



DEPARTMENT OF DEFENSE
SEXUAL ASSAULT PREVENTION
AND RESPONSE OFFICE



Sexual Assault Reporting and Retaliation

NOVA Conference, August 2018

Rachel Thanos
DoD SAPRO, Victim Assistance Program Analyst

Brian Benner
DoD IG, Supervisory Investigator, Whistleblower Reprisal
Investigations

www.sapr.mil

Learning Objectives



Objective 1:

Understand how military sexual assault victims perceive and experience retaliation associated with reporting sexual assault

Objective 2:

Describe the support and resources available to sexual assault victims in the Department of Defense who allege retaliation after reporting sexual assault

Objective 3:

Explain the role of the DoD Inspector General Whistleblower Reprisal Directorate and understand how they investigate cases of retaliation involving sexual assault victims

- In today's session I will provide some background information on our past and current understanding of instances of retaliation experienced by sexual assault victims
- Then I will discuss some of the support and resources available through the DoD's SAPR program and other DoD resources, as well as talk through the Department's Retaliation Prevention and Response Strategy and Implementation Plan
- Brian will finish by sharing the work of that he and his team do and what their processes look like

Agenda



- DoD Retaliation Prevention and Response Strategy
- Resources
- Whistleblower Reprisal Investigations

2016 WGRA: Total DoD Rates



Perceived Professional Reprisal/ Ostracism/ Maltreatment

In Fiscal Year 2016:

- **4.3%** of active duty women and **0.6%** of active duty men indicated experiencing some kind of sexual assault in the past year
- About **43%** of these women and **17%** of these men indicated on the survey they reported their sexual assault experience to a DoD authority

*Totals do not match due to rounding; Margins of error range from $\pm 4\%$ to $\pm 14\%$

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Survey data allows us to estimate the extent of those perceiving retaliation because they reported a sexual assault.

As you can see with the 2016 data, the numbers have remained fairly consistent with 58% of victims indicating they experienced a negative behavior

- You will also notice that almost a third of individuals indicate that they experienced a behavior, but it did not meet legal criteria

QUESTION FOR AUDIENCE: What have you seen? Have you worked with victims who have experienced any of these behaviors?

2014 data:

62% any type of retaliation

53% social retaliation

35% Adverse administrative action

32% professional retaliation

2016 WGRA: Total DoD Rates



To meet criteria as a form of “retaliation,” the respondent indicated:

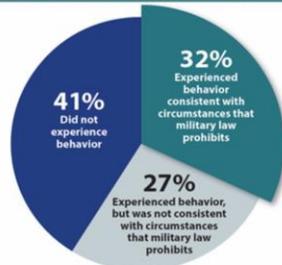
- The behavior (reprisal, ostracism, maltreatment)
- The “retaliator” knew or suspected the respondent made a protected communication
- The misconduct was done to interfere or deter the respondent from reporting/participation in the justice system

Statistical Highlights



Workplace Gender Relations Survey of Active Duty Members

Perceived Professional Reprisal & Perceived Ostracism/Maltreatment



Would Recommend Making a Report



67% of women who made a report indicated they would recommend others report a sexual assault



59% of men who made a report indicated they would recommend others report a sexual assault

- DoD SAPRO strives to meet the needs of victims by constantly evolving and growing the support services available through the Safe Helpline.
- For example, two areas that are of particular focus for DoD SAPRO are survivors who experience Reprisal/Ostracism/Maltreatment and Military men who have experienced sexual assault
- These two areas of focus have informed several new Safe Helpline initiatives that we will discuss today (retaliation reporting and Men's SHR sessions) and illustrates how Safe Helpline services are informed by the data we collect



DoD Retaliation Prevention and Response Strategy

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These data show us that victims experiencing negative outcomes after reporting sexual assault is an issue that needs to be addressed—we will talk now about the strategy that provides the framework for how the Department will address this issue.

QUESTION FOR AUDIENCE: How many of you are familiar with the DRPS and/or implementation plan?

