Duke Law Journal

VOLUME 45

FEBRUARY 1996

NUMBER 4

BY FORCE OF ARMS: RAPE, WAR, AND MILITARY CULTURE

MADELINE MORRIS[†]

TABLE OF CONTENTS

INTRODUCTION	652
I. RAPE BY MILITARY PERSONNEL	654
A. <i>The Rape Differential</i>	656
1. <i>The Peacetime Study</i>	659
2. <i>The Wartime Study</i>	664
II. THE RAPE DIFFERENTIAL: CAUSES AND CULTURE . .	674
A. <i>Causes</i>	674
B. <i>The Rape Differential and Military Culture</i>	691
1. <i>Primary Groups</i>	691
2. <i>Primary Groups in Military Organizations</i> . .	692

[†] Copyright © 1996 by Madeline Morris. Professor of Law, Duke University. I am grateful for the contributions of Kate Bartlett, Lawrence Baxter, Brian Belanger, Kenneth Bullock, Paul Carrington, Dennis DeConcini, Cynthia Enloe, Robinson Everett, William Fulton, John Gagnon, Pamela Gann, Tim Gearan, Shannon Geihlsler, Andrew Gordon, Françoise Hampson, Donald Horowitz, Susan Kerner-Hoeg, Benedict Kingsbury, Peter Klopfer, Andrew Koppelman, Paul Kurtz, David Lange, Charlene Lewis, Robert Lifton, Dino Lorenzini, Elizabeth McGoogan, Laura Miller, Mary Newcomer, Jonathan Ocko, Steven Prentice-Dunn, Horace Robertson, Alex Roland, Gladys Rothbell, Sheldon Rothbell, Mady Segal, Scott Silliman, Judith Stiehm, Olga Suhomlinova, Theodore Triebel, Laura Underkuffler, William Van Alstyne, Ronald Vergnolle, Neil Vidmar, Michael Wells, Yoshiaki Yoshimi, Chung-ok Ynn, the participants at the April 1994 Colloquium of the Georgia Humanities Center, the participants at the May 27, 1993 meeting of the Feminist Discussion Group of Kyoto, and the participants at the 1993 Rockefeller Foundation Conference on Women and War. For methodological assistance, I am indebted to John Jarvis, Survey Statistician, Criminal Justice Information Services Division, Federal Bureau of Investigation (FBI), and to Kenneth Land, Chair, Department of Sociology, Duke University. As always, I am indebted to Sandi Perkins for her excellent secretarial assistance and support.

This research was supported in part by the Eugene T. Bost, Jr. Research Professorship Fund of the Charles A. Cannon Trust No. Three.

3.	<i>Sexual Norms in Primary Groups</i>	698
4.	<i>Rape-Conducive Sexual and Gender Attitudes</i>	701
5.	<i>Rape-Conducive Sexual Norms in Military Culture</i>	706
a.	<i>Attitudes toward masculinity in military culture</i>	708
b.	<i>Attitudes toward sexuality in military culture</i>	710
c.	<i>Attitudes toward women in military culture</i>	716
6.	<i>Rape-Conducive Sexual Norms and the Psychology of Individual Military Personnel .</i>	721
7.	<i>Deindividuation Norms in Primary Groups .</i>	725
a.	<i>Normative deindividuation in general . . .</i>	725
b.	<i>Normative deindividuation in military organizations</i>	727
III.	CHANGES IN THE CONTENT OF MILITARY CULTURE	731
A.	<i>The Combat Exclusions</i>	734
B.	<i>Accessions Policies</i>	739
1.	<i>Accessing Recruits</i>	739
2.	<i>Basic Training</i>	742
IV.	FUNCTIONS OF AND ALTERNATIVES TO A MASCULINIST MILITARY IDENTITY	747
CONCLUSION		761

INTRODUCTION

Frequently throughout the history of warfare, widespread rape has been associated with war.¹ It has been alleged in recent years that rape and sexual assault by military personnel in peacetime also constitute problems of substantial magnitude.² This Article seeks to examine the relationship between sexual assault, combat, and military organizations. Toward that end, the Article first compares military rape rates with civilian rates in peace as well as in war. In the light of those crime-rate comparisons, the Article then offers policy analyses and proposals with a view to reducing the incidence of rape by military personnel.

1. See *infra* note 5.

2. See *infra* notes 6-10 and accompanying text.

The research conducted for this Article indicates that the peacetime rates of rape³ by American military personnel⁴ are actually lower (controlling for age and gender) than civilian rates. However, the data also indicate that peacetime military rape rates are diminished from civilian rates far less than are military rates of other violent crime. A similar phenomenon is also reflected in the wartime data collected: Military rape rates in the combat theater studied climbed to several times civilian rates, while military rates of other violent crime were roughly equivalent to civilian rates. Thus, in both the wartime and the peacetime contexts studied, a rape differential exists: The ratio of military rape rates to civilian rape rates is substantially larger than the ratio of military rates to civilian rates of other violent crime.

The existence of a military rape differential in war and in peace suggests that it may be possible to reduce military rape rates, perhaps bringing them into line with military rates of other violent crime. This Article considers whether and how such a reduction in military rape rates might be achieved.

Part I examines peacetime and wartime data, which both reflect the rape differential. Part II then considers means of reducing military rape rates. It considers possible underlying causes of the rape differential and appropriate responses to those underlying factors. In particular, Section II(B) explores the hypothesis that the rape differential may result in part from certain aspects of military culture: Military organizations are composed of bonded groups of individuals who come to share a set of group norms—a culture. As is discussed, the norms currently prevalent within military organizations include a configuration of norms regarding masculinity, sexuality, and women that have been found to be conducive to rape. To the extent that such military cultural factors con-

3. This Article focuses specifically on *rape* by military personnel. However, research in this field suggests that the causal factors affecting rape share common features with the factors affecting sexual harassment. See, e.g., Carl A. Bartling & Russell Eisenman, *Sexual Harassment Proclivities in Men and Women*, 31 BULL. OF THE PSYCHONOMIC SOC'Y 189, 191 (1993) (finding common characteristics associated with rape proclivity and sexual harassment proclivity). For that reason, the observations made in this Article are in part applicable to sexual harassment by military personnel.

4. It is anticipated that the patterns of rape incidence identified in the present study may be shared by the military organizations of many nations and cultures. However, because the empirical study reported in this Article is a case study of the American military only, further empirical work will be required to test the hypothesis that the rape differential described herein is generalizable to other nations and cultures.

tribute to the military rape differential, changing those normative aspects of military culture may foster a reduction in the incidence of rape by military personnel.

Part III attempts to identify policy choices that would facilitate the contemplated changes in the gender and sexual culture of the military. Contemplating such a fundamental change in military culture gives rise to a critical question: Can the gender and sexual norms of military organizations be changed without reducing military effectiveness? Or, put differently, are the norms in question—the gender culture of the military—integrally related to military effectiveness? That question is addressed in Part IV, which explores the functions of the gender culture of the military and considers the implications for military effectiveness of making changes in that culture. In identifying the existence and likely contributing causes of a rape differential within military organizations, the Article points to a set of previously unexamined considerations that should be taken into account in shaping military law and policy.

I. RAPE BY MILITARY PERSONNEL

Rape by military personnel occurs in the two very different contexts of war and peace. It is commonly assumed that the pervasiveness of rape in war results in some way from the nature of war itself: "War is hell," and one of its concomitants is rape.⁵ But

5. Certainly, rape in war is pervasive. Perhaps surprisingly, rape victims in war commonly include not only enemy civilians and troops but also allied and national civilians and even comrades in arms.

The tragedy in the former Yugoslavia provides recent examples of rape in war. See *Situation of Human Rights in the Territory of the Former Yugoslavia: Report of the Special Rapporteur of the Commission on Human Rights*, U.N. ESCOR, 49th Sess., Annex II, Agenda Item 50, at 63-75, U.N. Doc. E/CN.4/1993/50 (1993); Roy Gutman, *Serbs' Rape of Muslim Women in Bosnia Seen as Tactic of War*, HOUSTON CHRON., Aug. 23, 1992, at A1; Carol J. Williams, *Balkan War Rape Victims: Traumatized and Ignored*, L.A. TIMES, Nov. 30, 1992, at A1. The European Community estimated in its January 8, 1993 Report that 20,000 Muslim women had been raped by Serbian forces. See Jeri Laber, *Bosnia: Questions About Rape*, N.Y. REV. OF BOOKS, Mar. 25, 1993, at 4; *Rape Was Weapon of Serbs*, U.N. SAYS, N.Y. TIMES, Oct. 20, 1993, at A1. Such estimates can be subject to considerable inaccuracy, but may nevertheless provide some initial indication of the magnitude of the problem.

Although Muslims and Croats are also guilty of widespread war-related rapes, see Lance Morrow, *Unspeakable*, TIME, Feb. 22, 1993, at 48, numerous reports appear to indicate that Serbian soldiers may have been under orders to rape, pursuant to a deliberate Serbian military policy. See *id.* The Serbian case would not be unique with regard to

the involvement of the national government in mass rapes by military personnel. The Japanese government has recently admitted that forced-prostitution centers, called "comfort stations," were established and run by the Japanese military pursuant to official governmental policy, prior to and during World War II. See James Sterngold, *Japan Admits Army Forced Women into War Brothels*, N.Y. TIMES, Aug. 5, 1993, at A2; Teresa Watanabe, *Japan Admits That WWII Sex Slaves Were Coerced*, L.A. TIMES, Aug. 5, 1993, at A1. Estimates of the total number of women forced into sexual slavery at Japanese "comfort stations" range from 70,000 to 200,000. See Leslie Helm, *Human Rights: Koreans Won't Let Japan Bury "Comfort" Issue*, L.A. TIMES, Aug. 8, 1992, at A3.

Rape also is common in wars where there is no evidence of an official policy to rape. During the Rwandan war and genocide of 1994, thousands of women and girls were raped in a most brutal and inhuman manner. See AFRICAN RIGHTS, RWANDA: DEATH, DESPAIR AND DEFIANCE 748-97 (rev. ed. 1995). In the Vietnam War as well, horrific descriptions of widespread rape were reported—by veterans as well as others—without any suggestion that an official policy was involved. See, e.g., SUSAN BROWNMILLER, *AGAINST OUR WILL: MEN, WOMEN AND RAPE* 87-118 (1975); VIETNAM VETERANS AGAINST THE WAR, *THE WINTER SOLDIER INVESTIGATION* 13-14, 29, 44, 53-54, 94 (1972).

The victims of rape in war are not exclusively "enemy" civilians or troops. Allied and national civilians and troops also are assaulted. For example, rape of French women by American soldiers in World War II was sufficiently pervasive to cause General Eisenhower's headquarters to issue a directive in December 1944 to U.S. Army Commanders announcing the General's "grave concern" and instructing that speedy and appropriate punishments be administered. See JOHN COSTELLO, *LOVE SEX AND WAR* 143 (1985).

Civilian women in Peru recently have been subjected to widespread rape by military troops of their own country—apparently without regard to which "side" in the war, if any, with which the women may have been associated. As described in a publication of Human Rights Watch:

Throughout Peru's 12-year internal war, women . . . have been threatened, raped and murdered by government security forces; and women have been threatened, raped and murdered by the Communist Party of Peru—Shining Path. Often, the same woman is the victim of violence by both sides.

See AMERICAS WATCH & THE WOMEN'S RIGHTS PROJECT, *UNTOLD TERROR: VIOLENCE AGAINST WOMEN IN PERU'S ARMED CONFLICT* 1 (1992). For additional examples of rape of civilian women by military troops of their own countries, see BROWNMILLER, *supra*, at 81; Christine Chinkin, *Peace and Force in International Law, in RECONCEIVING REALITY: WOMEN AND INTERNATIONAL LAW* 203, 203-06 (Dorinda G. Dallmeyer ed., 1993).

Not only allied and national civilians but also comrades—co-members of the same military units—are raped in theaters of combat. A preliminary study of female Vietnam veterans estimated that as many as 29% of the American military women who served in Vietnam were the victims of attempted or completed sexual assaults. See *The Counseling and Other Needs of Women Veterans Who Were Sexually Assaulted or Harassed While on Active Duty and VA's Ability to Respond, Hearings Before the Senate Comm. on Veterans' Affairs*, 102d Cong., 2d Sess. 9 (1992) [hereinafter *Counseling and Other Needs of Women Veterans*] (statement of Dr. Jessica Wolfe, Associate Director, National Center for PTSD, Behavioral Science Division, Dep't of Veterans Affairs). (It should be noted, however, that this testimony reported only preliminary findings of an unpublished study. See Letter from the office of Jessica Wolfe to author (July 26, 1994) (on file with author). In addition, the 29% estimate in the Wolfe study is based not on data drawn from a random sample but on data drawn from a set of women who volunteered to participate in the

this "c'est la guerre" view of rape in war may in fact hide more than it reveals. As is examined below, influences particular to military populations appear to affect the incidence of rape by military personnel in peacetime as well as in war.

To distinguish the effects of war on rape rates from the effects of military service on rape rates, we must examine not only rates of rape in war but also rates of rape by military personnel in the peacetime context. For that reason, this section compares the rape incidence of military and civilian populations using peacetime as well as wartime data.

A. *The Rape Differential*

Rape, sexual assault, and sexual harassment by military personnel has been a focus of increasing concern in recent years. Some claim that sexual assault, including rape, within the United States military is a problem of substantial proportions;⁶ and some argue that sexual assault may be more pervasive among military personnel than among civilians.⁷ Several witnesses at Senate hearings in 1992 alleged that the extent of sexual assault within the U.S. military is significantly underestimated because reporting is informally discouraged and because reports that are made are frequently swept aside.⁸

survey. *Id.* That self-selection of respondents may, of course, introduce some bias into the data.) During the Persian Gulf War period, 24 female American military personnel were raped or sexually assaulted by male American soldiers, according to official reports. See John Lancaster, *24 Women Assaulted in Gulf Duty*, WASH. POST, July 21, 1992, at A1 (reporting six rapes, four attempted rapes, and fourteen indecent assaults). One self-report victimization study of female American Gulf War veterans found that approximately 8% of respondents had experienced attempted or completed sexual assault during their Gulf War deployment. Jessica Wolfe et al., *Self-Reported Sexual Assault in Female Gulf War Veterans* (Nov. 1992) (paper presented at the Annual Meetings of the Ass'n for Advancement of Behavior Therapy). Wolfe et al. state that the 8% sexual assault victimization rate of women deployed in the Gulf War represents "nearly a ten-fold increase over rates obtained using female community samples." *Id.* Wolfe et al. do not state whether those community samples control for age differences in military and civilian populations. Again, the 8% figure in the study is based on a set of self-selected respondents rather than on a random sample, which may introduce bias into the data.

In sum, rape in war is pervasive. It may be officially permitted or forbidden. Its victims include civilians as well as troops, allies, and sometimes even nationals as well as enemies.

6. See *Counseling and Other Needs of Women Veterans*, *supra* note 5.

7. See, e.g., *id.* at 382 (statement of Christine Courtois).

8. See *id.* at 12, 13 (statement of Diana Danis); *id.* at 24 (statement of Jacqueline Ortiz); *id.* at 26 (statement of Barbara Franco); *id.* at 28, 33-34, 38-39 (statement of

Many have pointed to the events at the 1991 Tailhook convention as illustrative of a broader problem of sexual assault within the military. At that convention of Navy and Marine aviators, at least ninety people (eighty-three women and seven men) were sexually assaulted one or more times by U.S. military men.⁹ The Department of Defense Inspector General's report on Tailhook '91 makes clear that these events were not an aberration. As the report states, "Our investigation disclosed that gauntlet-related indecent assaults dated back to at least Tailhook 88."¹⁰ It has been widely suggested that the incidents of sexual assault at the 1991 Tailhook convention represent the small visible tip of an underlying iceberg of military sexual assault.

In fact, however, little is known about the actual extent of sexual assault by military personnel because little data on this issue has been collected.¹¹ A large-scale study of active duty military personnel conducted by the Defense Manpower Data Center in 1988 found that 5% of the female respondents and 1% of the

Kelley Richard).

Of course, it is also frequently remarked that rates of sexual assault are underestimated in the civilian context. The author is aware of no systematic comparison of the relative accuracy of military and civilian estimates of sexual assault rates. For further discussion of military and civilian rape reporting and recording rates, see *infra* note 33.

9. See INSPECTOR GEN., U.S. DEP'T OF DEFENSE, TAILHOOK 91, PART 2: EVENTS AT THE 35TH ANNUAL TAILHOOK SYMPOSIUM VI-13 to VI-14 (1993); see also David Ballingrud, *Assaults Tarnish Navy Group*, ST. PETERSBURG TIMES, Jan. 17, 1992, at 1A; John Lancaster, *Navy "Gauntlet" Probed; Sex Harassment Alleged at Fliers' Convention*, WASH. POST, Oct. 30, 1991, at A1.

While other forms of sexual assault were reportedly pervasive, no allegations of rape at Tailhook '91 have been reported.

For a critique of some aspects of the Department of Defense Inspector General's Report on Tailhook '91, see William H. Parks, *Tailhook: What Happened, Why & What's to Be Learned*, PROCEEDINGS, Sept. 1994, at 89, 101.

10. INSPECTOR GEN., U.S. DEP'T OF DEFENSE, *supra* note 9, at VI-3; see also John C. Bahnseu, *Do We Need a Few Good Men?*, PROCEEDINGS, Aug. 1994, at 59, 59 ("According to my good Navy sources, Tailhook '91 was not an unusual Tailhook get-together, except for a larger turnout of women pilots.").

11. See *Counseling and Other Needs of Women Veterans*, *supra* note 5, at 10 (statement of Diana Danis); 1990 NAVY WOMEN'S STUDY GROUP, AN UPDATE REPORT ON THE PROGRESS OF WOMEN IN THE NAVY III-28 (1990) ("The incidence, the reporting, and the actions taken regarding sexual assault/rape are not fully captured in any Navy data base."); Gary A. Warner, *Rape In Military: Vexing Problem, but Difficult to Measure*, ORANGE COUNTY REG., July 11, 1992, § A, at 1; Gary A. Warner, *Pentagon Has No Clearinghouse for Data on Rape in Military*, ORANGE COUNTY REG., May 18, 1992, § A, at 18; cf. 1990 NAVY WOMEN'S STUDY GROUP, *supra*, at III-23 ("The lack of a data base and a common punitive charge for sexual harassment inhibits command oversight and trend analysis.").

male respondents stated that they had been the victims of actual or attempted rape or sexual assault during the previous year.¹² While that study indicates that the majority of perpetrators of all forms of sexual harassment reported were other military personnel,¹³ the specific ratio of military to civilian perpetrators of rape/sexual assault is not stated. Because the purpose of the study was to measure *victimization* of military personnel, it did not seek to estimate rates of rape/sexual assault *perpetration* by military personnel. Thus, it did not examine, for example, rape/sexual assault of civilians, American or otherwise, by military personnel.¹⁴

In sum, rather little is known about the extent of rape or sexual assault by military personnel. This Article attempts to make some meaningful comparison of the rape incidence of military and civilian populations. Toward that end, this study compares the rates of offenses committed by male U.S. military personnel¹⁵ and civilians in peacetime and during World War II (WWII).¹⁶

12. MELANIE MARTINDALE, DEFENSE MANPOWER DATA CENTER, SEXUAL HARASSMENT IN THE MILITARY: 1988, at xiii (1988). The "actual or attempted rape or sexual assault" category, though rather broad, was not further subdivided in the study.

Some commentators have noted that the Martindale study has the limitation that it did not provide for respondent anonymity, which may have resulted in underreporting. Wolfe et al., *supra* note 5, at 1.

13. See MARTINDALE, *supra* note 12, at 32-34.

14. A 1989 Navy study of sexual harassment rendered results similar to those obtained in the 1988 Defense Manpower Data Center study. See AMY L. CULBERTSON ET AL., ASSESSMENT OF SEXUAL HARASSMENT IN THE NAVY: RESULTS OF THE 1989 NAVY-WIDE SURVEY (1992). The Navy study, like the Defense Manpower Data Center Study, sought to measure *victimization* of, rather than *perpetration* by, military personnel. For that reason, the Navy study shares the limitations of the Defense Manpower Data Center study.

15. This Article does not examine officer and enlisted military personnel separately. A separate examination of those two populations would be valuable in subsequent research.

16. World War II was chosen for study because it is the most recent war, other than Vietnam, for which data were available in which the United States was engaged for a prolonged period, and in which troops had extensive contact with civilians. The Korean War was not chosen for study because of difficulty in obtaining relevant data. See Letter from Maria T. Hauna, Reference Librarian, Suitland Reference Branch, Nat'l Archives, to Kenneth W. Bullock, Research Assistant to author (Oct. 14, 1994) (stating that relevant records from Korean war are not indexed and may or may not exist) (on file with author). Vietnam was not chosen for study because its levels of low troop morale, particularly during the latter part of the war, would presumably influence crime rates. See Col. Robert D. Heinl Jr., U.S.M.C., *The Collapse of the Armed Forces*, ARMED FORCES J., June 1971, at 30, 30 ("The morale . . . of the U.S. Armed Forces [in Vietnam] are, with a few salient exceptions, lower and worse than at any time in this century and possibly in the history of the United States."). The Persian Gulf War was not chosen for study

As noted earlier, this Article focuses on the American military as a case study.¹⁷ It is anticipated that the observations made may be in part generalizable to the armed forces of other countries. Further research will be required, however, to determine the actual extent of generalizability.

To provide a context in which the rape data may be viewed more meaningfully, data on violent crimes other than rape will be considered together with the rape rate comparisons. Thus, the crimes considered in both the peacetime and wartime studies are murder/nonnegligent manslaughter ("murder/nn.m"), aggravated assault, and forcible rape.¹⁸ The raw data for both the peacetime and wartime studies are drawn from the FBI's Uniform Crime Reports for civilian crime statistics and from the archives of each military service for military crime statistics. All crime rate comparisons are for males only, and control for the age structures of the civilian and military populations.¹⁹

1. *The Peacetime Study.* The results of the peacetime (1987-92)²⁰ study are as follows. First, the rates of violent crime are *lower*, controlling for age, among the male military than among the male civilian population. This is true of rape as well as of the other violent crimes studied. Second, however, the diminu-

because troops' contact with civilians in the Persian Gulf was limited. See H.G. Reza, *When Troops Went to Persian Gulf So Did Military Justice*, L.A. TIMES, June 29, 1992, at B1.

Of course, because rape incidence and reporting are affected by societal factors that change over time, comparisons between 1940s wartime and contemporary peacetime rape statistics would be impracticable. The point of the present study, however, is not to compare rates or measure trends across time. Rather, this study seeks to compare military and civilian rates—first within one time period (1944-45) and then within another (1987-92). Thus, the focus is on the military/civilian comparison within a *given* (1940s or 1980s) time period. For that reason, societal changes over time should not unduly influence the comparison.

17. See *supra* note 4.

18. All references hereinafter to "rape" refer to forcible rape. Statutory rape is not included in the scope of this study.

19. Regarding other possibly relevant control variables, see *infra* text accompanying notes 66-74. For a full description of the methodology used in studying the peacetime data, see *infra* Appendix A, at pp. 764-70.

20. The "peacetime" period studied is 1987-92. Of course, that period includes January and February of 1991, during which there was active fighting in the Persian Gulf War. That combat period, however, had no discernible effect on the relevant crime rates. Regression analyses performed on the data excluding 1991 produced essentially equivalent results to those produced when including the 1991 data.

tion in military rape rates from civilian rape rates is less—*several times less*—than the diminution in the rates of the other violent crimes. In other words, military rape rates are reduced far less from civilian levels than are military rates of other violent crimes.

During the period 1987–1992, the military services' murder/nn.m, aggravated assault, and rape rates compared, on yearly average,²¹ with civilian rates as shown in Table I.²² The figures shown in the Table are military rates for each crime as a percentage of civilian rates for that crime (controlling for age and gender).

TABLE I

1987–1992 AVERAGE YEARLY MILITARY RATES OF
MURDER/NN.M, AGGRAVATED ASSAULT, AND RAPE AS A
PERCENTAGE OF U.S. MALE CIVILIAN RATES
(controlling for age)²³

	Army	Navy	Marine Corps	Air Force
Murder/nn.m	20	7 ²⁴	13	5
Aggravated Assault	18	4	4	2
Rape	47	19	27	20

21. For year by year data, see *infra* Appendix B, at pp. 771–74.

22. One additional crime, robbery, was also examined in the peacetime study. (It was not examined in the WWII study because of a paucity of data.) The diminution in military robbery from civilian rates was even greater than the diminutions in murder/nn.m and aggravated assault. See *infra* Appendix B, at pp. 771–74. This is perhaps not surprising since robbery has a property-crime component. We might reasonably expect lower rates of property crime by a fully employed population such as the military than by the civilian population. Because the property-crime aspect of robbery makes it less comparable to rape than the violent crimes of murder/nn.m and aggravated assault, this Article does not focus on it.

23. Percentages are rounded to whole numbers.

24. The statistics kept by the Naval Criminal Investigative Service, which supplied the Navy and Marine Corps data, do not separate murder/nn.m from negligent manslaughter. For that reason, the murder/nn.m rates of the Navy and Marine corps have been estimated. For estimation method, see *infra* note 406 and accompanying text.

It thus appears that active duty military populations' rates of murder/nn.m and aggravated assault are substantially lower than civilian rates of those crimes, but that the diminution in military rape rates from civilian levels is much less significant.²⁵ To simplify presentation, I have combined the murder/nn.m and aggravated assault data into an index of "other-violent-crime."²⁶ Military populations' diminution of other-violent-crime rates from civilian levels can now usefully be compared with their diminution of rape rates from civilian levels.

Table III shows the extent to which military diminution in rates of other violent crime from civilian levels exceeds military diminution in rape rates from civilian levels.

25. The following additional information for the 1987-92 period may be of interest to the reader.

TABLE II

COMPARISON OF CRIME RATES OF MALE MILITARY
PERSONNEL AND THE CIVILIAN POPULATION
(average crime rate per 100,000)

	Army	Navy	Marine Corps	Air Force	Male Civilians (controlling for age)*	Civilians (<i>not</i> controlled for age or gender)
Rape	64	28	42	26	135	42
Murder/nn.m	8	4	7	3	37	9
Aggravated Assault	270	57	75	24	1,476	419

*The "civilian rates controlling for age" are controlled relative to the age distribution of the Army. Because the age distributions of the military services vary somewhat, the civilian rates "controlling for age" may be viewed only as approximations (though rather close approximations) for comparisons with the military rates for the services other than the Army.

For methodological and source information regarding the foregoing data, see *infra* Appendix A, at pp. 764-70.

26. The index is constituted by adding the raw numbers of murder/nn.m and aggravated assault per year in each military service and dividing by the number of male personnel in that service to establish a rate of other violent crime for each service.

TABLE III

THE PEACETIME RAPE DIFFERENTIAL²⁷

	Army	Navy	Marine Corps	Air Force
Other-Violent-Crime Ratio ²⁸	.18	.04	.05	.02
Rape Ratio ²⁹	.47	.19	.20	.20
Rape Differential ³⁰	2.62	4.95	5.63	10.74

Regression analyses performed on these peacetime data determined that, for each military service, the difference between the diminution of rape and diminution of other violent crime was statistically significant.³¹ Thus, although the particulars differ among the different services,³² all of the services show the same overall pattern of diminishing all violent crime rates, including rape, from civilian levels, but diminishing rape rates significantly less than the rates of other violent crime.³³

27. All numbers are yearly averages for 1987-92.

28. The "other-violent-crime ratio" is the ratio of military other-violent-crime rates to civilian other-violent-crime rates.

29. The "rape ratio" is the ratio of military rape rates to civilian rape rates.

30. The "rape differential" is the multiple by which the rape ratio exceeds the other-violent-crime ratio.

31. $P \leq .01$. The differences between the diminutions of rape and of aggravated assault alone were highly significant ($P \leq .01$) for all four services. Differences between the diminutions of rape and of murder/nn.m alone were highly significant ($P \leq .01$) for Army and significant ($P \leq .05$) for Air Force and Navy. For the Marine Corps, the difference between rape diminution and murder/nn.m diminution was significant ($P = .04$) when an outlier year (1987) is excluded, but not significant ($P = .14$) when the outlier is included. For a description of the regression analyses performed, see *infra* Appendix A, at pp. 769-70.

32. Indeed, the interservice differences in crime rates are fascinating in themselves. While beyond the scope of this Article, an analysis of the different crime patterns of the four services would be worthwhile.

33. In comparing any sets of crime statistics, there is always the possibility that differences in reporting patterns and record-keeping practices may distort findings. In the present study, the findings would be misleading if rape were *more* completely reported in military than in civilian populations, and/or if murder/nn.m or aggravated assault were *less* completely reported in military than in civilian populations. Either or both of those

reporting differences would cause an artificial appearance of a lesser diminution in military rates of rape than of other violent crime. It appears, however, that reporting differences of those sorts have not influenced the findings of the present study for the following reasons.

First, it seems unlikely that rape reporting rates are higher in military populations than in civilian populations, particularly when the victim is a military woman. As stated in the 1990 *Update Report on the Progress of Women in the Navy*, regarding the authors' study of rape and sexual assault of Navy personnel:

The majority of staff level advisors interviewed perceive that most female victims would not report a rape. In the Study Group survey, only one out of ten females who said they had been raped or assaulted in the past year said they reported it to the police or Master at Arms. . . . Interview data suggest that rape is under-reported for the following reasons: fear of reprisals; embarrassment; would not be believed; lack of confidentiality and lack of sensitivity by those personnel providing assistance to the victim. Women in the Personal Reliability Program said they would not report a rape for fear of being removed from the program.

1990 NAVY WOMEN'S STUDY GROUP, *supra* note 11, at III-29 (emphasis omitted).

Another reason to believe that the military rape figures used in this study are estimated as conservatively as the civilian figures involves the definition of the crime. The definition of rape applied by the U.S. military until October 1992 *excluded* marital rape. See Uniform Code of Military Justice, Pub. L. No. 81-506, art. 120, 64 Stat. 107, 140 (1950), *amended by* National Defense Authorization Act for Fiscal Year 1993, Pub. L. No. 102-484, § 911(c), 106 Stat. 2315, 2506 (1992) (codified at 10 U.S.C. § 920 (1994)). By contrast, the UCR definition of rape during 1987-92 had no marital exemption. See FEDERAL BUREAU OF INVESTIGATION, U.S. DEP'T OF JUSTICE, CRIME IN THE UNITED STATES 1992: UNIFORM CRIME REPORTS 23 (1992) [hereinafter UCR 1992]; FEDERAL BUREAU OF INVESTIGATION, U.S. DEP'T OF JUSTICE, CRIME IN THE UNITED STATES 1991: UNIFORM CRIME REPORTS 23 (1991) [hereinafter UCR 1991]; FEDERAL BUREAU OF INVESTIGATION, U.S. DEP'T OF JUSTICE, CRIME IN THE UNITED STATES 1990: UNIFORM CRIME REPORTS 15 (1990) [hereinafter UCR 1990]; FEDERAL BUREAU OF INVESTIGATION, U.S. DEP'T OF JUSTICE, CRIME IN THE UNITED STATES 1989: UNIFORM CRIME REPORTS 14 (1989) [hereinafter UCR 1989]; FEDERAL BUREAU OF INVESTIGATION, U.S. DEP'T OF JUSTICE, CRIME IN THE UNITED STATES 1988: UNIFORM CRIME REPORTS 15 (1988) [hereinafter UCR 1988]; FEDERAL BUREAU OF INVESTIGATION, U.S. DEP'T OF JUSTICE, CRIME IN THE UNITED STATES 1987: UNIFORM CRIME REPORTS 13 (1987) [hereinafter UCR 1987]. Many states had eliminated marital exemptions from their rape statutes by or during the 1980s, and thus would have included marital rapes in their data provided for the UCR. See, e.g., MICH. COMP. LAWS ANN. § 750.5201 (1991); *Merton v. State*, 500 So.2d 1301, 1305 (Ala. Crim. App. 1986); *Weishaupt v. Commonwealth*, 315 S.E.2d 847, 855 (Va. 1984); *People v. Liberta*, 474 N.E.2d 567, 572-73 (N.Y. 1984), *cert. denied*, 471 U.S. 1020 (1985); *State v. Smith*, 426 A.2d 38, 45 (N.J. 1981). Thus, the military crime data for 1987-92 would have excluded marital rapes, while the UCR included marital rapes. Hence, military rapes may have been *less* completely reported than civilian rapes.

I turn now from the question of possible overestimation of military rape rates relative to civilian rates to the question of possible underestimation of military rates of other violent crime relative to civilian rates. It seems unlikely that murder/nn.m is less completely reported in military than in civilian populations. Once a homicide has occurred and there is a corpse to be accounted for, informal handling is precluded—and there is no evidence of greater leniency in charging or prosecution of homicides in the military

The fact that peacetime military rape rates are diminished much less from civilian levels than are military rates of other violent crime raises the question of whether peacetime military rape rates may be reduced to levels commensurate with the low peacetime military rates of other violent crime. Before examining possible approaches to reducing military rape rates, however, we shall examine military rates of rape and other violent crime in the wartime context.

2. *The Wartime Study.* Study of military and civilian crime rates during the WWII period provides a measurement of rape incidence in the combat context. The results of the WWII study suggest that a differential between military rates of rape and of other violent crime exists in war as well as in peace. In the war context, however, rather than military rape rates being less *diminished* from civilian levels than military rates of other violent crime, military rape rates in the combat theater studied rose far *above* civilian levels, while rates of other violent crime did not.

Comparisons with U.S. male civilian rape rates were made for U.S. Army³⁴ forces in the continental European Theater of Operations (ETO).³⁵ As in the peacetime study, all crime rate compar-

than in the civilian criminal justice system. Interview with Col. Scott Silliman, U.S.A.F. (Ret.), former Staff Judge Advocate, Air Combat Command, in Durham, N.C. (Aug. 10, 1994).

Finally, it is possible that aggravated assault might be less completely reported in a military population that may have a greater tolerance for violent behavior than the civilian population. As indicated above, while the diminutions of military rates of both murder/nn.m and aggravated assault from civilian levels are significantly greater than diminutions of military rape rates, the magnitude of difference is greater for aggravated assault than for murder/nn.m; that is, while both military aggravated assault and military murder/nn.m rates are diminished significantly more from civilian levels than are military rape rates, military aggravated assault is reduced even more from civilian levels than is military murder/nn.m. Perhaps some of that greater magnitude of diminution for aggravated assault found in the present study is due to greater underreporting of aggravated assault in military than in civilian populations. Even if this is so, however (and the proposition is highly speculative), the findings of significantly lesser diminution in rape apply to *both* murder/nn.m and aggravated assault. Therefore, even if greater underreporting of aggravated assault by military populations exists, its effect would seem to be on the magnitude rather than on the existence or statistical significance of the difference between rape and aggravated assault diminution.

For discussion of additional methodological safeguards, see *infra* Appendix A, at pp. 764-70.

34. The "U.S. Army" here includes air forces. The U.S. Air Force, which was not yet a separate military branch, was part of the War Department during WWII.

35. "Continental ETO" refers to the ETO excluding the United Kingdom. (Of

isons are for males only and control for the age structures of the civilian and military populations.³⁶

Because the circumstances of troops in the ETO varied from one phase of the war to another, the story of crime patterns in the ETO must be told chronologically over the course of the war. From the D-Day landing at Normandy (June 6, 1944) until late July, the Allied forces in the ETO were engaged in intense fighting—first on the beachhead and then for protracted weeks in the hedgerows of Normandy.³⁷ During that period, fighting was heavy, and troops' contact with civilians was extremely limited. In the words of Charles Whiting, "That summer, the weary, dirty, unshaven and very often frightened infantrymen lived, fought and died in those dugouts carved into the sides of the hedgerows."³⁸ "The tankers fought, cooked, slept, drank, and in many cases died in their 30-ton 400 hp-engined Shermans."³⁹ "[The troops] existed in a strange limbo, a world cut off completely from civilian life, either back home or here in France."⁴⁰ In light of the intensive combat activity and minimal contact with civilians, it is not surprising that rape rates were very low during this period. Aggravated assault rates also were low, and murder/un.m rates were minimal.⁴¹

The situation changed entirely during the two breakouts in the ETO, in France during August and September 1944 and in

course, the "ETO" also excludes the Mediterranean Theater of Operations, which included parts of Europe such as Italy.) .

36. For a full description of the methodology used in studying the WWII data, see *infra* Appendix C, at pp. 775–81.

37. See MARTHA HOYLE, *A WORLD IN FLAMES* 247–49, 253–54 (1969); CHARLES WHITING, '44: IN COMBAT FROM NORMANDY TO THE ARDENNES 59–102 (1984).

38. WHITING, *supra* note 37, at 82.

39. *Id.* at 91.

40. *Id.* at 63.

41. See CRIMINAL INVESTIGATION BRANCH, OFFICE OF THE THEATER PROVOST MARSHAL, SEMI-ANNUAL REPORT, JUNE-DEC. 1944 (1944) (on file with the National Archives RG 160, Entry 91, Box 725) [hereinafter 1944 SEMI-ANNUAL REPORT] (statistical graphs on unnumbered pages at end of Report). The number of investigations in June and July for rape was nineteen; for murder/nn.m was two; and for aggravated assault was twenty-seven (as adjusted). See *id.* Regarding adjustment of ETO aggravated assault numbers, see *infra* Appendix C, notes 432–34 and accompanying text. Unfortunately, it is not possible to calculate a rate per 100,000 troops for these crimes because the number of troops on the continent in the months of June and July is not available. Rather, the available data on ETO troop strength for those months combines troops on the continent with troops in the United Kingdom. See WAR DEP'T GEN. STAFF, STRENGTH OF THE ARMY (Aug. 1944-May 1945) (monthly reports).

