

AIR WAR COLLEGE

AIR UNIVERSITY

REVITALIZING THE SQUADRON: RETURNING FAIRNESS
AND A SEARCH FOR TRUTH IN ADDRESSING SEXUAL
ASSAULT IN THE MILITARY

by

Courtney D. Finkbeiner, Lieutenant Colonel, United States Air Force

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Advisor: Thomas G. Becker, Academic Director, The Judge Advocate General's School

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Biography

Lieutenant Colonel Courtney D. Finkbeiner entered the Air Force in 1991 as a traffic management serviceman, and in 1997 she received her direct commission in the United States Air Force Nurse Corps as a Registered Nurse. She earned her Bachelor's in Nursing in 1995 from the University of Central Arkansas, and a Master's in Nursing through the Air Force Institute of Technology at East Carolina University. Lieutenant Colonel Finkbeiner graduated from Air Command and Staff College with a Master's in Military Operational Arts and Sciences in 2011. She completed a humanitarian deployment with the U.S. Navy in support of Operation CONTINUING PROMISE, as well as serving a tour in Kuwait in support of Operation NEW DAWN. Lieutenant Colonel Finkbeiner has held a variety of leadership positions including Chief Nurse Executive, and most recently, commander of the 341st Medical Operations Squadron at Malmstrom Air Force Base, Montana. Currently, she is a student at the Air War College at Maxwell Air Force Base, Alabama.

Thesis

Revitalizing the squadrons calls on the Chief of Staff of the Air Force to boldly challenge the sexual assault status quo of *guilty until proven innocent* for the accused, and remove unnecessary impediments for commanders, as well as place authority and responsibility at the right level, otherwise Airmen cannot thrive, and the missions of the Air Force will suffer.

Abstract

Sexual assault is a serious issue, and in the military sexual assault disrupts good order and discipline, erodes morale, and distracts from protecting the nation. Congress and the American public have a growing concern for the issue of sexual assault in the military. In response to concerns, multiple legislative reforms have been enacted within the Department of Defense. Additionally, the Chief of Staff of the Air Force has made revitalizing the squadrons an important focus area calling for identification and removal of unnecessary impediments for commanders and placing command authority at the right level. Revitalizing the squadrons is disrupted, however, by unchecked sexual assault reforms that have led to a “guilty until proven innocent” wingman culture for anyone accused of sexual assault. By first identifying the unnecessary impediments to fair resolution of sexual assault allegations, this paper examines the questionable methods used to evaluate the extent of sexual assault in the military, the moral panic created from inflated statistics, and the impact of unchecked reforms on the military justice system, along with the obvious disparity of resources between the alleged victim and the accused. Next, this paper examines the level of disposition for sexual assault charges, the issue of confirmation bias with expedited transfers, and the lack of truth-seeking in the pre-trial process. In sum, this paper links revitalization of the squadrons and the impact of legislative reforms on those accused of sexual assault in the military.

Introduction

Most people, in fact, will not take the trouble in finding out the truth, but are much more inclined to accept the first story they hear.

Thucydides¹

In the last seven years, the U.S. executive and legislative branches have passed a multitude of reforms regarding sexual assault in the military. These reforms are radical, unnecessary, untested and do not protect the victim, undermine the constitutional rights for those accused of sexual assault, and strip the commander's ability to enforce good order and discipline in their units.² Rather than enacting additional legislation to change the structure of the military judicial process, Congress should improve the existing judicial system. Legislators and senior military leaders have failed to critically evaluate solutions to "fix" sexual misconduct in the military, and the number of unintended consequences continue to mount particularly on the side of the accused. The goal of any legislation should be the creation of a fair, impartial military justice system for victims and the accused alike.³ In this case, the definition of justice includes the respect for Due Process of the law, and respect for the individual rights of both the accused and victim.

Since 2012 sexual assault reforms have negatively impacted the ability of commanders to revitalize the squadron and created a wingman culture where the accused are guilty until proven innocent. How can airmen thrive in environments where the word "truth-seeking" in sexual assault investigations and pretrial procedure has been removed from their code of justice? The Chief of Staff of the Air Force calls for revitalizing the squadrons and identifying and removing unnecessary impediments and placing authority and responsibility at the right level. The perception of a military sexual assault problem based on moral panic and questionable statistics, and the growing disparity of resources for the defense and the accused are unnecessary

impediments. Placing authority and responsibility at the right level includes critically evaluating programs that have become incentives for making false accusations, redefining the level of command for deciding the initial disposition of the accused, and returning the pre-trial process to a truth-seeking investigation that protects the victims and provides due process to the accused.⁴

Sexual Assault & Prevention Response Background

The increased attention by legislators to the issue of sexual assault⁵ in the military has tilted the scales of justice away from the accused in a way no other crime in the military is viewed.⁶ Notwithstanding the requirements of Due Process, in their day-to-day lives, those accused of sexual assault are treated as presumed guilty because politics play an important role in how sexual assault cases are resolved.⁷ During testimony to the U.S. Commission on Civil Rights, retired U.S. Navy Commander and military defense attorney, Philip Cave, points out the “politicization of the issue of sexual assault in the military threatens the goal of...fairly and accurately distinguishing those Service members who are innocent from those who are guilty.”⁸ Vice Chair for the U.S. Civil Rights Commission, Abigail Thernstrom, acknowledges both the media and legislators believe the myth that the military is not seriously addressing sexual assault, when in reality the military is charging more people with “bogus” cases to show how seriously they do take it. The military and prosecutors are taking an even more aggressive stance, to the detriment of Due Process to the accused.⁹

In an unprecedented move, the U.S. Education Department has recently gone public with its own concerns regarding Due Process for those accused of sexual assault on college campuses. Secretary Betsy DeVos vocalized her concerns for the Obama-era guidance on campus sexual assault which is “unfair toward the accused and could jeopardize their futures, as the guidance lowered the standard for proving allegations.”¹⁰ Similar to the 2012 Department of Defense

(DOD) actions for military sexual assault, in 2011 the Obama administration outlined specific guidance for schools in addressing sexual assault allegations. Again like the military, the Obama administration and other activists placed intense pressure on colleges to fix the sexual assault problem while questioning leadership on their actions to take sexual assault seriously.

As a result of these concerns and their fixes, more campus reforms were introduced and until now, none of the reforms were critically evaluated for second and third order effects. Guidance flaws included the presumption of guilt ahead of a hearing, not allowing the accused student access to witnesses and evidence, and informing the hearing panel of the student's guilt instead of letting the hearing panel reach its own decision. DeVos is calling for investigation processes that are fairly balanced for both the victim and the accused.¹¹ DeVos' concerns for the campus accused is similar to the concerns for the military accused. Like DeVos, commanders should be asking if the current rules and culture are unfair towards the accused, is it jeopardizing their futures, and has the guidance lowered the standard for proving allegations.

