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MASTER OF MILITARY STUDIES

It is all about Respect: The Army's Problem with Sexual Assault.

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By

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Preface

For those who have supported and inspired me to select sexual assault as the topic for my masters of military studies paper of which appears to be such a controversial issue among senior military leaders. With the amount of negative publicity focused on sexual assault within the military, I became interested with finding out what preventive measures and other mitigation actions the Army implemented to combat sexual assault within its culture. Unfortunately, I am concerned that the Army has not looked beyond the sexual assault and prevention and response policy to identify the root causes to this multifaceted problem. There is more involved than publishing additional supplements to a policy that would soon become cumbersome for those charged with executing it. Changing the mindset of a culture unfortunately takes time, time that sexual assault victims and survivors do not have.

The majority of the credit for my research goes Dr. Pauletta Otis, Professor of International Studies, for believing in the importance of my topic; therefore, having the patience and unconditional support providing me the direction to produce a quality product. In addition, I would like to thank my family for their continued support and guidance.

Executive Summary

Title: It is all about Respect: The Army's Problem with Sexual Assault.

Author: Major Wendy Brinson, United States Army

Thesis: The Army has failed to address the root causes of sexual assault, hindering its ability to obtain a clear picture of the complexity of the problem. This paper explores the creation of the Army Sexual Assault Prevention and Response Policy.

Discussion: In the 1990s, the Army undertook important revisions to its policies and practices regarding responses to sexual assault incidents in the armed forces. With continued pressure received from the media and public, the Army conducted several investigations that subsequently created the framework for the establishment of the Army Sexual Assault Prevention and Response Policy (2004). In dealing with the challenges of finding solutions to this complex problem, the Army has come to realize it must transition from a force that simply responds to sexual assault, to a force that prevents sexual assault. Even with senior leaders' efforts, sexual assault appears to be a persistent problem within the military as a whole. In 2008, the Army has launched a sexual assault campaign aimed to change the culture of its service in order to prevent sexual assault. Understanding and acknowledging the impacts that military culture has on the prevention of sexual assault is critical. Female soldiers represent 14 percent of the Army and over 90 percent of the sexual assault victims. Sexual assault affects the unit and the integrity of the military, but it is the victim's life that changes forever. The focus will be to determine the scope and actions taken or not taken in attempt to combat the Army's sexual assault problem.

Conclusion: Sexual assault is not about the female's presence in the military, it is about power and violence. The offenders that commit these crimes take away an individual's trust, faith, and their judgment. It does not stop there; it negatively influences the cohesion and readiness of an organization, placing others in harm's way.

Introduction

*"We will work in the area of sexual assault prevention, not just responding to the tragedy of sexual assault, but we want to be a model in how we prevent sexual assault."*¹ Secretary of the Army, Pete Geren, July 2, 2008

This paper explores the creation of the Army Sexual Assault Prevention and Response Policy. The United States Army has received extensive media coverage because of its apparent ineffectiveness in combating the ongoing problem of sexual assault. In the 1990s, the Army undertook important revisions to its policies and practices regarding responses to sexual assault incidents in the armed forces.

As late as 2012, despite high rates of reported and unreported sexual assaults within the ranks, the government is reluctant to release records from the Department of Defense and Veteran Affairs regarding their response to sexual assault.² This continued refusal to disclose these reports prevent the public from knowing the human toll of military sexual assault.

After continued pressure from the media and public, the Army conducted several investigations that subsequently created the framework for the establishment of the Army Sexual Assault Prevention and Response Policy in 2004. In dealing with the challenges of finding solutions to this complex problem, the Army has come to realize it must transition from a force that simply responds to sexual assault to a force that prevents sexual assault.

One sexual assault is too many, and the way to combat sexual assault is to prevent it.³ The Army has launched a sexual assault campaign aiming to change the culture of its service in

¹ J.D. Leipold, *Secretary re-emphasizes Army Stance on Sexual Assault*, July 2, 2008, www.army.mil, (accessed January 25, 2012).

² Sandra S. Park and Rachel Natelson, *Exposing the Ugly Details of the Military Sexual Violence Epidemic*, February 29, 2012, <http://servicewomen.org>, (accessed February 29, 2012).

³ Rob McIlvaine, *Army Study Shows Decline in Behavioral Health Stigma*, January 30, 2012, www.army.mil, (accessed February 29, 2012).

order to prevent sexual assault. Sexual assault affects the unit and the integrity of the military, but it is the victim's life that changes forever. Changing the culture may be the first step to instilling the confidence that a victim requires before they decide to come forward and file a complaint. The other areas that influence a victim's decision are first responders' actions, the legal system, and medical treatment provided.

The Army continued to respond sexual assaults rather than address the root causes; this approach has hindered the institutions ability to obtain a clear picture of the complexity of the problem. The focus of this paper will be to determine the scope of the problem and actions taken, or not taken, in the attempt to combat sexual assault in the Army.

What is Sexual Assault?

