

by DWIGHT STIRLING and LAURA RILEY

Less than HONORABLE

Understanding the sociocultural context of military life in which sexual trauma takes place is crucial in advocating for survivors who receive "bad paper"

THERE are many ways that civil attorneys can assist veterans who have experienced military sexual trauma (MST). Each situation is unique, but one common area of need is a discharge upgrade. The trauma of the sexual harassment or assault itself within the military is often compounded by a frustrating reporting process. These experiences can lead to MST-related conditions, including post-traumatic stress disorder (PTSD), depression, and other difficulties that can negatively affect job performance. This can result in discharge with one of the stigmatized characterizations, i.e. besides honorable. This type of characterization is termed "bad paper" and deprives veteran survivors of MST of benefits that would otherwise be available to them.

A discharge upgrade is a restorative legal process that enables survivors of MST to obtain valuable benefits and helps put the pieces of their lives back together after military service. Successfully upgrading a less than honorable discharge extinguishes survivors' bad paper, unlocking valuable educational benefits and disability compensation while opening the door to free mental health and medical care. In addition to knowing the law, it is important that lawyers representing MST clients understand the singular components of military culture, which are unique markers of the military experience that often contribute to sexual assault and harassment.

Military Sexual Trauma

MST is defined as "psychological trauma which...resulted from a physical assault of a sexual nature, battery of a sexual nature, or sexual harassment."¹ The Uniform Code of Military Justice, the military's penal code, defines "sexual assault" as the commission of a sexual act on a person by threat, force, or while the person is asleep or otherwise unaware the sexual act is occurring.² Sexual harassment is "repeated, unsolicited verbal or physical contact of a sexual nature which is threatening in character."³ The U.S. Department of Defense (DoD) estimates that 18,900 service members in 2014 were victims of sexual assault.⁴ A 2015 study by the Department of Veterans Affairs found that two in five women endure MST while in military service, making women 10 times more likely than men to be sexually assaulted or harassed.⁵

Since survivors commonly fear retaliation, the majority of people who experience MST choose either not to report the

Dwight Stirling is a military JAG officer as well as CEO and cofounder of the Veterans Legal Institute, a nonprofit law firm. Laura Riley is an attorney serving on the board of directors of the Veterans Legal Institute. Both are adjunct professors of veterans law at the USC Gould School of Law.

AMANE KANEKO



assault at all or to file a restricted report. (A restricted report is one in which the sexual assault is not reported to the victim's commander or to military law enforcement officials, a procedure affording medical and mental health assistance without triggering a formal criminal investigation.)⁶ The DoD estimates that 75 percent of the service members who were sexually assaulted in 2014 did not report the assault to their leadership or to law enforcement in any way.⁷ Unfortunately, it is not only the assault or harassment itself that can be traumatic to a service member but also the process of reporting it. Marine Corps General James F. Amos stated in 2014 that many female survivors do not come forward because "they don't trust their chain of command."⁸ Researchers have found that "[v]eterans with MST fear stigmatization and do not discuss their military experience with friends or partners, leaving them feeling isolated, with fewer supports or coping resources for dealing with emotional distress."⁹

Characterizations of Service and Discharge Upgrades

Every service member receives a characterization of service upon completion of his or her tenure in the military, essentially a grade depicting personal performance during a military career. There are five types of characterizations of service, consisting of—from best to worst—honorable, general (under honorable conditions), other than honorable, bad-conduct, and dishonorable.¹⁰ Eighty-five percent of service members receive an honorable discharge.¹¹ Any of the four types of characterizations besides honorable is referred to by advocates in the field as "less than honorable," carrying with it a social stigma. A less than honorable discharge damages a veteran's postservice employment opportunities and disqualifies him or her from many VA benefits depending on the type. The latter two types, bad-conduct and dishonorable, known as punitive discharges, can bar a veteran from virtually all VA benefits.

