in the community.”¹⁹⁴

The public health approach is a broad, overarching method of planning and developing prevention strategies. This approach selects and knits together the most effective elements of the best models used in prevention strategy development. The public health framework ensures that a prevention strategy “demonstrates benefits for the largest group of people possible, because the problem is widespread and typically affects the entire population in some way, either directly or indirectly.”¹⁹⁵ Further, this approach supports the goal of eradicating sexual violence/assault because it depends on community-oriented collective action. Thus, the entire community takes on the responsibility to prevent sexual violence/assault, not just victims and advocates.

Application of a public health approach begins with defining the problem. Data are gathered from a variety of sources within the field of sexual assault to identify risk and protective factors. Next, prevention strategies are developed and tested. Once there are data to support a particular strategy, that strategy is adopted and implemented for widespread use. To ensure effectiveness and widespread adoption, ineffective strategies must be replaced and an effective evaluation processes must be established. Important to the success of this approach is ensuring that all aspects of program design and implementation are relevant to the cultural context of the population that the program serves.

The CDC’s public health framework for sexual assault prevention outlines the specifics of *when* to intervene, *what* to do, and most importantly, *how* to take action. An effective prevention strategy starts by defining *when* interventions¹⁹⁶ take place. The timing of sexual violence prevention activities typically divides into three categories. Primary prevention activities take place to prevent sexual violence before it occurs. Secondary prevention is defined as immediate responses after sexual violence has occurred in order to address its short-term consequences. The third category is the long-term response after sexual violence has occurred. Tertiary prevention addresses lasting consequences associated with violence and sex offender treatment interventions. Because of the interest in preventing sexual violence, the focus is generally on the primary and secondary categories.

¹⁹⁴ From “Sexual Violence Prevention: Beginning the Dialogue,” 1.

This resource can be downloaded from www.cdc.gov/ncipc/dvp/SVPrevention.pdf

¹⁹⁵ Id., 2.

¹⁹⁶ “*In this document, “intervention” describes any prevention or service-related activity.*” Id., 3 (italics in original).

The CDC recommends what is called the ecological model to guide the development and implementation of *what* to do. Integrating multiple domains of factors that influence sexual violence, the ecological model begins at the individual level, and progresses outward to the relationship level, the community level and the societal level. Influences at each level include factors such as: individual attitudes about sexual violence, family environment, economic situation, and social policies.¹⁹⁷ This model illustrates the complex interplay among the different levels of risk and protective factors, and helps to identify key points for prevention and intervention. “The ecological model supports a comprehensive public health approach that not only addresses an individual’s risk factors, but also the norms, beliefs, and social and economic systems that create the conditions for the occurrence of sexual violence.”¹⁹⁸

Once the *when* and *what* are defined, the most important step is defining *how* to do it. The *how* can be effectively developed by using the Spectrum of Prevention as a guide.¹⁹⁹ The Spectrum of Prevention helps not only to evaluate current prevention efforts and associated training, but also to assist in identifying areas of improvement. The Spectrum of Prevention is a proven method used by sexual violence/assault professionals to develop workable and understandable interventions that are mutually supportive and result in real change. The model begins on a personal level with educating individuals, and ends at a strategic level with influencing policy and legislation. For the greatest positive impact, any prevention strategy should employ all of the Spectrum of Prevention levels together.

SPECTRUM OF PREVENTION	
1. Strengthening Individual Knowledge and Skills	Enhancing an individual’s capability of preventing injury or illness and promoting safety
2. Promoting Community Education	Reaching groups of people with information and resources to promote health and safety
3. Educating Providers	Informing providers who will transmit skills and knowledge to others
4. Fostering Coalitions and Networks	Convening groups and individuals for broader goals and greater impact
5. Changing Organizational Practices	Adopting regulations and shaping norms to improve health and safety
6. Influencing Policy and Legislations	Developing strategies to change laws and policies to influence outcomes

¹⁹⁷ See Id., 5 for a chart of a model and a more complete list of influence factors.

¹⁹⁸ Id., 5.

¹⁹⁹ Davis, Rachel and others. *Sexual Violence and the Spectrum of Prevention: Towards a Community Solution*. (Enola, PA: National Sexual Violence Resource Center), 2006.

This resource can be downloaded from www.preventioninstitute.org/pdf/SV%20spectrum%20article.pdf

APPENDIX H – OVERVIEW OF THE MILITARY JUSTICE SYSTEM

Due to the unique nature and mission of the US Armed Forces, Congress provided the Military Services with a separate criminal justice system.²⁰⁰ The military justice system is a tool for commanders to maintain good order and discipline while protecting individual rights and enhancing the Services' ability to accomplish its missions.²⁰¹ A separate criminal justice system is also necessary to fulfill operational requirements while addressing criminal matters in remote worldwide locations during war and peace, on land and sea, under conditions when the civilian system is not available or could not function.²⁰² Military law, similar to civilian law, must be preventive and restrict antisocial behavior, but military law must also be motivating to ensure loyalty and commitment while maintaining morale and discipline.²⁰³

The principle reasons to take action against military offenders are analogous to those reasons supporting action against civilian offenders. The reasons include rehabilitation, punishing the wrongdoer, protecting the military community as a whole, preserving good order and discipline, specifically deterring the wrongdoer from offending again, and generally deterring those who know of the crime and sentence from committing the same or similar offenses.²⁰⁴ The general deterrence impact is more pronounced in the military because Service Members live and work in close proximity to each other.

In the military justice system there are three separate, yet equally important, groups: the military criminal investigative organizations, which investigate crime; the judge advocates, who prosecute and defend the accused; and the commanders, who take action as to disposition. All three groups must work diligently, cooperatively, yet independently, to ensure the facts are discovered, documented, and presented to a court of law.

THE UNIFORM CODE OF MILITARY JUSTICE (UCMJ) AND MILITARY SEX-RELATED CRIMINAL OFFENSES

All Service Members (including National Guard and Reservists on active Federal duty or in Title 10 status at the time of the offense) are subject to the UCMJ, Title 10, United States Code Sections 801-946, which Congress promulgated in 1950.²⁰⁵ Prior to October 1, 2007, the UCMJ set forth a wide range of sex-related criminal offenses (i.e., rape, carnal knowledge, sodomy (forcible and consensual), indecent assault, indecent acts or liberties with a child, indecent exposure, indecent language, indecent acts with

²⁰⁰ Congress created the military justice system pursuant to its Constitutional authority to “make Rules for the ...Regulation of the land and naval Forces.” U.S. Constitution Art. I, Section 8.

²⁰¹ See Westmoreland, 5.

²⁰² Id.

²⁰³ Id., 5-6.

²⁰⁴ Department of the Army Pamphlet 27-9, “Legal Services: Military Judges’ Benchbook,” September 15, 2002: 2-5-21.

²⁰⁵ Congress delegated certain rulemaking authority to the President of the United States who, through executive orders, has implemented the UCMJ. Those executive orders, which set forth details of the same subjects described in the UCMJ, are included in the *MANUAL FOR COURTS-MARTIAL, UNITED STATES* (2008 ed.) (*MCM*). The *MCM* also includes the *RULES FOR COURTS-MARTIAL (R.C.M.)*, *MILITARY RULES OF EVIDENCE*, and the specific elements of UCMJ criminal offenses. The President also mandated that the Department of Defense review the *MCM* annually and propose necessary legislative changes. See Executive Order No. 12473, *Code of Federal Regulations*, Title 3, (1984). This responsibility to conduct an annual review is essentially performed by the Joint Service Committee on Military Justice which is comprised of The Judge Advocates General of the Military Departments, the staff judge advocate to the Commandant of the Marine Corps, and Chief Counsel, United States Coast Guard. Department of Defense Directive 5500.17, “Role and Responsibilities of the Joint Service Committee (JSC) on Military Justice,” October 31, 2006.

another, pandering, prostitution, adultery, and bigamy).²⁰⁶ Congress amended and consolidated numerous punitive articles into Article 120, UCMJ for offenses occurring on and after October 1, 2007.²⁰⁷

MILITARY CRIMINAL INVESTIGATIVE ORGANIZATIONS

The Services have independent criminal investigative organizations (federal law enforcement agencies) that investigate felony crimes in which there is a military interest (which includes crimes committed on military installations, in which the perpetrator is subject to the UCMJ in any jurisdiction, or in which military property is involved).²⁰⁸ Non-felony crimes are the purview of investigative sections that report directly to their respective military police organizations.²⁰⁹

JUDGE ADVOCATES

The Services have military attorneys, known as judge advocates, assigned to an officer branch or community (Navy) designated as the Judge Advocate General's (JAG) Corps. The Marine Corps does not have a separate JAG Corps. All Marine judge advocates are unrestricted line officers who also serve in command billets and other non-legal assignments throughout their careers.