*“These women and these men who are willing to fight and die to protect and serve our country – they deserve better protection. Their families and dependents also sacrifice and serve. And so for this reason, we must spare no effort to protect them against this heinous crime. ... One sexual assault is one too many.”*⁴ Defense Secretary, Leon Panetta, January 18, 2012

According to the Army Regulation, 600-20, sexual assault is a crime defined as, “intentional sexual contact, characterized by use of force, physical threat, abuse of authority, when the victim does not or cannot consent. Sexual assault includes rape, nonconsensual sodomy (oral or anal sex), indecent assault (unwanted, inappropriate sexual contact or fondling), or attempts to commit these acts. Sexual assault can occur without regard to gender or spousal relationship or age of victim. Failure by the victim to offer physical resistance does not deem or construe as consent. Consent is not given when a person uses force, threat of force, or coercion or when the victim is asleep, incapacitated, or unconscious.”⁵

⁴ MSNBC.com Staff and News Services

⁵ Army Regulation 600-20, Chapter 8

It is important to note that the Army tracks other sexual crimes, which are included in the overall numbers reported in the Department of Defense annual sexual assault report. This paper focuses strictly on the sex crimes that meet the definition of sexual assault. Female soldiers represent 14 percent of the Army and over 90 percent of the sexual assault victims. Sexual assault leads all major violent crimes committed in the Army (depicted in table 1). Between 2006 and 2011, sexual assault in the Army has increased by 28 percent.⁶ Table 2 below depicts the increase of sexual assaults from fiscal years 2006 to 2011 (table 2).

Crime Categories	FY11 Offenses	Offenses Per 100,000	Percent Composition
Homicide	139	20	5%
Murder	65	9	2%
Voluntary Manslaughter	3	0	0%
Involuntary Manslaughter	24	3	1%
Negligent Homicide	11	2	0%
Attempted Murder	36	5	1%
Sex Assault	1,313	186	47%
Rape	515	73	18%
Aggravated Sexual Assault	414	59	15%
Forcible Sodomy	349	49	12%
Attempted Rape	29	4	1%
Attempted Aggravated Sexual Assault	6	1	0%
Kidnapping	69	10	2%
Robbery	87	12	3%
Aggravated Assault	920	130	33%
Child Pornography	283	40	10%
Total – Violent Felony	2,811	399	100%

Table 1: Major violent crimes committed by active duty soldiers

⁶ Headquarters, Department of the Army, Army 2020 Generating Health and Discipline in the Force: Ahead of the Strategic Reset Report 2012

Crime Category	FY06	FY07	FY08	FY09	FY10	FY11
Rape	418	535	348	406	461	515
Aggravated Sexual Assault	0	1	273	420	412	414
Forcible Sodomy	220	267	261	316	342	349
Attempted Rape	27	24	20	20	22	29
Attempted Aggravated Sexual Assault	0	0	6	3	5	6
Total Sexual Assaults	665	827	908	1,165	1,242	1,313

Table 2: Sexual assaults reported FY2006-2011

A recent lawsuit filed in 2011 by fourteen current and former members of the United States Military alleges that senior leaders have ignored sexual assault offenses committed by other service members; this latest suit, once again, has senior leaders searching for solutions to this complex problem. In fact, this new litigation has triggered the Department of Defense to identify new requirements that are designed to improve upon the current sexual assault policy.⁷ The new provisions include establishing an advocate certification program, expanding support to victim family members, specialized training for law enforcement and legal personnel, and the creation of an integrated data system to better track sexual assault cases. Once more, there are additional provisions identified to improve upon the sexual assault policy. This failure to look beyond the policy hinders the ability for senior leaders to make progress in dealing with this multifaceted issue.

Department of Defense Sexual Assault Prevention and Response Policy

Prior to 2005, the Department of Defense did not have an overarching policy that would set a department-wide standard for dealing with sexual abuse or assault.⁸ The Department of Defense Directive 1350.2, dated August 1995, outlined the Department’s policy concerning sexual harassment, and the Uniform Code of Military Justice (UCMJ) prescribed how to handle sexual assault incidents. The two did not balance the needs of the victim and the accountability

⁷Antoinette Bonsignore, “The Military’s Rape and Sexual Assault Epidemic,” April 2011, www.truth-out.org, (accessed January 5, 2012).

⁸ Terri Lukach, “General Explains New DOD Sexual Assault Policy,” March 23, 2005, www.af.mil/news, (accessed January 5, 2012).

of the offender; furthermore, these two documents underestimated the potential severity of the problem.⁹

In February 2004, Secretary Rumsfeld directed a review of the Department of Defense's process for the treatment and care of sexual assault victims. The basis for Secretary Rumsfeld's concern was an article in the *Denver Post* that reported 37 female service members sought counseling and other help from civilian rape crisis organizations after returning from combat deployments in Iraq or Afghanistan.¹⁰ The most significant outcome of this event was the creation of the Sexual Assault Prevention and Response Office (SAPRO) in 2005. In short, SAPRO became responsible for providing oversight to ensure that each of the Service's programs are in compliance with Department of Defense 2005 sexual assault policy.¹¹ In addition, to keep a pulse on the effectiveness of sexual assault prevention and response policy, the Defense Department published a provision in the fiscal year 2005 National Defense Authorization Act requiring the Department to provide an annual summary of the reported allegations of sexual assault.