Many MST survivors experience symptomatology in the immediate aftermath of the assault that negatively affects their job performance and may lead to low-level misconduct, including misuse of drugs and alcohol, insubordination, or absenteeism. The National Coalition for Homeless Veterans has found that women who experience MST are nine times more at risk for PTSD than those who do not experience MST.¹² PTSD is a disability that can have MST as its cause, along with other physical or mental traumatic events, for example observing a colleague killed in combat. Other common MST-related conditions include depression and other mood disorders, as well as substance use disorders.

As a result, survivors disproportionately receive a characterization of service that is less than honorable, that is, bad paper, making them ineligible for, *inter alia*, the Post-9/11 G.I. Bill, the extraordinary educational benefit that pays for four years of college tuition and an approximately \$2,000 per month living stipend.¹³ Focusing solely on a survivor's posttrauma behavior—rather than the factors, including the MST, that lead to it—a survivor's overall service record can be distorted. In issuing the bad paper, the survivor's command team may either be unaware of the sexual assault or, in some tragic instances, may retaliate against the survivor because of it.

Discharge Review Board

There is a way, however, to amend bad paper postservice, allowing a veteran to improve the characterization of service. A discharge upgrade is an administrative process by which a veteran's characterization of service, or paper, may be improved or increased from a less desirable to a more desirable type. Each branch of the military has an administrative agency called a Discharge Review Board (DRB)—a cadre of officers empowered to evaluate and change a veteran's characterization of discharge in certain circumstances. A veteran has 15 years from the date of separation to file an application with the DRB of his or

her former branch.¹⁴ For instance, a former army service member would file with the army's DRB.

By regulatory fiat a DRB adopts a "presumption of regularity in the conduct of governmental affairs," a policy under which military officials are assumed to have acted properly in the assignment of the applicant's characterization of service and wherein military records are assumed to be correct.¹⁵ The veteran thus carries the burden of presenting "substantial credible evidence" that the original characterization was improper.¹⁶

A DRB is authorized to upgrade a discharge characterization on the basis of either propriety or equity. A characterization of service will be changed on the basis of propriety if an "error of fact, law, procedure or discretion occurred, and the error was prejudicial to the veteran during the discharge process." Propriety will also serve as the basis for an upgrade if a statute or administrative rule has changed since the separation date, and the change would have affected the discharge type.¹⁷ In this way, veterans who received a general (under honorable conditions) characterization of service due to the Don't Ask, Don't Tell policy can apply and receive an honorable characterization on the basis of propriety since the rules regarding service by homosexual military personnel have changed subsequent to their separation.

Alternatively, upon consideration of the veteran's complete record, the DRB will upgrade a discharge on the basis of equity if the characterization does not accurately represent the quality of service. A more nuanced analysis than when propriety is at issue, an equity challenge takes into consideration a veteran's overall military performance, including annual evaluations, decorations and commendations, length of service, acts of merit, and postservice record.¹⁸ An application made on the grounds of equity also considers more abstract concepts, including "total capabilities" and "family and personal problems," as well as an examination into whether an "arbitrary or capricious action" was taken against the applicant.¹⁹ The quality of a veteran's advocacy is often the decisive factor in how persuasively these latter factors are set forth in the application paperwork—complex, layered concepts well-suited to lawyers' rhetorical abilities, critical reasoning, and analytical skills. Without legal assistance, a MST survivor's chances of success in an equity situation are low.

DRB applicants are able to decide how they would like the review process to occur. They can either opt for a records review in which the DRB simply reviews the application and supporting documents, a personal hearing in the Washington, D.C. area, or a personal hearing before a traveling board. An applicant's odds of success are increased by a personal appearance in which live testimony can convey the destructive force of military sexual trauma more poignantly than words on a page can.²⁰ However, travel costs are borne by the applicant, which can be a burden for California-based veterans attending hearings in Washington, D.C. Pursuant to the Administrative Procedures Act, denials can be appealed to the district court in which the applicant resides.²¹

