



Investigative

Policy &

Oversight

**Evaluation of Sexual Assault, Reprisal, and Related
Leadership Challenges at the United States
Air Force Academy**

Report Number IPO2004C003

December 3, 2004

**Office of the Inspector General
of the Department of Defense**

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Acronyms

AFGC	Air Force General Counsel	LtGen	Lieutenant General
AFI	Air Force Instruction	MajGen	Major General
AFIA	Air Force Inspections Agency	MCIO	Military Criminal Investigative Organization
AFOSI	Air Force Office of Special Investigations	MTL	Military Training Leader
AFMD	Air Force Mission Directive	OCR	Organizational Change Request
AFPD	Air Force Policy Directive	ODS	Officer Development System
AFSG	Air Force Surgeon General	PAT	Process Action Team
AFLSA	Air Force Legal Services Agency	P.L.	Public Law
AOC	Air Officer Commanding	POC	Point of Contact
ART	Academy Response Team	SAF/IG	Air Force Inspector General
BrigGen	Brigadier General	SANE	Sexual Assault Nurse Examiner
CASIE	Cadets Advocating Sexual Integrity and Education	SART	Sexual Assault Response/Resource Team
CCD	Center for Character Development	SASB	Sexual Assault Services Branch
CCQ	Cadet Charge of Quarters	SASC	Senate Armed Services Committee
CRO	Component Responsible Official	SJA	Staff Judge Advocate
DETCO	Detachment Commander	SPOI	Security Police Office of Investigations
DFBLC	Cadet Counseling and Leadership Development Center	TRW	Training Wing
DoDD	Department of Defense Directive	UCMJ	Uniform Code of Military Justice
DoDI	Department of Defense Instruction	USAFA	United States Air Force Academy
DoD IG	Department of Defense Inspector General	USAFAI	United States Air Force Academy Instruction
DUI	Driving Under the Influence	VMI	Virginia Military Institute
GAO	U.S. General Accountability Office	VWAP	Victim and Witness Assistance Program
Gen	General		
IPO	Investigative Policy and Oversight		
LRO	Local Responsible Official		

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Executive Summary

Who Should Read This Report and Why? Members of Congress; the Secretaries of Defense and Air Force; other senior DoD and Air Force leaders/managers; and others interested in the United States Air Force Academy (USAFA), sexual assaults, reprisal, or related leadership challenges in the military should read this report.

Background. In January 2003, the Secretary of the Air Force and Chief of Staff received allegations of widespread sexual assault problems at the Air Force Academy and immediately began an investigation. Subsequently, the news media began reporting that numerous female cadets were sexually assaulted while attending USAFA; that Air Force management generally “covered-up” the crimes and did not punish the offenders; and that female cadets were frequently punished for reporting sexual assaults. At Secretary of the Air Force direction, the Air Force General Counsel (SAF/GC) established a high-level working group, assessed complaints about USAFA processes related to sexual assault reporting, and issued a report on June 17, 2003. Based on preliminary input from the working group, the Secretary of the Air Force adopted an “Agenda for Change” and began corrective actions in May 2003. Subsequently, at congressional direction, the Secretary of Defense appointed a seven-member panel headed by former Congresswoman Tillie K. Fowler to investigate reports that at least 56 cadets had been sexually assaulted at USAFA since 1993. The Fowler Panel issued its report on September 22, 2003. Among other things, the Fowler Panel held that the Air Force Working Group may have shielded senior Air Force management from responsibility for USAFA sexual assault problems, and their accountability should be assessed. The Secretary of the Air Force has continued actions in response to both the working group and Fowler Panel reports.

On February 27, 2003, recognizing that the Secretary of the Air Force had “launched an investigation” the Chairman of the Senate Armed Services Committee requested that we “review the work being done by the Air Force and others and provide . . . findings and conclusions to us at the appropriate time. We also would ask you to be prepared to counsel us and other members of the Committee on your findings and conclusions.”

Our objectives for the review evolved over time in response to the previous studies and agreements with congressional members and the Secretary of Defense. Ultimately, we focused on: (1) quality and timeliness of criminal investigations conducted on alleged sexual assaults involving USAFA cadets over approximately 10 years beginning with 1993; (2) thoroughness and adequacy of the Air Force Working Group work, as impacted by the Fowler Panel work; and (3) factual findings associated with individual responsibility for sexual assault problems at USAFA. In accordance with the Inspector General’s statutory duty to “keep the head of [the Department of Defense] and the

Congress fully and currently informed,” between March 2003, and July 2004, we met with or wrote the Chairman or his staff more than 12 times to keep the Committee apprised on our evaluation work, as well as providing regular briefings to the Secretary of Defense. As reported to the Committee, our work included assessing “the ‘root’ causes of the cultural climate underlying the sexual assault and reprisal allegations”¹

Results. We consider the overall root cause of sexual assault problems at the Air Force Academy to be the failure of successive chains of command over the last 10 years to acknowledge the severity of the problems. Consequently, they failed to initiate and monitor adequate corrective measures to change the culture until very recently.

Although we identified limited exceptions, overall, we found that the Air Force Office of Special Investigations (AFOSI) investigated alleged sexual assaults thoroughly and timely once the complaints were reported for investigation. On average, however, more than 4 months elapsed between alleged sexual assault incidents and reporting to AFOSI, which adversely impacted ability to collect physical and testimonial evidence and prepare prosecutable cases. Over the last 3 years, the delay increased to more than 7 months. The delays were inherent in the confidential sexual assault reporting program that USAFA implemented unofficially in 1993, and formalized in 1997. Our report includes recommendations to address the limited exceptions that we found in AFOSI investigative quality.

We did not find evidence that the Air Force Working Group intentionally shielded Air Force Management from having to accept responsibility for sexual assault problems at USAFA.² However, both the Air Force Working Group and Fowler Panel were subject to strict time limits and both identified areas requiring further study in completing their work. Neither study fully assessed how it was possible that AFOSI, which had independent investigative authority prescribed in statute and confirmed in both DoD and Air Force policy, was hindered in exercising its authority. AFOSI Commanders objected to the academy’s confidential sexual assault reporting process from the time they learned in early 1996, that it might be withholding crime reporting. They objected to both the USAFA Superintendent and their bosses, three consecutive Air Force Inspectors General. Further, one AFOSI Commander solicited assistance in resolving the matter from the Air Force Judge Advocate General in 1996, and from the Air Force General Counsel in 1999. However, an Air Force Inspector General, Air Force Surgeon General and Air Force Judge Advocate General had acquiesced in the Academy’s confidential reporting program in 1996, without requiring oversight to ensure the program worked. As a result, a program designed on the concept that “. . . we couldn’t tell the OSI not to investigate and that’s why we needed a system where they didn’t find out . . .” was allowed to continue for approximately 10 years.³

The AFOSI Commanders should not have allowed their objections to be ignored without elevating the matter to the Secretary of the Air Force. However, they would have had to elevate the matter through their immediate superior, the Air Force Inspector General, pitting them against their superior officer, as well as other more senior officers who were condoning and supporting the USAFA program. Our report recommends changing the current organizational structure to make the AFOSI Commander directly reportable to the

¹ May 2, 2003, Inspector General of the Department of Defense letter to Chairman, Senate Armed Services Committee.

² We did find that one working group member did not provide information on his substantial previous involvement with the issues to the working group, and another with substantial previous involvement with the issues was allowed to continue as a working group staff leader.

³ [REDACTED] Interview, p. 34

Secretary of the Air Force. We also recommend that the Secretary consider increasing military rank for the AFOSI Commander to put the position on equal footing with officers confronted during criminal investigations. We believe these changes are necessary to avoid command influence and interference in future criminal investigations. We also recommend the Department consider civilianizing the AFOSI Commander position to a member of the Senior Executive Service as an alternative.

To encourage sexual assault reporting, since 1993, USAFA has had an “amnesty” program to “forgive minor infractions” that a sexual assault victim or witness commits in connection with the sexual assault. Based on an Air Force Working Group recommendation, the academy developed “assured amnesty,” generally on a blanket basis for “infractions” that are “normally addressed through cadet discipline.” The intent was to assure cadet victims, up front, that their infractions would be forgiven so they would not be discouraged from reporting sexual assaults. However, as the Fowler Panel pointed out such blanket amnesty is contrary to policy at other Service academies and could lead to false sexual assault reporting. We agree. In addition, all academy “infractions” are, or can become, violations under the Uniform Code of Military Justice (UCMJ), and the UCMJ already has procedures for granting “immunity” from prosecution. The USAFA amnesty program duplicates, in principle, the “immunity” provisions included in the UCMJ. Some USAFA officials and cadets do not recognize the distinction between amnesty granted in sexual assault cases and immunity granted in UCMJ proceedings. Furthermore, USAFA cannot expect its youthful cadets, or the USAFA officials responsible for administering the program, to know or readily comprehend all individual “infractions” that USAFA “normally addresses” through the disciplinary system. The fact that a particular infraction is “normally” addressed through cadet discipline does not mean that it will be in every case. Cadets, therefore, will continue to be unable to anticipate whether a particular infraction will be considered for amnesty and, since an offense could be subject to amnesty in one case but not another, USAFA will not be able to ensure consistency in rendering discipline.

Furthermore, we are concerned about an inequity inherent in the current USAFA amnesty program. Under the USAFA amnesty program, an individual accused of committing a sexual assault and ultimately not convicted could still be punished for lesser UCMJ violations in which the individual participated equally with the victim and witnesses who have been given amnesty for the same violations. Such inequitable treatment would be contrary to fundamental fairness.

The Fowler Panel recommended that the Air Force adopt a clear policy to encourage sexual assault reporting, which provides for Commandant or Superintendent determinations on a case-by-case basis. The panel indicated that the determinations should be based on advice from the Academy Response Team and the Academy Staff Judge Advocate, and should occur after carefully considering many factors. According to the panel, these factors should include (1) the circumstances surrounding the alleged sexual assault, (2) the evidence supporting the sexual assault allegation, (3) the seriousness of the victim’s reported misconduct and its relationship to the sexual assault, and (4) the need to encourage victims now and in the future to report sexual assaults. We support the recommendation. In implementing it, however, USAFA should apply the coverage to all potential infractions, recognizing that they all are or can become UCMJ violations. USAFA should also ensure that its case-by-case decisions on whether to forgive offenses do not result in disparate punishments among all cadets who participated equally in the offenses.

Our report also includes recommendations dealing with shortcomings in the USAFA Victim and Witness Assistance Program.

Beginning in 1995, the GAO, the Air Force Working Group, the Fowler Panel and various individuals, as well as internal USAFA climate surveys and our own work on this project, identified problems at USAFA that were rooted in a problematic cadet subculture manifested by an unhealthy disregard for regulations and the law, to include prohibitions regarding alcohol consumption and consensual sex in dormitories, negative male attitudes and actions toward women constituting sexual harassment and even sexual assault, and cadet order and discipline significantly below the level expected at a premier military institution funded at taxpayer expense. Our report offers recommendations, anchored to the exemplary conduct required of all commanding officers and others in authority in the Air Force (Title 10 §8583), to help sustain the Air Forces efforts to correct those problems, including an oversight mechanism.

Assessing Responsibility. While the current Secretary of the Air Force has already, by his own congressional testimony, accepted both the responsibility and accountability for the situation at the Air Force Academy -- as “the captain of the ship”⁴ -- a number of other senior officials share responsibility for the USAFA confidential sexual assault reporting program, cultural problems, and the resulting consequences. The program created a unique reporting policy at USAFA, which differed from the rest of the Air Force, without approval of the Secretary of the Air Force. While the change in policy did not cause the sexual assaults, it contributed to cultural problems, kept the magnitude of the problems from being visible to USAF leadership, and prevented effective criminal investigations. The officials involved in the policy changes that contributed to the investigative and cultural problems are listed below. Their actions leading to our determinations are detailed in Part V.

- LtGen (Ret) Bradley C. Hosmer (USAFA Superintendent, Jun. 1991-Jun. 1994)

- LtGen (Ret) Richard T. Swope (Air Force Inspector General, Apr. 1996-Oct. 1998)
- LtGen Charles H. Roadman II (Air Force Surgeon General, Nov. 1996-Dec. 1999)
- LtGen (Ret) Tad E. Oelstrom (USAFA Superintendent, Aug. 1997-Jun. 2000)
- LtGen (Ret) Nicholas B. Kehoe (Air Force Inspector General, Oct. 1998-Aug. 2000)
- LtGen (Ret) Raymond P. Huot (Air Force Inspector General, Aug. 2000-Jan. 2004)
- MajGen (Ret) John D. Dallager (USAFA Superintendent, Jun. 2000-Apr. 2003)⁵

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⁴ Testimony of The Honorable James G. Roche, Secretary of the Air Force, before the Senate Armed Services Committee, September 30, 2003, at page 68:

“[Chairman] WARNER: Well, . . . if the old man, the captain is in the bunk getting needed rest and the ship goes aground, he accepts the accountability and the responsibility.

“[Secretary] ROCHE: Yes, sir.

“[Chairman] WARNER: And I think you’re stepping up to that.

“[Secretary] ROCHE: . . . I am the captain of the ship.”

⁵ The Secretary of the Air Force has already taken action against MajGen Dallager to address his contribution to the problems.

Our evaluation found that the below officials were not responsible for, and did not contribute to or abide, sexual assault problems at USAFA. When informed of the problems, they took appropriate action. For current (2003-2004) leadership, they took aggressive action from the time of the January 2003 notification of the problems. Recent evidence, that some senior officials may have been notified of sexual assault issues as early as July 2002, is still being assessed and could affect the conclusions regarding one or more of the individuals below. Of course, those ongoing investigative activities could also turn up new evidence concerning any other officer, whether in the civil service or uniformed service, associated with the Air Force's response to sexual assault problems at the United States Air Force Academy. However, we do not anticipate that the ongoing activity will affect the systemic findings or recommendations in this report.

- Gen Merrill A. McPeak (Air Force Chief of Staff, Oct. 1990-Oct. 1994)
- Michael B. Donley (Acting Secretary of the Air Force, Jan. 1993-Jul. 1993)
- Honorable Sheila Widnall (Secretary of the Air Force, Aug. 1993-Oct. 1997)
- Honorable Gilbert F. Casselas (Air Force General Counsel, Nov. 1993-Oct. 1994)
- MajGen Patrick K. Gamble (Commandant of Cadets, Jun. 1993–Nov. 1994)
- BrigGen John D. Hopper, Jr. (Commandant of Cadets, Nov. 1994-Jul. 1996)
- Gen Ronald R. Fogleman (Air Force Chief of Staff, Oct. 1994 to Aug. 1997)
- BrigGen Stephen R. Lorenz (Commandant of Cadets, Aug. 1996-Jun. 1999)
- Gen Michael E. Ryan (Air Force Chief of Staff, Oct. 1997-Sep. 2001)
- Honorable Jeh C. Johnson (Air Force General Counsel, Oct. 1998-Jan. 2001)
- Honorable Frederick W. Peters (Secretary of the Air Force, Aug. 1999-Jan. 2001)
- Dr. Lawrence J. Delaney (Acting Secretary of the Air Force, Jan. 2001-May 2001)
- BrigGen Mark A. Welsh III (Commandant of Cadets, Jun. 1999-Aug. 2001)
- Honorable James G. Roche (Secretary of the Air Force, Jun. 2001-Present)⁶
- Honorable Mary L. Walker (Air Force General Counsel, Nov. 2001-Present)
- Gen John P. Jumper (Air Force Chief of Staff, Sep. 2001-Present)
- BrigGen Silvanes Taco Gilbert (Commandant of Cadets, Aug. 2001-Apr. 2003)
- BrigGen Francis X. Taylor (Commander, AFOSI, Sep. 1996-May 2001)
- BrigGen Leonard E. Patterson (Commander, AFOSI, May 2001-Present)
- Col Laurie S. Slavec (Commander, 34th Training Group, May 2002-Mar. 2003)
- BrigGen David A. Wagie (Dean of Faculty, Jun. 1998-Aug. 2004)

⁶ See text accompanying footnote 4, supra

Legal Officer Involvement. Two Air Force legal officers were involved in reviewing the USAFA sexual assault policy and taking actions in connection with that policy. In accordance with 10 U.S.C. 140 and DoD Directive 5145.1, the DoD General Counsel is responsible for determining whether legal representatives within the Department adhere to appropriate legal and ethical standards. Information on the following legal officers' involvement in the USAFA confidential sexual assault reporting program and potential responsibility for the resulting problems is being referred to the DoD General Counsel for determination.

[REDACTED]

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Part I - Introduction

Background

USAFA, which is located near Colorado Springs, Colorado, was established in 1954, to educate and train future Air Force officers. Its mission is “to develop and inspire air and space leaders with vision for tomorrow.”⁷ For 2003, the total enrollment was 4,266, including 725 female cadets. Women were first admitted in 1976, and currently comprise approximately 17 percent of the cadet population.

Air Force Academy Sex Scandal

In January 2003, the news media began reporting that numerous female cadets were sexually assaulted while attending USAFA; that Air Force management generally “covered-up” the crimes and did not punish the offenders; and that the female cadets were frequently punished for reporting the sexual assaults. Beginning in approximately January 2003, a number of current or former female cadets contacted Senator Wayne Allard (R-Colorado) to report sexual assaults while at USAFA. With the cadets’ permission, a number were referred to the Inspector General of the Department of Defense.

In response to what has now become generally known as the “Air Force Academy Sex Scandal,” the Congress, the Secretary of Defense, and the Secretary of the Air Force have taken numerous, varied actions, including:

- On January 3, 2003, the Secretary of the Air Force directed the Air Force General Counsel to establish a high-level working group (Air Force Working Group) and assess complaints about USAFA processes related to sexual assault reporting. The Air Force Working Group, which was headed by the Air Force General Counsel, completed its assessment and issued a report on June 17, 2003, “The Report of the Working Group Concerning the Deterrence of and Response to Incidents of Sexual Assault at the U.S. Air Force Academy.” The report included 36 recommendations, which the Air Force has implemented, plans to implement, or is considering for implementation. The report also recommended 12 areas for further study. Although sexual assault problems at USAFA had been longstanding, the Air Force Working Group Report and subsequent Air Force management actions left the impression that USAFA management was to blame for the problems.
- In early January 2003, the Secretary of the Air Force directed the Air Force Inspector General (SAF/IG)⁸ to review individual sexual assault

⁷ The Congress appoints cadets to the military academies. Appointments are controlled by geographic, political and military end-strength limitations. To be selected for admission, applicants must exhibit proven excellence in academics, leadership and athletics. At USAFA, each year, about 1,200 freshmen cadets are drawn from an application pool of approximately 9,000. Students come from all 50 states and several foreign countries.

⁸ The SAF/IG identifier denotes that the Air Force Inspector General, even though a Military Member, reports to the Secretary of the Air Force directly, not through the military chain of command.

cases at USAFA over the past 10 years, as well as cadet complaints concerning the handling of the cases. The SAF/IG review is ongoing.

- On March 26, 2003, USAFA senior management adopted the Secretary of the Air Force's "Agenda for Change," emphasizing cadet leadership qualities and setting forth organizational and responsibility changes to improve USAFA processes, alter perceptions, and begin restoring cadet pride in USAFA (See Appendix A). At the time of our fieldwork, USAFA was continuing to implement changes included in its Agenda for Change. One change, which is now in effect, returned USAFA to reporting all sexual assaults for investigation, but the process varies from Air Force-wide procedures in that initial victim contacts may still exclude an AFOSI criminal investigator.⁹
- In April 2003, the Secretary of the Air Force announced that he was replacing senior management at USAFA. The USAFA Superintendent serving as a lieutenant general was retired from military service on July 11, 2003 as a major general. The Commandant, Vice Commandant and Training Group Commander were reassigned to other Air Force duties.
- On April 16, 2003, the Congress passed Public Law (P.L.) 108-11 establishing a "Panel to Review Sexual Misconduct Allegations at United States Air Force Academy." The P.L. required the Secretary of Defense to appoint a seven-member panel from among private United States citizens who had expertise in behavioral and psychological sciences, standards and practices related to properly treating sexual assault victims (including their medical and legal rights and needs), as well as members from the United States military academies, to investigate reports that at least 56 cadets had been sexually assaulted at USAFA. The panel was to begin its work by May 8, 2003, and report its results to Congress within 90 days.¹⁰ The panel, which was headed by former Congresswoman Tillie K. Fowler (Fowler Panel), completed its review and issued a report (Fowler Report) on September 22, 2003, "Report of the Panel to Review Sexual Misconduct Allegations at the U.S. Air Force Academy." The Fowler Report included 20 recommendations to the Air Force, which the Air Force is implementing, or considering for implementation. In addition, the Fowler Report noted shortcomings in the Air Force Working Group report and recommended that the Inspector General of the Department of Defense thoroughly review the accountability of current and former

⁹ In 1993, the USAFA Superintendent, without prior Air Force approval, adopted process and procedural changes that were intended to help sexual assault victims protect their identity and avoid unwanted embarrassment. In 1997, the Air Force Surgeon General approved a temporary waiver of policy that required medical facility personnel to report sexual assaults to AFOSI. The overall result was that only victims could report a sexual assault to law enforcement. As discussed later in this report, the changes prevented reporting in some cases and delayed reporting in others, causing lost opportunities to collect physical and other evidence that could have resulted in successful criminal prosecutions.

¹⁰ P.L. 108-11, 117 STAT. 609, TITLE V

USAFA and Air Force Headquarters leadership for sexual assault problems at USAFA.

Appendix B includes a more complete description of the statutes and policies involved in USAFA sexual assault problems and our current evaluation.

Inspector General of the Department of Defense Evaluation

On February 24, 2003, Senator Susan M. Collins, Chairman, Senate Governmental Affairs Committee, and Senator Joseph I. Lieberman, Ranking Member, requested that the Inspector General of the Department of Defense investigate allegations “that the U.S. Air Force Academy apparently has failed to take appropriate action in response to reports of sexual assault against women cadets.”¹¹ The Senators noted that the Secretary of the Air Force, Dr. James G. Roche, had already announced the creation of a special panel to review the Air Force policies on sexual assault, with an emphasis on USAFA. Although commending the Secretary’s response, the Senators stated their belief that an independent investigation was necessary, and that the Inspector General of the Department of Defense was “. . . best suited to undertake such an investigation.”¹²

On February 27, 2003, Senator John Warner, Chairman, Senate Armed Services Committee, and Senator Wayne Allard wrote to the Inspector General requesting that he “review the work being done by the Air Force and others and to provide [his] findings and recommendations to [the Senate Armed Services Committee] at the appropriate time.”¹³

In a response to Senators Collins and Lieberman on February 28, 2003, and in a meeting with Senators Warner and Allard on March 17, 2003, the Inspector General of the Department of Defense advised that in accordance with his statutory mandate to “give particular regard to the activities of the internal audit, inspection, and investigative units of the military departments with a view toward avoiding duplication and insuring effective coordination and cooperation,”¹⁴ he had directed the Office of Investigative Policy and Oversight (IPO), to evaluate not only the ongoing Air Force review, but also to determine how allegations of sexual harassment and sexual assault are referred and handled in the other Service Academies. The Inspector General of the Department of Defense also stated that he would advise the Senators both of the results of the oversight evaluation of the Air Force and the larger systemic review.¹⁵

¹¹ February 24, 2003, letter from Susan M. Collins, Chairman, and Joseph I. Lieberman, Ranking Minority Member, Senate Committee on Governmental Affairs

¹² Ibid

¹³ February 27, 2003, letter from Senator John Warner, Chairman, Senate Committee on Armed Services, and Senator Wayne Allard

¹⁴ Inspector General Act of 1978, as amended (5 USC Appendix 1, §2)

¹⁵ Our evaluation objectives subsequently changed, because the National Defense Authorization Act for Fiscal Year 2004, Section 526, “Defense Task Force on Sexual Harassment and Violence at the Military Service Academies,” required the Secretary of Defense to establish a task force “. . . to examine matters relating to sexual harassment and violence at the United States Military Academy and the United States Naval Academy. . . .” and not later than 12 months after the task force members have been appointed, submit a report “. . . recommending ways by which the Department of Defense and the Department of the Army and the Department of the Navy may more effectively address matters relating to sexual harassment and violence at the United States Military Academy and the United States Naval Academy, respectively. . . .” In accordance with the Inspector General of the Department of Defense commitments to the Senate Armed Services Committee and others, our evaluation addressed the Air Force only and

As part of the data-gathering process, in May 2003, we administered a survey to USAFA female cadets to determine their views on the scope of sexual assaults at USAFA and their opinions regarding the Academy's response to sexual assaults. Given the longer-term experience of the Academy Class of 2003 and indications that over half of that class' female cadets did not have faith in USAFA sexual assault programs,¹⁶ the evaluation team believed it was crucial to obtain this class' views before they graduated. Therefore, we developed a survey and subsequently administered it to female cadets in all class years. The survey was administered to the cadets during the period May 19-21, 2003. On September 11, 2003, we issued an interim report detailing the survey results. On the same date, we provided a copy to the Fowler Panel to assist the Panel's work. This report summarizes the survey results. The complete interim report can be found at <http://www.dodig.osd.mil/Inspections/IPO/evalreports.htm>

Sexual Assault Crimes

Under the Uniform Code of Military Justice (UCMJ), a sexual assault ranges from indecent acts (e.g., inappropriate, unwanted touching, fondling, or groping) to forcible rape or sodomy. If evidence establishes beyond a reasonable doubt that a suspect committed the crime and the suspect is found guilty at court martial, the suspect could be sentenced to life in prison, depending on the specific acts committed and the circumstances involved.¹⁷ In addition to providing for punitive actions against offenders, Federal statute affords certain rights and protections to the victims and witnesses of crime. For example, the Victim and Witness Protection Act of 1982 requires the head of each U.S. department and agency engaged in detecting, investigating, or prosecuting crime to designate by name and office title each person who will be responsible for identifying the victims of crime and performing certain services for them at each stage of a criminal case.¹⁸

Sexual Assault Investigations

The Military Criminal Investigative Organizations (MCIOs) are responsible for investigating sexual assault allegations involving a Service Academy cadet or midshipman for their respective Military Departments.¹⁹ The investigations are intended to collect all possible evidence related to the crimes, including providing for medical personnel to complete sexual assault kit examinations on victims and suspects, processing the crime scene for evidence, ensuring evidence undergoes laboratory analysis when appropriate, and interviewing victims, witnesses and suspects to establish all facts relevant to the crimes. The MCIO generally briefs the Commanding Officer (at USAFA, the Superintendent) and responsible

focused primarily on overseeing the Air Force Working Group determinations and assessing accountability for sexual assault problems at USAFA.

¹⁶ Article on USAFA Web site, "Superintendent addresses issue of sexual assault," stated that 59 percent of the first-class (Class Year 2003) women cadets did not have faith in the Academy's programs regarding sexual assault. The Superintendent indicated that this statistic came from the results of the January 2003 USAFA sexual assault survey.

¹⁷ As is the case in civilian law enforcement, the Government must "prove beyond a reasonable doubt" that the suspected offender (suspect) committed the crime and should be deprived of individual rights and freedoms.

¹⁸ Victim and Witness Protection Act of 1982, 42 U.S.C., § 10607, subsection (a).

¹⁹ The MCIOs are the U.S. Army Criminal Investigation Command (USACIDC), the Naval Criminal Investigative Service (NCIS), and the Air Force Office of Special Investigations (AFOSI).

Military Department Staff Judge Advocate (SJA) routinely throughout the investigation and on the final investigative results. The SJA, in turn, generally advises the Commanding Officer as to whether the evidence is legally sufficient to proceed to court martial. The Commanding Officer then decides how to proceed. The decision may involve courts martial, non-judicial punishment, administrative discipline, various combinations of those processes, or no action.

Between January 7, 1993, and February 21, 2003, AFOSI received 56 sexual assault complaints involving a cadet (either a victim, or a suspect) at USAFA. Three cases were closed after investigation because the victim withdrew the complaint (1 case) or recanted the allegations (2 cases). Twenty-seven (51 percent) of the remaining 53 cases involved both a cadet victim and a cadet suspect. Six (11 percent) involved victims who were cadet freshmen, candidates, or basic trainees and suspects who were upperclassman cadets.²⁰

Objectives

Our overall objective for this evaluation was to evaluate the adequacy and effectiveness of USAFA policies and practices regarding sexual assault incidents involving cadets. The overall objective included:

- Determine whether USAFA policies regarding sexual assault crimes involving cadet suspects or victims are effective and comply with DoD and Air Force policies, and Federal law.
- Determine whether USAFA policies and practices regarding sexual assaults involving cadet suspects or victims adversely affect reporting, investigation, victim assistance, adjudication, or remediation.
- Determine whether AFOSI thoroughly investigates sexual assault incidents at USAFA.

Following the Fowler Report, at congressional request, we expanded the evaluation to include assessing Air Force leadership responsibility for sexual assault problems at USAFA.

See Appendix C for a discussion of our evaluation scope and methodology. See Appendix D for prior coverage related to the evaluation objectives.

²⁰ Individuals who attend the USAFA Preparatory School before admittance as first year cadets are known as “candidates.” To become a first year cadet, an individual generally must attend basic training at USAFA, which is 5 weeks in duration and immediately precedes the freshman school year. During this time, the individuals are known as “basic trainees.” At USAFA, first-year cadets are known as “Fourth-Degrees or Cadet Fourth Class (C4C), second-year cadets are Third-Degrees or Cadet Third Class (C3C), third-year cadets are Second-Degrees or Cadet Second Class (C2C), and fourth-year cadets are First-Degrees or Cadet First Class (C1C). For evaluation purposes, we use the more generally recognized freshman, sophomore, junior and senior titles to identify student class year. We also group candidates, basic trainees and freshman cadets together and include them in the freshman category.

Part II – Sexual Assault Survey

In May 2003, the Inspector General of the Department of Defense surveyed female cadets at USAFA to collect their views on sexual assaults at USAFA, including their views on factors such as the reasons for non-reporting (e.g., likelihood of reprisal or ostracism for reporting), personal safety on campus, the command's handling of sexual assault, and sexual assault support and training programs. We developed two definitions for the survey:

- **Sexual assault** (adapted from USAFA Instruction 51-201, "Cadet Victim/Witness Assistance and Notification Procedures," April 18, 2000):

The touching of another without their consent in a sexual manner, including attempts, in order to arouse, appeal to, or gratify the lust or sexual desires of the accused, the victim, or both. Sexual assault includes, but is not limited to, rape, sodomy, fondling, unwanted touching of a sexual nature, and indecent sexual acts that the victim does not consent to, or is explicitly or implicitly forced into. It is immaterial whether the touching is directly upon the body of another or is committed through the person's clothing.²¹

(**Note:** Although rape is defined separately, the sexual assault definition encompasses both rape and attempted rape; consequently, the survey data reported for sexual assault and rape are *not* additive.)

- **Rape** (essentially the same as the Uniform Code of Military Justice (UCMJ), Article 120, Rape):

"An act of sexual intercourse with a female, by force and/or without her consent (conscious or unconscious). Penetration, however slight, is sufficient to complete the offense."

Survey Population

Of the total 659 female cadets at USAFA, 66 were unavailable to complete the survey and 12 more did not appear for scheduled appointments (unexcused absences). The remaining 581 cadets completed the survey. Of the total surveys completed, we eliminated two entirely—one was blank except for class year and a general comment, and the other had so many inconsistencies that the results could not be interpreted reasonably. Our survey results, therefore, are based on responses from 579 female cadets, representing 87.9 percent of the population.

²¹ The Air Force believes this definition might be too broad and resulted in our survey producing a higher sexual assault incident count than is appropriate. We acknowledge that we defined the term broadly. For example, in adapting the USAFA definition, we excluded the clause that provides, "Consent is not given . . . when the person is alcohol impaired . . ." (USAFAI 51-201, April 18, 2000, at paragraph 2.2). This adaptation could result in a particular female cadet reporting a sexual assault when she might not have reported one had we retained the clause. However, it is equally likely that a particular female cadet would not report a sexual assault because she believed alcohol consumption led her to "consent" to the sexual activity. Ultimately, there was no "perfect" definition that we could use for the survey, but we believe the one adapted from the USAFA Instruction was both reasonable and appropriate. For example, the USAFA definition was the one to which the female cadets could best relate. Further, the survey included multiple opportunities for comment and explanation, and our analysis of those comments and explanations did not give us any reason to suspect that an incident was classified improperly in the survey.

Sexual Assault Incidents

Based on our survey:

- 43 cadets (7.4 percent), including 15 members from the Class of 2003 (11.7 percent of that class), were victims of at least one actual or attempted rape while at USAFA.
- 109 cadets (18.8 percent) were sexual assault victims one or more times while at USAFA--177 incidents reported (includes incidents for the 43 cadets who indicated actual or attempted rape).
- 397 cadets (68.6 percent) experienced sexual harassment (unwanted and uninvited sexual attention) in the form of sexual teasing, jokes, remarks, or questions; 262 cadets (45.3 percent) experienced sexually suggestive looks, gestures, or body language; 225 cadets (38.9 percent) received sexually oriented letters, telephone calls, e-mails, instant messages, or other material; 204 cadets (35.2 percent) experienced leaning over, cornering, pinching, brushing against, or unwanted touching; and 129 cadets (22.3 percent) were pressured for sexual favors.
- 33 sexual assault incidents (18.6 percent) were reported to authorities.
- Cadets who reported 14 sexual assaults (42.4 percent) experienced reprisal for reporting the incidents. (“Reprisal” was not defined in the survey.)
- 143 sexual assaults (80.8 percent) were not reported to authorities due to: (Note: Adding the 33 reported and 143 not reported yields 176, rather than the 177 total incidents reported. Since the difference would not have any significant impact on our analysis, we did not attempt to resolve the statistical discrepancy.)
 - embarrassment (77 incidents, or 53.8 percent);
 - fear of ostracism by peers (66 incidents, or 46.2 percent);
 - fear of reprisal (61 incidents, or 42.7 percent); or
 - belief that nothing would be done about the sexual assault (58 incidents, or 40.6 percent).²²
- For 172 of the 177 incidents reported, survey respondents categorized the offenders as either (1) a fellow cadet, (2) a civilian or military member (both affiliated and not affiliated with USAFA), or (3) an unidentified person. The fellow cadet category was primary--149 incidents, or 86.1 percent of the total. Of these offenders, 65 incidents (43.6 percent) involved cadet offenders who were senior to the victims.

²² Because cadets were allowed to select multiple reasons for not reporting, these numbers total more than the number of incidents not reported. When all respondents (both sexual assault victims and cadets not indicating sexual assault) were asked “other than embarrassment or shame, what do you think is the number ONE reason why some victims at your academy do not report sexual assaults,” the top two reasons given were fear of ostracism by peers (32.8 percent), and fear of punishment for other infractions (26.8 percent).

- For 174 of the 177 incidents reported, survey respondents identified locations where the incidents occurred as either (1) on-installation at USAFA (114 incidents, or 64.4 percent), including incidents occurring in a USAFA dormitory (65 incidents, or 36.7 percent), (2) not at USAFA, but at a USAFA-sponsored event (11 incidents, or 6.2 percent), or (3) not at USAFA or a USAFA-sponsored event (49 incidents, or 27.7 percent).

Response to Sexual Assault Incidents

Based on our survey:

- *Previous command's handling of sexual assault incidents:* A slight majority (310, or 53.5 percent) believed that previous leadership did not handle sexual assault incidents appropriately, while 86 (14.9 percent) believed they did, and 182 (31.4 percent) did not know.
- *Previous command's efforts to curb sexual harassment:* Almost half—267 (46.1 percent)—believed the previous command made honest and reasonable efforts to prevent or stop uninvited and unwanted sexual attention, while 310 (53.5 percent) believed it had not.
- *Current command's efforts to curb sexual harassment:* Almost all (556 respondents, or 96.0 percent) believed the current command was making honest and reasonable efforts to prevent or stop uninvited and unwanted sexual attention, while 22 (3.8 percent) believed it was not.
- *Cadet Safety:* Most (365 respondents, or 63.0 percent) did not fear for their personal safety, while 82 (14.2 percent) feared being hazed or unjustifiably harassed, 51 (8.8 percent) feared being sexually assaulted, and 27 (4.7%) feared being physically assaulted in a non-sexual manner. Cadets also indicated overwhelmingly (over 90 percent) that they felt very safe or safe in every location on campus, except when alone on academy grounds during darkness hours. During darkness, 68.9 percent felt very safe or safe; 20 percent felt somewhat safe; and 10.9 percent felt unsafe or very unsafe.

Part III - Sexual Assault Investigations

We reviewed 56 AFOSI sexual assault investigative case files, the total number of sexual assault cases that AFOSI identified as involving a USAFA cadet opened over the last 10 years.²³ The cases involved incidents that occurred between August 1, 1991, and November 17, 2002, and reported to AFOSI between January 7, 1993, and February 21, 2003. To ensure appropriate emphasis on recent policy and conditions, as opposed to historical conditions that might not truly reflect current policy and requirements, we segregated the cases and reviewed those opened over the last 3 years (18 cases). In addition, to relate actual cases to the results of the survey that we conducted during May 2003, to assess current climate/culture at the academy, we segregated the cases further and looked at those opened after May 1999 (20 cases). The post May 1999 period would coincide as best as possible with the cadet class years involved in the survey.

Case Review Results

Three (5 percent) of the 56 AFOSI sexual assault investigations were closed after investigation because the victim withdrew the complaint (1 case), or recanted the allegations (2 cases).²⁴ Evaluation of the remaining 53 cases revealed the following characteristics:

- Most (53 percent) AFOSI sexual assault investigations involving USAFA cadets involve rape or sodomy allegations, as opposed to lesser crimes such as indecent acts.
- Most alleged assaults (64 percent) occur on base at USAFA and a large proportion (42 percent) occur in academy dormitories.
- A large proportion (49 percent) of the incidents involve alcohol use and these incidents usually involve both the victim and suspect using alcohol.
- The largest victim category is cadets (71 percent), and *first-year female* cadets (including candidates and basic trainees) are (1) much more likely to be sexually assaulted, *or* (2) much more likely to report a sexual assault after it occurs, *or* (3) both more likely to be assaulted and to report the assault.
- Cadet seniors (36 percent of the suspects) are by far more likely to be suspects in an alleged sexual assault than other cadets, with the odds about equal for the remaining three class years.

²³ Five of these investigations were not completed when we finished our fieldwork. Investigative work continued on two cases, and courts martial were pending in three cases. We also reviewed one investigation involving consensual sex that came to our attention during the evaluation. This case was investigated during the 10-year period and involved a female who was a cadet when a sexual relationship began between her and a Military Member (Chaplin) assigned to USAFA. The relationship began in the early-1980s, continued for a number of years, and resulted in the Military Member being discharged from the Air Force. This case did not involve a sexual assault and, therefore, did not fit within the parameters for our evaluation. It is not included in our case analysis.

²⁴ These cases all involved freshman cadet victims.

- Most (51 percent) of the sexual assault investigations involve victims and suspects who are both cadets—the remainder consists of civilians and military members as either victims or suspects.
- 11 percent of the sexual assault investigations involve freshmen cadet victims and upper-class cadet suspects.
- Investigation cleared the suspect in one case (2 percent) and resulted in referring 48 suspects (79 percent) for prosecution or other action.
- A large proportion of the investigations resulted in civilian trial or military courts martial (21 percent) and/or disenrollment from USAFA (31 percent)—over the last 3 years, these proportions varied only slightly.
- The large portion of the remaining cases resulted in Article 15 punishment (8 percent), or honor code sanctions (21 percent)—over the last 3 years, these proportions declined to 0 percent and 0 percent, respectively.
- 19 percent, however, do not result in punitive action because the evidence is insufficient—over the last 3 years, this proportion increased to 23 percent.

Appendix E details our case review results.

Our case reviews disclosed the following conditions.

A. Barriers to Reporting, Investigating and Prosecuting Sexual Assault Cases

We identified barriers to reporting sexual assaults to law enforcement and to investigating the cases. Barriers to *reporting* occurred in 25 (47 percent) of the cases. The primary barrier to reporting a sexual assault was the USAFA process adopted in 1993²⁵ and formalized in July 1997,²⁶ under which the victim decided whether to report a sexual assault to law enforcement personnel. Other *reporting* barriers that we identified involved victims who were hesitant to report or delayed reporting a sexual assault because they (1) feared getting into trouble for underage drinking, (2) feared their assailants and believed the assailants would commit additional acts/abuses against them if they reported the sexual assaults, or (3) were embarrassed for allowing themselves to be in places or situations permitting the sexual assaults to have occurred. The result was that, on average, more than 4 months (127 days) elapsed before the incidents were reported to AFOSI—over the last 3 years, the delay was more than 7 months (232 days). After this much time, a sexual assault examination

²⁵ Air Force Working Group Report, p. 11

²⁶ The USAFA Superintendent implemented a confidential sexual assault reporting program in 1993, without prior Air Force approval, by changing operating processes. In November 1995, the subsequent Superintendent implemented the new sexual assault reporting program based on draft policy documents. Policy governing the new program was not finalized until July 1997, after the Air Force Surgeon General approved a waiver relieving USAFA medical personnel from policy requiring them to report sexual assaults to AFOSI. The program development is discussed later in this report and detailed in Appendix F.

on a victim or suspect would not produce useful evidence. Similarly, physical evidence possible from a crime scene examination would most likely be lost, and even witness memories likely would have diminished substantially.

Barriers to *investigative work* occurred in 6 (11 percent) of the cases. These barriers were all beyond AFOSI control and included (1) USAFA staff giving “rights advisements” and advising suspects to retain legal counsel before AFOSI was notified, which limited investigator ability to gain cooperative relations with suspects and, thereby, attain possible confessions, and (2) USAFA staff advising victims that they did not have to talk to AFOSI, thereby delaying reports to AFOSI and potentially causing losses of physical and other evidence essential to identifying suspects and solving the crimes. At least partially as a result of these reporting and investigative barriers, AFOSI did not identify suspects in 9 percent of the cases and in an additional 19 percent (28 percent total), the evidence was insufficient to result in prosecution or action against the suspects. We cannot conclude based on the overall data that these consequences resulted totally from the reporting and investigative barriers, but they certainly would have been major contributing factors and constituted barriers to prosecuting and punishing sex offenders at USAFA.

B. Once Notified, AFOSI Generally Conducted Thorough, Timely Investigations, But There Were Exceptions

Investigative work in 5 (28 percent) of the 18 cases opened in the last 3 years was untimely or not completed thoroughly. Except for one case, these investigative deficiencies probably would not have impacted case outcomes. In our view, nothing would be gained currently from re-opening the investigations.²⁷

We identified problems with timeliness or thoroughness in the following investigations:

- **Case Number [REDACTED]**: After a 4 month delay, the victim alleged that a male cadet had raped her in a vehicle operated by the accused. The accused claimed they had only kissed. Other cadets, who reportedly were in the vehicle with the victim and the accused immediately before the alleged rape, were not identified and interviewed. For example, dormitory sign-in/out sheets were not checked to identify possible witnesses, establish date and time, or otherwise support the victim’s statement. In addition, the auto was not located for crime scene processing or owner interview. The investigation did not result in

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²⁷ We do not believe that timeliness or thoroughness deficiencies impacted the outcomes in four cases. In the remaining case, the deficiencies involved physical evidence identification and crime scene processing. The time elapsed since the deficiencies occurred would preclude obtaining meaningful, tangible evidence that would support current prosecution efforts.

prosecution, or other action. A thorough investigation might have resolved the allegation.

- **Case No. [REDACTED]:** Bed linens and clothing (pajamas) were not seized as evidence and canvass interviews were not conducted to identify a suspect. The case agent believed that hair evidence, which might have been found on the items, would not have been meaningful because the case involved kissing and fondling only and because cadet rooms were noted for having lots of hair present. The case agent did not conduct canvass interviews because he believed the victim's roommate had refuted the victim's statement concerning the alleged crime. However, the case agent did not obtain a sworn statement from the roommate. In addition, the sheet and blanket had been issued to the victim only recently and hair evidence could have been meaningful in identifying a suspect. Finally, the case agent did not document reasons for the omissions in the investigative file.
- **Case No. [REDACTED]:** The suspect's ring was not seized and checked for blood evidence, and the crime scene was not processed—photographed, sketched, or evidence collected. AFOSI was not involved until approximately 1-week after the incident and witnesses had reported that the victim cleaned up blood at the scene after the incident. However, laboratory analysis on the suspect's ring and on carpet from the scene might have produced evidence, or logical investigative leads, and should have been accomplished. The items were not analyzed and the reasons were not fully documented in the investigative file.
- **Case No. [REDACTED]:** Victim and suspect e-mails indicated the possibility that sexual activity might have been consensual, and also tended to contradict the victim's statement that she did not yell during the alleged assault because she feared cadet discipline. However, the case agent waited at least 12-days to review the e-mail evidence and never re-interviewed the victim regarding the e-mails to assess credibility in her allegations. The case agent also waited a month to pursue one suspect interview. In addition, (1) a Forensic Science Consultant was not contacted, even though required in AFOSI guidance, and (2) AFOSI did not follow-up after receiving a SJA letter informing AFOSI that action was not being taken in the case.
- **Case No. [REDACTED]** The crime scene was not visited or processed to collect semen stain evidence that might have been present, or validate the victim's claim that the door lock to her dormitory room was broken. The case agent believes that visiting the crime scene would not have furthered the investigation because the subject and victim agreed the sex act took place and the only question was consent, and because there would not have been a way to determine when semen evidence was left at the scene. However, neither the decision nor basis was documented in the investigative file. Although processing the crime

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scene in the case might not have produced conclusive evidence, it would have given the investigators an additional basis for addressing the consent issue and pursuing the most appropriate case outcome.

