Report *of*
THE DEFENSE TASK FORCE
*on*

# Sexual Harassment & Violence at the Military Service Academies

June 2005

# DEFENSE TASK FORCE ON SEXUAL HARASSMENT & VIOLENCE AT THE MILITARY SERVICE ACADEMIES

June 30, 2005

Honorable Donald H. Rumsfeld
Secretary of Defense
The Pentagon
Washington, D.C. 20301

Dear Secretary Rumsfeld:

We are pleased to submit the report of the Defense Task Force on Sexual Harassment and Violence at the Military Service Academies. This report fulfills the requirements of Section 526 of Public Law 108-136, the National Defense Authorization Act for 2004, and the guidance provided in your charge. The report constitutes a substantial effort by a dedicated group representing all of the Military Services along with experts and leaders from the civilian sector. Our collective wisdom is reflected in findings and recommendations that we believe provide you the pathway to significantly reducing sexual harassment and violence at all the Academies.

Our assessment found the Academies had been actively addressing these issues prior to the Task Force's assessment. We applaud their efforts, but underscore the fact that understanding the human, environmental and cultural dynamics associated with sexual harassment and violence requires expertise beyond that available within the Academies. Our recommendations outline areas that need improvement – from as far ranging as statutory reforms to as simple as improving safety measures in the living spaces. It will take significant resources to implement our recommendations, but we believe that investment is essential if the Academies are to resolve these issues. We expect an increase in reporting of sexual assaults by cadets and midshipmen as these recommendations are implemented, indicating that assault victims are placing confidence and trust in the new processes and programs.

We thank all those who supported this effort – the Academies themselves, your staff, and the many private citizens who contributed their time and resources to this report.

The men and women of the Naval Academy and the Military Academy are committed to their calling of service to our country. They deserve to be trained and educated in an environment that is free of sexual harassment and assault. It will take a continuous, dedicated effort to achieve this goal. The recommendations included here are a substantial step in that direction, but the changes proposed will only be successful if they are institutionalized by both the Academy leadership and the cadets and midshipmen themselves.

Sincerely,

VADM G. L. Hoewing, USN
Task Force Co-Chairman

Delilah Rumburg
Task Force Co-Chairman

## DEFENSE TASK FORCE ON SEXUAL HARASSMENT AND VIOLENCE AT THE MILITARY SERVICE ACADEMIES

To the Senate Armed Services Committee
To the House Armed Services Committee
To the Secretary of Defense

We, the appointed members of the Defense Task Force on Sexual Harassment and Violence at the Military Service Academies, do hereby submit the results of our findings and offer our best recommendations to improve the policies, procedures and climate at the Academies.

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# Executive Summary

This Executive Summary briefly highlights key findings and recommendations in this report. For a full exposition of findings and recommendations, see Chapter 5.

## Task Force Charter

The Task Force on Sexual Harassment and Violence at the Military Service Academies was established on September 23, 2004, pursuant to Section 526 of Public Law 108-136, the National Defense Authorization Act for Fiscal Year 2004. Congress directed the Task Force to assess and make recommendations concerning how the Departments of the Army and the Navy may more effectively address sexual harassment and assault at the United States Military Academy and the United States Naval Academy. The Task Force consists of six members from the four branches of the Armed Forces and six members from the civilian community.

## Methodology

In creating this report the Task Force gathered information by conducting site visits; communicating with numerous individuals, including victims; reviewing the Department of Defense survey data; reviewing Academy and Service policies, reports, and data; consulting with subject matter experts; and communicating with related committees and task forces. The report was generated through a series of subcommittee and full Task Force meetings, a reference to the ecological model of public health, and a thorough review of reports, studies, and articles related to sexual harassment and assault.

## Service Academy Culture

The existence of sexual harassment and assault is an inherent contradiction to the spirit of the Academies that strives to and succeeds in creating strong commitments to honor and service. This contradiction is a product of complex and dynamic factors that influence the attitudes and behaviors of cadets and midshipmen. Historically, sexual harassment and sexual assault have been inadequately addressed at both Academies. Harassment is the more prevalent and corrosive problem, creating an environment in which sexual assault is more likely to occur. Although progress has been made, hostile attitudes and inappropriate actions toward women, and the toleration of these by some cadets and midshipmen, continue to hinder the establishment of a safe and professional environment in which to prepare future military officers.

Much of the solution to preventing this behavior rests with cadets and midshipmen themselves. They must understand that the obligation not to engage in or tolerate sexually harassing behavior is a values and leadership issue. Sexual harassment and assault are fundamentally at odds with the obligation of men and women in uniform to treat all with dignity and respect. Those who seek to be future leaders in the Armed Services are obligated to uphold standards—not only in their own conduct but also in their response to the conduct of others. Cadets and midshipmen who observe harassing behavior and fail to intervene and correct it, in effect, condone that behavior. This tolerance, even if only by a few, of the attitudes demonstrated by offenders, undermines the standards essential to successful leadership development. Accordingly, **midshipmen and cadets must assume more responsibility for holding others accountable by intervening, confronting, and correcting each other for failure to live up to the required standards.**

The Task Force also found that because female service members are a minority, are excluded from some of the highly regarded combat specialties, and are held to different physical fitness standards, some in the Academy communities do not value women as highly as men. Accordingly, the Task Force recommends: **Increase the number and visibility of female officers and Non-Commissioned Officers (NCOs) in key positions to serve as role models for both male and female cadets and midshipmen. Increase the percentage of women cadets and midshipmen at the Academies within current service operational constraints. Ensure consistent opportunities for women to be involved in leadership and Academy decision making, e.g. academic boards and admission boards.**

The Task Force concludes **the leadership, staff, faculty, cadets and midshipmen must model behaviors that reflect and positively convey the value of women in the military.** In addition we recommend **the Academies use modern survey and management tools on a permanent basis to provide information to oversight bodies.**

## Confidentiality

Confidentiality is a complicated matter with numerous implications for both victims and commanders, as evidenced by the extended debate within the Department of Defense prior to the approval of the new confidentiality policy. Confidentiality, as used in this report, refers to the privileged communications between victims of sexual assault and specified care providers and counselors. Confidentiality supports the provision of timely and meaningful assistance to victims following a sexual assault. Privileged communication, however, is an issue of extreme importance for commanders, not just victims. Commanders have principal responsibility for ensuring appropriate care of victims, as well as for investigating and holding accountable those who have committed the related misconduct. In our view, commanders can do neither effectively without a privileged reporting and counseling channel in place. The requirement that military medical facilities report cases of sexual assault is but one example of the problems associated with a lack of confidentiality under current military regulations. This requirement may inhibit a victim from seeking necessary medical care and lessen the likelihood the victim will report the assault. Accordingly, the Task Force recommends: **Congress should create a statutory privilege protecting communications made by victims of sexual assault to health care providers and victim advocates. This privilege should extend to both medical and mental health care providers and to those victim advocates designated and trained to perform that duty in a manner prescribed by DoD regulation.**

## Victims' Rights and Support

The *Office of the Inspector General of the Department of Defense's Report on the Service Academy Sexual Assault and Leadership Survey*, published in 2005 (presenting data from 2004) stated that the majority of female victims of sexual assault did not report because of fear of disclosure and the resulting perceived ramifications. The Task Force recommends: **Further maximize the use of existing and potential avenues for victims' support and reporting.** Maximizing avenues for victims' support provides more options for disclosure; expands the ability to obtain support and care; and assists in making informed decisions. Based on the guidelines provided in this report, **the Academies should establish a plan to implement the new DoD Sexual Assault Response policy and protocol and submit their plan to the Services in accordance with the statute.** The Task Force recommends: **Provide training to all Academy personnel, to include cadets and midshipmen, on the various reporting resources, the level of confidentiality afforded to each, as well as treatment available to victims.** Finally: **Ensure victims are informed of and afforded their federally mandated rights.**

## Offender Accountability

At both Academies available records from the past ten years reflect an extended period where alleged offenders were not consistently or effectively held accountable through the criminal justice system. The past two years have witnessed improved efforts and limited success at holding sexual assault offenders accountable through courts-martial as well as administrative procedures. Although the Task Force finds that the current programs are greatly improved, a key obstacle to increasing accountability for rape and sexual assault is that current statutes, though flexible, do not reflect the full spectrum of criminal sexual behaviors encountered at the military service academies and society at large. Therefore, the Task Force recommends that **Congress revise the current sexual misconduct statutes to more clearly and comprehensively address the full range of sexual misconduct.** Further, to facilitate the pretrial investigative process, the Task Force recommends **the amendment of Article 32 of the UCMJ to permit commanders to close the proceedings to protect the privacy of victims and alleged offenders.**

## Training and Education

Although the Academies have expended considerable effort in developing their sexual harassment and assault training and education programs, current format and scheduling undermine their importance and continuity. Programs are poorly designed, over-reliant on cadet and midshipmen instructors, inconveniently scheduled, and ineffective in conveying key concepts. In addition, faculty, staff, and volunteers are inadequately trained on sexual harassment and assault issues. Accordingly, the Task Force recommends that **classes addressing sexual harassment and assault be graded, conducted during academic hours, instructed by qualified faculty members, and incorporate a variety of instructional methods.** We also recommend the Academies **incorporate cadet and midshipmen education on sexual harassment and assault into a mandatory academic graded curriculum that addresses these subjects in a larger context of military leadership and/or ethics.** These programs should be **integrated into the academic curriculum at various levels and progresses over the course of cadets' and midshipmen's four-year career at the Academies.** In addition, the Academies need to **establish an effective training program for faculty, staff, sponsors, and volunteers who work closely with cadets and midshipmen.** All programs must be evaluated and updated on a regular basis.

## Prevention

At both Academies, sexual harassment and assault prevention program execution and management is fragmented and inadequate. In order to change prevailing attitudes and social norms we recommend that **the Academies develop an institutional sexual harassment and assault prevention plan that is evaluated and updated annually.** In addition, the Task Force found that Tactical Noncommissioned Officers and Senior Enlisted Leaders are underutilized resources in the prevention of sexual harassment and assault. **Senior Noncommissioned Officer and Senior Enlisted Leader duties need to be clearly defined and provide for greater direct interaction and involvement with cadets and midshipmen, particularly during evening and weekend hours.**

## Coordination Between Military and Civilian Communities

The insight from years of sexual assault reform in the civilian community is that permanent solutions must be community solutions. The Task Force finds that the Academies have limited formal relationships with local law enforcement and victim support agencies. The Task Force recommends the Academies **follow the DoD policy regarding establishing collaborative relationships with civilian authorities for sexual assault victim support.** Where informal relationships are more appropriate, **the Academies should endorse and validate these relationships through documentation.**

## Conclusion

The record of the two Academies, much like the record of the Department of Defense, is one of sporadic and incomplete attempts to eliminate sexual harassment and assault. Both the Naval and the Military Academies have made progress in addressing these issues over the last several years. The Academies need resources and support from the Services, DoD, and Congress to ensure success. The changes in law identified by this Task Force are a step in that direction; good-faith efforts to implement Task Force recommendations, as well as continued surveys and oversight, will keep the Academies moving forward. It is clear to this Task Force that sexual harassment and assault is not a "fix and forget" problem. What is needed now is a long-term, sustained effort, not only by the leaders of the Academies, but also by the cadets and midshipmen.

# Chapter 1: Introduction

## Legislative Origins and Requirements

The National Defense Authorization Act for Fiscal Year 2004, Public Law 108-136, Section 526 (see appendix A), directed the establishment of a Department of Defense task force to assess and make recommendations concerning how the Departments of the Army and the Navy may more effectively address sexual harassment and violence at the United States Military Academy and the United States Naval Academy. On June 7, 2004, the Secretary of Defense issued a *Charge to Move Forward* which ordered the Task Force to carry out Public Law 108-136 (see appendix B).

Congressional concern about sexual harassment and assault[1] at the Service Academies first led to formal action in 1990, when the Senate Armed Services Committee asked the Government Accounting Office (GAO) to inquire into the treatment of service academy cadets and midshipmen. In 1994 and 1995, the GAO testified and subsequently issued formal reports on the subject.[2]

In response to the United States Air Force Academy's sexual assault problems in 2003, Congress established a Panel, chaired by former member of Congress Tillie K. Fowler, to inquire into the issues at the Air Force Academy.[3] Out of concern about potentially similar problems at the US Military Academy and the US Naval Academy, Congress mandated the establishment of this Task Force on Sexual Harassment and Violence at the Military Service Academies. Pursuant to this mandate, Secretary of Defense Rumsfeld directed the Task Force to consider the report of the Fowler Commission and the 2005 Report of the DoD Inspector General (data from 2004; hereafter known as the 2004 DoD IG Survey).[4] The Task Force was established on September 23, 2004, and consists of twelve members. Six members were selected from the four branches of the United States Armed Forces, and six members were selected from the civilian community.

**Table 1: Definitions**

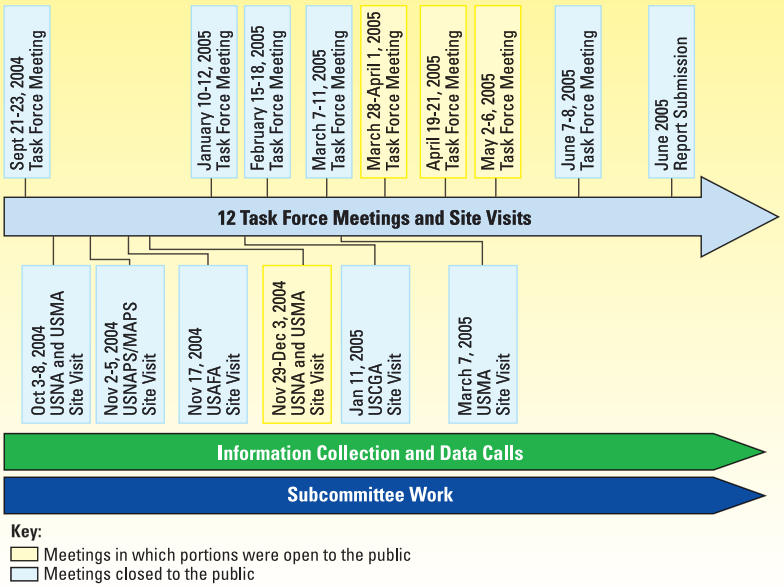
*Sexual Harassment* - Sexual harassment has a well-defined meaning within federal law. Specifically, sexual harassment is "unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature constitute sexual harassment when (1) submission to such conduct is made either explicitly or implicitly a term or condition of an individual's employment (2) submission to or rejection of such conduct by an individual is used as the basis for employment decisions affecting such individual, or (3) such conduct has the purpose or effect of unreasonably interfering with an individual's work performance or creating an intimidating, hostile, or offensive working environment."

*Sexual Violence* - Conversely, sexual violence is a term without a specific federal legal meaning. Sexual violence is a term that is widely used by civilian advocates who seek to end all violence against women or family violence and usually denotes sexual acts of force that are against the will of the victims. The term "sexual violence" is not used frequently within the military community. Within the military community, the term sexual assault carries a more far-reaching meaning that encompasses everything from violent sexual acts such as rape, forcible sodomy, and assault with intent to commit rape or sodomy, to indecent assault. While indecent assault connotes violence, violence is not a prerequisite of the crime. Indecent assault can be a mere sexual touching that occurs without the consent of the person who is touched.

## Methodology

Figure 1 to the right depicts the process the Task Force employed to gather information and determine the findings and recommendations presented in this report. The Task Force gathered information from as many diverse sources as possible in order to assess the Academies' current culture, policies, practices, and strategies for measuring and addressing sexual harassment and assault.

**Figure: 1**



## Information Sources

### *Site Visits*

The Task Force visited the Military Academy and Naval Academy two times and each of the preparatory schools once. Academy leaders, staff and faculty, victim service providers,[5] and personnel involved in the reporting and adjudication process either briefed Task Force members or were part of focus groups at the site visits. Academy superintendents personally briefed the Task Force multiple times. The members also held discussion groups with a subset of commanders, faculty, staff, cadets and midshipmen, law enforcement personnel, investigators, legal personnel, and service providers made available by the Academies.[6] Task Force staff also made separate fact-finding visits to the Academies.

In addition, Task Force members visited the US Air Force Academy[7] and the US Coast Guard Academy[8] to learn about their current practices.

### *Communication from Individuals*

To supplement group discussions on Academy grounds, the Task Force provided multiple channels of input, including private meetings, telephone conversations, and e-mails. Members invited input through these alternate channels at public meetings, on the Task Force website, with direct invitations to victims of reported cases, through distribution of contact information cards during Academy visits, and through Academy websites and e-mail distribution systems. Respondents included victims who are current and former cadets and midshipmen.

### *Department of Defense Survey Data*

The Task Force analyzed abbreviated results of the 2004 DoD IG survey of cadets and midshipmen prior to its public release in March 2005. These data provided context for and further understanding of the comments members heard in discussion groups with smaller subsets of cadets and midshipmen. Members examined the information for statistical differences by Academy, by year group, and by victim versus nonvictim status.

### *Academy and Service Policies, Reports, and Data*

On November 18, 2004, the Task Force submitted an extensive data request to the Academies, the Department of the Army, and the Department of the Navy for information pertaining to policies, reports, and practices relevant to sexual violence, harassment, and culture at the Academies from January 1994 through December 31, 2004. A list of those requested materials is provided in appendix C.

### *Consultation with Subject Matter Experts*

Experts in relevant subjects briefed the Task Force on sexual harassment, assault, and culture as well as the psychology and prosecution of sex offenders in civilian communities. Furthermore, the Task Force witnessed a demonstration of an exemplary education program cited as successful at the Naval Academy and across civilian universities nationwide.[9] Task Force staff also gathered information at the 2004 National Conference on Sexual Assault in Our Schools, which included participation and presentations by Academy leaders.

### *Communication with Related Committees and Task Forces*

The Task Force coordinated with and gathered additional insights from other DoD groups addressing the issue of sexual harassment and assault in the military, specifically the Joint Committee on Military Justice and the Joint Task Force on Sexual Assault Prevention and Response.

## Report Generation

### *Subcommittee and Full Task Force Meetings*

The Task Force met over a dozen times over the course of nine months to gather information, analyze data, synthesize the data into findings, and create recommendations. This iterative process ensured participation and agreement from the diverse voices representing different stakeholder groups within the Task Force.

### *Gap Analysis Using the Ecological Model[10]*

Once the Task Force had agreed on the findings and recommendations, an analysis was performed based on the ecological model of public health[11], to find any gaps or omissions.

### *Report Creation*

The Task Force structured the report according to the DoD *Charge to Move Forward* and its related statute (found in appendices B and A). This Task Force carefully considered both the charge and the statute in focusing and structuring our discussion. We went back to our sources for fact-checks prior to publication. In addition, while each section of the report is meritorious, this Task Force chose to vary the level of detail provided from section to section in accordance with our judgment of need.

### Review of Reports, Studies, and Articles Related to Sexual Harassment and Violence

The Task Force gathered and reviewed over one thousand reports, studies, surveys, and articles dating back to 1987 in order to become familiar with the complex issues surrounding sexual harassment and assault. This information is included in the Task Force archives.

## Relevant Reports Regarding Sexual Harassment and Violence at the Service Academies

The history of sexual harassment and assault at the Academies did not begin with the problems at the Air Force Academy in 2002–2003. An incident at the Naval Academy[12] led to Congressional scrutiny in 1990. Thereafter, Congress directed several efforts to address the issue at all the military service academies, including two reports on sexual harassment conducted by the General Accounting Office, two investigations at the Air Force Academy, and a related survey of all of the service academies.

### General Accounting Office – January 1994

The US General Accounting Office (GAO) Report to Congressional Requesters, *DoD Service Academies: More Actions Needed to Eliminate Sexual Harassment*, January 1994 assessed the Academies' efforts toward eradicating sexual harassment at their institutions. The GAO had two objectives: (1) to determine the extent to which sexual harassment occurred at the Academies, the forms it took, and its effects on those subjected to it; and (2) to evaluate the Academies' efforts to eradicate sexual harassment.

The GAO found that while the Academies generally complied with the minimum DoD requirements for sexual harassment eradication programs, they did not meet the goal of providing an environment free from sexual harassment. Although few cases of sexual harassment are formally reported, responses to GAO's survey indicated that between 93% and 97% of Academy women experienced at least one form of sexual harassment during academic year 1991. The most common forms of harassment were derogatory personal comments and comments that standards were lowered for women. Also noted was that neither of the Academies had developed usable trend data to assess the effectiveness of their sexual harassment eradication programs.

To better achieve DoD's goal of a sexual harassment–free environment, GAO's recommendations included (1) routine reviews of case files, student surveys, and focus groups in order to gather and analyze data regarding the extent of reported and unreported incidents of sexual harassment; and (2) systematic evaluation of the effectiveness of sexual harassment eradication programs on the basis of such data.

### General Accounting Office – January 1995

Members of Congress asked the GAO to update the 1990–91 study for the 1993–94 academic year[13]. Overall, the percentage of female students who indicated experiencing at least one of ten forms of sexual harassment on a recurring basis was significantly higher than in the previous study. The earlier study found that 76% of women at the Military Academy, 50% at the Naval Academy, and 59% at the Air Force Academy experienced some form of harassment on a recurring basis. The 1993 to 1994 study found that 80% of female Military Academy cadets, 70% of female midshipmen, and 78% of females at the Air Force Academy experienced the same. At all the Academies the most common forms of harassment were verbal or visual.

Male students at the Academies generally perceived an improvement from the 1990–91 study in the atmosphere for reporting sexual harassment. Conversely, there was no statistically significant change among women in the perceived likelihood of positive consequences occurring after reporting sexual harassment. The Air Force Academy actually showed a decline in the perception among female students that an offender would be appropriately punished for sexual harassment. Women at the Academies also generally showed no change in the negative consequences they thought were likely to occur as a result of reporting sexual harassment. Given that there was no apparent change in the perceptions of women regarding the negative consequences of reporting harassment, it is likely that sexual harassment continued to be underreported.

### Fowler Commission – September 2003

During the ten-year period from January 1, 1993 to December 31, 2002, there were 142 allegations of sexual assault at the U.S. Air Force Academy. On April 16, 2003, the President signed Public Law 108-11, 2003 (Emergency War Time Supplemental Appropriations Act of 2003) which, in Title V, §§501-503, established a panel known as the Fowler Commission to review sexual misconduct allegations at the United States Air Force Academy. Section 502 of the statute required the panel to study the policies, management and organizational practices, and cultural elements of the Academy that were con-

ducive to allowing sexual misconduct, including sexual assaults and rape, at the Academy.

The panel found that a failure in leadership helped create an environment in which sexual assault became "a part of life at the Academy." The panel stated that the sexual assault problems were real and continued to exist as of the writing of its report in September 2003[14]. The panel also found indicators of problems in the institutional culture; one in five responding male cadets did not believe that women belong at the Academy.

After the panel published its report, the entire Fowler Commission briefed key Congressional leaders. The Air Force accepted all the findings of the Fowler Commission, and all of the recommendations either have been implemented or are in the process of being implemented.

In Section 527 of the National Defense Authorization Act of 2004, Congress, in an apparent endorsement of the Fowler Commission recommendations, directed the Superintendents of all the Service Academies to consider the findings, conclusions, and recommendations of the Fowler Commission.

### DoD Inspector General Evaluation – December 2004

Based on requests from the Senate Governmental Affairs Committee and the Senate Armed Services Committee, the Inspector General of the Department of Defense conducted the "Evaluation of Sexual Assault, Reprisal, and Related Leadership Challenges at the United States Air Force Academy" from April 16, 2003 to December 3, 2004. This report focuses on accountability for the officers who led the Air Force Academy during the ten-year period that preceded the events of 2002–2003. The report is significant to this Task Force primarily because of its attention to confidentiality: it crystallized the Inspector General's position that victim confidentiality was a barrier to proper police investigation. The report specifically found that an unauthorized policy of confidentiality at the Air Force Academy hindered the Air Force's Office of Special Investigation's investigative efforts. This policy, approved by the Superintendent of the Academy, had not been approved by the Department of the Air Force. The Inspector General report is also critical of the amnesty program that existed at the Air Force Academy, which is relevant to the responsibilities of this Task Force.

### DoD Inspector General Survey – Conducted 2004

Related to the requests described above, the Secretary of Defense authorized a common survey of all three Service Academies, entitled the Service Academy Sexual Assault and Leadership Survey. This anonymous survey consisted of five parts with the following titles: "Demographics," "Values," "Academy Climate," "Personal Experiences," and "Written Comments." The purpose of this survey was to assess cadet and midshipman values, academy climate, scope of sexual harassment and sexual assault at each Academy, and factors that affect reporting of sexual assaults. The survey was also intended as a benchmark by which Academy leaders, the Department's senior leaders, and members of Congress could measure success over time. The Defense Manpower Data Center will conduct the required annual assessments during academic years 2005 through 2008. The Academy preparatory schools will be included in the surveys during academic years 2006 through 2008.

In the initial survey[15], the female cadets and midshipmen reported 64 incidents of rape as well as 30 incidents of forcible sodomy[16]. The details are expressed below in table 2.

**Table 2:**

| Experienced behavior against will without consent | USAFA | USMA | USNA |
|---|---|---|---|
| Total Incidents | 92 | 111 | 99 |
| Touched, stroked, or fondled private parts | 54 | 60 | 62 |
| Attempted sexual intercourse | 30 | 45 | 25 |
| Attempted oral or anal sex | 5 | 9 | 13 |
| Had sexual intercourse | 23 | 20 | 21 |
| Had oral sex | 6 | 6 | 11 |
| Had anal sex | 3 | 2 | 2 |
| Indicated 2 to 4 incidents | 13 | 11 | 16 |

SOURCE: 2004 DoD IG Survey

In addition to the assaults reported above, the survey reflected that over 50% of the women at the Academies reported sexual harassment, which was primarily verbal.

## Related Efforts

The Department of Defense and Congress are conducting several initiatives related to this Task Force's mission. These initiatives were primarily triggered by reports of misconduct from Iraq, but also reflect both the Department of Defense and Congress' rising concern that existing measures are ineffective at dealing with sexual assaults.

## Task Force on Care for Victims of Sexual Assault

Reports of sexual assault from the war zone in the Middle East became a serious issue for the Department of Defense during the initial stages of Operation Iraqi Freedom. In response, Secretary of Defense Rumsfeld appointed the Task Force on Care for Victims of Sexual Assault, led by Ms. Ellen Embrey, in February 2004. It was tasked to inquire into the handling of alleged victims of sexual assault throughout the Department of Defense. Within ninety days this Task Force reported to the Secretary and proposed an agenda that led to major changes in defense policy.[17]

Two primary findings of the Task Force were that DoD had no effective policy relating to sexual assault and that DoD did not have a common definition of terms permitting the necessary level of discourse on the subject.

A key recommendation was for the Secretary to establish a single point of accountability for policy relating to sexual assault. The Task Force also proposed an agenda for resolving the shortcomings of the existing departmental programs and policies.

## Joint Task Force on Sexual Assault Prevention and Response

In October 2004 Secretary of Defense Rumsfeld established the Joint Task Force on Sexual Assault Prevention and Response (JTF-SAPR) to serve as the temporary single point of accountability on sexual assault matters within DoD. The task force, led by Air Force Brigadier General K.C. McClain, had two principal missions. First, the task force was to implement Public Law 108-375, the Ronald W. Reagan National Defense Authorization Act for 2005. Among other requirements, this act required the Department of Defense to establish comprehensive sexual assault policies by January 1, 2005. Second, the task force was required to implement the recommendations of the Task Force on Care for Victims of Sexual Assault, discussed above.

JTF-SAPR issued a series of policy memoranda dealing with topics relating to sexual assault. Ten of eleven policy memoranda were in place by January 1, 2005, addressing all but one major policy issue. Key issues addressed were

- ★ establishing a common definition of sexual assault,
- ★ establishing a response capability in cases of sexual assault,
- ★ establishing standards for training on sexual assault, and
- ★ establishing standards for improved sexual assault victim care.

The remaining issue, confidentiality for victims of sexual assault, was resolved on March 16, 2005, by Deputy Secretary of Defense Wolfowitz after sixteen months of debate within the Department of Defense. This resolution permits confidential access to medical care and support, but does not protect victim confidentiality once the victim reports the offense to law enforcement authorities.

The remaining task for JTF-SAPR is consolidating the policy memoranda into a Department of Defense directive. Among other tasks, this directive should address sexual assault policy and establish a permanent office within the Office of the Secretary of Defense to implement and monitor compliance with the directive. JTF-SAPR is scheduled to expire upon completion of these tasks in October 2005.

## Joint Services Committee on Military Justice

Section 571 of the 2005 DoD Authorization Act required the Secretary of Defense to review the Uniform Code of Military Justice and the *Manual for Courts-Martial* to improve the military justice system's ability to address sexual assault issues and conform more closely to other federal laws and regulations of such issues.

This responsibility devolved to the Joint Services Committee on Military Justice. This committee, which consists of the senior judge advocates of the Army, Navy, Marine Corps, Air Force, and Coast Guard, proposed improvements to the Uniform Code of Military Justice establishing the new offense of stalking. The Joint Services Committee did not propose revisions to the Uniform Code of Military Justice conforming military sexual assault law to federal laws, choosing instead to propose some substantial revisions to the *Manual for Courts-Martial*. Whether these proposals are responsive to the Congressional requirement is unresolved. However, the proposals address neither the issue of confidentiality nor of sexual intercourse without consent where force is not involved.

## Forensic Evidence Reforms

The 2005 Department of Defense Authorization Act, Section 573, requires the Secretary of Defense to substantially improve procedures relating to the use and availability of forensic evidence in sexual assault cases. Of particular significance is the legislative direction to ensure that the United States Army Criminal Investigation Laboratory, which processes forensic evidence for the entire DoD, has sufficient personnel and resources to process all such evidence within 60 days of receipt. Compliance with this provision will remove a substantial roadblock to successful sexual assault prosecutions. As of October 2004, when Section 573 was enacted, the United States Army Criminal Investigative Laboratory's processing time for cases involving DNA analysis was 140 days per case. As of March 31, 2005, that time had been reduced to 89 days per case. In addition, the backlog of DNA cases has been reduced from 240 to 145.

While progress has been notable, it is not clear whether these reforms will meet the legal requirement established in the 2004 DoD Authorization Act. Although the Army has committed substantial resources,[18] the requirement for DNA analysis has doubled over the past four years due to the increasing utility of DNA analysis in many areas of criminal law. Recent technological breakthroughs enable more thorough and more useful analyses, but the process remains a time-consuming exercise requiring skilled analytical judgment.

# Chapter 2: Confidentiality: More than a Victim's Issue

In this chapter the Task Force has given special attention to confidentiality because it is key to addressing the issue of sexual harassment and assault. Confidentiality is a complicated matter with numerous implications for both victims and commanders, as evidenced by the extended debate within the Department of Defense prior to the approval of the new confidentiality policy. Confidentiality, as used in this regard by the Task Force, refers to the privileged communications between victims of sexual assault and specified care providers and counselors.[19]

It is undisputed that sexual assault at the military service academies, just as in the military and civilian communities, is a grossly underreported crime.[20] Among other factors, the extraordinarily unique psychological as well as physical impacts of these crimes understandably cause victims to be reluctant to report. These cases require a range of carefully considered actions—including special investigative and prosecutorial measures—that accommodate these conditions. One essential action is granting the option of confidentiality so that victims may seek help immediately without fear that the entire experience will become a public matter over which they have no control. When the experience becomes a public matter in this way, the victim's trauma is only compounded.

Confidentiality enables timely and meaningful assistance to victims following a sexual assault. Privileged communication, however, is an issue of extreme importance for commanders, not just victims. Commanders have principal responsibility for ensuring appropriate care of victims, as well as for investigating and holding accountable those who have committed the related misconduct. In our view, commanders can do neither effectively without a privileged reporting and counseling channel in place.

The option of confidentiality does not make this approach "victim-centric" to the exclusion of the needs and responsibilities of commanders. Rather, it will give commanders a far better opportunity to both take care of victims as well as investigate offenders and hold them accountable. Commanders cannot do either if they do not receive the information needed in a timely way. Extensive past experience shows that commanders will rarely receive critical information without an option for privileged reporting.

