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A SOLDIER AND  
A WOMAN

Sexual Integration in the Military

edited by

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CHAPTER NINETEEN

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Military Law and the Treatment of Women  
Soldiers: Sexual Harassment and  
Fraternization in the US Army

FRED L. BORCH III

Until the early 1980s, most soldiers in the United States Army believed that aggressive masculine behaviour and explicit sexual banter strengthened personal bonds between them. They also believed that this male bonding resulted in better unit cohesion – an *esprit de corps* essential to battlefield success. Consequently, those leading this nearly all-male army condoned, and sometimes encouraged, sexually orientated jokes, graphic language and ‘machismo’ by men in uniform. In the 1970s, for example, each monthly issue of *Soldiers*, an official army magazine, published a photograph of a ‘pin-up girl’ on its inside backcover – a feature enjoyed by the young male readership. Similarly, it was not unusual for European-based male troops to take a respite from training by visiting nearby ‘red light’ districts, on trips organized by officers and non-commissioned officers (NCOs).

The end of the draft and the advent of an all-volunteer army in 1973, however, meant that there were simply not enough young men to meet manpower needs. This, combined with the disbanding of the Women’s Army Corps in 1978, meant the end of the all-male force. Male and female soldiers now served together in one army, often working side by side, with many women in jobs which had been previously closed to them. By the late 1980s, women pilots and paratroopers were common in the new gender-integrated force. This revolutionary organizational transformation was, not surprisingly, accompanied by an equally dramatic increase in the percentage of women in the army, from about 2 per cent of personnel in 1973 to roughly 14 per cent today.

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The views expressed in this article are those of the author alone, and do not represent any official view of the Department of the Army or any other US government agency.

This change in the composition of the army meant that old ways of promoting male bonding were no longer acceptable. While front-line infantry and armoured units remained exclusively male, the vast majority of other units – from engineer, medical and signal to transportation, ordnance and aviation – now comprised both men and women. Consequently, army leaders discovered that previously desirable male-oriented sexual behaviour now undermined military order and discipline. Many female soldiers took offence when sexually graphic language was used in the workplace, or when photographs of naked women in sexually suggestive poses were displayed in barracks. They also objected to unsolicited (and therefore unwelcome) sexual advances from male colleagues. As these and other forms of ‘sexual harassment’ disrupted good order and discipline, and thus undermined unit cohesiveness, they were now forbidden. Army leaders soon learned, however, that it was not easy to rid the army of a masculine military culture and the behaviour that culture implied. Many male soldiers did not accept, much less understand, why old standards needed changing. The fact that substantial elements of American society were comfortable with – or at least condoned – the masculine view of women as ‘sex objects’ exacerbated the problem. If American society could not agree on the status and treatment to be afforded women, it was not going to be easy for the army to set or enforce new standards for the treatment of female soldiers.

The huge influx of women into the army also brought with it a second sex-related problem: consensual sexual contact between men and women in uniform. While the army recognized that romance or sex, or both, naturally occurs in a force of both males and females, sexual contact between soldiers of different ranks may provoke jealousies among other soldiers, thereby undermining unit cohesiveness. As this is particularly true where sexual relations occur between an officer and an enlisted soldier – especially where the former supervises the latter – the army prohibited such ‘fraternization’. This sex-related fraternization was also outlawed because it encouraged (or resulted in) undue personal familiarity between officers and enlisted personnel. As such overly familiar relationships had long been viewed as undermining a superior’s authority in his dealings with subordinates (‘familiarity breeds contempt’), sex-related fraternization had to be forbidden because it encouraged such familiarity and undermined the command process.

But if unit cohesiveness in a gender-integrated army required an end to sexual harassment and fraternization, how was this to be achieved? Educating and indoctrinating soldiers about the pernicious effects of such behaviour on the army was one method. Command influence, in the form of written rules, was another. But the ultimate command tool was military criminal law. This is because, while the American military legal system deters anti-social behaviour and punishes criminal conduct like any civilian criminal justice

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framework, it also promotes the 'good order and discipline' or unit cohesion necessary for military success. Having decided that achieving such cohesion in a gender-integrated army required an institutional climate in which all soldiers were treated with dignity and respect, and that sexual harassment and fraternization were detrimental to achieving that end, the army looked to criminal sanctions as the ultimate command tool for eradicating all forms of discrimination and harassment.

This chapter examines how the army has used its military justice system to deter sexual harassment and fraternization. It first defines the two terms as understood in the army, and explains how sexual harassment and fraternization are criminal offences in the military. Next, as an illustration of the application of military law in this context, the army's handling of sexual-related misconduct cases at Aberdeen Proving Ground from 1996 to 1997 is examined. While the army viewed events at Aberdeen as an aberration – and the accused sergeants as a criminal element whose misconduct did not reflect prevailing army values – many civilians saw things differently. It was widely felt that events at Aberdeen reflected the army's inability, or unwillingness, to eliminate a masculine-orientated military culture that tolerated sexual misconduct and harassment by those in authority. This essay explores the validity of both the army's perspective and that of the public. Finally, some observations about the army's success in using criminal law to combat sexual harassment and fraternization are offered, as well as some conclusions about future developments in the treatment of women soldiers.