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An additional case [REDACTED] with timeliness or thoroughness problems is described below in Finding C.

C. Additional Investigations Should Have Been Opened

Statements and information in two cases indicated that sexual assaults other than the ones under investigation had occurred and should have led to additional investigative case openings. AFOSI, however, did not open the additional investigations.

Information on these cases follows:

- **Investigation No. [REDACTED]**: During interview, the victim (a non-cadet who resided in the Colorado Springs area) indicated that she had sexual relations with other cadets the previous year, when she would have been only 15 years old. AFOSI did not pursue the possible statutory rape (carnal knowledge) crime. (As a result of our findings, AFOSI referred this matter to its legal office, which recommended that AFOSI locate and re-interview the victim to ascertain if any rape occurred during the timeframe involved.)
- **Investigation No. [REDACTED]**: During interviews, two witnesses indicated that the suspect had also sexually assaulted them. AFOSI did not pursue these allegations. (As a result of our findings, the two allegations were sent to the AFOSI legal office for comment and/or recommendation.)

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One investigation included in our review (96DET808D7-S792190) involved an alleged rape that the victim subsequently recanted. The suspect named in the investigation, a USAFA cadet, subsequently graduated and became an active Air Force officer. During our efforts to determine whether possible USAFA sex offenders had been improperly commissioned, we discovered another rape complaint involving the same suspect.

- **Investigation No. [REDACTED]**: During a job interview with AFOSI Detachment 102 in [REDACTED] an active duty officer and former Reserve Officer Training Corps (ROTC) student alleged that a USAFA cadet raped her during a USAFA/ROTC Summer program in [REDACTED]. Detachment 102 documented the allegation in a “zero” file and referred the allegation to AFOSI Detachment 323, [REDACTED], where the alleged suspect was then assigned. Detachment [REDACTED], however, did not open an investigation to resolve the allegation. We referred the matter to SAF/IG, which resulted in a criminal investigation into the alleged rape. In addition, AFOSI initiated a “Commander

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Directed Investigation” to determine whether its personnel complied with internal guidance when the rape allegation was received in [REDACTED].

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Air Force Working Group Determination. Air Force Working Group members with military justice experience evaluated 43 investigative cases containing alleged sexual assaults at USAFA to determine whether, in light of the available evidence, the criminal dispositions appeared reasonable. The reviewers “. . . disagreed with the reasonableness of the criminal disposition of one case . . . questioned, but could not form an opinion on, four others . . . [and] would have favored use of formal criminal processes to resolve close factual issues . . .” in others.²⁸ Our evaluation included analyzing all 56 investigations that AFOSI initiated over the last 10 years, which would include all the investigations that the Air Force Working Group reviewed. Our investigative case analysis did not cause us to question the Air Force Working Group determinations in this area.

Conclusion

Based on reviewing the investigative case files and conducting follow-up interviews with the case agents and other AFOSI personnel, 5 (28 percent) of the 18 investigations opened during the last three years (CY 2000 through CY 2003) omitted investigative steps necessary to thoroughness. In one case (6 percent), the investigative omissions might have affected the case outcome.

Recommendation

1. We recommend that AFOSI management require, and increase management oversight to ensure, that AFOSI investigators who conduct sexual assault investigations complete all investigative steps necessary to thoroughness in the investigations. The basis for omitting any logical investigative step in the investigations should be documented in the investigative file.

²⁸ Air Force Working Group report, pp. 156-164

Part IV – Prior Work on Sexual Assault Issues

Introduction

The Air Force Working Group and Fowler Panel completed substantial work on USAFA sexual assault issues, and the Air Force is continuing corrective actions in response to the work and its *Agenda for Change*. In completing their work, the Air Force Working Group and Fowler Panel both operated under strict time limits and both ended their work identifying areas for further study. The Fowler Panel noted certain shortcomings in the Air Force Working Group report, but generally left the analysis of those possible shortcomings to our evaluation.

Our objectives for this evaluation evolved over time in response to the previous work and the Inspector General of the Department of Defense commitments to Congress and DoD leadership. In the end, in addition to assessing the individual AFOSI criminal investigations, we agreed to provide oversight of the Air Force Working Group's results (this part of the report) and assess Air Force leadership accountability for the problems (Part V of the report). In completing our evaluation, we segregated information into the following categories:

- Sexual Assault Reporting and Investigation;
- Legal and Prosecutorial Matters;
- Amnesty for Infractions;
- Victim and Witness Assistance Program;
- Counseling Services for Victims;
- Medical Support Services for Victims;
- Prevention and Awareness Training;
- Security and Cadet Safety;
- Grievance Process/Appeal-Redress Methods; and
- Victim Confidentiality and Privacy.

Except as specifically addressed below and in Part V, we do not question either the Air Force Working Group or Fowler Panel determinations or recommendations.

Responsibility for Sexual Assault Investigations at USAFA

AFOSI is a Federal law enforcement agency responsible for conducting criminal investigations, counterintelligence activities, and specialized investigative and force protection support for the Air Force. Organizationally, AFOSI is a field-

operating agency under the direction and guidance of the Air Force Inspector General (SAF/IG).²⁹ The AFOSI Commander exercises command authority over all assigned personnel, facilities, property and funds, and has independent authority to initiate criminal investigations under both statute and DoD policy. The AFOSI Commander reports to SAF/IG, who reports to the Secretary of the Air Force.

AFOSI is responsible for investigating “[r]ape, sodomy, carnal knowledge, child molestation, or cases involving serious bodily harm,” which includes all sexual assaults at USAFA.³⁰ AFOSI maintains an investigative office (Detachment 808) at USAFA to investigate crimes involving USAFA personnel or property. The office is currently staffed with 11 criminal investigators, including the Detachment Commander (DETCO).

Sexual Assault Program Before the Agenda for Change

In early 1993, the USAFA Superintendent (Lieutenant General Bradley C. Hosmer), without prior Air Force approval, began implementing a new sexual assault program intended to ensure that victims would have someone (USAFA nurses) with whom to discuss sexual assaults while maintaining their identities and details of the assaults confidential. The Superintendent reported that he intentionally excluded the Cadet Counseling Center from the process because he believed cadets did not trust the center to maintain their counseling records confidential.³¹ He implemented the new program through new or modified processes adopted unofficially. Lieutenant General (LtGen) Hosmer contravened Air Force policies by limiting sexual assault reporting to USAFA commanders who would be obligated to report them to AFOSI for investigation. Because he received periodic notifications from USAFA nurses that sexual assaults had occurred and did not report them for investigation, LtGen Hosmer personally violated Air Force policies requiring reporting. Specifically, AFR 124-4, “Initiating AFOSI Investigations and Safeguarding, Handling, and Releasing Information from AFOSI Investigative Reports,” November 29, 1989, required LtGen Hosmer to “. . . refer matters and offenses that fall within AFOSI investigative responsibility. . . .” (See Appendix B) LtGen Hosmer retired from the Air Force, leaving the USAFA Superintendent position, in June 1994.

²⁹ Air Force Mission Directive (AFMD) 39, “Air Force Office of Special Investigations (AFOSI),” November 1, 1995

³⁰ Air Force Instruction (AFI) 71-101, Volume 1, “Criminal Investigations,” December 1, 1999, Attachment 2, Rule 25. The AFI designates “Sex Offenses” as rape, carnal knowledge, sodomy, indecent exposure, sexual misconduct, voyeurism, and child molestation”

³¹ The Cadet Counseling Center has Air Force medical professionals to counsel individuals and groups. If they are unable to meet specific needs, the center refers cadets to the Life Skills Support Center (LSSC) located on USAFA grounds. LSSC has mental health services for drug and alcohol treatment, family maltreatment and other general matters as needed. If neither the Cadet Counseling Center nor LSSC is able to meet a cadet’s mental health needs, USAFA will pay for civilian professional counseling. (Fowler Report, at 83) Thus, in excluding the Cadet Counseling Center from the sexual assault reporting process, the Superintendent excluded the professionals best trained and equipped to assist sexual assault victims.

In early 1995, [REDACTED],³² established a Process Action Team (PAT) to analyze the cadet social climate at USAFA and recommend improvements.³³ The PAT recommended various training initiatives, awareness practices, reporting initiatives and further climate surveys. Some initiatives that the PAT recommended were based on an erroneous position that sexual assaults did not have to be reported for investigation without the victim's permission or a decision from "the chain of command." Based on the PAT recommendations and the sexual assault program then in effect at USAFA, which the former Superintendent had adopted unofficially, USAFA drafted a new operating instruction (34 TRW Operating Instruction 36-10, "Sexual Assault Victim Assistance and Notification Procedures") for the Superintendent's approval.

In November 1995, following a U.S. General Accounting Office (GAO) report identifying sexual harassment problems at all the Service academies, the [REDACTED] implemented the sexual assault program in the draft Training Wing operating instruction.³⁴ The program continued the previous Superintendent's process under which victims could report sexual assaults confidentially and provide only the information they wanted to share. It also allowed USAFA commanders to not report sexual assaults to AFOSI.

AFOSI discovered the USAFA confidential sexual assault reporting process in early 1996, after a cadet sexual assault victim who initially followed the USAFA confidential reporting process reported the crime to AFOSI. After learning about this incident, and after an AFOSI Staff Judge Advocate and psychologist "fact-finding" trip to USAFA, AFOSI complained to the SAF/IG, who then organized a team with AFOSI, Air Force Surgeon General and Air Force Judge Advocate General representatives to visit USAFA and review the sexual assault program.³⁵ However, the [REDACTED] either objected to the visit or asked SAF/IG (LtGen Swope) not to send the team and offered to forward his draft program instruction to SAF/IG for an Air Force "headquarters" review. In any event, the team did not go to USAFA, and SAF/IG received the draft program instruction (34 TRW Operating Instruction 36-10, "Sexual Assault Victim Assistance and Notification Procedures"). He referred it to the [REDACTED] for review, and a Judge Advocate working group was formed.

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³² [REDACTED]

³³ February 19, 2004, Fogleman interview, p. 26 Though not specifically stated in the charter, our interview of General Ronald R. Fogleman, Air Force Chief of Staff during this period, disclosed that [REDACTED] chartered this group in response to a recent GAO report about the sexual harassment climate at the Service Academies

³⁴ Effective July 7, 2004, GAO became the Government Accountability Office (GAO) to better reflect that it has become a "modern professional services organization." P.L. 108-271, 118 Stat. 811 (2004)

³⁵ 1996 SAF/IG Briefing slides, HQ USAF Review of USAFA Sexual Assault Operating Instruction (C.1.116)

Following the working group effort to address the issues, on June 26, 1996, the SAF/IG forwarded a revised draft policy to the USAFA Superintendent.³⁶ The revision package was “. . . a basic concept of operations . . . “ not “. . . the details necessary to implement a comprehensive program. . . .”³⁷ Significantly, the revisions included provisions requiring all sexual assaults to be reported to the Commandant of Cadets, the officer primarily responsible for maintaining morale, good order and discipline in the cadet wing. However, the revisions also provided that “. . . [v]ictims who do not want to report an assault to criminal investigation agencies may . . . remain anonymous unless the Commandant of Cadets . . .” decides to require an investigation.

The USAFA Superintendent did not finalize the draft Training Wing instruction. Instead, following the arrival of a new USAFA Judge Advocate, USAFA completed a draft USAFA Instruction (USAF AI) 51-201, “Victim and Witness Assistance and Notification Procedures,” based in part on the SAF/IG concept reflected in the revisions to the draft Training Wing operating instruction. [REDACTED] implemented the program reflected in draft USAFAI 51-201 in November 1996. The new policy was then finalized on July 15, 1997. The SAF/IG (LtGen Swope), with [REDACTED] [REDACTED] agreement, coordinated on draft USAFAI 51-201. [REDACTED] program, both as implemented under the draft Training Wing operating instruction (November 1995) and under draft USAFAI 51-201 (November 1996), continued LtGen Hosmer’s program concept allowing victims to report sexual assaults confidentially and provide only the information they were willing to share. It also continued allowing USAFA commanders to withhold sexual assault reports from AFOSI, which was contrary to both DoD and Air Force policy requirements. See Appendix B.

During the intervening time between implementing and finalizing the new USAFA policy, on February 14, 1997, the [REDACTED] briefed SAF/IG (LtGen Swope), the [REDACTED] and the Air Force Surgeon General (LtGen Charles H. Roadman II) on the new USAFA program and need for a “waiver” from the reporting requirements in Air Force Instruction (AFI) 44-102, “Patient Care and Management of Clinical Services,” July 1, 1995. Following the briefing, LtGen Swope, LtGen Roadman, and [REDACTED] agreed that they would support the USAFA program. Subsequently, on May 9, 1997, the Air Force Surgeon General approved a policy waiver relieving all USAFA medical personnel from reporting sexual assaults to AFOSI in accordance with AFI 44-102.³⁸ The Surgeon General waiver meant that

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³⁶ After receiving the draft from SAF/IG, the [REDACTED] established a working group (five Judge Advocate attorneys, plus a Surgeon General representative) to review the policy. Three working group members (the two most senior attorneys and the Surgeon General representative) objected to the policy. Ultimately, however, the working group followed guidance from the Air Force Deputy Judge Advocate General to redraft the policy while preserving the USAFA program to the maximum extent possible.

³⁷ Memorandum for USAFA/CC, Subject: Sexual Assault Victim Assistance and Notification Procedures, June 26, 1996

³⁸ The waiver was supposed to have been temporary and required review after a year. The review, however, did not occur and the waiver continued in effect until May 27, 2003, when actions were taken under the *Agenda for*

USAFA medical personnel were no longer violating Air Force-wide policy when complying with the USAFA program.

The primary effect of the USAFA sexual assault reporting program was that it withheld information from commanders who would be obligated to report the crimes. We note in this regard that SAF/IG is proponent for some of the Air Force policy requiring crime reporting to AFOSI and, as a result, his coordination on draft USAFAI 51-201 could arguably constitute an “effective” waiver of reporting requirements. However, we do not believe that SAF/IG was authorized to waive policy promulgated on behalf of the Secretary of the Air Force and the Secretary of Defense without fully coordinating and gaining approval from the Secretary of the Air Force. In any event, the coordination action did not constitute a proper waiver and resulted in impeding AFOSI authority under both statute and policy to initiate investigations. Since the Air Force-wide policy was not properly waived, USAFA commanders (non-medical personnel) who learned about sexual assault crimes continued to violate Air Force-wide requirements that they report the crimes to AFOSI.

Overall, the USAFA sexual assault program that continued in effect from early 1993 until May 27, 2003, when USAFA announced its new policy for sexual assault reporting under the *Agenda for Change*, continuously contravened and at times directly violated Air Force-wide policies that required commanders to report crimes to AFOSI for investigation. The program also contravened both statute and policy intended to ensure that criminal investigators have independent authority to initiate and conduct investigations without interference. The USAFA program prevented criminal investigators from even learning about sexual assault crimes, thereby denying them the opportunity to exercise their independent authority to decide whether a criminal investigation was warranted. Sexual assault reporting to AFOSI was adversely affected in this way for approximately 10 years, despite continuing AFOSI objections. The sexual assault reporting program would not have been possible without SAF/IG, Air Force Judge Advocate General, Air Force Surgeon General, and SAF/GC condoning actions or agreement.

The evolution of the USAFA confidential sexual assault reporting program is described in more detail in Appendix F.

Sexual Assault Program After the Agenda for Change

According to the Air Force, following the *Agenda for Change*, USAFA sexual assault policy is now consistent with standard Air Force definitions and policy, and sexual assault reporting is now mandatory. The new program assigns responsibility for sexual assault case management to the USAFA Vice Commandant. As part of the new program, the Vice Commandant has developed

Change. No effort was made to reconcile the basis for this waiver with other policies that continued to require Air Force commanders to report crimes to AFOSI.

and implemented an Academy Response Team (ART) process.³⁹ The ART is comprised of medical, legal, counseling and command elements that assist sexual assault victims immediately, develop the facts, and initiate appropriate actions. ART members are Tier 1 (34th Training Wing, Victim Advocate Coordinator, AFOSI and legal *liaisons*, AFOSI representative, and Security Forces representative), or Tier II (medical and chaplain representatives). Tier I members are the immediate responders with the most vital roles in initiating victim support. All ART members receive special training on managing sexual assault cases, including victim psychology, and are required to brief victims thoroughly on investigative and legal processes.⁴⁰ Under the new policy, sexual assault reports are not confidential and all must be investigated appropriately.⁴¹ However, the reports are “Law Enforcement Sensitive” and efforts are required to protect victim privacy.⁴²

To meet the ART *liaison* member requirement, in September 2003, AFOSI established a new position, “AFOSI Advisor to 34th Training Wing,” which requires:

“... [a]n experienced special agent who has completed a successful tour as a Detachment Commander with a solid understanding of AFOSI procedures and processes. At SecAF [Secretary of the Air Force] direction, the incumbent will act as an advisor to the 34th Training Wing (TRW) Vice Commander (dual hat-Vice Commandant) on the investigative process with primary focus on matters involving sexual assault allegations. He/she will not be involved in the conduct of any investigative or operational activity. Incumbent will be OPCON and ADCON to 34 TRW/CV, assigned to the 34 TRW OSI advisor billet.”⁴³

Duties for the position include:

“... Serves as a Tier 1 member of the USAFA Academy Response Team (ART)

- Ensures complainants receive information about the investigative process at the outset and throughout the course of their case

³⁹ Personnel from the Office of the USAFA Judge Advocate, the Cadet Counseling Center, and AFOSI assisted in the ART development and implementation.

⁴⁰ *Agenda for Change*, p. 11

⁴¹ *Id.*, p. 1. “There are two exceptions: Information received by a chaplain in a private, counseling, or religious setting (See AFI 52-101), or by a lawyer within the attorney/client privilege. Such information is privileged and will not be reported without the consent of the victim, though victims should be encouraged to report. However, information given to the legal (JA) liaison of the Academy Response team is not privileged. Psychotherapists, including Counseling Center personnel, who learn of an alleged sexual assault are required to report the incident in accordance with this memorandum. Beyond this requirement, however, information provided to a psychotherapist or an assistant to a psychotherapist for the purpose of facilitating diagnosis or treatment is generally confidential (some other exceptions may apply, see AFI 44-109).”

⁴² *Id.*, p. 1. “Law Enforcement Sensitive information is protected, limited distribution only information, and handled within a defined group of authorized users on a need to know basis.”

⁴³ Position Description, “AFOSI Advisor to 34th Training Wing, USAFA, CO”

- Uses AFOSI experience to ensure that USAFA response processes cause no unnecessary delays or negative impact on effective criminal investigations (i.e., loss of evidence) or potential prosecution . . . ”

The AFOSI advisor is assigned to the 34th Training Wing, who will oversee the day-to-day work and rate the advisor’s job performance. The advisor responds to sexual assault complaints, advises victims on the investigative process and what to expect during investigations, and conducts training for USAFA. The advisor also performs “. . . [o]ther duties as assigned by 34 TRW/CV.” Finally, the advisor informs the local AFOSI detachment when sexual assault reports are received.

The AFOSI advisor does not have law enforcement authority and does not carry criminal investigator credentials. For all practical purposes, the AFOSI advisor is a USAFA employee with AFOSI background, not currently in the AFOSI chain of command.

A. Sexual Assault Reporting and Investigation

The statutes and policies governing sexual assault reporting and investigation are detailed in Appendix B. In summary, under statutory and policy requirements that have been in effect since at least the mid-1980s, Air Force commanders are required to investigate sexual assault crimes and must refer alleged sexual assault crimes to AFOSI for investigation. Once the crimes are reported, AFOSI has the responsibility and independent authority under both statute and policy (see Appendix B) to initiate and conduct criminal investigations without command interference.⁴⁴ In the event of an attempted impediment to an investigation or investigative technique, AFOSI must report (through SAF/IG) to the Secretary of the Air Force. The Secretary of the Air Force must resolve the problem promptly and notify the Inspector General of the Department of Defense.

The Air Force Working Group recognized the USAFA program’s effect on sexual assault reporting and investigation. However, in considering the issues, the working group concluded that “. . . it appears that the Commander, AFOSI, after consideration of the Academy’s position in 2000, concurred in the [Academy’s] process.”⁴⁵ The Air Force Working Group based this conclusion on a May 4, 2001, e-mail from Brigadier General (BrigGen) Francis X. Taylor, the AFOSI Commander from July 1996, until May 2001.⁴⁶ However, the working group did not interview BrigGen Taylor until after issuing the report and, according to BrigGen Taylor, did not use his e-mail in the proper context.⁴⁷

⁴⁴ AFOSI may also develop and initiate criminal investigations without a report from a commander. However, the USAFA program prevented AFOSI from even learning about the crimes, thereby denying AFOSI any ability to exercise this independent authority.

⁴⁵ Air Force Working Group Report, p. 44

⁴⁶ Ibid, p. 44, footnote 374. BrigGen Taylor now serves as Assistant Secretary of State for Diplomatic Security

⁴⁷ July 16, 2003, Taylor Interview Transcript (Air Force Working Group), p. 2

We agree with BrigGen Taylor. The agreement referenced in the Air Force Working Group conclusion was a final effort to ensure sexual assaults at USAFA would be reported to AFOSI and, had the agreement been implemented, AFOSI would have been in a position to investigate the crimes. The agreement, however, was never fully or formally implemented. BrigGen Taylor told us, in fact, that it was “. . . not formalized into an agreement because the implementation aspects of it were not clear. Which is why I wanted people to go back out and work with the staff on how to make that happen.”⁴⁸

AFOSI was Unable to Alter the USAFA Program

The AFOSI Commander, after first learning about the USAFA program in early 1996, continually objected to the program and attempted numerous times to prevent its adverse effects on AFOSI’s ability to initiate criminal investigations. In the end, however, the AFOSI Commander had neither the seniority nor the organizational independence necessary to prevent or alter the USAFA program that effectively excluded AFOSI from receiving sexual assault reports.

The AFOSI Commander elevated his concerns about the USAFA program to the SAF/IG, the [REDACTED] and others on at least three occasions between 1996 and 2000.

- In early 1996, a delayed sexual assault report to AFOSI occurred that involved a nurse without current USAFA status who took independent action and compromised evidence. After sending an AFOSI headquarters team to assess the situation, the AFOSI Commander briefed SAF/IG. The actions resulted in an Air Force Judge Advocate General working group that reviewed and redrafted the USAFA policy, but did not resolve the AFOSI concerns.
- In late 1999, after two female cadets determined that the same male cadet had sexually assaulted them both, and one came forward to AFOSI. At approximately the same time, AFOSI opened an investigation after a former cadet had a “flashback” type experience and complained to AFOSI about an on-and-off sexual relationship that she had with a USAFA chaplain beginning some 10 years earlier when she was a USAFA cadet. The two events caused BrigGen Taylor to ask the SAF/GC to review the USAFA policy. The meeting resulted in another working group, which the [REDACTED] headed [REDACTED].⁴⁹ The [REDACTED] working group continued from late 1999 until August 2000 or later, but did not resolve AFOSI concerns about sexual assault reporting at USAFA.

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⁴⁸ December 2, 2003, Taylor Interview Transcript, p. 32

⁴⁹ The Fowler Panel questioned why [REDACTED], who also headed the Air Force Working Group, never disclosed his previous involvement in the matter. This issue is addressed in Part IV-Accountability

- In August 2000, after LtGen Huot replaced LtGen Kehoe as SAF/IG, BrigGen Taylor again raised objections to the USAFA program and was told to work it out with USAFA. As a result, BrigGen Taylor traveled to USAFA and met with then USAFA Superintendent (LtGen Dallager) in mid-November 2000, ‘. . . to forcefully express his views. . . .’⁵⁰ The meeting resulted in the USAFA Superintendent ‘. . . looking for a methodology to get . . . [AFOSI] involved while assuring anonymity of the victim . . .’⁵¹ The meeting also resulted in two referrals to AFOSI almost immediately. The AFOSI Commander, however, was ‘. . . not ready to declare victory as . . . [AFOSI still was] not made aware of ALL complaints . . .’⁵² Following a subsequent meeting with the USAFA Commandant (BrigGen Mark A. Welsh) in May 2001, the AFOSI Commander seemed convinced that USAFA would begin notifying AFOSI on all sexual assaults, still without victim identity. According to BrigGen Taylor, AFOSI then ‘. . . would have authority or opportunity to go talk directly to the Superintendent on those cases where we felt very strongly, **which would have been all of them.** . . .’⁵³ (Emphasis added) BrigGen Taylor, however, retired from the Air Force in May 2001, and BrigGen Welsh left USAFA for a new assignment in August 2001. Even though BrigGen Taylor alerted his successor (BrigGen Leonard E. Patterson) to the situation, the successor AFOSI Commander did not follow-up and the agreement was never fully or formally implemented.⁵⁴

According to BrigGen Taylor, throughout his entire involvement in the matter, Air Force leadership never reconciled the USAFA interest in confidentiality with the AFOSI interest in timely investigations. After SAF/IG coordinated on the draft USAFA policy in 1996, however, BrigGen Taylor believed AFOSI had ‘. . . received direction that this [confidential sexual assault reporting] was the way it was going to be at the Academy. . . .’⁵⁵ He understood that the SAF/IG action was ‘. . . on behalf of the Secretary of the Air Force’ and, since the Secretary had authority to stop an investigation, he then tried to accommodate the new policy and provide the investigative support that AFOSI was required to provide. However, BrigGen Taylor never agreed that the USAFA program was the way to approach the problem and he continued to object to the program. In fact, he recalled several meetings where he pointed out specifically that ‘. . . you know, ‘we were ignoring a crime. We’re going to commission people who have been involved in criminal activity and that’s predatory,’ and on and on and on as reasons for not going in this direction.’⁵⁶

⁵⁰ September 13, 2000, ██████ e-mail to SAF/GC, Subject: “RE: AFA Sexual Assault Reporting”

⁵¹ November 19, 2000, Taylor e-mail to ██████, Subject: “RE: Academy”

⁵² Ibid

⁵³ July 16, 2003, Taylor Interview, p. 17

⁵⁴ Patterson was copied on several e-mails involving Taylor’s meetings with USAFA. In addition, Patterson’s previous position was the SAF/IG Director for Special Investigations, and he was copied on many if not most e-mails involving the ██████ Working Group.

⁵⁵ July 16, 2003, Taylor Interview, p. 6

⁵⁶ Ibid

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Conclusion

BrigGen Taylor should not have allowed his disagreement with the USAFA program to continue for many years without elevating the matter to the Secretary of the Air Force. The USAFA program contravened statutory and policy requirements that guaranteed independent investigative authority (see Appendix B), and BrigGen Taylor clearly recognized the program effects. Had USAFA officials interfered with a single investigation, the policy would have required elevation to the Secretary of the Air Force and ultimate reporting to the Inspector General of the Department of Defense. A program that prevented many investigations certainly should have warranted no less.

On the other hand, we recognize that the elevation would have had to be through the SAF/IG, and that the SAF/IG, [REDACTED], and Air Force Surgeon General all ultimately agreed to support the USAFA. (This area is addressed further in Part V, Responsibility.) As a result, efforts to elevate the matter to the Secretary of the Air Force would have pitted BrigGen Taylor against more senior Air Force officials, both in rank and in the Air Force organization, and the more senior officers included his first line supervisor.

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We also recognize, however, that BrigGen Taylor's assignment as AFOSI Commander was his "terminal" or final assignment before retiring from the Air Force. This is essentially the standard for AFOSI Commanders to help ensure that their future military careers will not be jeopardized from taking independent criminal investigative actions that are unpopular. However, the same is true of BrigGen Hoffman, the previous AFOSI Commander who initially raised the issues to BrigGen Taylor and caused him to pursue the matter. It is also true of BrigGen Patterson, who followed BrigGen Taylor as AFOSI Commander beginning in May 2001.

This situation demonstrates a fundamental flaw in the Air Force organizational structure that permits senior officers to influence AFOSI independent investigative authority. Furthermore, unless the current Air Force organizational structure is changed, potential for the same type adverse affects on AFOSI independence will continue. If the Air Force does not proceed swiftly to adopt the organizational change that we are recommending below, we believe the Secretary of Defense should consider civilianizing the senior AFOSI position to ensure that the type of senior officer influence that prevented the initiation of independent criminal investigations at the USAFA does not reoccur in the future.

The Current USAFA Program will not Solve the Problem

USAFA implemented the new policy in Commander's Guidance 05-8, May 27, 2003, which provides:

"... The SFCC [Security Forces Control Center] will immediately notify Tier 1 of the Academy Response Team (34 TRW CV, Victim

Advocate Coordinator, AFOSI and legal **liaisons**, AFOSI representative, and Security Forces representative). This group will confer promptly to determine what needs to be done to assist the complainant, and what investigative steps are necessary. . . . The Victim Advocate Coordinator along with the **AFOSI and legal liaisons** will ensure that the complainant is informed of and offered all available services, and that applicable investigative and legal processes are explained to the complainant. . . .” (Bolding added for emphasis)

The type of interdisciplinary approach to crime that USAFA is attempting is not new. This approach has been used successfully in both Federal and civilian law enforcement for many years. For example, a Sexual Assault Nurse Examiner (SANE) in Minneapolis, Minnesota runs one of the oldest Sexual Assault Response/Resource Team (SART) programs in the United States. The SART concept is based on the belief that “. . . a team response helps prevent the victim from reporting the account of the assault repeatedly. . . . [and] confusion among professionals trying to meet the needs of the rape victim as she progresses through the health care and criminal justice systems.” According to SART program documentation, SART members typically include the SANE, **police or sheriff, detectives**, prosecutor, rape crisis center advocate or counselor, and emergency department medical personnel. “. . . [W]hen law enforcement is called to the scene of sexual assault, they will protect the client from further harm, protect the crime scene evidence, and take a limited statement from the victim to determine if a sex crime was committed.” If a victim goes for emergency medical treatment immediately, law enforcement is called immediately to determine if a crime has been committed.⁵⁷

SART programs, therefore, involve both police officers and detectives (investigators) from the outset to prevent investigative delays, as well as to meet victim needs. To do otherwise would increase the opportunity for crime scene contamination and the resulting physical evidence losses, and would reduce ability to collect testimonial evidence from the victim and witnesses while the details are strongest in their minds. The ultimate effect would be reduced ability to pursue successful criminal prosecutions against sex offenders.

Under the USAFA requirements for ART, however, the “AFOSI advisor” is not actually in AFOSI and an AFOSI investigator is not assured presence at the initial contact with the victim. In our view, this process is not an effective use of limited criminal investigative resources, will continue to inhibit timely investigations and successful prosecutions, and is contrary to required investigator independence. Furthermore, we do not believe that AFOSI should be required to use an allocated employee position for an individual that actually works for USAFA. This arrangement will only mislead victims and others into believing that the individual is representing AFOSI when that is not the case.

⁵⁷ Sexual Assault Nurse Examiner (SANE) Development and Operations Guide, Sexual Assault Resource Service, Minneapolis, Minnesota, U.S. Department of Justice, Office of Justice Programs, Office of Victims of Crime (undated) (C.2.11)

The Air Force believes the USAFA advisor position will help counter cadet mistrust in AFOSI criminal investigators, and is in line with both the Fowler Panel and congressional desires to further victim confidentiality. We disagree. Delayed criminal investigator contact with the victim and crime scene will have the same effect as delayed crime reporting--that is, reduced ability to collect the testimonial and physical evidence necessary to successful prosecutions, or even the ability to determine whether a crime occurred. As discussed previously, over the last 10 years, sexual assault reports to AFOSI were delayed on average more than 4 months. Such delays are not in the best interests of the victim, the accused, or the community. The only effective way to counter cadet mistrust for AFOSI is to ensure that AFOSI is in a position to conduct thorough, timely investigations so prosecutions can be successful and sex offenders can be punished appropriately. Criminal investigators, probably more so than other first responders, rely on a constructive relationship with the victim to succeed.

Our review of USAFAI 51-202 "Academy Response Team" (ART) dated September 19, 2004, found a number of controls spelled out in the instruction that if followed would likely result in most sexual assaults being reported and investigated. As with the former instruction, lack of independent oversight could allow the program to drift. ART monthly reports on sexual assault cases and related issues are distributed only to Academy officials. AFOSI does not receive a copy to the ART's monthly report against which to measure the referrals received from the ART. Also external oversight is by exception; the Secretary of the Air Force and the Board of Visitors receive the ART's annual quality review of all active cases and cases closed since the last review only upon request. AFOSI is also excluded from the annual report.

B. Legal and Prosecutorial Matters

In January 2004, USAFA began phasing in an Officer Development System (ODS) based on the Air Force disciplinary system, which is based on the UCMJ. The objective is to integrate the ODS and Air Force discipline system into the way that USAFA develops officers.⁵⁸ Under the previous USAFA disciplinary system, cadets were subject to four types of disciplinary action: (1) UCMJ/Non-judicial Punishment; (2) Board of Officers/Hearing Officer; (3) USAFA Discipline System; and (4) USAFA Honor System.⁵⁹ Under this system, cadets were punished for infractions ranging from minor (room maintenance and appearance violations) to more serious (giving alcoholic beverages to under-aged cadets). Cadets who violated even minor academy rules were given demerits and required to march "tours" on base while carrying rifles. Once a cadet accumulated enough demerits, he/she was required to appear before a military review board that considered disenrolling the cadet from USAFA. Under the

⁵⁸ Commandant's Guidance 01-3, January 12, 2004, "Military Discipline and the Officer Development System"

⁵⁹ Air Force Cadet Wing Instruction 51-201, "Discipline and Probation System" September 26, 2001, paragraph 2.1

current system, the UCMJ replaces the previous cadet disciplinary system.⁶⁰ In addition to the disciplinary system changes, the overall changes included:

- adopting a definition for sexual assault based on UCMJ violations; and
- merging the 10th Air Base Wing Judge Advocate office and USAFA Judge Advocate legal office into the USAFA Judge Advocate with one Service Judge Advocate and one Chief of Military Justice.

The Air Force Working Group findings and recommendations in this area led to the Air Force changes noted above. Even though the Air Force Working Group did not specify an office or individual to be responsible for implementing its recommendations, this omission was not significant because the recommendations were addressed in the *Agenda for Change*, which assigned responsibility for the implementations.

Amnesty for Infractions

The sexual assault program that the USAFA Superintendent implemented in 1993 included a “de-facto” amnesty program to forgive victim and witness “infractions” committed in connection with a sexual assault. The program was intended to encourage victims and witnesses to report sexual assaults, at least to USAFA nurses who could assist victims in getting needed medical and other help, without having to fear disciplinary action for infractions. It was also intended to counter some cadets’ perceptions that they were punished for infractions because they reported sexual assaults. In implementing the program, however, the USAFA Superintendent neither publicized the program nor issued guidance on either requesting or approving amnesty. In fact, the Superintendent did not even tell some of his senior staff, including the Commandant, about his new sexual assault program adopted unofficially. In addition, as noted earlier, the Superintendent intentionally excluded the Cadet Counseling Center from his unofficial program, so USAFA counselors were unaware that an amnesty program was available. Overall, the program depended on USAFA nurses who were contacted about a sexual assault to get the word out, and then upon “word-of-mouth” among the cadets.

When the successor USAFA Superintendent formalized the program beginning in November 1995, he still did not issue guidance for requesting or approving amnesty. Thus, the program was not well understood by cadets and or by USAFA officials, and the application of program requirements was inconsistent. In fact, in reviewing AFOSI investigations conducted over the last 10 years, we discovered that some sexual assault victims (at least two who reported sexual assaults to AFOSI in 1993 and 1994) were not aware of the Superintendent’s amnesty program.

⁶⁰ Commandant’s Guidance 01-3, January 12, 2004, “Military Discipline and the Officer Development System”

The Air Force Working Group identified problems with the USAFA amnesty program and recommended “assured amnesty” for victims and others involved in reporting sexual assaults. The sexual assault program implemented under the *Agenda for Change* includes such “blanket amnesty,” except for:

“... [A]ny cadet involved in covering up the incident, any cadet involved in hindering the reporting or investigation of the incident, and the senior ranking cadet in attendance. The senior ranking cadet will be responsible and accountable for all infractions committed by junior cadets.

In reviewing the USAFA amnesty program subsequently, the Fowler Panel contrasted it to the Military Academy (Army) and Naval Academy and found that:

- The other academies do not have amnesty programs and, instead, have policies to encourage reporting. (The Fowler Panel concluded that the different focus might alleviate negative connotations with the term “amnesty” and avoid using a term not used in the administration of criminal justice.)
- Neither Army nor Navy allows “blanket” amnesty and, instead, requires decisions on a case-by-case basis. (The Fowler Panel recognized that blanket amnesty could lead to false sexual assault reporting because an alleged victim might claim sexual assault to avoid accountability for personal misconduct, or friend or peer misconduct.)
- The Army and Navy postpone decisions on whether to forgive victim and witness misconduct until after all available evidence is thoroughly reviewed and careful consideration is given to both offense severity and likelihood that the offense would have been reported otherwise.
- The Army policy identifies the official with decision authority. (The Fowler Panel concluded that a similar approach would benefit the USAFA policy.)
- The Army and Navy policies to encourage victim reporting should be considered carefully before deciding on discipline for non-assailant peers and friends.

The Fowler Panel recommended that the Air Force review the Army and Navy policies and adopt a clear policy to encourage sexual assault reporting. According to the Fowler Panel:

“The policy should provide the Commandant or Superintendent shall make determinations on a case-by-case basis. The decision should involve advice from the Academy Response Team and the Academy Staff Judge Advocate, and provide for careful consideration of many factors, including the circumstances surrounding the alleged sexual assault, the evidence supporting the allegation of sexual assault, the seriousness of the victim’s reported misconduct and its relationship to the sexual assault, and the need to encourage victims now and in the future to report sexual assaults.”

The Current Amnesty Program

USAFA implemented the current amnesty program in Commander' Guidance 06-3, June 3, 2003. The program includes blanket amnesty, with the exceptions identified above. The Commander's Guidance provides that:

“. . . Victims and witnesses will not receive . . . cadet disciplinary punishment for **infractions normally addressed through cadet discipline** which arise out of the same incident or event as the alleged sexual assault, though they may be counseled or afforded other rehabilitative measures. Examples of such infractions include “over the fence,” unauthorized consumption of alcohol, and fraternization or unprofessional relationships. The alleged assailant, cadets involved in covering up the incident or hindering its reporting or investigation, any cadet making a false allegation of sexual assault, or any cadet who provides alcohol to an underage cadet, may be punished, as appropriate, under either the cadet disciplinary system or the Uniform Code of Military Justice, as appropriate. In addition, the senior cadet present may be held accountable for the misconduct of junior cadets associated with the event.⁶¹ (Bolding added for emphasis)

The guidance attempts to eliminate confusion by pointing out that amnesty is applicable only to infractions normally addressed through cadet discipline, not to violations such as illegal use of narcotics, providing alcohol to a minor, or driving under the influence (DUI).

Current Program Problems and Concerns

As has been the case since program inception, the current USAFA amnesty program is intended to apply to “infractions normally addressed through cadet discipline,” not those processed through the UCMJ. We generally recognize the term “infraction” to denote nonconformance with rules or regulations and the term “violation” to denote nonconformance with statutory requirements (laws). In the military, however, any infraction is or can become a punishable UCMJ violation. For example, the “minor infraction” noted previously (room maintenance and appearance violation) could be a serious UCMJ violation, if the cadet disobeyed a lawful order to maintain proper military appearance in his/her dormitory room, especially if the infraction represented a repeat offense. USAFA cannot expect its youthful cadets, or the USAFA officials responsible for administering the program, to know or readily comprehend all individual “infractions” that USAFA “normally addresses” through the disciplinary system, rather than through UCMJ proceedings. Furthermore, the fact that a particular infraction is “normally” addressed through the disciplinary system does not mean that it will be in every case. Cadets, therefore, will continue to be unable to anticipate whether a particular infraction will be considered for amnesty.

⁶¹ Commander's Guidance 06-3, “Reporting Process for Sexual Assault at the Air Force Academy,” June 3, 2003, at 2. We note that the term “over the fence” used in the guidance refers to a cadet who leaves USAFA grounds without permission. In the regular Air Force, the violation would be called “Absent Without Leave,” or “AWOL,” which can be a serious UCMJ offense.

Furthermore, since an offense could be subject to amnesty in one case but not another, USAFA will not be able to ensure consistency in rendering discipline.

Another reason for confusion in the USAFA amnesty program is that it overlaps, in principle, the “immunity” program already included in the UCMJ. Under the Manual for Courts-Martial, Part II (Rules for Courts-Martial), Chapter VII (Pretrial Matters), Rule 704 (Immunity), a General Court Martial Convening Authority (in this case, the USAFA Superintendent) may grant “Transactional Immunity” or “Testimonial Immunity” from prosecution for UCMJ violations. If “Transactional Immunity” is granted, the military will not court martial for one or more UCMJ violations. If “Testimonial Immunity” is granted, the military will not court martial for one or more UCMJ violations identified during the individual’s testimony or statements, or from information derived directly or indirectly from the testimony or statements. The more significant Rule 704 provisions with relevance to the current issues are summarized below:

- Immunity may be granted to any person who is subject to the UCMJ.
- Immunity ordinarily should be granted only when testimony or other information from the person is necessary to the public interest, including the needs of good order and discipline, and when the person has refused or is likely to refuse to testify or provide other information on the basis of privilege against self-incrimination.
- A person granted immunity may be ordered to testify and answer investigator or counsel questions.
- After being granted immunity, if a person commits perjury, false swearing, makes a false statement, or fails to comply with an order to testify, the military may court martial the person for these offenses and may use testimony, statements, or information derived directly or indirectly there from in the court martial.
- The decision to grant immunity is generally within the General Court Martial Convening Authority’s sole discretion, and the General Court Martial Convening Authority may not delegate this authority.

We found that some USAFA officials and cadets did not recognize the distinction between amnesty granted in sexual assault cases and immunity granted in a UCMJ proceeding.

We are also concerned about an inequity inherent in the current USAFA amnesty program. We fully support the stated purpose to encourage sexual assault reporting. However, under the USAFA amnesty program, an individual accused of committing a sexual assault and ultimately not convicted could still be punished for lesser UCMJ violations in which the individual participated equally with the victim and witnesses who have been given amnesty for the same violations. Such inequitable treatment would be contrary to the principal that all

individuals are entitled to equal protection under law, and could cause equity questions that extend to the overall criminal justice system applied at USAFA.

Other Academy Programs Or Policies

In reviewing the USAFA amnesty program, we reviewed the Army, Navy and Coast Guard policies, as well as those for two private military academies—the Citadel, located in Charleston, South Carolina, and the Virginia Military Institute (VMI), located in Lexington, Virginia. VMI does not have an amnesty-type program or policy, and Coast Guard is revising its policy in this area.

Of the programs reviewed, only USAFA and the Citadel have “amnesty programs.” Unlike the USAFA amnesty program, however, the Citadel program is specific. The Citadel categorizes each punishable “offense” by class (Classes I – IV), the specific punishment for each offense, and provides that amnesty:

“... applies to all unserved punishments except those designated by this regulation (The Blue Book) as not qualifying for amnesty. Punishments not qualifying for amnesty are those stated, “No Amnesty” in Annex B, plus any offense determined to be substance abuse, alcohol related, hazing, sexual assault or sexual harassment related. . . . If it is determined that an offense was committed in anticipation of amnesty, then the punishment resulting from that offense will not qualify for amnesty. This determination will be made by the Commandant.”

The Annex B referenced in the Citadel regulation is 10 pages in length, lists each offense (ranging from minor, e.g., “improper shave” to serious, e.g., “illegal use, sale, possession or solicitation of drugs or drug paraphernalia”), the class to which it belongs, and the specific punishment for the offense. Then, by asterisk or note, the list specifically identifies each offense for which amnesty is not available. Therefore, unlike the USAFA amnesty program, the Citadel amnesty program is easily understandable for both cadets and officials responsible for administering punishment. The program is also specific as to the officials authorized to administer punishment and decide amnesty issues.