The Sexual Assault Prevention and Response Program established a comprehensive response structure intended to provide the appropriate level of care to sexual assault victims and improve prevention efforts through education and training programs, as well as enhance the investigation system and the prosecution of offenders. Defining the term *sexual assault* was the first step to ensure uniformity in the implementation of the education and training programs. The framework for an integrated sexual response capability worldwide created the ability for a victim anywhere access to the same standard of support systems and response personnel. What is more,

⁹ Dana Michael Hollywood, "Creating a True Army of One: Four Proposals to Combat Sexual Harassment in Today's Army," www.law.harvard.edu (accessed January 2, 2012).

¹⁰ Sandra Jontz, "DOD orders review of policies on how sexual-assault victims are treated," February 8, 2004, www.stripes.com/news, (accessed January 5, 2012).

¹¹ Task Force Report on Care for Victims of Sexual Assault (page xii).

the Sexual Assault Response Coordinator (SARC) position was created at every military installation to serve as the single point of contact to coordinate sexual assault victim care created.

The new policy also introduced a confidential reporting option for sexual assault victims, known as the restricted report. With the restricted report, there is no notification of the victim's chain of command nor are the installation police authorities notified; therefore, no investigation is conducted. However, the victim is able to receive services provided by the sexual assault program and medical staff.

This new policy also provided guidance to commanders in the form of a checklist, illustrating how to deal with sexual assault incidents.¹² The objective of the department-wide sexual assault prevention and response policy was to gain the trust of the victim by building a climate of confidence in which they could come forward and file a report, either restricted or unrestricted, while simultaneously instilling in the armed forces that sexual assault will not be tolerated. In the subsequent section, this examination will focus on the Army's response to sexual assault incidents, in order to determine the scope of the problem.

Framing the Problem – Sexual Assault

Prior to the mid-1900s, the Army had experienced few of the highly publicized sexual assault cases that had dogged the other services. That all changed with the high-profile Aberdeen Proving Ground case.¹³ In 1996, the Army swiftly initiated an investigation to look into the allegations outlined in formal complaints brought forth by of over 50 female recruits against 11 drill sergeants and one officer. Sending the message that there was, “no tolerance for sexual assault,” the offenders received sentences ranging from prison time to dishonorable discharges.

¹² Task Force Report on Care for Victims of Sexual Assault.

¹³ Dana Michael Hollywood, 168.

This scandal brought about the establishment of the Senior Review Panel on Sexual Harassment in 1997. This panel was responsible for reviewing the human relations environment in the Army, measured in terms of respect and dignity, with particular emphasis on sexual assault issues.¹⁴ The eight-month review revealed that there was a lack of institutionalized commitment to the Army Equal Opportunity (EO) program, as well as a lack of trust by soldiers in the EO complaint system. It was clear that Army leaders had failed to gain the trust of their soldiers; a critical factor in fostering, maintaining, enforcing environment of respect and dignity.¹⁵ After the Senior Panel published its report, the Advisory Committee issued recommendations that included reforming recruiting policy, training cadre, and toughening basic training requirements.¹⁶ There were no recommendations that addressed combating sexual assault directly.

As the Army demonstrated its position on sexual assault, allegations of sexual assault against SMA Gene McKinney became public. The Army's senior enlisted soldier, who proudly advocated there was absolutely no place for sexual assault in America's Army, was now being accused of committing that transgression.¹⁷ His accuser was a decorated soldier with twenty-two years of service. After the release of the details surrounding her allegations, five other women came forward with similar complaints. The jury acquitted SMA Gene McKinney of all sexual misconduct charges, but found him guilty of one count of obstructing justice.¹⁸ SMA Gene McKinney received a letter of reprimand and he was reduced to the rank of Master Sergeant. The verdict challenged the very essence of an organization whose motto, at the time, was an, "Army of One". By allowing personal attacks during the trial, it set the tone that sexual assault

¹⁴ The Secretary of the Army's, Senior Review Panel Report on Sexual Harassment, July 1997.

¹⁵ Ibid page 3.

¹⁶ Dana Michael Hollywood, page 165.

¹⁷ Dana Michael Hollywood, page 161.

¹⁸ Dana Michael Hollywood, page 162.

victims would become the target as their character came into question in order to minimize the action of the accused. This episode illustrates how victims come to lose faith in the system, and by extension, why many sexual assaults go unreported. This, in turn, causes victims to suffer in silence.

