

4 Task Force Findings

Sexual Assault Data and Definition

Finding 1

Data systems and records on reports of sexual assault are incomplete and not integrated.

As a part of this review, we asked each Service to provide quantitative data on reported assaults for calendar years 2002 and 2003. (See Appendix A, *Data Call, Services and Combatant Commands*.) Meeting the request required significant time and effort by the Services to gather, collate, and present the data. In some instances, aggregation required case-by-case review and manual collation of text data. Data was captured in multiple, unrelated data systems developed for different purposes that do not necessarily complement one another. Despite the Services' best efforts, the data provided to the Task Force was inconsistent and incomplete, in some cases. This was true for all relevant data pertaining to victim care, as well as command disposition and case outcomes.

While mechanisms such as serious incident reports, situation reports, and special interest reporting frequently report more serious cases of rape and sexual assault, these reporting methods do not capture all incidents, they are not standardized, they are not intended to analyze data, and the lack of record-keeping and follow-up by higher levels of command make it difficult to assess risk factors, trends, and accountability. What is needed is a system to help senior level commanders understand and manage trends and characteristics of Service level crime for the purpose of better understanding risk environments and mitigating those risks.

Capturing data with respect to victim preferences and the range and timeliness of support services provided appears particularly problematic. Specific data with respect to victim care is provided in Finding 23. A lack of integration and coordination among functional areas was also noted with respect to the Task Force request that each installation visited provide 10 reports of investigations, with corresponding records reflecting any and all support services provided to victims in those cases. With the exception of one installation that made a conscientious attempt to provide information on mental health support provided to victims in the identified cases, the information provided could not establish the timeliness or extent of support services provided to victims. Although the victim-focused sexual assault databases required by the DON are structured to provide at least some victim support information, problems with data submission and system functionality significantly impede current effectiveness.

The Department cannot identify or explain trends with respect to how cases are handled using the current data collection methods. Service investigative and military justice databases vary widely among and within each military department and often do not capture sufficient

information to analyze why many initial reports of sexual assault do not result in criminal convictions. For instance, there are no coded fields of information to generally explain why cases are unfounded or determined to have “insufficient evidence” or why commanders choose to pursue various options other than courts-martial. More importantly, there are no data fields or codes in these systems to reflect victim preferences during investigation (e.g., delayed reporting, refusal to participate, recantation) or during the legal process (e.g., preferring alternate dispositions to courts-martial process). Some investigators and legal offices annotate this information in individual case summaries within their respective databases, but this practice is not uniform and there is no way to retrieve this information without searching individual case records.

With respect to the investigation, command action, and military justice response, Defense Incident-Based Reporting System will capture much of the information that is needed when it is fully implemented within the Department. Each of the Services have various legacy security, investigation and judicial databases that are not well-integrated. Service systems are developed, under development, or testing transmission of DIBRS information to the DoD. However, current implementation in all five functional areas is variable across the Services. None of the Services are transmitting to DIBRS across all five functional areas, although a Service’s functional database may be fully operational. All services are currently reporting or testing submission of law enforcement data to DIBRS and the Air Force and Army report commander’s action information.

In the end, there is no integrated system or strategy for reporting, tracking, or reviewing reports of sexual assault and actions taken. The Department has no data collection requirement to systematically aid commanders (mission centric), service providers (victim centric) and legal and law enforcement (offender centric) officials in understanding the scope of the problem, how timely and effectively the services are provided, or how consistent and timely we are in resolving the issues for both victims and alleged offenders. Evaluating program effectiveness, assessing system accountability, and implementing data-informed process and program improvements is seriously compromised without more effective and integrated methods of data collection.

Finding 2

The rates of reported alleged sexual assaults were 69.1 and 70.0 per 100,000 uniformed service members for 2002 and 2003, respectively.

As described in Chapter 1, the Services were asked to provide data on cases reported in calendar year 2002 and 2003 in which the victim at the time of the incident was a uniformed service member. For cases reported, they were also asked to provide further quantitative data with respect to select demographic, offense and response variables. Despite a standardized request, Service differences in interpretation and reporting resulted. To what extent this was a function of the wording of the data call or different data reporting and capturing capabilities is unknown.

Across DoD, there were 901 and 1012 alleged cases of sexual assault with uniformed service member victims reported to criminal investigations in 2002 and 2003, respectively. These

figures include 24 (2002) and 94 (2003) reported cases in the CENTCOM AOR. Sexual assault, as referred to here, includes the alleged offenses of rape, forcible sodomy, assault with intent to commit rape or sodomy, indecent assault or an attempt to commit any of these offenses. There were 2,012 identified service member victims in the 1,913 alleged cases of sexual assault. Males constituted 9% of identified victims in these cases. Of the 1,913 cases of alleged sexual assault across DoD for 2002 and 2003, 1,634 alleged offenders were service members at the time of the incident. Males represented 99% of alleged service member offenders.

For our purposes, prevalence refers to the number of persons within an identified group who are victimized during a particular time period. Incidence refers to the number of separate victimizations or incidents perpetrated against persons within an identified group during a specified time period. Incidence cannot be inferred from the Service data provided because a case does not necessarily translate directly to an incident of sexual assault. However, prevalence rates can be estimated. The rates of alleged sexual assault across DoD were 69.1 and 70.0 per 100,000 uniform service members for 2002 and 2003, respectively. It is very important to note that these rates are **NOT** comparable, for a number of reasons, to those published by the Federal Bureau of Investigation's Uniform Crime Reporting Program (UCR). For example, the DoD rates include:

- ❑ All types of sexual assault, as opposed to being limited to forcible rape/attempted rape, as reported in the UCR program.
- ❑ Sexual assault of females and males, as opposed to being limited to forcible rape/attempted rape of females in the UCR program.
- ❑ Reports that may not be opened for investigation and reported to the UCR program by civilian law enforcement agencies.

Finding 3

Differences in definition create significant challenges for DoD in evaluating sexual assault trends and program execution.

The Task Force realized early on that there is considerable inconsistency in the terminology used and the behaviors included in related terms. To complicate matters, the same term may be used variably within and between DoD, the Services, and federal and civilian agencies.

This disparity in defining terminology and behaviors makes it very difficult to compare data within DoD or with non-DoD agencies and research. For example, in the DoD anonymous survey pertaining to sexual harassment (Lipari and Lancaster, 2003), sexual assault was defined as “had sex with you without your consent or against your will.” (See Chapter 6, *Literature Review* for more information.) In contrast, the National Crime Victimization Survey collects information on rape (which includes attempted rape) and sexual assault, which covers a wide range of victimizations including completed or attempted attacks generally involving unwanted sexual contact that does not involve penetration (Hart, 2003). When discussing “military sexual trauma,” the Veteran’s Administration is referring to either sexual harassment or sexual assault occurring during military service, both of which are defined further. (See Chapter 6, *Literature Review*.)

Differing terms and definitions are also used in policies, procedures, and legal documents within DoD. For example, the term “sexual assault” is not currently a specific offense under the UCMJ. In the MCM, the term is used only in MRE, 413, which governs the admissibility in a court-martial of a wide variety of past sexual acts and sexual contact that an accused committed and are being offered as evidence to support some relevant matter in issue during the trial. Depending upon the circumstances involved, DoD and the Services have included a number of separate UCMJ offenses into the term “sexual assault” when reviewing cases or trends. Indeed, different policies and instructions in the Services and in various task forces, commissions, panels, and process teams that have addressed “sexual assault” have all defined the term in different ways and included different offenses under the UCMJ in this more general and inclusive term.