### Sexual harassment in military law

The army considers sexual harassment to be a common form of sexual misconduct and a manifestation of gender discrimination. It is defined as suggestive or blatantly sexual behaviour, which is unwelcome, and which creates a hostile or offensive work environment. Any sexual favours that are demanded, requested or suggested – especially as a condition of employment or career and job success – constitute sexual harassment.

While the army recognizes that sexual harassment is not confined to the work environment, it is nonetheless most concerned with workplace sexual harassment. Thus, an on-the-job soldier who tells sexually suggestive jokes or stories creates a hostile or offensive climate that interferes with the ability of other soldiers to get their work done. Depending on the individuals involved, this type of sexual harassment may seriously degrade work performance and mission success. Of greater concern, however, is the form of sexual harassment that involves a supervisor who explicitly, or implicitly,

makes a subordinate's job, pay or career dependent on submitting to sexual relations, or to physical conduct of a sexual nature. This implies a lack of impartiality, and a personal self-interest that undermines the authority of the superior-subordinate relationship. First, the superior's actions are not compatible with the army's traditional beliefs in individual professionalism and respect for others; the army views sexual harassment as wrong *per se*. Second, his conduct creates a hostile work environment, interfering with the subordinate's work performance and, where submission or rejection of the sexual contact becomes a basis for career advancement, this abuse of power 'degrades mission readiness', which is devastating to the army's ability to work effectively as a team. For all these reasons, the army prohibits sexual harassment.<sup>1</sup>

Recognizing that effective suppression of sexual harassment requires clear delineation of prohibited behaviour, the army defines three broad categories of sexual harassment: verbal abuse, non-verbal abuse, and physical contact. Examples of verbal abuse include off-colour jokes, sexual comments, profanity, overt reactions to physical appearance (barking, growling, whistling), and applying terms of endearment to co-workers ('honey', 'baby', 'darling'). Non-verbal abuse includes leering, ogling, blowing kisses, licking lips, winking, provocatively posing or adjusting clothing in the presence of others, and giving or displaying sexually suggestive visual material. Examples of physical contact include stroking, patting, hugging, pinching, grabbing, kissing, giving unsolicited back or neck rubs, 'sliding up' to someone, 'cornering', blocking a passageway, adjusting someone's clothing (without permission), and making foot or knee contact (playing 'footsie-kneesie').<sup>2</sup>

Under military law, a soldier who sexually harasses another is subject to a variety of administrative sanctions. He may be given a letter of reprimand that, if filed in his official military personnel file, will have an adverse impact on promotion opportunities. His annual efficiency report may be annotated to reflect his inability to give women in uniform the dignity and respect required – a career terminator for a man who desires to be a professional soldier. In serious cases of sexual harassment, the perpetrator may also be administratively eliminated from the army, and given a discharge under 'general' or 'other than honourable' conditions. As both discharges are less than the 'honourable' discharge ordinarily received by a soldier leaving the

1. For an excellent discussion of the army view of sexual harassment, see Office of the Chief of Public Affairs, Department of the Army, Command Information Package, 'Sexual harassment: fixing the army's human relations environment', Spring 1998, p. 4.
2. Sexual harassment may be 'man on woman', 'man on man', 'woman on man' or 'woman on woman'. Given that almost all sexual harassment in the Army involves a male harasser and a female victim, however, this article focuses exclusively on that behaviour.

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army, this may affect his ability to obtain future civilian employment since most employers are not willing to hire a man whose military service was less than satisfactory.

Recognizing, however, that administrative sanctions may be inadequate, the army looks to its military criminal law system as the ultimate tool for suppressing sexual harassment. The Uniform Code of Military Justice, Title 10, United States Code, Sections 801-946, was enacted by Congress in 1950. The Code applies to all soldiers, sailors, airmen and marines. Its more than 50 'punitive articles' cover offences ranging from murder, robbery, larceny, forgery and drug use to desertion, misbehaviour before the enemy, mutiny, disobedience of orders and drunkenness on duty. As a general rule, civilian authorities defer to the military when crimes are committed by men and women in uniform; this means that most serious crimes are tried by military courts-martial rather than before a civilian court.

Sexual harassment is deemed a criminal offence if it constitutes criminal sexual misconduct as set out in the Uniform Code. Thus, for example, a male superior who forces a female subordinate to have sexual intercourse is guilty of rape. While evidence that actual force was used by a man to overcome a non-consenting woman is usually necessary to secure a rape conviction in a civil trial, military law recognizes that threats, intimidation or the abuse of authority may constitute 'constructive' force. For example, where the actions of a superior involve an abuse of power that creates a reasonable belief in the subordinate's mind that she will be grievously injured if she resists him, the act of sexual intercourse is deemed to have been accomplished by force. Under Article 120 of the Uniform Code, the maximum penalty for rape is death, but no death sentence has been imposed for many years. Instead, the typical rape sentence ranges from 10 to 25 years imprisonment.

