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Kristen Houser

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Analysis and Implications of the Omission of Offenders in the DoD Care for Victims of Sexual Assault Task Force Report

Kristen Houser
Moxie Resources LLC

This note addresses the weaknesses in the Department of Defense (DoD) Care for Victims of Sexual Assault Task Force (CVSATF) Report, released in May 2004. Sound policy and protocol cannot be developed to prevent and to respond to sexual assault in the military if the role of sex offenders is not understood, yet the report excludes information relevant to understanding sex offender behavior and to responsibility. Shortcomings in the CVSATF recommendations to improve military definitions of sexually violent behavior and data collection are summarized, as are limitations in the recommendations for sexual assault prevention strategies. This analysis highlights problems with the DoD CVSATF recommendations to improve offender accountability and secure safety for communities and discusses how the military social climate is prohibitive to facilitating these goals. This note suggests that policy and procedures guided by recommendations that omit information about sex offenders may actually leave communities at continued risk of sexual assault.

Keywords: military; sexual assault; sex offenders; U.S. Department of Defense

The Department of Defense (DoD) released the Care for Victims of Sexual Assault Task Force (CVSATF) Report in mid-May 2004. This report is the result of a 90-day review of all sexual assault policies and programs among the armed services and the DoD, ordered by the secretary of defense in February 2004. The report includes the DoD findings and recommendations relative to military definitions and collection of sexual assault data, sexual assault prevention efforts, incidence of reporting, support services to victims, and investigation and prosecution practices, including offender accountability. The DoD CVSATF Report is intended to be used as a blueprint for developing comprehensive policies and procedures to prevent and to respond to sexual assault within the military.

Although the CVSATF Report covers a wide scope of factors that contribute to sexual violence, the report failed to state or suggest that sexual assaults occur because perpetrators choose to commit these crimes. The authors effectively omitted the most important element in their analysis of sexual violence. This omission of sex offender dynamics and responsibility has significant implications that may ultimately undermine
the ability of the DoD to develop effective policies. Sound policy development requires a full understanding of the problem the policies are intended to address. This neutral stance and the accompanying neutral language utilized throughout the report, combined with various points that question the responsibility, reliability, and credibility of victims, reveal a cultural climate that may be the largest barrier to the implementation of effective prevention and intervention strategies to reduce the incidence of sexual violence perpetrated by and against military personnel. This note addresses the weaknesses of the analysis and recommendations offered by the CVSATF Report with particular attention to the omission of information and analysis of sex offender behaviors and responsibility.

Problems With Definitions and Data Collection

Perpetration Trends Overlooked

The DoD CVSATF Report clearly identified the need for a clear and uniformly utilized definition of sexual assault to inform policy and procedure, to guide investigations and prosecutions, and to support consistent and meaningful data collection. The problems found throughout the report stemming from the omission of the role of perpetrators of sexual violence begin here. The discussions of the needs for a clear definition and consistent data collection focus only on tracking the incidence of victimization and do not mention the value of tracking trends in perpetration. The difference between these two bodies of information may seem subtle, but it is significant. A tally of the number of reported sexual assaults will not result in a tally of the number of assailants, as most offenders are serial offenders, and one victim may be assaulted by any number of perpetrators acting as a group. Furthermore, simply counting the number of victims may not provide enough information to indicate whether alleged perpetrators are directly or indirectly linked to other reports or to detect similarities or trends among the methods used to set up and overpower the victim.

Inconsistent and Incomplete Definitions

The beginning of the CVSATF Report noted widespread confusion regarding the meanings of different terminology for various kinds of sexual violence, and the implications of this confusion are present throughout the findings and recommendations. The CVSATF review of policy and procedures that informed the report included interviews with military personnel and uncovered “considerable inconsistency in the legal and behavioral definitions of terms such as sexual assault, sexual harassment, and sexual trauma” (DoD, 2004, p. ix). This confusion has resulted in inconsistent and often inappropriate handling of sexual assault cases within the military. For instance,
some commanding officers have followed guidelines governing the handling of sexual harassment cases when actual rapes have been reported to them, handling the cases internally and without military law enforcement investigation.

