



National Capital Region
Medical

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DoD Expert Witnesses in Sexual Assault Courts-Martial

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Center for Forensic Behavioral Science (CFBS)

- Walter Reed National Military Medical Center
- Off-site location near Dalecarlia Reservoir
- Composed of one O-6 (COL Rick Malone) and two training programs
 - Forensic Psychiatry – Dr. Johnson, Dr. Yeaw
 - Forensic Psychology – Dr. Sweda, Dr. Montalbano
 - Maximum staff of 3 program directors, 4 fellows-in-training, and 3 additional forensic staff
 - Admin Asst – Ms Shauntey Williams



Roles of CFBS

- CFBS contains the only forensic psychiatry and psychology training programs in DoD
- Forensic Psychiatry trains Army and Navy primarily; the door is open for Air Force too
- CFBS is the central clearinghouse for expert witness requests through DoD
 - We consult and testify for Army, Navy, Air Force, Marines, and Coast Guard



Roles of CFBS

- CFBS has established a network of regional forensic consultants covering the globe, in order to better handle legal requests
- Besides serving as experts at trial, we routinely perform pretrial evaluations (known as RCM 706 or sanity boards) and other specialized forensic assessments for security clearances, military law enforcement agencies, and medicolegal questions at Walter Reed



Expertise in Sexual Assault

- CFBS faculty are well-read on the scientific literature on sexual assault, including victim behavior, effects of alcohol on memory and behavior, and psychological effects from sexual assault
- CFBS faculty have testified extensively on the topic, and fellows are trained intensively on the academic and ethical aspects of providing expert testimony



Expertise in Sexual Assaults

- CFBS regularly provides training at JAG conferences, for any military service, for either Trial Counsel (TC) or Defense (DEF)
- Recent conferences on this topic include:
 - TCAP, Fort Sam Houston, 2013 (TC)
 - TCAP, Naval Station Newport, 2013 (TC)
 - TCAP, Naval Base Coronado, 2013 (TC)
 - Air Force, Maxwell AFB, 2013 (TC and DEF)
 - Navy Yard, 2014 (DEF)
 - Navy Yard, 2014, upcoming (TC)



Expertise in Sexual Assault

- Our experts are neutral, meaning that we will take cases for either government or defense, and provide each side with the risks and benefits of having us testify
 - This is essential both from an ethical standpoint and to prevent being labelled as a “hired gun” for one side



Cost Savings to DoD

- Our staff work for free except for standard travel and lodging costs
- Non-DoD experts can charge \$300-500 per hour (a very rough approximation due to the various fee charts that are out there) – totalling \$20,000 per case on average with travel and lodging



Cost Savings to DoD

- Unfortunately, there are few of us, and most are stationed in non-forensic billets, running clinics, providing patient care, or performing other medical-related administrative duties
- The majority of courts-martial will be forced to pay large sums for civilian non-DoD experts, or possibly seek other trial outcomes if an expert cannot be found



Cost Savings to DoD

- When we take on these cases, we also relieve smaller military Medical Treatment Facilities (MTFs) from having to “loan” a medical provider to a case
 - These means the smaller MTF does not lose a few days’ worth of patient care appointments, which can cost the hospital or clinic money in the next year’s budget



Topics that we consult on:

Effects of Alcohol

- Ability to give consent for a sexual encounter
- Estimating blood alcohol levels and the possible physical and cognitive effects at that level
- Amnesia or blackouts due to alcohol
- Relevance of a rapidly rising blood alcohol level as a risk factor for blackouts
- Effects of genetics, food in the stomach, tolerance, drink size on alcohol levels
- Passing out (unconsciousness)



Topics that we consult on:

Counterintuitive Rape Victim Behavior

- Many common behaviors of sexual assault victims are “counterintuitive”
 - Not easily **understood** by the lay person, thus judges and panels.
- May diminish victim’s credibility in panel’s view without expert explanation due to pre-existing beliefs about how rape victims should respond or behave
- May minimize the panel’s/judge’s view of the accused’s culpability.



Topics that we consult on:

Counterintuitive Rape Victim Behavior

- There is no way that a victim should behave either during an assault or after it; reactions may be at either end of a spectrum:
 - Easily **explained** behaviors
 - Sexual behaviors
 - Failure to report/delayed reporting
 - Denial, minimization, recantation
 - Inconsistent disclosure



Topics that we consult on:

Counterintuitive Rape Victim Behavior

■ Examples:

- ❑ Not screaming, lack of resistance (shock/confusion/fear/futility)
- ❑ Destroying evidence by bathing or douching (feeling “unclean”)
- ❑ Refusing medical exam (further traumatization)
- ❑ Wanting to forget/not talk about assault (coping mechanism - suppression or denial)



Topics that we consult on:

Counterintuitive Rape Victim Behavior

■ Examples:

- ❑ Repeated victimization (“deer in the headlights”)
- ❑ Sexual relations with others shortly afterwards (desire to feel “normal”/regain control)
- ❑ Risky sexual behavior – A 2004 study found that up to 38% of women engaged in more sexually risky behavior *after* a sexual assault.



Topics that we consult on:

Counterintuitive Rape Victim Behavior

■ Reasons for Delayed Reporting:

- Disbelief/denial (especially w/acquaintance rape)
- Guilt/self-blame
- Shame, embarrassment, ambivalence
- Fear of :
 - assailant (retaliation)
 - not being believed (“No one will believe me”)
 - being blamed or rejected
 - having sexuality questioned, if male
 - being re-victimized
- Safety in numbers (only comes forward after someone else presses charges)



Topics that we consult on:

Counterintuitive Rape Victim Behavior

■ Reasons for Delayed Reporting:

- Failure to identify assault as “rape” (i.e., “unacknowledged” rape or acquaintance rape)
- Fear of assailant
- Fear of boyfriend/husband’s rejection
- Shame/guilt
- Effects on career
- Avoidance of trial, legal system (public scrutiny, further traumatization)



Topics that we consult on:

Counterintuitive Rape Victim Behavior

- Inconsistent reporting:
 - Many rape victims never report
 - Memory impairment (trauma/alcohol)
 - Often delayed (weeks/months/years); may affect memory
 - May give partial report initially
 - Often to close friend/family from outside unit
 - May tell different details at different times and to different persons
 - May conceal shameful details



Topics that we consult on:

Counterintuitive Rape Victim Behavior

■ Military considerations:

- Power relationship (“tainted consent”, cf. child sexual abuse)
 - Rank/authority, control over career, *in loco parentis* role
- Isolation
 - Remote location and lack of social support from family and pre-military friends may impact reaction
 - Continued contact may be unavoidable
- Adultery, fraternization are crimes under UCMJ
- Unit repercussions (effect on reporting, sentencing)



Topics that we consult on:

Counterintuitive Rape Victim Behavior

- Effects of sexual assault (relevant as victim impact in sentencing phase)
 - Posttraumatic Stress Disorder
 - Depression, anxiety, or psychiatric conditions
 - Effects on social functioning – dating, isolating behaviors, anger problems, turning to substances for treatment, for example



Summary

- The presence of memory impairments or compromised behavioral controls, along with counterintuitive rape victim behavior, pose a significant hurdle in convincing the trier of fact that a nonconsensual sexual encounter took place
- A forensic psychiatrist or psychologist can play a crucial role in providing scientific information to help the trier make a more educated decision concerning what happened during the alleged assault, as opposed to going with their personal beliefs about what a sexual assault looks like



Questions?

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