

MILITARY SEXUAL HARASSMENT AND SEXUAL ASSAULT

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SEXUAL HARASSMENT AND SEXUAL ASSAULT IN THE MILITARY

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MILITARY SEXUAL HARASSMENT

Sexual harassment continues to be one of the most serious problems facing women in the military. Despite an official policy of 'zero tolerance,' harassment is often ignored and sometimes condoned in military culture. The Department of Defense (DoD) considers sexual harassment a form of sexual discrimination, prohibited under its Equal Opportunity (EO) policy, which is set out in DOD Directive 1350.2. The Directive defines harassment as:

“[a] form of sex discrimination that involves unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature when:

“Submission to such conduct is made either explicitly or implicitly a term or condition of a person's job, pay, or career, or

“Submission to or rejection of such conduct by a person is used as a basis for career or employment decisions affecting that person, or

“Such conduct has the purpose or effect of unreasonably interfering with an individual's work performance or creates an intimidating, hostile, or offensive working environment.”

Each branch of the service has regulations to implement the Directive; each is required to follow DoD policy. In theory, all EO officers assist in implementing the policy. Information about making complaints and local, service-wide or DoD hotline numbers should be posted at every command. Unfortunately, the policies are not always followed; sexual harassment complaints are sometimes shunted aside, hidden under bureaucratic paperwork, or just ignored;

women making complaints run the risk of official and unofficial reprisals (see section 3, below, on retaliation).

USEFUL REGULATIONS ON SEXUAL HARASSMENT:

Department of Defense: DoD Directive 1350.2, “Department of Defense Military Equal Opportunity (MEO) Program,”

Army: AR 600-20, “Army Command Policy,” Chapter 7, “Prevention of Sexual Harassment,” and Appendix D, “EO/Sexual Harassment Complaint Processing System”

Navy: SECNAVINST 5300.26C, “Policy on Sexual Harassment”

SECNAVINST 5354.1, “Policy on Military Equal Opportunity Complaint Processing”

Marine Corps: MCO 1000.9, “Sexual Harassment”

MCO P5354.1D “Marine Corps Equal Opportunity (EO) Manual”

Air Force: AFI 36-2706 “Military Equal Opportunity Program”

Information about sexual harassment and similar issues can be found on the Military Law Task Force (MLTF) website, www.nlgmltf.org; the Task Force can be reached at 619-463-2369 and info@mltf.info. MLTF can put you in touch with independent attorneys or advocates familiar with military law. The Service Women’s Action Network (SWAN) also provides information, support and advocacy for victims of sexual harassment. SWAN can be reached at info@servicewomen.org, 212-683-0015 Ext. 324, through their general hotline number, 888-729-2089, or through their lesbian, gay, bisexual and transgender hotline number, 888-729-2095; their website is www.servicewomen.org. The GI Rights Network, with groups around the country, operates a toll-free hotline to provide information about complaints, discharges, and servicemembers’ rights. GI Rights Network counselors can be reached at 877-447-4487 and girights@girightshotline.org; their website is www.girightshotline.org. These groups encourage victims of sexual harassment to obtain help from a civilian attorney or legal advocate before making a complaint. It is extremely helpful to have independent legal help from the very beginning of the case in documenting the harassment, deciding which complaint procedure(s) to use, preparing a complaint, monitoring the investigation and taking further action if necessary.

DoD 1350.2 says that “the chain of command is the primary and preferred channel for identifying and correcting discriminatory practices,” including sexual harassment. If you have been harassed, EO policy suggests that you to first talk to the harasser to resolve the problem;

fortunately, this is not required. When that approach is inappropriate or fails, the policy encourages requests for help through the chain of command, starting at the lowest level. This may work if the command is sympathetic, but may not be worth the effort when the harasser is in (or *is*) the chain of command. In most cases, whether or not you use this chain-of-command approach, EO and other complaint procedures are more likely to work.

1. Sexual Harassment Complaint Procedures

Your command should have an Equal Opportunity officer who is supposed to provide training on sexual harassment issues and to assist servicemembers who have harassment or discrimination complaints. This person is likely to be enlisted, rather than an officer, and EO is often collateral duty, rather than the EO officer's primary MOS or rate. Skill levels, support and interest can vary a great deal from one EO to another. While it is often necessary to contact the EO officer in making or following up on a complaint, he or she should be approached with caution. There is no confidentiality with an EO, whose official responsibility is to the command rather than the person who has been harassed. While some can be vigorous advocates, you shouldn't assume the person is there for you.

Even within the EO system, informal complaints are favored. EO officers often encourage complainants to make informal, verbal complaints. These are handled without much paperwork, and often without any formal resolution or action. While they can be helpful if you wish to keep the matter low-key, these complaints do not receive careful attention or investigation, and require little or no official action by the command.

Formal sexual harassment complaints are taken more seriously; done in writing, they require a written response and create a better record if an appeal or other complaint is necessary. The Army uses DA Form 7279-R for complaints; the Navy uses NAVPERS 5354/2; the Marine Corps has no form; the Air Force uses a Formal Complaint Summary, AF IMT 1587.

The complaint should describe the sexual harassment in detail, with names of those involved and witnesses. It should also include the result you want—this can be anything from a public apology to a transfer for you or (a less likely result) the harasser. It is useful to write out a detailed complaint in advance, attaching witness statements and/or other evidence, instead of sitting down with an EO officer to write out a complaint on the spot. This reduces the chance that the person receiving the complaint will put his or her own spin on the case, or tell you what you can and cannot say. (And there's no need to limit your comments to the spaces on the form.) If an advocate or attorney did not help you prepare the complaint, he or she can help by reviewing the complaint, statements and other evidence, and suggesting additions or changes before you present them to the EO officer.

Complaint procedures vary from service to service; it is important to look at the service regs for specific procedures and time limits. Complaints should be made within a specific time after the incident (usually 60 days) unless circumstances prevent that. In the Air Force, complaints are made through the local OE officer. In the Army, formal complaints may be made

to the Commanding Officer (CO), the IG, chaplain, provost martial, Staff Judge Advocate or others. The Marine Corps has no separate harassment complaint procedure, so complainants choose among traditional grievance procedures such as request mast, IG complaints or complaints under Article 138 (see pages 5-6 below). You can also report harassment and make the initial complaint directly to the DoD Inspector General (IG) hotline, 800-424-9098 (or hotline@dodig.mil), or to your service's IG or sexual harassment hotline.