Identifying & Removing Unnecessary Impediments to Fair Resolution of Sexual Assault Allegations

Moral Panic and Questionable Statistics

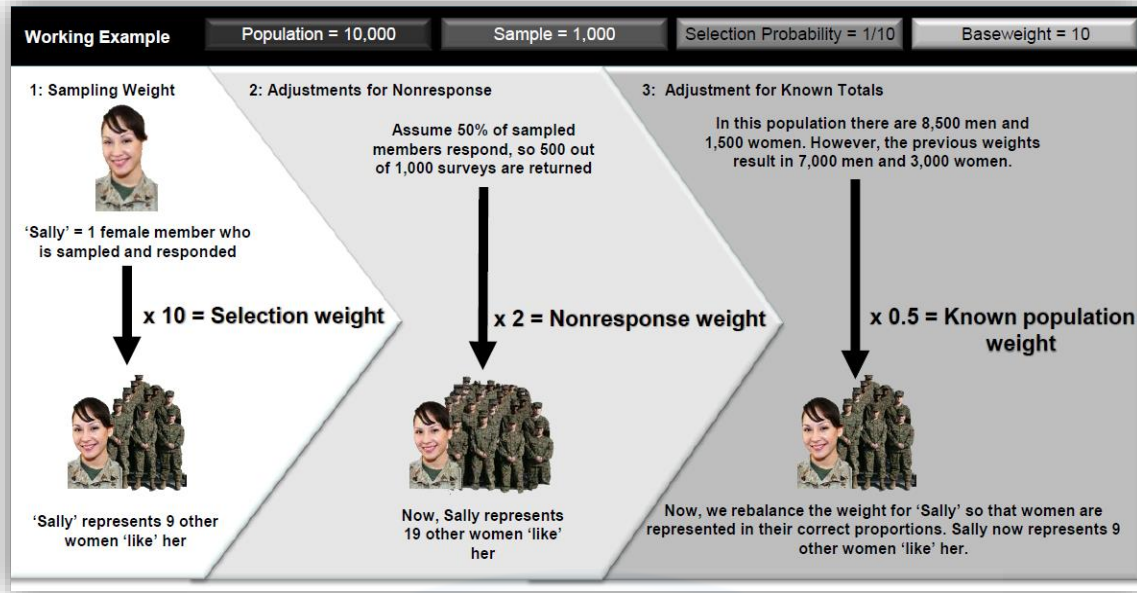
Today's environment surrounding sexual assault in the military has been fueled by "moral panic," a form of public fear stimulating state interventions which greatly exceed the threat posed to society by a particular "threatening" group. The fuel for the moral panic is bad data on the prevalence of sexual assault.

To assess the prevalence of sexual assault in the ranks, the DOD uses the biennial Workplace and Gender Relations Survey of Active Duty Members (WGRA), the Workplace Gender Relations Survey of Reserve Component Members (WGRR), and the RAND Military

Workplace Survey (RMWS). In his 2016 published article, Lieutenant Colonel Reggie Yager, U.S. Air Force Attorney, points out these surveys are a core issue in sexual assault policy. Advocates are using distorted survey data to inform policy and justify changes. All of these surveys have fundamental flaws that contribute to distortions of sexual assault in the military and fuel moral panic.¹² The most egregious survey flaw is the complete lack of validation for reported facts and inaccurate terminology, which skews reliability of the data. From 2008 until 2014, WGRA survey asked respondents if they had experienced “unwanted sexual contact,” (USC) a vague term different from any offense under Article 120, UCMJ.¹³ Although the RAND Corporation changed the survey to mirror the UCMJ definition, inaccurate USC data from the last six years has had a profound effect on the perception of the sexual assault problem in the military.¹⁴

The DOD surveys further inflate sexual assault statistics by extrapolating data and assigning weighted response rates up to 34% to account for the total population.¹⁵ DOD surveys are generalized *boosted* models, which adjusts for nonresponse by *predicting responses* to key survey measures (e.g. sexual assault) as well as *predicting survey response*.¹⁶ In other words, the DOD surveys inflate the actual sexual assault numbers to provide hypothetical data based on the probable responses from the entire active duty population. For example, in 2016 the DOD sent the WGRA survey to 735,329 individual active duty service members, and 151,010 completed the survey. The weighted response rate was 24%, and female members who responded were multiplied by 10. One female survey response represented nine other women, nine women who did not complete the survey. The over-inflation for non-responses is even higher. One female non-response represents 19 other women. Table 1, is an excerpt from the WGRA explaining their weighted methodology.¹⁷

Table 1. WGRA Three Step Weighting Process



Adapted from Office of People Analytics . 2016. 2016 Workplace and Gender Relations Survey of Active Duty Members. Overview Report, Washington, D.C.: Department of Defense.

Acknowledging the tremendous disparity in the military sexual assault data, the Defense Advisory Committee on Investigation, Prosecution, and Defense of Sexual Assault in the Armed Forces (DAC-IPAD), in their March 2017 report, questioned the reliability of the methodology used to collect sexual assault data. One of the biggest challenges recognized by the Committee is the number of sexual assaults actually occurring in the military which is based on an estimation from anonymous surveys and driving public debate.¹⁸ In a transcript from the 2017 Committee, testimony from Brigadier General (Retired) James Schwenk, explained the 26,000 estimates of sexual assault is an extrapolation from limited survey data that includes an overbroad definition of sexual assault.¹⁹ Anonymous surveys, like the ones used by the DOD, have not validated each report for meeting the standard for a crime. By presuming every report is true, researchers are producing questionable data without validation.²⁰ The Office of People

Analytics (OPA) outlines the limitations of the WGRA data, but legislators and military leaders are not reading the fine print.

References to “sexual assault” throughout the report *do not apply legal definitions for sexual assault* and should be interpreted as “alleged” events without knowing more about the specifics of particular cases or reports, *this data should not be construed as substantiated allegations*. As experiences of behaviors are self-reported on surveys, such experiences may or may not have been investigated, therefore, *conclusions that a crime occurred may not be made*.²¹

The annual Sexual Assault Prevention and Response (SAPRO) report, a culmination of WGRA, WGRR, RMWS anonymous surveys (Table2), goes to Congress each year as a validation measure of progress in the military addressing sexual assault.²² The DOD has accepted every sexual assault allegation as true regardless of proof, and policy makers are citing unsubstantiated reports to highlight a problem when there may be no cause. Additionally, the SAPRO report compares the unsubstantiated anonymous assault reports to actual substantiated criminal investigations in order to “close the gap between prevalence and reporting,” that is, to demonstrate a purported failure of the military to deal with the problem.²³ Flawed as this data may be, the DOD provides a level of transparency to the general public that is not required from the civilian judicial system. The military has opened the door for criticism through its transparency, yet the American public has no data to hold their own civilian judicial system accountable for addressing the prevalence and reporting of sexual assault.²⁴

Table 2. SAPRO Report of Estimated Number of Service Member Victims



*Note the correlation between the percent of *did not report* and the overall *estimated number of victims*. With probability measures, the larger the *did not report* category the larger the *estimated number of victims*.