Within two years of the SMA Gene McKinney's verdict, the Army found itself addressing another high profile sexual assault case. In 1999, the Army's highest-ranking female, General Claudia Kennedy, filed a sexual harassment complaint against General Larry Smith.¹⁹ The alleged incident occurred three years prior, and General Claudia Kennedy had complained informally to her superiors who handled incident internally. It was when she learned about the nomination of General Smith for the position of the Deputy Inspector General (IG), United States Army, a position involved in overseeing investigations of sexual assault that she felt a moral obligation to come forward formally.²⁰ The results of the investigation substantiated the sexual assault charges against General Larry Smith, and he received a letter of reprimand that led to the end of his career.

Over the past several years, the Army put forth relentless effort toward improving its policies and procedures aimed at achieving an Army that treats all soldiers and civilians with dignity and respect. The Kennedy case undercut the Army's portrayal of a male dominated organization open to giving females the mutual respect that they deserved.

In 2002, the Defense of Manpower Center directed all Services to conduct the Armed Forces Sexual Harassment Survey. The survey provided the Army an opportunity to evaluate the fundamental changes implemented after the Aberdeen Proving Ground scandal. Despite the increase in reported sexual assaults in the Army, the survey depicted females had faith that their

¹⁹ Dana Michael Hollywood, page 167.

²⁰ Dana Michael Hollywood, page 167-8.

leaders were doing the right thing in their efforts to prevent sexual assault. That said, statistical data released in response to a Freedom of Information Act (FOIA), indicated that the Army's current policy has failed to confront the problem. According to the FOIA data, the total number of reported cases of sexual assault involving Army personnel, including reservists, increased 19 percent from 1999 to 2002, and an additional five percent between 2002 and 2003.²¹

The Army continued to lag behind the other three services.²² Simply stated, thus far, the Army's efforts have done little to combat this complex issue. This is emblematic of what occurs when an institution responds to a crisis rather than the cause. With little improvement, the multifaceted matter of sexual assault was once again thrust to the forefront of the media after the United States Military went to combat in Afghanistan and Iraq.

After an article released in the *Denver Post* in 2003 stated that military victims had received assistance from civilian organizations, former Defense Secretary Rumsfeld directed the Undersecretary for Personnel and Readiness, David Chu to review the Department's process for the treatment and care of sexual assault victims. Reasons why victims turned to civilian organizations included poor medical treatment, lack of counseling, and incomplete criminal investigations by military officials. In addition, after a nine-month investigation, the *Denver Post* determined that military commanders routinely fail to prosecute those accused of sexual assault and domestic violence; instead, these commanders choose to handle their cases administratively instead of through their criminal courts.²³

Even though the article highlighted the inadequate support provided to sexual assault victims in a deployed environment, reports also indicated that sexual assault incidents were not

²¹ R. Jeffery Smith, "Sexual Assaults in Army on Rise: Report Blames Poor Oversight and Training," *Washington Post*, June 3, 2004.

²² Dana Michael Hollywood, page 169.

²³ *Denver Post*, "Military Justice Probed; Congress to Investigate Problems Found by Post," November 20, 2003.

handled properly in garrison environments. Throughout 2003, United States Central Command tracked the reporting of alleged sexual assaults, and this report revealed that the Army had eleven times more reported incidents than all the other Services.

Subsequent to the media's criticism of the Army's failure to properly deal with its sexual assault problem, and as directed by Defense Secretary Rumsfeld, the Army established a Task Force to look into the allegations brought forth by the *Denver Post's* investigation. The Task Force conducted a comparative analysis of Army data and data associated with university sexual assault programs. The Army Task Force identified two shortcomings; first, a lack of integration among supporting organizations in the execution of the sexual assault prevention, and second, leaders did not understand response policies nor did they understand confidential avenues of communication for victim support. There was a perception of unfair treatment when commanders punished a victim for a minor offense related to the sexual assault case, and there was a concern that this could affect the victim's willingness to report the incident. Actions taken, with reference to sexual assault incidents, varied among commanders because commanders did not always report offenses to the military police or criminal investigation department. In addition, the Task Force found that human relations training covering sexual assault did not address sexual assault prevention and response. Furthermore, the training was limited to initial entry training (IET) soldiers, drill sergeants, and senior legal officers. The Army did not have an integrated approach for providing sexual assault victims support and services, nor did it have a centralized system for tracking sexual assault cases. Lastly, since 2000, DNA testing requirements had doubled, and this created a backlog of DNA evidence waiting for processing.

The recommendations of the Task Force were to publish a sexual assault prevention and response policy as a separate provision in the Army Regulation 600-20, Army Command Policy. Included in the sexual assault policy was²⁴:

- (1) Oversight of all aspects of the Army sexual assault program managed by one component and a victim advocacy element responsible for managing the policy's education and support programs, at the unit level.
- (2) Incorporation of a thorough outline on privileged and confidential avenues of communication to increase leaders' awareness of options to support victims.
- (3) Additional requirements for the battalion-level commander to sign the Commander's Report of Disciplinary or Administrative Action form, authorization for commander's discretion to delay action taken reference a victim's alleged minor misconduct, and establishing a policy for consideration of geographical separation in an sexual assault case that would also, highlight other options available for protecting the victim.
- (4) Establishment of a human relations training program with a range of topics that had adverse impact on unit cohesion and effective working relationships. Soldiers would receive training throughout all stages of their career.
- (5) Additional requirements for specialized training giving all law enforcement, medical, and legal personnel the supplementary skills required to assist victims.
- (6) Development and publishing of a policy that outlined the procedures for collecting and reporting data on sexual assault cases as well as the management system.

