

THE SEEMINGLY INTRACTABLE PROBLEM OF DOMESTIC ABUSE IN THE DEPARTMENT OF DEFENSE

Historical Background

For over a decade, the problem of domestic abuse by soldiers has plagued the Department of Defense (DOD). Despite a 2001 claim by the then-deputy secretary of defense that DOD would not tolerate domestic violence, [as of September 2010](#), DOD still fell far short of providing the kind of leadership and oversight needed to effectively prevent and treat domestic abuse. DOD's persistent failure to curb this problem stems in significant part from its failure to develop an "[oversight framework with goals, milestones, and metrics with which to determine the effectiveness of its efforts](#)." The incomplete data of domestic abuse DOD maintains [also has stymied](#) the agency's efforts and its ability to effectively monitor incidents of domestic abuse. Unless DOD corrects these multiple problems, the agency "[will remain unable to assess the effectiveness of its efforts to prevent and treat domestic abuse](#)." Just as troubling, DOD guidance addressing, among other issues, clinical treatment and evaluation boards for domestic abuse [has remained in draft](#) form since 2006.

Recognizing the critical importance of maintaining accurate data on this issue, [Congress enacted legislation](#) in 1999 requiring the secretary of defense to "establish a central database of information on the incidents of domestic violence involving members of the armed forces." Despite this legislative mandate, numerous and ongoing deficiencies with DOD's databases continue even though, as the [Sept. 2010 GAO Report](#) makes clear, maintaining complete and accurate data is central to DOD's ability to prevent and treat domestic abuse. DOD also has ignored a recommendation from GAO, stemming from a 2006 report, to reconcile "[data discrepancies](#)" in DOD's databases of domestic violence. Because "[determining how to measure progress when implementing change is critical to making improvements](#)," DOD will not make meaningful progress on this front until it improves its data collection.

At the same time, domestic abuse by soldiers is on the rise, due at least in part to the rising incidence of post-traumatic stress disorder in soldiers returning from battle. As a result, the insufficiencies with DOD's databases are all the more critical. Compounding the problem is DOD's refusal to hold the perpetrators of domestic violence accountable for their crimes. The Army, in particular, has offered Congress and the public repeated assurances it is monitoring and responding appropriately to the increase in these crimes, but, as the [September 2010 GAO report](#) demonstrates, these are hollow assurances not supported by the facts. Media reports continue to highlight soldiers who evade prosecution in either the military or civilian criminal justice systems for acts of domestic abuse. For example, [a New York Times article](#) described the repeated beatings an Army sergeant's wife had received from her husband, who was never prosecuted. In that case, a Texas prosecutor did not press charges because the Army said it would pursue the matter, which it then failed to do.

Media reports also describe the family and personal strains caused by domestic abuse that have led to increased homicide rates. See Lizette Alvarez and Deborah Sontag, [When Strains on Military Families Turn Deadly](#), *New York Times*, February 15, 2008; Estes Thompson, *Associated Press*, [Soldier's Death Renews Criticism of Army](#), *Houston Chronicle*, October 4, 2008; Paloma Esquivel and Christine Hanley, [Family Tells of Alleged Killer's Post-Iraq Mental Troubles](#), *Los Angeles Times*, September 3, 2008. In October 2008, [the Houston Chronicle reported](#) on the third soldier in four months to be killed at Fort Bragg, North Carolina as a result of domestic violence, prompting a retired Army Colonel to say, “[t]he Marine Corps and the Army need to very quickly show leadership and control over their troops.” These articles paint a dire picture of troubled families vulnerable to homicides and other violent acts that increasingly are as predictable as they are prolific. And they raise the question of why the Army has yet to “show leadership and control over [its] troops.”

CREW'S FOIA Requests

In the wake of the spate of news articles chronicling an increase in acts of domestic violence by soldiers who face no adverse consequences from the military for their crimes, CREW filed a Freedom of Information Act (FOIA) request with the Army [on November 25, 2008](#). CREW requested records of the Army's policies related to soldiers accused of acts of domestic violence, and statistics as well as records concerning the number of soldiers accused, arrested, prosecuted, convicted, and jailed for domestic violence crimes.

CREW also requested statistics on the number of soldiers dishonorably and honorably discharged after committing acts of domestic violence, as well as the number of soldiers promoted following a conviction for a domestic violence offense. Additional statistics sought by CREW include the number of soldiers deployed while a domestic violence investigation or prosecution was ongoing; the number of soldiers ordered to attend anger management classes and/or counseling as a result of a domestic violence complaint pursuant to a deferred prosecution agreement or diversion program; and the number of soldiers prosecuted or jailed for failing to attend mandated anger management classes and/or counseling.

CREW also sought records demonstrating soldiers' attendance at such classes, and records pertaining to any actions taken if and when soldiers failed to attend such classes as ordered. Further, CREW requested statistics on the number of soldiers issued “no contact” orders following domestic violence complaints against them; the number of soldiers who violated such orders; the number of soldiers prosecuted or jailed for violating “no contact” orders; and the number of domestic violence related offenses soldiers committed while “no contact” orders were in effect.