On a military installation, the staff judge advocate (SJA) is the senior legal advisor to the commander. Within the Office of the staff judge advocate or Region Legal Services Office (Navy), the Military Justice Division or Command Services Department (Navy) provides legal advice to commanders regarding criminal justice matters. Trial Counsel (prosecutors) and the Chief of Military Justice, Military Justice Officer (Marine Corps), Senior Trial Counsel (Navy) work with law enforcement and criminal investigators and make recommendations to commanders as to the disposition of charges, pretrial restraint, search and seizure, and adverse administrative actions (e.g., discharge from the Service or letters of reprimand), along with other military justice issues.

²⁰⁶ See Annex B for a list of crimes under the UCMJ prior to October 1, 2007.

²⁰⁷ Article 120, UCMJ. The former Article 134 offenses of indecent assault, indecent acts or liberties with a child, indecent exposure, and indecent acts with another were subsumed into this comprehensive criminal article entitled, "Rape, Sexual Assault, and Other Sexual Misconduct." Article 120, UCMJ, as amended, sets forth new sex-related offenses constituting degrees of sexual assault offenses. This amendment also included the former Article 134, UCMJ offense of communicating indecent language in the presence of a child. The Article 134, UCMJ offense of indecent language communicated to another (other than in the presence of a child) remains in Article 134. The definition of "indecent" was also modified. The Article 134, UCMJ, Pandering and Prostitution was amended to include a new offense of patronizing a prostitute. In addition, a new offense of pandering that is "compelled" was added to Article 120. See Annex B for a list of crimes under the UCMJ effective on and after October 1, 2007.

²⁰⁸ The United States Army Criminal Investigation Command (USACIDC) investigates all Article 120 and 125, UCMJ sex-related criminal allegations (except for indecent exposure and indecent acts) occurring on military installations, involving Army members as suspects (regardless of where they occur), and allegations concerning Department of Defense personnel or contractors occurring in a deployed environment. The United States Army Criminal Investigation Laboratory (USACIL), a subordinate agency of USACIDC, provides forensic laboratory services to DOD investigative agencies and other Federal law enforcement agencies. The USACIL is DOD's executive agent for profiling, entering, and searching DNA profiles in Combined DNA Index System (CODIS). The Air Force Office of Special Investigation (AFOSI) is responsible for conducting criminal investigations for the Air Force. The AFOSI investigates reports of "serious sex crimes," which includes most of the Article 120, UCMJ offenses. The Naval Criminal Investigative Service (NCIS) has primary criminal investigative jurisdiction within the Department of the Navy (DON). The NCIS investigates rape, aggravated sexual assault, aggravated sexual contact, abusive sexual contact, indecent acts and non-consensual sodomy.

²⁰⁹ The Army Military Police Investigations, Air Force Security Force Investigations, Navy Master at Arms, and Marine Corps Criminal Investigations Division investigate non-felony offenses.

Military defense counsel, also attorneys and judge advocates, are detailed to represent accused Service Members who are tried at special courts-martial, general courts-martial, and pretrial investigations required prior to general courts-martial.²¹⁰ Generally, trial defense counsel are also available to assist accused Service Members in responding to other methods of case disposition, such as administrative discharge or nonjudicial punishment.²¹¹

DISPOSITION BY COMMANDERS

The immediate commander initially has discretion to decide how to resolve criminal offenses that involve members of that command.²¹² A superior commander, however, may withhold authority to dispose of individual cases, certain types of cases, cases, or generally.²¹³ The *MCM* directs that commanders should dispose of criminal allegations in a timely manner at the lowest appropriate level of disposition.²¹⁴ Commanders may:

- 1) take no action (e.g., when insufficient evidence exists or a case is unfounded);
- 2) take adverse administrative action (e.g., counseling, admonition, reprimand, extra military instruction, or withholding of privileges);
- 3) impose nonjudicial punishment (Article 15, UCMJ);
- 4) forward the case or return it to a subordinate commander; or
- 5) refer charges initiating the court-martial process and forward the charges and case file (with a recommendation as to disposition) to a superior commander who has authority to convene a court-martial.²¹⁵

A commander receiving charges from a subordinate commander may forward the case to trial by court-martial or dispose of those charges by dismissing the charges and taking a lesser action.²¹⁶

Commanders receive legal training prior to taking command and before taking action, typically obtain legal advice as to the disposition of an offense. The *MCM* provides that commanders should consider the following factors when deciding how to resolve a criminal offense:

- 1) the accused's character and military service;
- 2) the nature and circumstances of the offense and extent of harm caused by the offense including impact on morale, safety, welfare, and discipline;
- 3) appropriateness of the authorized punishment to the accused or offense;
- 4) possible improper motives of the accused;
- 5) the victim's or others' reluctance to testify;
- 6) the accused's cooperation in apprehending or convicting others;
- 7) evidence availability and admissibility;

²¹⁰ Article 38(b)(1), UCMJ. A military counsel of an accused's own selection may provide representation if that attorney is reasonably available. R.C.M. 506; Art. 38(b)(3)(B), UCMJ. A civilian defense counsel may represent a Service Member (at no cost to the government), if an accused so provides. Art. 38(b)(2), UCMJ.

²¹¹ Article 15, UCMJ.

²¹² Rule for Courts-Martial 306(a).

²¹³ *Id.* If the superior commanders choose not to withhold disposition authority, they may not limit the discretion of subordinate commanders.

²¹⁴ Rule for Courts-Martial 306(b).

²¹⁵ Rules for Courts-Martial 306(c)(1) – (5). Any person subject to the UCMJ may prefer charges which entails signing the charges under oath and stating that the signer has personal knowledge of or has investigated the matters set forth in the charges and that they are true to the best of that person's knowledge or belief. R.C.M. 307.

²¹⁶ Rules for Courts-Martial 306(c)(1) – (5).

- 8) the likelihood and availability of another jurisdiction prosecuting and existence of jurisdiction over the accused and the offense; and,
- 9) jurisdiction over the accused and the offense.²¹⁷

THE MILITARY COURT-MARTIAL PROCESS

When the immediate commander decides a case is appropriate for trial by court-martial and prefers charges against a Service Member, he or she forwards the case to the commander authorized to convene an appropriate level court-martial, referred to as the “convening authority.” A convening authority refers a case to court-martial by ordering that an accused be tried by a particular level of court-martial. A case may be referred to trial by summary court-martial, special court-martial, or general court-martial. Each level of court-martial proceeding involves witness examination, evidence admissibility (by applying the Military Rules of Evidence), the government’s burden of proof beyond a reasonable doubt, findings, and sentencing.²¹⁸

Summary Court-Martial

A summary court-martial, the court-martial with the lowest punishment authority, is typically convened by a lieutenant colonel²¹⁹ or higher commander and is presided over by one commissioned officer on active duty.²²⁰ Only enlisted Service Members may be tried by summary court-martial and the accused must affirmatively agree to be tried by summary court-martial.²²¹ There is no right to be represented by a counsel, but prior to trial, the accused is usually provided with an opportunity to consult with a military trial defense attorney.²²²

Authorized punishments exceed those found under Article 15, UCMJ. Maximum punishments vary by rank and include no more than 30 days of confinement, reductions in rank, and forfeiture of pay for one month.²²³ A summary court-martial conviction is not considered a federal conviction. Prior to the convening authority taking action to approve or disapprove the findings and approve or reduce the sentence, a judge advocate must review the summary court-martial record.²²⁴

Special Court-Martial

The next level of court-martial is trial by special court-martial which is typically convened by a colonel or captain (Navy) or higher commander. A special court-martial entails a court composed of a military judge (attorney and judge advocate) and at least three panel members, including at least one-third enlisted

²¹⁷ Rule for Courts-Martial 306(b).

²¹⁸ In addition to the maximum punishments described below, courts-martial punishments may include restriction, hard labor without confinement, imposition of a fine, or a reprimand.

²¹⁹ Commander in the Navy.

²²⁰ Rule for Courts-Martial 1301.

²²¹ Rule for Courts-Martial 1303.

²²² Rule for Courts-Martial 1301(e). A civilian attorney may represent the accused at no cost to the government. *Id.*

²²³ The maximum punishment at a summary court-martial for E1 through E4 includes 30 days confinement, reduction in rank to the lowest grade, 45 days hard labor or 60 days restriction to a specific area or location in lieu of confinement, and forfeiture of two-thirds pay for one month. R.C.M. 1302(d)(1). Noncommissioned officers (E5 through E9) may be sentenced to reduction of one pay grade, forfeiture of two-thirds pay per month for one month, and restriction for two months. R.C.M. 1301(d)(2).