The recommendations from the Task Force addressed the Army's need for a victim advocates program, uniform guidelines for responding to charges, enhanced training, better

²⁴ The Acting Secretary of the Army's, Task Force Report on Sexual Assault Polices, May 27, 2004.

oversight, and stronger prevention strategies.²⁵ The results of the report also revealed that the Army lacked an overarching sexual assault policy; and this missing piece of the puzzle prevented the Army from having a clear picture of the complexity of the sexual assault issue.

The Army Sexual Assault Prevention and Response Policy and Campaign

*“All leaders, military and Army Civilian, must maintain an environment that rejects sexual assault and attitudes and behaviors that promote such acts.”*²⁶ Director of Human Resources Policy, Major General John R. Hawkins III, February 6, 2009

The new Sexual Assault Prevention and Response Policy became effective in August 2004. The goal was to create a climate where soldiers live the Army Values, thereby eliminating incidents of sexual assault.²⁷ In October 2005, Department of Defense implemented a Department-wide overarching policy that would establish a “zero tolerance” environment for sexual misconduct. A policy aimed at providing a foundation that provided a vision and direction to all military services. Moreover, this policy sought to facilitate the prevention of sexual assault, significantly enhance support to victims, and increase reporting and accountability.²⁸

In addition to what the Army already had in place, the Department-wide policy implemented confidential reporting of sexual assaults, training standards for first responders, and procedures for storing evidence collected as part of restricted reporting. In 2008 and 2010, Pentagon data indicated sexual assaults in the armed forces continue to rise. The Army only began tracking sexual assault numbers in 2006; therefore, it did not have enough comparable

²⁵ Lara Friedrich and Anne Decleene, “Scandal Patrol: Once again, the U.S. military scolds itself on rape, but will anything change?” Fall 2004, www.msmagazine.com (accessed January 5, 2012).

²⁶ Army Public Affairs, *Army sending I.A.M. Strong kits to Battalions*, February 6, 2009, www.army.mil, (accessed January 5, 2012).

²⁷ Hank Minitrez, *Army launching I. A.M. Strong Prevention Campaign*, August 27, 2008, www.army.mil, (accessed January 5, 2012).

²⁸ United States Department of Defense: Sexual Assault Prevention and Response, www.sapr.mil (accessed December 21, 2011).

data to confirm if the sexual assault problem was getting worse over time.²⁹ However, in 2007 the number of sexual assaults in the Army was twice that of its sister services.³⁰ After dealing with the aftermath of repeated sexual assaults, the Army developed a campaign to promote a sexual assault prevention strategy.

In 2008, then Secretary of the Army, General Pete Geren, and Army Chief of Staff, General George W. Casey Jr., launched a new 5-year, four-phased prevention strategy aimed at changing Army culture and sharing best practices in order to prevent sexual assault. The I. A.M. Strong Campaign was designed to empower Soldiers to, "Intervene, Act, and Motivate," to prevent sexual assault.³¹ The concept of the campaign focused on peer-to-peer training in order to shift the mindset of the force from one which responds to sexual assaults to one that prevents sexual assaults. The program emphasized leadership's commitment to the program, education, training that stressed the soldier's moral responsibilities to take action, along with the sustainment and refinement of the program.

Phase I, entitled, "*Leadership Commitment*," provided commanders with materials that helped to raise awareness of the campaign. These materials also placed an emphasis on the importance for all leaders and soldiers to be part of the solution. Phase II, "*Army-wide Commitment*," stressed how critical it was for commanders, soldiers, and the community to collaborate if they hoped to prevent sexual assault. Phase III, "*Achieving Cultural Change*," aimed to encourage leaders of all ranks, both military and civilian, to set the conditions for an

²⁹ Yochi J. Dreazen, "Rate of Sexual Assault in Army Prompts an Effort at Prevention," October 2008, <http://online.wsj.com> (accessed January 23, 2012).

³⁰ Army Public Affairs, Army sending I A.M. Strong kits to Battalions, February 6, 2009, www.army.mil, (accessed January 5, 2012).

³¹ D. Myles Cullen, "Army launches Sexual Assault Prevention Campaign," www.army.mil (accessed January 23, 2012).

Army culture that is free of sexual assault.³² The fourth phase, scheduled to kick off in 2013, will have the theme of, “*Sustain and Refine*”.

With the completion of more than half of the I. A.M. Campaign, data collected in 2010 revealed that roughly one third of assault victims reported the crime.

