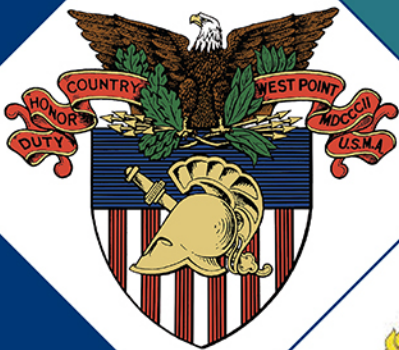




Annual Report on Sexual Harassment and Violence at the Military Service Academies

Academic Program Year
2016-2017





PERSONNEL AND
READINESS

UNDER SECRETARY OF DEFENSE
4000 DEFENSE PENTAGON
WASHINGTON, D.C. 20301-4000

JAN 29 2018

The Honorable John McCain
Chairman
Committee on Armed Services
United States Senate
Washington, DC 20510

Dear Mr. Chairman:

Section 532 of the John Warner National Defense Authorization Act for Fiscal Year 2007 (Public Law 109-364) requires an annual report during each Academic Program Year (APY) on the effectiveness of the policies, training, and procedures of each Military Service Academy (MSA) with respect to sexual harassment and violence involving academy personnel.

The enclosed "Annual Report on Sexual Harassment and Violence at the MSAs, APY 2016-2017" provides observations and recommendations based on the Department's onsite assessments at the MSAs. The report also includes data and analysis on reported cases of sexual harassment and sexual assault involving academy personnel occurring between June 1, 2016, and May 31, 2017. The Office of People Analytics' "2017 Service Academy Gender Relations Focus Groups Overview Report" is a part of this year's report and is also enclosed.

The Department believes the academies progressed in APY 16-17 and expects the MSAs to continue implementing action plans to promote responsible alcohol choices, reinvigorate prevention of sexual assault, enhance a culture of respect, and improve reporting of sexual assault and sexual harassment.

I am sending a similar letter to the Chairman of the Committee on Armed Services of the House of Representatives.

Sincerely,

A handwritten signature in black ink that reads "Robert L. Wilkie".

Robert L. Wilkie

Enclosures:
As stated

cc:
The Honorable Jack Reed
Ranking Member



PERSONNEL AND
READINESS

UNDER SECRETARY OF DEFENSE
4000 DEFENSE PENTAGON
WASHINGTON, D.C. 20301-4000

JAN 29 2018

The Honorable William M. "Mac" Thornberry
Chairman
Committee on Armed Services
U.S. House of Representatives
Washington, DC 20515

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Enclosures:
As stated

cc:
The Honorable Adam Smith
Ranking Member



*Department of Defense
Annual Report on Sexual Harassment and Violence at the Military Service
Academies, Academic Program Year 2016-2017*

The estimated cost of report or study for the Department of Defense is approximately \$582,000 in Fiscal Years 2017-2018. This includes \$413,000 in expenses and \$170,000 in DoD labor.

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FEBRUARY 2018

DoD Annual Report on Sexual Harassment and Violence at the Military Service Academies,

ACADEMIC PROGRAM YEAR 2016-2017

REPORTING REQUIREMENT

Section 532 of the John Warner National Defense Authorization Act for Fiscal Year 2007 (Public Law 109-364) requires the Department of Defense to conduct an annual assessment of the Military Service Academies to determine the effectiveness of policies, training, and procedures with respect to sexual harassment and sexual violence involving academy personnel. The Department accomplished this requirement by conducting on-site assessments and the 2017 Service Academy Gender Relations Focus Groups at each Academy.

The entire report is available on-line at SAPR.mil

Executive Summary

The Department of Defense requires the Military Service Academies (United States Military Academy, United States Naval Academy, and United States Air Force Academy) to address sexual harassment and sexual assault with programs that follow Department policy and federal law. Each year, the Department assesses the academies' progress on preventing and responding to sexual assault and sexual harassment and provides a report to Congress.

Summary of Key Events

Despite significant investments of attention, time, and resources, the 2016 estimated prevalence (occurrence) rate of unwanted sexual contact¹ increased at all three Academies, as compared to the rate measured two years prior. In addition, rates of reporting sexual assault, perceived negative outcomes associated with reporting, and other measures showed only modest, if any, improvement in the climate pertaining to sexual assault and sexual harassment at the Academies.

In March 2017, the Secretary of Defense met with the academy Superintendents, the Joint Chiefs of Staff, and other senior leadership to review the report's findings. Subsequent to that meeting and per the Secretary's guidance, in June 2017, the Office of the Under Secretary of Defense for Personnel and Readiness directed the Superintendents to create plans to:

- Promote Responsible Alcohol Choices
- Reinvigorate Prevention
- Enhance Culture of Respect
- Improve Sexual Assault and Harassment Reporting

At the time of report publication, all three Academies had submitted the plans requested by the Office of the Under

¹ Although the term "unwanted sexual contact" does not appear in Articles 120, 125, or 80 of the Uniform Code of Military Justice (UCMJ), for the purposes of the Service Academy Gender Relations Survey (SAGR) and this report, it is used to refer to a range of sex-related offenses that the UCMJ prohibits. These offenses include completed or attempted oral, anal, or vaginal penetration by a body part or an object, and the unwanted touching of genitalia, buttocks, breasts, or inner thighs when the victim did not or could not consent. The survey is conducted in April of even numbered years. Respondents to the survey are asked about their experiences of unwanted sexual contact in the 12 months that constitute the APY (June 1 to May 31). The definition of unwanted sexual contact used in the SAGR is behaviorally based and not intended to designate specific UCMJ offenses or establish crime rates.

Secretary of Defense for Personnel and Readiness and were working to implement key provisions in time for new cadet and midshipman arrivals in July 2018.

In May 2017, the Personnel Subcommittee of the House Armed Services Committee held a hearing to review progress at the Academies. Past and current cadets and midshipmen described their experiences with reporting sexual assault. DoD leadership and the three Superintendents then spoke to Members of Congress about past and ongoing efforts to prevent and respond to sexual assault and sexual harassment.

In June and July 2017, representatives from the Department and the Military Services conducted on-site assessments and technical assistance at the Academies. This report contains the results of those assessments, as well as information about the reporting of sexual assault and sexual harassment during Academic Program Year 2016-17. As part of the assessment process, this year's assessment also included Service Academy Gender Relations Focus Groups. These focus groups offer more in-depth information on cadet, midshipman, faculty, and staff perceptions of sexual assault reporting, prevention, training, and climate characteristics, such as alcohol use and leadership involvement. Focus group results provided in the report are not generalizable to the full population of the Military Service Academies. Themes should be considered the attitudes and opinions of focus group participants only and not opinions of all students, faculty, and staff.

Observations

The Department's on-site assessment found that all three academies' leaders demonstrated commitment to meeting victim response, healthcare, investigative, and military justice requirements identified in policy and law. The assessment team also worked with staff from each Academy to review policy, programs, and practices that addressed prevention of sexual assault and sexual harassment. We found that academy personnel possessed varied levels of understanding of the science behind effective prevention programs. As such, the quality and outcomes of programs aimed at prevention also varied. Consequently, the Department conducted half-day sessions with academy staff to assist them with developing the plan ordered by the Secretary and to provide them with access to expert consultation on effective prevention practices. All three academies also had or planned to have expert consultative support to enhance their prevention programming in the future. Participants in the cadet and midshipmen focus groups indicated that while academy leadership sets the tone, their peer leaders are also important influencers. Participants also noted that they favored educational materials that made learning objectives relevant to officership, involved small group discussion, and clarified complex interpersonal situations relevant to situations prime for sexual assault and sexual harassment intervention.

The three Academies have well-established response systems to assist victims of sexual assault, provide care, investigate allegations, and hold offenders appropriately accountable. For the most part, these systems comply with relevant Department and Service policy. However, program mismanagement within the Sexual Assault Prevention and Response office at the Air Force Academy impacted the delivery of victim assistance. While the Air Force Academy investigated and took steps to correct these problems, greater oversight of response programs and personnel is required at all three Academies. Cadet and midshipmen focus group participants indicated that greater reporting of sexual assault and sexual harassment is hampered by concerns about loss of privacy, social exclusion, and stigma about being a victim. Participants also indicated they had difficulty understanding what behaviors constituted sexual harassment. They also did not know to whom or what should be reported. Consistent with this finding, there was limited publicity of sexual harassment reporting procedures and resources at all three Academies.

