



**Department of Defense
Annual Report on Sexual Harassment and
Violence at the U.S. Military Service Academies:
Academic Program Year 2006-2007**

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Executive Summary

Overview

This Report is the Secretary of Defense's Annual Report to Congress on sexual harassment and sexual violence at the United States Military Service Academies covering academic program year (APY) June 1, 2006 through May 31, 2007. The Department of Defense Sexual Assault Prevention and Response Office (SAPRO) prepared an assessment of the effectiveness of the Academies' policies, training, and procedures with respect to sexual harassment and sexual violence involving cadets and midshipmen. This annual report includes information from cadet and midshipman focus groups conducted by the Defense Manpower Data Center (DMDC).

All three Military Service Academies (MSAs) have made great progress in establishing robust and effective prevention and response programs for both sexual assault and sexual harassment. As implemented by the MSAs, Department of Defense (DoD) policy, training, and prevention practices provide a comprehensive and consistent response structure to support and care for victims of sexual harassment and violence. Each Academy's educational program ensures every cadet and midshipman receives sexual assault prevention and response (SAPR) and prevention of sexual harassment (POSH) training that is later reinforced by MSA curricula. There is substantial evidence that the Academies are institutionalizing prevention strategies that demonstrate a commitment to end sexual harassment and violence in the Armed Forces.

Assessment Highlights

Sexual Assault

- All Military Service Academy sexual assault prevention and response programs were measured against Department of Defense policy contained in DoD Directive 6495.01, *Sexual Assault Prevention and Response (SAPR) Program*, 6 October 2005, and DoD Instruction 6495.02, *Sexual Assault Prevention and Response Program Procedures*, 23 June 2006.
- Overall, SAPR Programs have been successfully and permanently implemented at the Academies. Each school has integrated SAPR information seamlessly into its curriculum. The programs are thorough and well-constructed. The Academies are clearly in compliance with the SAPR policy. However, the assessment identified a few areas where improved training and cooperation between key stakeholders could increase the effectiveness of these robust programs.
- When allegations of sexual assault were reported, all three Academies had the infrastructure in place to effectively address the needs of the victims. Some cadets and midshipmen elected to make a Restricted Report, indicating the protections afforded under this option have credibility with victims of sexual assault. The Unrestricted

Reports were addressed by the military justice system or administrative adverse actions. The Academies were able to exercise the full range of disciplinary and administrative options available to them. Where appropriate, offenders that were not tried by courts-martial instead received non-judicial punishment, administrative adverse action, and/or were involuntarily separated from the military academy.

- As referenced earlier, DoD’s policy is new and consequently trend analysis is not possible at this time. The total numbers are as follows:

APY 2006/2007 REPORTS OF SEXUAL ASSAULT (Rape, sodomy, indecent assault, and attempts to commit these offenses) INVOLVING CADETS/MIDSHIPMEN	APY 2006/2007 Totals
# REPORTS OF SEXUAL ASSAULT (Total reported sexual assaults INVOLVING CADETS/MIDSHIPMEN) - TOTAL UNRESTRICTED AND RESTRICTED	40
# UNRESTRICTED REPORTS OF SEXUAL ASSAULT (Total reported sexual assaults BY or AGAINST Cadets/Midshipmen)	20
# Total Restricted Reports	27
# Converted from Restricted Report to Unrestricted Report	7
# 2007 RESTRICTED REPORTS REMAINING RESTRICTED	20

No interpretation of these statistics can be made at this time, and to do so would be pure speculation. The cases identified above only reflect the number of sexual assault cases **reported** to Academy officials and cannot be used for comparison or to estimate incidence and prevalence of sexual assault.

Sexual Harassment

- All Military Service Academies’ sexual harassment policies are in compliance with DoD Directive 1350.2, *DoD Military Equal Opportunity (MEO) Program*, and their respective Service policies. Cadets and midshipmen receive annual training throughout their four-year programs.
- The Military Service Academies’ MEO programs are operating as designed. However, it is our recommendation that DoD extend SAPR reporting policies to MEO functions. If DoD allowed limited confidential reporting in cases of sexual assault to equal opportunity personnel, victims would avoid losing the Restricted Reporting option simply because they reported the matter to the wrong office. Currently, MEO personnel do not act in a confidential capacity for crime, and are required to report all crimes to the command upon receipt of an allegation. As the difference between sexual harassment and sexual assault may not always be clear, victims of sexual assault, including cadets and midshipmen, would benefit from this additional protection.

Academy Focus Groups

- At all three Academies, focus group participants discussed both sexual assault and sexual harassment. However, the bulk of the discussions centered on sexual harassment and the difficulty the participants had in establishing a universally accepted definition for

offensive behavior. Focus group participants indicated that they received a significant amount of training on the issues of sexual harassment and sexual assault.

- Despite the difficulty noted above, focus group participants indicated that most concepts related to sexual assault are well understood. Participants indicated the crime was taken seriously by everyone. They also indicated that sexual assault at MSAs occurred infrequently and at a rate lower than civilian colleges. Focus group participants indicated that they felt safe in the dorms and at most locations on Academy grounds.
- Generally speaking, the distinct difference between Restricted Reporting and Unrestricted Reporting for sexual assaults was well understood by participants.
- There was a consensus that alcohol often plays a role in situations involving sexual assault.

Sexual Assault Prevention and Response involves a complex interaction of risk factors, protective factors, beliefs, and social norms. While the Military Services as a whole have implemented policy to address the problem of sexual assault, the Military Service Academies are uniquely positioned to shape our future military leaders to appreciate those complexities. They have taken on this task, and have demonstrated a commitment to eliminating sexual harassment and sexual assault from the Military Services by providing consistent policy, removing barriers to victim reporting, ensuring accessible care, and providing comprehensive training and education to all cadets and midshipmen.

Introduction

This is the Secretary of Defense Annual Report to Congress on the assessment of the Department of Defense Military Academies' Sexual Assault Prevention and Response and Prevention of Sexual Harassment programs covering academic program year June 1, 2006 through May 31, 2007, by the Department of Defense, Sexual Assault Prevention and Response Office. Findings from cadet and midshipman focus groups are included in the year's assessment.

Legislative Origin and Requirements

The National Defense Authorization Act for Fiscal Year 2007, Public Law 109-364, Section 532 (Appendix 1) requires the Secretary of Defense to submit an annual report to Congress regarding sexual harassment and sexual violence at the United States Service Academies. In odd-numbered years, the Academies prepare the report, which is informed in part by surveys conducted by DMDC. In even-numbered years, DoD SAPRO prepares the report, which is based in part on focus groups conducted by DMDC. The Secretary of Defense submits all reports to Congress.

Methodology

In assessing the Academies' programs, SAPRO gathered information by performing site visits with Academy personnel, reviewing Academy policies and procedures, conducting an extensive data-call for related documentation (including reports, policies, memoranda, and investigative files), and holding focus groups with cadets and midshipmen.

In accordance with The National Defense Authorization Act for Fiscal Year 2007, Public Law 109-364, Section 532, the *Service Academy 2007 Gender Relations Focus Groups (SAGR2007)* were conducted at all three Academies. Separate sessions were conducted for male and female cadets and midshipmen in each of the four class years. Data from the focus groups were analyzed qualitatively for major themes and ideas conveyed across the sessions. Analysts used a combination of topical coding and repeated reviews to gather specific comments into the emerging themes. Where students differed in their opinions on a topic, both perspectives are presented in separate findings. Although focus group results are not generalizable to all students at each of the Academies, the themes serve as illustrations of situations and attitudes for consideration by Academy officials as they assess their programs. Results are presented in separate chapters for each Academy. Within chapters, the major themes are presented with supporting comments from the cadets and midshipmen. Each comment identifies the gender of the focus group participant. Although there are commonalities in the results from each Academy, no attempt was made to compare or generalize findings across Academies (Appendix 3).

Relevant Reports Regarding Sexual Harassment and Violence at the Service Academies

As part of the assessment of the Academies, the following reports were reviewed:

- *Report of The Defense Task Force on Sexual Harassment and Violence at the Military Service Academies*, June 2005¹
- *Report of the Panel to Review Sexual Misconduct Allegations at the U.S. Air Force Academy*, September 2003²

Congress directed the Defense Task Force on Sexual Harassment and Violence at the Military Service Academies to make recommendations concerning how the Departments of the Army and the Navy may more effectively address sexual harassment and sexual assault at the U.S. Military Academy and U.S. Naval Academy, respectively. The Task Force made 44 recommendations for the U.S. Military Academy and U.S. Naval Academy to consider while executing their sexual harassment and assault programs.³

The following reflects the progress made by each Academy in implementing the recommendations and other significant program change highlights:

1. The United States Military Academy (USMA)

USMA developed 110 actions to implement those recommendations within their authority.⁴ One hundred and four actions have been implemented and six are underway.

Highlights include:

- The publishing of the USMA-level Sexual Assault Prevention and Response Policy.
- Partnerships with community resources for training and response.
- Short- and long-term renovation plans for the cadet living areas.
- Increasing goals for female representation on the staff and faculty to 20 percent, and 16 percent for cadet admissions.

¹ Out of concern about potentially similar problems at the U.S. Military Academy and the U.S. Naval Academy, Congress mandated the establishment of the Defense Task Force on Sexual Harassment and Violence at the Military Service Academies by Public Law 108-136, Section 526.

² Public Law 108-11, 2003, *Emergency War Time Supplemental Appropriations Act of 2003*, Title 5 §§ 501-503, established a panel known as the Fowler Commission to review sexual misconduct allegations at the U.S. Air Force Academy. Section 502 of the statute required the panel to study the policies, management and organizational practices, and cultural elements of the Academy that were conducive to allowing sexual misconduct (including sexual assaults and rape) to occur at the Academy.

³ Pursuant to the *National Defense Authorization Act for Fiscal Year 2004*, Section 526 of Public Law 108-136.

⁴ Some of the 44 recommendations were for Congress and the Department of Defense.

2. The United States Naval Academy (USNA)

USNA assigned each finding and recommendation to a senior level commander for accountability and oversight. Of the 44 recommendations, 40 have been completed or are on-going.⁵

Highlights include:

- Adding midshipman education on sexual harassment and assault into mandatory academic graded curriculum.⁶
- Funding of a billet in FY08 for a Program Manager.⁷
- Improved community collaboration.

3. The United States Air Force Academy (USAFA)

Recommendations from the Fowler Commission's *Report of the Panel to Review Sexual Misconduct Allegations at the U.S. Air Force Academy*, dated September 2003, have guided the strategic changes seen at USAFA.

All twenty-one recommendations spanning accountability, oversight, organizational culture, intervention and response to sexual assault have been addressed.

When The Defense Task Force on Sexual Harassment and Violence at the Military Service Academies Report was released in June 2005, the Air Force Academy was already in compliance or acting on 41 of 44 primary level recommendations. These 44 recommendations mirrored the recommendations already implemented by USAFA from the *Agenda for Change*,⁸ Fowler Commission, and others.

There were three new recommendations that required action.⁹

Highlights include:

- A nationally-certified Personal Ethics and Education Representative (PEER) program.¹⁰

⁵ Of the four remaining, one is not applicable to USNA, one requires structural changes, one data-collection element is pending and one recommendation was directed to Congress.

⁶ Added NL 110, NE203, NL310 and NL 400 Courses.

⁷ As outlined in recommendation 35B.

⁸ United States Air Force Academy, *Agenda for Change*, 2003.

⁹ Value of women (#2): Included as one aspect of an overall human relations course of instruction that discusses the benefits of diversity and the corrosive effects of sexism and racism in accomplishing the mission. Alcohol conference (#7): USAFA attended an alcohol conference and gathered information on what the other academies are doing to combat alcohol abuse/underage drinking. Private bathrooms (#36): No action has been taken on this recommendation as it would require significant demolition and reconstruction of the cadet dormitories.

- Adding the Sexual Assault Response Coordinator to the Academy Response Team (ART).
- Improving integration of the Four-Year Developmental Training Plan for Sexual Assault Prevention and Response, Human Relations, and other USAFA climate and culture issues.
- Strengthened community collaborations through formal MOAs with local sexual assault response agencies.

U.S. Military Service Academies Programs and Assessments

- 1. U.S. Military Academy**
Sexual Assault Prevention and Response Program
Sexual Harassment Program
DMDC Focus Groups
- 2. U.S. Naval Academy**
Sexual Assault Prevention and Response Program
Sexual Harassment Program
DMDC Focus Groups
- 3. U.S. Air Force Academy**
Sexual Assault Prevention and Response Program
Sexual Harassment Program
DMDC Focus Groups

¹⁰ USAFA PEERs are certified by the nationally renowned BACCHUS and GAMMA peer education network. PEERs are trained on a variety of issues to include sexual assault response.

United States Military Academy

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United States Military Academy Sexual Assault Prevention and Response Program Assessment

The United States Military Academy (USMA) leadership has clearly demonstrated commitment to their Sexual Assault Prevention and Response Program through sustained and dedicated efforts. USMA has done an outstanding job developing and continuously improving policies, procedures, and processes designed to prevent and respond to sexual violence in accordance with Department of Defense policies. An overview of the U.S. Military Academy's Sexual Assault Prevention and Response Program and our assessment of its effectiveness along with recommendations are detailed below. Policy compliance was measured against Department of Defense, Sexual Assault Prevention and Response Policy DoDD 6495.01, October 6, 2005 and DoDI 6495.02, June 23, 2006.

A. Sexual Assault Prevention and Response Program

1. Overview

The USMA Sexual Assault Response Policy (SARP)¹¹ for the Corps of Cadets is centered on the Sexual Assault Response Team (SART),¹² headed by the Special Assistant to the Superintendent for Human Relations (SAS-HR) for the United States Corps of Cadets (USCC).¹³ The Academy has a Victim Advocate (VA) program that provides 24 hours a day, 7 days a week (24/7) access for cadets who are victims of sexual assault in garrison or in a deployed/field training environment. The USMA policy outlines reporting procedures for cadets and employs numerous resources for preventing and responding to sexual assault.

Reporting

Once a report is made, the SAS-HR assigns a VA to the case.¹⁴ Unless a victim declines assistance from the VA, the VA provides the victim with accurate information on the sexual assault response process, including the options of Unrestricted and Restricted Reporting. It is mandatory that sexual assault victim assistance services are available. The VA also provides information on available healthcare, including a forensic medical examination for the collection of evidence. The VA reports directly to the Sexual Assault Response Coordinator (SARC) and

¹¹ *Sexual Assault Response Policy Memorandum 39-03*, dated 07 January 2007.

¹² The Sexual Assault Response Team consists of the victim's company Tactical Officer, the Victim Advocate (VA), the United States Corps of Cadets (USCC) Legal Advisor, a Public Affairs Office representative, and a Criminal Investigation Command (CID) Agent for Unrestricted Reports, and the Sexual Assault Response Coordinator, VA, and USCC Legal Advisor for Restricted Reports.

¹³ The Special Assistant to the Commandant for Human Relations performs all duties required as the Sexual Assault Response Program Manager.

¹⁴ Victim Advocates at the USMA are psychotherapists from the Center for Personal Development. This arrangement will be addressed later in the report.

both monitor cases through final disposition and resolution, while ensuring the victim's well-being and health concerns are addressed. The role of the SARC and the VA is to explain available options and resources and support the victim through the reporting process regardless of which option they choose.¹⁵

*Restricted Reporting*¹⁶

Restricted Reporting is an option for victims to confidentially disclose the occurrence of sexual assault without triggering an official investigation, and without being personally identified in the subsequent command notification. Restricted Reporting offers victims access to medical treatment, advocacy, and support. It is available to military victims who report to a SARC, VA, or healthcare provider.¹⁷ A report may also be made to a chaplain. A report made to a chaplain is not a Restricted Report under DoD SAPR policy, but is a communication that may be protected under the Military Rules of Evidence or applicable statutes and regulations. Only non-identifying information about a Restricted Report is provided to Commanders, who may in turn use the information to enhance preventive measures, improve education and training of their personnel, and closely scrutinize their organization's climate and culture for factors that may have contributed to the sexual assault. However, commanders may not investigate the sexual assault incident reported based on this information.

Unrestricted Reporting

An Unrestricted Report is any report of a sexual assault made through normal reporting channels, including the victim's chain of command, law enforcement, the U.S. Army Criminal Investigation Command (CID) or other criminal investigative service, and a SARC or healthcare provider wherein the individual does not elect Restricted Reporting. Even in Unrestricted Reporting situations, should a report of a sexual assault be initially made to someone other than the SARC or VA, the SARC and SAS-HR are immediately notified.

For Unrestricted Reports, specific information is disclosed only to those with an official need to know. The SARC notifies the Superintendent within 24 hours of an Unrestricted Report.

2. Assessment

COMPLIANCE: USMA is in compliance with DoD SAPR policy.

¹⁵ DoDD 6495.01, Section 4.5, 6 October 2005. It is DoD policy to encourage Unrestricted Reports through a systemic approach that supports the victim from the moment of the initial report through the military justice process.

¹⁶ USMA implemented a Restricted Reporting option in APY 2005/2006.

¹⁷ Mental health professionals are located at the Center for Personal Development (CPD) and Keller Army Community Hospital Community Mental Health. Medical providers are located at KACH and the Cadet Health Clinic.

The procedures that a USMA cadet should follow for reporting a sexual assault comply with DoD SAPR policy. Current procedures identify to whom a report can be made, the appropriate contact information, and an explanation of the option for Restricted Reporting. USMA maintains a 24/7 response capability for victims of sexual assault.

Currently, perceptions exist that there is a negative stigma associated with reporting sexual assault at the Academy,¹⁸ thereby causing this crime to be under reported.¹⁹ Additionally, focus group participants expressed concern that some women could use the reporting system to avoid being punished for consensual sex in the dormitories.²⁰ Some Academy personnel believe that publishing case outcome information would help control the rumor mill and counter-act the perception that false accusations of sexual assault are a problem at the Academy. Publishing case outcomes and related policies may also build confidence in the system.

- **It is recommended that the Academy continue to emphasize their policies on privacy, collateral misconduct, victim care, procedures for reporting, and support that is available for victims proceeding through the criminal justice system.²¹ It is also recommended that the USMA educate Academy personnel on the collateral misconduct policy, as well as the fact that victims do not typically receive immunity for collateral misconduct by simply reporting a sexual assault.²²**

¹⁸ Focus group participants suggested that if either sexual assault or harassment went unreported it might be due to a fear of attaining a bad reputation or calling undue attention to themselves in a highly competitive environment, as described in the DMDC overview, Section C.

¹⁹ Per interviews with Academy personnel.

²⁰ Although focus group participants expressed this concern, our review of APY 2006-2007 Unrestricted Reports of sexual assault cases at USMA did not suggest fabricated allegations. The perception that false accusations of sexual assault are a problem at the Academies was also not supported by the *Report of The Defense Task Force on Sexual Harassment and Violence at the Military Service Academies*, June 2005. Finding 20B in the report noted the following: "Despite the concerns of some cadets and midshipmen, the data does not show a significant incidence of fraudulent reporting. During a review of over 85 reported sexual assault cases at the two Academies over the past ten years, only two suggested fabricated allegations. There were cases where the victim recanted; however, those usually involved victims who decided they did not want to endure the investigative and judicial process."

²¹ DoDI 6495.02, Subsection 5.7.3 states that the Secretaries of the Military Departments shall "publicize policies and procedures for reporting a sexual assault and provide information regarding the availability of medical treatment, advocacy, and referral services."

²² DoDI 6495.02, 23 June 2006, Enclosure 3 Subsection E3.2.12 states, "Ensure commanders understand that taking action on victim collateral misconduct may be delayed until final disposition of the sexual assault case. Military Services will also ensure procedures are established that do not penalize commanders or organizations for delaying actions for collateral misconduct by the victim. Commanders must also be mindful of any potential trial and/or statute of limitations concerns when determining whether to defer action."

B. Resources for Victims**1. Overview***Medical and Mental Health*²³

The SART coordinates with medical personnel to ensure that appropriate care is provided to victims of sexual assault. The Mologne Cadet Health Center (MCHC) may provide initial examination and follow-up treatment for cadet victims not having a sexual assault forensic exam (SAFE). When a victim consents to have a SAFE, he or she is escorted to Keller Army Community Hospital (KACH) for the procedure, which is performed by a qualified medical provider. For Restricted Reports, the SAFE kit is obtained by the SARC then transferred via chain of custody to the Provost Marshal's evidence room for anonymous storage. For Unrestricted Reports, evidence is transferred via chain of custody to U.S. Army Criminal Investigation Command (CID) for storage.

The Center for Professional Development is the primary mental health facility with psychotherapists²⁴ available to assist cadets, and Community Mental Health Services (CMHS) are also available at KACH. Additionally, a Cadet Health Promotion and Wellness Council (CHPWC) examines relevant issues to adopt best practices for treatment of victims.

Legal

A Legal Assistance Attorney is available to provide cadets with personal, non-criminal legal assistance.