No matter where a complaint is made, it is usually referred to your command for investigation and resolution--your immediate CO, unless he or she is involved in the harassment. The CO should assign an independent officer to investigate the complaint, unless the IG or other agency which received the complaint has assigned its own investigator. In the Air Force, the local EO officer conducts the investigation. Each service sets time limits for investigation and response, and you should receive periodic updates if the investigation is lengthy.

In theory the investigator should speak with every witness you mention and consider each issue you raise. Investigators may question other witnesses, look into your own truthfulness or conduct, and add their own take to their report. To avoid tampering by the investigator or command, it helps to obtain written witness statements and gather other evidence in advance.

The investigator makes a written report, with findings of fact about the incident and recommendations for corrective action. This normally goes to the CO, who decides whether the complaint is "substantiated" (except in the Air Force, where the EO officer makes this decision). The CO also decides what action to take, if any, and is not required to follow the investigator's recommendations. You are entitled to a redacted (sanitized) copy of the investigator's findings and recommendations, but not necessarily the underlying investigative report or witness statements. The services vary on how much you will be told about the CO's decision and corrective action.

If you are not satisfied, you have the right to appeal. In most services, that means taking the complaint to the CO exercising general court-martial convening authority (GCMCA) over the CO handling the complaint. The Air Force keeps the appeal in the EO system, and the Army says the highest appeal is to the GCMCA. But the DoD Directive, which the services must follow, states that you may make a final appeal to the office of the Secretary of your service.

2. Other Complaint Procedures

Sexual harassment complaint procedures have limited value, particularly if the command is biased. For this reason, you may want to use other traditional military grievance procedures instead of or in addition to the EO complaint, to give you more control over the case and its outcome.

One such option is a personal meeting with the CO to discuss the harassment; the Navy and Marine Corps call this “request mast.” If the command has no “open door” policy, you may need to walk a written request for a meeting up the chain of command. You are not required to tell anyone other than the CO what it is about, and you can simply ignore NCOs’ or lower officers’ attempt to “deny” your request; the right to meet with one’s commanding officer is firmly embedded in military law and tradition. You may also request this meeting “with counsel present,” and bring your attorney or advocate. If you wish, you can present the CO with a written complaint, witness statements and/or evidence. If the CO does not help, you can make the same request to his or her CO, and so on up the chain of command.

Your attorney or advocate, who is not bound by the chain of command, can write directly to your CO, your CO’s CO, or military headquarters, demanding that the problem be resolved or that the command be investigated for inaction. If higher military authorities find the problem potentially embarrassing, they may take formal action or simply lean on your command to resolve the problem and get your advocate out of their hair.

One very useful option is a request for redress of grievance under Article 138 of the UCMJ. In a 138 complaint, you begin with a letter to your CO, asking him or her to correct the problem of harassment within his or her command. It is useful to mention or reference Article 138 in the letter. It should state how you have been wronged and ask for specific relief, giving details and attaching any evidence. The CO must respond within a reasonable time, set by the regs. If you are not completely satisfied, or if you receive no response, you then file a formal 138 complaint to the officer with special court-martial jurisdiction over your CO, submitted via your CO, complaining about your CO’s failure to solve the problem. (Each service has parallel procedures for complaints when the harasser is in another command, for example, Navy Regulation 1150.)

Article 138s get serious attention because they must be reported to service headquarters and can leave a permanent mark in an officer’s record. This tends to concern COs and, as with a formal EO complaint, makes a good paper trail of your effort to solve the problem through proper channels. 138 complaints sometimes end in a compromise: the complaint is denied and the officer’s record remains clean, or is partially denied, but you are given most or all of what you requested. Detailed information about Article 138 complaints can be found at www.girightshotline.org and www.nlgmtf.org. As with EO complaints, use of an independent advocate or attorneys is very helpful.

You have an absolute right to ask a Member of Congress to investigate and stop the harassment. This can be very effective *if* the Congressional office involved is willing to skip or expand the normal inquiry methods and ask your command or military headquarters directly to take the specific action you request. Routine Congressional inquiries are made by Congressional aides, not the Member of Congress; they go only to the military’s Congressional liaison officer and usually ask only for an explanation, not specific action on the problem. The liaison officer checks with the command, gets your CO’s or legal officer’s version of the story, and sends a boilerplate reply to the Congressional office saying that your rights have been respected and all

is well. While this is sometimes helpful, and the command will know that an inquiry has been made, a direct request for action from a Member of Congress has much more impact.

In some cases, you may choose to speak to the media, directly or through your advocate, using your name or speaking anonymously. “Going public” places greater pressure on the command to resolve the problem, but it may also result in retaliation, and should be approached with care. Legal assistance is extremely important here. Your right to speak with a reporter about your case or about problems with your command is set out in DoD Instruction 1325.06, but the regulation places limits on where, when and how you do so. This instruction also places some limits on what you can say—you cannot reveal classified material, make derogatory remarks about the Commander in Chief, or make threats, for example. An attorney or advocate can help you avoid these problems and, if you want, be present when you speak with the media.

Harassment cases can be taken to federal court, where you may ask for the same corrective action you requested in the original complaint, but not for money damages for pain and suffering caused by the harassment. Courts seldom step in unless a servicemember has tried all available administrative remedies, such as an EO complaint, and judges may defer to military discretion about personnel matters. But a court can order the military to enforce its own regulations or order it to do more than the regulations require.

3. Retaliation

Women often decide not to report harassment out of fear of retaliation. This is a real concern—women who file harassment complaints, or even mention the idea, may face “adverse personnel action” such as denial of promotion, poor performance evaluations, disciplinary action, or reassignment (allegedly unrelated to the complaint). Unofficial harassment—bullying, threats, or even hazing—can also be a problem. Occasionally commands respond with unwanted mental health evaluations. A hostile CO may use psychological problems resulting from the harassment (or invent emotional problems by giving doctors mis-information) to discredit your complaint, affect your career, or create grounds for an involuntary discharge.

While reprisals aren’t a given, it is best to be prepared for the possibility. Advocates often suggest that complainants keep a journal; make notes of the time, place and witnesses of any harassment; keep copies of documents and e-mail traffic showing the harassment or improper command actions and attitude; and talk with an advocate or attorney in advance about ways to respond to reprisals.

Reprisals for making, or simply threatening to make, a complaint about sexual harassment are violations of the EO regs, Article 92 of the UCMJ (failure to obey a lawful regulation), and special Whistleblower Protection Act policies. The complaint procedures mentioned above, such as Article 138 complaints and Congressional inquiries, can be used to protest reprisals and to request withdrawal of any “adverse personnel actions.”