These inconsistencies and confusion of terms must be resolved for sexual assaults to be appropriately investigated, prevented, and tracked. Oddly, the CVSATF recommendations stopped short of advocating that the Uniform Code of Military Justice (UCMJ) be amended to include a clear definition of sexual assault consistent with federal criminal statutes. Without this definition in the UCMJ, the actions of commanders, investigators, medical personnel, and other military support personnel are likely to continue to be inconsistent; the collection of data will likely remain incomplete and incompatible with studies on civilian populations; and efforts to prevent sexual violence will lack a clear and consistent definition throughout the armed services. The current definition of rape in the UCMJ is outdated and inconsistent with federal and state laws throughout the rest of the country, as it accounts only for forced vaginal penetration. The failure of the CVSATF to recommend the addition of a broadened definition of “sexual assault” to the UCMJ to include the full scope of criminal acts recognized by the federal and state governments is incomprehensible, as doing so could inform many of the other recommendations made in the report.

Perpetration Risk Factors Omitted

The final segment of the “Sexual Assault Data and Definition” section of the report includes an overview of risk factors for sexual victimization and correctly identifies factors associated with increased risk of victimization, such as youth, prior victimization experiences, and consumption of alcohol. However, the report fails to mention that the same factors are also correlated with the perpetration of sexual assaults. Research on incarcerated sex offenders and undetected sex offenders indicates that most offenders begin to commit sex offenses prior to reaching age 18 (Abel et al., 1987; Lanning, 2001). Research on incarcerated and undetected sex offenders also indicates that sex offenders deliberately and instrumentally use alcohol and other substances to aid in the facilitation of sexual assault (Lisak & Miller, 2002; Lisak & Roth, 1988, 1990). The focus on victimization and the omission of perpetration factors is a commonly made mistake, but one with significant consequences. Information from victims can easily be studied by examining data collected when support services or legal interventions are sought. Studying sex offenders is much more difficult because offenders are invested in remaining anonymous and denying their actions to avoid identification, prosecution, and accountability. The failure to include sex offenders when discussing prevention and research needs only reinforces the invisibility on which they rely and can result in “victim blaming” by shifting efforts to altering the behavior of victims rather than offenders. This is a common but unsophisticated approach to sexual assault “prevention,” and it will be discussed in the next section.
Prevention and Avoidance

Strategies Are Confused

Civilian-based rape crisis- and crime-prevention programs have often confused sexual assault “avoidance” or “awareness” with “sexual assault prevention.” Community educators often discuss strategies people may employ to reduce the risk of being personally sexually assaulted rather than teaching participants to identify problematic behaviors and discussing ways individuals and communities can intervene when they suspect or observe a person planning or setting up a sexual assault. In addition, the sharing of factual information on sexual assault incidence and contributing factors, or “raising awareness,” does not necessarily prevent rape.

The Centers for Disease Control and Prevention National Center for Injury Prevention has helped clarify the difference between rape prevention and risk reduction in recent years by focusing on primary prevention strategies in their work with recipients of Rape Prevention Education funds. Primary prevention strategies focus on preventing federal offenders from assaulting and influencing individuals to alter their belief systems and collective societal norms to decrease rape-supportive attitudes.

The CVSATF recommendations for sexual assault prevention make the same errors in confusing these approaches. The exclusion of information and analysis of sex offender behaviors and patterns limits the ability of the CVSATF to incorporate actual prevention strategies in their recommendations. The “Prevention” section of the CVSATF Report is riddled with references to activities that are best described as sexual assault avoidance or risk reduction, such as informing service members “on the dangers of risky behavior,” encouraging women to use “the buddy system,” and addressing physical safety measures such as the need for better lighting.

Wrong Message to the Wrong Audience

Ironically, this section notes that these kinds of “prevention programs” are often wasted on all-male units because the content is directed toward women. The inclusion of this observation in the report demonstrates a limited understanding of sexual assault within military culture. The majority of the efforts cited as current “prevention programs” solely focus on defining sexual assault and warning potential victims about risky behavior and environments but do not address the responsibility of men to identify and intervene in situations in which someone is being set up for sexual assault, to speak out when they hear about a sexual assault, or to work to change elements of male culture that support sexually abusive behaviors.