Similarly, sexual harassment that takes the form of unwanted oral or anal sodomy is punishable as a crime under Article 125 of the Code. As with rape, both force and a lack of consent are necessary to the offence of forcible sodomy. But, where intimidation or threats of injury make resistance futile, it is said that constructive force has been applied. The maximum penalty for forcible sodomy is life imprisonment. A life sentence, however, is rare; the typical punishment imposed at a court-martial ranges from one to ten years in jail.

Sexual harassment that takes the form of an assault or battery that is indecent, lewd or lascivious is also a criminal offence, punishable by a maximum of five years in jail. For example, a male soldier who fondles a female soldier's breast, or places his hand on her private parts, would be guilty of an indecent assault and battery if the contact came without consent. A related crime is 'indecent exposure', punishable by up to six months

imprisonment. A soldier who wilfully shows his private body parts to another would be guilty of this offence provided the exposure was made in an indecent manner. Thus, sexual harassment in the form of 'flashing' (quickly revealing the genitals) or 'mooning' (lowering trousers to show one's buttocks) could be punished – particularly if it occurred during duty hours in the workplace, and was done in a grossly vulgar, obscene and repugnant manner.

Military criminal law does more than simply criminalize acts; using indecent words may also be a crime under the Uniform Code. Thus, a male soldier who said to a woman soldier 'I want to fuck you' or 'I want to eat you' may be jailed for up to six months if this is found to be indecent language. Under almost all circumstances, a court-martial would convict a soldier making unwelcome vulgar comments of this nature, based on the premise that they are grossly offensive to modesty, decency and propriety, and consequently prejudicial to good order and discipline.

One other criminal provision is available to combat sexual harassment: the offence of 'cruelty and maltreatment' under Article 93 of the Code. A soldier may be punished if he 'is guilty of cruelty toward, or oppression or maltreatment of, any person subject to his orders'. Thus, a senior NCO who threatens the career, pay or job of a subordinate in order to secure sexual favours, or who deliberately makes offensive comments or gestures of a sexual nature, is guilty of cruelty and maltreatment. This uniquely military offence (it has no counterpart in civilian law) is punishable by up to a year in prison.

### Fraternization in military law

Sexual harassment and fraternization are both about sex, and both are proscribed because they have an adverse impact on order and discipline. But they are fundamentally different in one respect: sexual harassment involves *unwelcome* sexual contact, while most fraternization involves mutually *consensual* sexual relations.

The origins of the US Army's prohibition on fraternization stem from the class distinction between nobles and peasants that existed in feudal Europe, a distinction that, by the mid-1700s, was also firmly in place in British military forces. An aristocratic officer did not associate with his social 'inferiors' – the uneducated and poor men who were soldiers. An officer was expected to be a gentleman, and a gentleman did not 'fraternize', or act as he would towards his own brother, with a 'common' soldier who lacked 'good breeding' and had no 'social graces'.

While these class-based rules against fraternization did cross the Atlantic to the militias of colonial New England, the American military's current

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prohibition on fraternization has nothing to do with social class distinction. On the contrary, close personal relationships between officers and enlisted personnel are forbidden because of the well-founded notion that 'familiarity breeds contempt'. As an official army document stipulated in 1921:

[U]ndue familiarity between officers and enlisted men is forbidden . . . This requirement is not founded upon any difference in culture or mental attainments. It is founded solely upon the demands of discipline. Discipline requires an immediate, loyal, cheerful compliance with the lawful orders of the superior. Experience and human nature shows that these objects cannot be readily attained when there is undue familiarity between the officer and those under his command.<sup>3</sup>

In short, undue familiarity has an adverse impact on good order and discipline. Consequently, a superior may not be on overly friendly terms with his or her subordinates. Such fraternization is not permissible because it undermines the superior's authority. The army focuses almost exclusively on the sex aspect of fraternization, even though current rules against fraternization encompass much more than sex. In the gender-integrated army of the 1990s, fraternization in the form of mutually consensual sexual relations between superiors and subordinates is forbidden because, like sexual harassment, it undermines a unit's ability to function as a team.

While the army historically viewed fraternization as solely an officer-enlisted matter, today it considers improper 'officer-officer' and 'enlisted-enlisted' fraternization as equally damaging. Where a superior and subordinate have a close personal relationship, and there is an actual or perceived impact on good order and discipline, it is forbidden. Thus, for example, a colonel may not be romantically involved with a lieutenant in his unit. Similarly, the senior sergeant in a battalion may not have sexual relations with a subordinate who works for him. Nor may a drill sergeant date or otherwise socialize with trainees under his authority.<sup>4</sup> Again, these relationships are proscribed because of the belief that they will inevitably undermine that superior's authority.

