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ATTACKED FROM ALL SIDES: INCREASED SEXUAL ASSAULT REPORTS WITHIN THE U.S. MILITARY

by BRITTANY KUBES

Jessica, a helicopter maintenance crewmember in the U.S. Military, was the victim of sexual assault by more than one colleague.¹ In 2009, Jessica reported that her squad leader made unwanted sexual comments towards her and then tried to physically force himself on her.² In a later unrelated incident, an acquaintance stationed at another base raped her.³ Jessica is one of three women in a unit of 60 men.⁴

Experiences of sexual assault amongst military personnel are not unique. In fact, one in three female soldiers will experience sexual assault while serving in

the military.⁵ In 2008, there were 2,265 reports of sexual assault involving military service members, a nine percent increase from 2007.⁶

Was the 2008 increase in sexual assault reports in the military a positive result of stricter standards or a sign of rising assault occurrences?

According to Dr. Kaye Whitley, the director of the Pentagon's Sexual Assault Prevention and Response Office (SAPRO), the increase in the number of sexual assaults can be attributed to the improved reporting methods and the Department of Defense's (Department) new policy of encouraging victims to come forward with information regarding sexual assault.⁷ On the other hand, as one anonymous military intelligence lieutenant suggests, "military men and women have become hypersensitive to any hint of impropriety by fellow soldiers, which then leads to the rising level of reports."⁸

No matter what the direct cause of the increase in reporting, it has led to heightened controversy. Particularly, the controversy surrounds the oft-forgotten male sexual assault victims and the related implications of the "Don't Ask, Don't Tell" (DADT) policy. This policy prohibits openly gay men, lesbians and bisexuals from serving in the military.⁹

MILITARY SEXUAL ASSAULT REGULATIONS

In order to establish a central organization of accountability and oversight for sexual assault policy, the Department created SAPRO.¹⁰

Former Secretary of Defense, Donald H. Rumsfeld, directed former Secretary of Defense for Personnel and Readiness, Dr. David S. C. Chu, to review the way the Department controlled the treatment and care of military member sexual assault reports.¹¹ In 2007, the Uniform Code of Military Justice (UCMJ) broadened its definition of sexual abuse from solely covering rape to include other related offenses.¹² This change in the UCMJ definition demonstrates the Department's commitment to preventing sexual assault in the military.¹³

One year later, there was a nine percent increase in sexual assault reports.¹⁴ Additionally, the Pentagon estimated that approximately 80 to 90 percent of

sexual assaults went unreported in the military in 2008.¹⁵ Shortly after the Department created stricter assault regulations an increase in reports occurred.

DOES A RISE IN SEXUAL ASSAULT REPORTS IMPLICATE A RISE IN SEXUAL ASSAULT CASES?

There are various causes for the recent increase in sexual assault reports by military service victims. The Department notes that the increase may be attributed to the result of the UCMJ's broadened definition of the term "sexual assault."¹⁶ More conduct consequently falls under that category, resulting in more reports.

Indeed, some soldiers believe that the stringent standards have resulted in too much sensitivity. For example, according to military member James Mallory, if a soldier "hears anything off color across the room, they then have leverage to launch a complaint and possibly gain a promotion."¹⁷ These soldiers are skeptical of the increased number of reported attacks.¹⁸

Another factor is that soldiers may have mixed feelings about coming forward and reporting attacks.¹⁹ The victim may face a negative impact on his or her career and a remaining tour with the perpetrator.²⁰ Or, the victim may not report an attack if a "favor," such as a promotion in exchange for the alleged sexual assault, has resulted.²¹

On the other hand, some military personnel suggest that there are increased reports because the number of assaults has increased.²² The Defense Task Force on Sexual Assault in the Military Services reported that some military personnel believe the increase is attributed to the fact that perpetrators believe they will not be held accountable for their acts.²³ Specifically, these officers believe they have complete impunity because their commanders are often more focused on the mission than on their conduct.²⁴

Furthermore, Courtney Mullins, intern at the Washington Coalition of Sexual Assault Program, suggests that other barriers for military service victims exist that may be contributing to the overall number of reports.²⁵ Such barriers may include lack of privacy or fear of the career impact of reporting attacks.²⁶ Military service members live in close quarters in remote locations.²⁷ Additionally,

women are typically isolated and unevenly distributed at bases, making up only one in 10 soldiers at some bases.²⁸

Kingsley R. Browne, a professor at Wayne State University Law School, opines that sexual assaults are the predictable consequence of “mixing the sexes together in the often intimate and cloistered environments in which military personnel operate.”²⁹ These opinions contribute to the numerous reasons for the recent increase in sexual assault reports.

