



OPINION

A Travesty Of Justice: Collateral Charges In Military Sexual Assault Cases



REUTERS/Jonathan Ernst

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Defense Secretary Ash Carter proclaimed in a recent [letter](#) to Senator Kirsten Gillibrand that the military's criminal justice system is now superior to the civilian system in winning convictions of sexual misconduct. How was this feat accomplished? Mr. Carter reveals it was achieved through the practice of charging individuals with "collateral" allegations:

“...in both civilian and military judicial systems, defendants are often tried for ‘collateral misconduct’ charges, such as lying to an investigator, in addition to an underlying crime. In both the military and civilian systems, it is sometimes difficult to obtain a conviction for sexual assault. It is a common practice for prosecutors to attempt to obtain convictions for collateral charges as well, which provide additional methods of holding an individual responsible for his or her acts in the event of an acquittal for the charge of sexual assault.”

Carter explains that “collateral” refers to charges that would not be available in the civilian criminal justice setting, such as conduct unbecoming an officer, adultery, and orders violations. Former Army JAG Officer Michael Waddington, now in private practice, makes a similar point:

“A common tactic is to charge a service member using the “shotgun approach,” with as many charges as possible to leave defendants little choice but to plead guilty. Court martial charge sheets of three pages aren’t uncommon, often the same charge repeated time and time again in different ways.”

In case after case, we are seeing collateral charges being “stacked” on top of sexual misconduct charges to ensure that the accused is found guilty of “something.” The attitude seems to be, “if we can’t get you for rape, we’ll get you for not turning in that old pair of boots six years ago.”

In order to bolster the charges, investigators contact women who had a prior relationship with the accused and implore them to get a “rapist off the streets.” These women include former wives, girlfriends, or any other female with whom the accused service member had an intimate relationship. This practice has been documented in recent Army cases involving Sergeant First Class Kelly Stewart, Major Christian “Kit” Martin, Major Eric Burris, and Air Forces cases involving Master Sergeant Michael Silva and Major Michael Turpiano.

Military investigators are known to incentivize these “victims” with the prospect of receiving transitional compensation payments. The women may be advised of the possibility of receiving Veterans Administration disability payments based on claims of PTSD as a result of Military Sexual Trauma. In many cases, the alleged incident occurred many years previously and there is no corroborative evidence of misconduct. Nonetheless, benefits may be conferred following a diagnosis of PTSD due to Military Sexual Trauma based on the existence of depression, marital problems, or other life disruption.

Now a male service member who is accused of any type of sexual misconduct, whether it be assault, harassment, or “unwanted sexual contact,” will also face collateral charges. These charges involve previously ignored or unenforced violations, minor peccadilloes, or violations that arose during the course of the inquiry. In the end, there is a near-certainty that the accused will be convicted of something. This allows the Defense Secretary to proclaim to members of Congress that the military is in fact obtaining “convictions” in military sexual assault cases.

These dubious cases end up harming the falsely accused, their families, and friends. Ultimately they cause long-lasting damage to unit morale, personnel retention, military readiness, and the safety of the nation as a whole.

No one seeks to deny benefits to persons who have been truly victimized. Legitimate sexual assault victims should be afforded the necessary resources, and actual offenders should be punished in

accordance with applicable laws. But now a person can make a claim with little or no proof that they have been a victim of sexual misconduct and become entitled to lifelong taxpayer-funded compensation.

In the former Soviet Union, prosecutors achieved a near-100 percent conviction success rate. The secret to their success was the proliferation of broadly crafted and vaguely written laws that could be enforced according to the whim of law enforcement officials. Lavrentiy Beria, head of Joseph Stalin's secret police, reportedly summed up the Soviet solution this way: "Show me the man, and I'll show you the crime."

In their zealous quest to eradicate sexual assault, is it possible that American military prosecutors are resorting to the same horrifying Soviet tactics?

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