For example, the practice of male service members frequenting strip clubs, brothels, and other venues that support commercial sex acts is well documented, but it is not mentioned in the report, despite the fact that the U.S. military has clear guidelines forbidding such activity (Demick, 2002; MacIntyre, 2002; McMichael, 2002; Soh,
2003; “U.S. Military Blames Lap Dances,” 2004; Vinson, 2004). The report states that commanders feel very strongly about forcefully deterring alcohol and “improper personal relationship” offenses because they can be contributing factors to more serious crimes such as sexual assault. Enforcing the ban on strip clubs, “juicy bars,” brothels, and other commercial sex venues is of particular importance when addressing factors that contribute to sexual assault. The environment in these establishments normalizes, sanitizes, and reinforces rape myths (e.g., “all women want sex” and “men are entitled to sexual access to women”), sexual aggression, exploitation, and abuse.

Community Safety and Offender Accountability

Punitive Measures Do Not Ensure Safety

The CVSATF did not include sex offender treatment providers among its membership and appears not to have utilized research on sex offenders when making recommendations for community safety and offender accountability. Research on sex offenders indicates that most are repeat (or “serial”) offenders, including research on the sexually aggressive behaviors of Navy recruits (Abel et al., 1987; Colorado Sex Offender Management Board, 2004; Lanning, 2001; Lisak, 1999; Merrill et al., 1998), and that the majority of sex offenders exhibit some kind of “cross over” in their victimization patterns. This means they sexually assault people with whom they have various kinds of relationships (strangers, know by sight, peers, acquaintances, spouses, family members), of varying ages (adults, children, teens), and sometimes of both genders (Abel et al., 1987; Colorado Sex Offender Management Board, 2004; Lanning, 2001; Lisak, 1999). In addition, research documenting the co-occurrence of domestic violence and sexual assault, both within and outside of a violent relationship, is not considered in the CVSATF Report.

Recommendations in the CVSATF Report addressing offender accountability and community safety solely focus on punitive measures. The report emphasizes that the armed services are unique in their ability to employ a variety of methods to hold offenders accountable. These options include reduction in or forfeiture of pay, assignment of extra duties or training, administrative actions, withdrawal or withholding of privileges, reassignment or transfer actions, bars to reenlistment, changes in security classification, career field reclassifications, and reprimands, admonishments, censures, and rebukes. Although these measures are certainly punitive, none of these options is known to be effective in interrupting or ending a pattern of sexual offending. Other large institutions have attempted to punish sex offenders by taking similar ineffective measures and, as a result, have found themselves the center of lawsuits, public outrage, and widespread media coverage as their interventions did nothing to stop the offenders from assaulting more victims. The recently publicized sex abuse scandals in the Roman Catholic Church are one such example that clearly
demonstrates the damaging and dangerous ramifications of these inadequate actions. It is difficult to imagine any community in the United States regarding these options as appropriate sex offender interventions or enhancements to community safety.

**Longer Term Solutions Needed**

The CVSATF did not issue recommendations to address longer-term accountability and community safety, such as the development of sex offender treatment programs, segregated and supervised housing for those in treatment, or ongoing supervision for uniformed offenders who continue military service. These services could be utilized for offenders whose cases are plead down, when victims are not comfortable with utilizing the court process, or as a prophylactic measure when a uniformed service member has been identified by peers or supervisors as having inappropriate or deviant sexual interests or behaviors but an actual report of a sexual assault has not been made. The report also does not reveal a sense of responsibility toward civilian community safety. The CVSATF Report contains no recommendations regarding the sharing of information on sexual offenses with civilian law enforcement for ongoing supervision or surveillance when service members are discharged or otherwise leave the armed services. Sex offenders have no place in the military or in any community, and DoD policies must be created to adequately punish, control, and supervise military affiliated offenders across all kinds of community settings.

