

**Response Systems Panel
Comparative Systems Subcommittee
Minutes of February 11, 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 February, 11, 2014, to receive information on sentencing guidelines, mandatory minimums, and clemency. The transcript of the February 11, 2014 proceedings will be appended and is incorporated herein by reference.

Participating CSS Members:

Colonel (Ret.) Stephen Henley, Acting Chairman
Mr. Harvey Bryant
Brigadier General (Ret.) John Cooke
Brigadier General (Ret.) Malinda Dunn
The Honorable Barbara Jones (by phone)
Colonel (Ret.) Larry Morris (by phone)
Colonel (Ret.) Dawn Scholz
Mr. Russell Strand

Other Participants:

Colonel Patricia Ham, RSP Staff Director
Ms. Terri Saunders, RSP Deputy Staff Director
LTC Kelly McGovern, Branch Chief, Comparative Systems Subcommittee
Mr. Dillon Fishman, RSP Staff Attorney
Ms. Maria Fried, Designated Federal Official

Presenters:

Colonel (Ret.) Francis Gilligan, Office of Military Commissions
Colonel (Ret.) Steve Andraschko, Army Clemency & Parole Board
Colonel John Baker, U.S. Marine Corps
Mr. Mark Bergstrom, Pennsylvania State Sentencing Commission
Colonel (Ret.) Mr. Bruce Brown, Air Force Clemency & Parole Board
Mr. L. Russell Burrell, U.S. Sentencing Commission
Ms. Annette Burrhus-Clay, National Alliance to End Sexual Violence (NAESV)
Lieutenant Colonel Craig Burton, U.S. Air Force
Lieutenant Commander Stuart Kirkby, U.S. Navy
Ms. Meredith Farrar-Owens, Virginia Criminal Sentencing Commission
Ms. Molly Gill, Families Again Mandatory Minimums (FAMM)
Lieutenant Commander Stuart Kirkby, U.S. Navy
Mr. A.J. Kramer, Federal Public Defender, District of Columbia
Mr. Randall Lamoureux, Naval Clemency and Parole Board
Mr. Michael LoGrande, Air Force Review Boards Agency
Colonel Michael Mulligan, U.S. Army
Mr. Michael Nachmanoff, Federal Public Defender, Eastern District of Virginia

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Mr. Jonathan Wroblewski, U.S. Department of Justice Director, Office of Policy and Legislation

Introductory Remarks

At 8:28 am, Ms. Fried, the Designated Federal Official, opened the subcommittee meeting. As the designated Acting Chair, COL(Ret) Henley began the subcommittee meeting by explaining that the purpose of the meeting was to review the advisability of adopting sentencing guidelines and/or mandatory minimums, and clemency opportunities.

Overview of Military Sentencing, COL(Ret) Fran Gilligan

COL(Ret) Gilligan discussed topics and answered questions concerning: sentencing in the military, including whether further study is needed regarding sentencing in military adult sexual assault cases, mandatory minimum sentences, advisory sentencing guidelines; and whether military panel (jury) members should sentence convicted service members.

Clemency in the Military

The panel of presenters included:

Mr. Michael LoGrande, Air Force Review Boards Agency

LCDR Kirkby, U.S. Navy

Lt. Col. Burton, U.S. Air Force

COL(R) Mr. Bruce Brown, Air Force Clemency & Parole Board

Mr. Lamoureaux, Navy Clemency & Parole Board

COL(R) Andraschko, Army Clemency & Parole Board

The representatives discussed clemency in the military through the Convening Authority as well as through boards acting on behalf of the Service Secretaries. The speakers discussed the Service-specific procedures and opportunities for clemency, as well as the percentage rates of clemency granted. Topics included the role of the convening authority, clemency and parole boards, and the records correction boards.

Federal Sentencing Guidelines

Mr. Burrell, from the U.S. Sentencing Commission, discussed the history of the U.S. Sentencing Commission, the Federal Sentencing Guidelines, and the potential use of sentencing guidelines in the military system. He provided a handout that involved application of the Guidelines to fact patterns of hypothetical military sexual assaults to demonstrate the expected sentencing ranges under the U.S. Sentencing Guidelines.

State Sentencing Guidelines

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Ms. Farrar-Owens, from the Virginia Criminal Sentencing Commission, discussed state sentencing commissions, guidelines, and approaches to sentencing generally, as well as the approach that has been taken by the ~~state~~ ^{Commonwealth} of Virginia. ✓

Mr. Bergstrom, from the Pennsylvania State Sentencing Commission, also discussed state sentencing commissions, guidelines, and approaches to sentencing generally, as well as the specific approach that has been taken by the state of Pennsylvania.

Mandatory Minimums, Families Against Mandatory Minimums (FAMM), Ms. Molly Gill

Presenters:

Ms. Molly Gill, Families Against Mandatory Minimums (FAMM) and
Ms. Burrhus-Clay, National Alliance to End Sexual Violence (NAESV)

Ms. Gill provided multiple reasons why FAMM opposes mandatory minimums. She also voiced opposition to the military's implementing any additional mandatory minimum sentences.