Germany during March and April 1945. During the breakouts, forward troop movement was fast because new ground was quickly occupied,⁴² and fighting was lighter for most units than during the Normandy period or the winter period between breakouts.⁴³ Most importantly, there was extensive contact with civilians both as troops on duty liberated one village after another, leaving rear echelon personnel among the civilians, and as troops on leave "went to town."⁴⁴

During the two breakout periods, the incidence of violent crime (murder/nn.m, aggravated assault, and rape) among ETO troops rose dramatically.⁴⁵ But the ETO rape rates increased *far* more than the rates of aggravated assault or murder/nn.in. Indeed, during the French breakout period, murder and aggravated assault rates for ETO troops remained below U.S. civilian rates, whereas ETO rape rates far surpassed U.S. civilian rates.

Specifically, during the breakout across France in August and September 1944, the average monthly ETO murder/nn.m rate was about half (47%) of the U.S. civilian rate, and the average monthly ETO aggravated assault rate was about one-sixth (18%) of the U.S. civilian rate. During the same period, the ETO rape rate was nearly three times (260%) the U.S. civilian rate.⁴⁶

Describing the context in which rape of French women by American troops occurred, the official history of the Office of the Judge Advocate General for the ETO states:

42. See HUBERT ESSAME, *THE BATTLE FOR GERMANY 178-218* (1969) (Germany); HOYLE, *supra* note 37, at 259-61 (France), 300-06 (Germany); WHITING, *supra* note 37, at 97-108 (France).

43. See ESSAME, *supra* note 42, at 178-222 (Germany); HOYLE, *supra* note 37, at 259-61 (France); WHITING, *supra* note 37, at 98-118 (France).

44. See COSTELLO, *supra* note 5, at 343-46 (Germany); ESSAME, *supra* note 42, at 178-222 (Germany); HOYLE, *supra* note 37, at 259 (France); WHITING, *supra* note 37, at 105-118 (France); Interview with Col. William S. Fulton Jr. (Ret.), Clerk of Court, U.S. Army Judiciary, in Durham, N.C. (Jan. 10, 1994) (describing the levels of contact with German civilians during the "house to house pursuit" phase of the breakout period in Germany).

45. See European Theater of Operation Historical Division, Dep't of War, *Criminal Investigation Branch*, in *HISTORY OF THE OFFICE OF THE THEATER PROVOST MARSHAL, ETOUSA: 1 OCT. 1944-8 MAY 1945*, § III, at App. A (1945) (statistical graphs) (on file at the National Archives RG 332, Adm. 567c).

46. The raw numbers of ETO offenses for August and September on monthly average were 16 murder/nn.m (1.4 per 100,000 troops), 54 aggravated assaults (4.62 per 100,000 troops), and 107 rapes (9.27 per 100,000 troops). For methodological and source information on the foregoing data, see *infra* Appendix C, at pp. 775-81.

The French people welcomed their liberators, often giving them drink to show their appreciation. They spoke a strange tongue. The invading soldiers came fully armed. The people were grateful, but they had little or no protection. Many soldiers had the notion that French women generally were both attractive and free with their love. At any rate, whatever the operative factors, the number of violent sex crimes enormously increased with the arrival of our troops in France.

Generally speaking, the rape cases of the French Phase fell into one broad pattern characterized by violence, though of different degrees. The use of firearms was common in perpetrating the offense.⁴⁷

One may find it dubious that the rates of murder/nn.m and aggravated assault in a combat theater would be lower than civilian rates. It seems likely that all three of the crimes examined in the present study—murder/nn.m, aggravated assault, and rape—would be substantially undercounted in official combat-theater statistics because of underreporting, informal handling, and slippages in central collection of crime records.

Undercounting presumably would be most extreme in cases involving non-American victims—civilian or prisoner—who might be less inclined or able to report crimes to American authorities,⁴⁸ and whose victimization might often be taken less seriously by American authorities. Indeed, the ETO Judge Advocate General's Report states that, in general courts martial of American troops for murder in the ETO, 48% of the victims were Americans, while only 27% of the victims were German (and 14% were French).⁴⁹ Such statistics may well reflect that murders of Americans were handled in such a way as to show up disproportionately in official murder statistics.⁵⁰

47. Office of the Judge Advocate Gen., Dep't. of War, History of the Judge Advocate General's Office in the European Theater, 18 July 1942–1 November 1945, at 241 (1945) (unpublished manuscript, on file with the Office of the Chief of Military History, Historical Manuscript File, no. 8-3.5 AA v.1).

48. My colleague Mel Shimm shared with me a story that illustrates this point. As an officer serving in Korea after WWII, he interviewed a woman filing a complaint alleging that she had been raped by an American soldier. When Mel (a Caucasian male dressed in military uniform) asked her if she knew the soldier's identity or could describe his appearance, the woman said that she did not know her assailant's identity, but that he looked just like Mel.

49. Office of the Judge Advocate Gen., *supra* note 47, at Chart 15.

50. Indeed, it seems reasonable to assume, given the nature of a combat theater,

Undercounting of aggravated assault may have been even greater than undercounting of murder because assault is a less serious crime and, therefore, more likely to go unreported or to be handled informally. Rape is particularly likely to have been undercounted because it is less serious than murder,⁵¹ it is reputedly the most underreported violent crime even in the domestic context,⁵² and it was perpetrated in the ETO virtually exclusively against non-Americans.⁵³

German rape complainants would have faced a particularly difficult situation. In a section entitled "Mitigating Circumstances," the ETO Judge Advocate General's Report states:

The unusual circumstances surrounding the cases of alleged rape under Article of War 92 where the complainants have been German nationals have presented a special and difficult clemency situation. . . . [T]his office, as well as the Staff Judge Advocates of the Theater, have exerted unremitting efforts to see justice done for the accused in these cases. An example of the results from such efforts is seen in [several cases] where, based on post trial investigation, the victimized accused had their convictions set aside.⁵⁴

that some number of actual murders of Germans soldiers by American troops in the ETO were classified not as murders but as lawful killings in combat or in self-defense.

51. It is important to note, however, that under the Articles of War the sentences provided for rape and murder were the same. LEE S. TILLOTSON, *THE ARTICLES OF WAR ANNOTATED* 179 (1944) ("Any person subject to military law who commits murder or rape shall suffer death or imprisonment for life . . ."). Therefore, there is no reason to believe that murders would be more likely than rapes to be covered up to spare a soldier from harsh punishment.

52. See 1990 NAVY WOMEN'S STUDY GROUP, *supra* note 11, at III-29.

53. According to the Report of the ETO Judge Advocate General, none of the 761 complainants in the general courts martial for rape in the ETO were American. Office of the Judge Advocate Gen., *supra* note 47, at Chart 16.

One initially colorable theory suggesting *overcounting* of rapes in the ETO must be rejected on close examination of the available information. The theory for overcounting would be that because of factors associated with the war, women in WWII Europe were very sexually active with U.S. troops and then frequently alleged rape if the women's socially unacceptable sexual activity was discovered, which resulted in frequent false reports and an aggregate overcount of rapes. The problem with this theory is that the reports on criminal activity in the ETO consistently characterize the rapes as occurring in a violent manner, often at gunpoint. See *supra* note 47 and accompanying text; *infra* text accompanying note 58.

54. Office of the Judge Advocate Gen., *supra* note 47, at 339-40. Although this section of the Report indicates that "[a] more complete discussion of this situation will be set out in the next Chapter," *id.* at 340, the pages containing that discussion are missing from the Report and have been for many years, notwithstanding the considerable efforts of archivists to find the missing pages. Memorandum by Library of Congress 1 (Aug.

In addition, the ETO Judge Advocate General's Report specifically observes with regard to rape that "an indeterminable number of [rape reports] were investigated by agencies other than [the Criminal Investigation Branch of the Provost Marshal's office], such as investigating officers appointed by commanders."⁵⁵ Reports handled by agencies other than the Criminal Investigations Branch of the Provost Marshal's office would not appear in official statistics of investigations.

Thus, in considering all of the ETO crime figures, we must bear in mind that they probably reflect substantial undercounting. There is no reason to believe, however, that rape statistics are more complete than those for murder or aggravated assault. (Indeed, as indicated, there are reasons to draw the opposite conclusion.) Therefore, even while acknowledging counting problems, we may still place some reliance on the official counts for purposes of comparing the *relative* patterns or incidence of the three offenses in the ETO.

The relative crime rate pattern during the breakout into Germany was very similar to the pattern during the breakout across France. The rates of all three types of crimes examined rose to even higher levels during the German breakout than during the French breakout. But the *relative* relationship of the three crime rates was strikingly similar in the two periods: In each instance, the increase in rape was far greater than the increase in either murder/un.m or aggravated assault. During the period of the breakout across Germany (March and April 1945), the average monthly ETO murder/un.m rate was essentially equivalent (102%) to the U.S. civilian rate, and the average monthly ETO aggravated assault rate was about one-quarter (27%) of the civilian rate. During the same period, the ETO rape rate was nearly four times (366%) the civilian rate.⁵⁶ As summarized in the Army's official history of the ETO Criminal Investigation Branch, "Crimes of violence, meanwhile, after holding more or less steady during most of the

1975) (on file with the Office of the Chief of Military History, Historical Manuscript File, no. 8-3.5 AA v.1).

55. Office of the Judge Advocate Gen., *supra* note 47, at 249.

56. The raw numbers of ETO offenses for March and April on monthly average were 80 murder/un.m (3.1 per 100,000 troops), 228 aggravated assaults (8.82 per 100,000 troops), and 452 rapes (17.47 per 100,000 troops). For methodological and source information on the foregoing data, see *infra* Appendix C, at pp. 775-81.

During the period between breakouts (October 1944 through February 1945), U.S. troops in the ETO were fighting under conditions of strong resistance, slow gains, extreme cold and high snow,⁶⁰ and most forward troops had little contact with civilians.⁶¹ Not surprisingly, ETO rape rates during that period were very low compared with the breakout periods (on monthly average about half (54%) of the U.S. civilian rate). For this period, the ETO average monthly murder/nn.m rate was about two-thirds (64%) of the U.S. civilian rate, and the aggravated assault rate was about one-sixth (16%) of the U.S. civilian rate.⁶² Figure I shows in graphic form the pattern of crime rates in the ETO.

60. See ESSAME, *supra* note 42, at 65-177; MAX HASTINGS, VICTORY IN EUROPE 91-114 (1985); HOYLE, *supra* note 37, at 263-64, 270-72, 295-99; WHITING, *supra* note 37, at 177-89.

61. See ESSAME, *supra* note 42, at 65-177.

62. The raw numbers of ETO offenses for October through February on monthly average were 34 murder/nn.m (1.8 per 100,000 troops), 77 aggravated assaults (4.0 per 100,000 troops), and 33 rapes (1.8 per 100,000 troops). For methodological and source information on the foregoing data, see *infra* Appendix C, at pp. 775-81. For month by month data, see *infra* Appendix D, at p. 782.

FIGURE 1

ETO RATES OF MURDER/NN.M, AGGRAVATED
ASSAULT, AND RAPE AS A PROPORTION OF
U.S. MALE CIVILIAN RATES *
AUGUST 1944 - MAY 1945

* - CONTROLLING FOR AGE

Not only were ETO rape rates much more highly elevated than rates of other violent crime during the breakout periods in the ETO, but the rape rates of U.S. military personnel in occupied Germany continued to be disproportionately elevated long after the end of the war. As stated in the Theater Provost Marshal's Report of Operations for July through September 1946 (over a year after V-E Day): "One of the lessons learned in regards [sic] to specific crimes was that the appalling continuation of rape here in Germany can be said to have been largely influenced by war psychology and propaganda on both sides. Time alone will be able to erase this curse."⁶³

These data from the World War II period suggest that rape is not just "one atrocity among others," which results, like other vio-

63. 10 OFFICE OF THE THEATER PROVOST MARSHAL, REPORT OF OPERATIONS 1 JULY-30 SEPTEMBER 1946, at 3 (1946) ("supporting documents" section).

lent crime, from the character of combat. Rather, the pattern of rape in war (at least in the ETO of WWII) differs from that of murder/nn.m and aggravated assault, with the rape increase being starkly disproportionate to the increase of other violent crime in the peak crime periods and also after the cessation of hostilities. The differences between patterns of rape rates and other violent crime rates in the ETO are of sufficient magnitude to suggest—even accounting for inevitable distortions from reporting, processing, and record-keeping practices—that rape in war is a crime influenced by dynamics at least in part distinct from those influencing other violent crimes in war. If “war factors” such as diminished deterrents, foreign lands, chaos, violence, and terror⁶⁴ accounted for violent crimes in war homogeneously, then we would expect the rates of the various crimes such as rape, murder/nn.m, and aggravated assault to follow similar patterns. But they do not. Rather, rape is distinct from other crimes of violence in war, as is reflected in its far *greater* increase during peak-violent-crime periods.

A differential between military rape rates and rates of other violent crime thus exists both in peace and in war. In peacetime, military rape rates are reduced significantly less from civilian levels than are rates of other violent crime. In wartime, military rape rates are increased far more above civilian levels than are rates of other violent crime.

64. Wars are often fought in foreign lands where troops may experience a feeling of “time out” from the usual rules. In addition, troops may identify less with persons from other countries and cultures and may therefore tend more readily to dehumanize potential victims. See PETER KARSTEN, *LAW, SOLDIERS AND COMBAT* 55–61 (1978); Peter G. Bourne, *From Boot Camp to My Lai*, in *CRIMES OF WAR* 462, 466–67 (Richard Falk et al. eds., 1971); see also KARSTEN, *supra*, at 35 (discussing the role of cultural distance in the My Lai massacre). In addition, battle is terrifying, often chaotic and, of course, violent. The fear, rage, and desires for revenge produced in combat all can lead to atrocities in war. See KARSTEN, *supra*, at 62; JAMES S. KUNEN, *STANDARD OPERATING PROCEDURE* 281 (1971) (testimony of Dr. Robert Lifton before the Citizens’ Commission of Inquiry in U.S. War Crimes in Indochina); see also Richard Fox, *Narcissistic Rage and the Problem of Combat Aggression*, 31 *ARCHIVES GEN. PSYCHIATRY* 807, 807–08 (1974) (commenting on the transition toward more personalized hostility and desire for revenge after longer exposure to combat, especially after death of a “buddy” in combat).

II. THE RAPE DIFFERENTIAL: CAUSES AND CULTURE

A. *Causes*

The existence of the military rape differential suggests that it may be possible to reduce military rape rates in peace and in war, perhaps to levels commensurate with military rates of other violent crimes. This section considers *why* military rape rates should increase so disproportionately to other violent crime rates in war, and why, in peacetime, military service should correlate with a much lesser diminution in rape than in other violent crime. That causal analysis will then provide the basis for an examination of possible approaches to military rape reduction.

As discussed above, differences in the rape reporting patterns of military and civilian populations do not appear to account for the findings that military rape rates are diminished less from civilian levels (in peacetime) and increased more from civilian levels (in wartime) than are other violent crime rates.⁶⁵ Therefore, a substantive explanation is required. In this section, a number of possible causal factors contributing to the military rape differential will be explored.

In considering what factors may contribute to the rape differential, the first point to be acknowledged is that, while the peacetime and wartime studies conducted for this Article control for age and gender, additional demographic factors that are not controlled for here may account for part of the variance observed. Several additional variables that are often hypothesized to affect crime rates might usefully be controlled for in further studies. Those additional variables might include race, education, income, social disorganization, and geographic region.⁶⁶ The relevant question in connection with those additional variables would be whether any of them *differentially* affects rates of rape as compared with rates of other violent crime so as to account for the military rape differential.⁶⁷

65. See *supra* note 33; *supra* notes 48–55 and accompanying text.

66. See, e.g., Judith R. Blau & Peter M. Blau, *The Cost of Inequality: Metropolitan Structure and Violent Crime*, 47 AM. SOC. REV. 114 (1982); Gary LaFree et al., *Race and Crime in Postwar America: Determinants of African-American and White Rates, 1957–1988*, 30 CRIMINOLOGY 157 (1992); Joseph F. Sheley, *Structural Influences on the Problem of Race, Crime, and Criminal Justice Discrimination*, 67 TUL. L. REV. 2273 (1993).

67. It is important to note that, since the rape differential was observed not only in the 1987–92 all-volunteer force but also in the largely conscripted WWII force, a demo-

Preliminary examination of the race variable suggests that it would *not* help to account for the military rape differential for the following reasons. African-Americans constitute a higher proportion of the American military population than of the civilian population.⁶⁸ For the period 1987–92, the rate of arrest for rape for African-Americans was 6.36 times that for whites.⁶⁹ During the same period, blacks' murder/nn.m arrest rate was 9.37 times that of whites.⁷⁰ Therefore, the fact that the military has a higher percentage of African-Americans than the civilian population would be expected to increase the military's murder rates somewhat more than its rape rates. Yet the finding to be accounted for is the opposite: Military murder/nn.m rates are *diminished* more than military rape rates. The aggravated assault arrest rate for blacks in 1987–92 was 5.04 times that of whites compared to a rape arrest rate 6.36 times that of whites.⁷¹ A race variable thus might account for some, but very little, of the observed military rape differential with regard to aggravated assault.⁷² This preliminary examination suggests that introduction of a race variable would contribute very little to an explanation of the observed military rape differential.⁷³

No data comparable to the race data described above are available for the education, income, social disorganization, and geographic region variables.⁷⁴ Further research will therefore be required in order to offer even preliminary suggestions regarding

graphic factor that would account for part of the rape differential would have to obtain even for a conscripted army.

68. See MARTIN BINKIN, WHO WILL FIGHT THE NEXT WAR? 61–101 (1993).

69. See UCR 1992, *supra* note 33, at 235 (arrests by race); UCR 1991, *supra* note 33, at 231 (same); UCR 1990, *supra* note 33, at 192 (same); UCR 1989, *supra* note 33, at 190 (same); UCR 1988, *supra* note 33, at 186 (same); UCR 1987, *supra* note 33, at 182 (same).

70. See sources cited *supra* note 69.

71. See *id.*

72. The robbery rate for blacks was 12.9 times that of whites compared once again to a rape arrest rate 6.36 times that of whites. See *id.* Therefore, for robbery as well as for murder, race would not account for any part of the observed variance in diminution of rape and robbery incidence.

73. This brief consideration of the expected effects of a race control variable rests on the assumption that race would have the same effect on arrest rates (i.e., both on criminality and on police arrests decisions) in the military and civilian contexts. That assumption might or might not be warranted.

74. For some discussion of the effects of those additional variables on crime in the general population, see Blau & Blau, *supra* note 66, at 121–27.

the possible effects of those additional variables on the military rape differential.

One additional demographic factor, the percentage of population married, would be of particular relevance to a "sexual deprivation" theory of the military rape differential. The sexual deprivation theory would propose that military rape rates are elevated relative to military rates of other violent crime because, whereas military personnel have as much or more opportunity than civilians to express any *aggressive* impulses they might have (for instance, in combat practice), military personnel's sexual opportunities are more limited than those of civilians. Certainly, personnel on ships at sea or in other remote locations may have severely limited sexual opportunities. Moreover, men stationed on military bases on the American mainland—including those who live off base—may have more limited heterosexual opportunities than most male civilians, if only because the sex ratios of the base and surrounding areas are disproportionately male.⁷⁵ One might hypothesize that, for these reasons, military populations' rates of sexual aggression would be high relative to their rates of other forms of violent crime.⁷⁶ The suggestion here is not the simplistic one that "men must have sex" and will rape if "deprived" of sex. Rather, what is envisioned is a more complex dynamic in which sexual rejection may be more frequent for males in a sex-skewed environment such as would obtain, for instance, around some military bases, leading over time to frustration and anger, and to various undesirable outcomes, perhaps including rape.⁷⁷

75. This statement would apply to the many military bases located in rural locations, but would not apply, of course, to bases such as Long Beach Naval Shipyard in Los Angeles, Treasure Island Naval Base in San Francisco, or other military bases located in or near urban areas.

76. I am indebted to my colleague Bob Mosteller for noting the need to consider this possible explanation for the variance observed.

77. Related to the "sexual deprivation" explanation for the rape differential is the possible effect on military rape rates of the exclusion of gays from the military. *See infra* note 357 (regarding U.S. policy concerning gays in military service). If the percentage of gay males is lower in the military than in the civilian population, then perhaps the percentage of potential rapists of women is higher in the military than in the civilian population. (This proposition rests on the untested hypothesis that gay men rape women at a lower rate than do heterosexual men.) The possibly lower percentage of gays in the military than in the civilian population could thus explain some part of the military rape differential. We cannot know, of course, what proportion (if any) of the rape differential is accounted for by this factor because we do not know whether or to what extent the proportion of gay males in the military is actually lower than the proportion of gay

This sexual-deprivation explanation for the rape differential may account for some of the variance observed, but it seems unlikely to contribute substantially to an explanation of the phenomenon for several reasons. First, the limited research that has been done on the subject does not indicate that skewed sex ratios affect rape rates.⁷⁸ That research, however, has not been extensive and certainly is not dispositive of the question. The research thus does not support but also cannot be taken to preclude a sexual-deprivation explanation of some part of the military rape differential.

A second factor that detracts from the potential explanatory force of a sexual-deprivation explanation of the military rape differential is the ready availability of prostitution in the vicinity of military installations.⁷⁹ The easy access to prostitutes that is typical of the areas surrounding military installations means that an individual lacking other sexual opportunities would have a sexual outlet short of rape that would be preferable to rape both in ease of access and in safety from harsh legal consequences. Still, some proportion of men experiencing a scarcity of sexual opportunity presumably do not go to prostitutes—and some subset of that group may commit rape, for instance on a date.

A third reason that sexual deprivation seems wanting as a full explanation of the military rape differential is that, during the peacetime period studied, both the percentage of military personnel that are married (and so, presumably, have increased sexual opportunities) and military rape rates (but not military rates of other violent crimes) rose simultaneously.⁸⁰ If sexual scarcity were

males in the civilian population, and we do not know whether or to what extent gay men are less likely than heterosexual men to rape women. (Rape of a male is excluded from the present study because it was not defined as "rape" under military law prior to 1992. See 10 U.S.C. § 920 (1994) (amending 10 U.S.C. § 920 (1988)), and so does not appear in the available military crime statistics.)

78. See, e.g., MENACHEM AMIR, *PATTERNS IN FORCIBLE RAPE* 63–68 (1971) (discussing but not finding support for a skewed-sex-ratio theory of rape causation); cf. Larry Baron & Murray A. Straus, *Four Theories of Rape: A Macrosociological Analysis*, 34 SOC. PROBS. 467, 481–82 (1987) (finding no positive correlation between the percent of states' populations constituted by single adult males and states' rape rates).

79. See generally HELEN REYNOLDS, *THE ECONOMICS OF PROSTITUTION* 103 (1986) (prostitution and U.S. military in Nevada); SAUNDRA P. STURDEVANT & BRENDA STOLTZFUS, *LET THE GOOD TIMES ROLL: PROSTITUTION AND THE U.S. MILITARY IN ASIA* (1992); CHARLES WINICK & PAUL M. KINSIE, *THE LIVELY COMMERCE: PROSTITUTION IN THE UNITED STATES* 245–67 (1971) (history of prostitution and U.S. military).

80. During the period 1987–92, the percentage of male active duty military personnel who were married rose from 56% to 60%. See Defense Manpower Data Center, Active

responsible for the military rape differential, then we would expect an increase in sexual opportunities to correlate with rape reduction, all other things being equal. Instead, an increase in the percentage of personnel married accompanied a rape rate increase.

Of course, all other things likely are not equal. It may be that an increase in percentage of personnel married does, because of increased sexual opportunity, tend to reduce military rape rates but that the minimizing effect of the greater percentage of personnel married was overwhelmed in the period studied by other factors raising rape rates.⁸¹ Nevertheless, the simultaneous rise in the percentage of personnel married and military rape rates, together with the consistent availability of prostitution and the lack of support in the research on skewed sex ratios for a sexual deprivation theory of the rape differential, does suggest that some explanation other than or in addition to sexual deprivation is required to provide a full explanation for the military rape differential.

Another possible explanation for the military rape differential is that all-male groups (especially *young* all-male groups), military or otherwise, have a tendency toward rape proneness. The problem with this avenue of explanation is the apparent existence of counterexamples. There is no evidence that all or most boys' schools, men's clubs, or all-male seminaries and yeshivas have elevated rape rates.⁸² While some genres of all-male group may exhibit an elevated tendency to rape (for example, some fraternities, gangs, and other groups, as discussed below), it does not appear that all do. Therefore, an adequate explanation of the pattern

Duty by Marital Status 1987-92 (Oct. 26, 1994) (computer printout provided by the U.S. Defense Manpower Data Center, on file with author). During the same period, military rape rates showed an upward trend. Specifically, for each of the years 1987-92, Army rape rates per 100,000 active duty personnel were 55, 64, 61, 62, 69, 74. Navy rape rates were 16, 23, 23, 35, 34, 38. Marine rape rates were 31, 41, 32, 48, 41, 56. And Air Force rape rates were 20, 25, 24, 26, 29, 31. See data described *infra* Appendix A, at pp. 764-70, on file with author. During this period, military rates of murder/m.m and aggravated assault did not show an upward trend. See *id.*

81. For example, at least for the period after Tailhook '91 in which the services publicized "zero tolerance" policies regarding sexual assault, the increase in reported rape rates may reflect a higher rate of reporting by victims and of record-keeping by military authorities.

82. Telephone Interview with Mary Koss, Professor of Psychology, Univ. of Arizona (July 1994); Telephone Interview with Susan Roth, Professor of Psychology, Duke Univ. (Nov. 17, 1994); Telephone Interview with Leslie Lebowitz, National Center for the Study of Post Traumatic Stress Disorder (Nov. 17, 1994).

of military rape rates cannot be based solely on the fact that military organizations have been virtually all-male groups.

An alternative explanation for the pattern of military rape rates would focus on self-selection. The hypothesis here would be that those who self-select for military service are disproportionately rape prone. This hypothesis too would be flawed. First, it would not explain the patterns of military rape and other violent crime during WWII, when the army was largely conscripted. Second, it would require some elaboration of why individuals who choose to enter military service are disproportionately prone to commit rape as opposed to other violent crimes. Thus, if self-selection contributes at all to the explanation of patterns of military rape rates (a possibility to be explored further below),⁸³ it must be as part of a larger explanation.

Yet another explanation of the military rape differential would rest on the hypothesis that biological factors exert an upward pressure on rape rates but not (or not as much) on rates of other violent crime. The argument regarding military rape rates would be that, if there is a particular biological impetus to rape, then we might expect rape rates to be more amenable to increase (such as in war) and less amenable to reduction (such as in peacetime military service) than the rates of other violent crime.

Some sociobiologists do maintain that there is a sex-linked genetic disposition to rape among human males.⁸⁴ But sociobiolo-

83. See *infra* notes 257–66 and accompanying text.

84. See LEE ELLIS, *THEORIES OF RAPE: INQUIRIES INTO THE CAUSES OF SEXUAL AGGRESSION* 14–16 (1989) (reviewing the literature on sociobiological theories of rape); see also Charles Crawford & Birute M.F. Galdikas, *Rape in Nonhuman Animals: An Evolutionary Perspective*, 27 *CANADIAN PSYCHOLOGY* 215, 225–26 (1986); William M. Shields & Lea M. Shields, *Forcible Rape: An Evolutionary Perspective*, 4 *ETHOLOGY & SOCIOBIOLOGY* 115, 117–20 (1983); Randy Thornhill & Nancy W. Thornhill, *Human Rape: The Strengths of the Evolutionary Perspective*, in *SOCIOBIOLOGY AND PSYCHOLOGY: IDEAS, ISSUES AND APPLICATIONS* 269, 286 (C. Crawford et al. eds., 1987); Randy Thornhill & Nancy W. Thornhill, *Human Rape: An Evolutionary Analysis*, 4 *ETHOLOGY & SOCIOBIOLOGY* 137, 140 (1983).

Not surprisingly, data for the sociobiological theories of rape are inconclusive, and the theories (as well as sociobiology more generally) have come under serious scholarly criticism. For critiques of sociobiological theories of rape, see JOHN KLAMA, *AGGRESSION: THE MYTH OF THE BEAST WITHIN* 147–48 (1988); SUZANNE R. SUNDAY & ETHEL TOBACH, *VIOLENCE AGAINST WOMEN: A CRITIQUE OF THE SOCIOBIOLOGY OF RAPE* (1985). Regarding the scientific status of sociobiology in general, see MICHAEL RUSE, *SOCIOBIOLOGY: SENSE OR NONSENSE?* (2d ed. 1985); FLORIAN VON SCHILCHER & NEIL TENNANT, *PHILOSOPHY, EVOLUTION AND HUMAN NATURE* 106–68 (1984); Robert L. Simon, *The Sociobiology Muddle*, 92 *ETHICS* 327 (1982).

gical theories of crime generally posit biological influences underlying a broad range of aggressive behaviors, including not only rape but also, for instance, homicide and assault.⁸⁵ Therefore, a view that biological forces reduce the malleability of rape rates *more* than the malleability of other violent crime rates would go beyond the claims currently made even by sociobiology and would be highly speculative at this time.

A related and intriguing avenue of possible explanation for the military rape differential is that there exists a psychosexual linkage—perhaps biologically based, perhaps not—between violence and sexuality, such that training in and focus on deployment of violence, as occur in the military, would tend to foster *sexual* aggression.⁸⁶ Again, the state of the science in this area makes this avenue of explanation necessarily speculative.⁸⁷ Nonetheless, biological or other psychosexual factors linking sexuality and violence might indeed account for some part of the phenomenon in question.

While biological or related psychosexual factors may account for some part of the military rape differential, it is undisputed that biology is, at most, only one contributing factor determining the rape incidence of individuals, groups, and societies.⁸⁸ Environmental factors bearing on individual psychology, group dynamics, and societal structure and culture all are widely recognized to be influential in determining the rape incidence of individuals, groups, and societies—notwithstanding the effects of possible biological influences.⁸⁹ While a biological approach may thus partly explain the military rape differential and may warrant further exploration, this

85. See generally KLAMA, *supra* note 84, at 147–48 (discussing sociobiological theories of aggression).

86. For a discussion of such possible aggression/sexuality links, see DOLF ZILLMANN, *CONNECTIONS BETWEEN SEX AND AGGRESSION* (1984).

87. *Id.* at 15–17.

88. As sociobiologist E.O. Wilson stated, while “genes hold culture on a leash[, t]he leash is very long.” EDWARD O. WILSON, *ON HUMAN NATURE* 167 (1978).

89. See, e.g., AMIR, *supra* note 78, at 43–125; A. NICHOLAS GROTH, *MEN WHO RAPE: THE PSYCHOLOGY OF THE OFFENDER* 12–83 (1979); JEAN S. MACKELLAR, *RAPE: THE BAIT AND THE TRAP* 68–78, 129–33 (1975).

Particularly persuasive evidence of the strong influence of social factors on rape incidence are the findings that there are large differences in rape rates between different geographical areas, such as between different regions of the United States, and that these differences are consistent over time. See, e.g., Baron & Straus, *supra* note 78, at 467, 480–83; Joseph E. Scott & Loretta A. Schwalm, *Rape Rates and the Circulation of Adult Magazines*, 24 J. OF SEX RES. 241, 245–48 (1988).

approach, like the other explanations discussed above, is unlikely to account for *all* of the variance observed.

A crucial aspect of an analysis of possible causes contributing to the rape differential is an examination of the law relating to rape by military personnel. If the legal deterrents to rape were different in the military and civilian contexts, then it would not be surprising if there were a resultant differential in the rape rates of those two populations. The following analysis explores whether differences between the domestic criminal justice system and the domestic military justice system or international criminal justice system may contribute to the military rape differential.

American military law governing the handling of rape by military personnel appears to be comparable to civilian law in its substantive aspects, but possibly less stringent than civilian law in its procedural requirements and actual implementation. Shortcomings in the relevant military procedures and enforcement provisions may be contributing factors in an explanation of the military rape differential. Measures to identify procedural flaws and to bolster enforcement practices are considered below.

The statute under which rapes are prosecuted within the military justice system is similar in its definition of rape to the rape statutes of most American civilian jurisdictions. The military statute provides that "[a]ny person . . . who commits an act of sexual intercourse, by force and without consent, is guilty of rape."⁹⁰ The sentence provided for rape under the Uniform Code of Military Justice (UCMJ) is "death or such other punishment as a

90. 10 U.S.C. § 920 (1994). This statute applies to any rape committed by military personnel regardless of whether the victim is another military personnel or a civilian. When a military personnel commits an offense within a civilian jurisdiction (i.e., not on a military base or installation), that individual generally will still be prosecuted by military authorities applying military law, but may by law alternatively be (and, in practice, occasionally will be) prosecuted by civilian authorities applying civilian law. Interview with Wilbur L. Hardy, U.S. Army Crime Records Center, in Baltimore, Md. (May 19, 1994); Interview with personnel at the Navy Criminal Investigative Service, in Washington, D.C. (May 4, 1994).

The military rape statute that was in effect prior to October 1992 actually defined rape more narrowly than does the current statute. See *supra* note 33 (describing former statute, which excluded rape of a spouse and rape of males). The change in law, however, does not affect the analysis here. Rather, it means only that the rape differential measures in this Article are conservative measures, because the effect on the rape differential of having now broadened the military definition of rape would actually be to increase the rape differential since a broader range of conduct would now be counted as rape in military statistics. See *id.*

court-martial may direct."⁹¹ By regulation, that UCMJ provision is interpreted to mean *life imprisonment* or such other punishment as a court martial may direct for all rapes, except those in which the victim is under the age of twelve or in which the accused maimed or attempted to kill the victim; the death penalty may be imposed in those cases.⁹² The substantive military law defining rape thus is comparable to civilian law on the subject, and the potential sentences are as severe or more severe than those applicable to civilians.

The procedural framework governing the handling of rape by military personnel may be somewhat more problematic. Reports of rape by military personnel are to be forwarded by the military personnel or agency receiving the report to the immediate commander of the suspect (or to a law enforcement or investigative agency if no suspect is identified).⁹³ That immediate commander is then required to make a preliminary inquiry into the alleged offense.⁹⁴ At this stage, the commander generally should refer the case to the service's criminal investigative department (CID) for investigation pursuant to a regulation stating that "in serious . . . cases the commander should consider whether to seek the assistance of law enforcement personnel in conducting any inquiry or further investigation."⁹⁵ Assuming that a case is referred to CID, an investigative report is then sent back to the commander who, usually in consultation with Judge Advocate General Corps per-

91. 10 U.S.C. § 920 (1994).

92. MANUAL FOR COURTS MARTIAL, UNITED STATES, Rule 1004(c)(9) (1984) (as amended).

I reserve comment here on the appropriateness of the death penalty in general or on its constitutionality when applied to the category of rape cases for which it may be imposed under military law.

Unfortunately, meaningful statistics on the military sentences *actually* imposed for rape are unavailable because of the nature of military sentencing procedures. Military courts do not impose separate sentences for each count of which a defendant is convicted. Rather, one sentence is imposed for all the counts of which the defendant is convicted at a particular trial. For example, in 1991-92, for trials resulting in convictions of which rape was the most serious count, the median sentence in the Navy was five years and in the Marine Corps was thirteen years; however, those numbers are largely uninterpretable because the sentences might have included punishment for multiple crimes, all prosecuted in the same trial. See Letter from Capt. W.F. Grant, Jr., Chief Trial Judge, U.S. Navy, to author (June 15, 1995) (on file with author).

93. See MANUAL FOR COURTS MARTIAL, UNITED STATES, Rule 301 (1984) (as amended).

94. See *id.*, Rule 303.

95. See *id.* (Discussion of Regulation).

sonnel, decides whether to bring a charge of rape against the suspect.⁹⁶ An Article Thirty-Two investigation, the military analog to a grand jury proceeding, is then convened to determine whether there is sufficient evidence to warrant referring the charge to a court martial.⁹⁷

Provisions intended to ensure adequate enforcement also are in place. Article Ninety-Eight of the UCMJ provides that "[a]ny person . . . who (1) is responsible for unnecessary delay in the disposition of any case of a person accused of an offense . . . shall be punished as a court-martial may direct."⁹⁸ The UCMJ also provides for the processing and redress of complaints by "[a]ny member of the armed forces who believes himself wronged by his commanding officer."⁹⁹ Such wrongs presumably would include failure to process a rape complaint properly.

Notwithstanding these provisions intended to ensure enforcement, there is anecdotal evidence of failure to enforce military rape laws, including failures to investigate, to keep records, and to preserve evidence.¹⁰⁰ Witnesses at Senate hearings in 1992 testified that such failures are common.¹⁰¹ Other than anecdotal evidence, there are currently no data available to evaluate the nature or extent of failures to enforce military rape law (much less to compare military enforcement with civilian enforcement).

96. See generally *id.*, Rule 306 (Initial Disposition); *id.*, Rule 307 (Preferral of Charges).

97. See *id.*, Rule 405.

Any plea bargaining with regard to sentencing normally occurs in the period between the conclusion of the Article Thirty-Two investigation and the commencement of trial. See Interview with Col. Scott Silliman, U.S.A.F. (Ret.), former Staff Judge Advocate, Air Combat Command, in Durham, N.C. (Oct. 14, 1994). Plea bargaining as to the *crime charged* is extremely rare in the military justice system, see *id.*, in contrast with the civilian sector where pleas to a lesser charge are common.

98. 10 U.S.C. § 898 (1994).

99. 10 U.S.C. § 938 (1994).

100. See, e.g., *Counseling and Other Needs of Women Veterans*, *supra* note 5, at 12-14 (statement of Diana Danis); *id.* at 24 (statement of Jacqueline Ortiz); *id.* at 34 (statement of Barbara Franco); Molly Moore, *Navy Failed to Prosecute in 6 Rapes; Probe Finds Laxity on Sex Offenses at Florida Base*, WASH. POST, Oct. 22, 1990, at A1; Jeff Nesmith, *Military Courts Often Fail to Deal with Rape Charges: Leniency Is Common as Commanders Use Their Discretion to Punish Offenders*, ORANGE COUNTY REG., Oct. 4, 1995, at A14.

101. See, e.g., *Counseling and Other Needs of Women Veterans*, *supra* note 5, at 12-14 (statement of Diana Danis); *id.* at 24 (statement of Jacqueline Ortiz); *id.* at 34 (statement of Barbara Franco).