The remaining academies have policies to encourage sexual assault reporting, but they are not identified as amnesty programs and none has the effect of blanket amnesty approved in advance without regard to (1) whether information would have become known without the victim or witness report, or (2) the seriousness of the offense being forgiven. Furthermore, USAFA is the only academy that attempts to limit the consideration to “infractions normally addressed through cadet discipline.” The remaining academy policies deal with all offenses (apparently recognizing they are all UCMJ offenses) and the amnesty-type decisions are on a case-by-case basis after all available information is considered, including whether the matter would have been reported otherwise and the seriousness of the offense. Specifically, the Military Academy (Army) policy provides:

“ . . . [T]he circumstances surrounding the assault and its impact upon the victim shall be considered in determining whether it is appropriate to initiate or recommend administrative, disciplinary, or judicial action against a victim. The Commandant makes such decisions concerning cadet victims on a case-by-case basis. Final decisions and/or recommendations will be made after a thorough review of all reasonably available information and careful consideration of the severity of the offense(s) and the likelihood that the offense(s) would have otherwise been reported. Recognizing that victims may be reluctant to provide relevant information because it may implicate misconduct by non-assailant peers or friends, this policy provision is intended to encourage victim reporting and all matters shall be considered and carefully weighed before disciplining other cadets based on such information.”⁶²

Similarly, the Naval Academy policy provides:

“ . . . To encourage midshipmen to report sexual assaults and to ensure they receive available medical and counseling service, midshipman victims of sexual assault generally will not be disciplined for self-reported violations such as alcohol offenses or prior consensual sexual misconduct factually related to the assault. Midshipmen generally will be formally counseled for such violations. Final decisions concerning the processing of violations committed by midshipmen victims will be made on a case-by-case basis, after a thorough review of all reasonably available information, and considering the severity of the offense(s) and the likelihood that the offense(s) would have otherwise been reported. Recognizing that victims may be reluctant to provide relevant information also implicating misconduct by non-assailant peers or friends, the above policy to encourage victim reporting shall be considered and carefully weighed before disciplining other midshipmen based on such information.”⁶³

Conclusion

The USAFA amnesty program has created confusion from the beginning and, unless changes are made, this confusion will continue and likely offset any positive effect on sexual assault reporting. The Fowler Panel correctly noted that the current “blanket” amnesty approach could lead to false sexual assault reporting. In this regard, as one Naval Academy official advised:

“ . . . An automatic provision of what would amount to a decision to grant immunity (e.g., not to discipline a midshipman in any judicial or administrative forum) for all reported cases of sexual assault may create an unjustified safe harbor allowing a midshipman to avoid all responsibility or accountability for their own voluntary actions, irrespective of their nature or association to the reported offense. . . .”⁶⁴

⁶² United States Corps of Cadets (USCC) Policy Memorandum 39-03 at paragraph 6.c.3

⁶³ COMDTMIDNINST 1752.1A, the Naval Academy Sexual Assault Victim Intervention (SAVI) Program Instruction, Paragraphs 7(c) and (d)

⁶⁴ December 23, 2003 e-mail from ██████████, USNA JAG, citing DON Sexual Assault Victim Intervention (SAVI) Program Instruction, paragraphs 7 (d) and (c)

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We agree. Furthermore, in applying the program to “infractions normally addressed through cadet discipline,” USAFA has created a nebulous coverage that can never be understood well, not by cadets to whom it applies or the officials administering the program. Finally, the program has an inherent inequity in that it will not afford fundamental fairness to accused offenders who are either not guilty, or when evidence is insufficient to even pursue prosecution for an alleged sexual assault. Therefore, although we fully support the Fowler Panel recommendation in this area, in implementing the recommendation, USAFA should apply the coverage to all offenses, recognizing that they are all UCMJ violations. USAFA should also ensure that, in considering amnesty for victims and witnesses on a case-by-case basis, the decision(s) do not result in disparate punishments for equal offenses.

C. Victim and Witness Assistance Program

The Victim and Witness Protection Act of 1982, 42 U.S.C., §10607, sets forth specific protections and services for victims and witnesses of crime. The statute requires the head of each department or agency engaged in detecting, investigating, or prosecuting crime to designate by name and office title the person(s) responsible for identifying victims and performing required services at each stage of a criminal case. The statute also requires responsible officials, at the earliest opportunity possible without interfering with an investigation, to inform victims about their rights to services, and to provide the name, title, business address, and telephone number where the victims may request the services. Among other things, the responsible officials are required to (1) inform victims about public and private programs that are available to provide counseling, treatment, and other support, (2) arrange for a victim to receive reasonable protection from a suspected offender (or person acting in concert with or at the behest of the suspected offender), and (3) inform victims about specific services available to them during:

- investigation and prosecution;
- court proceedings; and
- after trial.

The DoD implemented these requirements in the Victim and Witness Assistance Program (VWAP), DoDD 1030.1, “Victim and Witness Assistance,” November 23, 1994, and DoD Instruction (DoDI) 1030.2, “Victim and Witness Assistance Procedures,” December 23, 1994. The Air Force, in turn, implemented the requirements in AFI 51-201, “Administration of Military Justice,” November 2, 1999. The implementing policies:

- require each DoD component to designate a “Component Responsible Official” (CRO) for VWAP coordination, implementation and management – in the Air Force, the CRO is the Air Force Judge Advocate General;

- require each DoD component to designate a Local Responsible Official (LRO) to ensure installation-level systems for (1) providing information on available benefits and services, and (2) assisting victims in obtaining the benefits and services;
- permit installation commanders to delegate, in writing, LRO duties and responsibilities to the Staff Judge Advocate – at USAFA, the LRO is the Staff Judge Advocate and, under Air Force policy, the LRO may appoint (need not be in writing) a “victim liaison” (medical or mental health care provider, judge advocate, paralegal, or other person) to assist during the military justice process;
- require a Victim and Witness Assistance Council, to the extent practicable, at each significant military installation, to ensure an interdisciplinary approach to providing services to victims and witnesses – the Air Force policy does not require a Victim and Witness Assistance Council;
- require each DoD component to establish oversight procedures to ensure an integrated support system capable of providing required services – the Air Force policy requires responsible Air Force officials to have self-inspection procedures and assess their own program effectiveness; and
- require initial notifications to victims and witnesses on DD Form 2701, “Initial Information for Victims and Witnesses of a Crime” – law enforcement officers (police officers and criminal investigators) are generally responsible for initial victim and witness notifications.

USAFA was not required to issue separate policy to implement the VWAP, but was required to comply with AFI 51-201, which implemented the requirements throughout the Air Force. However, when USAFA implemented its confidential sexual assault reporting policy in 1996, it did so based on USAFAI 51-201, the same number as the Air Force policy document used to implement the Air Force-wide VWAP. In addition, USAFAI 51-201 purported to “align with” AFI 51-201, and included language from AFI 51-201 indicating that the policy, at least in some respects, applied to all crimes. In reality, however, USAFAI 51-201 applied to sexual assault crimes and did not incorporate all VWAP requirements for those crimes. USAFAI 51-201 also did not even reference the LRO (Staff Judge Advocate), the official who had been designated as having primary responsibility for VWAP at the academy.

In issuing USAFAI 51-201, USAFA did not indicate that the policy supplemented, but did not replace, the Air Force policy. USAFA also did not indicate how it intended to apply Air Force policy to non-sexual assault crimes. USAFA simply operated its sexual assault program based on the USAFA 51-201 policy and left guidance on overall VWAP program implementation to individual USAFA officials. Overall, the USAFA actions were misleading and resulted in depriving sexual assault victims and witnesses of services and protections to which they were entitled under both statute and policy. This result is evident in sexual assault cases that were not referred for investigation, because law

enforcement (Air Force Security Forces, or AFOSI) was responsible for initial notifications and affording needed protections. This result also may have extended to non-sexual assault crimes, because the USAFA policy was confusing and the application to non-sexual assault crimes was unclear.

The Air Force Working Group correctly identified numerous problems with the USAFA Victim and Witness Assistance Program, as the program applied to sexual assaults. The changes adopted under the *Agenda for Change* were based in part on the Air Force Working Group recommendations.

Program After the *Agenda for Change*

Following the *Agenda for Change*, in May 2003, USAFA implemented the current sexual assault program using Commandant's Guidance 05-8, ". . . to provide all necessary support, assistance and protection for victims of sexual assault, beginning immediately when the report is received, and . . . to ensure that complaints are appropriately investigated and evidence is preserved, with the goal of providing justice for both the victim and the accused." The guidance announced the new ART process for addressing sexual assaults at USAFA and indicated that USAFAI 51-201, "Cadet Witness Assistance and Notification Procedures" would be revised. The new program also specifically tasks the Vice Commandant with (1) overseeing all sexual climate issues, (2) directing the Academy Counseling Center operations, and (3) maintaining appropriate liaison with community counseling entities. The new policy, however, still did not clarify whether USAFA intended for the policy to replace the Air Force VWAP requirements at USAFA. (The previous work has not recognized that the USAFA policy deals primarily with sexual assaults while the Air Force VWAP policy applies to all crimes. Our recommendations at the end of this section will address this difference, but the remaining discussion in this section will deal with how the VWAP was and is applied to sexual assault crimes at USAFA.)

Program Oversight Requirements

The Air Force Working Group correctly found that the previous program did not have effective VWAP oversight.⁶⁵ However, neither the Air Force Working Group's nor the Fowler Panel's recommendations specifically address this omission.

USAFA 51-201 is no longer in use and the Air Force-wide policy now governs VWAP at USAFA. According to the Air Force, VWAP is now a special interest item in IG inspections and Judge Advocate General "Article 6 visits." Regarding the IG special interest inspections, we note that the SAF/IG (the Air Force Inspections Agency (AFIA)) plans to conduct a comprehensive USAFA

⁶⁵ Air Force Working Group Report, p. 51

inspection in February 2005⁶⁶, and has begun an inspection plan for the work. Previous AFIA inspections at USAFA have covered support systems and operations, but not the overall USAFA programs planned for the next inspection.

We believe the planned oversight should go further. In requiring “oversight procedures,” the DoD policy (DoDD 1030.1) indicates that the intent is to ensure an integrated support system capable of meeting the services required for victims and witnesses. DoDD 1030.1 points out that the oversight procedures could include coverage by the component’s Inspector General, staff assistance visits, surveys, and status reports. Similarly, in requiring “self-inspections,” the Air Force policy (AFI 51-201) includes an additional example, i.e., providing that questionnaires could be sent to victims and witnesses soliciting their opinions on the assistance they received under the program. The oversight examples set forth in these policies all involve program performance, not whether the program is based on an integrated approach to support. Thus, in addition to the stated policy intention, the policies clearly intend oversight procedures for measuring performance and ensuring overall program effectiveness.

Assigning responsibility for the current USAFA sexual assault program to the Vice Commandant might ensure the high-level attention necessary to a successful program, at least in the short term while USAFA sexual assault problems are receiving continuing, high-level attention.⁶⁷ In addition, the current program is based on an integrated approach to supporting sexual assault victims. Specifically, the ART is responsible for dealing directly with sexual assault victims, and the ART includes command, medical, legal and law enforcement representatives. Thus, the ART is an integrated approach to victim support. To fully meet policy requirements, however, USAFA must have oversight procedures that ensure periodic program assessments and resulting corrections or improvements on a recurring basis. Otherwise, once the USAFA program is no longer subject to current attention levels, USAFA is unlikely to continue the day-to-day attention and oversight necessary to preserve effectiveness in the VWAP program. USAFA, therefore, should adopt all oversight procedures referenced in the governing policy. As a minimum, the LRO (Staff Judge Advocate) responsibilities for the program should be defined, and a program assessment should be required at least every 3 years. These assessments should include surveys or questionnaires to gather input from sexual assault victims and witnesses on their experiences with the VWAP.

Initial Victim and Witness Notifications.

Conceptually, law enforcement officers are called immediately when a crime occurs, because they are the individuals with specific authority to deal with the crimes. From an overall criminal justice perspective, the law enforcement officer

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⁶⁶ December 2, 2003, [REDACTED] Air Force Inspections Agency, Interview Summary (G.2.5)

⁶⁷ In this regard, we note that prior to the *Agenda for Change*, the program responsibility resided with the Superintendent, which did not ensure the necessary oversight

is first to arrive at a crime scene and first to deal with the victim and witnesses. DoD policy is premised on this concept and requires law enforcement officers (in this case, either Air Force Security Police or AFOSI) to initiate required notifications to the victims and witnesses. DD Form 2701, "Initial Information for Victims and Witnesses of a Crime," was specifically designed for this purpose.

AFOSI policy requires agents to inform sexual assault victims and witnesses promptly that:

- emergency medical and social services care are available and, when necessary, assist the individuals in securing care; and
- they have a right to reasonable protection if they believe participating in the military justice system will jeopardize their lives, well being, or safety.

The agents are also required to provide sexual assault victims and witnesses with the name, title, business address, and telephone number of the individual (at USAFA, the Director, Family Support Center, or the victim liaison) from whom to request services and, when necessary, assist in contacting the individuals. If a victim does not require immediate assistance, AFOSI agents are required to direct the victim to the local SJA, who is responsible for helping victims obtain financial, legal, and other services and arranging for contact with civilian agencies. AFOSI DETCOs serve as unit points of contact (POC) for victim and witness protection matters. DETCOs must assure that all detachment personnel receive training from the SJA and are familiar with DoD and Air Force requirements.

Agents are required to give DD Form 2701 to all victims, as well as all witnesses who (1) likely will be requested to testify in military or civilian court proceedings, (2) are threatened during any phase of the investigative process, or (3) express fear of cooperating with AFOSI. AFOSI also notifies witnesses whenever an agent determines that investigative circumstances warrant issuing DD Form 2701. If the investigation involves a matter that will be prosecuted in civilian jurisdictions, AFOSI agents seek guidance from the affected prosecuting attorney.

AFOSI guidance indicates that agents should use discretion in determining the best time to give a victim or witness DD Form 2701 and, normally, the best time is during the initial interview; however, a subsequent interview might be more appropriate depending on the person's mental or physical state, if the victim or witness could benefit from time to regain composure and health. Agents are required to coordinate questionable situations with the servicing SJA.

Based on our detailed review, AFOSI has an effective system for ensuring DD Forms 2701 are properly issued and tracking the issuances. Further, AFOSI agents continue to receive training related to properly notifying and assisting victims and witnesses, and has not encountered problems in satisfying its VWAP responsibilities. According to the DETCO, however, the ART now has the active

role in processing victims and frequently issues DD Form 2701 before AFOSI becomes involved. The DETCO believed that the only issue involved in ART issuing the form was the victim might be allowed to depart the area on leave before receiving DD Form 2701. As a practical matter, however, the DETCO believes the ART ensures that victims receive abundant information on the matters addressed in DD Form 2701. The DETCO explained that, based on the three or four cases processed under the new ART system as of March 2004, the ART is now generally issuing DD Form 2701 to victims. Detachment 808 then verifies that the DD Form 2701 was issued and documents the circumstances.⁶⁸ However, the victims and witnesses are entitled to this information under statute, and the Department is required to report the statistics annually to the Congress. USAFA has an effective system for meeting these requirements, but the USAFA system overall has not been fully reliable.

Conclusion

The USAFA Staff Judge Advocate is the designated LRO and should be assigned program oversight responsibility to ensure that the USAFA Victim and Witness Assistance Program functions as intended and complies with DoD and Air Force requirements. In addition, the USAFA policy governing assistance to victims and witnesses should identify all on- and off-base support services/resources available to victims and witnesses so personnel responsible for program actions can ensure consistency in notifying victims and witnesses about the services/resources available to them. Finally, if our previous recommendation to include AFOSI as part of the initial multidisciplinary contact with sexual assault victims is adopted, that part of oversight and accountability in the normal Air Force program will be restored.

Recommendations

2. The Air Force modify the current organizational structure and require the Commander, Air Force Office of Special Investigations, to report directly to the Secretary of the Air Force. The Air Force should also consider increasing the military rank for the AFOSI Commander, or as an alternative, civilianize the position in the Senior Executive Service to ensure that rank is not a factor in future attempts to influence AFOSI independence.
3. The Air Force modify the current United States Air Force Academy sexual assault program to include an AFOSI criminal investigator in initial victim contacts. If USAFA wants a former AFOSI criminal investigator (without law enforcement authority or investigator credentials) on staff to assist with complaint responses and training programs, USAFA should establish such a position directly, but should not advertise the person as an AFOSI agent if the AFOSI Commander does not rate the person's job performance.

⁶⁸ March 4, 2004, Summary of Interview of Detachment 808 Personnel (C.12.40)

4. The Superintendent, United States Air Force Academy, revise the current amnesty program based on the Fowler Panel recommendation detailed at the beginning of this section. In implementing the Fowler Panel recommendation, USAFA should apply the recommendation to all offenses, recognizing that all cadet infractions are or could become UCMJ violations.
5. The Superintendent, United States Air Force Academy, in considering amnesty for sexual assault victims and witnesses on a case-by-case basis, ensure that the decision(s) do not result in disparate punishments for equal infractions and afford fundamental fairness to all individuals involved in the infractions.
6. The Superintendent, United States Air Force Academy, reassign responsibility for the USAFA Victim and Witness Assistance Program to the USAFA Staff Judge Advocate (now the consolidated Academy/10th Air Base Wing legal office), the official already designated as the Local Responsible Official (LRO) for the program.
7. The Superintendent, United States Air Force Academy, revise and reissue USAFA Instruction 51-201, "Cadet Victim/Witness Assistance and Notification Procedures," to comply with the DoD Victim and Witness Assistance Program and the Air Force-wide policy implementing that program. The revised policy should:
 - a. identify all off-base victim support services/resources so personnel responsible for informing and supporting sexual assault victims are able to do so consistently;
 - b. designate responsibility for program oversight; and
 - c. require periodic reviews to ensure program success.
8. The Air Force Inspector General and the United States Air Force Academy Inspector General periodically inspect the USAFA Victim Witness Assistance Program to ensure continuing compliance with DoD and Air Force-wide requirements.

Culture

Beginning in 1995, the GAO, the Air Force Working Group, the Fowler Panel and various individuals, as well as internal USAFA climate surveys, identified problems at USAFA that were rooted in a problematic cadet subculture manifested by an unhealthy disregard for regulations and the law, to include prohibitions regarding alcohol consumption and consensual sex in dormitories, negative male attitudes and actions toward women constituting sexual harassment and even sexual assault, and cadet order and discipline significantly below the level expected at a premier military institution funded at taxpayer expense. Those

attitudes were not displayed by the majority of cadets, who continued to strive to meet the high standards of excellence expected of them, but they nevertheless reflected a serious problem which the Academy and Service leadership should have recognized earlier and moved more aggressively to address.

The Secretary of the Air Force *Agenda for Change* recognizes the need for change in the USAFA climate, which we believe the culture has produced:

“. . . These characteristics [personal honor, integrity and loyalty of its people individually contributing their utmost to achieve a common goal] can only be cultivated in a climate of trust and mutual respect: between the service and the nation; between the institution and its members; and, between the individuals who are the institution. In the absence of this fundamental compact, none of the values we cherish – integrity, service, excellence – can endure. Loyalty to these values and the institution must be placed above loyalty to any individual who betrays these values.

The Air Force Academy must bolster those processes and systems that guide honorable conduct, of which discipline for infractions is an integral component. The Academy must ensure cadets understand and exercise the spirit of these values in the context of their future in the Air Force. Discipline must be administered with measured judgment and in accordance with our core values. Ultimately, the success of the Air Force Academy depends on cadets, mentored by squadron-level officers and non-commissioned officers, internalizing these values and emerging from the Academy as officers of high character. . . .

Based on our current, not yet completed, Service academy survey and continuing media reports, the USAFA cultural problems persist. Our current survey indicates that some male cadets continue to believe females should not be allowed to attend USAFA, and many female cadets continue to fear consequences from reporting sexual assaults. Similarly, one recent news article reported:

“Fifteen Air Force Academy juniors and seniors under investigation in connection with a party that involved underage drinking have been stripped of their leadership duties. . . . The drinking allegedly occurred during an academy-approved, unsupervised off-campus retreat at a Winter Park resort in early October. The event was designed to improve the cadets’ leadership skills. . . .”⁶⁹

Changing the culture will require much more than simply punishing and expelling assailants while properly caring for victims and ensuring an absence of reprisal against those who come forward. Necessary changes will require a strong and enduring commitment on the part of Academy and cadet leadership to educate and enforce the requirement for exemplary leadership standards codified in Title 10 U.S.C. § 8583—the same requirement for leaders to be both role models and “vigilant in inspecting the conduct of all persons who are placed under their command” that was first enacted by the Continental Congress as Article I of the

⁶⁹ Colorado Springs Gazette, Party Costs Cadets, November 13, 2004, p. 1

1775 Navy Regulations. In the aftermath of various sexual scandals in the 1990's, Congress reenacted this "exemplary conduct" leadership standard for all military departments⁷⁰, affirming "a very clear standard by which Congress and the nation can measure the officers of our military services."

The following recommendations emphasize the need for change in the USAFA culture and are designed to ensure that this area will continue to receive the high-level attention and oversight warranted.

Recommendations

The Superintendent, United States Air Force Academy, take the following actions:

9. Work with other Service Academy Superintendents and Office of the Under Secretary of Defense (Personnel and Readiness) to formulate a single survey instrument and testing protocol that can be administered to cadets and midshipmen periodically to measure cultural changes and adherence to core values; upon completing each such survey, brief the Service Secretaries and the Inspector General of the Department of Defense on the results.
10. Increase command attention to eliminating alcohol consumption, prohibited consensual sex, and use of government equipment for pornography at the United States Air Force Academy, thereby furthering good order and discipline among cadets.
11. Ensure that orientation training for cadets includes effective training on clear standards for sexual interaction so all cadets understand clearly the boundaries, penalties for crossing them, individual leadership responsibilities, and reporting options.
12. Maintain a heightened level of command attention aimed at eliminating sexual harassment and negative attitudes toward women at the United States Air Force Academy.
13. Review current admissions criteria and consider adopting changes that emphasize core values as a part of the whole person concept, along with current measures, such as aptitude scores, grades, athletics, and extracurricular activities.
14. Implement Title 10 U.S.C. § 8583 requirements for exemplary leadership behavior into the cadet curriculum and disciplinary system to ensure that graduates possess and enforce the leadership traits essential for future leaders of the United States Air Force.

⁷⁰ 10 U.S.C. §8583 [Air Force] See also introduction to Part V of this report.

Part V - Responsibility

Responsible Air Force Leaders

The USAFA process for sexual assault reporting abrogated command responsibility for decisions, and shifted the responsibility to the youthful cadet victims already traumatized by the events and possibly lacking the objectivity to make valid decisions. The process contravened DoD and Air Force Policy. The senior Air Force officers who created, contributed to, or abided the new program generally ignored persistent senior staff and AFOSI warnings against the policy. Most importantly, they also generally ignored the need for a management system or process to measure program effectiveness and provide oversight. As a result, they did not comply with Title 10, §8583, "Requirement of exemplary conduct," which requires all commanding officers and others in authority in the Air Force -

- (1) to show in themselves a good example of virtue, honor, patriotism, and subordination;
- (2) to be vigilant in inspecting the conduct of all persons who are placed under their command;
- (3) to guard against and suppress all dissolute and immoral practices, and to correct, according to the laws and regulations of the Air Force, all persons who are guilty of them; and
- (4) to take all necessary and proper measures, under the laws, regulations, and customs of the Air Force, to promote and safeguard the morale, the physical well-being, and the general welfare of the officers and enlisted persons under their command or charge.

The Air Force officials who share responsibility for the USAFA program and the resulting problems are addressed individually below.

LtGen Bradley C. Hosmer (USAFA Superintendent, June 1991 to June 1994)

In 1993, after meeting with female USAFA cadets and hearing that many knew of cadets who had been sexually assaulted, LtGen Hosmer began a counseling program to deal with the "medical and emotional problem" experienced after a sexual assault. He directed a USAFA nurse, an active duty Lieutenant Colonel, to form a small group of medical professionals (nurses) and get the word out that cadets could talk to these people in confidence.⁷¹ LtGen Hosmer advised us that

⁷¹ December 3, 2003, Hosmer Interview Transcript, pp. 17-18 & 70

his intention was for the nurses to encourage cadets to report matters for investigation when they were told something that should be investigated as a crime.⁷² In practice, however, he explained that the matter would not be reported if the cadet did not want to report to police.⁷³

LtGen Hosmer did not view the problem as a sexual assault problem, but as a counseling record security matter, because command officials could access cadet counseling records. He believed the cadets needed someone to talk to about their sexual experience in a manner that would remain confidential. Specifically, according to LtGen Hosmer:

. . . I heard a number of the specific cases. . . . I would characterize . . . all of them . . . as heavy pressure from a peer, often the girl was a virgin, not prepared for the event, . . . realized later what she'd done, and was traumatized. . . .

Her own mind was not that she was a victim of abuse as much as she was a victim of stupidity, and her concern was that, in the circumstances we had then, she didn't feel she had anywhere she could turn to get appropriate counseling, help, and what have you, because of the phobia that existed on the part of the cadets about lack of privacy in their counseling records. That was the core issue. . . .

So when I did the confidentiality policy, it was not in my own mind, anyway, closely linked to sexual abuse.⁷⁴

LtGen Hosmer's testimony included the following additional salient points regarding his actions:

- Cadets who came forward to ask for help might not have done so without confidentiality. AFOSI likely would not have received the information anyway and, through his process, at least the traumatized cadet got help.⁷⁵
- The nurses were not qualified to distinguish between criminal and non-criminal sexual behavior, it “. . . was not her business.”⁷⁶
- He considered repeat offenders/predators, but someone (he thought possibly AFOSI) told him they likely would offend again. His thinking was there would be another chance to catch them.⁷⁷
- His process focused on the victim.⁷⁸
- He did not have a formal process to measure program effectiveness. He received periodic characterizations of the traffic concerning confidential

⁷² Ibid, p. 14

⁷³ Ibid, p. 13-15

⁷⁴ Ibid, p. 7

⁷⁵ Ibid, pp. 62

⁷⁶ Ibid, pp. 17

⁷⁷ Ibid, p. 59

⁷⁸ Ibid, p. 12-13

reports that the nurses received. Only the nurses knew identities and incident details.⁷⁹

- He did not take any direct action to alter or improve cadet perceptions regarding the counseling center and its records, such as directing USAFA commanders not to access the records.⁸⁰ He excluded his counseling center from the confidential reporting practice and established a counseling system with nurses instead of using the professional counselors and mental health staff employed by the cadet-counseling center.⁸¹
- He did not think to establish a multidisciplinary response to the problem, primarily because he did not think he was dealing with a criminal problem. He thought it was a medical and emotional problem.⁸²
- Other than with his new program, he did not know how to reestablish confidence in the Cadet Counseling Center, after the center was required to release a cadet's records during a criminal prosecution or administrative discipline process.⁸³

LtGen Hosmer conceded that he did not request Air Force permission before implementing the new program at USAFA, and that there was not a paper trail of approvals. However, he claimed that he spoke with then Secretary of the Air Force, Dr. Shelia Widnall, often and thought she was comfortable with what he was doing. In addition, he pointed out that his work, including the confidentiality aspects, was reported in the press.⁸⁴ For example, a March 1993 *Denver Post* article reported that LtGen Hosmer promised cadets confidentiality and prosecutions, and stressed that cadets did not have to report through the chain of command. The same news article reported that Congresswoman Patricia S. Schroeder praised him and quoted her saying "I think they figured out that . . . there is finally going to be zero tolerance for all of this."⁸⁵ Additionally, LtGen Hosmer advised us that Pentagon senior leadership applauded him.⁸⁶

LtGen Hosmer subsequently pointed out that, while he did not seek permission from Headquarters Air Force, he did not believe he violated policy. He stated he did discuss the matter with Acting Secretary of the Air Force Michael B. Donley and provided updates at which Air Force Chief of Staff Gen McPeak was also present.⁸⁷ He also provided us with a letter from Mr. Donley in which Mr. Donley recalls their interaction concerning a serious assault reported at the academy,

⁷⁹ Ibid, p. 60

⁸⁰ Ibid, p. 33

⁸¹ Ibid, p. 41

⁸² Ibid, p. 33

⁸³ Ibid, p. 40; October 28, 2003, De Austin Interview, p. 11

⁸⁴ December 3, 2003, Hosmer Interview, p. 85

⁸⁵ March 4, 1993, *Denver Post*, "AF Academy Draws the Line, Female Cadets Urged to Report Incidents," (E.3.162) p. 1

⁸⁶ December 3, 2003, Hosmer Interview, p. 85

⁸⁷ November 8, 2004, Hosmer letter, p 10

probably in February 1993, and continuing for several months. According to Mr. Donley's letter:

"It was clear that the nature and extent of sexual misconduct problems at the Academy were not fully understood and that incidents of misconduct were not always being reported. The **confidentiality of procedures** by which cadets report incidents was of particular concern and received your close attention."⁸⁸ (Emphasis added)

He concludes his letter by stating:

"I do not recall the specific changes you instituted at the Academy, or that any changes at the Academy required my approval or caused changes to Air Force-wide policies or procedures."⁸⁹

When we asked Mr. Donley to explain exactly what he meant by "the confidentiality of procedures" he explained:

"From a command and management point of view, the problem with sexual misconduct is that because of its private nature it is not always reported. If it's not reported, then the victim does not receive any appropriate medical treatment that may be called for. If it's not reported, then it's not investigated. If it's not reported, then the command remains in the dark about the nature and extent of the problem."⁹⁰

Mr. Donley further explained he was generally aware that Air Force policy required commanders to investigate crimes involving Air Force personnel and property, and that commanders were required to report crimes to AFOSI for investigation. He was not aware that alleged or possible sexual assault offenses reported by cadets to USAFA medical personnel or commanders were not reported to law enforcement for investigation. Mr. Donley also stated:

"I do not recall discussion of the details or when any particular set of revised policies or procedures was finalized or implemented. I do not recall being asked to approve changes in policies or procedures at the Academy."⁹¹

Gen Hosmer's public pronouncements promising cadets "confidentiality and **prosecutions**" (emphasis added) with his creation of an undisclosed counseling program wherein nurses would get the word out that cadets could talk to them in confidence and investigations would not occur without the victim's permission. However, he explained that he was not aware of any instance where a serious sexual assault, such as rape, uncovered via the confidential reporting program, was not referred to AFOSI.⁹² Since LtGen Hosmer implemented his confidential

⁸⁸ November 2, 2004, Donley letter

⁸⁹ Ibid

⁹⁰ November 26, 2004, Donely response to interrogatories

⁹¹ Ibid

⁹² November 8, 2004, Hosmer letter, p 19.

reporting program unofficially and did not ensure formal record keeping or oversight, we were unable to identify and evaluate all cases that may have been reported to USAFA confidentially. The Air Force Working Group reported finding evidence of 32 sexual assaults where the assault was alleged to have occurred in 1993 or 1994.⁹³ Our review of AFOSI investigations and work performed by the Air Force Working Group⁹⁴ identified 17 sexual assault complaints (including 4 involving non-cadet civilian females) investigated by AFOSI where the assault was alleged to have occurred in 1993 or 1994. We were unable to account for the remaining 1993-1994 confidential reports, or even to determine whether the 17 AFOSI investigations began with confidential reports to USAFA. In this regard, we note that the Commandant of Cadets⁹⁵ during this period did not know about the confidential reporting process, and neither did two victims who reported sexual assaults to AFOSI (one in 1993 and the other in 1994).

Conclusion

Although we did not find any evidence that LtGen Hosmer's actions were not well intended,⁹⁶ we believe that he had a command responsibility to seek higher-level approval before deviating from established DoD and Air Force policy requirements. His actions resulted in violating Air Force and USAFA policies that required commanders and medical personnel to report sexual assaults to AFOSI. They also contravened DoD policy authorizing criminal investigative agencies to use investigative techniques, including interviewing witnesses and victims, and collecting evidence. Further, DoD policy vests authority to decide whether to investigate a matter with the criminal investigative organization, and requires commanders who objected to opening an investigation to report their objection through the chain of command to the Secretary of the Military

⁹³ Air Force Working Group Report, p 71

⁹⁴ Air Force Working Group exhibit 383, Attachment 3

⁹⁵ February 25, 2004, Gamble Interview Transcript, pp15-16

⁹⁶ In fact, apparently after hearing from LtGen Hosmer, the entire Fowler Panel wrote to the Inspector General of the Department of Defense, November 3, 2004 to disagree strongly with our conclusion and applaud LtGen Hosmer's actions.

Department.⁹⁷ Air Force Chief of Staff Gen McPeak, Acting Secretary Donley and Secretary Widnall were not adequately informed about the confidential reporting practice and did not know it prevented crime reporting to AFOSI. Gen McPeak “. . . didn’t know that he had a special confidentiality deal,” or that some sexual assaults at USAFA were not reported to AFOSI.⁹⁸ Gen McPeak agreed that since LtGen Hosmer reported directly to him, it would have been pretty standard for LtGen Hosmer to consult with him (McPeak) before making a major policy decision.⁹⁹ Similarly, according to former Secretary Widnall, LtGen Hosmer stopped by to see her 3 to 4 months before she became Secretary and told her that he was dealing with sexual assaults at USAFA. She knew that he had met with female cadets and was trying to approach the problem from a perspective that addressed character development, leadership and training. However, he never asked her whether he could deviate from Air Force policy, and she did not recall ever discussing the program in “technical terms” with anyone, including LtGen Hosmer.¹⁰⁰ Acting Secretary Donley was also unaware that cadets reported alleged sexual assaults to USAFA officials and those reports were not referred to law enforcement for investigation.

⁹⁷ DoD Instruction 5505.3, “Initiation of Investigations by Military Criminal Investigative Organizations,” July 11, 1986, paragraph D.4. “Commanders outside military criminal investigative organizations shall not impede the use of investigative techniques permissible under law or regulation which the military criminal investigative organizations consider necessary.” paragraph D.1. “In each case the decision to initiate a criminal investigation remains with the criminal investigative organization.” paragraph F 1. “When a commander outside the military criminal investigative organization objects to the opening of a criminal investigation for operational or other reasons, that commander shall report the circumstances immediately via the chain of command to the Secretary of the Military Department concerned.”

Air Force Regulation 23-18, “Organization and Mission – Field Air Force Office of Special Investigation (AFOSI),” May 1, 1989, paragraph 1, “AFOSI is the only US Air Force organization authorized to investigate matters that fall within its overall mission.” Paragraph 3.b.1(a) described some of the crimes AFOSI investigates including: “Arson, bribery, homicide, counterfeiting, sex offenses, . . .”

AFR 124-4, “Initiating AFOSI Investigations and Safeguarding, Handling, and Releasing Information from AFOSI Investigative Reports,” November 29, 1990, ¶ 3. “Commanders’ Responsibilities: a. Promptly advise AFOSI of any matter that falls within AFOSI investigative responsibility (see AFR 23-18).” And paragraph 5. “Referring Investigative Matters to AFOSI: a. Commanders refer matters and offenses that fall within AFOSI investigative responsibility. . . . All referrals must be accompanied by all known information on the matter to be investigated.”

Air Force Policy Directive 71-1, “Special Investigations Criminal Investigations and Counterintelligence,” September 7, 1993, at paragraph 8. “The following responsibilities and authorities are established: Paragraph 8.1. “Only the Secretary of the Air Force (SECAF) through the Air Force Inspector General (SAF/IG) may direct the Air Force Office of Special Investigations (AFOSI) to delay, suspend, or terminate an investigation (Department of Defense [DoD] Instruction 5505.3). . . .” “8.4. The Commander, AFOSI: 8.4.1. Conducts criminal investigations, including violations of the UCMJ or other US laws and statutes.” And paragraph “8.5. Air Force commanders: 8.5.1. Refer to AFOSI all criminal matters and offenses for which AFOSI is responsible.”

Air Force Cadet Wing Regulation (AFCWR) 537-7, “Sexual Assault Notification Procedures,” June 23, 1992, paragraph 3.2 “It is imperative that Security Police and OSI be notified immediately of any sexual assault.”

AFR 160-12, “Medical Services – Professional Policies and Procedures,” June 13, 1985, Paragraph 53 “Reporting Serious Incidents. Incidents involving . . . rape, other sex offenses, . . . are within the investigative purview of AFOSI. When medical personnel acquire information during their official duties relating to these matters or other serious offenses, they should promptly refer it to the servicing AFOSI unit.”

⁹⁸ February 2, 2004, McPeak Interview Transcript, p. 10

⁹⁹ Ibid, p. 12

¹⁰⁰ January 28, 2004, Widnall Interview Transcript, pp. 47-48 & 51-52

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LtGen Richard T. Swope (Air Force Inspector General, April 1996 to October 1998)

AFOSI discovered the USAFA confidential sexual assault reporting process in early 1996, after a cadet sexual assault victim who initially followed the USAFA confidential reporting process reported the crime to AFOSI. The initial reporting resulted in a [redacted] Air Force nurse [redacted] in [redacted] interviewing and examining the cadet. The nurse was then [redacted] from the Air Force and no longer affiliated with USAFA officially, but returned to USAFA to examine the cadet victim. During the examination, the nurse assured the cadet that [redacted] would take the examination notes home with [redacted] and they would not become USAFA records.¹²¹ In addition, the nurse photographed the cadet’s injuries using a cadet clinic camera, but also took the film with [redacted] home. According to the [redacted] nurse, [redacted] surrendered the evidence to AFOSI several days after the cadet reported to AFOSI and “. . . AFOSI went ballistic.” However, as the [redacted] nurse explained, there were problems with the evidentiary value because [redacted] omitted various elements in [redacted] notes and pictures in order to protect the victim’s confidentiality.¹²²

After learning about this incident, and after an AFOSI Staff Judge Advocate and psychologist “fact- finding” trip to USAFA, AFOSI complained to the SAF/IG. LtGen Swope then organized a team with AFOSI, Air Force Surgeon General and Air Force Judge Advocate General representatives to visit USAFA and review the sexual assault program.¹²³ However, the [redacted] either objected to the visit or asked SAF/IG (LtGen Swope) not to send the team

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¹²¹ AFOSI case file (96404D7-S787850)

¹²² [redacted] Interview Transcript, pp. 68-71 & 92-95

¹²³ 1996 SAF/IG Briefing slides, HQ USAF Review of USAFA Sexual Assault Operating Instruction (C.1.116)

and offered to forward his draft program instruction to SAF/IG for an Air Force “headquarters” review. In any event, the team did not go to USAFA, and LtGen Swope received the draft program instruction (34 TRW Operating Instruction 36-10, “Sexual Assault Victim Assistance and Notification Procedures”).

LtGen Swope did not challenge the program based on statutory or policy requirements. Instead, he asked the [REDACTED] to review the new program as then reflected in a draft training wing operating instruction. Following the review, on June 26, 1996, LtGen Swope forwarded a revised draft policy to the USAFA Superintendent effectively condoning a departure from standing Air Force policy, allowing “. . . [v]ictims who do not want to report an assault to criminal investigation agencies may . . . remain anonymous unless the Commandant of Cadets . . .” decides to require an investigation. In taking this action, LtGen Swope did not resolve the predicate issue that provoked the review—the requirement for skilled criminal investigators to investigate violent crimes and their authority to investigate the crimes without interference. He also did not address the need for effective program oversight, or how USAFA should measure program performance or ensure success. The revisions did provide that:

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“. . . Academy acceptance of our basic premise will require additional guidance on such issues as proper training for victim’s advocates, changes in Emergency Room OIs [Operating Instructions] to make them compatible with this OI, creation of a method by which the Commandant of Cadets can document his decisions, local coordination between the OSI and the Commandant of Cadets on the ground rules for referrals to OSI, and initiation of a sexual assault training block at the beginning of cadet basic training.”¹²⁴

During subsequent involvement in the matter, however, LtGen Swope did not take exception to the USAFA policy even though it continued to lack guidance in these areas.¹²⁵

USAFA then drafted USAFA Instruction (USAFAI) 51-201, “Victim and Witness Assistance and Notification Procedures,” based in part on the SAF/IG concept, and forwarded this draft to LtGen Swope for review. After an Air Force Judge Advocate General review, LtGen Swope coordinated on this draft policy without challenging the guidance that was lacking in areas previously identified, and he did not withdraw his endorsement. The coordination again condoned the USAFA departure from policy requirements, allowing victims to report sexual assaults confidentially and provide only the information they were willing to share, and allowing USAFA commanders to withhold sexual assault reports from AFOSI. LtGen Swope did question the draft policy because it was “ambiguous” in authorizing the Commandant to require investigations. However, after receiving information that the Commandant did not in fact have such authority,

¹²⁴ June 26, 1996, SAF/IG Memorandum, Subject: “Sexual Assault Victim Assistance and Notification Procedures,” (C.I.117) p. 3

¹²⁵ The subsequent Surgeon General waiver alleviated the need for guidance on emergency room OIs, but not the remaining areas.

LtGen Swope did not reject the draft policy even though this situation was contrary to the concept reflected in his June 26, 1996, revisions, and he did not withdraw his endorsement.

On February 14, 1997, the [REDACTED] briefed LtGen Swope, the [REDACTED] and the Air Force Surgeon General (LtGen Roadman) on the new USAFA program and need for a “waiver” from the requirement for medical personnel to report sexual assaults to AFOSI in Air Force Instruction 44-102, “Patient Care and Management of Clinical Services,” July 1, 1995. Following the briefing, LtGen Swope, LtGen Roadman, and [REDACTED] agreed that they would support the USAFA program. Subsequently, on May 9, 1997, the Air Force Surgeon General approved a policy waiver relieving all USAFA medical personnel from reporting sexual assaults to AFOSI.¹²⁶ The Surgeon General waiver meant that USAFA medical personnel were no longer violating Air Force-wide policy when complying with the USAFA program. However, Air Force-wide policy continued to require commanders to report sexual assault crimes to AFOSI. Specifically, Paragraph 8.5.1, Air Force Policy Directive 71-1, “Special Investigations, Criminal Investigations and Counterintelligence,” September 7, 1993, required all Air Force Commanders to “. . . [r]efer to AFOSI all criminal matters and offenses for which AFOSI is responsible.” This policy also required the investigation of crimes:

“2. If a crime is committed by Air Force personnel or on Air Force installations, or if it is otherwise of interest to the Air Force, the Air Force will thoroughly investigate and refer it to appropriate authorities for action.”

Air Force Mission Directive 39, “Air Force Office of Special Investigations” was also in effect, providing (in part) that the AFOSI Commander “Reports to SAF/IG” and “. . . is delegated the independent authority to initiate criminal investigations according to Public Law 99-145.” Furthermore, DoD Instruction 5505.3, “Initiation of Criminal Investigations by Military Criminal Investigative Organizations,” July 11, 1986 was in effect, providing that the decision to initiate a criminal investigation rested entirely with the MCIO, or AFOSI in this case. That same policy required “[w]hen a commander . . . objects to the opening of a criminal investigation for operational or other reasons, that commander shall report the circumstances immediately via the chain of command to the Secretary of the Military Department concerned.” These policies were not waived. Therefore, non-medical commanders at USAFA who learned about alleged sexual assaults and did not refer the allegations to AFOSI continued to violate the policy requirements. Again, if a USAFA commander decided not to

¹²⁶ The waiver was supposed to have been temporary and required review after a year. The review, however, did not occur and the waiver continued in effect until May 27, 2003, when actions were taken under the *Agenda for Change*. An effort was not made to reconcile the basis for this waiver with other policies that continued to require Air Force commanders to report crimes to AFOSI.

refer a sexual assault to AFOSI, thereby objecting to the opening of an investigation, the matter should have been reported to the Secretary.

The USAFA Superintendent could not have formalized the confidential sexual assault reporting program in July 1997, without LtGen Swope's condoning actions and medical waiver agreement. The actions were completed independently without Air Force Chief of Staff or Secretary of the Air Force knowledge or approval, and enabled the USAFA Superintendent to circumvent policy that required reporting to AFOSI, and both statute and policy giving AFOSI independent authority to investigate alleged crimes.

On interview, LtGen Swope could not recall "... specifics about the case ... beyond I know that I was involved in this process. ..." He deferred to "... whatever formal documentation there is that would ... substantiate that ..."¹²⁷ However, based on his testimony, LtGen Swope bought into a "... social sciences approach to how you treat victims of sexual assault. ..." He knew that AFOSI would "... operate from a legal perspective, and in accordance with its charter ..." while he believed that a "senior commander" had to be involved in the investigation decision. Specifically, according to LtGen Swope:

... Based on my experience as a commander, based on my experience as the inspector -- and I had previously been an inspector as well, as you'll note from my history -- and my association with young people, my sensitivity to command responsibilities and my belief that from a human perspective, we had to ... help the victim of a crime regain what I would call their wholeness... [W]hile there's a common thread, ... a sexual assault ... is a singular event unto itself, and it is especially so for the people involved, and the imperative is that you take a careful look at it as a commander. ... And that's what drove us to say there has to be a senior commander involved. ... [J]unior people don't necessarily have the experience to look at these things in a broad context and then bring them together so that you can make a careful decision, it's important that a senior commander be involved, and in this case it's the commandant. ... [I]t was my concern that the senior leadership, ... at least at the commandant level, be aware of all the things that were going on and be involved in the decision making process in how to handle the circumstance.¹²⁸

He later informed us,

[C]adets weren't reporting ... [i]n large measure it was because the cadets did not trust the Air Force Office of Special Investigations (AFOSI). By reputation at least, AFOSI investigators were known to be intimidating and callous with regard to the plight of alleged victims.¹²⁹

¹²⁷ August 28, 2003, Swope Interview Transcript, p. 15

¹²⁸ Ibid, pp. 3-6

¹²⁹ November 16, 2004, Swope letter.