The "Confidential Reporting Policy for Victims of Sexual Assault" set forth in the draft *Department of Defense Directive on the DoD Sexual Assault Prevention and Response Program* is a positive step on this issue. The Task Force believes, however, that the policy's provisions for "restricted reporting" do not go far enough. In the Task Force's view, meaningful confidential counseling for sexual assault victims requires the establishment in law of privileged communications between victims and specified care providers and counselors.

The sections that follow discuss the issue of confidentiality and its need in greater detail. To fully appreciate those discussions, however, the Task Force underscores the reach of confidentiality and that it is not solely a victim's issue.

# Chapter 3: Service Academy Culture: The Real Challenge

In this chapter the Task Force highlights service academy culture because of its significant impact on sexual harassment and assault.

## Introduction

The United States Military and Naval Academies have similar cultures, defined by long-standing traditions and values shared with their respective Services. Both institutions seek to instill in their graduates the character the nation demands of its military leaders, as captured in their respective mottoes: "Duty, Honor, Country" for the Military Academy and "Honor, Courage, Commitment" for the Naval Academy. The Academies must transform young men and women, the majority of whom are coming directly from high school and possess characteristics common to young adults in American society, into military leaders who will be responsible for the lives of those in their charge. To do this requires an intensely disciplined education and training environment that addresses intellectual, emotional, moral, spiritual, and physical development over the course of four years. The evidence that the Academies successfully meet these challenges is the demonstrated performance of the vast majority of graduates.

Why then, with such high-quality youth and high standards of discipline, do acts of sexual harassment and sexual assaults still occur—conduct at odds not just with these high standards but also with minimally acceptable standards of behavior? The answer is the product of complex factors, some of which the Academies' leadership have limited control over but must manage and others which the Academies can influence. Realizing there are many influences that shape a culture, the Task Force has identified eight factors we found especially relevant to sexual harassment and assault.

## Factor A: Understanding the Value of Women to the Military

The role of women in the Services changed and expanded to meet the needs of the Services. For the all-volunteer force to succeed, the Services needed high-quality personnel, and women were a relatively untapped source of intellect, discipline, dedication, and leadership. The expansion of women's roles was a carefully crafted strategy based on operational requirements, not on equal opportunity or political correctness. Unfortunately, many cadets and midshipmen today often misunderstand this point. This lack of understanding can contribute to a culture that diminishes the regard given to women and leads to questioning their presence at the Academies.[21] In turn, this diminished regard leaves open the possibility of harassment.

## Factor B: The Impact of Youth Culture

The Academies must also contend with the clash between youth culture and the highly disciplined military culture needed to train future leaders. Those entering the Academies are still developing relationally, morally, spiritually, and intellectually. American youth today generally have casual attitudes toward sexual activities, underage and reckless alcohol use, and illegal drug use.[22] Additionally, some young people have been exposed to sexual harassment and/or assault prior to their matriculation to the Academies.[23] While these attitudes and experiences alone do not cause sexual assault, they may contribute to poor judgment, lowered inhibitions, and increased aggression and/or vulnerability to sexual assault. Alcohol is a particularly acute contributor[24]; the majority of sexual assaults at both Academies involve alcohol to some degree.[25]

## Factor C: Adherence to Rules and Regulations

Like other military organizations, the Academies regulate many aspects of cadet and midshipmen's lives. The highly regulated environment runs counter to prevailing American youth culture and the Academies are not always successful in communicating the rationale behind these regulations. Recent data developed by the Department of Defense Inspector General reflects that nearly half of cadets and midshipmen would violate significant Academy rules if they knew they would not get caught.[26] Often cadets and midshipmen make their own judgments about compliance because they do not understand or choose to ignore the relevance, value, and need of these regulations, especially those appearing to relate only to the unique disciplinary requirements of the Academies. While such attitudes do not excuse or explain incidents of sexual assault, they may explain why regulations prohibiting less serious but unquestionably harassing behavior are not given due regard.

## Factor D: Defining Honor and Honorable Conduct

Where the honor code is involved, the antiauthoritarian attitude described above is substantially diminished. More than three-quarters of cadets and midshipmen strongly agree to adhere to the honor concept even when they know they will not get caught violating it.[27] The Academies, then, have successfully imbued in the substantial majority of cadets and midshipmen the importance of the virtue of trustworthiness exemplified by a leader who does not "lie, cheat, or steal." The honorable behavior expected of a leader of character, however, incorporates standards of personal and professional conduct that go beyond these limited proscriptions. Honorable behavior must reflect other essential institutional values—to include respect for human dignity. The challenge for the Academies is to elevate the importance of institutional values fundamental to honorable behavior to a level comparable to that of honor as understood and appreciated by cadets and midshipmen.

## Factor E: Peer Loyalties

Peer loyalty is a valued principle actively developed by the Academies. This attribute is positive unless it overrides the obligation to correct improper behavior. Peer loyalty expectations can cause cadets and midshipmen to ignore problematic behavior or explain it away as harmless. Cadets and midshipmen may not understand that their duty as leaders to not engage in sexually harassing behavior, or tolerate those who do, overrides any obligation of peer loyalty.[28] Misplaced peer loyalty is detrimental to changing a "bystander" attitude and to encouraging cadets or midshipmen to correct, report, and/or discipline a peer, especially in the case of sexual harassment.

## Factor F: Reporting Backlash

In the 2004 DoD IG Survey, 36% of female victims of sexual assault at the Military Academy and 26% of the female victims at the Naval Academy indicated they did not report the assault because they "feared ostracism, harassment, or ridicule by peers."[29] The Academies are small, enclosed communities, which further intensifies the impact of a negative response from peers for an age group already highly sensitive to peer opinion. Furthermore, the environment is highly competitive, and peers participate in ranking one another's military aptitude, which in turn influences student rankings and career opportunities upon graduation. Academy leadership must continue efforts to counter the negative consequences of reporting harassment or assault so they can correct "blame-the-victim" attitudes and hold accountable those who perpetuate the backlash to reporting.

## Factor G: Power and Authority

Power is highly correlated with abuse.[30] Experience in the military services has demonstrated that this phenomenon has no cultural, gender, or racial boundaries. Research has established that sexual harassment and abuse are highly correlated with power—be it the power of position, grade, or physical strength.[31] The Academies develop young officers' ability to exercise their power and authority properly through instruction and actual experience. At the military academies, this objective is achieved by placing senior cadets and midshipmen in charge of their junior peers, whereby they learn to motivate, shape, lead, and work with subordinates. Proper training, oversight, and coaching will ensure that newly empowered individuals do not misuse or abuse their authority. Leaders must have an appreciation of the responsibilities that accompany power, and respect the trust the institution has placed in them.

## Factor H: Attitudes on Gender Disparities

There are at least three prominent factors related to the needs of the Services that lead to the differing treatment of men and women at the Academies. First, women comprise only 15%–17% of the student population.[32] Second, women are excluded from some combat specialties.[33] Third, there are differing physical standards for men and women at the Academies, which parallel the standards in the services. These distinctions are further accentuated by a male-dominated history at the Academies and a predominantly male faculty and staff.[34] Some in the Academy communities do not value women as highly as men because female service members are a minority, are excluded from some of the highly regarded combat specialties and are held to different physical fitness standards. When women are devalued, the likelihood of harassing and even abusive behavior increases.[35]

## Conclusion

Academy culture is shaped by all those who live and serve it, past and present. The existence of sexual harassment and assault is a contradiction in institutions that strive to and succeed in creating a strong commitment to honor and service. This contradiction is a product of complex and dynamic factors that influence the attitudes and behaviors of cadets and midshipmen. The solution to preventing this behavior, in large measure, lies with cadets and midshipmen themselves. They must understand that the obligation not to engage in or tolerate sexually harassing behavior is not a regulatory issue but a values and leadership issue. Sexual harassment and assault are values issues because they are fundamentally at odds with the obligation of men and women in uniform to treat all with dignity and respect. They are leadership issues because those who seek to be future leaders in the Armed Services are obligated to uphold standards—not only in their own conduct but also in their response to the conduct of others. Cadets and midshipmen who observe harassing behavior and fail to intervene in effect condone and express approval of that behavior. This tolerance of the attitudes demonstrated by even a few offenders undermines the standards essential to successful leadership development.

From an institutional standpoint, Academy leaders must continue to underscore this responsibility in cadets and midshipmen through the leadership-development and respect programs, while remaining aware of current youth culture. In particular, they should replicate their success in instilling exceptional regard for the honor code as they cultivate other essential professional values.

# Chapter 4: Overview of Sexual Harassment and Assault Resources at the Academies

The Task Force chose to address the topic of sexual harassment and assault in six categories: (1) victims' rights and support, (2) offender accountability, (3) data collection and case management tracking, (4) education and training, (5) prevention, and (6) coordination between military and civilian communities. What follows in this section is a summary of requirements and policies as of December 2004.

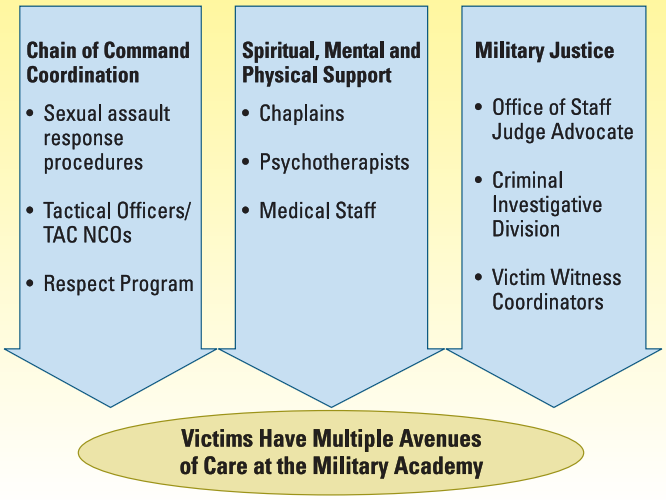
## Victims' Rights and Support

This section describes issues associated with the Academies' responses to victims of sexual assault, including

- ★ victims' care,
- ★ victims' rights,
- ★ confidentiality,
- ★ safety and protection, and
- ★ collateral offenses.

This section describes the various support bodies that are available, their locations, resources, and responsibilities. While not identical, both Academies utilize multifaceted approaches to provide multiple avenues for victims' care. These support bodies consist of both women and men and both civilian and military personnel.

Figure: 2




## Victims' Care at the Military Academy

### *Chain of Command Coordination:*

**Sexual assault response procedures** — The US Military Academy has a policy for institutional response to sexual assault that is focused on victim advocacy and centered on the chain of command. A Cadet Health Promotion and Wellness Council (CHPWC) examines relevant issues to adopt best practices for treatment of victims. The resources employed to assist victims include victim advocates, psychotherapists, Criminal Investigative Command (CID), staff judge advocates, chain of command, chaplains, and medical personnel. These resources, through the Tactical Officer/Tactical Non-Commissioned Officer, coordinate actions and meet monthly, as per MEDCOM Regulation 40-36, to review the handling of each case.[36]

**Tactical Officers/Tactical Noncommissioned Officers (TAC NCOs)** — Tactical Officers and TAC NCOs are the designated focal point for coordination of on-post victim services and are responsible for notifying (1) the Center for Personal Development (CPD) psychotherapist and Victim Advocate for direct victim assistance, (2) the Criminal Investigative Command to begin an investigation, and (3) the Staff Judge Advocate for legal oversight.

**Respect Program** — The Military Academy, under the Simon Center for the Professional Military Ethic (SCPME), implemented the Respect Program Advisory Council (RPAC) in 1992. The RPAC serves as the liaison between the Corps of Cadets and Commandant in dealing with issues of character development. Among a wide range of topics, RPAC addresses the prevention of sexual assault and harassment, informing cadets of resources available and their responsibility to prevent unacceptable behavior. A male active duty officer currently serves as the Respect Chairperson, and a female active duty officer serves as the Special Assistant for Respect. A male active duty enlisted member is the Equal Opportunity Advisor for the cadets. Selected cadets serve as Regimental and Company Respect Representatives.

### *Spiritual, Mental, and Physical Support:*

**Chaplains** — There are nine active duty male chaplains and one female GS-12 civilian chaplain who are designated to serve the cadet population.[37]

**Psychotherapists** — Until 2004, the social workers at Community Mental Health Services (CMHS) at Keller Army Community Hospital (KACH) were the primary

providers of care for victims of sexual assault. Currently, CPD is the primary mental health facility on post for cadets, and it has four psychologists: one female military, one female civilian, one male military, and one male civilian. All four psychologists serve as Victim Advocates.[38]

**Medical** — Cadets routinely use the Cadet Health Clinic for sick call, but can also report sexual assaults there. Currently the primary designee is a female civilian OB/GYN provider.[39] If a Sexual Assault Forensic Exam (SAFE) exam is necessary, victims are escorted to Keller Army Community Hospital for the procedure, which is performed by a qualified physician.

### *Military Justice:*

**Office of the Staff Judge Advocate** — The Military Academy Staff Judge Advocate (SJA) employs four civilian attorneys and twelve active duty Judge Advocate General (JAG) officers, supported by military and civilian paralegals. When there is a sexual assault, the victim is assigned to one of three prosecutors who are responsible for ensuring that the victim and witnesses are afforded their rights until there is resolution to the case. There are also three attorneys available to provide cadets with personal non-criminal legal assistance and services.[40]

**Criminal Investigative Command** — The Criminal Investigative Command (CID) investigates Army felony offenses. CID investigates cadets and all active duty soldiers accused of violating the Uniform Code of Military Justice within its jurisdiction. The CID office at the Military Academy has a staff of three male military Special Agents and is located within the same building as the Military Police.[41]

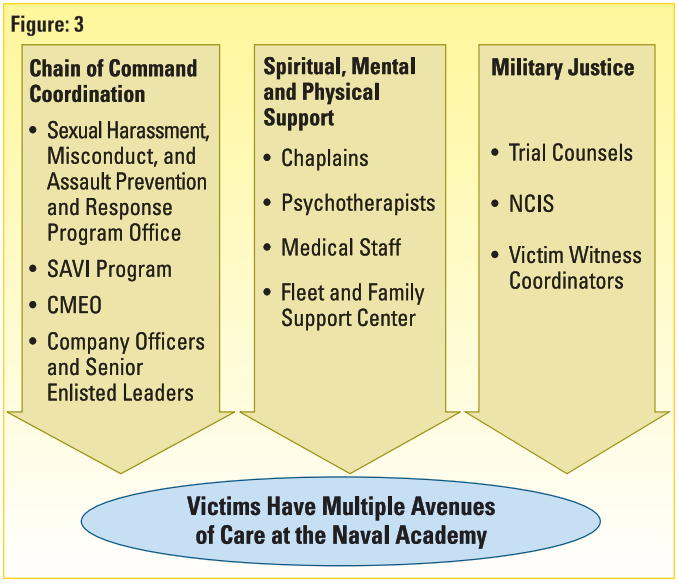
**Victim Witness Coordinator** — The position of Victim Witness Coordinator is currently assigned as a collateral duty to a civilian female paralegal who works at the Academy. The Victim Witness Coordinator is responsible for ensuring that victims' and witnesses' rights are accorded them from the start of an investigation until the case is resolved.[42]

## Victims' Care at the US Naval Academy

### *Chain-of-Command Coordination:*

**Sexual Harassment, Misconduct, and Assault Prevention and Response Program Office** — In 2004, in an effort to bring all component activities related to sexual harassment and assault under a single umbrella, the Naval Academy established the Sexual Harassment, Misconduct, and Assault Prevention and Response Program Office.

Figure: 3




Currently, the position of Program Manager is held by a female Navy Captain who reports directly to the Superintendent. The Program Manager directly supervises two full-time officers: one Training Coordinator and one JAG who serves as the Legal Representative. She is also responsible for indirect supervision of a full-time Brigade Sexual Assault Victim Intervention (SAVI) Program Coordinator and a collateral duty faculty/staff SAVI Coordinator.[43] All these positions are presently filled by women.

**Sexual Assault Victim Intervention Program** — The Sexual Assault Victim Intervention (SAVI) Program is a Naval Academy adaptation of a Navy-wide program to assist victims of sexual assault. Currently, the SAVI Coordinator is an active duty female officer responsible for managing the SAVI Advocates and SAVI GUIDEs. SAVI Advocates are officers and senior enlisted personnel on the staff who are trained to assist victims of an assault. SAVI GUIDEs are midshipmen who are trained to serve as peer resources.[44]

**Command Managed Equal Opportunity Program** — Currently, the Brigade Command Managed Equal Opportunity (CMEO) Program is administered by an active duty female officer. She is responsible for the training of midshipmen regarding sexual harassment issues and is the primary point of contact for midshipmen harassment complaints. She also oversees the midshipman Human Education Resource Officer(HERO) Program, in which midshipmen are educated in human relations issues.

**Company Officers and Senior Enlisted Leaders** — Company Officers and Senior Enlisted Leaders are located within each company and interact with the midshipmen on a daily basis.

### *Spiritual, Mental, and Physical Support:*

**Chaplains** — There are currently five male and one female active duty chaplains with offices located in the Battalion living space.

**Psychotherapists** — The Naval Academy has two mental health resources on the Yard where victims of sexual assault can obtain counseling. The Midshipmen Development Center (MDC) consists of two male active duty psychologists and one female civilian psychotherapist. The Mental Health Clinic is part of the Naval Medical Clinic Annapolis. It is composed of two psychologists, currently one civilian female and one active duty female, who provide counseling services to midshipmen, active duty personnel, and dependent personnel.[45]

**Medical** — The Brigade Medical Clinic, located within Bancroft Hall, provides basic medical care to all midshipmen during daytime hours and as needed during other hours. The Brigade Medical Clinic is part of Naval Medical Clinic Annapolis (NMCLA), which is also located on the Yard. NMCLA serves midshipmen, active duty service members, dependents, and retirees. SAFE exams are not performed at either clinic. They are performed at two local civilian hospitals, which are five and fifteen miles away from Academy grounds.

**Fleet and Family Support Center** — The Fleet and Family Support Center is at Naval Station Annapolis and can provide counseling services for midshipmen, other active duty service members, and their family members.

### *Military Justice:*

**Trial Counsel** — There is one full-time active duty female JAG from the Naval Legal Service Office North Central in Washington DC, whose primary office is on Naval Academy grounds. This individual provides legal assistance and defense counseling services and may be appointed as a defense counsel for courts-martial. Prosecutors are provided from a separate command, the Trial Service Office Northeast, located at the Washington Navy Yard, Washington DC. The Legal Assistance attorneys, from the Naval Legal Service Office North Central in Washington DC, are available to provide privileged legal counseling services to midshipmen if additional resources are necessary.[46]

**Naval Criminal Investigative Services** — Located on Academy grounds, Naval Criminal Investigative Services (NCIS) investigates felony offenses. This field office consists of three civilian Special Agents, currently two males and one female, and a female civilian Administrative Agent.[47]

**Victim Witness Coordinator** — In September 2004, the Victim Witness Coordinator position ceased to be a collateral duty of the Commandant's Legal Advisor and became a full-time position of the Legal Representative at the Naval Academy Sexual Harassment, Misconduct, and Assault Prevention and Response Program Office. Currently, the Victim Witness Coordinator is a military female officer. The Victim Witness Coordinator advises victims of their rights in the investigative and legal processes, consults with the victims on their wishes regarding these processes, and keeps them informed of the progress of the case.[48]

## Victims' Rights at the Military and Naval Academies

Under federal law, DoD Directive 1030.1 ("Victim and Witness Assistance"), and DoD Instruction 1030.2 ("Victim and Witness Assistance Procedures"), victims have been accorded certain rights, specifically to

- ★ be treated with fairness and with respect for dignity and privacy;
- ★ be reasonably protected from the accused offender;
- ★ be notified of all court proceedings;
- ★ be present at all public court proceedings related to the offense, unless the court determines that the victim's testimony would be materially affected if the victim heard testimony at trial;
- ★ confer with the government attorney in the case;
- ★ receive available restitution; and
- ★ be provided information about conviction, sentencing, imprisonment, and release of the offender.

Army and Navy policies direct that victims and witnesses be given their rights at the earliest opportunity during the investigation of a crime. Victim Witness Coordinators are responsible for ensuring victims are accorded their federally mandated rights, kept informed of the status of the case, understand the resources available to them throughout the process, and are assisted in the enforcement of their rights.[49]

## Confidentiality

Confidentiality, as that term is used in this regard, refers to communications made by a victim that are protected by law from disclosure absent the victim's consent. The victim holds this "privilege" and the courts and those professionals to whom the communications were made must respect the victim's privilege. The Military Rules of Evidence (MREs) define what privileges exist in the military services. At present, only chaplains, lawyers, and psychotherapists may receive confidential communications, and those communications are protected by law, except to the degree the law may have provided for exceptions. Chaplains have absolute confidentiality, meaning there are no exceptions to the chaplain-penitent privilege. The lawyer-client and psychotherapist-patient privilege are subject to some exceptions.

A confidential communication could include a victim's disclosure to a lawyer or the lawyer's assistant or paralegal to obtain services, and that communication is protected under the lawyer-client privilege. However, if the communication is made in a public place where it can be overheard by others or is made in front of persons not authorized to receive confidential communications, then it is not protected and not considered confidential.

Under MRE 513, psychotherapists are afforded limited confidentiality.[50] Information contained in medical and mental health records of cadets and midshipmen may be accessed by the commanders in certain circumstances. Personnel from the chain of command, medical personnel, the Victim Witness Assistance Program, and Investigative Services are afforded no confidentiality under military law, and are required to report the incident.[51]

The Superintendent of the Naval Academy established policy that affords certain SAVI personnel, specifically the Brigade SAVI Coordinator and midshipmen SAVI GUIDEs, limited confidentiality.[52] This grant of confidentiality is not afforded under federal law.[53]

## Safety and Protection

Both the Military Academy and the Naval Academy have taken a number of actions to ensure the safety of cadets and midshipmen. They

- ★ permit students to lock their doors;[54]
- ★ issue password-protected computers;[55] and
- ★ encourage the use of the "buddy system."[56]

If a sexual assault occurs, the Military Academy and Naval Academy can take additional steps to ensure the safety of the victim. They can

- ★ issue no contact/military protective orders;[57]
- ★ move the accused and/or the victim to separate companies (with victim consent);[58]
- ★ assign a Victim Advocate.[59]

In addition, the Naval Academy has the capability of moving the accused off Academy grounds until resolution of the case.[60]

## Collateral Offenses

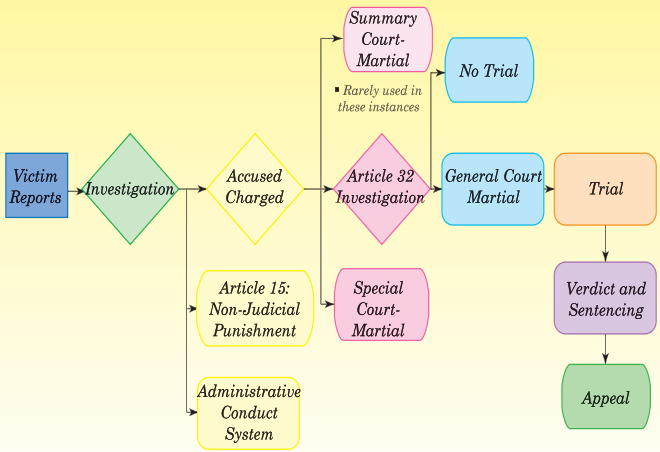
At both Academies, offenses committed by a victim or witness at or around the time of the alleged sexual assault are termed "collateral misconduct" or "collateral offenses." Collateral misconduct refers to behavior that is a crime under the UCMJ or a violation of Service or Academy regulations. Self-reported violations, such as alcohol offenses or prior consensual sexual misconduct (sex in the dorms), that are factually related to the assault are typical examples. Both Academies have implemented policies for dealing with instances of collateral misconduct.[61]

# Offender Accountability

Both Academies employ a variety of disciplinary mechanisms, judicial, nonjudicial, and administrative, to hold offenders accountable for sexual misconduct. (Please see the figure 4 below for an abbreviated view of the adjudication process.)[62] DoD surveys have determined that reporting rates for sexual assault at the Academies are relatively low.[63] For this and other reasons, the criminal prosecution and conviction rates are correspondingly low.[64] Over a ten-

**Figure: 4**

*ABBREVIATED ADJUDICATION PROCESS**




** At any point along the process starting with investigation, a determination of insufficient evidence to proceed could be made or the accused could be found not guilty.*

year period beginning in 1994, the Military Academy convened five courts-martial and secured three convictions in sex-related criminal cases.[65] The Naval Academy had one court-martial and conviction in that same ten-year period.[66] Many of the reported cases were resolved without the court-martial process because the Academies have other nonjudicial options at their disposal. Among those, involuntary administrative separation is routinely used to address cases of sexual assault and other sexual misconduct.

The Academies do not compile comprehensive statistics on sexual harassment cases. The disposition of these cases depends on the severity and nature of the harassment. Reported cases are handled in the same way sexual assault and other misconduct cases are handled. Anything from informal counseling to a court-martial may be appropriate depending upon the severity and nature of the misconduct.[67]

## Investigative/Court-Martial Process

At the investigative and pretrial stages, there are some minor differences in the way each Academy proceeds.[68] At the judicial stage, the processes for both the Naval Academy and Military Academy are essentially identical because both institutions use the law and procedures established by Congress in the Uniform Code of Military Justice and further refined by the President in the *Manual for Courts-Martial*. In practice the processes used at the Academies are virtually identical to those used by the Army and Navy in the field.

## Current Military Law

The UCMJ covers a wide range of sex-related crimes for prosecution (i.e., rape, carnal knowledge, sodomy, indecent assault, indecent acts or liberties with a child, indecent exposure, indecent language, indecent acts with another, pandering, prostitution, adultery, and bigamy). Although virtually all sexual misconduct can be charged under the current code, not all sexual offenses are easily prosecutable. For instance, the rape statute used by the military services, Article 120, has remained essentially unchanged since the adoption of the Uniform Code of Military Justice (UCMJ) in 1950 and requires proof that intercourse occurred *by force and without consent*.[69] However, the most common type of sexual assault cases reported at the Academies are "acquaintance rape" or "date rape," which usually do not involve the use of force necessary to obtain a conviction. In addition, because many victims do not suffer visible physical harm and do not defend themselves by using physical force against offenders, juries are reluctant to brand offenders with the harsh stigma associated with a rape or sexual assault conviction. To remedy this problem, most states (forty-six out of fifty), the District of Columbia, and the federal government have revised their sexual assault and rape statutes to more comprehensively reflect the range of commonly encountered contemporary sex crimes. A list of the current sex-related crimes under the Uniform Code of Military Justice, including Article 120, "Rape and Carnal Knowledge," is found in appendix D.

## Defense Counsel

The accused has rights that must be protected, the most important of which is the right to counsel.[70] The Naval Academy has a full-time, permanently assigned defense counsel.[71] This person consults with and, if necessary, defends midshipmen accused of crimes, honor violations, and other misconduct. The Military Academy does not have an on-site defense counsel. Cadets requiring advice from an attorney are referred to the legal assistance office, where an attorney will provide counsel and assistance until criminal charges are actually preferred. At that point, the accused will be assigned an attorney from Fort Drum, New York. Fort Drum is six hours away from West Point by car, so initial consultations are conducted via telephone and any in-person meetings require overnight travel of the attorney.

## Permanent Records of Alleged Misconduct

Under current guidelines and practice, military investigative agencies may establish a formal record of an allegation of criminal misconduct based on a determination by an investigative agent that the information is "credible." This determination is referred to as "indexing" (or informally in the Army as "titling"). Even if no disciplinary action is taken in the case, and even if an accused is acquitted in court, this indexing record and allegation will be maintained permanently with only limited provisions for removal or correction. In practice, this information may be used later for official purposes other than law enforcement.

## Data Collection and Case Management Tracking

Neither Academy has an adequate long-term data collection or case management and tracking system that allows for tracking and analysis. Each school began tracking and collecting data more thoroughly in recent years, but the systems have not been institutionalized. The military service academies are not subject to Title IX[72] or the Clery Act,[73] which impose certain obligations on civilian universities, including a requirement to track and report crime statistics publicly. In November 2004, the Department of Defense issued a new policy memorandum establishing new reporting requirements for the services to track sexual assault cases. The new policy applies to the military service academies and requires them to track and report information on reported sexual assaults.

### Defense Incident Based Reporting System (DIBRS)

The Defense Incident Based Reporting System is a data collection system designed to provide a standardized data repository and reporting system for criminal offenses and other high-interest issues for the Defense Department.[74] This system is designed to connect electronically with the Federal Bureau of Justice's Criminal Justice Information Service, which will maintain Defense information, along with other federally reported information, in the National Incident Based Reporting System. This connectivity will be established in 2005. Under current law the reporting and data collection requirements of DIBRS apply to the military service academies. The statutory requirements and need for statistical information on these crimes and other high-interest issues exist at the Academies as well as in the larger Department of Defense. The limited accessibility to personal identifying information built into DIBRS serves to protect the privacy interests of cadets and midshipmen subject to DIBRS reporting. In addition, the personal identifying information contained in DIBRS is maintained by the Defense Manpower Data Center and will not, except under court order, be released outside the Department of Defense.

## Training and Education

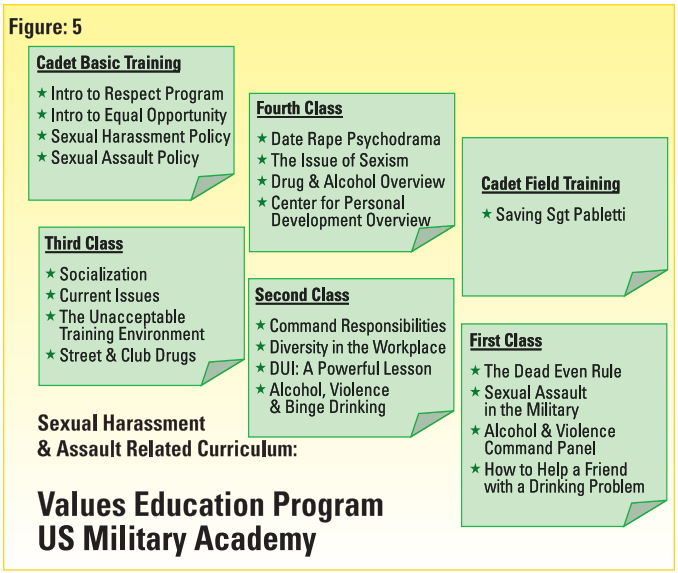
Basic goals for both Academies are effective training and education to prevent sexual harassment and assault as well as to effectively respond to an incident should one occur. For the purposes of this report, the Task Force refers to education as the intellectual process of gaining theoretical information and then learning to synthesize that theoretical information into practical application. This contrasts with training, which this Task Force defines as a basic process of learning to understand and follow an established set of policies or procedures. Both are equally important if slightly different in meaning.[75]

The Task Force addresses training and education relating to sexual harassment and assault in three broad categories based on the intended recipient: (1) cadets and midshipmen; (2) faculty, staff, and support personnel; and (3) local volunteers.

### Cadets

The Values Education Program at the Military Academy is a mandatory program for all cadets emphasizing the development of personal and professional values. It consists of forty-seven hours per year of values and ethics training throughout the four-year program. Within the Values Education Program, topics are organized into two categories: honor and respect. The Respect Program addresses sexual harassment and assault, and relevant topics are taught by specially trained cadet "Respect Representatives" under the supervision of a trained faculty or staff member.[76]

Figure: 5




### Midshipmen

The Sexual Assault Victim Intervention (SAVI) Program and the Command Managed Equal Opportunity (CMEO) Program are the mandatory programs at the Naval Academy that address sexual harassment and sexual assault. Both are Department of the Navy programs which are specifically tailored for the Brigade of Midshipmen. Much of the SAVI training is taught by specially trained midshipmen SAVI GUIDEs under the supervision of a faculty or staff member.[77] The CMEO program focuses on equal opportunity issues, including sexual harassment.