Overview



The Department views retaliation, associated with crime and misconduct reporting, as a significant concern.

With release of FY14 Annual Report, then-SecDef Carter directed the Department to ‘develop a comprehensive strategy to prevent retaliation against SM who report or INTERVENE on behalf of a victim in instances of sexual assault and other crimes”

Ultimately this becomes a readiness issue-if people don’t feel safe reporting sexual assault or intervening to prevent sexual assault, we will never achieve our desired end state. And, as we know sexual assault has a deleterious effect on readiness so we must take this on to ensure that we have a ready, fighting force.

Strategy is comprehensive and goes beyond what was mandated in the FY16 NDAA.

Overview



The Department is committed to:

- Eliminating retaliatory behavior
- Improving resources for reporters of retaliation
- Providing tools for commanders, supervisors, and peers to prevent and respond to retaliation against those who report violations

Overview



DoD Retaliation Prevention and Response Strategy (DRPRS):

- Addresses retaliation against Active Duty, Reserve, or National Guard Service
- Applies to reporting sexual assault or sexual harassment
- Applies to Service member bystanders/witnesses and first responders

Overview



DRPRS was signed by the Secretary of Defense in April 2016. Implementation actions extend through 2019.

DoD Retaliation Prevention and Response Strategy



Five Focus Areas:

- Standardizing definitions
- Improving data collection and analysis
- Streamlining investigation and accountability efforts
- Strengthening reporter protections
- Creating a culture intolerant of retaliation

Implementation plan released January 2017,
available on www.sapr.mil.

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These core pieces were identified as areas of focus to assist in addressing retaliation

- You will notice they all build on each other
- Standard definitions and better data collection are necessary to better understand the experiences and dynamics of different retaliatory behaviors

But just understanding is not enough, we want to create a safe space for survivors to come forward and report so we need to ensure that reporters are protected and we are able to investigate and hold people accountable for engaging in retaliatory behaviors.

Ultimately, we want to prevent these behaviors from occurring in the first place, and that comes down to creating a culture intolerant of retaliation.

Question: Is there anything from this list of focus areas you think we missed or should have addressed here?

Retaliation Examples



- A Service member stated that he was unwillingly relocated to a different base and was not believed by people in his unit when he reported that he had been sexually assaulted.
- A Service member stated she was ostracized by co-workers and Chain of Command, and felt that people were speaking negatively about her because she filed a report. Members of her Chain of Command were friends with the perpetrator, making her uncomfortable in the workplace.

These are some qualitative examples of retaliation concerns shared by callers to the Safe Helpline. You may notice that not all of these may meet the definitions of retaliatory behavior, but all have had an impact on the victim.

Retaliation Examples



- A Service member stated that she was afraid to report because the perpetrator is currently deployed with the victim and she does not want to disrupt unit cohesion.
- A Service member called in distress and stated that she lost rank as a result of filing an Unrestricted report.



DoD Resources for Sexual Assault Victims Who Experience Retaliation

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We are still in the process of fully developing the full spectrum of support and resources available to victims, but here is a quick overview of some of the resources and tools we currently have in place. As the Implementation Plan is fully executed, additional processes will come into place.

QUESTION FOR AUDIENCE: what resources are you aware of that can be leveraged to support sexual assault victims who experience retaliation?

Retaliation Resources



Per DoDI 6495.02, Victims can seek assistance on how to report retaliation by requesting assistance from:

- **Sexual Assault Response Coordinator (SARC)**, includes SARC on a different installation if needed
- **Sexual Assault Prevention and Response Victim Advocate (SAPR VA)**
- **Special Victims' Counsel (SVC)/Victim's Legal Counsel (VLC)**

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QUESTION FOR AUDIENCE: Does anything on this list surprise you? Were you familiar with all of these resources? Do you know how to access them on your base?

