

NAVY'S NEXT DUTY

Reforming itself after sex scandal means following military law

By WILLIAM GREGOR

In recent weeks both journalists and politicians have been hyper-ventilating over the reports of sexual misconduct within the military. They have creatively combined disparate incidents and facts to advance various ideological or policy positions concerning the participation of women in the military. But, the actual restoration of order will be done by military professionals. If these professionals are to understand these incidents and crimes, they must be more careful in their understanding of the facts, military law and military discipline. Hanging the guilty bastards simply won't be enough.

A professional soldier knows that in a well-disciplined unit the commander's role in maintaining discipline is minimal. This is true because the soldiers understand the rules and regulations and intervene to prevent infractions, to keep their fellow soldiers straight. Additionally, if they observe an infraction they are bound to either correct it or report it to their superior.

The Uniform Code of Military Justice is designed to promote self-policing. Any person subject to the code may report an offense and prefer charges. The civilian notion of a victim preferring charges is foreign to the military because offenses are seen as an assault against the military community, discipline and order. The commander's role in maintaining order is also clear. He is obligated to investigate all reports. He also should be watchful of the company his soldiers keep, lest they become part of groups whose conduct or principles contravene military norms. Many soldiers find this surveillance intrusive, but it is good military policy.

The misconduct at the Tailhook Association convention in Las Vegas is not in itself significant. Neither sin nor crime is new to the military or society. The grievous error was committed by commanders who failed to investigate the charges or who sought to impede the investigation. They ignored their duty.

In human terms, it is understandable that a commander might regret the need to prosecute a skilled pilot who has just successfully returned from a war; in professional terms it is not. An officer on duty knows no one. Additionally, the participation of senior officers in a private association notorious for its dissolute after-hours parties gave an air of approval to acts contrary to military law. However, public complaints that Naval officers have not come forward voluntarily to testify must be tempered by the knowledge that service members are protected by the Fifth Amendment and are not obligated to testify against themselves. Although honor would call for an officer to sacrifice himself for the good of his service, honor cannot be expected from persons of poor character.

Regrettably editorial discussions of the Tailhook incident have lumped with it the charges made by Spec. Jacqueline Ortiz, an Army reservist. Ortiz has testified that she was sodomized by SFC David J. Martinez while serving in Saudi Arabia. However, the case is very different and highlights the difference between civilian and military life. When Ortiz reported the assault, her commander did investigate. He reached the conclusion that sexual acts had been consensual and reprimanded both Ortiz and Martinez. The problem with that conclusion is that under military law sodomy is always a serious crime. Consensual sodomy is punishable by imprisonment and dishonorable discharge. Additionally, consensual sexual relations between non-commissioned officers and subordinates is unlawful. The commander should have preferred court-martial charges regardless of his personal views. How could he make such an obvious error?

The error is obvious only if you are familiar with military law. Reserve unit commanders do not have legal jurisdiction over their subordinates when they are not actually on drill. They are accustomed to tak-

OTHER VOICES



An F-18 Navy fighter plane flies over the USS America during sea trials. Some Navy pilots who belong to the Tailhook Association have been criticized for misconduct at recent conventions. But for recent changes in military law, much of the misconduct at the off-duty convention would have been beyond military jurisdiction.

ing no official notice of incidents in the civilian community. Off-duty reservists are considered private citizens and their conduct is regarded as a personal matter. In fact, Martinez had to be recalled to active duty so that the Army could legally reinvestigate the case. Similarly, had military law not recently changed, much of the misconduct at the Tailhook convention would have been beyond military jurisdiction.

In 1969, Sgt. O'Callahan appealed his Army conviction for attempted rape to the Supreme Court. Justice Douglas, writing for the majority, ruled that because the assault had occurred off-post in a civilian hotel the offense was not service-connected and the military, therefore, had no jurisdiction. Soon after an officer convicted of consensual sodomy with an enlisted man appealed his conviction on similar grounds. However, the court ruled that because the partner was a service member the military retained jurisdiction.

For the next 18 years, commanders could take no official notice of sexual offenses if they occurred off-post and involved only civilians. Fortunately, in June 1987, in another sexual assault case, the Supreme Court reversed O'Callahan; the active duty military regained universal jurisdiction over service members. Yet, the effect of 18 years of neglect upon the military is not easily erased.

In those 18 years, many soldiers, including officers, have come to believe that what they do off duty away from their units is not the concern of their command. Some commanders have come to view off-duty sexual conduct as a private matter and have ignored the regulations that prohibit sexual relation-

ships between officers and enlisted soldiers and enlisted soldiers of different rank. Yet, it seems perfectly clear that the conduct of the officers in that Las Vegas hotel would have been just as injurious to military discipline if the victims had all been civilians or if they willingly participated.

Sodomy, fraternization, and indecent acts have long been proscribed as conduct prejudicial to good order and discipline. Officers may hold diverse opinions about the prudence of these regulations, but duty demands that they know and enforce the law. To do otherwise is to invite disorder.

The military is an armed society. Its members are recruited for their capacity for violence. Americans expect that that force will be directed solely at the nation's enemies, not against other service members. Consequently, a true professional knows that a good officer adheres to all the rules, not just some and certainly not only those of his choosing. Society's concern for privacy, liberty or licentiousness must not distract an officer from his duty. Fortunately, none of the suspects in these incidents has claimed that their acts are protected by a right of privacy, though no doubt someone will. Fortunately, too, there are still officers who know their duty and who do it.

William J. Gregor, Ph.D., LTC, U.S. Army, is professor of military science at the University of Michigan. These views represent Gregor's and not necessarily those of the Department of Defense or the U.S. Army. Readers are invited to contribute to Other Voices. Please call 994-6863 for information.