We did not talk to all victims, but did interview three cadet victims involved in AFOSI investigations in 1993-1994. None expressed these views. One started the underground support group for cadet victims and was positive about interaction with the AFOSI case agent, advising that she felt victims' opinions of AFOSI depended on the situation of the crime.¹³⁰ Another advised that she was "an advocate for [AF]OSI" following her experience.¹³¹

LtGen Swope further asserted that prior to extending greater care to victims, sexual assault reporting at USAFA was nonexistent.¹³² We do not understand this assertion. During the years 1980 through 1992, AFOSI investigated 20 sexual assaults where the accused, victim, or both were USAFA cadets. The two cadet victims mentioned above were not even aware that a confidential reporting system existed at the USAFA.

LtGen Swope also could not recall whether he consulted with his superiors in the Air Force before or after the decision, advising that ". . . I don't remember specific discussions with the Secretary or the Assistant Secretary or the General Counsel or any of the General Counsel staff on it -- but those . . . offices would have an interest in these kinds of things. . . ." ¹³³ However, he did recall that:

. . . I talked with Gen Hosmer about this issue as he was involved in an earlier phase, to get his historical perspective on what had happened. . . .¹³⁴

Former Secretary Widnall and former Chief of Staff Fogleman confirmed that LtGen Swope did not consult them on the matter. Former Secretary Widnall, in fact, expressed anger at not being consulted on an issue as important as relieving USAFA personnel from reporting sexual assaults to AFOSI. Although not indicating that LtGen Swope was required to consult with her before making the decision, she advised:

. . . I'm so mad at Swope. He . . . reported to me . . . if I had seen the whole document [June 26, 1996, revision package], I would have called on Swope to go out and find out what was going on. . . . I did rely on him.

. . . I don't know what the word for it is when somebody goes off on their own and doesn't tell their supervisor what they're doing. . . .¹³⁵

General Fogleman told us:

. . . I could not . . . remember what this was all about. . . . I called back here and said, 'Hey, I am totally in the blind on this thing. Is it possible

¹³⁰ [REDACTED] interview transcript, pp 25, 26

¹³¹ [REDACTED] interview transcript, p 65

¹³² November 16, 2004 Swope letter.

¹³³ Ibid, p. 22

¹³⁴ Ibid, p. 9

¹³⁵ January 28, 2004, Widnall Interview Transcript, p. 60

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for me to see the record,' and then, as I got into it, and this OI [Operating Instruction] thing came out, I thought if there was an OI that went out of the air staff or out of the secretariat, either Sheila Widnall or I or both of us had to have top-lined that thing.

I mean, . . . that big an issue. So I pressed hard and I got a copy of the staff summary sheet . . . I was surprised to see that it was signed out by the IG and there was no indication that we had coordinated on it at all.

I mean, . . . not that there was anything wrong on that, but I was just surprised that there wasn't her ink and my ink on that thing.¹³⁶

In addition, in responding to a direct question as to whether he reviewed DoD Instruction 5505.3, Air Force Policy Directive 71-1, or AFOSI Mission Directive 39, in making his decision on sexual assault reporting at USAFA, LtGen Swope advised:

I don't recall reviewing -- it would be unusual for me not to have looked, but frankly, I don't recall doing it.¹³⁷

Despite his acknowledged prior experience as an inspector general and his then supervisory relationship with AFOSI, LtGen Swope claimed that he was unaware of the statute and policies that assured independent investigative authority for AFOSI. At the same time, however, he advised:

. . . I was engaged, actively engaged in understanding the administration of [AF]OSI -- I had been involved with [AF]OSI as a commander frequently at the field level earlier -- but I needed to understand how the organization worked from the top down, and I became aware through that I think probably that there was concern by the [AF]OSI folks about how these things got handled. . . .¹³⁸

The AFOSI Commander (BrigGen Taylor) continued to raise the matter to LtGen Swope (his superior officer) and subsequent SAF/IGs, but was never able to resolve the issue. For example, the AFOSI Commander learned about the USAFA briefing that led to LtGen Swope, LtGen Roadman and [REDACTED] agreeing to support the USAFA program. He was concerned about the impact on AFOSI independent investigative authority and asked LtGen Swope to allow him to attend the briefing. LtGen Swope, however, did not permit him to attend.¹³⁹ Instead, he did not support the AFOSI objections and continued to take actions condoning the USAFA departure from standing policy requirements.

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¹³⁶ February 19, 2004, Fogleman Interview Transcript, p. 33

¹³⁷ August 28, 2003, Swope Interview Transcript, p. 19

¹³⁸ Ibid, p. 10

¹³⁹ December 2, 2003, Taylor Interview Transcript, p. 14; July 16, 2003, Taylor Interview Transcript, p. 6

Conclusion

LtGen Swope was a principal in helping USAFA create and formally implement their unique sexual assault program. LtGen Swope's testimony confirms that he acted knowingly and intentionally in agreeing to a sexual assault reporting program that circumvented policies requiring crime reporting to AFOSI. Although his actions may have been well intended, he acknowledges that he pursued a "social sciences approach" to sexual assaults, and knew that AFOSI would "operate from a legal perspective, and in accordance with its charter." LtGen Swope cannot claim that he was unaware of the statutory and policy requirements. Since AFOSI reported to him directly, LtGen Swope was obligated to understand and ensure Air Force-wide compliance with those requirements. In addition, LtGen Swope took specific actions that condoned the USAFA departure from standing policy requirements without (1) resolving the predicate issue that provoked the continuing AFOSI objections—the requirement for skilled criminal investigators to investigate violent crimes and their authority to investigate the crimes without interference, or (2) ensuring USAFA would have a system, procedure, or process to measure program effectiveness or accomplishments. LtGen Swope did not object to the USAFA program even after it became clear that USAFA was not incorporating guidance and requiring Commandant authority as he had indicated was necessary. In response, he neither withdrew his endorsement nor provided an oversight mechanism to measure effectiveness. The lack of an objective oversight function prevented any external (including Air Force headquarters) view of the problem.

In a letter to us dated November 16, 2004, LtGen Swope quoted the Fowler report, stating ". . . the problems . . . were the result of a confidentiality policy which, over time, was poorly implemented and lacked responsible governance and oversight." We agree. Since LtGen Swope was a principal in creating the USAFA sexual assault reporting program and did so without providing for needed oversight, he must assume substantial responsibility for the subsequent results.

LtGen Charles H. Roadman II (Air Force Surgeon General, November 1996 to December 1999)

On June 3, 1996, then Air Force Surgeon General (LtGen Edgar R. Anderson, Jr.), Air Force Deputy Surgeon General (MajGen Roadman), and the Consultant for Psychiatry to the Air Force Surgeon General, presented the Consultant for Psychiatry's findings on USAFA culture and gender problems to the Air Force Chief of Staff (Gen Fogleman). The findings were presented in a four-page point paper prepared following a working trip to USAFA. MajGen Roadman, therefore, was aware of the USAFA problems, and that Gen Fogleman directed the [REDACTED] to return to USAFA and assess the problems further. MajGen Roadman was a recipient and, therefore, was also aware of the [REDACTED] June 10, 1996, memorandum to Gen Fogleman detailing results from the follow-up assessment and advising that ". . . the culture

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must be addressed . . .” and “. . . [t]he institution is still unaware of the extent of the problem. . . .”

In a note to Gen Fogleman on August 5, 1996, LtGen Roadman advised that the Surgeon General’s ██████████ had visited USAFA for meetings with senior staff and discussed:

- “Culture issues of reprisal & shunning
- % [percentage of] female recruitment/enrollment
- **Need to get to culture of institution . . .**”(Emphasis added)

LtGen Roadman’s note reflects that the ██████████ discussed the “IPT [Integrated Process Team] and external leadership,” indicating that ██████████ would discuss the external leader with Gen Fogleman. LtGen Roadman pointed out, “**I still believe external chair is important. I do not believe it should be Co-chair nor should be female. Is a total culture issue not a female issue.**” (Emphasis added) LtGen Roadman also provided Gen Fogleman with a list of seven General Officers that he had been “thinking about.”¹⁴⁰

On February 14, 1997, USAFA staff briefed LtGen Roadman (by then promoted to Surgeon General), the SAF/IG (LtGen Swope), and the ██████████ on the new USAFA sexual assault reporting program, which had already been implemented. The briefing addressed the need for LtGen Roadman to “waive” the reporting requirements in AFI 44-102, “Patient Care and Management of Clinical Services,” July 1, 1995, thereby relieving USAFA medical personnel from reporting sexual assaults to AFOSI. Following the briefing, LtGen Roadman, LtGen Swope and ██████████ agreed to support the USAFA program.

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On May 9, 1997, LtGen Roadman approved the waiver, which permitted USAFA to formalize its confidential sexual assault reporting program and withhold crime reporting from AFOSI. The waiver document included specific conditions—it was temporary and subject to review after a year; and sexual assaults were to be reported to Security Police Office of Investigations (SPOI), a law enforcement organization and the Commandant of Cadets “. . .with all pertinent details excluding the names of the victims and perpetrator.” [We assume that was a reference to the accused.] However, after including specific conditions in the waiver, LtGen Roadman did not take any action to ensure compliance. Although the waiver expired under its terms 1 year later, the expiration was not enforced and USAFA continued operating as if the waiver remained in effect. Furthermore, while the medical waiver was conditioned on concurrent reports to the Commandant of Cadets and SPOI that included “all pertinent details

¹⁴⁰ August 5, 1996, handwritten note from MajGen Roadman to Gen Fogleman, “Update on AFA”; The seven General Officers included: Gen N.T. Johnson, Gen Larry Welch, LtGen Hosmer “although AFA experience may detract as a choice,” Gen Russ Dougherty, Gen Bill Cheecn, Gen Bob Oaks, and LtGen Dale Thompson

excluding the names,” USAFA 51-201 adopting the program based on the waiver provided “. . . **only relevant information about the nature of the crime.** . . .” would be reported to SPOI. The Air Force Surgeon General did not take exception with the new policy even though it did not comport with specific conditions in the waiver. Evidence suggests that some alleged sexual assaults were not reported to either SPOI, or to AFOSI, even though the waiver specifically required reporting to SPOI.

LtGen Roadman supported the concept of an external IPT, thinking that an external evaluation of the culture might be more objective than an internal one. He believed that [REDACTED] wanted to address the issue with an internal IPT, indicating that when they (LtGen Roadman, [REDACTED], and LtGen Swope) visited the Academy in February 1997, feedback from [REDACTED] and the in-depth briefing they received indicated the Academy was making real progress. He recalls that Gen Fogleman talked with him (LtGen Roadman) about [REDACTED] working the issue. LtGen Roadman does not remember any specific tasking from Gen Fogleman, but understood that he should do whatever he could to help [REDACTED] address the problem.

LtGen Roadman believes that [REDACTED] felt that he and his staff could take the appropriate actions to address the cultural issues. LtGen Roadman is of the opinion that [REDACTED] felt the evaluation of the culture should be internal to the Academy. It was clear to LtGen Roadman that Gen Fogleman wanted the matter appropriately addressed, but he does not know whether Gen Fogleman supported an internal or external IPT. LtGen Roadman informed us that he knew that LtGen [REDACTED] was “working with an internal IPT”¹⁴¹ and the staff communication to and through his [REDACTED] indicated, “cadets were reporting to the student counseling center and that cadets were getting treatment and support.” He recalls that his communications indicated, “that real progress was being made at AFA.” Further, while his [REDACTED] states that the “culture was not being addressed,” he does not recall anything that would substantiate that belief.¹⁴²

In his response to our tentative conclusions LtGen Roadman provided information to defend his support of the USAFA program and his temporary waiver of the AFI 44-102. He reported,

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¹⁴¹ Our evaluation of the Air Force response to sexual assaults at the Air Force Academy has developed no information that [REDACTED] created an IPT to specifically address the culture identified by the AF Surgeon General’s [REDACTED]. We determined that the [REDACTED] relied on a process action team (PAT) during the February 1995-February 1996 time period to address the social climate and create a program to encourage sexual assault reporting and treatment for victims of alleged sexual assaults; however, we found no evidence of any programs to identify root causes and change the culture that fostered sexual assaults within the Cadet Wing and created barriers to reporting and treatment. The USAFA February 1997 briefing slide p. 31 entitled, “Social Climate PAT” reflects, “Ongoing since Feb 95; continues to meet regularly; CWC is the OPR for the USAFA/CC; Emphasis on ‘process’ not final product; Open, on-going items; New items generated – currently addressing 15 recommendations – 11 new taskings since inception in Feb 95”

¹⁴² November 18, 2004, Roadman written response to questions posed in November 16, 2004 email, Subject: “Follow-up questions from the Inspector General of the Department of Defense”

“[D]uring the 1986-1993 time of mandatory reporting w/o [without] confidentiality there were no reported [sexual] assaults. Once the confidentiality of reporting was implemented informally, in 1993, the number of cases reported increased. Once the formal confidentiality policy was instituted, in the fall of 1996, the reporting became consistent. To think that there were no assaults in the 1986-1993 times is not credible.”¹⁴³

During the period January 1980 to January 1993, AFOSI investigated a total of 20 alleged sexual assaults involving a cadet subject, cadet victim, or both a cadet subject and cadet victim. As far as consistency of sexual assault reporting to AFOSI, in 1996 AFOSI initiated 4 sexual assault investigations, in 1997: 2, in 1998: 3; 1999: 1; 2000: 4; 2001: 3; 2002: 4; and in 2003 after problems surfaced, AFOSI opened 17 investigations. The number of investigations initiated by AFOSI during the period 1994 through 2002 (30 cases in 9 years) is more consistent and higher than the period 1980 through 1992 (20 cases in 13 years). During 1993, when LtGen Hosmer responded to cadets' complaints regarding sexual assaults, AFOSI opened 9 investigations. We could not determine whether the USAFA program encouraged more reporting to AFOSI or whether more assaults were occurring.

As for addressing the culture at the Academy the [REDACTED] told us,

“I was, we were making the same recommendations to the Academy that they tackle the issue at that level, at the level of an IPT, not just a SASC [Sexual Assault Services Committee]. And what my recommendation had been was that the SASC become a very active IPT. We’d be happy to provide on-going consultation about how to do that. It’s a long-winded way of saying to you that I don’t believe that the issue that contributes to this culture of reprisal, shunning, silence; et cetera was ever really effectively addressed. I mean, there was tinkering around the edges, I think. This is my honest opinion, and people have gotten kind of hung up on this reporting thing as being very important. I don’t believe that it is. I really believe that the problems at the Academy have very little to do with whether the [AF]OSI gets involved or doesn’t get involved. And I could see having the [AF]OSI involved, and not having the [AF]OSI involved. As you may know, I became an advocate of confidential reporting.

One of the disappointing experiences I think I had as well out there is that it was clear to me that the Academy appreciated our interest, but weren’t overly anxious to have the U.S. Air Force Surgeon General’s office representatives frequently engaged in the Academy’s business, which is another cultural problem, I think, in the Air Force. It has to do with command authority, you know, versus the consultants. So, that’s my answer. I don’t think the problem was ever addressed.¹⁴⁴

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¹⁴³ Ibid, p. 3; supported by attachment 6 (bar graph from 2000 USAFA Sexual Assault Policy Working Group)

¹⁴⁴ [REDACTED] Interview Transcript, pp. 23-24

Conclusion

LtGen Roadman entered into an agreement and granted a policy waiver that enabled USAFA to formalize its sexual assault reporting program. LtGen Roadman argues, and we accept, that his actions were based on a desire to ensure sexual assault victims received needed treatment and services, not to prevent crime reporting.¹⁴⁵ However, the effect was to support a program that withheld sexual assault reporting from criminal investigators without substituting effective controls. In spite of his good intentions, his waiver was instrumental in enabling USAFA to formalize a confidential sexual assault reporting program that helped circumvent both statutory and policy requirements. More importantly, LtGen Roadman did not meet his obligation to monitor and follow-up on the waiver he granted to ensure the specific conditions that he included in the waiver were satisfied, nor did he establish an oversight program to monitor the cultural problem he and his psychiatric consultant believed was a root cause of the problem.

LtGen Tad E. Oelstrom (Superintendent, USAFA, August 1997 to June 2000)

LtGen Oelstrom arrived at USAFA less than 1 month after the confidential sexual assault reporting policy was formally implemented in July 1997, and was the USAFA Superintendent for about 3 years. During his tenure, approximately 34¹⁴⁶ alleged sexual assaults were reported to USAFA. AFOSI investigated 6 alleged sexual assaults of female cadets, which may or may not have been included in the approximate 34 assaults reported to USAFA.

Prior to his arrival at USAFA, the then AFOSI Commander (BrigGen Taylor) met with LtGen Oelstrom and discussed AFOSI's concerns with sexual assault reporting at USAFA.¹⁴⁷ According to BrigGen Taylor:

“ . . . I . . . discussed it with GEN Oelstrom before he took command as an issue of concern in terms of how [AF]OSI operated on the Air Force Academy on issues of sexual assaults. . . . He was not in the . . . [Superintendent position] when I discussed it with him, but **I asked him to review the policy when he got on board**. I expressed to him my concerns about the fact that we were not allowed to have direct contact with cadets that were victims of assault, except going through the Cadet Counseling Center. . . . **He said he would take a look at it** . . . ”¹⁴⁸ (Emphasis added)

LtGen Oelstrom described the meeting as follows:

¹⁴⁵ October 10, 2004, Roadman letter, pp. 3-4

¹⁴⁶ The number 34 is a rough calculation from data extracted from the Fowler Report, p14.

¹⁴⁷ As reflected in testimonies below, BrigGen Taylor and LtGen Oelstrom had different recollections on when and where the meeting occurred, but both establish that a meeting did occur and AFOSI concerns were discussed.

¹⁴⁸ December 2, 2003, Taylor Interview Transcript, pp. 21-22

“ . . . [H]e . . . come out, and we . . . talked, not in great detail, but talked about this relationship between [AF]OSI and the Academy’s procedure or program. . . . **[H]e was concerned with the authority of OSI in being hampered, hindered, diminished or whatever the right phrase is, and impacting their ability to perform their mission.** . . . That might have been a little bit strong, you know, he was aware of the fact that there were probably activities or actions or incidents that were occurring that didn’t come forward to [AF]OSI. . . .”¹⁴⁹ (Emphasis added)

Approximately 16 months after he became Superintendent, in December 1998, the Chief, Sexual Assault Services prepared the “Seattle Tape Briefing USAFA/CC (12/16/98).” The second briefing slide begins with the statement “We Have A Problem.” The briefing included statistics from the 1997 Social Climate Survey indicating that approximately 15 percent of female cadets had been sexually assaulted since coming to USAFA. The Fowler Panel reported that “. . . [i]t is not evident what the leadership did in response to learning that a sizable portion of the female cadet population reported being sexually assaulted after arriving at the Academy. . . .”¹⁵⁰

The purpose for the briefing was to obtain the approval of LtGen Oelstrom to use the Seattle tape, which is about the sexual assault of a male police officer, to help male cadets understand how sexual assault victims feel. The Director, Sexual Assault Services also prepared a similar briefing entitled, “Sexual Assault: Does the AFA have a problem?” Reportedly, this briefing was used in conjunction with the Seattle tape and was part of the academy’s awareness program. Regarding the briefing entitled, “Sexual Assault: Does the AFA Have a Problem?” MajGen Lorenz stated,

“the Fowler Commission is alluding to [it] like we’re given this briefing, and it’s like we didn’t react to it,” the whole point of the briefing . . . [W]hat it is, is an advertisement, to show the Seattle tape, which was an idea that came . . . through the [Sexual Assault Services] committee, who said the Seattle tape was . . . about a sexual assault of a male police officer, and it was graphic and it was very intense. The whole point of this was to show males that what a sexual assault – not [sic] feels like. You can’t really – [know] how dirty and how filthy it is and all that stuff.

So we would bring – those types of things would come to the committee, and I would advocate, along with Dave Wagie, in which we went forward and would build a briefing on it. Do we have a problem? Because of the inference of the Fowler Commission is that we didn’t do anything.

The whole point of the briefing was to sell this Seattle tape to the entire cadet wing, and show them we do have a problem and you’d better pay

¹⁴⁹ July 29, 2004, Oelstrom Interview Transcript, pp. 156-157

¹⁵⁰ Fowler Report, at 24

attention to this. That's the type of thing that would come through that committee. Education, training, a lack of communication."¹⁵¹

Information indicates that when LtGen Oelstrom and his executive officer first viewed the Seattle videotape they were extremely offended and refused to let Sexual Assault Services use the video or give the "Big 6" a briefing regarding the Seattle tape. However, MajGen Lorenz (then BrigGen) and BrigGen Wagie (then Col) convinced LtGen Oelstrom to see videotape in the context of the slide presentation. Following the briefing, LtGen Oelstrom gave permission for the briefing and tape to be used in the behavioral science and leadership (DFBL) class and with upper class training.¹⁵²

The Air Force Working Group and the Fowler Panel both held that LtGen Oelstrom was not as involved in the sexual assault program as were the two preceding Superintendents. According to the Air Force Working Group:

"... it did not appear that Lt Gen Oelstrom had the personal involvement in sexual assault matters that Lt Gen Hosmer and [REDACTED] did. Lieutenant General Oelstrom had some recollection of the Sexual Assault Services Committee, but said he did not recall much interface with them nor ever receiving information from them."¹⁵³

We agree.

Testimony to the Air Force Working Group indicates that LtGen Oelstrom could not recall specific details about sexual assault or gender climate issues. At times, he did not directly answer questions. The following information is based on our follow-up interview, as well as the previous statements and any relevant factual material identified during our evaluation.

Involvement in the Process. Prior to taking command in August 1997, LtGen Oelstrom met with the then [REDACTED], the former Superintendent (LtGen Hosmer), the then Air Force Chief of Staff (Gen Fogleman), and a former Superintendent of the U.S Military Academy (Army) to discuss challenges they faced.¹⁵⁴ Additionally, prior to taking command, USAFA staff briefed LtGen Oelstrom on the sexual assault program, including program history, the unique USAFA environment, sexual assault services division, cadet counseling hotline, sexual assault services committee, sexual assault education and awareness program, and the victim advocacy process.¹⁵⁵ As a result of the meetings and briefings, LtGen Oelstrom had a number of issues in his "back pocket" when he arrived at USAFA, including the

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¹⁵¹ March 18, 2004, Lorenz Transcript, pp. 84-85

¹⁵² December 10, 2003, email from former Chief, Sexual Assault Services (1997-1999) to the HQ, Electronic Systems Center Staff Judge Advocate, Subject: "RE: May be helpful..."

¹⁵³ Air Force Working Group Report, p. 139

¹⁵⁴ April 1, 2003, Oelstrom Interview Transcript, pp. 5-6

¹⁵⁵ April 14, 1997, briefing entitled "Issue Briefing USAFA Sexual Assault Cadet/Victim Witness and [sic] Assistance Program (VWAP);" November 16, 2004, Dasinger Interview Summary

acclimation and acceptance of women into the Cadet Wing, motivating cadets to pursue pilot training and become officers, integrating intercollegiate athletes in the Cadet Wing, and the honor system.¹⁵⁶ He did not consider issues of sexual harassment, gender bias, or sexual assault initially, but expected those issues would be an “offshoot” of some discussions.¹⁵⁷ He thought the issue concerning women was driven by comments of Gen Fogleman and Secretary Widnall regarding whether women were fully accepted into the Cadet Wing and whether they were adequately competing for key jobs, positions, and recognition at USAFA.¹⁵⁸

LtGen Oelstrom also met with [REDACTED] separately to discuss a broad range of issues concerning USAFA, including the climate and acceptance of women.¹⁵⁹ During the meeting, [REDACTED] discussed, although not in great detail, changes in the sexual assault policy implemented by LtGen Hosmer and the changes [REDACTED] had made to the policy.¹⁶⁰ According to LtGen Oelstrom, [REDACTED] told him:

- the policy was “virtually” in place and seemed to be working well, but “obviously it was one that was of contention;”
- the system was put in place to protect females reporting sexual abuse, sexual harassment, and sexual assault; and
- sexual assault reporting had been a concern to both [REDACTED] and LtGen Hosmer, and was an issue he (LtGen Oelstrom) needed to keep his “ears and eyes open to.”¹⁶¹

LtGen Oelstrom advised that he reviewed the sexual assault reporting policy during his first few months on the job, and was aware that the USAFA policy was different from the rest of the Air Force.¹⁶² He recalled that *the rest of the Air Force* immediately handed over sexual assaults to AFOSI while sexual assaults at USAFA were reported confidentially through the “CASIE system.”¹⁶³

LtGen Oelstrom advised that he preserved the confidential sexual assault reporting process because he “bought into” the system at the “front end . . . having attempted . . . to refine it -- make it work,” and absent any feedback to suggest that he needed to make a change, he saw no reason to take a position to change the process.¹⁶⁴ He was convinced that some balance was needed in the system to

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¹⁵⁶ Ibid, pp. 6-7

¹⁵⁷ Ibid, p. 8

¹⁵⁸ Ibid, p. 8

¹⁵⁹ July 29, 2004, Oelstrom Interview Transcript, pp. 4-5

¹⁶⁰ Ibid, p. 5

¹⁶¹ Ibid, pp. 5-6

¹⁶² Ibid, pp. 6 & 16

¹⁶³ Ibid, pp. 6-7 & 17

¹⁶⁴ Ibid, pp. 164-165

protect females, which meant that AFOSI would not become involved immediately.¹⁶⁵

LtGen Oelstrom could not recall specifically who briefed him initially on the sexual assault reporting process, but believed it was during his first couple of weeks on the job when he circulated through the Commandant, Dean, Athletic Department, Support Wing, and legal counsel.¹⁶⁶ He thought that any detail about the process would have come from BrigGen Lorenz, then Commandant of Cadets, because it related to the Cadet disciplinary system and the “care and feeding of cadets.”¹⁶⁷ LtGen Oelstrom could not recall what BrigGen Lorenz told him about the process. He did recall, however, that BrigGen Lorenz told him the USAFA system to address those issues seemed to be working, but expressed concern about the lack of detailed information he received on individual sexual assaults.¹⁶⁸ This was not an “alarm bell” to LtGen Oelstrom.¹⁶⁹ Instead, he characterized it as a “statement of fact.”¹⁷⁰ LtGen Oelstrom explained that the sexual assault reporting system confidential aspects were under Dean of Faculty control, and entailed assigned professionals who protected the privacy of females who went to them for guidance and help.¹⁷¹ He further explained that if a cadet reported a sexual assault through the “CASIE system,” the report remained there without the chain of command knowing about it unless the cadet wanted to go forward with a complaint.¹⁷² LtGen Oelstrom said it was common knowledge within the cadet wing that this process was available to cadets and, if a cadet wanted care from outside USAFA, the outside care would be made available to them as well.¹⁷³ Cadets also had the option to report a sexual assault through the disciplinary system.¹⁷⁴

LtGen Oelstrom advised that he spent considerable time talking with male and female cadets, AOCs, Commandants, senior leaders, and addressing groups in order to gauge how females were doing.¹⁷⁵ After talking with those groups and receiving information relative to cadet academic and military performance, competitiveness for key jobs in the Cadet Wing, graduation rates and disciplinary issues, he concluded that women were “comfortable and had assimilated into the Academy very well.”¹⁷⁶ When asked how he could conclude that women were comfortable when they were expressing discomfort with sexual harassment and sexual assault in a climate survey, he indicated that his senior staff expressed

¹⁶⁵ Ibid, pp. 100-101, 115, & 118

¹⁶⁶ Ibid, p. 7

¹⁶⁷ Ibid, p. 7

¹⁶⁸ Ibid, p. 8

¹⁶⁹ Ibid, p. 8

¹⁷⁰ Ibid, p. 8

¹⁷¹ Ibid, pp. 8-9

¹⁷² Ibid, p. 17

¹⁷³ Ibid, p. 9

¹⁷⁴ Ibid, p. 10

¹⁷⁵ Ibid, pp. 22 & 64

¹⁷⁶ Ibid, p. 22

some “discomfort” with the survey, telling him they had reservations about the survey results.¹⁷⁷ LtGen Oelstrom could not further describe or explain those reservations. Based on his testimony to the Air Force Working Group, LtGen Oelstrom recalled only one survey, which he believed [REDACTED] had brought to his attention, meaning the survey would have predated his arrival at USAFA. He did not “. . . recall anything that came to his attention that said statistics were getting worse. . . .”¹⁷⁸

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LtGen Oelstrom did not establish a system to monitor the sexual assault process, or establish measurement criteria to evaluate whether the fledgling USAFA sexual assault program was succeeding or failing.¹⁷⁹ Instead, he relied on his command staff to bring him issues they believed were important.¹⁸⁰ He also gauged the system from feedback he received from individual cadets and groups with whom he personally talked, as well as cadets attending USAFA from other Service academies.¹⁸¹ LtGen Oelstrom advised that the feedback to him was always positive.¹⁸² He recalled being briefed on the three social climate surveys that were conducted during his tenure, but he could not recall any specific survey results or who briefed him.¹⁸³ Additionally, LtGen Oelstrom did not know how many sexual assaults were reported through the confidential reporting process.¹⁸⁴ He was not briefed on all confidential sexual assault reports.¹⁸⁵ He was unaware that roughly 34 confidential reports were made during his tenure, but recalled being told about a “few,” which he thought was consistent with the 6 sexual assaults of female cadets that AFOSI investigated.¹⁸⁶

Although he received periodic briefings on many academy programs, the Sexual Assault Services Committee did not brief him on sexual assaults and he did not ask to be briefed.¹⁸⁷ In fact, he was unfamiliar with the Sexual Assault Services Committee role.¹⁸⁸ According to LtGen Oelstrom, no one brought concerns to him about the sexual assault reporting policy.¹⁸⁹ When asked about specific issues

¹⁷⁷ Ibid, pp. 67-74

¹⁷⁸ April 1, 2003, Oelstrom Interview Transcript, p. 14

¹⁷⁹ July 29, 2004, Oelstrom Interview Transcript, p. 19

¹⁸⁰ Ibid, pp. 19-21

¹⁸¹ Ibid, pp. 37-38

¹⁸² Ibid, p. 39

¹⁸³ Ibid, pp. 151-152 (As noted previously, this testimony is significantly different from the previous testimony to the Air Force Working Group) The December 1998 “We have a Problem” briefing contained statistics from the Fall 1997 Social Climate Survey. LtGen Oelstrom was USAFA Superintendent from August 1997 to June 2000. In 1997 and 1998 USAFA administered the social climate survey in the Fall. There was no survey in Fall 1999 because USAFA changed administration of the survey to the Spring. The next survey was given in Spring 2000. During LtGen Oelstrom’s tenure, he could conceivably have seen the results of prior surveys administered between 1993 through 1995, Fall 1997 and 1998, none in 1999, and it is highly unlikely he could have seen the Spring 2000 results as he departed in June 2000.

¹⁸⁴ Ibid, pp. 109-110

¹⁸⁵ Ibid, p. 109

¹⁸⁶ Ibid, p. 98

¹⁸⁷ Ibid, pp. 19, 100 & 178

¹⁸⁸ Ibid, pp. 142-143

¹⁸⁹ Ibid, pp. 14-15

such as survey results, sexual assault numbers, and sexual assault details, he said that he possibly did not receive some information because it never “got past his vice superintendent.”¹⁹⁰

Information provided by the Commandants.

MajGen Stephen R. Lorenz (USAFA Commandant August 1996 – June 1999) Regarding sexual assault and gender climate information MajGen Lorenz indicated, that as the Commandant he kept the Superintendent informed of everything through periodic meetings. MajGen Lorenz thought the Superintendent was briefed specifically on gender climate issues and sexual assault issues. This was done by providing minutes of meetings, and they would have a meeting with him on these issues periodically. He did not remember how often. He recalled going and briefing the Superintendent on these issues and attending multiple meetings with the Superintendent on this issue, along with the Dean and Director of Athletics. He remembered attending several meetings where they discussed statistics and charts and recommendations, how to change our courses to meet the goal, or what the Center for Character Development or the counselors would do, all these different things. The “JAG would get involved and the [AF]OSI would be there.”¹⁹¹

MajGen Lorenz advised the AF Working Group that when he received information from the Cadet Counseling Center about a specific sexual assault case that he would pass that information on to the Superintendent, that “. . . if I had facts or an incident that we knew about, we told him [the Superintendent] everything.” MajGen Lorenz advised that applied to both Superintendents that he worked for, and both Superintendents supported the cadet wing wholly in the actions they were taking.¹⁹²

AF Working Group representatives talked with MajGen Lorenz about information passed to the Superintendent. MajGen Lorenz made the point that this was across discipline or across mission areas of interest. They asked him to estimate or describe the extent to which sexual assault and/or gender climate issues were a matter of discussion amongst the mission areas leaders and the Superintendent. He stated,

“If an incident occurred, if any incident occurred, of any type, for instance. I’m not talking about Honor because that was a normal process. But if a cadet got drunk and smashed into a window, walked through a window, which is -- you alluded to that and he did get cadet discipline, or something that was like that behavior, we would -- the next day, you know, we had a stand-up, I think it was at eight thirty every morning or something or maybe it was three times a week and we

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¹⁹⁰ Ibid, pp. 80-82 & 149-150

¹⁹¹ April 10, 2003, Lorenz Interview Transcript, p. 68-69 (MajGen Lorenz served under ██████████ and LtGen Oelstrom. In his interview conducted by the AF Working Group, he was not specific regarding the level of activity for each superintendent under whom he served)

¹⁹² Ibid, p. 69

would bring behavior issues that were out of the norm to the Superintendent and to the staff sitting around the table. So if it was an incident that beared discussion, it was brought up normally right then. If I had something that was going to, you know, affect the Academy or anything or affect, you know, we would bring it to the attention and keep the Superintendent informed. I always kept the Superintendent informed of anything to get out in front of issues, not behind them.”

MajGen Lorenz indicated that this occurred under both Superintendents that he worked for.¹⁹³ MajGen Lorenz said “. . . during the time that I was there [USAFA], both [REDACTED] and General Oelstrom took a very proactive stance on this whole issue of sexual assault.”¹⁹⁴

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When we asked MajGen Lorenz what direction, guidance or discussions he received or had with LtGen Oelstrom concerning the handling of sexual assaults after he became the superintendent, MajGen Lorenz said, “The history of sexual assaults does not start with me.” He then provided the background and history of how the unique approach to sexual assault reporting and victim support evolved at USAFA; however, he did not answer our question.

MajGen Mark A. Welsh III (USAFA Commandant June 1999 – June 2001)

MajGen Welsh stated that he kept LtGen Oelstrom abreast of the work he was doing regarding notifications of sexual assault cases to AFOSI and modification of the Cadet Counseling Center’s sexual assault notification form.¹⁹⁵ He said, “General Oelstrom, by the way, was the approval authority on this form. Everything we did here, he was the ultimate commander at the Academy and I felt very strongly that he had to be the one buying off on all of this.”¹⁹⁶

With regard to actions taken by LtGen Oelstrom relevant to sexual assaults or gender climate, MajGen Welsh stated,

“Well, yes and no . . . specific to sexual assaults? No. It was not an issue. We didn’t have a -- known sexual assaults that, in fact, proved to be true. We had a group of them that -- this is just during the time period I was there, I don’t know about before or after -- but we didn’t have a group of them that were proven to be true where we actually had someone that we could take to trial and make an issue of. I never went to General Oelstrom or General Dallager and said, ‘We have a rape problem at the Air Force Academy.’ They knew about each case and they knew the facts of the case and they knew the ultimate result of the case, but I never felt that there was a runaway rape problem at the Air Force Academy. So they would not have known and I didn’t tell them because I didn’t know about it.

¹⁹³ April 10, 2003, Lorenz Interview Transcript, pp. 70-71

¹⁹⁴ March 18, 2004, Lorenz Interview Transcript, p. 14

¹⁹⁵ May 2, 2003, Welsh Interview Transcript, p. 17

¹⁹⁶ Ibid, p. 18

But in the spring semester of my first year there, I asked General Oelstrom to speak to the cadet wing about his Air Force experiences as part of a program called the Commandant's Leadership Series. And that year was the one chance he had to address the entire cadet wing at one time. He had lots of chances to address smaller groups, and he did that routinely. But this was all 4,000 of them, 2,000 in a hall and 2,000 in their rooms watching on their computers in an M5 training session. And he talked about his Air Force experience, but it was from the perspective of relationships with people and the focus of it was respect for all people. It was the different types of people he met, the different backgrounds they had, men and women, operators, maintainers. He talked about diversity. He talked about how they would all come together to accomplish things in combat. 'Focus on the Fight' was the theme of the series. It was really, really good. And it was them listening to a guy they really respected talk about how caring for people and responding to people's concerns and why it was important to understand what people felt and to think from their perspective. It was very, very good . . .

There were seven lectures in that series each year. I gave the first one in August of '99 and the last one was in April-May -- probably March-April, around April of 2000. And he gave that in Arnold Hall, a presentation to the cadet wing, and it was very, very good.

Besides that, General Oelstrom was very well respected by the cadet wing. He was seen as very professional, very hard working, very concerned about the Academy kind of guy. He spent a lot of time watching cadets do things and being around. He was very visible."¹⁹⁷

Conclusion

LtGen Oelstrom inherited a newly implemented sexual assault reporting program, but did not exercise reasonable management oversight even after receiving clear information that he would need to do so. He questioned some staff about the unique sexual assault reporting process upon arriving at USAFA, but did not effectively engage himself in the matter even though (1) the predecessor Superintendent alerted him he would need to monitor the program, (2) the Commandant advised he was receiving insufficient information on sexual assaults and (3) the AFOSI Commander advised the sexual assault reporting policy was interfering with the ability to investigate sexual assaults.

LtGen Oelstrom did not take sufficient action to monitor or measure program effectiveness, or even to know how many sexual assaults were reported. Instead, based on more general indices such as talking with female cadets generally, he concluded that female cadets were comfortable, fully integrated and accepted into USAFA. As a result of not effectively monitoring or overseeing the unique USAFA sexual assault reporting program, the problems continued, and became known after LtGen Dallager replaced him as Superintendent.

¹⁹⁷ May 2, 2003, Welsh Interview Transcript, pp. 52-53

LtGen Nicholas B. Kehoe (Air Force Inspector General, October 1998 to August 2000)

In Fall 1999, a male cadet allegedly raped a female cadet who then exercised her option under USAFAI 51-201 to keep the incident confidential. Subsequently, in a discussion with another female cadet, she learned that the same male cadet had sexually assaulted the other cadet a week earlier. The first sexual assault was reported to USAFA, but not AFOSI. After the discussion, the victims reported the assaults to AFOSI. The AFOSI detachment commander notified AFOSI headquarters through the chain of command.

As a result, the AFOSI Commander (BrigGen Taylor) raised the issues regarding the unique USAFA sexual assault reporting program to his boss, SAF/IG (LtGen Kehoe). The AFOSI Commander thinks he may have raised the issues to LtGen Kehoe previously during his initial in brief as SAF/IG in 1998, but not “. . . as something that I thought he needed to do something about . . . until 1999 or 2000, when we reengaged on it.”¹⁹⁸ Although “. . . the practical application of that policy was an issue of daily concern by OSI at the Air Force Academy. . . .” from 1997 until 1999, “. . . our detachment commanders there worked with the medical personnel and others to try to do their job as best [as they could] with the policy being implemented. It was not always successful. . . .”¹⁹⁹

In November 1999, the AFOSI Commander (BrigGen Taylor) asked the SAF/GC (Jeh Johnson) for assistance in requesting a USAFA policy review that would appear not to come from AFOSI, but from SAF/IG. SAF/GC (Johnson) agreed to arrange the review. On interview, SAF/GC (Johnson) advised “. . . I don’t recall coming to a conclusion myself that it was appropriate to treat the Academy differently. I thought it was something that we needed to look at, focus on and try to resolve one way or another. . . .”²⁰⁰ Johnson recalled choosing the [REDACTED] to lead the effort, and the decision was based on their mutual agreement, or because “[REDACTED] would have been the natural person to do it because [REDACTED] the [REDACTED] and [REDACTED].”²⁰¹

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On February 9, 2000, SAF/GC sent a memorandum to SAF/IG (LtGen Kehoe) asking him to sponsor a review. According to the memorandum:

[REDACTED]

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¹⁹⁸ December 2, 2003, Taylor Interview Transcript, p. 19

¹⁹⁹ Ibid, p. 20

²⁰⁰ February 11, 2004, Johnson Interview Transcript, p. 12

²⁰¹ Ibid, pp. 22-23

[REDACTED]

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[REDACTED]

In a February 16, 2000, e-mail to SAF/IG (LtGen Kehoe), SAF/IGX [REDACTED] supplied information to prepare LtGen Kehoe for telephoning the request to the USAFA Superintendent (LtGen Oelstrom):

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“Additional key points for consideration as you call sir. . . .

- Do current procedures treat cadet sexual assault victims differently than other USAF members, including Airmen of the same age group?

- Do current procedures potentially deny AFOSI the opportunity to make investigative linkages which could resolve cases, and possibly prevent assaults?

- Do current procedures potentially adversely affect AF interests (including institutional interests in good order and discipline, and in the quality of cadets or other AF members (where they have been alleged to have been the offending persons)?

- Do current procedures make AFA officials vulnerable to allegations of conflict of interest (in agreeing or encouraging a cadet to not report the assault to law enforcement

- If so, can these conditions be adequately justified at the present time?

- What should the proper role of AFOSI be?”

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From January 2000, until approximately August 2000, [REDACTED] chaired a working group that included AFOSI, SAF/GC, AF Surgeon General (AFSG) and USAFA representatives, which worked to resolve the issues. As evidenced by a series of emails, LtGen Kehoe was kept abreast of the working groups efforts during the review.

LtGen Kehoe was either the addressee or courtesy copy (cc) on at least seven e-mails covering [REDACTED] Working Group activities between February 2000, and August 2000. The last e-mail was in August 2000, and reflected that LtGen Kehoe met with the Principal Deputy General Counsel (Ms. Florence

Madden) concerning the Air Force Academy sexual assault reporting policy. The meeting occurred during the [REDACTED] Working Group review.²⁰² During this meeting, the Principal Deputy General Counsel advised that “. . . [REDACTED] leaned toward supporting [AF]OSI and pointed out that [AF]OSI’s **independent authority is statutory** (though not part of Title 10; it is in a Public Law). . . . **LtGen Kehoe thinks that an impasse has been reached** and that this will need to be resolved at the two-letter level. . . . (Emphasis added)²⁰³

The AFOSI Commander assumed that “. . . the IG, the GC, and the CC [USAFA Superintendent] would have to sit and discuss the way forward.”²⁰⁴ He believed that once they made a decision at that level “. . . they would inform me of what that decision was.”²⁰⁵ The AFOSI Commander did not know if the “two-digit level” discussion occurred, but he never received any feedback.²⁰⁶ LtGen Kehoe began terminal leave in late August 2000, and then retired without resolving the issue. He did not alert his successor to the continuing problems, or that he had determined an impasse had been reached.²⁰⁷

On interview, LtGen Kehoe did not recall the AFOSI Commander expressing concerns about the unique USAFA sexual assault reporting policy, or details about the [REDACTED] Working Group.²⁰⁸

“To be frank, as I said a minute ago, I actually didn’t recall that I was aware of it. Now, obviously you have showed me those e-mails. So, I was -- I do recall that somewhat vaguely . . . I would say I am familiar with OSI and JA -- Judge Advocate General and the General Counsel and there may be some others -- personnel or someone who were -- who were conducting a review of policies.”²⁰⁹

Conclusion

As the AFOSI Commander’s immediate supervisor, LtGen Kehoe was aware that:

- the USAFA program “. . . allowed for not informing AFOSI of sexual assaults . . .” and involved “. . . inconsistencies between that instruction and other Air Force procedures. . . .”
- the AFOSI Commander had elevated objections to the USAFA sexual assault reporting program to him on at least one occasion and solicited his assistance in resolving the objections;

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²⁰² The [REDACTED] Working Group activities are detailed in Appendix F

²⁰³ [REDACTED] e-mail to [REDACTED], Subject: “RE: AFA Sexual Assault Review Committee Proposal.” On the Air Staff, “two-digit level” is typically a LtGen or equivalent.