Important to note that can go outside SAPR/Military Chain of Command if needed to get assistance

There are a number of resources who can provide information and support to a victim, but not every resource can assist with every concern. Generally speaking:

Acts of reprisal should go to IG/Whistleblower Protection- Brian will talk more about this process

Criminal acts w/ an Unrestricted report go to MCIO

Maltreatment/Ostracism go to Command (but can be reported to DoD IG as well)

Retaliation Resources



- **Immediate commander or commanding officer outside their chain of command**
- **DoD IG/Service IG Whistleblower Protection**
- **Commander**, if requesting an Expedited Transfer, safety transfer and/or MPO/CPO
- **Service Military Equal Opportunity Representative**, if sexual harassment

Retaliation Resources



- **General Officer/Flag Officer**, if action involved administrative separation of victim within 1 year of final disposition of their sexual assault case or if the victim believes reporting a sexual assault/seeking mental health treatment for sexual assault impacted their military career
- **Military Criminal Investigative Organization (MCIO)**, if act is criminal in nature
- **Legal personnel**, including: trial counsel, VWAP, and/or legal assistance attorney (for first responders, SH complainants, witnesses and bystanders)
- **Article 138** (individual complaint against commander)

Retaliation Resources: SAPR Program



DD Form 2910-Victim Reporting Preference Statement:

- Explains reporting options, rights and resources available to victims
- Section d (6): “I understand that if I experience coercion, retaliation, reprisal or ostracism from my supervisors or peers, I can report it to the SARC, Special Victims’ Counsel, my commander, Victim Witness Assistance Program personnel or my Service Inspector General.”

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How can we be sure that victims of sexual assault understand they have protections from experiencing retaliatory behavior? From the very beginning we include it on the DD Form 2910 which all victims will sign when making a report. Opportunity for SARC/VA to check in with the victim about their experiences and make sure they are aware of resources and rights for any subsequent behavior

QUESTION FOR AUDIENCE: Do victims have questions about this question when you review the form?

Retaliation Resources: SARCs and VAs



SARCs and SAPR VAs can provide an overview of the types of retaliation and the investigative entities:

- Will often recommend consultation with a SVC, VLC, or a legal assistance attorney to gather more information
- Will also explain that an Inspector General (IG) can take a retaliation allegation at any time during the process

Once again, SARCs serve as the 'center of gravity'

- They don't provide ALL the information to the victim, but help them get connected with other resources.

Once the DoD RPRS has been implemented, Sexual Assault Response Coordinators (SARCs) and SAPR Victim Advocates (VAs) will provide comprehensive support to individuals alleging retaliation

SARCs and SAPR VA's will not be expected to advise individuals on reporting options

VAs may not have as much knowledge and experience with this issue, so they can get support from the Senior SARC on this, just as they would any other case-related issue

Retaliation Resources: SARCs and VAs



Senior installation SARCs (or Service Equivalent) will:

- Discuss cases of Retaliation with command at the monthly Case Management Groups (CMGs)
- Record reports of retaliation
 - Currently a manual process
 - Will be automated for the Defense Sexual Assault Incident Database (DSAID) once developed

Retaliation Resources: Case Management Meeting



Case Management Group (CMG)
meetings review allegations of retaliation
from victims who wish to disclose them

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Need to have a mechanism to track these reports and ensure they are being heard and addressed by those who have the power to address the concerns.

Because there are different resources present, great opportunity to develop a way forward.

Also opportunity for Victim's CO to get support/info (CAPT Ulmer example)

From Data call:

67 people requested their retaliation allegations be discussed at CMGs in FY16

61 allegations by sexual assault victims

6 allegations by witness/bystanders and first responders

Misconduct alleged:

35 ostracism and/or cruelty/oppression/maltreatment

20 reprisal

2 other criminal offenses

10 combination of above offenses

Follow-on actions:

Taken for 61 of the 67 retaliation allegations+

Nearly two-thirds (60 percent) of all allegations received multiple actions

*Source: USD(P&R) Data Call/Data Cleaned and Standardized Across Services by SAPRO

+ Six allegations could not be acted upon because the victim did not want action (1), the retaliator was unknown (1), the allegation did not meet the elements of retaliation (2), and the action was pending (2)

Retaliation Resources: Case Management Meeting



- CMG meetings occur monthly throughout the Services, chaired by senior installation commander
- CMG Chair will poll the group membership to see if any victims have disclosed a retaliation allegation for the group to consider
- All allegations are reviewed and forwarded to the appropriate authority (e.g., criminal investigators, inspector general, equal opportunity personnel)

Retaliation Resources: DoD Safe Helpline



The DoD Safe Helpline is a confidential worldwide service.

