

Response Systems Panel
Minutes of January 30, 2014 Public Meeting

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 governing federal regulations. The RSP held a public meeting on January 30, 2014, to hear from retired senior officers and commanders on the commander's role in military justice processes and sexual assault cases. The meeting began at 8:46 a.m. and concluded at 4:14 p.m. in the Faculty Conference Room of George Washington University Law School at 716 20th Street, NW, Washington, DC. The transcript of the January 30, 2014 public meeting is incorporated herein by reference.

Participating RSP Members:

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

Presenters:*

Major General (ret.) Martha Rainville, USAF*
Brigadier General (ret.) Pat Foote, USA
Rear Admiral (ret.) Marty Evans, USN*
Rear Admiral (ret.) Harold Robinson, USN
Captain Lory Manning (ret.), USN
Colonel (ret.) Paul McHale, USMC*
Ms. K. Denise Rucker Krepp, former U.S. Coast Guard JAG and former Chief Counsel, U.S.
Maritime Administration
General (ret.) Ann Dunwoody, USA
General (ret.) Roger Brady, USAF
Vice Admiral (ret.) Mike Vitale, USN*
Lieutenant General (ret.) James Campbell, USA
Lieutenant General (ret.) Ralph Jodice, II, USAF*
Rear Admiral (ret.) William Baumgartner, USCG

* by telephone

RSP Staff Participants:

Colonel Patricia Ham, RSP Staff Director
Lieutenant Colonel Kyle Green, RoC Branch Chief

Other Participants:

Ms. Maria Fried, Designated Federal Official

After the Designated Federal Officer opened the meeting, Judge Jones gave opening remarks.

Former Commanders and Officers Speaking in support of the Military Justice Improvement Act

Judge Jones introduced a panel of seven former commanders and officers who support removing the power to convene courts-martial from commanders, which has been proposed by Senator Kirsten Gillibrand, the author of the pending bill entitled the Military Justice Improvement Act (MJIA). Speaking in support of the MJIA were Generals Rainville and Foote, Admirals Evans and Robinson, Colonel McHale, Captain Manning, and Ms. Krepp.

In their opening remarks, several of the presenters offered each of the following reasons why convening authority should be removed from commanders: the current system has been unsuccessful when it comes to preventing and responding to sexual assault; apparent and/or actual conflicts of interest impede reporting and the impartial disposition of cases; convening authority is unnecessary to a commander's ability to maintain good order and discipline; underreporting of sexual assault is the result of victims' lack of confidence in commanders; commanders' lack of legal background; and commanders' exercise of convening authority is often unduly influenced by command factors extraneous to the merits of each given case. Following their opening remarks, presenters answered questions posed by RSP Members.

Former Commanders Speaking in Opposition of Removing Convening Authority from Commanders

Following a brief recess, the RSP heard from a panel of the following six former commanders who oppose removing convening authority from commanders: Admirals Vitale and Baumgartner and Generals Dunwoody, Brady, Campbell, and Jodice.

In their opening remarks, the presenters emphasized the following reasons why commanders should retain convening authority: it is necessary for commanders to remain both responsible and accountable for sexual assault prevention and response; it is necessary to maintain good order and discipline; removal of convening authority from commanders would

erode the trust of their subordinates; time should be allowed for the recent statutory reforms and DoD initiatives to be fully implemented; as challenging a problem as sexual assault cannot be solved without commanders' unique skills and authority; and commanders are chosen for their judgment, a central criterion in the proper exercise of convening authority. Following their opening remarks, presenters answered questions posed by RSP Members.

Public Comment

After a lunch recess, the panel reconvened to hear public comment from Ms. Melissa Davis, Ms. Ginny Lee, and Ms. Sarah Zak.