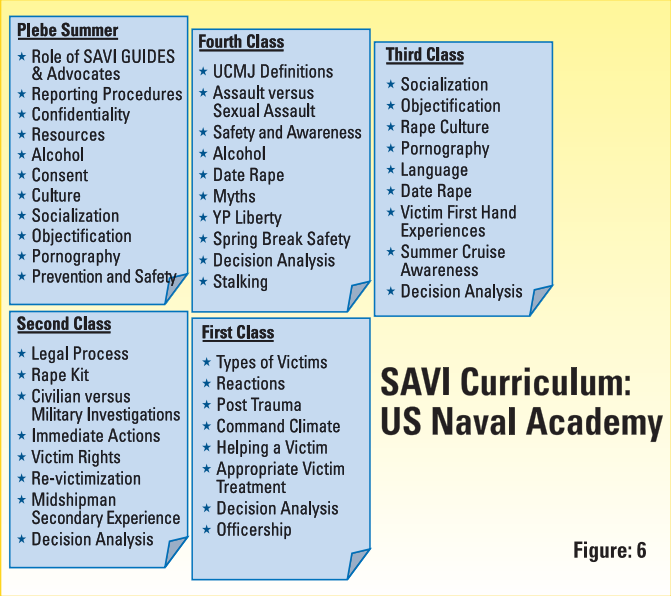


Figure: 6

CMEO training is taught by specially trained Human Education Resource Officers (HERO), also under the supervision of a trained faculty or staff member.

## Faculty, Staff, and Support Personnel

Sexual harassment training for faculty at both Academies is provided by the Department of the Army and Department of the Navy Equal Opportunity (EO) and Equal Employment Opportunity (EEO) Programs. Additionally, at the Naval Academy, both civilian and military faculty receive annual training on the SAVI Program, which addresses sexual assault.

At the Military Academy, Tactical Officers and Tactical Noncommissioned Officers are responsible for the day-to-day command and oversight of cadets. Tactical Officers are selected through a competitive process[78] and attend a graduate program in counseling immediately prior to being assigned to the Military Academy. This Master of Arts program is completed in residence at both the Military Academy and Long Island University[79] Tactical Non-Commissioned Officers are selected through the standard assignment process[80] and receive up to ten days of orientation before assuming their duties. The remainder of the staff and all installation support personnel receive training on sexual harassment through Department of the Army EO/EEO programs.

At the Naval Academy, Company Officers and Senior Enlisted Leaders are responsible for the day-to-day command and oversight of midshipmen. Company Officers are selected through a competitive process[81] and attend a graduate program in Leadership and Human Resource Development immediately prior to assignment at the Naval Academy. This Master of Science program is administered by the Naval Post-Graduate School on-site at the Naval Academy.[82] Navy Chief or Senior Chief Petty Officers are selected for Senior Enlisted Leader (SEL) positions through a competitive process[83] and are required to complete a four-week Basic Instructor Training course and a five-week Naval Academy–customized Recruit Division Commander Training course prior to assuming duties. Marine Gunnery Sergeants are selected for SEL positions through an exceptionally competitive process[84] based in part on previous training and successful performance as Drill Instructors at a Marine Recruit Depot. Therefore, upon selection, Marine SELs already possess a level of training comparable to that which the Navy provides Navy SELs prior to assignment. The remainder of staff and installation support personnel receives the same Department of the Navy SAVI and EO/EEO training discussed in the faculty section.

## Local Volunteers

Both Academies use local volunteers extensively in various athletic, extracurricular, and sponsor/mentor programs, but there is no institutionally mandated training or policy for these volunteer personnel. Each individual program using volunteers makes an independent determination of the need for such training.[85]

## Prevention

Similar to those in the society at large, military prevention programs have historically focused on what individuals can do to keep themselves safe. Experts have since realized that this approach alone is inadequate. The complex issues surrounding sexual harassment and assault require multiple strategies and demand involvement at both individual and institutional levels.[86] The discussion in other sections of this report regarding service academy culture, victims' rights and support, offender accountability, and training and education programs are important components of sexual harassment and assault prevention at the Military Academy and Naval Academy. Three additional prevention-related topics that have not been addressed are prevention program execution and management, physical environment, and accession standards.

## Prevention Program Execution and Management at the US Military Academy

At the Military Academy and within the U.S. Corps of Cadets (USCC), the prevention program execution and management for both sexual harassment and assault is the responsibility of the Simon Center for the Professional Military Ethic (SCPME).[87] SCPME's primary mission is to educate cadets on issues of ethics and character as they prepare to take on leadership roles in the Army. This is done through the previously described Values Education Program[88] and its subordinate Respect Program. This approach integrates sexual harassment and assault prevention and response training into a larger discussion on ethical conduct and leadership.

External to the USCC, sexual harassment prevention program management is the responsibility of the Equal Opportunity Program Manager on the Garrison Commander's staff.[89] This office is responsible for prevention instruction for faculty, staff, and all other installation personnel. Outside the USCC, sexual assault prevention program management has no single office specifically assigned.

## Prevention Program Execution and Management at the US Naval Academy

On April 16, 2004, the Naval Academy established the Sexual Harassment, Misconduct, and Assault Prevention and Response Program Office.[90] This office is part of the Superintendent's staff and is responsible for execution and management of both sexual harassment and assault prevention programs across the entire installation. Specific duties of this office include ensuring proper coordination between the multidisciplinary services offered by the Academy, providing training for all Academy personnel, and updating Academy instructions and regulations pertaining to sexual harassment and assault.

## Physical Environment

Both Academies are located on secure military installations with access controlled by military or civilian police. These police forces also patrol the Academy grounds. Student living, dining, and study areas are all located adjacent to one another within this secure area. The Military Academy is located in a somewhat isolated rural area of New York. The Naval Academy in Annapolis, Maryland, is in close proximity to the greater Washington-Baltimore metropolitan area.

The cadet and midshipmen living areas are organized around a military structure assigning them to rooms based on their company. Immediately adjacent to these rooms are the offices of the staff officers and NCOs assigned to supervise each company. These officers and NCOs are generally in and out of the company areas between 6:30 a.m. and 7:00 p.m. on weekdays, but only occasionally are present on weekends. These officers' oversight is augmented by a formalized "watch" (the Naval Academy) or "guard" (the Military Academy) program at both Academies. While not identical, the two programs are similar. Both require one or more officers to be on duty and physically present in a central office adjacent to the individual cadet or midshipmen living areas. These officers then oversee the watch or guard. At least one cadet or midshipman is assigned to each company area from roughly 5:30 a.m. until 12:00 a.m. on weekdays and twenty-four hours a day on weekends. Between the end of the night watch and the beginning of the day watch the following morning, a cadet or midshipman roving watch or guard is assigned to monitor all company living areas. In general, this roving watch or guard will visit each company area at least once during the night. While the Military Academy requires the officers to also visit at least four of the company areas through the night, the Naval Academy encourages, but does not require, the officers to visit individual company areas.[91]

The Academies assign individuals to rooms based on the company to which the cadet or midshipman is assigned. Each cadet or midshipman has one or more roommates of the same gender. While rules vary somewhat by company, cadets and midshipmen are encouraged to keep room doors open during the day except when changing clothes. Doors may be closed and/or locked at night after lights-out. Both academies have gender-designated communal restrooms. The Military Academy has gender-designated communal shower facilities, whereas the Naval Academy has shower facilities in each room.

## Accession Standards

Appointment to either Academy is the result of a rigorous and highly selective screening process. Most successful applicants receive a congressional or presidential nomination. In all cases applicants are closely scrutinized for academic abilities, leadership potential, and physical fitness. While many assessment tools are objective and standardized (grade point average, SAT scores, etc.), those methods most likely to reveal a propensity toward sexual harassment or assault are inherently more subjective. All applicants are to report and explain any past misconduct.

This includes both criminal acts as well as more minor misconduct in secondary schools or similar settings. Applicants must submit secondary school counselor recommendations and reports from local law enforcement agencies regarding criminal history or arrest records. Additionally, each applicant is interviewed extensively by an Academy liaison officer who typically meets the applicant early in the process, guides him or her through the application process, and then ultimately submits an official assessment of each applicant.

## Coordination Between Military and Civilian Communities

Coordination between military and civilian communities, including local support organizations and law enforcement agencies, is essential to providing comprehensive care for victims and for bringing offenders to justice. Establishing and maintaining a relationship with community agencies can be difficult and requires a great deal of effort and dedication on the part of both military and community agencies. To be effective, collaborative efforts must be mutually supported by both military and community agencies through formal or informal agreements.

### Formal Relationships

Neither the Military Academy nor the Naval Academy currently has formal memoranda of understanding (MOU)[92] or memoranda of agreement (MOA) with local community agencies regarding support to victims of sexual assault.[93]

### Informal Relationships

#### *The US Military Academy*

The Military Academy maintains informal relationships with local law enforcement agencies regarding support for victims of sexual assault. CID and local police agencies have established informal relationships to exchange and share information and to provide training.

#### *The US Naval Academy*

The Naval Academy currently has numerous informal working relationships with various civilian resources, including the following:

**North Arundel Hospital** — North Arundel Hospital, located approximately fifteen to twenty miles from the Naval Academy, provides SAFE exams and treatment to sexual assault victims. The hospital also provided training to SAVI personnel and the entire Brigade of Midshipmen.

**Anne Arundel Medical Center** — A new treatment facility in the Annapolis area is located approximately five miles from the Naval Academy. In October 2004, the Academy took actions to establish a relationship with the medical center to provide forensic exams and treatment to sexual assault victims. At present, the medical center is not staffed to provide the requested support.

**Sexual Assault Crisis Center of Glen Burnie** — The Sexual Assault Crisis Center (SACC) located in Glen Burnie, Maryland, provides a twenty-four-hour hotline for sexual assault victims, therapeutic counseling, and SAVI training. A member of the Fleet and Family Support Center is on the SACC board.

**Annapolis Police Department** — Naval Criminal Investigative Services (NCIS) confers with the local police departments if a midshipman reports an incident that took place outside of the Naval Academy or if a midshipman reports to a law enforcement entity outside the Academy.

**Anne Arundel Sexual Assault Response Team (SART)** — The Brigade SAVI Coordinator and Commandant's Legal Advisor attend the Anne Arundel County SART monthly meetings to increase coordination with local community officials and support local efforts in sexual assault prevention and victim advocacy.

**Maryland Coalition Against Sexual Assault (MCASA)** — A private, not-for-profit organization, MCASA works closely with local, state, and national organizations to address issues of sexual assault in Maryland. Representatives from MCASA have assisted in the training and education of midshipman SAVI GUIDEs.

**Anne Arundel Abuse Counseling Center (AAACC)** — AAACC is a local counseling center that provides one-on-one counseling and case-management services to victims of child physical or sexual abuse, adult survivors, and nonoffending parents.

**Anne Arundel County Police Department** — NCIS and USNA SAVI representatives (through the monthly SART meetings) correspond with county police officials, specifically agents in the sex crimes unit.

## The U.S. Military Academy Preparatory School and the U.S. Naval Academy Preparatory School

Both Academies have preparatory schools, which fall under the cognizance and supervision of the respective Academies' Superintendents. The Military Academy Preparatory School is located in Fort Monmouth, New Jersey, and the Naval Academy Preparatory School is located on the U.S. Naval Base in Newport, Rhode Island. Neither of the Preparatory Schools is within close proximity of its respective Service Academy. Both schools have a commanding officer, faculty, and staff on-site, who oversee the day-to-day operations of the Preparatory Schools.

The candidates at each school are either recent high school graduates or enlisted service members who demonstrate exceptional potential in leadership, athletics, or academics, but whose skills in one or more of these areas need improvement for admissions to the Academies. The Preparatory Schools are substantially smaller than the Academies, with just under 300 students, but they mirror the respective Academy experience in the development of military, moral, academic, and physical skills. At the conclusion of the ten-month program, the expectation is that candidates will possess the competence to excel at the Academies, the desire to become an Army, Navy, Marine Corps, or Coast Guard officer, and the willingness to live by the values of their respective services. These Preparatory School graduates make up approximately one-fourth of the incoming class at their respective Academies.

The candidates board at the schools and face many of the same issues as the Academies with regard to sexual harassment and assault. Because the Preparatory Schools are so much smaller, the in-house resources available to them are limited. Although supportive and approachable, the staff at both schools is small. Both schools have developed programs for assisting victims of sexual assault that are either provided on the installation or through working relationships with outside civilian resources. Due to the small size of the programs and the substantial distance from the Academies, there is considerably less oversight from the Superintendents.

# Chapter 5: Task Force Findings and Recommendations

## Service Academy Culture

**FINDING 1: Historically, sexual harassment and sexual assault have been inadequately addressed at both Academies. Harassment is the more prevalent and corrosive problem[94], creating an environment in which sexual assault is more likely to occur. Although progress has been made, hostile attitudes and inappropriate actions toward women, and the toleration of these by some cadets and midshipmen, continue to hinder the establishment of a safe and professional environment in which to prepare future military officers.**

While rape and sexual assault are clearly the more egregious crimes, sexual harassment affects a much larger percentage of the cadets and midshipmen at each Academy.

The incident rates reported in the 2004 DoD IG survey data are alarming and indicate a pattern of recurring behavior.[95] Sexual harassment can be progressive and may eventually lead to criminal behaviors. The lines between harassment and assault begin to blur when inappropriate comments lead to more invasive types of harassment. Unwanted touching and violations of privacy and personal space can be forms of harassment and may be crimes under the UCMJ. Even the more minor forms of harassment, such as sexually suggestive or derogatory jokes and comments about the appearance and weight of female cadets or midshipmen, may have a harmful cumulative effect.

The Task Force found that the sexual harassment encountered by cadets and midshipmen ranged from jokes and tales of sexual exploits that some find offensive to actual unwanted physical contact that crosses the line into assault. Examples of harassment recorded by cadets and midshipmen include using derogatory terms for female cadets and midshipmen;[96] making offensive gestures; continuing to ask for dates or sex after repeatedly being told no; offering to trade a professional favor, such as a good evaluation, for sexual acts; and retaliating against women for refusing sex or dates.

**RECOMMENDATION 1A: Midshipmen and cadets must assume more responsibility for holding others accountable by intervening, confronting, and correcting each other for infractions such as alcohol misuse, sexual harassment, and other related respect issues.**

Accountability does not always involve or require formal discipline and punishment. Accountability is about upholding standards, including standards of conduct, behavior, and treatment of other team members. In many instances, sexual harassment involves thoughtless or careless acts that run contrary to the dignified and respectful treatment that men and women in uniform are obligated to exhibit.

For cadets and midshipmen there must be no middle ground when it comes to upholding standards. Cadets and midshipmen who are willing and have the conviction to intervene and correct problem conduct may preempt more serious future misconduct. The correction may be a simple reminder of the rules and regulations. At other times, the midshipman or cadet might have to intervene and remove a potential victim or assailant from a bad situation, such as one involving excessive drinking or other noticeable loss of judgment by fellow classmates.

**RECOMMENDATION 1B: Use modern survey and management tools on a permanent basis to provide oversight bodies, Academy leaders, cadets, and midshipmen a mechanism for measuring the extent of sexual harassment and assault and the effectiveness of prevention and response efforts.**

**Survey Design:**

- Consult experts on sexual harassment and assault for survey design and revision.
- Ensure that questions regarding key issues remain constant over time in order to provide comparable trend data.
- Ensure that the survey is still flexible enough to address new trends in technology and in youth behavior.
- Ensure that the survey provides all key data needed for analysis, to include questions about stalking, voyeurism, and harassment through instant messaging and e-mail.

**Survey Conduct:**

- Design and conduct the survey through the Defense Manpower Data Center or another entity that has both expertise in and resources for designing and executing surveys and is also perceived by cadets and midshipmen as credible and completely anonymous.
- Conduct the survey on an annual permanent basis.
- Release the survey results as soon as possible, but not later than six months after survey conduct.

- Include the preparatory schools in the survey.
- Ensure surveys are anonymous, and reports of results are not so detailed as to permit identification of individuals. Only analyses or summaries of the data should be made public, as release of the data set could allow victims' identities to be deduced, compromising their privacy as well as the reliability of the survey.
- Conduct no more than one internal interim climate survey per year on the topics of sexual harassment and assault. An interim survey on climate, training, and/or education should not ask specifically about incidents, as repeated questioning on sexual assault is not sensitive to victims and could compromise the annual survey that does measure incident occurrence.

**Survey Use:**

- Provide survey results to appropriate entities to include the House and Senate Armed Services Committees, the Defense Department Advisory Committee on Women in the Services (DACOWITS), the Service Secretaries, the Board of Visitors, Executive Steering Committee, as well as Academy leaders.
- Debrief cadets and midshipmen on survey results and subsequent changes in policy and procedure.

**RECOMMENDATION 1C: Oversight bodies for the Academies must periodically monitor and ensure progress in combating sexual harassment and assault.**

- Continue active involvement by the Board of Visitors and Executive Steering Committees to ensure the long-term focus of the senior leaders on these issues.
- Continue regular oversight by appropriate Congressional committees.

**FINDING 2: The value and role of women in the military has been inadequately understood and addressed at both Academies.**

**RECOMMENDATION 2: The leadership, staff, faculty, cadets and midshipmen must model behaviors that reflect and positively convey the value of women in the military.**

- Leadership must ensure these values are modeled by all, without exception.
- Tailor training and education programs to address the equal importance of men and women to mission accomplishment. For further details, see **RECOMMENDATION 29B**.

**FINDING 3: An insufficient number of women peers and role models are available to cadets and midshipmen.**

**RECOMMENDATION 3A: Increase the number and visibility of female officers and NCOs in key positions to serve as role models for both male and female cadets and midshipmen.**

- Where possible, increase the number of female officers and NCOs on the faculty and staff.
- Ensure a representative share of women, officers and NCOs, are assigned to company-level positions.
- Increase access to and visibility of female role models via other methods, including the following:
  - Establish long-distance mentoring programs for female cadets and midshipmen with current active-duty female officers.
  - Use the mandatory lecture series to showcase men and women who have served together and exemplify teamwork and discipline, including female combat veterans and females serving in other key operational assignments.
  - Identify distinguished female graduates to be honored and represented proportionally in displays around the Academy grounds including paintings or photographs, plaques, quotations, room and building names, murals, etc. Inclusion should be integrated throughout the campus, not in a separate "women's display."

**RECOMMENDATION 3B: Increase the percentage of women cadets and midshipmen at the Academies, within current service operational constraints.**

- Some research shows that a "critical mass"[97] can make a difference in creating an environment that has a markedly positive effect on the acceptance and integration of women in a mostly male community, resulting in decreased incidence of sexual harassment and assault. Admissions standards and service needs should not be compromised in this effort.

**RECOMMENDATION 3C: Ensure consistent opportunities for women to be involved in leadership and decision making, including representation on admissions boards, on academic boards, in athletic discussions, and in other senior-level forums.**

- Increase the number of women on the admissions boards and on faculty hiring and promotion boards.
- Increase the number of women in permanent faculty and staff positions, including Department Heads and Head Coaches.
- Grow the pool of available female military faculty by identifying prospective candidates for faculty positions in time for graduate education for future assignment to the Academies.
- Diversify faculty and staff by utilizing an appropriate number of officers from other commissioning sources.

**FINDING 4: The Academies' Honor Programs have been successful at imbuing cadets and midshipmen with an exceptional regard for the value of honor as an essential attribute of leaders.**

**RECOMMENDATION 4: Build on the success achieved through the Honor Program to elevate the regard cadets and midshipmen have for other important values—in particular, dignity and respect for all.**

**FINDING 5: Cadets and midshipmen hold a substantial amount of power and authority over their junior peers.**

**RECOMMENDATION 5: Assess the issue of cadet and midshipman authority and its possible misuse. In this evaluation, consider**

- Developing methods that enhance leadership potential and supervisory authority without abuse or misuse of authority. Resources that may be of use in this area include
  - Aberdeen Proving Ground lessons learned[98]
  - Consultants that focus on gender violence–related topics[99]
  - Other service academies[100]
  - Service-specific recruit training models and lessons learned
- Continuing to strengthen the four-class system
- Establishing or assessing mechanisms that closely monitor cadet and midshipmen's supervisory control.

**FINDING 6: Misplaced peer loyalty results in a strong tendency in some cadets and midshipmen to ignore problematic behavior among their peers or otherwise explain it away as harmless.**

The 2004 DoD IG Survey and discussion group interviews indicate that cadets and midshipmen place significant value on peer loyalty. They also place high value on resolving problems without involving supervisory personnel. These values are generally positive and desirable traits, unless they override the duty to adequately correct inappropriate behavior. This misplaced peer loyalty can also undermine the effectiveness of Academy leadership and institutional programs designed to ensure cadet and midshipman safety.

**RECOMMENDATION 6A: Increase opportunities for cadets and midshipmen to engage in constructive interaction with a broader range of peers in order to decrease counterproductive peer loyalty.**

- Consider a consistent practice of reassigning cadets and midshipmen to different companies at a specific point during their four years (i.e., "scrambling").
- Consider assigning roommates within a company, rather than allowing cadets and midshipmen to choose roommates.

**RECOMMENDATION 6B: Academy, cadet, and midshipman leaders must not tolerate cadet and midshipman behavior or attitudes that reflect placement of greater value on peer loyalty than on personal accountability.**

- Tolerating or failing to report peer misconduct among fellow cadets and midshipmen should be unambiguously treated as misconduct itself, consistently resulting in proportional disciplinary action.
- Among cadet and midshipmen leaders, sexual harassment, assault, physical security, and alcohol policies must be proportionate, consistent, and strictly enforced. Special emphasis should be given to the following:

- Underage and excessive drinking
- Sexual harassment
- Derogatory or offensive comments or behavior
- Displays of sexually suggestive or graphic images

See also: **RECOMMENDATION 1A**

**FINDING 7. The majority of reported sexual assault or rape cases at the Academies involve alcohol use.**

Although alcohol is not the cause of the assault in these cases, it can be a contributing factor and is highly correlated. Our review of available case information disclosed a high instance of alcohol consumption by one or both of the parties in assault incidents at the Academies despite the prohibitions on underage drinking and drinking in the living areas. During 2004, there were twenty-four reported sexual assaults at the two service academies. Of those cases, thirteen involved alcohol. Nationally, approximately half of sexual assaults among college students involve alcohol.[101]

The high incidence of alcohol involvement in sexual assaults is disturbing and mirrors the trend found in the college population at-large. Mixing alcohol and sexual activity can impair judgment and inhibitions, facilitating an incident of nonconsensual intercourse. Research in this area also demonstrates that assailants sometime use alcohol in a deliberate plan to impair, weaken, or overcome the inhibitions and resistance of a victim.

Current alcohol regulations and prohibitions appear ineffective in curbing irresponsible alcohol use both on and off installation. For example, at the Military Academy, female cadets reported receiving warnings to "lock their doors" on Thursday nights, the night first-class cadets may go to an on-post cadet club which serves alcohol. Common experience was that some male cadets returned heavily intoxicated. Additionally, at both Academies, discussion groups and case reviews affirmed the presence and use of alcohol in the barracks or hall by both underage and of-age cadets and midshipmen.

**RECOMMENDATION 7: Host a multi-academy conference run by the cadets and midshipmen to develop realistic and implementable policies on alcohol, to include sanctions for violations, ways to encourage and practice responsible drinking, and opportunities for cadets and midshipmen to socialize and relax without alcohol.**

- Invite Coast Guard, Air Force, and the preparatory schools to participate.
- Task attendees to return to their respective academies with policies and programs that will achieve the goals identified above.
- Draw attendees from a diverse cross section of the academies, including cadet and midshipman leaders, Corps Squad athletes, club leaders, honor committee members, religious club members, Respect/SAVI representatives, etc.
- Require representative academy leadership to come to provide insight and advice to attendees about what limitations exist in implementing various ideas and which ideas are workable.
- Invite experts on the subjects of responsible drinking, nonalcoholic programs, and related subjects.
- Include the following topics for discussion: the link between alcohol and sexual assault, the negative effects of irresponsible drinking, and ideas for alcohol-free socializing.

## Victims' Rights and Support

**FINDING 8A. Within the last year, both Academies have made strides to revise and strengthen their sexual harassment and assault response programs, improving victims' services.**

Over the past year, both Academies conducted a comprehensive review of existing sexual harassment and assault response programs and made significant improvements to those programs, as reflected in cadet and midshipman feedback from discussion groups. These groups indicated that they believe

- complaints of sexual harassment or assault are more likely to be taken seriously;
- victims' services have been expanded;
- offenders are more likely to be held accountable; and
- leadership is more supportive and responsive.

The Military Academy made a positive change to ensure that Victim Advocate continuity is maintained from the time an offense is reported through resolution of the case.[102] The Naval Academy Sexual Assault Victim Intervention (SAVI) Program is a positive step toward implementation of DoD policy regarding the establishment of a Sexual Assault Response Program. While leadership at both Academies acknowledges that they need to make further improvements to achieve the desired level of victim support, they continue to strive toward positive changes.

**FINDING 8B. Both Academies have multifaceted approaches for supporting victims of sexual assault.[103] However, cadets, midshipmen, faculty, and staff are unclear about reporting resources and which provide confidentiality.**

Although survey results reflect that cadets and midshipmen believe they know where to go for confidential counseling, discussion groups indicate that there is some confusion. These discussion groups also reflect that faculty and staff were not aware of all the resources available to victims and the reporting requirement of each resource. For example, some cadets and midshipmen believe that a faculty member could be consulted confidentially.

Some cadets, midshipmen, faculty, and staff are uninformed and confused about the different levels of confidentiality afforded each resource under the law. The problem is compounded by both Academies publicizing misleading information regarding the level of confidentiality that each resource is legally granted. For example, at the Naval Academy, the leadership has granted limited confidentiality to the SAVI Program although no such protections exist under federal law.[104] The Military Academy publicizes that psychotherapists have full confidentiality despite exceptions where client information may be disclosed.[105] Finally, some victim service providers are confused as to the level of confidentiality they have been granted and the circumstances in which information conveyed by victims may be disclosed. This confusion among Academy leaders and victim support services has resulted in a false perception of confidentiality, improper disclosure of information, and inadequate service to victims.

**RECOMMENDATION 8A: Provide training to all Academy personnel on the various reporting resources and the level of confidentiality afforded to each.**

**RECOMMENDATION 8B: Further maximize the use of existing and potential avenues for victims' support and reporting.**

Maximizing avenues for victims' support provides more options for disclosure; expands the ability to obtain support and care; and assists in making informed decisions regarding whether to make a formal complaint. The Academies should do the following:

- Ensure availability and accessibility of Academy civilian and military, male and female service providers
- Ensure awareness of and access to community service providers
- Provide additional confidential resources (see **Recommendation 9A**)
- Maximize psychotherapist interaction with cadets and midshipmen
  - Ensure psychotherapists interact frequently in the daily lives of cadets and midshipmen
  - Provide abundant publicity for mental health services
  - Provide office locations that are readily accessible to cadets and midshipmen but are inconspicuous

**RECOMMENDATION 8C: Cadets and midshipmen, as peers, are often the first resource a victim will disclose to and therefore should be trained on both official reporting procedures and confidential options. If victims of sexual assault are unwilling to report, peers should strongly encourage victims to seek care from a confidential source.**

- Train cadets and midshipmen on avenues for reporting offenses and obtaining victim care.
- Educate cadets and midshipmen on how to be supportive of peers who disclose an assault.
- Eliminate mandated peer reporting, except in the case of those who witness a crime or who are in the supervisory chain of command. Mandated peer reporting by non-witness or non-supervisory peers may impede the goal of increasing the number of victims who seek assistance. It also places the peer in the difficult position of either disclosing private victim information or breaking Academy regulations.

**FINDING 9A. Victims lack adequate confidential resources, which is a barrier to reporting sexual harassment and assaults.**

The 2004 DoD IG survey stated that the majority of female victims of sexual assault did not report because of fear of disclosure and the resulting ramifications. For victims undecided about filing a complaint, confidentiality is vital to their willingness to seek support services. Without confidential counseling, victims may lack the support they need to make assaults known to the chain of command. Lack of confidential medical care limits opportunities for forensic evidence collection. Commanders cannot provide care for victims or investigate and hold offenders accountable if they do not receive the information needed from victims in a timely way.

Presently, chaplains are the only source of complete confidentiality under the law. Psychotherapists are granted a limited privilege, but are required to make restricted disclosure of communications under certain circumstances. Victim Witness Coordinators, Victim Advocates, medical personnel, the chain of command, cadets, and midshipmen are afforded no privilege under the law.[106]

**FINDING 9B. Victims may not seek medical care because, under current military regulations, medical care for victims of sexual assault at a military facility requires reporting and triggers a criminal investigation. This reporting requirement may result in a health risk to victims and a barrier to the collection of forensic evidence necessary for eventual prosecution.**

This regulation applies to the active duty military staff as well as civilian staff working in military medical facilities.[107] A victim of sexual assault cannot request a confidential medical exam or treatment at a military medical facility.

Based on the current system, sexual assault victims who are unsure if they want to become involved in the military justice system may be hesitant to use military medical facilities to obtain a medical exam and treatment. If feasible, victims needing confidentiality may seek assistance privately from a civilian medical facility, or they may not seek medical care at all. Without transportation to civilian facilities, there is little chance of a victim obtaining confidential, timely, civilian medical treatment.[108] As a result, the opportunity for collecting forensic evidence may be lost and the government's chance of successfully prosecuting the assault severely diminished.

**RECOMMENDATION 9A: Congress should create a statutory privilege protecting communications made by victims of sexual assault to health care providers and victim advocates. This privilege should extend to both medical and mental health care providers and to those victim advocates designated and trained to perform that duty in a manner prescribed by DoD regulation. This expansion will accomplish the following:**

- Provide victims immediate and comprehensive personal support
- Provide multiple channels to encourage reporting
- Protect victims' identities until they choose to report
- Protect communications between victims and newly established confidential sources throughout the criminal justice process
- Provide for collection and preservation of forensic evidence to support investigation of cases that victims choose to report
- Provide for the safeguarding of the forensic exam kit until the victim decides to report
- Provide for extended privileged care of victims with professional psychotherapists

Current DoD confidentiality policy lacks the breadth necessary to ensure maximum confidentiality for victims. This Task Force urges a statutory expansion to guarantee victims the option of confidential medical and mental health care. This privilege should provide victims the right to refuse to disclose or report a sexual assault and to prevent any other person from disclosing communications made in confidence to a health care provider or victim advocate for the purpose of enabling that provider's services and care. The sole exception to this privilege should be to permit disclosure only when necessary to prevent serious bodily harm or death of the victim or another person.

The Task Force recognizes that the granting of a statutory privilege is a serious and significant legal protection, but we believe privileged communication is imperative. Commanders have an obligation to ensure the welfare of individuals entrusted to their care, yet the lack of confidentiality has prevented many victims from seeking care they needed and wanted. The Task Force believes that establishing this privilege will not only serve to ensure that victims receive the care they need, but will also, in the long run, stimulate higher victim reporting rates.

**RECOMMENDATION 9B: Based on the following guidelines, the Academies should establish a plan to implement the new DoD Sexual Assault Response policy and protocol and submit their plan to the Services in accordance with the statute[109].**

The Academy plan must ensure that the SARC is not compromised in his/her responsibilities to the command and ethical responsibilities to the victim.

The plan shall, at minimum, address the following:

- Selection and Training of Victim Advocates:
  - Do not select cadets or midshipmen for duty as Victim Advocates
  - Carefully screen and train all Victim Advocates
  - Ensure Victim Advocates and their supervisors receive 40 hours of standardized victim advocacy training. The training should meet Victim Advocate training standards for the state in which the Academy is located, until a DoD or national standard is established
  - Develop protocols and provide training in the handling, segregation, maintenance and disposition of both privileged and unprivileged communications and materials pertaining thereto

    Victim Advocates should maintain separate files on privileged matters and a secure storage location must be provided. Access to these files is limited to those with Victim Advocate privilege or individuals authorized by the victim
  - Ensure Victim Advocates have access to a trained professional who deals with privileged communications as a part of their routine practice (e.g. psychotherapist, chaplain) for case consultation
- Selection and Training of the Sexual Assault Response Coordinator (SARC):
  - Assign position to allow for continuity and effective long-term program management
  - Ensure that the SARC not have access to identifying information from a restricted report
  - Ensure SARC position is assigned to a 0-6 or equivalent
  - Ensure SARC reports directly to the Superintendent
  - Develop a process for assignment of Victim Advocate for victims in a method that maintains protected communication
- Ensure that the following Program elements are included:
  - Ensure training clarifies that it is the Victim Advocates, not the SARC, who are empowered to provide confidential assistance
  - Ensure community service provider representation within the program
  - Warrant that the response program responds to entire installation
  - Provide a mechanism for evaluating operational procedures, including the relationship between the SARC and the Victim Advocates, on an annual basis
  - Identify mechanism for release of information from protected sources to disclose non-identifying aggregate or immediate information
  - Identify frequency for release of periodic non-identifying info to SARC
  - Victim Advocate files must be maintained separately and securely. Access must be limited to those with Victim Advocate privilege. These files may not be commingled with other personnel or medical files.