**Policy Built on Mythology**

Disturbingly, the CVSATF Report cites the Rules for Courts-Martial 306(b), a list of factors commanders should consider when determining how to respond to a reported offense in their findings of options for offender accountability. This list is a perfect example of how a lack of knowledge about the dynamics and character of sex offenders and the impact of sexual assault results in poor policy. Included in the list of factors that commanders should consider when determining how to proceed after a sexual assault is reported are the “character and military service of the accused,” the “nature of and circumstances surrounding the offense and the extent of harm caused,” “possible improper motives,” “reluctance of the victim or others to testify,” and “availability and admissibility of evidence.” These considerations are rooted in antiquated rape mythology. Sadly, victims of sexual assault are known to be very unwilling to report their sexual assaults and to testify in court proceedings. Their reasons are ironically based in fear of being held to the standards of the mythological rape victim.

The suggestion that a person’s job performance or military service record is an indicator of the likelihood that that person perpetrates sexual assaults is absurd. Sex offenders are often successful, well-respected “pillars” of their community. Again, the Catholic Church sex abuse scandal provides a clear picture of the ability sex offenders have, and, in fact, rely on, to appear as harmless, likeable, and productive people. The implication that “real” sex offenders are unproductive, deranged, frightening, or
bizarre in their actions is an established fable and has no place in sexual assault investigation guidelines.

It is difficult to assess the extent of injuries caused by sexual assault. The Bureau of Justice Statistics National Crime Victimization Survey defined a completed rape as an injury in and of itself but also found that the majority of victims do not incur injuries other than the rape (Rennison, 2002). Many sexual assault victims develop serious complications associated with posttraumatic stress disorder in the months and years following the incident. These include severe depression, suicidality, somatic and psychosomatic physical disorders, sleep deprivation, and subsequent chemical dependency (Kilpatrick, Edmunds, & Seymour, 1992). It is impossible for a commanding officer to be able to detect these kinds of harm in the immediate aftermath of an assault. Indeed, detection and diagnosis of these complications often requires assessment by a licensed behavioral health professional.

Any attempt by the DoD to adequately respond to sexual assault must incorporate these basic understandings. Sexual assaults nearly always happen in seclusion, effectively ensuring no other witnesses are available to corroborate details of the assault. The various methods employed by different offenders do not necessarily alter the severity of their actions and should not be considered when determining sanctions and interventions. A sex offender who gains access to victims by preying on naiveté or intoxication is as likely to be a serial offender as one who uses brute force. Both kinds of offenders pose an ongoing threat to community safety, and both are likely to inflict long-term and enduring harm on the victim. Sexual victimization has no place in the military and so is not deserving of rank; the policies sought by the DoD to address it should not categorize sexual assaults or judge them by myths and outdated notions.

Fear of Ostracism and Punishment

The U.S. Air Force Academy (USAFA) in Colorado Springs, Colorado, has received significant public and media attention in recent years regarding problems with the occurrence, handling, and possible cover-up of sexual assaults against cadets. The USAFA has been the focus of several internal and external investigations that have revealed a social climate marked by significant bias against women, occurrence of sexual assault, and distrust of the system and environment by victims (“Air Force Reports,” 2003; Herdy, Emery, & Moffeit, 2003). During congressional hearings held to investigate the extent of the problems at the USAFA, former Air Force Secretary James Roche acknowledged the hostile environment, saying, “We have to deal with a climate that has allowed this to happen” (“Air Force Reports,” 2003).

The Air Force inspector general surveyed female cadets at the USAFA in spring 2003 to assess the climate relative to sexual assault. Nearly 88% of female cadets at the academy responded. Their findings documented 177 incidents of sexual assault; nearly 20% of respondents reported experiencing at least one incident of sexual assault while at the academy. Approximately 7.5% of respondents reported being the victim of completed or attempted rape, and more than 80% of the incidents were not
reported for investigation (Panel to Review Sexual Misconduct Allegations at the U.S. Air Force Academy, 2003, p. 52). The most frequently cited reasons for not reporting the assault were embarrassment, fear of ostracism by peers, and fear of reprisal or punishment (Panel to Review Sexual Misconduct Allegations at the U.S. Air Force Academy, 2003). These fears are not isolated to the USAFA but are pervasive throughout military communities and, if not addressed, will continue to impede the ability to identify and intervene with offenders.