The scope of behavior covered in terms like sexual misconduct and sex-related offenses have blurred the distinctions even more. For instance, the DIBRS manual defines sex-related offenses as those involving “sexual misconduct” (another term not defined under the UCMJ) and includes offenses used in this Task Force definition of sexual assault, as well as the offenses of conspiracy and solicitation to commit those offenses and conduct unbecoming an officer (if a sexually violent offense is involved). Albeit completely unrelated to sexual assault, the DoD Instruction 5505.8 pertaining to the investigation of “sexual misconduct” uses the term to address UCMJ offenses involving sexual acts between consenting adults in private. However, the DoD VWAP instruction also notes that particular attention should be paid to victims of serious and violent crime including “sexual misconduct,” which is not defined in the instruction.

Perhaps, the area with the greatest potential for confusion within the military system is the overlap between the terms sexual harassment and sexual assault. At the beginning of each focus group, participants were asked their understanding of the meeting purpose. Almost without exception, participants responded that they were there to discuss sexual harassment. This occurred even though all Task Force communication with installations identified our focus as “sexual assault.” Participants continued to use the terms interchangeably until redirected several times. It was clear that there is confusion in the distinctions between harassment and assault, and it was often articulated that these are simply behaviors that fall on a continuum.

There is reason for confusion, even at the policy level. The DoD Equal Opportunity Program directive defines the term “sexual harassment” to include unwelcome “verbal or physical contact of a sexual nature.” While contact could often form the basis for a criminal charge under the punitive articles of the UCMJ and investigative agencies would typically have responsibility for investigating more egregious cases of such conduct, commanders and service members are often confused about the proper avenue for reporting these allegations when they arise. Notably, the equal opportunity representative (the appropriate resource for reports of sexual harassment) was often identified by focus group participants as the point of contact for reporting sexual assault.

In the end, confusion in definition and lack of consistency in applying the definitions present significant challenges for DoD in terms of tracking, evaluating trends, training, and program execution. Focused attention in this area is indicated.

Finding 4

Sexual assault risk factors in the military are not significantly different from those reported in civilian literature.

Research has consistently demonstrated that youth are at greater risk of sexual assault (e.g., Hart, 2003; Perkins, 1997; Tjaden and Thoennes, 2000). Data reported by the Services indicated the same. For those cases in which the age of the service member victim was available, ages 17 – 24 represented, on average, 87% of Air Force victims, 85% of DON victims and 83% of Army victims for the two years reported. For service member offenders, ages 17 – 24, represented, on average, 68% of Air Force offenders, 66% of DON offenders, and 40% of Army offenders.

In a national survey of college women, almost all of the completed rapes occurred on campus, in living quarters (Fisher, Cullen and Turner, 2000). Service data reported a consistent trend, despite definition and data capturing difficulties. Although the Task Force asked for the number of cases that occurred in mixed-gender living quarters on military installations, this could not be obtained from Army or DON databases. However, data supplied by the Army and DON was informative. In the Army, 52% of the total cases occurred in living quarters on military installations. In DON, 47% of the total cases occurred in living quarters under military control. However, when cases not occurring in areas under military control were excluded, 79% of DON cases occurred in living quarters. Had the Task Force asked for information on reported assault occurring in living quarters not under military control, it is believed that a greater percentage of all cases would have occurred in living quarters. In the Air Force, 19% of cases, on average, occurred in mixed-gender living quarters or military installations across the two years. It is believed that Air Force data reflects a lower trend because they reported only assaults in mixed gender quarters, as requested, as opposed to those occurring in all living quarters on military installations.

Research with different samples has found that approximately half of sexual assaults are associated with alcohol use by either the perpetrator or victim (Abbey, Clinton-Sherrod, McAuslan, Zawacki and Buck, 2003). Data provided by two of the Services indicated that the use of alcohol was associated, on average, with 50% of alleged sexual assault cases involving service member victims during 2002 and 2003. With respect to the CENTCOM AOR, the percentage of associated alcohol use ranged from 19% in the Army to 48% in the DON. It is important to note that some of the DON reported cases within the CENTCOM AOR occurred outside the combat area.

The use of alcohol as a risk factor was a prevailing theme during discussions with leaders, junior enlisted, providers and investigators, validating both civilian and military data. The focus groups suggested that alcohol is involved in most reported cases of sexual assault in circumstances when the victim and alleged offender were engaged in social drinking before the alleged assault occurred.

It is believed that training environments are also at risk for the occurrence of sexual assault, although definition and data capturing difficulties did not permit effective review of Service data call information. For many, arrival at technical training may be the first time away from home and away from parental controls. This newfound independence, coupled with peer

pressure and easy access to alcohol, may lead to reckless and risky behavior. Although in most circumstances it is illegal to drink under the age of twenty-one and illegal to provide alcohol to someone under the age of twenty-one, alcohol is easily accessible to service members in the United States and in a number of foreign countries. Young enlisted personnel, like their civilian counterparts, view social drinking as a rite of passage. Alcohol is restricted within the combat theater; however, the Task Force observed that it is accessible in this environment. It was also noted that close quarters, integration of units, limitation on privacy and personnel unfamiliar with each other could increase the risk of sexual assault.

Despite the fact that there are a number of identified risk factors for sexual assault, the Task Force was unable to confirm that this information has been effectively or consistently communicated to military members in existing prevention education efforts that are either directly or indirectly related to sexual assault. Notably, several victims who had received such risk-focused training subsequent to their sexual assaults indicated that they might have modified behavior that placed them in a risky situation had they had the information prior to the assault.

Prevention

Finding 5

Existing policies and programs aimed at preventing sexual assault are inconsistent and incomplete.

Several studies have been conducted to identify best practices for the prevention of sexual assault. Some promote mixed gender training, while others identify the benefits of single gender training. Regardless of the approach, education and awareness is an effective tool for the prevention of sexual assault. Although there are well-defined policies and programs for the prevention of sexual harassment, there is not a clearly defined DoD-wide policy or program aimed at preventing sexual assault. While some commands have made laudable efforts in sexual assault prevention training, a DoD-wide set of standards for sexual assault prevention would give this subject the emphasis it merits.

Commanders place special emphasis on a variety of subjects including alcohol/drug offenses and related behavior, improper relationships (e.g., fraternization and adultery), suicide prevention, and various forms of sensitivity training. While sexual harassment training is taught at basic officer and enlisted entry-level schools and throughout the career lifecycle, sexual assault prevention, and awareness training is rarely included, and if addressed at all, it is cursory. Junior enlisted personnel noted that installation “newcomer” and holiday safety briefings would be an excellent opportunity for Commanders to address sexual assault concerns with their personnel.

Limited instruction on sexual assault awareness is conducted at formal military schools during entry-level instruction for officers and enlisted personnel. Training and education beyond the institutional setting is sporadic and varies among the Services. The Navy requires annual training on the prevention of sexual assault during general military training

instruction for all Navy and Marine Corps personnel. In 1997, the Marine Corps also established the Mentors in Violence Prevention (MVP) program. MVP provides tools to assist and encourage male Marines to actively participate in efforts to prevent rape, battering, sexual harassment and all forms of male violence against women. MVP is a “Marines helping fellow Marines” program, which encourages Marines to become involved when they see abusive situations. Because the MVP program is currently only offered during senior noncommissioned officer (NCO) and staff NCO courses, many junior enlisted personnel were not familiar with MVP.

Finding 6

At some locations, commanders have developed local sexual assault awareness training.

During the installation and theater visits, the task force discovered some locally developed educational materials related to sexual assault. Much of the material was based on information from other federal, state, and local government agencies or educational tools published by various college and university functional matter experts. Often in response to a specific incident, commanders developed programs to ensure service members are better informed on the dangers of risky behavior.

For example, the Dorm Awareness Program at Travis Air Force Base provides invaluable information to young airmen to improve situational awareness, how to avoid becoming a victim of sexual assault and addresses appropriate dating behavior. Kusan Air Force Base, Korea has created a Sexual Assault Free Environment (SAFE) program for all personnel assigned to the base, both permanent party personnel and those on temporary duty. The program includes briefings by the wing commander, the military equal opportunity representative and guest speakers who are subject matter experts. The training is informative and widely publicized. Enlisted personnel participating during the focus groups commented that the SAFE program enhanced their awareness of issues related to sexual assault.

