

REPORT DOCUMENTATION PAGE*Form Approved*
OMB No. 0704-0188

Public reporting burden for this collection of information is estimated to average 1 hour per response, including the time for reviewing instructions, searching data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to Washington Headquarters Service, Directorate for Information Operations and Reports, 1215 Jefferson Davis Highway, Suite 1204, Arlington, VA 22202-4302, and to the Office of Management and Budget, Paperwork Reduction Project (0704-0188) Washington, DC 20503.

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1. REPORT DATE (DD-MM-YYYY) 15-04-2013		2. REPORT TYPE Master of Military Studies Research Paper		3. DATES COVERED (From - To) September 2012 - April 2013	
4. TITLE AND SUBTITLE REDUCING ALCOHOL-RELATED SEXUAL ASSAULT IN THE MARINE CORPS				5a. CONTRACT NUMBER N/A	
				5b. GRANT NUMBER N/A	
				5c. PROGRAM ELEMENT NUMBER N/A	
6. AUTHOR(S) Major Jeffrey R. Liebenguth, USMC				5d. PROJECT NUMBER N/A	
				5e. TASK NUMBER N/A	
				5f. WORK UNIT NUMBER N/A	
7. PERFORMING ORGANIZATION NAME(S) AND ADDRESS(ES) USMC Command and Staff College Marine Corps University 2076 South Street Quantico, VA 22134-5068				8. PERFORMING ORGANIZATION REPORT NUMBER N/A	
9. SPONSORING/MONITORING AGENCY NAME(S) AND ADDRESS(ES) N/A				10. SPONSOR/MONITOR'S ACRONYM(S) N/A	
				11. SPONSORING/MONITORING AGENCY REPORT NUMBER N/A	
12. DISTRIBUTION AVAILABILITY STATEMENT Unlimited					
13. SUPPLEMENTARY NOTES N/A					
14. ABSTRACT Paper discusses how to reduce alcohol-related sexual assault in the Marine Corps. It advocates more emphasis and training on the interplay between alcohol and sexual assault, as well as male and female-specific training on the issue.					
15. SUBJECT TERMS Sexual Assault, Alcohol, Incapacitation, Marine Corps					
16. SECURITY CLASSIFICATION OF:			17. LIMITATION OF ABSTRACT UU	18. NUMBER OF PAGES 31	19a. NAME OF RESPONSIBLE PERSON Marine Corps University / Command and Staff College
a. REPORT Unclass	b. ABSTRACT Unclass	c. THIS PAGE Unclass			19b. TELEPHONE NUMBER (Include area code) (703) 784-3330 (Admin Office)

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Command and Staff College
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Marine Corps Combat Development Command
Quantico, Virginia 22134-5068

MASTER OF MILITARY STUDIES

REDUCING ALCOHOL-RELATED SEXUAL ASSAULT IN THE MARINE CORPS

SUBMITTED IN PARTIAL FULFILLMENT
OF THE REQUIREMENTS FOR THE DEGREE OF
MASTER OF MILITARY STUDIES

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Preface

The impetus for this thesis was my experiences handling sexual assault cases, at both the trial and appellate level, as a Marine Corps Judge Advocate. In far too many of those cases alcohol was the primary factor causing the complainant and the accused to be pitted against one another within the confines of a military courtroom. I am convinced that these types of sexual assaults—those driven by alcohol consumption—can be significantly reduced in the Marine Corps. I write here in the hopes that, if only in a small way, I can assist in bringing about that reduction.

For all that they do and have done for me, this paper is dedicated to:

- Dr. Rebecca Johnson, my masters degree mentor, for her expert guidance and support throughout the process of writing this paper.
- My Conference Group 11 class advisors—LtCol Joseph Cross, Dr. John Gordon, and Dr. Craig Swanson—for their efforts, pearls of wisdom, and more during the academic year.
- Judge Advocates—on both sides of the aisle.
- My wife, daughter, and stepson—for everything they do.

Executive Summary

Title: Reducing Alcohol-Related Sexual Assault in the Marine Corps

Author: Major Jeffrey R. Liebenguth, United States Marine Corps

Thesis: The Marine Corps can significantly reduce the number of sexual assaults within its ranks by educating Marines on the contributing factor to nearly fifty percent of those assaults: alcohol. For example, male Marines need to be trained to recognize when a female may not be able to legally consent to sex due to alcohol consumption. Similarly, female Marines need understand that their risk of being sexually assaulted rises considerably when they drink to the point of blacking out or becoming incapacitated due to alcohol consumption.

Discussion: Sexual assault in the Marine Corps is primarily a male-on-female crime and, significantly, nearly fifty percent of those assaults involve the use of alcohol.¹ Thus, by properly addressing the interplay between alcohol consumption and the occurrence of sexual assault—nearly 50% of all sexual assaults in the Marine Corps involve alcohol consumption—the Marine Corps can reduce the annual number of those assaults in its ranks. Specifically, the Marine Corps needs to (1) provide focused training to all Marines on the interplay between alcohol use and sexual assault, and (2) provide male and female-specific training on the issue in order to empower all Marines with the knowledge required to recognize danger zones for sexual assault so that they can remove themselves from the same. For example, male Marines need to be instructed on how alcohol distorts their perceptions of a woman's sexual intent. Similarly, female Marines need to be taught that, to protect themselves from an alcohol related sexual assault, they should avoid drinking to the point of incapacitation. Both of these approaches are supported by independent researchers on the topic.

