

DoD's Unwanted Sexual Contact (USC) Debate: Another Perspective

by

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DoD's Unwanted Sexual Contact (USC) Debate: Another Perspective

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Abstract

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This paper critically analyzes and reviews many of the polarizing aspects of the USC/sexual assault debate in the armed services. Through a review of the statistical underpinnings, and an assessment of the proposed resolutions to the problem, this paper tries to widen the aperture of the debate and provide a more balanced picture of the problem. The ultimate aim of this paper is to provide the current, and purportedly objective, state of the issue in order to better inform the public and any pending or proposed resolution(s). Without an open discussion, resolutions may only be aimed at solving the perceived, rather than the actual, problems.

DoD's Unwanted Sexual Contact (USC) Debate: Another Perspective

[T]hese crimes cut to the heart of the Army's readiness for war. They destroy the very fabric of our force -- soldier and unit morale.

—General Ray Odierno¹

Despite aggressive and sustained efforts, sexual assault remains a corrosive element in our armed services. From the Navy's Tailhook scandal in the 80's, through the Army's Aberdeen Proving Ground recruit sex cases of the 90's, up through the courts-martial of BG Jeffrey Sinclair today, sexual assault continues to tarnish the services' reputation. If strategic leaders are unable to critically assess the problem, frame it accurately, and provide a cogent and clear vision of how to attack it, the services risk: being a less effective and cohesive fighting force, and Congress stripping Commanders of decision-making authority provided under the Uniform Code of Military Justice (UCMJ) to prosecute these offenses.

In addressing the armed forces' sexual assault problem, this paper will first provide a fuller assessment of the sexual assault issue against the backdrop of the current operational environment. It will critically examine the arguments and statistical data underpinning the issue and try to place it in a broader context. This paper will then assess the arguments made by those advocating for the greatest changes to the Department of Defense's (DoD) military structure, and try to determine their validity. It will also try to assess if their signature proposals will provide the meaningful resolution they seek. Lastly, this paper will provide an overall conclusion with a few recommendations for addressing this complex issue.

The aim of this paper is to critically and soberly assess the sexual assault issue in order best determine how to address it. In examining the issue, at no point is this

paper attempting to minimize its importance, nor the horrific experiences felt by those who have been sexual assault victims. If a true understanding of the scope of the problem is not fully debated, any proposed solution may only address the symptoms, and not the underlying problem.

Current Environment

In 2012, an investigative documentary, *The Invisible War*, was released purportedly revealing "one of America's most shameful and best kept secrets: the epidemic of rape within the U.S. military."² Through emotional interviews with sexual assault victims and DoD compiled statistics, the film depicted the services as having a culture that not only tolerates sexual assaults but does little to deter their future commission. *The Invisible War* received numerous accolades throughout the movie industry, earned a 2013 Academy Award nomination and ignited a fiery debate. Numerous stakeholders including the media, Congress, activist groups, DoD's most senior civilian and uniformed leaders, and even the President have directly addressed the issue.

President Obama, noting both the perceived cause and impact, stated,

[T]hose who commit sexual assault...threaten the trust and discipline that makes our military strong³ ... "[N]o military unit can succeed without discipline, without trust...[a]nd that's why we're going to work together...to stop these crimes of sexual assault...[a]nd that message is coming all the way from the top."⁴

Senators and Congressmen have voiced similar concerns. Senator Carl Levin, Chairman, Senate Armed Service Committee, stated, "discipline is the heart of the military culture, and trust is its soul...The plague of sexual assault erodes both the heart and the soul."⁵

Even Senator John McCain, a Vietnam Veteran and ardent military supporter, intimated a lack of confidence in the services' ability to handle the issue. In recounting a conversation that he had with a woman whose daughter was considering entering the military only if Senator McCain could offer his "unqualified support" of the decision - he told the woman that he could not.⁶ With women becoming a larger portion of the military population⁷ in future years, and attending colleges in greater percentages, alienating a future pool of educated recruits could have long-lasting and devastating impacts on the services.

The media has actively and aggressively reported on the issue often providing unflattering depictions of the armed services as a bureaucracy that is uncaring and/or unwilling to change.⁸ Exploding media headlines alerting the public of a sexual assault epidemic within the armed services⁹ have been commonplace, and cumulatively demanded the political leadership to bring immediate change to the services to ensure justice to the victims. To understand the root of their outcries, an initial layout of the underlying statistical data is important.

In a review of the results from the 2012 Department of Defense (DoD) Workplace and Gender Relations Survey of Active (WGRA) Duty Members, the following trend line for the annotated year is the percentage of female service-members who reported experiencing an "unwanted sexual contact" (USC) during that preceding 12 month period: 2006- 6.8%; 2010- 4.4%; and 2012- 6.1%.¹⁰ When questioning service-members, the survey incorporated an expansive definition of a USC:

Intentional sexual contact that was against a person's will or occurred when the person did not or could not consent. The term describes completed and attempted oral, anal, and vaginal penetration with any

body part or object, and the unwanted touching of genitalia and other sexually-related areas of the body.¹¹

The definition captured a wide array of conduct ranging from violent rapes to unwanted touchings.

In extrapolating the 2012 WGRA survey's findings to the whole of the armed forces, the DoD estimated that approximately 26,000 service-members (male and female) experienced a USC.¹² When that number (26,000) is juxtaposed against the actual number of sexual assaults reported to authorities in 2012: 26,000 v. 3,374, the disparity is quite alarming. When comparing the same data from the 2006 survey: 34,200 v. 2,947,¹³ and assessing the data over the last eight years, the longer term nature of the overall problem becomes apparent. In reviewing the statistics, two distinct issues are evident: (1) the large number of underreported USCs that persist annually, and, (2) the sheer number of approximate annual USCs.

If you synthesize all of the above stakeholders' concerns based on this data, the collective perception is that there is a misalignment between the DoD's vision and its culture and command climate. Put in a different way, if the DoD's vision of the armed services is to be a strong, unified, effective fighting force, our culture of discipline is an essential component of creating that end state. A disciplined force under a positive reinforcing command climate does not perpetually commit USCs; particularly against one another. Therefore, some stakeholders conclude that the reason sexual assault persists is because the force has a culture and climate that fosters undisciplined (potentially serious criminal) conduct. As a result of experiencing this culture and climate, sexual assault victims have lost "trust."

Those advocating for the greatest organizational change argue that the root "cause" of the perceived indifferent culture and resulting lack of "trust", are Commanders. New York Senator Kirsten Gillibrand, one of the staunchest advocates for military sexual assault victims, stated,

The chain of command is really an impediment for solving it [the sexual assault problem] because it's resulting in underreporting, no transparency, no accountability...They (victims) don't believe the commanders can be objective, that commanders either know the victim or know the perpetrator...that lack of objectivity is what creates the fear that justice won't be done.¹⁴

In sum, Senator Gillibrand's comments can reasonably be interpreted as finding that the culture and climate fostered by the services' chains of command promote insensitivity and lack of objectivity in handling victims' sexual assault complaints. In fact, the very structure of the chain of command clouds their decision-making in both pursuing claims and/or punishing their assailants. As a result, because victims do not see their assailants held accountable for their actions by the command, they are dissuaded from reporting, and the crimes remain perpetually underreported.

