

Report to Response Panel By Survivors For Survivors
Of Military Sexual Assault

According to the Army Flier, Ft. Rucker, AL

Lt. Colonel [REDACTED]

7th Infantry Division

Sexual Harassment and Assault Response and Prevention Program Manager

states:

"Victims generally fall into the category of being disenfranchised, isolated, not-well-regarded soldier. That is how he or she is selected by a predator," she said. Many soldiers are picked out because they are on the fringe."

(dothanedagle.com/army_flier/news/article_90feaace-cbc3-11e3-9d84-001a4bcf6878.html?mode=jqm)

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Think Tank for Addressing Military Gender Paradigm

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SUBJECT: Response to Findings of the Response Panel

Introduction

This report is written by survivors for survivors of Military Sexual Trauma while serving in the United States Military. In response to testimony provided by Lieutenant General Flora D. Darpino, The Judge Advocate General, US Army states “Past progress and institutional change, whether race or gender integration, or, more recently “Don’t Ask, Don’t Tell,” have been successful because of the focus of the commanders, not because of lawyers. And so it should be in addressing sexual assault.”² Instituting change within the ranks **is a matter** policy change and is the responsibility of the commanders, but the signifying difference in ending of segregation, beginning of integration, and ending the “Don’t Ask, Don’t Tell were indeed policy changes and not matters of **criminal acts and intentions against a fellow soldier in arms.**

Additionally, the position of the writers’ of this report is that if commanders are successful in maintaining good order and discipline and instituting change within his or her command, the number of sexual assaults and sexual crimes within the military would not be steadily rising since the advent of Tailhook. The writers’ of this report are proponents of the Military Justice Improvement Act and support the actions of, but are

¹ Lolita C. Baldor and Donna Cassata, M. 8. (2013, May 8). Most Military Sexual Assault Cases Go Unreported. *Associated Press, Military Times* .

² Transcript o RSP Public Meeting 214, September 25, 2013, Testimony of Lieutenant General Flora D. Darpino, The Judge Advocate General, US Army.

not directly affiliated with, sexual assault advocacy groups like Protect Our Defenders, Service Women's Action Network, and Military Rape Crisis Center that are proponents to decrease sexual assaults in the US military through lobbying efforts. It is our position, that the increase in reporting sexual crimes is a direct result of the advocacy mission and intervention by advocacy groups, and not the fallible belief that there is a greater confidence in the chain of command or that victims of said crimes believe that the crimes committed against them will be taken seriously and that justice will, in fact, prevail. Our intent is to provide substantial evidence that shows that the chain of command needs exclusion from the sexual assault investigations, prosecution and/or punishment of perpetrators. Our position is supported by the Defense Advisory Committee on Women in the Services (DOCOWITS) Annual Report of 2013 and the United States Commission on Civil Rights Report of 2013. Both (DACOWITS) and the Civil Rights Commission recommend removal of the chain of command and their findings will be noted in this report. There will be references to evidenced based practice from scholars, to include one of the authors, who have been researching the epidemic of MST for over 14 years.

Survivors of military sexual trauma and current active duty members look to these various advocacy organizations to include the: Military Rape Crisis Center (MRCC); Service Women's Action Network; Artemis Rising and Protect Our Defenders as a way to find support and some form of vindication as they continue to fight the system within, as well as a system set-up to support veterans. These organizations represent and provide services to current active duty victims of Military Sexual Trauma (MST) facing retaliation, at this moment, today. They also represent and have support from veterans that are fighting, yet again, for benefits from the Veterans' Administration as a result of MST. This report is for those that are fighting against violations committed against their person **yesterday, today, AND tomorrow.**

Today's Military

The military of our parents and our grandparents are in extinction from their day when compared to the military of today. A little over 2 million, or less than one percent of the American population serve in the US military, and this includes active duty, National Guard, Reservists, and the Coast Guard.³ An all-volunteer force constitutes today's military, however, there is a greater dissimilarity that further complicates the understanding of the today's United States military "as we inhabit the era of the citizen-soldier."⁴ In fact, the "forty percent of the troops deployed to Iraq and Afghanistan are

³ By The Numbers: Today's Military, <http://www.npr.org/2011/07/03/137536111/by-the-numbers-todays-military>

⁴ As Fewer Americans Serve, Growing Gap is Found Between Civilians and Military, *NY Times*, November 24,