As with sexual harassment, a variety of administrative measures are available to suppress improper relationships between military personnel of different

3. *A Comprehensive Course in Military Discipline and Courtesy*, US Army Pamphlet D-2 (Washington, DC, 1921), p. 5. For a historical examination of fraternization in the army, see Kevin W. Carter, 'Fraternization', *Military Law Review* 113 (Summer 1986), p. 61.

4. Thus, the enlisted-enlisted fraternization between drill sergeants and trainees at Aberdeen Proving Ground had a substantial adverse impact on good order and discipline because the NCO trainers were using their 'power, access and control' over trainees to obtain sexual favours.

ranks. Official records may be annotated to reflect a superior's inability to refrain from engaging in a sexual relationship with a subordinate. As these records are critical to continued professional success, the superior who is unwilling to refrain from fraternizing with a soldier who works for him will find his career curtailed. Again, elimination from the service – with a less than honourable discharge – may be used as a remedy in egregious instances of fraternization.

In addition to administrative remedies for combatting fraternization, the army, as with sexual harassment, has criminal remedies. Under the Uniform Code, officer-enlisted fraternization is an offence under Article 134 if the relationship compromised the superior-subordinate relationship (also called the 'chain of command'), if it resulted in the appearance of partiality, or if it otherwise undermined good order, discipline, authority or morale. A critical component of criminal fraternization is whether a reasonable person experienced in the problems of military leadership would conclude that the fraternization compromised the respect of enlisted persons for the professionalism, integrity and obligations of an officer. Under the definition of fraternization in Article 134, almost any sexual or romantic relationship between a superior officer and an enlisted subordinate would be a crime.

A catch-all punitive article in the Uniform Code makes criminal 'all disorders and neglects [that] prejudice good order and discipline'. Consequently, consensual sexual contact between the senior NCO in a unit and a soldier who works for him would be a criminal offence if their relationship undermines the NCO's authority in a unit, if it results in actual or perceived favouritism by the senior towards the junior, or otherwise has a demonstrably adverse affect on morale in that unit. For a number of legal reasons, however, the army prefers to prosecute enlisted-enlisted fraternization through the use of a so-called punitive regulation. This is a written order issued on the authority of the general officer in charge of an army organization or installation. If, for instance, a lawful punitive regulation states that dating or sexual relations between certain ranks of soldiers are prohibited, then any soldier violating that punitive regulation could be prosecuted for disobedience. As a practical matter, punitive regulations forbidding fraternization with trainees have been promulgated at all army installations where training occurs. Thus, for example, a drill sergeant responsible for training soldiers commits a criminal offence when he engages in sexual relations or otherwise socializes with raw recruits undergoing that training. Under the Code, a conviction for disobeying a lawful punitive regulation includes up to two years confinement.

In summary, conduct constituting the offence of fraternization may be prosecuted either as conduct prejudicial to good order and discipline, or as conduct violating a punitive regulation. But the same conduct might also

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violate other provisions of the Uniform Code: adultery, wrongful cohabitation, and indecent acts with another. If, for instance, one of the parties is married, then any sexual intercourse between them could be punished as adultery. Under current law, however, adultery is prosecuted only if there is a clearly demonstrated prejudicial impact on good order and discipline. A good example of criminal adultery would be one in which a married general officer was having an affair with his unmarried female enlisted aide-de-camp. A conviction may be punished with up to a year in jail. If the officer and enlisted person live together as husband and wife then they may be punished for 'wrongful cohabitation', which carries a maximum prison term of four months. Finally, if the fraternization involves indecent acts, this also may be punished under the Uniform Code. This covers sexual acts that tend to incite lust and are grossly vulgar, obscene, and repugnant to common propriety – for example, having sex in the presence of others. Although all parties might agree it is consensual, its public aspect makes it immoral, and therefore criminal. The maximum punishment would be five years in jail.

### The Aberdeen Proving Ground experience

Given the existence of clear rules outlawing sexual harassment and fraternization, soldiers in the army were surprised about what happened at Aberdeen Proving Ground in the autumn of 1996. It certainly surprised, and shocked, the American people. As the story at Aberdeen unfolded, it appeared to some that efforts to stop sexual harassment and sex-related fraternization had fallen terribly short of the mark – if not failed.

Aberdeen Proving Ground, a small installation in northern Maryland, is the home of the Army's Ordnance Corps. While the testing of new vehicles, weapons and ammunition constitute the 'Proving Ground' aspect of Aberdeen, the major activity on the post is the 'Advanced Individual Training' of new soldiers. This is advanced training in a specific skill for men and women who have finished 'Basic Training' in fundamental soldier skills. At Aberdeen, for example, some soldiers learned to be wheeled vehicle mechanics while others were taught how to repair tanks and other tracked equipment.

