

# Sexual Assault in the Air Force and Direct Victim Services

Captain Noah Coakley II  
Technical Sergeant Jessica Whetstone

## Overview

- Intro; Military Sexual Assault
- Military Cultural Factors
- History of Military Sexual Assault
- The Military Justice Process
- Policy Changes
- SAPR Program
- Special Victims' Counsel Program
- The Way Ahead

## The Invisible War



## History of Military Cultural Factors

### Problem Resolution at the Lowest Level

- It's frowned upon for service members to go directly to their command without trying to resolve the issue themselves
  - Makes it difficult for junior members to speak out against senior ranking members

### Value on Performance

- Premium value placed on performance can result in leaders dismissing or minimizing claims of sexual assault or harassment against high performers

### Movement of Military Personnel

- Victims may not want to report out of fear of not being believed and not having an established support system

### Team Allegiance

- Reporting a fellow team member for harassment or sexual assault can be seen as a form of team betrayal



# History of Military Sexual Assault

- Tailhook '91
  - Tailhook Association – A private organization comprised of past and present Navy and Marine Corps aviators
  - The first Tailhook conference took place in Tijuana, Mexico in 1956 and moved to Las Vegas in 1963
  - In 1991, at least 83 women and 7 men were assaulted during the three-day conference
    - “The Gantlet” – Women’s clothes were violently ripped off and then they were groped and sexually assaulted

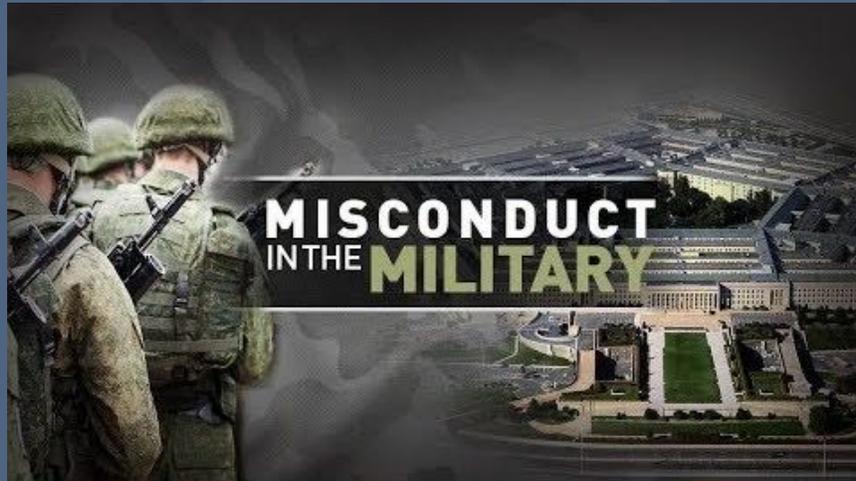


# History of Military Sexual Assault

- Aberdeen Proving Grounds (1996)
  - 12 male Army trainers charged with rape, abuse, and harassment of female soldiers under their supervision
- Air Force Academy (2003)
  - 60 former female academy cadets reported rape and other forms of abuse at the academy dating back to 1993.
    - Between 1993 and 2002, 142 allegations of sexual assault at the academy were reported
- Air Force Basic Training (2009 - 2012)
  - 12 male boot-camp instructors under investigation for allegedly raping, assaulting, harassing, and having sex with female recruits