CREW's FOIA request sought records on the number of times the Army has requested that a civilian prosecuting authority transfer jurisdiction of a domestic violence crime to the military; the number of times the Army initiated its own prosecution against an alleged perpetrator of domestic violence following the transfer of jurisdiction from a civil prosecuting authority; the number of times the Army declined to prosecute a domestic violence crime after having requested a transfer of jurisdiction from a civilian prosecuting authority; and all decisions

by the Army not to prosecute any individual for a domestic violence crime because such a prosecution would have prevented the Army from deploying the alleged perpetrator to Iraq, or any other foreign country. Finally, CREW sought records of all case review committees, including but not limited to those at Fort Riley in Kansas and Fort Bragg in North Carolina, regarding the handling of domestic violence complaints and the treatment of soldiers alleged to have committed such offenses.

In response, the Army referred the request to a number of its installations. Many stated they had no records. Personnel at the Army Court of Criminal Appeals explained the military keeps records about crimes pursuant to the Uniform Code of Military Justice (“UCMJ”, 64 [Stat.](#) 109, [10 U.S.C. Chapter 47](#)). Using the UCMJ as a frame of reference, however stymies effective monitoring as well as responding to CREW’s FOIA request because the UCMJ does not designate any crimes specifically as ones of domestic violence. To address this core deficiency, CREW and the Army Court of Criminal Appeals worked to define what crimes in the UCMJ list of offenses potentially may be those of domestic violence. Following this guidance, the Army prepared and released a spreadsheet with the total numbers of convictions, arraignments and discharges for the specified crimes.

The accuracy of this chart, however, remains in question, as there is no way of knowing if the crimes actually were those of domestic violence. For example, the crime of premeditated murder or kidnapping may or may not arise from domestic violence. Moreover, the spreadsheet does not provide an accurate count of domestic violence crimes prosecuted in the Army Court of Criminal Appeals. According to a November 3, 2009 letter from the U.S. Army Criminal Investigations Command, there were 3,080 Reports of Investigation and 8,589 Military Police Reports containing one or more domestic abuse allegations within the time frame of CREW’s request. No Army office, however, was able to provide any more specific details as to prosecutions, discharges, and/or other disciplinary proceedings arising from domestic abuse allegations within the Army itself.

The Army failed to provide responsive records to CREW beyond this limited information. It was not until CREW filed a lawsuit challenging the Army’s failure to comply with its legal obligations under the FOIA, [CREW v. Dep’t of Army](#) (D.D.C.), and only after the passage of considerable time that the Army was willing to work with CREW to determine what responsive records actually existed and, in the absence of records, find alternative ways to produce the information CREW was seeking. Ultimately this cooperative effort was successful enough to allow CREW to reach some conclusions on the extent of the Army’s recordkeeping on domestic violence crimes. CREW also gleaned some information on how the Army works with soldiers and their families on domestic abuse issues. CREW and the Army settled the FOIA litigation on March 15, 2011.¹

¹ This settlement was made possible in part by the work of Special Assistant United States Attorney Kelly McGovern and Major Joe Krill of the United States Army, who recognized the public interests underlying CREW’s FOIA request and questions and took exceptional steps to answer CREW’s questions.

In order to determine if the other branches of the military had similar problems with maintaining statistics on incidents of domestic violence, CREW submitted similar FOIA requests to the Department of Defense, Department of the Navy, Air Force, and the Marine Corps on November 2, 2009. The responses revealed these branches, like the Army, have failed in their responsibility to monitor and prevent domestic violence by soldiers.

The Department of Defense was able to provide only a spreadsheet containing totals of officers and enlisted men who were given dishonorable discharges for bad conduct. The Marine Corps was unable to provide any specific statistics obtained from tracking domestic abuse cases. Similarly, the Office of the Judge Advocate General for the Navy, in responding to the Marine Corps request, advised CREW it does not collect separate statistics that break out domestic violence from the general charge of assault. As a result, it was impossible for this office to provide any specific numbers of domestic violence crimes, and the office ultimately confirmed for CREW it has no centralized database that tracks such numbers.

Likewise, the Air Force produced few records, confirming it does not compile statistical information on this subject. The Air Force further noted it was unable to provide numbers of those discharged resulting from or following convictions for domestic violence because the Separation Program Designators codes, authorized by DOD, do not provide a specific code for discharges or court-martials for domestic violence. The Navy request also produced only a few records with no specific information on discharges resulting from or following a conviction for domestic violence. Like the other branches of the armed services, the Navy simply does not track this information.