Under the Victim-Witness Assistance Program,²⁵ the Victim-Witness Liaison (VWL) typically ensures that victims' and witnesses' legal rights²⁶ are afforded them from the start of an investigation and throughout the criminal justice process. A United States Corps of Cadets (USCC) Legal Advisor, who reports to the Staff Judge Advocate, consults with the victim to

²³ Per Department of Army, Medical Department Activity, West Point, NY, *Identification and Medical Management of Alleged Victims of Sexual Assault*, 2 February 2006 MEDDAC Regulation No. 40-430, Medical Management of Sexual Assault, December 2004.

²⁴ The Center for Professional Development has four trained psychotherapists on staff.

²⁵ DODI 1030.2, 4 June 2004 and DODD 1030.1, 13 April 2004. The Staff Judge Advocate's office is the proponent for the Victim-Witness Assistance Program per AR 27-10, Chapter 18-2-6, 16 November 2005.

²⁶ DD Form 2701, May 2004: (1) The right to be treated with fairness and with respect for your dignity and privacy; (2) The right to be reasonably protected from the accused offender; (3) The right to be notified of court proceedings; (4) The right to be present at all public court proceedings related to the offense, unless the court determines that your testimony would be materially affected if you as the victim heard other testimony at trial; (5) The right to confer with the attorney for the government in the case; (6) The right to available restitution; (7) The right to information about the conviction, sentencing, imprisonment, and release of the offender.

ensure he or she has been offered the services of the VWL, and that the victim has been advised of their federally-mandated rights.²⁷

Chaplains

Chaplains have authority under military law to have privileged, confidential communications with victims of sexual assault. Under Military Rule of Evidence (MRE) 503, a communication from a victim to a chaplain is a confidential communication if disclosed to a clergyman or a clergyman's assistant in his or her official capacity as a formal act of religion or as a matter of conscience. There are 10 chaplains available to cadets.

Community Collaboration

A Memorandum of Understanding (MOU)²⁸ currently exists between USMA and the Mental Health Association in Orange County, which includes their rape crisis services. The MOU has established procedures that coordinate sexual assault response efforts and related services, training, and data sharing.²⁹

Case Management Committee

The SAS-HR convenes a monthly meeting of the USCC SART members to review actions taken with recent cases. This meeting monitors ongoing Unrestricted Reported cases and SAPR processes. The SAS-HR participates in the monthly USMA Sexual Assault Review Board Meeting as well, and compiles USCC inputs on cases and case management. The SAS-HR submits a report to the USCC Chief of Staff that details actions taken on all open cases of sexual assault. The report includes recommendations for improvement to USCC's responsiveness.³⁰

2. Assessment

COMPLIANCE: USMA is in compliance with DoD SAPR policy.

Resources for victim care are available and accessible on post and comply with DoD SAPR policy. Information outlining the SAPR Program and available resources is displayed in cadet public areas and on the Academy's Intranet.

VA services are uniquely configured at USMA in that they are performed by psychotherapists.³¹ Should the victim require mental health treatment as well, he or she is typically referred to a

²⁷ AR 27-10, Chapter 18, 16 November 2005.

²⁸ Memorandum of Understanding (MOU) between USMA and Mental Health Association in Orange County, Inc. *Sexual Assault Prevention and Response Program*, dated 15 February 2005.

²⁹ MOU between USMA and Mental Health Association in Orange County, Inc. *Sexual Assault Prevention and Response Program*, 15 February 2007.

³⁰ USMA Memorandum. *Sexual Assault Review Board (SARB)*, 10 January 2007.

³¹ Based on on-site interviews. Psychotherapists are located at the Center for Personnel Development. They have four trained psychotherapists on staff.

different counselor. This is done to avoid any confusion of roles between psychotherapist and victim advocate.³²

Medical and Mental Health

The Restricted Reporting option has made it easier for the medical staff to treat victims confidentially. Given the number of restricted reports, it is perceived as a trusted resource by academy personnel.³³ Full medical care, including sexual assault forensic exams (SAFEs), is available on post at KACH and conforms to DoD SAPR policy.³⁴ Data is collected and tracked through medical channels, and SARCs are contacted in every case.

Sexual assault forensic exams are available 24/7 and performed on-post by a qualified medical provider, and off-post by trained Sexual Assault Nurse Examiners (SANEs). SANEs and Victim Advocacy services are also available off-post through the Orange County Mental Health Association. A Memorandum of Understanding (MOU) exists between USMA and Orange County Mental Health Association, and details services and procedures.³⁵

Chaplains

Chaplains are a valued resource for victims of sexual assault. USMA emphasizes their ability to have confidential communications³⁶ when making their services known to the cadets. USMA is utilizing chaplains appropriately.

Legal

Legal Assistance Attorneys are a valuable resource to cadets.³⁷ A sexual assault victim in the military may benefit from having this source of legal advice.³⁸

³² Based on on-site interviews.

³³ Assessment based on site-visit with medical personnel. The cadet clinic is an entry point for cadets to receive medical care and report sexual assaults.

³⁴ DoDI 6495.02, Enclosure 4, 23 June 2006.

³⁵ MOU is dated February 2007. Services provided include SANE, education and prevention, and advocacy.

³⁶ Under Military Rules of Evidence 503, a communication from a victim to a chaplain is a confidential communication if disclosed to a clergyman or a clergyman's assistant in his or her official capacity as a formal act of religion or as a matter of conscience.

³⁷ Based on review of the data-call, April 2007.

³⁸ Legal Assistance Attorneys are not authorized to enter into an attorney-client relationship with a victim for the purpose of discussing the military justice aspects, including collateral misconduct, of a sexual assault. Victim statements involving a previously unreported sexual assault or collateral misconduct involved in a sexual assault would not be confidential or considered as confidential reporting. An Area Defense Counsel and sexual assault victim can enter a confidential, attorney-client relationship for the purpose of discussing collateral misconduct associated with the sexual assault.

- **It is recommended that SARCs, VAs, and VWAP Victim Liaisons provide victims with Legal Assistance Attorney contact information and a brief explanation of the service they can provide.**³⁹

VWLs play a critical role in assisting sexual assault victims with navigating the military justice system. VWL assistance has a positive impact on victim cooperation with the military justice system.⁴⁰ VWL functions are performed by a paralegal in the military justice office as a collateral duty. It was noted that the VWL was not immediately contacted on at least one occasion when an Unrestricted Report was filed. The VWL has not consistently met with sexual assault victims from the outset of the criminal investigations.⁴¹

- **It is recommended that the SARC work with the Staff Judge Advocate to monitor victim access to and support by the VWL, in order to ensure that victims of sexual assault understand their rights and how to exercise them throughout the justice process.**⁴²

Case Management Committee

There is a process in place to review the care of a victim and the overall response to sexual assault allegations. The committee enables leadership to effectively evaluate its responsiveness to victim needs and make recommendations for change, as needed.

Community Collaboration

Off-post resources are available and advertised along with Academy resources. However, accessing off-post resources is a challenge due to the distance from USMA. Cadets who seek counseling or medical services off-post need transportation and an adequate amount of time away from USMA class and their cadet corps responsibilities. Even though an MOU exists, and

³⁹ DoDI 6495.02, Subsection 5.7.3 states that the Secretaries of the Military Departments shall “publicize policies and procedures for reporting a sexual assault and provide information regarding the availability of medical treatment, advocacy, and referral services.”

⁴⁰ Army Regulation 27-10, Chapter 18, Section 2 outlines the Victim Witness Assistance Program policy.

⁴¹ Based on on-site interviews. Under 6495.02, 23 June 2006, Subsection E10.1, Attachment 1 to Enclosure 10, “VA Sexual Assault Response Protocol Checklist.” This states that the VA should provide ongoing assistance by assisting the victim in gaining access to service providers and victim support resources that can help the victim explore future options and prioritize actions; assist the victim in contacting appropriate military and civilian legal offices for personal legal advice and assistance specific to the victim’s circumstances or cases; consult and work with the assigned VWL as applicable, and accompany the victim to appointments and civilian and military court proceedings, as appropriate and when requested by the victim.

⁴² As envisioned by the Victim-Witness Assistance Program, Army Regulation 27-10, Chapter 18, Sections 8 and 9 which outlines the requirements to identify victims and initiation of liaison service. Additional guidance is provided in Subsections E6.3.2, E6.3.2.3, E6.3.52.6 states that the VA shall receive training on knowledge of the military justice system, overview of the criminal investigative process and military judicial and evidentiary requirements, and Victim Rights and the role of the victim in accountability actions and limitations on accountability actions created by Restricted Reports.

while the Academy continues to share training experiences with the Orange County Mental Health Association and Rape Crisis Advocates,⁴³ there does not appear to be consistent communication or coordination between Academy personnel and these civilian agencies.

- **It is recommended that USMA continue to strengthen relationships with off-post resources and improve communications.**⁴⁴

C. Training and Prevention

1. Overview

Ongoing prevention and education has been implemented throughout the USMA at all levels. Education, training, and awareness are used to address the crime of sexual assault, promote the sensitive handling of victims, offer victim assistance and counseling, hold offenders accountable, provide confidential avenues for reporting, and reinforce a commitment to Army values.

USMA requires periodic, mandatory education for sexual assault prevention and response. Training is required for all military service members and civilian personnel who supervise service members. The training content includes the definition of sexual assault, reporting options, exceptions and limitations, and crimes that violate the Uniform Code of Military Justice (UCMJ). The content and format for sexual assault awareness training includes the nature of sexual assaults in the military environment, the use of realistic, scenario-based situations (demonstrating the cycle of reporting, response, and accountability procedures), and group participation and interaction.

Training is also conducted on protocols for the use of SAFE kits and chain of custody procedures. Cadet Field Training specifically addresses “negative elements” which include sexist behavior, alcohol use, and “Buckner” love (male/female attraction due to closeness). Under the Simon Center for The Professional Military Ethic (SCPME), the Respect Program Advisory Council (RPAC) serves as the liaison between the Corps of Cadets and the Commandant for issues of character development. RPAC has included comprehensive sexual assault prevention and reporting education as part of a Professional Military Ethics course.

2. Assessment

COMPLIANCE: USMA is in compliance with SAPR policy.

⁴³ As reported in the *Quarterly Report on USMA Actions regarding the Sexual Assault Prevention and Response Program* dated 23 May 2007.

⁴⁴ Orange County Rape Crisis Center, during on-site interview relayed that they do not like fielding media inquiries for the Academy and believe collaboration needs to be improved. DoDI 6495.02, 23 June 2006, Subsection E3.2.10.1-5 provides guidance for maintaining liaison with civilian sexual assault victim resources through MOU's.

In accordance with DoD SAPR policy, USMA requires periodic mandatory education for sexual assault prevention and response. All assigned personnel receive initial and annual SAPR education and training.⁴⁵ Medical and mental health personnel receive initial and annual SAPR education and training, in accordance with Army regulation.⁴⁶

There is confusion⁴⁷ about the roles of the VA and the VWL, and which position assists victims with the exercise of their legal rights. Victim rights assistance falls within the Victim Witness Assistance Program,⁴⁸ and should not be deferred to the VA during the criminal investigation of sexual assaults.

- **It is recommended that the SARC, VAs, and off-post service providers' cross-train to ensure proper understanding of roles, responsibilities, and resources in the criminal justice system. The SARC and VAs should refer victims to the VWL as early as possible in the investigative process.**⁴⁹

There is also confusion about the specific roles and responsibilities among the key players in the criminal justice system.⁵⁰ SAPR, VWAP, investigators, legal staff, and command all play different roles in serving victims. Consequently, responders from each program will have different goals in how they provide assistance to victims, and how they interact in the criminal justice process.

- **It is recommended that command, investigator, legal staff, SARC, and VWAP training highlight the specific roles and responsibilities that each agency plays in the sexual assault response process.**⁵¹

The Academy has made great improvements in its institutional prevention plan by incorporating innovative ideas and accountability into long-term strategy. As part of the Social Maturation Plan of the Cadet Leadership Development System, the Directorate of Cadet Activities has completed renovations of the Cadet First Class Club, written a guidebook for Cadet Club Officers, given classes to cadets on military etiquette, and opened Grant Hall's "Chock Full of Nuts" Coffee Shop.⁵² These highlight some creative examples of how the Academy is increasing

⁴⁵As required by AR 600-20.

⁴⁶MEDCOM Regulation 40-36, Medical Facility Management of Sexual Assault, 23 December 2004.

⁴⁷Based on on-site interviews with Academy personnel.

⁴⁸AR 27-10 Chapter 18-4c.

⁴⁹DoDI 6495.02, June 23, 2006, Subsection E6.3.1 requires training for the SARC and Subsection E6.3.2 requires training for the VAs.

⁵⁰Based on on-site interviews and review of data-call.

⁵¹DoDI 6495.01, June 23, 2006, Subsection E6.3.1 requires training for the SARC; Subsections, E6.3.4-2, E6.3.4.4 E6.3.4.5, require training for Law Enforcement; Subsections E6.2.5.1, E6.3.5.2, E6.3.5.6, E6.3.5, require training for MCIO's; Subsection E6.3.6.1, requires training for all Judge Advocates (JAs); and Subsection E6.3.6.2 requires training for Judge Advocate Trial Counsel.

⁵²As reported in the *Quarterly Report on USMA Actions Regarding the Sexual Assault Prevention and Response Program*.

awareness among cadets and academy personnel as they continue to seek out new ways to provide information on sexual assault prevention.⁵³ Prevention topics include responsible drinking, risk-reduction, and personal safety.

The Academy has enhanced cadet safety by allowing the cadets to lock their room doors after 9:00 P.M.⁵⁴ Focus group participants indicated that, “the locked door policy has addressed past concerns about personal safety in the dorms.”⁵⁵

D. Oversight

1. Overview

The USMA Sexual Assault Review Board (SARB) is a multi-disciplinary case management group that meets on a monthly basis.⁵⁶ The SARB reviews individual cases, monitors victim progress, and ensures all parts of the SAPR system are coordinated and accountable. The SARB advises the Superintendent on sexual assault issues, assists in the management and oversight of SAPR Programs, reviews the handling and disposition of sexual assault incidents, and makes recommendations to strengthen Academy SAPR policy and procedures.

Multiple data points are evaluated to assess the effectiveness of the SAPR Program. These data points include the number of sexual assaults reported, the reporting channel selected by the victim, timeliness of the response, quality of the response, disposition of investigations, effectiveness of responder training, victim feedback, and SART after-action reports. At the USMA, attitudes on sexual assault, command climate, and the effectiveness of the SAPR Program are measured through the Service Academy Gender Relations Survey, the Quality of Life Survey, and the Values Surveys.

Criminal Investigation Command has independent oversight by the Army Inspector General, as well as the Office of the Investigative Policy and Oversight of the Department of Defense Inspector General. The Judge Advocate General of the Army exercises policy oversight of the USMA Staff Judge Advocate Office.

⁵³ Information is often provided through speakers, authors, and informal means, such as the Margret Corbin Forum.

⁵⁴ USCC Standard Operating Procedures, Chapter 2, Annex A, Barracks 212.

⁵⁵ *DMDC Service Academy Gender Relations Focus Groups Report*, USMA Focus Groups Overview, Subsection “Safety.”

⁵⁶ The purpose of the SARB is to provide executive oversight, procedural guidance, and feedback concerning the installation’s SAPR Program. The board reviews the installation prevention program and the response to any sexual assault incident occurring on the installation. There are approximately 24 members that meet to discuss the status of cases and care for victims making both Unrestricted and Restricted Reports. No personal identifying information is briefed in Restricted Report cases. USMA Policy Memorandum 192-07, dated 15 February 2007.

2. Assessment

Appropriate mechanisms are in place both at Headquarters Army and USMA to ensure oversight of the effectiveness of the sexual assault prevention and response program at USMA.

A key element to an effective oversight program is the ability of leadership to sustain a long-term focus. Academy leadership has appointed a senior officer - the SAS-HR - as the SAPR Program Manager. This ensures an appropriate level of authority to successfully implement SAPR policy. However, in order for the program manager to remain effective, it is also incumbent that the Superintendent and Commandant champion SAPR efforts at every opportunity.

- **It is recommended that the Superintendent, Commandant, and SAS-HR periodically meet to review SAPR Programs. The meetings should identify critical points in USMA operations where senior leadership can reiterate and expand its support of the program's progress at the Academy.⁵⁷**

E. Military Justice

1. Overview

When an Unrestricted Report is made about a sexual assault committed by a member of the military, a criminal investigation is initiated and command takes appropriate disciplinary action. The victim may participate in an investigation, but will not usually be compelled to do so. Allegations of sexual assault are investigated by CID, which maintains an office at USMA, but has a separate chain of command.

Reports of Sexual Assaults Involving Cadets: APY 2006-2007

USMA APY 2006/2007 REPORTS OF SEXUAL ASSAULT (Rape, sodomy, indecent assault, and attempts to commit these offenses) INVOLVING CADETS	Rape	Sodomy	Indecent Assault	Attempts	Unknown	APY 2006/2007 Totals
# REPORTS OF SEXUAL ASSAULT (Total reported sexual assaults INVOLVING CADETS) - UNRESTRICTED AND RESTRICTED	7	0	8	1	0	16
# UNRESTRICTED REPORTS OF SEXUAL ASSAULT (Total reported sexual assaults BY or AGAINST Cadets)	2	0	3	0	0	5
# Restricted Reports	6	0	5	1	0	12
# Converted from Restricted Report to Unrestricted Report	1	0	0	0	0	1
# 2007 RESTRICTED REPORTS REMAINING RESTRICTED	5	0	5	1	0	11

Cases identified above represent only those sexual assault cases reported to Academy officials. As such, there is insufficient data to interpret these statistics or to make comparisons or to estimate the incidence and prevalence of sexual assault.

⁵⁷ DoDI 6495.02, Subsection E3.2.5.2.12 states that SARCs shall "conduct an ongoing assessment of the consistency and effectiveness of the SAPR within the assigned area of responsibility."

Case Dispositions

During APY 2006-2007, initially there were twelve Restricted Reports and four Unrestricted Reports. One Restricted Report converted to Unrestricted so that by the end of APY there were eleven Restricted Reports and five Unrestricted Reports.

Unrestricted Report Case Disposition

The two Unrestricted Report cases involving allegations of rape are pending.

The three Unrestricted Report cases involving allegations of indecent assault were substantiated and resolved through misconduct investigations. In two of these three cases the accused members were administratively separated from the Academy. The third case resulted in an administrative admonition.

2. Assessment

COMPLIANCE: USMA is in compliance with DoD SAPR policy.

APY 2006-2007 was the first full year in which cadets had the Restricted Reporting option. Eleven cadets chose to report and receive care under Restricted Reporting, which indicates the protections afforded under this option have credibility with victims of sexual assault. However, it is the goal of the DoD SAPR policy to build sufficient victim confidence in the military justice system such that all sexual assault reports will initially be Unrestricted Reports, or become Unrestricted Reports following a victim's initial decision to elect the Restricted Reporting option.⁵⁸ Consequently, DoD SAPR policy supports law enforcement and criminal justice procedures that hold people accountable for their actions.

- **It is recommended that the SAS-HR through the SARC inquire into the reasons why victims are choosing not to convert to Unrestricted Reporting and report this information through appropriate Service channels to DoD SAPRO without disclosing particular information or details from which one could determine the identity of a victim at the end of this current academic program year.⁵⁹**

U.S. Army Criminal Investigation Command (CID)

Criminal investigators at USMA recognize that the new Restricted Reporting option allows victims to get care confidentially. Investigators agree that getting care is critical to victims of sexual assault. They also agree that, with prompt care and support, more victims are likely to cooperate with investigators, and choose the Unrestricted Reporting option, thus, enabling CID

⁵⁸ SAPR policy DoDD 6495.01, 6 October 2005, Section 4.5 states that it is DoD policy to encourage complete, unrestricted reporting of sexual assaults.

⁵⁹ Implementation of this recommendation should not put undo pressure on victims or cause them to be re-traumatized.

to investigate. However, investigators at USMA are concerned over CID not being able to immediately investigate an alleged sexual assault under the Restricted Reporting option.⁶⁰

CID works closely with the SARC. The SARC will contact CID when a victim wishes to make a statement, and VAs are allowed to accompany victims upon request during CID interviews at USMA. Also, cross-training on their respective roles has proven to be helpful to the agents, SARC, and VAs.⁶¹

CID provides all crime victims and witnesses with DD Form 2701, *Initial Information for Victims and Witnesses of Crime*, which explains the investigative process, lists victims' legal rights, and identifies points of contact. Currently, agents are deferring the responsibility of informing victims about their legal rights and assistance to VAs. According to DoD guidance, the VWAP is responsible for ensuring that crime victims are assisted from the outset of an investigation and throughout the justice process.⁶² VWLs have not met consistently with sexual assault victims at the beginning of an investigation.⁶³

- **It is recommended that training for SARCs, VAs, and investigators emphasize that the VWL should be contacted immediately in every Unrestricted Report. All parties should understand that the VWL assists victims in understanding and protecting their legal rights and navigating the criminal justice system.⁶⁴ It is further recommended that the SARC review each victim's access to and support from the VWLs, when the victim desires such services.⁶⁵**

CID and the Provost Marshal's Office have successfully coordinated with local law enforcement to ensure 911 calls placed on the installation are routed to USMA emergency services. Emergency calls from outside the Academy are quickly located with the use of triangulation software.