The Academies have mature sexual assault investigative and accountability processes. Criminal investigators, judge advocates, and Special Victims Counsel/Victim Legal Counsel have the requisite training and appeared well prepared to execute their missions. However, the same cannot be said for sexual harassment investigation; personnel needed better preparation to review and investigate allegations. The Department also found that all three Academies are collecting data via climate surveys, outcomes of training, and other sources. However, the Academies have limited ability to evaluate their programs, advise leadership, and act on their findings.

Overall, reporting of sexual assault increased in Academic Program Year 2016-2017. The three Academies received a total of 112 reports of sexual assault, up from 86 reports received in the year prior. The vast majority of this increase in reporting occurred at the U.S. Military Academy. The other two Academies increased in sexual assault reporting by one report each. In addition, eight of the 112 reports received were for allegations about incidents that occurred prior to military service. Moreover, 18 of the 61 initial Restricted Reports converted to Unrestricted Reports, leaving 43 reports restricted at the end of the year. This reflects an increase of six conversions from the number of conversions made during the last Academic Program Year.

With regard to sexual harassment, six more cadets and midshipmen chose to make sexual harassment complaints this year than last year. Across all three Academies, there were zero formal complaints and 16 informal complaints, up from the 10 complaints received last year.²

Victim assistance remains a cornerstone of the academies' programs. The Department found that the vast majority of academy personnel provided consistent and compassionate support for sexual assault victims. However, one of the Services' identified shortfalls regarding personnel and took immediate steps to remediate these problems.

Feedback from the 2017 focus groups involving 188 cadets/midshipmen, and 107 faculty, and staff participants revealed that most cadets and midshipmen knew how to report and obtain support should they experience a sexual assault. However, reducing the number of future sexual assault victims requires new approaches and resources above what are currently provided for response programs. New initiatives require a sustained effort and a long-term view to give such efforts the best chances for success over time.

Assessment

The U.S. Military Academy and the U.S. Naval Academy are in compliance with the Department's policies that govern sexual assault and sexual harassment prevention, victim assistance and advocacy, investigation, accountability, and assessment. Sexual assault prevention and response program mismanagement at the U.S. Air Force Academy put it out of compliance with Department and Air Force victim assistance and advocacy policy. Given this discrepancy, the Air Force Academy is in partial compliance overall.

Compliance with policy, however, does not guaranty effective programs and practices. As a result, the Department identified a number of items for the Academies' action, including:

² In accordance with Department of Defense Directive 1350.2, an informal complaint is an allegation of unlawful discrimination or sexual harassment, made either orally or in writing, that is not submitted as a formal complaint, while a formal complaint is an allegation of unlawful discrimination or sexual harassment that is submitted in writing to the authority designated for receipt of such complaints in Service implementing regulations.

- Provide cadets and midshipmen with prevention skills and education that are both relevant to their current circumstances and their future roles as officers.
- Enhance preparation of military officers and senior enlisted leaders so they may more effectively promote and teach about climates of dignity and respect.
- Enact an oversight process for the assistance rendered by Sexual Assault Response Coordinators and Victim Advocates.
- Operationalize the Department's sexual harassment definition for the academy environment and expand services and support for cadets and midshipmen who desire to address it.
- Establish or enhance a centralized data assessment and reporting resource.

Conclusion

The Military Service Academies remain committed to eliminating sexual assault and sexual harassment as part of their overall effort to develop leaders of character. However, the Academies are unique environments that require programs tailored to their specific circumstances. Over the past ten years, the Academies have invested heavily in creating robust sexual assault response systems. Improved oversight of these programs will ensure that they continue to assist and support victims as intended. In addition, prevention of sexual assault will likely benefit from greater emphasis on programs to prevent and address sexual harassment. Future Department assessments will review academy efforts to address the action items identified in this report, as well as their progress in executing the plans directed by the Secretary of Defense.

Introduction

The Department of Defense (DoD) annually assesses the Military Service Academies' (MSA) programs addressing sexual harassment and sexual assault. Section 532 of the John Warner National Defense Authorization Act for Fiscal Year 2007 (Public Law 109-364) requires an assessment of the MSAs during each Academic Program Year (APY). This report fulfills this requirement by reviewing the effectiveness of the academies' policies, training, and procedures regarding sexual harassment and sexual violence involving academy personnel at the:

- United States Military Academy (USMA);
- United States Naval Academy (USNA);
and
- United States Air Force Academy (USAFA).

DoD assessment reports for the APYs beginning in even-numbered years, as is the case for this year's report, include onsite assessments conducted by DoD and the Military Services and focus groups conducted by the Office of People Analytics (OPA) with cadets, midshipmen, academy faculty and staff. The *Service Academy Gender Relations*

(SAGR) *Focus Groups* cover topics such as perceptions about sexual assault and sexual harassment occurrence and reporting, prevention programming and training, and other climate characteristics like alcohol use and leadership involvement.³

This report also assesses the MSAs' compliance with applicable DoD and Military Service sexual harassment and sexual assault policies. The MSAs' compliance and initiative completion status can be found in Appendices A-C of this report.

The APY 16-17 (June 1, 2016 – May 31, 2017) report documents Sexual Assault Prevention and Response (SAPR) and Prevention of Sexual Harassment program accomplishments and activities related to the five strategic goals, outlined in the Department of Defense Sexual Assault Prevention and Response Strategic Plan, 2017-2021: Sexual Assault Prevention, Sexual Assault Victim Assistance and Advocacy, Investigation, Accountability, and Assessment. Detailed statistical data from APY 16-17 and an analysis of these data are enclosed in Appendices D and E of this report.

³ For APYs beginning in odd-numbered years, as was the case with last year's report, the Department report includes each academy's self-assessment and a scientific, anonymous survey of cadets and midshipmen, conducted by the Office of People Analytics (OPA). This biennial survey, known as the SAGR survey, covers topics such as the past-year estimated prevalence of sexual assault and sexual harassment, factors affecting reporting and training, and characteristics of unwanted sexual and gender-related behaviors. OPA will conduct the next SAGR in 2018.

Goal One: Prevention

Summary of Prevention Observations from On-Site Assessment and Focus Groups

Primary prevention consists of policies, programs, and practices that aim to stop sexual assault and harassment before they occur. Within the last few years, the Centers for Disease Control and Prevention have released several technical assistance packages designed to improve primary prevention. The DoD Sexual Assault Prevention and Response Office (SAPRO) is currently working to share these evidence-based approaches and recommendations throughout the Military Services and the Academies.

Prevention efforts observed at the Academies largely consist of assessing and improving academy climate and teaching cadets and midshipmen how to intervene safely in risky situations. Senior leaders at all three Academies emphasized their expectations about leadership's engaged role in advancing climates that promote dignity and respect. The academy Superintendents made it clear that their leadership teams were committed to reducing the occurrence of sexual assault and sexual harassment. Further, focus group participants at each Academy stated that their leadership is committed to addressing the issue of sexual assault and sexual harassment. However, to better determine if policies are having the intended impact, the Department will assess how to improve upon and expand program evaluation methods as part of its overall effort to enhance primary prevention throughout the DoD as a whole.

The Department observed a number of potentially helpful practices as well as opportunities for growth in the academies' SAPR programs, sexual harassment prevention programs, and training initiatives.

The 2017 SAGR Focus Groups also identified modifications that would render prevention programming more effective with cadets and midshipmen.

Prevention Programs

The Naval Academy divides its SAPR program into separate prevention and response teams; this division is intended to delineate prevention from response and create a separate focus for each effort. The USNA SAPRO handles prevention and program management, while the SAPR Response Team handles response and victim support. The USNA SAPR Program Manager oversees both teams. Such a separation is intended to help USNA better prepare and support prevention personnel, who require a different skillset than response personnel.