Furthermore, the assailants are emboldened by the culture and the implied message that this behavior is acceptable. Based on this rationale, Senator Gillibrand is one of the leading advocates for limiting Commanders' UCMJ decision-making authority in a broad range of cases, to include sexual assault allegations.

It is axiomatic that Commanders have the primary responsibility to resolve issues in their ranks.¹⁵ Senior military leaders have mandated that combating sexual assault remain their highest priority¹⁶ and is an issue that must receive their full attention. Although it is recognized that Commanders are always responsible and accountable, is the underlying argument accurate? Is the chain of command the primary impediment to

resolution of the underreporting issue because victims have lost "trust" in them? Are Commanders not holding accused accountable? Will removing Commanders from the process actually have the positive net impact that is sought?

Before some of these later questions can even be addressed, the first question that at least must be debated is whether it is reasonable to characterize the armed forces as experiencing a "sexual assault epidemic." There are a number of voices that have been critical of the statistical basis underpinning the "epidemic" argument and state that the data in 2012 WGRA survey, and the manner in which it is being portrayed, provide an inaccurate picture of the current state of sexual assault in the armed forces.

What Is the State of the Problem?

In a comprehensive 2009 Rand study of sexual assault surveys, that included military sexual assault, it noted the difficulty in accurately surveying the subject matter due to the great disparity in definitional, methodological, and data measurement approaches.¹⁷ As a result of these factors, the Rand study found there to be a "striking range in estimates of the prevalence of sexual assault."¹⁸

In specifically observing the jump in numbers between the WGRA's different survey years, Mr. Paul Lavrakas, President of the American Association for Public Opinion Research, said that he was troubled by the wide variance in its yearly survey estimates and that "the first thing that comes to mind is [that] there's something wrong with the numbers... This is an extremely important topic, and it deserves to be measured very carefully."¹⁹ Professor David Segal, Director of the Center for Research on Military Organization and a professor of sociology at the University of Maryland, went even further stating that, "the data are squishy...[and]...I would be loath to infer trends from

two or three data points."²⁰ In directly attacking the accuracy of the survey's extrapolation figures, the authors' of an Ohio State Military Law Review determined that "the 2012 DOD SEXUAL ASSAULT REPORT lacked a reliable extrapolation regarding the scope of the military sexual assault problem."²¹

In addressing the basis of DoD's extrapolation technique, the Law Review called into question the foundational studies that it was based on and noted the criticisms that those surveys received for overinflated and impeached statistics.²² As an example of its inaccuracy, in extrapolating figures based off of its survey responses, the DoD's report states that approximately 4,100 active duty women (or 33%), and approximately 2,700 active duty men (or 19%), would have reported the USC that they experienced in the previous twelve months, to a military authority.²³ Therefore, a total of approximately 6,800 victim reports should be accounted for with military authorities.

The actual reported number of sexual assaults received by military authorities was 2,949- 2,595 women and 354 men. Although the significant discrepancy between extrapolated (6,800) and actual (2,949) reports received could be argued as more evidence of DoD's indifference and inaction to sexual assault complaints; it is more indicative, and consistent with, similar arguments made about the inflated statistics found in the underlying studies that the DoD's was based upon. Despite these criticisms, MG Gary Patton, Director of the Pentagon's Sexual Assault Prevention and Response Office, defended the survey and report, "I got a team of Ph.D.s and statisticians that look at this every year...It's the same questions, the methodology is consistent from 2006 to 2010 to 2012."²⁴

The Law Review also questioned the DoD's handling of the survey pool and specifically how it weighed the survey's non-respondents. Of the approximately 108,000 surveys that were sent out, only approximately 21% (23,000) were completed.²⁵ It "is not a good response rate, though it's a common one...For civilian surveys, we look for higher response rates than that," said Professor Segal.²⁶ Although much could be read into the 86,000, or 79%, that did not respond, was the appropriate due consideration given that it is very plausible that these non-responding service-members did not experience a USC.²⁷

In a *Wall Street Journal* OPED piece, Marine Captain, Harvard Law Graduate and active duty member of the Judge Advocate General's Corps, Lindsay Rodman expressed concern about the 2012 WGRA survey.²⁸ Capt Rodman, a participant in the on-line survey, specifically commented about the confusing (or misuse) of the term "unwanted sexual contact." According to Capt Rodman,

[a USC in the survey] includes touching the buttocks and attempted touching. All of that behavior is wrongful, but it doesn't comport with the conventional definition of sexual assault or with the legal definition of sexual assault in the Uniform Code of Military Justice, as enacted by Congress.²⁹

In explaining her overarching concerns, Capt Rodman indicated that she was offended by the way the issue has been mischaracterized³⁰ and that in her military experiences, the leadership has made revolutionary changes in its approach to handling sexual assault.³¹

When the WGRA survey used a very broad and overly-inclusive term and definition- like USC- it became ripe for confusion. "Confusion" surfaces in both the collection of accurate information from survey respondents, and how the totality (or

batching) of all the reported disparate acts will be interpreted. The former issue seems particularly resonant in the anecdotal experience related by Capt Rodman.

In her OPED piece, Capt Rodman expressed the concern of an all-inclusive survey seemingly intended to capture courts-martial level type conduct (violent rapes) and conduct generally handled at lower punitive and administrative levels (inappropriate touching). Her additional implied concern was that the survey was conducted without any guidance to the respondents to help explain and define the terminology. The DoD surveyors' lack of personal interaction with the respondents is yet another criticism leveled at its data collection.

In order to best validate survey information, personal interviews or follow-ups can be critical. Direct or follow-up interviews with survey respondents not only can assist in ensuring accuracy and uniformity in responding to survey questions, but also assist in the provision of an informed answer based on the scoped definitions.³² Without them, there can be confusion or inaccuracies in responding to questions.

For example, in the WGRA survey almost 50% of the respondents indicated that drugs or alcohol had been consumed prior to the alleged incident.³³ In circumstances where "substantial incapacitation" of the victim is the heart of the issue, it can be unclear as to the legal definition of what constitutes "substantial incapacitation." This "definitional" confusion is clearly evident in discussions with service-members.

A number of service-members have indicated that they have come to understand that if a person has "one drop" of alcohol that person is unable to consent to sex; or, that they "didn't realize you can't get consent with alcohol."³⁴ Although couching the rule in this manner provides an easy and understandable "bright line test" for our young

service-members, it is legally inaccurate.³⁵ Without interviews by trained professionals to guide the survey respondents, these types of misunderstandings can inadvertently impact the collected data and how it is subsequently interpreted.