With the assistance of the Department of Justice, Nellis Air Force Base, Nevada has developed and implemented the Nellis Sexual Assault Prevention Program (NSAPP). It is a three-pronged program focusing on prevention, education and on- and off-post community outreach. The training is mandatory for commanders, first sergeants, and all personnel. Some installations have also adopted a local “buddy system” program requiring service members to travel in pairs. In spite of the potential of these programs as preventive measures, they have not been shared or adopted Service-wide.

Finding 7

Sexual assault awareness training in the joint operational environment presents serious challenges due to operations tempo.

In the operational environment commanders must maintain a high degree of readiness and their focus is mission accomplishment. Conducting tactical training and mission rehearsals are priorities. Combatant Commanders outline theater requirements including training in

personnel deployment instructions that are applicable to all Services. Commanders expect that prior to arrival in a combat theater, units will have completed the array of mandatory training including equal opportunity/sexual harassment and cultural awareness training.

The operational environment is very transitory with units and individual replacements arriving and departing on a daily basis. With over 200,000 troops deployed to the CENTCOM area, it is difficult to maintain unit integrity in living accommodations while also providing separate quarters for females and males. Although co-ed living presented no major sexual assault issues during field exercises with their parent unit, Army female enlisted personnel did not like having to “bunk in the same area with males they did not know.” Lack of privacy for females and males was widely discussed among focus group participants. Generally, active duty females indicated they received information on how to deal with co-ed living arrangements prior to deployment, while reserve unit personnel we spoke to stated that they were not sure what to expect because it was not a topic identified for discussion in unit training.

The challenges for providing sexual assault awareness and prevention training in the joint environment is further complicated because of the large number of reserve component personnel (21% of deployed forces) in the CENTCOM theater. Reserve component personnel who participated in focus groups identified a lack of training on the prevention of sexual assault at home station and upon arrival in theater. This insight, coupled with increased utilization of reserve component personnel, cross-leveling of service members to fill unit vacancies, and lack of pre-deployment awareness training was highlighted during the Task Force’s visits throughout the CENTCOM theater of operation.

Commanders identified the need to conduct sexual assault awareness training prior to arrival in theater due to the high operations tempo. In addition, enlisted personnel also expressed strong desire for training that was not “death by PowerPoint.” Junior enlisted focus group participants that had deployed to a combat theater overwhelmingly endorsed the need for sexual assault awareness training prior to arrival in theater. They also indicated that, in order to be better prepared to protect themselves in a transitional wartime environment, the training may also need to be reinforced in theater, primarily because conditions and circumstances could not be anticipated in pre-deployment training. They noted that such training should be interactive in nature, using realistic scenarios, and come directly from their commanders. Many male focus group participants observed that current awareness training (on sexual harassment, mostly) is directed primarily toward females. They noted that many all-male units tend to believe such training efforts are wasted on them, since there are no women in their units. However, in the combat environment, mixed gender support and service support units become integrated into their command, and require service members not used to operating with females to quickly assimilate appropriate sensitivity not previously required. In many focus group discussions, male participants indicated that awareness training on sexual assaults should be directed toward males, especially regarding male behaviors and risky situations that male service members should be aware of (and seek to avoid) that might lead to being accused of sexual assault or becoming victims themselves. There was general consensus among focus group participants that in-theater training on sexual assault be given to all personnel (active, reserve and civilians) assigned to the theater, e.g. permanent party personnel as well as personnel on extended temporary duty, and that such training should be standard.

Finding 8

American service personnel are not well prepared to deal with inappropriate behavior by foreign nationals.

Prior to deployment, service personnel are supposed to receive information on cultural norms for the country/region to which they are being deployed. This training is a broad overview of the host country's traditions and social customs but does not address gender socialization or sexual assault. Focus groups with commanders and leaders reported that there was a general lack of awareness of how coalition military and third country nationals perceived American women. Several women reported that they had been inappropriately touched by local nationals or subjected to indecent acts of a sexual nature. In addition, they noted significant differences in cultural norms and expectations about women in interacting with men. Because some service members in the CENTCOM area were sexually assaulted by third country nationals, host nation citizens or coalition partner service members, aggressive efforts must be taken to ensure U.S. service members understand the cultural and religious differences of coalition and host country foreign nationals that could affect their interactions with U.S. service members (male and female), and more specifically, how to deal with any inappropriate behavior of a foreign national.

Finding 9

Training and education designed to prevent sexual assault is limited and varies from location to location.

Because the Department has not developed or required standardized education and training materials for the prevention of sexual assault, most service members lack a basic understanding of what constitutes sexual assault, risk factors, or preventive measures. This lack of knowledge and understanding of sexual assault was prevalent across both officer and enlisted ranks. Service members at all levels often confuse the definition of sexual assault with that of sexual harassment and sexual misconduct. During focus group sessions, it was also apparent that many did not know the situations and circumstances in which most sexual assaults occur and, consequently, they were unprepared to recognize and handle the risks in their environment. There is a common misperception that most cases of sexual assault involve a stranger waiting to attack an unsuspecting victim. Service members were surprised to learn that men could also be victims of sexual assault. While several commands have written "zero tolerance" policies that condemn sexual assault, these policies are not widely publicized and were not reinforced through awareness or sexual assault prevention training.

Finding 10

Junior enlisted personnel prefer training conducted by those with first hand experience.

There was nearly a unanimous opinion among most focus group participants that they would welcome awareness training and education in this area. Junior enlisted personnel also stated that training conducted by those with first-hand experience (i.e. testimonials) is more likely

to grab and keep their attention. They also indicated that training conducted by their leadership reinforces written policies because it shows that commanders are really concerned about their safety and protection. Based on current state of awareness, the Task Force is convinced that sexual assault awareness training should be provided throughout the career and during pre deployment and post deployment processing. The training should address issues specifically related to female and male potential victims and most importantly, how to respond to an incident should it occur. Pre-deployment training should prepare service members for what to expect in a joint, multinational environment. Studies indicate that effective training programs are those that address all learning styles and include audience/group participation.

At the time of the focus groups, enlisted participants stated that they had not received or could not remember receiving any training specifically on sexual assault. Those who had received special training in this area e.g., through the Navy's Sexual Assault Victims Intervention (SAVI) program or through some installation initiative like we observed at Travis AFB, were the exception to this finding, but these individuals still recommended training relevant to risks, what sexual assault is and is not, and the local process for reporting and receiving support and assistance if a sexual assault occurs.

Finding 11

Focus groups identified gaps in physical safety measures, which increased risk of sexual assault on service members.

The chain of command is responsible for ensuring that policies and practices regarding crime prevention and security are in place for the safety of service members. Command policies and practices regarding sexual assault prevention are major components of safety and reduce the risk of victimization of service members. During focus group sessions, participants identified the need for preventive measures. Some measures could be used at both CONUS installations and overseas areas, while others were more applicable to the operational environment.

- ❑ Adequate lighting
- ❑ Controlled access to buildings and living quarters
- ❑ "Crime Watch" programs
- ❑ Smart Cards with points of contact and emergency information
- ❑ "You are here" boards
- ❑ Roving Security Patrols (Foot, vehicle and use of technology)
- ❑ Noise mitigation around shower facilities (e.g. generators right next to showers)
- ❑ Placing view obstructing screens at entrances of shower facilities

Reporting

Finding 12

There are barriers to reporting incidents of sexual assault. Some are consistent with those in the civilian community while others are unique in a military setting.