In addition, you can complain to the IG about reprisals under the Military Whistleblower Protection Act, with provisions in DoD Directive 7050.6. The Act and directive, and regulations

in each branch of service, make it illegal for anyone to retaliate because you complained to a Member of Congress, the IG, or other officials who should receive reports about violation of regulations (like complaining to an EO officer about sexual harassment). The IG must investigate not only the retaliation, but also the original harassment. Here, too, documentation and outside assistance are extremely helpful. If the retaliation has affected your career or record, the Whistleblower policy allows an expedited petition to the Board for Correction of Military/Naval Records. (Information on the Correction Boards can be found in chapter 16 of the *Survival Guide*, at www.nvlsp.org.)

Because retaliation-by-psychiatrist has become a problem in sexual harassment and other complaints, Congress required DoD to make special provisions protecting servicemembers who are subjected to involuntary psychiatric evaluation or treatment. Under DoD Instruction 6490.4 and related service regulations, a CO must give advance written notice of the evaluation and a written statement of the behavior that allegedly warrants evaluation. If you're ordered to see a mental health professional, the CO must inform you of the right to consult a JAG or other attorney and to complain to the IG if the evaluation seems inappropriate or retaliatory. You are also entitled to a second opinion from a military or civilian professional. As under the whistleblower policy, the IG must investigate the original complaint as well as the improper evaluation.

Harassment complaints, and complaints about retaliation, are not simple. Commands sometimes ignore complaints or "solve" them with band-aid measures, and the danger of retaliation is real. Complaints require good documentation and determination. But with an independent civilian attorney or advocate and/or help from the organizations mentioned above, complaints can have a real impact.

MILITARY SEXUAL ASSAULT

The current DoD Sexual Assault Prevention and Response policy (SAPR), set up in 2006, represents the most recent attempt to "solve" the very serious problem of sexual assault in the military. DoD Directive 6495.01, dated October 6, 2005, with change 1 of November 7, 2008, sets out the basic policy, and SAPR procedures are described in DoD Instruction 6495.02. Since it was written, the policy has been "improved" with more emphasis on increased training about sexual assault and complaint procedures and with campaigns promoting "bystander intervention," or "buddy assistance."

The DoD Directive defines sexual assault; the original 2006 definition was expanded in a change to the Directive in November, 2008:

"For the purposes of this Directive and SAPR [the Sexual Assault and Prevention Program] awareness training and education, the term "sexual assault" is defined as intentional sexual conduct, 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 conduct 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 at 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 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 at issue shall not constitute consent.” (DoD 6495.01, Encl. 2, sec. E2.1.13)

This definition is more specific and detailed than the previous one. It clarifies issues raised by commands and accused assaulters after the regulation was written, and reflects Congressional efforts to clarify and strengthen the policy. It is worth looking at the 2006 definition for comparison; it defined sexual assault as:

“intentional sexual contact, characterized by use of force, physical threat or abuse of authority or when the victim does not or cannot consent. It includes rape, nonconsensual sodomy (oral or anal sex), indecent assault (unwanted, inappropriate sexual contact or fondling), or attempts to commit these acts. Sexual assault can occur without regard to gender or spousal relationship or age of victim. ‘Consent’ shall not be deemed or construed to mean the failure of the victim to offer physical resistance. Consent is not given when a person uses force, threat of force, coercion, or when the victim is asleep, incapacitated, or unconscious.” [SUPERCEDED]

DoD policy requires all commands to take action to prevent sexual assaults, to prosecute offenders and to treat victims with dignity and respect for their privacy. Unfortunately, assaults remain commonplace, and many commands downplay or ignore them. Some commands use creative methods to claim that assaults weren’t assaults, and some harass or punish those who report assaults.

Sexual assault is punishable under the Uniform Code of Military Justice. Article 120 covers rape, aggravated sexual assault and similar offenses; sodomy (oral and anal sex) is punishable under Article 125; and some related offenses are charged under Article 134, the general article. DoD policy emphasizes court-martial of assaulters, but commanding officers (COs) have almost total discretion in deciding whether or not, and how, to punish them. Commands have discretion to give assaulters non-judicial punishment under Article 15 of the UCMJ (called captain’s mast in the Navy and office hours in the Marine Corps), or to take them to court-martial. And, of course, COs may decide to use administrative discharges or administrative reprimands instead of disciplinary action, or to take no action at all.

USEFUL REGULATIONS ON SEXUAL ASSAULT

Department of Defense: DoD Directive 6495.01, “Sexual Assault Prevention and Response (SAPR) Program”

DoD Instruction 6495.02, “Sexual Assault Prevention and Response Program Procedures”

Army: AR 600-20, “Army Command Policy,” Chapter 8, “Sexual Assault Prevention and Response Program”

Navy: SECNAVINST 1752.4A, “Sexual Assault Prevention and Response”

Marine Corps: MCO 1752.5A “Sexual Assault Prevention and Prevention Program”

Air Force: [Air Force Policy Directive 36-60](#) , “Sexual Assault Prevention and Response Program” and [Air Force Instruction 36-6001](#), “Sexual Assault Prevention and Response Program”

The sexual assault policy has limits, and local commands are not consistent in enforcing it. MLTF urges women who have been assaulted to consider reporting the assault and to get legal assistance and personal support as soon as possible—if they are safe, even before making a report. Help is available from rape crisis centers, and from the groups mentioned on page 2, above. These groups can help you use the military’s assault reporting system and other military services effectively, and protect against reprisals for making reports.

It is useful for all servicemembers, women and men, to become familiar with the policy and their rights, whether or not there is an immediate need. If you know the policy, the correct military procedures and some sources of help, you protect not only yourself but other servicemembers.

DoD Directive 6495.01 and DoD Instruction 6495.02 are the highest military authority on sexual assault policy. They can be found on dedicated DoD websites, www.sapr.mil, and www.myduty.mil. (Links to the regulations can be found under “policy” on the SAPR website home page.) Each military service has its own regulations, which must comply with DoD. No branch of service or command can deny a right available in the DoD regulations. The regs are not always clear or easy to read, and the “commander’s checklist” (at the end of this article) and sample forms in the regs may be the best starting point in understanding the policy. Service regs listed on page 9, above, and other information on the policy can be found on a number of military websites:

Army: <http://www.sexualassault.army.mil> where regulations are found in the “library” section

Navy: www.cnrsw.navy.mil/fsc/savi.asp and [http://www.ig.navy.mil/Complaints/Complaints%20%20\(SAVI\).htm](http://www.ig.navy.mil/Complaints/Complaints%20%20(SAVI).htm), among others

Marine Corps: <http://www.usmc-mccs.org/sapro>, where regs are found under “policy”

Air Force: www.afpc.randolph.af.mil/library/sapr

These websites are helpful, with a lot of practical details about reporting, but they reflect a military viewpoint and may make the procedures sound easier and more effective than they are.

