

Response Systems Panel

Public Meeting - September 25, 2013

The Response Systems to Adult Sexual Assault Crimes Panel (RSP) is a federal advisory committee within the Department of Defense (DoD) operating pursuant to Section 576(a) of the National Defense Authorization Act for Fiscal Year 2013, the Federal Advisory Committee Act of 1972, The Government in Sunshine Act of 1976, and other appropriate federal regulations. The RSP held a public meeting on September 25, 2013. The meeting, which was held at the U.S. District Court for the District of Columbia, 333 Constitution Avenue NW, Washington, D.C., 20001, began at 9:10 a.m. and concluded at 4:18 p.m.

Participating Panel Members:

Honorable Barbara S. Jones – Chair
Honorable Elizabeth Holtzman
Brigadier General (ret.) Malinda Dunn
Colonel (ret.) Holly Cook
Professor Elizabeth Hillman
Vice Admiral (ret.) James Houck
Brigadier General (ret.) Colleen McGuire
Mr. Harvey Bryant
Ms. Mai Fernandez

Participating Response Systems Panel Staff Members:

Colonel Patricia Ham, USA, Staff Director

Other Participants:

Ms. Maria Fried, Designated Federal Officer

Presenters:

Lieutenant General Michael Linnington, U.S. Army
Colonel Corey Bradley, U.S. Army
Rear Admiral Dixon Smith, U.S. Navy
Captain David Harrison, U.S. Navy
Commander Frank Hutchison, U.S. Navy
General Edward Rice, U.S. Air Force
Colonel Polly S. Kenny, U.S. Air Force
Major General Steven Busby, U.S. Marine Corps
Lieutenant Colonel Kevin Harris, U.S. Marine Corps
Rear Admiral Thomas Ostebo, U.S. Coast Guard
Commander William Dwyer, U.S. Coast Guard
Brigadier General Richard C. Gross, Legal Counsel, Chairman of the Joint Chiefs of Staff
Lieutenant General Flora D. Darpino, The Judge Advocate General, U.S. Army

Vice Admiral Nanette M. DeRenzi, Judge Advocate General, U.S. Navy
Lieutenant General Richard C. Harding, The Judge Advocate General, U.S. Air Force
Major General Vaughn A. Ary, Staff Judge Advocate to the Commandant of the Marine Corps
Rear Admiral Frederick J. Kenney, Judge Advocate General and Chief Counsel, U.S. Coast
Guard

Public Comment

Ms. Miranda Peterson, Protect Our Defenders

PANEL MEETING

At 9:10 a.m., Colonel Patricia Ham, RSP Staff Director, and the Honorable Barbara Jones, RSP Chair, provided brief administrative comments. The meeting was recorded and transcribed by a court reporter. A copy of the transcript is appended to these minutes and is incorporated by reference.

Lieutenant General (LTG) Michael Linnington, U.S. Army

LTG Linnington spoke regarding his previous assignment as the Commanding General of the Military District of Washington, where he served as a General Court-Martial Convening Authority (GCMCA). He briefly discussed his command experience and his perspective on the UCMJ as a critical commander's tool for maintenance of good order and discipline. He also discussed his experience and relationship with judge advocates throughout his command time.

Colonel (COL) Corey Bradley, U.S. Army

COL Bradley discussed his experience as the Staff Judge Advocate for the Military District of Washington, working with LTG Linnington, and gave a brief overview of his experience.

Rear Admiral (RADM) Dixon Smith, U.S. Navy

RADM Smith is the commander of the Navy Region Mid-Atlantic, based out of Norfolk, Virginia, and a GCMCA for Navy personnel from Maine to North Carolina. After a brief overview of his command experience, RADM Smith discussed his role as a commander in the administration of military justice.

Captain (CAPT) David Harrison, U.S. Navy

CAPT Harrison is the Commanding Officer of the Navy Region Southwest Regional Legal Service Office (RLSO). CAPT Harrison gave a brief overview of his experience, including board selection by the Navy as a military justice litigation expert.

Commander (CDR) Frank Hutchison, U.S. Navy

CDR Hutchison is currently assigned in the Military Personnel Division of the Office of the Judge Advocate General, United States Navy. He was previously the legal advisor to the commander of the Navy Region Mid-Atlantic. He provided a brief overview of his experience.