National Guard and Reserve volunteers”⁵ as an advert from promises to not reinstate and prevent an unpopular draft. These soldiers’ represent the very core of the American heartland, yet face a process of decisions making that continues to be severed from civilian accountability.⁶ In order to maintain the status quo and have enough troops in theatre and at home, National Guard and Reservists were called up to meet the needs. National Guard and Reservist members are part-time soldiers, and “their actions as troops are not separate from civilians; the troops committing and suffering from sexual assaults are civilians.”⁷ These troops and their active duty counterparts would have multiple deployments and more than have suffer from Post-Traumatic Stress Disorder (PTSD), military sexual trauma (MST), or other psychological disorders, in addition to physical wounds from severe burns, amputations and traumatic brain injuries. Traumatic brain injuries often went under or not diagnosed and complicated other disorders like PTSD. Active duty members of the military have suffered the same traumas as their counterparts, including MST. The Coast Guard has now been included in the research of MST and are comparable in percentages with the rest of the military branches. This proves that no branch of our military is indifferent when it comes to sexual assault in the military. When the statistics of child pornography and child sexual abuse by military members are presented into the equation, the statistics become staggering, at best.

History of Military Sexual Assault

The Response Panel on Adult Sexual Crimes is the brain child of Secretary of Defense Chuck Hagel in an effort to study and understand the complex problem of sexual assault in the military. High ranking brass acknowledged that sexual assault, and various other sexual crimes from sexual harassment to possession of child pornography, has become somewhat the norm than the exception. “Failure to achieve these reforms would be a further tragedy to an already sorrowful history of inattention and ineptitude concerning military sexual assault,” said Brigadier General (Ret.) Loree Sutton. “In my view, achieving these essential reform measures must be considered as a national security imperative, demanding immediate action to prevent further damage to individual health and well-being, vertical and horizontal trust within units, military institutional reputation, operational mission readiness and the civilian-military compact. Far from ‘stripping’ commanders of accountability, as some detractors have suggested, these improvements will remove the inherent conflict of interest that clouds the perception and, all too often, the decision-making process under the current system. Implementing these reforms will actually support leaders to build and sustain unit

⁵Greden, Jeff; Marcia Valenstein, Jane Spinner, Adrian Blow, Lisa A Gorman, Gregory W. Dalack, Sheila Marcus, Michelle Kee, *Buddy-to-Buddy, A Citizen Soldier Peer Support Program to Counteract Stigma, PTSD, Depression and Suicide*, *1208 Annals of the New York Academy of Sciences* 1, 90-97 (2010).

⁶ Banner, Francine. Immoral Waiver: Judicial Review of Intra-Military Sexual Assault Claims. August 6, 2012.

⁷ *Id.*

cultures marked by respect, good order and discipline.”⁸ Scandals of sexual crimes in the news and social media have ripped the military for years. It is not unfathomable to note that Tailhook was not the first incident since women have been servicing since 1941 in the advent of the attack on Pearl Harbor.

Due to time equal to decades since the integration of women into the military, finding victims of MST prior to Vietnam has been all but impossible to find interview. However, in recent years there have been women from the Vietnam Era that have come forward and written about their experiences with MST. Unfortunately, the reality is that the first taste of sexual scandal that exists in the military is the breaking news of Tailhook.

The Department of Defense’s first look at Sexual Assault in the Military occurred in 1988 with military wide survey completed by women, only referenced in April of 2004 through a letter from Congress to the Secretary of Defense⁹, establishing a baseline for sexual crimes among active duty members. The next survey will not be completed until 1995. Many survivors have been aware of the Response Panel, as are organizations that represent current victims and survivors of military sexual trauma. During this time, the Tailhook Scandal captured national news headlines.

The Tailhook Scandal of 1991 originated from the 35th Annual Tailhook Convention of Naval Aviators where 83 women and seven men were victims of sexual assault and other crimes of a sexual nature. After a period dissatisfaction with the current investigation, Lt. Paula Coughlin went public via news agencies with the incident at Tailhook in 1992. “In total, 119 Navy and 21 Marine Corps officers were referred by Pentagon investigators for possible disciplinary actions. They were cited for incidents of indecent assault, indecent exposure, conduct unbecoming an officer or failure to act in a proper leadership capacity while at Tailhook '91. Further, 51 individuals were found to have made false statements during the investigation. None of these 140 cases ever went to trial. Approximately half were dropped for lack of evidence. Most of the rest of the men "went to the mast" - an internal non-judicial disciplinary procedure that meted out fines and severe career penalties. Almost all of these cases involved unseemly behavior rather than sexual assault.”¹⁰ Among the victims were civilians, a teenager, and active duty personnel.

Do to the length of time that it will take to list the chronology, and chronology of actions taken within the Department of Defense, United States House of Representatives and the United States Senate will provided with this report. For the purpose of this report, further documentation will consist of actual reported sexual trauma scandals.