Although reporting differences made it difficult to summarize the information provided across the Services, available data indicated that there is little delay in reporting, when cases are reported to investigators. Roughly two-thirds of the sexual assault cases with service member victims in 2002 and 2003 were reported within 72 hours of the alleged sexual assault.

Nevertheless, focus group participants consistently articulated reasons why uniformed victims of sexual assault might choose to forgo reporting sexual assault in a timely fashion, or at all. Some of the barriers they expressed were consistent with information received from experts as well as research literature (Baumer, et al. 2003):

- ❑ Concerns that they will not be believed.
- ❑ Feelings of embarrassment and stigma.
- ❑ Ambiguity about what constitutes sexual assault.
- ❑ Concerns that the criminal justice system is largely ineffective at responding to or preventing such incidents.
- ❑ Fear of reprisal from the offender.

Individuals were concerned that the chain of command and other unit personnel would not believe them and would ignore the complaint altogether. This was of particular concern when an alleged offender is of superior rank, has a good military record and reputation, controls the victim's professional success, or is very popular. Focus group participants also expressed concern of embarrassment and stigma since they believed that everyone in their unit would know and talk about what occurred once the investigative process began.

Focus group participants expressed a general lack of confidence in the chain of command's ability to effectively address a report of sexual assault. These comments were based on individuals' observations within their units and often stemmed from a lack of understanding about what had previously occurred in response to an allegation of sexual assault. Another barrier that we heard was about fear of repercussions from the chain of command because of the victim's own misconduct (e.g., underage drinking, fraternization, adultery, sexual relations in prohibited areas).

Participants also thought that reporting a sexual assault would damage their reputation, have negative career implications, or cause them to be ostracized by friends and unit personnel. For men, in particular, there was a general perception that reporting a male-against-male sexual assault might cause people to question the victim's sexual orientation. They also articulated that they were reluctant to report a sexual assault because the investigative process might disrupt the unit mission or negatively impact unit morale and cohesion.

Others indicated sexual assaults went unreported because victims were concerned that if they reported it would delay their redeployment or change of assignment date.

Finding 13

Generally, individuals are not aware of the full range of reporting options available to them.

Focus group participants believed that their chain of command was the sole avenue for reporting sexual assaults. They thought they would be more likely to report a sexual assault to a friend. This is consistent with civilian findings. (Fisher, et al., 2003). When focus group participants were informed of other reporting options outside the chain of command, they perceived there would be negative consequences for failing to notify their superiors. In other words, reporting anywhere else would be viewed as “jumping the chain of command” and disloyal to the unit.

Regardless of the entry point for reporting, focus group participants repeatedly stated that they believe there is a critical need for education and training on where to report and how to support a victim of sexual assault. Focus group participants also felt that it was critical for all service members to receive this education because a victim is more likely to report a sexual assault to a friend/junior enlisted than to a superior in their chain of command.

Focus groups also spoke about wanting to avoid the scrutiny of their chain of command and peers. In general, individuals had no awareness of the quality of the support “outside” and lacked awareness that in some cases, the support provided would be at their own expense. They expressed a preference to use outside sources, if available near the installation. Their reasoning was to deflect the concerns stated above and an additional desire of not wanting to engage the investigative and legal process mainly due to concerns about loss of privacy and/or a perception that they would be forced to defend their own conduct in the circumstances surrounding the assault.

Currently within DoD, there is not a way for victims of sexual assault to get military sponsored medical or mental health treatment without reporting the incident and triggering the investigative and judicial processes. While there are more private, and often times confidential, or anonymous reporting options available in the surrounding civilian communities and through the DoD-wide “One Source” 1-800 services now available, these are not widely publicized and the duration of support is limited. Unfortunately, there are limited options OCONUS and there are not any similar options in the CENTCOM AOR.

Finding 14

Victim’s privacy needs must be positively assured.

Commanders bear the primary burden of responsibility for protecting the privacy of victims under their command. However, current chain of command reporting mechanisms may intensify the problem. Many focus group participants indicated that, although identifiers were not shown, the facts of these offenses appear in blotter reports, Serious Incident

Reports, and on incident reports maintained on the shared drive of a computer network and are seen by non-command personnel and command personnel alike. In small ships and commands, the names don't have to be on the reports for people to intuitively derive the victim's and the offender's identities.

Focus group participants widely expressed their view that the NCOs and officers within their command structure who have no disposition responsibility in the case should not be informed of the details of the alleged incident. Many others expressed frustration that leaders/NCOs were not doing enough to positively assure the victim's (and the alleged offender's) privacy. Some focus group participants suggested that individuals questioned in connection with the investigative process be required to sign non-disclosure statements, with stiff penalties for violation.

Currently, a report to authorities of a sexual assault triggers an investigative process involving interviews with witnesses, friends, co-workers, and unit personnel. Collection of physical evidence, sometimes in the victim's or offender's room is equally invasive. This activity, necessary to hold the offender accountable, often serves to engage the "grapevine" and further erode the victim's privacy and reputation.

Some victims in response to rumors and not-so-veiled innuendos about their conduct and judgment, reported that they regretted their decision to report. After seeing this happen to others, several focus group participants cited this circumstance as a key barrier to reporting.

Finding 15

Balancing the issue of confidentiality for sexual assault victims with the commander's responsibility to ensure community safety and due process of law is very complicated, but must be addressed.

The perceived lack of privacy and confidentiality within DoD is thought by many to be one of the most significant barriers to reporting by military sexual assault victims. Experts consulted suggested that sexual assault victims benefit significantly from access to a safe haven—that is, a place to receive confidential advice, referrals for needed medical and social services, and to feel safe and protected from physical and verbal attacks. For military victims, this would mean providing a means to receive immediate care, legal advice, and support following the incident without, at least initially, having to advise his/her chain of command or trigger an investigation.

However, there is considerable confusion at all levels with respect to issues of mandatory reporting of sexual assault, and whether confidentiality or privilege applies under our current policies and regulations. One potential avenue for confidential disclosure within the military (for any subject, not just sexual assault), is to go to a military chaplain. In practice, there has been variable understanding and application of the privilege, as MRE 503 states it only applies to communications made either as a formal act of religion or as a matter of conscience. While many focus group participants believed that the chaplain's office would be a "safe haven" to disclose sexual assault without fear that it would be further disclosed, many recognized that such disclosure would not insure access to needed medical, advocacy or

mental health services. There was also difference of opinion by participants, including chaplains, whether the disclosure would be held in confidence. Some focus group participants reported that they were aware of situations in which chaplains informed commands in general terms about allegations, without disclosing the specific personnel involved. However, focus group participants also related that victims of sexual assault might not be comfortable approaching a military chaplain. For instance, some voiced concerns that a victim might be uncomfortable discussing sexual matters, that he or she may not desire spiritual guidance, or that a victim might feel awkward because of differences in rank or religious denomination.

As discussed in Chapter 2, MRE 513 provides a limited privilege between a psychotherapist and a patient. However, the rule does not specify what is meant by the phrase “in a case arising under the UCMJ” and DoD has not promulgated guidance in this area. In the *Report of the Panel to Review Sexual Misconduct Allegations at the Air Force Academy*, the Panel interpreted this phrase to include consultations with psychotherapists during the investigative phase of an offense under the UCMJ and concluded the privilege could extend to victims of sexual assault. In response, the Panel recommended establishing partial confidentiality for victims reporting to credentialed officials practicing under the umbrella of the psychotherapist privilege at the Air Force Academy.

For sexual assault victims seeking confidential disclosure, another problem with the application of MRE 513 is the fact that there has been no implementing guidance for providers and that exceptions to the privilege could be interpreted as “swallowing the rule.” For instance, under the rule a communication is not privileged “when necessary to ensure the safety and security of military personnel, military dependents, military property, classified information, or the accomplishment of the mission.” Under circumstances commonly applicable to many reports of sexual assault, a provider could determine this exception would apply and not afford a victim confidentiality. During focus group sessions with mental health providers and judge advocates, there was a great deal of confusion as to whether this privilege would extend to most sexual assault victims.