²⁰⁴ December 2, 2003, Taylor Interview Transcript, p. 25

²⁰⁵ Ibid, p. 26

²⁰⁶ Ibid, p. 26

²⁰⁷ December 3, 2003, Huot Interview Transcript, p. 52

²⁰⁸ October 2, 2003, Kehoe Interview Transcript, pp. 14-16 & 41

²⁰⁹ Ibid, p. 6

- AFOSI had independent authority to conduct investigations, and only the Secretary of the Air Force had authority to stop an AFOSI investigation;
- the Principal Deputy General Counsel had advised him that she “leaned” toward supporting AFOSI because AFOSI’s authority was statutory; and
- The [REDACTED] Working Group efforts had reached an impasse, requiring a higher-level resolution.

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Despite knowing these factors, and even though AFOSI was directly responsible to him, LtGen Kehoe did not take action to safeguard AFOSI’s statutory authority to investigate alleged sexual assaults at USAFA without interference from USAFA leadership. He allowed a program that interfered with AFOSI’s statutory authority to continue throughout his tenure as SAF/IG. Furthermore, after determining that an impasse had been reached shortly before he retired, LtGen Kehoe did not take any action to (1) resolve the impasse, (2) ensure his successor would do so, or (3) elevate the matter to the Secretary of the Air Force. In fact, he did not even alert his successor to the continuing situation or the factors described above. Instead, he allowed USAFA to continue a sexual assault reporting program that withheld crime reporting from criminal investigators. By doing so, LtGen Kehoe abided the USAFA program and became responsible in part for the Air Force’s lack of response to sexual assault problems at USAFA.

LtGen Raymond P. Huot (Air Force Inspector General, August 2000 to January 2004)

LtGen Huot became SAF/IG in late August 2000. Among other responsibilities, SAF/IG is required to, “[w]hen necessary, direct investigations and provide direct oversight of all IG investigations conducted at HQ USAF level.” Additionally, SAF/IG is required to “[p]rovide oversight for all IG investigations.” He has “. . . authority to comment on and to overturn the findings and conclusions of any IG investigation,” and to “[a]ssess and decide the disposition of all allegations of misconduct made against Air Force Senior Officials.”²¹⁰

In July 2000, former Air Force Surgeon General, LtGen (Ret) Dr. Edgar R. Anderson, Jr. complained (“the Anderson Complaint”) to Senator Mary Landrieu (D, Louisiana) that BrigGen (now LtGen) John D. Hopper, while Commandant of Cadets from 1994 to 1996, intentionally covered up sexual assault problems at USAFA.²¹¹ LtGen Anderson gave Senator Landrieu a copy of the four-page point

²¹⁰ AFPD 90-3, Paragraphs 2.1.3, 2.1.4, and 2.1.5

²¹¹ The correspondence from LtGen Anderson does not reference MajGen Hopper directly. However, Senator Landrieu’s letter to Senator Warner states that LtGen Anderson “alleged that several incidents of sexual abuse and misconduct occurred at the Air Force Academy during the tenure of Major General Hopper as the Commandant of Cadets. Furthermore, that several of these incidents were not investigated, and may have been deliberately covered-up.” (July 27, 2000, letter from Senator Landrieu to Senator Warner, Chairman, SASC) LtGen Anderson raised the issue to Congress at that time because MajGen Hopper had been nominated to become Vice Commander, Air Education and Training Command, and for appointment to lieutenant general rank, which required congressional approval, and the matter was pending congressional action.

paper that the Consultant for Psychiatry to the Air Force Surgeon General prepared in Spring 1996, identifying sexual assault problems and a culture hostile to female cadets at USAFA. On July 27, 2000, Senator Landrieu sent the complaint, including the four-page point paper,²¹² to the Senate Armed Services Committee (SASC). The SASC referred the complaint to the Assistant Secretary of Defense, Force Management Policy, who referred the matter to the Air Force. The complaint was then referred to SAF/IG for action.

During August 3-28, 2000, the SAF/IG Senior Official Inquiries Directorate (SAF/IGS) conducted a “complaint analysis” on the Anderson Complaint. AFI 90-301, paragraphs 2.6 and 2.13 describe a complaint analysis:

“A complaint analysis is a preliminary review of allegations and evidence to determine the potential validity and relevance of the allegations to the Air Force and **to determine what action, if any, is necessary within IG, command, or other channels.** A formal analysis is not required when no allegations or evidence of wrongdoing exist and the issue can be handled through IG *assistance*. **A complaint analysis will always result in one of the following: investigation, dismissal, referral or transfer of the complaint.**” (Emphasis added)

Based on the complaint analysis, SAF/IGS concluded that investigating BrigGen Hopper for wrongdoing was not warranted. LtGen Huot approved the complaint analysis on August 30, 2000, as one of his first actions as SAF/IG. Other than relating the results to the SASC, further action was not taken on the complaint.²¹³

Framing the Allegations. The Anderson Complaint overall, including the four-page point paper, raised numerous issues involving USAFA sexual assault and gender climate problems that constituted separate allegations, albeit not allegations against BrigGen Hopper.²¹⁴ According to the complaint:

- Female cadets may be at high risk for physical or sexual abuse because of the institutional culture at USAFA, which has not addressed the existence or severity of the problem.
- Cadets who have been sexually or physically assaulted are at high risk for further damage because this culture and the lack of coherent institutional measures to address the problem.
- This issue is not openly addressed
 - Cadets who have been victimized continue to be hurt

²¹² July 27, 2000, letter from Senator Landrieu to Senator Warner (G.4.7)

²¹³ The Air Force Working Group report did not address the complaint analysis. LtGen Huot was an Air Force Working Group member. Issues related to his nondisclosures to the working group are addressed later.

²¹⁴ We note that the SAF/IG directorate responsible for handling complaints against senior officials processed the complaint. Based on interviewing an investigating officer, SAF/IGS analyzes other issues involved in senior official complaint cases. Even if that is not the case, SAF/IG was obligated to refer the issues as necessary for appropriate resolution.

- Cadets who have not been victimized but who are aware of the problem do not have the institutional support or tools to know how to deal effectively with the problem.

The point paper identified the problem at USAFA as “the culture” and described the following characteristics:

- The culture at USAFA values loyalty to the institution over personal integrity.
 - Cadets confuse loyalty to the institution with loyalty to their own values.
 - “Pimping” or turning in another fellow cadet has serious negative consequences in the community.
 - This is a perversion of the notion that “your buddy in the foxhole” comes before anything else.

The complaint also pointed out that “[t]here is no formal, sanctioned program at USAFA to address the needs of cadets who have been assaulted,” and continued:

- No one has ultimate responsibility for the appropriate handling-- investigation and treatment (individual victim and community)--of the incident. The system contains a fractured composite of agencies, functioning independently.
 - Cadet Counseling Center, Mental Health Clinic, Center for Character Development, Chaplain, AFOSI, JAG, Security Police.
- There is no safety net for a traumatized, injured cadet.
- Many female cadets come to the Academy with early histories of childhood abuse; this subgroup is the most vulnerable to the trauma of sexual assault and most likely to develop symptoms of Post Traumatic Stress Disorder.
 - A cadet who has been assaulted is likely to be ostracized and humiliated because they were hurt.
 - A cadet who comes forward may be treated with distrust or anger for betraying the group.
- A cadet who has been assaulted is subjected to an investigation by legal/police/AFOSI agencies which may yield an assembly of hearsay evidence which implies she had “merited” the assault.
- A cadet who has been assaulted may be subjected to a process of psychiatric ‘diagnosis,’ MEB and disenrollment.
- A cadet who has been assaulted will most likely suffer silently in shame.

In addition, the Anderson Complaint identified 16 possible sexual assault victims, but the names had been redacted and the victims were identified only as cadets A through O. A possible 17th victim was described based on “possible fetal tissue” that a housekeeper observed in a USAFA bathroom.

The Air Force policy that governed the complaint analysis provides:

- “All allegations or adverse information of any kind **concerning Air Force senior officials** (brigadier general-select or civilian equivalent, or above) will be forwarded immediately to the Senior Official Inquiries Directorate (SAF/IGS) for analysis and resolution.”²¹⁵
- “Air Force IGs receive and process complaints from any source (**including anonymous**) regarding Air Force operations, organizations, functions, and personnel. Complaints will be handled through referral, transfer, dismissal, assistance, or investigation.”²¹⁶
- “The single most important factor in determining the success of an investigation is to clearly and concisely identify the complainant’s allegations. A properly framed allegation is a factual proposition to be proved or disproved during an investigation, which if true would constitute adverse information. Framed allegations must contain the following:
 - Who committed the violation?
 - What violation was committed?
 - What law, regulation, procedure, or policy was violated?
 - When did the violation occur?
- **Do not combine allegations merely to simplify the process.** If the complainant alleges multiple violations on different occasions, **make each of these a separate allegation.** The same rule applies when the complaint contains multiple subjects.”²¹⁷ (Emphasis added)

The investigating officer framed only one allegation for analysis based on the Anderson Complaint, “that Gen Hopper abused his authority while assigned as Commandant of Cadets, United States Air Force Academy, by actively concealing and/or discouraging proper investigation of incidents of cadet sexual misconduct, abuse, and assault.”²¹⁸ In framing the allegation, the investigating officer (1) had Senator Landrieu’s letter and the four-page point paper,²¹⁹ (2) spoke with the point-paper author—the file included notes from the conversation,²²⁰ and

²¹⁵ AFD 90-3, “Inspector General -- The Complaints Program,” November 1, 1999, paragraph 7

²¹⁶ AFI 90-301, “Inspector General Complaints,” January 30, 2001, paragraph 2.6

²¹⁷ Ibid, paragraph 2.13.1, “Framing Allegations”

²¹⁸ August 28, 2000, memorandum for SAF/IG, Subject: “Senior Official Complaint. Maj Gen John D. Hopper, Jr., COMPLAINT ANALYSIS,” (G.8.125) p. 5

²¹⁹ Ibid, p. 5

²²⁰ [REDACTED] Interview Transcript, p. 16

(3) attempted to interview LtGen Anderson on two different occasions, but LtGen Anderson declined to deal with the SAF/IG office.

Former Air Force Secretary Peters recalled receiving the Anderson Complaint and referring it to SAF/IG for action.²²¹ According to the former Secretary:

“... The issue there was that we wanted to try to get General Hopper confirmed before the Senate broke, and I thought that the IG was going to do two things: One, look at Hopper specifically on a fairly fast track because the SASC wanted it back, and then it was going to go out of session and they wanted to get Hopper confirmed before the long break for the inaugural, the election, and various things, but I thought that the IG was going to go on after that and look at the issues.”²²²

Secretary Peters did not recall SAF/IG looking at the situation previously. He surmised that getting the Hopper nomination cleared would have been the priority, but the allegations then should have been reviewed fully. Secretary Peters also recalled that when the SAF/IG came back to him, the result was a fairly standard clearance memo for the SASC. He did not recall seeing anything other than the clearance memo, which was sent to the SASC.²²³

Complaint Analysis. The complaint analysis was extensive, with attachments totaling more than 300 pages that showed events leading to the unique sexual assault reporting process at USAFA. The investigating officer thoroughly reviewed all elements in the singly-framed allegation against MajGen Hopper and concluded that further investigation was not warranted. Our independent review reached a similar conclusion as far as it relates to MajGen Hopper. The SAF/IGS analysis, however, did not thoroughly address the complaint overall. The investigating officer did not obtain and review USAFA social climate survey data, conduct female cadet focus group interviews, interview members of the Sexual Assault Services Committee, or conduct any other investigative activity to determine the gender climate, cadet culture, or effectiveness in the USAFA sexual assault reporting program. As established in the complaint analysis file, the official academy policy was rooted in a policy waiver in which a previous SAF/IG had participated. As an apparent result, the investigating officer did not check further and during his review, LtGen Huot apparently did not question the omission. Had they done so, they might have learned that the waiver had expired under its terms, and importantly the expiration had not been detected because the previous actions were taken without any SAF/IG oversight requirement.

During his September 30, 2003, testimony before the SASC, Air Force Secretary Roche characterized “as fascinating” that:

²²¹ March 4, 2004, Peters Interview Transcript, p. 13. The complaint analysis reflects “Senator Warner forwarded the letter and attached document to the Assistant Secretary of Defense for Force Management Policy. Since the complaint involves an Air Force Senior Official, it was forwarded to SAF/IGS, through AFGOMO [Air Force General Officer Matters Office], on 1 August 2000.”

²²² Ibid, pp. 13-14

²²³ Ibid, pp. 14-15

“ . . . people in responsible positions could read that and not recognize that it wasn’t a narrow issue of a particular officer, should he be promoted or not, but there was a backdrop to that. And one should have asked the question, well, is it OK now, or what was it. And, in fact, nothing was done. It’s hard for me to imagine how anybody in a responsible position could look at that and not ask a whole lot more questions. . . .”²²⁴

Secretary Roche recalled, based on conversations with LtGen Huot when he was assuming the SAF/IG position, that the finished complaint analysis file came to LtGen Huot for approval about the time that he became SAF/IG. According to Secretary Roche, LtGen Huot believed that the complaint analysis was correct and proper for the allegation considered. Based on subsequent discussions with LtGen Huot about whether the conditions described in the complaint were occurring, Secretary Roche advised:

“And by the time we are talking about this, . . . so much has transpired that he [Huot] only can refer to the 2000 and keeps coming back to the point that his office as the IG was asked to specifically look at the question of General Hopper’s responsibility. No one asked them to look at the larger picture, not the committee, not OSD Assistant Secretary, not anyone in the Air Force. So, Ray responds to the question he is asked, not to the question he was not asked. And by the time he and I discuss it, so much water is over the dam that it is not a point of conversation, other than I asked why didn’t someone take a look at the larger picture in say, ‘93 and ‘96. And he says he had no idea.”²²⁵

LtGen Huot advised that he became SAF/IG on a Friday and the completed complaint analysis was in his in-basket the following Monday. He read and then discussed it with the investigating officer. According to LtGen Huot, the investigating officer explained what he had done and walked LtGen Huot through each sexual assault case referenced in the point paper.²²⁶ LtGen Huot and the investigating officer also discussed the attachments. The investigating officer explained to LtGen Huot that the complaint document came from LtGen (ret.) Anderson. According to LtGen Huot, however, the complaint was:

“ . . . basically the same piece of paper that LtGen. Anderson provided to then chief of staff General Fogelman. . . and he got that piece of paper. He didn’t write it. This was not General Anderson’s complaint . . . (Interruption to tape.)-- written by then a nurse psychiatrist, on the staff over there . . . And she had gotten her information from -- I think from . . . a lieutenant colonel, a nurse that worked in the Cadet Counseling Center. Still works out there . . . You know, she’s been the subject of a lot of discussion in various groups. But -- so when we

²²⁴ FDCH Transcript of Congressional Hearings: Sept. 30, 2003, Senate Armed Services Committee Holds Hearing on Sexual Misconduct at the Air Force Academy, at 9-10

²²⁵ January 13, 2004, Roche Interview Transcript, pp. 69

²²⁶ December 3, 2003, Huot Interview Transcript, pp. 27-28

discussed the complaint, I said, 'Okay, well, why didn't you talk to General Anderson?'²²⁷

LtGen Huot was very knowledgeable about the complaint analysis and was aware that the investigating officer attempted to identify the victims whose names had been redacted in the complaint. He also recalled that the investigating officer had called LtGen Anderson, who declined interview, and then contacted the point paper author and obtained the victims' names.²²⁸ In addition, he recalled the investigating officer telling him that all the witness interviews did not support the allegation and, instead, indicated BrigGen Hopper was very engaged, very proactive, and tried to work the cases. Further, he pointed out that several incidents identified in the complaint did not occur while BrigGen Hopper was Commandant of Cadets.²²⁹

LtGen Huot was also aware that the investigating officer obtained substantial additional information during the complaint analysis, including LtGen Roadman's 1997 waiver of AFI 44-102, the reporting letter,²³⁰ and the point paper author's follow-up memorandum after Gen Fogelman sent her back to USAFA to assess the problems further. According to LtGen Huot, it appeared that the person who sounded the alarm did some more checking and reported back that USAFA was working the problem in an acceptable manner.²³¹ In this regard, while the follow-up memorandum did indicate that USAFA was working the problem, it also pointed out that:

"-- In spite of widespread education- the problem persists

--- Other measures are required- the culture must be addressed

--- The institution is still unaware of the extent of the problem"²³² (Emphasis added)

At the time LtGen Huot approved the complaint analysis, he did not take or order any action to determine if the problems were continuing. In explaining why he did not do so, LtGen Huot advised:

"... [F]rom all the information . . . in the report, there appeared to be nothing but forward progress. I mean -- there was nothing that would have -- that rose to the point where it would have been a catalyst for . . .

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²²⁷ Ibid, p. 28-29. LtGen Huot apparently confused [REDACTED], a psychiatrist detailed to USAFA in 1996, with [REDACTED], the [REDACTED] nurse who now works as a Victim's Advocate in the Cadet Counseling Center.

²²⁸ Ibid, pp. 29-30

²²⁹ Ibid, p. 30-31

²³⁰ We did not ask LtGen Huot to clarify what he meant by "the reporting letter." We believed he was referring to the SAF/IG Memorandum, Subject: "Sexual Assault Victim Assistance and Notification," June 26, 1996, that condoned the confidential sexual assault reporting program.

²³¹ December 3, 2003, Huot Interview Transcript, pp. 33

²³² June 8, 1996, [REDACTED] Memorandum for USAFA/CC [REDACTED], Subject: "Sexual Assault of Cadets at USAFA," (G.8.140) p. 4 (Note: The memorandum indicates that identical memoranda were sent to the Chief of Staff, the Surgeon General, and the Deputy Surgeon General.)

[the investigating officer] or my senior officials director to come in to me and say, 'Boss, there's a bigger problem here that we need to go address.' In fact, you know, we did all that other stuff. It looked like -- hey, people are engaged, they're involved, they're trying to work this. The original complaint that was re-filed was addressed in part by . . . [the point paper author's] response and all the other attachments in there and the witnesses. . . . [the point paper author] was one of the key witnesses. . . . [The point paper author] wasn't tugging . . . [the investigating officer] on the shoulder and saying, ' . . . we got a serious problem. The Air Force is not paying attention here.' In fact, . . . [the investigating officer's] impression -- and I called . . . [the investigating officer] later, when this came up again. I said, ' . . . what do you remember about [the point paper author's] . . . feelings on this? Did she feel like the Air Force wasn't paying attention?' And he said, 'Well, my impression is that she was satisfied that the Air Force was really trying to work the problem.'"²³³

Another significant factor, according to LtGen Huot, was a bar graph attached to the complaint analysis report showing that AFOSI sexual assault investigations increased in 1993, 1994 and 1995, indicating the number of sexual assaults reported to AFOSI for investigation increased after the confidential reporting program began.²³⁴ The referenced bar graph, which AFOSI prepared and which was Attachment 10 to the complaint analysis report, was based on the following data:

Table 1
Sexual Assaults – AF Academy, 1990-2000

Yr	1990	1991	1992	1993	1994	1995	1996	1997	1998	1999	2000
No	0	0	1	8	7	9	3	4	4	2	1

* Includes one "zero" file²³⁵

Based on the Table 1 data, sexual assault reports to AFOSI did increase in 1993, 1994, and 1995, while LtGen Hosmer was the USAFA Superintendent. The increases might have been attributable to the unofficial confidential sexual assault reporting program and LtGen Hosmer's continued attention to that program, but the inadequate factual data inherent in LtGen Hosmer's unofficial reporting system precludes a factual determination.²³⁶ On the other hand, Table 1 shows that the numbers declined after 1995, while the program continued in effect and, in fact, was adopted in official USAFA policy. Thus, if LtGen Huot assumed that the increases resulted from the USAFA program, he should have followed similar

²³³ December 3, 2003, Huot Interview Transcript, pp. 34-35

²³⁴ Ibid, pp. 37-38

²³⁵ A "zero" file is an investigative file closed after preliminary investigation that does not identify credible information indicating a crime occurred.

²³⁶ A "standard of comparison" does not exist to use in determining whether an increase or decrease in AFOSI investigations was attributable to the USAFA unofficial or official confidential sexual assault reporting program and other initiatives. In any event, it is clear that USAFA received substantially more sexual assault reports than were referred to AFOSI for investigation, which was contrary to requirements.

logic and questioned the declines. He did not. Although the number of investigations had collapsed to pre-1993 levels by the time he reviewed the complaint analysis, he did not take any action to determine why. LtGen Huot later explained that he decided to assume the declines were positive and that the USAFA's programs were working and fewer sexual assaults were occurring.²³⁷

Shortly after LtGen Huot completed the complaint analysis, the AFOSI Commander (BrigGen Taylor) complained to him about the sexual assault reporting policy at USAFA. The AFOSI Commander's complaint also did not trigger any action to assess the problem, or even to revisit the Anderson Complaint analysis. On the contrary, LtGen Huot effectively told the AFOSI Commander to go work it out with the USAFA Superintendent,²³⁸ thereby becoming the third successive SAF/IG not to resolve the AFOSI concerns.

Other information in the complaint analysis included a July 13, 2000, letter from the USAFA Staff Judge Advocate, to the "Sexual Assault Awareness Study Group," one of the names used for the █████ Working Group effort that began in January 2000, and continued until approximately August 2000. The letter was written in response to Mr. █████ request, and was designed to justify continuing the unique sexual assault reporting process at USAFA. According to the letter, (1) social climate survey data for Academic Year 1999 through December 1999,²³⁹ showed that 74.8 percent of all female cadets feared reprisal from another cadet if they reported sexual harassment, (2) this percentage was consistent with the preceding two climate surveys, and (3) the figures for sexual assault would be equivalent.²⁴⁰ This information supported statements in the four-page point paper (part of the Anderson Complaint) that there was a need to address the USAFA "culture," and that USAFA did not know the extent of the problem. Specifically, the point paper had been prepared in 1996, and the letter advised that "fear of reprisal" statistics have been "consistent" over years dating to that time. It is difficult to understand why neither the investigating officer nor LtGen Huot saw a need for further investigation, given the strong indicators that the USAFA sexual assault reporting program might not be functioning as effectively as claimed. In explanation, LtGen Huot advised:

“. . . there wasn't any catalyst . . . the report was . . . done on Hopper. . . there wasn't anything that came up in the rest of it that said, 'We needed to go look at more here.' Again, it looked like people were moving the ball forward -- and dealing with the situation. . . ."²⁴¹

²³⁷ November 4, 2004, Huot letter, p 6

²³⁸ December 3, 2003, Huot Interview, pp. 18 & 56; July 16, 2003, Taylor Interview Transcript (AFG Working Group), p. 21; December 2, 2003, Taylor Interview Transcript, p. 29

²³⁹ Elsewhere in this report, we have pointed out that the basis for this data is uncertain, since USAFA did not complete a formal climate survey in 1999. Nevertheless, the information was included in the complaint analysis, should have been considered, and should have, at minimum, resulted in questioning the information.

²⁴⁰ July 13, 2000, HQ USAFA/JA Memorandum for Sexual Assault Awareness Study Group, Subject: "Study Group Tasking," (G.8.156) p. 3, paragraph 5 (Attachment 18, Anderson Complaint Analysis).

²⁴¹ December 3, 2003, Huot Interview Transcript, p. 48

In addition, LtGen Huot advised that at the time he approved the complaint analysis, he was unaware of any problem with (1) the gender climate at USAFA, (2) how female cadets were treated at USAFA, or (3) how USAFA treated sexual assault victims.²⁴² Additionally, he advised that his predecessor, LtGen Kehoe, did not discuss these issues with him before or after he assumed the SAF/IG position.²⁴³

We do not find these arguments compelling, given that the issues all came to LtGen Huot in the Anderson Complaint, and the AFOSI Commander had alerted him to the problem on one (possibly two) occasions, and requested his assistance on at least one occasion. Furthermore, as noted in Appendix F, LtGen Huot was involved in the [REDACTED] Working Group, at least to the extent that he received various e-mails addressing the continuing AFOSI and USAFA conflict. We believe that this information, coupled with the AFOSI complaints and knowledge gained from reviewing the Anderson Complaint, should have led him to take action, either to actively engage in the [REDACTED] Working Group and ensure the issues were fully resolved, or reopen the Anderson Complaint and initiate a separate review into the allegations. LtGen Huot did neither.

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Concerned Citizen Complaint. On June 28, 2002, a “Concerned Citizen” wrote the Secretary of the Air Force (Secretary Roche), the Air Force Chief of Staff (Gen Jumper), and several other addressees.²⁴⁴ The Air Force Chief of Staff’s office received the letter on July 2, 2002, and referred it to SAF/IG (LtGen Huot) for inclusion in an “ongoing review.” The complaint included the following allegations:

- Female cadets are being raped and sexually harassed by male cadets and Academy officials refuse to prosecute the male rapists.
- Female cadets are afraid to report sexual harassment because they end up getting reprimanded and punished by their Air Officer Commanding (AOC).
- The current Commandant of Cadets has actually told female Cadets that have been raped it was their fault.
- Last summer, a female cadet who was within a few weeks of reporting to USAFA was raped by an upper classmen during her initial summer training. Junior officers who were aware of this incident were not allowed to speak of it during meetings with commanders. The female cadet left the Academy shortly after the incident and returned home. The male cadet still attends USAFA.
- This past year a female cadet was brutally raped in a dormitory bathroom. Several witnesses observed the cadet being forcibly dragged into the

²⁴² Ibid, pp. 48-49

²⁴³ Ibid, p. 52

²⁴⁴ The Secretary never received the letter. We were unable to determine a reason for the nonreceipt.

bathroom, heard her screams and did nothing to help. The Commandant dropped all charges against the male cadet.

- Over this past year, there have been over 22 rapes and none of the rapists have been prosecuted. Some counselors who treat abused cadets are concerned that this might make it in the news and give USAFA a bad name.
- Female cadets have been told that one reason commanders do not prosecute rapists is to protect the Academy's reputation.

The complaint asked the addressees to “[p]lease do not believe me . . . request the . . . FBI investigate the charges . . . and if I am correct, . . . take swift action against any commander implicated in this scandal. . . .” The full complaint letter is detailed in Appendix F.

Upon receiving the Concerned Citizen Complaint, the SAF/IGS conducted a “complaint analysis” into allegations against BrigGen S. Taco Gilbert III, the Commandant of Cadets. The complaint analysis specified a singly-framed allegation, “[t]hat BGen Gilbert was derelict in the performance of his duty, by wrongfully failing to prosecute service members guilty of raping and/or sexually assaulting female cadets.” The complaint analysis reviewed this allegation and concluded that it was “without merit and did not warrant further investigation.”

The complaint included multiple allegations and multiple accusations against unspecified male cadets, unspecified AOCs and unspecified counselors, as well as the Commandant of Cadets. In accordance with the governing policy (AFI 90-301), SAF/IG was required to complete a complaint analysis that addressed each allegation, even though the complaint was filed anonymously and did not name specific individuals in the accusations. Although the investigating officer did not frame separate allegations, the complaint analysis addressed some (but not all) of the allegations, as discussed below.

In conducting the complaint analysis, the investigating officer interviewed the USAFA Staff Judge Advocate and determined that he had seen the anonymous letter and met with the Superintendent (LtGen Dallager) and then USAFA Inspector General to discuss the contents. He described the meeting as “. . . here's just one more . . . iron in the fire for us and we need to come up with a . . . way to anticipate . . . questions from the media and things like that and how are we going to respond to it and so forth.” The Deputy Staff Judge Advocate attended a subsequent lower-level meeting with the USAFA Inspector General and various base officials to discuss how they would respond to media queries.²⁴⁵ The Staff Judge Advocate did not think USAFA did a lot regarding the letter because SAF/IGS was looking into the matter; however, his office looked at the military justice aspects.

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²⁴⁵ [REDACTED] Interview Transcript, p. 3

During the investigating officer interview, the USAFA Staff Judge Advocate provided background information on (1) the unique sexual assault reporting process, (2) the broad sexual assault definition that USAFA used, and (3) the CASIE Program and how cadets could report sexual assaults to CASIE representatives rather than for criminal investigation. The Staff Judge Advocate also provided detailed information on three sexual assault cases that he thought had a bearing on the complaint letter, including one in which the Commandant (BrigGen Gilbert) met with the female victim. He advised “I would not be at all surprised if that is not what has mutated into the, the Commandant has said that if you’re raped it’s your fault.” According to the Staff Judge Advocate:

“... [the Vice Commandant] ... came to me and said the Commandant ... decided based on the recommendations of ... the investigating officer the 32 and the base legal office; he’s going to drop the charges. Cause the 32 officer agrees you can’t prove it, why go forward. But he says what he wants to do in fairness to the victim is to call her in and just say why. ... just say look it’s not that I don’t believe you but in the final analysis ... it’s one on one and we don’t have proof beyond a reasonable doubt. Any problem with that? And I said no, no problem. ...”²⁴⁶

The Staff Judge Advocate also advised the investigating officer about an AFOSI investigation that involved a cadet-on-cadet sexual assault complaint, which resulted in a third cadet being disenrolled for fraternization.²⁴⁷

During the SAF/IGS complaint analysis, the investigating officer also:

- Conducted a follow-up telephone interview with the Staff Judge Advocate and --
 - obtained additional information on the case involving the Article 32 investigation; and
 - determined that the Staff Judge Advocate did not see any irregularity in the Commandant meeting with the female cadet, because --

“... He had the authority to tell the female why the Article 32 hearing officer did not recommend that her case proceed to court martial. She might not have wanted to hear that the evidence showed that it was partly consensual sex, but those were the facts. Like I explained to you earlier, the facts showed that the female victim’s actions contributed to her being drunk and willingly being naked in a bathroom with a male cadet who wasn’t her boyfriend. ...”²⁴⁸

- determined the Staff Judge Advocate did not think the facts supported the allegation that 22 rapes had occurred in the past year and the rapists had not been prosecuted--

²⁴⁶ Ibid, p. 11

²⁴⁷ Ibid, pp. 11-12

²⁴⁸ [REDACTED] Interview Transcript, p. 2

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“... The male cadet involved in the case that went to a 32 hearing is gone. We didn’t take it to a court martial and I agreed with that but we did administratively separate him for cause. And [the male cadet] who is the subject of Cadet ...’s allegation is being court martialed for another act with a civilian female. And I think the complainant also said something that the Commandant dropped all charges against the male cadets. The person doesn’t understand the system if they think the Commandant has the power to drop charges without all the legal channels reviewing the case and the facts. So I think the complainant embellished his complaint for his own agenda. The actions that the Commandant took on the rape cases that came to him for action from the legal channels showed no indication of wrongdoing on his part. . .”²⁴⁹

- Interviewed the USAFA Deputy Inspector General, and --
 - obtained details and documents on a cadet’s sexual assault complaint filed with the USAFA Inspector General, which was referred to AFOSI.
 - obtained information on the USAFA response to a Senator’s request (number of sexual assaults at the academy during the period August 2001 to August 2002).
- Interviewed an attorney in the USAFA Staff Judge Advocate office and --
 - obtained further detail on the USAFA sexual assault reporting system;
 - discussed the results of USAFA research indicating that 16 sexual assaults had been reported to USAFA (CASIE, legal, medical, security forces, and AFOSI) since August 2001.

The complaint analysis addressed the allegation that the “Commandant of Cadets tells female cadets that being raped is their fault!” The analysis relied entirely on the Staff Judge Advocate advice as to what occurred when BrigGen Gilbert met with the female cadet. Although another legal officer attended the meeting,²⁵⁰ the Staff Judge Advocate did not. Despite this fact, the investigating officer did not interview BrigGen Gilbert, the legal officer who attended the meeting, or the cadet to verify or refute the allegation. Further, we could not find any indication that the investigating officer reviewed the AFOSI Report of Investigation. Instead, she relied on information from the Staff Judge Advocate in considering the alleged sexual assault that may have been the basis for the allegation.

The remaining allegations and related complaint analysis considerations were as follows:

- “Female cadets are being raped and sexually harassed by male cadets and academy officials refuse to prosecute the male rapists.”

(The complaint analysis contained information that USAFA prepared in

²⁴⁹ Ibid, p. 2

²⁵⁰ [REDACTED] Interview Transcript, pp. 10-11

responding to the congressional request for information on sexual assaults between August 2001 and August 2002. Although this information indicated that 16 sexual assaults occurred during the period, rather than 22 as alleged in the complaint, the fact that the number was different was not a basis for dismissing the allegation that the offenders were not prosecuted.²⁵¹ Further, the investigating officer did not address the sexual harassment aspect of the allegation.)

- “Female cadets are afraid to report sexual harassment because they end up getting reprimanded and punished by their Air Officer Commanding (AOC).”

(Not addressed in the complaint analysis.)

- “AOCs punish the females for reporting being raped.”

(Not addressed in the complaint analysis. Information in the response to the congressional request indicating that 11 of 16 sexual assault victims chose not to have their complaints investigated relates to issues in both the Anderson Complaint and this complaint. This fact should have been recognized and considered. Additionally, it was related to BrigGen Taylor’s concerns and demonstrated those concerns continued a year after he retired.)

- “Some of the counselors who treat abused cadets are concerned that this might make it in the news and give the USAF Academy a bad name. Imagine that, counselors are more concerned about USAFA’s reputation than the victims’ healing.”

(Not addressed in the complaint analysis.)

- “Female cadets have been told that one of the reasons that commanders do not prosecute rapists is to protect the Academy’s reputation.”

(Not addressed in the complaint analysis.)

With additional investigative work, the investigating officer could have validated or refuted information in the complaint. We identified the complainant with little effort. When the complainant did not see any action regarding the anonymous complaint, the complainant then helped others prepare (co-author) the December 13, 2002, and January 2, 2003, e-mails that resulted in the Secretary of the Air Force establishing the Air Force Working Group.

²⁵¹ The response to the Senator was quoted in the complaint analysis. With respect to the 16 sexual assaults being reported, the first paragraph of the response advises “[e]ach of these reported sexual assaults were [sic] investigated to the fullest extent possible according to USAFAI 51-201.” However, the next paragraph advised that 11 were not investigated, and the following paragraph states “[a]ll reports of sexual assault are taken seriously. Each is thoroughly investigated, and people found guilty of this crime are held accountable.” We found this doublespeak indicative of the manner in which USAFA has furthered and justified its confidential sexual assault reporting program.

On interview, the investigating officer advised that the SAF/IGS practice is not to pursue anonymous complaints if witness interviews do not disclose names:

“ . . . You won’t find it in the Air Force Instruction 90-3, and you won’t find the words if the complainant does not identify a name to quit there. But -- the way our office handled things, if there was not a complaint -- a name in a complaint, that it was an anonymous complaint, and through our witness interviews, we did not uncover any names, we -- we didn’t go any further. So, there was -- we didn’t go and try to call individual cadets. You know, ‘Do you know somebody who’s been raped?’ . . . ”²⁵²

Even though the Staff Judge Advocate interviews, which disclosed specific case information, identified several individuals that might have had first-hand knowledge about the basis for allegations in the complaint, the investigating officer did not contact these individuals.

On interview, we asked LtGen Huot why the complaint analysis did not address allegations that:

- females were afraid to report for fear of being punished by their AOCs;
- AOCs punished female cadets for reporting being raped; and
- counselors who treated abused cadets were more concerned about USAFA getting a bad name than with the victims’ healing.

According to LtGen Huot:

“ . . . [T]he one piece that we could put our finger on was the link to -- (Interruption to tape.) -- Gilbert. And so we said, ‘Okay, I think we recognize this piece on the Gilbert piece and we can look at that and say, ‘Okay, that’s the piece that we can look at.’ And then . . . [the investigating officer] looked at the Academy response and essentially addressed what she felt was most of the other things in that letter based on, I think, a dialogue or some sort of exchange -- (Interruption to tape.) -- the LL [Legislative Liaison] to respond to the Murray letter...And that was included in her complaint analysis. . . . ”²⁵³

In responding to a question as to whether his office addressed the three allegations noted above, LtGen Huot stated “ . . . I don’t know what . . . [investigating officer] did there . . . other than what’s in here relative to the . . . [congressional] response -- that includes some of that and talks about the number of cases that were reported. . . . ” LtGen Huot indicated that he did not go “line by line” through the anonymous letter.²⁵⁴

²⁵² January 23, 2004, Investigating Officer Interview Transcript, pp. 58-59

²⁵³ December 3, 2003, Huot Interview Transcript, p. 96

²⁵⁴ Ibid pp. 99-100

On August 15, 2002, LtGen Huot approved the investigating officer's recommendation "[t]hat SAF/IGS not investigate the allegation against Brig Gen Gilbert."²⁵⁵

We asked Secretary Roche whether the SAF/IG should review allegations involving culture, climate and victim treatment, when the allegations do not accuse specific individuals. According to Secretary Roche:

“. . . [T]here appears to have been a culture in the Air Force IG -- Not to damn them, just to say the culture. That you look at the question you are asked. I am not saying that is good or that is bad. All I can tell you is it wasn't very helpful to me. . . . Because he viewed his job as -- there's an allegation, is it substantiated or is it not substantiated? And you remember when I have a problem with the first -- the January message. I don't turn to the IG. Because I would have to frame something into an allegation, substantiated or not substantiated. What I do is to say I don't know what I have got. Therefore, form a team of a broader based group. And to be very frank, get more females involved. . . .”²⁵⁶

We also asked Secretary Roche if he thought LtGen Huot should have addressed the non-specific issues in this specific complaint, and he advised:

“. . . I would have hoped that the IG would say, look, there are other things here like the Hopper. . . that I have not been asked to look at. But you ought to think about what you want to do about it. That is the proper way for a subordinate who thinks he is doing his job and stumbles upon something else. His obligation isn't to go fix the something else. It is to bring it to the attention to someone senior. . . .”²⁵⁷

LtGen Huot did not respond to substantive allegations of misconduct and allegations that Air Force cadets and crime victims at USAFA were being exploited. His actions were contrary to AFI 90-301, “Inspector General Complaints,” and his responsibility to direct investigations and provide direct oversight for all SAF/IG investigations.²⁵⁸ AFI 90-301, paragraph 2.13, required a complaint analysis to determine the potential validity and relevance of the allegations to the Air Force and to determine what action, if any, was necessary within SAF/IG, command, or other channels.

Disclosure to Air Force Working Group. LtGen Huot was a member of the Air Force Working Group, but did not tell the working group that he had participated directly in processing the Anderson and Concerned Citizen Complaints, and was responsible for the final decisions in those complaints. In fact, LtGen Huot did not notify the group of the existence of either complaint analysis. In this regard,

²⁵⁵ Memorandum for SAF/IG, from: SAF/IGS, Subject: “Senior Official Complaint - Brigadier General S. Taco Gilbert III, COMPLAINT ANALYSIS,” August 14, 2002 (G.8.78)

²⁵⁶ January 13, 2004, Roche Interview Transcript, pp. 158-159

²⁵⁷ Ibid, pp. 159-160

²⁵⁸ AFI 90-301, “Inspector General Complaints,” January 30, 2001, paragraph 1.9.2

we note that the Air Force Staff Judge Advocate General (MajGen Fiscus) was a working group member and received the four-page point paper supporting the Anderson Complaint in May 2003, as the working group effort was nearing completion²⁵⁹. Similarly, other working group members and the principal staff member were aware in early July 2002, of the Concerned Citizen Complaint.²⁶⁰ Accordingly, some working group members besides LtGen Huot had at least some knowledge regarding the existence of the complaints. Despite individual member knowledge, however, the Air Force Working Group did not benefit from the historical information gathered during the two complaint analyses, which would have simplified their fact-finding process. As the official responsible for processing and deciding both complaints, LtGen Huot should have ensured the Air Force Working Group knew about and benefited from the previous work. He did not. In explanation, LtGen Huot advised that the working group was focused on policies, procedures and practices, and the Anderson Complaint did not come to his mind as something the working group needed. In addition, he stated that he “just assumed” the working group was getting everything they needed from his people during the “data gathering.”²⁶¹

The investigating officer on the Concerned Citizen Complaint advised “. . . I recall that we weren’t asked [by the Air Force Working Group] to provide a list of the investigations or complaints we had worked. And again, that list of those types of complaints didn’t come forward until the Fowler panel had asked for it. . . .”²⁶²

During SASC testimony on September 30, 2003, Secretary Roche referred to the four-page point paper that was part of the Anderson Complaint and expressed “shock. . . to see the four pages. . . .” He advised that he, the Chief of Staff (Gen Jumper), and the SAF/GC (Ms. Walker), did not know about the document, and it first came to their attention as a result of a newspaper article. He indicated that it then took them “at least a week” to find the document, which was “. . . buried in an IG report.” According to Secretary Roche:

“. . . I have no doubt that had the working group had those four pages, that they would have taken the section on future studies where they said that the headquarters relationship should be examined, they would have built a much richer terms of reference, they would have used this. And then I would have argued with my boss that this is something that an OSD IG should look at or DOD IG, not the Air Force because I’d be looking at my predecessors who were in a different administration. And no matter what conclusion we came to, it would be somehow doubted.

²⁵⁹ June 21, 2004, Fiscus interview recording at 15 minutes

²⁶⁰ That matter is unresolved at the time of this report and is pending additional inquiries.

²⁶¹ December 3, 2003, Huot Interview Transcript, p. 51

²⁶² January 23, 2004, Investigating Officer Interview Transcript, p. 67

But it was absolutely appropriate that the DOD IG look at that. So I support Ms. Fowler's position and that position especially. . . ."²⁶³

Ms. Walker testified that she did not know anything about the Concerned Citizen Complaint until after the SASC hearing on September 30, 2003.²⁶⁴ The complaint first came to her attention when she was reviewing Secretary Roche's answers and General Jumper's answers to the SASC questions for the record. One question was "[w]hen did you first learn about the sexual assault issues at the Academy?" Secretary Roche answered January 2, 2003, the date on which he received the Renee Trindle e-mail. However, Gen Jumper answered June 2002, when he saw a letter. Gen Jumper's answer caused Ms. Walker to inquire about the letter.²⁶⁵ According to Ms. Walker:

" . . . I didn't know anything about that letter until then. And, all of a sudden, somebody produced it, and I said, 'Oh, my God,' you know. Now, it wasn't as complete as the e-mail . . . And so it was very different. But, still, I mean, I didn't -- I had never seen that letter before. The Secretary had never seen the letter before. So I first learned about it when whoever was preparing the draft answers for the Chief, somebody stuck that in the answer, and I was being asked to review the answers, and I looked at it and I went, '[w]hat the heck is that?'"²⁶⁶

Ms. Walker subsequently notified the Inspector General of the Department of Defense about the June 2002, letter and forwarded a copy on November 21, 2003.

The issues involved in the Anderson and Concerned Citizen Complaints were known to LtGen Huot, a prominent Air Force Working Group member, but were not addressed in the Air Force Working Group report. Ms. Walker could not explain the shortcoming. She stated that she previously had recommended the Secretary assign attorneys working for SAF/IG to SAF/GC, rather than the Air Force Judge Advocate General, because she has:

" . . . no window into their work. . . . I don't know what they're doing. You know, they could be finding things, and we don't have any communication -- neither does ██████████ -- with them. So my concern is that I don't know what goes on in there. And he chose not to do that. He chose to leave them where they are. And his point to me was, 'My inspector general should have been telling me.' And I said, 'Okay, boss. You're in charge. I'll live with whatever you want.' But that was my concern. And on the working group, you know, in retrospect, I think anybody who had information should have brought it forth. They knew. They were a part of this review. The only thing I can think of is that they somehow compartmentalize their focus on the Academy programs and policies and what was wrong with them, and somehow didn't reach into what

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²⁶³ FDCH Transcript of Congressional Hearings, "Sept. 30, 2003 Senate Armed Services Committee Holds Hearing on Sexual Misconduct at the Air Force Academy," p. 10

²⁶⁴ At the time this report was published, this matter remains unresolved and additional inquiries are pending.

²⁶⁵ January 22, 2004, Walker Interview, pp. 59-61

²⁶⁶ Ibid, at 60

they were aware of in another capacity. I don't know. I never asked Ray [LtGen Huot] about it because the Secretary told me he had dealt with him on, you know, not seeing the bigger issues. . . .²⁶⁷

Conclusion

As the SAF/IG, LtGen Huot was required to “[w]hen necessary, direct investigations and provide direct oversight of all IG investigations conducted at HQ USAF level.” He was also required to “[p]rovide oversight for all IG investigations.” In addition, he had authority “to comment on and to overturn the findings and conclusions of any IG investigation,” and to “[a]ssess and decide the disposition of all allegations of misconduct made against Air Force Senior Officials.”²⁶⁸ LtGen Huot did not exercise these authorities in deciding either the Anderson Complaint or Concerned Citizen Complaint. Furthermore, LtGen Huot did not make the Air Force Working Group aware of the complaints, or the issues involved. LtGen Huot apparently did not see any connection between issues in the complaints and the working group charter. However, as the most senior Air Force inspector, LtGen Huot must have known that there is no better indicator of whether policies and procedures work than real-life examples of those policies and procedures in operation. The fact he did not fully consider the issues in the previous complaint analyses should have led him to take actions that would ensure they were fully considered in the Air Force Working Group effort. He did not, and did not even alert other working group members. As a result, LtGen Huot did not satisfy his responsibilities as SAF/IG in deciding the Anderson and Concerned Citizen Complaint, or his responsibility as a prominent Air Force Working Group member.

