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A Roadblock to Justice

By Elizabeth Hamilton, Courant Staff Writer

Kayla Michael says she barely finished introducing herself before the garrison commander's deputy stiffened his spine and narrowed his eyes on a point somewhere just past the top of her head.

"Kayla Michael, you have no affiliation with the U.S. Army and no right to be on my premises today," he barked. "I am going to have you immediately escorted off the base and if you refuse to leave immediately, I will have you removed by force."

Michael imagined men in riot gear rappelling down from the ceiling and beating her to a pulp with batons, but she stood her ground long enough to ask why he hadn't canceled their appointment if all he was going to do was send her away.

"I tried to contact you," he said.

"How did you try?" she pressed.

"I order you to leave now and do not contact ACS [Army Community Service] again and do not contact this office again," he repeated.

She obeyed, looking over her shoulder at the armed soldiers trailing her as she sped away on her bike toward the gates.

And that was the end of Michael's three-year career as an advocate for victims, employed by a civilian contractor for the U.S. Army at its European headquarters in Heidelberg, Germany.

Michael's case is particularly stark – documents show she was fired last August after she advocated aggressively on behalf of a woman who reported being raped by an Army captain and psychologist – but it is not that unusual a case.

Despite proposed changes to the military's sexual assault policies, including one announced Friday that will give rape victims the ability to speak confidentially for the first time to advocates and medical professionals, Michael and four other advocates working for the military say they have been harassed or ignored – or in Michael's case, fired – for doing their jobs.

Michael and others are telling their stories for the first time, just months after Defense Secretary Donald Rumsfeld and other military brass pledged to hire more advocates as a way to address ongoing criticism that the military discourages sexual assault victims from reporting crimes or seeking help. The Pentagon is under intense pressure due to a series of well-publicized cases showing that some military commanders routinely protect batterers and rapists in their ranks.

Rumsfeld has ordered an internal investigation into how commanders have handled assault reports in Iraq. More recently, Rumsfeld appointed a brigadier general to head a newly created office to oversee the military's handling of sexual assault cases. That office is designed to give victims more access to advocates and services, military officials said.

Most of the advocates contacted for this story were unwilling to be identified, for fear they would be targeted for speaking out against the military.

But they all said essentially the same thing: Even as the military devises new policies to protect victims' rights, the advocates assigned to work on the front lines are battling a deep institutional resistance within the ranks.

If the commanding officer doesn't want a criminal case to go anywhere, they said, it won't. And nothing they say or do can affect that decision.

"There's no power. There's no teeth in it," said Becky, who works for the victim witness assistance program for the U.S. Air Force. "I feel like I'm constantly battling commanders to get them to hold their members accountable for what they did. They act like defense attorneys for these guys, even before they have defense attorneys assigned.

"If the commander agrees with me, they can be very respectful," she added. "But when they don't they just ignore me."

Christine Hansen, executive director of the Miles Foundation in Newtown, Conn., said the military must give victim advocates whistle-blower rights if it is serious about changing the culture of sexual abuse within its ranks.

"The victim advocates have no rights," Hansen said. "When they find themselves going toe to toe with the military, what is occurring is they're being fired, their contracts are being canceled, and their job duties and descriptions are being changed."

Hansen said her organization, which advocates for victims of sexual and domestic assault in the military here and abroad, is seeing an increasing number of complaints from advocates serving the military around the world. According to the Department of Defense, there were 215,331 women in active duty in the Army, Air Force, Navy and Marines as of May 31, 2004, with women making up slightly less than 15 percent of the overall force.

"We are seeing serious intrusions by military authorities into the work of victim advocates," she said.

Repeated attempts in the last two weeks to get a response from the Pentagon were unsuccessful.

Hansen said the Miles Foundation called the Senate Armed Services Committee in August to report a half-dozen cases, including Michael's, in which advocates were being harassed or fired, she said.