Although a lawyer-client privilege is recognized under MRE 502 this privilege would not extend to most victims of sexual assault. Reporting crimes falls outside the scope of legal assistance programs offered by legal offices in each of the military departments. Furthermore, confidential privileges available through military defense counsel services would not generally be available to victims, unless the victims were themselves suspected of committing criminal offenses. However, even if a victim accused of minor misconduct arising out of a sexual assault allegation sought counsel, the few defense counsel we spoke with noted that a counsel might advise a client victim to not discuss his or her circumstances with anyone else in order to help shield the victim from potential criminal liability.

Even if a “safe haven” could be assured for sexual assault victims through clarification of the existing rules with respect to communications to the clergy or between a psychotherapist and patient, existing policies and regulations might still preclude victims from seeking medical care within the military system for issues related to sexual assault.

Although most individuals we spoke to recognized that the lack of confidentiality within DoD serves as a barrier to reporting, there was equal concern that affording victims avenues

for confidential disclosure within DoD will result in either a delay or lack of investigation that ultimately impedes commanders' solemn responsibility to hold offenders accountable and to ensure community safety. Resolving these inherent tensions is complicated, but must be addressed.

Response—Safety and Protection

Finding 16

DoD guidelines are needed to ensure victim safety and protection.

Several focus group participants reported that steps to provide for the safety and protection of sexual assault victims are either not fully understood, inadequately applied, or take too long. Sexual assault can have a powerful and potentially long term effect on a victim's ability to cope. It often destabilizes a victim's sense of control, safety and well being, particularly if the victim lives in the same building, is assigned within the same command, and frequents the same base support and recreation facilities as the offender. Commander/leader focus group participants indicated that they did not have, or were unaware of clear-cut guidelines for actions that could be taken to address the physical and emotional needs of the victim. The lower the rank of the command/NCO leader focus group participants, the less was known.

Currently, Staff Judge Advocates (SJAs) are available to consult with commanders regarding what steps need to be taken to protect the victim from the alleged offender if the latter is an active duty service member (e.g., issuing a military protective order, ordering the service member - if the victim requests it - into dorms/barracks away from victim, temporarily suspending the suspected service member's access to firearms and ammunition, temporarily reassigning the alleged offender or the victim to ensure workplace separation of both). Additionally, the SJA can advise on steps to be taken to protect the victim from the alleged offender if the latter is a civilian.

At DoD installations, legal offices are also available to advise commanders on how to ensure the safety of victims of sexual assault. Legal staff can provide commanders with critical information regarding both military and civilian protection orders; the scope and applicability of the Armed Forces Domestic Security Act; a basic description of the immigration provisions of the Violence Against Women Act; and the scope and applicability of the Lautenberg Amendment to the Gun Control Act.

Finding 17

Actions to segregate alleged victim and alleged offender are not always timely.

Many sexual assaults take place in the victim's domicile. Among university students who are assaulted on campus, almost 60 percent take place in the victim's dormitory (Fisher, Cullen and Turner, 2000). Service data suggested a similar trend. Quickly segregating the victim and the offender, especially if they live in the same building or tent, is important. Several victims

who spoke to the task force noted that actions to provide for their safety and protection were either not initiated, inadequate or took too long. Because the victim often feels a loss of control after a sexual assault, it is important to give high priority to his/her wishes in making segregation decisions.

Focus group leader/commander participants widely acknowledged that they had the ability to move or transfer victims or offenders to another location, temporarily, but acknowledged that it was based on their personal judgment of the situation rather than on any specific set of guidelines or sensitivity training about the importance of assuring safety or protection of sexual assault victims.

Commanders/leaders expressed they have had a more difficult time accommodating the need to segregate victims from their assailants in a combat theater, when limited options are available, even temporarily. One commander noted that movement of one or both trained service members out of a unit supporting a critical war-fighting mission could significantly erode its ability to accomplish it, particularly if either party performed a critical skill.

Another officer indicated that he would immediately send both the victim and the offender out of the theater, to different but appropriate locations, even while the investigation was ongoing. The rationale offered for sending the victim out was there were limited support services available to provide timely ongoing assistance to a traumatized victim, whose performance may be impaired by the event. The rationale for sending the alleged offender out, often with no public indication of the basis for the action, is to remove the potentially criminal behavior from an environment where judgments being made were supposed to save lives, not ruin them.

Some victims reported that they felt they had been re-victimized by the commander's unilateral decision to send them home. They expressed frustration that their commanders had not consulted them prior to deciding to relocate them. Commanders expressed difficulty in making decisions to move either party because of the career implications and other consequences that may potentially occur if the investigation later finds that the report was not substantiated.

Finding 18

Assuring victim safety is a challenge when offenders are from coalition forces or foreign nations.

CENTCOM leader/commander focus group participants identified the challenges they faced in sorting through how to navigate jurisdictional authorities for issuing protection orders, seeking to strip them of their weapons, initiating criminal charges or otherwise holding offenders accountable. This was particularly problematic in countries that had no governing authorities for the U.S. to work with. Because no specific DoD policy or standards to address these issues existed prior to and during most of the conflict, Combined Joint Task Force (CJTF)-7, with only partial agreement with the coalition partners, published guidelines for responding to sexual assaults involving coalition partners in early March 2004.

Response—Care for Victims

Finding 19

Commanders have variable responses in support for victims.

Sexual assault can have a substantial impact on a victim's work habits and performance. Several victims noted that the emotional and physical consequences of sexual assault may make it difficult to continue working and/or maintain levels of proficiency required for success.

Focus group participants noted that the chain of command response to sexual assault victims varied. Some commands were reported to be very supportive, while others were noted to respond with indifference or disbelief. Some commands communicated, either directly or indirectly, that “the mission comes first.” It was difficult for some commands to appreciate the need for long-term supportive care for some victims, both with respect to mental health and legal support. Additionally, it was not always recognized that other military members, spouses or support personnel might need time away from work to accompany the victim in obtaining these support services. Over time, it became apparent from discussion in the leadership focus groups that this apparent insensitivity may be related to an absence of training that specifically addresses the needs of sexual assault victims rather than general disregard. Furthermore, it was not uncommon in these focus groups for leaders to indicate that the group discussion had enlightened them and they expressed a need for further education and information.

Finding 20

DoD has not mandated requirements to provide advocacy for sexual assault victims.

Under the best of circumstances and in all due diligence, there are aspects of criminal investigation that contribute to a victim's sense of shame, self-blame and guilt. For this reason, among others, victim advocacy is thought to be most effective when engaged from the very beginning.

Provider and other focus group participants agreed that sexual assault victim advocate policy and programming is needed throughout DoD. While DoD and Service VWAP policies require designated personnel to provide victim support, mostly in conjunction with the legal process, implementing regulations do not mandate appointment of liaisons to accompany and guide victims of sexual assault throughout the medical, counseling, and investigative processes. In the end, there is no one person or office across the military departments who are mandated to principally and exclusively serve the needs of sexual assault victims.

Notably, the Task Force found that Victim and Witness liaison officers in the combat theater were far more proactive in contacting sexual assault victims during the initial stages of an investigation and facilitating services on behalf of victims. These liaison officers were always JAGC officers who took a personal interest in performing duties that would normally

be performed by an advocate. They acknowledged that their effort to contact and provide support to victims early in the investigative process was beyond the mandate of DoD VWAP. Nevertheless, Victim and Witness liaison officers are not required, nor are they routinely trained, to provide the scope of services typically found within civilian advocacy models.