The DoD's "batching" of all conduct under one singular umbrella provides ample opportunity for misinterpretation of the data. The broad and encompassing definition of a USC used in the survey aggregates both offensive and repugnant behavior with egregious criminal conduct. By grouping this wide scope of conduct, and then extrapolating a bottom line figure (26,000), it artificially distorts the data by leveling and equating all of it. This is most evident in those extolling the extent of DoD's sexual assault epidemic: "238 convictions are a small number compared with the estimated 26,000 sex crimes that may have occurred that year...according to the department's anonymous survey."³⁶

The assumption underlying these types of repeated statements is that all 26,000 incidents are on the same plane and level of egregiousness. It also essentially purports that all represent courts-martial level offenses and does not account for the diversity of the alleged conduct and the innumerable tools available to address them based on the severity of the provable conduct. This paper will later address the military justice aspects of this discussion and provide greater details of how Commanders have handled allegations.

There is no denying the unfortunate fact that USCs are being committed by service-members on each other and civilians. As the above arguments try to elucidate, in order to address the problem leaders and stakeholders have to accurately capture it before putting forth methods to resolve it.

However, what if, arguably, the WGRA surveys are in fact sound, accurate, and none of the criticisms leveled against them meaningfully impact their overall accuracy. Does that by default mean that there is a sexual assault epidemic in the armed forces? The best manner to assess that question is by comparing the armed forces sexual assault data to other similar situated institutions or groupings.

How Do The Statistics Compare?

"[H]owever admirable the recent condemnations of sexual assault in the military, they're unlikely to have much impact, because sexual assault in the military is not a military problem. It is an *American* problem."³⁷ In examining the armed forces sexual assault issue, and comparing it to elements of the civilian community, there is a tacit acknowledgment that the sexual assault problem permeates all areas of U.S. society.

The 2010 U.S. Center for Disease Control (CDC) Summary Report, *The National Intimate Partner and Sexual Violence Survey*, found that "nearly 1 in 5 women (18.3%) and 1 in 71 men (1.4%) have been raped at some time in their lives."³⁸ Sexual violence victimization- other than rape- has impacted almost 1 in 2 women (44.6%) and 1 in 5 men (22.2%) over the course of their lives.³⁹ In the United States, this equals more than 53 million women and 25 million men.⁴⁰

A historical assessment indicates that overall military sexual assault rates are appreciably lower than in the civilian sector in comparable civilian populations.⁴¹ In the 2010 CDC study, approximately 1 in 20 women (5.6%) and men (5.3%) experienced sexual violence victimization, other than rape, in the 12 months prior to taking the survey.⁴² One percent, or approximately 1.3 million women, reported being raped by a perpetrator in the 12 months prior to taking the survey.⁴³ In sum, "in the 12 month period preceding the study, the CDC report found that 1.1% of women reported experiencing a

rape or attempted rape, and an additional 5.6% of women reported some form of "other sexual violence."⁴⁴ In a raw and rudimentary comparison, the 6.7% rate of civilian women reporting "rape and sexual violence" is slightly higher than the 6.1% of military women reporting a USC.⁴⁵

As discussed earlier, the Rand study noted the difficulty in obtaining consistent and comparable statistics in this subject area. Despite these limitations, Rand found that researchers generally claim a consistent 15% rape prevalence rate of civilian females and a 4-7% sexual assault rate for military women.⁴⁶

Among college women, a grouping most similarly aged to the military population, the comparison is even more marked. A 2000 Justice Department survey concluded that 3.5% of college women reported a rape or attempted rape, and an additional 15.5% reported that during the surveyed academic year, they had been "sexually victimized."⁴⁷ Approximately 8% of the "non-rape" sexual incidences involved physical force.⁴⁸

In recognition of the pervasive college sexual assault issue, in a January 22, 2014 speech, President Obama said, "It is estimated that one in five women on college campuses has been sexually assaulted during their time there. One in five."⁴⁹ In an effort to address the problem, President Obama established a White House Task Force to Protect Students from Sexual Assault. A White House study also determined that college parties were the situs for many of the incidents with alcohol and drugs playing key factors in the attacks.⁵⁰

A potentially disconcerting example of the accuracy of the White House study might be found in an email sent out by a Georgia Tech fraternity member to his brothers. The email's subject line is titled "Luring your Rapebait" and is a step-by-step

guide to "hooking up" with women at fraternity parties.⁵¹ Throughout the email, the author regularly advises his fraternity brothers on the strategic use of alcohol at different points of the encounter to increase success rates- "IF ANYTHING EVER FAILS, GO GET MORE ALCOHOL. I want everyone to succeed at the next couple of parties."⁵² The author publicly apologized for his email, expressed his regret and acknowledged an understanding of the wrongfulness of his action.⁵³ It is believed he is still a Georgia Tech student, but it is unknown what, if any, disciplinary action school officials took against him.

Even if by comparison the armed forces sexual assault numbers compare favorably to the civilian community's, there is another factor that needs to be examined that is not otherwise applicable in the civilian sector. What potential role, if any, did the last 12 years of persistent conflict potentially contribute to the current statistical base?

The Wars' Impact?

In explaining the panoply of highly publicized character/ethical problems that the U.S. Army has been facing, Army Chief of Staff, GEN Ray Odierno stated, "I wouldn't say lack of character was tolerated in (war) theater, but the fact of the last 10 or 12 years of repeated deployments, of the high op-tempo -- we might have lost focus on this issue...Sometimes in the past we've overlooked character issues because of competence and commitment."⁵⁴

As the Afghanistan and Iraq wars raged through the 2000s, recruiting quality candidates became a greater challenge for the services. The unpopularity of the Iraq War and the fear of dying in combat, were two prevalent reasons cited for not enlisting.⁵⁵ This reluctance manifested itself most clearly in 2005, when the Army failed to meet its recruiting goals by 7,000 Soldiers.⁵⁶ As a result, the overall lowering of

entrance standards and the granting of waivers became increasingly necessary tools to ensure the armed forces had enough personnel to prosecute the wars.

In 2003, the Army granted approximately 4.6% of its recruits "moral conduct" waivers, but by 2007, that figure more than doubled to 11.2%.⁵⁷ Stated differently, in 2007 approximately 1500 recruits were granted waivers for previous drug or alcohol abuse, while 2100 recruits were granted waivers for "serious criminal misconduct."⁵⁸ Unsurprisingly, "moral waiver" Soldiers had a misconduct rate that was twice the average.⁵⁹ Mr. Douglas Smith, the Army Recruiting Command's spokesman, explained its recruiting policies in a 2008 statement, "Standards in our society have changed over the years; we are a reflection of those changes...Considering offering a waiver to otherwise qualified recruits is the right thing to do for those Americans who want to answer the call to duty."⁶⁰

The recruiting problem also spawned internal policies that actively dissuaded Commanders from separating troubled Soldiers in order to ease the recruiting burden.⁶¹ This trend, however, has significantly changed.