In at least one case, the intervention seemed to backfire because the advocate was called in for questioning after the Miles Foundation reported the harassment to congressional leaders. In another, the advocate has been ordered not to speak to the press. A few have become so discouraged they're considering leaving their jobs.

"Allowing victims to speak confidentially to advocates is a step in the right direction, but won't solve the larger issue of whether the advocates are allowed by military commanders to do their jobs," Hansen said.

U.S. Rep. Louise Slaughter, a nine-term Democratic congresswoman from New York and co-chairwoman of the Congressional Caucus for Women's Issues, reacted with anger last week when told that advocates report being fired, harassed and disrespected by military brass.

"This is actually a contravention of the rules of the Pentagon and we're going to call them on it," Slaughter said. "We had no idea there was a problem with the advocates. I'm going to demand they respond to this."

Slaughter introduced last year what many advocates believe is the first comprehensive piece of legislation addressing domestic violence, sexual assault and stalking in the military.

The legislation, which is currently being revised by Slaughter's office, would provide whistleblower protections for advocates.

"We have tried for years to deal with the Pentagon on this," Slaughter said. "Every year they have given us lip service. The advocates are new. They were supposed to be a reform."

The military's victim advocate program was created in 1996, but the four major services have been slow in some places to implement it. There have been no advocates available for servicewomen in Iraq and Afghanistan, for example.

The Army announced last week it will train 1,000 sexual assault victim advocates around the globe and contract for "special assault response coordinators," who will provide training and oversight to the advocates.

Tina Greaves, who worked as an advocate for the Family Advocacy Program in Hanau, Germany, from 2002 to 2004 and is now with a private nonprofit agency in Connecticut, said advocates are almost entirely reliant on the goodwill of the commanding officer, who "has all the discretion."

Although she was not harassed, Greaves said, she had little success convincing commanding officers or military investigators that a soldier should be charged with a crime.

“I didn’t see a lot of offenders prosecuted,” Greaves said. “Usually it was just some sort of administrative punishment like a counseling statement, where your superior writes down what you’ve done and what you need to do to correct it – counseling, anger management, drug and alcohol treatment. That was it.”

If the advocate dared to disagree with the commanding officer or the military’s social work services office, Greaves said, “they could contact our employers and we could be terminated.”

Like Kayla Michael.

A Godsend

Kayla Michael, a 32-year-old from Georgia, was a godsend as far as Olivia Marconi was concerned.

Marconi had only been in Germany a few weeks last year, working as an employment counselor at Heidelberg Army Hospital. She didn’t speak the language and knew no one except her own mother when she says she was raped by the Army captain who offered to show her around the city while her mother was away.

The captain, who is not being identified by The Courant because he was never charged with a crime, worked with Marconi’s mother at the hospital as a psychologist and seemed like a safe bet to Marconi. She arranged to meet him at his apartment before they drove to a club with friends.

Before they got started, Marconi said, she told the captain she wasn’t much of a drinker. One, maybe two drinks is all she could handle, she said.

Once they arrived at the club, however, Marconi said she began drinking and by the time they left the bar early in the morning of June 20, she could barely stand. When they got back to his apartment it was clear she couldn’t drive home and he didn’t offer to take her there in a cab.

“He was like, ‘Well, you can sleep on the couch, where the dog sleeps. Or there’s the spare bed, under 100 boxes. Or there’s my nice clean bed with air conditioning.’”

Later, Marconi would tell military investigators that it took her days to remember what happened next. When she did, she was horrified.

Keep your legs up, she remembered him saying, move to the end of the bed. She was like a doll he kept moving around and posing, but she couldn’t feel what he was doing or make her body obey his commands. She was simply too drunk.

When it sunk in fully, so, too, did the thoroughness of her predicament. Marconi’s mother worked in the social work office that would normally handle her case, while the alleged rapist

worked across the hall from her mother in the psychology department. They shared a water cooler.

Marconi, a trained advocate herself, had come to Germany to work as an employment counselor for soldiers leaving the Army and, like Michael, she was a civilian employee working for an outside contractor. She knew that contract employees can be fired for any reason, at any time, so accusing an Army captain of rape had its risks.

