

**Response Systems Panel
Comparative Systems Subcommittee
Minutes of January 7, 2014 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 other appropriate federal regulations. The Comparative Systems Subcommittee (CSS) held a meeting on January 7, 2014, to receive an overview of training of prosecutors and defense counsel in sexual assault cases. The meeting began at 8:36 a.m. and concluded at 5:54 p.m. The transcript of the January 7, 2014, proceedings will be appended and is incorporated herein by reference.

Participating CSS Members:

Dean Elizabeth Hillman, Chair
Brigadier General (ret.) Malinda Dunn
Mr. Harvey Bryant
Colonel (ret.) Larry Morris
Colonel (ret.) Stephen Henley
Mr. Russell Strand
Ms. Rhonnie Jaus

Other Participants:

Colonel Patricia Ham, RSP Staff Director
Ms. Maria Fried, Designated Federal Officer
Mr. William Sprance, Alternate Designated Federal Officer
Mr. Dillon Fishman, RSP Staff Member
Ms. Janice Chayt, RSP Staff Member

Presenters:

COL (ret.) Fran Gilligan
Candace Mosley, National District Attorneys Association
Viktoria Kristiansson, AEquitas
Lisa Wayne, NACDL
Yvonne Younis, Defender Association of Philadelphia
LTC Matthew Calarco, USA
Col Ken Theurer, USAF
Col Vance Spath, USAF
Mr. Dave Houghland, USAF
LCDR Justin McEwen, USN
LtCol George Cadwalader, USMC
Ms. Bridget Ryan
Ms. Sandra Tullius
Mr. Ron White
Mr. Edward O'Brien
Mr. Neal Puckett

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Ms. Teresa Scalzo, USN
Ms. Kathleen Coyne
Ms. Claudia Bayliff

Introductory Remarks

After Ms. Fried opened the meeting, COL Ham thanked everyone for attending and explained that the purpose of the meeting was to look at evidentiary rules and training of defense counsel and prosecutors.

Military Rules of Evidence Compared to Federal Rules of Evidence

COL(R) Fran Gilligan presented information to the subcommittee on the comparison between the Military Rules of Evidence (MREs) and the Federal Rules of Evidence (FREs). He stated that the rules were substantially the same. COL Gilligan also discussed the changes to the Article 32 hearing required by the 2014 National Defense Authorization Act (NDAA).

Training Civilian Prosecutors

Candace Mosley, Director of Programs for the National District Attorneys Association (NDAA), described the NDAA's tuition based hands-on trial advocacy training and topic-specific conferences. She stated that the experience level of prosecutors assigned to sexual assault cases varies widely dependent on the size of the office and location. The NDAA provided a one-week version of the trial advocacy course to the Navy customizing the scenarios to ones pertinent to each bases specific needs. Military attorneys have also attended their courses. Although training is available, she noted that it is up to each jurisdiction to allow their personnel to attend. Many jurisdictions provide in-house training or have their own training institutes.

Viktoria Kristiansson, AEquitas, the Prosecutors' Resource on Violence Against Women, explained that AEquitas is dedicated to improving the quality of justice in sexual violence cases by providing 24/7 case consultation, legal research, training, and publications. The foundational principles of AEquitas training are that justice must be sought in a manner that is victim-centered, offender-focused, and collaborative. Training is primarily instructor-led, and hands-on, and is provided at no-cost. Training is provided at the national, state, and local-levels, as well as internationally. State and local training is often tailored to the specific needs of the jurisdiction. They have developed training for the Navy as well as the Army and Air Force. They use a participant satisfaction evaluation to measure the effectiveness of their training.

Both agencies have some on-line training with webinars, video-conferencing, or DVDs, but feel that in-person training is much more effective. The on-line training may be cost effective, but they do not provide feedback and do not change competencies to the same degree as a face-to-face training.

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Training Civilian Defense Counsel

Lisa Wayne, National Association of Criminal Defense Lawyers (NACDL), stated that she believed the military does a lot right and much of the current scrutiny is not fact based. She noted that military personnel attend the training provided by her organization. Ms. Wayne emphasized that sexual assault cases can be just as serious as a murder case, and there are often collateral consequences to the client that will affect the rest of their lives. She believes it is essential for defense counsel to have their own investigators to effectively represent their clients.

Yvonne Younis, Defender Association of Philadelphia, described the unique workings of the Philadelphia system. Most of the training is done one-on-one or in small groups within the office. Their defense attorneys normally have already tried over 1200 cases before being assigned their first rape jury case having worked their way up from Misdemeanor Court and other types of felony cases. She noted important areas of training are: the Sex Offender Registration and Notification Act (SORNA), interview techniques,

Both presenters explained that defense attorneys need training on: interview techniques, forensics, understanding DNA, rape kits, the sexual assault forensic examination, alcohol and drug related incidents, briefing a client on the consequences of a guilty plea and the Sex Offender Registration and Notification Act (SORNA), how to access restricted records, and rape shield laws.