CREW'S Findings

1. The Army Still Fails to Track Criminal Domestic Abuse Cases.

[CREW's FOIA request](#) sought, among other things, statistical details on what happened to soldiers accused of domestic abuse crimes. CREW requested data on the actual number of soldiers arrested by the Army and what happened to them from the point of their arrest onward. CREW also sought to discover how many of those arrested were actually prosecuted, jailed, discharged, promoted, deployed, given no contact orders, and/or sent to anger management classes. CREW further sought statistical information on the prosecution of domestic abuse cases either by the Army or civilian law enforcement authorities.

The Army's failure to maintain *any* statistical details of domestic abuse cases involving its soldiers stems in part from the complete lack of follow-up with the Army offices charged with prosecuting or investigating criminal. While the U.S. Army Criminal Investigations Command was able to state there were 3,080 Reports of Investigation and 8,589 Military Police Reports containing one or more domestic abuse allegations during the time frame of CREW's request, the Army had no statistics for the results of these investigations. In other words, it is impossible to tell how many of these allegations led to prosecutions, jail time, or any other adverse consequences. Without this statistical material, Army management, Congress, and the public cannot adequately assess whether any of the Army's efforts to reduce domestic violence are working.

Moreover, in tracking crimes of domestic violence, the Army relies exclusively on those crimes specified in the Uniform Code of Military Justice. The UCMJ, however, does not specify any crimes as those of domestic violence. Thus, it is impossible to know, for example, whether an incident involving assault also was a crime of domestic violence. Accordingly, the Army needs to develop a more refined classification system that permits tracking domestic violence related offenses.

This is not a problem only within the Army. The [September 2010 GAO report](#) confirmed that despite the legislative requirement to collect data in a domestic violence central database, the DOD still does not maintain an adequate database. CREW's findings about the Army's record keeping for domestic abuse matters mirror those of the GAO. Simply put, it is impossible for the Army to analyze overall trends concerning domestic abuse or even ascertain the scope of the problem. Without knowing the scope of the problem, DOD has no realistic chance of addressing and resolving it.

2. The Army Has Made Some Effort On The Clinical Side To Deal With Identified Cases of Domestic Abuse.

As part of the settlement of [CREW's lawsuit](#), the Army made Dr. Renee Robichaux available to CREW for questioning in a recorded discussion about the Army's Family Advocacy Program ("FAP"). That FAP deals specifically with protecting the spouses and children of domestic abuse and trying to prevent the abuse from re-occurring.² Dr. Robichaux is the social work programs manager for the FAP, and he described in detail how the Family Advocacy Program works. According to Dr. Robichaux, the FAP deals with the clinical side of domestic abuse cases. The cases come to the FAP at each Army installation when there is a reported allegation of domestic abuse, either by military justice or local law enforcement. The cases are reviewed every 90 days by a base Case Review Committee ("CRC"). The CRC determines if the cases should be closed or remain open.

The FAP is independent of both the military and civilian criminal justice systems. As such, it maintains no statistics on the judicial outcomes of FAP cases. According to Dr. Robichaux, doing so would require case workers to find out what those outcomes are, which would take time from away their already overworked schedules, as they struggle to keep reports and work on the actual clinical abuse cases.

Dr. Robichaux explained that the Army's FAP staff and the CRCs are attempting to deal with the problems of domestic abuse among soldiers once the cases are referred to the FAP. They are impeded in their effort, however, by a lack of funding. According to Dr. Robichaux, of the \$48 million the Army receives for all family advocacy programs, the FAP gets only \$21 million, even though 80 percent of the family advocacy work is assigned to the FAP. As this barely covers the cost of FAP's clinical programs, the FAP lacks the resources to conduct any statistical studies of domestic abuse. Further, absent any changes in the current system, any statistical studies would require data input from FAP clinicians, requiring them to take time away from their clinical abuse cases, where they already are stretched too thin.

² A transcript of this discussion is attached as Exhibit A.

Conclusion

The Army, as well as the other branches of the armed services, do not currently track the results of domestic abuse allegations in the criminal justice system or otherwise maintain a database that accurately reflects the number of domestic abuse crimes committed by soldiers. This failure violates the legislative mandate to maintain a database that tracks acts of domestic violence. As a result, the military, public and Congress have no effective way of knowing the true scope of the problem and whether any of the Army's preventative or punitive measures are working. Without knowing the scope of problem, the Army cannot effectively treat it. Therefore, the Army and the rest of DOD will continue to suffer from a high rate of domestic violence committed by soldiers. While the Army's clinical efforts to address domestic abuse have yielded some success, the program is not adequately funded and is hampered by a lack of statistical information.

Recommendations

1. The Department of Defense should establish a uniform coding system for acts of domestic violence that supplements the Uniform Code of Military Justice.
2. Each branch of the armed services should establish a central data base of all reported incidents of domestic violence, as defined and included in both the Uniform Code of Military Justice and the separately developed coding system.
3. Each branch of the armed services should conduct yearly reviews of its statistics on domestic violence, report on its findings to Department of Defense headquarters and Congress, and make that report available to the public.