²²⁴ Rule for Courts-Martial 1306(c).

Service Members if an enlisted accused so requests.²²⁵ The accused may choose instead to be tried by military judge alone with the military judge making findings of guilt and determining an appropriate sentence, if required.²²⁶ An accused may plead guilty to some or all of the charges and if the military judge accepts the guilty plea, the accused may elect whether to be sentenced by the panel or military judge alone.²²⁷ The accused has the right to be represented at trial by a military trial defense counsel (at no charge to the accused) or a civilian defense attorney (at no cost to the government).²²⁸

The maximum punishment at this level of court-martial (oftentimes called a straight special) is one year confinement, forfeiture of two-thirds pay per month for up to one year, and reduction to the lowest enlisted grade.²²⁹ A general court-martial convening authority also has the option to refer a case to a special court-martial with the power to adjudge a bad-conduct discharge (BCD Special). Although the accused has the same choices as to court composition (forum election) and plea, a BCD Special is empowered to adjudge a bad-conduct discharge in addition to the punishments authorized for a special court-martial.²³⁰

General Court-Martial

Before a convening authority refers a case to a general court-martial, the highest level of court-martial in the military justice system, a pretrial Article 32, UCMJ investigative hearing, must be conducted.²³¹ Article 32, UCMJ mandates that the general court-martial convening authority appoint an officer to conduct a fact-finding investigation to determine whether reasonable grounds exist to believe the accused committed an offense and to recommend the appropriate court-martial level.²³²

The Article 32 hearing is functionally similar to and a unique hybrid of the pretrial screening proceedings of the civilian preliminary hearing or grand jury.²³³ At the Article 32, UCMJ hearing, the accused has the right to be present, to be represented by an attorney to cross examine witnesses, and to call defense witnesses. The Article 32 hearing gives an accused and counsel an opportunity to review the government's evidence (including cross examining witnesses) and provides the convening authority a record upon which to determine the proper disposition. The investigating officer makes a recommendation as to disposition which the convening authority considers prior to deciding whether to refer a case to trial.²³⁴ Prior to referring a case to a general court-martial, the SJA must provide the

²²⁵ Rules for Courts-Martial 501(b)(2), 503(a)(2).

²²⁶ Rule for Courts-Martial 903.

²²⁷ Rule for Courts-Martial 910.

²²⁸ Rule for Courts-Martial 506; Art. 38(b)(1); (2), UCMJ.

²²⁹ Rule for Courts-Martial 1003.

²³⁰ If a military judge cannot be detailed due to physical condition or military exigencies, the maximum punishment is limited to a bad-conduct discharge, confinement of six months, and forfeiture of pay for six months. R.C.M. 201(f)(2)(B)(ii). Nevertheless, a commissioned or warrant officer tried by BCD Special cannot be discharged or sentenced to confinement. R.C.M. 1003(c)(2)(A).

²³¹ Rule for Courts-Martial 405.

²³² Article 32, UCMJ.

²³³ The Article 32 hearing affords the accused more rights in that "the grand jury is a secret proceeding that deprives a testifying accused of the right to confrontation, to present evidence, and generally the right to counsel before the grand jury when the accused does testify." *Id.* (footnote omitted). The Article 32 hearing investigating officer, however, only provides advisory recommendations to the convening authority, while a magistrate at a preliminary hearing determines whether probable cause exists to hold an accused and a grand jury makes the final determination whether to indict an accused subject only to another grand jury review. *Id.* For a further discussion of legal rights of Service Members in the military justice process, see also Annex C, Department of the Army Pamphlet 27-50-180, Colonel Francis A. Gilligan. "The Bill of Rights and Service Members," *Army Lawyer*. (December 1987): 3.

²³⁴ Rule for Courts-Martial 405.

convening authority with written pretrial advice, including conclusions whether each charge and specification (the plain, concise statement of the essential facts describing the offense within each charge) alleges an offense under the UCMJ, the evidence supports the allegation, and a court-martial would have jurisdiction over the accused and offenses.²³⁵ The pretrial advice must also include a recommendation as to appropriate disposition.²³⁶

An accused tried by general court-martial has the same elections as a special court-martial. That is, an accused may choose whether to plead guilty to all or some of the charges and if the military judge accepts the guilty plea, the accused must decide whether to be sentenced by a military judge alone or by panel members.²³⁷ Alternatively, the accused may choose to plead not guilty and be tried by a military judge alone with the military judge deciding whether the accused is guilty and an appropriate sentence, if required. The accused may instead decide to be tried by panel members who will determine guilt and a sentence, if required. A general court-martial by panel members requires the presence of at least 5 members.²³⁸ The panel will include at least one-third enlisted Service Members, if an enlisted accused so requests.²³⁹ A general court-martial may adjudge any punishment authorized by the *MCM* for the offenses of which the accused is found guilty, including death, confinement for life, dismissal (for officers), a dishonorable or a bad-conduct discharge for warrant officers or enlisted Service Members, and total forfeiture of all pay and allowances for the period of confinement.²⁴⁰ The accused has the right to be represented at trial by a military trial defense counsel (at no charge to the accused) or a civilian defense attorney (at no cost to the government).²⁴¹

Post-Trial Matters

After trial by court-martial, the convening authority has the opportunity to approve or disapprove findings and approve or reduce the sentence. Before the convening authority takes action on a general or special court-martial that includes a sentence to a bad-conduct discharge or one year confinement, the SJA must provide the convening authority with a post-trial recommendation.²⁴² The SJA's post-trial recommendation is provided to assist the convening authority in deciding what action to take on the sentence.²⁴³ The recommendations must include information regarding the findings and sentence (including any required corrective action if the accused raises a legal error) and any recommendation for clemency made with the announcement of the sentence.²⁴⁴ The SJA must serve this recommendation on the accused and defense counsel who have an opportunity to submit matters in the accused's behalf prior to the convening authority taking action.²⁴⁵

²³⁵ Rule for Courts-Martial 406.

²³⁶ *Id.*

²³⁷ Rules for Courts-Martial 903, 910.

²³⁸ Rule for Courts-Martial 805(b).

²³⁹ Rules for Courts-Martial 501(a)(1), 503(a)(2).

²⁴⁰ Rule for Courts-Martial 1003.

²⁴¹ Rule for Courts-Martial 506; Art. 38(b)(1); (2), UCMJ.

²⁴² Rule for Courts-Martial 1106.

²⁴³ *Id.*

²⁴⁴ *Id.*

²⁴⁵ Rules for Courts-Martial 1306, 1105-07.

APPENDIX I – OVERVIEW OF MILITARY SEXUAL ASSAULT PROGRAMMATIC POLICIES

Sexual assault policy in the military rests with the Sexual Assault Prevention and Response (SAPR) Program and requires policy guidance at each organizational level.²⁴⁶ Key features of SAPR policy are outlined below.

DEPARTMENT OF DEFENSE

Two primary policy documents guide the Department of Defense (DOD) Sexual Assault Prevention and Response Program, DOD Directive Number 6495.01²⁴⁷ provides the regulatory and policy guidance and DOD Instruction Number 6495.02²⁴⁸ provides guidance and procedures for implementing DODD 6495.01.

The DODD 6495.01 discusses the establishment of a culture of prevention, response and accountability to eliminate sexual assault. The DODD assigns primary responsibility for this program to the Under Secretary of Defense for Personnel and Readiness (USD(P&R)). Other DOD offices with significant roles and responsibilities are the Secretaries of the Military Departments, the Chairman of the Joint Chiefs of Staff (JCS), the Assistant Secretary of Defense (Health Affairs), the DOD General Counsel, the DOD Inspector General, the Commanders of the Combatant Commands, and the Directors of the Defense Agencies. The document discusses the confidential reporting program by defining restricted and unrestricted reporting, exceptions to restricted reporting and limitations on use. It also discusses the prohibition of enlistment and commissioning when a person has a qualifying conviction for sexual assault. Three enclosures accompany the DODD and assist in understanding the SAPR Program. These enclosures are: 1) References, 2) Definitions and 3) Confidential Reporting Program for Victims of Sexual Assault.

