



*Basic Training*, by Henrietta M. Snowden, watercolor/oil/pastel on paper, 2002.  
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# Chapter 12

## SELECTED FORENSIC MENTAL HEALTH ISSUES AROUND SEXUAL ASSAULT: A FOCUS ON THE ROLE OF THE EXPERT WITNESS

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## INTRODUCTION

Sexual assault in the US military has been a perennial issue, but it has gained extremely high visibility in recent years. There are many efforts to reduce the incidence of sexual trauma, better treat the victims, and improve the legal process about prosecuting perpetrators. The majority of the sexual assault literature focuses on posttraumatic stress disorder (PTSD) and other psychological reactions to rape. This chapter will provide a review of the prevalence, patterns, psychological reactions, and consequences of the dynamics of rape and sexual assault.

This is a highly charged issue for advocates, lawyers, and psychiatrists, with more than 20 years of accusations, convictions, and scandals at the Air Force Academy, Lackland Air Force Base, the Naval Academy, and others, including in the recent theaters of war in Iraq and Afghanistan. Numerous websites, reports, congressional investigations, and media accounts are available on the Internet. However, this chapter will focus on expert witness issues, rather than advocacy

or policy.

Many rape cases are based on circumstantial evidence, which is at least a result of delayed reporting, so that any forensic evidence (semen, vaginal tears, stained clothes, and so forth) is lost. These events often lead to a “he said, she said” situation. The behavior of the victim may be held up to scrutiny. Defense attorneys ask questions such as, “If she was raped, why would she wear provocative clothing to a party?” Or, “She claims she was raped, but had sex with her boyfriend the next night. Surely she could not have been raped.”

Although some accuse the military of turning a blind eye, that is not the author’s experience. Instead, the complexities of human behavior are played out in a military courtroom, often fueled by impulsive behavior, testosterone, and alcohol. With courts-martials sometimes hampered by a lack of forensic evidence, the importance of subject matter experts experienced in this field is critical.

## PREVALENCE OF RAPE AND ITS AFTERMATH

Sexual victimization is a problem in both civilian and military populations. Widely varying estimates exist of the prevalence of sexual assault, depending on how data are reported and collected, and how sexual assault is defined. One estimate from the civilian literature is that one in six women have been raped.<sup>1</sup> Intimate partner sexual violence is the most common pattern.<sup>2</sup>

The rate of sexual victimization among male military members is believed to be roughly the same as in the general population. For women in the military, however, the picture is different. Depending on the definition of sexual victimization, rates of sexual victimization are higher with estimates tending to cluster in the 23% to 33% range.<sup>3</sup> The Department of Defense (DoD) estimates that 26,000 sexual assaults were committed in the armed forces between 2011 and 2012.<sup>4</sup> No statistics exist for the military that break down by age for either victims or perpetrators. In the author’s experience, the victims are usually young women, and the perpetrators are young men; however, sexual assault is not confined to the young.

The most commonly observed psychiatric consequence of rape is PTSD. In the civilian literature, approximately 65% of men and 46% of women who have experienced a sexual assault report symptoms consistent with PTSD.<sup>5</sup> Because rape is more highly associated with PTSD than are other traumas,<sup>5,6</sup> and because it results in PTSD nearly four times more

often than military-related war stress,<sup>7</sup> it may be one of the most severe traumatic events humans suffer.

Sexual assault arguably has more negative consequences when it occurs during military service. Military sexual trauma may be worse for its victims because of a number of phenomena unique to military life. Specifically, it is associated with two times the risk for developing PTSD when rape occurs during military service than if it occurs after discharge.<sup>3,8</sup>

Among military units, home, work, and social environments are frequently co-mingled. Especially in deployment situations, this phenomenon may make it impossible for a victim to find safety; the victim may encounter the assailant at work, in the barracks, or where unit members spend leisure time. A past history of friendship or the need to depend on one another in combat operations may undermine a victim’s resolve to fight an assault. Whether at home, in social settings, or in combat, a sexual assault victim is normally taken by surprise and usually is not trained in how to resist. The lack of control contributes to the psychological symptoms.<sup>9</sup>

The military structure may also deter a victim from filing a complaint. When the rapist is the ranking officer, these difficulties are intensified. Victims may be fearful of saying “no” to a commanding officer’s advances or attacks, and they may fear that bringing charges in the aftermath would put their career or even

their lives in danger. Many victims fear that accusing one's commanding officer of sexual assault will end his or her military career.<sup>10</sup> The documentary, *Invisible War*, highlighted the difficulties of reporting through the chain of command.<sup>11</sup>

Military officials point out that the DoD has a zero tolerance policy on all forms of sexual misconduct. Early in 2004 the Care for Victims of Sexual Assault Task Force was created to investigate, inform, and improve DoD policy and response to sexual assault in the military. As a result, the Sexual Assault Prevention and Response Office was launched in early 2005 to ad-

dress this issue at all levels. Specifically, the program features:

- prevention through training and education programs;
- treatment and support of victims; and
- system accountability.