In theory, each base, ship and major command must assign a Sexual Assault Response Coordinator (SARC) and Victims Advocates to respond to sexual assault complaints. In 2005, the military reported it had trained a thousand SARCs and Victims Advocates and had an office available at each major installation. A SARC or Victims Advocate is supposed to be on call 24/7, even in deployed areas, so that response to sexual assaults should be immediate. Local contact information and service sexual assault hotline numbers should be posted publicly at all commands.

SARCs are the command contact point for sexual assault policy. They are responsible for ensuring that information about the policy is posted and available at the command, for receiving reports and ensuring that follow-up services and investigation (if appropriate) take place, for maintaining the confidentiality of victims who give confidential reports, and for informing the CO when an assault is reported. If you report an assault, a SARC should see you right away (or make sure that a Victims Advocate does so); make sure you have a Victims Advocate if you wish; make sure you have medical care and support services if you wish; and monitor your case to ensure the policy is followed correctly.

Victims Advocates are usually members of your command (occasionally civilian employees) who should be available to help you as soon as you make a report. They should explain the policy and inform you of your rights, and should offer to accompany you to any medical, investigative or legal appointments or proceedings. However, the Victims Advocates differ from civilian advocates and counselors, since they usually have less training and do not advocate for you or fight on your behalf if proper procedures are not followed.

Both the SARC and Victims Advocate are responsible primarily to the command, rather than to you. The information you give them is not privileged—they can be required to testify about the statements you make to them if your assaulter is court-martialed, and in some specific cases must inform your command that you reported an assault even if you wanted confidentiality.

The current policy is designed to encourage victims to report assaults, by allowing them the option of confidential (restricted) reports as well as non-confidential (unrestricted) reports. Only with unrestricted reports can the assault be investigated and the assaulter be prosecuted.

Again, if you report a sexual assault, a SARC or Advocate should respond at once—they should be available 24/7—to help you get immediate medical care, as well as follow-up care and counseling if needed, and to explain restricted and unrestricted reporting and your other rights. In addition, a Victims Advocate should offer to accompany you to all medical appointments, as well as interviews and meetings or legal proceedings, if you have made an unrestricted report and there is an investigation. Both the SARC and the Victims Advocate should assist in maintaining as much privacy for you as possible whether the report is restricted or unrestricted.

While the SARC or Victims Advocate must offer this information and help under the regulations, you are not required to accept it. You have no obligation to speak with either a SARC or a Victims Advocate, and they should leave if you ask. While these personnel can be helpful, it is important to remember that most Victims Advocates have limited experience and training, and that they are generally performing collateral (additional) duties. They bring as much or as little support to the job as their own character requires. Again, they are not advocates in the legal sense and seldom argue on your behalf if the command or investigators ignore your rights. But they are supposed to provide all the information you need to you make decisions about the case and to be your own advocate.

Health care providers, SARCs and Victims Advocates are required to respond to your report and, if appropriate, security personnel or an investigator should respond. Unfortunately, one important person is left out of this first-response team—an attorney. The policy doesn't trigger advice or assistance from a JAG, who could give you much more information about your rights and help you to use them. But you have the right to request a consultation with a JAG, and it is often valuable to do so, whether or not you have civilian legal help. Like civilian attorneys, JAGs can intervene with the command if the policy isn't followed or if the proper level of confidentiality is not maintained.

1. Restricted Reporting

You have the right to make a restricted (confidential) report, by reporting the assault directly to a SARC, Victims Advocate or health care personnel. This last term includes “persons assisting or otherwise supporting healthcare providers in providing healthcare services,” such as administrative personnel in medical treatment facilities. Some branches of the service have added to this list—the Marine Corps uses Uniformed Victims Advocates in addition to the Victims Advocates available through its family services programs. Chaplains may be able to receive restricted reports, though the DoD regulations are unclear on this and chaplains vary in their interpretation of religious confidentiality and privilege.

A restricted report provides the greatest privacy, as only the individuals mentioned here should know that you have been assaulted. While the CO will be told that an assault has occurred, he or she should not be given your name or that of the assaulter. But this confidentiality also means the person will not be investigated or prosecuted unless independent evidence exists or unless the command finds an exception to the restricted reporting policy.

Your report won't be restricted if you tell the "wrong" person about the assault—anyone other than a SARC, Victims Advocate, health care person or possibly a chaplain. A report to military law enforcement personnel or other command personnel will normally be reported in full to the CO. Civilian law enforcement often forward their reports to your command or base/ship security, and confidentiality is lost. If you tell a roommate, friend or co-worker about the assault, and the information comes to the command's attention, your restricted report will be considered unrestricted. And if the command receives information about the assault from an independent source (for example, a friend of the assaulter or a witness), it may investigate the case on the basis of that information.

If you make a restricted report (and, in theory, when you first start to make any sexual assault report), the SARC, Victims Advocate or medical personnel are required to ask you to sign a "Victim Reporting Preference Statement" (DD Form 2190). The form explains your rights and the limits of restricted reporting, describing some of the circumstances in which you may lose confidentiality. For example, if medical personnel think that you pose a danger to yourself or others, or that your performance of duties may be affected, they are allowed to inform the CO. This is a broad exception, and may cause some victims to look for medical and psychological support outside the military medical system, where confidentiality rules are much stronger.

With restricted reporting, you still receive full medical and psychological care. You can request (or refuse) a "sexual assault forensic exam" (SAFE), or rape kit, to document the assault. With a restricted report, the information and evidence you give will be kept for a year, identified by a number rather than your name. Since you can change a report from restricted to unrestricted at any time within a year, some women choose to start with a restricted report and then take time to consider their options. However, an unrestricted report cannot be changed to restricted. SARCs and Victims Advocates are supposed to encourage unrestricted reporting, but in theory should not pressure you about this.

With a restricted report, you are not required to talk to investigators or other law enforcement personnel, or to anyone from the command. If information travels to supervisors, division officers, or others in the command, though, they may want to question you. Similarly, investigators, MPs and SPs, or your command's security personnel will want to question you if they hear anything at all about the assault. You do not have to answer their questions or respond to their comments. Under the regulations, you can ask the Victims Advocate and the SARC to stop any improper questioning or comments.