DODI 6495.02 contains implementing instructions and assigns responsibilities for supporting and executing DOD's sexual assault policy. Implementation of this Instruction is the responsibility of the USD(P&R). This Instruction establishes the Sexual Assault Advisory Council (SAAC) and specifies the USD(P&R) will serve as the Chair. The Deputy Under Secretary of Defense for Plans (DUSD (Plans)) is the primary office representing USD(P&R) for SAPR Program development and oversight. DODI 6495.02 specifies that DUSD (Plans) is to provide SAPR strategic program guidance, serve as SAAC Executive Secretary, and prepare the DOD annual sexual assault and prevention report to Congress. The Instruction also assigns SAPR responsibilities to the Assistant Secretary of Defense (Health Affairs), DOD General Counsel and Inspector General, Secretaries of the Military Departments, Heads of DOD Components, Directors of the Defense Agencies, DOD Field Activities, the SAAC, and Commanders of the Combatant Commands. The DODI also applies to Reserve Component members who are sexually assaulted when performing active service and inactive duty for training.

²⁴⁶ This review did not include medical policies such as MEDCOM Reg 40-36, 21 January 2009 and BUMEDINST 6310.11, BUMED-M3R, 23 June 2009. It also did not include any regulatory guidance dated after August 31, 2009, for example IC-1 to AFI 36-6001, Sexual Assault Prevention and Response (SAPR) Program 30 September 2009.

²⁴⁷ DODD 6495.01, with change 1, 7 November 2008.

²⁴⁸ DODI 6495.02, with change 1, 13 November 2008.

The DODI has fourteen enclosures which provide more detail about the SAPR Program. The title of each enclosure follows:

- a. References
- b. Definitions
- c. DOD SAPR Program Requirements and Procedures
- d. Safe Collection and Preservation under Restricted Reporting
- e. Commander Sexual Assault Response Protocols for Unrestricted Reports of Sexual Assault
- f. First Responder Training Requirements
- g. Case Management for Unrestricted Reports of Sexual Assault
- h. Sexual Assault Quarterly and Annual Reporting Requirements
- i. VA and Supervisor Statements of Understanding
- j. VA Sexual Assault Response Protocols
- k. Memorandum of Understanding (MOU) Between Installation Law Enforcement Office and (City, County, State) Law Enforcement Agency
- l. Disposition Authority for Sexual Assault Cases and Authority for Review of Administrative Separations Involving Victims of Sexual Assault
- m. Victim Reporting Preference Statement.
- n. Forensic Medical Report Sexual Assault Examination

To implement the DOD policy guidance each of the Services, the Joint Chiefs of Staff, and the Combatant Commanders develop their own specific policies and procedures tailoring the implementation to effectively operate in their particular environment. Those policy descriptions are provided below.

AIR FORCE

Two primary policy documents guide the United States Air Force Sexual Assault Prevention and Response Program, Air Force Policy Directive (AFPD) 36-60²⁴⁹ (28 March 2008), *Sexual Assault Prevention and Response (SAPR) Program* and Air Force Instruction (AFI) 36-6001²⁵⁰ (29 September 2008), *Sexual Assault Prevention and Response (SAPR) Program*.

AFPD 36-60 includes SAPR policy direction with authorities and responsibilities applicable for all Air Force organizations and all levels of command. One attachment, Glossary of References and Supporting Information, accompanies this Directive.

The AFI 36-6001 provides implementing guidance for AFPD 36-60 and the DODI 6495.02 by assigning responsibilities for sexual assault and prevention. This instruction specifically addresses:

1. Overview and Functional Responsibilities
2. Program Execution.
3. Reporting Options
4. Prevention and Response in the Deployed Environment
5. Collection and Preservation of Evidence
6. Command Actions in Response to Sexual Assault
7. Information Collection, Records, and Forms

²⁴⁹ Air Force Policy Directive 36-60, “Sexual Assault Prevention and Response (SAPR) Program,” March 28, 2008

²⁵⁰ Air Force Instruction (AFI) 36-6001, “Sexual Assault Prevention and Response (SAPR) Program,” September 29, 2008

AFI 36-6001 further includes the following related attachments:

- Glossary of References and Supporting Information
- Commander's Checklist for Unrestricted Reports of Sexual Assault
- Commander's or Agency Head's Statement of Understanding
- Victim Advocate Volunteer Statement of Understanding
- Victim Advocate Sexual Assault Response Protocols Checklist
- Volunteer Victim Advocate Application
- AFI 36-6001 Functional Inspection Guide

ARMY

The Army publishes one document, Army Regulation (AR) 600-20, *Army Command Policy* (18 March 2008), Chapter 8 to prescribe the policy and responsibility of command as it relates to sexual assault and prevention. In addition to addressing the Army SAPR Program, AR 600-20 addresses: Well-Being, military and personal discipline and conduct, sexual harassment, and the Army Equal Opportunity Program. Elements of the Army SAPR Program include:

1. Purpose and Goals
2. Sexual Assault policy
3. Victim Advocate Program (includes the SARCs)
4. Definitions
5. Responsibilities and related checklists
6. Deployable SARC and Unit VA selection criteria.
 - a. Chain of command recommendation, be appointed on orders as a collateral duty and meet grade restrictions, complete the continuing education requirements and duty requirements.
 - b. Outstanding duty performance and demonstrated stability in personal affairs
 - c. Ability to be deployed and to respond anytime when on call
 - d. Requirement to complete continuing education requirements and duty requirements.
7. Training (professional military training, unit-level training, post-deployment training, and responder training).

Appendixes applicable to the SAPR Program include:

- The Command Climate Survey
- The Sexual Assault Review Board
- Army SAPR Program Victim Assistance Actions
- Confidentiality/Restricted Reporting
- Essential Training Tasks for a Sexual Assault Response Capability
- Sexual Assault Forensic Exam, Collection and Preservation of Evidence Under Restricted Reporting
- Sexual Assault Prevention and Response Program Assessment

NAVY

The two primary policy documents²⁵¹ which guide the Navy sexual assault prevention and response Program are, Secretary of the Navy Instruction (SECNAVINST) 1752.4A, *Sexual Assault Prevention and Response*, dated 01 Dec 2005²⁵² and Chief of Naval Operations Instruction (OPNAVINST) 1752.1B, *Sexual Assault Victim Intervention (SAVI) Program*, dated 29 Dec 2006.²⁵³

SECNAVINST 1752.4A provides overall policy and guidance for the establishment of a sexual assault/victim assistance program within the Department of the Navy (DON). This document includes the development and maintenance of a DON sexual assault database as well as the roles of the Chief of Naval Operations, Commandant of the Marine Corps, Directors of Naval Criminal Investigative Service and Marine Corps Criminal Investigation Division, Chief, Bureau of Medicine and Surgery, The Judge Advocate General of the Navy, and Commander, Naval Education and Training Command.

OPNAVINST 1752.1B issues policy, prescribes procedures, and assigns responsibility for implementation of the SAVI Program within the US Navy. Enclosures to this document include:

- Definitions
- Crime Victim's Bill of Rights
- Navy Policy Regarding Confidentiality For Victims of Sexual Assault
- Commander's Checklist for Prevention and Response to Allegations of Sexual Assault

MARINE CORPS

Falling under the DON organizationally, the Marine Corps lists two primary policy documents that guide the United States Marine Corps Sexual Assault Prevention and Response Program:

1. Secretary of the Navy Instruction (SECNAVINST) 1752.4A, *Sexual Assault Prevention and Response*, dated 01 Dec 2005.²⁵⁴
2. Marine Corps Order (MCO) 1752.5A, *Sexual Assault Prevention and Response (SAPR) Program*, dated 5 Feb 2008.

MCO 1752.5A provides the Marine Corps policy and guidance in accordance with the DOD and DON SAPR direction, and assigns specific responsibilities throughout the Marine Corps for the sexual assault prevention and response program. The MCO specifically addresses:

1. Confidentiality Policy Exceptions
2. Headquarters Marine Corps Sexual Assault Prevention and Response Responsibilities (MRRS) (includes administrative accountability, program inspection, education and training, program analysis, Victim Advocate program, and Resources)
3. Sexual Assault Response Coordinator (SARC) Responsibilities and Training Requirements (includes SARC selection guidance, case management, and applicability to Reserve Forces)

²⁵¹ There are several other documents that we have not listed which guide specific implementation aspects of the Navy Program.

²⁵² Identifies policies that are under revision to incorporate changes of the DODD 6495.01 and DODI 6495.02; Navy Instruction (SECNAVINST) 1752.4A, "Sexual Assault Prevention and Response," December 1, 2005

²⁵³ See Id.; Chief of Naval Operations Instruction (OPNAVINST) 1752.1B, "Sexual Assault Victim Intervention (SAVI) Program," December 29, 2006

²⁵⁴ Id.