Certainly, commanders have discretion in the processing of rape complaints, especially in the early stages of the process, such as the preliminary inquiry. That discretion could be misused to divert cases from prosecution or otherwise to extend inappropriate leniency.¹⁰² If there is, in fact, a laxity in the enforcement of military laws against rape, then that weakness would be expected to reduce the efficacy of that law in deterring rape.¹⁰³ Such a lack of deterrence would be expected to increase military rape rates and therefore could constitute an important element contributing to the rape differential.

Implementation of a thoroughgoing system of record-keeping, tracking all military rape allegations from their initial report to final disposition and compiling those data in a central data bank, would be valuable both in encouraging enforcement and in allowing for identification of procedural flaws or enforcement problems in the handling of rape within the military justice system. Careful record-keeping and oversight both would tend to improve enforcement directly (simply by increasing the visibility of the handling of cases) and would assist in identification of any problems in enforcement procedures.¹⁰⁴ Legislation instituting such centralized record-keeping and oversight of military sexual misconduct cases has been proposed in the past,¹⁰⁵ but none has been adopted to date.¹⁰⁶

102. See Nesmith, *supra* note 100:

Behind the guarded gates of military installations, there is no public scrutiny when commanders decide whether persons accused of crimes will be court-martialed or "counselled." That tends to favor leniency, said Frank Zimring, a law professor at the University of California at Berkeley.

In addition, Zimring said, if a charge is seen as serious enough to warrant prosecution, military commanders and court-martial juries often are under pressure to get rid of the accused, rather than incur the expense of incarceration.

103. On the roles of certainty and celerity in deterrence, see J.L. Miller & Andy B. Anderson, *Updating Deterrence Doctrine*, 77 J. OF CRIM. L. & CRIMINOLOGY 418, 421-22 (1986).

104. Regarding the utility of such a record-keeping and oversight program, see Statement of Professor Madeline Morris on the DeConcini Amendment to the National Defense Authorization Act of 1994 to Establish Within the Office of the Secretary of Defense the Position of Director of Special Investigations and for Other Purposes, 140 CONG. REC. S8164 (daily ed. July 1, 1994).

105. See, e.g., Proposed DeConcini Amendment to the National Defense Authorization Act of 1994 to Establish Within the Office of the Secretary of Defense the Position of Director of Special Investigations and for Other Purposes, 140 CONG. REC. S8159 (daily ed. July 1, 1994) (Amend. No. 2146) (companion legislation to S. 816, 103d Cong., 1st Sess. (1993)).

106. See, e.g., 140 CONG. REC. S8167-72 (daily ed. July 1, 1994) (rejecting proposed

Domestic military law, then, appears to be comparable to civilian law in its substantive aspects but may be less stringent in its actual implementation. If military enforcement mechanisms are in fact comparatively weak, then a resulting reduction in deterrence might explain some part of the military rape differential. Improved oversight in this area is warranted in order to identify and correct any patterns of enforcement failure.

The other body of law governing rape by military personnel is international law. It appears that enforcement of the international laws against rape by military personnel may be even more lacking than enforcement of other aspects of international law relating to military personnel.¹⁰⁷ Nevertheless, it seems unlikely that any feature of international justice contributes appreciably to the rape differential.

International law clearly criminalizes rape by military personnel.¹⁰⁸ There is, however, evidence that international law's prohi-

DeConcini Amendment).

The Department of Defense is currently in the process of implementing a Defense Incident Based Reporting System (DIBRS) which will provide for centralized uniform crime record-keeping throughout the military services. Telephone Interview with Lt. Col. David Shutler, U.S.A.F., Deputy Director, Legal Policy, Requirements and Resources (June 24, 1994). DIBRS, once in place, will greatly facilitate any attempt at centralized data compilation and oversight of rape/sexual assault case handling.

107. See *infra* note 109.

108. Rape is incontrovertibly a war crime. Both the Fourth Geneva Convention and the Additional Protocols to the Geneva Conventions explicitly prohibit rape. See Geneva Convention Relative to the Protection of Civilian Persons in Time of War, Aug. 12, 1949, art. 27, 6 U.S.T. 3516, 3536, 75 U.N.T.S. 287, 306 (Fourth Geneva Convention); Protocol Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of International Armed Conflicts, *opened for signature* Dec. 12, 1977, arts. 76(1), 85, 1125 U.N.T.S. 3; Protocol Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of Non-International Armed Conflicts, *opened for signature* Dec. 12, 1977, art. 4(2)(e), 1125 U.N.T.S. 609, 612.

Rape also may constitute a grave breach under the Geneva Conventions. Although rape is not specified in the Conventions as a grave breach, there is clear movement in the international community toward interpreting the Conventions' grave breach provisions to cover rape. The International Committee of the Red Cross (ICRC) has declared that the grave breach of "wilfully causing great suffering or serious injury to body or health" (Article 147 of the Fourth Geneva Convention) covers rape. Theodor Meron, *Rape as a Crime Under International Humanitarian Law*, 87 AM. J. OF INT'L L. 424, 426 (1993) [hereinafter Meron, *Rape*] (citing ICRC, Aide-Memoire (Dec. 3, 1992)). The U.S. Department of State also has stated recently that rape in some instances may constitute a grave breach. See *id.* at 427 n.22 (citing Letter from Robert A. Bradtke, Acting Assistant Sec. for Legislative Affairs, to Senator Arlen Specter (Jan. 27, 1993)).

For excellent overviews of the law of rape as a war crime, see Christine Chinkin, *Peace and Force in International Law*, in RECONCEIVING REALITY: WOMEN AND INTER-

bitions of rape have been even less subject to enforcement than have other provisions of international criminal law.¹⁰⁹ Nonethe-

NATIONAL LAW, *supra* note 5, at 203; Meron, *Rape, supra*.

Rape, like other war crimes, may constitute a crime against humanity when committed in a mass and systematic manner, and on the basis of political, racial, or religious group membership. See Theodor Meron, *The Case for War Crimes Trials in Yugoslavia*, 72 FOREIGN AFF. 122, 130 (1993) [hereinafter Meron, *Case*]. The Statutes of the International Criminal Tribunal for the Former Yugoslavia and Rwanda list rape among the conduct that may constitute crimes against humanity. *Statute of the International Tribunal, in UNITED NATIONS, SECURITY COUNCIL, REPORT OF THE SECRETARY-GENERAL PURSUANT TO PARAGRAPH 2 OF SECURITY COUNCIL RESOLUTION 808 (1993)*, Annex, art. 5(g), at 13, U.N. Doc. S/25704 (1993), adopted by S.C. Res. 827, U.N. SCOR, 48th Sess., at 29, U.N. Doc. S/INF/49 (1993) (former Yugoslavia); UNITED NATIONS, SECURITY COUNCIL, STATUS OF THE INTERNATIONAL TRIBUNAL FOR RWANDA, art. 3(g), U.N. Doc. S/RES/955 (1994) (Rwanda). There was broad consensus among the parties participating in the drafting of the first International Tribunal Statute to include rape (when committed under relevant conditions) within crimes against humanity. The U.N. Secretary-General, France, Italy, seven states represented by the Organization of the Islamic Conference (OIC), and the United States each submitted proposals for definitions of crimes to come within the jurisdiction of the International Tribunal that defined rape, committed under certain conditions, as a crime against humanity. See *Statute of the International Tribunal, supra*, art. 5; UNITED NATIONS, SECURITY COUNCIL, LETTER DATED 10 FEBRUARY 1993 FROM THE PERMANENT REPRESENTATIVE OF FRANCE TO THE UNITED NATIONS ADDRESSED TO THE SECRETARY-GENERAL, Annex V, art. VI(1)(b)(iv), at 62, U.N. Doc. S/25266 (1993); UNITED NATIONS, SECURITY COUNCIL, LETTER DATED 16 FEBRUARY 1993 FROM THE PERMANENT REPRESENTATIVE OF ITALY TO THE UNITED NATIONS ADDRESSED TO THE SECRETARY-GENERAL, Annex I, art. 4(c), at 3, U.N. Doc. S/25300 (1993); UNITED NATIONS, SECURITY COUNCIL, LETTER DATED 31 MARCH 1993 FROM THE REPRESENTATIVES OF EGYPT, THE ISLAMIC REPUBLIC OF IRAN, MALAYSIA, PAKISTAN, SAUDI ARABIA AND SENEGAL TO THE UNITED NATIONS ADDRESSED TO THE SECRETARY-GENERAL, Annex, art. II(c)(1), at 2, U.N. Doc. S/25512 (1993) (OIC); cf. UNITED NATIONS, SECURITY COUNCIL, LETTER DATED 5 APRIL 1993 FROM THE PERMANENT REPRESENTATIVE OF THE UNITED STATES OF AMERICA TO THE UNITED NATIONS ADDRESSED TO THE SECRETARY-GENERAL, Annex II, art. 10(b)(i), at b, U.N. Doc. S/25575 (1993) (making an argument that implicitly defines rape, committed under certain conditions, as a crime against humanity).

Under certain circumstances, rape can also be a part of the crime of genocide. The U.N. Convention on the Prevention or Punishment of the Crime of Genocide defines genocide to include "[k]illing members of the group," "[c]ausing serious bodily or mental harm to members of the group," and "[d]eliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part." Convention on the Prevention and Punishment of the Crime of Genocide, adopted Dec. 9, 1948, art. II, 78 U.N.T.S. 277, 280. The Convention requires proof of intent to destroy or partially destroy a national, ethnic, racial or religious group. *Id.* Rape, when carried out for the purposes of destroying such a group, may be prosecuted under the Genocide Convention. See Meron, *Case, supra*, at 130-32. For analysis of the applicability of the Genocide Convention to ethnic cleansing, see John Webb, *Genocide Treaty—Ethnic Cleansing—Substantive and Procedural Hurdles in the Application of the Genocide Convention to Alleged Crimes in the Former Yugoslavia*, 23 GA. J. INT'L & COMP. L. 377 (1993).

109. Those few prosecutions for violations of international criminal law that have occurred have given scant attention to the prosecution of rape. Rape was not mentioned

less, to date, international criminal law relating to military personnel has been so rarely enforced—whether regarding rape, murder, assault, or otherwise¹¹⁰—that it seems unlikely that *differential* enforcement of *international* provisions accounts for any significant part of the rape differential.

The proposition that underenforcement of international criminal law probably contributes little to an explanation of the rape differential should not be taken to suggest that international criminal law could not contribute in the future to a reduction of rape by military personnel. There are indications that the enforcement of international criminal law relating to military personnel may improve considerably in the coming years. Within the past three years, we have witnessed the establishment of the International Criminal Tribunals for the former Yugoslavia and Rwanda,¹¹¹ and the establishment of a permanent International Criminal Court is becoming an ever more real possibility.¹¹² The establishment of

in the Nuremberg Charter and was not prosecuted as a war crime at the Nuremberg trials. See Meron, *Rape*, *supra* note 108, at 425–26. Rape received limited treatment at the Tokyo tribunal. See *id.* at 426 & n.14; Charter of the International Tribunal for the Far East, Jan. 19, 1946, *amended* Apr. 26, 1946, TIAS No. 1589, 4 Bevens 20; 2 THE INTERNATIONAL MILITARY TRIBUNAL FOR THE FAR EAST, THE TOKYO JUDGMENT 967–68, 971–73, 988–89 (B.V.A. Röling & C.F. Rüter eds., 1977); 1 *id.* at 385; JOHN A. APPLEMAN, MILITARY TRIBUNALS AND INTERNATIONAL CRIMES 259 (1971); ARNOLD C. BRACKMAN, THE OTHER NUREMBERG: THE UNTOLD STORY OF THE TOKYO WAR CRIMES TRIALS 20–21, 84, 379–82 (1987); William H. Parks, *Command Responsibility for War Crimes*, 62 MIL. L. REV. 1, 69–73 (1973). National tribunals have only occasionally included evidence of rape as a part of prosecutions for war crimes and crimes against humanity. See, e.g., CONTROL COUNCIL LAW NO. 10, Art. II(1)(c) (Dec. 20, 1945) (Allied Control Council), reprinted in NAVAL WAR COLLEGE, DOCUMENTS ON PRISONERS OF WAR 305 (Int'l Law Studies vol. 60, Howard S. Levie ed., 1979) (providing occupying powers in Europe with authority to conduct war crimes trials subsequent to WWII); XV UNITED NATIONS WAR CRIMES COMMISSION, LAW REPORTS OF TRIALS OF WAR CRIMINALS 121 (1949); PHILIP R. PICCIGALLO, THE JAPANESE ON TRIAL 179–80 (1979).

110. Prosecution of war crimes or other crimes committed by military personnel has been inconsistent and rather minimal. Since the Nuremberg and Tokyo international tribunals after WWII, there have been no *international* war crimes tribunals. See Meron, *Case*, *supra* note 108, at 122. Some national courts have tried war crimes, but such proceedings have been sporadic, and their outcomes far from satisfactory. See *id.* at 123. Regarding the myriad impediments to the efficacy of war crimes tribunals in national courts, see II TRANSITIONAL JUSTICE: HOW EMERGING DEMOCRACIES RECKON WITH FORMER REGIMES (Neil J. Kritz ed., 1995) (country studies).

111. See S.C. Res. 827, *supra* note 108 (former Yugoslavia); S.C. Res. 955, *supra* note 108 (Rwanda).

112. Most recently, in November 1995 the U.N. General Assembly 6th Committee adopted a draft resolution calling for a Preparatory Committee to draft texts of a convention for an International Criminal Court (ICC). *Draft Resolution of the Gen. Assembly*

such tribunals for the adjudication of international crimes would be expected to contribute substantially to enforcement of international criminal law, including the enforcement of international law prohibiting rape.¹¹³ Thus, international criminal law has the potential to become a real factor in the deterrence of crime, including rape, by military personnel. But the influences of international criminal justice probably contribute little to an explanation of the existing military rape differential.

In sum, flaws in the enforcement of domestic law governing rape by military personnel may account for some part of the rape differential and may require the remedial steps discussed above. In contrast, while international criminal law may contribute to future efforts to reduce rape by military personnel, its existing shortcomings probably do not contribute significantly to an explanation of the rape differential observed.¹¹⁴

Sixth Comm., U.N. Doc. A/C.6/L.14 (1995). Regarding the historic development and prospects for implementation of the ICC concept, see Timothy C. Evered, *An International Criminal Court: Recent Proposals and American Concerns*, 6 PACE INT'L L. REV. 121 (1994); Roy S. Lee, *Remarks Made at Pace University School of Law on October 23, 1993*, 6 PACE INT'L L. REV. 93, 95-97 (1994); Robert Rosenstock, *Remarks Made at Pace University School of Law on October 23, 1993*, 6 PACE INT'L L. REV. 83 (1994); Michael P. Scharf, *Getting Serious About an International Criminal Court*, 6 PACE INT'L L. REV. 103 (1994).

113. Despite the weak history of prosecution of rape as a war crime, there is every indication that the International Tribunals for the former Yugoslavia and Rwanda will prosecute rape vigorously. *See, e.g.*, Indictment 2, Meakic and Others, issued by the International Criminal Tribunal for the Former Yugoslavia (Feb. 13, 1995) (listing rape and sexual assaults among the acts constituting crimes against humanity), reprinted in 34 I.L.M. 1011, 1014, 1020 (1995); Statutes of the International Criminal Tribunal for the former Yugoslavia and Rwanda, *supra* note 108 (listing rape as a crime against humanity); Judge Richard J. Goldstone, Prosecutor, International Criminal Tribunal, Remarks Made at Duke Law School (Nov. 5, 1994). Indeed, the International Tribunal may contribute greatly to the development of the international humanitarian law of rape (e.g., by setting a precedent for diligently prosecuting rape as a war crime, establishing it clearly as a grave breach under the Geneva Conventions, identifying it as a crime against humanity when committed on a mass and systematic scale, identifying it as a tool of genocide when so used, and by establishing that forced prostitution is a form of rape). Cf. SPECIAL TASK FORCE OF THE A.B.A. SECTION OF INT'L LAW AND PRACTICE, REPORT ON THE INT'L TRIBUNAL TO ADJUDICATE WAR CRIMES COMMITTED IN THE FORMER YUGOSLAVIA 15 (1993) (suggesting that the statute of the International Tribunal should "expand subparagraph 5(g) (rape) to include specific reference to enforced prostitution, enforced pregnancy, and other widespread sexual offenses").

114. Individual *civil* liability for rape, as well as criminal liability, may obtain under provisions of both domestic and international law. (For a discussion of *state* responsibility for rape by military personnel, see *infra* note 393.) There is, however, no reason to believe that any aspect of potential civil liability would contribute to the military rape differential. In the domestic context, military personnel would be subject to civil suit for

Finally, it is worth focusing on an additional avenue of explanation, concerning environmental factors, that appears promising in its potential to illuminate one important set of factors contributing to the military rape differential. A virtue of this avenue of explanation is that it carries significant implications for policymaking that may help to address the rape differential and thus to reduce further the incidence of rape by military personnel.¹¹⁵

rape in the same courts and under the same laws as civilians would be—or, more precisely, as civilian federal employees would be. In any event, the provisions applicable to suits for torts by federal employees are, for present purposes, entirely comparable to the provisions applicable to suits for torts by *any* civilian. See Letter from Col. Scott Silliman, U.S.A.F. (Ret.), former Staff Judge Advocate, Air Combat Command, to author (Jan. 23, 1996) (on file with author).

In the international context, the provisions under which military personnel would be subject to civil suit for rape would apply equally to other forms of violent abuse or torture because there are no provisions in international law giving rise to individual liability for rape in particular. Rather, international law permits states to provide civil remedies, in tort or restitution, for international crimes giving rise to universal jurisdiction. See RESTATEMENT (THIRD) OF THE FOREIGN RELATIONS LAW OF THE UNITED STATES § 404 cmt. b (1986). Crimes giving rise to universal jurisdiction include grave breaches of the Geneva Conventions, crimes against humanity and, probably, genocide. See Meron, *Case, supra* note 108, at 129; Kenneth Randall, *Universal Jurisdiction Under International Law*, 66 TEX. L. REV. 785, 788 (1988) (crimes against humanity). Compare RESTATEMENT (THIRD) OF THE FOREIGN RELATIONS LAW OF THE UNITED STATES, § 404 (providing universal jurisdiction to punish genocide) with E.S. Fawcett, *The Eichman Case*, 38 BRIT. Y.B. INT'L L. 181, 206 (1962) (arguing that territoriality is the exclusive jurisdictional basis for prosecution of genocide). Thus, rape or any other crime committed in such a way as to constitute a grave breach, a crime against humanity, or (probably) genocide, see *supra* note 108, can form the basis for civil liability. See, e.g., *Kadic v. Karadzic*, 70 F.3d 232 (2d Cir. 1995) (holding that the Alien Tort Act, 28 U.S.C. § 1350 (1988), provided U.S. federal jurisdiction for a tort suit against Radovan Karadzic, president of the Bosnian Serb administration in Pale, in his individual capacity, for wrongs, including rape, committed in the armed conflict in Bosnia-Herzegovina). Comparative data are lacking regarding the imposition of international law-based civil liability for rape and for other forms of violent abuse. But the prospect that military personnel perceive some disparity in the imposition of international civil liability for rape and for other forms of abuse, and that this perception affects their rape incidence, is extremely remote indeed.

115. One might ask why military rape incidence needs to be addressed or reduced, given that peacetime military rape rates are lower than civilian rape rates (after controlling for age and gender). The response is threefold. First, the blight of extremely high rape rates that is common to many wars (extremely high both in comparison with civilian rates and in comparison with military rates of other violent crime in war) is well worth addressing. Second, while peacetime military rape rates are lower than civilian rates, they are diminished from civilian rates substantially less than are military rates of other violent crime. See *supra* notes 20–33 and accompanying text. If that lesser diminution in rape is in fact due to factors that can be addressed with a resultant *further* reduction in military rape rates, bringing reduction in military rape rates more into line with reduction in military rates of other violent crime, then this too is a goal worth pursuing. Thirdly, reducing military rape rates as much as possible may be a national obligation under

The avenue of explanation for the military rape differential that I intend now to pursue rests largely on an interpretation of military culture, as follows: There are conditions of military life and lifestyle that inhibit and diminish rates of violent crime including rape, but there are other conditions in military life that tend to re-elevate rape rates. The factors minimizing military violent crime would include a structured and controlled lifestyle, often with greater surveillance of one's activities than in civilian life; fewer opportunities for many kinds of crime (especially for personnel living on base); a population that excludes past felons;¹¹⁶ a reduced incidence of drug abuse;¹¹⁷ and a close knit social organization that generally imparts and enforces anti-crime norms. These factors would contribute to a diminution in violent crime by military personnel in peacetime and, to a lesser extent, even in the combat context.

What may explain the lesser minimizing effect of these factors on military *rape* rates is that, even while those crime-inhibiting pressures are being exerted on all violent crime including rape, *countervailing* factors in military culture tend to push the *rape* rate—but not the rates of other violent crime—back up. In brief, the cultural influences that may tend to re-elevate military rape rates are as follows. When a closely bonded group (a “primary group”) shares group norms conducive to rape, the risk of rape by group members is increased. Norms conducive to rape include certain normative attitudes toward masculinity, toward sexuality, and toward women, and also include norms favoring deindividuation (described below) among group members. When primary group members with rape-conducive attitudes enter a deindividuated state, the risk of individual or group rape becomes significant, especially if external deterrents are minimal. The following section demonstrates that military units are primary groups, and examines evidence that military primary groups often share rape-conducive norms that may elevate the rape incidence of military organizations in war and in peace.¹¹⁸ Thus, the hypothesis to

international law. See *infra* note 393 and accompanying text.

116. See 10 U.S.C. § 504 (1994).

117. See Eric Schmitt, *Military Struggling to Stem an Increase in Family Violence*, N.Y. TIMES, May 23, 1994, at A1, A12.

118. Of course, military primary groups also could share norms conducive to crimes other than rape. The prevalence of certain crimes in particular units in certain wars suggests that such phenomena have indeed occurred. See, e.g., Office of the Judge Advocate

be explored is that these military cultural factors tend to increase military rape rates but not military rates of other violent crime—and that these cultural factors may contribute significantly to the military rape differential.

B. *The Rape Differential and Military Culture*

1. *Primary Groups*. The “primary group” is a familiar feature of analyses in sociology. As defined by the author of the term, primary groups are

characterized by intimate face-to-face association and cooperation. They are primary in several senses, but chiefly in that they are fundamental in forming the social nature and ideals of the individual. The result of intimate association, psychologically, is a certain fusion of individualities in a common whole, so that one's very self, for many purposes at least, is the common life and purpose of the group. Perhaps the simplest way of describing this wholeness is by saying that it is a “we”; it involves the sort of sympathy and mutual identification for which “we” is the natural expression.¹¹⁹

Primary groups are particularly influential in shaping their members' attitudes and behaviors.¹²⁰

Primary groups are distinguished from other forms of group association in that primary groups are emotionally central to the individual.¹²¹ While the prototype of the primary group is the family,¹²² other forms of primary group include close friendship groups,¹²³ fraternities and sororities,¹²⁴ religious orders,¹²⁵ reli-

Gen., *supra* note 47, at 263–68 (discussing widespread organized theft and resale of government supplies by members of a certain railway battalion in the ETO). However, there are reasons why norms conducive to rape in particular are especially likely to form in military organizations. See *infra* Part IV. For that reason, the following analysis, while having some applicability to crimes by military personnel in general, is particularly cogent and applicable to the phenomenon of *rape* by members of military organizations.

119. CHARLES H. COOLEY, *SOCIAL ORGANIZATION: A STUDY OF THE LARGER MIND* 23 (1909).

120. See DEXTER C. DUNPHY, *THE PRIMARY GROUP: A HANDBOOK FOR ANALYSIS AND FIELD RESEARCH* 40–79 (1972).

121. See *id.* at 5.

122. Ellsworth Faris, *The Primary Group: Essence and Accident*, 38 AM. J. SOC. 41, 48 (1932) (“The family has always been considered the essential type of a primary group.”).

123. See *id.* at 49; Peter O. Peretti, *Perceived Primary Group Criteria in the Relational Network of Closest Friendships*, 15 ADOLESCENCE 555, 555 (1980).

124. See DUNPHY, *supra* note 120, at 5, 15.

gious or psychotherapeutic "cults,"¹²⁶ street gangs,¹²⁷ some sports teams, and the like.¹²⁸

Primary groups involve personal affective relationships (often of a form replicating familial relationships); often require some form of renunciation or separation by members from other commitments and relationships; often have formal membership requirements and/or initiation rites; and frequently have some ideology or cause to which the group is committed.¹²⁹ Each of these characteristics of primary groups contributes to group cohesion.

Primary groups are powerful forces in the lives of their members because primary group relationships tap into the formative emotional and psychological structures that constitute the bases of the individual's personality or self. For this reason, primary groups profoundly affect individuals' inner emotional lives and, consequently, their attitudes and actions.¹³⁰ From a psychoanalytic perspective, primary groups "recreate primary ties originally formed in the family. They reactivate family identifications and make use of transference relationships to modify personality."¹³¹ In sum, primary groups are potentially influential.

Military units prominently feature the characteristics of primary groups. We would therefore expect the norms and attitudes engendered in the context of military units to have significant effects on the behavior of their members. After discussing the primary-group attributes of military units, we shall consider more specifically primary groups' influence on sexual attitudes and behavior, including rape.

2. *Primary Groups in Military Organizations.* The military unit is an institution with strong primary-group characteristics,¹³²

125. See *id.* at 5.

126. See *id.* at 5, 31-34 (including as primary groups "[r]esocialization groups such as therapy groups, rehabilitation groups, and self-analytic groups").

127. *Id.* at 5, 13-15.

128. See generally *id.* at 5.

129. This list contains factors characteristic of primary groups, not definitive or absolute requirements.

130. For an in-depth analysis of this process, see DUNPHY, *supra* note 120, at 40-59.

131. *Id.* at 34.

132. See MARTIN BINKIN & SHIRLEY J. BACH, *WOMEN AND THE MILITARY* 91 (1977); KARSTEN, *supra* note 64, at 69; CHARLES C. MOSKOS, JR., *THE AMERICAN ENLISTED MAN* 156 (1970); David H. Marlowe, *The Manning of the Force and the Structure of Battle: Part 2—Men and Women*, in *CONSCRIPTS AND VOLUNTEERS* 189, 193-94 (Robert K. Fullinwider ed., 1983).

especially in the combat context.¹³³ These characteristics begin to develop as early as basic training.¹³⁴ A central goal of military unit preparation is the fostering of unit cohesion through the formation of primary group bonds.¹³⁵ As General Colin Powell put it, "Bonding begins on the first day of boot camp."¹³⁶ The nature of the affective bonds of the military unit in combat is well reflected in the remarks of a wounded World War II veteran in 1944: "The men in my squad were my special friends. . . . If one man gets a letter from home . . . the whole company reads it. Whatever belongs to me belongs to the whole outfit."¹³⁷ As in other primary groups, cohesion in military units is fostered by the cementing of affective ties within the group, by separation of members from outside emotional ties, by the presence of membership requirements and initiation rites, and by the presence of an ideology or cause to which the group is committed.

The affective bonds developed in primary groups of all sorts tend to replicate the primary ties originally formed in the family.¹³⁸ Not surprisingly, the psychological structures of the family are conspicuously replicated within the military unit from the time of its formation.¹³⁹ The drill instructor who leads the unit

To be more precise, military units are intended to be, and *usually* are, primary groups. When they are not, "unit cohesion" is lacking, which is considered a serious problem by military leaders and experts. See *infra* notes 299-301 and accompanying text.

133. See JESSE G. GRAY, *THE WARRIORS* 44 (1959) ("As any commander knows, an hour or two of combat can do more to weld a unit together than can months of intensive training.").

134. For a discussion of the different roles of primary groups in combat and noncombat military units, see Roger W. Little, *Buddy Relations and Combat Performance*, in *THE NEW MILITARY* 195, 195-223 (Morris Janowitz ed., 1964).

135. See Frederick Manning, *Morale, Cohesion, and Esprit de Corps*, in *HANDBOOK OF MILITARY PSYCHOLOGY* 453, 457 (Reuven Gal & A. David Mangelsdorff eds., 1991); see also SENATE COMM. ON ARMED SERVICES, NATIONAL DEFENSE AUTHORIZATION ACT FOR FISCAL YEAR 1994, S. REP. NO. 112, 103d Cong., 1st Sess. 264 (1993) ("One of the most critical elements in combat capability is unit cohesion, that is, the bonds of trust among individual service members.").

136. SENATE COMM. ON ARMED SERVICES, *supra* note 135, at 275 (statement of Gen. Colin Powell).

137. II SAMUEL A. STOUFFER ET AL., *THE AMERICAN SOLDIER: COMBAT AND ITS AFTERMATH* 99 (1949).

138. See *supra* text accompanying notes 122-31.

139. As Dexter Dunphy has observed, "[T]he primary group in the army acts as a family surrogate" DUNPHY, *supra* note 120, at 26.

through basic training comes to occupy the role of a father.¹⁴⁰ As one Marine sergeant explained,

[The recruits are] seeking discipline, they're seeking someone to take charge, 'cause at home they never got it. . . . [A]nd it's kind of like the father-and-son game, all the way through. They form a fatherly image of the DI [drill instructor] whether they want to or not.¹⁴¹

In combat, the commanding officer as a paternal figure serves important functions. As one World War II veteran said, "About officers—everybody wants somebody to look up to when he's scared. It makes a lot of difference."¹⁴² The competently protective and paternal leader has consistently been found to be an important basis of morale for primary groups in combat.¹⁴³

Sigmund Freud discussed the replication of familial psychological structures in armies as well as in other "artificial groups" such as the church. As he stated,

In a Church . . . as well as in an army . . . the same illusion holds good of there being a head—in the Catholic Church Christ, in an army its Commander-in-Chief—who loves all the individuals in the group with an equal love. . . . It is not without a deep reason that the similarity between the Christian community and a family is invoked, and that believers call themselves brothers in Christ, that is, brothers through the love which Christ has for them. . . . The like holds good of an army. The Commander-in-Chief is a father who loves all soldiers equally, and for that reason they are comrades among themselves. . . . Every captain is,

140. A typical strategy is for the older, senior drill instructor to play a fatherly role, while the junior drill instructor is more of a "tough guy." Interview with Cpl. Salvatore Cardella, Marine Combat Correspondent, at Parris Island Marine Corps Recruit Depot, S.C. (Oct. 22, 1993).

141. GWYNNE DYER, WAR 113 (1985) (quoting U.S.M.C. Sgt. Carrington).

142. II STOFFER ET AL., *supra* note 137, at 124.

143. See Edward A. Shils, *Primary Groups in the American Army*, in CONTINUITIES IN SOCIAL RESEARCH 16, 32-35 (Robert K. Merton & Paul F. Lazarsfeld eds., 1974) [hereinafter Shils, *Primary*]. Indeed, Shils elsewhere states that

authoritarian leadership can indeed be a crucial component in primary groups composed of persons with personality needs which can best be satisfied by authoritative protection or in primary groups operating in situations which bring these needs for paternal protection to the fore. . . . With certain types of personalities or in certain types of situations (tasks and threats) primary-group solidarity might well be disintegrated by democratic leadership.

Edward A. Shils, *The Study of the Primary Group*, in THE POLICY SCIENCES 44, 65 n.60 (Daniel Lerner & Harold L. Lasswell eds., 1951) [hereinafter Shils, *The Study*].

as it were, the Commander-in-Chief and the father of his company, and so is every non-commissioned officer of his section.¹⁴⁴

Thus, military units, like other primary groups, feature affective bonds that are often reminiscent of family relationships.¹⁴⁵

In addition to replicating family relationships, military groups, like other primary groups, also encourage separation by members from other commitments and relationships. From the time of basic training, military personnel are encouraged to effectuate, at least temporarily, some separation from outside emotional ties. This trend in military training toward separation from family or other outside bonds is based on an understanding that the solidarity or cohesion of the military unit can be undermined by the pull of competing loyalties.¹⁴⁶ For that reason, military personnel are encouraged to transfer their loyalties from any previous attachments to the military unit, at least as a temporary matter.¹⁴⁷ The comments of one Marine Corps captain regarding recruits' communication with people "outside" during basic training are illustrative:

They're allowed to call home, so long as it doesn't get out of hand. . . . If it's a case of an emergency call coming in, then they're allowed to accept that call; if not, one of my staff will

144. SIGMUND FREUD, *GROUP PSYCHOLOGY AND THE ANALYSIS OF THE EGO* 25-26 (1959). This commonality between military and religious groups was again reflected in recent congressional testimony stating that "[s]uccessful officers . . . relay a strong sense of . . . security to their soldiers which . . . gains a degree of influence and control over members of their units often associated with charismatic leaders." SENATE COMM. ON ARMED SERVICES, *supra* note 135, at 307 (quoting Dr. William Daryl Henderson, retired Research Fellow at the National War College); *see also* DYER, *supra* note 141, at 103 ("[Military socialization] is, essentially, a conversion process in an almost religious sense—and as in all conversion phenomena, the emotions are far more important than the specific ideas.").

The theme of commonalities in the quasi-familial psychological structures of primary groups as seemingly diverse as military units, religious orders, cults, fraternities, street gangs, and sport teams is significant. The significance lies in the fact that those quasi-familial psychological structures greatly magnify the power of such groups' influence on their members. As we shall see, that magnified group influence may tend to increase, under certain circumstances, the rape incidence of group members.

145. Of course, "mother" and "sister" have been largely absent from the military "family." The significance of this absence is discussed *infra* notes 303-04 and accompanying text.

146. *See* DUNPHY, *supra* note 120, at 26 ("[A] man's real family loyalties were one of the most substantial threats to the solidarity of the army unit."); Edward A. Shils & Morris Janowitz, *Cohesion and Disintegration in the Wehrmacht in World War II*, 12 PUB. OPINION Q. 280, 289-91 (1948).

147. *See* DUNPHY, *supra* note 120, at 26.

take the message. . . . In some cases I'll get calls from parents who haven't quite gotten adjusted to the idea that their son had cut the strings. . . . The military provides them with an opportunity to leave home but they're still in a rather secure environment.¹⁴⁸

The emotional displacement of outside ties with unit bonds is pronounced during training, is generally more moderated in day-to-day peacetime military life, and is at its height in the combat context. Soldiers in combat frequently say that they are closer with their unit members than with their wives or families.¹⁴⁹ As one Vietnam veteran put it,

[T]here's a love relationship that is nurtured in combat because the man next to you—you're depending on him for the most important thing you have, your life. . . . I'd say this bond is stronger than almost anything, with the exception of parent and child. It's a hell of a lot stronger than man and wife—your life is in his hands¹⁵⁰

This replacement of family with the military unit as the emotional center of soldiers' lives, at least temporarily, is consistently reflected in soldiers' remarks and in the literature on the social psychology of combat.¹⁵¹ As Arkin and Dobrofsky conclude,

The interruption of intimate family relations which basic training accomplishes, the separation from family which basic training enforces, and the distance from one's family which the first enlistment tour encourages are all processes intended to ensure that

148. DYER, *supra* note 141, at 109 (quoting U.S.M.C. Capt. Brassington).

149. For a psychoanalytic analysis of the combat buddy relationship as narcissistic failure to discriminate between self and other, see Fox, *supra* note 64, at 809–11.

150. DYER, *supra* note 141, at 104 (quoting former U.S. Army Capt. John Early); see also *id.* at 127 (quoting William Manchester: "You are closer to those men than to anyone except your immediate family when you were young.").

151. See, e.g., William Arkin & Lynne R. Dobrofsky, *Military Socialization and Masculinity*, in *MAKING WAR, MAKING PEACE: THE SOCIAL FOUNDATIONS* 68, 76–77 (Francesca Cancian & James Gibson eds., 1990).

Consistent with the trend toward avoiding relationships with outsiders that might undermine the cohesion of the military primary group, a certain level of care is taken so that personal friendships *within* the military unit do not threaten its primary group solidarity. Thus, especially in the combat context, there is an avoidance of overt pairing off into duos that might seem exclusionary or rejecting of others or of the group. See Little, *supra* note 134, at 198.

the man is fully socialized (disciplined) by the military before re-introducing civilian and intimate influences of family.¹⁵²

In addition to the building of affective ties within the group, and the separation from affective ties outside the group, military units also share the formal membership requirements and initiation rites that are characteristic of primary groups.¹⁵³ As well as the threshold membership requirements for becoming a recruit (such as mental and physical testing, age, gender, and educational qualifications), various forms of initiation occur throughout basic training. Physical hardship and stern discipline must be undergone before one "becomes" a soldier, sailor, marine, or airman. The extraordinary challenge or ordeal from which one emerges as an initiate serves to create and to support a sense of group identity and solidarity.¹⁵⁴ The use of such formal and informal membership requirements and initiation rites is a characteristic mode of defining insiders and outsiders in primary groups.

Finally, as is common in primary groups, there is in the military an ideology or cause to which the group is committed: the defense and protection of a nation, or of a political system or way of life. A military organization's ideological basis, like that of other primary groups, may or may not actually be a primary motivation for membership or for group members' activities.¹⁵⁵ Nev-

152. Arkin & Dobrofsky, *supra* note 151, at 76-77.

153. For descriptions of membership requirements and initiation rites in college fraternities, see PEGGY R. SANDAY, *FRATERNITY GANG RAPE: SEX, BROTHERHOOD, AND PRIVILEGE ON CAMPUS* 135-55 (1990); Patricia Martin & Robert Hummer, *Fraternities and Rape on Campus*, 3 *GENDER & SOC'Y* 457, 462 (1989).

154. See DUNPHY, *supra* note 120, at 278; cf. Martin & Hummer, *supra* note 153, at 462 ("Characteristics of the [demanding and demeaning] pledge experience are rationalized by fraternity members as necessary to help pledges unite into a group, rely on each other, and join together against outsiders.").

155. While a group ideology or cause (e.g., a religious or political commitment) may serve as the members' ostensible purpose for membership, there is substantial evidence that ideology plays a secondary role to emotional sustenance and attachment in the motivations of many ideological primary group members. See DUNPHY, *supra* note 120, at 27; Edward A. Shils, *Primordial, Personal, Sacred, and Civil Ties*, in *THE STUDY OF SOCIETY: AN INTEGRATED ANTHOLOGY* 178, 178-92 (Peter I. Rose ed., 1967); Madeline Morris, *IAM: A Group Portrait* 75-96 (1986) (unpublished manuscript, on file with author).