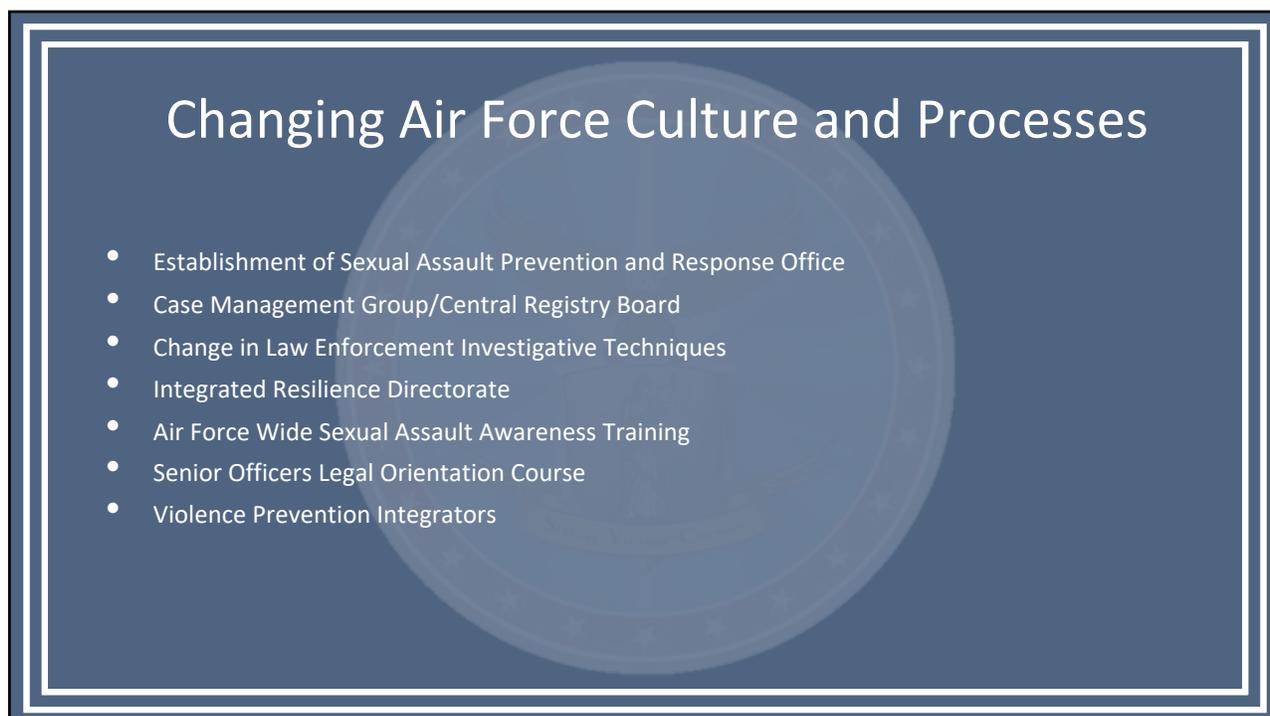
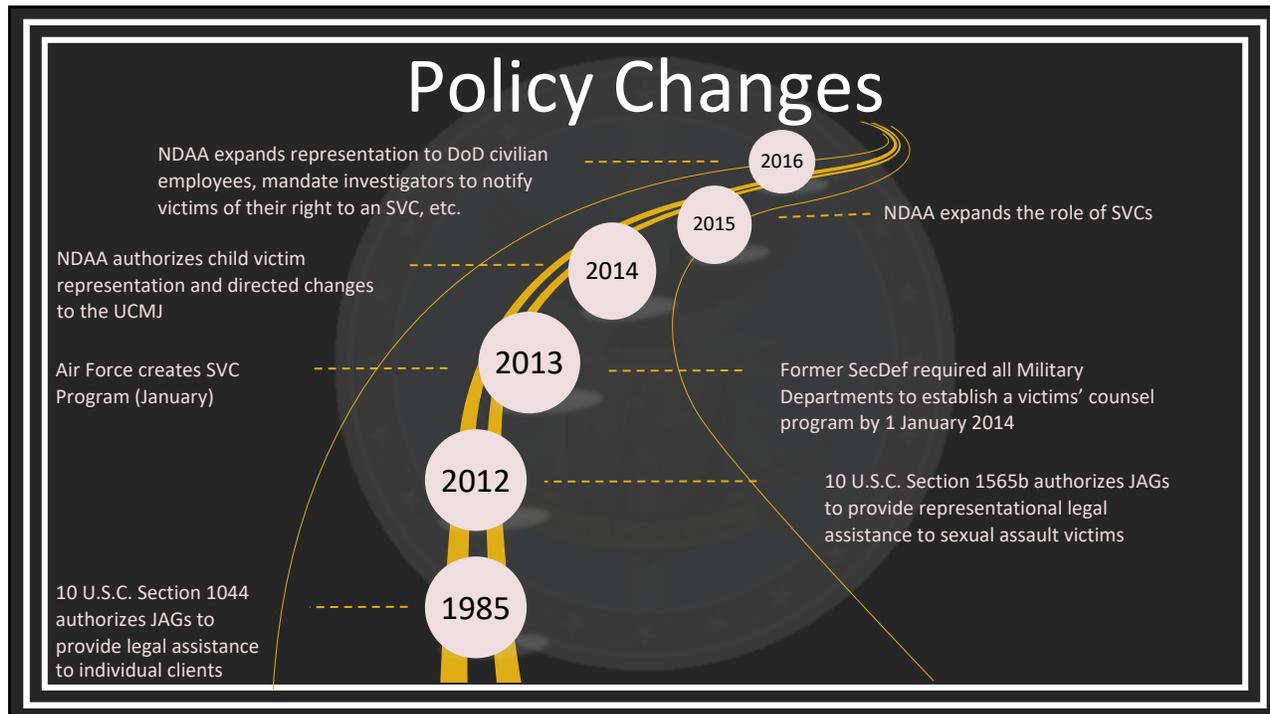