Board for Correction of Military Records

If more than 15 years have elapsed since the date of discharge, a veteran is ineligible to apply for an upgrade to the former branch DRB. In these instances, however, there is still a path to upgrading bad paper, namely, through application to the Board for Correction of Military Records (BCMR). As with DRBs, each branch of the military has a BCMR—an administrative agency of last resort that possesses much broader powers than does a DRB. BCMRs have wide-ranging authority to alter or modify the military service record of a service member or veteran, including changing the characterization of service listed on a former service member's certificate of discharge—a document commonly referred to as a DD 214. BCMRs are also

authorized to change inaccurate performance evaluations, alter reenlistment codes, and, in certain limited cases, order a veteran to be reinstated into military service.²²

A MST survivor has three years after discovering an “error or injustice” in his or her military records to apply to the BCMR for correction.²³ While not codified, the argument is frequently made in the discharge upgrade context that the error or injustice triggering the three-year clock is the denial by the DRB. This approach allows a veteran who experiences MST to apply to the BCMR as a kind of appellate process post-DRB rejection. Courts have held that actual knowledge of the error or injustice is required for statute of limitations purposes.²⁴ The BCMR is authorized to waive the three-year time limit “in the interests of justice.”²⁵ As the board is required to review the application before ruling on whether the time limit should be waived or not, submission of an application after the deadline has expired is almost always the wisest course of action.

As part of its vast powers, the BCMR can upgrade a punitive (bad-conduct and dishonorable) discharge issued by a special or general court-martial on clemency grounds.²⁶ (A DRB has no corresponding capacity.) Curiously, “clemency,” “error,” or “injustice” is not defined by either statute or regulation, leaving commentators to suggest that the practical meaning of the latter two terms is the same as “impropriety” and “inequity” in the DRB context.²⁷ Post-service conduct is considered to be particularly critical in the clemency context since members of the BCMR are positively influenced by evidence of

a MST survivor’s rehabilitation, exemplary citizenship, and salubrious contributions to society.²⁸

Military Culture

Skillful interaction with a client who has experienced MST and effective advocacy in the discharge upgrade context requires an understanding of the defining components of military culture. The day-to-day lifestyle of members of the military is unlike the mainstream, civilian lifestyle with which most civil attorneys are familiar. Military culture is a sui generis blend of norms, values, and customs that the U.S. Supreme Court calls a “specialized society separate from civilian society.”²⁹ Researchers have found that the military experience is characterized by five factors: (1) strict regulation of personal conduct, (2) an authoritarian, hierarchical leadership system based on obedience to orders, (3) tight-knit, “familial” bonds amongst members, (4) a code of honor, and (5) aggressive masculinity.³⁰

In contrast with civilian life, in which the government manages a relatively small swath of daily activity, military directives “essay more varied regulation of a much larger segment of the activities of the more tightly knit military community.”³¹ Service members can be held criminally liable for being disrespectful to their bosses, late to their jobs, and derelict in carrying out their duties. Certain friendships and sexual relationships are barred as inappropriate, certain tattoos are deemed prejudicial to good order, jewelry must be displayed in certain ways (even when off duty), and specific language must be used (or

THE CASE OF LINDA

Consider the case of “Linda.” (The actual name and some other personal details of the case have been changed, but Linda’s story is typical of the survivors of military sexual trauma.) A 19-year-old woman from a small town, Linda is naturally introverted, having joined the army directly out of high school, wanting to serve her country, see the world, and receive financial assistance for college. She attended basic combat training at Fort Jackson, South Carolina, her first time outside of California and away from her family for any length of time. From the moment Linda arrived at boot camp, she received unwanted sexual attention from the males in her platoon in the form of gestures, comments, and innuendos—behavior she countered by adopting a more masculine appearance and closing down emotionally. A few of her female colleagues complained about the sexually charged atmosphere to the sole female drill sergeant, only to be told to “suck it up and drive on.” Despite the low-level harassment—which she said to herself was just boys being boys—she felt at home within her platoon, developing close bonds with her colleagues and a deep admiration for the senior drill sergeant, a 28-year-old infantryman with a strict manner reminiscent of her father. On the last day of boot camp, there was a party to celebrate finishing 10 long weeks of being yelled at, running in formation at the break of dawn, and firing an M4 semi-automatic rifle for hours on end at the range. Linda drank four or five beers that night—the first time she had drunk alcohol since enlisting—and eventually passed out on a bed in a friend’s room. When she awoke, her clothes were off and there was a man on top of her. She realized to her terror that he was having sexual intercourse with her. She said “Stop!” and pushed at the man’s face, at which point her assailant jumped up, grabbed his clothes,