The Alleged Victim and the Accused: A Disparity of Resources

In 2014, Congress directed the SECDEF to establish the Judicial Proceedings Since Fiscal Year 2012 Amendments Panel (JPP) for a three-year term to investigate the issue of sexual assault in the military.²⁵ The JPP subcommittee conducted site visits and spoke to individuals who work in the military justice system representing 25 military installations. In their report on defense resources and experience, they focused on four main areas: (1) defense investigators, (2) defense office resources and staffing, (3) defense requests for and funding of experts, and (4) defense counsel experience.²⁶ In April 2017, the subcommittee issued their findings and recommendations in each of these areas before disbanding in September of 2017.

The prevalent problem was 90% of defense requests for investigative support are denied by convening authorities and military judges,²⁷ Junior paralegals who are not trained as investigators perform investigations. MCIOs will not investigate defense leads. Further compounding the investigation process is the altered Article 32 process from a pretrial investigation to a less-than-robust hearing where the victim is no longer required to and

frequently does not appear. Rather than examine the victim, the prosecution submits written statements as evidence for review. Discovery for the defense is no longer one of the purposes of the Article 32 process, making it far more difficult for defense counsel to gain access to important information.²⁸

From the JPP's 2012 to 2014 data, 75% of the cases that were not referred to trial had met an Article 32 *investigation* where the decision was made to dismiss charges.²⁹ This statistic should be an alarming sign for a broken process. In a system where the Article 32 is no longer an "investigation," the victim does not appear, there is no cross-examination, and "truth-seeking" is no longer a goal, it becomes evident neither victim nor accused can expect justice. The JPP subcommittee concludes the changes to Article 32 and the lack of defense resources has "negatively affected the quality of the military justice in sexual assault cases."³⁰ During the JPP subcommittee site visits with more than 280 individuals, both trial and defense counsel called the pretrial hearing a "paper drill."³¹

Nearly two and a half years since the Response Systems to Adult Sexual Assault Crimes Panel (RSP) recommended that Service defense organizations be provided with independent, deployable defense investigators, nothing has been done to support the recommendation. The subcommittee found sexual assault defense investigators are necessary to correct the "obvious imbalance" of resources when compared to the resources available to the prosecution.³² Likewise, the disadvantaged defense must reveal their trial strategy to the convening authority in order to have any hope for their funding of a defense expert.³³ The JPP also found the defense request for experts were frequently denied, or if approved, the defense was provided with an inadequate substitute.³⁴ Table 3 summarizes the disparity of military support services for both the victim and the accused.

Table 3. Victim and Accused Support Services Comparison

Support Services:	Victim	Accused
Legal Support	Special Victims Counsel (SVC)	Area Defense Counsel (ADC)
	Sexual Assault Prevention & Response Victims Advocate (SAPR VA)	
	Sexual Assault Response Center (SARC)	
	Special investigators	NO assigned investigators; untrained paralegals attempt to investigate
	Expedited transfer, DOD tracks transfer rates for victims & reports to Congress	RARELY Expedited transfer
	Funded expert testimony	NO funds for expert testimony
	Experienced prosecuting attorneys	Inexperienced defense attorneys
Reports	Annual SAPRO report in-depth details on occurrence & outcome	NO report on number of false or baseless allegations NO report on the outcome for the accused following false or baseless allegations or after acquittal (suicide, divorce, job loss)

Disposition of Sexual Assault Charges: Placing Authority & Responsibility at the Right Level

The United States (US) government has intensified pressure on the DOD to improve programs and response to sexual assault in the military. The 2012 Secretary of Defense memorandum *Withholding Initial Disposition Authority Under the Uniformed Code of Military Justice (UCMJ) in Certain Sexual Assault Cases* and the 2014 National Defense Authorization Act (NDAA) made radical changes to UCMJ limiting both the military commanders' and the military justice system's ability to address sexual misconduct. The 2012 documentary *The Invisible War* challenged society's beliefs on the military as a profession.³⁵ The film includes a

series of interviews from victims who reported sexual assault while in the military, and then describe their treatment by commanders after reporting.³⁶ In response to moral panic over the film, the SECDEF issued a memorandum withholding initial disposition authority from commanders who are not in the grade of O-6 (i.e., colonel or Navy captain) or higher, in certain sexual assault cases.

Expedited Transfer of Alleged Sexual Assault Victims

In December 2011, DOD issued a Directive-Type Memorandum (DTM) in response to the tragic situation of Marine Lance Corporal Maria Lauterbach after she filed a rape report on another Marine, Corporal Cesar Laurean. Following a verbal protective order, Lauterbach was murdered by Laurean.³⁷ The Deputy Secretary of Defense introduced DTM 11-063 establishing policies to expedite the transfer to another installation at government expense of service members who filed an unrestricted report of sexual assault.³⁸ The memorandum addresses “any threat to life or safety...a request to transfer the victim under these circumstances” and that “circumstances may also exist that warrant the transfer...but may not otherwise meet established criteria.”³⁹ As circumstances for an expedited transfer do not need to meet the criteria of the DTM, threat to life and safety, the original purpose of expedited transfer has become distorted and the process is dominated by victim confirmation bias.

The Process. Per Department of Defense Instruction (DODI) 6495.02, *Sexual Assault Prevention and Response (SAPR) Program Procedures*, victims of sexual assault are informed by the Sexual Assault Response Coordinator (SARC), the Sexual Assault Prevent Response Victims Advocate (SAPR VA), and the commanding officer (CO) at the time of filing an unrestricted report that an expedited transfer is an option. If the victim decides to initiate an expedited transfer request, the CO has 72 hours to respond. Victims have the right to appeal any

transfer denials from the CO to the next general officer in the chain of command. Additionally, in accordance with (IAW) DODI 6495.02, “a presumption shall be established *in favor* of transferring a Service member following a credible report of sexual assault.”⁴⁰ The resulting changes to this DODI has created second and third order effects for the victim, the accused and the CO.

Confirmation Bias. The term “in favor” creates *confirmation bias* on behalf of the victim before any investigation or truth-seeking has occurred. Confirmation bias happens when decision makers assign more weight to evidence that confirms their hypothesis, and ignore or under-weigh evidence that could disprove their hypothesis.⁴¹ A “credible report” as defined by DODI 6495.02, is “a written or verbal report made in support of an expedited transfer that is determined to have credible information.”⁴² Therefore, any statement from the victim can be considered a credible report. An official report from the MCIO is not a requirement for expedited transfer. In the past, the CO of the accused could request a preliminary investigation into a sexual assault allegations; however, since publication of DODI 6495.02, policy requires CO’s to immediately refer all sexual assault reports to an MCIO for investigation.⁴³ Due to the 72-hour response time for the CO, almost always, the victim is transferred before the CO has facts from a MCIO’s investigation. It is an injustice to the victim of sexual assault and the accused to require CO’s to make decisions in 72 hours based on unsubstantiated statements which involve competing interests and should involve principled deliberation. Service members under investigation for sexual assault have his/her records flagged and all favorable actions are suspended.⁴⁴ Expedited transfers reinforce victim confirmation bias and presume the guilt of the accused.