Conclusion: Alcohol has been, and likely always will be, a part of the Marine Corps culture. As a result, the Marine Corps needs to train Marines to understand how the consumption of alcohol can create dangerous situations in which sexual assault may arise, as well as practical and effective ways to mitigate the creation of those situations. Further, because sexual assault is mainly a male-on-female crime, and because males and females view the issues of sexual assault and alcohol use differently, specific training directed at male and female Marines is necessary to reduce the number of alcohol-related sexual assaults in the Marine Corps.

I. Introduction

A recent “Department of Defense report on sexual assault in military academies indicated alcohol was involved in 58% of sexual assault cases from the Military Academy and 57% of reported cases reviewed from the Naval Academy.”² Similarly, regardless of branch of service, “[a] military focus group on sexual assault noted that for young individuals entering military training, easily accessible alcohol, in combination with elements such as newfound independence, peer pressure, close quarters, integration of units, limitations on privacy, and new relationships, could help contribute to the increased risk of sexual assault.”³ Thus, researchers on the relationship between sexual assault in the military and alcohol consumption have concluded that alcohol use plays a “problematic role” in instances of sexual assault, especially among new military members.⁴

Unfortunately, the Marine Corps has not escaped the problem of sexual assault in its ranks. In fact, per the Commandant of the Marine Corps, the Marine Corps has a problem with the issue, saying that:

Marines . . . we have a significant issue with Sexual Assault inside our Corps – let me be clear on how I view this and where I stand. Sexual assault is an ugly mark on proud reputation; it goes against everything we claim to be as United States Marines . . . it is a crime. This crime is not only completely incompatible with our core values of honor, courage and commitment, it is an affront to the basic American principles we so bravely defend.⁵

Indeed, the yearly number of sexual assaults in the Marine Corps is unacceptable—in FY 11 there were over 300 reports of sexual assault in the Marine Corps.⁶ And as the following chart shows, the geographical origin of those reports was diverse:

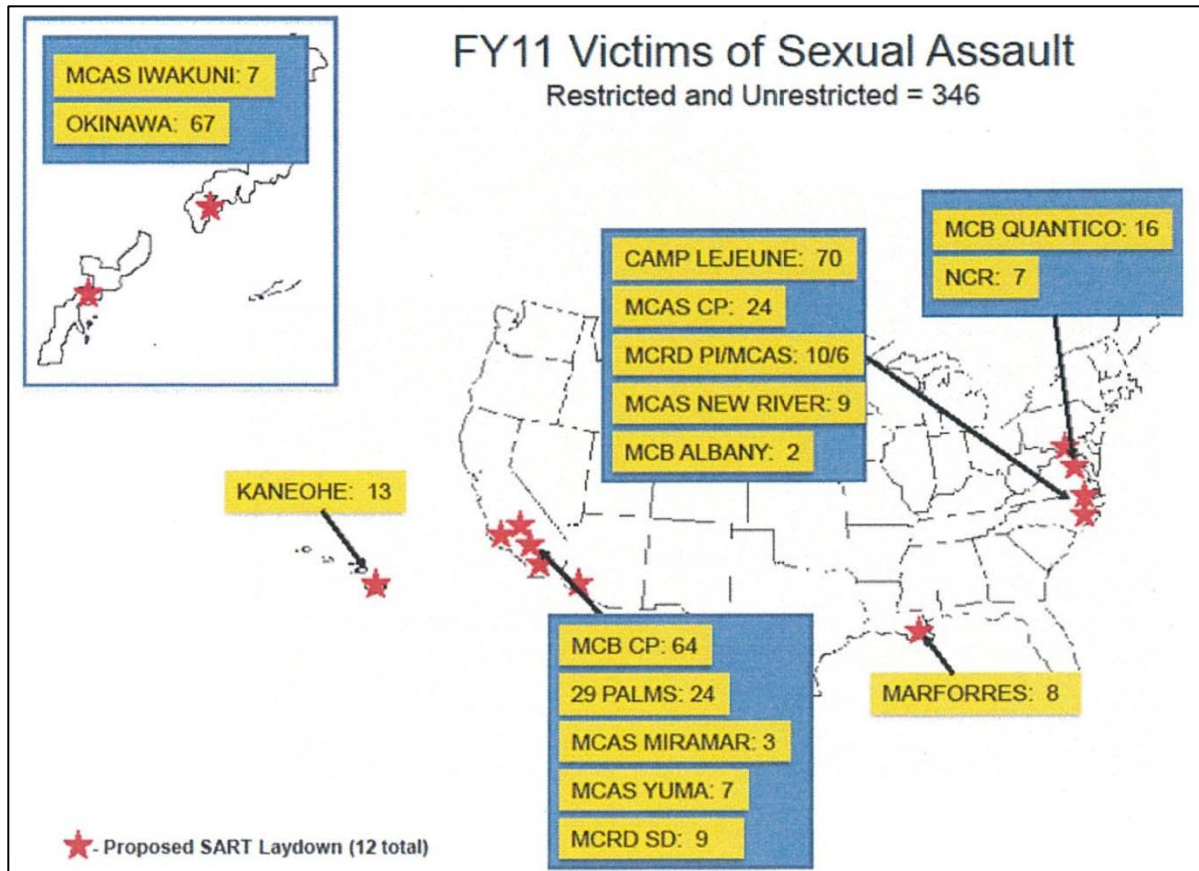


Figure 1

Significantly, nearly 50% of these FY 11 assaults involved alcohol use by one or both of the individuals involved.⁸