and was gone before she was fully conscious. Lying on her back in stunned amazement, Linda’s world shattered into pieces, and her faith was replaced by betrayal, fear, anger, and emptiness. A couple of days later, she confided in a female friend, who told her there was no point in reporting the incident and that nothing was going to happen because “you don’t know who did it. “Plus,” the friend said a moment later, “if you report, it’s just going to tear the platoon apart. Do you want that?”

A civil attorney, however, agreed to represent Linda on a pro bono basis, assisting with an application for discharge upgrade. Turning to alcohol to cope in the wake of being raped rather than “tearing the unit apart” by reporting to her chain of command, Linda had been involuntarily separated from military service a short time thereafter when her work performance was suffering and a bottle of gin was discovered in her desk drawer. Showing compassion and understanding, her attorney established an attorney-client relationship built on trust, a dynamic that facilitated Linda’s sharing the details of the assault and resultant impact on her life. That trust allowed the attorney to gain the information needed to make the strongest legal case for Linda. When her discharge was later upgraded to honorable, Linda enrolled in college via the Post-9/11 G.I. Bill, received PTSD counseling from specially trained psychologists, and was granted a generous living stipend, all of which provided a transformative change of circumstances that set her life on an entirely new course.*

* There are many resources that are available to provide assistance to MST survivors, including LACBA’s Veterans Legal Service Project and other services at Patriotic Hall. Also, each VA facility has a designated MST coordinator.

not used) at certain times. Recognizing that the terminal purpose of the armed forces is to fight and win the nation's wars, the Supreme Court allows increased governmental intrusiveness in the personal conduct arena because "[n]o military organization can function without strict discipline and regulation that would be unacceptable in a civilian setting."³²

One consequence of living within a culture in which dress code, physical fitness, and meal times are prescribed—and in which lives are placed in one another's care—is that powerful attachments form between members. There is a level of interdependence and connectedness in which members rely on one another's word for both vocational

that predominates the military's combat-masculine-warrior mentality. In order to acclimate recruits to kill the enemy without a second thought and pull the trigger instantly in war-time situations, recruits are trained to dehumanize their combat opponents and instructed to give no consideration to the enemy's feelings, emotions, or lives. Effective in turning young people into fighting machines, the highly developed capacity to dehumanize other people can have unintended consequences in non-combat scenarios, a skill set capable of devastating misuse in off-duty situations. Brought into the barracks context, in which 18- to 24-year old men and women interact socially against a background of high-stress jobs, readily accessible alcohol, close-quarter gossip, and sexual

INDEED, effective advocacy in the MST context often turns on the lawyer's understanding the military cultural experience that led to the MST. Many layers of trust often have already been destroyed before a MST survivor meets with a lawyer since the bonds have been broken with his or her surrogate military family.

success and personal well-being. Bonds bordering on familial start to take root during the indoctrination phase, the 10-week character development program known as basic training or boot camp, when largely 18-year-old recruits cast off their civilian willfulness and learn to think, look, and act like each other. Obedience to orders, respect for the chain of command, and putting the good of the group above personal interest are painstakingly instilled into trainees during boot camp. Researchers have found that young recruits transfer the trust previously reposed in parents, teachers, and coaches to their drill sergeants, while the emotional closeness of sibling relationships transfers to platoon members.³³ A military unit's familial dynamic is in fact the essence of military culture—the factor underlying its code of honor—in which selflessness is a central tenet, disloyalty is the ultimate sin, and risking your life to protect your comrades in the face of danger is performed reflexively.