False Accusations. In testimony to the U.S. Commission on Civil Rights, defense attorney, Philip Cave, brought up the concerns for false accusations from victims in order to obtain an expedited transfer, delay punishment for misconduct, or for revenge.⁴⁵ MCIO's have reported an increase in unfounded sexual assault cases from 5.2% in 2009, to 10.7% in 2010, 11.9% in 2011 (the year expedited transfer was introduced), and 13.6% in 2012.⁴⁶ While false accusations of sexual assault remain uncommon, this nearly three-fold increase in accusations that have been determined to be false by MCIO's is alarming. Implications that this increase is, at least in part, due to incentives for false accusations created by recent reforms is unavoidable. During 2016 the JPP Subcommittee site visits, MCIO's stated the internal policies that discourage thorough questioning and follow-up interviews of victims as well as the presence of special victims counsel (SVC) at every interview, hampered their ability to interview the victim as thoroughly as necessary.⁴⁷

In 2016 Will Helixon, former U.S. Army prosecutor for sexual assault, launched a social media survey and garnered 182 responses on the perceptions of reporting sexual assault in the military. Over 77% of the respondents agreed the request for expedited transfer to another post is an incentive for false sexual assault reporting. Helixon and the vast majority of respondents concluded there are circumstances in the military that make false reports of sexual assault more likely, yet there have been no efforts to study the rates of false reports in the military. Helixon calls for a task force comprised of defense lawyers, prosecutors, law enforcement, advocates, and social scientists to study false reports in the military in a comparison study to civilian communities.⁴⁸ A comparison study is warranted and, equally important, an evaluation of the impacts of expedited transfer on commander accountability.

Command Accountability. Major General Gary Patton, Director, DOD SAPR Office, uses the number of expedited transfers as a data point on the effectiveness of support programs for sexual assault victims. Of the 200 expedited transfers in 2011, only one was denied by the commander because that victim was separating from the military.⁴⁹ Patton goes on, “So we are watching that [denials of expedited transfers] very closely.” Patton’s statement implies the problem lies with the CO who cannot be trusted to make prudent decisions on expedited transfer rather than a flawed policy focused on transfer before any truth-seeking investigation into accusations. From the same testimony to the Civil Rights Committee, Dr. Victor Hansen, Hastings School of Law professor and former U.S. Army attorney, advocates holding CO’s criminally liable for failing to respond appropriately to sexual assault.⁵⁰ Both Patton and Hansen’s ideas on enforcement may motivate some CO’s to take action even if the expedited transfer is unwarranted. In her testimony to the U.S. Commission on Civil Rights, defense attorney Major Bridget Wilson stated,

...the military way is that if the command wants more reports, they will get those reports, one way or another even if those reports are not accurate. No institution is more single minded in its pursuit of a goal than the armed forces. When those in charge express the desire to see something done, it will be done, often without regard for the collateral damage.⁵¹

From the 2016 Helixon survey, 59.44% of respondents believe CO’s have no choice but to prosecute all cases where a victim alleges sexual assault. Helixon argues changes in the military evaluation system have made the way a CO supports the sexual assault prevention program a condition for promotion, and “one perceived misstep and an otherwise American Hero becomes a ‘has been’ and his or her career is over.”⁵² Then-Lieutenant Colonel Helixon was the prosecuting attorney for the sensational sexual assault case involving U.S. Army Brigadier General Jeffrey Sinclair. Helixon resigned from the Sinclair case, and eventually the Army,

siting concerns over the victim's less-than-truthful testimony. Helixon told colleagues he did not want to prosecute the case, but was being forced.⁵³

Initial Disposition of Sexual Assault Charges

The Process. Following the MCIO investigation of an unrestricted sexual assault report, the CO has the authority to determine the initial disposition of the accused. Each commander has discretion to dispose of offenses by members of that command.⁵⁴ For all allegations of *penetrative* sexual assault, however only a colonel, Navy captain or higher can make the initial disposition and special court-martial convening authority. For those allegations, commanders below the rank of colonel are not considered competent command authorities. A special court-martial convening authority will determine the initial disposition appropriate for the sexual assault offense to include: court martial, non-judicial punishment, and adverse administrative action.⁵⁵ From there, a preliminary hearing, under UCMJ Article 32, will be directed when it appears the sexual assault charges are of such a serious nature that trial by general court-martial may be warranted.⁵⁶

Commander Accountability. The Manual for Courts-Martial (MCM) states all commanders have the responsibility to maintain good order and discipline, promote efficiency and effectiveness in the military establishment, and thereby strengthen national security of the US.⁵⁷ Both military and civilians officials have a shared responsibility for the creation of sexual misconduct policy for the good of society. Officers and civilian officials take an oath to defend the Constitution, and it is the Constitution that makes them equally accountable for the defense of the nation.⁵⁸ Per Air Force Instruction (AFI) 1-2, *Commander's Responsibilities*, key elements of command are authority, accountability, and responsibility. There is no rank

distinction for commanders in the AFI, and every appointed commander is held to the same standard. Commanders are expected to:

Show themselves a good example of virtue, honor, patriotism, and subordination; to be vigilant in inspecting the conduct of all persons who are placed under their command; to guard against and suppress all dissolute and immoral practices, and to correct, according to the laws and regulations of the Air force, all persons who are guilty of them, and to take all necessary and proper measures, under the laws, regulations, and customs of the Air Force, to promote and safeguard the morale, the physical well-being, and the general welfare of the persons under their command or charge.⁵⁹

Confirmation Bias. As with many US government officials, the SECDEF is vulnerable to public opinion on national security issues, and his immediate response to the documentary *The Invisible War* was not based on national security concerns but by public scrutiny.⁶⁰ The SECDEF demonstrated confirmation bias when he delivered the 2012 *Withholding Initial Disposition Authority Under the Uniformed Code of Military Justice (UCMJ) in Certain Sexual Assault Cases*. Believing he had considerable justification the SECDEF enacted the change to the UCMJ based on distrust of commanders without investigating the issue and consulting military advisors. Ruling from moral panic, SECDEF's memorandum disempowered the service secretaries and Joint Chiefs by promulgating "unequal dialogue" in the decision to withhold disposition from commanders below the rank of colonel.⁶¹ Samuel Huntington's theory for civil-military relations suggests such preemptory exercise of civilian control leads to ineffective policies and unwise decisions.⁶² Contrary to what is expected of all officers by law, the SECDEF's memorandum implies only colonels or higher are competent when it comes to sexual assault cases.