**FINDING 10. Victim Witness Coordinators do not receive proper training to ensure that victims are afforded their rights. Neither Academy employs a Victim Witness Assistance Program in accordance with DoD policy.**

It is the responsibility of the Academy to ensure that victims are aware of the rights afforded them under law and that those rights are protected as soon as a sexual assault is reported to the command.[110] Therefore, it is imperative that Victim Witness Coordinators are well trained and contacted immediately in all cases to ensure that victims are accorded their rights at the onset of an investigation. At both Academies, Victim Witness Coordinators have not received sufficient training to enable them to perform these duties effectively.[111]

In interviews, victims cited multiple complaints, including the following:

- Not being consulted about decisions regarding relocating the victim or accused for safety reasons
- Not being advised that they could decline to make a formal statement
- Not being advised of the existence of a Victim Witness Coordinator, of their role, and of his or her identity
- Not being consulted on the disposition of the case

- Not being kept abreast of case status
- Being made to wait in the same room as defense witnesses prior to testifying
- Learning that individuals in the chain of command without a "need to know" had knowledge of the facts of the incident
- Not being notified of criminal proceedings until shortly before being called to testify
- Not being advised of the option to consult with an attorney for the government
- Not being advised of the federal right to seek restitution and remedies available through the state Criminal Injuries Compensation Offices

Most victims' complaints would not have existed if the Academies had communicated and afforded them their rights. This lack of knowledge made victims feel fearful, helpless, frustrated, and angry.

**RECOMMENDATION 10A: The Victim Witness Coordinator at each Academy should both receive the required annual Victim Witness Assistance Program training[112] and ensure that the following Academy personnel receive annual training on their role and responsibilities under this program:**

- Commanders;
- Sexual Assault Response Coordinators;
- Victim Advocates;
- Chaplains;
- Prosecution and defense attorneys;
- Law enforcement personnel;
- Mental health care providers; and
- Medical personnel.

**RECOMMENDATION 10B: Require Victim Witness Coordinators to make contact with a victim at the onset of an investigation and ensure that victims are afforded their rights through every phase of the case.**

**FINDING 11. There is confusion between the roles of the Victim Witness Coordinator and the Victim Advocate.**

The role of the Victim Witness Coordinator differs substantially from the role of the Victim Advocate, but the two are often confused. The similarity in titles is one of the sources of confusion. The role of the Victim Witness Coordinator is to ensure that victims' rights are enforced, to make victims aware of their resources, and to provide timely case status updates. The role of the Victim Advocate is to provide information and emotional support. At times, victims are not being afforded their rights and are being referred to the resource not trained or responsible for providing the information.

**RECOMMENDATION 11A: DoD should update the Victim Witness Assistance Program to eliminate the current confusion between the roles of the Victim Witness Coordinator and Victim Advocate.[113]**

- Ensure that the Victim Advocate and Victim Witness Coordinator are trained about each others' duties so they understand their distinct, but complementary roles in supporting victims.

**RECOMMENDATION 11B: Train Academy personnel on the distinct roles of the Victim Advocate and Victim Witness Coordinator and the importance of each.**

**FINDING 12. When sexual assault victims or witnesses have themselves engaged in collateral misconduct at or around the time of an assault, they must also be held accountable for their actions. When they are not held to the same standard as their peers, negative consequences result. The Task Force finds that a blanket amnesty policy for victim or witness misconduct serves to undermine discipline and stigmatize them.**

Neither Academy presently employs a blanket amnesty policy, but there has been considerable debate and discussion about the matter at all the academies. The Military Academy confers transactional immunity on a case-by-case basis when the Superintendent concludes it is needed to pursue disciplinary action against the offender. When the Superintendent determines it appropriate that the victim be held responsible for misconduct, the victim is given the option of adjudicating the misconduct either before or after disposition of the assault case. At the Naval Academy, if the Superintendent elects to adjudicate victim misconduct, it is done after the offender's case is resolved. The Naval Academy also has the option to place victims in its Leadership Responsibility Counseling program. At both

Academies, witness misconduct is usually adjudicated directly after the misconduct occurs.

At the Naval Academy, the leadership believes that a system which primarily grants disciplinary amnesty but requires participation in a structured Leadership Responsibility Counseling program creates an environment conducive to disclosing sexual assaults. While that may be true, there may be some negative aspects to this program. Assigning Leadership Responsibility Counseling without adjudicating the misconduct may undermine the credibility of victims and encourage perceptions of false reporting. Furthermore, Academy personnel are also concerned that actual cases of false reporting may emerge. In contrast, US Military Academy cadets, faculty, and staff in Task Force discussion groups felt that their Academy's system was fair.[114]

A potential negative aspect to a "nonamnesty" approach is that it may be a barrier to reporting sexual offenses for victims and witnesses who have pertinent information but fear they or their friends will be disciplined for misconduct such as drinking under age, having sex on Academy grounds, or other offenses. The policy could also breed a fear of being stigmatized and alienated by other cadets or midshipmen for reporting friends or peers. We note that some of the victims interviewed by the Task Force believed victims should be held accountable for their individual misconduct. The real crux of the issue is how leadership handles the matter. At present, both Academies carefully consider and weigh each case before disciplining other cadets or midshipmen based on such information, recognizing this potential reluctance.

**RECOMMENDATION 12A: Preserve the commander's discretion to handle victim and witness misconduct on a case-by-case basis.**

- Prohibit blanket amnesty policies.
- The Commander should retain the authority and discretion to determine the appropriate disciplinary response to victim misconduct and should have at his or her disposal the complete array of response and remediation options, including placement in a remediation program such as Leadership Responsibility Counseling, walking tours, loss of privileges, restriction, etc.

**RECOMMENDATION 12B: Offer victims who commit misconduct the option to delay disposition of their disciplinary cases. A "flexible sequencing" option strikes a good balance between the need for individual discipline and the need to create an environment that will not deter reporting.**

- Requiring victims to serve their punishment while their assailant retains full privileges (at least until the case is concluded) is perceived as unfair.[115]
- Victims who prefer swift justice should have the option of having their offenses adjudicated quickly. Any victim serving punishment prior to the resolution of the case would be doing so by choice.

**FINDING 13. Chaplains play a vital role in the support of victims, yet are understaffed at both Academies.**

The 2004 DoD IG Survey indicated that chaplains were the resource to whom male and female cadets and male midshipmen were most willing to report.[116] Chaplains assist victims in healing from an experience that may be both physically and emotionally traumatizing.

In addition, they provide victims spiritual and personal guidance throughout the administrative and legal process. Chaplains are presently the only completely confidential resource available to victims and offenders.[117] They may be a logical source in assisting offenders through counseling. The full confidentiality afforded chaplains is highly publicized, and cadets and midshipmen interviewed are well aware of this status.

Chaplains are both understaffed and highly utilized, specifically regarding sexual harassment and assault issues.[118] An overwhelming majority of cadets and midshipmen hold some spiritual belief; chaplains teach cadets and midshipmen positive values and instill a spiritual compass, countering values that could lead to harassment and assault. At both Academies, chaplains are easily accessible and maintain high visibility within the Corps of Cadets and the Brigade of Midshipmen.[119] They often spend many hours, including nights and weekends, talking to cadets or midshipmen, participating in physical training events, and, at the Naval Academy, teaching classes, all of which contribute to cadet and midshipman awareness of the chaplains' services.

**RECOMMENDATION 13: Assign an additional chaplain to each of the Academies.**

- Assign one additional chaplain to the Naval Academy to ensure that all battalions have chaplain representation in addition to an independent senior chaplain.
- Assign one additional chaplain to the Military Academy's Family Life Program.
- Utilize chaplains at the Military Academy in the training and education of cadets, specifically in the cadet ethics programs.

**FINDING 14. Although psychotherapists at the Center for Personal Development (US Military Academy) and Midshipman Development Center (US Naval Academy) provide professional psychological counseling, they lack specialized education and training to treat victims of sexual assault.**

Both Academies recognize the necessity of providing professional psychological counseling for victims of sexual assault. Accordingly, the leadership at both Academies encourages personnel to refer victims of sexual assault to Academy-based psychotherapists. The psychotherapists at both facilities are licensed to provide general professional counseling and assistance. Although the Academies' psychotherapists do have training in dealing with general trauma and have counseled victims of sexual assault in their careers, they lack the specific education and training to adequately counsel and assist sexual assault victims.[120]

**RECOMMENDATION 14: Require psychotherapists to receive specialized education and training in sexual assault and response to victims in the military prior to assignment at the Academies.**

- Provide accurate psychotherapist-patient privilege information in informed consent forms to all patients, as well as to all cadets and midshipmen.
- See also **RECOMMENDATION 34**.

**FINDING 15A. Peer influences discourage some cadets and midshipmen from availing themselves of some preventive safety options.**

**FINDING 15B. Both Academies have instituted safety policies and procedures for victims after an assault.**

The 2004 DoD IG Survey indicated that the largest number of sexual assaults at both Academies occurred in cadet or midshipmen living spaces. Despite the safety measures afforded by the Academies, many cadets and midshipmen do not utilize them. Cadets and midshipmen routinely leave doors unlocked at night, leave mailboxes unlocked, and leave computers on, not locked, and unattended. In addition, they do not always use the "buddy system." On a positive note, victims of sexual harassment and assault have routinely availed themselves of the safety measures afforded to them after an incident.

**RECOMMENDATION 15: Enhance safety policies and practices,[121] especially for living areas, to maximize cadet and midshipmen safety while ensuring accountability to the chain of command.**

- Ensure the policy is gender neutral.
- Ensure the policy allows for victim input.

## Offender Accountability

**FINDING 16A. At both service Academies, the available records from the past ten years reflect an extended period where alleged offenders were not consistently or effectively held accountable through the criminal justice system.[122] During the past two years the records reflect improved efforts and limited success at holding sexual assault offenders accountable through courts-martial as well as administrative procedures.**

- With one exception, from 1994 until recently, only administrative actions, if any, were taken against sexual assault offenders.
- The current leadership at both Academies has demonstrated concrete commitment toward positive change in accountability. The leadership at the Academies and this Task Force recognize that continuous and forceful efforts are required to ensure measurable progress.

**FINDING 16B. The current rape and sexual assault statutes, though flexible, do not reflect the full range of contemporary sexual misconduct encountered at the military service academies.**

*Any person subject to this chapter who commits an act of sexual intercourse by force and without consent, is guilty of rape and shall be punished by death or such other punishment as a court-martial may direct.*

Article 120 of the Uniform Code of Military Justice

The rape statute in the UCMJ is based on the more commonly understood notion of violent stranger rape; however, the vast majority of the rapes and sexual assaults reported at the military service academies are perpetrated by a cadet or midshipman who knows the victim, a situation typically referred to as "date rape" or "acquaintance rape."[123] Of the 210 female rapes and sexual assaults reported at the Naval Academy and Military Academy in the 2004 DoD IG Survey, the victim knew the perpetrator in 208 (99%) of the cases.[124]

Unlike most state and federal criminal codes,[125] military law does not adequately address the full range of contemporary sexual misconduct, as illustrated by the following:

- No statute specifically addressing nonconsensual sexual intercourse where no force is involved.
- The lack of varying degrees of sexual assault involving intercourse in the UCMJ. Currently all cases of nonconsensual sexual intercourse must be categorized as rape under Article 120.
- Ineffective options for handling alcohol-related assaults. Although the law accounts for the possibility that victims could not effectively consent to intercourse due to alcohol incapacitation, it is extremely difficult, as a practical matter, to secure a conviction when a victim is not completely unconscious.
- No statute specifically addressing sexual activity involving abuse of authority or senior-subordinate relationships in recognition of the uniquely coercive nature these relationships can entail.
- No separate statute for stalking.

Additionally, the language of the current statutory framework fails to clearly delineate the different kinds of prohibited conduct. This lack of clarity makes it more difficult for commanders to train cadets and midshipmen on what is or is not criminal misconduct.

**RECOMMENDATION 16: Congress should revise the current sexual misconduct statutes to more clearly and comprehensively address contemporary sexual misconduct.[126]**

- The revised statute should clearly identify specific crimes and their maximum penalties. By outlining criminal acts and their corresponding punishments in a format that people can understand, service members will know that such behavior is criminal.
- The revised statute should include varying degrees of sexual misconduct, while maintaining the label "rape" for the most forceful acts of sexual penetration.[127]
- The statute should include a provision for the criminal act of sexual penetration or assault where no force is involved. If a person has intercourse or other sexual contact with someone when they know or should know that there is no consent, the person should be held criminally accountable.
- The statute should also include specific provisions for stalking, abuse of authority and senior-subordinate sexual activity,[128] and incapacity to consent, including voluntary intoxication[129] of the victim.

**FINDING 17. Low reporting rates limit commands' ability to hold offenders accountable. Even in reported cases, however, prosecution of rape and sexual assault cases is hampered by the difficulty and complexity of trying the nonstranger cases commonly encountered at the Academies.**

Consistent with national trends, reporting rates for sexual assault at the Academies are among the lowest of any type of crime. The 2004 DoD IG Survey found that the majority of victims never reported their assault to any authorities. Even among cases reported, the number of prosecutions and convictions is low. Among the reasons why so few cases of sexual assault make it to court and even fewer result in convictions are the following:

- *The stigmatizing title "rape" and corresponding maximum punishment of death or life in prison.* Some victims, prosecutors, commanders, and juries hesitate to prosecute or convict a young person who uses no overt force and expose him to these severe sanctions. Even some assault victims expressed concern over the "rape" characterization and associated penalties. They wanted justice and accountability, but not a response perceived by the victims as excessive.
- *Complexity of sexual assault cases.* Although investigators increasingly are receiving specialized sexual assault training, prosecutors generally do not receive specialized training on a consistent basis to learn about developing prosecution strategies.
- *Intimidating and sometimes traumatizing investigative and judicial processes.* Many sexual assault victims choose not to participate in the judicial process because of the significant emotional and psychological toll imposed by repeated questioning about personal and often painful details, loss of privacy, and public humiliation.
- *Victim delay in reporting.* Victims commonly wait weeks, months, or even years before disclosing the fact of their assault to authorities. After so much time, crucial physical evidence has perished, investigators have lost the opportunity to identify and locate potential witnesses, and witnesses' memories have faded or are inaccurate.
- *Lack of corroborative evidence.* Without corroborative evidence, many cases become a matter of the victim's word against the word of the defendant.
- *Misconceptions about victim behavior.*[130] Widespread lack of understanding about common victim behaviors (e.g., delayed reporting, lack of physical resistance or injury) often deters commanders from pursuing and prosecuting cases, either because they themselves misconstrue the behavior or because they conclude a jury will view it negatively.

**RECOMMENDATION 17: Specialized training focused on sexual assault cases should be mandatory and consistent for both investigators and prosecutors.**

Law enforcement and judicial professionals who will deal with sexual assault cases must have a firm understanding of the unique aspects of successfully investigating and prosecuting the cases, as well as victim dynamics[131] and appropriate ways to work with victims of these crimes.

- The more evidence aside from the victim's statement the investigators can collect, the more effective the process. Investigators and prosecutors must know the right questions to ask and how to properly collect and document evidence of lack of consent.[132] Where practicable, investigators should consider using pretext phone calls.[133]
- Investigators and prosecutors must learn how sex offenders operate in order to identify predatory and other perpetrator behavior.[134]
- Prosecutors must learn to effectively use experts to educate panels and judges. They should learn how to take the focus off of the victim's behavior and place it on the defendant's behavior. They must be knowledgeable about Victim Witness Assistance Program, the protections for victims built into the UCMJ, and how to use motions practice[135] to protect the victim.

**ADDITIONAL RECOMMENDATIONS:** The following recommendations made in these subject areas are designed to help increase prosecution and conviction rates:

Confidentiality:

**RECOMMENDATION 8A**
**RECOMMENDATION 8B**
**RECOMMENDATION 9A**

Improve victim services:

**RECOMMENDATION 8B**
**RECOMMENDATION 9A**
**RECOMMENDATION 9B**
**RECOMMENDATION 10A**

**RECOMMENDATION 10B**

**RECOMMENDATION 11A**

**RECOMMENDATION 11B**

**RECOMMENDATION 14**

Revise UCMJ sex crime statute:

**RECOMMENDATION 16**

Close Article 32 hearings:

**RECOMMENDATION 18**

**FINDING 18. Article 32 hearings, which are open to the public, expose both the victim and the accused to unnecessary public scrutiny and may be detrimental to the interests of both parties.**

The *Manual for Courts-Martial* states that Article 32 hearings should normally be open to the public, but it grants commanders the discretion to close them.[136] Because this discretion is granted in the *Manual for Courts-Martial*, but not in the law, courts have been able to prohibit commanders from closing hearings. The hearings afford the defense an opportunity to gather information about the government's case and cross-examine the victim and other witnesses. Because the Military Rules of Evidence are generally not in effect at the hearing, attorneys have few restrictions on questions they can ask. Even when the attorneys do object to questions, the investigating officer presiding over the hearing generally just notes the objection and allows the question. This unrestricted questioning may result in private and embarrassing information about the victim being disclosed in the public hearing, even if it is not relevant to the charges and even if it might be inadmissible at trial. Media representatives often attend high-profile cases at the Academies and report what they observe in the local papers. Even if these cases do not proceed to trial, both the accused and the victim may be publicly stigmatized. This type of public exposure often discourages victims from reporting and/or participating in the judicial process.

**RECOMMENDATION 18: Congress should amend Article 32 to explicitly permit commanders to close the hearings.**

There is no requirement in the UCMJ that Article 32 hearings be open to the public. The defendant has a right to a public trial and to be able to confront the accuser in open court, but that right does not extend to the Article 32 hearing. By comparison, in state and federal courts, grand jury proceedings are held in closed sessions without the defendant or their attorney present.

**FINDING 19. Although charged with the well-being of midshipmen under their supervision, Company and Battalion Officers and Senior Enlisted Leaders at the United States Naval Academy are not kept sufficiently informed of the cases in their units.**

In an attempt to protect the privacy of victims, the Naval Academy has instituted a policy in which Company and Battalion Officers and Senior Enlisted Leaders are not informed of the nature or processing of a sexual assault case in their command. This impedes their ability to ensure the well-being of the victim and/or accused and to quell rumors about the case in their unit.

**RECOMMENDATION 19: The Naval Academy Superintendent's designee should inform Company and Battalion officers and Senior Enlisted Leaders about reported cases involving midshipmen under their supervision.**

The details of an incident that has been reported to official channels should be kept to the minimum necessary, but the officer and SEL should know who is involved, the nature of offense, who to contact for assistance in dealing with the incident, and any other information necessary to protect the victim.

**FINDING 20A. Staff, faculty, and cadets and midshipmen are not sufficiently informed about case outcomes, allowing rumors and incomplete information to be the prevailing source of information.**

- The staff, faculty, cadets and midshipmen at both Academies are not informed of the ultimate disposition of cases and are left to rely on rumors. They believe they could more adequately stem rumors and correct inaccurate or misleading information circulated among students if they had more information.
- Key officials at the Service Academies expressed concern that legal interpretations of the Privacy Act preclude the desirable practice of fully informing cadets and midshipmen when misconduct allegations are resolved by administrative means. Failure to inform, in at least limited terms, contributes to misinformation and misperception, fueling speculation and rumor.

**FINDING 20B. The perception that false accusations of sexual assault are a significant problem at the Academies is not supported by available data.**

Despite the concerns of some cadets and midshipmen, the data do not show a significant incidence of fraudulent reporting. During a review of over 85 reported sexual assault cases at the two Academies over the past ten years, only two suggest fabricated allegations. There were cases where the victim recanted; however, those usually involved victims who decided they did not want to endure the investigative and judicial process. This misperception is more pronounced at the Naval Academy.[137]

**RECOMMENDATION 20A: Ensure staff, faculty, and students are better educated and informed about the outcome of cases once they have been adjudicated.**

Providing Academy members with a comprehensive summary of cases, along with the final disposition and the reasons for that particular outcome, will educate them about the process. This will result in increased trust and confidence in the system. It will also help to deter retaliation and ostracism directed toward victims and assist in developing a supportive culture for them. Leaders will be able to better control the rumor mill and replace it with the truth.

**RECOMMENDATION 20B: The Department of Defense should revise the regulations implementing the Privacy Act to permit the dissemination of adverse administrative action within the command affected by the action.**

Establishing a "need to know" on the part of the members of the command would resolve this deficiency and permit commanders to disclose to their subordinates information that would serve to deter misconduct by members of their commands.

**FINDING 21. Effective representation of the accused is hampered by the lack of an on-site trial defense attorney at the United States Military Academy.**

When cadets or midshipmen are under investigation for a crime, they should have quick and easy access to qualified legal counsel. At the Naval Academy, a suspect can go to the defense counsel assigned to the Academy. At the Military Academy, however, defense counsel is six hours away at Fort Drum, New York.

**RECOMMENDATION 21: The Army should authorize and fund a defense counsel billet at the US Military Academy.**

An on-site defense counsel will be more readily available and have more time to devote to his or her client in person. The improved access to defense counsel will also assist the government by preventing unnecessary delay in adjudicating cases.[138]

## Data Collection and Case Management Tracking

**FINDING 22. At both Academies, the data collection and management systems for rape, sexual assault, and sexual harassment are informal and historically have been poorly maintained. Although recent improvements are notable, particularly at the US Naval Academy, the absence of a formalized collection and record-keeping requirement effectively prevents a detailed analysis of case disposition and long-term assessment of trends.**

Although the Government Accounting Office recommended in its 1994 and 1995 reports that the Academies track sexual harassment statistics, this was not done. Until required by Defense Directive Type Memorandum 8 in December 2004, there was no requirement for standardized case tracking or data collection and management. Installations throughout the armed forces, including the military academies, reported only general military justice statistics. The Staff Judge Advocates at the Academies developed their own internal methods of tracking reported cases, but these systems are informal and depend primarily on working relationships between criminal investigative personnel, legal personnel, and commanders at these institutions. Although useful to the individuals using them, they are of little or no assistance to reviewing authorities. Records-collections systems change as key participants in command, legal and criminal investigative personnel are reassigned. There is no correlation between old and new tracking systems, and, in accordance with regulations, records are destroyed in most cases.

Criminal investigative records[139] permit a review of the investigative phase of cases reported to the Naval Criminal Investigative Service and the Army Criminal Investigative Command. However, virtually no long- term criminal justice records have been retained at the Academies because few of the cases investigated were brought to trial.

**RECOMMENDATION 22: Implement a permanent system, common to both Academies, to record and maintain data about all reported cases of sexual harassment and assault to enable detailed future information gathering and trend analysis.**

Data should be recorded upon preferral of charges, initiation of nonjudicial punishment or other misconduct action or administrative action, or decision to do nothing, and they should be updated periodically thereafter. Information recorded in these records should include the following, at a minimum:

- Victim status (civilian/military, rank/position/class)
- Accused name and status
- Date and location of incident; date and location/agency of report (may include a trail of reporting)
- Brief synopsis that includes: victim's allegation (what, where, when, who, how); accused response, if any; evidence; witnesses; and first response (how did law enforcement respond, investigation progression)
- A legal opinion recommending action to be taken and reasons for this decision
- Resolution and case disposition, including disciplinary and/or administrative action taken, if any
- Current (or final) victim status, to include any disciplinary or administrative action taken relating to the incident
- Current (or final) accused status

**FINDING 23. The use of indexing information for other than law enforcement purposes is inappropriate and potentially unfair.**

It is critical for law enforcement officials to have access to accurate, detailed records of past accusations, charges, and arrests of a person accused of a crime because many perpetrators of sexual assault are repeat offenders. Without knowledge of the subject's law enforcement history, investigators would lose valuable information and predators could repeatedly commit crimes without detection. However, law enforcement files may contain unverified allegations and incomplete evidence. These records are often accessed by Service officials for reasons other than law enforcement, such as promotions and security clearance determinations, a practice criticized by a 1999 report of the National Academy of Public Administration.[140]

**RECOMMENDATION 23: Congress should provide a statutory limitation on the use of indexing information for any purpose other than law enforcement.**

Prior internal efforts by the Defense Department to control the use of indexed information have been unsuccessful. A statutory limitation on the use of indexed information is required to achieve a result that properly supports law enforcement and simultaneously provides due process protections for those accused of an offense.[141]

**FINDING 24. At the United States Naval Academy, indexing decisions may be made by individual case agents, who are junior and less experienced.**

The decision to index a suspect is important and may carry with it serious and lasting repercussions for the accused. At the Military Academy, the agent in charge, a senior agent with extensive experience as an investigator, makes the determination to index a suspect. At the Naval Academy, this decision is left to the agent working the particular case, regardless of the level of his or her experience.

**RECOMMENDATION 24: Only the agent in charge of a criminal investigative office should have the authority to decide to index a suspect.**

**FINDING 25. The DIBRS reporting and data collection requirements apply to all Department of Defense agencies and commands, including the military service academies.**

The statutory requirements and need for statistical information on these crimes and other high-interest issues are applicable to the Academies. The limited accessibility to personal identifying information built into DIBRS serves to protect the privacy interests of cadets and midshipmen subject to DIBRS reporting.

**RECOMMENDATION 25: Input data into DIBRS to the same extent as do other Department of Defense agencies.**

## Training and Education

**FINDING 26A. The Values Education Program at the Military Academy is structured to integrate issues of sexual harassment and assault into an overarching curriculum on character development.**

Integrating discussions on sexual harassment and assault into a unified and overarching curriculum on ethics and character development is a positive step.[142] Such integration will better enable Academy leadership to present sexual harassment and assault in context with other leadership issues facing future military officers.

**FINDING 26B. The Sexual Assault Victim Intervention (SAVI) curriculum at the Naval Academy is designed to provide both depth and breadth of understanding on sexual assault and related issues.**

The SAVI program curriculum is comprehensive, providing both training on Navy policies and standards of conduct, as well as education on sexual assault and related issues. Topics progress in complexity and depth of understanding so that, by the fourth year, the curriculum addresses implications of these issues on operations in the fleet.

**NO RELATED RECOMMENDATIONS**

**FINDING 27A. The sexual harassment and assault curriculum used at the Military Academy is too limited in scope.**

Although the Values Education Program curriculum provides training on Army policies and standards of conduct relating to sexual harassment and assault, it only peripherally addresses sexual harassment or assault as larger leadership issues that threaten unit readiness and effectiveness. In addition, the four-year curriculum is repetitive, with limited progression from basic to more advanced concepts.

**FINDING 27B. At the Naval Academy, the structure of the curricula addressing sexual harassment and sexual assault is poorly integrated.**

The sexual harassment curriculum at the Naval Academy is the purview of the Command Managed Equal Opportunity (CMEO) Program. However, the sexual assault prevention curriculum is the purview of the Sexual Assault Victim Intervention (SAVI) Program. There is little integration between these two curricula and their approaches are different.[143] In addition, despite a high correlation between sexual assault and alcohol use, there is little integration between SAVI and the Naval Academy alcohol education program.

In January 2005, the Naval Academy began making changes to the character development curriculum taught by the Leadership, Ethics, and Law Department. These changes will expand the four-year curriculum from twelve to fifteen semester hours and incorporate materials previously covered under the SAVI, CMEO, and alcohol education programs into the expanded academic curriculum. These changes are a commendable step toward addressing these issues from both an awareness and a leadership-development perspective.

**RECOMMENDATION 27A: Adapt existing programs to incorporate cadet and midshipman education on sexual harassment and assault into a mandatory academic graded curriculum that addresses these subjects in a larger context of military leadership and/or ethics.**

At a minimum, this curriculum should

- Be an academic curriculum to the greatest extent possible. Where accreditation issues prevent specific materials from being incorporated into an academic curriculum, other training forums may be used. However, cadet and midshipman performance should still be evaluated and the results directly incorporated into their performance evaluation and overall class standing.
- Educate about DoD and service-specific policies and standards of conduct.
- Use a "building block approach" to address sexual harassment and assault in progressively greater depth and complexity across the four-year curriculum. Areas of emphasis should include
  - Implications of sexual harassment and assault for military readiness
  - Personal safety, prevention, and risk reduction
  - Human sexuality and mature and healthy interaction
  - Factors contributing to sexual harassment and assault (eg., gender-motivated assault, toleration/bystander phenomenon, etc.)
  - Military leadership strategies for preventing and/or responding to sexual harassment or assault
  - Awareness of contemporary youth culture and attitudes

- Resources available to both victims and the chain of command
- Confidentiality options available to victims of sexual assault.

- Build strong connections between theoretical learning in the classroom and practical application in the field or fleet.
- Build an understanding that sexual harassment and assault are not "women's issues" but "leadership issues" that negatively affect both genders and the military at-large.
  - Avoid categorically stereotyping men as perpetrators and women as victims.

**RECOMMENDATION 27B: Federal law[144] regarding victim and witness rights should be incorporated into cadet and midshipman military justice curricula.**

**FINDING 28A. The format and scheduling of sexual harassment and assault training and education programs at the Academies undermine their importance.**

There is no grading or evaluation of cadet or midshipman participation in the Values Education Program, SAVI, or CMEO Programs. In addition, these classes are scheduled around academic classes and other events, and are thus held at inopportune times such as after lunch or in the evenings. Discussion groups reflected a pervasive attitude among cadets and midshipmen that these programs are viewed as less important than academic classes or athletics.

In January 2005, the Naval Academy began to incorporate materials previously covered under the SAVI and CMEO Programs into formal academic courses. This change is a commendable step in educating future officers on important leadership issues.

**FINDING 28B. Sexual harassment and assault education programs at both Academies are overreliant on cadet or midshipman instructors.**

Each program relies on cadet or midshipmen to present materials under the supervision of faculty or staff members. Discussion groups reveal that often, either presenters are completely unsupervised or the faculty or staff member is not present during the entire course of a discussion. In addition, discussion groups described:

- A focus on presenting the required material in the shortest time possible
- A lack of a field or fleet perspective
- A lack of a mature, adult perspective
- A lack of accountability with regard to quality of instruction or level of student participation
- At the Naval Academy, presenters receiving training material shortly before the scheduled class, allowing limited preparation

**RECOMMENDATION 28: Classes addressing sexual harassment and/or assault should be graded, conducted during academic hours, instructed by qualified faculty members, and incorporate a variety of instructional methods.**

At a minimum, the following instructional methods should be included:

- Readings, lectures, guest lecturers, and theater performances
- Contemporary case studies and personal essays
- Decision analysis training
- Both gender-segregated and mixed-gender small group discussions and interaction
- Use of bystander-intervention programs[145]
- Peer-facilitated discussions, presentations and/or activities

**FINDING 29. The sexual harassment and assault training programs at both Academies are not effective in conveying key concepts.**

Feedback from discussion groups with cadets and midshipmen and from the 2004 DoD IG Survey indicates a lack of understanding of available support for sexual assault victims, including misunderstandings about

- the role of the chain of command in responding to sexual assaults;
- how to obtain medical care;

- how to obtain counseling;
- how to obtain legal services; and
- the role of law enforcement and criminal investigative agencies.

**RECOMMENDATION 29A: Establish routine assessments of existing training and education programs in conveying key concepts relating to sexual harassment and assault services.**

Such assessment should be continuous and ongoing. The assessment should integrate both an analysis of cadet or midshipman performance on the graded curriculum as well as solicited feedback received directly from the cadets and midshipmen. Similarly, training and education programs for faculty, staff, and volunteers should integrate an assessment of participant understanding as well as solicited feedback.