However, a Defense Advisory Committee on Women in the Services survey found that male service members thought more highly of the effectiveness of these policies than female service members.<sup>12</sup>

## PATTERNS OF SEXUAL ASSAULT

The majority of experiences of sexual misconduct are between female victims and male assailants. However, many cases involve male on male sexual assault, and a smaller number of cases of female on male and female on female sexual assault. With statistical patterns of patterns of sexual assault unavailable, the author points to three major sexual assault patterns in the military based on her experience: (1) date rape, (2) power imbalance, and (3) combination.<sup>13</sup>

When looking at sexual assault in a recruit or basic training setting, there is an unequal power relationship. A useful concept here is looking at how predators select their victims. They touch their knees, probe, make friends, watch who reacts, and observe who is afraid to tell. Often the victims are worried at being separated from service if they report.<sup>13</sup> In many other situations, the perpetrator and alleged victim are friends or colleagues. As friends, they often go drinking together and engage in sexual activity, and the question is whether it is truly consensual.<sup>13</sup>

Following are some composite examples of sexual assault:

*Date rape.* The most common pattern of sexual assault is the date-rape pattern. In a common scenario, two or more soldiers, who are friendly, go drinking. They start or end up on a park bench or a barracks room. Some sexual activity occurs, which proceeds to intercourse. Often all are intoxicated. Delayed reporting is common. If the alleged victim goes to the police, there is little physical evidence. In the courts, again it is a "he said, she said" scenario.<sup>9</sup>

The case may or may not proceed to a court-martial. Whether the accused person is found guilty or not, usually both careers are over. The accused person gets a negative report. The victim also usually leaves the service, having felt humiliated and blamed throughout the legal process.

*Power imbalance.* Another pattern of sexual assault is

the power situation. The accused person is a recruiter or drill sergeant or in another position with power over a young recruit or service member. In the military recruit environment, if potential victims resist, the drill sergeant brings up failed physical training tests, past psychological issues, and other vulnerabilities. The victim, who wants to get in the service or stay in the service, puts up with some fondling or other inappropriate behavior, which then proceeds to further illegal sexual activity.<sup>13</sup>

Military law prohibits such sex, whether consensual or not, and it is clearly against the Uniform Code of Military Justice for a recruiter or drill sergeant to have sex with a recruit or trainee. However, there is still often no forensic evidence. Often these cases progress to legal proceedings only when there are multiple accusers. In these cases, it is enough to simply demonstrate that inappropriate sexual conduct has occurred for the perpetrator to be convicted. A variety of charges outlined in the Uniform Code of Military Justice cover the different offenses, from "conduct unbecoming an officer" to actual unwanted sexual intercourse.

*Combination.* This combination pattern of sexual assault is a hybrid of the date rape and power imbalance. A superior officer works with a more junior officer. They are friendly. Then there is an office party or a barbecue. Alcohol may or may not be consumed. One initiates sex. The victim does not feel comfortable in refusing. The hybrid pattern includes situations, such as a senior midshipman having sex with a younger one, and alcohol is often present.

In all of these scenarios, the couple is usually isolated. In the date-rape scenario it is often on a park bench, in a hotel room, or in a barracks room. In the power imbalance scenario, it often occurs at an isolated place, such as Edgewood Arsenal (13 miles from Aberdeen Proving Ground in Maryland), at an isolated Coast Guard station, or at a military academy.<sup>14</sup>

## **RAPE-TRAUMA SYNDROME**

Abundant literature on reactions to sexual assault exists. Most of these focus on sexual assault in civilians and female veterans. PTSD, depression, nightmares, and substance abuse are common.<sup>9</sup> One of the earliest influential articles in the field was "Rape trauma syndrome" by Holmstrom and Burgess.<sup>15</sup> It was an important contribution to the literature. The original article on rape-trauma syndrome was written about patients who came to an emergency department in Boston after being sexually assaulted. They were followed for a year and their reactions recorded. Both physical and psychological reactions of distress were prominent, including avoidance of the type of environment where it occurred.<sup>15</sup> Rape-trauma syndrome is a term used to describe short- and long-term physical and emotional reactions to rape. However, the description of rape-trauma syndrome has been overused to prove or disprove whether someone has been raped.

These psychological symptoms of distress unquestionably do occur in sexual assault. But they vary from

person to person, depending on the past history of the victim, the circumstances of the assault, and what happens after the event.

Expert witnesses are often asked to discuss rape-trauma syndrome. Attorneys call potential experts to opine on rape-trauma syndrome without knowing what it is. It is important for that expert to be aware of what (and what not) that syndrome covers. Unfortunately, attorneys may try to have experts cite the presence or absence of symptoms as evidence that the rape did (or did not) occur. They may seek to subpoena mental (behavioral) health records to determine whether PTSD symptoms are present; if not, they may try to say that the sexual activity was consensual.

Mental health records are now supposed to be protected from being used in court trials because either victims or defendants may not seek treatment if they know their records may be subpoenaed.<sup>16,17</sup> However, in practice the mental health records may be reviewed by the judge who determines their relevance.