THE MALE VICTIMS LEFT BEHIND

Women are not the only victims of sexual assault in the military. In 2008, 10 percent of military service victims were male.³⁰ Many men do not believe they are vulnerable to sexual assault if they are in all male units, likely due to the perceived safety net of DADT.³¹

DADT prohibits anyone who demonstrates a “propensity or intent to engage in homosexual acts” from serving in the U.S. armed forces.³² Under the policy, these acts “create an unacceptable risk to the armed forces’ high standards of morale, good order and discipline, and unit cohesion,” which are “the essence of military capability.”³³

One anonymous military intelligence officer contends that homosexuals should not be allowed in the military.³⁴ He states that soldiers should not have to fear living with “gay men who may be bigger and stronger” than them.³⁵ Is this the same apprehension that women face from such “bigger and stronger” heterosexual men in the military?

DADT has recently received a lot of media attention due to its controversial policy. However, there has been less focus on sexual assaults occurring within the military.³⁶ According to the Department, men may be less likely to report a sexual assault by another male due to risk of their own stigmatization with respect to DADT.³⁷

CONCLUSION

The Department asserts that significant progress has been made in responding to victims of sexual assault since the establishment of SAPRO.³⁸ At the same

time, the Department also acknowledges that improvements could be made in prevention, victim care and accountability.³⁹ President Obama recently called on Congress to “finally repeal the law that denies gay Americans the right to serve the country they love because of who they are.”⁴⁰

Congress may also be called on in the future to develop new regulations to make women feel more comfortable in the military and to further decrease the prevalence of sexual attacks. It may have a duty to do so regardless of whether those reports are a result of the broader sexual assault standard or a mere increase in reports.

NOTES

1 Katie Couric, *Sexual Assault Permeates U.S. Armed Forces*, CBS EVENING NEWS, Mar. 17, 2009, available at <http://www.cbsnews.com/stories/2009/03/17/eveningnews/main4872713.shtml>.

2 *Id.*

3 *Id.*

4 *Id.*

5 *Id.*

6 Department of Defense, FY08 Report on Sexual Assault in the Military 33 (2009), <http://www.sapr.mil/HomePage.aspx?Topic=resourcesReports&PageName=reportLinks.htm>.

7 Mike Mount, *Reports of Sexual Assault in Military Rise in 2008*, CNN, March 17, 2009, available at <http://www.cnn.com/2009/POLITICS/03/17/military.assaults/index.html>.

8 Telephone Interview with Anonymous Military Intelligence Officer, U.S. Army (March 22, 2010).

9 10 U.S.C. A. § 654 (2010).

10 Sexual Assault Prevention and Response Office, *About SAPRO*, <http://www.sapr.mil/HomePage.aspx?Topic=about%20SAPRO> (last visited Mar. 5, 2010).

11 *Id.*

12 See 10 U.S.C.A. § 920-120 (2007).

13 *Id.*

14 Department of Defense, *supra* note 6.

15 Nancy Gibbs, *Sexual Assaults on Female Soldiers: Don't Ask, Don't Tell*, TIME, March 8, 2010, available at <http://www.time.com/time/magazine/article/0,9171,1968110,00.html>.

16 Department of Defense, *supra* note 6.

17 Telephone interview with James Mallory, Private First Class, U.S. Military (Feb. 24, 2010).

18 *Id.*

19 *Id.*

20 Steven Lee Myers, *A Peril in War Zones: Sexual Abuse by Fellow G.I.'s*, N.Y. TIMES, Dec. 28, 2009, available at http://www.nytimes.com/2009/12/28/us/28women.html?pagewanted=3&_r=1.

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- 22 Myers, *supra* note 20.
- 23 *Id.*
- 24 *Id.*
- 25 Courtney Mullins, *Understanding Sexual Assault in the United States Military Culture*, CONNECTIONS: A BI-ANNUAL PUBLICATION OF THE WASHINGTON COALITION OF SEXUAL ASSAULT PROGRAMS, Fall/Winter 2005, at 10-11.
- 26 *Id.*
- 27 Myers, *supra* note 20.
- 28 Helen Benedict, *Betrayal*, COLUMBIA MAGAZINE, available at http://www.columbia.edu/cu/alumni/Magazine/Spring2009/03/25/2009-03-25_25_increase_in_sex_assault_in_combat_zon.html.
- 29 Kingsley R. Browne, *Military Sex Scandals from Tailhook to the Present: The Cure Can Be Worse than the Disease*, 14 DUKE J. GENDER L. & POL'Y 749, 788 (2007).
- 30 Department of Defense, *Report of the Defense Task Force on Sexual Assault in the Military Services* 35-36 (2009).
- 31 *Id.*
- 32 10 U.S.C.A. § 654 (2010).
- 33 *Id.*
- 34 Telephone Interview with Anonymous Military Intelligence Officer, *supra* note 8.
- 35 *Id.*
- 36 Nancy Gibbs, *supra* note 15.
- 37 Department of Defense, *supra* note 30, at 35-36.
- 38 *Id.* at 41.
- 39 *Id.*
- 40 Larisa Epatko, *Obama Vows to Repeal 'Don't Ask, Don't Tell,'* PBS NEWSHOUR, Jan. 28, 2010, available at http://abcnews.go.com/Politics/State_of_the_Union/state-of-the-union-2010-president-obama-speech-transcript/story?id=9678572.