For examination of the relationship between primary group bonding and ideological motivation in military organizations, see RICHARD A. GABRIEL, *THE NEW RED LEGIONS* (1980); Elliot P. Chodoff, *Ideology and Primary Groups*, 9 *ARMED FORCES & SOC'Y* 569, 577-91 (1983); Charles C. Moskos, Jr., *The American Combat Soldier in Vietnam*, 31 *J. OF SOC. ISSUES* 25, 26-27 (1975); Shils, *Primary*, *supra* note 143, at 23-24; Shils & Janowitz, *supra* note 146, at 281-315.

ertheless, members' ulterior or additional motives notwithstanding, the military organization's ideological basis provides for group members a basis or ostensible basis for participation and identification.

Military units, then, are primary groups.¹⁵⁶ They share with other primary groups the central characteristic of personal, affective bonding, along with the frequent concomitants of separation from external bonds, initiation requirements, and ideological components. The primary group bonds of the military unit begin forming in basic training and are most intense in the combat context.

3. *Sexual Norms in Primary Groups.* Heightened rape incidence is associated with certain primary groups. Some street or motorcycle gangs,¹⁵⁷ fraternities,¹⁵⁸ and sports teams,¹⁵⁹ for instance, appear to have elevated rape rates. Although less is known about rape in religious and therapeutic cults, the limited

156. More precisely, military units are *intended* to be (and usually are) primary groups. See *supra* note 132.

157. Regarding the phenomenon of rape by gang members, see MACKELLAR, *supra* note 89, at 112; W.H. Blanchard, *The Group Process in Gang Rape*, 49 J. OF SOC. PSYCHOL. 259, 259-66 (1959); Gilbert Geis, *Group Sexual Assaults*, MED. ASPECTS OF HUM. SEXUALITY, May 1971, at 101, 101-13; David Gelman et al., *The Mind of the Rapist*, NEWSWEEK, July 23, 1990, at 46, 50.

158. Regarding the prevalence of rape by fraternity members, see SANDAY, *supra* note 153; Julie K. Ehrhart & Bernice R. Sandler, *Party Rape*, 9 RESPONSE 2, 2-3 (1985); Mary P. Koss & John A. Gaines, *The Prediction of Sexual Aggression by Alcohol Use, Athletic Participation, and Fraternity Affiliation*, 8 J. OF INTERPERSONAL VIOLENCE 94, 105 (1993); Martin & Hummer, *supra* note 153, at 457-59.

159. Regarding the prevalence of rape by sports team members, see Gerald Eskenazi, *The Male Athlete and Sexual Assault*, N.Y. TIMES, June 3, 1990, § 8, at 1 (stating that "[i]nterviews with rape-crisis counselors as well as results of studies of assaults on college campuses indicate that athletes are involved in a disproportionate number of rapes and other sexual assaults"); Jerry Kirshenbaum, *An American Disgrace: A Violent and Unprecedented Lawlessness Has Arisen Among College Athletes in All Parts of the Country*, SPORTS ILLUSTRATED, Feb. 27, 1989, at 16, 17; Koss & Gaines, *supra* note 158, at 104-05 (finding participation in organized athletics a significant predictor of sexual aggression in undergraduate population studied); Rick Telander & Robert Sullivan, *You Reap What You Sow: Oklahoma Has Paid the Price for the Anything Goes Attitude That Coach Barry Switzer Has Allowed to Take Root*, SPORTS ILLUSTRATED, Feb. 27, 1989, at 20, 21, 23-24; see also Todd W. Crosset et al., *Male Student-Athletes Reported for Sexual Assault: A Survey of Campus Police Departments and Judicial Affairs Offices*, Address before the North American Society for Sports Sociology (Nov. 11, 1994), at 9 (on file with author) (reporting that, at 20 schools with highly rated Division I football and basketball teams surveyed between 1991 and 1993, "athletes appear to be disproportionately involved in incidents of sexual assault on college campuses").

data available suggest that rape rates are elevated in some cults as well.¹⁶⁰

The cause of the heightened rape incidence in such primary groups appears to lie, at least partly, in the groups' norms.¹⁶¹ Certain gender and sexual norms and attitudes have been found to be conducive to rape. This section briefly considers the role of sexual and gender norms in primary groups, and then examines the set of gender and sexual attitudes that has been found to be correlated with heightened rape propensity. The section concludes with an examination of the presence and role of rape-conducive norms in military culture.

The sets of norms developed in primary groups invariably include gender and sexual norms. Perhaps the prototype of sexual norms in primary groups is the incest taboo in families.¹⁶² Some primary groups develop specialized sexual norms (such as celibacy or "free love") for reasons including avoidance of loyalties developed in sexual relationships that might compete with loyalties to the group; avoidance of disruptions to group cohesion caused by sexual jealousies or rejections within the group; control over members' intimate selves through control of sexuality; and desire by group members or leaders for norms consistent with their sexual preferences.¹⁶³ Sigmund Freud made explicit the analogous

160. Regarding sexual abuse of adults in cults, see Paul Martin et al., *Post-Cult Symptoms: As Measured by MCMI Before and After Residential Treatment*, 9 CULTIC STUD. J. 219, 221, 238-39 (1992). Little systematic research has been done on the incidence in cults of rape specifically, as opposed to sexual abuse defined to include rape along with other forms of sexual abuse of adults. However, some anecdotal data on the subject is collected in Marcia Rudin, *Women, Elderly, and Children in Religious Cults*, 1 CULTIC STUD. J. 8, 10 (1984).

161. "Group norms" have been described as "ideas in the minds of members about what should and should not be done by a specific member under specified circumstances." THEODORE M. MILLS, *THE SOCIOLOGY OF SMALL GROUPS* 74 (1967); see also GEORGE C. HOMANS, *THE HUMAN GROUP* 121-27 (1950).

162. See generally Kurt W. Back, *Small Groups*, in *SOCIAL PSYCHOLOGY: SOCIOLOGICAL PERSPECTIVES* 320, 327-28 (Morris Rosenberg & Ralph H. Turner eds., 1990) (discussing Freudian perspectives on family relations as prototypes for small group interactions).

163. See generally *id.* at 334 (citations omitted):

[A] group will be more cohesive if it has fewer mutual choices. . . . [P]airing is an activity that is opposed to the general efficient group process, just as fighting—interpersonal aggression—is. Social critics have seen this point intuitively. Orwell's *Nineteen Eighty-Four* opposes individual love to group solidarity with Big Brother.

Cf. Martin & Hummer, *supra* note 153, at 470-71 (The fraternity norm of "getting sex without giving emotionally . . . poses no threat to the bonding and loyalty of the frater-

functions of such specialized sexual norms in religious organizations and military organizations:

In the great artificial groups, the Church and the army, there is no room for woman as a sexual object. The love relation between men and women remains outside these organizations.

Even in a person who has in other respects become absorbed in a group, the directly sexual impulses preserve a little of his individual activity. If they become too strong they disintegrate every group formation. The Catholic Church had the best of motives for recommending its followers to remain unmarried and for imposing celibacy upon its priests.¹⁶⁴

The content of primary groups' sexual norms varies between groups and between types of groups. For example, religious cults typically gravitate toward norms of broad sexual access by group leaders but limited or leader-controlled sexual access for others,¹⁶⁵ whereas fraternities tend to favor broad sexual access—sometimes including coercive access—for all members.¹⁶⁶

The sexual norms of some primary groups are conducive to rape. While the group norms conducive to rape in primary groups may on occasion be specialized sexual norms directly approving of rape,¹⁶⁷ rape-conducive group norms more often will consist of a set of normative attitudes toward sexuality and toward gender more broadly that enhances the attractions and reduces the aversions or inhibitions to rape.

nity brotherhood.").

164. FREUD, *supra* note 144, at 73.

165. Broad sexual access for group leaders often means virtually unconstrained sexual access by the group leader to all group members (or sometimes to all group members of the opposite sex). See Martin et al., *supra* note 160, at 221, 240. Limited or leader-controlled sexual access by group members takes a variety of forms ranging from celibacy requirements to requirements that members have sexual relations with (and/or marry) other members of the leader's choosing, or that members (usually female) engage in prostitution for the benefit of the group, or other arrangements in which the leader dictates the sexual behavior of group members, invariably prohibiting some sexual activities and often requiring others. See Rudin, *supra* note 160, at 9-10 (describing the leader-controlled sexual practices of a variety of religious cults); Roy Wallis, *Sex, Violence, and Religion*, 7 NEW RELIGIOUS MOVEMENTS 3, 3-4 (1983) (same).

166. See SANDAY, *supra* note 153, at 1-19; Martin & Hummer, *supra* note 153, at 459 ("[Some] fraternities create a sociocultural context in which the use of coercion in sexual relations with women is normative . . .").

167. See, e.g., SANDAY, *supra* note 153, at 11-19.

4. *Rape-Conducive Sexual and Gender Attitudes.* Social science research conducted over several decades has identified a specific set of attitudes that appears to be conducive to rape.¹⁶⁸ This set includes certain attitudes toward masculinity, toward sexuality, and toward women.

Particular attitudes toward masculinity have been found to be related to heightened levels of rape propensity.¹⁶⁹ Standards of masculinity that emphasize dominance, assertiveness, aggressiveness, independence, self-sufficiency, and willingness to take risks, and that reject characteristics such as compassion, understanding, and sensitivity have been found to be correlated with rape propensity. Several different measures for this construct of masculinity have been used in the studies that have identified this correlation. These measures include "negative masculinity," meaning a posture of self-assertion and self-protection unalloyed with communion or concern with others;¹⁷⁰ "hypermasculinity," meaning stereotypic masculinity and interpersonal opportunism;¹⁷¹ and nonfeminine "sex-typing," meaning personality or sex role constructs with minimal stereotypically feminine characteristics such as sensitivity or gentleness.¹⁷² In essence, normative standards of masculinity that emphasize aggressiveness, dominance, and independence, and that minimize sensitivity, gentleness, and other stereotypically feminine

168. While social science research on attitudes and rape-propensity cannot definitively establish a *causal* relationship based on the extensive correlations established, a causal relationship is strongly suggested by the available data and is generally believed to exist by researchers in the field. See, e.g., Donald L. Mosher & Ronald D. Anderson, *Macho Personality, Sexual Aggression, and Reactions to Guided Imagery of Realistic Rape*, 20 J. OF RES. IN PERSONALITY 77, 91 (1986).

169. Measures of rape propensity encompass measures both of prior commissions of rape (based on convictions or self-reports) and of self-reported likelihood of raping in the future under various conditions that may or may not occur (e.g., wartime). The available research suggests that all of these measures are valid indicators of some consistent factor of rape proneness or propensity. See, e.g., Neil M. Malamuth, *Rape Proclivity Among Males*, 37 J. OF SOC. ISSUES 138, 138 (1981) (affirming the validity of likelihood-of-raping measures).

170. Neil M. Malamuth et al., *Characteristics of Aggressors Against Women: Testing a Model Using a National Sample of College Students*, 59 J. OF CONSULTING PSYCHOL. 670, 673-74 (1991).

171. David Lisak & Susan Roth, *Motives and Psychodynamics of Self-Reported, Unincarcerated Rapists*, 60 AM. J. ORTHOPSYCHIATRY 268, 277-78 (1990).

172. Robert L. Quackenbush, *A Comparison of Androgynous, Masculine Sex-Typed, and Undifferentiated Males on Dimensions of Attitudes Toward Rape*, 23 J. OF RES. IN PERSONALITY 318, 328, 333 (1989).

characteristics have been found to be associated with heightened propensity to commit rape.

In addition to attitudes toward masculinity, certain attitudes toward sexuality also have been found to be associated with heightened rape propensity. "Adversarial sexual beliefs," the view that sexual relationships are inherently exploitative—that is, that each party seeks to benefit without regard for the other and will use manipulation and deceit for that purpose¹⁷³—are associated with heightened rape propensity.¹⁷⁴ "Sexual promiscuity," a high emphasis on sexuality and, in particular, a high number of sexual partners, also has been found to be correlated with high levels of sexual aggression.¹⁷⁵

Numerous studies have found that "rape myth acceptance" also is associated with rape propensity. Rape myths are "prejudicial, stereotyped, or false beliefs about rape, rape victims, and rapists."¹⁷⁶ Examples of rape myths would include, for instance, the belief that women enjoy being raped.¹⁷⁷ Belief in rape myths has been shown consistently to be strongly associated with sexual aggression and with self-reported likelihood to rape.¹⁷⁸

In addition to attitudes toward masculinity and sexuality, attitudes acceptant of violence against women also bear a relationship to rape propensity. Such an attitudinal construct, as described by Martha Burt, is "the notion that force and coercion are legitimate ways to gain compliance and specifically that they are legitimate in intimate and sexual relationships."¹⁷⁹ Not surprisingly, attitudes of

173. Martha Burt, *Cultural Myths and Supports for Rape*, 38 J. OF PERSONALITY & SOC. PSYCHOL. 217, 218 (1980).

174. See Quackenbush, *supra* note 172, at 338; cf. Burt, *supra* note 173, at 224-25 (finding that adversarial sexual beliefs are correlated with rape myth acceptance, which itself has subsequently been shown to correlate with sexual aggression and attraction to sexual aggression).

175. Malamuth et al., *supra* note 170, at 677-78.

176. Burt, *supra* note 173, at 217.

177. *Id.*

178. See John Briere & Neil M. Malamuth, *Self-Reported Likelihood of Sexually Aggressive Behavior: Attitudinal Versus Sexual Explanations*, 17 J. OF RES. IN PERSONALITY 315, 321-22 (1983); Neil M. Malamuth, *The Attraction to Sexual Aggression Scale: Part One*, 26 J. OF SEX RES. 26, 38-40 (1989) [hereinafter Malamuth, *Part One*]; Neil M. Malamuth, *The Attraction to Sexual Aggression Scale: Part Two*, 26 J. OF SEX RES. 324, 335-37 (1989) [hereinafter Malamuth, *Part Two*]; Quackenbush, *supra* note 172, at 334; see also Hubert S. Feild, *Attitudes Toward Rape: A Comparative Analysis of Police, Rapists, Crisis Counselors and Citizens*, 36 J. OF PERSONALITY & SOC. PSYCHOL. 156, 169 (1978) (finding rapists more likely than rape counsellors to endorse rape myths).

179. Burt, *supra* note 173, at 218.

this type have consistently been found to be highly correlated with sexual aggression and with rape propensity.¹⁸⁰

Finally, not only attitudes specifically toward *violence* against women but also attitudes toward women more generally influence rape propensity. "Hostility toward women" is a measure designed to reflect attitudes of distrust, anger, alienation, and resentment toward women.¹⁸¹ Such attitudes include, for example, beliefs that most women are deceitful, that women flirt to tease or hurt men, and that women take advantage of men who do not stand up to them.¹⁸² Several studies have found correlations between hostility toward women and sexual aggression against women.¹⁸³

Similarly, sex-role stereotyping generally—regarding occupational, familial, and social roles—also has been found to be associated with rape-propensity, at least in the contemporary American context. Such sex-role stereotyping includes views that women should not do men's work nor men do women's work, that a man is the head of the household, and that women should take a passive role in courtship.¹⁸⁴ Numerous studies using a variety of measures of sex-role stereotyping have found a correlation between stereotypical attitudes concerning gender roles and rape incidence or proclivity.¹⁸⁵

180. See Neil M. Malamuth, *Factors Associated with Rape as Predictors of Laboratory Aggression Against Women*, 45 J. OF PERSONALITY AND SOC. PSYCHOL. 432, 434 (1983); Malamuth, *Part One*, *supra* note 178, at 26, 38–40 (using acceptance of interpersonal violence in a three-factor composite index of rape-supportive attitudes that was found to be correlated with attraction to sexual aggression and with self-reported likelihood to rape); Malamuth, *Part Two*, *supra* note 178, at 335–37 (same); Quackenbush, *supra* note 172, at 334; see also Burt, *supra* note 173, at 225–29 (finding acceptance of violence correlated with rape myth acceptance that in turn has been found to be correlated with sexual aggression); Malamuth et al., *supra* note 170, at 676–77 (using acceptance of interpersonal violence scale in a composite index of attitudes supporting aggression that was found to be correlated with hostile masculinity that in turn was correlated with sexual aggression).

181. See James V.P. Check, *The Hostility Toward Women Scale 170–72* (1984) (unpublished Ph.D. dissertation, University of Manitoba).

182. *Id.*

183. See, e.g., Malamuth, *Part Two*, *supra* note 178, at 340, 348 (finding correlation of hostility toward women with attraction to sexual aggression); Lisak & Roth, *supra* note 171, at 274 (finding correlation between hostility toward women and commission of rape).

184. See Burt, *supra* note 173, at 222; Janet T. Spence et al., *A Short Version of the Attitudes Toward Women Scale (AWS)*, 2 BULL. OF THE PSYCHONOMIC SOC'Y 219 (1973); Caryl Utigard et al., *Gender Stereotyping and Rape Attitudes*, 32 CORRECTIVE AND SOC. PSYCHIATRY & J. OF BEHAV. TECH. METHODS AND THERAPY 99, 100–01 (1986).

185. See James V.P. Check & Neil M. Malamuth, *Sex Role Stereotyping and Reactions to Depictions of Stranger Versus Acquaintance Rape*, 45 J. OF PERSONALITY & SOC. PSYCHOL. 344, 351–52 (1983); Nella Hegeman & Stuart Meikle, *Motives and Attitudes of*

Thus, there is a set of attitudes—including attitudes of hypermasculinity, adversarial sexual beliefs, sexual promiscuity, rape myth acceptance, acceptance of violence against women, hostility toward women, and sex-role stereotyping—that is correlated with rape and rape proclivity. In fact, these attitudes share more than just their association with rape propensity. The attitudes associated with rape proneness form a “constellation” of attitudes in two senses. First, they are frequently found together; the presence in an individual of certain of these attitudes is correlated with the presence of certain other of the attitudes.¹⁸⁶ The existence of extensive intercorrelations between the rape-conducive attitudes supports the view that they form a meaningful whole, a

Rapists, 12 CANADIAN J. BEHAV. SCI. 359, 366 (1980) (reviewing other literature); Ronald L. Scott & Laurie A. Tetreault, *Attitudes of Rapists and Other Violent Offenders Toward Women*, 127 J. OF SOC. PSYCHOL. 375, 379 (1986); see also Burt, *supra* note 173, at 225–30 (finding correlation between sex role stereotyping and rape myth acceptance that has subsequently been found to correlate with rape propensity); Neil M. Malamuth et al., *Using the Confluence Model of Sexual Aggression to Predict Men's Conflict With Women: A Ten Year Follow-Up Study*, 69 J. OF PERSONALITY & SOC. PSYCHOL. 353, 354 (1995) (finding that men's distress in failing to conform to traditional masculine roles contributes to the characteristics of hostile masculinity); Utigard et al., *supra* note 184, at 102 (finding a correlation between rape-permissive attitudes and gender stereotyping). But see Carolyn Kozma & Marvin Zuckerman, *An Investigation of Some Hypotheses Concerning Rape and Murder*, 4 PERSONALITY & INDIVIDUAL DIFFERENCES 23, 26–27 (1983) (finding no greater antifeminist attitudes among rapists than among murderers or property felons); Zindel V. Segal & Lana Stermac, *A Measure of Rapists' Attitudes Towards Women*, 7 INT'L J. OF LAW & PSYCHIATRY 437, 438–39 (1984) (finding no difference between rapists, nonsex offenders and controls).

186. Malamuth et al. found that “attitudes supporting violence” (a three-part composite index composed of adversarial sexual beliefs, rape myth acceptance, and acceptance of violence against women) was strongly correlated with “hostile masculinity” (a three-part composite index composed of negative masculinity, hostility toward women, and adversarial sexual beliefs). Malamuth et al., *supra* note 170, at 676. Similarly, Check and Malamuth replicated Burt's findings that sex role stereotyping is correlated with rape myth acceptance, acceptance of violence against women, and adversarial sexual beliefs. Check & Malamuth, *supra* note 185, at 352. Other correlations among rape-conducive attitudes were found by Lisak and Roth, who observed correlations between sex role stereotyping and hostility toward women, and between sex role stereotyping and lack of femininity (the latter being a measure similar to the nonfeminine sex-typing mentioned *supra* text accompanying note 172). Lisak & Roth, *supra* note 171, at 273. Hubert Feild has observed correlations between sex-role stereotyping and belief in rape myths. Feild, *supra* note 178, at 174. Similarly, Quackenbush found strong correlations between nonfeminine sex-typing and adversarial sexual beliefs, acceptance of violence against women, and rape myth acceptance. Quackenbush, *supra* note 172, at 332. As Martha Burt concluded in 1980, “[T]he data support . . . the hypothesis that rape myth acceptance forms part of a larger and complexly related attitude structure that includes sex role stereotyping, feelings about sexuality, and acceptance of interpersonal violence.” Burt, *supra* note 173, at 228.

constellation or configuration of attitudes rather than a mere assortment of attitudes that are each conducive to rape. Second, these attitudes have interactive effects that produce a greater total impact on rape propensity than the simple additive effects of the attitudes. For instance, in one study, while hostile masculinity and sexual promiscuity each were found to be correlated with increased rape propensity, when they were both present, an interaction effect accounted for an additional 4% of explained variation in the prediction of sexual aggression.¹⁸⁷

Mosher and Sirkin have offered an integrated attitudinal construct that posits a "inacho personality constellation" consisting of "calloused sex attitudes," a belief in "violence as manly," and a conception of "danger as exciting."¹⁸⁸ Statistical analyses have supported the validity of this construct,¹⁸⁹ suggesting that it captures an underlying coherence in the set of different attitudes that it combines.

A 1986 study by Mosher and Anderson found a significant positive correlation between the macho personality constellation and aggressive sexual behavior.¹⁹⁰ Two additional studies have found that men with strong "inacho personality" characteristics experienced more enjoyment and less negative affect while imagining themselves committing rape than did less "inacho" men.¹⁹¹ As Mosher and Anderson concluded,

The socialization of the macho man, if it does not directly produce a rapist, appears to produce calloused sex attitudes toward women and rape and proclivities toward forceful and exploitative tactics to gain sexual access to reluctant women. The socialization of the hypermasculine male may script him to overvalue a definition of masculinity as tough and unfeeling, violent and exploitative of women, and as seeking the excitement of risking danger. This personality constellation, in conjunction with a history of aggressive behavior that elicits increasing levels of positive affect

187. Malamuth et al., *supra* note 170, at 677.

188. Donald L. Mosher & Mark Sirkin, *Measuring a Macho Personality Constellation*, 18 J. OF RES. IN PERSONALITY 150, 160 (1984).

189. *Id.* at 161.

190. Mosher & Anderson, *supra* note 168, at 83.

191. *Id.* at 86; James P. Sullivan & Donald L. Mosher, *Acceptance of Guided Imagery of Marital Rape as a Function of Macho Personality*, 5 VIOLENCE AND VICTIMS 275, 282 (1990).

and decreasing levels of negative affect, may provide the disinhibition that transforms the rape fantasy into a brutal reality.¹⁹²

In sum, a set of attitudes conducive to rape has been identified in several decades of research. This set of attitudes is inter-correlated and forms a coherent attitudinal configuration whose effect on rape propensity is greater than the sum of its parts.

5. *Rape-Conducive Sexual Norms in Military Culture.* Individuals' attitudes toward gender and sexuality, like other attitudes, are strongly influenced by their primary groups. In the process of socialization into a primary group, group norms, including normative attitudes toward gender and sexuality, are conveyed to group members.¹⁹³ If the normative gender and sexual attitudes of the primary group are of the sort that has been found to be conducive to rape, then we would expect the rape propensity—and, all other things being equal, the rape incidence—of the group to be heightened.

Like other primary groups, primary groups in the military develop and enforce group norms.¹⁹⁴ And like the sets of norms developed in other primary groups, the sets of norms in military primary groups include norms about gender and sexuality.¹⁹⁵

192. Mosher & Anderson, *supra* note 168, at 91 (citation omitted).

193. As Peter Peretti observes, "Socialization—the process by which the individual learns the norms, value, attitudes and customs of his or her subcultural groups—takes place within the setting of one's primary groups." Peretti, *supra* note 123, at 555.

194. See SENATE COMM. ON ARMED SERVICES, *supra* note 135, at 264 ("[T]he military society is characterized by its own laws, rules, customs, and traditions."). Indeed, the military unit in the combat context may have greater power to enforce its group norms than many other primary groups. As one Vietnam veteran pointed out, "The unit is all that one has. He either fits into the unit, or relegates himself to a fearful isolation. . . . Particularly in such a hostile environment, it is imperative for the individual to embrace the values of the group." KUNEN, *supra* note 64, at 239–40; see also II STOUFFER ET AL., *supra* note 137, at 130–31 (discussing the enforcement of group norms within combat units).

195. The utilization of sexual norms to foster group identity in military primary groups is reflected in an anecdote related by David Marlowe:

[C]ertain special forces units quasi-publically [sic] defined themselves through their sexual behavior. Several massage parlors in South Vietnam were considered their regular territory; they never engaged in vaginal intercourse; the women in the massage parlors were engaged exclusively to perform fellatio upon them. This was the diacritical that contrasted them with other American groups in Vietnam, as it was widely believed that Vietnamese prostitutes had an abhorrence of oral sex and normally refused to perform it.

Marlowe, *supra* note 132, at 192.

The sexual and gender norms presently imparted to members entering the U.S. armed forces are inadvertently comprised largely of the sort associated with heightened rape propensity.¹⁹⁶ The rape-conducive attitudinal constellation, including elements of hypermasculinity, adversarial sexual beliefs, promiscuity, rape myth acceptance, hostility toward women, and possibly also acceptance of violence against women, is reflected in various ways in military culture.¹⁹⁷

Having said that, it is also important to note that the U.S. military is in some respects in a state of transition regarding gender. Women are now participating in greater numbers and in a broader range of roles than in the past. And, within very recent years (particularly in the wake of Tailhook '91), special efforts have been made by military leaders to eliminate sexual harassment and assault by personnel.¹⁹⁸ All of these changes have had some influence on the gender and sexual norms extant within military culture.

Nevertheless, certain factors that remain within military organizations tend to reinforce and to perpetuate the traditional gender

196. This is not to say that norms inculcated in the military explicitly approve of rape. On the contrary, personnel receive training that there is a policy of "zero tolerance" for sexual harassment or assault. *See, e.g.,* Gordon R. Sullivan & Togo D. West, Jr., Statement of Army Policy on Sexual Harassment (July 21, 1994) (on file with author) ("The policy of the United States Army is that sexual harassment is unacceptable conduct and will not be tolerated.") Rather, the gender and sexual norms imparted to new recruits are of the type that enhance attractions and reduce aversions and inhibitions to rape; that is, they make normative the set of attitudes discussed above that are conducive to rape.

It is, however, also the case that norms approving of sexual assault short of rape apparently are perceived to exist by some personnel, at least episodically. As stated in the Department of Defense Inspector General's report on the events, including sexual assault, at Tailhook '91, "Officers who engaged in misconduct gave a variety of reasons for their behavior at Tailhook 91. Perhaps the most common rationale was that such behavior was 'expected' of junior officers and that Tailhook was comprised of 'traditions' built on various lore." INSPECTOR GEN., U.S. DEP'T OF DEFENSE, *supra* note 9, at X-1.

197. There is currently no data available on general sex-role stereotyping by military personnel. One study conducted by the Army Research Institute (ARI) does contain four questions addressing general sex role attitudes of U.S. Army personnel. *See* ARMY FAMILY RESEARCH PROGRAM, 1989 ARMY SOLDIER AND FAMILY SURVEY 13 (1989) (questions 72k-n). However, the study containing those ARI data is classified as a "limited document" and has not, to date, been made available to the author.

198. *See, e.g.,* Memorandum from Roberta K. Peters, Director, Office of Civilian Personnel Mgmt., U.S. Navy, to Navy HROs, RDs, and NAFI Elements (July 15, 1992) (requiring that all Navy and Marine Corps units schedule a full day of training for all uniform and civilian personnel on sexual harassment prevention).

and sexual norms of the military, as discussed in Part IV below. The result is that, while the gender norms within military culture have undergone some alteration in recent years, much of the traditional gender and sexual culture of the military remains.

The following examination of the gender and sexual norms of military culture attempts to present a picture of that culture that takes into account the extent of relevant change in recent years. The analysis is intended to describe central themes within an existing culture of military society.¹⁹⁹ Because no systematic study of military culture on these dimensions has yet been conducted, the discussion is necessarily suggestive rather than conclusive.

a. Attitudes toward masculinity in military culture. The military traditionally has had, and to a very large extent still has, a central group-identity structure built around a particular construction of masculinity.²⁰⁰ As expressed by David Marlowe, Chief of Military Psychiatry at the Walter Reed Army Institute of Research:

In the world of the combat soldier . . . masculinity is an essential measure of capability. In an interaction between male bonding and widespread cultural norms, the maleness of an act is the measure of its worth and thus a measure of one's ability. While many may disapprove of these norms, they have been and are, as a matter of ethnographic fact, the operative ones in much of military society and particularly in the combat group.²⁰¹

General William Westmoreland made explicit the traditional link between military service and masculinity in his testimony to Congress: "[N]o man with gumption wants a woman to fight his battles."²⁰² Or, as General Robert Barrow, former Marine Corps Commandant, commented on the prospect of women in combat: "When you get right down to it, you have to protect the manliness

199. It is broadly recognized that the military has a distinct culture within but also distinguishable from the broader national culture. As General Colin Powell has noted, "Active military service is not an everyday job in an ordinary workplace. It requires a unique blend of . . . ethics, bonding, and culture . . ." SENATE COMM. ON ARMED SERVICES, *supra* note 135, at 279 (statement of Gen. Powell).

200. See generally Kathryn Abrams, *Gender in the Military: Androcentrism and Institutional Reform*, 56 LAW & CONTEMP. PROBS., Autumn 1993, at 217 (arguing that the U.S. military is an "androcentric institution").

201. Marlowe, *supra* note 132, at 194.

202. JEANNE HOLM, WOMEN IN THE MILITARY: AN UNFINISHED REVOLUTION 341 (1982) (quoting Gen. William Westmoreland).

of war."²⁰³ In the words of David Marlowe, "The soldier's world is characterized by a stereotypical masculinity. His language is profane, his professed sexuality crude and direct; his maleness is his armor, the measure of his competence, capability, and confidence in himself."²⁰⁴

While such a vision of masculinity as a basis for group identity or individual worth is no longer an official part of military training or socialization (and while statements like those made by Generals Westmoreland and Barrow more than a decade ago presumably would not be made by military leaders now), this aspect of military culture nevertheless retains considerable vitality. As personnel at Parris Island Marine Recruit Training Depot stated in interviews in 1993 and 1994, the value of "manliness" is heavily impressed upon (male) recruits.²⁰⁵ According to one drill instructor, this "manliness" means

a warrior spirit that is based upon a sense of brotherhood, fraternalism—which, obviously, excludes women. . . . When a military organization is called to war, the mission is to kill and to dominate the opposing force. And domination is generally associated with a masculine thing. There's very little remorse. That's where the manliness thing comes into play.²⁰⁶

One enlisted Army man made related observations:

The macho thing is still the image for the combat arms. . . . Being rough and tough is still the mainstay of the way of troops trying to get to the top of the line. It's one of the things that will get you ahead. Nowadays, you can also advance by other means—but then you better have something excellent up your sleeve.²⁰⁷

203. Michael Wright, *The Marine Corps Faces the Future*, N.Y. TIMES MAG., June 20, 1982, at 16, 74 (quoting Gen. William Barrow).

204. Marlowe, *supra* note 132, at 192.

205. See Interview with Marine Corps Drill Instructor, Name Withheld, in Parris Island, S.C. (Oct. 22, 1993); Interview with Marine Corps Pub. Aff. Officer, Name Withheld, in Parris Island, S.C. (Oct. 22, 1993); Telephone Interview with Marine Corps Drill Instructor (Ret.), Name Withheld (Oct. 2, 1994).

206. Telephone Interview with retired Marine Corps Drill Instructor, *supra* note 205.

207. Telephone Interview with male Army Combat Engineer, Name Withheld (Sept. 25, 1994). The units in which gender and sexual norms appear to have changed least are, perhaps unsurprisingly, the units that have remained all male. Army and Air Force personnel—male and female, officer and enlisted—whom I interviewed in 1994 observed virtually without exception that "the manliness thing is still strong in the combat arms." See Interviews with female Army enlisted personnel, in Ft. Bragg, N.C. (Sept. 23, 1994)

The normative elements of hypermasculinity—a focus on toughness, self-sufficiency, and dominance²⁰⁸—are strikingly reflected in these descriptions. As Arkin and Dobrosky conclude in their analysis of masculinity in military socialization, military socialization produces “a strong, silent, self-reliant man”²⁰⁹ who will to a heightened extent “[reject] . . . intimacy and warmth,”²¹⁰ and emphasize “the ideal of virility.”²¹¹

b. Attitudes toward sexuality in military culture. In addition to the attitudes toward masculinity discussed above, the attitudes toward sexuality embodied in military culture also largely partake of those found to be conducive to rape, including both adversarial sexual beliefs and high valuation of promiscuity. Within traditional military culture, women are cast largely as the sexual adversary or target, while men are cast largely as promiscuous sexual hunters. These themes currently remain rather prevalent in military culture.

To better understand the military construction of the female as sexual adversary and the male as promiscuous, we should meet “Suzie.” “Suzie Rottencrotch” is a name sometimes used by military men to refer to women (other than close relatives of the men present).²¹² One drill instructor had the following to say about her in the course of a training lecture on the use of hand and arm signals:

If we get home with little Suzie . . . we’re in a nice companionship with little Suzie and here you are getting hot and heavy and then you’re getting ready to go down there and make that dive, privates, and Suzie says . . . Suzie says it’s the wrong time of the month. Privates, if you don’t want to get back home

(transcripts on file with author). As one female Army Sergeant related,

The combat MOS [military occupational specialty] men are always thinking that because I’m a female and in a non-combat MOS, I’m some kind of a sissy. Sissy meaning I don’t want to get dirty, won’t want to be around bugs, and things like that. They view themselves as the opposite of a sissy—as some kind of a super-hero. I guess it’s kind of a macho ego thing.

Interview with female Army Sergeant, Name Withheld, in Ft. Bragg, N.C. (Sept. 23, 1994).

208. See *supra* text accompanying notes 170–72.

209. Arkin & Dobrosky, *supra* note 151, at 72.

210. *Id.* at 77.

211. *Id.* at 74.

212. DYER, *supra* note 141, at 123; ROBERT J. LIFTON, *HOME FROM THE WAR* 243 (1973).

and indulge in this little adventure, you can show your girlfriend the hand and arm signal for "close it up."

And you want her to close up those nasty little thighs of hers, do you not, privates?²¹³

The same training lecture included the following aside: "Privates, if you don't have a little Suzie now, maybe you're going to find one when you get home. You bet. You'll find the first cheap slut you can get back home. What do you mean, 'No'? You're a Marine, you're going to do it."²¹⁴ Together with the intended humor of the presentation, other messages inhere. These include the intimation that, for a Marine, the female is the sexual adversary or target and is without other value; that what a Marine is looking for in women is "the first cheap slut he can get." The attitude is thus conveyed that a Marine's only relationship to women is the pursuit and acquisition of sex—a relationship that both casts the Marine as promiscuous and women as prey.

The current status of "Suzie Rottencrotch" is perhaps emblematic of the partial changes that have occurred in military culture. In October 1993, I asked a female drill instructor at Parris Island Marine Corps Recruit Depot whether the name "Suzie Rottencrotch" was still in use. She had never heard of the name but asked her male counterpart who was standing nearby. He replied that the name was still used but "not officially."²¹⁵

A more contextualized account of aspects of military sexual norms was conveyed to me in an interview with a former Navy judge advocate who served in the 1970s.²¹⁶ Other former Navy and Marine personnel confirm his description of the environment in Olangapo, the Philippines, near the American Naval Station at Subic Bay.²¹⁷ As the judge advocate described,

[W]e participated in creating the world's biggest brothel (just outside Subic). . . . Olangapo is called "the city of 10,000

213. DYER, *supra* note 141, at 123 (quoting lecture on hand and arm signals, Parris Island, 1982).

214. *Id.*

215. Interview with female Marine Corps Drill Instructor, Name Withheld, at Parris Island Marine Corps Recruit Depot, S.C. (Oct. 22, 1993).

216. Telephone Interview with Judge Advocate (Ret.), U.S. Navy, Name Withheld (Jan. 13, 1993).

217. Interview with former Captain, U.S. Navy, Name Withheld, in Durham, N.C. (Nov. 14, 1994); Interview with former Brigadier General, U.S. Marine Corps, Name Withheld, in Durham, N.C. (Nov. 3, 1994).

whores." If you're an impressionable young kid, and you're taken in tow—outside to Olangapo which is just row after row of bars, massage parlors, and no-pretext brothels—what does that do to a young kid's view on the value of women?

These gals would do the most degrading things—and do them in public. And it was always in a group. A gal would come along to a table in a bar and literally "serve" all the guys at the table. It was always in groups. In fact, girls would do tricks with their bodies and orifices on stage—that was very common. One game was to have the girl go under the table and fellate each guy—and whoever's face cracked soonest would buy the next round of drinks. This was true in all the enlisted bars—in the officer clubs there wouldn't be the group sex, but there would be group performances.

Subic Bay was an automatic stop for all the ships in the Pacific. So all the guys experienced this. This was not just a few of the guys or some small proportion; this was all the guys. . . .

That place was a circus. If I had to guess at the percentage of sailors—officer and enlisted—who *never* partook of those activities in Olangapo and Subic, I'd guess five percent.