Rape Subculture

While the idiosyncrasies of military culture “produce men and women who comprise perhaps the most powerful fighting force on Earth,” the cruel irony is that the factors also combine to create what researchers describe as a “rape subculture.”³⁴ A rape subculture is said to exist in which the number of sexual assault incidents exceed the norm, victims are frequently blamed for their assaults, and internal forces collaborate to deincestivize reporting to authorities. Dr. Kristen Zaleski, a professor and psychotherapist at the USC School of Social Work who works with survivors of MST, says that the touch points of military culture “can rapidly turn into rape-supportive attitudes if a victim is seen as ‘not a part’ of the collective group and therefore an acceptable target of violence.”³⁵

Even with more women in uniform today than ever before, they still make up only 15 percent of the active duty military.³⁶ Women's “outsider” status is accentuated by the dichotomy of military language, a gendered vocabulary in which “girls” and “ladies” describe substandard performers, and toughness—a first-order value—is associated with being a “man.” The research has found correlations between the “othering” of women and sexual violence against women. Connections have also been drawn between the military's masculinized culture and the emphasis on enduring pain in silence, on the one hand, and the reluctance of MST victims or survivors to report being assaulted, on the other.³⁷

The rape subculture is exacerbated by an “us versus them” dialectic

politics, the ability to disassociate from others—to dehumanize outsiders—can result in “unspeakable acts of sexual violence (committed) on its own members.”³⁸ The cross-currents of the “us versus them” dialectic and the familial bond dynamic may collide to intensify the resultant trauma. The MST survivor, like the incest survivor, must continue to interact with the perpetrator on a daily basis, pressured to withhold the information in order to protect the perpetrator, a brother-in-arms, and the military unit as a whole.

Repercussions of Reporting

A variety of factors within military culture discourage victims from reporting instances of sexual assault. As Elizabeth L. Hillman, president of Mills College and formerly a professor of law at UC Hastings, writes in *Front and Center: Sexual Violence in U.S. Military Law*, “Reporting fellow troops for sexual misconduct can...be interpreted as disloyal; it can lead to the humiliation and punishment of the military offender and cause damage to the public image of the armed forces.”³⁹ The perception of being disloyal to one's unit—a military member's surrogate family—is fraught with risk.

Many MST survivors tell of being ostracized in the wake of informing authorities about their assault, accused by their leadership of being weak, or of having brought the incident upon themselves by their own “slutty behavior.”⁴⁰ Wrenching criminal investigations can ensue that force unit members to take sides, which may result in a division of allegiances that often turns in favor of the male perpetrator, with the survivor unable to move to another unit and forced to work in proximity with the assailant. Perpetrators, frequently older and more senior in the hierarchy, insulate themselves against accusations by fostering close relationships within the chain of command while simultaneously selecting survivors who lack meaningful political support. In what often turns out to be a “he said, she said” situation, perpetrators have carefully greased the wheels in their favor long in advance.⁴¹

Whether or not MST survivors choose to report, the trauma they sustain routinely leads to their separation from the military with a less than honorable discharge, i.e. bad paper. Self-medication with drugs or alcohol or both, depression, eating disorders, and many other physical and psychological conditions stemming from trauma can diminish work performance, lead to antisocial behavior, and result in positive drug tests, thus causing the chain of command to initiate involuntary separation proceedings against the MST survivors. In particular, denial of the Post-9/11 G.I. Bill—a necessary result of bad paper—throws a

MST survivor's postmilitary life into chaos. Instead of attending four years of college for free along with an approximately \$2,000 living stipend, an MST survivor with bad paper is forced to find and hold a civilian job, negotiate the fallout of the MST, and repair their broken identities at the same time. In addition, medical benefits are often denied as a result of bad paper, leaving survivors without a viable option for critical therapeutic services.