Prosecution

The Office of the Staff Judge Advocate (SJA) is in compliance with DoD SAPR policy and appears very engaged in the sexual assault judicial process.⁶⁶ Trial Counsel, the Legal Assistance Attorney, and the Victim Witness Liaison are assigned to the SJA Office. This office's support is critical in building victim confidence in the criminal justice system. However, the individual roles of each of the above did not appear to be clearly understood by the key

⁶⁰ Based on on-site interviews of Academy personnel in April 2007, agents receive special training on the unique aspects of investigating sexual assault cases.

⁶¹ Based on on-site interviews of Academy personnel in April 2007.

⁶² DoDD 1030.01, 13 April 2004 and DoDI 1030.2, 4 June 2004.

⁶³ Based on on-site interviews with Academy personnel.

⁶⁴ Under SAPR policy DoDI 6495.02, 23 June 2006, Enclosure 10, "VA Checklist," the VA consults and works with the assigned Victim/Witness Liaison as applicable.

⁶⁵ DoDI 6495.02, 23 June 2006, Subsection E6.3.1 outlines SARC training.

⁶⁶ Based on review of the case files and interviews of Academy personnel.

stakeholders, nor fully integrated into training materials.⁶⁷ For example, most did not understand that a Legal Assistance Attorney can provide cadets with valuable legal advice.

- **It is recommended that training curricula be updated to highlight the different roles performed by the Trial Counsel, Legal Assistance Attorney, and Victim Witness Liaison. It is further recommended that this training be used by the SJA office, commanders, and any other USMA entity that assists victims.**⁶⁸

F. Chain of Command

1. Overview

USMA policies guide command implementation of sexual assault prevention and response, and address victim care and offender accountability.⁶⁹

2. Assessment

COMPLIANCE: *USMA is in compliance with DoD SAPR policy.*

The chain of command at USMA is successfully following policy guidance.

G. Addressing Victim Collateral Misconduct

1. Overview

USMA does not employ an amnesty system when dealing with a victim's collateral misconduct that is discovered as a result of reporting a sexual assault.⁷⁰ The command considers a victim's interests when deciding whether or not to delay disposition of a disciplinary case. Transactional Immunity is granted on a case-by-case basis, and may only be granted by the Superintendent, as a general court-martial convening authority pursuant to the procedures described in the *Manual for Courts-Martial*, RCM 704.⁷¹

⁶⁷ Based on on-site interviews of Academy personnel and review of the data-call.

⁶⁸ DoDI 64950.02, 23 June 2006. E6.3.4; 3.5; 3.6 outlines training requirements for legal personnel.

⁶⁹ USCC Policy Memorandum 39-07, *USCC Sexual Assault Response Policy*, page 6.

⁷⁰ Collateral misconduct refers to behavior that violates the UCMJ or Service or Academy regulations. Self-reported violations, such as an alcohol offense or prior consensual sexual misconduct (sex in the barracks) are typical examples.

⁷¹ USCC Policy Memorandum 39-03.

Commanders consider whether it is possible and appropriate to delay punishment of a victim's collateral misconduct until resolution of the allegations against the accused. The victim's preference is taken into consideration.⁷²

2. Assessment

COMPLIANCE: USMA is in compliance with DoD SAPR policy.⁷³

By offering victims who commit misconduct the option to request a delay in the disposition of their disciplinary cases, USMA balances the need for individual discipline and the need to create an environment that will not deter reporting sexual assaults.

H. Academic Program Year 2007-2008 Plan of Action

1. Overview

The USMA has a plan of action for APY 2007-2008 regarding sexual harassment and sexual violence prevention and response. West Point will continue to institutionalize prevention strategies by maintaining consistent policy, removing barriers to victim reporting, ensuring accessible care, and providing comprehensive education and training to all personnel. Twelve action points have been identified and are under way. Highlights include:

- Transition from phase I to phase II of policy implementation. Phase I stemmed from the USMA action plan, which tasked out 110 actions based on the 2004 DoD Task Force Report's 44 recommendations. The phase II action plan provides for continuous review and update of key components of the SAPR Program.
- USCC will assess and refine SAPR components of the Professional Military Ethic Education (PME2) program with new guest lecturers and follow-on classes. Consideration will be given to conducting gender separate training on the topic of sexual assault prevention.
- USMA will continue to refine the Cadet Leadership Development System by solidifying the Structure of Development, the Process of Development, and Assessment of all academic instruction. The SAPR component will be imbedded within all components of instruction, but will center on the Social and Moral Ethical domains.
- The Commandant will continue to specifically address sexual violence and harassment through briefings to the Cadet Corps at the beginning of each semester.

⁷² Based on on-site interviews

⁷³ DoDI 6495.02, 23 June 2006, E3.2.11 and E3.2.12.

- USMA will continue to look for innovative ways for conducting training. One creative training approach engages all assigned athletic staff and faculty, coaches, and athletes. They will involve the Student Athlete Advisory Committee (comprised of athletic team captains) to support Sexual Assault Program initiatives within their respective athletic teams, and work with other members of the Patriot League and Service Academies to address education and awareness throughout the league.

2. Assessment

COMPLIANCE: USMA is in compliance with DoD SAPR policy.⁷⁴

The USMA leadership has clearly demonstrated commitment to their sexual assault prevention and response program through sustained and dedicated efforts. The USMA plan for next year expands upon an outstanding foundation for sexual harassment and sexual violence prevention and response. The plan reinforces the policies of both DoD and U.S. Army SAPR and POSH programs. Continued aggressive training and education on the prevention of sexual harassment, sexual violence, and the misuse of alcohol, coupled with the support of leadership, will provide the cadets with a climate that tolerates only responsible decision-making. The USMA faculty and staff are committed to the implementation and support of DoD policy. Their consideration of the recommendations in this assessment will further enhance their dynamic SAPR Program.

⁷⁴ DoDI 6495.02, 23 June 2006, E3.2.11 and E3.2.12.

United States Military Academy Sexual Harassment Program Assessment

A. Definition of Sexual Harassment

DoD and the Army define sexual harassment as:

- “Sexual harassment is a form of sexual discrimination that involves unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature when:
 1. Submission to, or rejection of, such conduct is made either explicitly or implicitly a term or condition of a person’s job, pay, career, or
 2. Submission to, or rejection of, such conduct by a person is used as a basis for career or employment decisions affecting that person, or
 3. Such conduct has the purpose or effect of unreasonably interfering with an individual’s work performance or creates an intimidating, hostile, or offensive working environment.
- Any person in a supervisory or command position who uses or condones implicit or explicit sexual behavior to control, influence, or affect the career, pay, or job of a soldier or civilian employee who makes deliberate or repeated unwelcome verbal comments, gestures, or physical contact of a sexual nature is engaging in sexual harassment.”

B. Sexual Harassment Policy

United States Military Academy’s (USMA) policy on sexual harassment is spelled out in United States Corps of Cadets (USCC) Policy Memorandum Number 36-04.⁷⁵ The policy states:

“Any person affiliated with USCC who feels they are a victim of sexual harassment or observes an act of sexual harassment must take appropriate action. Whenever possible, confront the violator first. Immediately report repeat offenses or offenses that obviously cannot be resolved through individual clarification. All complainants have a responsibility to file only legitimate

⁷⁵ USCC Policy Memorandum Number 36-04, *Policy on Sexual Harassment*, 15 January 2007.

complaints and to allow the chain of command the opportunity to resolve the problem.”⁷⁶

C. Program Overview

USMA’s sexual harassment policy pertaining to the Corp of Cadets (USCC) is embedded within the Academy’s Respect Program. The purpose of the Respect Program is to foster the Corps’ development of and commitment to the fundamental principle that each individual has infinite dignity and worth. As such, the USMA maintains the Respect Program concept as an Army Value in order to ensure a healthy command climate and focus more succinctly on character development. The intent of the program is to engender a professional attitude that encompasses every aspect of cadet life, and foster the Corps’ development of and commitment to intrinsic characteristics necessary to effectively lead Soldiers in the 21st Century, including the fundamental principle that each individual intrinsically has infinite dignity and worth.

D. Program Organization

The USMA created the Center for the Professional Military Ethic in 1998. Later, in November 2000, USMA renamed the center the William E. Simon Center for the Professional Military Ethic (SCPME) in honor of the former US Treasury Secretary. SCPME’s mission is to: develop, coordinate, integrate, and assess programs and activities on the Professional Military Ethic in order to develop a professional self-concept of officership within cadets. SCPME’s functions include:

- USMA focal point for developing professional officership self-concept.
- Develop, coordinate, and integrate Professional Military Ethic Education (PME2) curricula and other activities within the Military Program.
- Supervise the Honor and Respect Committees.

SCPME is task organized in a manner which facilitates execution of assigned missions. The organization consists of one officer, one noncommissioned officer (NCO), and fifteen cadets on the Executive and Regimental Staff. Both the officer and NCO Equal Opportunity Advisor (EOA) assigned are graduates of the Defense Equal Opportunity Management Institute (DEOMI). The EOA serves both the USCC and the Commandant. The EOA’s responsibilities are outlined within the Respect Program standard operating procedures (SOP) and are consistent with Army policy. They include:

⁷⁶USCC Policy Memorandum Number 36-04, *Policy on Sexual Harassment*, 15 January 2007.

- Articulating DoD, Army, USMA, and USCC policy on sexual harassment.
- Assisting the USCC chain of command in implementing the policy.
- Recognizing and assessing indicators of institutional and individual discrimination and sexual harassment within the USCC.
- Recommending appropriate remedies to eliminate and prevent sexual harassment.
- Continuously assessing the command climate through formal surveys, interviews and sensing sessions.
- Assessing, planning, implementing and evaluate the USCC program.
- Organizing or assisting with training sessions addressing prevention of sexual harassment.
- Receiving and processing individual complaints of sexual harassment within USCC and conducting inquiries as required in accordance with Army Regulation 600-20.
- Serving as an advisor to commanders and investigating officers for issues pertaining to sexual harassment.
- Reviewing and commenting on investigative reports of sexual harassment complaints for compliance with DoD and Army policies.

E. Professional Military Ethic Education (PME2)

PME2 is a 4-year program consisting of 64 formal hours of instruction over the cadet's academic career. During the academic year, PME2 Company Teams, under the direction of the Education Officer, administer formal instruction designed to contribute to developing the moral-ethical character of each cadet in the company. Education begins during Cadet Basic Training. New cadets are taught the seven Army Values, reporting procedures, equal opportunity, sexual harassment, sexual assault, and conflict management. Annually-revised education guides, which include sexual harassment, are presented to cadets. Additional copies are made available through their Company Respect Representatives or by connecting to the internal Respect website: <http://www.internal.uscc.usma.edu/res> oth. Other resources include: Four Year Values Education Guide, Hip-Pocket Values Guide, the Cadet Basic Training, Cadet Field Training Guides, and Respect X/Y cases.

F. Incident Reporting and Investigations

Reporting procedures are addressed within both USCC Policy Memorandum Numbers 36-04 and 46-00 and the Respect Program Standard Operating Procedures (SOP). IAW Army policy, USCC offers two methods of reporting: informal and formal complaint procedures.

- Informal complaints enable a cadet who does not wish to file a formal complaint, to verbally report inappropriate behavior without requiring a full investigation by the chain of command. This process helps facilitate resolutions at the lowest possible level.
- In the formal complaint process, the cadet files in writing and swears to its accuracy using a DA Form 7279-R. USCC follows Army Regulation 600-20, which outlines the specific actions, timelines, and formal documentary requirements associated with the conduct of a formal investigation/report. The decision to file a formal complaint rests with the cadet. Cadets are encouraged to consult with the USCC EOA on the process. No formal sexual harassment complaints were filed during the designated timeframe. DA Poster 600-4 (Complaint Procedures Process) is embedded in the Respect Program SOP, posted on unit bulletin boards, and briefed to the classes during preparation for summer training.

Cadets also have the option to file sexual harassment complaints through the Inspector General, Chaplain's Office, Staff Judge Advocate, USMA EOA, or the Installation EO Assistance Line (845) 938-7082/2621. These options are consistent with Army policy and are addressed by the above mentioned USCC policy memorandums. Between June 1, 2006 through May 31, 2007, USMA processed no formal sexual harassment complaints, but did process five informal sexual harassment complaints through the Respect Program.

The USCC investigation process as detailed within the Respect Program SOP is as follows:

- Except complaints filed with IG, the Brigade Tactical Department (BTD) Chain of Command must act upon all formal complaints within three calendar days. The BTD Chain of Command must report all formal complaints to their next higher commander within 72 hours.
- The Commandant, or the investigating officer appointed by the Commandant, has 14 calendar days to investigate the allegations, meet the victim to discuss the outcome and results, and determine the final outcome. The Commandant must submit requests for any extension beyond the 14 days allocated to conduct the investigation, to the Superintendent.
- The complainant has seven days to appeal the Commandant's decision to the General Court-Martial Convening Authority (Superintendent) if he/she is dissatisfied with the investigation results or actions taken.

- The USCC EOA assesses all EO complaints (substantiated or unsubstantiated) to determine the effectiveness of any corrective actions taken and to detect and deter any incidents of reprisal. This assessment and recommendation, using a DA Form 7279-1-R, must be complete within 30-45 days of the Commandant's decision or the final appeal.

G. Assessment Results

- USMA sexual harassment policy is in compliance with DoD Directive 1350.2, DoD Military Equal Opportunity (MEO) Program, and Army Regulation 600-20, Army Command Policy, Chapter 7. A copy of the policy memorandum was posted in the permanent sections of the unit bulletin boards examined.
- The EOA assigned is a graduate of the DEOMI, IAW DoD and Army policy.
- The cadets are receiving initial and follow-up training pertaining to sexual harassment and complaint procedures.
- USMA follows guidance for filing and processing of sexual harassment complaints outlined in Army Regulation 600-20, Appendix D. However, the USMA Respect Program has modified the procedures slightly to account for the organizational structure of the USCC.
- The USCC investigation process as detailed within the Respect Program SOP is also consistent with Army policy.

H. Recommendations

- **Respect Mentorship Program:** A highlight of the assessment was a review of the Respect Mentorship Program (RMP). The RMP is designed to enable enrolled cadets to identify and address shortcomings in personal adherence to the Army Value of Respect and the unethical decisions that result in unprofessional behavior. At end-state, the cadet must demonstrate resolve to choose what is right without assistance or supervision. The program is similar in function and effect to the Honor Mentorship Program and is tied to a Special Leader Development Program. Cadets enrolled in the six month rehabilitative program must successfully complete all program requirements or face possible separation from the Corps of Cadets. In that the program is similar in effect to the Honor Mentorship Program, it is recommend that a Cadet Respect Code be developed and institutionalized similar to the Cadet Honor Code established in 1922, thus giving the Respect Program the same validity and visibility of the Honor Program.

- **Limited confidential reporting for EO:**⁷⁷ As reported in both the DoD Task Force Report on Care for Victims of Sexual Assault and the Army's Task Force Report on Sexual Assault Policies, confusion in the field remains on what behaviors are defined as sexual assault versus harassment. While the EO and Sexual Assault Response personnel understand the difference, many cadets do not, despite the level or amount of training conducted. As a consequence, cadets may inadvertently report a case of sexual assault to the EO Advisor, who does not currently act in a confidential capacity for crime and is required to report all crimes to command as soon as they are presented. This requirement to report could void the opportunity for sexual assault victims to select Restricted Reporting under the established sexual assault policy. As with the other Academies, it is recommended that each of the Military Departments and DoD examine granting limited confidential reporting (pertaining only to incidents of sexual assault) to EO Advisors. Under such policy, EO Advisors would be required to notify the Sexual Assault Response Coordinator instead of command, thus allowing the victim to be properly counseled on Restricted versus Unrestricted Reporting options. Until such confidentiality issues can be fully addressed at DoD level, it is recommended that the Academy EO office, prior to receiving any complaint, warn cadets that EO Advisors have a responsibility to report all matters relating to sexual assault to law enforcement and to the commander. An example of such a warning is as follows:

"I handle sexual harassment, not sexual assault issues. If you disclose something to me about a sexual assault, I must report it to the commander and law enforcement. If you want to talk about a sexual assault, or you're not sure what the difference is between sexual harassment and sexual assault, I'll refer you to the Sexual Assault Response Coordinator to make sure you understand your options."

⁷⁷ Confidential Reporting is defined in DoD SAPR policy DODI 6495.02, June 23, 2006, E2.1.1. as Restricted Reporting.

United States Military Academy DMDC Focus Group Overview

Focus group sessions were conducted at the United States Military Academy (USMA) from April 10-13, 2007. Questions were asked dealing with eight issues: sexual assault and sexual harassment, safety, mechanics of reporting, reasons for not reporting, training, future leader preparation, communication from the Academy, and use of alcohol.⁷⁸ Sixteen focus group sessions were conducted at USMA. Each session was scheduled for a 45-minute period to accommodate scheduled class time constraints. There were two sessions held for each gender for each class year, each involving between eight and thirteen students. Caution must be applied to the review of the findings presented. The results are based on qualitative analysis—findings cannot be generalized to all students at USMA.

A. Sexual Assault and Sexual Harassment

When asked to define sexual assault and sexual harassment, the bulk of the discussion centered on issues dealing with sexual harassment. Participants in the focus groups understood sexual assault is a physical act, whereas sexual harassment is more difficult to define because specific actions and comments that offend one person do not necessarily offend another person. Participants in the focus groups indicated that they generally define sexual harassment to include situations when someone makes a statement that is offensive to someone else. Both male and female focus group participants indicated that sexual harassment is not an issue at the Academy because they have rarely seen it or heard of it happening. More senior focus group participants felt it happens even less now than it did in the past. For the most part, focus group participants agreed that sexual harassment is not tolerated at the Academy, although certain companies are somewhat more accepting of such behavior. They indicated that any amount of sexual assault would be a serious problem, but most did not worry about it on a day-to-day basis.

B. Safety

Focus group participants indicated that, although it is not an issue they worry about frequently, the climate for avoiding and responding to sexual assault is better now than it was a few years ago. Focus group participants indicated that they take care of each other, which makes them feel safer than their friends who attend other colleges. Participants also indicated that, in general, the locked door policy has addressed past concerns about personal safety in the dorms.

⁷⁸ For purposes of summarizing focus group findings, issues dealing with mechanics of reporting and reasons for not reporting are combined into one discussion section.

C. Mechanics of Reporting and Reasons for Not Reporting

Participants in the focus groups indicated that the Academy has given them all the information and/or resources they need in order to respond should they ever experience an incident of sexual assault or sexual harassment. They indicated they have many options to report, understand the difference between Restricted and Unrestricted Reporting of sexual assault, and know how to contact their Sexual Assault Response Coordinator or Victim Advocate (VA) if need be. Focus group participants indicated they would be more likely to report an incident of sexual assault than sexual harassment. They suggested that if either incident went unreported it might be due to a fear of attaining a bad reputation or calling undue attention to themselves in a highly competitive environment. Upperclassmen participants in the focus groups indicated mixed feelings about how well the reporting system works, especially when reporting sexual assault. One concern about the system indicated by focus group participants was that women can use it as a scapegoat if they get caught having consensual sex in the dormitories.

D. Training

Focus group participants indicated they receive ample training on sexual assault and sexual harassment and acknowledge the potential risk that the severity of these issues could be compromised due to the excessive and tedious training. Focus group participants indicated that discussions were more effective than lectures when it came to learning about sexual assault or sexual harassment in Professional Military Ethics Education (PMEE) classes, where the majority of such training occurs. Focus group participants indicated that speakers who presented real life experiences were the most effective method of training sessions and PowerPoint briefings were among the least effective. Additionally, targeting men as “the bad guys” or portraying women as helpless did not have a positive effect in training sessions. Focus group participants recommended separate training for sexual harassment because the linking of sexual harassment to sexual assault ignores that sexual harassment is the more common of the two and is addressed in their Respect program.

E. Future Leader Preparation

Most participants in the focus groups indicated that the wide range of experiences they receive at the Academy goes a long way toward preparing them for dealing with sexual assault or sexual harassment as leaders, although some still felt they would like additional training on the topic. Having officers discuss problems they have encountered as commanders was a preferred way of learning more on this issue.

F. Communication from the Academy

Participants in the focus groups indicated that they received general information from the Academy about sexual assault or sexual harassment, but had heard very little information about

specific cases. As a consequence, they tend to rely on the rumor mill for information. Receiving specific information about cases after the fact (to protect anonymity) would be useful to focus group participants, as long as they hear it before it gets out to their parents and the general public.