Thus, it is highly likely that the Marine Corps can reduce the number of sexual assaults in its ranks by addressing the alcohol aspect of the problem. Indeed, researchers insist that “there needs to be more programs and education on the appropriate use of alcohol . . . , especially among new recruits. . . .”⁹ The Marine Corps recognizes this need, as the Commandant’s *Sexual Assault Prevention and Response Campaign Plan 2012*, stresses that “Particular command attention is required in those situations where alcohol is present. Leaders must also establish a climate that places serious consequences on the misuse and abuse of alcohol.”¹⁰ In the context of sexual assault prevention, the campaign plan further stresses the need to “train our Marines to

identify and avoid dangerous situations. . . .”¹¹ These are sound strategies.

Currently though, Marine Corps training on sexual assault does not adequately address alcohol as a factor in the problem. The focus of this paper will therefore be how the Marine Corps can curb the number of sexual assaults by training Marines to recognize and avoid situations involving alcohol that significantly increase the potential for sexual assault, or accusations of sexual assault. And because, as the Commandant of the Marine Corps has highlighted, the problem “is predominately a male-on-female crime[,]”¹² the paper will approach the issue from that perspective.

This paper will begin by laying out, in factual detail, two real-world examples of alcohol related sexual-assault cases that resulted in courts-martial: *United States v. Wood* and *United States v. Stewart*. Anecdotally, these cases are representative of he-said-she-said sexual assault cases involving the consumption of alcohol. Consequently, they will be used as a springboard to discuss how the Marine Corps can move to reduce the likelihood of similar cases occurring in the future by (1) providing focused training to all Marines on alcohol use and sexual assault, and (2) providing male and female-specific training on the matter.

II. Sexual Assault and Alcohol: *United States v. Wood* and *United States v. Stewart*

To put the problem addressed here in proper context, it is worth reviewing examples of the interplay between sexual assault and alcohol use. Two recent military cases, *United States v. Wood*¹³ and *United States v. Stewart*,¹⁴ will serve this purpose and serve as a catalyst for discussing how training could have aided both the accused and the accusers from finding themselves in the predicaments that they did.

In *Wood*, Private First Class (PFC) Wood, U.S. Marine Corps, was accused of rape.¹⁵ All facts pertinent to his case occurred in his barracks aboard the Marine Corps Base at 29

Palms, California during the early morning hours.¹⁶ Two college-aged women arrived from Palm Springs, CA and joined a party in the barracks around midnight.¹⁷ The complainant, Ms. T, testified that she consumed a moderate amount of alcohol, including a few sips of an alcoholic beverage that PFC Wood provided to her.¹⁸ At some point thereafter, Ms. T became ill.¹⁹ Ms. T next remembers waking up in the appellant's bed with his penis inside her vagina.²⁰ Ms. T testified that she pushed PFC Wood away and that he left the room.²¹ The allegation of rape surfaced when Ms. T presented at a pregnancy counseling center seeking communicable disease testing.²² PFC Wood admitted to having sexual intercourse with Ms. T, but claimed that it was consensual.²³ At his general court-martial trial, the prosecution's theory of the case was that PFC Wood was guilty of rape because, despite his claim that the sex was consensual, Ms. T was actually incapacitated due to intoxication and therefore could not give such consent.²⁴ Ultimately, PFC Wood was convicted of rape and sentenced to two years confinement, reduction to pay grade E-1 and a dishonorable discharge.²⁵

On appeal, the Navy and Marine Corps Court of Criminal Appeals overturned PFC Wood's conviction, ruling that the evidence was factually insufficient to sustain the conviction.²⁶ In doing so, the appellate court stressed that the most compelling testimony came from Ms. T herself:

She testified that she only drank about two to three alcoholic drinks of Red Bull mixed with vodka, and a shot of vodka. She also testified that she was sipping on the drinks and did not finish them. Ms. T also testified that while in another Marine's room, she drank a few sips of an alcoholic beverage the appellant brought her. On a scale of 1-10 (with 10 being the most drunk a person or she has ever been), Ms. T testified that she was a "maybe a three or four." She testified that she usually drinks on weekends and has several drinks, but has never blacked out from alcohol. Ms. T stated again at the end of cross-examination that she was not drunk. In response to a question from the military judge, Ms. T testified that she did not consider herself drunk.²⁷

The appellate court further noted that an expert in forensic toxicologist testified that “getting sick, blacking out, and then passing out would not be consistent with Ms. T's testimony of how much she drank.”²⁸ The expert also testified “to the toxicological effects of alcohol, assuming an even higher level of consumption than Ms. T reported, and calculated that the result would still not produce an inability to record memory [(black out)], much less cause someone to experience alcohol induced unconsciousness [(pass out)].”²⁹ Finally, the court highlighted that “[w]hile testifying on the subject of memory black out, [the expert] indicated that while unable to record memory or exercise good judgment, a person in an alcohol-induced black out is nonetheless capable of various tasks, including apparently consenting to sex.”³⁰