Training at Aberdeen, like such training anywhere in the army, is supervised by 'drill sergeants'. By virtue of their proven abilities as leaders, these men and women are given the responsibility of ensuring that trainees in their care achieve their fullest potential while training, and successfully complete that training. Drill sergeants stand *in loco parentis* to trainees, over whom they have, in army parlance, 'power, access and control'. To some

extent, they have even more authority than a parent; they decide when the trainee's day starts, what he or she will wear, eat, drink, and do during that day. This is because the army demands that drill sergeants transform raw civilians into loyal, capable and efficient soldiers. It is an awesome task, which implies phenomenal powers. The drill sergeant must teach young trainees quickly to obey and carry out orders, including the intentional killing of other human beings, with premeditation and without hesitation. Perhaps more importantly, the drill sergeant must teach these young soldiers that extraordinary conditions may require them intentionally to risk their own lives. To this end, the trainee must quickly and unquestioningly obey his or her drill sergeant. It is no wonder that trainees believe their drill sergeants have absolute and unbridled control over their lives, and will in large measure determine whether they succeed or fail.

Virtually all drill sergeants in the army are men and women of exceptional professional skill and personal integrity, who carefully exercise their awesome powers. At Aberdeen in 1996, however, a number of drill sergeants were discovered to be using their power for selfish sexual gratification. Some male drill sergeants used their status to obtain sexual favours from female trainees under their authority. Others used their 24-hour access to young women trainees to enter into sexual relationships with them. And at least one drill sergeant abused his authority by raping and indecently assaulting young trainees. This abuse of authority struck at the very heart of the army's rules concerning sexual harassment and fraternization.

From the beginning, the army did not view events at Aberdeen as being about sexual harassment or the status or treatment of female soldiers. It instead viewed these occurrences as purely criminal, with rape, sodomy and indecent assault among the most serious crimes. The American public and Congress, however, felt that the criminal conduct of the drill sergeants was a reflection of the army's failure to require soldiers to adhere to the new standards of behaviour outlawing sexual harassment and fraternization. This is an important point because, while the army pursued criminal action against criminals, it also had to answer a barrage of public criticism centring on the treatment of women, and the army's commitment to a role for female soldiers based on dignity and respect. On the other hand, because some of the sexual crimes at Aberdeen were consensual, the army also had to respond to those who questioned the need to punish those engaging in voluntary sexual activity. Thus, the case had immediate political importance far beyond the confines of the Aberdeen Proving Ground.

As the investigation unfolded, the army identified some 12 male drill sergeants involved in sexual misconduct. Most of the accused were guilty of unlawful fraternization, of a consensual nature, with trainees. Staff Sergeant Marvin C. Kelley, a 34-year-old drill sergeant, for example, was charged

with having prohibited sexual intercourse, or 'social interaction', with three female trainees. Another instructor, 30-year-old Staff Sergeant Ronald Moflett, was charged with having consensual sexual intercourse with at least one 18-year-old woman soldier under his authority. Similarly, Sergeant First Class Tony Cross, who was 33 years old, was accused of having sexual intercourse with three different teenaged female trainees. Sergeant Wayne Gamble was accused of having prohibited sexual relations with three trainees, while Staff Sergeant Vernell Robinson, Jr., a 32-year-old soldier, was alleged to have had improper sexual relations with five female trainees ranging in age from 20 to 30.

The adverse impact on training at Aberdeen was self-evident. Gamble, for example, testified in court that he used male soldiers to set up meetings for him with female trainees. He also said that trainees who had sex with him were rewarded by being kept off duty rosters, having their Army Physical Fitness Test scorecards altered, or being exempted from bed check. Other drill sergeants followed a similar pattern. There also was evidence that some sergeants engaged in what was known as 'The Game'; they competed with each other to see who could have sexual relations with the most trainees. Gamble testified that he, Kelley and Robinson arranged meetings with potential sex partners for one another. They also 'covered' for the female trainees with whom they were having sex, and for each other. According to Gamble, '[i]f you're supposed to be in the game, you look out for each other... you basically cover each other's butts'. Gamble also quoted Robinson as bragging that '[t]he game is good, and I'm a gangster'.<sup>5</sup>

While some argued that the sexual fraternization between the drill sergeants and trainees reflected nothing more than poor judgement, the army insisted that a drill sergeant who had sexual relations with a trainee was using his access, power and control to take advantage of and manipulate young subordinates under his supervision, an abuse of power which seriously damaged the drill sergeant-trainee relationship. As Gamble disclosed in his testimony, trainees received preferential treatment in return for sex, clear proof that the fraternization impaired the effectiveness of training and undermined good order and discipline. Consequently, those drill sergeants discovered to have fraternized with trainees deserved to be punished.

5. Elaine Sciolino, 'Rape witnesses tell of base out of control', *New York Times*, 15 April 1997; Jackie Spinner, 'Aberdeen sergeant convicted of sexual misconduct', *Washington Post*, 30 May 1997; Lorrie Delk, 'Former drill sergeant receives 10 months', *Pentagram*, 7 November 1997; Jackie Spinner and Dana Priest, 'Drill sergeant kept sex lists, court is told', *Washington Post*, 15 April 1997; Jackie Spinner, 'Two ex-drill sergeants at Aberdeen charged', *Washington Post*, 26 March 1997.