G. Use of Alcohol

Participants in the focus groups indicated that use of alcohol plays a significant role in situations involving sexual misconduct, especially sexual assault. Participants in the focus groups indicated that alcohol involvement creates problems in determining facts about the guilt or innocence of the people involved in a case of reported sexual assault. There was agreement that alcohol is never an excuse for unacceptable behavior. Some participants in the focus groups indicated that using alcohol is part of Academy culture. However, many believe the current alcohol policy is too restrictive and does not allow cadets to learn to drink responsibly. Additionally, they thought it would be beneficial if they could assist a friend in need without being punished themselves, even if the friend is drinking underage or inappropriately.

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United States Naval Academy Sexual Assault Prevention and Response Program Assessment

The United States Naval Academy (USNA) leadership has clearly demonstrated commitment to their Sexual Assault Prevention and Response Program through sustained and dedicated efforts. USNA has done an outstanding job developing and continuously improving policies, procedures, and processes designed to prevent and respond to sexual violence in accordance with Department of Defense policies. An overview of the U.S. Naval Academy's Sexual Assault Prevention and Response Program, an assessment of its effectiveness, and recommendations for improvement are detailed below. Policy compliance was measured against Department of Defense, Sexual Assault Prevention and Response policy described in DoDD 6495.01, October 6, 2005 and DoDI 6495.02, June 23, 2006.

A. Sexual Assault Victim Intervention (SAVI) Program

1. Overview

The Sexual Assault Response Coordinator (SARC)/Sexual Assault Prevention and Response Program Manager supervises the Sexual Assault Victim Intervention (SAVI) Program, including coordination of victim care, case management, prevention, response, and training for USNA and the Naval Academy Preparatory School (NAPS). The SARC reports to the Superintendent through the Deputy Superintendent/USNA Chief of Staff.⁷⁹

In addition to the SARC, the SAVI Program involves the USNA Faculty/Staff SAVI Liaison, the USNA Brigade SAVI Liaison (BSL) and the NAPS SAVI Liaison.

The USNA Faculty/Staff SAVI Liaison executes the SAVI Program and sexual assault prevention and response (SAPR) efforts involving USNA faculty and staff,⁸⁰ while also monitoring SAVI Faculty Liaisons. SAVI Faculty Liaisons are not SAVI Advocates, but they have been identified, trained, and assigned to discuss the SAVI program with midshipmen, staff, or faculty who seek information about reporting sexual assault.⁸¹

The USNA Brigade SAVI Liaison is responsible for SAVI Program implementation and SAPR efforts for the Brigade of Midshipmen. The BSL reports directly to the Commandant, with an additional duty of reporting to the SARC on SAPR matters.⁸² The BSL must notify the

⁷⁹ USNAINST 5354.5A, 17 August 2006, Section 10a (1).

⁸⁰ USNAINST 5354.5A, 17 August 2006, Section 10a (4).

⁸¹ USNAINST 1752.2, 27 September 2004, Enclosure 2 "Faculty Liaison Program."

⁸² USNAINST 5354.5A, 17 August 2006, Section 10a (2).

Commandant of any reported sexual assaults within 24 hours. Identifying information about the victim or alleged suspect is generally not disclosed in cases of Restricted Reporting.⁸³

The BSL manages the SAVI Guide Program. SAVI Guides are midshipmen who volunteer to serve as a peer resource for SAPR. SAVI Guides provide program information and explain reporting options so victims can make informed decisions. SAVI Guides also conduct training and participate in the planning and execution of Academy sexual assault awareness activities.

SAVI Advocates are officer and senior enlisted volunteers trained to provide support and assistance to sexual assault victims during initial assessment, medical, administrative, legal, and investigative procedures. The advocates also provide information and referrals for further assistance and services. USNA requires a minimum of ten SAVI Advocates.⁸⁴ A rotating schedule of SAVI Advocates ensures that an advocate is on call at all times and reachable by pager.⁸⁵ The BSL recruits, screens, and supervises SAVI Advocates, in cooperation with the Training Coordinator. SAVI Advocates are required to complete a minimum of 20 hours of initial training through the Department of the Navy Advocacy Course, as well as 10 hours of annual refresher training.

The NAPS SAVI Liaison oversees SAPR efforts for the Midshipmen/Cadet Candidate Battalion, faculty and staff.⁸⁶

Reporting

USNA policy outlines reporting procedures for midshipmen to follow and employs numerous resources for sexual assault prevention and response. The points of contact for initial reporting of sexual assault incidents are listed below.

Restricted Reporting⁸⁷

Restricted Reporting is an option for victims to confidentially disclose the occurrence of a sexual assault without triggering an official investigation and without being personally identified in the subsequent command notification. Restricted Reporting offers victims access to appropriate care, treatment, advocacy, and support. The role of the SARC and the VA is to explain available options and resources and support the victim through the reporting process regardless of which option they choose.⁸⁸ It is available to military victims who report to the Sexual Assault Response Coordinator (SARC), SAVI Liaisons, SAVI Victim Advocates, SAVI Guides, or Healthcare Providers (Naval Health Clinic, Midshipmen Development Center, Fleet and Family

⁸³ COMDTMIDNINST 1752.1C Encl. (3), 27 September 2004, Section 15-c. There are exceptions as noted.

⁸⁴ COMDTMIDNINST 1752.1C, 27 September 2004, Section 15-b.

⁸⁵ USNAINST 5354.5A, 17 August 2006, Section 9-b; On-site interview, April 2007.

⁸⁶ USNAINST 5354.5A, 17 August 2006, Section 10a (3).

⁸⁷ USNA issued Restricted Reporting procedures in August 2006.

⁸⁸ DoDD 6495.01, Section 4.5, 6 October 2005. It is DoD policy to encourage Unrestricted Reports through a systemic approach that supports the victim from the moment of the initial report through the military justice process.

Support Center).⁸⁹ A report may also be made to a chaplain. A report made to a chaplain is not a Restricted Report under DoD SAPR policy, but is a communication that may be protected under the Military Rules of Evidence or applicable statutes and regulations. Within 24 hours of receipt of a Restricted Report resulting from a sexual assault, the SARC notifies the Superintendent and prepares an incident report.⁹⁰

Unrestricted Reporting

An Unrestricted Report is any report of a sexual assault made through normal reporting channels, including the victim's chain of command, duty officers, law enforcement, the Naval Criminal Investigative Service (NCIS) or civilian criminal investigative service, and a SARC/SAVI program channels or healthcare provider wherein the individual does not elect Restricted Reporting. With an Unrestricted Report, the victim has the option of a Military Protective Order (MPO),⁹¹ and qualifies for services under the Victim Witness Assistance Program.⁹² Specific information about Unrestricted Reports is disclosed only to those with an official need to know.

2. Assessment

COMPLIANCE: USNA is in compliance with DoD SAPR policy.

The procedures that a midshipman should follow for reporting a sexual assault comply with DoD SAPR policy. Current procedures identify to whom a report is made, the appropriate contact information, and an explanation of the option for Restricted Reporting. USNA maintains a 24/7 response capability for victims of sexual assault.

SAVI Guides provide non-identifying information to the BSL. There is a concern that by providing only non-identifying information to the BSL, the BSL may not have enough details of the incident to ensure sufficient oversight of the SAVI Guides.⁹³ As SAVI Guides may be peers of both the victim and the perpetrator, the potential conflict of interest might require non-peer intervention. SAVI Guides should share all information with the BSL, and the BSL should ensure that the information gets to the SARC.

- **It is recommended that the SARC exercise supervision over all the sexual assault reports made to SAVI Guides and BSLs, to include identifying data of all victims. The SARC, SAVI VA, and BSL should also review relationships between SAVI**

⁸⁹ USNAINST 5354.5A, 17 August 2006, Section 9d (1).

⁹⁰ USNAINST 5354.5A Section 11 c (2), 17 August 2006.

⁹¹ USNAINST 5354.5A, 17 August 2006.

⁹² OPNAVINST 5800.7, 30 April 1996.

⁹³ Based on the on-site visit in April, 2007 with Academy personnel.

Guides, victims, and accused midshipman to preclude conflicts of interest or inappropriate relationships.⁹⁴

The first full academic program year of Restricted Reporting at the Academy was 2006-2007. Unfortunately, less than half of all midshipmen understand the difference between Restricted and Unrestricted Reporting⁹⁵ and many do not recognize the terms in relation to sexual assault.⁹⁶

- **It is recommended that training curricula continue to emphasize procedures that midshipmen should follow for reporting a sexual assault and to whom a victim can confidentially report.⁹⁷**

B. Resources for Victims

1. Overview

Medical and Mental Health

The Midshipman Development Center (MDC) has a Sexual Assault Prevention and Intervention Specialist⁹⁸ on staff to provide assistance in SAPR matters. MDC services also include prevention, training, counseling, and midshipmen/leadership consultation. Confidentiality is protected under the UCMJ psychotherapist-patient privilege.⁹⁹ When a sexual assault report is received, the MDC is required to notify the Commandant and provide non-identifying information about the incident.

The National Naval Medical Center (NNMC) at Bethesda, MD, performs sexual assault forensic exams (SAFEs) for military victims making a Restricted Report. Anne Arundel Medical Center (AAMC) conducts a SAFE for Unrestricted Reports or when the victim is a civilian. Additional off-base resources are also readily available.¹⁰⁰ Forensic evidence is stored at NCIS Consolidated Evidence Facility in Norfolk, VA.¹⁰¹ In cases of Restricted Reports, forensic

⁹⁴ DoDD 6495.01, October 2005, Subsection E2.1.17 and DoDI 6495.02, 23 June 2006, Subsection E3.2.6.2.3 direct personnel responsible for providing victim advocacy to report directly to the SARC.

⁹⁵ As reported in the *DMDC Service Academy Gender Relations Focus Groups Report*.

⁹⁶ *DMDC Service Academy Gender Relations Focus Groups Report*, USNA Focus Group sessions, April 2007: Subsection "Mechanics of Reporting and Reasons for Not Reporting," indicated that midshipmen understood the conceptual difference between Restricted and Unrestricted Reporting, although they did not recognize the terms.

⁹⁷ DoDI 6495.02, 23 June 2006, Subsection E3.2.1.1. requires that all personnel be provided with information on the reporting options available to them and the exceptions and/or limitations of each option.

⁹⁸ A Licensed Clinical Social Worker.

⁹⁹ Psychotherapist Patient Privilege, Manual for Courts-Martial, M.R.E. 513. Exceptions to Psychotherapist Patient Privilege are listed under M.R.E 513 (d).

¹⁰⁰ Baltimore-Washington Medical Center (BWMC) is also equipped to perform SAFEs for any victim. However, AAMC and BWMC cannot maintain confidentiality and may bill the patient's health insurance carrier for some services.

¹⁰¹ DoD policy on the storage SAFE kits can be found in DoDI 6495.02, Enclosure 4, 23 June 2006.

evidence is stored anonymously at the NCIS Consolidated Evidence Facility in Norfolk, VA. When the SAFE is performed at a civilian hospital, the evidence is transferred by the hospital to NCIS in Unrestricted Reports of sexual assault, and to the SARC/SAVI representative in cases of Restricted Reporting.

Legal

The Commandant's Legal Advisor reports to the USNA Staff Judge Advocate, and provides guidance, develops responses, and coordinates actions associated with the legal aspects of sexual assault allegations. The Legal Advisor represents the command, not the victim¹⁰² and has an additional duty to report allegations to the SARC.

The Midshipmen Legal Advisor provides legal assistance and defense counsel to the Midshipmen and maintains an office at USNA. The Midshipmen Legal Advisor is not in the Commandant's chain of command, as they fall under the cognizance of the Naval Legal Service Office.¹⁰³

Under the Victim Witness Assistance Program, the Staff Judge Advocate's office is responsible for ensuring that victims and witnesses understand and are given assistance with exercising their legal rights as appropriate, during the military justice process beginning with the investigation process until the case is resolved.¹⁰⁴

The Victim Witness Assistance Coordinator (VWAC) provides the victim with information on victims' legal rights, available resources, and how to appropriately exercise victim's legal rights.¹⁰⁵

Chaplains

Chaplains have authority under military law to have privileged, confidential communications with victims of sexual assault. Under Military Rules of Evidence 503, a communication from a victim to a chaplain is a confidential communication if disclosed to a clergyman or a clergyman's assistant in his or her official capacity as a formal act of religion or a matter of conscience.

¹⁰² USNAINST 5354.5A, 17 August 2006, Section 10a (6).

¹⁰³ The Legal Advisor providing legal assistance is available to provide privileged legal counseling services to midshipmen. This privilege, however, may not include communications made by the victim that contemplate the commission of a fraud or a crime. These attorneys may also be appointed as defense counsel for courts-martial. In cases where the counsel faces a conflict of interest, the parent command provides assistance and alternate counsel. For example, this office could not represent both the accused and the victim in the same case, should the victim be charged with collateral misconduct surrounding the offense. This information is based on interviews conducted at the Naval Legal Service Office in April 2007 and subsequent emails located in the USNA data-call.

¹⁰⁴ SECNAVIST 5800.11B, 5 January 2006.

¹⁰⁵ OPNAVINST 5800.7, 30 April 1996.

There is a Chaplain in each USNA battalion to provide support to sexual assault victims. Midshipmen may make appointments as needed with any chaplain.¹⁰⁶

Community Collaboration

A Memorandum of Understanding (MOU) exists between USNA and local police departments, civilian medical treatment facilities, a counseling center, the YWCA, and the local state attorney's office. The MOU implements a Sexual Assault Response Team (SART) to promote coordination of sexual assault response efforts.¹⁰⁷

Additionally, a Memorandum of Agreement (MOA) exists with Naval Support Activity Annapolis, and the Naval Health Clinic Annapolis to define the response plan for sexual assault incidents. Baltimore-Washington Medical Center (BWMC) is also equipped to perform a SAFE for any victim. Also, the USNA Fleet and Family Support Center will notify appropriate personnel should a midshipman report a sexual assault there.

Case Management Committee

A SAVI Coordination Committee is co-chaired by the USNA Chief of Staff and the Deputy Commandant. The SAVI Coordination Committee is required to meet quarterly to review sexual assault response and prevention efforts, and to assist the SARC in the development of awareness, prevention, and advocacy programs.¹⁰⁸

2. Assessment

COMPLIANCE: USNA is in compliance with and exceeds DoD SAPR policy.

Resources for victim care are available and accessible on base and exceed¹⁰⁹ DoD SAPRO policy. Information outlining the Academy's Program and available resources is displayed on base in public areas, as well as advertised in training materials. Local community resources are also available and accessible to midshipmen and are advertised along with Academy resources. SAFEs are available 24/7 and procedures are in place to ensure anonymous storage of evidence for up to one year.¹¹⁰

¹⁰⁶ COMDTMIDNINST 1752.1C, Section 15 (e) 27 September 2004.

¹⁰⁷ *Memorandum of Agreement Between Ann Arundel County Police Department, Annapolis Police Department, North Arundel Hospital, Ann Arundel Medical Center, Ann Arundel Abuse Counseling Center, United States Naval Academy, YWCA of Annapolis and Ann Arundel County and Ann Arundel County State's Attorney's Office*, 1 November 2004.

¹⁰⁸ USNAINST 1752.2, Section 7, 27 September 2004.

¹⁰⁹ DoD policy does not require the SAVI Guide Program. This level of peer support is laudable.

¹¹⁰ As described in the data-call.

Medical, Mental Health and Community Collaboration

Basic medical care is available on the USNA grounds. SAFEs can be performed 24/7 at NNMC and at civilian hospitals close to the Academy.¹¹¹ Memoranda of Agreement (MOAs)/ Memoranda of Understanding (MOUs)¹¹² exist between USNA and local community resources, and reflect an extensive effort in coordinating victim care. DoD SAPR policy allows for the sharing of information regarding sexual assault prosecutions, victim care, and forensic examinations involving service members. There is no mechanism in place at the Academy to survey and identify trends in sexual assault reports made to local community resources involving USNA personnel.¹¹³ The sharing of data will provide the Academy with a more complete picture of the actual number of sexual assault victims by including those only utilizing off-base resources.

- **It is recommended that USNA update their MOU/MOA with local community resources to include the sharing of information as appropriate.**¹¹⁴

Jurisdictional problems among law enforcement and medical care providers caused one victim to wait approximately 7 hours before a forensic exam was performed. The incident occurred off-base. The District of Columbia had jurisdiction and initially took the lead role in the investigation of the case. The DC Metropolitan Police requirement that the victim's SAFE kit be performed within their jurisdiction caused this unreasonable delay.¹¹⁵ Procedural differences among law enforcement agencies and medical care providers can be resolved by establishing a MOA.

¹¹¹ The Brigade Medical Clinic located within Bancroft Hall provides basic medical care. North Arundel Medical Center located approximately fifteen to twenty miles from the Naval Academy and Ann Arundel Medical Center located approximately five miles from the Academy.

¹¹² MOA between USNA, Naval Support Activity Annapolis, and Naval Health Clinic Annapolis, dated March 2007. MOU between Anne Arundel county Police Department, Annapolis Police Department, North Arundel Hospital, Anne Arundel Medical Center, Anne Arundel Abuse Counseling Center, USNA, YWCA of Annapolis and Anne Arundel County, and Anne Arundel County State's Attorney's Office serves as evidence of the commitment of the agencies listed to implement a sexual assault response team, signed June 2005.

¹¹³ Based on on-site interviews in April 2007 and review of existing MOUs.

¹¹⁴ DoDI6495.02, 23 June 2006, Subsection E3.2.10 – E3.2.10.5 provides guidance on collaborating with civilian resources.

¹¹⁵ Based on on-site interviews with Academy personnel and review of the data-call. In this case, the Victim Advocate (VA) was contacted at approximately 1000 and immediately responded to assist the victim. Both the VA and victim waited for NCIS to work out jurisdictional problems with District of Columbia Metropolitan Police before the SAFE could be performed. The victim arrived at the designated hospital at approximately 1600 for the SAFE. A forensic nurse was not immediately available and took an additional 2 hours to arrive. The VA and victim did not leave the hospital until approximately 2130. Extended delays jeopardize evidence and put the victim through unnecessary discomfort.

- **It is recommended that the SARC coordinate with NCIS personnel to identify jurisdictional procedures regarding sexual assault forensic examinations (SAFEs) in Maryland and the District of Columbia. USNA should collaborate with National Capital Region (NCR) SARCs to join current MOAs with civilian law enforcement, prosecutors, and servicing hospitals in the NCR to clearly identify the procedures to be followed and include organizational points of contact that can be referenced when a sexual assault occurs in the NCR area.**¹¹⁶

Legal

The Victim Witness Assistance Coordinator (VWAC) is a valuable resource for sexual assault victims who make Unrestricted Reports. The position plays a critical role in assisting victims with navigating the military justice system and with exercising their legal rights.¹¹⁷

The Midshipmen Legal Advisor providing Legal Assistance to midshipmen are a valuable resource.¹¹⁸ A sexual assault victim in the military may benefit from having this source of legal advice.¹¹⁹

- **It is recommended that SARCs, VAs, and VWAC provide victims with the Midshipmen Legal Advisor's contact information and a brief explanation of the service they can provide.**¹²⁰

Chaplains

Chaplains are a valued resource for victims of sexual assault, and their ability to have confidential communications¹²¹ is publicized to the midshipmen. Currently, there are six chaplains assigned to the midshipmen area. USNA uses its chaplains appropriately and publicizes their availability to the midshipmen.

¹¹⁶ DoDI 6495.02, 23 June 2006, Subsection E3.2.10 and E3.2.10.1 provides guidance on establishing agreements regarding jurisdictional issues and forensic evidence collection.

¹¹⁷ See recommendation under section E, "Military Justice," subsection "Prosecution."

¹¹⁸ Based on review of the data-call, April 2007.

¹¹⁹ Legal Assistance Attorneys are not authorized to enter into an attorney-client relationship with a victim for the purpose of discussing the military justice aspects, including collateral misconduct, of a sexual assault. Victim statements involving a previously unreported sexual assault or collateral misconduct involved in a sexual assault would not be confidential or considered as confidential reporting. An Area Defense Counsel and sexual assault victim can enter a confidential, attorney-client relationship for the purpose of discussing collateral misconduct associated with the sexual assault.

¹²⁰ DoDI 6495.02, Subsection 5.7.3 states that the Secretaries of the Military Departments shall "publicize policies and procedures for reporting a sexual assault and provide information regarding the availability of medical treatment, advocacy, and referral services."

¹²¹ Under Military Rules of Evidence 503, a communication from a victim to a chaplain is a confidential communication if disclosed to a clergyman or a clergyman's assistant in his or her official capacity as a formal act of religion or as a matter of conscience.

