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Sex Cases Rarely Go to Trial at Academy

Despite Evidence, Most Accused Midshipmen Expelled Instead

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With striking regularity, sexual-assault charges at the U.S. Naval Academy are dismissed without trial and the suspects are instead expelled from school, according to an analysis of hundreds of pages of Navy documents.

Of 56 midshipmen accused of sexual assault since 1998, two have been convicted, and one of those was in a civilian court, a review by The Washington Post of Navy incident reports, case summaries and data released by the school shows.

In virtually every other case in which investigators found evidence of sexual assault, military prosecutors -- and, in one instance, civilian officials -- cut deals forcing the alleged offender to leave the academy without facing trial and without having a criminal record.

At colleges across the country, administrators acknowledge that too few campus rapes lead to prosecution. But unlike most colleges, the Naval Academy has the power to bring criminal charges directly against its students through the military justice system.

The college has seen an increase in sexual-assault reports in recent years: Of 72 cases since 1998 in which a midshipman was the victim or the accused, 51 have come in the past four academic years alone -- a rise that academy officials attribute to a concerted effort to encourage victims to report incidents.

But increased reporting is only part of the solution, victims advocates say.

"It's not about how many reports you're receiving, it's about how much justice you're providing to victims of crime," said Anita Sanchez, spokeswoman for the Miles Foundation, an advocacy group for victims of violence associated with the military.

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Academy leaders say that they take every case seriously but that allegations are often hard to prove. In at least 13 cases, victims did not pursue an investigation.

"Factors such as these impact the availability of evidence necessary to prove that an offense occurred when taken to military or civilian courts," said Mike Brady, an academy spokesman.

And because most involve acquaintance rapes, the charges are often difficult to prove under military law. Although most state and federal rape laws have been expanded to encompass date rape, the military has been slow to follow. Congress finally expanded the military's rape statute in the 2006 National Defense Authorization Act, but it won't go into effect until next year.

The 160-year-old school has been plagued by sexual assault and harassment issues since it began admitting women in 1976, despite intensive high-level studies and hundreds of recommendations for change.

The school finds itself in the spotlight again with Lamar S. Owens Jr., last season's starting quarterback, who is accused of raping a midshipman in her dorm room. A hearing on his case was postponed last week as prosecutors consider additional charges against him.

"I have constantly made it clear to all our staff and midshipmen that the Navy does not tolerate sexual harassment and sexual assault," the academy's superintendent, Vice Adm. Rodney P. Rempt, said in a statement yesterday.

45 Cases Analyzed

The Post analyzed incident reports and summaries for 45 cases from the 1997-98 academic year through the 2003-04 year, the latest for which detailed documents were readily available. The records contain specific information about the cases but do not name victims or offenders.

In three of four incidents, the suspect and victim knew each other. In two of three, alcohol was a factor, and about half of those involved underage drinking, the analysis shows. Both issues have taken center stage in the Owens case, in which the football player, 22, and his 20-year-old accuser have admitted to drinking.

Of the 45 cases examined, six were referred to court-martial after an investigating officer determined that there was enough evidence to prosecute at a preliminary hearing, known as an Article 32.

But none ended up going to trial. One case involving a senior

enlisted Marine accused of raping a midshipman was thrown out by the Marine Corps for procedural errors. The Naval Academy attempted to reopen the case, but a military judge ruled that it did not have jurisdiction.

The five other cases involved midshipmen accused of sexually assaulting or raping female midshipmen. In each case, the accused was discharged from the academy before trial.

Overall, The Post analysis found 22 instances in which midshipmen accused of sexual assault were discharged from the academy between 1998 through May 2004. All but three were for offenses related to their case, but usually there were reduced charges, such as sexual misconduct rather than criminal sexual assault. In two cases, the suspects received other-than-honorable discharges; the rest received general discharges or administrative separations.

In one case, charges against a midshipman were dropped after his accuser refused a military judge's order to testify about child sexual abuse involving her father. The accused midshipman was later expelled for other sexual misconduct.