USNA also continued work on modifying its prevention programs and practices to promote more responsible choices by providing information about alcohol and its effects on the body and judgment to midshipmen who turn 21 years of age. The Naval Academy also convened an Alcohol Working Group led by a battalion officer (O-5) to coordinate brigade, staff, and faculty input. USNA also established a working group to create a plan to improve midshipman "life skills," such as sensible alcohol decisions, solutions to personal relationship challenges, effective communication, and consent language.

While the USMA's prevention and response teams are both part of the Sexual Harassment/Assault Response and Prevention (SHARP) program, USMA contracted with an independent organization with expertise in this area to review its prevention activities. The review commended the Superintendent's public presence on the issues of sexual assault and harassment, as well as academy efforts to make prevention a

permanent part of academy programming. SAPRO reviewed the independent organization's assessment and recommended plan for USMA and found it to be informative and based in research. The Services may leverage the Army's efforts to inform their own programs.

The Air Force Academy has been implementing the Cadet Healthy Interpersonal Skills (CHiPs) program. CHiPs curriculum is aimed at developing healthy and respectful interpersonal relationships, reducing stress, improving decision making, and reducing sexual harassment and sexual assault. In APY 15-16, USAFA conducted cadet focus groups to adapt the curriculum to a military setting. CHiPs curriculum originates from an organization working with other colleges and universities. In APY 16-17, USAFA introduced the curriculum to a small sample of cadets in a pilot effort.

The Gender Forum is another potentially helpful practice employed at USAFA. The program focuses on helping cadets better understand gender bias and overarching gender roles. The intent of the program is to provide cadets with an improved understanding and skill base for dealing respectfully with others.

Peer-to-Peer Programs

Civilian research finds that peers can influence the occurrence of sexual violence. Peers who voice support for sexually aggressive and/or violent acts may influence others to act similarly. Conversely, perceiving that peers are motivated to intervene to prevent rape has been found to influence others' willingness to intervene. Consequently, the Department believes that the academies' peer-to-peer programs have an important role to play in prevention. When trained and supported properly, they can positively affect the unit or company climate. Moreover, SAGR Focus Groups found that cadet and midshipman leadership can be particularly influential with peers. In addition, participants noted that for prevention of sexual assault and

harassment messaging to be taken seriously, the support of cadets and midshipmen is essential to shaping thoughts and behaviors.

USNA's peer-to-peer Sexual Harassment and Assault Prevention Education (SHAPE) program provides a significant amount of education and preparation to its midshipmen peer educators to facilitate discussions about sexual harassment and sexual assault. SHAPE focuses on a variety of prevention and response topics, including midshipmen's role in bystander intervention, tools for proactive intervention, and debunking of myths surrounding sexual assault and harassment. Midshipmen who volunteer and successfully audition for the SHAPE team receive more than 80 hours of training per academic year. The curriculum challenges midshipmen to view sexual assault prevention from a variety of perspectives. Each year, SHAPE peer educators solicit feedback from midshipmen to improve their program. Updates to SHAPE have been made regularly over the life of the program's existence by USNA's SAPR educator.

However, focus group feedback from midshipmen indicated that the many briefings conducted under the SHAPE program may be contributing to training fatigue on the topic of sexual assault and sexual harassment. Some midshipmen appreciated the current training, but felt it would be more relevant and effective if there were examples and situations which could be applied more directly to their lifestyle and situations.

SHAPE may be more helpful if it were refined to concentrate solely on prevention topics, and remove response-focused information covered in other USNA training efforts. This may be particularly relevant given that midshipmen found a great deal of SAPR programming to be repetitive. Hearing new information in SHAPE sessions may renew midshipman interest. Experts supporting the DoD Team on-site provided technical assistance to USNA staff with optimizing prevention curricula delivered through the SHAPE program.

USMA started its peer program, Cadets Against Sexual Harassment/Assault (CASHA), to encourage cultural change and educate cadets about the problems of sexual assault and sexual harassment. Recent changes to how USMA cadets participate in CASHA have limited its influence with the student body. The DoD on-site visit found that CASHA cadets were no longer volunteering into the program, but rather being assigned to the organization by USMA staff. In addition, assigned CASHA cadets were not receiving the preparation needed to be able to provide persuasive and motivating information vital to the effectiveness of a peer-led group. Feedback from the SAGR Focus Groups indicated that USMA cadets' opinions on CASHA were mixed. Many felt the trainings provided by CASHA members were poor quality, but others indicated the quality of training greatly depended on the skill and experience of the individual facilitator. Further details on potential modifications to improve CASHA's role in prevention efforts are included in the "Way Forward on Prevention" section.

Summary of Technical Assistance Provided by DoD Team

During each on-site assessment, DoD facilitated four hours of discussion on how to effectively incorporate prevention into the MSAs' response to the plans requested by the Office of the Under Secretary of Defense for Personnel and Readiness (USD(P&R)). An expert in prevention led each session, which was tailored to address the specific needs of each MSA.

Within the sexual assault prevention portion, several key themes were emphasized. Across all MSAs there is a need to disentangle prevention from response. Currently, the majority of programs and activities labeled "prevention" instead drive improved awareness of the problem and knowledge of response services for victims. These are, of course, important for helping cadets and midshipmen understand the problem and

available support options. However, knowledge of awareness and response information does not translate into decreased prevalence rates. Prevention must emphasize skill-building associated with recognizing and intervening in high risk situations. Rather than a primary focus on reactive solutions, there needs to be a shift toward engaging in proactive behaviors that set norms intolerant of sexual assault. Further, since many cadets and midshipmen have expressed fatigue regarding sexual assault training, programming should include explicit strategies for engaging their intrinsic motivation. The MSAs would benefit from increased emphasis, planning, and resourcing of prevention, including hiring and training personnel with the unique skill sets required for prevention.

The DoD team also imparted how prevention activities should have a much wider scope. This broader prevention perspective requires greater coordination with other programs aimed at stopping other problematic behaviors (e.g., sexual harassment, gender discrimination, alcohol misuse/abuse, etc.). Academy staff attending these sessions showed strong interest and intent to shifting their efforts to policies, programs, and practices demonstrated to decrease the occurrence of sexual assault and sexual harassment.

Way Forward on Prevention

Way Forward on Sexual Assault Prevention

Although prevention programs are in various stages of development or implementation at each Academy, DoD's on-site assessments found that prevention continues to be a top priority. This section highlights information the MSAs will need to address in the plans requested by USD(P&R).

Feedback from the SAGR Focus Groups emphasized that a successful prevention strategy will require the support of cadet and midshipman leadership. Across all three Academies, cadets and midshipmen stated that their peer leadership is the most influential

group on campus. Without their buy-in, creating the climate to establish prevention oriented behavior will be difficult.

Effective prevention is much larger than a one-time training or event. Well supported prevention efforts that encompass a community's policies, programs, and practices are much more likely to produce intended outcomes. That being said, improvements to cadet and midshipman prevention training are an important part of any future effort. In the creation and/or adaptation of prevention initiatives targeting cadets and midshipmen, materials should not only address how to prevent sexual violence now as students, but also in their future roles as officers. Feedback from focus groups and on-site visits underscored that a training's connection to officership made it much more relevant and interesting to cadets and midshipmen. The SAGR Focus Group results also suggest that some cadets and midshipmen are frustrated by repetitive trainings on the definition of sexual assault and reporting options. Many prefer information about prevention tactics, including bystander intervention. Lecture training that involves slide presentations is not taken seriously. Situations where thousands of cadets are trained together are also dismissed as a 'waste of time,' as many indicated students do not pay attention. Instead, focus group participants expressed a preference for small group discussions.

While most cadets and midshipmen will not be perpetrators, many will be in a position to prevent sexual assault or sexual harassment. Therefore, training should equip them with skills to create a command climate that supports prevention, such as improved communication skills, healthy relationships, bystander intervention, making healthier alcohol choices, and other efforts designed to promote helpful behaviors. Prevention training should also be included for all active duty officers and senior enlisted personnel leading cadet/midshipman units. These leaders can reinforce important learning objectives and help cadets and midshipmen apply what they have learned. Hence, preparation for officers

and senior enlisted personnel leading units should include a prevention component.