As was the case with the predecessor SAF/IG, LtGen Huot was the AFOSI Commander's immediate supervisor. However, when the AFOSI Commander came to him for assistance, he did not support the AFOSI Commander's statutory authority to investigate alleged sexual assaults at USAFA without interference from USAFA leadership. Although the USAFA program had interfered with AFOSI statutory authority for approximately 6 years by that time, LtGen Huot “. . . was noncommittal . . .” indicating that AFOSI should “. . . let the process work out and see what we can come up with. . . .”²⁶⁹ LtGen Huot, therefore, abided the USAFA program throughout his tenure as SAF/IG and became responsible in part for the Air Force's lack of response to sexual assault problems at USAFA.

²⁶⁷ Ibid, at 70-71

²⁶⁸ AFPD 90-3, “Inspector General -- The Complaints Program,” November 1, 1999, (C.7.16) paragraphs 2.1.3, 2.1.4, and 2.1.5

²⁶⁹ December 2, 2003, Taylor Interview Transcript, p. 29; LtGen Huot was apparently referring to the [REDACTED] Working Group effort, which was ongoing at the time.

Nonresponsible Air Force Leaders

After thorough examinations, we did not find that the following leaders contributed significantly to or were responsible for USAFA sexual assault problems.

Gen Ronald R. Fogleman (Air Force Chief of Staff, October 1994 to August 1997)

The USAFA Superintendent, Air Force Surgeon General, and Air Force Judge Advocate General (among others) report to the Air Force Chief of Staff, who reports to the Secretary of the Air Force. The SAF/IG reports to the Secretary of the Air Force. Although confidential sexual assault reporting had been in effect informally at USAFA since 1993, in Spring 1996, the [REDACTED] [REDACTED] was involved in formalizing the program in a draft training wing operating instruction (34TRWOI 36-10). He forwarded the draft operating instruction to SAF/IG for review within the Air Force headquarters after AFOSI learned about the program and complained to SAF/IG.

In early 1996, a cadet immolated himself at USAFA. Following [REDACTED] [REDACTED] complained that psychiatric care at USAFA was not up to standards. As a result, in Spring 1996, the Air Force Surgeon General (LtGen Anderson), with Gen Fogleman's approval, sent his [REDACTED] [REDACTED] to evaluate the USAFA program and conduct a credentialing investigation on a USAFA psychiatrist.²⁷⁰ At the time, at SAF/IG (LtGen Swope) request, the Air Force Judge Advocate General's office was reviewing draft 34TRWOI 36-10. A Surgeon General staff member was participating in or contributing to the review.

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While at USAFA, the [REDACTED] identified sexual assault and victim treatment problems, and described them in a four-page point paper entitled, *Sexual and Physical Assault at the USAF Academy*. According to the point paper:

“ . . . a problem at the USAF Academy, which **threatens the foundations of the institution - Female cadets may be at high risk for physical or sexual abuse because of the institutional culture at USAFA which has not addressed the existence or severity of the problem** - Cadets who have been sexually or physically assaulted are at **high risk for further damage because of this culture** as well as the **lack of coherent institutional measures to address the problem. . . .**”
(Emphasis added)

LtGen Anderson's reaction was “. . . we've got to take this to the Chief [Gen Fogleman]. . . . this is a bombshell.”²⁷¹ As a result, on June 3, 1996,

²⁷⁰ January 26, 2004, Anderson Interview Transcript, pp. 6-7

²⁷¹ Ibid, p. 15-16

LtGen Anderson, LtGen Roadman (Deputy Surgeon General) and the ██████████ ██████████ met and presented the point paper to Gen Fogleman. According to LtGen Anderson, during the meeting, Gen Fogleman agreed the problem needed immediate attention, and stated “. . . we’ll have to put together an IPT, an Integrated Process [Team].”²⁷² LtGen Anderson advises that he recommended a group independent from Air Force and USAFA review the USAFA sexual assault issues. According to LtGen Anderson, Gen Fogleman’s responded “. . . I’ll have to take it to the Secretary.”²⁷³

On June 4, 1996 (one day after the meeting), LtGen Anderson sent Gen Fogleman a note following up on the meeting. According to LtGen Anderson, in the note, he advised Gen Fogleman that “. . . this is serious, serious stuff, and kind of picked up on what Chip [LtGen Roadman] said about, you know, cure this patient, not kill it. I think I closed it by saying, [t]his patient needs major surgery, not just a Band-Aid.”²⁷⁴ LtGen Anderson believes his note reiterated the seriousness, highlighted the fact that serious crimes were occurring, and the importance of having someone outside USAFA examine the problems.²⁷⁵ According to LtGen Anderson, Gen Fogleman responded “[w]ell, I’ll take it. It’s taken care of.”²⁷⁶ At the time, LtGen Anderson did not know if Gen Fogleman spoke to Secretary Widnall, but subsequently learned “. . . that Secretary Widnall said she never heard it.”²⁷⁷

At some point during the June 3, 1996 meeting, Gen Fogleman instructed the ██████████ to return to USAFA and assess the problems further. The Consultant for Psychiatry did so June 5-7, 1996. On June 6 or 7, 1996, she also met with ██████████ to present her concerns. During the follow-up work, the Consultant for Psychiatry learned about continuing efforts to address sexual assault problems at USAFA. In documenting her follow-up work in a June 8, 1996, memoranda to Gen Fogleman, ██████████ LtGen Anderson and LtGen Roadman, the ██████████ described the continuing USAFA efforts, indicating “a great deal of the background work had already been accomplished to address these identical concerns.” The memoranda, however, specifically pointed out that:

“... -- In spite of widespread education - **the problem persists**
--- **Other measures are required- the culture must be addressed**
--- **The institution is still unaware of the extent of the problem**”²⁷⁸ (Emphasis added)

²⁷² Ibid, p. 18

²⁷³ Ibid, p. 19

²⁷⁴ Ibid, p. 20

²⁷⁵ Ibid, p. 27

²⁷⁶ Ibid, p. 28

²⁷⁷ Ibid, p. 28

²⁷⁸ June 8, 1996, Hall Memorandum for USAFA/CC ██████████, Subject: “Sexual Assault of Cadets at USAFA,” (G.8.140) p. 4 (The memorandum indicates that identical memoranda were sent to the Chief of Staff, the Surgeon General, and the Deputy Surgeon General.)

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The [REDACTED] further reported,

“-- We agreed to reactivate the SASC [Sexual Assault Services Committee] and re-configure this group as an IPT [Integrated Process Team]

--- Consideration will be given to membership/ outside consultants/ Charter/ Focus – the Culture . . .”

On interview, Gen Fogleman advised that he was aware of USAFA gender climate issues soon after becoming Chief of Staff. GAO had issued several reports identifying sexual harassment problems at the Service Academies. According to Gen Fogleman, however, [REDACTED] was “. . . working this issue very hard and I think he was one of the more proactive superintendents on trying to address this.”²⁷⁹ Gen Fogleman was also aware that [REDACTED] was “. . . publishing a new Academy regulation or directive on how all this was going to go about. . . .”²⁸⁰ With regard to his June 3, 1996, meeting with LtGen Anderson, LtGen Roadman, and the [REDACTED] Gen Fogleman advised “. . . it was kind of old news. . . . because of presentations at Corona and all that, I knew we had a problem. I knew that [REDACTED] was working the problem. . . .”²⁸¹

Gen Fogleman also commented regarding the subsequent June 8 memorandum:

“. . . [T]he two issues were, one, what were the results of whatever she had gone to investigate. The second one was what were the additional things that she found relative to the climate, the record and everything . . . by going back and looking at it, she had a list of 13 or 14 or 15 specific cases [sexual assaults] of things that had happened. . . . Normally, when I would get something like that, I would go to whoever was responsible for that particular function, in this case, it would have probably been [REDACTED], and said, ‘Okay, Paul, what are you doing about this.’ As it turns out, I think even in those memos, she had given essentially the same presentation to [REDACTED] and had indicated that [REDACTED] was taking steps based on that . . . to do things. And so **my recollection** of it is that I got the presentation. **I talked to the guy who was responsible** for it and, generally, was led to **believe that this OI [Operating Instruction] that was . . . waiting for approval at the air staff, would work this problem. . . .**”²⁸²

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²⁷⁹ February 19, 2004, Fogleman Interview Transcript, p. 8

²⁸⁰ Ibid, pp. 8-9

²⁸¹ Ibid, p. 9; On a triennial basis, senior Air Force leaders meet in sessions known as “Coronas” to address Air Force-wide matters such as specific conflict plans and budgets. Each year, one Corona is held at USAFA. Each Corona has both a classified and an unclassified file documenting the session. Except for classified files for 1993 and 1994, which Air Force could not locate, we reviewed each file. Files for the Corona held November 5-8, 1997, included a sexual harassment topic for USAFA following GAO reports identifying this problem at all the Service Academies. However, this Corona occurred several months after Gen Fogleman retired from the Air Force. The remaining Corona files did not include a topic related to USAFA sexual harassment or sexual assault problems. We note that this type topic was generally covered in the unclassified files, so Air Force’s inability to locate classified files for 1993 and 1994 likely would not impact our report.

²⁸² Ibid, p. 32

According to Gen Fogleman, in retrospect, “. . . I didn’t have as high a degree of concern as I should have. . . .” In his view, however, senior leadership was aware of the problem and dealing with it proactively, not ignoring it.²⁸³ Gen Fogleman advised that he probably called ██████████ told ██████ about the meeting, and “talked through what corrective actions were taken.” However, he could not recall any specifics, or whether he actually called ██████████.²⁸⁴ He also recalled that ██████████ was working to fix the problems before the June 3 meeting.²⁸⁵

Gen Fogleman could not explain why he did not alert Secretary Widnall following the June 3 meeting, or June 8 memorandum, although he believes Secretary Widnall was well aware of gender climate problems at USAFA. He advised that “. . . there was no reason to hide it. I don’t know why. I don’t know why I didn’t, if I didn’t brief her, I don’t know why. . . .”²⁸⁶

We asked Gen Fogleman whether he established an Integrated Process Team following the June 3 meeting, as LtGen Anderson referenced in connection with the June 3 meeting and Gen Fogleman referenced to the Fowler Panel. Gen Fogleman stated,

There was an [sic] actually an IPT that he ██████████ put together to work this that led to the recommendations I think that, you know, moved this from here to there, moved -- established this SAS [Sexual Assault Services] thing and all that. I think that really came out of his IPT that he had put together and I think, I could be wrong on this, but I think the IPT was his device to put together the answers to that GAO report -- I would have to go back and look, though.

Gen Fogleman thought this occurred the summer or in the spring of ‘95 but he did not know when it ended. He thought that the Air Force Working Group report referred to it. The Air Force Working Group Report makes several references to the Social Climate Process Action Team headed by then Col Wagie; however, there is no reference made to an Integrated Process Team.

Additional information provided by Gen Fogleman on November 7, 2004, substantiates that he received an update from LtGen Roadman on August 5, 1996, advising him that the Surgeon General’s psychiatric consultant had visited USAFA for meetings with senior staff and discussed:

- “Culture issues of reprisal & shunning
- % [percentage of] female recruitment/enrollment
- **Need to get to culture of institution** (Emphasis added)
- schedule to visit Hall & AFA staff to West Point (26 Aug)”

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²⁸³ Ibid, p. 34

²⁸⁴ Ibid, p. 36

²⁸⁵ Ibid, pp. 37-38

²⁸⁶ Ibid, p. 39

LtGen Roadman's note reflects that the [REDACTED] discussed the "IPT and external leadership," indicating that [REDACTED] would discuss the external leader with Gen Fogleman. LtGen Roadman pointed out, "**I still believe external chair is important.** I do not believe it should be Co-chair nor should be female. **Is a total culture issue not a female issue.**" (Emphasis added) LtGen Roadman also provided Gen Fogleman with a list of seven General Officers that he had been "thinking about."²⁸⁷

Gen Fogleman also provided us a handwritten August 13, 1996 memorandum for record which he (Gen Fogleman) prepared, documenting that he "[D]iscussed this issue w/[with] [REDACTED] and with Gen Roadman. No further action required at this time . . ." Gen Fogleman clarified that the note was intended for himself, indicating "there was no further action required of me at that time. Clearly there were actions and oversight underway by both the Air Staff and the Academy that would and did continue."

Gen Fogleman could not recall the specifics of his conversations with Generals Roadman and [REDACTED], but given the mention of the subject in the memo he would probably have discussed whether or not to go with an external chair of the IPT. He does not remember if he had, or stated, a position on assignment of an external chair. He does not remember if [REDACTED] had, or stated, a position on assignment of an external chair. Gen Fogleman does not remember making a decision on the assignment of an external chair. Furthermore, Gen Fogleman does not remember giving any feedback to LtGen Roadman on the assignment of an external chair.²⁸⁸

Gen Fogleman provided the August 13, 1996 memorandum to substantiate that he was not ignorant of Air Staff actions, and that he provided adequate oversight of [REDACTED].

We have found no evidence that the Integrated Process Team that LtGen Anderson recommended was ever created, in spite of LtGen Roadman's August 1996 update reminding Gen Fogleman of the "need to get to the culture of [the] institution," and his belief in the importance of an external IPT chair at the General Officer level.

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The [REDACTED] told us,

"I was, we were making the same recommendations to the Academy that they tackle the issue at that level, at the level of an IPT, not just a SASC. And what my recommendation had been was that the SASC [Sexual Assault Services Committee] become a very active IPT. We'd be happy to provide on-going consultation about how to do that. It's a long-winded way of saying to you that I don't believe that the issue that

²⁸⁷ August 5, 1996, handwritten note from MajGen Roadman to Gen Fogleman, "Update on AFA"; The seven General Officers included: Gen N.T. Johnson, Gen Larry Welch, LtGen Hosmer "although AFA experience may detract as a choice," Gen Russ Dougherty, Gen Bill Cheecn, Gen Bob Oaks, and LtGen Dale Thompson

²⁸⁸ November 8, 2004, Fogleman Email Response to Our Interrogatories

contributes to this culture of reprisal, shunning, silence; et cetera was ever really effectively addressed. I mean, there was tinkering around the edges, I think. This is my honest opinion, and people have gotten kind of hung up on this reporting thing as being very important. I don't believe that it is. I really believe that the problems at the Academy have very little to do with whether the [AF]OSI gets involved or doesn't get involved. And I could see having the [AF]OSI involved, and not having the [AF]OSI involved. As you may know, I became an advocate of confidential reporting.

One of the disappointing experiences I think I had as well out there is that it was clear to me that the Academy appreciated our interest, but weren't overly anxious to have the U.S. Air Force Surgeon General's office representatives frequently engaged in the Academy's business, which is another cultural problem, I think, in the Air Force. It has to do with command authority, you know, versus the consultants. So, that's my answer. I don't think the problem was ever addressed.²⁸⁹

USAFA Draft Policy

Gen Fogleman was unaware that the SAF/IG asked the ██████████ to form a working group and review USAFA draft sexual assault reporting policy. He was also unaware that SAF/IG forwarded the redrafted policy to ██████████ on June 26, 1996. According to Gen Fogleman, the June 26, 1996, memorandum first came to his attention in 2003, and he “. . . was surprised to see that it was signed out by the IG [LtGen Swope] and there was no indication that we had coordinated on it at all.”²⁹⁰ He did not question SAF/IG authority to send the memorandum, but was surprised that an operating instruction went out of the Air Staff or Secretariat without the signature of either Secretary Widnall or himself.²⁹¹ Gen Fogleman did not recall anyone briefing him on the draft operating instruction. He knew that ██████████ was developing an operating instruction dealing with sexual assaults, but was not involved in approving the policy and was unsure why ██████████ sent the draft to LtGen Swope for review.²⁹² However, based on Gen Fogleman's comment that he must have talked to ██████████ and “. . . was led to believe that this OI [Operating Instruction] that was . . . waiting for approval at the air staff, would work this problem. . . .”, Gen Fogleman was aware that the Air Staff was involved with the draft operating instruction.

Gen Fogleman also did not know about the February 14, 1997, USAFA briefing that apparently convinced LtGen Swope (SAF/IG), LtGen Roadman, and ██████████ to support the USAFA confidential reporting program. He knew that LtGen Roadman signed the May 1997 medical waiver, but learned about it afterwards.²⁹³ According to Gen Fogleman, “. . . I

²⁸⁹ September 15, 2003, Hall Interview Transcript, pp. 23-24

²⁹⁰ February 19, 2004, Fogleman Interview Transcript, p. 33

²⁹¹ Ibid, p. 33

²⁹² Ibid, pp. 48 & 52

²⁹³ Ibid, p. 63

can't remember Roadman coming to me in May or something and saying 'hey Chief, I'm going to sign off on this thing.'"²⁹⁴ He did not know about the waiver request that was considered, or that LtGen Roadman had agreed to issue the waiver. He advised, however, that LtGen Roadman had authority to waive this type policy.²⁹⁵

Chief of Staff Transition

Gen Fogleman did not brief his successor (Gen Ryan) about USAFA gender climate problems. He requested early retirement and left the position in August 1997, while Gen Ryan was still in Europe. Gen Ryan was not confirmed until October 1997. Gen Fogleman could not recall whether Gen Ryan had even been identified as his successor when he left.²⁹⁶

Gen Fogleman believed the

"entire senior leadership of the Air Force knew that we had a problem at the Air Force Academy. We had been getting briefings on it, you know at Coronas. We had GAO reports coming out. And I sincerely believe, at the time, that the people really tried to come to grips with the issue and if we did wrong, you know, perhaps we did it wrong, but it wasn't because we weren't [sic] trying to sweep it under the rug or any of that kind of stuff."²⁹⁷

Secretary Widnall did not know why Gen Fogleman did not brief her, stating "... it's inconceivable to me that General Fogleman wouldn't think I'd be interested in rape at the Academy. For heaven's sakes."²⁹⁸ She explained that Gen Fogleman never reported USAFA matters to her.²⁹⁹ She also explained that she trusted the USAFA leadership, "understood the issues in dealing with young people," and thought she would have been notified about a problem. Secretary Widnall said "[REDACTED] had a deep commitment to those issues, as did the various commandants."³⁰⁰

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Ms. Sheila C. Cheston, the Air Force General Counsel, did not know about the June 3, 1996, meeting, the four-page point paper involved in the meeting, or the follow-on June 8, 1996, memorandum.³⁰¹ She advised that Gen Fogleman never discussed sexual assault or other gender related issues at USAFA with her.³⁰²

²⁹⁴ Ibid, p. 65

²⁹⁵ Ibid, pp. 18-19

²⁹⁶ Ibid, p. 69

²⁹⁷ Ibid, p. 70

²⁹⁸ January 28, 2004, Widnall Interview Transcript, p. 30

²⁹⁹ Ibid, p. 26

³⁰⁰ Ibid, p. 26

³⁰¹ March 24, 2004, Cheston Interview Transcript, p. 37

³⁰² Ibid, p. 39

Since our interview with Gen Fogleman on February 19, 2004, he has obtained information regarding his June 4, 1996 schedule, which indicates that he met with Secretary Widnall from 8 – 8:30 AM. Although he cannot specifically recall telling the Secretary, he informed us, “I think I almost certainly told her about the information passed to me by the SG [Surgeon General] on the previous day (3 June). Gen Fogleman realizes that Secretary Widnall does not recall being told, and he has no reason to doubt her word, however, he believes it is quite possible, and even likely, “that when I told her on 4 June that there were indications of problems that warranted a deeper look, and that I had directed a follow-up by [REDACTED], she would have no reason to recall being told. Gen Fogleman characterized this as “one of numerous of [sic] bits of information that were mentioned to the Secretary and I, but were being worked by the staff.”

Conclusion

Gen Fogleman was not informed about Air Staff actions on the USAFA sexual assault reporting program, generally learning about the actions after-the-fact. Furthermore, he left the Chief of Staff position several months before his successor was confirmed, and the successor may not have been identified when he left the position. Accordingly, Gen Fogleman is not responsible for individual Air Staff member actions that condoned USAFA’s departure from standing Air Force requirements. He also cannot be faulted for not alerting his successor to the continuing USAFA problems.

Gen Fogleman received clear warnings in the June 3, 1996, meeting and June 8, 1996, memorandum. The June 8 memorandum clearly delineated that the USAFA problems were cultural and that USAFA management did not even know the full extent of the problem. Further, on August 5, 1996, he received a follow-up note from LtGen Roadman, “Update on AFA,” in which LtGen Roadman stressed the need to “get to the culture of the institution” and the need for an “external chair” at the General Officer level to lead an Integrated Process Team. LtGen Roadman suggested seven possible Air Force General Officers who might fill the external chair. Gen Fogleman points out, however, that the note also indicated the [REDACTED], the individual who first brought the issues to him, “. . . believes that real progress is being made at AFA under [REDACTED] evaluation of problem. So we are on track.” In addition, the record indicates that Gen Fogleman followed-up the Surgeon General’s note. Based on his August 13, 1996, memorandum for record (MFR):

“. . . discussed this issue w/ [REDACTED] and with Gen Roadman. No further action required at this time. . . .”

Gen Fogleman currently cannot articulate his discussions with [REDACTED] or LtGen Roadman, or further rationalize his decision that further action was not required. However, even though the Consultant for Psychiatry told us “I don’t think the [cultural] problem was ever addressed,” we did not identify any information suggesting that she, LtGen Roadman, or another individual raised

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concerns to Gen Fogleman after the discussions on or about August 13, 1996. It is arguable that Gen Fogleman should have required subsequent follow-up action to ensure the problems were resolved; however, there is no basis for us to conclude his management response at the time was unreasonable or inappropriate.

BrigGen Silvanes Taco Gilbert III (Commandant of Cadets, August 2001 to April 2003)

The Air Force Chief of Staff, Gen Michael E. Ryan, selected BrigGen Gilbert as the USAFA Commandant of Cadets. BrigGen Gilbert served in the position from August 2001, until he was reassigned in April 2003, when the Secretary of the Air Force removed senior USAFA leaders after sexual assault problems became known.

The Fowler Panel faulted BrigGen Gilbert for problems at USAFA, holding that:

“ . . . [A]s the senior commander, General Gilbert was obligated to take charge of sexual misconduct issues. General Gilbert failed to execute his responsibilities and directly contributed to mission failure. . . .”³⁰³

“ . . . General Gilbert failed to exercise the judgment, awareness and resourcefulness necessary to realize that there was a sexual misconduct and social climate problem . . . that directly impacted the welfare and safety of . . . cadets. . . . The responsibilities of command required that Academy leaders take the necessary steps to understand the scope and dimensions of the issue and be suitably informed to take appropriate actions. . . .”³⁰⁴

“ . . . General Gilbert failed to fully ensure the safety and security of the cadets under his command. . . .with respect to sexual misconduct issues. . . .”³⁰⁵

Similarly, the Air Force Working Group reported:

“ . . . [T]hose interviewed by the Working Group perceived a harsh disciplinary environment, which, coupled with the widely held view that the leadership of the command element was stern and unapproachable, led some cadets to believe it may not have been in their best interest to report misconduct for fear of bringing punishment upon themselves. Many MTLs, AOCs, and faculty members held the same belief, which provided a disincentive for them to foster an environment that would lead cadets to believe they should report infractions to command. This coupled with other factors, including fear of peer reprisal, led to an environment that may have deterred the reporting of incidents of sexual assault.”³⁰⁶

³⁰³ Fowler Report, p. 40

³⁰⁴ Ibid, p. 38

³⁰⁵ Ibid, p. 39

³⁰⁶ Air Force Working Group Report, p. 149

As an initial matter, we did not find any evidence that the environment during BrigGen Gilbert's time deterred sexual assault reporting. On the contrary, the CASIE program manager testified that she received 27 sexual assault reports between August 2001 and August 2002. Furthermore, these determinations did not fully recognize that BrigGen Gilbert aggressively pursued specific direction from the Chief of Staff to address cultural problems and restore good order and discipline at USAFA. The determinations also did not recognize that the USAFA culture was the most likely reason for continuing USAFA sexual assault problems. Further, the determinations did not take into account that the sexual assault notification procedures were dysfunctional and did not alert BrigGen Gilbert to the problems, or that the USAFA Superintendent did not know about the Chief of Staff's directive and did not fully support BrigGen Gilbert's actions. Finally, the determinations did not take into account the resistance to change that the Chief of Staff predicted in tasking BrigGen Gilbert with restoring good order and discipline at USAFA. When all factors are considered, BrigGen Gilbert acted responsibly and effectively under difficult circumstances, and began the process necessary to overcome the cultural problems in which the sexual assault problems were rooted. In fact, a number of changes that BrigGen Gilbert advocated while at USAFA are now in effect under the *Agenda for Change*.

Chief of Staff Guidance. In selecting BrigGen Gilbert as Commandant, the Air Force Chief of Staff, (Gen Michael E. Ryan) directed him to restore good order and discipline at USAFA. According to BrigGen Gilbert:

“. . . I was . . . summoned to the Chief of Staff's office, and he laid out his agenda for the Academy. . . . [At] that point in time, we had major drug issues. We had drug rings . . . operating in the dorms. We had disciplinary issues. We had already had another special investigation of the honor code, because there were problems with the honor code. The honor code -- lost its honor. The military academy had lost its focus.

. . . [H]e called me in, General Ryan, and he said, I want you to go in and reestablish honor. . . [in] the honor code, **reestablish military discipline**. . . . [T]here was not even an established uniform of the day. Everybody just wore whatever they wanted to wear. And he said, I want you to **reestablish the military focus** at the Academy. . . . [a]nd . . . 'this is not going to be popular. You are going to get **resentment from the staff**, you're going to get **resentment from the cadets**, you are going to get **resentment from the media** and be **criticized**. But **this is what I want you to do, and stay the course**. . . ."³⁰⁷
(Emphasis added)

Comments from Gen Ryan and Gen John Jumper who succeeded Gen Ryan as Chief of Staff confirm that BrigGen Gilbert was charged with restoring good order and discipline at USAFA. Gen Jumper advised that he “. . . had a conversation with his predecessor (General Ryan) who . . . told him that when he

³⁰⁷ March 18, 2004, Gilbert Interview Transcript, pp. 41-42

selected BrigGen Gilbert, it was to go out there and to deal with an emerging drug problem and discipline problems with regard to the neatness in the dormitories and the like. And that was the charter to Gilbert early on. . . .”³⁰⁸ However, Gen Ryan did not advise the Superintendent, LtGen Dallager, that he had directed BrigGen Gilbert to address the culture problems at USAFA. Furthermore, prior to January 2003 (16 months after his arrival at USAFA), BrigGen Gilbert was unaware that LtGen Dallager did not know about his “marching orders” from the Chief of Staff.³⁰⁹

Culture. Upon arriving at USAFA, BrigGen Gilbert found trash in the hallways, holes in the walls, and filthy rooms. Cadets did not wear their uniforms correctly, or have a uniform of the day. They were also outside their dorms after hours, and there were alcohol, drug and fraternization problems. According to BrigGen Gilbert:

“ . . . Cadets seemed to no longer view themselves as members of the Air Force. Rather, they seemed to identify more closely with being college students and viewed military duties as an onerous imposition on their free time.

My review of records indicated a casual acceptance of missed classes and intramural events, restrictions that were ignored, the presence of contraband, and absences during nighttime dormitory inspections. First classmen (seniors) had unlimited privileges and were very seldom around the squadrons to lead and supervise. As an example of the ‘nonmilitary’ environment, when I arrived there was no established uniform of the day. And, cadets objected vociferously when I insisted that they all wear the same uniform and wear it correctly. . . . [I]t was literally amazing to me to be at a prestigious military institution where **many cadets were used to making and following their own rules!**

Significantly, **fraternization and alcohol were not uncommon in the dorms. This greatly concerned me because my experience told me that when consensual sex and alcohol are tolerated in a confined setting it can lead to abusive behavior.** Upon my arrival, I found the dorms and the cadet area to be in terrible disrepair. There were holes in walls, peeling paint, water damage, broken doors and hinges, and dead trees and shrubbery, among many other defects. **In a self-contained environment like the Academy’s, conditions like these materially contributed [to] a lack of appropriate discipline and focus.**

The Air Force Academy is not a college, it is a military organization, and I set out to restore the proper culture there, step by step. I arrived too late to make any major structural changes for my first academic year, but my staff and I immediately began work to restore a proper military environment.”³¹⁰ (Emphasis added)

The then Vice Commandant described substantially identical cultural problems.

³⁰⁸ FDCH TRANSCRIPTS, SASC Congressional Hearings, September 30, 2003, (G.8.29) pp. 33-34

³⁰⁹ March 18, 2004, Gilbert Interview Transcript, p. 43

³¹⁰ 15 March 2004, Gilbert Supplemental Statement, (C.6.58) p. 32

... **The whole environment, from physical to accountability, was well below standards.** ... [S]omeone needs to go back into the 90's and figure out how we got there because by fixing the environment, you will have fixed sexual assault, alcohol abuse, all those kinds of things. ...

The **cadets' performance -- they couldn't march, simple performance things, the environment and lack of accountability.** We would have squadrons two years ago who would go to the noon formation -- they're all supposed to be there unless explicitly excused for certain reasons . . . **no more than 25 percent of the squadron showed up for duty. No one was held accountable for the rest of the 75 percent.** Now, 25 percent of them may have been legally excused. Then **a good half of the squadron, they didn't feel they even needed to show up for duty. In that environment, you will have sexual assaults and other negative behavior for this age group in particular.**³¹¹ (Emphasis added)

Initial Orientation. BrigGen Gilbert described his transition with the departing Commandant, BrigGen Mark A. Welsh III, as smooth. His initial orientation to USAFA was very non-specific on sexual assault and related problem areas. BrigGen Welsh confirmed that:

“ . . . Did I talk to him about a huge problem with sexual assaults? No, because I didn't think there was one and, quite frankly, still don't know if there was one as far as actual assaults and rapes. . . . If there was, I certainly didn't prepare him for it because I didn't know it. . . .”³¹²

BrigGen Welsh told him about the “different program” that the Vice Commandant supervised and could provide details.³¹³ According to BrigGen Gilbert, the consistent message from everyone was:

“ . . . The CASIE program was a model program; that it was leading the nation, that others were looking to emulate it, that it was extremely well organized, well run, and therefore I felt that at this point in time my direction, as I understood it, was this is a superintendent program, you don't play in it day-to-day; two, that it's running very well; and . . . throughout my first year there we saw a number of other schools come and visit to look at the program. . . .”³¹⁴

After the Vice Commandant “quickly reviewed the process” with him, BrigGen Gilbert:

“ . . . realized it [Sexual Assault Reporting Program] was different. Even though this was not one of those very hot-button issues I had been issued by the Chief of Staff to attune to upon my arrival, I realized it was an important program, and so I requested that the office

³¹¹ [REDACTED] Interview Transcript (Air Force Working Group), pp. 102-103

³¹² May 2, 2003, Welsh Interview Transcript (Air Force Working Group), pp. 5-6

³¹³ March 18, 2004, Gilbert Interview Transcript, p. 25

³¹⁴ Ibid, p. 26

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responsible for this program come in and brief me, and they did that in the first few weeks. . . .”³¹⁵

BrigGen Gilbert did not recall anyone briefing him on any information mechanism, or notification process to apprise the Commandant about sexual assaults as they occurred.

“No, . . . they did not tell me that. I do not recall any feedback from them on any information mechanism . . . my understanding was that . . . I was isolated from that information. That . . . if someone went outside, to the security force, et cetera, that . . . I as a commander would be involved; but otherwise, it would stay within this channel.”³¹⁶

A senior investigator with the Air Force Working Group stated, “[f]rom what I’d seen at that point, it was clear some people at senior levels within the Pentagon knew the USAFA sexual assault program created a minefield but I saw no evidence that LtGen Dallager or BrigGen Gilbert were ever forewarned.”³¹⁷ We agree. We did not find any evidence that BrigGen Gilbert received any information that should have alerted him to sexual assault problems through his initial orientation at USAFA. Thus, the question is whether BrigGen Gilbert should have been alerted to the problems through sexual assault notification procedures at USAFA.

In addressing this question, it is important first to recognize that approximately 1 month after BrigGen Gilbert arrived at USAFA, on September 11, 2001, terrorists attacked the World Trade Center in New York and the Pentagon in Arlington, Virginia. The next several months were virtually consumed with efforts to secure and protect the USAFA facility and personnel, as was true at other U.S. military installation throughout the world. It is also important to recognize that the USAFA confidential sexual assault reporting program was designed specifically to prevent commanders from receiving complete information on sexual assaults unless the victim wanted to pursue legal remedies.

Sexual Assault Services Committee. Although recognizing that the Sexual Assault Services Committee at USAFA had become ineffective, the Fowler Panel faulted BrigGen Gilbert for not becoming involved and using that forum to learn about the problem and take command actions.³¹⁸ USAFAI 51-201 identified the Commandant as responsible for heading the Sexual Assault Services Committee, but did not prevent delegating the responsibility. According to the Vice Commandant, “. . . that responsibility was delegated to the Vice Commandant some time in the . . . mid-90s. . . .” The Vice Commandant also advised that, as is typical when direct responsibilities are delegated, they are “inventoried and

³¹⁵ Ibid, p. 7

³¹⁶ Ibid, p. 28

³¹⁷ [REDACTED] Affidavit, p. 4

³¹⁸ Fowler Report, p. 39

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reviewed” when commands change and “. . . those were done. GEN Welsh with myself and myself with GEN Gilbert. . . .”³¹⁹

“. . . I gave him a short overview of the program, particularly any differences -- every base has its own particular environment in -- for example, the simple things, like . . . certain cars are safer than others, that type of thing, from a driving or a crime point of view. So there was an overview like that. And then GEN Gilbert got the in-briefs from each program, sexual assault services is no different than any other programs, flying safety, training, any of those. So he got that in-brief as he came on board. . . .”³²⁰

The Vice Commandant also described the mechanisms used to keep USAFA leaders, including BrigGen Gilbert, informed on Sexual Assault Services Committee meetings.

“. . . [T]here’s . . . a formal process for the reporting. Any committee meeting . . . not just the sexual assault services committee, there are minutes posted and . . . a staff summary sheet put on top of it, and those minute meetings go to where ever on the academy there might be interest. So . . . there was a formal mechanism for him to [get] meeting notes . . . Through a staff summary sheet. . . .”³²¹

“. . . As I recall, the . . . [Sexual Assault Services Committee] meeting minutes are signed and they’re forwarded up through the chain of command . . . the objective was that they would give all that to the Supe [Superintendent]. . . .”³²²

In addition, the Vice Commandant advised that he briefed on committee matters routinely.

“. . . both formally and as a matter of daily function. . . . I think it’s 51-201 requires biannual briefings . . . which I know occurred in my tenure . . . I was in the room . . . I . . . managed to butt in . . . when . . . there were issues to be expanded upon.”³²³

During BrigGen Gilbert’s tenure, the Sexual Assault Services Committee met four times, two meetings in 2001 (October 5 and December 13) and two meetings in 2002 (February 21 and May 2).³²⁴ Minutes from the May 2, 2002, meeting indicate that past and current sexual assault cases were discussed; however, the discussion was general without details indicating when or where incidents occurred, who was involved, or other facts. Minutes from another meeting mentioned sexual assault statistics, but only in currency terms. Minutes from a third meeting included an “action item,” indicating that sexual assault services

³¹⁹ [REDACTED] Interview Transcript, pp. 2-3

³²⁰ Ibid, p. 4

³²¹ Ibid, pp. 4-5

³²² [REDACTED] Interview Transcript (Air Force Working Group), p. 29

³²³ Ibid, p. 29; USAFAI 51-201, “Cadet Victim/Witness Assistance and Notification Procedures,” April 18, 2000, paragraph. 2.4, requires biannual reports to the Superintendent and other USAFA senior leaders (B.4.5)

³²⁴ Air Force Working Group Report, p. 21

personnel were required to prepare a briefing for the Superintendent. These meeting minutes do not indicate a significant problem or need for action, especially for an individual who had not been sensitized to the actual problems. BrigGen Gilbert should have received these meeting minutes. Further, based on Vice Commandant testimony, he was also “routinely briefed” on the committee. We have no reason to conclude that BrigGen Gilbert’s greater involvement in the committee, even direct participation in the meetings, would have made a difference.

Notification Form. The previous Commandant (BrigGen Welsh) began action to guarantee notification when a sexual assault occurred. Working with the Staff Judge Advocate, the Victim’s Advocate and others, he developed a two-page form (Appendix G, pp. 1-2) for the Cadet Counseling Center to use in notifying the Vice Commandant and, in turn, the Commandant. The form provided for information relative to the incident, victim treatment, and a section for the victim to grant permission for an investigation. According to BrigGen Welsh, the form did not include the victim’s name, or much detail on the incident, only enough information for BrigGen Welsh to decide “. . . whether this was something we wanted to investigate or . . . let the counselors talk to her first . . . The decision I made was then a very clear one. Do we investigate or not? **If it sounded like a crime, no matter what the victim preferred, we were going to investigate.**”³²⁵ (Emphasis added) BrigGen Welsh advised “. . . we hadn’t been using it a real long time when I left. . . .”³²⁶ He remembered only two such forms “. . . that went through me. . .”³²⁷

As a practical matter, prior to an investigation establishing the facts and circumstances, even a trained, experienced criminal investigator cannot determine whether a crime occurred. As a result, a criminal investigator should not be excluded from the initial victim contact. Nevertheless, BrigGen Welsh’s form provided for at least the information needed to determine whether the individual was alleging a crime, which would have permitted a reasonable decision on whether to bring AFOSI into the matter. However, BrigGen Welsh did not take steps to ensure the form would be codified in policy or standard operating procedure before he left the Commandant position. BrigGen Welsh also did not inform BrigGen Gilbert about the form, or that he had agreed to alert AFOSI when a sexual assault occurred.³²⁸

After BrigGen Welsh left USAFA and before BrigGen Gilbert became involved, a new CASIE Program Manager decided the form included too much information and was contrary to program requirements (USAFAI 51-201). The new CASIE Program Manger, with approval from the Vice Commandant and the Cadet Counseling Center Director, changed the two-page notification form to a check-

³²⁵ March 26, 2003, Welsh Interview Transcript (Air Force Working Group), p. 32

³²⁶ Ibid, p. 34

³²⁷ Ibid, p. 34

³²⁸ August 3, 2004, Welsh Interview Transcript, pp. 48-49

the-blocks notification with three check blocks on one page (Appendix G, p. 3). The new program manager did not change the form because a sexual assault victim complained, as reported to the Air Force Working Group and Fowler Panel. The change denied BrigGen Gilbert even the information that BrigGen Welsh had worked to obtain. Furthermore, BrigGen Gilbert did not even receive an abbreviated notification form until February 2003, less than 2 months before he left USAFA. According to BrigGen Gilbert:

“I . . . did receive forms beginning in . . . February of 2003, just before I left . . . on it, basically, were three boxes, was a cadet involved, was the security forces notified, and . . . that was all the information. . . . I sent it back . . . I . . . wrote . . . on the form. . . . I need more information than this as a commander to take action to address this issue. Where is this rest of the information?”

. . . [I]t was after I arrived in Washington that I learned . . . this form had been devised, I guess, by General Welsh, and that originally it was two pages of information. And it had been truncated down to three boxes on a piece of paper that did not supply, I felt, any useful information for me as a commander. . . .³²⁹

BrigGen Gilbert became frustrated with the existing system because it did not provide him information to address the problems.³³⁰ According to BrigGen Gilbert:

“ . . . I became increasingly troubled about the complete dearth of information I was receiving on sexual assaults and on the overall operation of the entire program. Despite the best of intentions, the program was isolating me from information I needed to take the necessary action. . . .”³³¹

By Fall 2002, BrigGen Gilbert also became concerned that the social climate survey program was not working.³³² The Director, Character Development Center, informed BrigGen Gilbert that the Spring 2002 survey was invalid, as had been all surveys for the past 4 years. The Director also informed BrigGen Gilbert that “. . . you could ascertain from the data in the Spring of 2002 social climate survey, ‘that gender relations needed some improvement. . . .’”³³³ According to BrigGen Gilbert:

“ . . . [W]e immediately took some aggressive steps. . . . We moved the respect and responsibility workshop, which is human relations, respect for genders and race, moved that -- in our training program. We increased the amount and the quality of our gender education programs in basic training. I upgraded the quality of individuals we put into our human relations program. I looked across the board at different areas

³²⁹ March 18, 2004, Gilbert Interview Transcript, pp. 28-29

³³⁰ [REDACTED] Interview Transcript, p. 68-69; [REDACTED] Interview Transcript, p. 9; [REDACTED] Interview Transcript (Air Force Working Group), p. 13

³³¹ March 18, 2004, Gilbert Interview Transcript, p. 69

³³² Ibid, p. 70

³³³ Ibid, p. 46

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where we could impact this. I directed renewed emphasis going to the dorms to make sure that bulletin boards and improper things were pulled down.

... [I]t's not like you'd walk through the halls and ... see ... pornographic pin-ups ... but ... stuff that we don't tolerate in the Air Force ... were being tolerated at the Academy. ... I said ... take it down. I gave that direction to the squadrons, and I would do it myself walking through the dorms.

... [W]e were ... taking action through the Cadet Interaction Committee, where all of our human relations individuals would come and meet with me and try to get that word out. Cadet-X ... would describe a situation ... [and] we'd get all the cadets to discuss. We reinvigorated that. ... [W]e tried to, among other things ... take a pretty broad and aggressive step to address gender relations as an issue at the Academy as soon as we found out that it was an issue. ...³³⁴

BrigGen Gilbert initiated efforts to “fix it” by requiring relevant survey questions and identifying a survey administration methodology that would produce useful data. He requested assistance from the Character Development Commission. He began attending meetings. He directed sending the gender climate survey to experts so they could update/revise it and make the survey statistically sound. When he observed problems related to gender climate issues, he took action (with the “Dodo” and “E-Dodo”, alcohol use in the dormitories, and improper jokes posted on bulletin boards). He engaged subordinate commanders in dealing with sexual harassment/gender issues. He communicated directions to the training group commander, who echoed them to lower levels. He directed his commanders to discuss issues with cadets, and to look at bulletin boards and things posted around squad rooms.³³⁵

Reorganization Attempts. BrigGen Gilbert was familiar with the Air Force system for dealing with sexual assaults:

“... [O]n a base, all the functions ... are aligned under the commander. There is no anonymity involved in the process, and I'm familiar with that, familiar with having the counseling system works for the commander, being able to task the medical, the investigative, the counseling, and ensure all those functions come together. I was very familiar with how that worked and how to liaise with the investigative arms in the Department of Defense, as well as external, as a wing commander. ...³³⁶

Finding a different program at USAFA, which afforded him far less information than an equivalent Wing Commander would receive elsewhere in the Air Force, BrigGen Gilbert sought to move several activities that collected sexual assault information under his command. In Fall 2002, BrigGen Gilbert proposed moving

³³⁴ Ibid, pp. 46-47

³³⁵ Ibid, pp. 47 & 80

³³⁶ Ibid, p. 6

the Cadet Counseling Center from the Dean of the Faculty to the 34th Training Wing. As an alternative, BrigGen Gilbert proposed moving the Cadet Counseling Center to the 10th Air Base Wing.³³⁷

MajGen Dallager, the Vice Commandant, and the 34th Training Group Commander all confirmed that BrigGen Gilbert was not satisfied with the sexual assault reporting procedures, because he was not getting the information he felt he needed. The 34th Training Group Commander pointed out that “. . . [n]ot knowing if somebody needed help was a huge concern to us because we weren’t allowed to know that and these were particularly sensitive issues that the chain of command needed to know in order to support any cadet that was in trouble. . . .”³³⁸ According to the Vice Commandant, BrigGen Gilbert used formal Organizational Change Requests (OCR) to propose moving the Cadet Counseling Center under his command on two different occasions, but the OCRs were rejected.³³⁹ BrigGen Gilbert described additional efforts:

. . . [A]s I became uncomfortable with the way CASIE was working, **I engaged with the superintendent and . . . expressed my concerns** over what I thought was wrong with the program, and asked for greater authority over CASIE and the . . . [Sexual Assault Services Committee], and **he told me that he liked the program the way it was and he wanted it to remain this way. . . .**

. . . [L]ater, as . . . GEN Dallager . . . realized that the program needed some reform. He chartered a meeting -- it was on a Saturday morning, I recall -- to revamp the . . . [Sexual Assault Services Committee] and CASIE, and he invited all the vice commanders, many of who were retired in the area or were still serving in the area. . . . **I asked if I could attend** that and **he said, No, you cannot, you’re not invited;** it’s for those people that run the . . . [Sexual Assault Services Committee]. . . .” (emphasis added)

We asked MajGen Dallager if BrigGen Gilbert ever came to him (Dallager) and said the sexual assault response system was broken. MajGen Dallager responded, “[w]ell, he did. He said I’m not getting the information I need and I want the CASIE under me.” MajGen Dallager went on to explain after he,

“...heard all sides, and we’re leaving it the way it is, because if we want to encourage reporting, the experts are telling me, the cadets are telling, we’ve got to do that. And secondly, even if I were to say yes, put it under the commandant, that combination of commandant and... training group commander would have been the wrong time to do it, in my view.”³⁴⁰

³³⁷ March 21, 2003, Gilbert Interview Transcript (Air Force Working Group), p. 54

³³⁸ March 23, 2004, Slavec Interview Transcript, p. 24

³³⁹ We attempted to obtain and verify action on the OCRs, but USAFA could not locate the records

³⁴⁰ July 7, 2004, Dallager Interview Transcript, p 25

BrigGen Gilbert advised that he did not point out that USAFAI 51-201 charged him (the Commandant) with heading the Sexual Assault Services Committee, because:

“... This was subsequent to my conversations over asking to have greater influence over the ... [Sexual Assault Services Committee], greater influence over the CASIE system. And **he told me that, no, he liked it the way it was with the vice commandant running it.** So I did not engage further on that. . . .”³⁴¹ (emphasis added)

BrigGen Gilbert also contacted the Permanent Professor and Head, Department of Behavioral Sciences and Leadership, and attempted to improve his information flow on sexual assaults. The response that he received was “. . . [w]e will do our best to improve the communications, but we disagree that the system needs to work under the Commandant.”³⁴² The department head advised that BrigGen Gilbert wanted the Counseling Center realigned under the Training Wing and was concerned that he was not getting the information needed to take action.³⁴³ She also advised that (1) sexual assault notifications were made to the Vice Commandant, rather than to the Commandant as required by USAFAI 51-201, (2) she disagreed with the Sexual Assault Services Committee being under the Commandant’s control, primarily due to a “fox guarding the hen house” perception, and (3) having the Sexual Assault Services Committee under the Commandant puts him in an awkward position because he also has UCMJ authority over the cadets.³⁴⁴ According to the department head:

“. . . I have had issues with the Commandant. I respect him as a person, but we have disagreed. . . .