Deliberations

After a brief recess, the panel reconvened to consider and deliberate on the Role of the Commander Subcommittee's Initial Assessment of Whether Senior Commanders Should Retain Authority to Refer Cases of Sexual Assault to Courts-Martial. Judge Jones reported the 11 findings of the Subcommittee – including that the evidence did not support a conclusion that removing convening authority from commanders would reduce the incidence or increase the reporting of sexual assault – as listed in the two-page cover memorandum accompanying the Assessment. Judge Jones also recited the conclusions reached at this point by the Subcommittee, as set forth on Pages 16-17 of the Assessment. Finally, Judge Jones reiterated that the work of the Subcommittee was not finished and that it could be expected to hear more information on the issue addressed by the Assessment.

Following the above report to the full Panel of the Role of the Commander Subcommittee, Professor Hillman presented her separate statement to the Panel in which she disagreed with the above-referenced findings and conclusions of the Subcommittee.

At this point, the full Panel deliberated on the Assessment of the Role of the Commander Subcommittee. To start, Judge Jones underscored the importance in her own mind of the fact that contrary to popular perception, a convening authority is almost always not the direct commander of either the accused or the accuser. Next, other RSP Members who serve on the Subcommittee voiced their support for the Assessment of the Subcommittee. First, noting that she initially was very receptive to the idea of removing convening authority from commanders, Representative Holtzman explained that she began to change her mind in light of the lack information as to how, in the new office with convening authority, priorities would be set and how accountability would be ensured. Ms. Holtzman also opined that while trained and professional, ostensibly independent prosecutors would actually be bureaucrats who would be no less influenced by extraneous factors, such as their win/loss ratios, than commanders.

Also speaking in support of the Subcommittee's Assessment, Admiral Houck opined that referral decisions are well-served by the input of commanders and their interaction with their staff judge advocates; he noted that his opinion was based on his six years of experience leading the Navy JAG Corps.

RSP Members who are not members of the Subcommittee also made remarks on the findings and conclusions reached by the Subcommittee. In particular, foreseeing a centralized prosecutorial bureaucracy remote from the commands in which cases arise, Colonel Cook voiced concern about delays – in the military justice process as well as in providing services to victims – that she expected would result from removal of convening authority from commanders.

Following Colonel Cook's remarks, Mr. Bryant stated that he remained unconvinced that removing convening authority from commanders would undermine good order and discipline, noting that subordinates remain disciplined in police departments even though sheriffs and chiefs of police do not make prosecutorial decisions. Mr. Bryant further opined that full-time prosecutors are in the best position to evaluate the evidence in order to determine whether to refer charges for court-martial. In response to Mr. Bryant's argument that cases should be decided based solely on facts, Ms. Fernandez asserted that problems should be solved on the basis of facts and opined that the facts heard by the Panel and Subcommittee thus far do not suggest that removing convening authority from commanders will solve the military's sexual assault problem. Ms. Fernandez added that resources should be directed to implement changes that reasonably can be expected to make a positive impact. The RSP members each voiced their opinions and concerns.

After deliberations had concluded, Judge Jones polled RSP Members on the Subcommittee's Initial Assessment. Colonel Cook agreed with the Subcommittee's conclusion that commanders should retain convening authority but offered substantive comments on the content of the Assessment. The remaining Members voted without offering substantive comments, as follows: General McGuire stated that she supported the Assessment; General Dunn, Representative Holtzman, and Admiral Houck each stated that they concurred in the Subcommittee's recommendation; Professor Hillman stated that she did not concur; Mr. Bryant advised that he disagreed, at this stage, with the Subcommittee's conclusions; and Ms. Fernandez stated that she concurred.

Finally, Judge Jones thanked RSP staff members for their support and once again advised that much work remained for the Panel ahead. The meeting ended at 4:14 p.m.

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



Barbara S. Jones

Chair

Role of the Commander Subcommittee

Response Systems to Adult Sexual Assault Crimes Panel

Attachments:

1. RoC Assessment - Removal of CC as CA (FINAL).pdf
2. Separate statement Hillman RoC subcommittee (FINAL).pdf