The MSAs must also consider the continuing issue of alcohol in sexual assault prevention initiatives. Cadets and midshipmen in focus groups offered that there should be opportunities for learning responsible alcohol use because of the large role alcohol plays in sexual assault and sexual harassment. Specifically, such information should address how alcohol impacts offender behavior, changes expectancies about acceptable behavior while drinking, and may be employed to incapacitate and confuse intended targets. Likewise, sexual assault training should emphasize how alcohol may create ambiguity when it comes to issues like consent. Further, SAGR Focus Group feedback indicated that some cadets and midshipmen engage in binge drinking and participants noted a desire to learn how to consume alcohol responsibly and ensure safety when consuming alcohol off-campus.

It should be noted that all three Academies have strict policies that forbid underage alcohol consumption. In the past, older, less effective approaches to reducing underage alcohol consumption focused on education about such policies and the serious consequences and/or punishments associated with underage drinking. While such information and policies have a role to play (Wechsler, Lee, Nelson, and Kuo, 2002), these are only the first steps in promoting more responsible alcohol choices. Rather, the MSAs should seek to employ additional individual- and environment-level approaches to further reduce underage drinking and promote healthier choices. *The National Institute on Alcohol Abuse and Alcoholism* describes individual-level strategies as those that target changes in attitudes or behaviors related to alcohol use. Intended outcomes are generally to decrease an individual's alcohol use and/or alcohol-related risk-taking behaviors, thereby reducing harmful consequences. Environmental-level strategies aim to reduce underage and excessive drinking at the population level by changing

the context (i.e., places, settings, occasions, and circumstances) in which alcohol use occurs, thereby reducing consequences. The MSAs should consider both approaches and not limit efforts to just legally-aged drinkers, but instead consider and employ appropriate interventions for cadets and midshipmen of all ages.

While each Academy has its unique set of circumstances, collaboration and information sharing between MSAs can be beneficial. The MSA Prevention Summit, hosted in January 2017 at USAFA, was a commendable example of how the Academies can collaborate and leverage each other's resources and knowledge. The summit provided an opportunity for the MSAs (along with U.S. Coast Guard Academy and U.S. Merchant Marine Academy) to acquire information from subject matter experts and share lessons learned. This event focused on prevention programs and practices that could be adopted or adapted at each Academy. Keeping these lines of communication open provides the opportunity to learn from each other's experiences as prevention efforts evolve.

Way Forward on Sexual Harassment Prevention

The Department encourages all three MSAs to strengthen sexual harassment prevention and response efforts. Such activities should be part of an overall effort to improve collaboration amongst all prevention training programs.

While sexual harassment does not always rise to the level of a criminal offense, it nevertheless may be harmful to the target of

the behavior and may disrupt the organizational climate of the unit. In some cases, sexual harassment can escalate to other, more problematic behaviors. The SAGR consistently finds a strong positive correlation between the occurrence of sexual harassment and the occurrence of sexual assault in MSA settings.

To ensure maximum benefit and reach within the academic environment, greater focus on sexual harassment prevention is needed. While sexual harassment is different from sexual assault, results from past SAGR surveys suggest that efforts taken to prevent sexual harassment may have the added benefit of preventing sexual assault as well. (Coker, Bush, Cook-Craig, DeGue, Clear, Brancato, Fisher, and Recktenwald, 2017).

SAGR Focus Groups indicate that students want training that provides clear and concise definitions of sexual harassment, as well as skills to handle and/or intervene with sexual harassment at the peer level. Cadets and midshipmen should also understand how sexual harassment differs from sexual assault and other forms of misconduct and what reporting options and support services are available.

Going forward, the Academies should include sexual harassment as part of their prevention strategy. It should include information on what constitutes sexual harassment, communication skills and behaviors that reduce harassment, and other things cadets and midshipmen can do to promote a culture where sexual harassment is not tolerated.

Goal Two: Advocacy and Victim Assistance

Summary of Advocacy and Victim Assistance Observations from On-Site Assessment and Focus Groups

The MSAs' response systems are intended to empower victims and facilitate recovery. The objective of these systems is to deliver consistent and effective victim support, response, and reporting options. The aim is to provide high quality services and support, instill confidence and trust, strengthen resilience, and inspire victims to report.

The ability to empower and assist victims relies on their willingness to report. To this end, the Department has issued policies and instituted programs to encourage greater reporting of sexual assault. These actions have driven greater reporting in the active duty force over the past ten years. For example, estimates indicate that one in three victimized Service members made an Unrestricted or Restricted report in 2016, up from one in 14 in 2006. It should also be noted that the occurrence of sexual assault has also declined since 2006, as measured by scientific surveys of the military population. This indicates that the increase in reporting is not due to an increase in crime, and may reflect greater victim confidence in the Department's response system.

While the absolute number of reports has increased over the past 10 years, the proportion of cadets and midshipmen electing to make an Unrestricted or Restricted Report has remained about one in eight. Unlike the decline seen in the active duty force, the estimated prevalence (occurrence) of sexual assault at the MSAs (measured by proxy as unwanted sexual contact (USC) has remained fairly consistent.

In APY 16-17, the MSAs received 112 reports of sexual assault, including 69

Unrestricted Reports and 43 Restricted Reports. Eight reports of sexual assault were for incidents prior to military service. USMA received 50 reports (29 Unrestricted and 21 Restricted Reports), USNA received 29 reports (20 Unrestricted and nine Restricted Reports), and USAFA received 33 reports (20 Unrestricted and 13 Restricted Reports). The 112 reports are an increase over the 86 total reports received last year. Most of the increase in reporting occurred at USMA, which received 24 more reports this year. USNA and USAFA each had an increase of one report this year.

As previously indicated, some of the increase in reporting may be due to an increase in the estimated past-year prevalence of sexual assaults. The 2016 SAGR Survey indicated that self-reported rates of USC for women and men at each Academy increased. During the 2017 SAGR Focus Groups, reactions to the increased prevalence rates were mixed, meaning that some participants were surprised by that finding but others were not. However, participants had little surprise over the comparative increase in USC during sophomore year, compared to freshman year. At each Academy, freshman participation in upperclassman activities are restricted and their schedules are strictly regimented. Inappropriate interaction with freshmen is referred to as "fraternization," and carries a heavy penalty. There are much fewer restrictions on sophomore activities, which may also increase their exposure to risky situations. In fact, this bump in USC rates between freshman and sophomore years led to a past Secretary of Defense directive for sophomores to receive a specialized preventive intervention.

While it is difficult to pinpoint why reporting increased so much at USMA, leadership believed standing up the SHARP Resource

Center (SRC) may be a contributing factor. The SRC co-locates the USC Sexual Assault Response Coordinator (SARC) and Victim Advocate in a centrally situated, privately accessible office space in the Cadet Area. Previously, the SARC and SAPR Victim Advocate (VA) were located in different buildings. Further, the SAPR VA was in Taylor Hall, where the offices of the Superintendent and Dean are located. By moving the offices to a more accessible, less observable place, more cadets may have felt comfortable reporting sexual assault allegations.

USMA also took the important step of clarifying its reporting policies. A July 7, 2016, policy letter from the Superintendent acknowledges that victims of a sexual assault may confide in someone about the assault before considering whether to file a Restricted or Unrestricted report. In order to foster an environment that supports the victim throughout the entire process of dealing with an assault, USMA personnel who interact with cadets in non-chain of command channels such as staff, faculty, or coaches are not required to report the incident. Instead, these personnel should encourage the victim to immediately contact the SARC.

The number of reports did not vary significantly at the Naval Academy. USNA continues to employ a robust victim assistance program. In particular, the Department was encouraged by USNA's partnership with Mercy Hospital, Baltimore, MD. The on-site visit with the director of the Forensic Nurse Examiner program disclosed that USNA had an excellent working relationship with the facility.

During the on-site assessment, the Department also noted that SARCs at each MSA have the ability to offer victims a sanctioned reason for class absences. These short reprieves provide victims with necessary time to heal, while also preserving victim confidentiality. The Naval Academy should ensure that this practice is codified in policy.

Late in the academic year, allegations about problems within the USAFA SAPR office were reported to academy leadership. A commander directed investigation disclosed significant evidence of mismanagement and unprofessionalism that negatively impacted victim advocacy and assistance rendered to a number of cadets. USAFA took action to address these personnel related issues.