- It provides anonymous, live, one-on-one crisis intervention, support, information and resources to members affected by sexual assault in the DoD community.

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QUESTION FOR AUDIENCE: Why do you think the Safe Helpline would be an especially beneficial resource for a sexual assault victim who is experiencing or has concerns about retaliation?

Safe Helpline launched in February of 2011 and has helped 126, 795 directly and more than 2.17 million website visitors

Safe, anonymous way to get information for people who are not ready or don't feel comfortable access info and support through SAPR Program/CoC

Because of this, SHL is a great resource for individuals who experience retaliation and are unsure what to do

Retaliation Resources: DoD Safe Helpline



Services include:

- Phone and Online Helpline
- Online responder database and text for info
- Safe HelpRoom; anonymous, online group peer support in a safe and moderated environment
- Safe Helpline app; includes access to self-care plans, responder database, online helpline, Safe HelpRoom and phone hotline using VoIP technology

Retaliation Resources: DoD Safe Helpline



Retaliation Support includes:

- Specialized training for SHL staff
- Ability to share retaliation concerns directly with DoD SAPRO anonymously
- Direct link to IG website on <https://safehelpline.org/>

QUESTION FOR AUDIENCE: Why do you think the Safe Helpline would be an especially beneficial resource for a sexual assault victim who is experiencing or has concerns about retaliation?

Safe Helpline launched in February of 2011 and has helped 126, 795 directly and more than 2.17 million website visitors

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<https://safehelpline.org/>

The screenshot shows the homepage of the Safe Helpline website. The main heading reads "SEXUAL ASSAULT SUPPORT FOR THE DOD COMMUNITY. TALK TO SOMEONE NOW. ANONYMOUS. CONFIDENTIAL. 24/7." Below this, there are four navigation buttons: "LIVE CHAT", "1-877-969-5847", "HOW IT WORKS", and "REPORT RETALIATION". A blue callout box with a white border points to the "REPORT RETALIATION" button. The callout box contains the text: "RETALIATION INFO: Selecting 'Report Retaliation' provides information on Retaliation and how to report". The website also features a world map at the bottom and several logos in the top right corner, including the Department of Defense and Department of Justice seals.

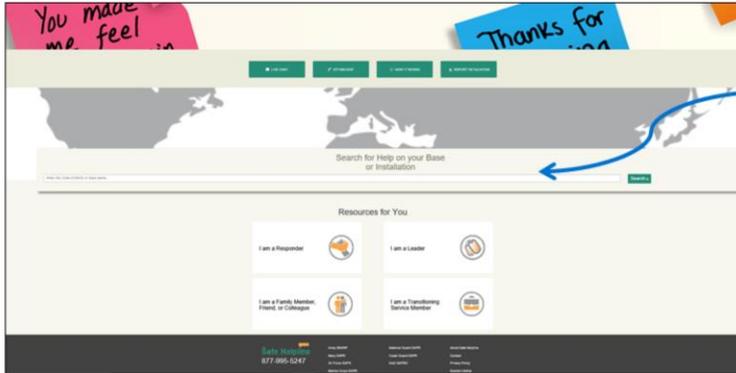
RETALIATION INFO:
Selecting "Report Retaliation" provides information on Retaliation and how to report

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Ways to get support around retaliation concerns:

- Military Feedback form goes to SAPRO-can include as much or as little info as they like
- Link to DoD IG to make a complaint online
- Local search to find service providers, including local SARC to get more info



SARC INFO:

- Enter your zip code here to find your SARC



Contact SAPRO:

sapro@wso.whs.mil

Learn More:

www.sapr.mil

Get Help:

877-995-5247

<https://safehelpline.org>



Now, we just reviewed some of the support personnel and mechanisms in place for victims through the SAPR program

- I'm now going to turn things over to my colleague Brian Benner from DoD IG to talk about the work that he and his team do



August 2018

INSPECTOR GENERAL
U.S. Department of Defense



INTEGRITY ★ EFFICIENCY ★ ACCOUNTABILITY ★ EXCELLENCE

BRIAN S. BENNER
SUPERVISORY INVESTIGATOR,
WHISTLEBLOWER REPRISAL INVESTIGATIONS, DOD OIG

NOVA CONFERENCE, JACKSONVILLE

DoD's WHISTLEBLOWER PROTECTION PROGRAM

- DoD OIG has overall responsibility for the Department's whistleblower protection program, which covers members of the armed forces, appropriated and non-appropriated fund employees, and DoD contractor employees.
- In general, DoD OIG handles all reprisal complaints filed by DoD contractors and non-appropriated fund employees. DoD OIG also handles many reprisal complaints filed by appropriated fund employees and oversees the rest.
- The Service IGs handle the vast majority of military reprisal complaints. However, DoD OIG handles all reprisal complaints that involve allegations of sexual assault. By statute, DoD OIG oversees all of them.



DoD OIG ORGANIZATIONAL CHART



SA CASE REFERRALS

- DoD Hotline:
 - DoD Hotline Investigators review complaint.
 - Referral ALL reprisal complaints to WRI.
 - ALL SA reprisal cases get referred directly to me and/or the other SA Supervisory Investigator.
- Service and Other DoD IG, DoD Notifications:
 - Required to Notify WRI Oversight Branch of ALL reprisal Complaints.
 - SA reprisal complaint sent directly to me and/or the other SA Supervisory Investigator for review.
 - Will take over ALL cases involving Complainant's who are victims of SA.
- Cannot investigate anonymous complaints;
 - We maintain confidentiality, but...
 - We must inform Subject(s) of the allegation so they can testify about the action.



AFTER REFERRAL, WE DETERMINE:

- Was an unfavorable personnel action taken or threatened against him/her, or was a favorable personnel action withheld or threatened to be withheld from him/her?
- Did the person who took, threatened, or withheld the action know about or suspect her/him report or testimony?
- Is there reason to believe the action was taken, threatened, or withheld in retaliation for his/her report, participation, or testimony?



MILITARY WHISTLEBLOWER PROTECTION

[10 U.S.C. 1034](#) prohibits taking (or threatening to take) an unfavorable personnel action, or withholding (or threatening to withhold) a favorable personnel action, as a reprisal against a member of the armed forces for making, preparing to make, or being perceived as having made or prepared to make a protected communication.

See *The Guide to Investigating Military Whistleblower Reprisal and Restriction Complaints* at:

<http://www.dodig.mil/programs/whistleblower/ioguide.html>



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We are using 10 U.S.C. 1034 as the example to discuss our program. Other applicable statutes are 10 U.S.C. 1587 for Non-Appropriated Fund Employees, 5 U.S.C. 2302 for Appropriated Fund Employees, and 10 U.S.C. 2409 for Contractor Employees. Presidential Policy Direction 19 authorizes investigations related to intelligence community Government Employees and Contractors and includes actions taken against Security Clearances. If anyone has specific questions, please feel free to ask me.

MILITARY WHISTLEBLOWER PROTECTION ACT

- Restriction § 1034(a)
 - No person may restrict a member of the armed forces in (lawfully) communicating with a Member of Congress or an Inspector General.
- Retaliatory personnel actions § 1034(b)
 - No person may take (or threaten to take) an unfavorable personnel action, or withhold (or threaten to withhold) a favorable personnel action, as a reprisal against a member of the armed forces for making preparing to make or having been perceived to have made or prepared to make a protected communication.