**RECOMMENDATION 29B: Military history and leadership curricula should integrate gender issues.**

At a minimum, these curricula should include the following:

- History and rationale of racial and gender integration in the US military, highlighting role models
- Importance of gender integration to meeting quality standards and manning requirements of an all-volunteer-force
- Rationale and implications of the 1993 decision regarding combat exclusion and current occupational-specialty restrictions
- Physiological differences between genders as the basis for differing physical fitness standards at military service academies and in the military services

**RECOMMENDATION 29C: Address the military ethos as it relates to the appropriate use of force and aggression within the profession of arms.**

At a minimum, this should include the following:

- integrating the subject into ethics and/or military leadership curricula across all four years
- integrating it into extracurricular programs and activities
- reinforcing it strongly in training and athletics programs

**FINDING 30. Course materials and lesson plans used by sexual harassment and assault education programs at both Academies are poorly designed.**

Course materials and lesson plans addressing sexual harassment and assault prevention and response are uninspiring. Material for the SAVI Program is notably better. A review of course materials and comments from cadet and midshipmen discussion groups yielded the following criticisms, judging the material to be

- Overly standardized in both format and presentation (several respondents commented on the excessive use of Power Point briefings)
- Overly focused on the Academy environment without clear connections to the fleet or field
- Repetitive, with SAVI being a notable exception
- Remiss in not acknowledging current youth culture, trends, and social norms
- Generally outdated, with limited use of contemporary case studies
- Apt to categorically stereotype men as perpetrators and women as victims
- Without sufficient (or any) time for interactive discussion of issues

**RECOMMENDATION 30A: Improve the quality and delivery of instructional materials.**

Improvements should include the following:

- Greater variety of instructional methods, including those outlined under recommendation 28
- More timely distribution and discussion of cadet and midshipman sexual harassment and assault case studies
- More context and connection from an operational military perspective
- Discussion of the incompatibility of sexual harassment/assault with academy/service core values
- Greater use of current scholarly research

- Understanding of the implications of current youth culture and social norms
- Greater emphasis on positive examples of appropriate behavior
- Cadet and midshipman feedback

**RECOMMENDATION 30B: Establish an annual evaluation and update process in order to improve instructional materials used in education related to sexual harassment and assault.**

**FINDING 31. Sexual harassment and assault education and training programs lack institutional continuity at both Academies.**

The lack of institutional continuity in sexual harassment and assault education programs at both Academies is due to the regular transition of military personnel into and out of key positions within these programs.

**RECOMMENDATION 31: To ensure adequate long-term continuity in sexual harassment and assault education programs, the Academies should incorporate either permanent military faculty or career civilian employees into an adequate number of the key positions.**

**FINDING 32. Noncommissioned and Chief Petty Officers assigned as Tactical or Brigade Staff at the Academies do not receive adequate indoctrination into the service academy environment.**

Most noncommissioned officers (NCOs) and Chief Petty officers selected for assignment to the Tactical Staff at the Military Academy or the Brigade Staff at the Naval Academy do not have previous experience training officer candidates. Most are also not familiar with service academy environments. The Military Academy offers a ten-day orientation course to newly assigned personnel; however, discussion groups report that Tactical NCOs commonly do not have the opportunity to complete the entire course. NCOs and Chief Petty Officers assigned as Senior Enlisted Leaders do not receive any Naval Academy-specific training prior to assuming duties.

**RECOMMENDATION 32: Establish a formal indoctrination process for all newly assigned Tactical or Brigade Staff Senior Noncommissioned and Chief Petty Officers.**

At a minimum, the following topics should be covered:

- the unique history and culture of the service academy;
- the service academy's approach to officer candidate development;
- their role within the service academy environment; and
- Academy-specific sexual harassment and assault policies and prevention and response programs.

**FINDING 33A. Faculty and staff at both Academies are inadequately trained in sexual harassment and assault issues.**

Faculty and staff members at both Academies receive only the standard sexual harassment and assault prevention training routinely provided to all Army or Navy personnel and employees.[146] They do not receive training on their role in Academy prevention and response programs, specifically

- understanding and enforcing Academy standards within classrooms; and
- responding appropriately to reports of possible sexual assault or misconduct.

**FINDING 33B. Volunteers working closely with cadets or midshipmen do not receive adequate training on sexual harassment or assault.**

Both Academies rely on volunteers to augment faculty and staff in programs such as extracurricular athletics. No policy exists at either Academy requiring these volunteers to receive training on sexual harassment or assault. Discussion groups and reviews of training materials provided by the Academies suggest that little or none is being done. This creates a significant potential for volunteers to fail to recognize conduct inconsistent with academy values, misadvise cadets or midshipmen on subjects related to sexual harassment and assault, or to improperly handle information they may obtain regarding potential or alleged incidents.

**RECOMMENDATION 33: Establish an effective training program for faculty, staff, sponsors, and volunteers who work closely with cadets and midshipmen.**

The program should address the following:

- Institutional policies and procedures regarding sexual harassment and assault
- Prevention and response programs in place for both cadets/midshipmen and faculty/staff/volunteers
- Role of faculty, staff, and volunteers in preventing and responding to potential incidents

**FINDING 34. Newly assigned military and civilian chaplains, psychotherapists, counselors, and medical personnel do not receive introductory training on Academy-specific policies and issues related to sexual assault victim support and confidentiality.**

**RECOMMENDATION 34: Establish a training program for newly assigned commanders, chaplains, psychotherapists, counselors, medical personnel,[147] victim advocates, and law enforcement personnel outlining Academy-specific policies regarding sexual assault victim support and confidentiality.**

## Prevention

**FINDING 35. Execution and management of sexual harassment or assault prevention programs at both Academies are fragmented and inadequate.**

- The Military Academy:
  - *Limited focus* – The Values Education Program is limited to providing training and does not address other components of an effective prevention program.
  - *Inadequate resources at SCPME* – As of December 2004, SCPME was staffed at 71%. This is barely adequate to meet its training responsibilities, let alone effectively oversee, advocate, or advise the Military Academy leadership on sexual harassment and/or assault prevention initiatives beyond those that are training-related.
  - *Dissimilar programs for cadets and staff* – The sexual harassment prevention program for faculty and staff is completely distinct from the cadet Values Education Program. This precludes a shared frame of reference among cadets and faculty and staff with regard to sexual harassment prevention.[148]
  - *Lack of staff program* – There is no sexual assault prevention program for faculty and staff.
- The Naval Academy
  - *Lack of Command-level advocate* – Sexual harassment and assault prevention programs have historically been overseen by midlevel officers without ready access to academy senior leadership.
  - *Fragmentation between sexual harassment and sexual assault programs* – The sexual harassment and the sexual assault prevention programs are distinct and separate, with very limited integration between the two.

The Naval Academy has recently taken strides towards improving the management and execution of sexual harassment and prevention programs. In October 2004, a Sexual Harassment, Misconduct, and Assault Prevention and Response Program Manager position was added to the staff of the academy superintendent. This program manager is a senior officer and is responsible for sexual harassment and assault prevention program oversight for both the Brigade of Midshipmen and all other installation personnel.

**RECOMMENDATION 35A: Develop an institutional sexual harassment and assault prevention plan that is evaluated and updated annually.**

Incorporate environmental change strategies such as awareness campaigns to change prevailing attitudes or social norms that support sexual harassment and assault.[149]

**RECOMMENDATION 35B: All sexual harassment and assault prevention programs at both Academies should ultimately be overseen and directed by an 0-6 level officer or civilian equivalent on the Superintendent's staff.[150]**

This position or office should do the following:

- Be directly responsible for all prevention activities both within the Academy and on the installation
- Ensure executive-level awareness training is provided for all officers, senior enlisted officers, faculty, coaches, and volunteers who work with cadets and midshipmen
- Establish relationships and regularly collaborate with local rape crisis and prevention organizations
  - Be familiar with current research and theory regarding prevention
- Advocate for and advise Academy leadership on prevention issues, initiatives, and related topics to include
  - Risk reduction
  - Education and training
  - Awareness activities and events
  - Physical safety and security issues
  - Cultural issues
  - Incidence tracking
- Facilitate regular communication between Academy leadership with cadets and midshipmen on sexual harassment and assault incidents as they occur
- Be staffed and resourced at an appropriate level to execute the responsibilities outlined above

**FINDING 36. Providing sufficient privacy for both genders while maintaining unit cohesion in cadet or midshipman living areas remains a challenge at both Academies.**

The existing design of living areas at both Academies requires gender-designated communal toilet facilities, access to which requires travel through common halls. While showers are available in midshipmen's rooms at the Naval Academy, the Military Academy offers only gender-designated communal shower facilities. Review of cadet and midshipman misconduct case files, in addition to discussion group interviews with cadets, midshipmen, Company Officers, and Tactical Officers, indicate that the requirement for cadets and midshipmen to travel through common areas in various states of dress often creates situations conducive to sexual harassment or other forms of misconduct. Nevertheless, cadets and midshipmen overwhelmingly oppose gender-segregated living areas. The 2004 DoD IG Survey indicates that 95.5% of women and 80% of men oppose gender-segregated living areas.[151] In addition, discussion groups with cadets and midshipmen indicate they believe gender segregation in living areas would undermine unit cohesion and lead to marginalization of female cadets and midshipmen.

**RECOMMENDATION 36: Future renovations of cadet and midshipman living areas should be consistent with DoD directives eliminating communal toilet or bathing facilities in favor of smaller facilities in the individual living areas.**

**FINDING 37A. Existing supervision of cadets and midshipman living areas is insufficient to prevent sexual harassment or assault at either Academy.**

Despite supervision and physical security measures in cadet and midshipman living areas, data from the 2004 DoD IG Survey indicates that 56.6% of sexual assaults affecting cadets or midshipmen occur in these areas.[152] The same data indicates that 92% of the offenders were fellow cadets or midshipmen.[153] Discussion groups with Tactical Officers, Company Officers, cadets, and midshipmen and interviews with past victims suggest the following contributing factors:

- *Limited officer supervision* – Review of duty schedules and discussion-groups suggest the Tactical Officers at the Military Academy and Company Officers at the Naval Academy are often too task-saturated to frequently be present and accessible in living areas.[154] This problem is more pronounced at the Naval Academy, where Company Officers have instructor duties in addition to their command responsibilities.
- *Limited enlisted supervision* – Discussion groups indicate that Army and Marine Corps Noncommissioned officers and Navy Chief Petty Officers assigned to the Tactical Staff at the Military Academy or the Brigade Staff at the Naval Academy are often tasked with extensive administrative duties. These duties limit their accessibility and presence in living areas.
- *Overreliance on cadet and midshipmen in the Military Academy Cadet Guard and the Naval Academy Watch program* – Both these programs rely heavily on cadet or midshipmen to monitor living areas, particularly after hours and on weekends. However, the 2004 DoD IG Survey and discussion group interviews indicate that cadets and midshipmen place tremendous, often disproportionate, value on peer loyalty and resolving cadet or midshipman issues without involving supervisory personnel. This significantly limits the supervisory value of both programs.

**FINDING 37B. Tactical Noncommissioned Officers at the Military Academy and Senior Enlisted Leaders at the Naval Academy are an underutilized resource in sexual harassment and assault prevention.**

The leadership abilities and extensive field and fleet experience that NCOs and Chief Petty Officers bring to the service academies present an overlooked resource which could address many shortcomings in existing prevention programs. Tactical NCOs and Senior Enlisted Leaders are selected in part for their experience and demonstrated leadership within their respective services. However, discussion groups suggest they are not always given a clear leadership and mentorship role with regard to cadets and midshipmen. Instead, they are often assigned administrative duties.

**RECOMMENDATION 37A: Tactical and Brigade Staff Officer, Senior Noncommissioned Officer, and Senior Enlisted Leader duties need to be clearly defined and provide for greater direct interaction and involvement with cadets and midshipmen, particularly during evening and weekend hours.**

Changes should include the following:

- Eliminating burdensome administrative responsibilities.
- Relieving Tactical and Brigade Staff Senior Noncommissioned and Chief Petty Officers of administrative responsibilities that can be performed by support staff.
- Making greater use of Senior Noncommissioned and Chief Petty Officers to set and enforce standards.

- Making greater use of Senior Noncommissioned and Chief Petty Officer as mentors to cadets and midshipmen, in order for them to share insights from a field/fleet perspective.
- Significantly expanding the number and role of Tactical and Brigade Staff within the Military Academy's Cadet Guard and the Naval Academy's Watch programs. Tactical and Brigade Staff should be more visible in the living areas throughout waking hours and routinely spot-check cadet or midshipman performance and duty areas.
- Instituting unscheduled visits to each company area by Tactical or Brigade staff during evenings, weekends and holidays. These visits should be used to assess conduct, informally mentor, and make on-the-spot corrections.
- Limit the extent to which Company Officers at the US Naval Academy are assigned academic instructor duties.

See also **RECOMMENDATION 5B**.

**FINDING 38. Admissions decisions are made without complete review of secondary school conduct and standardized assessments of applicant attitudes and values.**

Neither Academy requires applicants to sign a waiver authorizing secondary schools to release disciplinary information to the admissions committee, nor requires teacher assessments of applicants' conduct in class. This diminishes the ability of admissions committees to evaluate an applicant's propensity to treat others with dignity and respect. In addition, there is no standardized process used by either Academy to assess applicant attitudes and values for compatibility with Academy or military values. Structured interview questions to assess applicants' attitudes and values are not employed by Military Academy liaison officers, Naval Academy Blue and Gold officers, Congressional members, their staff, or other nominating officials.

**RECOMMENDATION 38A: Admissions offices should expand the selection process to obtain a summary of secondary school conduct.**

Particular attention should be given to the following:

- Requiring applicants to sign waivers allowing secondary schools to release any information on misconduct
- Obtaining teacher evaluations of applicants' behavior regarding treatment of others with dignity and respect

**RECOMMENDATION 38B: The Academy's admission offices should incorporate a standardized assessment of applicants' attitudes and values into the selection process to ensure compatibility with Academy and military values.**

This revision should include the following:

- Military Academy liaison officers and the Naval Academy Blue and Gold officers performing structured interviews to assess applicants' attitudes, values, and capacity to succeed in a diverse (in terms of gender, race, ethnicity, and religion) environment
- Structuring personal essays in the admissions process to gain greater insight into applicants' character and values

**FINDING 39. Admissions committee membership is not structured to reflect the diversity of the applicants.**

**RECOMMENDATION 39: Admissions committee membership should be restructured to ensure that it is representative of the diversity of the applicant pool.**

## Coordination Between Military and Civilian Communities

**FINDING 40. The absence of formal relationships between the Academies and local support agencies assisting victims of sexual assault has adversely affected the coordination of resources for victims' care.**

Neither Academy has established formal agreements with community agencies that address information exchange about or support for victims of sexual assault.

**RECOMMENDATION 40A: Follow the DoD policy regarding establishing collaborative relationships with civilian authorities for sexual assault victim support.[155]**

Establish formal relationships through memoranda of understanding with community support agencies that provide services and assistance to victims of sexual assault.

**RECOMMENDATION 40B: Assign liaison personnel, such as a Sexual Assault Response Coordinator (SARC), to facilitate coordination between Academies and the multiple civilian agencies responding to sexual assault.**

**FINDING 41. The Academies have not documented informal relationships with community support agencies to maintain continuity as key personnel change assignments.**

The Military Academy has not established any informal relationships with community support agencies for services to victims of sexual assault. At the Naval Academy, existing informal community relationships are very effective at sharing information and fostering collaborative efforts; however, these relationships are not institutionalized or consistent in their approaches to victim support. The Naval Academy staff has established varied relationships with at least eight different support agencies in the Annapolis area, but these relationships could be lost as current staff leave.

**RECOMMENDATION 41: Document any existing informal relationships with community agencies, and incorporate such documentation into procedures.**

**FINDING 42. The Academies do not adequately publicize community resources to cadets and midshipmen.**

The Academies do not publicize or utilize community resources during sexual assault prevention, training, and education; thus, cadets and midshipmen are not fully informed about the resources offered by these community agencies. Conversely, community agencies near both Academies are not fully aware of the Academies' culture, training, and processes employed to support and safeguard victims of sexual assault.

**RECOMMENDATION 42A: Collaborate with local community crisis counseling centers, where appropriate, in order to augment sexual assault expertise into military training programs and to exchange nonidentifying sexual assault data involving military personnel.**

**RECOMMENDATION 42B: Actively publicize information about available community resources and incorporate it into the sexual assault prevention and awareness training.**

**FINDING 43. Academy law enforcement agencies have not established formal agreements with community law enforcement agencies to address incidents of sexual assault.**

Neither Academy's law enforcement agencies have established formal agreements regarding incidents of sexual assault with surrounding community law enforcement agencies. In the past, informal relationships built on mutual respect and trust have been highly successful when the Academies collaborate with community law enforcement agencies. Academy law enforcement personnel feel that mandating formal agreements interferes with fostering positive relationships with community law enforcement agencies.

**RECOMMENDATION 43: Endorse and validate, through documentation, relationships with local law enforcement agencies.**

Whether relationships are formal or informal, the Academies must document relationships so that key information is captured and institutionalized.

## Preparatory Schools

**FINDING 44. The Academies' preparatory schools face the same challenges as the Academies in preventing and responding to sexual harassment and assault. While both schools have programs to address these issues, they are not fully integrated into the larger programs at their respective Academies.**

Because of the small size and more remote locations of the preparatory schools, their efforts are not as well coordinated, supported, and overseen as the programs at the Academies. The preparatory schools have the additional challenge of having only a ten-month program for one class instead of a four-year hierarchical structure. Both Academies have recently focused more attention on integrating the programs at the preparatory schools into those at the Academies.

**RECOMMENDATION 44: The Military and Naval Academies should fully integrate the preparatory schools into the prevention, training, and response programs and initiatives at each of the Academies. Any evaluation and oversight of the Academies' progress in addressing sexual harassment and assault should include the preparatory schools.**

# H.R.1588

## National Defense Authorization Act for Fiscal Year 2004 (Enrolled as Agreed to or Passed by Both House and Senate)

### *Sec. 526. Defense Task Force on Sexual Harassment and Violence at the Military Service Academies.*

*(a) ESTABLISHMENT- The Secretary of Defense shall establish a Department of Defense task force to examine matters relating to sexual harassment and violence at the United States Military Academy and the United States Naval Academy.*

*(b) RECOMMENDATIONS- Not later than 12 months after the date on which all members of the task force have been appointed, the task force shall submit to the Secretary of Defense a report recommending ways by which the Department of Defense and the Department of the Army and the Department of the Navy may more effectively address matters relating to sexual harassment and violence at the United States Military Academy and the United States Naval Academy, respectively. The report shall include an assessment of, and recommendations (including any recommended changes in law) for measures to improve, with respect to sexual harassment and violence at those academies, the following:*

*(1) Victims' safety programs.*

*(2) Offender accountability.*

*(3) Effective prevention of sexual harassment and violence.*

*(4) Collaboration among military organizations with responsibility or jurisdiction with respect to sexual harassment and violence.*

*(5) Coordination between military and civilian communities, including local support organizations, with respect to sexual harassment and violence.*

*(6) Coordination between military and civilian communities, including civilian law enforcement relating to acts of sexual harassment and violence.*

*(7) Data collection and case management and tracking.*

*(8) Curricula and training, including standard training programs for cadets at the United States Military Academy and midshipmen at the United States Naval Academy and for permanent personnel assigned to those academies.*

*(9) Responses to sexual harassment and violence at those academies, including standard guidelines.*

*(10) Other issues identified by the task force relating to sexual harassment and violence at those academies.*

*(c) METHODOLOGY- The task force shall consider the findings and recommendations of previous reviews and investigations of sexual harassment and violence conducted for those academies as one of the bases for its assessment.*

*(d) REPORT- (1) The task force shall submit to the Secretary of Defense and the Secretaries of the Army and the Navy a report on the activities of the task force and on the activities of the United States Military Academy and the United States Naval Academy to respond to sexual harassment and violence at those academies.*

*(2) The report shall include the following:*

*(A) Any barriers to implementation of improvements as a result of those efforts.*

*(B) Other areas of concern not previously addressed in prior reports.*

*(C) The findings and conclusions of the task force.*

*(D) Any recommendations for changes to policy and law as the task force considers appropriate, including whether cases of sexual assault at those academies should be included in the Department of Defense database known as the Defense Incident-Based Reporting System.*

*(3) Within 90 days after receipt of the report under paragraph (1) the Secretary of Defense shall submit the report, together with the Secretary's evaluation of the report, to the Committees on Armed Services of the Senate and House of Representatives.*

*(e) REPORT ON AIR FORCE ACADEMY- Simultaneously with the submission of the report under subsection (d)(3), the Secretary of Defense, in coordination with the Secretary of the Air Force, shall submit to the committees specified in that subsection the Secretary's assessment of the effectiveness of corrective actions being taken at the United States Air Force Academy as a result of various investigations conducted at that Academy into matters involving sexual assault and harassment.*

*(f) COMPOSITION- (1) The task force shall consist of not more than 14 members, to be appointed by the Secretary of Defense. Members shall be appointed from each of the Army, Navy, Air Force, and Marine Corps, and shall include an equal number of personnel of the Department of Defense (military and civilian) and persons from outside the Department of*

*Defense. Members appointed from outside the Department of Defense may be appointed from other Federal departments and agencies, from State and local agencies, or from the private sector.*

*(2) The Secretary shall ensure that the membership of the task force appointed from the Department of Defense includes at least one judge advocate.*

*(3) In appointing members to the task force, the Secretary may-*

*(A) consult with the Attorney General regarding a representative from the Office of Violence Against Women of the Department of Justice; and*

*(B) consult with the Secretary of Health and Human Services regarding a representative from the Women's Health office of the Department of Health and Human Services.*

*(4) Each member of the task force appointed from outside the Department of Defense shall be an individual who has demonstrated expertise in the area of sexual harassment and violence or shall be appointed from one of the following:*

*(A) A representative from the Office of Civil Rights of the Department of Education.*

*(B) A representative from the Centers for Disease Control and Prevention of the Department of Health and Human Services.*

*(C) A sexual assault policy and advocacy organization.*

*(D) A civilian law enforcement agency.*

*(E) A judicial policy organization.*

*(F) A national crime victim policy organization.*

*(5) The members of the task force shall be appointed not later than 120 days after the date of the enactment of this Act.*

*(g) CO-CHAIRS OF THE TASK FORCE- There shall be two co-chairs of the task force. One of the co-chairs shall be designated by the Secretary of the Defense at the time of appointment from among the Department of Defense personnel on the task force. The other co-chair shall be selected from among the members appointed from outside the Department of Defense by those members.*

*(h) ADMINISTRATIVE SUPPORT- (1) Each member of the task force who is a member of the Armed Forces or a civilian officer or employee of the United States shall serve without compensation (other than compensation to which entitled as a member of the Armed Forces or an officer or employee of the United States, as the case may be). Other members of the task force shall be appointed in accordance with, and subject to, section 3161 of title 5, United States Code.*

*(2) The Deputy Under Secretary of Defense for Personnel and Readiness, under the direction of the Under Secretary of Defense for Personnel and Readiness, shall provide oversight of the task force. The Washington Headquarters Services of the Department of Defense shall provide the task force with personnel, facilities, and other administrative support as necessary for the performance of the task force's duties.*

*(3) The Deputy Under Secretary shall coordinate with the Secretary of the Army to provide visits of the task force to the United States Military Academy and with the Secretary of the Navy to provide visits of the task force to the United States Naval Academy.*

*(i) TERMINATION- The task force shall terminate 90 days after the date on which the report of the task force is submitted to the Committees on Armed Services of the Senate and House of Representatives pursuant to subsection (d)(3).*

THE SECRETARY OF DEFENSE
1000 DEFENSE PENTAGON
WASHINGTON, DC 20301-1000

JUN 7 2004

MEMORANDUM FOR MEMBERS OF THE DEFENSE TASK FORCE ON SEXUAL HARASSMENT AND VIOLENCE AT THE MILITARY SERVICE ACADEMIES

SUBJECT: A Charge To Move Forward

Pursuant to Public Law 108-136, I hereby charge the Defense Task Force on Sexual Harassment and Violence at the Military Service Academies to assess and make recommendations concerning how the Departments of the Army and the Navy may more effectively address matters relating to sexual harassment and violence at the United States Military Academy and the United States Naval Academy (including any recommended changes in law).

Issues to be addressed by the Task Force:

- Effective prevention of sexual harassment and violence.
- Victims' safety programs.
- Offender accountability.
- Collaboration among military organizations with responsibility or jurisdiction with respect to sexual harassment and violence.
- Coordination between military and civilian communities, including local support organizations, with respect to sexual harassment and violence.
- Coordination between military and civilian communities, including civilian law enforcement relating to acts of sexual harassment and violence.
- Data collection and case management and tracking.
- Curricula and training, including standard training programs for cadets at the United States Military Academy and midshipmen at the United States Naval Academy and for permanent personnel assigned to those academies.
- Responses to sexual harassment and violence at these academies, including standard guidelines.
- Propriety of inclusion of cases of sexual assault at the Academies in the Department of Defense Data Base known as the Defense Incident-Based Reporting System.
- The findings and recommendations of previous reviews and investigations of sexual harassment and violence at these academies.

- Any other issues identified by the Task Force relating to sexual harassment and violence at these academies.
- Any barriers to implementation of improvements proposed by the Task Force.
- Any areas of concern that were not previously addressed in prior reports.

As you conduct your review of these academies, you should consider the findings and recommendations of the Fowler Commission. You should also make use of the data, findings and recommendations from the Department of Defense Inspector General's review of this topic that currently is in progress.

Sexual harassment and sexual violence are an anathema to honorable service to our nation. As you know, I have commissioned an in-depth study of the manner in which the Department handles sexual assault. We must ensure that the environment within the Department (Active, Guard, Reserve, Civilians, cadets, and midshipmen) is not conducive to sexual misconduct. The message sent by supervisory personnel must effectively communicate that any variety of this abhorrent behavior will not be tolerated.

The statute provides you with one year to report recommendations. I urge you to make every effort to come to closure within 6 to 9 months. The issues we are dealing with are critically important and I do not want to delay implementation of corrective actions. Dr. David Chu, Under Secretary of Defense for Personnel and Readiness, will monitor your progress and facilitate periodic updates. Upon completion of its work, the Task Force shall report its findings, conclusions, and recommendations to me and to the Secretaries of the Army and Navy.

# DEFENSE TASK FORCE ON SEXUAL HARASSMENT & VIOLENCE AT THE MILITARY SERVICE ACADEMIES

November 18, 2004

The Honorable Les Brownlee
Acting Secretary of the Army
101 Army Pentagon
Washington, DC 20310-0101

Dear Secretary Brownlee,

Section 526 of the National Defense Authorization Act for Fiscal Year 2004 (Public Law 108-136, 117 Stat.1466) provides for the establishment of a Department of Defense task force to examine matters relating to sexual harassment and violence at the United States Military Academy and the United States Naval Academy. This task force is charged with submitting a report to the Secretary of Defense, to the Secretary of the Navy, and to you recommending ways by which the Department of Defense and the Department of the Army and the Department of the Navy may more effectively address matters relating to sexual harassment and violence at the United States Military Academy and the United States Naval Academy, respectively.

Our task force was appointed on September 23, 2004 and has begun an assessment of the ten areas outlined in Section 526. In this endeavor, we request your assistance in obtaining documents pertaining to the task force mission. Specifically, we request the Army provide us with copies of the documents prepared during, or pertaining to, the period from 1 January 1994 through the present, as described in enclosure (1).

Secretary Rumsfeld has urged the task force to make every effort to come to closure within six to nine months. With this accelerated timeline in mind, we appreciate your support in expediting this request, and appreciate receiving the documents no later than 20 November 2004. Please feel free to contact us directly if you or your staff have any questions concerning this request. The task force's staff director, COL William J. Huleatt, can be reached at (703) 325-6430 and is also available to assist you in responding to this request.

Thank you in advance for your help.

Sincerely,

R.L. Hoewing
VADM, USN
Task Force Co-Chair

/s/
Delilah Rumburg
Task Force Co-Chair

Enclosures:
As stated

**Defense Task Force on Sexual Harassment and Violence at the Military Service Academies**

The Task Force requests that the Army and the Navy provide copies of the following documents prepared during, or pertaining to, the period from 01 January 1994 through present.

*For brevity, the following conventions are used:*
*"**Students**" refers to Cadets or Midshipmen*
*"**Academies**" refers to the US Naval Academy, US Military Academy, US Naval Academy Prep School, or US Military Academy Prep School*

Specific Cases:

1. All documents kept by CID, NCIS, or Military Police relating to investigations or allegations of rapes, sexual assaults, indecent acts, sexual harassment, and/or sexual misconduct involving a student. This includes sworn statements, witness statements, neighborhood canvases, agent notes, and all other information in the case files.

2. All documents kept by the Staff Judge Advocate's office, SAVI office, Equal Opportunity office, Commandant's office, or any other agency, relating to investigations, allegations, and prosecutions of rapes, sexual assaults, indecent acts, sexual harassment, and/or sexual misconduct involving a student. This includes sworn statements, witness statements and all other information in the case files.

3. All documents related to the disposition, including adverse administrative action and honor proceedings, of all allegations of rape, sexual assault, indecent acts, sexual harassment, and/or sexual misconduct involving a student, whether maintained at the SJA office, Commandant's office, Equal Opportunity office, SAVI office, or other agency.

4. All documents related to tracking data and trend analysis of sexual assault cases, including location of incident, rank of victim, rank of perpetrator, and separation status of both victim and perpetrator.

Academy Assessments:

5. All documents related to victims' assessments and/or surveys of the quality of resources, support, care, and services received throughout the legal and administrative processes.

6. All documents related to exit surveys or interviews conducted with students who have been voluntarily or involuntarily separated from the Academies.

Enclosure (1)
Page 1 of 3

7. All documents related to climate surveys, focus groups, or any other surveys that relate to sexual assault, harassment, or gender issues in general, to include the survey questions, data, and analysis.

8. All documents related to climate surveys, focus groups, or any other surveys that relate to alcohol or substance use, abuse, or conduct incidents, to include the survey questions, data, and analysis.

9. All documents related to trend data collected from counselors, chaplains, psychotherapists, local inspector generals, equal opportunity officers, or others, related to sexual assault and/or harassment.

10. All numbers, rates or data available related to alcohol or substance use, abuse, or conduct incidents among students at the Academies.

11. All numbers, rates or data available related to eating disorders among students at the Academies.

12. All other documents or files within the Department of the Navy or Department of the Army relating to sexual assault or sexual harassment at the Academies.

Academy Policies:

13. All documents related to established and/or contemplated "amnesty" policies, including monitoring and assessing policy effectiveness.

14. All documents related to established and/or contemplated confidentiality policies, including monitoring and assessing policy effectiveness.

15. All documents related to the victim/witness protection programs, including monitoring and assessing program effectiveness.

16. All documents related to roles and responsibilities for integrating services provided to victims of sexual assault.

17. All documents related to prohibited student behaviors and corresponding punishments, including monitoring and assessing regulation effectiveness.

18. All documents, including Memorandums of Understanding or Agreement, establishing an agreement with local community agencies, including law enforcement agencies, hospitals, and crisis support centers, for reporting sexual assault cases or supporting victims of sexual assault.

19. All documents related to Board of Visitor meetings, to include attendance records and meeting minutes.

Enclosure (1)
Page 2 of 3

20. All documents related to how sexual assault victims' resources are made known to students, including any data that assesses the effectiveness these methods.

21. All documents related to physical security and faculty/staff oversight of students within student residential areas.

22. All documents related to student mentoring programs, including monitoring and assessing program effectiveness.

23. All documents related to student sponsorship programs, including monitoring and assessing program effectiveness.

24. Raw numbers and relevant statistical analysis reflecting faculty, staff, Brigade/Corps officer and Brigade/Corps NCO gender demographics, to include the number of dual military faculty and staff members and length of tour, broken down by academic year.

Academy Training:

25. All documents, including policies, directives, curricula, course outlines and/or supporting documentation, related to courses and other educational offerings provided to students that directly or indirectly cover the following topics. Include any data that assesses the effectiveness of such courses or other educational offerings.
    a. Sexual harassment, sexual misconduct or sexual assault.
    b. Use of alcohol
    c. Dating, sex and sexuality

26. All documents, including policies, directives, curricula, course outlines and/or supporting documentation, related to courses and other educational offerings provided to faculty members, staff, Brigade/Corps officers, and Brigade/Corps non-commissioned officers (NCOs) that directly or indirectly cover sexual harassment, sexual misconduct or sexual assault. Include any data that assesses the effectiveness of such courses or other educational offerings.

27. All documents related to the process used to select and train officers and NCOs assigned within the Brigade/Corps at the Academies. Include any data that assesses the effectiveness of this process.

28. All documents related to the roles, responsibilities, and typical schedules of officers and NCOs assigned within the Brigade/Corps at the Academies.