During the on-site visit, USAFA leadership emphasized their commitment to supporting cadets and discussed their remediation plan for victim care. A temporary SARC and two victim advocates have been placed in the academy's SAPR office. In addition, leadership tapped into the academy's resource network (Peak Performance Center (PPC), chaplains, and Special Victims' Counsels (SVC) among others) to ensure victims receive proper support and care. USAFA and Headquarters Air Force are working to expedite a re-staffing solution for the SARC office.

At the cadet level, USAFA's Personal Ethics Education Representative (PEER) Program serves as a resource for support, outreach, and referrals for cadets, by cadets. All PEER cadets volunteer and undergo a rigorous eligibility review process. PPC clinical staff provides annual training to PEERs that includes helping and referring cadets dealing with depression, anxiety, sexual assault, sexual harassment, and other problems. All cadet squadrons are equipped with two PEERs who are trained to be a referral source to cadets in need of help. A few cadets and faculty members noted that PEERs are trustworthy resources, though it depends on the squadron as to whether the PEERs are taken seriously as a support resource by other cadets.

The USAFA Judge Advocate (JA) office has played an important role in training commanders and other parties in sexual assault response. For example, the JA office developed a scenario-based training for new commanders, which included how to handle

issues that a commander might face if a sexual assault occurred in his/her squadron.

All three Academies have a SVC or Victims' Legal Counsel (VLC) on the academy grounds. However, SVCs and VLCs often support clients at locations other than the Academies as well. USAFA obtained a dedicated SVC and Special Victims' Paralegal (SVP) during APY 15-16. However, in APY 16-17, the SVC and SVP office relocated to the cadet area from Peterson Air Force Base, which gave cadets greater visibility and accessibility to their services.

Way Forward on Advocacy and Victim Assistance

Way Forward on Sexual Assault Advocacy and Victim Assistance

Cadets and midshipmen in the 2017 SAGR Focus Groups expressed confidence in the response services at each Academy. Students in the focus groups were aware of their options to file a Restricted or Unrestricted report and how to access official resources. However, some faculty and staff, academic and athletic faculty, expressed less confidence in knowing their role in the response system or if they were a mandatory reporter for sexual assault.

The 2017 SAGR Focus Groups also identified several areas of concern that present potential barriers to increasing reporting by cadets and midshipmen. Consistent with responses on the 2016 survey, cadets and midshipmen in the focus groups endorsed fear of gossip and peer repercussions as a reason why victims may not report. In addition, skepticism toward victims and ostracism from peers are also prime concerns. Cadets and midshipmen had further concerns about how reporting a sexual assault might also bring about punishment for collateral misconduct (i.e., underage drinking) associated with an incident, as well as how reporting could impact career prospects in the short and long term.

To summarize, focus group and on-site assessment observations found that cadets and midshipmen are hesitant to attract any form of negative attention from their peers. In addition, they are equally hesitant to report a matter that might curtail another cadet or midshipman's academy education or impending military career. As a result, victims of sexual assault appear to engage in a transactional analysis of whether they should be loyal to fellow academy students and let infractions pass, or be loyal to themselves and the institution and seek assistance. As a result, some victimized cadets and midshipmen tend to press on with their lives and leave an incident unreported, especially for situations they consider to not be serious enough to bring to official attention. The Department acknowledges that reporting may never be a consideration for some victims of sexual assault. However, that choice should be made based on what is appropriate for the individual and not out of fear of the reaction by peers. Academy plans in response to the June 20, 2017 USD(P&R) memorandum should reflect an effort to address these concerns as part of their initiative to increase reporting of sexual assault and harassment.

Victims' privacy is of utmost importance. All Academies should ensure that records of sexual assault and harassment are compliant with laws and privacy, security, and records management policies. Any sexual assault case tracking that occurs outside of Defense Sexual Assault Incident Database (DSAID), for the purposes of briefing leadership, should be maintained separately for Restricted and Unrestricted reports. To further protect privacy, all electronic files containing personally identifiable information (PII) should be password protected, encrypted, and stored in systems that appropriately safeguard PII. DSAID is the Department's official database for reporting, managing, tracking, and protecting data drawn from sexual assault reports. Alternate data tracking systems are not authorized for use unless they meet Department standards for protection of PII. The Department welcomes any

recommendations to improve DSAID and increase user satisfaction with the system.

After filing a report, victims should receive timely, relevant case updates. In some cases, DoD observed that relevant parties do not consistently receive updates on the status of victims' Unrestricted Report cases. The Case Management Group (CMG), a body referred to differently by each Service, is an important resource for those who provide case status updates to the victim. Keeping commanders and response personnel well informed is an important component of victim care. Thus, the Academies should ensure the appropriate stakeholders are present and participating during CMGs.

Way Forward on Sexual Harassment Advocacy and Victim Assistance

According to the 2016 SAGR survey, 48 percent of female cadets/midshipmen and 12 percent of male cadets/midshipmen experienced some form of sexual harassment in the past year. The experiences suggest that some respondents believe the sexually harassing behavior was persistent and severe, and that a reasonable person would have considered the behavior inappropriate. However, few cadets and midshipmen chose to file a complaint. The survey also found that slightly less than half (47 percent) of cadets/midshipmen who indicated experiences USC also experienced behavior in line with professional reprisal, ostracism, and/or maltreatment. During the on-site assessment, Equal Opportunity Advisors and Military Equal Opportunity Officers suggested that fear of retaliation and ostracism prevent cadets and midshipmen from reporting.

SAGR Focus Groups confirmed that cadets and midshipmen believe sexual harassment is an issue that should be handled one-on-one. However, participants also noted that they were unsure about what constitutes sexual harassment, that sexual harassment definitions used in training are unclear, and the reporting process is confusing. While cadets and midshipmen are unlikely to report sexual

harassment, some voiced skepticism that there is a link between letting sexual harassment go and more serious harm in the future.

MSAs should ensure that sexual harassment training includes clear and concise definitions of sexual harassment, as well as scenario-based training on how to address and resolve sexual harassment allegations. The Department encourages resolution of sexual harassment complaints at the lowest level; however, training should also emphasize that sexual harassment behaviors are part of a continuum of harm and should be escalated up the chain of command as warranted. The Department mandates that the Services offer a variety of resources (e.g. a toll-free 24/7 hotline and the chain of command) to those members who do not want to directly confront the alleged harasser and/or prefer assistance in resolving the matter themselves. MSAs should consider how to best provide such services to cadets and midshipmen. This is a fundamentally different approach than currently exists at the MSAs, so this may require considerable planning and resourcing efforts.

As with sexual assault reporting, the location of the office where cadets and midshipmen obtain services can create a barrier for victims. The Academies should assess the location of the Equal Opportunity (EO) office to determine whether it facilitates or hinders seeking advice and guidance or filing a complaint. For example, at USAFA the EO office and resources are located several miles away from the cadet area, making it highly unlikely that any cadet could reasonably access its services. EO staff further indicated that having their offices physically located in close proximity to the academy's command structure may deter some cadets and midshipmen from entering the office due to fear of being seen by a peer or leadership.

Another barrier to reporting sexual harassment is lack of information. Cadets and midshipmen need to know how to seek assistance. Therefore, the 24/7 help-line

number and information about the processes of filing a complaint must be conspicuously posted consistent with USD(P&R) policy memorandum "Prevention and Response to Sexual harassment," dated September 19, 2014. Displaying procedures and available resources may also serve to encourage those who are reluctant to report sexual harassment allegations to consider available options.

A concerted and cohesive focus on sexual harassment response programs will aid and empower cadets, midshipmen, and leadership to address allegations of sexual harassment and other problematic behaviors.

Goals Three and Four: Investigation and Accountability

Investigation and Accountability Observations from On-Site Assessment and Focus Groups

Alleged sexual assaults should be investigated in a manner that minimizes the potential for victim re-traumatization while ensuring a just and fair process for alleged offenders. MSAs should also aim to hold offenders appropriately accountable.