Achieving Cultural Change

*“Let’s all of us rededicate ourselves to this critical task. Let’s push this fight in the right direction and eradicate the behaviors that enable sexual assault throughout this glorious army.”*³³ Army Secretary, John McHugh, March 28, 2011

The United State War Army College’s Strategic Leadership Primer defines organizational culture as, “the set of institutional, stated, and operating values, beliefs, and assumptions that people have about their organization that are validated by experiences over time.”³⁴ In his book *Organizational Culture and Leadership*, author Edgar Schein refers to how leaders can embed their assumptions in their organizations; in so doing, they can change an organization’s culture by getting the organization to share the same assumptions through culture-embedding mechanisms. Culture-embedding mechanisms enable a leader to create or change the culture of their organization. To ensure that the embedding lasts, leaders must also ensure that secondary articulation and reinforcement mechanisms are in place.³⁵

The most powerful embedded mechanism is what leaders pay attention to, measure, and control on a regular basis. General Pete Geren and General George W. Casey Jr. embedded their vision to eliminate sexual assault in the Army with the initiation of the sexual assault campaign.

³² Rob McIlvaine, *SHARP opens third phase in I. A.M. Strong campaign*, March 28, 2011, www.army.mil, (accessed January 23, 2012).

³³ Army Secretary John McHugh, SHARP Summit Speech, March 28, 2011.

³⁴ Department of Command, Leadership, and Management, United States Army War College, Strategic Leadership Primer, Carlisle, PA, United States Army War College, 2004.

³⁵ Edgar H. Schein, *Organizational Culture and Leadership*, John Wiley & Sons, Inc., 1992.

The goal of the I. A.M. Strong program was to achieve a cultural change by reducing the gap between the actual number of assaults in the Army and the number of unreported incidents.³⁶ Both General Officers systematically communicated the Army's transition from a force, which responds to sexual assaults to a force that prevents sexual assaults. Along with the launch of each phase of the campaign is an annual sexual assault prevention and response summit, which brings together leaders, soldiers, and Army communities. The stated goal of this summit is twofold; namely, to change the Army's culture and to share best practices.³⁷

The I. M. Strong campaign also includes three secondary articulation and reinforcement mechanisms; the first of which is a new training program. In 2008, the Army introduced a new training model; one that attempted to tackle sexual assault issues through training, awareness, and intervention. This approach was part of the SHARP Program's effort to promote cultural change. The purpose of the training program, entitled, "Sex Signal," is to indoctrinate new recruits and first-term soldiers and change their attitudes as well as their behavior. The aim of this program is to achieve a common understanding of the way ahead with a commitment by the individuals who attend the training.³⁸ The training requirement for career soldiers remains an annual event.

The second secondary articulation and reinforcement mechanism is sexual assault education. The Army has designated April as Sexual Assault Awareness Month. Leaders bring broad visibility to the importance of the sexual assault program. Additionally, sexual assault response coordinators at all levels conduct prevention and awareness training with a focus on the resources that are available to victims. Using the Army values, soldiers are re-educated in order

³⁶ T. Anthony Bell

³⁷ Rob McIlvaine, *SHARP opens third phase of I. A.M. Strong Campaign*, March 28, 2011.

³⁸ T. Anthony Bell, Army Launches new SHARP Course for Trainees, November 23, 2011, www.army.mil, (accessed January 23, 2012).

to change their attitudes and influence their behavior. To reach the targeted audience of young soldiers, the Army has leveraged the Army Soldier Show and the Army Concert Series; in addition, they have also collaborated with the Better Opportunity for Single Soldiers (BOSS) program.

The last secondary articulation and reinforcement mechanism is sustainment and refinement. This is where the Army will assess their strategy for eliminating sexual assault and update it in order to bring about change. The end-state is to maintain progress and share best practices with other services and communities.

First Responders

Along with the continued rise of incidents of sexual assaults, the Army has been inconsistent when it comes to reporting sexual assault investigations. Two factors that may have contributed to this inconsistency are a first responder's action when in contact with a sexual victim, and a commander's discretionary power exercised during a sexual assault complaint.

The United States Army Military Police School's professional military education (PME) incorporates sexual assault first responder training for all officers and soldiers. Additionally, all Criminal Investigation Department (CID) agents who conduct investigations on alleged sexual assaults receive annual first responder refresher training. The Department of the Army and the Military Police Corps have changed response procedures to sexual assaults with the aim to create an environment in which victims feel free to report their assault. What is more, Army installations have established response teams that include medical, legal, social workers, and investigation personnel; this was done in recognition of how critical first responders are in the effort to combat sexual assault.

Commanders have discretionary power when handling a sexual assault case; in that, they decide whether to prosecute soldiers, what offense to charge the soldiers with, what level of court-martial, and whether to refer a charge to trial.³⁹ Some feel that the discretion of the commander fosters the perception of an unfair system; namely, they feel that such a system does not balance the needs of the victim and the accountability of the offender. According to this line of thinking, commanders' discretion creates a clear conflict of interest; and as a result, it blocks victims' access to military justice. Truth be told, the vast majority of sexual assault cases never see the inside of a courtroom. This simple fact increases the risk that perpetrators who have not been held accountable will commit additional offences.⁴⁰ When this occurs, it creates an environment where sexual assault victims who are courageous enough to come forward and file a complaint, find themselves receiving additional harassment, or they are ridiculed, ostracized, and gossiped about by peers.