C. Training and Prevention

1. Overview

As a part of the Sexual Assault Prevention and Response Team, the Training Coordinator is responsible for organizing, tracking, and assisting in the development of SAPR training for USNA and NAPS. This position is centrally located at USNA and reports to the SARC.¹²²

A midshipman's training begins during plebe summer and continues throughout his or her four years at the Academy.¹²³ Some USNA academic courses taught by USNA faculty include sexual assault case studies and scenarios as part of the curriculum.¹²⁴

The Brigade SAVI Liaison is tasked to ensure that annual SAVI Program training is provided to Company Officers, Senior Enlisted Leaders, USNA Chaplains, Midshipmen Development Center personnel, and other Commandant staff who are likely to be first responders to midshipmen reports of sexual assault. The Brigade SAVI Liaison is also responsible for ensuring that SAVI program information is provided to other Commandant's staff and USNA personnel who work directly with midshipmen.¹²⁵

USNA faculty, staff and police are trained annually on the sexual assault response team, reporting procedures, confidentiality, and resources.

¹²² USNAINST 5354.5A, 17 August 2006.

¹²³ Sexual assault prevention training for midshipmen is taught in the context of a "Slippery Slope" continuum, ranging from a professional command climate of acceptable conduct to a sexually hostile environment of criminal misconduct.

During plebe summer, plebes receive sexual assault awareness training through the Navy Rights and Responsibilities course. This course, facilitated by Senior Enlisted Leaders, discusses dignity and respect in the context of the Armed Forces. As a component of this training, sexual assault is defined and the SAVI program is introduced.

A joint SAVI/CMEO/ADEO awareness brief is designed to reemphasize core values, dignity, and respect. SAVI topics include prevention, assistance to victims, resources, and confidentiality.

"Company Officer Straight Talk #2: Mutual Respect and Professionalism" is a course facilitated by Company Officers to discuss appropriate behavior, including situations in which alcohol is involved. The Company Officers provide information on USNA resources for sexual assault and alcohol issues.

The Saturday Morning Training Program is designed for 4/C and 3/C midshipmen to foster leadership development. As a component of this training, the SAVI program and sexual assault response and prevention are discussed.

¹²⁴ The examples are used to explore issues and initiate discussion of sexual assault response and prevention in the context of leadership and ethics.

¹²⁵ COMDTMIDNINST 1752.1C, 27 September 2004.

SAVI Guides serve as peer educators for sexual assault awareness training during Company Officer training time. The Brigade SAVI Liaison supervises and instructs the SAVI Guides on training topics and lesson planning.¹²⁶

Healthcare providers are also trained on the topics of definitions, incident processes, reporting options, confidentiality, SAVI program organization, and victim resources.

2. Assessment

COMPLIANCE: *USNA is in compliance with DoD SAPR policy.*

USNA has an extensive SAPR training curriculum that complies with DoD policy. Measures are in place to ensure qualification of instructors and related points of contact, effective training, availability of related resources, and quality control.

Training content includes the definition of sexual assault, reporting options, exceptions and limitations of confidential reporting, and crimes that violate the UCMJ. The content and format for sexual assault awareness training is tailored to the nature of sexual assaults in the military environment. The training also uses group discussion of realistic scenarios to demonstrate the cycle of reporting, system response, and accountability procedures.

USNA training material appears to incorporate risk-reduction and the effective role of men in the prevention of sexual assault. However, midshipmen may not always understand their duty to take action against sexually inappropriate behavior overrides any obligation to peer loyalty. Misplaced peer loyalty may prevent midshipmen from correctly reporting peers and disciplining those whom they lead. Educating these future commanders on the proper handling of ethical issues encountered by military leaders dealing with sexual assault matters would likely enhance the USNA's training program.

The majority of sexual assault prevention and response training is conducted by midshipmen SAVI Guides. Some might suggest that the lack of authority and military experience of the midshipmen instructors could result in midshipmen not taking the training seriously.¹²⁷ However, a review of the program shows that midshipmen do not perform all training, such as courses taught during Plebe Summer and in academic curricula. There is sufficient oversight of

¹²⁶ The training covers the topics of sexual assault definitions, reporting, bystander intervention, alcohol, consent, and victim resources and assistance. Special training occurs before spring break and summer cruises to provide information on personal safety. Civilian consultants developed a new training program called SHAPE (Sexual Harassment and Assault Prevention Education). It is scheduled for implementation in the 2007-2008 academic program year. The 16-hour training curriculum incorporates sessions specific to each midshipman's grade level throughout the four-year Academy experience.

¹²⁷ Concerns over the use of peer educators were brought up previously in the *Report of the Defense Task Force on Sexual Harassment and Violence at the Military Service Academies*. These concerns included the SAVI Guides' lack of Fleet experience, lack of a mature perspective, and lack of accountability.

the training and guidance provided to midshipmen who conduct the training. The use of midshipmen has some advantages, including making the training more accessible and relevant to peers. In addition, the involvement of peer educators has been identified as an effective component of sexual assault prevention programs.¹²⁸ Given the pros and cons associated with peer educators, a thorough study would give USNA a better idea if using SAVI Guides as trainers is having the intended effect.

- **It is recommended that USNA study the effectiveness of peer training in the Academy setting.**¹²⁹

Specialized training for investigators and legal personnel¹³⁰ dealing with the complex issues pertaining to sexual assault is required in DoD SAPR policy. Investigators have received the required specialized training. Legal personnel from the Trial Service Office Northeast, Washington Navy Yard, Washington DC, assigned to handle the USNA sexual assault cases had not received the required training at the time of this assessment.¹³¹

- **It is recommended that Judge Advocates assigned to handle USNA sexual assault cases should have the opportunity to attend specialized sexual assault prosecution training.**¹³²

D. Oversight

1. Overview

Oversight of the components of the USNA sexual assault response and prevention program is the responsibility of the SARC. Additionally, the SAVI Coordination Committee, which is co-chaired by the Deputy/Chief of Staff and the Deputy Commandant, meets quarterly to review SAPR efforts and assist the SARC in development of awareness, prevention, and advocacy programs. NCIS and the Legal Office have independent oversight by the Navy Inspector General. Additionally, NCIS has oversight by the OIG, DoD Office of Investigative Policy and Oversight. The quality of medical care is ensured by USNA military treatment facility Chief of Staff, and the USNA Chief of Chaplains supervises the activities of chaplains assigned to the base.

¹²⁸ Paul Schewe, Ed., *Rape Prevention and Risk Reduction Interventions*, Washington, DC: American Psychological Association, 2002, Chapter 5.

¹²⁹ DoDI 6495.02 Subsection E3.2.5.2.12 directs the SARC to conduct an ongoing assessment of the consistency and effectiveness of the SAPR within the assigned area of responsibility.

¹³⁰ Legal personnel include Judge Advocates, Trial Counsel, and Victim Witness Liaison.

¹³¹ Based on discussions with legal personnel located at the U.S. Navy Yard SJA office and review of the data call.

¹³² DoDI 6495.02, 23 June 2006, Subsection E6.3.6.1 requires training for all Judge Advocates. Subsection E6.3.6.2 requires training for Judge Advocate Trial Counsel.

2. Assessment

COMPLIANCE: *USNA is in compliance with DoD SAPR policy.*

Appropriate mechanisms are in place both at Headquarters Navy and USNA to ensure oversight of the effectiveness of the sexual assault prevention and response program at USNA.¹³³

E. Military Justice

1. Overview

In the case of an Unrestricted Report, allegations of sexual assault are investigated by NCIS, which is subsequently responsible for evidence collection. NCIS provides the facility for storage of evidence in cases of Restricted Reporting for up to one year. A sexual assault victim has the option to participate in an investigation, but will not be compelled to do so.¹³⁴ The USNA police and security personnel do not assume primary roles in investigating allegations of sexual assault of midshipmen. Unrestricted Reports are referred to NCIS, which maintains a Resident Agency at the Naval Academy. NCIS command, control, and reporting are independent of USNA leadership and outside the chain of command. Prosecutors are provided from the Trial Service Office Northeast, located at the Washington Navy Yard, Washington DC.

The Sexual Assault Legal Advisor reports to the USNA Staff Judge Advocate, and coordinates with the SARC on sexual assault matters. The Sexual Assault Legal Advisor represents USNA command, not the victim. There is an additional attorney who provides midshipmen with legal assistance and defense.¹³⁵ The Legal Advisor provides legal information and advice, develops legal responses, and coordinates legal actions associated with sexual assault allegations.¹³⁶

¹³³ Based on review of the data-call and site visits, April 2007.

¹³⁴ Victims may sign an NCIS Preference Statement declining their participation with the investigation.

¹³⁵ The Legal Advisor providing legal assistance is available to provide privileged legal counseling services to midshipmen. This privilege, however, may not include communications made by the victim that contemplate the commission of a fraud or a crime. These attorneys may also be appointed as defense counsel for courts-martial. In cases where the counsel faces a conflict of interest, the parent command provides assistance and alternate counsel. For example, this office could not represent both the accused and the victim in the same case, should the victim be charged with collateral misconduct surrounding the offense. This information is based on interviews conducted at the Naval Legal Service Office in April 2007 and subsequent emails located in the USNA data-call.

¹³⁶ USNAINST 5354.5A, 17 August 2006.

Reports of Sexual Assaults Involving Midshipmen: APY 2006-2007

USNA APY 2006/2007 REPORTS OF SEXUAL ASSAULT (Rape, sodomy, indecent assault, and attempts to commit these offenses) INVOLVING MIDSHIPMEN	Rape	Sodomy	Indecent Assault	Attempts	Unknown	APY 2006/2007 Totals
# REPORTS OF SEXUAL ASSAULT (Total reported sexual assaults INVOLVING MIDSHIPMEN) - UNRESTRICTED AND RESTRICTED	4	0	1	0	0	5
# UNRESTRICTED REPORTS OF SEXUAL ASSAULT (Total reported sexual assaults BY or AGAINST Midshipmen)	4	0	1	0	0	5
# Restricted Reports	2	0	0	0	0	2
# Converted from Restricted Report to Unrestricted Report	2	0	0	0	0	2
# 2007 RESTRICTED REPORTS REMAINING RESTRICTED	0	0	0	0	0	0

Cases identified above represent only those sexual assault cases reported to Academy officials. As such, there is insufficient data to interpret these statistics or to make comparisons or to estimate the incidence and prevalence of sexual assault.

Case Dispositions

Initially, there were two Restricted Reports and three Unrestricted Reports. Both Restricted Reports converted to Unrestricted so that at the end of APY there were five Unrestricted Reports.

Unrestricted Report Case Disposition

While the Academy investigative and legal systems were actively engaged in the four Unrestricted cases involving allegations of rape, none of the cases resulted in disciplinary action. In three of the cases the victim declined to cooperate, and in the fourth case the victim withdrew from the investigation after initially cooperating. The fifth Unrestricted Reported case involved an allegation of indecent assault. Upon investigation by NCIS, sufficient evidence was identified for a referral of charges. The accused was acquitted at a General Court-Martial.

2. Assessment

COMPLIANCE: USNA is in compliance with DoD SAPR policy.

APY 2006-2007 was the first full year in which midshipmen had the Restricted Reporting option. Two midshipmen chose to report and receive care under Restricted Reporting, which indicates the protections afforded under this option have credibility with victims of sexual assault. Both midshipmen eventually elected the Unrestricted Reporting option, indicating a certain level of trust in the system. The goal of the DoD SAPR Policy is to build sufficient victim confidence in the military justice system and the support provided victims, that all sexual assault reports will initially be unrestricted reports or become unrestricted reports following a

victim's initial decision to elect the Restricted Reporting option.¹³⁷ Consequently, DoD SAPR Policy supports law enforcement and criminal justice procedures that hold people accountable for their actions.

- **It is recommended that the SARC inquire into the reasons why victims are choosing not to convert to Unrestricted Reporting and why victims withdraw their cooperation after making an Unrestricted Report, and report this information through appropriate Service channels to DoD SAPRO beginning at the end of this current Academy Program Year without disclosing particular information or details from which one could determine the identity of a victim.**¹³⁸

Conversations with Academy personnel and focus group participants revealed a need for better dissemination of information about the outcome of cases.¹³⁹ The leadership began to address this issue after it was brought to their attention by the Defense Task Force on Sexual Harassment and Violence.¹⁴⁰ Ongoing efforts are needed to establish communication procedures to inform midshipmen about the outcome of cases after they are adjudicated. Additional efforts are also needed to develop a means to disseminate information to the staff and faculty.¹⁴¹

Naval Criminal Investigative Service (NCIS)

NCIS investigators recognize that the Restricted Reporting option allows victims to get care confidentially. Agents agree that getting care is critical to victims of sexual assault. They also agree that, with prompt care and support, more victims are likely to participate and assist with

¹³⁷ SAPR policy DoDD 6495.01 October 6, 2005, section 4.5 states that it is DoD policy to encourage complete, unrestricted reporting of sexual assaults.

¹³⁸ Implementation of this recommendation should not put undo pressure on victims or cause them to be re-traumatized.

¹³⁹ *DMDC Service Academy Gender Relations Focus Groups Report*, USNA Focus Group sessions April 2007, Subsection "Communication from the Academy," revealed that midshipmen tended to rely on the "rumor mill" for information. If the academy were to provide accurate information explaining the facts and outcomes of cases, then rumors that damage morale and reporting of sexual assault may become less prolific. Based on interviews with Academy personnel, there also appears to be a sub-culture of victim blaming within the Academy, stemming in part from the fallout over the loss of *US v. Owens*. Some Academy personnel believe that publishing case information would help control the rumor mill and possibly build confidence in the system. It seemed that most of the information about the case that personnel cited was actually inaccurate.

¹⁴⁰ *Report of The Defense Task Force on Sexual Harassment & Violence at the Military Service Academies, 2005*, Recommendation 20A states: "Ensure staff, faculty, and students are better educated and informed about the outcome of cases once they have been adjudicated. Providing Academy members with a comprehensive summary of cases, along with the final disposition and the reasons for that particular outcome, will educate them about the process. This will result in increased trust and confidence in the system. It will also help to deter retaliation and ostracism directed toward victims and assists in development a supportive culture for them. Leaders will be able to better control the rumor mill and replace it with truth."

¹⁴¹ Review of the data-call revealed the status of Recommendation 20A was completed to the limits of confidentiality.

investigative efforts.¹⁴² When requested by victims, agents at USNA have allowed SAVI personnel to accompany victims during the interview, provided they do not interfere.

NCIS agents work closely with the JAG office during the investigation and prosecution of a case. Each organization demonstrated familiarity with the other's role.

Prosecution

Trial Counsel (TC) is provided by the Trial Service Office Northeast located at the Washington Navy Yard. When there is a sexual assault, a victim will usually notify SAVI. Once a decision is made to file an Unrestricted Report, the Legal Office will notify NCIS and the TC. Building confidence in the military justice system is one way to encourage more sexual assault victims to make Unrestricted Reports, thereby promoting offender accountability. Victims are likely to gain confidence in the military justice system when they understand their rights and how to exercise them throughout every phase of the judicial process.

Currently, there appears to be a gap between the Assistant Staff Judge Advocate at the Academy (who performs VWL duties during the investigation of Unrestricted Reports), and the VWL located at the Trial Service Office Northeast at the Navy Yard (who performs VWL during the prosecution of a case).¹⁴³ Procedures should be in place to ensure there is a smooth transfer of victim assistance responsibilities from the Commandant's Legal Liaison at the Academy to the VWL at the Trial Services Office Northeast in all sexual assault cases.

- **It is recommended that the SARC monitor continuity in victim services throughout the investigation and prosecution by coordinating with the VWLs and other personnel providing victim assistance.**¹⁴⁴

F. Chain of Command

1. Overview

USNA policies guide the chain of command's implementation of sexual assault prevention and response, and cover victim care and offender accountability.

¹⁴² Based on on-site interviews with Academy personnel, April 2007.

¹⁴³ Based on on-site interviews with legal personnel and other Academy personnel who worked directly with victims.

¹⁴⁴ DoDI 6495.02, 23 June 2006, Subsection 5.7.3.3 states, "Ensure that victims of unrestricted reports of sexual assaults are afforded throughout the investigative and legal process the information outlined in DoD Directive 1030.1 [*Victim and Witness Assistance*] and DoD Instruction 1030.2 [*Victim and Witness Assistance Procedures*]." DoDI 6495.01, 23 June 2006, Subsection E6.1 ensures for a standard of care throughout the Department of Defense.

2. Assessment

COMPLIANCE: USNA is in compliance with DoD SAPR Policy.

The chain of command at USNA is successfully following policy guidance. Although a commander should not interfere with a pending case, the commander is required to "keep a finger on the pulse" of the organization's climate and respond with appropriate action toward any negative trends that may occur. Conversations with Academy personnel suggested that many embraced the perception that people may report sexual assault to escape the consequences of their bad behavior. This perception stemmed in part due to rumors regarding the highly publicized case, *United States v. Owens*. In the *Owens* case, the victim, as well as several witnesses was given testimonial immunity for their testimony. The commander and servicing staff judge advocate or legal advisor can counteract a negative trend such as this with education about the Academy's policy on collateral misconduct and an explanation of the meaning and effect of using testimonial immunity in criminal trials.

- **It is recommended that USNA educate Academy personnel on the collateral misconduct policy, as well as the fact that victims do not typically receive immunity for collateral misconduct by simply reporting a sexual assault.**¹⁴⁵

G. Addressing Victim Collateral Misconduct

1. Overview

Leadership Responsibility Counseling (LRC) is administered to a sexual assault victim who has committed policy or regulation infractions surrounding the assault, such as underage drinking, with the goals of encouraging reporting and minimizing the psychological damage of re-traumatization. LRC is provided when recommended by the SARC, and done in coordination with the SAVI Advocate, Legal Advisor, and the Midshipman Development Center. LRC is administered after the case has been adjudicated for the accused, and no less than 4 months after the incident. The Leadership Responsibility Counselor conducts a minimum of three sessions to address any behaviors unsuited for commissioned officers, and to emphasize leadership and professionalism.¹⁴⁶

Counselors selected to conduct Leadership Responsibility Counseling are senior commissioned officers generally of the rank O-4 and higher. Leadership Responsibility Counselors are trained on emotional considerations associated with counseling sexual assault victims, sensitivity to

¹⁴⁵ DODI 6495.02, 23 June 2006, Enclosure 3 Subsection E3.2.12 states in part, "Ensure commanders understand that taking action on victim collateral misconduct may be delayed until final disposition of the sexual assault case."

¹⁴⁶ COMDTMIDNINST 1752.1C Encl. (5), 27 September 2004.

victim privacy, warning signs that a victim is not ready for the counseling, and counseling from a leadership perspective.¹⁴⁷

2. Assessment

COMPLIANCE: *USNA is in compliance with DoD SAPR policy.*

The Leadership Responsibility Counseling program addresses the need for corrective action where collateral misconduct has occurred. The program, as offered by USNA, balances the need for individual discipline and the need to create an environment that will not deter sexual assault reporting.

H. Academic Program Year 2007-2008 Plan of Action

1. Overview

USNA has a plan of action for APY 2007-2008 regarding the prevention of and response to sexual harassment and sexual violence. Through the implementation of their seventeen point action plan for the upcoming academic program year, USNA plans to continue its progressive approach and refine its policies and programs. Highlights include:

- Continuing to implement recommendations of the *Report of the Defense Task Force on Sexual Harassment and Violence at the Military Service Academies* and build on its training, awareness, and outreach programs.
- Implementing assessment tools to evaluate the effectiveness of midshipman training.
- Increasing community collaboration through the use and revision of MOUs.
- Continuing efforts to increase the percentage of female midshipmen and female officer and senior enlisted role models at the Academy.
- Reviewing the Leadership, Ethics, and Law academic curriculum to expand and enhance existing sexual harassment and sexual assault course content and instructional methods.

2. Assessment

COMPLIANCE: *USNA is in compliance with DoD SAPR policy*

The USNA leadership has clearly demonstrated commitment to their sexual assault prevention and response program through sustained and dedicated efforts. USNA planning reflects a

¹⁴⁷ COMDTMIDNINST 1752.1C Encl. (5), 27 September 2004.

consistent approach, and appropriate response to violations of law and policy. USNA leadership has demonstrated a commitment to cultural change, and their solid program appears to be a viable catalyst. USNA will continue to address challenges to SAPR policy with assessments and refinements, while also ensuring the care of victims. Education has progressed beyond simple awareness training, and has matured to focus on prevention and a culture of responsible decision making. The elimination of sexual assault and harassment appears to be a substantive tenet in USNA's overall goal of producing leaders of character for the nation. The faculty and staff at USNA are committed to the implementation and support of DoD policy. Considering the recommendations in this assessment will further enhance their excellent SAPR Program.