At the MSAs, Unrestricted reports are investigated by Military Criminal Investigative Organizations (MCIO). The Department observed that MCIOs at each Academy received sufficient training on how to investigate sexual assault cases. At USMA, four out of five agents attended the CID Special Victims Unit Investigative Course at Ft Leonard Wood, MO. All three of the agents assigned to the USNA Naval Criminal Investigative Service (NCIS) office have attended the NCIS' Family and Sexual Violence training, which included topics such as the effects of trauma and stress on the victim and appropriate interviewing techniques. At USAFA, nine out of the 11 agents assigned attended the Office of Special Investigations' advanced sex crimes investigator training. The Department finds this level of agent preparation to be exceptional and reflective of a substantive MCIO commitment to providing high quality investigative support to the MSAs.

Each Academy also demonstrated a good working relationship among investigative and victim assistance personnel. Lines of communication remain open between the investigative officers, the Staff Judge Advocates, and SAPR personnel. Appropriate victim investigative and military justice personnel attend the case management group and ensure that case updates are appropriately accomplished.

Focus group participants voiced a concern about the difficult and often lengthy reporting process. Faculty and staff participants noted that the length of a sexual assault investigation caused angst among cadets and midshipmen. Cadet and midshipman participants also indicated that the reporting process was intimidating or stressful. Cadets and faculty members reported the lack of privacy inherent to the Unrestricted reporting process could make cadets less likely to report sexual assault or sexual harassment. Cadets do not want their peers to know the details about what happened; they are embarrassed and concerned people will not see them in the same way, and they will be forever associated with the incident.

Retaliation

Cadet and midshipman focus group participants primarily discussed a form of retaliation known as ostracism. Ostracism involves exclusion from social acceptance for making a report or intending to report protected communication, such as a sexual assault allegation. Fear of ostracism may be acute at the MSAs, since many focus group participants noted that cadets and midshipmen rely on the help and camaraderie of classmates to graduate.

Cadets and midshipmen students were also concerned that rumors of involvement with a sexual assault case could harm their careers and follow them in their future roles as officers. Due to the Academies' small size, rumors travel quickly via word-of-mouth and victims are concerned about loss of anonymity.

Way Forward on Investigation and Accountability

The Department did not have any overarching observations for the MSAs on sexual assault investigation and accountability.

Way Forward on Sexual Harassment Investigation and Accountability

While the MSAs have prepared and experienced investigative personnel, the

Department noted that allegations of sexual harassment do not receive the same emphasis. DoD policy encourages resolution at the lowest level, yet leaders need to ensure that cadets and midshipmen do not perceive that their allegations are disregarded. Further complaints of sexual harassment require response from command to halt their potential progression into a more serious matter.

Goal Five: Assessment

Summary of Assessment Observations from On-Site Assessment

Assessment is an enduring process of data collection and analytics designed to improve program effectiveness. The aim is to incorporate responsive, meaningful, and accurate systems of measurement and evaluation into other program components. Effective assessment ensures that programs and services are adaptable, flexible, and oriented toward achieving success while also preserving unique Military Service requirements.

The MSAs employ survey data from a variety of sources, including the *Academy Defense Equal Opportunity Climate Survey*, (academy DEOCS) which assesses cadet/midshipman unit climate on a wide variety of topics. The MSAs also use data from the biannual *SAGR Survey* and Focus Groups. Focus groups provide leadership with cadets, midshipmen, and faculty's perceptions of SAPR programs. The alternating schedule between survey and focus group administration provides a well-rounded approach to data collection, targeted at reducing survey fatigue and encouraging participation in data gathering efforts.

Way Forward on Assessment

All three Academies require a centralized resource to gather and assess data on outcomes associated with their efforts to prevent and respond to sexual assault and sexual harassment. This function should have a regular reporting requirement to academy decision makers who are empowered to recommend changes to academy policies, programs, and practices. In sum, an assessment resource should not only gather data and assess it, but also should make recommendations to academy leadership.

USMA and USNA should consider a Superintendent briefing on academy DEOCS survey results, similar to what DoD observed at USAFA. Once the Superintendent has been briefed, results should be disseminated down the chain of command. Cadet unit officers and senior enlisted leaders should be given the tools and direction they need to promote climates of dignity and respect within their units. Holding unit officers accountable for the climate of their units provides an opportunity to apply and learn leadership lessons in real time. Sharing how results of the surveys and focus groups inform the academies' decisions also conveys that cadet and midshipman voices are being heard and may lend itself to greater participation in future survey and research endeavors.

Conclusion

Over the years, the Academies have worked toward increasing cadet and midshipman awareness of sexual assault and sexual harassment and building a response system that meets victims' needs. Many of the recommendations cited in this report focus on optimizing academy prevention systems to better reduce the occurrence of sexual assault and sexual harassment.

On June 20, 2017, the Department released a memorandum to the Secretaries of the Military Departments requesting that each Military Department submit a plan to address the following areas at the MSAs: promoting

responsible alcohol choices, reinvigorating prevention, enhancing a culture of respect, and improving a culture of sexual assault and sexual harassment reporting.

Each Academy remains committed to ensuring that victim care remains of the highest quality. Further, reducing the occurrence of sexual harassment and USC at the Academies requires new approaches in primary prevention. While these initiatives will require a sustained effort and long-term view, the Department is committed to working with the Academies in their efforts.

Prepared by the Department of Defense
Sexual Assault Prevention and
Response Office (SAPRO) and the
Office of Diversity Management and
Equal Opportunity (ODMEO)

Learn More:
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IMMEDIATE RELEASE

DOD Releases Report on Sexual Harassment and Violence at Military Service Academies

Press Operations

Release No: NR-039-18
Feb. 7, 2018

Today, the Department of Defense released its Annual Report on Sexual Harassment and Violence at the United States Military Service Academies for academic program year 2016 – 2017. This year’s report contains the results of the department’s on-site assessments of the Academies and outcomes of focus groups of cadets, midshipmen, faculty, and staff.

The report contains results for the United States Military Academy, United States Naval Academy, and United States Air Force Academy.

“We are absolutely committed to making the Academies safe,” Robert Wilkie, Under Secretary of Defense for Personnel and Readiness, said. “It is imperative that these future officers understand how eliminating sexual harassment and assault advances our ability to protect the nation.”

The three Academies received 112 reports of sexual assault involving cadets or midshipmen in academic program year 2016-2017, an increase from 86 reports the previous year. Most of the reporting increase occurred at the U.S. Military Academy following a change in reporting policy and the relocation of its victim assistance office.

Overall, DOD’s assessment found that the academies complied with policies addressing sexual assault prevention and response. However, the Air Force Academy’s victim assistance efforts during the past academic program year did not comply with policy. Air Force Academy leadership has taken action to rectify the problems it detected within its sexual assault prevention and response office.

The [complete report](#) is available at sapr.mil. For academy specific information, contact the individual military services at 703-697-2564 for Army, 703-697-5342 for Navy, and 703-695-0640 for Air Force.

Members of the DoD community who have been affected by sexual assault can access 24/7 anonymous support through the DoD Safe Helpline at safehelpline.org, or by calling 877-995-5247.

MILITARY SEXUAL TRAUMA [MST]

- What judges should know about MST
 - Definition of MST comes from 38 USC § 1720D, but in general it is sexual assault or repeated threatening, sexual harassment that occurred during a veteran's military service
 - MST is an experience, not a diagnosis
 - Both men & women experience MST
 - Among some Veterans, MST is associated with:
 - Suicide
 - Both mental & physical health problems, even decades later
 - Drinking & drug use
 - Aggressive outbursts
 - Confusing, sometimes reckless, behaviors
 - Decrease in normal coping strategies
 - Male victims questioning their sexual identity
 - An MST history can affect response to court-ordered programs
 - MST victims suffer with power & control issues
 - MST is frequently underreported; victims are often reluctant to disclose
- Every VA healthcare facility provides treatment for mental and physical health conditions related to MST, even if not reported at the time of occurrence; Veterans do not need documentation of their experiences or to have a VA disability rating to receive treatment
- The Veterans Health Administration [VHA]¹ outpatient, inpatient and residential services for treatment related to MST²
 - A vet just asks for treatment for MST & it will be given³
 - All treatment for MST is provided free of charge
 - Every VA facility has an MST Coordinator to assist in accessing care. Veterans with questions about eligibility or other issues that might interfere with accessing services should contact the facility MST Coordinator to discuss possibilities
 - VHA Vet Centers⁴ may be a good option for active duty personnel who wish to keep treatment confidential from the Department of Defense [DOD]
 - Most VHA Vet Centers are staffed by veterans; treatment is provided in a non hospital environment
 - Vet Centers DO NOT share their treatment records with the DOD

¹ Department of Veterans Affairs has three main subdivisions: 1) Veterans Health Administration [VHA]; 2) Veterans Benefits Administration [VBA]; and, 3) National Cemetery Administration. The media frequently confuses the evidentiary burden and documentation required to receive MST-related disability compensation from VBA with the free MST-related treatment available through VHA, which does not require any documentation of the MST experiences.