It's important to remember that there are exceptions to restricted reporting, and what starts out as a restricted report may become unrestricted without your permission. Talking to others about the assault, either while reporting it or afterwards, may turn the report into an unrestricted one. If the command gets independent evidence of the assault, it can go ahead with an investigation and disciplinary action. In addition, the SARC or law enforcement personnel may disclose information to the command if they feel that it is necessary "to prevent or lessen a serious and imminent threat to the health or safety of the victim or another person." (DoD 6495.01, section E3.1.8.2) And, again, health care providers may inform the unit CO if there is

“any possible adverse duty impact related to the victim’s medical condition and prognosis.” (DoD 6495.01, section E3.1.10) With some of the exceptions, the amount of information and the persons to who it may be revealed are limited under the same directive.

2. Unrestricted Reporting.

An unrestricted report may be made to anyone. If you report the assault to law enforcement personnel, to health care personnel, or to someone in your unit with any authority at all, they should notify the SARC as well as the command. The SARC or Victims Advocate should respond immediately with the same assistance as in a restricted report. Information about the report will be provided to your CO and to military law enforcement—MPs, security, or your service’s investigative agency (CID, OSI, or NCIS)

This form of reporting allows you to request some protection against the assaulter from your command. You can ask for a no-contact order, and can ask (not always successfully) that the assaulter be moved away from your work or living space. The SARC or Victims Advocate should explain the process for requesting a military protective order and the possibility of moving or transferring you or the assaulter for your safety--and he or she should assist you in making the request. But these decisions rest with the CO, who has a lot of discretion and is not required to confine the assaulter or take any other action. If the CO fails to protect you, you can make a separate report and complaint about this. Civilian legal help is often useful in persuading the command to provide necessary protection.

Although you have less confidentiality than with a restricted report, the policy still requires that your privacy be respected. The CO and other personnel involved are supposed to ensure that information about the assault is limited to those with a need to know. Unnecessary and repetitious questioning is not allowed, and the regs say that gossip and rumors should be dealt with firmly. The SARC and CO are responsible, in theory, for making sure that information about the assault is shared only on a need-to-know basis. Of course, some SARCs and commands interpret this very broadly, assuming that senior enlisted personnel and officers in your immediate chain of command should be informed, along with personnel or admin officers, and maybe the chaplain and corpsman, and so on.

The CO and law enforcement personnel must investigate assault reports (unless they decide the reports are not credible). But you are not required to cooperate in an investigation, though you should expect to get some pressure to do so. Reporting a sexual assault and cooperating in legal proceedings can help to protect yourself and others, but it can also be a painful experience, even if the military follows all of the rules.

SAPR requires specialized sexual assault response training for law enforcement, commands, and legal personnel. Training materials encourage them to be sensitive about the trauma caused by an assault and to avoid “re-victimization” with unnecessary, repetitious or humiliating questions. You should not be questioned about unrelated sexual behavior or your personal sexual preferences or orientation. If any of this occurs, or the investigators are hostile,

you can halt the interview and demand to speak with an attorney or advocate before deciding whether to continue. And you may choose to have an attorney or an independent advocate present during questioning. Military investigators or police who violate these provisions of the regs can be subject to disciplinary action.

Security and law enforcement personnel do not decide whether or how to prosecute the offender. This is left to COs, usually those with authority to convene special or general courts-martial. If the offender is court-martialed or processed for misconduct discharge, you may be asked to testify as a witness. A Victims Advocate, or an attorney or another support person of your choice, can accompany you to meetings and interviews with prosecutors (called trial counsel) and to any legal proceedings. Civilian rape crisis centers often have trained volunteers who can support and advocate for you during investigations and prosecutions.

Legal proceedings may be difficult and stressful, and having an advocate through the process may help a great deal. While attorneys for the accused have some leeway in trying to disprove your report, SAPR policy should keep them from raising unrelated personal issues or badgering or humiliating you in interviews or in court. The 2008 changes in the definition of sexual assault discussed above limit the ways in which the assaulter's defense attorney may try to undermine your credibility, but character attacks still happen. It is important to remember here that the prosecutor may not be responsive to your situation and your needs—his or her duty is to prosecute the case, not to protect your interests. Having your own JAG and/or civilian attorney, along with an independent advocate, provides important legal and moral support, and holds the defense attorney and prosecutor to the policy.

Throughout the investigation and legal proceedings, you are entitled to monthly updates from the SARC about the status of the case. If you feel the case is being ignored or handled improperly, you can complain to a commander higher in the chain of command. Some of the complaint procedures described in the section on sexual harassment above can also be used to encourage prompt and proper action.

3. Protecting Yourself

Retaliation and harassment, specifically prohibited by the sexual assault policy, are nonetheless common. While some reprisals may be minor, others can hurt chances for advancement or lead to involuntary discharge, and many women have been verbally abused or hazed for reporting assaults. The problems, and the complaint procedures you can use to prevent or stop them, parallel those used against reprisals for sexual harassment complaints.

A sexual assault report or investigation may reveal that you violated other regulations or local orders (if there was illegal drinking when the assault occurred, for example, or you were in violation of barracks rules, etc.). Information you provide when you make an unrestricted complaint can be used against you. Under the current policy, COs have discretion to postpone disciplinary action against you for such “collateral” misconduct until the assault case is concluded. COs are encouraged to consider this, but are not required to postpone disciplinary

action against you. And this gives you only a postponement of disciplinary action; the regulations do not suggest that the command drop legal action against you permanently.

If your command is hostile, superiors may exaggerate or invent collateral misconduct, or accuse you of unrelated misconduct in order to give you non-judicial punishment under Article 15—this can be both a reprisal for making the report and a way to undermine your credibility (and therefore the credibility of your report). In addition, assaulters have been known to claim that women who report assault are lesbians who rejected friendly flirting. In some cases, when assault reports aren't believed, victims have been charged with making false official statements. These problems don't come up in every case, but it is best to be prepared for in case they do.

The sexual assault regs have explicit provisions for complaints against harassment and reprisals. These complaints can be made through the SARC, the CO, commanders higher in the chain of command, or the IG. Retaliation for complaints or reports also violates the Military Whistleblower Protection Act, so that they warrant Whistleblower complaints to the IG, as discussed in the section on reprisals for harassment, at pages 4 to 7, above.