The most highly publicized criminal case at Aberdeen, however, was not about fraternization or even sexual harassment. Rather, Staff Sergeant Delmar G. Simpson's court-martial involved non-consensual sex offences, the most serious being rape. An imposing 6' 4" man, 32-year-old Simpson had been a drill sergeant at Aberdeen's Ordnance Center and School since February 1995. Married and the father of four children, he had served in the army for 13 years, with stints in Somalia, Korea and Germany. A pre-trial investigation revealed that, over a 22-month period, Simpson had had improper sexual or social contacts with at least 30 female trainees, which led to 159 separate criminal charges, including rape, forcible sodomy, indecent assault, indecent acts, indecent language and communicating threats. Simpson also admitted to charges arising from consensual sexual relations with 11 different female soldiers. But these fraternization incidents paled in comparison with the non-consensual sex offences.

During the trial, Private First Class S.H. told how she had sexual intercourse with Simpson in exchange for a day off from training. Private K.G. reported that Simpson forcibly sodomized and raped her on two occasions. Similarly, Private First Class T.G. and Private First Class M.H. alleged that Simpson had raped and orally sodomized them. Private First Class P.R. described in graphic detail how Simpson raped her on nine separate occasions. Each time, she told Simpson that she did not want to have sex with him. But, as she said in her own words, when Simpson wanted her, he 'ordered her to his office or had another soldier send for her . . . I felt like I was a puppet, that I had strings attached to me . . . It got to a point I just gave up trying to resist . . . He was going to get what he wanted whether I resisted or not.' She further testified that some of the rapes occurred in a barracks storage room, while others took place in Simpson's office. P.R. also related how Simpson assaulted her by punching her in the arm and leg, and by pulling her by the hair. Other witnesses told similar stories of sexual abuse.<sup>6</sup>

By the time Simpson faced a jury at trial by court-martial, the 159 original charges had been reduced to 58. This occurred partly because the prosecution decided to eliminate those counts in which the evidence was conflicting or seemed inadequate to prove guilt beyond a reasonable doubt. But it also elected to dismiss those counts involving consensual sexual fraternization. As it was proceeding on a theory that Simpson had abused his power as a drill sergeant in having sexual relations with trainees, the prosecution wanted to focus its case on those trainees who had been raped

6. Jackie Spinner, 'Aberdeen case now in hands of army jury', *Washington Post*, 25 April, 1997; 'Aberdeen sergeant convicted of rape', *Washington Post*, 30 April 1997.

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or otherwise forced into non-consensual sex. The fraternization counts, reflecting consensual sexual contact between him and the trainees, did not further the 'abuse of power' theme. On the contrary, to pursue the fraternization charges against Simpson would have diluted the impact of the rape and non-consensual sex offences, allowing his defence counsel to portray him as a 'lover' rather than a sexual predator and rapist.

But, even with 101 counts dismissed, the remaining 58 criminal offences against Simpson were an impressive demonstration of criminal behaviour; the prosecution still involved 21 different victims and 19 counts of rape. After a two-week trial by a jury of both men and women soldiers, Simpson was convicted of 18 counts of rape involving six trainees and 29 other offences, mostly involving sexual misconduct. In May 1997, he was sentenced to 25 years' confinement. He was further reduced to the rank of private, and dishonourably discharged from the army.<sup>7</sup> Within six months of the Simpson verdict, all remaining sexual misconduct cases involving drill sergeants were completed.

### Sexual harassment and fraternization after Aberdeen Proving Ground

From the army's perspective, events at Aberdeen provided a number of lessons. Most importantly, it demonstrated that military law could be effective in punishing men in authority who abused women in their charge. Some commentators had questioned whether the military justice system was capable of handling sexual misconduct of this type. The guilty verdicts in more than five courts-martial, and the severe administrative sanctions meted out to more than ten other drill sergeants, proved that it was. This was a positive result, constituting a 'loud and clear' message that those who abuse their authority would be disciplined.

The criminal proceedings did, however, reveal at least one shortcoming with the Uniform Code of Military Justice. Some of the incidents of non-consensual sexual offences that should have been punishable as crimes could not be prosecuted under the Code because they did not satisfy the statutory definition of rape. Article 120 of the Code defines rape as sexual intercourse 'by force and without consent'. When enacted in 1950, this definition seemed adequate. As a matter of policy, military society wanted to punish any man

7. Gerry J. Gilmore, 'Simpson gets 25 years on rape convictions', *Pentagram*, 9 May 1997; Lorrie Delk, 'Simpson gets 25 years for rape, assault', *Aberdeen Proving Ground News*, 7 May 1997.

who had *forcible* non-consensual sexual intercourse with a woman. The element of force was thought to be important because requiring it would reduce the risk of a man being punished for rape when, in light of all the facts and circumstances, it was reasonable for him to believe that his partner was consenting. Forcible resistance by a woman, and the use of force by a man to overcome her, would constitute clear evidence that the intercourse was non-consensual, and therefore rape.