While victim advocates within the Navy and Marine Corps provide a range of services and support more in keeping with civilian advocacy models, their programs are resourced and implemented differently. The Navy's SAVI program is resourced with service funds and the Marine Corps victim advocacy program is funded through their Family Advocacy Program (FAP). The success of the Navy and Marine Corps' programs at installations we visited are largely dependent upon individual command attention, the resources available, and the experience and training of personnel acting as victim advocates. Although trained volunteers are available within Navy units ashore and deployed on ships, the adequacy of this support is largely dependent upon the experience and training of individuals selected to fill those positions. The Marine Corps trained civilian victim advocates are generally not available for deployment to the combat theater.

Finding 21

There is a perception that some victims are not consistently informed on the status of their cases.

Some victims interviewed felt their needs were not being met with respect to obtaining information on the status or outcome of their cases during the investigatory, command decision-making, and legal processes. The continuity and relative success of programs under the VWAP tend to work better at those locations where the liaison personnel are full-time civilian employees who are proactively involved with victims. Unfortunately, because of lack of funding, this function often becomes an additional or shared duty among personnel assigned to the local staff judge advocate office. Too frequently, this results in victims feeling as though nobody cares about them and is especially problematic when the victim and alleged offender are stationed in geographically dispersed locations. Strong coordination between victim advocates, where available, and VWAP personnel is critical in reducing this perceived gap.

Finding 22

There are multiple factors causing delays in immediate response to victims.

During focus group discussions, it became apparent that if the victim went to a military treatment facility, care was rendered; however, timeliness of care was identified as a problem for several reasons. These included long waiting times in emergency rooms, waiting for responders to arrive, waiting for medical evaluation of any other traumas, and delays in arranging for transportation of victims to "outside the gate" civilian facilities. Many medical commands, particularly in CONUS, have partnered with civilian agencies to obtain forensic evidence, since their experienced SANE nurses assure reliable evidence for trial and because a significant number of installations no longer have full military hospitals and instead

provide Monday-Friday clinical support. While these agreements are practical for a number of reasons, they may have unintended consequences. Through the eyes of a victim who recently experienced the trauma of a sexual assault, it is difficult for them to be forced to wait longer than absolutely necessary before showering. It may also unnecessarily require them to relate events to more than one medical provider. The response protocol at Nellis Air Force Base was notable in that victims are transported directly to the civilian facility by investigators, bypassing the military treatment facility except on rare occasions when the victim has other additional trauma.

Delays associated with investigation can also be a significant problem. Some delays noted during this review included geographic separation of the personnel involved that were caused by cases occurring during deployment or other temporary duty situations, and those reported after personnel have been redeployed or reassigned.

Finding 23

A system to coordinate and track victim support services for effective case management does not exist at all installations.

With respect to Service data call information pertaining to the care provided to victims, the Army reported that for cases of alleged sexual assault involving active duty victims, 86% of the victims accessed military or civilian services. Of the total number of Army victims, 48% received military medical care, 27% received behavioral health care and 12% received civilian purchased care. Service member victims who accessed care received a total of 1,272 clinic visits, with behavioral health visits being the greatest. With respect to the Department of the Navy, 63% of active duty victims received either medical or mental health care within Navy medical facilities. Of those, only 71% of the victims seen had diagnostic codes that reflected the sexual assault as the reason for the visit. In the Air Force, 98% of uniformed victims received medical care. Of the total number of victims, 52% received medical care within 7 days of the alleged sexual assault, while 5% received behavioral health care within 7 days.

In reviewing the reports submitted by the installations we visited, it was difficult to ascertain the level of support services offered, the timeliness of response, the extent to which commanders took action in regards to safety measures for the victim, or what was the final disposition of the case.

From our focus group discussions, there did not appear to be any organizational mandate to coordinate or integrate services and care for each victim of sexual assault case at most installations. However, at locations that we visited in CENTCOM, policies for transportation and coordination of care have recently been developed, but not well published.

Although multiple services are available for victims at most locations, many victims were unaware of them and were unable to identify a centralized individual, or process, responsible for insuring the timely and coordinated delivery of those services. Navy utilizes SAVI Program Coordinators and a SAVI Program Coordinating Committee on a quarterly basis to

address system issues that may limit access to care for victims. While an excellent model, focus group participants reported inconsistency in practice.

The Army has a MEDCOM regulation requiring SARBs (Sexual Assault Review Boards) at medical treatment facilities to perform quarterly reviews on how well the various providers coordinated their “stovepipe” services to support the victim; however these boards have not been consistently implemented Service-wide.

The Nellis Air Force Sexual Assault Prevention Program also uses a SART (Sexual Assault Response Team) concept to make certain all necessary team members are notified of an alleged assault. The SART concept allows for follow-up evaluation on how support services provided coordinated care for the victim, and a forum to address any gaps in care. Their SART reports directly to the installation Community Action Information Board (CAIB) to close any loops and keep the Command informed.

While Services have policies and procedures concerning each of the separate support services that may be used to help victims, many of these policies are outdated and are not consistently applied or not designed to insure integrated support for each victim’s case. A system is needed to assess how well each sexual assault case was managed, facilitate local policy changes and address any trends or risk factors. Additionally, a mechanism to report significant installation findings to the Service level is needed to perform Service-level system review and improvement. This process would allow the Services to obtain consistent data, assess trends, and be able to adjust policies or training materials on an ongoing basis.

Finding 24

Resourcing to deliver integrated case management support for victims in a combat theater is currently not a part of force planning.

At many CONUS locations, military treatment facilities have entered into memoranda of understanding (MOUs) with local organizations to provide specialized, expert medical and supportive care for victims. These facilities often utilize Sexual Assault Nurse Examiners (SANE) who are certified specialists. We found these relationships to be of great benefit to sexual assault victims, providing expert forensic evidence collection, advocacy, and on going medical and psychological support. Active duty victims we spoke to who chose to receive confidential care through these agencies were generally satisfied with the care and assistance received. However, these programs differ with respect to the scope of assistance provided from location to location, they may not be affordable for all victims if not otherwise reimbursed by the Services or through healthcare benefits, and may require significant travel time for the victim.

While the use of civilian experts has improved our ability to provide optimal care for victims in CONUS, it has consequently diluted professional training, development, and expertise within the Services. Therefore, one of our greatest challenges is providing this same level of care for victims at small, isolated installations CONUS, at OCONUS installations where expert host nation resources have not been developed and in the deployed environment.

With respect to forensic medical examination, we have SANEs in the active and reserve components, but have not strategically developed or implemented these assets throughout DoD. Medical and mental health professionals deployed to combat theaters are specifically trained and resourced to provide care for casualties and combat stress, but are not trained to provide specialized assistance to sexual assault victims (see finding 25). In addition, access to victim advocacy is minimal in the combat theatre. Where available, victim advocacy is an additional responsibility to the member's routine duties in support of the combat mission. While the Navy SAVI program purposefully utilizes military deployable victim advocates, ensuring that these assets are available in Navy units deployed to support joint forces has not occurred. There is no specific mechanism within the Navy to insure effective multifunctional case management and integration when commands are deployed away from Naval installations.

Finding 25

Department-wide uniform training of providers and standards of care for victims of sexual assault do not exist.

There is no clear DoD consensus on standards of medical care and optimal services in the care of victims of sexual assault, including DoD-wide standards of training for all care providers. Many focus group providers (physicians, nurses, chaplains, social workers) expressed concerns about inadequacy of specialized training in this area. Additionally, due to the frequent movement of both providers and victims, a focus group finding identified continuity of mental health care as a significant issue. Another frequent comment from focus groups were the desire for routine access to “after hours” support groups on military installations.

Very recently, the Department of Veterans Affairs established a continuing medical education program to assist primary care providers in identifying victims of military sexual trauma. This program is aimed at enhancing clinician's awareness of specific conditions and sensitivities associated with a veteran who has experienced sexual trauma in order to assure these victims receive the care they deserve. This program may be useful for DoD to evaluate for potential use in training of providers.