⁸ Brigadier General (ret.) Loree Sutton, <http://www.boxer.senate.gov/en/press/releases/111913a.cfm>

⁹Referenced in the April 15, 2004 letter from Congress to the SECDEF. Sources for this Chronology: The Women’s Research and Education Institute, Bibliography of Women in the Military; and the Pentagon Library

¹⁰ Frontline. *Tailhook '91*. <http://www.pbs.org/wgbh/pages/frontline/shows/navy/tailhook/91.html>

In 1997, “incidents of rape, sexual assault, and sexual harassment occurring at the Army’s Aberdeen (Maryland) Proving Grounds are revealed. In the aftermath, several drill sergeants are convicted by courts-martial of rape or charges related to sexual harassment. As a result of the problems found at Aberdeen, the Army convenes a Senior Review Panel to look at the problem of sexual harassment Army-wide. In February, the Senate Armed Services Committee conducts a hearing on Aberdeen. The Army’s top enlisted man, the Sergeant Major of the Army, is charged with sexual harassment. In October, the House Armed Services Committee, Subcommittee on Military Personnel conducts hearings on “Department of the Army Reports on and Corrective Actions Related to Recent Cases of Sexual Misconduct and Related Matters.” As a result of the incidents at Aberdeen, the Secretary of Defense appoints the Federal Advisory Committee on Gender-Integrated Training and Related Issues with former Senator Nancy Kassebaum-Baker as chair. The committee’s report is issued in December 1997.”¹¹

In 2003, allegations surface from the Air Force Academy of sexual assaults and retaliation for reporting of sexual assaults from class cadets. Congress also initiates its own investigation panel. Sexual Assault Response and Prevention was born in 2004 as a result of raising concerns of sexual assault within the ranks and within the prestige military academies across the United States with a stated mission “The Department of Defense Sexual Assault Prevention and Response Office (SAPRO) serves as the single point of authority for program accountability and oversight, in order to enable military readiness and reduce -- with a goal to eliminate -- sexual assault from the military.”¹²

Addressing Bullet Points of the Response Panel

On January 30th, The Response Panel on Military Sexual Assault Crimes Subcommittee presented a memorandum stating there was not significant proof and/or evidence that removing the chain of command from matters concerning sexual assault in the military would not improve reporting of sexual assaults, or that there is undue influence. However, the definition of “the chain of command” for victims Military Sexual Trauma (MST), much less the majority of lower ranking service members, is a vast contrast to the definition provided through the Response Panel who defines “the chain of command as O-6 and above that are members of the convening authority. It is important to note that the average service member does not and will not see the convening authority, except at inspections, changes of command and a few other special occasions. It is more important to note that service members see their command through their *direct* chain command that consists of E-5 to First Sergeant; First Lieutenant to Captain and

¹¹ DoD Care for Victims of Sexual Assault Task Force Report, pp. 92-96, http://new.vawnet.org/Assoc_Files_VAWnet/TaskForceRpt-AppC.pdf

¹² <http://sapr.mil/index.php/about/mission-and-history>

an occasional Lieutenant. Colonel. This is known as the platoon and company levels. All the orders come from the direct chain of command, and service members are trained that the platoon and company levels are family, a system of brotherhood and sisterhood that establishes that immediate cohesiveness and trust with one another's lives.

On the introductory page of the memorandum, subpoint 2, states that "to refer a sexual assault allegation for trial by court martial is reserved to a level of commander who will normally be removed from a personal knowledge of the accused or victim"¹³ is an accurate statement in theory. However, in the real world of the military, the victim often has to receive orders from the accused due to be in that chain of command, or the victim and the accused have the same *direct* chain of command, or can be they can be from different commands but serving on the same post or camp.