2 KINDS OF PROTECTED COMMUNICATION:

FIRST - Any **lawful** communication to a Member of Congress or an Inspector General (IG)

- “How’s the weather Representative Cummings?”
PROTECTED
- “Nice hair cut IG, LTC Joey Joe-Joe”
PROTECTED
- “Allow me to share this TS information in your open office space without confirmation you have the proper clearance”
NOT PROTECTED

§1034 and DoDD 7050.06



2 KINDS OF PROTECTED COMMUNICATION CONT'D

SECOND - Any communication to a recipient listed on the next slide that the member reasonably believes evidences:

- (A) A violation of law or regulation, including a law or regulation prohibiting rape, sexual assault, or other sexual misconduct, sexual harassment or unlawful discrimination.
- (B) Gross mismanagement, a gross waste of funds, an abuse of authority, or a substantial and specific danger to public health or safety.
- (C) A threat by another member of the armed forces or employee of the Federal Government that indicates a determination or intent to kill or cause serious bodily injury to members of the armed forces or civilians or damage to military, Federal, or civilian property.
- (D) Testifying in or assisting in an investigation or proceeding related to a PC
- (E) Filing or causing to be filed, participant in, or otherwise assisting in a reprisal investigation



AUTHORIZED RECIPIENTS OF PROTECTED COMMUNICATIONS

- DoD audit, inspection, investigation, or law enforcement organization
- Any person or organization in the chain of command
 - Defined in DoDD 7050.06
- Any other person or organization designated pursuant to regulations or other established administrative procedures to receive PCs
 - Example, SARC, SARP VA, EEO
- A court-martial proceeding



OTHER STATUTE PROTECTED DISCLOSURES

- All other whistleblower statues relevant to DoD use “Protected Disclosure”
- Not all are created equal, for instance:
 - Under 10 U.S.C. 1587, a non-appropriated fund instrumentality employee (i.e. bar tender at the officer’s club, or child care provider at the base day care) can disclose “mismanagement” to ANYONE
 - Under 10 U.S.C. 2409, Contractor employees are more restricted; gross mismanagement related to a DoD contract and can only be too certain officials (Contractor Managers, DoD Officials with responsibility to oversee the Contract.



PERSONNEL ACTION (PA)

- Any action taken on a Service member that affects, or has the potential to affect, that member's current position or career, including:
 - Promotions
 - Disciplinary/corrective actions
 - Transfers (expedited) or reassignments
 - *Have substantiated reprisal against officials for recommending that an Exp. Transfer be denied.*
 - Performance evaluations
 - Decisions on pay, benefits, awards, training, relief and removal
 - Separations or discharge
 - Referrals for Mental Health Evaluation
(DoDD 7050.06)