Events at Aberdeen indicated, however, that the requirement of force contained in the 1950 definition of rape made it difficult to punish certain non-consensual sexual misconduct. While the prevailing view continued to be that a female would not submit to unwelcome sexual advances without physically resisting her assailant, the reality was that a number of young women trainees at Aberdeen had submitted to sexual relations when merely threatened by their drill sergeants. Private First Class S.P., for example, insisted that she had not wanted to have intercourse with Simpson, yet she acquiesced when he threatened to declare her a 'training failure' if she did not. Forced to choose between submitting to sex or losing her job, she chose the former. As these threats did not constitute either the actual or constructive force required for rape, Simpson and any other drill sergeant who obtained sex through blackmail could not be charged with rape – or any similar offence.<sup>8</sup> The problematic nature of the rapes at Aberdeen went beyond legal issues. A number of the young victims (as is typical in cases of sexual assault) believed that they were partly 'responsible' for being raped. Thus, one young woman explained to an investigator that she did not think she had been raped because she had not been physically hurt; she believed that a woman must be beaten up for the sexual intercourse to constitute rape.

There were other troubling lessons. First, the Aberdeen events showed that the Ordnance Corps' training programmes lacked sufficient monitoring mechanisms to uncover the misconduct at an early stage. To a large extent, this institutional shortcoming had occurred because of personnel and budgetary reductions. The end of the Cold War had caused the army to lose more than 200,000 soldiers, meaning fewer personnel in supervisory roles, and fewer dollars for training programmes generally. As a result, only a few officers and senior NCOs were supervising drill sergeant activities. As long as the drill sergeants behaved properly, this lack of monitoring was harmless. But, as Simpson and his colleagues proved, insufficient supervision led to disaster when men of low moral character served as drill sergeants.

8. See Evan Thomas and Gregory L. Vistica, 'A question of consent', *Newsweek*, 28 April 1997; Thomas E. Ricks, 'Latest battle for the military is how best to deal with consensual sex', *Wall Street Journal*, 30 May 1997.

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SEXUAL HARASSMENT AND FRATERNIZATION IN THE US ARMY

The failure to have 'checks and balances' in place explained how the misconduct of a dozen drill sergeants had gone unreported and uncorrected for so long.

Another lesson was that the morals and values of the young trainees made them susceptible to improper relationships. More than a few of the 19 and 20 year olds were very sexually experienced. Some young women were sexually attracted to their drill sergeants, and wanted to engage in relations with them for recreational or romantic reasons. Others desired to fraternize with drill sergeants because they thought that such a relationship would improve their chances of success, or make their service at Aberdeen less onerous. This 'sex-for-a-favour' mentality was evident in more than a few fraternization cases.

A common view of events at Aberdeen was that the drill sergeant-trainee relationships were that of a 'sexual predator' and 'victim', with male instructors the former and female trainees the latter. Given that a number of fraternization incidents were initiated by trainees, however, this was a myth. But, while these young women soldiers were not victims, it was hard to view them as criminals. Most recognized that consensual sex with their instructors constituted criminal fraternization under the Uniform Code, but they often simply did not *understand* why it was important to refrain from entering into these sexual relationships. They did not appreciate why good order and discipline required them to suppress their own desires for gratification. Convinced that the consensual nature of the sex meant that there was no real harm, these young trainees simply did not accept the army's need to forbid fraternization of this type. The army concluded that while these young women had not been soldiers long enough to understand and obey its rules, the drill sergeants had no such excuse. Having been entrusted with extraordinary powers and special responsibilities, these drill sergeants deserved punishment for violating that trust.

While some claimed that the guilty verdicts at Aberdeen were 'an indictment of a military system that aids and abets the abuse of power', the vast majority of commentators viewed the guilty verdicts at Aberdeen as 'a victory for the Army's efforts to punish men in authority who abuse women in their charge'.<sup>9</sup> The army, in any event, believed it had proved that a criminal element was to blame for the trainee abuse, and that it had fixed responsibility for that abuse. After all, had not the worst offender been sentenced to a quarter-century in prison?

9. Dana Priest, 'Verdict deepens divisions over women in uniform', *Washington Post*, 30 April 1997; Paul Richter, 'Drill sergeant guilty of 18 charges of rape', *Los Angeles Times*, 30 April 1997; Scott Wilson, 'Aberdeen sergeant convicted', *Baltimore Sun*, 30 April 1997; unsigned editorial: 'Women in the military', *Washington Post*, 1 May 1997.