United States Naval Academy Sexual Harassment Program Assessment

A. Definition of Sexual Harassment

DoD and the Navy define sexual harassment as:

- “Sexual harassment is a form of sexual discrimination that involves unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature when:
 1. Submission to, or rejection of, such conduct is made either explicitly or implicitly a term or condition of a person’s job, pay, career, or
 2. Submission to, or rejection of, such conduct by a person is used as a basis for career or employment decisions affecting that person, or
 3. Such conduct has the purpose or effect of unreasonably interfering with an individual’s work performance or creates an intimidating, hostile, or offensive working environment.
- Any person in a supervisory or command position who uses or condones implicit or explicit sexual behavior to control, influence, or affect the career, pay, or job of a soldier or civilian employee who makes deliberate or repeated unwelcome verbal comments, gestures, or physical contact of a sexual nature is engaging in sexual harassment.”

B. Sexual Harassment Policy

USNA’s policy on sexual harassment is spelled out in USNA Instruction (USNAINST) 5354.5A.¹⁴⁸ The USNA policy states:

- Similar to the Fleet, the USNA has a zero tolerance policy for sexual harassment.
- Leaders will set clear standards pertaining to the prevention and deterrence of sexual harassment, misconduct and assault.
- Leadership is responsible for creating a professional command climate that parallels the leadership environments of the Fleet, and is essential to maintaining a positive command climate.

¹⁴⁸ United States Naval Academy Instruction (USNAINST) 5354.5A, *Prevention and Deterrence of Sexual Assault*, 17 August 2006.

- Leadership will implement a prevention and response program that includes awareness training and education, properly addresses incidents, and provides support to victims.

C. Program Overview

USNA's sexual harassment program pertaining to the midshipmen is embedded within the Academy's Prevention of Sexual Harassment, Misconduct, and Sexual Assault Program. The program elements include:

- Prevention and response awareness training and education;
- 24 hours, 7 days a week response and support;
- Multiple paths for reporting;
- Environment that encourages incident reporting;
- Investigative procedures;
- Support for victim;
- Case resolution and follow-on counseling.

D. Program Organization

In accordance with USNAINST 5354.5A, the Sexual Assault Response Coordinator (SARC) is the primary contact for reporting incidents of sexual harassment. The SARC is responsible for notifying the Superintendent and preparing USNA external incident reports within 24 hours of incident notification. The SARC is also responsible for supervising the overall sexual harassment program implementation, including coordination of victim care, case management and prevention and response training for the USNA. The currently assigned USNA SARC is a graduate of the Defense Equal Opportunity Management Institute (DEOMI).

IAW USNAINST 5354.5A, the Brigade Command Managed Equal Opportunity (CMEO) Officer is responsible for program implementation within the Brigade of Midshipmen, as well as awareness training and management of sexual harassment complaints throughout the resolution process. The CMEO Officer is a graduate of the Navy's week-long CMEO course conducted at the Navy's Center for Personal and Professional Development, as required by Navy policy.

The USNA has created a Sexual Harassment Response Team to provide assistance to any person who reports an incident of sexual harassment. This team includes the:

- Sexual Assault Response Coordinator
- Brigade Command Managed Equal Opportunity Officer
- Brigade Character Representatives
- Chaplains
- Chain of Command

E. Education

U.S. Naval Academy midshipmen are required to take four one-hour sessions during each of their four years at the academy as part of an effort to prevent sexual harassment. The classes begin when the midshipmen arrive at the academy during plebe summer, with instruction about the reporting of sexual harassment. By their fourth year, midshipmen will attend sessions exploring such subjects as the legal issues surrounding sexual misconduct.

Beginning in the 2007-2008 academic year, the USNA will implement a new sexual harassment and assault prevention education (SHAPE) program developed by outside consultants. This 16-hour training curriculum incorporates sessions for each year and will be implemented over the course of a midshipman's four-year Academy experience.

F. Incident Reporting and Investigations

Reporting procedures are addressed within both COMDTMIDNINST 5354.1A (currently under revision). IAW Navy policy, USNA offers two methods of reporting: informal and formal complaint procedures.

- **Informal Resolution System:** As with Navy policy, midshipmen are encouraged to first try to resolve sexual harassment conflicts at the lowest appropriate level. Two informal sexual harassment complaints were filed at the USNA from June 1, 2006 through May 31, 2007. Actions for informal resolution include:
 1. The midshipmen address the concerns verbally or in writing with the person(s) demonstrating the behavior or,
 2. The midshipman can request assistance from another midshipman, company officer, senior enlisted leader, or other command member or request mediation to resolve the dispute.
- **Formal Complaint System:** USNA had one formal sexual harassment complaint filed during the designated timeframe. The complaint was substantiated and handled within the administrative conduct system. There are three ways for a midshipman to file a formal complaint:
 1. File a Navy Equal Opportunity/Sexual Harassment Complaint Form (NAVPERS 5354/2). This form is used to process sexual harassment complaints within the command wherein the Commanding Officer is authorized to provide the requested remedy (redress). The form provides timelines and outlines detailed procedures for grievance resolution. The complaint form is divided into four parts:

Part 1- Complainant's written sworn statement and requested remedy.

Part 2- Complainant's list of advocates.

Part 3- Guidance for the commanding officer.

Part 4- Command feedback to the complainant and notification of the avenue for appeal.

2. NAVREGS Article 1150, Redress of Wrong Committed by a Superior. If a midshipman has a complaint against a superior and does not wish to use the above complaint form, he or she may file a complaint under NAVREGS Article 1150, Redress of Wrong Committed by a Superior. To file a complaint under this Article 1150, the individual should obtain legal counsel at a local Naval Legal Services Office (NLSO).
3. UCMJ Article 138, Complaint of Wrongs against the Commanding Officer. If the resolution from the complaint under NAVREGS Article 1150 is considered unjust by the complainant, or if the grievance is against the Commanding Officer, the midshipman may submit a complaint against the Commanding Officer under UCMJ Article 138.

Midshipmen have alternate avenues to file sexual harassment complaints. These include their local Navy Legal Service Office or the Navy Hotline (800-522-3451), the Navy Sexual Harassment Advice line at 800-253-0931, or a Navy Chaplain. These options are consistent with Navy and DoD policies.

G. Assessment Results

- USNA sexual harassment policy is in compliance with DoD Directive 1350.2, DoD Military Equal Opportunity (MEO) Program and SECNAV Instruction 5300.26D. However, the USNA is not in compliance with OPNAV Instruction 5354.1E, Navy Equal Opportunity Policy, which states that the CMEO Manager will be the single point of contact for all complaints. At the USNA, per USNAINST 5354.5A, the SARC is the primary contact for reporting complaints.
- A copy of the policy was posted in the permanent sections and unit bulletin boards examined. The Navy poster, "Navy Procedures for Processing Sexual Harassment/Discrimination Complaints for Military Personnel," was also prominently displayed in the areas examined.
- The SARC is a graduate of the DEOMI.

- The CMEO appointed is a temporary fill to support an individual augmentee (IA) requirement of the Academy. The CMEO is a graduate of the Navy's week-long CMEO course conducted at The Center for Personal and Professional Development. The temporary CMEO is also assigned as the drug and alcohol officer and as a company officer.
- The midshipmen are receiving initial and follow-up training pertaining to sexual harassment and complaint procedures.
- USNA follows guidance for filing and processing of sexual harassment complaints outlined in OPNAV Instruction 5354.1E with the exception of the before mentioned in paragraph 8.a.

H. Recommendations

- **Limited confidential reporting for EO:**¹⁴⁹ As reported in the DoD *Task Force Report on Care for Victims of Sexual Assault*, confusion in the field remains on what behaviors are defined as sexual assault versus harassment. While the EO and SAPR personnel understand the difference, many midshipmen do not, despite the level or amount of training conducted. As a consequence, personnel may inadvertently report a case of sexual assault to the EO Advisor, who does not currently act in a confidential capacity for crime, and is required to report all crimes to command as soon as they are presented. This requirement to report could void the opportunity for sexual assault victims to select Restricted Reporting under the established sexual assault policy. As with the other Academies, it is recommended that each of the Military Departments and DoD examine granting limited confidential reporting (pertaining only to incidents of sexual assault) to EO Advisors. Under such policy, EO Advisors would be required to notify the Sexual Assault Response Coordinator instead of command, thus allowing the victim to be properly counseled on Restricted and Unrestricted Reporting options. Until such confidential reporting issues can be fully addressed at DoD level, it is recommended that the Academy EO office, prior to receiving any complaint, warn cadets that EO Advisors have a responsibility to report all matters relating to sexual assault to law enforcement and to the commander. An example of such a warning is as follows:

"I handle sexual harassment, not sexual assault issues. If you disclose something to me about a sexual assault, I must report it to the commander and law enforcement. If you want to talk about a sexual assault, or you're not sure what the difference is between sexual harassment and sexual assault, I'll refer you to the Sexual

¹⁴⁹ Confidential Reporting is defined in DoD SAPR policy DODI 6495.02, June 23, 2006, E2.1.1 as Restricted Reporting.

Assault Response Coordinator to make sure you understand your options."

- **Examine SARC appointment policy:** USNA has addressed the aforementioned confusion by appointing the SARC as the primary contact for sexual harassment complaints. However, although not forbidden by Navy policy, it is not consistent with established policy or protocol set by the Navy as outlined in OPNAV Instruction 5354.1E, Navy Equal Opportunity Policy, which states that the CMEO Manager will be the single point of contact for all complaints. Upon graduation, Naval Academy Officers have not been trained to Navy standards in this respect, and may not be prepared to provide advice to subordinates on the Navy policy and protocol. It is recommended the USNA and Navy Equal Opportunity leadership reexamine the USNA instruction on appointing the SARC versus CMEO as the primary contact for sexual harassment complaints.

United States Naval Academy DMDC Focus Group Overview

Focus group sessions were conducted at the United States Naval Academy (USNA) April 23-26, 2007. Questions were asked dealing with nine issues: sexual assault and sexual harassment, safety, mechanics of reporting, reasons for not reporting, training, future leader preparation, communication from the Academy, use of alcohol, and dating relationships.¹⁵⁰ Eight focus group sessions were conducted at USNA. Each session was scheduled for a 90-minute period. There was one session held for both genders for each class year, each involving between eight and thirteen students. Caution must be applied to the review of the findings presented. The results are based on qualitative analysis—findings cannot be generalized to all students at USNA. Highlights of findings include:

A. Sexual Assault and Sexual Harassment

When asked to define sexual assault and sexual harassment, the bulk of the discussion centered on issues dealing with sexual harassment. Participants in the focus groups indicated that sexual assault is well understood by students and is taken very seriously by everyone. They indicated that sexual assault occasionally happens at the Academy, but most believe strongly that it happens much less frequently than it does at civilian colleges. They indicated that they define sexual harassment as occurring when someone makes a statement that is offensive to someone else. However, they acknowledged the definition is subjective because specific actions and comments that offend one person do not necessarily offend another. Sexual harassment is not something that concerned participants on a day-to-day basis. They indicated that most potential incidents of sexual harassment are avoided because the offenders stop making inappropriate comments when asked to do so. Participants also thought that women sometimes tolerate potentially harassing behaviors because they did not perceive it to be malicious. Additionally, men sometimes forget to be careful about what they say. Participants also indicated that sexual harassment is tolerated more in some companies, depending on the attitude of the company officers.

B. Safety

Focus group participants indicated that although sexual assault occasionally happens at the Academy, unlike sexual harassment, sexual assault is an obvious act, easily recognized by both male and female students. Overall, participants in the focus groups indicated they feel safe at the Academy. They indicated that while being able to lock their doors at night might help some

¹⁵⁰ For purposes of summarizing focus group findings, issues dealing with mechanics of reporting and reasons for not reporting are combined into one discussion section.

women feel safe from sexual assault, there is still some confusion about the specific requirements and enforcement of the locked-door policy.

C. Mechanics of Reporting and Reasons for Not Reporting

Participants in the focus groups indicated that they knew how to report an incident through their Sexual Assault Victim Intervention (SAVI) representative. They understood the conceptual difference between Restricted and Unrestricted Reporting of sexual assault, although they did not recognize the terms. There was also some lack of clarity in describing the role of the SAVI program and reporting procedures. Participants in the focus groups indicated they would be inclined to avoid reporting sexual harassment. Doing so is viewed as a serious act that could cause the person making the report to be labeled a troublemaker for their Academy career. Participants also indicated that someone might decide not to report an incident of sexual harassment because the process can be time consuming and involve many other people. Some participants believed the reporting system would protect the victim of a sexual assault, but not necessarily deal fairly with the accused person. They indicated varying levels of trust in how well the reporting system deals with reports of sexual harassment.

D. Training

Participants in the focus groups indicated that they receive a significant amount of training on the issues of sexual harassment and sexual assault. They indicated that having engaging speakers is a good way to present information about sexual assault or sexual harassment. The most effective speakers were dynamic, presented thought-provoking information, involved the audience, or shared real-life experiences. Participants indicated that the least effective training method involved PowerPoint briefings. Additionally, some women participants indicated they would like to receive training on what to do if a victim of sexual harassment or sexual assault comes to you as a friend. Some participants also expressed a desire for more information about sexual harassment, rather than always focusing on sexual assault.

E. Future Leader Preparation

Some focus group participants indicated that they would welcome training specifically designed to help them deal with situations they might encounter when they have their own command. Others indicated that they do not need any additional special training on dealing with sexual assault or sexual harassment as a leader.

F. Communication from the Academy

Focus group participants indicated that while they receive frequent emphasis on sexual assault and sexual harassment prevention and response from the Superintendent, they receive very little information about specific cases of sexual assault or sexual harassment. As a consequence, they

tend to rely on the rumor mill for information. While participants in the focus groups recognized the importance of maintaining confidentiality, they also indicated a desire for official information about specific incidents that would dispel rumors and explain what really happened. Receiving specific information about cases after the fact (to protect anonymity) would be useful to focus group participants, as long as they hear it before their parents and the general public.

G. Use of Alcohol

Participants in the focus groups indicated that alcohol almost always plays a role in situations of sexual assault, and sometimes in situations of sexual harassment. There was general agreement among participants that being under the influence of alcohol is not an excuse for sexual assault or sexual harassment nor does it absolve anyone from fault. They indicated that alcohol policies are intended to prevent students from abusive drinking, but work just the opposite for some. Participants indicated they are frustrated in that current alcohol policies penalize students who have been drinking even if their behavior is otherwise within Academy standards and also penalize non-drinkers who help friends who have been drinking. They indicated they favor alcohol policies that allow them to drink and act responsibly.

H. Dating Relationships

Women in the focus groups indicated that the rules regarding dating and relationships among midshipmen are appropriate and necessary. However, due to those rules, midshipmen couples sometimes “sneak around” and/or break the rules. Those rule violations are perceived to be tolerated to a certain degree. Some male participants reported that they completely avoid dating female midshipmen because of the potential problems it could cause.

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United States Air Force Academy Sexual Assault Prevention and Response Program Assessment

The United States Air Force Academy (USAFA) leadership has clearly demonstrated commitment to their Sexual Assault Prevention and Response Program through sustained and dedicated efforts. USAFA has done an outstanding job developing and continuously improving policies, procedures, and processes designed to prevent and respond to sexual violence in accordance with Department of Defense policies. An overview of the U.S. Air Force Academy's Sexual Assault Prevention and Response Program and our assessment of its effectiveness along with recommendations are detailed below. Policy compliance was measured against Department of Defense, Sexual Assault Prevention and Response Policy DoDD 6495.01, October 6, 2005 and DoDI 6495.02, June 23, 2006.

A. Sexual Assault Prevention and Response Program

1. Overview

The Sexual Assault Prevention and Response Program is administered by the Vice Commandant of Cadets on behalf of the Superintendent of USAFA. The Sexual Assault Response Coordinator (SARC)¹⁵¹ responds to all allegations of sexual assault involving any USAFA personnel and ensures appropriate agencies are notified for appropriate action.¹⁵² SARC services are available 24 hours a day, seven days a week (24/7) via the sexual assault response hotline. An Academy Response Team (ART) provides immediate support to victims of sexual assault. At USAFA, the ART is divided into two tiers: Tier 1 for immediate responders and Tier 2 for consultation, short-notice response, and long-term case management.¹⁵³

Reporting

Initial reports are made directly to the SARC or a Victim Advocate (VA). Unless a victim declines assistance from the VA or the SARC, the VA/SARC provides the victim with accurate information on the sexual assault response process, including the options of Unrestricted and Restricted Reporting. The VA/SARC also provides information on available healthcare,

¹⁵¹ *Department of The Air Force Policies and Procedures for the Prevention of and Response to Sexual Assault*, 3 June 2005, page 4, Section 4.12.

¹⁵² There are also an assistant SARC and two Victim Advocates.

¹⁵³ Tier 1 includes oversight by the Vice Commandant for Strategic Programs, team leadership from the SARC and team membership of the Victim Advocate Coordinator, Victim Advocate, Judge Advocate Liaison, and an Office of Special Investigations (OSI) Liaison. Tier 2 is composed mainly of representatives from the Academy Counseling Center, Security Forces, Chaplains, OSI, medical group, and legal representatives and members from the Prep School. (Per the USAFA data-call master binder, Tab 2.)

including a forensic medical examination for the collection of evidence.¹⁵⁴ The VA and SARC monitor cases through final disposition and resolution, while ensuring the victim's well-being and health concerns are addressed.

*Restricted Reporting*¹⁵⁵

Restricted Reporting is an option for victims to confidentially disclose the occurrence of a sexual assault without triggering an official investigation and without being personally identified in the subsequent command notification. Restricted Reporting offers victims access to appropriate care, treatment, advocacy, and support. It is available to military victims who report to a SARC, VA, or healthcare provider. As soon as a report is made, the SARC assigns a VA, who in turn immediately contacts the victim. The role of the SARC and the VA is to explain available options and resources and support the victim through the reporting process regardless of which option they choose.¹⁵⁶ A report may also be made to a chaplain. A report made to a chaplain is not a Restricted Report under DoD SAPR policy, but is a communication that may be protected under the Military Rules of Evidence or applicable statutes and regulations.¹⁵⁷ Within 24 hours of receipt of a Restricted Report resulting from a sexual assault, the SARC notifies the Vice Wing Commander that a Restricted Report was made. The SARC provides only non-identifying information to the Vice Wing Commander.¹⁵⁸ Commanders may use this information to enhance preventive measures, enhance education and training of their personnel, and closely scrutinize their organization's climate and culture for factors that may have contributed to the sexual assault.¹⁵⁹

Unrestricted Reporting

An Unrestricted Report is any report of a sexual assault made through normal reporting channels, including the victim's chain of command, law enforcement, the Air Force Office of Special Investigations (AFOSI) or other criminal investigative service, and a SARC or healthcare provider wherein the individual does not elect Restricted Reporting. Even in Unrestricted Reporting situations, should a report of a sexual assault be initially made to someone other than the SARC, the SARC is to be immediately notified and the SARC will promptly assign a VA to assist the victim.

¹⁵⁴ As explained in *Department of The Air Force Policies and Procedures for the Prevention of and Response to Sexual Assault*, 3 June 2005, section 5.3.2.

¹⁵⁵ USAFA implemented a Restricted Reporting option on 14 June 2005.

¹⁵⁶ DoDD 6495.01, Section 4.5, 6 October 2005. It is DoD policy to encourage Unrestricted Reports through a systemic approach that supports the victim from the moment of the initial report through the military justice process.

¹⁵⁷ *Department of The Air Force Policies and Procedures for the Prevention of and Response to Sexual Assault*, 3 June 2005, page 11.

¹⁵⁸ The SARC provides date, time (night or day), and general information as to location, number of alleged assailants and victims, and the nature of assault.

¹⁵⁹ Commanders may not investigate a reported sexual assault incident based on this information.

2. Assessment

COMPLIANCE: *USAFA is in compliance with DoD SAPR policy.*

The procedures that a USAFA cadet should follow for reporting a sexual assault comply with DoD SAPR policy. Current procedures identify to whom a report is made, the appropriate contact information, and an explanation of the option for Restricted Reporting. USAFA maintains a 24/7 response capability for victims of sexual assault. USAFA should continue to publicize the differences between, and the benefits of, the Restricted and Unrestricted Reporting options in materials and briefings provided to cadets.

The perception remains among some personnel¹⁶⁰ that victims hesitate to report being sexually assaulted due to a concern that they will experience retaliation by their command in the form of punishment for collateral misconduct. DoD SAPR policy allows command action on collateral misconduct to be delayed until after final disposition of the sexual assault case. The option for a delay in victim punishment was established to encourage command to consider the full spectrum of justice actions available in a given case. A command that is seen as fair and balanced in its response to sexual assault is more likely to create an environment that will not deter reporting.

- **To address any perception of retaliation through punishment for collateral misconduct, it is recommended that USAFA continue to emphasize, and publicize as appropriate to cadets and commanders, the DoD SAPR policy on collateral misconduct. Commanders should remain vigilant in this regard, and continue to be mindful that action on collateral misconduct may be delayed until final disposition of the sexual assault case. When practical, commanders should consider victims' input and consult with the servicing legal office and AFOSI before administering punishment. Command should notify the assigned VA or SARC prior to taking action affecting the victim as well.¹⁶¹**

¹⁶⁰ Per on-site interviews of Academy personnel, April 2007.