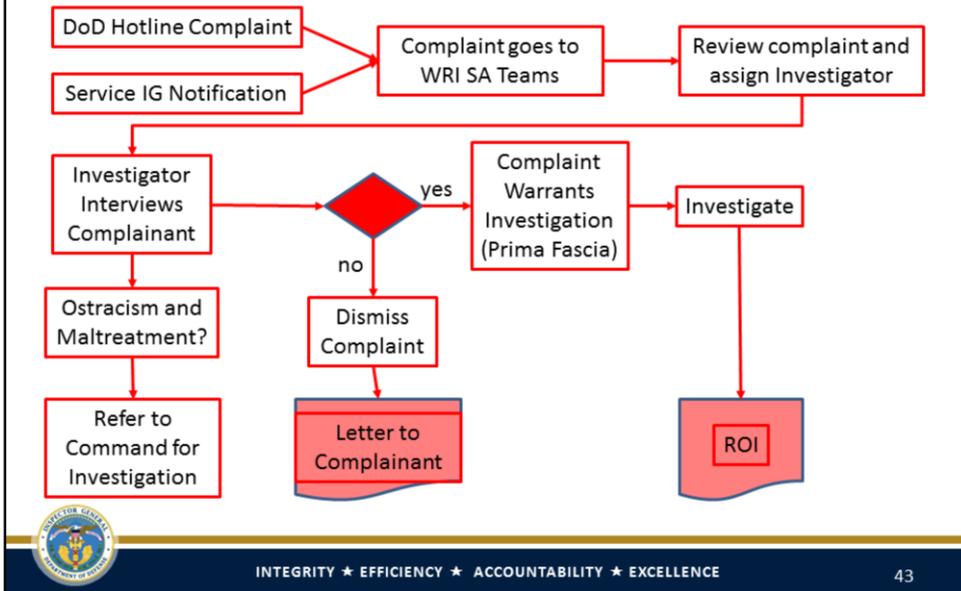


COUNSELING STATEMENTS

- Have substantiated that counseling statements were given in reprisal
 - Situationally dependent
 - *3 ludicrous counselings given one day after protected communication?-yes*
 - *1 given after being late for formation following verbal warnings?-probably not (we'll still assess it.)*
 - Boiler plate language warning about repercussions of continued misconduct is not a threat



WRI PROCESS OVERVIEW:



Complaint made on DoD Hotline Website or over the phone
Complaint made to Service or other DoD IG

SA Reprisal complaints referred to me,
I review complaint and assign an investigator,
Investigator will interview Complainant (most often sworn and recorded)
Based on information provided we determine if complaint warrants investigation.

INVESTIGATION TRIGGERED WHEN:

Viewing the complainant's assertions in the light most favorable to the complainant, we analyze the following factors:

- Timeliness of filing
- Has the complainant alleged that he or she made or was preparing to make a protected communication, or was he or she perceived as having made a protected communication?
- Has the complainant alleged that an unfavorable personnel action was taken or threatened against him or her, or was a favorable personnel action withheld or threatened to be withheld from him or her?
- Does the complaint, as supplemented by an interview of the complainant, support an inference that the Subject had knowledge of the protected communication/disclosure or perceive the complainant as making or preparing to make a protected communication/disclosure?
- Do the facts as set forth in the complaint and clarified in an interview of the complainant suggest a causal connection between the protected communication/disclosure and the personnel action?



ELEMENTS OF PROOF FOR MILITARY WHISTLEBLOWER REPRISAL

- Protected Communication: Did Complainant make or prepare to make a protected communication, or was Complainant perceived as having made or prepared to make a protected communication?
- Personnel Action: Was an unfavorable Personnel Action taken or threatened against Complainant, or was a favorable personnel action withheld or threatened to be withheld from Complainant?
- Knowledge of Protected Communication: Did the responsible management official(s) have knowledge of Complainant's protected communication(s) or perceive Complainant as making or preparing protected communications?
- Causation: Would the same Personnel Action(s) have been taken, withheld, or threatened absent the Protected Communications(s)?



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Is an evaluation that is not the absolute best an unfavorable personnel action?

CAUSAL CONNECTION:

- Timing
 - Protected Communication before the Personnel Action
- Given/Stated Reason
 - What explanation did the Subject give?
- Motivation
 - Why would the protected communications have motivated the subject to take the action?
- Disparate Treatment
 - Where other non-whistleblowers treated differently?



Given reason – We will ask the Complainant if the Subject told them why they were taking the action

Motivation – Must be related to the protected communication, motivation to maintain good order and discipline is a good thing and not reprisal. The unit being subjected to months of investigation which frustrates the Subject are indicative of motivation.

Disparate Treatment- SA Victim going through depression fails to pass physical training test so Commander has to put her on the list of Airmen to attend mandatory PT – But, Complainant is aware of other Airmen who failed PT and were not put on mandatory PT list.

WE DO, AND WE DON'T

- We Do:
 - Believe the Complainant
 - Check each other for biased thinking
 - Speak respectfully of everyone, even when no one else is around
 - Respect the trauma and work with Complainants to get what we need (not our way or the highway, but we do need cooperation.)
- We Don't:
 - Investigate the sexual assault
 - Ask about the assault unless necessary.
 - Judge Victims



2014 NDAA SEXUAL ASSAULT PROVISIONS

- Clarification of § 1034 that protected communication includes reporting rape, sexual assault, or other misconduct in violation of the Uniform Code of Military Justice: WRI updated directive & guidance
- Expansion of definition of retaliation to include ostracism & maltreatment:
 - Service Secretaries issued regulations; ostracism & maltreatment issues to be handled at command level
 - WRI works with the Sexual Assault Prevention & Response Office to provide subject matter expertise on retaliation as defined under 10 U.S.C. § 1034 and has launching a web page focused on retaliation for reporting sexual assault.
 - <https://www.safehelpline.org/anonymous-feedback.cfm> with links to Defense Hotline for retaliation.