But Marconi decided to seek help anyway.

She called the Heidelberg Army Community Service program June 25 and spoke to a supervisor, who assigned the case to Michael even though she technically was assigned to work only on domestic violence cases.

Marconi certainly didn't care about this distinction – she just needed someone who knew how to traverse the complex military complaint system – and Michael wasn't about to turn down a supervisor's orders or a rape victim's request for help, so they went together to the hospital and then reported the rape to military investigators

Both Marconi and Michael said they told investigators and doctors that the case could not be handled by the Heidelberg social work office because of its proximity to the alleged rapist's office and because Marconi didn't want her mother and her mother's co-workers to have access to her file.

They were assured that the case would be transferred to the Mannheim social work office, they said.

But that never happened and when Michael attempted to find out why – and after she met with the alleged offender's commander to discuss Marconi's concerns – she suddenly found herself in trouble.

In an e-mail written June 30 – five days after Marconi reported the rape to military investigators – a friend of the alleged offender and the acting chief of the Heidelberg social work office wrote to Michael's boss complaining about her actions in the case.

In that memo, Capt. Kevin Wagner said Michael had “misrepresented” herself to the victim and to the community as an advocate for sexual assault victims. He also complained that she inappropriately contacted the Army psychologist's commander before he'd been notified officially about the incident and made unrealistic demands for an apology from the alleged offender and a no-contact order to prevent the psychologist from contacting Marconi.

“The commander of course could not give the victim what she was asking for because he still had no finding other than an accusation that something happened,” Wagner wrote. “If he had control of both victim and offender in his unit at this point he could issue a no-contact order and do what he could to separate the two and prevent contact, however he could not take any administrative action until he had more to go forward with.”

Wagner also accused Michael of “pushing this victim into taking actions that she otherwise would not have taken” – such as calling for an appointment with the Mannheim social work office.

What he didn’t say is that he’d already assigned the case to his own office – despite Marconi’s concerns that it be handled elsewhere. When Marconi learned that her complaint had been transferred to her mother’s office, she was livid.

In a recent interview, Marconi said the situation was completely untenable.

“[Wagner] took the case from Mannheim and brought it back to Heidelberg and assigned it to a counselor I know, who is also a little bit friendly with the rapist,” she said. “I was furious.”

Wagner has left the Army and is no longer living in Germany, sources said. He could not be reached for comment.

The criminal case wasn’t going anywhere, either.

Marconi said she was called back by military investigators the day after she reported the rape and grilled, without Michael or anyone else present, about her complaint, and then told they weren’t going to pursue the case.

“I was exhausted. I was crying. That’s when they asked me if I was sure I wanted to accuse somebody of that rank,” Marconi said. “I said, ‘He’s working on a Ph.D. I’m working on a Ph.D. Who’s outranking whom here?’ I wasn’t familiar with the military at that time. I’d only been here 21/2 weeks.”

And the meeting with the alleged rapist’s commander that Wagner accused Michael of bungling and making unreasonable demands? Marconi said the commander did tell her that “he’d already issued a stay-away order and some kind of written reprimand that was put in the file.”

“I never knew that wasn’t done, but Capt. Wagner wrote in a memo that we knew these things can’t be done,” Marconi said later. “He never had one of his counselors tell me that? I thought I just hadn’t received a copy.”

In fact, because they were under the impression that it was being done, Michael said she continued to call and e-mail the commander to find out why they hadn’t received a copy of the no-contact order - which was also later held against her.

Michael was told Aug. 5 by her supervisor that her contract would be terminated for “supervision and liability” issues, according to documents.

She didn’t know about Wagner’s June 30 e-mail complaint about her handling of the Marconi case. Nor did she know about her own boss’s letter to the contracting office, written July 30, detailing the reasons she was going to be fired.

The two letters are nearly identical.