Since the height of the Iraq war in 2007, the number of enlisted Soldiers forced out of the Army for drugs, alcohol, and other misconduct has risen considerably.⁶² In 2007, approximately 5,600 were removed.⁶³ In 2013, that number grew to approximately 11,000.⁶⁴ Additionally, in the last few years, the services' recruiting standards and selectivity in choosing its recruits have tightened.

For example, in the middle 2000s, approximately 86% of the services new recruits earned a high-school diploma, and only 67% scored in the top 50th percentile on the Armed Forces Qualification Test.⁶⁵ Today, a high-school diploma, college credits,

an above-average score on the military entrance exams, and a clean criminal record are almost mandatory to be competitive for an active duty enlistment contract.⁶⁶

Admittedly, it is difficult to quantify how the overall policy of lowering the admittance standards during this period of time directly impacted USCs. The WGRA surveys began during wartime in 2006, at the peak of the conflict, and the yearly extrapolated USC numbers have jumped around considerably: CY06: 34,200; FY 2010: 19,300, and FY12: 26,000.⁶⁷ This of course harkens back to Mr. Lavrakas, President of the American Association for Public Opinion Research, concern about the reliability of the surveys themselves specifically noting the wide variance in its yearly survey estimates.⁶⁸ If we assume there is a “cause and effect,” as the armed forces' troubled and less qualified service-members are attrited and replaced by higher caliber, more well-rounded enlistees, the USC statistics should naturally be impacted.

It would not be unreasonable to challenge this line of logic. First, based on the above concession of the lack of definitive data to demonstrate a correlation between these two factors (i.e., lower admission standards and USC rates). Second, if the key to reducing USCs in the armed forces was to simply recruit smart, generally well-behaved people, then why do colleges and universities continue to have such a significant problem? By definition, universities seek quality high school graduates with strong grade point averages, and well-rounded backgrounds. Although there is no singular answer, the most logical and obvious difference between a university and the armed services, is the presence of a chain of command.

The singular purpose of an enlisted and officer chain of command is to account for their service-members. Their prime responsibility is to institute good order and

enforce discipline within their ranks. There is no parallel equivalent at a college or university. If a service-member is absent from any duty, they are tracked down and held accountable for their actions. If a university student misses a statistics class, there are no obvious repercussions. This difference is clearly understandable since being in the armed forces is a profession with rigid standards; however, it equally helps to provide a reasonable basis of the statistical disparity between the armed forces' and universities' sexual assault rates.

While the previous few sections tried to provide a different perspective of, and some context to, the statistical underpinnings of the USC debate, the above sets forth the concept that the chain of command has been a positive element in combating the services USC problem. A number of the services' harshest critics, however, cite the chain of command as being the core of the problem- not the solution.

Chain of Command: Part of the Problem or Solution?

Critics might reasonably argue that even if everything previously discussed were proved accurate- comparably, the armed forces is not statistically experiencing a sexual assault epidemic; and, based on its current recruiting and separation policies the USC statistics should naturally reduce- the heart of the problem still remains the victims' lack of trust in the chain of command. Because victims don't trust the chain of command, they will continue to underreport and the problem will persist.

Many of the senior stakeholders' earlier comments hone in on trust as being a critical component in resolving the issue. The essence of SEN Gillibrand's earlier quoted comments espouse a causal relationship between instilling victims' trust in the process by removing the chain of command from it. According to California Rep. Jackie Speier, "[i]f you report it, you are either told that you're a misfit or that you should take

two aspirins and...never say the word again. And if by any chance you want to pursue it...Boys will be boys [and the chain of command will]...get rid of the victim.”⁶⁹

In sum, critics maintain that removing the chain of command will result in greater USC reporting, less retaliation against the victims, and ultimately more justice. The 2012 DoD WGRA survey, and some recently released FY13 statistics, however, do not support these premises.

In fact, 80% of the female, and 88% of the male, service-members who responded to the 2012 WGRA survey indicated that their leadership does well in promoting a unit climate based on mutual respect and trust.⁷⁰ An additional 73% of the female, and 85% of male, service-members felt that their leadership created a healthy environment where victims would feel comfortable reporting a USC.⁷¹

Seventy percent of the female service-members indicated that they would feel comfortable in reporting a USC without fear of reprisal.⁷² This is 11 points higher than when polled in 2006, and five points higher than when polled in 2010.⁷³ Eighty three percent of male service-members indicated that they would feel free to report sexual assault without fear of reprisals.⁷⁴ This is eight points higher than when polled 2006 and 10 points higher than 2010.⁷⁵ These upward trending data points also correspond to victim reporting data.

Since 2004, the number of reported sexual assault incidents have slowly but consistently been rising.⁷⁶ In fiscal year (FY) 2007 there were 2,688 sexual assault reports, 3,374 in FY12,⁷⁷ and approximately 5,400 in FY13.⁷⁸ If the cumulative data indicate that a great majority of service-members trust their Commanders and would be

willing to report a USC incident to their chain of command without fear of reprisal, what “causes” the underreporting?

As with all complex and sensitive issues, there are many reasons that account for the discrepancy. It is unquestioned that some service-members genuinely do not trust their chain of command, believe nothing will happen if they report the incident, and/or reasonably believe they will be professionally retaliated against for reporting it.⁷⁹ Based on the WGRA survey responses, however, a large percentage of the women who had experienced a USC and did not report it, cite very personal, rather than command-centric, reasons for their decision. For example, 70% stated they simply "did not want anyone to know," and 66% indicated they "felt uncomfortable making a report."⁸⁰

Most revealing, those who did report their USC and experienced a form of "retaliation," generally pointed to a social, rather than a command-oriented reprisal.⁸¹ An example of this might be found in one airman’s experience.

The airman related that when she finally decided to report the incident to authorities, she started to get hazed by the accused's friends who banged on her door at all hours.⁸² The airman stated that she felt like she "became Public Enemy Number One in the squadron."⁸³ The narrative that predominates is that service-members generally do not report their USC incident because of: the personal and intimate nature of the violative act, lack of comfort in reporting, and/or fear of alienation by fellow service-members in their close knit unit.

The chain of command must change the culture in the ranks to make it clearly understood that reporting USC incidents does not violate any internal service-member

code of ethics, but rather personifies the best in them. It must work with the stakeholder institutions to make the process of reporting USCs as sensitive as possible. The chain of command must also root out Commanders who don't treat USC allegations with the seriousness they deserve. Based on service-members responses, this appears to be only a small minority of Commanders. According to the WGRA survey, 88% of the female, and 94% of male, service-members believe that their leadership makes it clear that sexual assault has no place in the military.⁸⁴ As discussed below, critics sharply disagree.

Commanders Exercising UCMJ

The Pentagon taking action is a good thing...but it is not the leap forward required to solve the problem. *302 prosecutions out of an estimated 26,000 cases just isn't good enough under any metric.* It is time for Congress to seize the opportunity... and create an independent, objective and non-biased military justice system worthy of our brave men and women's service.⁸⁵ (*Emphasis added*)

Do these statistics demonstrate that Commanders are not taking USCs seriously and are not properly exercising their UCMJ authority? Will removing Commanders' UCMJ authority solve the problem? In assessing this aspect of the issue, we must first determine the appropriate starting point.