In an attempt to alleviate this kind of situation, the Department of the Army released MILPER message 12-066 on March 7, 2012. The purpose of this message was to authorize humanitarian transfers for victims of sexual assault. The Commanding General, Human Resources Command (HRC), is the assignment authority for transfers of this nature. Humanitarian transfers avert forcing a victim from having to continue to work alongside, or even worse, live with the offender. The commander has the discretion to determine at the time of the request if the sexual assault is credible or not.

In 2011, Congresswoman Jackie Speier introduced a new bill to Congress. The bill aims to create a new, autonomous, Sexual Assault Oversight and Response Office in order to remove the handling of sexual assaults from the chain of command; the chief culprit when it comes to

³⁹ Steven D. Zansberg, *The First Amendment in the Military Courts: A Primer for the Civilian Attorney*, 2005.

⁴⁰ Service Women's Action Network (SWAN)

inconsistency.⁴¹ The Army is hesitant to endorse the Sexual Assault Training, Oversight, and Prevention Act (STOP Act). If sexual assaults are taken out of the chain of command's purview, it will eliminate social deterrence and it would allow subsequent cases to proceed without any conflict of interest.

The Legal System

In 2007, Congress amended and consolidated numerous criminal articles into Article 120. The purpose of this administrative change was to improve the ability of the military justice system to address sexual assault and to align the Uniform Code of Military Justice (UCMJ) and the Manual for Courts-Martial (MCM) more closely with other Federal laws and regulations.⁴²

The new provision reads as follows:

Article 120: Rape, Sexual Assault, and other Sexual Misconduct

(a) Rape. – Any person subject to this chapter who causes another person of any age to engage in a sexual act by:

- (1) using force against that other person;
- (2) causing grievous bodily harm to any person;
- (3) threatening or placing that other person in fear that any person will be subjected to death, grievous bodily harm, or kidnapping;
- (4) rendering another person by force or threat of force, or without the knowledge or permission of that person, a drug, intoxicant, or other similar substance and thereby substantially impairs the ability of that other person to appraise or control conduct; is guilty of rape and shall be punished as a court-martial may direct.⁴³

The one significant change to Article 120 is that, “without consent,” is no longer an element of rape.⁴⁴ However, the Government Accountability Office revealed through interviews with judge advocates that Article 120 of the UCMJ complicated the prosecution of sexual assault cases and

⁴¹ Government, Media, News, *The Sexual Assault Training Oversight and Prevention Act—the STOP Act*, November 18, 2011, <http://usmvaw.com>, (accessed March 5, 2012).

⁴² Ronald W. Reagan National Defense Authorization Act for Fiscal Year 2005.

⁴³ National Defense Authorization Act for Fiscal Year, 2006.

⁴⁴ Mark L. Johnson, *Forks in the Road: Recent Developments in Substantive Criminal Law*, June 2006, Army Law.

possibly resulted in unwarranted acquittals. Specifically, judge advocates stated that there was a lack of clarity with regard to the meaning of certain terms in the amended article. This lack of clarity has made it more difficult to prosecute these cases.⁴⁵ Effective June 28, 2012, the implementation of a revised Article 120 will address this issue and provide clarity to sex crime terms.

Although the military justice system is a separate, largely self-contained system, Congress has provided that the court-martial should mirror the federal criminal justice system and the principles of law and rules of evidence followed the federal courts should generally be recognized in the military courts as far as practicable.⁴⁶ As stated before, commanders have the discretion to determine the outcome of formal complaints, not attorneys. Depending on the complexity of the allegations and the quality of the evidence collected, sexual assault investigations can take months to complete. To provide a snapshot, for fiscal year 2009, 1,569 investigations were completed as well as 715 cases from 2008. From these cases, commanders had the jurisdiction and evidence to discipline 983 subjects, which included the referral of 410 court-martial charges, 351 nonjudicial punishments, 53 administrative discharges and 169 other adverse administrative actions. Another 997 subjects had their case dismissed for various reasons.⁴⁷ After senior leaders started placing emphasis on this subject matter, CID and the judge advocate general (JAG) hired specialized experts in order to close the gap between investigations and prosecutions.

⁴⁵ Military Justice, *Oversight and Better Collaboration Needed for Sexual Assault Investigations and Adjudications*, June 22, 2011, <http://www.gao.gov>, (accessed March 3, 2012).

⁴⁶ UCMJ Article 36.

⁴⁷ Elizabeth M. Collins, *Surviving Sexual Assault*, August 27, 2010, www.army.mil, (accessed March 5, 2012).