General (Gen) Edward Rice, U.S. Air Force

Gen Rice gave a brief overview of his command experience over a thirty-five year career. Gen Rice discussed a commander's UCMJ authority as it relates to the ability to maintain good order and discipline and mission accomplishment. He discussed recent increases in sexual assault reporting, and his opinions regarding the underlying causes of the increase.

Colonel (Col) Polly S. Kenny, U.S. Air Force

Col Kenny is currently Gen Rice's Staff Judge Advocate at Air Education and Training Command. Col Kenny gave a brief overview of her career and experience.

Major General (MajGen) Steven Busby, U.S. Marine Corps

MajGen Busby is the commanding general of the Third Marine Corps Aircraft Wing and Headquarters at Marine Corps Air Station Miramar. MajGen Busby briefly discussed the Marine Corps' efforts to combat sexual assault through both prevention and response improvements in the past several years, including increased training and education for commanders. After brief comments from LtCol Harris, MajGen Busby discussed multiple new initiatives on sexual assault prevention.

Lieutenant Colonel (LtCol) Kevin Harris, U.S. Marine Corps

LtCol Harris discussed recent changes in the Marine Corps legal community, including the sexual assault withholding policy to senior commanders and reorganization of the legal community to provide specialized support to sexual assault prosecutions.

Rear Admiral (RADM) Thomas Ostebo, U.S. Coast Guard

RADM Ostebo is the commander of the 17th Coast Guard District headquartered in Juneau, Alaska. He discussed his mission and relationships with judge advocates in his District. RADM Ostebo further outlined the Coast Guard's prevention and response efforts, training, and educational initiatives. He also briefly discussed his experience with the UCMJ while in command.

Commander (CDR) William Dwyer, U.S. Coast Guard

CDR Dwyer is RADM Ostebo's Staff Judge Advocate. CDR Dwyer discussed his experience as both a line officer and a judge advocate, and briefly addressed Coast Guard initiatives in prevention and response.

Question and Answer from the Panel to the Presenters

Chairwoman Jones opened the discussion for questions from the Panel members to the presenters. The initial questions revolved around logistical implications of removing the commander from the military justice process. All presenters opined that there would be significant logistic challenges for each service. Several raised concerns about practical implications, including resourcing of courts with command resources, bifurcating offenses and disposition authority, and command prioritization of input on legal issues.

Next, the Panel asked about command climate concerns and metrics for command accountability for each service. The services discussed evaluations, climate surveys, sexual assault survey data, trust of subordinates, and the efficacy of commanders without UCMJ authority. They discussed concerns raised by the previous day's presenters regarding trust of subordinates in commanders. The services noted that prosecution does not equate to prevention.

Several questions were asked about a judge advocate's ethical and professional responsibility obligations, the attorney-client relationship in the military, attorney-client relationships where the service (not the commander) is the client, disagreements between staff judge advocates and commanders, and how those disagreements were resolved.

Panel members then returned focus to questions about a commander's qualifications for making prosecutorial decisions, and a commander's role in victim care responsibilities. Panel members further proposed questions about a pilot program to test efficacy of the system on a smaller scale prior to full implementation.

Panel members asked questions about a possible review authority for initial dispositions when a commander chooses not to prosecute, in lieu of total removal from the referral process. The services explained that the process is already informally in place in most commands. Questions went on to ask about the panel selection process and the impact of removing the commander from that process as well.

The final questions focused around the continued perception of fairness in the system on behalf of the accused and the defense bar.

Chairwoman Jones thanked the presenters and the Panel recessed for lunch.

Brigadier General (BG) Richard C. Gross, Legal Counsel, Chairman of the Joint Chiefs of Staff

BG Gross briefly explained the role of the Joint Staff and the relationship with each of the services. BG Gross focused on three main issues: careful study prior to changing the military justice system to avoid unintended consequences, the role of the commander, and his experience and perspective on the justice systems of the Allies.

Lieutenant General (LTG) Flora D. Darpino, The Judge Advocate General, U.S. Army

LTG Darpino discussed the crucial role commanders play in the military justice process and the relationship to good order and discipline. LTG Darpino conveyed the Army's efforts in special victim capabilities. She discussed program efficacy and the increased prevention efforts Army-wide. LTG Darpino asked the Panel to continue to consider the worldwide deployability of military courts-martial, the paramount importance of command authority, and the positive trends in prevention and response to sexual assault which has begun in the last several years.