Next, the appellate court recounted that, “[a]lthough there was testimony that Ms. T was intoxicated and even ill at one point, PFC M, (another Marine present that night), testified that she was able to get up and walk unassisted from the bathroom to a bed in his room.”³¹ Similarly, PFC Wood stated “that Ms. T was sick earlier that evening, but that he saw her walk out of the bathroom without assistance.”³² Soon after, PFC Wood “got onto the bed in PFC M's room next to Ms. T and the two conversed.”³³ “PFC M testified that they were flirtatious.”³⁴ “PFC M maintained that Ms. T left his room with [PFC Wood] without any assistance.”³⁵ “These events, as recounted by others, all occurred after Ms. T was ill, and during the period of time of which she has no recollection.”³⁶

Finally, the appellate court pointed out that statements made by PFC Wood were “the only evidence of what may have occurred sexually between the appellant and Ms. T during the time period of her memory gap”³⁷:

While one of the statements does establish some indeterminate level of intoxication by Ms. T, including two brief periods of sleep during a lengthy sexual encounter, it does not constitute a confession to rape. The appellant describes a consensual sexual encounter wherein Ms. T briefly fell asleep and he

stopped having sex until Ms. T woke up, was responsive, and physically reciprocated. The appellant told NCIS that he stopped having sex with Ms. T when she pushed him away and asked him to stop. This is corroborated by Ms. T's testimony that when she pushed the appellant away, he left the room.³⁸

The appellate court thus concluded that the prosecution “failed to sustain its burden of proof, beyond a reasonable doubt, on the critical issue of incapacity”³⁹

In *United States v. Stewart*, Capt Stewart, U.S. Marine Corps, attended a party given at a Ms. N’s home to celebrate her graduation from an MBA program.⁴⁰ Ms. N and Capt Stewart had been sexually intimate in the past.⁴¹ Both were drinking alcohol.⁴² Ms. N went to her room to sleep around 10:30 PM.⁴³ Capt Stewart joined her around 4:00 AM.⁴⁴ Although she did not remember going to bed, Ms. N did recall waking up unclothed with Capt Stewart next to her and then putting her clothes on.⁴⁵ She also testified that Capt Stewart touched her vagina while atop her, that she rebuffed his sexual intercourse advance, and that he stimulated himself until ejaculating onto her stomach.⁴⁶

Ms. N further recalled Capt Stewart asking her afterwards if she was on the pill because he was concerned that they had not used a condom.⁴⁷ The two remained in the room together and when Ms. N’s brother checked in on them at about 7 or 8 AM, he was given no signs by Ms. N of discomfort or alarm.⁴⁸ Ms. N and Capt Stewart then joined others in the living room, including her brother, who reported that “neither of them acted odd or like anything was wrong.”⁴⁹ Two days later, Ms. N told Capt Stewart that she was angry about being the “girl of choice” and felt used.⁵⁰ Capt Stewart was distraught at having cheated on his girlfriend.⁵¹

About a month after the party, Ms. N’s brother accused Capt Stewart of sexually assaulting his sister and, when Ms. N’s parents learned of their daughter’s claim from her brother, they contacted the Marine Corps, which began an investigation.⁵² The Article 32 investigating officer, a Marine Corps Colonel, found that “there exists no significant evidence

that Ms. N was substantially incapacitated or was substantially incapable of declining participation in the sexual act.”⁵³ Thus, he found that “reasonable grounds do not exist to believe that the accused committed the offense alleged,” and recommended the charge be dismissed.⁵⁴

Despite the recommendation for dismissal by the Article 32 investigating officer, Capt Stewart was charged, tried, and convicted at a general court-martial for aggravated sexual assault and sentenced to two years confinement and dismissal from the Marine Corps.⁵⁵ Yet his conviction and sentence were ultimately reversed and the charge dismissed with prejudice by the Court of Appeals for the Armed Forces.⁵⁶

Cases like *Wood* and *Stewart*, where alcohol consumption appears to be the primary contributing factor to the subject incidents, are preventable. Male and female Marines need training on the warning signs that indicate a person may not legally be able to consent to sex because of alcohol-induced incapacitation, and they need training on how to protect themselves from becoming incapacitated due to alcohol consumption. These points will be further developed below.

III. Passing Out, Blacking Out, Incapacitation, and Consenting to Sex

Alcohol-induced incapacitation, which precludes a person from being able to legally consent to sex, often presents itself in the form of passing out or blacking out. Marines need to be taught the difference between these two concepts.

Passing out is like being anesthetized and is easily recognizable. But “[b]lackouts represent episodes of amnesia, during which subjects are capable of participating even in salient, emotionally charged events—as well as more mundane events—that they later cannot remember.”⁵⁷ That is, a person can seem to be fully functioning, with the ability to carry on a conversation, drive an automobile, and engage in other complicated behaviors—such as consenting to sexual

intercourse—yet the next morning they wake up and do not remember what happened, how they got where they are, or ever consenting to sexual intercourse.⁵⁸

Blackouts come in two forms, a complete blackout, known as en-bloc, or a partial blackout, known as fragmentary.⁵⁹ An en-bloc blackout is complete amnesia for substantial events that are otherwise recallable under normal conditions.⁶⁰ The central characteristic of a complete blackout is that the memory cannot be recalled under any conditions.⁶¹ “Fragmentary blackouts occur more frequently but, unlike en-bloc blackouts, recall of the forgotten event is possible.”⁶² Research indicates that blackout periods often begin at a blood alcohol content level (BAC) “around 0.20 percent and as low as 0.14 percent.”⁶³ Blackouts often range from 9 hours to 3 days.⁶⁴