¹⁶¹ DoDI 6495.02, 23 June 2006, Enclosure 3, Subsection E3.2.12 states, "Ensure commanders understand that taking action on victim collateral misconduct may be delayed until final disposition of the sexual assault case. Military Services will also ensure procedures are established that do not penalize commanders or organizations for delaying actions for collateral misconduct by the victim. Commanders must also be mindful of any potential trial and/or statute of limitations concerns when determining whether to defer action."

B. Resources for Victims

1. Overview

Medical and Mental Health

Medical care for a victim of sexual assault at USAFA commences when the patient arrives at a medical facility and reports an incident. The healthcare provider evaluates the patient for emergent medical needs and contacts the SARC. The SARC counsels the patient concerning the reporting options and ascertains the type of report the victim chooses to make (Restricted or Unrestricted). Notifications are made according to the checklist for each type of reporting. Patients may choose to undergo or decline a forensic exam with both Restricted and Unrestricted Reporting.¹⁶² The SAFE kit is then transferred via chain of custody to the AFOSI for storage.

Legal

There is a Legal Liaison available within the Staff Judge Advocate's office. The Legal Liaison for SARC issues (at USAFA, this position is referred to as the "JA Liaison assigned to the ART"), serves as a resource for all ART members, Victim Advocates, hospital personnel, and investigators.

The Victim Liaison for the Victim and Witness Assistance Program (VWAP)¹⁶³ is a valuable resource for sexual assault victims.¹⁶⁴ The Victim Liaison assists sexual assault victims with navigating the military justice system and with exercising their legal rights. In addition, a sexual assault victim in the military may benefit immensely from having this source to discuss the intricacies of the legal process.¹⁶⁵

Legal Assistance Attorneys are available to provide cadets with personal, non-criminal legal assistance. A sexual assault victim in the military may benefit from having this source of legal advice.¹⁶⁶

¹⁶² 10 MDG Instruction 44-32, 11 April 2006. A Sexual Assault Nurse Examiner is available at Memorial Hospital.

¹⁶³ The Staff Judge Advocate's office is the proponent for the Victim-Witness Assistance Program per U.S. Air Force Instruction 51-201, 26 November 2003.

¹⁶⁴ Based on interviews with Academy Personnel in April 2007 and AFI 51-201, 26 November 2003, Chapter 7: 7.a. and 7.c.

¹⁶⁵ Neither the VWAP Victim Liaison (if an attorney) nor the JA Liaison is authorized to enter into an attorney-client relationship with a victim. Any communications between the victim and the VWAP Victim Liaison or JA Liaison are not confidential.

¹⁶⁶ Legal Assistance Attorneys are not authorized to enter into an attorney-client relationship with a victim for the purpose of discussing the military justice aspects, including collateral misconduct, of a sexual assault. Victim statements involving a previously unreported sexual assault or collateral misconduct involved in a sexual assault would not be confidential or considered as confidential reporting. An Area Defense Counsel and sexual assault victim can enter a confidential, attorney-client relationship for the purpose of discussing collateral misconduct associated with the sexual assault.

Chaplains

Chaplains have authority under military law to have privileged, confidential communications with victims of sexual assault. Under Military Rules of Evidence 503, a communication from a victim to a chaplain is a confidential communication if disclosed to a clergyman or a clergyman's assistant in his or her official capacity as a formal act of religion or as a matter of conscience.

There are 10 chaplains assigned to the cadet area, with one chaplain specifically assigned as a liaison to the ART.

Community Collaboration

A Memorandum of Agreement (MOA) between USAFA and Memorial Hospital was signed on November 4, 2006. The MOA defines the procedures that civilian Sexual Assault Nurse Examiners (SANEs) must follow when conducting medical and forensic examinations for USAFA personnel who are victims of sexual assault. The MOA does not create additional jurisdiction, nor does it limit or modify existing jurisdiction vested in the parties. Additionally, a patient transfer agreement between Memorial Health System (an Enterprise of the City of Colorado Springs) and the USAFA Hospital were established in 2006 for the purpose of transferring and receiving patients at each facility.¹⁶⁷

Additional mental health resources are available through an MOA between USAFA and TESSA, (a local sexual assault and domestic violence crisis center) to provide confidential advocacy, therapy (group or individual), safe housing, and/or other services depending on the victim's needs and interests. This organization also provides information regarding the SARC, the Family Advocacy Program (FAP), and other resources at USAFA available to USAFA victims of sexual assault.

Case Management Committee

A multi-disciplinary case management group, chaired by the SARC, meets bi-weekly to review Unrestricted Reporting cases, improve reporting, facilitate victim updates, discuss process improvement to ensure system accountability, and victim access to quality services, as needed. The group membership includes the SARC, VA, Air Force Office of Special Investigations (AFOSI), Security Forces, Medical Group (including mental health), Chaplains, Judge Advocate (JA), and each reporting victim's commander, as required. Under Restricted Reporting, the group membership is limited to the SARC, the assigned VA, and a Medical Group member. The case management group reviews sexual assault trends for the area of responsibility, including consideration of the environmental information provided to command under Restricted

¹⁶⁷ Patient Transfer Agreement sample provided at Tab 26, USAFA master binder, SAPRO data-call, 17 April 2007.

Reporting. The committee reports to the Vice Commandant for Culture and Climate (Vice Wing Commander equivalent) weekly and may make recommendations.¹⁶⁸

2. Assessment

COMPLIANCE: USAFA is in compliance with DoD SAPR policy.

Concern was expressed that the personnel available to serve sexual assault victims are stretched too thin and that assigning replacements for vacant positions will positively impact the quality of the program and timeliness of services to victims.¹⁶⁹ Overall manning constraints resulted in the deletion of both a full-time JAG and OSI liaison being assigned to the ART. However, both the OSI and JAG are supportive of the USAFA sexual assault response program and currently rotate these duties.

- **It is recommended that a full time Legal Officer be assigned to the ART.**
- **It is recommended that the Superintendent in concert with the Headquarters Air Force (HAF) ensure that appropriate resources continue to be allocated for the USAFA SAPR Program, and that replacements for departing personnel be assigned in a timely manner, as this is key to sustainability.**

Medical and Mental Health

Resources for victim care are available and accessible on base and comply with SAPR policy. Information outlining the Academy's SAPR Program and available resources is displayed in USAFA and the military installation's public areas, as well as advertised in training materials. Local community resources¹⁷⁰ are also available and accessible to cadets and are advertised along with Academy resources. There are strong working relationships with the local community of hospitals and care providers.

Medical care is available on base. The military treatment facility's emergency room nurses are trained in sexual assault response care, including the importance of preserving forensic evidence. However, sexual assault forensic exams (SAFEs) are performed in the local community by a civilian Sexual Assault Nurse Examiner (SANE) at Memorial Hospital. This service is available 24/7. SAFE kits are stored according to DoD policy.¹⁷¹

In compliance with DoD policy, a Memorandum of Agreement (MOA) exists between the USAFA and off-base resources. The SARC/ART maintains what appears to be a good working

¹⁶⁸ Department of The Air Force Policies and Procedures for the Prevention of and Response to Sexual Assault, Section 4.17, 3 June 2005.

¹⁶⁹ Based on interviews with Academy personnel, April 2007.

¹⁷⁰ TESSA Rape Crisis Center; Memorial Hospital System of Colorado Springs, Colorado.

¹⁷¹ DoDI 6495.02, Enclosure 4, 23 June 2006.

relationship between Academy personnel, Memorial Hospital, and the TESSA Rape Crisis Center.¹⁷² Off-base sexual assault data is shared with USAFA SARC for tracking purposes. Combined training is held to ensure that the civilians working with the military are familiar with military culture and processes.

Community Collaboration

The Academy remains actively engaged with the surrounding civilian community, by maintaining membership in the Colorado Coalition Against Sexual Assault (CCASA); by attending quarterly meetings of the Sexual Assault Coalition (a Colorado Springs sexual assault group of helping agencies); and by credentialing its Victim Advocate Coordinator through the local chapter of NOVA (National Organization of Victim Advocates). The Academy's involvement with the community and its resources underscores USAFA's commitment to caring for victims and ending sexual violence.

Despite a strong MOA and combined training, the off-base agencies appear to be lacking a thorough understanding of military culture and processes. The people interviewed indicated that the military way of doing things is somewhat esoteric to them. Greater knowledge of the military and its policies and procedures is needed in order for the local community to be truly integrated into USAFA's sexual assault program.

- **It is recommended that USAFA strengthen its cross-training with local community resources on each other's roles, the roles of command, the military justice system, the military's policies and procedures respecting the SAPR Program, as well as pertinent aspects of military culture and customs.**¹⁷³

Legal

The JA Liaison is assigned to the ART and is a valuable resource for all ART members, VAs, hospital personnel, and investigators. The Victim Liaison for VWAP is a valuable resource for sexual assault victims.¹⁷⁴ However, this service is not consistently listed on information made available to cadets.¹⁷⁵

¹⁷² Cadets wishing to use TESSA services must travel off the USAFA grounds. This inconvenience may prohibit cadets from full access to this community resource.

¹⁷³ DoDI 6495.02, 23 June 2006, Subsection E3.2.10.1-5 provides guidance for maintaining a liaison with civilian sexual assault victim resources and establishing MOU's.

¹⁷⁴ AFI 51-201, Chapter 7.

¹⁷⁵ Based on review of the data-call, April 2007.

- **It is recommended that the contact information for the VWAP Victim Liaison (assigned to the Staff Judge Advocate's Office) be advertised as a resource for sexual assault victims.**¹⁷⁶

The Victim Liaison is a valuable resource for sexual assault victims who make Unrestricted Reports. The position plays a critical role in assisting sexual assault victims with navigating the military justice system and with exercising their legal rights.¹⁷⁷ Under the Victim-Witness Assistance Program, the Staff Judge Advocate is responsible for ensuring that victims and witnesses understand and are given assistance with exercising their legal rights as appropriate, during the military justice process beginning with the investigation process until the case is resolved.¹⁷⁸ At USAFA, there appeared to be some confusion over the differences in the roles and the individuals serving the roles of the VWAP Victim Liaison and the JA Liaison.¹⁷⁹

- **It is recommended that the relationships between the SARC, VA, JA Liaison, and VWAP Victim Liaison be strengthened through cross-training, and that all training materials be reviewed to ensure that each role is clearly defined and understood.**¹⁸⁰

Legal Assistance Attorneys are a valuable resource to cadets. A sexual assault victim in the military may benefit from having this source of legal advice.¹⁸¹

¹⁷⁶ DoDI 6495.02, Subsection 5.7.3 states that the Secretaries of the Military Departments shall "publicize policies and procedures for reporting a sexual assault and provide information regarding the availability of medical treatment, advocacy, and referral services."

¹⁷⁷ Victims' Rights law was enacted to ensure victim participation in the criminal justice process. As identified in DD Form 2701, May 2004, these include: (1) The right to be treated with fairness and with respect for your dignity and privacy; (2) The right to be reasonably protected from the accused offender; (3) The right to be notified of court proceedings; (4) The right to be present at all public court proceedings related to the offense, unless the court determines that your testimony would be materially affected if you as the victim heard other testimony at trial; (5) The right to confer with the attorney for the government in the case; (6) The right to available restitution; (7) The right to information about the conviction, sentencing, imprisonment, and release of the offender.

¹⁷⁸ The Staff Judge Advocate's office is the proponent for the Victim-Witness Assistance Program per U.S. Air Force Instruction 51-201, 26 November 2003.

¹⁷⁹ Neither the VWAP Victim Liaison (if an attorney) nor the JA Liaison are authorized to enter into an attorney-client relationship with a victim. Any communications between the victim and the VWAP Victim Liaison or JA Liaison are not confidential.

¹⁸⁰ DoDI 6495.02, 23 June 2006, Subsections E6.3.2, E6.3.2.3, E6.3.2.6, states that the VA shall receive training on knowledge of the military justice system, overview of the criminal investigative process and military judicial and evidentiary requirements, and Victim Rights and the role of the victim in accountability actions and limitations on accountability actions created by Restricted Reports. Additional guidance is provided in Subsection E10.1, Attachment 1 to Enclosure 10, "VA Sexual Assault Response Protocol Checklist." This states that the VA should provide ongoing assistance by assisting the victim in gaining access to service providers and victim support resources that can help the victim explore future options and prioritize actions; assist the victim in contacting appropriate military and civilian legal offices for personal legal advice and assistance specific to the victim's circumstances or cases; consult and work with the assigned VWL as applicable, and accompany the victim to appointments and civilian and military court proceedings, as appropriate and when requested by the victim.

- **It is recommended that SARCs, VAs, and VWAP Victim Liaisons provide victims with Legal Assistance Attorney contact information and a brief explanation of the service they can provide.**

Chaplains

Chaplains are a valued resource for victims of sexual assault and their ability to have confidential communications¹⁸² is publicized to the cadets. Currently, there are 10 chaplains assigned to the cadet area. USAFA uses its chaplains appropriately, and publicizes their availability to the cadets.

C. Training and Prevention

1. Overview

USAFA administers ongoing sexual assault awareness and prevention training to all cadets and ART members based on a recurring annual training plan.¹⁸³ The SARC assists the Commander in meeting annual training requirements, conducting newcomer and orientation briefings, and providing community education about available sexual assault prevention and response services.¹⁸⁴

The requirement for annual and periodic mandatory education and training in SAPR at USAFA is implemented through the SARC, with assistance from the Academy Counseling Center. Training events are structured using a four-year, developmental plan, and are delivered throughout the academic year. The training plan describes topics to be given to each of the four cadet classes, all faculty, and Commandant's staff members who interact with cadets. The training program is continually reviewed for improvements.

2. Assessment

COMPLIANCE: USAFA meets and exceeds DoD SAPR policy.

¹⁸¹ Legal Assistance Attorneys are not authorized to enter into an attorney-client relationship with a victim for the purpose of discussing the military justice aspects, including collateral misconduct, of a sexual assault. Victim statements involving a previously unreported sexual assault or collateral misconduct involved in a sexual assault would not be confidential or considered as confidential reporting. An Area Defense Counsel and sexual assault victim can enter a confidential, attorney-client relationship for the purpose of discussing collateral misconduct associated with the sexual assault.

¹⁸² Under Military Rules of Evidence 503, a communication from a victim to a chaplain is a confidential communication if disclosed to a clergyman or a clergyman's assistant in his or her official capacity as a formal act of religion or as a matter of conscience.

¹⁸³ *USAFA Sexual Assault Prevention and Response Program Curriculum APY 2007, USAFA Sexual Assault Awareness and Prevention Training Plan*, USAFA mater binder, SAPRO data-call, Tab 1, page 1.

¹⁸⁴ *Department of The Air Force Policies and Procedures for the Prevention of and Response to Sexual Assault*, 3 June 2005, Subsection 4.13.1.

USAFA has developed an extensive training curriculum¹⁸⁵ to promote awareness in sexual assault prevention and response. Measures are in place to ensure qualification of instructors and responsible points of contact, effective training for all cadets, and availability of appropriate resources. The training in the Four-Year Developmental Plan starts with basic policy early in a cadet's career, moves on to discussions with sexual assault survivors, and culminates with thought-provoking and challenging real-life stories that do not have clear "right" and "wrong" answers.

Additional training includes: a USAFA SAPR Policy and Reporting Process briefing for all incoming personnel; new faculty orientation with a focus on how to deal with cadets who present themselves as possible sexual assault victims; and deployment briefings for cadets and permanent personnel wherein cadets are provided with SARC contact information for the deployed location. The Academy Counseling Center also participates in the deployment reintegration process when personnel return to USAFA. USAFA Prep School training includes the SAPR Policy the reporting process for cadet candidates, and focused training for faculty.

Additional training takes place with other Academy personnel at USAFA.¹⁸⁶ Outstanding USAFA efforts have been made by instituting awareness campaigns in a variety of venues, such as Basic Cadet Training in-processing for new cadets and their parents; information fairs; faculty and cadet handbooks; pocket-sized crisis cards/policy cards; SARC posters; informational plays; and Sexual Assault Awareness Month activities.

D. Oversight

1. Overview

The Assistant Secretary of the Air Force for Manpower and Reserve Affairs (SAF/MR) serves as an agent of the Secretary of the Air Force and provides guidance, direction, and oversight for all matters pertaining to the formulation, review, and execution of plans, programs, and budgets addressing sexual assault for the Air Force. The Deputy Chief of Staff for Manpower and Personnel (AF/A1) is the primary Headquarters Air Force focal point for reporting on program accomplishment. The Superintendent and Commandant provide local oversight, serving as active champions of the program. The Vice Commandant of Cadets for Culture and Climate is functionally responsible for the sexual assault prevention and response program and ensures that adequate resources are available. The SARC reports directly to the Vice Commandant and supervises the Academy Response Team (ART). AFOSI has independent oversight by the Air Force Inspector General. The Air Force General Counsel establishes legal policy and provides legal oversight and guidance for all aspects of sexual assault policy, and other matters related to

¹⁸⁵ See *Report on Sexual Harassment and Violence at the U.S. Air Force Academy, Academic Program Year 2006*, 13 October 2006, for complete list.

¹⁸⁶ *Report on Sexual Harassment and Violence at the U.S. Air Force Academy, Academic Program Year 2006*, 13 October 2006: "Newcomer's Orientation and New Faculty Orientation," etc., page 12.

sexual assault as needed, except those matters related to the administration of military justice. The Judge Advocate General is responsible for ensuring proper training of judge advocates and trial counsel in sexual assault matters. TJAG is the responsible official for administration of the Victim and Witness Assistance Program. The quality of medical care is assured by USAFA military treatment facility Chief of Staff, and the USAFA Chief of Chaplains supervises the activities of chaplains assigned to the installation.

2. Assessment

Appropriate mechanisms are in place both at Headquarters Air Force and USAFA to ensure oversight of the effectiveness of the sexual assault prevention and response program at USAFA.¹⁸⁷

E. Military Justice

1. Overview

In the case of an Unrestricted Report, allegations of sexual assaults are investigated by the AFOSI. AFOSI holds primary responsibility for evidence collection during sexual assault investigations. In cases of Restricted Reporting, AFOSI stores SAFE kits anonymously for up to one year. Agents gather facts, preserve evidence, and provide a report of investigation to the accused's commander. The commander then consults with the Staff Judge Advocate before making a decision about what legal action should be taken. AFOSI maintains an office at USAFA, but its chain of command is independent and outside the command structure of USAFA.

The Staff Judge Advocate Office has a Chief of Military Justice who assists in advising commanders on case dispositions. The Staff Judge Advocate normally appoints a member of his office as Trial Counsel (prosecutor) to prosecute appropriate cases and further advise commanders on the specific sexual assault case to which he or she is assigned. Two Area Defense Counsel, who are independent from the Office of the Staff Judge Advocate and the command structure, are also present at the Academy to defend cadets accused of sexual misconduct.

¹⁸⁷ Based on review of the data-call and site-visits in April 2007.

Reports of Sexual Assaults Involving Cadets: APY 2006-2007

USAFA APY 2006/2007 REPORTS OF SEXUAL ASSAULT (Rape, sodomy, indecent assault, and attempts to commit these offenses) INVOLVING CADETS	Rape	Sodomy	Indecent Assault	Attempts	Unknown	APY 2006/2007 Totals
# REPORTS OF SEXUAL ASSAULT (Total reported sexual assaults INVOLVING CADETS) - UNRESTRICTED AND RESTRICTED	7	2	10	0	0	19
# UNRESTRICTED REPORTS OF SEXUAL ASSAULT (Total reported sexual assaults BY or AGAINST Cadets)	4	2	4	0	0	10
# Restricted Reports	6	0	7	0	0	13
# Converted from Restricted Report to Unrestricted Report	3	0	1	0	0	4
# 2007 RESTRICTED REPORTS REMAINING RESTRICTED	3	0	6	0	0	9

Cases identified above represent only those sexual assault cases reported to Academy officials. As such, there is insufficient data to interpret these statistics or to make comparisons or to estimate the incidence and prevalence of sexual assault.

Case Disposition

During APY 2006-2007 the SARC received 13 Restricted and 6 Unrestricted Reports. Four Restricted Reports converted to Unrestricted so that by the end of the APY there were nine Restricted Reports and ten Unrestricted Reports.

*Unrestricted Reports Case Disposition (as of 15 Oct 2007)**Rape*

Of the four allegations, two victims declined to go forward with the legal proceedings. The cases were not legally sufficient to pursue without the victims' assistance and cooperation. One of the two remaining cases moved to an Article 32 hearing pending disposition. The second case is pending command action.

Sodomy

Of the two allegations both cases are outside of USAFA jurisdiction pending trial in civilian court.

