

The Weekly Standard

Harassing the Military

There is no sexual assault crisis.

Jul 8, 2013, Vol. 18, No. 41

BY GAIL HERIOT

By now, almost everyone knows the lurid truth about the military—or they think they do. Last month, after a 2012 survey showed that sexual assault against servicewomen had risen dramatically in the last few years, the media went into overdrive. The Washington Post called it an “epidemic.” The New York Times blamed the rise on “the military’s entrenched culture of sexual violence.”

No wonder Congress has since been feverishly pursuing legislation to deal with this seeming national scandal—from a top-to-bottom overhaul of the military’s criminal justice system proposed by Senator Kirsten Gillibrand (D-NY) to mandatory minimum sentences for sexual assault backed by Rep. Mike Turner (R-Ohio).

There is just one problem: Precious little of this story has any basis in fact. Contrary to what many assume, there is no evidence that the military has a higher rate of sexual assault than, say, colleges and universities. Indeed, what paltry evidence there is suggests the opposite. Congress needs to stop, take a deep breath, and avoid adopting legislative remedies it will regret once the crisis atmosphere dies down.

Any institution home to a disproportionate number of young adults will likely have higher than average rates of what the military delicately calls “unwanted sexual contact.” That doesn’t excuse the behavior—which can range from a provocative pat on the bottom to forcible rape—but it does provide much-needed perspective.

The two most recent studies of campus sexual assault—The Sexual Victimization of College Women (2000) and The Campus Sexual Assault Study (2007)—both show colleges to be worse than the military when their figures are annualized to make them roughly comparable to the military’s. At least one older study, The Scope of Rape: Incidence and Prevalence of Sexual Aggression and Victimization in a National Sample of Higher Education Students (1987), makes the military seem like a Junior League garden party.

To be sure, each study asked different questions and collected responses differently, making precise comparisons difficult. Nevertheless the bottom line is clear: There is no evidence that the military is uniquely dangerous to women. Lawmakers who argue high sexual assault rates can harm the military’s morale and recruitment efforts are right, but their own overwrought reaction to the 2012 survey can also be harmful.

The military has surveyed its active-duty members on sexual assault repeatedly since 1988. Overall these surveys have shown impressive improvement. Sometimes the improvement has been astonishing—like that reported in the 2010 Workplace and Gender Relations Survey of Active Duty Members, which showed a 35 percent drop in the rate of unwanted sexual contact reported by servicewomen since the last survey in 2006.

The 2010 survey probably spawned the current controversy. Bear in mind that even expertly crafted surveys sometimes produce inaccurate results. The 2010 results were probably too good to be true. If the 2010 results were off the mark, it was inevitable that the results in 2012 would

look bad in comparison—even though the 2012 results were still a 10 percent improvement over the results in 2006.

Critics often assume that the military fails to provide sexual assault training or that it is lax in its prosecution of these crimes relative to civilian jurisdictions. But this is not supported by the evidence.

As for training, 96 percent of women and 97 percent of men reported in the 2012 survey that they had received sexual assault training in the last 12 months. These were slight improvements over 2010 and 2006, but the fact is sexual assault training has long been a way of life in the military.

Prosecution rate comparisons are difficult, since civilian jurisdictions are not required to publish statistics. Even if they were, they would be of little use, since for service members, reporting a sexual assault to military authorities is as much like reporting it to an employer as it is like reporting it to the police. The statistics would not be comparable.

Insofar as there is evidence, however, it suggests that the military is now more aggressive in prosecuting sexual assaults than civilian jurisdictions. For example, when a rape involving military personnel occurs off-post, civilian and military authorities both have jurisdiction. On those occasions in fiscal year 2011 on which the civilian jurisdiction took the lead, prosecution rates were 11 percent. In contrast, the military's prosecution rate was 55 percent. Even greater gaps were documented for prosecutions of aggravated sexual assault.

Indeed, some charge that in the military's zeal to placate its critics, it is now going too far. "[T]here's this myth that the military doesn't take sexual assault seriously," said former Army judge advocate Michael Waddington. "But the reality is they're charging more and more people with bogus cases to show that they do take it seriously." Similarly Bridget Wilson, a defense attorney specializing in military law, told the U.S. Commission on Civil Rights, "There is an increasing perception that the deck is stacked against someone accused of a sexual assault."

This is especially so in cases in which two service members have been drinking and engage in seemingly consensual sex. These days, in the military's view, he's guilty and she's an incapacitated victim. Civilian authorities usually shun such cases.

Indeed, it is cases like that that caused a female prosecutor who wished to be anonymous to comment to McClatchy Newspapers in 2011, "There is a pressure to prosecute, prosecute, prosecute. When you get one that's actually real, there's a lot of skepticism. You hear it routinely: 'Is this a rape case or is this a Navy rape case?'"

One thing is certain: The military's top brass is now desperate to convince Congress that it takes sexual assault seriously. On June 4, a supplicating Army chief of staff Gen. Raymond T. Odierno told the Senate Armed Services Committee that "combating sexual assault and sexual harassment within the ranks is our No. 1 priority."

The military is a large and complex institution with many priorities. But only one can be No. 1. If combating sexual assault and sexual harassment is the military's No. 1 priority, that means defending the nation from foreign aggression is not. It's time to sober up.

Gail Heriot is a professor of law at the University of San Diego and a member of the U.S. Commission on Civil Rights.