The one thing that strikes me is: I don't think it's possible to overestimate the influence of places like Olangapo. And these included graduates of the top law schools in the country—and we were all affected by it. . . . I mean I can't overstate it; it was beyond anything I'd ever seen or ever have seen since. . . . The whole carnival atmosphere cannot be overstated.²¹⁸

Although the account of Olangapo quoted above refers to a period during the 1970s, Olangapo apparently maintained a similar atmosphere until Subic Bay Naval Station closed in 1991. As the *New York Times* reported in 1993,

Many of the mothers [of the estimated 8,600 Amerasians in Olangapo] subsisted for a time on sporadic payments from the [American] fathers, pressuring Navy officials when payments lagged. But the financial support began drying up in 1991, when the Philippine Senate barred the renewal of United States leases on the sprawling naval base at Subic Bay and other installations in the Philippines. . . .

When the bulk of American ships and planes finally left last year, the decades-long party was over at the Pussy Cat Bar, the Joy Club and hundreds of other hostess clubs, discotheques,

218. Telephone Interview with Judge Advocate (Ret.), *supra* note 216.

brothels, massage parlors and short-stay hotels with neon signs just outside the gates of the Subic base.²¹⁹

While Olangapo is far away, we may be reminded in reading about it of events in Las Vegas at the 1991 and earlier Tailhook conventions where, according to the Department of Defense Inspector General, "[i]ncidents related by witnesses included a high ranking Navy civilian official dancing with strippers in hospitality suites, the throwing of flaming mannequins from rooftops, [and] earlier gauntlets and strip shows"²²⁰

Nor are these events limited to faraway places or to convention weekends.²²¹ As one Army Combat Engineer stationed at Fort Bragg related to me in 1994:

You'd be amazed. Most people have no idea what goes on. The talk is "down." The whores and sluts are circulated between the guys. (They go for pay, for no pay, for drinks, whatever.) Those women actually go into the barracks. The guys talk and brag about it and share it with each other. You pull out of it once you've found a good woman (like my wife). It's a lot of contempt toward the women plus bragging about what studs they [the guys] are.²²²

Each of the foregoing descriptions reflects a theme within military culture of casting women as sexual targets and military men as promiscuous sexual consumers. This theme, even while mitigated through the services' equal opportunity and anti-harassment efforts and policies, still appears to be strongly rooted within current military culture.

An additional datum reflecting this theme within military sexual culture is the fact that military personnel appear to consume more soft-core pornography²²³ per capita than does the ci-

219. Bruce Lambert, *Abandoned Filipinas Sue U.S. over Child Support*, N.Y. TIMES, June 21, 1993, at A3.

220. INSPECTOR GEN., U.S. DEP'T OF DEFENSE, *supra* note 9, at X-1 n.60.

221. Indeed, there has been some controversy within the military over the last decade as to what place striptease shows and the like have within clubs run by the Services. For instance,

[t]he uniformed leadership endeavored to terminate all striptease acts and go-go dancers at Navy clubs in the early 1980s. However, the order of Chief of Naval Operations James D. Watkins was countermanded the day following its issuance by Secretary of the Navy John F. Lehman. This clearly sent a mixed signal to the uniformed leadership.

Parks, *supra* note 9, at 103 n.6.

222. Telephone Interview with male Army Combat Engineer, *supra* note 207.

223. No data are available on military and civilian readership of hard-core pornogra-

vilian population of comparable gender, age, and education. Preliminary market research indicates that, on yearly average for 1992-93, the total percentage of all active duty military personnel reading Playboy was 14%, as compared with 4% of civilians.²²⁴ More specifically, 33% of male active duty personnel aged eighteen to twenty-nine read Playboy as compared with 13% of male civilians of that age range.²²⁵ For males aged thirty to forty-four, the civilian and military readership was comparable (approximately 9%), while for males forty-five and older, the military readership (approximately 11%) again exceeded civilian readership (approximately 4%) considerably.²²⁶

When educational level is held constant, the military readership level is again higher than the civilian level. On yearly average for 1992-93, among those whose highest educational degree was high school graduation, 24% of male military personnel read Playboy as compared with 9% of male civilians.²²⁷ For college graduates, readership levels were 12% for male military personnel and 7% for male civilians.²²⁸

To point out that pornography is more prevalent in the military than in the civilian environment is not to suggest that reading Playboy causes military personnel to commit rapes. (On the con-

phy. All subsequent references to "pornography" refer only to soft-core materials.

224. These data reflect the results of market research conducted by Simmons Market Research Bureau, Inc. (on file with author). The market research is "preliminary" for several reasons, including that Playboy is the only publication considered, that the sample size for the military population studied is too small for statistical reliability, and that the military population studied includes only personnel living off base.

225. *Id.*

226. *Id.*

227. *Id.* Usable data were not available for males with less than a high school diploma.

228. *Id.* While military personnel may consume a good deal of pornography without censure, *appearing* in the same publications is harshly punished on the ground that it reflects "discredit" on the corps. Several female and a few male service members have been disciplined for appearing in pornographic magazines. See JUDITH H. STIEHM, *ARMS AND THE ENLISTED WOMAN* 125 (1989). After the Marines discharged Sgt. Bambi Finney for appearing in Playboy, a Marine spokesman stated that "whatever activity is undertaken by the Marine is to bring credit upon the corps and not discredit. . . . [E]very action a Marine takes—both good and bad—reflects not only on herself, but on every Marine wearing a Marine uniform." *Id.*

An initial response is that Sgt. Finney was not quite "wearing a Marine uniform" at the time the photographs were taken. More to the point, the anecdote prompts one to ask what view of sexuality is expressed by the fact that military personnel disproportionately consume pornography but view themselves as "discredited" when one in their own corps appears in pornography.

trary, the available experimental psychology data on the links between pornography and sexual aggression tend to indicate that while violent pornography tends to increase sexual aggression, nonviolent pornography does not.²²⁹) Rather, the suggestion here is that the prevalence of pornography in the military environment may reflect sexual attitudes and norms within military culture that cast women as sexual targets and men as sexual consumers.

The hypothesis that the prevalence of pornography in the military reflects such a sexual culture within the military is supported by the findings of research on the links between pornography and rape at the societal level. Societal rates of pornography circulation and rape are highly correlated;²³⁰ that is, states and regions with high pornography circulation rates also tend to have high rape rates.²³¹ Thus, even while no causal link has been found between nonviolent pornography and aggression at the individual level, the two rates are highly correlated at the societal level.

The presence of the societal-level correlation seemingly without a relationship of direct causation at the individual level suggests that the correlation between pornography circulation and rape rates may be spurious. In other words, both phenomena may be influenced by some common third factor. Researchers in this field have suggested that the third factor influencing both rape rates and pornography circulation may be the cultural pervasiveness of a "macho" attitudinal pattern.²³² They hypothesize that each of the two phenomena, heightened pornography consumption and heightened rape rates, both reflect and at least in part result from the heightened cultural prevalence of the constellation of

229. See EDWARD DONNERSTEIN ET AL., THE QUESTION OF PORNOGRAPHY 98 (1987). Playboy contains very little violence. Joseph E. Scott & Steven J. Cuvelier, *Sexual Violence in Playboy Magazine: A Longitudinal Content Analysis*, 24 J. OF SEX RES. 534, 536 (1987).

230. See Baron & Straus, *supra* note 78, at 480-81; Scott & Schwalm, *supra* note 89, at 246-48. But see Cynthia S. Gentry, *Pornography and Rape: An Empirical Analysis*, 12 DEVIANT BEHAV.: AN INTERDISCIPLINARY J. 277 (1991) (reporting results of an analysis similar to that of Baron and Straus but using Standard Metropolitan Statistical Areas rather than states as geographical units of analysis, and finding no significant correlation between pornography circulation and rape rates).

231. See Baron & Straus, *supra* note 78, at 480-81; Scott & Schwalm, *supra* note 89, at 246-48.

232. See, e.g., 2 JOEL FEINBERG, OFFENSE TO OTHERS: THE MORAL LIMITS OF THE CRIMINAL LAW 150-54 (1985); Baron & Straus, *supra* note 78, at 467-68.

attitudes constituting "inachismo." Thus, there is reason to believe that the apparent heightened pornography consumption in the military environment may reflect the prevalence of normative sexual and gender attitudes within military culture that place women in the role of sexual targets or adversaries and men in the role of sexual consumers.²³³

Without providing a systematic or scientific comparison of military and civilian sexual attitudes, the foregoing discussion does suggest the continuing presence within military culture of adversarial sexual beliefs and normative promiscuity.²³⁴ Suzie Rottencrotch, Olangapo, Tailhook, Playboy, and remarks from Fort Bragg all reflect—without providing a systematic measure of—those attitudinal elements of military sexual culture. While recent military policy changes presumably are effecting some change in military gender and sexual norms, such a transition is, based on the available evidence, far from complete.

c. Attitudes toward women in military culture. Along with the attitudes toward sexuality discussed above, there are attitudes toward women reflected in military culture that are associated with rape propensity. These include hostility toward women and possibly also acceptance of violence against women.²³⁵

The inascularity that is definitive of the military in-group is, not surprisingly, defined in *contrast* to the "other"²³⁶—in particular, in contrast to women.²³⁷ An unmistakable hostility is

233. Of course, the relative isolation from women experienced by some male military personnel also might account for some part of the prevalence of pornography in the military environment. For that reason, the pornography circulation data presented here, while suggestive, cannot necessarily be interpreted exclusively as reflecting particular gender and sexual norms within military culture. It may even be the case that these two explanations for the prevalence of pornography are actually interrelated: The isolation from women experienced by some male military personnel may tend to reinforce the types of gender and sexual norms in question.

234. Because no information on rape myth acceptance by military personnel is currently available, no comparison of military and civilian populations on that dimension is possible.

235. As noted *supra* note 197, no data are currently available on sex-role attitudes of or sex-role stereotyping by military personnel.

236. See generally GEORG SIMMEL, *CONFLICT* 91 (Kurt W. Glencoe trans., 1955) (discussing the role of an identified "other" in fostering group unity).

237. See STIEHM, *supra* note 228, at 224 ("[Women] seem to be absolutely essential to the military. Their essentialness, though, lies in their absence.").

Women and gays (as well as young boys and old men) may be included within the out-group composed of those defined as not real men. See *infra* note 357 (regarding the

directed toward this other. A typical method of ostracization, particularly in basic training, is to refer to a male group member as a female. For instance, recruits are called "ladies" or "girls" as well as more vulgar names for women when they perform poorly in training.²³⁸ As Randy Shilts recounts,

The lessons on manhood . . . focus less on creating what the Army wanted than on defining what the Army did not want. This is why calling recruits faggots, sissies, pussies, and girls had been a time-honored stratagem for drill instructors throughout the armed forces. The context was clear: There was not much worse you could call a man.²³⁹

While the practice of this particular type of gendered name-calling is not now officially sanctioned, it still does occur with continuing frequency in practice.²⁴⁰

Perhaps the most straightforward expression of hostility toward women is found in the T-shirt worn by several male officers at the 1991 Tailhook convention. The back of the shirt read "Women Are Property," while the front read "He-Man Woman Hater's Club."²⁴¹

The military definition of the "nonmasculine" as the "other" is, of course, rendered problematic by the existence of military women.²⁴² One response to this dilemma has been to endeavor

issue of gays in the military and its relationship to the gender and sexual norms of military culture).

238. See CYNTHIA ENLOE, DOES KHAKI BECOME YOU? 14 (1983); CHRISTINE L. WILLIAMS, GENDER DIFFERENCES AT WORK 69 (1989).

There is a striking similarity in this regard in the methods of inculcation of gender norms in military organizations and sports organizations. David Kopay described how his high school football coach, "like many other coaches . . . used sexual slurs—'fag,' 'queer,' 'sissy,' 'pussy,'—to motivate (or intimidate) his young athletes." MYRIAM MIEDZIAN, BOYS WILL BE BOYS 198 (1991). One Indiana University basketball coach resorted to putting sanitary napkins into a player's locker. *Id.* Dave Meggessey, after recounting similar tactics by his coach, notes that "this sort of attack on a player's manhood is a coach's doomsday weapon." *Id.*

239. RANDY SHILTS, CONDUCT UNBECOMING 133 (1993).

240. Telephone Interview with female former Army Captain, Name Withheld (Sept. 22, 1994); Telephone Interview with male Army Combat Engineer, *supra* note 207; Interview with female enlisted Army Legal Specialist, Name Withheld, in Ft. Bragg, N.C. (Sept. 23, 1994); Interview with female Marine Corps Drill Instructor, *supra* note 215.

241. INSPECTOR GEN., U.S. DEP'T OF DEFENSE, *supra* note 9, at X-3.

242. The complexities of situating female participants in a "masculine" military are reflected in the comments of one young female Marine who remarked: "The way to motivate the male Marines is to play on their masculinity. And then the female Marines are motivated by a general line of 'We're gonna show those guys that we're just as good as

to maintain essentially masculine group identity and, necessarily then, female otherness. Consistent with this approach, official efforts are made to maintain the "femininity" of military women. The current Marine Corps Handbook, for instance, specifies that women's hair shall be "arranged in an attractive (feminine) style."²⁴³ Many similar examples of official efforts to "maintain femininity" may be found.²⁴⁴ Maintenance of the otherness of women is also sometimes achieved through less pleasant means, like the use of names such as "WUBA," an acronym meaning "Women Used by All," to refer to (allegedly promiscuous) female midshipmen²⁴⁵ or the reference to female Marines as "marionettes."²⁴⁶ The effect in each case is to retain, even in the face of female military participation, the position of females as the "other" and the definition of the "real military" as masculine and manly. Women, if present, are in that way recast as outside the group and, largely, as sexual targets—either under the more approving valence of having "an attractive, feminine style" or as the disapproved "Woman Used By All." In each case, the female is treated as the other and as sexual, as "government issue pussy" as

they are.'" Interview with female Marine, Name Withheld, at Parris Island Marine Corps Recruit Depot, S.C. (Oct. 22, 1993).

243. MARINE CORPS INSTITUTE, MARINE BATTLE SKILLS TRAINING HANDBOOK 1-4-50, at 4-35 (1993).

244. For example, U.S. Air Force Officer Cynthia Wright described a mandatory briefing entitled "Professional Issues" held for the women of the Air Force Academy's class of 1993:

Among the issues discussed were the techniques of effective makeup application, the importance of not swearing or crying in public, . . . and a . . . warning about the damage to one's reputation . . . of "sleeping around." In the same breath, they were warned that boys will be boys and that they were unlikely to see those same moral standards upheld by their male peers. Finally, they were given, as a class, diet tips for maintaining "all those curves they (the male cadets) like."

Cynthia Wright, *G.I. Jill: Sexism in the Air Force*, NEW REPUBLIC, Oct. 21, 1991, at 17.

In a similar vein, I was struck during a visit to Parris Island Marine Corps Recruit Depot by the fact that the majority of male Marines with whom I spoke about the Fourth Battalion (the one female Marine basic training battalion) mentioned that "they even have a beauty parlor over there." To a group of shaven-headed Marine recruits belly-crawling through the Basic Warrior Training terrain, the members of the Fourth Battalion with their beauty salon must appear very much the "other" indeed.

245. See Wright, *supra* note 244, at 17.

246. See WILLIAMS, *supra* note 238, at 69 (1989).

she is sometimes called,²⁴⁷ even while she is formally a Marine, soldier, airman, or sailor and so, formally, "one of us."²⁴⁸

This is not to say that no progress has been made toward improving gender attitudes and reducing hostility toward women. Rather, the point is that progress in that direction is incomplete and still often meets with resistance. The comments of one enlisted Army woman in 1994 are illustrative. As she related,

The changes in positions open to women and the number of women in the military—this has changed people's attitudes and ways of relating to women. Because they know we're going into combat with them. And that's what is important. It means they have to treat us a little more equal. But they still don't. For instance, in BNCOC [Basic Non-Commissioned Officer Course] the guys were passing around this story about how we only had to carry a twelve pound instead of a thirty-five pound rucksack into the field in training—which wasn't true. They were saying: You girls don't do anything hard just because you're female. They're saying that they're big, tough men, *and* they're saying that we come in and get an easier deal.²⁴⁹

Even while military gender culture is changing, elements of hostility toward women still appear to remain a part of that culture. The picture, then, is a complex one of attitudinal change and resistance to change being played out currently within military organizations.

In addition to general attitudes of hostility toward women, attitudes accepting of violence against women also *may* be heightened in military society. Direct measures comparing military and civilian attitudes regarding violence against women are lacking. However, recent studies conducted by the Army do suggest elevated rates of domestic abuse of the female partners of Army personnel as compared with rates of abuse of the female partners of civilian men.²⁵⁰ This heightened rate in the Army population of

247. See *Counseling and Other Needs of Women Veterans*, *supra* note 5, at 26 (statement of Barbara Franco).

248. Regarding the tendency of previously all-male groups to respond to the new presence of small numbers of "token" women by "exaggerat[ing] both their commonality and the token's difference," see Rosabeth Kanter, *Some Effects of Proportions on Group Life: Skewed Sex Ratios and Responses to Token Women*, 82 AM. J. OF SOC. 975 (1977).

249. Interview with female enlisted Army Legal Specialist, *supra* note 240.

250. See Eric Schmitt, *Military Struggling to Stem an Increase in Family Violence*, N.Y. TIMES, May 23, 1994, § A, at 1; Mark Thompson, *The Living Room War: As the U.S. Military Shrinks, Family Violence Is on the Rise: Can the Pentagon Do More to Prevent*

violent abuse of women may (though it does not necessarily) reflect underlying attitudes in the Army population that are more accepting of violence against women than are the attitudes in the civilian population.²⁵¹

In sum, there is substantial evidence—though as yet, no systematically collected data comparing military and civilian populations—of themes of hypermasculinity, adversarial sexual beliefs, promiscuity, hostility toward women, and possibly acceptance of violence against women, within current military culture.²⁵² The norms and normative attitudes toward gender and sexuality that are prevalent in military culture thus appear to partake largely of the set of attitudes that have been found to be associated with heightened rape propensity. These norms and attitudes are imparted to new members as they are socialized into their primary groups within the military. Even while the military services institute policies of “zero tolerance” of sexual harassment and assault,²⁵³ and provide formal training pursuant to those policies, informal socialization continues to perpetuate group norms that are inconsistent with those formal policies and goals. The result is that, even while the U.S. military is in some ways in transition regarding gender, military units’ normative attitudes toward gender and sexuality continue in part to be those associated with heightened levels of rape propensity.

It?, TIME, May 23, 1994, at 48; see also William A. Griffin & Allison R. Morgan, *Conflict in Maritally Distressed Military Couples*, 16 AM. J. OF FAM. THERAPY 14 (1988) (stating preliminary findings that military wives are more likely than civilian wives to be physically abused).

251. Alternative explanations for heightened military domestic abuse rates would include, for example, that frequent separations place strains on military families.

252. Clearly, systematic research comparing military and civilian populations’ attitudes on gender and sexuality would be most valuable. While the Department of Defense (DOD) has conducted extensive personnel attitude research on other topics, see, e.g., U.S. DEPARTMENT OF DEFENSE, DEFENSE TECHNICAL INFORMATION CENTER (DTIC), TECHNICAL REPORT SUMMARIES, DTIC BIBLIOGRAPHY (May 17, 1993) (on file with author), virtually no DOD research has been done on the attitudes toward gender and sexuality discussed here. See *id.* Presumably, the reason that such research has not been done is that it apparently does not serve any defense-related purpose. However, to the extent that the attitudes in question are contributing to the military rape differential, research on gender and sexual attitudes would be relevant to issues that are of concern to the DOD. See generally *supra* note 115.

253. See *supra* note 196.

6. *Rape Conducive Sexual Norms and the Psychology of Individual Military Personnel.* The gender and sexual norms of military organizations are conveyed to new members as they are socialized into the military group. But it must also be remembered that individual military personnel come to the military with their own psychological structures and motivations, including varying degrees of proclivity or aversion to rape. As argued below, the rape-conducive group norms extant in the military may tend disproportionately to attract members with heightened rape proclivities. This is not by any means to suggest that the U.S. armed forces are composed of a group of rapists in waiting. Quite the contrary, the predominant motives for joining the U.S. armed forces are educational and economic opportunity,²⁵⁴ followed by ideological and patriotic commitments.²⁵⁵ The point, however, is that a military culture featuring rape-conducive norms and attitudes may attract a greater number of members with heightened rape proclivities than would a military culture without those features—and those individual members may then have a particularly undesirable effect on their units.

The individual recruit who is psychologically inclined to rape poses a heightened rape risk within a military unit for several reasons. He may contribute to the elaboration of rape-conducive norms within his unit, and may serve as an instigator or leader in group rape.²⁵⁶ In addition, he may take the opportunity to coin-

254. See SUE E. BERRYMAN, WHO SERVES?: THE PERSISTENT MYTH OF THE UNDERCLASS ARMY 10 (1988); Charles Dale & Curtis Gilroy, *Determinants of Enlistments: A Macroeconomic Time-Series View*, 10 ARMED FORCES & SOC'Y 192, 202-03 (1982); Robert J. Johnson & Howard B. Kaplan, *Psychosocial Predictors of Enlistment in the All-Voluntary Armed Forces*, 22 YOUTH & SOC'Y 291, 311-12 (1991).

255. See Rupert F. Chisholm et al., *Pre-Enlistment Expectations/Perceptions of Army Life, Satisfaction, and Re-Enlistment of Volunteers*, 8 J. OF POL. AND MIL. SOC. 31, 34 tbl. 1 (1980).

256. It has been observed repeatedly that group rape is typically initiated and led by a group leader while the other group members follow, enthusiastically or reluctantly. See, e.g., DUNPHY, *supra* note 120, at 256; Geis, *supra* note 157, at 101; GROTH, *supra* note 89, at 112-13.

It appears that some proportion of participants in group rape are not themselves motivated (or at least not sufficiently or primarily motivated) to commit rape other than for the purpose of being accepted by the group. GROTH, *supra*, at 83; MACKELLAR, *supra* note 89, at 107-08. Rape as a group activity apparently can foster feelings of rapport, fellowship, and cooperation among assailants. See GROTH, *supra*, at 115; Geis, *supra*, at 111, 113; Edwin Megargee, *Psychological Determinants and Correlates of Criminal*

mit rape in a combat situation where deterrents are low.

The following consideration of the patterns of motivation for rape suggests reasons that an organization with rape-conducive gender and sexual norms may disproportionately attract individuals with heightened rape proclivities. Researchers on the psychology of rape generally concur that there are different motives for rape that may be categorized into types.²⁵⁷ Studies of individuals' motives for rape have produced several typologies of rape motives, includ-

Violence, in CRIMINAL VIOLENCE 81, 110 (Marvin Wolfgang & Neil Weiner eds., 1982). In addition, members seek to prove their virility or masculinity to each other both by performing sexually in the presence of the group and by their daring in participating in the rape. See GROTH, *supra*, at 113; MACKELLAR, *supra*, at 106-09. Several rescarchers go so far as to say that fulfillment of desire specifically to rape plays little part in the motives for group rape. See, e.g., MACKELLAR, *supra*, at 106; see also SANDAY, *supra* note 153, at 12 ("The homoeroticism of [gang rape] seems obvious.").

It seems plausible that leaders of group rape and perhaps some other group members as well may be predisposed to rape, while for other group members such inclination may play little part in motivating their participation in group rape. This relative absence of predisposition to rape in the motives of followers in group rapes may be reflected in the recidivism patterns of group rapists: While leaders commit as many individual as group rapes, followers typically commit rapes only in the group context. GROTH, *supra*, at 114. This may suggest that, while the act of rape itself is of primary importance to the leader, the rape may be of secondary or less than secondary importance in the motives of the followers. Similarly, whereas individual and group rapists have been found to be about equally likely to have had prior criminal convictions, group rapists were less likely to have had a prior conviction for a sex crime, which suggests that the usual motives for sex crimes are perhaps not central to their criminal activities. Richard Wright & D.J. West, *Rape—A Comparison of Group Offenses and Lone Assaults*, 21 MED. SCI. L. 25, 26 (1981).

We may therefore surmise that individuals with psychological proclivities to rape are more likely to become the "leaders" who initiate and encourage group rape than are others without those proclivities. We may also surmise that, among followers in group rape, the ratio of rape-specific motives to general affiliative motives for participation may vary, and that enthusiasm and willingness to participate in group rape will be in part influenced by each follower's inclinations or aversions to rape.

Thus, the presence of individuals with psychological proclivities to rape should be expected to increase significantly the rape propensity of groups in which they are members both by providing the leaders who encourage and initiate group rape and also by providing more willing followers.

257. Researchers on motives for rape concur that "desire for sex" is not a sufficient or even a necessary motivation for rape. See, e.g., Lynn Reynolds, *Rape: A Social Perspective*, in GENDER ISSUES, SEX OFFENSES, AND CRIMINAL JUSTICE 149, 151 (Sol Chaneles ed., 1984); GROTH, *supra* note 89, at 28. As Nicholas Groth states,

Sexual desire, in and of itself, is not the primary or paramount issue operating in [the rapist]. If it were, there are a number of opportunities available in our society for consensual sex. In fact, sexual assaults always coexist with consenting sexual relations in the life of the offender. In no case have we ever found that . . . [the rapist] had no other alternatives or outlets for his sexual desires.

Id.

ing Nicholas Groth's widely accepted three-type taxonomy.²⁵⁸

Groth identified three patterns of motivation for rape: power, anger, and sadism. In power-motivated rapes, the offender is motivated by underlying feelings of inadequacy and weakness and by doubts about his masculinity. He rapes in an effort to compensate for those feelings through controlling and sexually possessing the victim. Power rapists typically

feel insecure about their masculinity or conflicted about their identity. . . .

. . . Rape, then[,] becomes a way of putting such fears to rest, of asserting one's heterosexuality, and of preserving one's sense of manhood. . . .

. . . .

. . . The intent of the power rapist, then, is to assert his competency and validate his masculinity.²⁵⁹

The anger-motivated rapist, by contrast, seeks to use rape to gain revenge for a perceived wrong.²⁶⁰ He feels hurt, humiliated, or unjustly treated. The victim may be the perceived wrongdoer or may be only a symbolic representative of him or her (usually her).²⁶¹ Because the rape expresses feelings of rage, it typically is characterized by deliberate brutality and degradation.²⁶²

Finally, in sadism rapes, "[t]here is a sexual transformation of anger and power so that aggression itself becomes eroticized. . . . The assault usually involves bondage and torture and frequently has a bizarre or ritualistic quality to it."²⁶³

The most prevalent of the three identified motive patterns for rape appears to be power rape (55% in Groth's study), followed

258. For a history and review of taxonomies of rape motives, see Robert Prentky et al., *Development of a Rational Taxonomy for the Classification of Rapists: The Massachusetts Treatment Center System*, 13 BULL. AM. ACAD. PSYCHIATRY & L. 39 (1985).

259. GROTH, *supra* note 89, at 28-31. Several authors of typologies of rape motives describe a type corresponding to Groth's power rapist and use the term "macho" or "machismo" or, occasionally, "hypermasculinity" to describe this type of rapist's personal style. See, e.g., D.J. West, *Violent and Non-Violent Sex Offenders*, 16 AUSTL. J. OF FORENSIC SCI. 104, 105 (1984) ("The macho man's ideal is to be aggressive in sex . . . [and] to show the woman who's boss."); Prentky et al., *supra* note 258, at 48 ("[This type of offender] shows an exaggerated masculine style, an assertion of masculinity that is often labelled 'machismo.'").

260. GROTH, *supra* note 89, at 13-14.

261. *Id.* at 16-17.

262. *Id.* at 13-14.

263. *Id.* at 44.

by anger rape (40%), and then by a small minority of sadism rapes (5%).²⁶⁴ Thus, the vast majority of rapes fall within the power and anger motive patterns. Here, the perpetrator population is composed of men with concerns of inadequacy in areas of masculinity, manhood, and power (power rapists) and rage, usually against a woman or women (anger rapists). It would not be surprising if men intensely concerned with those issues were disproportionately attracted to an all-male, supposedly all-heterosexual, "macho," highly cohesive organization committed to the threat or deployment of armed physical force.²⁶⁵ By constructing a military organization that answers to that description, we may attract potential power and anger rapists in undesirable numbers.²⁶⁶

Again, the point here is not that many or most military personnel are psychologically predisposed to rape but, rather, that a military culture with the group norms discussed above may attract some critical mass of potential rapists who then have an undesirable effect in fostering the acceptance, transmission, and elaboration of rape-conducive norms; in committing rape; and in initiating and leading group rape, especially in the combat context. In these ways, individual psychological dynamics may interact with group

264. See *id.* at 58; see also Prentky et al., *supra* note 258, at 65-66 (reporting data on distribution of rape types consistent with that in the Groth study).

265. The "convergence theory" of group behavior suggests that individuals with compatible emotional needs tend to join the same groups in order to meet those needs and further tend to move the groups' activities in directions consistent with the fulfillment of those psychological dispositions. See DONELSON R. FORSYTH, *GROUP DYNAMICS* 438-69 (2d ed. 1990).

266. This would be true of any military organization but is especially true in an all-volunteer force in which the applicant pool is entirely self-selected. Admiral Worth Bagley, Vice Chief of Naval Operations (Ret.) has made a related point. As he stated,

Men join the Navy for many different reasons; however, a certain portion join and remain in the Navy because they enjoy being in a job which has been historically associated with fellowship among men in a difficult and dangerous endeavor. Changing the fabric of the Navy by integrat[ing] women into all combat roles might well reduce the attractions of the Navy to this segment of mankind.

Hearings on H.R. 9832 to Eliminate Discrimination Based on Sex with Respect to the Appointment and Admission of Persons to the Service Academies Before Subcomm. No. 2 of the House Armed Services Comm., 93d Cong., 2d Sess. 120 (1975) (statement of Vice Admiral Worth Bagley, then Chief of Naval Operations (Personnel)). Admiral Bagley's testimony was in support of the continued exclusion of women. His observations, however, could cut either way. It is true that different organizational cultures attract different "segments of mankind." The question, then, is which segments the armed forces should seek to attract.

gender and sexual norms to magnify the effects of rape-conducive norms on the rape propensity of military organizations.

7. *Deindividuation Norms in Primary Groups.* Rape-conducive gender and sexual norms are not, however, the only normative component of military culture that would tend to elevate the incidence of rape in military organizations. In addition, the presence in military organizations of norms favoring deindividuation also would tend to heighten military rape incidence.

a. *Normative deindividuation in general.* "Deindividuation" is a function of the submergence of individual identity within the larger group.²⁶⁷ This eclipsing of individual identity by group identification has been found under certain conditions to reduce individuals' internal constraints on behavior.²⁶⁸

The deindividuated state can render positive results. Strong feelings of unity and love, ecstatic experiences, and religious and other conversion experiences are associated with deindividuation.²⁶⁹ However, the submersion of individuality in groups is also associated with aggression and lack of compassion.²⁷⁰ In deindividuation, "[t]he loosening of our hold on the ego can bring about an emotional communion of a transcendental nature, but it can also lead us to commit atrocities of horrific proportions."²⁷¹ As Ed Diener states,

[T]he deindividuated person in a certain situation might be more likely to donate a large amount of money to charity, might be more likely to risk his or her life to help another, and might be more likely to kiss friends However, a deindividuated per-

267. See Ed Diener, *Deindividuation: The Absence of Self-Awareness and Self-Regulation in Group Members*, in *PSYCHOLOGY OF GROUP INFLUENCE* 209, 210 (Paul B. Paulus ed., 1980); Leon Festinger et al., *Some Consequences of De-Individuation in a Group*, 47 *J. OF ABNORMAL & SOC. PSYCHOL.* 382 (1952).

268. See FORSYTH, *supra* note 265, at 442.

269. See Steven Prentice-Dunn & Ronald W. Rogers, *Deindividuation and the Self-Regulation of Behavior*, in *PSYCHOLOGY OF GROUP INFLUENCE* 87, 102 (Paul B. Paulus ed., 2d ed. 1989); Philip G. Zimbardo, *The Human Choice: Individuation, Reason, and Order Versus Deindividuation, Impulse, and Chaos*, in *NEBRASKA SYMPOSIUM ON MOTIVATION* 237, 257 (William J. Arnold & David Levine eds., 1969).

270. See Philip G. Zimbardo, *Transforming Experimental Research into Advocacy for Social Change*, in *APPLYING SOCIAL PSYCHOLOGY* 33, 53 (Morton Deutsch & Harvey A. Hornstein eds., 1975).

271. Prentice-Dunn & Rogers, *supra* note 269, at 87.

son might also be more likely to throw rocks at others, participate in a lynching, or set a building ablaze.²⁷²

Deindividuation, then, is associated with extremes of behavior that may be positive or negative.

Deindividuation is believed to be related to disinhibition of behavior through a lessening of the deindividuated, group-focused individual's internal self-awareness or self-reflection,²⁷³ which disrupts his normal self-regulation.²⁷⁴ External situational cues and internal emotional impulses come to govern the behavior of the person in the deindividuated state.²⁷⁵

This does not mean, of course, that deindividuated behavior is random. On the contrary, individuals deindividuated at a religious revival meeting predictably will "testify," and deindividuated gang members engaged in gang rape do not get confused and "testify" instead of attacking the victim. The emotional impulses and situational cues that come to guide individuals' and groups' behavior in the deindividuated state are themselves a predictable and meaningful reflection of individuals' desires and the groups' cultures. The situational cues present in the deindividuated situation develop into the context-specific standards of behavior or "emergent norms" of the situation.²⁷⁶ In conditions of deindividuation, emotional impulses together with situation-specific group norms govern.²⁷⁷ In turn, those emotions as well as those emergent norms reflect the proclivities of group members.²⁷⁸

While the form of deindividuation discussed thus far has been radical or acute deindividuation, it appears that deindividuation may best be conceived as including a continuum of psychological

272. Diener, *supra* note 267, at 232.

273. See *id.* at 210; Charles S. Carver, *Physical Aggression as a Function of Objective Self-Awareness and Attitudes Toward Punishment*, 11 J. OF EXPERIMENTAL SOC. PSYCHOL. 510, 518 (1975); Brian Mullen, *Atrocity as a Function of Lynch-Mob Composition: A Self-Attention Perspective*, 12 PERSONALITY AND SOC. PSYCHOL. BULL. 187, 188 (1986).

274. See Steven Prentice-Dunn & Ronald W. Rogers, *Effects of Deindividuating Situational Cues and Aggressive Models on Subjective Deindividuation and Aggression*, 39 J. OF PERSONALITY AND SOC. PSYCHOL. 104, 104 (1980) [hereinafter Prentice-Dunn & Rogers, *Deindividuating Situational Cues*]; see also Steven Prentice-Dunn & Ronald W. Rogers, *Effects of Public and Private Self-Awareness on Deindividuation and Aggression*, 43 J. OF PERSONALITY AND SOC. PSYCHOL. 503, 503 (1982) [hereinafter Prentice-Dunn & Rogers, *Public and Private*].

275. Diener, *supra* note 267, at 210.

276. *Id.* at 230.

277. *Id.* at 231.

278. *Id.* at 230, 232-33.

states ranging from acute deindividuation to milder and perhaps more chronic or ongoing forms of deindividuation in which consciousness and identity are heavily communal, and individuality and individuated identity are minimized.²⁷⁹ Such low-level or "chronic" deindividuation might be found, for instance, in day-to-day life in a religious cult.

The normative level of individuation of group members varies between different primary groups.²⁸⁰ While some groups, such as some families for instance, normatively encourage the individuation and individuality of their members, other groups, such as the chronically deindividuated religious cult, have norms encouraging or requiring deindividuation. Similarly, acute deindividuation also is normative behavior for some groups.²⁸¹ For instance, acute deindividuation may be normative behavior at a religious revival or at some rock concerts.

Thus, the occurrence of deindividuation itself—both chronic and acute—is affected by group norms that favor or disfavor deindividuation. Moreover, the "disinhibited" behavior that will occur once in the deindividuated state also is guided by group attitudes, proclivities, and emergent group norms.²⁸² That disinhibited behavior may range from the heights of generosity to the depths of atrocity, including rape.

b. Normative deindividuation in military organizations. Military organizations share norms favoring deindividuation, both chronic (in training, in barracks life) and acute (in combat). This is not to say that deindividuation is fostered to the exclusion of all individuality in the military. On the contrary, recognition of individuality is reflected in, for instance, achievement awards and commendations to individuals. However, some degree of deindividuation is favored throughout a military career, and a particu-

279. *Id.* at 210, 219, 237. See generally Prentice-Dunn & Rogers, *supra* note 269, at 102-03 (discussing deindividuation in contexts other than those involving the prototypical acute deindividuation).

280. Cf. Back, *supra* note 162, at 339-40 (discussing differing levels of conformity demanded by different types of cohesive groups); Leon Festinger & John Thibaut, *Interpersonal Communication in Small Groups*, 46 J. OF ABNORMAL & SOC. PSYCHOL. 92 (1951) (considering the relationship between group cohesiveness and pressure on members to conform to group norms).

281. Cf. Diener, *supra* note 267, at 218-19 (discussing the role of norms and cues for disinhibited behavior).

282. See *supra* text accompanying notes 276-78.

larly high degree of deindividuation is called for during certain periods of service, including basic training and, for those who serve in combat, the combat context.

From the time of basic training, low-level deindividuation is cultivated in recruits. Throughout training, recruits learn to view themselves less and less as the individual identities they came in as and more and more as part of a team or group of buddies.²⁸³ Indeed, learning to identify with the other members of the unit is perhaps the most important lesson of basic training.²⁸⁴ Integral to basic training is the systematic stripping away of the recruit's prior self-image and identity.²⁸⁵ As Peter Bourne simply states, "[T]he recruit must reject his preexisting identity and envelop himself instead in the institutional identity of the military organization."²⁸⁶ Robert Lifton similarly observes that the recruit's "civil identity, with its built-in restraints, is eradicated, or at least undermined and set aside in favor of the warrior identity."²⁸⁷ This process of deindividuation is carefully constructed as part of the basic training process. As Gwynne Dyer vividly describes,

The first three days the raw recruits spend at Parris Island [Marine Corps Recruit Depot] are actually relatively easy, though they are hustled and shouted at continuously. It is during this time that they are documented and inoculated, receive uniforms, and learn the basic orders of drill that will enable young Americans to do everything simultaneously in large groups. But the most important thing that happens in "forming" is the surrender of the recruits' own clothes, their hair—all the physical evidence of their individual civilian identities.