The above quote implies that there were 26,000 USC incidents that Commanders could have acted upon. The 26,000 metric only represents the extrapolated number of USC incidents that the DoD thought may have transpired during FY12. Commanders are not able to take action on unreported incidents.

The above quote also exemplifies the earlier raised danger of using a broad USC definition in the WGRA survey. By surveying for a wide range of conduct under a single umbrella term and then extrapolating a bottom line figure, there is a perception that all

of the conduct is equally egregious. By equating all of the disparate conduct, there is the implied expectation that the Command would take the exact same action (i.e., courts-martial) for each of the allegations. As you will see below, there are many variables that impact Commanders decision-making in determining how, or even their authority, to handle reports.

Since authorities received 3,374 sexual assault reports in FY12, this is the most accurate initial metric point to start the analysis. “And yet only 3,374 such cases were reported, with 238 resulting in convictions. Of that number, 176 perpetrators actually served time.”⁸⁶ This quote also seemingly equates all of the received sexual assault reports. It implies an expectation that the Command could take similar action (i.e., courts-martial) for all 3,374 allegations, and that each accused should receive similar levels of punishment (i.e., prison time).

These expectations are understandable; however, no two cases are similar. Each case has its own challenges, evidentiary issues, and for different reasons, Commanders may not even have the authority to act upon the complaints it receives. This point will become clearer as we proceed through the below analysis.

Of the 3,374 reported sexual assault reports, 2,558 were unrestricted reports.⁸⁷ The remaining 816 were confidential restricted reports, and by definition, were not brought to investigative authorities or the chain of command for action.⁸⁸

Although there were 2,558 FY12 unrestricted reports, there were 2,661 unrestricted sexual assault cases that were ripe for disposition by Commanders in FY12.⁸⁹ The 2,661 metric includes pre-FY12 and FY12 cases that were pursued or

investigated and ready for Commander action in FY12.⁹⁰ Below is a breakdown of how those 2,661 sexual assault cases were processed in FY12.

Of the 2,661 cases, a service's Military Criminal Investigative Organization (MCIO), for example, CID or NCIS, determined that 363 of the received reports were unfounded.⁹¹ The MCIO will "unfound" a case when there is insufficient available evidence to indicate the accused committed the offense.⁹² In 584, of the 2,661 cases, Commanders lacked jurisdiction to act upon the allegations. Commanders lacked jurisdiction for one of six reasons: (1) the offender could not be identified or was unknown; (2) the subject was a civilian and not a service-member; (3) the accused service-member died; (4) the subject went AWOL before action; (5) a foreign criminal court, or (6) a state court, asserted primary jurisdiction over the case.⁹³ Since Commanders did not have the authority to act upon these 947 cases, once they are subtracted from 2,661, there remained 1,714 potential cases for Commanders disposition.⁹⁴

In 509 cases, Command action was simply not possible.⁹⁵ Victims refused to participate in any military justice action in 196 cases, there was insufficient evidence to prosecute any offense in 307, and 6 cases were beyond the statute of limitations.⁹⁶ After subtracting 509, there remained 1,205 cases for Commanders potential disposition.⁹⁷

To briefly review, there were 3,374 sexual assault allegations made in FY12. In total, there were 2,661 pre-FY12 and FY12 sexual assault cases ripe for Commander disposition. However, of those 2,661 cases, there were only 1,205 actionable cases for Commanders to assess. In 81 of those cases, after close consultation with their judge advocates, Commanders concluded that the allegations were either baseless or false.⁹⁸

In the remaining 1,124 cases, Commanders and their judge advocates determined that there was sufficient evidence for action in 880 sexual assault cases.⁹⁹ In these cases, Commanders preferred courts-martial charges in 594, levied non-judicial punishment (Article 15) in 158, administratively separated the subjects in 63, and performed other adverse administrative action in 65 cases.¹⁰⁰

In the remaining 244 cases (of the 1,124), there was insufficient evidence to take action on the initial sexual assault allegations. However, the Command did move forward on the substantiated non-sexual assault allegations that were part of those reports. In these 244 cases, the Commanders preferred courts-martial charges in 37, levied non-judicial punishment (Article 15) in 122, administratively separated the subjects in 26, and performed other adverse administrative action in 59 cases.¹⁰¹

The above numerical breakout supports the perspective that in a great majority of cases, Commanders are aggressively pursuing the actionable and evidentiary supported, sexual assault claims. An independent investigation and assessment performed by *McClatchy* came to the same conclusion. After reviewing innumerable FOIA received documents, *McClatchy* concluded that Commanders are aggressively pursuing sexual assault cases.¹⁰²

McClatchy further found that Commanders are exercising their prosecutorial authority over the objections of the MCIO case investigators.¹⁰³ Missouri Senator Claire McCaskill, a former sex crimes prosecutor, went even further than *McClatchy*. SEN McCaskill predicted that removing the chain of command from the prosecution of sex crimes would actually result in fewer, not more prosecutions.¹⁰⁴ SEN McCaskill stated,

Over the past two years, there have been at least 93 cases in which prosecutors declined to pursue charges, but in which a commander

launched a court martial. We've also found almost no cases in which a prosecutor wanted to pursue charges but was overruled by a commander. Stripping commanders of the ability to launch courts-martial seeks to solve a problem -- commanders refusing to move cases forward -- that we just don't have.¹⁰⁵

Congress, in an effort understand the complexity of the issue, mandated in the FY13 National Defense Authorization Act that the Secretary of Defense establish a bipartisan response systems panel (RSP) to study it. After months of hearings, evidence review and debate, on January 29, 2014, the RSP made its initial assessment of "Whether Senior Commanders Should Retain Authority to Refer Cases of Sexual Assault to Courts-Martial."¹⁰⁶ An overwhelming majority of RSP panel members (7-2) concluded, "The evidence does not support a conclusion that removing authority to convene courts-martial from senior commanders will reduce the incidence of sexual assault, or increase reporting of sexual assaults in the Armed Forces."¹⁰⁷

Former U.S. Rep. Elizabeth Holtzman and Ms. Mai Fernandez, prosecutor and Executive Director of the National Center for Victims of Crimes, both said that they came to the RSP panel believing that SEN Gillibrand's proposal "sounded right."¹⁰⁸ After reviewing the facts, pouring over the data and testimony, each changed their mind.¹⁰⁹ "I went into this thinking [Gillibrand's legislation] made sense. I'm a prosecutor; I wanted to go with that...", said Ms. Fernandez, "[b]ut when you hear the facts, it doesn't hold up."¹¹⁰

Conclusion

Much like in society in general, USCs in the armed services continue to occur at unacceptable rates. The thrust of this paper was not to minimize or appear intransigent on keeping the status quo, but rather to open the discourse. To have the greatest

impact on the problem, we must have a clear-eyed understanding of the underlying facts to get at some solutions. After review of all the evidence, this paper objectively concludes, that removing the chain of command from the equation will not solve any of the problems.