A key predictor of blackouts is the rate at which drinks are consumed.⁶⁵ Most blackout periods occur “after a rapid rise in blood alcohol level” as opposed to a slower rise over a longer period of time.⁶⁶ Consequently, all Marines, male and female, need to be armed with BAC tables so that they can determine when they, or someone else, is in the danger zone for blacking out or passing out. These tables should be made into ROE like cards and Marines should be required to carry them. Armed with these cards, Marines will have a tool on which to rely that will help them avoid risky sexual encounters. An example of such a card would look like this:

For Males

Body weight (lbs)	1 drink	2 drinks	3 drinks	4 drinks	5 drinks	6 drinks	7 drinks	8 drinks	9 drinks	10 drinks
100	.043	.087	.130	.174	.217	.261	.304	.348	.391	.435
125	.034	.069	.103	.139	.173	.209	.242	.278	.312	.346
150	.029	.058	.087	.116	.145	.174	.203	.232	.261	.290
175	.025	.050	.075	.100	.125	.150	.175	.200	.225	.250
200	.022	.043	.065	.087	.108	.130	.152	.174	.195	.217
225	.019	.039	.058	.078	.097	.117	.136	.156	.175	.198
250	.017	.035	.052	.070	.087	.105	.122	.139	.156	.173

For Females

Body weight (lbs)	1 drink	2 drinks	3 drinks	4 drinks	5 drinks	6 drinks	7 drinks	8 drinks	9 drinks	10 drinks
100	.050	.101	.152	.203	.253	.304	.355	.406	.456	.507
125	.040	.080	.120	.162	.202	.244	.282	.324	.364	.404
150	.034	.068	.101	.135	.169	.203	.237	.271	.304	.338
175	.029	.058	.087	.117	.146	.175	.204	.233	.262	.292
200	.026	.050	.076	.101	.126	.152	.177	.203	.227	.253
225	.022	.045	.068	.091	.113	.136	.159	.182	.204	.227
250	.020	.041	.061	.082	.101	.122	.142	.162	.182	.202

The Time Factor For Males and Females

Hours since first drink	Subtract this from BAC
1	.015
2	.030
3	.045
4	.060
5	.075
6	.090

Table 1⁶⁷

In sum, educating Marines—collectively—on these matters will enable them, in a powerful and meaningful way, to avoid situations that may result in incapacitated sexual assault. Yet this collective training is not enough. Men and women are different; they view sexual matters differently, and they react to alcohol differently. As a result, in order to reduce the number of alcohol-related sexual assaults, the Marine Corps needs to implement male and female-specific training on matter. This training would go beyond simple information concerning how alcohol impairs judgment; rather, it would prepare Marines to deal with situations involving the use of alcohol, with an eye toward preventing a sexual-assault incident.

IV. Male-Specific Training

On the male side of the issue, in both the Marine Corps and overall, “approximately 50% of sexual assault perpetrators consume alcohol prior to or during the assault.”⁶⁸ And compared with other perpetrators, male perpetrators who drank heavily (5 or more drinks consumed throughout the sexual assault), misperceived the woman’s “sexual intentions for a longer period of time, employed more isolating and controlling behaviors during the interaction, were more physically forceful, and perpetrated assaults that were more severe.”⁶⁹ There are two primary reasons for why this may be.

First, “[h]eavy drinking men may be so focused on their own sexual arousal and feelings of entitlement that they miss or ignore messages intended to convey the woman’s lack of interest.”⁷⁰ In fact, researchers indicate that “[i]t appears safe to conclude that men are likely to perceive a female target to be displaying more sexual interest than [a] woman will perceive in her display.”⁷¹ Second, intoxicated men “may view any form of consensual sexual activity as permission to engage in intercourse, thus feeling wronged and provoked when a woman stops their sexual advances.”⁷² Consequently, researchers on the subject have suggested that sexual assault prevention programs should focus on training men on the cognitive distortions that alcohol produces, stressing that:

Men need to recognize how alcohol affects their perceptions of women. . . . By focusing on these distortions and responsible drinking behaviors, men can learn to recognize when a woman is expressing discomfort regarding their use of sexual pressure. Men also need to learn that alcohol does not provide an excuse [for sexual assault] and to take responsibility for their behavior when intoxicated.⁷³

Put simply, males Marines must be made to understand that the cost of falsely believing a woman as able to consent to sex is quite high; they need to be taught that alcohol can adversely impact their ability to recognize whether a woman is consenting to sexual contact.

Similarly, and perhaps more importantly, male Marines need to be taught to identify when a female may not be able to legally consent to sexual intercourse, even if it appears that she is able to do so. There are many indicators of when a person may not be able to give consent to sexual intercourse because of alcohol-induced incapacitation: slurred speech, lack of motor faculties (e.g., stumbling, falling, swaying), falling asleep, and vomiting.⁷⁴ These indicators should be viewed and taught by the Marine Corps as clear signs that sexual intercourse should not be pursued because the individual may not be able to consent. In fact, Mount Holyoke College, an all-women college in Massachusetts, teaches its students that “[c]onsent is not valid if the person is *under the influence* of . . . alcohol”⁷⁵ Under this notion, if a person is not legally able to drive a car, the school deems that person unable to consent to sexual intercourse. And while this position is strict, it is nonetheless a good common-sense policy approach to the matter.