During a period of only seventy-two hours, in which they are allowed little sleep, the recruits lay aside their former lives in a series of hasty rituals (like being shaven to the scalp) whose symbolic significance is quite clear to them even though they are quite deliberately given absolutely no time for reflection. . . .

[S]o the recruits emerge from their initiation into the system, stripped of their civilian clothes, shorn of their hair, and deprived of whatever confidence in their own identity they may

283. See DYER, *supra* note 141, at 114.

284. See *id.*

285. Bourne, *supra* note 64, at 463; KUNEN, *supra* note 64, at 237.

286. Bourne, *supra* note 64, at 465.

287. LIFTON, *supra* note 212, at 28 (1973).

previously have had as eighteen-year-olds, like so many blanks ready to have the Marine identity impressed upon them.²⁸⁸

In these ways, deindividuation is normatively favored and encouraged in military training. Additional techniques that foster deindividuation include screaming in bayonet training, chanting cadences in drill training, and other exercises that minimize individual self-reflection and maximize group cohesion.²⁸⁹

Deindividuation has been found to be fostered and intensified by high levels of group cohesiveness,²⁹⁰ by physiological arousal of group members (caused by physical exertion, sensory stimulation, and the like),²⁹¹ by intensive situational involvement (especially when the group has an urgent common goal),²⁹² and by lack of situational structure.²⁹³ All of those potentiating factors are present at particularly powerful levels in the combat context, where deindividuation tendencies among military units will therefore be heightened.

J. Glenn Gray provides a vivid description of the deindividuation characteristics of the combat situation:

In these situations some are able to serve others in simple yet fundamental ways. Inhuman cruelty can give way to super-human kindness. Inhibitions vanish, and people are reduced to their es-

288. DYER, *supra* note 141, at 110-11. Personnel interviewed by the author at Parris Island Marine Corps Recruit Depot in October 1993 referred to this process of identity transformation as the "break down" and "build up" periods. See, e.g., Interview with Cpl. Cardella, *supra* note 140.

The analogy with deindividuation norms in other forms of primary group is striking. Regarding fraternities, for instance, Peggy Sanday has noted that

[b]ound emotionally to one another in the group, they consider group values and traditions to be significant guides for behavior. These values and traditions are inculcated during the pledging period and in the initiation rituals. In these rituals, pledges endure verbal and physical abuse as a condition for membership. The abusive behavior strips the pledge of his individual identity so that he is ready to accept a group-defined identity.

The victimization of pledges is part of a process designed to bring about a transformation of consciousness so that group identity and attitudes becomes personalized. The process includes a symbolic sacrifice of the self (or some part of the self) to a superior body that represents the communal identity of the house.

SANDAY, *supra* note 153, at 135.

289. See generally Diener, *supra* note 267, at 226 ("Rapid talking, shouting, and chanting are frequent accompaniments of deindividuated group activity.").

290. Prentice-Dunn & Rogers, *supra* note 269, at 94, 97.

291. *Id.*

292. Diener, *supra* note 267, at 223.

293. Zimbardo, *supra* note 269, at 257.

sence. . . . Again and again in moments of this kind I was as much inspired by the nobility of some of my fellows as appalled by the animality of others, or, more exactly, by both qualities in the same person. The average degree, which we commonly know in peacetime, conceals as much as it reveals about the human creature.²⁹⁴

Some of the commonalities between military and religious organizations were noted earlier.²⁹⁵ With regard to deindividuation, the parallels become striking. As Gray has commented regarding the experience of combat:

In moments like these many have a vague awareness of how isolated and separate their lives have hitherto been and how much they have missed by living in the narrow circle of family or a few friends. With the boundaries of the self expanded, they sense a kinship never known before. Their "I" passes insensibly into a "we," "iny" becomes "our," and individual fate loses its central importance. . . . [A]t its height, this sense of comradeship is an ecstasy.²⁹⁶

Gray concludes that

[t]here must be a similarity between this willingness of soldier-comrades for self-sacrifice and the willingness of saints and martyrs to die for their religious faith. . . .

This is the mystical element of war that has been mentioned by nearly all serious writers on the subject. William James spoke of it as a sacrament.²⁹⁷

Thus, the situation of a cohesive military unit in a combat situation is, like certain religious experiences, highly conducive to deindividuation.

Once military unit members are in a deindividuated state, and if the group's proclivities—its culture and normative attitudes, including gender and sexual attitudes—have already been developed in a rape-conducive direction, then rape becomes a plausible outcome.²⁹⁸ This would be particularly true under the conditions

294. GRAY, *supra* note 133, at 14-15.

295. See *supra* note 144 and accompanying text; *supra* note 155; *supra* note 164 and accompanying text.

296. GRAY, *supra* note 133, at 45; see also JEAN B. ELSHTAIN, *WOMEN AND WAR* 207 (1987) ("Communal ecstasy explains a willingness to sacrifice and gives dying for others a mystical quality.").

297. GRAY, *supra* note 133, at 47.

298. The normative factors (both gender and sexual norms, and norms favoring

of acute deindividuation that are characteristic of combat, but would also apply in peacetime when a milder or chronic deindividuation appears to be common and acute deindividuation occasional.

In summary, the deindividuation fostered in military units may interact with normative rape-conducive sexual and gender attitudes to elevate the rape propensity of military organizations. This interactive effect would be expected to occur in peace as well as in war, but to be particularly potent in the combat context.

III. CHANGES IN THE CONTENT OF MILITARY CULTURE

We have seen evidence in the discussion thus far that there exists a differential between military rape rates and military rates of other violent crime. We have considered the possibility that the military rape differential may be attributable in part to the norms and attitudes—toward gender and sexuality, and toward deindividuation—extant within military organizations. If that causal analysis is at all accurate, then it suggests that we may be able to reduce military rape rates, in peace and also in war, by altering the norms that are conveyed within the military.

The potential for reducing military rape incidence in this way suggests an additional perspective from which to evaluate policies affecting military culture. The possibility that certain aspects of military culture contribute to the military rape differential weighs in favor of policy choices that foster change in those aspects of military culture.

Thorny questions, however, remain. In particular, we must ask what sorts of policy choices would foster the cultural change in question and whether the contemplated cultural change can occur

deindividuation) that may increase the rape propensity of military units would be expected to increase both the incidence of rape by individual members and also, perhaps disproportionately, the incidence of group rape. It appears from the available anecdotal data that unlike rape in the nonwar context, which is more often than not committed by a lone individual, *see* GROTH, *supra* note 89, at 110 (1979); MACKELLAR, *supra* note 89, at 105, rape in war typically is committed by a group of two or more. *See, e.g., supra* notes 5–10 and accompanying text; Arnold J. Toynbee, *Violation of Women in War, in* MORALS IN WARTIME 136, 149 (Victor Robinson ed., 1943) (“The [WWII] officers and soldiers usually hunted in couples [for rape victims].”). It seems plausible that deindividuation—the eclipsing of individual identity by group identification—may particularly increase a propensity toward group rape.

without undermining military effectiveness. These are the issues to be addressed in this and the following section.

Primary group bonding has repeatedly been found in military research to be essential to combat performance—and thus essential to the effectiveness and, indeed, the survival of troops in combat.²⁹⁹ Primary group relations provide essential elements of morale in combat, including on-the-scene motivation,³⁰⁰ emotional support, and self-confidence.³⁰¹ Primary group bonding in the military is, in this way, a matter of life and death.

Deindividuation too appears to be an important contributor to combat effectiveness, fostering bravery and heroism in battle. Indeed, it has been suggested that traditional rituals such as war dances or chanting before battle were designed to facilitate deindividuation of the warriors in combat.³⁰²

For these reasons, in exploring ways to reduce the rape incidence of military personnel, reducing primary group bonding or deindividuation of troops would not be an appropriate place to start. Rather, a more appropriate focus would be on the normative gender and sexual attitudes within military culture.

There is reason to believe, as we have seen, that change in the gender and sexual norms of military culture could contribute to a reduction in the rape incidence of military organizations. Such cultural change could very likely be fostered through gender integration of the military, from basic training through combat, as shall now be considered. Such thoroughgoing integration of the military would be importantly facilitated by further narrowing or elimination of the female combat exclusion and by "accession" (as

299. See, e.g., MOSKOS, *supra* note 132, at 135, 144-45; I STOUFFER ET AL., *supra* note 137; Little, *supra* note 134, at 206-07; David H. Marlowe, *The Basic Training Process*, in *THE SYMPTOM AS COMMUNICATION IN SCHIZOPHRENIA* 75 (Kenneth L. Artiss ed., 1959); Shils & Janowitz, *supra* note 146, at 280; see also Moskoss, *supra* note 155, at 37 (arguing that primary-group ties in combat units arise from instrumental strategies for individual physical survival). It is interesting to note, however, that primary groups in the military do not always contribute to military effectiveness. When primary groups develop group norms in opposition to the goals of the larger military, primary groups can supply solidarity in opposition to official goals. See Little, *supra* note 134, at 195.

300. See Shils, *Primary*, *supra* note 143, at 21.

301. *Id.* at 27-28.

302. Zimbardo, *supra* note 269, at 257. We should not, however, lose sight of the risks associated with deindividuation in combat: One cross-cultural study, for instance, has found deindividuation to be correlated with torture and mutilation of the enemy in warfare. Robert I. Watson Jr., *Investigation into Deindividuation Using a Cross-Cultural Survey Technique*, 25 J. OF PERSONALITY & SOC. PSYCHOL. 342, 344 (1973).

hiring of uniformed personnel is called) of a greater proportion of female personnel, as shall be discussed later in this section.

We might expect that a truly thoroughgoing integration of women throughout the military services would do much to undermine group norms featuring the constellation of attitudes comprised of hypermasculinity, hostility toward women, adversarial sexual beliefs, and the like, discussed earlier. The presence of women as full members of the fighting forces would be inconsistent with a military culture in which women are viewed as the "other," primarily as sexual targets, and in which aggression is viewed as a sign of masculinity. The very presence of women as military equals would call into question such views.

There has been considerable movement in recent years toward integration of women into the American military. The gender integration of some military units may already be having a positive effect on gender attitudes. According to one female Army Sergeant interviewed in 1994, "The idea that being a soldier means being masculine is changing because of more women coming into the services. The fact that there are now female fighter pilots, for example, helps a lot."³⁰³ A female Army Staff Sergeant summed up the point, saying: "The units that work with females every day seem to be able to relate better."³⁰⁴

While we have seen some movement toward integration of women into the services in recent years, however, that movement has been within limits. Those limits on gender integration of the

303. Interview with female Army Sergeant, Name Withheld, at Fort Bragg, N.C. (Sept. 23, 1994). Another female Sergeant commented that

[t]he guys from the all-male units are not used to having women around. But once they *do* work with females, it helps. Like the guys at NPDL [non-commissioned officer training] who hadn't worked with females before. They even told us after a while that they were surprised and they had a lot of respect for us.

Interview with Sgt. Alesia Rodriguez, U.S. Army, at Fort Bragg, N.C. (Sept. 23, 1994).

304. Interview with Staff Sgt. Monica Krause, U.S. Army, at Fort Bragg, N.C. (Sept. 23, 1994).

By contrast, regarding the units that still remain all-male, one female former Army Captain who is married to an Army enlisted man observed:

The things that the leaders do in the male-only branches are different from in the integrated branches. Like they'll call the guys who don't do well "girls" and things like that. That will happen in the combat branches because there are no girls there to object; they won't get caught and turned in in all-male units. So all the leaders in the male units know it's not supposed to go on, but they still do it.

Telephone Interview with female former Army Captain, Name Withheld (Sept. 25, 1994).

military also appear to limit the extent of change likely to occur in military gender and sexual culture. It seems improbable, for reasons now to be considered, that we will see a full transition in the gender and sexual norms of the military as long as rules remain excluding women from a range of combat positions, and low proportions of women are accessed for military service.

A. *The Combat Exclusions*

The rules excluding women from combat have been narrowed considerably in recent years. However, the remaining exclusions of women from combat positions still limit the potential for change in the gender and sexual culture of the military. A very brief historical overview of legal limitations on American women's military participation will place these issues in context.

Prior to the Armed Forces Integration Act of 1948, American military women served only in auxiliary units.³⁰⁵ The 1948 Act authorized the participation of women in certain roles in the regular services, but limited their total presence to 2% of enlisted strength, and limited the rank that a female officer could achieve.³⁰⁶ The 2% total-female-enlisted participation limit was lifted in 1967.³⁰⁷ In 1976, women were admitted for the first time to the Naval, Air Force, and Military (Army) Academies.³⁰⁸ Two years later, statutory reform permitted women to be assigned to duty on certain naval vessels.³⁰⁹ Throughout this period, women were prohibited by statute from naval and air combat roles. Army policy, in the absence of statutory law, excluded women from combat positions. The legal status of American women's military participation remained in essentially this posture until 1988, when the Department of Defense (DOD) further defined the combat exclusion by adopting the "risk rule," which excluded women from noncombat units or missions in which the risks of exposure to direct combat, hostile fire, or capture equaled or exceeded those risks in the combat units they supported.³¹⁰

305. See M.C. DEVILBLISS, *WOMEN AND MILITARY SERVICE* 3-9 (1990).

306. Act of June 12, 1948, ch. 449, 62 Stat. 356 (repealed 1967).

307. See 10 U.S.C. § 3069 (1994) (repealing 10 U.S.C. § 5410 (1956)).

308. See Department of Defense Appropriation Authorization Act, 1976, Pub. L. No. 94-106, Title VIII, § 803(b)(1), 89 Stat. 531, 538 (1975).

309. See Department of Defense Appropriation Authorization Act, 1979, Pub. L. No. 95-485, § 808, 92 Stat. 1611, 1623 (1978) (repealed 1993).

310. The risk rule provided that risks of direct combat, exposure to hostile fire, or

Major changes toward a narrowing of the combat exclusion for women began to occur in 1991, when Congress repealed the statutory exclusion of women from combat aircraft in the Air Force and Navy.³¹¹ In 1993, Congress eliminated the statutory restrictions on women serving on combatant Navy vessels.³¹² Then, in the spring of 1993, Secretary of Defense Les Aspin directed the services to open combat aircraft positions to women, to provide recommendations to the DOD on whether to retain or replace the risk rule, and to study the possibilities for opening to women additional positions, including combat positions.³¹³

Pursuant to Secretary Aspin's initiative, the risk rule was rescinded in January of 1994, and was replaced by the "Direct Ground Combat Rule" (DGC Rule), which provides as follows:

A. *Rule.* Service members are eligible to be assigned to all positions for which they are qualified, except that women shall be excluded from assignment to units below the brigade level whose primary mission is to engage in direct combat on the ground, as defined below.

B. *Definition.* Direct ground combat is engaging an enemy on the ground with individual or crew served weapons, while being exposed to hostile fire and to a high probability of direct physical contact with the hostile force's personnel. Direct ground combat takes place well forward on the battlefield while locating and closing with the enemy to defeat them by fire, maneuver, or shock effect.³¹⁴

capture are proper criteria for closing *noncombat* positions or units to women, when the type, degree, and duration of such risks are equal to or greater than the combat unit with which they are normally associated within a given theater of operations. If the risk of noncombat units or positions is less than that of the land, air, or sea combat units with which they are associated, then they should be open to women. Noncombat units should be compared to combat land units, air to air, and so forth. Memorandum from Frank Carlucci, Secretary of Defense, to Secretaries of the Military Departments (February 2, 1988) (discussing *Women in the Military*) (on file with author).

311. See National Defense Authorization Act for Fiscal Years 1992 and 1993, Pub. L. No. 102-190, § 531, 105 Stat. 1290, 1365 (1991).

312. National Defense Authorization Act for Fiscal Year 1994, Pub. L. No. 103-160, § 547, 107 Stat. 1547, 1659 (1993).

313. Memorandum from Les Aspin, Secretary of Defense, to the Secretary of the Army, Secretary of the Navy, Secretary of the Air Force, Chairman, Joint Chiefs of Staff, Assistant Secretary of Defense (Force Management & Personnel), and Assistant Secretary of Defense (Reserve Affairs) (April 28, 1993) (setting policy regarding the assignment of women in the Armed Forces) (on file with author).

314. Memorandum from Les Aspin, Secretary of Defense, to the Secretary of the

Pursuant to Secretary Aspin's directive, the Air Force in 1994 opened additional combat aviation positions, bringing to over 99% the total proportion of Air Force positions open to women.³¹⁵ Air Force positions remaining closed include Air Force Pararescue, Combat Controllers, and any other positions or units defined as involving direct ground combat or assignment with direct ground combat units.³¹⁶

The Navy, pursuant to its interpretation of the DGC Rule, opened most combatant vessel positions to women, bringing to 94% the proportion of all active-duty Navy positions open to women.³¹⁷ Positions still excluding women include those in submarines, coastal patrol boats, certain mine warfare ships, and Special Operations Forces.³¹⁸

The Army, pursuant to its interpretation of the DGC Rule, opened certain additional positions, raising to 67% (from a former 61%) the proportion of Army positions open to women.³¹⁹ Army positions that remain closed include, but are not limited to, all combat units below the brigade level; Special Operations Forces; all armor and infantry; cannon, artillery, and short-range air de-

Army, Secretary of the Navy, Secretary of the Air Force, Chairman, Joint Chiefs of Staff, Assistant Secretary of Defense (Personnel & Readiness), and Assistant Secretary of Defense (Reserve Affairs) (Jan. 13, 1994) (on file with author).

315. Secretary of Defense, Press Release, *Secretary of Defense Perry Approves Plans to Open New Jobs for Women in the Military*, July 29, 1994 [hereinafter Press Release] (on file with author). These numbers for the Air Force include reserve and national guard positions. See Undersecretary of Defense Dorn, Special Briefing on Women in the Military, July 29, 1994, at 4 (The Federal News, Reuters Transcript Service) [hereinafter Special Briefing].

316. See Letter from William J. Perry, Secretary of Defense, to Senator Sam Nunn, Chairman, U.S. Senate Committee on Armed Services (July 28, 1994) (reporting actions taken to expand the role of women in the military) (on file with author).

317. See Letter from Perry, *supra* note 316, at 2.

318. See *id.*, Enclosure 2, at 5.

319. These percentages for the Army include reserve and national guard positions together with active duty positions. The Army currently does not know the percentage of active duty positions that were open before or after the policy change. Telephone Interview with Major Anita Minniefield, Public Affairs, Public Communications Division, U.S. Army (Aug. 19, 1994).

Considerable controversy among forces in the Army and the Department of Defense attended the decision of which Army positions were to open to women. Secretary of the Army Togo West favored but was not successful in achieving the opening of virtually all positions not considered to involve direct ground combat, which was narrowly defined. See Eric Schmitt, *Army Will Allow Women in 32,000 Combat Posts*, N.Y. TIMES, July 28, 1994, § A, at 12.

fense artillery; and units that co-locate by doctrine or requirement with direct ground combat units.³²⁰

The Marine Corps opened additional positions, raising from 33% to 62% the Marine Corps positions open to women.³²¹ Marine Corps positions still closed to women include positions analogous to Army positions still closed to women, listed above.³²²

Considerable progress has thus been made in narrowing the legal limitations on American women's military participation. However, exclusions still remain in all four forces, particularly in the Army and Marine Corps.

While the recent narrowing of the combat exclusion has been extremely valuable, the perpetuation of the exclusion in its present form limits potential effects on the gender and sexual norms of military culture that might be gained from a more thoroughgoing integration of women. The remaining combat exclusions limit women's advancement into leadership positions and also retain as exclusively male many of the most stereotypically masculine roles. Each of these factors limits the cultural change likely to result from the presence of women in the forces.

The remaining combat exclusions pose significant limitations on women's advancement within military organizations, particularly in the Army and Marine Corps. As one reporter asked Undersecretary of Defense for Personnel and Readiness Edwin Dorn,

If you're going to keep women, particularly in the Army and the Marine Corps, out of direct ground combat, are you not denying them . . . the opportunity to compete with their male counterparts for promotion, particularly to general officer? If they're not allowed to be in infantry and armor and most artillery, you've kind of removed them from the fast track, have you not?³²³

Undersecretary Dorn replied that "to be quite honest, you are partially correct, because [of] the prohibition against ground combat, it is not likely that in the next 25 or 30 years there will be a female chief of staff of the Army."³²⁴ Of course, Chief of Staff is not the only position that women will be impeded in achieving. Rather, insofar as combat service has been and continues to be an

320. See Special Briefing, *supra* note 315, at 4-5.

321. Press Release, *supra* note 315, at 1.

322. See Special Briefing, *supra* note 315, at 5.

323. *Id.* (anonymous reporter).

324. *Id.*

important element in promotion decisions,³²⁵ women's exclusion from much of combat service will limit their opportunities for promotion generally.

Integration of women into positions of military leadership would affect military gender norms both at a symbolic level and in very concrete ways. As one female former Army officer stated,

It helps a lot to have females there, but especially if they have some rank. Like in Saudi, during the Persian Gulf War, my commander told me to "Act like a soldier, not like a girl." I confronted him and he backed off. So he got feedback, because there was a female there—but especially because I had enough rank and the confidence to confront him. Not everyone would have been in a position to do that.³²⁶

To the extent that women are, because of remaining combat exclusions, less likely to become military leaders and more likely to remain in lower echelons, their value in changing the gender norms of military culture is thereby limited.

But it is not only the *rank* held by women but also the substance of their military roles—their job fields and duties—that would be expected to affect military gender norms. The combat exclusions contribute to a powerful symbolic message about the appropriate roles of men and women. Only men are deemed suitable for ground and certain other forms of combat—arguably the very positions that have been considered the prototypical military positions, perhaps the most "macho" ones. In this way, the continued exclusion of women from certain combat roles may actually reinforce and reaffirm traditional military gender norms; that is, to be a "real soldier," a fighter, one must be a man.

In addition to the general effects on military culture of the symbolic message carried by the remaining combat exclusions, we also must consider the particular effects of the exclusion on those occupational fields from which women are actually excluded. Units from which women are excluded may well elaborate "macho" norms (norms consisting of the constellation of rape-conducive gender and sexual attitudes discussed earlier) even more intensively than we have seen before, as all-male composition now becomes a distinguishing group feature even within the broader mili-

325. See Rodman D. Griffin, *Women in the Military*, 2 CONG. Q. RES. 835, 836-37 (1992).

326. Telephone Interview with female former Army Captain, *supra* note 304.

tary. We would expect for that tendency toward masculinist group identification to be heightened yet further as individuals attracted to that group image self-select into the remaining all-male occupational fields.³²⁷

While important progress has been made in reducing the range of combat positions from which women are excluded, reform also has been limited in ways that are likely to limit the effects of that reform on military culture. The remaining combat exclusions may tend, in both concrete and symbolic ways, to reinforce the traditional military gender and sexual norms that may be contributing to the military rape differential.

B. Accessions Policies

Related to but distinct from the issue of combat exclusion rules are the military services' policies on accessions of service members. No matter how many military positions are "open to women," unless the services' accessions policies contemplate actually placing women in some substantial proportion of those positions, military occupations will not become substantially integrated, and resultant change in military gender and sexual culture will thereby be limited.

1. *Accessing Recruits.* Each year, each service produces a personnel management plan for the next year including projected accessions, promotions, and discharges.³²⁸ These plans set numerical goals for accessions on a variety of bases, including prior service experience, job specialty, geographical district, race,

327. It is important additionally to observe that, unfortunately, the very occupational fields, centered in the Army and Marine Corps, that have been chosen to remain all male encompass the very units most at risk to rape in war. They are the units that occupy the ground, take prisoners, and come into contact with civilians. As Hays Parks has observed,

The problem [of crimes of violence, including rape, in the combat context] most directly involves members of the Army and Marines, for they have the greatest face-to-face confrontation with enemy forces and civilians on the battlefield. Additionally, certain triggering factors generally are found only in the area of ground operations.

William H. Parks, *Crimes in Hostilities: Conclusion*, MARINE CORPS GAZETTE, Sept. 1979, at 18. At the time of that writing, Parks was a Major, U.S.M.C. He is now Chief, International Law Branch, International Operational Law Division, Office of the Judge Advocate Gen. (JAG), U.S. Army, and Special Assistant for Law of War Matters, Office of the JAG, U.S. Army.

328. See STIEHM, *supra* note 228, at 155, 158.

and ethnicity.³²⁹ The Army and Marine Corps also have set minimum female enlisted accessions goals (18% and 16%, respectively).³³⁰ Informed sources within each of these services state that they intend to meet but do not expect to exceed their minimum goals for female accessions.³³¹ The Navy and Air Force now have gender-neutral accessions policies (in the sense of having no stated gender goals or quotas),³³² but still have projected or predicted numbers of females expected to be accessed (18% to 20% for the Navy).³³³

The planned or projected number of women to be accessed obviously is not simply a function of the number of jobs "open" to women in each service (i.e., jobs not restricted to men under a combat exclusion and not "reserved" to men for other policy reasons).³³⁴ Rather, each service considers a variety of factors, including the service's needs, potential availability of female recruits, and costs, in identifying the number of females to be accessed.³³⁵ That number may bear only a very distant relationship to the number of jobs open to women in the service.³³⁶ For instance, while 62% of Marine Corps positions are "open" to women,³³⁷ the current Marine Corps minimum goal or floor for female enlisted accessions is 6%.³³⁸ And the Navy prediction for female enlisted accessions is 18% to 20%,³³⁹ even while 94% of Navy positions are open to women.³⁴⁰

For gender integration to be effective in changing gender and sexual norms in the military, women must be present in sufficient numbers to be perceived as more than tokens.³⁴¹ Two decades of

329. See Telephone Interview with Capt. Ted Triebel, U.S. Navy (Ret.) (Nov. 2, 1994).

330. See *id.*

331. See *id.*

332. Regarding the Air Force gender-neutral accessions policy, see STIEHM, *supra* note 228, at 155. Regarding the Navy gender-neutral accessions policy, see Telephone Interview with Capt. Triebel, *supra* note 329.

333. See Telephone Interview with Capt. Triebel, *supra* note 329. A predicted percentage for the Air Force was not available.

334. STIEHM, *supra* note 228, at 157, 165, 175.

335. *Id.* at 155-158; Telephone Interview with Capt. Triebel, *supra* note 329.

336. See STIEHM, *supra* note 228, at 157.

337. See *supra* text accompanying note 321.

338. See Telephone Interview with Capt. Triebel, *supra* note 329.

339. See Interview with Capt. Ted Triebel, U.S. Navy (Ret.) in Durham, N.C. (Aug. 26, 1994).

340. See *supra* text accompanying note 317.

341. For a review of military research on female participation in the military general-

research in commercial, educational, and military contexts indicates that when women are introduced into a previously male environment, the *proportions* of male and female in the newly integrated environment are crucial in determining the outcome of integration. When women remain a small minority, stereotyping and negative reaction are perpetuated and women remain isolated within the group.³⁴² As Rosabeth Kanter has observed, "As long as numbers are low, disruptions of interaction around tokens . . . are seen by the organization as a huge deflection from its central purposes, a drain of energy, leading to the conclusion that it is not worth having people like the tokens around."³⁴³ The presence of women in small numbers dispersed throughout the military creates, in some ways, the worst of both worlds. As Judith Stiehm puts it, "Because the women remained a small percentage both of the whole and of any unit to which they were assigned, were dispersed through a variety of noncombat jobs, and were integrated into many previously all-male units, their presence disturbed without altering."³⁴⁴ The gender ratios of accessions are thus a very important factor in determining what effect the presence of military women will have on the gender and sexual norms of military culture.

Accessions policies exert a strong influence on accessions results. Based on accessions policies, recruiting commands in each service pursue recruiting strategies that target particular populations (defined by factors including age, region, race, and gender) in their advertising and in high school recruiting visits. While accessions policies and resultant recruiting strategies surely do not entirely determine the proportion of recruits that are female (broader societal gender roles, for instance, may more narrowly limit the number of females than the number of males that are "recruitable"), those policies do exert a considerable influence on the proportion of female accessions. For that reason, accessions

ly, see STIEHM, *supra* note 228, at 134-54.

342. See Diane N. Ruble & E. Tory Higgins, *Effects of Group Sex Composition on Self-Presentation and Sex-Typing*, 32 J. OF SOC. ISSUES 125, 125-31 (1976); James H. Thomas & Dirk C. Prather, *Integration of Females into a Previously All-Male Institution*, FIFTH ANNUAL SYMPOSIUM ON PSYCHOLOGY IN THE AIR FORCE 8 APRIL-10 APRIL 1976, at 100, 100-01 (1976); Ross A. Webber, *Perceptions and Behaviors in Mixed Sex Work Teams*, 15 INDUS. REL. 121, 121-29 (1976).

343. ROSABETH M. KANTER, MEN AND WOMEN OF THE CORPORATION 239 (1977).

344. STIEHM, *supra* note 228, at 152.

policies are crucially important to the future of women's military participation and thus to the potential effects of gender integration on military culture. "Accessions are the heart of the women-in-the-military matter. If women are not accessed, all other considerations become moot."³⁴⁵

Numerous factors, including military readiness, force diversity, and cost, have formed the basis of accessions policies to date. Military cultural change and the potential resulting reduction in military rape rates are yet another factor that might valuably be taken into account in the future formation of accessions policies regarding gender.

2. *Basic Training.* An especially important problem for purposes of military cultural change that arises from the low rate of female accessions into the services is the resultant impossibility of thoroughly integrating basic training. The most intensive period of socialization into military culture occurs in the basic training of new recruits. Therefore, an important point for transformation in the gender and sexual norms of military culture is in this initial training of military personnel.

The Army, Navy, and Air Force each conduct some form of gender-integrated basic training. But those services, in attempting to integrate basic training, are constrained by the fact that there are far fewer female than male recruits.³⁴⁶ The Air Force has responded to that constraint by distributing recruits in a gender-neutral manner, with the result that women generally constitute a small minority within their training units (on average, 21% in fiscal year 1993).³⁴⁷ The Navy, in contrast, clusters female recruits into a few basic training units with roughly equal numbers of

345. *Id.* at 174.

346. In 1993, the percentage of recruits in each service who were female was 16% in the Army, 13% in the Navy, 5% in the Marine Corps, and 22% in the Air Force. Defense Manpower Data Center, Non-Prior Service Accessions to Active Forces, Attained Age By Race By Service and Sex, Oct. 1992-Sep. 1993 (Jan. 23, 1996) (computer print-out provided by the U.S. Defense Manpower Data Center, on file with author).

347. Telephone Interview with Sgt. Anita Bailey, Public Affairs Manager, Lackland Air Force Base, San Antonio, Tex. (July 14, 1994). All activities in Air Force basic training are gender-integrated and include identical curricula except for some differences in physical training requirements. Men and women are billeted on the same barracks floors in different rooms (two men or two women to a room). Telephone Interview with Maj. Valerie Lofland, Chief, Force Management Directorate, Military Personnel Policy, Lackland Air Force Base, San Antonio, Tex. (Feb. 10, 1994).

males and females, and leaves the remaining majority of basic training units male only.³⁴⁸ The Army clusters female recruits into a few basic training units with a minimum of 25% females, leaving the remaining majority of units male only.³⁴⁹ The Marine Corps makes no attempt to integrate basic training, segregating male and female recruits at the battalion level.³⁵⁰

Air Force basic training thus occurs in a context in which females constitute a small minority within their training units. This minority status may substantially diminish the effects of women's presence on the gender norms and attitudes of the units in which they train.³⁵¹ For Marine and most Army and Navy personnel, basic training, a crucial period of socialization into military culture, occurs in an all-male environment.³⁵² The result of maintaining all-male training units is that females may be viewed by male recruits (and perhaps even by female recruits themselves) as marginal or peripheral to military life.³⁵³

348. Interview with Capt. Ted Triebel, U.S. Navy (Ret.), in Durham, N.C. (March 9, 1994).

349. Telephone Interviews with Raymond Harp, Public Information Specialist, U.S. Army Training and Doctrine Command (Sept. 1, 1994 and Nov. 2, 1994).

350. Marine Corps basic training is sex-segregated at the battalion level (approximately 1,200 personnel), and there exist no plans for integration. Telephone Interview with Cpl. Daniel Jones, Press Chief, Marine Corps Recruit Depot, Parris Island, S.C. (July 14, 1994).

351. Based on what is known about the consequences of placing a small proportion of women or other out-group members into a predominantly male or otherwise dominant-majority group, we may predict that those few women placed in each Air Force basic training unit would tend to be more subject to marginalization than would be the case if they constituted a more substantial proportion of their units. See KANTER, *supra* note 343, at 206-42 (discussing the marginalizing effects on women of constituting a small proportion of an otherwise male group); Kanter, *supra* note 248, at 987 (observing that constituting "less than 20% [of the group] in any particular situation . . . is not always a large enough number to overcome the problems of tokenism"); Thomas & Prather, *supra* note 342, at 100-01 (finding that marginalization of females in a previously all-male institution is more common when women constitute less than 25% of the new group); see also MICHAEL RUSTAD, WOMEN IN KHAKI: THE AMERICAN ENLISTED WOMAN 228-35 (1982) (arguing for a 65:35 male/female ratio in the U.S. Army as necessary to improve the status of enlisted women soldiers).

352. Even for those Army recruits trained in "gender-integrated" units, their training occurs in units in which females are in the minority. (The Army sets a minimum of 25% female for its gender-integrated basic training units. See *supra* text accompanying note 349.) As in the Air Force context, this minority status may diminish the beneficial effects of the females' presence. See *supra* note 351 and accompanying text.

353. See WILLIAMS, *supra* note 238, at 67 ("Because of the segregation of basic training, military women are an enigma to most servicemen."). An additional problem with segregated basic training is that it does not prepare female recruits for their military life

In explaining the Navy's reasons for moving toward gender-integrated recruit training, Patricia Thomas and Kathleen Bruyere state that "the Navy recognized that the practice [of single-sex recruit training] is divisive, setting the stage for differential treatment of women later in their military careers."³⁵⁴ Such marginalization of female recruits presumably would minimize the impact of their presence on the norms and attitudes of the organizations in which they participate. It will be difficult, however, for the Navy to counteract a tendency toward such marginalization of female recruits by "integrating" basic training if, because of accessions numbers, most basic training units remain all male even after "integration."

In addition to potentially causing female recruits to appear marginal or peripheral, another consequence of the single-sex basic training that occurs in all Marine and most Navy and Army units is that the presence of women in the services has little effect on the content (particularly the informal, "cultural" content) of the male recruits' training. This phenomenon is reflected in an anecdote mentioned earlier: The name "Suzie Rottencrotch" was still in unofficial use by males at Parris Island in 1993, but the female drill instructor I spoke with learned this only by asking her male counterpart.³⁵⁵ Also illustrative is the fact, related to me by a female drill instructor at Parris Island in 1994, that female recruits are informally instructed on what sexual conduct is appropriate for them, and on how to deal appropriately with the sexual conduct of the male Marines, which they should not expect to be exemplary.³⁵⁶ In ways such as those reflected in these brief anecdotes, the maintenance of single-sex basic training units permits the informal content of the training of male and female recruits to differ and, thereby, minimizes the effect that the existence of female

to come in the way that it does for male recruits. As Stiehm has noted, "[B]asic does not serve the same initiation function for women that it serves for men. . . . [I]t is only at her first assignment that a woman is likely to encounter a nearly all-male and sometimes hostile environment." STIEHM, *supra* note 228, at 4.

354. Patricia J. Thomas & Capt. Kathleen M. Bruyere, U.S. Navy (Ret.), *Gender Integrated Recruit-Training 2* (1993) (unpublished manuscript, on file with author) (Ms. Thomas is Director of Women and Multicultural Research, Navy Personnel Research and Development Center; Captain Bruyere was Chief of Staff at the Treasure Island Naval Base, San Francisco, CA).

355. See *supra* text accompanying note 215.

356. Telephone Interview with female Marine Gunnery Sergeant, Name Withheld, Parris Island Marine Recruit Depot (May 23, 1994).

recruits has on the gender and sexual norms conveyed in basic training.

Thoroughgoing integration of basic training would thus be an important component in transforming the gender and sexual norms of military culture. Such integration, however, is rendered highly problematic by the relative paucity of female accessions. The low proportion of female accessions therefore represents an obstacle to military cultural change both in terms of the reduced presence of women in the military generally and, of particular significance, during the intensive socialization period of basic training.

Although extensive progress has been made toward integration of women into the military, significant limitations remain that reduce the extent of resultant change in the gender and sexual norms of military culture.³⁵⁷ Arguably, a more thorough program

357. Together with thoroughgoing integration of women, acknowledged integration of gays in the armed forces also would likely be a valuable means for transforming the gender and sexual norms of military culture. A candid recognition of military participation by gays would be helpful in severing the association of military service with the set of sexual norms that casts men as promiscuous heterosexual consumers and women as sexual adversaries or targets. That particular construction of masculine sexuality could no longer remain central to military group identity if gays were recognized as part of the military group.

There has been some minimal movement in recent years toward acknowledgement of gay participation in the military, though far less extensive than the movement toward gender integration. The "compromise" resolution of the intensive debate on the legal status of gays in the military was the adoption in 1993 of the "don't ask, don't tell" rule. That policy provides that

a. . . . Applicants for enlistment, appointment, or induction shall not be asked or required to reveal whether they are heterosexual, homosexual or bisexual. Applicants also will not be asked or required to reveal whether they have engaged in homosexual conduct, unless independent evidence is received indicating that an applicant engaged in such conduct or unless the applicant volunteers a statement that he or she is a homosexual or bisexual, or words to that effect.

b. Homosexual conduct is grounds for barring entry into the Armed Forces. . . . Homosexual conduct is a homosexual act, a statement by the applicant that demonstrates a propensity or intent to engage in homosexual acts, or a homosexual marriage or attempted marriage. . . .

(2) An applicant shall be rejected for entry if he or she makes a statement that he or she is a homosexual or bisexual, or words to that effect, unless there is a further determination that the applicant has demonstrated that he or she is not a person who engages in, attempts to engage in, has a propensity to engage in, or intends to engage in homosexual acts.