One of the best ways to protect your safety and your rights is to learn about the sexual assault policy when you don't need it. You can jot down SARC and other sexual assault prevention websites and the military sexual assault hotline numbers for your branch of service. You can find out who the local SARC and Victims Advocate are and locate civilian legal groups and the nearest rape crisis center. If your command is not publicizing the policy and training all personnel in sexual assault prevention, or hasn't set up a real SARC and Victims Advocate system, you can request that they do so, make a formal complaint about the problem, or ask a civilian legal rights group to complain about it. If the command permits inappropriate language, sexually degrading comments or pictures about women, or any sort of sexual harassment--indicating that sexual abuse may be tolerated--you can use the complaint procedures discussed above. This pro-active approach will help you later if you need it, and will also help other victims of assault.

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Military's Proffered Protections to Victims of Sexual Assault Laced With Loopholes

By Bridget Wilson

Perhaps no empire is better at creating piles of paper than the military. The new Sexual Assault Prevention and Response Program is no exception. One of the promises of this heavily papered program is the option of "confidential" reporting of sexual assaults by victims in a manner that will enable that individual to disclose the details of the sexual assault to specified individuals and receive medical treatment, counseling and advocacy without automatically triggering the official investigative process. DOD Directive 6495.01, October 6, 2005, Subj.: Sexual Assault Prevention and Response (SAPR) Program, 4.6. This differs from "unrestricted" reporting in which the sexual assault will be reported to law enforcement and command authorities. DOD Directive 6495.01, October 6, 2005, Encl. 2, E2.1.2.

Under restricted reporting, any details provided to a Sexual Assault Response Coordinator (SARC) or the Victim's Advocate (VA) or Health Care Provider (HCP) will not be reported to law enforcement to initiate an official investigative process without the victim's consent or an exception to the Directive. *Id.*, E2.1.9. The DOD Directive also includes other specifics on the "confidential reporting program for victims of sexual assault". *Id.*, Encl. 3.

This policy reflects a change of philosophy in how to handle reports of sexual assault by creating a system that lets victims choose to withhold information about assaults from law enforcement and command authorities. The Department of Defense Directive, Instructions and Memoranda, which implements and describes this overall policy, acknowledges the potential negative impact of restricted reporting on investigations and holding perpetrators accountable. However, after examining the risks of confidential reporting, the military decided for policy reasons that such risks are outweighed by the opportunity to offer support for sexual assault victims and allow them to report the crimes which they otherwise would not report out of fear of the involvement of law enforcement or command authorities. *Id.* at E3.1.1.

The Department of Defense Directive is consistent with the rationale given in an earlier policy memorandum issued in March 2005. The stated reason for the confidentiality policy is to ensure that victims of sexual assault are protected, to maintain dignity and respect and provide support, advocacy and care. Assuring privacy and confidential disclosure is described as a method for addressing sexual assault, "the most under-reported violent crime in our society at

large and in the military.” Department of Defense Memorandum, March 16, 2005, Subj.: Confidentiality Policy for Victims of Sexual Assault (JFT-SAPR-009).¹

Policy Is a Response to Reports of Sexual Assault in Combat Zones and at Air Force Academy

This regulatory scheme was created in response to several public scandals about sexual assault in recent years, including reports of sexual assault on female troops in Iraq and Afghanistan, and reports of sexual assaults at the Air Force Academy in which victims were reluctant to report or found themselves being punished for “collateral misconduct” when they did report. There were numerous circumstances in which victims of sexual assault were retaliated against for raising their complaints. These policies reflect the struggle of addressing sexual assault in an institution that is 85-percent male, given that the vast majority of sexual assault victims are female.²

Under the confidential reporting known as “Restricted Reporting”, service members may *only* report the assault to a SARC, VA or Health Care Practitioner (HCP). That is an important limitation. For example, an ambiguous reference to reporting to chaplains points out some of the limitations of this “confidential” program. Under the restricted reporting option an individual could lose the protections of restricted reporting by discussing the sexual assault with anyone other than the persons designated in the regulation, that is the SARC, the VA or the HCP.

Beware: Reports to Chaplains of Sexual Assaults May Not Be Privileged

Chaplains are not among the persons designated to receive reports of sexual assault. The

¹ In examining Department of Defense publications, it is useful to remember that there is a hierarchy of regulations. At the top of the pyramid are Department of Defense Directives which issue policy binding upon all of the components of the Department of Defense. Further down in that hierarchy is the Department of Defense Instruction, which implements the overall policy, describing it in greater detail, usually giving some specific descriptions of items to be addressed, for example, checklists, in this case, for example, a Commander’s checklist with regard to reports of sexual assault. *See* DOD Instruction 6495.02, June 23, 2006, Subj.: Sexual Assault Prevention and Response Program Procedures, Encl. 5. In addition, there are memoranda produced by the Department that include additional discussions of policy that stem from the operation of the various areas of the policy. The services then also promulgate their own policies. However, where there is a discrepancy between service regulations and Department of Defense regulations, Department of Defense regulations are controlling.

² Not to imply that there are no male victims of sexual assault, but the vast majority of reported victims of sexual assault in the military are women who have been assaulted by men. The regulations are gender neutral. Sexual assault by men against other men is far more difficult to address because there are anti-gay military policies that make it even more difficult for male sexual assault victims to report crimes against them.

policy states in pertinent part:

“However, consistent with current policy, they may also report the assault to a chaplain. Although a report to a chaplain is *not* a restricted report under the policy or the provisions of this Directive, it is a communication that *may* be protected under the Military Rules of Evidence (MRE) or applicable statute and regulations. The restricted reporting process does not affect any privilege recognized under the MRE. This Directive and its policy on Restricted Reporting is in addition to current protections afforded the privileged communications with the chaplain and does not alter or affect those protections.” (Emphasis added)

That convoluted discussion is likely to mislead many service members into believing that chaplains are safe persons with whom to discuss the sexual assault, including giving the chaplain information that they were in violation of regulations, such as underage drinking, when the assault occurred.

This provision of the regulation does not make clear the distinction between privileged and confidential information and its uses in proceedings other than courts martial. The Military Rules of Evidence govern courts martial, the military version of criminal trial courts. However, the Military Rules of Evidence do not strictly apply to administrative proceedings.³ Administrative proceedings include many actions that can be taken to a service member’s detriment in which that service member may not invoke the protections of privilege, such as privileged communications with clergy. For example, administrative separation boards to remove an individual from the service may not be barred from considering information that would be protected from disclosure in a court martial under Military Rule of Evidence 503, Communications to Clergy. Reading the rule itself might mislead an individual to believe that it provides more protection than it actually does. M.R.E. 503 states, in part:

“(a) General Rule of Privilege. A person has a privilege to refuse to disclose or to prevent another from disclosing a confidential communication by the person to a clergyman or to a clergyman’s assistant, if such communication is made either as a formal act of religion or as a matter of conscience.”