Training of Military Counsel (Prosecution and Defense)¹

Lieutenant Colonel (LTC) Matthew Calarco, Chair of the Criminal Law Department, Army JAG School, described the Army's legal training program from the Officer basic Course through advanced and specialized training. The school also has an accredited LL.M. graduate course program. He explained that the training is a blend of lecture, student problem-solving sessions, workshops, and small group sessions, and culminates with a mock trial exposing them to all aspects of a case. The primary fact case used in the basic course is a sexual assault case and is the background for all of their training. They try to run the trial advocacy course at the same time as the Special Victim Counsel course so that during the mock trial students play their own roles as prosecution, defense, and Special Victim Counsel to participate in that interaction in a courtroom setting. After training they have reach back capability and will work with a senior counsel.

Colonel (Col) Ken Theurer, Commandant of the Air Force Judge Advocate General School, stated they provide resident training, on-site training, and online education. Col Vance Spath and Mr. Dave Houghland ensure that the training provided is effective in the field. Col Theurer

¹ The information provided by the military members contains opinions expressed by the presenters which do not necessarily represent the views of the Services or the Department of Defense.

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went over the full range of courses taught. In the Air Force to be certified as a trial or defense counsel they must not only graduate from the nine-week basic course, but they must also demonstrate proficiency in the courtroom, perform every phase of a court-martial, and be submitted by a military judge and your SJA for certification. This can take up to four-years. A sexual assault is used as the fact scenario in the basic course. The course uses a lot of small group interactions and has three advocacy exercises. The school offers several levels of advocacy courses for prosecution and defense as well as specialized courses to include an Intermediate and Advanced Sexual Assault Advocacy Course. They use a number of JAG Reservists as faculty to teach litigation course who have vast civilian experience.

Lt. Col. George Cadwalader, Executive Officer of the Naval Justice School and LCDR McEwen, Military Justice Department Head, Naval Justice School (NJS), provided a brief overview of the Naval Justice School and the training they provide. They primarily train judge advocates from the Navy, Marines, and the Coast Guard; commanders and senior officers who require military law training to perform their command staff duties; and collateral duty legal officers. The JAG basic course is ten-weeks covering military justice, civil, and operational law. One specialized course is Prosecuting Alcohol-Facilitated Sexual Assaults, a one-week advanced trial advocacy course. They also have Defending Sexual Assault Cases course, a separate one-week advanced advocacy course. The NJS now has a Victims Legal Counsel Course and last August had a Special Victim Capability Course as well as offering online primer courses on many topics.

Many courses offered at the various schools are open to members of the other services, and each faculty has members of the other services. Some of the members on the panel stated that it was their opinion that fully consolidating training would be a logistical problem as all the schools are running at nearly full capacity, no facility has the room to host the size of number of classes that would be required at any one location. They do reach out to the other services for subject matter experts and the commandants of the schools meet and discuss curriculum. Judge advocates from all the services have the opportunity to attend civilian courses when time and funding is available.

Additional Training of Military Counsel (prosecution and defense):

Mr. Edward O'Brien, HQE, Army Defense Counsel Assistance Program (DCAP), explained that defense counsel are generally inexperienced when they assume their duties, and it is imperative that the Army compensate for that lack of experience through training. Mr. Ron White, HQE, Army DCAP, explained that his duties include training and preparing written products offering advice on current events and issues, as well as assisting defense counsel one-on-one.

Ms. Sandra Tullius, HQE, Army Trial Counsel Assistance Program (TCAP). Ms. Tullius discussed the Army's Special Victim Prosecutor (SVP) program to include the training the SVPs have developed and provide to others. As a part of TCAP, Ms. Tullius trains and assists trial counsel worldwide. They are a resource to assist trial counsel with any issue they may face. They also collect data to help the field on a wide range of topics and issues. They are also available to go on site to assist.

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Ms. Bridget Ryan, HQE, Army TCAP, discussed the military institute on the prosecution of sexual violence and the Effective Strategies for Sexual Assault prosecution (ESSAP) Course which is taught to new prosecutors and addresses their biases. It is not a trial advocacy course, it is about attitudes, how to look at a case. The JAG School and TCAP provide a lot of training to assist trial counsel as well as regional conferences and symposiums.

Ms. Teresa Scalzo, Deputy Director, Navy TCAP, stated that the training being offered to Navy trial counsel is as effective as any offered in the civilian world. The NJS brings in national experts from AEquitas, as well as other organizations, to train their students. The Navy is also sending their prosecutors to the two-week Special Victims Investigations Course developed at Fort Leonard Wood which they attend with agents. Navy TCAP also hosts webinars and provides hands-on assistance with cases.