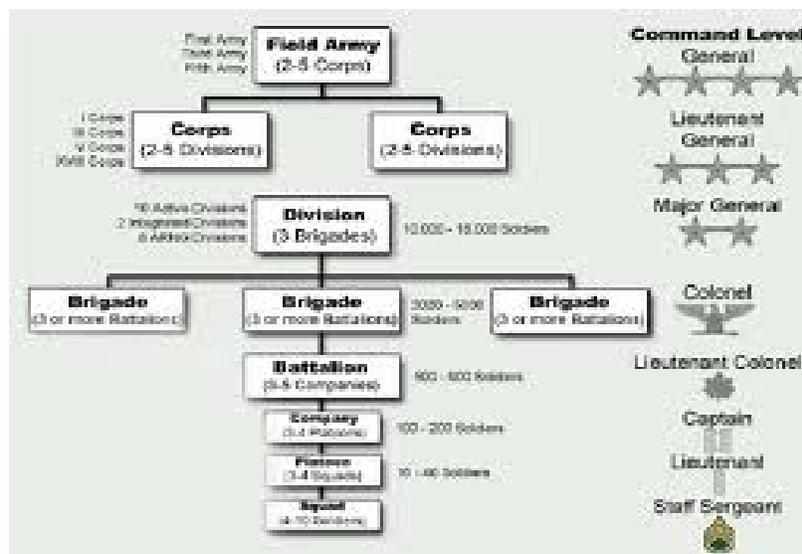


Figure 1.¹⁴

Company commanders are generally an O-3 or an O-4, and battalion commanders are O-5. Although this can change due to needs of the military, this is generally the chain of command that new recruits and new officers are taught during their training. commanders have certain authorities under the Uniform Code of Military Justice (UCMJ) to execute various executions of punishment, like an Article 15. Unit commanders often have heavy influence over military rape cases, and less than one in five cases are prosecuted.¹⁵ It is this practice and at this level that victims of MST, and

¹³ Memorandum for Members of the Response Panel, January 29, 2014, written by Honorable Barbara Jones.

¹⁴ Example of military organization. https://encrypted-tbn1.gstatic.com/images?q=tbn:ANd9GcQhIjCcVW5j-KzmVv-1lqR_jkd2nm1wO6B6viVKHs7PFPuxZebD

¹⁵ Parker, Ashley (15 Feb. 2011). Lawsuit Says Military Is Rife With Sexual Abuse. New York Times. Retrieved 16 March 2011.

various advocacy groups have backed the removal of the chain of command from the investigation and/or prosecution of perpetrators in the US military.

All eyes fell upon a criminal case involving Brigadier General Jeffrey Sinclair who was accused of sexual assault, forced sodomy, adultery, misappropriation of funds, unlawful use of military computers for viewing pornography. His accuser, a captain that worked directly for BG Sinclair, reported to her direct chain of command and her perpetrator. On March 21, 2014 it was reported, during an Article 32 plea bargain hearing, Brigadier General Jeffrey Sinclair “admitted to adultery and mistreating the captain but maintained that the affair was consensual.”¹⁶ Brigadier General admitted to having sexual affairs with a subordinate and two other women, in addition misappropriation of military funds, and watching pornography on military computers. Brigadier General Sinclair also admitted “making derogatory comments about women and, when challenged by his staff, replying: “I’m a general, I’ll say whatever the fuck I want.”¹⁷ How is this supposed to inspire confidence, the main reason for lack of reporting of sexual assaults and rape, according to the 2012 SAPR Report? The resulting outcome of a plea bargain of a \$20,000 fine and does not provide confidence in the second concern regarding the lack of reporting of sexual assaults, that justice will not be served, stands as reasoning proof that justice can still be blind.

On March 6, 2014, *The Stars and Stripes* reported that the senior prosecutor over sexual assault prosecutions, Lt. Colonel ██████████ “has been suspended after a lawyer who has worked for him recently reported he groped and tried to kiss her at a sexual-assault legal conference more than two years ago.”¹⁸

Retaliation against a victim of MST was enacted as a crime in the National Defense Authorization Act of 2014¹⁹ and defined as “taking or threatening to take adverse personnel action, or withholding or threatening to withhold a favorable personnel action” and “ostracism and such acts of maltreatment, as designated by the Secretary of Defense, committed by peers of a member of the Armed Forces or by other persons because the member reported a criminal offense.” Honorable and well-meaning as the definition describes, this amendment does not and will not prevent retaliation of victims of sexual assault. The ability to prove retaliation lies upon the victim solely, and produces additional stressors not unlike the assault itself. The burden of proof will be, more likely than not, reduced to a dismissal based on the “he said, she said” fallacy.

¹⁶ Clawson, Laura; Daily Kos; <http://m.dailykos.com/story/2014/03/21/1286415-Army-general-won-t-get-jail-time-in-sexual-assault-plea-deal>

¹⁷ *Id.*

¹⁸ Carroll, Chris and John Vandiver; *Stars and Stripes*, April 26, 2014, <http://www.stripes.com/army-s-top-sex-assault-prosecutor-suspended-after-assault-allegation-1.271461>

¹⁹ National Defense Authorization Act of 2014; p.298 changes to Uniform Code of Military Justice Section 1709

Just like rape has many symptoms other than the report, so does retaliation. The conversation on retaliation can fill a book.

In developing this response I have uncovered so much data that needs to be coalesced and presented responsibly that more than one paper is necessary. A Military, violence, and gender think tank that I am affiliated with has planned a few white papers that will comprehensively address these data and the tribunal's questions.

This paper is concluded at the time and it will be submitted alongside an outline of other white paper topics.