DEPARTMENT OF DEFENSE DIRECTIVE 1304.26, CHANGE 1, QUALIFICATION STANDARDS FOR ENLISTMENT, APPOINTMENT, AND INDUCTION 1-5 to 1-6 (March 4, 1994) (made effective Feb. 28, 1994), *reprinted in* 10 U.S.C. § 654(b)(2) (1994).

The "don't ask, don't tell" policy attempts precisely to reduce legal impediments to gay military participation while also protecting the traditional sexual and gender norms of the military by precluding *acknowledgement* of gay military participation.

of gender integration of the military would be preferable. Effects on military rape incidence are an additional factor, not previously taken into account, that should be considered in the making of policies—including combat-exclusion and accessions policies—that will ultimately shape the gender and sexual culture of the military.³⁵⁸

While the effects of sexual-orientation integration on the gender and sexual culture of the military would be a potentially profitable line of inquiry, any extensive treatment of the issue is beyond the scope of the present paper. For analysis of the issue of gays in the military and military culture generally, see Michelle M. Benecke & Kirstin S. Dodge, *Military Women in Nontraditional Job Fields: Casualties of the Armed Forces' War on Homosexuals*, 13 HARV. WOMEN'S L.J. 215 (1990); Kenneth L. Karst, *The Pursuit of Manhood and the Desegregation of the Armed Forces*, 38 U.C.L.A. L. REV. 499 (1991). For analyses of the constitutionality of the "don't ask, don't tell" policy, see David Cole & William N. Eskridge, Jr., *From Hand-Holding to Sodomy: First Amendment Protection of Homosexual (Expressive) Conduct*, 29 HARV. C.R.-C.L. L. REV. 319 (1994); David A. Schlueter, *Gays and Lesbians in the Military: A Rationally Based Solution to a Legal Rubik's Cube*, 29 WAKE FOREST L. REV. 393 (1994).

358. The point of all of the foregoing is not to say that the presence of women in military organizations will ensure that no rapes by military personnel will occur. In fact, the increased presence of women in the military might actually result in an increase in military rape rates in the short term as rape opportunities immediately increase with the increased presence of women. However, taking a long-term view, the increased presence of women in the services would likely result in a reduced rape rate as the integration of women causes associated changes in the gender and sexual norms of military culture. (In addition, the increased presence of women would increase the opportunities not only for rape but also for consensual sexual relationships between men and women from different units, which also might tend, according to one possible theory of the military rape differential, to reduce military rape rates. See *supra* notes 75-81 and accompanying text (discussing sexual deprivation explanation for military rape differential).) Thus, there are reasons to believe that the increased presence of women in the armed forces would result in a net reduction in rape by military personnel at least in the long run.

Nevertheless, we would not expect rape by military personnel—in peace or in war—to be entirely eliminated. The Russian Army in WWII, for instance, in which women constituted approximately 8% of combatants, see Anne E. Griesse & Richard Stites, *Russia: Revolution and War*, in *FEMALE SOLDIERS—COMBATANTS OR NONCOMBATANTS?* 61, 73 (Nancy L. Goldman ed., 1982), reportedly raped very pervasively. See BROWN-MILLER, *supra* note 5, at 63-71; COSTELLO, *supra* note 5, at 140-42. Indeed, some Russian military women in WWII reportedly collaborated in rapes. See, e.g., COSTELLO, *supra* note 5, at 142. Thus, the point is not that the presence of women precludes rapes. Rather, the suggestion here is that, to the extent that certain gender and sexual norms contribute to rape propensity, and to the extent that integration of women may help to change those norms, rape incidence in military organizations may be reduced by the integration of women. We may be witnessing some such effects in Peru's Communist Party, Shining Path. Human Rights Watch has speculated that the large number of female militants in Shining Path may have reduced its rape incidence: "Rape of women by the Shining Path is much less common [than rape by government forces], perhaps due to . . . the high number of women militants." AMERICAS WATCH & THE WOMEN'S RIGHTS PROJECT, *supra* note 5, at 4.

A detailed analysis of the considerations for and against thorough gender integration of the military is beyond the scope of this Article. However, in suggesting that considerations of rape reduction may weigh in favor of policies that will change military gender and sexual culture, it is worthwhile to explore the feasibility of such change at the conceptual level. In particular, it is important to ask: Can military gender and sexual culture be changed more thoroughly than has occurred to date without eroding military effectiveness? That is, does the traditional gender culture of the military itself contribute in necessary ways to military readiness? That question is addressed in the next and final Part.

IV. FUNCTIONS OF AND ALTERNATIVES TO A MASCULINIST MILITARY IDENTITY

We have seen that a certain constellation of attitudes toward gender and sexuality has been found to be associated with heightened rape propensity. For ease of exposition, I will refer to this attitudinal constellation as "masculinist."³⁵⁹ We have also seen evidence suggesting that this masculinist constellation of normative attitudes toward gender and sexuality is prevalent within military culture as currently constructed.

We now must ask, in contemplating a change in those gender and sexual norms of military culture, whether such a change can occur while also maintaining military effectiveness. For that reason, it will be valuable to explore the reasons for and the functions of a masculinist military identity,³⁶⁰ in order to consider whether functions now served by a masculinist military identity can be fulfilled through alternative means.

359. I add the "ist" suffix to "masculine" to indicate "one who practices or is occupied with, or a believer in," WEBSTER'S NEW TWENTIETH CENTURY DICTIONARY OF THE ENGLISH LANGUAGE 975 (2d ed. 1971), a particular construction of masculinity. Thus, I do not intend for the word "masculinist" to carry a particular evaluative valence. Rather, I aspire for it to take its place among the multifarious group of "ist" words such as herbalist, specialist, feminist, dermatologist, racist, therapist, capitalist, somnambulist, sexist, proctologist, economist, criminalist, cultist, novelist, and of course, The Shootist.

360. I will not distinguish here between causes and functions. For a discussion of the importance of this distinction in some contexts, see Marc Galanter, *News From Nowhere: The Debated Debate on Civil Justice*, 71 DENV. U. L. REV. 77 (1993). For present purposes, the question is whether the causes or functions of the masculinist-military phenomenon necessitate its retention.

Certainly, the phenomenon of linking military identity with masculinity has been longstanding and widespread. As David Marlowe has commented,

A widespread relationship links male sexual validation and validation in war, combat, and aggression. Until recent times, many human groups' definition of the male as sexually mature and eligible for marriage and intercourse was contingent upon his having proven himself as a warrior in battle. For example, the Afar and Issa peoples of the Horn of Africa required the slaying of an enemy in combat before a male was eligible for marriage. Among the Somali the demand for blood vengeance following assault is underlined by threats to withdraw sexual access and taunts about sexual unworthiness made by the women of the group to goad the men into combat. The examples can be multiplied for human groups on every continent and, at almost every level of societal complexity.³⁶¹

The pervasiveness of a masculinist military construct raises the question of the reasons for its widespread popularity and the functions that the construct may serve. Although no definitive explanation for the pervasiveness of the masculinist military construct is possible, five elements are likely contributing factors. The first two, as we shall see, may be waning in their causal vitality at this moment in history. The latter three continue to be causally efficacious, but may not represent an insurmountable barrier to change because of the availability of suitable alternatives.

The first and rather obvious explanation for the linkage of military service and masculinity is that, historically, success in combat depended heavily upon the physical strength of the combatants. Combat was a male domain because strength was largely determinative of combat's outcome. Now, of course, with the advent of increasingly lighter and more effective firepower, this basis for linking combat and maleness has become much more tenuous.³⁶²

361. Marlowe, *supra* note 132, at 191 (citations omitted).

362. A broader version of the physical-suitability-for-combat explanation for the link between combat and maleness would address not only the strength differences between men and women but also the fact that males are not subject to pregnancy and lactation as are women. However, technological progress, including the availability of contraception and of bottle feeding, lessen the import of these additional physical factors favoring males as fighters just as the advent of lighter firepower reduces the import of the strength differences between the genders.

But the historical importance of strength for combat, while addressing the linkage of combat and maleness, does not satisfactorily explain the more complex linkage of combat with the particular construction of masculinity (and attendant attitudes toward sexuality and toward women) that I have termed "masculinist" or the significant emotional energy invested in that link. The second explanation of the linkage between military service and masculinity addresses the issue on that more complex dimension. Here, at the level of psycho-sexual causes, explanations necessarily become more speculative.

One psychoanalytic explanation for the linkage of military service and a particular, "masculinist" construction of masculinity is that young males, unlike young females, utilize institutions like the traditional military as means through which to affirm their gender identities. The reasoning is that young males gravitate toward opportunities to affirm their masculinity (in a manner not analogous to the behavior of young females) because of gender-asymmetry in parenting which makes the psycho-sexual development of girls and boys fundamentally different. In essence, the argument here is that, in a society in which girls and boys are both primarily parented by women, girls never have to shift away from their primary attachment (mother) to develop (female) gender identity, whereas boys have to separate psychologically from the primary bond with mother to establish identification with a male figure to develop male gender identity. This more problematic male course of development, it is argued, creates a variety of psychological differences between the sexes, including a continuing need in many young (and some older) men to separate, distance, and distinguish themselves from the feminine, the (in)other, and to affirm their masculine identification in sharp contradistinction to femininity.³⁶³ Methods for such affirmation of maleness presumably would include bonding with father figures as well as with all-male,

363. See NANCY CHODOROW, *THE REPRODUCTION OF MOTHERING: PSYCHOANALYSIS AND THE SOCIOLOGY OF GENDER* 173-77 (1978); WILLIAMS, *supra* note 238, at 13-15; see also STIEHM, *supra* note 228, at 226-27 (observing that this psychoanalytic explanation of the implications of female primary parenting may go far in explaining why males, especially young males, are so susceptible to motivational ploys, such as the military's, that offer a confirmation of masculine identity). For an anthropological analysis relating male initiation rites to societal levels of gender role differentiation, see Roger V. Burton & John W.M. Whiting, *The Absent Father and Cross-Sex Identity*, 7 MERRILL-PALMER Q. 85 (1961).

hypermasculine groups. One such group would be, of course, the traditional armed forces.³⁶⁴ Viewed in this light, we can perhaps make sense of the Army National Guard advertisement that shows a group of young men wading through high water and bears the caption: "Kiss your momma goodbye."³⁶⁵

David Marlowe has once again made pertinent observations:

The military group is, in this sense, a reflection of the myriad other adolescent and youthful male groups that in most cultures traditionally play either a formal or informal role in the process of maturation and the acquisition of full male sexual and social identity. These institutions range from the *poro* and other age-graded groups in African societies, including circumcision and warrior-age class groups, to the men's societies and men's houses of the Circum-Pacific and other specialized groups. Horizontally bonded, exclusive groups of young males have also characterized the social developmental process in Western Europe. These range from groupings of apprentices and students to those of young professionals, all based upon highly elaborated and complex perceptions and images of male brotherhood. The United States has since its founding been marked by many like groups in the form of gangs, militias, volunteer fire companies, and other organizations that partake of elaborate sets of constructs of masculinity and male behavior.³⁶⁶

To whatever extent the above psychoanalytic view of the reasons for a masculinist military is accurate, trends toward more shared parenting should reduce the power of young males' need for participation in masculinist groups defined in distinction to the feminine (m)other. At the same time as technology plays a part in weakening the link between maleness and combat (by making successful use of violence less dependent on physical strength), technology and other social factors also weaken the link between

364. See WILLIAMS, *supra* note 238, at 15, 32, 66-67, 134-35. Other such groups would include gangs, fraternities, sport teams and the like.

Regarding the process of initiation into college fraternities, for instance, Peggy Sanday observes that

[the] cycle is not unlike that described by anthropologists for male initiation rites elsewhere. Generally speaking, these rites separate boys from psychological and social bonding to their mothers and forge new bonds centered around men. This process is accomplished by a symbolic death of the old and rebirth of the new.

SANDAY, *supra* note 153, at 141.

365. See WILLIAMS, *supra* note 238, at 47.

366. Marlowe, *supra* note 132, at 191.

femaleness and primary parenting. Both of these historical changes make more possible and more likely a movement away from the traditional masculinist military and toward a desegregation of military culture.

The first two reasons for the masculinist military construct thus may be waning in their causal efficacy. The other three, however, are of continuing vitality.

The third factor contributing to the masculinist military construct relates specifically to the particular *vision* of masculinity as dominance, aggressiveness, and toughness embraced in military culture. Presumably, idealization of those characteristics is highly functional in an organization whose *raison d'être* is combat. It therefore is unsurprising that those characteristics would be highly valued in military organizations.

Nevertheless, there is no reason that the high valuation of those attributes cannot be retained while simultaneously dissociating them from masculine gender; they may be valued instead as important attributes in a good soldier regardless of gender. Nor need the celebration of a certain steeliness exclude the approval also of compassion and understanding (as it does in the hypermasculinity component of the masculinist construct).³⁶⁷ Indeed, it is that very combination of aggressivity with compassion that is required for compliance with the laws of war that require humane treatment of prisoners, civilians, and the wounded.³⁶⁸ Therefore, there is much to be gained and little to be lost by changing this aspect of military culture from a masculinist vision of unalloyed aggressivity to an ungendered vision combining aggressivity with compassion.

The two final factors contributing to the masculinist military construct arise from the benefits of that construct for group cohe-

367. See *supra* notes 170-72 and accompanying text.

368. See Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field, Aug. 12, 1949, 6 U.S.T. 3114, 75 U.N.T.S. 31; Convention for the Amelioration of the Condition of Wounded, Sick and Shipwrecked Members of Armed Forces at Sea, Aug. 12, 1949, 6 U.S.T. 3217, 75 U.N.T.S. 85; Convention Related to the Treatment of Prisoners of War, Aug. 12, 1949, 6 U.S.T. 3316, 75 U.N.T.S. 135; Convention Relative to the Protection of Civilian Persons in Time of War, Aug. 12, 1949, 6 U.S.T. 3516, 75 U.N.T.S. 287 [hereinafter, collectively, Geneva Conventions].

Compassion, understanding, and "taking care of your troops" also are important attributes in officers and unit leaders, as is taught in, for example, the Navy's "LMET" (Leadership, Management, Education, Training) classes. See Interview with Capt. Ted Triebel, U.S. Navy (Ret.), in Durham, N.C. (August 18, 1994).

sion. First, a masculinist group identity may provide a basis for group cohesion between group members who otherwise share little in common. The group of individuals composing a military organization is often quite diverse in terms of race, ethnicity, religion, region, education, and class. This is especially true under conscription but remains somewhat true even with an all-volunteer force. Because military organizations *have* been virtually all male until recently, a focus on masculinity or "manhood" may well have served as a handy and powerful basis for group identity,³⁶⁹ allowing for a stable definition of group and other.³⁷⁰ Moreover, embracing a particular vision of masculinity that is defined in part by eschewal of the feminine may further aid group cohesion by defining an "other" that is constant over time: Even while the "enemy" changes, the *sexual* other does not change.

Given the importance of group cohesion for military effectiveness, especially in combat units,³⁷¹ we must ask, in contemplating changes to the military's traditional masculinist group identity, what alternative bases of group identity and cohesion could successfully replace the existing, gender-based structure. As discussed earlier, group identity and cohesion in ideological primary groups can be effectuated around themes that are religious, political, moral and the like; and nonideological primary groups can bond on the basis of not much more than the merest assertion of a "we/they" divide such as gang, fraternity, or team membership. There thus exists a range of possible bases for group identity and cohesion to be considered.

369. The recruiting slogan "The Marine Corps Builds Men," used from the 1960s to early '70s, Telephone Interview with Gunnery Sgt. Thomas Neal, U.S. Marine Corps Recruiting Command, Marketing Branch (Sept. 21, 1994), presumably reflected a recognition by the Marine Corps of this broadbased aspect of the service's appeal to potential recruits.

370. As Judith Stiehm notes, "[S]ome have argued that the 'woman debate' has been functional for the military because it enhances the unity of Black and white men, whose own integration is relatively recent." STIEHM, *supra* note 228, at 154.

The analogous group bonding function of group sexual identity in college fraternities has been noted by anthropologist Peggy Sanday. As she observes, "The sexual desire [the fraternity members] talk about provides the means and the mechanism to bond among themselves. Women are objects used to bring the brothers together as virile, heterosexual, loyal comrades." SANDAY, *supra* note 153, at 133. See generally DUNPHY, *supra* note 120, at 54-55 (discussing the psychological needs of group members as the source of collective group mythologies).

371. See *supra* notes 299-301 and accompanying text.

Appropriate and effective bases for military group identification other than gender could incorporate both ideological and non-ideological elements. Ideological bases could include an identification of the group as just warriors, protecting democracy and the decent lives of decent people. The "other" (always important for group identity) could be defined as those who would be oppressors, the unjust. Such visions of just warriors on an honorable mission can be mightily motivating.

One may have certain misgivings about such a basis for military group identity. Group identification as an armed band on a righteous mission can indeed be powerfully motivating—even intoxicating—and, for that reason, risky. Certainly, people who believe that they are justified in using violence for a righteous cause often are dangerous. As Myriam Miedzian well states,

Cossacks, whose pogroms against Jews terrorized my father and his family . . . believed that they had God and virtue on their side. . . . [T]he Germans who threw my aunts and uncles . . . into gas chambers . . . believed that they were serving the higher cause of purifying the Aryan race.³⁷²

The use of violence in the pursuit of good, then, is always something of which to be suspicious; but so is pacifism in the face of atrocity. Short of adopting a position of thoroughgoing pacifism, the merits of which I will not debate here, some basis for military group identification must exist. Surely, if armed force is ever to be deployed, then idealism and moral conviction are preferable motives to macho posturing. Examples of cohesive groups centered on ideological rather than gendered bases for bonding include some religious orders, Communist Party cells, the French resistance underground, and even Alcoholics Anonymous. Each of these types of groups has based a high degree of cohesion on an ideological basis, a shared cause, without utilizing gender as a basis of group bonding.

Nonideological bases for military group identification also are available. Those bases could include such basic definitions of group and other as national identification and, of course, unit and buddy identification.³⁷³ The readiness with which formation of group

372. MIEDZIAN, *supra* note 238, at 275.

373. See Manning, *supra* note 135, at 456–65; see also Maurice Garnier, *Technology, Organizational Culture, and Recruitment in the British Military Academy*, 3 J. OF POL. &

identification occurs even in the absence of shared ideology or other apparent basis is notable. As Donald Horowitz has described,

There is now a rapidly accumulating body of evidence that it takes few differences to divide a population into groups. Groups can form quickly on the basis of simple division into alternative categories. Once groups have formed, group loyalty quickly takes hold. . . .

The tendency to cleave and compare . . . forms the theme of a series of experiments . . . [which demonstrated] a marked propensity to form groups on the basis of the most casual differences and then to behave in a discriminatory fashion on the basis of the new group identity. There are many variations on the experiments, but they generally involve subjects assigned to a category on the basis of trivial differences, no differences, or a conspicuous toss of a coin. Once assigned, group members experienced no face-to-face interaction with other ingroup or outgroup members, and there was no effort to instill ingroup loyalty or outgroup hostility. Given the opportunity to apportion rewards, subjects nevertheless discriminated so as to favor ingroup members and disfavor outgroup members.

The minimal basis of group differentiation needs to be underscored. What produces group feeling and discrimination is simple division into categories. . . . In another experiment, subjects who were not placed into categories were accorded an opportunity to discriminate in apportioning rewards among other subjects with similar artistic preferences, dissimilar preferences, and no known preferences at all. This produced no statistically significant tendency to discriminate on the basis of similarity. Plainly, what counts is group membership and not demonstrated similarity. . . .

These findings have now been replicated and have a solid basis in the experimental literature.³⁷⁴

There thus exists a range of bases for group identity and motivation that would be suitable alternatives to the traditional masculinist military identity. Indeed, new bases for military identity may actually be more sustaining for soldiers' morale over time

MIL. SOC. 141, 143 (1975) (discussing the importance of regiment affiliation to the group identity of units in the British military).

374. DONALD L. HOROWITZ, *ETHNIC GROUPS IN CONFLICT* 143-46 (1985) (citations omitted).

than the masculinist identity. William Manchester has argued that while the "macho" image provides initial attraction, soldiers faced with the tragic realities of combat may reject that vision as false, and may feel duped and betrayed by the leaders who fostered that image.³⁷⁵ Manchester describes his own experience reflecting this phenomenon:

After my evacuation from Okmawa, I had the enormous pleasure of seeing [John] Wayne humiliated in person at Aiea Heights Naval Hospital in Hawaii Each evening, Navy corpsmen . . . could watch a movie. One night they had a surprise for us. Before the film the curtains parted and out stepped John Wayne, wearing a cowboy outfit He grinned his aw-shucks grin, passed a hand over his face and said, "Hi ya, guys!" He was greeted by a stony silence. Then somebody booed. Suddenly everyone was booing.

This man was a symbol of the fake machismo we had come to hate, and we weren't going to listen to him. He tried and tried to make himself heard, but we drowned him out, and eventually he quit and left.³⁷⁶

In short, while macho images may be potent motivators for young men, their productive effects may be shortlived and followed by counterproductive ones. Alternative bases for group identification thus might be not only equally but actually more efficacious than the traditional masculinist construct.

To recognize potential alternative bases for military group cohesion is not to underestimate in any way the power of gender as a basis for group bonding. Prudence requires clear recognition that gender-based bonding has served well to foster unit cohesion in the past. At the same time, however, we must acknowledge that utilization of that basis likely comes at a price. Loss of cohesion resulting from a shift away from gender as a basis for group identity may be at least minimized by the development of other bases for cohesion. A policy decision then is required as to whether, if any residual loss of cohesion remains, the benefits in military cultural change are worth that loss. We have accepted marginal losses of cohesion in choosing to integrate units by race, ethnicity, class, region, and religion.³⁷⁷ A similar weighing of costs and benefits

375. William Manchester, *The Bloodiest Battle of All*, N.Y. TIMES MAG., June 14, 1987, at 84.

376. *Id.*

377. See Manning, *supra* note 135, at 462 ("[H]eterogenous ethnic, racial, class, even

would be required as to any loss of cohesion that could result from further change in military gender and sexual culture.

Fifth and finally, in considering the functions of a masculinist military identity, it is important to note that an exclusively male, heterosexual group identity may serve to minimize sexual tensions between group members. As discussed earlier, sexual loyalties as well as sexual rivalries or jealousies pose potential threats to primary group cohesion.³⁷⁸ The maintenance of an all-male, ostensibly all-heterosexual military would be expected to minimize those threats to cohesion within military primary groups.³⁷⁹ Moreover, if those outside the group were viewed primarily as sexual targets (or even adversarial sexual targets), then this would tend to minimize even threats to group cohesion coming from the formation of bonds and loyalties in sexual relationships outside the group. Given this cohesion-protecting function of a masculinist group identity, we must ask, in considering amending such a basis for group identity, whether there are alternative means to minimize sexual tensions within the military group.

As discussed earlier, all primary groups develop sexual norms—sometimes specialized sexual norms—to control the potentially destructive effects of sexuality on group cohesion.³⁸⁰ The specialized sexual norms best suited to the military would appear to be much like those of the family³⁸¹ (just as the military unit replicates many of the other psychological structures of the family, as discussed earlier).³⁸² A military “incest taboo” would strictly prohibit sexual relationships between members of the same military units.³⁸³ The minimization of sexual relationships within mili-

regional origins tend to inhibit the development of unit cohesion. . . . Few if any modern armies make much of an effort to create [sic] homogeneous units around any of these variables.”).

Regarding the process of racial desegregation of the U.S. armed forces, see Karst, *supra* note 357, at 516–22 and sources cited therein.

378. See *supra* notes 163–64 and accompanying text.

379. Of course, a male heterosexual group identity may exist despite the presence of homosexual group members, particularly if their presence is unacknowledged. For discussion of acknowledged integration of gays into the military, see *supra* note 357.

380. See *supra* notes 163–64 and accompanying text.

381. See *supra* note 162 and accompanying text (referring to familial incest taboo).

382. See *supra* notes 138–45 and accompanying text.

383. The level of “unit” (squadron, platoon, etc.) to which the “incest taboo” would apply would need to be defined and might vary depending on the functional needs of the different components of military organizations (e.g., the cohesion needs of combat versus noncombat groups). Presumably, an essential criterion for defining “unit” for pur-

tary units has been accomplished historically through the exclusion of women and the ostensible exclusion of gays. The full inclusion of women would require adjustment of the mechanisms for continued minimization of sexual relationships within units. Just as military units have traditionally been "a band of brothers," gender-integrated units would have to be carefully shaped and defined as a band of brothers and sisters between whom sexual relationships would be unacceptable.³⁸⁴ The incest taboo approach would amount to a broadened fraternization policy, prohibiting not only inappropriate relationships between ranks but also sexual relationships regardless of rank within military units.³⁸⁵ We might realistically expect that the "incest taboo," like the longstanding fraternization policy prohibiting sexual relationships between ranks, would be less than completely enforceable but nevertheless sufficiently effective to minimize the potential problem of sexual tensions within military units.

poses of the incest taboo would be whether and to what extent the grouping in question is intended to have primary group characteristics. Another important criterion would be practicability: The narrower the definition of "unit," the smaller the range of potential relations would be prohibited and, in turn, the greater the likelihood that the taboo would be observed in practice.

384. Cf. Little, *supra* note 134, at 198 (observing the existence of a norm even in all-male units that limits the potentially divisive effects of exclusive "buddy" pairs within the groups). As Little states, "[A]n interview or conversation [with combat veterans] about 'buddies' always elicited additional comments about a context of solidarity in which distinctions among individuals did not appear." *Id.*

385. Currently, the anti-fraternization rule as a criminal prohibition arises from Article 134 of the Uniform Code of Military Justice and applies only to inappropriate relationships between officers and enlisted personnel. See 10 U.S.C. § 934 (1994), *implemented by* Executive Order No. 12,473, 3 C.F.R. 201 (1985), *amended by* Executive Order No. 12,767, 3 C.F.R. 334 (1992). In addition, however, each military Service has promulgated regulations governing fraternization and professional relationships. These tend to cover a broader range of relationships than only officer/enlisted. See, e.g., Air Force Instruction 36-2909, Fraternization and Professional Relationships, Attachment 1 (Feb. 20, 1995) ("[U]nprofessional relationships can develop between officers, between enlisted members, and between officers and enlisted members. Such relationships create the appearance that personal friendships and preferences are more important than individual performance and contribution to the mission. . . . Any relationship that harms [a] unit's morale, discipline or efficiency requires action . . .").

Regarding the need for an adapted anti-fraternization type policy in a gender-integrated military, see Lt. Commander William J. Davis, Jr. (U.S.N.), *Nobody asked me, but . . .*, PROCEEDINGS, Sept. 1994, at 105 ("Currently stated Navy policy fails to address the issues that must be resolved for a commanding officer to lead a gender-integrated wardroom. The Navy's fraternization policy, for example, does not address the particulars of intra-wardroom relationships among peers.").

Results of a large-scale study on gender relations in mixed-gender military units support the validity and potential efficacy of this family-analogy approach. The study observes that in fostering positive gender relations that minimize sexual tensions,

[w]omen may . . . rely on societal roles in which men and women are not sex objects for one another, such as sibling, parent, and child. Common during interviews were sentiments similar to this one heard in Somalia: "We're just like brothers and sisters out here." Women often note that harassment tends to come from outside the unit—from men who do not know them personally and especially from men who do not work with women regularly. A "brother" may stick up for a "sister" he feels is being discussed disparagingly behind her back.³⁸⁶

The taboo against within-unit sexual relationships could be intensified in units, such as combat units, in which cohesion is particularly crucial. Impressing upon troops that their lives may depend upon group cohesion in combat may cause units to develop internal mechanisms for enforcing the sexual-relationships prohibition for purposes of self-preservation.

Thus, there are methods available to minimize the disruptive potential of sexuality other than through the maintenance of a masculinist military. Certainly, other cohesive groups such as zealous political, religious, and self-help organizations have maintained strong group cohesion without gender exclusions.³⁸⁷ Moreover, group cohesion appears to have been adequate in the gender-integrated combat units of the past, including those of Russia, Israel, North Vietnam, and others.³⁸⁸

386. Laura L. Miller, *Creating Gender Detente in the Military 2* (1994) (unpublished manuscript written for Army Chief of Staff, Gen. Sullivan, and also distributed to Navy Flag Officers, on file with author).

387. See *supra* text accompanying note 373; JOHN M. BROWNLEE, *TOWARD DIVERSITY IN THE LOCAL CHURCH* 76, 88, 116–17, 184 (doctoral dissertation, Columbia Theological Seminary) (1993) (discussing religious bases of group unity in Christian churches in the light of gender, race, and cultural diversity); MARC GALANTER, *CULTS: FAITH, HEALING, AND COERCION* 176, 187 (1989) (noting the highly cohesive nature of zealous "healing groups" such as Alcoholics Anonymous and Federation of Parents for Drug Free Youth, which are mixed-gender groups).

388. See generally Griesse & Stites, *supra* note 358, at 68–85 (regarding Russian women in the combat units of World War II); Anne R. Bloom, *Israel: The Longest War, in FEMALE SOLDIERS—COMBATANTS OR NONCOMBATANTS?*, *supra* note 358, at 137, 137–62 (discussing the history of women's participation in the Israeli military); William J. Duiker, *Vietnam: War of Insurgency, in FEMALE SOLDIERS—COMBATANTS OR NONCOMBATANTS?*, *supra* note 358, at 107, 107–22 (discussing women's roles in Vietnam's wars).

As the Report of the Presidential Commission on the Assignment of Women in the Armed Forces states,

A review of the psychological literature and post-integration studies and testimony before the Commission indicates situations have existed in which women were able to bond with men in various non-combat environments. Also, non-combat mixed-gender units seemed to communicate and work better than single gender units performing similar tasks.³⁸⁹

Even so, the presence of both men and women within a unit surely creates some potential for sexual tensions that would not exist in an all-male group. Some loss of cohesion may result at the margin. As discussed earlier, the decision whether any loss of cohesion that does result from gender integration is warranted by the benefits of integration is a policy decision. Rape incidence considerations are among those that should be taken into account in that weighing.

In sum, while the masculinist military identity has served important functions as a basis for military group cohesion and identification, sound alternative bases for military group identity appear to be available. Masculinist military identity, then, is not inevitable or indispensable to military effectiveness but, rather, is a matter of choice.

Altering the masculinist basis of military group identification raises important concerns: What if there are important functions of the masculinist identity that have not been accounted for?³⁹⁰ What if the new basis is therefore less powerful, and leads to less cohesion, less motivation, less effectiveness in combat? These are crucial questions requiring careful address. Experimental programs to test the viability of a fully integrated combat force, for instance, should be earnestly pursued.³⁹¹ The exploration undertaken in this section suggests that the prospects for military cultural change consistent with military effectiveness are promising, and identifies

389. THE PRESIDENTIAL COMMISSION ON THE ASSIGNMENT OF WOMEN IN THE ARMED FORCES, REPORT TO THE PRESIDENT C-82 (1992).

390. For instance, some have speculated on a possible genetic basis for the link between combat and masculinity. See, e.g., William Matthews, *Military Has Basic Link to Sex*, ARMY TIMES, July 27, 1992, at 16 (quoting Charles Moskos). For a review of the research on gender and aggression, see MIEDZIAN, *supra* note 238, at 39-74.

391. See BINKIN, *supra* note 68, at 59-60 (describing how such experimental programs and research should be designed).

reduction in military rape incidence as one potential benefit of such change.

The factors that have been considered to date in the policy debate regarding women in the military have been primarily equal employment opportunity and military readiness.³⁹² This Article points to yet another, previously unconsidered, factor—the reduction of rape by military personnel—that should be taken into account in future consideration of policies, such as integration of women, that are likely to influence and to shape military culture. Indeed, taking into account the potential effects of military policies on military rape rates is a national obligation under some interpretations of international humanitarian law and human rights law. Both of those bodies of law require states to respect *and to ensure respect for* the legal prescriptions and prohibitions they entail. A comprehensive interpretation of the obligation to “ensure respect for” the prohibitions against rape would encompass both an obligation to refrain from policies that may unduly heighten rape incidence and an affirmative duty to pursue policies that would contribute to a reduction in rape rates when feasible.³⁹³

392. See, e.g., BINKIN & BACH, *supra* note 132, at ch. 4 (equal opportunity); BINKIN, *supra* note 68, at 26–47 (military readiness).

393. Rape of civilians is a violation of humanitarian law. See *supra* note 108 and accompanying text. Conventional and customary humanitarian law require that states work to ensure respect for those bodies of law. See, e.g., Geneva Conventions, *supra* note 368, at Common Art. 1. A broad interpretation of the obligation to “ensure respect” includes an obligation to desist from policies that unduly foster a military culture that results in heightened rates of violation of humanitarian law, including rape by military personnel.

National obligations to prevent rape by military personnel arise not only under international humanitarian law but also under international human rights law, such as the International Covenant on Civil and Political Rights (ICCPR), *adopted* Dec. 16, 1966, 999 U.N.T.S. 171 (entered into force Mar. 23, 1976), or the American Convention on Human Rights (ACHR), Nov. 22, 1969, O.A.S.T.S. No. 36 (entered into force July 18, 1978), *reprinted in* 9 I.L.M. 673 (1970). The ICCPR prohibits “unlawful attacks on honor,” ICCPR, art. 17, and “torture and other cruel, inhuman or degrading treatment or punishment.” *Id.* art. 7. The ACHR provides that “[e]very person has the right to have his physical, mental, and moral integrity respected” and that “[n]o one shall be subjected to torture or to cruel, inhuman, or degrading . . . treatment.” ACHR, art. 5, 9 I.L.M. at 676. Presumably, rape can be considered in some circumstances to fall within each of these prohibitions. See INTERNATIONAL HUMAN RIGHTS LAW GROUP, NO JUSTICE, NO PEACE: ACCOUNTABILITY FOR RAPE AND GENDER-BASED VIOLENCE IN THE FORMER YUGOSLAVIA 7 n.74 (1993); Elizabeth A. Kohn, *Rape as a Weapon of War: Women's Human Rights During the Dissolution of Yugoslavia*, 24 GOLDEN GATE U. L. REV. 199, 211 (1994). States are obligated under both the ICCPR and the ACHR to respect, protect, and ensure individuals' human rights. See ICCPR, art. 2(1); ACHR, art. 1, 9 I.L.M. at 675. See generally DOMINICK MCGOLDRICK, THE HUMAN RIGHTS COMMITTEE: ITS

CONCLUSION

This Article has presented evidence of a military rape differential, has considered methods of addressing that differential through domestic and international law, and has explored in some depth one avenue of explanation for and remediation of the differential observed. The evidence considered suggests that the gender and sexual norms of military culture may be causal factors contributing to the rape differential. The foregoing consideration of the

ROLE IN THE DEVELOPMENT OF THE INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS 269 (1991); MANFRED NOWAK, U.N. COVENANT ON CIVIL AND POLITICAL RIGHTS: CCPR COMMENTARY 26 (1993); Thomas Buergenthal, *To Respect and to Ensure: State Obligations and Permissible Derogations*, in THE INTERNATIONAL BILL OF RIGHTS: THE COVENANT ON CIVIL AND POLITICAL RIGHTS 72, 77-79 (Louis Henkin ed., 1981).

Under the doctrine of state responsibility, a state is accountable for breaches of customary international law or treaty obligations committed by or attributable to the state. Regarding developments in the law of state responsibility, see SHABTIA ROSENNE, THE INTERNATIONAL LAW COMMISSION'S DRAFT ARTICLES ON STATE RESPONSIBILITY (1991). A breach, such as rape, may be attributable to the state if the perpetrator is acting as an agent of the state or if the breach occurs under circumstances in which the state has failed diligently to fulfill its duty to prevent or to prosecute such offenses. See Rebecca J. Cook, *State Responsibility for Violations of Women's Rights*, 7 HARV. HUM. RTS. J. 125, 145 (1994); see also Kenneth Bullock, *United States Tort Liability for War Crimes Abroad: An Assessment and Recommendation*, LAW & CONTEMP. PROBS., Winter 1995, at 139 (specifically examining U.S. civil liability). As the Inter-American Court of Human Rights has stated in interpreting the ACHR,

[A]ny violation of rights recognized by the Convention carried out by an act of public authority or by persons who use their position of authority is imputable to the State. However, this does not define all the circumstances in which a State is obligated to prevent, investigate and punish human rights violations, nor all the cases in which the State might be found responsible for an infringement of those rights. An illegal act which violates human rights and which is initially not directly imputable to a State (for example, because it is the act of a private person or because the person responsible has not been identified) can lead to international responsibility of the State, not because of the act itself, but because of the lack of due diligence to prevent the violation

. . . . This duty to prevent includes all those means of a legal, political, administrative and cultural nature that promote the protection of human rights

Velásquez Rodríguez Case, Judgment of July 29, 1988, Inter-Am. Ct. H.R., Series C No. 4, at 154-55, *reprinted in* 28 I.L.M. 291, 325 (1989) (emphasis added).

Recent litigation before the International Court of Justice (ICJ) provides an example of an attempt to obtain civil relief against a State for wrongs including rape. In 1993, Bosnia-Herzegovina instituted ICJ proceedings against Serbia and Montenegro for violating the Genocide Convention. The ICJ issued provisional measures ordering Serbia and Montenegro to "take all measures within [their] power to prevent commission of the crime of genocide," including rape as a manifestation of genocide. Application of the Convention on the Prevention and Punishment of the Crime of Genocide (*Bosnia v. Yugoslavia*), 1993 I.C.J. 3, 24 (Apr. 8), *reprinted in* 87 AM. J. INT'L L. 505, 519 (1993).

Regarding national obligations to prevent rape under international law, see generally Chinkin, *supra* note 5.

functions of and possible alternatives to a masculinist military culture suggests that changes in the military's gender and sexual norms, which may help to reduce military rape incidence, may be effectuated without unduly degrading military effectiveness.