² www.mentalhealth.va.gov/msthome.asp

³ The only clear bar to treatment is a dishonorable discharge.

⁴ To find the nearest Vet Cent: http://www.va.gov/landing2_locations.htm

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To Combat Sexual Assault in the Military, Womanpower Is Essential

By Eileen C. Moore

The Department of Defense 2014–2016 Sexual Assault Prevention Strategy lists “Manpower” as the first necessary resource to combat sexual assaults in the military (tinyurl.com/y9hzvgxc). Perhaps. But it is women who should have the power to fight back. Under Article 1, Section 8 of the U.S. Constitution, Congress can make whatever rules it deems appropriate for the military.

In the civilian world, a woman who is sexually assaulted has several ways to seek justice. She can call the police. She can watch her assailant’s prosecution. She has the opportunity to sue him. After the assault, she can try to mend and recuperate in supportive surroundings. Sadly, none of these options may be available to a woman sexually assaulted in the military.

The serious problem in the military was described by one of the three women author Helen Thorpe wrote about in *Soldier Girls* (Dreamscape, 2014). She said predatory men are considered a kind of friendly fire. Another woman in Thorpe’s book said that as soon as she signed her enlistment contract, the Army recruiter sexually assaulted her. In *Ashley’s War* (Harper, 2015) author Gayle Tzemach Lemmon writes about a woman raped at a Marine Corps ball. He had previously done the same thing to another woman Marine. Because of frequent assignment changes and the uniqueness of military culture, predators, who usually outrank

their prey, are able to wander about bases freely and escape detection.

REPORTING ASSAULTS IN THE MILITARY

One way to report a sexual attack is to go through the chain of command. This unrestricted reporting prompts an official investigation. Retaliation usually results. The victim is perceived as disloyal and betraying the unit (Dwight Stirling and Laura Riley, “Less Than Honorable,” *Los Angeles Lawyer*, September 2016 (39:6) at 32). She is taunted with such slurs as “lying crazy whore” (Emily Hansen, “Carry That Weight: Victim Privacy Within the Military Sexual Assault Reporting Methods,” *John Marshall Journal of Information Technology and Privacy Law*, 2011 (28:4), at 551; *Cioca v. Rumsfeld*, No. 2011cv00151 (E.D. Va., filed Feb. 15, 2011). In an incident described in *Soldier Girls*, a woman reported a man who raped her while she was drunk. The troops lined up behind him. He was convicted of committing adultery. She was shunned and given a dead-end job.

An alternative way to report a sexual assault, restrictive reporting, does not trigger an official investigation. There is no report to command or military law enforcement, only to medical and mental health providers. There is no police report or investigation (Stirling and Riley, *supra*). The victim may seek medical attention and counseling, skipping the harassment and retaliation. Although

restrictive reporting ensures confidentiality on paper, the reality is commanders often demand the identities of the victim and the perpetrator. Word gets around, and victim persecution ensues (Hansen, *supra*, at 554).

Not surprisingly, victims of sexual assaults in the military are inhibited from reporting them (*id.* at 591). It is drilled into new recruits to put the good of the group above personal interests. The Department of Defense estimated that in 2014, 75 percent of those assaulted did not make a report to leadership or law enforcement (Stirling and Riley, *supra*).

PROSECUTING ASSAULTS IN THE MILITARY

It is little wonder women do not report sexual assaults in the military. Even if they steel themselves for the de rigueur bullying, military prosecutions can be maddening, if they happen at all.

The Marine Corps refused to prosecute the repeat rapist who attacked the woman Marine described in *Ashley’s War*. She ended up going to the San Diego Sex Crimes Unit. In civilian court, the rapist was charged with six counts of sexual assault. Two days into the trial, he pled guilty and was sentenced to three years in prison (*People v. Douglas A. Dowson* (unpublished, 2006 WL 2673277)).

In the case of *United States v. Benjamin Johnson* (54 M.J. 67), the Army prosecuted before a jury and secured a conviction. The staff sergeant was

convicted of having intercourse three times with a 14-year-old girl. He was also convicted of assault and battery of a military woman he outranked, supervised, and to whom he regularly gave back rubs while she worked at her desk. She pulled away from him as best she could, without saying anything. He did not appeal his rape convictions. The Court of Criminal Appeals affirmed his assault and battery conviction, but the Court of Appeals for the Armed Forces reversed because the woman didn't verbally protest. The dissenting judge noted the staff sergeant was in a power relationship with the woman, not a dating relationship, and there was nothing in the record to indicate the woman either invited or consented to being repeatedly massaged.

CIVIL SUITS

Unlike civilian counterparts, women who are sexually assaulted in the military cannot sue. Under the Federal Tort Claims Act (FTCA), traditional sovereign immunity is waived, and the government is usually liable for tortious conduct committed by its employees (28 U.S.C. § 1346(b)). In 1950, however, the U.S. Supreme Court carved out a judicial exception to the FTCA's immunity waiver in *Feres v. United States* (1950) 340 U.S. 135. In *Feres* the Court determined the government is not liable for injuries to "servicemen" where the injuries are in the course of activity incident to service.

Servicewomen have not fared any better than servicemen under the *Feres* doctrine.



istock

BOYS WERE ALWAYS BOYS

I've never forgotten the reaction of the executive officer of the compound when I reported to him what happened. I had spent my first night in country curled in a corner sobbing after two officers, a major and a captain, tried to break into the transient nurses' quarters, which had no telephone. At first, it was polite knocking with "do you girls want to have a drink with us?" It deteriorated to words that began with a "c" or an "f," until we heard the sound of wood cracking as they were breaking into the room where three of us were trying to sleep. I ended up jumping out the window and dragging the perimeter guard by his Sam Brown belt to the outside of the quarters' window. When he saw the officers climbing into our room, scared out of his mind himself, the private politely saluted and apologized for disturbing them. I whimpered something like, "don't salute them; shoot them." When it was over, I curled up and wept until I heard the roosters crowing and sought out the XO. The twinkle in his eyes, combined with the sound of his sucking his tongue through his teeth, screamed out to me what he was thinking: "Why did I have to miss all the fun?" Early on, I knew I was on my own.—Saigon, 1966

In a 2013 case, a servicewoman was required to perform physical training while she was pregnant, against doctor's orders. Army personnel were told she had a "high risk" pregnancy but still required her to perform strenuous physical activities. At one point, she underwent a procedure to prevent premature birth. Ultimately, her son was born prematurely and died 30 minutes after birth. The baby's father filed an action in federal district court on behalf of himself and the baby's estate, avoiding having the servicewoman sue the government herself. The Ninth Circuit Court of Appeals ruled against the father and son, stating that "unless and until Congress or the Supreme Court choose to 'confine the unfairness and irrationality that [*Feres*] has bred,' we are bound by controlling precedent" (*United States v. Ritchie*, 733 F.3d 871 (9th Cir., 2013)).

In the context of military sexual assaults, a woman in the National Guard was assaulted by a man who outranked her while on temporary duty. Ashamed, she did not report the incident. For the next eight years, the sergeant made constant sexual insinuations and invitations, which she didn't report either, out of fear of both losing her job and damaging her reputation. When she did not answer his telephone calls, he had her transferred closer to him. One night, he raped her. She brought an action for violation of her civil rights. The federal district court found the woman's claims arose from injuries incident to military service and

were barred by the *Feres* doctrine (*Perez v. Puerto Rico Nat. Guard*, 951 F.Supp. 2d 279 (U.S. District Court, D. Puerto Rico, 2013)).