Advocacy

Restoration occurs through a successful discharge upgrade. The chances of success increase exponentially when a lawyer prepares the veteran's discharge upgrade application, be it before the DRB or BCMR. An application consists of a standard legal brief accompanied by declarations, medical documentation, and other supporting evidence. The brief tells the veteran's complete story—a version of reality often diametrically opposed to the version contained in the survivor's official military file—by describing the MST, the attendant trauma, and the cause-effect relationship between the symptomology and the survivor's downward career trajectory. Without adept legal assistance and untrained in developing evidentiary records, a veteran—uncertain of what is important—will almost certainly fail to convince either the DRB or the BCMR to change the characterization of discharge.

Indeed, effective advocacy in the MST context often turns on the lawyer's understanding the military cultural experience that led to the MST. Many layers of trust often have already been destroyed before a MST survivor meets with a lawyer since the bonds have been broken with his or her surrogate military family. Additionally, telling the story of the underlying experience often triggers the feelings that arise out of the MST.⁴² An attorney can avoid further trauma on the part of the MST survivor and help him or her on the appropriate path through a willingness to listen to the survivor's experiences without judgment, thus creating an environment that fosters trust.

In this context, lawyers are at their most effective when they are aware of their use of language when interacting with MST clients. It is frequently useful to allow the client to describe his or her experiences in the client's own language. Indeed, a good rule of thumb is to mirror the language that the client is using back to him or her. If a lawyer feels it is necessary to use different phraseology in order to explain certain legal definitions, it can help to clearly articulate to the client why different language is being used. Then, the client will not mistakenly think the lawyer is defining the client's experience in a way with which the client may not identify.

Also, it can be helpful for lawyers to jet-

LACBA
SmartLaw

FLAT FEE LEGAL SERVICES FROM LACBA!

LACBA SmartLaw Flat Fees are an affordable way for clients to address legal issues. Clients get an affordable Flat Fee, but with the advantage of having a lawyer answer questions and complete the process correctly.

- ▶ LLC Business Formation: **\$800**
- ▶ Trademark Registration: **\$500**
- ▶ Uncontested Divorce: **\$800**

Flat fee rates cover attorneys' fees related to the matter. Filing fees and other costs are extra.

More information:
(866)SMARTLAW, SmartLaw.org/flatfee

Attorneys interested in receiving flat fee referrals
from LACBA: **(213) 896-6571**

LACBA A service of Los Angeles
County Bar Association

BUSINESS OPPORTUNITY

Want to purchase minerals and other oil/gas interests.

Send details to:

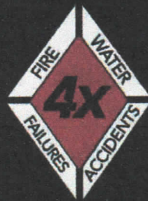
P.O. Box 13557
Denver, CO 80201

Does LACBA have your current e-mail address?

LACBA

Update your records online at
www.lacba.org/myaccount

or call Member Services at
213.896.6560



4xForensic

ENGINEERING LABORATORIES, INC.

www.4xforensic.com

CPT SPECIAL NEEDS TRUSTS

We make establishing Special Needs Trusts easy.

Protect SSI and traditional MediCal

No Minimum Funding

Clients of Any Age



Will Lindahl, MBA, CLFP
Enrollment Director
wil@snthelp.com
877-695-6444, Ext. 2

A Pooled Special Needs Trust provider that will go to your firm or to the client to facilitate signing. We can setup a trust for your client in days.



"CPT is the nation's leading pooled trust provider. I trust them to manage all of my clients who require a pooled trust."

- Kevin Urbatsch National Director of the Academy of Special Needs Planners

877-695-6444

www.snthelp.com

tion expectations formed from past experiences or histories. That is, it is advisable to exercise caution about trying to make one's client into a "perfect victim." Thus, it is important to take care before even labeling the client a victim at all. ■

¹ 38 U.S.C. §1720D(a)(1).

² 10 U.S.C. §920.

³ 38 U.S.C. §1720D(f).

⁴ U.S. DEP'T OF DEFENSE SEXUAL ASSAULT PREVENT AND RESPONSE, 2014 ANNUAL REPORT HIGHLIGHTS, available at <http://sapr.mil/index.php/fy14-annual-report-highlights> [hereinafter 2014 ANNUAL REPORT].