Enclosure (1)
Page 3 of 3

**DEFENSE TASK FORCE ON SEXUAL HARASSMENT & VIOLENCE AT THE MILITARY SERVICE ACADEMIES**

November 18, 2004

The Honorable Gordon R. England
Secretary of the Navy
1000 Navy Pentagon
Washington, D.C. 20350-1000

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Enclosure (1)
Page 3 of 3

## Current Sex Crimes Under Uniform Code of Military Justice

The following is a list of the current sex-related crimes under the Uniform Code of Military Justice, including Article 120, Rape and Carnal Knowledge. Maximum punishments are italicized and listed in parenthesis. Note that there are no sentencing guidelines or minimum sentences in the military. Anything from no punishment at all up to the maximum punishment may be adjudged by the judge or panel members.

### Article 120 Rape and Carnal Knowledge

a. Text.

"(a) Any person subject to this chapter who commits an act of sexual intercourse by force and without consent, is guilty of rape and shall be punished by death or such other punishment as a court-martial may direct."

(b) Any person subject to this chapter who, under circumstances not amounting to rape, commits an act of sexual intercourse with a person—

(1) who is not his or her spouse; and

(2) who has not attained the age of sixteen years, is guilty of carnal knowledge and shall be punished as a court-martial may direct.

(c) Penetration, however slight, is sufficient to complete either of these offenses.

(d)(1) In a prosecution under subsection (b), it is an affirmative defense that—

(A) the person with whom the accused committed the act of sexual intercourse had at the time of the alleged offense attained the age of twelve years; and

(B) the accused reasonably believed that the person had at the time of the alleged offense attained the age of 16 years.

(2) The accused has the burden of proving a defense under subparagraph (d)(1) by a preponderance of the evidence.

b. Elements.

(1) Rape. (*Death*)

(a) That the accused committed an act of sexual intercourse; and

(b) That the act of sexual intercourse was done by force and without consent.

(2) Carnal Knowledge. (*12 and over—20 years; under 12—life without parole*)

(a) That the accused committed an act of sexual intercourse with a certain person;

(b) That the person was not the accused's spouse; and

(c) That at the time of the sexual intercourse the person was under 16 years of age.

### Article 125 Sodomy

a. Text.

"(a) Any person subject to this chapter who engages in unnatural carnal copulation with another person of the same or opposite sex or with an animal is guilty of sodomy. Penetration, however slight, is sufficient to complete the offense.

(b) Any person found guilty of sodomy shall be punished as a court-martial may direct."

b. Elements. (*5 years*)

(1) That the accused engaged in unnatural carnal copulation with a certain other person or with an animal.

(Note: Add either or both of the following elements, if applicable)

(2) That the act was done with a child under the age of 16. (*12 and over—20 years; under 12—life without parole*)

(3) That the act was done by force and without the consent of the other person. (*life without parole*)

## Article 134 Adultery

a. Text. See paragraph 60*.

b. Elements. (*1 year*)

(1) That the accused wrongfully had sexual intercourse with a certain person;

(2) That, at the time, the accused or the other person was married to someone else; and

(3) That, under the circumstances, the conduct of the accused was to the prejudice of good order and discipline in the armed forces or was of a nature to bring discredit upon the armed forces.

## Article 134 Indecent Assault

a. Text. See paragraph 60*.

b. Elements. (*5 years*)

(1) That the accused assaulted a certain person not the spouse of the accused in a certain manner;

(2) That the acts were done with the intent to gratify the lust or sexual desires of the accused; and

(3) That, under the circumstances, the conduct of the accused was to the prejudice of good order and discipline in the armed forces or was of a nature to bring discredit upon the armed forces.

## Article 134 Assault with Intent to Commit Murder, Voluntary Manslaughter, Rape, Robbery, Sodomy, Arson, Burglary, or Housebreaking

a. Text. See paragraph 60*.

b. Elements. (*murder or rape—20 years; all others except housebreaking—10 years; housebreaking—5 years*)

(1) That the accused assaulted a certain person;

(2) That, at the time of the assault, the accused intended to kill (as required for murder or voluntary manslaughter) or intended to commit rape, robbery, sodomy, arson, burglary, or housebreaking; and

(3) That, under the circumstances, the conduct of the accused was to the prejudice of good order and discipline in the armed forces or was of a nature to bring discredit upon the armed forces.

## Article 134 Indecent Acts or Liberties with a Child

a. Text. See paragraph 60*.

b. Elements. (*7 years*)

(1) Physical Contact.

(a) That the accused committed a certain act upon the body of a certain person;

(b) That the person was under 16 years of age and not the spouse of the accused;

(c) That the act of the accused was indecent;

(d) That the accused committed the act with intent to arouse, appeal to, o gratify the lust, passions, or sexual desires of the accused, the victim, or both; and

(e) That, under the circumstances, the conduct of the accused was to the prejudice of good order and discipline in the armed forces or was of a nature to bring discredit upon the armed forces.

(2) No physical Contact.

(a) That the accused committed a certain act;

(b) That the act amounted to the taking of indecent liberties with a certain person;

(c) That the accused committed the act in the presence of this person;

(d) That this person was under 16 years of age and not the spouse of the accused;

(e) That the accused committed the act with intent to arouse, appeal to, o gratify the lust, passions, or sexual desires of the accused, the victim, or both; and

(f) That, under the circumstances, the conduct of the accused was to the prejudice of good order and discipline in the armed forces or was of a nature to bring discredit upon the armed forces.

## Article 134 Indecent Exposure

a. Text. See paragraph 60*.

b. Elements. (*6 months*)

(1) That the accused exposed a certain part of the accused's body to public view in an indecent manner;

(2) That the exposure was willful and wrongful; and

(3) That, under the circumstances, the conduct of the accused was to the prejudice of good order and discipline in the armed forces or was of a nature to bring discredit upon the armed forces.

## Article 134 Indecent Language

a. Text. See paragraph 60*.

b. Elements. (*to a child under 16—2 years; otherwise 6 months*)

(1) That the accused orally or in writing communicated to another person certain language;

(2) That such language was indecent; and

(3) That, under the circumstances, the conduct of the accused was to the prejudice of good order and discipline in the armed forces or was of a nature to bring discredit upon the armed forces.

(Note: In appropriate cases add the following element after element (1): That the person to whom the language was communicated was a child under the age of 16.)

## Article 134 Indecent Acts with Another

a. Text. See paragraph 60*.

b. Elements. (5 years)

(1) That the accused committed a certain wrongful act with a certain person;

(2) That the act was indecent; and

(3) That, under the circumstances, the conduct of the accused was to the prejudice of good order and discipline in the armed forces or was of a nature to bring discredit upon the armed forces.

## *60. Article 134 General Article

a. Text.

"Though not specifically mentioned in this chapter, all disorders and neglects to the prejudice of good order and discipline in the armed forces, all conduct of a nature to bring discredit upon the armed forces, and crimes and offenses not capital, of which persons subject to this chapter may be guilty, shall be taken cognizance of by a general, special, or summary court-martial, according to the nature and degree of the offense, and shall be punished at the discretion of that court."

Center for Personal Development
INFORMED CONSENT

Welcome to the Center for Personal Development (CPD). This document contains information about the Center's services and polices, as well as summary information about the Health Insurance Portability and Accountability Act (HIPAA), a new federal law that provides new privacy protections and new rights with regard to the use and disclosure of your Protected Health Information (PHI) used for the purpose of treatment and health care operations. Please read it carefully and ask any questions you may have.

**1. COUNSELING SERVICES**

Counseling is not easily described in general statements. It varies depending on the personality of the counselor and the cadet and the particular situation for which the cadet seeks assistance. There are a number of different approaches that can be used to address your concerns. It is not like visiting a medical doctor, in that counseling requires a very active effort on your part for it to be beneficial. In order to get the maximum benefit from counseling, you will have to work on things we talk about during and between counseling sessions.

Counseling has both benefits and risks. Risks sometimes include experiencing uncomfortable feelings like sadness, guilt, anxiety anger, and frustration. Counseling sometimes, although not always, requires discussing unpleasant aspects of your life. In turn, counseling often leads to a significant reduction in feelings of distress can help better relationships and resolve specific problems. However, there are no absolute guarantees about what will happen.

CPD counselors strongly believe and adhere to the true spirit of the bedrock values (honor and respect) in the manner of interacting with our cadet clients, regardless of class (plebe through firsties), race, gender, religion, or referral source (command/medical/self). Counselors convey this respect by keeping appointments or contacting you if a change in time is necessary. CPD has no waiting list for appointments and routinely sees clients within seven minutes of scheduled appointments. Errors and emergency situations can occur. If you have waited seven minutes, please see the receptionist for an explanation of the appointment status.

Our first session will involve an evaluation of your needs. By the end of the evaluation, your counselor will be able to offer some initial impressions of what counseling will involve as well as an initial plan if you decide to continue. You should evaluate this information along with your own assessment of whether you feel comfortable with your counselor. Counseling can sometimes involve a good deal of time and energy so you should be comfortable with your counselor. If for whatever reason you may feel uncomfortable (e.g., prior relationship with counselor, etc) please feel free to discuss this with your counselor. Similarly, if your counselor believes that you may be better served by another CPD provider this will be addressed as well. If, after this discussion, you or your counselor feel that seeing another provider would be beneficial for you, your counselor will do his/her best to effect a transfer to another one of the Center's counselors.

**2. APPOINTMENTS**

Appointments can be made a variety of ways. You and your counselor may decide a regular time and day of the week one to several sessions in advance. You may also schedule a follow-up appointment at the Center's main office prior to leaving. Also, you can schedule appointments sending an email message anytime to *CPD Appointments* or by calling x3327/3022 during duty hours (0700-1630hrs).

**3. ACCREDITATION**

CPD meets all standards and is fully accredited by the International Association of Counseling Services, Inc (IACS). IACS is the accrediting body by which most, if not all, college and university counseling centers are accredited.

**4. PROFESSIONAL RECORDS**

CPD records are maintained under double lock IAW with IACS standards. These records are not put into a cadet's outpatient medical record or cadet personnel record. Also, these records are generally not released without a cadet's written and informed consent and do not become part of a cadet's permanent military record. A cadet's CPD case file is maintained for 7 years from the last contact. At the end of this period, all records are destroyed.

In addition to these records, a computer-generated database is maintained with pertinent counseling information for each counseling contact. The database is used primarily by the Center's staff as both a means of tracking counseling contacts, and as an instrument to collect and report counseling trends. Computer support personnel assigned to USCC access the database on an as-needed basis in order to perform database maintenance and back-up procedures. Counseling data that is collected and stored is not used in any manner that will disclose a client's identity to personnel other than those mentioned in this paragraph.

**5. CONFIDENTIALITY**

Counselors in the Center for Personal Development (CPD) do the most they can to ensure your confidentiality. There are, however, certain circumstances when disclosure of information to third parties may be required. Information will be released to individuals within the Armed Forces who have an official need to know. Releases of information to those outside the Armed Forces are very limited and are governed by the Privacy Act of 1974. Please read the following examples of when disclosure may be required:

a. If a counselor believes you might harm yourself, someone else, or destroy government property.

b. If the counselor suspects that you or someone else is involved in child abuse or neglect.

c. If you are involved in legal actions or proceedings, your records and your counselor may be subject to subpoena or other court order.

d. If you are involved in, or have been involved in, any illegal activities including, but not limited to, activities prohibited by Army or Military Academy Regulations, the Uniform Code of Military Justice, federal statutes, state statutes, or local ordinances.

e. Qualified persons involved in quality assurance activities, clinical supervision, approved research projects, or investigations for security clearance purposes may be permitted access to your records.

f. If you are involved in a line of duty investigation.

g. Honor code violations, if you are seeing a Cadet Counselor, as during Cadet Basic Training.

h. If a counselor determines that alcohol and/or drug issues merit further evaluation by the Community Counseling Center.

i. Command referrals require that the TAC officer be informed of information pertinent to the referral including treatment plan, prognosis, and recommendations.

j. Signs of a significant mood, thought, anxiety, eating, or personality disorder may result in the CPD recommending that your TAC officer refer you to the Community Mental Health Service and/or the Cadet Health Center as appropriate.

k. If you are referred to the Community Mental Health Service for a fitness for duty evaluation, relevant information about your care at the CPD may be provided to the evaluating officer without your consent.

l. Another member of the Army Medical Department who is providing care to you and has a legitimate need for access to information in order to provide safe and competent care may be permitted access to your information without your consent.

**6. ELECTRONIC COMMUNICATION**

You and counselor may on occasion communicate via email. Generally this form of communication is secure and your counselor will always assign a *confidential* sensitivity property to the message prior to sending or responding. Nevertheless, there is no 100% guarantee of confidentiality via this mode of communication and it is advisable that messages of this nature be cryptic and limited.

On occasion, information regarding a CPD client is faxed to CPD, and, when appropriate, faxed from CPD to other parties. Again, while there is no 100% guarantee of confidentiality via this mode of communication, we take every precaution to ensure that information is protected. As is your right, if you wish to discuss an alternative means of communication, please discuss this with your CPD counselor.

**7. CPD STAFF**

CPD is staffed by three licensed psychologists clinically privileged by Keller Army Community Hospital as well as a part-time master's level counselor. The counseling staff works as a team. Your counselor may consult with other counseling staff, for professional and training purposes, to provide the best possible care.

**8. CADET'S RIGHTS**

a. Right to Request Restrictions – You have the right to request restrictions on certain uses and disclosures of protected health information about you. However, CPD is not required to agree to a restriction you request.

b. Right to Receive Confidential Communications by Alternative Means and at Alternative Locations – You have the right to request and receive confidential communications of PHI by alternative means and at alternative locations.

c. Right to Inspect and Copy – You have the right to inspect and obtain a copy (or both) of PHI and psychotherapy notes in my mental health records used to make decisions about you for as long as the PHI in maintained in the record. I may deny your access to PHI under certain circumstances, but in some cases, you may have this decision reviewed. On your request, I will discuss with you the details of the request and denial process.

d. Right to Amend – You have the right to request an amendment of PHI for as long as the PHI is maintained in the record. I may deny your request. On your request, I will discuss with you the details of the amendment process.

e. Right to an Accounting – You generally have the right to receive an accounting of disclosures of PHI for which you have neither provided consent nor authorization. On your request, I will discuss with you the details of the accounting process.

f. Right to a Paper Copy – You have the right to obtain a paper copy of the notice from me upon request, even if you have agreed to receive the notice electronically.

**9. PSYCHOLOGIST'S DUTIES**

a. We are required by law to maintain the privacy of protected health information and to provide you with a notice of my legal duties and privacy practices with respect to protected health information. Please refer to the Right of Notice you received through the Cadet Health Clinic for further information regarding protected health information.

b. CPD reserves the right to change the privacy policies and practices described in this notice. Unless I notify you of such changes, however, I am required to abide by the terms currently in effect.

c. If I revise my policies and procedures, CPD will provide you a revised notice upon your first appointment after the revision takes effect.

**10. QUESTIONS AND COMPLAINTS**

If you have questions about the information listed or disagree about a decision we make about access to your records, you may contact CPD's privacy officer, CPT Seth J. Wintroub.

If you believe that your privacy rights have been violated and wish to file a complaint, you may send a written complaint to CPT Wintroub. You may also send a written complaint to the Secretary of the U.S. Department of Health and Human Services. CPT Wintroub can help you with that process.

No retaliation will occur against you for filing a complaint.

**11. EMERGENCY SERVICES**

CPD provides emergency services on a walk in basis during operating hours (0730 to 1600, Monday – Friday). All other times, contact the Keller Army Community Hospital emergency room at (845) 938-4004.

**12. STATEMENT OF UNDERSTANDING**: Cadet's are encouraged to ask questions regarding the information contained in this document prior to the initiation of the intake interview and at any time in the future.

I have read the information provided above and understand that information about me will be safeguarded within the limits of confidentiality outlined above and as contained in the Privacy Act Statement.

**Signature**_____**Date**_____

**Counselor's Signature** _____**Date**_____

# Task Force Composition

## Task Force Members

Vice Admiral Gerald L. Hoewing – Co Chairperson

Ms. Delilah D. Rumburg – Co Chairperson

Mrs. Anita M. Carpenter

Colonel Sharon K. G. Dunbar

Brigadier General Gina S. Farrisee

Rear Admiral Louis V. Iasiello

Sergeant Major Alford L. McMichael

Ms. Sophia E. (Vera) Mikula

Dr. Laura L. Miller

Major General (Retired) Michael J. Nardotti, Jr.

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Lieutenant Commander Leslie K. Stolasz

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Major Jennifer S. Knies

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Ms. Lonnie Weiss

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Mr. Gerald R. Warren

Ms. Heather Meyers

Ms. Tammie Wims

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Department of Defense, Office of the Inspector General

Department of Defense, Joint Task Force on Sexual Assault Prevention and Response

Department of Defense, Office of the Deputy Undersecretary of Defense for Military Community and Family Policy

Department of Defense, Office of the Deputy Undersecretary of Defense for Plans

Department of Defense, Office of the General Counsel

Department of Defense, Office of the Undersecretary of Defense for Personnel & Readiness

Department of Defense, Washington Headquarters Service

Department of Justice, Office on Violence Against Women

Indiana Coalition Against Sexual Assault

Men Can Stop Rape

National Center for Higher Education Risk Management

National Conference on Sexual Assault in Our Schools

National Sexual Violence Resource Center

North Carolina Coalition Against Sexual Assault

Patton Boggs, LLP

Pennsylvania Coalition Against Rape

Rand Corporation

Saint Mary's High School

United Stated Air Force

United States Air Force Academy

United States Army

United States Coast Guard Academy

United States Marine Corps

United States Military Academy

United Stated Military Academy Preparatory School

United States Naval Academy

United States Naval Academy Preparatory School

United States Navy

Valliere & Counseling Associates, Inc.

*The Task Force would also like to offer a special thanks to the many individuals who made the personal sacrifices required to share their views, perspectives and experiences with our members. This report and its recommendations are much better informed because of their willingness to share.*

## Glossary of Terms

**AACSACC** – Anne Arundel County Sexual Assault Crisis Center

**CHPWC** – Cadet Health Promotion and Wellness Council

**CID** – US Army Criminal Investigative Command

**CMEO** – Command Managed Equal Opportunity Program

**CMHS** – Community Mental Health Services

**CPD** – Center for Personal Development

**DEOMI** – Defense Equal Opportunity Management Institute

**DIBRS** – Defense Incident Based Reporting System

**DoD** – Department of Defense

**EEO** – Equal Employment Opportunity

**EO** – Equal Opportunity

**EOA** – Equal Opportunity Advisors

**GAO** – General Accountability Office, formerly the Government Accounting Office

**JAG** – Judge Advocate General

**KACH** – Keller Army Community Hospital

**MDC** – Midshipmen Development Center

**MAA** – Mutual Assistance Agreement

**MOA** – Memoranda of Agreement

**MOU** – Memoranda of Understanding

**MRE** – Military Rules of Evidence

**NAPS** – Naval Academy Preparatory School

**NCIS** – Naval Criminal Investigative Services

NLSO – Naval Legal Service Office

**NCIS** – Naval Criminal Investigative Services

**NCO** – Non-commissioned officer

**SACC** – Sexual Assault Crisis Center

**SAFE** – Sexual Assault Forensic Exam

**SARP** – Sexual Assault Response Program

**SART** – Anne Arundel Sexual Assault Response Team

**SAVI** – Sexual Assault Victim Intervention Program

**SCPME** – Simon Center for Professional Military Ethic

**SEL** – Senior Enlisted Leader

**SJA** – Staff Judge Advocate

**UCMJ** – Uniform Code of Military Justice

**USMA** – United States Military Academy

**USNA** – United States Naval Academy

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[1] Without defining the terms, Congress established the requirement to assess "sexual harassment and violence" at the Military Service Academies.

[2] US General Accounting Office (GAO), *DOD Service Academies: More Actions Needed to Eliminate Sexual Harassment* (Washington DC: US Government Printing Office, January 1994).

[3] US Department of Defense, Task Force to Review Sexual Misconduct Allegations at the US Air Force Academy, *Report of The Panel to Review Sexual Misconduct Allegations at the U.S. Air Force Academy* (Washington DC: US Government Printing Office, September 2003).

[4] US Department of Defense, *Office of the Inspector General of the Department of Defense's Report on the Service Academy Sexual Assault and Leadership Survey* (Washington DC: Office of the Inspector General, March 2005). The IG collected data for this report in 2004 and, in the text of this report, it is referred to as the "2004 DoD IG Survey".

[5] Service providers included Academy medical workers, mental health workers, victim advocates, victim witness assistants, and chaplains as well as civilian medical and mental health workers.

[6] Discussion groups included the following: cadets and midshipmen of all ranks and both genders, exchange students, cadet-candidates and midshipmen-candidates, academic department heads, tenured and untenured civilian professors, regular and permanent military teaching staff, physical education coaches and staff, civilian and military nonteaching administrators, tactical officers/company officers, tactical noncommissioned officers/senior enlisted leaders, regimental tactical officers/battalion officers, and officer representatives for sports teams and extracurricular activities.

[7] The Task Force visited the US Air Force Academy on November 17, 2004, in order to obtain information regarding its current sexual harassment and sexual assault policies and procedures. Briefing topics included the following:

- Background/History of Sexual Assault at the US Air Force Academy
- Officer Development System
- Sexual Assault Response Team
- Culture Campaign Plan

Additionally, the Task Force met with Air Force cadets and exchange cadets/midshipmen in a discussion panel.

[8] The Task Force co-chairs visited the US Coast Guard Academy on January 11, 2005, in order to obtain information regarding its current sexual harassment and sexual assault policies and procedures. Briefing topics included the following:

- Sexual Assault Prevention Program Overview
- Sexual Assault and Harassment Awareness & Prevention four-year training program
- Sexual Assault Task Force Peer Helpline Standard Operating Procedures
- Superintendent Instruction 1754.1A, Reporting Sexual Assault
- Cadet Human Relations Survey Summary

Additionally, the co-chairs had an opportunity to meet with students, faculty, and staff during discussion panels.

[9] Experts on harassment and assault at civilian universities include: Ms. Monika Johnson-Hostler, Executive Director of the North Carolina Coalition Against Sexual Assault; Ms. Gail Stern and Mr. Christian Murphy from Catharsis Productions, who perform the "Sex Signals" education program on college campuses; and Mr. Brett Sokolow, JD, Risk Management Consultant, who advises universities on how to change their policies and cultures to reduce campus sexual harassment and assault. Ms. Anne Munch, JD, from Anne P. Munch and Associates, provided insights on prosecuting sexual assault cases, and Dr. Veronique Valliere, PsyD, from Valliere & Counseling Associates, Inc., provided research findings and insights into the psychology of sexual predators.

[10] Center for Disease Control and Prevention, "Sexual Violence Prevention: Beginning the Dialogue," presentation by the CDC, Atlanta, GA, 2004. A publication on the issues above is in press and expected summer 2005. The model, however, has decades-old usage in public health analysis.

[11] The ecological model supports a complete public health approach that addresses individual risk factors and behaviors, norms, beliefs, and social and economic systems that affect individuals, family, community and society.

[12] US GAO, *More Actions Needed*, 2.

[13] United States General Accounting Office. Report to Congressional Requesters, DoD Service Academies: Update on Extent of Sexual Harassment, March 1995.

[14] The Report of the Panel to Review Sexual Misconduct Allegations at the U.S. Air Force Academy, September 2003.

[15] US DOD, *Office of the Inspector General of the Department of Defense's Report*.

[16] The data provided in the 2004 DoD IG Survey do not permit the calculation of a precise rate of sexual assault at the Academies. Of the 1906 females surveyed, 262 (13.7%) reported experiencing sexual assault sometime during their Academy career. The 1906 females represented all classes at the Academies (i.e., 1st through 4th year); therefore, the time period in which these experiences occurred varied from less than 1 year to roughly 4 years.

[17] US Department of Defense, *Task Force Report on Care for Victims of Sexual Assault* (Washington DC: Task Force on Care for Victims of Sexual Assault, April 2004).

[18] To reduce the backlog and processing times, the Army Criminal Investigative Command undertook several initiatives. First, a new laboratory facility is scheduled to open in the summer of 2005, and a substantial expansion of the new facility has already been approved by the Army. Second, a new case-tracking system, designated as the Laboratory Information Management System, was selected and will be operational by June 2006. Third, a program to obtain resource support from the other Services, which use the Criminal Investigative Laboratory without reimbursement, was established. Finally, the Army approved a personnel plan that nearly doubles the number of DNA analytical personnel at the Criminal Investigative Laboratory, from 19 to 36.

[19] Chaplains are distinct in that they have absolute confidentiality. Under MRE 503, a communication from a victim to a chaplain is a confidential communication if disclosed to a clergyman or a clergyman's assistant in his or her official capacity, as a formal act of religion or as a matter of conscience.

[20] According to an August, 2002 report from the Bureau of Justice Statistics entitled "Rape and Sexual Assault: Reporting to Police and Medical Attention, 1992–2000," "Sixty-three percent of completed rapes, 65% of attempted rapes, and 74% of completed and attempted sexual assaults against females were not reported to the police." This report is available online at http://www.ojp.usdoj.gov/bjs/pub/pdf/rsarp00.pdf.

[21] The Task Force conducted multiple focus groups at both Academies on November 30 and December 2, 2004. During these focus groups, cadets and midshipmen stated that some of their peers believe that women do not belong at the Academies and that these attitudes may be reinforced by some vocal alumni.

[22] Centers for Disease Control, "Youth Risk Behavior Surveillance—United States, 2003," *CDC Morbidity & Mortality Weekly Report* 53, SS-2 (2004):1–29.

Most cadets and midshipmen bring to the Academy experiences and expectations developed in their high schools, although some enter the Academy after a period of military service. Recent data on the activities of American adolescents provide some insight into the hazards of the environments they have navigated. The Youth Risk Behavior Survey conducted by the CDC found that among 12th graders:

- 55.9% had participated in underage drinking in the previous month
- 33.3% had ridden in a vehicle with a driver who had consumed alcohol
- 13.6% of girls and 25.6% of boys had in the previous month driven a vehicle after drinking
- 62.3% of girls and 60.7% of boys had already had sexual intercourse
- 17.9% of girls and 22.2% of boys had already had four or more sexual partners
- 17.6% of girls and 33.5% of boys had drunk alcohol or used drugs before their last sexual intercourse

[23] Centers for Disease Control, "Youth Risk Behavior Surveillance." The Centers for Disease Control found in 2003 that among 12th graders 11.6% of girls and 6.6% of boys had been forced to have sexual intercourse.

[24] National Institute on Alcohol Abuse and Alcoholism (NIAAA), *A Call to Action: Changing the Culture of Drinking at U.S. Colleges* (Washington DC: NIAAA, April 9, 2005).

The NIAAA states that alcohol is involved in 70,000 cases of sexual assault and acquaintance rape each year of students between the ages of 18 and 24.

[25] Of the sexual assault cases provided to the Task Force to review, alcohol was involved in 58% of cases from the Military Academy and 57% of cases from the Naval Academy.

[26] US DOD, *Office of the Inspector General of the Department of Defense's Report*.

[27] US DOD, *Office of the Inspector General of the Department of Defense's Report*.

[28] According to the *Office of the Inspector General of the Department of Defense's Report on the Service Academy Sexual Assault and Leadership Survey*, 36% of female and 17% of male cadets at the Military Academy believe that—to a large or very large extent—peers "allow personal loyalties to affect reporting of sexual assault." 40% of female and 22% of male midshipmen believe the same about their Naval Academy peers.

[29] US GAO, *More Actions Needed*.The 1994 GAO survey asked all students, not just victims, about the negative consequences of reporting harassment (rather than assault), and offered a range of potential outcomes that differed from *the Office of the Inspector General of the Department of Defense's Report on the Service Academy Sexual Assault and Leadership Survey*, published in 2005 (data from 2004). The 1994 GAO survey found that among the female students at all three of the military service academies, over three-quarters believed that sexual harassment victims who reported the incidents would likely "be viewed as a crybaby," over half believed victims would likely "be shunned," about half believed victims "would be viewed less favorably by the student chain," and about a third believed they would receive lower military grades. Because the two surveys measured different types of responses to reporting different types of incidents (harassment vs. assault), we cannot determine whether there has been a change in the past 10 years.

[30] Annette Y. Lee-Chai and John A. Bargh, eds., *The Use and Abuse of Power: Multiple Perspectives on the Causes of Corruption* (Philadelphia, PA: Psychology Press, 2001).

[31] Lisa D. Bastian, Anita R. Lancaster, and Heidi E. Reyst, *Department of Defense 1995 Sexual Harassment Survey* (Arlington, VA: Defense Manpower Data Center, 1995); Melanie Martindale, *Sexual Harassment in the Military: 1988* (Arlington, VA: Defense Manpower Data Center, 1990); Robert E. Niebuhr and Wiley R. Boyles, "Sexual Harassment of Military Personnel: An Examination of Power Differentials," *International Journal of Intercultural Relations* 15 (1991): 445–57; Margaret S. Stockdale, ed., *Sexual Harassment in the Workplace* (Thousand Oaks, CA: Sage, 1996); and Sandy Welsh, "Gender and Sexual Harassment," *Annual Review of Sociology* 25:169–90.

[32] The relationship between male-dominated environments and sexual harassment is well documented:

James E. Gruber, "The Impact of Male Work Environments and Organizational Policies on Women's Experiences of Sexual Harassment," *Gender & Society* 12, no.3 (1998): 301–20; Phyllis Kernoff Mansfield, Patricia Barthalow Koch, Julie Henderson, Judith R. Vicary, Margaret Cohn, and Elaine W. Young, "The Job Climate for Women in Traditionally Male Blue-Collar Occupations," *Sex Roles* 25, no. 112 (1991): 63–79; Irene Padavic, "The Re-Creation of Gender in a Male Workplace," *Symbolic Interaction* 14, no. 3 (1991): 279–94; Barbara F. Reskin, Debra B. McBrier, and Julie A. Kmec, "The Determinants and Consequences of Workplace Sex and Race Composition," *Annual Review of Sociology* 25 (1999): 335–61; and Vicki Schultz, "Reconceptualizing Sexual Harassment," *Yale Law Journal* 107, no. 6: 1683–1805.

[33] This issue is significant in ground combat arms, where most of the combat exclusions exist. Over half of the male graduates of USMA enter career fields closed to women.

[34] Faculty/staff gender demographics include the following:

| Academy Key Faculty/Staff Gender Demographics | | | | |
|---|---|---|---|---|
| **Chain of Command** | **USMA** | | **USNA** | |
| | Males | Females | Males | Females |
| Superintendent, Commandant, Deputy Commandant, Chief of Staff, Command Sergeant Major/Brigade Master Chief | 4 | 0 | 5 | 0 |
| Regimental/Battalion Officers | 2 | 2 | 5 | 1 |
| Tactical/Company Officers | 36 | 6 | 27 | 3 |
| Company NCOs/SELs | 27 | 4 | 24 | 6 |
| **Faculty** | | | | |
| Deans/Vice Deans | 3 | 0 | 3 | 1 |
| Department Heads | 15 | 0 | 18 | 7 |
| Military Faculty: Permanent* | 71 | 10 | 22 | 0 |
| Military Faculty: Rotational** | 317 | 35 | 179 | 25 |
| Civilian Faculty | 99 | 35 | 230 | 89 |
| **Athletics** | | | | |
| Head Coaches | 18 | 1 | 24 | 3 |
| Assistant Coaches | 40 | 10 | 44 | 9 |

*The Permanent Military Professor Program at the Naval Academy is a recent program that began in 1997. This program's parallel at the Military Academy began in the early 19th century.

** Rotational military faculty are typically assigned to the Academies for a 2–4-year tour.

[35] Laura L. Miller, "Not Just Weapons of the Weak: Gender Harassment as a Form of Protest for Army Men," *Social Psychology Quarterly* 60, no. 1 (1997): 32–51; Schultz, Vicki, "Reconceptualizing Sexual Harassment," *Yale Law Journal* 107, no. 6 (1998): 1683–1805; Margaret S. Stockdale, ed., *Sexual Harassment in the Workplace* (Thousand Oaks, CA: Sage, 1996); and Sandy Welsh, "Gender and Sexual Harassment".