## **ISSUES FOR THE EXPERT WITNESS**

### **Immediate Reactions to Rape**

An expert witness, as opposed to a fact witness, is one who is not directly involved with the crime, but has knowledge about the behavior involved. In these sexual assault scenarios, expert witnesses are usually psychiatrists, psychologists, social workers, or nurses with expertise in this area. The expert witness is often consulted to educate the military panel (equivalent of a civilian jury) on reactions to rape and especially on reasons the alleged victim may or may not report promptly. The expert needs to be aware of military culture and the dynamics of sexual assault patterns described above and below. They also need to understand intoxication, and how the body processes alcohol.

The expert witness may also be asked to opine on the concept of "grooming," which is a term from the sexual abuse literature. A potential predator may make mild advances toward a target, such as putting a hand on the knee. If she or he does not react negatively, then the potential predator may go further.

Reactions to sexual assault can be divided into immediate reactions, ones right after the rape, and long-term psychological effects. Immediate reactions to rape during the experience include disbelief, fear, and thoughts such as, "why is this guy on me" or "I can't fight back."<sup>9</sup> Shame and fear often are felt directly after the sexual assault. In many cases there is delayed

reporting or none. Sometimes it takes weeks or months to report. Some victims report first to a friend or a mother and then after persuasion report to criminal authorities. The expert witness may be asked to speculate on reasons for delayed reporting. Explaining about the shame and worry about a soldier's career is often a cornerstone of testimony.

The two biggest issues for the expert witness in courts-martial usually are whether the sex is consensual and the involvement of alcohol. So the issue is often whether there was "competent" consent to sexual activity or the "he said, she said" scenario. The accused says the sex was consensual, and the victim says it was not. If it is clear that the victim was intoxicated at the time, informed consent was not given. But the level of intoxication can be difficult to ascertain weeks or months later. However, experts may opine on the intoxication level.

### **Longer Term Reactions to Rape**

Longer term reactions to rape include PTSD, depression, and substance abuse. In addition, the victim may avoid the situation where the sexual assault occurred and may also try to maintain a sense of normalcy, including maintaining intimate relationships with a partner. But, ironically, defense attorneys may try to use these coping mechanisms against the victim.

Another stressor, over time, is the legal system. The

legal trial, if it occurs, elicits strong reactions in the victim. There may be a re-experiencing of the assault, embarrassment about having personal details exposed in the courtroom, and humiliation in the unit. In the

author's experience, often when the victim is a female service member she leaves the military, sometimes having received the negative diagnosis of a borderline personality disorder or other negative repercussions.

## PREVENTION

Although it is less relevant to expert witness discussion, prevention is a critical and complicated subject. Current training on sexual assault tends to focus on two issues: (1) Army and/or military values (basically, you should not rape a fellow soldier or service member); and (2) the battle buddy system, which has not been particularly effective. Command needs to recognize patterns and circumstances (usually isolated posts) in which sexual misbehavior is likely to occur. The common theme is isolation, whether on a secluded base, park bench, barracks, or the container housing unit. The concept of behavioral drift is useful here, which refers to a "group think" mentality that allows behavior to slip into activities that violate society norms. In an isolated environment, with no oversight, unfortunate incidents can occur.<sup>18</sup>

The training of commanders should include not only Army values or traveling with a battle buddy, but also how to ensure that the military environment does not have training bases lacking adequate supervision or relatively isolated areas where privacy is available, such as picnic tables in an unlighted area. Commanders also need to promote responsible alcohol use. Training must empower potential victims to report as well as highlight the previously discussed concepts of how predators select, screen, or groom victims.

Some advocacy groups have said that rape is an occupational hazard of being in the service. That can best be changed by being aware of and altering the environmental hazards of isolation. After the Aberdeen Proving Ground scandal in the late 1990s, the Army moved to change the isolation of Edgewood Arsenal to provide more oversight. Lights above park benches and more monitoring of barracks rooms are also worthwhile considerations.<sup>14</sup>

Another underused strategy is educating men. The author's experience includes countless situations when the male perpetrator was unaware of the issue of competent consent, especially in date rape. They had drinks, he thought the sex was consensual, and now he is facing 5 years in prison and the end of his military career. Education for men could draw on what has been used on some college campuses. Posters, similar to those endorsing suicide prevention, could be posted with these words: "Avoid the police knocking on your door in the morning" or, "Avoid jail; save your career; respect her when she mumbles or screams 'no,' or is too drunk to consent."

There are no easy answers here. The military has been grappling with the solution to sexual assault issues. But the environmental context could be explored in more detail, as happened after the Aberdeen Proving Ground scandals.

## CONCLUSION

This chapter has covered the prevalence of sexual assault; patterns of sexual assault; short- and long-term reactions to rape; issues for the expert witness including intoxication and rape-trauma syndrome;

and some prevention ideas. Clearly, sexual assault is an enormous problem, both within the military and the civilian world. The expert witness should be prepared to be part of a reasoned discussion.

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