The only case that went to trial in that period was heard in a civilian court in San Diego, where a midshipman was accused of raping a civilian woman in June 2001 while on summer duty. He was sentenced to one year in jail and five years' probation. He was also required to register as a sex offender.

The only court-martial in a sexual-assault case since 1998 came last summer and involved two male midshipmen. That resulted in a conviction, and the defendant was sentenced to one year in the brig. The case is being appealed. Four other cases remain under investigation.

The fact that accused midshipmen, in almost every case, were able to avert prosecution by leaving the academy is "profoundly troubling," said Jamin B. Raskin, a law professor at American University with extensive experience in civil rights and sexual discrimination.

"A sexual assault should not be treated like a case of plagiarism," Raskin said. "This is not just an offense against academic rules; it's a crime. . . . The ethos of the institution should not be you take whatever you can get and if you get caught, then you leave."

Yet sexual assaults on college campuses are rarely prosecuted, one victims advocate said, and expelling assailants from the academy may amount to more enforcement than is typical elsewhere. Catherine Bath, executive director of Security on Campus Inc., said assault reports at the academy "are actually being taken seriously at some level."

On most college campuses, she said, "rarely do you see expulsions. We'd be happy with suspensions. But they don't want to ruin the young man's life."

Not an Unusual Tack

It's not only military prosecutors who have taken that approach.

In a 2001 case handled by the Anne Arundel County state's attorney, charges against three academy football players who were accused of raping a midshipman at an off-campus party were dropped in exchange for their resignations from the school.

Academy officials say there have been eight cases in the past five school years in which investigators found sufficient evidence of sexual assault to prosecute, some of which overlapped in the cases studied by The Post. Two involved rape. In those eight cases, seven of the accused midshipmen were removed from the academy, and one was allowed to remain after being punished through the school's administrative conduct system.

A Navy official familiar with many of the cases said that often the woman's memory was blurry, making prosecution difficult. Other times, the official said, the victim did not want to endure a court-martial.

"The people who got other-than-honorable in lieu probably talked to their counsel. Their counsel comes to us and says, 'Look, it's always hard to prove these things. How about if my guy offers a plea that he substantially did what you alleged him to do and you give him an other-than-honorable discharge in lieu of going to court?' " said the official, who spoke on condition of anonymity because of privacy concerns. "And, of course, we go to the victim and make sure everybody's kind of in concurrence with that processing."

Because the school is essentially a military base, the superintendent determines whether a case will be tried criminally or administratively. Or he can drop the charges. He must also endorse resignations, which the secretary of the Navy must approve.

But even after a resignation, if the accused are juniors or seniors, they could be required to reimburse the Navy from \$60,000 to \$130,000 for their education or serve two years as an enlisted sailor or Marine. Midshipmen who resign in their first two years do not have to reimburse the government.

In August, a Pentagon task force examining sexual assault and harassment at the Naval Academy and at West Point found that the Army academy convened five courts-martial and secured three convictions in sex-related crimes over a 10-year period, the report says. The Naval

Academy had one court-martial and conviction during that time.

The task force attributed the low number of prosecutions overall to the reluctance of victims to report crimes. Studies show that only about 5 percent of sexual-assault victims on college campuses report the crime. But the task force also pointed out a problem with the military rape statute: It requires proof that intercourse occurred "by force and without consent."

The most common type of sexual-assault cases reported at the academies are acquaintance rape, "which usually do not involve the use of force necessary to obtain a conviction," the task force reported. A new, expanded military statute goes into effect next year to make it easier to prosecute acquaintance rapes.

That change in law, and pressure on the academy to make its campus friendlier to women in the wake of so many critical studies, could mean more cases going to trial.

"I think you're going to see fewer midshipmen walk away from sex charges like you did a few years ago," said Charlotte E. Cluverius, a former Navy lawyer and academy law instructor who is now in private practice. "I think we're in the middle of seeing that now."

Staff writer Eric Rich contributed to this report.

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