Mr. Neal Puckett, HQE, Navy DCAP, stated the training provided to defense counsel at various stages in their tenure as litigators is robust, effective, and sufficient to meet their needs. Best practices include on-site, hands-on, eyes-on training of counsel using mobile training teams and mentoring. At least one senior experienced defense counsel should always be assigned to a sexual assault case. Mr. Puckett was concerned about budget restraints limiting future training.

Col Vance Spath, Director of Training and Readiness, Air Force, explained that the Air Force does not have a TCAP or DCAP program by name, but they have it in practice through the training and readiness office. Col Spath stated the comprehensive training programs in the military is multi-disciplinary and offers better training than exists in a typical civilian environment. He was concerned that if the training budget is cut it would damage both the prosecution and defense. The Air Force sends a SVP to sit as first chair with trial counsel assigned to a sexual assault case. Col Spath inspects all legal services offices reviewing cases, reading records of trial, and interviewing the attorneys. This allows him to determine if the training provided was effective. The inspection team will identify who needs training and what training is needed.

Ms. Kathleen Coyne, HQE, Defense Services Organization (DSO), USMC, had four recommendations to improve the training of defense attorneys: (1) Establish an independent Marine Corps DSO training budget, (2) lengthen the duration of a DSO assignment for defense counsel and support staff (3) Create a dedicated conflict-free investigative unit within the defense services organization (4) Reform the subpoena process to allow defense counsel to issue subpoenas for witnesses and evidence. Due to budget constraints most of her work with defense counsel worldwide is limited to telephonic consultations. It was her opinion that DSO does not have the funding to send their attorneys to available civilian courses.

In response to a question asking if the military was taking sexual assault seriously, all of the presenters responded that the issue of sexual assault was being taken seriously at all levels. Another issue was how to measure success. The presenters felt that observing counsel in court was the best way to measure the success of training as well as reviewing the record of trial. Surveys of judges and the victims would also provide valuable information. Some presenters also expressed concern that weak cases are being referred to court-martial not based on the

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evidence but because of the current political pressures often overriding the recommendation of the Article 32 officer not to go forward.

Sexual assault training for lawyers (civilian and military):

Ms. Claudia Bayliff, Attorney at Law, suggested that training needs to focus on the offender and the offender's behavior. There needs to be a shift away from discrediting the victim, to enhanced evidence gathering and in many cases identifying additional victims. She feels it is important to train counsel on the effects of trauma and the unique aspects of military victims and subjects. Ms. Bayliff added that training needs to address the reality of false reporting, "he said-she said" cases, working with the Special Victim Counsel, working with expert witnesses, and not using victim blaming language when describing the crime.

Closing comments

COL Ham discussed the need for the members of the subcommittee to review their Terms of Reference and to begin looking at the issues for deliberation and to be addressed in the subcommittee's report to the full committee. The subcommittee members discussed future meeting dates and the need to further coordinate availability.

The DFO closed the meeting at 5:54 PM.

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



Elizabeth Hillman
Chairperson for the Comparative Systems Subcommittee,
Response Systems to Adult Sexual Assault Crimes Panel

Attachments:

Presenters Bios

Claudia Bayliff
Lieutenant Colonel George Cadwalder
Lieutenant Colonel Mathew A. Calarco
Kathleen Coyne
Francis Gilligan
David M. Houghland
Lieutenant Commander Justin R. McEwen
Candace Mosley
Neal A. Puckett

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Bridget H. Ryan
Teresa Scalzo
Colonel Vance H. Spath
Colonel Kenneth M. Theurer
Sandra L. Tullius
Ronald White

Materials Provided

1. FRE/MRE Comparison
2. NDAA 14 Changes to UCMJ
3. Chapter 9 The Article 32 Investigation Synopsis
4. Jury Selection in Sexual Assault Cases
5. The National Center for the Prosecution of Violence Against Women
6. Rape Shield Statutes
7. NDAA Prosecutor Bootcamp
8. NDAA Trial Advocacy 1
9. JAGC Synchronized & Integrated MJ Training Pyramid
10. FY 14 Training Calendar
11. Officers Basic Course Criminal Law
12. JAOBC Initial Packet
13. New Prosecutor Course Training Agenda
14. Intermediate Trial Advocacy Course
15. Crim Law Block 1 & 2
16. Special Victim Advocate Course
17. Sexual Assault Prosecution and Defense Training at AF JAG School
18. TDAC 14-A
19. Defense Orientation Course Narrative Schedule
20. SVCC 14A
21. Course Narrative Schedule ISALC 13A
22. Master Curriculum Plan
23. ASALC 13A
24. MJAC 14A
25. Course Narrative Schedule
26. JMJAT 14A
27. Art 32 Investigating Officer Course
28. SAPR Summit Narrative Schedule
29. Statement of Neal Puckett
30. Statement of Kate Coyne with attachments