[36] The US Military Academy utilizes sexual assault response procedures which focus on Victim Advocacy and are centered on the chain of command. The resources employed to assist victims include victim advocates, psychotherapists, staff judge advocates, chain of command, chaplains, and medical personnel. These resources, through the Tactical Officer/Tactical Non-Commissioned Officer, coordinate actions and meet monthly, as per MEDCOM Regulation 40-36, to review the handling of each case. The policy that sets forth the sexual assault response procedures discusses the duty to report, confidentiality, transactional immunity, and reporting procedures. It has been revised to include no contact orders, flexible sequencing of collateral conduct punishment, a Victim Witness Coordinator, and quelling of rumors.

The Cadet Health Promotion and Wellness Council (CHPWC) provides a forum for all interested parties to periodically meet and discuss any issue or trend that is pertinent to sexual harassment or violence. Under the CHPWC chair, the following subcommittees have been established: Alcohol Awareness Education, Eating Disorder, Military Medicine, and Sexual Assault Education and Prevention. Under the Sexual Assault Education and Prevention Subcommittee, there are three action teams: Education, Prevention Treatment and Response, and Policy and Discipline.

More information on sexual assault response procedures can be found in R12 2030Z Nov 04 ALARACT RELEASE AUTHORITY (UC) ALARACT 176/2004, "Interim Guidance: Army Sexual Assault Prevention and Response Program" and USCC Policy Memorandum 39-03.

[37] The female chaplain, a prior Military Academy graduate, has served as the primary spiritual advisor for cadet victims of sexual assault.

[38] The Center for Personal Development (CPD) currently consists of two female and two male psychotherapists, with the Director position being held by the active duty female psychotherapist. Under recent policy, the Victim Advocate role is performed by the two female psychotherapists. However, a male psychotherapist is available and can perform the role of Victim Advocate if necessary. When an incident is initially reported to the Command or Criminal Investigative Command, either source will contact the Victim Advocate and request that the Victim Advocate meet the victim and provide support. The Victim Advocate may escort the victim to command, medical, or legal appointments and conduct follow-up consultations with the victim via e-mail, phone calls, and/or by making appointments for the victim at CPD. CPD is located in close proximity to the cadet living areas.

Community Mental Health Services (CMHS), Keller Army Community Hospital, was the provider of care to victims of sexual assault prior to 2003 and is located on the installation. CMHS employs two social workers, a psychiatrist, and a psychologist. Social workers fall under Social Work Service, which currently exists independent of CMHS. CPD presently manages the coordination for the hospitalization of cadets, but CMHS is available to provide emergency mental health services. This resource, although available to cadets, is primarily utilized for active duty personnel who are noncadets. Cadets who report to CMHS are now being referred to CPD.

[39] The Cadet Health Clinic employs one civilian female physician who, in addition to providing general medical care, is a treatment resource for sexually transmitted disease screening and birth control counseling. She has been employed by the clinic for three years and is a member of the Military Academy Sexual Assault Review Board. The clinic is open during normal business hours and is available to cadets.

Keller Army Community Hospital is on post and is accessible to cadets. It is utilized by noncadets as well as cadets and has qualified nurses and doctors to perform SAFE exams. There is no civilian hospital in close proximity to the Academy to use as an alternative.

[40] The SJA's office has standard duty hours. The attorneys within the SJA's office have three main functions: (1) to provide advice to commanders on legal topics such as cadet criminal misconduct; (2) to perform the functions of prosecutors advising commanders regarding the appropriate level of punishment in specific cases; and (3) to represent the command during courts-martial for violations of the Uniform Code of Military Justice. They also advise faculty and staff on issues such as contract law. Legal assistance attorneys on staff in the SJA's office provide legal assistance services to cadets.

There is also a Law Department consisting of 12 officers, 3 civilian lawyers, and numerous support staff. They teach a myriad of law classes for the Academy, as well as nonaccredited classes such as ethics. All of the lawyers on the staff volunteer as Officer Representatives for cadet clubs and sports.

[41] CID works closely with the SJA's office throughout an investigation and upon its completion will turn the case over to the SJA's office for decisions on subsequent prosecutions.

[42] The Victim Witness Coordinator's office is physically located on a separate floor within the Office of the Staff Judge Advocate. In addition to ensuring that victims' and witnesses' rights are accorded them by the appropriate entities, the Victim Witness Coordinator is also responsible for keeping the cadet informed of the status of the case and advising the cadet of available resources. Once a case of sexual assault is reported, the trial counsel coordinates with the Victim Witness Coordinator, who then becomes part of the team supporting the victim.

[43] The Program Manager is responsible for supervising overall program implementation including ensuring proper coordination between the multidisciplinary services offered by the Academy, providing training for all Academy personnel, and updating Academy instructions and regulations pertaining to sexual harassment, misconduct, and assault. The Brigade SAVI Coordinator and Faculty/Staff SAVI Coordinator are responsible for managing the SAVI programs for the brigade, faculty, and staff. The Legal Representative provides legal advice to the Program Manager and Superintendent, manages sexual assault cases through the investigative and legal processes, serves as Victim Witness Assistance Coordinator for the Naval Academy, serves as Data Collection Coordinator for the Naval Academy, and reviews and revises instructions, regulations, and training materials. The Training Coordinator is responsible for developing and coordinating sexual harassment and assault training for all personnel at the Naval Academy. More information can be found at the USNAINST 5354.5 dated April 16, 2004.

[44] The Brigade SAVI Coordinator manages the midshipman SAVI Program. The coordinator oversees the SAVI GUIDEs and Advocates, ensuring that they are properly trained to effectively assist victims, and coordinates with Academy leadership and other Academy and civilian resources. SAVI Advocates are assigned to a victim to provide advice and support throughout the medical, legal, and investigative process. SAVI GUIDEs advise victims of the resources available to them, accompany victims to appointments, and provide general peer support.

A victim of a sexual assault may report the incident a number of different ways, including to a SAVI Coordinator, a SAVI Advocate, or a SAVI GUIDE. Frequently, midshipmen victims will disclose the assault to a SAVI GUIDE. The guides are required to notify the Brigade SAVI Coordinator within 24 hours of receiving a report that an incident has occurred. The Brigade SAVI Coordinator keeps the leadership apprised that an incident has occurred, but will maintain confidentiality of the victim until the victim is willing to make a formal report. Having peer victim guides within SAVI is Naval Academy–specific; peers are not a part of the SAVI program in the regular Navy.

More information on the SAVI Program can be found in the COMDTMIDNINST 1752.1C dated September 27, 2004, USNAINST 1752.2 dated September 27, 2004, NDWINST 1752.2 dated August 12, 1997, OPNAVINST 1752.1A dated May 30, 2000, and SECNAVINST 1752.4 dated July 2, 1996.

[45] Within the Midshipmen Development Center (MDC), the female civilian psychotherapist specializes in eating disorders and is utilized as the primary counselor for sexual assaults. MDC is for the exclusive use of the midshipmen and serves as a source for confidential counseling. It is located within the midshipman living areas. More information can be found at USNAINST 1734.1B, dated March 30, 2000. The Naval Academy approved the hiring of a licensed social worker to be a Sexual Assault Prevention Specialist in June 2004. This specialist will work in the MDC as a counselor and will also assist in Academy-wide training efforts.

The Mental Health Clinic is open during daytime working hours and provides counseling services to midshipmen, active duty personnel, and dependents. A shuttle service is available to transport midshipmen to the clinic for any medical appointments. This clinic primarily sees active duty members, but the psychologists are called upon routinely to screen midshipmen's medical records for service suitability. More information can be found at NMCLANNINST 1752.1E, dated May 27, 2004.

[46] The legal assistance/defense counsel maintains an office in Dahlgren Hall, a midshipman activity center. In the Navy, defense counsel and legal assistance lawyers fall under the cognizance of the Naval Legal Service Office in their jurisdiction. In cases where the counsel faces a conflict of interest among clients, the parent command provides assistance and alternate counsel. An example of this would be if a midshipman accused of a sexual assault sought defense counseling services from the counsel on the Yard, and then the victim of the sexual assault sought defense counseling from the same attorney for collateral misconduct committed during the offense. The counsel could not represent both parties. In that case, the Naval Legal Service Office North Central, in Washington DC, would provide alternative counsel to the victim.

There are additional lawyers employed at the Naval Academy. The Superintendent's Staff Judge Advocate and Assistant Staff Judge Advocate, the Commandant's Legal Advisor, and the Legal Advisor to the Officer Development Program are located on the Naval Academy grounds. These attorneys work for the leadership and do not provide legal assistance or other legal services to midshipmen. There is also a Leadership, Ethics, and Law Department, where three Navy lawyers and one Marine lawyer, teach classes on military law. They are utilized primarily for educational purposes.

[47] Naval Criminal Investigative Service (NCIS) agents have been formally trained in conducting investigations at the Federal Law Enforcement Training Center, located in Glynco, Georgia. Two of the agents, one female and one male, work general crimes, and are the agents to respond in the event of a sexual assault report. This field office is supported by NCIS Headquarters, located at the Washington Navy Yard, Washington DC. Headquarters provides additional agents and specialists as required. NCIS investigates midshipmen and all active duty Naval personnel accused of committing felonies under the Uniform Code of Military Justice within their jurisdiction. NCIS works closely with the SJA office during an investigation and prosecution of a case.

[48] Prior to September 2004, the Victim Witness Coordinator role was a collateral duty of the Commandant's Legal Advisor. In September 2004, the Legal Representative to the Naval Academy Sexual Harassment, Misconduct, and Assault Prevention and Response Team assumed this duty and became responsible for ensuring that victims are accorded their rights, informed of the status of their cases, and are aware of their resources.

[49] Army Regulations (DA Reg. 27-10, Chapter 18, dated June 13, 2005) and Navy Instructions (SECNAVINST 5800.11A, dated June 16, 1995 and OPNAVINST 5800.7, dated April 30, 1996) implement the guidelines and policies set forth in DoD Directive 1030.1 ("Victim and Witness Assistance," dated April 13, 2004) and DoD Instruction 1030.2 ("Victim and Witness Assistance Procedures," dated June 4, 2004).

When the victim gives a statement to CID/NCIS, and an investigation is begun, Victims' Rights DD Form 2701, entitled "Initial Information for Victims and Witnesses of Crime," is given with appropriate information completed on the back, specifically the Investigative Agent's name and phone number, as well as the Victim Witness Coordinator's name and phone number. This form advises the victim of statutory rights and points of contact. It is the responsibility of CID/NCIS to keep track of the total number of DD Form 2701s given to victims and witnesses. Victim Witness Coordinators also inform victims of their rights, and assist in coordinating with resources, such as the investigators, medical professionals, or legal professionals.

After a formal report is made and a case is preferred against the accused, a prosecutor will be assigned to the case. It is the responsibility of the prosecutor or prosecutor's designee to provide all but one of the remaining DD Forms to the victim throughout the criminal justice process. If the victim has not received DD Form 2701 from CID/NCIS, the prosecutor or designee provides this form and verbally advises the victim of his or her rights. Prior to an Article 32 investigation, the prosecutor or designee must provide the victim with DD Form 2702, entitled "Court-Martial Information for Victims and Witnesses of Crime." This form conveys information on the court-martial process, to include the preliminary investigation, victim consultation, and information about the military justice system and legal terminology.

If the case proceeds to trial, the prosecutor or designee, during or after trial, must provide the victim with DD Form 2703, entitled "Post-Trial Information for Victims and Witnesses." This form discusses post-trial action, the victim's post-trial rights, and the right to be notified of the change in status of confinement of the accused.

In the event the accused is found guilty of an offense and is confined, the prosecutor or designee must provide the victim with DD Form 2704, entitled "Victim/Witness Certification and Election Concerning Inmate Status." This form details the victim's election to be notified in the event of the change of prisoner status, whether the prisoner is moved to a different confinement facility or released. In this form, the victim elects to receive or not receive this information. This form is sent to the confinement facility confidentially and is not part of the public record of trial.

It is the responsibility of the brig or other confinement facility to notify the victim, via DD Form 2705, of a change in prisoner status if the victim has elected to be informed of this information in DD Form 2704. DD Form 2705, entitled "Victim/Witness Notification of Inmate Status," provides information to victims on the offender's sentence, confinement status, clemency and parole hearings and status, and release from confinement.

[50] Under MRE 513, Psychotherapist/Patient Privilege, a psychotherapist is afforded a limited privilege. MRE 513 states that in cases arising under the UCMJ, a communication made to a psychotherapist is considered confidential if such communication was made for the purpose of facilitating diagnosis or treatment of the patient's mental or emotional condition. However, MRE 513 does include exceptions when there is no privilege under this rule, specifically:

(1) when the patient is dead;
(2) when the communication is evidence of spouse abuse, child abuse, or neglect or in a proceeding in which one spouse is charged with a crime against the person of the other spouse or a child of either spouse;
(3) when a federal law, state law, or service regulation imposes a duty to report information contained in a communication;
(4) when a psychotherapist believes that the patient's mental or emotional condition makes the patient a danger to any person, including the patient;
(5) if the communication clearly contemplated the future commission of a fraud or crime;
(6) when necessary to ensure the safety and security of military personnel, military dependents, military property, classified information, or the accomplishment of a military mission;
(7) when an accused offers statements or other evidence concerning his mental condition in defense, extenuation, or mitigation, the military judge may require disclosure in the interest of justice; or
(8) when disclosure is constitutionally required.

There is room for interpretation of a number of the exceptions. The exceptions that are likely to pierce the veil of confidentiality are:

- Number six, "when necessary to ensure the safety and security of military personnel, military dependents, military property, classified information, or the accomplishment of a military mission"; and
- Numbers three and four, if the person is suicidal.

[51] The chain of command is the superior-subordinate authority relationship that starts at the top of the organizational hierarchy and extends to the lowest levels. No one in the chain of command at the Military Academy or the Naval Academy has confidentiality. At the Military Academy, all military personnel have a duty to report allegations of sexual assault in accordance with MEDCOM Regulation 40-36 dated December 23, 2004 and MEDDAC Regulation 40-424, dated February 2, 2004. This requirement is also contained in USCC Policy Memorandum 39-03, dated April 25, 2003. At the Naval Academy, all company officers, senior enlisted leaders, other faculty, and staff have a duty to report allegations of sexual assault to the SAVI Coordinator or appropriate member of the chain of command in accordance with COMDTMIDNINST 1752.1C, dated September 27, 2004. If a cadet or midshipman victim of a sexual assault revealed information regarding the assault to anyone in the chain of command, the cadet's or midshipman's identity and the information revealed would be disclosed only to the senior chain of command and their legal advisors.

At the Military Academy, communications to medical personnel at Keller Army Community Hospital (KACH) are not protected and must be disclosed. Medical records are property of the U.S. Army. Any communication made by a victim of sexual assault to staff within the hospital is not a privileged communication and may be disclosed. Likewise, aboard the Naval Academy, the Naval Medical Clinic Annapolis personnel have no confidentiality, and the records are the property of the U.S. Navy. However, the Health Insurance Portability and Accountability Act (HIPAA) applies to the medical records of cadets, midshipmen, and other active duty personnel, and commands must satisfy one of the enumerated exceptions to gain access to the medical records of a command member.

At the Military Academy and the Naval Academy, the Victim Witness Coordinators have no confidentiality and are mandated reporters. If cadet or midshipman victims of sexual assault are referred to the Victim Witness Coordinator and subsequently disclose information about the assault, their identity and the information given must be provided to the Command. Special Agents within the Criminal Investigative Command (CID) or Naval Criminal Investigative Service (NCIS) have no confidentiality. If a victim reports an offense to CID or NCIS, the case will be disclosed to Command authorities and may be subsequently investigated.

[52] Limited confidentiality means that when a victim reports an incident of sexual assault to the Brigade SAVI Coordinator or a midshipman SAVI GUIDE, the details of the assault are reported to the Commandant, via the Deputy Commandant, but the identity of the victim is protected and not disclosed. This affords the victim a sense of anonymity, encourages reporting, and allows the Commandant some oversight to ensure the continued safety and well-being of the Brigade.

[53] The Naval Academy's Sexual Assault Victim Intervention (SAVI) Program has afforded different levels of confidentiality to the various positions within the program. Confidentiality, under this program, has been granted by the Superintendent, and is contained in COMDTMIDNINST 1752.1C, dated September 27, 2004.

The SAVI Coordinator has been granted limited confidentiality by the Superintendent. The SAVI Coordinator is usually advised by a SAVI GUIDE of a sexual assault incident. The GUIDE advises the Coordinator of the identity of the individual and the factual circumstances surrounding the assault. The Coordinator reports nonidentifying information to the Command unless the Superintendent insists on more, which to date has never occurred. The identity of the victim and circumstances surrounding the incident would be disclosed to the chain of command only if the victim were to elect to make a formal complaint.

As in the fleet, SAVI Advocates have been granted no confidentiality. Therefore, should any victim disclose information to a SAVI Advocate, the information is reported to the chain of command, respecting the privacy of the midshipman and only informing those with a need to know.

SAVI GUIDEs, like the Coordinator, have been granted "limited" confidentiality by the Superintendent. SAVI GUIDEs report to the SAVI Coordinator all information of a sexual assault incident within 24 hours of receiving information of an offense.

[54] At the Military Academy, cadets have recently been permitted to lock their doors after the last bed check, at approximately 11:30 p.m. Female cadets are informally reminded by upper-class female cadets to lock their doors on Thursday nights and after certain athletic functions when upperclassmen are permitted to drink alcoholic beverages. This is an informal safety measure initiated by the Margaret Corbin Forum, in which upper-class female cadets provide mentoring to junior female cadets. At the Naval Academy, midshipmen are also permitted to lock their doors at night. Company Mates of the Deck provide watch 24 hours a day on weekends and roam the decks. During the week, the Company Mates of the Deck secure their watch at approximately midnight. More information can be found at COMDTMIDNINST 1601.10D, dated May 24, 2004.

[55] All cadets and midshipmen are issued password-protected computers. Anyone desiring to harass a victim via e-mail or instant message would have to know the victim's e-mail address. With current technology, a harassing e-mail can be traced to the computer from which it originated. Furthermore, password-protected computers make it difficult for an intruder to access a victim's computer.

[56] Both Academies encourage cadets and midshipmen to use the buddy system when out in town, walking at night, or in a secluded area to reduce the risk of being assaulted.

[57] Specifically, the Military Academy, under USCC Policy Memorandum 39-03, dated April 25, 2003, has authorized the issuance of no contact orders, which may be utilized to keep the accused at a safe distance from the victim. At the Naval Academy, the Command is authorized to issue a military protective order (MPO), which is identical to the no contact order. The no contact order or MPO is a direct order provided in writing by the Command and served on an accused. It directs the accused to stay at least a certain distance from the victim, not to contact the victim by means of telephone, letters, notes, e-mail, instant messaging, or by any other means. It also directs the accused not to annoy or harass the victim in any way. A no contact order/MPO is used at the discretion of the Command after consultation with the victim as provided within the statutory rights of victims. If a victim in any way feels threatened by an accused, the Command will issue a no contact order/MPO to ensure the safety of the victim. If the accused disobeys the order, the accused is subject to disciplinary action.

[58] If the accused and victim are in the same company, the Military Academy and the Naval Academy have provided the victim with the option of requesting that the accused or victim be moved to a different company. Some victims utilize this option and others do not.

[59] At the Military Academy, the psychologists within the Center for Personal Development are the Victim Advocates in cases of sexual assault or harassment. The Military Academy has offered the victim the option of having the Victim Advocate accompany the victim, at the victim's discretion, to appointments and/or court proceedings throughout the process, whether the case is sent to a preliminary investigation, and then potentially to a court-martial, or not. At the Naval Academy, the victim is provided the same escort option under the SAVI program. Usually the SAVI Advocate, in support of the victim, will accompany the victim. Events for which a victim may request a Victim Advocate escort include, but are not limited to: an appointment with a member of the Command, with JAG personnel, an official from CID/NCIS, with a medical provider, with a psychotherapist, or any court proceedings that the victim may want to observe or in which he or she is required to provide testimony. The Victim Advocate will escort the victim to the appointment and will remain there to provide support.

[60] The Naval Academy has the option of moving the accused off the Naval Academy grounds during the investigation while still allowing the accused to continue classes. Naval Station Annapolis is located across the Severn River within close proximity to the Naval Academy proper, and rooming arrangements are available. An accused midshipman is moved to the Naval Station only when his or her presence within Bancroft Hall threatens the safety and security of midshipmen or the good order and discipline of the Brigade, such as when the midshipman is already facing separation from the Naval Academy for unrelated reasons. Provided a midshipman has not already been recommended for separation from the Naval Academy, he or she may continue to attend classes while berthing aboard the Naval Station.

The Naval Academy also has the option of transferring the accused to Naval Station Anacostia, located in Washington DC, approximately a one-hour drive from Annapolis. This option is utilized when the accused has committed a number of offenses, the government has a substantial amount of evidence indicating guilt, and it is apparent that the accused will be separated from the Academy, either by a court-martial or an administrative separation. It is also utilized when an accused continues to contact the victim or other witnesses after being given a direct order to stay away from them and it is determined that moral restraint of an order is insufficient. If relocated to Anacostia, the accused will not usually attend classes.

At present, the Military Academy does not offer the option of moving the accused to a military installation off the Military Academy grounds during the investigation while still allowing the accused to continue classes. Because of the remote location of the Military Academy and the lack of any military installations in close proximity, this option, albeit a valid safety measure, is not logistically feasible.

[61] **The Military Academy – Collateral Offenses**

The Military Academy does not recognize an amnesty system when dealing with collateral misconduct that is discovered as a result of reporting a sexual assault. The leadership has decided that amnesty is not a tool that would enhance the institution's goal of developing leaders. Instead, transactional immunity is granted on a case-by-case basis and may only be granted by the Superintendent, as per USCC Policy Memorandum 39-03, dated April 25, 2003. Transactional immunity, if granted, bars the Superintendent from taking any punitive or administrative action against the victim for the collateral offenses. It may be granted to a victim or a witness. In determining whether to grant transactional immunity, the Superintendent considers the severity of the offense and the likelihood that the offense would otherwise have been reported.

If not granted transactional immunity, the victim is given the option to determine when the collateral offense case is adjudicated. The victim may elect to have it heard before the sexual assault case is adjudicated or disposed of in another manner, or after the sexual assault case is complete.

With regard to nonassailant peers or friends who may have been present at the time and committed collateral misconduct offenses, the facts of each case are considered and carefully weighed before a discipline determination is made. The Academy recognizes that victims may be reluctant to provide relevant information for a sexual assault case if that information may implicate misconduct by nonassailant peers or friends. The Academy believes that this policy encourages victims to come forward and report.

**The Naval Academy – Collateral Offenses**

To encourage midshipmen to report sexual assaults and to ensure they receive available medical and counseling services, midshipman victims of sexual assault generally will not be disciplined for self-reported violations of the UCMJ, such as an alcohol offense or prior consensual sexual misconduct factually related to the assault. Instead, midshipmen generally will be counseled for such violations. This policy is contained in USNAINST 1752.2, dated September 27, 2004 and COMDTMIDNINST 1752.1C, dated September 27, 2004.

Final decisions concerning the processing of violations committed by midshipmen victims are made by the Superintendent on a case-by-case basis after a thorough review of all reasonably available information. The Superintendent considers the severity of the offense and the likelihood that the offense would have otherwise been reported. No decision as to the handling of a victim's collateral misconduct case is made until the sexual assault case is resolved. If the case is resolved prior to four months, the decision will be made after four months elapse. The Academy will not discipline a victim if the complaint was found to be sincere and reasonably supported by the evidence.

With regard to nonassailant peers or friends who may have been present at the time and committed collateral misconduct offenses, each case is considered and carefully weighed before disciplining other midshipmen based on such information. The Academy recognizes that victims may be reluctant to provide relevant information for the sexual assault case if that information may implicate misconduct by nonassailant peers or friends. Any self-report by a nonassailant peer or friend is a mitigating factor when determining punishment. The Academy believes that this policy encourages victims to come forward and report.

To address collateral misconduct, the Naval Academy has developed the Leadership Responsibility Counseling program. The leadership believes that this system of Leadership Responsibility Counseling creates an environment conducive to disclosing sexual assaults. Under this program, a victim would receive specialized counseling to address conduct infractions that are associated with the incident. The counselors are trained Senior Commissioned Officers, Lieutenant Commander and above.

If the victim is not disciplined after the sexual assault case is completed or resolved, Leadership Responsibility Counseling is assigned. The emphasis is placed on leadership and professionalism without scrutinizing the painful details of the sexual assault incident. Formal counseling records are documented in the victim's record at the Academy. However, once a victim graduates and is sent to the fleet, Leadership Responsibility Counseling records do not follow. This form of counseling is similar to the "Honor Remediation," "Conduct Remediation," and "Aptitude Remediation" also utilized successfully by the Naval Academy for deficient behavior, conduct, or performance of midshipmen. These are mechanisms used to track a midshipman's development and determine whether the midshipman is fit to become an officer in the fleet.

[62] Offenses are handled at the lowest appropriate level. The commander decides at which level an offense is resolved and what is the appropriate punishment. The commander may opt for no punishment, administrative measures, nonjudicial punishment, or, for the most serious offenses, a court-martial. Administrative measures vary from an oral or written reprimand to separation from the Academy and/or military service. Nonjudicial punishment can result in restriction, extra duty, and loss of rank or pay. The Academies have their own nonjudicial conduct systems with punishments including walking or sitting tours and loss of privileges. General courts-martial are the military's felony-level court. A guilty verdict at a general court-martial can result in a dismissal from the service (a dishonorable discharge) and confinement (up to life, depending on the crime).

[63] In the *Office of the Inspector General of the Department of Defense's Report on the Service Academy Sexual Assault and Leadership Survey*, published in 2005, 357 incidents of sexual assault were recorded by cadets and midshipmen. Of these, 248 were never reported to authorities. (These numbers represent all three military service academies, Army, Navy, and Air Force.) US DOD, *Office of the Inspector General of the Department of Defense's Report*.

[64] See findings number 16A, 16B, 17, and 18 for a discussion of other contributing factors to the low prosecution rates at the Academies.

[65] In 1997 a male cadet was acquitted of rape and indecent acts. In 2003 a male cadet pleaded guilty to possession of child pornography and was sentenced to 16 months confinement and a dismissal. In 2004 a male cadet pleaded guilty to conduct unbecoming an officer for filming and storing on his government computer images of nude female cadets. These pictures were taken without the knowledge of the victims. He was sentenced to 18 months confinement and a dismissal. In 2005 a male cadet pleaded guilty to breaking into the room of two female cadets late at night and masturbating in front of them. He was sentenced to six months confinement and a dismissal. In 2005 a male cadet was convicted of breaking and entering and indecent assault. He was sentenced to 30 months confinement. During this 10-year period, four cadets were formally charged with crimes, and their resignations were accepted in lieu of court-martial. In each of the four cases, the victims were consulted and supported accepting the resignations.

[66] Since 2001 the Naval Academy has preferred charges on 12 sexual assault allegations. Eight of those cases were determined to have insufficient evidence at an Article 32 hearing and were dealt with administratively. Of those eight, four of the accused offenders were separated from the Naval Academy and remaining cases are still pending separation. The remaining four cases were referred to courts-martial. One case was dismissed by the judge for lack of jurisdiction and is currently under appeal. In two cases the accused offenders' resignations in lieu of court-martial were accepted. In the last case, the victim decided she did not want to participate in the proceedings and the accused was separated administratively. In 2001, a midshipman was convicted of rape in a civilian court in California and was sentenced to confinement. The midshipman was administratively separated from the Naval Academy pending his trial. In 2002, another midshipman was convicted of possession of child pornography at a general court-martial, sentenced to confinement, and dismissed from the Navy.

[67] The United States Military Academy uses the Army's Equal Opportunity program to monitor sexual harassment complaints; however the accountability system is the same as with any other misconduct, including sexual assault. The United States Naval Academy uses the Navy program, Command Managed Equal Opportunity, and like the Military Academy, harassment is addressed using the same range of disciplinary measures as used for other misconduct.

[68] The investigative and courts-martial process for the United States Naval Academy and United States Military Academy are very similar to one another. Unless otherwise noted, the process as described is the same at both academies. As soon as one of the investigative agencies (Naval Criminal Investigative Service [NCIS] at the Naval Academy or Criminal Investigation District Command [CIDC] at the Military Academy) receives a formal complaint that a victim has been sexually assaulted, it notifies the Academy Staff Judge Advocate (SJA). The SJA coordinates with NCIS/CIDC while the investigation is ongoing to provide any support needed, such as search authorizations to collect evidence, if applicable. After the victim provides a signed, sworn statement, the SJA receives a copy of it. While the case is being investigated, the accused may be served with a Military Protective Order, directing him or her to stay away from the victim. Also, if the victim and accused are in the same company, the victim may choose to be removed from the company or have the accused moved to a different company. The accused typically continues on with a normal academic schedule and is provided excused absences and transportation as required to meet with periodic legal counsel. (Each service has criminal jurisdiction over its cadets or midshipmen at all times, no matter where the crime occurs. If the crime occurs off the installation, the service may share jurisdiction with the local civilian jurisdiction where the crime occurred. In that case, the military and civilian authorities will agree upon which of them will exercise its jurisdiction and handle the case. Local civilian authorities often cede jurisdiction to the military authorities.) At the United States Naval Academy, the SJA notifies the Trial Service Office Northeast, located in Washington DC. The Trial Service Office will provide the prosecutor (referred to as Trial Counsel in the military) if the case goes to an Article 32 hearing. At the United States Military Academy, the prosecutor will come from the local Staff Judge Advocate Office. As soon as the NCIS/CIDC investigation is sufficiently complete, the Command will evaluate the case and decide how to dispose of it. The case may be sent forward to a court-martial or it may be handled through administrative channels utilizing the Academy's misconduct proceedings. The Superintendent at both Academies is the Convening Authority and thus has the authority to convene a court-martial under the Manual for Courts-Martial. If the Command decides there is probable cause to believe a crime occurred and that a particular cadet or midshipman committed the crime, it may decide to send the case forward to a trial. A prosecutor will draft charges based upon the evidence in the available NCIS/CIDC investigation. The charges are then preferred, which means that the investigatory package is reviewed by an active duty member who signs and swears that, based on the evidence, there is probable cause to believe the offenses occurred and that the accused is the offender. Before a case can go to a General Court-Martial there must be an Article 32 hearing. The accused may waive the hearing if he or she chooses to do so. At the Article 32 hearing, the accused is represented by defense counsel. The accused will have a military defense counsel assigned from Trial Defense Service, or may choose to hire a civilian counsel, at no expense to the United States. The government is represented by the Trial Counsel and presents its evidence. If the victim is a cadet, midshipman, or other active duty member, the victim will be called to testify and must appear. Civilian witnesses and victims, however, cannot be compelled to testify at an Article 32 hearing. The defense may present evidence, cross-examine government witnesses, or do nothing but listen and gather information about the case. The hearing is presided over by an Investigating Officer. The Investigating Officer may also question witnesses or request evidence not presented. At the conclusion of the Article 32, the Investigating Officer reviews the evidence presented and makes a written recommendation to the Convening Authority. Contained within the recommendation is the Investigating Officer's opinion as to whether evidence of every element of each offense was presented, the strength of the evidence, whether charges should be added, dropped, or modified, and in which forum, if any, the case should be handled. The Investigating Officer's recommendation is simply a recommendation to the Convening Authority. The Convening Authority may elect to take some, all, or none of the Investigating Officer's advice. The Convening Authority makes the decision regarding in which forum, if any, the case will be heard. If the Superintendent elects to send it to a court-martial, it is usually a general court-martial, which is the military's felony court. If the Superintendent refers the case to a general court-martial, a military judge is assigned and the accused is arraigned on the charges. The accused is represented by counsel at every court proceeding and has the right to request assistance in obtaining witnesses and evidence for the defense. The accused may elect to be tried by a military judge alone. If he or she does, the judge decides guilt or innocence, and if the accused is found guilty, the judge determines a sentence. If the accused elects to be tried by a panel of military members (the jury), the panel makes the determination of whether the accused is guilty, and if the accused is found guilty, the panel members determine an appropriate sentence after being instructed by the judge on the applicable punishments. If acquitted, the accused generally remains enrolled at the Academy, but could be administratively separated if the evidence warranted such an action. If found guilty, the accused serves the sentence. If found guilty, but not sentenced to a dismissal, the Academy will usually administratively separate the accused from the military based on the criminal conviction.

[69] Uniform Code of Military Justice, Art. 120.

[70] A cadet or midshipman under the age of 18 becomes an emancipated adult upon entering the service academy and is considered an adult for all legal purposes.