Ms. Burrhus-Clay discussed the perspective of her experience working with victims, and she expressed opposition to mandatory minimum sentences in the military. Specifically, she noted that mandatory minimums may actually deter victims from reporting because they do not want to assume responsibility for the specific punishment that the accused will be required to serve.

Civilian Defense Counsel Perspectives on Sentencing Guidelines & Mandatory Minimums

Presenters: Mr. A.J. Kramer and Mr. Michael Nachmanoff

Mr. Kramer and Mr. Nachmanoff discussed their experience as defense counsel working with the U.S. Sentencing Guidelines, and offered their suggestions for improving sentencing. Both expressed opposition to mandatory minimum sentences.

Department of Justice Perspective on Sentencing Guidelines and Mandatory Minimums

Mr. Wroblewski discussed his background with the Department of Justice, and the Department of Justice's position on these topics. He noted the long standing support for sentencing guidelines.

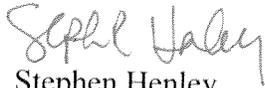
DoD & Services: Comments Concerning Potential Impact of Changing Clemency Opportunities, Establishing Sentencing Guidelines, or Imposing Mandatory Minimums in Sexual Assault Cases

Representatives from the Army, Navy, and Marines discussed their personal opinions and positions on pending and potential legislative changes regarding these subjects. They all opposed sentencing guidelines and mandatory minimums. Additionally, they noted potential issues regarding the recent changes to Article 60 which will impact clemency.

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The subcommittee adjourned at 5:33 PM.

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



Stephen Henley

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

Attachments:

Presenter Biographies Provided

Mark H. Bergstrom
L. Russell Burress
Pamela G. Montgomery
Annette Burrhus-Clay
Bruce T. Brown
Michael F. LoGrande
Lieutenant Colonel R. Craig Burton
Captain Steven J. Andersen, U.S. Coast Guard
Sergeant Major Mark A. Byrd Sr.

Associated Materials Provided to CSS

1. Smart on Sentencing, Galik & Morris
2. Mandatory Minimums Making Minimal Difference, Baehr
3. Sentencing Shift, Oppel
4. Air Force Clemency and Parole, Brown
5. PA Sentencing Matrix
6. PA Summary of sentences by Offense Category
7. PA Mandatory Minimums
8. PA Offenses that require registration
9. PA Megan's law updates
10. PA Table of Maximum Punishments
11. PA Sentencing Guidelines PPT to RSP
12. State Sentencing Guidelines, Kauder & Ostrum
13. Smarter Sentencing Act, FAMM
14. USSC Report to Congress Chapter 5
15. USSC Report to Congress Chapter 10
16. USSC Report to Congress Chapter 12

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17. Federal ^{U.C.} mandatory Minimums, FAMM
18. Correcting Course, Gill
19. Letter to Leahy and Crapo
20. Federal Prison Spending
21. Mandatory Minimums in a Nutshell, FAMM
22. The Hidden Danger, Grayer
23. Letter to Leahy
24. 18USC §3553
25. 28 USC§991
26. Report on Native American Sentencing
27. The Federal Sentencing Guidelines, Compromises, Breyer
28. USSC Guideline Application Frequencies
29. USSC video links for new judges
30. Criminal Sexual Abuse, Burgess
31. USSC Selected Statistics
32. USSC Table 17
33. USSC Table 28
34. USSC Use of Guidelines and Specific Characteristics of Offenders
35. US Clemency & Parole Board Briefing
36. Statement of Mr. Andraschko
37. USSC Case annotations
38. USSC Report to Congress Analysis of Penalties for Federal Rape Cases 1995
39. An Offer You Can't Refuse, Human Rights Watch
40. USSC Guidelines Manual Appendix B
41. Crime, Cost, and Consequences
42. National Crime Justice ^{U.C.} measures Affecting State Courts
43. Profiling Felony Cases in the NACM
44. An Analysis of 2010 State Court Caseload
45. Criminal Case Unit of Count Used by State, 2010
46. UCS New Rape Definition
47. Frequently Asked Questions, UCR Definition of Rape
48. Dead Law Walking, Bowman
49. The Sentences of the Marine Corps, Solis
50. Evidence-Based Practice, Warren
51. Threat of Mandatory Minimums, Johnson
52. Mandatory sentencing once America's law-and-order panacea, FAMM
53. USSC Sex Offense Primer
54. DoJ Reporting Rape in 2013
55. Using ^{U.C.} offender Risk and Needs Assessment
56. Strategic Judging
57. The State of Sentencing, 2007
58. When Mandatory isn't Required, Frakt
59. Theories of Punishment, Muhlhausen
60. Military Sentencing Guidelines, Immel
61. VA Sentencing Guidelines Briefing

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62. Penalties for Sex Offenses in VA
63. Other Sexual Assault Section C
64. Rape Sentencing Worksheet
65. Forcible Rape Section C
66. Memo to RSP to look at Sentencing
67. NAESV Policy Statement, Military Sexual Assault, July 2013
68. A Decade of Truth-In-Sentencing in Virginia (Virginia Criminal Sentencing Commission)