Appeal For Help

Michael, who now attends the University of Heidelberg Medical School, complained to everyone who would take a phone call and requested a meeting with the commander of the United States Army, Europe & 7th Army, Gen. B.B. Bell.

On Aug. 10, Michael sent an appeal for help to Bell, who she hoped would be receptive because of the strong no-tolerance position he's taken on sexual harassment and assault. The message – “Sexual Assault, not in OUR Army” – scrolls across the top of the European command's website, with a link to Bell's own directive on the issue.

Michael's e-mail, which she provided to The Courant, read as follows:

“Hello General Bell, I am the Victim Advocate with the Heidelberg Family Advocacy Program at ACS. I was informed a few days ago that my contract will be terminated immediately due to technical reasons.

The true reason my contract is being terminated is because of my assistance in a sexual assault case against a Heidelberg officer and psychologist. Could you possibly assist with my case?”

Bell's response was to order her immediate removal from the base for sending “damaging e-mails,” Michael said.

According to documents obtained by The Courant, Lt. Col. Diane M. Vanderpot, commander of the 411th Base Support Battalion in Heidelberg, carried out the order the next morning.

An affidavit, written by a contract specialist for the Army in Heidelberg, spells out how it happened.

The specialist wrote that Michael's boss “received a call from the 411th BSB Commander the previous evening. The commander had been advised from the [U.S. Army Europe Command Gen. Bell] that contractor Kayla Michael, who is in the process of being terminated, had sent out a damaging email to the General and other Army Community Services employees and clients concerning the incidents occurring at ACS.”

Michael said there was nothing “damaging” in any of her e-mails, to Bell or others, and she provided copies of them to The Courant.

“The whole thing would be so much easier for me to accept if the general were a ‘normal general’ and didn't give a damn about soldiers raping whomever,” Michael said. “To this day, he makes commercials right and left saying ‘sexual assault will not be tolerated in our Army.’”

Jane Crichton, spokeswoman for Bell, said she would get answers to The Courant's questions about Bell's involvement in the case, but had not responded by the end of the week.

Michael's requests for help from the Army's Office of the Inspector General and the U.S. Office of Special Counsel were all denied. According to the responses she received, Michael had no rights once her contract was terminated.

It wasn't until her plea for help reached the Miles Foundation that anyone began to listen.

The Miles Foundation contacted the U.S. Senate Armed Services Committee Aug. 19, which then requested an investigation from U.S. military authorities in Germany.

That investigation, completed in January, wasn't reviewed by Russell Hall, the regional director for the Installation Management Agency Europe, which oversees the Heidelberg base, until mid-March. The Courant's first request to Hall's office was March 2; an earlier request, to the attorney who conducted the investigation for Hall, was made Feb. 10.

Hall's spokeswoman, Kim Walz, said Friday that Hall recently made a recommendation in the Michael case, but she was not able to provide any information about the contents of the report or the recommendation.

Walz said Hall was not available to discuss the report because Friday was a "training holiday for the troops."

Walz said Hall ordered the investigation to determine whether Michael's contract was "illegally terminated and to ascertain if the program had suffered as a result of the termination." She also wasn't able to say Friday exactly when Hall ordered that investigation.

Michael's position as victim advocate has been covered by two other staff members in the office since she was fired, Walz said, and a new Armywide contract for victim advocates will result in one advocate at the 411th in Heidelberg. Walz said the office has served a total of two alleged victims from October to December 2004.

"Mr. Hall takes these programs very seriously," Walz said. "He has made it clear to everyone in IMA-Europe that the Army's sexual assault policy will be strictly enforced in Europe and victims will be treated with dignity and respect."

Whatever the outcome of the Michael investigation, however, Marconi said she does not feel like she was treated with dignity or respect at any point - except by Michael.

"Her professionalism is amazing," Marconi said. "I thought it was really disgusting she was fired. She didn't quit when they wanted her to quit. They wanted her to just give me my rights, tell me the case was over and move on. She wasn't going to do that."