## Tailhook Aftermath



## Sexual Assault and the Military Justice Process

- Restricted vs Unrestricted Reporting
- Investigative Agencies
- Commander Driven Justice System
- The Court Martial
- Appeal/Clemency



# UCMJ Changes

## Pre-2013

- Statute of limitations
- No mandatory minimum
- At the SJA's discretion whether or not to consider victims' disposition input
- Military commanders' had the power to overturn convictions

## Now

- Paradigm shift in victim advocacy (SVC Program)
- *Kastenburg* – legislation ensuring victims' rights now codified in Article 6b
- New statutory language explicitly provides that a crime victim has the right to decline to testify during preliminary hearings
- Amending Article 46 to place limits on defense counsel interviews of victims
- Allowing victims to submit matters to convening authorities on the issue of clemency
- Statute of limitations
- Mandatory minimum of dishonorable discharge if found guilty
- Added non consensual pornography as a crime

# Wilkerson Case

abc NEWS VIDEO LIVE SHOWS

## Overtured Sexual Assault Case Spurs Bill to Limit Commanders' Tribunal Powers

By Matthew Larotonda March 12, 2013

A bill introduced in the House of Representatives would remove the power of military commanders to unilaterally overturn or lessen the decisions of judges or juries at courts martial under their review. The proposed legislation came as a direct response to the outrage of victim advocates and some lawmakers to the recent case of an Air Force lieutenant colonel granted clemency after a sexual assault conviction.

## Air Force General Defends Overturning Sexual Assault Conviction By Blaming Victim

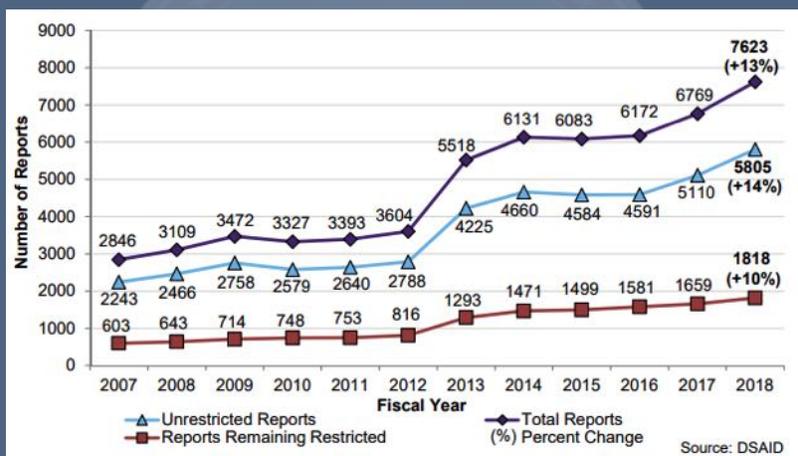
HAYES BROWN APR 11, 2013, 5:00 PM

SHARE



The letter an Air Force general wrote defending his decision to overturn a jury's sexual