For underreporting, honing in on the unit culture and establishing the norm that fellow service-members must encourage victims to report incidences, and support them once they have, is potentially one way to increase it. Through training, service-members must inculcate a belief that the more respectful, encouraging and supportive they are to sexual assault victims, the closer we will get in rooting out the problem.

There has been a tremendous amount of focus on the handling and processing of the potential punitive aspects an accused may face once an incident occurs. Holding accused accountable is an important element of the debate- but it is only one aspect. In short, the armed services are not going to prosecute or punish their way out of this problem. Training, education and Command action can prevent incidences from occurring and as Benjamin Franklin said, "an ounce of prevention is worth a pound of cure."¹¹¹

Training and education must continue to focus on bystander intervention, the drinking culture and how alcohol, late nights in the barracks are generally the table-setters for a USC. As an example, but representative of all of the services, the Navy found that most sexual assaults happen to "18-to-24-year-olds in social settings where alcohol is consumed."¹¹² The incidents usually occur at the person's initial duty station, or MOS schools just after boot camp.¹¹³

The training tools must also remain fresh and updated to keep the force engaged and prevent them from becoming "numb" and non-receptive to the same old training. The Marine Corps has already implemented an interactive and "in-your-face" training program that is receiving positive feedback from its service-members.¹¹⁴

In terms of Command action, common-sense time-window limits to on-post alcohol sales; greater weekend-night oversight and control of the barracks, to include, cameras and senior NCOs physically present, should be employed. Installation-level leaders must endeavor to provide popular, non-alcohol related opportunities. They must routinely tout successes of non-drinking related events and continue to encourage attendance through their personal appearance and devoting limited resources (i.e., money) to their execution.

Installations with successful, alcohol-free events, with lower sexual assault rates, must receive distinction by strategic leaders and reviewed for best practices. Service-members who take actions to further the intent of the program (intervene in a situation, organize an event) must be routinely and publicly recognized in front of their peers.

COL(R) Elspeth Ritchie, former Army psychiatrist, took a longer view of the problem, "The controversy over sexual assault in the Army will not go away, to my chagrin and those of my fellow soldiers...[and] will not be solved simply by changing the decision on who prosecutes...different strategies are needed for prevention in the varying scenarios."¹¹⁵ Focusing our efforts, energy and resources, on the real, and not perceived problem areas, will continue to push the positive trends in the right direction.

Endnotes

¹ Elliott C. McLaughlin, "Military Chiefs Oppose Removing Commanders from Sexual Assault Probes," *CNN*, June 5, 2013, <http://www.cnn.com/2013/06/04/politics/senate-hearing-military-sexual-assault> (accessed September 1, 2013).

² "The Invisible War/The Film/Talkback," linked from *PBS Homepage*, at "Independent Lens," <http://www.pbs.org/independentlens/invisible-war/film.html> (accessed September 2, 2013).

³ McLaughlin, "Military Chiefs Oppose Removing Commanders from Sexual Assault Probes."

⁴ Darren Samuelsohn and Anna Palmer, "Obama MIA on Military Sexual Assault," *POLITICO Pro*, August 8, 2013, <http://www.politico.com/story/2013/08/barack-obama-military-sexual-assault-95322.html> (accessed September 1, 2013).

⁵ Jennifer Steinhauer, "Joint Chiefs' Answers on Sex Crimes Dismay Senators," *The New York Times Online*, June 4, 2013, http://www.nytimes.com/2013/06/05/us/politics/joint-chiefs-testimony-on-sexual-assault-dismays-senators.html?_r=0 (accessed September 1, 2013).

⁶ *Ibid.*

⁷ Laura B. Shrestha and Elayne J. Heisler, *The Changing Demographic Profile of the United States* (Washington, DC: Congressional Research Service, March 2011) 2, 15.

⁸ Darren Samuelsohn, "Decades Behind: Sexual Assault Unchecked as Defense Department Ducks Reform," *POLITICO Pro*, August 6, 2013, <http://www.politico.com/story/2013/08/defense-department-sexual-assault-reform-95262.html> (accessed September 1, 2013).

⁹ Nick Schwellenbach, "Fear of Reprisal: The Quiet Accomplice in the Military's Sexual-Assault Epidemic," *TIME Online*, May 9, 2013, <http://nation.time.com/2013/05/09/fear-of-reprisal-the-quiet-accomplice-in-the-militarys-sexual-assault-epidemic/> (accessed September 1, 2013).

¹⁰ U.S. Department of Defense, *Department of Defense Annual Report on Sexual Assaults in the Military: Fiscal Year 2012* (Washington, DC: U.S. Department of Defense, April 2013), 12, http://www.sapr.mil/public/docs/reports/FY12_DoD_SAPRO_Annual_Report_on_Sexual_Assault-VOLUME_ONE.pdf (accessed September 1, 2013).

¹¹ *Ibid.*, 2.

¹² *Ibid.*, 12.

¹³ *Ibid.*, 13, 24.

¹⁴ Donna Cassata, "Kirsten Gillibrand Targets Military Sexual Assault Law," *Huffington Post*, July 29, 2013, http://www.huffingtonpost.com/2013/07/29/kirsten-gillibrand-military-sexual-assault_n_3669914.html (accessed September 5, 2013).

¹⁵ McLaughlin, "Military Chiefs Oppose Removing Commanders from Sexual Assault Probes."

¹⁶ Now This News, "Army Chief of Staff: Combatting Sexual Assault is Number One Priority," June 5, 2013, <http://www.nowthisnews.com/news/sexual-assault-military/> (accessed February 17, 2014).

¹⁷ Margaret C. Harrell et. al., *A Compendium of Sexual Assault Research* (Santa Monica, CA: RAND, 2009), 2, http://www.rand.org/content/dam/rand/pubs/technical_reports/2009/RAND_TR617.pdf (accessed February 21, 2014).

¹⁸ Ibid.

¹⁹ David Lerman, "Polling Specialists Question Military Sexual Assault Survey," *Bloomberg*, May 16, 2013, <http://www.bloomberg.com/news/2013-05-16/polling-experts-question-pentagon-sexual-assault-survey.html> (accessed February 21, 2014).

²⁰ Ibid.

²¹ Lisa M. Schenck, "Informing the Debate About Sexual Assault in the Military Services: Is the Department of Defense Its Own Worst Enemy?," *11 OHIO ST. J. CRIM. L.* (forthcoming Spring, 2014), 17, http://responsesystemspanel.whs.mil/public/docs/Background_Materials/InformDebateAboutSexAsslt_Schenck220140115_DRAFT.pdf (accessed February 17, 2014).

²² Ibid.

²³ U.S. Department of Defense, *Department of Defense Annual Report on Sexual Assaults in the Military: Fiscal Year 2012*, 36-37.

²⁴ Lerman, "Polling Specialists Question Military Sexual Assault Survey."