4. Commander Responsibilities under the SAPR Program (includes UCMJ reporting requirements, collateral misconduct, and Reservist Line of Duty determinations)
5. Commander's Guidance on the Uniformed Victim Advocate Billet
6. Unit SARC Responsibilities and Training Requirements
7. Guidance to all Marines

MCO 1752.5A further addresses the following in accompanying appendices:

- Flowcharts for Restricted and Unrestricted Reporting Options
- Commander's Protocol for Responding to Allegations of Sexual Assault
- Selection Criteria for Unit Victim Advocates
- Training Requirements and Responsibilities for
 - Victim Advocates and Uniformed Victim Advocates
 - Chaplains
 - Provost Marshall Office and Criminal Investigation Division
 - Judge Advocate, Trial Counsel, and Trial Defense Counsel
- Restricted Reporting "SAFE" Protocol
- Sexual Assault Incident Report Database (SAIRD) Mandatory Data Fields
- Naval Criminal Investigative Service Property Submission Protocol
- Report of Results of Trial
- Sample Command Policy Letter

JOINT OPERATIONS

The Military Services assign personnel to each of the ten combatant commands and the myriad DOD organizations in support of joint mission requirements. Often, sexual assault prevention and response program support for combatant commands, agencies and field activities is provided by the supporting Military Service responsible for the installation on which the respective headquarters are located, and/or where combatant command, agency and field activity personnel are assigned or deployed. Because there are so few uniformed military personnel assigned to the DOD agencies and field operating activities we omitted them from our review.²⁵⁵

Joint Publication (J Pub) 1-0, *Personnel Support to Joint Operations*, dated 16 Oct 2006, addresses SAPR in Item 21 of the Joint Force Manpower and Personnel Directorate Checklist, pages C-3 and C-4, to assist in addressing the sufficiency of sexual assault and prevention in planning documents.

Sexual assault prevention and response program guidance and execution varies among the Combatant Commands. Many, but not all, have issued sexual assault and prevention guidance. The level of specificity in published guidance varies in particular with respect to clarification of reporting options as shown below:

- United States Central Command (CENTCOM) – headquartered at MacDill Air Force Base, Florida. CENTCOM developed and distributed Command Policy Letter #16 (29 November 2007) and Regulation 600-16 (26 November 2007) establishing policies and procedures for Equal Opportunity, Sexual Harassment, and Sexual Assault Prevention and Response. These documents outline primary staff responsibilities and response procedures.

²⁵⁵ See Annex D for chart of the personnel demographics from a sample of DOD Agencies and Field Activities.

- United States Joint Forces Command (JFCOM) – headquartered at Norfolk, Virginia and follows the Navy SAVI Program. USJFC Instruction 1752.1A , 07 May 03, provides guidance, implements policy and designates responsibility for implementation of the SAVI (SAPR) program. This Instruction outlines definitions, procedures, and reporting requirements.
- United States Northern Command (NORTHCOM) – headquartered at Peterson Air Force Base, Colorado. NORTHCOM references DODD 6495.01 guidance and has a full time SARC at the Headquarters. NORTHCOM receives support from the 21st Space Wing, Peterson Air Force Base.
- United States European Command (EUCOM) – headquartered at Stuttgart, Germany. USEUCOM Policy Memorandum 06-01 (22 January 2007), directed to EUCOM Component Commanders, advises of a zero tolerance environment, outlines minimal training requirements, describes reporting options, and discusses military justice goals. In addition, USEUCOM Policy Memorandum 07-01 (26 January 2007) addresses subordinate EUCOM commander responsibilities.
- United States Pacific Command (PACOM) – headquartered at Camp Smith, Hawaii. PACOM has issued a Prevention of Sexual Assault Policy Statement for Military and Civilian Personnel (7 November 2007). PACOM receives support from Service elements in their area who apply appropriate procedures for processing restricted or unrestricted reports.
- United States Transportation Command (TRANSCOM) – headquartered at Scott Air Force Base, Illinois. TRANSCOM follows the policies and procedures of the Air Force SAPR program, and has a full time SARC on staff.
- United States Southern Command (SOUTHCOM) – headquartered in Miami, Florida as a stand-alone installation. SOUTHCOM headquarters has a SARC as well as a Health Clinic. United States Southern Command Policy Memorandum (dated 1 September 2007) establishes guidance for prevention of and response (allegations) to sexual assault.
- United States Special Operations Command (USSOCOM) – headquartered at MacDill Air Force Base, Florida. USSOCOM Directive 600-8 (8 July 2004) addresses the SAPR program, Prevention of Sexual Assault, Reporting Sexual Assault Incidents, Actions to be Taken After a Sexual Assault, Victim Confidentiality, Medical Management of Sexual Assault Victims, Management of Alleged Perpetrators, and the Sexual Assault Advisory Council.
- United States Strategic Command (STRATCOM) – headquartered at Offutt Air Force Base, Nebraska. Air Force SAPR policy and procedures apply in accordance with Offutt Air Force base Instruction.
- United States Africa Command (AFRICOM) – headquartered at Stuttgart, Germany. The AFRICOM Commander issued a policy letter, dated 1 Oct 2008, addressing sexual assault and established a Sexual Assault Hotline to the regional SARC.

APPENDIX J – STATUS OF “MORAL” WAIVERS

During the course of our review, the Task Force heard frequent concerns over the potential linkage of disciplinary problems (including sexual assault) to Service Members who had been granted waivers to enlist. Waivers are granted for a number of reasons such as age, education, medical and number of dependents, the criticism most often focused on “moral” waivers (also referred to as conduct or legal waivers). Although each Service approaches enlistment waivers differently, military recruiters from each Service are expected to recruit and enlist only those individuals whom they believe are capable of serving successfully and honorably. The granting of moral or conduct waivers to recruits is, at times, expedient when recruiting is a challenge. However, the Task Force reports that the Services are aware of the dangers in granting such waivers. We examined the waiver policy for all four Services and found the current policies and practices appropriate. Senior leadership has assured the Task Force that current policy is not to grant moral or conduct waivers without the careful scrutiny and screening by senior Service (flag or general officer) leadership and their legal advisors. This Task Force found no evidence of significantly increased disciplinary problems because of the use of waivers.

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APPENDIX K – SUPPLEMENTAL LETTERS (WITHOUT ENCLOSURES)

DEFENSE TASK FORCE ON SEXUAL ASSAULT IN THE MILITARY SERVICES



DEFENSE TASK FORCE ON SEXUAL ASSAULT IN THE MILITARY SERVICES
2850 EISENHOWER AVENUE, SUITE 100
ALEXANDRIA, VIRGINIA 22314

December 1, 2009

Ms. Gail H. McGinn
Deputy Under Secretary of Defense (Plans)
4000 Defense Pentagon
Washington, D.C. 20301-4000

Dear Ms. McGinn:

Pursuant to Section 576 of the Ronald W. Reagan National Defense Authorization Act for Fiscal Year 2005, the Defense Task Force on Sexual Assault in the Military Services conducted a one-year assessment of matters relating to sexual assault cases in which members of the Armed Services are either victims or commit acts of sexual assault. The Secretary of Defense further requested we make "recommendations for ways by which civilian leaders within the Department of Defense [(DoD)] and leadership within the Armed Forces may continue to improve the Department's response to matters relating to sexual assault."

During our review, numerous site visits (including a visit to the United States Army Criminal Investigative Laboratory (USACIL)), and extensive interviews with commanders, military law enforcement agency personnel, staff judge advocates, defense counsel, trial counsel, military judges, The Judge Advocates General of the Services, the Staff Judge Advocate to the Commandant of the Marine Corps, and DoD IG personnel, we identified the following matters within your purview that merit your action but we will not include in our final report:

1. The Victim and Witness Assistance Program (VWAP).

- a. Although DoD has provided VWAP requirements and guidelines, many installation VWAPs are not following the spirit of the program (i.e., ensuring victims are informed about the military justice process, available benefits, and accessible services and consulted concerning case outcome). Many of the locations we visited had not established an integrated support system as DoD Instruction 1030.2, *The Victim and Witness Assistance Procedures*, requires. During our site visits and interviews, a number of victims stated they were not satisfied with the information provided regarding final case disposition, including trial results. As recommended in the Report of the Defense Task Force on Sexual Harassment and Violence of the Military Service Academies, June 2005, we encourage you to ensure prosecutors and Victim and Witness Liaisons (VWLs) provide victims with the opportunity to voice concerns. Prosecutors and VWLs should better educate and prepare victims for the judicial proceedings (including roles of the parties) and manage their expectations regarding potential trial results. After case disposition, either prosecutors or VWLs should discuss the results with victims.