# Statistics

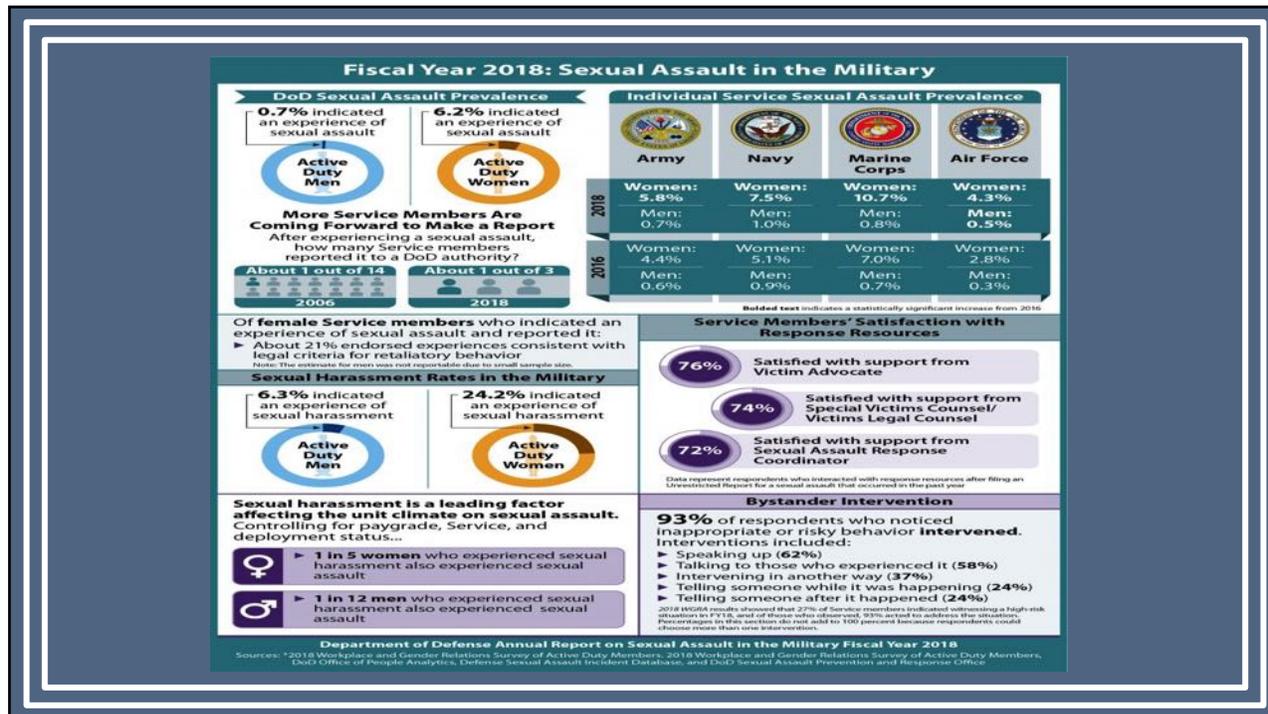


# Statistics Continued

Table 4. Case Dispositions Reported in FY18

Case Disposition Category	Count of Case Dispositions	Share of Case Dispositions
Sexual Assault Investigation That Can Be Considered for Possible Action by DoD Commanders	2,854	N/A
<b>Evidence Supported Commander Action</b>	1,845	65%
Sexual Assault Offense Action	1,211	66%
Court-Martial Charge Preferred (Initiated)	668	55%
Nonjudicial Punishment (Article 15, UCMJ)	267	22%
Administrative Discharge	118	10%
Other Adverse Administrative Action	158	13%
<b>Non-Sexual Assault Offense Action</b>	634	34%
Court-Martial Charge Preferred (Initiated)	72	11%
Nonjudicial Punishment (Article 15, UCMJ)	339	53%
Administrative Discharge	96	15%
Other Adverse Administrative Action	127	20%
<b>Unfounded by Command/Legal Review</b>	74	3%
<b>Commander Action Precluded</b>	935	33%
Victim Died	0	0%
Victim Declined to Participate in the Military Justice Action	173	19%
Insufficient Evidence to Prosecute	735	79%
Statute of Limitations Expired	27	3%

**Note:** Victims who were assaulted by multiple subjects are counted only once to correspond with the subject who received the most serious disposition.



## Sexual Assault Prevention and Response Program (SAPR)

Mission - "Educate, Advocate, and collaborate to respond to and stop sexual assault and its harmful effects on the Air Force."

- Serve as the point of contact for coordinating sexual assault victim care and response
  - SAPR supports Active Duty, Air Force Reserve, Air National Guard, and their dependents 18 and older, and Air Force civilian employees
- SVC representatives collaborate with SAPR personnel to facilitate the continuity of care and advocacy
  - SVC representatives participate in monthly sexual assault Case Management Group meetings to review individual cases



## Military Rights: Article 6b, UCMJ

The right to be reasonably protected from the accused

The right to reasonable, accurate, and timely notice

The right not to be excluded from any public hearing or proceeding unless determined that testimony by the victim of an offense under this chapter would be materially altered if the victim heard other testimony at that hearing or proceeding.

