

McGovern used powerpoint slides during her presentation, which are attached. The JSC-SAS traveled to fourteen different jurisdictions as of 6 August, with plans to travel to five more jurisdictions, and interviewed prosecutors, defense counsel, investigators, victim service providers, non-governmental organizations, and others around the nation. The JSC-SAS sought information from these varied civilian jurisdictions and described for the panel information about: organizational structure; training of prosecutors, defenders, investigators, victim advocates and attorneys; the role of victim advocates and attorneys; victims' rights statutory schemes and enforcement mechanisms; the process from report of offense through sentencing; defense perspectives; and challenges.

The panel members next interviewed Dr. David Lisak by phone. Dr. Lisak described sex offender behavior and the erroneous view that non-stranger rapes are caused by alcohol. Dr. Lisak stated that studies show most rapes are committed by a small number of men and that a high percentage of those are serial offenders. Dr. Lisak clarified that by "rape" he means penetrating offenses using force or the threat of force as well as other sexual assaults using force or the threat of force. From interviews of civilian jurors, research shows there is hesitancy to convict young men because they "don't" want to ruin their lives." Mr. Lisak has not interviewed military jurors (members) and has not assessed military sexual offender treatment programs.

Dr. Lisak stated that he studies rape in the military, in higher education, and in the civilian world. Of the three, the military has been "at this for years," meaning seriously attempting to address the issue of sexual assault; higher education "got a free pass" until the last couple of years; and civilian jurisdictions are "the weakest link amongst all three."

Dr. Lisak stated there is a layer of betrayal in the military due to its paternal and maternal nature. Victims see the military almost as family so the impact of a sexual assault can be magnified. The stakes are different for military victims than for civilian victims. Fear of repercussions from peers and supervisors and reticence to harm the unit are factors that reduce reporting. There is a complexity to reporting that is different in the military than civilian life, somewhat present also in higher education but nowhere near as intense.

Dr. Lisak discussed reporting rates at the military academies (10% USMA; 5% USNA; 35% AF), colleges and universities (5%), civilian sector (20-25%), and military (20-25%). Finally, Dr. Lisak stated that constant training is one of the most important things for investigators and prosecutors and it is frustrating that military culture impedes these. Although improved somewhat, Dr. Lisak stated the military needs to systematically work to improve the experience level of prosecutors and to encourage that investigative agencies should be part of the team.

The members next heard from Dr. Cassia Spohn, who used powerpoint slides which are attached. Dr. Spohn discussed her study of patterns and policies of "clearing" rape cases in Los Angeles.

In Los Angeles, there are two ways to “clear” a case; arrest the suspect and turn him or her over for prosecution, or clear by “exceptional means.” In order to do the latter, the police must answer four questions affirmatively: first, has the investigation established the identity of a suspect; second, is the suspects’ location known; third, is there enough information to arrest; and four, is there something beyond the control of law enforcement that precludes them from arresting the suspect?

Dr. Spohn’s research revealed that detectives with problematic cases approach the District Attorney prior to arrest to obtain a decision not to file charges and then clear the case using “exceptional means.”

Of 5031 rapes and attempted rapes reported to LAPD 2005-09:

- 616 (12.2% were cleared by suspect arrest
- 489 (9.7%) resulted in charges filed
- 390 (7.8%) resulted in conviction
- 232 (4.6%) resulted in a prison sentence.

Of 2269 rapes and attempted rapes reported to LASD 2005-09:

- 770 (33.9%) were cleared by suspect arrest
- 405 (17.8%) resulted in charges filed
- 317 (14%) resulted in conviction
- 179 (8.4%) resulted in prison sentence.

The District Attorney only took cases where there was proof beyond a reasonable doubt and corroboration of the victim’s allegations. Prosecutors want only “slam-dunk” cases and won’t take a case they are not sure to win because “they want to win.”

Finally, the members heard from Dr. Jim Lynch. Dr. Lynch addressed how and whether one could compare crime survey data from the 2012 Workplace and Gender Relations Survey of Active Duty Members (WGRA), the basis for DoD’s extrapolated number that 26,000 service members experienced “unwanted sexual contact,” and other national crime surveys. Dr. Lynch described victimization surveys including the National Crime Victimization Survey (NCVS), which seek to measure criminal events, compared to public health type surveys which began in the early 80’s, championed by Kirkpatrick, which seek to measure damage. These design features (measure criminal events or measure health damage) drive survey results higher or lower. Public health surveys seek to sweep as much into them as possible and thus drive results higher; crime surveys want to measure criminal events and thus drive results lower. For example, the public health surveys include questions on the extent of coercion, which casts a broad net. Crime victim surveys use narrow definitions; public health surveys use broad definitions. Casting a broad net, public health surveys use a “single stage screening approach,” using a broad

question to identify an event. NCVS, on the other hand, uses a second stage screening approach in order to validate criminal events, which involves follow up interviews. In fact, Dr. Bonnie Fisher looked at one stage versus two-stage screening surveys and found the one-stage surveys yielded results 50% higher than the two-stage surveys. Dr. Lynch stated that a very good survey is the recent one on prison rape, which cost \$84 million and took seven years. He opined that if DoD wants the most accurate survey, it needs to develop a devoted survey, similar to the prison rape survey.

Also important is the length of the reference period the survey asks about, known as “bounding,” as this affects memory. Public health surveys use a year or longer; NCVS uses six months. People want to comply so reach back further in time and their memories are worse.

Applying these concepts to the WGRA, Dr. Lynch observed that it borrowed design ideas and is “not optimum.” Both the survey’s bounding (twelve months) and the lack of second stage screening are issues that would cause the survey to yield higher results. As a result, the 26,000 number extrapolated from the WGRA is “probably high.” In addition, the low response rate to the WGRA (24%) is an issue (response rate to NCVS is 87.5%). When asked whether the extrapolated results of the WGRA (26,000 “unwanted sexual contact”) should be contrasted with the approximate 3300 reported sexual assaults in DoD in 2012 to argue the delta between the two represents the number of unreported sexual assaults, Dr. Lynch stated, “you shouldn’t do that.”

The preparatory session ended at approximately 1545.

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

Barbara S. Jones
Chair
Response Systems to Adult Sexual Assault Crimes Panel

Attachments:

1. Powerpoint Presentation: Study of Sexual Assault in Civilian and Military Justice Systems
2. Memorandum for Chair, JSC, Subject: Comparison of Military and Civilian Response to Allegations of Sexual Assault, dated June 28, 2013
3. Excel Spread Sheet: JSC-SAS Interview Questions
4. Bio – Dr. David Lisak
5. Dr. Lisak Written Statement to House Armed Services Committee January 23, 2013
6. Lisak, *Rape Fact Sheet*