Article 32, UCMJ

The Process. In addition to changing command level authority, the pre-trial process has undergone radical UCMJ changes. The 2014 NDAA made dramatic changes to the UCMJ, most

notably, Article 32, and Rule 405, MCM, which changed a pretrial *investigation* to a preliminary *hearing* for the purposes of a “narrower objective.”⁶³ The preliminary hearing is no longer intended as a means of discovery and the sexual assault victim is not required to testify or be present.⁶⁴ The radical change from investigation to hearing is illustrated by verbiage from the 2012 MCM that is deleted from the 2016 MCM:

The primary purpose of the investigation...is to inquire into the truth of the matters set forth in the charges, the form of the charges, and to secure information on which to determine should what disposition should be made of the case. The investigation also serves as a means of discovery. The investigation be limited to issues raised by the charges and necessary to proper disposition of the case. The investigation is not limited to examination of the witness and evidence mentioned in the accompanying allied papers.⁶⁵

Confirmation Bias. The preliminary hearing is to impartially weigh the facts needed for the “limited scope.”⁶⁶ The scope is indeed limited, as the sexual assault victim is not required to testify at the hearing or be present. The defense is no longer given “wide-latitude in cross-examining witnesses” which was an option in previous MCMs.⁶⁷ Summarizing the impact to the judicial system: the victim is not required to attend the preliminary hearing, testify, or be cross-examined and, therefore, contribute to truth inquiry on the charges. As one military law expert has described it, the 2014 NDAA changed the Article 32 process from:

... a screening device designed to protect against referral to trial of baseless charges, provide convening authorities with necessary factual and legal predicates for either referral or other disposition of charges....

To something quite different, something where:

...Congress threw all of this out the window, and...turned one of the best features of the military justice system into a legal speed bump with little value in assessing the ultimate truth of an allegation.⁶⁸

Research Implications

From the cumulative data collected on this topic (see Appendix B), this research has identified the need for critical evaluation on the second and third-order effects of sexual assault reform. The respondents are at the forefront of leading airmen, and the majority of responses identified serious problems.

Culture Implications. While 50% of respondents agreed the Air Force culture meets the SECAF definition and this culture is extended to those accused of sexual assault, another 55% were unsure or disagreed. It is concerning the term “guilty until proven innocent” is mentioned in free text responses. What are the implications for those accused of sexual assault, regardless of guilt or innocence, if they are not afforded the same wingman culture as other airmen?

Credibility Implications. Many respondents, 44%, were unsure if sexual assault allegations were carefully considered before approving expedited transfer, while only 19% agreed careful consideration was given prior to the transfer. Does this imply the 72 hour timeline is too short for CO’s to make a credible determination or the DODI terminology “in favor of” has led to confirmation bias for the alleged victim? It is also concerning the term “false allegations” is mentioned repeatedly in free text responses.

Impediment Implications. It is clear the respondents are divided when it comes to unnecessary impediments regarding the sexual assault prevention and response program with 34% not experiencing impediments, 33% experiencing impediments, and 33% were unsure. Does this mean impediments, or obstructions, for the sexual assault program is something that is either not defined or something that is not questioned or challenged? What are the implications for the alleged victim or the accused?

Recommendations

You should punish in the same manner those who commit crimes with those who accuse falsely.

Thucydides⁶⁹

Identifying & Removing Unnecessary Impediments to Fair Resolution of Sexual Assault Allegations

1. Data Collection

Recommendation. The DOD needs to adopt a gold standard for collecting sexual assault data. For example, the Bureau of Justice Statistics uses the National Crime Victimization Survey, which is considered the “gold standard” in capturing violent crime rates.⁷⁰ The bureau conducts months of in-person interviews, either face-to-face or via telephone with a scientific sample size. Unlike the DOD surveys, which are based on weighted metrics that are inflated probability values to meet the estimated target population response rate.⁷¹ While using a tool similar to the Bureau of Justice could be manpower intensive, collecting accurate data to identify the depth of the sexual assault issue within the military is an investment both the American public and the DOD would support.

Additionally, using a question understanding aid (QUAID) for DOD surveys would help to identify and correct ambiguity in vague terms such as “unwanted sexual contact” compared to the UCMJ definition of sexual assault. The biggest challenge with fidelity and variation of survey question is question interpretation by the respondent. When the question is misinterpreted, the validity and reliability of the response is called into question.⁷² Eliminating misinterpretation further emphasizes the benefit of in-person surveys.

Recommendation. Establish data collection for false or baseless allegations of sexual assault and include the outcomes for the accused (suicide, divorce, job loss, etc.). DOD data

collection has been focused on the alleged sexual assault victim, and little has been done to evaluate the impact of false or baseless allegations for the accused. Defining the extent of suicide, divorce, job loss, promotion loss, and chronic mental health issues would ensure those trends are also brought to the attention of the military senior leaders, commanders, legislators, and the American public. Knowing the breadth and depth of the outcomes for those falsely accused, would stimulate military justice reforms that hold service members responsible when making false statements on all crimes.

2. Balanced Support Services

Recommendation. Provide balanced support services for the accused. Congress and the military needs to follow through with the JPP formal recommendations from over three years ago and correct the disparity for the defense. Providing independent defense investigators, ensuring sufficient staffing and resourcing of defense offices, place expert witness approval and funding authority in the military defense organizations, and ensure lead defense counsel in sexual assault cases have sufficient litigation experience, setting a minimum tour length for defense of two years. Additionally, as recommended by the JPP, the SECDEF should conduct an audit on all military services to determine the optimal level of staffing for the defense in the long term. In the short term, the SECDEF should authorize temporary details from one military service to another to eliminate the disparity of resources for the defense.⁷³ The disparity of resources for the defense impacts the support staff available for the accused. Until the defense has more staffing, the ADC cannot act as the sole legal support for the accused.

Disposition of Sexual Assault Charges: Placing Authority & Responsibility at the Right Level

1. Expedited Transfer

Recommendation. Evaluate incentives for false accusations with expedited transfer. The term *in favor* creates confirmation bias for the victim should be removed from DODI 6495.02. Rather than the 72 hour timeline for the CO to respond, a safety risk assessment should be done within 24 hours of an alleged victim filing a sexual assault report. The risk assessment is done by military police to determine the threat of violence level for the victim. This assessment includes the where the alleged victim lives, (dorm, on-base, off-base), who resides with alleged victim, whether the alleged victim and accused work together, and the perceived level of threat from the squadron commander. This information along with the request for expedited transfer contribute to credible information for the deciding commander. Data should be collected on the number of expedited transfers that were a result of false or baseless accusations. Additionally, data should be collected on the number of alleged victims that became uncooperative witnesses once transferred.

2. Article 32

Recommendation. Return UCMJ article 32 to a truth-seeking investigation where the victim and accused are required to appear. As the JPP identified, without witnesses, including the alleged victim, there is far less evidence to present. Without evidence, the victim and the accused cannot have justice. Multiple support services provide an opportunity for the victim to work through the discomfort of testifying, and testifying provides the accused Due Process. If the civilian judicial system requires cross examination of both the alleged sexual assault victim and the accused, why would the military require less?