Indecent Assault

Of the four allegations, two resulted in non judicial punishment (Article 15), one case is pending administrative action and one is outside USAFA jurisdiction.

2. Assessment

COMPLIANCE: *USAFA is in compliance with DOD SAPR policy.*

APY 2006-2007 was the first full year wherein cadets had the Restricted Reporting option. Six cadets chose to report and receive care under Restricted Reporting, which indicates the

protections afforded under this option have credibility with victims of sexual assault. The goal of the DoD SAPR policy is to build sufficient victim confidence in the military justice system and the support provided victims that all sexual assault reports will initially be Unrestricted Reports or become Unrestricted Reports following a victim's initial decision to elect the Restricted Reporting option.¹⁸⁸ Consequently, DoD SAPR Policy supports law enforcement and criminal justice procedures that hold people accountable for their actions.

- **It is recommended that the SARC inquire into the reasons why victims are choosing not to convert to Unrestricted Reporting and why victims withdraw their cooperation after making an Unrestricted Report. Report this information through appropriate Service channels to DoD SAPRO beginning at the end of this current academic program year without disclosing particular information or details from which one could determine the identity of a victim.**¹⁸⁹

Air Force Office of Special Investigations (AFOSI)

Forensic evidence was collected from one victim who elected to file a Restricted Report. AFOSI stores anonymous evidence for up to one year, in compliance with DoD SAPR policy. AFOSI provides all crime victims and witnesses with the *Initial Information for Victims and Witnesses of Crime* pamphlet¹⁹⁰ which explains the investigative process and lists victims' rights and points of contact. The VWAP is responsible for assisting crime victims from the onset of an investigation throughout the military justice process.¹⁹¹ AFOSI agents rely on VAs to coordinate victim interviews and victim assistance and appear to rely on VAs to assist with victim's rights. However, the JA Liaison is the position that is responsible for protecting victim's rights during the investigative and judicial process.

- **It is recommended that training and procedures for SARCs, VAs, and investigators emphasize that the JA Liaison should be contacted immediately in every Unrestricted Report. All parties should understand that the JA Liaison assists victims in understanding and protecting their legal rights and navigating the criminal justice system.**¹⁹²

¹⁸⁸ SAPR policy DoDD 6495.01, 6 October 2005, Section 4.5 states that it is DoD policy to encourage complete, unrestricted reporting of sexual assaults.

¹⁸⁹ Implementation of this recommendation should not put undo pressure on victims or cause them to be re-traumatized.

¹⁹⁰ DD Form 2701, May 2004.

¹⁹¹ DoDD 1030.01, 13 April 2004; DoDI 1030.2, 4 June 2004.

¹⁹² Under SAPR policy DoDI 6495.02, 23 June 2006, Enclosure 10, "VA Checklist," the VA consults and works with the assigned Victim/Witness Liaison as applicable.

Prosecution

The Office of the Staff Judge Advocate (SJA) is in compliance with DoD SAPR policy and appears very engaged in the sexual assault justice process.¹⁹³

Trial Counsel, Legal Liaison, Legal Assistance Attorney, and Victim Witness Liaison responsibilities all fall under the SJA Office. The support from this office is critical in building confidence in the criminal justice system, particularly for sexual assault victims. The individual roles of each of the above did not appear to be clearly understood by the key stakeholders nor fully integrated into training materials.¹⁹⁴

- **It is recommended that training curricula for permanent party be updated to highlight the roles performed by the Trial Counsel and the JA Liaison. It is further recommended that this training be used by the SJA office, commanders, and other multi-disciplinary agencies that assist victims.**

Specialized training for investigators and legal personnel¹⁹⁵ is provided by AFOSI and JAG offices, respectively, by bringing in local and national sexual assault resources.

The majority of sexual assault cases at USAFA involved alcohol.¹⁹⁶ Alcohol-facilitated sexual assault cases are among the most difficult to prosecute, in part because society has a tendency to blame the victim for the sexual assault due to the victim possibly drinking in excess and engaging in other risky behavior. Some of the challenges associated with prosecuting these difficult cases can be overcome by training in techniques that can be used at trial. USAFA sent Trial Counsel to specialized trainings on overcoming defenses based on consent, particularly in alcohol-facilitated sexual assault cases, and this is a practice that should continue.

F. Chain of Command

1. Overview

USAFA policies guide the chain of command's implementation of sexual assault prevention and response, and cover victim care and offender accountability.

2. Assessment

COMPLIANCE: USAFA is in compliance with DoD SAPR policy.

¹⁹³ Based on the interview with the trial counsel who handled the two courts-martial. He had attended two trainings on alcohol-facilitated sexual assault and appeared genuinely upset by the acquittals. Also, SJAs inform the victims of case outcomes and appeared very aware of the dynamics involved in working these cases.

¹⁹⁴ Per on-site interviews in April 2007 and review of the data-call.

¹⁹⁵ Legal personnel include judges, victim-witness personnel, and legal assistance personnel.

¹⁹⁶ As reported by SJA personnel during on-site interviews.

G. Addressing Victim Collateral Misconduct

1. Overview

Commanders are responsible for ensuring the victim's misconduct is addressed in a manner that is consistent with and appropriate to the circumstances. Commanders have the authority to determine the appropriate disposition of victim misconduct, to include deferring disciplinary action until after disposition of the sexual assault case.¹⁹⁷

2. Assessment

COMPLIANCE: *The Academy is in compliance with DoD SAPR policy regarding collateral misconduct.*¹⁹⁸

By being mindful that action on a victim's misconduct can be delayed until final disposition of the sexual assault case and considering the victim's input, USAFA balances the need for individual discipline and the need to create an environment that will not deter reporting sexual assaults.

H. Academy Program Year 2007-2008 Plan of Actions

1. Overview

USAFA has a plan of action for APY 2007-2008 regarding the prevention of and response to sexual harassment and sexual violence. Highlights include:

- Expanding the curriculum to include cadet feedback, as well as topics such as understanding consent, skills for effective bystander intervention, rape victim testimonies, and the link between alcohol and sexual assault.
- Contracting with nationally-recognized experts in campus safety, security and high-risk student health and safety issues to better expand and refine programs.
- Increasing ART manning and improving victim care potential by hiring new full-time SARC with prior MAJCOM SARC experience.
- Facilitating recurring dialogue with all service academies to share ideas, challenges, and best practices for addressing sexual assault and harassment issues.

¹⁹⁷ Department of The Air Force Policies and Procedures for the Prevention of and Response to Sexual Assault, 3 June 2005, page 16, Section 10.

¹⁹⁸ DoDI 6495.02, 23 June 2006, E3.2.11 and E3.2.12.

- Updating USAFAI 51-201 to formalize the USAFA SAPR Program and ART process, upon release of the Air Force SAPR Instruction.

2. Assessment

The USAFA leadership has clearly demonstrated commitment to their sexual assault prevention and response program through sustained and dedicated efforts. The USAFA plan for next year continues to build on an outstanding foundation established in the prevention of and response to sexual harassment and violence. The plan reinforces the policies of both DoD SAPRO and the AF SAPRO. Continued aggressive training and education on the topics of sexual harassment, sexual violence and misuse of alcohol, coupled with the support of leadership will provide the cadets with a climate that does not tolerate any form of sexual harassment and violence. The faculty and staff at USAFA are committed to the implementation and support of DoD SAPR policy. Considering the recommendations in this assessment will further enhance their dynamic SAPR Program.

United States Air Force Academy Sexual Harassment Program Assessment

A. Definition of Sexual Harassment

DoD and the Air Force define sexual harassment as:

- “Sexual harassment is a form of sexual discrimination that involves unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature when:
 1. Submission to, or rejection of, such conduct is made either explicitly or implicitly a term or condition of a person’s job, pay, career, or
 2. Submission to, or rejection of, such conduct by a person is used as a basis for career or employment decisions affecting that person, or
 3. Such conduct has the purpose or effect of unreasonably interfering with an individual’s work performance or creates an intimidating, hostile, or offensive working environment.
- Any person in a supervisory or command position who uses or condones implicit or explicit sexual behavior to control, influence, or affect the career, pay, or job of a Soldier or civilian employee who makes deliberate or repeated unwelcome verbal comments, gestures, or physical contact of a sexual nature is engaging in sexual harassment.”

B. Sexual Harassment Policy

USAFA’s policy on sexual harassment is spelled out in HQ USAFA/CC Policy on Sexual Harassment Memorandum and on USAFA VA 36-1 (poster) which is posted to bulletin boards and briefed to the cadet classes. The policy states:

“The United States Air Force Academy’s policy on sexual harassment in any form is ‘zero tolerance.’ Any form of harassment or discrimination impedes our mission-preparing cadets to become leaders of character for the Air Force and Nation. Commanders and supervisors are accountable for creating an environment where individuals feel comfortable expressing their concerns. If anyone believes they are the victim of sexual harassment it is their duty and obligation to come forward and address their concerns without fear of reprisal or retaliation.”

C. Program Overview and Organization

- The 10th Air Base Wing Military Equal Opportunity Office (10 ABW/ME) is the central point of contact for sexual harassment concerns and complaints for all military personnel to include cadets and cadet candidates in accordance with Air Force Instruction (AFI) 36-2706.
- The primary objective of the program is to improve mission effectiveness by promoting an environment free from personal, social, or institutional barriers that prevent Air Force members from rising to the highest level of responsibility possible based on their individual merit, fitness, and capability.
- In August 2006, 10 ABW/ME opened a satellite office in the cadet area. Prior to that time, MEO interaction with cadets was sparse due to resource limitations of personnel and geographic distance (6 miles) to the cadet area.
- 10 ABW/ME regularly attends USAFA/CWP meetings with USAFA leadership of all levels to advise on human relations indicators which may impact the Cadet Wing.

D. Education

Prevention through human relations education is provided to USAFA cadets throughout the cadet's education process. Education begins within 30 duty-days of arrival, when cadets receive sexual harassment training by personnel trained by Defense Equal Opportunity Management Institute (DEOMI). Continued human relations training is a 4-year program consisting of formal instruction throughout the cadet's academic career.

E. Complaint Options

USAFA offers two methods of reporting sexual harassment complaints: Informal and Formal.

- Informal: The informal complaint process assists military personnel who have experienced sexual harassment attempt resolution at the lowest possible level. There are no time limits for filing informal complaints. Informal options include:
 1. Advising the alleged offender of the inappropriate behavior by verbal or written correspondence.
 2. Requesting intervention by a co-worker.
 3. Using the facilitation process to mutually resolve disputes.
 4. Requesting the Commander Worked Issue (CWI) process. Commanders, first sergeants and supervisors may address allegations of sexual harassment within a unit when a complaint has not been formally filed with the EO office.

- **Formal:** Military members use the formal complaint process to resolve allegations of sexual harassment using a set protocol that involves EO personnel. A formal complaint has strict time constraints. The EO office may take several steps to clarify complaints, and employ the SJA office for legal reviews. Once a complaint is received from the military member, an EO Specialist explains the EO purview, provides the definitions of sexual harassment and sexual assault, and gathers specific data to determine if the complaint or request is within the EO purview. The results of the clarification are forwarded to the complainant's commander for action. The wing commander has final review of the complaint package. The complaint process is posted on bulletin boards and is briefed to the cadet classes.

Between June 1, 2006 and May 31, 2007, 10 ABW/ME processed no formal sexual harassment complaints, but did process four Commander Worked Issues, relating to cadets or Cadet Wing permanent personnel.

F. Assessment Results

- USAFA sexual harassment policy is in compliance with DoD Directive 1350.2, DoD Military Equal Opportunity (MEO) Program, and AFI 36-2706, Military Equal Opportunity Program. A copy of the policy memorandum was posted permanently in the sections and unit bulletin boards examined. The Air Force offers a sexual harassment / unlawful discrimination hotline which is operated by the HQ AFPC/DDPSFOS ((800) 616-3775, DSN 665-5000). The hotline provides information on how and where to file complaints, and the kinds of behaviors that constitute sexual harassment.
- The EO Specialists assigned are graduates of the DEOMI, IAW DoD Directive and Air Force policy.
- USAFA cadets are receiving initial (within 30 duty-days of arrival) and follow-up training on sexual harassment and complaint procedures.
- USAFA follows the guidance for filing and processing of sexual harassment complaints outlined in AFI 36-2706 and DoD policy.

G. Recommendations

- **Increase EO authorizations.** Prior to August 2006, EO interaction with cadets was sparse due to resource limitations of personnel and geographic distance to the cadet area. The Academy leadership recognized this dilemma and opened a satellite office in the cadet area. However, AF directed a reduction of the EOA staff from five authorized billets to three. Note that USAFA included these billets in POM 2008, but they were not

funded. This potentially compromises the overall effectiveness of the program. It is recommended that funding be reexamined.

- **Align EO with the Superintendent's staff:** The EO regularly attends meetings and meets as needed with USAFA leadership of all levels to advise on human relations indicators which may impact the Cadet Wing. However, the EO is not a member of the Superintendent's staff, but is an asset of the 10 ABW. Aligning the EO to the Superintendent's staff would enhance accessibility and credibility of the EO program.
- **Limited confidential reporting for EO:**¹⁹⁹ As reported in both the *DoD Task Force Report on Care for Victims of Sexual Assault* and the 2004 *USAF Report of Sexual Assault Prevention and Response*, confusion in the field remains on what behaviors constitute sexual assault versus harassment. While the EO and SAPR personnel understand the difference, many cadets do not, despite the level or amount of training they have received. As a consequence, cadets may inadvertently report a case of sexual assault to the EO Advisors, who cannot currently offer confidential reporting for crimes. All criminal allegations must be reported to the Air Force Office of Special Investigations (AFOSI) or Security Forces (SF) as soon as they are received. This requirement to report could void the opportunity for sexual assault victims to select Restricted Reporting under the established sexual assault policy. As with the other Academies, it is recommended that each of the Military Departments and DoD examine granting limited confidential reporting (pertaining only to reports of sexual assault) to EO Advisors. Under such policy, EO Advisors would be required to notify the Sexual Assault Response Coordinator (SARC) instead of command, thus allowing the victim to be properly counseled on Restricted and Unrestricted Reporting options. Upon receiving an inadvertent report of sexual assault, the EO Advisors should stop victims from further describing the sexual assault and notify them that they should first speak with the SARC who will be able to explain their options. Until such confidential reporting issues can be fully addressed at DoD level, it is recommended that the Academies' EO offices, prior to receiving any complaint, warn cadets that EO Advisors have a responsibility to report all matters relating to sexual assault to law enforcement and to the commander. Below is an example of such a warning:

"I handle sexual harassment, not sexual assault issues. If you disclose something to me about a sexual assault, I must report it to the commander and law enforcement. If you want to talk about a sexual assault, or you're not sure what the difference is between sexual harassment and sexual assault, I'll refer you to the Sexual

¹⁹⁹Confidential Reporting is defined in DoD SAPR policy DODI 6495.02, 23 June 2006, E2.1.1 as Restricted Reporting.

Assault Response Coordinator to make sure you understand your options."

United States Air Force Academy DMDC Focus Group Overview

Focus group sessions were conducted at the United States Air Force Academy (USAFA) on April 17-19, 2007. Questions were asked dealing with eight issues: sexual assault and sexual harassment, safety, mechanics of reporting, reasons for not reporting, training, future leader preparation, communication from the Academy, and use of alcohol.²⁰⁰ Eight focus group sessions were conducted at USAFA. Each session was scheduled for a 90-minute period. There was one session held for each gender for each class year, each with involving between eight and thirteen students. Caution must be applied to the review of the findings presented. The results are based on qualitative analysis—findings cannot be generalized to all students at USAFA.

A. Sexual Assault and Sexual Harassment

When asked to define sexual assault and sexual harassment, the bulk of the discussion centered on issues dealing with sexual harassment. Participants in the focus groups indicated that what constitutes sexual assault is well understood by students and is taken very seriously by everyone. They also indicated that sexual assault occurs infrequently, much less so than at civilian colleges. Focus group participants indicated that behaviors they defined as sexual harassment ranged from jokes, comments, rumors, explicit e-mails, and unwanted touching to “sexual favors for a reward.” They indicated, however, that it is difficult to define sexual harassment because specific actions and comments that offend one person do not necessarily offend another. Although there are often gender-related comments made by Academy students to each other, focus group participants indicated most were not thought to be sexual harassment. In situations where sexual harassment might occur at the Academy, it could result from students not being aware they are doing it or because women sometimes send mixed messages to the men regarding what is and is not acceptable. Participants in the focus groups indicated that Academy men consciously avoid situations that could lead to sexual harassment and sometimes go out of their way to make sure they are not creating situations which could be misconstrued. Focus group participants indicated that it is sometimes difficult to confront harassers directly. However, students often intervene for others, particularly younger cadets, in situations where sexual harassment could happen.

B. Safety

Focus group participants indicated that sexual assault is not common at the Academy and it happens less frequently than it does at other colleges. Focus group participants indicated they

²⁰⁰ For purposes of summarizing focus group findings, issues dealing with mechanics of reporting and reasons for not reporting are combined into one discussion session.

generally felt safe in the dorms and at most locations on campus. They do not feel a need to have a mandatory door locking policy at night.

C. Mechanics of Reporting and Reasons for Not Reporting

Participants in the focus groups indicated that they have a number of resources to call on should they ever experience an incident of sexual assault or sexual harassment. They indicated they understand the difference between Restricted and Unrestricted Reporting of sexual assault and know how to contact their SARC (Sexual Assault Response Coordinator). When asked why someone might not report an incident of sexual harassment, participants in the focus groups indicated that the person might prefer to handle it on their own or at least keep it to the lowest possible level. Participants in the focus groups indicated they would be more likely to report sexual assault than sexual harassment, but some indicated that if alcohol were involved they might not even report a sexual assault. They indicated they would have enough faith in the reporting system to trust that justice would be done in cases of sexual assault or sexual harassment. Some participants in the focus groups indicated that they were frustrated by the fact that the reporting system appears biased against the accused in a sexual assault case, especially when alcohol is involved.

D. Training

Whether they liked the training or not, some participants in the focus groups indicated that much of the sexual assault or sexual harassment training they currently receive is focused on response: what to do when an incident happens. Focus group participants indicated that receive a large amount of training on sexual assault or sexual harassment, despite the potential risk is that the severity of these issues could be compromised due to the excessive and tedious training. Focus group participants indicated that the most effective training methods included speakers who presented real life experiences discussion sessions, while PowerPoint briefings were among the least effective training methods. Additionally, training that resulted in male students feeling that “all men are predators/offenders” did not have a positive effect on gender relations. Focus group participants indicated that additional variety in the types of training sessions would improve the training they receive on sexual assault or sexual harassment.

E. Future Leader Preparation

Although most participants in the focus groups indicated that the wide range of experiences they receive at the Academy goes a long way toward preparing them for dealing with sexual assault or sexual harassment as leaders, some still felt they would like additional training on how to handle real-life scenarios, especially in a legal context.

F. Communication from the Academy

Focus group participants indicated that e-mail was the Academy's main form of communication to students about incidents of sexual assault or sexual harassment. However, some participants in the focus groups indicated they would prefer to receive information about incidents of sexual assault or sexual harassment in person. Participants in the focus groups indicated that they receive the right amount of information and an acceptable level of detail, given the need for confidentiality in cases of sexual assault or sexual harassment. Participants in the focus groups expressed their desire that communications from the Academy be given to students regarding issues sexual assault or sexual harassment before it reaches the press and general public.²⁰¹

G. Use of Alcohol

Focus group participants agreed that alcohol plays a role in situations of sexual assault or sexual harassment. They indicated that alcohol does not excuse either the victim or the offender in a sexual assault situation. However, they indicated that alcohol does "blur the line" between guilt and innocence. Some focus group participants indicated that drinking takes place because of normal rebellion against the rules and some indicated that drinking is the way some students respond to the stress of Academy life. Focus group participants indicated that the alcohol policies were reasonable and that students have dealt with drinking in a fairly responsible manner. Participants felt that stricter alcohol policies would not likely reduce the amount of drinking. They indicated that alcohol training focuses quite heavily on using a designated guardian or "wing man" to help students stay out of trouble when drinking, which is something they appreciate. When asked how training could be improved, some focus group participants, especially juniors, indicated that they would like the training to focus more on personal responsibility.

²⁰¹ As referenced in the first sentence, the Superintendent does in fact send out "cadet all" emails prior to public releases regarding sexual assault cases. In addition both the Superintendent and Commandant provide updates to cadets during class assemblies.

Report Conclusion

The Academies have made tremendous progress over the last few years in establishing robust and effective prevention and response programs for both sexual assault and sexual harassment. The records and interviews at the Academies reflect good-faith efforts by leadership to implement previous Task Force recommendations. Senior leaders, faculty, and staff at the Academies appear committed to the implementation and support of DoD SAPR and POSH policies. As the programs mature, MSA leadership needs to sustain their efforts through continued oversight, climate surveys, and initiatives to further institutionalize policies, procedures, and community collaboration.