Medical Treatment for Sexual Assault Victims

There are two types of reporting procedures available to victims of sexual assault, restricted and unrestricted. The medical support available to a victim remains the same, regardless of what type of report is filed. According to the Rape, Abuse and Incest National Network, care for assault victims ranges from treating physical problems (e.g., injuries, pregnancy, sexually transmitted diseases) that could result from the assault, to helping victims cope with the damaging emotional side-effects of the event.⁴⁸ In sum, because of some excellent initiatives, Army communities have evolved the way they provide medical and law enforcement support to their victims. All supporting agencies have synchronized their efforts to ensure a united and strong base of support is available.

Where the Army is still falling short with medical support is with their veterans who suffer from Military Sexual Trauma (MST). The definition of MST given by United States Code 170D of Title 38 by Veterans Affairs (VA) is, “psychological trauma, which in the judgment of a VA mental health professional, resulted from a physical assault of a sexual nature, which occurred while the Veteran was serving on active duty.”⁴⁹ Of the different types of sexual assaults, MST is by far the most serious. ⁵⁰ According to a study, “MST is reported by 20 to 40 percent of female veterans resulting in post-traumatic stress disorder (PTSD), depression, and sleep difficulty.”⁵¹ Veterans sexually assaulted while in the service often find themselves ineligible for post-service disability compensation and medical treatment if they have no

⁴⁸ SSG Joy Pariante, *Sexual Assault: A Victims Story*, March 12, 2009, www.army.mil, (accessed February 10, 2012).

⁴⁹ United States Department Veteran Affairs, *Military Sexual Trauma*, <http://www.ptsd.va.gov>, (accessed March 5, 2012).

⁵⁰ Department of Veterans Affairs defines Military Sexual Trauma as psychological trauma, which is the judgment of a VA mental health professional, resulted from a physical assault of a sexual nature, battery of a sexual nature, or sexual harassment, which occurred while the veteran was serving on active duty or active duty for training.

⁵¹ Headquarters, Department of the Army, *Army 2020 Generating Health and Discipline in the Force: Ahead of the Strategic Reset Report 2012*, pg. 121

evidence that they are suffering from service-related traumatic stress.⁵² The reality is a large number of victims that are not reporting their crime for various reasons. To deny them the medical treatment they need to assist in their recovery does not give the impression that the military is taken care of their own.

Conclusion

In conclusion, the sexual assault problem is a complex one; however, as the policy continues to evolve, and the pressures of the public and media increases, leaders have struggled to identify the root of the problem. There are victims that have broken their silence and publicly stated the discrepancies within the Army system that continues to victimize those who chose to file a complaint. With so much emphasis placed on creating a comprehensive and responsive program, until recently, the effectiveness of the collaborative process has been forced to take a back seat.

Sexual assault is not about the female's presence in the military, it is about power and violence. The offenders that commit these crimes take away their victim's trust, faith, and judgment. It does not stop there; it negatively influences the cohesion and readiness of an organization, thereby placing others in harm's way. Understanding and acknowledging the impacts that military culture has on the prevention of sexual assault is critical.

Military culture accentuates the importance of the team over the individual. The Army launched a sexual assault campaign with the desired end-state of achieving a culture that would prevent sexual assault. The change of a mature culture is challenging and generational. With the steady increase in sexual assaults, time is something the Army does not have. Research reveals that despite a number of attempts to create an environment that would foster confidentiality and

⁵² Rick Maze, *Bill would ease compensation for sexual trauma*, March 8, 2011, www.armytimes.com, (accessed February 23, 2012).

security, most have not been as successful as expected. In any given population, there will be a small group of nonconformists. Thus far, the Army's actions indicate a naivety about the seriousness of this crime. Simply stated, for the good of the institution, the Army must take decisive and immediate action to protect victims and to preserve unit cohesion. Adoption of a zero tolerance policy with regard to sexual assault will achieve both of these objectives. The Army has put forth tremendous effort to combat sexual assault within its ranks. Yet, the Army needs to acknowledge the seriousness of sexual assault and change its reporting procedures; in so doing, the Army will give victims immediate access to the military judicial process, and bypass unit commanders who currently have the discretion, but lack the expertise to decide whether a report is credible. The Sexual Assault Training Oversight and Prevention Act, put forward by Congress, would allow this to happen by establishing a third party oversight for sexual assault crimes; thereby removing the case from the military commander's influence.⁵³

Article 120 of the UCMJ caused some challenges for the JAG office (e.g., requiring additional training, personnel, and time to prosecute cases). The Army lacks a system that holds individual who commit this crime accountable. It is essential that the Army impose meaningful penalties that will elicit a behavioral change that prevents sexual assault. Punishments such as reductions in pay, reprimands, transfer to new locations, and the choice to separate from service do not prompt a behavior change.

⁵³ Service Women's Action Network, *New McClatchy Investigation on Military Rape Prosecutions Released Investigation Reveals a Broken Military Justice System in Need of Reform*, November 29, 2011, <http://yubanet.com/usa/>, (accessed March 5, 2012).

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