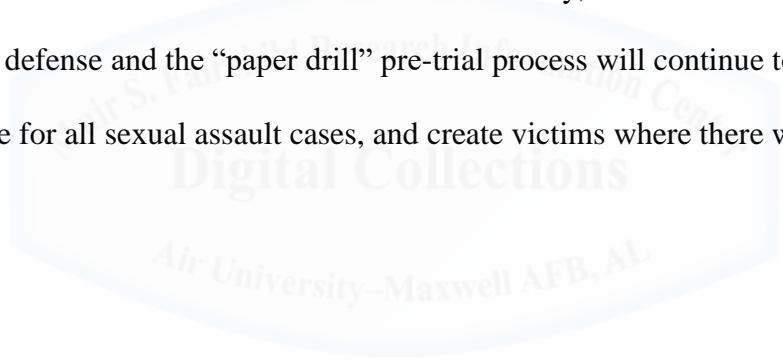
3. Initial Disposition

Recommendation. Demonstrate trust in lawfully appointed commander and allow commanders below the military grade of Colonel or O6 to determine initial disposition for all sexual assault offenses. Per regulation, hold all commanders responsible for the good order and discipline in their units, and punish only those commanders who violate their legal obligation. Sexual assault is the only crime where there are limits imposed on command decision making. This tells Airmen their commanders can make prudent decision on all crimes but those specific to sexual assault. If squadrons are where the Airmen live and thrive, then squadron commanders below the grade of O6 should have the authority to make decisions regarding sexual assault including penetrating offenses.

Conclusion

Challenging what has become the status quo for those accused of sexual assault is key to revitalizing the squadrons. While the author of this paper recognizes the seriousness of sexual assault in the military, allowing a culture of *guilty until proven innocent* for those accused of sexual assault negatively impacts the wingman culture and continues to be overlooked by senior officials. Unchecked “fixes” for military sexual assault has created victims of the accused, has failed to protect the actual victim, and has belittled the commander’s authority to enforce good order and discipline. Equally important, these reforms are creating moral panic which feeds political agendas and leads to the denial of Due Process for airmen accused of sexual assault. Despite the U.S. Commission on Civil Rights, the Judicial Proceedings Panel, and the Defense Advisory Committee for Sexual Assault identification of sexual assault data flaws, an overzealous military accepting bogus claims, and the obvious imbalance of resources for the defense, nothing has been done to change what has become a status quo. The first step to

improving the way sexual assault is identified in the military is by eliminating inflated probability measures and utilize an industry gold standard including in-person interviews that provide clarity while eliminating ambiguity in determining the nature of the sexual assault allegations according the definition of a crime. The second step to securing justice for both the accused and the victim is to return the pre-trial process to an investigation focused on “truth-seeking.” Next, in order for squadron commanders to safeguard the morale, physical well-being, and general welfare of all persons under their command, commanders below the rank of Colonel should be recognized as commanders under the Air Force instruction and determine the initial disposition for all sexual assault allegations. Punish commanders who disregard their command responsibilities and not the entire command structure. Finally, the avoidable disparity of resources for the defense and the “paper drill” pre-trial process will continue to affect the quality of military justice for all sexual assault cases, and create victims where there were none.



Appendix A.

Survey Questions

(Complete survey questions & results located at <https://www.surveymonkey.com/results/SM-9KLLK2ZW8/>. Access to open ended responses available upon request.

1. The Wingman Culture is defined as a culture of good wingmen encouraging others to grow mentally, physically, socially, with the commitment to build a strong community whose members are capable and have a strong sense of belonging. Does the Air Force treat airmen accused of sexual assault consistent with the wingman culture?
2. Does the current military sexual assault process adjudicate occurrences of sexual assault with fair and just results for both the victims and accused?
3. IAW DODI 6495.02 *Sexual Assault & Prevention Response Program*, victims who file an unrestricted report, shall be informed as soon as practical of the option to request an expedited transfer to the nearest personal support system. The commanding officer has 72 hours to approve the request, and any denials will be reviewed by the first flag officer in the chain of command. Additionally, the commanding officer must make a determination on the transfer based on a credible report (written or verbal report sufficiently believable to presume the facts in question are true) of sexual assault. Is the expedited transfer instruction a sound policy?
4. The credibility of sexual assault allegations are carefully considered before an expedited transfer is approved?
5. The number of support services offered to the sexual assault victim is: rate the adequacy.
6. The number of support services offered to individuals accused of sexual assault is: rate the adequacy.
7. One of the Chief of Staff of the Air Force's focus areas is "revitalizing the squadrons" by "identifying and removing unnecessary impediments for commanders." Have you experienced unnecessary impediments regarding the current military sexual assault prevention and response process or program?
8. If you could change the way the Air Force handles allegations of sexual assault, what would you change?

Appendix B.

Methods: 2018 Survey Results

The following research was approved by the Maxwell Air Force Base Air University review board, and was conducted in accordance with the applicable Air Force Instructions. The respondents selected were students from the Air War College (AWC), students from the Chief Master Sergeants course, and First Sergeants from Maxwell Air Force Base, Alabama. A survey link was provided for anonymous responses and aggregation of data. A total of 8 colonels, 29 lieutenant colonels, 37 chief master sergeants, 5 first sergeants, and 7 government civilians completed the survey for a total of 86 respondents. The results will be provided for each of the eight questions. Free text was allowed for each question so participants could expand on their responses. Complete survey questions are located in Appendix A of this document.

Corresponding data is located at the following link <https://www.surveymonkey.com/results/SM-9KLLK2ZW8/>.

Findings

Wingman Culture. Defining the Wingman Culture as a culture of good wingmen encouraging others to grow mentally, physically, socially, with the commitment to build a strong community whose members are capable and have a strong sense of belonging. Respondents were asked if the Air Force provides this type of culture for those accused of sexual assault. For the total respondents, 50% agree or strongly agree, 33% disagree or strongly disagree, and 17% were unsure. Free text comments were provided by 38 respondents and included:

- *...when an Airmen is accused of sexual assault...the member is shunned if not completely ostracized from their peers, other members of the unit, sometimes even unit leadership*

- *...majority of Airmen accused of sexual assault are left without wingman...Air Force has become quick to judge at the sound of sexual assault without waiting for the process to play out...leadership is quick to ostracize the accused.*
- *...we treat members guilty until proven innocent (15 other respondents commented similarly)*

Fair & Just Adjudication. When asked if the current military sexual assault process adjudicates occurrences of sexual assault with fair and just results for both the victims and the accused, for the total respondents, 41% agree or strongly agree, 35% disagree or strongly disagree, and 24% were unsure. Free text comments were provided by 37 respondents and included:

- *...our sexual assault process has created victims where there aren't crimes...we ostracize the accused.*
- *...more work needs to be done with false accusations, the intent is to protect the alleged victims, however, there is significant impact on those falsely accused...very difficult for those members to come back as if nothing happened...unfairly labeled.*
- *...the current system is heavily focused on the victim.*