²⁵ Schenck, "Informing the Debate" 15-36.

²⁶ Lerman, "Polling Specialists Question Military Sexual Assault Survey."

²⁷ Schenck, "Informing the Debate," 35-36.

²⁸ Lindsay L. Rodman, "The Pentagon's Bad Math on Sexual Assault," *The Wall Street Journal Online*, May 19, 2013, http://online.wsj.com/news/articles/SB10001424127887323582904578484941173658754?mg=r_eno64-

[wsj&url=http%3A%2F%2Fonline.wsj.com%2Farticle%2FSB10001424127887323582904578484941173658754.html](http://www.wsj.com/article/SB10001424127887323582904578484941173658754.html) (accessed February 17, 2014).

²⁹ Rodman, "The Pentagon's Bad Math on Sexual Assault."

³⁰ Jim Michaels, "Marine Officer: Sexual Assault Problem's Scope Exaggerated," *USA Today Online*, July 15, 2013, <http://www.usatoday.com/story/news/politics/2013/07/14/rodman-marine-corps-sexual-assault-pentagon-military-congress-mccain-reid-speier/2513565/> (accessed February 17, 2014).

³¹ Rodman, "The Pentagon's Bad Math on Sexual Assault."

³² Schenck, "Informing the Debate," 35, 42, 45-48.

³³ U.S. Department of Defense, *2012 Workplace and Gender Relations Survey of Active Duty Members, Fiscal Year 2012* (Washington, DC: U.S. Department of Defense, April 2013), 3, http://www.sapr.mil/public/docs/research/2012_Workplace_and_Gender_Relations_Survey_of_Active_Duty_Members-Survey_Note_and_Briefing.pdf (accessed March 25, 2014).

³⁴ Gretel C. Kovach, "Marines Get Blunt Sex Talk To Prevent Assault," *U-T San Diego*, August 17, 2013, <http://www.utsandiego.com/news/2013/aug/17/marine-sex-assault-training/> (accessed September 6, 2013); see also James Joyner, "Military Sexual Assault Policy: No Consent With Alcohol," *Outside the Beltway*, August 16, 2013, <http://www.outsidethebeltway.com/military-sexual-assault-policy-no-consent-with-alcohol/> (accessed February 17, 2014).

³⁵ Michael Doyle and Marisa Taylor, "Bureaucracy Has Blossomed in Military's War on Rape," *McClatchy*, November 28, 2011, <http://www.mcclatchydc.com/2011/11/28/131524/bureaucracy-has-blossomed-in-militarys.html> (accessed February 20, 2014).

³⁶ Yuri Kageyama and Richard Lardner, "Documents Reveal Chaotic Military Sex-Abuse Record," *AP*, February 9, 2014, <http://www.bigstory.ap.org/article/documents-reveal-chaotic-military-sex-abuse-record-1> (accessed February 21, 2014).

³⁷ Micah Zenko and Amelia Mae Wolf, "Our Military, Ourselves," *Foreign Policy*, May 21, 2013, http://www.foreignpolicy.com/articles/2013/05/21/our_military_ourselves (accessed March 7, 2014).

³⁸ Michele C. Black et. al., *The National Intimate Partner and Sexual Violence Survey: 2010 Summary Report* (U.S. Center for Disease Control, November 2011), 1, <http://www.cdc.gov/violenceprevention/pdf/nisvsreport2010-a.pdf> (accessed February 13, 2014).

³⁹ Black et. al., *The National Intimate Partner and Sexual Violence Survey: 2010 Summary Report*, 19.

⁴⁰ Ibid.

⁴¹ Rosa Brooks, "Is Sexual Assault Really an Epidemic," *Foreign Policy*, July 10, 2013, http://www.foreignpolicy.com/articles/2013/07/10/is_sexual_assault_really_an_epidemic?page=0,1 (accessed September 6, 2013).

⁴² Black et. al., *The National Intimate Partner and Sexual Violence Survey: 2010 Summary Report*, 3.

⁴³ Ibid.

⁴⁴ Brooks, "Is Sexual Assault Really an Epidemic."

⁴⁵ Ibid.

⁴⁶ Harrell et al., *A Compendium of Sexual Assault Research*, 3.

⁴⁷ Brooks, "Is Sexual Assault Really an Epidemic."

⁴⁸ Ibid.

⁴⁹ Petula Dvorak, "Stop Blaming Women for Sexual Assaults on Campus," *Washington Post Online*, February 24, 2014, http://www.washingtonpost.com/local/stop-blaming-victims-for-sexual-assaults-on-campus/2014/02/24/b88efb1e-9d8f-11e3-9ba6-800d1192d08b_story.html (accessed February 26, 2014).

⁵⁰ Ibid.

⁵¹ Cyrus Massoumi, "College Frat Sends 'Rapebait' Email with Explicit Hookup Instructions," *Mr. Conservative*, October 8, 2013, <http://m.mrconservative.com/mrconservative/#!/entry/college-frat-sends-rapebait-email-with-explicit-hookup-instructions,5254a1c3da27f5d9d0304f1d/1> (accessed February 26, 2014).

⁵² Ibid.

⁵³ Tyler Kingkade, "Fraternity Member at Georgia Tech Apologizes for 'Luring Your Rapebait' Email," *Huffington Post*, October 11, 2013, http://www.huffingtonpost.com/2013/10/11/fraternity-georgia-tech-email-rapebait_n_4085390.html (accessed February 26, 2014).

⁵⁴ "Crimes and Misconduct Force More Soldiers Out," *Fox News*, February 15, 2014, <http://www.foxnews.com/politics/2014/02/15/crimes-misconduct-forces-more-soldiers-out/#> (accessed February 26, 2014).

⁵⁵ Lloyd Vries, "War Is Hurting Army Recruitment," *CBS News*, March 8, 2005, <http://www.cbsnews.com/news/war-is-hurting-army-recruitment/> (accessed February 26, 2014).

⁵⁶ Annalyn Kurtz, "Getting into the Military is Getting Tougher," *CNN*, May 15, 2013, <http://money.cnn.com/2013/05/15/news/economy/military-recruiting/index.html>, (accessed February 27, 2014).

⁵⁷ Greg Mitchell, "More Than 1 in 10 Army Recruits Given 'Moral Waivers'," *Huffington Post*, July 13, 2008, http://www.huffingtonpost.com/greg-mitchell/shocker-more-than-1-in-10_b_112400.html (accessed February 26, 2014).

⁵⁸ Ibid.

⁵⁹ Ibid.

⁶⁰ Ibid.

⁶¹ Greg Jaffe, "To Fill Ranks, Army Acts to Retain Even Problem Enlistees," *Wall Street Journal*, June 3, 2005, http://online.wsj.com/news/articles/SB111776400852250138?mod=tff_main_tff_top (accessed March 2, 2014).

⁶² "Crimes and Misconduct Force More Soldiers Out."

⁶³ Ibid.

⁶⁴ Ibid.

⁶⁵ Kurtz, "Getting into the Military is Getting Tougher."