This policy, combined with training that teaches male Marines how to recognize when they are in a risky zone of engaging in sexual conduct that may be criminal because the other person cannot give consent due to alcohol consumption, will surely reduce the alcohol-related sexual assaults in the Marine Corps. Good training vignettes to drive both of these points home would be cases like *Wood* and *Stewart*. Cases like these should be used in male-specific sexual assault training to illustrate how quickly the mix of alcohol and sex can lead to sexual assault, or allegations of sexual assault. They can drive home the point to male Marines that sexual assault cases involving alcohol use, like *Wood* and *Stewart*, are often he-said-she-said cases. That is, the only people in the room that can testify as to the nature of the sexual intercourse are the accuser and the accused.

He-said-she-said cases are incredibly difficult to judge for the fact-finder. At the court-martial of PFC Wood, the fact-finder determined that, based on the evidence presented, PFC Wood was guilty of sexual assault beyond a reasonable doubt. But on appeal, different fact-finders, looking at the same evidence, concluded that there was reasonable doubt as to his guilt, and overturned his sexual-assault conviction. Whatever the reasons for these very different views of the evidence, the point that needs to be stressed to male Marines such a divergent differing views are possible and thus, if they find themselves in a situation similar to the one that PFC Wood found himself in with Ms. T, the surest way to avoid an allegation of sexual assault is by not pursuing sexual intercourse. To do otherwise, may lead a court-martial, where those determining guilt or innocence are not infallible—that is, they could make a mistake. Indeed, many commentators have highlighted the uncertainty of a trial—whatever the truth might be:

“Having your fate rest in the hands of a jury is the same as entrusting yourself to surgery with a mentally retarded doctor.”

~Bill Messing

“When you go into court you are putting your fate into the hands of twelve people who weren't smart enough to get out of jury duty.”

~Norm Crosby

“A jury consists of twelve persons chosen to decide who has the better lawyer.”

~Robert Frost

“This is a court of law, young man, not a court of justice.”

~Oliver Wendell Holmes, Jr.

“Justice is open to everyone in the same way as the Ritz Hotel.”

~Judge Sturgess⁷⁶

Thus, the point needs to be stressed to male Marines that innocent people sometimes go to jail, and the best way to avoid such a predicament for sexual assault involving alcohol is by being *beyond suspicion*. PFC Wood and Capt Stewart were thought to be otherwise and they both

ended up at a court-martial as a result. Although their convictions were eventually reversed on appeal, they spent time imprisoned awaiting that result, endured the stress of a court-martial, and had their reputations marred; in short, they had their lives turned upside down, which they might have avoided had they recognized the dangers detailed here.

Similarly, the consequences of a sexual assault conviction need to be emphasized to male Marines. It is not enough that they simply know that it is a crime. They need to know, for instance, that under Article 120(b)(3) of the Uniform Code of Military Justice (UCMJ), a person convicted of sexual assault for having sex with a person who cannot consent due alcohol-induced incapacitation, faces 30 years of confinement, a dishonorable discharge, and total forfeiture of all pay.⁷⁷ Moreover, they need to know that every state has a sex offender registry to track post-conviction sex offenders. For example, under California law, as in many states, a person convicted under Article 120(b)(3) must register as a sex offender while residing there.⁷⁸

In sum, the general goal of the male-specific training urged here is to cause Male Marines to become more skilled at determining when a woman is legally able to consent to sex while, at the same time, increasing their criterion and boundary lines for drawing that determination. One way to do this would be to provide male Marines with perceptual training in which they repeatedly make judgments about women's ability to consent under varying circumstances involving the consumption of alcohol. An example of such a scenario could involve a 125 pound female that has had six drinks over a two hour period. Although she is conversing with the male Marine as they leave a bar to go back to her place, she is slurring her speech and stumbles while walking.

Thus, the question for the male Marine would be, should sexual intercourse be pursued? Using the BAC card that he has, the male Marine would determine that, based on the female's

weight of 125 pounds, and the number of drinks that she has had over a two hour period, her BAC is likely .214 (.244 - .030 = .214), and therefore is within the *blackout range*. This computation, combined with the fact that the female is slurring her speech and stumbling, would be clear signs for the male Marine that the female may not be able to consent to sex, and therefore he should not pursue it, even if she signals otherwise.

V. Female-Specific Training

Significantly, “women generally achieve higher BAC’s than men when consuming equivalent amounts of alcohol”⁷⁹ Thus, a woman is generally more likely to experience a blackout from alcohol consumption than a man that has consumed an equivalent amount of alcohol. The negative consequences of this fact are continuously driven home by testimonials from women:

I don't remember the next morning. I was still a little disoriented.⁸⁰
~Complainant in *U.S. v. Wood*

Q: Let me ask you, how were you feeling when you realized that you didn’t have your clothes on, physically and mentally?