Vice Admiral (VADM) Nanette M. DeRenzi, Judge Advocate General, U.S. Navy

VADM DeRenzi discussed the recent initiatives in prevention and response, including the Victims Legal Counsel Program and a closer focus on victims' rights. She discussed specialized training for judge advocates and criminal investigators, sexual assault response coordinators, victim advocates, and highly-qualified experts. VADM DeRenzi then discussed the importance of command authority in the military justice process and emphasized the role of the commander in the military.

Lieutenant General (Lt Gen) Richard C. Harding, The Judge Advocate General, U.S. Air Force

Lt Gen Harding opened his remarks by focusing on victim care and offender accountability. He emphasized that military commanders were critical in fulfilling that mission. Lt Gen Harding opined that removing the commander from the military justice system would decrease confidence in the command and detract from military discipline.

Lt Gen Harding then discussed the success of the Air Force's pilot Special Victims Counsel Program, which provides legal representation to victims of sexual assault throughout the investigation and court-martial process. Lt Gen Harding credits the program with increased victim confidence in the military justice system, better reporting, and higher victim satisfaction at the completion of the court-martial process.

Major General (MajGen) Vaughn A. Ary, Staff Judge Advocate to the Commandant of the Marine Corps

MajGen Ary opened his remarks by focusing on the need to establish victim trust of leadership and the justice system. He noted that since recent training, education, and prevention initiatives have been in place, reporting has increased. He outlined the commander's responsibility for all success and failure within a unit, to include sexual assault. MajGen Ary also noted that the Marine Corps has recently realigned its prosecution efforts to better support sexual assault prosecutions. MajGen Ary stated that the Marine Corps has similarly strengthened the Defense Services organization, leading to increased confidence in the military justice system by both the victim and the accused.

Rear Admiral (RADM) Frederick J. Kenney, Judge Advocate General and Chief Counsel, U.S. Coast Guard

RADM Kenney first focused on proactive steps taken by the Coast Guard over the last two years to improve sexual assault prevention and response. He outlined a number of training and education efforts Coast Guard-wide from a specialized sexual assault prevention department. RADM Kenney discussed the Coast Guard's efforts in creating Special Victims Counsel, and how these efforts continue to support ongoing victim care. VADM Kenney closed his remarks by discussing the importance of a highly disciplined force and the commander's active role in ensuring good order and discipline.

Question and Answer from the Panel to the Presenters

Chairwoman Jones opened the discussion for questions from the Panel members to the presenters. The first set of questions focused on the concerns that 1) commanders sometimes made bad decisions about prosecutions and/or victim care and 2) that command involvement in the process led to retaliation. The presenters responded that commanders were in the best place to prevent retaliation, and were not a source of retaliation. Further, that the collaborative role of the judge advocate and commander often leads to good decisions and can overcome personal biases or improper views.

Questions from the Panel then focused on the commander's UCMJ authority playing a direct role in the maintenance of good order and discipline. Several presenters commented that the commander's responsibility to set standards and have the authority to enforce those standards were crucial to the ability to command.

The next questions focused on formalizing concurrence of the judge advocate and commander prior to disposing of charges and logistical resourcing of courts-martial in the event that commanders were removed from the military justice system.

The Panel members then asked questions about the Article 32 investigation and its purpose. Some of the issues discussed included the use of the Article 32 as a discovery tool and how the rape shield protections should be implemented in the Article 32, and comparing its use to that of a grand jury. In discussing comparative systems, the Panel asked questions regarding possible implementation of sentencing guidelines or mandatory minimums.

BG Gross informed the Panel that the Chairman of the Joint Chiefs of Staff formally recommended a comprehensive review of the UCMJ and to study the implications of sentencing guidelines or mandatory minimums.

Public Comment from Ms. Miranda Peterson, Protect Our Defenders

Ms. Peterson addressed the Panel and discussed concerns about sexual assault in the military. She asked that the Panel consider removal of the commander and reforming the jury selection process and the Article 32 process. She raised concerns about victims being ostracized by their peers and leaders, and concern about a commander's ability to set aside a conviction.

The Designated Federal Officer closed the public meeting at 4:18 p.m.

I hereby certify, to the best of my knowledge, the foregoing minutes are accurate and complete.

A handwritten signature in cursive script that reads "Barbara S. Jones".

Barbara Jones

Chair

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