WHAT'S SPECIFIC TO SEXUAL ASSAULT CASES?

Did victim report or prepare to report, or was he/she perceived as reporting or preparing to report a [sexual assault](#) to any of the following?

- a Sexual Assault Response Coordinator (SARC), Sexual Assault Prevention & Response Victim's Advocate (SAPR VA), or JAG office
- health care personnel
- a member of Congress
- an Inspector General
- a member of a DoD law enforcement organization such as CID, NCIS, OSI, or DCIS
- any person or organization in your chain of command
- a court-martial proceeding,
- any other person or organization designated or other established administrative procedures to receive such communications. Domestic violence reporting to FAP.

Or did she/he testify or prepare testimony as a witness in an investigation of or court martial related to a rape, sexual assault, or other sexual misconduct?

Or is he/she a Special Victim's Counsel who fulfilled their duty in relation to a sexual assault?



THINGS TO KEEP IN MIND

§ 1034 cases require a preponderance of the evidence to show that the personnel action would have been taken, withheld, or threatened absent the protected communication.

Actions taken in response to collateral misconduct and/or victim's needs or impaired ability to fulfill his/her duties are not usually reprisal.

- Mental health evaluations
- Expedited transfers
- Medical evaluation boards



SOME NUMBERS

- Last year we had 6 investigators, 1 Senior Investigator and 1 Supervisory Investigator (me) for 57 intakes and 30 investigations.
- Starting in approx. Sept 2017 Mr. Fine realigned 16 FTEs, 7 of which WRI used to create another SA team. Now we have 2 Supervisors, 2 Senior Investigators, and 10 investigators.
- Case load down to 7 intakes, and 16 investigations as of July 2018.



TRENDS?

- Probable Cause
 - Example
- “Retaliatory” SA Allegations
 - Complainant A lodges SA complaint and shortly there after Complainant B lodges SA complaint.
- Men as victims
- Broadening of the term to include behavior that in the past was considered jocularity.
 - Testicular taps
 - Butt grabbing



DOD DIRECTIVE 7050.06

MILITARY WHISTLEBLOWER PROTECTION

- Implements policy for military whistleblower protection under Section 1034
- One-year filing deadline
 - No reprisal investigation is required if a complaint is filed more than one year after complainant became aware of the subject personnel action (no time limit for restriction)
 - May investigate nonetheless if compelling reasons for the delay in submission



MANAGE EXPECTATIONS

- The applicable statute determines if a communication/disclosure is protected
 - We give the broadest interpretation, but there are limits
- We are not in the “Pound of Flesh” business
 - We can only recommend actions to make Complainants whole and hold wrong doers accountable.
 - Service and DoD Officials determine the appropriate corrective actions.
- Admiral Brian Losey...



FURTHER DISCUSSION

- Spring/Summer 2016, DoD OIG, Administrative Investigations, WRI, created a team dedicated to investigating all reprisal cases involving sexual assault allegations.
- Case load is at most 5 per investigator.
- Questions?
- How can WRI help you?



FURTHER QUESTIONS?

Brian S. Benner & Ashleigh Thompson
Supervisory Investigators
Whistleblower Reprisal Investigations
DoD Office of the Inspector General

Brian.Benner@dodig.mil

Office: 703-69-3519;
DSN: 499-3519;

Ashleigh.Thompson@dodig.mil

Office: 703-699-5618
DSN: 499-5619

Nilgun.Tolek@dodig.mil

Director, WRI

Office: 703-602-0095

DSN: 332-0095