In 2011, 28 military sexual assault victims filed a class action against Donald Rumsfeld and Robert Gates. They alleged these former secretaries of defense fostered an environment that resulted in the plaintiffs becoming victims of sexual assault, violating their rights under the First, Fifth, and Fourteenth Amendments (*Cioca v. Rumsfeld*, No. 2011cv00151 (E.D. Va., filed Feb. 15, 2011)). Their claims were made pursuant to the 1971 case of *Bivens v. Six Unknown Agents of the Federal Bureau of Narcotics* (403 U.S. 388), which permits plaintiffs to recover damages against federal officers who violate constitutional rights. Stating that the "unique disciplinary structure of the military establishment" prevented the case from proceeding, the federal trial court dismissed it (*Cioca v. Rumsfeld* (2011; WL 13137348) U.S. District Court, not reported). The Fourth Circuit Court of Appeals affirmed, noting that Congress has not created an express cause of action as a remedy for this type of claim, and that "it is Congress, not the courts, that the Constitution has charged with that responsibility" (*Cioca v. Rumsfeld* (2015) 720 F.3d 505).

RECOVERY . . . OR LACK THEREOF

The military and veterans' system is geared against smooth recovery for

women who are sexually assaulted in the military. Their disability benefits, housing, education, and employment opportunities and health care benefits are adversely affected.

When making a disability claim with the Department of Veterans Affairs (VA), there is significant disparity in the rates that post-traumatic stress disorder (PTSD) claims are granted, depending on whether a claim is based on military sexual trauma or some other stressor (*Service Women's Action Network v. Secretary of Veterans Affairs* (2016) 815 F.3d 1369). A federal regulation sets a higher proof requirement for military sexual trauma survivors than for other veterans disabled by PTSD. Veterans whose PTSD is based on military sexual trauma must provide corroborating evidence of the sexual assault, but no such corroboration is required for those claiming PTSD from other stressors (38 C.F.R. § 3.304(f)(5)). The vicious effect of the military's treatment of sexual abuse comes full circle with this corroboration requirement. Because victims are in such immense fear of retaliation, the great majority do not report the incident, and because they do not report it, they are unable to provide the required corroboration. Making matters worse, formal investigations of sexual assaults are destroyed by the military after two years, rendering it impossible to provide original evidence of a sexual assault to the VA (Hansen, *supra*, at 573).

Following an attack, military women often have no place to find solace and care, ending up homeless civilians. Many women veterans feel unsafe in environments with significant numbers of males outnumbering them, such as in veterans' housing facilities (Cacilia Kim and Elizabeth Kristen, "A Safer House," *Los Angeles Lawyer*, January 2017 (39:10) at 22). The small number of women veterans who do enter these facilities risk exacerbating preexisting injuries, such as PTSD resulting from military sexual trauma, by living while surrounded by male veterans. But some in the housing arena argue that segregated housing for women veterans amounts to discrimination under the Fair Housing Act (*id.*). Indeed, that was the landlord's defense

in a case where the victim of a military sexual assault was again assaulted while trying to recuperate in a veterans' facility housing 122 male and six female veterans (*Sharon T. v. New Directions Inc.* (2016; WL 158223) U.S. District Court, not reported in F.Supp.3d.).

In addition to all the other problems the victim of a sexual assault faces, employment success is dimmed. After a sexual assault, a woman's job performance can be affected by depression, misuse of drugs or alcohol, insubordination, or absenteeism (Stirling and Riley, *supra*). Her employment chances are further hampered because her educational opportunities are often diminished. Whether or not she reported the sexual assault, she routinely ends up separated from the military with a less-than-honorable discharge, which renders her ineligible for the extraordinary educational benefit that pays for four years of college tuition and up to \$2,000 a month stipend (Stirling and Riley, *supra*).

Finally, women's health care needs are distinct from men's. Health care within the VA is designed to serve mostly men (Helen Thorpe, "The V.A.'s Woman Problem," *The New York Times*, Opinions, August 15, 2015). The Women Veterans Committee asked the U.S. Senate Veterans Affairs Committee to make sexual trauma care readily available to all veterans who need it and to require the VA to train its employees to treat sexual trauma (tinyurl.com/y9dgwa5z). But if a woman has a less-than-honorable discharge, she may also be excluded from critical VA health care benefits (Dwight Stirling, "Serving the Veteran Community," *Orange County Lawyer*, November 2014, vol. 56 at 14).

CONCLUSION

To a large extent, women are still outsiders in the misogynistic military culture (Hansen, *supra*, at 568) that includes a gendered vocabulary in which "girls" and "ladies" describe substandard performers. Toughness is associated with being a man (Stirling and Riley, *supra*). Drill instructors put down male recruits by calling them "pussies" or "sissies" (Megan N. Schmid, "Combating a Different Enemy: Proposals to Change the

IF CONGRESS WANTS TO EMPOWER MILITARY WOMEN, IT CAN

"The case arises in the context of Congress' authority over national defense and military affairs, and perhaps in no other area has the Court accorded Congress greater deference. . . . Article I, section 8 of the Constitution commits exclusively to the Congress the powers to raise and support armies, provide and maintain a Navy, and make rules for Government and regulation of the land and naval forces, and pursuant to these powers it lies within the discretion of the Congress to determine the occasions for expansion of our Armed Forces, and the means best suited to such expansion should it prove necessary."—*Rostker v. Goldberg* (1981) 453 U.S. 57

The issue before the Supreme Court in *Rostker* concerned women in the military. In 1975, registration for the military draft was discontinued. But after the Soviet Union invaded Afghanistan in 1980, President Jimmy Carter determined it was necessary to reinstitute the registration process. President Carter requested funds for registration of both men and women for military service, but Congress only allocated funds for the registration of men. A class action was filed by a group of young men from Pennsylvania. They claimed their rights to Equal Protection and Due Process were violated in that only males were subject to registration for the draft, and therefore there was an increased probability of the males actually being inducted because the pool of draft eligibles was decreased by the exclusion of females. Three days before registration was to commence, a federal court ordered the government to cease the registration process. The issue was taken to the Supreme Court. In 1981, *Rostker v. Goldberg* held that Congress had acted well within its constitutional authority to raise and regulate armies and navies when it authorized the registration of men but not women. The Court stated that Congress conducted hearings and held floor debate in response to the president's request for authorization to register women, and its decision to exempt them was not the accidental byproduct of a traditional way of thinking about women.

Culture of Sexual Assault in the Military," *Villanova Law Review*, 2010 (55:2) at 475). Rules are sometimes different. A woman in *Soldier Girls* described how during deployment men were permitted to wear only T-shirts in the hot weather, but women had to wear their camouflage shirts over their T-shirts. Photos of barely clad women were all over, and pin-ups from *Sports Illustrated* decorated the motor pool. A former Marine described his platoon's "slut wall" of raunchy photos in a newspaper article, "Every interaction I had with female Marines in basic training, and every

reference to them, seemed intended to foster contempt" (Alexander McCoy, "More Than Just Marines Behaving Badly," *The New York Times*, Opinions, March 8, 2017).

Our armed forces are long overdue for major changes. As things stand now, women in the military are more likely to be raped by fellow soldiers than killed by enemy fire (Hansen, *supra*, at 569). Military women need to be empowered. All the problems faced by victims of military sexual assaults could be remedied if only Congress had the willpower to create womanpower. ■



Justice Eileen C. Moore (eileen.moore@jud.ca.gov) sits on the California Court of Appeal. In a former life, Justice Moore served as a combat nurse in Vietnam in the Army Nurse Corps. She was awarded the Vietnam Service Medal, the National Defense Service Medal, and the Cross of Gallantry with Palm. She is a member of Vietnam Veterans of America. Since 2008 she has chaired the Judicial Council's Veterans Working Group for California Courts. She has volunteered as a mentor for veterans in Veterans Treatment Courts. In 2015 she received a Benjamin Franklin award for her book, *Gender Results*.