The US Congress, influenced in part by news media and public interest in the courts-martial proceedings at Aberdeen, was not convinced that the army's policies on sexual misconduct had been vindicated. On the contrary, some elected officials claimed that Aberdeen was a symptom of a much bigger institutional problem. To discover whether their complaints had merit, and to learn if a systemic flaw needed fixing, senior army commanders commissioned two reports to review and assess policies on sexual harassment.

The first report, authored by the army's Inspector-General, reviewed sexual harassment policies and procedures at basic and advanced individual training sites throughout the army. It also evaluated sexual harassment training provided to men and women initially entering the army. The second report, by the 'Senior Review Panel on Sexual Harassment' (which included prominent men and women) was a comprehensive review of the army's human relations environment. Both reports were based on interviews with thousands of soldiers and civilians at over 50 army posts in the United States and overseas. Never had such a comprehensive examination of the treatment of women in the army been achieved.

Both reports reached the same conclusion: the army had serious problems in the area of the treatment of women soldiers. There was 'endemic sexual harassment crossing gender, rank, and racial lines [in the army] . . . and [the army] lacks the institutional commitment to treat men and women equally'. Both also opined that the army's system for reporting abuse was flawed. But, most importantly, both concluded that the root cause for these problems was that men and women soldiers did not trust their officer and NCO leaders to create a healthy, safe and secure environment for them, and consequently did not report sexual harassment or other sex-related misconduct to those in authority. As the Panel report put it, 'passive leadership has allowed sexual harassment to persist'. Taken together, the two reports were harsh criticism. Newspaper headlines loudly trumpeted that the army was 'rife with sexual discrimination', and that there was 'wide abuse of women'. Not surprisingly, both friends and foes of the army were alarmed at the seeming magnitude of the issue.<sup>10</sup>

Stung by this criticism, but also recognizing the need for a renewed institutional initiative towards ending sex-related discrimination, the army's senior leaders drafted a plan for correcting the leadership and training deficiencies identified. First, new procedures for selecting and training drill sergeants were implemented, and more officers and NCOs were added to

10. Associated Press, 'Report: army rife with sexual discrimination', *Daily Progress* (Charlottesville, VA), 12 September 1997; Dana Priest, 'Army finds wide abuse of women', *Washington Post*, 12 September 1997; Philip Shenon, 'Army's leadership blamed in report on sexual abuses', *New York Times*, 12 September 1997.

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training programmes to ensure that there was an adequate leader presence in the training environment. Second, the army began an initiative aimed at strengthening the teaching and reinforcing of army values, specifically by adding an extra week to training during which raw recruits were indoctrinated in the values of loyalty, duty, respect, selfless service, honour, integrity and personal courage. Soldiers already on active duty also were to receive new training on the importance of these seven army values.<sup>11</sup> While the impetus for this new training was certainly a desire to end sex-related discrimination, and avoid any future Aberdeen Proving Ground scenarios, the new instruction has not focused on male-female relationships. On the contrary, because army values training emphasizes that all soldiers are entitled to be treated with dignity and respect, the training has not caused resentment among male soldiers, nor has it resulted in any hostility towards women soldiers.

By mid-1998, the army's plan had been fully implemented at its training centres, and soldiers who had long ago completed their basic and advanced training programmes were receiving additional instruction at their units. Left unsaid, but clear to all concerned, was that the ultimate tool for enforcing army standards regarding the treatment of women would continue to be criminal law.

### Conclusion

Today, the army's leaders, if not all soldiers, agree that sexual harassment and fraternization corrode the military discipline needed in an effective fighting force.

Sexual harassment was the natural consequence of a traditional all-male army that viewed macho behaviour as good, reinforced by a similar point of view within wider society. A successful gender-integrated army, where every soldier must be treated with dignity and respect if the highest possible unit cohesiveness is to be achieved, requires an end to sexual harassment. Similarly, sexual relations between officers and enlisted personnel, or between enlisted superiors and their subordinates, must also be forbidden if a gender-integrated army is to succeed. To achieve these twin goals, commanders look to military criminal law as part of the solution for suppressing

11. Tom Bowman, 'Army panel expected to recommend tighter screening for drill sergeants', *Baltimore Sun*, 4 June 1997; Associated Press, 'Training emphasis on values', *Augusta Chronicle*, 25 October 1998.

sexual harassment and fraternization; the law will either deter unacceptable behaviour by causing individual soldiers to modify their behaviour, or it will result in their elimination from the army.

Events at Aberdeen showed conclusively that military law was effective in punishing those in authority who abuse female soldiers by engaging in coercive sexual relationships. But Aberdeen also demonstrated that the army's efforts to prevent sexual harassment and sex-related fraternization had been inadequate. New initiatives resulting from two reports commissioned in the aftermath of Aberdeen should invigorate the army's fight against sexual harassment and sex-related fraternization. It remains to be seen if these new initiatives will succeed. With women constituting about one-seventh of today's army, and serving in a variety of critical positions as both officers and enlisted soldiers, the army must eliminate sexual harassment and fraternization. There is no alternative if the gender-integrated force is to be truly effective.

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