- b. Victims frequently believe that the prosecutors are their attorneys. When the VWL is acting as a prosecutor in the case, this misperception is reinforced. This also places trial counsel in a difficult position when they attempt to fulfill their ethical obligations to try criminal

cases they can prove beyond a reasonable doubt, while fulfilling their victim witness liaison duties to assist the victim throughout the adjudicative process. Also, trial counsel cannot fulfill the role as confidante for the victim because the trial counsel's primary duty is to be a zealous advocate for the government. Trial counsel also have an obligation to disclose relevant matters to the defense. Therefore, we recommend that judge advocates do not serve as both VWLs and trial counsel for the same case.

2. Military Protective Orders (MPO). The Sexual Assault Prevention and Response Program DoD Instruction sets forth appropriate procedures to follow regarding whether to issue an MPO (DD Form 2873) to an alleged offender. The DoDI also requires the Services to withhold sexual assault case disposition authority to the special court-martial convening authority. Current DoD instructions do not require the commander to complete a DD Form 2873 when issuing an MPO. We recommend that the *final* decision making authority to *deny* issuing MPOs in sexual assault cases is the battalion (O5) or equivalent command level in consultation with a judge advocate. We also recommend that you require commanders issuing military protective orders do so by using DD Form 2873 and provide victims and alleged offenders copies of the completed order.

3. Sex Offender Registration Requirements. If found guilty of an Article 120 offense, an accused in all likelihood will have to register as a sex offender for life. This registration is accompanied by many severe social and legal ramifications. Consequently, many involved in the sexual assault case disposition process (including victims and panel members) may hesitate to pursue a criminal conviction. In light of the enactment of the new Article 120, Uniform Code of Military Justice, we recommend that you update the list of offenses (or require military judges to make a determination) for which a conviction triggers sex offender registration requirements and exclude those offenses for which registration is inappropriate.

4. For many years, the Defense Equal Opportunity and Management Institute (DEOMI) has provided unit commanders with a real-time assessment of their command climate through use of an Organizational Climate Survey (DEOCS). The DEOCS, a pen and paper or on-line questionnaire, measures climate factors associated with military equal opportunity and civilian equal employment opportunity issues, as well as organizational effectiveness factors. Further, the Defense Management Data Center (DMDC) conducts the Survey of Gender Relations every four years however, that information is at the macro level and of no real benefit to unit commanders. Integrating questions from the DMDC Survey into the DEOCS would provide commanders with more complete pictures of their command climate. We recommend that the Sexual Assault Prevention and Response Office coordinate with appropriate DOD offices to add sexual assault questions to the DEOCS. Those offices are: the Office of Diversity Management and Equal Opportunity for DEOMI and the Office of the Under Secretary of Defense (Program Integration) for DMDC.

We forward these matters to you with confidence that you will take action you deem necessary and appropriate.

Sincerely,



Louis V. Iasiello, Ph.D.
Task Force Co-Chair



Millicent A. Wasell
Task Force Co-Chair

cc:
Department of Defense Inspector General
The Judge Advocates General of the Services
Staff Judge Advocate to the Commandant of the Marine Corps
Service Military Criminal Investigative Organizations

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DEFENSE TASK FORCE ON SEXUAL ASSAULT IN THE MILITARY SERVICES

2850 EISENHOWER AVENUE, SUITE 100
ALEXANDRIA, VIRGINIA 22314

December 1, 2009

The Honorable Gordon S. Heddell
Department of Defense
Office of the Inspector General
400 Army Navy Drive
Arlington, VA 22202-4704

Dear Mr. Heddell:

Pursuant to Section 576 of the Ronald W. Reagan National Defense Authorization Act for Fiscal Year 2005, the Defense Task Force on Sexual Assault in the Military Services conducted a one-year assessment of matters relating to sexual assault cases in which members of the Armed Services are either victims or commit acts of sexual assault. The Secretary of Defense further requested we make "recommendations for ways by which civilian leaders within the Department of Defense [(DoD)] and leadership within the Armed Forces may continue to improve the Department's response to matters relating to sexual assault."

During our review, numerous site visits (including a visit to the United States Army Criminal Investigative Laboratory (USACIL)), and extensive interviews with commanders, military law enforcement personnel, staff judge advocates, defense counsel, trial counsel, military judges, The Judge Advocates General of the Services, the Staff Judge Advocate to the Commandant of the Marine Corps, and DoD IG personnel we identified the following matters within your purview that merit your action but we will not include in our final report:

1. Coordination between Military and Civilian Law Enforcement.

a. Due to increased privatization of federal property including some new housing areas where local law enforcement authorities have primary police authority, military law enforcement agencies do not always have jurisdiction over areas on military installations. We recommend that military law enforcement agencies have a clear understanding and written documentation delineating the jurisdiction for all areas within their installations and other areas within their responsibility. In addition, local military law enforcement agencies should coordinate with installation commanders to ensure each area is mapped and marked as federal exclusive, concurrent, or proprietary.

b. In today's age of technology, panel members who sit as finders of fact in sexual assault cases may be expecting to see videotaped interrogations. Because of media exposure, panel members know videotaping capability exists and the absence of videotaped interrogations may exacerbate any distrust of law enforcement procedures. In all likelihood, panel members believe that many jurisdictions videotape law enforcement interviews of alleged assailants. Consequently, we recommend that the military law enforcement agencies videotape interviews of alleged sexual assault offenders.

2. The USACIL.

a. In every sexual assault case, a consultation between the agent, trial counsel, and the USACIL should be conducted to determine “best evidence.” The USACIL’s policy is to operate under a best evidence rule. In cases in which the accused has admitted sexual contact there appears to be no need to do a DNA analysis to determine the perpetrator’s identity. As a result, military law enforcement agencies often do not forward Sexual Assault Forensic Examination (SAFE) kits and/or any evidence to the USACIL for examination. Judge advocates sometimes request that the USACIL examine SAFE kits in those cases because the accused’s admissions are often found inadmissible as evidence in court. Further, the USACIL has extensive scientific capabilities to evaluate forensic evidence that may prove more than the accused’s identity. Such an examination also could corroborate contentious facts of the case. The DNA obtained during sexual assault case investigations may be eligible for entry into Combined DNA Index System (CODIS) to determine whether matching DNA is in the system. By obtaining DNA from all sexual assault cases, the USACIL examiners can perform a CODIS search to determine if a suspect’s DNA was previously entered into the CODIS which could assist in solving a previously unsolved case or identify the suspect as a repeat offender. Based on these observations, we recommend you direct that, after consultation to determine “best evidence,” military criminal investigators submit appropriate forensic evidence from all sexual assault investigations to the USACIL.

b. The Services are required to provide the USACIL with DNA samples collected from offenders, including sex offenders, *convicted* by general or special courts-martial, especially when little or no confinement is adjudged. In many cases, the Army and Air Force have not provided the USACIL with this required DNA. As we understand it, DoD is working with the Department of Justice to initiate obtaining DNA CODIS submissions when service members are in a status equivalent to arrest. By collecting the DNA samples from service members *titled* in an investigation, those samples would be readily available for submission into CODIS. We support taking DNA from arrestees, including alleged sex offenders, when they are titled and providing those samples to the USACIL for entry into CODIS. Nevertheless, we recommend that you work with the Service Secretaries to ensure, as required, DNA is taken from offenders convicted (by general or special courts-martial) of qualifying military offenses, including sex offenders, and that DNA is sent to USACIL.

We forward these matters to you with confidence that you will take action you deem necessary and appropriate.

Sincerely,



Louis V. Iasiello, Ph.D.
Task Force Co-Chair



Millicent Wasell
Task Force Co-Chair

cc:
Under Secretary of Defense for Personnel and Readiness
Secretaries of the Military Departments
The Judge Advocates General of the Services
Staff Judge Advocate to the Commandant of the Marine Corps
Service Military Criminal Investigative Organizations



DEFENSE TASK FORCE ON SEXUAL ASSAULT IN THE MILITARY SERVICES

2850 EISENHOWER AVENUE, SUITE 100
ALEXANDRIA, VIRGINIA 22314

December 1, 2009

Lieutenant General Dana K. Chipman
The Judge Advocate General, U.S. Army
Pentagon Room 2B514
2200 Army Pentagon
Washington, D.C. 20310-2200

Dear General Chipman:

Pursuant to Section 576 of the Ronald W. Reagan National Defense Authorization Act for Fiscal Year 2005, the Defense Task Force on Sexual Assault in the Military Services conducted a one-year assessment of matters relating to sexual assault cases in which members of the Armed Services are either victims or commit acts of sexual assault. The Secretary of Defense further requested we make "recommendations for ways by which civilian leaders within the Department of Defense [(DoD)] and leadership within the Armed Forces may continue to improve the Department's response to matters relating to sexual assault."