Response—Investigation and Prosecution

Finding 26

There is a backlog of DNA evidence waiting for processing at the United States Army Criminal Investigation Laboratory (USACIL) and this can significantly delay investigations and prosecutions.

Investigators and prosecutors who must rely on the backlogged United States Army Criminal Investigation Laboratory (USACIL) to process their evidence are frustrated by the length of time required to have forensic evidence analyzed. More importantly, the lengthy delays cause hardship to sexual assault victims who must wait for the test results and any command

decision with respect to the disposition of the alleged offense(s). Finally, the delays contribute to perceptions that the justice system is too slow in holding offenders accountable. During focus group sessions at installations, prosecutors and investigators said it normally takes at least six-months to get laboratory reports on DNA or similar analysis and that USACIL has a policy that won't allow cases to be expedited unless charges in a case have already been preferred. However, the results of laboratory analysis frequently are needed before deciding to prefer charges against an alleged offender and, even if they are not required, referral of charges starts the 120-day speedy trial clock. Prosecutors and investigators also noted that the waiting list for expedited results could still mean delays of several months. In some cases, investigators have sought and received higher headquarters authorization to pay for and use state or local laboratories in order to expedite cases.

The Services have taken affirmative steps to try to deal with this issue. A Process Action Team (PAT) from the Army, in coordination with the other Services, is conducting a review of current laboratory practices and any required immediate action to eliminate the current backlog and improve efficiencies. The Air Force senior leadership approved resources to provide additional manpower to USACIL, thus attempting to decrease the evidence processing time for these tests.

Finding 27

The environment in the combat theater can have a severe and detrimental impact on the ability to timely and effectively investigate and prosecute cases.

In theater, agents working for AFOSI, NCIS, and USACID are often tasked to perform counter-intelligence and force protection duties in addition to their criminal investigations responsibilities. Those agents who deployed to Kuwait and Iraq during the initial months of Operation Iraqi Freedom reported that they lacked sufficient manpower and transportation resources to cover every forward operating location in a timely manner. These shortages are compounded by new missions, such as investigating mass gravesites for potential war crimes prosecutions and being required to investigate all combat deaths as possible homicides or violations of the law of war. Some investigators acknowledged that current shortages in investigative resources within the combat theater might mean they would have to rely on "reach back" capability. Furthermore, the focus of their efforts was on trying to gather intelligence and protect U.S. personnel from enemy forces.

Other than being able to preserve perishable evidence and secure an initial statement from someone reporting a sexual assault, any case that would have arisen would have required outside, additional resources. Judge advocates deployed in theater during this period reported having to conduct large portions of criminal investigations on their own. It is possible the unavailability and workload of investigative agents also may have been a reason why a number of sexual assaults reported in the combat theater were first investigated by the command rather than by investigative agencies with appropriate expertise.

Finding 28

Investigations run by the command, both formal and informal, without involvement of investigative agencies may compromise cases of sexual assault.

Pursuant to R.C.M. 303, commanders “shall make or cause to be made a preliminary inquiry” into suspected offenses that are triable by court-martial. The discussion to that rule notes that commanders may conduct investigations personally or with members of the command, but that they should consider whether to seek the assistance of law enforcement personnel in conducting any inquiry or investigation in serious or complex cases. Generally, commanders immediately contact investigative agencies whenever serious crimes that have not been investigated come to their attention. Occasionally, commanders initiate commander-directed inquiries or investigations before contacting investigative agencies when allegations of serious criminal misconduct arise within their command. Although there may be a myriad of reasons for this (e.g., lack of investigative resources, not realizing full seriousness of allegation as reported) many focus group participants have questioned this practice because cases of sexual assault are serious crimes that fall within the regulatory jurisdiction of the investigative agencies for each military department (AFOSI, USACID, and NCIS). Some focus group participants complained that the current emphasis on chain-of-command reporting (e.g., serious incident reports, situation reports) results in commands trying to ascertain facts surrounding sexual assault reports before investigators are on scene. This can often negatively impact an investigation, including tainting potential evidence or testimony. This informal process of trying to ascertain facts can produce multiple victim statements that may be viewed as inconsistent or, even worse, increase a victim’s anxiety to the point that he or she shuts down because of being required to continually repeat what happened.

Finding 29

Addressing victim misconduct is a significant challenge for commanders.

As noted in Findings 4, 5, and 12 many reported cases of sexual assault involve circumstances where the victim may have been involved with some type of minor misconduct (e.g., adultery, fraternization, underage alcohol offenses, and violations of certain regulations or orders). At every location we visited, the general deterrence message was effectively and forcefully communicated with respect to alcohol-related offenses and improper personal relationships, though not always adhered to by members of the command. One reason these offenses are such strong command focus items is because they can often be contributing factors in even more serious crimes, such as sexual assault offenses.

Commanders and their supporting judge advocates explained the dilemmas associated with handling minor misconduct on the part of a victim of sexual assault. They acknowledged the misperceptions that can arise when the command takes fairly quick action to address minor victim misconduct stemming from circumstances surrounding an allegation of sexual assault. In some cases involving alcohol, we heard commanders were very concerned that the amount and patterns of alcohol consumption by a victim required the victim to be enrolled

in alcohol abuse counseling. In other cases, we were told the victim had violated specific orders from the commander and that swift action was deemed necessary. Although somewhat rare, we heard of cases where commanders would address minor victim misconduct before the disposition of the sexual assault offense (and any other misconduct) against the alleged offender was resolved because the commander believed he or she needed to dispose of each offense in the most expeditious manner.

Because the criminal process associated with investigating and taking any action against an alleged offender for sexual assault typically takes much longer and frequently lacks transparency, there was a misperception among some junior service members that victims get punished for reporting a sexual assault and that alleged offenders frequently go unpunished. This may have been because those who knew about the offense had been re-deployed or reassigned before final disposition or because the disposition did not involve a public proceeding, such as a court-martial. Also, focus group participants expressing these opinions would not have been in a position to know all the facts and circumstances surrounding an individual case.

Commanders, senior NCOs, and legal office personnel all recognize the seriousness of this misperception and were very concerned about how to address this issue. It would be improper to communicate any type of “amnesty” message for minor victim misconduct in cases involving sexual assault, especially because such a message might encourage false reporting of a sexual assault if service member wanted to divert attention from his or her own misconduct (e.g., pregnancy through adulterous relationship). There is no DoD policy guidance for commanders regarding this issue. However, the Department of Navy has a policy as part of its SAVI instruction that advises commanders to consider delaying any action to address minor victim misconduct until the final disposition of the sexual assault is resolved and to consider that disposition when deciding how to best address the minor victim misconduct.

Finding 30

Understanding the dynamics of false allegations of sexual assault may help the Department minimize victimization of actual victims.

The Task Force is extremely sensitive to the challenge presented when individuals make a false allegation of sexual assault. The reasons for these vary, and often the allegation is not the result of conscious deception, but rather the result of multiple other factors impacting the individual making the allegation. Nonetheless, the issue is of particular concern because of the negative effect these false allegations have on all involved.

This challenge is not unique to the military and confronts the civilian community as well. Many focus group participants expressed concerns about the effect of false allegations, but in truth, there is little formal research to help us understand the various reasons why a victim might allege sexual assault when it has not occurred. We currently do not know the number of circumstances where the alleged victim deliberately and maliciously makes a false claim. Often there are other mechanisms at play, involving complex individual factors not well understood.

Focus group participants, especially enlisted personnel, expressed the belief that there were individuals who made such allegations for secondary gain and that the alleged accused was at a disadvantage. Commanders expressed concerns in terms of the impact on unit cohesion and mission accomplishment. Investigators and legal personnel expressed the negative impact on limited resources and their ability to investigate and litigate legitimate cases. Some victims expressed their experience in encountering skeptical commanders, investigators, and peers as questioning the assault claim.