This exploration of rape incidence in the military has implications both for further research and for present policymaking. Research comparing rape and other crime rates among different types of units (for instance, combat and noncombat units, units stationed at home and stationed abroad) may reveal important information. Further research on the handling and prosecution of rape by military personnel also is required to identify methods of improving both domestic and international enforcement of the prohibition against rape. In addition, evaluation research techniques³⁹⁴ should be employed to measure military cultural change and to measure the effects of that change both on military effectiveness and on military rates of rape and sexual assault. The generalizability of the findings reported in this Article also remains to be considered: Further research is warranted to determine the extent to which the factors increasing U.S. military rape rates may also increase rape incidence in non-U.S. military organizations, and the extent to which common remedies may be applied.³⁹⁵

Beyond indicating the need for further research, this Article points to the appropriateness of taking rape incidence into account in making policy decisions affecting the gender and sexual norms of military culture. We may begin to act upon the indications that we already have of the sorts of cultural changes that could contribute to reducing rape incidence in the military. The benefits of such a reduction are great for potential victims of rape in war and in peace and also for those personnel who may thus be spared from becoming rape perpetrators.³⁹⁶

394. "Evaluation research is the systematic application of social research procedures for assessing the . . . utility of social intervention programs." PETER H. ROSSI & HOWARD E. FREEMAN, *EVALUATION: A SYSTEMATIC APPROACH* 5 (5th ed. 1993) (emphasis omitted).

395. See *supra* notes 361-66 and accompanying text. Indeed, having seen how the rape propensity of a military unit may inadvertently be heightened, we may also be able to gain insight into how a military organization can be intentionally shaped and *deployed* as an instrument to carry out an official military policy of rape such as those in WWII Japan and 1990s Bosnia. See *supra* note 5.

396. Susan Brownmiller described the tragic experience of both victim and perpetrator of a rape in WWII:

Klaus Küster, a member of the Hitler Youth, saw three Russians grab a woman on the street and take her into a hallway. He followed. One soldier trained his

APPENDIX A

METHODOLOGY FOR COMPARING MILITARY AND CIVILIAN
CRIME RATES FOR THE PERIOD 1987-1992

The following methodology was used to compare male military and civilian crime rates while controlling for age.

For each year,

1) Divide the total population base ("Total All Agencies") of the Uniform Crime Reports (UCR) "Offenses Known to the Police, Population Group" table³⁹⁷ by the total U.S. civilian population³⁹⁸ to obtain the percentage of the U.S. civilian population

pistol on Klaus. The second held the screaming woman while the third raped her. Klaus watched the Russian who had done the raping emerge from the doorway. Tears were streaming down the soldier's face as he wailed, "Ya bolshoi svinya"—"I am a big pig."

BROWNMILLER, *supra* note 5, at 67.

397. UCR 1992, *supra* note 33, at 196; UCR 1991, *supra* note 33, at 192; UCR 1990, *supra* note 33, at 156; UCR 1989, *supra* note 33, at 154; UCR 1988, *supra* note 33, at 150; UCR 1987, *supra* note 33, at 146.

398. For total U.S. civilian population data, see BUREAU OF THE CENSUS, U.S. DEP'T OF COMMERCE, CURRENT POPULATION REPORTS, PPL-8, APPENDIX C, *Civilian Population—Estimates, by Age, Sex, Race, and Hispanic Origin* (July 1, 1992) [hereinafter BUREAU OF THE CENSUS 1992]; BUREAU OF THE CENSUS, U.S. DEP'T OF COMMERCE, CURRENT POPULATION REPORTS, P25-1095, *Table 3: Civilian Population—Estimates, by Age, Sex, Race, and Hispanic Origin* (July 1, 1991) [hereinafter BUREAU OF THE CENSUS 1991]; BUREAU OF THE CENSUS, U.S. DEP'T OF COMMERCE, CURRENT POPULATION REPORTS, P25-1095, *Table 3: Civilian Population—Estimates, by Age, Sex, Race, and Hispanic Origin* (July 1, 1990) [hereinafter BUREAU OF THE CENSUS 1990]; BUREAU OF THE CENSUS, U.S. DEP'T OF COMMERCE, CURRENT POPULATION REPORTS, P25-1095, *Table 3: Civilian Population—Estimates, by Age, Sex, Race, and Hispanic Origin* (July 1, 1989) [hereinafter BUREAU OF THE CENSUS 1989]; BUREAU OF THE CENSUS, U.S. DEP'T OF COMMERCE, CURRENT POPULATION REPORTS, P25-1095, *Table 3: Civilian Population—Estimates, by Age, Sex, Race, and Hispanic Origin* (July 1, 1988) [hereinafter BUREAU OF THE CENSUS 1988]; BUREAU OF THE CENSUS, U.S. DEP'T OF COMMERCE, CURRENT POPULATION REPORTS, P25-1095, *Table 3: Civilian Population—Estimates, by Age, Sex, Race, and Hispanic Origin* (July 1, 1987) [hereinafter BUREAU OF THE CENSUS 1987].

The U.S. civilian population, as opposed to the U.S. resident population (which includes U.S. troops stationed in the United States), is used as the demographic base for UCR analysis throughout this study. It is possible that some error is introduced by using the civilian population measure. While much or most serious crime by military personnel is handled through military channels and therefore does not appear in the UCR statistics (which reflect only crimes handled through civilian authorities), some crimes committed by military personnel are handled through civilian authorities and therefore do appear in the UCR statistics. For that reason, using a population base of civilians results in a

included in the UCR offenses-known population.

2) A) Create age groupings as follows. Because military participation begins at age seventeen, the first age group includes ages 17-19. The remainder of the age groups represent five-year increments (to be consistent with UCR data age groupings) beginning with age 20 and ending with age 65 (because there is essentially no military participation over that age).

B) Multiply the total number of males³⁹⁹ in each age group in the U.S. civilian population⁴⁰⁰ by the percentage of the civilian population included in the UCR offenses-known population (obtained in step one) to identify the number of males in each age group in the UCR offenses-known population.

slightly inflated civilian offense rate per person. This is so to the extent that military personnel's offenses are included in the raw UCR numbers of offenses known, but military personnel are not included in the civilian population to whom those offenses are attributed in calculating the rate per person.

The alternative approach, using not the civilian but the resident population measure, would introduce the opposite (and presumably a greater magnitude of) error. Using a population base of civilians *and* troops stationed in the United States (the resident population) would result in a *deflated* civilian offense rate per person to the extent that military personnel's offenses are excluded from the raw UCR numbers of offenses known (because they were handled through military channels), but military personnel are included in the resident population to whom the offenses are attributed in calculating the rate per person.

Therefore, some error may be introduced whichever base population is used. The decision in this study to use the civilian population base rests on the view that the magnitude of the error thus introduced is smaller than that which would be introduced by use of a resident population base because the majority of serious crime by military personnel is handled through military channels. See Interview with Wilbur L. Hardy, Director, U.S. Army Crime Records Center, in Baltimore, Md. (May 19, 1994) (discussing the distribution of handling of crimes by military personnel between military and civilian authorities); Interview with personnel at the Navy Criminal Investigative Service, in Washington, D.C. (May 4, 1994) (same).

399. Males constituted approximately 90% of U.S. military personnel during the period studied. See Defense Manpower Data Center, Active Duty by Age and Gender 1986-1992 (Feb. 15, 1994) (computer printout provided by the U.S. Defense Manpower Data Center, on file with author). In addition, males commit virtually all rapes, see, e.g., UCR 1992, *supra* note 33, at 234 (stating that the persons arrested for forcible rape were 98.7% male in 1992), as well as the great majority of murder/mn.s, aggravated assaults, and robberies. See *id.* (listing the respective percentages as 90.3%, 85.2%, and 91.5%). For those reasons, the important group to examine in attempting to compare the rape incidence of military and civilian populations is the male component of those populations.

400. For age distributions of civilian males, see BUREAU OF THE CENSUS sources cited *supra* note 399.

3) A) List the number of arrests for the year of males in each age group for the crime in question.⁴⁰¹

B) Multiply that number of arrests in each age group by the percentage of *completed* crimes for the crime in question (i.e., excluding attempts) to obtain the number of arrests for the year for the completed crime in question committed by males in each age group.⁴⁰²

4) Divide that number of arrests of males in each age group for completed crimes (obtained in step 3) by the rate of arrest per offense known for the crime⁴⁰³ to estimate the number of completed offenses known to the police committed by males in each age group.

401. For arrest data on males by age group, see UCR 1992, *supra* note 33, at 229-30; UCR 1991, *supra* note 33, at 225-26; UCR 1990, *supra* note 33, at 186-87; UCR 1989, *supra* note 33, at 184-85; UCR 1988, *supra* note 33, at 180-81; UCR 1987, *supra* note 33, at 176-77.

402. Because the military crime statistics provided do not include attempts in the numbers of crimes committed, except in the case of aggravated assault in which attempts are included in the definition of the crime, see 10 U.S.C.A. § 928 (West 1983), the UCR data must be adjusted to exclude attempted crimes other than aggravated assault.

For murder/nn.m, completed crimes by definition equal 100% of UCR offenses known. The UCR excludes attempted killings from the murder/nn.in category. See UCR 1992, *supra* note 33, at 13; UCR 1991, *supra* note 33, at 13; UCR 1990, *supra* note 33, at 8; UCR 1989, *supra* note 33, at 7; UCR 1988, *supra* note 33, at 8; UCR 1987, *supra* note 33, at 7.

For rape, the proportion of attempts to completed crimes for each year is published in the UCR. See UCR 1992, *supra* note 33, at 24; UCR 1991, *supra* note 33, at 24; UCR 1990, *supra* note 33, at 16; UCR 1989, *supra* note 33, at 15; UCR 1988, *supra* note 33, at 16; UCR 1987, *supra* note 33, at 14.

For robbery, an estimate of the proportions of attempted to completed crimes was derived from data stating those proportions for 1991 and 1992 provided by four states (Idaho, Iowa, North Dakota, and South Carolina) that have begun (since 1991 or 1992, depending on the state) gathering that information under the new National Incident Based Reporting System currently being instituted by the FBI. The estimated percentage of robberies completed was 88%.

403. To obtain the rate of arrest per offense known for the crime, divide the total yearly arrests for the crime by the total yearly offenses known for the crime. For total arrest data, see UCR 1992, *supra* note 33, at 227; UCR 1991, *supra* note 33, at 223; UCR 1990, *supra* note 33, at 184; UCR 1989, *supra* note 33, at 182; UCR 1988, *supra* note 33, at 178; UCR 1987, *supra* note 33, at 174. For total offenses known data, see UCR 1992, *supra* note 33, at 208; UCR 1991, *supra* note 33, at 204; UCR 1990, *supra* note 33, at 165; UCR 1989, *supra* note 33, at 163; UCR 1988, *supra* note 33, at 159; UCR 1987, *supra* note 33, at 155.

5) Divide that number of completed offenses known committed by males in each age group (obtained in step 4) by the number of males in the UCR population in that age group (from step 2) to obtain the rate per person.

6) Identify the percentage of male personnel in the relevant military service that are in each age group (out of the total male population of that service).⁴⁰⁴ Multiply that percentage by 1,000 to identify the number of males in each age group that would exist in a model population of 100,000 males with the age distribution of that military service.

7) Multiply the civilian completed offenses-known rate per person for each age group (obtained in step 5) by the number of males in that age group in the model population to produce a number of offenses known of that crime that would be produced by that age group in the model population, i.e., in a population of males with the age distribution of the particular military service and with the crime rate structure of the civilian population.

8) Add up the number of offenses committed by each age group in the model population to obtain the total number of offenses in the model population. That total is the rate of the crime in question per 100,000 population that would be expected in a male population with the age structure of the particular military service and the crime rate structure of the civilian population.

9) To estimate the number of founded investigations of murder/nn.m for the Navy and for the Marine Corps, multiply the number of founded reports of cases of (murder/nn.m *plus* negligent/involuntary manslaughter) by .74.⁴⁰⁵

404. For age and sex distributions of military personnel, see Defense Manpower Data Center, *supra* note 400.

405. The Naval Criminal Investigative Service (NCIS) provided the offense data on Navy and Marine populations (on file with author). The NCIS does not keep murder/nn.m statistics separately from statistics for negligent/involuntary manslaughter. For that reason, the following procedure is used to estimate the number of founded investigations of murder/nn.m for the Navy and for the Marine Corps.

Identify the proportion of all *Army* cases (murder/nn.m plus negligent homicide plus involuntary manslaughter founded cases investigated) that are murder/mu.m cases. That proportion is .74. See U.S. Army Crime Records Center, CID/MPR Reports 1986/1993 (May 11, 1994) (computer printout provided by the Army Crime Records Cen-

10) Adjust the number of founded investigations⁴⁰⁶ of the crime in question⁴⁰⁷ for each service⁴⁰⁸ to exclude crimes com-

ter, on file with author). Multiply the number of founded investigations of (murder/nn.m plus negligent/involuntary manslaughter) for the Navy and for the Marine Corps by that proportion (.74) to estimate the number of founded cases of murder/nn.m investigated for the Navy and for the Marine Corps.

406. The statistics provided by the military services are numbers of "founded investigations" of each crime. This measure most nearly equates with the UCR "actual offenses known," which includes all offenses brought to the attention of the police but excludes any "complaints of crime [that] are determined through investigation to be unfounded or false." UCR 1992, *supra* note 33, at 376.

Different law enforcement agencies, both civilian and military, may vary somewhat in their standards and practices for founding and unfounding cases. To the extent of that variation, "founded investigation" or "offenses known" data from different jurisdictions may reflect the actual underlying crime rates somewhat differently.

Additionally, while one "founded investigation" generally equals one UCR "offense known," the count of crimes by military personnel may be slightly conservative because the method employed for counting investigations will on occasion include more than one UCR "offense known" within one "investigation." For example, there could be one military "investigation" into the rape of two women raped in the same episode by the same individual or gang. Interview with Kelli Carroll, Program Analyst, Naval Criminal Investigative Service, in Washington, D.C. (May 4, 1994). Under the UCR, that event would constitute two rapes known to the police because there are two victims. Or if a rapist confessed in a single confession to three rapes, that confession might result in one, two, or three Navy "investigations," *see id.*, while it would constitute three rapes under the UCR because of the number of victims.

Both the UCR and the data from the military services record only the most serious offense occurring in any criminal episode. *See* FEDERAL BUREAU OF INVESTIGATION, U.S. DEP'T OF JUSTICE, UNIFORM CRIME REPORTING HANDBOOK 33 (1984) (regarding "hierarchy rule" for crime recording).

407. As indicated in Table I, the assault rates for the Navy and for the Marine Corps were each, on yearly average, 4% of the civilian rate. In fact, the Navy and Marine assault rates may actually be even less than 4% of civilian rates because the statistics kept by the Naval Criminal Investigative Service (NCIS), which supplied the Navy and Marine data, do not separate simple assault from aggravated assault. Therefore, the assault numbers obtained for the Navy and Marine Corps included simple assaults along with aggravated assaults. Those assault numbers are compared in the present analysis with UCR aggravated assault numbers only. The reason for comparing all reported Navy and Marine assaults with only *aggravated* UCR assault figures is that many or most simple assaults by military personnel would be handled at the company level (through nonjudicial punishment) and, therefore, would not be reflected in the NCIS's assault statistics. Interview with Brigadier General George Walls, U.S.M.C. (Ret.), in Durham, N.C. (March 25, 1994). Thus, the assault data provided by NCIS likely reflects primarily *aggravated* assaults. For that reason, including simple assaults in the UCR comparison data would tend to overestimate the Navy and Marine diminution of assault from civilian levels. Comparison with only UCR *aggravated* assault figures should produce the more accurate or, at least, the more conservative estimate of the Navy and Marine diminution factor for aggravated assault. By minimizing the assault diminution measure, this approach is the measure least favorable to the Article's thesis.

408. The offense data on the Army and Air Force populations were provided by the

mitted by females by the following procedure. Multiply the percent male in the service population by the percent male arrestees for that crime that year (from UCR arrest data).⁴⁰⁹ Now divide that number by the sum of (the percent male in the service population times the percent male arrestees) plus (the percent female in the service population times the percent female arrestees). The resulting figure estimates the percent of the service's founded reports of the crime in question committed by males. Multiply the total number of founded reports by that percentage to obtain the number of founded investigations of the crime in question committed by males in that service.⁴¹⁰

11) Divide the expected rate per 100,000 model population (obtained in step 8) by the actual male offense rate in the particular military service (obtained in step 10) to obtain the ratio of "expected rates" (i.e., civilian male rates adjusted for age) to actual rates (i.e., military male rates).

12) To test the statistical significance of the differences between rape diminution from "expected rates" and diminution for other crimes from "expected rates," the regression analysis is as follows.

U.S. Army Crime Records Center and the U.S. Air Force, respectively. See U.S. Army Crime Records Center, *supra* note 406; Computer Printout provided by U.S. Air Force (Feb. 16, 1994) (on file with author). The crime statistics kept by the Air Force prior to 1992 did not separate out unfounded cases. Therefore, the raw Air Force numbers were adjusted to exclude the approximate proportion of unfounded cases by the following procedure. Determine for each crime the percentage of cases classified by the Air Force as "unfounded" in 1992-93. Multiply the raw number of Air Force cases for each crime in the years prior to 1992 by the percentage of "founded" cases for that crime in 1992-93 to obtain the approximate number of founded cases of each crime for the years prior to 1992.

409. See UCR 1987-92, *supra* note 404. The assumption here is that the distribution of crime commission between males and females is the same in the military and civilian populations. That assumption may or may not be correct.

410. The founded investigation numbers reported by the four military services should cover very close to all of the murder/nn.m, rape, and aggravated assault committed by active duty military personnel. Such crimes would either be investigated by military authorities or, even if handled through civilian channels, would come to the attention of military authorities by formal notification by the civilian agency or, in cases where no formal notification occurred, by the absence of the service member if he is placed under arrest (as presumably would occur for the serious crimes here examined). Interview with Wilbur L. Hardy, *supra* note 399; Interview with personnel at the Navy Criminal Investigative Service, *supra* note 399.

The basic linear regression model has annual ratios for four types of crime under consideration as a dependent variable and three dummy variables as predictors: murder/nn.m, aggravated assault, and other-violent-crime. The reference category is rape.

This model is estimated separately for each one of the four military services.

The data used in the analysis are pooled panel data. For that reason, to safeguard against potential autocorrelation across years, employ the SAS Autoreg procedure. Because in all but one⁴¹¹ of the estimated models the autocorrelation has been negligible, utilize the ordinary least squares (OLS) estimators for the regression coefficients in the analysis.

411. The one exception has been the analysis for the Marine Corps when excluding the observations for 1987. Crime ratios for the Marine Corps in 1987 are strikingly different from the data for other years. Thns, an additional analysis was required to evaluate the effect of this series of influential cases. After elimination of the 1987 observations, the autocorrelation became pronounced enough to warrant reference to the maximum likelihood estimators rather than OLS ones.

APPENDIX B

TABLE IV

MILITARY RATES OF MURDER/NN.M, AGGRAVATED ASSAULT,
OTHER-VIOLENT-CRIME INDEX, ROBBERY, AND RAPE
AS PROPORTIONS OF U.S. MALE CIVILIAN RATES
1987-1992
(controlling for age)

1987-1992 on Yearly Average⁴¹²

	Army	Navy	Marine Corps	Air Force
Murder/nn.m	.20	.07	.13	.05
Aggravated Assault	.18	.04	.04	.02
Other-Violent- Crime Index ⁴¹³	.19	.04	.05	.02
Robbery	.02	.009	.02	.003
Rape	.47	.19	.27	.20

412. Any discrepancies between yearly rates and average rates are due to rounding.

413. Index combining murder/nn.m and aggravated assault.

1987

	Army	Navy	Marine Corps	Air Force
Murder/nn.m	.25	.02	.05	.11
Aggravated Assault	.15	.04	.08	.02
Other-Violent-Crime Index	.16	.04	.08	.02
Robbery	.03	.008	.01	.003
Rape	.45	.13	.22	.17

1988

	Army	Navy	Marine Corps	Air Force
Murder/nn.m	.19	.10	.15	.08
Aggravated Assault	.18	.03	.04	.02
Other-Violent-Crime Index	.18	.03	.04	.02
Robbery	.02	.008	.01	.003
Rape	.50	.18	.30	.22

1989

	Army	Navy	Marine Corps	Air Force
Murder/nn.m	.18	.11	.27	.06
Aggravated Assault	.24	.03	.05	.02
Other-Violent-Crime Index	.24	.03	.05	.02
Robbery	.02	.01	.03	.003
Rape	.46	.17	.23	.20

1990

	Army	Navy	Marine Corps	Air Force
Murder/nn.m	.18	.12	.16	.08
Aggravated Assault	.18	.04	.04	.02
Other-Violent-Crime Index	.18	.05	.05	.02
Robbery	.01	.009	.03	.002
Rape	.44	.25	.32	.20

1991

	Army	Navy	Marine Corps	Air Force
Murder/nn.m	.23	.09	.20	.09
Aggravated Assault	.18	.04	.04	.02
Other-Violent-Crime Index	.18	.04	.04	.02
Robbery	.02	.01	.01	.002
Rape	.47	.22	.25	.22

1992

	Army	Navy	Marine Corps	Air Force
Murder/nn.m	.17	.09	.18	.01
Aggravated Assault	.17	.04	.04	.02
Other-Violent-Crime Index	.17	.05	.04	.02
Robbery	.01	.01	.03	.002
Rape	.51	.25	.34	.23

APPENDIX C

METHODOLOGY FOR COMPARING MILITARY AND CIVILIAN
CRIME RATES FOR JUNE 1944 THROUGH MAY 1945

The following methodology was used to compare male military and civilian crime rates while controlling for age.

For each month,

1) Divide the total population base of the Uniform Crime Reports (UCR) "Monthly Variations, Offenses Known to the Police" table⁴¹⁴ by the total U.S. civilian population⁴¹⁵ to obtain the percentage of the U.S. civilian population included in the UCR offenses-known population.⁴¹⁶

414. UCR 1945, *supra* note 59, at 89; UCR 1944, *supra* note 59, at 66.

415. For total U.S. civilian population data, see BUREAU OF THE CENSUS, U.S. DEP'T OF COMMERCE, P12-98, CURRENT POPULATION REPORTS, *Table 2: Civilian Population—Estimates by Age, Color, and Sex: 1940-1950* (Aug. 13, 1954).

The U.S. civilian population, as opposed to the U.S. resident population (which includes U.S. troops stationed in the United States), is used as the demographic base for UCR analysis throughout this study. For discussion of the ramifications of using the civilian demographic base, see *supra* note 399. For a discussion of the preferability of using civilian rather than resident population data for studying crime during World War II specifically, see Darrell J. Steffensmeier et al., *World War II and Its Effect on the Sex Differential in Arrests: An Empirical Test of the Sex-Role Equality and Crime Proposition*, 21 Soc. Q. 403, 407 (1980).

416. Until 1958, the UCR used the population statistics of the *decennial* census, unadjusted for population growth, throughout each decade between decennial censuses. See Marvin E. Wolfgang, *Uniform Crime Reports: A Critical Appraisal*, 111 U. PA. L. REV. 708, 725 (1963). Thus, throughout the 1940s, the UCR used the population statistics from the 1940 census, unadjusted for population growth. Ordinarily, the result of that practice would be to create an artificial appearance of rising crime rates throughout the decade. This would occur because as an actually growing population produced higher numbers of crimes, that crime number would be transformed into a crime "rate" by dividing the number by a population figure that was inaccurately low—and became more inaccurately low each successive year after 1940.

However, during the period 1944-45, the normal population growth of the civilian population was approximately counterbalanced by the induction of personnel into the WWII military force. See BUREAU OF THE CENSUS, U.S. DEP'T OF COMMERCE, *supra* note 416. Thus, as it happens, the total civilian population base on which the 1944 and 1945 data are based may be relied upon as relatively accurate. The population changes in the U.S. civilian population from 1940 to 1944-45 were not changes in total population but changes in age and gender distribution of that population. Those changes are, of course, accounted for in the age and gender controls used in the present study.

2) A) Create age groupings as follows. The first age group includes ages 18–19.⁴¹⁷ The rest of the age groups represent five-year increments for age groups 20 through 49 and then end with age group 50 (to be consistent with UCR data groupings).

B) Multiply the total number of males⁴¹⁸ in each age group in the U.S. civilian population⁴¹⁹ by the percentage of civilian population included in the UCR offenses-known population (obtained in step one) to identify the number of males in each age group in the UCR offenses-known population.

3) Identify the percentage of arrestees for the crime in question that year that were males.⁴²⁰

4) List the number of arrests for that crime for the year in each age group.⁴²¹

417. During the World War II period, there was in fact a small number of troops stationed abroad who were under the age of 18. The available data indicates only that they were over 14 and under 18 years old, but we may assume that they were more likely than not close to 18. Because the age groupings in the census data for the World War II period do not permit an age grouping for 17 year olds only, and because a 15–17-year-old age range would be unworkable for attributing crime rates to this group (violent crime rates increase exponentially within the 15–17-year-old age range), the present study places these “under-age soldiers,” for purposes of statistical analysis, in the 18–19 age group.

418. Males constituted approximately 99.3% of U.S. military personnel abroad during the World War II period studied. See BUREAU OF THE CENSUS, U.S. DEP’T OF COMMERCE, *supra* note 416; BUREAU OF THE CENSUS, U.S. DEP’T OF COMMERCE, CURRENT POPULATION REPORTS, P-25, *Table 3: Total Population Including Armed Forces Abroad—Estimates by Age, Color and Sex, 1940–1950* (Aug. 13, 1954). In addition, males committed virtually all rapes, see UCR 1945, *supra* note 59, at 113; UCR 1944, *supra* note 59, at 91, as well as the great majority of murder/nn.m’s, aggravated assaults, and robberies. See UCR 1944–45, *supra*. For those reasons, the important group to examine in attempting to compare the rape incidence of military and civilian populations in 1944–45 is the male component of those populations.

419. For age distributions of civilian males, 1944 and 1945, see BUREAU OF THE CENSUS, U.S. DEP’T OF COMMERCE, *supra* note 416.

420. For arrest data by sex, see UCR 1945, *supra* note 59, at 113; UCR 1944, *supra* note 59, at 91. UCR arrest data for this period do not provide separate figures for aggravated assault and other assault. See UCR 1944–45, *supra*. Therefore, the combined “assault” category data must be used to approximate the sex distribution of arrestees for aggravated assault. Similarly, because UCR arrest data for this period do not provide separate figures for murder/nn.m and negligent manslaughter, see *id.*, the combined “criminal homicide” category data must be used to approximate the sex distribution of arrestees for murder/nn.m.

421. For arrest data by age group, see UCR 1945, *supra* note 59, at 117; UCR 1944, *supra* note 59, at 96. Because UCR arrest data for this period do not provide separate

5) Multiply the number of arrests for that crime for the year for each age group (obtained in step 4) by the percentage of male arrestees for that crime for the year (obtained in step 3) to estimate the number of arrests of males in each age group for that crime for the year.

6) Divide that number of arrests of males in each age group (obtained in step 5) by the total number of arrests for that crime for the year⁴²² to obtain the *percentage* of arrests for that crime for the year that were arrests of males in each age group.

7) A) Multiply the average daily number of offenses known for the crime in question for the month⁴²³ by the number of days in the month to obtain the *monthly* number of offenses known.⁴²⁴

B) For rape, multiply the monthly number of offenses known by the percentage of all rapes for the year that were *forcible*⁴²⁵ (i.e., to exclude statutory rapes, which are not included in the ETO rape figures⁴²⁶).

8) Multiply that monthly number of offenses known for the crime in question (obtained in step 7) by the percentage of offens-

figures for aggravated assault and other assault, *see* UCR 1944-45, *supra*, the combined "assault" category data must be used to approximate the age distribution of arrestees for aggravated assault. Similarly, because UCR arrest data for this period do not provide separate figures for murder/nn.m and negligent manslaughter, *see id.*, the combined "criminal homicide" category data must be used to approximate the age distribution of arrestees for murder/nn.m.

422. For total arrest numbers, *see* UCR 1945, *supra* note 59, at 117; UCR 1944, *supra* note 59, at 96.

423. For average daily offenses known data, *see* UCR 1945, *supra* note 59, at 89; UCR 1944, *supra* note 59, at 66.

424. The UCR monthly offenses known figures are based only on data collected from cities over 25,000 in population. Those cities have higher violent crime rates than smaller towns or rural areas. *Compare, e.g.*, UCR 1945, *supra* note 59, at 5 (crime rates of cities and towns of various sizes) *with id.* at 28 (crime rates of rural areas). For that reason, crime rate estimates based on UCR monthly offenses-known figures somewhat overestimate actual national crime rates. This factor may cause the civilian crime rates estimates in the present study to be somewhat in excess of actual national civilian crime rates. Because the difference between urban and rural rates is particularly marked for aggravated assault, the overestimation of that crime may be greatest.

425. For number of forcible and statutory rapes for both 1944 and 1945, *see* UCR 1945, *supra* note 59, at 103.

426. *See* Office of the Judge Advocate Gen., *supra* note 47, at 251, 254.

es *completed* for that crime to obtain the monthly number of *completed* offenses known for the crime in question.⁴²⁷

9) A) Multiply that monthly number of completed offenses known for the crime in question (obtained in step 8) by the percentage of offenses cleared⁴²⁸ for the crime in question⁴²⁹ to estimate the monthly number of offenses cleared for the crime in question.

B) Multiply that monthly number of offenses cleared for the crime in question by the percentage of arrests for the crime for the year that were arrests of males in each age group (obtained in step 6) to estimate the monthly number of completed offenses cleared for males in each age group.

10) Divide that monthly number of completed offenses cleared for males in each age group (obtained in step 9) by the number of males in the UCR population in that age group to obtain the civilian monthly rate of completed offenses cleared per person in each age group.

11) Identify the percentage of male personnel in the military population⁴³⁰ that are in each age group out of the total male

427. Because the ETO crime statistics do not include attempts in the numbers of crimes investigated, see A MANUAL FOR COURTS MARTIAL, U.S. ARMY, ¶ 152(c), at 190 (1943) (defining crimes to exclude attempts), other than in the case of aggravated assault, see *id.* ¶ 149(l) (defining crime of "assault with intent to commit any felony" to include attempts), the UCR data must be adjusted to exclude attempted crimes other than aggravated assault.

For murder/nn.m, completed crimes by definition equal 100% of UCR offenses known. The UCR excludes attempted killings from the murder/nn.m category. See UCR 1945, *supra* note 59, at 120; UCR 1944, *supra* note 59, at 101.

For rape, the proportion of attempts to completed crimes for each year has been published in the UCR only since 1964. For that reason, an estimate of the percentage of all rapes that are completed is drawn by averaging the completed rape percentages for the five years between 1964-68. That average percentage (approximately 66%) is then used as an estimate of the percentage of rapes completed in 1944 and 1945.

428. An offense is "cleared" by arrest or exceptional means. An offense is cleared by exceptional means when the offender has been identified and there is sufficient information to support an arrest and charge, but the offender cannot be arrested because of some circumstance outside the control of the law enforcement agency. See FEDERAL BUREAU OF INVESTIGATION, U.S. DEP'T OF JUSTICE, *supra* note 407, at 42.

429. For clearance rate data, see FEDERAL BUREAU OF INVESTIGATION, U.S. DEP'T OF JUSTICE, 1946 UNIFORM CRIME REPORTS 54 (Total Groups I-VI) (citing 1945 data); UCR 1945, *supra* note 59, at 40 (Total Groups I-VI) (citing 1944 data).

430. The military population used for age distribution of males includes all U.S.

military population. Multiply that percentage by 1,000 to identify the number of males in each age group that would exist in a model population of 100,000 males with the age distribution of the military population.

12) Multiply the civilian monthly completed-offenses-cleared rate per person for each age group (obtained in step 10) by the number of males in that age group in the model population to produce a number of offenses cleared for that crime that would be produced by that age group in the model population, i.e., in a population of males with the age distribution of the military population and with the crime rate structure of the civilian population.

13) Add up the number of offenses cleared for each age group in the model population to obtain the total number of offenses cleared in the model population. That total is the rate of offenses cleared for the (completed) crime in question per 100,000 population that would be expected in a male population with the age structure of the military population and the crime rate structure of the civilian population.

14) A) For aggravated assault, adjust the ETO assault-with-a-dangerous-weapon numbers as follows.⁴³¹ Divide (the number of ETO courts martial for assault with a dangerous weapon plus the number of ETO courts martial for assault with intent to do murder or manslaughter) by the number of ETO courts martial for assault with a dangerous weapon.⁴³² Now multiply the resulting percentage (113%)⁴³³ by the number of ETO investigations for

Armed Forces Abroad, not just Army personnel in the ETO. Separate age distribution data on the Army in the ETO are not available. See MACHINE RECORDS BRANCH, WAR DEP'T GENERAL STAFF, *STRENGTH OF THE ARMY* (monthly reports August 1944-May 1945) [hereinafter *STRENGTH OF THE ARMY*].

431. The available ETO assault investigations data reflect only assault with a dangerous weapon. See 1944 SEMI-ANNUAL REPORT, *supra* note 41. The ETO data thus exclude assaults with intent to do murder or to do manslaughter, which should be included to create a category comparable to UCR aggravated assault. Therefore, the assault with a dangerous weapon numbers must be adjusted to include an estimated number of assaults with intent to do murder or to do manslaughter in order to produce a figure representing a category comparable to the UCR aggravated assault category.

432. For courts martial numbers, see THE GENERAL BOARD, U.S. FORCES, EUROPEAN THEATER, MILITARY JUSTICE ADMINISTRATION IN THEATER OF OPERATIONS 23 (UA 25 U586 no. 83).

433. In the ETO from late 1942 until May 1945, there were 687 courts martial for

assault with a dangerous weapon to estimate the total number of ETO investigations for aggravated assault.

B) Divide the expected offenses cleared rate per 100,000 model population (obtained in step 13) by the actual investigation rate⁴³⁴ for the ETO,⁴³⁵ for the crime in question (obtained, for

assault with a dangerous weapon, and 90 courts martial for assault with intent to do murder or manslaughter. *See id.* Thus, the number of courts martial for assault with intent to do murder or manslaughter was approximately 13% of the number of courts martial for assault with a dangerous weapon. Therefore, the total number of (courts martial for assault with a dangerous weapon plus courts martial for assault with intent to do murder or manslaughter) is approximately 113% of the number of courts martial for assault with a dangerous weapon.

434. For the ETO, the available data measures "personnel investigated" rather than "investigations conducted." *See* 1944 SEMI-ANNUAL REPORT, *supra* note 41. This means that the ETO measure (of *subjects*) differs from the UCR measure (of *offenses cleared*). This difference in measures results in two types of error in rate comparisons. First, if three individuals commit a crime together and are then identified as the offenders, that counts as one UCR "offense cleared" and as three ETO "personnel investigated." This error would cause the ETO count to be inflated relative to the UCR count. The second error factor cuts in the opposite direction. If one individual is identified as the offender for killing three people, that counts as one ETO "personnel investigated" and as three UCR "offenses cleared." Because we do not know the magnitude of these two error factors for any crime category, we cannot know whether or to what extent they cancel each other out. In addition, it should be noted that comparing ETO "personnel investigated" with UCR "offenses cleared" may somewhat inflate the ETO rates relative to UCR rates insofar as some proportion of ETO "personnel investigated" may be exonerated prior to arrest.

435. These ETO investigation rates are derived by using continental ETO troop strength numbers, *see* STRENGTH OF THE ARMY, *supra* note 431, together with numbers of ETO personnel investigated for the crimes in question as recorded in reports from the Office of the Theater Provost Marshal, ETO. *See* 1944 SEMI-ANNUAL REPORT, *supra* note 41 (citing 1944 data); European Theatre of Operation Historical Division, Dep't of War, *supra* note 45 (citing 1945 data).

Women's contribution to ETO violent crime rates was negligible. Females constituted only .06% of the U.S. armed forces abroad in 1944-45, *see* STRENGTH OF THE ARMY, *supra*, and women commit far less violent crime than men per person. *See, e.g., supra* notes 400 and 419. For that reason, no adjustment is made here to exclude female crime from the ETO crime rates.

Because continental ETO troop strength data were not available for December 1944, continental ETO troop strength for that month was estimated as an average of the troop strengths for November 1944 and January 1945.

Data on nonnegligent manslaughter was available only for the 1944 months. The nonnegligent manslaughter numbers for the ETO from January to May 1945 have therefore been estimated by establishing that, during the 1944 months, the number of nonnegligent manslaughters in the ETO had been 84% the number of murders, and then estimating that, for each of the 1945 months, the number of nonnegligent manslaughters was 84% of the number of murders.

The ETO definitions for the crimes examined were essentially consistent with the UCR definitions used at the time except for the ETO rape definition's exclusion of statu-

aggravated assault, in step 14A) to obtain the ratio of "expected rates" (i.e., civilian male rates adjusted for age) to actual rates (i.e., Army male rates).

15) It is not possible to test the statistical significance of the difference between diminution factors for different crimes for the WWII period because each month's data must be analyzed separately (pooled data covering the ten-month period would not be meaningful),⁴³⁶ and there is only one observation for each month.

tory and attempted rape, which has been adjusted for in the present study, and the ETO data's inclusion of assault with a deadly weapon but not assault with intent to kill, which also has been adjusted for in the present study.

Consistent with UCR practice, the ETO reports recorded only the most serious crime occurring in any criminal episode (e.g., if a murder, robbery, and rape occurred in one episode, only the murder would be recorded). *See* FIRST UNITED STATES ARMY, REPORT OF OPERATIONS, 1 AUGUST 1944-22 FEBRUARY 1945, ANNEX 12, PROVOST MARSHAL SECTION REPORT 237 (1945).

436. *See supra* text accompanying note 37.

APPENDIX D

TABLE V

ETO RATES OF MURDER/NN.M, AGGRAVATED ASSAULT, AND
RAPE AS A PROPORTION OF U.S. MALE CIVILIAN RATES
AUGUST 1944–MAY 1945
(controlling for age)

	Murder/nn.m	Aggravated Assault	Rape
August	.62	.21	2.86
September	.32	.15	2.33
October	.79	.27	1.02
November	.48	.14	.60
December	.75	.11	.48
January	.83	.11	.24
February	.35	.17	.36
March	.56	.27	3.85
April	1.54	.27	4.76
May	.96	.26	2.38