During our review, numerous site visits (including a visit to the United States Army Criminal Investigative Laboratory (USACIL)), and extensive interviews with commanders, military law enforcement personnel, staff judge advocates, defense counsel, trial counsel, military judges, The Judge Advocates General of the Services, the Staff Judge Advocate to the Commandant of the Marine Corps, and Department of Defense IG personnel we identified the following matters within your purview that merit your action but we will not include in our final report:

1. Article 32, UCMJ Hearing Officer. Complex legal and factual issues exist when investigating and trying sexual assault cases. The new Article 120, Uniform Code of Military Justice is cumbersome and difficult for line officers to understand and apply. Convening authorities place great weight on Article 32 investigating officers' findings and recommendations. The Services primarily use judge advocates as Article 32, UCMJ investigating officers for sexual assault cases. We recommend that convening authorities appoint judge advocates (including active and Reserve Component military judges) as Article 32, UCMJ, hearing officers for sexual assault cases.

2. Trial Counsel/Prosecutors.

- a. Inexperienced prosecutors are trying difficult sexual assault cases involving allegations of acquaintance rape. Many of these cases have limited corroborating evidence. Until recently, prosecutors have not received specialized training regarding prosecution strategies in sexual assault cases, including assailant and victim behavior evidence, forensic evidence, alcohol-related issues, overcoming preconceived panel prejudices (e.g., lack of resistance, alcohol consumption, a victim's collateral misconduct, prior social relationships between the parties, and at-risk behavior) and working with traumatized victims. A lack of understanding exists regarding common victim behaviors which may adversely impact sexual assault case disposition. Some Services have established highly qualified expert programs and

military justice litigation tracks, and identified senior prosecutors to ensure more experienced and sophisticated litigators are in the field. Nevertheless, we recommend that prior to their assignments prosecutors receive specialized training regarding trial strategies for sexual assault cases, including but not limited to assailant and victim behavior evidence, forensic evidence, alcohol and drug-related issues, and working with traumatized victims.

b. Many judge advocates do not maintain records in sexual assault cases reflecting the basis for their case disposition recommendations to commanders. This adds to the perception that prosecutors are not taking sexual assault cases seriously and makes it more difficult to subsequently explain reasonable decisions made. For example, during installation site visits, most prosecutors did not retain case files and any files provided for the Task Force's review did not include documentation reflecting their analysis and basis for advice to commanders. Consequently, we recommend that before advising special and general court-martial convening authorities, prosecutors complete a memorandum or proof analysis sheet (for internal staff judge advocate use only) setting forth a legal analysis of the evidence before advising a commander regarding a sexual assault case (*see* Enclosures 1 and 2 for examples). Supervisors of prosecutors should review and retain these documents for five years after case disposition.

c. The USACIL receives its accreditation from an internationally-recognized organization. To maintain its accreditation and ensure quality of work-product, the laboratory must comply with established standards and requirements. The laboratory must evaluate, at least annually, each examiner's courtroom testimony. Trial counsel do not routinely provide feedback to the USACIL. We recommend that trial counsel provide an assessment to the laboratory regarding examiner testimony to meet accreditation requirements.

We forward these matters to you with confidence that you will take action you deem necessary and appropriate.

Sincerely,



Louis V. Iasiello, Ph.D.
Task Force Co-Chair



Millicent Wasell
Task Force Co-Chair

Enclosures
As stated

cc:
Under Secretary of Defense for Personnel and Readiness
Department of Defense Inspector General
The Judge Advocates General of the Services
Staff Judge Advocate to the Commandant of the Marine Corps
Service Military Criminal Investigative Organizations



DEFENSE TASK FORCE ON SEXUAL ASSAULT IN THE MILITARY SERVICES

2850 EISENHOWER AVENUE, SUITE 100
ALEXANDRIA, VIRGINIA 22314

December 1, 2009

Colonel Vaughn A. Ary
Staff Judge Advocate to the Commandant of the U.S. Marine Corps, Acting
Headquarters, U.S. Marine Corps (JA)
Pentagon Room 4D558
3000 Marine Corps Pentagon
Washington, D.C. 20350-3000

Dear Colonel Ary:

Pursuant to Section 576 of the Ronald W. Reagan National Defense Authorization Act for Fiscal Year 2005, the Defense Task Force on Sexual Assault in the Military Services conducted a one-year assessment of matters relating to sexual assault cases in which members of the Armed Services are either victims or commit acts of sexual assault. The Secretary of Defense further requested we make "recommendations for ways by which civilian leaders within the Department of Defense [(DoD)] and leadership within the Armed Forces may continue to improve the Department's response to matters relating to sexual assault."

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2. Trial Counsel/Prosecutors.

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b. Many judge advocates do not maintain records in sexual assault cases reflecting the basis for their case disposition recommendations to commanders. This adds to the perception that prosecutors are not taking sexual assault cases seriously and makes it more difficult to subsequently explain reasonable decisions made. For example, during installation site visits, most prosecutors did not retain case files and any files provided for the Task Force's review did not include documentation reflecting their analysis and basis for advice to commanders. Consequently, we recommend that before advising special and general court-martial convening authorities, prosecutors complete a memorandum or proof analysis sheet (for internal staff judge advocate use only) setting forth a legal analysis of the evidence before advising a commander regarding a sexual assault case (*see* Enclosures 1 and 2 for examples). Supervisors of prosecutors should review and retain these documents for five years after case disposition.

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Sincerely,



Louis V. Iasiello, Ph.D.
Task Force Co-Chair



Millicent Wasell
Task Force Co-Chair

Enclosures
As stated

cc:
Under Secretary of Defense for Personnel and Readiness
Department of Defense Inspector General
The Judge Advocates General of the Services
Service Military Criminal Investigative Organizations



DEFENSE TASK FORCE ON SEXUAL ASSAULT IN THE MILITARY SERVICES

2850 EISENHOWER AVENUE, SUITE 100
ALEXANDRIA, VIRGINIA 22314

December 1, 2009

Vice Admiral James W. Houck
Judge Advocate General, U.S. Navy
Pentagon Room 4C642
1000 Navy Pentagon
Washington, D.C. 20350-1000

Dear Admiral Houck:

Pursuant to Section 576 of the Ronald W. Reagan National Defense Authorization Act for Fiscal Year 2005, the Defense Task Force on Sexual Assault in the Military Services conducted a one-year assessment of matters relating to sexual assault cases in which members of the Armed Services are either victims or commit acts of sexual assault. The Secretary of Defense further requested we make "recommendations for ways by which civilian leaders within the Department of Defense [(DoD)] and leadership within the Armed Forces may continue to improve the Department's response to matters relating to sexual assault."

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Sincerely,



Louis V. Iasiello, Ph.D.
Task Force Co-Chair



Millicent Wasell
Task Force Co-Chair

Enclosures
As stated

cc:
Under Secretary of Defense for Personnel and Readiness
Department of Defense Inspector General
The Judge Advocates General of the Services
Staff Judge Advocate to the Commandant of the Marine Corps
Service Military Criminal Investigative Organizations



DEFENSE TASK FORCE ON SEXUAL ASSAULT IN THE MILITARY SERVICES

2850 EISENHOWER AVENUE, SUITE 100
ALEXANDRIA, VIRGINIA 22314

December 1, 2009

Lieutenant General Jack L. Rives
The Judge Advocate General, U.S. Air Force
1420 Air Force Pentagon
Washington, D.C. 20330-1420

Dear General Rives:

Pursuant to Section 576 of the Ronald W. Reagan National Defense Authorization Act for Fiscal Year 2005, the Defense Task Force on Sexual Assault in the Military Services conducted a one-year assessment of matters relating to sexual assault cases in which members of the Armed Services are either victims or commit acts of sexual assault. The Secretary of Defense further requested we make "recommendations for ways by which civilian leaders within the Department of Defense [(DoD)] and leadership within the Armed Forces may continue to improve the Department's response to matters relating to sexual assault."

