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[BARELY LEGAL: Sexual Violence in the U.S. Military](#)

October 31, 2014 12:00 am [3 comments](#)

By FLORENCE SEAMAN

Soon after September 11, 2001, Stephanie Schroeder joined the U.S. Marine Corps because she wanted to serve her country. She knew that her service would require hard work and sacrifice, but she never could have expected that the danger she'd face would be from her own colleagues. Within a year of service, Stephanie was raped by a fellow Marine. "This experience was traumatic, but what followed was complete torture," Stephanie recounted in a statement to Cornell Law School's Global Gender Justice Clinic. Assaults continued, and Stephanie was forced to work alongside her attackers for over a year while her unit turned its back on her. "My attackers sexually degraded me in front of my entire unit, and my commander called me a 'troublemaker' and punished me every chance he got." Eventually, Stephanie was discharged from the military with a personality disorder, even though she never saw a doctor to even receive that diagnosis.

Unfortunately, what happened to Stephanie and how she was treated is not a one-off occurrence. While the military has made significant changes to combat the problem of sexual violence, these changes have not resulted in lower rates of sexual violence against service members. In fact, the rates of sexual abuse have risen steadily since reporting started in 2004, and, in 2014, [the Department of Defense reported](#) 5,061 sexual assaults against service members. Furthermore, the military judicial system [prosecutes only eight percent](#) of those alleged to have engaged in rape or sexual assault, as compared to the civilian system, [which prosecutes 40 percent](#) of those alleged to be such perpetrators. By allowing a culture of impunity, the U.S. government fails to honor the sacrifices of our service members who risk their lives every day for our country.

All citizens would like to think that if they reported a crime that was committed against them, it would be investigated promptly, thoroughly and unbiasedly. However, when service members experience sexual violence in the military, the Manual for Courts-Martial gives the accused's commander the power to determine whether the case will be investigated and prosecuted. But what if the commander perpetrated the abuse? Or the commander simply does not want prosecution of a sex abuse case to damage the reputation of the unit? Because commanders might have close working or personal relationships with the accused, their partiality compromises the military's ability to afford meaningful redress.

Additionally, because of U.S. Supreme Court precedent [in cases like *Cioca v. Rumsfeld*](#), survivors of military sexual assault cannot access federal courts for redress. So if a commander decides not to investigate or prosecute a service member's case, the survivor cannot appeal the decision. If all civilian citizens can seek justice in federal courts, then shouldn't the people who are protecting our freedom have that same right?

Like Stephanie, many servicewomen and men who have experienced and reported unwanted sexual conduct have been revictimized through professional retaliation (such as denial of rank), social retaliation, administrative action and/or other punishment, according to a [Department of Defense briefing](#). Nobody should have to suffer through retaliation as a consequence of seeking justice.

The United Nations Committee Against Torture will review the United States' compliance with the UN Convention Against Torture from November 11 to 13. Cornell Law School's Avon Global Center for Women and Justice and Global Gender Justice Clinic, with support from relevant organizations advocating on behalf of military sexual assault survivors, have submitted a shadow report to the Committee, outlining U.S. shortcomings in protecting service members' fundamental rights and suggesting reforms. In particular, decisions about how sexual assault complaints are resolved should be taken out of the chain of command, so that commanders do not control whether or not these crimes are prosecuted. The U.S. military is made up of outstanding American women and men who have devoted their lives to serving our country. The government should ensure that their noble and critically important work is not tarnished by the scourge of sexual violence.

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Dew_Process Law · an hour ago

PS to my prior post. I do not wish to leave any reader with the impression that I support the current "commander-driven" military justice system, because I do not. But, it is the system that Congress created and which is in existence. Most other common-law countries have abolished that practice and have created either separate military prosecution units where experienced prosecutors make the decisions as lawyers (Canada, e.g.) or allow civilian prosecutors to exercise prosecutorial discretion.