Attorneys who have litigated the issue of clergy communications privilege know that the privilege may be challenged in a court of law on the grounds that the communication was not confidential because it was not made in the clergyman’s capacity as a “spiritual advisor.” It is not difficult to imagine an individual who is not seeking any “spiritual advice” would speak to a

³ See, for example, AR 635-200, *Personnel Separations: Active Duty Enlisted Separations*, 2-11: “a. *Presentation of Evidence*. The rules of evidence for court-martial and other judicial proceedings are not applicable before an administrative separation board.”

chaplain about sexual assault incorrectly believing the conversation is covered by the “restricted reporting” policies.

Beware: Chaplains May Snitch On Service Members

Nor is it unknown for chaplains to breach the confidence of a service member who has disclosed that s/he has behaved contrary to military regulations. As a result, military commands can use that improperly disclosed, otherwise “privileged information” against a service member to discharge that service member administratively or take other detrimental “administrative” actions against him or her.

Many of the Constitutional legal protections that we expect in courts do not accrue to individuals involved in administrative proceedings, including those in the Armed Forces. Accordingly, in addition to privileged information, evidence that is the fruit of illegal searches, or otherwise in violation of the service member’s rights might be used in administrative proceedings to the detriment of the service member.⁴

In addition, the SAPRO regulations include an extensive list of exceptions to the confidentiality of information, which threatens to eviscerate the protections asserted. One of the exceptions included in that laundry list is that “regardless of whether the member elects restricted or unrestricted reporting, confidentiality of medical information will be maintained in accordance with DOD 6025.18-R, DOD Health Information Privacy Regulation, January 24, 2003.” This regulation, promulgated in response to the Health Insurance Portability and Accountability Act (“HIPAA”), 29 U.S.C. § 1191c, includes permitting disclosures of confidential information for “specialized government functions.” DOD 6025.18-R, Jan. 24, 2003, C7.11. *Standard Uses and Disclosures for Specialized Government Functions* at C7.11.1, *Armed Forces Personnel*, Parts C711.11.R-C7.111.

Service Members’ Protected Fitness Information Subject to Disclosure

The general rule on disclosures for specialized government functions under DoD 6025.18-R states:

“General Rule. A covered entity (including a covered entity not part of or affiliated with the Department of Defense) may use and disclose the protected health information of individuals who are Armed Forces personnel for activities deemed necessary by appropriate military command authorities to ensure proper execution of the military mission.”

⁴ Author’s note: In almost 35 years of dealing with service members’ problems, I have yet to see a single chaplain disciplined for breaking the confidence of a service member. I have on several occasions, however, known chaplains to have informed commands of behavior contrary to military regulations, information that they received from a service member and which the service member had trusted the chaplain to keep in confidence.

Among those permitted determinations and disclosures are determinations of fitness for duty, C7.11.1.3.1, determining a member's fitness to perform any particular mission, assignment, order, or duty, including compliance with any actions required as a precondition to perform such mission, assignment, order or duty (C7.11.1.3.2) and to carry out any other activity necessary to the proper execution of the mission of the Armed Force (C7.11.1.3.5.). It is foreseeable that a victim who is a pilot or navigator in an air wing could have his or her "restricted report" given to the commanding officer under this exception, regardless of the victim's choice of reporting option.

For that reason, the question arises whether the exceptions incorporated into the SAPRO regulations leave military authorities in precisely the same position they were prior to this volume of new regulations, able to make a claim of appropriate disclosure out of concern for "military necessity." The exceptions appear to swallow the confidentiality rules.

Information From "Independent" Source Not Protected and Could Be Used Against Victim

Further, when information about sexual assault comes to a commander's attention from a source independent of the restricted reporting avenues, that commander *shall* report the matter to law enforcement and an official investigation may be initiated based on that independently acquired information. Who or what is an "independent" source is not defined. DoD D 6495.01, E3.1.11. Should any sexual assault victim think that he or she will be protected from prosecution for collateral misconduct, the directive makes clear that is not the case, stating: "Covered communications that have been disclosed may be used in disciplinary proceedings against the defendant or the victim, even if such communications were improperly disclosed". E3.1.12.

Restricted reporting does not create any actionable rights for the alleged offender or victim, or constitute a grant of immunity for actionable conduct by the offender or the *victim*. Any communications that have been disclosed may be used in disciplinary proceedings against either the offender or the victim, even if the communications were improperly disclosed. DoD D 6495.01 at E3.1.12. That, coupled with the mission and national security exceptions under the DoD's confidentiality regulations, DoD 6025.18-R, raises serious concerns about whether the option of restricted reporting is illusory, or, worse, simply serves to interfere with the prosecution of perpetrators without really protecting the victims of sexual assault.

As is always true in law and regulation, the devil is in the details. For example, it is unclear under the regulation whether disclosing a sexual assault to your boyfriend or girlfriend, who then angrily confronts a commanding officer or a presumed perpetrator, would eviscerate the limited protections the victim obtains through restricted reporting. The regulations make no specific reference to waiver. But if the victim is limited to whom s/he can make a "restricted" report, by implication, does s/he lose the benefits of that choice by telling another person outside that triangle of SARC, VA and HCP? What if s/he has reported the assault to a friend who then takes the victim to the military hospital? May the victim still invoke the restricted reporting

option? Do restricted reporting limitations commence only when the victim elects the option, regardless of prior disclosures? Arguably, a victim cannot knowingly waive a right of which s/he was unaware. Will the mandated intensive training under the regulations create a presumption that the victim knows of the options? See, DoDI 6495.02, "Sexual Assault Prevention and Response Program Procedures," June 23, 2006, Encl 3., E3.2 requiring periodic mandatory education in SAPR.

The asserted trade-off for the restricted/confidential reporting system is the opportunity to provide more sensitive treatment of sexual assault victims by victims' advocates vs. the law enforcement advantage that could be gained from immediate reporting of a sexual assault. It is hoped that more victims of sexual assault will come forward for treatment and report assaults. But, a close examination of the numerous limitations and exceptions in the sexual assault regulation shows that reporting victims may still be exposed to the same risks of retaliation, prosecution and breaches of confidence as before the changes in policy.