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- a. Inexperienced prosecutors are trying difficult sexual assault cases involving allegations of acquaintance rape. Many of these cases have limited corroborating evidence. Until recently, prosecutors have not received specialized training regarding prosecution strategies in sexual assault cases, including assailant and victim behavior evidence, forensic evidence, alcohol-related issues, overcoming preconceived panel prejudices (e.g., lack of resistance, alcohol consumption, a victim's collateral misconduct, prior social relationships between the parties, and at-risk behavior) and working with traumatized victims. A lack of understanding exists regarding common victim behaviors which may adversely impact sexual assault case disposition. Some Services have established highly qualified expert programs and

military justice litigation tracks, and identified senior prosecutors to ensure more experienced and sophisticated litigators are in the field. Nevertheless, we recommend that prior to their assignments prosecutors receive specialized training regarding trial strategies for sexual assault cases, including but not limited to assailant and victim behavior evidence, forensic evidence, alcohol and drug-related issues, and working with traumatized victims.

b. Many judge advocates do not maintain records in sexual assault cases reflecting the basis for their case disposition recommendations to commanders. This adds to the perception that prosecutors are not taking sexual assault cases seriously and makes it more difficult to subsequently explain reasonable decisions made. For example, during installation site visits, most prosecutors did not retain case files and any files provided for the Task Force's review did not include documentation reflecting their analysis and basis for advice to commanders. Consequently, we recommend that before advising special and general court-martial convening authorities, prosecutors complete a memorandum or proof analysis sheet (for internal staff judge advocate use only) setting forth a legal analysis of the evidence before advising a commander regarding a sexual assault case (*see* Enclosures 1 and 2 for examples). Supervisors of prosecutors should review and retain these documents for five years after case disposition.

c. The USACIL receives its accreditation from an internationally-recognized organization. To maintain its accreditation and ensure quality of work-product, the laboratory must comply with established standards and requirements. The laboratory must evaluate, at least annually, each examiner's courtroom testimony. Trial counsel do not routinely provide feedback to the USACIL. We recommend that trial counsel provide an assessment to the laboratory regarding examiner testimony to meet accreditation requirements.

We forward these matters to you with confidence that you will take action you deem necessary and appropriate.

Sincerely,



Louis V. Iasiello, Ph.D.
Task Force Co-Chair



Millicent Wasell
Task Force Co-Chair

Enclosures
As stated

cc:
Under Secretary of Defense for Personnel and Readiness
Department of Defense Inspector General
The Judge Advocates General of the Services
Staff Judge Advocate to the Commandant of the Marine Corps
Service Military Criminal Investigative Organizations

APPENDIX L – STATEMENT FROM THE SEXUAL ASSAULT PREVENTION AND RESPONSE OFFICE

**Statement to the
Defense Task Force on Sexual Assault in the Military Services
By
Dr. Kaye Whitley, Director
Sexual Assault Prevention and Response Office
(SAPRO)
Office of the Secretary of Defense
August 17, 2009**

As the Task Force works to assimilate the data it has been gathering over the past year into recommendations for the Department, I would like to request that you consider the following factors.

The Under Secretary of Defense for Personnel and Readiness and the Deputy Under Secretary of Defense for Plans designed the current SAPRO structure to reflect the needs of the Department. Currently within the Office, there exists sufficient expertise to support the three primary missions of prevention, response, and accountability. However, given the breadth of these missions and the extent of the recommendations that we expect to be forthcoming from the DTF, SAPRO would definitely benefit from greater manpower resources that balance subject matter expertise with seasoned military experience.

As you all know, at the direction of the President, the Department has initiated in-sourcing. As the Director, I have taken this opportunity to reduce the office's reliance on contractors and grow a professional government staff that will advance our mission. The greater consistency and control brought by a permanent staff, as well as the \$20 million increase in funding in the President's 2010 budget, will -- without a doubt -- help us achieve our vision of improving military readiness by creating an environment free from sexual violence.

SAPRO would benefit greatly from the contributions of at least one uniformed member from each Service. In fact, this kind of access to each Military Service is something I have been advocating informally for quite some time. A staff officer from each Service, preferably at the O-4 level, would enhance formal and informal communications, provide insights to the unique Service cultures, and streamline mission planning and execution. Unfortunately, given the current operational tempo and tasking of the Services in Operation Enduring Freedom and Operation Iraqi Freedom, requests for uniformed members have not been a logistic reality. In fact, obtaining the single military Deputy Director position took a great deal of time and effort. Consequently, I have had to staff my office with representatives from the Services in an unconventional way. Nevertheless, I now have on my permanent government staff representatives from each of the four Military Services who are either on active duty, reserve duty, or very recently retired from active service. While I have over sixty-five years of accumulated uniformed experience on staff, SAPRO would only benefit from more. Certainly, a recommendation from the Task Force for greater involvement of the active force in the SAPRO staff structure would carry great weight. I believe this kind of recommendation would ultimately enhance our capabilities and effectiveness.

SAPRO would also likely benefit from the presence of an experienced, trial-seasoned judge advocate. Given that one the Secretary's current interest items is the improvement of training and sustainment of trial counsel, this in-house resource would assist the Office's ability to oversee this

important line of action. However, any recommendation by the Task Force for a judge advocate would need to consider that SAPRO has a narrow and well-defined role in military justice. Department policy limits the Office's role to establishing training standards for attorneys and investigators, as well as ensuring that victims are supported through the military justice process. A judge advocate's legal duties in SAPRO would be limited to these functions. In addition, adding a military attorney to the Office staff may be perceived as undue command influence. To date, the office has been served well by having guidance from the Department's Office of General Counsel.

The span of control for the civilian Director of SAPRO is adequate to direct the activities for the number of current and forecasted employees. The current structure provides for sufficient career professional development and progression for the primarily civilian workforce in the Office. In addition, the continuity that exists by having civilian employees assigned to SAPRO since the activation of the organization in June 2005 has been tremendous.

However, the Task Force's recommendation for an O-6 officer to lead SAPRO does not change the level of influence that a civilian director (YC-3) has to advance the mission. While an officer who has successfully completed an O-6 command would certainly bring a wealth of insight and knowledge to the Office, an O-6 in the Pentagon does not bring a significantly different level of credibility, capability or transformative power than a YC-3 (formerly a GS-15). In addition, sustainment of this position is likely to be extremely difficult, as finding O-6 officers that have a level of subject matter expertise on par with their military experience is unlikely. Military leadership without this balance is likely to slow mission momentum as well as be perceived as subject to Departmental control.

I would encourage the Task Force to make a recommendation that would truly advance the Program: Leadership of the program, the SAPRO office, and the effort to eradicate this problem from the Armed Forces should rest in the hands of a General Officer or a member of the Senior Executive Service. Advances in Sexual Assault Prevention and Response have only been possible when the Senior-most leaders throughout the Department directed and oversaw the allocation of attention, resources, and personnel. A senior leader at the General Officer or Senior Executive Service level is a better alternative to lead the charge. The Defense Military Equal Opportunity Office and the Office of Military and Community Family Policy each have SES members at their helm. These organizations are instrumental in advancing the Department's efforts to overcome discrimination and domestic violence. Sexual Assault Prevention and Response deserves the same benefit of senior leadership. A Task Force recommendation for the dedication of a senior leader position to this program would have a great and long lasting effect. The DUSD (Plans) is currently working with personnel to allocate one of P&R's limited SES billets to SAPRO for the Director position.

In our January, 5, 2009 meeting with the Task Force, the Deputy Under Secretary of Defense (Plans) voiced her desire that the Task Force focus its attention on identifying problems and policy gaps for the Department to address. Discussion of SAPRO staffing and design was not specifically requested because the Department has been involved in a strategic planning, oversight, and organizational design project since last November. SAPRO contracted a team of strategic planning subject matter experts to work with the Office, the Service SAPR programs, and key internal and external stakeholders to develop the DOD-wide SAPR Strategic Plan for fiscal year 2010-2015. This document provides a strategic roadmap for all SAPR program goals, objectives, and high-priority initiatives. We have also made the plan flexible enough to address the Task Force's recommendations when they are released later this year. Our planning experts have also been helping us design an oversight framework for the plan. The development of this framework involved a comprehensive review and analysis of everything, from defining SAPRO and Service processes and roles, to improving coordinating with external partners and stakeholders. Finally, the strategic experts have begun an organizational design for SAPRO itself, using the DOD-wide SAPR Strategic Plan and Oversight Framework as a foundation. The organizational design

project will use our mission priorities and challenges to analyze our current structure and capabilities, develop design options, and formulate a phased transition plan. These three products will be presented to the Deputy Under Secretary of Defense (Plans) for her review and consideration in the near future.

It is important to know that SAPRO's strategic planning during the last year included representatives from the Services, the JCS J-1, the Office of General Counsel, and the DOD Inspector General. The organizational recommendations by our planning experts will mesh with the SAPR strategic plan and will define both immediate and future organizational staffing. The positions in SAPRO's new organizational structure will be clearly defined and aligned with the short and long term goals of the Department's SAPR program. But most importantly: the planning process has had buy-in from across our DOD-wide team.

In closing, I want to thank the Task Force for its dedication to the goal of eradicating sexual assault from the military services. I see you as our allies in a collective fight against those who would prey on our nation's most valued resource: our women and men in uniform. I look forward to reading your report and implementing the well-informed recommendations that help the Department serve the victims of this crime and prevent its occurrence.

Thank you,

Kaye Whitley, Ed.D.
Director
Sexual Assault Prevention and Response Office

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