Expedited Transfer. Following the DODI 6495.02 explanation and requirements for expedited transfer, respondents were asked if expedited transfer is a sound policy. For the total respondents, 53% agree or strongly agree, 35% disagree or strongly disagree, and 12% were unsure. Free text comments were provided by 39 respondents and included:

- *...this DODI forces a commander to respond to a report without evidence...*
- *...commanders seem to be quick to pull the trigger on this because they don't want to be labeled...tell me how 72 hours is enough for a credible report?*
- *I don't feel 72 hours is enough time for a commander to make a decision (10 respondents commented similar)*
-

Credibility & Expedited Transfer. When asked if the credibility of sexual assault allegations were carefully considered before approving an expedited transfer, of the total respondents 19% agree or strongly agree, 37% disagree or strongly disagree, and 44% were unsure. Free text comments were provided by 36 respondents and included:

- *...the reality is credible or not credible, a simple denial runs the risk of forcing a commander to justify his or her decision to the first flag officer in the chain...isn't that undue influence...at the very least its intimidation...*
- *...the worst part is that in our attempts to show that we care for the victim...we may be impacting the alleged offender...when it's very reasonable to assume this person did not really assault anyone*

Victim Support Services. When asked about the number of support services for the sexual assault victim, of the total respondents, 67% believed they were completely adequate, 26% believed there could be more, 5% believed there could be less, 2% believed there was not enough, and none believed there was too much.

Accused Support Services. When asked about the number of support services for those accused of sexual assault, of the total respondents 30% believed they were completely adequate, 26% believed there was not enough, 21% believed there should be more, 1% believed there should be less, and none believed there were too much. Additionally, 22% of respondents chose to type comments rather than rate the support services for the accused. Comments included:

- *...I think we forget that the accused are Americans with Constitutional rights to be presumed innocent until proven guilty.*
- *...the accused lack a designated advocate aside from the area defense council.*
- *...ADC does the best they can, but I believe they are stretched too thin...*

Unnecessary Impediments. When it came to revitalizing the squadrons and experiencing any unnecessary impediments regarding sexual assault prevention and response process or program,

of the total respondents 34% had not experienced impediments, 33% had experienced impediments, and 33% were unsure. Free text comments were provided by 35 respondents and included:

- *...I have seen overzealous SARCs that directly try to impact commander decisions on discipline based on...advocating for the victim.*
- *...as a 0-5 commander, there were numerous decisions and reporting mechanisms that were out of my hands...Colonels all the way to Lt Gen level.*
- *...if a commander ever disagreed with a suspected victim, I feel they would be ousted by the next level.*
- *...the AF has just annoyed everyone with the oversaturation (SAPR/green dot) which takes away from the intent of awareness.*
- *...length of investigation is primary impediment...the unit is unable to move forward for sometimes years.*
 - *...at the wing CMG meetings, Wing leadership wants to dictate to the squadron how to care for the victim.*

Handling Allegations. Respondents were asked what if anything should be changed regarding the handling of sexual assault allegations. If respondents believed nothing should be changed, they were to put “N/A” not applicable, in the comment box. For the total respondents, 6 skipped the question, and 80 responded with comments with 29 of those labeled N/A. Text analysis showed three key terms: accused used 21 times, victim used 19 times, and process used 17 times.

Comments included:

- *...guilty until proven innocent attitude towards accused.*
- *...we need to be more supportive of the victim and the accused.*
- *...I think the first focus needs to be on "How well do we train Airmen to try to not become victims to begin with?"*
- *...justice is too long for the victim and the accused...the process should be swifter.*

- *...an expedient process at the Sq/CC level should be available for the hard to prosecute cases/those with circumstantial evidence.*
- *...I'm not sure how to improve the AF process. I think the problem is bigger than just the AF. There are cases of false accusations but the system does not handle that well.*
- *...I think sometimes the Air Force rushes to "justice" too fast without adequately validating accusations. I think we could be a bit more deliberate in the process.*



Notes

- ¹ Goodreads Inc. (2018, Jan 29). *goodreads.com*. Retrieved from goodreads.com:
<https://www.goodreads.com/author/quotes/957.Thucydides>
- ² Stimson, C. (2013, November 6). *The Heritage Foundation*. Retrieved from heritage.org:
<http://www.heritage.org/node/11580/print-display>, p. 35.
- ³ *Ibid*, p. 28.
- ⁴ See Art 32, UCMJ, 10 USC § 832 (pretrial hearing as prerequisite to referral of charge to a general court-martial).
- ⁵ In popular usage, “sexual assault” is an umbrella description for several types of sex crimes set out in Article 120, UCMJ, *Rape and sexual assault generally*. The offenses punished under Article 120, in descending severity, are “Rape,” “Sexual Assault,” “Aggravated Sexual Contact,” and “Abusive Sexual Contact.” The elements that the prosecution must prove are different, as are the maximum punishments upon conviction, all of which include a dishonorable discharge (mandatory), forfeiture of all pay and allowances, and reduction to the lowest enlisted grade, as well as maximum prison sentences that range from seven years to life. For purposes of this paper, the distinctions among the Article 120 offenses are not important and the term “sexual assault” refers to any violation of Article 120, UCMJ.
- ⁶ U.S. Commission on Civil Rights. (September 2013). *Sexual Assault in the Military*. Washington, D.C.: United States Commission on Civil Rights., p. 76.
- ⁷ *Ibid*, p. 74.
- ⁸ *Ibid*, p. 74.
- ⁹ *Ibid*, p. 144.
- ¹⁰ Tatum, Sophie. 2017. "DeVos Announces Review of Obama-era Sexual Assault Guidance." *www.cnn.com*. September 7. Accessed October 1, 2017. <http://www.cnn.com/2017/09/07/politics/besty-devos-education-department-title-ix/index.html>.
- ¹¹ *Ibid*.
- ¹² Yager, Reggie. 2015. "What's Missing From Sexual Assault Prevention and Response." *ssrn.com*. Dec 3. Accessed October 1, 2017. <http://ssrn.com/abstract-2697788>. p. 39.
- ¹³ See fn. 5.
- ¹⁴ *Ibid*, p. 39.
- ¹⁵ Rodham, Lindsay L. 2013. "The Pentagon's Bad Math on Sexual Assault." *www.wsj.com*. May 19. Accessed Nov 12, 2017. <https://www.wsj.com/articles/SB10001424127887323582904578484941173658754>.
- ¹⁶ Office of People Analytics . 2016. *2016 Workplace and Gender Relations Survey of Active Duty Members*. Overview Report, Washington, D.C.: Department of Defense. p. viii.
- ¹⁷ *Ibid*, p. 26.
- ¹⁸ Bradford, Martha B. 2017. *Defense Advisory Committee on Investigation, Prosecution, and Defense of Sexual Assault in the Armed Forces Initial Report*. Initial Report 2017, Washington, D.C.: Department of Defense. p. 12.
- ¹⁹ *Ibid*, p. 12 endnotes.
- ²⁰ Yager, p. 52.
- ²¹ Office of People Analytics, p. 8-10.
- ²² Undersecretary of Defense. 2017. *Department of Defense Annual Report of Sexual Assault*. Annual Report, Washington, D.C.: Department of Defense. p. 9
- ²³ *Ibid*, p. 12.
- ²⁴ Bluhm, Brandi K. 2016. "Civil-Military Relations and Sexual Assault." *Civil-Military Relations and Sexual Assault*. Monterey, California: Naval Postgraduate School, September.
- ²⁵ Bradford, p. A-3.
- ²⁶ Judicial Proceedings Panel (JPP). 2017. *Report on Militar Defense Counsel Resources and Experience in Sexual Assault Cases*. Report of the Judicial Proceedings Since Fiscal Year 2012 Amendments, Washington, D.C.: Joint Proceedings Panel. p. 13.
- ²⁷ *Ibid*, p. 49.
- ²⁸ *Ibid*, p. 11.
- ²⁹ Judicial Proceedings Panel (JPP). 2016. *Report on Statistical Data Regarding Military Adjudication of Sexual Assault Offenses*. Report of the Judicial Proceedings Since Fiscal Year 2012 Amendments Panel, Washington, D.C.: Judicial Proceedings Panel. p. 25.
- ³⁰ JPP (2017), p. 14.