**Victims’ Safety Is Central to Offender Accountability**

Most communities rely on the criminal justice system to punish, remove, and supervise sex offenders and to ensure community safety. For this system to work, victims must report their assailants to law enforcement agencies and be willing to provide information to members of the criminal justice system for the duration of the investigation and court proceedings, which can often last a year or longer. Timely reporting is particularly important to ensure proper collection and preservation of forensic evidence. Civilian communities have made many changes during the past 10 years to make the criminal justice process more user friendly for victims. Sensitivity training has been provided to all players: Law enforcement and prosecutors have been trained to properly investigate nonstranger sexual assaults; nurses have been specially trained to collect and preserve evidence; and service providers have collaborated to expand support networks for victims, to close communication gaps, and to improve access to confidential victim support services. The inclusion of confidential victim advocacy services with privileged communication protections has been central to the success of civilian-based programs.

The CVSATF Report repeatedly and correctly noted that the lack of confidential and private victim services within the military is a significant impediment to victims’ willingness to report sexual assaults or seek medical or emotional care. Currently, mandatory reporting requirements and regulations are in place to make certain that commanders are provided information about sexual assaults because commanders are responsible for ensuring community safety and due process of the law. These mandatory reporting requirements mean victims have no way to obtain medical or emotional support without the information being passed to their commander and triggering an investigation.

The CVSATF Report notes that data on the offenses and details of allegations may be kept on shared computers and printed in reports that are easily viewed by both command and noncommand personnel. This information is easily accessed by a rather large number of people and can lead to speculations and assumptions about the victim’s identity. Subsequently, premature judgments about the validity of the report and victim credibility can result, as can rumors, harassment, ostracism, and even threats to the victim’s safety. This process significantly diminishes the chances that a victim will feel safe or supported and compounds the problems that stem from the dearth of confidential services.
The mandated reporting requirements and lack of confidentiality and privacy assurances effectively preclude victims from telling anyone about the crimes committed against them. The aforementioned problems with military methods of offender accountability provide little incentive for victims to begin an investigative and judicial process, as minimally punitive consequences rarely seem like “justice.” It is sadly ironic that the regulations intended to enhance community safety actually have the opposite effect: They seriously reduce the likelihood that a victim will report the assailant and therefore allow the assailant to remain anonymous and free to commit more assaults.

Conclusion

Attempts to effectively reduce or eliminate the incidence of sexual assault in any community require long-term commitment to a wide array of activities that must be integrated throughout the culture and practices of that community. The CVSATF is to be commended for gathering such a vast amount of information on current policies and procedures and research on sexual assault victimization and producing a report in only 90 days. Although the report covered a large number of factors that contribute to sexual violence, recommendations to improve the ability of the DoD to effectively prevent and respond to sexual assault must be revisited and infused with expert knowledge from those who treat sex offenders. Enacting the recommendations included in this preliminary report without addressing the most core element of sexual assault—those who choose to commit the assaults—would be folly. The DoD must incorporate the understanding that sexual assault is not a thing that happens to people but a criminal and brutal act that some people choose to inflict on others because they have the desire and will to do so. Priority must also be given to affording safety, privacy, and confidentiality to victims who seek emergency and support services. The ability of any community to identify people who commit sexual offenses and appropriately intervene is largely dependent on the willingness of victims to come forward and the ability of the community to provide support to the victim in return. It is clear that the culture and practices of the military do not provide nearly enough safety, privacy, security, or assurances to encourage victims to do so. Without accepting and addressing these core facts about sexual assault perpetrators and victims, sexual violence in military communities cannot be meaningfully addressed.

References


**Kristen Houser**, MPA, has worked in the field of sexual violence for 15 years and provides consulting, training, and public speaking on issues related to sexual violence and prostitution through her consulting company, Moxie Resources LLC, located in Omaha, Nebraska. She served on the board of directors for the National Alliance to End Sexual Violence from 2002 to 2005, including a term as president in 2004.