BGen Gilbert wanted the Counseling Center realigned under the Training Wing by this summer (2003). He pretty clearly stated was that the reason he wanted the realignment was a control and information issue. He was concerned that he was only getting a little bit of information and his view was that he needed more information so he could take action. In my mind it was more of a communication issue. I think we really could work very well together as we are now. . . .”³⁴⁵

The 34th Training Group Commander also attempted to address the information problem with the department head and was similarly rebuffed with the comment “It belongs to the dean, you know. It’s not your program.”³⁴⁶

Even though BrigGen Gilbert was charged with responsibility for the Sexual Assault Services Committee, he was not allowed to have any control over the

³⁴¹ March 18, 2004, Gilbert Interview Transcript, pp. 9-10

³⁴² March 21, 2003, Gilbert Interview Transcript (Air Force Working Group), p. 55

³⁴³ [REDACTED] Interview Transcript (Air Force Working Group), p. 13

³⁴⁴ Ibid, p. 8

³⁴⁵ Ibid, p. 13

³⁴⁶ March 23, 2004, Slavec Interview Transcript, p. 10

operations or information concerning sexual assaults. MajGen Dallager liked the program the way it was and wanted it to remain that way.³⁴⁷

MajGen Dallager acknowledged that he provided minimal guidance to BrigGen Gilbert regarding his role in responding to sexual assaults. He characterized the information flow between the Sexual Assault Services Branch and BrigGen Gilbert as “not good,” advising that the Sexual Assault Services Committee had atrophied, probably due to personnel changes. He also commented that BrigGen Gilbert might have had some personality issues with the Vice Commandant, which contributed to an information barrier. According to MajGen Dallager, he found that some report forms were “stuck” between the Vice Commandant and the Commandant, leaving BrigGen Gilbert “out of the loop” and, as a result, the number of assaults reported to him during a particular timeframe was significantly less than the number of actual reports.³⁴⁸

Our evaluation did not disclose any personality issue that affected information flow between BrigGen Gilbert and the Vice Commandant. We did find, however, that the Vice Commandant, apparently in attempting to comport with program preferences, may have reviewed sexual assault notification forms and then returned them to the Cadet Counseling Center, possibly alerting BrigGen Gilbert verbally. Although we were unable to isolate all the forms that LtGen Dallager believed were “stuck” between the Vice Commandant and Commandant, the Vice Commandant had reviewed the ones we did identify and had returned them without the Commandant’s initials denoting review. During the period that BrigGen Gilbert was Commandant (August 3, 2001 until April 10, 2003), he was informed about eight sexual assaults, all of which were reported to AFOSI for investigation.³⁴⁹ During August 2001 through August 2002, the Vice Commandant received approximately 27 sexual assault notifications.³⁵⁰

Efforts to Address Gender and Safety Issues. BrigGen Gilbert attempted to address gender issues, attitudes and perceptions by (1) increasing faculty and staff awareness, (2) improving faculty quality and capability, and (3) establishing leadership and mentoring programs.³⁵¹ He selected a highly qualified female colonel, a USAFA graduate, as Commander, 34th Training Group, the first female in such a leadership position at USAFA. He increased sexual assault training (first and second sessions) in cadet basic training programs. He required all cadets to know their rights under the basic Cadet Bill of Rights, directing each cadet to read the book and then tested them on their knowledge. He changed the time for the Respect and Responsibility Workshop. He upgraded quality requirements for cadets assigned to human relations positions. He attempted to end the year-round absence of athletes from their squadrons and reorganize

³⁴⁷ March 18, 2004, Gilbert Interview, pp. 9-10 & 34-35

³⁴⁸ July 7, 2004, Dallager Interview Transcript, pp. 13-21

³⁴⁹ April 12, 2004, Gilbert Supplemental Statement, p. 26; March 18, 2004, Gilbert Interview Transcript, pp. 58-65

³⁵⁰ [REDACTED] Interview Transcript, pp. 48-49

³⁵¹ March 18, 2004, Gilbert Interview, p. 85; April 12, 2004, Gilbert Supplemental Statement, pp. 8-10

seating in the dining facility to sit all squadron members together. The athletic department resisted these changes and LtGen Dallager disapproved the requests. For physical security reasons, he attempted to assign female cadets to specific areas in the dormitories (later adopted in the *Agenda for Change*), but LtGen Dallager also rejected this request.³⁵²

BrigGen Gilbert also took action to improve cadet safety and security. In this regard, in answering our May 2003 survey, respondents provided location information for 174 of 177 sexual assault incidents--64.4 percent (114) occurred on the installation and more than half of these (65) occurred in a dormitory.³⁵³ Additionally, of the 53 sexual assaults that AFOSI investigated between 1993 and 2002, 49 percent (26) involved alcohol and 42 percent (22) of these occurred in a dormitory.³⁵⁴ One successful effort that BrigGen Gilbert undertook was to restore the Cadet Charge of Quarters (CCQ) system to ensure needed monitoring in the dormitories. According to the Vice Commandant:

“... When we saw our sexual assault numbers ... --the lack of reporting, that is -- when we saw the alcohol conduct in the dorms, when we saw the appearance and lack of military decorum and the protection of assets -- government assets -- one of the things that popped up right away is there’s no one in charge, no cadet in charge. . . for a freshman to walk up and say, ‘Hey, someone’s bothering me down the hall,’ those type of things because that’s how you stop sexual assault by controlling the environment. . . .

We attempted to reinstate CCQs , and it was vociferously fought against in all areas, both the Academic Department, the Athletic Department, some of the staff. . . . [T]he 10th Air Base Wing . . . were strong supporters of simply . . . doing what we do with every other squadron in the Air Force -- there’s somebody manning the duty desk.

. . . [W]hy someone decided to not follow standard Air Force procedure in a cadet squadron where it’s needed more than anywhere else, I can’t tell you. But I can tell you because of the current structure, it was a big uphill battle to get CCQs put back in, but we were successful at that. And that action was based on empirical data saying we needed it back. And it’s an example of, even though it’s bureaucratic, **the Commandant went to bat and got that done**. And the appearance of the dorms is now what it looked like 25 years ago. There isn’t trash out in the hallways; rooms look good; somebody’s taking messages, but I can tell you that **the Commandant of Cadets took infinite heat for trying to do that. . . .**³⁵⁵ (Emphasis added)

In addition, during BrigGen Gilbert’s time, a number of physical security programs were instituted, some responding to needs identified after the attacks on September 11, 2001, but all dealing with cadet safety and well being. The

³⁵² Agenda for Change, p. 5; March 18, 2004, Gilbert Interview Transcript, p. 130

³⁵³ September 11, 2003, USAFA Sexual Assault Survey, (C.8.41) p. 18

³⁵⁴ See Part III of this report

³⁵⁵ [REDACTED] Interview Transcript (Air Force Working Group), pp. 107–108

minutes from Sexual Assault Services Committee meetings during BrigGen Gilbert's tenure reference cadet safety and security issues.

We recognize that BrigGen Gilbert's efforts might have been more successful had he focused on improving communications with other affected USAFA mission elements. Frequent and continued interaction with the Cadet Counseling Center certainly might have enhanced both the relationship and information flow. However, we believe that BrigGen Gilbert's efforts to restore good order and discipline through applying and enforcing the rules, and holding cadets, staff, and faculty members accountable for their actions, was the proper method to effect the cultural change necessary to attack the sexual assault problem at its core.

Impact on Sexual Assault Reporting. The Air Force Working Group concluded BrigGen Gilbert's actions to restore good order and discipline led to an environment that may have deterred sexual assault reporting³⁵⁶. The Air Force Working Group recognized that USAFA Social Climate Survey data for 2002, indicated that fewer female cadets feared reporting sexual assaults, but tended to discount the data because:

“... according to the individual who prepared the briefing, the briefing was never presented to anyone because the Center for Character Development decided the results were not useful or reliable.”³⁵⁷

In addition, the Air Force Working Group reported:

“... [t]he belief that more cadets were being punished (at least regarding the upper range of punishments) during Brig Gen Gilbert's tenure is not supported by the data. Interestingly, the projected total for academic year 2002-2003, the year in which Colonel Slavec served as Commander of the 34th Training Group, is the lowest of all five years. . . .”³⁵⁸

We do not agree that BrigGen Gilbert's efforts to restore good order and discipline at USAFA deterred sexual assault reporting. First of all, as the working group recognized, the Social Climate Survey data reflected an improvement in fear of reprisal statistics. Most of the surveys prior to BrigGen Gilbert's time indicated that more than 70 percent of female cadets feared reprisal for reporting sexual harassment. The Spring 2002 survey results reflected lower rates—63 percent feared reprisal from other cadets, 48 percent from AOCs, 36 percent from MTLs, 36 percent from coaches, and 41 percent from faculty.³⁵⁹ Although the rates remained high, the declines are a positive indication that the Vice Commandant was correct in concluding “. . . had you continued this for several more good years after changing the environment . . . you could have used that

³⁵⁶ Air Force Working Group Report, p 149

³⁵⁷ Air Force Working Group Report, (Footnote 674) p. 84

³⁵⁸ Ibid, p. 148

³⁵⁹ Ibid, pp. 84-85

data to effect change. . . .”³⁶⁰ More importantly, the sexual assault reporting data indicate significantly increased reporting during BrigGen Gilbert’s tenure. Between August, 2001, and August 2002, the Cadet Counseling Center received 27 sexual assault reports).³⁶¹ This was the highest number of sexual assaults reported to the Counseling Center since the 1992 –1993 academic year.³⁶² While we don’t know exactly what that means, we do understand it to indicate that reporting was not being deterred.

Furthermore, when BrigGen Gilbert became aware that a sexual assault had occurred, he ensured appropriate investigation and action. Although USAFA claimed that 5 of the 16 sexual assaults reported between August 1, 2000, and August 1, 2001, were referred to AFOSI, AFOSI records reflect only 2 sexual assault investigations were initiated.³⁶³ During his tenure, BrigGen Gilbert became aware of 8 sexual assaults. They were all referred to AFOSI for investigation.

Finally, the “upper range of punishments” data used in the Air Force Working Group Report do not indicate that BrigGen Gilbert’s efforts to restore good order and discipline were unsuccessful. BrigGen Gilbert first ensured that cadets knew the requirements and then emphasized applying and enforcing those requirements consistently. The requirements had been in place before BrigGen Gilbert, but they were not applied or enforced consistently. This issue is discussed more completely elsewhere in this report. As the Vice Commandant stated:

“. . . the very people I read about and hear our Secretary and others talk about are the very people who’ve already turned this around. . . . as I looked in the paper at the list of changes . . . [Agenda for Change], these two leaders had already instituted three-quarters of them. . . .”³⁶⁴

Gen Michael P.C. Carns, a former Air Force Vice Chief of Staff (1991 – 1994) and the individual who headed the Senior Review Panel (September 2000 – March 2001) that assessed problems with the USAFA Honor Code, commented similarly. According to Gen Carns, “. . . [m]y view was the Academy was way off base and the only sane one there was the Commandant. . . . Gen Carns characterized BrigGen Gilbert as an individual with “. . . Impeccable Character and Integrity” and advised that BrigGen Gilbert “. . . was trying to do the right thing” while at USAFA.³⁶⁵

³⁶⁰ [REDACTED] Interview Transcript (Air Force Working Group), p. 101

³⁶¹ [REDACTED] Interview Transcript, pp. 48-50

³⁶² USAFA Sexual Assault Services briefing

³⁶³ In responding to a congressional request for information, USAFA advised that: 16 sexual assaults were reported between August 1, 2000, and August 1, 2001; 10 victims remained anonymous, did not provide perpetrator information, or did not want an investigation; 1 victim underwent a rape examination, but did not provide perpetrator information and did not want an investigation; and 5 cases were referred for criminal investigation.

³⁶⁴ [REDACTED] Interview Transcript (Air Force Working Group), p. 108

³⁶⁵ [REDACTED] Interview Summary

Awarding Meritorious Service Medal to Col Slavec. The Fowler Panel faulted BrigGen Gilbert for awarding a Meritorious Service Medal to Col Slavec, his 34th Training Group Commander, after she was reassigned due to the problems at USAFA. The Fowler Panel recommended that we review this and other medals awarded to Air Force leaders who were accountable for the USAFA problems.

BrigGen Gilbert awarded the medal to Col Slavec because:

“ . . . The Air Force has a tradition of awarding end-of-tour decorations, even to the point that at the three-year point if someone is not moving, you consider them for an in-place decoration. I looked at the character of Colonel Slavic’s tenure, and though she was not fully successful, though she had interpersonal problems, I had given her an exceptionally tough task, just as the Chief of Staff had given me one. She didn’t shy from it. Just as the Chief of Staff had stated, there would be opposition. It would be difficult. That didn’t stop her. Granted, her interpersonal skills became an issue. But she put forward a number of very important and very positive steps across the wide range of our military training/character programs. She saw the need to transform the Academy, had numerous good ideas and enthusiastically supported my objectives, and took many actions to improve the Academy’s culture in the face of deep-seated opposition within the Academy.

Now, her contemporaries in my command, the other group commanders, I awarded when they left Legions of Merit award. The MSM is the same award that I gave my AOCs when they left, which is two levels down from her in command. So, it was recognition that she had not been fully successful, but recognition that she had made an important contribution while she was there, in my judgment. . . .”³⁶⁶

“ . . . [A]s I looked at on balance what she had done, the good, and the challenges that she had faced, I looked at her potential to continue to contribute at the Air Force, I felt that the MSM was an appropriate decoration. Colonel Slavec. . . was remarkably effective in many ways.”³⁶⁷

BrigGen Gilbert cited the following specific initiatives and attributes justifying the medal:

- Col Slavec’s initiative in developing and implementing a mentoring program for the cadet senior staff.
- Col Slavec’s initiative in instituting a summer wing commander to address conduct in the dormitories.
- Col Slavec’s willingness to make tough personnel calls when the staff was not performing.

³⁶⁶ Mar 18, 2004, Gilbert Interview Transcript, p. 157

³⁶⁷ Ibid, p. 157; March 15, 2004, Gilbert Supplemental Statement, p. 30

- Col Slavec’s willingness to use her previous experience at the Air Force Personnel Center to continually push requests for more talented staff members.
- Col Slavec’s joint initiative to institute the Quality Force Review Board, which had cadets and officers review performance of each cadet on probation as a quality force measure and as a mentoring opportunity.
- Col Slavec’s joint initiative to upgrade AOC and MTL training.
- Col Slavec’s enthusiastic and effective implementation of:
 - expanded and upgraded gender relations education during Basic Training, when substantial changes were necessary on very short notice;
 - efforts to hold the line on military and character education when academic and athletic factions tried to cancel those programs;
 - an improved cadet squadron commander selection process that included assigning new commanders to other than their home squadrons to reduce peer pressure;
 - a revised way for measuring leadership performance;
 - increased vigilance over alcohol use and possession in the dormitories;
 - improved supervision over athletes;
 - increased CCQ presence in the dormitories and revamped evening accountability; and
 - initiatives on proper uniform and room appearance.³⁶⁸

AFI 36-2803, “The Air Force Awards and Decorations Program,” establishes the eligibility requirements and award authorities for decorations and for achievement, service, foreign and unit awards. The instruction describes how to prepare, submit, process and record the various decorations and awards. For purposes of this policy, the USAFA Commandant of Cadets is a Wing Commander equivalent and, according to table 1.1, the Commandant is the approval authority for awarding a Meritorious Service Medal. Paragraph 3.7 provides the criteria for revoking awards: “Revoke an award if facts, later determined, would have prevented original approval of the award.”

BrigGen Gilbert’s justification for approving the award for Col Slavec does not include disputed facts. Although the factors cited as justification for the award may be viewed as subjective, approval authority for the award rested with BrigGen Gilbert, who firmly supports his decision to award the Meritorious Service Medal to Col Slavec.³⁶⁹ Our evaluation did not disclose facts that would

³⁶⁸ March 15, 2004, Supplemental Gilbert Statement, pp. 30-31

³⁶⁹ Mar 18, 2004, Gilbert Interview Transcript, p. 157

cause us to question the justification. Accordingly, we do not have a basis to conclude that the medal was awarded inappropriately, or should be revoked.

Conclusion

BrigGen Gilbert was not responsible for sexual assault problems at USAFA. Those problems were the byproduct of a well intended, but dysfunctional sexual assault reporting system, which BrigGen Gilbert did not help create, contribute to, or abide. His efforts to produce a quality Air Force Lieutenant through stalwart efforts to apply and enforce the existing rules consistently, hold individuals accountable for their actions and, thereby, restore good order and discipline at USAFA, was the proper manner to effect the cultural changes necessary to deter sexual assaults and increase sexual assault reporting.

During their transition, the previous Commandant informed BrigGen Gilbert that the USAFA sexual assault reporting program was “different,” and the Vice Commandant could provide program details. He did not inform BrigGen Gilbert that:

- he had developed and implemented a sexual assault notification form to ensure timely notifications to the Commandant;
- the need to update USAFA policy or standard operating procedures to codify requirements for the new sexual assault notification form; or
- AFOSI had complained about the USAFA sexual assault reporting process and he had agreed to alert AFOSI when a confidential sexual assault report was received.

As a result, after the previous Commandant left USAFA and before BrigGen Gilbert became involved, a new CASIE program manager (with Vice Commandant and Counseling Center Director approval), changed the notification form to eliminate all information necessary to an investigation decision.

Furthermore, BrigGen Gilbert was not kept informed on sexual assault reports even though required under USAFA policy. The individual who headed the Cadet Counseling Center did not believe the Commandant should be involved in the process, and dealt with the Vice Commandant. BrigGen Gilbert did not see a sexual assault notification form until February 2003, less than 2 months before he was reassigned, and the abbreviated notification form he received excluded all meaningful information. BrigGen Gilbert recalled learning about only eight alleged sexual assaults during his entire time at USAFA. He ensured criminal investigations and appropriate command actions in those cases.

USAFA policy made the Commandant responsible for the Sexual Assault Service Committee. However, that responsibility was delegated to the Vice Commandant when the policy was adopted in the mid-1990s. Minutes from the committee meetings held while BrigGen Gilbert was Commandant do not include any

information that would have alerted him to the sexual assault problems. In addition, the record is clear that the USAFA Superintendent did not intend for BrigGen Gilbert to become involved in the process and rebuffed BrigGen Gilbert each time he attempted to become involved. The Superintendent also rejected changes that BrigGen Gilbert requested to gain access to the information he needed to address sexual assault and related issues. He attempted to change the sexual assault reporting process, but his efforts were rebuffed and the information that he needed to address problems directly was denied.

Regarding the Meritorious Service Medal that BrigGen Gilbert awarded to the individual that he selected as Commander, 34th Training Group (Col Slavec), BrigGen Gilbert had authority to award the medal and documented his justification for doing so. Our evaluation did not reveal any impropriety or inappropriateness in the decision. We also did not identify any basis for revoking the medal under the controlling Air Force policy.

Col Laurie S. Slavec (34th Training Group Commander, May 2002, to March 2003)

Col Slavec occupied the 34th Training Group Commander position for only approximately 10 months. The first 2 months were devoted largely to receiving and indoctrinating new freshmen cadets, and processing them through the 5 week Cadet Basic Training program, which began in June 2002. After January 2003, Air Force headquarters leaders influenced USAFA management actions, including Col Slavec's actions. Accordingly, in assessing Col Slavec's responsibility for USAFA sexual assault problems, we focused on the approximately 7 months from July 2002, through January 2003.

Both the Fowler Panel and Air Force Working Group blamed Col Slavec for problems at USAFA, holding that:

- Her leadership style and treatment of some sexual assault victims negatively impacted willingness to report sexual assaults.
- She was overly aggressive in discharging her command responsibilities and alienated AOCs, military training leaders (MTL) and cadets, resulting in the breakdown of good order and discipline in her command.
- She created an environment where the perception of fear, punishment and reprisal became an accepted reality.
- She failed to establish a safe and secure military training environment and failed to execute her command responsibilities in a fair and impartial manner, exacerbating problems in the Cadet Wing.
- Through ineffective leadership, she directly contributed to mission failure.³⁷⁰

³⁷⁰ Fowler Report, pp. 40-41; Air Force Working Group Report, p. 148

We do not agree with these previous assessments.³⁷¹ The testimonies on which they are based address the uncompromising manner in which Col Slavec attempted to apply and enforce discipline. However, they do not take into account the USAFA culture that permitted the sexual assault problems, or the need for strong action to restore order and discipline.

We did not find any basis to conclude other than that Col Slavec was selected specifically due to her demonstrated ability to deal with difficult problems and then charged with restoring good order and discipline at USAFA and holding cadets accountable for their actions. She did not create or contribute to sexual assault problems at USAFA and, in the end, had to little time and support to meet the mandate she was given. The following testimonies and accompanying analyses fairly describe the conditions that confronted Col Slavec in attempting to restore order and discipline.

Mandate to Restore Good Order and Discipline. BrigGen Gilbert’s assignment as Commandant of Cadets, including the Chief of Staff “mandate” to restore order and discipline at USAFA, is described in the section above. In selecting Col Slavec, BrigGen Gilbert observed “a real need” for strong leadership and a need to emphasize leadership. In describing his orders to Col Slavec, BrigGen Gilbert advised:

“ . . . I gave her a piece of what the Chief of Staff had given to me, knowing that it was going to be a tough task, knowing that we had not been able to address all the issues in the previous year because of my late arrival at the beginning of the academic year [August 2001]. . . . I knew it was going to be a rough row to hoe, and I knew that she was going to get some negative feedback, just like the chief had warned me that I would. . . . nonetheless, she was getting glowing feedback through the end of the summer. . . .”³⁷² (Emphasis added)

Col Slavec confirmed her initial tasking was to improve good order and discipline,³⁷³ advising that she talked with BrigGen Gilbert prior to arriving at USAFA, knew he was struggling with having cadets meet standards, and **wanted her to ensure cadets would be accountable for meeting standards.** She understood BrigGen Gilbert’s vision was “[t]o produce a quality second lieutenant for the Air Force . . .” by “. . . producing leaders with character by upholding standards and ensuring accountability. . . .”³⁷⁴ (Emphasis added)
Col Slavec stated:

“ . . . When I . . . talked with General Gilbert . . . he . . . indicated . . . that he was struggling with having cadets meet standards and that **one**

³⁷¹ The previous holdings, if true, would be tantamount to a “Dereliction in the performance of duties” charge under UCMJ Article 92, and could warrant court martial. Therefore, we considered the bases for the charges under each element prescribed in the UCMJ and detailed in the Manual for Courts Martial. We did not find any basis to conclude that Col Slavec violated the UCMJ.

³⁷² March 18, 2004, Gilbert Interview Transcript, p. 95

³⁷³ March 20, 2003, Slavec Interview Transcript (Air Force Working Group), pp. 15–16

³⁷⁴ Ibid, p. 16

of my charges would be to make sure that cadet accountability, both little ‘a’ for attendance and big ‘a’ for ramifications of their behavior, would meet standards and the same with Colonel Rivers, the Vice Commandant. And so it was not hard to see why he had that concern and not hard to see how he could be frustrated with that . . . Having been the recipient of second lieutenants in my various assignments around the Air Force, **I had had concerns about the quality of officer being produced by the Air Force Academy.** Especially when I was the Squadron Commander at Langley, I had dozens of second lieutenants come right out of their various commissioning sources, whether it was here, ROTC [Reserve Officer Training Corps] or OTS [Officer Training School], and the quality comparison to OTS and ROTC was striking. ROTC and OTS were so much more professional and appeared competent than the cadets that were coming out of -- the second lieutenants that were coming out of USAFA, and that concerned me a tremendous amount. **The discipline problems in the second lieutenants I had at the 1st Comm [Communications] Squadron were ninety-eight percent USAFA grads [graduates]; never had the problems with ROTC or OTS grads.**

So, I had that concern as a recipient of the product. And so when I got here, and **in dealing with the vision that General Gilbert had set out, I embraced it wholeheartedly,** that the mission of the Air Force Academy had been diluted. The product we were producing was diluted in what needed to meet the needs of the Air Force. . . .³⁷⁵
(Emphasis added)

BrigGen Gilbert also made it clear to Col Slavec that:

“. . . he was concerned about the product as well. And then as the Training Group Commander, **the 24/7 mission of making them accountable and holding them to standards was a huge part of what we needed to do,** and ‘we’ as in the group AOCs and the AOCs and the MTLs. And **his vision was made clear to everybody** -- cadets, permanent party. It was his standard billboard of what his expectation was (sic) and the need to produce a quality second lieutenant for the Air Force . . . he . . . briefs every class and the same sound bites are used producing leaders with character by upholding standards and ensuring accountability. It’s kind of like the vision statement that everybody has posted. He has a vision statement, and it was very clear, very simple; and **there was no doubt that the Commandant had his campaign to produce a quality second lieutenant. . . .**³⁷⁶ (Emphasis added)

When asked if she had the impression, directly or explicitly, that she was being brought on board to facilitate BrigGen Gilbert’s vision, Col Slavec advised:

“. . . I think in discussions with [REDACTED], my previous Commander, nothing directly was said, but **he made it clear to me that our time together at Langley had shown him that we could**

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³⁷⁵ Ibid, p. 15

³⁷⁶ Ibid, p. 16

take on the hard issues and achieve results and that I was the right person for the job to do that here. . . .³⁷⁷ (Emphasis added)

Col Slavec described her philosophy as:

“. . . [t]his is a military academy, and it needs to be the priority. . . There's three ways to get a commission. If you want a college experience, go to college, and then go to OTS, or go to college and go to ROTC. **But if you come here, you know the rules, and the rules are this is a military academy paid for by the taxpayer, and they are expecting you to be professional, upstanding, and follow the rules. And if you don't want that, then leave. Otherwise, if you're going to stay here respect the rules. . . .**

³⁷⁸ (Emphasis added)

Initial Impressions. Upon arriving at USAFA, Col Slavec's first impression was “. . . [n]o one's enforcing the rules. . . .”³⁷⁹ She observed problems with cadet dress and personal appearance; with accountability at formations and parades; condoning misconduct; cohabitation in the dormitories; and issues of loyalty to peers over loyalty to values.³⁸⁰ When asked about her USAFA perceptions after several years in the operational Air Force, Colonel Slavec stated:

“. . . I had been back for reunions, and so the physical facilities were not a big difference. Everything looked pretty much the same. I was taken aback by the cadet dress and personal appearance. In particular, the women's hair was, you know, being a female worried about regs [regulations], I was appalled. And the sideburns and the lack of shaving and overall that first impression that you're looking at the troops and you're saying, '**What is going on? No one's enforcing the rules.**'

And then delving down into accountability at formations, the first couple of weeks was parade season. And it looked like **half of the squadrons weren't even present at the parades, mandatory parades.** And coming back up, the other half is barbequing in the quads, in the dorms. They chose not to go to the parades. So, it was rather **disconcerting that accountability as in not just attendance accountability, but in being responsible for their behavior and where they were supposed to be was very, very lax. . . .**³⁸¹ (Emphasis added)

Col Slavec told the Fowler Panel, “. . . [w]hen I returned as a training group commander, I was **dismayed at the lack of priority that military training took in the institution.**”³⁸² (Emphasis added) She opined:

“. . . It is **important for the military academy to accept the fact that it is a military academy, that it is not a university** competing at

³⁷⁷ Ibid, p. 16

³⁷⁸ Ibid, pp. 187-188

³⁷⁹ Ibid, p. 14

³⁸⁰ Ibid, pp. 14, 37-38 & 94

³⁸¹ Ibid, p. 14

³⁸² July 11, 2003, Slavec Interview Transcript (Fowler Panel), p. 19

NCAA division 1 as a priority. That is an extremely important fact that the Air Force Academy has to accept before it can really address the issues. Once it has done that and accepted the fact that it is a military academy, then put the military training as a priority recognizing that academics is important, physical fitness is important, but the military training—the core value training, the spirit of the honor code, and developing leaders of character—once it has embraced that is the mission, then it can move forward. But until that happens, it will be fraught with a conflict of priorities.”³⁸³

With regard to the unique sexual assault reporting process in effect at USAFA and the program’s effect on command ability to provide protection and safety for cadets, Colonel Slavec stated:

“ . . . the CASIE program [sexual assault reporting process] was very deliberate in divorcing itself from the chain of command. It was very deliberate in making sure the training group Commander and the Commandant were not part of its environment. . . .”³⁸⁴

Col Slavec advised that CASIE was included in her orientation upon arriving at USAFA. She met with a CASIE counselor and a behavioral science faculty member who was the CASIE advocate. One, the Victim’s Advocate assigned to the Cadet Counseling Center, initially briefed her on the program. The **Victim’s Advocate described the sexual assault reporting program** as “. . . a very successful program that had been around any number of years and that it was strictly **divorced from the Commandant** and there wasn’t a problem in its existence. It **worked for the dean and that basically they knew things I would never know, and it was meant to be that way.** . . .”³⁸⁵

Col Slavec indicated that she questioned the program from the start.

“ . . . **I absolutely questioned from the start:** Where is the chain of command in the issue? **It was deliberately divorced from the chain of command. But why? Because that’s the way it works here. But that’s not the way it works in the Air Force.** But that’s the way it works here. . . .” (Emphasis added)³⁸⁶

She explained, however, that:

“ . . . There were people in the meetings, my [REDACTED]. [REDACTED] was there to say, that’s the way it is, you know. She had been there for three years and that’s the way it was. The dean owned it. The superintendent loved the program. The Commandant wanted to change it and it wasn’t going to happen; so, get over it . . . And so, it became one of those issues that I would raise to

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³⁸³ Ibid, p. 19

³⁸⁴ March 23, 2004, Slavec Interview Transcript, pp. 7-8

³⁸⁵ Ibid, pp. 8-9

³⁸⁶ Ibid, p. 9

the Commandant and he would say: **The superintendent won't -- support it. . . .**³⁸⁷ (Emphasis added)

Col Slavec also explained that, based on "secondhand knowledge," she was aware Gen Gilbert interacted with the superintendent and the dean to change the program, and was ". . . put down; no, it's not going to change. . . ."³⁸⁸ Col Slavec had the impression that the program belonged to the Victim's Advocate who briefed her, ". . . [s]he definitely took ownership of it from day one. I think she had been there from day one with it. In fact, she would tell you stories about -- I think the superintendent at the time was [REDACTED] I think -- whatever it was at the beginning of time when it was initiated. She was part of that and was very proud of it. She took personal ownership in that program and was very proud of it; and the dean was proud of it, and the superintendent was proud of it. . . ."³⁸⁹

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Col Slavec also described her initial CASIE impressions and concerns with the sexual assault reporting process to the Fowler Panel.

". . . As far as learning about the programs when I arrived at the Academy, **one of the orientation briefings I received from CASIE was excellent. I was very excited about CASIE because when I was a cadet it was not available.** It is an excellent resource for cadets, not just females but for cadets, to receive counseling on various aspects of personal problems in an environment that is non-threatening. But **my concern with CASIE in my orientation was that it excluded the chain of command when there were sexual assaults, which was not the Air Force standard.** Again, Academy unique processes divorcing themselves from Air Force standards are very difficult when you are accustomed to standard processes and procedures. So, that was an initial concern and one that carried through my tenure. On that again, as General Gilbert has raised, that he and the agenda for change helped correct. . . ."³⁹⁰ (Emphasis added)

Initial Impact on Academy Training. With regard to Col Slavec's initial impact on the training wing's mission, BrigGen Gilbert advised:

". . . She took off with a vision of where we could go. **There was a bias, it seemed, in the system against military training.** What I mean by that, it's sort of, **any time there is a scheduling conflict,** the universal solution that came from all the mission elements seem to be, well, **cancel the military training block** and we will move everything else around. That was the type of bias. So, she sort of dug her heels in and said, 'no, we are not going to play second fiddle anymore.' We had rearranged the schedule. We got rid of the period in the evening that I told you about. **So we were trying to migrate military training back towards more effective blocks of time during the day.** She was trying to make the most of that. In the process of all that she did, I guess the easiest way to say it is, **she broke a lot of glass around here**

³⁸⁷ Ibid, pp. 9-10

³⁸⁸ Ibid, p. 10

³⁸⁹ Ibid, pp. 10-11

³⁹⁰ July 11, 2003, Slavec Interview Transcript (Fowler Panel), p. 7

... She rubbed a lot of people the wrong way because she dug her heels in and was often viewed as uncompromising . . . I think largely it was [a matter of style]. I think **she accomplished a lot of very important things that helped reaffirm military training's role here, to address the issues of accountability and standards, responsibility. But the style was an issue.** I mean, just little things, like she came in at the beginning of the summer and pertaining to these other issues that we are dealing with, she immediately looked at the Human Relations Training. She said, 'you know, **I think we need to put more gender training in BCT and here is how I want to do it.**' I said, 'fine, go ahead.' So, she did have an impact right from the very beginning. . . ."³⁹¹ (Emphasis added)

BrigGen Gilbert advised further:

"... Okay, so basically addressing the sexual harassment issue, sexual assault issue, the first hour of training they get first in BCT [Basic Cadet Training], the first three weeks, then the ninety minutes they get in the second three weeks based on, 'here is what the services are. Here is how to avail yourself of the services. Here is how to prevent becoming a [sexual assault] victim. Here is what you should expect as a cadet. Here is what is off limits.' So, **she put some more of that into the summer program.** As the summer went along, **she initially got very good reviews from the Dean and the Athletic Director,** as well. They enjoyed working with her at the very beginning of the summer. As the summer went on and we began the academic year, there started to be some rumblings. . . ."³⁹² (Emphasis added)

Problems with Enforcing Cadet Discipline. Col Slavec detailed numerous problems with enforcing cadet discipline, including:

- Interrelationship with Athletic Department
 - Football Team Athletics Interfered with Cadet Basic Training

"... let me give you what happened **during basic training** that just flipped the Commandant, me, and everybody else out. We're still in the middle of Basic Cadet Training, which is as strict as we get strict, and the **football team comes up and takes the freshmen football players outside of training at night** when nobody knew any better and took them down to meet and greet and socialize while they're still in Basic Cadet Training . . . And so that got me involved at about ten o'clock at night when the football players aren't back in the dorms where they're supposed to be. 'Crazy cadets.' '**Oh, well, you know, we've got to get ready for the football season, and these guys are key to recruits, and we want to take them out of training**' -- Basic Cadet Training before it's even done with. So, it's at that point that you get informed early that, as I was told that night, you know, the only person at this place that can call the President [of the United States] and the President will take his call is [REDACTED] they call him . . . I was informed during this whole incident that I should be aware that the only person at the Air Force Academy

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³⁹¹ March 21, 2003, Gilbert Interview Transcript (Air Force Working Group), pp. 34-35

³⁹² Ibid, pp. 35-36

who can call the President and have him take his call is Fisher DeBerry. In other words, **General DeBerry, as they call him, runs this place. . . .**³⁹³ (Emphasis added)

– Athletic Personnel Improperly Handled Mental Health Issue

“. . . We had an **incident . . . [involving] the tennis team and a . . . freshman [cadet]. . . .** We found out that one of our freshman . . . had **suicidal tendencies.** ‘Wow, you’re kidding. What’s going on?’ Well, it turns out the **athletic team had directed her and accompanied her for counseling for a number of times without telling the AOC or the NCO [Military Training Leader] that she had a problem because they wanted to take care of it on their own.** It turns out **this four degree is high-end suicide.** She’s at Cedar Springs, which is the mental hospital. And as they drill down on it, the tennis team has known about this but wouldn’t tell the AOC or the NCO because they wanted to take care of it. That’s a tremendous problem to the chain of command if you don’t know your troops are in trouble. And yet **they’re treating their team like their own unit.** They knew she was having trouble. They were taking her to counseling. But only when they got a suicide note from her did they call the AOC for help. **We immediately jumped on it and got her into the right channels, the command channels to take care of her issues.** That’s not uncommon.³⁹⁴

– Athletic Personnel Improperly Handled Unauthorized “Gentleman’s Club”

“. . . [t]he **Civil Engineers** were working in a utility room, and they **found . . .** they called it a **gentleman’s club.** It was this room that was **couches and stuff on the walls** that were inappropriate. And it just so happened to be **part of the swimming pool where you look into the swimming pool underneath so you can watch people swim,** and lots of inappropriate things in this gentleman’s club . . . **Porno, evidence of alcohol.** So I called my counterpart and said, ‘Hey, you know, we have a report of a gentleman’s club,’ bla-bla-bla-bla-bla, and the next thing I know **they’ve cleaned it all up and taken care of it . . .** And it’s cleaned up. ‘Okay. Well, **let’s see if we shouldn’t pursue the alcohol and the porn.**’ . . . ‘**No, we took care of it.**’ ‘Okay, you took care of it.’ . . . They went in and **cleaned it up and took the evidence and the names of the people** that were involved. And they cleaned it up . . . They took care of it themselves . . . [Interviewer: **Did they give you those names?**] ‘**No. . . .** trying to push that button would have required going to the Commandant. . . .’³⁹⁵

– Hockey Team Athletes Improperly Handled Improprieties

“. . . [A]nother [involved] . . . hockey players. You wouldn’t believe how I had to scream and shout and jump up on the table to say, ‘We must discipline **the hockey players who are having an affair with the married women** who worked down at,’ you know that story. **You would have thought that I had come out of the moon expecting**

³⁹³ March 20, 2003, Slavec Interview Transcript (Air Force Working Group), pp. 24-25

³⁹⁴ Ibid, pp. 26-27

³⁹⁵ Ibid, pp. 28-29

there to be an investigation done on that. ‘No, we took care of it. You can’t go there. You will cause too much trouble.’ And I just refused. **I absolutely refused** at that point and said, ‘We will investigate it,’ and **it’s still an ongoing investigation, but much to the chagrin of my counterparts who said, ‘You better not go there. You can’t touch that. We took care of it’** . . . The first step was AH [Athletics Department] went to the Superintendent and told him about it because it involved civilian employees, union stuff. . . . Then it got leaked down to my level . . . and **I went to my counterpart and said, ‘We’ve got to investigate this. This involves cadets. No, it involves hockey players. We took care of it.’ I forced the issue.** . . . ‘So we went down to the SF [Security Forces] and the [AF]OSI to start the investigation when the cadets then said, going back to their hockey players and then again they came back to me and said, ‘**We don’t want to go there. You don’t want to go there.**’ I said, ‘We’re going to go there.’ And that’s where it is right now. . . . **we continue to get AH’s notes to us that you don’t want to go there.** So, it’s still going through SF and OSI . . . It might end up going to the local authorities as well . . . because some of it happened in the Springs area at the ladies’ homes. But the bottom line is we plan to continue it on an official investigation track with sworn statements, whereas **we are being encouraged strongly not to bother with anymore of it because it was taken care of by the Athletic Department** . . . Well, **once I pitched a fit** and said, ‘We are going to do it,’ we’re doing it. **And the Commandant is now . . . behind us on it.** But **before it got up to the Commandant’s level . . . it was me and my peers fighting over the fact that we should just drop it,** and I refused to drop it. **They committed adultery with the mother of another classmate of another cadet.** That’s the wrong kind of business that we’re in. . . .”³⁹⁶
 (Emphasis added)

- Cadets Condone Other Cadet Wrongdoing

“. . . **cohabitation is accepted. Nobody turns anybody else in.** Even though it’s a major cadet discipline infraction, nobody turns them in. . . .”³⁹⁷

. . . Every one of the players in . . . [an alleged sexual assault] incident – ‘How did you let a four degree come into your room and party? How did you let that happen? You knew it was going on. **Assault or no assault, there was a four degree drinking in your room.**’ ‘Well, she was having a party, you know. I wasn’t going to say anything.’ Even when . . . the guy’s asleep and she’s having the involvement with the alleged assault, the guy who’s sleeping knows that they’re getting it on over there and doesn’t do anything about it, knowing it’s frat and drinking. The guy that wants to go back -- take her back to his room and tells his roommate to leave. His roommate knows he’s going to be fratting with her and drinking, doesn’t do anything about it. **Condonation is the biggest problem we have.** Acceptance of breaking the rules, criminal or otherwise, is a huge problem. . . .
 (Emphasis Added)

³⁹⁶ Ibid, pp. 29-33

³⁹⁷ Ibid, p. 38

... The **condonation of cadets doing things in every illegal manner, whether it's alcohol or frat or cohabitation**, cadets condone cadets for everything. It is a huge peer culture that you don't turn your buddy in. And one of the different ways of dealing with business this year we've made an effort to "pull the thread" on everybody. **'Okay, you were drinking in the dorms. Instead of just hitting you,' which is how they did it in the past, 'we're now finding out where did you get the liquor? Who knew about it? Who was partying with you? ... [W]e've taken it from the one dimension to the two dimension to sometimes the three dimension to where people have to understand condoning this is contributing to the problem.** And so as we have expanded that envelope of discipline, if you've got your girlfriend sleeping in your room with you and your roommate knows it and doesn't tell you to stop, your roommate is now in trouble. And so that's a new way of disciplining that we've done this year that, hopefully, is making an impact on, 'Just stop. Don't do that because I'm going to get in trouble, and if I'm going to get in trouble because of what you did, that's wrong. Get out of here.'³⁹⁸ (Emphasis added)

[Interviewer] One of the things that you've related that you're concerned about is condonation. **If people perceive you as a hard ass, do you think that'll have an effect on their willingness to report?** [Colonel Slavec] '...Oh, **I think you're going to find cadets don't report other cadets. They never have.'**³⁹⁹ **It's a terrible problem we have here** and one that the Commandant has -- has made as part of the vision here. Loyalty is to the United States, the United States Air Force, and your unit, not your classmate, not you. ... **[U]ntil we break through that barrier**, that loyalty to the classmate, that loyalty to my friend who will shun me if I turn them in, who will consider me a -- they call it a tool, is the term they use -- as being part of the military for turning you in for either criminal activity or not. **And it's not until they know that they are contributing to the problem by condoning it that we're ever going to break through that.** ...⁴⁰⁰