A: Well, I mean, physically I was just scared. I mean, I was just scared, like, I was confused, I was groggy. I had just woken up just, you know, didn’t – first didn’t know where I was. Okay. I’m in my bed. Oh my gosh, what’s going on? I was – I was very much out of it because I was just, you know – I had just had a lot to drink the night before, I had just woken up, so I was just trying to figure out what was going on.⁸¹

~Testimony of complainant in *U.S. v. Stewart*

It kind of happened to me freshman year. I’m not positive about what happened, that’s the worst part about it. I drank too much at a frat one night, I blacked out and I woke up the next morning with nothing on in their cold dorms, so I don’t really know what happened and the guy wasn’t in the bed anymore, I don’t even think I could tell you who the hell he was, no I couldn’t.⁸²

~Anna, college student

Because a woman is generally more likely to experience an alcohol-induced blackout than a man that has consumed an equivalent amount of alcohol, the use of protective drinking strategies “is likely to have a larger impact on reducing negative consequences for women than men.”⁸³ In fact, findings from a study conducted by the University of Washington scholars suggest that training meant to lower alcohol consumption, or the manner of consumption, may be especially useful in lowering negative sex-related consequences for women who mix the two.⁸⁴ More specifically, that study noted that training designed to lower alcohol consumption in situations where one could encounter a sexual partner could decrease the sexual risks that accompany alcohol use.⁸⁵

Similarly, researchers from the University of Buffalo Research Institute on Addictions, found that “women’s alcohol consumption plays a significant role in a large proportion of sexual assault incidents among young women”⁸⁶ They determined that “findings clearly point toward women’s voluntary heavy episodic drinking [(HED)] within social settings as a key risk factor in sexual victimization and a mechanism to address in prevention efforts.”⁸⁷ Their data indicated that women reporting HED (drinking 4 or more drinks on an occasion) less than once a month or not at all, reported attempted or completed rape while incapacitated at a rate of 1.1%; that those women who reported HED one to three times per month, 8.9% reported incapacitated rape; and that women who engaged in HED on a weekly basis, reported incapacitated rape at a rate of 23.6%.⁸⁸ Based on these findings, the researchers concluded that “prevention efforts aimed at reducing women’s (HED) within the social settings can have a significant impact on reducing rates of sexual victimization”⁸⁹ Based on this data, a woman can reduce her chances of being sexually assaulted by nearly 25% by limiting her weekly alcohol consumption to no more than 3 drinks per occasion.

Moreover, although the University of Buffalo study was conducted on college students, the researchers stressed that non-college students of similar age (18-22) are likely to be similarly vulnerable to incapacitated rape because they exhibit high rates of HED.⁹⁰ In fact, the authors noted that some researchers “found that young women not in college reported even higher rates of sexual victimization than college students.”⁹¹ The researchers therefore concluded that “similarly aged non-college students appear to be at similar or even higher risk of heavy drinking and sexual victimization”⁹² Marines surely fall into this category.

One incapacitated-rape-prevention strategy for women that the Buffalo researchers stressed has shown promise is the parent-based intervention, “which aims to reduce college drinking by increasing parental monitoring and communication.”⁹³ During the summer before college, parents of incoming students were provided with a handbook meant to help them talk to their students about college drinking.⁹⁴ The handbooks contain tips on improving parent-teen communication, emphasizing the importance of communicating values about alcohol use to teens and continued parental monitoring and communication during college as ways of reducing college student drinking.⁹⁵ The Buffalo researchers, studying 1000 mother-daughter pairs recruited from graduating high school seniors, found that students involved in the parent-based intervention had a decline in heavy episodic drinking, and predictably, a lower incidence of incapacitated rape due to alcohol use.⁹⁶

A similar approach should be implemented by the Marine Corps. But instead of parent-based intervention, which would be impractical, a female-leader intervention, which uses the same approach and has the same goals, should be implemented. And it would not be difficult to implement. In fact, the previously referenced Commandant’s 2012 sexual assault prevention and response campaign plan already call for something similar to this, with the purpose of

introducing male recruits to “role model” female Marine leaders.⁹⁷

Under the proposed female-to-female intervention model though, it is not enough to simply convey the message that female Marines should drink responsibly, as this message is overly broad and vague. The message needs to be more specific: female Marines, when they do drink, should do so with an eye toward protecting themselves from incapacitated sexual assault. That is, they should avoid drinking to the point of incapacitation, or even nearing that point. The point needs to be stressed to female Marines that while they may have the right to drink to the point of blacking out and yet not be sexually assaulted, they increase the potential of the latter by doing the former. The point needs to be made to female Marines that, by engaging in such drinking practices, they entrust their own safety to bystanders at best, and a potential assailant at worst.

Thus, drinking responsibly for today’s female Marines needs to be drinking in a way in which they do not have to rely on others to ensure that they are not sexually assaulted. It is commonly accepted that most female victims of sexual assault know their male attackers. In one particularly disturbing case, a female Navy sailor was sexually assaulted by her male liberty buddy—the person that was supposed to look out for her—and a number of his friends while she was incapacitated from alcohol consumption.⁹⁸ As such a case demonstrates, the best way to avoid incapacitated rape, is to avoid becoming incapacitated by limiting alcohol consumption. Finally, this message would be “most effective if high-status” female Marine leaders are involved in disseminating that message to other female Marines.⁹⁹

Still, as the Buffalo researchers emphasized, rape prevention efforts like this, which target women’s behavior, have “been criticized as unfairly requiring women as potential victims to alter their behavior and restrict their freedom in exchange for their safety.”¹⁰⁰ But the two

female researchers disagree with this notion, stressing that:

Although the goal of the approach we advocate is to alter women's behavior, it seems difficult to argue that preventing women from drinking to the point of incapacitation restricts their freedom or involves a loss. On the contrary, it offers many additional benefits. Advocating drinking reduction for women as a way of reducing their vulnerability to rape implies neither that women are to blame for their own victimization nor that prevention directed toward male perpetrators is unnecessary.¹⁰¹