[71] The military refers to defense counsel as Trial Defense Counsel; however, for simplicity, it will be referred to here as defense counsel.

[72] Title IX of the Educational Amendment of 1972. Amending the Higher Education Act of 1965, this law prohibits sex discrimination in educational institutions. This act is codified as Title 20, United States Code, Chapter 38, Sections 1681-1688. The act was also amended by, PL 100-259, 102 stat. 28, the Civil Rights Restoration Act of 1987 ("Title IX").

[73] *Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act*, codified at 20 *US Code* 1092 (f). As a part of the Higher Education Act of 1965, this is a federal law that requires colleges and universities to disclose certain timely and annual information about campus crime and security policies.

[74] Over the past 15 years, at least seven different federal statutes have imposed a requirement to collect and report crime data. In the past, the Department of Defense has not complied with these legal requirements. DIBRS is intended to fulfill these statutory requirements for the Department of Defense. The system is designed to collect statistical data on criminal offenses and other high-interest issues including suicide, fraternization, drug abuse, homosexual misconduct, sexual assault, sexual harassment, and domestic violence. Although statistical data may be requested by and reported to Congress and other non–law enforcement agencies, full access to the database and any personal identifying information is limited to law enforcement personnel and used by them for limited purposes only. Personal identifying data in DIBRS is maintained according to a "shelf-life policy" which limits the amount of time certain identifying information is maintained in the system. For example, the personal identifying information for any acquittals, set aside actions, or unfounded allegations is removed immediately. The same information for offenses disposed of by Article 15 or by administrative actions and not reportable under the Brady and Lautenberg Acts, or involving sex offender registration is required to be removed six months after entry into the database.

[75] Houghton Mifflin. *The 2004 American Heritage Dictionary of the English Language* (New York: Houghton Mifflin, 2004). The dictionary offers the following definitions: Education—knowledge acquired by learning and instruction. Training—activity leading to skilled behavior.

[76] Cadet Respect Representatives are volunteers and serve as peer resources and instructors on the respect topics of embracing diversity, conflict resolution, prevention of sexual assault and harassment, and health awareness (including responsible alcohol use). The Respect Representatives receive 40 hours of training a year, predominantly from Defense Equal Opportunity Management Institute (DEOMI) sources. There are typically two Respect Representatives per Cadet Company.

[77] SAVI GUIDEs (GUIDE stands for Guidance, Understand, Information, Direction, and Education) are midshipman volunteers who serve as peer resources as well as instructors on sexual assault prevention and response topics. SAVI GUIDEs complete a 20-hour Department of the Navy victim advocacy course and 10–15 hours of annual refresher training each year. There is at least one SAVI GUIDE in each company. The faculty or staff members who oversee this training are trained SAVI Advocates and at a minimum receive the same level of training as the SAVI GUIDEs.

[78] Applicants are evaluated based on a combination of past duty performance and academic ability. In Academic Year 2004, 90 applications were received from qualified officers and only 15 were selected for positions.

[79] Degree includes 40 hours of coursework and a comprehensive final exam.

[80] The Academy Command Sergeant Major personally reviews and approves all candidates prior to assignment.

[81] Applicants are evaluated based on a combination of past duty performance and academic ability.

[82] This program includes 54 hours of academic coursework and a thesis.

[83] To be assigned to the Naval Academy as an SEL, Chief and Senior Chief Petty Officers must first be nominated by their respective Command Master Chief and then subsequently be selected by a formal SEL selection board.

[84] To be assigned to the Naval Academy as an SEL, Gunnery Sergeants must first be competitively selected for Drill Instructor duty and successfully complete at least one tour at a Marine recruit depot. They must then be competitively selected from among other Drill Instructors for Assistant Marine Officer Instructor (AMOI) duty. Most are then assigned to Naval Reserve officer training units. However, the top Marine Gunnery Sergeants selected for AMOI duty are automatically assigned as SELs at the Naval Academy.

[85] All Naval Academy sponsors received SAVI training during the spring and summer of 2004. Additionally, all new sponsors are required to receive this training prior to having a midshipman assigned to them.

[86] D. Greco, "Parity in Sexual Violence Prevention Education: A History of Social Change Efforts," in *The 2005 Sexual Misconduct Source Book for Schools*, ed. T. Roscoe and K. Koestner, 138–50 (St. Davids, PA: Campus Outreach Services, 2005).

[87] The Simon Center for the Professional Military Ethic (SCPME) is a nonacademic department of the Military Academy focusing on character development and values education within the USCC. According to its director, SCPME is currently authorized to obtain a staff of up to 14 people. This staff includes 4 endowed positions, 6 military positions, and 2 civil service positions. Another 2 positions exist that can be filled by military, civil service, or contract personnel. As of December 2004, 4 of those 14 positions (29%) were vacant. Vacant positions are

- Visiting Professor of Character Development (endowed position)
- Curriculum Developer (endowed position)
- Information Technologist (military/civil service/contract position)
- Operations Officer (military/civil service/contract position)

[88] The Values Education Program is divided into two subordinate program elements, the Honor Program and the Respect Program. The Honor Program emphasizes the Military Academy Honor Code while the Respect Program emphasizes diversity awareness, conflict resolution, sexual harassment and assault prevention, health awareness, and responsible alcohol use. Cadets are assigned leadership roles under both the Honor and Respect Programs. A Cadet Respect Captain coordinates the activities of a team of cadet respect representatives. These cadets are overseen by the Special Assistant to the Commandant for Respect and work closely with the Values Education Team, an informal group of approximately 100 volunteer members of the Military Academy faculty and staff led by the staff of SCPME. These faculty/staff Values Education Team members initially receive training very similar to that of the cadets, but generally receive additional training as they volunteer over several years.

[89] Army installations have an Equal Opportunity (EO) Program Manager, normally a senior officer, who is responsible for all EO programs on that post. The program manager is assisted by full-time Equal Opportunity Advisors (EOA) assigned to each brigade. This EO team is responsible for sexual harassment prevention and diversity awareness programs in addition to processing complaints of unlawful discrimination. There is an EOA assigned to the USCC. This position has been incorporated into the staff of the Simon Center for the Professional Military Ethic (SCPME).

[90] The Naval Academy Sexual Harassment, Misconduct & Assault Prevention and Response Program Office was established as a part of the Naval Academy Superintendent's staff to coordinate prevention training, reinforce prevention efforts, and ensure consistent, coordinated responses to incidents of sexual harassment or violence. The Program manager position is currently filled by a female Navy captain who leads a team comprising the following:

- Brigade SAVI Coordinator
- Faculty/staff SAVI Coordinator
- US Naval Academy Preparatory School SAVI Coordinator
- Training Coordinator
- Legal Representative

[91] Military Academy Cadet Guard Program information is found in the USCC Standard Operating Procedures, Annex E. Naval Academy Watch Program information is found in COMDTMIDNINST 1601.10D.

[92] A memorandum of understanding (MOU) allows two or more agencies to combine resources, skills, and experiences to more effectively address a particular organizational need. Typically a formal MOU is a written signed agreement but is not legally binding. MOUs aid in establishing guidelines for institutionalizing procedures, identifying duties and responsibilities, and fostering partnerships with other organizations to provide improved quality of service.

[93] The Military Academy has two existing agreements with community agencies; however, existing agreements do not specifically address support for victims of sexual assault.

- The mutual assistance agreement (MAA) between the Military Academy Provost Marshal Office and regional law enforcement agencies enables each law enforcement agency to effectively handle emergency situations, such as antiterrorist operations, by voluntarily interchanging law enforcement services.
- The MOA between the Military Academy Provost Marshal's Office and the Highland Falls Police Department establishes written guidelines for information sharing on military-related incidents of child and spouse abuse occurring off-post in the Village of Highland Falls, New York.

[94] See Table A-17 (page A-20) and Table A-21A (page A-23). US Department of Defense, *Office of the Inspector General of the Department of Defense's Report on the Service Academy Sexual Assault and Leadership Survey*.

[95] US GAO, *More Actions Needed*. This report found that between 93% and 97% of Academy women reported experiencing at least one form of sexual harassment during the academic year 1991. It also found that 80% of Military Academy women and 70% of Naval Academy women indicated that they experienced sexual harassment on a recurring basis—"at least a couple times a month." The most common of those behaviors were derogatory comments about women, particularly about women at the academies.

The 2004 DoD IG Survey provided more detail on sexually-oriented harassment behaviors, but did not include "hostile environment" harassment factors. This survey found that 56% of females and 11% of males had experienced sexual harassment while at the Academies. The most frequent behavior reported on this survey as experienced often or very often was repeated "stories or jokes of a sexual nature that were offensive to you." US DOD, *Office of the Inspector General of the Department of Defense's Report*.

Unfortunately, the lack of comparable survey data means we cannot determine whether harassment levels have increased or decreased since 1991.

[96] For example, "WUBA" for female midshipmen ("women used by all" or "women with unusually big asses"), "Hudson hips" or "Severn River hip disease" (referring to the size of a female cadet or midshipman's hips), and "Gray trou" (referring to the gray pants worn by all cadets, but used only as a negative term for female cadets).

[97] Barbara F. Reskin, Debra B. McBrier, and Julie A. Kmec, "The Determinants and Consequences of Workplace Sex and Race Composition," *Annual Review of Sociology* 25 (1999): 335–61.

Critical Mass, from a sociological perspective, is formed when the numbers of people necessary to adopt a new practice or belief system also have sufficient awareness so that the resultant chain reaction has irreversible momentum.

[98] US Department of Defense, *Human Relations Action Plan*, Issue 9-1 (Washington DC: Department of the Army, 1997), page 63, Recommendation 1.

[99] Some examples of resources related to and consultants who focus on this area are Jackson Katz, Ed.M.; Sex Signals by Catharsis Productions; Brett A. Sokolow, JD; David Lisak, Ph.D.; and Dr. Alan Berkowitz.

[100] Strategy sharing among all service academies in this area, especially including the US Coast Guard Academy, would be very effective.

[101] A. Abbey, L.T. Ross, and D. McDuffie, "Alcohol's Role in Sexual Assault," in *Drug and Alcohol Abuse Reviews: Volume 5, Addictive Behaviors in Women*, ed. R.R. Watson, 97, 123 (Totowa, NJ: Humana Press, 1994).

[102] Until recently at the Military Academy, social workers at Social Work Services served as first responders and Victim Advocates for cadets. Although they initially met with victims at the Criminal Investigation Command (CID), the social workers were then required to turn the case over to the Center for Personal Development (CPD) for follow-up with the victim. This practice created a critical information gap where the victims often were not informed of their rights, did not understand their rights, and did not have the necessary emotional support throughout the criminal justice process. The Military Academy has recently closed this gap by designating the psychotherapists at CPD as Victim Advocates to assist victims from the time they report an offense through resolution of the case.

Law enforcement has recently recognized the value of CPD in providing support to victims. Previously, they were concerned that any communication between CPD and victims would jeopardize the investigation. To resolve this concern, CID provided training to CPD personnel to ensure that initial contact does not jeopardize the investigation. CID has found that victims have been more forthcoming because of the added level of comfort resulting from consistent Victim Advocate support. In addition, the command has shown great support of CPD and has made efforts to maximize its utilization. As a result, victims report that they are more comfortable having designated Victim Advocates to support them throughout the process.

[103] The Military Academy's framework acknowledges that a victim may report to a Chaplain, Respect Representative, or the Center for Personal Development, but stresses reporting to the Tactical Officer, who then holds the responsibility for ensuring that the victim is provided necessary and desired resources such as military police, CID, medical, legal, and spiritual assistance.

The Naval Academy's framework also acknowledges that a victim may report to a Chaplain or the Midshipmen Development Center, but its Sexual Assault Victim Intervention Program (SAVI), in which officers or senior enlisted serve as SAVI advocates and selected midshipmen serve as SAVI GUIDEs, focuses primarily on reporting a sexual assault to a trained SAVI GUIDE. SAVI GUIDEs and the SAVI Coordinator ensure that victims are provided necessary and desired resources such as military police, Naval Criminal Investigative Services (NCIS), medical, legal, and spiritual assistance.

[104] At the Naval Academy, the Superintendent has granted full confidentiality to the SAVI Coordinator and SAVI GUIDEs despite the fact that no such confidentiality exists under federal law. This grant of confidentiality has been successfully challenged at an Article 32 investigation, where statements made by a victim to SAVI personnel, despite the grant of confidentiality, were ultimately disclosed.

[105] **Psychotherapists:** Under MRE 513, a psychotherapist is afforded a privilege with a patient. MRE 513 states that a communication made to a psychotherapist is considered confidential if such communication was made for the purpose of facilitating diagnosis or treatment of the patient's mental or emotional condition. However, MRE 513 does include exceptions, where restricted disclosure is permitted under this rule. At present, confidentiality under MRE 513 is limited, and unless Congress changes the law granting psychotherapists full confidentiality, there is a real possibility that communications between a psychotherapist and a victim will be disclosed.

In addition to the confidentiality afforded under MRE 513, at the Military Academy, CPD personnel have been granted full confidentiality by the Superintendent. This privilege of full confidentiality was granted in an effort to provide cadets with a resource to obtain professional counseling that maximizes confidentiality to encourage cadets to utilize this resource. However, prior to any counseling session, victims are required to read and sign a consent form that improperly documents the level of confidentiality and fails to reflect the privilege contained in MRE 513, stating that information will be released to individuals within the Armed Forces who have an official need to know. (See consent form, appendix E). A privilege afforded by the Superintendent, as well-intentioned as it is, will not supersede federal law if a sexual assault is tried in federal court.

[106] **Chaplains:** Chaplains have full confidentiality. Under MRE 503, a communication from a victim to a chaplain is a confidential communication if disclosed to a clergyman or a clergyman's assistant in his or her official capacity as a formal act of religion or as a matter of conscience. The chaplain's role is addressed in Finding 13 of this report.

**Psychotherapists:** See note 105.

**Legal Staff (Attorneys and Victim Witness Coordinators):** Confidentiality is afforded, with limited exceptions, under the lawyer-client privilege, MRE 502. This privilege would apply if a victim sought the advice and counsel of a legal services attorney or a defense attorney. Communications could be disclosed, however, if the communications made by the victim contemplated the commission of a fraud or crime. The other exceptions listed under MRE 502 would not be relevant to a case of sexual assault.

This privilege, however, does not apply if the victim reports an offense to a lawyer who represents the government, such as the Superintendent's SJA, the Commandant's legal advisor, or a prosecutor, because the victim is not the lawyer's client. The privilege is only applicable to a lawyer-client relationship. Victim Witness Coordinators, as legal staff for the Academies, cannot offer a lawyer-client relationship to victims because the United States government is their client. Under the Victim/Witness Assistance Program, Victim Witness Coordinators are tasked with ensuring that victims are afforded their rights at every stage of the proceeding and providing case status updates. Since Victim Witness Coordinators spend ample time talking with victims during a case, this may prove problematic if victims disclose information to them. Victim Witness Coordinators could be compelled to disclose in court any statements made by victims.

**Victim Advocates:** Victim Advocates, at present, have no privilege granted by federal law. As with the Victim Witness Coordinators, this may prove problematic if victims disclose information to them. They, too, may be compelled to testify in court and disclose statements made by victims.

This also creates a potential conflict for psychotherapists at the US Military Academy who wear the dual hat of Victim Advocates. Where psychotherapists are granted a privilege with restricted disclosure under MRE 513, Victim Advocates have no privilege. When assisting a victim, there is a potential that communications may later be disclosed depending on what role CPD personnel are filling at the given time. This is confusing to the psychotherapists and may prove confusing and harmful to victims if they disclose information to psychotherapists acting as Victim Advocates under the false impression that the communications are completely confidential.

At the US Naval Academy, contrary to current law, the SAVI Coordinator and SAVI GUIDEs have been granted limited confidentiality by the Superintendent. Only if a victim chooses to make a formal complaint will the victim's identifying information be disclosed to someone other than the SAVI Coordinator and the SAVI GUIDE involved. This grant of confidentiality afforded to the SAVI Coordinator and GUIDEs, although a well-intended effort at protecting victims, will not supersede federal law if a sexual assault is tried in federal court and may ultimately do more harm than good.

**Medical Personnel:** Civilian and military medical personnel employed at military medical facilities have no privilege under the law. Therefore, if a victim of a sexual assault seeks medical treatment and/or a SAFE exam at a military hospital or clinic, the victim's identity, statements of the victim, and information compiled during the examination can be disclosed. The victim's identity can be disclosed to the command and any statements made by the victim or evidence collected during the examination would not be confidential and may later be admissible in a court-martial.

[107] USCC Policy Memorandum 39-03, dated April 25, 2003; COMDTMIDNINST 1752.1C, dated September 27, 2004; and OPNAVINST 1752.1A, dated May 30, 2000.

[108] At the Naval Academy, the closest hospital, Anne Arundel Medical Center, is approximately a 10–15-minute drive from the school. At the Military Academy, the Horton Hospital is approximately a 30-minute drive from the school.

[109] Public Law 108-375, Section 577. *The Ronald W. Reagan National Defense Authorization Act for Fiscal Year 2005*. DoD Directive to be effective October 1, 2005.

[110] 42 *US Code* § 10606(b); DoD Directive 1030.1, "Victim and Witness Assistance," dated April 13, 2004; and DoD Instruction 1030.2, "Victim and Witness Assistance Procedures," dated June 4, 2004.

[111] **The Military Academy:** At the Military Academy, until recently, victims were inconsistently advised of their rights at the onset of the investigation. Criminal Investigative Command (CID) provided DD Form 2701 to victims but did not verbally apprise victims of their rights consistently. The information on the back of the form was not completely filled out, and victims were told verbally to contact the Victim Witness Coordinator if they had any questions. In addition, victims were inconsistently provided with DD Forms 2702, 2703, and 2704. A review of DD Form 2706, the annual report detailing statistical information on assistance rendered to all victims and witnesses, indicated there were only a small number of these forms being provided to victims and witnesses.

The Military Academy does not typically utilize the Victim Witness Coordinator until a case is at the court-martial stage, if at all. Typically, the prosecutor, at some point in the process, will advise the Victim Witness Coordinator of an ongoing sexual assault case and will disclose the identity of the victim. At that point, the Victim Witness Coordinator contacts the victim and apprises the victim of the legally mandated rights contained in DD Form 2701. The Victim Witness Coordinator receives the police blotters identifying current reports of offenses, but the names of victims are omitted from the blotter and listed, instead, as a "protected identity." The Victim Witness Coordinator is not provided, nor seeks, the names of victims from the Criminal Investigative Command. In addition, the Victim Witness Coordinator is not consistently ensuring that DD Forms 2702, 2703, and 2704 are provided to victims by the prosecutors.

**The Naval Academy:** At the Naval Academy, victims are being advised of their rights at the onset of an investigation on a fairly consistent basis. The Victim Witness Coordinator is typically notified of a sexual assault victim as soon as the victim makes a report to SAVI personnel and indicates a desire to make an official report to Naval Criminal Investigative Service (NCIS). The Victim Witness Coordinator, prior to the victim making an official statement to NCIS, verbally apprises the victim of the legally mandated rights and provides DD Form 2701.

NCIS, in most cases, also provides the DD Form 2701 to victims and verbally apprises the victims of their rights. Agents are required, via an NCIS interoffice checklist, to acknowledge that this has been completed. On the back of DD Form 2701, NCIS agents provide their names and phone numbers. However, the Victim Witness Coordinator's name and phone number is not provided consistently. NCIS Agents indicate to victims verbally that they can contact their SAVI Advocate (rather than the Victim Witness Coordinator) if they have any questions pertaining to their rights. The resources utilized to support victims need to receive clarification of the Victim Witness Coordinator and Victim Advocate roles and should ensure that they document the proper source on the back of DD Form 2701. The Victim Witness Coordinator does meet periodically with victims to discuss their rights and to assist them in enforcing their rights, accessing services, and providing case updates. The Victim Witness Coordinator, however, is not ensuring that DD Forms 2702, 2703, and 2704 are being provided to victims by prosecutors. Until last year, these forms were not being provided to victims on a consistent basis.

[112] DoD Instruction 1030.2.

[113] DoD Instruction 1030.2, Section 6, dated June 4, 2004.

[114] Although both Academies review victim misconduct on a case-by-case basis, the Military Academy firmly embraces a non–blanket amnesty approach, whereas USNA utilizes Leadership Responsibility Counseling as its primary method of handling victim misconduct.

[115] Cadets, Midshipmen, Tactical Officers, and Company Officers expressed this opinion in focus groups and victims opinioned this during interviews.

[116] The one exception was female midshipmen, the majority of whom indicated that they would report to the SAVI Coordinator or a SAVI GUIDE.

[117] Under MRE 503, a communication from a victim to a chaplain is a confidential communication if disclosed to a clergyman or a clergyman's assistant in his or her official capacity as a formal act of religion or as a matter of conscience.

[118] Based on discussion groups and survey data from both Academies.

[119] Based on discussions with Chaplains at both Academies; 2002 US Military Academy Cadet Quality of Life Survey.

[120] Both Academies provide counseling for stress, self-esteem, weight management, separation anxiety, anger, depression, transitions, family problems, grief, conduct, performance, decision making, motivation, relationship issues, etc. Also, at the US Naval Academy, the female psychotherapist specializes in eating disorders.

[121] The use of chain-latches, doors with windows and blinds, allowing cadets and midshipmen to lock their doors before Taps, security cameras in the hallways of the living spaces as a deterrent and a record of activity, and a "buddy escort" to accompany a cadet or midshipman back to his or her room all are security measures that enhance safety.

[122] See notes 65 and 66 for a full description.

[123] This nontraditional type of rape may be characterized by (1) kissing and fondling but no consent by the victim to the sexual advances of the attacker; (2) passive resistance by the victim to the sexual advances of the attacker; (3) the attacker's disregard of the victim's statement that he/she does not desire to engage in sexual intercourse; (4) the absence of physical threats by the attacker to the victim; (5) the failure of the victim to seize opportunities to escape from the attacker; (6) the failure of the victim to scream or cry out; (7) little or no observable physical injury to the victim; and (8) the failure of the victim to report the rape promptly. *US v. Webster*, 37 MJ 670, 674 (1993).

[124] This is an even greater percentage than in society at-large, where 82% of all sexual assaults are committed by someone they know. Lenore M.J. Simon, "Sex Offender Legislation and the Antitherapeutic Effects on Victims," *Arizona Law Review* 41 (1999): 485, 496–97.

[125] As of 2004, 46 out of the 50 states, as well as the District of Columbia and federal government, had enacted revised sexual assault and/or rape statutes. The statutes differ in many ways, but all of them have broken sex-related crimes into varying degrees with correspondingly varied penalties. Many statutes have crimes that make having intercourse without the consent of the other party a crime, even in the absence of any force, threat, or coercion.

[126] An example of the type of statute the Task Force recommends can be found as one of the options in a report for the Joint Service Committee on Military Justice entitled "Sex Crimes and the UCMJ." The report contains several options for revising the UCMJ sex crimes; however, the one that most closely matches what the Task Force is recommending is "option 5." This proposal maintains the crime of rape and adds crimes of aggravated sexual assault, aggravated sexual contact, abusive sexual contact, and wrongful sexual contact, among others. The crimes range from forceful sexual penetration to sexual contact without the permission of the victim and specifically include the crime of sexual acts with someone who is too incapacitated to appraise the nature of his or her actions.

"Sex Crimes and the UCMJ: A Report for The Joint Service Committee On Military Justice" February 2005, available at http://www.defenselink.mil/dodgc/php/ (DoD 2004 Review of Sex Offenses under the UCMJ and MCM G: JCS Subcommittee Report to JCS Chairman (Colonel) Mark Harvey).

[127] Half of the states have maintained the label "rape" for the most forceful acts, such as use of a deadly weapon. Half of the remaining states use different degrees or levels of "sexual assault," while the remaining states use other labels with varying degrees or levels, such as "criminal sexual conduct," "sexual abuse," "sexual battery," and "gross sexual imposition."

[128] The majority of states have statutes that prohibit otherwise consensual sex between prisoners and their custodians. Many prohibit other abuses of trust and authority such as between doctors and psychotherapists and their patients. The position of trust and authority of seniors and subordinates in the military is easily comparable to these other relationships. For example, drill sergeants have an enormous amount of authority over trainees. They control every aspect of their lives, including when they wake, sleep, eat, or even speak. They have enormous power to punish and reward, and they are the trainees' only window to the outside world.

[129] The language in the explanation portion of the MCM for Article 120 dictates that if a victim is "of unsound mind or unconscious to an extent rendering him or her incapable of giving consent, the act is rape." Though the current law allows for the prosecution of a defendant for having sex with a severely intoxicated, yet conscious, victim, most service members are under the impression that unless a victim is unconscious, it is not rape. Specifically prohibiting this behavior in the statute will put service members on notice that such behavior is a crime.

[130] Common victim behaviors include delayed reporting, inconsistencies in recounting details of the event, lack of resistance, lack of physical injury or trauma, and lack of emotion when recounting the event.

[131] Victims may perceive themselves to be in a possibly life-threatening situation, triggering a fight-or-flight reaction, which activates dramatic chemical changes in the brain. Higher-functioning parts of the brain shut down and "survival" centers activate, causing information to be processed and stored differently. If the stress continues, another set of chemical responses facilitates numbing and dissociation (or freezing). The immediate and early effects can be numbing, detachment, or lack of emotional responsiveness; reduction of awareness of environment (being in a daze); alteration in perception of environment (things feel strange or unreal); alteration in the perception of self (feeling detached or like an outside observer—as in a dream); nausea, physical exhaustion, physical aches; inability to recall important aspects of the trauma; distress when reminded of the event; recurrent images, thoughts, flashbacks; illusions (misperception of real stimuli such as believing the perpetrator is breaking in when hearing normal house noises); difficulty being alone; general anxiety, agitation, restlessness; exaggerated startle response; difficulty sleeping, difficulty concentrating; irritability, crying, difficulty handling everyday stresses; moving, changing jobs/school; significant distress or impairment in social or occupational functioning; and difficulty in completing necessary tasks or mobilizing resources. Ongoing effects may include problems sleeping, nightmares; roller coaster moods; angry outbursts; flashbacks, panic/anxiety attacks; lowered self-esteem; increase in substance use; self-destructive acting out in younger people; depression, suicidal thoughts and gestures; pattern of avoidance; negative impact on social functioning; problems with trust and intimacy; negative impact on occupational functioning; and negative impact on vision of the future. Other reactions may include denial, minimizing (recanting, continuing to associate with perpetrator, refusing help); guilt, self-blame; shame; problems with own body, sexuality; promiscuity (in younger victims); and changing appearance.

Munch, Anne. "Sexual Assault 'Best Practices' for Prosecutors". Consultant to the Defense Task Force on Sexual Harassment and Violence at the Military Service Academies. Washington DC: 2005.

[132] The investigative agencies are responding well to the increased need for specialized training in investigating cases of sexual assault. Investigators are being trained to work with victims by always approaching the case believing that a crime may have occurred; discussing, not confronting; interviewing, not interrogating; staying objective and compassionate; remaining nonjudgmental in behavior and speech; using active listening skills; avoiding language that implies the victim is to blame; showing empathy; using care when phrasing questions; and describing all steps of the investigation to prepare the victim. Investigators are being trained to develop better corroborating evidence by securing, photographing, and documenting the crime scene and secondary crime scenes and identifying different types of witnesses such as perceiving witnesses, immediate and ongoing outcry witnesses, suspect outcry witnesses, suspect associates, and other potential victims.

[133] Pretext phone calls are phone calls from the victim to the suspect that are taped with the victim's knowledge in hopes that the suspect will make some admissions about the assault to the victim. This type of call is legal in the military but should not be used when the suspect is represented by counsel or has otherwise requested counsel or when the victim is not emotionally capable of participating (as per therapist recommendation).

[134] The typical "undetected rapist" does not use a gun, knife, or other weapon, uses instrumental, not gratuitous violence, increases violence as needed, has access to consensual sex, and comes from all racial and ethnic backgrounds. They premeditate, maneuvering their victims into positions of vulnerability, using alcohol deliberately, and using a context of normal sexual behavior to gain advantage. Sex offenders are skilled at manipulation and deception for the purpose of hiding their crimes and typically follow rules well and progress quickly through programs that do not understand their ability to deceive and hide information. These characteristics are based on multiple and unrelated groups of research literature: sexual assault victim literature and research; sex offender studies completed under federal certificates of confidentiality; undetected rapist studies; longitudinal recidivism and re-offense studies; and post-conviction polygraph literature and research.

[135] Normally "motions practice" refers to the arguments between defense and prosecution about whether or not certain evidence should be presented to the jury or if a case will even go to trial. These arguments are normally conducted outside the presence of the jury. If the defense has evidence they want to present and the prosecution does not want it included (for example, sexual history of the victim), each will write detailed arguments supported by law, previous legal decisions, and the facts of the case. They will then typically argue their cases verbally in front of the judge, who will make a decision. Motions practice can be very complicated and intense. In some cases, the motions practice is longer and more involved than the actual case that the jury sees. It can make a substantial difference in the outcome of a case if it is done well (by either side).

[136] Rules for Courts-Martial 405(h)(3)

[137] In the 2004 DoD IG Survey (US DOD, *Office of the Inspector General of the Department of Defense's Report*), 17% of females and 17.3% of males at the Military Academy considered fraudulent reporting to be a large or very large problem. At the Naval Academy 36.8% of females and 43.2% of males considered it a large or very large problem.

[138] Cadets at US Military Academy have access to legal counsel through the legal assistance office; however, these attorneys are not full-time defense attorneys. A cadet under investigation may start out with a legal assistance attorney, and when charges are preferred, the cadet must then retain a new attorney from Ft. Drum. Switching attorneys in the middle of an investigation is not in the best interests of the accused cadet.

[139] Criminal investigative records are maintained centrally in the Washington D.C. area.

[140] National Academy of Public Administration, *Adapting Military Sex Crime Investigations to Changing Times* (National Academy of Public Administration, 1999).

[141] National Academy of Public Administration, Adapting Military Sex Crime Investigations. This report severely criticized the practice of using this information for other than law enforcement purposes and recommended that the standard for indexing be raised from "credible information" to "probable cause" in order to limit the misuse of information. The Task Force believes that strictly limiting the use of the information, rather than changing the standard, better protects the interests of all interested parties.

[142] Sexual harassment and assault are addressed by the Values Education Program under the subordinate Respect Program. The "overview" section of this report contains a more detailed outline of the Values Education Program structure.

[143] The sexual harassment curriculum is limited, repetitive in nature, and highly standardized. The sexual assault curriculum is more comprehensive and builds on previously presented concepts versus simply repeating them.

[144] 42 *US Code* § 10607

[145] For example, the Mentors in Violence Prevention Model (http://www.Jacksonkatz.com/MVP.html)

[146] The Military Academy faculty and staff receive standard sexual harassment prevention training through Equal Opportunity Office channels but no sexual assault prevention training. The Naval Academy faculty and staff receive sexual harassment prevention training through the Command Managed Equal Opportunity Office and sexual violence prevention training through the Sexual Assault Victim Intervention Program.

[147] Training for medical personnel should follow the guidelines outlines in the most recent *National Protocol for Sexual Assault Medical Forensic Examiners* as published by the Department of Justice's Office on Violence Against Women.

[148] See Finding 33A.

[149] National Sexual Resource Center, fact sheet, *Focusing on the Prevention of First-Time Male Perpetration of Sexual Violence*, April 23, 2003.

[150] See Recommendation 9B. It is important to note that prevention and response are separate functions. Nevertheless, it may be intuitive that the SARC also manage the prevention program.

[151] US DOD, *Office of the Inspector General of the Department of Defense's Report*, ix

[152] US DOD, *Office of the Inspector General of the Department of Defense's Report*, xiv

[153] US DOD, *Office of the Inspector General of the Department of Defense's Report*, xiv

[154] This was a consistent observation in discussion groups comprising both cadets/midshipmen and Tactical/Company Officers.

[155] DoD policy states that military installations in the United States (and overseas, where appropriate) shall establish a formal memorandum of understanding (MOU) with local community service providers, and other military services, as necessary and appropriate, for providing support and care for victims of sexual assault (consistent with section 577[b] [10] of the *Ronald W. Reagan National Defense Authorization Act for Fiscal Year 2005*, Public Law 108-375, October 28, 2004).