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Sexual Harassment in the Military

by Kathleen Gilbert

(This article was written for the Resist newsletter in the fall of 2006. Unfortunately, the problems described here have only increased since it was written. Subsequent studies and reports from the Department of Defense and independent sources have shown that incidents of sexual harassment and assault have not declined, that the "new" regulations and limited confidentiality created in 2006 have done nothing to stop the problem, and that servicewomen remain hesitant to report rapes and harassment because of the very real likelihood of more harassment and retaliation.)

While stationed in the Gulf, Army Specialist Suzanne Swift was sexually harassed repeatedly by fellow soldiers. One of her superiors forced her to engage in sex on threat of disciplinary action. After her return to the states, she was harassed by another superior who "ordered" her to report to his bed. When she complained to her command she was ostracized and harassed. Facing a second deployment to Iraq with one of her original harassers, she went AWOL in January, 2006. She was arrested at her mother's home on June 11 and returned to Ft. Lewis in Washington, where she is awaiting criminal charges for AWOL and missing her deployment. The command has now investigated her complaints, but has not released the results.

Sexual harassment and assault are endemic in the military. 1,012 sexual assaults were reported in the military in 2003, jumping to 1,700 in 2004, according to the military's own figures. An Associated Press story this August reported that more than 80 recruiters were disciplined in 2004 for sexual misconduct with potential enlistees. The Department of Defense has admitted that 80 complaints of sexual assault or other sexual misconduct were made in combat zones during 2003. A 2004 military survey of women at

official military academies found that 50% of women questioned had experienced sexual harassment. (This followed statements from nearly 150 women who said they were assaulted by male cadets while attending the Air Force Academy between 1993 and 2003.)

The scandal is not just in the continuing pattern of harassment and assault, but also the military's shameful response. Women who complain are ignored, threatened, isolated, labeled "troublemakers" or lesbians. They may face further harassment by the assaulter and his friends, and are often punished with poor performance evaluations, disciplinary action for alleged wrongdoing, unwanted psychiatric evaluations, and even involuntary discharge. Women raped in combat zones have reported poor medical treatment, lack of counseling, failure to gather forensic evidence, incomplete criminal investigations, threats of punishment after making complaints, and a disregard for their safety (often leaving them in the same unit with their attacker), according to the Denver Post. As a result, many simply hide their attack. Many who try to complain eventually give up the process. It is not uncommon for women to go AWOL for their own safety, or as the result of the stress of the assault, as in Suzanne Swift's case. Men all too often escape punishment or receive very minor penalties and are able to continue their military careers.

The military has made some efforts to identify causes and contributing factors, but these are consistently shallow. Reports from the Department of Defense have periodically identified such causes as a lack of training about the definition and wrongness of harassment and assault, lack of clear training in responses to harassment, and lack of repeated training. Alcohol has been cited as a contributing factor, as has the pressure of working in close quarters with women (read: women being allowed to serve in traditionally male jobs).

In reality, however, the military has never addressed the underlying causes of these problems and cannot do so without fundamental criticism of the military and fundamental changes in its role and methods. Sexual harassment and assault result in large part from the intentional use of sexism-sexual imagery and sexual brutality—in military training and indoctrination, and their acceptance in military culture.

Training Soldiers: Power and Sex

During basic training, male soldiers are taught to equate manliness and sexual prowess with prowess as a warrior; sexual violence with military violence; and disobedience or non-conformity with weakness, femininity and homosexuality. Drill instructors use crude parallels between recruits' rifles and penises when discussing maintenance and use of weapons, and emphasize violent sexual imagery in combat training. Recruits who show fear or perform poorly are called "broke dick," "girl," "faggot" and worse. Other recruits are encouraged to join in taunting (and sometimes in physical abuse) of poor performers, distinguishing themselves as the real men. Complainers are told to fill out "PU55Y" forms. In combat training, sexual imagery is routine, and the idea of sex as violence is turned into chants and taunts. This training, like indoctrination using racial stereotypes and names ("ragheads" being among the most innocuous) enable objectification of an enemy and brutality towards that enemy. This training creates soldiers who obey orders without thinking, who are conditioned to engage in the most heinous violence.

Indoctrination of this sort is reinforced in military culture, in the sexist banter and violent imagery common at most commands, in the use of sexual gratification as a reward for good soldiering (in ports of call after long deployments; in R&R after periods of combat). Sexism and harassment become bonding mechanisms within units, used to maintain camaraderie and morale. Inevitably, command tolerance of

(and participation in) harassment prevents enforcement of regulations and protects those accused of harassment or assault.

There is, in addition, an important element of anger towards women in traditionally male roles, and an assumption that women who join the military are "either whores or dykes." But this anger exists in the context of the training and culture of male soldiers.

Studies and New Regulations

The most recent study of sexual assault in the military was released in 2004. Conducted at Congressional insistence, it found that assault remained widespread, that women were afraid to report assaults and were discouraged from doing so. Like recent Congressional hearings and media reports, it emphasizes the lack of confidentiality as a major problem.

New regulations were published at the end of 2004 and early 2005, also at Congressional insistence. These regulations allow women to make confidential or "restricted" reports in which their privacy is protected but the assaulter is not investigated. The regs require increased training about sexual assault, including pre-deployment training for troops on their way to war zones, etc., formation of "response teams" to provide medical, counseling and other assistance to women quickly after assaults, and a few discretionary measures to protect women from further assault or retaliation. The services have been slow to implement these new regulations. Many local commands are confused about them or resistant to the "reforms," and observers have seen little real change.

In the short run, no real reduction in harassment and assault will occur unless military women are empowered to make complaints and given real protection from their assaulters and from command retaliation. This means continuing pressure on the military to enforce new and existing regulations. It means demanding that victims receive legal assistance from military and civilian counsel from the moment they contemplate making a complaint. It must mean keeping pressure on Congress and the media to report those cases in which women want outside focus (anonymous or otherwise). And it means that the women's movement and its supporters must include this issue in their broader work around sexual harassment, developing campaigns to support military women in cooperation with military rights groups to challenge individual cases, to demand effective training and implementation, and to expose the underlying issues.

In the long run, real change requires much more. If the underlying issues are made public and the military is required to stop using the worst sexism to teach soldiering and obedience, to end the objectification and dehumanization of women and enemies in every aspect of training, it will be possible to control the rampant sexism in the military. But this would also mean basic changes in how and why soldiers fight. If it is not to prove manliness, if it is not a form of sexual dominance, then the motivation for fighting might have to be based on more honorable motives-protecting the weak against oppression, fighting for things this country and its people believe in. It would mean a military in which discipline and obedience of orders would have to flow from commitment and belief in the cause, rather than a desire to prove oneself as a man.

9/12/10