- ³¹ Ibid, p. 11.
- ³² Ibid, p. 14.
- ³³ Ibid, p. 17.
- ³⁴ Ibid, p. 17.
- ³⁵ Bradford, p. A1-2.
- ³⁶ Ibid, A-2.
- ³⁷ U.S. Commission on Civil Rights. (September 2013). *Sexual Assault in the Military*. Washington, D.C.: United States Commission on Civil Rights, p. 28. After extradition from Mexico where he had fled after killing Lauterbach, Laurean was prosecuted by the State of North Carolina for murder and other associated crimes, convicted, and sentence to life imprisonment.
- ³⁸ Stimson, p. 25.
- ³⁹ Deputy Secretary of Defense. (2011, December 16). Directive Type Memorandum (DTM) 11-063. *Expedited Transfer of Military Service Members Who File Unrestricted Reports of Sexual Assault*. Washington, D.C.: Department of Defense.
- ⁴⁰ Under Secretary of Defense for Personnel and Readiness. (2013, March 28). Department of Defense Instruction 6495.02. *Sexual Assault Prevention and Response (SAPR) Program Procedures*. Department of Defense. p. 37-40 (emphasis added).
- ⁴¹ ScienceDaily. 2017. *sciencedaily.com*. Nov 13. Accessed Nov 13, 2017. http://www.sciencedaily.com/terms/confirmation_bias.htm.
- ⁴² Ibid, p. 87.
- ⁴³ Ibid, p. 48.
- ⁴⁴ Ibid, p. 48.
- ⁴⁵ Ibid, p. 74.
- ⁴⁶ Ibid, p. 74.
- ⁴⁷ JPP (2017), p. 11.
- ⁴⁸ Helixon, W. M. (2016, May 10). *Law Office of Will M. Helixon*. Retrieved from www.helixongroup.com: <http://www.helixongroup.com/always-believe-victim-meets-false-allegations-accused-suffers/#comment-681>, p.10.
- ⁴⁹ U.S. Commission on Civil Rights. (2013, January 11). *www.eusccr.com*. Retrieved from Transcript of Briefing on Military Sexual Assault-FINAL: http://www.eusccr.com/msa_1.htm. p.
- ⁵⁰ U.S. Commission on Civil Rights. (September 2013). *Sexual Assault in the Military*, p. 52.
- ⁵¹ Ibid, p. 73.
- ⁵² Helixon, p. 10.
- ⁵³ Blinder, A., & Opiel, Jr., R. A. (2014, March 12). *How A Military Sexual Assault Case Foundered*. Retrieved from www.nytimes.com: <https://www.nytimes.com/2014/03/13/us/how-a-military-sexual-assault-case-founded.html>
- ⁵⁴ MANUAL FOR COURTS-MARTIAL (MCM), UNITED STATES, RULES FOR COURTS-MARTIAL (R.C.M.) 405 (2016.)
- ⁵⁵ Bradford, p. A-2.
- ⁵⁶ MCM, *supra* note, R.C.M. 405(c) (2016).
- ⁵⁷ MCM, Preamble, (2012).
- ⁵⁸ Neilson Suzanne C., and Don M. Snider. 2009. *American Civilian-Military Relations*. Baltimore, Maryland: The Johns Hopkins University Press, p. 69.
- ⁵⁹ AFI51-406, p. 3.
- ⁶⁰ Nielson, et, al. p. 69-70.
- ⁶¹ Ibid, p. 268
- ⁶² Ibid, p. 268.
- ⁶³ Committee Armed Services House of Representatives. 2014. "National Defense Authorization Act for Fiscal Year 2014." *113th Congress, 1st Session*. Washington D.C.: United States of America House of Representatives, p. 702.
- ⁶⁴ MCM, *supra* note, R.C.M. 405(e)(f)(g) (2012).
- ⁶⁵ MCM, *supra* note, R.C.M. 405(e)(f)(g) (2012).
- ⁶⁶ MCM, *supra* note, R.C.M. 405(a) (2016).
- ⁶⁷ MCM, *supra* note, R.C.M. 405(h) (2012).
- ⁶⁸ Becker, Thomas G. , "Alas, Poor Truth, We Knew You: Reflections on the Transformation of Article 32, UCMJ: 'Investigations into Pretrial 'Hearings.'", THE REPORTER, vol. 42 no. 2 at 41, 42, 44 (2015) (quoting, in part, from Thomas G. Becker, "In Defense of American Military Justice: A Comparative Analysis of the United States

Military Justice System and What Happens in the Civilian World,” (2003), posting on the National Institute for Military Justice website). Mr. Becker is currently the Academic Director at The Judge Advocate General’s School, U.S. Air Force, at Maxwell AFB, AL, a retired Air Force judge advocate, and former State Public Defender, State of Iowa.

⁶⁹ Goodreads Inc. (2018, Jan 29). *goodreads.com*. Retrieved from goodreads.com:

<https://www.goodreads.com/author/quotes/957.Thucydides>

⁷⁰ Rodham, Lindsay L. 2013. "The Pentagon's Bad Math on Sexual Assault." *www.wsj.com*. May 19. Accessed Nov 12, 2017. <https://www.wsj.com/articles/SB10001424127887323582904578484941173658754>.

⁷¹ Ibid.

⁷² Graesser, A. C., Wiemer-Hastings, K., kreuz, R., & Wiemer-Hastings, P. (2000). QUAID: A questionnaire evaluation aid for survey methodologists. *Behavior Research Methods, Instruments, & Computers*, 254-262. Retrieved from <https://link.springer.com/article/10.3758/BF03207792>

⁷³ JPP (2017), p. 4-5.