The right to be reasonably heard

The right to confer with the counsel representing the Government at any proceeding

The right to receive restitution as provided by law

The right to proceedings free from unreasonable delay

The right to be treated with fairness and with respect for your dignity and privacy

**\*\*Similar to the Crime Victims' Rights Act of 2004\*\***

## Special Victims' Counsel Program



## Special Victims' Counsel Program Background

### Timeline:

- January 2013: AF stands up SVC program
- August 2013: SECDEF mandates program for all services
- December 2013: SVC program codified at 10 U.S.C. § 1044e

### SVCs: 47 locations worldwide

- 48 active-duty, full-time Judge Advocates
- 5 Chief Circuit Special Victims' Counsels
- 48 Special Victims' Paralegals

**Total number of client's helped: Over 6000!**

## Governing Statute

### 10 U.S. Code § 1044e

#### Types of Legal Assistance Authorized:

- (1) Legal consultation regarding potential criminal liability of the victim related to the assault
- (2) Legal consultation regarding the Victim Witness Assistance Program, including the rights and benefits afforded the victim
- (3) Legal consultation regarding the responsibilities and support provided to the victim by the SARC, or domestic abuse advocate
- (4) Legal consultation regarding the potential for civil litigation against other parties (other than the United States).
- (5) Legal consultation regarding the military justice system, including (but not limited to)
  - (A) the roles and responsibilities of the trial counsel, the defense counsel, and investigators;
  - (B) any proceedings of the military justice process in which the victim may observe;
  - (C) the Government's authority to compel cooperation and testimony; and
  - (D) the victim's responsibility to testify, and other duties to the court.

## Governing Statute

- (6) Representing the victim at any proceedings in connection with the reporting, military investigation, and military prosecution of the alleged sex-related offense
- (7) Legal consultation regarding eligibility for emotional and mental health counseling and other medical services
- (8) Legal consultation and assistance
  - (A) in personal civil legal matters;
  - (B) in any proceedings of the military justice process in which a victim can participate as a witness or other party;
  - (C) in obtaining civilian and military protecting or restraining orders; and
  - (D) in obtaining, any available military and veteran benefits, such as transitional compensation benefits and other State and Federal victims' compensation programs.
- (9) Legal consultation and assistance in connection with
  - (A) any complaint against the Government, including with an inspector general and complaints regarding equal employment opportunities
  - (B) any request to the Government for information, including FOIA requests
  - (C) **any correspondence or other communications with Congress.**

## Special Victims' Counsel Program

- Advise: develop clients' understanding of the investigatory and military justice processes
- Advocate: protect the rights afforded to victims
- Empower: by giving clients a voice and removing barriers to their full participation in the military justice process

Providing this service to victims will result in a more robust opportunity for victims to be heard, to retain and take advantage of their rights, and enhance the justice system.

# Special Victims' Counsel Program

## Who Do We Help?

- Active Duty Military
- Reservists and Guardsmen
- Military Retirees
- Dependents of Military Members (including children)
- DoD Civilians (if there is a Military Nexus)
- Exceptional Circumstances Requests

# Special Victims' Counsel Program

## What We Do

- Represent Clients in Military Hearings (Courts and Administrative Hearings)
- Military Protective Orders/No Contact Orders
- Attend Law Enforcement Interviews
- Collateral Misconduct
- Specialized Legal Assistance
- Expedited and Humanitarian Transfers
- Appellate Representation
- Nonrated Periods of Performance Reports
- Transitional Compensation
- Explain Options/Outcomes... CLIENT'S CHOICE
- Independent and Confidential Advice

One Stop Legal Shop!

# Child Representation

## Challenges

- Determining Competency
- Guardian Ad Litem vs. Attorney
- Article 6(b) Representative
- Issues with Non-Offending Parents

# Legal Challenges

Standing... What Can We Do in Court and How Did We Get it?

- LRM v. Kastenberg (2013)
- Object on the Merits During Client Testimony
- Rape Shield Law
- Mental Health Privilege
- Victim's Right to be Heard (Impact Statements)

## Beyond The Courtroom



The New York Times  
*'I Have a Moral Responsibility to Come Forward': Colonel Accuses Top Military Nominee of Assault*



Army Col. Kathryn A. Speltz says she was sexually assaulted by General John E. Hyten, who is nominated to be the vice chair of the Joint Chiefs of Staff. Eric Lipton/The New York Times

By Helene Cooper



## The Way Ahead

### SAAITF Recommendations:

- Establish Sexual Harassment as a Specific Criminal Offense
- Implement Sentencing Guidelines
- Increase Training for Commanders
- Trauma Informed Training for Agents and JAGs
- CATCH Program
- Enhance Forensic/Investigative Capabilities

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## Questions?