⁵ SHANNON K. BARTH, ET AL., *Military Sexual Trauma Amongst Recent Veterans*, 50 AM. J. OF PREVENTATIVE MED. 77-86 (2016).

⁶ ARMY REG. 600-20, §8-4.

⁷ 2014 ANNUAL REPORT at 8.

⁸ KIRBY DICK, *Don't Trust the Pentagon to End Rape*, N.Y. TIMES, June 3, 2013, available at <http://www.nytimes.com>.

⁹ MARYLENE CLOITRE, ET AL., *STAIR for Strengthening Social Support and Relationships Among Veterans With Military Sexual Trauma and PTSD*, 181 MILITARY MED. 183-87 (2016).

¹⁰ CONN. VETERANS LEGAL CTR., VETERANS DISCHARGE UPGRADE MANUAL, 17 (2011) [hereinafter CONN. VETERANS].

¹¹ Human Rights Watch, *Booted: Lack of Recourse for Wrongfully Discharged U.S. Military Rape Survivors*, 2 (May 19, 2016), available at <https://www.hrw.org> [hereinafter Human Rights Watch].

¹² Nat'l Coal. for Homeless Veterans, *Homeless Female Veterans*, available at <http://www.nchv.org>.

¹³ Human Rights Watch, *supra* note 11, at 3.

¹⁴ 32 C.F.R. §70.8(a)(2).

¹⁵ 32 C.F.R. §70.8 (b)(12)(vi).

¹⁶ *Id.*

¹⁷ 32 C.F.R. §70.9(b).

¹⁸ 2 C.F.R. §70.9(c)(3)(i).

¹⁹ 32 C.F.R. §70.9(c)(3)(ii).

²⁰ CONN. VETERANS, *supra* note 10, at 15.

²¹ 28 U.S.C. §2401.

²² 10 U.S.C. §1552.

²³ 10 U.S.C. §1552(b).

²⁴ *Dickson v. Sec'y of Def.*, 68 F.3d 1396, 1405 (D.C. Cir. 1995).

²⁵ *Allen v. Card*, 799 F. Supp. 158, 166 (D.D.C. 1992).

²⁶ 10 U.S.C. §1552(f)(2).

²⁷ KATHLEEN GILBERD, *Upgrading Less-Than-Fully-Honorable Discharges*, in THE AM. VETERANS AND SERVICE MEMBERS SURVIVAL GUIDE, 346, 353-54 (2009).
²⁸ *Id.*

²⁹ *Parker v. Levy*, 417 U.S. 733, 743 (1974).

³⁰ KRISTEN ZALESKI, UNDERSTANDING AND TREATING SEXUAL TRAUMA 17-25 (2015) [hereinafter ZALESKI].

³¹ *Parker*, 417 U.S. at 749.

³² *Chappell v. Wallace*, 462 U.S. 296, 300 (1983).

³³ ZALESKI, *supra* note 30, at 22-24.

³⁴ *Id.* at 20.

³⁵ *Id.* at 21.

³⁶ *By the numbers: Women in the U.S. Military*, Jan. 24, 2013, CNN.COM., <http://www.cnn.com>.

³⁷ ZALESKI, *supra* note 1, at 23.

³⁸ *Id.* at 21.

³⁹ ELIZABETH HILLMAN, *Front and center: Sexual violence in U.S. Military law*, 37 POL. & SOC. 106 (2009).

⁴⁰ BESSEL A. VAN DER KOLK, ET AL., TRAUMATIC STRESS: THE EFFECTS OF OVERWHELMING ON MIND, BODY AND SOCIETY 24-46 (2007).

⁴¹ MIETTE WELLS, UNDERSTANDING MILITARY SEXUAL TRAUMA 58 (2013).

⁴² For a more in-depth discussion on trauma memory, see ZALESKI, *supra* note 30, at 82-83.