After her case was transferred to her mother's office and not prosecuted by military investigators, Marconi said she gave up trying to get help. She's eager to leave Germany and her job with the Army.

"I got a bill for \$148 for my own rape kit and it went to my work on the base. They didn't even send it to my home," Marconi said. "Every once in a while I come into the worst pain."

Incomplete Response

The response from the Army about Michael's case, eight months after the fact, is not yet complete.

Walz said Hall ordered the investigation because of the e-mail Michael sent to Bell requesting help. But documents and interviews suggest the only timely response to Michael's plea for help from the Army or IMA-Europe was to order her from the base – not once, but twice.

In fact, it was a deputy garrison commander under Hall who agreed to meet with Michael after she was removed from the base Aug. 11 and who, according to Michael, kept their appointment only to order her to leave immediately or face forcible removal.

And the timing of the investigation ordered by Hall's office suggests it was a request from the Senate Armed Services Committee in Washington, D.C., not Michael's pleas for help, that prompted military officials in Germany to take a closer look at her case.

Walz said the military might not be getting a fair shake in the Michael case because it is limited in what it can say publicly about its own actions.

"People like Ms. Michael are free to tell their side of the story, but we are not," Walz said. "Our hands are tied because of privacy laws and regulations. I don't think in any of the cases anything is black or white."

After being told that Michael provided documents to back up most of her claims, Walz said she would look into questions about how the advocate was treated by Hall's staff and stated, "If that's what happened, that's bad. I can tell you, Mr. Hall wouldn't tolerate that."

But tolerate this kind of treatment is exactly what the military has done, advocates said, and nothing in the new Defense Department's policies will prevent commanders and others from engaging in the same behavior.

Slaughter said she will work to strengthen her bill to provide even more protections for advocates.

In addition to the whistle-blower protections supported by advocates such as Hansen, Slaughter's bill would establish two senior executive level offices, Director of Special Investigations and Office of the Victims' Advocate.

The first would enforce timely investigations of sexual assault, domestic violence, family violence and stalking, and manage sexual assault response teams and domestic violence response teams. The other would improve access to services for victims and survivors.

Although the Defense Department Friday announced its new confidentiality policy for victims, to be implemented within 90 days, it is unclear whether the Pentagon supports greater protections for the advocates themselves.

The Pentagon's new policy, which it prefers to call "restricted reporting," would allow victims to report a rape confidentially to one of the newly created sexual assault response coordinators or medical staff. The case would then be assigned to an advocate, who would advise the victim of his or her rights. The new policy also allows for evidence to be collected by medical personnel, even if the victim chooses not to formally report the rape.

Commanding officers will be informed within 24 hours about all reported assaults – even those in which the victim chooses not to be identified or formally report a rape – in order to give them "a more realistic assessment of what is happening" in their ranks, said David S.C. Chu, undersecretary of defense for personnel and readiness.

"If we're successful, we'll see more incidents reported," Chu said during a press briefing at the Pentagon Friday. "Given the severe under-reporting we've spoken [about], that's going to be progress, frankly."

The new policy makes no mention of confidentiality for victims of domestic violence, however, and it was unclear Friday whether the same rights would extend to them. Nor does it speak to the types of problems encountered by advocates such as Michael, who is still waiting to hear from commanders in Germany about her case.

She fears that what happens at remote bases is beyond the reach of even the most well-intentioned military brass in Washington, D.C.

In a letter Michael wrote Aug. 20, pleading for help with her case, she describes being chased off the base earlier that day, still clearly rattled by the experience. "I biked as fast as I could to the gate, with the hairs on the back of my head on end. I fully expected to be shot at," she wrote, ending with a question that has yet to be answered: "Guys, all I am is a victim advocate. I am sooo talk-to-able. What on earth is happening to me?"

A discussion of this story with Courant Staff Writer Elizabeth Hamilton is scheduled to be shown on New England Cable News each hour Monday between 9 a.m. and noon.

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