⁶⁶ Ibid.

⁶⁷ U.S. Department of Defense, *Department of Defense Annual Report on Sexual Assaults in the Military: Fiscal Year 2012*, 13.

⁶⁸ Lerman, "Polling Specialists Question Military Sexual Assault Survey."

⁶⁹ Kira Zalan, "Why Stopping Rape in the Military is a Tough Sell," *US News*, March 13, 2012, <http://www.usnews.com/opinion/articles/2012/03/13/why-stopping-rape-in-the-military-is-a-tough-sell> (accessed March 7, 2014).

⁷⁰ U.S. Department of Defense, *Department of Defense Annual Report on Sexual Assaults in the Military: Fiscal Year 2012*, 26.

⁷¹ Ibid.

⁷² Ibid.

⁷³ U.S. Department of Defense, *2012 Workplace and Gender Relations Survey of Active Duty Members, Fiscal Year 2012*, 5.

⁷⁴ U.S. Department of Defense, *Department of Defense Annual Report on Sexual Assaults in the Military: Fiscal Year 2012*, 26.

⁷⁵ U.S. Department of Defense, *2012 Workplace and Gender Relations Survey of Active Duty Members, Fiscal Year 2012*, 5.

⁷⁶ U.S. Department of Defense, *Department of Defense Annual Report on Sexual Assaults in the Military: Fiscal Year 2012*, 24.

⁷⁷ Ibid.

⁷⁸ Chris Carroll, "Report of Sexual Assault in the Military Climbed in FY 2013," *Stars and Stripes Online*, February 26, 2014, <http://www.stripes.com/news/us/reports-of-sexual-assault-in-the-military-climbed-in-fy-2013-1.270162> (accessed February 27, 2014).

⁷⁹ U.S. Department of Defense, *Department of Defense Annual Report on Sexual Assaults in the Military: Fiscal Year 2012*, 21, 27.

⁸⁰ Ibid., 18.

⁸¹ Ibid., 27.

⁸² Mimi Swartz, "Sexual Misconduct in the Military-and Why Kirsten Gillibrand Is Pushing Reform to the Top of Her Agenda," *Vogue Online*, February 21, 2014, <http://www.vogue.com/magazine/article/kirsten-gillibrand-calls-for-reform-after-reports-of-military-rape-and-misconduct/#1> (accessed February 26, 2014).

⁸³ Ibid.

⁸⁴ U.S. Department of Defense, *2012 Workplace and Gender Relations Survey of Active Duty Members, Fiscal Year 2012*, 5.

⁸⁵ *Gillibrand Statement on New Pentagon Sexual Assault Policy* (Washington, DC: Senate, August 15, 2013), <http://www.gillibrand.senate.gov/newsroom/press/release/gillibrand-statement-on-new-pentagon-sexual-assault-policy> (accessed February 13, 2014).

⁸⁶ Swartz, "Sexual Misconduct in the Military-and Why Kirsten Gillibrand Is Pushing Reform to the Top of Her Agenda."

⁸⁷ U.S. Department of Defense, *Department of Defense Annual Report on Sexual Assaults in the Military: Fiscal Year 2012*, 57.

⁸⁸ Ibid., 52.

⁸⁹ Ibid., 66.

⁹⁰ Ibid.

⁹¹ Ibid.

⁹² Ibid., 66-67.

⁹³ Ibid., 66.

⁹⁴ Ibid.

⁹⁵ Ibid., 68.

⁹⁶ Ibid.

⁹⁷ Ibid.

⁹⁸ Ibid., 68-69.

⁹⁹ Ibid., 68.

¹⁰⁰ Ibid.

¹⁰¹ Ibid., 68, 70.

¹⁰² Doyle and Taylor, "Military Sexual-Assault Case Triggers Political Furor."

¹⁰³ Ibid.

¹⁰⁴ Melinda Henneberger, "Sen. McCaskill's Military Sexual-Assault Bill is Meatier Than Advertised," *Washington Post Online*, March 9, 2014, http://www.washingtonpost.com/politics/sen-mccaskills-military-sexual-assault-bill-is-meatier-than-advertised/2014/03/09/cdf646b4-a79a-11e3-8d62-419db477a0e6_story.html (March 10, 2014).

¹⁰⁵ Claire McCaskill, "Sexual Assaults in the Military -- The Policy Matters," *Huffington Post* (November 18, 2013), http://www.huffingtonpost.com/claire-mccaskill/sexual-assaults-in-the-mi_b_4297449.html (March 10, 2014).

¹⁰⁶ Response Systems Panel, *Whether Senior Commanders Should Retain Authority to Refer Cases of Sexual Assault to Courts-Martial* (Washington, DC: U.S. Department of Defense, January 29, 2014), http://responsesystemspanel.whs.mil/Public/docs/meetings/20140130/RoC_Assessment_Removal_CC_as_CA_FINAL.pdf (accessed March 10, 2014).

¹⁰⁷ Ibid.

¹⁰⁸ Liz Halloran, "Democrats Clash in Military Sexual Assault Debate," *NPR*, February 12, 2014, <http://www.npr.org/blogs/itsallpolitics/2014/02/12/275975428/democrats-clash-in-military-sexual-assault-debate> (accessed March 6, 2014); Patricia Kime, "Panel: Commanders Should Retain Authority in Sex Assault Case," *Military Times*, January 30, 2014, <http://www.militarytimes.com/article/20140130/NEWS05/301300023/Panel-Commanders-should-retain-authority-sex-assault-cases> (accessed March 11, 2014)..

¹⁰⁹ Ibid.

¹¹⁰ Patricia Kime, "Panel: Commanders Should Retain Authority in Sex Assault Case," *Military Times*, January 30, 2014, <http://www.militarytimes.com/article/20140130/NEWS05/301300023/Panel-Commanders-should-retain-authority-sex-assault-cases> (accessed March 11, 2014).

¹¹¹ Kris Ringwall, "BeefTalk: An Ounce of Prevention Is Worth a Pound of Cure," *NDSU News*, <http://www.ag.ndsu.edu/news/columns/beeftalk/beeftalk-an-ounce-of-prevention-is-worth-a-pound-of-cure/> (accessed March 13, 2014).

¹¹² Brock Vergakis, "Navy Seeks More Sexual Assault Survey Responses," *Huffington Post*, December 21, 2013, http://www.huffingtonpost.com/2013/12/21/navy-sexual-assault_n_4485927.html (accessed February 21, 2014).

¹¹³ Ibid.

¹¹⁴ Gretel C. Kovach, "Marines Get Blunt Sex Talk to Prevent Assault," *U-T San Diego*, August 17, 2013, <http://www.utsandiego.com/news/2013/aug/17/marine-sex-assault-training/> (accessed September 6, 2013).

¹¹⁵ Mark Thompson, "The Pentagon Battle against Sexual Assault Rages On," *Time Online*, March 9, 2014, <http://time.com/17536/pentagon-military-sexual-/> (accessed March 10, 2014).