- Cadets Consuming Alcohol

"... every week we deal with alcohol issues. And just to show you how disappointing it is, we came out with this new policy on drinking, Article 15 kind of stuff, and we had a two-day opportunity to 'turn in all your alcohol in the cadet area, non-retribution.' The Cadet Wing Commander put together this great program where 'for the next forty-eight hours we're going to collect your alcohol and you won't get busted. Give us your alcohol. But at the end of that forty-eight hours, sorry, you're going to get busted bad.' ... [T]hat went through last Friday or the Friday before last -- and that **very next Saturday we busted a big beer party in the dorms for firsties.** And so you -- you take a step back, and you go, all right, we've just increased the hit, we just had a non-retribution period and 'You're still stupid enough to drink in the dorms?'⁴⁰¹

³⁹⁸ Ibid, pp. 49 & 95

³⁹⁹ Ibid, p. 92

⁴⁰⁰ Ibid, pp. 97-98

⁴⁰¹ Ibid, pp. 49-50

It's not allowed. But I can tell you that was **another part of the football game discipline piece was the drunk cadets barfing all over each other in the stadium. It was just pitiful. And they end up being cuffed and taken away on a bus to the SF and booked because they were just silly drunk.** You know, finally, when we got to the point where we had **fine-tuned the accountability**, and part of that was the cadet taking accountability, smells your breath at the same time, **cadets got the clue that, you know, I can't come drunk to the game. . . .**⁴⁰² (Emphasis added)

According to the [REDACTED] "... [alcohol] abuse seems to have gotten worse at younger ages. But, I think that is endemic of society. But, yes sir, it's out there. **It's the root of ninety percent of our problems.**"⁴⁰³ When asked about whether the alcohol policy was enforced consistently throughout the cadet wing; the Deputy Commander advised "... [y]es, sir. And **the reason I can say yes is because the alcohol hit, by nature, is one, going to be one, that is automatically going to Colonel Slavec's level or possibly to General Gilbert depending on the class of the cadet. So we see them all. So that ensures a consistency across the board. . . .**"⁴⁰⁴ The Deputy Commander also advised that "... General Welsh did great things for morale, but **standards went down the toilet.** [REDACTED] left it up basically to the Group AOCs, and there were **two of us** that were pretty hard line, and . . . **tough, but fair** is how I like to voice it. The other two . . . pretty laissez faire. So, no consistency across the group. **Colonel Slavec brought that consistency to the four groups. . . .**"⁴⁰⁵ According to the Deputy Commander, **after BrigGen Gilbert and Col Slavec arrived, the "... [e]mphasis [was] on the core values.** The parades were crappy. The uniforms were crappy. The rooms were dirty. And he made that a daily priority. **When Colonel Slavec got here, . . . we put more of an emphasis on discipline.** And the cadets . . . I've talked to have said, **'You know, yes, it's harder now but we appreciate the fact that the standards have been raised because we're starting to develop some pride again in who we are, what we do, and where we come from. . . .**'"⁴⁰⁶ (Emphasis added)

- Mandatory Formations
 - Mandatory Attendance at Football Games--

"... **Football games are mandatory**, which means mandatory. Well, it didn't take long to figure out that cadets weren't going to football games either because they got busted for DUI [driving under the influence of alcohol] during a football game downtown or they got in an accident when they were supposed to be at the football game. And so last fall, **we ramped it up on accountability**, accountability formations for football games. That **ended up in a lot of discipline**

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⁴⁰² Ibid, p. 145

⁴⁰³ [REDACTED] Interview Transcript (Air Force Working Group), p. 5

⁴⁰⁴ Ibid, p. 8

⁴⁰⁵ Ibid, pp. 24-25

⁴⁰⁶ Ibid, p. 25

actions because cadets were coming drunk to games. They were coming unshaven to games, their hair, I mean, that whole football season ended up in a huge jump in discipline actions because we were holding cadets accountable to a mandatory formation in the right uniform. So that pretty much set the tone for my “hard ass” reputation of not allowing cadets to get out of mandatory formations. . . .”⁴⁰⁷

– Missing Classes--

“ . . . I think I’ve held firm on if you miss a class, you’re expected to have what we call additive Form 10s, which means if you miss one class, then you get two demerits. The next time you miss a class, you should get three demerits, and if you miss another, you should get four demerits. . . . [I]n the past, there was a lot of zeroing out of missing class. And that, working with the DF [Dean of Faculty] community, the faculty, was not right. Cadets were missing five and ten classes, and nobody in the squadron was doing anything about it. That’s not what we’re here for. That’s a mandatory formation. Don’t zero out the Form 10, which, by the way, is generated by the faculty. Not allowed. You have to . . . make an additive. If your first one is zeroed out, your next one is nothing less than one demerit, and work it up from there. And I’ve really held firm on that and seen a tremendous improvement in class attendance and the same with intramurals, whereas before, it was blown off. The form generated by the intramural staff, which is down at the Athletic Department, terrible complaints from them that they were being blown off. No more. You miss a mandatory formation; you’re accountable for it. And I have held firm much harder than my predecessor did on that because, again, that’s what we’re here for -- mandatory formations and you should be accountable. . . .”⁴⁰⁸

• Cadet Squadron Commander Selection Process

“ . . . [T]hat’s been changed this year. We’re going more in line with the Air Force command selection board process where there will be a pool of cadets nominated by their AOCs, and then . . . the Cadet Wing Commander and Cadet Group Commanders . . . will be the ones that select cadets to work for them. . . . [T]here will be less incest and less good old boy because they can’t pick within their own group. They have to pick elsewhere, whereas before, some of the squadron commanders, especially last semester, oh my goodness. I don’t know how they made it to be a firstie, let alone a Squadron Commander because all they were interested in was raising money for their . . . tailgates. . . .”⁴⁰⁹ (Emphasis added)

• Fraternalization

“ . . . If we were just in the cadet area, there is a very strict class training environment -- the freshmen the fourth class who can’t socialize with the freshman. You have to be dealing with them on official business only, and the same in the academic area. You don’t

⁴⁰⁷ March 20, 2003, Slavec Interview Transcript (Air Force Working Group), pp. 137-138

⁴⁰⁸ Ibid, p. 138

⁴⁰⁹ Ibid, p. 144

have classes with fourth classmen. You have no reason to deal with them. But in the athletic area, the teams view -- **once you go outside to the north and you go down the stairs into the gym in the field house** -- they view that as **no longer** is there a **training environment**. **Now we're . . . all teammates**. Now we're . . . all **buddies**. They go by their **first names**. They **party together**. They **hang out together**. And only when they come back up to the area do they put their face back on to be in the training environment . . . And the **coaches contribute to** that problem of **diluting** the **military Academy environment** by **having parties for everybody** on their team regardless of what class they're in. We would never allow that in the cadet area. You can't socialize with the fourth classmen. But in the **athletic arena, they're not fourth classmen**. **They're a teammate, and the teammate becomes their new social partner. . . .**⁴¹⁰

The . . . case got my attention, first of all, when it was reported she [an alleged sexual assault victim] . . . **had a frat [fraternization] weekend with a four degree** [freshman] because of a squadron auction where she **sold herself to the highest bid for a date**. And the date was **bought by a four degree**. It should never have happened. **Should never have happened that the squadron let a four degree buy a date with an upperclassman**. So as that situation unraveled, it just got worse and worse and worse in . . . that the **date turned into two dates, turned into a night downtown, turned into honor, turned into every ugly thing in the world**. And as we . . . turned that one into a 'Let's see what's going on in the squadron with an auction that they're putting a three degree up for auction,' it became **apparent that she had an ongoing problem -- sleeping with her boyfriend in another squadron**, causing the **other squadron** to make her not come into the squadron, **no contact orders**. So then you start peeling back that curtain, and that was where **it went back to the CASIE case that nobody knew about. . . .**⁴¹¹ (Emphasis added)

- Male and Female Cadet Cohabitation

“. . . Reading all the details behind everybody's investigations, talking to the cadets who don't claim sexual assault **that we find cohabitating**, dialogue with previous cadets on parties that lead to sexual activity and resulting claims, my personal experience here. And, again, you're dealing with 18- to 22-year-olds who are attracted to each other. And the **dormitory environment here has not been restrictive enough to ensure that cohabitation isn't going on, on a frequent basis. . . .**"⁴¹²
(Emphasis added)

- Enforcing Cadet Discipline

“. . . Cadets are responsible for processing all those Form 10s and then putting them into a system which then allows visibility for the punishments, which are tours or confinements. And in order for that product to be visible, at the squadron level you have to put the information in. And then the next phase is the cadet in charge of that at the Cadet Wing Staff has to then be accountable for those people that

⁴¹⁰ Ibid, pp. 22-23

⁴¹¹ Ibid, pp. 151-152

⁴¹² Ibid, p. 39

are supposed to show up for tours and confinements. And then that is the loop of expectation through ramification.

Well guess what? Here I am on a weekend, and there's one poor kid marching a tour. And I know in the last three weeks I was the authority on dozens of cadets for tours. So **I knew there was something wrong**. Well, come to find out, **this system was so corrupt** and so fraught with cadets throwing away forms, holding onto forms until after a weekend, or basically just **destroying the evidence** that it **never got into the system**.

And so, I got the Cadet Wing Commander, and we had a surprise what I would call an ORI with the four group AOCs and I on a Saturday and went through the Wing to find absolute corrupt cadet discipline system with the paperwork. I'd hit you with my level of 120 demerits and guess what, it never made it anywhere because the cadet, who was supposed to put it in the system forgot, put it in his bottom drawer, and it never got anywhere. And the **AOC didn't follow up on it because it's the cadet's responsibility**.

So, we peeled back that onion to where it was unbelievable, **unbelievable** to where **cadets were taking an AOC-directed 10-tour hit and giving** them, 'Oh, **all you have to do for ten hours is go down and work out for ten hours** and we'll give you credit for it instead of marching tours.' . . . 'Oh, hey, you know what, **why don't you just go out and wash my car, and I'll give you credit for it.**' I mean, it's **that kind of corruption**.

So we peeled back that onion and got people's attention. So **now, if you get demerits and tours, you are held accountable from step-one through the end, and that has really upset a lot of cadets** because you know what, they don't want to be doing that. **I have had disenrollment packages where there've been 300 tours, and when I asked the guy, 'How many have you done?' he didn't do a one of them. That's corrupt, absolutely corrupt.** So yeah, **they're not happy with my discipline approach. . . .**⁴¹³ (Emphasis added)

- Mission Element Competition for Cadet Time

“. . . My counterparts and the liaisons to the training group, I'll have a very feverish dialog on an ongoing basis, daily, on issues. But if you raise it **above that level, it becomes very territorial, extremely territorial, and extremely stifled communication** . . . Because the **Athletic Director thinks this is a sports camp**, and the **Dean thinks it's a college**, and the **Commandant thinks it's a military academy**. And as they **compete for cadet time**, that's what it goes back to -- **cadet time. Who gets the cadets' time?** And it gets back to, "I want the cadets' time because I'm the Athletic Director," and so on and so forth. And so the **Superintendent facilitates nothing**. He just doesn't. He facilitated **the status quo**. Okay, they **agree to disagree, and nothing happens**. And **that's the way it's been since I've been here**. And I know **it's been that way for long before I've been here** because **progress that should be made, and will be made because the SECAF is finally going to make some changes, should have**

⁴¹³ Ibid, pp. 139-140

been done by the Superintendent. But he didn't have the -- the gas to do it. And add to that, the alumni committee, my goodness. You can't get anything done around here. . . .⁴¹⁴ (Emphasis Added)

- Cadet Character and Honor

“. . . the Notre Dame game? It's a sell-out crowd, **high terrorist alert**, and the cadets have to have their uniform on. That's their basic way to get into the cadet area, which we have a cadet area where only cadets can sit, and you have to be in uniform. So, up comes the stairs this cadet with -- a cadet looking like a cadet, **a person looking like a cadet except his side-burns** were just way out of regs [regulations]. So, I stopped him and said, 'Who's your AOC?' because we just had an inspection that morning, and there was no way he could have passed that inspection. And he said, 'I don't know.' I said, 'How can you not know?' I said, 'Let me have your ID.' . . . 'I don't have any ID.' . . . 'You don't have any ID?' And he refused to talk, so I got the cops and I said, 'This guy's trespassing. No ID. He's not a cadet, and **he's wearing a class of '03, which is a senior class uniform.**' And so they took him into custody . . . the civilian wearing the outfit wouldn't tell us who gave him the outfit, so we took the name off the uniform and tracked it down and found him in the crowd and, 'You know, what's going on here?' Well, they couldn't get their story straight on how it all happened that **this kid, ex-cadet who'd been thrown out on honor**, happened to **show up without a ticket** to a football game. He **walked in with somebody else's uniform** and into the cadet area, which **violates any number of integrity, honor, trespassing**, blah-blah-blah-blah-blah. So, that proceeded. Arrested the kid that trespassed and was wearing a cadet uniform, so he could figure out, you know, what happened here. And that's -- **did an honor clarification with the cadet, hit him with a serious, gross, poor judgment on, basically, compromising security especially when you have a high ThreatCon in a military facility.** . . .⁴¹⁵

Based on the testimonies, strong measures were required to restore order and discipline at USAFA, and the Air Force Chief of Staff charged BrigGen Gilbert with doing so. BrigGen Gilbert, in turn, charged Col Slavec with helping him accomplish the objective. The USAFA Superintendent (LtGen Dallager), however, was unaware that the Air Force Chief of Staff had given BrigGen Gilbert this direction. Furthermore, BrigGen Gilbert was not aware until January 2003 (16 months after his arrival at USAFA), that LtGen Dallager's did not know about his "marching orders" from the Chief of Staff. Therefore, it is not surprising that BrigGen Gilbert and Col Slavec "ruffled feathers" within other USAFA mission elements that were competing for "cadet time." It is also not surprising that some cadets saw their actions as heavy handed based on what they may have been used to in the past. Furthermore, the mission element (Athletic Department, especially) actions to address cadet disciplinary matters without involving command would have been a major challenge to command authority

⁴¹⁴ Ibid, p. 142

⁴¹⁵ Ibid, pp. 145-146

and an impediment to BrigGen Gilbert and Col Slavec meeting their objective to restore order and discipline. According to Col Slavec:

“ . . . I worked aggressively to attack and clean up a decade-old culture that spawned unprofessional cadet behavior creating an environment conducive to sexual misconduct. This intensive campaign was pursued in the 34th Training Group with little external support, inadequate institutional processes or resources necessary to effect positive change. Our focus—standardized enforcement of all existing cadet disciplinary regulations accountability for actions and critical review of an outdated and unacceptable environment—stirred resentment with those accustomed to the preferred climate of collegial cooperation and toleration.

Every known incident during my tenure, which was less than one year, was thoroughly investigated by Security Forces and/or Office of Special Investigations, with legal experts providing advice on definitions of rape, assault and other UCMJ infractions. At every plausible opportunity, Article 32 hearings or other appropriate disciplinary actions were pursued, in accordance with legal and senior leadership guidance and regulation directives. Unique Air Force Academy (nonstandard Air Force) regulations and processes on sexual assaults hampered the chain of command’s ability to be properly notified and given the opportunity to appropriately respond and ensure the safety and due process of all cadets. . . .”⁴¹⁶

There were problems with criminal conduct, including sexual assault, drugs and thefts, as well as rule infractions, long before BrigGen Gilbert or Col Slavec arrived at USAFA. Otherwise, there would not have been a need for the Chief of Staff’s direction that BrigGen Gilbert address order and discipline problems. Further, the June 28, 2002, Concerned Citizen Complaint, which predates Col Slavec, indicates that sexual assault reporting was a substantial issue before Col Slavec arrived at USAFA. On the other hand, they were attempting to comply with their orders to restore order and discipline and, to do so, they were attempting to apply and enforce the rules consistently. Since most sexual assaults involved drinking and other infractions, it is reasonable to assume that sexual assault victims would have been more reluctant to report. They certainly would have had a basis to perceive a greater likelihood of punishment for their infractions.⁴¹⁷ However, this situation does not constitute a basis for blaming either BrigGen Gilbert or Col Slavec for problems at USAFA. On the contrary, we agree with BrigGen Gilbert’s assessment that “. . . when consensual sex and alcohol are tolerated in a confined setting it can lead to abusive behavior. . . .”

The former Vice Commandant of Cadets during Col Slavec’s tenure described Col Slavec’s administration of discipline:

⁴¹⁶ March 23, 2004, Slavec Interview Transcript, pp. 134-135

⁴¹⁷ As discussed elsewhere in this report, neither cadets nor administering officials fully understood the amnesty program then in effect at USAFA. Therefore, cadets generally did not have a basis to assume that their infractions would be forgiven.

“... I ... [saw] the disciplinary patterns of four training group commanders -- three training group commanders, to where you -- recent history, and a couple of Commandants, let’s say a dozen, or half a dozen group command -- cadet group commanders in ... a good hundred AOCs or more, **COLONEL Slavec’s was the most consistent application of cadet disciplinary actions.** And no one has to take my word for that, you can go dig through all the records if you want, and go back and look at the same records I do. In other words, **COLONEL Slavec** was -- followed on the previous training group commander in -- [REDACTED] (phonetic) -- and actually **started fairly applying cadet disciplinary standards.** Where the JAG is getting his anecdotal evidence is that **cadets were not used to this.**⁴¹⁸ There was **a whole group of cadets that were used to getting away with almost anything.** And **they were shocked,** both with [REDACTED] and then **COLONEL Slavec came on board and was very up front with the cadets from the get go.** We said, here is the disciplinary regs; **I know you haven’t had these applied evenly in some cases, however -- or even at all in some cases, we’d (inaudible) some of them directly applied sexual assault. And COLONEL Slavec said, simply, read them, they’re there; if you violate number three, this is the punishment, and then required her AOCs to evenly apply those -- those documents.** So what COLONEL Slavec did -- as a matter of fact, I’m pretty amazed that it -- for the JAG -- **she insisted that cadet discipline follow the civil law we apply. It is not fair that you get a different sentence, heavier or lighter, than I do for infraction. She applied good order and discipline.** And, again, as I look at the record, **she did it better than anyone else in there.**⁴¹⁹

The [REDACTED] illustrated how the staff did as they pleased, and took exception when Col Slavec imposed standard conduct expectations, and disciplined both cadets and staff for violating the rules:

“... [O]ne incident that I recall, specific incident, Colonel Slavec directed a Chief Master Sergeant in -- very forcefully -- to get in uniform on the Terazzo. This individual was walking around Terazzo without a hat on. ... [W]hy that would be a shock to the system is absolutely beyond me. It obviously wasn’t a shock to Colonel Slavec, she went, Chief, you need to get in uniform. The environment ... of lack of accountability ... had actually kind of pervaded some of the daily operations. And Colonel Slavec was a very detailed -- this is the United States Air Force Academy, if you’re on the staff, you will have higher standards. You will certainly have higher standards than the cadets. But as a minimum, you will follow Air Force standards, which is what we’re asking for and we want the cadets to see that you go the extra mile in there. I can’t imagine there’s anyone in the entire Air Force that would argue with that baseline. ... However, that incident, like no other, how can a colonel tell me, a chief, to put my hat on. I mean, it pervaded her group. It -- it took a couple of weeks for it to calm down, until -- until some other very ... talented officers and NCOs ... [asked] chief, ... why didn’t you have your hat on out in the

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⁴¹⁸ [REDACTED] Interview Transcript, pp. 39-40; With regard to a USAFA attorney’s allegation that AOC’s were punished for administering punishment, [REDACTED] stated, “This statement ... that ... Colonel Slavec could ... just punish them ... is categorically wrong.”

⁴¹⁹ Ibid, p. 40

middle of the cadets. I mean, haven't you ever walked up to a cadet and told them to put their hat on? . . ."⁴²⁰

Adverse Testimony. The Fowler Panel and Air Force Working Groups heard various testimonies that effectively complained about or condemned Col Slavec's management style.

- The Superintendent (LtGen Dallager) advised that he heard about problems with Col Slavec "from a variety of sources, unsolicited originally and then solicited, to include parents, sponsors, cadets, graduates, visitors, AOCs, exchange cadets; that in trying to put the "M" back in military, the environment has been -- I don't say this flippantly -- it's been tough love without the love portion and that it's a bit of the leadership by Form 10 environment and that the **AOCs and the MTLs have very little discretion or flexibility in how they respond to infractions.** . . . And a lot of this is not the substance, it's the style of how people go about doing things. . . ."⁴²¹ (Emphasis added)

We recognize that LtGen Dallager's may have been unaware that the Air Force Chief of Staff had directed BrigGen Gilbert to restore order and discipline at USAFA. Further, it is not surprising that he heard about "problems with Col Slavec" from various sources. The rules and prescribed punishments had always existed, but many cadets were having those rules and punishments applied to them consistently under Col Slavec. The fact that LtGen Dallager received complaints indicating that neither the cadets nor their parents were pleased is not surprising. However, his comment that Col Slavec was not allowing individual AOCs and MTLs discretion and flexibility in how "they responded" to infractions indicates to us that he preferred the status quo.

Individual infractions (and the specific punishment for each) are prescribed, documented, and apply to all cadets. Individual factual situations require, and disciplinary systems should ensure, discretion in applying and enforcing rules. Furthermore, the AOCs and MTLs at USAFA should have input into the disciplinary process. However, they should not have authority to respond to infractions as they choose and withhold information from the chain of command. Affording such individual "discretion or flexibility" was responsible for the systems that Col Slavec attempted to correct.

- The [REDACTED], complained about a "lack of communication" between the Training Wing and other USAFA elements and described several incidents or situations to demonstrate the claim. One involved the Department's Head's efforts to contact Col Slavec after her office requested amnesty for a cadet and the

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⁴²⁰ Ibid, pp. 44-45

⁴²¹ March 25, 2003, Dallager Interview Transcript (Air Force Working Group), pp. 84 & 86

request “was denied.”⁴²² However, the requested amnesty was not denied. It was granted only in part, because several violations involved in the amnesty request did not relate to the alleged assault (e.g., sex in the dormitory incidents and underage drinking incidents predating the alleged assault).⁴²³

We agree that there was a “lack of communication” between Col Slavec and other USAFA elements. The specific problems described previously (Problems with Cadet Discipline) that Col Slavec was required to deal with resulted at least in part because those other USAFA elements withheld information and attempted to hide problems.

- The former Chief, Sexual Assault Services Branch, Cadet Counseling Center, indicated that Col Slavec exhibited hostility toward the CASIE program, stating “. . . point blank, ‘I don’t want anything to do with sexual assault. I’m not sure I think your program helps. . . .’”

The extent of problems at USAFA that were disclosed only after individual cadets complained to the news media, Congress and the Secretary of the Air Force have proven Col Slavec correct. After having to deal with more serious problems that erupted because initial problems were withheld from the chain of command, Col Slavec reasonably concluded that the program was not working.

The Fowler Panel also faulted Col Slavec’s for the problems because:

“. . . [W]hile Colonel Slavec was in the first line of responsibility for enforcing disciplinary standards, she was unaware of the definition of sexual assault, held her own definition of a “true rape” as requiring some level of violence, and seemed to hold the attitude that cadets claimed sexual assault only to receive amnesty. As the member of the leadership team closest to the Cadet Wing, Colonel Slavec was in a key position to become aware of the problem of sexual assaults. Instead, her inflexible and insensitive attitudes and actions exacerbated problems in the Cadet Wing. . . .”⁴²⁴

We disagree. As an initial matter, the term “sexual assault” is not defined in the UCMJ. The closest UCMJ terminology is “assault with the intent to commit rape” (Article 134). In accordance with Article 120 (Rape), for a rape to occur, an accused must have committed “. . . an act of sexual intercourse . . . by force and without consent. . . .” Accordingly, Col Slavec was correct in indicating that a “true rape” involves some level of violence. More importantly, how Col Slavec defined sexual assault was not relevant to the issues.

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⁴²² [REDACTED] Interview Transcript (Air Force Working Group), p. 6

⁴²³ March 20, 2003, Slavec Interview Transcript, p. 63

⁴²⁴ Fowler Report, pp. 40-41

The USAFA confidential sexual assault reporting process was designed specifically to exclude the chain of command from specific knowledge about sexual assaults unless a victim wanted to pursue legal action against the offender. Col Slavec was not directly involved in initial sexual assault reporting, any victim services involved in the process, or oversight for either the reporting process or related services. She only became involved when a matter was referred for investigation. Then, AFOSI controlled the investigation, and the Superintendent controlled any resulting prosecution. Accordingly, we do not agree that Col Slavec was in a key position to become aware of sexual assault problems.

Conclusion

Col Slavec did not contribute to or abide problems at USAFA and should not have been held accountable for those problems. She was selected specifically to help restore good order and discipline, and hold cadets accountable for their actions. Col Slavec attempted to apply and enforce the existing rules, because “. . . this is a military academy paid for by the taxpayer, and they are expecting you to be professional, upstanding, and follow the rules. . . .” We agree, both with her efforts to restore good order and discipline, and her reasons for doing so. Furthermore, although her methods were characterized as “draconian,” and she characterized herself as “a hard ass,” we believe those methods were both necessary and appropriate to the conditions that Col Slavec confronted, which she had been tasked with changing. Many USAFA officials viewed her efforts as taking away their discretion and flexibility, but such discretion and flexibility were based on authority they should never have had, as the specific incidents described earlier demonstrate.

BrigGen David A. Wagie (Dean of Faculty, June 1998 to August 2004)

For an extended period (approximately 17 years), BrigGen Wagie served in various USAFA positions that involved or related to the unique sexual assault reporting process. From late 1992 until 1994, as the Deputy Commandant for Military Instruction, then Col Wagie directed a team that recommended creating a Center for Character Development (CCD). In 1994, the Superintendent (LtGen Hosmer) approved the recommendation, appointed Col Wagie as the Director, and tasked CCD with addressing underlying cadet character issues, including sexual assault and sexual harassment. Col Wagie was responsible for establishing the CCD, including the Human Relations Division.⁴²⁵

In early 1995, [REDACTED], appointed Col Wagie to chair a Cadet Social Climate Process Action Team (PAT) to examine sexual assault and sexual harassment issues at USAFA. Col Wagie became the Vice Dean of Faculty the following year, but continued chairing the PAT. From 1995

⁴²⁵ November 19, 2003, Supplemental Wagie Statement (G.9.39), p. 1

through 1997, the PAT recommended numerous changes that [REDACTED] approved.

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BrigGen Wagie acknowledges that he was instrumental in creating the sexual assault reporting program at USAFA. According to BrigGen Wagie, the program included (1) a cross-mission Sexual Assault Services Committee, which reported to the Commandant, (2) a Sexual Assault Services Branch (SASB), which included a victim's advocate program, (3) a sexual assault hotline manned by cadets, known as Cadets Advocating Sexual Integrity and Education (CASIE), and (4) a sexual assault education program. Col Wagie also led another initiative aimed at improving management skills for USAFA officers who led cadets. This initiative resulted in a Masters Degree Program in Counseling and Education for USAFA Air Officers Commanding (AOC). Although a 2-year test program was approved, manpower requirements shelved the program in 2002, until the *Agenda for Change* revived the initiative.⁴²⁶

BrigGen Wagie was also involved in implementing the sexual assault reporting program. According to BrigGen Wagie, the program resulted in a new confidentiality policy aimed at improving sexual assault reporting. Prior to formally adopting the new program, the Sexual Assault Services Branch was moved from the Center for Character Development, which reported to the Commandant, to the Cadet Counseling Center, which reported to the Dean of Faculty. The change was intended to ensure that reports to the Sexual Assault Services Branch would remain confidential. The Cadet Counseling Center and the Sexual Assault Services Branch reported to BrigGen Wagie.⁴²⁷ However, in accordance with USAFAI 51-201, the Cadet Counseling Center was required to report sexual assaults directly to the Commandant of Cadets. Cadet Counseling Center personnel also participated directly in the Sexual Assault Services Committee, which the Vice Commandant chaired for the Commandant.

BrigGen Wagie also chaired a Character Development Commission that provided strategic oversight for all USAFA character education and training programs. He received annual executive briefings on cadet social climate survey results, except for sexual assault information.⁴²⁸ As Chair, he directed each mission element to address the social climate survey issues applicable to them—e.g., the Commandant would be directed to address the AOC and cadet issues. BrigGen Wagie briefed the USAFA faculty on climate data (other than sexual assault data) and his concerns/directions in numerous forums.⁴²⁹

Prior Study Determination. The Fowler Panel blamed BrigGen Wagie for problems at USAFA, holding that he had “the greatest experience and

⁴²⁶ November 19, 2003, Wagie Interview Transcript, p. 42

⁴²⁷ Ibid, p. 6-7 [“So if I go from 700 people in the organization, I go down five levels and this organization of three experts are the ones that have two primary functions. One was to provide support for a victim that came forward. And two was to provide education on the issue.”]

⁴²⁸ The Vice Commandant and Sexual Assault Services Committee were given the sexual assault information

⁴²⁹ November 19, 2003, Wagie Interview Transcript, pp. 13, 44, 77 & 96

responsibility for the sexual assault response program,” and “failed to take the action expected of someone in his leadership position.” In supporting the position, the panel observed:

- The Dean of Faculty was directly responsible for the Cadet Counseling Center and CASIE program, for conducting surveys and compiling data, and for the Center for Character Development.⁴³⁰
- BrigGen Wagie supervised the Cadet Counseling Center and conducted bi-weekly meetings with the head of the Counseling Center. Accordingly, he knew or should have known about the numbers of sexual assaults reported.⁴³¹
- BrigGen Wagie was the key USAFA senior leader aware of the sexual assault survey data and the number of cases reported to the Cadet Counseling Center.⁴³²
- BrigGen Wagie was the officer most responsible for the sexual assault response program and administering the Social Climate Surveys. Although USAFA declared the surveys statistically invalid year after year, BrigGen Wagie never acted to correct the survey tool.⁴³³

Because BrigGen Wagie had extensive background in the sexual assault reporting process and a lengthy tenure at USAFA, the Fowler Panel concluded that he (1) had “considerable institutional knowledge of the nature and extent of the Academy’s sexual misconduct problems,” (2) had a responsibility to recognize the sexual assault problems and take appropriate action, and (3) because he did not do so, he contributed to mission failure.⁴³⁴

We do not agree.⁴³⁵ As an initial matter, BrigGen Wagie was not responsible for “. . . conducting surveys and compiling data, and for the Center for Character Development.” BrigGen Wagie never had responsibility for those functions. Furthermore, although true that BrigGen Wagie had substantial experience with the unique sexual assault response program, he was not responsible for program execution or oversight, and he did not receive sexual assault information. In addition, although BrigGen Wagie helped create and implement the unique USAFA sexual assault reporting program, he did so under the Superintendent’s direction, with other senior Air Force leaders’ knowledge and consent. He was not the deciding official, or an individual with program responsibility. As a result, BrigGen Wagie cannot be held responsible for creating, contributing to, or

⁴³⁰ Fowler Report, pp. 33-34

⁴³¹ Ibid, p. 39

⁴³² Ibid, p. 34

⁴³³ Ibid, p. 38

⁴³⁴ Ibid, p. 39

⁴³⁵ The previous holdings, if true, would be tantamount to a “Dereliction in the performance of duties” charge under UCMJ Article 92, which could warrant court martial. Therefore, we considered the bases for the charges under each element prescribed in the UCMJ and detailed in the Manual for Courts Martial. We did not find any basis to conclude that BrigGen Wagie violated the UCMJ.

abiding the unique sexual assault reporting program at USAFA, or the resulting problems.

Social Climate Surveys. The Center for Character Development, Human Relations Division, 34th Training Wing (under the Commandant of Cadets), developed and administered social climate surveys. The Institutional Research Office (XPR), Plans and Programs Directorate (under the Superintendent), compiled and distributed the results. According to BrigGen Wagie, except for sexual assault survey data briefed to all USAFA senior leaders (including BrigGen Wagie) in December 1998, and July 2002, he was unaware of sexual assault survey data.

Based on statements from former Cadet Counseling Center Directors and Sexual Assault Services Branch Chiefs, USAFA leaders (including BrigGen Wagie) “saw” the general social climate survey and sexual harassment data, and were given the statistics (total numbers per year), except for the period December 1998, until July 2002. Between December 1998 and July 2002, sexual assault survey data were used only in the Cadet Counseling Center, along with anecdotal evidence and sexual assault reports, to improve victim support and cadet education and training.⁴³⁶ USAFA leaders were not given, or briefed on, the results.

The Cadet Counseling Center and the Sexual Assault Services Branch reported to BrigGen Wagie. During recurring staff meetings, the Cadet Counseling Center staff briefed BrigGen Wagie on the number of hotline calls that CASIE received and the number of sexual assaults reported to the center. However, in accordance with USAFAI 51-201 requirements, all specific sexual assault information was given to the Vice Commandant (and then to the Commandant and Superintendent via Sexual Assault Services Tracking Sheets). The information was also given to the Sexual Assault Services Committee, which the Vice Commandant chaired and which Cadet Counseling Center personnel attended directly. BrigGen Wagie did not receive and was not involved directly in sexual assault reporting. He expected the Sexual Assault Services Committee and the Commandant to address sexual assault issues.⁴³⁷

Survey Validity. The former Director, Cadet Counseling Center, advised the Air Force Working Group that he (the Director) declared the survey information invalid after a July 2002, meeting with LtGen Dallager.⁴³⁸ In describing the validity issue, the former Director stated:

“ . . . Most of the data we actually considered invalid . . . There were significant problems in terms of the data. . . . [M]ost of the data is

⁴³⁶ [REDACTED] Interview Transcript (AFGC Working Group), pp. 2; [REDACTED] Interview Transcript (AFGC Working Group), pp. 1-2; [REDACTED] Interview Transcript (AFGC Working Group), pp. 1-4

⁴³⁷ November 19, 2003, Wagie Interview Transcript, p. 14

⁴³⁸ [REDACTED] Interview Transcript, p. 16

invalid because we didn't feel the sample size was adequate. Without an adequate sample size, it's hard to make an estimate of what is really happening in the cadet wing. So the sample size problems. Some questions were poorly written. The survey, itself, took on a very long length, and so it became a 200 item survey which we felt posed problems. Some of the questions required certain assumptions that people read definitions about what sexual assault was, about what harassment was and so forth. So there was [sic] some difficult assumptions that needed to be met. In later years we got into other concerns about the way the survey was administered. The last two years of the survey administration, there was pressure on cadets to participate. One year it was regarded as a mandatory survey that cadets had to complete before they left on spring break, and another year it was administered as a competition just to try to get the numbers of people participating up. So we had real questions about what the data might have meant.⁴³⁹

Regarding his perceptions about numbers derived from the survey data, he explained:

"... The perception was that it was a number, some type of general ballpark sort of figure regarding sexual assault. It was really hard to have any real sense of confidence in the data to know... if the iceberg analogy holds. It was really hard to have a sense of whether the number accurately reflected what was beneath the surface or not. . . ."⁴⁴⁰

The former Director, however, continued using the data, because:

"... they reflected... some type of range of what might be going on with sexual assault. . . . [T]he things that we really relied on was the... robust numbers of reports to the Sexual Assault Hotline which... told us that sexual assaults were occurring and in our environment of zero tolerance, we clearly had a... continuing... issue at the Academy."⁴⁴¹

In describing the survey data usage, the former Director advised:

"... [T]he climate survey data was used to kind of fit into the picture of what was getting reported to the Sexual Assault Hotline. . . . [O]ne of the things that [data] indicated to us was we... have an ongoing problem and... need to... continue our educational efforts which had been generally improved from year to year."⁴⁴²

The former Director acknowledged that issues regarding survey validity were never briefed to USAFA leadership. Furthermore, BrigGen Wagie pointed out that USAFA never declared the surveys invalid, and noted the former Director's comments regarding how the data continued to be used.

⁴³⁹ [REDACTED] Interview Transcript, pp. 24-25

⁴⁴⁰ Ibid, p. 27

⁴⁴¹ Ibid, p. 27

⁴⁴² Ibid, p. 27

We could not determine whether survey validity was ever discussed with BrigGen Wagie prior to January 2003. However, under circumstances where BrigGen Wagie (1) was not responsible for administering the survey, (2) was not briefed on sexual assault data from the surveys, and (3) was not informed the surveys were considered invalid, we cannot conclude that he should have taken action to overcome the validity issues.

Character Development Commission. According to BrigGen Wagie, the Character Development Commission, which he chaired, was never briefed on sexual assault data from any survey. He also advised that XPR sent sexual assault data to only the Cadet Counseling Center (and CCD) for review, analysis, and comparison to case and anecdotal data.⁴⁴³

The general social climate survey data (intercollegiate/religious/race/gender issues, such as harassment, reprisal, etc.) were briefed annually to the Character Development Commission. These data were segregated based on mission element (faculty, coach, AOC, cadet), and BrigGen Wagie directed each mission element to use the data for action in their respective mission elements. Since the Commandant's representative (from CCD) briefed the data, BrigGen Wagie believed that the Commandant had the data and would take any action considered necessary to address issues involving cadet or AOC behavior.⁴⁴⁴ According to BrigGen Wagie, he did not give the Superintendent specifics from sexual assault surveys because he never received any such data. In addition, in responding to the claim that he should have been aware of the sexual assault survey data, BrigGen Wagie advised that he had many responsibilities and relied on the processes and organizations (e.g., the Sexual Assault Services Committee) he helped to establish before becoming the Dean.⁴⁴⁵ In addition, USAFA senior leaders, including BrigGen Wagie, were being told continually that the sexual assault reporting program was a highly successful "model" program, which others were attempting to emulate.⁴⁴⁶

Supporting Testimony. Two former Directors of the Cadet Counseling Center, advised that (1) sexual assault incidents were reported to the Vice Commandant, and (2) sexual assault data collected on CASIE hotline reports, social climate surveys, and anecdotal reports were briefed to the Sexual Assault Services Committee.⁴⁴⁷ When asked if he recalled briefing the Dean on annual sexual assault report numbers, he advised that he did not brief the information at staff meetings. When asked what specific sexual assault information he did brief to the Dean, he stated:

⁴⁴³ November 19, 2003, Wagie Interview Transcript, pp. 69-70

⁴⁴⁴ Ibid, p. 62

⁴⁴⁵ Ibid, pp. 90-91; November 19, 2003, Wagie Supplemental Statement, p. 1

⁴⁴⁶ Ibid, p. 91

⁴⁴⁷ [REDACTED] Interview Transcript (AFGC Working Group), p. 8; [REDACTED] Interview Transcript (AFGC Working Group), p. 7; [REDACTED] Interview Transcript (AFGC Working Group), p. 8

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“... Not very much because the dean wasn’t really in the loop on sexual assault. We would brief that through the sexual assault services committee. . . . [In] those monthly meetings of the DF [Dean of Faculty] agency heads, the number of sexual assault reports wasn’t something that was routinely briefed. . . .”⁴⁴⁸

When asked if he recalled whether sexual assault issues were ever briefed to the leadership, the former Director stated:

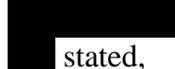
“... [I]f there was a certain case that came up or if the vice-commandant or the commandant weren’t readily available, I would talk with General Wagie about it just so the senior leadership had some tie-in. But routinely, the dean was separate from the sexual assault reports because he manages the academic portion and the sexual assault reports were seen more as an investigative or disciplinary response and treatment side. So those were briefed to the vice-commandant as per 51-201 and then subsequently through the Sexual Assault Services Committee.”⁴⁴⁹

Regarding those times that he briefed BrigGen Wagie on specific cases when the commandant or vice-commandant were unavailable, the former director stated:

“... if there was something of an immediate or urgent nature and the commandant had been gone for a day or something like that or the vice-commandant would be out of pocket, but those would be very rare instances. I mean, I can only think of one or two times when that would have occurred. . . . the dean is not part of our . . . tracking and response and reporting. The tracking form went from the sexual assault services office, which is housed here in the counseling center, to the vice-commandant to the commandant to the superintendent.”⁴⁵⁰

According to the former Director, in the one or two cases when he informed BrigGen Wagie about sexual assaults, he followed up with a tracking form to the Vice Commandant.⁴⁵¹

The former Superintendent (2000-2003), LtGen Dallager, believed that BrigGen Wagie would have pursued any major sexual assault issue coming to his attention. He also believed the previous reports indicating BrigGen Wagie should have known about the problems due to his longevity at USAFA were unfair. According to LtGen Dallager, 95 percent of the USAFA population was very surprised when the sexual assault issue surfaced.⁴⁵²

, confirmed that BrigGen Wagie did not receive sexual assault data.  stated,

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⁴⁴⁸  Interview Transcript (AFGC Working Group), p. 8

⁴⁴⁹ Ibid, pp. 8-9

⁴⁵⁰ Ibid, p. 9

⁴⁵¹ Ibid, p. 9

⁴⁵² March 3, 2004, Dallager Interview Transcript, pp. 62-63

“I was occasionally asked by USAFA/XPR . . . to review the entire Social Climate Survey, with a particular emphasis on questions in the sexual assault portion of the Social Climate Survey. I remember making changes to some of these questions. I believe I saw the results of the survey every year. I am not sure how or to whom these results were debriefed.

In December of 1998, I gave a briefing to the “Top Six” (General Oelstrom, General Lorenz, General Wagie, [REDACTED], [REDACTED]). I do not recall giving any other briefings on sexual assault or sexual assault statistics to Academy leadership.”⁴⁵³

The subsequent [REDACTED] advised that [REDACTED] received sexual assault survey data and used the information in training CASIE volunteers, as well as in cadet briefings, such as “Street Smarts” training and Basic Cadet Training (BCT) briefs.⁴⁵⁴ The [REDACTED] advised that [REDACTED] received a report on sexual assault survey results from CCD, but never presented the results to anyone. [REDACTED] was unsure “what happened to” sexual assault survey results.⁴⁵⁵

According to the [REDACTED] sexual assault reports to the Cadet Counseling Center were reported to the Vice Commandant. He could not remember whether senior leadership was ever briefed on sexual assault survey data, but confirmed that they were not briefed on survey validity issues.

The [REDACTED] did not remember receiving any sexual assault survey results before July 2002.⁴⁵⁶

Duties and Responsibilities. The Dean of Faculty is responsible for the academic mission, which includes overseeing the curriculum, ensuring cadets receive “a world-class education” to be the best officers possible, and supervising the faculty. The various governing policy documents and relevance to the sexual assault reporting program are summarized below:

- USAFAI 36-173, “Organization of the USAF Academy, Program for Air Force Cadets,” August 11, 1997, outlines duties for all USAFA personnel responsible for educational policy or involved with implementing and administering the USAFA program. The policy applies to all offices involved with cadet academic, athletic, and military training programs. Paragraph 3.2 describes duties and responsibilities for the Dean of Faculty. The prescribed duties and responsibilities do not include anything relating to the sexual assault process. Further, paragraph 3.2.5 requires the Dean of Faculty to “[p]rovide . . . a full range of educational, career, and personal counseling services through the Cadet Counseling Center.” The

453 [REDACTED] Interview Transcript (AFGC Working Group), p. 2

454 [REDACTED] Interview Transcript (AFGC Working Group), p. 1

455 [REDACTED] Interview Transcript (AFGC Working Group), p. 1

456 [REDACTED] Interview Transcript (AFGC Working Group), p. 35

policy does not prescribe any responsibility for monitoring or acting on sexual assaults.

- USAFAI 51-201, “Cadet Victim Witness Assistance and Notification Procedures,” April 18, 2000, also does not require the Dean of Faculty to respond to or monitor sexual assault or related issues. The policy assigns these responsibilities to the Commandant and Sexual Assault Services Committee, and the Superintendent ultimately.

Conclusion

Our work did not develop evidence establishing that BrigGen Wagie failed as a leader, or was responsible for problems associated with the USAFA sexual assault program.

- BrigGen Wagie was not directly involved in the sexual assault reporting program. The Cadet Counseling Center and Sexual Assault Services Branch were included in the Dean of Faculty organization, but handled all sexual assault matters directly with the Commandant or Vice Commandant, and the Sexual Assault Services Committee.
- During staff meetings with sub-organization element heads, BrigGen Wagie was told about (summary numbers without details) sexual assault hotline calls and incidents that the Cadet Counseling Center received. The numbers were not viewed as a cause for concern and BrigGen Wagie was not responsible for monitoring or acting on the information.
- BrigGen Wagie was not responsible for administering or analyzing results from social climate surveys that were conducted. Senior USAFA leaders, including BrigGen Wagie, were briefed on sexual assault information from social climate survey data in 1998 and again in 2002. Otherwise, BrigGen Wagie did not receive or learn about sexual assault information involved in social climate surveys.
- BrigGen Wagie possibly should have known that the social climate surveys were being considered invalid. However, under circumstances where BrigGen Wagie (1) was not responsible for administering the survey, or analyzing, or using the results, (2) was not briefed on sexual assault data from the surveys, and (3) was not informed the surveys were considered invalid, we cannot conclude that he should have taken action to overcome the validity issues.

PAGES 149-175 ARE BEING WITHHELD IN ACCORDANCE WITH THE
FREEDOM OF INFORMATION ACT UNDER EXEMPTIONS (b)(5) AND (b)(7)(A).