There is a distinction that remains important to the discussion. If the "military justice" system is in reality, a disciplinary system (as it is now), Commanders must, and always have had the final say in disciplining troops - something that is fine for military offenses such as AWOL etc. But, don't pretend it is a "justice" system. But, if in fact as Canada, Australia, the U.K., and other countries have demonstrated, you want a true system of military justice, then justice, not discipline must be the primary goal. And if so, then experienced lawyers need to be the decision-makers, just as in any District Attorneys office or U.S. Attorneys office.

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Dew_Process Law · an hour ago

As a Veteran who served as a Judge Advocate, and as an attorney who concentrates in defending military members accused of crimes, I have followed this debate with great interest. The first problem is getting honest and relevant "facts," -- versus opinion or anecdotal "evidence." This is not to imply that there is not a viable issue in reducing sexual violence in the military, because certainly that is (and should be) an on-going process -- but the same applies to other segments of society that have 18- 25 year olds as their core component. Add to that, volatile commentary by well-meaning, but seriously uninformed politicians about the perceived extent of the "problem."

Having spent 30 years as a judge advocate to include being both a prosecutor and defense counsel as well as training young prosecutors, the U.S. military assuredly prosecutes sexual assault allegations that would never see the light of a courtroom in any civilian jurisdiction. And yes, like most civilian jurisdictions, human frailties sometimes allow failures - but that is not an institutional problem. Since 1994, the Department of Defense has been extremely proactive in dealing with victims in general and victims of sexual assaults in particular: See, e.g., <http://vwac.defense.gov/dodpro...> and <http://vwac.defense.gov/otherp...> . Indeed, the U.S. military probably has the most aggressive prosecution and victims' advocacy programs in the nation. See: <https://www.ovcttac.gov/EBlast...> .

Critics rightfully point out that in the end, it is the Commander who makes the decision as to who should be prosecuted and for what charges (after an investigation under 10 USC 832). But, the truthful reality is that in 99% of the cases, the commanders adopt the recommendation of their prosecutors and Staff Judge Advocate (the legal advisor to the Commander). But, critics - especially those who do not understand the military justice system contained in federal law as the Uniform Code of Military Justice, 10 USC 801 et seq., fail to understand that the military is not a democracy - commanders exist to make life-and-death decisions and sometimes those are not

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If you are not familiar with it, I invite you to read "The Report of the Response Systems for Adult Sexual Crimes Panel" through the Secretary of Defense and to the Committee on Armed Services in the Senate and House of Representatives June 27, 2014. The report mentioned that the Department of Defense has been making a lot of changes to the way reports of sexual assault are handled.

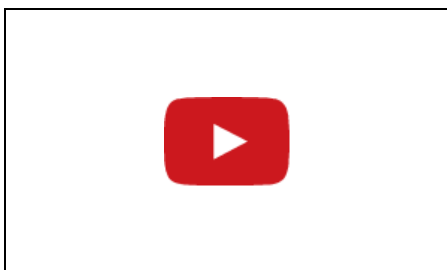
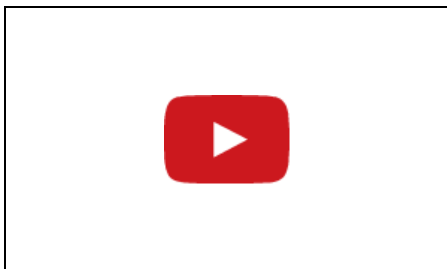
Some of the few changes that have been implemented since 2005 include: a reporting processes that is independent from the immediate chain of command of the victim; an investigation process that initiates when the report is filed unless the victim prefers otherwise; and the option to request transfer of the victim or perpetrator if they are in the same working environment. These changes alone highlight how case histories, such as Stephanie's, though tragic are not as relevant to the discussion as they once were.

As a matter of great significance the Panel recommended that the prosecution of a sexual assault NOT be removed from the chain of command of the perpetrator. In addition to the many changes, some of which are too new to have been evaluated for iimpact, the Panel indicated a lack of evidence to support that making the change to the prosecution system would achieve the desired results of: reduced incidents of sexual assault; increased reporting; improved quality of investigation or increased convictions.

If the advocacy groups have a rebuttal for these findings and recommendations, I have not seen it, but would like to.

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