A number of focus group participants expressed a desire to require commanders to take clear and unambiguous action against malicious false accusers. The challenge is, however, that rarely is there clear and unambiguous understanding of the factors that lead a person to use an unconventional and undesirable act to get needed help vice a truly malicious act. This requires recognition that the individual, despite negative behavior, may need to be assessed by a professional behavioral health counselor.

Finding 31

The investigative and legal communities are not currently resourced to provide investigators and prosecutors at each location with specialized training in handling sexual assault cases.

Installation law enforcement, judge advocates, and investigator resources are scarce, have heavy caseloads, and have no specific requirement to be trained in how to effectively handle sexual assault cases; in a combat theater, such resources are even more limited.

For the most part, investigators and judge advocates participating in focus groups reported that they did not have formal, specialized training in handling sexual assault cases. However, because sex offense cases represent a large percentage of cases within the criminal justice system, many investigators and prosecutors had extensive experience in handling sexual assault cases. In addition, AFOSI, NCIS, and Army CID all reported having agents with specialized training (often forensic consultants) available at the regional and headquarters levels. The Federal Law Enforcement Training Center (FLETC) now has a block of instruction specifically related to investigating cases of sexual assault. AFOSI and NCIS conduct all basic investigator training at FLETC. AFOSI established an Advanced Sexual Assault Investigations Workshop, conducted at the Air Force Academy in December 2003. They are in the process of expanding this course for investigators from each MAJCOM.

Many prosecutors also reported they were exposed to the issues involved with sexual assault cases as part of overall litigation training programs. Recently, the Air Force Judge Advocate General School offered its first course of instruction devoted solely to the prosecution of sexual assault cases and the course is open to judge advocates from all military departments. In addition, some judge advocates were able to attend various types of specialized training through civilian training programs offered by the Department of Justice, the National College of District Attorneys, and some state-run programs.

Finding 32

Due to a lack of system transparency, there is a perception that commanders do not always take appropriate action and/or alleged offenders are not always held accountable.

There is very little transparency during the investigation of sexual assault cases and the decision-making process for individual cases. Consequently, most service members (especially more junior personnel) do not understand why cases are handled a particular way. This lack of transparency is due to, in part, the need for investigative operational security and the Privacy Act protections afforded to both the victim and alleged offender.

Because of the military's inability to tell "its side of the story" in individual cases of sexual assault (i.e., due to Privacy Act restrictions and other victim or alleged offender privacy concerns), most commanders, investigators, and judge advocates expressed frustration at not being able to address the specific factors in individual cases that caused particular findings or dispositions. Because most reports of sexual assault involved fact patterns that make burdens of proof very difficult to meet, this often drives individual results. Everyone involved with the investigation and prosecution of cases acknowledged that DoD must devise better ways to educate members within DoD and the civilian community that cases are taken seriously. There was universal recognition that commanders are usually unable to advise unit and installation personnel how cases were handled or what action was taken against alleged offenders, unless the case involved a public proceeding, such as a court-martial.

At some installations, attempts by the command backfired when it tried to get out the word on disciplinary action taken in individual cases. Focus group participants reported seeing installation newspaper articles where reported cases involved the same or similar offense under the UCMJ, and where the more senior offender received nonjudicial punishment and the junior offender received a stiff sentence by a court-martial. Because the actual facts of each case were unknown, this reinforced the misperception that the system treats senior enlisted and officer offenders more favorably.

Finding 33

Sexual assault cases are often very difficult to investigate and to successfully prosecute, but available data shows commanders are taking action.

Because of the nature of the crime and the circumstances that are typically involved, obtaining the quality of evidence required to meet the criminal burden of proof is very difficult in cases involving sexual assault. Very often, there is no issue with respect to whether sexual activity occurred between the parties involved and, therefore, the issues of consent and the exact nature of the sexual conduct become central to the case. Given the prevalence of alcohol involved in these cases, the frequency of cases where the victim and alleged offender are social acquaintances or have been consensual sexual partners prior to the allegation, and the lack of corroborating witness testimony, investigators are often faced with the difficult task of trying to evaluate the credibility of two conflicting stories; the one of the victim and the other of the alleged offender. Every consistency and inconsistency in

the statements given by both parties becomes critical. Add these factors to those discussed earlier in this chapter related to the barriers and problems with reporting, and commanders are often faced with extremely difficult decisions in deciding the best way to handle allegations.

The Department of the Navy's (DON) reported statistics on cases of insufficient evidence show how difficult these cases can be for investigators, prosecutors, and commanders. The DON (includes both Navy and Marine Corps data) identified 235 of its cases resulted in a determination of insufficient evidence and more than 38% of those determinations were because the victim refused to cooperate (59 cases) or victim fabrication was involved (31 cases).

The data provided by the military departments for this report reveals there were 1,634 military individuals identified and accused of sexual assault during the last two calendar years. Of the 1,634 alleged offenders identified, 401 were from the Air Force, 670 were from the Army, 440 were from the Navy, and 123 were from the Marine Corps.

Of the 401 Air Force cases, charges were preferred, i.e., initiated, (rough equivalent of indictment) against 97 (just over 24%) of the alleged offenders and nonjudicial punishment proceedings under the UCMJ were initiated against another 42. Consequently, 139 cases (nearly 35%) resulted in some type of military justice action.

None of the other military departments were able to provide information on the initial command actions taken in the cases reported. Due to the Army's self-identified problem of receiving timely and accurate commander's reports of disciplinary action for entry into its criminal databases, the Army was unable to identify final dispositions in nearly half (45%) of its cases. Army was only able to determine that there was court-martial action in 76 cases and nonjudicial punishment proceedings in another 97 cases.

Of the 563 DON cases (including both Navy and Marine Corps data), there was court-martial action in 154 cases and nonjudicial punishment proceedings in another 85 cases. This data shows some type of military justice action was taken in nearly 43% of cases.

Excluding the Army's incomplete data on command actions taken, the combined data provided by the Air Force, Navy, and Marine Corps show that courts-martial charges were at least preferred (i.e., initiated) in 26% of cases, and military justice action was taken in over 39% of cases.

System Accountability for Sexual Assault

Finding 34

No overarching policies, programs, and procedures exist within DoD to ensure all functional areas responsible for dealing with victims of sexual assault provide an integrated response to reported cases of sexual assault.

Within the Office of the Secretary of Defense, there is no policy office with sole responsibility for establishing policy and maintaining oversight in matters involving sexual assault. Consequently, there are no policies specifically geared toward responding to reported cases of sexual assault and this lack of oversight means there are no standardized expectations that the military departments and defense agencies must meet. The lack of policy guidance and oversight translates into a lack of such policies and oversight mechanisms within DoD components.

Finding 35

Accountability for resolving sexual assault problems is diffused.

Currently, Service-specific programs, policies and organizational structures that provide care for victims of sexual assault are either addressing specific systemic needs or have augmented and reinforced program offices established for other purposes. In all cases, resources to execute these programs were accomplished through application of the discretionary funds of the Service, primarily because no DoD-wide policy or program guidance exists to reinforce the need to specifically apply resources to this issue.

Each of the Services evolved their focus on this issue in response to internal management awareness that these problems needed management attention. The Services deserve credit for the individual initiatives across the functional spectrum to increase capability to respond to risks relating to sexual assault, improve care for victims of sexual assault, and establish command emphasis to rapidly report sexual assault incidents.

However, pockets of excellence in each of the Services' in establishing sexual assault-focused management initiatives are not adequate. The absence of DoD-wide policies and programs to deal with this pervasive, underreported problem has led to this situation, coupled with the fact that, except in the Navy, Service-wide command emphasis on supporting victims and preventing sexual assault is lacking.