In line with this thinking, Loyola Marymount University provides its female students specific guidance on alcohol consumption and sexual assault. The University instructs that “It is not being sexist to tell you that the simple fact is that alcohol affects women differently than men.”¹⁰² Women can expect considerably more alcohol-caused impairment than men at equivalent levels of consumption.¹⁰³ Women, the University teaches, “are more sensitive to alcohol” for a number of reasons. First, “on the average, women are smaller than men, equivalent doses of alcohol produce higher levels of concentration in women's bodies.”¹⁰⁴ Second, “[t]he average female carries more body fat than the average male, and body fat contains little water. Consequently, most women have less body water to dilute the alcohol, leaving a higher concentration of alcohol in women's bodies.”¹⁰⁵ Third, “[a]lcohol dehydrogenase is a metabolizing enzyme that helps the body get alcohol out of its system. Women have less of this enzyme than men, so more of what women drink enters the bloodstream as pure alcohol.”¹⁰⁶ And fourth, fluctuating hormone levels in women means that the effects of alcohol will set in faster when their estrogen levels are elevated. Moreover, the mix of alcohol with birth control pills or other medications will cause the intoxicating effects of alcohol to set in at lower levels of BAC.¹⁰⁷

The University goes on to provide *Drinking Strategies and Tips*,¹⁰⁸ a blood alcohol content (BAC) calculator,¹⁰⁹ and an explanation of the varying BAC level effects.¹¹⁰ In fact, the

University goes as far as advising its students that they should establish their own known drinking limit:

If you do not already know how much alcohol you can handle without losing control, try it out one time at home with your parents or friend present. Explain to them what you are attempting to learn. Most people find that no more than a drink an hour will keep them in control of the situation and avoid drunkenness. Have your parents or friend videotape you while you are attempting to see what happens when you consume more than the recommended one drink per hour.¹¹¹

This guidance comports with the advice given by Michael Domitrz, executive director of *The Date Safe Project* and author of *May I Kiss You?* He tells parents of college bound daughters to talk to them about how much alcohol they can handle and share the dangers of engaging in sex when using alcohol.¹¹²

In the end, it would be ideal if female Marines did not have to guard against being sexually assaulted. But that is not the reality. And while they may hope that bystanders would step in if they recognized that there was a danger of that female Marine being sexually assaulted, she cannot, and should not, rely on that happening. The single best way to guard against rape involving the use of alcohol is to for female Marines to understand the dangerous interplay between alcohol and sexual assault and, more importantly, know and stay within their alcohol consumption limits in order to avoid becoming incapacitated. As a result, the Marine Corps should take this approach and implement a female-specific education strategy to reduce sexual assaults.

Finally, female Marines need to be instructed on the general perceptions of women who drink, and how those perceptions may increase their risk of being sexually assaulted while intoxicated. Research suggests that that “there has been less focus on assessing the effect of alcohol on women’s sexual behavior because society takes an unfavorable view of women who become intoxicated and have sex.”¹¹³ As a result of these negative perceptions, “women’s

expectancies about alcohol's sexual effects are less positive than men's expectancies, because the social costs associated with alcohol use and sexual behavior are greater for women."¹¹⁴ That is, "women who drink alcohol are generally viewed as more willing to engage in sex than women who do not drink; therefore, women who drink excessive amounts of alcohol are frequently considered responsible for the behavior of men in the context of a sexual encounter."¹¹⁵ However wrongful these perceptions may be, their prevalence needs to be made known to female Marines so that they may further guard against being sexually assaulted.

VII. Conclusion

Each of the training points advocated for in this paper should work together to reduce the number of alcohol related sexual assaults in the Marine Corps. The collective training on the interplay between alcohol, passing out, blacking out, consent, and sexual assault provides the framework, while the male and female-specific training provides a more meaningful approach to combatting the issue because it springs from the inherent differences in men and women regarding the matter.

Importantly, the gender-specific training proposed here for the Marine Corps has already been shown to work. And while that success was in the college arena, nothing suggests that the same approach would not achieve the same success within the military generally, or the Marine Corps specifically. Further, implementing the proposals found here would not be onerous or costly, as they are a supplement to the robust sexual-assault training that the Marine Corps is already providing, not a replacement for it. That is, the training approach recommended here is meant to be in addition to, no in lieu of, the current sexual-assault-prevention training that the Marine Corps is conducting. And the additional time requirement to implement that training should be no more than 1 hour. Further, measuring the effectiveness of this training at reducing

sexual assaults would be straightforward: tracking the number of sexual assault reports in which the accuser or accused consumed alcohol. Moreover, if that data, for example, showed that there was a significant decrease in the use of alcohol by one gender or the other in reported instances of sexual assault, the Marine Corps could further refine its training to address the gender where no decrease had been shown. Based on this author's review of the literature on the topic, this would be a pioneering approach to reducing sexual assault for a military service.

The implementation of the suggested training could come in two ways. A test of the training could be done at one or a few selected units to determine its effectiveness, or the training could be implemented straightaway as a part of all sexual assault prevention training. Because of the urgency of the issue, the ease in which the suggested training can be integrated into the current training, and the existing research that indicates that the strategies presented are effective, the recommendation here is that the training be implemented throughout the Marine Corps.

In the end, the suggestions found in this paper would be the same advice any parent would likely give to their college-bound son or daughter. Surely the Marine Corps could give the same advice to its Marines.

Endnotes

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